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## **RESEARCH REPORT**

# **PHASE 2 OF THE SURVEY OF CHILD SUPPORT AWARDS: FINAL REPORT**

**2004-FCY-7E**



# **Phase 2 of the Survey of Child Support Awards: Final Report**

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**Presented to:**

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We would like to express our gratitude as well to the individuals at each participating court site who have the responsibility for collecting the data for the Survey of Child Support Awards. We realize they face a challenging task in collecting relevant data from files that vary greatly in the amount of information they contain, and we very much appreciate their efforts. Thanks also to Kenty Adams of Neurofinance Inc. in Montreal for maintaining the database used to generate the results presented in this report.

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## EXECUTIVE SUMMARY

On May 1, 1997, the Federal Child Support Guidelines came into effect with the amendments to the *Divorce Act*. (The amendments to the *Income Tax Act* concerning the tax treatment of child support payments took effect on the same date.) The amendments to the *Divorce Act* required the Minister of Justice to review the operation of the Guidelines and report to Parliament before May 1, 2002. This report has now been tabled in Parliament.<sup>1</sup>

The Federal-Provincial-Territorial Task Force on Implementation of the Child Support Reforms established a Research and Evaluation Subcommittee to help develop the comprehensive program of socio-legal research to support the review required by the 1997 *Divorce Act* amendments. Given the profound change in the way child support order amounts are calculated under the Guidelines, the Task Force and the Research Subcommittee members agreed that the first research priority was to collect information about support orders and variation orders made on or after May 1, 1997. This analysis is based on data reported from the project's inception, and provides analysis of ongoing periodic collection of information from the courts designed to monitor the use of Child Support Guidelines in Canada and their implementation in family law cases across the country.

This report summarizes the interim findings of Phase 2 of the project, which began in the fall of 1998. The report presents the results of the analysis of data collected from the fall of 1998 through November 14, 2003. This report does not include any data from Quebec or Nunavut.

Highlights of the findings of Phase 2 data are as follows:

### Case Characteristics

- A total of 51,205 cases of divorce or variations of previous orders in which children were present were analyzed for this report.
- In cases where a child support amount was specified, the father was the payor in 92.8 percent of cases, and the mother was the payor in 6.2 percent of cases.
- The majority of orders (82.4 percent) were interim or final divorce orders and 16.1 percent were interim or final variation orders.
- The disposition of the majority of all cases was by consent or uncontested (87.9 percent); 9.3 percent of cases were reported as contested.
- In a majority of cases there was legal representation for at least one parent (82.1 percent); mothers had legal representation in 72.4 percent of cases and fathers in 60.4 percent of cases. Both parents had legal representation in 50 percent of the total cases. There was a significant decline between 1998 and 2003 in the proportion of cases with legal representation.

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<sup>1</sup> Department of Justice Canada, (2002). *Children Come First: A Report to Parliament Reviewing the Provisions and Operations of the Federal Child Support Guidelines*. Ottawa, ON: Department of Justice Canada.

- In 10.2 percent of the cases, a spousal support order amount was also made, usually payable monthly; in 98.7 percent of the cases where spousal support was ordered the husband was the payor. Monthly amounts ranged from \$1 to \$24,000.
- The majority of cases involved either one child (40.3 percent) or two children (44.6 percent).
- In 7,520 cases, it was estimated that there were 9,167 children over the age of majority.
- In the majority of cases (78.5 percent), the mother had sole custody; the father had sole custody in 8.8 percent of cases. Shared custody (a child spends at least 40 percent of the time with each parent) was relatively infrequent (6.7 percent), as was split custody (one or more children have primary residence with the mother and one or more children have primary residence with the father) (5.1 percent). The proportion of shared custody cases increased from 1998 (4.8 percent) to 2003 (8.3 percent).

### **Child Support Order Amounts and Related Factors**

- Data were available on monthly child support order amounts for 40,725 cases, representing 79.5 percent of the total. For all cases, child support amounts ranged from \$1 to \$8,366 per month, with a median of \$435.
- When total child support order amounts were examined in relation to the amount from the Child Support Guidelines tables in sole custody cases, the majority of order amounts were either the same as (58.4 percent) or greater than (30.6 percent) the table amount. Only 11 percent of cases reported order amounts that were less than the table amounts.
- There was a steady increase from 1998 (50.5 percent) through 2002 (63.4 percent) in the proportion of sole custody cases in which the child support order amount was equal to the table amount as stated in the order.
- Annual income for the paying parent was specified in 78.2 percent of cases and ranged from \$1 to \$9,945,500, with a median income of \$37,000. Annual income of receiving parents was specified in 46 percent of cases, and ranged from \$39 to \$6,052,649, with a median of \$26,000.
- When the amounts of child support orders were examined in relation to the income of the paying parents and the number of children in the cases, the results indicated a steady increase in child support order amounts as paying parents' income and number of children increased.
- For cases involving two children, at all income levels, child support order amounts for sole custody cases were higher than order amounts in shared or split custody cases.

### **Special or Extraordinary Expenses: Section 7 of the Federal Child Support Guidelines**

- Of the 31.9 percent of cases that indicated special expenses were ordered, the monthly amount of the paying parent's share of special or extraordinary expenses ranged from \$2 to \$1,534, with a median amount of \$117.
- The most commonly ordered type of expense was child/day care (11.8 percent of total cases). Expenses for extracurricular expenses followed this at 10 percent, and medical/dental insurance premiums followed at 9.3 percent.

### **Undue Hardship: Section 10**

- Undue hardship applications were identified in only 0.5 percent of the total cases in the sample.
- Of the 213 cases in which undue hardship applications were brought by the paying parent, 135 resulted in a decrease of the table amount, 35 were denied, and one case resulted in an increase of the table amount.
- Of the 14 undue hardship applications made by the receiving parent, one resulted in an increase of the table amount, and five were denied.

### **Variations**

- In 48.7 percent of variation cases, the applicant was the receiving parent. The paying parent was the applicant in 43.1 percent of variation cases, and in 8.2 percent of cases, parents were cross-applicants.
- Of variation applications brought by the receiving parent, 66.2 percent resulted in an increase, 30.2 percent resulted in a decrease, 3.2 percent resulted in a termination order, and 0.5 percent were denied.
- Of variation applications brought by the paying parent, 13.6 percent resulted in an increase, 68.8 percent resulted in a decrease, 15.9 percent resulted in a termination order, and 1.8 percent were denied.
- The proportion of variation cases that were contested (24.6 percent) was considerably higher than the proportion of divorce cases that were contested (6 percent).



## 1.0 INTRODUCTION

### 1.1 BACKGROUND

On May 1, 1997, the Federal Child Support Guidelines came into effect with the amendments to the *Divorce Act*.<sup>2</sup> (The amendments to the *Income Tax Act* concerning the tax treatment of child support payments took effect on that same date.) The amendments to the *Divorce Act* required the Minister of Justice to review the operation of the Guidelines and report to Parliament before May 1, 2002. This report has been tabled in Parliament and is publicly available.<sup>3</sup> A program of research by the Department of Justice Canada has been undertaken to provide data to allow for a comprehensive review of the provisions and operations of the Guidelines.

The Federal-Provincial-Territorial Task Force on Implementation of the Child Support Reforms established a Research and Evaluation Subcommittee<sup>4</sup> to help develop the comprehensive program of socio-legal research required to support the review required by the 1997 *Divorce Act* amendments. Given the profound change in the way order amounts are calculated under the Guidelines, the Task Force and the Research Subcommittee members agreed that the first research priority was to collect information about support orders and variation orders made on or after May 1, 1997. This project is providing data on the implementation of the Guidelines, and allows for ongoing or periodic collection of information from the courts until the end of the research initiative in March 2004.

Phase 1 of this project began in December 1997 and ended in October 1998. This pilot phase consisted of three tasks. Task 1 was managing the initial phase of the data collection process. Task 2 was to manage and prepare data received from participating courts for input into a computerized database. Task 3 was to analyze the collected data. The Canadian Research Institute for Law and the Family (CRILF) was contracted to complete tasks 1 and 3. Phase 2 of this project involved implementing a revised survey instrument and began in the fall of 1998.

### 1.2 STUDY APPROACH

This report presents the results of the analysis of data collected from Phase 2 of the Child Support Award Monitoring Project, which commenced in the fall of 1998 and continued through November 2003. Data were collected at each participating site on all divorce cases involving

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<sup>2</sup> *Divorce Act*, R.S.C. 1985 (2<sup>nd</sup> Supp.), c.3.

<sup>3</sup> Department of Justice Canada, (2002). *Children Come First: A Report to Parliament Reviewing the Provisions and Operation of the Federal Child Support Guidelines*. Ottawa, ON: Department of Justice Canada.

<sup>4</sup> This committee has been replaced by the Coordinating Committee of Senior Officials—Family Law Research Subcommittee.

children. Section 2.0 discusses the methods used to collect the data for Phase 2. A description of the cases on selected variables is presented in Section 3.0, and factors related to child support order amounts organized according to the sections of the Child Support Guidelines are discussed in Section 4.0. Section 5.0 presents the conclusions of the report. There is also a detailed data definition report (available upon request) that presents a discussion of each data element contained in the database for this study.

## 2.0 METHODOLOGY

### 2.1 RESEARCH DESIGN AND PROCEDURES

Following completion of the pilot phase of data collection for this project, a revised survey instrument was implemented that addressed several problems and issues identified during the pilot. As with the pilot survey on child support orders, the instrument used in Phase 2 was designed to record at each participating site all court decisions under the *Divorce Act* involving children.<sup>5</sup> Relevant data sources for completing the survey instrument included the following:

- All interim child support orders in divorce files.
- Final divorce judgments that specifically incorporate separation agreements, minutes of settlement or previous court orders.
- Final divorce judgments that are silent on child support even though children are involved.
- Orders varying divorce judgments.
- Final divorce judgments that contain corollary relief orders.

In addition, it was discovered during the pilot phase that several other sources of relevant information for completing the survey instrument were available in files at certain court sites. The addition of an item on the revised instrument allows for the identification of the documents that were used to collect the data.

The unit of analysis for this project is the individual court decision, not the individual case. In other words, a divorce judgment involving child support for which a variation order is later made would be included as two separate cases in the database.

All provinces and territories except Quebec and Nunavut collected data included in this analysis in at least one site.<sup>6</sup> The sites that collected data for this analysis are:

- St. John's, Newfoundland.
- Charlottetown and Summerside, Prince Edward Island.
- Halifax, New Glasgow, Sydney, Truro and Yarmouth, Nova Scotia.

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<sup>5</sup> Some sites have also collected data from cases proceeding under provincial legislation. For purposes of analysis, these cases have been omitted from this report.

<sup>6</sup> As Quebec's system of determining child support awards is different from the Federal Child Support Guidelines, a separate study was designed to collect and analyze data in Quebec. See: Linda Goupil, *Rapport du Comité de suivi du modèle québécois de fixation des pensions alimentaires pour enfants*, Québec: Ministre de la Justice, procurement générale, Ministre responsable de la condition féminine et de l'application des lois professionnelles, Mars 2000. (*Report of the Follow-up Committee on the Quebec Model for the Determination of Child Support Payments*, in press.)

- Fredericton, New Brunswick.
- Ottawa, Toronto and London, Ontario.
- Winnipeg, Manitoba.
- Saskatoon and Regina, Saskatchewan.
- Edmonton and Calgary, Alberta.
- Victoria, British Columbia.
- Yellowknife, Northwest Territories.
- Whitehorse, Yukon.

The Federal-Provincial-Territorial Research Subcommittee members from each jurisdiction selected the sites to be studied in their respective jurisdictions. The Subcommittee was also heavily involved in the design of the survey and facilitated the site visits by the research team.

The contractor responsible for maintaining the database is Neurofinance Inc., located in Montreal. Neurofinance developed a computerized data input program that mirrors the paper survey instrument. In 2001, the data input process was moved to a web-based application, and data capture clerks now enter data directly at a secure internet site. The data analyzed in this report are from the version of the database received by the Canadian Research Institute for Law and the Family on November 18, 2003, and include all valid cases (n=56,490) entered in the database from the beginning of Phase 2 in the fall of 1998 through November 14, 2003.<sup>7</sup>

Figure 2.1 presents the number and percentage of cases included in this database by province or territory of origin. The largest number of cases was from Alberta (39.5 percent), followed by 29.6 percent from Ontario, 6.8 percent from New Brunswick and 6.5 percent from Nova Scotia. The number of cases from Alberta was large because both major urban centres in the province, Edmonton and Calgary, were participating in the project. The large number of Ontario cases reflects the fact that it was the most populous jurisdiction, with three court sites taking part. The jurisdictions with the fewest number of cases in the study were the Yukon (209), Northwest Territories (251) and Newfoundland (477).

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<sup>7</sup> A total of 5,285 cases were excluded from the database for purposes of the analyses presented in this report. The majority of these cases (n=3,793) were excluded because the file indicated that they had proceeded solely under provincial legislation. A smaller number of cases (n=1,492) were excluded for one or more of the following reasons: cases in which the child support award amount was based on a previous order dated prior to the implementation of the Federal Child Support Guidelines on May 1, 1997; cases representing variations that resulted only in termination orders and dealt with no other issues; cases relying solely on affidavits for data capture and not including information on whether the case represented a divorce or a variation; duplicate cases as determined by examination of whether the case was a divorce or a variation, the court file number, the date of judicial decision and the date when the order was issued and entered; and test cases that were entered during beta testing of the data entry system.



## **2.2 DATA QUALITY ISSUES**

One potential data quality issue that should be acknowledged is the differing availability of information for completing the survey instrument across participating sites. At some sites, the file available to data capture clerks contains all relevant documentation for a case, including any prior agreements or orders. At other sites, the available file contains only the final divorce judgment, which may be silent on child support because it was addressed in a previous agreement or order. While this could cause some variables to be underreported in the survey, it should not compromise the quality of the data that were available.

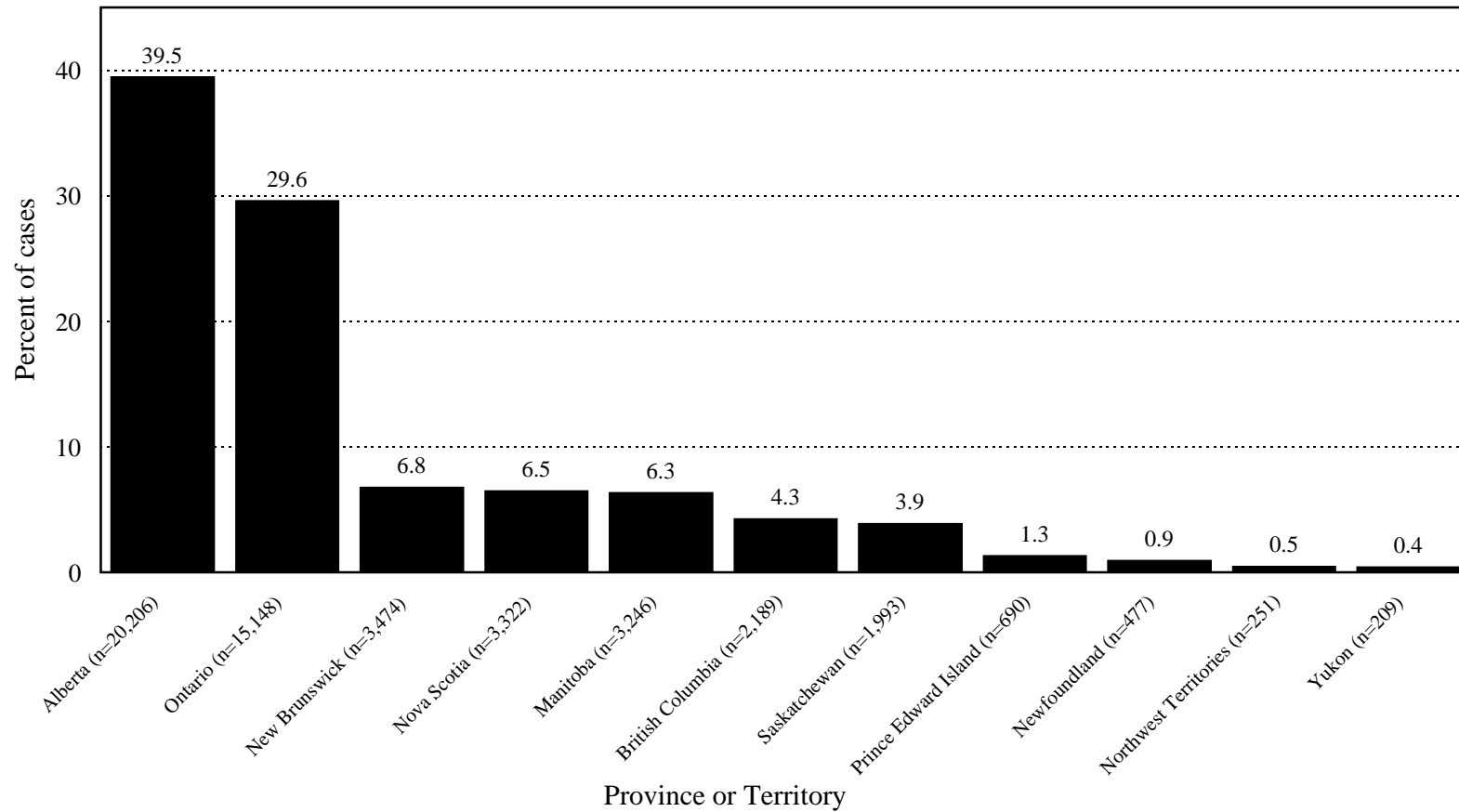
Although an attempt was made to train all data capture clerks and a standard coding manual made available, the fact that different persons across the country are collecting the information could affect data quality. Communication with coders has been ongoing throughout the project to minimize any effects on data quality. Survey team representatives conducted on-site data capturing training sessions with most of the data capture clerks following revision of the survey instrument in the fall of 1998. Further, a revised coding manual was developed for the revised questionnaire detailing the information to be coded for each item. CRILF maintained a toll-free help line for data capture clerks to answer questions regarding the appropriate way to code particular cases until April 2003. Questions from the data capture clerks are now directed to the Family, Children and Youth Section of the Department of Justice Canada.

Figure 2.2 indicates the source documents used to complete the instruments. Final orders were the most frequent source of information. These were available in 88.9 percent of cases. Affidavits (40.7 percent) and previous orders (15 percent) were also used in capturing data. Financial statements (1.8 percent) and minutes of settlement (4.7 percent) were the least frequently used. Final and previous orders, affidavits and minutes of settlement were considered the most reliable sources of data. Data capture clerks were instructed to only use financial statements if the information required was not available from any other source.

### **2.2.1 Limitations of Data Elements**

Over the course of this initiative, certain data elements were identified as problematic for various reasons. This section identifies these elements and discusses their limitations.

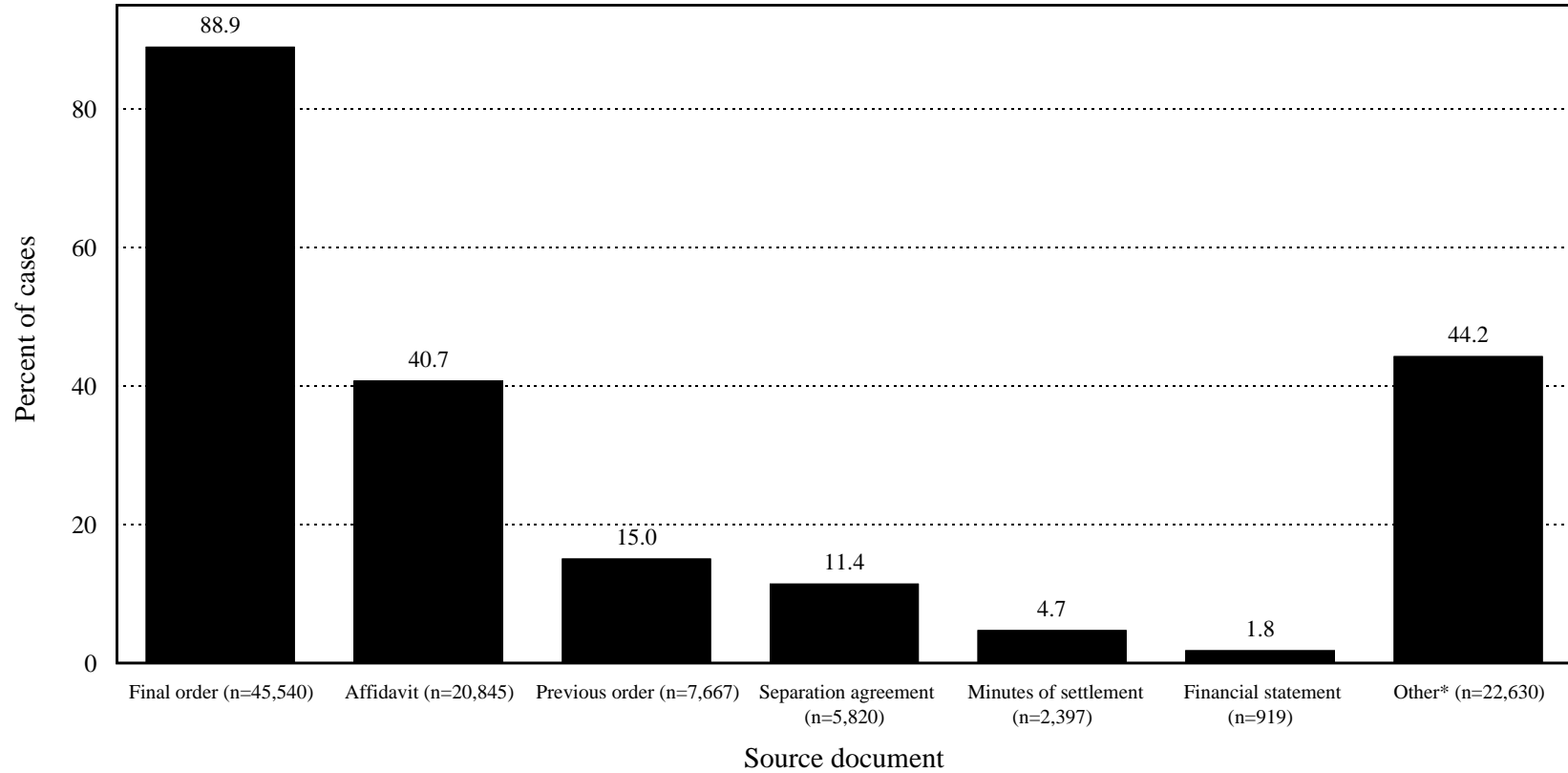
**Figure 2.1: Percentage of Cases from Each Participating Province or Territory**



Total n=51,205.

Source of Data: Survey of Child Support Awards, November 2003.

**Figure 2.2: Source Documents Used to Complete Survey**



Total n=51,205.

Numbers do not add up to total since more than one source document may be used to complete the survey.

\* Other includes such documents as data sheet, petition, variation application, clerk's notes and interim order.

Source of Data: Survey of Child Support Awards, November 2003.

## **Birth Dates of Children**

Data capture clerks were only asked to provide the year of birth of each child involved in the case rather than the actual birth date. This meant that it was not possible to determine accurately all children who were over the age of majority as of the date of the order. As a result, data concerning children over the age of majority should be treated with caution. Capturing the exact birth date of the children would have allowed this determination.

## **Legal Representation**

Legal representation for the parents was very broadly defined in this study to include any evidence that the parent had legal representation at any point during the proceedings for the current case. Thus, a parent who was represented by a lawyer in one meeting at the outset of the case would be treated the same as a parent who relied on counsel throughout a prolonged, contested case. It would have been preferable to collect more detailed information regarding the extent to which counsel was used in the case, as well as on the particular issues that required the most legal advice.

## **Disposition of Case**

Data capture clerks were asked to indicate if a case was contested, uncontested or disposed of on consent. Further, information was also sought regarding the disposition of each issue dealt with in the case. In practice, data capture clerks had a great deal of difficulty distinguishing between uncontested cases and issues and those that were resolved on consent. For this reason, uncontested and consent cases were combined for data analysis purposes.

## **Spousal Support Order Amounts**

As this survey, by design, only deals with cases in which children are present, the data on spousal support do not include all spousal support order amounts made in the participating jurisdictions. In particular, it does not reflect cases where spousal support was sought or ordered, but in which there are no children. Because collecting data on all spousal support order amounts was beyond the scope of this project, it should be recognized that spousal support as discussed in this report is not representative of all such order amounts made.

## **Custody**

It was evident that some data capture clerks had difficulty distinguishing between “joint custody” and “joint guardianship,” which are not Child Support Guidelines terms, and “shared custody,” which is the term under the Guidelines used to refer to the situation where the child lives with each parent at least 40 percent of the time. For this reason, the terms joint custody and joint guardianship are not used in this report, and custody was determined using the amount of time the child(ren) spent with each parent, as determined by the data capture clerks. If a child spent 40 to 60 percent of time with each parent, the case was treated as shared custody.

## **Section 13 Compliance**

Section 13 of the Child Support Guidelines specifies that certain pieces of information are to be included in a child support order. In practice, it was found that many child support orders do not include all of the information required by Section 13, thus limiting the extent to which data required for completing the survey can be obtained from the order. Further, in cases involving only one child, it is unclear whether including the name of the child to whom the order relates or for whom special or extraordinary expenses were ordered was considered necessary. Thus, the relatively low rates of compliance with some components of Section 13 should be interpreted cautiously.

### **2.3 DATA ANALYSIS STRATEGY**

This report presents analyses of the database generated from the fall of 1998 through November 14, 2003. In cases where measures of central tendency are presented, both the medians (the point above and below which 50 percent of the cases fall) and the means (or averages) are presented because the median is less sensitive to the effects of extreme scores. Medians only are presented in tables and figures.



### **3.0 DESCRIPTION OF CASES**

#### **3.1 SOURCE OF CHILD SUPPORT ORDER INFORMATION**

Data capture clerks were required to determine whether a case represented an original divorce order or a variation order. They were also asked to indicate the type of judgment or order used. Of the 51,205 cases, 82.4 percent were interim orders under federal legislation or final divorce orders, and 16.1 percent were interim or final variation orders. No information was available on whether the remaining 1.5 percent of cases were original divorce orders or variations.

Figure 3.1 presents a breakdown of the types of divorce orders or judgments used to complete the survey instrument. The most common type used was a divorce order that included a child support order (51.1 percent), followed by a divorce order that was silent on child support (31.8 percent).<sup>8</sup> Interim child support orders were reported in 10.8 percent of cases.

Of a total of 8,262 variations, a substantial majority (88.2 percent) were final variation orders.

#### **3.2 DISPOSITION OF ORDER**

One item on the survey instrument asks for the final disposition of the order. Due to possible confusion regarding the distinction between “consent” and “uncontested” dispositions, these categories were collapsed. Only 4,715 cases (9.3 percent) with non-missing data (n=50,833) on this variable were contested; 44,660 cases (87.9 percent) were coded as consent/uncontested. In 1,458 cases (2.9 percent) the disposition was unknown.

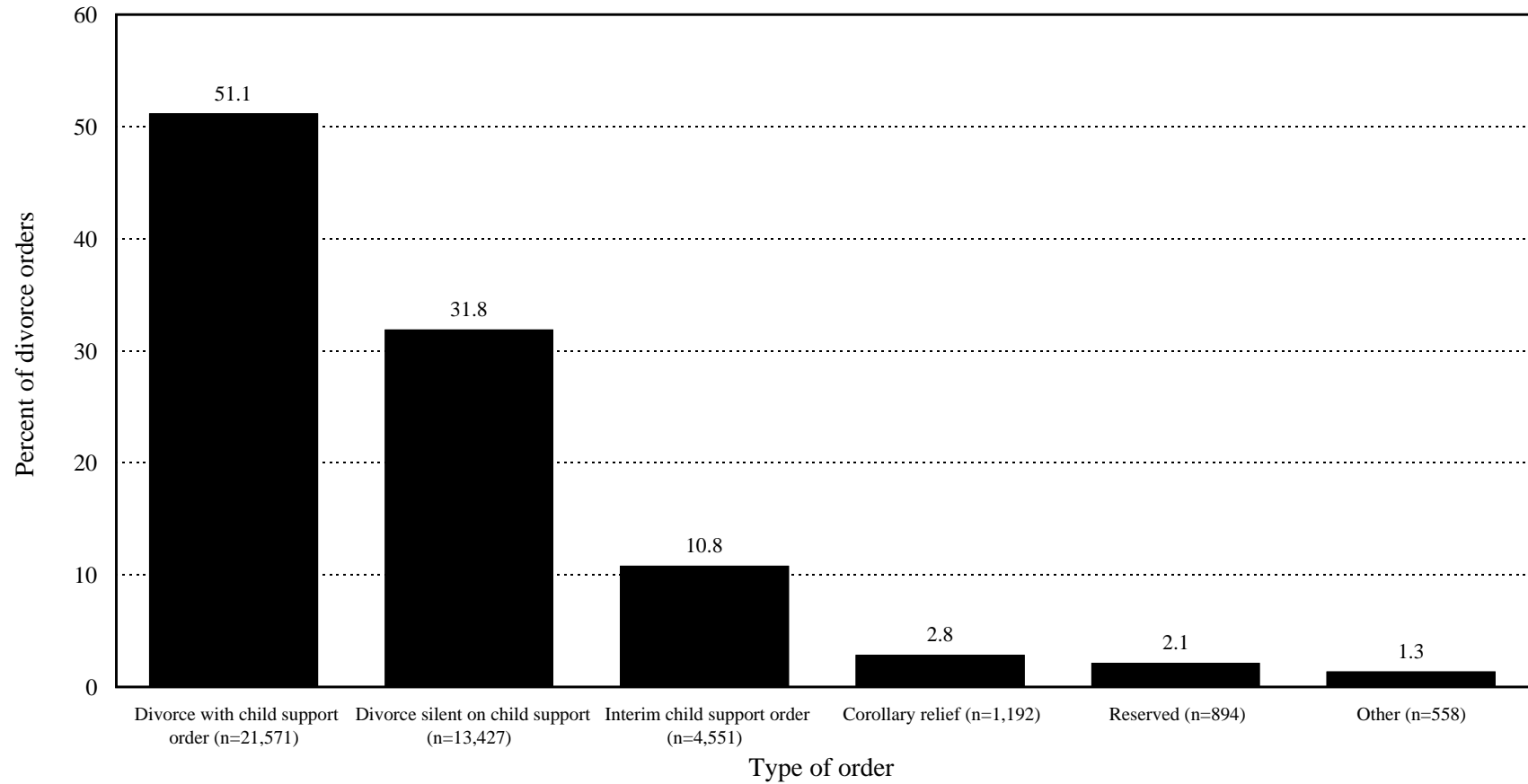
When examined over time, the proportion of cases that were contested decreased consistently. In 1998, 18.8 percent of cases were contested; this proportion decreased to 11.8 percent in 1999, 8.9 percent in 2000, 7.9 percent in 2001, 7.8 percent in 2002 and 5.7 percent in 2003.

Substantial differences were found in the disposition of divorce orders and variations. Of the total number of divorce orders for which information on disposition was available (n=41,980), 91.3 percent were coded as consent/uncontested and 6 percent as contested. However, of the 8,206 variations with information on disposition of the case, 71.6 percent were by consent/uncontested and 24.6 percent were contested.

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<sup>8</sup> The majority of the cases silent on child support are from Ontario, because at some court sites, child support orders are not included in divorce orders.

**Figure 3.1: Type of Order Under the Divorce Act**



Total number of divorce orders = 42,193.

750 cases were missing data on both type of divorce order/judgment and type of variation order.

Source of Data: Survey of Child Support Awards, November 2003.



### **3.3 LEGAL REPRESENTATION**

In the majority of cases with non-missing data (n=50,993), the mother was reported as having legal representation (36,912 or 72.4 percent). Of cases with non-missing data on legal representation for the father (n=50,939), the majority also had representation (30,744 or 60.4 percent), although the percentage was not as high as with mothers. A total of 42,056 cases (82.1 percent) reported legal representation for at least one parent, and 25,600 cases (50 percent of the total sample) reported representation for both parents. Only 786 cases (2.2 percent of non-missing data) reported legal representation for a government agency. Government agencies would include social assistance or enforcement agencies, but exclude Legal Aid Clinics that represent parents.

The parent receiving child support was considerably more likely to have legal representation (32,953 or 79.1 percent of non-missing data) than was the parent paying child support (26,899 or 66.2 percent of non-missing data). This pattern held across all years of the study; however, there was a tendency for the proportion of both paying and receiving parents with legal representation to decrease over time. The proportion of receiving parents with legal representation ranged from a high of 86.1 percent in 1999 to a low of 71.9 percent in 2003. Similarly, the proportion of paying parents with legal representation ranged from 75.5 percent in 1998 to 60.1 percent in 2003.

Legal representation was also analyzed separately for cases involving divorce orders and variations. Cases involving divorce orders were less likely to have legal representation for mothers (74.2 percent), fathers (59.9 percent) and government agencies (0.4 percent) than were cases involving variations (75.6 percent for mothers, 71.6 percent for fathers and 4 percent for government agencies).

### **3.4 SPOUSAL SUPPORT ORDER AMOUNTS**

A total of 5,239 cases (10.2 percent of the total sample) had a valid (non-zero) spousal support order amount that was payable monthly, annually or in a lump sum. It should be noted that, due to the nature of the survey, these only represent spousal support cases in which children were involved and provide no indication about cases where children were not involved. Of these cases, the majority (87.4 percent) had spousal support amounts payable monthly. In 566 cases (10.8 percent) the order amount was a lump sum, and in 93 cases (1.8 percent) an annual spousal support amount was specified.

The monthly spousal order amount ranged from \$1 to \$24,000. Over three quarters of the monthly order amounts (78.2 percent) were \$1,500 or less. The lump sum order amounts ranged from \$1 to \$2,500,000. Seventy-three of the 93 cases of annual spousal support had an amount of \$1. It should be noted that the *Divorce Act* provides that the courts are to only consider whether to make a spousal support order after making an appropriate child support order and, for this reason, they are sometimes quite low. Even so, these amounts are sometimes included in the order so they can be reconsidered at a later time.

A total of 4,987 of the spousal support cases specified the paying spouse. In 4,922 cases (98.7 percent) the husband was the paying spouse, while in only 65 cases (1.3 percent) the wife was the payor.

### **3.5 PAYING AND RECEIVING PARENT INCOMES**

A non-zero income for the paying parent was provided in 40,057 cases (78.2 percent of the total sample) and was “not stated” in 9,348 cases. As would be expected, since the receiving parent’s income is not required in straightforward applications of the Guidelines, a non-zero receiving parent’s income was specified in fewer cases (23,556 or 46 percent of the total). In cases where it would be expected that the recipient parent’s income would be specified (i.e. shared or split custody and/or special or extraordinary expenses ordered), 75.7 percent of the cases had a recipient parent income included.

The median annual income for paying parents was \$37,000 (mean=\$43,524) and ranged from \$1 to \$9,945,500. The median annual income for receiving parents was \$26,000 (mean=\$32,909), and ranged from \$39 to \$6,052,649.

For purposes of additional analysis of income information, the incomes of paying and receiving parents were collapsed into seven categories:

- \$ 1 - \$14,999
- \$ 15,000 - \$29,999
- \$ 30,000 - \$44,999
- \$ 45,000 - \$59,999
- \$ 60,000 - \$74,999
- \$ 75,000 - \$149,999
- \$150,000 and greater

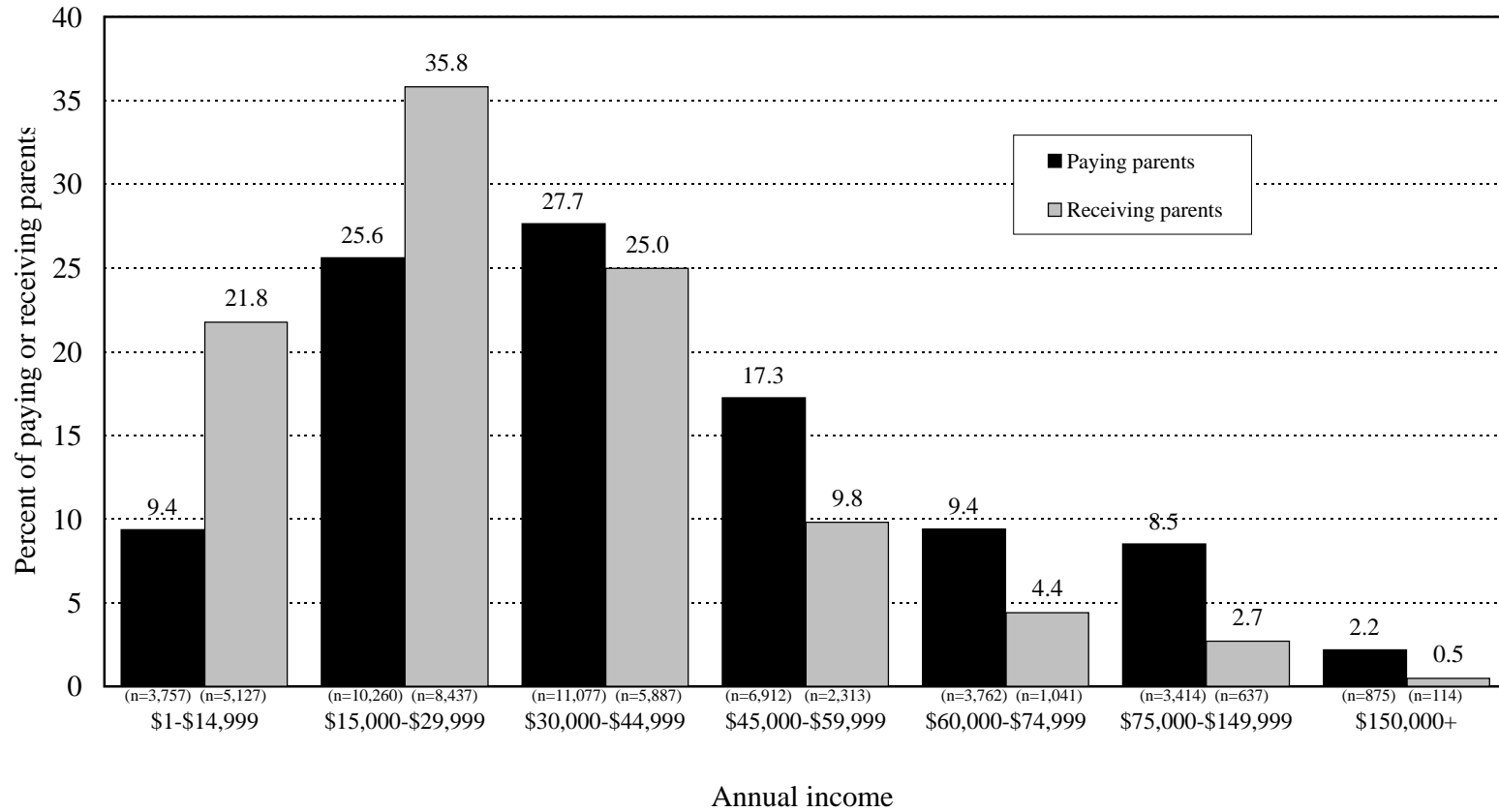
Figure 3.2 presents the categorized income levels for the paying and receiving parents. The highest proportion of paying parents (27.7 percent) fell into the \$30,000 to \$44,999 category. A total of 9.4 percent of paying parents fell into the lowest income category, and 2.2 percent had incomes in excess of \$150,000.

The pattern of income for receiving parents was somewhat different from paying parents in that the most common income category for receiving parents was \$15,000 to \$29,999 (35.8 percent of non-missing responses), followed by 25 percent in the \$30,000 to \$44,999 range. The proportion of cases in the higher income ranges was considerably lower for receiving parents than for paying parents.

### **3.6 NUMBER AND AGE OF CHILDREN IN CASE**

Data were available on the number of children included in all but 390 cases. A total of 90,445 children are included in cases in the database. The majority of cases included either one child (20,500 or 40.3 percent) or two children (22,648 or 44.6 percent). Three children were reported in 12.4 percent (n=6,300) of cases. Because relatively few cases involved four or more children

**Figure 3.2: Paying and Receiving Parents' Annual Incomes**



Total n=51,205. Cases missing information on paying parent income=11,148. Cases missing information on receiving parent income=27,649.  
 Source of Data: Survey of Child Support Awards, November 2003.

(n=1,367 or 2.7 percent), they were collapsed into a single category for purposes of subsequent analyses.

It is not possible to determine exactly how many children over the age of majority are present in the database, since only year of birth is requested on the survey instrument for each child involved in the case. However, an estimate of this number was computed. It is probably an overestimate, since it assumes that a child who reached the age of majority at any point during the year of the judgment would have been regarded as over the age of majority at the time of the judgment. This estimate indicated that there was at least one child over the age of majority in 7,520 cases (14.7 percent of the total), which represents 9,167 children. Figure 3.3 presents the age breakdown of children determined to be the age of majority or older. The majority of children were 18 (31.4 percent) or 19 (27.4 percent) years of age.

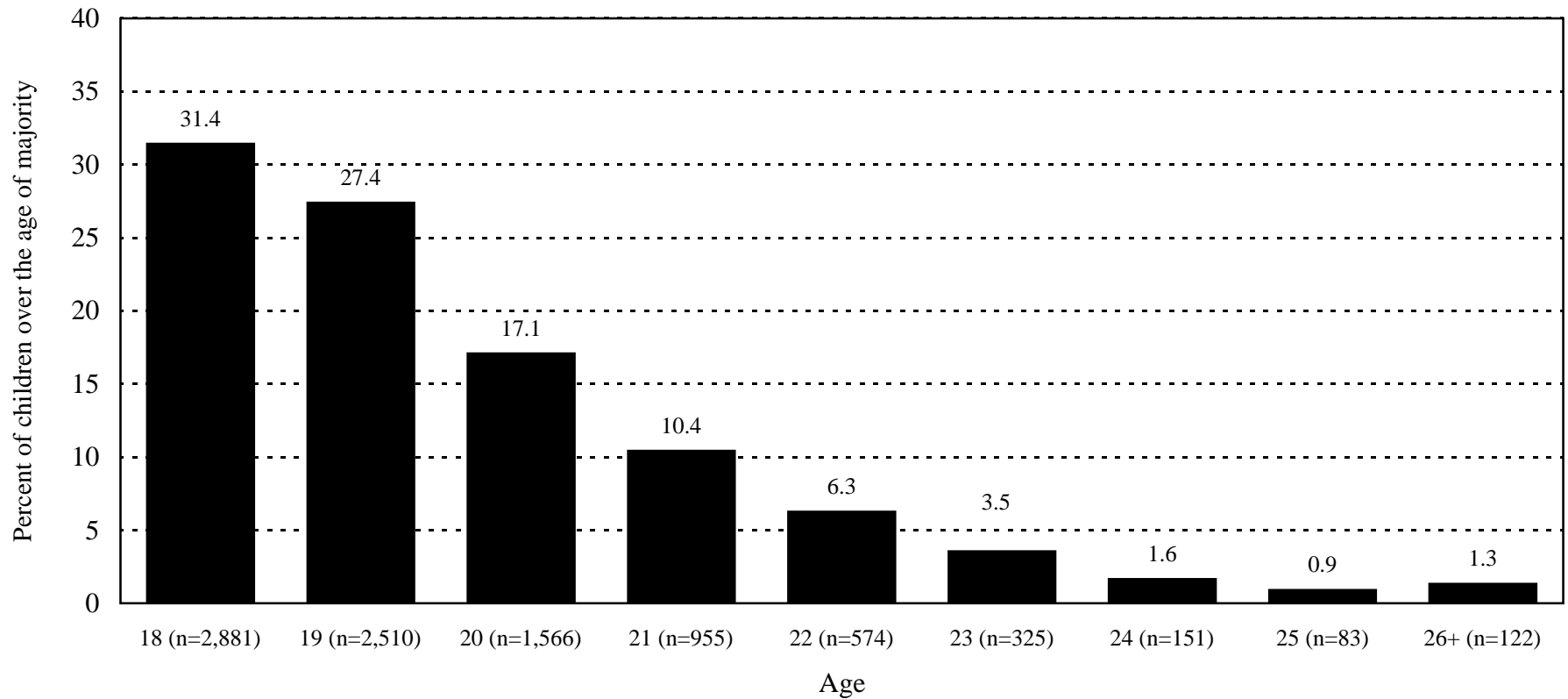
The revised survey instrument for Phase 2 also asked for the number of children treated as under the age of majority and the number of children treated as over the age of majority where this information was available. Children who were over the age of majority, with the applicable child support table amount ordered, are considered as being treated as under the age of majority. Children who were over the age of majority, with an amount ordered that the court considers appropriate *other* than that specified in the table are viewed as being treated as over the age of majority. In 2,345 cases (4.6 percent of the total), it was indicated that there was at least one child treated as over the age of majority.

### **3.7 TYPE OF CUSTODY ARRANGEMENTS**

Figure 3.4 presents the type of custody arrangement in the cases according to the definitions of custody provided in the Guidelines, which refer mainly to principal residence of the children. As discussed in the methodology section, custody was established for the purposes of this study based on time spent with each parent, using the figures from the Guidelines. This means that a parent who has a child 60 percent or more of the time has sole custody, while cases where each parent has the child 40 to 60 percent of the time are classified as having shared custody.

In the majority of cases (78.5 percent), the mother had sole custody; fathers had sole custody in 8.8 percent of cases. Shared custody (the child spends at least 40 percent of the time with each parent) was reported in 6.7 percent of cases. Split custody (one or more children have primary residence with the mother and one or more children have primary residence with the father) was reported in 5.1 percent of cases. This classification is based on terms used in the Child Support Guidelines. In some of the “sole custody” cases, there was a form of legal joint custody or joint guardianship, but the child did not spend at least 40 percent of the time with each parent, and hence under section 9 of the Guidelines this did not qualify as “shared custody.”

**Figure 3.3: Age Breakdown of Children Over the Age of Majority**

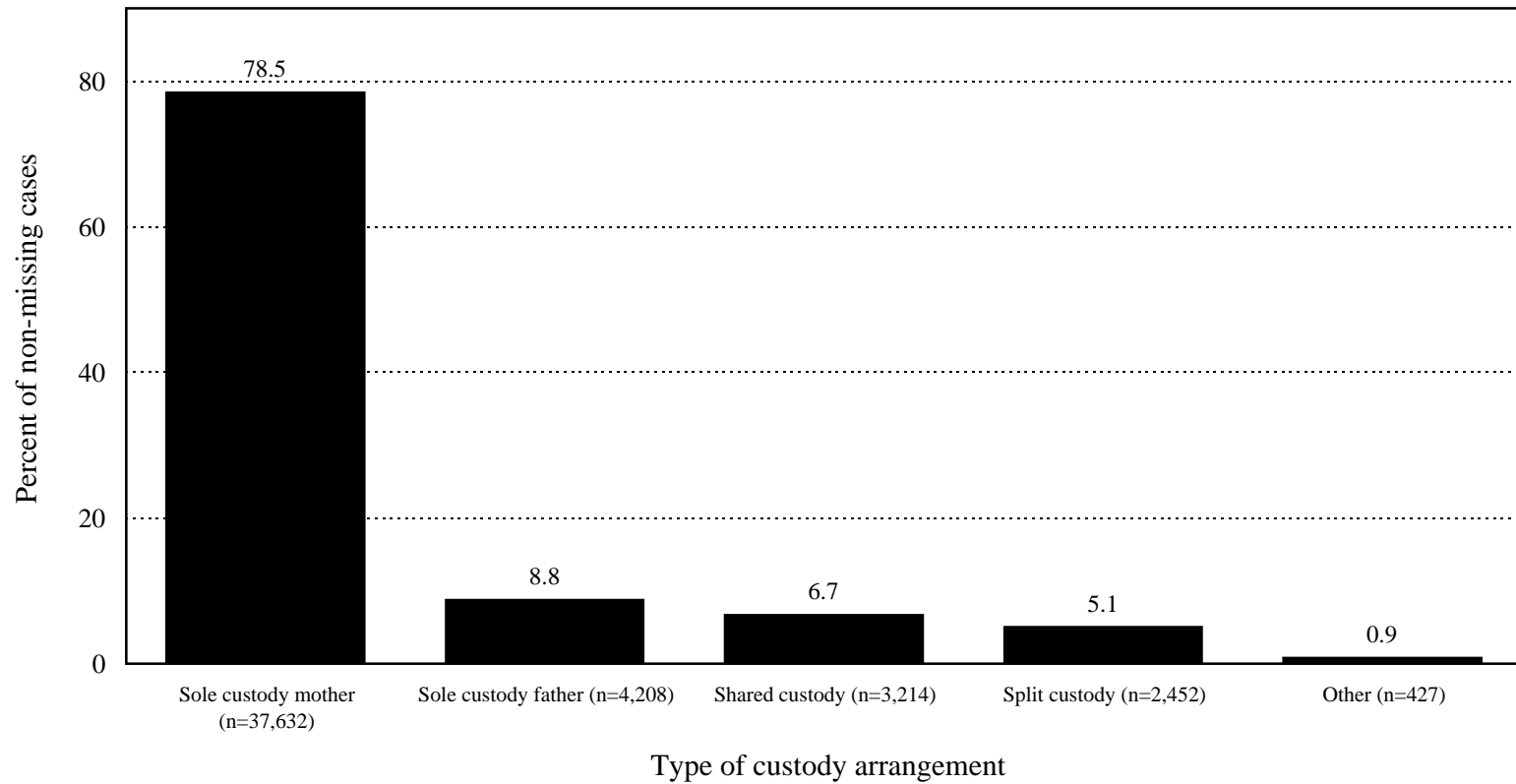


Total n=51,205. Number of children over the age of majority=9,167.

As the age of majority is 18 in some Canadian provinces/territories and 19 in others, 18-year-old children are only included in this figure for jurisdictions where the age of majority is 18.

Source of Data: Survey of Child Support Awards, November 2003.

**Figure 3.4: Type of Custody Arrangements  
(as defined by the Guidelines)**



Total n=51,205. Missing cases=3,272.

Source of Data: Survey of Child Support Awards, November 2003.

Patterns of custody remained consistent across the time period of this study. There was a tendency for the percentage of cases with sole custody to the mother to decrease modestly over time from a high of 80.2 percent in 1999 to a low of 76.5 percent in 2003. There was a corresponding tendency for the percentage of cases reporting shared custody to increase over time, from a low of 4.8 percent in 1998 to a high of 8.4 percent in 2003.





## **4.0 CHILD SUPPORT ORDER AMOUNTS**

Data were available on monthly child support order amounts for a total of 40,725 cases, representing 79.5 percent of the total.<sup>9</sup> Across all cases, monthly child support amounts ranged from \$1 to \$8,366, with a median value of \$435 (mean=\$552).<sup>10</sup> Section 4.3 presents child support amounts by number of children and paying parent income.

It was indicated in 72 cases (0.1 percent of total cases) that an annual amount was ordered for child support. These ranged from annual amounts of \$1 to \$100,000. Lump sum child support order amounts were reported in 350 cases (0.7 percent of total cases) and ranged from \$1 to \$406,667.

Further analysis of annual and lump sum child support order amounts suggested that many of these were for special or extraordinary expenses for post-secondary education for children over the age of majority. A total of 33.1 percent of the cases with lump sum support order amounts and 27.8 percent of cases with annual order amounts included at least one child over the age of majority, compared to 13.3 percent of cases including only monthly payments. Further, 38.9 percent of cases with annual support payments included special or extraordinary expenses, compared to 29.4 percent of cases with lump sum order amounts and 35.9 percent of cases with only monthly order amounts. Finally, 18.1 percent of cases with annual order amounts reported special or extraordinary expenses ordered for post-secondary education, compared to 10.9 percent of cases with lump sum order amounts and 5.4 percent of cases with only monthly order amounts.

In the cases with a non-missing child support order amount and the paying parent specified, the father was the payor in 92.8 percent of the cases (n=39,143), while the mother was the payor in 6.2 percent of cases (n=2,633). The payor of child support was coded as some other person in 110 cases (0.3 percent). Information on the paying parent was not available or not applicable in 299 cases (0.7 percent) with valid child support order amounts.

### **4.1 RELATIONSHIP BETWEEN CHILD SUPPORT ORDER AMOUNTS AND TABLE AMOUNTS**

Child support order amounts as stated in the order were compared with the amounts provided for in the Child Support Guidelines tables for sole custody cases in which the paying parent income and number of children in the case were specified. Cases in which the paying parent income was \$150,000 or more were excluded from this analysis since the determination of child support amounts in these cases is less straightforward than in cases with lower incomes, and judges have greater discretion in ordering child support amounts that may deviate from the table values.

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<sup>9</sup> Cases with monthly child support award amounts in excess of \$6,000 were examined manually in order to determine if these awards were accurate, given the other information available on the case. As a result, monthly award amounts in excess of \$10,000 for 36 cases were excluded from these analyses as they were determined to be anomalies, outliers or inaccurate.

<sup>10</sup> This represents the total child support award amount, which includes any “add-ons” for special or extraordinary expenses.

A total of 30,351 sole custody cases with paying parent incomes less than \$150,000 had the information necessary to make this comparison. Table 4.1 presents the proportion of cases reporting actual order amounts less than the table amount, equal to the table amount and greater than the table amount for all cases, as well as separately by income level of the paying parent. Across all cases, the actual child support order amount, which includes the base amount plus any additions or deductions for items such as special expenses, was most likely to be either equal to the table amount as coded by the data capture clerks (58.4 percent) or greater than the table amount (30.6 percent). Only 11 percent of all cases reported an order amount that was lower than the table amount. For the most part, the analysis comparing order amounts with table amounts by paying parent income was consistent with the pattern observed with all cases. However, there was a tendency for the proportion of order amounts less than the table amount to increase slightly as income increased.

**Table 4.1: Total Child Support Order Amount in Relation to Table Amount by Paying Parent Income in Sole Custody Cases<sup>1</sup>**

Income	Relationship of order amount to table amount					
	Amount less than table		Amount equal to table		Amount greater than table	
	n	%	n	%	n	%
\$1–\$14,999 (n=2,499)	185	7.4	1,034	41.4	1,280	51.2
\$15,000–\$29,999 (n=8,564)	810	9.5	5,133	59.9	2,621	30.6
\$30,000–\$44,999 (n=8,965)	1,049	11.7	5,367	59.9	2,549	28.4
\$45,000–\$59,999 (n=5,230)	631	12.1	3,165	60.5	1,434	27.4
\$60,000–\$74,999 (n=2,685)	342	12.7	1,597	59.5	746	27.8
\$75,000–\$149,999 (n=2,408)	327	13.6	1,416	58.8	665	27.6
All cases (n=30,351)	3,344	11.0	17,712	58.4	9,295	30.6

<sup>1</sup> In order to allow for minor variations from the table amounts as coded, the child support order amount was considered to be equal to the table amount if it was within 5 percent (either higher or lower) of the table amount. Thus, an order amount was considered less than the table amount if it was more than 5 percent less; similarly, amounts greater than 5 percent above the order amount were considered higher than the table amount. Cases in which the paying parent income was \$150,000 or greater were excluded.

Source of Data: Survey of Child Support Awards, November 2003.

A subsequent analysis indicated that the relatively high proportion of cases with child support order amounts in excess of the table amount was, in part, due to the ordering of special or extraordinary expenses. A total of 31.7 percent of cases with the order amount equal to the table amount were coded as having special or extraordinary expenses ordered, compared to 54.7 percent of cases in which the order amount was greater than the table amount.

In order to examine whether changes in the relationship between child support order amounts and table amounts as reported in the order changed over the course of the initiative, cases were divided by year from 1998 through 2003 according to the date of judgment. Table 4.2 presents the relationship between order amounts and table amounts by year, excluding cases in which the paying parent income was \$150,000 or more. There was a general increase across the six years in the proportion of cases in which the order amount was equal to the table amount. This proportion ranged from a low of 50.5 percent in 1998 to a high of 63.4 percent in 2002. The proportion of cases reporting child support order amounts that were less than the table amounts remained quite consistent across the years. The proportion of cases reporting order amounts in

excess of table amounts decreased across time from a high of 38.8 percent in 1998 to a low of 25.8 percent in 2002.

**Table 4.2: Total Child Support Order Amount in Relation to Table Amount by Year of Judgment in Sole Custody Cases<sup>1</sup>**

Year	Relationship of order amount to table amount					
	Amount less than table		Amount equal to table		Amount greater than table	
	n	%	n	%	n	%
1998 (n = 1,920)	207	10.8	969	50.5	744	38.8
1999 (n = 6,909)	788	11.4	3,703	53.6	2,418	35.0
2000 (n = 5,146)	579	11.3	2,927	56.9	1,640	31.9
2001 (n = 5,474)	580	10.6	3,331	60.9	1,563	28.6
2002 (n = 6,073)	659	10.9	3,848	63.4	1,566	25.8
2003 (n = 4,783)	523	10.9	2,912	60.9	1,348	28.2

<sup>1</sup> In order to allow for minor variations from the table amounts as coded, the child support order amount was considered to be equal to the table amount if it was within 5 percent (either higher or lower) of the table amount. Thus, an order amount was considered less than the table amount if it was more than 5 percent less; similarly, amounts greater than 5 percent above the order amount were considered higher than the table amount. Cases in which the paying parent income was \$150,000 or greater were excluded

Source of Data: Survey of Child Support Awards, November 2003.

#### **4.2 RELATIONSHIP BETWEEN CHILD SUPPORT ORDER AMOUNT, NUMBER OF CHILDREN AND PAYING PARENT'S INCOME**

To investigate the relationship between the paying parent's income and monthly child support order amounts, median support order amounts were examined by income category and number of children. Figure 4.1 presents the results of this analysis for sole custody cases including one, two or three children. The pattern of findings was quite consistent across number of children, and indicated a steady increase in the amount of child support order amounts as income of the paying parent increased and the number of children increased. This pattern would be expected, given that the table values increase incrementally with payor income and number of children in the case.

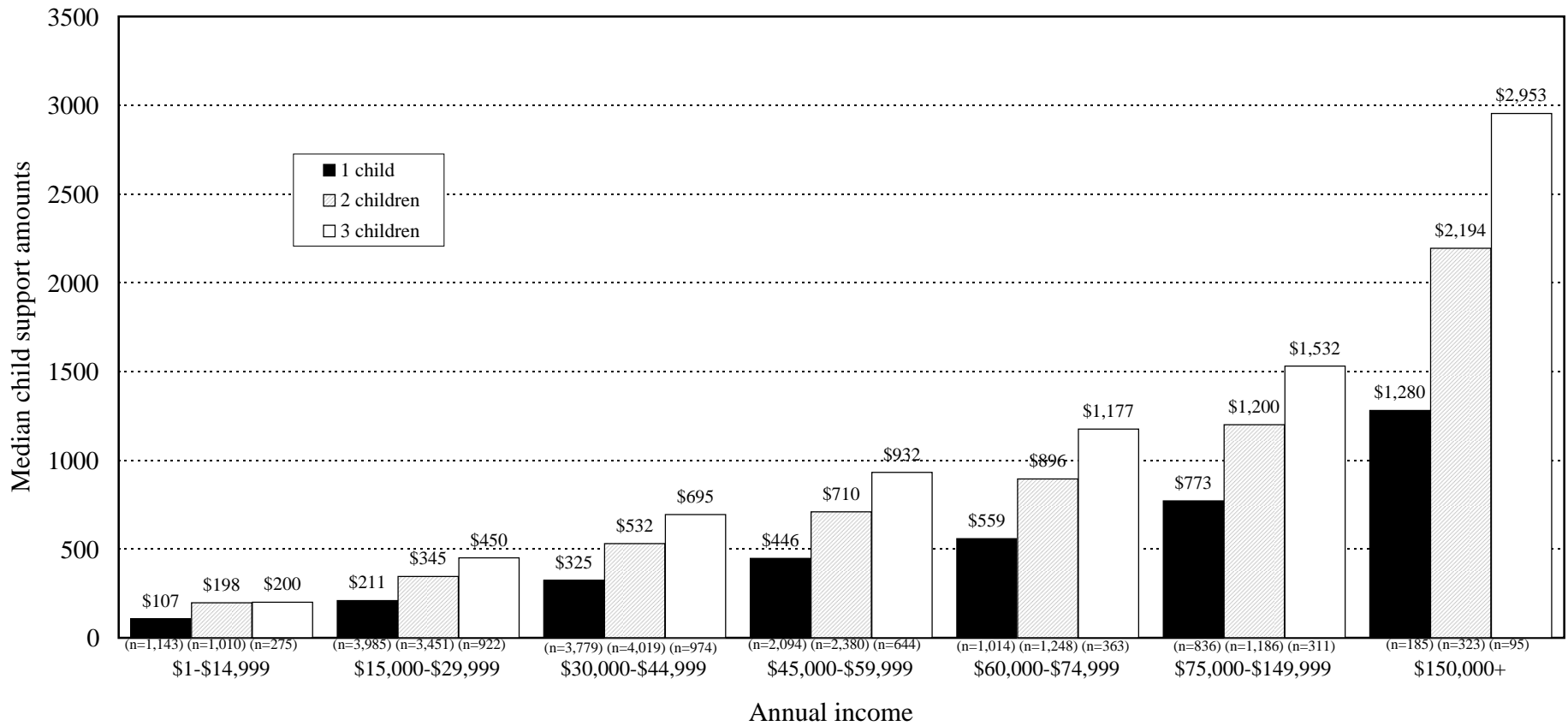
#### **4.3 ORDER AMOUNTS FOR CHILDREN AT OR OVER THE AGE OF MAJORITY**

The item on the survey asking about discretionary order amounts for children at or over the age of majority was only completed for 266 children, which suggests that such order amounts are rarely used or that information regarding these order amounts was not readily available to the data capture clerks.

Further, since the question asked for the discretionary amount for children over the age of majority only if they were not included in the table amount for all children, it is likely that child support order amounts for some children over the age of majority are included in the total child support amount and/or are reflected in special expenses for post-secondary education.

The monthly amounts of these orders for cases in which this item was completed ranged from \$34 to \$9,200.

**Figure 4.1: Median Child Support Amounts in Sole Custody Cases by Paying Parent Income and Number of Children**



Total n=51,205. Cases analyzed=30,237.

Sole custody cases=41,840. Sole custody cases with one, two, or three children=40,848.

Sole custody cases with up to three children missing data on paying parent income=8,315.

Source of Data: Survey of Child Support Awards; November 2003.

#### **4.4 CHILD SUPPORT ORDER AMOUNTS IN CASES WHERE PAYING PARENT INCOME IS \$150,000 OR GREATER**

Section 4 of the Child Support Guidelines provides that in cases where the paying parent income is in excess of \$150,000, the amount of child support should be either the amount as determined by the applicable table or, if the court believes that amount is not appropriate, the table amount for the first \$150,000 of the payor's income and the amount that the court considers appropriate for the balance of the payor's income. Thus, the court is allowed considerable discretion when determining the amount of child support in cases where the paying parent earns a high income. However, case law suggests that there is a presumption in favour of the table amount as a minimum when the payor's income is above \$150,000.

There was considerable variation in the incomes and child support order amounts in cases where the paying parent earned \$150,000 per year or more. Paying parent incomes in this category ranged from \$150,000 to \$9,945,500, with a median income of \$210,000 (mean=\$618,205). Monthly child support amounts in sole custody cases ranged from \$72 to \$8,366, with a median amount of \$2,027 (mean=\$2,241).

Cases with high income paying parents were considerably more likely to have special or extraordinary expenses ordered. In situations where the paying parent income was less than \$150,000, a total of 36.9 percent of cases had special or extraordinary expenses ordered. However, when the paying parent income was \$150,000 or more, 56.5 percent of cases had special or extraordinary expenses ordered.

#### **4.5 SPECIAL OR EXTRAORDINARY EXPENSES**

In a child support order the court may, on either spouses' request, provide an amount to cover special or extraordinary expenses, including child care, medical/dental insurance premiums, health-related expenses, primary/secondary school, post-secondary education or extracurricular activities. The survey requests information on whether special or extraordinary expenses were ordered in each case and, for those cases in which they were, whether an amount and/or proportion of the paying parent's share of these expenses was specified. The instrument also asks which specific expenses were ordered according to those contained in section 7 of the Child Support Guidelines.

In a total of 16,350 cases (31.9 percent of the total sample), special or extraordinary expenses were reported. In 8,061 of these cases (15.7 percent of the total sample or 49.3 percent of the cases in which special or extraordinary expenses were reported), the proportion of these expenses to be paid by the paying parent was specified. In 7,590 cases (14.8 percent of the total sample or 46.4 percent of the cases with special or extraordinary expenses ordered), the amount of the special expenses was specified. In 2,833 cases (17.3 percent of the cases in which special expenses were ordered), neither an amount nor proportion was specified.<sup>11</sup>

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<sup>11</sup> It should be noted that if special or extraordinary expenses are not specified in an order, then the expenses are not enforceable by the provincial/territorial Maintenance Enforcement Program (MEP) agencies. MEP can enforce based on receipt-based expenses, not specified in advance, provided the category or nature of that expense was identified in the order.

Of the 7,590 cases that specified the monthly amount of the paying parent's share of special or extraordinary expenses, the amount ranged from \$2 to \$1,534, with a median amount of \$117 (mean=\$156).<sup>12</sup> Of the 8,061 cases in which the paying parent's proportion of special expenses was specified, the proportion varied from 10 percent to 100 percent (median proportion was 59 percent). The most common proportion specified was 50 percent (2,086 cases), followed by a proportion of 100 percent in 826 cases. An annual payment amount for special expenses was provided in 200 cases and ranged from \$3 to \$30,000 (median=\$1,461; mean=\$3,270). An amount for lump sum special expenses was indicated in 251 cases and ranged from \$1 to \$125,000 (median=\$1,000; mean=\$3,015). The proportion of cases in which special expenses were included remained quite consistent across time, and ranged from a low of 31.1 percent in 2002 to a high of 33.3 percent in 2003.

Section 7 of the Guidelines allows the court to order special or extraordinary expenses in one or more of six categories. Figure 4.2 presents the number and proportion of cases out of the total sample in which each specific type of expense was ordered. The most commonly ordered type of expense was child/day care expenses (11.8 percent of total cases). The next most common expenses were extracurricular activities expenses (10 percent) and medical/dental insurance premiums (9.3 percent). The least frequently ordered expenses were post-secondary education (5.5 percent) and primary/secondary education (5.6 percent).

Figure 4.3 presents the proportion of cases in which all children were either under the age of majority or over the age of majority<sup>13</sup> and in which type of special or extraordinary expense was specified. As expected, child/day care expenses were much more likely to be ordered in cases in which all children were under the age of majority rather than over the age of majority (13.7 percent compared to 0.2 percent, respectively). Similarly, expenses for post-secondary education were considerably more likely to be ordered in cases in which all children were over the age of majority (16.7 percent) rather than under the age of majority (4.3 percent).

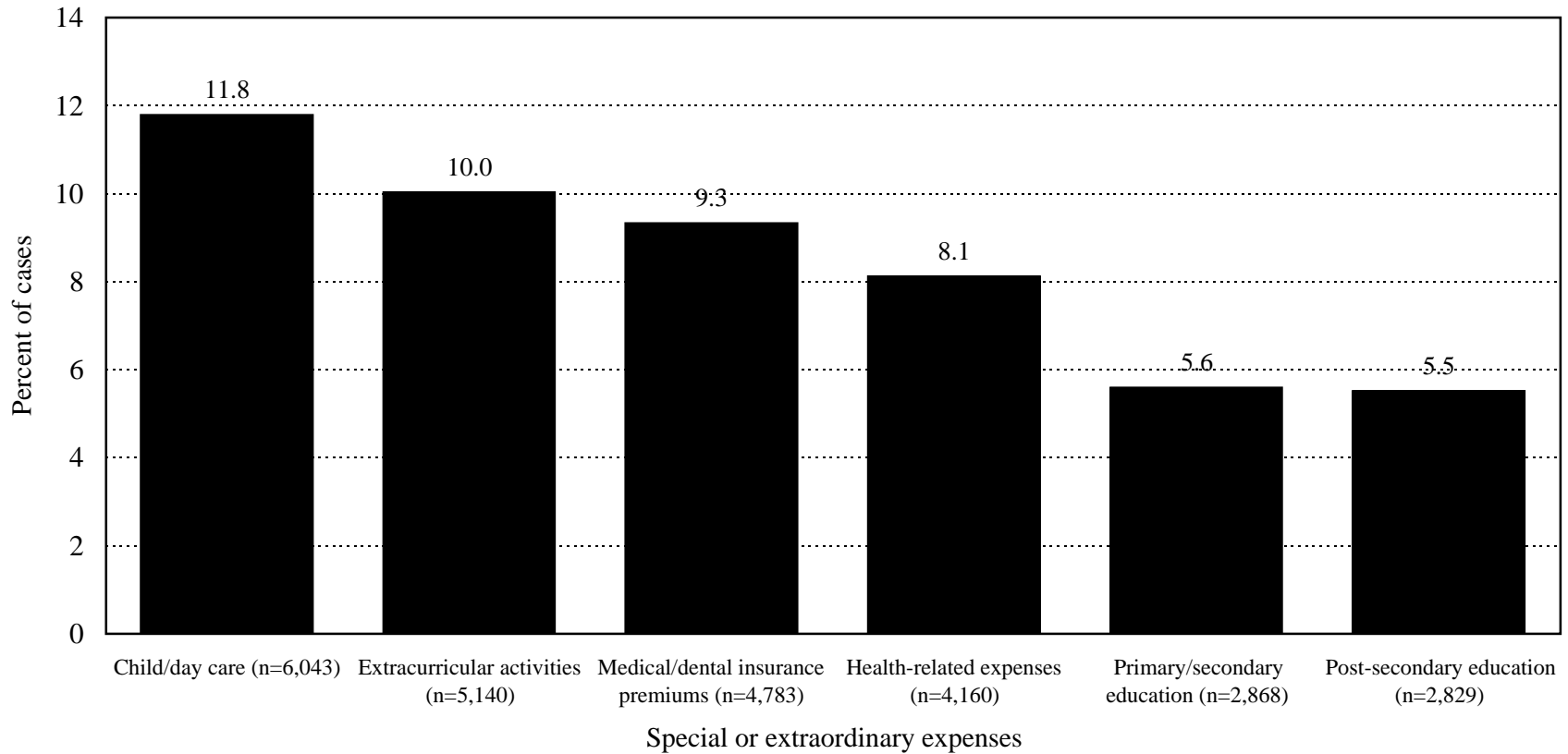
Of the 13,167 cases that specified which of the special or extraordinary expenses were ordered, the majority of cases (53 percent) had one expense ordered. Considerably fewer cases had two (22.1 percent), three (11.8 percent), four (5.4 percent), five (4 percent) or six (3.6 percent) special or extraordinary expenses ordered.

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<sup>12</sup> Monthly special or extraordinary expenses amounts in excess of \$1,000 were examined manually to determine whether these amounts were accurate according to other information in the case. On this basis, thirteen cases with monthly amounts greater than \$1,500 were excluded from analysis of this variable. In addition, 36 cases with a monthly amount of \$0 were also excluded.

<sup>13</sup> See Section 3.6 for a discussion of the limitations of this estimate.

**Figure 4.2: Percentage of Cases Specifying Special or Extraordinary Expenses Under Section 7 of the Guidelines**

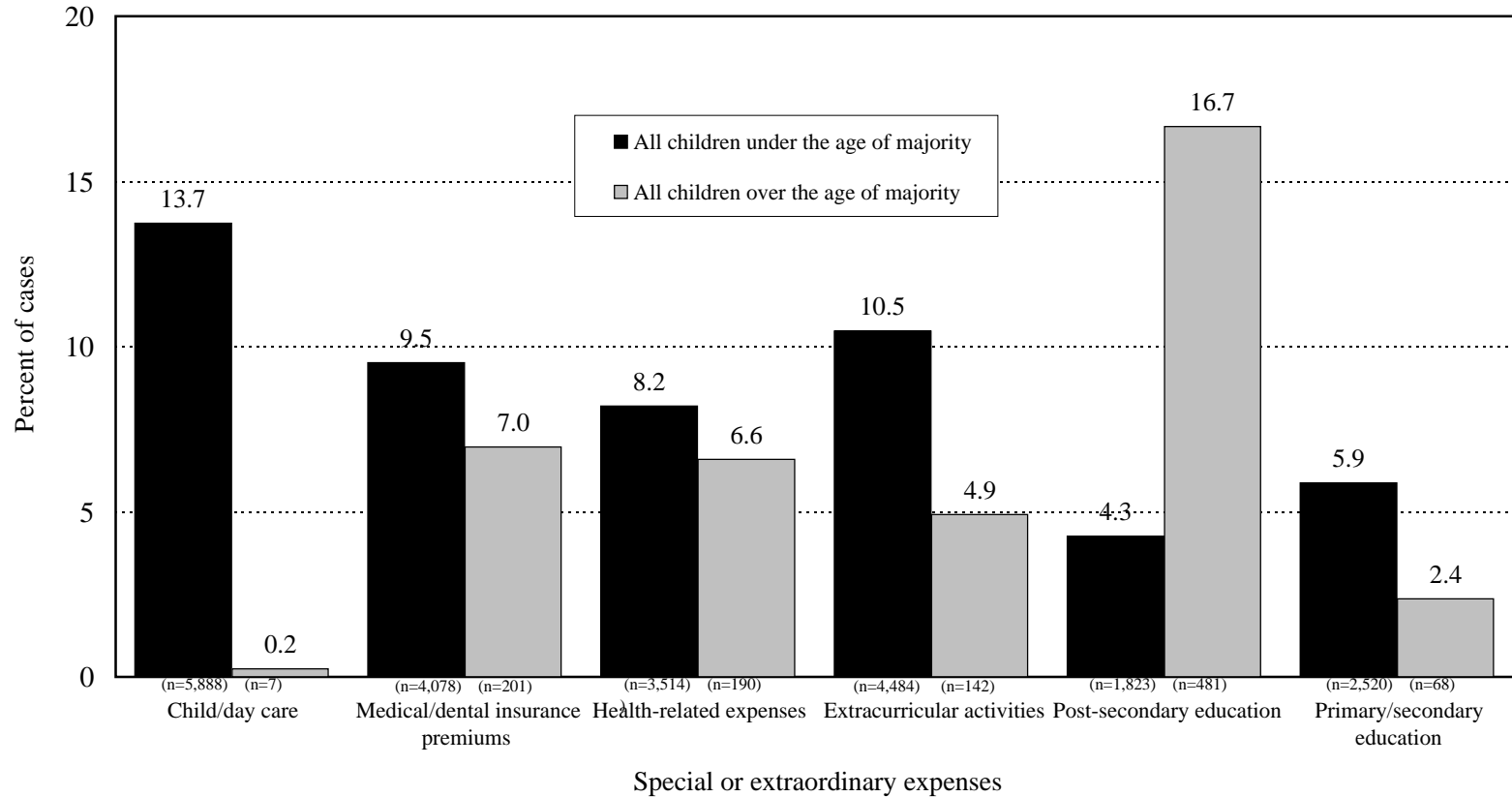


Total n=51,205.

These categories are not mutually exclusive and more than one expense can be specified in a case. A total of 16,350 cases (31.9 percent) had one or more section 7 expenses added.

Source of Data: Survey of Child Support Awards, November 2003.

**Figure 4.3: Percentage of Cases Specifying Special or Extraordinary Expenses Under Section 7 of the Guidelines for Cases with Children Under and Over the Age of Majority**



Total n=51,205.

n for all children under the age of majority=42,869. n for all children over the age of majority=2,886.

These categories are not mutually exclusive and more than one expense can be specified in a case.

Source of Data: Survey of Child Support Awards, November 2003.



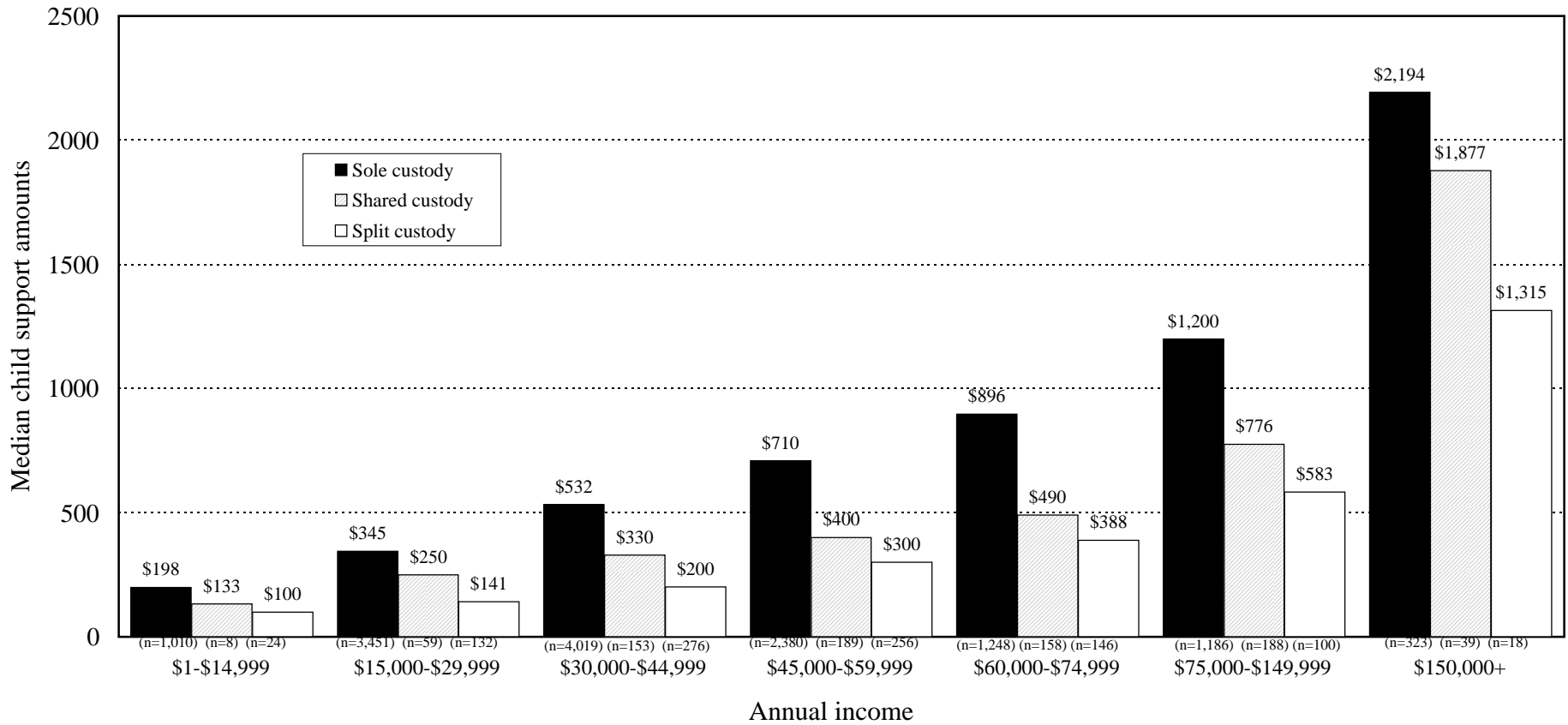
#### **4.6 CHILD SUPPORT ORDER AMOUNTS IN CASES OF SHARED OR SPLIT CUSTODY**

In order to examine child support order amounts in cases of shared or split custody, monthly median order amounts in these cases were compared with order amounts in cases of sole custody. In cases of split custody, the amount to be paid by the paying parent is presumptively offset by taking the income of the receiving parent into account. In shared custody cases, the court has considerable discretion, but can reduce the table amount to reflect the payor's costs in sharing custody. Thus, in cases with comparable paying parent incomes and number of children, child support order amounts in sole custody cases should be higher than orders in shared or split custody cases.

Figure 4.4 presents the median monthly child support orders amounts by paying parent income in sole, shared and split custody cases involving two children. The analysis was only conducted with cases having two children since, by definition, split custody cannot exist in cases with one child, and in cases with more than two children, split custody could involve differing numbers of children residing with each parent, which could make the analysis misleading. As expected, for all income levels, the median child support order amount for sole custody cases was higher than both shared and split custody cases. Further, for all income levels, child support order amounts were higher in shared custody cases than in split custody situations. Also, as would be expected, the amount of child support order amounts for each type of custody increased consistently as paying parent income increased.

Cases of sole, shared and split custody were also compared on other factors. When disposition for the case was examined, split custody cases were most likely to be contested (11.5 percent), followed by sole custody cases (8.8 percent) and shared custody cases (6.2 percent). Shared custody cases were most likely to have special or extraordinary expenses ordered (41.2 percent), followed by sole custody cases (32.1 percent) and split custody cases (26.1 percent). With respect to paying parent income, median income was highest in cases of shared custody (\$52,000; mean=\$65,800), followed by split custody (\$44,000; mean=\$55,100) and sole custody (\$35,600; mean=\$51,600).

**Figure 4.4: Median Monthly Child Support Order Amounts in Sole, Shared, and Split Custody Cases with Two Children by Paying Parent Income**



Total n=51,205. Cases analyzed: Sole custody cases n=13,617; shared custody cases n=794; split custody cases n=952.  
 Source of Data: Survey of Child Support Awards, November 2003.

#### **4.7 UNDUE HARDSHIP APPLICATIONS**

Undue hardship applications were identified in only 233 (0.5 percent) of the total cases in the sample.<sup>14</sup> Of these applications, 213 (91.4 percent) were brought by the paying parent and 14 (6 percent) by the receiving parent; there were six cases involving cross-applications. In 61 cases (26.2 percent), the incomes of other household members were used in the standard of living test. They were not used in 63 cases (27 percent); however, it is not known if there were other household members with incomes in these cases. It was unknown whether the incomes of other family members were used in 109 cases (46.8 percent).

Of the 213 cases in which applications for undue hardship were brought by the paying parent, 135 (63.4 percent) resulted in a decrease of the table amount, 35 (16.4 percent) were denied, and one resulted in an order amount higher than the table amount. The outcomes of 42 (19.7 percent) applications were unknown or missing. Of the 14 cases in which applications were brought by the receiving parent, only one resulted in an increase of the table amount and five were denied. Three of the cases resulted in an order that was less than the table amount. The outcome was unknown in five cases. Of the six cross-applications, three resulted in a decrease of the table amount, and the outcome was unknown in three cases.

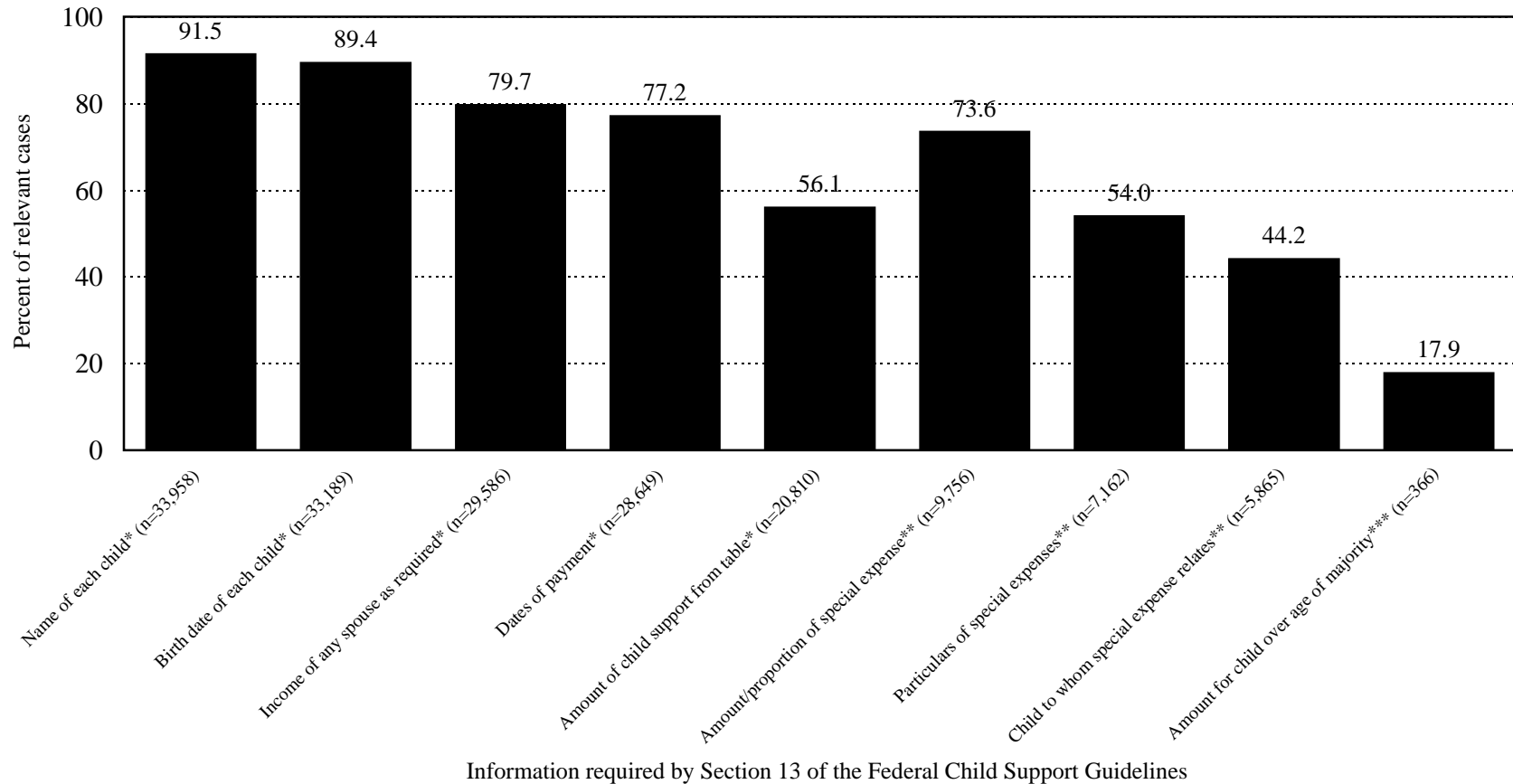
#### **4.8 INFORMATION TO BE INCLUDED IN A CHILD SUPPORT ORDER ACCORDING TO SECTION 13 OF THE CHILD SUPPORT GUIDELINES**

Section 13 of the Guidelines specifies information that should be included in a child support order. In the revised survey instrument used in Phase 2, data capture clerks were explicitly asked to indicate, by means of a checklist, which of the individual components contained in section 13 were included in each order. Since section 13 only applies to cases in which there was a child support order, only cases in which child support was dealt with in the order were included as the base sample (n=37,112). Figure 4.5 indicates the proportion of cases reporting the inclusion of each piece of information specified in section 13.

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<sup>14</sup> It should be noted that the data probably do not accurately reflect the number of cases in which undue hardship is raised. If a claim for undue hardship is raised in an original application and subsequently fails at a court hearing, there may be no record of the application in the court file that was available to the data capture clerks.

**Figure 4.5: Percentage of Cases Containing Information Required by Section 13 of the Federal Child Support Guidelines**



\* These percentages are based on the number of cases indicating that child support was dealt with in the order/judgment (n=37,112).

\*\* These percentages are based on the number of cases indicating child support was dealt with in the order/judgment and in which it was indicated that special or extraordinary expenses were ordered (n=13,259).

\*\*\* This percentage is based on the number of cases indicating child support was dealt with in the order/judgment and in which it was indicated that one or more children were treated as over the age of majority (n=2,042).

Source of Data: Survey of Child Support Awards, November 2003.

A substantial proportion of cases had information on both the name<sup>15</sup> and the date of birth of each child to whom the order relates (91.5 percent and 89.4 percent, respectively). Over three-quarters of the cases had information on the income of any spouse whose income is used to determine the child support amount (79.7 percent) as well as the dates on which payments are due (77.2 percent). A total of 56.1 percent of cases had the amount of child support as determined from the appropriate table included in the order.

With respect to the information required when special or extraordinary expenses are ordered, only cases with child support order amounts and special or extraordinary expenses were included (n=13,259). Of these cases, 73.6 percent were coded as having the amount or proportion of any extraordinary expense ordered specified. A total of 54 percent of the cases reported having the particulars of all special or extraordinary expenses ordered. Less than one-half (44.2 percent) reported the identity of the child to whom any special or extraordinary expense related. It should be noted, however, that 36.7 percent of cases with child support orders and special expenses ordered had only one child, and therefore it could be argued that it was not necessary to specify the child by name.

Section 13 also requires that the amount considered appropriate for any child over the age of majority be listed in a child support order. Determining compliance with this component of section 13 is problematic. Although 2,042 cases in the database included a child support order that indicated that there were children treated as over the age of majority, it is probable that some unknown proportion of these children were not considered as eligible for child support, and thus would not have an amount reported under section 13. However, this is the best base figure available for determining adherence to this component of section 13. Using this figure, a total of 17.9 percent of the cases were coded as having an amount for a child over the age of majority. For the reason noted, however, this figure should be treated with caution.

Table 4.3 presents the proportion of cases dealing with child support that included each component required by section 13 across the six years of this study. In general, for most components that are mandatory in all child support orders, there was an increase in compliance with section 13 over time. For example, in 1998, 83.3 percent of child support orders included the name of each child to whom the order relates; by 2003, this proportion had increased to 96.1 percent. Similarly, in 1998, 69.9 percent of cases included the dates on which child support payments were to be made; in 2003, this proportion was 82.3 percent.

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<sup>15</sup> It is possible that the child's name would be missing in some cases with only one child, since in these cases the child to whom the order relates would be clear.

**Table 4.3: Number of Cases Including Each Component Required by Section 13 of the Child Support Guidelines by Year**

Component	Year											
	1998		1999		2000		2001		2002		2003	
	n	%	n	%	n	%	n	%	n	%	n	%
Name of each child <sup>1</sup>	2017	83.3	7473	88.8	5903	86.6	6360	94.6	6878	95.7	5265	96.1
Birth date of each child <sup>1</sup>	1946	80.4	7256	86.3	5791	85.0	6204	92.2	6736	93.8	5198	94.9
Income of spouse(s) <sup>1</sup>	1752	72.4	6439	76.5	5064	74.3	5512	82.0	6052	84.2	4719	86.2
Date of payments <sup>1</sup>	1692	69.9	6430	76.4	4845	71.1	5204	77.4	5919	82.4	4508	82.3
Amount of child support <sup>1</sup>	1386	57.3	4757	56.6	3288	48.2	3766	56.0	4342	60.4	3235	59.1
Amount/proportion of special expenses <sup>2</sup>	600	70.1	2139	75.5	1691	71.4	1734	73.4	1866	70.7	1718	78.6
Particulars of special expenses <sup>2</sup>	571	66.7	1841	65.0	1347	56.9	1183	50.1	1101	41.7	1108	50.7
Child to whom special expense relates <sup>2</sup>	463	54.1	1549	54.7	1024	43.2	1039	44.0	886	33.6	899	41.1
Amount for child over age of majority <sup>3</sup>	22	15.8	106	26.2	58	16.9	62	15.6	83	18.9	35	11.1

Source of Data: Survey of Child Support Awards, November 2003.

<sup>1</sup> Only cases in which child support was dealt with were analyzed.

<sup>2</sup> Only cases in which child support was dealt with and special expenses were ordered were analyzed.

<sup>3</sup> Only cases in which child support was dealt with and there were one or more children over the age of majority were analyzed.

The pattern of adherence to section 13 over time was not as straightforward with respect to components required in cases where there were special or extraordinary expenses. There was an increase over time in the percentage of cases including the amount or proportion of special expenses (70.1 percent in 1998 and 78.6 percent in 2003). However, the percentage of cases including the particulars of the special expenses and the child to whom the expense relates decreased over time. The proportion of cases including the amount of child support for a child over the age of majority also decreased over time; however, as noted above, these data are problematic and, thus, should be interpreted with caution.

#### **4.9 VARIATION OF CHILD SUPPORT ORDERS**

The database included 8,262 cases coded by data capture clerks as involving variation to child support orders. In 48.7 percent (n=3,642) of cases for which data were available, the applicant was the receiving parent. The paying parent was the applicant in 43.1 percent (n=3,224) of cases, and in 8.2 percent (n=617) of cases, parents were cross-applicants.

Of 5,223 variation applications with non-missing data, 2,580 (49.4 percent) resulted in a decrease of the amount, while 39.3 percent (n=2,052) resulted in an increase of the amount. The application was denied in 1.2 percent of cases and resulted in a termination order in 10.1 percent of cases. The outcome of the application was not stated or missing in 36.8 percent of cases.

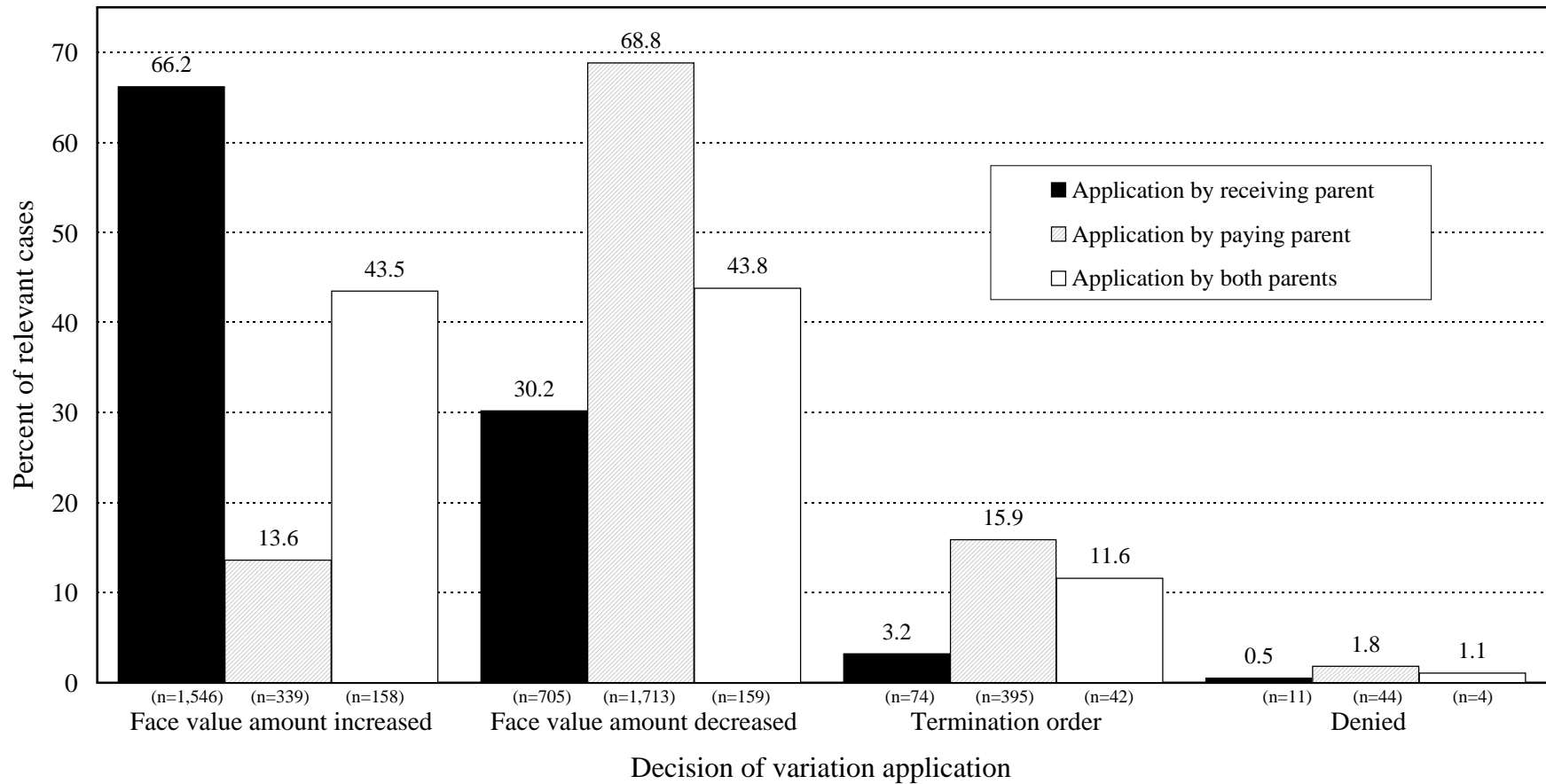
While almost 50 percent of variation applications resulted in a decrease, changes in the tax treatment may mean that a decrease in the face amount does not mean a decrease in the actual amount of child support that a recipient parent will retain after tax. The change in tax treatment came into force May 1, 1997, at the same time as the Guidelines. The change in tax treatment impacted the variation of child support orders made before May 1, 1997 and varied after that date. These orders were previously taxable in the hands of the recipient but the post-May 1, 1997 varied orders were not taxable. However, with child support order amounts no longer taxable, a decrease in the face amount can sometimes translate after variation into an actual increase in the net amount for the receiving parent.

Of the cases in which a reason for the variation application was coded, a common reason given was the implementation of the Guidelines. As would be expected, this reason arose more frequently shortly after implementation of the Guidelines. Other reasons given for the variation application included “change in income,” “change of custody” and “child independent.”

Figure 4.6 presents the outcome of variation applications by applicant. Of those brought by the receiving parent, 66.2 percent resulted in an increase of the face value amount, 30.2 percent resulted in a decrease, 3.2 percent resulted in a termination order and 0.5 percent were denied. Of applications brought by the paying parent, 13.6 percent resulted in an increase of the face value amount, 68.8 percent resulted in a decrease, 15.9 percent resulted in a termination order and 1.8 percent were denied. Of the cross-applications, approximately equal numbers resulted in an increase (43.5 percent) and a decrease (43.8 percent) of the face value amount. Fewer cases resulted in a termination order (11.6 percent) or denial of the application (1.1 percent).

To look at this issue from a different perspective, of the 2,043 variation applications in which the applicant was known and that resulted in an increase of the face value support amount, 75.7 percent were brought by the receiving parent and 16.6 percent by the paying parent; 7.7 percent were cross-applications. Of the 2,577 variation applications that resulted in a decrease of the face value support amount, 27.4 percent were brought by the receiving parent and 66.5 percent by the paying parent; 6.2 percent were cross-applications.

**Figure 4.6: Decision of Variation Application by Applicant**



Total number of variation orders=8,262. Cases in which the decision of the variation application was not stated are excluded from this analysis (n=3,039).

Source of Data: Survey of Child Support Awards, November 2003.



## **5.0 CONCLUSIONS**

As noted in section 2.2, the information available to data capture clerks varies widely across the court sites participating in this project. For example, clerks in some areas have available to them the entire file documenting all activities in a particular case, while clerks in other areas may have ready access only to the final order or judgment. Despite this limitation of the data collected for this phase of the project, a reliable database currently consisting of more than 51,000 cases has been generated in Phase 2. This database provides much insight into the implementation and use of the Federal Child Support Guidelines. In particular, since data for Phase 2 of this project have now been collected for six years, information on trends over time and the extent to which the Guidelines have met their stated objectives is available.

### **5.1 TRENDS OVER TIME**

Several noteworthy trends in child support order amounts and related factors have been observed over the course of Phase 2. These trends include:

- The proportion of cases that were contested decreased consistently. In 1998, 18.8 percent of cases were contested; this proportion decreased to 11.8 percent in 1999, 8.9 percent in 2000, 7.9 percent in 2001, 7.8 percent in 2002 and 5.7 percent in 2003.
- There was a tendency for the proportion of both paying and receiving parents with legal representation to decrease over time. The proportion of receiving parents with legal representation ranged from a high of 86.1 percent in 1999 to a low of 71.9 percent in 2003. Similarly, the proportion of paying parents with legal representation ranged from 75.5 percent in 1998 to 60.1 percent in 2003.
- The percentage of cases with sole custody to the mother decreased modestly over time from a high of 80.2 percent in 1999 to a low of 76.5 percent in 2003. There was a corresponding tendency for the percentage of cases reporting shared custody to increase over time, from a low of 4.8 percent in 1998 to a high of 8.4 percent in 2003.
- There was a general increase across over time in the proportion of cases in which the order amount was equal to the table amount. This proportion ranged from a low of 50.5 percent in 1998 to a high of 63.4 percent in 2002. The proportion of cases reporting child support order amounts less than the table amounts remained quite consistent across years. The proportion of cases reporting order amounts in excess of table amounts decreased across time from a high of 38.8 percent in 1998 to a low of 25.8 percent in 2002.
- The proportion of cases in which special or extraordinary expenses were included remained quite consistent across time, and ranged from a low of 31.1 percent in 2002 to a high of 33.3 in 2003.

- There was a general increase over time in compliance with section 13 of the Child Support Guidelines, which specifies information that should be included in a child support order. For example, in 1998, 83.3 percent of child support orders included the name of each child to whom the order relates; by 2003, this proportion had increased to 96.1 percent. Similarly, in 1998, 69.9 percent of cases included the dates on which child support payments were to be made; in 2003, this proportion was 82.3 percent.

## **5.2 OBJECTIVES OF THE CHILD SUPPORT GUIDELINES**

The findings of the present study indicate that, in many cases, the stated objectives of the Guidelines are being met.

For example, the data support the conclusion that the stated objective of the Child Support Guidelines to “establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation” is being met. Results show that in a majority of cases, the actual order amount is equal to or higher than that specified in the table. Thus:

- Fifty-eight (58) percent of cases had child support order amounts that were equal to the amounts specified in the Guidelines tables as specified in the order or judgment. This indicates a high degree of predictability of child support amounts for cases in similar circumstances.
- Thirty-one (31) percent of cases reported child support amounts greater than those specified in the Guidelines tables, suggesting that in many cases, judges are viewing the table amount as a “floor” that needs to be increased if warranted by the circumstances of a particular case, frequently by ordering special or extraordinary expenses.
- Only 11 percent of cases reported child support order amounts that were lower than the amount specified in the Guidelines tables.

Further, over the course of Phase 2, the proportion of cases with order amounts equal to the table amount has increased, from a low of 51 percent in 1998 to a high of 63 percent in 2002.

The data also support the conclusion that the stated objective of the Child Support Guidelines to “ensure consistent treatment of spouses and children who are in similar circumstances” is being met. Results show that:

- The amount of child support order amounts steadily increased as paying parents’ incomes and the number of children in the case increased.
- Income information was available in a substantial percentage of cases (78 percent for paying parents and 46 percent for receiving parents), indicating that disclosure of financial information is occurring in most cases in a manner specified by the Guidelines.

The low proportion of contested cases (9.3 percent of cases) also provides some limited evidence that the objective to “reduce conflict and tension between spouses by making the calculation of child support orders more objective” is also being met. Without baseline measures of these variables prior to implementation of the Child Support Guidelines, we cannot state with certainty that the Guidelines have resulted in lower levels of conflict and tension. However, the proportion of contested cases decreased steadily across time, and ranged from a high of 18.8 percent in 1998 to a low of 5.7 percent in 2003. The decrease in the number of contested cases over time may reflect the fact that, as lawyers and parents became more familiar with the Guidelines and the courts resolved various contentious interpretive issues, more cases could be settled without undue conflict.