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We should think of ourselves as responding to the multiplicity of values that historical traditions have presented us with, and should try to take the next step under the pressure of the search for coherence. —Thomas Nagel, American philosopher

To my Dad, Albert Robert Santopietro, the lawyer who dreamed of academia.



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Child Support Law in California and Sweden

A Comparison Across Welfare State Models

ELIZABETH STUART PERRY

Abstract

Ensuring just distribution of and adequate funding for children whose parents do not live together is a global legal challenge. It affects many families as well as every legal jurisdiction's welfare state and family law.

This comparative study describes child support legal solutions in two jurisdictions, California (a liberal welfare state) and Sweden (a social democratic one). Analyzed are the similarities and differences in these states' legal responses to the inequalities child support law functions to alleviate, and the implications for child support theory and practice in these and other jurisdictions.

Micro-comparative chapters demonstrate how the jurisdictions' regulations differ by analyzing children's rights and needs and parents' duties and abilities to pay, each as defined in the child support law. Also compared are procedural laws enforcing child support rights and duties in private and public law cases.

Macro-comparative chapters draw a comparative portrait of two welfare state ideological and family law child support approaches, both aiming to reduce inequalities, in terms of how their child support laws and welfare states have defined and addressed the best interests of children and society at large.

Most of the differences in the laws and their interpretations are found to reflect the welfare state ideals of the two societies including their ideal models of the family and of individuals' relationships to the state. Ideals for judicial and negotiated family law conflict resolution also play a significant role.

Analyses of the differences include comparison of the jurisdictions' (1) histories, (2) legal principles and traditions, (3) gender equality ideals and realities and (4) income equality ideals and realities, all as related to legal child support rights and duties.

The study provides a better understanding of some of the weaknesses within these regulations, and also of the child support system design choices they represent. Weaknesses in child support laws arise not just from confusions over how to prioritize conflicting interests directly regulated by the legal rules, but also how to prioritize those interests given conflicting ideals of the state and the family, both between and within these societies. Despite the different ideals influencing both systems' solutions, elements of each jurisdiction's experience have potential to inform the other's further development.

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Elizabeth Stuart Perry

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Terms and Abbreviations

ACF	The US federal Administration for Children and Families, organized under the Department of Health and Human Services. The Office of Child Support Enforcement is organized under the ACF.
ADR	Alternative Dispute Resolution. Any non-judicial means for coming to a settlement or judgment, for example mediation.
ALI	American Law Institute. An independent organization that publishes scholarly work to clarify, modernize, and otherwise improve US law, including the Principles of the Law of Family Dissolution's child support chapter.
Arrears/arrearages	Past-due child support payments.
BIC/ <i>barnets bästa</i>	The Best Interest of the Child standard used by California courts in deciding issues concerning a child; <i>barnets bästa</i> , a more substantive than procedural principle, in Sweden.
Cal.	The Supreme Court of California (in case law decisions "Cal."), which hears public law, private law and criminal cases and is the ultimate authority on California state law.
Cal. App.	California Court of Appeal (in case law decision citations herein "Cal. App." and then 2d, 3d, or 4th for the various California Appellate Reports 1905 to date).
Cal. Code Regs.	The California Code of Regulations, providing the regulations adopted after administrative rulemaking authorized by statutory law.
C.F.R.	The US Code of Federal Regulations, providing inter alia detailed child support rules for the 50 states plus the District of Columbia to follow.

Cal. Fam. Code/FC	The California Family Code., regulating inter alia both private law and public law child support systems in California.
CP or Payee	Custodial parent; <i>boförälder</i> in Sweden. The parent with primary or exclusive physical and often sole legal custody of a child. Generally receives child support on behalf of the child from the noncustodial “payor” parent, thus is also called the “payee” of child support (or “creditor,” owed child support from the “debtor”/payor parent in international child support treaties).
Cal. Rules of Court	The California Rules of Court. The Judicial Council of California is authorized by the California Constitution art. VI, § 6 to adopt these rules for court administration, practice, and procedure, so long as they are not inconsistent with any statutory law.
Dept.	<i>Departement</i> in Sweden, Department in California. Governmental departments in charge of administering matters within their respective areas of expertise.
<i>Dir.</i>	<i>Direktiv</i> . Issued by a Swedish <i>Departement</i> to regulate how a task such as an investigation should be conducted.
<i>Ds</i>	<i>Departementsserien</i> . Swedish Departmental Publication Series, in which reports following research or investigations by departments, <i>Departementsskrivelser</i> , are published.
EU	European Union. A supranational legal order of currently 28 Member State nations including Sweden, regulated by primary law including the Treaty on European Union and the Treaty on the Functioning of the European Union.
<i>FB</i>	<i>Föräldrabalken</i> . The Swedish Parents Code, regulating, inter alia, <i>underhållsbidrag</i> , Sweden’s private law child support.

FCR of Child Support	Federal Case Registry of Child Support. A national database of information on parties to all US public child support (“IV-D”) and private, non-IV-D cases or court orders entered or changed on or after October 1, 1998.
<i>Föreskrifter</i>	Detailed regulations promulgated by a Swedish public authority or agency. Names vary by agency; one is <i>Allmänna råd</i> (General Guidelines) by <i>Skatteverket</i> , the Swedish Tax Authority.
<i>Förordning</i>	Government-promulgated Swedish regulations (by <i>Regeringen</i>), announcing rules that do not have such consequences for individuals that they must be decided by the legislature.
FLFO	Family Law Facilitator’s Office. A resource for California parents available in the private civil family law courthouses.
FPLS	Federal Parent Locator Service. A child support enforcement and collection tool across the US, created under US federal law.
The Guideline	The California child support formula for determining amounts of child support to be paid by parents based upon their incomes and parenting time with their child, adopted for mandatory use per the California Family Code.
<i>HD</i>	The Swedish Supreme Court (<i>Högsta domstolen</i>)/judgments marked “HD”).
<i>HFD</i>	The Swedish Supreme Administrative Court (<i>Högsta förvaltningsdomstolen</i>)/judgments marked “RÅ”).
<i>ISF</i>	The Swedish Social Insurance Inspectorate (<i>Inspektionen för socialförsäkringen</i>). An independent supervisory agency, organized as part of the Ministry of Health and Social Affairs.
<i>Kronofogdemyndigheten, Kronofogden</i>	The Swedish Debt Collection Agency. Exclusively responsible for public and private debt collection in Sweden.

<i>Lagrådet</i>	The Swedish Council on Legislation. A council of judges and former judges from the Swedish Supreme Court and the Swedish Supreme Administrative Court that gives nonbinding opinions from a legal and constitutional perspective on draft legislation (<i>Propositioner</i> from <i>Regeringen</i>) before they are submitted to <i>Riksdagen</i> .
LIA	California's "low-income adjustment," presumed appropriate where a parent earns very low income (net income less than \$1500 [13,038 SEK] per month).
LCSA and CSEA	Local Child Support Agency (most often county-level) and Child Support Enforcement Agency (state-level). Public child support enforcement agencies, which operate in every US state to find NCPs; to make, enforce, and modify child support orders; and to collect payments from NCPs and send them to CPs. Also known as a "Title IV-D agency" referring to the US federal law that created them.
LSA	Living Standard Addition (<i>standardtillägg</i>). The add-on amount theoretically available to increase a Swedish private child support (a UB) to cover above-usual needs for a child whose parents' financial circumstances can afford to meet such less central needs.
NCP	Noncustodial parent. The parent who does not live with the child, or lives with the child less than the CP (custodial parent). May share legal custody. Generally pays child support to the CP thus is called the "payor" or "debtor."
OCSE	Office of Child Support Enforcement. The federal agency, a subdivision within the US Dept. for Health & Human Services' Administration for Children and Families, responsible for administering the US nationwide child support program. OCSE promulgates certain child support rules for all US states to follow in connection with federal social-benefit-program funding.

Passport Denial	The names of US obligors owing \$5,000 [43,460 SEK] or more in child support arrears are sent to the federal OCSE for tax refund offset and to the US Department of State to indicate that a passport cannot be issued for that person.
<i>Prop.</i>	<i>Proposition.</i> A proposal of new Swedish statutory law, written by <i>Regeringen</i> , the government (politically-elected executive) currently in charge.
<i>Reg.</i>	<i>Regeringen.</i> The Government in Sweden, a.k.a. the national cabinet formed by usually a coalition of political parties and currently in charge of proposing and executing law and policy. “The Governor and his or her administration” would be the equivalent in California, where “government” refers not only to the executive branch of government but to all public entities, e.g. courts and the legislature are parts of the state “government.”
<i>Remissinstans</i>	An expert, such as a university, local government or interest group, responding to a call for comments on a <i>Proposition</i> by submitting a written <i>Remissyttrande</i> of comments and opinions that are informative to lawmakers but are not themselves a source of law.
<i>Riks</i>	<i>Riksdagen.</i> The Swedish legislature, a.k.a. the Swedish Parliament, a national unicameral body of 349 elected members.
<i>Rskr</i>	<i>Riksdagsskrivelse.</i> A formal writing from the Swedish Parliament (<i>Riksdagen</i>) to the Government (<i>Regeringen</i>).
<i>SCB</i>	<i>Statistiska centralbyrån.</i> Statistics Sweden, the Swedish agency responsible for developing and disseminating official and other statistics, responding to requests from <i>Regeringen</i> and administrative agencies (<i>myndigheter</i>).
SEK	<i>Svenska kronor.</i> Swedish crowns, the monetary currency of Sweden.

<i>SFB</i>	<i>Socialförsäkringsbalken</i> . The Swedish Social Insurance Code, regulating, inter alia, <i>underhållsstöd</i> (UStöd), Sweden's child-support-guaranteeing social benefit.
<i>SFS</i>	<i>Svenske författningssamling</i> . The Swedish Code of Statutes, the published collection of Sweden's statutory law. Every piece of new legislation has an SFS number, even if its provisions modify a Code on a given subject like the FB or SFB.
<i>SoS</i>	<i>Socialstyrelsen</i> . The Swedish National Board of Health and Welfare, the government agency (one of many organized under the <i>Socialdepartementet</i> a.k.a. the Social Department or Ministry of Health and Social Affairs). SoS has a broad mandate to regulate and advise providers of social services (healthcare and others) offered at the more local-government levels. Regulates therefore social services provided in family law matters.
<i>SOU</i>	<i>Statens offentliga utredningar</i> . Official reports of Swedish legislative and investigative expert commissions; an important source of legislative history when an SOU leads to a Prop. and then to statutory law.
<i>Standardtillägg</i>	The additional child support theoretically available under Swedish UB law (private civil rules) to allow the child to share in the parents' living standard.
TANF	Temporary Assistance for Needy Families. A US Social-Security-Act-created means-tested cash benefit program for low-income families, run by the states funded by federal block grants. California's TANF is called CalWORKS. Before 1996 TANF was AFDC, Aid to Families with Dependent Children.
<i>UB</i>	<i>Underhållsbidrag</i> . The Swedish private-law child support (sometimes called child maintenance). A monthly payment from a parent/guardian for the benefit of a qualifying child, with the amount decided specific to the child's circumstances, per the FB.

UN CRC	The United Nations Convention on the Rights of the Child; <i>Barnkonventionen</i> in Sweden. Sweden has ratified the UN CRC; the US has signed but not ratified it.
USA, US	United States of America.
U.S.C.	United States Code (federal statute codification).
USD and \$	United States dollars, the monetary currency of the USA.
<i>UStöd</i>	<i>Underhållsstöd</i> . The Swedish public law governmentally-paid child support guarantee. Part advance recouped from the payor, part social benefit in cases of payor's financial need. A cash social benefit for children with separately-living parents who do not receive UB. Paid in a standardized monthly amount set by law for all qualifying children in each of three age categories.
<i>Utskott</i>	A committee in Sweden, particularly one within the <i>Riksdagen</i> which investigates, proposes, and follows up upon matters referred to it by the <i>Riksdagen</i> .
WSM(s)	Welfare state model(s). Ideal types describing different capitalist societies' ideologies with respect to the relationship between the state, the market and the family, specifically regarding welfare provisions. The liberal WSM (the USA is the prototypical example) and the social democratic WSM (Sweden is prototypical) are examples of WSMs.

1. Introducing the Study

1.1. Introduction and Overview

This doctoral dissertation presents the results of a comparative *child support* study.¹ It describes legal solutions in two legal systems, California's and Sweden's, to a problem affecting children, parents and the state, and analyzes how and why these solutions differ.

The *shared societal problem* addressed by child support law is that some children have parents who divorce, separate or never live together, and these children are not as easily able to access both parents' financial resources to meet their support needs compared with children whose parents live together. One aspect of this problem is that children with separately-living parents often live with one parent, much more or exclusively than with the other. Another aspect is that, in addition to this caregiving imbalance, an earning imbalance between parents is common, and more often than not the higher earner is the parent with whom the child does not live.² Modern societies attempt to solve this problem in differing ways. For example, laws

¹ "Child support" studied here is defined as payments owed from and paid by parents, not the state, although the state may advance child support or itself provide other supports to children. Per the United States Supreme Court in 1990, in the US today "the common usage of 'child support' refers to legally compulsory payments made by parents. Black's Law Dictionary defines 'child support' as '[t]he legal obligation of parents to contribute to the economic maintenance, including education, of their children; enforceable in both civil and criminal contexts.'" See *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990) (citing BLACK'S LAW DICTIONARY 217 (5th ed. 1979)). Social benefits to children *do not constitute* "child support" as defined in this way, although social benefits may *replace* child support, as this thesis will discuss. In Sweden child support fitting the definition above is called *underhållsbidrag* (herein "UB"), however UB payments are only civilly, not also criminally, enforceable. *Underhållsstöd* (herein "USTöd") is a social benefit replacing or supplementing (guaranteeing) receipt of sufficient child support. Both are compared herein to California's Guideline child support system.

² As the thesis will discuss, existing law and even much academic discussion is grounded in an assumed societal norm of two parents economically supporting and otherwise parenting their children in one household, coupled with a second norm of only one parent living with children whose parents do not live together, despite increasing numbers of children whose families do not resemble those norms. In both California and Sweden, if two parents earn equal incomes and each care for their children 50% of the time, child support law becomes unnecessary, yet unequal caring and earning—along traditional gender lines at a systems level—is most frequent. Thus this regulatory area is also intimately connected to issues of gender and class inequality and gender roles. In policy discussions it is often reduced to its historic roots, oversimplifying it today: how to keep children and single mothers sufficiently supported absent a male earner in their household.

helping parents set and enforce private child support obligations owing by their children's other parent, as well as laws providing some level of state financial support to all children (especially children at risk of poverty) exist throughout the EU and the US today.³

Child support laws specifically have been enacted (in the two legal systems studied and in many others) to clarify how much and how parents should pay money to support children if the parents divorce, separate, or never live together. The child support laws in both Sweden and California, via rules that this thesis describes and compares, both function (1) to avoid disadvantages (objective and relative) for children with separately-living parents and (2) to ensure fair contribution and division of responsibility between private and public child-support-duty holders (between the parents and between parents and the state).

Substantively these laws define these children's rights to child support, their financial needs to be met by child support, their parents' duties and abilities to pay child support, and the allocation of responsibility for child support between the two parents. *Procedurally* the laws also work to ensure that parents actually pay child support and that child support amounts are adjusted to the relevant circumstances of children and parents over time. As part of this, these laws attempt to recover reimbursements from parents in cases where the state needs to step in and support these children (more than it otherwise would have supported them) because they are not receiving the parental child support owed.

Societies often address the problem of ensuring support for children with separately-living parents *indirectly*. They provide increased levels of welfare state public support to children's households generally (usually via public law grants, services, and social insurances). They work towards more gender equality in the public and private spheres, and strengthen labor market conditions for parents. They also address the need for child support *directly*, via private-law regulation of child support payable between separately-living parents. *This study examines the latter (the direct regulation of child support payable by parents), in the context of the former (states' systems for contributing to the support of children).*⁴

³ This legal area, aiming to protect children's access to financial and caregiving support from their parents, is relatively young. Historically such protections were not always provided in private law (as duties between private parties) or public law (as state supports for such children). The two jurisdictions studied implemented such laws as their welfare states developed, as will be discussed.

⁴ Both jurisdictions have somewhat bifurcated child support laws because some children's support needs are regulated without any replacement public benefits first being paid to help them (*private cases* herein) while many others (the *public cases*) involve public agencies enforcing child support duties under statutory rules more or less distinct from the private-law rules, as will be discussed.

This thesis analyzes and compares the child support laws payable between parents in Sweden, a *social democratic welfare state* known for relatively large state investments in children, and in California, a *liberal welfare state* known for relatively heavy emphasis on market-economy-based and private responsibility for children. *The analysis identifies similarities, differences, and the primary reasons behind the similarities and differences, then discusses the findings' implications.*

The study's findings demonstrate how these two jurisdictions' child support solutions differ, specifically as to the laws regulating child support rights and needs of children; the duties to pay and financial ability assessments of parents; and procedures for setting, modifying, and enforcing child support payments. Conclusions include that *differences often manifest in how the legal rules are interpreted rather than in the (often internationally similar)⁵ wording of the rules themselves*, and that *many of the differences in the laws and their interpretations reflect the welfare state ideals of the two societies evidenced in their different overall welfare state and family law approaches addressing the similar societal inequalities implicated by child support law. Particularly, legal actors prioritize or emphasize parts of the regulations in ways aligned with each society's fundamental assumptions and beliefs about the proper relationships between parents, children, and the welfare state. They also de-prioritize and de-emphasize other parts, even in ways that compromise legislators' aims for the laws.*

The study's results lead, the analysis submits, to a better understanding of some of the weaknesses within these regulations, including some identified in previous academic work. *Weaknesses in child support laws arise not just from confusions over how to prioritize conflicting interests directly regulated by the legal rules, but also how to prioritize those interests given conflicting ideals of government and the family, both between and within these societies.* Despite the different ideals influencing both systems' solutions, elements of each jurisdiction's experience are found to have potential to inform the other's further development.

⁵ See *infra* Chapters 1.3 and 5.2, which discuss child support from an international vantage, Chapter 3 in which the statutory texts in the jurisdictions studied are introduced, and Chapter 6 which compares the black-letter texts and rules.

1.2. The Problem Area Regulated by the Laws Compared

A large proportion of all children and parents are affected by child support law

Approximately 26–27% of all children in Sweden have separately-living parents, meaning their two parents do not live together in one household with them.⁶ In California the percentage of children with separately-living parents is 31%.⁷

In Sweden, slightly more than 50% of the children with separately-living parents lived most or exclusively with their mothers according to a 2014 government study of Swedish separately-living parents, while 35% lived approximately equal time with each parent (alternating residence or *växelvís* in Swedish) and slightly fewer than 10% lived most or exclusively with their fathers.⁸ Of the Swedish parents using the public child support system, largely not available if the children alternate residence, in 2019 over 4 of 5 support payees are women and over 4 of 5 support payors are men.⁹

In California, U.S. Census Bureau projections estimate that 23% of all children live in “female-led households with no husband present” and 9% in “male-led

⁶ ISF Report 2019:7, *Från underhållsstöd till underhållsbidrag? En granskning av 2016 års reform inom underhållsstödet* [From UStöd to UB? A Review of 2016's Reform of UStöd], at 67 (reporting this percent for 2000–2017). In 2013 there were approximately 480,000 such children in Sweden, and 540,000 such parents, of a then-total population of 9.64 million persons. SCB Demographic Report 2014:1, *Olika familjer lever på olika sätt—om barns boende och försörjning efter en separation* [Different families live in different ways—a survey on residence and support of children after a separation], at 11, 147 (English summary) (reporting August 2012–March 2013 questionnaire study responses of approximately 15,000 Swedish children's separately-living parents, collected in order “to see how the parents had solved housing issues [physical custody] and finances [child support] for the child.”).

⁷ The total population of California is approximately four times larger than Sweden's. California had an estimated population of 39.54 million people as of July 1, 2017, 22.9% of whom (approximately 9 million) were children, thus the 31% with separately-living parents consisted of approximately 2.84 million children. See U.S. Census Bureau, *QuickFacts (California) Total Population* (2017) (available at <https://www.census.gov/quickfacts/fact/table/californiacitycitycalifornia,ca/PST045217>) (also reporting, *inter alia*, that 8.1% of persons under 65 years of age were without health insurance and 44% of persons age 5 and older spoke a language other than English at home).

⁸ SCB Demographic Report 2014:1, *supra* note 6, at 11–12, 148 (English summary). In comparison in 1992–93 only about 4% of children with separately-living parents alternated residence between their two parents and homes. Anna Singer, *Voices heard and unheard—A Scandinavian perspective*, 36 JOURNAL OF SOCIAL WELFARE AND FAMILY LAW 381, 386 (2014) (arguing that political prioritization of equal parenting goals favoring alternating residence is one reason Swedish children's rights to be heard and to participate in physical custody decisionmaking have not fully been protected in Swedish law or practice). Strong emphasis on out-of-court parental agreements is another reason. See Eva Ryrstedt, *Mediation Regarding Children—Is the Result Always in the Best Interests of the Child?: A View From Sweden*, 26 INTERNATIONAL JOURNAL OF LAW, POLICY AND THE FAMILY 220 (2012).

⁹ ISF Report 2019:7, *supra* note 6, at 13.

households with no wife present.”¹⁰ This does not reveal the percentages living approximately equal time in each household, or clarify how many children are living with their two non-married parents or with a non-married stepparent (although we know these categories have significantly expanded and should be distinguished).¹¹

The California child support orders in place in private and public cases show percentages of time with each parent, although they may inaccurately reflect the children’s time with the payor parent.¹² A 2017 report on the functioning of California’s child support Guideline sampled child support orders statewide and found that *California payor parents had 40% or more of the parenting time with the children in 18% of all child support cases sampled*. Specifically in 27% of the private cases and in 9% of the public cases a court had recorded that the parents shared the supported child’s care.¹³ The 18% overall shared care (children alternating residence) percentage represented an increase from 17% in 2010 and 15% in 2005.¹⁴

The above California household data, including 31% of children having separately-living parents, is similar to statistics for the USA as a whole.¹⁵ The U.S.

¹⁰ See U.S. Census Bureau, *QuickFacts (California) Household Types* (2017) (available at <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>) (estimating additionally that 9% of children lived in households including a nonmarital cohabitant of a parent, and that 86% of California’s children are their head of household’s own children, while an additional 9% are grandchildren and the remaining are other children including foster children).

¹¹ See, e.g., Regina S. Baker, *The Changing Association Among Marriage, Work, and Child Poverty in the United States, 1974–2010*, 77 JOURNAL OF MARRIAGE AND FAMILY 1166 (2015).

¹² The possibility of such inaccuracy was noted in a 2011 report on the functioning of California’s child support Guideline, which found that in 26% of California’s private child support cases the payor parent was recognized in the court order to spend 41% or more time with the children concerned. The same timeshare, 41% or more, was recognized in just 8% of public system cases. Administrative Office of the Courts, *Review of Statewide Uniform Child Support Guideline 2010: A Report to the California Legislature (June 2011)* 61 [hereinafter *Guideline Review 2010*] (available at <http://www.courts.ca.gov/documents/review-sucsg-0611.pdf>).

The report suggested that courts in public cases may be calculating child support owed by NCP fathers with less parenting time than the fathers actually spent with their children, increasing their child support payment obligation inappropriately. In the other direction, some family law scholars and practitioners have long expressed concerns that fathers request and are assigned more time with the children than they later actually spend; this can decrease inappropriately the child support paid by them to the mother’s household with the child.

¹³ Administrative Office of the Courts, *Review of Statewide Uniform Child Support Guideline 2017: A Report to the California Legislature (January 2018)* 274 [hereinafter *Guideline Review 2017*] (available at <https://www.courts.ca.gov/documents/lr-2018-JC-review-of-statewide-CS-guideline-2017-Fam-4054a.pdf>).

¹⁴ *Guideline Review 2010* at 61 (reporting on living arrangements for children whose data appears in sampled child support court cases, not necessarily all such children).

¹⁵ See Timothy Grall, U.S. Census Bureau Report—*Custodial Mothers and Fathers and Their Child Support: 2013* 1 (January 2016) (available at <https://www.census.gov/library/publications/2016/demo/p60->

Census Bureau reported for 2016 that 69% of all US children lived in families with two parents.¹⁶ Approximately 23% of all American children lived in the second-most-common type of household for children, a single-mother household, and 4% lived in a single-father household.¹⁷

California's alternating residence percentage is probably roughly similar to the percentage for the US as a whole. For the US as a whole, researchers have estimated that approximately 20–31.5% of children with separated parents live approximately equally with each parent, a custody arrangement also sometimes called extended visitation (with the terminology often reflecting preferred models of the ideal family, as will be discussed with respect to child support). The higher percentage in that range being for Wisconsin as of 2001, a US state where joint physical custody has been studied and also where it has been relatively more supported and encouraged by the child support law than may be true in California.¹⁸ The data indicate in any

255.html). This report also includes a breakdown by census participants' self-reported racial identity, according to which 48.1% of children reported as black; 23.1% of children reported as white; 13.6% of children reported as other races; and 29.6% of Hispanic children (who may be of any racial identity) currently having separately-living parents. The Swedish percentage, 25%, is similar to the white and only slightly less similar to the Hispanic percentage in the US. Some comparative researchers restrict their US sample to children reported as white, for example when studying child poverty. In the interest of not excluding data on the children not reported as white, whose families use the child support laws no less and indeed are more likely to have separately-living parents, however, *my reviews of child support data do not restrict the data by race categorizations (used in the US but not in Sweden), ethnicity or other demographic factor. This should not affect the analysis, as the study does not aim to compare performance data, but rather the legal solutions in their broader WSM contexts.*

¹⁶ In total 50.7 million children lived with their two parents, of whom 47.7 million lived with married parents and 3.0 million with unmarried cohabitating parents. The US 69% is roughly similar to Sweden's 75% of children living with their two parents. This study focuses on the other 25–31%.

¹⁷ U.S. Census Bureau, Press Release CB16-192: *The Majority of Children Live with Two Parents*, *Census Bureau Reports* (Nov. 17, 2016) (available at <https://www.census.gov/newsroom/press-releases/2016/cb16-192.html>) (reporting data from the *America's Families and Living Arrangements* statistical tables package). *But see* MARY DALY & KATHERINE RAKE, *GENDER AND THE WELFARE STATE* 104 (2003) (finding from the Luxembourg Income Study that 5.4% of US households and 4.8% of Swedish households are "lone mother households" meaning a sole adult woman residing with at least one dependent child).

¹⁸ *See* Steven T. Cook & Patricia Brown, *Recent Trends in Children's Placement Arrangements in Divorce and Paternity Cases in Wisconsin: Report to the Wisconsin Department of Workforce Development, Bureau of Child Support* 8 (July 2005, revised May 2006). *See also* Marigold S. Melli & Patricia R. Brown, *Exploring a New Family Form—the Shared Time Family*, 22 *INTERNATIONAL JOURNAL OF LAW, POLICY AND THE FAMILY* 231, 259 (2008) (mentioning estimates that put shared parenting nationwide at about 20%, but 32% in Wisconsin) and Christine Skinner & Jacqueline Davidson, *Recent Trends in Child Maintenance Schemes in 14 Countries*, 23 *INTERNATIONAL JOURNAL OF LAW, POLICY AND THE FAMILY* 25, 28 (2009) ("In Wisconsin, USA, the child support formula was adjusted to encourage shared care.").

event that *alternating residence in California and in Sweden has been becoming more common for a number of years.*

About 80% of the Swedish separately-living parents *with a child living with them all or most of the time*, thus *excluding* the parents of those children who alternate residence, reported receiving child support (in total, whether via the private or the public child-support-guarantee system).¹⁹ Of *all* separately-living parents in Sweden, meaning the parents above as well as the parents of children alternating residence, *52% of mothers and 8% of fathers received child support* from the other parent directly or from the public agency that administers the public child support guarantee *underhållsstöd* (herein “UStöd”). Over 50% of these parents who received child support received the precisely same amount paid for the public benefit, then 1,273 SEK per month (about \$135–190, as the exchange rate has varied over recent years²⁰), regardless of the payor’s or the parents’ combined income level.²¹ “Very few” of the Swedish parents whose children lived 50% time with each parent received (or paid) any child support, private or public.²² Some fathers reported feeling disadvantaged by the agency, or by

¹⁹ See SCB Demographic Report 2014:1, *supra* note 6, at 11, 149 (English summary). Among the 16% reporting that they did *not* receive child support, reported reasons included that *their child support agreement had not worked*, that they had *good income personally* and therefore did not need child support from the NCP, and that the child in question *no longer qualified* for support (e.g. had turned 18). In the first two instances, there likely was a right to payment via the public UStöd, so it is unclear if these parents simply defined child support as this study does (to include only *parental* payments) when answering researchers’ questions, or actively chose not to apply for UStöd for their children. Compare ISF Report 2019:7, *supra* note 6, at 142–143.

²⁰ For consistency throughout this thesis currency conversions have been calculated with the Swedish Central Bank (*Riksbank*) 2017–2018 (24-month-average) exchange rate between SEK and USD (8.6921 SEK per \$1 or \$0.115 per 1 SEK). With this rate 1,273 SEK is \$146.45.

²¹ See SCB Demographic Report 2014:1, *supra* note 6, at 149. Note that parents of every child in Sweden receive a child allowance (*barnbidrag*) of 1,050 SEK (about \$115) or more per child per month as well. Gross *per capita* annual income in Sweden in 2017 was 354,890 SEK (\$38,322) including employer and state benefits as well as salaries; the 2017 annual *disposable* income *per capita* was 223,780 SEK (\$27,745). See <https://www.ekonomifakta.se/Fakta/Ekonomi/Hushallens-ekonomi/Hushallens-inkomster/>. Child support has been found to represent 96.2% of national average net cash transfers in the US (to those households receiving it), but just 24.5% in Sweden. Skinner & Davidson (2009), *supra* note 18, at 31 (also finding that 94.8% of Swedish non-widowed lone parents receive child maintenance circa 2000, versus 31.7% of similar US parents). These numbers reflect the very few state support transfers to households in need in the US, as will be discussed. Also, high Swedish receipt *includes UStöd*.

²² See SCB Demographic Report 2014:1, *supra* note 6, at 149. This is mainly a consequence of Swedish private child support law, presented in Chapter 3, whereby each parent providing support by living with the child a significant portion of the time, approximately 40% or more, generally is considered to have fulfilled his or her legal duty to support the child and pays no child support to the other, although the law recently has been changing to address situations of very different income

family law or social services generally, due to a perceived bias in favor of mothers. Some mothers reported perceiving that financial circumstances in their households with their children were difficult.²³

About 49% of custodial parents (herein “CPs”)²⁴ in the USA had child support agreements or orders, whether legally formal or informal. *Of that half of parents who did have child support orders or agreements, only 45.6% actually received full payment during 2013, while 28% received partial payment and 26% received no payments during that year.* Measured another way, nationwide about 68.5% of the child support dollars owed pursuant to legal orders were reported as received for 2013, averaging to about \$3,950 per year (\$329 or 2,860 SEK per month) per CP paid. Also, 61.7% of CPs reported receiving some type of *noncash* support, *unregulated* in the child support law, from noncustodial parents (herein “NCPs”), in addition to or instead of child support payments.²⁵ In California during 2015 DCSS data indicates that 78% of new court orders for child support entered were in public (Title IV-D) child support cases, with the remaining 22% in private civil cases,²⁶ yet the total relative use of each system is unknown.

In Sweden nearly 50% of surveyed separately-living mothers and close to 60% of surveyed fathers reported agreeing with the other parent regarding how they would handle child support, before 2016 reforms incentivizing less public system use; one third of the mothers and roughly one fourth of the fathers reported having Sweden’s public child support system (the UStöd system) handle their child’s or children’s support.²⁷ As the law continues to evolve, these many children and parents continue directly to be affected.

levels between the two parents. Even in cases where support is paid, per the 2014 study, “there is a relatively weak connection between the income level of the parent paying economic support and the amount paid.” *Id.*

²³ *See id.*

²⁴ Legal custody or responsibility for the child, sole or joint, is not currently relevant in either jurisdiction’s child support system. Parents with primary *physical* responsibility, who are most often the parents who receive child support, are often referred to as “custodial” parents in the international family law child support literature in English, and those who have less time with the child are often called “noncustodial” parents. In Sweden the first is a *boförälder* (“living-with parent”) and the second generally an *underhållsskyldig förälder* (“support-owing parent”). Herein abbreviations defined in the table preceding Chapter 1, CP and NCP, and sometimes “payee” and “payor” are used.

²⁵ Grall (2016), *supra* note 15, at 1–2. Informal support is an important part of the full child support situation, yet often is hidden from view because per the law typically only cash payments satisfy one’s established legal child support payment obligation.

²⁶ *Guideline Review 2017* at 37 (reporting that 86,936 new court orders for child support were entered in public cases and 24,499 in private cases).

²⁷ *See* SCB Demographic Report 2014:1, *supra* note 6, at 149.

Children with separately-living parents often and disproportionately suffer poverty's ill effects

Research finds that single-mother households and the children living in them—in Sweden, the US, and other countries—suffer economic and related harms *more often* than other households with children. For Sweden, for example, in 2018 the government estimated that *40.2% of single-mother households, 22.0% of single-father households but just 10.6% of two-parent households* would have a “low economic standard” after the effect of annual budgetary adjustments to social supports.²⁸ In the jurisdictions studied most poverty is relative, not absolute, but it disproportionately disadvantages children with separately-living parents, even in Sweden.²⁹

In 2014 UNICEF Sweden asked Stockholm University Department of Social Work researchers to compile the existing research on single mothers receiving *försörjningsstöd* (economic assistance, formerly *socialbidrag*, akin to what Californians would call “welfare” or TANF/CalWORKS). The researchers were to do this with particular emphasis on the single mothers’ children’s well-being.³⁰ The resulting report concluded that the then-current welfare state solutions for assuring these Swedish children’s adequate support were unsatisfactory, as *nearly every fourth single-mother-led household* received *försörjningsstöd*, a need-based support found to be stigmatizing compared to non-need-based supports, in order to support her children adequately.³¹ In Sweden ideal welfare state protection would include adequate universal supports (and child support from the children’s father, if he is able to pay it) preventing the CP from needing to apply for need-based support. Preventing *all* categories of society members from needing to rely on need-based state support is

²⁸ SCB Economic Microsimulation Report 2018:1, *Effekter för hushållens ekonomi i statens budget 2018* [Effects for households’ finances in Sweden’s 2018 national budget], at 14.

²⁹ See DALY & RAKE (2003), *supra* note 17, at 105 (finding that lone mothers in the mid-1990s earned 62% less in the US and 46% less in Sweden than the mean market income but that, after taxes and transfers, state intervention had reduced the financial disadvantage of lone mothers to 57% below average income in the US and to 20% below average in Sweden).

³⁰ Hugo Stranz & Stefan Wiklund, *I välfärdens utkant—Om ensamstående mödrar med socialbidrag och deras barn* [In the welfare state’s periphery—On single mothers with need-based social benefits and their children] 5 (UNICEF Sverige 2014). The purpose was to *widen perspectives on the concept of “social exclusion” among single mothers and their children*, particularly those who need this means-tested form of public support, and to *document how social exclusion happens* among children in Sweden today.

³¹ In comparison, 2.6% of two-parent households and 8% of single father-led households needed the benefit. *Id.* (citing SoS, *Ekoniskt bistånd årsstatistik 2013: belopp samt antal biståndsmottagare och antal biståndshushåll* [Economic social benefits yearly statistics 2013: amounts, number of recipients and number of recipient households] (2014)).

a policy goal, which is also true in California, but not as directly with focus on optimizing individuals' financial welfare immediately (versus saving state money).³²

Of the 140,000 Swedish children living in households receiving *försörjningsstöd* in 2013, about 70,000 of them lived with a single mother; in other words *half the children growing up on this poverty-relief benefit in Sweden lived with their single mother*. This is despite 79.8 % of women working outside the home in Sweden, compared to 66.4% in the EU as a whole.³³

The UNICEF-sponsored research also surveyed previous international (particularly US) published research on these topics. It found that *single mothers and children receiving means-tested poverty relief internationally suffer disproportionately high incidence rates of several negative factors, both presently and longer-term*. These factors include increased physical and mental health issues, feelings of shame, less educational achievement and cognitive development, more criminality, more likelihood that the children as adults will require the same financial support, and others.³⁴ Swedish children to single mothers who received *försörjningsstöd* also experienced *disproportional referral into child protective governmental services*, at least in part because the detailed, individualized application process for *försörjningsstöd* brings children in families receiving it into closer scrutiny by governmental agencies.³⁵ Swedish single-parent households do receive several significant social benefits of more universal character, as will be discussed, but nonetheless remain relatively economically vulnerable.

In California there is a similar need-based public support for low-income households, CalWORKS. In 2018, 77.6% of public child support cases (where one of the State's local child support agencies—LCSAs herein—manages the case) involved children receiving CalWORKS or other need-based public benefits.³⁶ California's child support law requires in such cases that child support payments

³² This is one example of similar expressions of intention in Sweden and California having quite different underlying content, and it is more directly tied to their WSM ideals; see Chapter 2.2, *infra*.

³³ See <https://www.ekonomifakta.se/Fakta/Arbetsmarknad/Jamstalldhet/Kvinnor-pa-arbetsmarknaden---internationellt/> (reporting statistics for Swedish women ages 20-64). In California 63% of all people over age 16 (including 57.1% of women) were employed, as is discussed in the next section, but the different age range is just one factor making these statistics difficult to compare. Making such comparisons is not the purpose of this descriptive overview.

³⁴ Stranz & Wiklund (2014), *supra* note 30, at 12–13.

³⁵ *Id.* at 19. Other social benefits, such as the public child support guarantee UStöd, adhere more completely to the Swedish welfare policy's "essential principles of universalism and anti-discrimination." *Id.* at 22. This affects analysis of the fact that UStöd is not means-tested as to the CP, as will be discussed.

³⁶ See California DCSS, *Comparative Data Tables for Managing Program Performance (Federal Fiscal Year 2017)*, <http://childsupport.ca.gov> (at Table 2.1).

from NCPs be retained in large part by the state, as benefit reimbursement.³⁷ In this way CalWORKS is, in effect, a type of child support advance, not unlike Sweden's public child support social benefit, also collected when possible from NCPs owing child support, in order to reimburse the state.³⁸

Data on California's child poverty relief social benefits shows CalWORKS, along with food purchase assistance and federal income tax refundable credits, as one of the top three means-tested social programs preventing *more* California children from living in poverty.³⁹ Using the California Poverty Measure approximately 25% of all children in California qualified as "poor" in 2011, even after social benefits were received.⁴⁰ Data from the U.S. Census Bureau American Community Survey estimates for 2017 that *36% of California's female-led households with children under 18 were below the poverty level, including 54% that included children both under 5 years old and between 5 and 17*, compared to 10% of married couple households with children under 18

³⁷ Currently \$50 (435 SEK) per month is passed through to the child's household, but new legislative changes may soon increase this to \$100–200 (869–1,738). *See* Chapter 4, *infra*.

³⁸ Given these private-public interactions, the study is not confined to private or public law, and the duality in each system (child support legally regulated through "dual systems") is an element of the comparison.

³⁹ *See* Public Policy Institute of California, *Just the Facts*, available at <https://www.ppic.org/publication/the-calworks-program/> ("One of the goals of CalWORKs is to reduce child poverty; its statewide impact—a 2.3 percentage point reduction—ranks third among large-scale safety net programs. CalFresh food assistance and the federal EITC each mitigate child poverty by 4 percentage points—and each provides more total benefits than CalWORKs. CalWORKs tends to lower poverty more in inland areas and less in coastal counties."). Without CalWORKS approximately 300,000 more California children would be in poverty (214,200) or deep poverty (94,900), per 2013–15 data. *See id.*

⁴⁰ Sarah Bohn & Caroline Danielson, Public Policy Institute of California, *Child Poverty and the Social Safety Net in California 2* (September 2014, available at www.ppic.org) (concluding at 6 *inter alia* that *2.3 million California children are poor even with social benefits and at least one working parent* and that "[m]ajor social safety net programs substantially mitigate poverty. Without the safety net, 1.28 million more children would be poor: 420,000 age 5 and under; 510,000 6-to-12-year-olds; and 360,000 teenagers. California's child poverty rate would be nearly 40 percent (rather than 25%) were it not for safety net program benefits included in the CPM"). Note that Sweden's 40% of single mother households with a "low economic standard" is not measured on this same scale. It is beyond this project's scope to compare the living standards identified by the studied jurisdictions themselves as inadequate.

(and 17% of all families with children under 18).⁴¹ As of June 2017 CalWORKS was received by roughly 10% of California's children.⁴²

In total 63.0% of the California population aged 16 and over were, as of July 2017, estimated to be employed (“in the civilian labor force”); among females in this age range, 57.1% were employed.⁴³

Median 2017 annual gross income for *all* Californian family households was estimated in a recent U.S. Census Bureau study to be \$76,975 (669,074 SEK, or 55,756 SEK per month); the median for married couples with children, \$93,800 (67,943 SEK per month), was significantly higher, and single-parent households had the lowest median of all.⁴⁴

To summarize, the US poverty rate for children in single-parent families is “roughly five times the rate for children in married-couple families,”⁴⁵ while 36.5% of Swedish children aged 0–19 in single parent households had less than 60% of the median income level in 2013, roughly three times the rate of children in households with two parents.⁴⁶ Thus despite available social benefits, despite child support laws

⁴¹ See U.S. Census Bureau, *2013–2017 American Community Survey 5-Year Estimates—Poverty Status in the Past 12 Months of Families* (data table) (available at <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>). Of the female-led households with children, 62% of those with zero workers earning income were below the poverty level, 27% of those with one worker, and 9% with two workers. Of married couple-led households with children, just 14% of households with zero earners were below the poverty level, 12% with one worker, and 3% with two.

⁴² See Bohn & Danielson (2014), *supra* note 40, at 2. National evidence indicates that California serves more families than other US states do. *Id.* (explaining that in California in 2015 “65 out of every 100 in poverty received assistance, compared with a national average of 23”). The CalWORKS-recipient adults tend to have much less education than the average adult in California, and often have childcare responsibilities complicating their abilities to comply with CalWORKS requirements that they seek education or paid work. *See id.* (citing statistics that fewer than 10% of adults receiving CalWORKs have education beyond high school, compared with about 60% of all California adults).

⁴³ See U.S. Census Bureau, *QuickFacts (California) Total Population* (2017) (available at <https://www.census.gov/quickfacts/fact/table/californiacitycitycalifornia,ca/PST045217>).

⁴⁴ See U.S. Census Bureau, *2013–2017 American Community Survey 5-Year Estimates—Income in the Past 12 Months* (data table, in 2017 inflation-adjusted dollars) (available at <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>).

⁴⁵ See National Academies of Sciences, *Consensus Report: A Roadmap to Reducing Child Poverty* 7-5 (2019) [hereinafter *Roadmap to Reducing Child Poverty*].

⁴⁶ This was 41.9% of children living with single mothers, and 18.0% of children living with single fathers, compared to 12.1% of children living with two parents. Note how living with a single father is close to living with two parents in terms of risk. This measure is called “low disposable income” in Sweden. See SCB, *Andel personer efter hushållstyp i hushåll med en låg disponibel inkomst per konsumtionsenhet* [Percentage of people by household type in households with a low disposable income per consumption unit], <https://www.scb.se/hitta-statistik/statistik-efter-amne/hushallens-ekonomi/inkomster-och-inkomstfordelning/hushallens-ekonomi-hek/pong/tabell-och-diagram/disponibel-inkomst->

and despite parents' employment participation, *the households of single parents and especially female single parents with multiple children have lower standards of living and are more often living in poverty* than other households, in both Sweden and California.

A division between private and public regulation ("dual systems") impedes their functioning

In both Sweden and California, some of the child support law exists in private law, regulating rights, duties and their enforcement between private individuals, and some of the child support law exists in public law, regulating rights and duties between private individuals and the state (mainly where public benefits to support a child with separately-living parents have been paid to the CP thus the state has an interest in seeking contribution or reimbursement from the parent who had a duty to pay private child support).⁴⁷

These dual systems lead to confusion among parents, inequalities in how the law aids parents and children using different systems (threatening uniformity and equal treatment principles) and criticism of the state's role and actions, in both systems.

The child support law solutions now implemented are known to be underperforming

As the dissertation develops within the comparative analyses of the present child support laws, previous research has identified various difficulties in the theory behind and the operation of these laws. Difficulties exist in discerning and protecting the rights and interests of children, of each of their (separately-living) parents, and of the state. This is partially attributed to the laws' simultaneous attempts to protect the financial interests of the state and of the separately-living family members, in both legal systems. Problems also arise because the laws' stated aims and even substantive rules can differ from what is being administered in practice.

Legal and other factors which this dissertation addresses, including as related to the systems' welfare state models ("WSMs" herein) and related family and gender policies, contribute to the present reality in both jurisdictions: *far from 100% of the children deemed by the law to have a right to receive parentally-paid child support actually receive it, even where their NCPs could pay it*. A significant portion of children who receive child support do not receive it regularly and on time each month.⁴⁸ Many do not receive

19912013/andel-personer-efter-hushallstyp-i-hushall-med-en-lag-disponibel-inkomst-per-konsumtionsenhet/.

⁴⁷ In Sweden the only public benefit to which NCPs contribute in this way is UStöd.

⁴⁸ Child support law operates, it must be remembered, within the context of childhood, a short window of years that passes quickly for each child compared to the pace of legal, financial and

it in the full amount the law deems appropriate given their parents' financial means. Especially notable for the purposes of this project in comparative law, *the child support laws are partially unclear as to their own aims*. These laws are criticized by experts and laypersons alike yet political agreement to overhaul them is elusive. Child support laws are thus both considered important to child welfare, and quite seriously flawed.

This study provides an overview of these child support laws and their implementation, via a comparison also introducing the welfare state ideals and realities of the two societies in which the laws are situated. That the two legal solutions studied, attempts to solve the shared *social problem* they both address, are both challenged with difficulties at present is in a sense the *legal problem* taken on by the study. Via analysis and comparison of these two contemporary solutions to the social need for child support regulation, the research contributes understanding of each that can assist lawmakers in improving the solutions.

1.3. Support as a Child's Right (and Parents' and States' Duty)

As stated in the United Nations Convention on the Rights of the Child (the CRC) at Article 27(2), "the *parent(s)* or others responsible for the child have the *primary* responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development."⁴⁹ The State Parties to the Convention "shall take appropriate measures to *assist parents* and others responsible for the child *to implement this right* and shall *in cases of need* provide material assistance and support programs, particularly with regard to nutrition, clothing and housing."⁵⁰ The nations of the world therefore, by having child-support laws, honor their child support related obligations under the CRC, which also states that they "shall take all appropriate measures to secure the *recovery* of maintenance *for the child from the parents*

emotional conflict resolution between adults. Lack of child support, inadequate amounts *or* delay in receiving child support can cause irreparable harms to a child.

⁴⁹ United Nations Convention of 20 November 1989 on the Rights of the Child, 1577 U.N.T.S. 3 (1989) [hereinafter the *UN CRC* and the *Barnkonvention*] (available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201577/v1577.pdf>). Over 190 countries have become state parties to this treaty. Parents' primary responsibility is also addressed within its Articles 5 and 18.

⁵⁰ *Id.* at Art. 27(3) (emphasis added). Although the US has not ratified the CRC, its federal government and its several States including California have legislatively and judicially confirmed parents' child-support duties and required governments to act to collect child support pursuant to other sources of law both national and international.

or other persons having financial responsibility for the child, both within the State Party and from abroad.”⁵¹

The CRC’s text supports a legal conclusion that at least certain *results*, defined as “the conditions for living necessary for the child’s development,” are explicitly a “right” of every child under international standards. This right is often recognized in locally-binding law as well—the law examined for this study—if the CRC has been incorporated into national law *or* if a jurisdiction separately has established this right.⁵² Per the CRC, these results are to be achieved by means of *parental child support*, but also *governmental assistance* in cases of low parental financial means and in parental child support enforcement efforts.⁵³

Child support provision was also a parent’s duty in the two jurisdictions studied here, California and Sweden, *before* it was specifically stated in the CRC. Western law historically has acknowledged that *a child’s right to material resources provided by parents during his or her childhood can be considered a natural right of the oldest type*.⁵⁴ Still, parents and legal systems struggle with questions and impediments in defining and enforcing these rights, especially as the demographics of families change. Not very many family law scholars writing about child support have engaged in it from a *child’s rights* perspective.⁵⁵ This may be true especially in the United States, where *parents’ rights*

⁵¹ *Id.* at Art. 27(4) (emphasis added). The United States, heavily involved in the CRC’s drafting and a signatory to it since 1995, remains the only country that has not ratified it, for reasons often attributed to the procedural and political difficulty of getting an international treaty ratified in the US Congress by a sufficient number of the States. *See* TREVOR BUCK, INTERNATIONAL CHILD LAW 91–94 (3rd ed. 2014) (discussing reasons the US has not ratified the CRC, including federalism concerns, e.g. that the various US states generally hold the competence to regulate family law; concerns regarding how introducing enforceable “children’s rights” beyond those provided under national and state law might threaten “parental rights” as well as the ideal of limited government interference into the private sphere; and how US courts nonetheless *do* recognize the CRC, e.g. as evidence of customary international law).

⁵² Whether there is a legal right, and crucially whether the right is to *funds sufficient to meet a child’s basic needs* or rather to some *share of parental income* that may exceed basic needs has been extensively examined in the child support literature. *See* NICK WIKLEY, CHILD SUPPORT LAW AND POLICY 25 (2006) (commenting that, if the latter, “in this sense, and in crude terms, children’s needs will be defined in the first instance by their social class.”). *See also infra* Figure 1 (within this section).

⁵³ *See* Helen Stalford, *Maintenance, Mediation and the Future of EU Family Law*, in CHILDREN AND THE EUROPEAN UNION: RIGHTS, WELFARE AND ACCOUNTABILITY 119 (2012) (citing CRC Article 27(2) as evidence that child maintenance is an internationally-recognized child’s rights issue). *See also infra* Chapter 2.1.1.6 (on the CRC’s status in Sweden).

⁵⁴ *See infra* Chapter 7.1 for a brief historical summary of the legal child support duty in each system.

⁵⁵ *But see, e.g.*, ANNA SINGER, BARNS RÄTT 140 (2017) (stating that the 25% of Sweden’s children with separately-living parents have a formal right to support paid by the NCP, yet in practice half of these children receive their support from public funds via Sweden’s public-law child support guarantee,

against state interference have continued to hold their position as the focus of many rights discourses, leading to reluctance to recognize children's rights as a matter of law.⁵⁶

Also relevant to child support law are parents' duties under the UN CRC to fulfill their child's needs for care, security and a good upbringing (physically, emotionally and financially), and the child's corresponding right, the *right to family*. This right, set forth at CRC Article 7, is also a basic premise of Swedish law.⁵⁷ American laws including those of California agree that fundamental rights are implicated when the state considers whether and how to intervene into individuals' family lives, however often focus on the rights of the *adult* family members.⁵⁸

The duality of duties and rights are recognized in both jurisdictions studied. For example, Sweden's statutory family law states that those with legal custody of a child have the *right* and the *duty* to decide questions relating to the child's personal affairs, and that the custodian shall, in pace with the increasing age and development of the child, take increasing account of the child's views and wishes.⁵⁹ In the United States too, the origin of parental *rights* and privileges has often been situated in the parents' *duties* owed to their child: "the duty comes first," as stressed by scholar Katharine K. Baker.⁶⁰ Baker quotes John Locke's observation that "[t]he power . . . that parents

UStöd. *See also id.* at 23–34 (problematizing the traditional child-as-object family law assumptions and describing developments towards a new child-as-subject, children's-rights orientation in Swedish law).

⁵⁶ *See, e.g.,* Viola Boström, Marie Nordvik & Elizabeth Perry, *Regulations of and Remedies for Corporal Punishment Against Children*, in INTERNATIONAL SURVEY OF FAMILY LAW 2018 527 (Margaret Brinig ed., 2018) (discussing parents' vs. children's rights in the US regulation of corporal punishment context, in a comparison with Sweden and Norway).

⁵⁷ *See* ANNA SINGER, BARNETS BÄSTA: OM BARNS RÄTTLIGA STÄLLNING I FAMILJ OCH SAMHÄLLE [BEST INTERESTS OF THE CHILD: ON CHILDREN'S LEGAL STATUS IN THE FAMILY AND SOCIETY] 53, 110 (7th ed. 2019) (specifically applying UN CRC Art. 7 to Swedish parentage determinations and children's right to know their genetic background).

⁵⁸ *See, e.g.,* In re Marriage Cases, 43 Cal.4th 757, 781 (2008) (on constitutional rights in California to form a family, here in the same-sex-marriage context). The positive right in Sweden (the right to have the state act to fulfill the right) receives more emphasis compared with the negative right, emphasized in California (the right not to have the state interfere). This reflects one difference between the studied jurisdictions' conceptions of the proper role of the state, one that has some influence on child support enforcement, as will be discussed. *See generally infra* Chapters 6.4 and 7.3 (sections comparing procedures and enforcement).

⁵⁹ FB 6:11.

⁶⁰ Katharine K. Baker, *Asymmetric Parenthood*, in RECONCEIVING THE FAMILY: CRITIQUE ON THE AMERICAN LAW INSTITUTE'S PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION 121, 135 (Robin Fretwell Wilson ed., 2006) (criticizing ALI's decision to recommend custodial rights to certain de facto, non-legal parents, yet also to recommend *against these same parents owing a child support duty*) (internal citations omitted). *See infra* Chapter 5.2 regarding ALI's child support Principles.

have over their children, [arises] from that duty which is incumbent upon them, to take care of their offspring during the imperfect state of childhood” and adds mention that Georg Hegel and communitarian thinking generally also have *linked parental rights to parental duties*.⁶¹

This study is not primarily framed in terms of the “rights” of the children served by these laws, but begins with this introduction to the international law and fundamental rights context because in that context such rights are widely claimed to exist.⁶² Children’s rights to child support are often a primary focus in academic and policy discourses on child support and the social problem it addresses.⁶³

Lastly, *children’s rights* should be distinguished from their *legitimate expectations* as well, as a useful way to contemplate the public-and-private “twin track” nature of the laws compared herein.⁶⁴ Figure 1 illustrates the distinction.

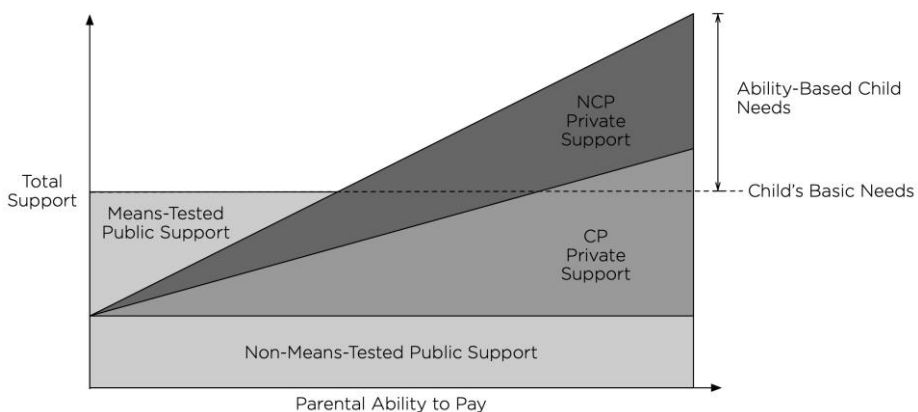


Figure 1, *Distinctions between Public-Law/Private-Law Protected Support Levels*

In both Sweden and California the “right” to some child support is insured by the state. Enough state support is provided to keep children above some legislatively-defined unacceptable level of relative poverty (the Child’s Basic Needs level in Figure

⁶¹ *Id.* The ALI’s reasoning may have been to avoid discouraging people to become de facto parents, for example stepparents, Baker explains, citing PRINCIPLES § 3.03 comment b, reporter’s note at 420. Baker then outlines several objections to that rationale. *Id.* at 135–136.

⁶² *But see infra* Chapter 2.1.1.6, explaining how this is not so in all jurisdictions.

⁶³ For further discussion of rights to child support in Sweden under the CRC and EU law covering enforcement of child support from abroad *see infra* Chapter 2.1.1.6.

⁶⁴ WIKLEY (2006), *supra* note 52, at 10 (distinguishing the *expectation*, unlike the *right*, as one that could be compromised in light of other compelling interests, and that *the state itself likely will not or cannot fund*, given other pressing demands). Figure 1 is very much inspired by Wikeley’s similar illustration. *See id.* at 11 (citing several influential theorists).

1), in part through social services (such as free public education) and in part through cash benefits or tax credits universally (or nearly-universally) paid to parents for the benefit of their children. *Welfare law supplements parents' available market income, if necessary, to bring a child up to this Child's Basic Needs level of Total Support.* When only a CP lives with a child, her financial abilities in fact provide the base of parental support to the child. This is clear in child support law but sometimes lost in academic analysis, therefore I distinguish it from an NCP's expected contribution in Figure 1.

The "legitimate expectation" that children will benefit from their parents' standard of living, if *higher*, is enforced through the private-law legal duty placed on parents to provide support in relation to their financial abilities. The *expectation* is served by California's Guideline law and Sweden's living standard addition (the *standardtillägg*), each applied to higher-income parents and analyzed within Chapter 3.4 on the laws' definitions of children's needs.

1.4. Scope: Aim, Questions and Delimitations

1.4.1. *Aim of the Study*

This project aims to analyze and compare the legal regulation of child support in Sweden and California from a welfare state perspective. The legal regulation of child support refers to payments from parents fulfilling their duties of support owed to their children when they do not live with the children full-time, in fulfillment of the children's rights to financial support from their parents, which the state has a secondary duty to fulfill. The two jurisdictions follow contrasting (social democratic and liberal) welfare state models ("WSMs" herein). The analysis and comparison will answer the question "how do these child support laws differ, and why?" with particular focus on analyzing differences tied to the welfare state ideals, ultimately to contribute both detailed and broader insights for use by researchers and child support lawmakers in these and other jurisdictions.

1.4.2. *Research Questions*

The study's comparative analysis answers the question of *how the child support laws of Sweden and California differ (and why)* via step-by-step consideration of elements central to both jurisdictions' child support systems. To prepare for the comparative analysis,

three “descriptive” chapters determine, present and analyze the relevant law of the two jurisdictions to answer one question each.⁶⁵

Chapter 3 answers Question 1: What are the substantive law rules, in both private and public law? Included are the legal rules defining *children’s needs for and rights to child support*; the corresponding *duties of parents* to provide that support; the measures used to determine in each case an appropriate *child support amount* and the parents’ *abilities to pay*; and the *role and duties of the state* (a) to enforce parents’ duties to provide child support and (b) to replace child support for children whose parents do not, for various reasons, provide child support in a timely manner.

Chapter 4 answers Question 2: What are the procedural law rules, in both private and public law? Considered are the procedural rules regulating *setting or modifying* child supports to be paid; how compliance is *encouraged and required (enforced)* to ensure that payments are made; and how parents are encouraged and required to pay *past-due support arrears* (in other words how child support debt is *collected* when payments that were owed have not been made in full).

Chapter 5 finishes describing the laws studied and provides a bridge to the comparative chapters. It answers Question 3: What child support legal system *design elements* and *interest trade-offs* exist and were chosen by these two jurisdictions? Included are lawmakers’ *stated intentions* for these laws.

Next, the comparative and concluding chapters answer three comparative questions central to the aim of this project.⁶⁶ Chapter 6 answers Question 4: *How* are these child support laws similar and also different? Chapter 7 answers Question 5: *Why* are these child support systems similar and also different? Finally, Chapter 8 overviews the most central comparative findings and answers Question 6: What are the findings’ *implications*?

The comparative chapters, in answering these three questions, analyze many of the differences observed throughout the descriptive chapters. Discussion focuses on the child support legal system differences from the perspective of the two jurisdictions’ *WSM ideals*, largely as expressed through their family and welfare law frameworks. Chapter 7 also proposes an explanation (a thesis) regarding what the described similarities and differences reveal about these laws and their societal and legal contexts. Similarities arising from *similar historic, gender-based and class-based social*

⁶⁵ Because the thesis assumes knowledge of WSM theoretical classifications, actual welfare state supports for children, and policy positions on gender and the family, these are introduced within Chapter 2 as general background to the study and its use of WSM theory.

⁶⁶ Functional comparative method also involves the step of identifying what laws and institutions in each legal system serve equivalent functions, in other words where in each system regulations of parentally-provided child support are found. This is accomplished with Chapter 2.1.2.2, *infra* (“The ‘Functions’ of the Laws Studied”).

inequalities are analyzed. Also analyzed are a selection of the more fundamental differences found, *differences best explained by the jurisdictions' different WSM responses to those inequalities* (the social problem addressed by child support law) and also *differences arising from differing legal system structures and ideals*. Discussions of public-private child support system divisions in both jurisdictions are integrated throughout.

Note that the comparative discussions analyze how and why these two child support systems are similar and different in reference to a number of *factors common to child support systems in many jurisdictions worldwide*. Frameworks for comparing child support systems, developed within previous comparative child support systems research, often include consideration of factors⁶⁷ including (1) how the scope or *level of a child's needs* is conceptualized and determined in each system; (2) to what extent *private versus public, administrative versus judicial, and individualized versus simple* calculation mechanisms are used; (3) what *ideal model for the family* is promoted, overtly or covertly, related to *inter alia* (4) *whose income and how much of it* is considered in setting the child support amount (chiefly whether child support recipient parents' incomes are considered alongside payor parents' and how much sharing of income the payor is expected to do); and—also relatedly—(5) *how rigorously payors*, the large majority of whom are fathers, *are pursued* for child support payments. Such factors often are analyzed alongside other integral elements of child support systems such as the (6) *costs potentially faced by families to enforce* child support laws; (7) how *lower- and higher-income parents* are served by the systems' rules; (8) how *subsequent partners and children* are treated; (9) *ease of modifications and enforcement* versus discouraging barriers to modifications and enforcement; and (10) the relationship of child support to *other social supports* available for families or children in a society.

All of these factors (some in greater depth) are introduced within the descriptive chapters, Chapters 3–5, and then discussed further as appropriate in the subsequent comparative discussions.

1.4.3. *Delimitations*

Child support law can be analyzed on many levels, as the above wide range of research question factors suggests. To achieve a manageable study I have had to make some delimitations.

First, I have not extensively described specific *child custody* laws or forms of custody, for example joint or sole legal or physical custody and different schedules of visitation. Custody rules and procedures that assume or promote a particular form

⁶⁷ The factors listed here are adapted primarily from among those described by legal scholar Nick Wikeley in his comprehensive comparative examination of UK child support law and policy (see WIKELEY (2006), *supra* note 52) but also reflect several other comparatists' work.

of physical or legal custody (or a particular model of the ideal family) are quite relevant to a child support study. Legally and culturally, the duties of both “cash and care” are interrelated and integral to parenting, including after separation, in both studied jurisdictions,⁶⁸ and related family policy is included in the study. Traditional custody types are nonetheless not detailed herein. The study does explore the interactions between (evolving) parental behavior, most prominently shared physical custody (alternating residence) and child-support laws, but does not fully explore the existing law or literature on those interactions.

Second, detailed general (as opposed to family-law-specific) *procedural law issues* also have been excluded, for example regarding how a court or agency must make a certain level of effort to notify an NCP that a child-support legal action has been filed against him according to the general rules of civil or administrative procedure (and rights to due process), and how private parties or the state collect child-support debts pursuant to *debt collection laws outside of those specific to child support*. The study nonetheless considers the issues and the importance of actual, prompt notice to parents regarding their child support obligations, child-support-specific legal procedures, and the various means of enforcement often used by child-support-specific courts or agencies.⁶⁹ Among the excluded topics are (mainly Californian) law on compelling production of evidence e.g. income and asset information; most law in both jurisdictions on *cross-border child support enforcement* (international and interstate);⁷⁰ and the *details of enforcement and debt collection mechanisms* (such as payor income-withholding).

Lastly, the laws and related topics studied could have been analyzed in *more depth and detail*, but have not been. This is because the study prioritizes broader comparison of the main legal, theoretical and pragmatic aspects of the systems’ child support systems, given the aim of comparing and analyzing the two jurisdictions’

⁶⁸ See, e.g., Barbara Hobson & David Morgan, *Introduction*, in MAKING MEN INTO FATHERS: MEN, MASCULINITIES AND THE SOCIAL POLITICS OF FATHERHOOD 1, 3 (Barbara Hobson ed., 2002) (“[W]hat is perceived as a crisis in fatherhood involves competing and conflicting social politics that revolve around the dimensions of cash and care, the obligations and rights of fatherhood. Our purpose is to situate these politics in the broader context of policy regimes, ideological and cultural frames of family and gender, and structural changes in post-industrial globalizing economies.”).

⁶⁹ These enforcement mechanisms can contribute to negative public attitudes towards the child support systems, especially in the public systems, which the study addresses without going further into general collections law and mechanisms, or into bankruptcy law, etc.

⁷⁰ International child support situations, because they are subject to a variety of exceptional rules under Swedish and Californian law and to international agreements and conflict-of-law rules, could not be included. See generally SOU 2010:59, *Underhållsskyldighet i internationella situationer* [Child support responsibility in international situations].

child support law solutions from a WSM perspective. For example the child support laws studied could have been analyzed more thoroughly in the context of international and national *children's rights* literature, or analyzed from a deeper *critical or gender perspective*.

More attention also could have been given to the *economic and mathematical details* behind the California Guideline child support formula and the Swedish data on costs of children used in calculations of children's support amounts. Interdisciplinary child support research projects often involve mathematics and economics to a greater extent than I can present within this broad comparative legal study. More detailed technical understanding of the formulas used in jurisdictions like California are vital to some legal research purposes. On the other hand mathematics-focused research has been criticized for obscuring or ignoring more fundamental policy questions.⁷¹

Ultimately, for this comparative project, the general theories of child support in two jurisdictions are in focus, including how each views a proper balance between private and public financial responsibility for children and whether parental duties to support children are limited to meeting the child's economic needs or include a right for the child to a share of parental income.⁷² The research focus is on *why the systems differ* in these regards, in light of their welfare state ideologies. The economic measures used to decide appropriate shares of parental income to allocate to children in various situations are described and compared, but not in more depth than is appropriate for this study.

1.5. Relation to Earlier Research

Internationally, a period of research focused on child support (the financial support of children not living with two biological parents) occurred in the late 1980s; this research on the consequences of divorce or separation following a period where research was more focused on the then-rising divorce rates themselves, as English socio-legal researcher Mavis Maclean has summarized.⁷³

In both civil law and common law countries, multidisciplinary and interdisciplinary research projects in the late 1980s focused on clarifying how children could best be supported in various social contexts after their two parents

⁷¹ See WIKLEY (2006), *supra* note 52, at 21–22 (“There is also a much more extensive literature, especially in the United States, on the technical issues . . . tend[ing] to sidestep or even ignore the more basic policy questions about the structure of any scheme.”).

⁷² See *id.* at 22, 510.

⁷³ Mavis Maclean, *Families*, in THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH 285, 290–92 (Peter Cane & Herbert M. Kritzer eds., 2010).

no longer lived together or if they never lived together. Demographers at that time studied incidence rates of single parenthood and re-partnering. Economists studied the costs of child-rearing and proposed ways to make more specific the expectation that parents share resources with their children after separation as they did in a common household. And socio-legal researchers studied different forms of child support legal regulation, this dissertation project's topic.⁷⁴

Previous research on Swedish and California child support laws (as well as related relevant research) is cited throughout this thesis. The pace at which legal scholars are studying child support systems has slowed, in part because updated child support systems are now in place (post divorce and women's job market participation expansions); they are revised, most often, conservatively. Nonetheless both single-jurisdiction and comparative child support legal research continues to develop, and this project builds upon it.

The novelty of this project arises in part from its deeper presentation and comparison of two legal systems' approaches to child support law, including by its use of existing social science research into the WSMs represented by these two jurisdictions to aid the legal comparative analysis. While legal researchers have previously compared the approaches to child support adopted by different US states⁷⁵ and by different countries including Sweden and the US,⁷⁶ these have often been surveys and not deeper comparisons.⁷⁷ This project aims to make a contribution especially with respect to how the similarities and differences between the child support laws studied can be understood in light of the systems' respective WSMs.⁷⁸ Perhaps such interdisciplinary, interjurisdictional analysis can ignite interest in or be useful in informing larger legal reforms to come.

⁷⁴ See *id.*

⁷⁵ See e.g., Jane C. Venohr, *Child Support Guidelines and Guidelines Reviews: State Differences and Common Issues*, 47 FAMILY LAW QUARTERLY 327 (2013).

⁷⁶ See e.g., Skinner & Davidson (2009), *supra* note 18, at 25 (social policy research describing models and principles for the child maintenance policy area across countries including most of the Nordic and Anglo-American countries).

⁷⁷ I have in any case sought but not found prior research on child support law in a detailed legal comparison between California (or the US) and Sweden (or Scandinavia) alone.

⁷⁸ That child support schemes differ based on differing WSMs has been noted in the literature many times. See, e.g., WIKLEY (2006), *supra* note 52, at 491 (mentioning that Scandinavian and Anglo-Saxon models have very different traditions). Detailed studies of how and why they differ are less common.

1.6. Citation System and References

This thesis uses generally the Bluebook⁷⁹ uniform system for legal citation, a system developed in the United States for use in legal writing for both research and (in a modified form) legal practice purposes.⁸⁰ This system was developed and is continuously revised in a cooperative effort by the editors of the Columbia Law Review, the Harvard Law Review, the University of Pennsylvania Law Review and The Yale Law Journal. It is widely used in American law journals, by scholars and practitioners, but also more broadly, including for international legal scholarship such as this dissertation and for practice before US courts.

The Bluebook citation system is criticized by some for its particular stringency and complexity.⁸¹ Other prefer that it is a footnote- (not endnote-) based system that allows presentation of detailed source and explanatory information for interested readers. I favor the system's use of *signals* (such as *see*, *but see*, or no signal for materials quoted in the main text or directly stating the proposition paraphrased) and *parentheticals* (such as “criticizing the trial court’s reasoning” or “explaining that...” within parentheses following a Bluebook source citation). Both enable clarification and contextualization of the material cited and the reason(s) it is cited.

The Bluebook system works particularly well for this thesis because its reference manual includes, although from a US perspective, detailed formatting suggestions for a large variety of materials. It covers international and foreign materials of various kinds and even specifically Swedish materials.⁸² There exists to date no

⁷⁹ THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Association et al. eds., 19th ed. 2010).

⁸⁰ Bluebook or alternately California Style Manual citation style is required to be used, for example, “in all documents filed in the courts” in California. CAL. RULES OF COURT rule 1.200.

⁸¹ See Richard A. Posner, *The Bluebook Blues*, 129 YALE LAW JOURNAL 850, 853 (2011) (wondering, for example, regarding Bluebook abbreviations, “[w]hat is the point? It’s as if there were a heavy tax on letters, making it costly to write out Coast Guard Court of Criminal Appeals instead of abbreviating it ‘C.G. Ct. Crim. App.’” but also opining that “[t]here is an argument for a uniform understanding of signals of case authority (such as ‘accord,’ ‘see,’ ‘see also,’ ‘cf.,’ ‘but see,’ ‘contra’), and The Bluebook offers a set of definitions. In fact there is little uniformity in the use of the signals by law clerks and other legal writers. The Bluebook’s effort is unobjectionable and takes up little space, so I am not disposed to criticize it.”). Abbreviations in this dissertation are softened from the Bluebook’s harsher recommendations, to accommodate the international readers not as familiar with Bluebook style as American law students may be. Journal names are not abbreviated at all.

⁸² See THE BLUEBOOK, *supra* note 79, at 396–398 (Table T2.39, entitled “Sweden (Civil Law)”). To the extent that the formats suggested for Swedish materials are excessively cumbersome without adding useful information enabling readers more easily to find Swedish sources, however, I have modified them to resemble the forms of citation for these materials more commonly used by Swedish legal researchers.

written reference for Swedish legal research citation norms similar to the Bluebook. Instead general reference material for legal writing in Swedish (and all Swedish university degree programs in law) include guidance in the conventions and citation options for Swedish legal texts.⁸³ These Swedish legal citation conventions would be difficult to use for a text written in English and for an international audience, given that references often include abbreviations of the names of, for example, legislative acts or codes. Even written out fully, the names of these legal sources are in Swedish. Translating them renders the system confusing for *all* readers, thus any benefit to Swedish readers bestowed by using that system is lost, while much difficulty is added in trying to devise ways for Californian material to be cited. In contrast, the Bluebook system is designed for use in English. Despite its sometimes overly-cumbersome guidance, it has worked well in slightly simplified form⁸⁴ for this dissertation.

1.7. Describing Swedish Law in English

After some experimentation with various alternatives, I have chosen to present and discuss the Swedish law within this dissertation in English but with ample use of certain Swedish legal terms in Swedish. Swedish terms appear in *italics*, at first directly following the English translations. Subsequently, for the most common Swedish child-support-law terms discussed throughout the thesis, they are used alone. Clarity is promoted in that the Swedish terms are used only once they have been well introduced in English, most often within the same chapter. This solution assists my Swedish legal audience in understanding which laws and concepts I am discussing without having to guess from my English translations of their Swedish names, a situation I have experienced often when reading discussions of Swedish law in English. The solution also assists my non-Swedish-reading legal audience in learning with more specificity (and googleability) some terms and concepts from Swedish law. Thus the public child support guarantee *underhållsstöd* (“UStöd”) can be more clearly distinguished from the private parental child support *underhållsbidrag* (“UB”) without the common English translations “maintenance allowance” and

⁸³ See, e.g., ELSA TROLLE ÖNNERFORS & HENRIK WENANDER, ATT SKRIVA RÄTT: GODA RÅD FÖR ATT SKRIVA UPPSATS I JURIDIK [TO WRITE RIGHT: GOOD ADVICE FOR WRITING THESES IN LAW] (2d ed. 2019).

⁸⁴ For example, Swedish materials are cited more simply than Bluebook Table T2.39 prescribes. Internet sources are cited more liberally. “Last visited” parentheticals, publisher names and cities, printed code volume-plus-supplement dates and subsequent appellate histories are eliminated.

“maintenance contribution.” This protects the reader from wondering, as I do, if parents or the state pay an “allowance” vs. a “contribution.”

Simultaneously I have provided, to the best of my ability, an optimally-accurate translation into American English (and even Californian family law jargon) of the terms for the research’s purposes.⁸⁵ My aim has been to assist a non-Swedish-reading and specifically a Californian legal audience most quickly to understand the Swedish law discussed. Thus, for example, a Swedish organizational unit of the national government’s legal administration, a *myndighet* in Swedish, becomes a “department” and not a “ministry.” A *kommun* becomes a “municipality” or “county” and not a “province” or some other subdivision of more local or regional authority.

Terms are never perfectly translatable into concepts from another language or culture, and rephrasing can be appropriate, but they also can be overdone. I have kept translations very literally close to the Swedish whenever it possible, given the importance of statutory textual wording; this allows conveyance of the legislators’ expressed meaning as precisely as possible. Thus 1949’s *föräldrabalk* becomes “Parents Code,” true to its literal meaning, not the official but slightly confusing (and seemingly editorializing) translation “Children and Parents Code.”

1.8. Organization of the Thesis

This thesis is divided into eight chapters. Chapter 1 is an introduction to the study including its societal problem context, and Chapter 2 introduces the study’s uses of theory and legal research methods, as well as some background on the welfare state contexts of the two studied legal jurisdictions.

Chapters 3 and 4 are the descriptive chapters presenting the child support laws compared. Chapter 3 begins with an introduction to how child support law is situated in both private and public law in both jurisdictions. The core of the current child support law in the Californian and Swedish legal jurisdictions then is presented within the remainder of Chapter 3, on the rights to child support and the duties to provide it that the law creates, and within Chapter 4, on the procedures the law creates for setting, modifying and enforcing child support.

Chapter 5 provides a discussion of international scholarly child support system categorizations in relation to these jurisdictions’ own choices and stated legislative intents. These are also presented where relevant throughout the thesis, but Chapter 5 gathers the design choices and legislative intents together as a bridge to the comparison.

⁸⁵ All translation is by the author, unless otherwise noted, therefore “author’s translation” is not specifically noted throughout the thesis. Legal provisions are current to mid-2019.

Chapter 6 begins the comparative analysis. It presents comparisons of the black-letter laws described primarily in Chapters 3 and 4, after an introduction to the comparison. Chapter 7 (“Why the Differences?”) then presents comparative discussions organized by topic. These analyze *why the laws are similar*—primarily due to the jurisdictions’ similar social inequalities arising from somewhat shared historical backgrounds—and also *why they differ as identified*—primarily because of the different approaches the jurisdictions have taken in creating their welfare states and their family-law legal contexts. Four comparative discussions are presented, on the topics of the jurisdictions’ (1) *histories*; (2) *legal principles and traditions*; (3) *gender equality ideals and realities*; and (4) *income equality ideals and realities*, all as related to children’s legal child support rights as presently regulated.

Finally, Chapter 8 includes culminating discussion of the study’s central findings. It overviews and touches upon the implications of the study’s findings and the potential futures of these laws, including generally areas of reform that might be feasible and advisable given the welfare state ideologies and other features of the legal systems.

2. Child Support in the Welfare State: Method, Theory, and Context

2.1. Traditional and Comparative Methods

2.1.1. *Traditional Legal Method and Materials*

2.1.1.1. *Introduction to the Method and Its Use in This Study*

Legal scholars' uses of traditional legal methods to study child support law do not differ significantly between Sweden and the United States. This project is, within Swedish legal scholarship, "*rättsvetenskapligt*" (within the field of proper legal science) and at least partially "*rättsdogmatiskt*" (based on traditional legal dogmatism), as the terms are understood in Sweden today. It is also accomplished with traditional legal research methods as they are understood in the United States.⁸⁶ The weight of and the amount of focus given to some of the legal sources studied—with respect to case law precedents but even more with respect to Swedish preparatory works—differs somewhat, but this is discussed in the analysis where relevant to understanding the validity of conclusions made regarding the content of the current law.

Fundamental to traditional and proper legal research method is *examination of formal sources of law* for any tasks that involve determining the content of the current legal rules being studied, if determination of their content is necessary to accomplish the research project's aim. It can be appropriate or even necessary to examine sources beyond the formal sources as well. For a comparative legal research project it is especially important that the researcher can correctly identify where to find relevant legal rules in each system, and how to assess their relative authority or importance, often termed the legal system's *hierarchy of legal sources*. Brief descriptions of the materials and hierarchies applicable to this study are thus helpful in describing

⁸⁶ See Aleksander Peczenik, *Juridikens allmänna läror*, SVENSK JURISTTIDNING 249, 255 (2005) (explaining Swedish law's modern view and adding that "[t]he situation in the US is also complex. Questioning of the *deskriptivnormativa* sources of the law appears as natural because the Anglo-Saxon legal tradition completely lacked the continental 'Professorenrecht' and was characterized by 'judge-made law.' But paradoxically, there is in the United States a wealth of very theoretical, yes, philosophical writings in different areas of law.").

the methods by which this study answers the research questions necessary to fulfill its aim. Such descriptions follow this introduction.

Beyond identifying “what the law is,” proper traditional legal research, including this study, involves normative questions of what the law should do, including how its rules might best address a social problem. It asks in part “[w]hat ought we legally to do?”⁸⁷ as it analyzes and compares the child support laws studied in light of the social problem they address and their societal contexts. This research seeks answers to such questions via examination of how the law’s intentions and rules are structured today and how well they are working. Modernly this is considered not only a legitimate but perhaps the most important question that traditional legal research method can be used to answer.⁸⁸

Traditional legal methods were used to accomplish the work done by the descriptive chapters of this thesis: setting forth the applicable legal rules in different legal areas (e.g. public and private child support law) and those areas’ structures.⁸⁹ Several normative positions, in other words discussions justifying some aspects of the law and criticizing others, are woven into the descriptions of the law where appropriate, and then further normative positions are presented in the comparative chapters; even these elements of the thesis are within the domain of proper traditional legal method.⁹⁰

2.1.1.2. Challenges and Choices Regarding Material

Family law, especially as implemented in practice, can be notoriously difficult to research in traditional legal sources such as statutory law and especially case law, even appellate case law. This has proven true during the research process resulting in this thesis, for both Swedish and Californian child support law.

Statutes are often written in broad terms (“reasonable in light of the circumstances”), with the specific content to be filled in by individual decisionmakers such as judges, mediators and administrative agency rule-promulgators or individual agency employees who are given some amount of discretion, often intentionally, to decide the sensitive and emotional issues most prevalent in family law.

Case law in both jurisdictions consists mainly of unpublished decisions at the trial court level, lacking in value as precedent. Few families, unlike corporations and

⁸⁷ Jan M. SMITS, *THE MIND AND METHOD OF THE LEGAL ACADEMIC* 150 (2012).

⁸⁸ *See id.*

⁸⁹ *See* Peczenik (2005), *supra* note 86, at 249–450 (describing these as tasks of traditional legal method).

⁹⁰ *See id.* (describing traditional legal method as involving these analytical tasks).

governments, can afford financially or in terms of time (given the brevity of childhood) to appeal decisions to higher courts. A majority of cases—fortunately in most cases but in other cases unjustly—are settled informally, out of court, leaving behind little material for researchers to review. Trial-court-level child support determinations, if families even go to trial court, are also relatively difficult to access. Published, citable case law contributing to our understanding of child support law, especially in situations not affecting wealthier families, is thus limited, and yet case law decisions can be of critical importance in understanding how a court will likely rule on an issue not directly addressed by statute.

Choosing materials from which confidently to describe child support law today, especially as implemented and functioning in practice, therefore is not entirely straightforward.⁹¹ A researcher cannot assume that the published cases are representative of the majority of cases or scenarios in which families find themselves. One cannot assume that the statutes or even rules promulgated pursuant to them will provide a clear idea of how much or in which situations child support is legally appropriate.

Accordingly the study has relied on scholarly articles and evaluative reports, including governmental reports of quantitative research by public and private entities, and even informal conversations with professionals in the legal systems studied and academic experts (to confirm my understandings and to obtain their opinions on the child support law systems), alongside analysis of the traditional legal sources.

In Sweden, I also have included for example published staff training materials, informal guidelines and recommendations from the government agencies charged with assisting parents and courts in child support matters. Such governmental soft-law publications have had significant influence on judges, researchers and those analyzing the law in practice during the legal reform process. They also reveal much about the child support, family law, and WSM-related ideals and assumptions analyzed in order to fulfill the research aim.

In California, for the same reasons, federal and state child support agency and court system materials and materials by public policy/child advocacy groups are included. This is done less because these materials have been read and used by courts (although often they have been) but more to determine how the statutory and case

⁹¹ A comparatist using the functional method is, however, not necessarily bound to official sources in determining how the law in each system is redressing the societal problem. See Katharina Boele-Woelki et al., *Principles of European Family Law Regarding Parental Responsibilities* 165, in EUROPEAN FAMILY LAW SERIES NO. 16 (2007) (describing the Commission on European Family Law's comparative family law methods and the practical importance of studying law in action to discover "what practitioners are actually doing with the legal rules.").

law is understood, explained and critiqued by such interest groups and regulatory authorities. The materials make it possible to evaluate the different interpretations, ideals and assumptions of child support law common among private-system experts (private attorneys, for example) and public-system experts (such as agency staff). Such materials are key to describing accurately the family law and welfare state contexts in which the child support laws operate.

One additional methodological challenge should be mentioned. Position-taking has sometimes influenced the research publications on this topic, rendering choice of reliable material slightly more difficult at times. This seems tied to public debate and even legal-academic debate on child support being sometimes politicized, emotional, and discussed with suspicion of other positions, often along gender lines. While this seems especially problematic in the US, many of the same tensions or tendencies towards bias are also noticeable in Swedish public and academic debates regarding child support and other family-law topics.⁹² In both jurisdictions, some published research is quite pro-payee (whether or not also typifying payees as mothers, lower-income earners or more appropriate carers). Some is quite pro-payor (fathers, men, higher-income earners or less appropriate as carers). The value of such research can be compromised, especially where no rigorous attempt has been made to recognize the authors' own potential biases and to make as thorough and evidence-based an evaluation of one's findings and conclusions as possible.

Some of this, again particularly in the US with respect to the materials examined for this study, could reflect a helpfully adversarial debating system within the scholarly literature for resolving disagreements about the law. It appears however too often to be a result of researchers' and other family-law professionals' personal views of the ideal family and evolving family norms, more and less appropriately expressed and defended. For some writers who are exposed to a system that seems seriously dysfunctional or unjust each day—for example in settlement discussions, courtrooms or child support agency offices—expressing real emotion in response may be appropriate, especially in critical legal scholarship.⁹³ A subsequent researcher must carefully evaluate the resulting material, however.

⁹² There appears to be more consensus in the research published by the various universities and policy-influencing organizations in Sweden however, compared to that published by the various universities and policy-influencing organizations in the US, likely reflecting less stark public opinion differences within Swedish society on these topics.

⁹³ See, e.g., Edward L. Rubin, *On beyond truth: a theory for evaluating legal scholarship*, 80 CALIFORNIA LAW REVIEW 889 (1992).

Aspects of this politicization of child support research are presented within this thesis, yet materials deemed excessively biased and poorly grounded have been critically questioned and sometimes entirely excluded.

2.1.1.3. *The Swedish Hierarchy of Legal Sources*

Regarding Swedish legal sources of primary importance and their hierarchy, scholar Aleksander Peczenik has published some widely-cited guidance on this topic.⁹⁴ In very simplified summary, in determining “what the law is” it is necessary to consider (in rank order from most to least formally binding on decision-makers such as courts) any applicable European Union (EU) law; Swedish constitutional law; provisions of the European Convention of Human Rights; Swedish statutory law including or in light of incorporated international treaties; and Swedish governmental regulations and departmental regulations. It is also important to consider legislative preparatory works and case law from the highest instances of the Swedish Supreme Court (for private law) and the Swedish Supreme Administrative Court (for public law). Trial- and appeals-court-level judgments and “soft law” sources such as other governmental publications can also be useful, if their less-authoritative nature is taken into account.

The hierarchy of Swedish national-level legal norms can be said to begin with the legal sources that in principle *always* take precedence in cases of conflict between two sources and to proceed through legal sources that are “outranked” *by* all other sources. First and highest in the hierarchy of national Swedish legal sources that “must” (or shall) be considered in interpreting the law⁹⁵ is national constitutional law. The European Convention of Human Rights (*Europakonventionen*), per the constitutional Swedish Instrument of Government, also may not be contravened by any other Swedish law.⁹⁶

Second highest in the “shall” ordering are non-constitutional acts of the Swedish Parliament (the *Riksdag*), otherwise known as legislation (*lagstiftning*) or statutory law, followed closely by governmental regulations (*förordningar*), sometimes called

⁹⁴ See, e.g., ALEKSANDER PECZENIK, JURIDIKENS METODPROBLEM—RÄTTSKÄLLELÄRA OCH LAGTOLKNING 48–53 [METHODODOLOGY PROBLEMS IN LAW—HIERARCHY OF SOURCES THEORY AND LEGAL INTERPRETATION] (2d ed. 1980). See also Hans-Heinrich Vogel, *Sources of Swedish Law, in* SWEDISH LEGAL SYSTEM 20 (Michael Bogdan ed., 2010) (summarizing in English the Swedish hierarchy and relevance of various sources of law).

⁹⁵ The Swedish legal scholar Peczenik refers to this as a “must, should and may” ranking. See ALEKSANDER PECZENIK, ON LAW AND REASON 321 (1989).

⁹⁶ *Regeringsformen* [The Instrument of Government], Ch. 2 Art. 19 (official translation in English available at <https://www.riksdagen.se/en/documents-and-laws/>).

ordinances or statutory instruments, and then by national governmental agency or local municipality regulations (*myndighetsföreskrifter* or *kommunföreskrifter*). “Shall consider” sources are those a judge is bound to consider if he or she does not want to act improperly when interpreting Swedish law.

In cases where the meaning of a law remains unclear from the “shall” sources, the hierarchy of sources that a judge “should” consider adds several other sources of law, the hierarchy of which is more unclear. This includes principally legislative preparatory works and case law, which are not formally binding on courts but are considered proper to consider. Legislative preparatory works are somewhat akin to American legislative history but given significantly more weight during interpretation. They supply much detail beyond the statutory language itself, and historically Swedish courts have even decided matters on rare occasion based upon a statement in preparatory works despite it being contrary to the plain wording of the statutory law itself.⁹⁷ Case law from the highest instances of the two separate systems of general courts and administrative courts and from a few other specialized Swedish courts is the other source of law that “should” be considered.⁹⁸

Several other sources of law “may” be considered by courts in interpreting Swedish law, including general principles of law, custom and usage,⁹⁹ and of course legal scholarship (*doktrin*) by legal academics,¹⁰⁰ of which this dissertation is one example.

Since Sweden’s entry into the EU on January 1, 1995,¹⁰¹ EU law has had a direct role in regulating many public and private rights and obligations in Sweden, supplementing and in some cases replacing national law, for example replacing certain legal rules in the conflicts-of-law (*IP-rätt*), international succession law, and labor law areas. This doctoral thesis however *focuses on areas of Swedish national law over*

⁹⁷ See e.g. NJA 1985 p. 781 (wherein the Swedish Supreme Court held that a practice boxing match was criminal due to the intents explained in the preparatory works, despite the statute’s wording excluding the behavior from criminal liability).

⁹⁸ Note that Swedish judges have an even greater duty to consider and in fact to adhere to relevant case law from the CJEU and the European Court of Human Rights.

⁹⁹ Custom is an even more prominent source of law in certain fields of Swedish law, for example in commercial law, although not in family law (formally).

¹⁰⁰ KJELL-ÅKE MODÉER, RÄTTSTEKNIK 12 (1980). See also ALEKSANDER PECZENIK, RÄTTEN OCH FÖRNUFTET—EN LÄROBOK I ALLMÄN RÄTTSLÄRA [LAW AND REASON—A TEXTBOOK IN JURISPRUDENCE] (1986).

¹⁰¹ This followed a period when Sweden held itself outside of full membership in the common market area by reason of its “traditional policy of non-alliance in peace and neutrality in war.” Introduction to SWEDISH LAW: A SURVEY 29, 40 (Hugo Tiberg, Fredrik Strerzel & Pär Cronhult eds., 1994).

which the EU has no competence, namely purely-national family law and social welfare (public benefits) law. These areas generally have not been harmonized or directly modified by EU law and instead continue to be regulated in each EU Member State, including in Sweden, at the national level.¹⁰² Lawmaking in these areas can be affected indirectly in that, for example, no national law may discriminate on the basis of EU nationality within the EU or impede EU free movement rights without sufficient non-discriminatory purposes.

2.1.1.4. *The California Hierarchy of Legal Sources*

California sources include the United States Constitution and US federal laws and treaties, all of which have supremacy over all California law including the California Constitution in cases of direct conflict. *As in Sweden, the union level does not have competence to regulate family law generally*, and child support is more extensively and directly regulated more locally, at the national level in Sweden and at the state level in California. Indisputably, however, US federal law has come to have a more direct regulatory role in child support law. Federal funding contributions to welfare benefits (and related child support enforcement) have been used to incentivize state cooperation with federal child support regulation, and California accordingly has agreed to follow federal regulations. Therefore some federal law is cited throughout the thesis.¹⁰³

The California Constitution is the highest source of legal authority on specifically California state law, followed by the legislation (statutes) codified into the California Codes,¹⁰⁴ and the state regulations codified within the California Code of

¹⁰² See generally Riksdagen [The Swedish Parliament], *EU Information*, <http://eu.riksdagen.se/global/other-languages/english/#What-does-the-EU-do> (specifying in citizen educational material online that the EU does not regulate certain areas, for example child support). Exceptions exist, such as harmonized EU law on national courts' jurisdiction over and choice of law rules for enforcement of inter-EU child support orders. But see *International Handelsgesellschaft v Einfuhr- und Vorratsstelle Getreide* [1970] ECR 1125 Case 11/70 (establishing that EU law supremacy must, within its areas of competence, extend over all national law, even over Member States' constitutional principles but assuring that those principles are reflected within EU law itself). Milder controversy or at least delays in complete recognition of this supremacy can be said to continue in Sweden (and other Member States), although EU law has held unequivocally that the supremacy exists, and the EU proceeds accordingly within its areas of competence.

¹⁰³ The next subsection of this chapter briefly discusses the federal, sister state and international law influences on California child support law.

¹⁰⁴ CAL. CODE OF CIVIL PROCEDURE OF 1897 ("The organic law is the constitution of government, and is altogether written. Other written laws are denominated statutes. The written law of this State is

Regulations.¹⁰⁵ Published California Supreme Court or Courts of Appeals case law interprets these legal sources and thus can have the same authority as the source of law interpreted. In addition California courts may base their decisions on “unwritten law,” otherwise known as the common law. It is defined in the California Code of Civil Procedure:¹⁰⁶

Unwritten law is the law not promulgated and recorded, as mentioned in Section 1896, but which *is, nevertheless, observed and administered in the courts* of the country. It has no certain repository, but is *collected from the reports of the decisions of the courts, and the treatises of learned men* [sic].

Codes in California thus establish the law respecting the subjects that they explicitly cover, but “where the code is silent the common law governs.” Common law then will be the controlling law on an issue, so long as it is *not directly in conflict with any statutory law*.¹⁰⁷

The academic treatises acknowledged in the statute tend to be organized commentaries on the state’s law, written by judges and lawyers more often than by academics; they are cited as sources from which unwritten law is “collected” because they often compile or deduce what the common law rule is from a variety of court decisions and have long been well-known to courts, and cited by them where appropriate (but not in place of case law precedent). In theory it is *the rule itself, created from the collective wisdom of common-law courts*, that is the true source of law being relied upon in the absence of a statute modifying the common-law rule.

Although there is a presumption that statutes do not change the common law by mere implication,¹⁰⁸ *the statutory law within the California Codes, especially within the California Family Code, has proven itself to be the most relevant source of law for this study*. The rules for child support determination and child support enforcement are set forth for both “private” and “public” sides of the system in the Family Code. Its

therefore contained in its Constitution and statutes, and in the Constitution and statutes of the United States.”)

¹⁰⁵ See generally CAL. GOVERNMENT CODE §§ 11342.1 and 11342.2 (on the scope of authority of state agencies to regulate and on the validity of California regulations).

¹⁰⁶ CAL. CODE CIV. PROC. § 1899 (originally enacted in 1872; emphasis added). Section 1896 provides simply that “[a] written law is that which is promulgated in writing, and of which a record is in existence.”

¹⁰⁷ *Victory Oil Company v. Hancock Oil Company*, 125 Cal. App. 2d 222, 229 (1954). The new US State of California adopted the English common law as modified by early American common law case decisions. California Statutes of 1850, *An Act Adopting the Common Law*. The doctrine of *stare decisis* was very early confirmed as applying in California by California’s Supreme Court. *Id.* at 230.

¹⁰⁸ See, e.g., *City of Laguna Beach v. California Insurance Guarantee Association*, 182 Cal. App. 4th 711 (2010).

provisions and the appellate case law that has interpreted those provisions are the source of most of the California law studied.

Materials such as child support administrative regulations and the California Rules of Court (in addition to more local rules of court) are relevant to child support law practice, although they have only occasionally been necessary to describe to answer this study's research questions at an appropriate level of depth.

Materials such as mandatory-use child support court forms promulgated by the Judicial Council of California via legislative power delegated to it by statute are considered for this study, better to analyze the law as tailored to its administration in practice, but cannot be considered a source of law. The study also takes account of other sources that would for the most part be merely persuasive but not mandatory for a court to consider. These include *scholars' and others' analyses of the law* (not rising to the level of "treatises") and *written evidence of the intent of lawmakers* from the child support law's legislative history (both of which have a lesser standing in California compared to in Sweden). Other "soft law" sources, such as child support law performance reports and similar reports, may influence lawmakers and decisionmakers' interpretation of child support law as well, and thus are helpful to the analysis and comparison, as discussed above and in the comparative method section below.

2.1.1.5. US Federal and International Law's Role in California

One may wonder the extent to which the study's description and analysis of California family law is generalizable to US law applicable in the other US states and territories. The answer depends on at least two factors. One is the extent to which the laws of the several states are *harmonized* or have *developed similarly* over time, for example from adoption of model rules developed and promoted by experts such as the American Law Institute or states' courts agreeing with and following the reasoning of each other's case decisions. The other is the extent to which federal law, which *in areas of federal competence* has constitutional supremacy over state law in cases of direct conflict,¹⁰⁹ can be said to play a role. International law at this time plays much less of a role in the US than it does (in various but not all instances) in Sweden, as will be discussed.

The first factor, regarding the similarity or dissimilarity of child support law in the more than 50 US jurisdictions (to the extent that states retain discretion to develop differing child support approaches, as discussed directly below), is beyond

¹⁰⁹ The Supremacy Clause of the US Constitution requires that federal law (the federal US Constitution, law and treaties made under US authority) supersedes any inconsistent provisions of state law or state constitutions, binding the judges of every state. U.S. CONST. art. VI, § 2.

the scope of this study, outside of brief discussion of other states' child support approaches in order to situate the California approach. *At an abstract level*, the law of different US states is sometimes very similar, and other states' experiences in applying and developing child support law can offer much helpful information to a researcher, to lawmakers and to courts. *At a concrete level*, however, even if another state has adopted *identically-worded* rules to California's, the statutory laws themselves and case-law precedents further defining them *do not have actual legal effect* across state lines.¹¹⁰ The California courts can decide how to interpret any extra-jurisdictional, potentially persuasive law or other relevant source, but it is not mandatory law that they are bound to interpret. Each US state, district and territory is a separate legal systems, just as Sweden and Finland are separate legal systems and yet both *subject to* EU law and sometimes *persuaded by* the other's legal solutions.¹¹¹

It is the significance of the *second* factor mentioned above, however—federal law's role in the child support area—that explains how many of the issues this thesis addresses *do* exist across the US. Because family law is an area of regulatory competence generally reserved to the states,¹¹² one might hypothesize that there continues to be little federal-law influence over California's legislative and case law on child support. To the contrary, unlike in the EU, US federal law *has* required some harmonization, and also has incentivized states to adjust (and even dramatically reform) their child-support schemes in recent decades, using enumerated federal powers as well as a tool termed “fiscal federalism.”

In the United States, *fiscal federalism* is the idea that the federal government expands its regulatory control over traditionally state-governed issues, including family law, via federal programs providing federal grant monies to states that “opt in” voluntarily in order to receive the funds. Despite family law being an area of law traditionally left to the states, and the federal government being one of limited and

¹¹⁰ As a result many legal practitioners of family law in California almost never encounter cases or statutes from another state. They may do legal research to find such law if an issue seems unresolved under California law to date or if it is in their client's interest to argue for a change in the law, since such examples can be *persuasive*, although never binding. Relatedly, California practitioners often refer to the California Supreme Court as simply “the Supreme Court,” a habit that can confuse lawyers from other jurisdictions who may first think of the US Supreme Court (“SCOTUS”) or their own state's supreme court when reading such a reference. This becomes extra confusing in New York, where the “supreme” courts are trial-level courts and the highest court is called the Court of Appeals.

¹¹¹ Of course Sweden and Finland are also independent nations; the US/EU analogy should not be overextended.

¹¹² See, e.g., Laura W. Morgan, *A Shift in the Ruling Paradigm: Child Support as Outside the Contours of “Family Law”*, 14 DIVORCE LITIGATION 117, nn. 31–32 (2000).

specific powers constitutionally,¹¹³ there is today far-reaching federal law influence over American family law in all fifty states,¹¹⁴ including in the child support area.¹¹⁵

Federal law also has an influence via laws enacted pursuant to one of the limited and enumerated federal powers that the first US states granted the federal government by ratifying the US Constitution. Federal powers include for example the US Congress's power to regulate interstate commerce, which the US Supreme Court has interpreted quite broadly.¹¹⁶

Tensions arise, of course, between federal-level oversights or mandates tied to important federal funding and states' desire for autonomy and individualized solutions. The federal role can be viewed as similar to the EU's role with respect to EU member states, including Sweden, in that it encroaches upon this area of law, when it does, to achieve greater uniformity and to improve effectiveness of the law, especially in cross-border cases.

Specific to child support law, federal law requiring a federal-state partnership for establishing and enforcing child support orders, namely Title IV-D of the Social Security Act of 1935 as amended in 1974,¹¹⁷ is an example of fiscal federalism in this area. *Each of the over fifty US jurisdictions has been required to implement a uniform child support guideline as a condition of continued federal child support enforcement program funding.* They have "opted into" federal child support schemes in order to receive federal funding to help them finance their social benefit programs such as, in California's case, CalWORKS.

Interstate enforcement of child support is now governed by federal law as well. Examples include the 1994 Full Faith and Credit for Child Support Orders Act (FFCCSOA)¹¹⁸ and the 1996 Personal Responsibility and Work Opportunity

¹¹³ See Linda D. Elrod, *The Federalization of Family Law*, 36 HUMAN RIGHTS MAGAZINE 1, 2 (2009) ("The Evolution of the American Family") ("For almost two hundred years, the fifty [sic] states regulated family law because the federal government did not. The Tenth Amendment [to the US Constitution] left states with '[t]he powers not delegated to the United States by the Constitution, nor prohibited by it.'").

¹¹⁴ *Id.* at 1 ("A multitude of federal laws now regulate and impact families; some specifically confer jurisdiction on federal courts.").

¹¹⁵ See, e.g., WIKLEY (2006), *supra* note 52, at 148–149.

¹¹⁶ See, e.g., Richard A. Epstein, *The Proper Scope of the Commerce Power*, 73 VIRGINIA LAW REVIEW 1387, 1388 (1987) (answering the question "as a matter of both of first principle and of Supreme Court precedent: what is the proper construction of the grant of congressional power contained within article 1, section 8, clause 3?" vis-à-vis the clause's "intended role in limiting government power").

¹¹⁷ Codified at 42 U.S.C. § 651 et seq.

¹¹⁸ Codified at 28 U.S.C. § 1738(b), requiring states to afford full faith and credit (recognize and enforce) child support orders entered by other states, and to refrain from modifying or issuing

Reconciliation Act¹¹⁹ that required all states, *inter alia*, to adopt the National Conference of Commissioners on Uniform State Laws (NCCUSL)'s Uniform Interstate Family Support Act (UIFSA) by January 1, 1998. Federal law has also *criminalized*, including at the felony level, willful failure to pay past-due court-ordered child support, defined as support remaining unpaid for longer than one year or owed in an amount over \$5,000 (43,460 SEK) in cases where the child and payor are located in separate states.¹²⁰

International law influence over California's otherwise state-law-based family law exists, albeit in markedly limited situations generally connected with cross-border enforcement beyond this study's scope. For example, in 2008 the NCCUSL proposed amendments to the UIFSA in response to the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.¹²¹ The US closely participated in drafting and then signed this Convention at The Hague, Netherlands, on November 23, 2007, committing the executive branch of the federal government to make a good-faith effort to bring the Convention into force, but not assuring that the legislative branch (the US Congress) or state governments would take the remaining steps required to effectuate the Convention.¹²² It is however now effective throughout the United States, as of 2017, with certain reservations.¹²³ With this and other treaties,¹²⁴ the United States, due to both domestic political will and procedural complexities, is a hesitant participant,¹²⁵

contrary orders except when the issuing state has lost continuing, exclusive jurisdiction over the case due to both parents and the child no longer residing in the issuing state, or consent by all parties.

¹¹⁹ Codified at 42 U.S.C. § 666.

¹²⁰ The Child Support Recovery Act (CSRA) of 1992, codified at 18 U.S.C. § 228, amended in 1998 when it became the Deadbeat Parents Punishment Act (DPPA).

¹²¹ National Conference of Commissioners on United States Law, *Uniform Interstate Family Support Act (Last Amended or Revised 2008) with Prefatory Note and Comments*, 43 FAMILY LAW QUARTERLY 75, 85 (2009). The Uniform Interstate Family Support Act was adopted into the California Family Code per federal mandate. See CAL. FAM. CODE § 5700 et seq.

¹²² *Id.*

¹²³ See Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance [hereinafter the *2007 Hague Convention*] and its status table and reservations text (available at <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=1016&disp=resdn>).

¹²⁴ Because treaties have legal status equivalent to the US Constitution, are given supremacy over federal or state law, and are directly applicable after ratification without any need for effectuating legislation, they are much more hesitantly ratified in the US than in many other nations. See also note 51, *supra*.

¹²⁵ See generally Mortimer N.S. Sellers, *Universal Human Rights Law in the United States*, in HUMAN RIGHTS AND CIVIL LIBERTIES IN THE 21ST CENTURY 15 (Yves Haeck & Eva Brems eds., 2014) and

one reason international law influence over California child support law remains modest.

The main effect of the federal (and international) law's role in California child support law is to incentivize and sometimes to require more uniformity and more recognition of out-of-state and international child support orders validly made. Some of this law also works to assure continuing state-court jurisdiction over the effective years of child support rights and obligations, namely during the minority of the child. Pressure to use international-law definitions of children's "rights" including rights to financial support for their development from their parents and states has not been a strong influence motivating states like California to reform their child support laws.

2.1.1.6. *The Barnkonvention (UN CRC)'s and EU Law's Role in Sweden*

One treaty, introduced above in the first chapter, is the UN Convention on the Rights of the Child (known as the CRC in English and *Barnkonventionen* in Swedish), which Sweden signed and ratified in 1990.¹²⁶

Swedish lawmakers have approved that the UN CRC (*Barnkonventionen*) will be incorporated into Swedish law, with a status that equals that of legislatively-adopted Swedish law, effective January 1, 2020.¹²⁷ An investigation developing guidelines for the interpretation of the CRC's often broad provisions is ongoing,¹²⁸ although the Swedish Council on Legislation (*Lagrådet*) had advised against the Government's proposal to incorporate the CRC and then analyze how its text should be applied in the Swedish national law context. *Lagrådet* saw the approach as problematic, including with respect to legal certainty.¹²⁹

It remains to be seen how Swedish child support law, public and private, might be affected by the coming change. In Norway, where the CRC takes precedence over other laws, researchers suggest that for example work-based welfare policy

Why won't America ratify the UN convention on children's rights?: The Economist Explains, <http://www.economist.com/node/21587294>.

¹²⁶ See Chapter 1.3, *supra*, discussing primarily CRC Article 27 regarding child support.

¹²⁷ *Riksdagsskrivelse* 2017/18:389 (reporting the legislature's approval on 13 June 2018 of this proposed legal change).

¹²⁸ See Dir. 2018:20, *Kartläggning av hur svensk lagstiftning och praxis överensstämmer med barnkonventionen* [Survey of how Swedish legislation and practice are in accordance with the Convention on the Rights of the Child].

¹²⁹ *Lagrådet, Utdrag ur protokoll vid sammanträde* [The Swedish Council on Legislation, Excerpt from minutes of meeting] (2017-09-06) 4–5, available at <https://www.lagradet.se/yttranden/Inkorporering%20av%20FNs%20konvention%20om%20barnets%20rattigheter.pdf>. A number of childrens' rights organizations, however, favored the plan.

(*Arbeidslinjen*) has been affected, legally, in that it should not be permissible to press parents to take work if the effects on their children's rights are not independently considered. In practice, however, Norwegian interpretation of the law has led to a result not as different from prior law as might have been possible—for example receipt of social benefits may still be tied to parental work requirements.¹³⁰

The CRC provides at Article 5 that “State Parties shall respect the responsibilities, *rights* and *duties* of parents” and others legally responsible for the child, who in turn help their children, via “appropriate direction and guidance,” to exercise their rights recognized in the Convention.¹³¹ Article 18 of the Convention details the responsibilities of state parties to “use their best efforts to ensure recognition of the principle” that (1) “both parents have common responsibilities for the upbringing and development of the child.”¹³² It confirms that (2) parents have the primary responsibility, and that (3) the “best interests of the child will be their basic concern.” Swedish family law legislation reflects all three of these tenets. So does Californian statutory law, which evidences the widespread adoption—if not the uniform application—of many family law principles also appearing in international law. This includes but is not limited to the currently-dominant “best interests of the child” (*barnets bästa*) standard particularly prominent in child custody law but also relevant for child support.¹³³

Specific to the child support parental duty, and correspondingly the child's right to receive financial support from both parents, Article 27(2) of the CRC states that “the parent(s) or others responsible for the child have the primary responsibility to

¹³⁰ Mons Oppedal, *Barns rett til materiell velferd—Hva er situasjonen i Norge?* [*Children's rights to material welfare—How does the situation look in Norway?*], in *Socialforskringsrapport 2018:4* at 49 (published papers following FK and Fortes Research Seminar 2018: Children and Parents in Social Insurance).

¹³¹ CRC Art. 5 (emphasis added).

¹³² CRC Art. 18.

¹³³ Notably for this comparative study differences exist as to the *content* of these similar words. While “best interest of the child” (the “BIC standard” in California) is a fundamental principle of Californian family law today, and more broadly within the US, US state law is most often cited as its source. Thus its interpretation and development as a principle occurs more internally than might be assumed. In contrast, in Sweden, often international law instruments are cited as the source of the BIC standard, reflecting again the two jurisdictions' differing orientations towards international law (and children's positive rights). On the other hand Swedish national interpretation of the principle's meaning for Swedish family law practice is, as in California, also somewhat internal. Relatedly, the words do not connote exactly the same meaning: BIC in Sweden is understood more as “the child's right to” have his or her best interests control certain decisionmaking, while in the US the standard reflects “the state's duty to,” more procedurally, set the best interests of the child first in similar decisionmaking. See generally SINGER (2019), *supra* note 57.

secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.”

Child support receipt thus is *defined* as a child's right, as was introduced earlier, to the extent that a right detailed in the CRC signed by 195 nations worldwide can be legally construed as an existing, enforceable right, and to the extent law can substantiate the content of that right plus provide remedies to ensure it.¹³⁴

At the same time, in child support proceedings:¹³⁵

[T]here is no universal right of either *application* or *enforcement* that equates with the competent child's universal right to participate in proceedings concerning *custody and access*. Children's material welfare following divorce or parental separation is, therefore, *entirely subject to the relevant national law*, making the likelihood of any financial relief not only *dependent upon their custodial parent* pursuing a maintenance claim, *but also on the relevant authorities* ensuring such obligations are enforced.

It is therefore clear that receipt of child support has not fully been established as a child's enforceable legal “right” at an international level via the CRC, despite the use of rights terminology.¹³⁶ Children's rights to support as a right lacking an effective remedy are discussed further, within the comparison.

At the EU level, conflict-of-laws support law is legally relevant to the enforceability of a Swedish child's right to support from his or her parents in many cases with international elements. The EU's Maintenance Regulation,¹³⁷ for example, applicable to both spousal and child support obligations, affects Swedish child support establishment and enforcement cross-nationally by harmonizing jurisdiction

¹³⁴ See Stalford, *supra* note 53, at 119 (citing Article 27(2) to argue that “[c]hild maintenance is, therefore, by definition a children's rights issue: it is concerned with upholding and protecting children's welfare insofar as its aim is to address the child's ongoing material needs in the event of parental divorce or separation with a view to avoiding and alleviating child poverty.”)

¹³⁵ *Id.* at 128 (emphasis added).

¹³⁶ In the UK courts have even held that child support is *not* a child's right. See WIKLEY (2006), *supra* note 52, at 7.

¹³⁷ Council Regulation (EC) No 4/2009 of 18 December 2008 (on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations) [hereinafter the *EU Maintenance Regulation*]. The EU Maintenance Regulation was adopted, per its preamble at paragraph 8, in connection with negotiations that also resulted in the 2007 *Hague Convention* and the Protocol on the Law Applicable to Maintenance Obligations [the 2007 *Hague Protocol*]. Those instruments also are to be taken into account in interpreting the EU Maintenance Regulation.

and choice-of-applicable-law issues¹³⁸ plus streamlining international recognition and enforcement of national judgments made on child support obligations. Those holding or subject to a judicial or an administrative decision on child support from another jurisdiction can have it recognized and enforced in Sweden pursuant to the Maintenance Regulation, which recognizes the diversity of ways, some administrative and some judicial, that Member States memorialize child support obligations under their national legal systems.

Importantly, *integration and internationalization* within the EU are also having effects beyond direct textual modifications to national legal rules, procedures, or even policies. As Swedish legal scholar Lena Wennberg wrote in 2012, “EU governance extends into the Member States, not necessarily through social and family policies as is conventionally understood, but rather *in terms of shaping discourses and processes through subtle patterns of influence on, and the insinuation of, particular values, ways of thinking and agency.*”¹³⁹ While liberal (as in liberal WSM) influences are sometimes pointed to as threatening the strength and sustainability of Sweden’s WSM ideals, naturally the reverse occurs as well.

2.1.2. *Functional Comparative Law Method*

2.1.2.1. *Introduction to the Method and Its Use in This Study*

This legal research project uses the *functionalist comparative law* method to complete a micro-comparison¹⁴⁰ of the private- and public-law child support rules in Sweden and California from a welfare state theoretical perspective. It thus examines rules in each legal system that are sufficiently functionally equivalent, meaning that they

¹³⁸ The details of jurisdiction (which court decides a matter) and choice of law (which nation’s legal rules that court applies) are beyond the scope of this dissertation. Under the EU Maintenance Regulation, via its reference at Article 15 to the governing 2007 Hague Protocol on the law applicable to maintenance obligations, the national rules on child support obligations are usually those of the country where the “creditor” is habitually resident. Since the creditor is most often the CP of the child, this is usually the country where the child lives.

¹³⁹ LENA WENNBERG, CONSTRUCTIONS OF NORMALITY AND THE BOUNDARIES OF SOCIAL CITIZENSHIP: SOLO MOTHERS IN THE SWEDISH WELFARE MODEL 9 (2012) (emphasis added).

¹⁴⁰ See Pär Hallström, *Theory and Method of Comparative Constitutional Law*, 61 SCANDINAVIAN STUDIES IN LAW 49, 53 (2015) (“The method for making micro comparisons is somewhat different from that of macro comparisons because the *function of the specific rule is more important in micro comparison* than in macro comparison. Otherwise the difference of method is not significant. In both the two cases *the analysis must include the nature of the legal systems and consideration has to be taken of the historical, political, economic and ideological context.*”) (emphasis added).

more or less both aim to solve a sufficiently similar societal problem occurring in both societies. According to Zweigert and Kötz's functionalist comparative law theory, "only rules which perform the same function and address the same real problem or conflict of interests can profitably be compared."¹⁴¹ *This study's research process therefore required asking what real problem was in focus, identifying the rules aimed to address that problem in the legal systems compared, and then describing and comparing them.*

Functional comparative law method can involve various tasks depending on the aims of a particular research project.¹⁴² This study's aim, *to analyze and compare alternate legal approaches to a social problem across two systems*, has been recognized in previous scholarship as a valid aim to pursue via the functionalist comparative law method.¹⁴³ As scholarship on the method has suggested, *comparative law scholars should continue to use the functionalist method on their "quest[s] for a better understanding of the real-world consequences of legal institutions and for improved legal solutions to social problems."*¹⁴⁴ Scholars however also should "respond to the claim that functionalism has a tendency to exaggerate the extent to which different societies face similar problems," and such exaggeration invites, among other things, inaccurate conclusions that one legal solution is better than another at solving the problem.¹⁴⁵ It is avoided by taking care to use a more refined and modern approach with the method, and within the comparative analysis "distinguishing between *intended functions* and *actual consequences*," devoting "more effort to the task of *causal inference*" and "striv[ing] to take law's *context* seriously."¹⁴⁶

This study finds the legal solutions and the conditions within the systems studied more similar than some would assume, thus more profitably comparable. Nonetheless, as required for proper use of this legal research method, *the analysis*

¹⁴¹ KONRAD ZWIEGERT & HEIN KÖTZ, INTRODUCTION TO COMPARATIVE LAW 10 (3. rev. ed. 1998).

¹⁴² See Ralf Michaels, *The Functional Method of Comparative Law*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW 339 (Mathias Reimann & Reinhard Zimmerman eds., 2008).

¹⁴³ See ZWIEGERT & KÖTZ (1998), *supra* note 141, at 34 (finding also that analysis of whether aspects of those solutions may or may not work for the other system is a valid aim of comparative law methodology).

¹⁴⁴ Christopher A. Whytock, *Legal Origins, Functionalism, and the Future of Comparative Law*, 6 BRIGHAM YOUNG UNIVERSITY LAW REVIEW 1879, 1904 (2009) (emphasis added.) See also *id.* at 1905 (concluding that "a new functionalism that combines the traditional better solutions impulse with a refined concept of function, and that takes causal inference and contextual factors seriously, would have the potential to make valuable contributions to our understanding of law and to the improvement of legal institutions.")

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* See also *id.* at 1905 (concluding that "a new functionalism that combines the traditional better solutions impulse with a refined concept of function, and that takes causal inference and contextual factors seriously, would have the potential to make valuable contributions to our understanding of law and to the improvement of legal institutions.")

avoids assuming that the societies' problems for children with separately-living parents are so similar that the legal solutions are equivalently aiming, in all regards, to alleviate the same harms while avoiding causing the same secondary effects. Instead the comparative chapters *take the law's context seriously*, and even elevate it; the societies' differing welfare state ideals and realities are found to be the *main* factor not only correlated with but also causally linked to important legal divergences.

This study's aim does not however involve seeking to conclude that one legal system *as a whole* is a *superior solution* to the social problem in focus, although such an "evaluative function" of comparative law¹⁴⁷ could be proper for a different study. Normative positions are taken at certain points of the analysis, but in the interests of accuracy no overly-broad conclusion is made (or, hopefully, implied) that California or Sweden has designed a *superior solution* (in the specifics of its *child support law*) to the social problem at hand.¹⁴⁸ The study instead examines the tools used in each system, in their contexts. Their unique challenges are analyzed, alongside their commonalities, including by using WSM theory, introduced immediately below.

Summarizing the considerations of my comparative methodology, I attempt to consider "wide, deep and local contexts."¹⁴⁹ *Why* did I do this comparison, in other words what is its purpose, and why was it necessary to the extent I have done? Chapter 1 presents the aim and research questions, while Chapter 2 includes the rationale of its breadth and my choices regarding perspectives I use. *What* did I do, in *wide* context, meaning which jurisdictional and rule choices did I make and why,

¹⁴⁷ See *id.* at 373–376.

¹⁴⁸ At the same time, I am convinced by decades of social-science evidence on the results of the two systems' financial support of children policies *generally*, and feel it more than reasonable to admit that current Swedish law more successfully prevents child poverty. See, e.g., Markus Jäntti & Sheldon Danziger, *Child Poverty in Sweden and the United States: The Effect of Social Transfers and Parental Labor Force Participation*, 48 INDUSTRIAL & LABOR RELATIONS REVIEW 48, 60 (1994) ("Children in the United States whose parents fared poorly in the labor market remained poor because the government did relatively little to help them. Almost a quarter of them did not receive any transfers, and most of those who received transfers did not receive enough to escape from poverty. All poor children in Sweden—in fact, all children in Sweden—received transfers; and most market-income-poor children in Sweden, particularly those living in mother-only families, received enough assistance to escape poverty.") See also DALY & RAKE (2003), *supra* note 17, at 66 (finding from a gender perspective that, in comparison to seven other countries within four WSMs, "[t]he exceptional nature of the Swedish welfare state in not just protecting mothers, but in reducing their relative chances of poverty, stands out clearly").

¹⁴⁹ David Jenkins, *There and Back Again—The Strange Journey of Special Advocates and Comparative Law Methodology*, 42 COLUMBIA HUMAN RIGHTS REVIEW 279, 354 (2011) (proposing that a "best practices approach" to the use of comparative law includes attention to these contexts, "each with its own constituent factors," and illustrating with a detailed analysis of one court's comparative method misuse and its consequences).

and how can I justify my limitations? The sections on research method and delimitations, including this section on comparative method, describe such choices.

How did I do this, in *deep* context, getting the details of the law sufficiently well understood despite foreign language, cross-disciplinary and empirical material and other challenges, to keep it feasible to reach a high-quality study result? Language barriers I have addressed by intensive study of the Swedish language personally and by consultations with native Swedish speakers. Cross-disciplinary challenges were avoided by doctoral coursework in sociological and gender studies methods and prior coursework and other experience, plus consultations with university colleagues particularly focused in political science, legal sociology and gender topics relevant to this study. Coursework required for my bachelor's degree in biological sciences also prepared me to analyze statistics reported within empirical materials.

Finally, *where* did I do this, meaning have I considered the *local* context of each jurisdiction sufficiently, for example to assure that any recommended introduction of parts of one system to the local context of the other would be more likely to flourish than to introduce new difficulties? Following legal education in the United States and several years of practice as a family law attorney in California, I have been resident throughout the research period in Sweden, engaged full-time with the law department's Swedish-educated researchers and teachers. Such immersion, in both legal jurisdictions, has benefited the project, as has systematic study of their welfare state contexts.

2.1.2.2. *The "Functions" of the Laws Studied*

A first necessary step is to identify and responsibly qualify (describe the limits of) the necessary *functional equivalences* between laws and legal institutions in each system compared.¹⁵⁰ This must be done for comparative methodological purposes, but also to situate the problem and the two legal system's solutions in the international child support law research and policymaking context, from which the analysis will benefit.

As stated earlier, the *societal problem* studied in this comparison of legal solutions addressing it is that some children have parents who divorce, separate or never live together, and these children are not as easily able to access both parents' financial resources to meet their support needs compared with children whose parents live

¹⁵⁰ See Michaels (2008), *supra* note 142, at 371–372 (defining and defending functional equivalence as “similarity in difference” and discussing the due care and breadth of perspective necessary to compare two societies’ solutions to similar problems).

together.¹⁵¹ The child support laws studied herein serve to address this societal problem, as the study has confirmed. They are comparable because they serve the same function in their two legal systems.

The legal regulations of child support payable by parents in Sweden and in California, along with the public-law mechanisms for ensuring that child support is received and recovered from parents with a duty to pay it, serve *two main functions*, in manners this thesis describes.

Both jurisdictions' law serves the functions of (1) *avoiding child disadvantage* (both objectively and relatively) for children with separately-living parents while (2) *ensuring fair contribution and division of responsibility* between private and public child-support-duty holders (between the two parents and between the parents and the state).

I have defined these *manifest functions* in light of the child support laws' stated, overt, legislatively- and sometimes judicially-assigned purposes, however I have also found evidence of several more *latent functions* likely to be at play, often influenced by differences between the two jurisdictions' welfare state ideals and related responses to social inequalities relevant to the social problem addressed by child support law.¹⁵² Relatedly, I have attempted to use functional comparative law methods to critically analyze each system's child support legal system without losing awareness of and respect for the often-positive aspects of each system's distinct legal culture.¹⁵³

In my view, best practice in comparative law today involves use of the functional method in a precise and cautious, yet also confident and pragmatic, way. We must acknowledge that scholars, lawmakers, judges and other legal actors in fact use foreign-law material for various valid purposes in the present day, as many have for many hundreds of years. We must move beyond discussion of whether comparisons should be done at all, to better invest our time in mastering how to do them well.¹⁵⁴

¹⁵¹ Note that this is not exactly framed as the economic problems associated with increasing numbers of single-mother-led households, which is where much but not all child support research chooses to focus. See, e.g., Yin-Ling Irene Wong, Irwin Garfinkel & Sara McLanahan, *Single-Mother Families in Eight Countries: Economic Status and Social Policy*, 67 SOCIAL SERVICE REVIEW 177, 177 (1993) ("The growth of single-mother families during the past 2 decades is considered a social problem in most Western industrialized countries.") How the problem is framed impacts which laws in each system can be said to serve the function of addressing it.

¹⁵² See Michaels (2008), *supra* note 142, at 352 (discussing manifest and latent functions).

¹⁵³ See *id.* at 379 ("By reconstructing legal culture in functional terms, functional comparative law helps preserve the culture's otherness while making it commensurable with our own law—we see the foreign law's functions and dysfunctions, both manifest and latent, and we know from comparison how else these effects can be brought about.")

¹⁵⁴ See generally Whytock (2009), *supra* note 144.

2.1.2.3. *Benefits of Comparing Two Systems: Sweden and California*

As I detail in the comparison chapters with reference to the descriptive chapters, this project began with a hypothesis that the institutions that implement child support law in California and Sweden are appropriately functionally analogous for effective comparison, on both the private law civil court and public law administrative agency sides of child support adjudication and administration. Their stated aims and use in practice as revealed by public research reports on their successes and challenges made clear that they were, to some extent, analogous, and that researching them could reveal interesting differences, including between ways of thinking about child support solutions.

The project is designed to compare two systems, representing two WSMs, despite the challenges in so doing. Beginning a comparative study as a doctoral dissertation project can seem as daunting as engaging in two full and separate projects, either one of which could be set aside in the interest of devoting available resources to the other. This project nonetheless compares two systems as a conscious investment of additional time and energy in order to reap greater rewards than otherwise would have been possible. These two legal jurisdictions are appropriate for comparison because they are both, to put it simply, “similar enough,” sharing what we might call socially progressive modern Western values and challenges, yet “different enough,” especially with respect to their WSMs, potentially to reveal unexpected perspectives to each other.

The jurisdictions are distinct enough also not to have been previously compared to each other as often or extensively as each has been compared to more geographically and ideologically proximate jurisdictions. Among the ways in which they are different, the systems have civil law (Sweden) versus common law (California) origins, although both are actually atypical with respect to those classifications, as will be touched upon in subsequent chapters.¹⁵⁵ More important are the popular reputations of Sweden as the prototypical *social democratic* welfare state, providing comprehensive state investment in welfare, and of California or the United States as a whole as the prototypical *liberal* welfare state, where the market is the preferred solution, followed by private solutions such as reliance on family and only lastly on the state for a minimal social safety net.¹⁵⁶

¹⁵⁵ Both Sweden and California have systems that easily can be misunderstood, in my view, when measured against the civil law/common law ideal forms often introduced during law school for pedagogical purposes, thus legal family differences are not featured in the comparison. See further Chapter 7, *infra*.

¹⁵⁶ See, e.g. Hila Shamir, *The State of Care: Rethinking the Distributive Effects of Familial Care Policies in Liberal Welfare States*, 58 AMERICAN JOURNAL OF COMPARATIVE LAW 953, 960 (2010). Academically,

As alluded above and developed extensively below, comparison of Sweden and California at the specific level of child support law, private and public, from a WSM theoretical perspective necessitates a certain amount of broader comparison of the two jurisdictions' legal and political identities and policies. Comparison of just *these two* jurisdictions, considered polar opposites and prototypes of their own WSM types yet sharing reputations as progressive family law pioneers, is particularly well-suited to a study from the WSMs perspective. The mutual awareness to which the study contributes may inform future academic evaluations of calls for more, or less, direct public vs. private funding for children's needs in these and other societies. That is one aspiration motivating the choice of systems to compare.

2.2. Welfare State Model Theory and Ideal Types

The rights of children to a certain level of child support (private funding for their maintenance and development into independent adults) and to what extent taxpayer monies should be expended to enforce or replace that private funding are closely related to questions of *the desirability of more or less public funding directly for children's support*. The ideal role of the state versus the family in funding children is in turn connected to a legal jurisdiction's ideal (and existing) *welfare state* or system of providing citizens with public supports. This study uses welfare state theory, therefore, to help analyze the differences found between Sweden and California's child support legal regulations.

There exists a tradition in sociological research of using "deductive reasoning and ideal types" as a method for understanding messy, real-world social phenomena.¹⁵⁷ The German sociologist Max Weber, often called a founder of sociology, advocated use of an abstract system as the only workable means of analyzing the complexity of social life.¹⁵⁸ Danish sociologist Gøsta Esping-Anderson's work on WSMs, the ideal-types system used here, follows in the same tradition.¹⁵⁹

welfare state theory became a stated theoretical framework for this project as I began to find that the most significant differences in how child support law is *implemented* in these jurisdictions stem from the inherent beliefs and goals of the two WSMs involved.

¹⁵⁷ See Emanuele Ferragina & Martin Seeleib-Kaiser, *Welfare regime debate: past, present, futures?*, 39 POLICY & POLITICS 583, 583 (2011).

¹⁵⁸ MAX WEBER, ON THE METHODOLOGY OF THE SOCIAL SCIENCES 90 (1904, trans. and ed. by Edward A. Shils & Henry A. Finch, 1949).

¹⁵⁹ See Ferragina & Seeleib-Kaiser (2011), *supra* note 157, at 583.

Welfare state variants are clusters of nations that have been classified into a group sharing qualitatively similar “arrangements between state, market and the family.”¹⁶⁰ These arrangements change and vary somewhat over time and place, thus no nation ever perfectly fits one of the classifications. This is to be expected; WSMs are “ideal” types used as heuristic devices in comparative research, not “real” types.¹⁶¹

A state’s WSM can be defined in more detail as “*the state’s role in education, health, housing, poor relief, social insurance and other social services.*”¹⁶² The state’s larger or smaller role in these areas “clearly plays a key role as mediator” among the various other influences that shape public welfare outcomes.¹⁶³

Diverse disciplines have come to recognize WSM theory as “at the core of their endeavor,” yet most *legal* academics have seen welfare state research as relatively marginal¹⁶⁴ despite the economic prominence of public welfare spending in most advanced economies, including of the liberal type.¹⁶⁵ Over especially the past 40 years political scientists, sociologists, historians, economists and others have come to study healthcare; immigration; environmental policy; criminal justice; family policy and other topics with the aid of comparative welfare states theory.¹⁶⁶ There

¹⁶⁰ GÖSTA ESPING-ANDERSON, *THE THREE WORLDS OF WELFARE CAPITALISM* 26 (1990). *See also* AGNES BLOME ET AL., *FAMILY AND THE WELFARE STATE IN EUROPE* 38–68 (2009) (defining the concept of welfare regime as “the manner in which welfare—seen as an interaction between state, market and family or private household—is produced or organized in a particular country” and attributing this definition to Esping-Anderson but updating the term “welfare state regimes” to “welfare regimes” to better include *the role of the private family* in the term).

¹⁶¹ *See* Ferragina & Seeleib-Kaiser (2011), *supra* note 157, at 585 (also noting that Esping-Anderson himself made the distinction between “ideal” and “real” types).

¹⁶² Jason Beckfield et al., *An institutional theory of welfare state effects on the distribution of population health*, 13 *SOCIAL THEORY AND HEALTH* 227, 228 (2015) (furthering research into WSMs’ roles in public health distribution outcomes by proposing an institutional, comparative theory of social inequalities in health) (emphasis added). Other valid definitions have been advanced, often reflecting the WSMs where the scholarship is published or the disciplinary focus of the author.

¹⁶³ *Id.*

¹⁶⁴ Nick Wikeley, *The Welfare State*, in *THE OXFORD HANDBOOK OF LEGAL STUDIES* 397, 397 (Peter Cane & Mark Tushnet eds., 2003) (noting that consequently “[t]he scholarly writing by jurists which has the Welfare State at its heart is the exception rather than the rule.”). When a mere few legal scholars study law in relation to WSMs, in the UK but also elsewhere, *there is a risk that welfare state legal scholars will of necessity focus on positivistic descriptions of the latest welfare-related legal developments*, “eschewing any normative perspective.” *Id.* at 411. This thesis does its part to ameliorate that risk.

¹⁶⁵ The Scandinavian social democratic nations’ welfare, labor and employment law scholars may deserve this critique to a lesser extent than private family law scholars and others.

¹⁶⁶ *See* WIKELEY (2003), *supra* note 164, at 397–398. For one critique of tendencies in welfare states scholarship to underserve the gender aspects intimately involved with welfare policies, *see* DALY & RAKE (2003), *supra* note 17, at 4–5, 166–167 (also surveying feminist welfare states literature).

exist evolving research literatures, for example institutional analysis¹⁶⁷ in sociology and comparative political economy in political science, that study and compare social phenomena occurring within nations-states following differing WSMs.

WSM-related research aims to discover how political and economic institutions and national economies within different welfare states vary, and how they might promote, enable or limit state and private actors' behavior, which helps researchers explain observed differences in outcomes.¹⁶⁸

This study analyzes and compares the legal regulation of parentally-provided child support, including the public assistance offered to enforce or replace these private obligations in Sweden and California. The law regulates children's, women's and men's relationships with state supports versus private dependencies. Abstract, purified models of these two jurisdictions' welfare state *types* are used "as conceptual instruments for comparison with and the measurement of reality,"¹⁶⁹ as explained in the subsections below.

2.2.1. *Esping-Anderson's Welfare State Models*

Danish sociologist Gøsta Esping-Anderson's classified the WSM variations observable within late-20th-century capitalist nations into "regime-type clusters" and demonstrated that welfare states cluster into types with "qualitatively different arrangements between state, market, and the family."¹⁷⁰ Published in book form in

¹⁶⁷ "Institutional theory" in its many forms and evolutions over time focuses in one way or another on institutions such as state actors, professional groups, or the family. See generally W. Richard Scott, *The Adolescence of Institutional Theory*, 32 ADMINISTRATIVE SCIENCE QUARTERLY 493, 508 (1987) ("Institutional factors determine that actors in one type of setting, called firms, pursue profits; that actors in another setting, called agencies, seek larger budgets; that actors in a third setting, called political parties, seek votes; and that actors in an even stranger setting, research universities, pursue publications.")

¹⁶⁸ See generally JOHN L. CAMPBELL, INSTITUTIONAL CHANGE AND GLOBALIZATION 1–30 (2004) (confronting to help rectify various disciplines' analytic challenges in using institutional analysis today). Previous comparisons of specific regulations in *inter alia* Sweden and the US have been completed in these fields. See, e.g., DALY & RAKE (2003), *supra* note 17, and LENNART J. LUNDQVIST, THE HARE AND THE TORTOISE: CLEAN AIR POLICIES IN THE UNITED STATES AND SWEDEN (1980).

¹⁶⁹ WEBER, *supra* note 158, at 97–98 (stressing that a researcher errs in confusing *use of ideal models* with *judging based on an ideology*; the latter is to be avoided).

¹⁷⁰ ESPING-ANDERSON (1990), *supra* note 160, at 26.

1990, this classification has been widely cited and discussed in various social science research fields ever since.¹⁷¹ Its validity has been carefully demonstrated.¹⁷²

Esping-Anderson labelled the three WSMs he identified as “liberal,” a group including for example the United States, UK, Canada and Australia; “corporate,”¹⁷³ including for example France, Austria and Germany; and “social democratic,” the smallest group, comprised of Sweden and the other Scandinavian countries.¹⁷⁴

As he described them, *liberal* welfare states offer relatively minimal state welfare protection thus their citizens rely more heavily on the private sector; *corporate* a.k.a. *conservative* welfare states offer more status-differentiating welfare benefits through a larger role for employers in providing welfare protections; and *social democratic* welfare states offer the most encompassing, generous, and equalizing social benefits¹⁷⁵ thus their citizens rely less, in comparison to welfare states following the other models, on market and family.

Esping-Anderson understood, as introduced above, that “ideal types” differ from the reality of any given nation at any given time. He gave examples of the differences between theory and reality, relevant to this comparative legal study between Scandinavia’s Sweden and America’s California:¹⁷⁶

¹⁷¹ Walter Korpi & Joakim Palme, *The Paradox of Redistribution and Strategies of Equality: Welfare State Institutions, Inequality and Poverty in the Western Countries* 9, Luxembourg Income Study (LIS) Working Paper Series No. 174 (1998) (“By underlining the multi-dimensional nature of welfare state variation, Esping-Andersen’s typology is innovative and very fruitful and it has stimulated much research.”).

¹⁷² See Ferragina & Seeleib-Kaiser (2011), *supra* note 157, at 584 (reviewing 23 quantitative studies on welfare regimes and concluding Esping-Anderson’s classifications valid, then suggesting certain improvements to the methods through which they are used).

¹⁷³ Others term this “Christian democracy” or “conservatism.” See, e.g., Ferragina & Seeleib-Kaiser (2011), *supra* note 157, at 584. Other divisions have been made among these societies based on the gender equality and family policies, however they confirm the liberal and social democratic or Nordic types in focus of this study. See, e.g. DALY & RAKE (2003), *supra* note 17, at 5 and Mary Daly, *Families versus State and Market*, in *THE OXFORD HANDBOOK OF THE WELFARE STATE* 139, 142 (Francis G. Castles et al. eds., 2010) (distinguishing Germany and France to a greater extent with respect to their ideals for the family).

¹⁷⁴ See ESPING-ANDERSON (1990), *supra* note 160, at 26–29.

¹⁷⁵ See Beckfield et al. (2015), *supra* note 162, at 229 (citing ESPING-ANDERSON (1990), *supra* note 160).

¹⁷⁶ ESPING-ANDERSON (1990), *supra* note 160, at 28–29 (emphasis added). The more similar welfare states historically in the two jurisdictions studied, including with respect to child support, and their divergence over time as both their welfare state model and child support laws have developed is one interesting finding resulting from this comparative study. See Chapter 7.1, *infra*, for a discussion of historical factors that contributed to the present-day differences observed in the laws compared.

[W]elfare states cluster, but we must recognize that there is no single pure case. The Scandinavian countries may be predominantly social democratic, but they are not free of crucial liberal elements. Neither are the liberal regimes pure types. The American social-security system is redistributive, compulsory and far from actuarial. *At least in its early formulation, the New Deal was as social democratic as was contemporary Scandinavian social democracy.* And European conservative regimes have incorporated both liberal and social democratic impulses. Over the decades, they have become less corporatist and less authoritarian.

These classifications have been further developed by some researchers and challenged by others¹⁷⁷ but remain a broadly accepted and helpful starting point for comparative studies across WSMs.¹⁷⁸ This is especially true for Sweden and California, a state within the United States, since *Sweden and the United States are considered prototypical cases of their respective WSMs.* These two jurisdictions fit the ideal-type models particularly starkly by lying at opposite ends of a continuum proposed for wealthier democracies between social-democratic and liberal types,¹⁷⁹ while they nonetheless, as Esping-Anderson stressed, in reality are only *predominantly* representative of those types (and also contain *elements*, such as aspects of child support regulations, of the other two types).

2.2.2. *Critical Feminist Perspectives in Relation to Welfare State Models*

Welfare states invariably enact law with gendered effects, and thus more or less openly encourage or discourage different *ideals for the family* and men and women's places in the private and public spheres. The study addresses the gendered core aspect of the child support laws, acknowledging that analysis of these laws requires

¹⁷⁷ See e.g. Ferragina & Seeleib-Kaiser (2011), *supra* note 157, at 584.

¹⁷⁸ See James Mahmud Rice et al., *The Temporal Welfare State: A Crossnational Comparison*, 26 JOURNAL OF PUBLIC POLICY 195, 197 (2006) (arguing that the classification scheme remains helpful although no country fits the categories perfectly and some countries not at all). See also Ruth Mannelqvist, *Social Insurance Law—The Core of Swedish Welfare Law*, in EXPLOITING THE LIMITS OF LAW: SWEDISH FEMINISMS AND THE CHALLENGE TO PESSIMISM 141, 143–145 (Åsa Gunnarsson et al. eds., 2007) (describing multiple typologies used in social science research, including those better incorporating the gendered aspects of welfare provision).

¹⁷⁹ Ferragina & Seeleib-Kaiser (2011), *supra* note 157, at 585 (identifying Sweden at one extreme and the United States at the other of Esping-Anderson's decommodification and social stratification scale and calling them countries that can be considered prototypes of the social-democratic and liberal categories). See also *id.* at 597 (“Our literature review confirms the existence of three worlds of welfare capitalism in the light of ideal types. We propose a classification of rich democracies on a continuum from the most purely social-democratic (Sweden) to the most liberal country (the US).”).

adoption of a critical feminist perspective. Today critical evaluation can be considered a necessary part of traditional and comparative legal methods, but it is developed specifically and particularly directly within a critical and feminist legal theory literature that has informed this study's analyses.

"To adopt a feminist perspective is, first and foremost, to bring a *gendered perception* of legal and social arrangements to bear upon a *largely gender-neutral understanding* of them."¹⁸⁰ British scholar Joanne Conaghan's description explains further that "[t]he object is to highlight the gendered assumptions embedded in such arrangements, assumptions too often rendered invisible by, among other things, the allegedly 'objective' analyses of traditional academia." Critical legal theories have recently been promoted as a tool that could benefit Swedish family law today,¹⁸¹ but gendered perspectives and testing for gender biases have also been used in Swedish family law previously.¹⁸²

Because women and men have achieved formal legal equality in a number of realms in recent decades (including in both jurisdictions studied), modern feminist legal scholars argue that law today must be "analysed in terms of the part it plays in conjunction with other regimes or 'discourses' to regulate our familial and gendered lives."¹⁸³ These include institutional regimes such as the structures of labor markets and tax and benefit systems, in other words the institutions that comparison of the Swedish and Californian WSMs involves.

2.2.3. *Project's Use of the Theory*

WSM theory is used throughout the comparison and analysis to assist with descriptions of the law and its real-world context, meaning to help organize and present the specifics and underlying political assumptions of each child-support system. This aids analysis and comparison of the child support rules. The WSM models are used to help deepen the reader's understanding of the ideals striven towards in the studied societies so that the unwritten and often unspoken

¹⁸⁰ Joanne Conaghan, *Reassessing the Feminist Legal Project in Law*, 27 JOURNAL OF LAW AND SOCIETY 351, 359 (2000) (emphasis added). See also Frances Olsen, *Feminism and Critical Legal Theory: An American Perspective*, 18 INTERNATIONAL JOURNAL OF THE SOCIOLOGY OF LAW 199 (1990).

¹⁸¹ See Jameson Garland, *A Role for Critical Legal Theory in Swedish Family Law?*, in FÖR BARN BÄSTA – VÄNBOK TILL ANNA SINGER 111 (2017). See also Singer (2014), *supra* note 8, at 381 (regarding the protection of children's rights in Swedish law and practice, in tension with gender goals).

¹⁸² See, e.g., SCHIRATZKI, JOHANNA, MAMMA OCH PAPPA INFÖR RÄTTEN [MOM AND DAD BEFORE THE COURT] (2008).

¹⁸³ Alison Diduck & Katherine O'Donovan, *Feminism and Families: Plus Ça Change?*, in FEMINIST PERSPECTIVES ON FAMILY LAW 1, 3 (Alison Diduck & Katherine O'Donovan eds., 2006).

assumptions, tensions and latent intents behind the plain language of the law become visible to non-experts (including legal experts not native to that legal society).

To give an example, child support law in Sweden provides that parents have a legal duty financially to support their child to an extent that is “reasonable” considering the “child’s needs” and the “parents’ combined economic abilities.”¹⁸⁴ This formulation to a family lawyer (from any of a number of jurisdictions) will look familiar, as these terms fit an international pattern for defining the parental duty of support, even where jurisdictions are not bound by any higher-order law requiring it.¹⁸⁵

To achieve this project’s aim, however, Swedish law and other sources are used to identify and communicate in this dissertation a more nuanced understanding of how these terms are understood and used *in Swedish law*. In this example, by analyzing the further words of explanation and sample fact patterns used in legislative preparatory works and case law decisions, it can be specified that “reasonable” does not include a parent being required to pay more than he or she can afford after consideration of, among other things, his or her *actual costs for his or her own current housing*, so long as they are not challenged as unreasonably high given the number of people living in parent’s household and the typical costs for the housing’s geographic area.

Comparative legal analysis determining what the Swedish legal rule is, without more, would move on to contrast the Swedish rule with the analogous rule in California, where the parents’ *expenses instead are considered irrelevant* to their abilities to pay. Instead in California a formula calculates a parent’s ability to pay from the number of children to be supported, from the parent’s actual income, and from what percentage of time the child spends living or visiting with each parent.

Using WSM theory, the analysis can go further. It can introduce theory-based partial explanations into the comparison as to *why* this difference between the two rules might exist. The difference between the parent’s ability-to-pay rules can be analyzed in light of the fundamental ideals represented by the WSM-related policies (including family and gender policies) in each legal system, rather than in a more anecdotal or disorganized fashion.

Continuing with the example, if because the Swedish WSM favors child support (and other) law that *provides children with more state-provided support and correspondingly less dependence on and susceptibility to their particular parents’ financial circumstances*, we can expect that a Swedish rule on how much a parent will be legally obligated to pay (in relation

¹⁸⁴ FB 7:1 para. 1. This and the analogous California law are described within Chapter 3, *infra*.

¹⁸⁵ It is a similarity, one of many, between the US and Swedish family laws that intrigued me and led me to propose this comparative project.

to the parent's own self-support needs) will be relatively generous to the parent. The relative "generosity" of Sweden's rule is easier to understand from a more correct understanding of the Swedish point of view, where transferring the risk of insufficient well-being from the family to the society level, and not just in means-tested cases, is favorable and will encourage social solidarity, individual freedom, and desire to earn.¹⁸⁶

Use of such WSM perspective on the difference in these rules also renders it more understandable that California's rule would prioritize keeping the private family as responsible for child support as possible, even if it means a parent must reduce his own housing costs or live with a relatively low overall living standard,¹⁸⁷ and even if it means disparities in the living standards of children in the society. From the liberal WSM perspective, communicating through the law that *the child's expenses are the payor's personal responsibility* and that it is punishable or at least shameful not to earn enough for the parent's and the child's needs is *necessary to encourage the parent to maximize his market earnings*. Maintaining freedom from government "hand-outs" or interference is valued, not only by the lawmaker but by the parent himself. In both systems, these beliefs will be implicated in any consideration of an alternate child support rule.

2.3. From Ideal Types to the Jurisdictions Studied

The methods and WSM theory *ideal prototypes* presented above are complimented here by a brief survey of the *actual* current welfare state legal circumstances in Sweden and California, to which those theories and methods are next applied as part of the child support legal comparison. General background descriptions of each jurisdiction's *social benefit package for children* and *gender and family policies* are presented within this section as well.

Social benefits can play an important part in legal policy solutions to gender inequalities. As Esping-Andersen described the approach to social benefits for families in a social democratic welfare state like Sweden:

¹⁸⁶ See Chapter 7.5, *infra*, for discussion of economic solidarity versus lack of solidarity as one source of explanation for the differences found between these child support laws.

¹⁸⁷ This is not to imply that California child support levels have definitely been determined to be "too high." Others studying the issue have criticized them both as too low and too high. The same is true for Swedish child supports. This thesis presents the law and the tradeoffs in comparative WSM perspective, to achieve its aim and not definitively to advocate for different levels in either jurisdiction.

In contrast to the corporatist-subsidiarity model [attributed to France and Germany], the principle is *not to wait until the family's capacity to aid is exhausted*, but to *preemptively socialize the costs of familyhood*. The ideal is not to maximize dependence on the family, but capacities for *individual* independence. . . . Perhaps the most salient characteristic of the social democratic regime is its fusion of welfare and work.¹⁸⁸

Today Sweden's welfare state approach largely follows the social democratic-model pattern described in welfare states theory research literature.¹⁸⁹ Some political developments might be said to contain more liberal (and corporatist) welfare model elements, as will be returned to in the comparison chapters with respect to the child support laws and family policies in focus for this study. Sweden generally has "stayed the course" with its family, welfare, and labor policies in the years since the mid-1990s, "rolling out the model further rather than changing it," with focuses on encouraging men's caregiving roles and children's increased recognition as individuals before the law.¹⁹⁰

California's welfare state today *also* continues to resemble its established model, a characteristic it shares with Sweden while many other jurisdictions' welfare state approaches to the family have been experiencing more change.¹⁹¹ California has (per federal US law requirements) continued policies focused on increasing employment among lone parents with children and decreasing their use of need-based cash welfare benefits.¹⁹²

Relatedly, relatively severe enforcement of the child support laws generally has continued, especially in cases where the CP household has received or is receiving welfare, although there are signs this is changing. *In just the last year, California has begun to enact changes to child support enforcement and other family policies, notably parental leave, while Sweden has been further adjusting its child support guarantee's relationship to the civil law child support system*, both somewhat in opposition to their WSM ideals and indicative of the mixed nature of the real-world jurisdictions. Child support legal changes will be discussed in the legal descriptive and comparison chapters, but their context—the

¹⁸⁸ ESPING-ANDERSON (1990), *supra* note 160, at 28 (emphasis added).

¹⁸⁹ See Mahmud Rice et al. (2006), *supra* note 178, at 217 (summarizing comparatively "welfare-gender regimes").

¹⁹⁰ Daly (2010), *supra* note 172, at 144–145 (comparing the then-latest ten years of family policy developments in Australia, France, Germany, Sweden, the UK and the USA).

¹⁹¹ See, e.g., *id.* at 150 (concluding that many of the Western jurisdictions compared have been converging their family welfare policies towards EU and OECD norms for the labor-market-flexible dual-earner family, but "Sweden and the United States are unique in that their relatively long-standing approaches to the family remain more or less unchanged.").

¹⁹² See *id.* at 144.

other main family welfare policies and social benefit schemes as well as their gender equality approaches—are introduced here.

2.3.1. *Sweden and California's Welfare States*

California's liberal WSM and Sweden's social democratic one can be characterized via comparison of several of each jurisdiction's characteristics with Esping-Anderson's idealized descriptions of these types of welfare states, as was done very generally above, but here the more *de facto* elements of each welfare state are outlined. For this study's purposes, particular focus is on the jurisdictions' approaches to gender and the family.

Temporally, Swedish policymakers developed its social democratic WSM quite recently, beginning in the 1920s and 1930s, a time during which the United States also introduced some broad social protections such as Social Security retirement benefits for workers.¹⁹³ Until that time, Sweden's WSM more closely resembled the liberal model that the USA had then and has largely retained.

Specifically, the modern Swedish welfare state, sometimes referred to as the *folkhem* (the home of the people), was motivated at least in part by a perception that a population crisis was underway and fundamental social policy reforms providing social protection such as social insurances and services were needed to replace the aid responsibilities previously falling mainly on employers.¹⁹⁴ Sweden built its new comprehensive social safety net by passing extensive legislation, proposed by the Swedish Social Democratic Party (*socialdemokraterna*) and its coalition parties.

*One policy intent was to negate negative economic consequences of decisions to marry and to have children, especially for working-class parents.*¹⁹⁵ As an effect, all children were economically provided for by the society at large, to a much greater extent than before and without

¹⁹³ See ESPING-ANDERSON (1990), *supra* note 160, at 24 (“In the United States, the New Deal was premised on a similar [to Sweden’s welfare-state-initiating red-green, working-class and rural-farmer] coalition (forged by the Democratic Party), but with the important difference that the labor-intensive South blocked a truly universalistic social security system and opposed further welfare state developments.”).

¹⁹⁴ See ALVA MYRDAL & GUNNAR MYRDAL, KRIS I BEFOLKNINGSFRÅGAN [CRISIS IN THE POPULATION QUESTION] (1934); see also WENNBERG (2012), *supra* note 139, at 4. Employers’ more central role in assuring welfare of workers is a characteristic of the conservative WSM; elements of this are also modernly seen in California, especially for upper-middle-class workers whose employers provide a more comprehensive protection than the state’s, but also generally in that health insurance is generally provided via employers (if they offer that benefit).

¹⁹⁵ See DAVID POPENOE, DISTURBING THE NEST 105–108 (1988). See also MYRDAL & MYRDAL (1934), *supra* note 194.

the *moralistic judgment* of those in need that had been the tone of poverty relief measures in many jurisdictions.¹⁹⁶

It was through political and lawmaking processes that Sweden developed from a *liberal* market model to a *social democratic* model, particularly between 1937 and 1947, and continues as one to this day,¹⁹⁷ although trends towards more liberal model elements have occurred and continue to have political influence, as discussed in the comparison with respect to child support laws.

Esping-Anderson described a liberal welfare state as one “in which means-tested assistance, modest universal transfers, or modest social-insurance plans predominate,” as was introduced above. He specifically detailed this type:

Benefits cater mainly to a clientele of low-income, usually working-class, state dependents. In this model, the progress of social reform has been severely circumscribed by traditional, liberal work-ethic norms: it is one where the limits of welfare equal the marginal propensity to opt for welfare instead of work. Entitlement rules are therefore strict and often associated with stigma; benefits are typically modest. In turn, the state encourages the market...¹⁹⁸

In California today, private resources and the market economy are indeed relatively prominent over and less regulated by governmental resources and actors; the “safety net” of social benefits primarily is reserved for the very poor and to a certain extent senior citizens; and relatively large economic class stratifications exist. These are defining characteristics of a liberal welfare state.

In contrast, Sweden’s social democratic welfare state includes more prominent governmental resources and regulations, enacted in a deliberate effort to lessen and to prevent economic class (and gender) divisions and to keep market capitalism balanced with as-broad-as-possible equality among citizens and a good standard of

¹⁹⁶ See, e.g., Jacobus tenBroek, *California’s Dual System of Family Law: Its Origin, Development and Present Status: Part 1*, 16 STANFORD LAW REVIEW 257 (1964) (describing the moralistic historical underpinnings of California’s family law).

¹⁹⁷ See ESPING-ANDERSON (1990), *supra* note 160, at 28–29. The change in Sweden from a means-tested child benefit (*barnbidrag*), introduced in 1937, which could stigmatize its recipients, to a universal one introduced in 1947 is one example of Sweden’s development from a liberal WSM to an early social democratic one during that decade.

¹⁹⁸ See ESPING-ANDERSON (1990), *supra* note 160, at 26.

living for all citizens.¹⁹⁹ These are *prototypical* social democratic model characteristics.²⁰⁰

California's WSM correlates with the majority of its policymakers and lawmakers generally disfavoring broader *state-provided* social benefits, out of concern that citizens' willingness to work might be reduced and government's power may grow. Society members may begin to depend on the state instead of on their own private resources, an undesirable goal from a liberal welfare state ideology perspective.²⁰¹ Growing wealth and income inequalities along with rising rates of state imprisonment of poorer citizens have been cited in social science literature as related to the ideological hesitance to solve such problems through enlargements of the state's role. Proponents of the ideology counter with non-state solutions which might be available. Some American family law research for example acknowledges that the *imprisonment of mainly low-income fathers after civil contempt proceedings for failure to pay child support* is a serious problem, yet advocates for *solutions that keep the state's role from expanding*.²⁰²

Today in Sweden, available social supports are relatively high when an individual has no income,²⁰³ compared to in California, where cash welfare benefits are time-limited, minimal, stigmatized and coupled to seeking work or pursuing readiness for work. Swedish social supports diminish with increasing incomes, as in California, but lower-income earners in Sweden are taxed relatively highly,²⁰⁴ to pay for the comprehensive social benefits they and all other Swedes receive. Low-income Americans are subject to very low or no income taxes, although they pay relatively high sales taxes.

The broad Swedish middle class is included in social benefits, some *universal*, some *need-based*, and some taking the form of *social insurances* linked to prior or current work

¹⁹⁹ See Chapter 7.2.2, *infra*, for further discussion of the historical development with focus on the child support duty.

²⁰⁰ See ESPING-ANDERSON (1990), *supra* note 160, at 31.

²⁰¹ Compare Martha L.A. Fineman, *Masking Dependency: The Political Role of Family Rhetoric*, 81 VIRGINIA LAW REVIEW 2181 (1995).

²⁰² See, e.g., Stacy Brustin & Lisa Martin, *Bridging the Justice Gap in Family Law: Repurposing Federal IV-D Funding to Expand Community-Based Legal and Social Services for Parents*, 67 HASTINGS LAW JOURNAL 1265, 1276 (2016) (discussing how particularly low-income fathers in the USA see *public child support agencies* as solely interested in “taking their money or locking them up for failing to pay support” and advocating strengthening *private* actors' and organizations' abilities to help low-income families with family law cases, instead of enlarging the *public* child support agency role).

²⁰³ ANDREAS BERGH, DEN KAPITALISTISKA VÄLFÄRDSSTATEN (3rd ed. 2013).

²⁰⁴ See *id.*

participation.²⁰⁵ Some particulars of these are described in the next subsection. Lower and higher income earners are less included in some benefits because of some benefits' ties, as social insurances, to earnings and thus to individual marketplace participation. Those on parental leave from a well-paying job, for example, receive replacement income based on their most recent salary level, while those who become parents while unemployed cannot receive as high a monthly income-replacement social insurance benefit as higher earners can, but instead receive a base-level benefit.²⁰⁶

The social democratic ideal-type model fits nations, as explained earlier, that are decreasing poverty and economic disparity among citizens by (1) including virtually all individuals in most social benefits universally instead of "targeting" benefits based on income-testing and (2) using workplace participation as the basis for earning higher payments of social benefits. Both features, as described, exist in Sweden today. The contrast with California's liberal welfare state type is marked, although the social insurance benefits tied to work are somewhat present in both models.

These models *in the child support law area* can be seen to differ with respect to how important a source of financial support for a child an absent (or at least non-residential) parent's income ideally will be, and to what lengths the state will go to collect child support from such parents, as will be extensively discussed in coming chapters. As one example of the difference, a recent empirically-based California child support reform proposal to demand less child support payment from the poorest of fathers was delayed by lawmakers' desires not to overly-alleviate pressure on low-income fathers to work and to pay child support. Lawmakers proposing the change assured their constituents that such fathers' likelihood of payment would *increase* if orders took more correct account of who could and truly could not pay. The rules were not being softened and fathers would still feel significant pressure to work.²⁰⁷ That work is likely to be disincentivized if society provides some financial

²⁰⁵ See The Swedish Social Insurance Code (*Socialförsäkringsbalk*) ["SFB" herein] 1:1 (indicating that this code regulates both social insurances and social benefits).

²⁰⁶ This differs from purely social democratic ideals, as represented by the Swedish social insurance principle of full inclusivity and equal benefits regardless of levels of contribution, as described by Swedish welfare scholar Ruth Mannelqvist. See Mannelqvist (2007), *supra* note 178, at 146–147 (describing the workfare core of Swedish social insurance benefits, the principles of *solidarity* and *redistribution*, and the wage-loss-protective design of most current insurances, with very few means-tested).

²⁰⁷ See also Elizabeth Stuart Perry, *Evidence-Based and Politics-Driven: Comparing Child Support Law Evaluations Across Welfare-State Models*, in *FAMILY LAW AND FAMILY REALITIES* 285, 297–98 (Carol Rogerson, Masha Antokolskaia, Joanna Miles, Patrick Parkinson, & Machteld Vonk eds., 2019) (describing California lawmakers' efforts to justify excepting more of very-low-income-payers'

relief so that households are kept out of poverty is a belief very commonplace in California, and not at all commonplace in Sweden. Swedish adults are also expected to and do work at similar rates as Californians, but their motivations to do so are not seen as threatened but rather promoted by the significant universal social benefits and broader social insurance protections they receive.

Table 1 summarizes the WSM characteristics referred to most often in the comparative chapters. These are the elements of the theoretical WSMs that most strongly and repeatedly are observable in the actual, current Californian and Swedish child support law contexts.

Sweden's social democratic WSM:	California's liberal WSM:
SE-1: individual freedom <i>(from private dependency)</i>	CA-1: individual freedom <i>(from state interference)</i>
SE-2: a good economic standard for all	CA-2: a minimal economic standard for all
SE-3: relatively high state power, responsibility, and funding	CA-3: relatively low state power, responsibility, and funding

Table 1, The Welfare State Model Characteristics

2.3.2. General Background on Social Benefits for Children's Needs in California

There are various state-provided services available in California for children, some universal and some means-tested. Among the *means-tested* supports, available only to low-income families, are medical and dental treatment and preventive care, some daycare and preschool programs, food and nutrition programs ("food stamps" and free or reduced-price school lunches), low-income rental housing and mortgage assistance, and cash benefits.

Universal supports for California's children that are available regardless of income qualification (and often regardless of legal residence status) include most prominently access to "free and appropriate" public education from the ages of

monthly income from child support obligations as not generous with payor parents, but rather simply fair and more likely to increase rather than decrease overall private child supports paid, a net savings of state money, not a state investment in the poor).

approximately 5 (Kindergarten) through 17 (high school's final grade 12).²⁰⁸ Low-cost or free after-school and community-funded activities such as summer camps and classes or sports activities may also be available in many communities. Some supports are not mandated by law to be provided, though the federal government attempts to support local development of quality after-school resources via funding and other support.²⁰⁹ Many public supports exist in cooperation with or alongside private, often non-profit efforts, some religious and some secular.

Some state supports are available to families with incomes up to 200% of the poverty line, for example Supplemental Security Income ("SSI") which provides children with documented severe physical or mental disabilities (or born below a certain low birthweight) a monthly cash benefit on the rationale that their parents will have increased costs and less available time to earn. Although it phases out as parents' income level increases, SSI currently pays benefits averaging \$650 (5,650 SEK) per month to the low-income families of nearly 2% of US children.²¹⁰ Tax system benefits for families with children also play a significant role in providing state transfers to lower-income families. There is a federal income tax deduction for each child dependent on an income tax return filers, although only parents earning a minimum threshold amount of income need to file tax returns, and deductions are only useful if they reduce a tax owing on income. Since the 1990s the federal tax system has also been used to pay refundable child tax credit to families, sending the annual payment for each dependent child of a taxpaying family household regardless of whether the taxpayer parents owed any tax. Sweden's income tax system, in

²⁰⁸ The United States Supreme Court in *Plyler v. Doe* established that children's access to public education at the "K-12" level is protected by their constitutional right to Fourteenth Amendment equal protection under the law, and cannot be limited without proof of a compelling state interest. *See Plyler v. Doe*, 457 U.S. 202 (1982), *rehearing denied* 458 U.S. 1131 (1982). Low-cost "community colleges" have, however, recently been receiving additional funding via statutes aiming to make the first two years of college study more financially accessible. *See, e.g.*, California Assembly Bill ("AB") 19 (2017) establishing the "California College Promise."

²⁰⁹ *See* the federal government's website on after-school support, at [http:// youth.gov/youth-topics/afterschool-programs](http://youth.gov/youth-topics/afterschool-programs). California also has legislatively implemented some supports, via funding and regulation, for after-school programs. *See, e.g.*, After School Education and Safety Program (ASES), CAL. EDUCATION CODE §§ 8482-8484.6. These programs can be more available for schools mainly serving children from low-income families than for other schools, straining middle-income families.

²¹⁰ *Roadmap to Reducing Child Poverty* (2019), *supra* note 45, at 3-12 (citing K. Romig, *SSI: A Lifeline for Children with Disabilities* (Center on Budget and Policy Priorities 2017)).

contrast, does not allow any tax deduction due to responsibility for children, preferring direct universal child benefits.²¹¹

Public supports and similar programs in California are often aimed to protect and strengthen youth and families, especially “at-risk” youth and families. The role of federal and California state social services in supporting children is generally as a last-resort “safety net,” to be complimented by private options for similar services paid for by private families. Low-income residential parents may receive some societal support, but the public’s (and voters’) concern that this will be abused or will deprive the recipients of motivation to work can be high.

Few of California’s main public supports targeted to children are available to children with middle- or upper-income parents, although there are a variety of programs at all levels of government designed to provide some assistance to those who are in need but do not qualify for those programs.²¹² At the same time, there are many programs serving lower-income families that are not helpful to those in deep poverty, such as tax incentives based on earned income.

The fragile (and liberal-welfare-model typical) political balance that has been struck between helping individuals and families in need yet not encouraging “dependence” upon state aid is signaled throughout the applicable law and its implementation. For example, it is signaled in the mission statement of the California Department of Social Services (herein “CDSS”), which is “to serve, aid, and protect needy and vulnerable children and adults in ways that strengthen and preserve families, encourage personal responsibility, and foster independence.”²¹³ The CDSS administers several large state social benefit programs, including CalWORKS (“Work Opportunities and Responsibility to Kids”), which provides monthly monetary payments to qualifying families, frequently called “welfare.” CalWORKS is California’s version of the federal Temporary Assistance for Needy Families

²¹¹ See Livia Sz. Oláh et al., *Coresidential paternal roles in industrialized countries: Sweden, Hungary and the United States*, in MAKING MEN INTO FATHERS: MEN, MASCULINITIES, AND THE SOCIAL POLITICS OF FATHERHOOD 25, 31 (Barbara Hobson ed., 2002).

²¹² The U.S. Department of Health and Human Services Children’s Health Insurance Program (“CHIP”), created in 1997, is one example, matching funds to states to encourage them to cover children whose household incomes do not allow them to receive coverage through Medicaid. President George W. Bush disfavored the program, arguing it would “steer the program away from its core purpose of providing insurance for poor children and toward covering children from middle-class families,” in effect federalizing health care, a direction popular with some political parties in the US, but not with others. See David Stout, *Bush Vetoes Children’s Health Bill*, NEW YORK TIMES, Oct. 3, 2007, <https://www.nytimes.com/2007/10/03/washington/03cnd-veto.html>.

²¹³ CDSS website, available at <http://www.cdss.ca.gov/>.

(“TANF”) program.²¹⁴ Accordingly, as required by federal law, California requires those receiving these benefits to cooperate in good faith with parentage (paternity) determinations for child support purposes, and to assign rights to child support from a child’s other parent to the State for periods when the child is receiving welfare payments.²¹⁵ Exceptions are granted for good cause, for example provable threats to the applicant parent’s safety, however these are not frequently used.²¹⁶

Various other benefits and services for which California’s individuals and families in need can apply exist, though they are not coordinated through one governmental agency and thus separate applications must be made to each, satisfying various criteria. Californians may apply for “food stamps” via CalFresh, California’s version of the federal Department of Agriculture’s Supplemental Nutrition Assistance Program (“SNAP”), a program very significant for lifting many US children above the poverty threshold.²¹⁷ They may apply for government-funded health care insurance not available to those with more economic resources, via Medi-Cal, California’s version of the federal Medicaid program for low-income children, families and certain qualifying adults, by applying at one of California’s county-level Department of Public Social Services (“DPSS”) offices.²¹⁸ Californians may also apply for public rental housing subsidy vouchers, via their local housing agency that operates in cooperation with the federal Department of Housing and Urban Development (“HUD”).²¹⁹ There are also federal and state efforts to provide more affordable and higher-quality child care and preschool options, mainly targeted for

²¹⁴ *Personal Responsibility and Work Opportunity Reconciliation Act (TANF)*: 42 U.S.C. §§ 601–619. Political messages are explicit in the titling of these legal acts: the society will “temporarily” assist “needy” families, providing “work opportunities” so that adults can take “personal responsibility” for their kids and develop “independence” from societal, state-funded supports.

²¹⁵ See 42 U.S.C. §§ 608(a)(2–3), 654(29).

²¹⁶ See 42 U.S.C. §§ 608(a)(2–3), 654(29) and Office of the Inspector General, Department of Health & Human Services, *Client Cooperation with Child Support Enforcement: Good Cause Exceptions* 12–16 (March 2000) (available at <https://oig.hhs.gov/oei/reports/oei-06-98-00043.pdf>) (reporting findings that TANF clients in six states, including California, most often *do not request good cause exceptions to cooperation requirements, even if they are victims of domestic violence*, because they nonetheless want to pursue child support enforcement from the NCP, and because they have *financial and fairness concerns plus fears* related to both the agency and the NCP).

²¹⁷ See <http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap>.

²¹⁸ See Los Angeles County Department of Health Care Services, *Medi-Cal Eligibility & Covered California – FAQ’s*, <https://www.dhcs.ca.gov/services/medi-cal/eligibility/Pages/Medi-CalFAQs2014a.aspx>.

²¹⁹ See http://portal.hud.gov/hudportal/HUD?src=/topics/rental_assistance/phprog.

low-income families.²²⁰ The legal availability of supports to children in California does not always guarantee that children will *actually receive the supports*, however, even if they meet the eligibility criteria. Due to unavailability of housing units that will accept families holding public housing vouchers, for example, waiting lists for low-income housing assistance have been deemed dysfunctionally long for years in areas of California; and child poverty remains a significant issue.²²¹

Future directions for child benefits in the US as a whole were evaluated by a recent US National Science Foundation study commissioned by the US Congress to provide an “evidence-based non-partisan analysis”²²² on how to reduce childhood poverty and deep poverty in the US by 50% within 10 years. The resulting 2019 report recommends adoption of two alternative packages of social benefits, each package combining work-promoting and universal-benefit types, which are predicted best suited to achieve the targeted poverty reduction.²²³ A \$166 or \$250 (1,443 or 2,173 SEK) per month per child nearly-*universal child allowance*²²⁴ and a *child support assurance program* benefit of \$100 or \$150 (869 or 1,304 SEK) guaranteed minimum child support per month per child legally owed child support²²⁵ were among the social benefits recommended to be introduced. Political initiatives for new social benefits of these types are not prominent within public debate at this time. New initiatives could arise from research evidence such as the NSF study coming to lawmakers’ attention. Recently the comparative research has confirmed not only that the US continues to have a worse child poverty problem than its closest peer welfare states, *but that many of the US’s closest peers (the UK beginning in the late 1990s*

²²⁰ See, e.g., U.S. Dep’t of Health and Human Services Office of Child Care, *What We Do* (last revised 2018-06-13; available at www.acf.hhs.gov/occ/about/what-we-do).

²²¹ See, e.g., <https://www.marketplace.org/2018/01/03/wealth-poverty/its-long-wait-section-8-housing-us-cities> (reporting that the waiting list in Los Angeles opened to add names in 2018, for the first time in 13 years; applicants could join a lottery to get a spot on the list) and Public Policy Institute of California, *Geography of Child Poverty in California* (Feb. 2017), available at <https://www.ppic.org/map/geography-of-child-poverty-in-california/>.

²²² See *Roadmap to Reducing Child Poverty* (2019), *supra* note 45, at 1–7.

²²³ See *id.* at S-16, 1-1 (2019) (measuring poverty levels and planned reduction targets using the US Supplemental Poverty Measure of about \$25,000 (217,303 SEK) per year income for a family of four in 2017 and also, at 2-24–2-28, comparing this to international poverty measures).

²²⁴ See *id.* at D5-21–23 (explaining its phase-out for higher-income families and concluding that an expected work disincentive from this new social benefit would decrease total earned income by parents yet not so significantly as to reduce the expected child poverty reductions of 3.4% or 5.4% more than slightly).

²²⁵ See *id.* at D5-24-25 (including finding that no work reduction would be expected with the modest monthly income increases from the benefit).

and Canada as recently as 2016) have implemented large investments to eradicate child poverty which are now showing signs of success.²²⁶

As the NSF Report brings to US lawmakers' attention (with a tone of inclusiveness for its audience holding divergent political positions on the root causes of poverty):²²⁷

Whether a family's income is above or below a poverty threshold depends on *parents' decisions* regarding their own schooling, work, and marriage, *as well on a host of structural factors* such as the availability of work, housing, and public transportation, the prevalence of neighborhood crime, and institutional racism, all of which are *well beyond the control of families*. However, *government programs also matter a great deal*. Child poverty rates in the United States would be much higher were it not for programs such as the Supplemental Nutrition Assistance Program (SNAP), which provides nutrition-assistance benefits to low-income individuals, the Earned Income Tax Credit (EITC), and the Child Tax Credit (CTC).... If all countries' child poverty rates were measured solely by the *earned income of parents*, U.S. children would have poverty rates that fell in the middle of the rankings among peer English-speaking countries. *Part of what drives our child poverty rates so much higher than those in peer Anglophone and other high-income nations is the much smaller fraction of U.S. gross domestic product that is devoted to redistributive social programs*.... [S]pending on children younger than age 19 accounted for 9 percent of the U.S. federal budget in 2017. This figure, which does not include state spending on education, is *projected to fall to 6.9 percent* by 2028, while at the same time spending on adults under Social Security, Medicare, and Medicaid, which accounted for 45 percent of the budget in 2017, is *projected to rise to 50 percent* by 2028.

To conclude, social supports to single-parent families have not always been as restrictive in California (or the US as a whole) as they are today. Beginning in 1974, however, in reaction to increasing state costs connected with benefits paid to single-parent families, "a subtle but definite change in public policy was enacted, whereby the cost of child support was to be shifted from the public to the private, that is, from the taxpayer to the parent."²²⁸ Simultaneously women increasingly participate

²²⁶ See *id.* at A-9 and 1-1 ("By most measures, poverty among U.S. children is higher than in peer English-speaking countries such as Canada and Australia, and it is much higher than in most other industrialized countries.")

²²⁷ *Id.* at 1-2 (emphasis added) (citing the Urban Institute, specifically J.B. Isaacs et al., *Kids' Share 2018: Report on federal expenditures on children through 2017 and future projections* (2018), available at https://www.urban.org/sites/default/files/publication/98725/kids_share_2018_0.pdf).

²²⁸ Laura W. Morgan, *Child Support Fifty Years Later*, 42 FAMILY LAW QUARTERLY 365, 366-367 (2008).

in the workforce, yet both parental leave and child care state supports remain minimal.²²⁹

2.3.3. General Background on Social Benefits for Children's Needs in Sweden

The Swedish welfare state takes some direct financial responsibility for helping to raise all children. *Universal* no-charge social benefits and services for children include public education and hot lunch at school, health and dental care, prescription medicines, and the “child contribution” or *barnbidrag*. Children with disabilities are universally eligible for additional supports.

Parents of children ages 0–16, resident in Sweden, are universally entitled to the *barnbidrag*²³⁰ to assist with childrearing expenses. The *barnbidrag* currently provides 1,250 SEK (\$144) per month per child.²³¹ Today's universal version of the *barnbidrag* was first introduced in 1947²³² to replace a 1937 version that had only been available to economically at-risk children.²³³ Legislative intents supporting introducing the benefit in 1937, although it was not yet fully universal, included to *more fairly distribute the costs of raising children* and to *avoid stigmatizing families* with low income by requiring them to rely on poverty relief benefits instead.²³⁴ The policy behind introduction of the 1947 version was to *promote the birth rate* (a population policy goal), to *even out the financial living standard available to families with children and those without children* (a fairness goal), and to *guarantee a certain minimum standard to families with children* (a social policy goal).²³⁵

²²⁹ Parental leave in California today is introduced at Chapter 2.3.4 introducing gender and family policies.

²³⁰ The Social Insurance Code (*Socialförsäkringsbalk*) (2010:110) [hereinafter SFB] at its Chapters 15 & 16.

²³¹ SFB 15:3 (after an increase of 150 SEK [§17] via Lag 2017:1308).

²³² See Prop. 1947:220, *Kungl. Maj:ts proposition till riksdagen med förslag till lag om allmänna barnbidrag m.m.* [His Royal Majesty's Proposition to Swedish Parliament with Proposed Statutory Law on the Universal Child Benefit Etc.].

²³³ See Prop. 1937:276, *Kungl. Maj:ts proposition till riksdagen med förslag till lag om barnbidrag m.m.* [His Royal Majesty's Proposition to Swedish Parliament with Proposed Statutory Law on Child Benefit Etc.].

²³⁴ See Prop. 1937:276 at 31–32. Lawmakers specifically mentioned that poverty relief benefits, although historically the only aid available, should not be used to support children. The stigma of poor relief could negatively affect their emotional and cognitive life, decreasing their chances for their best possible futures. They also wanted to avoid increasing tensions between classes.

²³⁵ SOU 2011:51, *Fortsatt föräldrar—om ansvar, ekonomi och samarbete för barnets skull* [Continuing parents – on responsibility, economics and cooperation for the child's sake] at 251. See also Riksdagen [The Swedish Parliament] Ds 2013:42, *Utbetalning av barnbidrag och flerbarnstillägg* at 16 (explaining that the universal

Other social benefits and services available to Swedish families with children, based on qualifying circumstances other than income level, include an extra cash payment, the *flerbarnstillägg* or “multiple child addition,” to households with two or more children registered to the same permanent address.²³⁶ For two children, for example, a 150 SEK-per-month (\$17) addition is payable in 2019, for a total state contribution of 2,650 SEK (\$305) each month. For four children, a 1,740 SEK (\$200) addition is payable, for a total *non-means-tested* payment to a household with four children of 6,740 SEK per month (\$775).²³⁷

Teens aged 16 and over benefit from student support social benefits if they continue to study. When children turn 16, those studying full-time (instead of entering the workforce) are entitled to *studiehjälp* (“study help”) in the same amount as the *barnbidrag* their parents were receiving until then. It is payable through their completion of upper secondary education (high school) or age 20.²³⁸ Following completion of high school studies or reaching age 20, Swedish students may claim *studiemedel* (“study support” or student aid) for further studies. This is a higher monthly amount that recognizes that adult or college students will typically be living independently. *Studiemedel* is available as a monthly grant, which never is repaid, plus optional low-interest *student loans*, and certain additions depending on a student’s circumstances.²³⁹ Grants and loans can be received for up to 12 semesters (240 weeks) of college or university study by students under age 56 (or, for loans in some circumstances, 47).²⁴⁰ Students of all ages are entitled to free education (tuition and fee-free) at all levels, but *studiemedel* by assisting them with living costs makes further education available to all, including single parents.

Some Swedish social benefits for families with children are targeted based on financial need, however need must not be as severe as in California. A “housing allowance” or *bostadsbidrag*, for example, is available for families who pay more than 1,400 SEK (\$161) per month for their reasonable housing, whether they rent or own the housing, but struggle to afford adequate housing because they earn a lower

child allowance can be said to constitute a compensation for the support burden parents shoulder, citing SOU 2011:51 at 251).

²³⁶ SFB 15:8–12.

²³⁷ FK, *Aktuella belopp* [Current Amounts] 2019, <https://www.forsakringskassan.se/wps/wcm/connect/6986fee9-055f-4cf1-b1b2-e701f316a31d/293-aktuella-belopp-2019-01.pdf?MOD=AJPERES&CVID=>.

²³⁸ *Studiestödlagen* [The Swedish Study Support Law] (1999:1395). There are additions to this support available for students needing more support due to parents’ low incomes or a boarding supplement for schooling far from home.

²³⁹ *Id.*; see also CSN [the Swedish Financial Aid Agency], <https://www.csn.se/languages/english.html>.

²⁴⁰ *Id.*

income.²⁴¹ The housing benefit is available primarily to the parent with whom a child is *folkbokfört* (with whom the child is publicly registered as living), however a visitation-purposes form of the benefit in a lower monetary amount is available to a parent with whom a child lives at least 30 days per year. A *växelvis boende* housing allowance for situations where a child or children live with both parents alternately, is also available.²⁴²

Important distinctions can be made between different types of social benefits, but such discussions are for the main part beyond the scope of this study. In brief, *some Swedish social benefits require some financial contribution from recipients*, although at affordable levels often capped per month or year. *Others require recipients to have worked a sufficiently long period of time to qualify for them at income-replacement instead of minimum levels (social insurances)*. A large majority of younger Swedish children attend public *förskola* (preschools), as an example of the first type. The social benefit providing the parent(s) of each infant child with paid parental leave is an example of the second.²⁴³

After parents take parental leave and are ready to return to work, *förskola* care is available to them during their work hours, from when a child is approximately age 12–18 months through the beginning of primary school at age 6 (this kindergarten-like year is called *sex års* meaning “six years”). Preschool fees to parents are dependent on parental income level: they are set by law as 3% of the parents’ combined gross monthly income for one child, 2% for a second child in care, and

²⁴¹ See SFB chapters 95–98 (regulating the housing benefit) and Dir. 2018:97, *Ökad träffsäkerhet och minskad skuldsättning inom bostadsbidrag och underhållsstöd* [Increased accuracy and reduced indebtedness within housing support and UStöd] at 3 (“Together with the child contribution and parental leave social insurance, the housing allowance and UStöd play a central role to realize goals within [Sweden’s] economic family policy, child law policy and equality policy.”). Requirements for a parent to receive the housing benefit include having a child living with the parent at the housing address and paying more than 1,400 SEK (\$161) per month for the housing. The benefit’s amount is set depending on income, number of children, housing cost and housing size. The 2017 average amount paid per month to a family with children was 2,540 SEK (\$292). Dir. 2018:97 at 2.

²⁴² See Dir. 2018:97 (summarizing the past, present and potential future of the benefit).

²⁴³ *Föräldraledighetslagen* [The Swedish Parental Leave Law] (1995:584) statutorily guarantees parental leave is available from 60 days before birth until a child is 18 months old, and for care of the child at older ages if all days (or parts of days) of parental leave compensation have not yet been used. It is shared between the parents and able in part to be used until a child turns eight years old or has finished the first grade, whichever is later, including to reduce a parent’s work time percentage-wise as needed to care for the child. Pay for parental leave (*föräldrapenning*), per SFB 12:12, is available for 480 days per child, with a possible 180 extra days per additional child born in cases of multiple birth (twins, triplets etc.).

1% for a third; additional children in a family attend preschool without cost.²⁴⁴ *There is also a maximum fee cap of (for 2019) 1,425 SEK (\$164) per month for one child*, thus parents earning a combined 47,490 SEK (\$5,464) or more per month in gross income pay that amount (not more), and all families earning less total income pay less.²⁴⁵

The actual total monthly cost per child of Swedish daycare/preschool is approximately 13,333 SEK (\$1,534) per month, thus *the state subsidizes 90% or more of the cost of childcare up to school age* (and similarly assures that after-school and school-break-day care are provided at modest, affordable fees). The monthly preschool cost payable to the state by parents is kept, regardless of parental income levels, close to the total received from the state as the child's monthly *barnbidrag* social benefit, therefore affordability of childcare and early childhood education is not problematic for Swedish families with small children, and is another area where *costs are shared (socialized) on principle and not as an assistance to children or parents who otherwise could not afford the care*.

Care is available so long as both parents are working, studying or otherwise unavailable to care for the child on an unlimited basis, such as if a parent is disabled, on sick leave, or on parental leave with another small child (for a limited number of hours per week to meet the older child's need for socialization and the younger child's for individual attention at home).

Most *förskola* (preschools), sometimes called by the older term *barndagshem* (children's day home, akin to daycare in American English, often shortened to *dagis*), are closed for the month of July when the majority of Swedish workplaces are closed or on reduced staffing, however some are open in July, in the evenings, and overnight for the children of nightshift workers such as hospital staff. Parents, like

²⁴⁴ See *Skollagen [The Swedish Education Act]* (2010:800) at 8:16, 8:20 and Prop. 1999/2000:129, *Maxtaxa och allmän förskola m.m.* [Maximum fees and public preschool, etc.]. In the US the federal government considers daycare costs under 7% of parental income as reasonable, but most families pay significantly more: in California, center-based care in 2017 cost an average of \$16,542 (143,785 SEK) annually, which was 60.4% of California single-parent family median income and 18.6% of California married-couple family income; home-based daycare on average cost 38.8% and 12% of those same median household incomes. Child Care Aware of America, *The US and the High Cost of Child Care* 25–29 (2018 annual report) (available at usa.childcareaware.org/costofcare) (ranking California the most costly and the third most costly US state for these types of care, but reporting 37% of income for single parents and 11% for coupled parents as average nationwide).

²⁴⁵ See Swedish Department of Education (Skolverket), *State Contributions [to Counties] for Maximum Fees 2019 (Statsbidrag för maxtaxa 2019)*, available at www.skolverket.se/skolutveckling/statsbidrag/statesbidrag-or-maxtaxa-2019. To assure equality of educational opportunity and high educational quality for all, no private or public preschool may charge more than these rates. This is also true for public and private schooling at all levels.

all full-time workers, are legally entitled to five weeks or more of paid annual vacation from employment, and thus summer child care is rarely a concern. As a result of these social welfare laws most families spend many weeks on vacation together each summer, and also over the winter holiday break in late December into early January. There is also high-quality after-school care called “free time” (*fritidshem or fritids*) provided as an extension of the school day at the elementary level.

Swedish children in lower-income families may also qualify for other social benefits that are means-tested, including for monthly cash payment benefits (economic support modernly called *försörjningsstöd*), introduced in Chapter 1.2. Some families may receive additional supports, for example for new immigrants and refugees, or for children’s or parents’ qualifying special needs.

Sweden’s system of social benefits is, as can be seen from the above description, particularly comprehensive in comparison to those in most other societies,²⁴⁶ which influences both *need for* and *attitudes regarding* parentally-paid child support to Swedish children of separately-living parents. All forms of common social benefit payments contributed an average of 17% of Swedish households with children’s disposable income in 2013, according to government statistics.²⁴⁷ Welfare support, meaning extra funds for low-income families (*försörjningsstöd* or *ekonomiskt bistånd*) contributed 1.6%; “maintenance support” a.k.a. the public child support guarantee UStöd comprised 2.5%; the universal child allowance (*barnbidrag*) 6.8%; the means-tested housing allowance 1.8%; and parental social insurance (income replacement payments to parents on parental leave) 4.4%. Although not all households receive all benefits, *all households with children are receiving a significant amount of universalized financial support from the state* to help meet the children’s needs, *regardless of income level* or whether there are two parents in the home or one.

Note that private child support, UB, *is not mentioned in these government statistics* on Swedish state-provided social benefits. Benefits are often studied from the social benefit agencies’ own and other governmental data records, and those records do not reflect the UB contributions many households are known to be receiving instead of the public child support guarantee and collection option UStöd (described in detail in Chapter 3). It is not surprising that public law policymakers reviewing how much support is available to households with children might undervalue this unseen UB component. This reflects how it is seen as a private concern, unless the benefit

²⁴⁶ See also Skinner & Davidson (2009), *supra* note 18, at 33.

²⁴⁷ See SCB, *Family support as share/percentage of disposable income in families with children living at home aged 0–17 by type of social assistance, population group, observations and year* (2013) (available at http://www.statistikdatabasen.scb.se/pxweb/en/ssd/START__LE__LE0102__LE0102L/LE0102T12/?rxid=6682426b-bd02-49a7-bcd7-366873ef54d6).

socially insuring it is requested, not entirely unlike in California with private versus public cases, as will be discussed.

Nonetheless, the data demonstrate how *child supports for children with separately-living parents contribute a smaller, additional support to those children*, within the larger Swedish welfare state system providing a good economic situation for *all* children. The Swedish child support laws, private and public, take into consideration the state supports (social benefits) paid to children in estimating children's monthly needs for support purposes, as Chapter 3 will describe.

2.3.4. Sweden and California's Approaches to Gender and Family Policy

Sweden's welfare state also was introduced with awareness that society was not yet organized to allow citizens equality regardless of gender. Its policy intent was to move towards gender equality, at least (at first) equality in terms of participation in the labor market, as explained by Swedish feminist scholars:²⁴⁸

The idea of 'workfare' is at the core of the Swedish welfare state model that is based on an *egalitarian* ideology of social citizenship, *and so also central to the policy of promoting gender equality*. In contrast to a 'bread-winner' ideology, under the notion of 'workfare' men and women alike have been regarded as self-supporting individuals within a labour market in line with the ideal of a dual income-earner family ideology.

Thus a "prominent characteristic of the Swedish model" is the fact that "gender equality policy is closely intertwined with the Swedish welfare state ideology."²⁴⁹ Gender equality aims and policy efforts towards them are not hidden in academic policy literature in Sweden. As expressed in 2019 by Sweden's Prime Minister Stefan Löfven,²⁵⁰

²⁴⁸ Eva-Maria Svensson & Åsa Gunnarsson, *Gender Equality in the Swedish Welfare State*, 2 FEMINISTS@LAW (2012) 1, 3 (internal citations omitted). See also Åsa Gunnarsson, *Tax Law Directions for Erasing the Public/Private Divide in Everyday Life Economy*, in TRACING THE WOMEN-FRIENDLY WELFARE STATE: GENDERED POLITICS OF EVERYDAY LIFE IN SWEDEN 38 (Åsa Gunnarsson, ed., 2013) (tracing how Swedish tax reforms between 1971 and 2007 contributed to women's autonomy via workplace participation).

²⁴⁹ Svensson & Gunnarsson (2012), *supra* note 248, at 2.

²⁵⁰ Government Offices of Sweden, *Feminist policy must make a difference in people's daily lives and experiences* (March 7, 2019) (explaining, in online outreach in English, the Government's gender-policy-related objectives: "Being a feminist government means that the Government wants to make a difference in people's daily lives and experiences. The Government will redouble its efforts to combat violence and oppression, and will prevent and combat both men's violence against women and honour-related violence and oppression. Children and young people must live secure lives, in

We're now proudly and vigorously continuing to build a gender-equal society for everyone, a society where women and men, girls and boys can live their lives to their full potential, where no one is held back. This is how we build a stronger society and a safer Sweden.

Sweden's model, "seeking to link universal welfare to work,"²⁵¹ correlates with Sweden's achievement of a high work participation rate, including among parents, through the availability of many education- and work-enabling social benefits including 480 days per child of paid parental leave flexibly usable over the first years of children's lives, universal low-cost government-provided daycare and healthcare and no-cost, living-grant-supported higher education.²⁵²

As Swedish legal researchers Eva-Maria Svensson and Åsa Gunnarsson describe:²⁵³

In the formation of the welfare state gender equality has been a major concern in many welfare reforms, and has been particularly important in those reforms oriented to the labour market.

Swedish economic family policy goals in place include, as of 2016, that economic family policies should (1) "contribute to a good standard of living among all families with children," (2) "decrease the economic differences between households with and without children" and (3) contribute to a gender equal parenthood."²⁵⁴ Formal gender equality goals have been set forth in Swedish law since the 1970s²⁵⁵ and mandatory consideration of likely effects on gender equality ("gender mainstreaming") in all lawmaking processes and government statistics reporting has

school and at home. The Government will also continue to promote the economic empowerment of women, and combat women's ill health. The integration of women and men who come to Sweden must work better. The Government want integration to be feminist, with a clear gender perspective.").

²⁵¹ BLOME ET AL. (2009), *supra* note 160, at 40–41 (2009) (presenting Esping-Andersen's classifications and contrasting this goal of social democratic regimes with the liberal regimes' goal of "strengthening the market," then discussing critiques and alternate classifications in the research literature).

²⁵² Chapters 2.2.4 and 2.2.5 immediately below briefly describe Swedish and Californian social benefits and other state supports, the contexts in which the child support laws have been enacted.

²⁵³ Svensson & Gunnarsson (2012), *supra* note 248, at 2 (internal citations omitted) (emphasis added).

²⁵⁴ FK Report 2016:6, *Barnbushällens ekonomi: resultatindikatorer för den ekonomiska familjepolitiken 2016*, 7 (within the English summary).

²⁵⁵ See Svensson & Gunnarsson (2012), *supra* note 248, at 4 (describing the introduction of *jämställdhet* by Swedish Prime Minister and leading social democrat Olof Palme in 1972, followed by equality policy's introduction).

been Swedish law since the 1990s.²⁵⁶ The latest updating of Swedish gender policy by the legislature occurred in 2006:²⁵⁷

The most recent parliamentary reform of gender equality policy in 2006 changed the expression of the overall objective *from one of equal rights, responsibilities and opportunities* for men and women, to a statement that women and men should have the *same power to shape society and their own lives*. The same rights, opportunities and responsibilities are now seen as preconditions for achieving this objective (Prop. 2005/06:155).

In California and in the United States as a whole, progress towards gender equality has been an expressed goal in many contexts, but has not been advanced by a *nationwide* governmental family policy similar to Sweden's, and in the absence of a policy welfare protection advancing gender equality has been minimal.²⁵⁸ The US remains the only industrialized nation in the world, for example, without some form of paid parental leave,²⁵⁹ however relatively progressive California has passed into law some paid parental leave protection at the state level.²⁶⁰ The scope of the leave is limited in comparison to that in social democratic welfare states, *but also* in comparison to its fellow liberal welfare state, the UK, ²⁶¹ demonstrating the uniqueness of each welfare state, within their WSM theoretical classifications (and that the US is a prototype liberal type in part due to its more extreme version of liberal WSM).

²⁵⁶ See *id.* at 6 (citing SFS 1998:1474 and SFS 2001:100).

²⁵⁷ *Id.* at 6 (emphasis added).

²⁵⁸ It is also true that private market employers competing for quality workers have developed paid leave policies and other supports for employed parents, widening the divide between low-income and middle-to-high-income Californians that has relevance to child support law. See Chapter 7.5 (economic differences as causes of the legal differences found).

²⁵⁹ See Human Rights Watch, *Failing its Families: Lack of Paid Leave and Work-Family Supports in the U.S.* 1 (2011), available at <http://www.hrw.org/node/96432> (identifying lacking US family policies and determining the most significant to be the lack of paid parental leave). There is no right *in law* to any amount of *paid* parental or maternity leave under federal US law, but in 1993 the Family and Medical Leave Act (FMLA) provides job protection and up to 12 weeks of *unpaid* leave within the first year after birth or adoption of a child, for qualifying employees. See, e.g., LAURA CARLSON, *SEARCHING FOR EQUALITY: SEX DISCRIMINATION, PARENTAL LEAVE AND THE SWEDISH MODEL WITH COMPARISONS TO EU, UK AND US LAW* 299–301 (2007).

²⁶⁰ California has again expanded parental leave effective 2019, but job protection and social insurance payments are regulated separately. A maximum 6 paid and 12 total weeks is available at 60–70% wages, but only for qualified employees (with larger employers etc.). See California Employment Development Department, *Overview of California's Paid Family Leave Program 2019* (revised June 2019) (https://www.edd.ca.gov/disability/paid_family_leave.htm).

²⁶¹ See, e.g., CARLSON (2007), *supra* note 259, at 327–329.

Legal challenges decades ago to laws regulating mainly employment that discriminated on the basis of sex and gender were the main engine driving law towards providing more equality of *opportunity* for women to participate in earning. Equality of *result* for women—and equality of opportunity for men to participate more in caring—have not, however, been widely seen as within the scope of what a liberal welfare state, especially a US one governed by a limited-role-for-government ideal, is intended to provide.

On the other hand progress, including legislative progress, towards gender equality has not been absent, especially in California, one of the US's most progressive states.²⁶² California's 2018 law mandating a minimum of one to three women per company on corporate leadership boards may be said to represent a more socio-democratic element within primarily a liberal welfare state; California passed this legal effort to equalize gender equality *results* via state regulation of market institutions.²⁶³ One California law professor, describing herself as a feminist and acknowledging a desire for the US to do better given international gender equality statistics, nonetheless responded in no uncertain terms one week later with a published opinion piece entitled "California law that would create corporate gender quotas is a textbook case of government overreach."²⁶⁴ She concluded in a liberal-welfare-state-typical fashion:²⁶⁵

Governments can certainly help to foster and incentivize an environment in which *companies choose* to make positive changes. But when a *state mandates* gender quotas on private boards, it is going too far.

²⁶² See, e.g., *id.* at 261 (choosing "California, a path breaker with respect to family and work" as one state of focus) and The California Equal Pay Act, *codified at* CAL. LABOR CODE § 1197.5 (decades old but expanded significantly since 2015). See also CAL. LABOR CODE § 432.3 (effective 2018, *inter alia* forbidding California employers from relying on pay history in setting wages and requiring them to provide a pay scale upon applicant's request).

²⁶³ See Cal. Senate Bill ("SB") 826 (2018).

²⁶⁴ Jessica Levinson, *California law that would create corporate gender quotas is a textbook case of government overreach*, NBC NEWS, Sept. 5, 2018 ("Hot Takes" Opinion), <https://www.nbcnews.com/think/opinion/california-law-would-create-corporate-gender-quotas-textbook-case-government-ncna906601> (arguing that "government overreach like this tends to have no limiting principle" thus the state may order any number of quotas if allowed to, and that the law's constitutionality might be challenged for creating a classification based on sex with arguably not an important enough state purpose).

²⁶⁵ *Id.* (emphasis added) (adding that "[o]nce the government decides it has the right to intercede in this arena, it is difficult to know where and when the government interference will end.").

Both Sweden and California have experienced advancements for women in recent decades, including increased (although not yet equal) participation by women in employment. Women today participate fairly equally in many higher education programs and have achieved increased economic independence and more positions of power in both public and private sectors. These jurisdictions' different welfare state based (and legal system based) approaches to addressing sex- and gender-based discrimination and inequalities have differed during their developments and continue to differ in many ways.²⁶⁶ Advancements for men have also steadily been occurring, including participating in the care of their children in a more co-equal (although not yet equal) way. This is happening both while men are living with the children's other parent and when they live separately, as evidenced for example in the growing number of children alternating residence to live equal time with each of their separated parents in both California and Sweden.²⁶⁷

The actual welfare state contexts of Sweden and California, after the following introduction to their social benefits for children and families, are taken up further within the thesis as appropriate to identifying and explaining differences between the child support systems.

Further Background on Gender and Families Policies

Although an important part of the larger ideologies of the WSMs described in broad strokes above, the jurisdictions' specific gender and family policies—in public law but also in the private family law—strongly influence the child support systems studied. It is useful to the comparison to describe them in some further detail here, in term of their ideals and as they actually exist today.

As Swedish family law scholar Eva Ryrstedt has noted, the private-law Swedish Marriage Code (of 1920, replaced by a partially new version in 1987) “was constructed, as far as ninety years ago, in a spirit of *individuality and independence*. . . [and] also contains several rules based on the concept of *community*, such as the division of marital property at the termination of a marriage.”²⁶⁸ In the current version of the Swedish Marriage Code, *Äktenskapsbalk* (1987:230), this language is little changed. Swedish spouses' duties to each other during marriage included, even in 1920, that they shall, *together, care for the home and children*, including its chores and

²⁶⁶ See, e.g., Carlson (2007), *supra* note 259 (both describing the histories of these developments and comparing them).

²⁶⁷ See Chapter 1.2, *supra*.

²⁶⁸ Eva Ryrstedt, *Family and Inheritance Law*, in SWEDISH LEGAL SYSTEM 245, 245 (Michael Bogdan ed., 2010) (emphasis added).

its expenses, and that they shall act, in consultation with one another, in the best interests of the family.²⁶⁹

During the 1950s, Swedish policymakers applied this Swedish marriage model via a male breadwinner and female homemaker ideal, with the independent, individual spouses dividing their labor accordingly. During the 1960s, however, this began to change. As Swedish laws and society established more broadly a culture of women also performing paid work, the duties of childrearing began to be seen as a societal responsibility.²⁷⁰ The *dual-breadwinner family form* fairly rapidly replaced the single-breadwinner one, and generally *individuals* fulfilling both public, market-economy and private duties and responsibilities, with state support when necessary, became relatively more important in Swedish legal culture than *families* fulfilling them.²⁷¹

As previously mentioned, the Swedish state has pursued equality between male and females at home and work for many decades, but this became much more fully developed, expanded and articulated, especially in the 1970s (when the gender equality policy was first termed *jämställdhet*). In the 1970s the Swedish state established over 70 “family and gender” commissions to recommend legislation that could advance the reversal of existing gender inequality in society.²⁷² This reform movement was recorded retrospectively in the 2002 Swedish governmental action plan for gender equality.²⁷³

The overarching goal of Swedish gender equality policy is that “women and men should have the same opportunities, rights and responsibilities in all vital areas of life;” concrete subgoals are to achieve “(1) an even distribution of power and influence; (2) the same opportunities for financial independence; (3) equal conditions and pre-requisites for enterprise, work, conditions of work and career

²⁶⁹ *Id.* at 247 (noting that the law provides little remedy, however, for violations of these general rules; they were more normative and declaratory). *See also* today’s Swedish Marriage Code (ÄB) 1:2 (“Spouses shall show each other fidelity and consideration. They should together care for their home and children and in consultation with one another work together in the family’s best interests.”).

²⁷⁰ *See* WENNBERG (2012), *supra* note 139, at 6.

²⁷¹ *But see id.* at 6–7 (arguing that solo mothers do not fit well into the older *or* newer ideals of maintenance relations within the family, e.g. they can neither be 100% housewife-carer, supported by someone else’s earned income, nor one half of a team each doing 50% of the caring and earning, but must perform both roles solo). Hence the social problem addressed by child support. Gender role ideals and behaviors explaining some of the child support law differences found in this study are compared at Chapter 7.4, *infra*.

²⁷² Jenny Ahlberg et al., *Actualizing the “Democratic Family”? Swedish Policy Rhetoric versus Family Practices*, 15 SOCIAL POLITICS 79, 82 (2008) (citing SOU 1972:41 at 58 as a good example of how their aims were described).

²⁷³ *Id.* at 85 (citing *Regeringens skrivelse* 2002–2003:140).

development; (4) shared responsibility for home and children; and (5) freedom from sexually related violence.”²⁷⁴

Social democratic welfare states emphasize egalitarianism, including between men and women,²⁷⁵ with social policy goals including reaching gender equality at work and at home, in other words in earning and in caring roles. Sweden encourages, as mentioned above, full workplace/market participation by enabling all adults to work, and achieves this by removing the largest difficulties experienced in other nations of combining family and work by providing supports like paid parental leave and elder care; individual (not married-filing-jointly, family) taxation thus no marginal-income disincentives for the “second salary” in a couple; very-low-cost daycare approximately covered by the monthly universal child benefit paid to all families to assist with the costs of raising each child and to remove the daycare cost obstacle to work for both parents; and law that employers provide vacations of at least 25 full days per year, most often paid at a total wage *higher* than the usual wage.²⁷⁶

Family and gender relations policy in a liberal welfare state like California is dominated by the core liberal-model value of stark individualism and government’s role as limited to ensuring fair market competition and correcting market failures: “[W]hile the poverty of lone mothers might be addressed as a matter of poor relief, liberals basically regard the family as falling decisively on the private side of the public-private dichotomy, unfit as the subject for any substantial public intervention.”²⁷⁷ The integration of women, especially lone mothers who are most often the payees of child support, into the labor market is a goal in California,

²⁷⁴ *Id.* (describing the Swedish 2003 action plan document). *See also id.* at 90 (“We must agree with the Swedish government’s own 2003 ‘action plan’ for gender equality which stressed that Sweden is still characterized by a gender system in which women are subordinated to men.”).

²⁷⁵ *Id.* at 198 (describing the family policy of the three welfare state systems and mentioning that social democrats “strive to bring women into the paid labour force fully on a par with men, with public employment being one major mechanism used to this end.”)

²⁷⁶ The equivalent amount of paid vacation is mandatory for part-time workers in proportion to what percent of full-time they work. *See* The Swedish Law on Vacation Time (*Semesterlagen*) (1977:480). It is an often-discussed issue in Sweden that women participate in the labor force but continue *disproportionally to work part-time and to contribute more time to household work* than men. (Framing this another way, Swedish men continue *disproportionately to contribute more time to work outside the home and to contribute less time to household work*. In truth the two patterns of continuing to “do gender” in traditionally more familiar ways have been found to perpetuate each other. *See, e.g.,* Anne Grönlund & Björn Halleröd, *Den vackra visionen och den vrånga vardagen* [*The beautiful vision and the everyday life*], in JÄMSTÄLLDHETENS PRIS [GENDER EQUALITY’S PRICE] 17, 28–31 (Anne Grönlund & Björn Halleröd eds., 2008).

²⁷⁷ Mahmud Rice et al. (2006), *supra* note 178, at 197–198.

especially as a way to encourage individuals' abilities to be self-supporting, tied to the ideal of minimizing reliance on the state.²⁷⁸

As comparative welfare states research has found, women's entry into a relatively lightly-regulated labor market based on a historic norm of a male worker with few childcare or eldercare responsibilities, *without* significant regulatory restructuring to take the private family's existing care responsibilities into account (such as social benefits friendly to working parents), "*has been associated as much with the maintenance and reinforcement of difference—differences across and within nations—as with processes of convergence and equality between men and women.*"²⁷⁹

California, true to its liberal welfare state ideology, takes a relatively modest responsibility for ensuring a good living standard for all citizens, but rather emphasizes its efforts to maximize market and private solutions, several of which are discussed in this thesis as they pertain to the California public and private child support systems.

²⁷⁸ Research into the effects of large-scale reforms to need-based welfare in the United States that pushed lone mothers off welfare benefits and towards more market participation finds that the reforms have had limited success in preventing single mother household poverty, and may have worsened it. See, e.g., *Roadmap to Reducing Child Poverty* (2019), *supra* note 45.

²⁷⁹ DALY & RAKE (2003), *supra* note 17, at 172 (internal citation omitted) (emphasis added).

3. Rights to Receive and Duties to Pay

3.1. Introduction

What are the substantive law rules, in both private and public law? This chapter answers that question. It addresses several sub-questions: What *rights* for children and *duties* for parents and the state do Swedish and Californian law assign to create their parental child support regulations? What is the relationship between children's "needs" for support and their "rights" to (1) *parental child support*, and to (2) *state substitutes for child support*, if any, if sufficient parental support is not forthcoming?

Chapter 3.2 first describes how Californian and Swedish child support laws function via "*dual systems*," to prepare the reader for the subsequent descriptions of the resulting four sets of legal rules. Chapter 3.3 begins to describe the systems' substantive laws that define the *nature of the duties to provide child support* as well as *the amounts and components of "basic" child support*. Chapter 3.4 details further the laws defining a *child's needs* for child support purposes in each system, and Chapter 3.5 details further the laws on parents' *abilities to pay* child support.²⁸⁰

3.2. Child Support Law Across a Public-Private Divide

The American law and political science academic Jacobus tenBroek in 1964 described the "two [public and private] systems of family law in California: different in *origin*, different in *history*, different in *substantive provisions*, different in *administration*, different in *orientation and outlook*."²⁸¹ This characterizes somewhat well the current public-private law divide or "dual system"²⁸² organization of both Californian and Swedish child support regulation mentioned in Chapter 1.2's introduction.

²⁸⁰ The discussion of parental *abilities to pay* is limited to how parents' abilities to provide financial support to their children are determined *for child support law purposes*, to set appropriate child support amounts they are expected to pay (or to repay, if the state has already paid some support to the child). In other words, the *scope of their duty* is the issue. *Procedures for collection* of past-due child support debts are discussed in the next chapter. Collection law may define differently how much a debtor is expected able to repay, but this is delimited from the study.

²⁸¹ tenBroek (1964), *supra* note 196, at 257 (emphasis added).

²⁸² See, e.g., Shannon Bettis Nakabayashi, *A 'Dual System' of Family Law Revisited: Current Inequalities in California's Child Support Law*, 35 UNIVERSITY OF SAN FRANCISCO LAW REVIEW 593 (2001) (citing and discussing tenBroek (1964), *supra* note 196).

In the two legal jurisdictions compared, this law has developed over time via both private-law legislation and court actions *and* via public-law social-benefit-related legislation and court actions, thus a “dual system” (perhaps even a “tripartite system”²⁸³) has been created and perpetuated. Such dualities are not unusual internationally given the historically separate legal needs of wealthier children’s parents and economically more vulnerable children’s parents whom legal jurisdictions have sought to protect (or otherwise address), via public benefits regulated in public law. Dual systems regulating child support have been criticized more often than defended in the research literature, however, particularly due to the difficulties and confusions they cause, as separate regulations of approximately the same social need.²⁸⁴

This chapter and the next describe the complete child support law package of regulation in both jurisdictions studied, thus they present both *private law rules* which define a substantive child support duty owed by parents *and* the more-or-less-related *public law rules* that also exist to ensure that child support is received by children and paid by parents via involvement of the welfare state.

In both jurisdictions, private-case child supports are set in parental agreements or civil courts *between a child’s parents*, while public-case child supports are set *between a state agency and parents*. Thus to analyze and compare Sweden and California’s child support legal systems, *four sets of rules* must be examined. In Sweden, these are the private-law UB and the public-law UStöd systems previously introduced. In California, these are the private-law, family-court-driven system and the public law, public-child-support-agency-driven system (the “Title IV-D” system herein, in reference to the US federal statutory law regulating it).²⁸⁵

The differences between each jurisdiction’s public and private systems will become clearer as the laws are described below. In brief comparative summary, in both jurisdictions the private-law systems are those setting child supports between parents. This occurs sometimes with help from their lawyers, state-provided

²⁸³ *Id.* at 603–604 (“Not only is there still a tiered system of family law [specifically child support] in California, but a tripartite system has developed—one for the very rich, one for those receiving welfare or AFDC [TANF/CalWORKS, a.k.a. poverty relief welfare benefits], and one for everyone in between.”)

²⁸⁴ See e.g. WIKLEY (2006), *supra* note 52, at 88 (quoting a 1974 “Finer report” by the UK’s Committee on One-Parent Families criticizing a “disorderly and anomalous tangle of relationship between the *three systems of family law*” there (emphasis added), meaning two tiers of private courts hearing divorce matters and a third public-law system of means-tested benefits). Wikeley provides a detailed historical description of these UK systems.

²⁸⁵ See *id.* at 148–163 for a concise introduction, in international perspective, to the history of Title IV and US child support law more broadly. A historical summary, with California in focus, also is presented within this thesis, *infra* Chapter 7.2.1.

mediation opportunities and/or civil courts hearing divorce, separation or other cases involving child support and brought to court by the parents themselves.

On the public side, in California seeking child support via California's public agency system is *mandatory* where a CP's financial means are limited, specifically if that parent *receives need-based social benefits* (specifically CalWORKS or MediCal) for the child's household, but *optional* otherwise. In theory the payor parent should have rendered unnecessary the payee parent's reliance on poverty relief by paying an adequate amount of private child support. In cases where child support has been set but the payment owed is zero dollars per month, the need-based social benefits to the CP and children will not be collected from the NCP, because it was demonstrated under child support law that he did not have the ability to pay more.

In many cases, however, child support has not been set, or has not been paid as court-ordered. The need-based state benefit payments made in such cases to the child's household are *subject to reimbursement by the payor parent to the state* via a state-led child-support-collection process, following establishment of an NCP duty to pay child support (usually paternity and California Guideline child support amount determinations), if necessary. *The amount collected is not, however, the amount of poverty relief received; it is the amount owed each month in child support per the Guideline calculations*, from which partial or total repayment to the state of the poverty-relief amount may be taken. The rest is paid to the child's CP. After many years of criticism the United States, and California specifically for this study's purposes, has in 2019 passed legislation to allow more of the payments made each month by NCPs to reach their children's households, as will be described.

In Sweden public cases begin when a CP who has not successfully agreed on a private child support (a UB) with the NCP *applies for a non-need-based social benefit, the child-support guarantee* called *underhållsstöd* (UStöd). This is available for, among other children living with only one parent, every child whose NCP is not paying adequate private child support. The state then pursues reimbursement for the state's payout of the UStöd benefit via state-led child support collection from the NCP, in other words from the child-support-duty-owing parent. Swedish CPs may separately be receiving need-based social benefit payments, but *the amount collected from the payee parent is the share of the public child support guarantee amount that the parent is deemed able to afford, if any*.

One important dual-system difference is that the Swedish public child support functions as *a full or partial grant in many cases*, a guarantee of a certain level of child support to every child whose parents live separately, regardless of the income level in the custodial or noncustodial households. *Whether the benefit is a full or partial grant (or not a grant at all but fully reimbursable by the payor parent) is based upon whether the payor parent is considered financially able to pay some or all of the monthly social benefit's amount*, in

which case he generally has a duty to reimburse the state.²⁸⁶ This would be the equivalent of California child support law deciding to advance a set monthly child support amount per child from public funds and not to collect it from NCPs deemed to have incomes too low to be able to afford to repay the state, in full or in part. There is a somewhat similar mechanism in California, but only for children living in the lowest-income custodial households, specifically the generally-available poverty relief mentioned above, which is not explicitly a child-support advance or guarantee although it is primarily available only to families with children. California's children with separately-living parents under current law receive no particular state support based on their status as children of sole parents (in contrast to, for example, how US children to a parent who has died are eligible for federal Social Security benefits to replace future support from that parent).

3.3. The Parental Duty and Ordinary Child Support Generally

What are parents' duties under the child support laws studied? What is the scope of parents' duty, in other words what levels of child support does the law require to be paid, by whom, to whom, and does the law seek to provide children with a minimal living standard, an above-poverty-line standard, the child's own prior standard (assuming the parents are separating), an average middle-class standard, or some other level? How are these levels of support related to parents' financial resources and children's needs?

3.3.1. *Legal Child Support Duty and "Guideline" Child Support in California*

Californian parents' legal duty financially to support their children is codified at California Family Code § 3900:

Subject to this division [of the Code], the *father and mother* of a minor child have an *equal* responsibility to support their child *in the manner suitable to the child's circumstances*.²⁸⁷

²⁸⁶ Not all parents with a duty to pay child support (NCPs or "payors") are men, but the large majority as of 2019 are men in both systems studied. Child support is, for this and many other reasons, a deeply gendered issue. Because of this, and because conventional English lacks a gender-neutral pronoun, male pronouns are most often used herein for NCP payors. Female pronouns are used for parents receiving support for a child's benefit (CPs or "payees"), for the same reasons.

²⁸⁷ CAL. FAM. CODE § 3900 (emphasis added). Little-known, rarely-enforced filial laws in California also remain in force, providing that adult children have a duty to support their parent "who is in need and unable to maintain himself or herself by work." Adult children may be sued by either a parent or

Supporting his or her minor children is, according to today's Californian statutory law, a parent's "first and principal obligation."²⁸⁸ It was also a fundamental *parental duty long recognized by courts* in California prior to its codification.²⁸⁹ The California courts have confirmed that *the child has a corresponding "absolute, inalienable right"* to this support from his or her parents, which no change in their domestic (marital) status or contract between the parents may affect.²⁹⁰ The parents cannot transfer their legal and moral duty to others or limit it by stipulation between themselves, since the parents cannot limit the courts' power to review and modify child support orders during the child's minority.²⁹¹

Satisfaction of the Duty via Payments of Child Support

When a child's parents live in different households in California, satisfaction of the parents' shared support duty can involve *periodic payments of child support* from one parent to the other, depending on the parents' relative incomes and time with the child.²⁹² Child support payments are traditionally made by the parent living much less often (or not at all) with the child, the payor is much more often a father, and makes payments to the parent living with the child closer to full-time, much more often a mother. Payments may also be required from a parent with 50% time (*or even*

the state if the state has paid certain social benefits to the parent. *See* CAL. FAM. CODE §§ 4400–4414 (detailing certain exceptions). This illustrates the liberal market welfare state emphasis on private before public duties seen within California law, yet the lack of enforcement in practice demonstrates a more individualistic relation to the state than existed historically. Swedish filial laws also existed but were abolished in 1979. *See* Prop. 1978/79:12, *Underhåll till barn och fränskilda, m.m.* [*Support to children and separated persons, etc.*].

²⁸⁸ CAL. FAM. CODE § 4053(a) (2015) ("A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life.").

²⁸⁹ *See, e.g.* *Lewis v. Lewis*, 174 Cal. 336 (1917). *See also* 33 Cal. Jur. 3d Family Law § 1140 (Supp. Feb. 2018) on the liability of parents arising from the duty to support a minor child.

²⁹⁰ *Smith v. Smith*, 125 Cal. App. 2d 154, 164 (2d Dist. 1954) (emphasis added).

²⁹¹ *See, e.g.*, CAL. FAM. CODE §§ 3580, 3585, and 7632 (code sections regulating marital separation, child support and paternity agreements, all of which confirm that these private agreements cannot remove the court's power to set appropriate child-related orders, including support orders); *see also* *Marriage of Alter*, 171 Cal. App. 4th 718, 729–30 (2009) (holding that a marital settlement agreement cannot stipulate that support cannot be modified downward because *the court cannot be divested of its power to modify to a Guideline child support amount, upwards or downwards, if new circumstances warrant a change*).

²⁹² *See* CAL. FAM. CODE § 4001 (permitting a court to make child support orders with respect to either or both parents in "any proceeding where there is at issue the support" of a minor child, an incapacitated adult child without sufficient means, or an adult child still in high school until the earlier of graduation or the child's 19th birthday).

more, albeit extremely rarely) with the child, if circumstances so require per the Guideline calculations.²⁹³

Regarding the child support duty's scope, *any child of a biological or adoptive parent* has a right to have his or her needs met to the extent the Guideline formula provides, regardless of whether the parent has ever lived with the other parent, or whether the payor parent was married to another person when the child was conceived. Child support per California law is payable for *all children until they reach age 18 or to the earlier of their completion of grade 12 (high school) or reaching age 19*, absent an *enforceable parental agreement* to a later end date.²⁹⁴ Child support may also be ordered or agreed to for an *incapacitated adult child*, with no upper age limit so long as the adult child is legally "incapacitated from earning a living and without sufficient means."²⁹⁵

Whether or not a parent shares in or has sole *legal or physical custody has no direct bearing on his or her support duties* under California law, except as related to current time spent caring for the child.²⁹⁶ A parent's *timeshare living with the child has a sliding-scale effect in Guideline support calculations*, discussed further below, but whether the parent intended to become a parent or was in a marital (or any other) relationship with the other parent does not affect the duty. This may seem self-evident, however historically in both California and Sweden a father's child support duty was more or less tied to whether or not a child was born within a marriage, and a mother's to

²⁹³ Regarding various US states' laws and cases of NCPs receiving child support from CPs see Emma J. Cone-Roddy, *Payments to Not Parent?: Noncustodial Parents as the Recipients of Child Support*, 81 UNIVERSITY OF CHICAGO LAW REVIEW 1749 (2014). This generally happens when the NCP has some time with the child and very low income relative to a high-income payor.

²⁹⁴ CAL. FAM. CODE § 3901(a). See also CAL. FAM. CODE §§ 3901(b) (parents may agree to and courts may enforce agreements for support *beyond* the § 3901(a) default limits); 3587 (courts may approve and enter as support orders parental agreements to support an *adult* child); and 6500 (18 as age of majority).

²⁹⁵ See CAL. FAM. CODE §§ 3910(a) ("The father and mother have an equal responsibility to maintain, to the extent of their ability, a child of whatever age who is incapacitated from earning a living and without sufficient means.") and 3587 ("Notwithstanding any other provision of law, the court has the authority to approve a stipulated agreement by the parents to pay for the support of an adult child or for the continuation of child support after a child attains the age of 18 years and to make a support order to effectuate the agreement.") These provisions encouraging *private parental responsibility for even adult children* to avoid that they become "public charges," dependent on safety-net public welfare funds, illustrate a view of *the state's versus the family's financial role in California* that accords with a liberal WSM.

²⁹⁶ Note that technically a parent's time of "primary physical responsibility" and not actual physical presence with the child is used for Guideline allocation of support between the parents, thus times at school and even boarding school are allocated by courts using their discretion based on the degree to which each parent is involved with the child during those times, responding to emergencies, transporting the child, etc. See, e.g., *DaSilva v. DaSilva*, 119 Cal. App. 4th 1030, 1034 (2004).

whether she was unmarried (in which case she *would* owe a child support duty that married women did not owe). At least one California trial court in a 1996 case justified a child support amount as sufficient and usual to meet a child's needs in "cases like this," where the child was born out of wedlock to a father who was an extraordinarily high earner and not in a relationship with the mother. The ruling was overturned on appeal for insufficient regard to "the child's right to share in the [payor parent's] standard of living" regardless of the circumstances of the birth.²⁹⁷

A parent has no common-law obligation to provide for the support of his or her minor child after the parent dies, and thus the *parent's liability for future child support is normally terminated by his or her own death*.²⁹⁸ The estate of a parent child support obligor in California, however, remains liable for support furnished *by the county or state* in case the parent dies leaving a child dependent upon the county or state for support *and* the parent leaves an estate sufficient for the child's support.²⁹⁹ A second exception to the automatic termination of child support obligation at death is involved when the child support obligation was *fixed by property settlement agreement upon the divorce or separation of the parents*; the child support debt in that case would survive, like other debts, as a charge against the parent's estate.

Levels of Guideline Support

Regarding the level of support the law requires parents to provide, the California Guideline levels are not designed to cover an NCP's one-half of a similarly-aged child's minimal or even comfortably reasonable monthly costs, whether individualized or based on some average idea of what a child costs month to month, in a *direct* sense that adds up clothing, food and other costs attributable to the child.³⁰⁰ Rather, the Guideline allocates a portion of the total parental discretionary income, in an amount considered appropriate to a child's needs. The appropriate amount is set by the formula *based on expenditure data* estimated to reveal what *percentage of expenditures by a similar two-parent household typically are allocated to their child or children* and provide that same "share" of the parents' combined incomes to the child, in theory.

²⁹⁷ McGinley v. Herman, 50 Cal. App. 4th 936, 945 (1996).

²⁹⁸ See National Legal Research Group, 33 CAL. JUR. 3D FAMILY LAW § 1148 (updated through Feb. 2018).

²⁹⁹ CAL. FAM. CODE § 3952.

³⁰⁰ *But see* the USDA estimation of needs method discussed at Chapter 3.4 that would, if deemed desirable and adopted by legislators, move California back towards tying child support to evidence of direct costs. California historically used judicial discretion and testimony concerning direct costs to decide appropriate support orders.

Child support secures in this way some continuity of access to support appropriate to the parents' incomes pre-separation, even after separation, when the parents do not live together.³⁰¹ The California Legislature via the Family Code has decided, and the courts enforce over objections from some payor parents, to focus on a *shared living standard* conceptualization of child support.³⁰²

Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.

Child support is defined more concretely in California's regulatory law:³⁰³

[Child support is] amounts [of money] required to be paid under a judgment, decree, or order, whether temporary, final, or subject to modification, for the support and maintenance of a child or children, which provides for any or all of the following: *monetary support, health insurance coverage, arrears*, and may include *interest on delinquent child support obligations*.

The "base" or basic monetary support amount of child support payable per month for a specific child by a specific parent, before any mandatory or discretionary "add-ons" (discussed below) and before any "arrears" (past-due support) or interest on arrears as mentioned in the above definition, is known as "base Guideline support" in California. *The amount is automatically scaled up or down in accordance with the parents' (and thus, in the law's meaning, the child's) financial circumstances as measured by their current (or recent) incomes.* It does not represent a "base" in the sense of a minimum level of money needed to raise a child and indeed may be insufficient for meeting a child's basic needs if the parents' incomes are low. It is more a continuation of what both parents would likely have spent on the child if they lived together with the child as a two-parent household. This share of the family budget is however *only in theory still useable for the child once the parents live apart*, but the decrease in living standard is shared

³⁰¹ For an overview of the social science estimators and which costs are included in expenditure data used see, e.g., Administrative Office of the Courts, *Review of Statewide Uniform Child Support Guideline 1993 (December 1993)* 163-176 [hereinafter *Guideline Review 1993*] (available at <https://www.courts.ca.gov/documents/ChildSupport-1993ChildSupportGuideline.pdf>). The estimators and "children's needs" theory underlying the Guideline is also discussed further at Ch. 3.4.1.

³⁰² CAL. FAM. CODE § 4053(f).

³⁰³ 22 CAL. CODE OF REGULATIONS § 110144 (emphasis added).

among each parent and the child or children more equitably than might otherwise be the case if a smaller amount of child support was ordered.³⁰⁴

The term “Guideline” refers to the statewide mandatory child support Guideline as statutorily defined in detail,³⁰⁵ legally in effect in the State of California since January 1, 1994. It has not been substantially adjusted since its initial adoption, although it is regularly reviewed and minimally modified.³⁰⁶ The California Guideline sets, mathematically,³⁰⁷ a specific, in most cases mandatory (legally presumed correct)³⁰⁸ dollar amount of child support to be paid in any given family’s income and physical custody situation, replacing the discretionary awards that judges decided

³⁰⁴ Chapter 5.2, *infra*, further analyzes the studied jurisdictions’ child support theoretical models and design choices in light of the various interests child support theorists and lawmakers attempt to satisfy.

³⁰⁵ CAL. FAM. CODE §§ 4050–4076.

³⁰⁶ See *Guideline Review 2017* at 73–75 (summarizing the 1984 federal Congressional mandate to states to develop *advisory* numeric child support guidelines, then the 1988 federal law requiring instead *mandatory* (presumably correct) guidelines, and the California Guideline versions that resulted).

³⁰⁷ The mathematics underlying the computerized child support calculations in California are codified as statutory law at CAL. FAM. CODE § 4055, which is included at Appendix 2. The formula includes components representing the higher wage earner’s net income; the higher wage earner’s parenting time percentage; and the total net income of both parents, in addition to a “K factor” representing the “amount of both parents’ income to be allocated for child support.” As summarized by the *Guideline Review 2017* at 10, “[t]he K factor is intended to reflect the amount intact families spend on their children. It is determined based on both parents’ combined monthly total net income, striated into income intervals.”

³⁰⁸ The Guideline’s mandatory nature, many note, renders the word “guideline” potentially misleading, and may indicate that a politically-appeasing “soft-sell” was intended when it was authored. Indeed the courts of California have noted that “[t]he term ‘guideline’ . . . is a euphemism.” *Y.R. v. A.F.*, 9 Cal. App. 5th 974, *5 (2017) (noting the presumption that its results are correct and mandatory in most cases). See also Carol Rogerson, *Child Support, Spousal Support and the Turn to Guidelines*, in ROUTLEDGE HANDBOOK OF FAMILY LAW AND POLICY 153, 154–155 (John Eekelaar & Rob George eds. 2014) (internal citations omitted) (“In the common law world, the American states were the pioneers in developing child support guidelines as a result of federal requirements imposed in 1988. Australia, the UK, New Zealand and Canada followed suit. In each of these jurisdictions the guidelines were formally legislated and the terminology of ‘guidelines’ is in fact misleading, for these are mandatory schemes that generate precise amounts of child support. In the UK, Australia and New Zealand, the adoption of child support guidelines was part of a larger reform of child support law which involved the removal of child support matters from the courts and the creation of an administrative agency to both access and enforce child support. In Canada, as in the United States, child support determinations using the guidelines continue to be made by courts, although one of the clear objectives of the guidelines is to encourage out of court settlement.”) See also Grace Ganz Blumberg, *Balancing the Interests: The American Law Institute’s Treatment of Child Support*, 33 FAMILY LAW QUARTERLY 39, 67 (1999) (“[T]he term ‘formula’ would more aptly capture state response to the federal requirement.”)

in years past, which could vary substantially between similar cases.³⁰⁹ Judges, lawyers, mediators and parents themselves calculate child support amounts, not by doing actual mathematical calculations but by entering relevant facts into one of several computer programs designed and certified correctly to calculate child support via this formula.

For pairs of parents earning all but the lowest and highest incomes per month,³¹⁰ the “K factor” or “amount of combined income allocated for child support” is set at 25% for one child (and adjusted upwards for more than one child via a “multiplier for additional children”), with reductions to the percentage at incomes below and above that range.³¹¹ An earlier Guideline Review had justified adjusting this middle-income K-factor in 1993, the same year the K factor adjustments for lower and higher incomes were last modified, but the 25% anchor percentage was retained.³¹²

K is the percent of income allocated for child support. This number is loosely based on the findings of van der Gaag and Espenshade on the amounts intact families spend on children. This K factor, though, has been modified over the years and thus no longer completely reflects those findings. However, it should be noted that the determinations made by van der Gaag and Espenshade have themselves have been subject to criticism from some people on both sides of the issue. ... In addition, the data used are now over 20 years old.

Because *another period of nearly 25 years have elapsed since the K factor was adjusted per current data*, the experts conducting California’s 2017 Guideline Review studied the continued appropriateness of the current K factor. They proposed that an *adjustment down to an anchor of 21% (thus 21% of both parents’ incomes combined allocated for the support of one child) may be appropriate* given updated household spending on children and other data.³¹³ If lawmakers act upon these recommendations, the child support amounts

³⁰⁹ See, e.g., *Brothers v. Kern*, 154 Cal. App. 4th 126 (2007) (describing the limits on judges since the implementation of the Guideline, requiring them not to deviate from it except in statutorily-specified circumstances).

³¹⁰ See *infra* Chapter 3.4.1 for details focused on the California child’s needs.

³¹¹ See *Guideline Review 2017* at 75–76.

³¹² *Guideline Review 1993* at 31 (also presented within *Guideline Review 2017* at 74). See also *Guideline Review 2017* at 21 (describing 1993 legislative changes within a comprehensive history of the California Guideline’s evolution) and William S. Comanor et al., *The Monetary Cost of Raising Children*, in *ECONOMIC AND LEGAL ISSUES IN COMPETITION, INTELLECTUAL PROPERTY, BANKRUPTCY, AND THE COST OF RAISING CHILDREN* (RESEARCH IN LAW AND ECONOMICS VOL. 27) 209, 214 (James Lagenfeld, ed., 2015) (discussing how Espenshade’s concept of creating an equivalency scale to help determine the costs of children, published in 1984, came to underlie many state guidelines).

³¹³ *Guideline Review 2017* at 21.

payable by NCPs will likely somewhat decrease, and thus political factors could prevent action on the reviewing experts' recommendations.³¹⁴

Several example Guideline calculations under the current law appear in Table 2, to provide a sense of the range of situations regulated by the Guideline and how the CS amounts differ among them.

Table 2: Example California Guideline Base Child Support Amounts

Case	Parent 1* Annual Gross Income (\$)	Parent 1 Monthly Gross Income (\$)	Parent 2 Annual Gross Income (\$)	Parent 2 Monthly Gross Income (\$)	Parent 1 Percent Time with Child(ren)	Number of Joint Children	Base Monthly Child Support (\$)	In Swedish Kronor (SEK)
1	50,000	4,167	36,000	3,000	50%	1	96	834
2	50,000	4,167	36,000	3,000	0%	1	827	7,188
3	33,706	2,809	33,706	2,809	35%	2	250	2,173
4	50,000	4,167	36,000	3,000	50%	3	-3***	-26
5	50,000	4,167	36,000	3,000	50%	3	117	1,017
6	50,000	4,167	36,000	3,000	0%	3	1,654	14,377
7	200,000	16,667	200,000	16,667	20%	2	1,900	16,515
8	200,000	16,667	70,000	5,833	20%	2	2,511	21,826
9	100,000	8,333	36,000	3,000	50%	1	694	6,032
10	22,176	1,848*	22,176	1,848*	20%	1	245	2,130
11	22,176	1,848*	22,176	1,848*	0%	1	375	3,260
12	22,176	1,848*	22,176	1,848*	0%	3	751	6,528
13	22,176	1,848*	22,176	1,848*	50%	3	306**	2,660

*Parent 1 usually refers to the higher earner with less custodial time (the payor).

*CA minimum wage \$12.00 per hour (2019) for large companies, x 40 hours per week x 4.2 weeks per mo. Minimum wage for smaller companies is \$11.00 per hour. These rise to \$13 and \$12 in 2020. Median annual individual income in the US was \$33,706 (292,976 SEK) for 2018.

**Payable by whichever parent takes the three children as tax deductions.

***P2 takes children as tax dependents here, and in the box below P1 does instead.

Scenario 1, for example, calculates the California child support amount if a pair of parents has one child, the child lives 50% of her time with her father and 50% of

³¹⁴ Reviewing experts recognized this. *See Guideline Review 2017* at 39 (“We recognize, however, that a child support guideline is more than a numerical formula. It reflects policy decisions regarding multiple issues related to child-rearing expenditures and parental income, all of which have real-life consequences for families of every income level.”). *See also* Venohr (2013), *supra* note 75, at 327 (finding that many US states’ reviews are completed as required, yet actual adjustments to the states’ child support guideline formulas rarely follow).

her time with her mother. Here one parent earns \$50,000 per year (\$4,167 per month or 36,220 SEK) as a salaried employee while the other earns \$36,000 per year (\$3,000 per month or 26,076 SEK), also as a salaried employee. In that case the California Guideline sets base Guideline support at \$96 (834 SEK) per month, payable from higher earner to lower earner because the higher earner earns an excess of the couple's combined discretionary income available to support their child and has equal parenting time.³¹⁵

Scenario 2 provides the child support amount in the same situation except that the child lives 100% of her time with her CP, usually in both jurisdictions a mother and lower earner. The support would now be \$827 (7,188 SEK) per month, paid by the NCP to the CP and allowing the CP (in theory) to provide all of the NCP's and her own expected financial contributions to the child full-time in her home.

Scenarios 3 provides that both parents earn the current median individual income, but one has 35% parenting time while the other has 65%. They also have two mutual children. In this relatively equal situation with respect to both earning and parenting, California Guideline child support for the two children together is \$250 (or 2,173 SEK) per month. Per the calculator's results printout (at Appendix 1) parents or others can see that, when the older child "ages out" of needing child support, the one child left to be supported should receive \$191 (1,660 SEK) per month, assuming no changes have occurred to income, parenting schedule, the relevant tax laws or any of the (very many) other factors that can be entered into the calculator.

Scenarios 4 through 13 examine other situations, including alternating residence (50% time with the payor) and "typical" visitation (20% time with the payor) situations at high, middle and lower income levels.³¹⁶ The online calculator can be used to test other scenarios.

Scenarios 4 and 5 illustrate the differences to child support obligations that occur under California child support law based on which parent claims the children on his or her US tax declarations, to make a comparative observation. Here the parents have three children living 50% of the time with each of them, but somewhat-different, both middle-earner-level incomes. If the lower earner claims the children on her tax return, she will owe the other parent \$3 per month (26 SEK), whereas if the higher earner claims

³¹⁵ Calculated per California DCSS, *Payment Estimator (Guideline Calculator)*, <https://www.cse.ca.gov/ChildSupport/cse/guidelineCalculator> (and specifically <http://www.childsup.ca.gov/resources/calculatechildsupport.aspx> for 2019), attached as Appendix 1.

³¹⁶ See Venohr (2013), *supra* note 75, for a comparison of all US states' mandatory guideline child support amounts for various family scenarios. Unfortunately the scenarios studied did not include any cases involving near-50%-50% alternating custodial time, due to states' very different treatments of payor-with-significant-parenting-time cases.

them, he will pay \$117 (1,017 SEK) per month to the lower-income mother (to give the children while in her home a share of the *negative social benefit*, from tax savings).

This illustrates the *relatively hidden ways the Californian or US welfare state (through the national tax law, applicable in all US states) helps to support children, at virtually all-family income levels*. Tax reductions (and, in recent decades, tax credits) are targeted to parents, so long as they have earned *some* income from work. In alternating residence situations (and actually in all situations if the CP agrees to “release” the right to claim the children), *parents may choose which of them claims the children*.

The Guideline calculator, in combination with their draft tax return preparations, can show them how much extra money they together can retain from what otherwise would be their federal tax liability (CA-1, freedom from state interference). Thus state support to use on the children’s expenses can be maximized by allowing the “right” parent to make the claim. This is analogous in some ways to divisions in Sweden of the universal child benefit (*barnbidraget*) between two households. Tax rules for a given year may vary the amount of support for children the parents may retain (of “their earnings”, not a government “handout” but a tax reduction, in line with liberal WSM ideals).

Factors Affecting Guideline Base Amounts for a Given Child

The *age of a child does not affect Guideline child support amounts owed* in California, although age assumptions sometimes have been made when expenditures-on-children data have been studied by various researchers.³¹⁷ Neither do any *assets of the child*, absent extremely rare circumstances.³¹⁸ How many *other children the parents have to support* does have an effect,³¹⁹ as do many other factors including the sources of various incomes

³¹⁷ See, e.g., *Guideline Review 1993* at 163 (detailing how one estimator used ages 8 for one child, ages 8 and 10 for two children, and ages 4, 8 and 13 for three in a family, and comparing several estimators). Only a few US states adjust child support based on children’s ages. See, e.g., Venohr (2013), *supra* note 75, at 348.

³¹⁸ The law is that a child has the right to be raised financially by his or her parents absent extraordinary circumstances (such as a much wealthier child), as detailed at Chapter 3.4.1. In Swedish statutory law a child’s income is mentioned specifically as a consideration which can affect the appropriate child support amount, yet the rule (except to the extent that social benefits paid by the state are considered income) ends up similar to California’s: only very significant child investment or earned income will be used to support the child, lessening the parents’ duty, as set forth in Chapter 3.4.3.

³¹⁹ The formula calculates support for all children that a set of parents have together, and separately allows support amount adjustments for *other children* either or both parents support. See, e.g., CAL. FAM. CODE § 4071 (regulating availability of and ceilings for hardship deductions from Guideline-level base support due to the support needs of *other children residing with the payor parent in his current*

received by each parent and their tax reporting statuses (employed or self-employed and married filing jointly or single, for example, as can be noted at Appendix 1).³²⁰

Any *income of a new partner or spouse* that a parent may have, affecting their costs for self-support in an upward or downward direction, *may not be considered unless a child would be exceptionally harmed by failure to consider the income*,³²¹ so partners' incomes are not entered into the Guideline calculator. Current California law does not require a stepparent to meet the legal parents' primary support duty, absent extraordinary circumstances.³²² In practice, however, stepparents or new partners sharing an economic household with a parent and child in situations where the other parent lives elsewhere can greatly affect the child's need for child support from the NCP, and even from the CP.³²³

household) and *infra* Chapter 3.5.1 on parents' ability to pay for more discussion. Regarding age, the Guideline will set support for each child, and will allocate a higher amount of the monthly total for multiple children of one pair of parents to the *younger or youngest* sibling(s), but not because younger children cost more. It is instead so that, *when their older siblings age out of receiving child support, the amount in the existing order is already correct for the remaining, younger sibling or siblings*, since children in households with fewer minor children to support enjoy more per capita of the available parental income.

³²⁰ See also California DCSS, *Payment Estimator (Guideline Calculator)*, <https://www.cse.ca.gov/ChildSupport/cse/guidelineCalculator> and Chapter 3.5.1 on parental ability to pay. Appendix 1 includes both jurisdictions' online calculation tool for private law users, and both jurisdictions' public option (IV-D and UStöd) homepages for parents, as general reference supporting the comparison.

³²¹ CAL. FAM. CODE § 4057.5 (a).

³²² New mate income in California "shall not" be considered in fixing child support except in specified extraordinary circumstances. CAL. FAM. CODE § 4057.5 (a) & (b). See also CAL. FAM. CODE § 915(a) on child support debts of one spouse being treated as debt incurred before marriage, *even if* the support is ordered *during* the marriage, resulting in limited responsibility of each partner for the other's prior child support obligations. See Chapter 3.5.1 on stepparent income being relevant in certain circumstances.

³²³ Ira Mark Ellman & Sanford L. Braver, *Child Support and the Custodial Mother's Move or Remarriage: What Citizens Believe the Law Should Be*, 21 PSYCHOLOGY, PUBLIC POLICY AND LAW 145, 146 (2015) ("Consider stepparent support obligations, for example. Whether or not stepparents have a legal duty to support children living with them, they usually will. People sharing a household have too many joint consumption items to avoid it. *The stepparent contributing to his blended family's rent or electric bill is necessarily contributing to the cost of housing his stepchildren, and so on with other items, such as automobiles. Even for items that are in principle consumed separately, such as groceries, considerable vigilance would be needed to ensure a stepchild realized no benefit, and it is hard to imagine a marriage could survive the tension created by one spouse's aggressive efforts to avoid conferring any benefits on the other spouse's children. The situation is only more dramatic in the case of a wealthy stepparent who earns far more than either of the parents; his income may provide his new family, including his stepchildren, with a living standard far more comfortable than the child would have had if the original marriage had survived. At the other extreme, it is possible, of course, that a stepparent earns less than he costs—less than the marginal cost of adding him to the custodial household. In that less common case, the stepparent must rely on the income of the parent he married, consuming funds that might otherwise have gone toward his stepchildren's support.* So here, too, the presence of a stepparent has an *unavoidable* impact on the children's financial well-

A CP who chooses to work less or not at all (e.g. because her new partner's income enables her to do so) may or may not have income she reasonably could be earning imputed to her as well,³²⁴ depending on the reasonableness of her choice given her duty to support her children, as will be returned to in Chapter 4.5 (abilities to pay). If income is imputed, this phantom income would go into the Guideline calculator, in a sense representing a portion of the stepparent's salary considered useable by his partner for support of her legal children.

*Judges may permissibly order child support amounts that deviate from the support amount that the Guideline calculates, but they are limited to doing so only due to one of the factors listed by statute,*³²⁵ as has been confirmed by case law.³²⁶ Total support may also be more than base child support if the child has *special costs that need to be paid for, such as day care or uninsured medical costs*, but child support for those needs is considered “add-on,” not “base,” support.³²⁷

Regarding the base support amount and a parent's duty, the topics of this section, it is helpful to understand that *any orders deviating from the prescribed Guideline amount* of base child support, even for cases where the trial judge considered the Guideline amount “unjust or inappropriate,”³²⁸ must be made *only after the Guideline calculations have been done* and the data (income and timeshare information) upon which they were based recorded within the court records of the case.³²⁹ The court retains a good deal of discretion, in some circumstances, in balancing the statutory factors it is required to consider when making a child support award.³³⁰ For example in determining what income numbers to use in the Guideline calculations the court can choose whether or not to impute income to an allegedly underemployed parent. In sum, *the Guideline rules are the playing field, within the boundaries of which the court must operate* as it sets base (and add-on) child support.

being. *The point is that a rule instructing courts to ignore stepparent income, when setting child support levels, is in tension with social and economic realities.*”) (emphasis added).

³²⁴CAL. FAM. CODE § 4058(b).

³²⁵ CAL. FAM. CODE § 4057.5.

³²⁶ Marriage of Katzberg, 88 Cal. App. 4th 974 (2001). See Chapter ___ for discussion of these factors.

³²⁷ Calculations are discussed in the procedural chapter, Chapter 4, and “add-ons” are discussed in subsequent sections of this chapter.

³²⁸ Per CAL. FAM. CODE § 4057(b), this is a reason a judge can deviate from Guideline.

³²⁹ CAL. FAM. CODE § 4056(a).

³³⁰ Marriage of Wittgrove, 120 Cal. App. 4th 1317 (2004); see also *infra* Chapter 7.3 on the roles of judicial discretion in the systems compared.

3.3.2. *California Public Law's Relationship to Base Child Support Duty*

All child support orders in California are set pursuant to the mandatory Guideline, discussed above, but some cases are opened and litigated by a public agency representing the State of California, namely the local child support agency (herein “LCSA”) within each county pursuant to its duties to seek reimbursement for public assistance paid when the parents have unfulfilled child support obligations³³¹ and its duties to assist parents upon their request in setting and collecting on child support orders, even when public assistance benefits are not sought for the child.³³² These are the public child support cases (Title IV-D) cases, introduced earlier.³³³

There is *no difference* in the parental duty or the amount of child support that should be owing for a given child between the private and public sides of California’s child support system, since they are governed by the same substantive law. The differences are more procedural, and thus are largely addressed in Chapter 4. There is *arguably a difference* in the *interests served* by the public side of the system, because its side of the dual system serves a different population of children and parents than the private system. The most common reason that an LCSA is involved in a California child support case is because *the agency and the CP are legally required to work together* to pursue a child support order against the NCP *in connection with the child receiving public assistance*.³³⁴ The State of California, like all other US states, is legally obliged under federal law to pursue money for the support of minor children from the children’s parents’ private resources. After the State becomes involved in paying for the support of those children from public (part federal, part State) funds, a county-level LCSA *must* get involved to enforce the parents’ child support

³³¹ See CAL. FAM. CODE § 17400(a) (“The local child support agency shall take appropriate action, including criminal action in cooperation with the district attorneys, to establish, modify, and enforce child support and, if appropriate, enforce spousal support orders if the child is receiving public assistance, including Medi-Cal.”).

³³² See CAL. FAM. CODE § 17400(a) (“... and, if requested, shall take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.”)

³³³ This refers to Title IV-D of the Social Security Act of 1974, codified at 42 U.S.C. § 651 et seq., as defined within California law at CAL. FAM. CODE § 17000(l).

³³⁴ See CALIFORNIA WELFARE AND INSTITUTIONS CODE § 11477 (“As a condition of eligibility for [welfare assistance], each applicant or recipient shall do all of the following: . . . (b)(1) Cooperate with the county welfare department and local child support agency in establishing the paternity of a child of the applicant or recipient born out of wedlock with respect to whom aid is claimed, and in establishing, modifying, or enforcing a support order with respect to a child of the individual for whom aid is requested or obtained, unless the applicant or recipient qualifies for a good cause exception pursuant to § 11477.04 [on risk of violence and other harms and situations where pursuing child support orders would put the CP or child at risk].”) There is a somewhat similar requirement for recipients of UStöd. See *infra* Chapter 4.2.4.

obligations.³³⁵ Child support sought in Title-IV-D cases includes current and forthcoming child support,³³⁶ *but also amounts of money that a county seeks to have a NCP reimburse to it* for public assistance it has paid to a CP or another legal guardian of the child on behalf of a child.³³⁷

This section focuses on *parents' duty to support their children* and on the *amount of base child support* deemed appropriate pursuant to California public law. To summarize, the duty and the amount are regulated by the same statutes, regulations and case law promulgated under the California private law discussed above, *but the laws require state actors to serve (or at least to focus on) different populations* based on whether the child's household receives need-based public assistance.

There are also some additional procedural rules provided in public law so that child support owing under the private law can be administered and collected by the public child support agencies using all their child support collection tools, as addressed in Chapter 4 on the procedures and enforcement of these child support laws. Here it suffices to mention that although the child support *amount* that public child support agencies in California are tasked with securing is presumed to be the same amount required based on the relevant facts of any given case, *in practice* IV-D cases are administered differently, due to LCSAs' involvement. A greater percentage of IV-D child support court orders are entered by default,³³⁸ some of these without any response from the parent being ordered to pay support having been received, although the income evidence required to impute income today must meet a higher standard than it did under earlier law. More IV-D orders also are entered without *any* or with *less* custodial time allocated to the payor parent than is seen in private cases, even if these allocations may be inaccurate, as was mentioned in Chapter 1.2's introduction to the problem regulated.

California public- and private-law child support differences may be partly a result of an overburdened public agency system (although private family law courtrooms are also overburdened), and partly a result of differences between the families whose cases are resolved within the private versus public systems. The IV-D system was introduced to help increase child support receipt, especially for benefits recipients.

To the extent that differences result from biases or unequal treatment of different parents (or supported children), they are a legal problem for the system. There is also a challenge for legal certainty. Amounts of child support ordered under the same

³³⁵ See CAL. FAM. CODE § 17400(a).

³³⁶ CAL. FAM. CODE §§ 17400 (on LCSA responsibilities) and 17404 (on actions brought by an LCSA, their parties and their priority relationship to other actions).

³³⁷ CAL. FAM. CODE § 17402.

³³⁸ See *infra* Chapter 4.2.2.

substantive law for the same child could easily in practice end up differing based upon *whether the case was pursued as a private or public case*, and thus what facts were entered into the calculations during differing procedural progression of the case; whether the Guideline calculations and the child support litigation in general were *carried out with more or less attention to detail*; or whether *legal representation or assistance* for each (or either) of the parties involved was available.³³⁹

3.3.3. *Parents' Duty to Pay and Base Child Support in Swedish Private Law – Underhållsbidrag*

Today financial support for children in Sweden whose parents do not live together is governed, as introduced previously, by two parallel systems of law, one private and one public.³⁴⁰ The subject of this section is the Swedish private-law *duty itself* and the base or main portion of a monthly UB payment fulfilling that duty.³⁴¹

The Swedish Legal Duty to Support one's Children

Under Sweden's private family law, enacted within the Swedish Parents Code or *föräldrabalken* (herein the "FB"), parents have a legal duty financially to support their child to *an extent that is reasonable considering the child's needs and the parents' combined economic abilities*.³⁴² The parents' duty to support their child expires when the child turns 18, unless he or she is still in elementary/middle (primary) school or high (upper secondary) school, or a similar educational program below the university level. The extended duty then expires when the education is completed or the young

³³⁹ See *infra* Chapter 7.5 (comparative discussion with respect to WSM-related family income level differences as a cause of the legal differences found).

³⁴⁰ The newer, public system was introduced to protect children by guaranteeing that they will receive child support, even if they have a NCP who cannot be found or who does not pay support in a timely manner or in full via the private (UB) system, as has been explained. Such child support guarantees are common in Europe. The *relationship* between these separated public and traditional private law child support systems in Sweden's case has been repeatedly identified in Sweden's governmental research and by its academics as problematic, as also was introduced *supra* Chapter 1. See SOU 2011:51 at 27 ("The investigation reveals that there are several problems associated with the existence of two parallel systems to regulate support for the child."); see also Eva Ryrstedt, *Familjerätt och socialrätt i samverkan* [Family law and social law in collaboration], 3 JURIDISK TIDSKRIFT VID STOCKHOLMS UNIVERSITET 574 (2002).

³⁴¹ The public UStöd system's implications for the parental duty set forth in the FB and the base amounts of UStöd paid out to children when UStöd is used are detailed in the next section.

³⁴² FB 7:1 para. 1 ("Föräldrarna skall svara för underhåll åt barnet efter vad som är skäligt med hänsyn till barnets behov och föräldrarnas samlade ekonomiska förmåga.") (emphasis added).

person reaches age 21, whichever comes first.³⁴³ Any duty to support an incapacitated adult child, along with a duty for adult children to support an incapacitated parent, was removed from the law in 1979.³⁴⁴

Parents who have the duty include legal parents (both biological and adoptive parents). A *stepparent can also have a child support duty* under Swedish private law.³⁴⁵ A stepparent is defined as a person who lives with the supported child and one of the child's parents and who is married to or has a biological child with that parent,³⁴⁶ thus nonmarital partner stepparents do not have this duty to their partner's children from a previous relationship, unless there also is at least one shared, biological child. The stepparent's duty is, where it exists, *subsidiary* to the parents' duty, in that it does not apply to the extent that the child can obtain UB from the NCP, payor parent under the private law.³⁴⁷ That determination hinges on the amount of support calculated as needed by the child but also on the housing and other expenses of the payor parent,³⁴⁸ as discussed below in the section on determining parents' abilities to pay. The *public child support law also intervenes here under current law*, rendering these

³⁴³ FB 7:1 para. 2.

³⁴⁴ Prop. 1978/79:12 at 2 (simultaneously limiting the duty of *spousal support* to a transition period, allowing it for a longer time only if special circumstances exist, yet also confirming it not automatically to end upon the payee's remarriage). Consequently, if Swedish parents enter into contracts to provide for an adult sick child, these agreements are no longer considered Swedish private family law support agreements, subject to certain special rules of enforcement. See Chapter 4.2.3, *infra*, on parental agreements setting UB amounts.

³⁴⁵ FB 7:5 ("Den som varaktigt bor tillsammans med annans barn och med föräldern som har vårdnaden om barnet är underhållsskyldig mot barnet, om han eller hon är gift med föräldern eller har eget barn tillsammans med föräldern."). Swedish law generally respects nonmarital cohabitant partnerships and rarely makes distinctions between married and "*sambo*" couples' legal statuses, except as is directly provided in the Swedish Cohabitation Act or the Swedish Marriage Code. *Sambo* (literally, "living together") relationships involve equal property division rights upon separation that are limited to the shared dwelling and household goods, for example. See The Swedish Cohabitation Act (*Sambolagen*), Lag 2003:376. Law, especially older law, still requires in some circumstances, as here, that the *sambo* relationship has a more traditional-marriage-like level of commitment for the same rights and duties to apply. Here, a *sambo* couple must have at least one joint child, *otherwise* the law will *not* impose child support duties, e.g. the nonparent cohabitant living with his *sambo*'s child will *not* be liable to support the stepchild if the parents fail to do so. There is an element of treating all of the household's children equally in this difference, when there is a joint child as well as a stepchild living with the *sambos*.

³⁴⁶ *Id.*

³⁴⁷ FB 7:5 para. 2 ("Underhållsskyldigheten bestäms på samma sätt som för förälder enligt 1 § men gäller ej till den del barnet kan få underhåll från den förälder som den underhållsskyldige ej bor tillsammans med.")

³⁴⁸ See FB 7:3.

aspects of the private law somewhat outdated because a child's basic needs for support would need to be inadequately met by the parents *even after* the UStöd public child support is received.³⁴⁹ In practice, then, the duty to pay child support rests *firstly* with the parents, *secondly* with the state up to its UStöd-guaranteed (basic needs) level, and *only thirdly* with a stepparent (also only to a basic-needs level, which has already been met by UStöd). Accordingly, since UStöd law began to guarantee unpaid NCP child support in this way, *very few (if any) stepparents have ever been assigned a support duty towards a stepchild*, although, as in California, in practice they share a home and almost universally play a role in providing part of the child's living standard.

Satisfaction of the Duty – Residing with a Child or Paying UB

The Swedish child support duty is generally considered satisfied by the day-to-day expenditures of any parent “permanently residing” with the child,³⁵⁰ thus *private child support amounts are owed only by parents with less than approximately 40% parenting time*, and generally are *not* paid in cases where the child spends close to 50% time with each parent, regardless of any income disparity between the parents.³⁵¹ Swedish private law on *whether a child is owed a UB (a payment), or instead is considered to have been supported from a parent via living with them* is based, as a main rule, upon FB 7:2 and case law interpreting it.³⁵²

The main case for many years has been NJA 1998 p. 267 in which the Swedish Supreme Court described the *factors a court should consider to decide if a child “actually lives with” a parent* for UB child support purposes, thus the parent does not owe a support payment, *or whether they have visitation together, although a larger amount*, in which case a

³⁴⁹ SINGER (2019), *supra* note 57, at 206.

³⁵⁰ This follows from FB 7:2, which requires a parent to fulfill the duty via payment of a child support amount to the child, whether or not the parent shares in the legal custody of the child, only if the parent does not “live permanently” with the child. Regarding the references to legal custody in FB 7:2 para. 1, they came into the text with the 1978 reforms to the FB. Prior to that only parents *without* a share in the legal custody of the child were liable to pay support, regardless of whether the parent spent time with the child. It is arguably unnecessary language today.

³⁵¹ See cases NJA 1998 p. 267 (allowing child support where a parent had slightly over 35% time) and RH 1993:64 (denying child support where a parent had 5 overnights instead of 7, every two-week period and shared summers etc.; also holding that with a child in preschool overnights is the proper measure of which parent has the child for a given day).

³⁵² SINGER (2017), *supra* note 55, at 149 (summarizing the case law rule to be that if a child spends slightly less than 40% of the time with one parent it is *växelvis boende* thus a UB can be ordered only per FB 7:6, but less time than nearly 40% with a parent is considered *utridgat umgänge* or “extended visitation” thus UB can be ordered per FB 7:2).

support payment (albeit of reduced amount) may be owed.³⁵³ In NJA 1998 p. 267 a *father still was required to pay a child support, reduced in amount, although the children lived with him somewhat over one-third of the time*, given that the *mother had sole legal custody and had the children a “significantly greater” proportion of their time*. He was considered to have visitation, not alternating residence,³⁵⁴ even though he had incurred childcare, clothing, food and higher-than-reasonable housing costs for them due to staying in the former marital residence (on which more was owed than its value).

The Court referred to preparatory works, prior case law and soft-law recommendations on where to draw the line between “visitation” and “living permanently with” a child via alternating, approximately-equal time with each parent. The Court held that *at approximately one-third of the time with the lower-time parent*, these determinations should be made *not only from the timeshare percentage but also via examination of various relevant circumstances*.³⁵⁵ Circumstances such as where the child has his or her official address, where he or she keeps belongings, what the time schedule looks like *and* how the parents have divided up financial responsibilities for the child should be considered in these almost-equal-time cases.³⁵⁶

A recent exception to this rule that no child support will be paid if children are living 50% of the time with each parent arose in 2013, via another Swedish Supreme Court case, NJA 2013 p. 955. In this case the Court held that *when a child lives alternatingly* with both of two parents, a support duty *can* exist for the parent who has

³⁵³ See NJA 1998 p. 267 at 273–274.

³⁵⁴ Might the Court have concluded that this was the *type of case* where a child support ought still to be available to a higher-time CP, thus although *not actively wishing to strip the father of recognition as a parent who “lives with” his children* found it necessary to do so, in order to allow payment of a child support under the statute as it is worded?

³⁵⁵ In California this would be called consideration of “the totality of the circumstances,” and these multifactor weighings are also used in certain child custody related determinations.

³⁵⁶ NJA 1998 p. 267 at 273–274 (deciding contrary to a *rapporteur’s* recommendations that the duty to pay should remain on these facts, explaining that “[c]learly it normally is a question of visitation, and not of actually living with the child, when a child is in one parent’s home only a third of the time. Even if the timeshare difference is smaller, the result often should be the same, unless there are factors clearly pointing in another direction. This applies especially strongly when the child the majority of the time is with a parent who is a sole legal custodian and therefore has the entire responsibility for the child’s personal circumstances.”) The case’s reasoning demonstrates how the private law child support duty in Sweden is still a *joint duty* (with a parent owing in theory up to 100% of a child’s support if the other parent cannot pay any support), which is also true in California. The Swedish FB-based duty is not a *purely individual* one (with each parent responsible for 50% of a child’s support, if they can afford it, regardless of the other parent’s circumstances). UStöd’s availability to all CPs *and* practice in many UB situations seems however to make the duty more one of 50% responsibility, as is discussed further below regarding the *standardtillägg* (living standard addition) to UB amounts, and at Chapter 6.3.4.

a larger economic ability to provide support, *if* the child does not *in fact* have the possibility of getting 50% of the (basic-needs-level) support he or she has a right to, pursuant to FB 7:1, from the lower-income parent.³⁵⁷

Under the facts of this case, *the less-financially-able mother's income available to support the parents' three children was clearly well below the amount calculated as required to meet 50% the children's basic needs*. She could therefore not meet their basic needs during her 50% time with them, while the higher-income father, per the income and living circumstances evidence available, could do so by paying UB to assure that their basic needs were in fact met during their time with their mother.³⁵⁸

The Court imposed a support duty on the father who, although supporting his children and permanently living with them half-time, *did not assure that their needs for support were met during the half of their time when they instead lived with their mother*. The Court found the duty to pay support under these rather extreme facts arising not from FB 7:2, the usual source of the duty to pay a UB, but rather from FB 7:6, which allows child support orders to be made payable by (1) someone who has neglected to fulfill their support duty to a child but (2) who is *not* someone with a duty to pay pursuant

³⁵⁷ NJA 2013 p. 955. The Supreme Court pointed out that “the child’s needs can vary based on a number of [*child-based*] factors such as age, health, giftedness or talents [*begåvning*] and interests, but also based on *external factors* such as the parents’ general circumstances and conditions [*allmänna ställning och villkor*]” and added that “[i]t is nevertheless the parents’ economic circumstances that ultimately decide the limits of their support duty.” See *id.* (citing Prop. 1978/79:12 at 153 et seq. and 400 et seq.). One Swedish Supreme Court justice dissented from the majority opinion by the other three on the panel, noting that it could be discussed whether FB 7:2 should be interpreted by analogy, despite preparatory works indicating such use was not intended for this situation; 7:6 should be broadly interpreted although it was meant for another situation; or if indeed any additional statutory support beyond 7:1 para. 1 at its first sentence was needed to reach the result reached.)

³⁵⁸ Such large income differences are relatively rare between parents in both Sweden and California, but they are likely more rare in Sweden. Regarding California payor (obligor) versus payee (obligee) relative incomes see *Guideline Review 2017* at 263 (“*In all case categories, the average obligor income was greater than obligee income*. Overall, obligees earned 86 percent of the obligor’s median net income. The average income differences between obligors and obligees was greatest among non-IV-D [private-law] cases, where obligees’ median net income was only 56 percent of obligors’ median [net] income. This is contrasted by obligees earning 80 percent of the median net income of obligors in IV-D [public-law] cases.”) (emphasis added). (Note that because medians vary when IV-D and non-IV-D cases are considered separately and together, an overall median for payees’ net monthly income that is 86% of the same number for payors overall is consistent with both IV-D and non-IV-D subgroups having less equal incomes, 80% and 56% respectively. *Very-high-income earner-payors are part of the non-IV-D group. The IV-D group is majority very-low-income for both payors and payees.*)

to FB 7:2. *The Court therefore confirmed FB 7:6 as an additional legal basis for a legal duty to pay child support (up to a basic-needs level).*³⁵⁹

Following NJA 2013 p. 955, it seems clear that the Swedish private-law parental support duty does not lose all legal force to protect children's rights to basic-level support from a more financially well-situated parent because they live equal time with each of their parents in separate households. Statutory changes must be made, however, if these children are to receive reasonable support consistently from their higher-income parents.³⁶⁰ Some changes in how parents are encouraged to proceed with negotiations of support if they both have significant parenting time have however subsequently occurred,³⁶¹ in line with Swedish law's focus on private ordering of child support (analyzed most fully at Chapter 7.3 on legal system tradition differences).

Considerations Legally Required to Decide a UB Support Amount

In deciding the amount of UB to be paid pursuant to Sweden's private family law child support duty, the parties, or the court (in the rare instances one becomes involved in a child support matter)³⁶² are directed to *consider the child's own income*,

³⁵⁹ FB 7:6 (paraphrased in the translation). Whether this reasoning will extend to child support being paid in many more shared care (alternating residence) cases in Sweden remains to be seen. Some commentators have called for statutory changes clarifying the law. Others have argued that the duty is clear in the law as written and support in cases of alternating residence should be ordered or agreed to more frequently.

³⁶⁰ Discussions in Chapters 6 and 7, *infra*, compare child support in alternating-residence situations and discuss further this developing area of Swedish law.

³⁶¹ See, e.g., FK's website at https://www.forsakringskassan.se/privatpers/foralder/for_foraldrar_som_inte_lever_ihop/barnet_bor_vaxelvis_hos_bada_faraldrarna/underhallsbidrag (now advising parents whose children have alternating residence that a UB might still be appropriate in cases of large income differences between the parents and advises parents to contact them to discuss the issue). But see FK's online UB calculator, available at https://www.forsakringskassan.se/privatpers/foralder/for_foraldrar_som_inte_lever_ihop/berakna-underhallsbidrag#/ (advising parents that the calculator is functional only for cases where the children live with one parent; otherwise parents are advised to schedule a web meeting for help) and Appendix 1 (providing a copy of both Swedish and Californian online calculators for general reference on how these laws are implemented and presented to their users).

³⁶² Procedural issues for setting, modifying and enforcing child support amounts are considered in the next chapter.

property, and social benefits already received from the state to support the upbringing of the child.³⁶³

Those determining an appropriate child support amount *must also consider the parents' specific economic circumstances*, as preparatory work explains is the statutory law's meaning, because a *child's total need* should be determined in reference to *the socioeconomic level the child's parent or parents can provide*.³⁶⁴ For the costs of the child's support the parents shall between themselves take part, each according to his or her financial ability.³⁶⁵ Thus Sweden's UB law also follows a model that *sets child support to a different level if parents can afford to pay more*. It also *allocates the child support duty between the parents in proportion to their income*, as does California as discussed above, rather than for example setting child support as a percent of the payor's income.³⁶⁶ Under the private law an appropriate, base amount for one parent not permanently living with the child to pay to the other can thus be calculated, to which the add-ons and *standardtillägg* discussed below can be added.

An appropriate amount of monthly base child support under the Swedish private law thus by law depends on an *individualized assessment* of a given child's needs. As discussed in more detail below at Chapter 3.4.2, needs for UB purposes are calculated (most often by the parents in private consultation with each other) in whatever manner they see fit, but *usually from guidance in the form of data on the typical actual costs of raising a child* of that age and gender.³⁶⁷ There are several methods used

³⁶³ FB 7:1 lists the child's own income, property and social benefits as factors that must be considered when deciding a child support amount. More detail on how the child's needs for UB are determined follows in Chapter 3.4, *infra*.

³⁶⁴ Prop. 1978/79:12 at 105 (providing that the child's total support needs *cannot be seen as freestanding from the parents' economic circumstances*, and specifically that a child can, *on a sliding scale, claim a higher living standard the better situated the parents are financially*). This legal provision is key to understanding one similarity between the child support laws of California and Sweden, in that they both, at least on the private side of the law, *explicitly aim to redistribute more private financial resources from parents to children in cases where the parents can afford it*. See the child's needs section, *infra* Chapter 3.4.2, *infra*, for discussion of this conception of "need" in Swedish law as interpreted by courts.

³⁶⁵ FB 7:1 para. 3 ("I kostnaderna för barnets underhåll skall föräldrarna sinsemellan ta del var och en efter sin förmåga.") The parents' abilities to pay are taken up *infra* Chapter 3.5.2.

³⁶⁶ However this idea, that the higher-earner parent should pay a greater portion of the child's expenses, is in practice not legally enforced in the large majority of Swedish alternating-residence cases. Still, Swedish law requires that parents each contribute to the extent they each are able given their incomes, to the amount of parental financial support their child needs, as does California law.

³⁶⁷ See FK, *Beräkna underhållsbidrag och skapa avtalsunderlag* [Calculate child support and record the information necessary to reach a signed agreement], available at https://www.forsakringskassan.se/privatpers/foralder/for_foraldrar_som_inte_lever_ihop/berakna-underhallsbidrag#/ (also included at Appendix 1). From that FK webpage providing a UB calculator parents are referred to Konsumentverket's public data on the costs of a reasonable living standard (*en rimlig levnadsnivå*),

today in various sections of Swedish law to determine reasonable monthly costs for children, detailed at Chapter 3.4.2.3.

Recent family-law preparatory works explicitly choose the Konsumentverket's measures of reasonable living costs, which vary by age and gender of the child and are already used in FB's UB online calculator, as the best basis from which to set UStöd amounts.³⁶⁸ The soft-law guidance available from Konsumentverket and Försäkringskassan³⁶⁹ provides that an average boy or girl at various ages will have costs totaling between 2,140 SEK–5,070 SEK (\$246–\$583) per month,³⁷⁰ therefore the Swedish “child’s needs” basis for setting base UB can be said generally to be approximately that amount, minus a child’s social benefits that cover a portion of the needs. These total costs will then be apportioned between the parents, resulting in the base child support amount from the NCP.

As an example, if two parents with one child are attempting to determine an appropriate base amount of UB to be paid for a 17-year-old girl, the calculator suggests that the total monthly cost of raising the child, based on her age and gender, is likely approximately 4,110 SEK (approximately \$473), or 3,069 SEK per month (approximately \$353) after the child’s social benefit of 1,250 SEK (\$144) that she receives per month in full-time high school student study support from the state is subtracted. Of that total, 1,820 SEK (\$209) is for all food, outside of lunches which are provided free by Swedish schools. The other typical costs included, suggested according to the results of governmental consumer research on average childrearing costs in Sweden,³⁷¹ are free-time, recreational costs like books, ice skates, a bicycle and activity fees (760 SEK or \$87), clothes and shoes for every day plus for recreation and parties (700 SEK or \$81), hygiene products including for example

published online. Chapter 4.2.3, *infra*, further describes legal procedural rules and practices for setting a UB.

³⁶⁸ See Prop. 2016/17:216, *Aldersdifferentierat underhållsstöd och höjt grundavdrag för bidragsskyldiga föräldrar* [*Age-differentiated UStöd and increased basic deduction for parents who are liable to pay contributions*] at 14.

³⁶⁹ The government acknowledges, however, that different measures of the costs of raising a child are used for different purposes within the law today, and lists a number of them, for example within Prop. 2012/13:189, *Förstärkta samarbetssamtal* [*Reinforced cooperation talks*] at 14 (proposing expansion of municipality-provided custody and visitation informal mediations to include discussions of child support and suggesting that any of these would be acceptable bases for an agreement). What a court would most likely use if the parents could not reach agreement is not mentioned, again evidencing the more private nature of proper UB amounts in Sweden, not monitored by the state in private cases to the extent that they are in California.

³⁷⁰ Prop. 2016/17:216 at 15 (“The basic needs’ amount varies significantly depending on the child’s age from 2,140 SEK [\$246] per month for the smallest [sic] children to 5,070 SEK [\$583] for the oldest.”).

³⁷¹ See Chapter 3.4.3’s discussion of needs estimators in the UStöd context, *infra*.

toothpaste, soap and haircuts (370 SEK or \$43), mobile telephone with service (280 SEK or \$32) and supplemental sick and accident insurance (180 SEK or \$21).³⁷²

Per his duty to pay a UB, the NCP will pay his portion of these costs as child support, in proportion to his share of the total parental income available for support. Costs such as a higher housing cost the CP most likely must cover so that the child can have a bedroom are not listed here,³⁷³ and *what portion parents if living together would have spent of their discretionary income in excess of what a couple without a child would spend is not mentioned*, in contrast with Guideline support in California. (Although Sweden can be said to share with California a two-parent-household norm legislation does not express preference for children's family type in that manner). Instead the *Swedish law's focus in defining the child support obligation is on the actual monthly costs most directly attributable to a typical middle-class child*, while also emphasizing that this should be individualized based on a child's individual circumstances, including wealthier parents.

3.3.4. Base Child Support in Swedish Public Law – Underhållsstöd

The above-described scheme of Swedish private child support regulated within the FB co-exists alongside the UStöd public child support guarantee previously introduced. UStöd is regulated within the Swedish Social Insurance Code (*Socialförsäkringsbalken*, herein "SFB").³⁷⁴ From a comparative child support systems perspective UStöd creates a *guaranteed child support (or child maintenance) scheme*³⁷⁵ in Sweden, although in Sweden itself the public child support benefit it advances is

³⁷² Note that prices may differ between California and Sweden, and similar- or even higher-quality goods and services may cost less in one place or the other (even aside from currency fluctuations). Therefore a lower price for, e.g., mobile phones in Sweden should not be read to imply a lower quality, just as a higher US price should not be read to imply a higher quality. These costs are listed for description of the categories of items contemplated by lawmakers for child-support purposes, not for micro-level comparison of the costs.

³⁷³ Housing costs for the child and CP together usually are included, instead, in the CP's self-support reserve. See *infra* Chapter 3.5.2 (parental abilities to pay under UB law).

³⁷⁴ See SFB 17:1 (describing the contents of the SFB's Chapters 17 providing definitions, 18 regulating the benefit's parameters, and 19 regulating the payor's repayment obligation to the state).

³⁷⁵ Skinner & Davidson (2009), *supra* note 18, at 46 (finding a pattern of guaranteed child support schemes being common, nearly ubiquitous, in European countries and absent in all Anglophone ones). See also WIKLEY (2006), *supra* note 52, at 491–493 (on the history of proposals for and the potential of a guaranteed maintenance scheme for the UK).

sometimes discussed and analyzed quite separately from the private child support duty to which it is tied.³⁷⁶

UStöd separateness is understandable because, unlike its predecessor the child-support advance, *UStöd was meant to be a broader state support for various types of children living with only one parent*, not just for those with a living parent who could be collected against to contribute child support.³⁷⁷ Children whose other parent has died, so long as they are not eligible to receive another support (such as Sweden's child pension, *barnpension*) to replace that parent's support, are eligible for UStöd.³⁷⁸ Also, since 2016 single Swedish women may pursue having a biological child via insemination within the Swedish health system with donor sperm, something previously limited to women with a partner. Children born in this way have one, not two, legal parents, and are another example of children who may receive UStöd without the investigations with respect to a second parent otherwise conducted in connection with an application for UStöd, to decide an NCP repayment obligation.³⁷⁹

The amount of support to which a child is entitled under the UStöd system is relatively simple to describe, if one sets aside for a moment the private system's parallel existence. UStöd law as of 2019 sets the benefit amount at 1,573 SEK (approximately \$181) per month for any child living with only one parent who has not yet reached 11 years old; 1,773 SEK (\$204) for one aged 11–14, and 2,073 SEK (\$238) for one aged 15 to 18.³⁸⁰ As discussed in the child's needs section below, Swedish private law's UB calculation has always been individually-tailored to each child; the public guarantee is not, although the introduction of these three age

³⁷⁶ As one example, recent preparatory works *attempt to steer away from calling payor parents' contributions to the state "repayments"* of the benefit. See Prop. 2008/09:200, *Socialförsäkringsbalk* [Swedish Social Insurance Code], at 426 (explaining the legislative intent behind SFB Ch. 19's use of the term "payment obligation," despite previous use of the term "repayment obligation," given *inter alia* weakening connections between the private UB and the public UStöd systems).

³⁷⁷ See Prop. 1995/96:208, *Underhållsstöd till barn till särlevande föräldrar, m.m.* [UStöd to children with separated parents, etc.] at 38.

³⁷⁸ See Prop. 1995/96:208 at 38 and SFB 18:11.

³⁷⁹ Prop. 2014/15:127, *Assisterad befruktning för ensamstående kvinnor* [Assisted fertilization for single women] at 20 describes Swedish law relieving FK of its duties to investigate parentage in these cases, first permitted in 2016. See also FK 2001:9, *Vägledning: Underhållsstöd [UStöd]* 33 (Version 13, decided 2018-09-24) (confirming that such children do have a right to UStöd, citing Prop. 2014/15:127 at 20).

³⁸⁰ SFB 18:20. The age-differentiated, higher amounts for older children became effective in 2018. See Prop. 2016/17:216 (proposing an age differential to better cover the needs of children at different ages).

categories moves in that direction.³⁸¹ UStöd's higher amounts begin to be paid by FK to the child's parents from the month containing his or her applicable birthday through the month containing his or her 18th birthday, or through further months until the child graduates from secondary education (high school or its equivalent), so long as the child continues studying full-time at that level, or at the end of June in the year the child reaches age 20.³⁸²

UStöd is payable to any child whose parents do not live together, so long as the child lives with one of them, that parent has legal custody and lives in Sweden, and no private child support or its equivalent is received from the other parent (if any).³⁸³ Children living with a legal guardian can also have a right to UStöd, as can adult children 18–20 who are still studying at the high school level, as mentioned above, although they must remain unmarried to qualify.³⁸⁴

One exception to the child's right to UStöd applies if the child's mother is the CP and she "obviously without valid reason"³⁸⁵ refuses to cooperate with state efforts to establish the legal parentage of the child's second parent (usually paternity). The UStöd law requires that a CP neither refuse to cooperate with establishing parentage³⁸⁶ nor refuse to cooperate with the setting of a UB amount if one is needed

³⁸¹ California, in its turn, also individuates child support amounts, by both parental incomes and a child's individual special needs, but does not directly consider age or gender in so doing. It may be that support increases as a child becomes a teen, keeping pace with a payor parent's income if it increases over time (and the support order is modified). It could also however decrease, if the lower-income, payee parent earns more money for example, or if the payor parent's income declines or his ability to pay declines due to for example the birth of additional children with a new partner.

³⁸² SFB 18:14. According to the private law, FB 7:1, the same parents' UB child support duty continues until the child who is still in secondary education turns 21, not 20. Separate child support legal reform processes occur on each side of the private-public divide; consistency and fairness are thus often compromised.

³⁸³ See SFB 18:2–18:4 and 18:9.

³⁸⁴ See SFB 18:6–18:7.

³⁸⁵ SFB 18:8.

³⁸⁶ See SFB 18:8. *But compare* RÅ 2002 ref. 3 (interpreting this statutory provision and holding that a mother who had a child after *anonymous artificial insemination* in Denmark was entitled to UStöd for that child). UStöd is available for children born by artificial insemination using donated sperm in Sweden to single mothers. There is a new investigation ongoing which may modify UStöd rules, however, perhaps narrowing its current application to more clearly define it as an insurance for when legal parent NCPs do not pay UB as they should; see Dir. 2018:97 at 19 ("It should be investigated if UStöd should be paid to children that have been the subject of single-parent adoption and to children born through assisted fertilization of a single woman or if such support should be income-tested." Report to be delivered by 1 October 2020).

so that FK will have a legal basis through which to collect from an NCP who lives abroad.³⁸⁷

Another exception avoids UB child supports being set unreasonably low by parental agreement in order to qualify the child for a “topping up” to the UStöd level, paid by the state. In Proposition 2004/05:116 the government (*regeringen*) proposed the rule, today expressed in SFB 18:23, that UStöd will *not* be paid out to bring up to the full UStöd level a UB amount set “clearly or obviously below what the duty-owing person should pay” (“*uppenbart understiger vad den bidragskyldige bör betala*”), if this state of affairs can fairly be held against the CP.³⁸⁸

Lawmakers sought, however, to *limit the risk that a child could lose rights* to CS because of the parents’ suspected misuse of the system, given that getting the amount modified or re-tried in court can be difficult or impossible.³⁸⁹ The Proposition (preparatory works to the law) set forth a test for what amount “clearly” falls below a reasonable amount: Försäkringskassan must first estimate what the UB child support amount under the private family law rules should likely be, and then see if the parentally-set amount falls at least 1/3 below that estimate. Parents generally are expected to be honest and appreciative of, not abusive of, Sweden’s social supports, and rampant abuse has not reported in the materials studied.

If UStöd is paid out to a child, it becomes the *NCP’s legal duty to repay as much of the support paid out as he or she is considered able to repay*; it is the FK agency’s duty promptly to calculate that repayment amount.³⁹⁰ The collection efforts will collect the amount of the benefit previously paid to the child’s CP in full, in part, or not at all, depending on the debtor parent’s financial abilities to pay.³⁹¹ Thus the benefit remains in a sense an *advance* (*förskott*) of child support owed per the duty set by FB, whether an order or agreement for an UB amount has been set. In that way it guarantees that a child will receive child support on time, although from the state and in the amount set by UStöd law. A repayment is then collected by the state from

³⁸⁷ SFB 18:10. SFB 19:30 provides that FK can require a CP to bring or cooperate with a private child support case if a private UB has not yet been set, or to provide an enforceable UB order for FK to enforce. The rule applies when the payor lives abroad or receives his income from abroad, not in all cases.

³⁸⁸ Prop. 2004/05:116, *Ett reformerat underhållsstöd [A reformed UStöd]* at 68; see also LARS-GÖRAN HESSMARK ET AL., SOCIALFÖRSÄKRINGSBALKEN [THE SWEDISH SOCIAL INSURANCE CODE] (Zetec 2019-06-27) [hereinafter “Commentated SFB”] at comments to SFB 18:23.

³⁸⁹ Prop. 2004/05:116 at 68, referring to FB 7:10 on modification of child support judgments or agreements in case of changes of circumstances.

³⁹⁰ See SFB 19:2–19:3. See also SFB 19:49 (“Försäkringskassan shall without delay take measures to collect what is owed, if the debtor does not satisfy his or her duty to pay.”).

³⁹¹ See Chapter 3.5.3 which details the law on NCPs’ abilities to pay under Swedish UStöd law.

the NCP. If the NCP cannot afford to repay the full amount, the UStöd functions *also*, partially or fully, as a *non-repayable social benefit* (an *utfyllningsbidrag*, literally a “filling-out contribution”).

The Swedish state in 2014 paid out this support to about 220,000 children, in the total amount of approximately 3.2 billion SEK (over \$368 million). In the same year it collected approximately 1.2 billion SEK (over \$138 million) from payor parents.³⁹² This gap could be seen as indicative of the societal need for the benefit, in terms of *the amount of “child support” children would not receive if this advance/benefit was not in place*. Understanding that to mean support not paid due to “deadbeat parents” not paying support as they should despite a legal duty to do so would oversimplify reality, however. *The dual functions of this benefit complicate such analysis*. Some UStöd is *meant* to be paid out to children *without* NCPs, and to those with NCPs who truly cannot afford to provide child support in a sufficient amount. (The second category, where a “filling out” amount is paid instead of full UStöd or the then-existing UStöd for alternating residence, represented however only 2% of the cases in 2010, according to SOU 2011:51.)³⁹³

UStöd is regulated within Sweden’s public law as a social benefit paid to a single parent living with a child qualifying for the support, *specifically because* no UB child support is being timely received from an NCP as regulated within the private family law. It is enforced in cases of nonpayment within the administrative courts and by the public debt collection agency, as described below at Chapter 4.4.2 on collections of unpaid child support (enforcement) under Swedish law.

Per UStöd reforms first effective in 2016, parents are now somewhat more incentivized to use the UStöd guarantee only if necessary, not for convenience, and to try again to set a UB via agreement with the other parent periodically. Now, *if the NCP pays timely and in full his or her repayment obligation to FK for six months, the child’s right to UStöd ends, except* if special circumstances (*särskilda skäl*) exist for FK to continue to pay the benefit and to collect repayment from the payor (rather than to stop paying it so that the parents can then pay and receive child support directly between themselves).³⁹⁴ “Special circumstances” amounting to good enough cause that UStöd will still be available is to be defined further by courts as they apply the law,

³⁹² See ISF Report 2015:3, *Kvalitet i underhållsstöd—en granskning av försäkringskassans handläggning [Quality in UStöd—A Review of its Administration by FK]*.

³⁹³ See SOU 2011:51 at 385.

³⁹⁴ See SFB 18:9 a (as updated effective 1 April 2016).

lawmakers indicated within preparatory works proposing this new rule,³⁹⁵ and the current state of the law will be discussed below.

During the six-month period, according to the preparatory works, FK “*should have had a dialogue with the parents* about the fact that child support *can* be regulated outside of the UStöd system and that information and support are available regarding UB, the private child support.”³⁹⁶ The decision that UStöd for a given child is appropriate is in all cases made by the FK agency, upon the CP’s application on behalf of the child, after which the benefit is paid monthly by FK to the CP. The “six-month rule” adding a time limit for use of UStöd in cases seeming to involve parents reasonably able to cooperate is relatively new, therefore its effects in practice on the interactions of the Swedish child support dual system are not yet fully known.³⁹⁷

There is a second new UStöd law provision that allows *payment of UStöd to begin no earlier than one month after the parents move apart from each other*, rather than immediately.³⁹⁸ This change also is intended to increase parents’ incentives to learn about the UB system and to negotiate between themselves a private law UB amount *instead* of deciding they cannot agree and applying for UStöd, if they can do so. This delay incentive and the “six-month” rule both became effective for the first time on April 1, 2016.³⁹⁹

³⁹⁵ See Prop. 2014/15:145, *Ökad reglering av barns underhåll utanför underhållsstödet* [Increased regulation of children’s support outside the UStöd benefit] at 35 and 60 (also mentioning examples of good cause such as a threatening, potentially violent relationship between the parents, a history of a payor repeatedly going back to not paying timely and in full, and recently-worsened financial circumstances that make it highly unlikely the payor will continue to pay timely and in full when the agency removes itself as the go-between for the parents).

Violence is not the only special circumstance however, and in early application of the new rule FK may have been deciding that no good cause existed to continue UStöd, in too many cases where the lawmaker would have intended the benefit to continue. See recent court cases District Court of Gothenburg, judgment announced 2017-11-23 in Case no. 4656-17, and Court of Appeal in Stockholm, judgment announced February 2, 2018 in Case No. 4330-17 (in Swedish *Kammarrätten i Göteborg, dom meddelad 2017-11-23 i mål nr 4656-17 och Kammarrätten i Stockholm, dom meddelad 2018-02-05 i mål nr 4330-17*). See also ISF Report 2019:7 (reviewing recent application and judicial decisions).

³⁹⁶ Prop. 2014/15:145 at 33–34 (“Under denna tid bör Försäkringskassan ha haft en dialog med föräldrarna om att underhållet kan regleras utanför underhållsstödet och ha upplyst dessa om att det finns information och stöd att tillgå i frågan om underhållsbidrag”) (emphasis added).

³⁹⁷ The latest administrative review of how the new rule is working, ISF Report 2019:7, is discussed herein within e.g. Chapter 4.2 on the procedural laws for setting initial child supports.

³⁹⁸ SFB 18:13.

³⁹⁹ This public policy goal was formulated per Prop. 2014/15:145 on increasing regulation of child support outside the UStöd public system, following government research findings summarized therein that many parents *did not know they could use the private system*, and that the amount of support for their child under that system often *would be higher than the set public benefit amount*. See further *infra* Chapter 5.3.4 on the legislative intents for the UStöd system.

The duty to pay UStöd or public child support is, in sum, a duty owed *by the state* to children qualifying for it under the applicable law, not a parental duty. The public law also provides that *parents with a duty to pay UB monetary child support are liable to repay the state for the UStöd support it instead pays to their children, in an amount from no repayment up to the full amount of the UStöd paid out* (never more), depending on the payor's financial ability to pay.⁴⁰⁰

If a payor parent is reliably fulfilling his support duty, usually via a UB payment to a CP for the child, to at least the level of the public benefit, his child has *no right to the benefit*, and if a payor parent is reliably paying *some* support but less than the benefit, a child only has a right to the difference, to “top up” support to the state-guaranteed amount, as has been mentioned. This underscores that *the state duty's to pay*, although it is performed earlier in time, is legally *secondary* to the parents' duty.

3.4. Children's Needs for Child Support

3.4.1. Children's Needs as Defined within California Law

California's Guideline child support calculations, as introduced within the above discussions, set each child's “needs” in relation to both parents' combined incomes available for expenditures on themselves and their children, and specifically the percentage of that available total income they likely would have spent on expenses attributable to the child. The California Guideline is, as the latest expert review of it expressed, “an Income Shares formula that assumes the *amount ordered in child support*, combined with the *resident parent's expenditures on the child*, approximates the *total amount of expenditures had the parents lived together with the child*.”⁴⁰¹ It assigns a child enough parental disposable income to continue his or her access to the same share of that

⁴⁰⁰ There also was a form of UStöd *targeted to low-income parents of children alternating residence*, but it is not discussed in depth for this study's purposes because it is currently being phased out. A new support to such parents has been introduced to the housing allowance social benefit instead. The housing allowance also is means-tested, and aims to assure that all households with children have access to good-quality housing. See Prop. 2017/18:6, *Nytt särskilt bidrag inom bostadsbidraget för barn som bor växelvis* [New specific support within the housing support for children with alternating residence] at 1. UStöd for alternating residence situations' aim was as a support to *low-income* parents with children living approximately *half-time* with them, in contrast to the main UStöd's aim of assisting more traditional CPs (with children living with them the large majority of the time).

⁴⁰¹ *Guideline Review 2017* at 39 (emphasis added).

income according to consumer data collected from two-parent households.⁴⁰² The parents' duty is to provide support "*suitable to the child's circumstances*."⁴⁰³ This has been interpreted since adoption of the California child support Guideline to mean allocating to the child a percentage from these two parents' total net disposable income similar to what would be allocated to the child if they were all living together (*continuity of expenditure* on the child), although it is acknowledged that in post-separation reality, when parents are *not* living together, their incomes unavoidably will be re-budgeted to cover the necessary costs of two parental households, and thus children will bear some of the decrease in living standard following parental separation.

As introduced above in the duty section, *the percentage of combined net disposable parental income currently assigned to one child by the law creating the Guideline formula is 25%, if that income is within the low-middle to middle-high income range of \$801–6,666 (6,962–57,942 SEK) per month*. This was based upon research finding that percentage to be the "marginal cost" of adding a first child to the household, among "intact families" (two-adult households); couples were found to need about this much more income to remain at the same living standard as before they had a child. This data is reported to support the conclusion that two-parent households spend about this share of their combined incomes on one child living with them.⁴⁰⁴

Because California's Guideline uses "net disposable" (after-tax and certain other deductions from gross income), and does not make many other changes in converting percentage of expenditures consumer data to percentage of income

⁴⁰² Such households are recognized to spend different shares of parental income on a child or children compared to single parent households, specifically a higher percent of the single-parent's income than would be spent of the total of two parents' incomes. See discussion at Chapter ____.

⁴⁰³ CAL. FAM. CODE § 3900 ("Subject to this division [of the Family Code], the father and mother of a minor child have an equal responsibility to support their child in *the manner suitable to the child's circumstances*." Emphasis added.)

⁴⁰⁴ That \$801 (6,962 SEK) per month is the starting point for the range of combined parental incomes considered not low but "low-middle" in California, and thus not given more forgiving child support payment expectation, relates to liberal WSM ideals and actual class relations (including some lingering notions of the "unworthy poor"). Chapter 7 (the "Why?" chapter), *infra*, returns to these topics. Experts advising the California Legislature have recommended an update to these income ranges. See *Guideline Review 2017* at 32 (explaining that these ranges remain in 1993 dollars and proposing new ranges—the middle range would become \$1,301–11,000 per month [11,308–95,613 SEK]). The same reviewers recommended adjustment of the percentage of income spent on one child estimate, the K-factor, down to 21%. *Id.* The new CAL. FAM. CODE § 4055 adopted to take effect in 2021 appears not to have made these changes, although other 2019 reform bills have passed that should provide some relief to low-income payors and payees.

calculated by the formula,⁴⁰⁵ the resulting amount (without many further reductions) is *the child's theoretical total need for parental support*. The NCP's is to be paid as a child support, and the CP's is assumed to be spent on the child within their household together (ignoring for the moment adjustments if the NCP has a share of the parenting time). *This amount, the 25% of available parental income for one child, is multiplied by 1.6 if these two parents have two children, by 2.0 for three children, by 2.3 for four children and so on, meaning that two children are supported with $.25 \times 1.6 = 40\%$ of their parents' income, and therefore theoretically 20% each.*⁴⁰⁶ If parents have less disposable income, this percentage ("K-factor" in the California child support law's Guideline formula) is between 20–25%. If parents have total income above \$6,666 (57,942 SEK) per month, it begins gradually to decline. It declines further if they have over \$10,000 (86,921 SEK) per month surplus (net disposable) income.

The formula allocates resulting support across the two households in proportion to the parents' incomes (and parenting time), and makes certain other adjustments to the children's needs (for example for "add-on" needs detailed at Chapter 3.4.1.4, below), or to the available net disposable income of one or both parents. Such adjustments (due to for example other children to be supported or "extraordinary" hardships) are described in the ability-to-pay discussions, below at Chapter 3.5.1. How the Guideline's mathematical formula sets the basic "need" amount for a child is the topic of this section.

3.4.1.1. The Research Behind Estimates of Expenditures on Children

It becomes important briefly to examine the data chosen as the basis for the children's needs estimates the California Guideline uses to set child support amounts parents legally are expected to provide in California, for the study's comparison across two systems of how children's child support "needs" legally are conceptualized, estimated and then required of parents (enforced).

⁴⁰⁵ Chapter 5.2, *infra*, explains more about US guideline models' continuity-of-expenditures design choices, such as whether to allow continuation of savings and investment by including funds used for these purposes in two-parent homes to be allocated to CP homes via child support.

⁴⁰⁶ CAL. FAM. CODE § 4055 (detailing the Guideline child support calculation formula including variations in percentage of net disposable income assigned to children at various parental income levels and multipliers for each additional child of the parents). This code section also appears within Appendix 2. Note that these are simply "needs" estimators, based on what parents are estimated actually to spend on children (from two-parent-household expenditure data), used along the way to assigning a Guideline child support to be paid. They are not requirements or predictions of how the support will be spent in the single-parent household.

While the different categories of costs usually incurred to raise a child seem reasonably openly a part of child-support setting in Sweden—at least under the latest method used to estimate them⁴⁰⁷—*most descriptions of the California child support law do not detail which expenditures for children were included, and not included*, by the researchers determining the cost of raising a child. Were costs of providing a child with a mobile phone included? Medical or other insurance? How were costs for larger housing allocated between parents and children? Electricity bills? Transportation costs? Was savings for the child’s future higher education (most often expected to be financed by US parents to the extent that they are able), included? Does the fact that families may incur debt to provide necessary support to their children affect these measures, particularly for low-income families? Did expenditures on children versus adults *vary* in the consumer data used, based on different factors in the households studied? If so, *can it all be reduced to a simple formula*, for example California’s with one “K-factor” for one child (of any age or gender)? Legal research literature attempts to explore these questions, but they are more often left in the realm of the more numerically oriented sciences. The California Legislature is advised that the data can justifiably estimate what *marginal expenditures* two-parent households make compared to two-adult households (without children), but how that sausage, to borrow an analogy, is specifically put together at the cost-by-cost level is obscured.

How, in other words, does the law ultimately balance the interests of the custodial and noncustodial households in setting the legal level of child support, and what exactly are parents providing in the home or paying as child support? “The operating assumption of the current system,” child support researcher Ira Ellman has commented, “in most states, is that a guideline grid based upon the consultant’s estimates of child expenditures yields generally appropriate support payments *without the need to ask such questions*.”⁴⁰⁸

These details are important in order to compare and analyze child support laws that redistribute income between two households for the benefit of the children at a more detailed level. They could be helpful for users of the Guideline to understand as well. Yet California (like many US states) uses a formula that calculates child support amounts for parents (and courts) without ever explaining its details fully and clearly, even in the periodic review reports made by experts to the California Legislature per its request (and federal law’s requirements), the latest of which is 414 pages long. The below summary provides some better understanding of how the Guideline estimates a California child’s needs for parental support, but it cannot

⁴⁰⁷ See *infra* Chapter 3.4.2. While this *seems* more open to parents and legal professionals, it still obscures important policy choices; see *infra* Chapter 5.2 (on design choices for child support systems).

⁴⁰⁸ Ira Mark Ellman & Tara Ellman, *The Purpose of Child Support* 1, 9 (2006) (available at SSRN: <https://ssrn.com/abstract=926692> or <http://dx.doi.org/10.2139/ssrn.926692>) (challenging this assumption).

clearly, unfortunately, answer all of the above questions, a weakness in child support law and policy itself that is further explored in the comparison.

The consultant group which recently recommended adjustment of the middle-income “K-factor” from 25% to 21%, based on updated economic data and research methodologies, examined several older and newer studies to review the California Guideline for continued accuracy and possible modifications.⁴⁰⁹ Some of the recent studies used similar methods to the ones used to set the Guideline originally but with newer household expenditure data and adjusted assumptions. Some used different methods for *estimating the costs of raising children* and *translating estimates into a state guideline formula*. Both types of newer studies used newer consumer data than the data California’s current Guideline remains based on, namely (as previously introduced) underlying consumer data which was already, when adopted in 1993, over 20 years old. The formula had last been carefully reviewed in 2010 against newer data and found still to be within the range” of academic child-rearing expenditure estimates, “although at the high end.”⁴¹⁰ Legislators have however not made any changes, as is not surprising given the liberal WSM ideal of private support for children (prioritized over lowering already-established child support obligations being paid by payors).

The 2017 reviewers summarized in particular three newer studies⁴¹¹ estimating US child rearing expenditures with alternative methods to those used to create the current Guideline. One is the study on which New Jersey has based its child-support guideline schedules (Rodgers 2013). One study, led by a University of California researcher, “review[s] and reject[s] current methods for determining costs: both from income equivalence methods and those offered in annual government surveys; and provide[s] quite different results despite using the same data employed by others” (Comanor et al. 2015⁴¹²).

Comanor et al. ultimately use annual U.S. Consumer Expenditure Survey (CEX) data to estimate much lower costs for rearing children by declining to consider the *total economic costs* of children (including marginal expenditure estimates as used in the California Guideline and others) and instead recommending replacement of current estimators with one “linked directly to *actual monetary outlays*” for children’s needs.

⁴⁰⁹ *Guideline Review 2017* at 55–70 (“Comparative Economic Analysis of Current Economic Research on Child-Rearing Expenditures”). Although some recommended changes were recently made in response, the K factor and the income intervals *have not been changed as proposed*. See CAL. FAM. CODE § 4055 (as amended by Stats. 2017, Ch. 730, Section 2. (SB 469), effective January 1, 2018). The section becomes operative January 1, 2021, by its own provisions.

⁴¹⁰ *Id.* at 39.

⁴¹¹ *Guideline Review 2017* at 52–54.

⁴¹² Comanor et al. (2015), *supra* note 312, at 209.

This is done to correct an unjust benefit the study authors conclude payees receive at the expense of payors under current Guideline law.⁴¹³

Lastly the reviewing experts summarized one study published by the United States Department of Agriculture on a method developed by the US Department of Agriculture's Center for Nutrition Policy and Promotion (Lino 2017⁴¹⁴). As that study described:⁴¹⁵

[The CNPP] develops economic estimates for the major categories of child-rearing expenditures (i.e., housing, food, transportation, clothing, health care, child care and education, and miscellaneous child-rearing expenditures.) After *identifying the major categories of expenses that most families incur*, it then *allocates the expenses*. Unlike the Rothbarth and Engel estimates, for most categories of expenditures *the CNPP does not use a marginal cost method* that measures child-rearing expenditures as the difference in expense between equivalent couples with and without children. Rather *it examines direct parental costs through age 17*. It allocates child-specific expenses (such as clothing, education and health care) *directly* to children. Food and health care expenses are allocated to children based on findings from *federal surveys on a child's budget shares* [citing the Nationwide Food Consumption Survey and the National Medical Care Utilization and Expenditure Survey]. Family-related transportation expenses and miscellaneous expenses are allocated using *a per capita method*. However, beginning in 2008, USDA estimates housing expenses on a child based on the *average cost of an additional bedroom*. Estimates are provided for major components of the budget by *age of child, family income, and region of residence*.

⁴¹³ *Id.* at 246. Comanor has also previously published work criticizing US child support law as both damaging to payors and less beneficial to payees than lawmakers believe. There is little lawmaker support for his proposals, and a number of his arguments stretch credibility and thus appear biased in favor of payors, for example “for middle/high-income single households, there is no evidence in these data that including a single child in the household increases average housing costs at all.” *Id.* at 226. Their point on *the limitations of the most common estimation methods* however, that researchers did not study actual family expenditures, deserves consideration. Reasons US state legislatures may favor higher estimates of needs thus higher child support amounts, yet also are criticized for setting child supports too low, are addressed in Chapter 7.4 (on the family law “gender wars”).

⁴¹⁴ M. Lino et al., *Expenditures on Children by Families, 2015* (Miscellaneous Publication No. 1528-2015, U.S. Department of Agriculture, Center for Nutrition Policy and Promotion, 2017) (*available at* www.cnpp.usda.gov). Note that the USDA methods detailed in this chapter are set forth within this 2017 publication.

⁴¹⁵ *Id.* at 47 (reporting that of the 50 US states only Minnesota currently uses this USDA method of estimating costs of children, although Ohio guideline reviewers have recommended it twice in recent years to Ohio's legislature) (emphasis added).

Despite the USDA method of estimating families' expenditures for children using *direct* instead of *marginal* average cost measures, it resulted for 2016 in an estimated 26%, 39% and 49% of household expenditures being attributable to one, two and three children in "married couple families,"⁴¹⁶ compared to the current California Guideline formula's use of 25%, 40% and 50% respectively. *Virtually all of the measures summarized in the Guideline Review come quite close to these same results,*⁴¹⁷ which makes the differences with Swedish estimates (also several in number and also relatively similar to each other in result) of interest to explain.⁴¹⁸

The Guideline 2017 reviewers ultimately explained advantages and disadvantages of all available data and methods, and what other states had done in response to the latest research. The report made its recommendations to modify, but retain, the California Guideline in its present form. That is to say, the "marginal expenditures" method of estimating how much it costs to raise a child remains in place in California, as it does in most of the US.

Examining the report and the studies it references reveals in sum that most research behind US states' child support guidelines has been that which focuses on providing a continuity of marginal expenditures by first *estimating children's impact on their parents' consumption (expenditure) patterns*. The research typically subtracts total expenditures by two-adult households *at a given level of economic well-being* from total expenditures by two-parent households with one, two or three children (and sometimes more) *at the same level* of economic well-being. The difference is considered the *estimated cost of adding each child to the household*.

Household expenditures by category do not need to be allocated between children and adults to calculate the average marginal cost of adding a child to a household at a given income level in this manner, although such allocation is

⁴¹⁶ *Guideline Review 2017* at 55. See also Ira Mark Ellman, *Fudging Failure: The Economic Analysis Used to Construct Child Support Guidelines*, UNIVERSITY OF CHICAGO LEGAL FORUM 167, 195–196 (2004) (analyzing the different yet still sometimes arbitrary assumptions made within the USDA method, for example per capita allocations for housing and transportation expenditures over which policymakers could reasonably disagree, depending on their focus, e.g. *how much home an infant uses* versus *what premium must be paid for housing in child-friendly locations with good schools*).

⁴¹⁷ This has been alluded to by academic child support research. See, e.g. Ellman (2004), *supra* note 416, at 181–182 ("[T]here is good reason to think that parental expenditures on children may in fact be a roughly constant percentage of total expenditures over an income range that is wide enough to include the great majority of parents subject to support awards," citing David Betson's 1990 study) and 207 ("Yet, beginning with Espenshade, observers generally have generally agreed that marginal child expenditures are a fairly constant percentage of total *expenditures* across a very wide income range.") (emphasis in original).

⁴¹⁸ Chapter 6.2 *infra* compares the legal measures of children's needs and their underlying estimators.

necessary to decide which households with and without children are at an “equal living standard” or level of economic well-being, and especially there the data underlying child support law has been criticized, and seems intuitively suspect.

The *equal level of economic well-being* between similar couples without children and couples with children (used to estimate the *marginal cost* of adding the children to a household) has been defined variously in the different foundational studies proposing these *equivalence scales*. Households have been deemed to have equal living standards if they have, for example, *an equal percentage of total family expenditure devoted to food* (Engel), or alternatively *the same amounts spent on certain adult goods like adult clothing, alcohol and tobacco* (Rothbarth).⁴¹⁹

Most child costs estimation studies used for US child support guidelines now use adult clothing equivalences alone. Most studies are based on national data including consideration of regional variations, economic downturns, and a variety of other factors. Each has been criticized with respect to the validity of some of its assumptions. Note that how expenditures are allocated by researchers to parents versus children varies, although most do use recent data collected in detail from two-adult households versus two-parent households.

What the traditional “marginal expenditures” methods have in common is that they include as a “*child expense*” only the *difference* in a given expense category between what a couple with a child spend, compared to a no-child couple at the same level of economic well-being. If, in other words, parents on average do not change apartments after a child is born, the rental expenditure will not have increased pre- and post-adding a child to the home, thus the *marginal* expenditure included in the child support formula for housing the child will be zero.⁴²⁰

Usually custodial households, if the parents’ incomes follow the traditional and still very common pattern of a higher-earning male NCP and a lower-earning female

⁴¹⁹ See *Guideline Review 2017* at 46 (summarizing the Engel estimator designed by a German statistician in the 1850s, and the Rothbarth estimator proposed in the 1940s by a German economist and statistician, neither with US data). Subsequent research assumes or determines these methods for comparing households’ behavior at different income levels to be useful for studying US households today, although their use is also strongly and rather convincingly criticized. See Ellman (2004), *supra* note 416, at 192 (“[T]here is in fact some evidence to suggest that the addition of children to a household changes the adults’ priorities with respect to their expenditures on themselves, in ways that would lead the Rothbarth scale to underestimate marginal expenditures on children.”) (internal citation omitted).

⁴²⁰ See, e.g., Ellman & Ellman (2006), *supra* note 408, at 6 (commenting that the *largest base costs of utilities, automobile use and housing will largely be excluded* from child support when marginal expenditure methods are used to set a guideline, *even if the CP may have difficulty covering these items necessary for the child’s well-being*, and illustrating with examples).

CP, *will not* have equal living standards after Guideline child support is paid, and the child will be in the household with the lower living standard, contrary to what most community members think is the best way to balance the interests of these two households via child support payments, is how some analyses⁴²¹ view this way of estimating the costs of a child (from the viewpoint that an as-close-as-possible shared standard of living, in light of other interests, is an aim of the child support law).

Using a marginal costs method, as California does, to estimate the cost of raising the two parents' child or children thus makes *the level of the CP's income the greatest factor affecting continued child well-being after separation*.⁴²² This represents a policy choice that lawmakers made, this line of reasoning concludes, not to require more transfer of income particularly to the lowest-income CP households. California's Guideline, regulated across private and public law, does make adjustments at differing income levels to achieve better results than would occur via a pure continuity of marginal expenditures formula, but it may leave bringing up the insufficiently-funded CP household to an above-poverty-line level to public need-based support, even where the child or children's NCP could (arguably) afford to pay more.

Child support amounts under the current California Guideline are in many cases likely higher than they would be under a basic direct-costs-of-the-child approach, at least one that takes in to account both parents' incomes. The USDA method discussed above, on the other hand, found the same or more total parental income attributable to US children's expenses under its (relatively) direct-costs approach.

⁴²¹ See *id.* at 9.

⁴²² See *id.* at 11 (“[A] method for generating guidelines that bases support amounts on marginal child expenditures will necessarily make the economic welfare of the child after separation dependent primarily on the *pre*-support-payment income of the custodial parent.”). See also Ira Mark Ellman & Tara Ellman, *The Theory of Child Support*, 45 HARVARD JOURNAL ON LEGISLATION 107, 127–128 (2008) (discussing the problem with the current cost estimation method given its actual results at various levels of parental income disparity, and proposing a new forward-thinking measure of appropriate child support, with guidelines designed to take tradeoffs between the two households at the time of the child support order into account instead of looking backwards at fictional households). This latter proposal is comparable to the ALI model child support law's model, discussed *infra*, which Ira Ellman helped a research group led by Grace Blumberg to create. Blumberg has written that the team designed a child support law that deliberately took into account the US reality of low public child supports. See *infra* Chapter 5.2.1.1.

3.4.1.2. Variation in California Children's Needs

California child support law is largely controlled by the mandatory Guideline, but court decisions have also established that a child's "needs" are determined subjectively, with a given child's "reasonable needs" determined from the "circumstances of the parties," including that "[c]learly where the child has a wealthy parent, that child is entitled to, and therefore 'needs' something more than the bare necessities of life."⁴²³ The child support amounts calculated pursuant to the mandatory Guideline, presumed correct pursuant to statute,⁴²⁴ provide higher child supports to the children of wealthier parents, and case law has confirmed *the "well-established principle that the 'child's need is measured by the parents' current station in life."*⁴²⁵ In cases where the parents' incomes are dissimilar and one of them is deemed "extraordinarily high earning" the courts have held that the *level of the higher-income parent's income* "clearly is the primary factor in a child support determination."⁴²⁶

This relates to the discussion earlier that child support in California and much of the USA is based on a *continuity of expenditures* theory, attempting to assure that children of separated-living parents and children of together-living parents have access to the same percentage of expenditure on them from the combined parental incomes, thus not allowing parental separation (or parents never having lived together) to negatively affect children economically, to the extent possible. "Continuity" as a model for estimating appropriate "needs" of a given child, it should be noted, does *not mean a right to the same amounts of money per month historically spent*, or to child support level set based on older income information. The amount of parental support available to fulfill a child's needs is based on evidence of *current* income, and appropriately adjusts up or down if the parents, or one of them, earns more or less income in the future.⁴²⁷ *In theory, if the parents had stayed together, the same*

⁴²³ Y.R. v. A.F., 9 Cal. App. 5th 974, *5 (2017) (multiple internal citations omitted) (standing for the proposition that a child's support needs are primarily a function of the higher earning parent's disposable income and standard of living, as measured by the parents' current, not historic, station in life).

⁴²⁴ CAL. FAM. CODE § 4057(a).

⁴²⁵ Marriage of Cheriton, 92 Cal. App. 4th 269, 293 (2001) (as modified on denial of rehearing, Oct. 12, 2001, and review denied, Dec. 19, 2001) (multiple internal citations omitted; emphasis added).

⁴²⁶ Marriage of Hubner, 94 Cal. App. 4th 175, 186 (2001) (holding that the high earning parent's financial information must be disclosed if there exists a dispute between the parents on child support amount, but only in a manner protecting the high earner's right to reasonable privacy regarding his or her finances).

⁴²⁷ Modifications to child support orders or agreements based upon changes to either parent's income or to child's time spent living with each parent are an important part of keeping the child's current needs accurately covered by their child support. Modifications are discussed *infra* Chapter 4.3.

ups and downs to their joint incomes could have occurred, but it is likely they would still have spent the same percentages of their available income on expenditures for the child that the average two-parent households similar to them in income and number of children would spend.

It is accepted in California law that children's "needs" will also vary, just like adults' in a household, based on the total income available for that household to spend on each household member. From this perspective (which directly contradicts Sweden's chosen view) there can be no one amount of "need" that is the same for every child in California, even if age and gender variations were considered, because some children have siblings who also share in the use of their parents' income, their parents' incomes are different, and etc.

The California Guideline does not provide the same amount of child support per child for siblings, such that if support for one is calculated to be \$300 (2,608 SEK) per month, support for two will be \$600 (5,215 SEK). Instead, *child support for two children supported by the same two parents will be the child support for one times 1.6*; for three children it is the child support for one times 2.0, and this continues, with child support for ten children being the amount for one multiplied by 2.86.⁴²⁸ Each of those ten children receives, then, 28.6% of the actual dollars of support that would have been paid for an only child of the same parents, reflecting the economic research findings that parents' incomes need to be and are used differently to support multiple children in a household and that *each additional child does not add 100% more cost for children*. It reflects how *economics of scale* allow parents to raise additional children more inexpensively.⁴²⁹

This illustrates well how the definition of a child's "needs" under the California law operates to individuate child support amounts, since it is tied to their parents' economic status *and* likely consumer behavior (likely expenditures on their children given their incomes and number of children). Evidence of the actual expenditures required (or in any case spent) to keep that particular child safely housed, clothed, fed, educated, and otherwise healthy and well is not considered necessary for setting

Current income is usually established from most recent pay records and tax returns. *See infra* Chapter 6.4 (comparative discussion).

⁴²⁸ CAL. FAM. CODE § 4055(b)(4); *see also* Venohr (2013), *supra* note 75 (discussing and presenting as Exhibit 1 the "California Child Support Guideline Formula"). Section 4055 also requires that in most cases support for the *youngest* child is set to equal support for *one* child, and the rest of child support owing under the multiplier is allocated to each *older* sibling, with the smallest additional support amount to the oldest. This ensures that as older siblings "age out" of receiving child support, a court order or agreement for child support *automatically adjusts* to providing a correct amount for the children still receiving support, so no modification is needed.

⁴²⁹ Regarding children in the payor's subsequent household, *see infra* Chapter 3.5.1.2 on reductions to a low-income California parent's ability to pay per the Guideline law's "hardship deduction".

support orders for that child, only evidence as to parental incomes (and timeshare), *unless* certain special “add-ons” to child support are appropriate for that child, discussed immediately below.⁴³⁰

Another factor *not* directly influencing a child’s needs level for California child support purposes is whether or not the child has income or assets, as previously discussed, or social benefits (although the reverse may be true, that need-based social benefit eligibility is reduced *because of child support received*).

In summary, California Guideline base child support amounts reflect what living standard the parents’ incomes currently can provide for the child or children, and this definition of “needs” must be considered in interpreting the statutory language allowing a court to order “an amount *necessary* for the support of the child.”⁴³¹ One might associate the word “necessary” with a more conservative level of support than the Guideline will set for children to high-income parents. At the other extreme, the Guideline support calculated from very-low-income parents’ incomes might not truly suffice as an amount “necessary for the support of the child.” Different definitions of “need” are actually at play depending on the income level of the parents, the poverty line and available social benefits.⁴³² *Child support amounts alone almost certainly leave children to two poor parents in poverty unless other sources of support such as government transfers prevent that.*⁴³³

3.4.1.3. Maximum Needs in California (“Extraordinarily High Income” Situations)

Because how much child support is appropriate to meet a child’s “needs” is calculated pursuant to the mandatory California Guideline, the main rule does not

⁴³⁰ This is also true in Swedish UB law, if the parents do not individuate the amount consumer data recommends for a given child’s age and gender, as is presented *infra* Chapter 3.4.2.3.

⁴³¹ CAL. FAM. CODE § 4001 (providing that, in a proceeding where child support is at issue, “the court may order either or both parents to pay *an amount necessary* for the support of the child.”) (emphasis added). *See also* CAL. FAM. CODE § 3910(a) (requiring both parents to support a child, *whether a minor or an adult*, to the extent of the parents’ ability, if the child is “incapacitated from earning a living and without *sufficient means*.”) (emphasis added). “Sufficient means” has been interpreted in case law concerning incapacitated adult children to relate to their chance of becoming a public charge, supported by public monies. Such rare support orders are beyond this dissertation’s scope, except to note that Sweden’s laws do not extend the parents’ support duty in this manner; the Swedish state pays necessary support to disabled adults, spreading this cost across the entire society rather than assigning it to these adults’ parents.

⁴³² See Figure 1, *supra* Chapter 1.3 p. 35 (distinguishing between basic *needs* insured by the state and higher living standard *legitimate expectations*, with their relations to income and need-based benefits).

⁴³³ Chapter 1.2, *supra*, summarized how some California children remain in poverty despite available benefits, even if they receive them.

set a clear maximum ceiling for child support. *There is no law setting a maximum total for a child's needs under the California Guideline.* Exceptionally, however, judges may deviate, from the presumably-correct amount of child support calculated by the Guideline per statutorily-enumerated circumstances, one of which applies to those whose income would lead to a Guideline amount *above what a court might find reasonable for the child's needs.*⁴³⁴

Where a child's parent or parents have what California Family Code § 4057(b)(3) refers to as “extraordinarily high income,” a court may lower the child support amount ordered. This special circumstance, *applicable only in cases where a high-earning payor parent makes over approximately \$400,000 per year (approximately 3,744,500 SEK),*⁴³⁵ allows a court to *examine evidence of the historic, current and/or proposed costs for raising the child and to set a lower support amount than the Guideline calculates.*

In this way courts retain some discretion to decide that a child's needs are less than what the Guideline formula dictates, in the rare case of their parents' extremely high ability to pay or other specified special circumstances.⁴³⁶ *The basic principle that a child has a right to share in the standard of living of both parents* remains applicable, however, and thus there is not truly a limit against raising the child's custodial household into a high standard of living (as there is in Sweden, despite the wording of legislative intent arguably supporting such a result).

California's case law confirms that even in cases where the “extraordinarily high income” special circumstance “clearly applies, *the trial court should ‘access[] [the child's needs] differently depending on whether [the supporting parent] earns \$12 million a year [or] ... \$1 million...*’”⁴³⁷ Extraordinarily-high-income cases typically involve the payee parent submitting evidence to the court of the child's proposed expenses to be covered by child support, often but not always based upon the child's prior expenses, after the

⁴³⁴ CAL. FAM. CODE § 4057 provides the list of exceptional circumstances. Note the similar “maximum reasonable needs” rule regarding the Swedish *standardtillägg* discussed below in this section. The Swedish rules has been found to limit UB child support amounts to very modest levels as a percentage of NCP income, even to children of the highest-income parents in Sweden, compared to California's highest child support amounts. *See infra* Chapter 6.2.6 (comparing maximum child supports available, that is to say if a payor does not volunteer more, in both jurisdictions).

⁴³⁵ Per 2019 online listserv contact with family law specialist attorneys in California and the personal pre-2013 legal practice experience of the author in Los Angeles.

⁴³⁶ The other CAL. FAM. CODE § 4057 special circumstances are discussed briefly in Chapter 3.5.1 on California parents' abilities to pay.

⁴³⁷ Y.R. v. A.F., 9 Cal. App. 5th 974, *5 (2017) (quoting *Johnson v. Superior Court*, 66 Cal. App. 4th 70, 74 (2d Dist. 1998), a decision granting basketball player Larry Johnson a writ of mandate against the family law court order that he reveal certain additional income and lifestyle information) (emphasis added).

higher-earner parent is found to be an “extraordinarily high earner,” thus allowing the court to consider reducing the level of child support calculated under the Guideline to the level of total proposed needs.⁴³⁸ Because very high earners who can afford to pursue litigation into the appeals courts are involved in these cases, there is relatively abundant case law giving courts guidance on child support determinations at the extremely high end of the Guideline formula.

Beyond the child’s right to a base amount of Guideline support to share so much as possible in the lifestyle or living standard available to his or her parents, the child also has a right under California child support law to certain amounts for specific further expenses called “additional child support” or simply “add-ons,” which are described next.

3.4.1.4. *Children’s Needs in California – “Add-Ons”*

California child support orders are created first by calculating the base child support obligation payable from one parent to another pursuant to the aims and calculations described above, and then by calculating and allocating between the parents any additional child support required for certain statutorily-defined “add-on” expenses.⁴³⁹ Add-ons can be theoretically distinguished from base support in that *they usually are temporary expenses, whereas factors affecting base support are more permanent*, unless incomes or custodial time changes. Separating add-ons out from the main child support amount therefore can help parents avoid later needing to modify a child support agreement or court order.

California courts have *no discretion to order additional child support add-ons*; they are limited to the “mandatory” and “discretionary” add-ons provided by statute, although the statute does allow a bit of discretion in that the court may determine if and to what extent to grant or deny certain add-ons.⁴⁴⁰ Add-ons increase the child’s total costs or “needs” to be covered by the parents; they increase the total monthly child support payable by the payor’s share of the add-on expense.

⁴³⁸ See CAL. FAM. CODE § 4057.

⁴³⁹ See CAL. FAM. CODE § 4061 (“The amounts in Section 4062 [defining the mandatory and permissive add-on expenses] shall be considered additional support for the children and shall be computed in accordance with the following...”).

⁴⁴⁰ 33 CAL. JUR. 3D FAMILY LAWS 1192 (updated to Feb. 2018) (citing *e.g.* Marriage of de Guigne, 97 Cal. App. 4th 1353 (2002)). This limitation can be important to assure that consistent, “appropriate” child support orders are made, but also for other reasons, for example because family law “support” debts are favored debts, non-dischargeable in personal bankruptcy, while orders to pay amounts that are not “support”, such as the other party’s attorney fees, might be dischargeable.

Mandatory Add-Ons

The expenses that the court “shall” order as additional child support are known as the “mandatory add-ons.” They number only two: “child care costs related to [parental] employment or to reasonably necessary education or training for employment skills,” and “reasonable uninsured health care costs for the children.”⁴⁴¹

The *mandatory child care costs add-on* helps enable parents to engage in paid work or education towards paid work during their custodial time. Because there can be no *reduction* to the Guideline-calculated base child support amount due to *add-on* expenses that are also to be addressed in the child support order,⁴⁴² a payor parent might pay the full basic support to the payee parent, and then separately receive a payment from the payee parent for 50% of the add-on costs the payor has incurred. This could happen for example if the payor pays the daycare provider 100% directly.

The *mandatory uninsured health care costs add-on* addresses those costs that parents incur for the child’s health care despite the child having health insurance coverage and the parents using it to the fullest extent possible. These costs may include for example “co-pays” required for each doctor’s office visit or for medications. The law rebuttably presumes that “costs actually paid” for a child’s “uninsured health care needs” were “reasonable,”⁴⁴³ which discourages and simplifies litigation the other parent may bring to rebut this presumption and avoid reimbursing the other parent as court ordered.⁴⁴⁴

Discretionary Add-Ons

Alongside the two mandatory add-ons are the “discretionary add-ons.” It is within the discretion of the California family court, in public or private cases because they use the same Guideline, to decide if base child support (plus mandatory add-ons) will be increased further due to “[c]osts related to the educational or other special needs of the children” or “[t]ravel expenses for visitation.”⁴⁴⁵

⁴⁴¹ CAL. FAM. CODE § 4062(a).

⁴⁴² See *Marriage of Gigliotti*, 33 Cal. App. 4th 518 (1995) (holding that CAL. FAM. CODE § 4062 authorizes only additions, not reductions); but see *Wilson v. Shea*, 87 Cal. App. 4th 887 (2001) (distinguishing *Gigliotti* and upholding a trial court’s order that a father could reduce by \$150 [1,304 SEK] per month his base support payment in order to fund an account for his own travel to the child for visitation, which the court deemed in the child’s best interest).

⁴⁴³ CAL. FAM. CODE § 4063(d).

⁴⁴⁴ Disputes can occur, for example regarding whether a child “needs” talk therapy or orthodontic care.

⁴⁴⁵ CAL. FAM. CODE § 4062(b).

The *educational or special needs costs discretionary add-on* may include private school tuition, if in the court's discretion it is found to be in the child's best interests and can be afforded by the parents.⁴⁴⁶ Although generally public schooling is considered adequate for children when one parent objects to paying for private schooling, the court also has *broad general discretion to mitigate the harm to children's living standards after their parents separate*, to the extent that the parents still can afford to pay for *established* extras such as private school and extracurricular activities.⁴⁴⁷ Thus added-on educational and special-needs costs may *also* include the costs of sport or other activities in which the child engages, especially if he or she engaged in them before the parents' separation. One court for example allowed a \$500 (4,714 SEK) per month addition to base and mandatory add-on child support for private school costs *as well as gymnastics, dance and "other stay-at-home mom activities,"* after testimony from a custodial mother regarding the activities in which the child no longer could participate since the parents' separation.⁴⁴⁸ Often, however, the parents cannot reasonably afford to continue costly extra expenses across two households, and private school is one item that may need to be sacrificed, especially if it is not more necessary than usual, e.g. not for a child with special needs (handicapped or gifted).⁴⁴⁹

The *visitation expenses discretionary add-on* consists of the travel costs connected with a child having access to time with each parent, if non-local travel between the parents' homes, for a parent or the child, is required. The law on what a court in its discretion may include as appropriate travel expenses is not specific,⁴⁵⁰ but *costs for airfare, lodging and ground transportation are typically considered appropriate*. There has been some debate in the case law over whether visitation expenses paid (advanced) by the payor directly may be used as a "negative add-on," like a visitation reduction,

⁴⁴⁶ See *Marriage of Aylesworth*, 106 Cal. App. 3d 869, 879 (1980) (finding private school add-on appropriate) and *Marriage of de Guigne*, 97 Cal. App. 4th 1353, 1367–1368 (2002) (adding on both private school tuition and tutoring services costs for children who attended private school prior to parental separation).

⁴⁴⁷ See *Marriage of Schlafly*, 149 Cal. App. 4th 747, 760–761 (2007) (allowing add-ons for recreational and extracurricular activities engaged in prior to parental separation).

⁴⁴⁸ *Id.* at 760 (2007) (emphasis added). Note that the mitigation of a reduction in the children's standard of living after divorce or separation is similar to the *standard tillägg* discussed in the next section.

⁴⁴⁹ See CAL. PRAC. GUIDE FAMILY L. Ch. 6-A § 6:691.

⁴⁵⁰ The statutory law at CAL. FAM. CODE § 4062(b)(2) simply allows "[t]ravel expenses for visitation" with no further elaboration.

reducing his or her total child support burden.⁴⁵¹ Best practice seems to be avoiding court orders including Guideline support amounts reduced by negative add-ons by instead treating a payor's extra travel-for-visitation expenses as a California Family Code § 4057(b)(5) "special circumstance" that allows the court in its discretion to somewhat reduce the Guideline support amount to be ordered, in consideration of the payor's extra costs incurred to provide the child with "frequent and continuing contact"⁴⁵² with both parents. At least in one case involving a CP moving a child to a new location farther away from the NCP (a "move-away case"), this has been recognized as the appropriate way to accommodate both *the child's need for frequent and continuing contact with both parents* and the law on *allocation of visitation travel expenses between both parents*.⁴⁵³ Travel expenses may also be allocated by a court via an order separate from the main child support order.⁴⁵⁴

Allocation of Add-Ons Between the Parents

Apportionment of add-on expenses, both mandatory and discretionary, "shall be" 50% to each parent, unless either parent requests and documents that a different apportionment would be more appropriate.⁴⁵⁵ This may be considered justified because after the payment of base child support the portion of the parents' joint incomes to be spent on the child or children should already have been allocated (redistributed) between them for use during their time with the child (per the economic research discussed above), and "add-on" costs should thereafter be contributed to equally by both, but in fact this means the lower-income parent will be contributing to add-ons more than her share of combined parental income should require. Add-ons by their nature have not already been provided for in the base child support allocation.

In certain situations, including highly-unequal income situations, it is considered appropriate and it is often requested and ordered that more of the add-on costs be

⁴⁵¹ See CAL. PRAC. GUIDE FAMILY L. Ch. 6-A §§ 293–293.2. See further Chapter 4's treatment of this topic from a procedural prospective. Sweden's UB law also includes a visitation reduction available in some circumstances; UStöd law has removed an analogous deduction.

⁴⁵² CAL. FAM. CODE § 3020(b) ("The Legislature finds and declares that it is the public policy of this state *to assure that children have frequent and continuing contact with both parents* after the parents have separated or dissolved their marriage, or ended their relationship, and *to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy*, except where the contact would not be in the best interest of the child...."). Emphasis added.

⁴⁵³ See *Wilson v. Shea*, 87 Cal. App. 4th 887, 893–895 (2001).

⁴⁵⁴ See *Charisma R. v. Kristina S. (Charisma II)*, 175 Cal. App. 4th 361, 391 (2009).

⁴⁵⁵ CAL. FAM. CODE § 4061(a).

paid by the higher-income parent,⁴⁵⁶ but otherwise a 50% division is ordered. Thus a complete California child support order meeting a child's needs, including for both mandatory and discretionary add-ons, might include an order that father pay mother \$400 (3,760 SEK) per month as base Guideline support, *plus* one-half of the childcare costs incurred by mother during her working hours, one-half of the out-of-pocket medical care expenses for the child (those not covered by insurance), and one-half of the travel costs for when father comes to town to have parenting time with the child or when the child travels to him.⁴⁵⁷

The 50% allocation rule (that each parent pay 50% of the add-on costs, except if a parent objects and litigates the issue) has been criticized as *unduly burdensome to a lower-income parent* and specifically as *in violation of the basic principle* at California Family Code § 4053 (d) that child support be paid by each parent “according to his or her ability.”⁴⁵⁸ *To be required to pay 50% of a large childcare cost when one is, per income shares, only responsible to cover perhaps 25% of the child's needs clearly violates the principle.*

Even if some childcare costs already are included in some of the underlying economic estimates of the costs of raising children (upon which Guideline base child support amounts are set), they are not included at a higher cost average that should apply for *single-parent* households. On the other hand, the Guideline arguably is set

⁴⁵⁶ Per CAL. FAM. CODE § 4061(b)(2), (c) and (d), the court shall apportion qualifying child care expenses in this instance to the parents *in proportion to their net disposable incomes* (via income shares) after adjustments to their gross incomes if spousal support is paid and received, and to the child support payor's net income for the base child support paid.

⁴⁵⁷ The law also requires all California child support orders to provide for which parent must maintain health care insurance for the child, per CAL. FAM. CODE § 3751(a)(2) (“In any case in which an amount is set for current support, the court *shall require that health insurance coverage for a supported child shall be maintained by either or both parents if that insurance is available at no cost or at a reasonable cost to the parent.* Health insurance coverage shall be *rebuttably presumed to be reasonable in cost* if the cost to the responsible parent providing medical support does not exceed 5 percent of his or her gross income.”) (emphasis added). The health insurance is usually purchased through the parent's employer's insurance offerings to employees. The premium costs for the child's insurance, if any, are entered into the Guideline calculations, however, thus addition of those expenditures is already included in the calculations of the base child support amount, and do not need to be added on. *See infra* Appendix 1.

⁴⁵⁸ *See* Grace Blumberg, *The California Child Support Guideline: Conceptual Underpinnings and Possible Modifications*, 14 FAMILY LAW NEWS AND REVIEW 11, 11–14 (Los Angeles County Bar Association) (1993). Blumberg also critiques California Family Code § 4061(d), part of the section describing how a court must allocate add-ons if it decides not to use the 50% each rule. Subsection (d) reduces only the *payor's* net income due to base child support he pays. The *payee* is *also* assumed under income shares principles to have contributed a particular share of her income to the base support needs of the child; not *also* reducing *her* net income by her child support deemed paid skews the subsequent proportional allocation to the payee's detriment.

to err on the side of higher child-support base amounts to cover some of these discrepancies and higher costs associated with separately-living parents. It is conceivable, then, that the payee is receiving extra funds via the law setting base amounts, even if receiving only a 50% contribution from payor.⁴⁵⁹

Nonetheless, although it violates the allocation rules, the 50% rule *simplifies child support add-on reimbursement communications between parents*, allowing *them* to settle these reoccurring matters of healthcare and daycare costs regularly between themselves without attorney or court assistance (as does having add-ons separated out from base support in the first place).⁴⁶⁰ This benefit to each parent and the child weighs against allocation by income shares, which would minimally require the Guideline computerized calculators to clarify for parents what relative percentages of their combined total parental each had been assigned. Simple administration and private ordering (direct settlement of support issues between the parents privately are favored by California's law, but lawmakers also clearly wished not to allow those factors to take priority over certain other priorities, as discussed within Chapter 5.

3.4.2. *Children's Needs as Defined within Swedish Private Law*

The Swedish private system, the subject of this section, in theory *individuates* each child's particular needs, using guidelines of how much a typical child needs per month *only as a starting point*. In practice it is not at all clear that these idealized, properly-individuated support amounts actually are calculated, by parents or by courts, although recent efforts have aimed better to prepare parents and courts to do the calculations better in line with legislative intent. In contrast, the Swedish public system, discussed next at Chapter 3.4.3, provides one monthly amount for all children in one of three age categories, the amount of which is legislated based upon the public system's method of determining children's support needs.

While California private and public child support law systems use the same mandated Guideline following the continuity-of-expenditures model for determining a particular child's needs for parental support, in Sweden these needs

⁴⁵⁹ One could argue, on the other hand, that only marginal costs of children are included, and this can leave lower-relative-income CPs economically struggling even after payment of Guideline child support, against the best interests of the children. Swedish and Californian child support amounts both balance the parties' interests in a way that leaves lower-income CPs less economically well-off than higher-income NCPs (instead of equalizing the two homes' living standards via child support), even if the CP household has the children the large majority of the time. This is desired, to the extent that lawmakers have justified that child support will meet the children's needs, and where they have not provided in law for spousal support to be paid as well.

⁴⁶⁰ The extent that each jurisdiction prioritizes simple, cost-effective administration is analyzed comparatively at Chapter 7.3, *infra*.

are calculated or estimated somewhat differently across the two systems, as has been introduced.

3.4.2.1. *Total Needs in Relation to the Needs for Parental Support*

As introduced at the beginning of this chapter, to determine an appropriate private law child-support amount, Swedish parents (or, if they cannot agree, a court) must consider *what is reasonable given the “needs” of the child and each parent’s financial ability* to meet a portion of those needs. Thus a child’s total reasonable, individuated living costs (*total needs*) are first at issue, then the portion to be paid by the parents together (*needs for parental support*, after consideration of other sources of support) and finally the appropriate UB payment (the NCP or higher earner’s *portion of the needed parental support*).⁴⁶¹ During the determination, a child’s *particular circumstances* including any income, assets, and social benefits must (“shall”) be considered, “taking into account existing regulations on this subject.”⁴⁶²

Despite this mandatory language, the parents’ calculations and subsequent decision on what “needs” the child has and how much UB will be paid, if any, are of a “*dispositiv*” or non-mandatory nature in Swedish private law. The parents do not have the same mandatory duties as a court has when it is tasked with settling a dispute between the parents. Thus children’s “rights” to a proper child support amount to meet their “needs” are *limited by the parents’ discretion or responsibility to set a UB amount to be paid between them*, not enforced by the state. A court will only intervene if one parent litigates the child support issue, as discussed in Chapter 4 on procedures for resolving child support disputes. The public agency most involved with child support issues, FK, will only intervene to the extent that a parent applies for the UB guarantee, UStöd, by that application confirming that an adequate UB has not been agreed to or paid (whether out of unwillingness or inability).

FB 7:1’s enumerated “considerations” (potential deductions at the decisionmaker parents’ discretion) of the child’s income, assets and social benefits from his or her *total needs* are, in a sense, *deductions for the child’s own and the state’s expected contributions*.⁴⁶³

⁴⁶¹ This is the author’s clarifying analysis, because in both jurisdictions studied a child’s “needs” might be referred to with any of these meanings. Needs (*behov*) in Swedish UB law are, usually, the total needs for parental support.

⁴⁶² FB 7:1 para. 1, described more fully *supra* Chapter 3.3.3.

⁴⁶³ Swedish lawmakers have made mention of the fact that children cost less per child to raise when they have more siblings, but this (somewhat contrary to the stark individualist WSM ideal) rarely if ever is mentioned in guidance for decisionmakers on how to estimate a Swedish child’s needs. *See, e.g.,* SOU 1995:26, *Underhållsbidrag och bidragsförskott [UB and child support advance]* at 275 (because

To the extent that the law provides that each—the child and the society—is to contribute to supporting the child financially, the parents are relieved of providing a portion of the child support they would otherwise have a duty to pay.

On the other hand, *parents have the primary responsibility* to provide financially for their children under Swedish law, a principle the state has recently sought to emphasize.⁴⁶⁴ The *needs of the child that remain unmet* are for the parents to cover, secondarily guaranteed (insured) by the state to a certain level. As introduced earlier in this chapter, each has a duty to contribute to the extent he or she can, via living in the home with the child where it is presumed a parent provides adequate support, or alternately by payment of child support into the child's home.⁴⁶⁵

If one parent has significantly less parenting time with the child and thus will pay a UB (or has agreed to or been ordered to pay a UB despite alternating residence with the child), the total monthly sum of the child's *needs for parental support* (the total costs of the child minus contributions by the state or the child) is calculated first. Then the child support (UB) amount becomes the payor parent's expected *proportional contribution to covering that need for parental support* (using the ratio "need for parental support" x ("payor's available income" / "payor's + payee's available incomes")).⁴⁶⁶ Thus if the payor has 75% of the parents' combined monthly income legally considered available for child support (discussed in the "abilities to pay" sections below), he or she pays 75% of the child's calculated needs.

Note that *the total "need" for child support for two or more children to the same parents will be the total of each child's need for child support, not a reduced amount per child* based on actual expenditures data for families with more than one child (as with California's Guideline). Reductions to the total child support *actually to be paid* for several children will happen with respect to whether the payor parent is considered *able to afford to meet his portion of the children's total need for parental child support*. A given child's

multiple children reduces the needs of each, whether a child has siblings should be considered in the discretionary UB setting process).

⁴⁶⁴ See, e.g., Ds 2014:27, *Ökat stöd för underhållsreglering* [Increased support for child support regulating] at 8 ("The responsibility for children's support lies first with the parents, not the state.") and SOU 2003:42, *Ett reformerat underhållsstöd* [A reformed maintenance support] at 90 (setting forth that parents have the primary responsibility, and states an important but secondary role, citing CRC Articles 5 and 18).

⁴⁶⁵ See FB 7:1 para. 3 ("In the costs for the child's support the parents shall both participate, each after his or her own ability") and FB 7:2 (providing that when a parent does not live with the child, regardless of shared legal custody or no legal custody, the parent fulfills the child support obligation via a payment of money).

⁴⁶⁶ See, e.g., JOHANNA SCHIRATZKI, RÄTTVIST UNDERHÅLLSBIDRAG TILL BARN 15 [FAIR PRIVATE CHILD SUPPORT TO CHILDREN] (2005) and FK 2016:1 Version 5, *Vägledning: Underhållsbidrag till barn* [Guidance: UB to children] 12, 43 (last modified 2018-09-24) (the latter listing several formulas helpful to UB calculations).

percentage share of the combined children's UB amounts (for example, 33% for one child of three siblings, each with very similar UB amounts) is multiplied with the payor's available income for support (his *överskott*) to find the amount of UB to which that child will have a right from the payor. If the amount does not reach the UStöd guaranteed support level, UStöd can be paid to make up the difference.

Because a Swedish child's need for child support is to be calculated subjectively for each child on an individuated basis, *generally permissible "add-ons" are included along with the "base" amount of support*, and thus the total of the child's need for UB parental child support is allocated by the above formula (or another of the parents' choosing), not simply the base support. The permissible add-ons portion of the child's total needs under Swedish private law is nonetheless discussed separately, below, to aid in the comparison to California.

3.4.2.2. *The Role of a Child's Assets, Income and Social Benefits*

The effect a child's own incomes have on determination of the child's total "needs" to be met by the parents, also mentioned above in the duty discussion and with respect to social benefits, *could* be considered as a later step: once a child's *total needs* are determined, then the child's social benefits and assets could be considered elements of *how to cover the child's total needs*—the parents' contribution, the state's contribution, and so on. This is commonly done in Sweden. In order to arrive at an amount of "needs" *for parental child support* (the topic of this study), however, here the child's own resources (privately owned or provided by the state) are properly considered and deducted from total needs first, before consideration of what contribution will be expected from the parents.

Preparatory works have clarified that *small incomes or gifts to the child were meant to be considered irrelevant* when setting private child support amounts.⁴⁶⁷ Also, per the Swedish Supreme Court, a child's *investment assets* should not require the child to contribute to his or her own support beyond the amount of the post-tax income from the assets *unless* (1) comparison of the child's and parents' economic circumstances reveal a "blatant imbalance" and (2) the assets total a "very significant amount" (*not* found in a case where each child had approximately 400,000 SEK, approximately \$43,000, in investments).⁴⁶⁸ A comparison first is made between the *child's and the parents' incomes* and then of their *overall financial situations*, including with consideration to the form in which assets are held, how easily available they may be

⁴⁶⁷ See Prop. 1978/79:12 at 154.

⁴⁶⁸ See NJA 1996 p. 134 at 139 (and 136 for the facts of the case regarding the children's assets).

(their liquidity), and likely consequences of accessing them.⁴⁶⁹ Income from the investments (*inkomster av kapital*) may be subtracted from the child's total needs amount, in the actual after-tax amounts earned,⁴⁷⁰ but *in most cases*, as in California, *children will not be expected to use their assets to support themselves*. Their parents will retain their primary duty to provide support (along with other sources of support, as illustrated at Figure 3, below in Chapter 6.3.6 comparing the states' and others' relative roles across the two jurisdictions).

In Sweden, *a child's social benefits affect the child's support needs, often significantly*. The child's universal child contribution support from the state and other benefits he or she may receive are subtracted from the total needs of the child before the parents share responsibility to meet the remaining needs. *Universal social benefits are paid out in order to relieve the private family of some of the cost of raising a child or children* (typically regardless of whether the parents live separately or together), and thus are properly *deducted from the child's needs total that the parents are to divide between themselves* and be responsible for paying themselves, to the extent they are financially able to do so.⁴⁷¹ Every Swedish child's social benefits usually consist of at least the monthly child benefit, currently 1,250 SEK (\$144).⁴⁷²

Certain *need-based social benefits* (paid to assist a household with supporting a child because parental resources are insufficient) are however *not to be subtracted from a child's total needs* (which would in effect consider them as incomes to the child of the type that should reduce their parents' duty) when a proper UB is being determined.

To know which benefits should be considered income to the child one must *look to the benefit's purpose*.⁴⁷³ If for example the multiple-child social benefit (*flerbarnstillägget*) paid to households with more than one child is subtracted as income

⁴⁶⁹ See *id.* (the Swedish Supreme Court deciding the proper step-by-step analysis and affirming an appeals court's decision that two children deserved a higher UB, in other words *had higher needs to be met by their parents*, due to both parents' financial abilities and the children's many evidenced monthly costs, *despite* each child's significant investment holdings). Some actual, after-tax income from the investments was subtracted from the needs total before support was allocated between the parents, but the *principal* balance of the investments did not need to be considered for UB purposes, *given that the parents also had the ability to pay the support needed* to meet the children's above-average needs so that they could share the parents' living standards.

⁴⁷⁰ See *id.* at 138–139. See also SCHIRATZKI (2005), *supra* note 466, at 45.

⁴⁷¹ See *id.*

⁴⁷² SFB 15:3. Legislative and public preferences for state versus private financial responsibility for children is also discussed comparatively *infra* Chapter 7.5.

⁴⁷³ Prop. 1978/79:12 at 154 (specifying also that economic support paid pursuant to the Law on Social Services (*Socialtjänstlagen*) should *not* be subtracted from need to be covered by the parents). See also FK 2016:1 Version 5, *supra* note 466, at 13 (citing guidance that preparatory works and academic analyses have provided on this issue).

to the child, it would in effect reduce both parents' UB obligation, even though only one of those households may in fact have multiple children and thus was intended by lawmakers to receive the benefit.⁴⁷⁴ This benefit would more properly be included in the income received by the parent whose household receives it,⁴⁷⁵ rather than in the child's income reducing the private support the child needs from his or her parents. This effectuates the legal rule that private support comes first, and then whether the state has a further obligation to help with needs still unmet can be considered.

Thus a court may investigate the aims of various social benefits to determine the total amount of monthly social benefits it will subtract from a child's total needs to calculate an appropriate UB. *The Swedish private-law court, however, has no duty to investigate if the income numbers reported to it by the parents are correct, if they are not in dispute.* This is in contrast to the mandatory fact-seeking a Californian judicial officer must do in reviewing the mandatory financial disclosure forms and basic supporting evidence attached by the parents to those forms (e.g. recent paystubs) in order to calculate Guideline support, even if the parents are requesting approval to agree between themselves to a different support amount.⁴⁷⁶

Swedish courts deciding UB amounts do not appear to correct parties when, for example, they count an older child's *studiestöd* in its full amount per month as a reduction in the monthly needs, even though this support is paid for 10 and not 12 months per year and thus should (to implement legislative intent for the child's needs to be covered by child support) be subtracted as a smaller amount, stretched over 12 months, for child support calculations purposes.⁴⁷⁷ With respect to this example, the *FK online UB calculation tool* now advises *parents* that the tool appropriately reduces

⁴⁷⁴ SOU 1983:51, *Ensamföräldrarna och deras barn* [*Single parents and their children*], at 345–346.

⁴⁷⁵ See ÅKE SALDEEN, *BARN OCH FÖRÄLDRAR* [CHILDREN AND PARENTS] 106 (1995) and ANDERS AGELL, *UNDERHÅLL TILL BARN OCH MAKE* [SUPPORT TO CHILDREN AND SPOUSE] 22 (4th ed. 1988 & Supp. 1991).

⁴⁷⁶ This is because in Sweden private child support issues are considered of an “in principle *dispositiv* nature,” in other words able to be settled between the parents as private parties, as opposed to *indispositiv* issues which cannot be as freely opted out of between the parties because certain mandatory rules limit how they may be resolved. SCHIRATZKI (2005), *supra* note 466, at 44. See Chapter 7.3, *infra*, which discusses the differences in Sweden's and California's judicial oversight of child support resolutions, compared with child custody and visitation resolutions, in the context of legal dispute resolution ideals.

⁴⁷⁷ See SCHIRATZKI (2005), *supra* note 466, at 44 (reporting on a Swedish child support law study including examination of 2004 trial court level decisions).

this benefit when auto-filling the form for a child eligible for *studiestöd*,⁴⁷⁸ reflecting the agency-not-court focus (or really the between-parents focus) as the norm for child support issue resolution, but also ongoing efforts the FK agency is making to support parents in solving child support issues for their children when the parents live separately. The advisors to parents who seek the agency's in-person or Skype-based assistance with child support calculation are likely to receive the same guidance.

To summarize, a child's "needs" to be covered by financial contributions from both parents are, under Swedish private law, generally *the difference between the subjective total "needs" or living costs of the child, add-ons to base support included, and the amount that the society covers via provision of universal services and payments of social benefits*. A child's own incomes and assets are also relevant, but rarely significantly affect child support calculations.

It is primarily the parents' responsibility as negotiators of the UB amount to account for and collect evidence of the child's social benefits and other specifics regarding the child's financial need of support. Parents may decide between themselves how exactly consideration "shall" be taken to these various factors, although attorneys and courts will aid them to a certain extent if the parents so request.

Despite encouragement to individualize estimates of a child's needs, law and other sources largely do not suggest that parents look at a representative recent time period of *their own* paid, actual expenditures attributable to a given child, except for with respect to certain unusual expenditures as discussed below. This may reflect a strong preference for standardized, best-for-all solutions in the Swedish legal tradition.

To estimate the majority of a child's expenditures, parents usually are directed towards other estimation methods. These are analyzed next.

3.4.2.3. *Methods for Estimating a Child's Total Monthly Needs*

A child's total approximate monthly needs or costs for private child support purposes have for many years in Sweden been estimated via reference to a

⁴⁷⁸ Used to calculate support for a 17-year-old, the calculator reports this in the "social benefits and other incomes" input box on the form. See FK, *Beräkna underhållsbidrag och skapa avtalsunderlag* [Calculate child support and record the information necessary to reach a signed agreement], https://www.forsakringskassan.se/privatpers/foralder/for_foraldrar_som_inte_lever_ihop/berakna-underhallsbidrag#/ ("We have filled in study support per month. The support is paid out 10 months per year, therefore the sum is only 1,041 SEK [\$120].").

schablonbelopp or “standard amount,” and courts deciding private child support amounts in disputes between parents have largely used the *schablon* method.⁴⁷⁹ A newer method, the Swedish Consumer Agency (*Konsumentverket*)’s *referensvärde* method based on annual publicly-collected consumer data, is increasingly being recommended to parents negotiating child support and to the public agency staff who assist them, including via its use on FK’s website.⁴⁸⁰ This newer method proposes a modestly higher monthly total of child’s needs, according to governmental calculations.⁴⁸¹ FK’s most recent UB guidance manual describes the above two total-needs-estimation methods, plus one more (using the child’s *actual costs* as they are known to the parents) as options for parents and FK staff assisting them.⁴⁸² These three methods are introduced in this section.

Earlier, non-binding administrative (“soft law”) guidance to those deciding child’s needs for child support purposes built upon statements in preparatory works from Sweden’s 1979 child support legislative reform.⁴⁸³ This guidance was addressed to county workers helping to estimate the amount of a typical child’s gross monthly “needs” and then to allocate them between the parents to reach a child support amount. The guidance detailing this “ratio-sharing method” a.k.a. income-shares

⁴⁷⁹ SCHIRATZKI (2005), *supra* note 466, at 41 (reporting 100% use of the *schablon* method among all 2004 case decisions setting or modifying child support that Schiratzki randomly sampled). *See also* SOU 2011:51 at 183–200 (discussing the different methods and what cost categories they variously include), SoS, *Barns försörjning vid separation—ett utbildningsmaterial* [*Child support at the time of separation—an educational guidebook*] 37 (2014) (available at <http://mfof.se/varnad-boende-och-umgange/barns-forsorjning-vid-separation/>) (“Another measure is that which the courts often use as a template or standard (*schablon*), in other words a certain percentage of the current price base amount (*prisbasbelopp*). All usual living costs are considered to be included in the standard plus the child’s share of the housing costs.”) and SINGER (2019), *supra* note 57, at 206–207 (discussing how the *schablon* method’s estimates can be outdated compared to both the *Konsumentverket*’s method and the method now used to set UStöd amounts but emphasizing that individuating each child’s needs estimate is ideal).

⁴⁸⁰ *See* FK, *Beräkna underhållsbidrag och skapa avtalsunderlag* [*Calculate child support and record the information necessary to reach a signed agreement*], https://www.forsakringskassan.se/privatpers/foralder/for_foraldrar_som_inte_lever_ihop/berakna-underhallsbidrag#/.

⁴⁸¹ SoS (2014), *supra* note 479, at 40 (comparing the different methods used or recommended by the Swedish government to estimate monthly needs and concluding that the *Konsumentverket*’s method of calculating individual’s monthly needs results in a higher monthly need amount than specifically the *schablonbelopp*, *förbehållsbelopp* for UStöd repayment purposes and *riksnormen för försörjningsstöd* for need-based social benefit purposes). *See also* Prop. 2012/13:189 at 14 (on cooperation talks; also comparing child’s needs estimates from different areas of Swedish law, particularly public law).

⁴⁸² *See* FK 2016:1 Version 5, *supra* note 466, at 12.

⁴⁸³ SOU 1995:26 at 51 (describing this history).

method (*kvotdelningsmotod*)⁴⁸⁴ called first for estimating a child's needs as a percentage of the currently-applicable "price base amount" (the *prisbasbelopp*) used as an estimator of an adult's needs in other areas of Swedish law,⁴⁸⁵ and then allocating the resulting "standard amount" (*schablonbelopp*) in proportion to the parent's available incomes (as exemplified above).

The *schablonbelopp* for a child in the age range 0–6 was 65% of a *prisbasbelopp*, or 2,405 SEK (approximately \$264) per month in 2014; for age 7–12 it was 80% or 2,960 SEK (\$325) and for age 13–17 it was 95% or 3,515 SEK (\$386).⁴⁸⁶ Accordingly children's needs estimates made for UB purposes by use of this method vary by the age of each child, but not by gender or by any measure of the child's living standard, at least before the stage where potential "add-ons" are considered.

Child care costs, if any, are next added to this "standard amount," and social benefits, most commonly the *barnbidrag* or *studiestöd* for high-school-level students (plus an amount for school-provided lunch since the standard includes all meals), are subtracted. This leaves an estimate of the total "needs" for parental support to be negotiated up or down with respect to an individual child's actual costs, including any special "add-ons." The final, total needs to be covered by the parents amount is then allocated between the parents (which is by income shares, as in California) to reach a child support amount for the NCP to pay.⁴⁸⁷

*This method was not set by statutory law or binding for the county workers to which it was addressed, and was even withdrawn as a current publication by the Social Welfare Department in 1999.*⁴⁸⁸ Perhaps due to its simplicity, and an absence of alternative guidance, however, the method has often been repeated in soft-law sources and relied upon by those calculating appropriate private child supports, including judges (as evidenced by its appearance in case law and governmental child support law research reports⁴⁸⁹). Given that California and many other jurisdictions also use an income-shares method to allocate a consumer-data-based "total cost of a child" between parents to set child support amounts, perhaps the Swedish method was not as

⁴⁸⁴ *Id.*

⁴⁸⁵ See SoS 1989:6, *Underhållsbidrag till barn [UB to children]* (withdrawn in 1999, per SOSFS 1999:15). See also SOU 2003:42 at 68 and SCHIRATZKI (2005), *supra* note 466, at 41. The base amount (*basbelopp*) in turn was set by statutory law, specifically by Lag 1962:381 on general insurance (*om allmän försäkring, AFL*). SOU 1995:26 at 51.

⁴⁸⁶ See SoS (2014), *supra* note 479, at 37 (citing Försäkringskassan for the *schablonbelopp* for a child in these age categories).

⁴⁸⁷ See SOU 1995:26 at 51–52.

⁴⁸⁸ Withdrawn 1999 via SOSFS 1999:15.

⁴⁸⁹ See e.g. SOU 1995:26 at 51.

dependent upon the administrative guidance as is sometimes thought. The guidance had not suggested an obscure or original method, but rather one fairly intuitive, and commonly used internationally.⁴⁹⁰

The second method suggested to parents for estimating a child's needs and then calculating a UB amount is grounded in the Swedish Consumer Agency (*Konsumentverket*) "reference values" (*referensvärde*), which are calculated from consumer data collected annually by the Swedish government.⁴⁹¹ These data-based average costs for children are reported *with distinctions for the age category and gender of children*. They are now used for estimating each child's needs on the FK website for parents calculating and negotiating a private child support amount.⁴⁹² Once a needs amount for parental support is determined, income shares allocation proceeds, as with the other methods.

This *referensvärde* method, by adding up actual (if average) consumer-data-based child costs may better approximate a child's actual needs than the *schablon*-based, method. The *schablon* method is more indirect, in that it estimates that a child within a certain age range will need a certain percentage of what an average adult needs (per an adult-needs estimate calculated for other Swedish law purposes, the *prishasbelopp*). The *referensvärde* also has as a strength that it intends to provide a "reasonable" living standard via use of consumer data about real children, however it has been criticized for providing a relatively modest costs estimate; there are other estimates aiming to provide a lower, "base" consumption level that *nonetheless include more categories of child costs*.⁴⁹³

It may be true that the *referensvärde* method's use of not only age but also gender helps better to individualize each child's estimated needs amount, although the gender differences reported in these estimators are not large. The missing

⁴⁹⁰ See also Chapter 6.2.2, *infra*, comparing the differences in what consumer data is used.

⁴⁹¹ See Konsumentverket Report 2018:5, *Konsumentverkets beräkningar av referensvärden* [calculation of reference values] (detailing the methods used and review processes for updating these methods) and Konsumentverket, *Koll på pengarna 2019* [Checking on the money 2019], <https://www.konsumentverket.se/globalassets/publikationer/privatekonomi/koll-pa-pengarna-2019-konsumentverket.pdf>.

⁴⁹² See FK, *Beräkna underhållsbidrag och skapa avtalsunderlag* [Calculate child support and record the information necessary to reach a signed agreement], [https://www.forsakringskassan.se/privatpers/foralder/for_foraldrar_som_inte_lever_ihop/berakna-underhallsbidrag#/.](https://www.forsakringskassan.se/privatpers/foralder/for_foraldrar_som_inte_lever_ihop/berakna-underhallsbidrag#/) The differences in the costs by gender (male or female) are not large. They can be said to help individuate child support amounts better than an average-costs estimator without gender distinctions, yet come with the assumptions that gender is binary and that an individual child will cost a gender-typical (and an age-typical) amount. Here again *individualization* is in conflict with *uniformity, ease of use and administrative efficiency* (e.g. avoiding the need for evidence of actual costs in every case for every child). The balance between efficiency and individualization is discussed more within the comparison's Chapter 7.3.

⁴⁹³ See SCHIRATZKI (2005), *supra* note 466, at 45–46 (citing SOU 2003:42 at 98 and SOU 2002:73, *Förbättrad statistik om hushållens inkomster* [improved statistics about household incomes]).

consideration of differing parental living standards, however, continues to imply that children of the same sex and developmental stage in Sweden cost their parents approximately the same amount for food, clothing, mobile phones and all other costs related to raising them not universally provided by the state, *regardless of the parents' incomes*, which, if child support is being regulated in *private law* to help resolve disputes between parents and not as a social benefit, seems highly questionable objectively. This is evidence, however, of the strength of WSM-related ideals that public policy debate and lawmaking must weigh against other interests.

The legislatively-intended variations in Swedish private child support amounts in the upwards direction are achieved via law on permissible child support add-ons, discussed next.

3.4.2.4. *Swedish Private Law Special Need, Travel Cost and Living Standard "Additions"*

As previously introduced, under Swedish law a child's special or unusual needs for extra monthly support generally are included at the stage of listing their "needs" in total. Each special need is added as *an individual-child-specific addition* to the more general estimate of how much money per month is needed to cover the not-special, reasonable needs of a similar child. As an example, an 8-year-old girl may according to consumer data generally need X amount to cover her costs of living, and a particular 8-year-old girl may need X plus Y, with Y representing extra parentally-provided support to cover costs related to a disability or illness, or extraordinary involvement in an expensive competitive sport. Those special costs, Y, plus X, become her needs in total to be allocated between her two parents.⁴⁹⁴

The Swedish private law supporting special-needs add-ons or "additions" derives from the statute itself, FB 7:1, which directs only that parents are responsible for providing an amount of child support that is "reasonable" considering their *child's needs* and *both parents' financial circumstances*. The preparatory works to the statute address in somewhat more specific terms what appropriate levels of child support should be, but do not go as far as to detail various add-ons and how they might be

⁴⁹⁴ Analogous in California would be the base amount of Guideline-calculated support following from her parents' incomes and relative time with her, then adding the mandatory uninsured healthcare costs add-on and perhaps the discretionary special circumstances add-on for the sports costs.

decided. Proposition 1978/79:12 mentions the need for more concrete guidelines.⁴⁹⁵ Lawmakers at the same time *wanted courts to retain use of their existing judicial discretion* to decide UB amounts “unencumbered by more detailed regulations.”⁴⁹⁶

Significantly, lawmakers also discussed how *administrative guidelines* giving advice on how UB in various situations might be decided, *and would be desirable*. Detailed guidelines should not be written into the statutory law itself, they reasoned, yet *constitutionally in order to bind courts they would need to be statutory law*.

Instead, non-binding guidance subordinated to both case decisions and statutory law would be best, the Proposition authors continued. Guidelines should be written separately by agencies with different roles in setting UB amounts (FK and the then-existing child welfare committees, *barnavårdsnämnderna*), but as much as possible be kept uniform (*enbetydliga*), and they should regularly be updated with respect to court decisions and how they themselves are being used in practice.⁴⁹⁷

Proposition 1978/79:12 thus does not itself detail particular special needs of children that Konsumentverket’s data and the *schablon* method of estimating a child’s reasonable costs might not have already covered, *except* with respect to the *standardtillägg* or living standard addition for children of wealthier parents (discussed below in this section). Given the Proposition’s emphasis on the importance of *individual considerations given all the circumstances* in each child’s case, however, the lack of specific mention of “add-ons” does not alter a reader’s perception that the legislative intention was for such additions, perhaps to be detailed in soft-law, non-binding future guidelines.

On Which Expenses Need to be “Added On” under UB Law

The current training materials for administrators of child support often mention “add-ons” indirectly, by listing for FK personnel and parents what the *schablon* and the *Konsumentverket* reference values needs estimates already include, so that they can decide what additional costs they would like to add in to a given child’s needs total. The guidance also comments that one can “obviously, of course” (*självkärlart*) use a child’s “actual costs” (*faktiska kostnader*).⁴⁹⁸ It seems this is an entirely third option,

⁴⁹⁵ See Prop. 1978/79:12 at 96 (mainly regarding the principle that the duty to pay child support should be limited by the need to leave payors a certain amount to financial ability to support himself “and his family,” here meaning his current household).

⁴⁹⁶ *Id.*

⁴⁹⁷ See Prop. 1978/79:12 at 95–96. Quite different were the mandatory child support guidelines required to be introduced into the statutory law itself in all US states starting in the 1980s, deliberately limiting courts’ discretion.

⁴⁹⁸ FK 2016:1 Version 5, *supra* note 466, at 15.

and of course logically it is. Given parents' freedoms to use their discretion in how they determine their child's total needs, it seems clear they could use some measure of actual costs in lieu of (1) either of the two popular estimators (2) plus additional costs, including the *standardtillägg* if appropriate. Because, unlike in California, there is no Guideline, "base" amount of child support required by law, a court also legally has the discretion to set appropriate UB support from detailed information on what a given child's needs can be predicted to be given his or her actual needs from the recent past. The concept of "add-ons" is in this way *less distinct* in Sweden than it is in California.

Describing "actual costs," however, the most recent FK guidance advises not how parents might go about determining how much a given child has historically been costing them *in total*, as a basis for discussion of needs going forward. Rather it describes only that "the child may for example have extraordinary costs for food and participate in a free-time activity that *Konsumentverket* did not consider usual but that the parents think is meaningful to the child's continued well-being." Further it mentions possible frequent travel between the parents' homes and "other costs that neither the *schablon* nor *Konsumentverket* [methods] consider," in which case it "can be important" to *determine the actual costs*.

Costs for (any uninsured) wellness and medical care, special dietary costs and disability-related costs are *the most commonly "considered" actual costs*, according to FK's guidance.⁴⁹⁹ This could be confusing to those attempting to use the guidance; it excludes mention of the out-of-pocket childcare (preschool) fees incurred for most children between ages 1 and 6, most notably, although those fees are mentioned as extra, actual costs needing to be added to either of the two common needs estimations, in the sections discussing those estimators. Neither estimator has already included them.⁵⁰⁰

FK's wording talks of "considering" actual costs, yet it seems clear they are expected to be *added on to a base needs total*, arrived at using a one-size-fits-most estimator, *if* the parents agree or *if* a court in its discretion deems such addition appropriate. *They are permissive, not mandatory, additions*, using California's terminology, and the real, more guaranteed amount of UB is based on a standard, estimated needs total, not on consideration of the child at issue.

Perhaps that is why actual childcare costs do not end up included on the "actual costs" list. A court, and any reasonable FK advisor or parent, would definitely include the childcare expense in the needs total. It is an "add-on" with a legitimacy

⁴⁹⁹ See *id.*

⁵⁰⁰ See *id.* at 14–15.

on par with the needs estimator totals. In that sense childcare costs may be the only “mandatory”-like “add-on” to Swedish UB needs calculations.

An example given by the same guidance publication seems to support this hypothesis, adding on no actual costs except the child care fee, however it also raises another concern.

For a five-year-old child, the guidance explains,⁵⁰¹ one should add 820 SEK (\$94) in food costs (if the child is provided lunch five days per week at preschool) to the 1,450 SEK (\$167) per month *Konsumentverket* estimates a child of that age to need exclusive of groceries for meals (*livsmedel*). One then adds on a “reasonable childcare fee” (presumably the actual one paid for this child) of 1,260 SEK (\$145). Finally, one subtracts the universal child benefit (*barnbidrag*) of 1,250 SEK (\$144). The child’s needs for parental child support, to be divided between the parents, are thus calculated to be 2,280 SEK (\$262) per month.⁵⁰²

Food at home + Konsumentverket’s needs estimate (age 5) + preschool = Total needs

⁵⁰¹ See *id.* at 15.

⁵⁰² An example using the same facts but the *schablon* method estimated a total needs for parental support of 2,475 SEK (\$285), with a different list of costs included and excluded. Also here potential “add-ons” for certain costs are listed (only for “unusual, large” costs), and again *there is no suggestion that the more typical costs among those excluded by the estimator—for example musical instruments, a stereo (equipment on which to play music), or music lessons—be added in by the parents*. While children’s music lessons may be available for no or very low cost in Swedish counties, there is no clear reason that the UB legal system in practice favors leaving so many potential known costs “off the table” for discussion and estimation. Chapter 7.3 suggests some explanations, in comparative perspective, stemming from Swedish legal system structure, ideals and tradition. These include ideals of *procedural automation and simplicity*, in addition to *state agencies’ duties* to steer unmistakably clear of playing a legislative, lawmaking role or an official administrative decisionmaking role that might trigger an individual’s right to a review of the decision made. Regarding FK needing to emphasize that the parents and not it are rendering the decision on a UB amount see FK 2016:1 Version 5, *supra* note 466, at 38 (“Since you as an administrator at Försäkringskassan do not determine any maintenance allowance, but only help the parents to agree on maintenance allowance, it is important that it is the parents and not you who, for example, fill in the maintenance allowance calculation tool that is available on Försäkringskassan’s website. *It is also very important that you emphasize that if the maintenance allowance is calculated to a certain amount, it is the parents who have agreed on that amount and not the Swedish Social Insurance Agency who decided on any amount. It is also important to remember that if you provide incorrect information to a customer that causes him or her to suffer financial losses, the customer may claim damages from the Swedish Social Insurance Agency* [citing here (Prop. 1997/98:105, *Det allmännas skadeståndsansvar* [Public Liability], at 32–39)]. You can read more about damages in the Guidance 2004:7, *Förvaltningsrätt i praktiken* [Administrative law in practice].”) (emphasis added). See also *id.* at 39 (advising FK personnel to check if parents seem ready to agree on a UB or if they could benefit from a cooperative mediation/discussion—at the county office, not at FK—however to advise that parents can together get information from FK, as a three-way meeting or web meeting).

$$\begin{aligned}\text{Total needs} - \text{universal social benefit} &= \text{Total needs for parental support} \\ \text{Total UB} &= \text{NCP's share of Total needs for parental support}^{503}\end{aligned}$$

Concerning is that the guidance mentions *directly above* this example various limitations within Konsumentverket's methodology.⁵⁰⁴ It explicitly lists a number of costs *not* included in Konsumentverket's needs estimates, several of which are almost certainly provided to every five year old child by every reasonable Swedish CP.⁵⁰⁵

The Swedish Consumer Agency has made its calculations on the basic needs of goods and services. They have not included costs for if one needs medication or aids due to illness or disability. What is also not included in the Swedish Consumer Agency's calculations are, for example, costs for travel, medical and wellness care, glass-eyes, gifts, vacations, [children's birthday and similar] parties.

Why would the agency responsible for assisting parents in reaching appropriate, individualized private child support agreements exclude advice for the parents to consider—perhaps to list out—anticipated costs for even extremely modest travel, summer vacation activities, celebrations of holidays and birthday, gifts for the child (beyond the parentally-purchased toys and sports equipment included), costs of gifts from the child expected when the child attends others' birthday parties, and so on?

Conceivably, child support agency administrators (and courts as well) might be hesitant to add such further reasonable, just-as-universal costs to the Konsumentverket and *schablonbelopp* estimators as they execute lawmakers' intentions for the UB law, although legislative intent seemed to expect higher-quality child-support-specific guidelines would be developed. Lawmakers in no way *required* a systematic underestimation of the costs actually incurred by parents to raise a child.⁵⁰⁶

Another reason the exclusion of a number of extremely common costs might be considered acceptable by Swedish UB administrators, judges and private attorneys might be some notion that both parents incur certain types of costs, assuming the

⁵⁰³ The child's housing expense is included in the CP's actual housing expense, thus treated as a deduction for the CP that, all else being equal, will be higher than the NCP's housing deduction. Both may have a higher deduction, if both live with the child sufficiently often. *See* Chapter 3.5.2, *infra*. Marginal housing expense is thus not a mandatory "add-on" to the child's cost estimators, and yet an actual housing cost figure will normally be used for it in the calculations. In unusual circumstances it is a recognized discretionary "add-on".

⁵⁰⁴ Costs are included only for food prepared at home, never for restaurant meals or snacks, as one example. *See further* Chapter 6.2, *infra*, comparing the data and theories used to set children's needs.

⁵⁰⁵ FK 2016:1 Version 5, *supra* note 466, at 15.

⁵⁰⁶ *See* Chapter 5.3, *infra*, summarizing legislative intents.

NCP is exercising some parenting time (although then he would be entitled to a visitation deduction, discussed in Chapter 3.5's treatment of parents' abilities to pay). Meals, for example, might be provided by each parent at times as well, but these are not excluded from the categories of costs included when estimating the child's "needs" including individuated needs. Perhaps a higher total needs estimate should be used, in the interest that CPs and NCPs actually divide a more reasonably comprehensive total of the direct costs incurred for their children.

Swedish private-law court decisions also have interpreted which special needs costs are reasonable to add to the average costs total and how they should be added (or considered). One decision included a CP's loss of income when caring for a sick child as a special-need cost attributable to the child.⁵⁰⁷

As the calculation process operates today, parents (and courts) seem to consider evidence of the costs to be covered by parents for a child's special needs, including for example costs of participating in sports activities, *at least in cases where the child also has a medical diagnosis necessitating additional costs* for the parents.⁵⁰⁸ The most usual special needs additions in Sweden, outside of those considered in connection with the living standard additions discussed below, seem to be for special-medical-needs-related costs, including lost income due to caring for a special-needs child. In practice, however, case law and currently-active guidelines are limited in specifics, and *adding costs for a child's special needs to the child's needs total remains a highly discretionary exercise* by parents and courts.

Per a separate statutory section within the child custody chapter of the Swedish private law FB, both parents also should contribute to the *travel costs for visitation* with an NCP, each according to his or her ability.⁵⁰⁹ This is related to the child's right to contact with his or her NCP, which both parents have a shared responsibility to

⁵⁰⁷ See, e.g., NJA 1995 p. 297 (holding that a *parent's lost earnings* due to her need to care for a child with special needs *could be counted as an add-on cost to the child's needs total*, such that it could partially be covered by the nonresidential parent's payment of child support covering his share of the child's needs).

⁵⁰⁸ See SCHIRATZKI (2005), *supra* note 466, at 5, 51–52 (detailing the two of 14 trial-court-level cases from 2004 included in her study where special-needs add-ons were granted by the court as involving special computer programs to help with reading and writing difficulties, special foot-cushioning insoles, and costs for ice-hockey participation in one case and medicine and sports activities in the other). In only three of the 14 cases studied were any special-needs add-ons requested.

⁵⁰⁹ FB 6:15 b para 1 (requiring a child's residential parent, if the child lives with only one parent, to contribute to the travel costs caused by fulfilling the child's need for visitation with the other parent, as is reasonable considering the parents' financial abilities and other circumstances).

assure.⁵¹⁰ Preparatory work clarifies with respect to this statutory provision that *the visiting parent can be considered to have the primary responsibility for travel costs*, yet that *both should contribute, generally in proportion to their ability* (not 50% per parent) but each case should be subject to judicial discretion to consider all of the circumstances of the particular case.⁵¹¹ Costs for transportation, but also most likely for other visitation-related costs such as necessary overnight lodging, should be shared as part of this Swedish private law visitation costs add-on of additional child support.⁵¹²

The Living Standard Addition (Standardtillägget)

A further addition or “add-on” to private child support covering a child’s average monthly needs legally is available, but it is of a different character than the other additions. The *standardtillägg*, literally “[living-] standard addition” (hereinafter *standardtillägg*) relates more to the parents’ combined financial circumstances and relatively less to the child’s demonstrated monthly needs.

The *standardtillägg* is not mentioned directly in the statutory law, though it follows from FB 7:1 para. 1, the law governing parents’ basic duty to support their child to a reasonable level given the child’s needs *and* the parents’ combined economic circumstances. Unlike other additions (add-ons), it is expressly discussed in the preparatory work to the current UB law.

⁵¹⁰ FB 6:15 paras 1 and 2 (“The child shall have a right to socialize with a parent with whom it does not live. The contact can be made by the child and the parent meeting each other or by having another contact. The child’s parents have a joint responsibility for ensuring that the child’s need for socializing [umgänge, visitation in California terms] with a parent that the child does not live together with as far as possible is met.”) FB 6:15 also allows for the Swedish social services to bring a case seeking visitation with grandparents or others particularly close to the child, yet the statutes do not impose a support obligation with respect to fulfilling the child’s right, if any, to such visitation.

⁵¹¹ Prop. 1997/98:7, *Vårdnad, boende och umgänge* [Legal and physical custody and visitation] at 71–72 (clarifying also that travel costs generally should be shared proportionally to income, in the same manner as when the base child support is calculated, with the parents thus taking responsibility for the child’s needs each in accordance with his or her respective proportion of their combined discretionary incomes). See also SINGER (2019), *supra* note 57, at 176–177 (commenting that travel distance according to the preparatory works should be at least 100 kilometers for an add-on to be appropriate, yet that a judgment based on the totality of the circumstances in each individual case must be made) and NJA 1990 p. 219 (wherein the Swedish Supreme Court *prior to introduction of this statute* ruled that in exceptional cases travel and other costs for visitation could be ordered shared).

⁵¹² See RH 2001:41 (wherein an appeals court, *Svea hovrätt*, ruled that only *actual* transportation e.g. train ticket costs, and not other visitation-related costs such as for lodging, would be shared given the facts of that case, yet with the judges in disagreement regarding whether other costs, e.g. lodging costs, may properly be included in other cases, given that *legislative intent seems to be that they could be included*, per Prop. 1997/98:7 at 118).

Proposition 1978/79:12 provides that “[t]he child can claim *a higher standard for him- or herself, on a sliding scale*, the better-off the parents are financially.”⁵¹³ The lawmakers intended that the *standardtillägg*’s appropriateness and amount *initially should be judged from the parents’ combined discretionary incomes*, meaning net-of-tax incomes after subtraction of each of their permitted self-support reservations, including their housing costs. Due consideration “should also be able to be given more generally to any duty to support a spouse,”⁵¹⁴ and to any needs of the payor’s own not covered by the usual self-support reserves.

“I am not prepared to suggest a formula for how the living standard addition to a child’s needs should be calculated,” concluded the minister (head of the Justice Department, *departementschef*) within the Proposition, but “perhaps detailed advisory regulations on setting private Swedish child support amounts could address the *standardtillägg* as well.”⁵¹⁵ Such guidance written directly into the law was considered undesirable by the law’s drafters, but they did expect that detailed regulations would instead be promulgated.⁵¹⁶

Today the *standardtillägg* is similar to other child support add-ons, however, in that *it is a tool suggested to decisionmakers*, meaning parents, attorneys, advisors at relevant government agencies and courts, by the preparatory works proceeding the 1979 revisions to the FB private child support rules, yet seems to be used more rarely than parental incomes might reasonably suggest is appropriate. Very little data exists as to how frequently children with a right to it receive this extra support, and sufficiently detailed rules on how a UB *standardtillägg* should be calculated have not been developed.

Case law offers further detail as to the current legal rules for the *standardtillägg*. The Swedish Supreme Court has *not declined* to order a *standardtillägg* in *any* of the three cases it has decided on this issue, although none of the amounts of additional support ordered will seem sufficient to raise the child’s living standard to that of the parents’ from a Californian perspective.

⁵¹³ Prop. 1978/79:12 at 105 (emphasis added). Note that in practice the child will be represented by the CP, who is not under an obligation to make this claim and may choose to do so or not to do so at her discretion, thus although “the child can claim” a higher standard, this is not a right enforceable by the child, and it is not actively enforced by the state on the child’s behalf either. See Chapter 7.3 for comparative discussion on this topic.

⁵¹⁴ Prop. 1978/79:12 at 105; *but see id.* at 98 (discussing contrasting opinions in the lawmaking process regarding limiting children’s support due to expenditures to support a homemaker spouse).

⁵¹⁵ *Id.* at 105.

⁵¹⁶ *See id.* at 95 and 105.

In 1985 the Court held a *standardtillägg* to be appropriate when a teenager was accustomed to a higher standard of living during the parents' marriage and had higher costs due to age and activities, stating a rule (without citation to another source of law) that "[a]s a guideline it can be stated that the child *must have such a large contribution that its [living] standard is similar to that of the [payor]*. The child *must*, however, *reasonably be able to take advantage of the contested, higher contribution*, and a *standardtillägg* is therefore more justified the older the child is."⁵¹⁷

In 1995 a *standardtillägg* was nonetheless held appropriate for a three-year-old *without* previous experience of a higher standard *or* the higher costs of teen years, at least where the payor parent lived at a significantly higher economic standard than the CP.⁵¹⁸ The Court indicated that a *standardtillägg* sufficient to give the child a standard similar to the payor parent's was appropriate, but also indicated (citing the 1985 case) that the child must have a *reasonable ability to use* the "higher"⁵¹⁹ amount of support.⁵²⁰

Finally, in 1996, the Court agreed with a CP mother's request that two *standardtillägg* amounts of 1,500 SEK (\$173) each should be added to the total needs of two children, both teenagers with various activities and costs.⁵²¹ The parents both had very good living standards, but the *payee CP* had a much *larger* disposable income for UB purposes than the payor NCP, and thus the NCP did not agree to pay as much UB as the CP deemed appropriate. After the Court approved all calculations pursuant to the *schablon* estimation and *kvotdelning* allocation methods described above in this chapter, *the NCP was ordered to pay a UB of 800 SEK (\$92) per month per child* as contribution to the support of the children.⁵²² This was a reduction to what

⁵¹⁷ NJA 1985 p. 781 at 787 (emphasis added).

⁵¹⁸ NJA 1995 p. 297.

⁵¹⁹ This seemed to be a reference to a belief that a civil court in a private child support matter *ordering an unwilling parent to contribute* to providing a child with an amount of parental support *higher than the consumer-data-based middle-class average for any child* must be justified by *more* than the law at FB 7:1 and its stated legislative intent for the parents to provide the child with whatever level of higher-than-average living standard is affordable to them on a sliding scale of living standards parents might afford. The case law's implications are discussed at Chapter 3 (in relation to California's analogous law providing children with a right to share in their parents' or higher-income NCP's living standard).

⁵²⁰ See NJA 1995 p. 297 at 302 (citing NJA 1985 p. 781); see also SCHIRATZKI (2005), *supra* note 466, at 52–57 (discussing *inter alia* these Supreme Court case precedents and 2004 trial-level cases involving the *standardtillägg*).

⁵²¹ See NJA 1996 p. 134. This the same case that gave guidance on whether a child's own investments should reduce needs for child support, as discussed above in this chapter.

⁵²² *Id.* (detailing that each parent received 500,000 SEK [\$57,524] net in their property division after separation; the CP earned 51,000 SEK [\$5,867] per month and the NCP 21,000 SEK [\$2,416]; and

the CP already had secured at the trial-court level. The trial court had decided, making an evaluation of “reasonableness,” that the NCP father should pay 1,123 SEK (\$129) per month per child, the UB amount requested by the CP, “which corresponds to what society through the rules on advance payments [UStöd rules] guarantees each child, even if a distribution of the needs of the children strictly according to both parents’ and the children’s own economic circumstances would lead to lower amounts.”⁵²³ The appeals court and then the Supreme Court ruled differently, and the result was in the end a lower UB amount paid by the NCP as a contribution to the support of his two children living with their CP mother, even though a *standardtillägg* had been granted. The children did not “need” additional money to live at a higher living standard than their higher-income CP could provide, yet had a right to a higher-than-average standard given both parents’ financial circumstances. When the calculations were done, *with a standardtillägg* having been granted, the NCP’s contribution to the children was nonetheless less than the minimum UStöd amount guaranteed by the state.⁵²⁴

The Swedish Supreme Court has most recently signaled that the reasoning behind the *standardtillägg* remains sound. Its ruling in NJA 2013 p. 955 confirms its view that a parents’ support duty will vary, depending especially on the parents’ *economic circumstances*.⁵²⁵

The child’s needs may vary depending on a number of factors such as age, health status, talent and interest, but also external factors such as the general condition and

their disposable incomes were calculated to be 17,140 SEK [\$1,972] and 6,427 SEK [\$739] respectively, with reductions made for housing costs of 10,000 SEK [\$1,150] and 5,663 SEK [\$652]).

⁵²³ This result would mean that the state guarantee amount was a floor, a minimum UB which should be paid by any NCP who could afford to pay it, regardless of the CP’s income. In a similar situation of disagreement on a UB amount under current UStöd law, it is worth noting, a CP *could in any case receive the UStöd amount for each child*, without going to court, and an NCP would be collected against by the state for up to that amount, *unless* the NCP had won a judgment to pay a lower amount in UB. In this case, at the Supreme Court level, the payor *did* win such a judgment. Illustrated here is one way the private and public systems lack coordination, one which may be remedied if the UStöd law is modified to take CP income into account. There may be other reasons lawmakers nonetheless choose not to do so.

⁵²⁴ It could be discussed whether the fairness (as between the parents) aims for Swedish child support law are served in cases such as this. *See* Prop. 1978/79:12 at 82 (“If society took over the maintenance obligations of the debtors [completely], this would justly and certainly be experienced as manifestly unfair by the parents who live together with their children and make financial sacrifices on their behalf.”).

⁵²⁵ NJA 2013 p. 955 (citing Prop. 1978/79:12 at 153 and 400). The comparison discusses how phrases like these are found to be understood quite differently between the two jurisdictions, and connects this to their respective legal and welfare state cultures.

conditions of the parents. However, *it is the parents' financial circumstances that ultimately determine the extent of their maintenance obligation.*

Scholarly research has criticized the limited provision of the *standardtillägg* by Sweden's courts, arguing that the amounts given are small and seem to be arbitrarily set.⁵²⁶ Today's training materials by FK⁵²⁷ and SoS for child support parental discussion facilitators address the appropriateness of a *standardtillägg* by calling for parents to discuss whether one might be appropriate for their child. As SoS explains, "individual circumstances on the child's side may cause the child to need higher maintenance than follows from the average-costs consumer data. The better the parents' financial ability is, the greater the claim to a higher standard and thus maintenance can the child require."⁵²⁸ This soft law guidance briefly mentions the Swedish Supreme Court cases that have directly addressed *standardtillägg* requests.⁵²⁹ SoS's version notes that *even though* one parent litigant argued that a younger child did *not need* a living standard addition, the Supreme Court in 1995 disagreed.⁵³⁰

All of this soft-law guidance is phrased in terms of the child's "needs" being greater where the parents can afford a higher living standard, demonstrating how Swedish family law professionals may see the *standardtillägg* as a child's right, but one, from an enforcement perspective, solely the responsibility of parents to assure gets fulfilled, given that it is a right to support above what is considered "necessary" for the child's development.⁵³¹

⁵²⁶ See, e.g., SCHIRATZKI (2005), *supra* note 466, at 57 (criticizing the application of the *standardtillägg* in practice, where trial and other courts she studied seem to improperly make decisions regarding it by arbitrarily *setting a standardtillägg amount between the requested amounts of each parent or using evidence of a child's actual costs*).

⁵²⁷ See FK 2016:1 Version 5, *supra* note 466, at 16 (the latest guidance, citing Prop. 1978/79:12 at 105, 154, 400 and 422, and adding that a CP's good living standard will automatically be provided to the child but if the NCP has a good standard or property of higher value a *standardtillägg* "can" be discussed, and does not have to be paid as cash but instead might for example involve the NCP paying for the child's camps, trips abroad, hobby costs or similar costs).

⁵²⁸ SoS (2014), *supra* note 479, at 56 (mentioning also that more marginal needs should be met for children whose parents can afford to do so).

⁵²⁹ See FK 2016:1 Version 5, *supra* note 466, at 16 (explaining that there exists no guideline (*riktlinje*) on how a *standardtillägg* should be calculated but that the cases NJA 1985 p. 781, NJA 1995 p. 297 and NJA 1996 p. 134 could be useful).

⁵³⁰ See SoS (2014), *supra* note 479, at 56 (citing NJA 1995 p. 297).

⁵³¹ See also SCHIRATZKI (2005), *supra* note 466, at 52 (opining that it follows from the purposes behind the *standardtillägg* that it can be seen as a child's right). Chapter 6.2 analyzes and compares the child support laws studied with respect to various levels of children's needs they might fulfill.

Like all aspects of a private child support amount, a *standardtillägg* is in principle *dispositiv* (non-mandatory) and thus may be agreed to or declined between the parents on the child's behalf, without government oversight, or ordered by a court only upon the evidence presented to the court by the parties. The Swedish court has no duty to independently verify or question the parents on a *dispositiv* issue.⁵³² It seems clear that the *standardtillägg* was not intended to cover specific, proven special expenses attributable to a child like the previously-discussed special additions but rather is supplemental child support enabling a child whose parents can afford it to have more of the child's less pressing needs met, in other words to enjoy a higher living standard available to the parents,⁵³³ despite the frequent reference in practice to provable expenses used to justify a *standardtillägg*.

3.4.2.5. What Legislatively-Intended Living Standard?

At the start of this chapter the legal duty to provide child support and *the basic measure of child support* in both jurisdictions studied was introduced. This section of the chapter details a number of the *specifics underlying what "needs" of a child the law seeks to meet* via child support law. Here, references from the examined legal sources that help to establish *what level of living standard* Swedish private-law lawmakers intended to achieve for children to separately-living parents are presented.

The total child's needs amount calculated by the Swedish standard-costs-based ("*schablon*") method is meant to include all of the "usual" costs directly related to the

⁵³² See *id.* at 44. But see FB 7:10 paras. 1–2 (giving courts the power to modify child support judgments or agreements between parents if changed circumstances warrant it, and specifying that parental agreements can also, without changed circumstances, be modified by the court "if the agreement is unreasonable considering the circumstances at the time it was made and the circumstances in general.").

⁵³³ See Prop. 1978/79:12 at 105, 154, 400 and 422; see also NJA 1989 p. 700 (where the appeals court affirmed a trial court's decision to grant a 300 SEK (\$35) per month *standardtillägg* to a teenaged child, opining simultaneously at 701 that per unnamed prior case law "significant restrictiveness" should be applied when deciding to supplement child support with this addition; the Supreme Court level decision was not regarding that issue but rather attorney fees) and SCHIRATZKI (2005), *supra* note 466, at 52 (citing NJA 1989 p. 700). Regarding the effect of both (instead of just one parent) having good economic circumstances, see NJA 1985 p. 781 at 787 ("The fact that also the parent with whom the child is living has very good finances, as can be seen from the referenced motive statement, does not mean that the [UB] is calculated but suppresses the child's claim on the debtor [payor]. As a guideline, it can be stated that the child must have such a large contribution that its standard is similar to the person obliged to pay the allowance.").

child, plus the child's portion of the household's housing expenses,⁵³⁴ and thus should keep a child provided for at a comfortable middle-class living standard, not at a poverty or minimal-needs level, as had been discussed.

The other often-used method previously detailed, the *referensvärde* method, also aims to give children a reasonable, not minimal, living standard ("*en rimlig konsumtionsstandard*"). Consumer data are used differently under the (Konsumentverket data-focused) *referensvärde* method, but the goal remains to find an up-to-date costs total for living a reasonable life in Sweden, setting aside considerations of differences in levels of consumption within the population:⁵³⁵

The calculations cover both individual and household costs [note: not housing costs] and are *based on a basic need for goods and services that are needed to live everyday life in today's society, irrespective of household income*. The calculations include food, clothing and shoes, leisure and play (including mobile phone), child and youth insurance, home insurance, consumables, home equipment (including computer), media, home telephone etc. The costs cover *both current expenses and certain savings in order to be able to replace durable goods*. It is *neither a minimum nor abundant consumption level* that is represented, *but rather a reasonable consumption standard*. The calculations do *not* however include *differences that exist in consumption due to cultural differences, illness or disability*.

The estimators are not law and they do *not* create legally-binding, presumptively-correct needs *or* child support amounts, even if courts and others who calculate child support amounts may treat them as presumptively correct in practice.⁵³⁶ Although these costs estimators (and their assumptions about the legislatively-intended living standard a child should be able to enjoy) are intended only to serve as a *starting point* for estimating an individual child's needs, they have an *advisory (and normalizing)*

⁵³⁴ SoS (2014), *supra* note 479, at 37 ("All usual living costs are considered included in the *schablonbelopp* plus the child's share of the housing costs."). Compare FK 2016:1 Version 5, *supra* note 466, at 13 ("The child's housing cost usually is calculated into the CP's housing costs" (citing Prop. 1978/79:12 at 104)).

⁵³⁵ SoS (2014), *supra* note 479, at 38 (paraphrasing the Swedish Consumer Agency's reference-values calculation purposes in the child support context) (emphasis added); *see also* The Swedish Consumer Agency (Konsumentverket), Report 2018:5, *The Swedish Consumer Agency's methods for calculating reference values for some of the most common household expense categories* 8 (English-language version of the Agency's Report 2018:5, *supra* note 491).

⁵³⁶ It remains parents themselves responsible for deciding UB amounts in Sweden, sometimes with assistance from FK or attorneys and as a last resort civil law courts, in the rare case that bringing an action will be cost-effective given low UB amounts at issue. A recommendation that FK instead be responsible for calculating these supports was made but not adopted when FB was last substantially revised in 1979. *See* Prop. 1978/79:12 at 95.

function as well, helping parents to decide what level of spending they should expect or aim to invest towards meeting the child's needs when the parents live separately.⁵³⁷ Parents living together must also decide this, more or less actively, and the same annually-updated Swedish reference values are used to advise them as well. Thus *UB calculation guidance reveals something of the ideals and practical considerations influencing the Swedish child support system.*

Confusion in UB-setting practice in part arises from *somewhat contradictory answers* UB lawmakers have given to the question of how one *might* best determine a child's "needs" in order to set a reasonable UB amount, even if one retains discretion as a decisionmaker, especially as a parent, to do as one wishes.⁵³⁸

The FB's preparatory works⁵³⁹ provide that (1) *calculation of a child's needs should begin with reference to the average, generalized economic needs of children in Sweden*, without reference to the child's parents' economic living standards. Simultaneously the same preparatory works direct that (2) *children's needs and child support amounts should vary and be individualized*, and that (3) *children have a right to share in a higher and higher living standard, on a sliding scale as their parents' abilities to provide one increase.*

These principles are reconcilable with the hypothesis that lawmakers desired to maintain a *comfortable floor* for what would be considered basic needs of children in Sweden's modern, almost uniformly lower-to-upper-middle-class society,⁵⁴⁰ in significant part attributable to Sweden's creation and refinement of its social-democratic welfare state since the 1930s.

Swedish law does establish a comfortable floor, instead of minimal floor, to assure all children a good start in life.⁵⁴¹ Private UB lawmakers also recognized that children should be able to benefit from a higher standard, having less pressing

⁵³⁷ See Konsumentverket Report 2018:5, *supra* note 491, at 6 (describing uses of the *referensvärden*: "It must be possible to use the cost calculations as reference values when planning household budgets – by households, municipal consumer counsellors, budget and debt counsellors, social service offices, banks, schools, etc. The calculations' reference values are also submitted to the Government as underlying data for their decision on the national standard within income support.")

⁵³⁸ See SCHIRATZKI (2005), *supra* note 466, at 43.

⁵³⁹ Prop. 1978/79:12. See more detailed presentation at Chapter 5's treatment of legislative intents, *infra*.

⁵⁴⁰ See, e.g., POPENOE (1988), *supra* note 195, for findings and sociological observations regarding Sweden's social classes and their relationship to legal regulation affecting families with children. But see Judith Stacey, *Good Riddance to "The Family": A Response to David Popenoe*, 55 JOURNAL OF MARRIAGE AND FAMILY 545, 545 (1993) (criticizing some of Popenoe's seeming assumptions that the weakening of the traditional nuclear family as he defined it could be worthy of concern).

⁵⁴¹ The more minimal level set by the Swedish Social Services Act (*Socialtjänstlag* (2001:453)) compared to the reasonable standard set by both private and public child support regulations in Sweden is discussed in SOU 2003:42 at 97–102.

“needs” met as well,⁵⁴² if their parents can afford it. These lawmakers would seem to agree with those in California, that children whose parents live together share a living standard provided by the parents’ combined incomes—and, historically and statistically still today, disproportionately the father’s higher income—*which child support laws should help assure for the children even after parental separation*, lest one parent’s refusal to provide that for them cause them unnecessary harm.

Swedish scholar Johanna Schiratzki read these principles announced by UB lawmakers to imply that at *a certain, higher, level, an individual child’s “needs” calculation should rely more on evidence of the “parents’ financial circumstances as such” and less on evidence of specific costs the child will incur.*⁵⁴³

Even more emphasis on the “sliding scale” element of the principle might be appropriate, I would add. The *continuous* nature of an appropriate UB is often set aside during application of the law, in favor of binary determinations of whether a child should receive a higher UB amount (or not), and this comparison with California helps makes that more clear. The comparative-law perspective *and the preparatory works* on this child support principle support the observation that there is a *range* of appropriate UB amounts that should be awarded as a *function of* parental disposable income, increasing *regardless* of a child’s currently-enumerated “needs,” as parental income rises (unless lawmakers articulate a reason they should not and change the UB law).

Schiratzki points to the Swedish gift tax rules (prior to their 2005 removal from law) as one reason *evidence* in the form of known, actual expenses (that particular short- and long-term “needs” were being met with an UB amount) might have been important to courts when the UB rules with first being interpreted. Amounts of UB child support *not* limited by some kind of proof of related expenses *could* for tax purposes have been deemed as a wealth transfer or gift, forms of transfer which were then, unlike child support, taxable to the recipient child.⁵⁴⁴

The somewhat contradictory principles could also stem from lawmakers’ several purposes for UB law.⁵⁴⁵ To assure that *each child with separately-living parents has the reasonable needs of an average child satisfied*, protecting these children’s and society’s interests in their avoiding relative poverty during their childhoods, requires

⁵⁴² See NJA 1985 p. 781.

⁵⁴³ SCHIRATZKI (2005), *supra* note 466, at 43. See also SINGER (2017), *supra* note 55, at 148.

⁵⁴⁴ *Id.*

⁵⁴⁵ See *infra* Chapter 5.2, describing what scholars have identified as the several purposes and interests served by modern child support legal schemes, and *infra* Chapter 5.3, on the stated purposes of the two schemes compared herein.

evidencing what such a “reasonable needs” total includes.⁵⁴⁶ (This is true *even if this total is more than the child’s parents can afford* or one of them does not fulfill the duty to contribute what each can afford, circumstances from which the UStöd system protects each child, up to such a level.) To assure that *children and CPs are not unfairly burdened* when parents separate or never live together, even when an NCP will not voluntarily provide more support, requires law redistributing more of the resources the NCP has control over to the CP and child’s household. Then the CP and child will have discretion as to how to spend those resources in the child’s best interest.⁵⁴⁷

Thus *children whose parents can and usually would provide them with more than the reasonable-standard level* are given, via the *second* principle or rule, *legal support for pursuing their interest in more support*. They may claim at least more than the guaranteed or reasonable-living-standard level (and arguably much more, in theory, if the NCP’s income is much higher).⁵⁴⁸ Children are given a legal “right” to access that higher level of support. This right is not to a *binary*, “yes-or-no” “higher level of support,” but *really to a proportion of the income available for the child to share in*, I would argue, however the law might choose to define “income available” and that portion each child should be allocated. Application of the law could become difficult because the norm is focused on the direct costs of a typical child.

3.4.3. *Children’s Needs as Defined within Swedish Public Law*

It is often stated that the guarantee amount of UStöd was meant to correspond to one half of an average child’s monthly needs after the *barnbidrag* is taken into consideration.⁵⁴⁹ Legislative history, however, belies this oversimplification.⁵⁵⁰

⁵⁴⁶ But see Konsumentverket Report 2018:5, *supra* note 491, at 23 (noting that “[t]he Swedish Consumer Agency has decided against using the term ‘reasonable living expenses’ as this term can be interpreted in different ways” thus simply ‘reference values for living expenses’ will henceforth be used, also bringing Swedish practice more in line with other European countries that create “reference budgets”).

⁵⁴⁷ The law has the effect of educating parents as to what level they are expected voluntarily to provide, it is helpful to remember, not simply of empowering courts to order such NCPs to pay higher UB amounts.

⁵⁴⁸ See *supra* Chapter 1.3, Figure 1 (distinctions between public- and private-law-protected levels).

⁵⁴⁹ See e.g. Prop. 2016/17:216 at 13 (citing Prop. 1995/96:208 at 40) and Prop. 2017/18:6 at 15.

⁵⁵⁰ SOU 2011:51 included investigators researching costs for children that are not included in the consumer agency’s reference values, for example the marginal cost of taking a child on a simple vacation once per year (via bus, staying at a hostel, in Sweden), and making decisions about what should be included, with the idea that 50% would be the appropriate UStöd level). See 2011:51 at 199–203. But see SOU 2003:42 at 97–101 (tracing the public guarantee amount’s history and reviewing reasons the public child support amount likely was *not* actually set to cover one half of a child’s costs

The 1995/96 bill that formed the basis for the introduction of UStöd stated that its guarantee amount *would* correspond to approximately half of the normal costs for a child after taking into account the general child allowance.⁵⁵¹ The amount set was in other words *justified* as approximately covering about half of a child's average needs, however it was also exactly the amount (1,173 SEK or \$135) frozen into law for state budgetary reasons the year before as the guarantee level of the child-support advance.⁵⁵² This amount had itself arisen due to other considerations, including having been indexed to the *prishasbelopp* in the early 1960s with no mention of what its amount was expected to cover.⁵⁵³

The one-half-each conception of *how much of a child's needs each parent would be expected to pay* was also suggested in SOU 1983:51 by the Single Parent Committee (*Ensamförälderkommittén*), which favored it because it would be simple to apply and a parent's responsibility for the child could be *calculated* from his or her own financial situation, without consideration of the other parent's,⁵⁵⁴ but that proposal did not directly affect the private joint parental duty for UB purposes, discussed above, or the evolving guarantee level of the public-law advance system that ultimately became UStöd.

Nonetheless the UStöd guarantee amount today clearly has an important role in meeting *some* of an eligible child's needs, and somewhat more since it has recently been increased for older children, as this section will describe. Today a child might receive 100% of the UStöd guarantee level for his or her age as full UStöd and 0% from UB, or the exact opposite (if the NCP pays UB of at least the UStöd amount), or anything in between. For example, a child might receive 75% of the level from a UB and then 25% of the level from a supplemental UStöd.

What makes the public-law guarantee level so important to defining the "needs" of Swedish children whose parents live separately is the fact that—for over 60 years now—every eligible child whose NCP was not reliably paying a higher-than-guarantee amount in UB has had a right to

but instead evolved as a balance between controlling public costs and keeping single-parent households off of poverty relief, an amount that was then adopted into UStöd law). This history also explains why a 50%-each child support model was *not* adopted for the private law that evolved into today's UB either, despite legal practice in the early 1900s using that model. The 1917 preparatory works to the law on children born out of wedlock advised against 50% responsibility to each parent due to its unfairness to mothers who normally were the lower-income parents.

⁵⁵¹ See Prop. 1995/96:208 at 40.

⁵⁵² See SOU 2003:42 at 100–101.

⁵⁵³ See *id.* at 98 (noting that it was first set to 25% of a *prishasbelopp*).

⁵⁵⁴ *Id.* at 98–99.

receive the public-law guarantee amount.⁵⁵⁵ The amount has more or less been the maximum amount collected from NCPs by the state as well. In practice, UStöd has become a full UB replacement for most children, and its guarantee amount has also become the “normalized” amount of UB paid for children whose parents do *not* claim UStöd for them, even where an NCP has a high income, although efforts to encourage parents to change that are underway, as previously introduced.

Further entrenching the guarantee amount as important to defining a Swedish qualifying child’s needs for child support from an NCP, UStöd since 1997 has been payable without a UB having ever been set. When the *advance* of a UB became the new UStöd, a *support*, in 1997, it became a payment of the guaranteed public-law amount to each child qualifying for it by having separately-living parents and not receiving a UB, *regardless* of whether or not a UB had been set, or even could be. The UB amount-setting rules were no longer to be used even in collecting a contribution to the public guarantee amount from an NCP, in cases where the UStöd law called for such collection.

Although 2003 lawmakers indicated that UStöd was not meant to become a “general support from society for separated children,” but rather only a guarantee of support from an NCP,⁵⁵⁶ this was not precisely true: it *was* meant to be a general support *in cases where no NCP owing a child support duty was available*, including for children with only one parent. For the majority of children living with just one parent today, there is an NCP, and it is true that *for those cases* UStöd was intended only to guarantee every child timely receipt of support for which the NCP was more primarily responsible.

⁵⁵⁵ The advance *and* the UStöd that replaced it shared the aims of replacing *and* (from 1957) *supplementing when necessary the NCP’s expected support up to a level guaranteed by the advance*. See SOU 2003:42 at 96–97. SOU 2003:42 explains at 95–96 that between the advance’s introduction in 1937 and 1948 only a set amount of UB was advanced, up to a maximum amount, and only if the mother and her new husband’s income could not instead fully support the child. *In 1948 this was cancelled and the aim became to help children born to married couples but now living with single mothers be equal to children living with two parents* by advancing them an unpaid UB amount *without* testing the income of their custodial households; the state became primary guarantor instead of the stepfather (then usually the sole income-earner) and the mother. In 1956 the advance was broadened to be available to children born to married or unmarried parents, whose NCP father or mother owed but did not pay a set UB, and *its function of supplementing UB amounts below a certain level was added*. There was another societal support for children whose paternity had not been established. In the 1960s those children were moved over to the advance system instead, first only after age 3, to incentivize determination of paternity for very young children, and later from birth so long as their mothers did not unreasonably refuse to cooperate with state efforts to determine paternity.

⁵⁵⁶ See *id.* at 97.

Still, the reform left unclear exactly how strenuously the CP and the state should work to convince a reluctant NCP to pay a UB, and made it easier for parents and others to treat UStöd as a general support.

The 1997 reform was designed (1) “to increase the average amount of child support payors shall pay,”⁵⁵⁷ given the “principle truth” that these parents [NCPs] are responsible for “a reasonably comparable part” of their child’s support relative to the CP’s contribution, but also (2) to help effectuate a desired “cleaning-up of public finances”⁵⁵⁸ The reform, to streamline governmental administrative cost, ended much of the public agency obligation to set an individualized amount of UB private child support, including the county social services offices’ (*sociálnämndernas*) rights to take NCPs to court to set child support. The preparatory works which reasoned that the guarantee level was sufficient to cover about half of a typical child’s monthly costs given the universal *barnbidrag* also continued the earlier *bidragförskott* system’s streamlined approach to granting UStöd without considering the applicant CP’s financial ability to support the child.⁵⁵⁹

The UStöd public guarantee level then set continued unchanged for a number of years, but very recently has been increased and differentiated by the child’s age several times. Legislative history reveals that *recent increases were made in order to provide an amount that better matches the different needs of different children, specifically of different ages*.⁵⁶⁰ Interestingly, the recent change to two and then three levels instead of one level for children of all ages was introduced to respond to a proposal that the amount be set at three different levels depending on children’s ages, based on the popular soft-law

⁵⁵⁷ Meaning pay back to the state after UStöd has been advanced, not pay directly as UB.

⁵⁵⁸ See Prop. 1995/96:208 at 44 (emphasis added) (adding that “parents however should not be financially pressed over reasonable ability” thus “[p]articular attention should be paid to parents with limited income who are liable to repayment.”). Fairness to payors and the need for effective use of public funds (for child support enforcement and/or social benefit payments children might need if child support is not paid) are two of the most common considerations behind child support lawmaking internationally; see discussion at Chapter 5.2, *infra* (on child support’s theoretical design elements and balanced interests).

⁵⁵⁹ See SOU 2003:42 at 101 and Prop. 1995/96:208 at 40 (defending the government’s choice not to include investigation of the CP’s income and mentioning that the level was being set to meet half of a normal child’s needs after subtraction of the *barnbidrag*).

⁵⁶⁰ Prop. 2016/17:216 at 43 (summarizing Ds 2017:2).

guidelines for setting *private UB amounts*.⁵⁶¹ Still, the needs of a given child remain very differently calculated between the private-law system described previously in this chapter and this public-law UStöd system, and the UStöd system remains dominant as an influence on how needs for child support are seen in Sweden today.

Regarding any *permissible reductions or additions* (“add-ons”) to a child’s “needs” for child support under the UStöd system, the CP and her household are not considered as sources of support reducing the child’s “need” for UStöd, yet the child him- or herself can earn too much to receive the public child support guarantee. The child’s minimum annual income that could reduce the right to UStöd was in 2018 raised to 60,000 SEK (\$6,901) per year.⁵⁶² A child’s UStöd is reduced in proportion to the amount of income the child earns annually over the 60,000 SEK limit.⁵⁶³ There are no other subtractions from UStöd, unless the child is living alternately with each parent and one or both parents has income below a certain limit, thus previously qualified for UStöd for alternating residence. UStöd in this form was available to either or both parents up to a maximum amount of 50% of the full UStöd guarantee level paid.⁵⁶⁴ This “*underhållsstöd vid växelvis boende*” is however being phased out for current recipients between 2018 and 2021, and can no longer be granted to new recipients.⁵⁶⁵ A new means-tested support for households with children living approximately half time in them, organized in connection with the housing allowance (*bostadsbidrag*) instead of in connection with the child support guarantee (UStöd), will replace this form of UStöd.⁵⁶⁶

This does mean that *no UStöd is available to help a parent whose child or children live 50% of their time with the other, much-higher-income parent. The lower-income parent needs to qualify for the housing benefit, or herself pay a full 50% of the children’s needed support and housing costs despite having significantly less than 50% of the parental income available for support.* This burdens the parent earning less, usually the mother, unless the other parent voluntarily provides more of the money needed to cover the child’s needs, as in

⁵⁶¹ *Id.* at 7 (“The [investigation into separately-living parent issues] did not submit a draft proposal on the amount of [UStöd], but considered that the size. . . should be differentiated in three different age groups similar to the division of age groups that have previously been applied for civil-law maintenance [UB] payments,” citing SoS 1989:6 (withdrawn in 1999, per SOSFS 1999:15). The guidelines for setting private law child support amounts published in 1989 were repealed but nonetheless are often referred to in practice and, as here, in governmental research reviews of potential new revisions to the law. *See, e.g.*, SOU 2003:42 at 162.

⁵⁶² SFB 18:30; *see also* Prop. 2016/17:216 at 1, 4–5 (giving the former and new wording of SFB 18:30).

⁵⁶³ SFB 18:30.

⁵⁶⁴ *See* Prop. 2017/18:6 at 1–2.

⁵⁶⁵ *See id.* at 33–34.

⁵⁶⁶ *See id.* at 1–2.

theory they can be expected to do by purchasing shoes, mobile phones and other items for the child during their time together. Even such agreement leaves mothers in a one-down position, however, dependent on fathers' voluntary generosity if they wish to assure the child's needs are met fully in both households.

On the other hand, if the child lives only with the lower-income parent—the traditional choice, reducing the father's parenting time to visitation not 50%—*UStöd is available in full, even to high-income CPs*. The implication of no means testing of the CP is that even a child living with a high-income CP has a right to request and receive UStöd, if not receiving a private UB in any form. The NCP will be required to repay the state up to the full UStöd amount, but not more. UStöd payments to wealthier CP households is (to an extent) considered just or fair because *the NCP is not contributing support needed to raise the child or, in other words, meet the child's reasonable basic needs, and society has decided to support all (nearly-100%-time) CP households in those circumstances*.⁵⁶⁷ It is also considered an overcompensation to be avoided as much as possible as the rules are reviewed and reformed.

In this way the Swedish legislature has decided to take it upon the whole of society, rather than on the CP, to “take up the slack” when one parent does not meet his or her support obligation,⁵⁶⁸ and then to pursue that duty-owing parent for repayment rather than expecting the CP to do so. Repayment is not always easy to secure.⁵⁶⁹

There are *no additions* to the child's needs total met by UStöd, regardless of a child's individual needs. Children who cost their CP more to raise than average must rely on that parent's resources, resources of any new partner she may have, other governmental benefits, and/or possibly the NCP (though if he is not fulfilling his

⁵⁶⁷ Income-testing of the CP and her new spouse, if any, ended during the evolution of the *bidragsförskott* and was deliberately not reinstated by lawmakers proposing the new UStöd.

⁵⁶⁸ Compare this result to the result from NJA 2013 p. 955 determining that FB 7:6 can serve as an independent basis for requiring a higher-income parent with approximately 50% parenting time to pay more for his children's support when the CP does not have the ability properly to meet their basic needs during her 50% of the time with them, discussed in Chapter 3.3.3. There it is the other parent and not the state “taking up the slack.” One obvious distinction is that the state is paying the public child support benefit so that the child is provided for immediately, then (in theory) requiring repayment by the NCP who owes a duty based on FB 7:2, whereas the *duty to pay for the necessities for one's child if the other parent cannot* follows from FB 7:6. If the NCP found to owe FB 7:6-based child support (although he had 50% parenting time) *failed to pay* the UB the court assigned to him, the state might step in to assist the children, but not with UStöd as it is currently regulated. Both examples attempt to put the parents' duty first, but also to insure, with state funds, that *children do not wait and suffer disadvantage or harm* when their parents fail fully to satisfy their support duties. When these come into conflict, lawmakers' intent usually overtly directs those applying the law to err on the side of child welfare.

⁵⁶⁹ See Chapter 4.5, *infra*, describing costs incurred to pursue UB setting and enforcement.

duty to pay adequate and timely UB support or is deemed by the UStöd repayment system unable to repay the UStöd it is arguably unlikely he might be able financially to assist the child with unusual, add-on costs).

An implication of there being no additions to UStöd's amount guaranteed for all children of a given age is that a child's higher individualized support *needs* do not create a *right* to a higher UStöd. If the NCP is not, for whatever reason, paying UB, *it becomes irrelevant if he has a very high income in relation to the CP's*, and that the child *would* therefore have a right to either a higher UB or even a living standard addition (a *standardtillägg*).

The CP can commence an action in court on the child's behalf to set a higher, private UB. Most CPs instead apply for the public UStöd amount, and *the child accordingly receives less support than would have been available under the private system*, as Swedish lawmakers have noted in connection with recent UStöd reforms; what is not mentioned is the transaction costs to a child or CP having to enforce the child's legitimate interests. Further research into whether there is some way to legislate this properly across the public law-private law divide seems needed; as this study shows, other jurisdictions have found ways to use public power to provide CPs and children with state backing (more than information) in this regard. On the other hand, children who would have received *less* UB also may receive UStöd today, overcompensating them, so the lack of coordination between the two regulations of what a child "needs" is not a unidirectional problem.⁵⁷⁰

3.5. Parents' Abilities to Pay Child Support

3.5.1. Parents' Abilities to Pay under California Law

In all four systems studied, what the law considers a parent's financial ability to pay child support *limits* his or her obligation to pay child support, yet in the private systems parental ability also can *expand* children's needs, as just discussed. This section describes the California law on parents' abilities to pay child support, including which types of income and how much income is considered available for child support, *in both private and public child support systems* given their shared use of California's Guideline. The following two sections do the same for Swedish private (UB) and public (UStöd) child support law respectively, since parents' ability to pay is regulated differently in each of those systems.

⁵⁷⁰ See FK 2016:1 Version 5, *supra* note 466, at 26.

In theory *these laws impose no duty to pay child support that is greater than a parent's current ability to pay*. The other parent in both jurisdictions may then be required to pay or provide relatively more support to the child, at least under the private law child support rules (not considering replacement supports that the state may provide pursuant to public law).⁵⁷¹ Parents who have very limited income at a given point in time,⁵⁷² if they are not *unreasonably* underemployed, are thus *not required to impoverish themselves* to pay child support needed by the child at that time.⁵⁷³ A private-law duty to pay will not be imposed on such a parent during the period in which his or her income is considered insufficient for child-support purposes.

Of course the balance between financial sufficiency for the payor, for the payee, for the child supported and for the state's own budgetary resources is not determined by a fixed international standard but rather by the laws (and the *societal, political and lawmaking circumstances and processes*) in California and Sweden, influenced by their WSM ideals. The two jurisdictions today *differ somewhat* regarding how a parent's current financial ability to pay child support is defined, *despite the shared principles* of parental responsibility for child support being limited by ability to pay; joint parental responsibility for child support; and the primacy of the parents' duty of support followed by the state's secondary duty.

⁵⁷¹ See CAL. FAM. CODE § 3910(a) and FB 7:1 (both stating parents owe a duty together based on their relative abilities to pay). See also Prop. 1978/79:12 at 1 (opining that Swedish parents' duties to support their children are not unconditional but rather are decided on the grounds of reasonableness) and County of Napa v. Combs, 222 Cal. App. 3d 1077, 1080–1081 (1990) (holding that a county's claim for reimbursement of previously-paid public assistance to a child can be made against either or both parents). But compare Swedish public UStöd law, which does *not* review a residential parent's income in determining a child's right to the Swedish public child support guarantee.

⁵⁷² Note that unpaid child support debts from an *earlier* period when the payor legally had a duty to pay and was considered able to pay, yet did not do so, are not extinguished by a current inability to pay. Law defining a payor's ability to make payments on child support arrearages or to repay the state for support it has provided to a child largely is discussed in the next chapter, as part of child support enforcement. The ability-to-pay rules here are used for *setting* child supports.

⁵⁷³ See e.g. CAL. FAM. CODE §§ 4055(b)(7) ("In all cases in which the net disposable income per month of the obligor is less than one thousand five hundred dollars (\$1,500) [13,038 SEK], adjusted annually for cost-of-living increases, there is a rebuttable presumption that the obligor is entitled to a low-income adjustment" (an LIA herein)) and 4070–4071 (regulating the LIA). See also FB 7:1 para. 3 (regarding each parent providing support to the relative extent he or she is able). See also Chun v. Chun, 190 Cal. App. 3d 589 (1987) (holding that each parent is to provide only support they can afford under CAL. FAM. CODE § 3910, re: the support of a disabled adult child in need). Since imprisonment for indebtedness modernly is unconstitutional at US federal and state levels, US jurisdictions generally may not constitutionally punish poverty or lack of income as such, at least with imprisonment. See Bearden v. Georgia, 461 U.S. 660 (1983).

3.5.1.1. Which Incomes and Assets the Law Considers Available for Support

The California Family Code expressly provides that “[e]ach parent should pay for the support of the children according to his or her ability.”⁵⁷⁴ Each parent’s ability to pay child support in California is calculated, pursuant to the mandatory child support Guideline, starting from his or her *total annual gross income* “from whatever source derived.”⁵⁷⁵ The statute lists as examples of incomes included “[i]ncome such as *commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers’ compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, and spousal support actually received from a person not a party to the proceeding to establish a child support order under this article*” plus *net business income* and, *in the discretion of the court, certain employee or self-employment benefits reducing the parent’s living expenses, or imputed income based on the earning capacity of a parent in lieu of that parent’s income.*⁵⁷⁶ As a main rule, all incomes are included unless excluded. A few sources are excluded by statute from a parent’s gross income, including *received means-tested social benefits* and *child support payments.*⁵⁷⁷

California courts have clarified that the incomes properly included in gross income for Guideline child support calculation purposes share in common that *they are monies actually received by, meaning for the benefit of, the parent whose ability to pay is being computed.* Payments like Social Security disability benefits intended for his or her dependent spouse or child are thus *not* properly counted among his or her own actually received incomes.⁵⁷⁸

⁵⁷⁴ CAL. FAM. CODE § 4053(d) (listing one of several principles to which courts implementing the statewide uniform Guideline “shall adhere” per § 4053). *See also* Marriage of Drake, 53 Cal. App. 4th 1139, 1161 (1997) (holding that the Guideline formula does not set a *payment* amount for each parent’s support *yet they nonetheless have a mutual legal duty to support*).

⁵⁷⁵ CAL. FAM. CODE § 4058(a).

⁵⁷⁶ CAL. FAM. CODE § 4058(a)–(b) (emphasis added).

⁵⁷⁷ *See* CAL. FAM. CODE § 4058(c) (excluding “any income derived from child support payments actually received, and income derived from any public assistance program, eligibility for which is based on a determination of need” along with “child support received by a party for children from another relationship” because child support is not considered income to the party). Certain other sources of money such as one-time gifts and inheritances also are not considered income, although § 4058(c) does not list them. They are discussed herein below.

⁵⁷⁸ *See* Marriage of Daugherty, 232 Cal. App. 4th 463 (2014) (further clarifying that such payments should be counted as credits of child support paid by the disabled payor parent). Admittedly this does not make clear why need-based social benefits to the parent for the parent’s needs are not included in gross income for support purposes, although as a matter of public policy this must be the case, given the benefits’ purpose in insuring the recipient parent’s own minimal needs are met. *See further* Mendoza v. Ramos, 182 Cal. App. 4th 680 (2010) (discussing how a CalWORKs recipient is required

Assets

Although assets or wealth as such is not listed as “income” for child support purposes, it is still *legally relevant to a parent’s ability to pay and to the “standard of living” to be shared with the child* as part of the child’s reasonable needs.⁵⁷⁹ A court can therefore err if it fails to take substantial wealth into account when calculating appropriate Guideline support, even if the wealth is not producing income.⁵⁸⁰ Any *actual income resulting from the assets or wealth* is of course income for child support purposes. Beyond that, pursuant to an “earning capacity doctrine” that California courts have developed based on California Family Code § 4058(b), *reasonable income at a reasonable rate of return* may be imputed in a court’s discretion *whenever to do so serves the best interests of the child*.⁵⁸¹ Factors such as whether the assets or wealth are reasonably being invested or their historic use do not preclude the court from imputing income, since “[t]he only statutory limitation on the court’s discretion to apply the earning capacity doctrine to investment assets is the best interests of the child.”⁵⁸² Similarly, income does not include newly-received inheritances, but they are instead treated just like wealth already owned. *Income may be imputed on parents’ inheritances* in determining their duty to pay child support, just as it may be for other assets or wealth.⁵⁸³

Unusual, Difficult-to-Document and Fluctuating Incomes

Parents’ atypical sources of income have been the subject of a number of California child support law case decisions. Generally the statutory wording that incomes “from whatever source derived”⁵⁸⁴ are included in gross income for child support purposes predisposes a court to rule that a given income *will* be included as part of a parent’s total income, however *courts enjoy broad discretion to assure fair and appropriate orders in each case*. Courts have held for example *lottery winnings*, *income diverted to debt*

by that social benefit program to be seeking or preparing for work and how it would be against public policy to *impute* income to such a parent).

⁵⁷⁹ Compare CAL. FAM. CODE § 4008 (“The community property, the quasi-community property, and the separate property may be subjected to the support of the children in the proportions the court determines are just.”) This allows *child support orders from assets of the parties during divorce proceedings*, before final determinations of which properties are separate vs. joint have been made.

⁵⁸⁰ See *Marriage of Cheriton*, 92 Cal. App. 4th 269, 289, 292 (2001).

⁵⁸¹ See *Marriage of Williams*, 150 Cal. App. 4th 1221, 1240 (2007).

⁵⁸² *Marriage of Destein*, 91 Cal. App. 4th 1385, 1394 (2001).

⁵⁸³ See *Kern v. Castle*, 75 Cal. App. 4th 1442, 1453 (1999).

⁵⁸⁴ CAL. FAM. CODE § 4058(a).

cancellation, and the *value of perquisites like free use of a car and apartment* from an employer as properly included in a parent's gross income for support purposes.⁵⁸⁵

Income not properly reported on tax returns and thus difficult to document such as *cash or illegal income* may be alleged to exist by a payee parent. A court may properly impute likely income from such sources based on other evidence, for example evidence of bank deposits or loan applications made by the payor parent that are inconsistent with the parent's income claims and tax returns.⁵⁸⁶

Another non-uncommon source of parental income, re-occurring *gifted amounts from the parent's own parents or other friends or relatives*, may be considered a source of income for support purposes. This rule, established by case law, can help a court achieve justice in a case where a parent lives at a high living standard, *without* earning traditional income from employment, because of recurring gifts from wealthy relatives.⁵⁸⁷

In cases where a parent's income fluctuates over time, the court must attempt to estimate a *reasonable likely average monthly amount* the parent can be deemed to be earning; statutes⁵⁸⁸ and case law⁵⁸⁹ have respectively suggested and established that *using the last 12 months of income (one year) is generally a good "benchmark" measure*. A longer or shorter interval may however be more appropriate to use as the best predictor of

⁵⁸⁵ See CAL. CIV. PRAC. FAMILY LAW LITIGATION § 3:109 (on annual gross income; citations omitted).

⁵⁸⁶ See *Marriage of Calcaterra & Badakhsh*, 132 Cal. App. 4th 28, 37 (2005) (finding imputation of \$6,000 [52,153 SEK] monthly income to a mother proper, based on her \$72,000 [625,831 SEK] annual bank deposits; she claimed her income to be only \$2,600 [22,599 SEK] per month, yet also claimed \$4,700 [40,853 SEK] per month in expenses). Evidence proving that such deposits are from sources of income excepted from consideration for child support purposes like nonrecurring gifts, loans, transfers between bank accounts and child support payments can avoid imputation of income in circumstances like these. See CAL. PRAC. GUIDE FAMILY L. Ch. 6-A at 6:443.31 ("practice pointer").

⁵⁸⁷ See *Marriage of Alter*, 171 Cal. App. 4th 718, 736–737 (2009) (requiring that such gifts, if they are to be included in income, "bear a reasonable relationship to the traditional meaning of income as a recurrent monetary benefit"). More or less recurrent gifts to one parent such as these, for example for the legal fees owed by the parent, are not uncommon in family law cases litigated in higher-income areas of California. They can distort the relative abilities of the parents to litigate and to provide the children with a similar living standard in both households, yet a court may have difficulty correcting the imbalance if the gifts are not deemed "income." Third parties can stop gifting at any time and generally have no duty of support.

⁵⁸⁸ See CAL. FAM. CODE §§ 4064 ("The court may adjust the child support order as appropriate to accommodate seasonal or fluctuating income of either parent"), 4060 ("If the monthly net disposable income figure does not accurately reflect the actual or prospective earnings of the parties at the time the determination of support is made, the court may adjust the amount appropriately") and 4059 (regulating the calculation of *annual net disposable income* of the parties from annual gross income minus certain deductions).

⁵⁸⁹ See *Marriage of Riddle*, 125 Cal. App. 4th 1075, 1083 (2005).

income that will be earned in the immediate future, when the child support order is in effect, and courts have discretion to choose a “fair and representative time sample.”⁵⁹⁰

One subcategory of fluctuating or difficult to predict income is *performance bonus income*. A court may include likely *future bonuses* in Guideline calculations of income available to pay support, as a form of fluctuating income discussed above, *unless* the parent who wishes to prove the bonuses are unlikely to recur does so, and not simply through his or her own statements.⁵⁹¹ The court *may instead order that future irregular bonuses be shared with the child or children* via payment of a fixed percent of the bonus, but only as a properly-supported deviation from Guideline supported by mandatory statutory findings, *or if the parties have stipulated to this solution*.⁵⁹²

Note that *Guideline calculations of appropriate child support is not the only use of parents’ incomes for child support system purposes*. In the child support enforcement law, for example, California provides that income from certain federal disability or retirement social benefits to a living payor or to the child of a living payor, if received by the CP and *not* considered by the court during the calculation of appropriate child support, must be *credited as payments* by the payor. This provision is intended to reduce the amount of child support that disabled or retired payors must pay from their often limited incomes.⁵⁹³

Imputation of Income to an Under-Earning Parent

If a parent is not working as much as he or she could to support the children, the court may *in its discretion* impute income, entering into the Guideline calculator the

⁵⁹⁰ *Id.* at 1080–1084 (2005).

⁵⁹¹ *See* M.S. v. O.S., 176 Cal. App. 4th 548, 554–555 (2009) (where past bonuses were included in income because no evidence from the Native American tribe paying them to the parent stating that they would end was submitted to the court).

⁵⁹² *See* Marriage of Hall, 81 Cal. App. 4th 313, 318 (2000) (calling an *unstipulated* order to pay “8% of all earnings over and above the sum of \$10,300 [89,529 SEK] per month” *in addition to* a Guideline base amount of child support reversible error because it differed from Guideline on its face and no § 4056(a) findings were made as required). Note this example of the power of parents to bind themselves *in contract* to support solutions that *the state* via a court may not legally order against their will, although the court must still calculate Guideline support to know whether it is approving a deviation or not. *See id.* at 317.

⁵⁹³ *See* CAL. FAM. CODE § 4504(b) and 10 Witkin Summary of Cal. Law 11th ed. Parent & Child § 448 (October 2017).

monthly amount of income that the court finds the parent *could* be earning.⁵⁹⁴ Although *no bad-faith intention is needed* to support a decision to impute income to an under- or unemployed parent, the amount of any imputed income *must*, per well-established case law, be based on *actual evidence of the parent's capacity to earn and present ability to earn*.⁵⁹⁵ In practice this has been enforced, for example by private counsel representing parents seeking to avoid having income imputed to them; vocational expert evidence of actual job offers available may be offered by the other parent.

Absent evidence of the parent having an ability to earn a particular amount, a California court *may* presume and impute income equal to *full-time work at the California minimum legal hourly wage*, including in public-system cases where the NCP does not answer the LCSA's petition for a child support order against him ("default cases").⁵⁹⁶ *This may soon be modified to assure more consideration of each potential payor's individual circumstances*, per the recommendations of California's Guideline Reviews in 2010⁵⁹⁷ and 2017 in light of newly-enacted federal child support regulations, *yet 2019 proposed amendments retained the same rule*.⁵⁹⁸

⁵⁹⁴ See *Marriage of Cryer*, 198 Cal. App. 4th 1039, 1051 (2011) (upholding a trial court's decision not to impute income to an unemployed mother as no abuse of the court's discretion where father had not explained how imputation would have been in the child's best interests).

⁵⁹⁵ See *Marriage of Regnery*, 214 Cal. App. 3d 1367, 1372–1373 (1989) (outlining that, subject to the best interests of the children e.g. small children a parent is caring for at home, courts properly impute income from work where a parent has the *ability to work* based on factors such as age, occupation, skills, education and health, and has an *opportunity to work* that has been evidenced to the court, but lacks the *willingness to work* consistent with ability and opportunity).

⁵⁹⁶ See CAL. FAM. CODE § 17400(d)(2) (requiring agency notice to a potential payor that he will be presumed to earn 40 hours per week income at the minimum wage unless he promptly provides different income information). The frequency of very-low-income, *below*-minimum-wage payor parents makes this imputation *an incentive to provide actual income information*. For payors earning much more, the opposite is true: basing child support on a presumption that they earn only minimum wage would be an incentive *not* to provide information proving their higher income.

⁵⁹⁷ See *Guideline Review 2010* at 85 ("While this presumption is questionable in the best of economic circumstances, there is absolutely no basis for it in a time when employment in California has dropped for 40 consecutive months, unemployment stands at 12.5 percent, and underemployment has reached 20 percent. The barriers to full-time employment are even worse for the high proportions of Hispanic and African-American noncustodial parents in the IV-D system, whose national unemployment rates are 12.6 and 16.5 percent respectively.").

⁵⁹⁸ See *Guideline Review 2017* at 23–24 (suggesting statutory modifications because "Family Code section 17400(d)(2) currently provides that the [LCSA] may use presumed income of 40 hours per week at minimum wage when the child support obligor's income or income history is unknown. Statutory language may need to be amended to more closely align with the federal rule's concerns on using 'standard presumed amounts without looking at or investigating individual circumstances.'") and 2019 California AB 1817 (last amended April 2019).

A court should not impute income in cases where *the expectation that the parent could be working to help provide financially for the child or children is unreasonable*, such as in cases of a parent being *presently incarcerated*,⁵⁹⁹ *fully disabled*,⁶⁰⁰ or in some cases *at home caring for very small children* (if the parent working is deemed not in their best interests under the circumstances of the case).

Regarding incarceration, when an NCP is incarcerated it is inappropriate to impute income to him, however a court may properly *issue a new child support order but suspend it*, reserving jurisdiction to set a more specific order in the future. Such a child support order may be set at zero dollars (\$0) per month, but its existence can facilitate later modification by the LCSA or by the CP when the NCP is released or otherwise gains the capacity to earn or to provide medical insurance to the child.⁶⁰¹ *Existing child support obligations are as a general rule automatically paused* for the duration of the imprisonment. However California Family Code § 4007.5(a)(2) *denies* the otherwise automatic pausing of child support payments coming due under existing orders for two categories of payors: those who are financially able to pay despite being incarcerated, but also *those unable to pay while incarcerated but who are “incarcerated or voluntarily institutionalized for any offense constituting domestic violence ... against the support obligee or supported child, or for any offense that could be enjoined by a protective order [e.g. harassment, stalking]... or as a result of his or her failure to comply with a court order to pay child support.”*⁶⁰²

⁵⁹⁹ See *Marriage of Smith*, 90 Cal. App. 4th 74, 83–84 (2001) (holding that there are *no public policy exceptions to the earning capacity test*, thus the present-ability-and-opportunity standard applies to an incarcerated parent regardless of the nature of the offense for which he or she is incarcerated, *even where the parent is imprisoned for molesting his child*). But see CAL. FAM. CODE § 4007.5(a)(2) (last modified 2015) and 2019 California AB 1091 (last amended March 2019) (providing a tough-on-wrongdoers *exception* to a rule suspending child support orders when a payor is imprisoned for more than 90 days, denying this relief to those imprisoned for *inter alia* domestic violence in both current and proposed versions of § 4007.5(a)(2)).

⁶⁰⁰ Disability insurance or benefits received to *replace* a disabled parent’s income may however properly be included in income available for supporting the child. See *supra* Chapter 3.5.1.1 above.

⁶⁰¹ See *El Dorado County Dept. of Child Support Services v. Nutt*, 167 Cal. App. 4th 990, 993–994 (2008) (involving an incarcerated parent with no possibility of parole before the child became an adult).

⁶⁰² CAL. FAM. CODE § 4007.5(a)(2) (emphasis added). Compare *Guideline Review 2017* at 23 (recommending that the California Legislature “delete subdivision (a)(2) in its entirety as it violates the current federal rule at 45 C.F.R. § 302.56(c)(3)” which requires *all* US states *not* to treat incarceration as “voluntary unemployment in establishing or modifying support orders.”) The WSM-ideals-related balances struck in California versus Sweden between concern that *low-income NCPs will accrue excessive debt and not letting wrongdoers benefit from their wrongdoing or fail to fulfill their support duties to their children* are compared, *inter alia*, *infra* Chapter 7.5 (regarding income inequality ideals and realities).

In a case of a CP at home with a small child or children, the *best interests of the children is the standard* upon which a court should exercise its discretion as to whether to impute income to the CP, in effect lowering the NCP's child support payment.⁶⁰³ Further clarification from lawmakers as to when imputing income to a parent is and is not appropriate has been added to § 4058(b) effective January 1, 2019,⁶⁰⁴ given new federal regulation of this topic.⁶⁰⁵

New Partner Income

In some exceptional circumstances, the court may *instead of imputing income* to a parent consider a parent's subsequent spouse or partner's income indirectly, *when the parent intentionally remains unemployed or underemployed and relies on* the new spouse's income, per Family Code § 4057.5(b). This *can prevent inappropriate support orders*, for example in situations where one parent has become a stay-at-home parent or part-time worker with little personal income, supported by a higher-income new spouse.

If the court did not consider the true household income in the under-earning CP or NCP's household, the Guideline formula's automatic calculations could require the *other* parent to contribute an inappropriately high share of a child's support. Calculating Guideline support with such hypothetical income attributed to the CP reduces the NCP payor's child support burden due, indirectly, to the stepparent's

⁶⁰³ See CAL. FAM. CODE § 4058(b). See also *Marriage of Lim & Carrasco*, 214 Cal. App. 4th 768, 775 (2013) (holding that “no authority permits a court to impute earning capacity to a parent unless doing so is in the best interest of the children”). Guideline law specifically provides that *children's needs for care* (need to have a parent available for caregiving to a certain extent, especially in some circumstances like when the child is very young or ill) should be considered when determining parental abilities to pay support. Relatedly, *public assistance law* precludes imputing employment income to a single nonworking parent who is the primary caregiver for very young children. In this narrow situation, *usually arising in public rather than private cases*, the discretion conferred to courts by CAL. FAM. CODE § 4058(b) is preempted by federal law. See *County of Yolo v. Garcia*, 20 Cal. App. 4th 1771 (1993). It is also against public policy to impute income to a CalWORKs (cash public assistance) recipient, who is supposed to be preparing to work or seeking work as an element of the benefit program. See *Mendoza v. Ramos*, 182 Cal. App. 4th 680, 686 (2010).

⁶⁰⁴ The new version provides that “[t]he court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children, taking into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.”

⁶⁰⁵ See *Guideline Review 2017* at 23 (recommending that legislators modify § 4058(b) on considering a parent's earning capacity versus actual income “to specify or give examples of the circumstances where earning capacity may be used to better conform to the federal commentary to the new federal rules on using earning capacity.”)

income actually supporting the child (replacing support from the CP, which she has secured through her agreement with and private dependence on her new partner).

As introduced above in the duty section of this chapter regarding a California stepparent's child support duty, a new partner or spouse's income is considered for Guideline child support purpose *only* in "extraordinary" cases where not including the income would lead to "extreme and severe hardship" to a child subject to the support order being calculated, in which case it *must* be considered.⁶⁰⁶ An enhanced living standard *for a parent* due to a new partner's income or assets thus is precluded as a reason to consider new partner income for child support purposes, since the hardship *to a child* element is missing in such a case. The *general rule*, not unlike under Swedish UB law, is that *neither the payee nor payor's new partner's (spouse or cohabitant) income may be considered to increase or to decrease a child support amount*. The most common situation in which new partner income is to some extent considered in child-support calculations is when one parent has become a stay-at-home parent supported by a new partner; the statute gives only this example of what "an extraordinary case" might be.⁶⁰⁷

3.5.1.2. Exclusions and Deductions from Gross Income

Each parent's annual gross income under the California Guideline, totaled from all the sources discussed above, is *reduced* for child support calculation purposes by

⁶⁰⁶ See CAL. FAM. CODE § 4057.5(a) (an obligor or obligee's "subsequent spouse or nonmarital partner shall not be considered when determining or modifying child support, *except in an extraordinary case* where excluding that income would lead to extreme and severe hardship to any child subject to the child support award, in which case the court *shall also consider* whether including that income would lead to extreme and severe hardship to any child supported by" the parent or his or her new partner). See also Marriage of Woods, 37 Cal. App. 4th 1059, 1067 (1995). Note that *this makes stepparents responsible for helping to keep a child out of extreme, severe hardship*, giving them a private-law-imposed secondary support responsibility that comes in after the parents' but *seemingly before the state's*. Note too that the manner in which the new partner's income, or some portion of it, is "considered" has deliberately been left to the court's discretion, as indicated by uncoded legislative history on the section. See Stats. 1994, Ch. 1140, § 3 ("It is the intent of the Legislature that the restrictions specified in [§ 4057.5] ... is [sic] not subject to court standardization, but is subject to judgment on a case-by-case basis").

⁶⁰⁷ See CAL. FAM. CODE § 4057.5(b) (providing for the purposes of just this provision that "an extraordinary case may include a parent who voluntarily or intentionally quits work or reduces income, or who intentionally remains unemployed or underemployed and relies on a subsequent spouse's income."). This seems a sensible result from a child's rights perspective, given that the intentional, voluntary underemployment of a parent only leads to consideration of their new partner's income where "severe and extreme hardship" will befall a child if the new partner's income is *not* considered.

certain exclusions and deductions. These include federal and state income taxes, employment-related fees, certain retirement plan and health insurance costs, legal support obligations to previous spouses and children *not* currently living with the payor, and any California Family Code §§ 4070–4073 “hardship deduction” to income granted by the court for e.g. *dependent children living in the payor’s current household*, as discussed below.⁶⁰⁸ The resulting annual net disposable income is divided by 12 to find the *monthly net disposable income*, which may be adjusted by a court if it “does not accurately reflect the actual or prospective earnings of the parties at the time the determination of support is made.”⁶⁰⁹ The final monthly income figure then is used by the Guideline formula to calculate and allocate to one parent a presumably-correct monthly base child support amount to pay. In practice, the Guideline calculations are made by the “calculator” online (Appendix 1) or by similar private software programs following the statutory rules for the formula.⁶¹⁰

Deductions from Income: Cost of Health Insurance Coverage

California child support law requires child support orders to include an order that one or both parents maintain health insurance coverage for the child or children, if it is available to them for no or “reasonable” cost, defined as costing 5% or less of the parent’s gross income to add the child or children to a self-only health insurance policy.⁶¹¹ Health insurance is defined to include dental and vision coverage as well as medical.⁶¹² This is explicitly required for all child support orders, those in private support cases *and* in public, Title IV-D cases (those brought by the LCSAs on behalf of the state).⁶¹³ The costs to a parent, if any, of supported children’s required insurance coverage are deductions permitted from gross income, as previously described.

⁶⁰⁸ See CAL. FAM. CODE § 4059 (excerpts from which are included at Appendix 2).

⁶⁰⁹ CAL. FAM. CODE § 4060 (on computation of monthly net disposable income).

⁶¹⁰ See CAL. RULES OF COURT rules 5.275 (providing standards for software used to calculate Guideline support) *and* 5.275(j) (requiring public cases to use one particular government Guideline calculation program while private cases may use any program approved as Guideline-compliant).

⁶¹¹ See CAL. FAM. CODE § 3750(a)(2). Further, § 3751(a)(1) requires the payor parent to keep the local child support agency updated on the insurance provided, and § 3751.5 mandates that *health insurers and employers not deny coverage to children* for a number of specified reasons. The health insurance provision is among those provisions federally mandated for all 50 states.

⁶¹² See CAL. FAM. CODE § 3750.

⁶¹³ See CAL. FAM. CODE § 17422 (requiring local child support agencies to seek and to monitor compliance with such orders including via communication with employers).

Permissible Reductions to Income: Not Self-Support

As introduced above, the Guideline calculation formula reduces the total *gross* income entered into it to reach a *monthly net disposable income*.⁶¹⁴ It mathematically reduces gross income by the amount of federal and state taxes anticipated to be paid under current federal tax law, without the parents needing to provide evidence of taxes actually paid,⁶¹⁵ and reduces that post-tax net income further, by mandatory and other appropriate paycheck reductions.

None of the statutory reductions to gross income specifically includes a parent's housing, food and other *necessary expenses*, however, *except* in the case of a very-low-income parent, who may receive a (non-mandatory) "low-income adjustment" (herein LIA) from a court. *Only a parent with (for 2019) a maximum of \$1,500 per month (13,038 SEK) in net monthly income can qualify for LIA consideration.*⁶¹⁶ For this income group, a need for the adjustment is *legally presumed*. Facts would need to *overcome* the presumption for a parent's income available for support *not* to be reduced.⁶¹⁷

Surprisingly, however, (or perhaps not, with liberal WSM ideals in mind) *courts actually granted the LIA to only 65% of qualifying payors in IV-D (public) cases, and to just 6%*

⁶¹⁴ See CAL. FAM. CODE § 4059 (on annual net disposable income) and Appendix 2.

⁶¹⁵ See CAL. FAM. CODE § 4059(a). This is done at applicable tax rates for the parents' reported filing statuses (single, married, head of household, married filing separately) and income types (salary, self-employment income, etc.), which is why parents should enter these types of details into the Guideline calculator, set forth at Appendix 1.

⁶¹⁶ See CAL. FAM. CODE § 4055(b)(7) "In all cases in which the net disposable income per month of the obligor is less than one thousand five hundred dollars (\$1,500) [13,038 SEK], adjusted annually for cost-of-living increases, *there is a rebuttable presumption that the obligor is entitled to a low-income adjustment.* The Judicial Council shall annually determine the amount of the net disposable income adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the California Department of Industrial Relations, Division of Labor Statistics and Research." (emphasis added).

⁶¹⁷ Section 4055(b)(7) continues: "The presumption may be rebutted by evidence showing that the application of the low-income adjustment would be *unjust and inappropriate in the particular case*. In determining whether the presumption is rebutted, *the court shall consider the principles provided in Section 4053, and the impact of the contemplated adjustment on the respective net incomes* of the obligor and the obligee." (emphasis added). Regarding the CAL. FAM. CODE § 4053 principles *see* Chapter 5.3, *infra*. Thus whether a very-low-income parent will have any adjustment for his own minimal living expenses is *not objectively determined as to his individual needs alone but in relation to*—as could be predicted from California's WSM—*his duty to his children. But see Guideline Review 2017* at 171 (describing how many other states, but not California, impose minimum child support orders of most often \$50 [435 SEK] per month, so *even if their formulas have reserved a basic-needs-level amount of income for the payor's self-support, the mandatory minimum child support is paid out of that reserve, if it is paid at all, due to public policy expecting every parent to be held responsible to pay some amount for his child's needs*).

of qualifying payors in non-IV-D cases, as Guideline reviewers in 2010 found after sampling cases statewide.⁶¹⁸ Ninety percent of the public cases where the LIA was not granted had been decided by *agreement* or *default*. In private cases judicial officer focus groups explained that a judge, not the computerized calculator, had to flag possible eligibility for the LIA. The computer program did not default to pose the question for them in low-income cases. They then had to *decide* to apply it, something they clearly have not often done, despite the presumption's importance to the financial solvency of low-income parents and their household children.⁶¹⁹

California's Guideline formula is arguably designed *automatically* to preserve from the income of all parents an amount for that parent's reasonable self-support needs, however this is *not done via an explicit amount subtracted from gross income, as in Sweden*.⁶²⁰ Rather, it follows from the level set for child support, as discussed earlier in the chapter—what percentage of income parents with the same income would devote to the child (implying that the rest is devoted to themselves). *In theory*, state minimum-wage laws in combination with *the duty of parents to support their children as their "first and primary obligation"*⁶²¹ (thus to work full-time to support their children) means that every parent can provide for him- or herself *and* a child or children, although at the very lowest incomes they may require some state aid.

⁶¹⁸ *Guideline Review 2017* at 172–173 (reporting *Guideline Review 2010* findings).

⁶¹⁹ It seems reasonable to conclude that *California's liberal WSM ideals do not comfortably coexist with the LLA rule* allowing a low-income parent owing a support duty to retain slightly more than the Guideline otherwise dictates from his own income. *The law as applied* consequently seems to avoid even *the rule's conservative intended consequences*. More evidence that reforming the LIA was politically difficult can be found in that the statute, CAL. FAM. CODE § 4055(b)(7), has a sunset date of January 1, 2021, at which time the qualifying net disposable income per month *returns to \$1,000 [8,692 SEK] from \$1500 [13,038 SEK]*. (It seems likely the increase, which was long overdue, will be extended, however, especially in light of the 2018 federal rule requiring states to consider guidelines' impacts on NCPs and CPs with incomes under 200% of the federal poverty line. See 45 C.F.R. § 302.56(h)(1).)

⁶²⁰ And a few US jurisdictions as well. Twelve US states use 100% of the poverty threshold, for example, *although they and other states characterize any self-support reserves very differently than in Scandinavia*: "The minimum amount of net income necessary for a parent to remain productive in a workplace" is how Delaware Family Court Civil Rule 502(d) frames the interest protected, for example, as quoted in California's most recent Guideline Review. See *Guideline Review 2017* at 171–186 (reviewing California's and other states' approaches to "low-income adjustments," in which category self-support reserves are considered to fit, and noting that California's LIA is rather unique: "unlike most state self-support reserves [that most often reference a poverty threshold], the California low-income adjustment did not consider how much income the obligor needed to live above a subsistence level. It was simply a percentage reduction to the regular guidelines amount.") (citing *Guideline Review 2010* at 81–82).

⁶²¹ CAL. FAM. CODE § 4053(a) (emphasis added).

The California child support system expects that a parent will engage full-time (40 hours per week, 50 weeks per year) in paid work, which at the state's minimum hourly wage or higher means (again, in theory) that every parent will earn enough to support himself if he chooses housing, food and other necessities affordable at his income level.⁶²²

*If a Californian parent of a child or children owed a child support duty commits him or herself to rent, mortgage, or other payment obligations in excess of what he or she can afford given the existence of the children and their Guideline-level support needs, the Guideline will not excuse or enable that behavior by reducing the parent's income available for support and thus the child support obligation.*⁶²³ A court may advise such a parent to seek financial counseling assistance and remind him or her that the children's needs come first.⁶²⁴ This is actually viewed similarly in Sweden, to an extent, with lawmakers referring to encouraging parents work efforts given their duties to their children, but the context softens the effect.

This is also the view in Sweden with respect to a Swedish parent's *debts* in relation to their child support obligations. *Debts, as distinct from reasonable living expenses, cannot be deducted* from a Swedish parent's income as part of the determination of the parent's ability to pay child support.⁶²⁵

Permissible Reductions to Income: Support of Household Dependents ("Hardship" Deductions)

⁶²² Reality is starkly different, however, where unemployed and underemployed parents may be too poor to afford their own bare minimum subsistence needs; state and federal US child support law is beginning to understand that. *Guideline Review* 2017 at 169–170 (quoting the desired outcomes of the federal OCSE's new 2016 rule on this issue as including "an increase in regular, on-time payments to all families; an increase in the number of NCPs working and supporting their children; and a reduction in the accumulation of unpaid child support arrears" from 81 Fed. Reg. 93493 (Dec. 20, 2016)). See also notes 616–617, *infra*, and accompanying text.

⁶²³ This is at the stage, however, of calculating support owing. Determination later, for enforcement purposes, of whether a parent had an *actual ability to pay* at the time that he did *not* in fact pay a given installment of child support may involve debt considerations. This is true for example if California courts in civil contempt proceedings confine a child support debtor to jail until he pays past-due child support, because fundamental liberty interests are considered implicated. See *infra* Chapter 4.4 (describing child support collection procedures and "tools," for both jurisdictions).

⁶²⁴ Brief comparative discussion of this basic hierarchy of priorities for parents' income in California and a different hierarchy in Sweden occurs *infra* Chapter 6.1.3 ("Two Similar Yet Different Societies' WSMs in Relation to the Comparison").

⁶²⁵ Debts, according to Swedish child support lawmakers, should not increase a parent's living costs deduction and thus decrease support payable by the parent, because *debts should not be held against the child*. SOU 1995:26 at 256. *Indebtedness* is one area where Swedish culture has been described in the literature to be more moralistic than the US today. See Chapter 6.5, *infra*, comparing how rigorously child support debts (in relation to all other debts) are collected in each jurisdiction.

Court-ordered child *or* spousal support actually paid to former spouses or other children *not* living with the parent is usually deducted from the gross income available for support, as mentioned above. In contrast, the California Guideline law takes into account the needs of a parent's legal children *who live with him or her* only in connection to whether to grant a "hardship" deduction, available only in extraordinary circumstances.⁶²⁶

Presumed-correct Guideline child support amounts *may*, in a court's discretion, be reduced in consideration of children living at home's reasonable expenses paid by the parent whose income is being calculated, but *only in cases of severe financial hardship* to the parent.⁶²⁷ Support of another adult living with a parent is not included.⁶²⁸

Hardship deductions are exclusively statutorily defined to include only situations where the payor faces "extreme financial hardship" as a result of the basic support needed by those at-home children (not stepchildren unless adopted⁶²⁹), or extreme hardships caused by extraordinary health expenses or uninsured catastrophic losses.⁶³⁰ Even a situation meeting the definition of "hardship" does not guarantee that the court deciding a California child support will choose to adjust Guideline support downward, but it permits the court to do so. Any adjustment made must be justified by the court in a mandatory statement of reasons.⁶³¹

On the other hand, *a hardship deduction is rebuttably presumed to be appropriate if a payor's income is below \$1,500 per month.*⁶³² If the court grants a hardship deduction, it is applied by deducting the amount granted from the income of the affected parent per

⁶²⁶ See CAL. FAM. CODE § 4070 ("If a parent is experiencing *extreme financial hardship* due to *justifiable expenses* resulting from the circumstances enumerated in Section 4071, *on the request of a party*, the court may allow the income deductions under Section 4059 that may be necessary to accommodate those circumstances.")

⁶²⁷ *Id.*

⁶²⁸ See CAL. FAM. CODE § 4071 (listing as the only permissible hardships under this section *extraordinary* health expenses, uninsured *catastrophic* losses, and a need to provide *minimum basic* living expenses of children a parent is *legally obligated* to support who live with the parent, with a maximum equal to the amount allocated to each child per the child support order). See also *Marriage of Drake*, 53 Cal. App. 4th 1139, 1160–1162 (1997) (holding that a payor being responsible even for significant living expenses of a current spouse is *not* a "special circumstance" allowing any deduction).

⁶²⁹ See *Haggard v. Haggard*, 38 Cal. App. 4th 1566, 1568 (1995).

⁶³⁰ See CAL. FAM. CODE § 4071.

⁶³¹ See CAL. FAM. CODE § 4072(a) (requiring a court to state the reasons supporting the deduction in writing or on the record; and to document the amount of the deduction and the underlying facts and circumstances). See also *Marriage of Carlsen*, 50 Cal. App. 4th 212, 217 (1996).

⁶³² See CAL. FAM. CODE §§ 4070–4073.

California Family Code § 4059(g), before further application of the Guideline formula.

One requirement of § 4059(g) is that in applying a hardship deduction “the court shall seek to provide equity between competing child support orders,” which confirms *legislative intent that all children of a particular parent receive child support from that parent that is fair as between those children*. It also suggests that support obligations to his children supported pursuant to another child support order (between this parent and another former partner of his) can *also* be included for hardship deduction decisionmaking, despite the wording of § 4071 limiting this deduction to children living with the parent.

The situation very-low-income payors face has been the subject of recent federal-level child support rulemaking which resulted in the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs “final rule,” in effect since January 2017.⁶³³ The Guideline Review of 2017 described the new federal final rule, which California is obliged to adopt, and its effects on the US states’ “ability to pay” law as follows:⁶³⁴

In the final rule, ACF [the Administration for Children and Families, a federal executive department under which the Office of Child Support Enforcement is organized] has included “ability to pay” in [US Code of Federal Regulations] section 302.56(c)(1) as *the overarching standard for states to follow* in their guidelines for setting support. The ACF commentary provides the following concern and justification for this change:

Over time, we have observed a trend among some States to *reduce their case investigation efforts* and to *impose high standard minimum orders without developing any evidence or factual basis* for the child support ordered amount.

Our rule is designed to address the concern that in *some jurisdictions, orders for the lowest income noncustodial parents are not set based upon a factual inquiry into the noncustodial parent’s income and ability to pay*, but instead are routinely set based upon a standardized amount well above the means of those parents to pay it. The Federal child support guidelines statute requires guidelines that result in “appropriate child support awards” and is based on the *fundamental principle* that each child support order should take into

⁶³³ See *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs (an OCSE final rule)*, 81 Fed. Reg. 93492 (Dec. 20, 2016) (codified at 45 C.F.R. §§ 301–304 and 307–309) (published by ACF on December 20, 2016; became effective January 19, 2017).

⁶³⁴ *Guideline Review 2017* at 145 (emphasis added) (citing 81 Fed. Reg. 93492, 93516–93517 (footnotes omitted) (emphasis added)).

consideration *the noncustodial parent's ability to pay*. Therefore, we have codified this longstanding policy guidance as *the leading guidelines principle* in § 302.56(c)(1).

As support for the new federal rule requiring better evidence of low-income-payors' ability to pay when child support orders are made, the ACF federal rulemakers cited research finding that *setting an accurate child support order based upon the NCP's ability to pay improves the chances that the NCP will continue to pay over time*.⁶³⁵ Compliance with support orders is strongly linked to actual income and ability to pay, they concluded, thus families do not benefit from many states' current practices of imputing income without sufficient evidence that the payor actually can or will earn it:⁶³⁶

Many low-income noncustodial parents do not meet their child support obligations because *they do not earn enough to pay what is ordered*. Orders set beyond a noncustodial parents' ability to pay can result in a number of deleterious effects, including unmanageable debt, reduced low-wage employment, increased underground activities, crime, incarceration, recidivism, and reduced contact with their children. Research consistently finds that orders set too high are associated with less consistent payments, lower compliance, and increased child support debt. In fact, *studies find that orders set above 15 to 20 percent of a noncustodial parent's income increases the likelihood that the noncustodial parent will pay less support and pay less consistently, resulting in increased arrears*. The conclusion from this research is that *families do not benefit from orders that noncustodial parents cannot comply with because of their limited income. High orders do not translate to higher payments when the noncustodial parent has limited income*.

California law and practice regarding parental ability to pay issues may soon be further modified in light of these new federal regulations.

3.5.2. Parents' Abilities to Pay under Swedish Private Law

Sweden, like California, does not require a parent to pay or provide child support beyond what he or she reasonably can afford. At the same time *separately-living parents' financial situations are meant to have an effect both on the amount of support a child receives,⁶³⁷ and on the allocation between the two parents of the duty to support the child*. Determination of each parent's ability to pay child support thus is necessary for setting or modifying child support orders or agreements.

⁶³⁵ See *id.*

⁶³⁶ *Id.* (emphasis added).

⁶³⁷ See the discussion of the *standardtillägg* earlier in this chapter.

Swedish courts or parents calculate income available for UB private child support in order to find “the parents’ combined economic abilities” to pay, because the law requires support to be set at a reasonable level given the child’s needs (largely based on consumer-data-determined reference costs, not parental income) and the parents’ combined ability to pay.⁶³⁸ Parents’ net discretionary income available for child support or “surplus” (“*överskott*”) is the amount remaining of their gross income after several self-support, support-of-others and costs-of-earning-income deductions are subtracted. A parent’s surplus is the maximum amount that parent is considered able to pay, and is thus the amount used, together with the other parent’s *överskott*, somewhat to calculate UB (for *standardtillägg* purposes), but primarily to allocate support to a child between the parents, resulting in a child support payment (UB) amount.

Use of these private-system rules to calculate the parent’s abilities to pay has declined in practice over recent years, in favor of the somewhat analogous rules in the public UStöd system, discussed in the next section, Chapter 3.5.3.

The child’s needs for UB purposes, detailed at Chapter 3.4.2, are calculated *first* and then serve in effect as a sort of “cap” or maximum of how much of a payor parent’s income, even if it is very ample, will be ordered to be paid as child support. This is true even in cases where a *standardtillägg* is considered appropriate, since courts have interpreted reasonability to include that a child have a reasonable way to *spend* all support provided each month on actual costs.⁶³⁹ As was discussed above, a child’s needs total is generally relatively modest in Sweden today, and the UStöd amount has accordingly become a norm.⁶⁴⁰

Both parents’ abilities (monthly discretionary incomes or *överskott* amounts) are calculated and compared for private UB purposes, and the responsibility for meeting the child’s total needs (as determined by UB law) is allocated between the parents by income shares. As a result, if a parent lives full-time with her child while the other parent does not and hence a UB will be paid, its amount will be the NCP’s share of the child’s enumerated monthly needs. For example, if the CP has 30% of the total discretionary parental income considered available for child support (meaning 30%

⁶³⁸ FB 7:1 para. 1.

⁶³⁹ See *supra* Chapter 3.4.2 where this was introduced. Such restrictive interpretation of what it means to share a parent’s living standard may function to keep the separated parents’ finances separate, since spousal support after divorce is now disfavored (in both jurisdictions studied but especially in Sweden, with its welfare state built upon ideals of individual freedom from traditional private family dependence and numerous supports helping both parents balance work and family). Still, it is problematic from the perspective of true amounts spent on children in higher-income families. See *infra* Chapter 7.5 for comparative discussion.

⁶⁴⁰ See SCHIRATZKI (2005), *supra* note 466, at 61.

of the total of the two parents' surpluses), she will be responsible for 30% of the child's needs total. The NCP will pay 70% of the monthly needs total, via a monthly payment of UB.⁶⁴¹

3.5.2.1. *Which Incomes and Assets the Law Considers Available for Support*

The calculation leading to a parent's *överskott* begins with a parent's gross income from work and other sources such as unemployment compensation, pension payments and taxable returns from assets such as rents or investment capital gains,⁶⁴² reduced by taxes paid and other costs to produce the income.⁶⁴³ The next chapter on procedural law describes typical practices used by parents and courts to gather this information.

Unusual Sources of Income, Difficult-to-Document Income and Fluctuating Income

There is little binding law or guidance in private child support statutory law, preparatory works or regulations requiring a particular treatment of the following sources of income during ability to pay calculations. Guidance materials published for use in guiding parents indicate that the *överskott* is calculated for each parent in the same manner, collecting information on each parent's income from work "etc.", tax on income from work, expenses necessary for the acquisition of income, capital gains or investment incomes (*inkomst av kapital* for Swedish tax law purposes), tax on *kapital*, and then information on actual living costs, special costs, and housing costs.⁶⁴⁴ Because all the incomes listed appear on Swedish tax returns, it is likely that all incomes appearing on a parent's most recent annual tax return will usually be included, and others not included, since "special incomes" is not listed in the same manner as "special costs."

Accordingly, *if* the following types of income do not appear within the totals for earned and *kapital* income on the prior year's tax return, they may or may not be included in child support calculations between parents, or before a court: (i)

⁶⁴¹ Had the CP's *överskott* been *higher*, the NCP's payment would have been *lower*. At the extremes, a parent earning 100% of the combined discretionary income will be responsible for 100% of the child's needs as calculated under Swedish private law, but here it is helpful to note that those needs are constrained by how much universal support Sweden provides in the form of social benefits, including the public child support amount, UStöd.

⁶⁴² SCHIRATZKI (2005), *supra* note 466, at 59. The statutory law itself at FB Chapter 7 does not define "income" specifically. The preparatory works do discuss some types. *See* Prop. 1978/79:12 at 105.

⁶⁴³ *See* SoS (2014), *supra* note 479, at 59.

⁶⁴⁴ SoS (2014), *supra* note 479, at 59. *See also* FK 2016:1 Version 5, *supra* note 466.

gambling winnings; (ii) debt cancellation; (iii) perquisites like free use of a car or apartment from an employer; (iv) cash income not reported on tax returns or possibly illegal income; (v) gifted amounts, whether one-time or recurring; and (vi) fluctuating income such as seasonal or performance-based bonus income. Some of these items usually would be on a tax return in the year paid, but such incomes can also influence a parent's financial circumstances or living standard without being visible there.

Assets

Wealth or assets are included in the determination of income available for support during consideration of the appropriateness of a *standardtillägg*, thus not in the majority of cases. Case law and regulations are relatively lacking on the details of to what extent wealth affects determination of a parent's ability to pay private child support amounts, leaving decisions to the discretion of the court and parents as they determine what is "reasonable."⁶⁴⁵ Similarly, inheritances are not taxable incomes in Sweden and will not be included for child support purposes in annual income in the year received, although incomes derived from them will be included. Inherited assets, as with all wealth, should be considered as a part of the overall economic circumstances of the parent when a *standardtillägg*, if any, is set.⁶⁴⁶

Imputation of Income to an Under-Earning Parent

The main statutory law creating the Swedish child support duty refers to each parent's *economic abilities* to support the child, and case law has further defined how a parent's economic ability to pay child support is determined.

The guidance materials published for FK staff's use indicate that parents' "*economic abilities*" under FB actually are equal to their abilities to earn, and that *most often actual income* is used as a measure of ability to earn. Where more appropriate, however,

⁶⁴⁵ This discretion is granted by FB 7:1 p.1.

⁶⁴⁶ See case law cited *supra* Chapter 3.4.2.4 (on the *standardtillägg* addition to support meant to help ensure a shared living standard for the child and parents). Only very large inheritances are federally taxed in the US, and California itself has no inheritance tax presently.

the income a parent *could have earned* instead is used as the starting point for a child support calculation.⁶⁴⁷ Case law supports this interpretation of the law.⁶⁴⁸

New Partner Income

Stepparent or cohabitant partner's income⁶⁴⁹ in the Swedish private-law UB system generally is *not considered* with respect to a parent's ability to pay child support. Only the parent's personal income is at issue, relative to a given child's other parent's income.

A parent may however have *unusually low costs of living* warranting a reduction of that parent's self-care reserve below the standard amount (meaning that he or she will have more net income available for child support) for reasons related to their current partner. Lower personal costs simply because one lives with a partner who earns income ordinarily is *not* a sufficient reason to reduce one's self-care reserve for personal living costs. On the other hand sharing one's home with another adult is usually expected to *reduce the size of the parent's permissible housing costs reserve* for actual, reasonable housing costs (because each adult is expected to cover one half of those costs).⁶⁵⁰ Partnered Swedish adults can usually be expected therefore to have a higher net discretionary income amount available for child support, even though technically stepparent income is not considered.

Note however that a parent's partner's *lack* of sufficient income for his or her own support can also, under limited circumstances, trigger a reserve for that partner's support as a dependent. This will reduce the parent's income available to pay child support, as discussed below in this section.⁶⁵¹

⁶⁴⁷ SoS (2014), *supra* note 479, at 57 (citing Prop. 1978/79:12 at 401 and 423).

⁶⁴⁸ See, e.g., Prop. 1978/79:12 at 401–402 (a support payor's income potential, instead of actual income, is only used when the payor *without good cause fails to earn enough* to support a child) and RH 2011:44 (holding that income would be imputed to a father working only part-time).

⁶⁴⁹ Under Swedish law whether a partner is a legal spouse or a cohabitant (non-marital) partner rarely has any effect. The choice whether to marry is considered personal, and economic self-sufficiency for all adults is, as has been introduced, an important family policy goal. Still, certain legal differences exist, in part because of intent for the law regulating cohabitants be a different option.

⁶⁵⁰ GÖSTA WALIN ET AL., FÖRÄLDRABALKEN (June 5, 2018) [hereinafter "Commentated FB"], at comments to FB 7:3 para. 2.

⁶⁵¹ Because in California there are no reductions for personal living, housing expenses, or dependent spouses (except very exceptionally), a parent's partner's income even more rarely affects the disposable income considered available for Guideline support purposes.

3.5.2.2. Reductions to Income Available for Child Support

The Self-Care Reserve

There are several deductions from income or “reserves” from income routinely applied to a parent’s gross income in order to reach the parent’s *överskott* or discretionary income considered available for child support purposes at the stage of determining a parent’s ability to pay child support. Note that these are not the same reserves permitted to a parent from whom *unpaid* support is later being *collected*, for example via executing an attachment order against his or her salary from employment.⁶⁵²

Each parent is permitted to reserve from his or her total after-tax income an amount for the parent’s own self-support, a *förbehållsbeloppet*, for “all typical costs of living.” These expressly include a “reasonable” housing cost for that parent’s household circumstances, discussed separately below, plus a remaining living costs total for an adult’s ordinary (“*vanliga*”) living costs.⁶⁵³

The non-housing-costs self-care reserve amount is not generally calculated subjectively, from evidence provided by each parent of their actual expenditures, but via use of an objective “*normalbelopp*” (normal amount), which is defined by FB 7:3 as 120% of the current *prisbasbelopp* (base prices amount) provided in Swedish law at SFB 2:6–7.⁶⁵⁴ This guideline amount of a parent’s deductible living costs for child-

⁶⁵² The latter, the law of enforcement of child support obligations, is treated below in Chapter 4. *See also* Prop. 1978/79:12 at 102 (explaining that the FB rules for reservations from income for child support setting purposes differ partially from the corresponding rules for reservations when attaching salary for child support collection purposes, and suggesting that some reconsideration of the debt collection law’s established regulations might be wise after the new FB rules have been in force for a time) and RH 2003:16 (an appeals case on calculating the appropriate reserves from income in attachment situations).

⁶⁵³ FB 7:3 paras. 1–2. *See also* SOU 1995:26 at 258 (on this *förbehållsbelopp* and men vs women’s living costs 1978–1999) and Commentated FB at comments to FB 7:3 para. 2 (listing as included *food, clothing, laundry, hygiene, natural gas, electricity, telephone, the radio-and-TV license fee formerly required in Sweden to be paid by viewing/listening households, newspapers, insurance premiums, union dues, normal out-of-pocket costs for healthcare and travel to and from the workplace*, also noting that certain reasonable additional costs would properly be taken into account in individual cases). These seem to correspond to some of the Swedish Consumer Agency (*Konsumentverket*) reference values for living expenses, discussed *supra* within this chapter.

⁶⁵⁴ FB 7:3 para. 2. *See also supra* Chapter 3.4.2 (discussing the living standard contemplated by the *prisbasbelopp*). Note that a parent is allowed 120%, not 100%, of this amount as the self-care reserve. Preparatory works to the FB in 1978–79 reasoned that *a lower allowance (thus an expected lower living standard) would be unreasonable* given the long expected period of child support orders, and *a higher one*

support purposes is thus 120% of the cost considered reasonable for an adult to live at a modest lifestyle level in Sweden under the National Insurance Act. Although it typically is not, it could in theory be adjusted by a court,⁶⁵⁵ the law provides only that reasonable self-support allowances should be calculated with “guidance from” this *normalbelopp*, and legislative intent was that *reasonableness in each individual case* could be improved by giving judges the discretion to adjust the *underhållsbidrag* amount itself up or down too.⁶⁵⁶ These allowable deductions adjust automatically each year with the then-applicable *prisbasbelopp*.⁶⁵⁷

Reserves for the Support of Household Dependents

A parent further may withhold from his or her income, if special circumstances warrant it, an additional living-costs reserve for a portion of the living expenses of a partner, provided the partner is *married to the payor parent or has a child together with him or her*.⁶⁵⁸ The qualifying partner generally must be without his or her own income for self-support, *and* this lack of income must be reasonable. Reasonable circumstances might include that the partner is at home full-time with a preschool-aged child⁶⁵⁹ or

would favor the NCP over the CP. Prop. 1978/79:12 at 97. The low child support level from the resulting UB is however considered reasonable for the child despite the same extended time period, but preparatory works did not address this. See SCHIRATZKI (2005), *supra* note 466, at 60.

⁶⁵⁵ See e.g. NJA 1994 p. 226 (holding that in determining the amount of self-support reserve appropriate upon entry of a child support order, an addition to the normal living costs amount could not be made for savings toward a new car).

⁶⁵⁶ See Prop. 1978/79:12 at 107, 397; see also Jennie Karlsson, *Underhåll till barn: Särskilt om standardtillägg vid växehvist boende* [*Support to children: Focus on living standard addition with alternate residence*] (master's thesis in law, Lund University) (Fall 2014) (advisor Eva Ryrstedt) at 27 (addressing the guidance that the now-withdrawn SoS 1989:6 offered for how a decisionmaker could increase or decrease a UB amount based upon a comparison of the *total discretionary income*, the *parents' living standards*, and *particular difficulties* (“*sociala problem*”) of the payor or the payor's family, also mentioning that whether a *standardtillägg* should be paid can per the guidance be decided in this process also).

⁶⁵⁷ See FB 7:3 para. 2.

⁶⁵⁸ FB 7:3 para. 3. Note that a *sambo* or non-marital partner at home with small children, whether her own biological children and/or the support-owing parent's children, would *not* qualify for the same reserve from his income for her support, though if they were married (or had a biological child together) she *would* qualify. The European Court of Human Rights found discrimination in a somewhat analogous case, where a UK woman living with a woman partner received no decreased child support payment obligation, but had she been partnered instead with a man she would have received a decrease, thus if challenged this Swedish-law distinction also may not survive scrutiny. See J.M. vs. the United Kingdom, ECHR judgment of September 28, 2010.

⁶⁵⁹ See e.g. the admittedly older case NJA 1983 p. 678 (allowing a reserve for a wife home with a preschool-aged child). It is unlikely this would be a special circumstance recognized by a court today;

is seeking work. If on the other hand the partner has income sufficient to provide a *normalbelopp* for his or her own needs plus one half of the couple's reasonable housing costs then the deduction (the reserve from the parent's income considered available to pay child support) is not allowed.⁶⁶⁰ The *normalbelopp* for a partner, even where it is allowed, is only 60% of the *prishasbelopp*, if the court does not adjust it in its discretion granted by FB 7:3 para. 3.⁶⁶¹ In other words the payor partner is only allowed to be responsible for half of the new partner's reasonable living costs at the same *normalbelopp* level as him- or herself.

A parent is also allowed a reserve for the *support of any additional child or children living in the parent's present household*, whether the child be the parent's own child or a bonus- or stepchild, but *only if* the child support payment currently being calculated *would restrict the discretionary income of the parent in a way that leaves insufficient funds for the child living at home's support*.⁶⁶²

This is done such that each other child of the parent at home shall have a *combined* amount of support from this parent and the child's other parent that constitutes 40% of the applicable (current) *prishasbelopp*, if the court does not choose a different reserve amount in its discretion.⁶⁶³ A stepchild would have the support expected from both of his or her legal parents considered *before* a reserve for his or her support was made from the stepparent's income.

This provision is intended to guarantee that these children's support needs are also protected within the child-support-law scheme, and the children with separately-living parents' needs are not prioritized such as to impoverish the children whose parents might be living together but still require support.⁶⁶⁴ The exact amount

in practice parental leave social insurance payments provide most parents home with children with most of their usual salary throughout that period.

⁶⁶⁰ Commentated FB at comments to FB 7:3 para. 3.

⁶⁶¹ See FB 7:3 para. 3.

⁶⁶² Compare the also somewhat-discretionary and need-based "hardship deductions" described in the California abilities-to-pay section, *supra*.

⁶⁶³ FB 7:3 para. 4. The 2019 *prishasbelopp* amount is 46,500 SEK for 12 months (\$5,350), thus 3,875 SEK (\$446) per month. Note that amounts paid *on the other parent's behalf* or because the parent has died or not paid a private child support *are included* here, thus *barnpension* and UStöd are included. See also SCHIRATZKI (2005), *supra* note 466, at 60 (calling this reserve a "guarantee rule" applied *only as a last step or resort*, when income is limited as described). Because of the UStöd child support guarantee, the rules described here are *very rarely used in practice*, but are described because they remain the law.

⁶⁶⁴ Prop. 1978/79:12 at 160 ("No priority is given to an eligible [for child support] child in relation to a child with whom the debtor lives. The fourth paragraph is based instead on the basic principle that the children should in principle be treated equally. As mentioned under § 1, this does not mean that they have claim for equal maintenance from the joint parent. The fourth paragraph is a guarantee rule

is to be decided by the court as the circumstances of the specific case require,⁶⁶⁵ in the unusual circumstance that a case ever is litigated in court.

When parents make agreements on private child supports they can request help from FK specialists to determine how these rules may be applied to their own case, as discussed further within Chapter 4 on procedures for setting and modifying child supports via parental agreement.

The Housing Reserve

A Swedish parent's reasonable, and most often *actual*, housing costs are deducted from his or her income during the process of arriving at his or her net disposable income available for UB (his or her *överskott*), per FB 7:3 para. 2. Even if the actual costs are higher than what is considered standard (*schablon*), a parent having shown *special circumstances* justifying the higher costs, notably *including use of the home for housing the children during his or her parenting time*, generally may deduct them from gross income in the determination of his or her ability to pay child support.⁶⁶⁶

Note that this removes a need in most cases to consider the supported children's housing costs as part of their needs for support, because each of their separately-living parents may deduct reasonable housing costs for them from their gross income in deciding the net parental income amount available to cover the children's other needs for support, thus child support amounts in Sweden will not need to include housing costs for the children.⁶⁶⁷

which is only raised when it becomes clear that the home-living child will not have sufficient support to have his or her minimum needs met if the general distribution of child support rules are applied.”)

⁶⁶⁵ FB 7:3 para. 4.

⁶⁶⁶ See NJA 1987 p. 569 and NJA 1990 p. 201 (approving use of actual costs where a father had obtained the housing when he had sole custody of the supported children, where it was shown the children would continue to have visitation time with him in the home, and where the difference between the expected/average and actual cost was not unreasonable).

⁶⁶⁷ It is appropriate for a court to consider the actual circumstances of a case *and to include some housing costs in a child's needs total in some circumstances*, however. See Commentated FB at comments to FB 7:3 para. 2 (relying on the general discretion of the court in setting UB amounts). It can be proper to include in a parent's housing costs deduction the *marginal cost* for housing a child—in other words, as discussed earlier in connection with California's use of marginal cost estimators, *the increase in cost a parent must pay between housing if he did not live with the housed child and the fact that he does*. This is appropriate for example “if the net housing cost for the children is significant at the same time as the difference between the parents' income is large, or if the children in the family are only legal children of one spouse or cohabitant.” *Id.* Here the Swedish UB law also uses the concept of marginal cost, so central to California's child-support setting rules, but only as an option the court may use in its broad discretion, for unusual cases. While it “would *in principle be most appropriate to separate out the marginal*

Absent special circumstances making a parent's actual, higher-than-standard housing costs reasonable, a court may use the highest standard amount of housing costs for that area and family size in approving the deduction.⁶⁶⁸ Yearly regulations published by Försäkringskassan give the standard and the highest acceptable (presumed reasonable) housing costs in given geographic areas of Sweden and for different family sizes. This guidance can be used by parents and courts to check the reasonableness of an actual housing costs amount a parent requests to deduct from income.⁶⁶⁹ Courts have allowed a *standard* deduction for housing even when a parent's actual housing cost was unusually *low*,⁶⁷⁰ and also approved a higher, actual cost when falling housing prices have made selling a home with a high mortgage debt difficult.⁶⁷¹ The direction of these case decisions, generally in favor of not being unduly financially punishing towards the parents, is in line with the Swedish WSM's ideals.⁶⁷²

Any spouse, partner or other income-earning adult sharing the parent's housing generally is expected to cover one half of the housing costs. *A deduction from the parent's income for another adult's housing can also be appropriate* if (1) he or she is a spouse or partner legally analogous to a spouse who (2) had no or low personal income (after consideration of actual or ability to earn) and (3) *special circumstances* make it reasonable for the parent to need to support that partner (the same special circumstances permissible under the deduction allowed for personal expenses, discussed above).⁶⁷³ If these conditions are not met, however, the parent living with a new partner (who is unable to support him- or herself but not qualifying to be supported by the parent under the above qualifications) may take a deduction equal to what his or her reasonable housing deduction *would have been had he or she lived as a single person*, and this generally will be greater than one half of the cost of housing shared with another adult. In this way cohabitating with another adult is not

housing cost that the child would be considered to require and add that to the child's needs amount," usually the CP's interest in having them considered will be met by her larger housing deduction from her income, compared to the NCP's. *Id.* at comments to FB 7:3 (following para. 4 commentary, in a section on the method for calculation of a child's needs and how to divide them between the parents).

⁶⁶⁸ See NJA 1990 p. 201.

⁶⁶⁹ See a recent version, FKFS 2016:9, *Om genomsnittlig och högsta godtagbara bostadskostnad för år 2017* [On average and highest acceptable housing costs for 2017].

⁶⁷⁰ See NJA 1991 p. 40.

⁶⁷¹ See RH 1992:93.

⁶⁷² It may strike members of the Californian child support legal community as surprisingly generous. See Chapter 6.1.3 introducing the comparison for discussions of the WSM ideals with reference to this housing reserve example.

⁶⁷³ FB 7:3 para. 3.

disfavored, with an expectation that such an adult must, even if actually unable, reduce the living expenses of the parent with a duty to provide child support. Here the law *avoid encouraging private dependencies*, yet also allows them reasonably to be taken into account in limited circumstances (when they exist, temporarily, and are considered reasonable), very much in line with Sweden's social democratic WSM.⁶⁷⁴

When the housing cost deduction is determined in regards to a *homeowner parent*, any mortgage payments made that reduce the principal mortgage debt (amortize the loan) generally *should not* be included, and interest on the loan *should* be included, but only in its net amount, after the tax deduction for interest paid is considered. The objective here is giving each parent the legislatively-intended deduction from gross income for their reasonable costs of living, but not over- or undercompensating them.

The Visitation Reduction

Finally, under the private UB law an NCP may still, within six months after a visit with the child or children, reduce his UB payment if he has had a child staying with him for a continuous minimum of five 24-hour periods, or alternately for at least six 24-hour periods in a calendar month.⁶⁷⁵ This visitation reduction is *not permitted* if the child support amount was set *contemplating* the amount of visitation that has in fact taken place.⁶⁷⁶

According to the preparatory works that were the basis for modifying the FB in the late 1970s, *principles of fairness* required that a payor get a reasonable reduction in his support obligation when he contributes to the support of the child via having the child stay with him or her, and in addition *potential contact between child and NCP was thought important not to risk because of affordability concerns*, if the parent was granted no reduction despite incurring costs for visitation.⁶⁷⁷

Such reduction was introduced simultaneously for public-system cases as well, meaning cases where an advance of the UB amount was paid and repayment sought

⁶⁷⁴ Because California's Guideline does not deduct a parent's own expenses from gross income for ability to pay calculations, and also shields new partners from child support liability, there is little difference between the jurisdictions found from this Swedish UB rule.

⁶⁷⁵ FB 7:4 (the last day counting as a full 24 hours unless the visit began and ended on the same day).

⁶⁷⁶ FB 7:4 para. 4.

⁶⁷⁷ See Prop. 1978/79:12 at 108–109. The lost income to the CP who may have fixed costs was simultaneously considered; it became the lawmakers' reason not to set the reduction at 1/30 of the monthly UB per 24-hour period, but rather at 1/40. See Prop. 1978/79:12 at 111.

by the state from the NCP.⁶⁷⁸ The UStöd law's reduction has however recently been abolished,⁶⁷⁹ and thus *only child support arranged under the UB private rules now involves a right for the NCP, under certain circumstances, to reduce his child support payment based on visitation time*. Lawmakers defended keeping the private-law visitation reduction while removing the public one from law by emphasizing that the private system properly provided parents “room to make individually-adapted and thus *more appropriate* considerations” when setting child support amounts.⁶⁸⁰ The public-system reduction was under-used, costly and otherwise problematic.⁶⁸¹ Another form of reduction to both the NCP's repayment amount and the UStöd payment is in any case still available within the public system, but only where a court order or state-approved parental agreement specifies visitation of more than 30 days.⁶⁸²

3.5.3. Parents' Abilities to Pay under Swedish Public Law

No parental “ability to pay” is considered in the Swedish public-law UStöd system for the purpose of deciding *how much support* will be paid out for a child (because one set amount is set for all children), or *whether the child is eligible* for UStöd (because only the criteria that the child has separated parents, lives with one parent, and does not receive child support from the other must be satisfied).

FK, as the agency responsible for seeking repayment of all or some portion of the UStöd amount paid to the child, must calculate each NCP's ability to pay

⁶⁷⁸ See Prop. 1978/79:12 at 111–112 (describing how the reduction should apply to public-system cases as well, and that the ministers responsible for both public and private child support administration had discussed the matter and agreed that reducing not just *the repayment burden on the NCP* but also *the UStöd paid to the CP for the child* was most appropriate; fairness and avoiding abuse of the public system were cited reasons).

⁶⁷⁹ See SFS 2015:755 (abolishing former SFB 19:19–20 which regulated the *umgängesavdrag* reduction).

⁶⁸⁰ Prop. 2014/15:145 at 45 (emphasis added).

⁶⁸¹ See also SOU 2011:51 at 354 (recommending cancellation of the public-system visitation reduction due to only about 6% of payors using the reduction, it being for very little money compared to the administrative costs for the state, and it possibly introducing more conflict between parents and commodification of the child compared to other measures legislators considered more likely to increase visitation).

⁶⁸² See SFB 19:22–19:25 and SFB 18:29 (providing “net-calculation”, *nettoberäkning*, but only if a *court order* or *state-approved* visitation agreement exists providing that an NCP will spend at least 30 days per year with the children). See also Prop. 2014/15:145 at 12–13, 42–44 (distinguishing *nettoberäkning* from *umgängesavdrag*, and abolishing only the latter as expensive, little-used, ineffective and conflict-promoting).

(repay/contribute), simultaneously or promptly after granting a child UStöd.⁶⁸³ In the cases where a child has a duty-owing NCP, that parent will begin paying each month (in advance, although this does not matter for the child receiving UStöd) the amount the UStöd laws deem him able to pay.⁶⁸⁴

3.5.3.1. The UStöd Repayment (NCP Contribution) Rules

Once a CP has applied for UStöd, FK as the responsible agency will collect and use the NCP's income information for repayment-ability-calculation purposes, per SFB chapter 19.⁶⁸⁵ The NCP's financial circumstances are in this regard highly relevant within the UStöd system, as they determine to what extent a payor parent is providing the child support regulated under the SFB to Swedish children, versus the extent the state is providing it.

The CP's income information is not considered and thus her ability to pay child support is wholly irrelevant within the UStöd system, since within this public-law system the issue is the NCP's expected contribution to repaying the UStöd his child needed because he did not pay a UB amount.⁶⁸⁶ At issue is not allocation of child-support responsibility between the two parents, as is in focus within the private system, but replacing support that would have been provided by a second parent, for both child welfare and fairness reasons (not overburdening the CP). Preparatory works indicated that CP finances were left out of UStöd eligibility determinations mainly for efficiency reasons, but also in fairness to the CP.⁶⁸⁷

⁶⁸³ See SFB 19:3 (requiring payment duty to be set at the same time or promptly after the decision to grant the benefit is made).

⁶⁸⁴ See SFB 19:2 (requiring a duty-owing parent to pay FK each month, in advance, the amount paid out in UStöd to his child or some portion of it).

⁶⁸⁵ There has been some attempt to reframe UStöd-related NCP payments to the state as contributions instead of repayments. See Prop. 2008/09:200 at 426 (explaining the legislative intent behind SFB Ch. 19's use of the term "payment obligation," *betalningsskyldighet*, despite previous use of the term "repayment obligation," *återbetalningskyldighet*: to avoid confusion with the repayment of mistakenly paid out UStöd *but also due to the increasingly weak relationship between UStöd payments to the child and (re)payment contributions expected from the NCP*).

⁶⁸⁶ This was discussed *supra* Chapter 3.4.3. Considerations of efficient administration or other consideration may nonetheless call for UStöd to remain non-income-tested, but articulation of or reconfirmation of the reasons (see *infra* note 686, directly below) may promote increased confidence in the regulation and uniformity between systems.

⁶⁸⁷ See Prop. 1995/96:208 at 40 (reasoning that very few CPs had high incomes, thus administering income testing of CPs would not render many applicants ineligible to receive UStöd). These parents, lawmakers reasoned, also already receive less housing allowance, pay more for public childcare, plus

How much an NCP will owe and be expected to pay to FK per the UStöd repayment or contribution rules is calculated *beginning with the NCP's taxable annual income from his latest finalized tax return* (the tax return last accepted as final by the Swedish tax authority before February of the year being for which ability to pay UStöd is being calculated), including any incomes from work, capital and businesses, with some adjustments.⁶⁸⁸

In the UStöd system, a self-care reserve of 120,000 SEK (\$13,806) is subtracted per current law from the payor NCP's annual taxable income.⁶⁸⁹ Received amounts of certain tax-free study-related social benefits (grants, not loans) are added to the taxable income.⁶⁹⁰ *The net result is somewhat akin to the UB-system's surplus or överskott, although the two are calculated differently and will be different amounts for the same NCP and income.*

In UStöd cases, the net result is the amount of an NCP's annual income the state (via FK) considers available for the coming one year's monthly payments in fulfilment of his child support duty.

FK's Reasonableness Assessments for NCP Income—Discretion for the Agency

If it is “obvious” that the NCP's earning capacity significantly exceeds that calculated automatically from his prior tax return, *and* he does not show good cause why earning capacity should not be used, FK may instead determine the NCP's payment obligation by a “reasonableness assessment.”⁶⁹¹

Discretionary FK agency “reasonableness assessments” may be necessary, for example, *when an NCP earns income outside of Sweden* and the Swedish tax records do not detail it, or (as the Swedish Supreme Administrative Court confirmed as recently as 2008) *when an NCP runs a business at a loss* for several years instead of using his clear *earning capacity* to earn and to *fulfill his parental economic support duties*.⁶⁹²

contribute one half or more to a child's support, so it is appropriate that they receive a state support providing the other half. *Id.*

⁶⁸⁸ See SFB 19:10–19:14.

⁶⁸⁹ SFB 19:19 (including a base deduction of 120,000 SEK [\$13,806], increased from 100,000 SEK [\$11,505] per Lag 2017:995).

⁶⁹⁰ SFB 19:15 (specifying *studiebidrag* and *studiestartsstöd*, minus any need-based/dependent child-based additions). In the UB system student loans—all for living expenses in Sweden, not tuition—are incomes available for support, generally, unlike other borrowed funds.

⁶⁹¹ SFB 19:21.

⁶⁹² See RÅ 2008 ref. 71. This is one example of how the traditional *public policy emphasizing child support as a serious obligation which parents have obligations to act upon (via reasonable attempts to earn)* is expressed in Swedish case law, similarly to how it is expressed in California case law. In both it can be observed on

UStöd Contribution Amounts: A Percentage of Payor Discretionary Income

UStöd rules set the exact NCP contribution amount owing per child as a percentage per child *of the surplus income figure calculated as described above* (not of gross income or some other measurement of net income). The percentage depends on the total number of children the NCP has a legal duty to support per the private law rules at FB 7:1). The needs of all children of the NCP to whom he owes a duty of support—those living with him and those not living with him—are thus considered in this system.⁶⁹³ It is beyond this study's scope to analyze these differences between UB and UStöd rules, but they clearly will result in different obligations for NCPs, in various ways, adding confusion and undesired incentives to child support private ordering desired by Swedish lawmakers.

If the NCP owes a duty of support to only one child, the percent of the parent's income available for UStöd repayment is 14%; for two total children, 11.5% per child; and for three total children, 10% per child.⁶⁹⁴

UStöd Contribution Amounts: Recalculations

What amount this is will be recalculated, modifying the repayment amount, *each time a new NCP income tax decision is made by the Swedish tax authorities* (therefore usually annually), as well as *each time a triggering event occurs that will affect the contribution amount*, usually when the number of children to whom an NCP owes a support duty changes or one of the children begins receiving a higher UStöd because they have turned 11 or 15 years old.⁶⁹⁵

Alternate amounts owed for each child might also be set because a UB has been entered as a court order confirming support owed to a CP on behalf of a child, required for the state to collect child support internationally.⁶⁹⁶ As discussed earlier

both private and public sides of the systems. The differences are more in how the two societies, in their different WSM contexts, *define* and *interpret* what child support obligations are specifically, and in what is “reasonable” in different contexts.

⁶⁹³ See SFB 19:16 and FB 7:1.

⁶⁹⁴ SFB 19:17 (providing also that additional children's percentages are to be calculated as, for example, $4 + 27/4$, for four children, thus 7.75% each).

⁶⁹⁵ SFB 19:34. This system is largely automated when all parties involved live in Sweden, owing to the fact that Swedish state agencies have and cooperate to share necessary social benefits records, tax records, and population register information (e.g. who is the child or parent of whom, where each is registered as living, and their age information).

⁶⁹⁶ See SFB 19:28–33 (regulating international situations).

a custody and visitation judgment may also be the basis for a visitation reduction (at the 1/40 of the monthly amount owed per day rate) under UStöd law.⁶⁹⁷

*If the amount per child thus calculated is equal to or greater than the UStöd paid out to each child during the applicable period, the NCP will be responsible for paying back the full UStöd amount.*⁶⁹⁸ Otherwise, the child or children will nonetheless receive full UStöd for their age from FK, and the amount paid by the state in excess of what the NCP must repay will be a non-repayable grant to the child, in fulfilment of the guarantee that every child living with only one parent will receive a reasonable amount of child support.

3.5.3.2. Implications for Choice of Private or Public System

Given the uncoordinated rules there will be differences between the same NCP's ability to pay child support, to the same child, premised on the same duty, between the UB and UStöd systems. This is an in principle unsatisfactory result that also leads rationally to strategic behavior on the part of parents. When these differences were investigated closely in 2011, investigators found many differences in different directions based on parents' relative incomes.⁶⁹⁹ As they summarized:⁷⁰⁰

[E]ven among separately-living parents as a group it is usual that the dad has high income and the mom low income. This is interesting because the chance in these cases is great that the child would be able to get significantly more in child support if the parents themselves came to an agreement on a UB for the child instead of applying for UStöd. The reason is most likely that in the high majority of cases the dad would, if the UB rules are applied, get to pay a larger portion of the child's total support, because he with high likelihood has a larger discretionary income [*överskott*] when the amount of UB is calculated. Conversely the parents are assumed to pay equally much for the child, regardless of their relative abilities to pay, in the UStöd system.

Following those findings came the UStöd reforms aiming to incentivize parents' use of the UB system, to limit use of the public system for children with an NCP to cases where its guarantee function is truly necessary,⁷⁰¹ and there are further

⁶⁹⁷ See SFB 19:22–24.

⁶⁹⁸ See SFB 19:26 (“The amount to be paid [to FK, as repayment of UStöd] for one child may never exceed what is paid out to the child during the applicable payment-duty time period.”).

⁶⁹⁹ See SOU 2011:51.

⁷⁰⁰ *Id.* at 403.

⁷⁰¹ See, e.g., *infra* Chapter 4.2.4 (on the procedures to establish UStöd) for discussion of their impact in practice.

investigations underway to consider further changes to UStöd (although unfortunately not UB at the same time). Nonetheless whether to consider the CP's income in granting UStöd is one item again being investigated.⁷⁰²

Policy discussion of the private-law versus public-law ability-to-pay rules will be included in these evaluations. Calls by Swedish family law academics for harmonization of the private and public systems have included specifically *recommendations to “modernize” the private ability-to-pay calculations to be in harmony with the public law ones.*⁷⁰³ Such suggestions and others could lead to reform in the near future.

Until such time, under current law it in many cases remains rational for CPs to apply for UStöd instead of seeking a UB agreement or order—even in cases where lawmakers had not intended that result—given the different support amounts available to their children under each system, mainly based on differences in how UStöd contemplates only the NCP's ability to pay while UB contemplates both parents' abilities.⁷⁰⁴

⁷⁰² See Dir. 2018:97 at 18 (listing whether both parents' income should be considered for UStöd and what motivates parents to choose one system over the other among the questions an investigator is to answer by 1 October 2020).

⁷⁰³ See Johanna Schiratzki & Anna Singer, *Debatt: Regler om underhåll till barn driver på konflikter* [Debate: Rules on child support drive conflicts], SVENSKA DAGBLADET (28 April 2017) (available at <https://www.svd.se/regler-om-underhall-till-barn-driver-pa-konflikter>). Chapter 8, *infra*, briefly addresses reform possibilities in light of this study's findings, as these chapters also have done in connection with describing the details of the law and SOU 2011:51.

⁷⁰⁴ See *id.*

4. Child Support Procedures and Enforcement

4.1. Introduction

To answer its research question (“What are the procedural law rules, in both private and public law?”) this chapter presents an overview of the *procedural law regulating private and public child support setting, modifying and enforcement* in the two jurisdictions compared. It covers briefly the rules of child support debt collections and of responsibility for the fees and costs incurred in setting and enforcing child support obligations as well. The chapter aims to present the law at a level of detail best balancing the broad scope of the study and the need for some narrower focus to present concrete information necessary to support the comparison.⁷⁰⁵ Additionally some readers (including family law experts in the other jurisdiction) may need the details presented to build a sufficiently robust understanding of the system foreign to them. This assists them in evaluating the comparison and potentially utilizing the example of the other system in their own.

4.2. Reaching Initial Agreement or Court Order

When parents in either jurisdiction first need to decide the issue of child support for a child, either parent may initiate communications with the other regarding the issue (and other issues needing to be resolved between them such as paternity establishment, child custody or parenting schedule issues). Parents at this stage seek to reach agreement or to get help from appropriate professionals, together or separately. In some cases, as with paternity determinations in connection with the granting of certain social benefits, the state may initiate child support determination.

In both Sweden and California, help for parents is available from private lawyers or from the state, including via state-funded mediation help and via internet-based

⁷⁰⁵ See *supra* Chapter 1.4.3 on the topics excluded from the study, including most issues of compelling the production of income and asset information, other evidence issues and most of the law of debt collection not specific to the child support systems. For an English-language summary of Swedish procedural law generally, see Peter Westberg, *Civil and Criminal Procedure, in SWEDISH LEGAL SYSTEM* 199 (Michael Bogdan ed., 2010) (explaining at 199 that the public, if asked what might be a third branch of power in government, might think of the press or media, not of the courts, due to the very minimized role—increasing now—that courts traditionally have had in Sweden).

and in-person contact with an administrative agency with child support expertise, as will be described.⁷⁰⁶ In *public* child support cases, in both jurisdictions, the state with a CP's help must by law contact the second parent, determine paternity if that has not been done, and set a support amount for the NCP to pay, *through* the state as intermediary between the parents and often *to* the state to contribute some repayment of funds the state has advanced to support the child. In both systems, children's support rights are enforced somewhat regardless of the CP's wishes in these cases, where the state has an obligation to recoup state monies. In both systems, the laws also emphasize that cooperative agreements between parents are ideal, yet Californian and Swedish parents discuss child support issues with each other in the shadow of quite different mandatory rules. These rules regard what amount the court or agency might seek in child support (or repayment contribution) if the parties cannot agree,⁷⁰⁷ and how, procedurally, that will be done.

There are, in other words, many similarities, while at the same time factors—including a stronger importance placed on formal, written, court-approved child support orders in California and lack of an easily-accessed child-support payment guarantee—contributing to some significant procedural differences.⁷⁰⁸

Swedish civil-law courts that hear family law disputes between private individuals, including UB disputes, are the “general courts” (*allmänna domstolarna*). They include trial-level courts called “district courts” (*tingsrätt*), with appeals available to the “courts of appeal” (*hovrätt*), and ultimately to the Swedish Supreme Court (*Högsta domstolen*). In contrast, disputes that involve public agencies in conflict with individuals, including conflicts over eligibility for UStöd, are heard by the separate “general administrative courts” (*allmänna förvaltningsdomstolarna*) including trial-level “administrative courts” (*förvaltningsrätt*), “administrative courts of appeal” (*kammarrätt*), and ultimately the Swedish Supreme Administrative Court (*Högsta förvaltningsdomstolen*).⁷⁰⁹

⁷⁰⁶ *Försäkringskassan* (FK) in Sweden for private and public cases, the local child support agencies (LCSAs) in California for public cases, and the Family Law Facilitators at California's courthouses for private cases. Private mediators paid by the parties and other forms of ADR such as “collaborative divorce” are also available in California but rare in Sweden, given Swedes' broader use of public options (a WSM-related difference). Legal-cost barriers to resolving child support issues exist however in both jurisdictions, as will be discussed.

⁷⁰⁷ The discretion of parents is limited in California by the mandatory Guideline, and in Sweden by norms and law in the absence of a mandatory guideline, as set forth in Chapter 3 above.

⁷⁰⁸ Further comparison of the procedural laws described in this chapter is made at Chapter 6.4.

⁷⁰⁹ See, e.g., Sveriges domstolar [The Swedish Courts], *The Swedish Courts*, <http://www.old.domstol.se/Funktioner/English/The-Swedish-courts/>.

In California, “private family law” matters including child support disputes are heard by “superior courts” of general civil jurisdiction, which often are assigned within a California county court to hear exclusively family law cases, thus become courtrooms known as family law departments.⁷¹⁰ Each courtroom (department), whether a general family law department or a family law department assigned the public Title-IV-D cases, consists of one judicial officer, who may be a judge or a commissioner.⁷¹¹ Private family law and public (IV-D) family law departments exist in different courtrooms, often in different courthouse buildings, and the LCSAs (state agency) attorneys appear routinely in the IV-D cases, in the IV-D courtrooms, and not in the non-IV-D.

4.2.1. *Reaching an Agreement or Order in California Non-IV-D Cases*

4.2.1.1. *Parental Agreements*

Family law in general, in many jurisdictions, *provides a framework within which parents themselves negotiate the terms* of their divorce, separation or co-parenting. This function has been suggested as “the primary function of contemporary divorce law.”⁷¹² Parents negotiate “in the shadow of the law,” and their settling their issues via this “private ordering” is favored and encouraged, including with respect to financial issues. However, California’s Guideline child support law to a certain extent restricts how parents may settle child support issues privately between them, as this section introduces, in the interest of achieving the Guideline’s purposes. The Guideline amount of child support to which a child is entitled must generally be calculated, even where the parties wish to agree to a higher or lower amount, in order for courts to comply with their duties under the law.

⁷¹⁰ See, e.g., California Courts—The Judicial Branch of California, *About California Courts* (2019), <https://www.courts.ca.gov/2113.htm>.

⁷¹¹ Commissioners were introduced with the Family Law Facilitators, discussed in the next section of this chapter, *infra*. All family law judicial officers receive judicial training and support, including specific to family law adjudication and developments in the law.

⁷¹² Robert H. Mnookin, & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE LAW JOURNAL 950, 950 (1979). See also Johanna Schiratzki, *Litigation in the Shadow of Mediation—Supporting Children in Sweden*, in FAMILY LAW AND FAMILY VALUES 123 (Mavis Maclean ed., 2005).

Discussions Between Parents for “Fair and Efficient Settlements”

Two legislative intents for specifically the California child support Guideline law are “to encourage fair and efficient settlements” and “to minimize the need for litigation.”⁷¹³ “Fair” alludes to the fairness to the child, to each of the parents and even to the state, which is achieved, the law presumes, via the adequate and uniform levels of child support set by the Guideline formula, but perhaps also by some non-Guideline child support solutions agreed to by parents. “Efficient” refers to the potential savings of time and money which can be had from agreements settling child support questions, compared to costs and delays of litigation.

Settlement discussions between parent parties to family law cases generally are encouraged by California court staff, judges and attorneys early in the court case process for many cases. For specifically child-support-issue resolution, however, mediation before seeing a judge is *not* required. Instead, *parents without attorneys are encouraged by the California courts’ self-help system to come to the private courts’ in-house “family law facilitators” office to get assistance with calculating Guideline child support.*⁷¹⁴ They are advised to pursue a legally-enforceable (private, non-IV-D case) order via the court, but also to “learn more” about free LCSA’s child support services on the public system’s website.⁷¹⁵ In contrast, *in every case involving child custody or visitation, courthouse-based mediation of those issues is mandatory before the parents may see a judge,*⁷¹⁶ although cases where domestic violence between the parties is alleged are subject to special rules.⁷¹⁷

The fact that child support issues are *not* generally discussed in mandatory custody mediation does not mean parents may not settle these issues via an agreement between them, but it may make private agreements less likely. Despite the intent

⁷¹³ CAL. FAM. CODE § 4053(j) (“The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.”) See also Marriage of Laudeman, 92 Cal. App. 4th 1009, 1013 (2001) (citing § 4053(j)).

⁷¹⁴ See Judicial Branch of California, *Child Support* (2019), <https://www.courts.ca.gov/selfhelp-support.htm> (self-help resources webpage).

⁷¹⁵ See *id.* In this and other ways it is the “default” for many parents to initiate private cases; agency use seems an exceptional option. Public cases and LCSAs are discussed next, at Chapter 4.2.2, *infra*.

⁷¹⁶ These mediations are *focused on child custody and visitation issues only*, to try to reach an agreement on a parenting plan in the best interest of the child. See CAL. FAM. CODE §§ 3170(a), 3175 and CAL. RULES OF COURT rule 5.210.

⁷¹⁷ See CAL. FAM. CODE § 3170(b) (providing that domestic violence cases will be handled differently by Family Courts Services who otherwise meet parents together for custody mediations). It is highly unlikely that face-to-face mediation will be appropriate in such cases. This seems understood in both systems; domestic violence is also an exception to the rule in Sweden encouraging private-law settlements before use of UStöd.

stated in the law to encourage fair and efficient settlements, the California Guideline law also seeks to minimize cases where a child receives a child support *different* from the presumed-correct Guideline amount, especially in an amount *less than* the Guideline amount. Therefore *courts, facilitators, LCSAs or other professionals may calculate a more “correct” child support order for a child than many parents could do alone.* This may be one reason mediation of child support issues is not a priority, especially compared to legal and physical custody issues for which no one formulaic solution will serve the best interests of a particular child. In custody cases, a solution agreed upon by the parents in consultation with each other is likely to be a better solution than one a court or agency could decide. Not so in child support cases, is the law’s premise.

Legal Limitations on Parental Agreements and Courts’ Approvals of Them

Since the mandatory Guideline amount of child support is legally presumed correct,⁷¹⁸ a parental agreement to any different amount is treated as one of the *enumerated situations warranting a deviation* from Guideline.⁷¹⁹ Approving a parental agreement to child support orders that deviate from the Guideline thus *requires* a court, per California Family Code § 4057 on when and how a court may make an order deviating from the mandatory Guideline, to *write into the order* or at minimum to *state on the record in open court* what Guideline support *would have been* and why a deviation per the parents’ agreement is nonetheless in the best interests of the child in that particular case.⁷²⁰

Logically, to confirm whether *any* agreed child support amount deviates from Guideline or not requires that the court review the income and other claims

⁷¹⁸ See CAL. FAM. CODE § 4057(a) (creating a rebuttable legal presumption that Guideline formula support is “the correct amount of child support to be ordered”). Such a provision is required in every U.S. state by the federal regulation 45 C.F.R. § 302.56 (f).

⁷¹⁹ See CAL. FAM. CODE § 4057(b)(1) (listing parental agreement among the factors that can rebut the presumption that the Guideline support amount is correct).

⁷²⁰ See CAL. FAM. CODE § 4056(a) (listing as findings of the court that it must state on the record when deviating from Guideline: (1) the amount of Guideline support, (2) the reasons to make a different order, and (3) the “reasons the amount of support ordered is consistent with the best interests of the children”). See *further* CAL. FAM. CODE § 4056(b) (“At the request of any party, the court shall state in writing or on the record the following information used in determining the guideline amount under this article: (1) The net monthly disposable income of each parent. (2) The actual federal income tax filing status of each parent (for example, single, married, married filing separately, or head of household and number of exemptions). (3) Deductions from gross income for each parent. (4) The approximate percentage of time pursuant to paragraph (1) of subdivision (b) of Section 4055 that each parent has primary physical responsibility for the children compared to the other parent.”)

underlying the support amount, even if the parents claim that the amount agreed to is the Guideline amount. Published case decisions from the appellate level courts seem to favor this result, clarifying that an *estimate* of Guideline support will not suffice; actual, precise calculations are required.⁷²¹

The statutory law provides specifically that *a stipulated child support order for a below-Guideline amount may be entered* (approved by the court and signed as a valid, enforceable legal order) so long as the court has received *declarations by the parties* that the parties have been fully informed of their rights concerning child support; the order is being agreed to without coercion or duress; the agreement is in the “best interests of the children” involved; the *needs of their children will be adequately met* by the agreed child-support amount; and finally that the right to child support has not been assigned to the county (the public LCSA) and no application for public welfare assistance is pending.⁷²² Thus a court can approve a stipulation if the parents have declared each of those things to be true, and it has been unclear if the court must still know the Guideline amount and state reasons for deviating from it, if the agreement does deviate from it.

In practice, *trial courts strained by very large caseloads have been accepting a party's sworn statements* that the parents have exchanged income information as required and have agreed that a non-Guideline support amount is in the best interests of the child and will meet the child's needs, with these statements printed on a Judicial Council form for the parents to sign. These statements have been considered sufficient basis to give court approval to parental stipulations without the court specifying why a deviation from Guideline was appropriate in the specific case (other than that the parents had agreed). The Guideline Review 2017 evaluators, in order to report to the California Legislature the state of the child support law in practice, randomly-

⁷²¹ See *Marriage of Whealon*, 53 Cal. App. 4th 132, 144 (1997) (holding, shortly after the Guideline's introduction, that a court *cannot* make the required § 4056 mandatory findings via an *estimate* of what a true Guideline calculation would calculate). See also *Marriage of Hubner*, 94 Cal. App. 4th 177, 184 (2001) (holding that *even in a case with an extraordinarily high earner payor*, “only after the guideline formula is computed on a legitimate evidentiary basis as to the supporting parent's income may a court conclude that the guideline amount exceeds the child's reasonable needs” but *excepting* situations where neither income nor the child support amount is *disputed between the parents*). The fact that a child's “reasonable needs” play a factor in “extraordinarily high earner” cases resembles Sweden's capping of maximum needs for child support, as described in Chapter 3, *supra*, and compared at Chapter 6.2, *infra*.

⁷²² CAL. FAM. CODE § 4065(a). The last two instances would make the case a Title-IV-D case, to be resolved in a public-case courtroom instead. There is a further requirement, at § 4065(c), that the LCSA must join in any stipulation in a Title-IV-D case, and the agency *may not* approve a stipulation for *below*-Guideline support if the child or children are on public assistance, or have an application for such assistance pending. See Chapter 4.2.2, *infra* (on public-case procedures).

sampled case files containing California child support orders, as has been mentioned. They found that “stipulation of the parents” was the court’s written reason for ordering support deviating from the Guideline child support amount in 55.9% of the cases deviating from Guideline.⁷²³ The percentage of deviations for this reason was higher in private cases, but it also was high in IV-D cases.⁷²⁴

Instead of continuing this practice, the reviewers concluded, California courts *must review or make a calculation of the mandatory Guideline amount, even in cases of parental agreements*, in order for California to be in compliance with *its own law and with federal rules*.⁷²⁵ The reviewers noted that “a number of commentators” on the draft Review report had requested an exception for parental agreements from the rules concerning presuming the Guideline amount to be correct and needing to justify why it is not correct in each case, concerned that “major problems” for the courts could follow otherwise. This can be considered indicative of the family law legal culture on mainly the private size of the dual-system divide in California, although reviewers did not make that point.

The reviewers responded that following the rules would not be a burden because a majority of parental stipulations would be for Guideline support amounts, and *in the other cases courts could require parents to submit the Guideline calculation and their own justifications for deviating*, which the court could then approve.⁷²⁶ (This indicates another private family law tradition, namely that parties or their attorneys are often expected to prepare orders for judicial signature, a reason the mandatory forms are a practical necessity; far from all litigants have attorneys.)

Thus it seems to be the law that even in private cases where there is no issue of a party applying for need-based public benefits, California courts *may not legally allow parents private control over the terms of child support to be paid for their child by approving parental agreements without first reviewing the Guideline amount*. A court must at minimum review a computer printout from one or both parents showing what they contend the Guideline support amount to be, and the parents’ reasons for wishing to deviate from it. Such a printout and statement of reasons prepared by the parent(s) must

⁷²³ See *Guideline Review 2017* at 29–30.

⁷²⁴ See *id.*

⁷²⁵ See *id.*

⁷²⁶ See *id.* (“We do not believe that support orders entered as a result of stipulated agreements are, or should be, excluded from the requirements.... The State’s guidelines must be a rebuttable presumption in *any* award of child support in the State. *That includes support obligations ordered by the court or administrative authority as a result of stipulated agreements reached by the parties.*”). The California Guideline reviewers were here recognizing the federal intent to assure state guidelines are followed, without a deference to parents’ wishes to deviate if they cannot justify those wishes, and the federal rules that US states regulate child support setting accordingly, on both private and public sides of the system.

already, under current statewide court rules, be attached to any request for a court to approve an agreement to a non-Guideline amount (in other words, to any request for a deviation).⁷²⁷ Parents in California thus do not have full freedom or discretion (a fully *dispositiv* right, in Swedish terms, as will be discussed further) to decide a child's support *amount* between themselves without calculating the Guideline amount, at least if they want to or must have a legal order for child support.

Parents also *may not divest the court of its jurisdiction to review the child support for appropriateness in the future*, again even in purely private cases where parents are not currently receiving or applying for need-based welfare benefits.⁷²⁸ An agreement purporting to do so is *void as against public policy*, and a court if asked by one parent again to consider the child support issue in later years will do so despite the parents' void agreement, if jurisdiction otherwise exists.⁷²⁹ *Not even the court itself may approve an agreement abridging the child's right to state judicial supervision over appropriate support.*⁷³⁰

Filing a Case in Court to Reach or Give Legal Force to a Parental Agreement

For many parents, *discussion privately between them* about a child's legal and physical custody and child support is the first step when these issues arise for the first time. Others separate without ever agreeing to or exchanging any child support, while others file a court case first, then negotiate. The *types of actions* in which a court may make child support orders per California Family Code §§ 4000–4001 include direct actions seeking only child support orders, but also dissolution, legal separation,

⁷²⁷ See CAL RULES OF COURT rule 5.260(b).

⁷²⁸ Parents are free to contract between themselves regarding child support responsibility, but their agreement does not abridge the child's right to support from both parents or restrict the court's power to act on the child's behalf in a later support proceeding. See CAL. FAM. CODE §§ 3580, 3585, and 7632; see also *Marriage of Lusby*, 64 Cal. App. 4th 459, 469 (1998). A later support proceeding could be initiated by one of the parents, if they fell out of agreement, or by the LCSA if the CP sought welfare, or their assistance.

⁷²⁹ See e.g., *Marriage of Alter*, 171 Cal. App. 4th 718, 729–730 (2009) (holding that a settlement agreement provision making child support “absolutely non-modifiable downward” was void and unenforceable because a trial court always retains the jurisdiction to modify child support orders, upward or downward).

⁷³⁰ See *Kristine M. v. David P.*, 135 Cal. App. 4th 783, 786 (2006) (holding void as against public policy and as abuse of the trial court's discretion entry of a stipulated judgment terminating a biological father's parental rights and child support obligations where no pending prospective adoption existed). Note *the state's interest in having two parents financially responsible for every child when possible*, thus that it declines to allow one parent to release the other parent from his or her duties to the child unless another second parent is applying to adopt the child.

nullity of marriage, parentage,⁷³¹ domestic violence prevention,⁷³² and any other actions where support orders for a minor or disabled needy adult child are appropriate.

The filing of a court action *so that* (1) a settlement can be reached,⁷³³ (2) an already-reached settlement can be given legal force as a court order,⁷³⁴ or (3) a judge can decide points of contention between the parents is common in California.⁷³⁵ In private cases, agreements to specific child support orders are often part of a fully-stipulated judgment resolving a court case, for example a divorce or paternity case, in its entirety, but the child support orders come with special requirements related to registering their existence with the public child support enforcement state agency (discussed later in the enforcement section of this chapter).

Generally, *even in cases where the parents have agreed on how child support will be settled*, they are expected to seek to have their child support agreement entered by the family court as a *stipulated court order*, and this happens as a matter of course, especially if a court case is already active and ongoing. Far from all separately-living US parents complete this step, as discussed in Chapter 1 introducing the social problem regulated. Nationwide, research has found that *over half of all American CPs have no child-support agreement, informal or formal*. However, *among those who do have an agreement or court order, about 90% of all orders or agreements are formal, enforceable court orders*.⁷³⁶

An enforceable, comprehensive and correct court order is considered important, even where the parents have cooperatively agreed and trust each other to follow the terms of the child support agreement, because *without an order no child support debt will automatically accrue if payments do stop, or are made only partially*. Child support debt in California, relative to other personal debt, is difficult to escape as the indebted person and often easier to collect as the person or state owed, especially with help from the public child support agencies. Legally it is “priority debt,” given priority

⁷³¹ See CAL. FAM. CODE § 7637.

⁷³² See CAL. FAM. CODE § 6341.

⁷³³ See Judicial Branch of California, *Child Support* (2019), <https://www.courts.ca.gov/selfhelp-support.htm> (self-help resources webpage).

⁷³⁴ See CAL. FAM. CODE § 3585 (“The provisions of an agreement between the parents for child support shall be deemed to be *separate and severable from all other provisions of the agreement* relating to property and support of either spouse. An order for child support based on the agreement *shall* be imposed by law and *shall* be made *under the power of the court to order child support*.”) (emphasis added).

⁷³⁵ This last use of courts is the subject of the next section.

⁷³⁶ Nationwide in 2014, only 48.7% of US CPs had a formal court order *or even an informal agreement* with the NCP regarding child support. *Of those with an order or agreement, 89.8% were formal court-or-agency-entered orders*, while 10.2% were “informal agreements or understandings.” Grall (2016), *supra* note 15, at 5.

over other debts when funds are not sufficient to satisfy all debts.⁷³⁷ Even if never used for enforcement purposes, valid court orders assist parents in proving child support income or payment obligations for their own financial purposes, e.g. when making credit line or loan applications or debt repayment plans.

Agreements to Child-Support Orders, Simplified: the Mandatory Standardized Forms

Procedurally, the law provides for what calculations “the court” must perform in setting Guideline child support orders.⁷³⁸ In practice, however, in California private-system cases the *exchanges of income information* and *Guideline calculations* are often made by individual parties (parents) or by other child support professionals rather than by courts (judges), especially initially, for the purpose of trying to come to an out-of-court agreement on a suitable child support amount.⁷³⁹

In any civil case, as a general rule a California court may, upon request, enter a judgment based upon the terms of a written agreement resolving an issue or the case in its entirety.⁷⁴⁰ *Agreements resolving child-support issues or cases are routinely drafted on mandatory court forms designed for this purpose.*⁷⁴¹ As a part of the parental agreement to

⁷³⁷ See CAL. FAM. CODE § 4011 (court-ordered child support payments “shall be made” by the obligor “before payment of any debts owed to creditors.”). See also Chapter 4.4.1, *infra*, on enforcement via collections.

⁷³⁸ See, e.g., CAL. FAM. CODE § 4052.5 added in 2013 regarding cases in which a child has more than two legal parents (“The court shall apply the guideline by dividing child support obligations among the parents based on income and amount of time spent with the child by each parent, pursuant to Section 4053”; emphasis added). Child support procedures for more than two parents are not a topic of this thesis, but the wording of this code section hints at the allocation issues which require resolution in those cases, by the court or by such parents.

⁷³⁹ Courts, parents and attorneys are required by CAL. RULES OF COURT rule 5.275(j) to only use the California Department of Child Support Services child support calculator in IV-D cases, but may use and Guideline-law-certified software in private cases. Many private family law attorneys use commercially-developed California child support calculating software, for example one going by the brand name Dissomaster. Because all calculate with the Guideline formula, they should arrive at the same results; differences are more in information entry style or ease of use.

⁷⁴⁰ See, e.g., CAL. CIVIL CODE § 664.6 (“If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.”). Note that jurisdiction is mandatorily retained over California *child support* (and custody) orders, but permissibly waived by parties for non-mandatory types of orders (including spousal support). Compare Chapter 7.3’s discussion.

⁷⁴¹ These forms are available at <http://www.courts.ca.gov/documents>, where all other California court family law and other Judicial Council “fillable” forms also can be downloaded.

child support orders process, incomes and assets must be disclosed in full to the other parent and the court on a particular four-page form adopted by the Judicial Council of California for mandatory use in child support litigation. This *must* be done before any contested child support hearing⁷⁴² but *may* be done upon request by a party personally or through an attorney as an aid to negotiations towards an agreement.

The form on which these disclosures must be made by both parties (preparing one each, then exchanging them) is entitled FL-150 – *Income and Expense Declaration*.⁷⁴³ The information provided on and with this completed form (including a party's recent tax returns) enables each party, or the parties together, to use the online Guideline calculator to determine the appropriate Guideline child support amount, if all the information on this form is agreed. Otherwise, after a court hearing the court will decide what financial information it holds to be true and correct, and it will calculate Guideline support accordingly. Having performed the Guideline calculations in advance of any court involvement gives parents information on what amount would likely be ordered by a court. Parents can do this themselves or with the help of one or two lawyers or mediators. Important to many litigants is also the *family-law facilitator at the county courthouse*,⁷⁴⁴ the free state-provided source of help for non-represented parents in private-system cases, and one place they can ask questions about how to fill in the forms.

To be used with the disclosures form is the Judicial Council of California *mandatory form for drafting a parental agreement to initial or modified child support orders*, which once completed provides all the information a court will need to review the parents' agreement on child support.⁷⁴⁵ *Efforts to increase compliance by both private lawyers and*

⁷⁴² See CAL. RULES OF COURT rule 5.260(a) ("Except as provided below, for all hearings involving child, spousal, or domestic partner support, both parties must complete, file, and serve a current Income and Expense Declaration (form FL-150) on all parties.").

⁷⁴³ A copy of this four-page form that is so central to setting and modifying California child support is included at Appendix 3. There is also a simplified version, FL-155, for use in limited situations. See CAL. FAM. CODE § 4068(2)(b) (providing for the creation of the simplified version of the form in consultation with various child support interest groups including legislative committees, public assistance agencies, private attorneys including a low-income legal services organization, a custodial parent group, and a noncustodial parent group).

⁷⁴⁴ The Family Law Facilitators Program created within the California child support statutory law is discussed below in this section.

⁷⁴⁵ The form is FL-350 – Stipulation to Establish or Modify Child Support and Order. It tracks the various statutory conditions and requirements, helping to ensure that every court order includes specifics and mandatory court findings of fact. See forms FL-340, FL-342, FL-342(A) and FL-343, available at courts.ca.gov and Appendix 3. FL-340 – Findings and Order After Hearing is a cover sheet to be signed by the judge after his or her completion or approval of the detailed orders made

public LCSA staff with the “mandatory” attachment of these forms to all child support orders have been recommended by the 2017 Guideline Review report, so that parties can better understand the basis of their child support orders.⁷⁴⁶

A parental agreement resolving child support may be filed by mail or delivery to the courthouse family law clerks office, including as a stipulated final judgment resolving all issues in a private court case (custody, property division, parentage, and/or support, for example). In many cases where the parents have reached an agreement *no appearance before a judicial officer is ever necessary*.⁷⁴⁷ The parents must submit, along with the stipulated judgment containing the desired child support orders, a number of other forms waiving or confirming mutual financial disclosures and making required appearances, stipulations and waivers, if after the court’s review and signature the case will be concluded. The complete stipulated final judgment package must be delivered to the clerk’s office at the county superior court having jurisdiction and venue over the case, which then will review it and return one finalized copy to each parent party if it is approved and signed by the judge assigned to the case.⁷⁴⁸

4.2.1.2. Court Orders in Non-IV-D Cases, Decided by the Court

Child support court orders, in California’s private system, are issued by state civil-law courts. These courts also resolve child support disputes between parents, if any. An introduction to those courts therefore assists the description of the procedural law regulating child support disputes.

California Courts Resolving Child Support Disputes

The state’s courts, organized by county, include 58 trial-level superior courts, one in each county (although in large counties they may be physically housed in multiple courthouses with multiple courtrooms each); six district courts of appeal; and one California Supreme Court.⁷⁴⁹ California’s court system is the largest in the United

on the various attachment forms which together with the cover sheet comprise a complete final order.

⁷⁴⁶ *Guideline Review 2017* at 26.

⁷⁴⁷ See California Courts, *Completing Divorce or Separation: Uncontested Case*, available at <http://www.courts.ca.gov/8411.htm> (giving details of the procedure and referring parents to the Family Law Facilitators or the LCSAs for further help).

⁷⁴⁸ See *id.*

⁷⁴⁹ See Judicial Council of California, *California Judicial Branch Fact Sheet (Feb. 2019)*, available at https://www.courts.ca.gov/documents/California_Judicial_Branch.pdf. These courts hear all judicial

States.⁷⁵⁰ Approximately 1,800 judicial officers (1,743 authorized judges plus several hundred commissioners and referees) and thousands of court employees work within the state's court system, from approximately 500 buildings statewide.⁷⁵¹ In fiscal year 2016–2017 there were approximately 6 million cases active in the courts statewide, with approximately 5.8 million filings at the trial court level per year, however *only approximately 386,000 of these were filings in the types of family law cases often involving child support issues.*⁷⁵²

The California Rules of Court, the California Code of Civil Procedure, the California Code of Regulations and local rules promulgated by the various local court systems along with appellate case law (and some more rarely relied on additional sources) provide the procedural law under which the courts operate. Additionally, the Judicial Council of California is the policy-setting division of the court system.⁷⁵³ It creates, among other things and often as directed by statutory law, the *Judicial Council mandatory family-law and civil case forms* introduced in the previous section. They are to be used by parties, attorneys and judicial officers in resolving all child support disputes, whether settled amicably or decided after a full court trial.

Judicial officers handling private family law matters including private (non-Title-IV-D) child support matters are assigned to an individual courtroom, known as a “department” of a county superior court. Those handling Title-IV-D cases are assigned to separate departments exclusively handling those public-system cases.

Decisions to Pursue Child Support via Court Hearing

The income available to a CP from sources other than child support can greatly influence her desire and freedom to choose whether or not to file a non-IV-D court

matters, civil and criminal, including what in Sweden would be called administrative or public-law matters. Courtrooms are assigned to different areas of law—juvenile, domestic violence, small claims, family, etc.—but parties may be state or private entities or individuals.

⁷⁵⁰ It serves more than 39 million people (about 12% of the US population). *Id.*

⁷⁵¹ *See id.*

⁷⁵² Specifically 135,000 “marital filings” (for dissolutions, separations or annulments) and 241,000 “other family law filings (e.g. paternity, child support).” Judicial Council of California, *Court Statistics Report 2018 ii*, available at <https://www.courts.ca.gov/12941.htm>. Nearly 3.6 million cases filed, of the 5.8 million total, were for minor criminal infractions.

⁷⁵³ It operates per Article VI, Section 6(d) of the California Constitution, which provides that “[t]o improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute.”

case seeking child support against her child's NCP. CPs with incomes low enough that they require need-based CalWORKS or Medicaid state support most often *must* cooperate with the LCSA's filing of a public-system IV-D case instead, discussed in the next section. Other CPs, who have not applied for or previously received public assistance benefits for the child to be supported, may choose whether to use the private courts or the LCSA.⁷⁵⁴

There is under current law further *encouragement for a CP to set child support orders* (or mandatory requirement, depending on the CP's public assistance status), if the parents also need child custody orders. *All California courts making custody orders for a child, even when child support orders are not requested, also must determine if a parent is receiving or might apply for public assistance. The court must make child support orders if that is the case,*⁷⁵⁵ although new statutory changes to be effective in 2022 will remove the obligation that a parent reveals if she "intends to" apply for public assistance. In any case the normalized inclusion of child support issue consideration during child custody and visitation hearings (they use the same mandatory forms, for example, and a user simply "checks the boxes" as to which issues the court is requested to resolve) is seen as encouraging more parents to obtain support orders.

Towards the other end of the income distribution, *CPs who have a child with a high-income NCP in California also have an obvious incentive to seek child support for the child*, because support amounts vary significantly based on the parents' incomes and are

⁷⁵⁴ That CPs have easy access to the court, private and through the public agency that will represent them if they so choose, can be considered a good thing from a child support effectiveness perspective. See, e.g., Heather Keating, *The Role of Child Support in Tackling Child Poverty*, in WEALTH AND POVERTY IN CLOSE PERSONAL RELATIONSHIPS (MONEY MATTERS) 148, 163 (Susan Millns & Simone Wong eds., 2017) (assessing effectiveness in a UK context for higher- and lower-income families and concluding, *inter alia*, that child support helps particularly the lowest-income lone parents who receive it regularly and that the UK "should not be taking any steps which make it *more* difficult for lone parents to secure regular support from the other parent by an over-reliance on private agreements...."). This type of importance of child support income exists also is emphasized in the US context. See, e.g., OCSE, *2017 Child Support: More Money for Families (Annual Infographic)* (2017) (citing US Census data to conclude that "[c]hild support accounts for about half the average income of low-income [American] parents who receive it, lifting 3/4 million people out of poverty in 2016.").

⁷⁵⁵ See CAL. FAM. CODE § 3029 (providing that an order granting custody to a parent who is receiving, or in the court's opinion is likely to receive, public assistance for maintenance of the child "shall include" an order directing the NCP to pay "any amount necessary" for the child's support to the extent of the NCP's ability to pay). The amount necessary is the Guideline-calculated amount. See also CAL. FAM. CODE § 4004 (in any proceeding where child support is in issue, the court "shall require" the parties to disclose whether either is receiving *or intends to apply* for public assistance for maintenance of the child). But see AB 1092, *An act to amend Sections 4004 and 17500 of the Family Code, relating to child support* (introduced February 21, 2019) (available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1092).

available in situations of income disparity even if the payor parent lives 50% of the time with the child (or, rarely but possibly, even more, as mentioned in Chapter 3). There is no legal *requirement* that a CP in this situation seek the Guideline child support that the child has a right to, but the practical difference in the household resources available for the child can be dramatic between doing so and not doing so, thus the CP is economically incentivized to seek child support for the child.⁷⁵⁶ Even in moderate-income cases, child support amounts being as significant as California's in many cases encourages more child supports to be set, even where the payor parent will not volunteer to make a parental agreement to Guideline support. Knowing this, payors also expect to try to reach an agreement and have it entered as a legally-enforceable court order, or to be ordered in court despite their lack of agreement to produce their income details and to pay a child support.

The Right to Bring a Civil Action for Child Support

The right as a private person to *bring a dedicated civil action to obtain child support* owed pursuant to the parental child support duty derives from California Family Code § 4000, while the right to *obtain an order for child support in any other proceeding* where support of a minor child is at issue derives from § 4001.⁷⁵⁷ Most usual, cost-effective and time-effective is to obtain an order for child support as part of another, existing family law action, for example a divorce action or an action to determine the existence of a parental relationship (a parentage/paternity action).⁷⁵⁸

Section 4000 provides that “[i]f a parent has the duty to provide for the support of the parent’s child and willfully fails to so provide, *the other parent, or the child by a guardian ad litem, may bring an action* against the parent to enforce the duty.”⁷⁵⁹

⁷⁵⁶ In contrast, in Sweden, as introduced at Chapter 3, a child to a high-income NCP living with a much-lower-income CP cannot realistically expect a court to order, against an NCP’s will, so high a UB amount that a dramatically heightened living standard for the child would result. Many elements of the system will also discourage the filing of a court case for child support, as will be discussed.

⁷⁵⁷ The county’s right to pursue child support on behalf of a child is created by § 4002; such public Title-IV-D cases are addressed in the next section in this chapter.

⁷⁵⁸ See *Marriage of Lambe & Meehan*, 37 Cal. App. 4th 388, 392 (1995) (holding that a motion in a pending family law action can be less expensive and more time-efficient than a separate support action). Civil actions in California conclude, if not otherwise dismissed, with a *final judgment* resolving all issues before the court. A child support order may be made as part of a final judgment, or earlier during the proceedings, *pendente lite*, or even after a final judgment including a child support order has been entered. In the latter case the updated child support order sought would be considered a *modification*, discussed below in this chapter.

⁷⁵⁹ Emphasis added.

Section 4001 provides that a court “may order either or both parents to pay an amount necessary for the support of the child” in any case where support of a minor child is at issue. The section conveys jurisdiction to the court to *take up* the child support issue in certain civil cases, but does not, via reference to “an amount necessary,” convey discretion to the court as to the *amount* of support the court may order, because child support must be set per the Guideline rules⁷⁶⁰ or it will be reversible on appeal as a matter of law.⁷⁶¹ Courts may order a child support amount that deviates from the Guideline’s calculated amount only in specific, limited circumstances, including in cases of “extraordinarily high income” or cases of low income qualifying for the “low income exclusion.” Otherwise, the traditional judicial discretion provided with the procedural remedy allowing a CP to go to court for private-case child support has been superseded by the uniform Guideline rules.

“Default” Orders and Judgments

A significant portion of all California child support orders are entered by a court after what is known as “*default*” by the respondent parent,⁷⁶² usually the payor. A default judgment containing child support orders is typically a judgment establishing parentage or dissolving a marriage. It usually is entered by the court after one parent has (1) filed her court case petition, including for child support to be ordered from the other parent, and (2) summons, a document that is served with the petition, summoning the respondent to court and explaining the due date by which to make a written response. She has (3) caused these and other required documents to be “served on” (delivered to) the other parent, usually via personal service (pursuant to procedural law beyond the scope of this study), and she has (4) *filed proof of that service*, signed under penalty of perjury by an adult person, other than a party, who has accomplished the service.⁷⁶³ After a required waiting period she has also (5)

⁷⁶⁰ Codified at CAL. FAM. CODE § 4050 et seq.

⁷⁶¹ Marriage of Carter, 26 Cal. App. 4th 1024, 1028–29 (1994).

⁷⁶² See *Guideline Review* 2017 at 24, 254–255 (showing judgments by default in 24.2% of private, non-IV-D cases in which child support orders were made, and 47.1% of public, IV-D cases, based on the sampled cases studied). Judgments based on parental stipulations were entered in 56.8% of non-IV-D cases and 31.5% of IV-D cases; contested judgments were entered in only 19% of non-IV-D and 21.4% of IV-D cases sampled. Swedish UB “defaults” are more rare, as described shortly.

⁷⁶³ This Proof of Service provides details of when, where and what documents were served. See CAL. CODE CIV. PROC. §§ 413.10–417.40 (regulating various methods of legal service conferring jurisdiction for the court over the served defendant) and Judicial Council of California, *Form FL – 115 Proof of Service of Summons (Family Law—Uniform Parentage—Custody and Support)*, available at <https://www.courts.ca.gov/documents/fl115.pdf>.

requested that the court enter the terms of her requested judgment, including its proposed child support order, by default.

The proper service of the summons and petition gives the court *personal jurisdiction over the respondent parent*. Assurance that the NCP knew about the court hearing and case and had time to respond is required for a judgment entered by the court without the participation of the NCP to be valid.⁷⁶⁴ It proves a very high likelihood that the NCP received the notices to appear in court printed on the summons and had a chance to object to the requests made in the petition, therefore it can be assumed that he chose not to. He can then be *assumed not to be opposed to the requested judgment being entered, requiring him to pay the requested child support*. In any event his procedural due process rights have not been offended. The court may properly and in the interest of justice for the petitioner and child(ren) (6) proceed to enter a judgment based on the evidence and requests submitted by the parent who has brought the matter to court.⁷⁶⁵ The court and petitioner may not change the requested orders that were noticed to the respondent party; only a judgment exactly awarding the relief sought in the petition may be entered, and then final (7) notice that the judgment has been entered and a court-signed copy of it are mailed to the respondent.

In practice there are a number of barriers to respondent parents answering court summons and petitions, therefore default child support orders or judgments are known to contribute to difficulties enforcing child support orders and efforts are made to avoid them. This must be balanced against the interest in not allowing NCPs or other respondents to court cases filed against them to prevent entry of orders against them simply by refusing to respond.

⁷⁶⁴ See *County of San Diego v. Gorham*, 186 Cal. App. 4th 1215, 1227 (2000) (internal quotes omitted) (holding that a default judgment entered against a parent based on *false* proof of service was void as a matter of law because “even though a *statutory scheme may empower the trial court to determine . . . child support* in a family law matter, *such power only extends to parties over whom it has personal jurisdiction*.”) (emphasis added).

⁷⁶⁵ This is also true for public cases, brought by an LCSA against a parent, as presented in the next section. High percentages of child support orders entered by non-participatory default are problematic in both private and public cases because actual notice to the sued parent may not have occurred, and in any case he or she may not actually have the income the petitioning parent asserted, thus may be unable to pay the now-valid, legally enforceable child support order.

Retroactivity of Initial California Child Support Orders

A court making an initial⁷⁶⁶ child support order in any type of California action (including private but also public child support cases) has *discretion to decide what date the child support will begin, within limits*. The retroactivity of the order may extend *no earlier than the date of the filing of the initial petition or pleading in the case*, or exceptionally to the date the respondent parent was served with notice of the action (if this did not occur until more than 90 days after the action's filing date, so long as the court finds that he or she was not evading service).⁷⁶⁷ In the absence of expedited or temporary child support orders, *payments of informal child support by the soon-to-be child support payor may be credited towards satisfaction of a subsequent child support order for particular date periods*, but this also falls within a court's discretion, and the court will decide by considering all the facts of the case.

Even if the payee parent has been potentially acting in bad faith, case law has clarified that child support “is intended to support the children, not to punish parents for their litigation tactics,” thus retroactivity to the date of the petition is still appropriate.⁷⁶⁸ *For this reason many family law attorneys will file an action for divorce and a request for child custody and support orders as soon as possible*, and only then begin the discussions of whether the parties can settle all issues via parental agreement instead of needing to prepare evidence and arguments and proceed to court. A payor parent who has made informal support payments during the time before a child support order was entered is often *credited* in the amount of the payments he or she can prove

⁷⁶⁶ Initial, not “expedited.” Thus far this chapter has not distinguished between child support orders entered during the ordinary course of litigation or as part of a final judgment fully resolving a private case and more *emergency, expedited orders* entered near the beginning of a case and providing child support immediately, without the children needing to wait until the final judgement. California has an “expedited” option, *see* CAL. FAM. CODE § 3600 et seq. (providing that “expedited child support” must be ordered pending any child support proceeding if requested, in the first instance ex parte subject to a 30-day stay during which the parent ordered to pay may request a noticed hearing), but it is not so commonly requested, especially if the wait until the first hearing is only approximately 30–40 or fewer days. There is a similar mechanism available under UB law, although UStöd's availability has reduced the need for it. These early, interim orders are however beyond the scope of this study.

⁷⁶⁷ *See* CAL. FAM. CODE § 4009 (changing an earlier rule allowing retroactivity of initial child support orders only to the date of filing of a request for a hearing, thus becoming more child- and payee-parent friendly and less payor-friendly). *Distinguish* rules for retroactivity of child support amount modifications, discussed *infra* at Chapter 4.3 (to date of a court filing requesting modification). *See also* Marriage of Cryer, 198 Cal. App. 4th 1039, 1052 (2011) (declining to make retroactive an order *reducing* a child support amount because a CP payee could lose ownership of the child's home if the reduced amount was made retroactive, and *the child's best interests must be a consideration*).

⁷⁶⁸ Marriage of Barth, 210 Cal. App. 4th 363, 373 (2012).

or that the payee parent agrees were paid against the balance owing pursuant to the retroactivity of the initial child support order.

4.2.1.3. *The Family Law Facilitators Program*

Since introduction of the Family Law Facilitator program statewide in 1997, *private* case family-law litigants (including litigants with unresolved child-support-setting needs) have been able to access *free help in the courthouses where their child support issues are resolved*.⁷⁶⁹ This was put into place out of a legislative desire for “a speedy, conflict-reducing system for resolving issues of child support, spousal support, and health insurance that is cost-effective and accessible to families that cannot afford legal representation,” based upon legislative concern that “entry of a child support order is frequently delayed while parents engage in protracted litigation concerning custody and visitation” and family courts burdened with heavy caseloads did not have sufficient personnel to remedy that.⁷⁷⁰

Since the program’s introduction, each California superior court is required to appoint as its family law facilitator and maintain an office for a California-licensed attorney with “mediation or litigation experience, or both, in the field of family law.”⁷⁷¹ Access to some state-provided help for private litigants (not seeking help from a public-side LCSA) and even for some Title-IV-D litigants *not able to get help from the LCSA* (as the payor NCP in one of their cases) has been a positive improvement to the child support system as a whole.⁷⁷² *In effect, some support for parents*

⁷⁶⁹ See CAL. FAM. CODE §§ 10000 et seq. (Family Law Facilitator Act codification).

⁷⁷⁰ CAL. FAM. CODE § 10001 (“(a) The Legislature finds and declares . . . (1) Child and spousal support are serious legal obligations . . . (2) [P]ilot projects have provided a cost-effective and efficient method for the courts to process family law cases that involve unrepresented litigants with issues concerning child support, spousal support, and health insurance. . . . (b) Therefore, it is the intent of the Legislature to make the services provided in the family law pilot projects in the Counties of Santa Clara and San Mateo available to unrepresented parties in the superior courts of all California counties.”)

⁷⁷¹ CAL. FAM. CODE § 10002. A superior court is for example the Los Angeles Superior Court, comprised of all its courtrooms in all of its several buildings, and not each individual courtroom.

⁷⁷² See, e.g., Administrative Office of the Courts, *California’s Child Support Commissioner System: An Evaluation of the First Two Years of the Program* (2001) (available at <http://www.courts.ca.gov/documents/cscr2000.pdf>) (evaluating the private-case-dedicated “family law facilitators” and the simultaneously-introduced Title-IV-D-case-dedicated “child support commissioners,” who serve, unlike the facilitators, a more judge-like role). The improvements were found to have provided a better overall child support system across the public-private case divide. See *id.* at 2 (“Focus group participants reported that the child support system is fairer as a result of the child support commissioner system because of efforts made by child support commissioners to give time and

from the state in setting appropriate child support amounts has been extended to the parents with private, non-IV-D cases, who most often do not have legal counsel. The law intentionally avoided overlapping with the public LCSAs' duties.⁷⁷³ The offices were added with a focus on improving child support issue resolution, although they assist private-case litigants with other issues as well; in California counties where a courthouse-based family law self-help "information center" already existed (to help litigants on all issues) when facilitators were introduced state-wide, lawmakers were clear why new resources were being made available: "the family law facilitator shall provide assistance on *child support* issues."⁷⁷⁴

4.2.2. California IV-D Cases and the Child Support Agencies' Role

The role or legal duties of California's county-based local child support agencies (LCSAs) seems comprehensive and clear as detailed in the California Family Code, if one does not know of the parallel private, court-based child support system discussed above. LCSAs are to "promptly and effectively" *establish, modify, and enforce* "child support obligations, including medical support" and "determin[e] paternity in the case of a child born out of wedlock."⁷⁷⁵ They "shall take appropriate action, including criminal action in cooperation with the district attorneys, to establish, modify, and enforce child support and, if appropriate, enforce spousal support orders."⁷⁷⁶

These mandates, required by federal welfare law as previously discussed, apply regardless of receiving a request for help from a parent or child, "if the child is receiving public assistance, including Medi-Cal" (needed-based public health insurance), thus they *apply automatically and require the county procedurally to open and pursue*

attention to Title IV-D matters [in which CPs' interests are represented by LCSAs] and by *the assistance that family law facilitators provide to noncustodial parents.*" (Emphasis added.)

⁷⁷³ See CAL. FAM. CODE § 10008 ("(a) Except as provided in subdivision (b), nothing in this chapter shall be construed to apply to a child for whom services *are provided or required to be provided* by a local child support agency pursuant to Section 17400. (b) In cases in which the services of the local child support agency are provided pursuant to Section 17400, *either parent may utilize the services of the family law facilitator* that are specified in Section 10004. *In order for a custodial parent who is receiving the services of the local child support agency pursuant to Section 17400 to utilize the services specified in Section 10005 relating to support, the custodial parent must obtain written authorization from the local child support agency.* It is not the intent of the Legislature in enacting this section to limit the duties of local child support agencies with respect to seeking child support payments or to in any way limit or supersede other provisions of this code respecting temporary child support.") (emphasis added).

⁷⁷⁴ CAL. FAM. CODE § 10004 (emphasis added).

⁷⁷⁵ CAL. FAM. CODE § 17400(a).

⁷⁷⁶ *Id.*

public (Title-IV-D) cases. Because LCSAs also must provide all of the same services in private (non-Title-IV-D) cases *upon request*, it would seem that all families' legal child support order needs would be met by the state via its LCSAs, and thus all cases would be IV-D cases.⁷⁷⁷

In practice however, as discussed in the previous section, many child support orders are instead established and modified through the private system, with no involvement of an LCSA as a litigant party or otherwise.⁷⁷⁸

Under what circumstances is a case pursued through the public child support agency system, and how does it proceed? This section discusses briefly the law governing the procedures by which each of the California Department of Child Support Services' 49 local child support agencies (LCSAs) initiate a case for child support.⁷⁷⁹ Sometimes CPs initiate these cases by applying for help from the agency. Very often the state, through the agency, itself initiates the case (including a court case), as part of the procedures followed when a parent applies for need-based cash assistance from the state's public assistance programs.

The Child Support Agencies' Role

A parent may wish to seek their nearest LCSA's help in setting and collecting a CS amount because this can decrease the cost and complexity of pursuing child support, compared with engaging in private family law litigation. The LCSAs in each California county provide their services in setting and enforcing CS orders for a *de minimus* fee to the custodial (payee) parent.⁷⁸⁰

⁷⁷⁷ See CAL. FAM. CODE § 17400(a). See also California DCSS, *About Child Support Services in California*, <https://childsupport.ca.gov/about-us/> ("If you have a child or children and are no longer in a relationship with the other parent, talk to us about child support. We help ALL parents navigate the child support process from beginning to end, whether the parents were married or not, live in different states or are even in a different country.").

⁷⁷⁸ Note that in a subset of these cases the LCSA will later have a role in enforcement or modification of the resulting child support order.

⁷⁷⁹ See California Child Support Services, *Welcome to California Child Support Services*, <https://childsupport.ca.gov/> (this new web address effective on and after 20 May, 2019).

⁷⁸⁰ This is per the Federal Deficit Reduction Act of 2005, Public Law 109-171, applicable to all US states' Title-IV-D child support agencies. The \$25 (217 SEK) annual fee in California is charged to the CP. See May 2017 Revision to the 2017–18 Governor's Budget local assistance estimates for the DCSS 13, available at <https://childsupport.ca.gov/wp-content/.../2017-2018-May-Revision.pdf>.

California's legislature, pursuant to the requirements of US federal law⁷⁸¹ enacted California Family Code Section 17000 *et seq.* (Division 17: Support Services) in 1999. Division 17 established a Department of Child Support Services (the DCSS) within the California Health and Human Services Agency and required that it "shall administer all services and perform all functions necessary to establish, collect and distribute child support."⁷⁸² *The duties or functions vested in the new department were, and remain today, those each state was required by the federal law to administer*, namely "securing child and spousal support, medical support [orders as to which parent(s) will provide medical insurance coverage to the child, discussed in Chapter 3], and determining paternity."⁷⁸³

To accomplish its functions, the DCSS oversees the work of the LCSAs, also created when the DCSS was created. These county departments are independently responsible for "promptly and effectively establishing, modifying and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock" for children in their geographic area.⁷⁸⁴ Employees who had formally been with the family support divisions within the county district attorneys' offices were transferred by Family Code § 17304(e)(1)(A) to employment with these new LCSAs.

California's DCSS, like the child support departments in all other US states, are required by federal law; the federal government justifies this requirement in the interest of assuring that federal welfare funds are not spent to support children who could be benefiting from money from their absent NCPs. Competing aims of the law are revealed here, to *help children via child support calculation and successful enforcement*, but also to *protect state resources by giving children less of them*, instead holding parents primarily responsible for supporting their children. When these federal requirements led to California's Guideline law in the early 1990s, they represented a reversal of the immediately-prior policy of supporting mothers and children more liberally with welfare funds.⁷⁸⁵

⁷⁸¹ Part D of Title IV of the federal Social Security Act, 42 United States Code § 651 *et seq.* *See also* CAL. FAM. CODE § 17303 (declaring recognition of this requirement to consolidate state child support enforcement in one state agency).

⁷⁸² CAL. FAM. CODE § 17200.

⁷⁸³ CAL. FAM. CODE § 17202.

⁷⁸⁴ CAL. FAM. CODE § 17304; *see also* CAL. FAM. CODE § 17400.

⁷⁸⁵ *See* the history overview presented partially to explain and contextualize the differences observed between the two child support regulations compared, *infra* Chapter 7.2.

For reasons of efficiency, *all California IV-D cases are referred to family law commissioners*, judicial officers who are not appointed or elected as judges but instead hear cases and make orders as temporary judges. If a party to a IV-D child support matter objects, a commissioner's proposed orders will be reviewed by a judge.⁷⁸⁶

There is discussion in California among legal researchers and others in California that there is unfairness and a (classist) "dual system" built into the child support law, as has been introduced. This is not only because wealthier families go to divorce court and poorer ones generally get brought into the LCSAs and their courts (in order to assure that welfare gets repaid to the greatest extent possible), but also because, for CPs using need-based public assistance, agreement to pursue the other parent for child support is mandatory,⁷⁸⁷ while higher-income parents are not required to set a child support order or to help in the same way to establish paternity (parentage) of their child. The role of the LCSAs can seem in this context to be partially punitive and limiting of the CP's freedom on the basis of socioeconomic status. Serving children and their CPs but also society at large is inherent in the public IV-D agencies' role.

Automating and simplifying compliance with and enforcement of child support orders is another inherent part of the agencies' role. California judicial officers entering child support orders, whether in private or public cases, *may* in the order require that the payor make payment via the State Disbursement Unit (SDU),⁷⁸⁸ but the SDU apparatus is part of the public system. The SDU records that a child support payment was received (in a given amount, on a given date, reducing future disagreements about those facts) and disperses the payment to the payee CP for the child, if she has never received welfare for the child. *If state monies in the form of welfare payments for supporting the child are being paid* or have previously been paid, however, judicial officers *must* require that payments go through the SDU, which then withholds for the state all but a legally-required "pass-through" amount.⁷⁸⁹

The amount of means-tested governmental financial assistance a child and his or her family can receive is determined by an entirely different system, beyond this study's scope and independent of whether a child support amount is due from a

⁷⁸⁶ CAL. FAM. CODE § 4251.

⁷⁸⁷ CAL. WELFARE AND INSTITUTIONS CODE § 11477.04. Similar concerns have been raised in Sweden, where only UStöd recipient children's CPs must cooperate in pursuing their child's NCP for child support (contribution to the state in repayment of the UStöd). In both jurisdictions this is generally a requirement that society accepts or supports being set in exchange for the receipt of need-based public support (UStöd being quasi-need-based, with respect to children receiving it although they have a living NCP with a support obligation that he is not fulfilling).

⁷⁸⁸ CAL. FAM. CODE §§ 4201(a), 17309.

⁷⁸⁹ CAL. FAM. CODE §§ 4200(a), 17309. These pass-through amounts are scheduled soon to increase substantially, as described in Chapter 4.4.1 on collections of child support in California, *infra*.

parent. That “welfare” or cash needs-based public assistance system, called CalWORKs in California and analogous to *försörjningsstöd* in Sweden, has been discussed briefly in Chapters 1.2 (on the societal problem child support addresses) and 2 (on social benefits for families). *There is no real tie between CalWORKS benefits and the child’s needs or rights as measured by the Guideline child support law*, although the same federal law regulates both. CalWORKS assistance (along with MediCal and foster care payments made to foster parents a child may need if legal parents cannot care for him or her) is simply the aid that the IV-D enforcement system aims to have parents who owe child support reimburse to the state, up to the amounts they are held to owe in child support.

The LCSAs’ role is to collect from a payor the *current child support amount owing* (for the present month, if the children are still in need of current support), *plus a contribution towards past support arrearages*, if any.⁷⁹⁰ Part to all of the child support later collected from the payor parent or paid by that parent into the SDU can be applied to repay those public benefit payments made to the child’s residential household.⁷⁹¹ So long as a parent’s absence from the child’s household can be said to have contributed to the child’s need for public assistance, the Guideline child support he or she is obligated to pay may be reached to repay the public assistance per § 17402, *even if he or she has joint legal and physical custody of the child*.⁷⁹² Making the determinations of how much child support is owed but relatedly if the child has received benefits and if the payor parent had fully met his child support duty during that time are child support agency responsibilities.

Although some view the state DCSS and its local (county-based) agencies as mainly a computerized system to calculate and collect child support for state benefit more than children’s,⁷⁹³ some argue forcefully that it is a system of agencies both successful at performing its assigned tasks and more and more responsive to payee

⁷⁹⁰ Reimbursement to the county and current child support owing may each be sought in a public case, per CAL. FAM. CODE §§ 17402 and 17404 respectively.

⁷⁹¹ See § 17402(a). The remainder of the public assistance, if greater, is not repayable under child support law.

⁷⁹² See *County of Yolo v. Worrell*, 208 Cal. App. 3d 471, 477 (1989). This is notably different from Swedish law, which generally turns off and on the child support duty automatically, not requiring a return to court (and generally does not hold a parent actually living with a child eligible for child support).

⁷⁹³ See, e.g., Kenneth Braswell, *The Child Support System Should Support Families, Not Government Coffers*, NEW YORK TIMES, Apr. 23, 2015 (updated), <https://www.nytimes.com/roomfordebate/2015/04/23/collecting-child-support-without-making-matters-worse/> (executive director of Fathers Incorporated arguing for reforms).

and payor parents' individual needs.⁷⁹⁴ Meanwhile scholars and national non-profit interest organizations such as the Center for Law and Social Policy (CLASP) continuously work together with the national and state child support agencies to try to improve the implementation of US child support laws via the IV-D system. In 2000, to give just one example, CLASP issued a report aiming to “identif[y] strategies states can use to tailor their standard child support practices to fathers with a limited ability to pay,” focusing largely on the IV-D side of the system and including *the possibility of passing through collected support to families instead of withholding it to repay governmental benefits; better setting support orders based on payors' actual abilities to pay; and better managing “uncollectible” arrearages.*⁷⁹⁵ All three of these concerns have now been addressed via federal rulemaking and with new California law (passed in mid-2019).

Public System Advantages for Initial Establishment of Child Support

As the California Department of Child Support Services (DCSS) communicates to parents on its latest web portal, there are advantages to the IV-D system at the stage of establishing child support for the first time:⁷⁹⁶

Having a case with Child Support Services *creates a record* of all child support payments, *provides a neutral go-between* for parents, and *can help both parents avoid court* and *assist with navigating the child support system*. Child Support Services *staff act in the public interest* and do not represent either side of a child support case. . . . [S]ervices are provided at *little or no cost*. If you are thinking of opening a case, or have been named in a child support case, contact us right away. Your local agency can *help both of you know what to expect*,

⁷⁹⁴ See, e.g., Colleen Eubanks, *The Child Support System Can Be Tough, But It's Fair*, NEW YORK TIMES, Apr. 23, 2015 (updated), <https://www.nytimes.com/roomfordebate/2015/04/23/collecting-child-support-without-making-matters-worse/> (executive director of the National Child Support Enforcement Association, arguing that 74% of collections by the public agencies are employer-based wage withholdings from willing and able to pay obligors, it is a “highly successful federal-state-tribal partnership that collected \$32 billion [over 278 billion SEK] last year for families” and that it has come a long way from its inception 40 years ago as a program focused on welfare cost recovery).

⁷⁹⁵ Vicki Turetsky, *Realistic Child Support Policies for Low-Income Fathers*, Kellogg Devolution Initiative Paper, CLASP, Washington, D.C. (March 2000) (available at www.clasp.org). Turetsky later has served as the head of the national, federal Office for Child Support, and prior to that worked in California. The 2017 Guideline Report also reviewed the situation for low-income payors and suggested statutory changes to bring California law into compliance with the new federal rules, as discussed in a subsequent section of this chapter.

⁷⁹⁶ California Child Support Services, *Welcome to California Child Support Services*, <https://childsupport.ca.gov/> (this new web address effective on and after 20 May, 2019) (emphasis added).

and will work with you to *make the child support process as stress-free as possible*. We can even help you *work out an agreement* for child support and avoid court.

California's LCSAs work to (1) open a child support case with the LCSA; (2) locate parents; (3) file a summons and complaint to open a court case (via which the child support orders will ultimately be entered as court orders); (4) establish legal parentage of children; (5) create a stipulated agreement via *mediation within the LCSA*;⁷⁹⁷ (6) have the court calculate and enter a support order, filing the stipulated judgment (if any) for court review; and (7) assist as parents make or receive payments, via mandatory paycheck withholding if the payor parent is employed. Finally, later in the process than an initial order, LCSAs work to (8) enforce the order (if necessary); (9) modify the order (if necessary); and (10) close the case, usually when the youngest child turns 18.⁷⁹⁸

There are some downsides to using California's public child support enforcement agency system, however there also are downsides to the private system, for example cost, lost work time having to appear in court, the very high costs of using paid legal counsel, and difficulties enforcing unpaid child support orders without the state's help, as discussed soon below. The "dual-systems" division's long history, wherein different groups in society use the different systems, may account for the largest reason that among families with a choice (because they are not receiving public assistance benefits), many families continue to use the private system.

The following sections describe the public system procedures to the extent they differ from the private system procedures already detailed; the treatment is shorter because much that is shared between the systems has already been set forth.

Parental Agreements

When might a IV-D, agency-led child support case be resolved by parental agreement? *The principles favoring "fair and efficient" settlements between the parents still apply* when a parent requests that the LCSA serving his or her California county assist in calculating an appropriate child support and entering a child support order. The LCSA and the public family law court (another "department" a.k.a. courtroom within the same civil court system as private family law courts) will favor low-conflict

⁷⁹⁷ This option, for "Family Meetings" whether together or separately towards signing a parental agreement, "may not be offered in all child support offices [LCSAs]." *Id.*

⁷⁹⁸ See California DCSS, *How a Child Support Case Works*, <https://childsupport.ca.gov/about-us/about-california-child-support-services/#pay> (detailing "ten steps of the child support process" for parents).

resolution of cases when possible, although, as just mentioned above, *not all LCSAs have the resources to assist parents in meeting to work out an agreement settling child support.*

Parents' freedom as to the terms of parental agreements in IV-D cases are however more limited than those in non-IV-D cases, because of the agency's legal duties to provide an administrative-law, executive-branch layer of state oversight (the courts of the judicial branch being the other layer). This is so substantively in order to avoid frustrating the state's purposes of collecting Guideline child support from parents who should be paying it, preventing undue public expenditure on support to children who should but do not receive private child support, in cases where the child's household is receiving or is applying for welfare benefits (CalWORKS or Medi-Cal).

Procedurally, if an LCSA is providing enforcement services in a case, whether mandatorily or by parent request, any stipulated child support agreement *must be approved not only by the parents but also by the agency (on behalf of the state), in order to then be approved by the court* and entered as a legally valid child support order.⁷⁹⁹ An LCSA "shall not" approve a child support order *below* the Guideline amount if the children are receiving need-based cash benefits (CalWORKs program assistance), if an application for public assistance is pending, or if the parent receiving support has not consented to the order.⁸⁰⁰

As a result, *parents who are welfare recipients* may not ever make agreements for a below-Guideline support amount, and *parents who have assigned their child's support case to an LCSA* (by requesting its services) may not make below-Guideline agreements without the agency's approval, and then the court's. In contrast, *parents who have not requested the state to help them* in these ways—via welfare support or LCSA services—may make below-Guideline agreements, although they too must explain their reasons to the court for its approval of their stipulated deviation from the Guideline support amount.⁸⁰¹

⁷⁹⁹ See CAL. FAM. CODE § 4065 (c). See also CAL. FAM. CODE § 17406 (j)–(k) (parties' signatures also required).

⁸⁰⁰ CAL. FAM. CODE § 4065(c).

⁸⁰¹ This is not to imply that below-Guideline child support orders or the power of parents to make them without the child's involvement, or the state's on behalf of the child, is per se desirable. Rather it illustrates the relative freedom of higher-income parents to contract between themselves, or even arguably the relative vulnerability of their children's child support rights and needs.

Settlement of paternity establishment issues necessary to establish the legal child support duty also is favored, although parentage determinations are beyond this study's scope.⁸⁰²

Court Orders and "Default" Judgments in IV-D Cases

What circumstances of parental disagreement lead to the LCSAs litigating a child support matter *as a contested matter, in court*? It can happen that the proposed payor answered the court case paperwork served to him or her. LCSAs are required to serve proposed payor parents with a combined summons and complaint and a "proposed judgment" advising them that unless they file an answer within 30 days, the proposed judgment will become legally binding, ordering child support based on the payor's income or income history based on evidence known to the agency or submitted by the CP payee. If the payor's income is unknown, presumed income may be used (the paperwork must warn), without the presentation of other evidence or further notice to defendant.⁸⁰³

LCSAs as a rule *must* proceed this way, per the procedural law requirements that they seek default judgments (which establish child support orders easily and efficiently even if a payor chooses to ignore the summons to court).⁸⁰⁴ The proposed judgment is not entered by default, however, in cases where a payor appears in court (or submits responsive paperwork) to contest the child support or other orders requested, in which case the court can assess both parties' claims and evidence to complete the child support Guideline calculations.

⁸⁰² In any action filed by an LCSA pursuant to CAL. FAM. CODE § 17402 (for repayment by an NCP to the county which provided welfare support to his child) or § 17404 (for paternity establishment and child support), where the minor child's paternity is at issue, the LCSA *must* provide the mother and alleged father the opportunity to execute a voluntary declaration of paternity or enter into a stipulation for a judgment of paternity, *before* a hearing or trial on the matter in court. *See* CAL. FAM. CODE §§ 7574 (on voluntary declarations of paternity) and 17410 (on stipulations for judgments of paternity).

⁸⁰³ *See* CAL. FAM. CODE § 17400(d).

⁸⁰⁴ *See* CAL. FAM. CODE § 17400. This provision of California law may soon be modified, however, due to the new federal rule requirement of *more individualized inquiry* before imputing income in a default case. *See Guideline Review 2017* at 23–24 (suggesting statutory amendments including because "Family Code section 17400(d)(2) currently provides that the local child support agency may use presumed income of 40 hours per week at minimum wage when the child support obligor's income or income history is unknown. Statutory language may need to be amended to more closely align with the federal rule's concerns on using 'standard presumed amounts without looking at or investigating individual circumstances.'")

Providing due process for respondent payor parents while also achieving a high rate of child support orders being entered for children in public cases is the guiding concern of these rules. Even if a default judgment is finalized, such judgments (entered without the participation of one parent) are relatively easy to set aside if the respondent payor appears shortly after the judgment has been entered (with good cause as to why he did not answer earlier).⁸⁰⁵ Additionally, default child support orders in IV-D (public-agency-filed) cases, if based on a payor's *presumed* income, are subject to special set-aside provisions.⁸⁰⁶

In public child support cases, the parties are the State, on behalf of the child or children, versus the parent who will be ordered to pay child support.⁸⁰⁷ Even if a private child support order has been previously made in a private family law case, the LCSA may file a new civil action pursuant to its concurrent right to sue for reimbursement of public monies paid to support a child, up to the amount the parent owing child support should have paid.⁸⁰⁸

Because in principle all and especially all IV-D child support agreements or decisions in California are entered as court orders, and because the case load of the LCSAs is large, the *LCSAs generally file new cases in court immediately when they open them internally*, even if no controversy exists between the parents.⁸⁰⁹ Checking if a case already exists is not a priority. Public cases are litigated by LCSA attorneys in the public case courtrooms, so a public case filing is more convenient for agency staff.

⁸⁰⁵ *But see* County of San Diego v. Gorham, 186 Cal. App. 4th 1215, 1227 (2010) (holding that the Family Code's procedures, if properly followed, provide the defendant parent with an opportunity to be heard before a judgment is entered and therefore do not violate his fundamental due process rights). *If the LCSA properly calculated child support in the proposed judgment*, the court has a *mandatory duty to enter a default judgment*, per the statutory law, *without* a further hearing. *See* County of Yuba v. Savedra, 78 Cal. App. 4th 1311, 1322–1324 (2000).

⁸⁰⁶ *See* CAL. FAM. CODE § 17432.

⁸⁰⁷ *See* CAL. FAM. CODE §§ 4002(a) & (b) and 17404(a) (providing that the LCSA prosecutes actions “in the name of the county on behalf of the child, children, or a parent of the child or children” and “the parent who has requested or who is receiving support enforcement services of the local child support agency shall not be a necessary party.”) & (e)(1) (requiring that parent to be added as a party after a child support order, even if temporary, has been secured, for purposes limited by the section, e.g. pursuing initial custody order or later pursuing modification of the child support order in certain instances). In contrast are the private child support cases generally carried out by family court judges or public or private family law mediators with the child's two parents before them as the parties to the case, and a governmental child support agency not involved.

⁸⁰⁸ *See* County of Yolo v. Worrell, 208 Cal. App. 3d 471 (1989).

⁸⁰⁹ If there is no dispute between the parents or the agency and the payor, a case is then completed via stipulated judgment, in other words an approved agreement. Swedish researchers may conclude that the California system is more “litigious” than it is if this use of the courts as the normal location of recording all family law agreements and orders is not taken into account.

Parents and agencies may bring parallel cases in the two child support systems, and the commissioners or judges hearing those cases follow the same substantive law,⁸¹⁰ but the LCSAs usually litigate their own public case for a given child, or enforce the private-case order via the LCSA system. Default judgments are a tool supporting efficient work in securing a child support order for every child mandated to have one (due to receipt of need-based public assistance) or whose CP requests one.

Legislative Preference for Proceedings through the Public System?

The law creating and regulating California's IV-D public system demonstrates little strong legislative interest in preserving the private system, and to the contrary seems to encourage more cases to be filed as public cases, or at minimum registered for public enforcement of any child support order entered in any case, private or public.⁸¹¹ This may reflect interest on the part of lawmakers and perhaps some within court system administration to have *as many child support situations as possible resolved as public cases*, because federal funds are available for public IV-D cases in California, but not to the family law state courts generally when they are entering private-case child support orders.⁸¹² The legislative will co-exists in California however with the not-insignificant will and power of the judiciary and of the private bar, attorneys often well-paid to litigate divorce and other family law cases, including the child (and spousal) support issues on the private side of the system. Their concerns for individual litigants to retain the ability to, for example, testify and cross-examine live witnesses in family law cases are in tension with the possibility of routinely assigning all cases to a public administrative agency.⁸¹³ If an opt-out rule were to be applied, it is likely litigants with private attorney representation would opt out of assigning their

⁸¹⁰ See CAL. RULES OF COURT rules 5.300–5.375.

⁸¹¹ See, e.g., CAL. FAM. CODE § 17400(f) (requiring prominent displays is “every public area of every office of the agencies established by this section” a clear and simple notice that § 17400 child support services are “provided to all individuals, whether or not they are recipients of public assistance.”)

⁸¹² See, e.g., Association of Certified Family Law Specialists, 4 ACFLS NEWSLETTER 27 (Debra Frank, ed., 2009) (presenting a recommendation, based on a successful change in Texas, to make *every* California case involving child support a IV-D case, unless both parents “opt-out,” because replacing the current “opt-in” system would significantly increase available federal child support funding thus help solve the problem of severe underfunding of California’s family law courts).

⁸¹³ See, e.g., Elkins Family Law Task Force, *Final Report and Recommendations* (2010) (available at www.courts.ca.gov/documents/elkins-finalreport.pdf) and Amy M. Pellman et al., *A Child-Centered Response to the Elkins Family Law Task Force*, 20 WILLIAM & MARY BILL OF RIGHTS JOURNAL 81 (2011) (describing the California Supreme Court’s concerns expressed in its *Elkins* opinion that led to access to justice improvements for *parents* and proposing additional changes to secure minor’s counsel and other safeguards for *children*, in a custody context).

child support issues to the LCSAs, although the goal of moving many private cases with unrepresented parent parties into the agency system also could be achieved.

The Retroactivity of IV-D Child Support Orders

The court as a general rule may make *initial*⁸¹⁴ Title-IV-D (public-case) child support orders retroactive to the date of the filing of the petition in the action, per California Family Code § 4009, discussed above, because it applies to *all* child support orders in *all* types of cases in which they are issued—a helpful coordination between the private and public child support systems of the kind Swedish legal commentators have desired for Sweden. Retroactivity in *modifications* in public cases follow a different rule and can only extend back to the filing of the motion for the child support modification, because *in the modifications context* retroactivity is controlled by federal law (pre-empting state law like § 4009).⁸¹⁵ This is one example of an unhelpful difference between the private and public sides of California’s child support legal regulation, but one that does not affect monthly child support amounts as calculated between the private and public systems, only the retroactivity issue, if any.

Retroactivity of these public child support orders does little to address the harms a child might have faced from not receiving child support before a CP or LCSA files a request for it, since California has no public child support guarantee. Interestingly, despite the WSM-related differences in ideology, *one common proposal for reform of California’s child support law has been to provide more public funding of children generally, and even for the state to advance the child support a child needs*, as Sweden and other jurisdictions have chosen to do, rather than allowing child support payments to reach a child’s household only when and if a debtor parent, voluntarily or after collection efforts, pays them. These proposals have not to date been adopted in California, however, despite the child support advance having been pilot-tested (in, however, a particularly liberal-WSM-friendly fashion).⁸¹⁶ Currently, it is means-tested poverty

⁸¹⁴ See CAL. FAM. CODE § 17400(g)(1) (“In any action to establish a child support order brought by the local child support agency in the performance of duties under this section, the local child support agency may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order has the same force and effect as a like or similar order under this code.”) The LCSA seeking expedited, pre-initial-hearing support orders is beyond this study’s scope, as similar orders were in the non-IV, private cases discussion above.

⁸¹⁵ The controlling federal law for public child support modifications or terminations is 42 U.S.C. § 666(a)(9).

⁸¹⁶ California tested, as part of its welfare reform legislation in the late 1990s, “the child support assurance concept” as an alternative to welfare for families *where the CP earns income and is the payee of a*

relief benefits, chiefly CalWORKS, that are the child's "safety net" when child support is not, despite an LCSA's efforts, received and a custodial household does not have sufficient income without it.

4.2.3. *Reaching an Agreement or Order in Swedish Private Cases*

How are initial child support decisions made and memorialized pursuant to Swedish private (UB) law? Procedurally, initial calculation of child support in Sweden is often done at the time of a marital dissolution, a cohabitant couple's separation, or in other situations such as a baby being born to parents who have never cohabitated. Other issues, most prominently custody and parentage (paternity), are often decided simultaneously. Once set, *underhållsbidrag* as a main rule is paid in advance for each calendar month,⁸¹⁷ from the NCP to the CP, for the NCP's share of the child's expenses. Written agreements to other solutions are enforceable, however, per ordinary written contract rules.⁸¹⁸

This section discusses the law on the procedures for reaching such private agreements, or alternately securing UB court orders after hearing if necessary,⁸¹⁹ with focus on how much discretion the parents and the court have to decide child support

child support order. The California legislature intended to pilot-test a model program similar to New York's Child Assistance Program (CAP). See AB 1542, art. 5 §§ 18241–18247; see also Paula Roberts, *California Child Support Assurance Legislation*, August 1, 1997, available at <http://www.clasp.org/resources-and-publications/california-child-support-assurance-legislation> (discussing the up to three "demonstration projects" to be tested, including one based on New York's CAP, in which California would pay child support of up to \$250 [2,173 SEK] for the first child, \$125 [1,087 SEK] for the second, and \$65 [565 SEK] for any subsequent child each month, regardless of whether the obligor parent made full payment, *in exchange for the obligee foregoing certain welfare benefits although she was eligible for them*).

⁸¹⁷ See FB 7:7.

⁸¹⁸ See *Utsökningsbalken* [The Swedish Enforcement Code, UB] (1981:774), at UB 3:19 (providing that a written, witnessed agreement to child or spousal support made pursuant to the Parents or Marriage Code may be enforced as a legal judgment, although enforcement is stayed if a court action has been filed challenging the agreement).

⁸¹⁹ The specifics of court procedures generally in these jurisdictions is beyond this study's scope. Note only that in California child support and other family law issues may be decided preliminarily at a hearing and then modified over the course of several pre-trial hearings and a party-led discovery process before a final trial (of several hours or at the extreme several days) is conducted—in the rare cases a trial is conducted because the parties do not reach a settlement on all issues. In Sweden a mix of oral and written pre-trial preparations also occurs, although discovery and rules of evidence in the American sense do not. The Swedish civil court system strives to resolve cases after just one main court proceeding; since the 1940s the three fundamental procedural principles of *orality*, *immediacy*, and *concentration* have governed its operation. Westberg (2010), *supra* note 705, at 211.

issues. The next section of this chapter discusses the UStöd procedural law on the same topics.

4.2.3.1. Parental Agreements and the Level of Contractual Freedom vs. State Oversight

Child support is “in principle” a *dispositiv* area of Swedish private law (“optional” or “non-mandatory” is a rough translation).⁸²⁰ This means that parents may contract about their child’s support relatively freely,⁸²¹ because the court is not considered to have a societal interest to protect in child support matters in the same way it is tasked to protect children’s and society’s interests in paternity, custody and visitation, and other issues considered *indispositiva* (mandatory) for the court and other state actors to oversee.⁸²² Swedish child support law is in other words not *tvingande rätt* (obligatory or mandatory law), as are certain other (limited) areas of Swedish private law, including those other areas just mentioned, where the state regulates the boundaries of permissible private arrangements more closely.⁸²³

⁸²⁰ See, e.g., SCHIRATZKI (2005), *supra* note 466, at 28–29 (describing how generally UB is *dispositiv* in nature, decided after a hearing before the court but with that court having a limited responsibility for the substance of the matter, e.g. the court *is not empowered to calculate an amount higher or lower than the range of the parents’ two suggested child support amounts* and will enter an agreement between them without doing any factfinding). But see FB 7:7 para. 2 (requiring agreements to a lump sum payment satisfying a parent’s child support obligation, or a payment covering more than three months of child support into the future, *if for a child under age 18, to be approved by and deposited with the local social affairs board (socialnämnden)*). The board should be more careful with approving such agreements to a one-time payment the longer the period is that will be covered. Commentated FB at comments to FB 7:7. A court may also order, even if the parents do not both agree to it, a one-time payment. *Id.* These agreed-to one-time settlements of child support for a given period for a given child also remove FK’s legal ability to seek UStöd repayment from the NCP for that period. See SFB 19:4 para. 1.

⁸²¹ See, e.g., SOU 1995:26 at 50. This topic is covered comparatively at Chapter 7.3, *infra*.

⁸²² See, e.g., FB 6:17 (a) (regulating how the social affairs board (*socialnämnden*) in the municipality (*kommun*) of the child’s registered address “shall ensure that legal custody, physical custody and visitation will be properly investigated” before it approves parents’ agreements regarding those issues). Chapter 7.3, *infra*, includes brief comparison of the stringency of child support versus custody-related state oversight, in both jurisdictions.

⁸²³ In contrast all public law areas are (to my understanding) considered mandatory law. The UStöd benefit may thus have an advantage in Swedish legal culture, in that its monitoring and enforcement are clearly on the public side of the distinction between public law (mandatory for the state to oversee) and private law (the province of the private parties, generally, in most cases). This distinction is difficult to analyze from an American law perspective, where what is and is not a proper subject for the state to regulate is conceptualized differently, and courts may take responsibility for looking out for the best interests of children per common law doctrines, such as the doctrine of *parens patriae*.

This can seem an unclear distinction, because the family law support duty is *also* in some ways overtly labeled as obligatory law, and courts have held that (at minimum) one cannot waive the right to Swedish UB support completely, in advance.⁸²⁴ In certain instances, one-time, lump-sum payments satisfying a Swedish parent's child support duty are also possible by parental agreement or court order (over one parent's objection), per FB 7:7 para. 2, however.⁸²⁵ On the other hand the support amount, even if a one-time payment has been paid, is *modifiable in case of changed circumstances warranting a modification during the period in which the duty is owing*, meaning the children's childhood years, per FB 7:10. This is done in very limited circumstances,⁸²⁶ but does tend to weaken any suggestion that Swedish child support law is more fully *dispositiv*.

Generally, however, it is safe to say that *Swedish private child support agreements are not monitored and regulated by the state to the same extent as was described above for California*. There are few statutory provisions limiting them by prescribing requirements as to their form or content. Even those existing are often either not encountered (due to few children's support being resolved under FB rules) or are interpreted in light of children's needs now being guaranteed to a reasonable level by UStöd.

A Swedish UB child support is set most often via parental agreement, although even here the UStöd system can have an effect because especially CPs may expect an amount of support from an NCP of at least the UStöd amount, thus may be unwilling to agree to a UB for a lesser sum (and FB guidance to such parents seems to be to advise them why the lower amount may be appropriate but also to acknowledge that they can apply for UStöd instead, and then cause FK to collect the

⁸²⁴ See RH 2000:42 (holding a contract for a husband to pay his wife installment payments in a set amount towards their household expenses unenforceable because *the duty to support applies regardless of the parties' contracts about it* and the wife had a duty to support the husband when he did not have the financial ability to contribute, not to attempt to enforce a contract against him). Despite the unusual facts of that case, the appeals court set forth that "[i]t is clear from scholarly doctrine and practice [court decisions] that the family law support obligation is considered to have a *mandatory character* in the sense that *a party cannot, in advance, before the support issue for a certain period of time arises, with binding effect generally waive his right in principle to support contribution*." *Id.* (emphasis added) (citing a 1990 commentary to the Marriage Code, AGELL (1988), *supra* note 480, at 149, and cases cited therein).

⁸²⁵ These must be carefully chosen to be in the child's best interest (but can be best if for example the child and payor do not have any ongoing familial relationship); on the other hand they can become difficult to refund correctly if payor or child dies before the support already paid has fully come due. Commentated FB at comments to 7:7. That a court can make such a decision is nonetheless when at least one parent is requesting it, as a referee between them, not fully *sua sponte* based on a court's duty to deny certain wishes of the parents in the child's or society's best interest.

⁸²⁶ See Commentated FB at comments to FB 7:10.

full UStöd amount from the NCP).⁸²⁷ Both written and unwritten forms are valid and enforceable, as it is generally the rules of general contract that regulate them, although only UBs of relatively short duration can be enforced by oral agreement.⁸²⁸

Agreements for the payment of a certain UB amount under specific terms are considered to be *between the child, represented by the CP, and the payor NCP*. They are binding on both parties.⁸²⁹ A Swedish UB agreement is however only enforceable against *those parties who entered into it*.⁸³⁰ Earlier law explicitly stated that agreements did not prevent the child from receiving higher maintenance—in other words an agreement could not bind the child to a lower support if a court later deemed a higher one appropriate—but commentators on the FB point out that *now Swedish agreements are in principle binding for both parties*. The same Swedish law experts point out, however, that FB 7:10 *suggests broad discretion for a court to modify UB agreements that possibly are unfavorable for the child, thus possibly child support agreements would in fact be held binding only against the adult representative* for the child who has entered into the agreement, and not against the child, who could therefore petition a court to increase UB support.⁸³¹ Notable here is how *lawmakers seem to have softened the child's right always to modify UB child support, strengthening the parents' autonomy to agree and have it be binding*, however there is tension between these ideals.

Parents can read about the law and a typical child's needs at the FK agency's website, then use the online tool there, as one way to agree to an amount both parties agree is appropriate.⁸³² A model written agreement also is available there, but parties

⁸²⁷ See FK 2016:1 Version 5, *supra* note 466, at 26 (giving guidance to FK staff on how to counsel such CPs, but not encouraging the NCP to go to court to secure the right under UB rules to pay less or fully exploring that difficult conflict between their interests).

⁸²⁸ Unwritten agreements have been held binding. See Commentated FB at comments to FB 7:2.

⁸²⁹ See FB 7:2 para. 2 (stating that UB is set via judgment or contract). See also SOU 1995:26 at 50 (“Otherwise [UB] is decided by court judgment or contract per [FB] 7:2 para. 2. Full contractual freedom applies in principle and an executed contract is binding for both parties, that is to say the child and the duty-owing person. Children under 18 years old are normally represented by the residential parent [a.k.a. the CP].”)

⁸³⁰ Published legal commentary on FB 7:2 para. 3 indicates that the section entitles a child's CP to represent the child, even if that parent is herself a minor. However it is not a given that the parent always will act in the child's best interest. The child's appointed guardian, if any, is also competent to represent the child. “One can possibly fear that the custodial parent might enter into an unfavorable agreement for the child, *particularly as [child support] agreements have no requirements as to form*” (“*helst som avtal inte är formkrävande*”). Commentated FB at comments to FB 7:2 para. 3 (citing for comparison NJA 1920 p. 124).

⁸³¹ See *id.*

⁸³² This was fully described at Chapter 3.4.2, *supra*. See FK, *Beräkna underhållsbidrag och skapa avtalsunderlag* [Calculate child support and record the information necessary to reach a signed agreement],

may use their own wording as well. Such an agreement becomes binding and legally enforceable, if for a period longer than three months, by being *signed before two witnesses*.⁸³³ A one-sided commitment or promissory note (*förbindelse*) signed only by the payor also is recognized as enforceable.⁸³⁴ Guidance from FK recommends that every agreement includes an end date (for example the child's 18th birthday or June 30 of the year the child is expected to complete secondary education), to avoid confusion if the contract must be enforced.⁸³⁵

In practice the large majority of private child supports agreed to between the parents are not entered as court orders, in contrast to in California, nor are they meant to be, per current law and the policy behind it. For many children, child support from a parent with a duty to pay support is never formally decided and reduced to an enforceable writing even if child support is paid between them informally to some degree.⁸³⁶ Many other children's parents are able to agree on a child support amount recorded in a private agreement between them. Many also exchange no money between them, because child support payments are not expected in instances of alternating (50%-50%) physical custody, or for other reasons including not wanting to face conflict and confusion over how one might proceed to calculate child support.⁸³⁷ This is also true in California, but more disfavored from the state's and children's advocates' perspectives there. If there is no unmet need and good parental cooperation with low conflict, any of these results can be positive for the child (and the parents and state), especially from a Swedish perspective.

Swedish parents attempting to agree on child support procedurally today have additional forums and sources of help to support them in reaching agreement

https://www.forsakringskassan.se/privatpers/foralder/for_foraldrar_som_inte_lever_ihop/berakna-underhallsbidrag#/.

⁸³³ FB 7:7.

⁸³⁴ UB 3:19.

⁸³⁵ FK 2016:1 Version 5, *supra* note 466, at 26.

⁸³⁶ See Chapter 1.2, *supra*.

⁸³⁷ Compare to the situation in the US before the US Congress required mandatory guidelines: "Before support guidelines, *support amounts were just one of several critical issues negotiated* between parties, and *it was not uncommon for them to make tradeoffs* between the child support amount and other aspects of the divorce settlement, including custody arrangements. *The implementation of uniform guidelines that established the support amount in every case helped eliminate that [trade-offs of child support in settlement agreements] dynamic* and removed one potential complication in reaching a judgment on all divorce issues." Ira Mark Ellman, *A Case Study in Failed Law Reform: Arizona's Child Support Guidelines*, 57 ARIZONA LAW REVIEW 137, 185 (2012) (internal citation omitted; emphasis added). It is possible making Swedish child support amounts more calculable and less discretionary could be of similar benefit, while remaining in line with Swedish WSM and legal system ideals.

(mediation talks and FK meeting opportunities) than they had a few years ago. Child support's importance as a Swedish state concern has in recent years increased somewhat compared to its reduction in importance after the introduction of child support advances from the state (a reduction in importance *noted and weighed in* when lawmakers wrote the current UB laws⁸³⁸). As part of this small renaissance, in 2014 municipality-provided custody and visitation mediations began to be able to include support questions.⁸³⁹ For a time family law policy was to keep parents' guided settlement conversations⁸⁴⁰ focused only on custody issues, and a previous reform proposal to add financial issues to their scope was not implemented.⁸⁴¹ In 2014, however, the Swedish legislature added financial issues to those meetings. Effective 2016 it also reformed the public UStöd benefit to encourage parents more often to reach agreements under the UB rules, at the same time increasing FK's role in giving them information and support in regards to both systems.⁸⁴²

⁸³⁸ See, e.g., Prop. 1978/79:12 at 127 (citing a reduced need for ordering UB payments retroactively since children have been able to get a child support advance from the state) and NJA 1991 p. 503 (in which the Swedish Supreme Court affirmed yet somewhat disagreed with the appeals court, which had cited Prop. 1978/79:12 at 127 while reasoning and holding that a father should not under his financial circumstances be held liable for many more months of retroactive child support than the trial court had granted, despite the FB allowing up to three years retroactivity). In NJA 1991 p. 503, at 505, the rapporteur proposed to the Supreme Court that *inter alia* the child's need had in fact been met by the social benefit child support advance, and that since the UB requested now was not above the level of the advance, the father's weak ability to pay more retroactive support would not affect the child's "possibility of getting support or her mother's support burden." Thus the appeals court, the rapporteur and the Supreme Court all recognized that the child not actually having any unmet needs did have some effect on both the writing of and the interpretation of the FB rules, when balancing a right to UB against a payor's ability to pay it.

⁸³⁹ Prop. 2012/13:189 resulted in implementation of these all-topic conversations in 2014, modifying *Socialtjänstlagen* [The Swedish Social Services Law] (2001:453) at 5:3 to add the phrase "and questions related to the child's support." See Lag 2013:1000. However, although economic issues *can* now be discussed, assistance with reaching written *agreements* between the parents during these sessions are still limited to custody and visitation issues: "The county shall ensure (1) that parents can be offered expert-led discussions for the purpose of reaching agreement on issues regarding legal custody, physical custody, visitation and questions regarding the child's economic support (cooperation discussions), and (2) that parents receive help to reach written agreements per FB 6:6, 6:14 (a) para. 2 or 6:15 (a) para. 3." Lag (2013:1000) (referring to custody and visitation sections of the FB).

⁸⁴⁰ Provided pursuant to SoL 5:3 at the county (*kommun*) level at the request of the parents or by order of a court.

⁸⁴¹ This is not a rare position. Even liberal (yet progressive) California's family law has limited mandatory mediations there to custody and visitation topics, as described earlier in this chapter.

⁸⁴² See Prop. 2004/05:116.

4.2.3.2. Court Orders for UB, Decided by the Court

A UB amount also can be set via court judgment after a hearing, per the private law.⁸⁴³ This may occur at the time of a divorce or separation or later, if voluntary support or compliance with the parents' signed agreement fails. Going to court is however disfavored in practice, ideologically and practically, as has been discussed and will be analyzed further within the comparison.

The Right to Bring a Civil Action for Child Support

The UB law provides that “the parent with legal custody” may represent the child in a civil action seeking child support, and each or either of the parents has the right to be heard in a child support action.⁸⁴⁴ The underage child is usually represented by his or her CP. It is the child who is considered the petitioner or plaintiff (*kärande*) in a UB child support matter, however, and summaries of the law regularly point out that a child who has reached 18 will represent him- or herself against the NCP or, if living apart from the parents, against both parents.⁸⁴⁵ This can read strangely from an American perspective but does not in practice place notably more pressure on the child, at least if the child is under 18; it may also be effective in signaling to the NCP that *his child* has been put into the position of needing to pursue his or her support rights because the parent has not met his duty without being compelled.⁸⁴⁶ The law contains no mention of the child having a right to be heard on these matters however, in contrast with the child's right to be heard in Swedish custody and visitation matters.

Actions for UB may involve other issues, such as custody issues. The child's (via the CP's) request for child support to be resolved must be made for actual orders

⁸⁴³ FB 7:2 para. 2.

⁸⁴⁴ FB 7:2 paras. 3–4. Here the text of the law retains an assumption that a child with separately-living parents has only one legal guardian (*vårdnadshavaren* in Swedish). This is unlike in California where the CP represents the child's interest but is herself the named party.

⁸⁴⁵ See, e.g., SINGER (2017), *supra* note 55, at 142. It has not come to my attention that many Swedish young adults sue their parent or parents for child support, however because support can be sought retroactively for a period up to three years (per FB 7:8), such a case may have more value than one under Californian retroactivity rules.

⁸⁴⁶ It also communicates the child's independent status, in line with Swedish WSM ideals. Conversely, in California child support actions the fact that the petitioning parent or the LCSA is representing the child's support interests does not imply that their own interests also may be considered, to a greater extent than with application of either jurisdictions' law. Family law there does make that clear distinction and, as in Sweden, the best interests of the child is the standard all involved are reminded to serve.

that the support owed be paid, because a request solely determining support owed, although potentially useful as an enforceable judgment, will not compel the NCP to begin to pay on the obligation.⁸⁴⁷

No mediation of the support issue is mandatory before the parties may appear at a hearing before the court (as is also true in California), although trying to reach an agreement via a mediation is recommended. Swedish counties (*kommuner*) have duties to provide mediated discussion opportunities for parents that include as topics not only the custody but financial issues related to living separately while having children, as mentioned above in the description of parental agreements settling child support issues. Mediators are however directed by the law to help the parents reach actual agreements only pursuant to specified sections of the custody law, and not pursuant to Chapter 7 of the FB as well (the child support chapter).⁸⁴⁸

Appeals from the trial court level to an appeals level, and also appeals to the Swedish Supreme Court, both require permission granted by those respective courts.⁸⁴⁹ A default judgment cannot be appealed. It becomes final if within one month the payor has not in writing requested a hearing on the substance of the dispute (that did not occur because in his initial absence a default was entered).⁸⁵⁰

“Default” Orders and Judgments

The results from an action for UB child support can be an order or judgment made after the court decides the matter; a settlement agreement by the parents entered as a judgment and enforceable the same way, because they came to the court wanting to enter their negotiated settlement or they reached such settlement while in the process of the litigation (e.g. before or at a hearing);⁸⁵¹ or a *default judgment* (*tredskodom*).

⁸⁴⁷ FK 2016:1 Version 5, *supra* note 466, at 28. This follows from RB 13:1–2 RB. A declaratory judgment or order (declaring that a person owes a child a support duty, for example) neither compels payment of child support nor is enforceable. A judgment or order for finding that obligation and ordering performance on that obligation (a *fullgörelsetalan*) is needed.

⁸⁴⁸ See *Socialtjänstlagen* [The Swedish Social Services Law] 5:3 (proving that parents receive help to reach contractual agreements per FB 6:14 a, para. 2 or 6:15 a, para. 3).

⁸⁴⁹ RB 49:12 (appeals court) and RB 54: 1, 3 & 9–12 (for the Supreme Court’s own discretionary acceptance of a given case approved to come to it by an appeals court). See also FB 20:12 para. 1 (allowing the appeals court to approve further appeal to the Supreme Court, but in an exclusively child support case *only* if special circumstances exist, e.g. that there is a question for the highest court to answer that is important for future application of the law). If a custody issue is granted leave to appeal, the support question also may be appealed. FB 20:12 para. 2.

⁸⁵⁰ RB 44:9–44:10.

⁸⁵¹ A settlement entered as a judgment is regulated per RB 17:6.

These can occur if the answering party does not appear at a preparatory or final (main) hearing after having properly been notified of it and the possibility that a decision could be made in his absence.⁸⁵² The petitioning parent may request a continuance to another date, or may request the entry of the default order or judgment. If the petitioner does not appear or if she does not request that the default be entered, the case will be dismissed.⁸⁵³

The role of default judgments for child support is quite different in Sweden compared to in California, from the perspective of *state's interest*. The Swedish court deciding UB cases is not being asked by the legislature and child support agency attorneys legally to set an enforceable child support in as many cases as possible. It is to the contrary asked or required to *abstain from deciding* the child support matter unless clearly and unavoidably requested to do so by the parent parties, given the classification of child support issue disputes as almost exclusively within the parties' control.⁸⁵⁴

Retroactivity of Initial UB Child Support Orders

Child support (UB) orders may be made retroactive for support periods up to *three years*, thus a court-ordered (or agreed-to) support obligation may immediately involve a number of months of arrearages owing.⁸⁵⁵ The period of potential obligation extends to a date three years before the decision of the court becomes legally effective or the date the party bearing the burden of the agreement signs it. This retroactivity limit should be distinguished from the rule that once "set" (by enforceable agreement or court order) child support is *enforceable* for up to five years before its collection generally is time-barred.⁸⁵⁶

⁸⁵² A default judgment (*tredskodom*) for an exclusively child support case (and the possible consequences of failures to appear by one or both parties generally) is regulated per RB 44:2 for a preparatory meeting and RB 44:4 for the final (main) oral hearing.

⁸⁵³ *Id.*

⁸⁵⁴ From the CP and child's perspective, however, the power of the Swedish court upon request to enter the default against the recalcitrant or in any event absent NCP so that an enforceable legal order does result from the effort to bring the NCP to court is similar to the California court's power to do the same.

⁸⁵⁵ FB 7:8.

⁸⁵⁶ FB 7:9. The prescription period runs from the date that a court final judgment or interim order for child support became effective, often three weeks after its issuance. *See* RB 50:1, 52:1.

4.2.4. Establishing Swedish Underhållsstöd

The public child support UStöd is not “set” in terms of what amount will be granted, but procedurally it must be applied for by the payee and approved by the Social Insurance Agency, FK, which then approaches the payor parent regarding the application and about his or her obligation to contribute at some level, up to the amount of the UStöd paid out to the payee for the child. These topics have been addressed in Chapter 3.⁸⁵⁷

*UStöd is available retroactively for a maximum of one month and can start only in the month after the parents move apart,*⁸⁵⁸ thus UB rules are more important if a child needs to enforce a parent’s unfulfilled child support duty for a number of past months or years.⁸⁵⁹

This section describes briefly some procedural details not previously described regarding how this support is initiated (to be received by a CP for a child’s benefit on a monthly basis for the first time), with focus on the role of parental cooperation in the process.

Parental Agreements and the Level of Contractual Freedom vs. State Oversight

Parents who are able to handle child support privately between them increasingly are steered away from the UStöd system by its latest procedural law changes,⁸⁶⁰ while parents with high-conflict relationships or other barriers seriously hindering their abilities to cooperate are not.⁸⁶¹ Thus, while there is no such thing as a parental agreement to a UStöd *amount* because UStöd is a guarantee payment available from the state in a set amount, the *parents do have some discretion, namely how and how strenuously to work with each other towards a UB agreement.*

⁸⁵⁷ See Chapters 3.4.3 and 3.5.3, *supra*, on the child’s needs under UStöd law (UStöd levels, now varying with age category) and the NCP’s ability to (re-)pay the state.

⁸⁵⁸ See SFB 18:13.

⁸⁵⁹ In contrast FK itself (per SFB 19:5 para. 1) may decide an NCP’s child support obligation for the repayment of UStöd against an NCP *retroactively for up to three years of obligation, measured from the day it notifies an NCP in accordance with SFB 18:38 that UStöd has been applied for* and that he or she should respond in oral or written form with any objection or relevant information. This can be helpful if an NCP previously living abroad moves to Sweden, for example.

⁸⁶⁰ Lawmakers intended the latest UStöd reforms (effective in 2016) to change behavior, particularly among *newly separated* parents without an already-established child support solution. See Prop. 2014/15:145 at 35. Especially the requirement for FK to work to increase parents’ knowledge of both UB and UStöd rules was expected to lead to more parents choosing not to apply for UStöd, and following that the “normalization” of the UStöd amount was expected to diminish. *Id.*

⁸⁶¹ See, e.g. SFB 18:9 a (the “six-months rule” including its “special circumstances” exception).

For CPs, there is the question of whether or not to apply for UStöd, knowing the state will then collect contribution from their child's other parent if UStöd is granted, unless she chooses per SFB 18:24 to *only receive the difference between what his income would require him to pay back to FK and the full UStöd amount*.⁸⁶² and the NCP may be deemed able to pay more than he already is paying in UB, if any.⁸⁶³ Many CPs do apply for UStöd. Despite its primary nature as a private child support guarantee, *of the approximately 500,000 Swedish children with separately-living parents in 2017, over 209,400 of them received UStöd*.⁸⁶⁴ When a UB has been set by a court order or valid parental agreement, still the CP must decide whether to apply for UStöd, either because the amount of UB is under the full UStöd level or because the NCP does not pay reliably.

NCPs also have discretion. They may reliably pay at least a full-UStöd-level support (1,573–2,073 SEK, which is \$181–238, per month) to the CP for each supported child, perhaps even signing a witnessed, enforceable promissory note to do so.⁸⁶⁵ If a parent owing a child support duty did this, the child would not be eligible for UStöd, but of course the NCP would need to pay at this level. Many cannot afford to, and others would not legally be expected to, pursuant to the UB

⁸⁶² This paragraph, allowing a CP to ask for the UStöd social insurance benefit in “filling-out” form only, without the NCP being collected against for his expected contribution (based on the computerized calculations discussed in the previous chapter) is designed to allow cooperative direct payment of what the NCP *can* afford to pay. It can be subject to abuse, but the “reasonableness determination” FK may do pursuant to 18:21 can help prevent that. Commentated SFB (2019) at comments to SFB 18:24.

⁸⁶³ See SFB 18:21 (providing that UStöd will only be paid in an amount sufficient to bring its level up to the full UStöd amount, from the amount the NCP would be expected to repay, “if there exists reason to assume” the NCP is paying reliably an amount of support at least as high as his repayment amount to FK, based on his income, likely would be). In this sense the amount “of UStöd” also may be subject to negotiation, in that *an agreement to an amount of UB that is lower than the UStöd level could lead to a “filling-in” amount of UStöd being paid to the CP for the child as well*. This creates a significant problem in that UStöd will be paid out in a *higher* amount (up to its limit) when the UB rules would lead to a *lower* child support because the CP has a good income, if the CP applies for it. Compare LARS BEJSTAM, BIDRAGSFÖRSKOTT [CHILD SUPPORT ADVANCE] 504–508 (1994) (analyzing the precursor to UStöd's similar “filling-in” function rules, and concluding that the state could be said to subsidize not only missing NCP support as intended but also support expected from the CP or unusually wealthy child under this rule, with the state paying *more* the more well-off the CP or child was). The procedural rules can attempt to detect inappropriate use of UStöd, but *given confusion about this a reasonable CP can feel that each child is entitled to a full UStöd amount to represent the NCP's “missing” contribution*, regardless of whether the NCP would pay less due to having few financial resources or because the CP earns more.

⁸⁶⁴ SINGER (2019), *supra* note 57, at 214–215 (citing FK and SCB statistics).

⁸⁶⁵ These are the current UStöd amounts per SFB 18:20 for up to age 11, 11–14 inclusive, and 15 and older, as Chapter 3 described. Before 2018 there was only one level for children of all ages.

rules, which take into account the CP's income as well. The fact that over 200,000 children *do* receive a UStöd must be considered in this fuller-picture context.

Lack of agreement is not one of the eligibility criteria for UStöd, but rather lack of *timely payments*⁸⁶⁶ *at or above the UStöd level* is central, along with the other criteria (that the parent live with only one parent etc.). The benefit often is granted in its secondary function, as a “filling-in” state grant to bring the total support amount actually being paid up to the “full” UStöd level. The amount above what the NCP is considered able to pay to bring each child up to their “full” UStöd amount still can be paid by FK, even if the parents pay and receive the lower amount directly between them.⁸⁶⁷ The “six-months” rules does not change the availability of the “filling-in” amount, *only* the availability of full UStöd payments from FK if the parents can successfully handle between them whatever amount the NCP is considered (under UStöd rules) to owe.

The “filling-in” benefit is designed to be available primarily in cases where adequate UB (defined as at the UStöd level) is *unaffordable* for the NCP, *but it is also paid out simply if he does not pay “full” UStöd, for whatever reason*.

The NCP must not be paying UB at the UStöd level or greater, *or otherwise* be seeing to it that the child receives equivalent support. UStöd will not be paid if the agency has *reason to believe* that the parent owing a support duty to the child is *in fact fulfilling that duty sufficiently and in a timely fashion*, as set by a court order or agreement setting child support.⁸⁶⁸

⁸⁶⁶ Another risk, pointed out by Uppsala University's Department of Law and ISF and acknowledged by lawmakers, is that payors may be late with payments simply to cause UStöd to continue to be paid out in full for the child, instead of stopping after six months. Prop. 2014/15:145 at 36. Lawmakers took the position that “one should be able to assume that the majority of individuals fulfill their responsibilities in the right way.” *Id.* This expresses a recognized and in many ways reasonable, WSM-related aspect of Swedish culture and individuals' relationship to their far-reaching welfare system. Trust may (to a larger extent than in other jurisdictions) be extended. Social solidarity is relatively high. See *infra* Chapter 7.5 for comparative discussion.

⁸⁶⁷ See SFB 18:21. See also Prop. 2014/15:145 at 33 (confirming that encouraging NCPs with *any* established contribution payment amount to pay it directly to the CP was the aim of the reform that went into effect in 2016). Only full UStöd payouts were targeted, since cases where only a “filling-out” amount is paid to the child already mean that the NCP is paying directly what he owes, if anything.

⁸⁶⁸ Specifically SFB 18:9 disallows payment of UStöd “if there is reason to assume” that the NCP is paying regular support in at least the UStöd amount for a given child (para. 1), *or if “it is obvious”* that the parent is “in some other way seeing to that the child receives” a corresponding amount of support (para. 2). No recent published court decisions exist clarifying what types of situations might today be considered to fulfill especially the second paragraph. Commentated SFB (2019) at comments to SFB 18:9 para. 2. The language allows FK most often simply to grant UStöd, in cases where an NCP claims already to be supporting the child in some way other than timely payments

Sufficiency of the amount per SFB rules is judged in reference to the full UStöd amount, because that amount alone is considered proper under the UStöd rules.⁸⁶⁹ So long as a child was receiving the reasonable, standardized level of support that the child support advance (UStöd predecessor) represented, lawmakers did not consider there to be a need for support from the public at large to make up for an NCP's failure to pay an even higher amount he might owe under UB rules.⁸⁷⁰ UStöd has not changed this basic premise—a common one internationally. CP income was not in focus.

The 2016 reform to UStöd eligibility rules has brought the question of Swedish parents' abilities to cooperate to solve child support issues into new focus. Eligibility for the benefit now ends after six consecutive months of correct payments by the NCP to the state, *except* if FK finds there are special circumstances making continued UStöd most appropriate, as introduced at Chapter 3. The aim is to have more parents reach UB agreements, whether for the first time or as a modification or reinstatement of an older agreement that the NCP had stopped paying.

Tasked with supporting parents whose child currently receives UStöd (among other parents), the FK agency has needed to develop procedures and experience at having (often difficult) conversations with parents. *FK staff now not only counsel parents to try to agree to a UB instead of turning to UStöd. They also must make decisions regarding whether parental conflicts might exist making it inappropriate to expect the two parents to make and receive payments between themselves.*⁸⁷¹

pursuant to an agreement or court order but the evidence does not make his claim obviously true. Older cases, preparatory works note, support a policy of erring on the side of benefitting the child, and (under para. 1) even more minor delays of UB payments gave a child a right to UStöd's predecessor, the child support advance. *Id.* at comments to SFB 18:9 para. 1 (citing SOU 1995:26 at 411 et seq.).

⁸⁶⁹ See SFB 18:9. The law in this section could make an exception for cases where a UB amount has been set lower due to the parties relative incomes, for example, not simply because the NCP has a low ability to pay. It does not explicitly do so, which is understandable given that agreements to UB amounts do not require using the method a court would use to set a UB, or recordation of the parties' incomes. On the other hand *there are measures attempting to prevent abuse of UStöd*, including SFB 18:10 (allowing UStöd to be denied) and 18:23 para. 2 (allowing it to be reduced to a UB amount). See Commentated SFB (2019) at comments to 18:10 and Prop. 2004/05:116 at 99 et seq.

⁸⁷⁰ Prop. 1964:70, *med förslag till lag om bidragsförskott, m.m.* [proposal for law on child support advance] at 36.

⁸⁷¹ ISF Report 2019:7, *supra* note 6, at 17–18. FK's focus seems to have been on this aspect of the reform, which if successful will save the state money. As this review of the reform's effects reported, the aspect emphasized by proponents of the reform and adopted by lawmakers, namely that parents could be incentivized and enabled to *negotiate a (higher) UB amount* the NCP would start paying *instead* of the amount he was already paying through FK, still requires more focus at FK. Instead FK may have further normalized the UStöd amount, at least when it began exercising its new role, for example by sending NCPs letters informing them they could instead pay an amount of “at least” the

FK, in trying to define the legal meaning of “special circumstances” for its applications of the law, may have been too conservative. It may have limited permissions to use UStöd longer-term mainly to cases involving demonstrable threats or violence. *Difficulties and conflicts* should also be deemed “special circumstances” within the meaning of the law, courts have clarified recently, if there exists an “obvious [*påtaglig*] risk” that the support issue will not be resolved or that cooperation between the parents is inappropriate.⁸⁷²

The procedures for establishing a UStöd via parental agreement (or lack thereof) and the agency-based application and repayment calculation process mainly are mediated, in other words, by FK staff, often via written communications with each parent after the UStöd application has been submitted, but sometimes via in-person or videoconference conversations with both parents.⁸⁷³ If parents mediate the issues regarding their children within their municipality they may also come to an agreement that UStöd could be appropriate in some form for their child.

Court Judgments

Children whose applications for UStöd are denied may, if attempts to resolve the issue at the agency are not satisfactory to them, bring an action in court, usually through their CP as their representative. The rules always also contemplate a young adult child still studying in secondary school, who has the same rights on his or her

UStöd amount to avoid going through the UStöd system. See ISF Report 2015:3, *supra* note 392, at 57–58. The 2019 review surveyed parents (only those where the NCP had been repaying the full amount of UStöd through FK before *their children were disqualified for UStöd* per the “six months rule”). It found that 89% of parents surveyed reported paying or receiving the same amount, thus exactly the UStöd sum, directly between parents afterwards. There were few reported increases to the amount (2% of CPs and 11% of NCPs reported that their new, presumably UB, amount was higher than the UStöd had been) or decreases (6% of CPs and only 1% of NCPs reported that it was lower). Seven percent of CPs and 3% of NCPs reported having exchanged no child support since the UStöd was stopped. See ISF Report 2019:7, *supra* note 6, at 142. See also *id.* at 19, 51 (CPs tend not easily to accept lower-than-UStöd amounts, per FK staff interviewed) and 138 (noting that lawmakers expected higher support amounts to result from the push to the UB system, “but there exists another side of the coin,” the cases where CPs earn more than NCPs and where NCPs have low income, both of which result in lower UBs).

⁸⁷² *Id.* at 151 (deducing the nuances of the law defining “special circumstances”).

⁸⁷³ See ISF Report 2019:7, *supra* note 6, and FK 2001:9, *Vägledning: Underhållsstöd [UStöd]* (Version 13, decided 2018-09-24) (providing descriptions of the various possible issues to be resolved and usual procedures).

own behalf with respect to “extended UStöd.”⁸⁷⁴ Dispute resolution in a case concerning a social benefit occurs via a case before a trial-level administrative law court. Questions of a child’s eligibility for UStöd often have been appealed further, to appeals-level administrative courts, and a few ultimately have been decided by Sweden’s Supreme Administrative Court.⁸⁷⁵ Except to the extent that the case decisions resulting from such litigation has clarified the substantive law on UStöd, the administrative court procedural law is beyond the scope of this study.

4.3. Modifications and Arrearages

4.3.1. Introduction

This section covers modifications and arrearages in first California, then Sweden.

Modifications are described because they are particularly important to a child’s right to child support being fulfilled, in that without easily- and actually-obtained modifications a child could receive an amount of child support that is inappropriate for current needs (or abilities to pay). Many procedural rules do not differ based on whether parents already have established a child support previously. The rules that are different, especially *limitations on when an existing child support may or may not (yet) be modified against one parent’s wishes*, and *whether the child support amounts automatically adjust* (so that children’s changing needs are met without an active modification being necessary) are the most important modification-related rules.

Rules on arrearages or unpaid, past-due support are outlined very briefly, as context for the comparison of what type of debt situation the arrearage-related child support rules have led to for child support payors and payees (and their children) in each jurisdiction.

⁸⁷⁴ The young adult would-be recipient also has similar obligations connected to whether UStöd he or she has a right to will actually be paid out by FK. SFB 18:12. The young adult must, like the CP, for example cooperate with a determination of paternity per SFB 18:8 and with the procedures with which FK requests cooperation per SFB 18:10.

⁸⁷⁵ See, e.g., HFD 2012 ref. 72 (a child living with specially-appointed guardians with whom she was placed at birth, registered at the home of one of them after their separation, had a right to UStöd, despite the statute not clarifying the situation for guardianship cases, since the legislature *could not* have intended a child in this situation to *not* have the right; the child’s legal parents became liable for repayments to the state).

4.3.2. Under California Law

4.3.2.1. Modifications

When a party desires to modify a California child support order made within the private system, the usual or legally favored procedure is *first to ask* the other party to agree to a modification, based on a new support calculation the party personally or a professional on his or her behalf has done, or to discuss modification and provide updated financial information.

If communication is difficult between the parties or they feel they do not have the ability to calculate support on their own, either may *return to the court that issued the initial order*,⁸⁷⁶ whether to file a new stipulation or to request that the other party be called to court for a contested hearing, provided that California continues to be the legal residence of at least one of the parties.⁸⁷⁷

As introduced in Chapter 3, there is an *information-exchange provision in California Guideline child support law to help parents decide if a modification would be appropriate*. Each parent has a right to request, without the need first to begin a court process, a full reporting of the other parent's incomes and assets⁸⁷⁸ including copies of his or her most recent federal and state tax returns.⁸⁷⁹ With these, either parent should be able to calculate Guideline child support, or to seek for example a Family Law Facilitator's help to do so, and then can propose agreeing to the calculations with the other parent.

In general, the continuing jurisdiction of the court to enforce a child's right to appropriate support means that *California child support orders are modifiable "at any time*

⁸⁷⁶ See CAL. FAM. CODE § 3651(a) (providing continuing jurisdiction over a case to the particular trial-level court department that was assigned the case initially).

⁸⁷⁷ CAL. FAM. CODE § 4909.

⁸⁷⁸ See CAL. FAM. CODE § 3664 (providing that "(a) At any time following a judgment of dissolution of marriage or legal separation of the parties, or a determination of paternity, that provides for payment of support, either the party ordered to pay support or the party to whom support was ordered to be paid or that party's assignee, without leave of court, may serve a request on the other party for the production of a completed current income and expense declaration in the form adopted by the Judicial Council" and further allowing the requesting parent to request income information directly from the other parent's employer *if* the request made pursuant to (a) is *not answered* within 35 days).

⁸⁷⁹ See CAL. FAM. CODE § 3665 ("(a) A copy of the prior year's federal and state personal income tax returns shall be attached to the income and expense declaration of each party. (b) A party shall not disclose the contents or provide copies of the other party's tax returns to anyone except the court, the party's attorney, the party's accountant, or other financial consultant assisting with matters relating to the proceeding, or any other person permitted by the court.").

as the court determines to be necessary.”⁸⁸⁰ Even an order based on a parental agreement is modifiable if a court determines modification necessary (including if the parents agreed it would *not* be modifiable).⁸⁸¹ Parents cannot limit the court’s jurisdiction to review and modify a child support order in the best interests of the child.

Modifications however *generally require a “material change of circumstances,”* in other words the facts underlying a child support order must have sufficiently changed to make a change to the order necessary, because otherwise the modification motion would be “nothing more than an impermissible collateral attack on a prior final order.”⁸⁸² As introduced above, this is expressly not the case for existing, stipulated child support orders for a *lower* than Guideline amount; in those cases assuring the child can have access to adequate support is prioritized over keeping parents from returning to court.⁸⁸³

Modifications are often sought by a payor after he experiences an income reduction, or learns of an increase in the payee parent’s income. Changes in the amount of time the child spends in the payor’s home compared to the other parent’s also can necessitate a child support modification. A payee often seeks a modification when the payor’s income has gone up, the payee’s has gone down, the child’s time with the payor has decreased or the child’s needs otherwise have changed.

The family court retains continuing jurisdiction to modify a child support order throughout the child’s eligibility to receive child support pursuant to the parents’ duty to support the child, including the duty to support an adult incapacitated child.⁸⁸⁴ Even a California Family Code § 3587 agreement to support an adult child

⁸⁸⁰ CAL. FAM. CODE § 3651(a). (emphasis added).

⁸⁸¹ CAL. FAM. CODE § 3651(e).

⁸⁸² *Marriage of Stanton*, 190 Cal. App. 4th 547, 554 (2010); *see also Marriage of Williams*, 150 Cal. App. 4th 1221, 1235 (2007) (assuming a stipulated order was for Guideline support where it was made without § 4056(a) findings supporting a deviation). A change in the child support law can amount to a material change of circumstances, for example amendment to the Guideline formula or the elimination of new partner income as a rebuttal factor against the presumptively correct guideline support amount (which actually happened in 1994) led some child support orders to be modifiable. *See* CAL. FAM. CODE § 4057.5(e); *see also* William P. Hogoboom et al., RUTTER GROUP CALIFORNIA PRACTICE GUIDE: FAMILY LAW §§ 17:26–17:29 (2019).

⁸⁸³ CAL. FAM. CODE § 4065(d).

⁸⁸⁴ CAL. FAM. CODE §§ 3580; 3585 (“The provisions of an agreement between the parents for child support shall be deemed to be separate and severable from all other provisions of the agreement relating to property and support of either spouse. An order for child support based on the agreement shall be imposed by law and shall be made under the power of the court to order child support.”) *and* 7632 (“Regardless of its terms, an agreement between an alleged father or a presumed parent and the other parent or child does not bar an action.”) *See also Marriage of Alter*, 171 Cal. App. 4th 718, 729–730 (2009) (agreements restricting the court’s jurisdiction over child support are *void as against public*

not otherwise legally entitled to support, *if it has been entered as a formal child support order*, requires a material change of circumstances to modify, because it is subject to the same modification rules as any child support order. If instead such an agreement is merely a *contract between the parents*, it is modifiable (and enforceable) by a court pursuant only to ordinary contract law rules. Unlike if it were a formal child support order, if parents have “expressly and specifically” stated in their contract for stipulated adult support that it *may not* be modified or terminated by a court, then it *will not* be modifiable or terminatable, absent other contract law reasons.⁸⁸⁵

These rules reflect the *primacy of concern for the child’s interests* even in family law procedural matters, including *a state interest in not allowing parents to re-open the child support issue unless circumstances require it* and not when, for example, a payor who agreed to pay above-Guideline support has changed his or her mind, absent any change in income or parental time with the child. This selective unavailability of the courts under California law (and under Swedish UB law as well, as will be presented below), is not family-law-specific. That a matter once decided may not be relitigated on the same facts is a basic element of civil procedure in many jurisdictions. It nonetheless promotes reducing conflict between the parents and saving court resources. State monitoring of child support on behalf of the child is encouraged instead by law assuring that parents know the rules and steps to take when a change of circumstances does occur.⁸⁸⁶

Modifications of orders in public, IV-D cases, unlike those orders made by the private family law courts, may sometimes be automatic. Modifications of a IV-D child support order can be sought by either parent.⁸⁸⁷ Like the courts in non-IV-D cases, *LCSAs are required to notify both payees and payors of their rights to request a review for a possible adjustment of the*

policy and the court can always modify upward, but also even downward, as appropriate) and Marriage of Lambe & Meehan, 37 Cal. App. 4th 388, 391–393 (1995) (parents’ agreement cannot modify the duty or court’s jurisdiction over § 3910(a) needy incapacitated adult child support orders).

⁸⁸⁵ Marriage of Rosenfeld & Gross, 225 Cal. App. 4th 478, 489–490 (2014) (regarding a marital settlement agreement to provide college expenses). Note that under California law, then, once a child is *no longer* legally entitled to support or to court supervision of their support via continuing, inalienable jurisdiction, parents’ autonomy to make binding agreements about it *increases*, but mainly in ways promotive of the support getting paid. Courts cannot order adult child support, except for certain incapacitated adult children, but they will enforce promises of such support.

⁸⁸⁶ As part of the court-centered effort to increase parental awareness of the rules in promoting their child’s right to a correct support, a standard Judicial Council form (printed notice) that gives *information on the procedures for modifying a child support order is routinely issued with each child support order*, because the “court shall” provide such a document to the parties whenever they are given formal written notice of a new child support order issued in their case. CAL. FAM. CODE § 4010.

⁸⁸⁷ CAL. FAM. CODE § 17402.

support amount being paid,⁸⁸⁸ although this is regulated differently in the public law context.

The list of qualifying *changes of circumstances* in public cases is quite detailed:⁸⁸⁹

§ 115520. Changes in Circumstances—Review Requested by a Party.

(a) Any of the following changes in circumstances or combination of changes in circumstances shall be considered a basis for a review for adjustment. Changes in circumstances may include:

(1) A change in the obligee or obligor's employment status or income.

(2) A change in parenting time or custody. A court order showing a change in parenting time shall be prima facie evidence of a change in the parenting time.

(3) A change in additional child support costs or expenses incurred related to the following:

(A) Child care costs related to employment or reasonably necessary education or training for employment skills.

(B) Reasonable uninsured health care costs for the child(ren) as provided in Section 4063, Family Code.

(C) Costs related to the educational or other special needs of the child(ren).

(D) Travel expenses for visitation.

(4) A financial hardship on the obligee or obligor, as defined in Family Code Section 4071.

(5) The obligee or obligor begins or ceases receiving Unemployment Insurance Benefits, State Disability Insurance, or Worker's Compensation.

(6) Additional child support orders exist for which the obligor is responsible, which were not taken into account when the order was established or last adjusted.

⁸⁸⁸ CAL. CODE REGS. tit. 22, § 115503 (2019).

⁸⁸⁹ CAL. CODE REGS. tit. 22, § 115520 (2019) (exemplifying for this study's purposes the typical detail within a California state regulation, promulgated per authority delegated by the California Legislature) (internal citations omitted).

- (7) A change in the obligee or obligor's health insurance premium or the availability of health insurance through an employer.
- (8) The release of the obligee/obligor from incarceration in a county jail, state or federal prison, or court-ordered rehabilitation facility.
- (9) The release of the obligee/obligor from a psychiatric facility.
- (10) Any other changes in circumstances that would affect the amount of support.

California's LCSAs *must* by law monitor *all* IV-D child support case orders and seek modifications when they are needed. *Only in cases in which the CP is receiving CalWORKS, however, does the law require that LCSAs follow a specific review schedule:* they must review and, if appropriate, seek modification of each current welfare recipient's case "[a]t least once every three years."⁸⁹⁰

California regulations require the LCSAs to review child support orders in their cases *if any of a list of enumerated changes of circumstance occur*.⁸⁹¹

Changes in circumstances shall be limited to:

- (1) The obligor or obligee is incarcerated in a county jail, state or federal prison, or court-ordered rehabilitation facility and there is no evidence of support potential. If the obligor is incarcerated, the local child support agency shall seek to adjust the current order to zero, and refer to the case closure regulations at 22 California Code of Regulations, Section 118203(a)(5)(B) to determine if case closure is appropriate.
- (2) The obligor's sole income is Supplemental Security Income/State Supplementary Payment, CalWORKs, or any other public assistance program for which eligibility is determined on the basis of need, and that income was used in determining the amount of the support order. If the obligor's sole income is Supplemental Security Income/State Supplementary Payment, the local child support agency shall seek to adjust the current order to zero, and refer to the case closure regulations at 22 California Code of Regulations, Section 118203(a)(5)(D) to determine if case closure is appropriate. Pursuant to Section 17400.5, Family Code, the local child support agency shall file a motion to modify the order within 30 days of verification of receipt of the Supplemental Security Income/State Supplementary Payment.

⁸⁹⁰ CAL. FAM. CODE § 3680.5 (a)–(b).

⁸⁹¹ CAL. CODE REGS. tit. 22, § 115530 (2019) (internal citations omitted).

(3) The obligor stops receiving Supplemental Security Income/State Supplementary Payment, CalWORKs, or any other public assistance program for which eligibility is determined on the basis of need.

(4) The obligor has a medically verified total and permanent disability with no evidence of support potential. The local child support agency shall seek to adjust the current order to zero and refer to the case closure regulations at 22 California Code of Regulations, Section 118203(a)(5)(C) to determine if case closure is appropriate.

(5) The obligor is institutionalized in a psychiatric facility and has no evidence of support potential. The local child support agency shall seek to adjust the current order to zero and refer to the case closure regulations at 22 California Code of Regulations, Section 118203(a)(5)(A) to determine if case closure is appropriate.

(6) The child support order was based on presumed income, and the actual income or income history of the obligor becomes known.

(7) The obligor or obligee's health insurance premium was not included in the guideline (Family Code Section 4055) calculation when the child support was established or last adjusted.

(8) The obligor or obligee is a reservist in the military and is called to active duty.

Informal agreements that a parent wishes to modify, in contrast to enforceable legal orders for child support, will be treated as initial legal orders for child support (not modifications) under Guideline law in private or public cases, thus *prior amounts paid will be irrelevant* in determining if a modification can be allowed due to changes in the circumstances. Such is the force of California and federal US law generally favoring legally-entered judicial child-support orders, and incentivizing both payees and payors to make sure that a legally-enforceable order is in place.

4.3.2.2. *Arrearages*

When child support owing pursuant to a California court order has not timely been paid, the unpaid amount becomes an “arrearage” and is distinguishable from the ongoing, current support.⁸⁹² *Interest* on the principal debt amount and *fees* for collection of the debt are included in the total that the delinquent payor is deemed

⁸⁹² Child support orders and judgments (including lawful interest and penalties thereon) are *enforceable until paid in full or otherwise satisfied*. CAL. FAM. CODE § 291; *see also* §§ 4503 and 17400(e). *See also* Chapter 4.4, *infra*, describing collections rules.

to owe; not even a court may forgive them, or the arrearage itself.⁸⁹³ Once a payor has missed, in part or in full, a payment of child support, an arrearage is owed, in addition to the regular upcoming payments of current support. Past arrearages are automatically offset by later *overpayments* in support,⁸⁹⁴ but *regular payments* of the full correct amount of current support in future months will not satisfy any outstanding arrearages. They instead satisfy current support needs of the child. Interest will continue to accrue on the unpaid arrearage.

However, *a court may order that overpayments a payor made while not yet having any arrearage debt*—in other words extra support which exceeded the court-ordered amount of current child support in past months—be *set off against future arrearages*. This may be done, in the court’s discretion, *only if* (1) the overage was paid “during a fat season in anticipation of a lean season” (for example because the supporting parent has fluctuating income); (2) no need for support payments is shown during the arrearage period; and (3) there is no indication that the child or CP would be harmed by denial of the arrearage collection.⁸⁹⁵ If these conditions are *not* satisfied, *or if the court decides not to “set off” the arrearage debt* even though the conditions are satisfied, the *main rule* applies: *overpayments are simply deemed voluntary gifts with no implications for future support obligations*.

The importance and *general inflexibility* of paying child support owing is impressed upon California payors through these rules. Paying child support late is treated relatively strictly. *Even when there is no arrearage* because child support has been paid on time, *the rules tend to favor payors not being permitted to pay in advance or otherwise unilaterally to modify what child support the child and CP should receive* on a given due date.

Under current Guideline law, interest also accrues quite strictly on Californian child support arrearages. Like all other money judgments in California, *child support orders accrue post-judgment interest at the legal rate (currently 10% per year)*.⁸⁹⁶ Unless the order

⁸⁹³ See CAL. FAM. CODE § 3651(c).

⁸⁹⁴ CAL. FAM. CODE § 4007(b).

⁸⁹⁵ Marriage of Peet, 84 Cal. App. 3d 974, 980–981 (1978); *see also* Keith G. v. Suzanne H., 62 Cal. App. 4th 853, 858–861 (1998) (citing Peet, holding that because a court has discretion to determine the *manner* in which support judgment will be *enforced*, it “may give credit for past overpayment”). In the Keith G. case, a setoff order was held to affect only the *manner* in which a payor pays a child support obligation, *not its amount, scope or duration*, so it was not a “modification” of the child support order but instead only about enforcement.

⁸⁹⁶ See CAL. CODE OF CIV. PROC. § 685.010(a) (setting the legal civil-case post-judgment interest rate at 10% per annum of the principal amount of the money judgment remaining unsatisfied). State and local government entities, when they owe money pursuant to judgments against them, instead owe 7% annual post-judgment interest. *See* CAL. CONST. art. XV, § 1 (limiting post-judgment interest rates to be set by statute to 10% maximum and providing that absent a statute the rate will be 7%).

or final judgment provides otherwise, the interest accrues as to *each installment* when each installment becomes due, and it continues to accrue for so long as the arrearage remains unpaid.⁸⁹⁷

There is some fairness to payors reflected in California's child support debt collection rules. Interest accrues only on the overdue installments under the initial support order, for example. A court order *setting exact arrearages still owing* under a child support order (for example after a court has heard evidence and resolved a dispute about what payments can be proven to have been made previously) is clarifying something about the performance under the initial court order, *not making a new order* for monthly installments of child support that *itself* accrues interest. The same is true for an order *establishing a periodic payment plan* for arrearages resulting from the initial order.⁸⁹⁸ Payors have just the one, initial order under which their debts are increasing due to interest, although they must comply with the new orders as to how much has not yet been paid and perhaps on what schedule they will pay that arrearage.

Sufficient notice must be provided to the payor (arrearage obligor) as well, although lack of notice is rarely an enduring defense against having to provide child support one has a duty to provide. By statute, *child support judgments and orders must provide written notice that interest on arrearages*, should a payor fall behind in paying per the order, *accrues at the legal rate*.⁸⁹⁹ Such notice therefore appears on the applicable mandatory Judicial Council child support forms.⁹⁰⁰ However, California courts have determined that this notice is *not* required by the payor's constitutional rights to procedural (or substantive) due process.⁹⁰¹

California's 10% legal interest rate leads to child support debt amounts quickly increasing if they are not paid promptly, but also has the result—as an interest rate higher than that on many consumer debts—of encouraging a delinquent support payor to *prioritize repaying child support debt* (or other debts created by judgment of a court). This is another example private responsibility for child support being strongly encouraged in California.

⁸⁹⁷ See CAL. CONST. art. XV, § 1; CAL. CODE OF CIV. PROC. §§ 685.010(a)-(b), 685.020(b); and Marriage of Hubner, 124 Cal. App. 4th 1082, 1089 (2004). Note that an exception exists in certain IV-D cases where the debtor cannot be located.

⁸⁹⁸ CAL. FAM. CODE § 155 (changing prior rule from Dupont v. Dupont, 88 Cal. App. 4th 192, 201–202 (2001)).

⁸⁹⁹ CAL. CODE OF CIV. PROC. § 695.211.

⁹⁰⁰ See Form FL-342 (Child Support Information and Order Attachment, revised January 1, 2017) 3, in Appendix 3.

⁹⁰¹ See Marriage of Thompson, 41 Cal. App. 4th 1049, 1057 (1996) (“Interest accrues as a matter of law, and parents are charged with knowledge of the law”). See also Marriage of Hubner, 124 Cal. App. 4th 1082, 1089 (2004).

As a matter of law, interest accrues as to unpaid installments that become due under a child support order even when a judge has *incorrectly suspended a payor's obligation to make ongoing child support payments*. Once the erroneous suspension is corrected, the original child support order will be considered to have been active throughout the period when the debtor thought he no longer was required to pay. This is due to a general rule of appellate law: “As with all civil judgments which are affirmed, or ... modified on appeal, post-judgment interest accrues from the date of the original judgment rather than from the judgment following the remittitur.”⁹⁰²

Payment plans for arrearages in *private* cases are *set in the judge's discretion*, which allows for flexible solutions including lower monthly payments that a payor can afford. All of these legal provisions related to California's relatively strict rule that child support arrearages in California *never expire*—and so *they can be enforced for as many years after they were incurred as necessary, until fully paid*.⁹⁰³

Child support arrearages, along with certain other family-law obligations, also are *not dischargeable in personal bankruptcy proceedings*. Other unsecured debts often are dischargeable, in order to give a debtor a cleaner new start per the legislative intent of bankruptcy protection. Support debts (being “domestic support obligations”) are among the most common exceptions.⁹⁰⁴

Many of these rules apply to both IV-D and non-IV-D cases. There exists however a special program that California's LCSAs can offer debtors in IV-D cases to *compromise their arrearages owed to the state*.⁹⁰⁵ Compromising arrearages means reducing or forgiving some amount of past-due child-support debt in defined, limited circumstances.⁹⁰⁶

⁹⁰² Marriage of Hubner, 124 Cal. App. 4th 1082, 1090–1091 (2004) (reversing a trial court decision to suspend child support payments while a supported child participated in a high school exchange student program in Japan and *reinstating the original obligation, with interest on each missed payment*).

⁹⁰³ See CAL. FAM. CODE §§ 291(a), 4503, & 17400(e). In Sweden old, uncollected child support debt, once legally set in an agreement or court judgment, expires after five years, as was described earlier in this chapter. That reflects the legal context for a dramatic difference in practice as to what kind of hardship arrearage debts become for a large number of lower-income payors, as is discussed *infra* Chapter 6.

⁹⁰⁴ See 11 U.S.C. § 523(a)(5) and 11 USC § 101(14A) (excluding all “domestic support obligations” from debts that are dischargeable in personal bankruptcy).

⁹⁰⁵ See CAL. FAM. CODE § 17560 and WELFARE & INSTITUTIONS CODE § 11200 et seq.

⁹⁰⁶ This is similar to the discretion Sweden's FK agency UStöd repayment obligation enforcement is given to forgive some debt owed by a payor of child support, per SFB 19:45, also for use only in exceptional cases.

4.3.3. Under Swedish Law

This section first combines description and discussion of the UB and UStöd regulations with respect to modification of a Swedish child's support amount. It continues by describing and discussing the Swedish law in both systems regarding arrearages (past-due support or contribution amounts).

4.3.3.1. Modifications

As in California, Swedish UB legally-binding agreements or orders may first be modified by a court when the moving party can show that there has been a *significant change in the relevant circumstances*, or otherwise after six years.⁹⁰⁷ They also may be modified by a court if the contract was unreasonable at its inception in consideration of the relative circumstances otherwise, but decisions to order repayment of payments already received should be made only if special circumstances exist.⁹⁰⁸

The FB UB rules are designed to reduce the need for modifications of Swedish child support amounts in that they automatically adjust slightly on an annual basis.⁹⁰⁹ Procedurally this is however problematic in that *parents are expected to follow state announcements and do the mathematical increase themselves*.⁹¹⁰ It is easy to question if parents actually follow through and increase their children's UB amounts, in the few (but probably growing) number of cases where support is decided by UB rules. Few statistics exist to confirm that they do, or otherwise to determine how many children's support needs are being met through receipt of a UB calculated using the FB rules.⁹¹¹ It is treated as a private law and in principle *dispositiv* matter, not bound by any mandatory rules the court must enforce, as has been described.⁹¹²

⁹⁰⁷ FB 7:10. See also FK 2016:1 Version 5, *supra* note 466, at 35 (advising parents to check carefully that the other party's income information seems correct before entering into a child support agreement or having one decided by the court).

⁹⁰⁸ FB 7:10 para. 2.

⁹⁰⁹ See Lag (1966:680) *om ändring av visa underhållsbidrag (indexlagen)*, a statutory law that adjusts UB amounts in relation to inflationary changes to the Swedish currency (SEK).

⁹¹⁰ See FK 2016:1 Version 5, *supra* note 466, at 35. This puts particularly payors at legal risk of having the unpaid, increased amount legally collected, if the CP or child takes action to do so. See *id*.

⁹¹¹ See, e.g., ISF Report 2019:7, *supra* note 6, at 137 (UBs are set between the parents privately so information about them does not exist in FK's databases).

⁹¹² The state has a duty to protect the child's interest in receiving adequate support, and also to evaluate the effectiveness of the UStöd guarantee social benefit, both of which are somewhat compromised by the lack more direct involvement in and monitoring of the sufficiency of UB child supports, as is discussed in the context of the different legal traditions as one cause of the differences found. See Chapter 7.3, *infra*, discussing Swedish legal system ideals and assumptions with respect to

Nonetheless *sufficiently-significant changes in a child's needs or one or both parents' financial or physical custody circumstances with the child are intended to lead to modifications*, thus keeping child support amounts appropriate at any given time. The preparatory works indicate lawmaker awareness however that an amount agreed to—or court-ordered—often will remain the amount paid for years, thus should sometimes be set with that in mind.⁹¹³

Modification of Swedish UB child support amounts due to changed circumstances (to a child's needs or living situation or to parental financial abilities) occur most often via *a return to informal discussion between parents*. Little is known about how often these talks occur or how successful these talks are in adjusting UB amounts to new amounts that the UB rules would dictate. As explained above, Swedish parents under current law are held fully responsible for ensuring their children's support rights are met. The state does not track statistics on non-UStöd cases, at least not since the state ceased being responsible for assuring that a UB was set before a public child support advance would issue.

If parents currently using the UB system cannot agree to modify it, the CP on the child's behalf or the young adult child may take the dispute to court, as described above. In practice, more often, *the CP will apply for UStöd*, assuming the disagreement regards a support amount that will be increased by abandoning the previously-determined UB amount (instead of legally enforcing it, as described in the next section of this chapter).

If the NCP is continuing to pay the UB support pursuant to the non-modified agreement or order, full UStöd is unavailable, yet the incentive for one parent to go to court for a modification remains low, in line with Swedish child support conflict resolution ideals.

With this in mind FK counsels parents *in advance* of the need for a modification to consider making their private contractual agreements for UB for “at the most a few years,” to then have reason to calculate the amount again and sign a new agreement, but to be cautious:⁹¹⁴

case types considered *dispositiv* (like child support) versus *indispositiv* (like legal and physical child custody).

⁹¹³ See Prop. 1978/79:12.

⁹¹⁴ FK 2016:1 Version 5, *supra* note 466, at 35 (emphasis added). This counseling to parents illustrates how the child support system discourages parents from proceeding to court, even in cases where it is true that the child's best interests could better be met. Given low support amounts and relatively high court costs this can be reasonable advice, but if legal reforms can instead simplify getting a needed modification that would be preferable from both child's rights and access to justice for the CP perspectives (and for the state, if it prevents use of UStöd caused by an obstinant NCP taking advantage of the difficulty the child faces in requiring a UB modification). The automatic adjustments for 2014–2018 inclusive were 2% in total. *Id.* at 34. Children with existing UBs grew five years older in that same period.

If the parents have difficulty agreeing it many times can be better for the child that a contract for a longer period exists than having no agreement at all. *This can mean that the UB becomes unreasonable, for different reasons, after a time* but UB increases in any case with inflation as described [above].

Per FB 7:10 UB modifications can be ordered retroactive, meaning for periods before a case was brought for the requested modification, but absent the parties agreement *a court may only decrease or cancel unpaid amounts of support for previous periods (arrears)*; the court may not against one party's objection retroactively increase or decrease already-paid support. Retroactive adjustments can however be made for the period that has passed between the filing of the modification request and the court's date of decision.⁹¹⁵

UStöd is available again, even in instances where the benefit has recently been stopped because of the “six months rule,” if the child again meets its criteria (i.e. the payor is no longer paying support as required per the agreement one or both parents wants modified). In practice however there will be a delay in receipt of support for the child caused by the re-application process. State reviewers have recognized that this can put the financial situation of the child and CP household at risk.⁹¹⁶

Notable for this discussion of the procedural rules for modifications is some historical context. *Swedish UB law*—including rules influencing how likely it is that children will benefit from modifications of their UB amounts when circumstances change—*has been weakened since the introduction of the UStöd benefit (and its predecessor)*, yet UStöd rights nonetheless *also* are currently being reduced to promote more use of the weakened and aged UB rules.⁹¹⁷ UB law has been interpreted and reformed (or not reformed) since the introduction of UStöd's predecessor, the child support advance, *overtly with the protections of the state guarantee system in mind*, as is discussed further within the comparative chapters. Somewhat contrary to the emphasis in the 2016 reforms on *parents' overuses and lack of understanding of the UStöd system* despite its stated purposes, *the Swedish family law systems themselves have expected and advised parents to rely on UStöd*, more often than not. *The Swedish Supreme Court*, as one example, *declined to broaden availability of legal aid funds for UB setting or modification in court*,

⁹¹⁵ California law is similar in all of these respects except that courts may make generous payment plans, in their discretion, for arrearages but not reduce or cancel them. See the next subsection.

⁹¹⁶ See ISF Report 2019:7, *supra* note 6 (recommending these re-applications be prioritized in the future, and that special circumstances to continue UStöd be found under more circumstances to prevent CP's need to unsuccessfully negotiate with an NCP and then to reapply).

⁹¹⁷ Review efforts do appear to be underway and perhaps can find some value in these analyses.

overtly reasoning that the availability of UStöd has reduced potential harms arising from CPs' *de facto* inability to enforce children's UB rights.⁹¹⁸

UStöd Modifications

On the public-law side, modification of UStöd can mean modification of the *amount paid out by FK* for support of a child, only in certain circumstances including when the amount of private child support received directly is being “topped up” to the guaranteed UStöd level via payment of a partial US, *and/or* it can be modification of the *amount the responsible payor parent needs to repay* under the SFB repayment liability rules.

Since the 2016 reforms to UStöd, there is a new category of modifications of Swedish child support: cases moving from UStöd to UB. FK is now legally bound by the “six months rule” to investigate and possibly end full UStöd payments once an NCP has been paying on time the amount expected as his contribution for six continuous months. FK therefore now contacts parents soon after such a six-month period. The agency *investigates if special circumstances exist* such that full UStöd nonetheless should continue. It also *encourages parents to reach a parental agreement modifying their children's support amounts via direct negotiation* after UStöd is stopped, and informs them that the “filling-in” amount is still available, simply not the agency's service to pay out to the payee then collect from the payor monies the payor is considered able to pay directly.

This type of “modification,” often resulting in a first-time “agreement” was described above in the description of Swedish UB parental agreements. Most often it seems currently the NCP after communication with FK simply begins to pay the UStöd amount (or the repayment contribution amount expected of him under SFB rules, if lower) directly to the CP instead of through FK—thus lawmakers' hoped-for parental discussions and agreements to often higher UB amounts has not yet occurred.⁹¹⁹

⁹¹⁸ See, e.g., NJA 2003 p. 226. The Court severely restricts legal aid availability in UB cases, in light of the marginal financial benefit available following UB litigation, *considering the UStöd guaranteeing the child an average amount of support instead*, without any need to go to court. SCHIRATZKI (2005), *supra* note 466, at 30–40.

⁹¹⁹ In the future perhaps FK will be able to support parents more *actually to reach a UB agreement in their child's best interest* at this point in the procedural process. UStöd could be modified to an appropriate UB amount then recorded with the agency. Ideally parents where only one of them will be living with the child could be much more strongly expected to decide and record a UB agreement in the first instance, after separation or the birth of a child to two persons not cohabitating, without first and

In focus for this project is the amount of support legally decided to actually go to the child, given my definition of child support as that which is parentally paid (and in Sweden its public guarantee substitute amount). Thus the initial payment amount from FK is in focus.⁹²⁰ In the UStöd system, this is the statutorily-set amount paid out per child, as described in Chapter 3.4.3. It may be modified if circumstances affecting a child's eligibility for its full amount change. The child's income, for example, may be evidenced by a new finalized tax return to have risen above the level at which UStöd eligibility is phased out for the child. Per SFB 18:35 reduction of UStöd due to a child's income should be reconsidered when there is a new final tax decision for the child, but *the change (reduction to or elimination of UStöd) shall apply from February of the year following the year in which the final tax decision was announced*, thus cushioning the impact on the child or the child's CP household rather than abruptly ending the support.⁹²¹ The ending of a statutory reason a child with a right to UStöd is not receiving it can also "modify" the amount the child is receiving, from zero to an amount appropriate to his or her circumstances per SFB rules. The rules are many and complicated on this but for example a child with a right to UStöd may not be paid it when the CP representing the child is failing to cooperate with FK. If this failure ends, eligibility can be reinstated.

Repayment Contribution Reassessments and Modifications

The final type of modification procedure to be described is the modification of the amount a given obligor must pay to the FK under UStöd public system rules. This procedure is for re-evaluation and adjustment if necessary of the payor's obligation to make a contribution payment to FK if a child has received UStöd. It concerns in other words *modification of the amount the law considers the NCP's ability to pay*, via periodic recalculation of it. *As a main rule this type of modification will not affect the amount received by the child.*

Assessment of the amount the payor NCP is obliged to pay each month was described above at Chapter 3.5.3. *The amount initially calculated for an obligor will be*

perhaps again needing to apply for UStöd in a different amount. See Chapter 8, *infra*, which briefly outlines ideas suggested by this comparison, for consideration as possible improvements to the law.

⁹²⁰ The dissertation's focus is not on collection details. The contribution amounts paid back to the state in some cases when state funds have been expended on the child are in focus, to the extent they reflect the laws' rules on abilities to pay child support, and the incentives for parents to pay.

⁹²¹ Sometimes a tax decision changes after becoming final. If this happens regarding a UStöd-supported child the amount of the child's monthly UStöd is *not retroactively or for the future adjusted*. This is a difference compared to what applies to a parent who is liable to pay contributions. See Prop. 2004/05:116.

recalculated, modifying the repayment amount owed by him, *each time a new income tax decision concerning the NCP is made by the Swedish tax authorities*, therefore usually annually.⁹²² It also is triggered to occur any time there is a significant change to his ability to pay (due, for example, to the birth of a new child, or an older one either aging into a higher level of UStöd or aging out of receiving child support from the NCP).⁹²³

A visitation deduction (*umgängesavdrag*, reducing the payment owed when a child spent a certain number of nights in the payor's home) was *recently abolished* in order to simplify administration of UStöd, among other reasons.⁹²⁴ An NCP's timeshare with the child therefore does not trigger a change in UStöd payments (or his repayment responsibility to the state) unless the child switches from living with the CP to living with the payor, or unless the child begins alternating residence, as determined under UB law. In practice the parents will trigger FK's awareness of such a change by applying to change the child's state-registered address, or a parent will contact FK to explain that the child no longer qualifies to receive UStöd.⁹²⁵

4.3.3.2. *Arrearages*

Public-system arrearages (to the state, not to the child who still receives the guarantee benefit in full each month) arise when the debtor parent has not paid the

⁹²² SFB 19:34. This system is largely automated when all parties involved live in Sweden, owing to the state's coordinated social benefits records, tax records, and population register information (e.g. who is the child or parent of whom, where each is registered as living, who is registered at the same address with a given person, age and birthday information, etc.).

⁹²³ See SFB 19:34. A payor may even be determined not to be the legal parent of a child, but this will trigger different procedures than recalculation of any payment obligation, unless the payor has additional legal children who receive UStöd.

⁹²⁴ See Prop. 2014/15:145 at 41–45 (giving reasons to remove this from UB laws yet disagreeing with the Swedish Debt Collection Agency (*Kronofogdemyndigheten*)'s suggestion to simultaneously remove the corresponding reduction possibility in the civil law at FB 7:4). See also Chapter 3.5's discussion of this, *supra*.

⁹²⁵ A CP may do this to avoid receiving benefit payments to which the child is not entitled, but an NCP who is considered able to contribute to the support each month (who is thus making payments to FK every month) almost certainly will. A risk of fraud arises, however, when an NCP is *not* considered liable for any contribution, because there is an incentive for the two parents to keep the child registered as living with the former CP and to allow the child to keep receiving UStöd, despite the NCP now actually parenting the child in his household approximately half-time. This is one of several risks or worrying incentives to parents that could be avoided if there was not a single-parent-home-dedicated social benefit payable in amounts above the appropriate UB. Another one is the lowest-income families actually continuing to task only one parent with the child's full-time care when two good-enough parents are available.

total amount due in a given month or has skipped making certain, or all, monthly payments due. These are the more common type of arrearages in Sweden, due to the UStöd guarantee. If a child receives support through the UStöd system because a payor has failed to pay UB support for a given month and the child instead receives UStöd, the “arrearages” in that the UB wasn’t paid are satisfied via the NCP’s later repayments to the state, whether on time (in advance of each month UStöd is paid out) or later, as a debt owed to the state.

For these types of arrearages, *FK has the discretion, on its own initiative or after a request by the debtor, to compromise the arrearage partially or totally*, if special circumstances regarding the debtor’s personal or economic circumstances exist.⁹²⁶ A decision to compromise an arrearage should be made restrictively under SFB rules, and arrearages are to be reduced or forgiven only in exceptional cases.⁹²⁷

The enforceability of the obligated parent’s debt was increased by legal changes to UStöd rules in 2012, mainly to clarify that after FK grants a payor a short period of pause to his repayment obligation, the missed support payments must be paid off on a schedule; of a payment on the schedule is late *and the debtor does not catch up within five months*, the arrearages become immediately due in full. Their payment due dates per the defaulted-on payment plan are accelerated so that they become fully collectible.⁹²⁸

FK has reported that *56% of payors became indebted due to UStöd in 2013*, and that the debts were higher among payors with *low incomes* or *many children*.⁹²⁹ In 2010, a full 71% of recurrent debtors being referred for collection were there because of UStöd repayment debts.⁹³⁰

On the private-law side of Sweden’s child support system, once a UB child support amount is established it must be paid as ordered or it can be at the payee’s request collected as a debt by *Kronofogden*, the Swedish governmental collection agency.⁹³¹

Connecting the private law system to the public welfare family law, FB 7:2 a provides that *a parent’s private-law support duty is considered fulfilled, to the extent of UStöd*

⁹²⁶ SFB 19:45.

⁹²⁷ Prop. 1995/96:208 at 54 et seq., 98 et seq. *See also* Commentated SFB at comments to SFB 19:45.

⁹²⁸ *See* Prop. 2012/13:16, *Vissa frågor om underhållsstöd* [Certain questions re: UStöd].

⁹²⁹ Dir. 2018:97 at 21 (citing FK’s report *Kartläggning av överskuldsättning och analys av indrivnings- och återkravsregler* [Survey of surplus debts and analysis of recovery and repayment request rules]).

⁹³⁰ *Id.* (citing SOU 2013:78, *Överskuldsättning i kreditsambället?* [Overindebtedness in the credit society?] p. 138). The 2018 investigation is looking into *inter alia* if using taxed income updated more frequently than every year might be able to reduce the issue of UStöd contribution arrearage debts.

⁹³¹ *See infra* Chapter 4.4.2 on collections under Swedish law, *infra*.

*payments made to the child (or CP), if the NCP has a duty to reimburse FK for its payments of UStöd.*⁹³² Thus the state takes over responsibility for collecting what a payor owes, be it the full UStöd or a portion thereof based on his financial circumstances. Yet fulfillment of the duty to pay private UB is only satisfied up to the amount of the state's payment of UStöd to the child (note: this may be more than the NCP actually pays in satisfaction of that amount).⁹³³ Payees therefore are not foreclosed from collecting the rest of an unpaid UB—the amount above the UStöd the child receives, not what the NCP actually pays—when UB has been set higher than the public benefit. This is however rarely worthwhile, as UB amounts are rarely for amounts much higher than the UStöd amount.

4.4. Collection of Unpaid Child Support

When child support is legally required to be paid but is not, or may not be, both jurisdictions' laws include provisions to enforce the requirements against an unwilling payor. This section presents an overview of those provisions.

4.4.1. Under California Law

This section briefly describes the private and public alternatives for enforcing California child support orders in an integrated fashion. Collection of child support owed to a child in California is *partly the responsibility of the payee parent to pursue*, or not to pursue, assuming she has not assigned collection to the IV-D public agency, due to receipt of public benefits or voluntarily. Many California payees remain unaware that the public agency can assist them with collections however;⁹³⁴ somewhat the opposite situation as has been found in Sweden, where many parents were found to be aware of the public UStöd system but *not* aware that they were expected first to attempt to use the private UB rules.

⁹³² FB 7:2 a, introduced by Lag (1996:1031) and modified by Lag (2010:1203).

⁹³³ SFB Chapter 19 regulates the duty to repay UStöd amounts.

⁹³⁴ Lawmakers realized public awareness of this needed to be improved to meet their aims of rigorously enforcing child support for all eligible children. The law now *promotes public education* aimed at *increasing voluntary use* of the public LCSAs. One provision, CAL. FAM. CODE § 17400(f), requires *prominent displays* in “every public area of every office of the agencies” containing a clear, simple notice that § 17400 child support services are “provided to all individuals, whether or not they are recipients of public assistance.” Those services include enforcement of child support orders even if they were obtained in non-IV-D cases, without agency involvement. *See also* Chapter 4.2, *supra*, regarding the LCSAs' role.

Because state and federal lawmakers aim to have not just IV-D but *all* child support orders successfully complied with,⁹³⁵ enforcing them is *also partly the responsibility of the state*. A number of legal provisions attempt to improve child support compliance regardless of the action (or inaction) of the CP on the child's behalf, and regardless of whether the order was established in a private or public case.⁹³⁶

"A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life," the principle lawmakers set forth at California Family Code § 4053(a),⁹³⁷ expresses well the legal system's ideological position with respect to enforcing child support law. That position is consistent with another Family Code provision, § 4011, which expressly provides that court-ordered child support payments "shall be made" by the obligor "before payment of any debts owed to [other] creditors."

In California, most collection of child support arrearages is today assigned to the public child support agency enforcement system, or assisted by it. Private collections are costly, complicated, and rendered unnecessary in many cases since the development of the public agency system and some of the relatively automatic enforcement tools Guideline law put into place.

Enforcement Tools Available

By law the public child support agency system should have *information on every payee and payor of child support in California* ready to use if enforcement becomes necessary. It naturally has this information in its own IV-D cases. In private cases, therefore, the procedural law requires both initial and modified orders for child support (plus judgments of paternity) to include an information-reporting provision. Orders must require both payee and payor to file with the court and the state's "child support registry", *within ten days* of the order, their *home and mailing addresses, telephone numbers,*

⁹³⁵ Lawmakers also expect the state child support agency system to *take leadership* over collection efforts. See, e.g., CAL. FAM. CODE § 17306(a)(3) ("Problems collecting child support reflect a fundamental lack of leadership and accountability in the collection program. These management problems have cost California taxpayers and families billions of dollars."). This legislative chiding, introduced in 1999, appears within the Code section regulating uniform forms, policies, and procedures for LCSAs.

⁹³⁶ For example CAL. FAM. CODE § 4014 (a) requires *all* payors to provide their *employer's name and address to the other parent (or to the public agency* if payments are required to be made through it), to assist with enforcement if the payor does not pay as required.

⁹³⁷ This principle is analyzed in more detail at Chapter 5.3, *infra*.

driver's license numbers, contact information for their employers and any further information the Judicial Council of California (the court system) decides to require.⁹³⁸

All child support orders also must be issued with an *immediately-effective earnings assignment order*, subject to stay only for narrowly-defined “good cause” reasons.⁹³⁹ This means that every payee should have in hand, when receiving a copy of the new child support ordered for her child, a court order she can serve by mail upon the payor’s employer to alert the employer of the child support order and to require the employer to deduct the child support from the payor’s wages and send it instead to the child (via the state’s State Disbursement Unit, required by federal law).

A wage assignment order will be immediately effective once served, although the payor *may* lawfully object to the court if a statutorily-listed good cause reason applies, *including that the payor has paid child support in full and on time for the preceding 12 months, or does not yet owe any arrearage*.⁹⁴⁰ In general, therefore, assignment orders are useful once a payor begins not to pay on time or in full, but usually in private cases child support is still paid directly between payor and payee. The earnings assignment order is on hand to simplify enforcement if it becomes necessary, assuming the payor has a steady employer.

Although withholding income is considered by many to be “the most potent tool that now exists to stop the poverty of children” with separately-living parents,⁹⁴¹ California child support lawmakers also intended to encourage courts to order *security deposits*. Courts are empowered to order a payor to deposit “child support security” funds (at maximum enough to cover up to one year’s worth of child support payments) into an interest-bearing trust account, withdrawals from which may be made only upon court authorization.⁹⁴²

This additional tool was provided to help insure that support would be paid in cases where earnings assignment orders could not be effective, primarily when a payor is self-employed or changes jobs frequently.⁹⁴³ No past due support arrearage

⁹³⁸ See CAL. FAM. CODE § 4014(b)–(c). These requirements follow from federal U.S. law. Any change to any of this information is required also to be reported, also within ten days.

⁹³⁹ See CAL. FAM. CODE § 5200 et seq. In practice, in private cases, these orders are not actually uniformly served upon the payor’s employer as the authors of the child support scheme seem to have intended.

⁹⁴⁰ CAL. FAM. CODE § 5231.

⁹⁴¹ HARRIETT BUHAI CENTER FOR FAMILY LAW, CALIFORNIA FAMILY LAW BASICS § 24.04 (25.1 ed. 2013).

⁹⁴² See CAL. FAM. CODE § 4550 et seq.

⁹⁴³ See Stats. 1991, Ch. 1141, § 1. Courts nonetheless retain discretion to order or not to order security deposits or trust accounts, in part to allow them not to make such an order if such a trust account already exists for the benefit of the supported children. *But see* CAL. FAM. CODE § 4600–4641,

needs to yet exist for a court to order this precautionary remedy,⁹⁴⁴ although they are nonetheless not routinely ordered.

There are a number of further options a judge issuing child support orders may choose to try to encourage successful support of the child. When a parent claims that his or her child support delinquency is due to unemployment, for example, a court also has the option of issuing a “seek work” order, requiring the parent to *submit a list, at specified intervals, of at least five different places to which he or she has applied for work*.⁹⁴⁵ Other enforcement tools, only available to the LCSAs, are discussed next. Following that contempt of court, another enforcement tool available in private or public cases, is discussed in somewhat more depth.

Collection under Public, IV-D Child Support Orders

The largest difference between private and public enforcement, and a significant benefit to enforcing child support orders via the public system, is the wide range of tools available only to it. County LCSAs (in cooperation with the state-level DCSS, other states’ and countries’ child support authorities and the federal child support collection tools) have *unparalleled access to collection resources and remedies not available to a private-family-law litigant or her attorney*. Once put on notice of a child support payor’s “delinquency” the state DCSS is required to collect the delinquency (arrearages) via *any legal method under state or federal law*.⁹⁴⁶

LCSAs can (1) find reliable records of a payor’s whereabouts if it is being reported to tax authorities by its source (for example an employer).⁹⁴⁷ They can (2) suspend debtor parents’ California drivers’ and professional or recreational licenses (including for example licenses to practice law or to fish recreationally).⁹⁴⁸ The agencies may (3) block the issuance or renewal of a US passport *or revoke* a passport

requiring a court in some instances to order one year of support held as security after “bad faith” failure to pay and support at least 60 days in arrears.

⁹⁴⁴ See CAL. FAM. CODE § 4560(b).

⁹⁴⁵ See CAL. FAM. CODE § 4505.

⁹⁴⁶ See CAL. FAM. CODE § 17450.

⁹⁴⁷ See CAL. FAM. CODE § 17452 (requiring the state tax authority to give DCSS *any requested tax return information for collection purposes*, subject to state and federal laws on privacy and information security, and releasing it from potential liability for providing this data, including for failing to inform taxpayers or account holders that it has turned over their identifying information).

⁹⁴⁸ See CAL. FAM. CODE § 17520 (requiring a debt more than 30 calendar days in arrears). State licensing agencies now also must track whether persons owe child support debts before renewing or issuing licenses to them.

in cases of large arrearages owed,⁹⁴⁹ and (4) keep track of child support debtors' bank account holdings via communication with their banks (without notice given to the debtor).⁹⁵⁰ LCSAs attorneys also (5) litigate civil contempt of court proceedings at no cost to the payee (although the payor may be liable for the LCSA's reasonable fees and costs if he or she can afford them), and (6) in welfare cases may collect from a payor arrearages incurred *while the payee was concealing the children from the payor*. Although the payee in such a case can be estopped from collecting the arrearages herself, the state retains the right to reimbursement for the public benefits paid to the children because they were not receiving the child support.⁹⁵¹ Interstate and international enforcement of child support orders, beyond the scope of this study, is also tasked to California's LCSAs.⁹⁵²

Contempt of Court Proceedings to Enforce Child Support

Statutory authority for enforcement of a child support order by way of a "contempt of court" proceeding, whether against a parent who, *despite ability and opportunity, willfully fails to work up to capacity* or one that is working (but simply does not pay) is found at California Code of Civil Procedure § 1209(a)(5). The section permits contempt of court proceedings as a remedy for willful violation of valid court orders in general, not only for support orders or family law orders.⁹⁵³

⁹⁴⁹ Federal law authorizes the denial or revocation of a US passport when a payor is certified by a state as owing more than \$2,500 (21,730 SEK) in past-due child support. The obligor must be given notice and opportunity to challenge the arrearage determination before the state agency confirms the arrearage to the U.S. passport authority. *See* 42 U.S.C. §§ 652(k), 654(31). *See also* Eunique v. Powell, 302 Fed. 3d 971, 974–976 (9th Cir. 2002) (upholding the constitutionality of this enforcement tool).

⁹⁵⁰ *See* CAL. FAM. CODE § 17453 (requiring DCSS to operate a system for matching child support debtors' names to account holders at financial institutions, and financial institutions doing business in California to provide information on their account holders if their names appear on the support debtor lists, without notifying them). DCSS may then, if certain conditions are met, levy the accounts to collect the owed child support debt.

⁹⁵¹ *Marriage of Kelley*, 186 Cal. App. 3d 613 (1986).

⁹⁵² *See, e.g.* CAL. CODE REGS. tit. 22, § 117400 (a) (2018) ("A local child support agency shall establish paternity, and establish and enforce support orders when the noncustodial parent resides in a state other than California and the custodial party resides in California, or when neither parent resides in California and one parent applies directly for Title IV-D services in California.") There are mandatory federal forms helping to make this interstate cooperation more effective, similar to the California state mandatory Judicial Council forms. *See* CAL. CODE REGS. tit. 22, § 117407 (2018) and OCSE, *Intergovernmental Child Support Enforcement Forms*, <https://www.acf.hhs.gov/css/resource/uifsa-intergovernmental-child-support-enforcement-forms>.

⁹⁵³ *See also* CAL. FAM. CODE § 490 (specifying that orders and judgments made under the Cal. Family Code may be punishable by contempt).

Most California courts treat contempt of court proceedings as quasi-*criminal in nature, not civil*, in order to afford the defendant payor a heightened level of right to due process.⁹⁵⁴ They are controversial, but they are one way that especially the public LCSAs may attempt to collect child support arrearages (and current payments) in difficult cases, where the agency suspects that the payor could pay but is willfully failing to do so.

At a proceeding to determine if a payor will be held in contempt of court, the state (or the payee, if she uses this method) attempts to prove that *there was a valid child support order in place for certain months or years of time*, the payor *actually knew of the order*, and that he *willfully violated it*. If convicted of contempt of court, a payor can face jail time, until coming into compliance with the order of the court.

Contempt's use in collecting child support has been challenged constitutionally by some payors, however courts have consistently held that requiring a parent to work to pay child support debt is no different from requiring him to work to pay tax debt: he remains free to choose the employer and terms, and thus this is not akin to indentured servitude or slavery, as some payors have argued in court,⁹⁵⁵ and especially the LCSAs consider it relatively effective enough to pursue, in cases where they have confidence a payor can pay but is not doing so, despite the time and cost-intensive nature of a hearing.⁹⁵⁶

Much California case law has confirmed the lawfulness of using this remedy in a child support context.⁹⁵⁷ Today *contempt can be used to enforce virtually all valid child support orders* in (usually significant) arrears, so long as they were made pursuant to statutory authority. Thus amounts owed to the county (in IV-D cases), or to a third-party creditor on the payee's behalf *per court order*, or made against an unemployed payor

⁹⁵⁴ RUTTER GROUP CALIFORNIA PRACTICE GUIDE: FAMILY LAW § 18:115. *See also* In re Feiock, 215 Cal. App. 3d 141, 145 (1989) (appellate court concluding the “preferable rule” may be to apply the more stringent due process protections whenever the payor accused of contempt faces any amount of potential jail time).

⁹⁵⁵ *See Moss v. Superior Court (Ortiz)*, 17 Cal. 4th 396, 409–410 (1998) (“The obligation of a parent to support a child, and to become employed if that is necessary to meet the obligation, is in no way comparable or akin to peonage or slavery ... [It is] not only a moral obligation, but one that is legally enforceable.”).

⁹⁵⁶ CAL. FAM. CODE § 17400 specifically provides that local child support agencies have the responsibility for establishing, modifying, *and enforcing* child support, as well as spousal support orders, if appropriate, on request or in cases involving public assistance. I witnessed a contempt hearing in Los Angeles Superior Court as part of this project, and came to understand that they are often used when a payor may be making considerable black-market income, difficult to prove; risk of losing one's physical freedom can motivate payment.

⁹⁵⁷ *See Moss v. Superior Court (Ortiz)*, 17 Cal. 4th 396 (1998).

presumed to have income per the Family Code, all may lawfully be enforced via contempt proceedings.⁹⁵⁸

In *Turner v. Rogers*,⁹⁵⁹ the U.S. Supreme Court held that state-provided defense counsel is *not* required by the federal Constitution’s Amendment XIV Due Process Clause in cases where *other procedural safeguards* protect a defendant. Specifically the majority in *Turner* held that even in these quasi-criminal proceedings now widely used to enforce US child support orders, no state-provided lawyer or representative is constitutionally required to be appointed for the defendant payor, at least not in private cases.

The Court reasoned as follows:⁹⁶⁰

In our view, a categorical right to counsel in proceedings of the kind before us would carry with it *disadvantages (in the form of unfairness and delay)* that, in terms of *ultimate* fairness, would deprive it of significant superiority over the alternatives that we have mentioned. We consequently hold that the Due Process Clause does not automatically require the provision of counsel at civil contempt proceedings to an indigent individual who is subject to a child support order, *even if that individual faces incarceration (for up to a year)*. In particular, that Clause does not require the provision of counsel where the opposing parent or other custodian (to whom support funds are owed) is not represented by counsel and the State provides alternative procedural safeguards equivalent to those we have mentioned (adequate notice of the importance of ability to pay, fair opportunity to present, and to dispute, relevant information, and court findings).

We do not address civil contempt proceedings where the underlying child support payment is owed *to the State*, for example, for reimbursement of welfare funds paid to the parent with custody. *Those proceedings more closely resemble debt-collection proceedings. The government is likely to have counsel or some other competent representative....* And this kind of proceeding is not before us. Neither do we address what due process requires in an *unusually complex case* where a defendant “can fairly be represented only by a trained advocate.” Gagnon, 411 U. S., at 788; see also Reply Brief for Petitioner 18–20 (not claiming that *Turner*’s case is especially complex).

Since the *Turner* opinion, the Office of Child Support Enforcement has issued a new federal “final rule” (as discussed earlier at Chapter 3.5.1) to address several ways in which US states have been potentially violating especially very-low-income payors’ due process rights, and California’s 2017 Guideline Review has analyzed this issue further. All changes to California practices now required by these federal sources of

⁹⁵⁸ See, e.g., CAL. FAM. CODE § 150 (defining support to include arrears and support owed pursuant to LCSA case orders).

⁹⁵⁹ 564 U.S. 431 (2011).

⁹⁶⁰ 564 U.S. 431 (2011) at 448 (some internal citations omitted) (emphasis added).

law have been or will be introduced and passed into California law by a coming deadline.

Private (non-IV-D-case) Child Support Enforcement and Collections

Some payee CPs, despite not succeeding easily in collecting past due child support (via for example negotiations with the payor, or a wage assignment), nonetheless do not assign collection to an LCSA, even if they know aid from the agency is available. A payee may be unsure that the public system will operate in a timely fashion, or be concerned for how the public collections system may impact the payor and his ability to see the children or to earn an income (via suspension of a driver's or professional license for example).

Debts arising from child support orders (of all kinds⁹⁶¹) are afforded special status under child support law, as has been mentioned, and support-specific enforcements have been the focus in this section thus far. For the payee who does not use the public system, *the usual procedures or tools for collecting on an unpaid civil court money judgment apply to child support private collection*. Though there are some rules favoring support judgments over other types, enforcement of money judgments is the area of law implicated. Such rules are relatively briefly mentioned here, for comparative purposes (including comparison to the public system), but otherwise delimited from this study.

A parent privately enforcing a child support order faces *no statute of limitations* on enforcing it, and thus can pursue enforcement (as can an LCSA) even after the child has reached adulthood, or years later.⁹⁶² She can secure a court's determination of support arrearages (for unpaid support *plus* interest and costs of collection owed).⁹⁶³ That determination may be used to obtain a writ of execution, allowing the payee to levy a payor's bank account or other property to satisfy the debt owed. These private enforcement options include the payee taking the responsibility upon herself (or an attorney she must pay for) to prepare the paperwork and give notice and a chance

⁹⁶¹ Even a California Family Code § 3587 agreement to support an adult child not otherwise legally entitled to support can be enforceable in the same manner as other support orders *if it has been entered as a formal child support order*. However, *if it is merely a contract* only ordinary contract enforcement remedies are available to enforce it. See Marriage of Rosenfeld & Gross, 225 Cal. App. 4th 478, 489–490 (2014) (regarding a marital settlement agreement to provide college expenses).

⁹⁶² Child support orders and judgments (including lawful interest and penalties thereon) are *enforceable until paid in full or otherwise satisfied*. CAL. FAM. CODE § 291; see also §§ 4503 and 17400(e).

⁹⁶³ See CAL. FAM. CODE § 4725 (requiring first that the payee has served the payor with a “notice of delinquency”).

to respond to the payor during these private civil court proceedings. They are therefore extremely rarely affordable or cost-effective for a private CP to pursue.

The payee legally may even pursue a payor via civil contempt of court, however without the LCSA taking over the case and determining a contempt of court proceeding will be appropriate this is at the payee's sole expense, only potentially recoverable via a fee order against the payor. Litigation of this sophisticated nature usually cannot be attempted by a non-attorney. A payee needing to enforce a child support order often does not have the funds to hire an attorney, and it is not easy to get an attorney to take on a case to collect private child support arrearages if the arrearages are not themselves very large, and owing from a wealthy but non-compliant payor reasonably expected to be able to be collected against.⁹⁶⁴ This option therefore is used only by the wealthiest parents in conflict over child support, and rarely even then.

Private case payees attempting to collect unpaid California child support in rare instances hire private attorneys, use private investigation services, and complete multiple court appearances, but *most simply decide that they cannot successfully litigate or incentivize a non-paying parent to pay*, given the costs and time involved in doing so and, often, claims by the payor that he or she does not have the ability to pay. Although LCSAs communicate their services in detail through public websites,⁹⁶⁵ it is not certain even willing payees will reach them and be able to proceed with collection.

Criminal Liability for Failure to Pay California Child Support

Although criminal prosecution is rare against child support debtors, the public family law of child support even extends into the criminal law: non-support of one's child is a crime against the state, in all 50 states.⁹⁶⁶ In California, failure to pay child support is a misdemeanor pursuant to the California Penal Code Section 270:⁹⁶⁷

- (1) If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor punishable by a fine not exceeding

⁹⁶⁴ There is one specialist in Los Angeles, for example, who will take on these cases for a potential recovery of a percentage of the arrearage, but only if the total arrearage owed is very large *and* the payor who has not paid is very likely to be *able* to pay, thus the collection will not be wasted effort.

⁹⁶⁵ See, e.g., for Los Angeles County: <http://cssd.lacounty.gov/enforcing-a-court-order/#private> (listing 15 enforcement methods used, including criminal prosecution and "seek work" court orders).

⁹⁶⁶ National Conference of State Legislatures, *Criminal Nonsupport and Child Support*, available at www.ncsl.org/research/human-services/criminal-nonsupport-and-child-support.aspx (last visited Nov. 22, 2017).

⁹⁶⁷ CAL. PENAL CODE § 270.

two thousand dollars (\$2,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment....(3) The court, in determining the ability of the parent to support his or her child, shall consider all income, including social insurance benefits and gifts.

One of the US federal level's child support legislative acts also has criminalized, *including at the felony level*, willful failure to pay past-due court-ordered child support, defined as support remaining unpaid for longer than one year *or* owed in an amount over \$5,000, but *only in cases where the child and payor are located in separate states* and thus the federal legislature has jurisdiction to regulate.⁹⁶⁸

Latest Reforms to California Child Support Collections Law

There are extremely significant changes underway in California enforcement and collections, largely but not completely as a consequence of the new standards federal regulations recently have required all US states to meet.⁹⁶⁹

In California, new legislative bills on child support enforcement were passed in September 2019 by both houses of the California Legislature. When they become law, *100% to 300% more monthly child support will “pass through” from California NCP to CP households*, without affecting CPs' public benefit eligibility. This can be considered a positive enforcement measure, as opposed to a punitive one. It is expected to *increase NCPs' incentives to make every effort to provide their children with support* through the system (instead of through informal, in-kind support), since instead of the money being kept by the state to repay welfare benefits it will actually reach the children.⁹⁷⁰

⁹⁶⁸ The Child Support Recovery Act (CSRA) of 1992, codified at 18 U.S.C. § 228, amended in 1998 when it became the Deadbeat Parents Punishment Act (DPPA).

⁹⁶⁹ See Chapter 3.5.1, *supra* (citing and discussing *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs* (an OCSE final rule), 81 Fed. Reg. 93492 (Dec. 20, 2016) (codified at 45 C.F.R. §§ 301–304 and 307–309) (became effective January 19, 2017), in the ability-to-pay context).

⁹⁷⁰ See AB 1092, *An act to amend Sections 4004 and 17500 of the Family Code, relating to child support* (introduced February 21, 2019) (available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1092) and SB 337, *An act to amend Section 17500 of, and to amend, repeal, and add Section 17504 of, the Family Code, relating to child support* (introduced February 19, 2019) (available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB337&search_keywords=child+support). When child support collections first began to be kept by the state, which paid welfare benefits to CPs and their children beforehand, it was intended to work more as a guarantee system, “somewhat akin to Sweden’s [but] for the very poorest, but today [it] ends up counterproductive.” Bruce Covert, *The Brilliant Idea from Europe That Could Revolutionize Child Support*, THINKPROGRESS, April 16, 2015, <https://thinkprogress.org/the-brilliant->

The new legislative changes also will eliminate the 10% annual interest rate on arrearages. It will be, under the new statutory language scheduled to take effect in 2022, reduced to 0%,⁹⁷¹ which may seem contrary to liberal WSM ideals, but is also likely to make the child support system seem fairer, and arrearages more realistically payable, thus increasing buy-in and compliance.

Changes to California Family Code Section 17500 will modify the definition of child support “delinquencies” so that arrearages owed to the state and *deemed to be “uncollectable” per federal law regulations* will no longer fit that definition.⁹⁷² This should allow the state better to focus collection efforts on pursuing NCPs who more reasonably have the ability to pay their child support debts, reducing difficulties for the lowest-income payors and their children, but also for the state.

Also, effective January 1, 2019, California no longer permits the State Disbursement Unit to send child support collections to “private collection agencies.” Within the public system, payee parents have been informed that they will instead be receiving paper checks for arrearages successfully collected.⁹⁷³

idea-from-europe-that-could-revolutionize-child-support-dd3416db9bfb (press article discussing research on European countries’ guaranteed child support payment systems).

⁹⁷¹ See *id.* CPs seeking child support orders in private cases will also per these changes no longer be required to disclose if they *intend to* apply for need-based public supports, only if they are *currently receiving or actively, currently applying* for such benefits. In one sense this seems to run counter to the liberal WSM ideals encouraging private responsibility for child support, however it also supports individuals’ freedom and privacy vis-à-vis the state. SB 337 (to become effective January 1, 2022) expresses the intent to “increase the amount of child support payments received and to strengthen family unity between children and their noncustodial parent, thereby improving the health and well-being of low-income children.” Textual comparison of the upcoming modifications to current law are available at https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200SB337.

⁹⁷² See CAL. FAM. CODE § 17500 (B)–(C) (proposed changes, SB 337) (available at https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200SB337) (adding the language, *inter alia*, “Commencing January 1, 2022, and to the extent permitted under federal law, a ‘child support delinquency’ does not include an arrearage or otherwise past due amount owed to the state that the local child support agency or department has determined to be uncollectible.”) (emphasis added). In determining the meaning of “uncollectible” for “purposes of arrearages and otherwise past due amounts owed to the state,” *the DCSS or an LCSA* “shall, consistent with Section 303.11 of Title 45 of the Code of Federal Regulations” *consider all of nine factors*, including available income and assets; sources of income; age of the arrearage; the number of support orders an NCP is liable to pay; his history of employment, payment and incarceration; whether the order was based in imputed income; and “other readily ascertainable debts.” *Id.*

⁹⁷³ See California DCSS, *Payments*, <http://www.childsup.ca.gov/payments.aspx> (“The new California Family Code Section 5614 directs the SDU to send child support collections directly to the family. If you have your child support collected by a PCA, DCSS will no longer deposit your child support collections into the PCA’s account. Instead, a paper check will be mailed to you.”).

4.4.2. Under Swedish Law

This section provides an overview of the *legal enforcement tools available to individuals and to FK, both supported by Kronofogden, in collecting past-due Swedish child support.* The *rules and debt restructuring options protecting a payor debtor from overly-harsh collection compromising his financial situation* also are introduced. Rules for this (existing in both jurisdictions) receive much more emphasis in application of the Swedish child support law than in California's; they are for example more in focus for the agency responsible for assisting parents with child support, which in Sweden *is also the agency in charge generally of every citizen's social benefits* and therefore may have less focus on CPs relative to NCPs than LCSA agencies have. Collection from foreign countries or from payors with incomes from foreign sources, although not a trivial part of FK's collections efforts, are delimited from this study.

On Private versus Public Enforcement

Prior to 1979 more types of UB agreements to support a family member were legally classified as "support agreements" under Swedish law, and collectable as such. For example, if Swedish parents before 1979 entered into a contract to provide support for their disabled adult child, the law for testing the validity of and for enforcing their agreement would have been the law regulating family law "support agreements." There are some support-debt-specific enforcement rules comprising that law, for example with respect to the attachment of property rules, discussed shortly below.⁹⁷⁴

Lawmakers wished to insure disabled adults and, in essence, *all individuals* (with the partial exception of minor children) through the social democratic welfare state.⁹⁷⁵ They therefore limited private family-law duties of support in new ways, and today *child support* is enforceable via some special rules for "support agreements," but *a contract to support another adult would be simply an ordinary private contract*, and would be assessed according to non-family-law contract rules.⁹⁷⁶

⁹⁷⁴ See UB 3:19.

⁹⁷⁵ This is in accordance with what I labeled in Chapter 2 as the WSM ideal (SE-1), freedom from private dependency.

⁹⁷⁶ Specifically the Swedish Contract Act (1915: 218) (e.g. Section 36) would apply. Commentated FB (2019) at comments to FB 7:2. Since these reforms to the FB in 1979, contracts through which (adult) children undertake to pay support contributions *to their parents* also are no longer regarded as agreements fulfilling any Swedish private family law support obligation. The FB rules governing modifications of UB agreements also would not apply to such non-family-support contracts. *Id.*

Today, in Sweden, a private UB agreement or order *may* be privately enforced by the CP or child. The Swedish Debt Collection Agency, *Kronofogden*, collects debts upon request on behalf of individuals who are owed debts in Sweden, and is considered very effective. Collecting arrears owed to a CP or child without involving the public-law child support (UStöd) system is thus less difficult or costly than in California. Those enforcing UB amounts (family law support obligations) do not pay the usual fees for Kronofogden's assistance, and there is a convenient web form for beginning the process.⁹⁷⁷ The agency can attach personal property, wages, tax refunds, and even real properties, although for real properties a CP can be charged fees. The collection agency explains this to payees.⁹⁷⁸

However, such private debt collection for child support is less frequently necessary today. Exceptions are cases where the amount owed under UB rules exceeds the amount paid out to the child in UStöd, the child is not eligible to receive UStöd for some reason, there is UB debt owing from before UStöd was granted, or the CP has chosen not to apply for UStöd even though there is a UB unpaid debt owing.

The reduced necessity for private debt enforcement on behalf of children with support rights is due to the UStöd benefit available from the other main agency involved in Swedish child support debt collection, FK, in connection with its administration of UStöd. *In practice FK now plays a larger role than private parties in collecting child support debts, although it collects them only on the state's behalf*, not stepping into the shoes of a payee (except in certain cases with international elements⁹⁷⁹). Because of FK's duties first to pay out UStöd to payees not receiving timely child support and then routinely to collect contributions from payors, private enforcement is not common. FK collects current support *but also is obligated per SFB 19:49 to "without delay" take measures to collect unpaid amounts due*.⁹⁸⁰ Public law can be said to have usurped private law in the child support enforcement area.⁹⁸¹

⁹⁷⁷ See Kronofogden, *Ansökan - Verkställighet (underhållsbidrag)* [Application – Execution of UB], available at <https://www.kronofogden.se/AnsokanVerkstallighetunderhallsbidrag.html>.

⁹⁷⁸ *Id.* at 2.

⁹⁷⁹ See SFB 19:21–19:30, 19:37.

⁹⁸⁰ Regulations require that FK first, before turning an NCP's debt over to Kronofogden for collection, encourage the NCP to pay the late payments owing, with late fee, by a certain due date. The notice must give notice to the debtor that additional collection fees will be his responsibility if collection is necessary. *Indrivningsförrordningen* [The Swedish Recovery Regulation] § 3.

⁹⁸¹ Rune Lavin & Lars-Göran Malmberg, *Administrative Law*, in SWEDISH LEGAL SYSTEM 66, 74 (Michael Bogdan ed., 2010) (discussing the collection of child support amounts set under the private versus public systems).

Enforcement Requiring Setting of a UB

FK is obligated to pursue reimbursement payments from NCPs to children who receive UStöd, as has been described. It will however as a main rule only enforce the payor's child support obligation *up to the public benefit amount*, rather than enforcing whatever larger amount of UB might have been set legally for a child.⁹⁸²

Usually no UB is set, since collections through the UStöd system can proceed whether there is a court order, agreement, or no agreement at all between the parties. It can be relevant to set a UB, FK guidance observes, "if the duty-owing parent can pay a UB that is higher than the UStöd amount."⁹⁸³ Setting a UB can also be important if past months or years of support are unpaid, because UB and not UStöd can be sought by a payee for retroactive periods.⁹⁸⁴ A payor's debt is by law considered satisfied for a given period (for example a given month), to the amount of UStöd actually paid to the child, if the payor pays what he is expected to pay under SFB rules, as was introduced earlier in this chapter.

Enforcement Tools for Swedish Child Support Obligations

The most common tool used for collection of unpaid debts from individuals in Sweden today is execution by *salary and wage garnishment*,⁹⁸⁵ somewhat similarly to in California child support collections (as described in the previous section).

Execution through the seizure of personal and real property is also possible per Swedish collections law detailed in the Swedish Enforcement Code, however there are detailed rules protecting the debtor when household goods are seized, complicating the method⁹⁸⁶ but also helping it strike the aimed-for balance between successful

⁹⁸² This is a distinction from the Californian agencies' role as collectors, also pursuant to public law and on the state's behalf; LCSAs collect the full obligation for a payee, and withhold for the state only what is owed to the state as welfare reimbursement (or less, because of "pass-through" rules).

⁹⁸³ FK 2001:9, *supra* note 873, at 12 (citing Prop. 1995/96:208 at 102). Here note the lack of distinction between the concepts of what the payor *can* pay and what UB rules would require him to pay, which has to do with the CP's financial circumstances also. This interaction between the dual-system's rules *usually makes it unlikely that a child will be owed a UB higher than the UStöd level for his or her age, especially with the recently-increased UStöd amounts*. SINGER (2017), *supra* note 55, at 155–156 (critiquing the incentivizing power of the new UStöd "six-months" rule in combination with the recently-raised UStöd amounts and lack of a better formula for calculating UBs instead).

⁹⁸⁴ UStöd is available only starting the month after parents separate *or the right to the UStöd arises*, for example because the NCP did not pay UB on time or in full. SFB 18:13. In contrast child support pursuant to the UB-defined duty to pay child support, the same duty insured by UStöd, can be sought retroactively for up to three years, as discussed earlier in this chapter.

⁹⁸⁵ Westberg (2010), *supra* note 705, at 240.

⁹⁸⁶ *Id.*

enforcement of debts and not contributing to a debtor's financial difficulties excessively, in his and society's interest.

Many Swedish payors willingly send the payments FK requests them to pay, some at the full level of the UStöd paid to their child and some at a reduced amount based on the payor's financial circumstances. When, however, payors do not pay, or do not pay in full or on time, this results in unpaid "arrears" owed to the Swedish state for children who have turned to the UStöd system.

Listed below are the main procedural means used by the state (by the public child support system as regulated in SFB, FB, the Swedish Enforcement Code and other law) to collect arrearages owed to the state for previous payments of UStöd. Described also are the debtor protection and debt relief tools administered by FK, and debt restructuring tools administered by Kronofogden. These are used to ensure that debts owed for past child support do not compromise a payor and his current household to an unreasonable degree.

Interest on Arrearages

Interest accrues if a payor does not pay the repayment contribution for the UStöd paid to his child on time, per SFB 19:47. While interest no longer accrues during a payment deferment period granted by FK (discussed immediately below), *interest has been added on arrearages for late payments, even when the payment delay is short*. Lawmakers made these two changes simultaneously, intending to *increase incentives to pay on time* while also *assuring that debtor parents do not become overly-indebted* when they have a deferment.⁹⁸⁷ They reasoned that this would allow the arrearages later to be paid off more quickly *and parents to perhaps reach agreement on a UB*, which was a main aim of their 2015–2016 reform effort.⁹⁸⁸

While interest was set at 1% annually for 2015, however, in 2016 the government in charge lowered it to 0.6%, and then for 2017 to 0.34%.⁹⁸⁹ For 2018 interests on debts owed to the state was reduced to 0.13% annually.⁹⁹⁰ These rates may create

⁹⁸⁷ Prop. 2014/15:145 at 54 (this proposition also introducing the six-months rule and the increased role for FK in supporting parents deciding child supports).

⁹⁸⁸ See *id.* Interest rates are set yearly by the government, per SFB 19:47 para. 2. In research preparatory to the new rules researchers had predicted income to the state based on interest being charged at a rate decided yearly by the Bank of Sweden that was then (2013 level) 3% per year. See Ds 2014:27, *supra* note 464, at 104.

⁹⁸⁹ Commentated SFB (2019) at comments to SFB 19:47. California's interest rate of 10% is soon being reduced to zero to give child support debtors some relief, as presented earlier.

⁹⁹⁰ SFS 2017:1182.

less of an incentive to prioritize payment of outstanding arrearages than might have been expected when lawmakers discussed using them in that way.

Wage Attachment and Attachment of Property

Called *lönutmatning* in Swedish, the wage attachment enforcement tool can be considered the most effective today, but attaching personal property is also possible with the assistance of the enforcement agency. Individuals pay certain fees to use Kronofogden's services, however they are not oppressively high, in line with its mission as a state agency helping consumers with debt issues.⁹⁹¹ As noted above, fees do not apply to individuals enforcing child support debts. FK also can use the services of Kronofogden, and is obligated to turn cases over to that authority

Judgments on Unpaid Arrearages

Civil court judgments regarding arrearages are available, but not necessary in many cases. The first steps necessary for obtaining an order for an NCP to pay UB support, or (less effectively, because it cannot be enforced in and of itself) a declaratory judgment that a parent owes a child support duty were described above at Chapter 4.2.3.2 on securing child support via court orders in Sweden.⁹⁹²

Once a CP or young adult child has an enforceable court order or agreement and its terms are violated, it can be enforced directly with the enforcement agency, Kronofogden, as explained above. Even determination of month-by-month arrearages are part of the application for collection (unlike in California where a privately-enforcing payee would need a court to determine the arrearages unpaid). However sometimes there are reasons that a court appearance may be necessary.⁹⁹³

Deferral and Compromise of Arrearages

The next two mechanisms to be described (and those in the next subsection as well) function not as means of securing a payment but more as *means for preventing the child*

⁹⁹¹ Fees are described at <https://www.kronofogden.se/Avgifter.html>.

⁹⁹² FK 2016:1 Version 5, *supra* note 466, at 28, discusses how agency staff might wish to advise parents concerning the Swedish Judicial Procedure Code rules and necessary procedures.

⁹⁹³ For more information on collections options for CPs or children with unpaid child support orders see Kronofogden, *We Can Help*, <https://www.kronofogden.se/english.html> (calling itself the *The Swedish Enforcement Authority* and explaining its role in both collections and helping consumers in debt).

*support debtor's financial situation from becoming unreasonably compromised by child support obligation payments.*⁹⁹⁴ They are thus more child-support-collection-related than ways to effectuate successful collection.

Deferral (*anstånd*), an important tool for FK, currently is regulated at SFB 19:40–19:44. The law gives FK the power to decide to grant partial or total *deferral of a payor's contribution-payment obligation for a period of time up to one year*, upon the payor's application for such relief.⁹⁹⁵ The agency may exercise this power even if the debt has already been transferred to the collection agency for collections.⁹⁹⁶ An application for deferral is granted “to the extent necessary so that the debtor may retain what is needed for his own and the family's support,” as determined by application of rules regarding a self-support reserve under Swedish collections law.⁹⁹⁷ A payment deferral also may be granted if there “otherwise exists reason for it in consideration of the debtor's personal or economic conditions.”⁹⁹⁸

Lawmakers proposed this mechanism when the UStöd benefit was being introduced in 1995. The payor was not to pay a higher percentage of income than is usually required of him (per repayment obligation calculations) after the deferral period ends and the debtor (the “contributor”) has regained an ability to pay, *unless* he also owed some arrearages for a period of nonpayment when he did *not* have approval to take the pause in making payments.⁹⁹⁹ Lawmakers expressed their position on the importance of parents prioritizing support of their children financially, and also how strenuously child support debtors should be treated if they nonetheless have difficulty paying child support:¹⁰⁰⁰

The overall approach behind [these] suggestions for UStöd has been that *child support for their own children should be a highly-prioritized expense for parents*. That a support duty

⁹⁹⁴ See *infra* Chapters 6.1.3 and 7.5 (putting this relatively balanced WSM-related attitude observable in the rules and their application towards child support debtors in comparative perspective).

⁹⁹⁵ See SFB 19:40. This was intended for shorter periods of inability to re-pay UStöd. Lawmakers and commenters on the UStöd proposition had concerns for the mounting debt a debtor could face by being granted a *pause* instead of a full *forgiveness* via the remit rules. See Prop. 1995/96:208 at 53.

⁹⁹⁶ RÅ 2000 ref. 25.

⁹⁹⁷ SFB 19:41 para. 1 (referring to *Utsökningsbalk* 7:4–7.5).

⁹⁹⁸ SFB 19:41 para. 2.

⁹⁹⁹ Prop. 1995/96:208 at 81 (allowing that then monthly payments may be “greater than the repayment obligation according to the percentage method” and that “the parent liable for repayment may of course otherwise pay off the debt at a faster rate if he or she so desires”). Lawmakers noted that the standardization of the payments after a deferral—in other words that debtors would again simply pay an amount calculated under the usual percent-of-income rules and not a particular new payment plan—would be *relatively simple to administer*, one important aim. *Id.*

¹⁰⁰⁰ Prop. 1995/96:208 at 25 (emphasis added).

rests. . . on the parents of the child must demand that they *adapt their work efforts and their own expenses after it*. The government shares this perception. *In some cases, however, it can be difficult for a debtor for various reasons to pay back the stipulated repayment amount to the state. In such cases, the obligor parent should be able to get deferment or remission.*

Today new rules require an NCP owing debt to the Swedish state through the UStöd system to pay it off in periodic payments per SFB 19:43. If he applies *he is entitled per the statute to be granted an additional deferment for the amount of the monthly payment owed above his calculated ability to pay* (for current support plus part of the arrearage). He also is incentivized to pay on time what is expected of him by the same statutory provision.¹⁰⁰¹

Sweden's public child support rules also allow FK on the state's behalf to grant a remit (*eftergift*), meaning a *reduction or complete forgiveness of child support arrearages owed*. The debtor may apply for this remission, *or it may be granted on FK's own initiative*, in either case only if there exist special circumstances considering the debtor's personal and economic situation.¹⁰⁰² This tool is somewhat analogous to the California LCSAs' compromise of arrearages owed to the state, a program described in the previous subsection. It too only compromises the debts outstanding to *the state*, not to a child waiting for payment, and it too was meant to be applied *very restrictively*.¹⁰⁰³

FK is to forgive outstanding child support debt only if there is *reason to believe the debtor will not be able to pay in the foreseeable future*, before the debt is no longer collectible due to prescription, thus liquidity or cashflow problems of shorter duration will not be sufficient reason, but a debtor having a severe illness could be.¹⁰⁰⁴

A decision on remission *includes liabilities and interest*. Old debts are to be completely written off, but the debtor will not receive repayment of any amount already paid. Remission can also affect the debtor's re-payment obligation for future payments.¹⁰⁰⁵

Bankruptcy and Debt Restructuring

A severely indebted person in Sweden may, under certain conditions, be held totally or partially exempt from the obligation to pay his or her debts as currently due. To

¹⁰⁰¹ See SFB 19:43 para. 2. If these periodic payments are late, there is an acceleration rule by which the entire debt he owes the state will become immediately due and enforceable. See SFB 19:43 para. 3.

¹⁰⁰² SFB 19:45.

¹⁰⁰³ See Prop. 1995/96:208 at 54, 98. See also Commentated SFB (2019) at comments to SFB 19:45.

¹⁰⁰⁴ There is a five-year prescription period per Lag 1982:188, although the same law provides special rules if the debt has been granted deferment previously.

¹⁰⁰⁵ See Prop. 1995/96:208 at 54.

receive such relief he or she must apply for *personal bankruptcy with debt restructuring* (*skuldsanering*) at the collection agency, Kronofogden.¹⁰⁰⁶ An indebted NCP owing child support debts (among others) may go through this process. If creditors can agree that the debtor be allowed to repay debts under a particular plan and schedule, he may be granted such *skuldsanering*. Child support debts may become payable per the personal bankruptcy payment plan, although support the debtor is obligated to pay for coming months of support will not be affected (unless perhaps they were included in an agreement for the debtor to pay a lump-sum payment satisfying a longer period of child support obligation).

Kronofogden communicates its decision regarding debt restructuring for an NCP to FK, which reports back information on the debtor's UStöd-related debts, becoming one of the creditors in the debt reorganization.¹⁰⁰⁷ The included debts must be paid according to a payment plan for a period of time after which the remaining balances are forgiven and the former debtor is debt-free—of debts that were included. Child support debts owed *to the state* can be included in this form of bankruptcy protection, *but private UB debts to the CP cannot*. Thus if an NCP owes the CP instead of the state for past child support, the court order or agreement does *not* go into the *skuldsanering* and remains collectable (if the debtor has any ability to pay it) until it becomes uncollectable due to prescription, in other words the end of the statute of limitations for enforcing that month of child support debt.

When CPs Do Not Seek to Enforce UB or to Apply for UStöd

Swedish CPs may decline to enforce UB for a child due to a desire to avoid additional conflict with the NCP. Some may also prefer to support their children with only their own incomes because they value remaining independent financially from an unwilling or possibly truly unable payor co-parent. This is a wish respected in both jurisdictions studied, so long as the single parent easily can support the child to an acceptable living standard without the legally-expected contributions from the second parent. (In theory either jurisdiction could instead have prioritized the child's independent right to the support and not allowed a CP to represent the child and waive it.) Sweden's WSM and its policy on equality between men and women has strongly emphasized adults being financially independent as an important ideal. The Swedish welfare state also in practice allows more single parent households to

¹⁰⁰⁶ See *Skuldsaneringslagen* [The Swedish Debt Remediation Act] (2016:675) (effective November 1, 2016, replacing the older *Skuldsaneringslag* from 2006). Note that only restructuring, not complete forgiveness, is available in Swedish personal bankruptcy (unlike in the US where both types exist).

¹⁰⁰⁷ See FK 2001:2, *Vägledning: Återbetalning av underhållsstöd* [Guidance: Repayment of UStöd] (Version 14, decided 2019-05-24).

succeed with being financially independent from second parents who have moved away (if not from the state, at least while raising dependent children). Private child support contributions do not play as central a role for children's well-being as they do in California.

4.5. Responsibility for Attorney's Fees and Other Costs

4.5.1. In California

There is *no cost involved for California parents able to reach an informal agreement* on child support without paid expert help (and without assigning the case to the public IV-D system). An informal, unenforceable child support solution is disfavored by the legal and welfare system however because it puts the future enforceability of the child's support at risk, and thus the state at risk of having to support a child who has parents capable of doing so.¹⁰⁰⁸

Next most affordable—without assigning the case to an LCSA—is *reaching an agreement using the Guideline calculator and free Judicial Council forms and having it entered by the family court as a stipulated child support order or final judgment*. Without assistance beyond the civil courts' self-help resources online and at the Family Law Facilitator's Office, this option costs only court case filing fees to (at minimum) one parent, *unless one or both parents (due to very low income) qualify for a fee waiver*. Fee waivers are provided by law in California courts, to litigants needing to bring or respond to action, to preserve litigants' access-to-justice rights.¹⁰⁰⁹ The family courts thus *can* serve very-low-income litigants, just as the LCSAs do—but only if they do not use need-based

¹⁰⁰⁸ My American grandfather used to joke in his small-business setting, "In God we trust; all others pay cash." Many Californians do not view this as necessary with respect to their children's other parent, or they wish to avoid confrontation or contact. They therefore don't secure a child support order after parents separate. Many others do want an order, even if they trust the payor parent, *especially if the child will receive a sizable child support given the two parents' financial circumstances and relative parenting schedule*. The State of California clearly encourages the ideal of an order for *every* child with separately-living parents. Chapter 7.3, *infra*, compares Swedish and Californian legal cultures with respect to conflict resolution and enforcement of child support.

¹⁰⁰⁹ See CAL. GOVERNMENT CODE §§ 68630–68640. The filing fee to begin a child support case in the non-IV-D court is \$435 (3,781 SEK), so a waiver to ensure access to justice for low-income litigants is quite significant. See Judicial Branch of California, *Statenide Civil Fee Schedule Effective January 1, 2016; Current as of January 1, 2019*, available at <https://www.courts.ca.gov/7646.htm>. See also Judicial Branch of California, *Fee Waiver Options*, <https://www.courts.ca.gov/selfhelp-fee-waiver.htm>?

rdLocaleAttr=en (explaining that needs-based public assistance recipients—all those receiving "Medi-Cal, Food Stamps (CalFresh), Cal-Works, General Assistance, SSI, SSP, Tribal TANF, IHHS or CAPI"—are qualified for civil court fee waivers).

welfare benefits for the child. Conversely the LCSAs can serve non-welfare families, but instead middle- and upper-income parents usually use the private courts.

Costs and Typical In-Court Resolution of Non-IV-D Cases

Additional fees are faced by parents obtaining a child support court order after a hearing before a judge, even without the involvement of one or two lawyers, due to a *hearing fee* for those without fee waivers. Unsurprisingly, the most expensive way to obtain a California child support order is to pursue any of the above options with the *involvement of one or two lawyers, private mediators, or private (retired, arbitrating) judges*, or other paid professionals such as *forensic accountants* hired to determine one or both parents' income available for child support purposes.

The more disagreement and conflict between the parent parties, the more these hourly professionals will cost. Because there is no right to state-appointed counsel in child support matters—except in IV-D welfare reimbursement cases if paternity determination is involved as discussed below—the *attorney fees and costs are entirely the responsibility of the parents*. The extremely high cost of proceeding in court with counsel is unfortunate. Paid professionals' expertise likely could improve the quality of child support and other family law orders in very many cases if it were more available to parents in need of such orders.

*Over 75% of the time California child support litigants are self-represented.*¹⁰¹⁰ They usually in the private system are parties to a family law proceeding determining child support, which is usually a divorce or parentage case. The court will simultaneously determine child custody, allocation of attorney's fees, and possibly property division and other issues, for the parties and their mutual children.

No publicly-provided attorney representation of a parent is available in California private family law cases on any issue, not even for determinations of paternity. The Family Law Facilitators and other self-help supports are the legislature's attempt to meet parents' need for legal guidance in these cases. Because only the other parent

¹⁰¹⁰ See *Guideline Review 2017* at 266 (“In 2017, neither parent had representation in 77 percent of the cases, down three percentage points from 2011, while both had representation in 10 percent of the cases, slightly down from 12 percent in 2011. An opposite trend is observed when looking at cases in which only one parent had an attorney. Obligees [payees] only were represented in 8 percent of cases in the 2017 review, up from 6 percent in 2011, and obligors [payors] only were represented in 5 percent of the cases in the 2017 review, up from 3 percent in 2011.”)

is litigating against each parent, not the state, and most are unrepresented, the process is legally considered to meet due process requirements.¹⁰¹¹

No Legal Expense Insurance

To Swedish readers it will be important to note that there are no home insurance plans providing legal help coverage to those insured in the United States, although the idea has been promoted in the comparative law literature, given such insurance's popularity in Europe and some earlier popularity in the US.¹⁰¹²

Allocation of Fee Responsibility Between the Parties

Per the “American Rule,” each party generally will bear his or her own costs of civil litigation rather than having them “shifted” to the party that does not prevail. A family law court in California may however order one party to cover some portion of the others’ fees and costs, in light of “the extent to which the conduct of each party or attorney *furtheres or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation* between the parties and attorneys.”¹⁰¹³ A court can and often does order one party to contribute to the “reasonably necessary” legal costs of the other in a divorce or separation-related case, if the requesting party can demonstrate *need* and that the other party has a *greater ability to pay*.¹⁰¹⁴

Absent an income disparity between the partners, however, generally each parent will need to be able to afford an hourly fee (of several hundred US dollars per hour,

¹⁰¹¹ Compare public cases, where the state’s LCSA attorneys may appear in court to secure a child support for the child, but do not represent the CP or the payor parent.

¹⁰¹² See, e.g., Francis Regan, *Whatever happened to: Legal Expense Insurance?*, 26 ALTERNATIVE LAW JOURNAL 293 (2001).

¹⁰¹³ CAL. FAM. CODE § 271 (providing that “[a]n award of attorney’s fees and costs pursuant to this section is in the nature of a sanction.”) (emphasis added) and CAL. CODE OF CIVIL PROCEDURE 391 (defining self-represented “vexatious litigants” and allowing courts to require them to provide security to parties they sue, under penalty of case dismissal).

¹⁰¹⁴ CAL. FAM. CODE § 2030(a)(1) (“In a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party’s rights by ordering, if necessary based on the income and needs assessments, one party, except a governmental entity, to pay to the other party, or to the other party’s attorney, whatever amount is reasonably necessary for attorney’s fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.”).

set by the private market) if he or she wishes to engage a lawyer to help with resolving the child support issue.

It may seem unimportant to have such counsel when child support is calculated by the Guideline formula, yet for some parents with incomes complicated to calculate (or find), especially large incomes, hiring professional help can be the only way to assure that correct input has been made into the mandatory Guideline calculation tool, and the best arguments made for the judge to order additional add-ons, deviate from the Guideline support amount, or otherwise resolve child support related disputes on the child's behalf.

When (and only when) a party is self-represented in a private case, he or she may request help from a court-provided Family Law Facilitator's office, discussed above. The help is at no cost, however these services do not extend to help during court appearances, financial discovery, or to taking on formal legal representation of a parent.¹⁰¹⁵

For very-low-income litigants, private legal services organizations also may be available to assist them with self-representation, or to make court appearances as their legal representatives in complex legal situations.¹⁰¹⁶ Very-low-income litigants may be advised to seek child support orders *if the NCP has a good income from employment*, but deliberately not to seek child support orders (if possible) if the NCP has a less-reliable ability to pay.¹⁰¹⁷

Thus in California the parties' financial, social and intellectual resources influence which procedure they choose to establish initial child support orders in non-IV-D cases. The wealthy quite routinely have full-service private legal counsel, middle-income parties often have some combination of paid legal counsel and self-representation, and low-income parties most often remain self-represented, sometimes with no-cost, limited assistance via the Family Law Facilitators Office or self-help centers and websites.¹⁰¹⁸ Many of the very low-income families seek public

¹⁰¹⁵ See Judicial Branch of California, *Child Support* (2019), <https://www.courts.ca.gov/selfhelp-support.htm> (self-help resources webpage) (describing services available) and discussion of Family Law Facilitator functions within this chapter, *supra*.

¹⁰¹⁶ The Harriet Buhai Center for Family Law in Los Angeles (hbcfl.org), where the author served as an attorney volunteer for several years, is an example of one such organization.

¹⁰¹⁷ Having child support orders in place can cause interference with month-to-month CalWORKs eligibility, especially in overburdened counties where the LCSA and the benefits offices' computerized tracking month to month of payments definitely can be criticized. Children whose CPs do not receive private child support or need-based welfare payments in a given month can suffer serious financial consequences due simply to the mechanisms of enforcement administration, even if the legal rules as adopted by the legislature do not *per se* cause the problem.

¹⁰¹⁸ See Judicial Branch of California, *Child Support* (2019), <https://www.courts.ca.gov/selfhelp-support.htm> (self-help resources webpage).

assistance payments from the state, thus triggering the requirements that their child support orders are established and enforced through the IV-D system.

Those who have not received public assistance from the welfare system—also perhaps having very low income but not qualifying for CalWORKS, for example due to their immigration status in California—often apply to have their child support court orders established by the private-law family courts. *The judge or commissioner serving unrepresented litigants plays a relatively active role to offer them some limited guidance during court hearings*, asking them each direct questions about their incomes, their parenting schedule and their children’s needs.

Nonetheless non-IV-D unrepresented litigants often struggle to know what evidence they must present to the court and what remedies may be available to them. A significant number in California require court-provided language translation. If the public system worked efficiently and well, it would seem a sensible alternative for many of the litigants now in the private system, at least for their child support issues (and it may be that alternative, for many). Costs in a non-IV-D case are less of a barrier—for low-income litigants—than difficulties understanding the procedures, substantive law rules and expectations of the court and child support system, because *the possibility of hiring a lawyer is not reasonably within the financial ability of low-income litigants*. Hiring an attorney to secure a modest child support amount also would not be cost-effective in any case (as is the main barrier to court for child support issues in Sweden, discussed below).

Positive Features of Non-IV-D Resolutions in Court

One other manner of *informally* resolving child support and other family law issues at the trial court level *with counsel* has been noted disapprovingly by at least one California appellate court:¹⁰¹⁹

This case appears to have followed the all-too-common pattern in family law of lawyers *disappearing into a judge’s chamber and emerging with the judge’s order, independent of any hearing or settlement*. Yet of all matters, *child support orders* and particularly given the aura of occult wizardry surrounding the algebraic formula set forth in section 4055 *must be seen by each parent as the result of a fair and reasonable process, not an arbitrary decision done in a corner*.

In *Hall* the appeals court reversed the child support order of the trial court because the Guideline rules were clearly not fulfilled by the order that emerged, not because

¹⁰¹⁹ Marriage of Hall, 81 Cal. App. 4th 313, 319 (2000).

of their location. Chambers discussions are in any case not a common way for child support orders to be made, because parent confidence in the process is valued.

More typically after an oral hearing *the judicial officer fills out the Judicial Council child support order forms by hand* and supports them with an attached computer printout showing what income amounts and other details were used as the basis for the order. Parents with or without counsel get both *access to presenting their evidence and arguments to the judge*, the *aid of the child support uniform Guideline* and its consideration of various factors in calculating a support amount, and the *written guidance* mandated by Guideline law (the details of the order, how to modify it if necessary in the future, how they must register their employment and other information with the child support system within 10 days, and so forth).

Costs and Typical In-Court Resolution of IV-D Cases

To use the public IV-D system, in contrast and as has been mentioned above, a CP payee parent must pay the local child support agency (her county's LCSA) a very small, federally-mandated fee of \$25 (217 SEK).¹⁰²⁰ In any county-initiated child support proceeding, on the other hand, *the court may order the payor parent to pay the county's reasonable attorney fees and costs if this is affordable for that parent*, although generally it will not be deemed affordable.¹⁰²¹ For the payee and child seeking the order however, there is no risk of significant fees.

The payee *must herself* pursue child custody and visitation orders, if needed, in a IV-D case. To do so she is added as a party once the LCSA has started the case and established an initial child support order. This is due to the public-private divide nature of child support in California: LCSA attorneys represent the state (the people of California) and must not be required to participate in the custody order portions of a case they have filed, as was described earlier in the legal description of the LCSAs' role.

In a California Family Code § 17402 reimbursement action (the typical IV-D case, where the state is seeking welfare benefits reimbursement), *a payor parent does not have any constitutional due-process right to appointed, public legal counsel, unless the case includes a paternity determination*.¹⁰²² The *state interest against taxpayer-funded counsel* outweighs the parent's private interest, concluded an appeals court, because *having to provide such counsel to payors in every reimbursement case would seriously undermine the main purpose of the*

¹⁰²⁰ Office of Child Support Enforcement, U.S. Dept. of Health and Human Services, *Implementation of the \$25 Annual Fee in the Deficit Reduction Act of 2005*: DCL-06-16 (2006).

¹⁰²¹ See CAL. FAM. CODE § 4002(c).

¹⁰²² See *Clark v. Super. Ct. (County of Orange)*, 62 Cal. App. 4th 576, 591–592 (1998).

Title IV-D program. The child support program aims to *save taxpayer funds* by seeking these public assistance reimbursements from duty-owing parents whose child or children have received public assistance funds.¹⁰²³

In contrast, as the California Supreme Court established in 1979, payors in county reimbursement actions *in which establishing paternity also is at issue* do have a due-process right to state-provided counsel.¹⁰²⁴

4.5.2. *In Sweden*

In Sweden's private cases that are settled privately between the parents, no fees are incurred. Similarly applying for UStöd and getting support from FK (and even from Kronofogden) are without costs to the parent or child. In the few private cases that go to court, however, fees can be significant for both sides, especially relative to the child support amounts available as an outcome.

In Private (UB) Cases

The largest cost a parent can incur in enforcing UB child support is attorneys' fees charged for time spent working on the case and appearing in court, as in California. Fees are so significant, in relation to how much more UB a CP or child can expect to be awarded, that *litigation of UB child support matters has been close to completely eliminated* as a reasonable way to reach agreement or otherwise get a resolution to a child support issue.¹⁰²⁵

¹⁰²³ See *id.* at 586–587.

¹⁰²⁴ *Salas v. Cortez*, 24 Cal. 3d 22 (1979) (holding by a majority opinion in a consolidated set of similar cases that indigent defendants in paternity proceedings *prosecuted by the state* constitutionally are entitled to appointed counsel). Establishing a parent-child relationship with a fact-finding process “seriously impinged” by the state lawyers proceeding against an unrepresented defendant does not satisfy considerations of “fairness and public policy.” *Id.* (followed by a detailed dissenting opinion asking, *inter alia*, who would pay for these counsel the Court was finding necessary, and arguing due process did not require them).

¹⁰²⁵ See SCHIRATZKI (2005), *supra* note 466, at 30–40 (describing the limiting circumstances preventing most UB disputes from being litigated, including the case law limiting availability of legal aid; legal costs insurance's exclusions of most UB matters; capped UB amounts in practice; and the risks of attorney fees and fee-shifting rules in relation to the highest UB amounts that can be expected).

Allocation of Fees Between the Parties and Legal Aid Possibilities

In conjunction with announcing a decision on the merits of a litigated UB case, the Swedish civil law court typically will order that *each party bears a portion of both parties' attorney fees and costs in relation to whether each party is considered to have prevailed or not prevailed, unless special circumstances call for a different allocation.*¹⁰²⁶

The child with a right to support, being the party (although most often represented by a CP), is considered the individual needing funds to litigate the support issue.¹⁰²⁷ The CP, on the child's behalf, will find that *no legal aid or legal costs insurance coverage typically is available for litigating a UB issue*, except in the rare cases where the support amount likely to be received is *atypically high*, specifically involving a living standard addition from parents with a higher standard of living than most, and the case is particularly complex thus an attorney is necessary.¹⁰²⁸

Legal assistance regulated by the Swedish Law on Legal Assistance (*Rättshjälpslagen*) can provide attorney assistance to lower-incomes civil litigants, however its § 11 limits the support's availability *in UB cases* to those with *special circumstances*.¹⁰²⁹ The Swedish Supreme Court in 2003 clarified that not simply a UB amount above the UStöd level *or even a living standard addition being likely* will trigger this help's availability, but special needs of the child or especially complicated-to-determine financial circumstances could allow a child to claim the help in order to bring a UB action.

Legal costs insurance is, when available, subject to a deductible payment, which in itself can exceed the likely financial benefit to the child in bringing a UB action—the amount above the full UStöd amount that a child could be granted in UB.¹⁰³⁰ Attorneys are not required to represent parent parties in court, however in practice these barriers have normalized application for UStöd when an NCP does not pay UB in full and on time, or will not agree to a UB (and conversely the UStöd amount being a typical result of agreements to pay UB).

¹⁰²⁶ FB 7:19 para. 2. See NJA 1989 p. 700 at 704 (“The responsibility for the costs of the litigation in court shall in such a case be allocated, unless special reasons call for something else, so that [the allocation] broadly reflects to what extent the parties have won and lost the case itself.”).

¹⁰²⁷ See generally Prop. 1984/85:163, *Om barns ansvar för rättegångskostnader i mål om underhåll* [On children's responsibility for court costs in cases concerning support].

¹⁰²⁸ See SINGER (2019), *supra* note 57, at 222–223 (problematizing the current effects UStöd amounts have on the likelihood that a party can justifiably bring a court action for UB and concluding that only in cases where a *standardtillägg* is likely can bringing an action be beneficial for the child).

¹⁰²⁹ Lawmakers took the availability of the public child support advance, thus most children's needs already being sufficiently provided for, into account in proposing this limitation. See Prop. 1996/97:9, *Ny rättshjälpslag* [New law on legal aid] at 36.

¹⁰³⁰ See SINGER (2019), *supra* note 57, at 223.

Costs in UStöd Cases

In Swedish public cases, a CP on a child's behalf who has applied for UStöd will not pay anything to FK to apply or to seek their assistance with child support questions. If an NCP makes late payments or litigation between the agency and the CP, child, or the NCP arises, however, some costs may be incurred.

CPs most often incur no costs to begin to receive UStöd, and it arrives relatively quickly, although it can no longer begin immediately, in the first month after a separation, but will be paid for the following month and forward. There is in this sense a "cost" in missed support for that month if the CP does not also receive a UB from the other parent for that month (which seems unlikely, otherwise UStöd would not need to be sought).

5. Child Support Design Choices and Legislative Intent

5.1. Introduction

This study aims to analyze and compare the two just-described child support legal regulations from a welfare state perspective, to discover how and why they are similar and different. This chapter finishes describing the laws studied and provides a bridge to the comparative chapters. It answers the third research question: What child support legal system *design elements* and *interest trade-offs* exist and were chosen by these two jurisdictions? Included are lawmakers' *stated intentions* for these laws. Some of laws' legislative intents were touched upon in Chapters 3 and 4. Here, the main intentions are presented together and discussed in relation to *academic theory* and in relation to *the diversity of child support* regulations adopted internationally.

5.2. Child Support Design Elements and Interest Trade-Offs

Aims and principles for child support law have been identified and evaluated by legal scholarship—and also by groups of legal scholars meeting and collaborating for the purpose of publishing model child support laws.¹⁰³¹ Scholarship has had significant influence on the laws studied by developing the theory upon which they were based. Researchers have compared the different international child support solutions¹⁰³²

¹⁰³¹ Such academic efforts have what might be called *persuasive legitimacy*, see, e.g., Katharina Boele-Woelki, *The principles of European family law: its aims and prospects*, 1 UTRECHT LAW REVIEW 160, 163 (2005) (discussing a European effort to state model law-like principles for *family law* which does not to date include child support law). This Commission on European Family Law (CEFL) provides guidance on spousal, but not child, support. Separately it provides guidance on parental responsibility including rules governing responsibility over a child's property. See Katharina Boele-Woelki et al., *Principles of European Family Law Regarding Divorce and Maintenance Between Former Spouses*, EUROPEAN FAMILY LAW SERIES NO. 7 (2004) and Boele-Woelki et al. (2007), *supra* note 91. See also Katharina Boele-Woelki, *The Working Method of the Commission on European Family Law*, in EUROPEAN FAMILY LAW IN ACTION III: COMMON CORE AND BETTER LAW IN EUROPEAN FAMILY LAW 15 (Katharina Boele-Woelki ed., 2005).

¹⁰³² See, e.g., Skinner & Davidson (2009), *supra* note 18 (social policy research describing models and principles for child support law and policy from countries including most of the Nordic and Anglo-American countries) and WIKLEY (2006), *supra* note 52, at 27 (discussing international norms and

and proposed best-practice principles and “model laws” for lawmakers’ consideration. One prominent US model child support law project is described next.

5.2.1.1. *American model law: ALI Principles of Child Support*

Principle and pragmatism must be combined in the creation of a child support system.¹⁰³³ In the United States, the American Law Institute (ALI) Principles on the topic of child support were developed with exactly that balance in focus. The Principles propose to US states best-practice principles and model rules for child support regulation.¹⁰³⁴ The Principles are considered by US states evaluating their approaches to child support regulation, as are other states’ existing solutions. A brief discussion of the ALI Principles for child support law is thus helpful for *describing the interests weighed in regulating child support in any jurisdiction*, and for clarifying how legal theory to balance those interests has developed in American, liberal WSM jurisdictions.¹⁰³⁵

Californian legal scholar Grace Ganz Blumberg was chair of the expert group drafting the ALI child support principles. Blumberg credited as influential to the drafting a 1992 research article by David Betson et al. on the trade-offs implicit in child-support guideline creation from an economic perspective, writing that it “not only persuaded [the ALI group] to attempt a reformulation, but also showed [it] the way.”¹⁰³⁶

Betson et al. had recommended that lawmakers “address *explicitly* the trade-offs” being made in their child support law decision-making. These trade-offs include (1) *increasing child welfare* via higher child supports yet simultaneously *decreasing CPs’*

national objectives for allocating and quantifying child support liabilities). There are a number of notable pioneers of earlier child support research, not all of whom are cited in this thesis.

¹⁰³³ WIKLEY (2006), *supra* note 52, at 27 (discussing models for allocating and quantifying child support liabilities, international norms, and national objectives).

¹⁰³⁴ ALI, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION; ANALYSIS AND RECOMMENDATIONS (2002) (addressing child support at Chapter 3). Tentative Draft No. 3, Part II, Chapter 3 (April 8, 1998), was approved by the ALI membership in May 1998 and published in its final version in 2002.

¹⁰³⁵ Note that Sweden’s discourses are more similar than different than this US discourses when the need to balance various interests in child support regulation. *See, e.g.*, SOU 1995:26 at 247 (interests must be balanced because no one method for setting child support can satisfy all interests equally). *See also id.* at 241 et seq. generally (discussing choices made by Sweden).

¹⁰³⁶ Blumberg (1999), *supra* note 308, at 39 (citing David Betson et al., *Trade-Offs Implicit in Child-Support Guidelines*, 11 JOURNAL OF POLICY ANALYSIS & MANAGEMENT 1 (1992)). Betson’s work also significantly affected development of the marginal-expenditure-based state guidelines to which the ALI was responding. The ALI group was also influenced by an “enhanced marginal expenditure model” guideline variant developed for Massachusetts and later adopted in Washington, D.C.

incentives to work; (2) increasing the negative effects of payors' *perceived injustice* with higher supports yet also increasing children's welfare; and (3) perhaps inevitably increasing child *as well as CP welfare* with child support amounts as calculated in the US today, versus setting a child support level *covering only the payor's share of the children's direct costs* defined in a more limited way than most current marginal expenditure estimates.

Payors (as a group) and some policymakers are wary of child support potentially serving some of the function that spousal support used to serve, and in some cases continues to serve, *e.g.* making up for economically dependent spouses' and particularly *caregiver mothers' lower incomes in a given case by partial redistribution of earner fathers' incomes after divorce* (temporarily or longer-term). Policymakers can address this concern by keeping child support levels low and tightly related to direct expenses of a child, defined conservatively, however doing so comes into conflict with the fact that *a lower child support level also reduces children's economic well-being* in their residential household¹⁰³⁷ *and otherwise can be unequitable to the CP*.¹⁰³⁸

Betson et al. concluded that two child support models used by US states, the Income Shares and the Melson Formula models, may better *incentivize workforce participation* by the CP compared to other models,¹⁰³⁹ yet that the additional income the CP may then earn does not *increase child well-being* as much as does the alternative Cassetty (Equal Living Standards) Model. The Cassetty model, by redistributing more of the primary wage earner's wages back to the household where the child lives, *best preserves children's pre-divorce economic levels via child support*, though it also limits the custodial household's (the children's) living standard by not permitting child support to provide a higher standard for the CP and children than for the payor NCP.¹⁰⁴⁰

¹⁰³⁷ Betson et al. (1992), *supra* note 1036, at 19 (emphasis added).

¹⁰³⁸ It can be unjust because it largely ignores the CP's increased costs beyond the child's direct costs, in other words many shared household costs that increase because of the child's presence plus her own reduction in earnings likely to follow from being a single parent having primary physical responsibility for a child.

¹⁰³⁹ High adult workforce participation is a desired outcome in both California and Sweden, although to a less unequivocal extent in California with respect to primary caregivers of young children. Parents' workforce participation is supported by both WSMs and assumed or encouraged by both child support regulations, yet still challenged in both societies by men's lesser and women's greater responsibility for children and other caregiving. See Chapter 7.4.1, on the jurisdictions' gender policies' effects causing the child support laws to differ.

¹⁰⁴⁰ Betson et al. (1992), *supra* note 1036, at 10 and 18. Note that there is an explicit assumption made in this article, and in many of the formulae it compares, that neither parent re-partner, and also that the child lives full-time with only one of them. These are deviations from realities that are addressed

Ultimately these economics and poverty scholars (who influenced the legal scholars behind ALI's child support treatment) examined which child support formulas among those just described actually had been adopted in various US states. They found that the more “popular” formulas across US jurisdictions were those that result in children *more often* suffering *more economic harm* from the divorce of their parents compared to alternative, less popular, formulas, leading them to conclude as follows:¹⁰⁴¹

It is striking that the formulae actually in use are so different from those based on notions of distributive justice. While the very existence of legally mandated child-support payments demonstrates *our society's belief that children have a right to their parents' economic support, this right is tempered in current formulae, which give the wage earner the primary claim on his or her income*. Unless this is the result of a *consciously held ethical principle*, or of a *pragmatic concern* about seriously harmful effects of work disincentivation (a worry we find may be unwarranted), children stand to gain if policy makers would address *explicitly* the trade-off implicit in child-support guidelines. . . . *To privilege the claim of the wage earner on earnings, we [via current laws] weaken children's claim on their parents' aid, and put the provider of income over the provider of care.*

Benson et al. made references in this 1992 publication to “the” wage earner and provider of income, and to “the” provider of care. These may have been somewhat more in accord with role specialization actually in practice in the US then, compared to now, although—as was established at Chapters 1 and 2 above—child support and custody issues among separately-living parents remain highly gendered issues, and that must be given attention in analyzing the laws. Now, in any event, a large majority of US (and Swedish) mothers, both mothers with partners and single mothers, are income earners,¹⁰⁴² while increasing numbers of single fathers are primary parents to their children nearly or fully 50% of the time.

in the California guideline, and to a lesser extent in Sweden, as discussed at Chapter 3.3 on ordinary child supports in each system.

¹⁰⁴¹ Betson et al. (1992), *supra* note 1036, at 19 (emphasis added).

¹⁰⁴² Statistics reveal both a gender difference in providing income to American families with children, but also a *significant majority of mothers in the workforce*, including married mothers with higher-income spouses presumably with some ability to choose at-home motherhood, which is culturally not strongly discouraged in the US (compared to Sweden). *See, e.g.*, U.S. Bureau of Labor Statistics, *Employment Characteristics of Families 2018* (News Release April 18, 2019) (“At least one parent was employed in 90.8 percent of families with children.... Among married-couple families with children, 97.4 percent had at least one employed parent, and 63.0 percent had both parents employed. Among families maintained by fathers, 84.2 percent of fathers were employed in 2018, a greater share than the 74.1 percent of employed mothers in families maintained by mothers.”)

The references also reflect a still-prevalent choice, indeed the most prevalent choice (or assumption) within scholarship and lawmaking internationally, as to how to categorize the parents involved in child support cases. References assuming one earner and one carer, for comparative family law purposes such as the present study, may evidence at least an ambivalence about a dual-earner ideal model of the family, for example, compared to a male-breadwinner model. On the other hand these can be attempts to advocate for women and children's needs as they exist in today's jurisdictions, and from a difference feminist perspective. *In both directions academic characterizations of the interests in need of balancing with child support law can have implications for how mothers and fathers are characterized during child support law enactment and application.* For example, when distributive justice among separated parents economically related in traditional female-caretaker/male earner co-parenting relationships are in focus, large child support transfers may be favored to support mothers' primary caretaking role, and fathers' parenting time may be limited or at least its increase not encouraged, in part to justify the large transfers to CP households.¹⁰⁴³

ALI's Method for Balancing the Interests

It was with the above-described Benson et al. conclusions in mind that the ALI group of scholars worked to propose a best-practice method for setting child supports via the guideline formulas mandated by US federal law.¹⁰⁴⁴ They sought to establish a *method* for lawmakers to use in designing child support formulas (guidelines) determining appropriate child support amounts—a method that should remain constant over the years, even as the numerical data (the estimates of marginal

¹⁰⁴³ See *infra* Chapter 7.4 for comparative discussion of differences between the child support laws studied in relation to their jurisdictions' gender and family policies. For extensive analysis of distributive justice theories and child support, see Marsha Garrison, *Autonomy or Community? An Evaluation of Two Models of Parental Obligation*, 86 CALIFORNIA LAW REVIEW 41, 44-45 (1998).

¹⁰⁴⁴ See American Law Institute, *Principles of the Law of Family Dissolution: Analysis and Recommendations*, Chapter 1, Topic 1: Summary Overview of the Remaining Chapters (an excerpt from the then-upcoming 2001 final manuscript), 8 DUKE JOURNAL OF GENDER LAW & POLICY 1, 14 (2001) (cautioning simultaneously against belief that "scientific answers" could be achieved to the question of the right, or just, amount of child support: "On the contrary, instead of answering this question, child support guidelines simply pose it anew in the generalized context of a uniform guideline rather than in the individualized context of a discretionary award. Additionally, the factors that underlay inadequate or unjust discretionary child support awards could not be expected to vanish in the face of formulaic guidelines; those factors might instead be expected to influence rulemakers who construct the guidelines.") (emphasis added).

child expenditure and household equivalence scales often used in states' guidelines, and used too by the ALI model law) change over time.¹⁰⁴⁵

ALI ultimately proposed (for the creation of a US state's guideline) a "process of balancing interests." Lawmakers should first (1) "*identify[] the interests of the child, the residential parent, the nonresidential parent, and the state,*" then (2) *establish the "cognizable" interests*, meaning those they decide will be taken into account with the child support guidelines they are drafting. They must also (3) *specify the "social and cultural values that should be reflected or expressed in the child support rules."* Finally, to create a best-practice guideline formula lawmakers should (4) "*again balance and harmonize the interests of the parties*" for the various cases where the guideline formula will "respond[] to the specific financial circumstances of the parents."

Lawmakers must be sure to adjust the child support amounts that result from their formula in each kind of typical case, so that the principles and interests upon which the child support law is based (the "cognizable interests") are realized as intended.¹⁰⁴⁶ In other words the guideline should *adjust* how child support amounts are calculated for differing income-level, parenting-time and other situations *to align with the lawmakers' intentions for the child support law*. A guideline should tailor the child support amounts for different situations to be an appropriate balance of the parties' interests, like judges may have done using their pre-guideline discretion, but *in a more predictable, consistent way set into the mathematical guideline formula*, was the ALI group's view. This is a view somewhat focused on private-law concerns but also extends to balancing the state's interests and duties with respect to child support.

As the summarized ALI analysis remarks:¹⁰⁴⁷

Besides yielding a set of operative goals and principled child support guidelines, the process of balancing interests has another important virtue. In the highly charged and often polarized arena of child support, *balancing tends to be consensus-building*, for it identifies and takes into account the interests of *all* parties. No single interest is fully vindicated, but no interest is ignored or slighted either. Identifying and accounting for all interests is *a useful antidote to the polarization that results when the interests of one party, whether the child, the state, the residential parent, or the support obligor, are treated as preeminent or specially privileged*.

Another way to categorize the interests balanced or theory behind child support law in many legal jurisdictions is that they tend to include a "*child well-being component*" (a

¹⁰⁴⁵ *Id.* This is not only an American concept. Sweden and California both have a process for updating costs of children data while the basic law about *how to use that data to set appropriate support amounts* stays constant, as Chapter 3, *supra*, described.

¹⁰⁴⁶ *Id.* at 15 (emphasis added).

¹⁰⁴⁷ *Id.* (emphasis added).

component of child support aiming to protect the child beneficiary of child support); a “*dual-obligation component*” (a separate component or reason for having the law, aiming to enforce a social consensus that both parents should contribute to the support of a child, even if the child lives primarily or exclusively with one); and a “*gross disparity component*” (aiming to limit any gap in living standard between the child’s household(s) and the parents’ households);¹⁰⁴⁸ all balanced against an idea that the *support obligor should retain some priority in the use of his or her own income*, not becoming impoverished or obliged to pay so much child support that the child’s well-being now exceeds the obligor’s.¹⁰⁴⁹

Most important for this comparative study is the theoretical discussion on properly and *explicitly* balancing interests with child support law. The ALI Principles’ own proposed compromise or balance between these interests is also instructive regarding the US family law and child support ideals that are the closets context for the Californian law studied.

ALI’s child support principles were reduced to a concrete, specific mathematical ALI model child support formula.¹⁰⁵⁰ The ALI formula is intended to provide children with “a standard of living *not grossly inferior to that of either parent.*”¹⁰⁵¹ That means it requires more transfer of income from the NCP to the CP *in cases where the CP’s income is so much lower than the NCP’s that the usual marginal expenditure share of the NCP’s income does not bring up the living standard in the CP household enough to prevent a gross disparity.* ALI’s model-law formula, called an “enhanced” continuity-of-marginal-expenditure-by-income-shares model formula by its drafters,¹⁰⁵² starts calculation of

¹⁰⁴⁸ Ellman & Ellman (2008), *supra* note 422, at 129. Ira Ellman was also a member of the ALI child support group.

¹⁰⁴⁹ *Id.* at 145–147 (terming this the “Earner’s Priority Principle.”) Note that this component is the one Betson et al. concluded had been unduly prioritized in many US jurisdictions’ child support laws, resulting in lower child support amounts. The principle is recognized with Swedish regulations of the child support duty as well; *see e.g.* Prop. 1978/79:12 at 83 (discussing how the duty to pay child support varies in accordance with ability to pay, meaning both that poorer payors *should not* be required to pay from the income they need to retain for their own support and also that wealthier payors *should* contribute to a higher living standard for the child).

¹⁰⁵⁰ *See* ALI, *Principles of the Law of Family Dissolution* § 3.04 (2002) (reproduced *infra* as Appendix 4). This section lists all the interests ALI identified and how they should be balanced.

¹⁰⁵¹ *Id.*

¹⁰⁵² *See* Blumberg (1999), *supra* note 308, at 98 and 100 (defining in an appendix the terms income shares and income sharing, among other terms, and distinguishing the ALI formula from others). “The ALI formula, while requiring the same few basic facts as the majority Income Shares formula, uses them in a manner that is more responsive to the economic situation of the particular family” via use of a *base percentage* and a *supplemental percentage* that allows the CP household a minimal standard of living, from NCP income if necessary, in order to benefit the child. *Id.*

a child support for one child with the usual marginal expenditures on the child (expressed as a percentage of the payor's income, so for example 22%).¹⁰⁵³ It reduces this by 10%, assuming the NCP would spend 10% of this amount directly on the child during a "typical" amount of visitation.¹⁰⁵⁴ To this 20% base it also adds an additional amount to child support, a "supplement," for example 14% more of the NCP's income in the case of one child. *The supplement will generally enhance the marginal expenditure base child support obligation in its full amount if the CP has substantially lower income,*¹⁰⁵⁵ *and in some amount so long as the CP has less income than the NCP* (which is the statistically typical situation). However *no supplement will be payable if the CP has income equal to that of the NCP*, before the child support transfer. In equal-income cases the marginal expenditure percentage of income from the NCP is considered the correct amount for him to pay, *because both parents will have the same base and the NCP's share of just the marginal child costs will be transferred to the CP household.*¹⁰⁵⁶ In cases where the CP's income is *greater* than the NCP's the ALI formula *reduces the marginal expenditure*

¹⁰⁵³ This description is informed by Grace Blumberg's UCLA teaching materials for the course Family Law 317, supplied to me to aid this project, in addition to Chapter 3 of the Principles.

¹⁰⁵⁴ The ALI model is thus different from and *reveals a child support formula design choice that California has made*, namely to continuously adjust child support as a factor of NCP custodial time.

¹⁰⁵⁵ This means that in cases where an NCP can afford it and CP income is below the level which can afford basic adequacy for her household, the child support will be at its maximum, 34% of the NCP's net income, if there is one child to support, however this is deemed to include a fair contribution to the CP's costs for childcare necessary for work. From a Swedish perspective it is surprising that the NCP will be required by law to supplement the living standard of the CP household, above the amount he would have paid for the child's needs (measured as marginal expenditure), in order that the CP may avoid receiving any state welfare support in this circumstance. The prioritization of private support before state support, also the public policy in Sweden, but *to this extent* in the US—follows directly from its liberal-WSM ideals. Economic independence after separation, also a shared principle in the family laws of the US and Sweden, comes in second in the US and first in Sweden. Contributing yet another view, "equal living standard model" proponents would argue that because both parents and the child shared one standard of living pre-separation (in theory, but usually), even the ALI formula leaves the NCP with a higher standard of living and the CP and child with a lower one under common fact scenarios. *ALI's position was that its formula strikes the best balance give the various interests involved, including the state's interests in not needing to step in with support, and also in assuring good standards for children (primarily financed by their parents).*

¹⁰⁵⁶ In a both parents earning equally but one parent doing all or the large majority of the caregiving scenario, this is the result. If both were earning and caring equally, there would be no child support, although the family would have greater expenses than a family living in one household, so all would experience some living standard reduction in the absence of state supports or other income increases.

percentage, again in order to achieve better balances of all interests concerned, as the child support Principles describe them.¹⁰⁵⁷

Orienting the two systems studied in terms of the ALI model, California's mandatory Guideline child support formula *and* Swedish child support law's components (including statutory provisions and legislative intents) both reflect each of these ALI-identified components to some degree.¹⁰⁵⁸ Sweden's model for setting child support amounts emphasizes fewer of these goals for primarily Anglo-American or liberal welfare states' *child support law*, perhaps by design. As this thesis introduces, the Swedish welfare state regulations *outside of child support law* more primarily serve the functions of protecting children with separately-living parents and of allocating the costs of raising a child between the NCP, the CP, and the state. Child support retains a role, yet a more modest one, as is seen as appropriate within Sweden's social democratic welfare state.

5.2.1.2. *Design Choices for Setting Children's Needs & Allocating Meeting Them*

Modern child support legal regulations involve *theoretical choices*. A primary choice is *what living standard or measure of a child's needs* the law will require parents living separately to provide—direct costs for the child, for example, or a share of the parental income, as has been discussed.¹⁰⁵⁹ The questions lawmakers must answer do not end there. If a share of income model is selected, will it be a per capita share,

¹⁰⁵⁷ See *infra* Appendix 4 for the full list given by ALI, *Principles of the Law of Family Dissolution* § 3.04. For more detailed comparison of the ALI model, which produces relatively high child support amounts, with the three current US models and with a proposed Costs Sharing Model see Pamela Foohey, *Child Support and (In)Ability To Pay: The Case for the Cost Shares Model*, 13 U.C. DAVIS JOURNAL OF JUVENILE LAW & POLICY 35, 56–58 (2009) (“The major difference between the Principles and the Cost Shares model is that while recognizing that child support payments may be burdensome to obligor parents, especially lower-income obligor parents, *the Principles do not try to fully protect the interests of the obligor parent if that parent's standard of living is substantially higher than the residential parent's*. The result is higher child support obligations.”) (emphasis added).

¹⁰⁵⁸ Certain details of the ALI and CA Guideline formulas' mathematical mechanisms are delimited from this doctoral study, which focuses on *finding and analyzing broader differences* between the existing Swedish and Californian child support laws and systems, including to some extent in their espoused principles and procedural implementations within their WSM contexts. Research focused on designing a new system or critiquing the functioning of an existing one would need to “do the math” to a greater extent. See *supra* Chapter 1.4.3.

¹⁰⁵⁹ This description of the legal policy choices necessarily made applies, at least, for the jurisdictions studied and other American and European jurisdictions. The full worldwide diversity of child support regulations aimed at the shared social problem described in Chapter 1 is beyond the scope of this thesis.

such that for example an only child of two parents earning in total X per year will be allocated one-third of X, or a share measured in some other way? Will a child's share include or exclude monies for savings and investment? A child's own views?

Another necessary choice, a more procedural one, is *how the law will measure or determine an exact amount of money* which correctly represents the theoretical base chosen, and not just in general but for children in sometimes very different family configurations and financial circumstances.¹⁰⁶⁰

Also a legislative choice is *what economic data on which the law will rely*, as Chapter 3 introduced when describing the data used to support California's and Sweden's child support levels. Child support could theoretically be based on data about child-rearing expenditures in single-parent households, on foster-care payments to families caring for children who are wards of the state, or on some calculation based upon the relative standards of living enjoyed in the payor's and payee's households, as just a few examples.¹⁰⁶¹ As Sweden demonstrates, an accounting of costs can also de-emphasize the expenditure pattern differences between different types of households.

A fourth theoretical question for lawmakers is *what to do about shared expenses*, those that benefit a child yet necessarily also the rest of the child's household or households, for example the size and amenities of their housing. Such decisions (which often are included in the question of how to determine an exact amount of money to be paid) can drastically impact what amount is fairly deemed the total of direct child costs or the usual share of parental income expended on the child.

Fifth, *procedural or administrative design choices* must be made as well, including *how much discretion the decisionmaker will have* in setting the level of need, and not unrelatedly *who that decisionmaker will be*. Usually this means whether courts and/or an administrative agency will step in and make child support decisions, and to what extent the parents or one of them may substitute their own idea of the needed amount of child support.¹⁰⁶² These are often, in academic literature, related to

¹⁰⁶⁰ This assumes a child support system that chooses to vary the amount of support owed based on individual circumstances instead of to assign one level of support for all children.

¹⁰⁶¹ See *Guideline Review 2010* at 121–122 (contrasting these ideas to the model chosen). Instead California adopted the idea of providing children with what consumer expenditure data predict they would have had if their parents lived together, and it uses the idea of allocating that across two parents' households by considering the income of each of them. Sweden instead uses consumer data based on the reasonable average expenses of all children, without categorization by parental income level, number of siblings or parental couplehood status, but with consideration of gender and age differences.

¹⁰⁶² Compare the list of child support system factors presented at Chapter 1.4.2 (Research Questions), *supra*. See also Christine Skinner et al., *A Comparative Analysis of Child Maintenance Schemes in*

jurisdictions' *ideal model of the family*,¹⁰⁶³ as is explored within the comparison. It is unfortunate that in making these choices lawmaking rarely involves open debate, for example about "the underlying choice between individualistic and sharing norms within the family."¹⁰⁶⁴

To summarize briefly here the studied jurisdictions' choices, described and compared in the appropriate sections of Chapters 3 and 6 respectively, California's base Guideline amount of child support is set based on the *continuity of expenditures model*, a choice to expect parents to continue expending the same percentage of each of their incomes on the child or children as they theoretically did (or would have) in a two-parent home together.¹⁰⁶⁵ It chooses this ostensibly "because most states believe that children should not be the economic victims of their parents' decisions to live apart," according to the Judicial Council of California's experts' report to California's legislature.¹⁰⁶⁶ California specifically follows an "income shares" model,

Five Countries, 14 EUROPEAN JOURNAL OF SOCIAL SECURITY 330, 331 (2012) (explaining the various factors international collaborators used).

¹⁰⁶³ See, e.g., *id.* at 346 (identifying "children's costs" and "male breadwinner" child support regulation model types after examination of UK, US, Iceland, Finland and the Netherlands). See also Chapter 7.4 (on gender-policy and gendered-behavior factors contributing to the differences found), *infra*.

¹⁰⁶⁴ Marsha Garrison, *Delegalizing Family Law*, in SELECTIONS FROM THE ISFL RECIFE CONFERENCE 160, 174 (Margaret F. Brinig ed., 2014) (available at <https://www.isflhome.org/books>) ("Instead, government officials tended to commission economic studies and number crunching. Hard choices about public values were typically avoided.") (internal citation omitted) Garrison, observing much variation in child support amounts throughout Europe and among the US states, concluded that jurisdictions' decision to "delegalize" child support (numerical guidelines and administrative forms replacing traditional discretion) was "a valuable project, well worth pursuing" but that guidelines will not reach their full potential without more public debate and more research on *the economics of raising children in separated families* and on *public perceptions of fairness regarding child support*. *Id.* at 174–175.

¹⁰⁶⁵ The underlying economic assumptions have however been criticized. See WIKLEY (2006), *supra* note 52, at 163 (citing Ellman (2004), *supra* note 416, for criticism of the economics and underlying data *plus* its application via guidelines, which are *seemingly values-free while actually obscuring important trade-offs and policy choices*). I find that the focus on poverty prevention without expansion of public investment in children causes other important interests to have secondary status. Evaluators could more clearly consider CP and NCP *relative interests* with respect to each other, and also what *systemic gender equality effects* current law might have. In other words they could profitably take a gender perspective on the laws they influence which have a very intimate, often strong, and fundamentally gendered societal impact. Even absent an overt gender statutory aim or higher-order policy, might they perpetuate poverty or lower economic self-sufficiency for women as a group, thus directly relate to the laws' federally-mandated aims?). See further Chapter 7.4 (gender policies' effects on the child support laws).

¹⁰⁶⁶ *Guideline Review 2010* at 121. See also Venohr (2013), *supra* note 75, at 329–332 (regarding the various models for child support amount and allocation between the parents adopted in the various US states). Venohr notes that *the California Guideline almost follows the Percentage of Obligor Income* model in

looking at both parents' incomes when estimating and allocating the child support responsibility between the parents. This is loosely based on the direct costs of the child, defined as marginal costs. California sets these estimated costs, however, not at one median or mean figure. Rather they scale up and down with higher and lower parental incomes, thus California's choice is a *share of parental income* approach.

Procedurally, to set the exact child support amount, California made the decision to use net (post-tax) instead of gross parental income. As of 2013, 23 out of the 51 US child support jurisdictions (50 US states plus the District of Columbia) do so.¹⁰⁶⁷ The percentage of both parents' combined income expected to be devoted to child-rearing expenditures in California for pairs of parents—across a very wide scale of income (earning a combined \$801–\$6,666 per month)—was set at 25 percent of combined parental income for one child,¹⁰⁶⁸ and more for each additional child.

California chose to grant a second child not 25% *more* of the combined parental income, however, because per the US consumer data on which California chose to rely each additional child does not cost parents as much as the first (in marginal-expenditure terms). Additionally, both CPs' and NCPs' incomes are considered and the child's support is allocated between them proportionally. California's guideline, like the guidelines of 38 other states and Sweden's private-law rules, follows an *income shares model* and not a percent-of-obligor-income (POOI) model.¹⁰⁶⁹

cases *not* involving custodial timesharing, and that many states have Income Shares models that do not follow the prototype of that model developed in the 1980s. *See id.* at 333 n.10. *But see* Ellman (2012), *supra* note 837, at 185 (explaining the lack of federal funding for guideline development and how one model spread quickly among the states with little real competition).

¹⁰⁶⁷ Venohr (2013), *supra* note 75, at 334. California also decided to base parental ability-to-pay determinations on evidence of very recent income, most often income not yet reported on annual tax returns, therefore its formula must calculate likely tax obligations based on current-year federal US and state tax laws and subtract them from parental income.

¹⁰⁶⁸ *Id.* According to Venohr, 48 of the 50 states plus the District of Columbia use this “continuity of expenditures” premise, the majority of these states (39) then dividing this amount of parental income owing to the children between the parents pursuant to the “income shares” model, as California does although not in its prototypical form, and the minority (9) pursuant to the “percentage of obligor income” model, only looking at the nonresidential parent's income when determining which percentage of that income he will pay, and then exactly how much. (In both systems the CP's support contribution is assumed to be made in the custodial home.) Three states instead using a “Melson Formula”-based model, which calculates child support not from amounts spent on average in “intact” households but from children's and each parent's “basic needs,” often a poverty-level, subsistence amount of money needed to live, plus a percentage, where affordable for the payor, to allow the child to share in the payor's standard of living. *See id.* at 329–332.

¹⁰⁶⁹ *But see* Venohr (2013), *supra* note 75, at 333, n.10 (explaining that the California Guideline follows a version of the income shares model that *actually resembles a percentage of income model, but with a timeshare allocation component*). The principle of each parent paying relative shares of their incomes is in line with

The income shares model helps the Guideline respond more nimbly to the many child support cases involving families who do not resemble the traditional high-earner-male-payor and low-earner-female-carer family form. It responds in other words to cases where a CP earns as much or more than the NCP payor, and to those where the children live with and are cared for by each parent for significant percentages of their time, up to the increasingly common 50% timeshare between parents.¹⁰⁷⁰

Perhaps *because* of specifically child support law's lesser modern role, Sweden chose a child's direct costs, and rather conservatively set, as the measure of the living standard to be provided by child support. It also chose consumer data undifferentiated by the parents' economic circumstances to determine those costs. Shared costs like housing and investments were largely kept out consideration for child support purposes, also reducing child support amounts, although quality housing for families with children is otherwise addressed by the Swedish state.

Sweden *also* chose, I conclude—as its WSM grew in comprehensiveness—that children should not be the economic victims of their parents' financial circumstances, not only after divorce but *indeed whether their parents live separately or together*. Because *all* children were in focus for these WSM-related welfare-lawmaking choices, they were made *outside* of child support law. While Sweden, like other jurisdictions internationally, *has* child support law in the traditional sense, to set, allocate and enforce parents' duties to support their children when they do not live in one household, its procedural or administrative design choices minimize court involvement and discretion while allowing broad parental discretion to decide a child support amount, if any. The context allows those private child supports not to need to be strenuously prioritized *over other important public policy aims*.

The social security (public law) side of Sweden's child support system has been where most influential, recent decisions have been made. Swedish lawmakers decided that state monies would be used to *guarantee child support is received by every child entitled to it but not receiving it*, and that an agency would administer that side of the child support system's payments to CPs and collection from NCPs. Swedish UB lawmakers made the decision to vary amounts of private-law child support to which children are entitled from parents, a partial adoption of a *share of parental income model*, however its courts limited child support more in line with the *direct costs model* of raising a given child.

public opinion that not just the NCP but instead both parents should be considered financial supporters of their child or children: child support amounts should change with differing CP income levels. See, e.g., Sanford L. Braver et al., *Public Intuitions About Fair Child Support Allocations: Converging Evidence for a "Fair Shares" Rule*, 20 PSYCHOLOGY, PUBLIC POLICY & LAW 146, 151 (2014).

¹⁰⁷⁰ See Venohr (2013), *supra* note 75, at 332.

The UStöd guarantee system would set instead a standardized amount, unrelated to the private law's rules, as a child's standard of living to be provided.

Sweden's welfare state coverage for dependent children includes nearly complete funding for their educations, medical and dental care, child care and other expenses often considered in other jurisdictions important to be covered by private child support (or, in its absence, by need-based public assistance). Child support paid between parents or to a single parent by the state provides a comparatively modest contribution to the costs of raising a Swedish child or maintaining a custodial household, and relatedly the regulation follows the *direct costs model*.

Swedish private law rules appear to have been relatively neglected in terms of legal reform in recent decades, in a manner more in line with Sweden's WSM than against it, which may explain similar experiences in other Nordic countries.¹⁰⁷¹ Similarly, Anglo-American liberal WSM countries have tended to reform their child support laws in ways parallel with each other, but not so often in ways parallel with the Nordic countries, in terms of basic design.¹⁰⁷²

Neither ideal—California's of the private family's self-sufficiency or Sweden's of private responsibility for the fewer, non-socialized costs of child rearing—is universally held to or perfectly implemented, but the cultural assumptions and financial realities for families bound up in the difference affect the two societies' child-support laws, and child welfare outcomes.

¹⁰⁷¹ Compare Iceland, another Nordic country with a comprehensive welfare state. Icelandic child support law had (as of 2012) continued virtually unchanged since its implementation in 1946, despite involving one fixed payment amount from the NCP to the CP (the parent at the child's official address), advanced by the state and then collected, regardless of incomes or amount of NCP parenting time. See Guðný Björk Eydal and Hrefna Friðriksdóttir, *Child Maintenance Policies in Iceland: Caring Mothers and Breadwinning Fathers*, 14 EUROPEAN JOURNAL OF SOCIAL SECURITY 267 (2012) (describing a system somewhat similar to the UStöd system, and a reform proposal made). Proposals for new Icelandic child support law were based mainly on Norway's regulation, and included "increased emphasis on the rights of parents to negotiate a private arrangement, the abolition of the minimum maintenance payment, and the requirement that official rulings of child support should take into account the incomes of both parents, as well as the level of contact between the non-resident parent and the child." *Id.* at 282.

¹⁰⁷² See, e.g., WIKLEY (2006), *supra* note 52, at 491 n.152 (pointing to WSM differences between Anglo-American and Scandinavian traditions as *a reason the UK followed Australia and the US in 1991*, adopting "a national, formula-based administrative scheme for assessing, collecting and enforcing private child support liabilities," thus taking "a very different path from our North European neighbours.").

5.3. Lawmakers' Intents and Principles

5.3.1. Introduction

Lawmakers' intents on a more theoretical level have thus far been discussed, but this section presents some of the main intents stated by lawmakers when the currently-effective Californian and Swedish rules were enacted.

5.3.2. For California Private Family Law

Stated Legislative Intent: Complying with Federal Law

As the California Legislature makes clear within California Family Code § 4050, it adopted the state's current child support statutory scheme with, at least overtly, just one intention:

In adopting the statewide uniform [child support] guideline provided in this article, it is the intention of the Legislature *to ensure that this state remains in compliance with federal regulations* for child support guidelines.¹⁰⁷³

This is the entire text of the “legislative intent” section of California’s child support statutory regulation, within which is found the substantive and procedural rules described above in Chapters 3 and 4. Section 4050 refers to U.S. federal law requirements that California, and all other US states, adopt and maintain a state “guideline” for determining child-support amounts, specifically a numeric formula for determining appropriate support under the facts of a given child’s child support case.¹⁰⁷⁴ Smaller statements of intent are however sometimes added when reform bills are introduced and passed into law. In 2019, significantly, California Legislature Senate Bill 337, expressing the intent to “*increase the amount of child support payments received and to strengthen family unity between children and their noncustodial parent, thereby*

¹⁰⁷³ CAL. FAM. CODE § 4050 (added Stats 1993 ch 219 § 138 (AB 1500), continuing without substantive change § 4720 in existence since 1984 within the California Civil Code; emphasis added). Note that despite the connotation of voluntariness, the state “guideline” is mandatory, for use in all child support calculations, absent rare exceptions which a court must justify in writing.

¹⁰⁷⁴ The federal legislature (the US Congress comprised of the Senate and House of Representatives) in turn stated its intentions in adopting the child support mandates directed at the 50 states which traditionally have primary jurisdiction over family law, as discussed in the next section.

improving the health and well-being of low-income children” was passed into law and scheduled to become effective in 2022.¹⁰⁷⁵

It must be remembered that California had, prior to the federal requirements for a uniform guideline, an established, *largely court-created* law on child support which was modified where necessary by the new federal rules. As a consequence a number of rules and principles to ensure fair dispute resolution and child supports in line with broader public policy goals already existed when the simple 1993 legislative intent section quoted above was enacted.

Other intentions of California’s legislature have been framed as “principles” by California Family Code § 4054(g), in a way that resembles the ALI Principles’ recommended steps of expressing the social and cultural values meant to be supported by the child support law, and which interests can be directly taken into account (cognizable interests) in the law on setting an amount of child support.

Principles to be Followed in Implementing California Child Support Law

Stated legislative intent with respect to child support is not comprehensive within California’s statutory law governing private child-support orders. The Family Code, however, also states twelve “principles” to be followed in connection with the setting of child support orders, discussed below.

According to California Family Code § 4053, the first principle to be followed by state courts in implementing the statewide child support Guideline by making orders in individual cases is that (1) “a parent’s *first and primary* obligation is to *support* his or her minor children according to the parent’s circumstances and station in life.”¹⁰⁷⁶ This presumably does not mean that a financial support duty takes precedence over caring for children and over self-care if the self-support would cause Guideline-level child support to be unaffordable for the parent, but it is strong signaling of the State’s expectations that parents will share their income with their children (meeting more than basic needs if their “station in life” permits it).

The second principle, (2) “both parents are mutually responsible for the support of their children,”¹⁰⁷⁷ states (indirectly) California’s public policy on at least

¹⁰⁷⁵ SB 337, *An act to amend Section 17500 of, and to amend, repeal, and add Section 17504 of, the Family Code, relating to child support* (introduced February 19, 2019) (scheduled to become effective January 1, 2022) (available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB337&search_keywords=child+support).

¹⁰⁷⁶ CAL. FAM. CODE § 4053(a). Arguably “support” could be read to include non-financial support such as caretaking. The section as a whole does not state a principle that both parents are responsible for the caretaking of their children, nor does it ever specify “financial” support.

¹⁰⁷⁷ CAL. FAM. CODE § 4053(b).

separately-living parents' gender roles in providing child support. Both parents are expected to participate in supporting their children, though *state involvement in whether both parents participate in paid work arises almost exclusively in cases where the parents live separately*. In contrast, California (like Sweden) does not impose a duty to participate in the *care* of the children, non-financially; this can be interpreted as privileging fathers' freedom over mothers', but also has been defended because it may not be in the best interests of the child to be cared for by an unwilling or otherwise inappropriate parent. Receiving cash support from any parent is more easily deemed in a child's best interests.

Third, (3) the mandatory state Guideline on the amount of child support to be paid "takes into account *each* parent's actual income *and* level of responsibility for the children,"¹⁰⁷⁸ meaning the legislatively-intended level of child support deliberately adjusts based on how much of the total parental income each parent earns and how often they have caregiving responsibility in their household for the child.

Fourth, (4) "[e]ach parent should pay for the support of the children according to his or her ability."¹⁰⁷⁹ This clarifies that parents' financial support of their children is shared, but relative to their individual abilities to pay. California here can be seen to have made a decision on allocating the child support between the parents in accordance with their incomes, via "income shares" and not, for example, 50% each.

Fifth, (5) the state Guideline "seeks to place the interests of children as the state's top priority,"¹⁰⁸⁰ thus in principle persons using the child support law should refrain from putting the state's or a parent's interests before children's, in a child-support-law variant of the best interest of the child principle.

Sixth, (6) "[c]hildren should share in the standard of living of both parents," and "child support *may therefore appropriately improve the standard of living of the custodial household* to improve the lives of the children,"¹⁰⁸¹ clarifying that custodial parents and their household members unavoidably experience an increase in their standard of living if the child is to share in the payor's standard even in the payee parent's home, but that is in the child's best interest. This attempts to negate one common payor concern about the appropriateness of child support payments not being exclusively spent only on the child's direct needs. It also illustrates that California has chosen to set the amount of a child's need in regard to the standard of living available from the parents' incomes, taken as a combined whole.

¹⁰⁷⁸ CAL. FAM. CODE § 4053(c) (emphasis added).

¹⁰⁷⁹ CAL. FAM. CODE § 4053(d).

¹⁰⁸⁰ CAL. FAM. CODE § 4053(e).

¹⁰⁸¹ CAL. FAM. CODE § 4053(f) (emphasis added).

Seventh, (7) California child support amounts in situations of alternating residence or extensive visitation, which the statute calls “cases where both parents have high levels of responsibility for the children” should both *recognize increased costs* of raising children in two households and “should *minimize significant disparities* in the children’s living standards in the two homes.”¹⁰⁸² In effect this principle states a legislative intent for the California Guideline formula that it take into account how children living alternately with each of their parents will cost in total more of the parents’ combined income, and that even though the payor (the parent with higher income) cares for the child as often as the payee, still a child support payment is intended to be owed, to provide the child with the benefits of the payor’s higher income even in the other household.

Further (8) “[t]he financial needs of the children should be met through *private financial resources* as much as possible;”¹⁰⁸³ (9) “[i]t is presumed that a parent having primary physical responsibility for the children *contributes a significant portion* of available resources for the support of the children;”¹⁰⁸⁴ (10) the state Guideline “seeks to encourage *fair and efficient settlements* of conflicts between parents and seeks to *minimize the need for litigation*;”¹⁰⁸⁵ (11) it is “intended to be *presumptively correct in all cases*, and only under special circumstances should child support orders fall below the child support mandated by the Guideline formula;”¹⁰⁸⁶ and finally (12) “[c]hild support orders must ensure that children *actually receive* fair, timely and sufficient support reflecting the state’s high standard of living and high costs of raising children compared to other states.”¹⁰⁸⁷

Such principles naturally come into conflict with each other, for example one might argue that children being the *state’s highest priority* yet required to have their needs met through *private financial resources* does not easily ensure that children actually receive fair, timely and sufficient support. These tensions reflect the competing interests which must be balanced by child support law, as discussed earlier with regards to scholar’s theories of child support.

¹⁰⁸² CAL. FAM. CODE § 4053(g).

¹⁰⁸³ CAL. FAM. CODE § 4053(h) (emphasis added).

¹⁰⁸⁴ CAL. FAM. CODE § 4053(i) (emphasis added).

¹⁰⁸⁵ CAL. FAM. CODE § 4053(j) (emphasis added). Encouraging “fair” settlements means that the state should not seek efficient settlements that avoid litigation but result in disfavoring a party with less bargaining power interests, for example the child’s or CP’s. Advantages and disadvantages of private settlements (private ordering resolutions) are discussed within the comparison between California and Sweden’s procedural child support law.

¹⁰⁸⁶ CAL. FAM. CODE § 4053(k).

¹⁰⁸⁷ CAL. FAM. CODE § 4053(l).

Case law interpreting California Family Code § 4053 has reiterated the statutory principles and to some extent clarified how they are to be used. For example, appellate case law confirms that *trial courts retain significant latitude or discretion in applying the statutory principles*, since they are reviewable on appeal only for abuse of that discretion. An appeals court therefore determines only if the trial court acted reasonably in exercising its discretion, deferring to the lower court's decision if possible rather than considering the issue anew.¹⁰⁸⁸

Case law also holds that the statutory statements of intent, including that the child support Guideline “seeks to place the interests of children as the state’s top priority,” require that a court (here specifically in deciding whether “good cause” exists¹⁰⁸⁹ to grant a retroactive modification to a child support order) must *conduct a balancing test among several interests*. A court must do this “with the primary focus being to ensure, if possible, that ‘children actually receive fair, timely, and *sufficient* support’ (§4053(f), emphasis added).”¹⁰⁹⁰ Specifically, this must include, according to case law, an evaluation of *the children’s “needs”* (to be met by the requested child support) and *not simply the parents’ expenses or ability to pay*; failure to consider the needs could constitute an abuse of discretion.¹⁰⁹¹

Federally-Required Intentions: A Numeric, Income-Based Guideline

Federal requirements for child support guidelines now require that the guidelines (1) be based on the NCP’s “earnings, income and other evidence of ability to pay” (which must include consideration of at least low-income NCPs’ “basic subsistence needs,” total income; and specific circumstances if income is to be imputed. State guidelines also must (2) address how the parent(s) will cover financially the child’s health care costs via health insurance and/or cash medical support; (3) “provide that incarceration may not be treated as voluntary unemployment” for child support

¹⁰⁸⁸ Marriage of Schlafly, 149 Cal. App. 4th 747 (2007) (confirmed on subsequent appeal, 2007 WL 2193747, unpublished).

¹⁰⁸⁹ Under CAL. FAM. CODE § 3653(b) regarding retroactive child support modifications.

¹⁰⁹⁰ Marriage of Leonard, 119 Cal. App. 4th 546, 560 (2004) (quoting Stewart v. Gomez, 47 Cal. App. 4th 1748, 1754 (1996), a case interpreting CAL. FAM. CODE § 4058(b) regarding earning capacity being included as gross income to a parent in light of the § 4053 principles) (emphasis, as indicated, in original).

¹⁰⁹¹ *Id.* (“[W]e glean from the principles in section 4053 that whether there is good cause to deny retroactivity under section 3653(b) requires an evaluation of the children’s needs at the time. . . . in the context of the then-existing ability of the parents—both custodial and non-custodial—to provide child support.”)

purposes; and (4) be “based on specific descriptive and numeric criteria and result in a computation of a child support obligation.”¹⁰⁹²

These requirements suggest that the federal legislators were primarily concerned with *increasing legitimacy and uniformity by reducing state judicial and legislative discretion* when it comes to tying child support amounts to payor income in a specific, numerical way; correcting problems that had arisen under previous versions of the rule (e.g. with how low-income payors were treated); and assuring that children are covered by medical insurance. The mechanism, reducing discretion in child support setting at the state-by-state and case-by-case levels, in turn suggests intention to ensure that child support laws throughout the United States become more uniform and thus perhaps more predictable as well as fair and consistent across states.

California (along with all other US states plus the District of Columbia) separately have considered various goals for their guideline laws. Each state presumably intends to provide for (1) the “*best interest of the child*” (BIC) and for the guidelines they have written to result in (2) “*appropriate*” *child support amounts*.¹⁰⁹³ Other policy considerations common to a number of states have included, according to research comparing the guidelines and their implementation, (3) *fairness*, (4) *equity*, (5) *comprehensiveness*, (6) *predictability*, (7) *transparency*, and (8) *ease of use* of the guidelines.”¹⁰⁹⁴ Although not all of these widely-legislatively-intended legal and policy principles specifically are stated in the California Family Code’s statutory child support provisions, most or all are mentioned as principles to be followed in implementing the Guideline or alluded to in some form.

Given that the federal law was imposed on top of California’s previously-existing state child support legal schemes, largely developed in case law over many years but with their start in English statutory poor relief law (in which “legal liability of relatives was *designed to indemnify the public and to minimize its costs in relieving the poor*”¹⁰⁹⁵), the minimalism of the federal requirements is understandable. The federal government sought to unify state laws and assure that they met a certain minimum standard, rather than to comprehensively replace them.

Required Periodic Reviews

Following closely the federal requirements, California’s Family Code clarifies at § 4067 that “[i]t is the *intent of the Legislature* that the statewide uniform guideline shall

¹⁰⁹² 45 C.F.R. § 302.56(c) (last modified 81 FR 93562, Dec. 20, 2016).

¹⁰⁹³ See Venohr (2013), *supra* note 75, at 329.

¹⁰⁹⁴ *Id.*

¹⁰⁹⁵ tenBroek (1964), *supra* note 196, at 283–284 (emphasis added).

be reviewed by the Legislature at least every four years and shall be revised by the Legislature as appropriate to ensure that its application results in the determination of *appropriate child support amounts* [emphasis added]. The review shall include consideration of changes required by applicable federal laws and regulations or recommended from time to time by the Judicial Council [of California] pursuant to Section 4054.”

California Family Code § 4054 provides detailed information on how California’s child support law will be monitored and developed by the Judicial Council of California within the Administrative Office of the Courts.¹⁰⁹⁶ It reads, in part relevant to federally-required child support Guideline reviews, as follows (italics added):

“(a) The Judicial Council *shall* periodically review the statewide uniform guideline to *recommend* to the Legislature appropriate revisions.

(b) The review *shall* include *economic data on the cost of raising children* and analysis of *case data*, gathered through sampling or other methods, on the *actual application* of the guideline after the guideline’s operative date. The review *shall* also include an analysis of guidelines and studies *from other states*, and other research and studies available to or undertaken by the Judicial Council.

(c) Any recommendations for revisions to the guideline *shall* be made to ensure that the guideline results in *appropriate* child support orders, to *limit deviations* from the guideline, or otherwise to help ensure that the guideline is in *compliance* with federal law.[]

(e) The initial review by the Judicial Council *shall* be submitted to the Legislature and to the Department of Child Support Services on or before December 31, 1993, and subsequent reviews *shall* occur *at least every four years* thereafter unless federal law requires a different interval.”

These *mandatory* requirements as implemented into California law suggest that California had a *legislative intent to achieve regular, data-based revisions*¹⁰⁹⁷ to the states’ child support guidelines, mainly due to the federal law requiring most of these specifics.

Section 4054(d) also sets forth the *permissible* further actions California’s Judicial Council may take when it conducts the federal- and state-law-required child-support

¹⁰⁹⁶ Because it further speaks to legislative intent indirectly throughout and then expressly in its final subsection, § 4054 is set forth in full *infra* Appendix 2.

¹⁰⁹⁷ *But see* Perry (2019), *supra* note 207 (comparing one Swedish and one California review and reform process and illustrating that *the intent to review does not always mean the intent to revise*).

system reviews. The specific guidance indicates what factors California lawmakers consider most likely to be relevant to updating their child support legal scheme, although not rising to the importance level of the mandatory considerations:¹⁰⁹⁸

“(d) The Judicial Council *may* also review and report on *other* matters, including, but not limited to, the following:

- (1) The treatment of the *income of a subsequent spouse or nonmarital partner*.
- (2) The treatment of *children from prior or subsequent relationships*.
- (3) The application of the guideline in a case where a payer parent has *extraordinarily low or extraordinarily high income*, or where *each* parent has primary physical custody of one or more of the children of the marriage.
- (4) The benefits and limitations of a uniform statewide *spousal support guideline* and the interrelationship of that guideline with the state child support guideline.
- (5) Whether the use of *gross or net income* in the guideline is preferable.
- (6) Whether the guideline affects *child custody litigation* or the *efficiency* of the judicial process.
- (7) Whether the various *assumptions* used in *computer software* used by some [note: now all] courts to calculate child support comport with state law and *should be made available* to parties and counsel.”

Although many aspects important to a child support regulation are thus *subject* to review, much of the intricacy of the child support guideline system *need not* be reviewed periodically, as the statutory law leaves the decision on whether such review is necessary to the administrative-agency level.

California’s legislators themselves chose to impose *two additional conditions* for the federally-required periodic child support law reviews and their resulting recommendations for reforms. They required the reviewing agency to (1) consult with the public, specifically with a variety of child-support-law professionals and interest groups.¹⁰⁹⁹ Reviewers must also – most relevantly for understanding the

¹⁰⁹⁸ Emphasis added.

¹⁰⁹⁹ Reviewers “*shall consult* with a broad cross-section of *groups involved in child support issues*, including, but not limited to, the following: (1) Custodial and noncustodial parents. (2) Representatives of established women’s rights and fathers’ rights groups. (3) Representatives of established organizations

legislative intent present in California child support law – (2) be “guided by the legislative intent that children share in the *standard of living* of both of their parents,”¹¹⁰⁰ who are by definition in child-support cases not living in a household together.

Sections 4054(f) and (g) suggest, as can be noted from the plain wording of the sections, that the California Legislature keeps well in mind the importance of *involving stakeholders*.¹¹⁰¹ This law also demonstrates the *politicized* nature of child support law, and the legislative intent to have the policy-making branch of the California judicial system, the Judicial Council, consult with all interested parties (including impartial as well as partial interest groups) as it reviews the state guideline formula and its efficacy in practice.

New Simplicity and Efficiency Intents (California 1996)

Partially because of the regular review system, the California Legislature became aware of difficulties arising from the dual-system nature of California’s child support system. It added to the Family Code¹¹⁰² in 1996 a procedural provision aimed

that advocate for the economic well-being of children. (4) Members of the judiciary, district attorney’s offices, the Attorney General’s office, and the Department of Child Support Services. (5) Certified family law specialists. (6) Academicians specializing in family law. (7) Persons representing low-income parents. (8) Persons representing recipients of assistance under the CalWORKs program seeking child support services.” CAL. FAM. CODE § 4054 (f) (emphasis added).

¹¹⁰⁰ CAL. FAM. CODE § 4054 (g) (emphasis added). Emphasis on shared, if not equal, living standards (in the context of the scholars’ conclusions discussed in the last section) is a reminder that the child support reforms at the federal level, then enacted in California, were intended to result in higher child support amounts than had previously been required of parents living apart from their children, to better the children’s lives and to relieve the state of the support burden that would otherwise largely fall upon welfare social benefit systems.

¹¹⁰¹ Swedish legal reform processes value this as well, and accomplish it via expert and community feedback processes on propositions for statutory legal changes, although precisely which stakeholders must be involved is not specified within the child support laws themselves, as is the case in California.

¹¹⁰² In US legal sources, including in California, legislative intent is often expressed within the statutory text. In Sweden this type of expression is found primarily in the preparatory works or legislative history, which might “acquire the same importance as if they had formed part of the statute itself.” Per-Olof Ekelöf, *Teleological Construction of Statutes*, 2 SCANDINAVIAN STUDIES IN LAW 75, 94 (1958). One might alternately use teleological construction (*teleologisk tolkning*) to find legislative intent regarding how to apply the law to novel facts, and thus look at the function legislators meant to achieve and try to interpret in a manner leading to a result in line with that purpose. See *id.* at 86. This view in Sweden is however not held by all scholars (or courts); the *main or traditional view* is that intent found in the preparatory works *should be followed if clear, even if seemingly counterproductive*, until legislative changes

primarily at the private child support case system. Section 4250 modified the existing *public-family-law* enforcement system to allow its use by *private*, non-welfare-using families. It also introduced other changes, with *the legislative intent procedurally to improve the usability of the private-law system for unrepresented parent litigants using the private law courts*:

“(a) The Legislature finds and declares the following:

(1) Child and spousal support are serious legal obligations.

(2) The current system for obtaining, modifying, and enforcing child and spousal support orders is inadequate to meet the future needs of California's children due to burgeoning caseloads within local child support agencies and the growing number of parents who are representing themselves in family law actions.

(3) The *success* of California's child support enforcement program *depends upon* its ability to establish and enforce child support orders *quickly and efficiently*.

(4) There is a *compelling state interest* in creating an *expedited process* in the courts that is *cost-effective* and *accessible* to families, for establishing and enforcing child support orders in cases *being enforced by* the local child support agency.

(5) There is a compelling state interest in having a simple, speedy, conflict-reducing system, that is both cost-effective and accessible to families, for resolving *all issues concerning children*, including support, health insurance, custody, and visitation in family law cases *that do not involve enforcement by the local child support agency*.

(b) Therefore, it is the *intent of the Legislature* to: (1) provide for commissioners to hear child support cases being enforced by the local child support agency; (2) adopt uniform and simplified procedures for *all* child support cases; and (3) create an Office of the Family Law Facilitator in the courts to provide education, information, and assistance to parents with child support issues.”¹¹⁰³

Emphasis on the California Family Code § 4250 legislative intents to adopt *uniform* and *simplified procedures* for *all* child support cases and assistance at the courthouses in the form of the Family Law Facilitators becomes more important the less income

are made. *See, e.g., id.*, at 75–117 (remarking, at 117, “I am no prophet in my own country. Several of my Swedish colleagues have expressed dissent from my opinions regarding the proper application of statutes.”).

¹¹⁰³ CAL. FAM. CODE § 4250. Sections 4250–53 were enacted in 1996 (pursuant to Assembly Bill 1058 (Stats. 1996, ch. 957)) to create the Child Support Commissioner and Family Law Facilitator Program, in an effort to expedite child support order practices, as described *supra* Chapter 4.2.1.3.

families have. While wealthier families also use the courts, middle-income ones may face severe financial difficulty if processes are not efficient there. The highest-income families can and often do opt out of the court system, instead using private judge or mediator assistance if they have a child support dispute, and private attorneys to help them reach an agreement.¹¹⁰⁴

5.3.3. *For California Public Family Law*

This section highlights the extent to which public-system-specific intents and principles exist within the California child support law. Child support in California is regulated partially comprehensively across private and public law child support system sub-areas, and partially separately. A distinction is observable between the substantive rules, which the two systems largely share, and procedural rules, which differ in important ways.¹¹⁰⁵

The federal statutory regulation of “Child Support and Establishment of Paternity” (as Title IV-D of the U.S. Code is titled) offers *no additional intents* or principles for the *setting* of public-case child support amounts. The uniform child support guidelines it required all states to create are to apply to private and public cases alike, and what is considered the correct level of child support is the same for all children regardless if their child support is determined through the private or public system.

However, Title IV-D states that legislators have authorized appropriations of federal funds “[f]or the *purpose of enforcing* the support obligations owed by NCPs to their children and the spouse (or former spouse) with whom such children are living, *locating* NCPs, *establishing* paternity, *obtaining* child and spousal support, and *assuring that assistance in obtaining support will be available under this part to all children...* [whether or not they are eligible for cash assistance] for whom such assistance is requested....”¹¹⁰⁶ This suggests a *public law intent* focused on providing public agency help in *enforcing* child support obligations, including in cases where the children are owed a support duty by a parent who must be located before child support can be enforced, and whether or not a child receives state welfare benefits towards his or her support. The statutory language explicitly specifies however that public child support agency assistance will be available to children “for whom such assistance is

¹¹⁰⁴ Procedural paths and the fees involved were outlined *supra* Chapter 4.5.

¹¹⁰⁵ The differences, and even simply the existence of two separate spheres for child support determination and enforcement, can affect substantive rights of the parties, as the comparison will discuss.

¹¹⁰⁶ 42 U.S.C. § 651 (last amended 1996) (emphasis added).

requested,” making clear that the intent of the federal lawmakers was not to *require* parents to seek child support with public LCSA help, *or* to require LCSAs to serve all children’s child-support-setting needs.¹¹⁰⁷ An intent not to expand the public system to cover all child support cases means that the legislators considered it acceptable, at least when this statutory law was enacted, to retain the dual private-public system.

With respect to *enforcement* of child support orders, there is a small addition to the stated intents defining the purpose of the local child support agencies (LCSAs). LCSAs’ purpose is to enforce the rights and duties set pursuant to the private law rules, as Chapters 3 and 4 described.

In terms of applying the statutory principles to non-IV-D (private-law) and IV-D (public) cases, private and public child support arenas are fairly well coordinated. They are regulated simultaneously or similarly in several ways. California has a strong public policy in favor of “adequate” child support amounts being set in both; courts must consider the same statutory principles in setting awards across both; and required periodic reviews of the Guideline must look at both private and public cases in practice, in so doing consulting with multiple stakeholder groups expert in one or both systems to suggest possible improvements to the child support scheme and its implementation simultaneously for both the public and private sides.

Differences in the principles guiding the private and public child support systems in California largely exist only in the *relative emphasis* of one principle or another in each system. The generally-applicable statutory principle emphasizing a child’s *right to the same living standard as both parents*, for example, implying a relatively high amount of child support is “adequate” for a family with a middle- to high-earning payor parent, mainly comes into play in *private cases* where a payor has a higher income and living standard available to him or her (usually him) compared to the payee and child, yet still the payee and child’s household is not so low-income as to be receiving public assistance. The legislators’ Guideline law intends to redistribute some of the NCP’s income back into the child’s home with the CP, yet the state child support agency is not required to become involved and pursue a *public case* child support order.¹¹⁰⁸

¹¹⁰⁷ It may be possible however for state authorities to broaden the subset of eligible children receiving public child support case assistance through the Title-IV-D scheme. *See supra* note 808 and accompanying text (on proposals to modify California law to opt all children into the Title IV-D system by default, thus securing more sorely-needed funding for the states’ private family law courts).

¹¹⁰⁸ The public child support law is now seeking to inform as many parents as possible that the LCSAs are available to help any CP, not just ones receiving public benefits, mainly as a way to receive federal funding for resolution of as many of California’s child support cases as possible. This may

In the case of economically struggling parents, especially those with incomes so low that they seek social benefit assistance and thus have public child support cases, the state's interest in redistributing relatively meager parental income is diminished. The child already shares in the living standard of the parents if that living standard is very-low-income, although certain social benefits for families potentially assist the child's residential household to avoid deeper poverty.

As another example, the law intends to place *the interests of children as the state's top priority*,¹¹⁰⁹ yet initiates public cases that result in some support collected from one parent (who might otherwise use it to buy needed items for the child) going to the state for welfare benefit repayment, while in private cases the system including judges is more free to prioritize children's needs in an inherently less complicated or compromised manner.

The state interest in emphasizing the principle that *parents are primarily responsible for their children's support* is implicated mainly in public cases where otherwise need-based public benefits might have been called upon to help support the child.¹¹¹⁰ The principle may also be cited to counter a payor's claim in a private case that paying child support due is impossible because of other financial obligations.

5.3.4. For Swedish Private Family Law

The legislative intents and substantive rules for today's Swedish UB system were carried forward into 1949's new *föräldrabalk* (FB). The rules consolidated and merged into the FB came largely from the *lag om barn utom äktenskap* (Law on Nonmarital Children) of 1917 and the *lag om barn i äktenskap* (Law on Marital Children) of 1920.¹¹¹¹ Avoiding harm to children, especially children to unmarried mothers who

support the "preserve public funds" intent as well as, or arguably in preference to, the "assure an adequate, correct child support amount for every child" intent.

¹¹⁰⁹ Per CAL. FAM. CODE § 4053(e), discussed above.

¹¹¹⁰ In this respect California's liberal WSM ideals are apparent, and its budgetary interest in collecting as much unpaid child support as possible. On the other hand many academics have questioned the efficacy of and net gain from *costly child support enforcement against indigent parents (fathers) for very low monthly payments*, to children who have already received welfare support instead.

¹¹¹¹ SOU 1946:49, *Ärvdabalksakkunnigas förslag till föräldrabalk* [*The Inheritance Code expert group's proposals for a Parents Code*], at 53 (listing the prior laws being replaced by the new code). See also Prop. 1978/79:12 at 54–55 (summarizing experts' conclusions that the support rules set in 1920 should now be updated given society's increased role in welfare and other societal changes). Still-applicable intents have mainly not been reiterated in newer preparatory works unless a change was being considered, thus finding precise statements of the original intents behind each provision or the regulation as a whole is difficult. Chapter 7.2, *infra*, provides a historical summary.

were not engaged to be married to the child's father,¹¹¹² was in focus. The child support duty was also *unlimited by a parent's economic circumstances and sex-neutral*, in that any parent, mother or father, who did not have custody of a child had a duty to pay support for that child.¹¹¹³ Courts were recognized to have discretion in setting reasonable support amounts, including in different monthly amounts during the time support would be owed, when procedural reforms to appear in the new *FB* were proposed.¹¹¹⁴

The 1979 FB Child Support Lawmakers' Intent

The Proposition leading to the 1979 reform to the *FB*'s child support regulation, its latest larger reform, added legislative intents specific to the rule changes adopted then. Emphasized repeatedly was a main goal to *reduce the support burden on payor parents* with weak economic circumstances.¹¹¹⁵ The reform intentions also included *providing more direction* to decisionmakers as to how private child support amounts should be decided, in the interests of achieving *more uniformity and predictability*, but this "at the same time is weighed against the desire to *in each particular case* retain sufficient discretion to be able to make a *just and reasonable weighing* between the involved parties' interests."¹¹¹⁶

The *UB* private law reforms adopted by legislators were proposed to prioritize immediate reliefs for payors *even though it was recognized that lower private UB obligations would increase state costs*, because payors would have less repayment responsibility to the state after child support was advanced via the public advance guarantee system (the precursor to the *UStöd* system). It was reasoned that *payors could be helped in this*

¹¹¹² See *SOU* 1946:49 at 97–98. This report focused in large part also on scientific blood type evidence, statistics on children born to unmarried women over recent years and decades, and otherwise on making informed proposals regarding the establishment of paternity, mentioning that therefore a child support responsibility could be set. See *SOU* 1946:49 at 138–92.

¹¹¹³ *SOU* 1946:49 at 13 and 97. This continued prior law recognizing a support duty for unmarried working mothers paying support to another person or family to care for the child. The *unlimited* nature of the parents' child support duty was changed to a *limited* one in the late 1970s. See Prop. 1978/79:12 at 1 ("Föräldrarnas underhållsplikt blir i fortsättningen aldrig ovillkorlig utan görs beroende av föräldrarnas ekonomiska förmåga och barnets behov").

¹¹¹⁴ *SOU* 1946:49 at 98.

¹¹¹⁵ Prop. 1978/79:12 at 1 ("Ett huvudsyfte är att mildra underhållsördan för underhållsskyldiga med svag ekonomi.").

¹¹¹⁶ Prop. 1978/79:12 at 94 ("Strävandena att uppnå större fasthet i tillämpningen får emellertid vägas mot önskemålet att i det enskilda fallet kunna göra en rättvis och rimlig avvägning mellan de inblandade parternas intressen.") (emphasis added).

way, by lowering what they were expected to pay as a UB, *without disadvantaging payees and children* because of the general and specific welfare state supports *barnbidrag* and *bidragförsäkring* guaranteeing a *reasonable support level* for children.¹¹¹⁷

There was an intent too that gender equality progress should be supported in the simultaneous reforms to the spousal support (alimony) rules, although *the pace of gender equality progress should be chosen carefully so as not to abandon too quickly the laws' original purposes to protect weaker parties*.¹¹¹⁸

Concern that overly-burdensome child support collection from payors could jeopardize payors' relationships with the supported children also supported easing payors' burdens immediately. Crucially, *the Proposition expressed a choice to retain a child support duty for parents who do not live with their children, despite some suggestions that society should take over this role* and despite existing increased state supports for solo parents and for children in general. The first reason cited was that *parents living with the children and paying for their needs would find cancellation of the other parent's duty to contribute "blatantly unjust."* A better solution to the payor parent "sometimes feeling burdened" by a requirement to contribute to a child with whom he was not building a family life at home would be, according to the Proposition, *encouragement of regular contact* between the child and the NCP. This would maintain a sense of belonging ("*vidmakthålla en sambörighet*") that would make the duty to care financially for the child obvious.¹¹¹⁹ There was also suggestion that no child should "be left with no contribution from the father," though child support amounts paid to children from different relationships could differ, even if the children's needs were identical (because their respective other parents had different incomes).¹¹²⁰

As the Proposition's author summarized, "the aim with the reform [was] to reduce the burden mainly for the child support debtors in the worst economic circumstances; to achieve a somewhat more uniform assessment of child support issues; and to meet certain specific reform requirements from the *Riksdag*" (e.g. for immediate reforms addressing child support debtors' situations).¹¹²¹ The reform therefore included substantive and procedural aspects.

¹¹¹⁷ See *id.* at 76–80. Note that in this WSM ideology more burden to taxpayers to support some children whose NCPs had lower incomes did not require more justification than this, and the additional state costs did not prevent passage of the reform. *The change was in line with, not against, mainstream WSM-based ideals.*

¹¹¹⁸ See *id.* at 55.

¹¹¹⁹ See *id.* at 82.

¹¹²⁰ *Id.* at 106.

¹¹²¹ *Id.* at 81.

Further changes to the public-law child support advance collections system then in place (including guidelines to help child supports be calculated more uniformly in both the private and public systems) and to supports for children in general were in 1978 anticipated to be made in the near future. Against this background lawmakers chose to reform the FB (and certain related laws) immediately, despite the disadvantages of revising the support law system in a multi-staged manner. Public-law proposals could then be built taking into consideration the newly-reformed private rules.¹¹²²

The legislative aims behind the FB adopted in 1979 have not been overtly modified, although they also have not been rigorously furthered in recent years via enforcement of the law as it is written.¹¹²³ A reform in the mid-2010s to the *public* child support benefit rules clarified that *emphasizing parents' primary responsibility* for their children's support¹¹²⁴ and *educating parents* whom recent research shows may not be aware of the expectation that they try to reach agreement on a private child support amount, were its aims. *Decreasing overuse of the public system*, which is properly meant for use only as a backup (as emphasized by the recent reform's Proposition), was desired, with *cost savings to the state* an expected secondary bonus but not as important as the *financial benefits to children from individualized child supports* when their parents use the private system.¹¹²⁵

¹¹²² See *id.* at 80–81. The review of the public supports for single parents were however limited to recommending changes that would not cost the state more, net, than the present system, given the economic difficulties being experienced at the time. See *id.* at 56.

¹¹²³ See SINGER (2017), *supra* note 55, at 139–140 (discussing how the formal right to child support from a parent not living with a child remains, yet in practice many children with this right instead receive UStöd from the state).

¹¹²⁴ See, e.g., SOU 2003:42 at 90 (citing CRC Articles 5 and 18 as legal sources particularly emphasizing the primacy of parents' responsibility).

¹¹²⁵ Prop. 2014/15:145 at 76 (summarizing the previous findings that 55 million Swedish crowns per year would be saved if the parents who are debt-free in paying their support obligations through the public system had instead paid directly, privately, to the other parent, yet *emphasizing that there is no express goal to save money within the public system; the primary goal is instead to set focus upon the fact that the parents, and not the state, have primary child support responsibility*: “Det är dock viktigt att betona att det inte finns någon målsättning i sig att göra besparingar inom underhållsstödssystemet. Det primära syftet är istället att sätta fokus på att ansvaret för barnets försörjning ligga i första hand hos föräldrarna, inte staten.”).

Principles in Swedish Case Decisions

The Swedish legal system gives a strong but technically merely persuasive authority to case law decisions by even its highest courts,¹¹²⁶ and in any case courts in either system do not express original stated *legislative* intent for a given *statutory* provision. Nonetheless relevant to an academic study of what principles exist that influence the law in practice should include any new principles of private child support law announced or clarified by the courts.

A central principle of Swedish child support law that preparatory works to the private law rules introduced in 1979 was recently reaffirmed by the Swedish Supreme Court (*Högstadsdomstolen*). The Court, in the child support case NJA 2013 p. 955, stated that “[a] central *principle* is that the child shall have a *similar economic standard of living as the parents* even if they don’t live together.”¹¹²⁷ This principle or intent of the private child support law led the Court to find child support payable in this case, even though the children at issue lived 50% with the payor. It thus extended the 1979 private child support rules beyond what had been understood by the legal community to be their limitations. Specifically the Court, after stating the principle, reasoned that “the child shall therefore have the right to live at a level that doesn’t too much differ from the standard that the best economically situated parent has and, with alternating residence, *not only during the time the child lives with that parent.*”¹¹²⁸ This step had not appeared in the preparatory works, written at a time when alternating residence was much rarer, but the opinion of the highest civil law court generally is taken to mean within Swedish family law that legislators did intend it to provide a shared living standard, even in certain cases where the payor has as much parenting time as the payee.

Related Swedish Family Law Principles

To determine the principles and intents at play in the child support law system, consideration of Sweden’s private family law policy for children of separately-living

¹¹²⁶ This is in contrast to a precedential authority absolutely binding California’s lower courts, in theory, unless they can distinguish the facts of a new case sufficiently from a prior decided case. *See supra* Chapter 2.1.1.3 and 2.1.1.4 (on the hierarchies of legal sources in these jurisdictions).

¹¹²⁷ “En central princip är att barnet ska ha likartad ekonomisk standard som föräldrarna även om dessa inte lever tillsammans.” (Emphasis added.)

¹¹²⁸ “Barnet ska därför ha rätt att leva på en nivå som inte alltför mycket avviker från den standard som den bäst ekonomiskt ställde föräldern har och, vid växelvist boende, inte endast under den tid barnet bor med föräldern.”

parents in conjunction with the statutory law specific to legal and physical child custody is helpful.

Swedish custody laws¹¹²⁹ appear to assume that separated or divorced parents should, and in fact will, continue to cooperate as a “separated nuclear family,” therefore in a sense that the nuclear family continues (or is created, in the case of never-together parents) for the child or children’s benefit.¹¹³⁰ The law provides, for example, that the “best interests of the child” (“*barnets bästa*”) in decisions on legal and physical custody and visitation shall be determined by attaching particular importance to “the child’s need for a close and good contact with both parents.”¹¹³¹ Other relevant evidence of the Swedish lawmakers’ intents within the custody area and private family law more broadly, including relevant stated legislative intentions within child custody law, exist but are not extensively examined for this study.¹¹³² This thesis refers to some of custody law where appropriate, however, most prominently to contrast the state’s role, procedurally, in Swedish *child custody* versus *child support* disputes, as a means of analyzing the differing levels of state involvement in child support enforcement found in Sweden and California.¹¹³³

Swedish private (and public) family law is also situated within its national economic family policy (*ekonomiska familjepolitiken*) and gender equality policy (*jämställdhetspolitiken*), which were described at Chapter 2.3.4. Some relevant legislative intents therefore are part of that context, and are discussed in this thesis where appropriate to the analysis.

5.3.5. For Swedish Public Family Law

The Swedish public child support benefit (UStöd) was passed into law in 1995 with intents to make the social benefit (1) *more independent from the private child support rules*, but also to achieve this in a way as to (2) *reduce governmental costs* through public law that would simultaneously (3) make clear that *parents are primarily responsible for their children’s support*. More recently it was reformed to pursue even further the second

¹¹²⁹ Swedish custody laws are published in the FB at FB Chapter 6, directly before the child support laws contained in FB Chapter 7.

¹¹³⁰ See SCHIRATZKI (2005), *supra* note 466, at 13 (recognizing this expectation in the Swedish law).

¹¹³¹ FB 6:2 a (“barnets behov av en nära och god kontakt med båda föräldrarna”). This is markedly similar to California’s custody law’s requirement for “frequent and continuing contact with both parents,” first described *supra* Chapter 3.4.1.4.

¹¹³² Recent policy goals with respect to parenting, for example, are summarized within FK 2016:6, *supra* note 254, at 15–17 (in Swedish with a summary in English).

¹¹³³ See *infra*, particularly Chapter 7.3.

and third goals, encouraging more parents to use the private rules *instead* of the public ones, but still not integrating them (as they historically were integrated when the public benefit was an advance of support calculated per the private law rules, a system that proved expensive and otherwise problematic¹¹³⁴).

UStöd is payable regardless of the CP's income, while the other parent is alive yet is not paying civil-law child support pursuant to his or her duty to contribute to the child's support.¹¹³⁵ This social benefit is intended to guarantee reasonable support in most cases where a UB duty is owed but no UB is paid (even in the absence of a formal child support order or agreement).¹¹³⁶ It has been stated that the set amount per month has been intended, from the time of benefit's introduction, to correspond to approximately half the monthly costs of raising a child, after the income from the state-provided *barnbidrag* is considered.¹¹³⁷ The CP would thus fulfill his or her child support duty through living with and raising the child every day, presumably spending both income and the *barnbidrag* to do so, and the NCP's duty would be fulfilled by the UStöd guaranteed monthly amount, if the NCP did not pay a private UB child support.

UStöd's Multiple Intended Functions

Sweden's Government first proposed UStöd in its approximately current form in Proposition 1995/96:208, to replace *two* then-existing governmental benefits named the *bidragsförskott* or advance of a private-law-established child support and the *särskilda bidraget till vissa adoptivbarn*, a financial contribution to certain adopted children (those adopted by a single parent).¹¹³⁸ Proposition 1995/96:208 discussed

¹¹³⁴ See Bejstam (1994), *supra* note 859 (a doctoral thesis with the earlier law as its subject).

¹¹³⁵ If the other parent has died, there is a different social benefit, *barnpension*, paid to the child, per SFB 18:11. The child is not eligible for UStöd.

¹¹³⁶ See *supra* Chapter 3.4.3 and see, e.g., SoS (2014), *supra* note 479, at 24 (citing Ds. 2014:27). This booklet of information on child support, published in connection with the training of county-level parent discussion facilitators, explains that UStöd has *the form of a protective statutory regulation* and shall *guarantee the child a reasonable level of support if private-law child support is not paid*. *Id.* at 4. This is cited not as a source of what the law is in the legal sense, although the statements are accurate, but to illustrate how its purposes are explained to administrators and ultimately to parents.

¹¹³⁷ See Prop. 2016/17:216 at 13 ("I den proposition som låg till grund för införandet av underhållsstödet anfördes att underhållsstödsbeloppet skulle motsvara ungefär hälften av normalkostnaderna för ett barn sedan hänsyn tagits till det allmänna barnbidraget (prop. 1995/96:208 at 40 et seq.).") This was more fully presented *supra* Chapter 3.4.3.

¹¹³⁸ Prop. 1995/96:208 at 1. One may see immediately how the social benefit could be justified very differently with respect to these two circumstances, separated parents versus adoption without a second parent.

principles behind the law, including that societal financial support for children whose parents do not live together *should be independent of the Parental Code's rules* on UB, and that rules to achieve this should be developed in such a way as to *reduce governmental costs*.¹¹³⁹ Nonetheless lawmakers intended that the law should *make clear that it is primarily the parents' responsibility* to provide for children's economic support.¹¹⁴⁰ The benefit is thus "intended to safeguard the child's needs and to demand of both parents that they take financial responsibility."¹¹⁴¹ Upon examination those two intents can be distinguished however. *Safeguarding the child's needs* applies to *all* cases, and *demanding contribution from an NCP* only to the subset of cases where such a parent exists and can afford to pay.

There is therefore some understandable inconsistency in statements of legislative intent (and in interpretations during the benefit's administration) as to whether the benefit *remains a replacement of UB, but measured differently for reasons of benefit administration simplicity and uniformity*, or has *become something else*. Some seem to view UStöd instead as a support for certain children capable of being interpreted as a support society has decided to provide those children, wholly divorced¹¹⁴² from UB "child support" to be provided by parents, and they are not entirely incorrect given that UStöd is a broader support, with roles in addition to its role in guaranteeing child support (for example in cases of children adopted by a single adult).

UStöd law, upon the recommendation of an investigative committee tasked with suggesting legislation to provide better clarity and better security against the lack of uniformity in the rules and concepts common to many social insurance laws, was in 2011 collected together with approximately 30 other laws regulating social security benefits of various types into a Social Insurance Code, the SFB (*socialförsäkringsbalk*) presented in the earlier descriptive chapters.¹¹⁴³ The substance of the law on UStöd, thus lawmakers' intents for it, remained unchanged at that time.¹¹⁴⁴

¹¹³⁹ This must be seen in light of the child support advance's construction as a *simple, efficient tool* that would *no longer require individualized calculation of child support in all cases*, as is aimed for in both jurisdictions compared but I find to be *more emphasized* in Sweden's legal system's tradition.

¹¹⁴⁰ Prop. 1995/96:208; *see also* Socialförsäkringsutskottet 1996/97:SfU3, *Underhållsstöd till barn till särlevande föräldrar* [UStöd to children with separately-living parents] at 1.

¹¹⁴¹ Riksrevisionen (RiR) 2010:22, *Underhållsstödet—för barnens bästa?* [Maintenance Support—in the children's best interests?], at 1 (by the Swedish National Audit Office) (within the English-language summary).

¹¹⁴² The pun was unintentional but may amuse the reader.

¹¹⁴³ SOU 2005:114 at 29.

¹¹⁴⁴ SFS 2010:110.

The relatively new UStöd law provision that requires payment of UStöd to begin *at the earliest one month after the parents move apart from each other, not immediately*¹¹⁴⁵ was proposed in 2014 and adopted effective 2016 with *a new intent*, or perhaps a new focus on an earlier-existing intent, *to increase parents' incentives to learn about the UB system and to negotiate between themselves a private law UB amount instead of applying for UStöd* if their situation does not require it. This one initial month of the child support guarantee being unavailable to CPs (technically to their children), and the simultaneously-enacted “six-months rule” requiring UStöd payments to the CP to stop (as a main rule) if the NCP makes payments consistently to the state for six months,¹¹⁴⁶ were intended as *incentives* for the parents to use the UB system more often.¹¹⁴⁷ They were introduced with measures increasing the FK agency's role in child support administration. FK would now be responsible for educating and assisting parents with regard to the dual child support systems and their own, primary, obligations to act in their children's best interests. These intents were decided upon, per Proposition 2014/15:145 on increasing regulation of child support outside the UStöd public system, in connection with government research findings summarized therein that many parents *did not know they could use the private UB system*, and that *the amount of support for their child under the UB system* (mainly in cases of low CP income) *would be higher than the set UStöd amount*.¹¹⁴⁸

The current purpose of or legislative intents for UStöd were clarified somewhat further in two December 2018 case decisions from Sweden's Supreme

¹¹⁴⁵ SFB 18:13 para. 1 (providing that UStöd can be paid by FK from and including the month that the parents have moved apart or the right to UStöd has otherwise arisen, however not retroactively for longer than one month before the application).

¹¹⁴⁶ SFB 18:9 a.

¹¹⁴⁷ A critic might note that both incentives disadvantage the CP (and the child), compared to her position before the reforms, with a missed month of support and the requirement of accepting the risk later that the NCP will not continue to make consistent payments when they must be made directly instead of through the UStöd system. They both seemingly advantage the NCP, as well, in that he misses a month of support or repayment obligation (potentially, although his duty for that month still may be enforced). Also, if in conflict with the CP, he enjoys a power over her once the state steps out of the case after (or every) six months, intent on enforcing voluntary private ordering. See *infra* Chapter 7.3 (regarding the jurisdictions' laws' different treatment of the power dynamics sometimes observed between separated parents as explained by their legal system principles).

¹¹⁴⁸ This naturally follows from the fact that the UB amount requires more than 50% of a child's needs to be met by one parent if the other cannot afford to contribute as much, while UStöd does not consider the CP's income and provides an approximately 50% coverage for a child's expected needs. That NCPs might not consider it beneficial to them, fair, or possible to pay a higher amount as a UB, and reasons that considerations were not more prominent in this legal reform discussion, are partially explained by the observation *infra* Chapter 7.3.

Administrative Court against a background of parents living physically separately and unmarried but having additional children together while their older child or children received UStöd.¹¹⁴⁹ At issue was the meaning of the SFB 18:3 paras. 1–2 requirements that a child’s parents do not “live together,” and must be able to demonstrate that they do not, for the child to have a right to the benefit.

In one case the agency FK argued the position that *the aim of UStöd is not to be a general financial support for parents with low incomes*. Rather “the society shall step in and give children of separately-living parents a guaranteed contribution to their support, if the child does not have the possibility of getting a child support of sufficient size from the parent owing a child support duty,”¹¹⁵⁰ and thus, FK argued, “the concept ‘separately living’ *must be intended to mean* that the parents have separated.” FK argued, losing at the trial and appeals court levels but then prevailing at the Supreme Administrative Court, that “the parents having three children together during the time that the public child support benefit was paid out strongly suggests that they had not separated but rather should be considered as living together.”¹¹⁵¹

In making its decision the highest Court reviewed the UStöd preparatory works¹¹⁵² which indicated that parents living apart due to one being *imprisoned, so long as he or she intended to rejoin the family after release*, or one *living in another location due to his or her work* but visiting with the family regularly are *not* to be considered “separately living,” and thus are *not meant to receive UStöd*. A court or the agency therefore should consider not only whether the parents share their living space but also whether they “have such a common household as normally characterizes a life together [*ett sammanlevande*]” even if they don’t completely share living quarters.¹¹⁵³

This clarified rule for the agency’s application of the law suggests that UStöd cannot (often) properly be claimed by unmarried parents living in two homes for a period during which they continue to have children together, but *not* because the fact of a new birth *per se* proves that they share the type of connection which the law equates with “living together.” Rather the Court clarified that such facts *raise that issue* and thus trigger a *requirement that the custodial (applicant) parent prove* that they do *not* live together within the law’s meaning. In one of the two cases decided in December 2018 the CP could *not* meet her burden to prove that she and the other parent lived separately despite the fact that they had had several children while she

¹¹⁴⁹ See the Supreme Administrative Court of Sweden’s judgments of 4 December 2018 in case numbers HFD 7223-17 & 7224-17 and HFD 3828-17 & 4104-17.

¹¹⁵⁰ *Id.* at 3.

¹¹⁵¹ *Id.*

¹¹⁵² Specifically Prop. 1978/79:12 at 197.

¹¹⁵³ Supreme Administrative Court of Sweden’s judgments of 4 December 2018 in case numbers HFD 7223-17 & 7224-17 and HFD 3828-17 & 4104-17, *supra* note 1143, at 5.

was receiving UStöd for their older siblings. In the other case, however, the benefit *could* be paid although that pair of parents also had had a second child together, attracting the agency's attention.

6. Comparing the Law: Rights, Duties, Procedures and Enforcement Today

6.1. Introduction to the Comparison

6.1.1. *Aims and Organization of the Comparison*

A brief introduction to this, the more exclusively comparative part of this thesis, will help orient the reader before the microcomparison of the child support laws promised by this chapter's title begins in earnest at Chapter 6.2.

This project aims, as set forth in Chapter 1.4.1, to analyze and compare the legal regulation of child support in Sweden and California from a welfare state perspective. The thesis, including especially the comparison, proposes several answers to the multi-faceted question “*how* do these child support laws differ, and *why*?”

This chapter analyzes how the jurisdictions' laws compare to each other on mainly a rule-by-rule basis, with focus on the study question “*how are these laws similar and also different?*” Topics covered include the *legal child support duty's nature*, children's *rights to support*, and parents' *duties to provide it*, followed by the laws regulating *procedural* and *enforcement* aspects of the child support systems in California and Sweden. This largely tracks the organization of Chapters 3 and 4. Because a good deal of the rule-by-rule comparison and analysis has been made within the descriptive chapters, this chapter can focus on lifting out selected differences (and similarities) at the micro-comparative level, to more deeply analyze them.

The next chapter, Chapter 7, answers its study question (“*why* are these child support systems similar and also different?”), in part by moving beyond the micro-comparison's borders to make a child-support-focused (thus not comprehensive) macro-comparison of the laws' legal systems and welfare state contexts.¹¹⁵⁴

The concluding chapter, Chapter 8, then discusses the study's central findings and their implications for the possible future trajectories of these laws, largely in overview and with a comparison of their shared *functions* addressing the social need for child support legal systems. It includes brief presentation of reform possibilities

¹¹⁵⁴ Chapter 7 presents four comparative discussions in total, on the topics of the jurisdictions' (1) *histories*; (2) *legal principles and traditions*; (3) *gender equality ideals and realities*; and (4) *income equality ideals and realities*, all as related to children's legal child support rights as presently regulated.

that the study suggests might be both feasible and advisable in light of the welfare state ideologies and other features of these legal systems.

Together the chapters of the comparison deepen and broaden the comparative analysis of the black-letter law. *Welfare state model theory* and *critical (gender and class) perspective* is used throughout the comparison, more or less in each subchapter depending on what is relevant to the analysis of a given topic.¹¹⁵⁵

6.1.2. Use of Micro-comparison and Macro-comparison

Here revisiting the topic of legal research method primarily addressed in Chapter 2 is appropriate, to explain the organization of the next two chapters and to provide a comparison of the systems on a more general level.

Methodologically in comparative law, “[t]he focus of micro comparison is not the legal systems as such but *specific legal institutes or issues*.”¹¹⁵⁶ To make a micro-comparison of specific legal rules properly, the nature of the legal systems (and the historical, political, economic and ideological context) must be addressed, but is not in focus.¹¹⁵⁷ Accordingly *this chapter*, Chapter 6, presents a micro-comparison within the confines of economic family law. It compares the legal rules as written and interpreted in their legal systems.

The following chapter, Chapter 7, is better described as a macro-comparison because its focus shifts to the legal systems and their societal, WSM contexts “as such,” to the degree relevant for each comparative discussion. Chapter 7’s discussions analyze the larger-scale similarities and differences between the legal jurisdictions and their welfare state contexts, to explain why, the laws differ,¹¹⁵⁸ e.g.

¹¹⁵⁵ See *supra* Chapter 2.2.2 on the project’s use of WSM theory and critical/feminist perspective. As may go without saying, *traditional legal* and *functional comparative methods* also undergird the observations, connections, and arguments advanced.

¹¹⁵⁶ Hallström (2015), *supra* note 140, at 53 (emphasis added).

¹¹⁵⁷ *Id.* (“The method for making micro comparisons is somewhat different from that of macro comparisons because the function of the specific rule is more important in micro comparison than in macro comparison. . . . In *both* [of] the two cases the analysis *must* include the *nature of the legal systems* and consideration has to be taken of the *historical, political, economic* and *ideological* context.” Emphasis added.)

¹¹⁵⁸ The question of similarities and differences can be simplified to “to what extent and how do they differ?” This is because “similarity is little more than the absence of difference and vice versa.” JOHAN LINDHOLM, STATE PROCEDURE AND UNION RIGHTS: A COMPARISON OF THE EUROPEAN UNION AND THE UNITED STATES 35 (2007) (discussing comparative legal method and citing MICHAEL BOGDAN, KOMPARATIV RÄTTSKUNSKAP 64 (2nd ed. 2003)). As an example, if California mandates periodic reviews of the law by child support statute while Sweden also *in practice* experiences periodic reviews but does not specify their frequency within the child support law, is that a similarity

various causes contributing to the differences found. Analysis is aided by WSM theory applied to examples of differences gleaned from the micro-comparison.

The study's broader conclusions, supported by lifting the micro-comparison to a higher perspective with this more macro-comparative chapter, are meant to be relevant to readers with decisionmaking, lawmaking or other roles in either jurisdiction studied. They are framed broadly enough also to aid researchers and stakeholders even in other systems, for example in other US states and in other countries, who may face similar questions and challenges in their own societies.

6.1.3. *Two Similar-Yet-Different Societies' WSMs in Relation to the Comparison*

This study examines the child support laws of two societies with fairly starkly contrasting WSMs, and discusses the differences between the child support system solutions and ideals with reference to those WSMs. There is however *a risk of overstating the contrast* between the two societies or legal jurisdictions, thus this section briefly deepens Chapter 2's discussion of the jurisdictions' compatibilities. It presents some systems-level findings.¹¹⁵⁹

To allude to a common comparative-law analogy, *Sweden and California are more like the two most different apple varieties one can study, rather than like apples and oranges.*

One can imagine a theoretical continuum between minimum and maximum possible state support aimed at ensuring the welfare of individual members of a society. It might begin with societies where a welfare state is *completely absent* and non-state actors and institutions have a much greater relative role in ensuring individuals' welfare; which institutions would be more prominent than the state could vary. An organized religion or the private market or family clans, perhaps. Similarly, on the *maximumly strong* welfare state end of the continuum would be varying types of societies, all with highly-developed and expansive welfare state protections.

Esping-Anderson's WSM typologies were not built to categorize such a wide range of possibilities. They were built from his categorization of the world's *capitalist democratic nations* of the *twentieth century*. Not included were those societies purporting to protect the welfare of their members via, for example, complete socialistic state ownership of all property, totalitarian control of their members, or those with both weak welfare states and weak rule of law.

Extreme presence of the state and extreme absence of the state exists, in other words, but at a great distance ideologically from either of the jurisdictions compared.

or a difference? It is both. Discussions of differences throughout this comparison thus largely include discussion of similarities.

¹¹⁵⁹ In focus here are not only the jurisdictions' comparability for research purposes, in other words, which hopefully already is clear, but also their similarities from an eagle-eyed perspective.

While Esping-Anderson's models may somewhat depict Sweden and California as polar extremes within the group of societies he studied, *they also were similar enough for him to compare*. They are both *democratic, capitalist, wealthy enough to support significant welfare spending, and developed with influence from largely Western and Judeo-Christian thought and tradition*, then progressively become more diverse as the world has grown more interconnected via modern communication and transport technology.¹¹⁶⁰

Today's social-democratic Sweden, I conclude from the legal and contextual materials analyzed, is most accurately characterized as an attempt to reach a well-balanced level of "*compassionate capitalism*." The welfare state is wary of letting free-market capitalism go too far. Today's liberal-market California is most accurately characterized as an attempt to maintain "*less-fettered capitalism*." California's welfare state is wary of letting state interference in free-market capitalism (or the long-diverse population's varying social ideals) go too far.¹¹⁶¹

Thus (1) the degree of support for public *financial investment in and steering or regulation of* social welfare significantly differs between Sweden and California, as is predictable from socio-legal descriptions of their respective WSMs. Simultaneously (2) support for both *more* and for *less* state involvement in welfare exists *within* both societies' political spectrums (as can be important for a comparatist to remember when analyzing legal elements seemingly at odds with the "usual" WSM ideals).

What differs markedly too is the *status quo level of state involvement*, and thus the legally-established minimum welfare standards. This means the starting points for reform discussions also differ markedly: a welfare conservative in Sweden might be seeking welfare rules *more* generously redistributive or strongly protective than California's most welfare-generous progressive would seek.

The importance of Sweden's commitment to welfare *for all*, however—implementing the most central welfare benefits such that every member of society benefits from them, avoiding means-testing that interferes with social solidarity—cannot easily be overstated. "Generous" in Swedish welfare terms does not mean

¹¹⁶⁰ Many topics beyond this study's scope could be investigated about these influences, e.g. regarding Protestantism's influence on both jurisdictions' concepts of the family. Note also that *the wealth referred to can be largely in an active, productive workforce*, funding welfare spending on a "pay-as-you-go" basis via payroll taxes. See, e.g., Mannelqvist (2007), *supra* note 178, at 147.

¹¹⁶¹ In the US many distinguish between *social liberalism* and *economic liberalism*; California is rather liberal in both senses. California's higher social liberalism is associated with lower economic liberalism (CA-1), to a degree, compared to other US states, meaning its politics allow more welfare state protections successfully to be passed into state law (CA-2). Sweden may or may not be more socially liberal, depending on how one defines it. It is much less economically liberal, in that the state more tightly regulates the market and more progressively redistributes funds among members of its population to assure a high standard of welfare for all (SE-2). For the key to the codes see *supra* Table 1, on page 81, revisited by the discussion immediately below.

giving to the “worthy poor” a government support while excluding most middle-class society members from its benefits. For the average Swede, supporting the strong welfare state is strongly *personally* beneficial and economically rational.

As introduced above in Chapter 2.3.1 (Table 1), Sweden’s social democratic WSM is described in research literature as partially defined by goals to promote (SE-1) individual freedom (*from private dependency*) as well as (SE-2) a good economic standard of living for all, both pursued via (SE-3) a relatively high level of state power and responsibility for meeting the financial needs of all members of the society, including children, and relatively high welfare state funding.

In contrast, today’s liberal welfare states, of which California is one, have been defined by their aims to promote (CA-1) individual freedom (*from state interference*); (CA-2) a minimal economic standard for those who cannot or do not achieve a better standard via private relationships or market activity and (CA-3) a relatively low level of state power, responsibility, and funding. The comparative discussions occasionally refer back to these aims.

In both of these relatively wealthy societies, today’s laws do not permit children to earn a living on the private market to support themselves or their households (as a main rule, subject to limited exceptions). Primary education is mandated (and guaranteed).

Sweden’s approach to ensuring that children are supported adequately to adulthood (despite their societally-enforced economic incapacity) is *high state investment in children*. It relieves all families, including the solo parent families (both payees and payors of child support) in focus here, of a portion of their historically-larger responsibility for supporting children. When the state meets some of a child’s basic needs, the amount the child is dependent on its parents is reduced (SE-1), *and children of lower-income families are raised with less financial support disadvantage* relative to other children (SE-2), although differences do remain, as introduced in Chapter 1.2.

California’s approach to ensuring children are supported adequately, which might be called *low-to-medium investment in children* relatively speaking, is not by any means the full opposite of Sweden’s approach, despite its WSM type being considered prototypically liberal. Welfare monies are more limited and generally are strongly targeted to the children most in need. Practically, given the majority political ideals, welfare program funding does not suffice (CA-3) to bring all children up to a standard of living at which their well-being is largely protected regardless of the income levels of their families (compare SE-2). Ideologically, the aim is instead something more practically feasible in light of the low funding for welfare: to have a minimum economic standard for those in the most need.

As a consequence even most Californian progressives (social liberals) do not advocate removing means-testing for social benefit eligibility, for example.¹¹⁶² Nonetheless, in California state monies do play a significant role in reducing the welfare differences families would experience if they had to rely solely on their members' market income.¹¹⁶³

These themes are returned to within the comparative discussions. The point to be made here is simply that, as one might expect between two varieties of apple, some differences are more differences of *degree*, not *type*, and others are more differences of type. *Both apples-to-apples and apples-to-oranges comparisons—as well as differences of degree and type—can be very interesting; both can contribute fruitfully*¹¹⁶⁴ *to legal science.*

The Societies' Attitudinal Differences Towards Child Support

The ideals of each jurisdiction's WSM were related in Chapter 2.2.3 to the two systems' child support legal rules on what housing expenses an NCP might subtract from his income available for child support payments. There, the example illustrates how the thesis uses WSM theory in analyzing and comparing the legal rules. *Here the example is revisited to exemplify some basic welfare-state-related attitudinal differences towards child support and payor parents that influence interpretation of child support laws* in these two similar-yet-different jurisdictions. This example illustrates *difference in the basic view of parentally-paid child support as an institution* between the two studied jurisdictions, which may help the reader interpret the remainder of the comparison.

In summary, the Swedish rule on housing expenses allows parents (including the most frequent payors, NCP fathers) to deduct their *actual housing expenses* during child support determinations, *unless* the expenses are demonstrably unreasonable because they are higher than average for the NCP's region and family size, although even then they may be deemed reasonable depending on the circumstances. It is possible that *no* amount of UB payment will be considered reasonably affordable if the NCP's income just covers his own (standardized) living expenses plus his (actual,

¹¹⁶² Newly-popular “far left” political candidates in the US are now supporting *some* universal social benefits, such as socialized healthcare. Most mainstream liberals remain unsure that universal fee-free higher education is affordable, however, and wouldn't mainly benefit the rich at the expense of the poor. As introduced in Chapter 2, California has expanded low-cost college into the first two post-high-school years to a greater extent than less-progressive US states.

¹¹⁶³ See Chapter 1.2, *supra*, on child support and need-based benefits' importance for California's lower-income CP households.

¹¹⁶⁴ I would apologize, but every tome benefits from a pit of levity.

reasonable) housing expenses. In Sweden, child support payments are not to be paid at the risk of impoverishing the NCP household. Reducing his household below a reasonable, average standard (not a minimum standard) is avoided.¹¹⁶⁵

The Swedish child can nonetheless turn to the UStöd system and receive a reasonable child support. Then the NCP's income will be tested per UStöd rules to see if he will be considered able to afford to make full or partial repayment contributions to the state. Under the UStöd system's separate ability-to-pay rules, conceptually similar to the UB system on this point, calculations will afford the NCP a reasonable, sustainable (not minimal) standard, to be purchased from his own income. The child-support-related contribution to the state obligation begins to be considered affordable for him only after his own support is relatively secure, and his other children's needs are considered as well.

Under Sweden's WSM, the NCP's household impoverished by child support payment obligations, even if it is composed of just the NCP himself, is not acceptable. In contrast, in California, if a low-income single man is living alone (without children), his standard of living is less of a protected interest, in comparison to the standards for the children he has a legal duty to support. Regardless of his living situation, California's child support system *ideologically* will seek to impose some minimal child support payment per month if at all possible. A lower-income single man living alone in Sweden can receive state help *through the child support laws*, not as an *exception* to the main rules (like California's LIA) but in the *ordinary functioning* of the UB and UStöd laws. The Swedish NCP also is eligible for aid through other state welfare benefits, via forms personal to him and forms dependent on his having parenting time with a child (like the housing benefit for families with children).

A Swedish single father NCP thus is *politically expected* to have a state-guaranteed higher living standard than state help would provide a similarly-situated father in California, and this can be observed, as just discussed, in the child support laws of each jurisdiction. Using available state funds to provide more generous amounts of non-means-tested support directly to the child and CP household makes more sense, from this Swedish perspective, than pressing low-income NCPs stringently; granting

¹¹⁶⁵ Consider for example the wording used by one Swedish investigative group suggesting improvements to the UStöd system in 2002, not so far from how a Californian lawmaker might express the same idea: "The care of children *must of course be given high priority* by a parent. The duty to provide for children means that *the parent must adapt their own expenses according to this duty*. At the same time this investigation considers it reasonable for an obligor parent to reserve for him- or herself a reasonable amount for self-support before he or she is required to repay UStöd." SOU 2003:42 at 24 (next announcing a proposal to double such self-support reserves) (emphasis added).

more support “to children” can be *less stigmatizing* to either parent, and generally is *more politically desirable* as well.¹¹⁶⁶

In contrast, under California’s Guideline law, what is “reasonable” is for *every* NCP to pay a child support based on income level and time with the child. Token, minimum orders that still were unaffordable to the NCP have been used overzealously for years, although some greater protections for low-income NCPs have recently been enacted to reduce the problem of uncollectable arrearages, as discussed within Chapter 4. In California low orders are preferred to orders for zero child support (although California uses those as well, to have an order ready to modify if and when an NCP starts earning more income). *No actual expenses of the NCP are considered*, except in cases at the lowest levels of monthly income, and to a minimal degree, if granted by a court. Even if he *reasonably* incurs an actual housing expense it is assumed and (in a moral sense) expected that *an NCP’s living expenses and living standard will be decided after he knows his child support obligation*, meaning the sum the Guideline expects him to pay in monthly child support.

This explains why, if a Californian child support payor claims difficulty with paying child support due to his housing expense, he will be advised (possibly even orally by a judicial officer, although they could not formally order this) to move himself to lower-cost housing, or to take on higher-paid work, or to work longer hours, within reason. The law allows deviation from the Guideline for few reasons, and actual housing or other expenses are not among them. Thus, in California, *payment of child support is considered reasonable, even necessary, to prioritize over an average, reasonable living standard for the payor*, in situations where both cannot be afforded.¹¹⁶⁷

¹¹⁶⁶ The result *in practice* may be that many Swedish CP *mothers and children* instead face the stigma of reliance on need-based additional supports, saving face for fathers at the price of loss of face for women and children. Legislative responses within the child support laws, in line with Sweden’s WSM, might include *more non-need-based supports* for children with separately-living parents (*the increased UStöd amounts recently introduced fits this description*), or *more adjustments better to equalize relative poverty risks* between mothers’ and fathers’ households (the case law interpreting the FB in a way that opens up the possibility of UB *for children alternating residence* fits this description). The increased UStöd amounts also *increase NCPs’ duty to share more of the costs of raising their children*, to the extent that *higher-income NCPs will be considered able to repay the full, increased UStöd amounts*. In lower-income cases the state will cover the extra cost for the increased UStöd payment, boosting children with less-well-off parents’ economic situation better to match other childrens’ (also in line with Sweden’s WSM).

¹¹⁶⁷ Designers of the Guideline may object that this was not intended, however promoting a *reasonable* (as opposed to *minimally acceptable*) NCP living standard (SE-2) has not been found to be in focus, or mentioned, in connection with Guideline child support law. Even for CPs and children the focus is to keep them above the income level that would qualify them—that is to say force them to apply for and become reliant on—need-based public assistance. Securing some part of an NCP’s income for his child’s use without pushing him onto need-based public benefits or out of a paying

Supporting one's dependents, especially one's children, is emphasized by the ideals of the Californian society's WSM, by which *the state properly has a minimal role to play in supporting children*.

Parents thus become wrongdoers not to work harder (as is considered theoretically if not actually possible) or to sacrifice their own living standards to minimize the risk of their children needing to apply for need-based social benefits (an attitude of judged unworthiness that can be exacerbated against poorer parents).¹¹⁶⁸ In the United States, including in California, *it is more politically desirable to hide welfare supports to children and families in, for example, the tax law*, allowing low-income people to retain more of "their own income" to support "their children." Such supports are provided for in California's public welfare law, but within a different ideological climate with respect to what is desirable.

This example explains to members of each society a little more thoroughly how members of the other society *think and feel*, to the degree relevant to this study's aim to compare and analyze the jurisdictions' child support laws. The comparison uses WSM theory in this way. Any deviations from the theoretically-expected WSM-based inclinations also become particularly interesting to analyze.

6.2. Comparing the Rights and Needs to Receive Child Support

6.2.1. *The Scope of the Right to Child Support: Who Receives, For How Long?*

In both jurisdictions, the *durational* scope of the right to child support (and the parental duty to provide it) is nearly identical for the vast majority of cases involving minor children. It extends from birth (actually before birth), to age 18, with possible continuation for a time period (to age 19 per California law, 21 per UB law and 20 per UStöd law) if the child is still pursuing basic or high-school-level (pre-college) education.¹¹⁶⁹ Under the UStöd system the age is 20 to align better with other public-law-regulated social benefits available to young people; this is one example of the UB and UStöd systems evolving separately and not being well-coordinated. In California the upper-limit age of 19 if still in high school, a lower age than Sweden's

employment is the priority aim. Given the context, the low welfare state supports, this easily can be understood.

¹¹⁶⁸ See *infra* Chapter 7.5, especially 7.5.3 focused more on class differences between groups of families, in contrast to differences in income between parents of the same child.

¹¹⁶⁹ See *supra* Chapters 3.3.1 for California, 3.3.3 for UB and 3.3.4 for UStöd, describing the law compared here. Generally the comparison follows the ordering of the descriptive chapters and includes minimal internal references of this type.

despite generally more stringent private family duties in that system. This is likely related to Swedish children on average being older when they finish upper secondary education, since they begin schooling later, at age 6 instead of 5 as in the US.¹¹⁷⁰

Per the black-letter statutory child support law in both systems, a parents' legal children are the rightsholders with respect to that parent. *Parents before the child herself*: The parents are expected to provide support before the child's own incomes or assets may be used for the child's support, in both jurisdictions, so long as the child's resources are not very large relative to the parents' own resources. *State before parents in certain instances, mainly in Sweden*: In Sweden, certain of the child's social benefits, specifically ones meant (like the *barnbidrag* universal child benefit) to reduce all parents' support burden, also explicitly reduce the child's right to (and need for) parental child support, from parents' private resources; this is not true under California child support law.¹¹⁷¹

The most notable difference in the scope of the right to parental support is that *in California the right to be supported by a parent who can afford it extends to disabled adult children in need*, if they otherwise would or might require social safety net benefit payments. *In Sweden today parents' private child support obligations to their formerly minor children end more definitively at a child's 18th birthday (or slightly later)*.¹¹⁷²

The context for this difference, outside the child support law in the public welfare law, is that the Swedish state takes over as the primary support insurer for disabled adults, whether or not they have parents or others who could instead support them; the disabled adult individual has a right to claim necessary *state* supports, but not to claim further *parental* support, meaning to become dependent for a longer period of time on the private individuals who had been their legal guardians.

¹¹⁷⁰ Both jurisdictions' educations through high school consist of 13 academic years generally starting in approximately August and ending in approximately June.

¹¹⁷¹ In both jurisdictions, certain public-welfare-enhancing social services reduce children's reasonable needs, notably tuition-free primary and secondary schooling. This is not explicitly stated in the child support laws, perhaps because it is so well-established in both jurisdictions that it is a given culturally-established contextual fact now. Both jurisdictions have signed (and Sweden has ratified) the UN International Covenant on Economic, Social and Cultural Rights, Article 13 of which includes the requirement of publicly-provided primary education and commits states to make progress towards free public secondary and, interestingly from a US perspective, *university education*. See the Covenant (*available at* https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-3&chapter=4&clang=_en). Many jurisdictions internationally still require children's families to pay for their schooling, as the US and Sweden did historically.

¹¹⁷² This is true regarding the private child support legal duty but also with respect to higher education loan determinations and otherwise.

The WSM preference in California for reliance on private before public resources or dependencies (CA-1, which might be called *freedom from dependence on the state but not from dependence on other private individuals*) can be observed here. So can the contrasting Swedish WSM preference (SE-1, for *freedom through dependence on the state thus freeing one from private dependencies within the family*).¹¹⁷³

In practice California rarely enforces the duty to support an adult disabled child in financial need (or the duty to support an adult parent in need, nonetheless still valid law). Many California parents to disabled adult children nonetheless follow the liberal WSM ideal and do support the children privately, if they can afford to.¹¹⁷⁴ As a result many adult children do not “need to” apply for all social benefits for which they otherwise might qualify. If the State of California ever might wish to avoid providing expensive public benefits to a disabled adult, and that adult had financially able living parents, the legal duties remain in law and could theoretically be called upon to deny that person’s application(s) for need-based public benefits.

A second and more common “need” that young adult children in California have is *support during the years of their university or post-secondary education* of whatever type.¹¹⁷⁵ As with needed support while one is a child, support needed by young adults can be more difficult to procure voluntarily from a parent the child has not lived with recently. Nonetheless there is no child support duty imposed on parents extending beyond the end of high school, in either jurisdiction.

Sweden’s *child support* laws do not clearly contemplate this continuing financial need if a young adult pursues higher education, except to the extent that the right to child support from one’s parents ends, if enforced through the UStöd public benefit system, in the same month that the right to public benefit *student support* begins.¹¹⁷⁶

¹¹⁷³ See Table 1 within Chapter 2.3, *supra*.

¹¹⁷⁴ See generally Sande L. Buhai, *Parental Support of Adult Children with Disabilities*, 91 MINNESOTA LAW REVIEW 710 (2007) (tracing the evolution of moral and legal support duties and arguing that US parents generally do all they can to support their adult children in need but that an enforceable legal duty to do so is inappropriate as a substitute for governmental or other institutions which provide support without regard to the wealth or status of an adult’s parents).

¹¹⁷⁵ Even if not in college, young adults in the US are increasingly not immediately financially independent. Because single parenthood has also increased, often a young adult is still being supported by only one parent. This parent also has an interest in child support legal duties for the other parent being extended, to assist them. See Sally F. Goldfarb, *Who Pays for the “Boomerang Generation”?: A Legal Perspective on Financial Support for Young Adults*, 37 HARVARD JOURNAL OF LAW & GENDER 45 (2014).

¹¹⁷⁶ In practice a UB support also would end upon graduation from high school and the same Swedish student support would begin as soon as the student began pursuing higher education as well. In either case a gap of a few months might occur, however young adults are eligible for other supports, for example they can receive monies to help them pay for driver’s license preparation, or

This is in the context that all Swedish education, including higher education, is tuition-free, and available grants, loans and need-based supplemental supports fulfill young adults' needs, if any, for support, regardless of their former legal guardians' incomes or assets.

In practice many Swedish parents to young adults help them financially, but in relatively modest ways, perhaps allowing them free continuing housing, or paying for their travel to join the family for a holiday or on a trip. At the more generous end, financially well-off Swedish parents might provide their young adult children the chance to live in an investment home owed by the parents, or might gift them a downpayment to buy an apartment. They do not save for 18 years to afford to buy their adult children higher education or borrow large amounts themselves to do so, as is common in California among better-off parents, tying the Californian young adults to relatively more dependence on their parents.

California's child support laws, like Sweden's, do not directly give a young adult college student a right to parental support, despite the continuing inability for these former children to support themselves while pursuing full-time studies. The California welfare state instead helps many students afford higher education via discounted in-state tuitions and in an increasing number of cases tuition-free two-year post-high-school community college opportunities. Federal student aid programs and diverse private and public scholarships also help to address what remains a large need for support, without law establishing a right to support from any payor, parent or state. State supports are especially targeted at lower-income students who might not otherwise pursue higher education, and many students take large loans to finance themselves until they are employed and earning income.

There is one group of young, non-disabled adults that the California child support system sometimes helps by legally requiring their parent(s) to pay support to or for them during their post-secondary education. Some of California's young adults benefit from *enforceable private contracts between the parents requiring one or both of them to pay some amount towards higher education expenses*. As described earlier these contracts can be as enforceable as any other child support orders if they are converted into "support orders" when they are made. Contracting parents most often were encouraged by their family law advocates during divorce-related financial settlement negotiations to *agree* to finance their children during university studies. The child support law enforcement system then *strengthens* the child's resulting *contractual* right (as the beneficiary of a binding contract between the parents) to university financing

housing benefits if they cannot afford independent housing. In practice many parents allow the young adult children to continue to live at home, but there is no legal obligation or much societal expectation that they will do so.

by allowing such contracts to be enforceable as *child support orders*, backed by the full power of the LCSA enforcement system.

Such private agreements are popular because US federal student aid programs as well as state public and private colleges and universities calculate an “expected parent contribution,” up to 100% of the cost of attendance (for tuition, room and board, plus mandatory fees, books, health insurance, and travel, among other items) from both parents’ incomes, *despite their child having reached the age of majority*. There is no *legal* obligation for parents to pay their expected contributions, however the student is most often not eligible for more favorable state-backed loans or other types of aid to cover that “family responsibility.” If the student does not have a college savings account put into place by the parents earlier on, or some other way to cover education costs, it can become very difficult to pursue higher education, especially at the school of the student’s choice regardless of tuition considerations. A student might be eligible to borrow up to the full cost of the education, yet this too is sometimes disallowed by financial aid laws if the “expected parent contribution” is large enough. Separated higher-income Californian parents can be concerned that the other parent will refuse to contribute when the time for university comes, forcing one parent to bear the full cost, or the student to lose educational opportunities.

There is no similar need for *university costs* or any other similar post-childhood contingencies usually to be addressed in Swedish divorce settlements. Rather, per the WSM in Sweden, it can (more often than in California) be considered a challenge to equal opportunity for all young people that some young adults receive generous private gifts (usually from parents and grandparents) towards, for example, being able to buy a first home, while others do not benefit from that same opportunity.¹¹⁷⁷ Preventing growth of income and wealth inequalities in society is within the purview of the Swedish ideal-type WSM, to a significantly greater extent than it is within the purview of the liberal ideal-type WSM. Thus no adult child support for disability or higher education makes sense for Sweden, while the partial existence of both makes sense for California.

¹¹⁷⁷ In today’s Sweden such a concern would most likely only be voiced by the most- or more-left-leaning political parties’ members, although it reflects the social democratic WSM ideals, strongest in perhaps the 1970s, which have become more mixed with liberal WSM elements. Today’s Californians also express concerns for equal opportunity, but per their freedom-*from*-the state/dependence-*on*-the-family WSM ideals, they less often support full financial independence for all young adults, especially if it requires the state intervening to provide it.

6.2.2. *Children's Needs: Theories, Data, Estimations and the Law*

A point of similarity between the Swedish and Californian systems is their *basis in numeric children's costs data and more user-friendly tools for using those data*. The child support calculation tools provided to parents (and judges)—the online calculators¹¹⁷⁸ available to Californian and Swedish parents alike as described in Chapter 3—can be helpful in empowering them to attempt to reach child support agreements, which is a shared aim of both jurisdictions.

However such tools, based on such numerical data regarding “the costs of children,” can also obscure, in both jurisdictions, the real basis that has been chosen to determine what a given child “needs” financially. It is not (only) the culturally-specific context of what expenditures on children are considered appropriate and reasonably necessary that has been decided by lawmakers and the implementation of the child support laws in practice that influences the data-based estimations of a child's needs.

Of central importance also is what proportion of shared household or family costs child support law assigns to a child, and how. In other words the *similarities found include that these aspects are confusing and obscured from users of the laws* and relatedly that the underlying data may not support the child support results they lead to but that that is difficult for lawmakers fully to evaluate.

Meanwhile the *differences largely are found in the theories of needs underlying each jurisdictions' numerical child support calculation results*. These result in a narrow and relatively low range of child needs totals expected under Sweden's laws, and a much wider range of relatively higher needs totals under California's, as discussed previously in the thesis and as summarized in the next subsection.

Regarding the first similarity between the theories, data, and estimation tools: even to (non-child-support-expert) legislators, lawyers and judges, and especially to parents, the numerical guidance in each jurisdiction that leads to child support amounts *can seem confusing*, as it is currently explained to them. This is partially as a result of the desire to keep explanations simple enough for broad accessibility, but also because of unresolved policy questions. While being confusing, the calculations and precise numerical amounts resulting from the mandated (California, UStöd) or suggested (UB) estimators of children's need *also can seem to reduce the determination of an appropriate child support amount to a math problem, with one or a small range of correct and reasonably precise answers*.

In one sense this is very positive, because both jurisdictions sought to reduce excessive discretion in child support decisionmaking, and both seem to have to an extent succeeded. On the other hand few professionals working with child support

¹¹⁷⁸ Both are included at Appendix 1, *infra*.

every day, much less parents, could explain what policy choices led to the numbers used by the tools, or what percentage of what expenses might or might not have been included from the consumer data each is based upon. Parents, it is likely, are even more unsure. This can lead to results for children being out of synch with lawmakers' intentions, and to parents being dissatisfied with the amounts they are expected to pay or receive, among other negative outcomes.

Difficulty in achieving widespread understanding of the law may be viewed by those who have written child support law as a virtually unavoidable difficulty. It is in any case a clear similarity between these two jurisdictions, despite their quite different underlying child support policy choices. *More easily available material really explaining the law's assumptions and policy aims might alleviate the problem, if those assumptions and aims actually were clearer to lawmakers than they appear to be* from the materials available for this study.¹¹⁷⁹ Educating the parents using the law and the state officials applying it has been an element of reforms implemented over time in both jurisdictions, but the underlying piece—regulators and the regulated being truly clear on what choices have been made and why for children and parents in different circumstances, across both private and public systems—has been lacking.

Regarding the related similarity mentioned above, the economic data and how it is used to reach child needs totals may be in need of better review, in plainer terms and more directly by lawmakers, in both jurisdictions. Existing academic criticisms (introduced in Chapter 3) have not seemingly been addressed by reforms implemented to date, although reform processes are actively ongoing now in both jurisdictions. The *theories of children's needs for parental child support behind the data chosen* for these jurisdictions' child support estimations are not fully self-evident, as this study's findings in Chapter 3 and Chapter 5's child support policy choices discussions reveal. Nonetheless, assuming the theoretical goals are sufficiently articulated by lawmakers in these jurisdictions, the unanswered criticisms of the ways in which empirical data have been chosen and used render the children's needs estimates made using the data less reliable.

In Sweden, lawmakers' desired outcome for UB and UStöd amounts seems to be *a good estimate of the direct costs of covering a child's reasonable child-specific expenses, regardless of parental income levels*. California's desired outcome seems to be *a good estimate of the share of parental income a given child needs to achieve a theoretical continuity of expenditure on the child pre- and post-separation*. There is evidence from both jurisdictions tending to show that *the data used by each system may not be as well suited for achieving that system's desired outcome* as the child support systems purport it to be.

¹¹⁷⁹ Future reforms prioritizing clarifying them overtly without sacrificing ease of use for parents seem advisable.

The data *and theories of children's needs* have been criticized in both systems by researchers who have examined them, yet appear to satisfy lawmakers as reasonable-enough ways to make children's needs estimations (from the WSM perspective of each system). The ideologically-influenced theoretical choices concerning what overall *amount* of parental income a child "needs," the direct-costs and share-of-income models are compared in the next subsection.

Returning to the difference found with respect to what types of data have been *chosen as relevant* to estimating children's needs post-separation, one prominent difference must be highlighted here. Wholly apart from which items to consider an expense of the child versus the adult parents, Swedish and Californian conceptions of what a child costs differ because their data for setting the needs amounts differs based on another important distinction.

Children's needs data is based on *quasi-reality (actual consumer behavior data)* in California, and researched and theorized by economists studying generally *two-parent* families in the US as a whole. In contrast children's needs data in Sweden is based on *quasi-ideals (reasonable or reference expenses)*, collected by the Swedish Consumer Agency. This agency in Sweden is tasked with deciding reference values in an effort to advise individuals and families as to what they "should" be spending, thus what the state will provide for them to spend via social benefits if they do not have sufficient private resources for full self-support. The same data is what state consumer debt counselors will review with those who become excessively indebted.

Comparison with Sweden reveals that the US jurisdictions, including California, have made a notable choice by basing the amounts of enforceable private child support transfers on what (non-separately-living) consumers with children *actually tend to spend* on those children, and at different household budget levels.¹¹⁸⁰

California's current child support law implements a *relatively* values-neutral policy on what parents "should" spend on children, perhaps with an ideology-related focus on private-law conflict resolution between individual private citizen single parents, and not so much on what the public law would consider reasonable. The answer California gives is "the child needs what you would probably actually spend, if you lived together." This moralizes regarding the *ideal family norm* for the child, and who should and should not suffer because of parental separate living. It does not however take the opportunity to reconceptualize, judge or influence private family spending, because the parents live separately and are requesting state conflict-resolution help

¹¹⁸⁰ Critics sometimes propose other models for US jurisdictions' consideration, with focus on how well suited *pre-separation spending* is to *post-separation* households. See, e.g., Foohey, *supra* note 1057, at 58 ("In basing its obligations on *realistic actual expenditures* of *postdivorce* households, the Cost Shares model identifies and incorporates another consideration upon which guidelines should focus: the ability of parents to pay.") (emphasis added).

and knowledge-based guidance to determine their respective financial duties with respect to the child. California child support law does not impliedly ask if perhaps (for example) American families spend too much, or too little, on any given child-related expense or on children generally, compared to the saving they might instead be doing for retirement, or the indebtedness they might better avoid. Via the choice of data California does not try to adjust spending on children, per se, with regulation of what child support it will court-order NCPs to pay—as it *might do if child support was to be paid by the state and not the parents*.¹¹⁸¹

Sweden's chosen data instead reflects more of a collectivist understanding of what Swedish families likely are (and also should reasonably) spend to meet children's needs, which also makes sense from a more public-welfare-law-prominent orientation.¹¹⁸² The consumer agency has made multiple decisions in trying to prepare a budget for a reasonable child (and, in the same process, the reasonable adult) living in Sweden. It has decided how often it is reasonable to replace a child's bicycle, whether the household will share computers or have one each, whether to include a mobile phone plan on a pay-as-you-go or a contract basis, whether to allow a budget for higher-cost environmentally-responsible products (the answer was yes), and at what age a child can be expected to have a personal phone, among many other choices. Parents are invited to use *as a baseline* as they individually decide an appropriate needs total for their child.¹¹⁸³

Income diversity is deliberately left out of consideration (in some tension with the shared living standard function UB law and California law both include for child support). Requiring parents to contribute to over-financing a child however, from

¹¹⁸¹ There are small elements however of this type of ideology in California child support setting, for example courts will not generally order add-on support for private school tuition against one parent's objection, absent evidence that it is affordable for the parents and the child's best interests are served by being allowed to continue with or go to a special-needs non-public school. California's publicly-provided K-12 education meets the reasonable needs of almost all children is the position courts take.

¹¹⁸² California may use the same types of measures in setting public welfare benefit amounts, but not amounts to be spent on children after parents separate, unless a parent applies for public benefits. The nature of UStöd as a public child support guarantee which should not be set at too high a cost for taxpayers may play a role here, as well as Sweden's ideals distinguishing private amounts—to be decided freely between parents—from state-imposed amounts, only (in theory) coming into play when parents have failed privately to handle their own affairs and need to seek state help to resolve their conflict.

¹¹⁸³ That is in theory how UB judges should use the consumer data; the problem that in practice both parents and judges fall back on these standard recommendations too often is somewhat distinguishable. Still, discretionary guidelines in the absence of more specific guidelines cannot in my view be recommended. *See infra* Chapter 7.3.1.

this view, is also prevented, as is the state needing to replace unpaid child support amounts that are based perhaps on more irresponsible consumer spending.

Sweden's solution is arguably more NCP-friendly than CP-friendly, since if two parents together had historically been spending larger amounts on a child the law may now require the CP to be responsible for financing the continuation of that, to the extent possible (especially in practice, given low *standardtillägg* awards and strongly discouraged defense of a child's right to child support in court).

Needs estimates based on this data leave it to the CP to provide more financial support than the NCP is required to provide, if the child is accustomed to more spending on her needs than the consumer agency deems reasonable, in addition to providing all or virtually all of the caregiving the child requires, a factor not assigned an economic value by the child support laws in either jurisdiction. Then again, encouragement to spend reasonable amounts, even if somewhat patronizing at the individual level, may promote healthy consumer behavior in current and future generations, at the societal level; such could be a social democratic WSM-related reason to support child supports being based on reasonable budgets for spending on children.

6.2.3. *Child Support "Needed": Direct Costs vs. Share of Income Approaches*

Comparative child support scholar Christine Skinner and her research collaborators have observed "some possible *child maintenance models* emerging that might explain variance across countries, such as a '*male breadwinner model*' and a '*children's costs model*.'"¹¹⁸⁴ These roughly align with *the share-of-income approach* found in California and *the direct-costs approach* found in Sweden, respectively.

The jurisdictions have chosen different data to measure and estimate the costs of raising a child, in ways significantly reflecting the WSM ideals of each society (and whether child support tends to have primarily a private-law or a public-law character), as described in the above subsection. Legally-determined amounts representing a child's "needs" also differ because more typical costs of raising a child are expected to be paid *by parents* and not by the state in California, compared to in Sweden. *Thirdly, however*, and very significantly, the *model-based approaches themselves* lead directly to a more generous reallocation of a larger portion of total parental income in California to the child's household, and deliberately so: the child's child support interest is in a *share of total parental income*, varying with the amount of that income, per California's model. Sweden's model more straightforwardly has decided that the

¹¹⁸⁴ See Skinner et al. (2012), *supra* note 1062, at 346 (identifying as an important question for future research how child support schemes approach the issue of gender equality, and how they ought to approach the issue) (emphasis added).

NCP's share of costs *directly attributable* to raising the child will be the measure of child support contribution. Looking at the context, these differences exist even while the *actual living standards* in these two relatively wealthy countries are not extremely different, at least for families other than those at the (largely Californian) extremes of wealth or poverty.

Regarding the level of total costs assigned to parents versus to the state, in the US the cost of a child *to parents*, from birth to a child's 18th birthday (excluding any higher education costs) has been estimated to be \$803 (6,980 SEK) per month *for lower-income families* (with less than \$60,640 per year of total family income). The same estimated cost is \$1,116 (9,700 SEK) per month for *middle-income* families (with \$60,640–\$105,000 or 527,089 SEK–912,671 SEK per year total family income) and \$1,850 per month (16,080 SEK) for *higher-income* families (greater than \$105,000 or 912,671 SEK per year total family income).¹¹⁸⁵

In Sweden, the Swedish Consumer Agency provides reference costs for children and adults, *deliberately* undifferentiated by income level.¹¹⁸⁶ It divides its cost estimates of reasonable living estimates for children by age for “food expenses” and “other expenses.” It also provides a third and final category of reference expenses called “shared household costs,” reported by total number of persons in a household and whether they live in a small, medium, or large town or city in Sweden. According to its 2019 information for consumers, a child 14 to 17 years old can be expected to incur food costs of 1,820 SEK (\$209) per month, assuming school lunches (state-provided in Sweden) are eaten on weekdays and all other meals are prepared at

¹¹⁸⁵ This is in the United States as a whole, pursuant to annually-updated US Department of Agriculture data. Family income is generally combined parental income. *See* Venohr (2013), *supra* note 75, at 338 (citing USDA data from 2013). California is known to have a higher-than-average cost of living. California's monthly child supports paid by NCPs when the parents live separately are also comparatively high. *See id.* at 346–350 (finding \$384 [3,338 SEK], \$1,052 [9,144 SEK] and \$1,014 [8,814 SEK] per month California child supports in three hypothetical case scenarios, compared to averages of \$336 [2,921 SEK], \$754 [6,554 SEK] and \$812 [7,058 SEK] in those same scenarios across all 50 states plus D.C.; ranges were \$220–412, \$552–1,052 and \$600–1,306, which is 1,912–3,581, 4,798–9,154 and 5,215–11,352 SEK). Venohr's scenarios all assumed no add-ons and *zero* timeshare with the NCP, and the CP making somewhat less income than the NCP, but at equal educational attainment levels (less than high school diploma, some college, or graduate/professional degree respectively). *Compare* Table 2, *supra* Chapter 3.3.1 (presenting 13 different California Guideline monthly child support scenarios, including results when parents have equal incomes or equal parenting time (shared care)).

¹¹⁸⁶ *See* Konsumentverket Report 2018:5, *supra* note 491, at 7 (“It is *assumed* that the basic need for such goods and services *does not differ greatly from one household to another, nor is it dependent on factors such as household income*. The Swedish Consumer Agency's calculations are thus *based on need rather than income*.”) (emphasis added).

home. The child would also incur 2,290 SEK (\$263) in other costs (specifically for clothing, recreation, mobile telephone, personal hygiene and supplemental accident insurance).¹¹⁸⁷ In total this is 4,110 SEK per month (\$473).¹¹⁸⁸ This total partially is intended by Swedish child support law to be covered by the universal child benefit, and the remainder generally is parents' responsibility (including add-ons to support, compared below, and housing costs).¹¹⁸⁹

Housing and household costs such as utilities and home insurance stand outside of the child's "direct costs" thus an NCP is not expected to make any direct contribution to the CP's costs for housing the child (although they may be higher than they would be if she did not live with the child), *however* these costs are not ideologically excluded. Rather they are considered by deducting them from the CP's income as part of her household-sized-based reasonable actual housing costs exclusion. The child's food and other costs tend to be the cost categories in focus for Swedish child support purposes because they are directly attributable to a child being supported, and because the other costs are ensured by the child support system and by the welfare state as a whole in other ways, as illustrated by this housing costs example.

See Figure 2, immediately below, for information in English, provided by the Swedish state, to report the average monthly costs of a teen Swedish child alongside those of an adult living without an adult partner and those of an adult couple together.¹¹⁹⁰ Most notable for comparative purposes, *differing levels of total income are not taken into account*, in sharp contrast to US use of income intervals, including in the California Guideline formula. By focusing on and normalizing the *reasonable* cost of (middle-class) living, the Swedish state demonstrates its focus on its WSM aim (SE-2, to ensure a reasonable standard of living for all) here.

Swedish law's evident preference for setting as few as possible reasonable monthly cost of living standard estimates *differing by income level* helps to explain the child support system's use of *the* reasonable needs cost of raising *a* child as a starting

¹¹⁸⁷ Konsumentverket, *Koll på pengarna 2019* [Checking on the money 2019] at 27, <https://www.konsumentverket.se/globalassets/publikationer/privatekonomi/koll-pa-pengarna-2019-konsumentverket.pdf>.

¹¹⁸⁸ This is not meant to be directly comparable to the US numbers above which include housing and educational costs. Those costs illustrate the way the US child support law views its context—significantly tied to families at different income levels incurring markedly different total costs, which relates to the marked class differences in the US (much less present in Sweden).

¹¹⁸⁹ Reference values were described within Chapter 3.4.2, *supra*, along with other methods recommended and used for determining children's needs for UB child support purposes.

¹¹⁹⁰ From Official Website of Sweden (The Swedish Institute), *Meet the Anderssons*, <https://sweden.se/society/meet-the-average-anderssons/> (presenting a description of a statistics-based average family in Sweden).

point (and, it has been argued, too often as the ending point) in deciding a *particular individual* child's needs total. Doing so reflects the social democratic WSM ideal of the state working to help society members reach economic and social *equality*, but it *also* reflects the Swedish state's strong preference for *administrative simplicity and efficiency* observable throughout Swedish public and private child support law.¹¹⁹¹ Sweden's monthly needs totals (the reasonable costs of children estimates) are, as Chapter 3.4.2 described, differentiated by gender and age of the child for whom a needs estimate is required, under both UB and UStöd rules, but *explicitly* not by parental income level.

Figure 2, *Average Monthly Cost of Living in Sweden (from sweden.se)*

Average monthly cost of living in Sweden			
(Swedish krona, SEK)			
	15-19-year-olds	Single	Married or sambo
Food	1,890	2,470	4,940
Clothing	690	660	1,320
Hygiene, medical care	390	490	980
Sport and leisure	740	690	1,380
Local transport	–	850	1,700
Unemployment insurance	–	120	240
Home insurance	–	130	150
Accident insurance	140	–	–
Electricity	90	430	520
TV, telephony, internet	370	1,430	1,760
Cleaning, washing etc.	80	120	150
Car	–	2,790	2,790
Pay services	–	30	50
Total monthly costs	4,390	10,210	15,980

Please note that these figures are the average living costs for all of Sweden; actual costs vary considerably depending on where you live. Also, these figures don't include housing, which is the highest monthly cost for most people. (Last update: April 2019.)

Source: [Institutet för Privatekonomi/Swedbank](#)

California's Guideline in contrast does not vary child need total estimates based on gender *or* age, yet it focuses *heavily* on income level, and (in theory) on actual US

¹¹⁹¹ See Chapter 7.3, *infra*, discussing the influence of such legal system ideals on the child support laws compared.

consumer behavior, not reasonable consumer behavior.¹¹⁹² The Guideline's marginal costs (not direct child costs) needs theory sets a child's needs in reference to a percentage—in other words a share, not a totaled cost in US dollars—of parents' combined income. The percent figure sought from research into consumer behavior is whichever percentage will provide (in theory) a continuity of expenditures for the child, in relation to their incomes, after parental separation. It not only adjusts children's needs totals if their parents have more money available to use to enhance their lifestyles (as Swedish UB law does. California law *requires*, as designed, consideration of parental incomes. There is no measure of a child's needs without knowing what his or her parents earn. The Guideline thus can be seen as *privileging parental income differences among children over other differences*, like the child's age and gender. The liberal WSM value of freedom from state interference so that one can support one's own private family dependents is in line with such legal rules.

A related difference in the conception of a child's "needs" occurs when more than one child of the same parents is supported under each of the two approaches. *In Sweden multiple children reduce the parents' income available for child support, but not each child's needs level.* Each child is an individual societymember and his or her needs are estimated largely without any influence from private family characteristics (which explains ideologically why gender and age can be accounted for, but parents' income and other children less so, ideally). Under the California Guideline child's needs estimation model, however, total theoretical cost of adding one child to a two-adult household (estimated from the "marginal costs" research) becomes the basic measure of a child's needs to be allocated between the parents. It is *only* a child's needs total if there is *just one* child to be supported by these parents. An additional percentage of that basic "only-child's-needs" amount is added, per child, after the first child, with each additional child needing less *additional* parental income to cover their likely costs. In other words the marginal cost of adding an additional child to a household is less that adding the previous child or children. Here again the focus is on the real circumstances of this actual private family, although fictionalized to be living together instead of across two households (idealizing that form).

Presenting "continuity" for a child pre- and post-separation via the child support system did not however *require* the US share-of-family-income approach. Swedish child support lawmakers could in principle also claim to be provided a "continuity" for Swedish children pre- and post-parental separation. Needs totals for children in Sweden set a floor, at a reasonable (not minimal) living standard, but still a floor that

¹¹⁹² Of course it is not possible to conclude (from this study) that one jurisdiction's consumers *actually* spend more, less, or equally reasonably on their children. It *is* possible to conclude that their *welfare states, via the child support laws* seem to support only "reasonable" spending (Sweden) or instead "actual" spending (California). Neither jurisdiction's literature extensively addresses this.

all children are socially insured against falling below. *The same* monthly spending (in Swedish crowns, not as a percentage of income) is expected to cover a child's reasonable needs, for all children of a given age and sex. Because needs thus conceptualized do not change, *regardless* of whether the child lives with one or two adults, or with or without siblings, or with differences in family income, the child is provided with "continuity," yet it is limited to its (generous) basic needs level.¹¹⁹³

Sweden's child support laws choose instead not to set focus on comparing the "intact" family to the sole-parent or separately-living one, even though Sweden and California clearly share a two-parent household as a norm in their family laws, and even a weak breadwinner model of that family, as discussed elsewhere in this comparison. It generally does not refer to continuity for the child.

California's chosen approach seems better to protect against *undercompensation* of CP households for the expenses they actually incur to raise the child, especially in families (1) with large income differences between the two parents, (2) where there exists one CP, and (3) where the CP is the lower-income parent. Such households are recognized in the child support research literature as the *most traditional* from a gender-behavior perspective, and the type of household child support laws in both jurisdictions originally were created to assist.

These remain the households that *benefit most in terms of increased income* from private child support law (if it is used as intended), in both jurisdictions and under both UB and UStöd regulations.¹¹⁹⁴ It is logical that lawmakers would preserve or strengthen the rules favoring that type of household (even if they perhaps do not work as well for other types of households), to the extent they focus on poverty-prevention (CA-2) or raising up the lowest-income households to a reasonable standard (SE-2) goals. Adequately funding children in such households through parentally-paid child support both fairly allocates responsibility for meeting their needs to their parents (especially to the higher-earning NCP) and not excessively to the state *and* reduces the children's risks of relative disadvantage—two shared functions of child support law in these two jurisdictions.¹¹⁹⁵ Other types of households end up less well served—and their numbers are growing.

¹¹⁹³ Not differentiating between subgroups or carefully documenting various forms of diversity within the society likely is a solution which would not work equally easily in the United States. Ethnic or cultural background is another difference between families that in Sweden is *expressly not in focus* when reasonable or reference costs of living are set by the Swedish state, despite acknowledgment by researchers that consumer behavior may vary depending on a families' traditions and habits. *See supra* Chapter 3.4.2 (discussing *Konsumentverket* methodology). This could be addressed by future research.

¹¹⁹⁴ This is true under the California Guideline but also in Sweden, even with the UStöd child support guarantee. *See* Table 2, *supra* Chapter 3.3.1, and e.g. SCB, *Demographics Report* 2014:1.

¹¹⁹⁵ The shared functions are compared in more detail at Chapter 8.2, *infra*.

Comparing these costs estimates and the realities behind them *in detail* is beyond the scope of this study. Rather they are used to illustrate the notable differences found between the two jurisdictions studied, mainly between the *theories* each jurisdiction has chosen or developed regarding *how to determine how much a child “needs.”*

Because *several different ways of estimating arrive at similar proportions of total parental income being devoted to one, two and three children*, the Guideline amounts of total parental income assigned to meet the child’s needs are generally considered appropriate by lawmakers and those using the Guideline. They are confirmed by the apparent consensus among economic researchers working with child support guidelines, although that does not cure the problem of others, especially lawmakers, typically being able to understand them in detail. *A similar clustering of results is seen in Sweden between Konsumentverket estimates of child costs and the other estimation methods used to set amounts of UB and UStöd; these totals and their amounts relative to each other have also been challenged by researchers.*¹¹⁹⁶ Nonetheless their similarity to each other seems to have a legitimacy-building effect during application of the law.¹¹⁹⁷

Additional challenges to the Guideline’s accuracy at estimating the actual costs (“needs”) of children in various economic circumstances include that the parental income intervals also have not been updated in many years, despite inflation, and that *they do not take into account the different household budgets that actually apply to the single-parent households in which children receiving child support actually live*. Sweden’s challenges include as a general rule using parental income for support calculations from parents’ last-finalized tax returns, thus data two years old.¹¹⁹⁸ Nonetheless, California children’s needs totals are smaller when parental incomes are smaller, and rise with

¹¹⁹⁶ Discussed in detail at Chapter 3.4.2. See, e.g., SCHIRATZKI (2005), *supra* note 466, at 49 figure 2 (comparing UB and UStöd average expected child needs guidelines against that for need-based welfare support, *försörjningsstöd*).

¹¹⁹⁷ California’s estimations of children’s needs (marginal costs) for child support purposes also are regularly updated by re-applying economists’ assumptions to newer consumer data sets. The actual Guideline percentage of combined parental income considered a proper base (the “K factor”) has, in practice, not been changed in over thirty years, in part because reviews have concluded that it has remained reasonably likely to produce appropriate child support amounts, especially in the complicated political climate between groups who wish to see child support amounts increased and those who wish to see them reduced, but also due to new data continuing to a certain extent to support them. See Chapter 7.4 (discussing comparatively the family law “gender wars” present in both jurisdictions as contributors to the differences observed between the child support systems).

¹¹⁹⁸ This topic is addressed with the comparative discussion of parental ability-to-pay rules, *infra*.

those incomes, unlike Swedens. They are adjusted also for certain special (add-on) needs of individual children, like Sweden's.¹¹⁹⁹

Allocation Between the Parents

In *both systems*, once a total estimated needs amount for a child has been arrived at, it is *allocated between the parents in proportion to their incomes*, thus the child's need for parental child support is allocated 50% to each only if they have equal income-considered-available (for child support). More typically, one parent has higher income than the other, in which case if that parent had 66% of the combined income available for child support, the other would be responsible (in theory) for only 33%.

If there is an NCP, specifically a payor parent with very little or no parenting time with the child, he will pay 100% of his percentage share into the CP household. The CP is assumed also to contribute her share directly within the custodial household, and 100% of the child's needs are met (whether that be the direct costs total net of social benefits, as in Sweden, or the continuity of the percentage of combined parental income, as in California).

If, instead, the parents both care for the child approximately equally, the "needs" theories in the two jurisdictions diverge somewhat again, as compared further below.

Sweden's UB child supports and UStöd guarantee amounts are meant to cover the NCP's share of the direct costs of an average child, after social benefits have been taken in to account—thus they follow more of a children's costs model, in Skinner's terms, while California does something different.¹²⁰⁰

¹¹⁹⁹ This is not meant to suggest that child supports adjust *automatically* over time in California, in pace with children's changing needs. California Guideline child support amounts do not automatically adjust but instead require a parent or LCSA to initiate a new calculation, likely leading to a new parental agreement or court order based on changed circumstances. In Sweden, private UB amounts set by court order are, in contrast, indexed by operation of statute for smaller automatic increases over time, but require a parent to initiate any other type of modification for changed circumstances, as in California. Most different is the Swedish public UStöd benefit amount, which *does not increase absent passage of a new statute adjusting it*; UStöd was thus frozen at one level for a number of recent years while its purchasing power to meet children's needs decreased, leading to criticism. It has now been very recently adjusted and age-differentiated, thus it will increase automatically, for a given child, as younger children get older (the only manner in which it differentiates between children). *See infra* Chapter 6.4.1 (comparison of setting and modifying procedures).

¹²⁰⁰ The LSA and related legislative intents for UB law, on the other hand, would support a contention that the overly-reductionist *application* of UB law *in practice*, resulting in very similar amounts of child support for each child despite differing actual costs, *should not be mistaken for what lawmakers intended*. UB lawmakers would nonetheless agree that the law aimed to have *both parents* cover the *usual costs attributable to the child* (a *child welfare* function) while *avoiding private transfers of an*

It does not necessarily follow that California's system should be categorized as a fully male breadwinner model, more that *it is agnostic, while Sweden's is embedded within a clear and stated gender equality policy*. The California Guideline instead *attempts to respond to, and perhaps even to preserve, the existing economic, parenting role specialization and other diversity* within the population regulated,¹²⁰¹ instead of to minimize those differences, as the Swedish WSM favors. California's Guideline law is not as literal in *tallying children's costs* (the suggested Swedish way to calculate children's needs, from which parents have broad discretion and courts limited discretion to deviate).

Guideline law allocates to each child the same *share of the family's total income* as the child would likely have received in a two-parent household—taking a share-of-income approach based on marginal expenditure theory—but it simultaneously espouses principles including that *both parents should contribute financially to their children's needs*, and signals to both parents that they are expected to work full time at their individual earning capacities (for at least minimum wage in most cases).¹²⁰²

The Guideline transfers a larger amount of the highest earner's income into the lower-earner's home, compared to child support in Sweden, at the extreme end of the income scale *reducing work incentives and increasing full-time parenting incentives for those co-parenting with a wealthy (usually male) earner*, it must be admitted.¹²⁰³ This is also however in accord with, if perhaps an overextension of, the principle of California child support law that amounts “should” take into account the higher costs of raising

overly-large amount which could perpetuate gender inequality and private dependence between adults, even if it could prevent more CPs and their children from needing other state supports today (a fairness or *proper division of responsibility between the separating adults and the state* function). That is the clearly the *anti-traditional-male-breadwinner* model.

¹²⁰¹ To “preserve the diversity in parenting arrangements within families” was for example one of seven principles the American Law Institute identified for its model child custody law. ALI, *supra* note 1044, at 6. Conservative political parties in Sweden also have advocated for *policies supporting parents who will stay home with children longer*—a type of welfare benefit (cash to the family to support its removal of women from paid work in order to care for dependents) disfavored by the prototypical social democratic WSM.

¹²⁰² See Chapter 3.5, *supra*, on the imputation of income to California parents, yet also Chapter 4.2's description of default judgment overuse, especially in IV-D (public) cases, and ongoing reforms.

¹²⁰³ This is one example of what some critics call a hidden alimony or spousal support element within child support law. Others argue that nonetheless lower income earners' households, which more often have the child or children a greater percentage of the time, suffer a drop in living standard after separation, which is to be avoided as much as possible even if an equal living standards result would be too burdensome on the higher earner's income and household. See Chapter 5.2 on the interest trade-offs implicated.

children in two homes, and “may” appropriately raise a parent’s standard to raise the child’s.¹²⁰⁴

The Guideline also reduces child support as parenting time increases for the (usually male) higher-income parent, since the child’s “needs” are more being met in the other home as well. The law is considered relatively progressive in the US, for doing this despite criticism from those who prefer to keep child supports higher in the primary parent (usually mother)’s household, sometimes even if that means *avoiding alternating residence parenting as too expensive* for many families.¹²⁰⁵

In Sweden, if the child alternates residence between the parents’ households, instead each parent is assumed to provide the appropriate share of the “needs” total to the child during their time together, perhaps more where that parent has more of the combined income and less where not. The end result is all of the child’s needs total being met.¹²⁰⁶

As a whole, the evidence observable within the California law and sources interpreting it suggests that *lawmakers in California might dispute that their intention was to follow a male breadwinner model of child support, or to encourage perpetuation of a male-breadwinner, female-carer ideal mode of the family*, but they also would dispute that their intention was actively to discourage it or the traditional economic dependence of women with which it comes, for all families. From a comparative perspective, ideal family model considerations were not overtly central to the formulation of current child support statutes of either jurisdiction. They were more assumed givens, in line with each jurisdiction’s WSM ideals. Therefore they were more important for family-law policymakers in Sweden’s legal and WSM context, which actively legislates with clear gender equality goals in mind.¹²⁰⁷

¹²⁰⁴ See Chapter 5.3.1, *supra*, on the various principles of Guideline child support law in California.

¹²⁰⁵ This project is not aimed at determining if alternating residence is best for children, mothers, fathers, and/or society, however the balance of the research evidence on this point encountered among the material studied seems to suggest that its positives outweigh its negatives in the two welfare states studied. It is also predicted that it *will become more commonplace and normalized* and, relatedly, *more often more positive* for children in coming years. This is problematized with respect to the child support laws at Chapter 7.4, *infra*.

¹²⁰⁶ This is likely how the parents divided responsibility for financing the child when (and if) they lived together, with the higher earner contributing proportionally more to child and household expenses, including those attributable to the lower earner. Much of the disagreement over what a child “needs” between these systems can be traced to a difference in *how much of a base, shared household* the payor, versus the payee *and/or the state*, should be responsible for in the payee’s home and what implications that has for all involved.

¹²⁰⁷ Gender-related explanations for the differences between these two child support legal regulations are compared further *infra* Chapter 7.4.

6.2.4. *Children's Needs: What Additions to "Base" Support?*

The most interesting Swedish "add-on" to a base child support amount, the *standardtillägg* (living standard addition or LSA), has already been discussed in comparison to the Californian Guideline's automatic higher supports to children of higher-income parents. The systems' laws are similar, given the LSA, in that *both include a private-law right for children with parents with higher private resources to claim a higher-than-average level of "need" for financial support*, in theory whether or not the higher living standard was experienced by the child during the parents' cohabitation (if any). In practice the right to more support when parents can afford it appears to be realized to a very limited relative extent in Sweden. The LSA, even when used, has been set at modest amounts and interpreted to require particular costs justifying its award and to be less appropriate for younger children. A higher-income living standard often involves higher expenses from birth, for example more expensive baby equipment, technology, vacations, transportation, birthday parties and much else, in Sweden and in California. This kind of generally-increased budget for child expenses does not appear ever to be discussed in the setting of UB *standardtillägg* amounts, neither in preparatory works to the statutory law nor in published appellate case law decisions. This is unsurprising from the WSM ideals perspective, as it encourages living standard variations between societymembers, in opposition to core social democratic values.

Other Swedish UB additions to base support, usually for *sports costs* or *other special needs of a particular child*, are similar to the analogous Californian "discretionary add-ons" provided for by statute (and distinguished from the two "mandatory add-ons"). They are discretionary for the parents to agree to or a court to order, and both tend to cover recreational (or other "educational") plus special-needs costs. These often involve increased costs to the parents owing to a child's disability, or perhaps a talent (like competitive athletic competition), under both jurisdictions' private-law child support systems (and California's public one).

Finally, travel costs for non-local visitation are to be shared, in both jurisdictions. They fit into the "discretionary" and not mandatory category in California, to allow judges to determine whether it is appropriate in a given case to order sharing of these expenses, and how. In Sweden, *child custody* statutory law requires that travel expenses for visitation be shared, thus these rules are not part of the child support regulation as they are in California. Whether to order payment of these costs in given case is discretionary with the Swedish court deciding a custody (or custody and support) issue, as in California.

Allocation of travel expenses necessary for visitation between the parents is 50%-50% as a general rule under the California Guideline, although a judge can order a different allocation (and commentators recognize that allocation in proportion to

income would be more in line with the theory of the child support system's Guideline design, if more complicated to calculate). In Sweden, where each parent's proportion of the combined parental income is a bit easier to calculate, travel costs are as a main rule shared according to each parent's proportion of their combined income.

The most important Californian "add-ons" are the two *mandatorily* added to base support if they are applicable in a given case. They include a specific child's uninsured healthcare costs¹²⁰⁸ and childcare costs, so long as the childcare costs are "related to" parental employment or to "reasonably necessary" education or training for employment skills.¹²⁰⁹ Because in Sweden the welfare state package for children includes full, fee-free health and dental care, provides parental leave and leave for use when children must stay home sick, and caps parentally-paid costs for daycare, preschool and after-school care,¹²¹⁰ the equivalent additions to Swedish "needs" totals for UB purposes have minimal effects. Such costs also do not result in Swedish infants costing their parents (as opposed to the state) more to raise than older children and teens. This is reflected in the three UStöd monthly amounts paid to CPs for children in various age categories (which become higher with increasing age).

In California both higher support levels appropriate in a given case *and* any available "add-ons" to a child's needs or support total are enforced by the public system, because that system (via LCSAs and the courts hearing Title-IV child support cases) determine children's "needs" per the same Guideline support law used for private, non-Title-IV cases. In contrast the UStöd public benefit child support system is not paying out or collecting individuated child support amounts calculated under the private law rules. The UStöd and UB determinations of children's needs have been separated, and the UStöd payments individuated only slightly, with respect only to the child's age category. Therefore no "add-ons" may be advanced or collected through use of the UStöd system, yet in some cases it

¹²⁰⁸ Provision of health insurance for the child is a California Guideline child support order requirement in all cases, thus is not treated as an "add-on," but additional costs, not covered by said insurance, are added on.

¹²⁰⁹ CAL. FAMILY CODE § 4062(a). The specificity in wording signals that a parent may not require the other parent to contribute to child care hired for any purpose other than the earning of income, which minimizes conflict but could be questioned in cases where a CP has 100% care of the couple's child or children. There are certain work-related limits to use of Swedish state-subsidized childcare as well, although the child's interest in attending part-time is recognized by allowing a certain number of hours to be used even if a parent is for example home on parental leave with a younger child.

¹²¹⁰ As described *supra* Chapter 2.3, the Swedish state subsidizes approximately 90% of the true cost to the state of providing daycare/preschool, and the maximum monthly cost to parents approximately equals the universal child benefit they receive from the state.

provides a higher support amount than UB calculated for a given child would, even with permissible “add-ons” included.

6.2.5. *The Amount: What Minimum?*

The lowest child support amount a child might be assigned under the California system is, in theory, zero dollars per month, although the system’s rules and operation favor making at least a small, token order whenever possible (and relatively severe collections efforts often lead relatives or friends of the low-income payor to pay, at least when child support payments have become past due and consequences are beginning to accrue).

Zero Swedish crowns per month is also the lowest UB amount. Neither system imposes an absolute duty to pay child support on the lowest-income potential payors, nor could they reasonably enforce one. Thus, as is broadly recognized, without welfare state assistance, CPs—parents with physical care of the children—in both countries would, as a group, live with more financial disadvantage than they do today, as would their children.

Due to the Swedish public child support guarantee system, a part of the welfare state support for children, not zero but rather the UStöd amount for a child’s age is in practice the lowest child support a single parent can receive for them, unless a UB order or agreement sets a lower amount.¹²¹¹ It is not insignificant. Representing about half of the monthly costs that a typical child needs covered by parents, UStöd protects children well from the risks involved in having one parent financially providing for them, instead of two.

UStöd is available only so long as the child’s parents consist of a CP and an NCP who do not “live together” as defined by UStöd law, however. UStöd is no longer available in alternating residence situations, although a housing assistance benefit is available instead to alternating-residence households who qualify, as has been mentioned. UStöd is also not available for parents who can be considered still in a pair relationship with each other, even if they live in two different locations and the NCP contributes no child support (such as if one parent is imprisoned but intends to come home once released).

For these types of children with separately-living parents, there is zero child support at the minimum (no ordinary remedy) through the child-support system, in either jurisdiction, even though their needs can be considered identical to needs of the children targeted by child support law (and its guarantee). This highlights child support’s history and

¹²¹¹ It is also the minimum amount Swedish CPs are thought to expect. See ISF Report 2019:7, *supra* note 6, at 144 (reporting FK staff’s belief that CPs often will not accept an amount of UB lower than the normalized UStöd amount, because they see the UStöd amount as a floor).

main nature today as a regulatory solution to the problem of *traditional parent couples separating* (usually divorcing), and one taking his income elsewhere. *Child support* is not an extra support for households where only one parent earns income, or only one parent is present for a given period of time, and neither is its guarantee.

Child supports set at zero occur in California cases where parental income from the NCP, relative to that from the CP, is not sufficiently high to result in a Guideline support amount, despite tools the child support system can use in some cases (such as imputation of a full-time income if the actual facts of the case support a finding that the parent *could* be working to that degree). If support is set at zero, this does not imply that the child has *zero needs*, but instead that any parent caring for the child must meet the child's needs without a contribution legally being able to be ordered from the other parent, at least until such time as income levels or parenting responsibilities change. Alternately, and often, households with children but insufficient private resources to meet their needs turn to need-based public assistance benefits, the most common offering cash and medical care assistance, which may at a later time be partially reimbursable by the NCP, if any.

Zero dollar Californian child support orders also may occur, at least in theory, in cases of equal caregiving and equal earning, as well as in cases where one parent has a somewhat higher percentage of time caregiving but also a somewhat higher income. (And, in these cases, generally Swedish UB and UStöd also would be unavailable.) What can interfere with a California child support amount being zero in an equal timeshare and equal earnings case is the *federal and state tax laws continuing to require just one parent to claim the child as a dependent*; when one parent—whichever one—receives “head of household” tax filing status in the Guideline calculator and the other receives “single” status, *the “single” taxpayer will be given less child-based tax relief*, thus will pay more income tax, and thus will have *fewer net dollars remaining as available for child support*. The calculator will automatically require a small child support every month *paid by the parent claiming the child for tax purposes, to the parent not claiming the child*; in this way the US welfare state benefits for families with children are shared between two parents who each have lived with the child or children half-time and have equal incomes (which remains a relatively rare situation in both jurisdictions to date).¹²¹²

¹²¹² The tax forms and instructions do not tend to illustrate this for parents very well, only defining a dependent as a person for whom the taxpayer provides over half of the person's support. This is an example of how welfare law provisions throughout family, social benefits and tax law areas (and others) can be slow to adapt to changing family realities, in many jurisdictions including both of the two studied.

6.2.6. *The Amount: What Maximum?*

Discussion of the maximum child support available under these systems is not meant to give undue focus to the rare extreme cases, but rather to describe the limits of the law's support allocations for children's needs. The limits help illustrate the theoretical model of proper measures of children's needs and parents' duties to share their private resources with their minor children, in each jurisdiction.

The descriptive chapters set forth evidence from the legal sources regarding what legislatively-intended living standards are to be achieved for children via the child support systems studied. Swedish legal sources provide less detail into various levels intended for children in various circumstances (partially because UB lawmakers left some of these decisions for others to develop as they applied the law). The child support systems do not exist in a vacuum however but in a welfare state context with markedly different ramifications, as has been discussed in several contexts above. Where Swedish law provides the detailed consideration to assure children's well-being, less *in* various family circumstances than *regardless* of family circumstances, is in the welfare state provisions surrounding child support law, rather than within it. It would thus be an error to conclude, from consideration of solely the material in the child support legal confines, that Sweden is unconcerned about *assuring child welfare above a basic-needs level*, one typical function served by child support law (and perhaps mainly by child-support law) in other jurisdictions, including in California.

On the maximum-child-support end of the spectrum, the private, non-IV-D California system has confirmed that there is *no upper limit* to appropriate child support, in theory, because a child's needs as defined by the Guideline case law's extraordinarily-high-earner doctrine continue to increase with increasing income. There should be, as case law has held, some difference in child support if an extraordinarily-high-earning parent earns for example \$1 million (8,692,100 SEK) or \$10 million (86,921,000 SEK) per month. (Research does not to my knowledge disprove that this is good for child welfare, incidentally. Child support researchers have found that it takes a significantly higher household income before increased funding completely ceases to create increased child well-being.¹²¹³)

The court in its discretion *may* decide some amount well below what the Guideline calculator would provide in such a circumstance (by considering the child's reasonable needs, as the law considers appropriate in Sweden for any case where a *standardtillägg* is requested), but in theory *living standards increasing without known*

¹²¹³ Ellman & Ellman (2008), *supra* note 422, at 135 (evaluating the "child well-being component" of child support across household income levels).

limit remains Guideline law. No concrete cap has been set, within the California context where entertainment, tech industry and other very-high-income individuals (and families) conduct their divorces, separations and paternity suits.¹²¹⁴ This remains the law despite some attorney's common arguments that, for example, no child needs two ponies.¹²¹⁵

Three reasons for this, which are in line with the WSM in California although would not be to an equal extent in Sweden, can be mentioned.

First, arguably extraordinarily high child support is an appropriate way to assure that a child shares in a wealthy parent's financial opportunities and lifestyle *during childhood*, perhaps even including the opportunity to have the child's CP not need to begin earning independent income so that (usually) her attention could (continue to) be focused on the child and the child's activities and schooling, although this is not explicitly the law. Many CPs receiving large child supports are in fact independently wealthy themselves, whether via earnings or spousal support ordered following divorce, but they often are *relatively* "low-income" and thus in the absence of high child supports living standard differences would be felt by the child or children, especially if they spent substantial time in the NCP's home(s).

Second, with a child support legal maximum, a wealthy parent could in effect impose an even greater power differential over an ex-spouse or parenting partner and their child or children simply due to dramatically unequal financial power, which is considered inappropriate, conflict-inducing, and could be an impediment to the end of adult relationships, to the child's detriment. Long-term spousal support awards are modernly disfavored, although if the parents were married spousal support may be one way similar interests could be served. In cases where the parents were not married, spousal support is unavailable, yet the child's interests do not change.

¹²¹⁴ The IV-D public system is in theory available to set and enforce child support amounts at any level, so the same theoretical maximum exists in that system, although in practice virtually no high-income cases are heard through that system. In contrast Swedish parents of various income levels might use the UStöd system, for example if they and the other parent cannot agree to a UB amount, if the UB amount is lower than the guaranteed level (in theory even due to the CP's income being higher than the NCP's), or if the NCP is not paying the UB reliably. The maximum UStöd, however, is equal to its minimum amount for any given child in a certain age range.

¹²¹⁵ In a case of alternating residence between an extraordinarily high earner and another parent, thus a case where a very high monthly child support will be ordered in California, it very likely *would* be reasonable for the child to have a pony at each home. Imagine, for example, a \$35,000 (304,224 SEK) *per month* child support award, and an equal amount available for the child's needs in the payor's home. (As a moment with any internet search engine reveals, the actor Charlie Sheen as of 2019 pays a total of \$110,000 or 956,131 SEK per month total for four children, for example, to two mothers with two children each.) "Reasonable" is a word representing a very flexible concept.

California's model of child support entitles the child to continue using a share of parental wages. California's WSM is not strictly opposed to promoting a continuing male-wage-earner relationship within families (or strictly dedicated to promoting a dual-earner, dual-carer relationship within families).

Separately, as a relatively progressive and socially liberal US state (among the 50 US states, all classified as liberal welfare states), California is rather famously committed to no-fault, available divorce or separation: California started the no-fault divorce trend internationally when it removed fault requirements from divorce law with its Family Law Act of 1969.¹²¹⁶

In this context, a no-maximum child support law makes sense, from a power-within-families perspective as couples negotiate settlements or litigate family law matters in court.¹²¹⁷

Third, and most directly supported by California's child support law itself via its legislatively-adopted stated principles and Guideline model, very large child supports may be required to allocate the proper share of parental income to children of the very wealthy, because they will include amounts dedicated to *savings and investments* of various kinds (perhaps including for example the CP household's mortgage on a home which the child may inherit and also college savings for the child), which consumer data show to be *part of the usual expenditures on a child to higher-income parents in a two-parent household*.

The continuity of expenditures model theoretically requires that such sums be extended to children, even when their parents live apart, to achieve the intended equality of treatment between children regardless of whether their parents share a household. Importantly, from the WSM perspective, in high-income cases child support's principles and goals can be realized *fully from private resources, costing the state nothing*, especially if a case is settled (as most often happens) "in the shadow of the law" a.k.a. with the parties using their knowledge of what the court would most likely do if the matter was litigated as they negotiate.

¹²¹⁶ See Aidan R. Gough, *Community Property and Family Law: The Family Law Act of 1969*, 1970 CAL. LAW 273, 279 (1970) (analyzing contemporaneously the reform's impact on earlier divorce law and calling elimination of fault, including in its consideration for property division and support issues, the Act's "chief contribution.").

¹²¹⁷ See, e.g., Katherine Bartlett, *Feminism and Family Law*, 33 FAMILY LAW QUARTERLY 475, 479 (1999) ("Reform of the system for dividing property between divorcing spouses in the 1970s and 1980s was viewed both as a way to secure some source of support at divorce for women whose husbands failed to provide adequate alimony, [] and to correct the fundamental unfairness of a system that neither recognized the contributions of wives toward the accumulated property of their husbands nor gave wives any ownership interest in the assets acquired by their "partners" during the marriage.")

Some of the ramifications of very large child supports are in tension with the child support law's *prohibition of orders for child support extending into the future*. A California court may not order support past the support duty's expiration at age 18, absent special circumstances, because it lacks jurisdiction to do so,¹²¹⁸ and a Swedish court is under a similar prohibition. While ordering child support (absent parental agreement) for a time after the child will qualify for it legally is improper, in both countries the parents settling support between them may set up some security for eventualities, through trusts (in California), insurances or contractual provisions between the parents, for example.

A very large monthly support, justified on grounds of its necessity for current support, if the CP decides to finance current support needs more generously, that alternately *may* be used by a CP in part to save for the child's future, is not overtly disfavored, especially in California where private wealth acquisition is used to protect families and individuals' freedom *from* dependence on the state. One contractual provision common in California (the agreement to pay for college, enforceable as an ordinary child support order) was discussed earlier in this chapter.

On the other hand, *in a social democratic welfare state instead of in California's liberal one*, lawmakers might impose a lower maximum limit, or if the statutes were not clear courts might find such a limit. In addition, incomes generally would be taxed more progressively, bringing down extremes of wealth concentration in a few individuals.

In the case of Sweden, WSM ideals go against perpetuating inequality, especially to an extreme such as is seen among California's cases resulting in the highest support awards. Johanna Schiratzki's Swedish UB research involved requesting and examining all UB judgments and decisions made by Swedish trial courts during 2004. She found that *the highest child support ordered in any case that year was 3,831 SEK (\$441) total per month for two children*.¹²¹⁹ Swedish trial courts had ordered only *between 4 and 8% of payors' gross incomes payable as UB child support per child*, despite the availability of the *standardtillägg* and various other additions legislatively intended to allow UB amounts to be individuated, including to allow children access to a high-income

¹²¹⁸ The California Family Code grants a court jurisdiction of a defined scope to make child support orders, but even this has been challenged by some reluctant payors' legal advocates. *See* (Insert cite to one of the several articles where men's advocates and libertarians have challenged child support orders, even for minor children's support, as improper state takings of property).

¹²¹⁹ This was in a case where the NCP payor had gross monthly income over two times higher than the CP's (23,612 SEK [\$2,716] and 10,171 SEK [\$1,170] respectively). *See* SCHIRATZKI (2005), *supra* note 466, at 79 (calculating that all total UB amounts ordered by Swedish courts in 2004, including for multiple children, were within the range of 8–16.5% of the payor's gross income).

NCP's higher standard of living.¹²²⁰ Schiratzki proposed in response a new method for setting more appropriate UB amounts, a "base- and bonus-support" method.¹²²¹

6.2.7. *The Child's Right to Support, or the Caregiver's to Contribution?*

In evaluating the nature and strength of a right, the old Roman law maxim *ubi jus ibi remedium* is commonly cited: where there is a right, there is (or should be) a remedy, because without a remedy, there is no effective right.¹²²²

Swedish and Californian child support systems have in common that a child's right to appropriate child support is only enforceable *if a parent or guardian* seeks a court's or an agency's assistance to determine or receive support due on the child's behalf. In neither jurisdiction does any state organ review *sua sponte* the financial situations of *all* children to separately-living parents (or of together-living parents) to assure that the children's rights to support are being enforced.

The state does enforce some rights of the child actively, even against parents' wishes, for example the child's right to primary education. The right to child support is not such a right. If no CP applies for welfare benefits to help with the costs of raising the child (in California CalWORKS or MediCal and in Sweden UStöd), there will be no state attempt to provide a remedy to the child, even if the child is in fact being raised in more limited economic circumstances than would have been the case had the CP enforced the child's right to support.

Contributing to this similarity in the child support laws are factors present in both legal systems, including traditional respect for the *privacy of the family*¹²²³ and for

¹²²⁰ See *id.* Because of Sweden's relatively modest UB amounts, foreign judgments or agreements between parents who come from a society outside of Sweden which are enforced in Sweden have been noticed to be for relatively large amounts.

¹²²¹ See *id.* at 81–84. See also further discussion of this proposal, *infra* Chapter 8.5.

¹²²² The maxim has been confirmed in common law jurisdictions since early Anglo-American common law. See, e.g., *Marbury v. Madison*, 5 U.S. 137, 163 (1803) (quoting Blackstone's Commentaries for the proposition, extended into American law, that "it is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress."). See also CARLSON (2007), *supra* note 259, at 331 ("Having laws is not enough, the individual must also be able to successfully assert her rights under those laws within the legal system," citing American and EU examples recognizing this.).

¹²²³ For one example, see ISF Report 2015:3, *supra* note 391, at 61, giving results of an inquiry into reasons CPs do or do not seek UStöd on their child's behalf: "In some cases, it may also be that the CP withdraws her application so that the [NCP] will not end up in debt. First when the application has been submitted can the CP become aware of the consequences of [the grant of UStöd] for the support-owing [NCP]. In some of these cases, the CP then must manage without any child support, and CPs with low incomes may then find it difficult to support the child. They may also risk receiving a lower need-based benefit

parental rights, assumptions that the child's and the CP's *interests are aligned*,¹²²⁴ and, inevitably, *limited governmental resources* prioritized towards other goals. There is no means by which *a child* in his or her own right may enforce the right to child support from a parent with whom he or she does not live, under the child support laws of the two jurisdictions studied, at least not before the age of 18 when the right to receive the support (if a duty is still owed because, for example, the child is still in high school) may transfer to the adult child. A child is not seen as a legal subject to be able to seek state child support enforcement help directly, even if in other areas of family law the child may be afforded a stronger right to bring an action or to be heard.

Also similarly in these two jurisdictions, a CP receives the child support as a monthly in-advance contribution to (or, in the case of arrears, reimbursement for) her costs of raising the child. This *parent* has a right with a remedy, meaning in this case the ability to go to civil court for child support orders against the NCP, or alternately to put in motion state child support collection efforts, by applying for state assistance for the child. Historically child support was at times seen as a right of reimbursement owing to whomever had in fact supported the child in the absence of a (usually but not always) male, payor parent. The line has been blurry at times between *reimbursing an economic equal on fairness grounds*—because that person is incurring expenditures for which the payor has a shared responsibility—and *providing for an economically dependent person* not expected to be able to earn enough market income for self-support.

Even today this line can be more overtly identified and discussed in policymaking: the child is dependent, and *not paying* for his or her own care. The CP or more directly the custodian female parent is now, under formal law, considered an economic equal—though in some other times and in some other places today she also has been

amount from the municipality if they choose not to apply for UStöd. Interviewed [FK] caseworkers state that they try to emphasize the child's right to support, but the CP, who in these cases are usually women, may have reasons not to complete their application." (emphasis added). The mention of CPs' sex reflects that FK workers are aware that power dynamics can cause especially female parents to make agreements from a one-down power position in their relationship with the other parent. Still, parents are allowed to choose.

¹²²⁴ See, e.g., EVA NILSSON, BARN I RÄTTENS GRÄNSLAND: OM BARNPERSPEKTIV VID PRÖVNING OM UPPEHÅLLSTILLSTÅND [CHILDREN AT THE LAW'S BORDER: ON THE CHILD'S PERSPECTIVE IN RESIDENCE PERMIT DETERMINATIONS] 242 (2007) (problematizing legal assumptions of alignment versus conflict of interest between parents and children in a migration-law context).

or is considered a dependent, requiring particular gender-based supports if her male breadwinner no longer can or will support her.¹²²⁵

*The nature of the child support right as against the child's two parents in Sweden and California seems still to be one of reimbursement to the caregiver, and often the state, may help explain its secondary status among other child's rights or child's welfare issues.*¹²²⁶ While in both jurisdictions children “should not be the economic victims of their parents’ decisions to live apart” (as California expresses it), or children living with sole parents should not be disadvantaged thus the welfare state should work to assure that they are not disadvantaged (as Sweden expresses it), *discretion remains with the caregiver parent(s) actively to enforce this right, or alternately to obtain adequate resources from elsewhere than the NCP or the state, to fulfill the child's right to support.*

Her own incomes and assets, and/or those of a new partner or her own parents, seem to be the most common sources turned to instead of the child support system, in both systems.¹²²⁷ This invites another question, addressed in the following subsection, of whether the child’s right is to money from any source, or specifically from an NCP.

6.2.8. *Children's Child Support Rights in Private vs. Public Law*

Is a child’s child support right a right to *money* in these two welfare states, which can be expended to improve wellbeing, or is it a right to money *from the payor parent specifically*?

Child support statutory law in both countries identifies only the two parents as duty-holders, together owing a support adequate to their child’s needs, to the extent they are able to provide it.¹²²⁸ This very similar language is, however, *interpreted* quite

¹²²⁵ See, e.g., Mannelqvist (2007), *supra* note 178, at 147–148 (summarizing the abolishment in Sweden of the “widows’ pension” at the end of the 1980s, in favor of a smaller, sex-neutral “survivors’ pension” and noting that women have in ways like this had to give up financial protections to which they were previously entitled, in order to progress towards equality). Compare Carlson (2007), *supra* note 259, at 354–355 (explaining the “asymmetry of responsibility” from a feminist perspective that has resulted thus far from legislative removals of economic compensations for women before men have been required to share equally in unpaid caregiving work within the family).

¹²²⁶ As Betty Nordwind, Harriet Buhai Center for Family Law’s director, expressed it to this study’s author, child support is not seen as a child welfare issue. Informal interview by Elizabeth Perry with Betty L. Nordwind, Executive Director, Harriett Buhai Center for Family Law, in Los Angeles California, November 5, 2014.

¹²²⁷ In-kind, non-cash support from the NCP also plays a notable role in both jurisdictions, worthy of further research, although because data on it is minimal it is only mentioned briefly in this thesis.

¹²²⁸ From the CAL. FAM. CODE at § 3900: “[T]he father and mother of a minor child have an equal responsibility to support their child in the manner suitable to the child’s circumstances.” From the

differently, by those who apply it today. It may partially have been intended, when written, to create somewhat different rights to child support, even if internationally and historically common child support language was used. Largely, however, this comparison has found that the WSM contexts as they have evolved have most strongly influenced modern interpretations of the child support duty and the laws regulating it.

The historical legal sources of the child's current right to child support differ between the two jurisdictions, as mentioned, but not dramatically. The Swedish right is considered sourced in the UN CRC but also, prior to that instrument's ratification, in earlier private statutory law (originally for children from within and without wedlock) and in earlier public law providing social supports for single mothers with dependent children. The Californian right arises from similar historic statutory law in the same respects, and also somewhat, on the private law side, from common law developed in the courts of England, the early US, and then in California. From examination of the laws compared it can be concluded that *it is the diverging WSMs in recent history that lead to a worldview and ideals in each legal system making their respective emphases predictable, more than differences in earlier law.*

In Sweden, where child support legal obligations stem from national but also international law (notably the UN CRC and its emphasis on the *state parties' own* child welfare obligations),¹²²⁹ the legal system's view or focus seems to be primarily that the child has a *right to money*, which parents have *primary* responsibility to provide but which *ultimately the state is obligated to guarantee*, at least for all cases where the parents do not provide an amount of money that the child is considered to "need." In California, contrastingly, where the child's support rights have arisen from a combination of modern statutes evolved from Elizabethan England's "poor laws," from the divorce courts' jurisprudence, and from the more recent reforms of US federal low-income assistance programs, the right to money *from the payor* is the clear emphasis.¹²³⁰

Again here, an illustration of the inner workings of these worldviews may help to define them. A Swedish child support lawmaker might reason, consciously or perhaps unconsciously, that it is *not desirable* for law to signal or to impose on modern couples with children an *increased or continuing private dependency* after divorce or separation, especially if it needs to be forced by state intervention, perhaps increasing or perpetuating conflict. The child's "right" to adequate resources to assure a good

FB at 7:1 para. 1: "The parents have a legal duty financially to support their child to an extent that is reasonable considering the child's needs and the parents' combined economic abilities."

¹²²⁹ See *supra* Chapter 1.3 on support as a child's "right."

¹²³⁰ This is especially true within the child support law itself, since it is entwined with public social benefit law (CalWORKS and MediCal), but less directly that UB is entwined with UStöd.

upbringing—a natural or moral duty before it was a legal one—is naturally and historically fulfilled by the parents, but *the state alleviating that dependence* for all children (so that none suffer disadvantages rooted in the lottery of their birth) is a central goal of Swedish family policy.

If the child has a right specifically to money from an absent parent, as the FB directs, Sweden can be expected to recognize and enforce that somewhat hesitantly, and to try to move away from needing to do so. *If the child has a right simply to money*, which not every pair of parents can provide, each parent—in fairness to the other parent and to the society—should be encouraged to be like most parents and contribute to providing it.

The Swedish state will thus provide that encouragement, carefully limiting it to parents who *do* have sufficient resources.¹²³¹ This can be done best, this worldview reasons, with focus on assuring a healthy and good cooperation between the parents and contact with both parents for the child. It is definitely *not* to be done via communicating to NCP fathers a message counterproductive to progress towards gender equality for both men and women, for example that they still are seen primarily as financial *providers* relative to mother-*caregivers*.

If support from a parent is not relatively freely given, from the Swedish WSM perspective the state is wise to keep its focus on the child, and on all children, to provide them with everything they need for a good childhood. Teaching all children well, including teaching them to earn and to care for children they are likely to raise one day, could end the need for child support payments, or at minimum reduce it, from this perspective. *The child's right is to money and services necessary to his or her development, at a non-minimal level.*

In contrast, a Californian child support lawmaker might reason, consciously or perhaps unconsciously, that it is *not desirable* for law to signal that the state will help one's children ("their" children) with other people's tax payments, at the risk that parents will accordingly take their support obligations—moral as well as legal duties—less seriously, and see them as less urgently prioritized. Society flourishes when all parents work hard to financially support their (mainly own) children, and to care for them.

It is also a reality that mothers more often than not have the physical caregiving responsibility for children after the parents' relationship ends, or if one never existed.¹²³² As single parents try to work and raise their children, they *and* the children

¹²³¹ See *infra* Appendix 5, FK's flowchart of how its caseworkers guide parents to UStöd or UB rules.

¹²³² This view, based in observable statistical reality, occurs in the family law systems of both California and Sweden, although it is evolving somewhat rapidly in both. Chapter 7.4.2, *infra*, compares gendered parenting behaviors as one contributor to the differences found between the child support laws.

can suffer disadvantages, compared to what would have been possible if the parents had raised their children in a two-parent home, especially from the Californian perspective. Often such parents can be expected to apply for (need-based) welfare benefits, obligating the society to give them a temporary support so their children do not suffer too many of poverty's disadvantages. The children were not parties to their parents' decisions regarding the parental relationship, yet can suffer poverty as a consequence of the breakdown of that relationship, which means their futures can be compromised by the refusal or inability of one or both of their parents to support them adequately.

We cannot afford to or do not wish to have every household with a child receiving welfare payments from the state, however, the Californian WSM assumes.¹²³³ It is best to assure that children are not disadvantaged compared to what specifically *they* would have had if *their* NCP (usually father) had lived with them. Had they lived together, their "primary parent" (usually mother) would have had help financially from the other parent, thus she could have had more free, non-working time to be with the children, especially the young children, in a less stressed household. Therefore, from the Californian WSM perspective, *if the child has a right specifically to money from an absent parent*, as the Californian Family Code (the FC) directs, the legal system should enforce that aspect of the rule. The money should come from the NCP, somewhat strictly. The legal system should keep signaling to parents that taking responsibility is *expected*, *virtuous*, and *required to be a good parent*, while also endeavoring not to waste state resources by going too far with this interpretation of the right to support.

Spending state money trying to enforce child support orders against NCPs who will never be able to pay them will not encourage compliance *or* keep government as small as is ideal in California. If an NCP cannot afford to or does not pay, the child and very-low-income CP will need to receive welfare monies instead, but the *child support debt will in many cases accrue*. The NCP's repayment debt will bear interest and penalties far into the future, in case he ever does begin to have the financial ability to reimburse those who fulfilled his child's right when he failed to.

If the child has a "right" to adequate money to support his or her development, from the Californian perspective it is difficult to see why *the state*, in an ideal liberal market economy, would have an enforceable legal duty to provide that, or even perhaps a moral one, *except* where quite serious harm would be done to the child without state intervention (hence most need-based aid only being available for those with very low income). Certainly the child support laws themselves are not the source of a

¹²³³ Although support for enactment of a universal child benefit is growing, and relatively high in progressive California compared to in some more conservative US states.

special right for *all* children with separately-living parents to *state-provided* financial support.

The state's Title-IV support collections system is provided as an aid to CPs and their children, and to taxpayers who have an interest in recouping welfare monies already expended and preventing more from being required. No child support guarantee has been passed into law, however. It is preferable to let the private family (with its surrounding private community and market resources) meet its duty to the child, and to keep the living standard available through state aid minimal, not comfortable. Increasing the living standard provided to poor children through *enough state-provided cash aid to lift most children out of the risk of poverty* is *not desirable*, as it is against the core beliefs and ideals of the liberal WSM. It is also not feasible (affordable) for the minimally-funded state, perhaps in actual economic terms, but definitely in the most common opinion of societymembers.

In cases of very low parental income, especially through no “fault” of the parent’s (as is the case for example with a disabled or deceased parent, or other special circumstances), this WSM assumes that *the state may and should properly act to protect children*. Federal and state welfare programs, modern versions of welfare-state protections implemented after the Great Depression of the 1930s, are underfunded yet there is no serious political interest in further curtailing or ending them, even if there is also not sufficient political will or tax money available to increase their funding.¹²³⁴ Such protections for low-income children—whether or not their parents separated or had children while single—are *outside of the child support law* in California, and thus outside of the child support system’s focus on the responsibilities of the parents, to each other and to the child.¹²³⁵ *The right to child support is a right to money from the parents, with a right to state assistance only in procuring it from the parents.*

Thus between these contrasting jurisdictions, the child’s right to child support with respect to whether it is solely a private duty differs, which impacts the law and

¹²³⁴ Immigration status of the recipient children and families can, however, affect eligibility for some existing public child-welfare protections, another factor increasing pressure for private resources including parental child support payments to adequately cover the support needs of children. Unfortunately immigration status and child support is beyond the scope of this thesis.

¹²³⁵ As recent scholarship observes, “child support is the primary policy tool used to assure *private* financial support of children of divorced or never-married parents [in the US].” Daniel R. Meyer, Maria Cancian & Yiyu Chen, *Why Are Child Support Orders Becoming Less Likely after Divorce?*, 89 SOCIAL SERVICE REVIEW 301, 301 (2015) (emphasis added) (concluding nonetheless, based on study of Wisconsin data, that changes in custody and relative incomes, among other explanations for declining child support order frequency in divorce cases, seem to explain only about half of the decline, and about half remain unexplained). See also Scott Altman, *A Theory of Child Support*, 17 INTERNATIONAL JOURNAL OF LAW, POLICY & THE FAMILY 173, 184 (2003) (theorizing, *inter alia*, child support duty as a possible tort-like consequence for separated parents).

its implementation in a number of ways. Perhaps unexpectedly, the child's right to child support in each jurisdiction's *private law system* is quite similar to the right in *its own public law system*, and differs more with the right in the other jurisdiction's private law system. In other words in both jurisdictions the right—even though it exists across a private law/public law divide—is *more in line with the WSM ideals of the system than with differences between public- or private-law ideals* (although those can be observed as well).

In both systems, similar ideals and assumptions of private law (e.g. “this is about resolving a private dispute between the parents, and they should steer its resolution”) and public law (“the state is here to assist in getting the child's right met, against the parents if necessary”) are present, but *they mean different things because of the lens that is the WSM ideology*.

Thus the Swedish public system is more focused on using the child support guarantee to advance the child's welfare (and equal treatment for all children) than on fairness between or enforcing private duties of the parents', *but so, in large part, is the Swedish private system* in the sense that it shies away from imposing or enforcing rigorously (more than minimally) the private duties set forth in the civil law.¹²³⁶

Meanwhile the Californian Title-IV system also is assisting parents in the interest of the child's welfare (and working for uniformity between children in the sense that *universal paternity establishment* and *a child support order for every eligible child* promote uniformity). However, as just discussed, this public system operates from the belief that the best way to do this is to *signal to NCPs that they are wrongdoers* if they cannot or do not pay sufficient private support for their children to the CP. Given the mandatory, numeric Guideline formula, *the private divorce courts also must emphasize the same interest in the child's welfare* (interpreted as the *child's right to private child support meeting the Guideline's exacting requirements*) as the Title-IV system does. Guideline law blocks the private-side family law courts from freely approving parental agreements resolving the child's right to support, despite settlements agreements being desirable generally.

Because of most CPs' freedoms to enforce or not to enforce child support laws for their children, *it is possible that UStöd*—a cash benefit for children living with and supported by just one parent, with few strings attached for the CP who must apply for it—is *one of the most effective ways to get support into the largest majority of such children's*

¹²³⁶ As discussed throughout this thesis, previous Swedish UB scholarship also has found the UB law as enforced through parents and the courts weaker than the statutory language and preparatory works require, or even intend. The UStöd system and its separateness have often been pointed to as a main cause, but *the WSM ideals (including its gender equality norms) may play as important a role, along with the Swedish conflict resolution ideals and traditions*. See Chapter 7.3–7.4, *infra*.

households. It fulfills the ideal of *the money* being received and doing some good for such children, even if from the state.

Paradoxically, the NCP in turn being indebted *to the state*, and *not* to the CP (subject to the CP's discretion as to whether to collect) for repayment contributions *is almost certainly the most effective way to assure that the child's support money ultimately "comes from" their obligated payor parent and not the state*, in all cases where that parent is deemed able to afford it. In this sense both Sweden and California are doing quite well to assure a child's right to money *and* to money *from a parent*, mostly because of their *state-provided* child supports and repayment collection systems (UStöd's two parts, in Sweden, both within the public-law child support statutory scheme, and CalWORKS, within California's public welfare law but outside of its child support systems as such, paired with the Title-IV system's repayment enforcement mechanisms, regulated within the FC child support law).

6.3. Comparing the Duties and Abilities to Provide Child Support

6.3.1. *Incomes and Assets Obligating a Parent*

Substantively, in both jurisdictions, the child support laws require consideration of *each parent's income from all sources* to decide a correct amount of child support for a given child, *except* in the UStöd guarantee payment contribution from system, which considers NCPs' income for all sources but excludes CP income from consideration. The shared aim is for an appropriate child support amount to be determined from an accurate understanding of the parents' combined as well as separate financial circumstances.¹²³⁷ Legally relevant income is *personal income*, not business income—except to the extent paid out to or used for a parent's personal expenses—and *not income of a parent's current spouse or partner*, subject to certain limited exceptions.

Decisionmakers consider statements by the parties and written records of their incomes. In both countries, earned incomes from employment or self-employment are most significant, but also investment (capital gains) income as reported on tax returns.

Potentially-income-generating asset information, in other words information about wealth that is not currently producing taxable income, also is relevant in exceptional cases in both jurisdictions.

Differences in which types of and whose incomes and assets are considered during child support setting in these two jurisdictions are generally *more procedural*

¹²³⁷ See *supra* Chapter 3.5.1 for California and 3.5.2 for Sweden.

than substantive. Because they are difficult to distinguish, both types of legal differences are discussed in this section.¹²³⁸ *Whether income from an asset appears on a parent's tax declarations*, for example, can influence whether that income will be factored into child support calculations in the studied jurisdictions, because *both jurisdictions use recent tax returns as evidence of recent income* during calculation procedures, and in practice further investigation does not always occur or is not comprehensive. Both jurisdictions notably on the public sides of the child support systems, have tried and are trying to improve accuracy and legal certainty on an ongoing basis. Nonetheless, parents negotiating child support agreements may or may not remember to disclose relevant income *not* appearing on the tax return, for example recurrent gift income from their own parents, perks from employment or self-employment that reduce the parent's living expenses, or certain foreign income.

Such incomes also may not become known to a court or agency deciding or helping parents to decide a child support issue, even though *legally they are part of the total financial circumstances of the parents which should be considered in setting the support amount* in both jurisdictions. This makes more of a difference in California, due to child support maximum amounts being much less capped than they are in Sweden.

In both jurisdictions, incomes *not actually being earned* may be *imputed* by a court (or, for UStöd, by the FK agency caseworker) in specific, limited circumstances, but only if a parent is *unreasonably* under-earning (although no bad faith is required, in either system, for imputation to be appropriate). *The duty to support one's child thus requires, per the black-letter law, some effort by each parent to earn income, enforceable by holding the parent responsible for having earned income he or she reasonably could have earned*, including in many cases from substantial assets.

This is balanced against the systems' shared aim to set child support amounts that are *sufficiently likely actually to be affordable for the parents* (and, for all four systems if less directly for the UStöd system, actually received for the child's needs). While Sweden's state guarantee of sufficient child support introduces some important differences impacting whether income imputation actually will occur, *the similarity between the legal rules regulating income imputation for child-support-setting purposes in Sweden and California reveals some of the jurisdictions' common history and moral reasoning*. Holding parents accountable to support their biological children remains a goal of significance.

UStöd repayment liability determinations between the Swedish state and the NCP may legally, as just discussed, include a decision to impute income,¹²³⁹ although as

¹²³⁸ Other procedural comparisons are made within Chapter 6.4, *infra*.

¹²³⁹ SFB 19:21. As was introduced in the descriptive chapters, a "reasonability assessment" per SFB 19:21 is supposed to be conducted when it is "obvious" that the parent not cohabiting with the child

implemented currently this agency discretion is problematic from a quality-of-administration and uniformity perspective.¹²⁴⁰ “A public benefit with broad room for discretionary judgment like [UStöd] requires that the steering documents are clear and that caseworkers get sufficient support to be able to make correct judgments,” as public benefit system administration quality reviewers expressed it,¹²⁴¹ and those improvements are not possible at this time due to both statutory and budgetary constraints on FK.¹²⁴²

The income of a CP receiving UStöd is irrelevant to whether a child qualifies for it. *CPs’ incomes for UStöd purposes consequently are not reviewed at all, and thus are never imputed*, although such CPs are now incentivized to use the UB system instead. Per UB law a CP is expected to produce evidence of her own incomes, to be considered along with the NCPs’, whether with the other parent or in court.¹²⁴³ In contrast, *incomes of both parties are reviewed in Swedish UB cases, and in California in every case*, whether the case is private (non-IV-D), or public (IV-D), since the same Guideline rules are used to set the amount of child support considered legally appropriate.

Certain deductions from gross income are permitted in both jurisdictions for necessary expenditures, including for *taxes paid* on the income and, in California only (because these exist in California), for *health insurance premiums* required to be paid by the parent for the supported child.

California law is notably more detailed in listing specific deductions allowed, and also various sources of income a parent may have,¹²⁴⁴ as might be expected because child support amounts continue to increase with greater parental income in California, and because child support plays a more central role in securing financial well-being for children

has an earning capacity considerably greater than the income shown on their last finalized tax return, but the income used for UStöd repayment amount setting will still be the tax data, if that parent has an acceptable reason that he or she is not earning up to capacity. FK also has the discretion to set the monthly amount of (re-)payment from such a reasonability assessment, instead of by the usual calculations. *See id.* The agency sets payment amounts after such an assessment in approximately 3% of cases. *See* ISF Report 2015:3, *supra* note 391, at 68 (describing FK caseworkers reporting these are usually for NCPs with foreign income or who are self-employed).

¹²⁴⁰ *See id.* at 67–71 (reporting findings from a recent review of the assessment process in practice). *See also id.* at 13 (summarizing in English: “The report shows that it is unclear when and on what information a reasonability assessment is to be conducted.”).

¹²⁴¹ *Id.* at 106. *See infra* Chapter 3.5.

¹²⁴² *See* ISF Report 2019:7, *supra* note 6.

¹²⁴³ It may be, however, that parents being encouraged by FK as the UStöd administering agency to instead use UB simply start paying the full amount of UStöd directly between them in many instances, instead of starting anew with the UB system’s rules to determine an appropriate private-law child support, as was the aim of the reform. *See id.* at 8. *See also* FK 2001:2, *supra* note 1007.

¹²⁴⁴ *See* descriptions, for example *supra* Chapter 3.5.1.

and their CP households. These are predictable WSM-related differences. On the other hand, California sometimes includes more specific details in the statutory law and case law plus administrative regulations themselves, while Sweden finds more guidance in preparatory works, which together with statutory law and case decisions are cited in agency guidance to administrators.¹²⁴⁵ This is also a legal system (legal sources) difference, less related to WSMs. An additional explanation for more details being available within California child support law is the greater population of California, making it logical that more cases with more situations to be decided as matters of first impression have arisen.

Nonetheless, Swedish UB amounts reach a maximum level (what has been or can reasonably be spent each month on the child's needs fitting the "add-on" criteria within the UB system, no matter how wealthy the parents are) relatively quickly as parental income totals rise. Wealthy litigants do not benefit from extensive efforts to find hidden incomes, and the published body of appellate case law in each jurisdiction reflects that.

Perhaps even more importantly, in California setting a private UB amount, however small, for every child (especially those receiving need-based public assistance) is a political priority. In contrast, in Sweden the need to set a UB amount in order for the state guarantee to be available to a child was ended with the introduction of UStöd, and the guaranteed UStöd level protects child welfare (in most cases) regardless of whether NCP income for contribution purposes is calculated well. Thus *in Sweden income calculation and catching every source of income is, by direct consequence of the black-letter law, less important to support setting*. This is true in both the private and public systems, and is reflected in how detailed and prioritized rulemaking on calculating accurate parental income totals is in both systems.

The main questions to be answered for UB calculation are whether each parent has a monthly income "surplus" considered available for support, and how large it is relative to the other parent's. The size of the surpluses determine whether the parents can afford to pay child support *up to at least the UStöd level*—the level very much in focus—or even can afford to pay a living standard addition or other special needs costs. In California, the child's needs are to a larger extent defined by the parental income calculations, and *the Title-IV system does not introduce a standardized level*

¹²⁴⁵ See FK's guidance manuals (Vägledning) in their most recent versions for both the UB and UStöd systems. The guidance publications are carefully written not to add new rules but to report what the law and lawmakers have expressed on a given topic, and what case law has interpreted from that. They are in this sense not regulations, adding detail under a delegated legislative power. Agency practice more accidentally affects the results of the law in practice, for example because limited investigative resources must be allocated.

of child support to be expected. Thus rules regarding exactly how to determine how much each parent can pay are more important, even in the average case.¹²⁴⁶

Both jurisdictions expect parents *voluntarily to reveal their income information*, although only exceptionally in the UStöd system, after its computerized review of NCP tax returns. Both Californian and Swedish parents are expected to provide (to each other and to the court or agency) written evidence of their income sources, although California's statutory provisions on exact timelines and content for these declarations are noteworthy. Both systems also rely heavily on the *most recently-prepared tax declarations (tax returns) of the parents*. In the case of Sweden's public (UStöd) child support cases, this is done automatically as the FK agency calculates an NCP's ability to contribute to child support, separately from testing the child's eligibility for to receive UStöd.¹²⁴⁷ In California it is supplemented with more recent evidence of income in the form of recent pay records and any other documentation.

In California, the scope of discovery of information from the other parent can be broader than it most often is in Sweden. Child support evidence discovery follows the general California civil litigation procedural law (discovery rules set forth within California's codified statutory law and sometimes specialized for family law cases). This allows for example a parent's legal counsel—in the cases where a parent can afford legal representation or otherwise has access to it—to subpoena the bank records of the other parent. Suspicions that a parent is dishonestly failing to reveal all of his or her income relevant for tax purposes thus can be investigated (although only in theory; it is permitted by the law but in virtually all cases available resources would prevent it).

In the shadow of those expensive-to-use rules, however, are California's *mandatory family law financial disclosures* used in all cases.¹²⁴⁸ The Income and Expense Declaration in particular is used, requiring (or encouraging, if the parties are opting simply to negotiate child support between themselves) each parent to share with the other parent recent pay stubs, tax returns, as well as lists of monthly income from various sources (and all of their claimed monthly expenses).

The *age of the parental income information used* is different between the two systems. This in many cases will be more important than *which sources of income* are required to be (and actually are) considered in setting child support amounts and abilities to pay. In most cases the main type of income parents have is employment income, or in any case income reported on the tax return. A parent's salary can however change,

¹²⁴⁶ The extreme level of detail in California child support income calculation also, of course, reflects cultural differences including within the legal systems cultures. Note again Appendix 1 and *see infra* Chapter 7.3 on legal system traditions as an explanation of the differences found.

¹²⁴⁷ *See supra* Chapter 3.5.3.

¹²⁴⁸ These are described at Chapter 4.2.1, *supra*.

resulting in a *problematic difference between what a parent earned two years ago and what he or she earns currently*. Both legal regulations are trying to determine what income payor parents will have available for upcoming months of child support (or, in the case of UStöd, contribution).

Older income evidence has to date been used in Sweden, particularly by the UStöd system because its primarily automated procedures for efficiently administering repayment obligations involve gathering income information for parents from the Swedish tax authority.¹²⁴⁹ *Skatteverket* has released only the most recent finalized annual tax declaration, which has been assumed to be an accurate estimate of current income available for child support becoming due in the months to follow.¹²⁵⁰ Swedish personal income tax declarations on a calendar year's income are prepared, as in the US, several months after the December end of the tax year. They are then tax-agency reviewed and finalized.

Reliance on the most recently-available finalized return thus results in an income level a parent had *nearly two years before* routinely being used for child support ability-to-pay calculation purposes, as reviewers of the systems recognize and criticize. If parents negotiating or litigating UB amounts rely on these tax records, UB could be set too high, too low or misallocated between the two parents.¹²⁵¹ When FK relies on them, UStöd monthly expected contributions can also be set too high, leading to undesirable indebtedness for low-income payors (or too low, in which case the payor parent is unlikely to object).

However, in 2019 *Skatteverket* began to receive *monthly* employer-provided reports of payments made to employees, for several financial-control-related reasons not specific to the UStöd benefit. This could lead to changes updating the age of income information used to set UStöd contribution payment amounts, and perhaps also will change practices of some UB decisionmakers (parents themselves, or courts), preventing parents and children from being further affected by this issue. The

¹²⁴⁹ Per SFB 19:10-17; see also ISF Report 2015:3, *supra* note 391, at 64 (describing how this is done automatically but per FK procedure cases of a zero payment obligation from the NCP in the year the CP applies for UStöd are investigated further).

¹²⁵⁰ The Swedish welfare state's relatively rigorous automatic documentation of various sources of income as part of the Swedish income tax system, even though those wealthy enough to litigate child support calculations may have unusual sources of income not reflected on their tax returns, contributes to the Swedish legal system culture of tending to believe that all necessary information will very likely appear on official records, and the further development of ways to inquire further are not prioritized.

¹²⁵¹ See SINGER (2019), *supra* note 57, at 217–218.

government has announced review of both UStöd and housing benefit to consider potential changes specifically to their administration.¹²⁵²

California's rules are more responsive to income changes, in that they require (as part of the mandatory income declaration process before every support-setting or modification) a parent's *most recent evidence of earnings*, usually consisting of paystubs and the most recent *prepared* tax return signed by the parent and presumably filed (although this can be checked directly with the tax authorities in cases where suspicion arises). Most US tax returns are never formally finalized by the federal or state tax agencies,¹²⁵³ partially explaining this difference. California, however, also systematically expects each parent's own sworn written declarations of how much he or she has earned over the past 12 months from all sources. The State facilitates this with both statutory provisions requiring it for both court and private settlement discussion purposes *and* judicial-system-designed and approved forms for parents' use (in a number of languages and in formats usable by parents with various disabilities).¹²⁵⁴

Neither jurisdiction, however, *requires* private-system support amount decisions (agreements or orders) to be updated periodically with respect to the relevant circumstances of the children and parents, assuring the intentions of the lawmakers as to the child's support amounts are being realized. As with seeking child support in the first place, in most private cases *parental discretion* controls as to whether incomes of the parents and child support amounts retain the legislatively-intended relationship to each other. Because of the debt to the state involved in IV-D and UStöd cases, updates are automatically initiated by the child support agency, in each jurisdiction. *Both jurisdictions also leave courts some discretion* to decide appropriate parental incomes. As one example, California courts may choose a different "fair and representative time sample" when estimating likely average earnings for the months to follow when the child support will need to be paid.

¹²⁵² Dir. 2018:97. *See also Familjestöd ska ses över*, AFTONBLADET (2018-09-02) (reporting that both housing allowance and UStöd benefit administration would be reviewed, given their importance to single-parent families who receive 20% of their spendable income from those two social benefits alone). Both benefits were reformed effective 2018-03-01, and ISF's review of those changes on specifically children alternating residence are ongoing, with results expected in December 2022. *See* inspsf.se (regarding ongoing projects).

¹²⁵³ Federal and state tax authorities in the US do not have the resources to review and finalize every tax return, but instead rely on automated checks for red-flag inaccuracies and a system of auditing a (small) selection of returns; a return legally may be audited for several years after filing. Taxpayers in general do not receive notification that their tax returns have been formally finalized.

¹²⁵⁴ *See infra* Appendix 3 (providing English-language examples of each form).

6.3.2. *Liabilities, Dependents and Other Reductions Permitted*

Reductions to income available for Swedish UB purposes is a relatively well-developed area of law, in comparison with the just-discussed area regarding *additions* to income (in other words which sources of income should be considered and how they are to be found). Among Swedish parents with incomes high enough to make child support litigation more likely, claims that discretionary income available for support should be *reduced* seem to have been more frequent at the appellate level than claims requesting the *addition* of unusual or hidden incomes.¹²⁵⁵ In addition, more generally, this comparative study has observed a *WSM-related reduction of the importance of and sizes of Swedish UB payments*, especially in practice, compared to how important and potentially large they appear in the statutory law. Here one can observe an example of that, to the extent that relatively few parents have gone to court trying to expend, rather than reduce, the child support duty.

The black-letter laws of both jurisdictions allow courts to consider the support needs of very nearly the same categories of persons when calculating a parent's net discretionary income available to pay child support to a particular child. A parent's dependent spouse (in limited circumstances) may require support that affects the parent's relevant total financial circumstances, for example.

Their other children may also affect support, whether they are paying support to those children or living with them. The Californian rules more firmly restrict consideration of especially legal children now living with the payor, requiring *extreme hardship* before those children's needs may reduce a parent's obligations to (usually) his (usually) older children. In the UB and UStöd systems reductions for the support needs of a parent's other children are more routinely allowed. Both jurisdictions aim to treat *a parent's legal children from other relationships* equally fairly, compared with the children whose support is being calculated. The law of both jurisdictions may calculate *different supports for different children of the same parent* however, if the parent is no longer living with several different children. This most often reflects differences in those children's *other* parents' incomes, but difference also could arise from a child's special needs add-ons.

Both jurisdictions also acknowledge the support needs of a parent's household children, if any, although no primary duty to support these children exists in either jurisdiction. A support duty is rarely legally owed to stepchildren.

Significant differences between California and Sweden with respect to permissible deductions from income available for support include the *reduction of a*

¹²⁵⁵ I have not tested this empirically, however. A project studying the Swedish child support systems with empirical legal methods could reveal family law researcher misconceptions, including my own.

*Swedish parent's gross income by a standard amount for his or her personal expenses, and another for his or her actual, reasonable housing costs, under UB law.*¹²⁵⁶ These allowances are designed to be used in synergy with the UStöd guarantee: if a parent's income remaining for child support is too low after these necessary costs are deducted, the child still will have a right to receive full UStöd, and the portion the parent could not afford to contribute will be a non-repayable grant from the state. This ensures that the child receives adequate support, to the reasonable-needs level, representing the contribution owed from a second parent. Regardless of whether the UB or UStöd rules are used to determine a payor's ability to pay, this will be the result for low-ability payors (and their children). The UStöd repayment contribution calculation rules are different from the UB reductions from income. They subtract a set living allowance from taxable income, then set obligation to the children based on fixed percentages of discretionary income.

6.3.3. *Joint (vs. Individual) Parental Duties*

Male and female parents are both expected to work for pay by the child support laws in both jurisdictions, as has been described. Both systems also require, per the statutory rules if not always in practice, a higher-income parent to pay more than 50% of the support a child needs, up to 100% (although not more than the parent is legally considered able to afford).

There is some evidence, however, that especially Swedish family law in practice may (noticeably often) include an expectation that *one half* of a child's needs be met by each parent, regardless of any income disparity. In effect, an individual parent's child support duty has been decoupled from the other parent's duty; it has become a *de facto individual duty to pay 50%* of a child's needed support, with the Swedish state guaranteeing the other one half as necessary.¹²⁵⁷

¹²⁵⁶ Some of these differences have already been discussed *supra* Chapter 6.1.3, where they were related to the WSM ideals they reflect in each jurisdiction.

¹²⁵⁷ Disagreement regarding whether Sweden's child support duty *should* remain one jointly owed by two parents (forming or maintaining in a sense one economic "nest" in which to raise the child) has persisted for some time, as Chapter 3.3, *supra*, introduced. *See, e.g.*, SOU 1995:26 at 241 (explaining that investigators *would not recommend changing* the Swedish child support legal principle of *each parent contributing in accordance with his or her financial ability*; the directive setting the investigation's scope had required retained such joint liability, and investigators also deemed it preferable). "During this process, however, the investigation has multiple times encountered this perception that the support duty ought to be divided between the parents in such a way that each separately should answer for a certain portion—one half—of the child's needs." *Id.* (emphasis added). The 1995 investigation went on to review the existing joint division; the equal-division possibility (including having the state guarantee the other one half even

Clearly, *the text of the black-letter laws, in California and in Sweden*, create a joint parental duty to pay child support, to the extent each parent is considered to have the ability to pay. The laws require each parent to provide in accordance with his or her abilities *relative to* the other parent's abilities. A parent earning average income therefore is expected to pay or provide *more support for a child if the other parent earns very little income*, and conversely the same average earner parent is expected to pay *much less if the other parent is a high earner*.

In practice as well, the California Guideline is used for both private and public child support cases (the extra CP household income needed when child support is not received coming from CalWORKS need-based benefits, a separately-regulated area of public law). As a result all California child supports are set by the rules allocating the child support responsibility according to the parents' relative incomes (or proven income abilities). A support may be very small, but it is allocated, and by parenting times as well.

In practice in Sweden, UB support works similarly, although it is still unavailable for cases where both parents are significantly involved with the child's care.¹²⁵⁸ But for factors leading to UB amounts within a relatively small range clustered around zero and the exact amount of state-guaranteed child support (UStöd), an individualized amount is set and apportioned between the parents based on relative incomes. If and when a UB amount properly is decided, a parent with 75% of the income covers 75% of the child's needs for parental support. But in UStöd practice, once a child's support "case" ends up decided through that system, the CP's contribution is assumed provided in the home, the state decides a one-size-fits-most child support amount by statute, and the NCP's contribution is determined by rules resembling the American percentage of obligor income model popular in some US states, although because of the predetermined amount this provides no individuated result for the child. It is simply a (rather efficient and preferable)¹²⁵⁹ way of

when the parent paying his or her 50% had the clear ability to provide more); and the possibility of setting UB as a certain percentage of the NCP's gross income (then in use in Norway). Investigators concluded that the existing joint duty remained preferable to the other two. *See id.* at 241–246.

¹²⁵⁸ Those cases theoretically result in each parent spending at home a relatively large or small total amount on the child, based on his or her own income, although empirical data has not been widely collected or spread within the Swedish child support law and policy community and there are several reasons to doubt this happens sufficiently often.

¹²⁵⁹ This is the system Johanna Schiratzki referenced when proposing one way UB *amount*-setting rules could be reformed. *See* SCHIRATZKI (2005), *supra* note 466, at 83. It is also a system that has been advocated for by Anna Singer and Johanna Schiratzki together, as one way to unify UB and UStöd *ability-to-pay* determination rules. *See* Schiratzki & Singer (2017), *supra* note 703.

determining how much of a contribution to the state-decided support amount an NCP can pay.

One may conclude that the duty definitely is joint—not 50% each but 100% together—by considering the FB 7:1 law text. In practice, however, *the absence of a Swedish legal duty for a higher earner to pay any child support if a child spends equal time after separation in each parent's new household (absent exceptional circumstances) leads to the child experiencing the higher living standard available to one parent and not to the other parent, one-half of the time.*¹²⁶⁰ This can be seen as a separation of the duty into each parent, not the parents *jointly* providing as good an economic standard as the child would have if the parents' incomes were pooled and a portion dedicated to the child's expenses, wherever he or she might sleep (as "income sharing" is conceptualized in the US).¹²⁶¹ The undesirability of a child going back and forth between significantly different living standards has been expressed memorably by courts in both jurisdictions.

This section problematizes comparatively *how each system regulates that parents "share" the duty to support their children*, whether that be fully or partially by what in American law is called *joint liability* (with either owing the full amount if the other cannot or does not contribute at all, for example), or by *several liability* (with each owing only a certain share of the obligation, in the case of two liable parents 50% each).¹²⁶²

¹²⁶⁰ In contrast to in more traditional situations in which a child lives with only one parent. There, in theory, the duty is more "joint" as described above, with the NCP's payment varying depending on the CP's income level, although the total needs of the child are capped at a comparatively modest direct-costs level. See *infra* Chapter 6.2.8.

¹²⁶¹ The previous section explained how this can make sense, within the Swedish legal system's conception of each parent and child as individuals with their own budgets of needs to be filled. *But see* SOU 1995:26 at 245–246 (advocating for retention of the joint duty, but also an updated method for allocating the support responsibility between the parents that would "improve and simplify" calculations while also resulting in separately-living parents' financial circumstances becoming "somewhat less [inter]dependent."). That method is the one retained today and described at Chapter 3.4.2. Commenting that "the arguments advanced for an equal division and a percent method are *not such that they justify disturbance of these fundamental principles of parental responsibility* to, to the extent they have the ability, *in solidarity* financially support their children," they also added that other solutions might be investigated in the future, "for example when men's and women's economic conditions have become more similar than they are today." *Id.* at 246.

¹²⁶² One can further distinguish between how the responsibility is proportioned during child support setting, and how it is proportioned if one parent then fails to pay the portion legally assigned to him or her. Making that distinction helps one to understand the UStöd child support guarantee, as it is intended to function. The distinction is not crucial to this analysis however, because such significant confusion continues in practice between the UB and UStöd systems that both can be considered ways to set support owed by each parent in the first place, not simply to provide a financial protection once someone has failed to comply with the requirements of the first system. *Per UStöd law today no payor parent has to have a UB obligation set then fail to pay it by a date certain for UStöd to be granted.*

In the UB system there is an absence of a clear statutory duty to pay support if a high earner is also sharing the care of his child (living approximately 50% of the time with his child). The UStöd guarantee system can in practice create an individual duty, limited to one half of a child's needs for each parent to cover. *There results an insulation of high-earner NCPs from being required to pay child support in as high an amount as would be necessary for the child to maintain a standard of living equal to the NCP's, despite the law calling for such sharing*, and it leaves a gap in the financing of the child in the CP's household.

This has not been considered such a severe problem as to cause a different result via different statutory law or different interpretation by the courts, perhaps because of WSM gender policy ideals favoring rules that provide more equality including economic independence, even at a current cost, over rules that require court orders assigning more private dependence, which can slow down progress towards equality.¹²⁶³

This issue, of the duty's joint versus individual nature, could be a significant part of the reason the public and private law with respect to child support in Sweden has been criticized by expert investigations and academic researchers over the years, and has been confusing to many individuals attempting to use it properly. Clarifying this could contribute to deciphering the differing, in part counter-intuitive and somewhat incompatible rules from each side of the Swedish "dual system."

There is a subtler aspect of child support law where the jointness or 50%-each nature of the duty comes into play in each jurisdiction. California and Sweden, as described in Chapter 3, both allocate the legal child support responsibility between the parents for base child support by income shares, proportionally. While Sweden treats "add-ons" to base support in the same way, *California has adopted a 50%-each allocation, despite critique for this as unduly burdensome on the lower-income parent*. Simplicity for use of the rules by parents, without needing agency or court help, seem to be the main reason.¹²⁶⁴ California reasons are thus for *efficiency of private ordering*—settling "add-ons" easily between parents on an ongoing basis—while Sweden's *simplify administration for the state agency* paying out UStöd and collecting reimbursements. Both

Rather a somewhat hazy "inability" for the two parents to handle child support matters privately between themselves is to be found. *See* Report 2019:7, *supra* note 6. Additionally parents may be shuttled between the two systems multiple times under current law, and still may believe that the UStöd amount is the amount of UB for a payor to pay. Because there is no clear step one and step two, what is support setting and what is support enforcement becomes difficult to determine. The changing *allocation of the duty* is problematic, but hidden in this confusion.

¹²⁶³ *See infra* Chapter 7.4.1 (discussing gender policy differences in feminist priorities between the jurisdictions as causes for some of the differences observed between the child support laws compared).

¹²⁶⁴ *See infra* Chapter 7.3 (including discussions of differences arising from the family law legal systems' structures and priorities).

choose not to consider proportional allocation, the type of shared parental duty their law has created, more important enough to preserve.

Conversely, while California maintains the proportional allocation of the child support duty even in public cases (except with respect to “add-ons,” if any), *Sweden’s child support rules have the practical effect of excepting virtually all cases where its UStöd public guarantee is paid from the proportional allocation of responsibility*. This seems acceptable mainly due to the public-private division into two child support systems, coupled with WSM-related public comfort with the transfer of historically private family obligations to the state.

Focusing on Sweden

Per the black-letter Swedish law a child, represented by a CP, could separately seek additional UB, above the UStöd amount. It is thus not the law *as written* which creates the *de facto* split between cases which do and do not proportionally allocate. The *conservative upper-end limits on UB amounts* awarded in practice—another result the statutory law does not require—and the *costs of child support litigation*, which are likely to be borne by the CP herself and not shifted to the NCP—together create the result.

This replacement of the UB-intended results with the UStöd rules has a larger effect on the support amounts available in higher-income cases, it would seem, particularly where the CP earns significantly less than the NCP.

Conversely, the UStöd guarantee brings *up* support amounts (as it was designed to do) in *lower-income-NCP* cases, *without* asking for a support payment beyond what is affordable to the NCP, but also without expecting the CP to receive zero or a low “child support,” even if per UB rules she might be found responsible for all or nearly all of the child’s support. That high-income earners who also are CPs are receiving a rather large monthly state benefit that they do not need (if the UB laws are considered the main-rule way to answer that question) is not loudly protested. This could be patronizing to female carer-earners, or could represent a true cultural belief (public opinion) that each parent is only to be held responsible for 50%—a cultural belief with which the UB law is out of step.

Under current law, the state pays out UStöd in its set amount to replace the missing NCP contribution, *in effect* favoring the CP by not asking the CP to step in and pay greater than 50%, even if the UB system would expect that of her.

Interestingly, the UB rules *do* ask (or, absent the UStöd rules, require) *NCPs to pay more when the CP has a relatively weak ability to pay* (which fits with the historic origin of child support duties: the more-financially-able father as payor and the primary-parent mother as payee). There is no universal public benefit to apply for to “opt

out” of that duty: NCPs who can afford to pay must pay. Unwilling NCPs might pay directly (in the rare cases where the CP enforces the child’s right in court and then via the public debt collection agency if he does not pay). Alternating, if the CP turns to FK for UStöd for the child, the NCP will pay in UStöd reimbursement contributions (but only the maximum benefit level).

The NCP’s available discretion, however, is *also* quite significant. It is introduced by the existence of the UStöd system as currently regulated: an NCP retains the *de facto* ability to *fail to agree to pay directly (or more than the UStöd amount)*. This *causes* the CP whose child would be entitled to a higher UB to need to apply for UStöd, assuming litigating the issue is (as it most often is) unreasonable. The CP must settle unwillingly for UStöd. Thus the NCP has a *de facto power* to opt to pay only the full UStöd amount (a reasonable one-half of the child’s needs).

Arguably both elements of the Swedish child support system as a whole that thus can be said to “favor” CPs were *intended by lawmakers*: UB lawmakers chose to retain a duty allocated by relative incomes, knowing this would lead to fathers paying more than 50% of their children’s needs, benefiting CP households. UStöd lawmakers chose not to income-test the CP, knowing some CPs (and children) would thus get more support than the UB system would consider correct. *Both elements reflect some amount of redistributive intention*, meaning that lawmakers consciously *erred on the side of providing too much instead of too little support to single parent households*. Such households always include children (relative to NCP payor households which may or may not). CP households much more often than not also are headed by female parents paid less market income on average.

This way of looking at the law’s effects may be unusual in Sweden, where the current UB solution sincerely is understood to represent just enough transfer of support needed by *the child* from each parent, in light of his or her financial abilities relative to the other parent. The blended economics of the CP and the child is discussed by Swedish researchers and lawmakers, but to a much lesser extent than in California, where too the support is formally considered directed only at the child but is more informally seen as one part of the total income of the CP, partially determining if she can keep the entire household out of financial instability. This makes sense given the direct-costs versus share-of-parental-income models of what the child support should provide.

The *combination* of the two Swedish child support systems and the different options they leave parents counteracts against legislative intent in many instances. The rules currently cap UB amounts that can actually be awarded by a court or agreed to privately. They thus largely *leave the discretion of whether to pay a legislatively-intended (higher) level of child support to the relatively-higher-earning fathers*, as one important

example, and in so doing can be said to maintain some amount of financial inequality in favor of NCPs.¹²⁶⁵

Focusing on California

Meanwhile the California system (in both public and private cases) asks the CP to pay more than 50%, if able, because the Guideline amount will reflect the parents' relative incomes and timeshares. If an NCP pays even less than ordered, again the CP who can afford it is expected to handle the excess support burden without state help. In other words, if a California CP *can* afford to raise the children herself to a reasonable living standard, she will not receive any governmental aid, even where the NCP pays zero child support. The California child support system operates this way because public assistance from CalWORKS is limited to very-low-income households and there is no universal state child support guarantee. For very-low-income families, in other words if the CP cannot afford to support the children on her income plus the child support ordered for the NCP to pay, instead there is a combination of need-based supports (CalWORKS etc.) and *"pass-throughs" of some of the child support an NCP may be paying in to the state*, even while the state is still owed a debt.¹²⁶⁶

On the higher-income end, however, California NCPs might be required (without a reasonable way to opt out) to provide quite a high living standard to both the children and the CP. Keeping discretion as to whether or not to share his living standard with the child has mostly been denied to NCPs since the Guideline law was adopted; the law controls, enforced by the child support agencies. He may not decide the living standard, and he may not limit his contribution to one half. On the other hand, in the category of add-ons (which can be important if for larger costs), higher-income NCPs *do* retain the discretion to pay their proportional share *or* the 50% the law requires of them (absent a special request and the granting of a court order for proportional allocation of "add-ons").

¹²⁶⁵ Schiratzki directly linked this to the remaining force of patriarchy in the Swedish family law. See SCHIRATZKI (2005), *supra* note 466, at 79.

¹²⁶⁶ The state, in other words, rather than keeping all the money it can from NCP payments shares some of that money with the CP household, even though that household already has received CalWORKS and the rest of the NCP's payments are reimbursing the state for that. See Chapter 6, describing this among the other ways California seeks to optimize support levels in low-income CP homes and to *increase NCP incentives to pay*. See also Skinner & Davidson (2009), *supra* note 17, at 33.

Conclusions

In either jurisdiction, any hypothetical reforms that would *more* strenuously promote or enforce the *jointness* of the duty—requiring a parent with more net disposable incomes than the other parent to pay even more of that income into the other household, for example by increasing what are considered expenses attributable to the child—could work contrary to other policy goals. They may disincentivize parents from earning more equally for example, because the lower-income CP would not feel as much economic pressure. Similarly, higher child support amounts transferred to parents with more custodial time can disincentivized parental agreements to custody solutions that share the parenting time more equally.¹²⁶⁷ Such effects are likely to be stronger in California where an average child support amount represents more of a CP household's total income and is simply a larger amount of money.¹²⁶⁸ In Sweden, the joint In that sense the “flaws” of the Swedish system work exactly as the (most dominant) WSM ideals would wish them to work, avoiding encouraging perpetuating inequalities.

Allocation according to the parents' respective economic circumstances, actually enforced, means higher earner parents will pay more, and traditional roles will be somewhat enforced—but also that *child welfare will go up for children living only with one parent*, to the extent it is dependent on private family support, (while *costs to the state will go down*, assuming enforcement efforts do not cost more than is paid in child support substitutes). It may not be surprising, then, that the newer Swedish child support system (UStöd), also the system most tied to Swedish WSM-related policy goals, involves the most equality and the least allocation—in its black-letter rules—while also erring on the side of child (and CP) welfare, and that the 2016 UStöd reforms, which *did* attempt more fervently to educate parents and FK staff regarding the jointness of the duty (thus the need to calculate UBs) was not welcomed readily by families, agency staff, or reviewers.¹²⁶⁹

¹²⁶⁷ Such concerns have been mentioned in Swedish preparatory works and in American scholarship about balancing the interests to devise guideline law. See, e.g., Chapter 5.2, *supra*.

¹²⁶⁸ See Skinner & Davidson (2009), *supra* note 17, at 25 (presenting several case vignettes in which the US represented by Wisconsin was found to set the highest child support amounts, and Sweden among the lowest).

¹²⁶⁹ See ISF Report 2019:7, *supra* note 6, at 13–14 (noting in its executive summary that over 80% of CPs are women and over 80% of NCPs are men, a division that has remained consistent for a number of years, and that this “can have negative consequences from a gender equality and power perspective if parents are to handle child support themselves....[If they cannot cooperate] there exists an accompanying risk that the woman's economic autonomy will be limited.”)

6.3.4. *Abilities to Pay: The Duty's Legal Limits*

In principle, the black-letter law of both jurisdictions makes parents' child support duties contingent on ability to pay, thus not unconditional. Although the laws compared all protect every parent's right to have his or her duty to pay limited to an actual ability to pay, however, differences in the duty's legal limits exist, because the laws *define* the situations in which a parent will and will not be considered able to pay.

The differences mainly relate to differing policy concepts of ideal allocations of resources between children and their two separately-living parents (especially in the post-divorce family), as analyzed above within Chapter 6.2's discussions of the amounts of child support provided by these laws.

In California, across both private and public systems, income net of taxes paid, but generally *not* net of the parent's own *living expenses* is used to determine if and how much support he or she will be legally expected to provide or pay. Imputation of income is *possible* but *carefully restricted* to cases where a true opportunity to earn more than actual income is likely.

Sweden's UB system has similar basic rules, although generally the law expresses more weakly any emphasis on using one's income "first and foremost" to support one's child. Other demands on a parent's income are taken into consideration more generously (to the parent), as was illustrated with the example of how for UB purposes actual housing costs are deductible from income available for support.¹²⁷⁰ The danger of loss to the child is mitigated by the stronger welfare state.

The UStöd system uses a separate system for calculating ability to pay than the UB system, as detailed at Chapter 3.5.3, but the same WSM ideals apply.

It is interesting to note that in Sweden, evaluation of separately-living parents' economic abilities or "abilities to *pay*" parental child support, for what remains the majority of cases (situations where a child lives significantly more with one parent) becomes entangled with *whether they have sufficient "abilities to cooperate" in the child's best interest*.

Cooperative ability, even under the latest UStöd reforms, generally determines if Swedish parents will use the UB system or will get to or need to rely on the public UStöd system instead. *Cooperative ability thus determines whether and how the law will examine their financial abilities to pay (or repay)* because parents who can cooperate will both have their abilities to pay considered, while those who cannot will, via the UStöd system, only see the NCP's finances considered, and then only for repayment of UStöd purposes, via the public ability-to-pay rules. Using the UStöd system *caps the maximum child support* realistically enforceable through the child support system,

¹²⁷⁰ See *supra* Chapter 6.1.3 (Two Similar Yet Different Societies' WSMs).

but also raises the floor. Many children receive more UStöd than they would receive in UB because of its need-based grant aspect, but also because it (in practice) guarantees the UStöd amount to CP households in cases where UB would be lower *due to the parents' relative incomes*. Thus either system could be relatively advantageous from a given parent's perspective, depending on the facts of the case, inviting reasonable confusion, some overcompensation outcomes, and less fair outcomes in a number of common scenarios.¹²⁷¹

Even if alternating residence will be the child's living situation, today some amount of UB may still be appropriate, thus abilities to pay of both parents *should* be calculated cooperatively as part of that private-rules-based evaluation.¹²⁷² If a potential payor parent is not willing to pay a UB, court involvement is in theory possible, but only in the unlikely event that the lower-income parent would find it cost-effective to litigate the issue.¹²⁷³ Whether this result is desirable or acceptable can depend on whether UStöd is viewed as a grant helpful given the increased costs of two households compared to one, or a repayable benefit insuring, importantly, that NCPs pay it back: do the two parents have a cooperative shared nest in which they raise their child or children, even if they separate otherwise, or are they after separation two (more) unrelated households, in which case the NCP's repayment or contribution to the state in light of aid advanced to his legal child for the child's direct costs can be viewed as *wholly separate from the CP household's receipt of social benefits* to which *it* is entitled, even if they are need-based and could be avoided if the NC were required to pay more in child support.

In any event *UStöd will not be available to either parent for a child alternating residence, so the public system's rules for calculating ability to pay will never be applied* for cases involving children whose parents each care for them approximately 50% of the time. Housing allowance and other social benefits can nonetheless be paid to lower-income single-

¹²⁷¹ It was the main conclusion of the Swedish investigative report SOU 2011:51 that children in a number of circumstances (including those living in the most economically-vulnerable households with lowest-income CPs) *could* receive more support and experience less relative poverty *if* their parents used UB instead of resorting to UStöd, which is more properly meant as an *insurance*. The 2016 UStöd reforms were the result. *Results can however go the other way*, leading to reasonable resistance to UB system use. The core of the problem—that there are two badly-coordinated systems—remains. See, e.g., Schiratzki & Singer (2017), *supra* note 703.

¹²⁷² See SINGER (2017), *supra* note 55, at 146–149 (describing and problematizing the state of the law since NJA 2013 p. 955 which held that even a blameless failure not to provide enough economic support to a child during the child's 50% time with the other parent could lead to an obligation to pay a UB per FB 7:6).

¹²⁷³ See *id.* at 145–146 (discussing court-related costs and lack of legal aid in these cases, concluding that “[t]hose who need a private child support simply cannot afford to seek one”).

parent households with children 50% of the time, thus the state insures a good living standard for all children; lawmakers intended this result after ending the availability of UStöd in alternating-residence situations.¹²⁷⁴

6.3.5. *How Alternating Residence Affects the Duty*

California's child support scheme follows a minority US approach as to how to adjust child support given differing parenting-time allocations.¹²⁷⁵ Its Guideline formula provides a more or less *continuous adjustment*, as described in Chapter 3, reducing the monthly child support amount owed by a payor slightly with each slight percentage increase in what percentage of the time he has physical responsibility for the supported child.¹²⁷⁶

Sweden's current private (UB) law rule gives (in theory) *no adjustment* of the child support amount payable, *until* a payor parent has physical custody often enough that the law considers it "shared care" and not "visitation;" this is most often at and over about 30–35% parenting time, also as described in Chapter 3. *The majority of US states follow the same type of approach as Sweden's. It has been called a "cliff" approach because support stays the same through a wide range of NCP parenting time percentages, then falls significantly at a certain threshold.*¹²⁷⁷

Under Swedish UB rules, child support is generally *not payable at all* in significantly-shared care (alternating residence) situations, on the theory that each parent meets his or her support obligations during the time living with the child.¹²⁷⁸ Swedish

¹²⁷⁴ As discussed above at Chapter 5.3.4. The focus of this thesis however is on the parental child support duty, meant to be fulfilled via the UB rules, and its most direct state guarantee, UStöd, which is (where possible) repaid by an NCP in lieu of paying UB support. The other benefits are true grants from the state, not repaid.

¹²⁷⁵ See Jane C. Venohr & Tracy E. Griffith, *Child Support Guidelines: Issues and Reviews*, 43 FAMILY COURT REVIEW 415 (2005).

¹²⁷⁶ See Geoffrey P. Miller, *Parental Bonding and the Design of Child Support Obligations*, in THE LAW AND ECONOMICS OF CHILD SUPPORT PAYMENTS 210, 221 (William S. Comandor, ed., 2004) ("[The] approach is to include an explicit adjustment for visitation in the state's general child support guidelines. California, long an innovator in family law issues, uses perhaps the most extensive methodology.").

¹²⁷⁷ Sanford L. Braver et al., *Public Sentiments About the Parenting Time Adjustment in Child Support Awards*, 49 FAMILY LAW QUARTERLY 433, 434 (2015). A third approach, and the second-most-widespread in the US (16 of the 51 US jurisdictions), makes *no adjustment* of the child support amount payable under the state's guideline for payor parenting time, but *instead will consider parenting time of the payor as a reason to deviate* from the guideline support amount in a given case; it thus seems to require "atypical" circumstances for support to adjust due to parenting time with the payor. See *id.*

¹²⁷⁸ Prop. 2014/15:145 at 51.

lawmakers have associated not only UStöd's availability but *also the increased frequency of alternating residence* with the changed reality in Sweden that "child support responsibility is handled by each parent answering for those costs that arise for the child during the time spent in his or her home."¹²⁷⁹

The continuous-adjustment approach in California aligns with the State's public policy of ensuring "frequent and continuing contact"¹²⁸⁰ for the child with both parents. Similar continuous-adjustment approaches have been adopted by more jurisdictions over time, both in the US and in the Nordic countries, mainly in response to *fairness concerns* in comparison to an approach entirely lacking any adjustment regardless of whether a payor spends any time with his child or children. *Fairness favors some adjustment, proponents of the Californian approach argue, because NCP payors also incur costs during their parenting time,*¹²⁸¹ which, as described in Chapter 1, is increasing in California, and also in Sweden.

Public intuition as to how child support amounts should adjust with various percentages of payor parenting time also seems to support California's approach, at least in US (and UK) contexts.¹²⁸² Parents are increasingly co-raising their children,

¹²⁷⁹ *Id.* See also SCHIRATZKI (2005), *supra* note 466, at 75 (finding that alternating residence is favored by Sweden's dominant economic family policy, so targeted measures for more traditional single parent households, those with children living within them closer to 100% of the time, scarcely occur).

¹²⁸⁰ CAL. FAM. CODE § 3020(b) ("The Legislature finds and declares that *it is the public policy of this state to assure that children have frequent and continuing contact with both parents* after the parents have separated or dissolved their marriage, or ended their relationship, *and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy*, except where the contact would not be in the best interest of the child....") (emphasis added). Note that the state will *assure* contact, but *encourage*, not *assure*, that parents share physical caregiving and legal responsibility for decisionmaking ("the rights and responsibilities of child rearing"). California has no preference for equal shared care (alternating residence), but it is not disfavored either. The BIC standard controls.

¹²⁸¹ See, e.g., Venohr (2013), *supra* note 75, at 341–342 ("Proponents of expanding shared-parenting time formulas [during the US states' guideline reviews] argue that it is fair to recognize the nonresidential parent's direct expenditures on the child while the child is in his or her care."). This argument also is made in Sweden periodically, e.g. in preparatory works deciding whether to introduce, maintain or eliminate visitation-linked child support reductions in both the UB and UStöd systems.

¹²⁸² See, e.g., Braver et al., *supra* note 1277, at 445 (finding from a surveyed sample of the American public, specifically from Arizona, that rather smooth, non-cliff-like reductions in child support owed as NCP custody time increased in hypothetical case scenarios were favored, and comparing similar results from a UK study). It was found, however, that the *members of the public surveyed would reduce support by only about 17% for a 50%-time payor, compared to if he had zero parenting time*—and compared to the existing 65% reduction for payors with equal custody time in Arizona under child support law there, suggesting that the public would tend to be more supportive of traditional CPs receiving higher child supports than some legislatures.

and over time parents' incomes have become *less different from each other* as well (though female mother incomes, especially market incomes, remain significantly lower than male father incomes in both societies, at a systematic level). Given the larger diversity of family forms, continuous adjustment fits more easily with the various child support case scenarios parents and courts must resolve.

The California approach has been criticized as well, however, in the US¹²⁸³ and Sweden,¹²⁸⁴ largely with concern for how a (traditional or primary) CP may have nearly as many expenses relating to the child regardless of how much time the NCP also cares for the child. These concerns seem to remain so significant, despite being based on an earner-carer duality weakening in both jurisdictions studied (and which neither aims actively to perpetuate) that the cliff approach taken by Sweden continues to be widespread.

This is not to discount Swedish lawmakers' professed rationale for its cliff approach: UB lawmakers based FB 7:2 on the assumption that each parent *actually living with his or her child* would contribute to meeting the child's financial needs (and in proportion to his or her own income, meaning that a parent will spend a certain percentage of their income on one child within a wide range of income levels, and the amount that therefore is spent varies and will be more for the higher-income parent with close-to-equal time).¹²⁸⁵ California lawmakers employ similar rationale, because the Guideline law relies on a certain percentage of parental income expected from each parent, even though their incomes differ, as the basis of the total parental support expected to be spent on a child; that total is then allocated between the households based on how often the child is being cared for in each household.

There is another rationale for not ordering child support paid by parents who do take some responsibility for parenting their child, however, this one more uniquely found in the Swedish system: a parent retaining *legal* custody, even if he or she had

¹²⁸³ *Id.* at 438. (describing the four types of child costs incurred by parents, of which a 2004 Braver study had found that "only one, which is labeled 'variable' expenses, is zero-sum (i.e., what one parent pays subtracts from what the other needs to). . . . Additional parenting time that increases the father's outlays for the other three categories does not usually save the mother anything."). *See also* Venohr (2013), *supra* note 75, at 342 ("Opponents argue that the custodial parent's direct child-rearing expenditures are not always significantly reduced when the child spends time with the nonresidential parent and that low thresholds encourage parents to bargain the timesharing arrangement to raise or lower the amount of the support award.") and William V. Fabricius et al., *Custody And Parenting Time Links To Family Relationships and Wellbeing After Divorce*, in *THE ROLE OF THE FATHER IN CHILD DEVELOPMENT* 201 (Michael E. Lamb, ed., 5th ed. 2010) (describing a 2008 public opinion study revealing *strong preferences for equal parenting time*).

¹²⁸⁴ *See* Prop. 1978/79:12 at 111 (lost income to the CP likely to have fixed costs as a concern justifying reducing the visitation deduction).

¹²⁸⁵ *See* Prop. 1978/79:12.

no or little parenting time with a child, previously could *not* be ordered to pay child support to the *de facto* CP who also had legal custody. This concept—that a parent who is (with the other parent) legally responsible for deciding important aspects of a child’s upbringing *does not need to be* (or *cannot be*, per the limits on the state in Swedish private cases) ordered to contribute a certain sum, is not wholly unreasonable in theory. In practice, however, it does not seem to have been empirically, critically tested before it was introduced into UB law (not that many similar family law notions have been, in any jurisdiction). Realizations later occurred with respect to how many NCPs awarded a shared right in decisionmaking then failed to shoulder a reasonable share of the financial expenses borne by the CP (a mother, usually, with physical custody and day-to-day expense-paying responsibility), and the law was changed.¹²⁸⁶ The system “remembers” that sense, that child support is not something the private law orders so freely or often that it can be considered a given for every single parent.¹²⁸⁷

Unlike Swedish UB law’s main rule (now subject to some exception), California Guideline law requires child support to be paid by a higher-income parent to a lower-income one, even if they each have 50% physical custody. This is favored in California because it provides a secure base in *private resources* to be used for the child’s support, at the legislatively-intended (income-stratified) level considered affordable for the parents, even though the higher-income parent, traditionally not often living approximately 50% time with the child, is now doing so. California balances this required private transfer between parents both caring for the child, on the other hand, with the *continuous adjustment approach*, which reduces the *amount* of the traditional US child support transfers between households. If the State had not chosen to reduce the child support amount in consideration of the NCP’s parenting time, he would be paying as much if he were completely absent from the child’s care as if he shared a full 50% of it, a result many who experience it in other jurisdictions find fundamentally unfair.

One factor SE and CA lawmakers both considered in deciding legislatively-favored child support amounts is the *additional costs incurred by children living in two households*. Two households will have more total expenses than one, all of which must be covered by the same two adults’ incomes, at least in California where social

¹²⁸⁶ When this was changed it was justified as important so that joint legal custody for NCP fathers, otherwise increasing in popularity, would not be disfavored for financial reasons, especially in low-income-CP situations.

¹²⁸⁷ The legal understanding behind this conservative view of the Swedish state’s power in ordering child support is discussed *infra* Chapter 7.3.2 (re: parental discretion versus state oversight of child support amounts).

assistance benefits such as Sweden's housing allowance are not available to families unless their incomes are very low.¹²⁸⁸ In Sweden the UStöd benefit itself, *so long as the child lives primarily with one parent*, serves the function of financing the increased costs of *the CP's* single parent household, without adding to the burden of the NCP, and other supports on an as-needed basis (such as the housing allowance, outside the child support law) can assist the NCP with his increased costs in providing housing for the child as well.

Some research has concluded from evidence on how child support payments are actually spent that a child's living standard competes with the expenses of *the new second home* and *the CP's personal support needs*, which is a widely-recognized, common concern among payor parents, most often fathers.¹²⁸⁹ California law in response has established firmly that the *custodial household's standard, including the standard of the CP, may appropriately be raised* as a result of the amount of base, Guideline child support received, clarifying California lawmakers' prioritizing of the child's right to share in the higher-income-parent's living standard *over* its effect on the other parent's living standard (even in alternating residence, shared-care situations).¹²⁹⁰

For Swedish separated parents with higher incomes, generally the fact that the higher-income parent also has significant parenting time triggers the cliff, *eliminating* private child support obligation *and* its public guarantee. Increasing the living standard of the child in the lower-income-parent's household can then only occur if the higher-income parent *agrees voluntarily to pay to do so*. This unequal power situation could easily concern Swedish policymakers, but it seems to be less prioritized compared to the WSM ideals disfavoring wealthy living standards being preserved, at least between adult partners.¹²⁹¹

The child's interest in (or right to) both financial good fortune *and* substantial contact with both parents are put in tension in this situation, more under Sweden's

¹²⁸⁸ In addition, one-adult households may have to pay for certain *services* provided by a second parent in a two-parent home, *thereby spending a higher percentage of net income on a child* or children. See Blumberg (1999), *supra* note 308, at 97 (citing research from the 1980s estimating that the total cost of raising children represents 25, 35 and 40% of total household expenditures for one, two and three children respectively in a *two-parent* household *yet perhaps 40, 55 and 60% in a one-parent household*). "Mandatory add-ons" for work-enabling child care help the California Guideline adjust child support to these realities; Sweden's UB law also adds in childcare fees actually incurred to a child's total needs. See Chapter 3.4, *supra*, on Guideline "add-ons" and UB "needs" estimation methods.

¹²⁸⁹ See e.g. William S. Comanor, *Child Support Payments: A Review of Current Policies*, in THE LAW AND ECONOMICS OF CHILD SUPPORT PAYMENTS 1 (William S. Comanor ed., 2004). Chapter 7.4, *infra*, discusses the "gender wars" of child support, fueled by these tensions.

¹²⁹⁰ CAL. FAM. CODE § 4053(f) ("child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children").

¹²⁹¹ See further *infra* Chapter 7.5 (income equality ideals' and realities' relationship to the support laws).

law than under California's. The Swedish lower-income parent, usually a mother, may also more often need to choose to sacrifice financing her own needs from her own income, in order to provide the child with the higher standard he or she may be accustomed to from pre-separation life and from alternating residence in the other parent's home.

On the other hand, California's continuous adjustment approach also results in support amounts which are *lower*, from the traditional payee single-mother primary parent perspective, than such a mother traditionally would have received (before separately-living fathers without primary custody started having significant parenting time). California lawmakers have chosen to *reduce* the NCP's support burden (thus the CP's income from child support) continuously as the NCP's parenting time *increases* from zero, from this traditional perspective, which cannot so easily be discounted given the statistics on how often mothers still do have primary parenting responsibility after separation or divorce.

Seen in another, more gender-role-progressive way (not usually stated by lawmakers or researchers in either country, but nonetheless equally true mathematically): California has chosen to *increase* support (from zero if the parents' incomes are equal) as the higher-income parent's parenting time *decreases* from the 50% society might expect from modern parents, compared to if California had chosen the approach that Sweden (and the majority of US states) have chosen to date. *California chose relative fairness to the payor over increased income security for the lower-income, usually single-mother, in that respect*—a serious policy concern among many child support experts, as analyzed further in Chapter 7.4 (gender-related) and 7.5 (*inter alia* poverty-related) discussions, but also a policy promoting gender-equality in parenting behavior that Sweden may wish to consider adopting.

Sweden's current law, that child support will not be payable at all if each parent has at least nearly 40% of the parenting time (absent unusually low payee income which can trigger an exception), means that *in Sweden child support is only available to parents who care for the child over 60% of the time*. Alternating residence significantly affects the duty to *pay* child support, if not the duty to provide it in one's home with the child. It is a result softened by Swedish public benefit protections available to all children and their households, but it is a stark difference from the availability in California of child support to reallocate unequal private incomes between two parents, for the child's benefit.

6.3.6. *The States' Duties and Role in Relation to Others'*

The *role of the private family (parents and the child)* versus the *role of the state* in welfare provision is a dyad often discussed, including in the UN CRC introduced in Chapter

1.3. This section briefly takes up two additional sources of welfare provision for children relevant to comparing their child support laws, present in both Sweden and California. These two sources brings the total number of sources considered here to six, as illustrated in Figure 3 directly below. Beyond their two parents, themselves (in limited circumstances), and the welfare state, children in these jurisdictions as a group receive some support from *private market actors*, and also from their *communities*. All six sources contribute to reducing a child's needs for private parental (or state) support, but the jurisdictions' ideals, I have found, rank them (relative to each other) very differently.

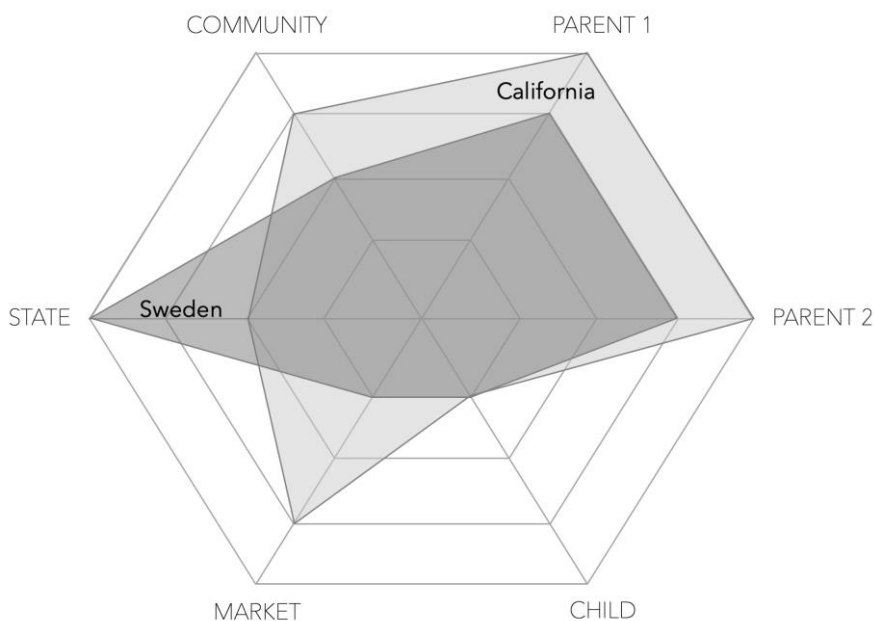


Figure 3, *Six Contributors to Children's Support*

Specific to child support provision for children whose parents live separately, the two compared jurisdictions' laws both assign *primary responsibility* to a child's usually two legal parents (and sometimes in small part to a child with significant personal assets). They assign *secondary responsibility* for financial child support to the welfare state, although the state fulfills a child's needs to differing degrees in Sweden and in California, as illustrated.

Two Parents, a Child and the Welfare State

In practice and arguably in ideology *the state child support (subsistence level, family needs-based) guarantee in the liberal welfare state ranks last behind the other contributors to a child's support*. It does not come into play unless absolutely needed as the guarantor because all other sources have proven insufficient. The laws studied and the materials on their welfare state contexts confirm this ranking, which I have attempted roughly to represent in Figure 3, where each contributor's relative importance in each jurisdiction is represented. *Those reaching the outermost ring for each jurisdiction are the state and the parents together for Sweden, and the parents alone for California*. Although Sweden emphasizes that the state's role in child support is secondary to the parents' the totality of universal, means-tested and needs-targeted social protections justify its ranking here as co-equal with the parents'.

This study's results reveal also, to be clear, that both welfare states make significant investments in children with separately-living parents, with California's contribution more extensive than those of many other US states. As has been discussed however, *in California the state as a "main rule" does not provide universal cash or services support for children's basic support needs* (with relatively recent but important tax credits and deductions for children being an exception, along with other exceptions like benefits for orphaned children, Native American Indian children, to some degree disabled children, etc.). Moreover, mainly only *very-low-income* households with children, among financially stressed households, receive some cash aid, and this via the need-based welfare benefit system on a time-limited basis with work requirements for the CP.¹²⁹²

California offers public assistance help to those with very low incomes, but its population's internalized WSM ideals lead even many individuals and families *who qualify* for certain supports *not to apply for them*, to children's potential detriment.¹²⁹³

¹²⁹² This WSM context to the Californian child support laws is one that US scholars have acknowledged for over 20 years. See Blumberg (1999), *supra* note 308, at 41 ("Addressed to the rulemaker, [ALP's].... Chapter 3 begins in full context, accepting it as a given. The context is the United States, with its free-market economy and limited public welfare system, where parents are assigned the primary obligation for the support of their children and the state, at most, begrudgingly undertakes a secondary role as guarantor when parents are otherwise unable to support their children.") (internal citations omitted).

¹²⁹³ This is one reason the currently-proposed US universal child benefit would likely be relatively effective in alleviating and preventing child poverty in the US, if politically it can be passed into law: Americans favor *tax breaks* and even *cash grants paid through the tax system*, and spend them on their children's needs, but will often not go "looking for a handout from the government," even if their children's welfare is put at risk as a result.

The state in California does have a crucial role to play for the poorest families—the nonworking poor and to an extent the working poor. There are social benefits beyond CalWORKS and MediCal available, such as food assistance (special funds available exclusively to buy healthier-items-only groceries needed by a family, and means-tested free or reduced-price lunches at public schools), as well as other social supports summarized at Chapter 2.3. Many take advantage when they need to, but there is also a *class divide* in feeling that public assistance benefits or even some public service options *are acceptable to use personally* (and even in knowing what benefits exist). In the child support context many Californians’ use of the relatively expensive private courts instead of the more powerful (at child support enforcement) LCSAs is one example.

Through the Child Support Laws

The State of California does not assist children to single parents specifically, by paying out cash assistance through the child support system, while Sweden does, with UStöd. There the jurisdictions differ. California does however provide the *procedural* help some CPs need to enforce their children’s private support rights from the other parent effectively, through the LCSAs but even through the private court systems’ “self-help” (and Family Law Facilitator) resources. Here there is a similarity: Sweden does this with UStöd and somewhat now with UB (informationally), and also did so before the non-repayable cash benefit aspect (the “filling-out” part) of the UStöd benefit and its predecessors was introduced.

The Swedish state’s role in child support, guaranteeing it and especially decoupling it from a requirement that a private support be set first whenever possible, has worked perhaps too well to target extra state resources to children of single parents not receiving private child support. Experts seem to disagree on whether the society providing UStöd to children with higher-income CPs is a desirable policy in and of itself,¹²⁹⁴ but *in combination with a UB system that denies higher-incomes CPs as high a UB amount when the NCP is relatively low-income* (or caring for the child a substantial amount of the time), it seems mainly problematic, unless a decision is made more unequivocally to provide the support to single-parent homes’ children regardless of what UB amount would be calculated.

UStöd lawmakers instead are trying to re-educate parents about their own *primary* responsibility, and are scaling back the benefit’s availability, although in future investigations and reviews due consideration must be given to the positive results that have been seen from the nearly-universal availability of the benefit.

¹²⁹⁴ See discussion of Eva Ryrstedt’s analysis on this point, for example, *infra* note 1585.

In wider context, however, whether or not UStöd is granted to an eligible Swedish child, that child is already receiving a nearly-equally-significant cash support, the universal child benefit, and is insured against significant “add-on” child support needs for necessities like medical care and educational costs in virtually all respects. This, comparatively, justifies considering the Swedish state a co-equal partner with the parents.

How Child Support Law Connects to Market Sources of Welfare Provision for Children

Not only the “family and state dyad” (that Figure 3 represents as four actors in total) but also the two other actors or sources named above contribute to children’s material welfare, and thus are relevant in comparing the child support laws from a welfare state perspective. Here the first, the market, is considered.

To make accurate comparisons, *especially involving one or more liberal welfare state jurisdictions*, prior research advises considering “the triad instead of the dyad”: family, state, but also *private market providers as sources of welfare resources*.¹²⁹⁵ “The triad” can assist with accurate analysis when evaluating private family law duties interrelated with areas of public law family-related regulation (and even with proposing more politically realistic reforms, if that is a research aim).¹²⁹⁶

The private market may be, to a specific child, one provider of important welfare services, goods, or payments, thus reducing their overall needs for child support from parents. This can be seen in California’s liberal welfare state—extensively, as described next—but also in Sweden’s social democratic one.

An example is when a liberal WSM element is introduced in Sweden, like opening up the state monopoly in schools and healthcare provision to include some private providers. It is a weak and only barely analogous factor, given legal restraints on such private actors becoming responsible for vital healthcare like major surgeries, and from making large profits by running very expensive and elite schools, even if those schools then were to offer scholarships to a few students who could not afford them. For that reason “Market” is assigned the lowest extent of contribution to children’s support in Sweden (in Figure 3).

The market is significantly more important in California. In California there are a number of other examples, not present in Sweden. *Private employers offering their employee parents subsidized child care or paid parental leave not required by or funded by*

¹²⁹⁵ Shamir (2010), *supra* note 156, at 953 (assessing comparatively the distributive outcomes of one US and one Israeli market-provided social welfare service, child care and elderly care respectively, to assist in *finding social policy reforms that can increase women’s equality and decrease class stratification, and showing that regulation of the family inside and outside of “family law” is “intimately connected to wide social policy debates”*).

¹²⁹⁶ *Id.*

the state is one example. This notably fits the description of a *corporate or conservative* WSM element per Esping-Anderson's typologies set forth in Chapter 2.2.1, rather than a purely liberal one.

Employee benefits for their children is in one sense an aspect of employee compensation, even if granted more as a perquisite or "perk" for belonging in a given trade group or company's employ. All children of parents at ABC Corp. may be offered free childcare at the office on weekends, or free college tuition at ABC University, for example. Eligibility for private group insurance coverage for employees' or executives' children or other dependents is another example. In another sense it is a *market actor stepping into the shoes of what might otherwise be a needed public service for a greater portion of the population*. It might also otherwise be a service or monetary contribution that the private family in another time or place had responsibility to provide.

Private market sources of welfare support for individuals play a real role in reducing the social problem of securing sufficient support for children of single parents in California. The Guideline child support law (per federal mandates) requires every child support order to specify which parent(s) will be providing health insurance coverage to the child, not because parents "shop" for their health insurance on the private market—although self-employed parents do. Rather, *high-quality employers provide a welfare service, namely spreading the risk of high medical care expenses over their employee population and subsidizing some of the care*. The child's basic needs for health care may be met by the State of California if a child's parents have very low incomes, but more often that aspect of his or her needs is met by one or both of the parents signing up via their employer (and usually paying a cost for it from their income, but not as high a cost as if it were not employer-subsidized).

In California, per its WSM ideals and practices the *private market* is thus used, and often *avored* to be used, *along with* (primarily) the child's family for procuring what a child needs *when possible*. The inequality of access (non-universalism) makes securing access for an individual child all the more important as a child support law element.

It also makes individual children's well-being more uncertain (increasing inequality), which is why the (mainly) social democratic Sweden is unlikely to shift very extensively from universal public child supports to more market-tied or employment-tied ones. In Sweden, there are no employee benefits offered through adults' employers that increase their children's financial welfare directly, beyond of course salary. Sweden's people expect universal access for all individuals to *state* support for needed services and funds, and some children having different benefits due to their parents' occupations would seem strange and unnecessary.

Community

Extended family, family friends, churches, private charities and similar others who provide some support for children, when it is needed or in general, have *no formal legal duty to do so* (at least as assigned by the child support laws studied, in the jurisdictions in focus). They are nonetheless part of the complete context in both California and Sweden.

Figure 3 assigns a higher emphasis on community as a source of child support contributions to California. Often in California “Community” is a *preferred* source of needed resources compared to social benefits (because private sources are preferred over public sources, which are seen as a “last resort” associated with shame, bureaucracy, often low quality, thus are to be avoided).¹²⁹⁷ Even more often it is the lack of public options that lead Californians to rely more on their personal private networks for child support help.

In contrast, in Sweden society members have a trusting and positive relationship with the state and its services. All schools and school lunches are free of charge to parents, as are other things considered by Swedes as basic, normal needs during childhood (such as immunizations, dental care including necessary orthodontics, transportation to school, special-needs assistance in home and school settings, etc.). I have not encountered distrust as to their quality, except in the public political debates over how to improve public services. The universal child allowance received for every child, in an amount similar to the additional UStöd amount for children with single parents, also may cut down on Swedish children needing community-organized drives for canned foods or gently used clothing because of need, of the type seen in the US (although frugality and swap meets for used items are popular in Sweden, just not targeted as a charity to lower-income groups). Several additional supports available specifically for sole parents’ households, some of which have been briefly described herein as context to the child support legal regulation studied, exist too, completing a comprehensive safety net of which traditional child support (UB) is only one part.¹²⁹⁸ As is the Swedish state’s WSM-related intention, financial risk

¹²⁹⁷ Because of the liberal-WSM-related hesitance to take state aid in California, *and* the social-democratic-WSM-related hesitance to take *private* aid in Sweden, more children may be missing out on the benefits of child support (and welfare supports similar to it) to which they are legally entitled. This seems to happen more frequently than would be the case *if children’s rights to child support were enforced by the state in all cases*, instead of left to the discretion of their parents, *and/or a cultural shift motivated parents not to hesitate to seek it for their children*.

¹²⁹⁸ Chapter 2.3, *supra*, described these Swedish conditions as background to the child support systems studied. For discussion of the challenges inherent in regulating who will be considered a sole parent for need-based social benefit purposes (in a Nordic comparative context) see Anna Singer, *The*

and worry is universally lessened, as are *the risks and insecurities with private family, market or community support* (for example of loss of availability, and of inequality in availability). A private child support from an NCP, especially one with whom the CP may be in conflict, seems—and objectively is, as proven by economic studies cited within this thesis—less important to many households. The state’s duty to enforce it, compared to its role in providing that high universal welfare standard, is less prioritized. Most parents do contract with each other and both provide privately for their children even when the parents live separately, but secondarily they turn to the state, and rarely to other sources of support playing a larger role in California.

6.4. Comparing the Procedures to Establish or Modify Child Support Obligations

6.4.1. Initial Settings and Modifications

The procedural descriptive chapter discussed in detail the various ways initial and modified child supports may be and are set in each jurisdiction.¹²⁹⁹ Here those ways are compared, with one important exception: the jurisdictions’ orientations towards *parental agreements settling child support issues* instead, in other words the relative levels of *parental* (and *judicial* and *agency*) *discretion* afforded under the jurisdictions’ laws are taken up within Chapter 7.3.

In general, in California, usually in connection with divorce or parentage establishment cases, parents obtain initial child support orders *entered by a court, even though they most often have been agreed to by the parents* (not contested in court) after a Guideline calculation has shown the parents what the law considers an appropriate support amount for their child’s circumstances. In Sweden agreements also are favored, but the amount is less firmly suggested by the state; it is not legally presumed to be correct, as in California. Written, witnessed agreements are favored, but they preferably are not brought to a court.

A legally-valid, entered order is the end result of both private and public systems in California. A child support order will contain an amount of support calculated via the mandatory formula, although whether calculation is done by the parents (with or without Family Law Facilitator’s Office guidance), an LCSA (local child support agency), a private attorney or a court itself varies. It will include not only the child support amount to be paid (see Sweden’s simple model agreement form, and

Relevance of Cohabitation for Parental Rights, in NORDIC COHABITATION LAW 211 (John Asland et al. eds., 2015).

¹²⁹⁹ See Chapter 4, *supra*.

California's, at Appendix 7) but also the income and other information underlying the Guideline calculation. This is required by the court system's mandatory-use child support order and stipulated order forms (provided at Appendices 3 and 7 for reference), and is valued for helping parents understand and comply with the child support order. The detailed written order also simplifies review by the parent in the future, to determine from the old order and new income information whether a modification is necessary.

In Sweden, the child support issue is most often considered along with divorce or separation of unmarried parents, and more often results in *an informal agreement between the parents or a signed contract between them following the basically formalities set forth in the FB*. In fewer cases, a court order is obtained, but it is rarely cost-effective and is strongly discouraged.¹³⁰⁰ The parties may also consider there to be no child support issue, as UB child support generally is not considered available to approximately 40% of Swedish children whose parents live separately.¹³⁰¹ Until 2016 UStöd was being used by more parents than originally intended, meaning that in many cases a CP (once the parents had decided there would be a CP) applied for the UStöd benefit on the child's behalf, and it was the state that followed up with calculating and collecting a repayment contribution from the NCP.

California, via the public LCSAs, also pursues paternity determinations and child support orders on behalf of the CP and child if requested, or if the CP has applied for need-based public benefits that trigger LCSA involvement. The LCSA can enforce the child support order, to obtain payment into the agency (or an affiliated payment unit of the state government) for partial or full transmission to the child's household. In Sweden, CP parents who have not received a private child support for their child (or been able to agree on one with the NCP) somewhat similarly open a UStöd case with the FK agency. It also performs child-support enforcement and collections, including receiving payments from NCPs and paying out the UStöd benefit to children's households. The benefit amount is less tied to the amount an NCP is required to pay. UStöd as a social insurance is premised on a slightly different need than the enforcement in IV-D cases in California of private child support duties,

¹³⁰⁰ UB's importance and access to justice in conflicts over UBs have been de-emphasized *expressly because lawmakers have relied on the availability of UStöd to meet a child's basic support needs*, if in a less individualized but more universally sufficient manner than UB rules make possible, as discussed within Chapter 4.3, *supra*.

¹³⁰¹ Here I mean in cases of shared care (for the most part excluded under both UB and UStöd rules) and in cases of special circumstances (under the UStöd rules), including high-conflict or domestic violence making it unlikely the parents could privately agree to a UB. The full UStöd benefit may be used for over the six-month limit imposed since 2016 in this latter category of cases (even if the NCP pays contributions to the state regularly for those months).

although many IV-D cases are for children who received need-based welfare benefits, theoretically at least in part because no private child support was paid to them.

There are cases in both jurisdictions where parents do not set a child support for a child who would be eligible for one, relying instead on an informal understanding between themselves,¹³⁰² CP income only, or public benefit replacements. There is also no child support payment owed, in either jurisdiction, in cases where parents' incomes are approximately equal *and so is their parenting time* with the child. In Sweden approximately equal parenting time alone is usually enough to result in no child support payment being owed. In California, court orders making the findings regarding incomes, parenting time and the small or nonexistent child support payment to be exchanged are often entered anyway, ready for modification if circumstances change.

These are indisputably large differences, especially the nearly universal court involvement in California (with and without the LCSA also being involved) compared to the more frequent FK agency involvement (but a low frequency of court orders) in Sweden.

Steps Parents Should Take in Securing Child Support for a Child

As was already compared and analyzed in Chapter 4, what steps Swedish parents “should” take to try to agree to and receive a UB before instead applying for UStöd (or proceeding to civil court) seems somewhat unclear. The Swedish materials reviewed for this comparison do not state whether filing a court action to set a private-law child support under certain circumstances is advisable for CPs instead of applying for the public-law child support benefit (triggering the state to seek contribution from the payor), assuming the parents cannot agree that the NCP will begin paying an appropriate child support directly to the CP, but it seems applying for UStöd and thus for the state to handle enforcement of the NCP's duty is more

¹³⁰² This can put the child's claim for support in jeopardy with respect to the months before enforceable child support orders are sought based on the parents' agreement, in California, *although this would not be problematic in Sweden*. California law limits the power of courts to order *retroactive* child support, especially compared to Sweden's rules for retroactivity, providing that an order can be made retroactive for up to three years. In California the focus is on the payor having received notice that a particular support obligation is requested to be established against him at a coming hearing date in court. In Sweden the inherent duty is seen as a duty to *pay or provide support to one's children anyway*, thus no specific notice (beyond presumed knowledge of the published statutory law) is required for the setting of a retroactive child support amount due. This correlates with *Sweden's de-emphasis on parents having formal court-issued child support orders*, and in stark contrast *California's emphasis on having formal orders court-issues as soon as possible in every case*, not waiting to see if voluntary support is reliably paid.

expected. UStöd (and its earlier forms) were not explicitly introduced to end support dispute litigation, but the assumptions underlying its introduction did include the Swedish family law's aversion for court-based conflict resolution, as well as an in-fact low number of UB cases being litigated.

Even the 2015 proposition introducing new incentives for parents to avoid using UStöd and instead use UB *rules* did not state an intention for parents to start using UB court-based *procedures or enforcement mechanisms*. It instead clearly and repeatedly stressed that the government considered it preferable for *parents to attempt* to reach *agreement* on a UB, now supported by both county mediation conversations and FK staff.

Child support administrators in Sweden are legally liable if they can be seen as exercising state power, “decisionmaking” on behalf of the state as to what an appropriate UB should be. FK staff are thus advised to be very clear with parents that only the parents have made any decisions, as Chapter 3 described while presenting the support FK offers parents in calculating UB amounts.¹³⁰³ I would expect this to leave newly separated parents seeking guidance less satisfied than if

¹³⁰³ The concerns of overstepping the state's proper role, inherent to the Swedish legal system's norms, are *perhaps exaggerated in the UB advisory process* premised on two parents sitting down to talk about their own children's needs however. It seems little about giving the parents a worksheet clearly listing various costs not already contemplated by the estimators, for example, with blank spaces for agreeing to whether each type of cost is likely to be incurred for their child (and if so at what level) would be adding content to the law or making a decision for the parents, in my view. In California *LCSA staff calculate child supports per the legislatively-adopted mathematical formula and ask parents to review and agree to them*, or otherwise bring the calculations to a court to have them decided as appropriate. The process is not confused with formal agency decisionmaking in individual cases, and further evaluation of how much more autonomy might be permissible for FK staff could help them better to serve children and parents. The concern in California would be that staff were engaging in the “unlicensed practice of law” if they gave advice about the legal effects of the law. Nonlawyers rendering such advice is not unlawful in Sweden. Stronger FK steering in UB setting, via walking parents through more questions that could be relevant, may give parents an opportunity to find an area of disagreement, but also an opportunity to resolve it in the child's best interest. They could *avoid the entirety of easily-anticipated child costs falling solely on one parent*, particularly the parent with the large majority of the parenting time and possibly a lower income as well. Compare, e.g. Grönlund & Halleröd (2008), *supra* note 276 (finding from interview studies gendered behavior in the spending of discretionary personal income on children and home versus on personal recreation, with women tending to do the former and men the latter, partially because men do not prioritize such spending or wish to see it as shared and partially because women gate-keep, not entrusting purchases of “curtains and clothing” to men, thereby perpetuating unequal division of resources within the family). Each parent having opportunity to draft their own versions of these forms in advance could potentially further smooth this process. *A pilot test of such ideas, inspired in part by California's mandatory use of family law Judicial Council forms such as those at Appendix 3 may benefit the UB system. See also Chapter 8, infra* (outlining briefly proposals for further review in the studied jurisdictions).

the agency did offer a more robust calculating tool. What steps parents, and which of them, should follow when parents “cannot reach agreement” on child support remain relatively unclear, from this comparison’s perspective (although not out of line with Sweden’s contract-based family law conflict resolution ideals).

There is some guidance published on which Swedish parents, or at least the agency staff working with them, can rely.¹³⁰⁴ Not all foreseeable questions are fully answered however. What if the discussion leads to the NCP arguing (correctly, let us presume) that an amount much lower than the UStöd amount is appropriate for him to pay, but the CP dislikes that result? Must he now go to court for a UB court order to escape liability to pay UStöd-level reimbursements to the state? It seems so, but instead he likely will pay the contribution amount FK calculates for him, despite it being higher than a UB would properly be. Even if Swedish child support experts may have adequate answers to these questions in theory, or based on their cultural expertise in the system, parents’ knowledge levels and incentives to determine the correct paths to take on their children’s behalfs remain unfortunately murky (especially, it might be noted, for parents not born and raised in Sweden).

Since 2016’s reforms to UStöd, it seems clearer that a CP should then either continue to receive UStöd for the child or, if the NCP pays a contribution in full and on time for six months, should again discuss support with the other parent (but no direct guidance is given as to which parent should initiate this discussion; an encouragement that either should initiate a talk with FK assistance as soon as possible could be given more often, for example online).¹³⁰⁵

Comparatively, in California, for the most financially at-risk children (those receiving need-based benefits), the state proceeds with the IV-D case child support setting and enforcement, requiring little on the part of the CP or child. If instead issues associated with the parents’ divorce or separation are taken to the non-IV-D courts, they should by law flag the need for child support to be resolved and take

¹³⁰⁴ The FK and SoS guidance manuals regarding child supports both meet the parents’ needs identified here, however, in many ways. See FK 2016:1, *supra* note 466, and SoS (2014), *supra* note 479. They may, this study suggests, benefit however from improvements that go somewhat farther in helping parents be thorough with the many factors useful to consider in meeting their child’s needs. One of the SoS publication’s most helpful pages (compared against the criteria outlined, inspired by the California example), appears at Appendix 6 (partially translated into English).

¹³⁰⁵ NCPs are also counseled by FK that they have more control over this process than they may be aware. They can “choose” to pay directly “to the child” (to the CP for the child’s benefit), and those direct payments (if made to at least the UStöd level, unless a lower UB has been court-ordered or agreed to in an enforceable agreement) *would cut off the child’s right to the benefit*, immediately. This has interesting implications for the gendered tensions at a systematic level between separated parents. An NCP has autonomy and control, under current law, to pay directly, or not to pay, relative to the CP and child. See *infra* Chapter 7.4.3.

the initiative to request that the parents provide the court with the necessary income and parenting time information, so that the court can calculate and enter a child support order immediately in the courtroom when the parents are there. Initiative required on the part of parents is much less, but only for cases that have entered the IV-D or non-IV-D system already. In other cases parents must decide how to cooperate on calculating a child support, aided by the self-help materials online.

Regarding modifications, in both California and Sweden a “significant change of circumstances” is required for a court to relitigate the support issue. However, since court involvement is rare in Sweden, the true hurdle for modification is *whether the other parent will discuss making a change because changed circumstances warrant it*. The same, in practice, would be the first question in California as well, except for in IV-D cases which will automatically regularly be considered for modification by the LCSA. UStöd repayment contributions and amounts paid out to children automatically adjust as well, to a certain extent, while UB amounts must be adjusted slightly by the parents themselves, per an indexed increases rule. Non-IV-D California orders do not adjust themselves at all, however parents are by law entitled to request each other’s comprehensive income information, again on mandatory forms. This enables parents thinking a modification may be in the child’s best interests to calculate an updated Guideline support amount to propose to the other parent, or the court.

The remainder of this procedural-law comparison analyzes a few chosen topics related to the black-letter-legal differences and the differences in common practice just summarized.

6.4.2. *Child Support Court and Agency Procedural Roles*

Given previous discussions it can quickly be summarized that Swedish *courts* have a role, at the Supreme Court level especially, in interpreting the child support law (private and public), in the few instances that cases about this law are litigated and then appealed. Swedish trial courts also of course interpret and apply child support law. They do this in disputes between parents (on the UB side) and in disputes between parents and the FK agency (on the public-law, UStöd side).

The administrative courts’ role has not been in focus for this study, outside of the most important case decisions those courts have made regarding UStöd, mainly regarding the criteria necessary for a child to receive it in various factual situations, and the procedures for how those facts are to be determined (between FL and the applicant, generally).

The Swedish *civil trial court’s* role in child support disputes between parents has been characterized in earlier chapters as relatively weak, compared to the parents. Even FK may be considered more central to application of the Swedish child

support law than the UB trial courts: the FK *agency* is responsible under the law for granting or denying UStöd applications, and for investigating, calculating and collects NCP contribution payments. On the private-law side it also has become the agency responsible for advising parents on *both* UB and UStöd rules and procedures.

The Swedish civil court has no duty of independent inquiry in child support disputes, as is further discussed in Chapter 7.3, and therefore determines resolutions to parents' UB conflicts based on the facts they offer, and within the bounds, in terms of requested UB support amounts, that the two parents' claims set.

California's *courts* in contrast are relatively powerful, yet they have detailed statutorily-limited procedures to follow when deciding Guideline child support disputes, including when deciding when to "deviate" from the Guideline-prescribed amounts. The courts must comply with several legislative mandates, procedurally, to help ensure that child support orders are both entered (approved and signed by the court, to be enforceable as child support orders) and kept track of (sent to the correct public-system institutions) for state enforcement purposes.

The California child support *agencies* also are highly regulated by statute. Although the agencies are specialized and effective at rigorous child support enforcement, their staff attorneys ultimately must bring child support matters to a court, just as parents must, to have child support amounts approved as enforceable court orders.

Are Agencies or Courts Prominent under Jurisdiction's Law?

Chapter 4 described a number of ways in which the relationships within the *written* law between these institutions, courts and agencies, are influenced by cultural and legal system common understandings, as well as by the law as administered in practice.

Given those influences, as one example, *California's system can be said to be not only court-centered but private-court centered in the eyes of the public, while on paper in the Family Code it may appear agency-centered*, because the DCSS and the local LCSAs are granted more enforcement power. The public child support agency-based system and its many advantages could lead one to assume that virtually all parents use the LCSAs, but in reality the dual-system segregates IV-D welfare recipient cases, which are agency-run, and non-IV-D divorce and parentage cases, which are court-run.

Similarly in Sweden, the FB private child support duty on paper seems designed to be applied by courts. Procedural rules regulate court procedures, not to the same extent what parents are to do in order to fulfill their duties to their child via private agreements, for example.

In reality the UB litigation option exists in a conflict resolution system regulated and understood *outside* of Chapter 7 of the FB. *Parents have control*, as has been

described. *Parents are meant, per the ideals, to have ownership of solving the child support issue between themselves.*

Agencies do not appear prominent on paper in the private law, however the FK agency does seem the strongest actor on paper in the public law (the UStöd rules within the SFB), which matches its centrality in the real-world administration of UStöd.

The Federal Legislature's and Agency's Role (in the US)

In general in the US today, the mandatory guidelines used by agencies, courts and parents alike are a prominent feature, making it fair to say that California's child support system is now *legislature-dominant*:¹³⁰⁶

Child support has been revolutionized. It is no longer a simple matter of a negotiated settlement in a lawyer's office or a judge's own determination of what constitutes an adequate amount of money to support a child. In the past, court-ordered child support tended to greatly undervalue the true costs of raising children. Today, child support is governed by standardized guidelines which judges must follow or, if not, express reasons for their deviation.

The law deciding many aspects of the guidelines chosen by each US state, and how they are administered, also in many ways is *federal law* emanating from Washington, D.C. instead of from the state legislature (or state child support agency) in California. Sweden, in contrast, is freer to decide its own child support law and policy.

As researcher-practitioners studying the federalized US Title-IV system recently have suggested, the federal child support agency (OCSE) may now be moving in a new direction, a direction in which seems California is already beginning to follow.

OCSE now recognizes that the earlier aim of Title-IV, *cost recapture of welfare expenditures*, as *no longer sustainable*. Therefore the agency is trying to “rebrand” its mission as one *encouraging shared involvement in financial parenting*.

As fewer public child support cases involve families who receive or have received Title IV-D public benefits (the benefits' criteria having become more stringent and thus available to fewer low-income CP households), *the nationwide US agency is working to have the states' IV-D missions expanded, for example to include custody and visitation issues* so that families can in the future potentially receive *all* the family-law court orders they need—custody as well as support—settled within one public (IV-D) case.¹³⁰⁷

¹³⁰⁶ SANFORD N. KATZ, FAMILY LAW IN AMERICA 152 (2d ed. 2015).

¹³⁰⁷ See Brustin & Martin (2016), *supra* note 202, at 1275–1276.

These American researchers are against such an expansion of the US public child support agencies. They propose instead expanding *non-state* resources for low-income families needing family law assistance. *In line with liberal WSM values*, they identify expansion of the state and its LCSA attorneys' role in the family law cases of especially low-income CPs and NCPs as problematic, reducing these litigants' *autonomy* in comparison to wealthier parents'.

As the discussions above have noted regarding California's differing private versus public cases, wealthier parents using the private system are by law *full parties* to the case concerning them, and often appear (self-represented or, less commonly, represented by private counsel). They retain to a greater extent their freedom *not* to set custody or child support court orders.¹³⁰⁸

In California, however, the private-system Family Law Facilitator's Program (introduced at Chapter 4.2.1.3) operates differently than the public-system IV-D system attorneys do. The facilitator attorneys in California, these researchers note approvingly, do *not* represent the state's interests as they aid unrepresented parents in "filling out forms, running guideline calculations, answering questions, and in some cases mediating cases."¹³⁰⁹

From the freedom-from-state-interference point of view (CA-1), further expansion of the public child support system can be seen as something *not* working in line with the WSM ideals valued by the legal system. In this view, California's Family Law Facilitator's Office services in the private child support system are preferable, *despite the more comprehensive help offered by the public-system LCSAs* compared to the private-system facilitators, both for virtually no charge to parents.

From this view, the idea discussed at Chapter 4.2.2, to classify *all cases involving child support as public (Title-IV-D) by default* in the future, as a way for California to access sorely-needed court funding assistance from the federal government, would *not* be favorable, unless it can be implemented in a way that preserves more *autonomy for litigants*, regardless of their financial resources.

This kind of *individual rights preservation delivered via the availability of expensive court-based individuation* is emblematic of California's dispute resolution ideals.¹³¹⁰ Pursuing

¹³⁰⁸ See *id.* at 1277–1278 (criticizing e.g. that "[w]orking with IV-D agencies means that parents give up their ability to control the means and objectives of the representation as well as the privileges and ethical protections attendant to legal counsel.")

¹³⁰⁹ See *id.* at n. 89.

¹³¹⁰ See, e.g., Carlson (2007), *supra* note 259, at 344–345 (categorizing the US as tending towards a *bourgeois rights* orientation—rights are entitlements seeking to be defined clearly—while Sweden tends towards a *socialist rights* orientation—rights are policy pronouncements, intentionally vague—"consistent with the perception many Swedes have of being a middle, third, way between the West and the East."). With an example of proposed *negligible* fines for corporations as a main remedy for

this ideal can cause, however, some of the same types of problems seen in the dual systems today, with wealthier parents able to achieve better, more tailored child support decisions, because they can afford to go to court more often, to bring in private counsel, and (in California if not in Sweden) even to conduct discovery regarding income evidence, take expert testimony as to a parent's earning capacity, and the like.

6.4.3. *Costs to Parents of Setting, Modifying & Enforcing Child Supports*

Costs typically faced by parents are affected not only by how much a parent in each studied jurisdiction must pay to litigate a child support issue, especially given that most child support matters are not adversarially litigated in either system. Financial costs to enforce child support rights are more affected by how willing parents owing a child support duty are (1) to cooperate with the decisionmaking necessary to set a child support amount, and then (2) to pay as required.

How willing the payor is on either of these two counts is related to *how easy and supported the procedural process is, in the typical case*, practically but also emotionally.

Chapter 4.5 presented and to a large extent compared the law and practice in each jurisdiction relating to typical fees and costs incurred by parents. This section therefore briefly comments comparatively on two common barriers to inexpensive, efficient child support setting: *payors unwilling (although able) to pay*, and *payors perhaps willing but unaware of what is expected of them*.¹³¹¹

Comparing Non-Compliance with Child Support Law: Knowing Refusal to Pay

Payor parents usually want to care well for their children. There is ample research literature however, especially in the US, describing various barriers payor fathers feel they face that decreases their willingness to pay, even when financially it is possible.

noncompliance with gender-equality mandates, Carlson observes a tendency in the Swedish legal system *not to expect rights to be enforced vigorously by individuals*, but rather to expect agencies and other institutions (like labor unions) to assure that rights are (collectively) respected. *See id.* at 345 (contrasting the Swedish context with the US and UK, where “[t]he law has been seen as a guardian of the rights of the individual from the time of the Magna Carta.”). Each jurisdiction's expectation regarding whether law can or cannot be used to safeguard individual rights thus becomes self-fulfilling. *Id.*

¹³¹¹ Cases of inability to pay (and the large costs to the state of attempting to enforce child support debts against such parent payors) are instead compared within the next section, specifically *infra* Chapter 6.5.1 on what type of problem arrearages are in each system.

Child support is not only an economic, financial resource for children, but also a non-economic, “expressive resource.”¹³¹² When a parent provides support for his or her child’s well-being it communicates something emotional to the child, and for each parent.¹³¹³ The chance for a child to receive support thus can sometimes be improved by an opportunity for the payor to pay it directly, to the child, which is not always possible.¹³¹⁴ Payors may be more *or less* motivated to pay support to the CP directly, or to the state as an intermediary. Both jurisdictions provide opportunity for either solution, especially through the public systems.

Parents in both Sweden and California sometimes avoid paying *formal support* in favor of providing direct *informal support* to children instead. They buy, for example, a needed pair of shoes or backpack when spending time with the child. Neither jurisdiction recognizes informal support as a form of child support payment that will satisfy a formal payment order or agreement being enforced. Sweden’s system is however somewhat more accommodating of informal support when no formal money judgment is in place, in that the duty to pay a UB (or to pay a contribution amount back to the state for UStöd) can be satisfied by evidence that the payor has

¹³¹² Kay Cook et al., *Mothers’ experiences of child support: qualitative research and opportunities for policy insight*, 21 JOURNAL OF FAMILY STUDIES 57, 58 (2015) (“Paying, receiving and using child support can be straightforward or contested because the money is bound up with gender, power and emotions. This cannot be effectively captured through quantitative studies or managed through policy approaches that do not acknowledge the expressive and relational logic of child support.”) (internal citations omitted).

¹³¹³ Vicki Turetsky, *Written Testimony of Vicki Turetsky, Senior Staff Attorney, Center for Law and Social Policy, before the Senate Finance Committee Subcommittee on Social Security and Family Policy* 5 (October 11, 2001) (available at www.clasp.org) (“Just as a job is about more than just a paycheck, child support is about more than money. A father’s good-faith effort to pay child support carries with it symbolic meaning about his capacity to care for and take care of his children. The stakes are high for all members of the family. For fathers, it represents his basic commitment to his children. For mothers, it is evidence that the father will back her up. For children, it means that their father has put them first.”).

¹³¹⁴ In both jurisdictions parents can and do sometimes for this reason *agree* to opt out of using the child support laws only to exchange money, partly via agreeing to less-regular “in-kind” support, and partially by reducing child support payment obligations when parents instead spend more time caring for the child. See Margaret Ryznar, *In-Kind Child Support*, 29 JOURNAL OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS 351, 359–360 (2017) (“[F]inancial adjustments are made to [NCP]s’ child support obligation to reflect the financial spending they do directly on their children [during NCPs’ parenting time]. This is similar to in-kind child support. Thus, while in-kind child support is not currently part of the general family law, it is consistent with the general family law.”). See also Laurie S. Kohn, *Money Can’t Buy You Love—Valuing Contributions by Nonresidential Fathers*, 81 BROOKLYN LAW REVIEW 53 (2015).

met his obligation, to at least the UStöd level, in some other way than via cash payment, as described earlier.¹³¹⁵

The divorce or separation process can, in both jurisdictions, include conflict over custody and visitation issues, and perhaps a sense (more in California's child support framework) that a father is seen as more important for his child support payment than for his parenting relationship with the child, which can reduce his motivation to pay.¹³¹⁶

A payee CP also may wrongfully interfere with the payor NCP's time or relationship with the child supported, leading the NCP father to wonder why the legal system will more readily assist the mother with securing child support than the father with securing parenting time.¹³¹⁷ The duty to pay support is separate from issues of custody and visitation, in that there is no *legal* right to refuse to pay child support payments due because of parenting time disputes or even (in many instances) wrongful behavior on the part of the other parent, because the child support is for *the child*. Still, willingness to pay decreases.

¹³¹⁵ This can be problematic too, if the parents are in conflict and it is used as a form of fighting for control over how money on the child is spent. California is therefore stricter about child support payments of money being required, even though payment of informal support has sometimes been found more strongly correlated with father-child contact than payment of formal support. See Lenna Nepomnyaschy, *Child Support and Father-Child Contact: Testing Reciprocal Pathways*, 44 DEMOGRAPHY 93 (2007) (also finding contact more causative of future child support payment than payment is causative of contact). Future developments in child support law may find ways to recognize certain forms of informal support.

¹³¹⁶ See Ronald K. Henry, *Child Support Policy and the Unintended Consequences of Good Intentions*, in THE LAW AND ECONOMICS OF CHILD SUPPORT PAYMENTS 128, 139 (2004) ("It is time to examine the role of government policy in the post-divorce behavior of the non-custodial parents. When we say to non-custodial parents that we care nothing about their relationships with their children, that we offer no protection against the custodial parent's interference with that relationship, and that we will devote government resources only to extracting financial payments, we should not be surprised by the result. *Parents support children when they are permitted to be parents; slaves run away.*") (emphasis added).

¹³¹⁷ See Ira Mark Ellman, *Should Visitation Denial Affect the Obligation to Pay Support?*, in THE LAW AND ECONOMICS OF CHILD SUPPORT PAYMENTS 178, 204 (William S. Comanor ed., 2004) (arguing that *child-support judicial officers should first seek non-coercive measures to resolve visitation problems, but then justifiably should consider financial sanctions against the CP and child*: "Such sanctions may be unlikely to yield an improvement in the amount of contact or in the relationship of the child and the support obligator in the difficult cases for which this remedy is reserved. But *when an obligor's opportunity to maintain a meaningful relationship with the child is impaired, through no fault of his own, then so is his duty to support that child.*" (emphasis added). Ellman proposes that the courts not do this in cases likely to "put the child in serious financial jeopardy . . . in the absence of a social safety net to replace his support" but that courts are reasonable to consider the reduced financial support remedy in cases where, in reality, new partner income or extended family income will replace the wronged father's support payments).

What these problems have in common is *the emotional and practical conflict between the parents that can lead an NCP to stop paying child support*, at least if it must be paid directly to the CP.

Public child support agencies that can act as intermediaries and can secure regular payments in easy, automatic ways (such as through wage withholding) can lessen the likelihood of this behavior causing risks to the child's economic welfare. This is a helpful secondary role played by FK in Sweden and the LSCAs in California, whenever parents are too much in conflict to interact directly.¹³¹⁸ Even if a payor is simply unwilling to pay for some other reason, the agencies' enforcement tools help make it easier for the NCP to pay, thus potentially removing the barrier to payment of child support and the chance of costs rising for both parents.

Comparing Non-Compliance: Unwitting Nonparticipation

In California, perhaps the most surprising fact about Title-IV "welfare family law" child support cases and orders is that *nearly half are entered by default judgment in California*,¹³¹⁹ and at least in recent years approximately 68% of orders have been entered by default nationwide.¹³²⁰ In some cases a payor not appearing in court means he has reviewed and is satisfied with the child support calculation being offered by the payee. In too many other cases, however, no appearance by the payor may mean that he will become legally obligated to pay a child support he does not know about, or fully understand. Such NCP payors nonetheless continue legally to be bound to pay as ordered or face enforcement measures, unless they can "show up" soon after and follow the necessary procedures to get a default judgment overturned. As recently as 2010 an even higher percentage of California child support orders (46% overall as of 2010's Guideline Review, and 68% of IV-D cases

¹³¹⁸ More sanctioning and litigation is to be avoided, but on the other hand sometimes a judge setting a limit with a CP interfering with court-ordered parenting time of an NCP (for example by changing which parent has primary custody) can be effective, within the separated family at issue and as a signaling tool helpful to shaping the coparenting behavior of others. I have heard about at least one case in each jurisdiction of switched primary custody in the best interests of the child after severe visitation interference, but am not aware how child support was affected during those severe custody disputes.

¹³¹⁹ As described in Chapter 4.2, judgments by default were made in 47.1% of public, IV-D cases in sampled cases, compared to in 24.2% of private, non-IV-D cases. Judgments based on parental stipulations were entered in 56.8% of non-IV-D cases and 31.5% of IV-D cases; contested judgments were entered in only 19% of non-IV-D and 21.4% of IV-D cases sampled. See *Guideline Review 2017* at 24, 254–255.

¹³²⁰ *Guideline Review 2010* at 43.

compared to 22% of non-IV-D cases¹³²¹) were entered by “default” against an absent party. Efforts in the US are ongoing to reduce the percentage of orders entered by default, but it remains to be seen how much improvement will occur within the public child support system.

In Sweden, the UB system (the civil court) has a default judgment procedure, as Chapter 4.2.3 described. The court can enter a judgment based on a CP or child’s request to the court under certain conditions, even when the NCP does not appear. *The child support issue rarely is resolved* in civil courts, however, in part due to the public UStöd law that actually may serve the same function as California’s default judgment mechanism: a CP can assert the child’s right to monthly support payments from the other parent, the state (in California a LCSA, in Sweden FK) will attempt to contact the other parent to hear his views on the application, but if he will not respond the application can be approved, the support money advanced, and then the agency can go about collecting the payments from the previously-uncooperative payor, using its enforcement tools.

Child support procedural law that helps all parents know about their responsibilities and what steps they need to take, at an earlier stage than these examples, is of course preferable, given both systems’ aim to keep the child in good contact with both parents and to decrease conflict and perceived unfairness. The roles of the Family Law Facilitator in California’s private courts, FK in its informational capacity in Sweden, and the LCSAs for IV-D cases are important aspects of the child support regulations in this respect.

6.5. Comparing How (Rigorously) Child Support Debts Are Collected

Knowing how often parents owing child support actually pay it, and whether they pay it *timely and in full* or *later*, is key in comparing the success of state child support enforcement and collection efforts. Such efforts are included as part of the child support laws of both jurisdictions, as the descriptive chapters reported. Comparing success rates however is not the research purpose here. Identifying the legal similarities and differences between the regulations of collections—including drawing a conclusion on how relatively prioritized successful collection of child support is, from a parent payor, in the jurisdictions—is the purpose of this section.

¹³²¹ *Guideline Review 2010* at 43.

Regarding How Child Support Enforcement and Collection is Framed

One foundational difference in how the two jurisdictions approach child support can be observed in *how the enforcement and collection issues often are framed*. In Sweden the need for child support legal enforcement mainly seems to arise *if* separated parents seek the help of the FK agency, which can advise them on the UB system but also is obliged to grant their child UStöd, if they apply and the conditions are met. If Swedish parents do not apply for UStöd, their children are less in focus for the state (as to their legal right to parental child support), because separation issues like custody and support are privately resolved and only involve the state in (some) cases of conflict. Courts do not review child support orders for compliance with the law, and they don't report the details of them to another state department in charge of implementing child support law for performance tracking purposes.

In California the focus is on a larger group of children, namely those whose child support needs have come to the attention of the courts or child support agencies in all private and public cases, due to the *reporting requirements* that Guideline law places on courts, agencies and parents alike (but only *if* parents get a child support order at all, as previously discussed). Sometimes, although less often than in Sweden, exclusively the public (IV-D) cases are in focus, for similar reasons as in Sweden. Public authorities report with more focus on the cases with which they are more actively involved, and which involve more of a state expenditure (IV-D cases).

The meaning of child support, and thus who should pay it and from whom it should be collected, is more blurred in Sweden compared to California also has to do with framing or specifically *word choice within the private and public side regulations*. The confusion in how “child support” is framed partially arises because *the UStöd benefit has been defined in public law as a child maintenance “support,”* a terminology that weakly (if at all) contrasts it with or makes reference to the child maintenance “contribution” (UB) paid by an NCP. The distinction was clearer, as was the intended role for UStöd, when its predecessor was termed the child support “advance.”¹³²² Even the private-law term does not easily distinguish it from social insurances available to

¹³²² As explained earlier, the benefit was deliberately distanced from UB and broadened to be payable to children who did not have an NCP owing a UB. Since then academics, policymakers, benefit administrators, courts and parents have struggled to reconcile it with the private system and some have viewed it as having been a mistake. See, e.g., Anders Agell, *Underhållsstödet. Ett rättssystematiskt misstag [UStöd. A Legal System Mistake]*, in FESTSKRIFT TILL FREDRIK STERZEL 17 (Lena Marcusson ed., 1999).

parents.¹³²³ The difference between UB and UStöd generally is familiar to parents, or at least those who (unlike myself) have spoken Swedish and grown up with the Swedish legal system, but its terminology *in addition to* it being regulated by two (uncoordinated) sets of rules could be improved.¹³²⁴

The State Actors Responsible for Child Support Enforcement and Collection

In Sweden state officials *responsible for monitoring child welfare and family economic policy and administering social insurance benefits* have responsibility for the public UStöd benefit (but not for tracking whether UB amounts have been set). They (FK agency staff) also have a responsibility to those I call “private case” parents. FK must meet with and aid parents whose children have not become UStöd benefit recipients, thus parents involved in a “public case” to fulfill their child’s child support rights. FK’s role in private cases is however only advisory.

The analogous state officials in California, the DCSS and LCSAs, similarly have under the public-side child support law an added role, beyond their earlier one in public cases only. LCSAs now are tasked to help private, non-benefit-receiving parents to set child supports also, in the interest of as many children as possible receiving adequate support. LCSAs’ role in “private” (non-CalWORKS) cases is not—and this is the main difference—merely advisory. The agencies open public IV-D cases for any parent who requests their help, and *the Family Code child support law actively requires these public agencies to work to calculate a Guideline child support after collecting necessary income and other information, then to take the lead role in enforcing it, including in collecting arrearages, which never expire*. The agencies must request that the NCP agree to and pay a Guideline child support, which is entered routinely as a court order even if he agrees and pays correctly. If an NCP does *not* agree the agency takes the issue to the court, which hears any arguments but otherwise sets the child support amount that the agency has calculated, and can then enforce.

¹³²³ Compare the terms *underhållsbidrag*, the “contribution” to a child’s support expected under private law from a parent, with *bostadsbidrag*, the “contribution” to housing available on a need-tested basis from the state.

¹³²⁴ It is also true (as has been discussed) that Swedish parents do not all realize the secondary role some lawmakers are now emphasizing that the UStöd public benefit (equated with the state in general) is meant to have. Regarding diversity within the parent population, parents born abroad are disproportionately often in debt to the Swedish state, including in connection with UStöd. See Davor Vuleta, *Ekonomisk Otrygghet—En deskriptiv analys av migranternas överskuldssättning [Financial Insecurity—A descriptive analysis of migrants’ over indebtedness]* (Research Report in Sociology of Law 2018:1, Lund University/Kronofogden). This is discussed in the next section, comparing arrearage issues.

How the Performance of Success of Child Support Law is Framed

There are differences specific to reporting done on how well Swedish children's child support rights are being fulfilled by "child support." In Sweden, how many children receive UStöd is more often reported as a positive (these households were financially supported, and would have been worse off had this UStöd benefit not been available) than as a negative (these households needed the benefit unfortunately and we must do more to make that not be the case). The latter is how the Californian child support enforcement community frames social benefits, like CalWORKS, that replace parental child support when it is not paid. (The first way is how public benefits administrators report the CalWORKS program's success also, but in "child support" law enforcement, a separate system not run by the same agency, *avoiding the need to go to the other system for child support replacement aid* is more unabashedly in focus.)

The UStöd benefit may be something Swedish lawmakers wish to strengthen and use to replace UB altogether, and I mean no comment against their purposes with UStöd from a policy standpoint. In this comparison of how successfully "child support" is enforced and collected, the above observations explain simply that the different public-private divisions involved in the laws compared can make a collections comparison challenging. *For comparative-law purposes* Sweden's focus is on whether an eligible child received actual monetary support for a given month, related to the parents' legal support duty. That cannot directly be compared to California's (and may other jurisdictions') focus on whether a child received money *from the obliged parent*, therefore preventing the state from having to pay that same support (in California, at least for children below a chosen household income limit).

Thus using the question *how many single parents in your jurisdiction receive adequate child support for their children paid as a result of the duty they are owed by the NCP* can sometimes be misunderstood, in Sweden itself and in comparisons including Sweden. Some research may define child support as what obligated parents actually pay (including this thesis). Some reporting is instead how many children receive support at all, including after state transfers if parentally-owed child support has *not* been paid and therefore a child has qualified for its UStöd substitute.

One comparative review of child support national schemes found that *Sweden had the highest proportion of non-widowed lone parents who reported "receiving child support," and the US had among the lowest: 94.8% to 31.7%.* As the review correctly noted, this was partially attributable to the *child support guarantee, Ustöd*, in Sweden,¹³²⁵ but of course

¹³²⁵ Skinner & Davidson (2009), *supra* note 17, at 31 (reporting the UK as the lowest, with 21.5%, and Germany at 28.4%; the next highest after Sweden was Norway at 77.7%). UStöd is now more restrictively granted in full and for longer than six months, but what effects will be seen for these kinds of statistics is not yet known.

gives a misleading view in terms of how diligently Swedish NCPs are paying child support directly to their children's CP. Nonetheless, the high Swedish total does have value in research about child welfare (if not necessarily in research about child support law's performance vis-à-vis NCPs). Because UBs are so private to the separated families in Sweden, it would be difficult to try to report data on those alone for comparative purposes in any case. The percent of CPs receiving child support *from the NCP* in Sweden is significantly lower, per the limited public reports available, as was described in Chapter 1.2. It is also complicated by the general lack of a duty to pay child support in cases of alternating residence.

Methods for Encouraging and Requiring Child Support Payment

This remainder of this section briefly compares the methods the jurisdictions use to collect child support, meaning (1) to assure owed amounts are paid in the first instance, when due, and also (2) to collect unpaid, past-due child support amounts (arrearages), all previously described in Chapter 4, mainly at Chapter 4.4.

Since the 1990s' nationwide reforms to child support law, the US states have endeavored *more strenuously* and *more uniformly* to collect child support from biological parents, to increase child welfare while decreasing the state's financial investment in such welfare.¹³²⁶ Just as the earliest child support obligations were primarily imposed to keep women and children free from having to take as much advantage of other public and private charity,¹³²⁷ US child support enforcement today is deemed vital primarily—especially from the public law system's point of view—for *keeping women and children off the "welfare rolls."*¹³²⁸ Other legislative aims and components recognized under US law as important to balance within the child support law and welfare policy more broadly, including fairness interests between parents (to an extent) and any foreseeable systematic gender equality effects of the laws have had a *secondary status*.

California's Guideline law mainly enacted in the early 1990s is no exception. It empowers both courts and the county-based LCSAs to put into place a number of mechanisms to help make sure support is paid as ordered, when child support is first decided. *Wage assignment orders pre-issued* in each case; *clear notices legally required to be given to payors* with the very specific and detailed order; and the *written orders* themselves

¹³²⁶ In the US, California included, CalWORKS "poverty relief" has been since 1996 significantly reduced by mechanisms including work requirements and time limits on using the benefit, which has increased the significance of private child support as a contributor to lifting children's living standards as much as possible out of poverty.

¹³²⁷ Drew D. Hansen, *The American Invention of Child Support: Dependency and Punishment in Early American Child Support Law*, 108 YALE LAW JOURNAL 1133, 1142 (1999).

¹³²⁸ *Id.* at 1123.

being routinely made in a broad range of civil case types and in cases of parental agreement are examples.

Sweden during the same period also has aimed to enforce private support duties enacted in their most recent form mainly in the late 1970s. Swedish family policies for improving child support law's effectiveness include *noticeably less coercion and desires to punish NCPs*, compared to Californian policies. Other aims and societal values might be said to have a *more primary status*. There is a *relative* absence of such concepts and terms as the US term "deadbeat dads," for example. The economic independence of each household and individual adult is such an ingrained and important value that neither the state nor individuals as a rule views a father who has stopped cohabiting with the other parent and may not be paying child support as a person to judge and punish harshly without focusing instead the reasons he might not be paying.

The Swedish child support system's expressions of child support aims, for example even those expressing a somewhat more liberal WSM orientation¹³²⁹ placed *more emphasis on increasing fathers' involvement as caregivers for their children than on enforcing their (or mothers') economic duties towards their children*. Researchers have linked this kind of positive framing of fathers living separately from their children, including focusing on the structural problems preventing them from helping their children) to more positive policies being proposed as to how the law will respond to them.¹³³⁰ This is true in both jurisdictions, but in Sweden the research seems more directly to have influenced public policy and attitudes regarding child support debtors.

Collecting Arrearages

The Swedish mechanisms for collecting child support arrearages, especially outside of the UStöd benefit administration, are less particular to enforcement of just child support law, as opposed to enforcement of private contracts and collection of debts owed. Collections is much simpler for a CP, because of the national public Swedish

¹³²⁹ The 2016 reforms to UStöd, based on determination of a need to *decrease* parents' reliance on the UStöd social benefit and to *increase* privately-paid child support amounts, are one example. FK had been making efforts to get more parents to use private UB rules and not UStöd long prior to that reform, however. See FK, *Försäkringskassan och socialförsäkringen 2005* [FK and Social Insurances 2005] (annual agency review) (mentioning such efforts, long before 2016).

¹³³⁰ See e.g., Hobson & Morgan (2002), *supra* note 68, at 5 ("We are not surprised that our cases suggest the following pattern: when the discourse in absent fatherhood is *framed in more structural terms*, such as [by focusing on] precarious employment and unemployment in a post-industrial economy, it tends to produce policies with *positive incentives rather than penalties*, and a *greater emphasis on care rather than the economic aspects of fatherhood*."). (emphasis added.).

collection agency, and the fact that its services largely are provided free of charge to a CP enforcing a UB amount.¹³³¹ If a Swedish private child support order or witnessed (enforceable) agreement for an amount *more* than the public benefit amount exists, *the amount over the benefit may be privately enforced, as may any private debt owed pursuant to a contract.*

The Swedish state through the UStöd system will collect past-due child support for a CP in the sense that the UStöd benefit immediately places the unpaid, past-due UB support in the child's household *and converts the debt, up to that amount, from one owed to the child to one owed to the state.* Once the state has paid the NCP's debt, it receives a monthly contribution from the NCP—in advance of more past-due arrears accruing. (The advance payments nature of the UStöd contribution obligation is different from “ordinary” debt collection mechanisms, but it does become available in the first place because an NCP has failed to pay child support despite an obligation to do so, thus the CP or child or state has an outstanding debt to collect. Both features make it similar to the system by which the LCSAs cause a payor to start paying monthly in advance as well.)

In California public LCSAs will collect the *full amount* of child support owed under any valid child support order set privately or through the public LCSAs. Its recovery efforts are not limited to any advance amount the state has paid to support the child, even though in many cases public benefits have been paid out to support the child. Its role is not as a social insurance agency but as a dedicated state organ for private child support enforcement, partially to collect debts owed to the state by NCPs, and partially to act on behalf of children and their CPs.

Thus child support law requires LCSAs to collect the whole amount owed for a child as Guideline child support, *but then to allocate the funds collected.* Some the state will transfer to the child's household as current support paid by the payor parent. This may be 100% of the payment received in from the NCP, if the CP household is *not* receiving specific means-tested benefits (and has not in the past). The rest the state will retain to pay its own costs, at both state and federal levels, for need-based social benefits previously or currently paid to the child's household.

Collection measures for even older, more serious arrearages are to some extent similar in Sweden and California, in that *wage withholding is the most common tool used*¹³³²

¹³³¹ The Swedish Debt Collection Agency is so effective, like healthcare, that private options are not considered necessary even by higher-income earners who could shop for services within Sweden or internationally.

¹³³² Wage garnishment has additionally come to be seen as the most effective and preferred child support enforcement method *internationally*, including as the first-listed method within the 2007 *Hague Convention*, now in force in both Sweden and the United States (since 2014 and 2017 respectively). *See*

and *a public agency will help with collection of child support debts* in both jurisdictions. Collections measures are also very different, in that professional license and driver's license suspensions and contempt of court proceedings against payor parents in default are relatively commonplace in California but unavailable (and I almost wrote "unbelievable") in Sweden. Instead UStöd is used, and debts to FK are collected by it and Kronofogden, as described in Chapter 4.4.

California LCSAs will collect child support debts using a number of relatively strong tools, but does not need to do routinely, since the "shadow of the enforcement law" motivates many payors who *are* able to pay their child support on time, or to catch up with arrearage payments, to do so. The same can be said of Sweden's seriously effective general collection methods (for all debts, not specifically child support), including attachment of personal property found at the debtor's home and a government-run "credit rating" type system where any existing debts are listed so that future lenders will be aware of a debtor's unclean payment history,¹³³³ in addition to the personal bankruptcy debt restructuring rules.

Distinction in Collection Rigor between Public and Private Cases

When one focuses solely on higher-income cases—where children are not at risk of requiring assistance from need-based public welfare programs *regardless* of the child support amount set for them—California's legislative and judicial intent in making easy collections possible seems to focus more freely on *fairness between the parents*, and *fairness between the payor parent and child* (given the child's right to have access to the lifestyle available to that parent). These cases, *including when arrearages need to be ordered paid or collection is being pursued by a CP*, usually are heard in the non-IV-D courtrooms. The LCSA-specific enforcement tools are thus less often used in private cases, *but therefore the automatic collections mechanisms applied by law to all cases become useful*. Wage assignment orders, especially, if the payor is employed, and the fact that an order will be enforced at whatever support amount was set for a particular child *for an unlimited amount of time until the past-due support is paid in full*, make California collections possible in average private cases, even without the state actively needing to pursue the debtor parent.

In higher-income Swedish cases, a similar *heavier focus on fairness and less on basic adequacy for the child* occurs in UB amount setting, in theory, but collections

Brinig (2019), *supra* note **Error! Bookmark not defined.**, at n. 64 and accompanying text (also overviewing the current state of child support law and enforcement internationally) and the 2007 *Hague Convention's* Status Table (available at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=131>).

¹³³³ The US has credit reporting also, but via several large, fairly highly regulated private companies.

mechanisms *within child support law* do less to provide a remedy, to make sure that the child's right fully can be enforced. Sweden's child support statutes and case law decisions include these fairness and shared living standard aims, yet the emphasis at the collections phase is much more muted by the heavy emphasis on the UStöd (public) side of the system, and its WSM-related *central* aim: publicly guaranteeing a good standard of living for *each* child in need of child support, via the set-amount UStöd guarantee, and leaving higher supports to the parents to work out between them, if possible.

To an extent, the legislative intent, policies and interests which support the child support law *in general* can be distinguished from the interests served by stricter child support *enforcement* law, and this explains perhaps the most important distinction between the private and public sides of child support law in both jurisdictions. *In both jurisdictions, the public side's strength is not in nuanced amount-setting but more in recovering private support from NCPs as broadly as possible.* In Sweden this means for every child whose parent applies for UStöd or a child support order from a court, and in California it extends ideally to each child whose support needs have not been met, although these legislative ambitions are far from realized. Strong enforcement in Sweden is tied with better cost savings for the UStöd benefit and to more closely collaborating co-parents with fewer conflicts. Child welfare is only affected to the extent that children should be receiving higher UBs than the UStöd amounts they are receiving. In California, in contrast, strong child support enforcement is tied to evidence of positive outcomes for child welfare, to keeping as many children as possible off of need-based benefits, and to other desired social effects, mainly on the lower-income separately-living parents served by the Title-IV-D system.¹³³⁴

6.5.1. *What Type of Problem are Arrearages Resulting from These Laws?*

Chapter 4.3 described two rather different legal regulations of arrearages. In California they *never expire* and *may not be forgiven or reduced* (except if only owing to the

¹³³⁴ As the US-based Center for Law and Social Policy (CLASP) has highlighted as part of its advocacy towards ending welfare reimbursement to the state from child support collections while keeping collections systems strong, “[s]tates with stronger child support enforcement programs have lower non-marital birth rates and lower divorce rates than states where child support [enforcement] is not as effective.” CLASP Research Fact Sheet “The Child Support Program Promotes Marriage and Reduces Non-Marital Child Bearing” (undated) (*available at* www.clasp.org) (*citing, inter alia*, Anna Aizer & Sara McLanahan, *The Impact of Child Support on Fertility, Parental Investments and Child Well-Being*, Princeton University, Center for Research on Child Well-Being (2004)). In California these arguments may persuade more socially-conservative policymakers who espouse “family values” such as favoring formal marriage to invest state money for the support needs of poor children. *But see* Baker (2015), *supra* note 11.

state, and then in very limited circumstances). Payments *cannot be put on hold* for a short period of time, as is possible in the UStöd repayment system, without a judicial officer considering a modification. In general *the California system is designed strongly to encourage payors to request a modification of the court ordered child support amount as soon as possible*. An NCP will ideally formally request a modification from the private court or public agency in advance of missing or being late with any payment, if financial circumstances have changed in a manner that justifies a downwards modification. As described, once arrearages have accrued *the court is permitted by law only to set a payment plan*, not to reduce the principal amount in arrears, or the interest and fees accrued. The Guideline's principle that parents' first obligation is to support their children is enforced strongly.

Relatedly, and due to a large number of parents with very low income nonetheless being ordered to pay ambitious amounts of child support, *California has an arrearage problem of very large proportions*.

Sweden in contrast has a prescription period of five years, if a UB has been set, thus debt owing for a giving month of child support, if not collected within that timeframe, will in effect be forgiven forever. Sweden also, via FK, has a somewhat more payor-accommodating mechanism for reducing or eliminating child support debts owed to the state under special circumstances than California's analogous "compromise of arrearages" program. As a result it is much rarer in Sweden to be child support debtor in very deep and intractable financial difficulty due only to child support debt, and these debts will more likely become uncollectable with the passage of time. Nonetheless Sweden has an arrearages problem, with a high number of unpaid individual monthly payments to the UStöd system.

California's child support arrears situation as of 2004 was described by American child support researcher Elaine Sorensen, and helps explain the more recent state legislation introduced to reduce interest charged on arrears:¹³³⁵

Key factors contributing to California's arrears are policies that the California Department of Child Support Services and the California Legislature can change. *Assessing interest at 10 percent per year, establishing child-support awards that exceed low-income obligors' ability to pay, and rarely modifying child-support awards* are contributing mightily to California's arrears, and *these policies are not dictated by federal law*. In California, child-support arrears are largely uncollectible; only 25 percent of California's arrears are likely to be collected in ten years, and arrears could easily double in that time if

¹³³⁵ Elaine Sorensen, *Understanding How Child-Support Arrears Reached \$18 Billion in California*, 94 AMERICAN ECONOMIC REVIEW 312, 312 (2004) (emphases added) (citing the 10% interest assessment on arrears, charged in practice since 1992 by LCSAs, as the single largest factor contributing to exorbitant total amount of arrears then unpaid).

California does not address their growth. Thus, the aforementioned policies need to be changed to stem the tide of rising arrears.

The legislation enacting the California Guideline in 1992 led in practice to an increase in the child support amounts ordered, including in low-income public cases, and thus to the severe indebtedness problem:¹³³⁶

California also enacted major changes to its child-support guidelines in 1992, which increased child-support awards for many NCPs, especially those with children on Aid to Families with Dependent Children (AFDC), now called Temporary Assistance to Needy Families (TANF) [CalWORKS in California]. In California, the average annual award for families in the child support program was \$3,898 [33,882 SEK] in FY [fiscal year] 1998, up from \$2,407 [20,922 SEK] in FY 1992.

Today in Sweden, arrearages from unpaid UStöd are the most common debt type among current debts to the state in active collection at the Swedish Consumer Agency (Kronofogden), with *over 34,900 individuals owing an average of 35 debts (often missed monthly payments) each*.¹³³⁷

In both jurisdictions, child support arrearages have raised concerns for the debtors and their households. Both jurisdictions, as has been discussed, have chosen nonetheless to keep NCPs responsible for contributing some child support when they can afford to do so, as publicly replacing the funds they are expected to contribute would be unsatisfactory for a number of reasons. Arrearages owed from NCPs struggling to afford child support have been treated as a social problem to combat by enacting reforms to child support enforcement law, in Sweden and at least recently in California as well.

Recent legislative reform efforts in California are close to becoming effective new law and should soon alter the child support enforcement law in rather dramatic ways, as described in Chapter 4.4, including by *eliminating the 10% interest rate on child support arrears*. Lawmakers aim to make it more reasonably possible for more payors to get

¹³³⁶ *Id.* at 313 (reporting also that many of these awards were set by default based on imputed, not actual income, leading to unpayable awards and arrears accruing and compounded by 10% per year interest).

¹³³⁷ It is largely because a new debt is registered for every missed payment, in comparison to tax or other annually-incurred debts. Vuleta (2018), *supra* note 1350, at 46–47 (finding that 31% of these are owed for children with both parents not born in Sweden, an overrepresentation of 81% compared to their proportion of the population, and aiming to propose ways to address immigrants' relative economic inequality and lack of knowledge re: fees and debts in Sweden). In general, debtors with annual income of 150,000–300,000 had the most debts per debtor, regardless of background, while higher-income earners among the debtors had fewer but larger debts. Debtors were 60% men and 40% women. *Id.* at 50–51.

out of child support debt. The simultaneous *increases in the amount of child support which will be “passed through”* to payors’ children (instead of being kept by the state for repayment of benefits) when NCPs make monthly payments can be expected to increase payors’ incentives to pay, and to increase confidence in the state’s child support collection system generally. These measures aim not only to increase payments to children, but also to reduce the huge total of arrearages owing “on the books” in California, yet in reality uncollectable, because the debtors have no realistic chance of becoming able to pay.

6.6. Comparing Administrative Data and Abilities to Monitor Support Law Performance

What effects family circumstances and state efforts have on child support in practice can be difficult for both of these legal systems to determine, because *both jurisdictions have known limitations to their routinely-collected demographic data.*

Administrative datakeeping has, on one hand, not yet evolved to be compatible with changing family formations, for example in collecting information on whether children are alternating residence instead of living much more with one parent. On the other hand the public-private divide in specifically the child support systems causes much less data to be collected about the situation of children whose support is regulated via the private rules (UB or non-Title-IV).¹³³⁸ Less quality information about *the true population of families being regulated by the child support laws* is problematic because it invites lawmaking based on preconceptions, or the subset of families for whom a given investigative group of lawmakers has data.

Sweden’s national statistics agency, Statistics Sweden (*Statistiska centralbyrån* or SCB) has had difficulty reporting how often children live in various custody arrangements, among other statistics on children of separated parents. This is because a child, like any resident of Sweden, can only be officially registered for

¹³³⁸ This is in part despite of the actual legal rules. In California, for example, details of *all* child support orders and their payors and payees are required to be reported to the state’s public child support enforcement system, yet it is unknown how reliably the non-IV-D courts comply with these requirements. *See Guideline Review 2017* at 242 (“We do not know what percent of all non-IV-D orders were represented in the DCSS non-IV-D data. *There is no statewide database of all court orders filed.* Courts are required to forward the FL-191 and FL-192 forms to DCSS. DCSS uses these forms to create non-IV-D cases for inclusion in the State and Federal Case Registries. The State Disbursement Unit (SDU) also uses them to facilitate processing wage withholding payments that the SDU receives on behalf of non-IV-D cases. *However, it is unknown whether the courts consistently forward all FL-191s and FL-192s to DCSS;* it is possible that DCSS’s database of non-IV-D cases represents fewer than the actual number of non-IV-D child support orders established in a given year.”).

governmental purposes (*folkbokförd*) at one address, even if he or she in reality spends half the time at another address. Otherwise a person could be double-counted in the population register, which would affect negatively many other aspects of governance.

The Social Insurance Agency (FK) and others responsible for Swedish public law administration generally also do not yet have a way to know which children receive or do not receive “private” UBs and what percentage of the time they spend with each parent. This information cannot be gleaned from examination of any of Sweden’s continuously-updated state databases; special studies must thus be undertaken for researchers to track this.¹³³⁹

The Swedish population register has no equivalent in the USA.¹³⁴⁰ It is used daily by all of the various governmental agencies to confirm, for example, where a person is eligible for public school and healthcare, where official documents are sent via postal mail from all of the government’s agencies, what a person’s marital status is on a particular date, which children they have legal custody over, their legal name, date of birth, sex and so forth. Statistical reports are therefore easily built from the national register data, with proper permissions.¹³⁴¹ The data (even combined with

¹³³⁹ See, e.g., Chapter 1.2 note 7, *supra*, and accompanying text (reporting the best available recent data, from 2014). See also ISF Report 2019:7, *supra* note 6. The databases on a whole are extremely valuable for research and for efficient, modern state administration, but public/private law distinctions especially limit their usefulness in areas that are considered legally to bridge between public and private realms. Compare Chapter 7.3.3 (discussing how “permissive” versus “mandatory” classification between private law matters affects child support state oversight).

¹³⁴⁰ In the US, much research is done and many benefits are awarded on a *household basis*, using the *family* instead of the *individual* as the unit of analysis. Who lives where is not, however, centrally recorded by any one agency or authority, federal or state. The tax, motor vehicle, social security, passport and other authorities may have different addresses last reported by or regarding a given individual, and in practice it is the individual’s responsibility to prove residency in a given location for a given purpose requiring it. This, but even more so the historic assumptions and definitions that expect a child to live with only one parent (creating dilemmas for co-parents who must decide whether each or only one of them may report the child as part of their household “family”) have been identified as an increasing problem for lawmakers to address, in both the US and the Nordic countries. See Maria Cancian et al., *Who Gets Custody Now? Dramatic Changes in Children’s Living Arrangements After Divorce*, 51 DEMOGRAPHY 1381, 1393 (2014) and Mia Hakovirta & Minna Rantalaiho, *Family Policy and Shared Parenting in Nordic Countries*, 13 EUROPEAN JOURNAL OF SOCIAL SECURITY 247, 254-257 (2011).

¹³⁴¹ Regarding the administrative data used by Sweden and California (and many academic researchers) to characterize the effectiveness of child support law and its enforcement more generally, this study has found that administrative data has its advantages and disadvantages, compared to survey data or other data sources. In the child support context, weaknesses in household-based administrative data (lacking connections between NCP payors and their children considered

other agency databases) cannot, however, currently aid research regarding children alternating residence, or about children receiving UB pursuant to a private-law contract between the parents. This is in stark opposition to how easily the data can facilitate research into receipt of the public UStöd, about which extensive data is available in the social insurance benefit receipt databases.¹³⁴²

members of another household) have been addressed by American researchers via study of Scandinavian data from Denmark, where reliable administrative databases, similar to Sweden's, do contain information on parent-child connections. Nonetheless even in Scandinavia such data is not comprehensive. *Even the best administrative data requires supplementation with survey data for child support effects to be studied robustly.* See Maya Rossin-Slater & Miriam Wilst, *Parental Responses to Child Support Obligations: Evidence From Administrative Data* (National Bureau of Economic Research Working Paper 22227) 11–12 (May 2016). (“[A]dministrative data has its drawbacks. For example, we do not observe whether parents have formal or informal child support agreements, fathers’ visits with their non-custodial children, or fathers’ in-kind transfers and non-monetary gifts to their children. We...shed some light on these variables using supplemental survey data.”).

¹³⁴² See, e.g. ISF Report 2019:7, *supra* note 6, at 69 (commenting that no more recent statistics than from SCB Demographic Report 2014:1 are available in 2019, regarding how many Swedish children live alternately or receive UB). This is another reason financial difficulties caused by Sweden’s cliff approach (alternating residence ending eligibility for private and public child support thus increasing financial strain on households with children alternating residence) can easily be overlooked by lawmakers. Governing politicians in charge of improving child welfare policy *rationality will then prioritize UStöd legal development over UB legal development*: UStöd effects can easily be seen and measured, compared to UB’s.

7. Why the Differences?

7.1. Introduction

Why do the substantive and procedural child support laws differ as described in Chapter 6, and conversely why are they similar? This is the research question in focus for this chapter.

This study did not initially aim to organize analysis of the child support laws studied around the WSM ideals and realities in California and Sweden or the effects they have on the power relationship contexts relevant to child support law. It came to focus increasingly on WSM-related distinctions between the jurisdictions studied as explanations for the differences found as it became evident they were centrally important. The importance of the WSM distinctions—especially their differing ideals of the family, of economic inequality, and of the role of the state in achieving those ideals—became increasingly clear from study of the legal sources and their contexts. In other words, *the research process resulting in this dissertation revealed the WSM influences on the law* while aiming open-endedly to compare and analyze the Swedish and Californian child support legal systems.

This study thus sets the child support laws in the context of their jurisdictions' social and economic policies, a major part of what comparative family law scholars do,¹³⁴³ including in part to counter the comparatist's urge "to argue the merits of particular policies [or legal mechanisms] without acknowledging institutional constraints on their development."¹³⁴⁴ Nonetheless it is worth acknowledging here that this comparative legal study, given its opportunity as a doctoral project, presents a somewhat lengthier contextual discussion than can be afforded in some other research formats.

What follow are socio-legal discussions aimed to explain the "why" behind the choices made in each jurisdiction by child support lawmakers and interpreters and

¹³⁴³ See, e.g., DAVID BRADLEY, FAMILY LAW AND POLITICAL CULTURE—SCANDINAVIAN LAWS IN COMPARATIVE PERSPECTIVE viii (1996) (reporting a study of English, Swedish, Danish and Norwegian family laws).

¹³⁴⁴ *Id.* at xiv (noting that this is "a strong tendency in writing on English family law"). Bradley noted that legal scholars limiting themselves to the law and not its context is *understandable*, especially in non-comparative legal scholarship, but *not desirable*, particularly in family law with its close connection to "principles of societal organization." See *id.* (recognizing further that some legal scholars may disapprove of his aims but defending them against myopic alternatives: "If all of this is not for those keen to take a subjective position on legal policy, at the other postmodern end of the spectrum of academic life this research may be seen as small beer, given the attention devoted to the minutiae of legislation.").

to present the study's thesis that *WSM-based responses to power relationships within the family and society largely explain the differences between Californian and Swedish child support laws*.

The comparative topics chosen for expansion in this chapter include child support law differences (and similarities) arising from the jurisdictions' (1) *histories*; (2) *legal principles and traditions*; (3) *gender equality ideals and realities*; and (4) *income equality ideals and realities*, all as related to children's legal child support rights as presently regulated.

Connecting family law, power and WSM theory

I have found that *similarities* identified by this study are best explained by *shared social inequalities* in the two jurisdictions, historically and presently, *and* both jurisdictions' basic aim to prevent perpetuating inequality.¹³⁴⁵

These social inequalities and societal attitudes towards them relate to the jurisdictions' current WSM ideologies, but are also a broader phenomenon existing historically and presently in many jurisdictions across the world. They include men having legal, economic and political advantages relative to women, the wealthy relative to the poor, and adults relative to children, but also women having greater acceptance as active parents (and expertise born of consequently greater hands-on parenting practice) in both Sweden and California.¹³⁴⁶

All of these imbalances have been diminishing to greater or lesser extents over the past century, as is reflected in the family laws of these jurisdictions, but each remains a reality reflected by the demographic and other data introduced at Chapter 1.2 and throughout this thesis.

Differences observed within the child support laws studied are found to be best explained by the systems' differing welfare-state *responses* to the similar inequalities. In other words, *Swedish and Californian legal responses to the financial support needs of children with separately-living parents largely differ today based on the laws and policies each society has enacted to address their shared group-level inequalities more broadly*. The most relevant existing

¹³⁴⁵ The finding that the jurisdictions *share a basic orientation* to these power structures—that they are undesirable and unjust—is important to note. If instead one jurisdiction overtly aimed to maintain these inequalities, the laws would not be serving the same societal functions and their comparability in terms of certain of their professed aims would be reduced. A complete lack of effort to reduce inequalities, even coupled with professed aim to reduce them, also would be disqualifying, but such is not the situation with these two jurisdictions.

¹³⁴⁶ The inequalities of power analytical perspective, born of critical studies in law, was introduced at Chapter 2.2.2.

inequalities these welfare states have acted to address include the *economic* inequalities between family members (men and women, adults and children, specialized earners and specialized carers) and between families (richer and poorer), but they also have addressed (differently) the *cultural* gender-role-related inequalities. Some inequalities have only begun to be addressed (*women having greater acceptance as active parents*, for example). These choices are found to be reflected in the child support laws.¹³⁴⁷

This study analyzes examples of these inequalities present within the child support laws as it describes and compares the laws. It builds upon previous critical feminist, legal sociology of the family and other literatures¹³⁴⁸ by providing examples of the differences observable in the child support family and welfare laws of Sweden and California, jurisdictions representing WSM-type extremes between the social democratic (high state involvement) and the liberal (low state involvement) types. It also builds upon previous child support and other literatures in examining how jurisdictions have been responding to—and in some cases actively encouraging—social change relating to power relationships within the family, specifically in relation to child support law.

Family laws in any jurisdiction “provide ample scope for the *exercise of power* and *acquisition of privilege*,” as one comparative legal scholar observed while analyzing four jurisdictions’ family laws across the Anglo-American (liberal) and Scandinavian (social democratic) welfare state divide.¹³⁴⁹ Political and institutional factors have been shown to influence “the evolution and structure of laws relating to the family.”¹³⁵⁰ Family-law issues “*arise in relation to existing social structure, for example tensions between sexual equality and class equality*” and law- and policymakers’ responses have been found to have had a “defining influence” on Scandinavian family laws.¹³⁵¹

¹³⁴⁷ There are also a number of intersectionalities with the gender and economic factors in focus that deserve further attention but which are not within this initial, broad comparative study’s scope. Child support legal materials and even welfare and family policy materials *mainly reflect majority cultures’ norms in each society*. Ethnic, religious, linguistic and sexual orientation diversities in both jurisdictions most particularly should be considered within further reviews of these child support and related family law dispute resolution systems.

¹³⁴⁸ When a legal comparatist “comes to explain his [or her] findings, that is, to describe the causes of the legal similarities and differences,” the “insights and discoveries of the legal sociologist” should not be ignored, and even “theses which the sociologist of law would regard as unproven, but which are nevertheless cogent enough to carry weight in discussions or decisions about changing the law” often cannot appropriately be avoided. ZWIEGERT & KÖTZ (1998), *supra* note 141, at 11–12. It is desirable that lawyers become “sufficiently receptive to the non-legal forces which control conduct, and here they have much to learn from the more open-minded sociologists of law.” *Id.* at 11.

¹³⁴⁹ BRADLEY (1996), *supra* note 1343, at xiv (emphasis added).

¹³⁵⁰ *Id.*

¹³⁵¹ *Id.* at xiii (specifically finding *social democratic* responses in the Scandinavian welfare states to have influenced laws regulating domestic relationships).

With this framework in mind this chapter introduction closes by returning attention to the child support regulations described in earlier chapters, by briefly summarizing main similarities and differences between them.

Prominent similarities and differences at a more generalized level

The similarities (shared aspects) between the child-support laws compared herein are often plain to see. I have found the laws to share (1) *similar wordings*, (2) *similar actors*, (3) contextual similarities including a *similar social problem* they both seek to alleviate while avoiding undesirable secondary effects (thus they serve comparable “functions” for comparative purposes), and more. These child support laws (4) *existed historically and remain now in the private law*, but in both jurisdictions (5) *also have been expanded into public law to protect the economic security of children to sole parents*. Both jurisdictions’ rules (6) *encourage voluntary participation* by parents but also (7) *include enforcement mechanisms mainly administered by the state*, especially to protect state financial interests while communicating and advancing other valued ideals. They both (8) *struggle with elements of the law containing (gendered) assumptions* that children will live with only one parent after parental separation, and that CPs will earn less market income than NCPs, both while the demographic facts on those issues continue to evolve.

Certain points of difference (legal rules or applications that are dissimilar), however, particularly the differences described in most detail in Chapter 6, are also quite pronounced. Differences include, broadly speaking, (1) a number of rule provisions with *similar* design or wording that are nonetheless *interpreted* by legal actors quite differently, and in ways correlating with the two states’ respective WSMs; and (2) rule provisions, especially on the public-law sides, with quite *different* wordings and approaches to the shared social concern, again largely correlating with the ideals and aims known to be characteristic of the jurisdictions’ WSMs.

Chapter 6 described each of these findings of similarity and difference as it compared the legal rules topic-by-topic, and commented on how the WSM ideals of each system correlated (most often) with the rules or interpretations in that system. *This chapter expands upon those findings* with discussions of how the similarities can be understood to exist largely because of the jurisdictions’ shared power structure contexts, and how the differences can be explained as having been caused by the WSMs developed in each jurisdiction over approximately the past 80 years, according to and within which the child support laws (and family law legal systems generally) have evolved and functioned.

7.2. Causes Arising from the Systems' Histories

Notable differences in the histories of Swedish and Californian child support systems include the diverging paths each followed after periods of greater similarity. Over approximately the past 85 years, as their current welfare states developed, their welfare states' public-law child and family supports were created, in parallel with the separately-developing private-law legal rights and duties between family members in each jurisdiction. *This discussion focuses on the direct history of the evolving regulations* that culminated in today's child support dual systems in these two jurisdictions, supporting the conclusion that some similarities and differences observable now between the child support laws arose from the ways in which they arose in each jurisdiction.¹³⁵²

7.2.1. California's Private and Public Child Support Law's History

California is a relatively young US state, having become the 31st state (out of 50) by act of the US Congress on September 9, 1850, after the Mexican-American War that ended in 1848.¹³⁵³ The new State of California adopted the common law of England, as modified by early American case law decisions, by statute on April 13, 1850.¹³⁵⁴

¹³⁵² Other factors which have had an influence on these jurisdictions' child support laws include (1) their population *birth rate experiences and net emigration and immigration patterns*; (2) the *internationally and locally changing roles, rights and duties of men and women in private and public spheres* that caused changing custody patterns and legal preferences (mainly discussed at Chapter 7.4, not here); (3) *labor market and economic boom and bust patterns*; (4) *political movements and ideals coming into control of law- and policymaking at different times*; and (5) changing perceptions of *children's needs and rights* (analyzed at Chapter 7.3 regarding differences in the jurisdictions' family law legal systems). This study's aim and scope require consideration of the laws' context in these various regards where appropriate throughout the thesis, but their histories cannot all be summarized here.

¹³⁵³ Compromise of 1850, *An Act for the Admission of the State of California into the Union*.

¹³⁵⁴ California Statutes of 1850, *An Act Adopting the Common Law*. See also Paul Mason, *Constitutional History of California, published annually within The California Legislature, The Constitutions of California and Related Documents* 102 (2017) (available at <https://www.senate.ca.gov/sites/senate>.

[ca.gov/files/the_constitutions_of_california_and_the_united_states2.pdf](https://www.senate.ca.gov/sites/senate)) (suggesting common law was applied even earlier: "The American alcaldes were usually completely ignorant of local Spanish customs and had no knowledge whatever of the civil or Spanish law, so that the law which was actually applied, insofar as it followed any system of law, was the common law. And this, in spite of the fact that it was clear that there was no authorization for applying the common law, until it had been adopted by the legislature" on April 13, 1850.).

Very shortly thereafter the first California codes (Civil, Civil Procedure, Penal and Political) were enacted: *the codes entered into force as of January 1, 1873*.¹³⁵⁵

Child support was initially treated by California's private family law in a manner not entirely dissimilar from its treatment today.¹³⁵⁶ It was however more dependent upon *a broader judicial discretion for setting child support amounts* than has been available to courts since the current California Guideline was implemented in the early 1990s. California Civil Code of 1872 § 138, in force and interpreted in case law as of 1899, granted jurisdiction so that courts could decide child custody and support matters in any manner they saw fit:¹³⁵⁷

[A court may] before or after judgment [of divorce] give such direction for the *custody, care, and education of the children of the marriage* as may seem necessary or proper, and may at any time vacate or modify the same.

The courts' jurisdiction to make and modify (or vacate entirely) child support orders was broad.¹³⁵⁸ Child support jurisdiction, as remains true today, *continued until a child no longer qualified for child support*, thus it could be (as it can be now) ordered or modified regardless of whether orders for child support were made in a divorce decree.¹³⁵⁹ Spousal support, then and now, in contrast, can be ordered or modified in much more limited circumstances after final judgment of divorce.

As the California Supreme Court interpreted the jurisdictional law in its 1899 case decision *McKay v. McKay*, quoting a New York case which interpreted a New York

¹³⁵⁵ See, e.g., CAL. CIV. CODE § 2(2) (2016) ("This Code takes effect at twelve o'clock noon, on the first day of January, eighteen hundred and seventy-three.") The enactment of the California Civil Code reportedly represented "the first attempt on the part of an *English-speaking* community of considerable size to codify comprehensively the substantive common law...." Maurice E. Harrison, *First Half-Century of the California Civil Code*, 10 CALIFORNIA LAW REVIEW 185 (1922) (emphasis added).

¹³⁵⁶ For an account of American child custody and support laws' earlier history, see MARY ANN MASON, FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS: THE HISTORY OF CHILD CUSTODY IN THE UNITED STATES (1994).

¹³⁵⁷ CAL. CIV. CODE OF 1872 § 138. See also CAL. CIV. CODE OF 1872 § 139 (support of wife and children on divorce or separation granted to wife, "for an offense of the husband").

¹³⁵⁸ CAL. CIV. CODE OF 1872 § 139 provided specifically that "[w]here a divorce is granted *for an offense of the husband*, the court *may* compel him to provide for the maintenance of the children of the marriage, *and* to make such suitable allowance to the wife for her support during her life, or for a shorter period, as the court *may* deem just, having regard to the circumstances of the parties respectively; and the court *may* from time to time modify its orders in these respects." (emphasis added). Sex-based and fault distinctions were also present in Swedish law of this time period.

¹³⁵⁹ Rather, in California spousal support jurisdiction continues *unless the parties clearly waive all future rights to it* which terminates the courts' jurisdiction forever, but they cannot do this for child support jurisdiction.

statute analogous to California's § 138, "By expressly authorizing an order to be made *after judgment* providing *only* for the 'care, custody, and education of the *children* of the marriage,' it has impliedly prohibited such an order for *any other cause*."¹³⁶⁰

The Californian private law's distinction between child support and spousal support, leaving the state *courts more power to steer a divorced family's financial relations with respect to dependent children than with respect to dependent spouses*, was recognized at the time to reflect *a legislatively-made decision to settle family support matters with finality between adult parties* to private litigation, yet to provide *ongoing court oversight with respect to children's needs*.

Early California case decisions held themselves *bound by the statutory scheme*, not possessed of inherent discretionary power as to when courts had jurisdiction to make child or spousal support orders. The statute allowed courts in any event to order child support *both before and after judgment*, and per California Civil Code of 1872 § 138, quoted above, courts retained full discretion to decide the proper *amount of child support* in each case.

Per California Civil Code § 209 also then in effect, a stepfather¹³⁶¹ had no duty to support "his wife's children by a former husband," yet when he *voluntarily did so* the children were expressly "not liable to him for their support, nor he to them for their services."¹³⁶² Citing this law, the California Supreme Court further held in *McKay v. McKay* that a plaintiff mother who had not expended any further monies for the support of her children than what her new husband, their stepfather, had expended, could not use § 138 to recover retroactively against the children's father. The Court ruled:¹³⁶³

The provisions of section 138 cannot be made a substitute for an action, or give to him [the stepfather] the right to assert through the plaintiff [mother] a claim which he could not himself make.

A parental support duty did exist, and child support orders could be made by California courts, *McKay v. McKay* confirmed, but only *prospectively*, for *future* expenses incurred *after* the date of application for new orders.¹³⁶⁴ The California

¹³⁶⁰ 125 Cal. 65, 68 (1899) (internal citations omitted) (emphasis added). Note that "sister state" case law has no precedential effect—the decision of the New York court in no way bound the California court—yet can be persuasive, as it was here.

¹³⁶¹ The current law on stepparent child support duties was presented at Chapter 3.

¹³⁶² CAL. CIV. CODE OF 1872 § 209.

¹³⁶³ 125 Cal. at 70 (citing a Michigan case decision that ruled similarly).

¹³⁶⁴ *See id.*

Supreme Court in *McKay* also held that § 138’s language *implied legislative intent* that courts could order payment of expenses *reasonably to be incurred* for children’s custody, care and education.¹³⁶⁵ However, the court’s jurisdiction (conferred either by statute or retained in an original divorce decree) was “not for the purpose of reimbursing,” therefore where a stepfather, or mother, had expended monies for the children’s care during the time when no child support order existed against the father but *had not applied to the court for child support orders* the trial court could not properly order retroactive support, only prospective support.¹³⁶⁶

In 1901, turning to the simultaneous development of the public law, *California passed legislation adopting the Elizabethan Poor Law’s traditional features*, and then passed an Indigent Act in 1933, defining the poor as a distinct class and regulating their lives quite closely.¹³⁶⁷ The entire United States at that time was responding to the economic crisis known as the Great Depression, and quite soon thereafter federally-driven child support rules began to replace state-specific rules, a shift of authority which remains in place today.

It was in 1935 the US Congress passed legislation to establish the Aid to Families with Dependent Children (AFDC) program, as part of the larger Social Security Act.¹³⁶⁸ Under the AFDC program *all states developed plans*, subject to federal approval, *for means-testing families and providing qualifying families with monthly financial assistance*.¹³⁶⁹ Private court-based child support order enforcement was at this stage *not* coupled to qualification for public benefits (modern poor relief), and *families often did not have a child support order, even if they would have qualified for one*.¹³⁷⁰ Generally in this period child support was very weakly enforced.

¹³⁶⁵ *Id.* at 69.

¹³⁶⁶ *Id.* at 71–72 (citing two prior California cases, *Loveren v. Loveren*, 100 Cal. 493 (1893) and *Lacey v. Lacey*, 108 Cal. 45 (1895)). Interestingly the court, almost as an afterthought in its final paragraph of this case decision, cites also to Civil Code § 208, which provides, as the court quotes, that “[a] parent is not bound to compensate the other parent or a relative for the voluntary support of his child, *without an agreement for compensation*.” *Id.* (emphasis added). Perhaps this was left for last because it was not argued by counsel for the parties, or because it only further clarifies the characterization of the stepfather and mother’s support in this case as “voluntary” prior to their seeking of a child support order. Retroactive child support orders remain unavailable in California (yet available in Sweden), in line with the jurisdictions’ WSMs and this history. See Chapter 6.4.1, *supra*.

¹³⁶⁷ Nakabayashi (2001), *supra* note 281, at 591 and 593 (citing 1901 statutes later codified at CAL. WELFARE & INSTITUTIONS CODE §§ 17000–17409).

¹³⁶⁸ 42 U.S.C. §§ 301–1399.

¹³⁶⁹ LAURA W. MORGAN, CHILD SUPPORT GUIDELINES INTERPRETATION AND APPLICATION § 1.02 (2014).

¹³⁷⁰ *Id.* at § 1.01.

Several decades later, the [California] Family Act of 1969 made major reforms to the private divorce law implemented within the California Family Code, but not many to the substantive rules (including child support rules). One contemporaneous family law scholar described that reform's impact on child support law:¹³⁷¹

The Family Law Act reenacts, in sections 4700–4703, the substance of the prior law relating to child support without major change. *Though the Governor's Commission on the Family had suggested the repeal of section 196 of the Civil Code, because of its unequal allocation of responsibility for support between the father and the mother, its recommendation was not followed and that section remains in force despite the new enactment.* Termination of alimony and of child support obligations upon the happening of a specified contingency are treated separately in the new law, rather than conjointly as they were under former Civil Code section 139.8. Section 4701 adds to the law *a provision allowing the court to order wage assignments in child support cases.* This provision, based on the Governor's Commission recommendations, follows closely the provisions of Wisconsin law, where the experiment has apparently proven quite successful.

Thus 1969's expert reviewers' suggestion that California adjust child support rules in the interest of more fairness on the basis of sex and between the parents was not adopted. It would have weakened the strength of historic provisions making (more often employed, and better paid) men more economically responsible for their children, thus this reluctance was in line with the liberal WSM. *In contrast their recommendation for statutory law making it possible for courts improve child support order compliance by issued wage assignment orders to payors' employers was adopted,* again as could be predicted from the basic ideals of the jurisdiction's welfare state.

In 1974, with the federal Family Support Act (FSA) of 1974, the US Congress first added a requirement for states to continue receiving federal AFDC funds: *establish and enforce child support orders.* In order to reduce the federal cost of the AFDC (need-based aid to families with dependent children) program, the FSA required the federal Department of Health and Human Services to establish the federal Office of Child Support Enforcement (OCSE), which was to regulate state-level "Title IV-D" agencies dedicated to child support enforcement that the Act required states to establish.¹³⁷²

As a result of the new federal rules, California's historical experience with child support "guidelines" began in the mid-1980s. Enactment by the California

¹³⁷¹ Gough, *supra* note 1216, at 291–292 (internal citations omitted) (emphasis added).

¹³⁷² Morgan (2008), *supra* note 228, at 367.

Legislature of the Agnos Child Support Standards Act of 1984¹³⁷³ established a “two-tiered” system of child support guidelines including a *mandatory minimum statewide* guideline amount and *additionally* a *county-level “discretionary” component* for determining *higher-than-minimum* child support awards.¹³⁷⁴ This system of multiple county-based discretionary guidelines was found to violate the federal law requiring states to establish *one* uniform “guideline” for each state¹³⁷⁵ and put California in jeopardy of losing its public assistance program federal funding.

To remedy this California legislators first implemented interim statewide guidelines, superseding the county-based discretionary system,¹³⁷⁶ and then adopted the comprehensive 1992 California uniform guideline (“the Guideline” detailed within this thesis), not significantly modified since.¹³⁷⁷

Since 1992, US guidelines including California’s have gained acceptance, *in part because they simplified divorce negotiations*.¹³⁷⁸

Advocates and decision-makers appreciated the *predictability* of the existing child support system (*which routinely gave rise to stipulated settlements*) as well as a *core value of consistent application to all litigants*. Over time, the guidelines gained institutional acceptance, overshadowing any concern that anyone might have with the particular model.

The legislation enacting the present California Guideline led in practice to an increase in the child support amounts ordered, including in public cases, leading to California’s serious problem with outstanding child support arrearages, as previously discussed at Chapter 6.5.3 comparing the jurisdictions’ law on and current situation with arrearages. The 1992 and especially California legislation first effective in

¹³⁷³ Stats. 1984, Ch. 1605. *See also* Karly Schlinkert, *The Numbers Game: Why California’s Child Support Formula Should Be Amended to Avoid Parental Abuse*, 44 GOLDEN GATE UNIVERSITY LAW REVIEW 257 (2014).

¹³⁷⁴ *See generally* Marriage of Ostler & Smith, 223 Cal. App. 3d 33, 51–52 (1990) (citing the Act’s text). Swedish researcher Joanna Schiratzki’s 2005 recommendation for reforming the UB laws (described briefly at Chapter 8, *infra*) was not entirely dissimilar to this approach.

¹³⁷⁵ *See* 42 U.S.C. § 667(a), (b)(2) (last amended Oct. 13, 1988 by 102 Stat. 2346 (Public Law 100-485)).

¹³⁷⁶ Stats. 1990, Ch. 1493.

¹³⁷⁷ In force since July 1, 1992, the Guideline, codified at CAL. FAM. CODE § 4050 et seq. satisfies federal requirements as the exclusive “statewide uniform child support guideline.” *See* CAL. FAM. CODE § 4052 (courts must follow, the only exceptions being specifically provided by the Guideline sections of the Family Code). *See also* Stats. 1992, Ch. 46.

¹³⁷⁸ Ellman (2012), *supra* note 837, at 185 (internal citation omitted) (emphasis added).

1999¹³⁷⁹ created the LCSAs public child support agencies in all counties of the state, and their powers to find and pursue parents for child support on behalf of the child, the CP and the state.¹³⁸⁰

Mandatory “guideline” formulas for child support have now been adopted not only in California and all other US states, but in many common-law jurisdictions around the world.¹³⁸¹

7.2.2. Sweden’s Private and Public Child Support Law’s History

Sweden has been under parliamentary control since the early 1700s.¹³⁸² Early Swedish law had no legal rules providing that *married parents* (mainly fathers) had a responsibility to support their children. Lawmakers and others likely saw this as an evident consequence of marriage.¹³⁸³ Perhaps Swedish lawmakers in this regard agreed with their English lawmaker contemporaries (the source of the common law later adopted by California, alluded to in the section above), that it was “natural” for parent to support their children and nothing requiring legal regulation.

¹³⁷⁹ Stats.1999, c.478 (AB 196).

¹³⁸⁰ These powers are described at Chapter 4__ on the procedures for setting, modifying and enforcing public child support orders in California.

¹³⁸¹ Canada has even extended the development and use of guidelines to the more “contentious and complex” spousal support arena. Rogerson (2014), *supra* note 308, at 153–154 (2014) (relating this modern family law systems’ *trend away from discretionary standards and towards* “more rule-like provisions, driven in large part by *concerns about efficient dispute resolution*,” citing John Dewar, *Family Law and Its Discontents*, 14 INTERNATIONAL JOURNAL OF LAW, POLICY AND THE FAMILY 59 (2000)). John Dewar described his “four thematic perspectives which may help map out the current muddled terrain [of family law]” as follows: the *decline in marriage’s significance*; a *shift from discretion towards rules* in family law legislation; a *diversification in the sources of legal norms in family law*, now including private contract and global human rights norms; and finally a “*complex fragmentation of the family law system*, understood as a set of concrete practices and institutions.” *Id.* at 59 (nonetheless defending the role of law in family matters, “a role which is increasingly called into question by progressive as well as conservative forces.”). See also Chapter 7.3.2–7.3.3, *infra*, (comparison of the *role of discretion in child support decisionmaking* in Sweden and California).

¹³⁸² The Swedish Parliament (Riksdag) and council were strong enough, after the defeat of Sweden in the Great Nordic War and the death of then-king Karl XII in 1718, to introduce a new constitution reducing royal power and instead establishing power in the hands of parliament. This is known as *Frihetstiden* (the Time of Freedom). See BJÖRN VON SYDOW, PARLAMENTARISMEN I SVERIGE: UTVECKLING OCH UTFORMNING TILL 1945 (1997) and Official Website of Sweden, *History of Sweden*, available at <https://sweden.se/society/history-of-sweden/>.

¹³⁸³ See AGELL (1988 & supp. 1991), *supra* note 480, at 14.

In 1734, however, a Swedish statute was enacted¹³⁸⁴ creating a conditional legal right for children born *outside of marriage* to receive a subsistence minimum of food and care from their parents until they were considered able to provide such support to themselves (at the latest when they reached 15 years old).¹³⁸⁵ This allowed a CP mother to seek contribution from an NCP father, despite no legal marital duties on which to base that result. It also allowed *others caring for the child of a working single mother* to seek child support compensation from her.¹³⁸⁶ This legal duty was continued and strengthened in 1917, when a new law regarding children born out of wedlock gave such children an *unconditional* right to support from their parent(s) until they reached age 15.¹³⁸⁷

A Swedish law introduced in 1920 first gave children born *within marriage* a right to child support. The law imposed the parental duty to provide support to one's children to age 16 for *both groups* of children, with the possibility to extend support longer under certain conditions of parental ability to pay and child's need (but usually not beyond the age of 18 for children born outside of marriage).¹³⁸⁸

Interestingly in light of today's dual systems, one having arisen from private courts resolving divorces, *the living standard available to these two groups of children differed*. The Swedish child of a marriage's level of support was based upon the *higher-earning parent's ability to pay for the children within marriage*, while the child of a single parent's level of support was based upon *both parents'* abilities to pay. Presumably this was due to the independent legal statuses of the unmarried parents (thus the independent status of the single mother) compared to the combined financial unit of the married couple.

Under the new policies creating Sweden's *folkhem* welfare state in the 1930s and after, support for all individuals throughout their life cycles became largely universal, without means-testing. Health care, education and other support and services of central importance to individuals came to be provided to all from tax revenues collected from all. Because they were educated, healthy and proud of their society, all could work and pay taxes to further strengthen the system. *As a consequence of this history*, partially a desired one (to achieve more equality for children) and partly

¹³⁸⁴ Per the earlier Ärvdabalken 8:7 (*Om underhållsbidrag ur kvarlåtenskap*, removed from law by Lag (1978:855)).

¹³⁸⁵ *Id.*

¹³⁸⁶ See SOU 1946:49 at 13 and 97.

¹³⁸⁷ Chapter 5.3.3 on the legislative intents for Swedish UB law discussed this period of history.

¹³⁸⁸ Per the earlier Ärvdabalken 8:7 (*Om underhållsbidrag ur kvarlåtenskap*, removed from law by Lag (1978:855)).

not,¹³⁸⁹ *child support from absent parents* and funding of children directly from their parents' market income generally became a relatively less important contribution to a child's economic security in Sweden compared to in California and many other jurisdictions.¹³⁹⁰

*In 1949 the rules for all children's support from parents, married or unmarried, were combined into Chapter 7 of the FB. An expert committee proposed the FB after its 1946 investigation into rearranging and consolidating laws previously categorized as the "new Inheritance Code."*¹³⁹¹ The assortment of laws at issue included the 1734 Inheritance Code itself as well as several laws that had been introduced between 1917 and 1933. The complete assortment of laws considered for consolidation into the FB included the statutory law regulating parents' and children's rights and duties with respect to inheritance, parentage for children born to married versus unmarried parents, wills, estate administration, adoption and guardianships.¹³⁹² *Because the guardianship, child custody and child support laws had a strong connection to each other, the committee recommended that these topics, "what in other legal systems are usually called parental authority," as well as establishment-of-paternity and adoption rules become one code together, a Parents Code, even though guardianship had an understandable connection to inheritance as well plus sometimes applies to adults; the other laws were considered better collected into the new Ärvdabalk (Inheritance Code).*¹³⁹³

The changes made to establish 1949's FB, including FB Chapter 7 setting forth the private-law child support duty rules which remain in force today, were mostly *not substantive*,¹³⁹⁴ although Chapter 7 formulated the child support duty more equally for children born to married and unmarried parents.¹³⁹⁵ Many of the provisions from earlier in the 1900s were carried forward until at least the next major UB law reform, in 1978, after the shift in Swedish family law ideals for the family from a *male breadwinner-female homemaker* to a *dual-earner-carer* model largely had taken place.¹³⁹⁶

¹³⁸⁹ See, e.g., Prop. 2014/15:145, as described previously, which identified and responded to the welfare benefit UStöd being over-interpreted as lessening parents' duties to pay individualized, private UB amounts.

¹³⁹⁰ See, however, Chapter 1.2's description of the remaining relative economic insecurity for lone mothers in Sweden (and California, and many other jurisdictions).

¹³⁹¹ SOU 1946:49 at 60.

¹³⁹² *Id.*

¹³⁹³ *Id.* at 61.

¹³⁹⁴ SOU 1946:49 at 61 and 97.

¹³⁹⁵ SOU 1946:49 at 97 (mentioning too that the proposed code abstained from including an inheritance-related rule that was better moved to the Inheritance Code).

¹³⁹⁶ See Chapter 2.3.4, *supra*.

The statutory language regarding the parental duty of support at FB 7:1 *before the 1978 reform* provided that “[t]he parents should be responsible to incur the costs for the child’s maintenance and education, *if the child does not have his or her own assets*.¹³⁹⁷ The 1978 reform’s primary aim, much discussed since in subsequent legislative history and legal commentary, was to *mitigate the child support burdens of payees* (most often fathers not living with their children), especially those with low income, in the context of an economic downturn being experienced at that time.¹³⁹⁸ Another goal of the reform was to *create a more uniform process* of interpreting and applying these laws (“*större enbetydighet i rättslämpningen*”) to reach appropriate child support amounts, via for example creating some centrally-announced guidelines regarding what living expense deductions from gross income (*förbehållsbelopp*) a payor is allowed during support calculations.¹³⁹⁹

The same proposition, among other things, *reduced increases of the UB support amount in connection with a living-costs index* from 100% of the yearly increase in the index to 70%, thus *making automatic increases of child support monthly amounts smaller*. It also *introduced a visitation deduction from child support* when payors had a child visit their home for at least five days; *reduced the statute of limitations for bringing a child support case* from ten to three years, time-barring more cases for past support; and *abolished the duty to support adult but disabled children*. These actions seem to underscore the stated intent at that time, which was primarily to ease instead of increase payors’ economic responsibility towards their children.¹⁴⁰⁰ The reform consequently *weakened the legal position of payees*, generally children and their CP mother representatives, *in relation to payors*, generally NCP fathers (although *not* in relation to the welfare state). CPs and children became *less dependent on private sources of support (the family)*, and *also less legally empowered to enforce the NCP’s support duty*. These consequences were little discussed in the proposition,

¹³⁹⁷ Prop. 1978/79:12 at 4 (“Föräldrarna var skyldiga att vidkännas kostnaden för barnets uppehälle och utbildning, om ej barnet har egna tillgångar.”) (emphasis added). Note the individualism expressed, placing the child’s own resources before the parents’, at least for the rare cases where a child would have had means for self-support. Parents are, as has been described, primarily responsible even if a Swedish (or Californian) child has sufficient resources for self-support, except in extraordinary circumstances. The rules are thus very similar. The individual versus family orientation of the family law *ideals* nonetheless can be seen in small differences such as this one.

¹³⁹⁸ See *supra* Chapter 5.3.3’s description of the legislative intents for UB law announced with this reform.

¹³⁹⁹ Prop. 1978/79:12 at 1.

¹⁴⁰⁰ Several Swedish family law experts have responded to this observation with surprise during preparation of this thesis, but the text of the Proposition is clear. It is possible the surprise reflects that the 1979 reforms’ focus seems to have gone against a Swedish welfare state or legal system expectation or ideal, although the reforms, as mentioned, seem to have been supportive of social democratic WSM ideals generally, and subsequent investigative reports summary them accurately.

except for the observation that social benefits would prevent much harm to payees and children. Because the UB law has not yet been significantly reformed since those changes went into effect in 1979, these results, the politics at least of that time, remain applicable to current law.¹⁴⁰¹

Simultaneous with the above-described UB system's development and its influences on the parental support duty, the Swedish public law child support guarantee system (now UStöd) was developing.¹⁴⁰² As described at Chapter 3.3.4 in connection with the nature of the Swedish legal duty to pay child support, this system used to advance some or all of an individualized, established UB owed by an NCP. The intent was mainly to reduce poverty among children of single mothers and their need to rely on poor relief (then *fattigvården*)¹⁴⁰³ for basic support in cases where a liable father did not pay an *established child support obligation*,¹⁴⁰⁴ thus the public protection was directly tied to the UB system's rules.¹⁴⁰⁵ The historic *legislative intent* with the early child support *advance* benefit was to provide a societal guarantee, *subsidiary* to the parents' duty jointly and severally to support their child(ren), in order to avoid financially difficult conditions for children of single mothers. This was provided, under the then-less-developed Swedish family economic policy, only in cases where the father was not paying support *and* the mother, herself or via her new partner, could not take over his portion of the support their child or children needed.

In 1957 the “difference” or “filling out” (*utfyllnadsbidrag*) contribution portion of the public child support advance was first introduced, bringing the public support system's provided help more into the realm of a social benefit grant for low-income

¹⁴⁰¹ Further changes to Chapter 7 of FB came in 1996, during a fiscal crisis, and again rules setting an NCP's child support duty became more protective of payor parents' finances, without much discussion of the potential compromising effects. Because UStöd has concurrently been *strengthened*, this *weakening* over recent history of UB has been less of an issue than it would be if it was compromising *basic rights* to child support, instead of mainly *legitimate interests* in more UB support from higher-earning payors.

¹⁴⁰² See, e.g., FK Report 2011:5, *Särlevande föräldrar och deras barns boende och underhåll* [*Separately-living parents and their children's residence and support*] at 106 for an FK agency-produced historical summary of developing law regarding support to children with parents not living together.

¹⁴⁰³ *Id.*, at 107. See also SOU 2003:42.

¹⁴⁰⁴ Prop. 1937:276; see also SOU 2003:42 at 97–102 (reviewing the historical development of the public child support advance).

¹⁴⁰⁵ Means-testing was removed in 1948, the same year the benefit was changed to no longer vary based on where the mother lived with the child and on the number of children she supported. This parallels the change from a mean-tested *barnbidrag*, introduced in 1937, to a universal one introduced in 1947; both together reflect Sweden's development from a liberal WSM to a social democratic one, as introduced *supra* at Chapter 2.2.1.

families who needed it.¹⁴⁰⁶ The amount the payor parent was required to repay the state was confirmed to be the amount he or she was liable for under an established UB agreement or judgment, *which might be less than the full amount the state provided to the other parent for support of the children*. In this way a child support order set too low, as they often were, to provide a child with sufficient support was brought up to a sufficient level by a pure grant from the state. With this legislative change, the addition of the *utfyllnadsbidrag*, a governmental payment in advance of child support owed by a parent also became a guaranteed grant to a certain minimum standard.¹⁴⁰⁷ The minimum level being advanced and enforced went from one calculated under the UB civil law rules with reference to individual needs and abilities to pay to one set by the public law at a general level, equal for all children of single parents.¹⁴⁰⁸

In 1964 the earlier version of *bidragförskott* was updated to be a support for a child with a single parent, whether mother *or father*; it retained the *utfyllnadsbidrag* rules bringing every child support level up to a set level, if it was set lower by the civil law judgment or agreement between the parents.¹⁴⁰⁹

The 1995 introduction of UStöd to replace the UB-advance system has already been described,¹⁴¹⁰ including the new public benefit's requirement, as a separate step, that NCPs owing a child support duty to a child granted UStöd repay (or partially contribute to) the state under a new and different set of ability-to-pay rules. *UStöd's introduction was the moment in Swedish child support history when the public system no longer required that a UB be established*, further establishing the *dual system* of child-support law.

The purposes of the 1995 change to UStöd included *to increase the amounts NCPs were repaying* after child support advances were paid, in part because of the NCP's duty to pay about as much as the CP for the child's support, and in part to protect

¹⁴⁰⁶ Prop. 1957:139.

¹⁴⁰⁷ This can be analogized to welfare paid to California single-parent households, then paid back by the child support payor (debtor) to the extent he or she is liable under a child support order, despite CalWORKS being regulated outside of the child support law and more similarly to Sweden's remaining poor relief benefit (*försörjningsstöd*). In line with the WSM-based ideals of each jurisdiction, Sweden's state-paid UStöd has become more generous relative to private responsibility for children's support, and California's welfare to single mothers less so, in the decades since they were first introduced.

¹⁴⁰⁸ FK Report 2011:5, *supra* note 1402, at 107; *see also* SOU 2003:42.

¹⁴⁰⁹ *See* Lag (1964:143) on the Swedish child support advance. The gender-linked expectations Swedish family law and policy are compared with California's within Chapter 7.4, *infra*.

¹⁴¹⁰ UStöd's introduction, its relation to the UB system, and legislative intents for it were described *supra* in the relevant subsections of Chapters 3, 4 and 5.

the government from unnecessary costs.¹⁴¹¹ This is notable, that UB in 1978 was adjusted to *decrease* pressure on payors of private child supports in light of the welfare state protections in place for their children, then UStöd in 1995 aimed to *increase* private repayment amounts, yet *via more movement of Swedish child support regulation in general from the private to the public system*, and including an expansion of which children would be covered by the new UStöd benefit (to children *without* NCPs, for example, previously provided for under other benefit regulations).

Researchers¹⁴¹² wrote a thorough commentary for use by governmental and private legal practitioners on the then-new UStöd and the private UB; they summarized the history leading to the introduction of UStöd,¹⁴¹³ including the Swedish Council on Legislation (*Lagrådet*) concerns that the desired aims *could have been achieved via reforms to the UB law*; that the *entirely separate system* for calculating parents' financial obligations to their children—including that the new public system *only would consider the NCP's ability to pay and not the CP's—must be considered disadvantageous, complicated and difficult to interpret and apply*.¹⁴¹⁴

It is unclear why these serious concerns did not put a stop to the introduction of UStöd law in 1996, although (as discussed at Chapter 5.3.4 on the currently-effective legislative intents for the UStöd regulation) the benefit's role in replacing several earlier social benefits, not only the UB-advance system, and the related *different view by some of what UStöd was meant to accomplish* could have been involved.

Political time pressure and a conflict between public-law and private-law aims (or investigative committees) seem in any event to have been two primary reasons.¹⁴¹⁵ The reforms to the UB-advance system and the recommendations made within Ds 1996:2¹⁴¹⁶ were *intended to be considered simultaneously with recommendations made by a governmentally-appointed investigator tasked with reviewing the UB rules in connection with the state's payments of child*

¹⁴¹¹ Prop. 1995/96:208 at 44. This suggestion, that each parent would owe *approximately half of the support needed by a child*, is in contrast to the private-law child support rules where the parents pay a percentage of 50% each *only if they have equal incomes*, since a child has a right to share in the living standards available to their parents under the FB rules. See Chapter 6.3.4, *supra*.

¹⁴¹² One was an academic and one a Swedish justice department expert involved in the 1993 governmental study of the two child support systems in Sweden.

¹⁴¹³ BEJSTAM & WICKSTRÖM (1996), *supra* note 1464, at 11–17.

¹⁴¹⁴ *Id.* at 15.

¹⁴¹⁵ There were family law people and there were social insurance, public welfare people. Such a statement often can explain much of the dual system difficulty across multiple jurisdictions, although economic differences present in society are tightly related. See Chapter 7.5, *infra*.

¹⁴¹⁶ Ds 1996:2, *Underhållsstöd till barn till särlevande föräldrar* [UStöd to children with separately-living parents].

support advances.¹⁴¹⁷ The latter report, SOU 1995:26, was published first, in March 1995, while Ds 1996:2 came out in January 1996. The recommendations within the 1996 report focused exclusively on the public side of the dual system and on costs savings, despite the availability of the UB report intended to be considered simultaneously. Thus the 1996 report *suggested decoupling the two halves of the system*, mainly as one way to reduce public-system costs, this proposal was implemented, and *consideration of the other direction the legal reforms could have gone—integration between the two systems improving the dual system conflicts*—left for consideration at another, later time.¹⁴¹⁸

As two Swedish scholars summarized the historic relationship between the UStöd and the UB systems, to which 2016 reforms to UStöd responded,¹⁴¹⁹

With the new system introduced in the 1996 Act, *the social insurance office has become, in reality, the body that determines the parents' maintenance liability* [as if there was no UB system,] as maintenance advances [now UStöd benefits] are granted to a *great extent*. The courts' judgment on [UB] maintenance has come to occupy a *subsidiary position*, and really has significance *only* when maintenance advance is *not* paid. *It can be said that public law, in this case, has encroached upon family law.*

7.2.3. *Comparing Stated and Other Intents for the Laws Given Their Histories*

To the extent that *statements* by Swedish and Californian lawmakers of what the current child support laws *are intended to accomplish* differ, what explains these differences? *Historical factors* following from the family law and welfare law policy developments in each jurisdiction over time, discussed above, can be seen to play a role. The role of these history-related versus WSM-related factors in shaping legislative intents are difficult to distinguish, and naturally so (welfare policy developments being central to creating a welfare state more or less following a WSM ideal).

Here combined discussion of both types of factors helps to explain the differences found between Californian and Swedish intents. WSM-related ideals *and* the unique story of trial-and-error lawmaking experienced by each jurisdiction help

¹⁴¹⁷ This is stated in Prop. 1995/96:208 at 25, and discussed within BEJSTAM & WICKSTRÖM (1996), *supra* note 920, at 15 and 208. See also SOU 1990:8, *Sambällsstöd till underhållsbidragsberättigade barn Del I* [*Societal support to children owed a UB*], and AGELL (1988 & supp. 1991), *supra* note 480, at 3 (commenting that SOU 1990:8 was issued in an unready state due to a desire that new child support rules would become effective on January 1, 1990, with tax reforms also scheduled for that date).

¹⁴¹⁸ BEJSTAM & WICKSTRÖM (1996), *supra* note 1464, at 208.

¹⁴¹⁹ Lavin & Malmberg (2010), *supra* note 981, at 74–75 (emphasis added).

reveal the *differing priorities and assumptions underlying even seemingly close-to-identical statements of legislative intent* for California and Sweden's child support laws.

California's lawmakers stated as legislative intent for the child support Guideline law that the State will *stay in compliance with the requirements of federal U.S. law* on child support guidelines, while Swedish child support law makes no reference to EU law or its obligations under the UN CRC as a source of its intents. This makes sense; neither the EU nor the UN CRC have directly attempted to impose a specific child support regulation standard on Sweden, and the most recent major changes to the FB private child support rules occurred in 1978–79, before Sweden was a member of the EU and before the drafting of the CRC.

Federal intents upon which California acted by adopting its current child support Guideline law in 1992 included intents for (1) increased *uniformity*, (2) *foreseeability*, and assurance that (3) *sufficiently large ordered amounts* would result from child support decisionmaking throughout the US.¹⁴²⁰ California legislators also expressed intent to (4) preserve necessary, though narrower, discretion for flexibility in decisionmaking via the (5) *additional guidance* the new law would provide to decisionmakers, and (6) emphasized that the Judicial Council of California to be “guided by the *legislative intent* that children *share in the standard of living* of both of their parents” when making recommendations for changes to the law during each review process.¹⁴²¹

Sweden's lawmakers expressed similar intents for the 1979 UB law. It was intended to (1) provide *more direction* to those applying the law, in the interests of achieving (2) *more uniformity* and (3) *foreseeability*, yet weighed against (4) leaving *enough discretion* in the hands of those applying the law (courts) to allow a desired (5) “just and reasonable weighing between the involved parties’ interests.”¹⁴²² Lawmakers also announced less-legal-rule-specific policy intents primarily regarding (6) relieving payors of undue economic pressures, as discussed in Chapter 7.2.2 (immediately above). UB lawmakers also stated that UB was to allow Swedish children access to their parents’ living standards, but this was not “promoted” in the preparatory works when lawmakers summarized the *main* intents for the law (in contrast to California lawmakers’ *emphasis* in 1992 on shared standards of living).

¹⁴²⁰ Those intents were expressed through requirements that California pass law creating a *numeric, income-based guideline*, to be *periodically reviewed against empirical evidence* (expenditures-on-children data, case data on deviations from the Guideline, comparative data regarding other states’ child support systems, and other data). See *supra* Chapter 5.3.

¹⁴²¹ See Chapter 5.3.1. Emphasis added to this text from CAL. FAM. CODE § 4054(g).

¹⁴²² See *supra* Chapter 5.3.3, citing Prop. 1978/79:12 at 94. The weighing of the interests largely was accomplished, in California, by lawmakers when they designed the Guideline’s details. In contrast, in Sweden, the law remains more vague. See Chapter 8.5 (recommending potential ways to improve the difficulties arising from this during application of the law).

In fact Swedish preparatory works for *both* private and public child supports, in 1978 and since, state intents for the private-law level of child support to provide more support where possible to children, in an individualized way, for a child whose parents can afford it. Therefore it joins California in having a *share in the standard of living of both parents* intent, *but* this intent is not stated equally explicitly *or fulfilled as aggressively* in the Swedish UB lawmakers' choice of child support models, theories, data, or enforcement measures.¹⁴²³

While Swedish child support law is periodically reviewed at the government's initiative, it is not reviewed on a *set schedule* or pursuant to *set criteria* as in California. California (and the U.S. Congress's) legislative intents to keep the child-support-setting law (1) *in line with current economic data* (to assure "appropriate" child support amounts across a broad range of factual circumstances) and (2) *accurately, consistently applied in practice* are not shared, at least not as strongly, by Sweden's lawmakers.¹⁴²⁴ This is not surprising given that individuating private child supports and spending legislative resources and state money on doing so as a priority is supported by the ideals of California's WSM (CA-1, *freedom from dependence on the state*). It is disfavored by the ideals of the Swedish WSM, which would prefer to spend those resources on providing more needed support directly to children as individual citizens, or to CPs as individual citizens, freeing them from dependence on an NCP no longer living with them (SE-1, *freedom from private dependence*).

These preferences in one direction do not mean that rules tending to move in the other direction will never become law or be retained in law, but this will happen less often. In the case of rules still retained in law but disfavored by political ideals or new directions of the legal system, they may wither as a result of passivity, or active undermining of them in another regulatory area. UB rules seem to have suffered this fate for several decades, although the new limitations on UStöd (the six-month rule especially, intended to push parents back to the UB rules) and the possibility of new reforms to UB rules—perhaps even in connection with simultaneous review of the UStöd rules—could remedy this.

Input from stakeholders, experts and the general public in connection with new proposals for legal changes is intended to be considered in both legal systems, as elements of their democratic processes and rule of law considerations. California specifies this within child support law *specifically* and *details what groups should be consulted*

¹⁴²³ Chapter 5.2.1.2, *supra*, presents comparatively the design choices made by the systems.

¹⁴²⁴ On the other hand, Swedish UB support is intended to be set with reference to consumer data on the average costs of boys and girls of various ages, thus can be said to be *self-adjusting*, while UStöd has recently been increased, better to meet the needs of especially older children, in light of consumer data on their higher average direct costs.

as part of its effort to assure uniform and appropriate child support results. This illustrates, then, another shared intent, pursued differently. Here the difference is most likely, most strongly related to the systems' differing legal system histories, therefore traditions and cultures: Sweden's statutory laws used to be much more detailed, more in the continental civil law tradition, as law still active from over 200 years ago can demonstrate.¹⁴²⁵ Today a generalized style usually is preferred. What to specify to assure uniformity and what to generalize and allow discretionary decisionmaking to influence are similarly considered, at least in Californian and Swedish family law areas examined for this study.

Meanwhile the public child support law system in California, really a type of administrative enforcement system for enforcing the private/universally-applicable child support rules, *shares the same substantive intents as the private system* for the *setting* child supports. It adds new intents when it comes to the law's *enforcement*.

California's Title-IV-D child support system primarily exists pursuant to *provisions added to the California Family Code on procedural issues*. These provisions *create and assign duties to the public child support agency system* aimed at enforcing the generally-applicable child support rules with respect to more children (primarily those receiving public assistance funds) and with more available enforcement tools.¹⁴²⁶ It is intended to *provide support to the public in carrying out the steps necessary to secure private child support contributions to a child*, somewhat as the Swedish dual system (between UB and the child support advance) functioned *before* UStöd's introduction that pushed the Swedish systems further apart.

The Californian IV-D system today performs tasks assigned to the LCSAs, but *it too has a fairly recent history like the one that led to UStöd implementation*. The creation of LCSAs ended a confusingly diverse assignment of child-support-related public tasks across other county-based offices including district attorneys' offices.¹⁴²⁷

Thus in California the dual system in its modern form *was intended*—a shared substantive side and a split enforcement side—although lawmakers have recently been attempting to broaden the public side's use by parents beyond its current clientele of mostly low-income parents. The substantive side serves the procedural

¹⁴²⁵ Swedish law students are directed to the Law on Pigs in Acorn Forests as an amusing example.

¹⁴²⁶ See *supra* Chapter 3.3.2.

¹⁴²⁷ Until 1999 California's child support enforcement system "was divided between the State Department of Social Services, the Attorney General's office, the Franchise Tax Board, the Employment Development Department, the Department of Motor Vehicles, and 58 county district attorneys' offices," a situation that was acknowledged by the California Legislature to be "*a major impediment to getting support to the children*" of California. CAL. FAM. CODE § 17303 (2014) (findings of the Legislature added to the Family Code in 1999 by Stats.1999, c.478 (AB 196), § 1) (emphasis added).

side's aims because it imposes *one system of laws* via which lawmakers' *aims with respect to the child's right to support, including* the specifics on amounts of support, parents' abilities to pay, and a formula through which child support can numerically, even given most of the varying family circumstances that could be anticipated to arise in individual cases.

That child support amounts pursuant to the child support law's rules *actually will be set for all eligible children* is strongly intended in California,¹⁴²⁸ in contrast to the Swedish UB law's advisory, non-mandatory nature¹⁴²⁹ coupled with its lack (since 1995) of a requirement that UB *ever* formally be set before a child may receive its public guarantee benefit, UStöd.

Sweden's private and public law child support systems, in comparison to California's, are *much more distinct from each other*, including in their stated legislative intents (one of which, for the public system, even stated an intent that the then-enacted reforms would make them *more* independent of each other, albeit to improve expensive and problematic interactions the systems were having at that time).¹⁴³⁰ The private system (for parental agreements or court orders setting UB) is intended per its preparatory works to provide a *somewhat flexible framework* within which parents, their advisors, or courts if needed can decide a "reasonable" child support amount to be paid by a parent not living permanently with the child. Swedish UB lawmakers also intended child support to be payable in certain circumstances, for example *even if* the child lives with each parent approximately equal time but one has difficulty meeting their financial needs, as is evidenced by the FB 7:6 provision requiring a parent to step in to meet a child's needs for support even if the parent does live with the child.¹⁴³¹

Statutory wording regarding "reasonable support" in consideration of parents' economic circumstances for Swedish UB purposes was not intended, as similar language was intended in California, to provide a child of separated parents with a *share in parental income* in all cases, as is compared at Chapter 6.2. Rather the Swedish UB preparatory works and administrative guidelines issued pursuant to them referred to ways in which the (*mostly direct*) *costs of the child* could be estimated, with

¹⁴²⁸ In California a presumptively-correct guideline is a federal requirement for *every* state—although how the *California* Guideline specifically functions, for example taking into account both parents' income levels and levels of parenting time, was determined at the California level. Swedish laws discussed apply nationwide; they interact with more local government's functions, but discussion of those interactions are beyond the scope of the present comparative study.

¹⁴²⁹ This is discussed more thoroughly at Chapter 7.3.3, *infra*.

¹⁴³⁰ See the historical summary above, *supra*.

¹⁴³¹ See Chapter 3.3.3, *supra*, discussing FB 7:6 and the important case law clarifying its applicability to alternating-residence cases.

reasonable special needs including an undefined higher amount if the parents could afford a higher standard of living.

The intent of Swedish lawmakers in 1978 was to set a framework, detailed in certain small but helpful respects (regarding deductions for parent's own living expenses is the most prominent example) but also *deliberately, broadly flexible*, to let those applying the law determine what was "reasonable" in a particular case.

In historic perspective, this resembles what child support law and its court-based application was intended to do in California *prior to the federalization of child support and the mandatory Guideline*, but *not* what it is intended to do today. In line with the liberal WSM's emphasis on private responsibility for the family except for in exceptional cases, California lawmakers have implemented their intentions with the now-extensively-developed and routinely-used Guideline law and administration.

A less traditional form of child support law, not sharing the time-tested aims of private child support systems, UStöd seems to have struggled to find a coherent and workable role for itself alongside the private UB system (which was not repealed or integrated adequately at *any stage* with the public benefit, but especially became uncoupled from it as the benefit evolved and parents' use of it in practice evolved).¹⁴³²

The intents to *save public benefit payment money and make administration of the law easier and less costly* are reflected in Swedish private and public preparatory works *and also* in Californian private and public child support law. The intent to *minimize costs and complexity is in Swedish public law given as a reason means-testing for CPs would not be used* in the process of deciding if a child is eligible for the public support benefit, for example.¹⁴³³

These intents to *save money* and to *simplify administration* were also mentioned by Swedish lawmakers in connection with intent to *encourage private ordering* (settlements between the parents), which are discussed at Chapter 7.3 on how differences in the discretion and encouragement each jurisdiction's child support laws allow the parents can be linked to the family law *legal systems'* ideals and intentions (separate from lawmaker intents for child support laws).

¹⁴³² See *supra* Chapter 3.3.4 for a summary of the 2018 case law with which the Swedish Supreme Administrative Court has attempted to clarify the proper determination of which children whose parents live apart were legislatively intended to benefit from UStöd, clarifying it to be reserved *for those whose parents, if they have two, are not only living separately but also no longer share a family-type bond*.

¹⁴³³ This priority for simplicity was mentioned historically as a reason to stop requiring a UB to be set before UStöd would be available, as that proved itself to be more resource-intensive than simply separating the systems and paying to eligible children a one-size-fits-all public child support benefit amount if they did not receive a sufficient private support. Chapter 7.3, *infra*, discusses *simplicity* as a goal prioritized more by the Swedish child support systems than by the Californian.

Both jurisdictions, for example, express intents to emphasize private responsibility for child support and to rely on private, parentally-provided resources before state resources for supporting children to separated parents, the shared societal problem in focus. California's other legislative intents—and the federally-imposed elements of its child support law as well—reflect the US liberal welfare states' relatively strong prioritization of private responsibility, at least as a political ideal. Swedish child support systems, while diligently working towards lawmakers' stated intents, do not include, compared to California's, (1) equally-rigorous ongoing tracking of the public and private child support systems' successes in establishing initial child support orders; (2) mandatory state supervision of the amounts set for children's child supports; or (3) enforcing child support orders as priority debts, with multiple particularly stringent collection measures. I do not suggest that the laws should necessary be reformed to include any of these elements, but they offer potential tools to be considered for strengthening the laws.

7.3. Causes Arising from Legal System Principles and Traditions

This section analyzes several differences between the child support solutions studied that appear to have more to do with differences between Swedish and Californian *legal system principles and traditions* than with the jurisdictions' WSM-based approaches to family welfare policy as such. With "principles and traditions" I mean both their *ideals* and family law legal system *structures* broadly construed. The structures and ideals of *dispute resolution*, namely the Swedish emphasis on consensus and private contract versus the Californian focus on uniform rules and successful enforcement performance feature prominently.

This section is *not* about the distinctions most commonly recognized between civil law (or Scandinavian) versus common law (or Anglo-American) legal system types, such as conceptions regarding the power of a solely-legitimate legislature versus one checked by long-established judicial review. While those differences exist, they appear to have a relatively subtle effect on these child support systems.¹⁴³⁴ The findings support what Zweigert and Kötz (among others) concluded many years ago in response to legal scholarship and pedagogy on the "supposed opposition between *statutory* and *case-law* systems":¹⁴³⁵

¹⁴³⁴ They are differences to be kept in mind when considering any legal borrowing between the jurisdictions, but focus on the WSM-based ideological differences even there is recommended. Where there's a will there's a way, and the opposite is also true.

¹⁴³⁵ ZWIEGERT & KÖTZ (1998), *supra* note 141, at 71 (emphasis added). See also Mariana Pargendler, *The Rise and Decline of Legal Families*, 60 AMERICAN JOURNAL OF COMPARATIVE LAW 1043 (2012).

No one can deny that *differences exist...but they have generally been exaggerated*. For comparative law as a whole and for the theory of legal families in particular, *the question of sources of law is of minor importance*.

Discussed in this section instead are how the legal systems' structure and ideals explain the differences (and similarities) in the law. Included first is an analysis of how *individualized versus standardized* child support setting and enforcement are today in California and Sweden. Next is a discussion of *judicial and parental discretion* in the two jurisdictions (agency *discretion* in both having little importance, although the agencies are important, especially to enforcement of child support law, as was discussed in Chapter 6). The topic of *parental discretion* to resolve child support cases is the area of difference in the child support rules found to be *most* related to Sweden and California's differing legal system principles and traditions.

Next discussed are the differences in how much state oversight is legally assigned to child support versus custody dispute resolution in these jurisdictions, via discussions of the permissive versus mandatory roles courts are assigned in each and other procedural differences in how they are resolved.

Next to last is a slightly different discussion of the jurisdictions' *expectations of and ideals for separately-living* parents, namely in regards to *fostering healthy co-parenting* alongside *minimizing family-law litigation*. Finally, a brief comment is included on the jurisdictions' evolving views of *children's rights and interests in comparison to parent's rights and interests* when it comes to the extent to which these legal system contexts and child support laws have allowed parental discretion to determine outcomes for children, but this comparison mainly will be addressed with a subsequent publication.

7.3.1. *Individualization vs. Standardization of Support Amounts: A Shared Challenge*

California and Sweden's child support systems have both been intended, according to their lawmakers, to provide *some standardized rule-based guidance* to decisionmakers (increasing uniformity of result and ease of use of the law) and also *some appropriate flexibility*, best to meet children's (and family situations') individualized needs.¹⁴³⁶

¹⁴³⁶ See, e.g., SOU 1995:26 at 247 (simplicity must be balanced with the ability to reach fair and nuanced individual solutions; no one method for setting child support can satisfy all interests equally). In Sweden UStöd-reforming lawmakers also have stated that increasing and individualizing the informational support FK provides to parents (to help them reach individualized child support agreements) could increase the chance that parents will take a "child's rights perspective." Prop. 2014/15:145 at 51 (meaning they will more likely agree to a support in the best interests of the child without undue regard for their own interests in paying less support themselves). The ability for

They do this, however, quite differently in practice, as discussed and related to their WSMs in the procedural comparison (primarily at Chapters 6.4 and 6.5 above).

One theme among the differences is a differing *emphasis*—perhaps related to the legal system traditions of each jurisdiction—on the shared aim to have simple, cost-effective, easy-to-apply rules.¹⁴³⁷ *Differences in the prioritization of simplicity* occur particularly when achieving simplicity will conflict with the mutual goal of providing more appropriate (to a child’s needs) child support amounts. In both jurisdictions “appropriate” sometimes means *high enough* and sometimes means *individualized to the child’s personal circumstances* (or both).

Sweden in particular has preferred more cost-effective, simple and universally-appropriate solutions for setting child support amounts at a sufficient level. In the private UB law, one example is that reference values and similar very simple-to-use estimates of an average child’s reasonable needs have become the norm. These values resemble the simplicity of the UStöd amount(s). The reference values are otherwise for public law use (e.g. for state budget counseling of indebted individuals). The private child support law emphasizes that they are used in UB amounts calculations as a *starting point only*, because individualizing a support to a given child is important and a strength of the private law. Nonetheless the estimators are used routinely to calculate real and fictive UB amounts, for example when investigations calculate UB amounts to contrast with UStöd amounts.

I have observed earlier that courts and lawmakers in the UB system often justify decisions they make by commenting that the public child support is, after all, available to meet the child’s needs (thus repayment obligations can be reduced without harming children, or legal aid availability can be denied for UB cases, without significantly harming children, etc.) The public law has encroached into the private law, and simultaneously cast a shadow over it. UB rules are now applied and even modified “in the shadow” of the UStöd benefit.

California child supports in IV-D cases, in contrast, have no relation to the amount of replacement public money children can receive if child support is not paid (CalWORKS amounts). They instead are highly individuated, because the legal child support duty *and amounts* are set in California via the combined *private duty/public enforcement aid* package regulated in the California Family Code. That is a plus, which is simple in that there are not two regulations for users of the law to navigate. On the other hand the Guideline rules are actually very complex and cannot be calculated by hand, which makes them relatively inaccessible. California prioritized

individuals to reach consensus in the best interests of another without that result having been required of them by a higher authority is very much a Swedish ideal of conflict resolution generally.

¹⁴³⁷ See, e.g., SOU 1995:26 at 247 (simplicity must be balanced with the ability to reach fair and nuanced individual solutions).

better child support amount results, and not simplicity, when it designed and adopted the Guideline.

Taken together, Sweden's child support amount-setting rules (interacting across the UB and UStöd systems) protect children well when individualized UB amounts likely would be too low, but do this via a highly standardized amount of support to each child. The Swedish laws *do not result in varying UB amounts as often as California's Guideline does, or UB lawmakers intended*. This is due to conservative court interpretations regarding the *standardtillägg*, but it is also because UB amounts are largely left to parents to decide, using standardized amounts to negotiate very loosely regulated private contracts, in line with Sweden's legal system ideals for conflict resolution.¹⁴³⁸

Private ordering is not in itself problematic. I instead am observing that the *comparatively broad and unsupervised contractual freedom* (partly in the name of simplicity) that Swedish parents have with respect to their children's UB rights is problematic when *combined with* inadequately concrete guidance as to *how* to determine more specific support amounts for various circumstances. Parents are free to contract to unduly low support amounts, or not to contract at all. They are then asked to arrive at an individualized, appropriate UB for their child that may be different from the UStöd available if they simply claim to be unable to agree at all. For one this will be to their economic advantage, and to the other it will not be. Agreeing to the UStöd amount itself instead could make sense in this situation.

If this suggests something generalizable about legal rules, it may be that broad discretion paired with loose guidance does not create a whole array of predictable, differentiated, and adequate results (that both contracting parties will agree to). They seem to result in parental *avoidance of the UB system*, in this case, or otherwise lower UB amounts for children than policymakers actually would, for good reasons, consider best. Parents use the guidance they have, the UStöd amount or the reference values system, but neither specifies solutions for a number of common scenarios, like varying degrees of shared care.

A solution more like the California Guideline, in other words reasonably simple *to use* (but more complicated legislatively *to design*) may meet Swedish legislative (and social welfare) aims more successfully.

¹⁴³⁸ See HÅKAN HYDÉN & THERESE HYDÉN, RÄTTSREGLER: EN INTRODUCTION TILL JURIDIKEN 64 (7th ed. 2016) ("The civil justice system is *built around the agreement* as a legal instrument. The agreement *creates collaboration between people*. The agreement *serves as a regulatory and governing mechanism*. Law and the contract have the same *function* in this way. *The difference is that the agreement comes through negotiations (real or apparent) between individual parties*, while the law comes through political decisions made by a body representing the polity.") (emphasis added).

Sweden has preferred simplicity to individualization especially (1) when individualized private support amounts likely would be significantly higher (high-income payor cases); (2) when they likely would be lower due to more equal income between the parents (given the UStöd option for payees); and (3) when support likely *should* exist given the FB's definition of the duty *despite* more equal parenting between two parents with disparate incomes (cases of alternating residence but unequal income). California's Guideline in the same cases does result in higher supports for children of higher-income parents or payors. It also minimizes support in cases of equal income (and care), while preserving it in cases of equal care but disparate income. It does this, however, through having a very detailed *automatic, legislatively-decided* Guideline formula, usable via a publically-available calculator.¹⁴³⁹

7.3.2. *Legal System Traditions for Judicial vs. Parental Discretion*

Evaluating differing laws providing more or less “discretion” in setting child supports includes evaluating permitted levels of *judicial discretion*. In other words, to what extent do the child support rules limit judges's discretion as they decide child support matters in a given case?¹⁴⁴⁰

As was established earlier, the difference here is a relatively limited Guideline law in California and a somewhat broader discretion for a Swedish civil court judge, who nonetheless has less freedom to decide child support matters since they are *permissive* in Sweden (but more *mandatory* in the US, as will be discussed). Swedish judges do not have as many legislatively-prescribed rules to follow, yet they also do not “make law” to the same extent as California courts in any case. Neither set of courts is developing the child support law as extensively as it may have historically, nor enjoys broad discretion as to child support amounts.

This evaluation also must include evaluating levels of *parental discretion* granted by the child support laws. To what extent do the statutes or their usual application in practice *provide oversight* of child support amounts separated parents *may agree to or do*

¹⁴³⁹ I consider it worthwhile for Sweden to investigate the potential benefits and drawbacks of adopting a more comprehensive child support formula than it uses now, if not so complex as California's, because this could best balance simple standardization with individualized results.

¹⁴⁴⁰ In reality, of course, “although legal rules and legal discretion may be seen as ideal types, with contrasting advantages and disadvantages, in the real world of family law (as elsewhere) we always find a mix of both, a continual shifting between them, and elements of one always embedded in the other.” Stephen D. Sugarman, “*Family Law for the Next Century*”: *Background and Overview of the Conference*, 27 FAMILY LAW QUARTERLY 175, 177 (1993) (summarizing an argument by Carl Schneider).

agree to on behalf of their children?¹⁴⁴¹ Here the laws are more different than they are in terms of judicial discretion: both parents have ample discretion, yet Swedish parents' discretion is broader, not limited by a presumably-correct Guideline support calculation, and also subject to much less state oversight. Neither lawmakers, nor courts, nor the child support administrative agency (FK) impose oversight over the content of the agreements Swedish parents make concerning their children's support needs and how they will share them going forward.

Judicial-versus-lawmaker discretion is a prominent tension in California's legal conception of child support regulation—with parents usually expected simply to *apply* the legal framework to their factual situation¹⁴⁴² in order to settle out of court.

Conversely parental discretion is prominent in Sweden's child support conception, with the courts there to referee if absolutely necessary, but mainly on the parties' terms. The legal rules provide guidance to both, but do not require particularly predictable results from either.

With each system's laws interwoven in this way, they are most easily understood when considered as a complete system, balancing parental, court, and legislative decisionmaking powers, mainly following the legal system traditions of each jurisdiction.

Why the Systems Distribute Child Support Decisionmaking Discretion as They Do

While judicial frustration expressed in cases decided shortly after California's mandatory Guideline went into effect¹⁴⁴³ has tempered with time (and increasing judicial familiarity with the child support calculation software), to the extent they enjoined their earlier discretion, they were correct to be alarmed. California's statutory Guideline took from its judges a formally much broader discretion in

¹⁴⁴¹ Here “may” and “do” are distinguished because *nudging* parents to agree to more appropriate child supports *in practice* in the large majority of cases, without formally requiring their decisions be reviewed by the state's courts or an agency in every case, may be a way for child support laws in Sweden to retain their essential character as “private” yet also achieve desired aims for a larger proportion of the children at issue.

¹⁴⁴² This is perhaps somewhat akin to Swedish courts' role, as traditionally viewed.

¹⁴⁴³ See, e.g., *id.* at 1040–1041 (“Indeed, the entire statutory scheme appears to be an unprecedented effort by the Legislature to micromanage child support hearings and determinations in a manner which was neither contemplated nor required by federal law. The result is a process of determining child support which is complex and unduly costly, which requires the use of a computer and which is not understood by anyone, least of all the affected parties.”)

setting child support amounts.¹⁴⁴⁴ California lawmakers also deliberately preserved some discretionary authority for the courts, so that they could adjust child support amounts when necessary, in the interests of equity and fairness.¹⁴⁴⁵ Nonetheless most judicial (and some parental) discretion was abandoned in favor of the *mandatory, mathematical, yet individuating* Guideline for both public and private cases.

That decision stands in clear contrast with Sweden's decision formally to retain judicial (and especially parental) discretion and individualization,¹⁴⁴⁶ making it more curious that Sweden has nonetheless in practice, even in the courts, moved towards nearly universal use of common-standard-based *advisory* guidelines, in cases where a child support is being calculated.

This can be understood as *meeting a desire Swedish decisionmakers have—both courts and parents—for better guidance as to how to calculate an appropriate child support*.¹⁴⁴⁷ The judicial system traditions in Sweden appear to value efficient and uniform solutions of this type, more than it would value for example each judge creatively and personally attempting to estimate children's needs for child support. Nonetheless cooperative parenting without the need for authoritative rules is a strong ideal, as detailed immediately below.

Simultaneously the Swedish legal system wants civil judges to (1) put private parental agreements focused on what the parents think is best for the child at the center of child support decisionmaking, and to (2) exercise sound judicial discretion along with the standardized advisory guidelines if parents cannot resolve their own conflict. It seems not at all that Sweden's *WSM-related ideals* require its current approach, of having no more specific and comprehensive child support guidelines.

The most likely reason the current solution has been favored is found in the Swedish legal system's ideal of non-court-based dispute resolution, a more legal-principles-and-traditions-related ideal. This has to do with the proper role of the state in the lives of the people, but in a *different context* than the traditional "proper role of the *welfare state* in providing

¹⁴⁴⁴ See *Marriage of Drake*, 53 Cal. App. 4th 1139, 1159 (1997) ("The present statutory scheme limits the broad discretion accorded the trial court under prior law and channels its remaining discretion within the new statutory parameters.")

¹⁴⁴⁵ See *Marriage of Fini*, 26 Cal. App. 4th 1033, 1043 (1994) (in which the court's unusually irate written opinion pointed out that "the author of the child support statute . . . ushered in another bill making clear 'that it was not the intention of the Legislature to eliminate family law judges' traditional discretionary authority . . . in cases where justice requires it.") The *Fini* court attached as an appendix to its published judicial decision a summary of a California legislative bill from which it had quoted.

¹⁴⁴⁶ See Prop. 1978/79:12.

¹⁴⁴⁷ Explaining existing advisory guidelines to parents via FK has been addressing this need, but in my view misses the underlying need for *better, more specific and comprehensive* guidelines, even if they remain solely advisory, to prevent decisionmakers logically continuing to prefer the easy and very specific UStöd amounts.

grants and services” context. The ideal here is not in terms of securing the people’s material welfare but instead in how to secure individuals’ freedom from state overreach in terms of power and control over their *decisionmaking* with other *private individuals*. Solutions reached via a process resulting in an agreed consensus are seen by the Swedish society and legal system as *much more sustainable than those imposed from an authority*.

That such distinctions can be made between Sweden and California within the family-law context is an interesting finding. It seems the (CA-1) ideal of freedom *from* state interference is a value known also to the social democratic Sweden, but here in child support law where it is *not* the prominent value in California, due to the perceived stronger importance of the child and state interests at stake.

California’s WSM respects strongly individuals’ freedom to make private contracts, rather famously so despite the fact that stronger state oversight could better protect parties to the contract from undesirable outcomes. At-will employment and looser regulation of the healthcare market are two examples where California “allows” private contracts that may lead to socially undesirable abuses of power and harm to private individuals.

But why is Sweden seeming to use this freedom-of-contract model when children need help assuring that their two parents provide for them, a model it rejects in many *other* contexts in order to provide a stronger social protection?¹⁴⁴⁸ The answer I find has to do with the *consensus ideal* in Swedish *family* law and more broadly.¹⁴⁴⁸

California previously had a more open, discretionary system for child support setting, as previously introduced, and less connection between the private child support system and the public system for assisting single mothers raising children, especially those in financial need. In other words *California’s child support rules and case law used to resemble more closely the current UB system’s in both respects* (little tie between public and private sides and little state insistence on a particular level of child support to be provided by NCPs), even though the jurisdictions’ respective WSMs have not dramatically changed.

The introduction of the California Guideline did, on the other hand, represent a move *towards* a *better fit* between the child support law as implemented in practice and liberal WSM ideals. Unlike the path UStöd and UB took, the Guideline placed *more* emphasis on private responsibility for *paying for* children, and less on private responsibility for *deciding how much* to pay, via consensus and contract. California devoted more state resources to *enforcing* the child support amounts *lawmakers*

¹⁴⁴⁸ In my view the child support law could be reformed in ways *that do not violate the consensus ideal* yet move away from the weaknesses of the current system.

decided were appropriate, while devoting fewer state resources to need-based state aid for the same target group of children and CP households.

The State had had its liberal WSM-based emphasis for many decades, even as its discretion-based rules developed in private-law courts, however. The Guideline's introduction was a change towards a *more automated and uniform (if not precisely "simple") procedural basis for setting supports* that advanced liberal WSM aims yet also other aims, more shared by Sweden and California, namely predictability, uniformity, reducing need for family law litigation, promoting settlements between parents, optimizing needs of state resources so that higher-income individuals are not overcompensated within certain social benefit schemes in practice, and so on.¹⁴⁴⁹

Thus California private and public systems rely more today on *maximum possible individualization* of child support amounts *while keeping support-setting simplified*, at least with respect to whether a state decisionmaker—or a parent—must exercise any discretion during the processing of a usual case, versus simply entering relevant parental income figures into a calculator. Discretion is relatively minimized, but not flexibility of results, in theory. Flexibility is disallowed especially in the ways lawmakers do not want others to exercise discretion: to reduce child support amounts, or to make them less predictable and thus more difficult and expensive to determine.

In Sweden, meanwhile, the private (UB) system relies on parental or judicial discretion, while strongly *discouraging parents from litigating* child support matters (more below). Lawmakers and courts have *in practice* caused more and more reliance on the technically *optional* guidelines used in UB cases. The Swedish guidelines (the popular methods for estimating and allocating a child's needs) are not however as comprehensive as California's in suggesting what would be the most desirable child support outcomes in a number of common factual scenarios. Individualization has not been a serious concern in practice, although lawmakers and academic criticism have valued it, especially with respect to older children seeming to have needs for more child support.

In contrast to the loose private-side rules, Sweden's public-side child support system offers *much more lawmaker-prescribed* and *less-individualized rules* for setting children's support amounts. Public child supports became more and more uniform as the Swedish welfare state developed more strongly towards implementing social democratic WSM ideals, not less, despite the high value Sweden places on parental discretion to agree on child support issues and its aim to individuate UB amounts. There is not really much paradox here, however, if one recalls that the UStöd benefit is only a "back-up" system *in case* the UB rules and ideals cannot be used, and from

¹⁴⁴⁹ See Chapter 7.2.3, *supra* in this chapter (comparing the legislative intents).

a public law perspective it *has brought every child up to a guaranteed minimum amount of child support* (the 2016 reforms and their ongoing implementation issues notwithstanding). UStöd does this via *less focus* on private responsibility for specific child support amounts. In fact UStöd lawmakers did this partially through reducing use of its available budgetary resources for individuating what parents should pay for “their” child. UStöd now focuses resources on *a more universal benefit insurance benefit* for use when the parents did not successfully take private responsibility and solve the support issue informally between them after separation, just as they had during their relationship (if any). *Individualization having proven expensive*—as it of course is if there is no computerized or otherwise pre-set mathematical formula already developed to automate deciding an individualized amount in various predictable circumstances—Sweden has acted in line with its ideals, and favored simplicity.

California acts more in line with its own ideals by spending most available child support money on enforcement against payors not willingly paying, to underscore the *value* or WSM-related *ideal* that, regardless of the structural barriers preventing the poorest of parents from paying adequate child support, they “should” be pressed to try.

Private UB rules afford much discretion, even today, per the text of the rules themselves. Nonetheless, *over time they have become more standardized in results they achieve for various children*, as they have been applied by courts and parents. This is especially true since UStöd was set as a fixed-amount benefit and stopped varying based on what UB amount had been set or was required to be set by the state for a given child. Rational parents and others encountering two parallel rule systems regulating the same social need will choose the one most advantageous to them. Simplicity is also rationally favored over complexity, as is avoiding setting a support amount privately and without third-party leadership with an ex-intimate partner, especially if opting out for a one-size-fits-all benefit solution is possible. *Even private individuals and families* must weigh the benefits between individuating child support amounts and agreeing to a simpler if less well-tailored option.

Parental Discretion in Sweden (Resulting from Weak Judicial Oversight Tradition?)

Courts in Sweden are both assigned the discretion to set appropriate child support amounts and seen institutionally by the legal system as less empowered to develop

law, compared to Anglo-American courts¹⁴⁵⁰ including California's. This leads to *habitual conservatism*. *Swedish courts rather carefully exercise their discretion as to how to apply UB law*, despite the legislative intent that better child support solutions would be developed, in part by courts.

Parents, as a result, must persuade each other—or, in the usual case, a less wealthy payee must convince the financially-strongly payor to provide more UB than the UStöd amount she can turn to instead, *without* much of a worrisome shadow of the law threatening to order the same result for her, and with her legal fees added to it, if the parents cannot agree. As in the courts, parents' discretion being broad does little when it is exercised by a weaker party. As has been introduced, Sweden's legal system traditions nonetheless affords parents broad discretion, and results nonetheless are conservative, from a payee point of view. (The discretion, instead of state oversight, on average benefits payors, in other words, and puts payees in an unprotected one-down position.)

Lack of court oversight in Swedish family law disputes has been criticized by some Swedish legal researchers as clashing with WSM ideals. "One of the *keys values in Swedish society* is individualism," Johanna Schiratzki wrote in her analysis of the Swedish child support law as applied in courts. "*Individualism is generally understood to mean that the needs and wishes of an individual are prioritized in relation to the best interests of the group* to which the person belongs."¹⁴⁵¹ Access to court resolution is important to this, and yet not always provided, in Schiratzki's view. She argues this is due to a "legal gap" explained partially by "the aim of the [Swedish] legal system being to *facilitate mediation* and *not* to provide tools for litigation."¹⁴⁵² She suggests that resultingly, unfortunately, "the scope of individualism depends on a person's financial situation,"¹⁴⁵³ because poorer would-be child support litigants being denied their rights in private agreement setting context cannot effectively turn to the courts.

Within Sweden's constitutional balance of power model, based in its Instrument of Government (*regeringsformen*, part of the constitutional law), all public power in

¹⁴⁵⁰ See CARLSON (2007), *supra* note 259, at 338–340 (describing Swedish courts, specifically the Swedish Labor Court interpreting anti-discrimination law, inclined to interpret statutes and preparatory works *narrowly*, declining to make broader interpretations in line with legislative objectives, as in contrast US courts applying anti-discrimination laws have done).

¹⁴⁵¹ SCHIRATZKI (2005), *supra* note 712, at 321 (internal citation omitted) (emphasis added). It is a culture of self-actualization, instead of one in which some people largely are cast into roles to serve others in their family or other group. According to Sweden's WSM, transfers by the state to individuals, instead of between individuals based on personal family relationships, enable this idealized individualism.

¹⁴⁵² *Id.* at 124 (emphasis added).

¹⁴⁵³ *Id.*

Sweden “proceeds from the people” and the Swedish Parliament is the “foremost representative of the people.”¹⁴⁵⁴ The Swedish judiciary historically has *not* been considered a fully co-equal branch of government. The reasoning within the Swedish legal order is that that political power originates with the people of Sweden, and their directly-, democratically-elected representatives in the Parliament are the most legitimate holders of decision-making authority on their behalf.

The American federal-constitution-based model of checks and balances between three co-equal branches of government (the legislative, administrative and judicial) is also based upon power originating with the people. It is explicitly retained by the people to the extent they do not specifically delegate it to government. Nonetheless Californian courts have the power to check the legislature when its lawmaking efforts exceed constitutional limits.¹⁴⁵⁵ Courts definitely can “check” an uncooperative parent so that child support can be set properly based on the income and other evidence presented to the court, and can order that more be produced.

State-initiated “checks” against parents who wish to avoid paying sufficient child support are also part of the child support legal system as a whole in Sweden, largely through the FK agency as it investigates the applications of payees and the income of payors, although some simplifying or efficient administrative exceptions in the law allow, for example, some NCPs’ UStöd repayment obligations not to be set as high as they likely should be, because their low tax-reported income is not questioned.¹⁴⁵⁶ There are also the county-provided mediation opportunities (called “cooperation talks”) for parents who wish to reach agreement on custody or support issues, however the state (county) representative there has no obligation to be reviewing the support-setting process for accuracy.¹⁴⁵⁷ In California, courts are the

¹⁴⁵⁴ *Regeringsformen* [The Instrument of Government], Ch. 1 Arts. 1, 4 (official translation in English available at <https://www.riksdagen.se/en/documents-and-laws/>).

¹⁴⁵⁵ The “co-equality” of the three branches of government is taught to school children in the US and even cited by congresspeople and presidential candidates, but it is not based on any specific legal provision. The courts’ power to exercise judicial review—its sole meaningful check on the other two branches—is not explicitly granted by the US Constitution but was determined necessary by the early US Supreme Court, which exercised its power to strike down congressional acts as unconstitutional only twice prior to the Civil War: in *Marbury v. Madison* (1803) which explicitly announced judicial review, and in *Dred Scott v. Sandford* (1857).

¹⁴⁵⁶ See, e.g., ISF Report 2019:7, *supra* note 6, also discussed previously, in Chapter.

¹⁴⁵⁷ See Ryrstedt (2012), *supra* note 8, at 220–221 (acknowledging “cooperation talks” in the custody and visitation law context as an important way to keep parents out of court, but questioning their effectiveness in assuring that the child’s interests are put first when a *negotiation* in light of the parents’ respective interests takes place, instead of a *mediation* focused on determining the best interests of the child) (reproducing with permission a translation into English of the article *Samarbetessamtal—leder de till en “sann” överenskommelse för barnets bästa, eller bara en förhandlingslösning?* [Mediation talks—do they lead to a “true” accord in the best interests of the child, or only a negotiated settlement?], SVENSK JURISTTIDNING (2009)).

place to enforce rights, in private and public child support systems alike, but they are facilitated by the court staff (self-help centers) and the child support agencies.

When it comes to whether to set child support at all, parental discretion is rather broad in both jurisdictions, especially for CPs because in the legal systems they represent the child's interests in these matters. Some CPs in California and in Sweden do not wish to seek child support for their children. Neither jurisdiction has created a child's legal right to parental child support stronger in comparison to the CP's right to exercise discretion in this regard. Thus the CP may decide whether seeking child support is worth any benefits it might offer the child. The laws studied allow CPs' wishes to be respected instead of insisting on enforcement of children's rights to support in every case, especially with respect to children not on need-based (or, in Sweden, missing-child-support-based) public assistance.

This extends to the amount of child support decided in Sweden, yet not in California. As has been discussed, once a CP has sought support for a child, Guideline support is presumed correct, and no lesser amount. *California's law will not allow a parent to stipulate to a child support order for under-Guideline support*, without declaring that he or she is not receiving, has not applied for and has not previously received CalWORKS support for the child, but also without declaring the best interests of the child will be met by the stipulation. Here the US state goes farther than Sweden to emphasize the state as a *secondary* child support guarantor, as the WSM ideals would lead one to predict.¹⁴⁵⁸ California's legal system supports this detail-oriented state oversight decided upon by the child support lawmakers, in that it has dozens of mandatory procedural forms in many areas of law to help implement court oversights such as these.

7.3.3. *Swedish Ideals to Avoid Court Involvement and Permissible vs. Mandatory Rules*

In Sweden *child support determination* is classified as mainly *permissive*,¹⁴⁵⁹ as has been introduced in earlier chapters, while custody is classified more similarly to its

¹⁴⁵⁸ That offers one reform idea for Swedish public lawmakers to consider: might requiring UStöd applicants not to agree to a lower UB amount than is recommended for their child by Sweden's existing UB calculating tools be one way to lessen the strategic behavior the current system may promote?

¹⁴⁵⁹ SCHIRATZKI (2005), *supra* note 466, at 44 (regarding child support amounts). In Swedish a *dispositiv* provision of law, in other words, may be avoided by the parties by contract between them, e.g. such a provision will apply unless the parties agree otherwise. Note that in American legal English the deceptively-similar word "dispositive" instead usually refers a point of law, fact or provision of a will that clearly settles a particular issue. "The *dispositive fact* was that the accused was *filmed committing the crime*," for example. For a general jurisprudential discussion of the distinction

treatment in California. *Resultingly parental discretion relative to the state's (and the child's, where the child is not personally the child support seeker) is much broader in Sweden.* How does this relate to the various ways Swedish law and its administration encourages parents to settle child support privately, thus the difference between it and California on this issue?

The title of one Swedish governmental report illustrates the Swedish family law ideal for resolving child support matters: *On Their Own Legs—Payment of Child Support Directly Between the Parents* was published in 2015.¹⁴⁶⁰ As the comparison found, somewhat paradoxically Sweden holds the state—otherwise taking such a central role in ensuring children's welfare—*away* from most child support decisionmaking. The legal system's treatment of *permissive* issues to be resolved between private parties negotiating agreements resolves this paradox.

Swedish custody issues are considered *indispositiva*, in other words *not* capable of being completely settled however the parties agree, because the state has certain duties to assure the rights of the child are protected,¹⁴⁶¹ while support issues are considered mainly or in principle *dispositiva*, although *there are some legal provisions protecting the child's support rights even when the parents desire to agree to compromise them, as will be described in this chapter section.*¹⁴⁶²

Private ordering (parental settlement between themselves) is preferred for both custody and support issues in Sweden, yet this is true in many jurisdictions, without the same result that child support becomes much *more* non-mandatory for the state to oversee. In California one reason these two common issues occurring at the time

within Swedish court procedural law *see* PETER FITGER ET AL., RÄTTEGÅNGSBALKEN [THE SWEDISH JUDICIAL PROCEDURE CODE] (Supp. 86, Zeteo 2019-06-27) [herein "Commentated RB"] at comments above Chapter 42 (*Om rättegången i tvistemål* [Civil Trial Procedure]).

¹⁴⁶⁰ See FK Report 2015:14, *På egna ben—betalning av barnets underhåll direkt mellan föräldrarna* [On Their Own Legs—Payment of Child Support Directly Between the Parents] (regarding overuse of the UStöd system and potential benefits of incentivizing Swedish parents to use the UB rules instead).

¹⁴⁶¹ The issue of paternity also is mandatory (*indispositiva*) for the state to monitor. As explained by legal commentators on the FB, "the courts should take investigatory initiative because from society's perspective it is of importance that a child's legal status in terms of duties is consistent with the actual [social parental] relationship." Paternity also may be acknowledged, via a separate procedure regulated outside of the FB. Commentated FB at comments to Ch. 3 (provisions on court procedures I paternity cases). Even in paternity cases the moving party is the child, per FB 3:5, although the state or mother (if she has custody, and even if she is underage) may represent the child. Lag 1994:1433.

¹⁴⁶² Another contributing factor is that child custody and support issues have been reviewed and regulated *separately* and are often discussed in the governmental and academic literature separately. *See* SINGER (2017), *supra* note 55, at 98 (discussing negotiated and court paths to establish initial orders after parental separation and how much recent legal reform has occurred in this area, partly to encourage settlements and partly to strengthen children's rights and position).

of parental separation have become less different from each other (in how the law views the importance of encouraging parents to resolve them) seems to be the *court-order-based family law issue resolution process*, under which it the state aims to provide parents needing custody *or* child support resolution with court orders *also* resolving the other—and the state oversees both.¹⁴⁶³

Use of the Swedish private-law court system to resolve family law issues that are financially related, as opposed to physical custody and visitation issues, is especially discouraged in multiple ways, including the way in focus here: that financial issues are considered *dispositiv* and thus the state has no duty to investigate beyond the evidence presented (or not presented) by the parent parties. In Swedish private-law child support matters, the court/state has a limited responsibility compared to the parents in assuring that the rights of the child are satisfied.¹⁴⁶⁴ If the parents are in agreement; it conducts no independent examination of the facts to assure that a child is receiving a legally correct amount of child support, and in fact cannot order a higher or lower *underhållsbidrag* amount than those in the range of what each parent requests.¹⁴⁶⁵) The private-family-law judicial resolution procedure for deciding a child-support amount is, according to the preparatory works, deliberately flexible, requiring a court to exercise considerable discretion while considering a range of factors,¹⁴⁶⁶ if the decision reaches a court. Even the method specified to help calculate an amount should only be used as a helpful tool, not a prescription, towards

¹⁴⁶³ There are both conflict-resolution-ideals-related *and* more *directly* WSM-related reasons child support issues have not received as priority treatment in Sweden as they have in California, as discussed throughout this thesis.

¹⁴⁶⁴ See SCHIRATZKI (2005), *supra* note 466, at 28–29 (describing the court process as a *dispositiv process*—meaning one in which the parties may generally deviate from the rules via contract, and pointing out that even regarding legal and physical custody issues the Swedish civil-law court can enter a stipulated settlement by the parents without conducting an independent investigation or conducting a hearing, per FB 6:17 para. 4). See also LARS BEJSTAM & ANITA WICKSTRÖM, UNDERHÅLLSSTÖD OCH UNDERHÅLLSBIDRAG 161–162 [USTÖD & UB] (1996). Parties to child-support cases under California law also have a great deal of contractual freedom, especially on the private-family-law side of child support and child custody decision-making. California law’s supports to parents to set and collect appropriate, individualized child support amounts against the payor parent’s will can however be distinguished starkly from how much power an uncooperative co-parent is given under the Swedish system. The duty for the state to assure that unmarried parents reached an agreement on child support (formerly FB 7:11) was removed from law effective February 1, 1997, for example. See Lag (1996:1031) *om ändring i Föräldrabalken* [on change to the Parents Code].

¹⁴⁶⁵ SCHIRATZKI (2005), *supra* note 466, at 29.

¹⁴⁶⁶ Prop. 2004/05:116 at 68 (citing in support of this interpretation Prop. 1978/79:12 at 107).

finding a reasonable support amount in a particular case, although legislators have acknowledged that it has come to be used generally.¹⁴⁶⁷

In terms of law on the books, this sounds like a sensitive, flexible system with a lot of potential to meet an individual child and family's needs. *In practice, however, the court's discretion is minimally and improperly used.* Courts often award child-support amounts (of living standard addition) that *simply compromise between the two parents' requested amounts*, or issue awards *close in amount to the public-law monthly support figure intended to provide a minimum standard*, rather than engage in a thorough evaluation of relevant factors to reach a well-considered, individualized result,¹⁴⁶⁸ largely due to Swedish courts' lack of responsibility over support outcomes.

Review of parental agreements to assure sufficient fulfillment of a child's rights and interests occurs only on the custody side and not on the financial side of parental separation or divorce resolutions in Sweden, in the rare instance that these issues are resolved by a court. This is discussed more directly in the following subsection.

7.3.4. *Comparing Custody and Support Resolution Rules and Ideals*

In Sweden child support as an issue is treated *more permissively* than physical custody and visitation, which is classified instead as mostly *mandatory*, although both can be settled and are favored to be settled privately by the parents. In California both are classified as mostly *mandatory*, although still settlement within the bounds and oversight provided by the law is favored and supported, for example with mandatory mediation for custody issues (though not for support). The mandatory oversight (duty assigned to the court and state) is justified by the children's interests involved, which the legal system there traditionally will step in to protect (to a certain extent, balanced against the parents' rights at stake in a given matter).

Sweden's *permissive* classification for support issues—at least as it is interpreted currently—can be seen negatively to affect Sweden's child support laws' success as a regulatory solution: parents would like (and seem to need) more legislative or state guidance, or at least the firm hand of the law available to increase the motivation of

¹⁴⁶⁷ *Id.*

¹⁴⁶⁸ SCHIRATZKI (2005), *supra* note 466, at 77 (observing from investigation of trial-court-level case decisions that the child often must prove why an *underhållsbidrag* amount should include consideration of special needs or the standard addition, and that the court's discretionary assessment on the standard addition often results in it being set between the two parent's suggested amounts). Schiratzki reports (in the foreword) that she began her research project with the intention to write a *neutral* book on Sweden's child support laws, but found that advocacy for legal reform was instead necessary, given the serious deficiencies inherent in the existent dual system and the 2004 case law judgments she studied. *See id.* at 5.

hesitant parents to discuss and try to settle the support issue, yet instead the state emphasizes to them the state's limited role in the issue.

There exists relatively detailed law based in the FB on the various procedures available to assure that private-law legal and physical *custody and visitation issues* are resolved well between the parents whenever possible, but otherwise with state assistance.¹⁴⁶⁹ In comparison *child support* procedural law, including especially sufficiently-detailed procedures for parents and the state to follow in order to resolve support issues well *given the existence now of the UStöd system* seems less comprehensive. Swedish family law policy has for many years strongly preferred out-of-court resolutions between separating parents. Swedish governmental investigations over the years have additionally found (mainly in the custody and visitation agreement context) that resolutions made cooperatively between the parents *before any court process has been initiated* tend to succeed more often and to endure for longer than cooperative resolutions made *after* the initiation of a court process.¹⁴⁷⁰

This is reported to be one reason courts deciding custody disputes rarely use their statutory power to send litigating parents to mediation,¹⁴⁷¹ but also helps explain why the Swedish legal system does not seek *first* to get the parties to court so that they *there* can reach a good agreement. California's law, in contrast, encourages just that.

In Sweden *the way in which agreement is reached*—given that family law solutions are always subject to modification during the child's minority—is recognized as especially important for the durability of the result.¹⁴⁷² The negotiating tradition and the consensus ideal, but also the quite extreme version of an assumption that separated parents can and should work out disagreements entirely by themselves

¹⁴⁶⁹ See SINGER (2017), *supra* note 55, at 119–128 (explaining the procedures for *custody* cases including county-level conversations including help with reaching a written agreement; help by *socialnämnden* per FB 6:6 para. 2 for legal custody and similar sections within FB Chapter 6 for physical custody and visitation to approve agreements between the parents after confirming that they are not clearly against the child's best interests; help from the court and *socialnämnden* to mediate towards a settlement and to investigate the child's circumstances before a court order is entered; and custody order enforcement options). Use of courts for custody matters, however, *also in principle is discouraged* by Swedish family law and legal culture, as is also discussed in this section of Chapter 7.

¹⁴⁷⁰ Swedish parents came to an agreement on custody and visitation when mediation had been initiated without commencing any judicial procedure in approximately 80% of cases, versus approximately 56% mediating after court proceedings had begun. See Ryrstedt (2012), *supra* note 8, at 227 (discussing those findings from Prop. 1990/91:8, *Om vård och umgänge* [On custody and visitation] and others to explain the preference for parents reaching agreement). See also Prop. 1990/91:8 at 27–28.

¹⁴⁷¹ See Ryrstedt (2012), *supra* note 8, at 227 (reporting that usually one or both parents initiate municipality-based mediation and that courts rarely use FB 6:1 to send parents there, as “it is not thought to be productive”).

¹⁴⁷² *Id.* at 228.

based on contract law, *without the court even empowered to decide many issues if they cannot*,¹⁴⁷³ are explanatory factors.

And yet, that child custody is best settled between the parents has not led to it being classified or emphasized to be a completely permissive (*dispositiv*) issue in Sweden. As might be expected, given the Swedish family law and WSM ideals of seeing a child as an individual with interests distinguishable from parents' and important to protect, child custody and visitation issues are more *indispositiv*. When hearing them the Swedish private-law court, a state organ, along with other state organs (like social services staff) *do* have a duty of oversight.

In Sweden, *custody* dispute resolution thus has much in common with *support* dispute resolution in California. For *custody*, Swedish courts review parental settlements agreements and have the legal ability to go against the parents' agreement if the best interests of the child require, or to assist parents in reaching a settlement, among other safeguards.¹⁴⁷⁴ "The development of shared custody after divorce or separation was also seen as a question of children's rights" in Sweden, and thus the *custody* laws required consultation with children and decisions based on children's best interests,¹⁴⁷⁵ *but not the child support laws*.

Perhaps the decision to retain the *dispositiv* classification for child support law may best be explained by the relative role of the state in Sweden's social democratic welfare state. The Swedish welfare state deliberately transferred much financial responsibility from the private family to the state in the raising of children, such that already in the 1950s version of Sweden's welfare state 30% of each child's basic costs were covered by the state through the universal child benefit (*barnbidrag*) which Sweden had pioneered years earlier.¹⁴⁷⁶

California in contrast (and per federal law requirements) retains a mandatory (*indispositiv*) role for judges in enforcing private child support rights for children. True to the liberal model, California supports a (weak, means-tested) social safety net for children, but as a last-resort option, reserved for *after* all attempts have been made to collect private support from those with a duty to pay it.

Meanwhile in the Swedish context, efforts to more stringently enforce the Swedish private child support duties parents still by law owe to the child may seem to many policymakers to push in the "wrong" direction ideologically, as if progress

¹⁴⁷³ See Eva Ryrstedt, *Family Law and Social Law: Reciprocal Dependency in a Comparative Perspective*, 20 INTERNATIONAL JOURNAL OF LAW, POLICY AND THE FAMILY 44 (2006).

¹⁴⁷⁴ See SINGER (2017), *supra* note 55, at 122–132 (describing the various ways in which a court can meet its duty to assure *barnets bästa* in custody cases and describing them as *indispositiv* because of the court's duty).

¹⁴⁷⁵ Ahlberg et al. (2008), *supra* note 271, at 86. See also SOU 1987:7.

¹⁴⁷⁶ See POPENOE (1988), *supra* note 195, at 124.

towards more universal and private-family-independent progress is being reversed. UStöd has also rendered the UB system relatively unnecessary for a number of years.

Public law drafters' newest ideas for expanding, even further distancing from the private system, or perhaps finally reforming UStöd to give it more coherence and connection with the private support duties it guarantees seem more readily embraced. *Strengthening the child support system via the social benefit side*, especially while disregarding the private side of the system, *further the "intent" or welfare state ideal and mission to shift support of children from the individual family to the state (a collection of all families, with and without children)*. Such shifts are especially desirable, per the WSM's ideal, if it results in immediate better outcomes for the children most at financial risk today due to relative poverty, reducing economic inequalities.

Perhaps in these comparative distinctions one can discern a prioritization of public policy values in both legal systems: *dependent children's reasonable needs, not independent adults', come first* in instances where one set of needs comes in conflict with the other, because parents' and society's duties to children are primary, even if fulfilling those duties ideally comes second to avoiding conflict and court.

The difference in Sweden and California, attributable to judicial versus negotiated conflict resolution ideals, is that while both rank child's needs ostensibly highest, *Sweden ranks avoiding court conflict above securing maximum private contribution* to children's support (yet does not make a similar compromise when children's custodial needs are at stake), while *California does the opposite*, ranking maximum private support duty enforcement above minimizing the potential harmful effects of disputed conflict, *especially in the public-system cases* involving lower-income CPs thus more risk for children and state funds to be imposed upon. Custody matter California views as even more appropriately individualized and settled, although with oversight.

7.3.5. Cooperative Parenting Ideals for Co-parenting

As Swedish family law researchers have described, Swedish family law currently is grounded in an idealistic vision of parents' abilities to reach agreements on custody and support solutions that will serve their children's best interests, and thus may not handle well the situations where reality differs from this ideal.¹⁴⁷⁷

¹⁴⁷⁷ See, e.g., Eva Ryrstedt, *Familjerätt och stöd till barnfamiljer*, JURIDISK TIDSKRIFT VID STOCKHOLMS UNIVERSITET 598, 626 (2004) (discussing the misjoinder between private family law and public social benefit law in Sweden and the weak availability of judicial solutions in individual cases due to the idealized vision that parents can cooperate). See also Ryrstedt (2002), *supra* note 340, at 590 ("Cooperation in a positive spirit around the child, where in principle all decisions are taken in consensus, is of course an ideal situation. This ideological superstructure *must also be the reason why*

Distinct from but related to the stated intents in both systems to encourage out-of-court settlements of legal disputes are the intents to increase cooperation and decrease potential or actual conflict between separated parents, summarized here as the *intent to instill or strengthen a cooperative microculture between co-parents*, meaning both in individual families and generally in society. In theory California family law also prioritizes this ideal, but as has been discussed above it may be ranked as a priority differently than in Sweden.

If the law signals that one is expected to and it is “good” to continue to act as a parenting team and a continuing family nest with the shared purpose of raising and loving the child, in the child’s best interest, *children’s needs can be met optimally with minimal governmental oversight*, as closely to how the state-family relationship works when the parents are living together as a non-separated family unit. That could summarize the family law ethic in either jurisdiction, I have found.

This intent exists somewhat in tension with the “clean break” intent of modernized divorce law more generally however, also seen in both legal systems, which aims economically and practically to disentangle two separating adults¹⁴⁷⁸ by, for example, no longer imposing the ongoing ties inherent in paying and receiving long-term spousal support on them and their potential future partners (to the extent possible).¹⁴⁷⁹ The best interest of the child principle of prioritizing children’s interests leads to a need for family law to *integrate the two ideals of a “clean break”* disentangling the *adults’* financial interdependencies, yet also creating a break from the conflict and a secure, cooperative, ongoing connection with respect to the *children’s* financial needs. In Sweden and California, this is done partially via the legal system expecting a willingness among co-parents to agree to continue being more interdependent financially than they otherwise would be. They must use their incomes together to support their children.

Another tension exists between parental settlements with no state oversight and women’s relative power in securing outcomes favorable to their and their children’s interests. As was recently concluded by researchers in England and Wales’ spousal support context, “[f]reely choosing and agreeing upon a bespoke solution is one thing; ending up with an outcome that overlooks legal entitlements and

Swedish law does not provide any dispute resolution model, except when it comes to just custody and visitation.”) (emphasis added).

¹⁴⁷⁸ See BRADLEY, *supra* note 1343, at 71 (on clean break after Swedish divorce, at least for couples without children).

¹⁴⁷⁹ Sweden has virtually eliminated spousal support since the 1970s, while California still uses it in certain cases, but favors shorter-term periods of it while an economically dependent spouse develops (usually) her income earning capacity post-separation. See CAL. FAM. CODE § 4320.

opportunities entirely is quite another.”¹⁴⁸⁰ In Sweden scholars have recognized that inequality can be said to have worsened since women’s economic protections in family law were removed, based on the theory that men and women could successfully negotiate equally.¹⁴⁸¹

The Swedish private child support system *assumes*, without fully stating or defending the assumption, that parents *will agree* to legally-intended divisions of their child support financial responsibility in their child’s best interests. Minimizing court supervision of these issues can be observed not only in Sweden but somewhat in its neighboring countries.¹⁴⁸² The Swedish *public* child support law now relies a bit more on the same latent assumption, requiring as it does FK to counsel parents to try to settle on a UB private child support instead of using the public system.¹⁴⁸³ Separating

¹⁴⁸⁰ Emma Hitchings & Johanna Miles, *Rules Versus Discretion in Financial Remedies on Divorce*, 33 INTERNATIONAL JOURNAL OF LAW, POLICY AND THE FAMILY 24, 41 (2019). (citing in an English and Welsh context a *widespread lack of legal counsel* during financial settlement discussions and recent data showing that *women still tend to suffer economically, and men to benefit*, from divorce).

¹⁴⁸¹ See, e.g., CARLSON (2007), *supra* note 259, at 354–355 (finding an “asymmetry of responsibility” from a feminist perspective in Sweden’s legislative removals of economic compensations for women’s continuing, *de facto* more-than-equal work in the home). In Sweden, spousal support and more generous pension and other property division rules at divorce were ended in order to strengthen the economic independence of women (a WSM-related aim). These changes have however, thus far, given *men, not women* greater economic power and freedom compared to before these legal changes, removing incentives for men to invest more at home instead of benefiting from a part-time-worker female partner. Carlson’s finding that *Swedish men now retain relatively more of their market income, earned by their relatively greater performance at work, while women now receive less (of the total parental income, or from mens’ income, depending on one’s focus) for the care work they still disproportionately do* is confirmed by this study’s findings regarding Swedish child support regulations in comparative context. Highly similar observations were made by Johanna Schiratzki in reporting her empirical study of Swedish child support law. See SCHIRATZKI (2005), *supra* note 466.

¹⁴⁸² See BRADLEY, *supra* note 1343, at 174, finding the (related) *deliberate exclusion of the power of the courts to resolve family law matters* and to prefer to leave conflict resolution to the parents alone also in Denmark.

¹⁴⁸³ However, FK staff have already reported to reviewers of the law in practice that some NCPs have used contact necessary to negotiate the direct payment of child support as a time to harass the CP. See ISF Report 2019:7, *supra* note 6, at 122. Previously FK staff had reported also that NCPs do not have much incentive to return FK phone calls. See *id.* at 71 (explaining that *NCPs reasonably don’t call FK caseworkers back* because when an NCP’s taxed income was zero on their tax return, *FK must find some evidence that the NCP in fact earns more*; without it FK will not be able to do an alternative assessment and therefore *the NCP will be considered to have zero income* for UStöd purposes, hence no contribution obligation). The agency also does not have sufficient investigative time to look any further if a person is *registered as unemployed or on another type of wage replacement from FK*. These NCPs are investigated no further as to their true income or income potential. *Some NCPs may, the reviewing ISF reports, strategically leave self-employment and go on need-based social benefits* to avoid a reasonableness

parents in Sweden are expected to participate in mediation meetings regarding custody and residence issues, where economic (child support) issues now can be included.¹⁴⁸⁴ They are expected to reach negotiated settlements between them regarding these issues, and only to utilize the courts if agreement cannot be reached.¹⁴⁸⁵ On the Social Insurance Agency's webpages for separating parents, for example, the Agency has interpreted the law, here the child support law in relation to the physical custody timeshare chosen by the parents, without any mention of possible court action or another remedy if parents cannot agree, advising parents that:

If the child lives about equal time with each parent, neither must pay child support for the child. If the child lives a little more at one parent's home, you yourselves can come to an agreement on the support amount.

If one parent has a much higher income than the other it can be reasonable for that parent to pay child support despite the child's living alternately with both parents.

Lastly, you make an oral agreement or a written contract. Use the child support calculator to get an idea of what is reasonable to pay.¹⁴⁸⁶

The Courts reviewing requests for legal fee assistance in child support cases also view favorably that settlement was attempted, even if settlement was not reached,¹⁴⁸⁷ which is similar to California's Family Code preferences for (and mandates for) attempts between the parents to settle their disputes regarding their children via mediation instead of in court.

assessment. *See id.* at 69. Caseworkers think more investigation should be done, particularly in cases where an NCP goes from owing the full repayment amount to zero in one year. *Id.* at 66.

¹⁴⁸⁴ SOU 2011:51, *supra* note 238, at 32, proposed to the legislators that the non-binding mediation sessions (*samarbetessamtal*) that were already being provided by municipalities in family law cases regarding custody and visitation issues *should include economic questions having to do with the child*, to contribute to an overall better situation for the child going forward after parents' divorce or separation. Later Prop. 2014/15:145 was passed into law, implementing this suggestion.

¹⁴⁸⁵ *See* FK, *Barnet bor växelvis ungefär lika mycket hos båda föräldrarna: Ska någon av oss betala underhåll?* [The child alternates residence and lives about equally with both parents: Should someone pay child support?], <http://www.forsakringskassan.se/privatpers/foralder/separerar/vaxelvist>.

¹⁴⁸⁶ *Id.* The calculator requests information from parents on the child's needs and the parents' income and living situations, including if they have new partners and/or children at their separate residences. The "oral or written" agreements are not required to be filed with the state, however FK does propose a simple one-page agreement form including all components required by law to make the written agreement legally enforceable if necessary. It is included at Appendix 1.

¹⁴⁸⁷ *See* SCHIRATZKI (2005), *supra* note 466, at 38.

The extreme lengths (comparatively) that Swedish family law in practice goes to, especially in the child support area, to keep parents out of court cannot be attributed to the same core interests as California's similar aim. Causes that help sustain the Swedish preference for out-of-court resolutions and Swedish family (and welfare law)'s seeming unwillingness to believe (or in any case much to discuss) separating parents perhaps should not be left to work things out informally go deeper into the Swedish legal system. Implicated are the basic conceptions of which matters should be adjudicated by the courts or decided by state agencies versus which should be the sole responsibility of the family (or, rather, two individuals who are both responsible for a child).

That Swedish parents may in fact have an *inability to agree* over child support matters is, I submit, well-recognized; it is in a sense the basis for the part of the UStöd benefit that remains an advance of child support the NCP could have but did not pay. Advancing these funds because of the time-sensitive nature of the child's needs is a rational (and successful) policy, in terms of child welfare. The question that could be asked, when one looks comparatively at other jurisdictions' child support solutions, is why Swedish lawmakers would *not* focus more on the "front end," *helping (more closely) or requiring parents to negotiate child support* in most cases, perhaps before their child could receive the state replacement/guarantee.¹⁴⁸⁸ It is not because the Swedish family law community believes strongly that no agreement could be reached. As has been discussed, the community most likely *overestimates* parents' abilities to reach agreements in the child's best interest. It is staunchly in the beliefs, assumptions and commitments regarding what encompasses a *private matter between individuals*.

7.3.6. *Ideals of Children's Rights*

Sweden's legal system has stated a stronger position on children as individual citizen rightsholders¹⁴⁸⁹ than has California, where their interests, more than their rights, are in focus.¹⁴⁹⁰ This study has involved analysis of whether that difference can be seen

¹⁴⁸⁸ Admittedly this could resemble a return to the child support advance system in place before UStöd was introduced, however with certain improvements—but re-inserting a stronger UB-UStöd system tie.

¹⁴⁸⁹ See, e.g., Ahlberg et al. (2008), *supra* note 271, at 86 (explaining that the child is an independent citizen in Sweden, and "an independent individual, whose interests must be protected by the legal system in the same way as those of other citizens") (citing SOU 1987:7, SOU 1994:38 and SOU 1998:97).

¹⁴⁹⁰ In California and the US generally, family law has modernly placed children's *interests* before parents', looking therefore when making child custody (and, relatedly, support) decisions to serve the

as a reason for the child support system differences found. It finds that stronger recognition of children's rights as individuals (legal subjects) in Sweden and stronger recognition and legal protection of their international human rights has not resulted in improved rights fulfillment with respect to *child support* rights. Both Swedish and Californian children are not receiving private (or, in the Swedish case, public) child support if their CP mothers do not wish to pursue it, but in Sweden even when a CP does seek the legal system's help, primarily it is the UStöd benefit that offers a remedy to the child. Except when the CP seeks social benefits to cover the support missing from the NCP, the state does not defend the child's right to the support.¹⁴⁹¹

From a *child's rights perspective*, parents choosing economic independence for their households despite the child living with only one of them may be undesirable. This has the potential to cause more economic harm in California, but also can have a larger impact in Sweden, given UB law's focus on the child's interest in or right to share in both parents' living standards thus to have less central needs met if the two parents' combined incomes could afford that for the child.

Perhaps lawmakers have decided that prioritizing a parent's right to decide whether to pursue child support is appropriate, because children's best interests will also be served by such a rule. As is argued in the philosophic literature on parents and children's intertwined interests:¹⁴⁹²

Policies to combat poverty and to help even affluent parents achieve a better work-life balance do...serve the interests of parents, but of course they serve children's interests too. *Children's interests in growing up well parented (and other people's interest in their growing up that way) may be quite sufficient [to justify such policies].*

7.4. Causes Relating to Gender Equality Ideals and Realities

In the United States, a trend towards more egalitarian views of the gender roles of men and women continued for more than two decades between the 1974 and 1994, yet social attitude surveys have shown that the frequency of egalitarian views has

best interests of the child as distinguishable from the parents' interests, but is less engaged in developing children's rights per se. See *supra* Chapter 2.1.1.6.

¹⁴⁹¹ As discussed *supra* Chapter 6.2.7 (*The Child's Right to Support, or the Caregiver's to Contribution?*).

¹⁴⁹² Harry Brighouse & Adam Swift, *Parents' Rights and the Value of the Family*, 117 *ETHICS* 80, 107 (2006) (commenting further that policy justifications based more purely on parental rights and interests might not be inappropriate, but making the point that framing them with respect to the child's interests often is possible and less controversial: "[O]ne might want to go further, advocating pro-parenting policies on avowedly nonneutral grounds that appealed directly to the value, for parents, of parenting relationships. We do not mean to rule out such arguments.") (emphasis added).

leveled off since then, across both male and female genders and all income and education levels.¹⁴⁹³ This has not been accompanied by “any structural or broader ideological changes in American society,” finds one research team in sociology, and may instead be attributable to “period events”:¹⁴⁹⁴

[T]he rise and decline of feminist and antifeminist movements; the shifts in popular culture, *especially the rise of a new cultural frame that incorporates traditional gender roles without implying hierarchical power relations*; and the independent emergence of new cultural concerns, such as *intensive parenting* and *career stress*, whose consequences, intended or not, *helped reverse past trends in norms of gender equality*.

In Sweden, research into the norms influencing parents “doing gender” and caring for children today finds that fathers and mothers still experience different levels of conflicting emotions about their roles as legal policies continue to encourage increasing gender equality at home and at work.¹⁴⁹⁵ “Good-enough” levels of equality in earning and household work including childcare have been associated with the highest levels of comfort for both men and women in recent years, given internalized ideals of “being a man” and “being a woman.” Research suggests that “too much” and “too little” gender-equal behavior in a modern Swedish pair relationship between a man and a woman are associated with more discomfort and relationship discord.¹⁴⁹⁶

Beliefs about the ideal roles of mothers, fathers, women and men are an element affecting child support lawmaking and its operation in practice.¹⁴⁹⁷ This section’s discussions briefly return to the focus introduced in Chapter 2, namely first

¹⁴⁹³ David Cotter et al., *The End of the Gender Revolution? Gender Role Attitudes from 1977 to 2008*, 117 AMERICAN JOURNAL OF SOCIOLOGY 259, 260 (2011) (proposing causation factors to explain the finding that “the overall patterns clearly break into two eras: a uniform trend toward less traditional gender roles during the 1970s and 1980s, but only small and shifting changes since the mid-1990s” based on NORC at the University of Chicago General Social Survey data for the period 1977–2008 and several researchers’ studies of that data).

¹⁴⁹⁴ *Id.* at 286–287 (emphasis added).

¹⁴⁹⁵ See, e.g., SOFIA BJÖRK, GENDER AND EMOTIONS IN FAMILY CARE: UNDERSTANDING MASCULINITY AND GENDER EQUALITY IN SWEDEN 66 (2017).

¹⁴⁹⁶ See Grönlund & Halleröd (2008), *supra* note 276, at 28–31 (introducing a theme of this research collection regarding why *lagom* or *just-right* equality seemed favored by both men and women as of the early 2000s).

¹⁴⁹⁷ See Hobson & Morgan, *supra* note 68, at 3 (introducing a collection of sociological articles on fatherhood from a comparative perspective, including Swedish and U.S. discussions. “The point of departure in this book is that what is perceived as a crisis in fatherhood involves competing and conflicting social politics that revolve around the dimensions of cash and care, the obligations and rights of fatherhood.”).

discussed are the jurisdictions' *gender policies* as an explanation for the differences found between the child support laws. Then parents' *gendered parenting behaviors* (largely within the separated family) are compared to explain differences found in the laws. Finally the jurisdictions' legal systems' versions of the "gender wars" of family law (*gendered conflicts over the laws and their administration*) are briefly considered as one explanatory factor.

7.4.1. *Gender-Equality Policy, Goals and Child Support Law*

The section might be titled *feminism versus pluralism*, because Sweden's gender equality laws and clear stance favoring (1) a two-earner two-carer family model achieved via state support to families and (2) progress generally for men and women towards equal public and private power and opportunity as individuals *contrasts, very evidently*, with California's lack of consensus and strong state policy on such issues (or whether "the state" should have a role in regulating such matters). The differing gender goals and laws clearly correlate with the child support systems' design choices and outcomes.¹⁴⁹⁸

Varieties of Feminism and Family Policy

Schools of thought vary in the family law and policy international community, including among feminist researchers in law, in sociology, and in other fields, as to whether it is more or less promotive of gender equality to have purely gender-equal family laws "on the books" today, despite the fact that societies and thus law "in practice" continue to be gender-divided in terms of responsibility for children. They consist, as has been introduced, of a large majority of sole parents being women with primary physical (and emotional, and often financial and legal) responsibility for children.

One mainstream American view of feminism in family law is seen in the following comment from recent published child support research:¹⁴⁹⁹

¹⁴⁹⁸ Gender-equality-policy-based, WSM-related differences between the child support maximum amounts set through each jurisdiction's law were identified and discussed at Chapter 6.2.6. Here gender goals and legal requirements as causes of the differences are analyzed more deeply.

¹⁴⁹⁹ Braver et al. (2015), *supra* note 1281, at 433 and 436 (emphasis added).

One would expect that states more responsive to feminist organizations would have *higher child support schedules* with smaller or no visitation adjustments, with the opposite being true in states more responsive to men's rights groups.

In other words, *from the mainstream modern US WSM perspective, it can be seen as a feminist position to favor higher child support transfers from (mainly) fathers to (mainly) mothers*, responding to a current societal reality of women's greater physical caretaking responsibility for children and lesser economic earning. This historically was the position taken by Swedish family law and policy as well.¹⁵⁰⁰

The thesis has earlier described however that *from the mainstream modern Swedish WSM perspective*, that is to say from the late 1960s and forward, *higher child support transfers are seen as a less feminist, and a less favored, legal result* which the family law rules generally do not support.¹⁵⁰¹

The ideology behind the California Guideline rules, in contrast, does not avoid (and sometimes, though not always, even seems to encourage) a view of NCPs, usually men, as most unequivocally useful to children with whom they do not live as *financial providers*, but less so (or more problematically as a group) as *carers*.

There are also some proponents of each of these two views in each of the two jurisdictions, it should be noted, and the legal text is gender-neutral on the sharing of the duty, in both jurisdictions, so that when the laws are applied they can (especially in California) meet the needs of both more traditionally role-divided and more equally-divided couples. Yet parenting responsibility and incomes vary, on average, along sex and gender lines, especially for female parents with younger

¹⁵⁰⁰ See Ahlberg et al. (2008), *supra* note 271, at 82 ("While Swedish policy had placed some emphasis on individual rights, autonomy and gender equality before this, [], policies remained ambivalent. For example, while on the one hand women's "dual roles" were problematized in the 1940s and 1950s, on the other hand it was asserted that mothers were irreplaceable for small children. Hence, the normative dominance of the male breadwinner family was not seriously questioned []. A radical shift to this settlement took place in the late 1960's, when the desirability of "equality of opportunity" ("*jämställdhet*") between men and women became a normative discourse [].") (internal citations omitted).

¹⁵⁰¹ There is law in both jurisdictions that could be interpreted thus applied in different ways, as has been illustrated in this thesis for the FB private child support laws, to achieve one type of feminist policy goal or the other. The study finds for example that the Swedish WSM's favored view—that each parent is an individual who can support his or her children without a former partner's continuing help, outside of the former partner taking full responsibility for the child's needs 50% of the time—is coloring or otherwise affecting the *modern interpretation* of the aging FB statutory text. If this is so, Swedish lawmakers may wish to address directly if this an appropriate result, or if the law, mainly the UB law, should be clarified or reformed.

children at home.¹⁵⁰² This invites analysis of the gender-neutral law text, providing that the parents shall each contribute according to their individual abilities, and its common understandings and outcomes in practice.¹⁵⁰³ From a gender perspective, by which I mean looking at the law in terms of its implications for women and men as groups¹⁵⁰⁴, child support law (1) continues to evolve in an attempt to serve and respond well not only to children's needs but also to women and men's needs in their public and private roles, and simultaneously it (2) aims, overtly and covertly, to influence that evolving society and (3) simply lags behind societal progression due to the difficulties inherent in reforms of the law and of professionals' established practices and preferences, inadvertently influencing the evolving society. The policy of the society enacting the law may be to maintain (or go back to) a traditional idea of an ideal family or gender role division, or it can be to *encourage or even force changes towards a different ideal "normal."* California lawmakers might point out that there also is a third way, which is to try to remain neutral as to the family forms and ideals held by society members.

¹⁵⁰² In California more diversity exists between families in terms of role specialization, with some parents 100% unemployed due to childcare responsibilities over a number of years while their partners earn 100% of the income used to support the family while others follow a fully equal earning, equal caring dual-role model, and there are many variations between these two extremes. The existence of the breadwinner-carer parental behavior, alongside the dual-earner parental behavior, and the WSM's ideal of accommodating both (because private behavior is not the state's domain) is one reason the family law requires that different spousal and child support solutions be available after separation, should it occur. *In both jurisdictions*, interestingly perhaps to theorists, *the family law enforces a joint financial obligation to one's children, but does not enforce a joint care obligation*, due to concerns discussed within the thesis regarding alternating residence (shared parenting after separation) and child support. In Sweden the 100% homemaker is virtually nonexistent today, and part-time work positions are becoming less frequent for women and more frequent for men (although they are still more prevalent among women). Inequality of caring within the private family before and after separation remains more common than not, especially after separation, however. *See supra* Chapter 1.2. The question of whether inequality of financially providing should not perhaps also, in fairness and for child welfare reasons, be continued in the child support law is thus relevant even in Sweden.

¹⁵⁰³ *See, e.g., Katherine Bartlett, Feminism and Family Law*, 33 FAMILY LAW QUARTERLY 475, 480 (1999) and Nan D. Hunter, *Child Support Law and Policy: The Systematic Imposition of Costs of Women*, 6 HARVARD WOMENS LAW JOURNAL 1, 4 (1983) (casting problem of inadequate child support awards as problem of equity for women)).

¹⁵⁰⁴ This is not to imply that these are the only gender identifications worthy of consideration, but they are the largest groups, and within the scope of this study. Economic (and leisure time) inequalities between men and women within households is an area of academic inquiry. *See, e.g., Sara Cantillon & Marie Moran, Intra-household Inequality, Poverty and Well-Being, in WEALTH AND POVERTY IN CLOSE PERSONAL RELATIONSHIPS (MONEY MATTERS) 21* (Susan Millns & Simone Wong eds., 2017). This literature and discussion should, in my view, more rigorously be linked to child support academic inquiry.

The mainstream Swedish approach is to pursue gender equality. The approach encouraging (strongly at times, though usually not through force) step by step progress towards Sweden's equality feminist ideal society is the one overtly pursued by the majority culture and most lawmaking in Sweden. Signs of a similar policy position can sometimes be seen, although to a lesser extent, in California today as well,¹⁵⁰⁵ but the position has not been adopted in the US nationally.

In both systems such policies become muddled by other ideals, overt and covert, many of which are hold-overs from the historical assumptions about the genders (and classes) of individuals and their roles in a less equal society—including, in my views, ways that the family law is hesitant about affording fathers fully equal caregiving opportunities.¹⁵⁰⁶ The resulting child support laws, as I see them, accommodate and even press forward towards an egalitarian ideal, but also strive to create substantive equality in the material sense in the actual society existing today, where more women continue to have primary responsibility for children and most men continue to have control over more money. It is a delicate balance.¹⁵⁰⁷

Sweden's family policies create ample time for home life outside the usual working hours and days per year, allowing, arguably, for virtually any working parent to also be an active day-to-day and year-to-year parent, although the extent to which this differs in private vs. public employment or between different industries, especially ones dominated by male vs female workers, is debated. In any case California's policies are not as well developed in this regard, in line with its WSM.¹⁵⁰⁸

¹⁵⁰⁵ Social engineering is acceptable and sometimes strongly supported in the relatively progressive US state, as has been mentioned with respect to some of its benefit offerings and gender equality in the workforce laws for example.

¹⁵⁰⁶ At times there also are fears about unequal treatment that research is able to dispel. See SCHIRATZKI (2008), *supra* note 182. Schiratzki's conclusions in this book demonstrated that it was not mothers per se but primary parents who were more likely to be awarded physical custody by Swedish courts, and that that was appropriate in the best interests of the child, as one example. See also SCHIRATZKI (2005), *supra* note 466, at 75 (explaining that the traditional nuclear family is the starting point or assumed norm for Swedish economic family policy; and that "[i]n line with *likhetsfeminismen* [the equality feminism] dominating Swedish policy, the nuclear family's parents are expected to divide care, earning and other responsibilities equally," and that equal division is expected to continue if the parents separate).

¹⁵⁰⁷ And feminist thinking often supports such pragmatism, so that women receive fair outcomes in the here and now. See e.g. WENNBERG (2012), *supra* note 139, at 18 ("In brief the equality of the results, that is, substantial equality, ought to be the key issue when sex-neutral [social insurance and protection system] regulations are applied in a reality that is systematically structured by gender.")

¹⁵⁰⁸ See Chapter 2.2.1, *supra*, on Esping-Anderson's prototypical WSMs; see also Blumberg (1999), *supra* note 308 (describing the neutral stance taken by the ALI Principles of Family Dissolution's child support law chapter on primary solo parent paid employment, although only for a parent earning no

These *policy goals* affect legal and societal expectations for equal care and equal income earning and financial support, in non-separated as well as separated families. They therefore affect, for separated families, child support.¹⁵⁰⁹ A distinction should also be made however between what these jurisdictions do to create a welfare state, in the *public law* of each, *versus what they do (or should do) in the private family law regulating conflicts between family members and the conduct of family members with respect to each other*. Some of the differences found can partially be explained by what lawmakers understand to be their proper roles depending on whether they are in a private law or public law context. The distinction, for example, between *assuring the economic well-being of dependent children* and *supplying remedies to achieve fairness between parents* should remain in focus for both jurisdictions as they continue to shape both public policy and benefits, and rights and remedies within the private law of the family.¹⁵¹⁰

7.4.2. Gendered Parenting Behavior and Roles After Separation

Researchers have postulated a number of implications for the rapidly-shifting roles for mothers, fathers, and states in recent decades, including with a focus on fathers' shifting *family roles as men*.¹⁵¹¹

[M]any industrialized countries have experienced a considerable increase in the support states provide for families. Like separation and repartnering, this change also raises different issues for men than for women, since the traditional element of the father's role in the family division of labor is financial support. State support for families with children is generally seen as pro-family, although not always (Popenoe

or little income in order to care for a young child). The lack in the US of subsidized high-quality childcare and of social insurance benefits replacing parents' incomes during a child's infancy, both components of Sweden's welfare state, are part of the context for such a position. It is also supportable from a difference-feminist perspective, but more questionable from an equality-feminist one.

¹⁵⁰⁹ See the discussion of the implications of these conclusions (regarding differences between the laws and their causes, including in gender policies of both jurisdictions) at Chapter 8.3, *infra*.

¹⁵¹⁰ See generally Jordi Ribot, *How much Family Conduct do we need to Regulate?*, in MANAGING FAMILY JUSTICE IN DIVERSE SOCIETIES 273, 289 (Mavis Maclean & John Eekelaar eds. 2013) (making a case for a "culturally contextualized family law": "Instead of imposing top-down solutions based on some morality standards or policy guidelines, family law should provide a *framework within which individual choice is maximized*, thereby according its fundamental goal of *pursuing fairness in family relationships*.") Ribot cites Mavis Mclean for this "facilitative rights-based" model, "which sits well with increasing experiences of multiculturalism in a global society." *Id.* He argues too that family members' freedom should be limited if its exercise violates shared human rights norms including by discriminating against family members on the basis of gender, but that encouraging bottom-up changes in citizens' beliefs is preferable and likely to be more successful than top-down legislating. See *id.* at 291 n. 93.

¹⁵¹¹ Oláh et al. (2002), *supra* note 211, at 26.

1988, 1991). A consideration of families in gendered perspective, however, suggests that the type and extent of state support for families might have very different implications for the family roles of men than for those of women.

The descriptive chapters described the child support laws *and their WSM contexts*, including the child and family policies of Sweden and California but also summary statistics on the caregiving and financial roles parents in each jurisdiction are now playing in their children's lives post-separation. *Both parents are expected and encouraged to work* by the child support laws' references to both parents' support responsibilities, and a majority of both men and women single parents do so. *Both are increasingly supported to part in infant and child care*, within two-parent homes and if they are single parents, via for example parental leave laws now in place in both jurisdictions, *and statistics reveal that more equal participation in care is occurring*, even in the liberal WSM context that makes balancing work and parenting relatively difficult.

Overall Sweden encourages parents, especially mothers, to work more universally (and perhaps realistically) because the welfare state's universal supports (services, grants and social insurances) *practically* enable all parents to work and *ideologically* supporting full participation in the workforce by parents. As just one example, parent couples' abilities *both* to remain workers after the birth of a child are significantly improved by the legal and cultural norms that *parents stay home to care for infants for their first year of life while on legally-mandated paid leave*, with *each parent* having a period of time to go to work while the other parent is home on paid leave with the child (an experience very few American parents ever *both* enjoy). Little to no gap in income-earning is experienced, and no severe reduction in net earnings because of day-care costs occurs either, compared to in California where paid parental leave is comparatively minimal and daycare subsidized only for some, mainly via private employers' offerings.

Many parents do parent in somewhat gender-typical patterns today, usually explaining that they simply prefer the tasks they take on in the family, and the other parent prefers theirs. "Perhaps *the slippage between ideal and reality* creates the need to 'justify' what might be regarded as unequal aspects of a relationship? *The slippage conceals a gender power system*, which, at the same time, is *reproduced in the negotiations between men and women*—and this is *only exacerbated by* an official concept of gender equality which *underplays inequalities in power* between men and women," as one Swedish researcher noted to address this common behavior.¹⁵¹² The law operates

¹⁵¹² Ahlberg, (emphasis added). The critique here is of Sweden, yet is much more justifiably levied against California and other jurisdictions with welfare states not supporting progress by equalizing power more than they do.

within these various tensions, and the differences in the regulations studied partly reflect the difference in the two WSM contexts.

7.4.3. “Gender Wars” in Family and Child Support Arenas

Sweden in 1993¹⁵¹³ solicited the views of ordinary fathers, specifically to see why men had not to a greater extent taken up paternity leave granted to them. As reported by Bergman and Hobson:¹⁵¹⁴

Though members of the papa group admitted that *structural reasons (attitudes of employers and co-workers) were the main reasons* why men did not take up their rights to parental leave, they also pointed out that *men felt disempowered in the family*. They faced *hidden discrimination by mothers who patronized them or derided their competence as fathers*. They argued that men needed to take their share of leave in the first year of childrearing in order to gain experience as fathers, to have total responsibility on a daily basis with care—for the diapers and feeding—which is not only a period of bonding, but also a time when gender roles in the family are often formed. The idea of *men’s rights for custody and care is implicit in the papa group’s stand on joint custody*. They were the strongest advocates in government studies *arguing that joint custody should be a basic principle in law and policy that should be followed whether parents have lived together or not* and whether the mother refuses to recognize the biological father’s rights to custody or not.

One argument for putting some distance between *child custody and visitation* and *child support* issue resolution—and for imposing some state oversight over parents’ discretion to settle both of these issues—involves *parents potentially acting strategically and in ways not in the child’s best interests* if they negotiate with each other with the links between parenting time and child support in mind. California partially solves this by having its gradually-adjusting scale instead of a cliff approach for how shared parenting affects child support amounts, and by increasing the total amount expected to be needed for near-alternating-residence situations. Sweden partially solves this by marginalizing and minimizing child support compared to custody

¹⁵¹³ See Ds 1995:2, *Arbetsgruppen om papporna, barnen och arbetslivet (Pappagruppens) slutrapport* [Working group on the dads, the children and work life (Dads’ group’s) final report].

¹⁵¹⁴ Helena Bergman & Barbara Hobson, *Compulsory fatherhood: the coding of fatherhood in the Swedish welfare state*, in *MAKING MEN INTO FATHERS: MEN, MASCULINITIES AND THE SOCIAL POLITICS OF FATHERHOOD* 91, 110 (Barbara Hobson ed., 2002) (noting that “[i]nterestingly, the men appointed to the government group were not experts on gender roles, nor psychologists or sociologists who had done research on men and masculinities. They were professional men who were fathers: a TV program director, a vice-president of a Swedish company, a consultant and writer, a secretary of the Culture Department, and one local and national politician.”) (internal citation omitted) (emphasis added).

issues, but the suspicions and lack of co-operative coparenting in a child's best interests in part reflects gendered identity linked mistrust and even anger between men as a group and women as a group as they interact in the family law conflict resolution context.

Strategic-behavior concerns must be evaluated carefully in light of a jurisdiction's overarching child support, family law, *and* family policy aims. For example, a jurisdiction striving to promote cultural changes so that men and women more equally share unpaid private-sphere work including parenting will have *child support lawmakers less motivated to preserve high child supports and low rates of shared care after divorce or separation*, but—due to the fairness and adequacy of support concerns at the heart of enacting child support laws—such a jurisdiction *still will wish to avoid reducing child supports in cases where NCP parenting time nonetheless is low*.

There has been a concern among family law experts in many jurisdictions over the years—especially when shared parenting time was much more rare and less normalized in both Sweden and California than it is now—that *NCPs might be seeking increased parenting time opportunistically in some cases, in order to lower the child support amounts they would otherwise be obligated to pay*.¹⁵¹⁵

The concern is not only that fathers with little interest in or skill at parenting day to day might be awarded *and spend* that time with their children, although that view has not completely faded from family law discourse.¹⁵¹⁶ The more updated concern is that some NCPs *do not actually exercise their significant parenting time that was the basis for setting a lower child support amount*. Then the difficulty of modifying the order by showing that he has *not* exercised his legally-recognized parenting time becomes an often-prohibitively-expensive burden for the CP. She then must bear more than her share of both the care and support responsibilities, allow the child's welfare to suffer, or both.

American family law researcher Margaret Brinig recently evaluated empirically this concern and concluded that “shared parenting in the United States does not currently seem to provoke drifts towards maternal custody that occur outside of the legal system.”¹⁵¹⁷ This means that *fathers were found generally to keep exercising their custodial time with the children, contrary to the concern* (which could also be classified as a myth or stereotype) that some significant number of parents truly are motivated to ask for a

¹⁵¹⁵ See Margaret F. Brinig, *Chickens and Eggs: Does Custody Move Support, or Vice-Versa?*, 29 JOURNAL OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS 269 (2017). This was in an Arizona and Indiana context but the results are useful for analyzing the validity of these concerns in California and, potentially, in Sweden as well.

¹⁵¹⁶ See discussions within Chapter 7.4, *infra*.

¹⁵¹⁷ *Id.* at 287–288.

different living arrangement for their child than they think is in the child's best interests.

Both informal oral interviews with California child support researchers and practitioners and scholarly research such as Crowley's political science study of the politics of American child support law underscored for me the *highly politicized and gender-wars-related nature of child support law in the United States, including in California*, and specifically how much men's groups concerns were not necessarily addressed as well as they could be, in part given the negative approaches many of the men's groups have used.

As Crowley summarized the evolution of child support policy:¹⁵¹⁸

Social workers, conservatives, and women leaders each immediately selected a legitimate means to shake out their competition. Social workers infiltrated successive presidential administrations, conservatives stressed the importance of automatic programs [for child support enforcement], and women leaders used the gender gap [in Reagan-era voting patterns] in order to emerge as the new victorious entrepreneurs. But male advocacy groups—the precursors to the fathers' rights groups—were not as successful in selecting legitimate shakeout strategies. Before transforming themselves into the fathers' rights groups of today, these organizations utilized illegitimate tactics designed to demonize the current holders of power: members of the opposite sex.

After policymakers came to perceive a political strategy of using stereotyping, anti-women rhetoric as illegitimate, Crowley maintains, male advocacy groups evolved into "fathers' rights" groups, and switched to a strategy of *challenging women to become their allies in putting the best interests of supported children first*, to protect children from negative effects of parental separations via (1) father-child contact (shared custody arrangements), (2) lower Guideline child support levels, and (3) solutions to very-low-income fathers' struggles with current child support laws.

Fathers' rights groups have been partially successful in bringing some attention to poor fathers' needs, and in continuing to increase shared custody arrangements, Crowley concludes, but have not won much support for fathers' groups' position that child support levels should be lowered.¹⁵¹⁹

Since Crowley's study was published in 2003, the push and pull for political influence between women's and men's groups on the issue of child support seems to have continued, and to a lesser but real extent in Sweden as well. Gender-group conflicts have played an undeniable role in child support research literature and

¹⁵¹⁸ JOCELYN ELISE CROWLEY, *THE POLITICS OF CHILD SUPPORT IN AMERICA* 179 (2003).

¹⁵¹⁹ *See id.*

policy discussions, both in California and in Sweden, and how they differ is one explanation for the differences in the laws and their enforcement in practice.

7.5. Causes Relating to Income Equality Ideals and Realities

The legal differences found are related here to *economic*¹⁵²⁰ and *economic-attitudinal differences* between the jurisdictions. Sweden and California modernly are legal jurisdictions with (1) differing levels of demographic heterogeneity including different levels of economic inequality, (2) differing levels of *social solidarity*,¹⁵²¹ and (3) differing public attitudes regarding economic *fairness*, within child support administration and more broadly. The incentives therefore differ, from within the child support legal rules *and* from the overall societal context, to create laws providing that individuals should receive or pay larger or smaller child supports.

Public and lawmaker attitudes about economically poorer (and richer) individuals and families in general, and even attitudes about indebtedness from specifically child support obligations, contribute to the child support legal system differences described throughout the thesis. They contribute to California's more starkly dual-system enforcement of *private child support among the relatively wealthy* and *public child support among the mainly very poor*. They also contribute to the Swedish rules' more one-size-fits all approach. These topics are explored via several short subsections, below.

Income Level and Child Support

Published documentation of child support law performance in both these jurisdictions finds a similar phenomenon: the lowest-income families have a harder time than the higher-incomes ones in relation to the child support system, with both Californian and Swedish child support systems continuing to result in often uncollectible indebtedness for the lowest-income payors. NCP payors have become

¹⁵²⁰ Part of the economic context is that the welfare state difference *generally* between Sweden and the United States will continue to eliminate more child poverty in Sweden into the foreseeable future. See Jäntti & Danziger, *supra* note 148 (holding demographics more constant by comparing child poverty among white, non-Hispanic U.S. children with Swedish children and finding that *due to Swedish social transfers a much lower percentage of children in Sweden were poor regardless of parents' characteristics including work efforts, although market-poor percentages were similar before transfers*). Another part is the ideals and household-level economic realities that the child support laws affect directly.

¹⁵²¹ See Mannelqvist (2007), *supra* note 178, at 146 (regarding principles of Swedish social insurance legislation: "The public insurance system is general in several senses of the word. It covers the entire population on equal terms. The system is financed largely through proportional contributions and taxes, *but the provisions are the same for everyone. This can also be seen as an outcome of one important principle in social security legislation; the principle of solidarity.*") (emphasis added).

indebted after not paying child support as legally required (mainly as obliged through the public sides of the system in both jurisdictions).

CP payees and their children continue to have unmet financial needs after considering income from all sources. They can be said to receive too little in private or public child support replacement social benefits. Sweden has closed this gap and increased financial living standards for children living with only one legal parent to a much greater extent than California. It has also made child support indebtedness for NCPs less of a common and serious burden. Nonetheless some of the same relative-poverty-related issues seem to be occurring, despite of *and* as a result of the child support solutions these systems have designed and implemented. How can the differences, in the laws and in the results, be understood from an *economic class perspective*?

When California child support law accommodates and orders the continuation of *standards of living far below or above a comfortable middle-class standard* via its support laws, the difference correlates with both its liberal WSM policies and with the resulting income-diverse population served by the child support laws.

When instead Swedish laws counteract the continuation of such living-standard diversity, by both raising up what would be lower private child support transfers but also bringing down (comparatively speaking) the amounts that might otherwise be transferred in high-income situation, the laws (and how they are different from California's) reflect its social democratic WSM policies and resultingly more universally middle class society.

The differences found, in other words, between the economic child support laws and systems of these jurisdictionss must be seen “as the distillation of more durable historical choices for a specific kind of society, since economic institutions condition levels of social protection, the distribution of income, and the availability of collective goods—features of the social solidarity of a nation.”¹⁵²²

¹⁵²² Peter A. Hall & David Soskice, *An Introduction to Varieties of Capitalism*, in VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE 1 (Peter A. Hall & David Soskice eds., 2001) (proposing that “comparative political economy revolves around the conceptual frameworks used to understand institutional variation across nations” and contrasting “liberal” with “coordinated” market economies). “The core distinction we draw is between two types of political economies, liberal market economies and coordinated market economies, which constitute ideal types at the poles of a spectrum along which many nations can be arrayed.” *Id.* at 8. “[I]n liberal market economies, the adult population tends to be engaged more extensively in paid employment and levels of income inequality are high.[] In coordinated market economies, working hours tend to be shorter for more of the population and incomes more equal. With regard to the distribution of well-being, of course, these differences are important.” *Id.* at 21.

One might not expect nativism (concerns about a falling birthrate) to be a factor in the US, which the current US President has repeatedly referred to as “full” while pursuing immigration reductions, yet *in fact the birthrate is declining in the US today*.¹⁵²³

Contrastingly, in Sweden, the birth rate (1.78) is relatively high (compared to itself previously, and to other EU jurisdictions),¹⁵²⁴ and it is now *slightly higher than in the US* (which has a 1.728 lifetime live births per woman rate as of 2018).

Nativistic goals played a role in the introduction of the social democratic welfare state to Sweden, nearly a century ago, and indeed today young adults feel much less at risk if they have a newborn in Sweden, compared to in the US.

Child support laws themselves do not seem to differ with respect to one jurisdiction or the other strongly aiming to increase or decrease its population. Social support packages for children and families, on the other hand, are recognized in both countries as one way to encourage (or discourage) both the birth and the migration of children into the society.

Perhaps concern about the US birthrate’s continuing decline will soon play a role in Californian or US adoption of more welfare protections for children and families, shifting the welfare state there away from resembling the most extreme liberal WSM.

Class and Income Equality Policies Affecting Child Support Amounts in Sweden

Sweden has for decades moved away from an “unworthy poor” mentality towards a broadly-held ideal of equality and removing institutional barriers to it, which has both been caused by and contributes to the ongoing political support in Sweden for

¹⁵²³ See Brady E. Hamilton et al., *Births: Provisional Data for 2018* (U.S. National Center for Health Statistics, May 2019) (available at <https://www.cdc.gov/nchs/products/databriefs.htm>) (*reporting a 2018 US birthrate of 1.728 lifetime live births per woman, a 2% reduction from 2017*) and Claire Cain Miller, *Americans Are Having Fewer Babies. They Told Us Why*, NEW YORK TIMES, July 5, 2018, <https://www.nytimes.com/2018/07/05/upshot/americans-are-having-fewer-babies-they-told-us-why.html> (reporting reasons for and a 1.8 overall fertility rate, down due to factors like teen pregnancies and unintended pregnancies which have decreased, inter alia due to longer-acting birth control methods).

¹⁵²⁴ Sweden in 2017 had a birthrate of 1.78 *lifetime live births per woman*, compared to an EU average of 1.59. Eurostat Official EU Statistics (2019), *Total Fertility Rate 1960 – 2017* (https://ec.europa.eu/eurostat/statistics-explained/images/0/00/Total_fertility_rate%2C_1960%E2%80%932017_%28live_births_per_woman%29.png).

universal, not frequently- or highly-means-tested, social benefits and insurances.¹⁵²⁵ Because “[t]he history of most welfare states is a story of transition from *relief based on charity and discretion* to *benefits based on legislation and entitlement*,”¹⁵²⁶ it is fair to say that Sweden’s welfare state, but also to a lesser extent California’s, have more advanced poverty relief systems than they once did, even though income inequalities remain a public concern.

In the 1960s, focus shifted in Swedish family policy from *class* to *gender*: the new term *jämställdhet* “distinguished the issue of *gender inequality* from the previously completely dominant political discourse, in Sweden, around *class inequality*.”¹⁵²⁷ In other words, a commonality between these two sources of inequality was for the time being removed, such that more of a *gender-equality regardless of class* policy focus was prioritized. Class inequalities had already been lessened and policies working against them institutionalized to a great extent, such that the momentum of continued improvements in that policy area could be expected to continue without as much focus needed. In any event, the gender inequality faced by all women, but particularly the middle- to upper-class Swedish-born women’s situation at home, at work and in public life became the next priority.

Today in Sweden another shift in priority is occurring, from gender equality for men and women (now an institutionalized concern likely to maintain policy momentum) to non-heteronormative gender nondiscrimination and, perhaps to an even greater extent, to *nondiscrimination on the basis of ethnicity or birth outside of Sweden*. The Swedish agency for gender equality issues has, for example, been blended into a new agency combatting all forms of discrimination.

On the class inequality front, median incomes of all types of households in Sweden have increased since 1998, but *differences* in the median income of different types of households *have simultaneously widened somewhat*.¹⁵²⁸

In this context, the ties between all these inequalities and child support law might be expected to get more attention in Sweden, and *its laws might be expected to play a stronger role in evening out inequalities*,¹⁵²⁹ especially in more economically disadvantaged households. That is what this study has observed.

¹⁵²⁵ Compare Korpi & Palme, *supra* note 171, at 36 (finding a “Paradox of Redistribution: The more we target benefits at the poor only *and* the more concerned we are with creating equality via equal public transfers to all, the *less likely* we are to reduce poverty and inequality.”) (emphasis added).

¹⁵²⁶ Mannelqvist (2007), *supra* note 178, at 143 (emphasis added).

¹⁵²⁷ Ahlberg et al. (2008), *supra* note 272, at 82.

¹⁵²⁸ See FK Report 2016:6, *supra* note 254, at 27.

¹⁵²⁹ But see Ryrstedt (2006), *supra* note 1476, at 52 (“Of course, one purpose of the [UStöd] legislation may be to even out the differences in income between different groups in society. But that should

Previous sections of this thesis have discussed Sweden's child support laws and their effects on children coming from parents of different income levels, but in brief every eligible has an interest under the UB rules in having an optimal child support amount individualized *for him or her*, provided by both of the parents together. However, if what the parents can afford is low, UStöd will increase the child's standard. In practice, UStöd support also brings up the portion the child can expect representing the NCP's support contribution to an amount capable of providing the child with a reasonable, comfortable living standard level in *every* case, regardless of the living standard of the CP household *or* the income of the NCP. Therefore, in reality, regardless of parental income level Swedish children can expect to be supported at the UStöd amount level for their age.

The clear exception, in theory, are cases where the child should qualify for a *standardtillägg*, because the parents can afford to meet less fundamental "needs," if the child can successfully claim to have such needs. As has been discussed, income equality elements of the WSM ideals along with other factors have reduced expectations in practice for this add-on child support. On the other hand, private child support law may well begin to fulfill legislative intent for the "living standard addition." As Anna Singer has commented:¹⁵³⁰

The [Swedish] Supreme Court [in NJA 2013 p. 95]...expressed itself in a way that seems to refer to determining a child support obligation that extends beyond that [basic needs level]. Children that alternate residence should, according to the Court, have *a right to live at a level that does not excessively deviate from the standard of the most economically well-off parent*, even when the child is at home with the other parent. *The question is what that practically could mean.* If the parents have very different economic standards it is hardly possible with help of a UB to the child make it possible for the child to live at the same standard in both homes.

not be the purpose of financial support that is meant to replace a parent's liability to pay child support.") (arguing that means-testing UStöd with respect to the CP's income leaves some children, for example to higher-income CPs without a public support that properly should be seen as a contribution to *them* because both parents are liable to contribute to support, not to the CP who also has her own responsibility to contribute support to them). Ryrstedt argues that higher-income CPs already pay relatively more for their children e.g. in daycare fees, plus do not qualify for housing allowance, therefore having the sole burden of supporting a child placed on them can reduce their living standard to the equivalent of a significantly lower-income CP, but points out "that the system of social insurance is not always based on the *norm of fairness* which governs means testing, but is equally often based on the principle of *replacing loss of income* or on the political objective of *supporting families with children*." *Id* (emphasis added).

¹⁵³⁰ SINGER (2017), *supra* note 55, at 148 (emphasis added).

Of course the California Guideline demonstrates how it is actually *possible* for a child to live at the same standard, or something much nearer to it, in both homes with the help of a child support payment; it is not desirable within the WSM and Swedish society's expectations for child support law, but that is perhaps a different point.

Finally it should be noted however that Swedish income equality ideals and resulting policy focus does not bring the whole of society down to a humble economic level. *Even if* the UB law's "living standard addition" is *not* granted to a Swedish child, he or she is granted a right to adequate money being spent on a quite economically privileged lifestyle—with nutritious food, safe surroundings, good-quality housing, clothing, technology, health services, enrichment and entertainment. This living standard for all children in Sweden might be called "socio-economically appropriate" for a relatively wealthy European nation—as if the entire nation is one's family, with whom there is a right to share.

This means that even in Sweden where child support policy seeks to even out children's income-class-related differences, there is nonetheless a class-privilege component affecting the child support laws, seen in larger perspective. The laws seek to support all *Swedish* children with mobile phones and (past a certain age) with their own bedrooms—*not to even out their living standards relative to all children in the world*. They do respond to economic class inequalities *globally*, in other words, but on a *national* level. Lawmakers work to reduce or at least not to exacerbate class divides *within the society*, which helps build social solidarity. The big-family analogy is actually quite apt, and a certain similarity with California is revealed.

Class and Income Equality Policies Affecting Child Support Amounts in California

In the US, the entire population is not treated as one large family of individuals entitled to share fairly equally in the good fortune theoretically affordable to the group as a whole. Economic policies encourage every individual (or their family together) to strive to reach as economically well-off a living standard as they can for and by themselves, via market activity and private dependencies within the family.

Child support law not being guaranteed by the welfare state is explained by the WSM view of income differences. The Guideline not being designed to provide a statewide living standard *socio-economically appropriate for the whole group* for every child, makes sense from this perspective. It instead offers an appropriate share of the private family income, so that adults have to keep supporting their children similarly even if the parents separate. It instead aims to provide a socio-economically appropriate standard, in other words, for smaller groups within the larger society—groups defined from the "continuity of expenditures" model's underlying data for families at different income levels and living standards. Levels of child support in

California are matched to a specific child's parents' living standard in every case (with excessively low standards, if the family cannot afford more, to be addressed within welfare law, *outside* of child support law).

Thus if a California child lives within a certain economic class—for example he and his school peers go to summer camps, travel, and have cell phones and digital tablets, or even if they all have very expensive private school (and ponies)—the Guideline support law may be able to preserve the right to continue living in that way, if the child's parents separate. Swedish UB law probably would not allow this, assuming the parent that moves away had the large majority of the high income allowing that lifestyle. The *standardtillägg* on its face suggests that this might be possible, but in practice it is well above what amounts a child has been considered reasonably able to spend.

The California child nonetheless has a legitimate expectation to continue that prior lifestyle, if the parental incomes are ample enough, recognized by and enforceable under the law. The Guideline law operates in a way that allows the child to continue the economic lifestyle to which he or she has grown accustomed, or *even to begin a lifestyle at that level* (for example a newborn child to parents who have never lived together, if the NCP's income was very high, would receive a large enough *child support* to make all of that possible, and the child could “afford” in a sense to have her mother live with her at a similar standard). The law reflects both the relative public acceptability of elite economic living standards in California and all of the policy choices whereby the Guideline law came to serve the function of allocating the economic privilege enjoyed by a family of individuals pre-separation. *The family* here is the unit of economic policy focus, not the individual as in Sweden, in line with the welfare state ideals of both.

“Allocating the economic privilege” is only true of course *to the extent it is possible by redistributing incomes between the child's parents*.¹⁵³¹ California, in line with its WSM, does not subsidize boosting children to a level above a rather low minimum (for the society), even *with* need-based social benefits. (Nor would Sweden wish to boost, with state funds, different children to different “levels,” but for somewhat different reasons.) On the “welfare family law” side of the US child support and poor-relief benefits system, no proposal of which I am aware has ever suggested increasing *state*

¹⁵³¹ “Circumstances” and “lifestyle” discussions in the private family law refer, however hesitantly or subtly in most instances, to socio-economic class differences, in both jurisdictions. To what extent the child support laws operate, for sound and for questionable reasons, to maintain family members' economic lifestyle level during family transitions such as divorce, versus simply to keep individuals and households out of relative poverty in their broader state or national context, could profitably become a more open policy debate when these laws are reformed.

funding (through the child support system or otherwise) to assure that children who lose one parent from their two-parent residential household suffer minimal decline in their already-middle-class socio-economic situation, meaning in circumstances where the child will nevertheless remain comfortably out of poverty.¹⁵³²

Public Discourses on Economic Inequality

Reducing instead of maintaining class-based differences in access to a good living standard remains more in focus in Sweden for even “mainstream” lawmaking (not just that focused directly on poverty’s ills), despite the welfare state’s already-accomplished progress in reducing class-based differences. (One could imagine issues of the very poor would be more central to lawmaking in the jurisdiction where those problems are more severe, but that is not the case.)

Swedish policies have resulted in their being notably less extreme income differences within Sweden’s welfare state today than there are in California, but the public discourse keeps the issue in focus nonetheless. As an example of both the public debate to improve things further, and the progress already made, consider one 2019 labor-union-related publication based on SCB Swedish population statistics. It reported for example that 34% of Swedish women and 32% of Swedish men *in a worker occupation* reported *not* having taken a vacation trip of at least one week or having had access to a summer cottage or mobile home in the past 12 months (during 2018); this compared to 17% of women and 12% of men in the (higher education- and income-related) *service occupation* category. Occupations requiring less educational training were associated with less access to these common leisure-time activities, and income differences between the occupations were suggested as a likely contributor.¹⁵³³

The idea that the majority of any occupational group would have access to longer than a week of vacation each year might surprise Californians, but in Sweden this does represent relative disadvantage. The framing of how these relative advantages and disadvantages are discussed in Sweden, linking individual men and women (not households or couples) to a “class” based on occupational category and tied to each

¹⁵³² The one exception may be federal social security benefits paid to certain children whose parent has died, beyond the scope of this study.

¹⁵³³ See Mats Larsson, *Semester- och fritidsvanor för arbetare och tjänstemän Semesterresande, tillgång till fritidshus och fritidsvanor efter klass och kön år 1984–2018* 8 (Landsorganisationen i Sverige 2019) (reporting consistent, significantly lower rates of vacation-taking, sports activities, reading and more among Swedes aged 16-84 in occupations requiring less education compared to those requiring more). In total, 25% of women and 23% of men had not enjoyed these things in 2018 (but three in four Swedish adults had).

individual's ability to complete education, to earn, and to have what others in the society have is fairly typical in economic equality discourse in Sweden.

Discussion is less open and progressive in mainstream Californian public discourse. The concept of "socio-economically appropriate" anything admits to a class consciousness, a class-divide-perpetuation element in the law that many policymakers, judges and family members themselves might prefer not to acknowledge when making child support decisions. Yet child support law in California often does, as has been discussed, function to provide an important portion of *middle-class* (as well as higher and lower) *custodial households' total monthly income*, overtly to keep them from sinking into a lower income class category, and not only at the very-low-income levels.

Meanwhile Sweden's child support law discourse is more focused on covering the marginal direct-cost needs of a particular individual citizen, the child, at a living standard level he or she should share with the whole of society. This shies away from addressing the fact that for some households UB or UStöd for each child will represent an important component of household income, and in others it will not adequately cover even one half of the expenditures actually habitually made on the child, thus will burden the CP disproportionately compared to the NCP.

The *attention paid to income differences, in Californian child support law*, versus the *deliberate setting aside of income differences in, Swedish child support law*, thus is related to both the economic differences existing in these societal contexts (larger and smaller respectively), and the jurisdictions' WSM-related family policy's aims to reduce them (smaller and larger).

The importance of child support to CP households reflects these differences in focus. Per nationwide 2009 U.S. Census data, for example, US families *that received child support received an average of \$5,135 (44,634 SEK) per year, which represented 16% of those families' average annual income in 2009.*¹⁵³⁴ Other recent nationwide research has found that child support contributes an average of 40% of "poor" *custodial families receiving child support's income*, and that US child poverty would increase by 4.4% without child support.¹⁵³⁵

¹⁵³⁴ Office of Child Support Enforcement, U.S. Department of Health & Human Servs., *Child Support Fact Sheet No. 2* (2013), as reported by Venohr (2013), *supra* note 75, at 328. The numbers would make 100% of annual income just about \$32,100 [279,016 SEK]; this is median-level, not poverty-level; compare 2018 incomes reported on the next page. California child support total amounts received by CPs are comparable. See California DCSS, *Comparative Data Tables for Managing Program Performance* (Federal Fiscal Year 2017), <http://childsupport.ca.gov>. Note that the US census is taken every ten years thus this is the latest data.

¹⁵³⁵ ELAINE SORESENSEN, URBAN INST., CHILD SUPPORT PLAYS AN INCREASINGLY IMPORTANT ROLE FOR POOR CUSTODIAL FAMILIES 1 (2010). Sorensen reported further that for poor CP households in

The median annual *individual* income in Sweden and in the US does not seem to differ drastically: in 2018 it was 287,064 SEK (\$33,026) in Sweden¹⁵³⁶ compared to \$33,706 (292,976 SEK) in the United States, both as reported by the nation's official statistics agencies.¹⁵³⁷ The portion added to single parents' households from NCP child support contributions on the other hand does differ, for those households who receive it. Even though the average amounts of child-support-duty-related transfers are lower in Sweden, because of UStöd they are more universally available to children, although not to children alternating residence.

Social Solidarity and The State's Role in Providing a Good Living Standard

It goes to the heart of WSM theory to consider the two compared societies' views on the appropriate balance between the state and the family, but such discussion largely already occurred at Chapter 6.3.6 above.¹⁵³⁸ This section on economic differences (differences in incomes equality both idealistically and in reality) will simply mention again the *internal societal divisions* on these issues, especially in California, as one reason the child support laws compared differ as they do.

Social solidarity is weaker in California generally, because the public is more diverse in terms of income level, ethnic group identity, language and religion. Social solidarity also is splintered into subgroups. Individuals' (and their representative lawmakers') views often vary *within* California, with respect to what the state's role should be towards a given subgroup in society.

The American welfare state favors the welfare of the "deserving middle class" and, to an extent, the working poor, at the expense of even poorer families. It favors a role for the state in helping more middle-income groups, but opinions are more divided about the lowest-

the US, *child support* had gone from representing on average 5% of family income in 1997 to 10% in 2007; *earnings* from work also increased in importance, from 50 to 57%; while TANF [CalWORKS in California] *need-based public assistance benefits* decreased in importance, *from 21% in 1997 to only 9% in 2007. Id.* at 3. This is on average. Among custodial households who actually received some child support, in 2007 it represented on average a full 40% of their income, with earnings contributing another 43%. For the poorest families (under 50% of poverty line) in 2007, according to this research, child support represented 63% of income. *Id.* at 3–4.

¹⁵³⁶ *These Graphs Reveal How Much People Earn Where You Live in Sweden*, THE LOCAL (October 1, 2019) (available at www.thelocal.se) (citing SCB 2018 Preliminary Annual Statistics).

¹⁵³⁷ Federal Reserve Bank of St. Louis Economic Research (FRED Economic Data), *Real Median Personal Income in the United States* (2019) (for 2018, in 2018 dollars, based on U.S. Census Bureau statistics) (available at fred.stlouisfed.org/series/MEPAINUSA672N).

¹⁵³⁸ See also Elizabeth Stuart Perry, *Sambällets respektive familjens ansvar för barnen: ett internationellt perspektiv* [Societal versus familial responsibility for children: an international perspective], in *Socialförsäkringsrapport 2018:4* at 139 (published papers following FK and Fortes Research Seminar 2018: Children and Parents in Social Insurance).

income families. This is ostensibly to avoid the state disincentivizing the very poor from finding gainful employment, as Chapter 2 described. Alternatively or additionally, it may reflect racial or ethnic background divisions and lack of social solidarity between ethnic groups, with individuals concerned most with and feeling belonging primarily with other people more like themselves within the large and hectic Californian welfare state.

One way in which Californian social solidarity is splintered, thus lawmaker and public support for child support laws that help everyone in society may be lower than in Sweden, was discussed in Chapter 6.3.6 (and illustrated by Figure 3, *Six Contributors to Children's Support*). Namely, the state's limited role is supplemented or replaced, for middle- and upper-income families, by aspects of the private market, specifically the *private labor market*.

As has been discussed, Californian single parents are bearing many of the costs that are borne by the public welfare state in Sweden, including for young adult children no longer eligible for child support from their other parent living elsewhere.¹⁵³⁹ Securing legal rights to retain the types of “private social insurances” each Californian may have—through the employer of the other parent for example—is something the child support law serves to do.

Sweden's child support law does not bear the same burdens, but it is required to be sensitive to the WSM's ideals of *economic independence* for individuals, even from others in their nuclear family (and therefore definitely from their ex-spouse's employer-provided benefits—not that these exist, as discussed in Chapter 6).

Due to Swedish gender-policy-related legislative preferences Swedish parents supporting children are regulated by laws *deliberately framed not to look at their income as a household total* whenever possible. Incomes of adults were reconceptualized years ago as *individual*, they are separately and individually taxed with nothing about marital or cohabitation status (or dependent children) affecting taxes owed.

At the same time lawmakers and individuals are aware of the actual reality of households with children, where both parent earners while living together and their children *do* benefit from the economy of scale that sharing a residence and two incomes allows. Most often, in addition, one was earning more than the other (a traditional gender-linked pattern still observed in both Sweden and California). *Still*, the social democratic ideals, as previously introduced, of (SE1) freedom from private dependency and (SE2) a good living standard for *all (individuals)* values not only a

¹⁵³⁹ See, e.g., Goldfarb (2014), *supra* note 1179, at 45 (“[C]hild support orders should be more broadly available for young adults who are past the age of majority but not yet financially independent” given current demographic circumstances which have led to their single mothers, in practice, financially supporting them without legal redress from current child support laws).

living standard that does not differ too extremely from others' living standards, but also one that each adult is equally and successfully (as often as possible) able to earn him- or herself. This devalues focus on preserving pre-existing advantages for wealthier households, particularly through requiring continued private financing of another household after divorce or separation.¹⁵⁴⁰

Supported by strong social solidarity and shared social democratic WSM ideals, the Swedish child support system can be said to assure that 100% of the average-middle-class-child "needs" total gets funded by sufficient income, whether parental or state-provided. Simultaneously, the state assists both parents' new households to assure that their own adult reasonable needs are met, if necessary, and the society's members communicate attitudinally much less shame towards anyone applying for a public benefit from which they could benefit, for example housing benefit, UStöd, or paid parental leave or sick leave. There is less focus on private transfers between members of the former economic household between the two adult parents.

Public Attitudes About Debt and Child Support Debtors

One area where Swedish culture still includes a relatively strong moralistic norm is *personal indebtedness*.¹⁵⁴¹ Failure to save adequately in a pension for one's retirement and failure timely to pay all bills owing remains more against socially accepted norms in Sweden. In contrast, Californian social norms in at least recent decades have (more unfortunately than not) weakened with respect to personal indebtedness, retirement security and being behind on one's bills. Personal bankruptcy legal protection is more liberally available in the US than in Sweden, and collection, generally the responsibility of creditors to assure via private debt collection companies, is more uneven.

Especially given less welfare-state-provided security protecting them from unforeseen financial emergencies, Americans have come to more commonly and

¹⁵⁴⁰ See Ahlberg et al. (2008), *supra* note 272 (examining these ideals against evidence of to what extent they are realized in practice, finding a significant gap remaining between the ideal and reality). See also Oláh et al. (2002), *supra* note 211, at 29 (discussing social democratic and conservative political parties' ideals regarding gender roles and models of the ideal family as also affecting what private and public supports to children are encouraged in lawmaking).

¹⁵⁴¹ ANN-SOFIE HENRIKSON, ÖVERSKULDSATT OCH SKYLDIG: EN RÄTTSVETENSKAPLIG ANALYS AV KONSUMENTSKYDDET MOT ÖVERSKULDSÄTTNING [DEEP IN DEBT AND LIABLE TO PAY: A LEGAL ANALYSIS OF SWEDEN'S CONSUMER PROTECTIONS AGAINST PERSONAL OVER-INDEBTEDNESS] 91 (2016) ("Unlike the US, the European countries have emphasized the moral aspects of the conditions in order to be considered for debt relief. In Europe, overindebtedness has been considered as a social problem, while in America it was seen as a credit market failure. American philosophy can be described as a 'fresh start.'").

less shamefully seek and receive borrowed money, from the private market, and also federal bankruptcy protection (among both individuals and corporations) when this results in an overindebted situation.

In contrast, in Sweden, the welfare state has protected societymembers from relatively “necessary” (in the US) loans, like loans required to pay for needed medical care not covered by insurance. In Sweden, having a negative “mark” on one’s record with the state collection agency for a bill not paid is not normalized or understandable to the same degree.

Child support debts do not follow this same pattern however. As scholars have noted repeatedly, the family is especially important to individuals’ financial well-being in the US precisely because of a minimal safety net of social benefits, which public attitudes in the US work against strengthening:

An historic distrust of theories of social solidarity and an emphasis on rugged individualism and on family autonomy have blocked development of robust welfare policies and income supports.¹⁵⁴²

Thus, in the US, *child support debts represent abandoning one’s children to potentially a very dangerous economic situation*. Culturally, they are distinguishable from consumer debts in that they are one of the most unacceptable debts to have and not to pay. Therefore legally they are one of the most difficult types to avoid paying, as was introduced in Chapter 4.4 and compared in Chapter 6.5.1 (on the arrearage problems).

In Sweden, in contrast, child support debts are one of the most common debts registered with the state debt collection agency and are somewhat prioritized, but when a Swedish NCP does not pay child support as agreed or ordered, the child has already received UStöd insuring his or her economic safety, relative to a child in California. Perhaps therefore the family law and public discourse is more likely to consider the situation from the payors’ perspective, to view nonpayment as likely arising from an inability to pay with structural causes, and to proceed accordingly. Political rhetoric, instead of condemning the personal failures of such parents to provide for their children as a sign of societal decay, is more likely to discuss what help the debtors can be offered.

¹⁵⁴² Barbara Bennett Woodhouse, “*State Orphans*” in *the United States: A Failure of Intergenerational Solidarity*, Emory Legal Studies Research Paper No. 12-202 (Mar. 2012) at 2 (available at SSRN: <https://ssrn.com/abstract=2030244> or <http://dx.doi.org/10.2139/ssrn.2030244>) (citing MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH: A THEORY OF DEPENDENCY* 7–12 (2004) and her own earlier publication Barbara Bennett Woodhouse, *A World Fit for Children is a World Fit for Everyone: Ecogenerism, Feminism, and Vulnerability*, 46 HOUSTON LAW REVIEW 817, 853-855 (2009)).

Changing Attitudes?

As one California family-law researcher said to me during preparation of this comparison, certain California voters and legislators may see children not as fellow individual citizens in an economically inactive period of their lives but as *expensive, optional bobbies, a consumer choice* for whom *the parents* should be fully responsible. They thus hesitate to extend state support to children. In the US, there is reluctance to subsidize “[o]ther people’s children, other races’ children, other classes’ children—treated, increasingly, as their parents’ expensive hobbies.”¹⁵⁴³ The us-versus-them, or, more generously, me-for-me-and-mine mentality among many in the United States, perhaps rational and perhaps not in the US context, may largely explain the distance between the child support and welfare policies of California and Sweden.

Additional California/US beliefs of a more class-based nature, namely that poor fathers want to “shirk[] their responsibility” for supporting their children, have hampered attempts by researchers to inform legislators about the evidence they have found, that *even very-low-income US fathers actually do want to support their children, financially and emotionally*.¹⁵⁴⁴ They have been trying to do so despite the arduous arrearages collection rules and administration in practice, as reported by the Urban Institute in August 2019.¹⁵⁴⁵ Child support collection laws that support low-income parents with this view can thus be expected to achieve similar positive results as those from the pilot study.¹⁵⁴⁶

¹⁵⁴³ Jane Maslow Cohen, *Competitive and Cooperative Dependencies: The Case for Children*, 81 VIRGINIA LAW REVIEW 2217, 2218 (1995) (concluding that “[t]he status of childhood dependency has suffered a woeful demotion in the dependency-based competitions of our time” and comparing U.S. federal and state governments’ expenditures on children with their relatively large expenditures on the elderly, the disabled, and the incarcerated). Compare Fineman, *supra* note 201.

¹⁵⁴⁴ Heather Hahn, et al., *Relief from Government-Owed Child Support Debt and Its Effects on Parents and Children: Evaluation of the San Francisco Child Support Debt Relief Pilot* xi (August 28, 2019) (Urban Institute, Center on Labor, Human Services, & Population) (available at <https://www.urban.org/research/publication/relief-government-owed-child-support-debt-and-its-effects-parents-and-children>) (“The pervasive narrative of parents ‘shirking responsibility’ may lead some to reject the idea of forgiving government-owed child support debt, but this pilot adds evidence that these stereotypes are false and racist. In fact, punitive policies contribute to the debt in the first place.”) (internal citations omitted).

¹⁵⁴⁵ *Id.* (“In contrast to pervasive negative stereotypes, many fathers from the focus groups wanted to be and were actively and positively engaged in their children’s lives, providing both financial and emotional support.”).

¹⁵⁴⁶ *Id.* at vi.

[R]esults are clear. When parents' public assistance debt is paid off, so 100 percent of their child support payments goes to their children, parents make more consistent and timely payments, children receive more financial support, parents' employment barriers are reduced, and parents' housing status and credit scores often improve.

As a result of mounting evidence such as this, there may be a legislative attitudinal shift occurring in California. As the California Senate Bill 337's sponsoring state senator Nancy Skinner expressed it, "Just as California now realizes that 'tough-on-crime' laws of the 1990s were a bad mistake and had unintended consequences, it's also time for the state to acknowledge that so-called 'welfare reform' laws were similarly misguided."¹⁵⁴⁷

The new legislation she refers to, passed in California in 2019, implements will result in significantly more child support paid in the future going to the CP for the child, instead of to state reimbursement for welfare. The state will, in other words, negatively (as in the tax system) economically benefit some of the state's lowest-income households with children. Children with CPs earning close to the limit for CalWORKS qualification—still close to the poverty line—will be able to receive \$200 (1,738 SEK) per month in child support that will not be counted towards their income for CalWORKS purposes. The new provisions mean California's child support system will no longer as severely prevent children from qualifying for the welfare benefits that, combined with child support and their CP's income from work, could raise their living standards impactfully.

This represents a move away from liberal WSM ideals, pursuant to which refusing as many low-income earners the right to "resort to" (or benefit from) cash welfare supports actually encourages their drive to work harder to achieve their own financial independence. Such attitudes are internalized even by the low-income families in need of assistance themselves, leading many CPs to decline to apply for benefits even if they qualify—which puts their child at more financial risk.

California's new child support enforcement policy is still justified by liberal WSM-appropriate expressions of motivating fathers to pay more support to their children, but will now have a softer (less extremely liberal) actual content.

It may be that attitudes are changing slightly in the *other direction* in Sweden (thus they are both regressing to the mean). Policymakers in Sweden, as has been mentioned, also are seeking to reduce the use of need-based benefits by lone parent households, but in Sweden the understanding behind the words includes a desire to

¹⁵⁴⁷ *Senator Nancy Skinner Announces the "Child Support Reform Act"*, EAST COUNTY TODAY, Apr. 9, 2019 (available at <https://eastcountytoday.net/senator-nancy-skinner-announces-the-child-support-reform-act/>).

increase state monies paid to the households, just not as need-based aid (a much more social democratic ideal than California would adopt, even after the new reforms).¹⁵⁴⁸

Even child support legal changes being investigated, however, such as adding means testing to UStöd, are more properly viewed as concerned with bringing the UB and UStöd systems closer together, although avoiding overcompensating high-income CPs also fits with Sweden's WSM (and equality policies). Small course corrections in child support law development, in both countries, represent an avoidance of going too far in pursuit of each jurisdiction's WSM, more than they represent any fundamental shift in the respective models followed.

Existing Income Inequality Within the Family Contributing to Child Support Differences

“Ultimately, all that child support rules can do is move around a finite amount of parental income in order to satisfy certain objectives. Child support cannot provide adequacy when funds are insufficient.”¹⁵⁴⁹ What can provide sufficiency, and less economic relative disadvantage for single parent households, is *higher incomes in single-parent households*. Three possible sources of income are implicated in child support regulation.

First, higher child support levels paid by parents with less parenting responsibility. Of course, this is not a novel idea, but in some cases can be a good one, in balance with all other considerations discussed throughout this thesis. In this category fits efforts to increase NCP's income-earning abilities, not simply to take more money for the NCP's nonresident children from his current household.

¹⁵⁴⁸ See Courtney E. Martin, *Child Support vs. Deadbeat States*, NEW YORK TIMES, Sept. 10, 2019, <https://www.nytimes.com/2019/09/10/opinion/child-support-states.html> (“On Tuesday, the California Legislature passed two bills—SB [Senate Bill] 337, which would mandate that \$100 [869 SEK] pass through for one child and \$200 [1,738 SEK] for two—and Assembly Bill 1092, which would eliminate the onerous interest rate on child support debt.”). If these bills become law, 100% to 300% more monthly child support will “pass through” from California NCP to CP households beginning in 2022, without affecting CPs’ public benefit eligibility; the 10% interest rate on arrearages will be reduced to 0%; and CPs seeking child support orders in private cases will no longer be required to disclose if they *intend* to apply for need-based public supports, only if they are actively, currently applying. See AB 1092, *An act to amend Sections 4004 and 17500 of the Family Code, relating to child support* (introduced February 21, 2019) (available at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1092) and SB 337, *An act to amend Section 17500 of, and to amend, repeal, and add Section 17504 of, the Family Code, relating to child support* (introduced February 19, 2019) (available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB337&search_keywords=child+support).

¹⁵⁴⁹ Blumberg (1999), *supra* note 308, at 95 (summarizing the ALI model-law formula for setting child support and recognizing the limits of what US child support guideline laws can achieve for child welfare and justice generally, limited as they are to redistributing private parental income).

Second, higher public benefit levels targeted to support children either living in one-earner homes, in one legal parent homes, or in homes demonstrating financial need, is another idea, also already under discussion.

Third, however, with more of a view towards the future of this same social problem, attention directed to setting goals for increasing market income in single-parent households. In this category fit state efforts pursuing more equality of *ability to earn* (state-subsidized childcare provision but also encouraging *private responsibility for contributing to caring for one's children* in parents not doing their “fair share” of the care work already). Sweden overtly has these policies, but could pursue them more clearly in the child support context.

External incentives but also *internal* motivation for single parents (mothers) to earn—and for single parents (fathers) to help share the care of dependent children while the other is at work, via more equal parenting from birth—can be built, through policy efforts. They even can arise in society without state policy support, as is seen in the United States where the *culture* is developing towards more equal earning and caring, in the absence of state supports making such parental behavior workable for many.

Centrally, today, however, the child support laws do largely accept and even reward ongoing parental role specialization, with higher economic responsibility for those who earn more (but not higher caregiving expectations) and with higher payments to those who earn less (while justifying this because those parents also are doing a disproportionate amount of unpaid caregiving).

The economic realities in the two jurisdictions, where lawmakers have responsibilities to try to alleviate existing financial inequalities among the lowest-income households in the short term, seems to impact the freedom and the creativity of lawmakers who might otherwise address the social problem with a wider perspective.

A summary of the main findings, analysis of the current functions of the child support laws in Sweden and California, and finally brief discussion of several implications of the study's findings for the future of child support and family law are presented next, in the concluding chapter.

8. Conclusions, Implications and Future Directions

This final chapter broadly compares the child support laws and systems in Sweden and California today with an eye towards their future trajectories. It discusses the study's central findings and their implications for the possible futures of these laws, largely in overview but also via brief comments on reform possibilities that the findings indicate might serve each system's legal and ideological aims.¹⁵⁵⁰

8.1. Conclusions Regarding Why the Laws Differ

The previous chapter's purpose was to discuss several factors this study finds have contributed to the ways in which Swedish and Californian child support laws differ today. I have proposed factors including the laws' different *histories* as they developed alongside their jurisdictions' diverging welfare state models and packages of social supports for children and adults.

The second category of causative factors I categorized as differing legal principles and traditions, with focus on the *procedural* differences—the conflict resolution ideals and structures explaining where (and with how much state oversight) child support legal application occurs.

Third and fourth factors contributing to the differences in the laws caused differences more in the *substantive* child support rules. *Societal ideals* and (not unrelatedly) policies on *gender and income equality* explain the more-or-less traditional-role-promoting and the more-or-less income-differentiating rules assigning child support amounts to be paid between co-parents for their children's needs. They also help to explain the differences today between California's more-class-based dual system for child support, and Sweden's dual system within which the universalized public child support guarantee is claimed by and repaid by parents from all segments of society.

Critical Discussion

Social hierarchies have existed during the history of child support legal development in the two studied jurisdictions and up to the present time. Those of less power according to these hierarchies have been in a relative one-down position. Children, women, carers, the poor, non-partnered adults, and those less expert at various tasks

¹⁵⁵⁰ Forthcoming publications for Sweden and California separately will offer more concrete analysis.

or roles have been and to varying extents are subject to discrimination, as academic literature in various disciplines has repeatedly found. The fact that Sweden and California have basic orientations against discrimination and towards increasing equality for society members makes the comparison of their regulations of family conflicts and private resource distribution to children particularly interesting. How these systems define the problems of inequality, and what the state in each has been tasked to do about it, has had profound impact on the laws of child support.

On Earning and Caring, Looking Forward

The last-mentioned trait, being novice relative to others, is the category I apply in this thesis to fathers as a group, here in the context of their interactions with the family law and specifically child support law. As a group, men and therefore fathers have not had, particularly in California compared to Sweden, *as much* socialization, respect and support for their *caregiving* roles compared to mothers as a group, while women and therefore mothers as a group have had relatively less socialization, respect and support for their *earning* roles.

Both of these inequalities are easily observable in the social problem described at Chapter 1.2, and also in the child support laws enacted to respond to it, in both jurisdictions. While some of the other inequalities (like women's lack of legal equality under the law and economic power in the family) have long been countered by family support law and other expressions of societal willingness to act, in both jurisdictions, after completing this research I am left with deep doubt that *fathers' inherent abilities to be as decent parents as mothers to their children—and mothers' to be as decent providers as fathers to their children—* have reached the level of generally-accepted truth, even among the highly educated society members writing and researching on law and social policy, and I propose we have a more frank and open discussion about that.

Others can argue that reasonable observers may have different views on the subject, but in exercising the critical perspective I promised to bring to these laws and their context I am not convinced that enough recent research evidence to justify the state power exercised in enforcing these laws has been brought to bear on *why we have these laws today*. In theory, legal responses to the existing social problem and the existing support needs of children could not only mend the end result but lessen the problem altogether. Public monies might not be needed to guarantee disproportionately single mother households with near to 100% care of their children in the future, or to chase fathers who have been motivated for various reasons to walk away from or do less than the mother of their mutual child does day to day for that child. Using current parental behavior to justify regulations that

perpetuate that behavior must be questioned, first here in the intellectual debate and then in lawmaking contexts.¹⁵⁵¹

Existing law, lawmakers and the legal community have played their part in perpetuating the social hierarchies most closely involved with the rules regulating child support systems. Remnants of older rules assuming (or contributing to) inequalities between people based particularly on their genders and income levels remain within today's law. They appear in the law's application in practice, but despite legal experts close to the problems raising important objections, political will has not been sufficient to create major child support legislative reform. In both jurisdictions there is a sense that child support law is not directly relevant to child welfare. I wonder if we have asked a sufficiently broad child welfare question.

In my view, *while financial resources during childhood are properly in focus in the child support regulations analyzed for this study, socialization during childhood plays an obvious role too.* Meaning, perhaps the laws' regrettably gendered context needs to be more overtly addressed, and more questions asked about why, for so many children with separately-living parents, their fathers are not caring for them more and their single mothers are not earning as much as their single fathers, and what effects these rules have on those realities, or could have in the future.

On the Barriers to Child Support Reform

"[T]hose who stand to gain from a reform may not work as hard for its adoption as those who stand to lose from it will work for its defeat" was one child supporter researcher's conclusion as to why one US child support reform proposal backed by all experts in the subject and by the public at large was nonetheless blocked by a US state legislature in 2011.¹⁵⁵²

Legal scholars have previously observed that *those established in positions of legal and social power tend to seek to retain power*, making law's attempts to balance fairly all interests involved in regulation of a social issue all the more difficult.¹⁵⁵³

The results of this comparative study offer one example tending to prove that *legal regulations of relationships do not always (actually) seek to achieve a balance of power between*

¹⁵⁵¹ The achievements Sweden already has made in this direction and yet how they seem to have stalled in the child support legal area, compared to the almost complete absence of a pro-gender-equal-parenting discussion in California child support, motivate me to reach these conclusions.

¹⁵⁵² Ellman (2012), *supra* note 837, at 138 (2012) (reporting on Arizona's child support reform experience from 2008–2011) (emphasis added).

¹⁵⁵³ See, e.g., Anna Christensen, *Skydd för etablerad position—ett normativt grundmönster* [Protection for established position—a normative basic pattern], 4 TIDSSKRIFT FOR RETTSVITENSKAP 519, 529 (1996).

co-equal interests. The laws may seek, overtly or more covertly, to maintain an asymmetrical relationship, to the benefit of a party or position that previously has been established as favored, and not to equalize the positions *de facto*.¹⁵⁵⁴

This bias in favor of relatively powerful interests is instantly recognizable in a family-law context from the law's traditional conceptualization of children more as objects of the law, subjected by family and other law to their parents' power (and responsibility) to decide many aspects of their lives,¹⁵⁵⁵ an orientation towards their relative social power more frequently questioned today.¹⁵⁵⁶

The same bias favoring the (currently) more powerful exists also in the child support laws regulating financial resources between men and women to benefit their children, and in their Swedish and Californian societal contexts more generally. The *extent* of the remaining biases in the child support law, and of the remaining unjust results in practice of the legal rules, however, seems to be diminishing over time, and more rapidly in the context (Sweden) where active elimination of power imbalances in the family is an overt family policy aim.

Thus the answer to the question of *why these laws differ as they do* can be found in the different WSM-related family policy efforts that have been made, especially in the last 50–80 years, in their respective legal jurisdictions.

8.2. Conclusions Regarding the Functions Served

Specific societal goals that child support laws in California and Sweden intend to achieve, thus their shared *functions* in broad terms, were defined for comparative methodological purposes.¹⁵⁵⁷ Both jurisdictions' laws serve the function of (1) *avoiding child disadvantage* (both objectively and relatively) for children with separately-living parents. They do this while also (2) *ensuring fair contribution and division of responsibility* between private and public child-support duty holders (between the two parents and between the parents and the state).

Function (1), namely the child support law's functioning *to avoid child disadvantage due to parental separation*, includes how the law helps children with separately-living

¹⁵⁵⁴ See *id.*

¹⁵⁵⁵ See, e.g., SINGER (2017), *supra* note 55, at 21–24.

¹⁵⁵⁶ Children's rights advances are not, however, easily observed in child support law. See Elizabeth Stuart Perry, *A Voice, But To Speak To Whom?—Modern Family Law Conceptions of Children and Their Support Rights in Sweden and California* (FamLaPP: Family Law, Practices and Policies second annual conference paper) (forthcoming, December 2019).

¹⁵⁵⁷ These were therefore first set forth, in summary form, *supra* Chapter 2.1.2.2 (comparative method).

parents avoid facing poverty and other disadvantage. The three main disadvantages to children that I find the law seeks to avoid are (A) relative poverty; (B) harm from living at a living standard below that which their parents can afford and likely would have provided if living together; and also (C) non-financial harms such as losing contact with and care provided by a parent or experiencing excessive parental conflict. These findings are based in observations of lawmakers' stated concerns and intents¹⁵⁵⁸ and in the legal provisions themselves, in both jurisdictions.

Function (2), the child support law's functioning *to ensure "fair" parental contributions and desired levels of state responsibility*, includes the ways in which the law ensures that parents fulfill their legal child support duties. Function (2) ensures that the law achieves function (1)'s financial and non-financial aims *in a manner* that (A) allocates the cost to *parents first, before the state*; (B) avoids undue relative burden on either parent's or the state's resources even when such burdens would be affordable to the burdened; and (C) avoids impoverishing parents or their other household family members.

Implicit in these "financially help children do well" and "fairly distribute the costs of helping children" functions for children with separated parents is a public-law function (and legal obligation). More expressly stated in international legal sources between states such as the UN CRC but also found in more local law, each jurisdiction has legal responsibility to coordinate the duties of parents and of states with respect to the financial support of children. Californian and Swedish legal jurisdictions both currently coordinate the private duties of parents and the public duties of the state to support children with separated parents via the dual public law-private law child support systems studied comparatively for this research project, each of which I submit can be more deeply understood and even potentially improved via the example of the other.

There are gender and economic class components to both functions of child support law, yet both functions also are broader. In a theoretical future society lacking today's systemic gender inequalities, for example, some of these child support law functions would still be serviceable, although not to the same extent.¹⁵⁵⁹

If children to separated parents in the vast majority of cases were cared for equally by their male and female parents *and* those parents generally earned similar equal incomes, for example—remaining variation not differing by gender—the need for

¹⁵⁵⁸ Chapter 5.3, *supra*, presented these.

¹⁵⁵⁹ Chapter 5.2, *supra*, described the interests balanced by child support regulations in more detail, while Chapters 6 and 7, *supra*, reported on the extent of and some reasons for the differences.

these laws *at the systems level* would have passed into history.¹⁵⁶⁰ Still, in individual cases lawmakers might continue to find it advisable that the child support laws redistribute some of parents' income to their children in accordance with parents' relative incomes and parenting time differences. This is predicted from each jurisdiction's laws and lawmaking discussions regarding *the proper role of child support in today's cases of equally shared care*.

Both jurisdictions' laws make child support nonexistent, or virtually so, where two parents with equal care have the same income considered available for child support. This is understandable in light of the support duty's tie to legal (most often biological) parenthood in both jurisdictions.¹⁵⁶¹ Both jurisdictions' laws also provide for child support to be available in instances of equal care yet different incomes, California's with a prescribed continuous adjustment of child support in relation to time in each household and Sweden's on a more discretionary basis, much more difficult to enforce (arguably even unavailable from a court except in exceptional circumstances).

In both systems some lawmakers and theorists have discussed the desirability of child support in alternating residence situations with respect to the functions I have labeled (1)(B) and (2)(B) above (child's access to shared living standard and lower-income parent's not being disproportionately burdened). They have also provided for child support in these situations where one parent is particularly low-income, from a (1)(A) perspective (avoiding relative poverty for the child, even if the low-income parent and the higher-income one both share in caring for the child and thus the child is "at risk" of living in poverty only one half of the time). Interestingly,

¹⁵⁶⁰ Here only the existing gender inequalities, financial and nonfinancial, are considered, although more thorough consideration of economic-class-based differences suggested within the materials analyzed would be desirable. There seems to be a less rapid trend towards shared care among parents with lower education levels and incomes, for example. On the other hand poorer fathers' care for their children, including through informal economic support, seems often to have been underestimated or misunderstood in pursuit of child support cost recovery goals, to some extent in both jurisdictions yet as is well-documented over time in California and the US.

¹⁵⁶¹ *Why* the duty has come to be imposed only on legal parents is another question periodically worth revisiting. Both of these jurisdictions modernly (as a main rule) do not impose child support responsibility on single parents' adult household partners, whether or not they have married. This is no inevitable similarity. Laws could consider a totality of the financial circumstances in the child's two households. Shared socially liberal cultural values and family law developments led to this similarity, including some concerns for the "remarriageability" of single parents if their children also become (formally in law) the responsibility of new partners. As economic self-sufficiency increases for especially single mothers new justifications may be needed, or the rule changed (to prevent overcompensation in repartnered two-adult homes relative to child support payors' homes, if a payor is not also repartnered with a second earner, for example).

however, Swedish statutory law only seems to allow child support duty—private or public—to be imposed on an unwilling parent (by law) in dual-residence situations to fulfill that third function, saving the child from a poverty-level living standard in the other parent's home, *although* the other two functions are recognized and child support administrators encourage parents to consider agreeing privately to some transfer between them in similar, but less severe, situations.¹⁵⁶²

Gender equality rendering child support laws less necessary theoretically could be achieved in any of several ways. One way is the further development of the *dual-carer-dual-earner model* for the family, already universalized and recognized in law pursuant to Sweden's WSM but also on the rise in California. It is argued simultaneously to solve many power inequalities in public and private spheres that are considered problematic under both WSMs. California's existing welfare state and child support laws demonstrate that there is some similar desire in California to develop towards gender equality by means of this universal-employment-based model, but more weakly, which might seem confusing given the liberal welfare state's prioritization of strong economic growth—something promoted by universal adult employment productivity. Alternatively viewed, California is found to be relatively hampered in putting its shared desire to promote gender equality, at least as to women's employment equality, into action *via enactments of public and private law*, because of the relatively modest role the state has under its present WSM. If market and other forces in California do bring about gender equality at work and home, instead of a strong welfare state, child support law still will be affected as described.

Finding these kinds of differences in how the *same child support law functions* are (more or less successfully) fulfilled by the laws as written and executed in the two jurisdictions led to another quite central study finding. This was the rather surprising discovery that their *distinct legal system cultures with respect to conflict resolution* are an important factor causing several main differences, almost wholly aside from the WSM-related differences explaining the large majority of the main differences found and sometimes in conflict with WSM-related aims.

Thus *two* main factors ultimately emerged as key explanations for Swedish and Californian child support system differences in how they have designed and put into practice child support laws serving largely the same two categories of functions in society.

First, the *WSM ideals* of each society (and their consequences, meaning the welfare states in place today) are a key explanation, and it seems fair to call them *the* key explanation. Ideals regarding how large and what type of a role the state should

¹⁵⁶² *Supra* Chapter 7.3 this was related to the prioritization of conflict resolution by contract in Sweden.

play in ensuring well-being for children (and parents) relative to the private family—and concerns for the consequences of child support policy in light of the jurisdiction's ideals—are interwoven into most aspects of the legal provisions and the tenor of their enforcement. Truly similar legal wording or concepts can be very differently amplified (or dampened) based on WSM ideals and related assumptions.

Second, however, a set of *private-law conflict resolution ideals* regarding (again) the proper role of the state, but in conflict resolution between private parties rather than in welfare, also lead directly to some of the important differences found, even in ways seemingly contrary to the WSM ideals.

Specifically a *strong aversion* in Sweden for the state, whether via courts or agencies, to have *too large a presence* in private law dispute resolutions contrasts markedly with a Californian *ideal of access to justice* through opportunity to be heard and to present one's *individual* case, particularly and ultimately in courts. In practical terms child support for all California children ideally is settled via parental agreement, not via conflict and more expensive litigation, given functions (1)(C) and (2)(C)—to prevent child disadvantage stemming from parental conflict or any costs that might impoverish the children supported or other children living with either of the parents. But this ideal amicable and efficient agreement is to be reached *under state supervision of the issue's resolution*, in the form of at least the detailed mandatory child support formula and with court (or agency and court) help if agreement cannot be reached. After parents discuss underlying income information and appropriate “add on” children's needs (much as they ideally would in Sweden), Californian parental agreements are then entered as enforceable court orders, ideally following court review of the parents' agreement to ensure that legislative intents for the child's welfare properly have been followed.

The desire in California to assure that children do not become dependent on state funds (a liberal *WSM-related desire*, present in a weaker form in Sweden) does not fully explain these standard, state-involvement-intensive child support procedures. The *dispute resolution ideals* in California better explain the broader access to child support resolutions in state courts in that jurisdiction. The *state is considered to be protecting children and parents appropriately from private family power imbalances* in the form of unfair and inadequate child support amounts, in other words failures to use child support law to redistribute money to the child in ways fulfilling the two functions of child support law. Injustice and poor outcomes (for all but the more powerful member(s) of the family) would result from the state's *withholding* its conflict-resolution assistance.

Swedish WSM ideals lead lawmakers there to make *quite nearly the same argument in support of regulating the independent welfare of each member of the private family with social benefit, tax policy and other protections*. These are all considered within the proper purview of

the Swedish welfare state. And yet Swedish *dispute resolution ideals* cause its state to step aside and let the private dynamics of the family primarily control child support outcomes (at the *individual child* level). Alternately the conflicts or difficulties achieving a good protection for the child largely can be avoided by reliance on a substitute, the UStöd child support public guarantee.

It was found that Swedish NCPs can in practice choose to pay only the UStöd amount directly to make it highly unlikely that their child will successfully secure a higher support, even if higher support would be appropriate—and FK agency staff, prioritizing private resolutions over individual justice concerns (unwittingly but in line with the legal system's ideals) have reportedly sometimes advised NCPs of this, despite lawmakers having recently and specifically tasked them with *reducing* the normalization of the UStöd amount.

On the other hand Swedish CPs can claim the UStöd benefit for their child, to receive at least the UStöd amount, rather easily by design (given Sweden's WSM-related prioritization of making universalized and semi-universalized state welfare supports like UStöd fairly easy for children's caregivers to access). CPs appear to be able to do this even if the UStöd amount might be excessive in light of the parents' relative economic circumstances. Neither CP nor NCP has relatively easy redress in Swedish courts to defend the child's rights and interests, or their own. While costs to those who can afford court may be affordable in comparison to costs in California, they are not reasonable in relation to the relatively low child support amounts potentially securable. Also in line with the dispute resolution ideals, child support administrators tend to mention the legal court remedy's availability but not to *emphasize* to parents their statutory rights to proceed to court, as may occur in the Californian system, where court cost "fee waivers" reduce economic difficulties with bringing child support needs to the private-law court.

California's situation is not free from ideological conflicts either: broad access to courts and state-decided appropriate child support amounts, in other words those *conflict resolution ideals*, coexist with liberal market *WSM ideals* that leave lower-income litigants much less able to access such court-based justice, and more likely to be discriminated against by the public child support processes. WSM ideals *also* generally deny economically weaker private family members the kinds of *group-level* state supports that could better ensure their equal power within their private families (and in society at large), based on a belief that freedom *from* such state involvement in the family and individuals' welfare is preferable, even if resulting outcomes are less than ideal. The different concepts of rights, as individual or group oriented, and of how best to preserve them clearly has influence, altering the results one would expect simply from reading the laws or learning the WSM ideals.

These Child Support Laws' Anticipated Future Functions

*Child support law thus will likely continue to be appropriate—even in the increasingly (gender-) equal future towards which findings indicate each jurisdiction is developing.*¹⁵⁶³ Both societies' (majority) public and family law system attitudes; welfare state components (although more limited in California); and child support laws *evidence desire to move towards more gender equality for parents*. This is truer regarding women becoming equal at work and less true for the newer cultural interest (California) or aim (Sweden) regarding men becoming equal at home, but the direction of change is the same on both counts, in both societies. They also both express needs for child support to be owed in some circumstances that would still exist, even if the gendered aspect of the social problem did not.

The above-mentioned circumstance of equal care yet unequal income is one such circumstance. An enforceable right to support in that circumstance is solid under California Guideline law (public and private). UStöd is not available in that circumstance, although other public supports are to assure that the standard in the lower-income-parent's home is not compromising the child's right to a reasonable economic standard. UB child support under those facts is, in contrast, available, but in a highly limited way again focused on the standardized living standard below which no child should need to live.

Absent the gendered aspect, then, both set of laws as they are formulated today also would still apply in cases where one parent cannot or will not care as much as the other for a child, for example, or one happens to earn significantly less income during a given period. Both of those scenarios could occur despite income and parenting equality between the sexes (and all genders). *Child support law would however be an even more marginal topic from a child welfare/child relative disadvantage perspective than it is today, in such a future, because it would be applicable in fewer cases and often for lesser amounts.*

This is the direction existing law is headed, in both jurisdictions. Sweden's laws and child support system as administered in practice appear to have gone more in that direction already. Part of the difference seems attributable to Swedish society having achieved more *de facto* gender and class equality relative to California, even independent of redistributive welfare state supports. In both jurisdictions mothers and fathers both working outside the home is now the norm. In Sweden that labor market aspect but also the behaviors of men and women caring for children *within* the home have shifted more notably, affecting custody and child support decisions in cases where parents separate. In other words there are smaller gender-linked

¹⁵⁶³ Implications for child support law and policy of *growing wealth inequalities generally* and *gender-equality attitude diversity in the context of national origin and religious practice diversities* in each society are not addressed in this study, but future research into those topics could make an important contribution.

financial inequalities between female and male parents in Sweden, so there are fewer needing to be addressed by Sweden's child support law.

This difference in societal need has no doubt been *shaped by* Sweden's social democratic welfare state in action, for example by universal daycare and parental leave availability having already assisted women and men in establishing more equal careers and home responsibilities. It is however now a societal difference *apart from* the current financial redistributions to single-mother households. It is less need for child support due to greater equality having arrived.

Another part of the lessened need for child support in Sweden relative to California is attributable to *current financial redistribution* helping single mothers (thus their children) directly month to month, without separately ameliorating the gender inequalities that lead them to need that help disproportionately. In result, the state's investments in single mother households mean concretely and immediately that children growing up in such households are more similar in income level to those in households financed by single men (and, of course, to those in households financed by two adults). Children suffer less economic disadvantage in that sense. It is less need for (and the demand on fathers for) child support due to state correction of the labor market's results when adults specialize along gender lines and then separate, taking their stronger speciality with them—the very same historic social problem addressed by early child support law.

Both kinds of difference reduce the severity of children's needs in Sweden for the monthly private child support that each jurisdiction's laws create rights to and enforce. The two elements—*more gender-equal parenting* and *more state subsidizing of single-mother households*—also do the same in California, but both for a smaller segment of the population. There are (somewhat) fewer equal shared care and earning parent pairs, but even more notably there is a smaller percentage of single mother households qualifying for state supports, and they receive lower amounts (both because of strong WSM-related means testing and other limitations placed under California law on state supports to children's families).

Both of the two elements reduce child support's importance while to some extent (almost completely in Sweden) protecting children's financial welfare. *The fair distribution of child support costs between parents and taxpayers function (and between the two parents) is compromised, however, by the second difference.*

8.3. Two Differences Most Prominently Affecting Swedish Law

This comparison has analyzed a number of important differences (and similarities) between the child support laws of California and Sweden in light of the research

questions and comparative child support factors considered.¹⁵⁶⁴ This section highlights two central differences analyzed from a welfare state and critical perspective throughout the thesis, with focus on Sweden.

Access to Share in Parental Living Standard

Although both the Swedish and Californian child support systems can be described as having one function of “avoiding child disadvantage” via providing children with legal access to sharing the living standard available to their parents, it can be argued that the two systems actually aim to do categorically different things under this same textual umbrella, and therefore that they really are not serving that same function at all.

This argument is mainly defensible by considering the Swedish public system’s benefit, which is paid as a guaranteed minimum support amount (representing about half of the money needed by a Swedish child each month, or in theory the absent parent’s one half) to *any* child with separately-living parents, whether or not the payor parent has any ability to pay. It functions to ensure that *every* child living with only one of his or her two legal parents *receives an adequately-high (not token-amount) monthly child support*, one that the absent parent ideally would pay (and would be able to pay) voluntarily, timely and in full, but does not pay, regardless of the CP’s income level which is assumed also to be contributing to the child’s support.¹⁵⁶⁵ UStöd does little to address the right (or legitimate expectation) to a share of a *specific child’s parents’ economic resources*, and has largely eliminated UB amounts set high enough actually to give eligible children access to their supporting parent’s living standard.

On the other hand, the intended scope of Sweden’s public child support guarantee benefit, according to 2018 case law precedent, is *not* in fact *every child living with only one legal parent who does not share finances with the other parent*. Rather, the intended recipients of UStöd are those children who are living with and supported by only one parent *because the parents have ended their family bond*. Economic difficulty is not a qualifying criterium. The benefit is based on the private-law duty to pay a child support when one parent does not live together with a child. This, and recent private-side case law and scholarship recognizing and giving more force to the aim to give children access to their supporting parents’ living standard, together make it

¹⁵⁶⁴ Both research questions and child support comparison factors were outlined *supra* Chapter 1.4.

¹⁵⁶⁵ Compare Ryrstedt (2006), *supra* note 1476, at 48 (concluding that Norway’s public child support benefit system *could not be said to have the same function as Sweden’s* because Norway’s was means-tested, and while Norway’s private and public child support systems are closely related “and can practically be viewed as two parts of the same regulation,” Sweden’s are separate, which “only confuses and complicates the concepts.”).

more likely that *application* of the Swedish laws has caused some difficulties, but the living standard function does and will remain one intended by law. It may even soon become better realized in legal application, as Chapter 8.5 will discuss.

The Breadth of the Public Law – Private Law Divide

The Swedish UStöd benefit is dependent on the legal child support duty described in the Swedish private law, and California has no equivalent, therefore (despite more severe economic inequalities in California) the dual system for child support is actually more divided in Sweden. California private and public-benefit cases use one measure of appropriate child support but partially different procedures, where Sweden uses two different measures in parallel.

As one example of how separately the systems have become, having been reformed and applied largely separately over time, the most recent Supreme Administrative Court case law on the UStöd benefit largely does not address whether the benefit should be analyzed in relation to the statutory history and case law of FB 7:1—the statutory provision establishing the private law duty which the UStöd benefit insures is met—and does not mention that body of law. Public-law courts focus on defining the SFB-based *public law's* scope, as the private law is not within their purview. Yet analyses of the scope of the child support duty upon which UStöd is based must surely be important to answering questions of UStöd's scope?

No economic hardship (child disadvantage) needs to be proven for a child to receive UStöd, only that no child support has been received. UStöd is an insurance against the risk that an NCP will not pay child support as expected, and one meant to be liberally granted to assure the the children it supports benefit from it as intended.

Given that this broad gap between the two systems has not been repaired, and in line with the social democratic WSM ideal and with Sweden's family and gender policy, one can ask *whether the Swedish public child support benefit today serves perhaps two "avoid child disadvantage" functions of its own, separate from those described in the above section.*

First is a function similar to the child support law function (1)(A) and (1)(C) discussed above, avoiding child disadvantage from *relative poverty* and from *non-economic harms* such as excessive parental conflict (by removing the need for parents to fight over why the UB payment has not arrived).

Second, though, perhaps UStöd (like other Swedish social insurances) serves *a pro-equality and independence function*, less emphasized when its relation to UB support is in focus. In other words perhaps UStöd should be recognized as functioning not only to bring children to an economic level more equal with other children's, but also more directly *to reduce further their dependence on their private family situation*, whether

lower *or higher-income*. That would put it in *opposition* to function (1)(B) above, regarding child support functioning to prevent child disadvantage from living at a lower living standard *than that available to their NCP*. If these independent functions are served, UStöd role in reducing use of UB's *standardtillägg* still encroaches on UB private law, but it also helps fulfill its own (unique) function.

If the *independence from the private family* aim is an aim lawmakers intended, it can be said to be working well. It ensures eligible children a solid financial situation, without tying their treatment to their CP's *or NCP's* income level (which means-tested UStöd or using the *standardtillägg* would do), and it does so in line with social democratic WSM ideals for economic equal treatment and for independence for every individual. I expect however that any ways in which UStöd is found to function in opposition to UB's function will soon be reduced, in order for the Swedish dual system for child support to function more optimally.

8.4. Shared Parenting, Children's Rights and Child Support's Future

Child support research specifically focusing on the *decline in use of the existing child support law* has addressed, in a US context but with applicability also to Sweden, the importance of reconceiving child support law's aging assumptions:¹⁵⁶⁶

Given the growing diversity of physical custody arrangements, it is increasingly important to distinguish *absent parents who fail to pay support* from *engaged parents whose direct care responsibilities may render a child support order inappropriate*, or in other words, to distinguish *deadbeat* dads from *full-time* and *part-time* dads. These two situations have very different implications for child well-being and for evaluations of the performance of the child support enforcement system.

Family policies and parenting behavior affect child support received by children under the child support laws, but the laws also affect those parenting behaviors and policies. One California provision deserves special comment in this regard.

Of the California statutory child support principles presented (at Chapter 5.3.2), the seventh principle demonstrates how lawmakers intend child support transfers between parents, even if they care equal amounts yet earn unequal amounts, to operate to meet the child's needs: child support orders in shared care situations, which the statute calls "cases where both parents have high levels of responsibility for the children," should *recognize increased costs* of raising children in two households

¹⁵⁶⁶ Meyer et al., *supra* note 1235, at 329–330 (emphasis added).

and “should *minimize significant disparities* in the children’s living standards in the two homes.”¹⁵⁶⁷

California may not expressly encourage the dual-earner or especially the dual-carer model of the family to the same extent as Sweden’s social democratic welfare state, but through this aspect of Guideline law the US state promotes equal care, a stepping stone (potentially) to equal incomes, greater normalization of modern fathers as equal parents in the care realm, and less eventual need for child support law (or its costly public support insurances). It acknowledges shared care’s existence and refers to it positively (“both parents have high levels of responsibility”). The Guideline as a whole also makes child support available in shared-care cases by in principle seeking to redistribute parental income between the two homes with the *child’s best interest in having as good and as even a living standard as possible in each home* in focus. Via these legal elements, California child support law removes some economics-based objections to shared care and also lessens economic incentives for parents to oppose it. These provisions may be interesting for other jurisdictions to consider.

In cases of equal care *and* equal incomes, California Guideline support will be zero. Sweden reaches the same result. In cases of equal care and *unequal* incomes, Sweden is beginning to apply a child’s legal interest in some support payable by the higher earner. It seems to be happening on two bases, including on the basis of the FB 7:1 living standard sharing principle (at least for voluntary settlements of support, via FK encouraging equal-care parents to consider if a UB might still be appropriate). Second, on the basis of meeting the alternating-residence child’s needs if they are not being met to a basic level, a court-enforceable possibility under FB 7:6 since the case NJA 2013 p. 955.

Child support amounts and rules can perpetuate specialization of gender roles (men’s as well as women’s), even in separately-living families, just as very high public supports targeting such families may do. This is the labor-market-participation disincentivizing effect discussed by the ALI child support group and within Swedish and Californian policy development. Well-meaning experts can even disfavor children being in shared parenting situations where they enjoy substantial contact with both parents and witness both parents in a caring role, because of child support effects. Child support legal development in the future will need to weigh the predictable financial results in two households in light of changing demographics in a new way than they did when these laws were written. Worry about financial fragility of single mother homes may to a greater extent be balanced with concerns about the

¹⁵⁶⁷ CAL. FAM. CODE § 4053(g).

financial stability we hope that the children, supported today, will be able to provide their own children, regardless of their household configuration in the future.

8.5. Child Support Law Current Critique and Reform Proposals

To briefly highlight the main current critiques of each system and to comment on potential reform ideas in light of this comparative study is the purpose of this section. These proposals I consider feasible and, subject to the results of further discussions in each jurisdiction, advisable in light of the needs, challenges, *welfare state ideologies* and other features of the legal systems in focus. They may also be relevant for similar jurisdictions.

Regarding Sweden's Child Support System as a Whole

In Sweden, when one considers the child support laws across both the private and the public parallel systems, something is amiss. In light of this study of California's child support compared to Sweden's, it seems Johanna Schiratzki's detailed recommendations published in 2005¹⁵⁶⁸ that the private UB system can be better utilized by making it more synchronized with the public UStöd system are still relevant to implement. Simplicity of administration, preference for private ordering, and governance of public welfare law and private family law within different departments may help explain the lawmakers' reticence to act in a coordinated way, but from a legal perspective is not adequate reason to sacrifice coherence and fairness.

Having completed this comparison with California's law, I propose additionally that UB lawmakers consider modifying the binary distinction between "living with" a child and not being considered to do so, for FB 7:2 purposes. Introducing instead a more individualized UB responsibility dependent upon parents' *relative time* with the children *and their relative incomes* available for support could respond to difficulties current law causes for families. Making it more automated, like a Guideline formula or set of tables providing likely appropriate support ranges, could reduce a number of problems. Lawmakers would be able to suggest support amounts for parents in different care and income situations, and parents could agree to a specific amount. FK could use the same guidelines automatically to calculate an estimated support amount useable for its payments of UStöd support guarantee amounts.

¹⁵⁶⁸ See SCHIRATZKI (2005), *supra* note 466, at 74–84 (describing a basic needs level of support supplemented by a percentage of higher income, to meet children's shared living standard rights under current FB law. See also SINGER (2017), *supra* note 55, at 148.

Within the UStöd system, although public benefits are less easily individually tailored than private law solutions, UStöd amounts recently *did* become more individualized for children. The same could be done for their co-parents, introducing different categories of the support needed based on what a likely UB responsibility would be, thus lessening the earner-carer shadows lingering over the law. Hopefully this could be done by adopting the same guidelines to be used going forward to calculate private UB obligations, and requiring parents to give the necessary income and parenting time information as part of the UStöd application process. Important regardless of the chosen solution, my findings suggest that the UB and UStöd changes must be considered and made *simultaneously*.

Prioritizing private ordering can nonetheless remain as strong a priority and a Swedish legal system structural institution as it is today.¹⁵⁶⁹ One way to retain it while also better supporting families in their child support problem-solving that has successfully been implemented in California is the use of *more detailed state-prepared financial disclosure forms* and *more detailed child support parental agreement forms* (included at Appendices 3 and 7).

The advisability of having resulting agreements registered with the state so that children's financial well-being can be more fully understood in fulfillment of the state's obligations to them can also be reviewed, but checklists and forms raising important issues for parents to resolve have the potential to help parents come to the negotiation table with more individual knowledge of both parties' finances and with more signaling from the state as to what outcomes likely will be in the best interests of their children.

Mechanisms for assuring that once agreed a child support will reliably be paid, that at the same time do not increase use of the courts or cause agency decisionmaking, can be sought, including perhaps *voluntary automatic paycheck deduction* where employers transfer monthly support directly to payee parents for *any* payor to agree to when the support is agreed to (not only those owing child support arrears).

Agreeing to UB will be made much more efficient and simple, too, if the joint UStöd/UB amount system regulating how much UStöd will be paid under different categories of parenting time, income difference, and children's age can be suggested to parents as an amount they most often can agree to. Use the normalizing effect, which now causes parents inappropriately to use the UStöd amount for too many

¹⁵⁶⁹ Assigning FK the official role of deciding individualized child support amounts would require it to exercise public power, changing the way child support rights are seen as a private dispute between individuals. Such an agency role probably could nonetheless be justified by appropriate new legislation, for example if the state would advance the amount decided in cases where parents would not agree to pay it. Strongly supporting all parents in agreeing to an appropriate support is perhaps a simpler way, requiring fewer changes.

children because it is convenient to have a number suggested, but change the number, to get the amount more appropriate for children and their parents. This has to an extent already been done on the public law side, normalizing new amounts for kids in different age categories, but CP and NCP relative and absolute income considerations could come in, and the UB law side could be brought into alignment with the UStöd side by using the same computations.

As part of the new amount-setting investigation, in addition to considering a percentage of parental income model for addressing the needs currently met (in theory) by the *standardtillägg*, the question could be asked *whether consumer-agency-decided “reference” needs totals exclude many expenses ordinarily actually incurred in CP households*, and also if using values deliberately set irrespective of income levels is the best choice for a private-law allocation of resources in families with various characteristics.¹⁵⁷⁰ It may be, but addressing it overtly, as with all of these topics, will result in better lawmaking with more clearly defined aims.

Lastly, if resort to the civil court will remain a remedy available, improvements to court access and child support decisionmaking must be considered. Best may be the court process and existing mediation support being required to work together, in a more coordinated way. Best may be to keep the focus on families (parents, perhaps with their older child’s age-appropriate input) deciding themselves, within the newly-introduced, more specific bounds of the law, how to define and allocate their childrens’ parental child support rights, given both Swedish WSM and conflict resolution ideals.

Regarding California’s Child Support System as a Whole

While a dual system has its problems, and Sweden’s dual system for both procedure and the child support amount doubly so, it is clear that Sweden’s *guarantee* that some meaningful level of child support, regardless of the payor parent’s cooperation in paying, will reach a child without delay, serves well the core functions of child support law. The guarantee, and the totality of the Swedish welfare state child support system, is resulting in most Swedish children avoiding time during their childhoods spent in relative poverty, and even largely avoiding the stigmas

¹⁵⁷⁰ See Konsumentverket Report 2018:5, *supra* note 491, at 7 (“It is assumed that the basic need for such goods and services does not differ greatly from one household to another, nor is it dependent on factors such as household income. The Swedish Consumer Agency’s calculations are thus based on need rather than income.”).

historically tied to receipt of need-based “poverty relief” offered in more liberal-model welfare state systems such as California’s.¹⁵⁷¹

California’s WSM has not to date been interpreted to support a universal child benefit for all children (although the tax credits may be considered a form of one for children to income-earning parents), and the economic class and social solidarity challenges described at Chapter 7.5 are very real barriers. The CalWORKS and other need-based supports are the supports most closely analogous to a child support guarantee. As those resources have been further reduced in recent years, the child support law, especially the public-side procedures applicable to all child support cases private or public, seem to be working relatively well in serving their functions and the legislative aims set for them, both federally and in California. A main problem preventing them from working better seems to be limited resources at both civil courts and within the child support agency system, somewhat in line with the liberal WSM, but perhaps in a shortsighted way given that securing financially stable childhoods for children can increase their productivity and decrease the costs they will represent for the state in the future.

Another problem that this comparison revealed in California is with the *lack of participation* by many separated families, making it uncertain to what extent their children’s financial needs and rights are being secured via contributions from both of their parents. However the system currently is being quite significantly reformed in ways that could incentivize more use of and satisfaction with it (via increased pass-throughs—another hidden child benefit because it means less recovery of welfare payments for the state—and interest charge elimination). Any other changes might be made specifically taking into account the potential benefits of increasing the system’s reach, so that more children have child support in place in society generally, and not solely in the IV-D cases mandated by receipt of benefits. This is in line with the liberal WSM, in that it helps promote private responsibility for children, but also with California’s more progressive family law and policy ambitions.

Lastly the expenditure data and estimation methodologies on which child support amounts are based seem in sore need of review as to whether they or rather other alternatives are the most proper basis for setting amounts. Amounts exchanged between parents for children’s support *post-separation* might better, in my view, be set in line with anticipated child needs in their new one or two homes, and also in a way taking into account the extent to which current law might perpetuate gender

¹⁵⁷¹ Yet 22% of Swedish children in homes with a single mother have been reported nonetheless to depend additionally on need-based cash benefit aid, and can be said to remain disadvantaged both now and in terms of their longer-term development. See *supra* Chapter 1.2. To the extent this is a remaining effect of gender-based earning and caring inequalities, child support law’s potential effects on it have already been discussed in this chapter.

stereotypes and behavior not in California's long-term economic interests as a state or a society.

Although it may decrease child support amounts in some cases, *adopting the Guideline formula changes recommended by the latest periodic review* (decreasing the “K” factor based on the finding that the current factor is likely overcompensating CP households) would keep the system more evidence-based and less vulnerable to criticism that it favors women or is insensitive to justice for payor parents (men). *Ideally* future reviewers could investigate whether some better data basis could be enacted for California's Guideline yet remain in compliance with federal requirements, however political will and priority is unlikely to make that possible, and understandably so given more pressing needs among California's children.

It has been suggested that child-friendly legal reforms in the US work best if they focus on *immediate* harms and gains; use *universal* social benefits, not targeted, when possible; and *incubate new ideas* (that might not pass immediately for broader use) via small local and state initiatives.¹⁵⁷² Therefore California child support lawmakers proposing new directions for the law may want to appeal to liberal WSM ideals in combination with emphasizing universality—for example making a proposed child support guarantee *universal* so that legislators' middle-class voter constituents will have something immediate and personal to gain from it, in addition to pilot-testing it if necessary.

8.6. Concluding Remarks

Comparing legal solution across cultural contexts poses challenges, as the discussions regarding theory and method in Chapter 2 acknowledged. Done with excessive attention to the details that vary between jurisdictions, research can contribute to a general sense of “otherness” which can frustrate opportunities to learn from the rich and long experiences of others. Done with too little attention to detailed differences, research can gloss over important distinctions instead of elucidating them to help the reader appreciate the uniqueness and evaluate the implications. Pre-existing, often misleading conceptions about other legal systems and cultures can best be discouraged (and their effects on legal research results

¹⁵⁷² See CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS* (2014). See also Elizabeth Scott, *The Politics of Family Law Reform—Getting from Here to There* (for a book symposium on Huntington's 2014 book) (Oct. 27, 2014), available at <https://balkin.blogspot.se/2014/10/the-politics-of-family-law-reform.html?m=1n>.

minimized) by conscientious consideration of all relevant factors.¹⁵⁷³ I have done my best to do so herein.

Many factors influence the likelihood that California or Sweden will substantially reform existing child support law. The ease and expense of implementing a proposed reform; how much it aligns with or goes against the prevalent WSM ideals of the jurisdiction;¹⁵⁷⁴ and the specific political tensions at play (perhaps between fathers' and mothers' advocates, perhaps between public law and private law legal experts) are factors I have identified as a result of this study.¹⁵⁷⁵ The significance of the entrenched tensions should not be underestimated.

Nonetheless the popularity of one solution to these tensions among child support lawmakers is certainly not explained by its effectiveness. Passing into law child support rules that give only vague guidance as to who shall receive child support, in what amount, why, and with what consequences for noncompliance is inadvisable. Hopes that those who apply the law will solve difficult questions when legislators have been unable to causes the problems of excess discretion that child support law has experienced in the past.

The possible reforms, small and large, which could bring a more reliable, effective and fair child support solution to children, families, and society must be left to others to develop and implement, hopefully sooner rather than later. This thesis compares the solutions against each other from a welfare state perspective, identifies how they differ, and describes some explanations suggested by the materials studied. Its findings, from welfare state model and critical feminist perspectives and in their comparative format, offer new ways of understanding child support law. I think they could be useful when the laws next are reviewed in each jurisdiction.

This law is not only about children and their daily expenses. It is part of the family law's continuing role in creating fairness and providing norms for their separately-living parents too. Recognizing that, lawmakers can decide less myopically what legal

¹⁵⁷³ See Mosa Sayed, *Några aspekter på mångkulturens utmaningar—med särskilt fokus på islamisk rätt* [*Some aspects of multiculturalism's challenges—with particular focus on Islamic law*], SVENSK JURISTIDNING 877, 886 (2013) (“[C]onsider all the factors.... If this is *not* done, all analyses of the possible tensions that can arise from the meeting between [the two bodies of] law can become misleading. Such a starting point can also lead to conclusions that point fingers or blame [one culture or another], on erroneous grounds.”) (examining and carefully contextualizing the legal challenges and potential value conflicts between Swedish and Islamic laws that affect Sweden, especially many Muslims resident of Sweden) (emphasis added).

¹⁵⁷⁴ Californian child support is, for example, a product of its welfare state environment, a WSM US child support scholars acknowledge. See Blumberg (1999), *supra* note 308, at 41 and Figure 3, *supra* note

¹⁵⁷⁵ See Perry (2019), *supra* note 207 (reviewing recent child support reform recommendations actually taken up by legislators, versus ones that were not, in Sweden and California).

rules and procedures contribute to encouraging change in line with current legislatively-set child support legal aims, or even if the aims themselves require modification as these societies continue to evolve.

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Appendices

Appendix 1—Child Support Calculators, California and Sweden

California's child support calculator input webpage for parents—home screen

The screenshot shows the homepage of the California Child Support Services calculator. The header includes the CA.gov logo, social media icons, and navigation links like 'Contact Us', 'Translate', and 'Settings'. Below the header is a secondary navigation bar with icons for 'Home', 'Our Agency', 'I Want To:', 'About A Case', 'Services We Offer', 'Helpful Links', 'Employers', and 'Search'. The main heading is 'Calculate Child Support'. On the left, a sidebar titled 'Calculating Debt Payoff' explains how to use the calculator to determine payment amounts and timeframes. The main content area contains three paragraphs: the first states the calculator is based on California legal guidelines; the second notes that the county child support commissioner or family law judge has the final authority; the third advises consulting a lawyer or family law facilitator for questions. Below this is a 'Guideline Calculator Links' section with links to the calculator, user guide, facilitator list, and a feedback email. A note at the bottom of this section asks users to report technical problems to their local child support agency. To the right of the text are five blue buttons: 'Online Case Info', 'Calculate Support', 'Make A Payment', 'Apply for Services', and 'FAQs'. Below the text is a 'Qualified Business Income Deduction' section, which describes an Excel tool for estimating the QBID and notes it was developed by Ventura County Child Support Services. The footer contains links for 'Back to Top', 'Privacy Policy', 'Contact Us', 'Translation Services', 'Accessibility', 'Terms of Use', and 'Public Records Act Requests', along with social media icons, copyright information for 2019, and a note about the CAWeb Publishing Service.

Calculating Debt Payoff

If you have unpaid child support debt, you can figure out how long it will take to pay it off with our [Arrears Payoff Calculator](#).

You can choose a payment and see how many months it will take until you're paid in full, or choose a time frame and it will show you the payment you need to make to have a zero balance by the end date.

The California Child Support Guideline Calculator is based on the same child support legal guidelines used in California courts, and can be used to estimate the amount of child support that may be ordered in your case.

The county child support commissioner or family law judge has the final authority to determine the amount of a child support order. This calculator provides only an estimate and is not a guarantee of the amount of child support that will be ordered. Many factors may affect the amount of child support awarded.

If you have any questions about the child support guidelines, you should talk with a lawyer or contact a [Family Law Facilitator](#).

Guideline Calculator Links

- [Go to Calculator](#)
- [Download the Calculator User Guide](#)
- [Go to Family Law Facilitator List](#)
- [*Email your question about the Guideline Calculator](#)

*Please note, this address is only to be used to report technical problems with the website calculator. If you have questions about our programs or your specific case, please contact your [local child support agency](#).

Qualified Business Income Deduction

The Qualified Business Income Deduction calculator is an Excel tool provided by California Child Support to assist Guideline Calculator users in determining the amount of any Qualified Business Income deduction (QBID) they may need to enter in the Monthly Deduction Information section of the Guideline Calculator. The QBID calculator provides only an estimated amount based on the information entered by the user. Do not use the QBID calculator for tax return preparation or for any purpose other than support calculations. Only the original Excel tool available through this [link](#) should be relied upon by the users. Any version downloaded and presented by others may have altered formulas affecting the result. This calculator tool was developed by Ventura County Child Support Services and has been certified by an independent Certified Public Accountant.

Online Case Info

Calculate Support

Make A Payment

Apply for Services

FAQs

[Back to Top](#) [Privacy Policy](#) [Contact Us](#) [Translation Services](#) [Accessibility](#) [Terms of Use](#) [Public Records Act Requests](#) [f](#) [t](#) [v](#) [in](#)

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<https://childsupport.ca.gov/calculate-child-support/>

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California law requires courts to adhere to statewide uniform guidelines in setting child support orders. The Payment Estimator applies the statewide uniform guideline calculation to the information that you enter into the blank fields. Click on [Instructions](#) for information to help you enter information into the blank fields.

Warning:
Some understanding of California family law and California and federal tax law is necessary to complete some blank fields correctly. You can obtain assistance in completing the Payment Estimator from your county's [Family Law Facilitator](#) or a family law attorney.

Local Child Support Agencies provide child support services to the public at no cost. Among the services provided by Local Child Support Agencies are obtaining court orders and modifying court orders based on statewide uniform guidelines. If you would like to apply for services, click on the following link. [I would like an application for services.](#)

Number of Children to Use in the Calculation:

Number of Children:

<https://gc.cse.ca.gov/ChildSupport/cse/guidelineCalculator>

California's child support calculator input webpage for parents—page 2

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California Child Support Self Service - Calculation Detail

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Dependent Information

Name	Prior Period Date Range	Time with Parent 1 (%) is the same for each child: ☒
☒ FIRST-BORN	Not Applicable	Time with Parent 1 (%) 20.0 Advanced

Parents Living Together Without Custody of Children

☐ Check here if Parent 1 and Parent 2 are living together and neither have custody of the children. (Child(ren) in foster care or other non-parent custody)

Tax Information

Tax Year:	2019	
Federal Income Taxes:	Parent 1:	Parent 2:
Federal Tax Filing Status:	SINGLE	HEAD OF HOUSEHOLD
Federal Tax Exemptions:	1	2
State Income Taxes:	☒ California	☒ California
California Tax Filing Status (Registered Domestic Partner Only):	SAME AS FEDERAL	SAME AS FEDERAL
Show Maximized Exemptions and Credits (Court Discretion/Stipulations Only):	☐	

Other Tax Settings

Other Federal Tax Settings:		
Number of Children for Child Care Credit	0	1
Number of Children for Earned Income Credit	0	1
Number of Children for Child Tax Credit	0	1
Number of Dependents for Family Tax Credit	0	0
Self-Employment Taxes	☒	☒
FICA (Social Security and/or Medicare)	☒	☒
Medicare	☒	☒
Earned Income Credit	☒	☒
Retirement Saver's Credit	☒	☒
If Married Filing Separately, Lived with Spouse Part of the Year	☒	☒
Parent is Blind	☐	☐
Parent is 65 or Older	☐	☐
New Spouse is Blind	☐	☐
New Spouse is 65 or Older	☐	☐
Deduction type when Parent 1 and Parent 2 are married to each other, filing separately:	☒ Itemized Deductions	☐ Standard Deduction
Other State Tax Settings:		
California Tax Exemptions (Registered Domestic Partner Only)	1	2

https://csc.ca.gov/ChildSupport/cse/guidelineCalculator?findNewGuidelineCalculation?conv_id=none&conv_instance=5491c93e-4a9e-4401-89e7-b... 1/5

Children for California Child Care Credit	0	1
California State Income Taxes	☒	☒
California State Disability Insurance	☒	☒
California Dependency Credit for Dependent Parent(s)	☐	☐
California Joint Custody Head of Household Credit	☐	☐
California Renter's Credit	☒	☒
California Earned Income Tax Credit	☒	☒
Other State Tax Rate:	%	%
Other State Tax Amount: \$		

Monthly Income Information

Wages/Salary: MONTHLY MONTHLY

☒ **Calculate Wages/Salary**

Presumed Income: ☐ ☐

Earned Income Frequency:

Hours/Week:

Minimum Wage:

Amount Year-To-Date:

YTD Date Range: to to

Imputed Income: ☒ None ☐ Some ☐ All ☒ None ☐ Some ☐ All

Self-Employment Income:

Unemployment Compensation:

Disability (Taxable):

☒ **Other Taxable Income**

Social Security Income (Taxable):

Other Income (Retirement, Annuity, SS Other Relationship, Operating Losses, etc.):

Short-Term Capital Gains:

Long-Term Capital Gains:

Line 4e from IRS Form 4952:

Unrecaptured Section 1250 Gain:

Nonqualified Dividends:

Qualified Dividends:

Interest Received:

Royalties:

Rental Income:

Other Taxable Income Adjustments:

Other Non-Taxable Income:

☒ **Other Non-Taxable Income Details**

Social Security Income (Non-Taxable):

Tax Exempt Interest:

Disability:

Worker's Compensation:

Spousal Support Received Other Relationship:

https://gc.cse.ca.gov/ChildSupport/cse/guidelineCalculator/fndNewGuidelineCalculation?conv_id=none&conv_instance=5491c93e-4a9e-4401-89e7-b... 2/5

California Child Support Self Service - Calculation Detail

New Spouse Wages/Salary:		
☐ New-Spouse Other Income and Deductions		
Self-Employment Income:		
Social Security Income (Non-Taxable):		
Social Security Income (Taxable):		
Other Taxable Income:		
Spousal/Other Partner Support Paid Other Relationship:	☒ Non-Tax Deductible	☒ Non-Tax Deductible
Retirement Contribution If Adjustments to Income:		
Required Union Dues:		
Necessary Job-Related Expenses:		
☐ Public Assistance and Child Support Received		
Public Assistance:		
Child Support Received:		
Monthly Deduction Information		
Child Support Paid (Other Relationships):		
Spousal Support Paid This Relationship:		
Property Tax:		
Mortgage Interest:		
Qualified Business Income (QBI):		
Required Union Dues:		
Health Insurance Post Tax:	☐ Pre-Tax	☐ Pre-Tax
☐ Other Health Insurance		
Post Tax:	☐ Post-Tax	☐ Post-Tax
Wage Deduction:		
Mandatory Retirement (Tax-Deferred):		
☐ Other Retirement Contributions		
Mandatory Retirement (Non-Tax-Deferred):		
Voluntary Retirement (Tax-Deferred):		
Voluntary Retirement (Non-Tax-Deferred):		
☐ Job Related Expenses & Spousal Support Other Relationship		
Necessary Job-Related Expenses:		
Spousal/Other Partner Support Paid Other Relationships:	☒ Non-Tax Deductible	☒ Non-Tax Deductible
☐ Other Itemized Deductions		
Deductible Interest Expenses:		
Other Medical Expenses:		
Contribution Deduction:		
State and Local Sales Tax:		
Miscellaneous Itemized:		
☐ Other Tax Deductions		
Adjustments to Income:		

California Child Support Self Service - Calculation Detail

Other Discretionary Deductions:		

☒ **Alternative Minimum Tax Information (IRS Form 6251) & State Adjustments**

Certain Interest on Home Mortgage:		
Investment Interest:		
Post-1986 Depreciation:		
Adjusted Gain or Loss:		
Incentive Stock Options:		
Passive Activities:		
Estates and Trusts Schedule K-1 (Form 1041):		
Tax Exempt Interest From Private Activity Bonds (Post 8/7/1986):		
Other Preferences (See IRS Form 6251):		
Alternative Minimum Tax Operating Loss Deduction:		

☒ **State Adjustments**

State Adjustments to Income:		
State Adjustments to Itemized Deductions:		

☒ **Extraordinary Health and Catastrophic Losses**

Extraordinary Health Expenses:		
Uninsured Catastrophic Losses:		

Hardship Children (FC 4071(b)):

	☒ Apply Hardship		☒ Apply Hardship

☒ **Other Hardship Children Details**

Enter Dollar Amount for Family Code 4071(b) Children:		☒		☒
\$				
Number of Other Family Code 4071(b) Children:				
	☒ Not Applicable		☒ Not Applicable	

☒ **Computation Method for Hardship**

☒ Match Presumed Child Support Per Capita
☐ Match Basic Child Support Per Capita

☒ **Monthly Child Support Add-On Information**

☒ **Parent 1**

Dependent	Child Care(\$)	Visits/Travel Expenses(\$)	School Expenses(\$)	Uninsured Health Expenses(\$)
FIRST-BORN				
Child Care for Other Children:				

☒ **Parent 2**

Dependent	Child Care(\$)	Visits/Travel Expenses(\$)	School Expenses(\$)	Uninsured Health Expenses(\$)
FIRST-BORN				
Child Care for Other Children:				

Allocation for Child Support Add-Ons: ☒ 50/50 ☐ Prorate per Family Code 4061(b) ☐ After Support

☒ **Other Settings**

Apply Low-Income Adjustment	☒ N/A ☐ Yes ☐ No
Calculate Temporary Spousal Support:	☒ No ☐ Alameda ☐ Humboldt ☐ Kings ☐ Marin ☐ Santa Clara

Printable Calculation Results (to be factual findings basis for child support court order)

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[Guideline Calculator](#)

[About DCSS](#)



Supporting California's Children

[Web On-line Feedback](#)

Recorded Messages (toll free)
(866) 249-0773

(Sacramento)
(916) 464-5000

TTY
(866) 399-4096

[Bilingual Services \(en español\)](#)

Recorded Messages (toll free)
(866) 249-0773

(Sacramento)
(916) 464-5000

Child Support Results

Monthly Support Totals

Type	Parent 1(\$)	Parent 2(\$)
Total Monthly Child Support Amount Owed:	250.00	0.00
Basic Child Support Amount:	250.00	0.00
Child Support Add-Ons Amount:	0.00	0.00
Total Arrears Support Amount:	0.00	0.00
Temporary Spousal Support Amount (N/A):	0.00	0.00

Amount of Child Support Per Child

Child	Time with Parent 1(%)	Parent 1 Add-Ons(\$)	Parent 1 Support(\$)	Parent 1 Total(\$)	Parent 2 Add-Ons(\$)	Parent 2 Support(\$)	Parent 2 Total(\$)
FIRST-BORN	35.0	0.00	59.00	59.00	0.00	0.00	0.00
SECOND-BORN	35.0	0.00	191.00	191.00	0.00	0.00	0.00
Average % Time with Parent 1	35.0	0.00	250.00	250.00	0.00	0.00	0.00

Amount of Child Support Arrears Per Child

Child	Prior Period Date Range	Parent 1 Add-Ons(\$)	Parent 1 Support(\$)	Parent 1 Total(\$)	Parent 2 Add-Ons(\$)	Parent 2 Support(\$)	Parent 2 Total(\$)
FIRST-BORN	Not Applicable	0.00	0.00	0.00	0.00	0.00	0.00
SECOND-BORN	Not Applicable	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00

Monthly Tax/Income Information (Tax Year: 2019)

Type	Parent 1(\$)	Parent 2(\$)
Monthly Net Disposable Income:	2325.00	2997.00
Monthly Net Disposable Income After Support:	2075.00	3247.00
Monthly Gross Income:	2809.00	2809.00
Monthly Federal Adjusted Gross Income:	2809.00	2809.00
Federal Tax Filing Status	SINGLE	HEAD OF HOUSEHOLD
Number of Federal Tax Exemptions	1	3
California Tax Filing Status	SAME AS FEDERAL	SAME AS FEDERAL
Number of California Tax Exemptions	1	3
Monthly Federal Taxable Income:	1792.00	1280.00
Monthly Federal Tax Liabilities:	199.00	-431.00
Monthly Federal Self-Employment Tax:	0.00	0.00
Monthly FICA (Social Security and/or Medicare):	215.00	215.00
Monthly State Tax Liabilities:	42.00	0.00
Monthly CASDI:	28.00	28.00

Other Monthly Deduction Totals

Type	Parent 1(\$)	Parent 2(\$)
Hardship Deduction Amount	0.00	0.00
Hardship Deduction Children	0.0	0.0

[View Printable Results](#) [Start Over](#)

(see also Appendix 3, forms, for the child support order pages themselves)

Calculation Results Summary

Monthly Support Totals	Parent 1	Parent 2					
Monthly Child Support Amount	250.00	0.00					
Basic Child Support Amount	250.00	0.00					
Child Support Add-Ons Amount	0.00	0.00					
Child Care	0.00	0.00					
Visits/Travel Expenses	0.00	0.00					
School Expenses	0.00	0.00					
Uninsured Health Expenses	0.00	0.00					
Total Arrears Support Amount	0.00	0.00					
Temporary Spousal Support Amount (N/A)	0.00	0.00					
Monthly Tax/Income Information (Tax Year: 2019)	Parent 1	Parent 2					
Monthly Net Disposable Income	2325.00	2997.00					
Monthly Taxable & Non-Taxable Gross Income	2809.00	2809.00					
Monthly Taxable Gross Income	2809.00	2809.00					
Monthly Non-Taxable Gross Income	0.00	0.00					
Federal Adjusted Gross Income	2809.00	2809.00					
Federal Taxable Income	1792.00	1280.00					
Net Income After Support	2075.00	3247.00					
Federal Tax Filing Status	SINGLE	HEAD OF HOUSEHOLD					
Number of Tax Exemptions (Federal)	1	3					
State Tax Filing Status	SAME AS FEDERAL	SAME AS FEDERAL					
Number of Tax Exemptions (State)	1	3					
Federal Tax Liabilities	199.00	-431.00					
State Tax Liabilities	42.00	0.00					
FICA (Social Security and/or Medicare)	215.00	215.00					
Self-Employment Tax	0.00	0.00					
CASDI	28.00	28.00					
Public Assistance	NO	NO					
Other Monthly Deduction Totals	Parent 1	Parent 2					
Child Support Paid (Other Relationships)	0.00	0.00					
Required Union Dues	0.00	0.00					
Mandatory Retirement	0.00	0.00					
Job Related Expenses & Spousal Support Other Relationship	0.00	0.00					
Health Insurance Premium	0.00	0.00					
Hardship Deduction Amount	0.00	0.00					
Hardship Deduction Children	0.0	0.0					
Extraordinary Health Expenses	0.00	0.00					
Uninsured Catastrophic Losses	0.00	0.00					
Monthly Support Amounts Per Child	% Time with Parent 1	Parent 1 Add-Ons	Parent 1 Support	Parent 1 Total	Parent 2 Add-Ons	Parent 2 Support	Parent 2 Total
FIRST-BORN	35.0	0.00	59.00	59.00	0.00	0.00	0.00
SECOND-BORN	35.0	0.00	191.00	191.00	0.00	0.00	0.00
Average % Time with Parent 1	35.0%	0.00	250.00	250.00	0.00	0.00	0.00

PARENT 1 is required to pay PARENT 2 \$250.00 in CURRENT SUPPORT

Total Child Support Arrears Per Child							
Child Name	Prior Period Date Range	Parent 1 Add-Ons	Parent 1 Support	Parent 1 Total	Parent 2 Add-Ons	Parent 2 Support	Parent 2 Total
FIRST-BORN	Not Applicable	0.00	0.00	0.00	0.00	0.00	0.00
SECOND-BORN	Not Applicable	0.00	0.00	0.00	0.00	0.00	0.00

https://gc.cse.ca.gov/ChildSupport/cse/guidelineCalculator/viewGuidelineCalculationSummaryAndDetailForm?resultType=GDL&conv_id=Guidelin... 1/4

583

boende), eller om ni har flera gemensamma barn och de inte bor tillsammans hos en av er. Ni kan istället boka ett webbmöte för att få information av en handläggare.

Hur funkar det?

Fyll barnets kostnader och dina egna inkomster och utgifter. Spara uppgifterna och skicka länken till beräkningen till den andra föräldern så att hen kan fylla i sina inkomster och utgifter. Du kan såklart också göra beräkningen på egen hand, men tänk på att du behöver veta vilka inkomster och utgifter den andra föräldern har för att få rätt belopp uträknat.

Vad får ni?

När ni båda fyllt i era uppgifter får ni ett förslag på ett rättvist underhållsbidrag och en avtalsmall som ni kan använda för att göra en giltig överenskommelse om underhållsbidrag.

1. Sample ✓

Fyll i barnets namn. Om du även fyller i kön och ålder hjälper vi dig med förifyllda summor baserade på Konsumentverkets beräkningar för vad barn kostar.

Ska du räkna för fler barn fyller du i ett barn i taget. Du kan lägga till fler barn längre ner.

Barn

Förnamn

Sample ✓

Kön (frivilligt)

Flicka ▼

Ålder (frivilligt)

15 år ▼

Gå vidare

2. Kostnader och inkomster för Sample ✓

De förfyllda summorna kommer från Konsumentverkets beräkningar för vad barn kostar och är baserade på kön och ålder. Du kan ändra summorna om de inte stämmer överens med ditt barns kostnader.

[Konsumentverket \(konsumentverket.se\)](https://www.konsumentverket.se) 

Kostnader för basbehov

Mat

Här ingår all mat som barnet äter hemma, förutom lunch på vardagar.

1 820 ✓ kr/mån



Hygien

Här ingår bland annat blöjor, tvål, tandkräm och frisörbesök.

370 ✓ kr/mån



Kläder och skor

Här ingår kläder för vardag, fritid och festligare tillfällen.

700 ✓ kr/mån



Fritid och lek

Här ingår bland annat leksaker, böcker, skridskor, cykel och föreningsavgifter.

760 ✓ kr/mån



Mobiltelefon

Här ingår själva telefonen och kontantkort eller abonnemang.

280 ✓ kr/mån



Försäkring

Här ingår sjuk- och olycksfallsförsäkring för barn och ungdomar (under 18 år).

180 ✓ kr/mån



Kostnader för barnomsorg

Här ingår avgiften för förskola och fritids.

[+ Lägg till kostnad](#)

Övriga kostnader

Här kan du lägga till andra kostnader för barnet, till exempel dyrare fritidsaktiviteter, eventuella skolavgifter, kostnader för specialkost och annat som inte ingår i baskostnaderna. Fyll i varje kostnad utslaget per månad.

[+ Lägg till kostnad](#)

Barnbidrag och övriga inkomster

Vi har fyllt i beloppet för barnbidrag. Om barnet har övriga inkomster, lägg till dem till beloppet.

Inkomster

 kr/mån

Kostnad för Sample

2 860 kr/mån

[Gå vidare](#)

Vill du räkna för fler barn?

Du kan lägga till fler barn i uträkningen om barnen har samma föräldrar och bor tillsammans hos den ena av er.

[+ Lägg till fler barn](#)



**Sammanlagd kostnad för barn 2 860
kr/mån**

Spara uträkningen som PDF

3. Föräldrar och boende

Fyll i ditt och den andra förälderns namn samt var barnet/barnen bor mest. Du kan bara använda verktyget om barnet bor mer hos den ena föräldern än den andra. Boka ett webbmöte för att räkna ut underhållsbidrag i andra situationer.

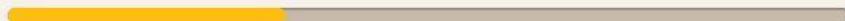
Namn

Ditt namn

Den andra förälderns namn

Barnet/barnen bor mest hos: 

☒ dig ☐ den andra föräldern



Gå vidare

4a. Inkomster och utgifter för dig

Fyll i inkomster och utgifter. Alla summor ska fyllas i per månad.

Inkomst

Inkomst

Fyll i inkomst per månad före skatt.

 kr/mån

Skatt

Fyll i skatt per månad, i procent.

  procent

Övriga inkomster

Här kan du fylla i övriga inkomster, till exempel avkastning på kapitalinkomster. Lägg in inkomsterna efter skatt. Skatten på kapitalinkomster är alltid 30 procent.

Övriga inkomster 1

Beskrivning

Fyll i text.

Inkomst per månad

Fyll i ett belopp.

  kr/mån

 [Ta bort](#)

[+ Lägg till fler](#)

Utgifter

Levnadskostnader

Fyll i levnadskostnader per månad. Här ingår till exempel mat, kläder, el, telefon, TV-licens, försäkringsavgifter och resor till och från arbetet. Maxgränsen för

Bostadskostnad

Fyll i bostadskostnad per månad. Delar

till och från arbetet. Maxgränsen för levnadskostnader i beräkningen av underhåll är 4 650 kronor.

4 650



kr/mån

Fyll i bostadskostnad per månad. Delar du bostaden med en annan vuxen fyller du i halva bostadskostnaden.

kr/mån

Övriga utgifter

Här kan du fylla i övriga utgifter. Det kan till exempel vara höga medicinkostnader, dubbel bosättning eller kostnader för arbetskläder.

Övriga utgifter 1

Beskrivning

Fyll i text.



Utgift per månad

kr/mån

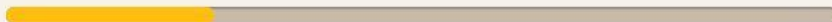
 [Ta bort](#)

[+ Lägg till fler](#)

Överskott för dig

Överskottet är den summa som blir över när man tar inkomsterna minus utgifterna.

-4 650 kr/mån



[Gå vidare](#)

4b. Inkomster och utgifter för den andra föräldern

Fyll i inkomster och utgifter. Alla summor ska fyllas i per månad.

Inkomst

Inkomst

Fyll i inkomst per månad före skatt.

kr/mån

Skatt

Fyll i skatt per månad, i procent.

 procen

Övriga inkomster

Här kan du fylla i övriga inkomster, till exempel avkastning på kapitalinkomster. Lägg in inkomsterna efter skatt. Skatten på kapitalinkomster är alltid 30 procent.

[+ Lägg till inkomst](#)

Utgifter

Levnadskostnader

Fyll i levnadskostnader per månad. Här ingår till exempel mat, kläder, el, telefon, TV-licens, försäkringsavgifter och resor till och från arbetet. Maxgränsen för levnadskostnader i beräkningen av underhåll är 4 650 kronor.

 kr/mån

Bostadskostnad

Fyll i bostadskostnad per månad. Delar du bostaden med en annan vuxen fyller du i halva bostadskostnaden.

kr/mån

Övriga utgifter

Här kan du fylla i övriga utgifter. Det kan till exempel vara höga medicinkostnader, dubbel bostättning eller kostnader för arbetskläder.

[+ Lägg till utgift](#)

Familjesituation

Bor det andra barn hemma hos den andra föräldern som hen är förälder till?

☐ Ja ☒ Nej

Överskott för den andra föräldern

Överskottet är den summa som blir över när man tar inkomsterna minus utgifterna.

-4 650 kr/mån



Gå vidare



Underhållsbidrag och avtalsmall

Fyll i uppgifterna ovan för att se vad underhållsbidraget blir.

[Så här beräknas underhåll](#)

Spara eller dela beräkningen

Skapa en länk för att spara beräkningen eller dela den med någon annan.

Skapa länk till beräkningen

Glöm inte att göra ett avtal



[Ladda ner avtalsmall \(för barn 0-17 år\) \(pdf\)](#)



[Ladda ner avtalsmall \(för barn över 18 år\) \(pdf\)](#)

Tips på hur ni går vidare

Gör en skriftlig överenskommelse för underhållsbidraget. Ni kan använda avtalsmallen som finns i verktyget.

Sätt en löpande överföring för underhållsbidraget och märk betalningen med underhållsbidrag.

Tänk på att se över överenskommelsen när barnet blir äldre eller om era livssituationer förändras, till exempel om någon av er får fler barn, högre inkomst eller blir arbetslös.

Umgängesavdrag

Om barnet bor tillfälligt under minst 6 dygn i månaden eller under 5 dygn i sträck hos dig som ska betala underhållsbidraget kan du dra av 1/40 av underhållsbidraget per dag.

Så här räknar du ut avdraget

Om du ska betala 2 500 kronor i underhållsbidrag och barnet bor hos dig i en vecka (7 dagar) räknar du så här.

$$1/40 \times 2\,500 = 62,50 \text{ kronor}$$

$$62,5 \text{ kronor} \times 7 = 437,50 \text{ kronor}$$

Avdraget avrundas nedåt. Nästa gång du betalar underhållsbidrag kan du dra av 437 kronor.

Du kan bara göra umgängesavdrag om ni föräldrar inte redan har kommit överens om underhållsbidrag med ett stående umgängesavdrag per månad, ett så kallat nettoavtal.

Minimera

Tänk på att...

Försäkringskassan sparar inte den information du fyller i här. Men du kan själv välja att spara din beräkning eller dela den med någon annan. För att informationen inte ska hamna hos fel person, kontrollera att du har skrivit in rätt e-postadress innan du delar länken med e-post. Tänk också på att stänga ner webbläsaren helt om du delar dator med någon annan.

For contract form for parents' use, see Appendix 7, below.

Application for help from Local Child Support Agency (to start a IV-D case)—home page




California Department of
Child Support Services

[Home](#)
[Custodial Party](#)
[Noncustodial Parent](#)
[Employer](#)
[Payments](#)
[Reports](#)
[Resources](#)
[Child Support Professionals](#)

Resources » [Apply For Services](#)


[Applying for Child Support Services](#)

A New Online Application is Here!

We heard from you and have made it easier!

Introducing VIOLA
the Virtual Interactive OnLine Application



Introduction
English / Español



Tutorial
English / Español



**APPLY FOR
CHILD SUPPORT**
English / Español



I NEED TO...

- [Apply for Services](#)
- [Make a Payment](#)
- [Check My Child Support Account](#)
- [Get Publications](#)
- [Calculate Child Support](#)
- [Calculate Arrears Payoff](#)
- [Establish Paternity](#)
- [Contact My Local Child Support Agency](#)
- [Request Public Records](#)
- [Career Opportunities](#)
- [Contact DCSS](#)
- [Protect My Privacy/Security](#)

Child support program services are delivered through 51 local child support agencies. The following services are available:

- [Locating a parent](#)
- [Establishing paternity](#)
- [Establishing, modifying and enforcing a court order for child support](#)
- [Establishing, modifying and enforcing an order for health insurance coverage](#)

To apply for services, complete the Application for Child Support Services Packet and return it to the county child support agency in your area. Completed applications must be received by the local child support agency in your area to be processed. Applications are also available on a walk-in basis at local child support agency offices.

Individuals currently receiving CalWORKS are automatically referred to their local child support agency for services. If you are a CalWORKS beneficiary and have questions about your case, please contact your local child support agency.

Application for Child Support Services Packet

FS-CSS-002: Self Service Application for Support Services Packet

[English](#)
[Armenian](#)
[Chinese](#)
[Hmong](#)
[Russian](#)
[Spanish](#)
[Vietnamese](#)

Försäkringskassan

Sök här Sök Logga in Meny

Privatperson / Förälder / För föräldrar som inte lever ihop / Barnet bor hos dig / Underhållsstöd

Underhållsstöd när barnet bor hos dig

Teckenspråk

Underhållsstöd är pengar som du kan ansöka om när du inte lever tillsammans med barnets andra förälder och hen inte betalar underhållsbidrag.

Kan jag få underhållsstöd?

Ja, du kan få underhållsstöd om du och den andra föräldern inte kan komma överens om underhållsbidrag eller om hen inte kan betala. Det här gäller om

- du har vårdnad om barnet
- du och den andra föräldern inte har ett förhållande
- du och den andra föräldern inte bor ihop
- den andra föräldern inte betalar underhållt alla, betalar ett lägre belopp än underhållsstödet eller inte betalar i tid.
- barnet är under 18 år
- barnet är folkbokfört hos dig
- du och barnet bor i Sverige

Om barnet är över 18 år

Hur mycket får jag?

Om den andra föräldern inte betalar något underhåll får du 1 573 kronor per månad till och med månaden när barnet fyller 11 år, därefter 1 723 kronor till och med månaden när barnet fyller 15 år och 2 073 kronor efter att barnet har fyllt 15 år.

Om den andra föräldern betalar ett lägre underhåll så får du ett utfyllnadsbelopp från Försäkringskassan, vilket ger dig totalt 1 573 kronor, 1 723 kronor eller 2 073 per månad. Du får alltså pengar dels från Försäkringskassan, dels från den andra föräldern.

Exempel

Om ditt barn är 5 år och du får 500 kronor per månad från den andra föräldern så får du 1 073 kronor från Försäkringskassan. Det blir totalt 1 573 kronor per månad.

Om ditt barn har inkomster som är högre än 60 000 kronor blir underhållsstödet lägre.

Hur gör jag för att få underhållsstöd?

1. Ansök

Du ansöker om underhållsstöd på Mina sidor.

Ansök om underhållsstöd – för barn under 18 som bor hos endast en förälder

Om du inte kan ansöka på Mina sidor

2. Du får ett beslut

Om din ansökan är komplett tar det högst 6 veckor innan du får ett beslut. Om den andra föräldern bor utomlands tar det högst 17 veckor.

Relaterade länkar

Nya regler

Underhållsstödet höjs för barn mellan 11 och 14 år

Räcker pengarna?



Vad är ett rättvist och rimligt underhåll?

Separerade föräldrar

Har du frågor om underhållsbidrag?



Få personlig hjälp av en handläggare

Boka webbmöte

Har du frågor om föräldraförsäkringen?



Få svar på vår Facebooksida.

Ställ din fråga

https://www.forsakringskassan.se/privatpers/foralder/for_foraldrar_som_inte_lever_ihop/barnet_bor_hos_dig/underhallsstod_nar_barnet_bor_hos_dig

3. Utbetalning

När beslutet är fattat får du den första utbetalningen inom 10 dagar. Därefter betalas underhållsstödet ut den 25:e varje månad.

Pengarna betalas ut i förskott för den kommande månaden.

Avvikande utbetalningsdagar

[Utbetalningsdatum och handläggningstider](#)

När syns utbetalningen på Mina sidor?

Under Utbetalningar på Mina sidor kan du se din utbetalning 8 dagar innan pengarna kommer.

4. Den andra föräldern ska betala till Försäkringskassan

När du får underhållsstöd måste den andra föräldern betala tillbaka hela eller delar av underhållsstödet till Försäkringskassan.

5. Hör av dig om din situation ändras

Anmäl till oss om något som kan påverka ditt underhållsstöd ändras, till exempel om

- den andra föräldern börjar betala underhåll direkt till dig
- den andra föräldern betalar mer i underhåll än tidigare
- ni flyttar ihop eller börjar leva som ett par.

Ring till kundcenter 0771 - 524 524 för att anmäla förändringen.

När den andra föräldern har skött inbetalningarna till Försäkringskassan i sex månader

När den andra föräldern har betalat i tid till Försäkringskassan minst sex månader i följd, prövar vi om det finns skäl till att Försäkringskassan fortsätter att betala underhållsstödet. Båda föräldrarna får då ett brev om prövningen. Om det inte finns några skäl ska den andra föräldern istället betala underhållsbidrag direkt till dig.

Ni ska själva komma överens om en summa för underhållsbidrag. Med verktyget Beräkna underhållsbidrag får ni ett förelag på ett underhållsbidrag och en avtalemall. Beräkningen och avtalemallen kan ni använda för att göra en giltig överenskommelse om underhållsbidrag.

Beräkna underhållsbidrag

Försäkringskassan kan göra undantag i vissa situationer, till exempel om det finns en hotbild eller om den bidragskyldiges ekonomiska situation förändrats så att betalningsförmågan är obefintlig.

Vad gör vi om vi inte kan komma överens?

Om ni inte kan komma överens om ett underhållsbidrag så kan ni kontakta Försäkringskassans kundcenter på telefonnummer 0771-524 524 för att få information om underhållsstöd.

Du kan boka ett personligt möte med en handläggare för att få hjälp med dina frågor om hur ni räknar ut underhållsbidraget.

Boka tid för möte

Kommunen erbjuder också gratis samarbetsamtal om vårdnad, umgänge, boende och barns företräde. Där får ni hjälp att hitta gemensamma lösningar för barnets bästa utan att behöva gå till domstol. Kontakta din kommun.

Om ni ändå inte kan komma överens om frågor som rör barnet så kan ni vända er till tingsrätten. Kontakta ett juridiskt ombud för att få veta hur ni ska göra.

📍 Hjälp oss göra vår webbplats bättre

Svara på enkäten och berätta vad du tycker om webbplatsen.

Appendix 2—Selected Statutory Sections, California

§ 4055. Statewide uniform guideline for determining child support, CA FAM § 4055

West's Annotated California Codes
Family Code (Refs & Annos)
Division 9. Support (Refs & Annos)
Part 2. Child Support (Refs & Annos)
Chapter 2. Court-Ordered Child Support (Refs & Annos)
Article 2. Statewide Uniform Guideline (Refs & Annos)

West's Ann.Cal.Fam.Code § 4055

§ 4055. Statewide uniform guideline for determining child support

Effective: January 1, 2018

Currentness

<Section operative until Jan. 1, 2021. See, also, § 4055 operative Jan. 1, 2021.>

(a) The statewide uniform guideline for determining child support orders is as follows: $CS = K[HN \%68 (H\%)(TN)]$.

(b)(1) The components of the formula are as follows:

(A) CS = child support amount.

(B) K = amount of both parents' income to be allocated for child support as set forth in paragraph (3).

(C) HN = high earner's net monthly disposable income.

(D) H% = approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% equals the average of the approximate percentages of time the high earner parent spends with each child.

(E) TN = total net monthly disposable income of both parties.

(2) To compute net disposable income, see Section 4059.

(3) K (amount of both parents' income allocated for child support) equals one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times the following fraction:

Total Net Disposable

Income Per Month

K

\$0-800	$0.20 + \text{TN}/16,000$
\$801-6,666	0.25
\$6,667-10,000	$0.10 + 1,000/\text{TN}$
Over \$10,000	$0.12 + 800/\text{TN}$

For example, if H% equals 20 percent and the total monthly net disposable income of the parents is \$1,000, $K = (1 + 0.20) \times 0.25$, or 0.30. If H% equals 80 percent and the total monthly net disposable income of the parents is \$1,000, $K = (2 \div 0.80) \times 0.25$, or 0.30.

(4) For more than one child, multiply CS by:

2 children	1.6
3 children	2
4 children	2.3
5 children	2.5
6 children	2.625
7 children	2.75
8 children	2.813
9 children	2.844
10 children	2.86

(5) If the amount calculated under the formula results in a positive number, the higher earner shall pay that amount to the lower earner. If the amount calculated under the formula results in a negative number, the lower earner shall pay the absolute value of that amount to the higher earner.

(6) In any default proceeding where proof is by affidavit pursuant to Section 2336, or in any proceeding for child support in which a party fails to appear after being duly noticed, H% shall be set at zero in the formula if the noncustodial parent is the higher earner or at 100 if the custodial parent is the higher earner, where there is no evidence presented demonstrating the percentage of time that the noncustodial parent has primary physical responsibility for the children. H% shall not be set as described in paragraph (3) if the moving party in a default proceeding is the noncustodial parent or if the party who fails to appear after being duly noticed is the custodial parent. A statement by the party who is not in default as to the percentage of time that the noncustodial parent has primary physical responsibility for the children shall be deemed sufficient evidence.

(7) In all cases in which the net disposable income per month of the obligor is less than one thousand five hundred dollars (\$1,500), adjusted annually for cost-of-living increases, there is a rebuttable presumption that the obligor is entitled to a low-income adjustment. The Judicial Council shall annually determine the amount of the net disposable income adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by

the California Department of Industrial Relations, Division of Labor Statistics and Research. The presumption may be rebutted by evidence showing that the application of the low-income adjustment would be unjust and inappropriate in the particular case. In determining whether the presumption is rebutted, the court shall consider the principles provided in Section 4053, and the impact of the contemplated adjustment on the respective net incomes of the obligor and the obligee. The low-income adjustment shall reduce the child support amount otherwise determined under this section by an amount that is no greater than the amount calculated by multiplying the child support amount otherwise determined under this section by a fraction, the numerator of which is 1,500, adjusted annually for cost-of-living increases, minus the obligor's net disposable income per month, and the denominator of which is 1,500, adjusted annually for cost-of-living increases.

(8) Unless the court orders otherwise, the order for child support shall allocate the support amount so that the amount of support for the youngest child is the amount of support for one child, and the amount for the next youngest child is the difference between that amount and the amount for two children, with similar allocations for additional children. However, this paragraph does not apply to cases in which there are different time-sharing arrangements for different children or where the court determines that the allocation would be inappropriate in the particular case.

(c) If a court uses a computer to calculate the child support order, the computer program shall not automatically default affirmatively or negatively on whether a low-income adjustment is to be applied. If the low-income adjustment is applied, the computer program shall not provide the amount of the low-income adjustment. Instead, the computer program shall ask the user whether or not to apply the low-income adjustment, and if answered affirmatively, the computer program shall provide the range of the adjustment permitted by paragraph (7) of subdivision (b).

(d) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

Credits

(Added by Stats.1993, c. 219 (A.B.1500), § 138. Amended by Stats.1993, c. 1156 (S.B.541), § 1; Stats.1994, c. 906 (A.B.923), § 1.5; Stats.1998, c. 581 (A.B.2801), § 15; Stats.2003, c. 225 (A.B.1752), § 1, eff. Aug. 11, 2003; Stats.2012, c. 646 (A.B.2393), § 1; Stats.2013, c. 76 (A.B.383), § 61; Stats.2017, c. 730 (S.B.469), § 1, eff. Jan. 1, 2018.)

West's Ann. Cal. Fam. Code § 4055, CA FAM § 4055

Current with urgency legislation through Ch. 5 of 2019 Reg.Sess

West's Annotated California Codes
Family Code (Refs & Annos)
Division 9. Support (Refs & Annos)
Part 2. Child Support (Refs & Annos)
Chapter 2. Court-Ordered Child Support (Refs & Annos)
Article 2. Statewide Uniform Guideline (Refs & Annos)

West's Ann.Cal.Fam.Code § 4058

§ 4058. Annual gross income of parents

Effective: January 1, 2019

Currentness

(a) The annual gross income of each parent means income from whatever source derived, except as specified in subdivision (c) and includes, but is not limited to, the following:

(1) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, and spousal support actually received from a person not a party to the proceeding to establish a child support order under this article.

(2) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.

(3) In the discretion of the court, employee benefits or self-employment benefits, taking into consideration the benefit to the employee, any corresponding reduction in living expenses, and other relevant facts.

(b) The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children, taking into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.

(c) Annual gross income does not include any income derived from child support payments actually received, and income derived from any public assistance program, eligibility for which is based on a determination of need. Child support received by a party for children from another relationship shall not be included as part of that party's gross or net income.

Credits

(Added by Stats.1993, c. 219 (A.B.1500), § 138. Amended by Stats.2018, c. 178 (A.B.2780), § 1, eff. Jan. 1, 2019.)

West's Ann. Cal. Fam. Code § 4058, CA FAM § 4058

Current with urgency legislation through Ch. 5 of 2019 Reg.Sess

West's Annotated California Codes
Family Code (Refs & Annos)
Division 6. Nullity, Dissolution, and Legal Separation (Refs & Annos)
Part 1. General Provisions (Refs & Annos)
Chapter 9. Disclosure of Assets and Liabilities (Refs & Annos)

West's Ann.Cal.Fam.Code § 2100

§ 2100. Legislative findings and declarations; disclosure of assets and liabilities

Effective: January 1, 2002
Currentness

The Legislature finds and declares the following:

(a) It is the policy of the State of California (1) to marshal, preserve, and protect community and quasi-community assets and liabilities that exist at the date of separation so as to avoid dissipation of the community estate before distribution, (2) to ensure fair and sufficient child and spousal support awards, and (3) to achieve a division of community and quasi-community assets and liabilities on the dissolution or nullity of marriage or legal separation of the parties as provided under California law.

(b) Sound public policy further favors the reduction of the adversarial nature of marital dissolution and the attendant costs by fostering full disclosure and cooperative discovery.

(c) In order to promote this public policy, a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties. Moreover, each party has a continuing duty to immediately, fully, and accurately update and augment that disclosure to the extent there have been any material changes so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have a full and complete knowledge of the relevant underlying facts.

Credits

(Added by Stats.1993, c. 219 (A.B.1500), § 107. Amended by Stats.1993, c. 1101 (A.B.1469), § 3, eff. Oct. 11, 1993, operative Jan. 1, 1994; Stats.2001, c. 703 (A.B.583), § 2.)

West's Ann. Cal. Fam. Code § 2100, CA FAM § 2100

Current with urgency legislation through Ch. 524 of the 2019 Reg. Sess. Some statute sections may be more current, see credits for details.

Appendix 3—Income and Expense Declaration and Mandatory Child Support Court Order after Hearing Forms, California

FL-150

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/CLAIMANT:	To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished.
INCOME AND EXPENSE DECLARATION	CASE NUMBER:

1. Employment (Give information on your current job or, if you're unemployed, your most recent job.)

Attach copies of your pay stubs for last two months (black out social security numbers).

- a. Employer:
- b. Employer's address:
- c. Employer's phone number:
- d. Occupation:
- e. Date job started:
- f. If unemployed, date job ended:
- g. I work about _____ hours per week.
- h. I get paid \$ _____ gross (before taxes) _____ per month _____ per week _____ per hour.

(If you have more than one job, attach an 8½-by-11-inch sheet of paper and list the same information as above for your other jobs. Write "Question 1—Other Jobs" at the top.)

2. Age and education

- a. My age is (specify): _____
- b. I have completed high school or the equivalent: ☐ Yes ☐ No If no, highest grade completed (specify): _____
- c. Number of years of college completed (specify): _____ Degree(s) obtained (specify): _____
- d. Number of years of graduate school completed (specify): _____ Degree(s) obtained (specify): _____
- e. I have: ☐ professional/occupational license(s) (specify): _____
☐ vocational training (specify): _____

3. Tax information

- a. ☐ I last filed taxes for tax year (specify year): _____
- b. My tax filing status is ☐ single ☐ head of household ☐ married, filing separately
☐ married, filing jointly with (specify name): _____
- c. I file state tax returns in ☐ California ☐ other (specify state): _____
- d. I claim the following number of exemptions (including myself) on my taxes (specify): _____

4. Other party's income. I estimate the gross monthly income (before taxes) of the other party in this case at (specify): \$ _____
 This estimate is based on (explain): _____

(If you need more space to answer any questions on this form, attach an 8½-by-11-inch sheet of paper and write the question number before your answer.) Number of pages attached: _____

I declare under penalty of perjury under the laws of the State of California that the information contained on all pages of this form and any attachments is true and correct.

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

Form Adopted for Mandatory Use
 Judicial Council of California
 FL-150 (Rev. January 1, 2007)

INCOME AND EXPENSE DECLARATION

Page 1 of 4
 Family Code, §§ 2030–2032,
 2100–2113, 2652, 2620–2634,
 4050–4075, 4300–4339
 www.courtinfo.ca.gov
 American LegalNet, Inc.
 www.FormsWorkflow.com

PETITIONER/PLAINTIFF: _____ RESPONDENT/DEFENDANT: _____ OTHER PARENT/CLAIMANT: _____	FL-150 CASE NUMBER: _____

Attach copies of your pay stubs for the last two months and proof of any other income. Take a copy of your latest federal tax return to the court hearing. (Black out your social security number on the pay stub and tax return.)

5. **Income** (For average monthly, add up all the income you received in each category in the last 12 months and divide the total by 12.)

	Last month	Average monthly
a. Salary or wages (gross, before taxes)	\$	\$
b. Overtime (gross, before taxes)	\$	\$
c. Commissions or bonuses	\$	\$
d. Public assistance (for example: TANF, SSI, GA/GR) ☐ currently receiving	\$	\$
e. Spousal support ☐ from this marriage ☐ from a different marriage	\$	\$
f. Partner support ☐ from this domestic partnership ☐ from a different domestic partnership	\$	\$
g. Pension/retirement fund payments	\$	\$
h. Social security retirement (not SSI)	\$	\$
i. Disability: ☐ Social security (not SSI) ☐ State disability (SDI) ☐ Private insurance	\$	\$
j. Unemployment compensation	\$	\$
k. Workers' compensation	\$	\$
l. Other (military BAQ, royalty payments, etc.) (specify):	\$	\$

6. **Investment income** (Attach a schedule showing gross receipts less cash expenses for each piece of property.)

a. Dividends/interest	\$	\$
b. Rental property income	\$	\$
c. Trust income	\$	\$
d. Other (specify):	\$	\$

7. **Income from self-employment, after business expenses for all businesses**

I am the ☐ owner/sole proprietor ☐ business partner ☐ other (specify): _____

Number of years in this business (specify): _____

Name of business (specify): _____

Type of business (specify): _____

Attach a profit and loss statement for the last two years or a Schedule C from your last federal tax return. Black out your social security number. If you have more than one business, provide the information above for each of your businesses.

8. ☐ **Additional income.** I received one-time money (lottery winnings, inheritance, etc.) in the last 12 months (specify source and amount): _____

9. ☐ **Change in income.** My financial situation has changed significantly over the last 12 months because (specify): _____

10. **Deductions**

	Last month
a. Required union dues	\$
b. Required retirement payments (not social security, FICA, 401(k), or IRA)	\$
c. Medical, hospital, dental, and other health insurance premiums (total monthly amount)	\$
d. Child support that I pay for children from other relationships	\$
e. Spousal support that I pay by court order from a different marriage	\$
f. Partner support that I pay by court order from a different domestic partnership	\$
g. Necessary job-related expenses not reimbursed by my employer (attach explanation labeled "Question 10g")	\$

11. **Assets**

	Total
a. Cash and checking accounts, savings, credit union, money market, and other deposit accounts	\$
b. Stocks, bonds, and other assets I could easily sell	\$
c. All other property, ☐ real and ☐ personal (estimate fair market value minus the debts you owe)	\$

PETITIONER/PLAINTIFF:		CASE NUMBER:
RESPONDENT/DEFENDANT:		
OTHER PARENT/CLAIMANT:		

12. The following people live with me:

Name	Age	How the person is related to me? (ex: son)	That person's gross monthly income	Pays some of the household expenses?
a.				☐ Yes ☐ No
b.				☐ Yes ☐ No
c.				☐ Yes ☐ No
d.				☐ Yes ☐ No
e.				☐ Yes ☐ No

13. Average monthly expenses

☐ Estimated expenses☐ Actual expenses☐ Proposed needs

a. Home:

(1) ☐ Rent or ☐ mortgage... \$

If mortgage:

(a) average principal: \$

(b) average interest: \$

(2) Real property taxes \$

(3) Homeowner's or renter's insurance
(if not included above) \$

(4) Maintenance and repair \$

b. Health-care costs not paid by insurance... \$

c. Child care \$

d. Groceries and household supplies \$

e. Eating out \$

f. Utilities (gas, electric, water, trash) \$

g. Telephone, cell phone, and e-mail \$

h. Laundry and cleaning \$

i. Clothes \$

j. Education \$

k. Entertainment, gifts, and vacation \$

l. Auto expenses and transportation
(insurance, gas, repairs, bus, etc.) \$m. Insurance (life, accident, etc.; do not
include auto, home, or health insurance) \$

n. Savings and investments \$

o. Charitable contributions \$

p. Monthly payments listed in item 14
(itemize below in 14 and insert total here) \$

q. Other (specify): \$

r. **TOTAL EXPENSES (a-q) (do not add in
the amounts in a(1)(a) and (b))** \$

s. Amount of expenses paid by others \$

14. Installment payments and debts not listed above

Paid to	For	Amount	Balance	Date of last payment
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	

15. Attorney fees (This is required if either party is requesting attorney fees.):

a. To date, I have paid my attorney this amount for fees and costs (specify): \$

b. The source of this money was (specify):

c. I still owe the following fees and costs to my attorney (specify total owed): \$

d. My attorney's hourly rate is (specify): \$

I confirm this fee arrangement.

Date:

(TYPE OR PRINT NAME OF ATTORNEY)

(SIGNATURE OF ATTORNEY)

PETITIONER/PLAINTIFF: _____	CASE NUMBER: _____
RESPONDENT/DEFENDANT: _____	_____
OTHER PARENT/CLAIMANT: _____	_____

CHILD SUPPORT INFORMATION
(NOTE: Fill out this page only if your case involves child support.)

16. Number of children

- a. I have (specify number): _____ children under the age of 18 with the other parent in this case.
- b. The children spend _____ percent of their time with me and _____ percent of their time with the other parent.
(If you're not sure about percentage or it has not been agreed on, please describe your parenting schedule here.)

17. Children's health-care expenses

- a. ☐ I do ☐ I do not have health insurance available to me for the children through my job.

b. Name of insurance company: _____

c. Address of insurance company: _____

- d. The monthly cost for the children's health insurance is or would be (specify): \$ _____
(Do not include the amount your employer pays.)

18. Additional expenses for the children in this case

Amount per month

a. Child care so I can work or get job training.	\$ _____
b. Children's health care not covered by insurance	\$ _____
c. Travel expenses for visitation	\$ _____
d. Children's educational or other special needs (specify below):	\$ _____

19. Special hardships. I ask the court to consider the following special financial circumstances (attach documentation of any item listed here, including court orders):

Amount per month

For how many months?

a. Extraordinary health expenses not included in 18b.	\$ _____	_____
b. Major losses not covered by insurance (examples: fire, theft, other insured loss)	\$ _____	_____
c. (1) Expenses for my minor children who are from other relationships and are living with me	\$ _____	_____
(2) Names and ages of those children (specify): _____		

- (3) Child support I receive for those children. \$ _____

The expenses listed in a, b, and c create an extreme financial hardship because (explain):

20. Other information I want the court to know concerning support in my case (specify):

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Clear This Form

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ EMAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____		FOR COURT USE ONLY To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
PETITIONER/PLAINTIFF: _____ RESPONDENT/DEFENDANT: _____ OTHER PARTY: _____		
FINDINGS AND ORDER AFTER HEARING		
		CASE NUMBER: _____

1. This proceeding was heard on (date): _____ at (time): _____ In Dept.: _____ Room: _____
 by Judge (name): _____ ☐ Temporary Judge
 On the order to show cause, notice of motion or request for order filed (date): _____ by (name): _____
- a. ☐ Petitioner/plaintiff present ☐ Attorney present (name): _____
 b. ☐ Respondent/defendant present ☐ Attorney present (name): _____
 c. ☐ Other party present ☐ Attorney present (name): _____

THE COURT ORDERS

2. Custody and visitation/parenting time: As attached ☐ on form FL-341 ☐ Other ☐ Not applicable
3. Child support: As attached ☐ on form FL-342 ☐ Other ☐ Not applicable
4. Spousal or family support: As attached ☐ on form FL-343 ☐ Other ☐ Not applicable
5. Property orders: As attached ☐ on form FL-344 ☐ Other ☐ Not applicable
6. Attorney's fees: As attached ☐ on form FL-345 ☐ Other ☐ Not applicable
7. Other orders: ☐ As attached ☐ Not applicable
8. All other issues are reserved until further order of court.
9. ☐ This matter is continued for further hearing on (date): _____ at (time): _____ In Dept.: _____
 on the following issues: _____

Date: _____

JUDICIAL OFFICER

Approved as conforming to court order.

SIGNATURE OF ATTORNEY FOR ☐ PETITIONER / PLAINTIFF ☐ RESPONDENT/DEFENDANT ☐ OTHER PARTY

Form Adopted for Mandatory Use
 Judicial Council of California
 FL-340 (Rev. January 1, 2012)

FINDINGS AND ORDER AFTER HEARING (Family Law—Custody and Support—Uniform Parentage)

Page 1 of 1
 www.court.ca.gov

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PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

CHILD SUPPORT INFORMATION AND ORDER ATTACHMENT

- TO ☐ Findings and Order After Hearing (form FL-340) ☐ Judgment (form FL-180)
☐ Restraining Order After Hearing (CLETS-OAH) (form DV-130)
☐ Other (specify):

THE COURT USED THE FOLLOWING INFORMATION IN DETERMINING THE AMOUNT OF CHILD SUPPORT:

1. ☐ A printout of a computer calculation and findings is attached and incorporated in this order for all required items not filled out below.
2. ☐ **Income**
- a. Each parent's monthly income is as follows:
- | | Gross monthly income | Net monthly income | Receiving TANF/CalWORKS |
|--------------------------|----------------------|--------------------|--------------------------|
| Petitioner/plaintiff: \$ | | \$ | ☐ |
| Respondent/defendant: \$ | | \$ | ☐ |
| Other parent/party: \$ | | \$ | ☐ |
- b. Imputation of income. The court finds that the ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party has the capacity to earn: \$ _____ per _____ and has based the support order upon this imputed income.
3. ☐ **Children of this relationship**
- a. Number of children who are the subjects of the support order (specify): _____
- b. Approximate percentage of time spent with petitioner/plaintiff: _____ %
 Respondent/defendant: _____ %
 Other parent/party: _____ %
4. ☐ **Hardships**
- Hardships for the following have been allowed in calculating child support:
- | | Petitioner/ plaintiff | Respondent/ defendant | Other parent/ party | Approximate ending time for the hardship |
|---|-----------------------|-----------------------|---------------------|--|
| a. ☐ Other minor children: | \$ | \$ | \$ | |
| b. ☐ Extraordinary medical expenses: | \$ | \$ | \$ | |
| c. ☐ Catastrophic losses: | \$ | \$ | \$ | |

THE COURT ORDERS

5. ☐ **Low-income adjustment**
- a. ☐ The low-income adjustment applies.
☐ The low-income adjustment does not apply because (specify reasons): _____
6. ☐ **Child support**
- a. **Base child support**
- ☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party must pay child support beginning (date): _____ and continuing until further order of the court, or until the child marries, dies, is emancipated, reaches age 19, or reaches age 18 and is not a full-time high school student, whichever occurs first, as follows:
- Child's name Date of birth Monthly amount Payable to (name):
- Payable ☐ on the 1st of the month ☐ one-half on the 1st and one-half on the 15th of the month
☐ other (specify): _____

THIS IS A COURT ORDER.

Page 1 of 3

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

THE COURT FURTHER ORDERS

6. b. ☐ **Mandatory additional child support**

(1) Child-care costs related to employment or reasonably necessary job training

(a) ☐ Petitioner/plaintiff must pay:	% of total or ☐ \$	per month	child-care costs.
(b) ☐ Respondent/defendant must pay:	% of total or ☐ \$	per month	child-care costs.
(c) ☐ Other parent/party must pay:	% of total or ☐ \$	per month	child-care costs.
(d) ☐ Costs to be paid as follows (specify):			

c. **Mandatory additional child support**

(2) Reasonable uninsured health-care costs for the children

(a) ☐ Petitioner/plaintiff must pay:	% of total or ☐ \$	per month.
(b) ☐ Respondent/defendant must pay:	% of total or ☐ \$	per month.
(c) ☐ Other parent/party must pay:	% of total or ☐ \$	per month.
(d) ☐ Costs to be paid as follows (specify):		

d. ☐ **Additional child support**(1) ☐ Costs related to the educational or other special needs of the children

(a) ☐ Petitioner/plaintiff must pay:	% of total or ☐ \$	per month.
(b) ☐ Respondent/defendant must pay:	% of total or ☐ \$	per month.
(c) ☐ Other parent/party must pay:	% of total or ☐ \$	per month.
(d) ☐ Costs to be paid as follows (specify):		

(2) ☐ Travel expenses for visitation

(a) ☐ Petitioner/plaintiff must pay:	% of total or ☐ \$	per month.
(b) ☐ Respondent/defendant must pay:	% of total or ☐ \$	per month.
(c) ☐ Other parent/party must pay:	% of total or ☐ \$	per month.
(d) ☐ Costs to be paid as follows (specify):		

e. ☐ **Non-Guideline Order**

This order does not meet the child support guideline set forth in Family Code section 4055. *Non-Guideline Child Support Findings Attachment* (form FL-342(A)) is attached.

Total child support per month: \$

f. **Child Support Order Suspension**

When a person who has been ordered to pay child support is in jail or prison or is involuntarily institutionalized for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison, or an institution is because the person didn't pay court ordered child support or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.

7. **Health-care expenses**

a. Health insurance coverage for the minor children of the parties must be maintained by the

☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party if available at no or reasonable cost through their respective places of employment or self-employment. Both parties are ordered to cooperate in the presentation, collection, and reimbursement of any health-care claims. The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.

THIS IS A COURT ORDER.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

7. b. ☐ Health insurance is not available to the ☐ petitioner/plaintiff ☐ respondent/defendant ☐ other parent/party at a reasonable cost at this time.
- c. ☐ The party providing coverage must assign the right of reimbursement to the other party.
8. **Earnings assignment**
An earnings assignment order is issued. Note: The payor of child support is responsible for the payment of support directly to the recipient until support payments are deducted from the payor's wages and for payment of any support not paid by the assignment.
9. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.
10. ☐ **Employment search order (Family Code § 4505)**
☐ Petitioner/plaintiff ☐ Respondent/defendant ☐ Other parent/party is ordered to seek employment with the following terms and conditions:
11. **Other orders (specify):**
12. **Notices**
- a. *Notice of Rights and Responsibilities (Health-Care Costs and Reimbursement Procedures) and Information Sheet on Changing a Child Support Order* (form FL-192) must be attached and is incorporated into this order.
- b. If this form is attached to *Restraining Order After Hearing* (form DV-130), the support orders issued on this form (form FL-342) remain in effect after the restraining orders issued on form DV-130 end.
13. **Child Support Case Registry Form**
Both parties must complete and file with the court a *Child Support Case Registry Form* (form FL-191) within 10 days of the date of this order. Thereafter, the parties must notify the court of any change in the information submitted within 10 days of the change by filing an updated form.

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the legal rate, which is currently 10 percent per year.

THIS IS A COURT ORDER.

Appendix 4—ALI Principles Section 3.04

The American Law Institute, *PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS* § 3.04 (2002):

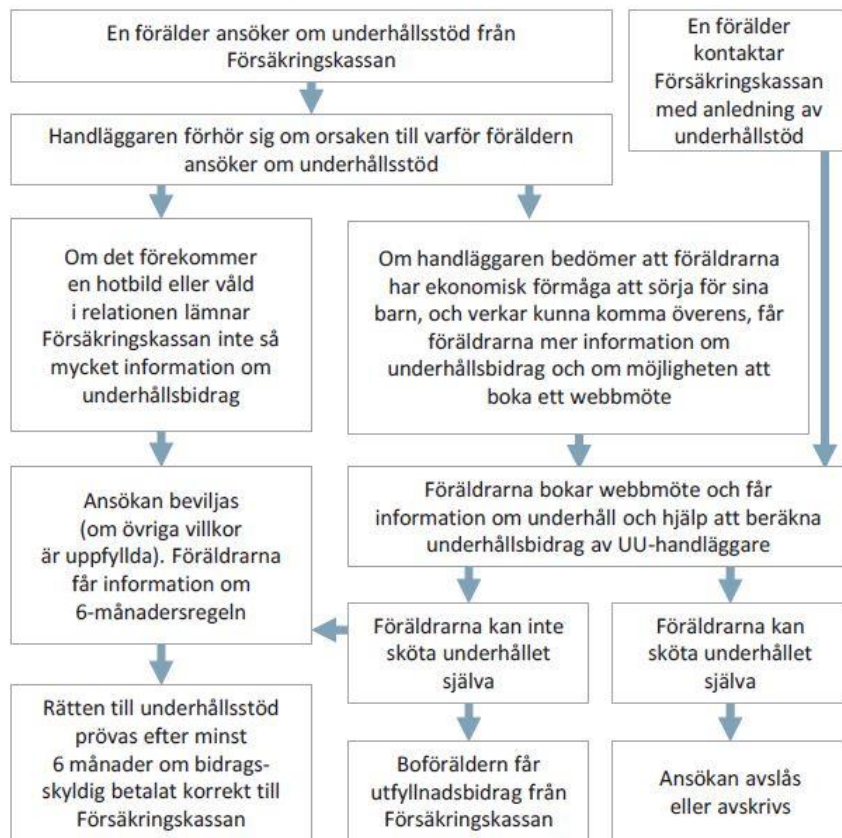
§ 3.04 ~~The~~ Objectives of The Principles Governing Child Support

The Principles governing child support take into account competing values and resolve the competing claims and interests of the child, the child's parents, and society. The Principles set forth in this chapter reflect and seek to achieve the following objectives:

- (1) ~~that~~ parents share income with a child in order that the child enjoy
 - (a) ~~a~~ minimum decent standard of living when the combined income of the parents is sufficient to achieve such result without impoverishing either parent, and
 - (b) ~~a~~ standard of living not grossly inferior to that of either parent;
- (2) ~~that~~ a child not suffer loss of important life opportunities that the parents are able to provide without undue hardship to themselves or their other dependents;
- (3) ~~that~~ residential [custodial] parents be treated fairly;
- (4) ~~that~~ nonresidential [noncustodial] parents be treated fairly;
- (5) ~~that~~ child-support rules not discourage the labor-force participation or vocational training of either parent;
- (6) ~~that~~ child-support rules take into account a child's need for care;
- (7) ~~that~~ child-support rules be readily comprehensible and administrable, and reflect popular understanding of the duties and obligations of parents to a child and to each other;
- (8) ~~that~~ child-support awards be readily enforceable and modifiable as the circumstances of the parties change; and
- (9) ~~that~~ the design and implementation of child-support rules foster cooperation and minimize conflict between the child's parents.

Appendix 5—FK Chart, Advising Parents re: UB or UStöd, Sweden

Figur 3.2. Schematisk bild av föräldrarnas första kontakt med Försäkringskassan i ett underhållsärende



From ISF Report 2019:7, page 49

Appendix 6—SoS Checklist for Child Support Discussions, Sweden

For Discussions on Jointly Supporting the Child After Separation—“The questions below can be used as support for reviewing how the parents handled the costs of the child before the separation.”

(How have you/you together handled payment of purchases for the child while you lived together? How have you/you both divided the costs between you for for example vacations, outings and shared family activities? How do you/you both want the child/children to have it going forward? What needs do you think the child has? Etc.)

Checklista 4. Vid samtal om ekonomiska förhållanden

Frågorna nedan kan användas som stöd för att ta reda på hur föräldrarna hanterat barnets ekonomi före separationen.

Frageställning	Exempel
Hur har du/ni hanterat betalning av inköp etc. till barnet/barnen medan ni sammanlevde?	Klädinköp, fritidsaktiviteter, förskole- och fritidshemsavgifter, vård av sjukt barn, försäkringar, mediciner etc.
Hur har du/ni fördelat kostnaderna er emellan vid exempelvis semesterresor/utflykter och gemensamma familjeaktiviteter?	Resor, uppehålle, boende etc.
Hur vill du/ni att barnet/barnen ska ha det i fortsättningen? Vilka behov tycker du/ni att barnet har?	Fritidsinstressen, umgänge med syskon och vänner till familjen, kläder, leksaker/fritidsutrustning/mobil och annan elektronisk utrustning, försäkringar.
Vad tycker du/ni att ni måste bli överens om när det gäller barnets ekonomi?	Prioriteringar.
Vilka kostnader ser du/ni kommer att öka i samband med separationen?	
Kommer några kostnader att minska? Vilka? Varför?	
Hur brukar ni göra när barnet är sjukt? Hur kommer ni att göra i framtiden?	Fundera på kostnaden för var och en vid vård av sjukt barn. Hur löser man det enklast?
Vad säger barnet? Hur medvetet är barnet om de ekonomiska aspekterna av föräldrarnas separation?	
Hur stor vecko-/månadspeng ska barnet ha?	
Kommer du/ni att ha ett sparande för barnet?	
Finns det kostnader för barnet på grund av hälsoproblem?	Bland annat mediciner, psykologiskt stöd, annat.
Uppstår det kostnader på grund av barnets utbildning/skola?	Extra undervisning eller stöd, men också utflykter, klassresor etc.
Finns det kostnader förknippade med att barnet ska kunna upprätthålla relationer med familj, släkt och andra personer?	Resekostnader etc.

Appendix 7—Agreements on Child Support, Sweden and California

FK's Model Parental Contract (Agreement) on UB, from calculator website (App. 1)

Avtal om underhållsbidrag till barn

1 (1)

Barnet som ska få underhållsbidrag

Förnamn och efternamn	Barnets personnummer

Förälder som barnet bor hos

Förnamn och efternamn	Förälderns personnummer

Förälder som ska betala underhållsbidrag

Förnamn och efternamn	Förälderns personnummer

Underhållsbidrag som ska betalas till barnet

Underhållsbidraget betalas från och med	Underhållsbidraget betalas tills barnet fyller 18 år, datum Annat datum _____	Belopp som ska betalas, kronor per månad med bokstäver	Belopp i siffror, svenska kronor

Bestämmelser om betalning

Underhållsbidraget förfaller till betalning den sista dagen i månaden och avser kommande månad enligt föräldrabalken 7 kap. 7§.

Enligt lagen (1966:660) om ändring av vissa underhållsbidrag anpassas beloppet varje år till ändringar i penningvärdet. Eventuell höjning sker från och med den 1 februari.

Underskrift av den förälder som ska betala underhållsbidrag

Datum när avtalet tecknas	Förälderns namnteckning

Förälderns namnteckning beviittnas av två personer

Namnteckning	Namnteckning
Namnfortydligande	Namnfortydligande
Adress	Adress

Föräldern som barnet bor hos godtar avtalet för barnets räkning

Datum	Förälderns namnteckning

California's Mandatory Form for Orders Based on Child Support Parental Agreements

FL-350

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NO.: STATE: ZIP CODE: FAX NO.:	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT(PARTY):		
STIPULATION TO ESTABLISH OR MODIFY CHILD SUPPORT AND ORDER		
		CASE NUMBER:

1. a. ☐ Mother's net monthly disposable income: \$
 ☐ Father's net monthly disposable income: \$
 -OR-
 b. ☐ A printout of a computer calculation of the parents' financial circumstances is attached.
2. ☐ Percentage of time each parent has primary responsibility for the children: Mother: % Father: %
3. a. ☐ A hardship is being experienced by the mother: \$ per month because of (specify):
 The hardship will last until (date):
 b. ☐ A hardship is being experienced by the father: \$ per month because of (specify):
 The hardship will last until (date):
4. The amount of child support payable by (name): , referred to as "the parent ordered to pay support," as calculated under the guideline is: \$ per month.
5. ☐ We agree to guideline support.
6. ☐ The guideline amount should be rebutted because of the following:
 - a. ☐ We agree to child support in the amount of \$ per month; the agreement is in the best interest of the children; the needs of the children will be adequately met by the agreed amount; and application of the guideline would be unjust or inappropriate in this case.
 - b. ☐ Other rebutting factors (specify):
7. The parent ordered to pay support must pay child support as follows beginning (date):
 - a. BASIC CHILD SUPPORT
 Child's name Monthly amount Payable to (name):
 Total: \$ payable ☐ on the first of the month ☐ other (specify):
 b. ☐ In addition, the parent ordered to pay support must pay the following:
 - (1) ☐ \$ per month for child care costs to (name): on (date):
 - (2) ☐ \$ per month for health-care costs not covered by insurance to (name): on (date):
 - (3) ☐ \$ per month for special educational or other needs of the children to (name): on (date):
 - (4) ☐ other (specify):
 - c. Total monthly child support payable by the parent ordered to pay support will be: \$
 payable ☐ on the first of the month ☐ other (specify):
 - d. When a person who has been ordered to pay child support is in jail or prison or is involuntarily institutionalized for any period of more than 90 days in a row, the child support order is temporarily stopped. However, the child support order will not be stopped if the person who owes support has the financial ability to pay that support while in jail, prison, or an institution. It will also not be stopped if the reason the person is in jail, prison, or an institution is because the person didn't pay court ordered child support or committed domestic violence against the supported person or child. The child support order starts again on the first day of the month after the person is released from jail, prison, or an institution.

PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER:

8. a. Health insurance will be maintained by (specify name):
The parent ordered to provide health insurance must seek continuation of coverage for the child after the child attains the age when the child is no longer considered eligible for coverage as a dependent under the insurance contract, if the child is incapable of self-sustaining employment because of a physically or mentally disabling injury, illness, or condition and is chiefly dependent upon the parent providing health insurance for support and maintenance.
- b. ☐ A health insurance coverage assignment will issue if health insurance is available through employment or other group plan or otherwise is available at reasonable cost. Both parents are ordered to cooperate in the presentation, collection, and reimbursement of any medical claims.
- c. Any health expenses not paid by insurance will be shared: Mother: % Father: %
9. a. An earnings assignment order is issued.
- b. ☐ We agree that service of the earnings assignment be stayed because we have made the following alternative arrangements to ensure payment (specify):
10. In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount in arrears nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support, jointly.
11. ☐ Travel expenses for visitation will be shared: Mother: % Father: %
12. ☐ We agree that we will promptly inform each other of any change of residence or employment, including the employer's name, address, and telephone number.
13. ☐ Other (specify):
14. We agree that we are fully informed of our rights under the California child support guidelines.
15. We make this agreement freely without coercion or duress.
16. The right to support
- a. ☐ has not been assigned to any county, and no application for public assistance is pending.
- b. ☐ has been assigned or an application for public assistance is pending in (county name):
- If you checked b., an attorney for the local child support agency must sign below, joining in this agreement.

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR LOCAL CHILD SUPPORT AGENCY)

Notice: If the amount agreed to is less than the guideline amount, no change of circumstances need be shown to obtain a change in the support order to a higher amount. If the order is above the guideline, a change of circumstances will be required to modify this order. This form must be signed by the court to be effective.

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

(TYPE OR PRINT NAME) (SIGNATURE OF RESPONDENT)

(TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR PETITIONER)

(TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR RESPONDENT)

THE COURT ORDERS

17. a. ☐ The guideline child support amount in item 4 is rebutted by the factors stated in item 6.
- b. Items 7 through 13 are ordered. All child support payments must continue until further order of the court, or until the child marries, dies, is emancipated, or reaches age 18. The duty of support continues as to an unmarried child who has attained the age of 18 years, is a full-time high school student, and resides with a parent, until the time the child completes the 12th grade or attains the age of 19 years, whichever first occurs. Except as modified by this stipulation, all provisions of any previous orders made in this action will remain in effect.

Date:

JUDGE OF THE SUPERIOR COURT

NOTICE: Any party required to pay child support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent per year. This can be a large added amount.

STIPULATION TO ESTABLISH OR MODIFY
CHILD SUPPORT AND ORDER

For your protection and privacy, please press the Clear
This Form button after you have printed the form.

Print this form

Save this form

Clear this form