

The Survey of Child Support Awards: Final Analysis of Pilot Data and Recommendations for Continued Data Collection

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EXECUTIVE SUMMARY

In 1990, the Federal-Provincial-Territorial Family Law Committee embarked on a study to address widespread dissatisfaction concerning the determination of child support. On behalf of the Committee, the Department of Justice Canada undertook a four-year program of research to establish a formula for determining child support award amounts in cases of family breakdown.

On May 1, 1997, the amendments to the *Divorce Act* and the Federal Child Support Guidelines came into effect. (The amendments to the *Income Tax Act* concerning the tax treatment of child support payments also took effect on May 1, 1997.) The amendments to the *Divorce Act* require the Minister of Justice to undertake a review of the operation of the Guidelines and report to Parliament by 2002. The program of research undertaken by the Department of Justice Canada over the next three years must accomplish a number of tasks, including preparation of a comprehensive review of the provisions and operations of the Guidelines.

The Federal-Provincial-Territorial Task Force on Implementation of the Child Support Reforms has 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 approach to the determination of award amounts required by the Guidelines, members of the Task Force and the Research Subcommittee agreed that the first research priority should be to begin collecting information about support orders and variation orders made on or after May 1, 1997. The main purposes of this project are to get some early indications about the implementation of the Guidelines, and to provide for ongoing or periodic collection of information from the courts until the end of the Child Support Initiative in March 2001.

Phase 1 of this project began in December 1997, and was completed in October 1998. This report summarizes the findings from Phase 1 of the project as part of the transition to ongoing data collection in Phase 2. The report is divided into two parts. Part 1 describes the processing of divorce cases involving child support orders and documents issues related to that process at the different sites involved in the project. Part 2 presents the results of the analysis of the data from the pilot survey. Information was only collected from cases proceeding under the federal *Divorce Act* which involved children.

Highlights of the findings from the pilot survey are presented below:

Case Characteristics

- The majority of orders in the pilot database represent divorce orders or judgments (67.3 percent); 12.5 percent were interim orders; and the remaining 20.2 percent were variations.
- The disposition of the majority of cases was obtained by consent of both parties (39.3 percent) or was uncontested (49.5 percent).
- Mothers had legal representation in 74.2 percent of cases, while fathers had a lawyer in 59 percent of the cases. Both parents had representation in 46.5 percent of cases.

- A total of 9.1 percent of the cases had a valid spousal award amount, the majority of which were payable monthly.
- Most cases involved either one (41.3 percent) or two (43.2 percent) children.
- With respect to custody, in a substantial majority of cases the mother had sole custody (72.8 percent), while fathers had sole custody in 6.3 percent. In 6.6 percent of the cases, shared custody, where a child spends at least 40 percent of the time with each parent, was specified. Split custody, where one or more children have primary residence with the mother and one or more children have primary residence with the father, was specified in 3.7 percent of cases. (In 10.6 percent of the cases it was not possible to determine custody arrangements.)

Child Support Awards and Table Amounts

- In 47.2 percent of valid cases, it was indicated on the survey instrument that the child support award amount was determined by following the Child Support Guidelines; in 17.6 percent the method used was prior consent or agreement, while in 23.1 percent the method was not stated. It is very likely, however, that some portion of the cases marked as “not stated” or as “prior order or agreement” did in fact use the Guidelines.
- Valid data on monthly child support award amounts were available for 85.7 percent of cases, and varied from \$1 through \$14,200 per month.
- Annual income for the paying parent was specified in 68.3 percent of cases and ranged from \$0 through \$3,322,592 with a median income of \$34,725. Annual income of the receiving parents was specified in 37.3 percent of cases with a median value of \$21,093 and a range of \$0 through \$357,500.
- When the amount of child support awards is examined in relation to paying parent’s income, the results indicate a steady increase in amount of child support as income of the paying parent increases.

Special or Extraordinary Expenses: Section 7

- In the total sample, 31.2 percent of cases were reported as having special or extraordinary expenses awarded.
- Of the cases that had the monthly amount of the paying parent’s special or extraordinary expenses specified, the median amount was \$116 and ranged from \$2 through \$5,900.
- The most commonly awarded special or extraordinary expenses were medical or dental insurance premiums (9.7 percent of total cases) followed by extra-curricular activities (9.3 percent).
- There was a consistent increase in the proportion of cases with special or extraordinary expenses awarded as paying parent’s income level increased; at the lowest income level (\$0-14,999), only 11.5 percent of cases had special or extraordinary expenses awarded; this proportion increased to 59.5 percent at the highest income level (\$150,000 and over).

- The amount of special or extraordinary expenses awarded increased as the paying parent's income increased.

Undue Hardship: Section 10

- There were very few undue hardship applications captured in the pilot database (0.6 percent of total cases).
- Of 42 applications brought by the paying parent, 23 resulted in a decrease of the Guideline amount, 8 were denied, 1 resulted in an increase, and the outcome of 10 were unknown.
- Of six applications brought by the receiving parent, two resulted in an increase of the Guideline amount, three were denied, and one resulted in a decrease.

Variations

- In the majority of variation cases, the applicant was the receiving parent (51.9 percent); the paying parent was the applicant in 40.3 percent of cases, and 7.8 percent of cases were cross-applications.
- The most common reason for variation applications was implementation of the Federal Child Support Guidelines, representing 35 percent of applications for which data were available.

1.0 INTRODUCTION

In 1990, the Federal-Provincial-Territorial Family Law Committee began a study to address widespread dissatisfaction concerning the determination of child support. On behalf of the Committee, the Department of Justice Canada undertook a four-year program of research to create a formula for determining child support award amounts in cases of family breakdown.

On March 6, 1996, the federal government announced its policy intentions regarding child support. The four initiatives announced were:

- 1) to implement child support guidelines;
- 2) to change the tax treatment of child support;
- 3) to improve the enforcement of support orders; and
- 4) to increase the allowance to working low-income families through the Working Income Supplement (WIS).

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 also took effect on May 1, 1997.) The amendments to the *Divorce Act* require the Minister of Justice to review the operation of the Guidelines and report to Parliament by 2002. Over the next three years, the Department's program of research must include preparation of a comprehensive review of the provisions and operations of the Guidelines.

The Federal-Provincial-Territorial Task Force on Implementation of the Child Support Reforms has established a Research and Evaluation Subcommittee to assist in the development of 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 award amounts are calculated under the Guidelines, the Task Force and Research Subcommittee members agreed that the first research priority should be to collect information about support orders and variation orders made on or after May 1, 1997. This project will provide some early indications about the implementation of the Guidelines, and provide for ongoing or periodic collection of information from the courts until the end of the initiative in March 2001.

Phase 1 of this project began in December 1997 and ended in October 1998. This phase consisted of three tasks. Task 1 was managing the initial phase of the data collection process. Task 2 was the management and preparation of data received from participating courts 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.

This report summarizes the findings from Phase 1 of the project as part of the transition to ongoing data collection in Phase 2. The report is divided into two parts. Part 1 describes the processing of divorce cases involving child support orders and documents issues related to that process at the different sites involved in the project. Part 2 presents the results of the analysis of the data from the pilot survey. Information was collected only from cases governed by the federal *Divorce Act* which involved children.

PART 1: DIVORCE AND THE PROCESSING OF CHILD SUPPORT ORDERS

2.0 INTRODUCTION

2.1 Study Approach

The information in this part of the report was obtained from a variety of sources. These sources include site visits, telephone interviews and written materials provided by the various jurisdictions. The court sites involved in the study were:

- St. John's, Newfoundland;
- Halifax, Nova Scotia;
- Charlottetown and Summerside, Prince Edward Island;
- Fredericton, New Brunswick;
- Ottawa, Ontario;
- Toronto, Ontario;
- London, Ontario;
- Winnipeg, Manitoba;
- most court sites in Saskatchewan;
- Edmonton, Alberta (as of October 1998, data were also collected in Calgary);
- Victoria, British Columbia;
- Yellowknife, Northwest Territories; and
- Whitehorse, Yukon.

As Quebec's system of determining child support awards differs from other Canadian jurisdictions, a methodology is presently being developed to collect and analyze its data. Therefore, there are no Quebec data presented in this report.

This part of the report presents a brief overview of the study sites as of March 31, 1998 based on the sources listed above.¹ Section 3.0 discusses the type of court structure and the provincial or territorial legislation related to divorce and child support. Section 4.0 contains a detailed description of the process of granting a divorce and related matters such as child support. Section 5.0 presents issues related to the administration of divorce and child support orders and similarities and differences among the sites are discussed.

2.2 Limitations of the Study

The findings presented in this part of the report are subject to limitations. The major limitations are briefly discussed here.

¹ If a jurisdiction chose to update its information past this date, the updated information is included.

Constant Change

The sites involved in this study are currently implementing the Federal Child Support Guidelines. Therefore, procedures, policies and practices are evolving. Different sites are at different stages in implementing the Guidelines, and the approach at specific sites is often unique. This limits our ability to directly compare the sites and suggests that the picture we have of any one site may not be valid for very long. The information contained in Part 1 represents the situation at most sites as of March 31, 1998. In some cases, information after March 31, 1998 was available and is included.

Variations in the Source of Data

The amount of information available for this report varies greatly by study site.

3.0 LEGAL CONTEXT OF DIVORCE AND IMPLEMENTATION OF THE FEDERAL CHILD SUPPORT GUIDELINES

Court systems which handle legal action regarding divorce and child support can vary depending on the jurisdiction. These systems can be broadly identified as either a two-tiered system or a Unified Family Court system. In the traditional, or two-tiered system, matters under the federal *Divorce Act* are addressed in a Superior Court by a federally appointed judge (*Constitution Act*, section 91). The Superior Court hears divorce actions and related corollary relief matters (including child support, spousal support, and custody or access) and can also address property issues under provincial or territorial legislation. In a two-tiered system, a provincial or territorial court judge can also hear child support, spousal support, and custody or access if they are not part of the divorce proceedings. However, the provincial or territorial court cannot deal with property issues.

In a Unified Family Court, the Court hears all family-related matters whether under provincial, territorial or federal legislation.

3.1 Types of Courts

As Table 1 indicates, as of March 31, 1998, seven of the study sites had only a two-tiered court system. The seven sites are Halifax, Ottawa, Toronto, Edmonton, Victoria, Whitehorse, and Yellowknife. St. John's and most locations in Saskatchewan use the Unified Family Court system, but other locations in Newfoundland and Saskatchewan use the two-tiered system. In Saskatchewan, the Family Law Division (a Unified Family Court) of the Court of Queen's Bench has exclusive jurisdiction in Prince Albert, Saskatoon, and Regina. London uses both the Unified Family Court and the two-tiered system. New Brunswick, Prince Edward Island, and Manitoba have province-wide Unified Family Courts, and 40 new Unified Family Court judges will soon be appointed to expand the Unified Family Court in a number of locations across Canada.

Table 1
Types of Courts and Court Titles by Study Site
(as of March 31, 1998)

Study Site	Two-tier System	Unified Family Court	Courts dealing with matters under the <i>Divorce Act</i>
St. John's, NF		X	Supreme Court Trial Division
Halifax, NS	X		Supreme Court of the Province of Nova Scotia
Charlottetown, PEI		X	Court of Queen's Bench, Family Division
Fredericton, NB		X	Court of Queen's Bench, Family Division
Ottawa, ON	X		Ontario Court (General Division)
Toronto, ON	X		Ontario Court (General Division)
London, ON	X	X	Ontario Court (General Division) — Family Court
Winnipeg, MN		X	Court of Queen's Bench, Family Division
Most court sites in SK	X	X	Court of Queen's Bench, Family Law Division (Regina and Prince Albert)
Edmonton, AB	X		Court of Queen's Bench
Victoria, BC	X		Supreme Court of the Province of British Columbia
Yellowknife, NT	X		Supreme Court of Northwest Territories
Whitehorse, YK	X		Supreme Court of Yukon

3.2 Provincial and Territorial Legislation and Practice

In addition to the type of court, provincial or territorial legislation and judicial practice may affect the process of divorce and the use of the Guidelines. As of March 31, 1998, most provinces had either enacted legislation adopting the Guidelines (Prince Edward Island, Ontario and Saskatchewan), or did so soon after March 31, 1998 (Newfoundland, New Brunswick, and British Columbia). Nova Scotia, Manitoba, and the Northwest Territories have since enacted legislation. Quebec has enacted legislation defining its own guidelines which use a different model and apply to proceedings under both the federal *Divorce Act* and provincial legislation. Only Alberta has not yet given a clear indication whether it will adopt the federal Guidelines in provincial legislation. If a province or territory has drafted its own child support guidelines and the federal government has designated them, the only time they do not apply in cases of divorce is when the parents live in different jurisdictions.

The importance of judicial practice in encouraging the use of the federal Guidelines should not be overlooked. Although Alberta has not formally enacted legislation to adopt the Guidelines for child support cases that do not involve divorce, most provincial Family Court and Queen's Bench judges appear to be using the Guidelines to deal with child support applications under provincial law. In the Alberta Court of Queen's Bench, this can be attributed to a practice directive from the Chief Justice.

Although paragraph 11(1)(b) of the *Divorce Act* requires that before granting a divorce the court must "satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines," it is difficult to determine how actively judges scrutinize child support arrangements in situations involving consent agreements

or uncontested applications. In Edmonton, Child Support Centre staff must review all uncontested cases of divorce involving children, as well as contested applications brought by unrepresented parties.

Most jurisdictions require financial statements in contested divorce cases involving children. The legal requirement is usually established by the Rules of Court or Practice Rule.² In the Northwest Territories, practice directives require the use of financial statements. Only Prince Edward Island and Newfoundland (as of March 31, 1998) require financial statements through their provincial Family Law Acts and the Northwest Territories is considering a move in this direction. Under the Yukon Divorce Rules, financial statements must be filed if there are children of the marriage. In Manitoba, financial statements must be filed when a petition is filed if support is requested. Only in Edmonton must financial statements be filed in all cases to allow scrutiny of consent orders. In many sites, it does not appear that financial statements are always required in cases involving consent agreements or orders, or uncontested applications.

4.0 PROCESS OF DIVORCE AND ANCILLARY MATTERS

The process of divorce can be broken down into three general stages:

- marriage breakdown;
- pre-petition stage; and
- divorce proceeding.

Each of these stages involves a series of decisions on the part of one or both spouses. The divorce can be completed rapidly, or can take years if the parties separate and take no further action until one party wants to remarry.

Figure 1 provides a model of the divorce process. This model is general enough to accommodate most variations in how divorce cases are handled across Canada. In Section 5.0 we will see how various factors, which differ in the jurisdictions involved in this study, affect the general process.

4.1 Marriage Breakdown

The *Divorce Act*, which governs the process of divorce in Canada, provides that the basis for divorce is a “breakdown of the marriage.” Breakdown is established when one or more of the following occurs:

- 1) the spouses have lived separate and apart for at least one year;
- 2) one spouse committed adultery; or

² In Alberta, the Rules of Court and Practice Notes provide for the filing and serving of a Notice to Disclose. The practice of the Court is to strictly enforce the remedies, including costs, in the event of non-compliance.

3) one spouse treated the other spouse with physical or mental cruelty.

Figure 1: The Process of Divorce

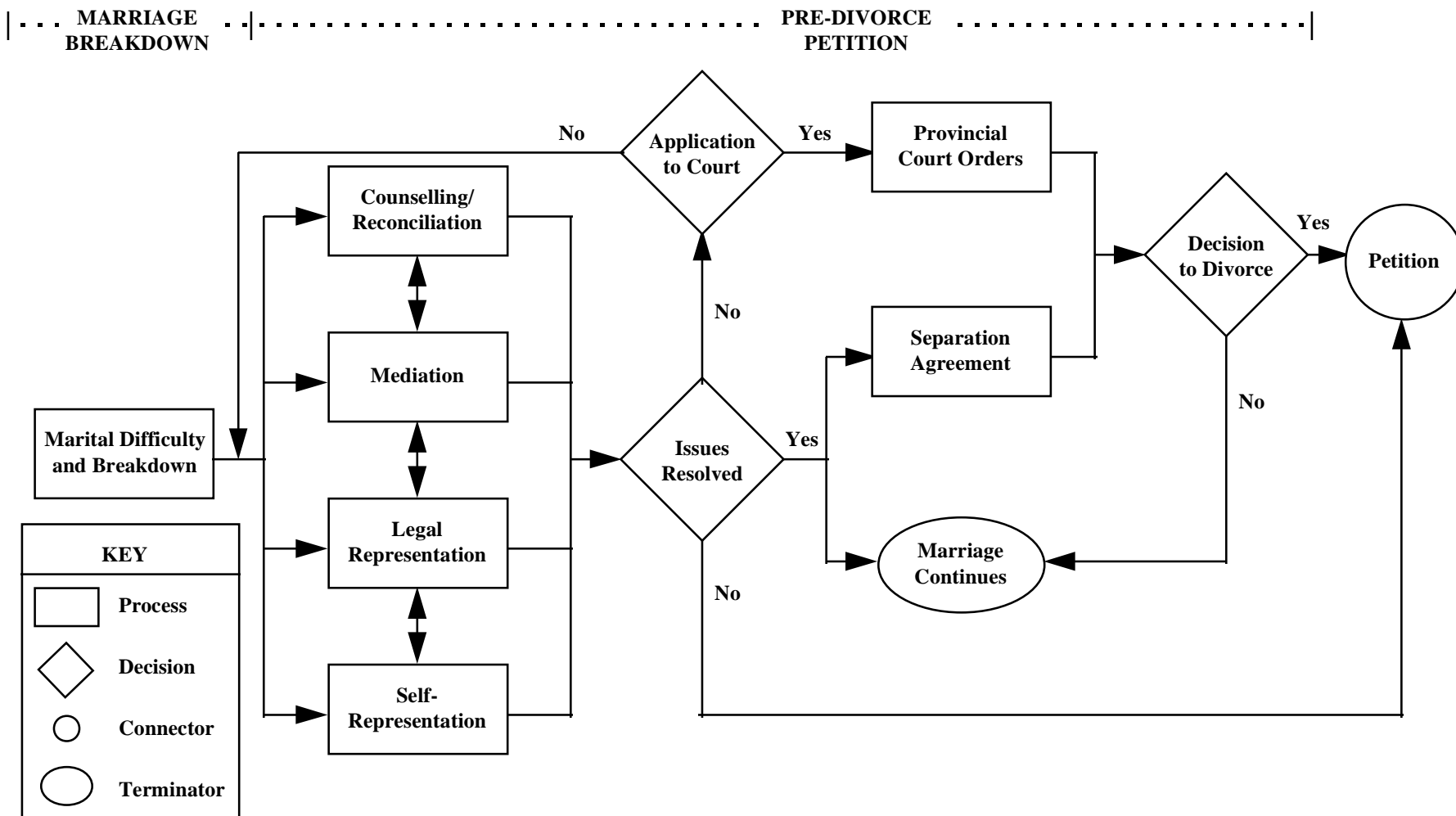
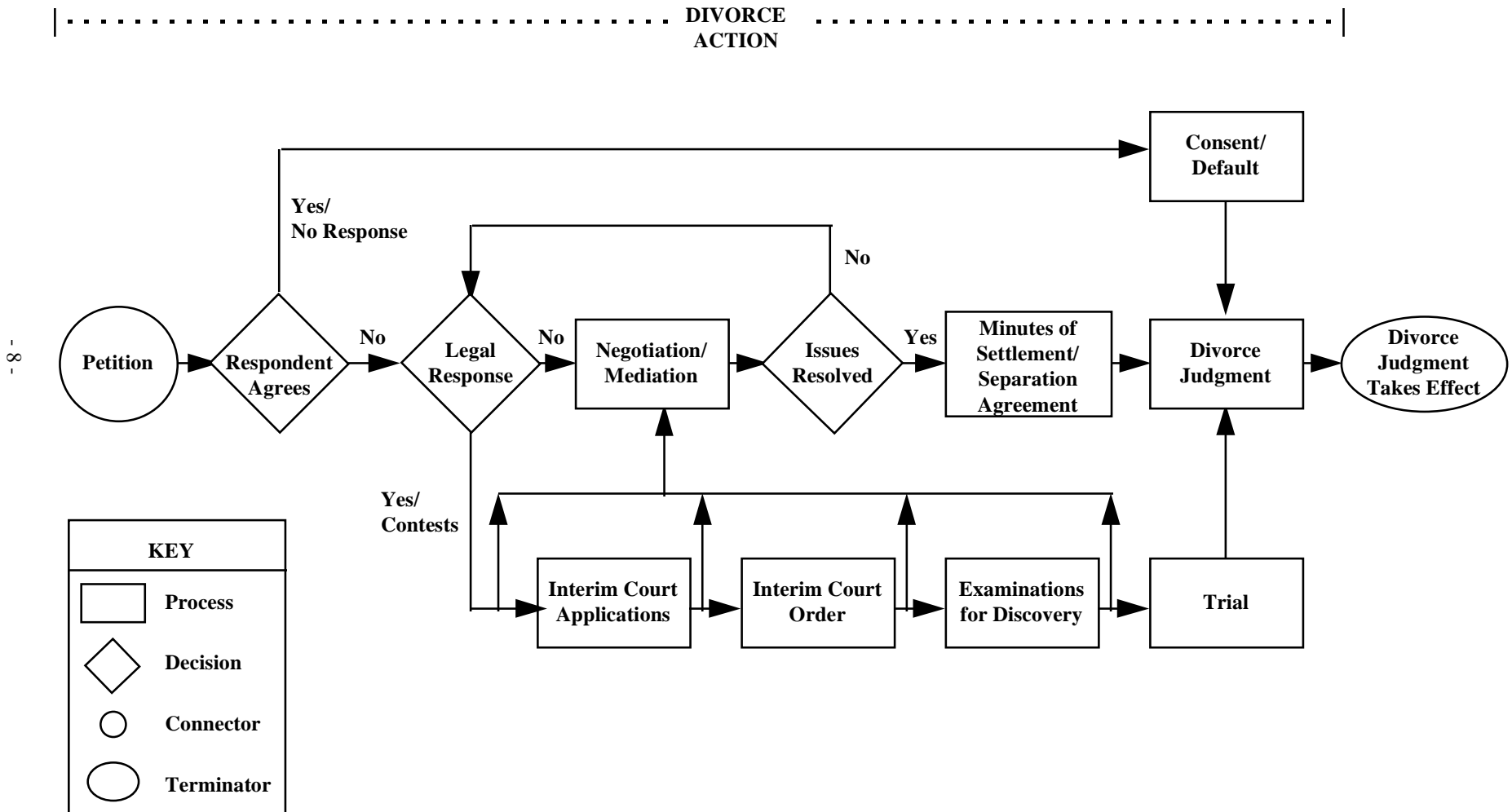


Figure 1: The Process of Divorce (continued)



As Figure 1 indicates, the divorce process begins with marriage breakdown occurring for any number of reasons. However, at the petition stage, one of the three indications of breakdown of marriage must be used as the grounds for divorce.

4.2 Pre-petition Stage

The pre-petition process may involve several stages and decisions. Actions taken at this early stage set the framework for subsequent decisions. During the separation, couples often resolve many of the legal issues related to their marriage breakdown by separation agreements or interim court orders which are later incorporated into the final divorce order.

When marital problems arise, the couple may try marriage counselling or private discussion. If either approach is successful, the marriage may continue. Alternatively, the couple may find that the issues are unlikely to be resolved or that they no longer wish to try to resolve them. At this point, the couple may decide to physically separate.

Once a couple decides to separate, they must then decide whether to take further action.³ If the couple is childless and has no significant property issues, the husband and wife may simply go their own ways. Often no formal action is taken unless a separated spouse wishes to remarry, which may occur years later.

Even when the separation is relatively amicable, the parties may wish to formalize the details of the separation. This is especially true when children, substantial assets, or significant debts are involved, or when one spouse requires financial support from the other for him or herself or the children of the marriage. At this point, one or both may consult a lawyer. A family court counsellor, a court conciliator, or a mediator may also be consulted. Occasionally, information or advice obtained at this stage results in an attempt at reconciliation. In fact, section 9 of the *Divorce Act* requires legal advisors to discuss the possibility of reconciliation with their clients and advise them about reconciliation support services.

If the couple can agree on the resolution of all issues, a separation agreement will usually be prepared. Each spouse is advised to obtain independent legal advice before signing such an agreement. Agreements are often negotiated between the two lawyers. If an agreement is not reached, the lawyers may refer the couple to a mediator who tries to assist the spouses in reaching an agreement regarding one or more issues. Some separated spouses consult a mediator before seeing lawyers. If mediation results in an agreement, the parties should be referred to lawyers before signing the agreement. If the agreement has been signed, the parties may begin divorce proceedings immediately or they may do nothing further until one or the other wishes to divorce to allow, for example, remarriage.

³ In Canada, a couple may live “separate and apart” in the same residence if they cease to live as a “family unit,” suspending sexual, economic, and social ties. However, this is very rare.

If the parties cannot agree, applications can be made to the court to resolve the various issues between them. Each province and territory has legislation permitting the courts to deal with issues of custody, child support, spousal support, possession of the matrimonial home and division of property. Sometimes a court order under provincial or territorial legislation resolves all the issues between the parties, and the terms of the order can be incorporated into a separation agreement. The separated parties may then choose to do nothing further unless one of them wishes to remarry. Alternatively, if the issues are not resolved at this stage, one or both parties may wish to file a petition for divorce.

If the separation took place unilaterally, one or both spouses often seek legal advice immediately. An application may be made to the court for an interim order dealing with custody, support, and possession of the home even before negotiations begin. Sometimes, a spouse may have sought legal advice prior to separation and may initiate interim court proceedings immediately upon separation.

In the majority of cases, the parties proceed with a legal divorce. There may be one or more court orders or consent orders, a separation agreement, or only a verbal understanding between the parties prior to the filing of a divorce petition.

4.3 Divorce Proceeding

Divorce proceedings technically commence when one or both spouses (joint petition) file a petition (or application) with the court. The petition usually describes the length of the marriage, the legal grounds for seeking the divorce, the income and assets of the applicant spouse, and the children of the marriage. Orders for custody and support of the children and spousal support are also proposed. Applications for property division, which are governed by provincial or territorial statutes, are often joined with the divorce petition. Some provincial or territorial rules require an application for property division to be made in separate documents, but permit it to be heard at the same time as the divorce petition. Other jurisdictions' rules permit property claims to be included directly in the divorce petition. Occasionally, an application for property division has already been made and decided before the divorce proceedings begin.

In all jurisdictions, spouses can file a petition before a one-year separation is completed, though the divorce cannot be granted until one year of separation, if that is the ground for divorce. Once the petition has been filed in court, it must be served on the respondent. The respondent then has a specified time in which to answer the petition.⁴ If the parties have already entered into a separation agreement and the order requested in the petition incorporates the terms of the agreement, a response is usually not filed. Similarly, when the respondent agrees with the petition (or does not wish to actively contest it), a response is not filed, even if there are no previous orders or agreements. This type of divorce is referred to as "uncontested." The petition can then proceed without an oral hearing in most jurisdictions. A judge reviews the documents and makes a divorce judgment. If neither party appeals the divorce judgment, it takes effect in 31 days. If there is an order regarding matters such as child support, custody, and access as part of the judgment, this part of the judgment may take effect immediately.

⁴ There are provisions for a "substitute service" (e.g., publication of a newspaper notice) in cases where a respondent cannot be located.

If the respondent files a legal response to the petition, then the petitioner is also given an opportunity to respond to that. Negotiations often take place at this point and mediation or other forms of alternative dispute resolution may also occur.⁵ If the issues in dispute can be resolved, “minutes of settlement” or a separation agreement may be drawn up or the parties may agree to the terms of the orders to be included in the divorce judgment, and the divorce will proceed as if it were uncontested. A respondent may wish to attempt negotiations before filing a response. If negotiations are successful, any resulting written document is usually called a separation agreement (or minutes of settlement). If issues are not resolved, an answer is filed and the divorce is then contested.

If issues cannot be quickly resolved, it may be necessary to apply for interim orders for matters such as custody, child and spousal support, or possession of the matrimonial home, especially if the divorce proceedings are likely to be lengthy or if there is a need for financial support (which is usually the case if there are children). In urgent cases, “interim” interim hearings are held. Examinations for discovery will be held to provide each side with an opportunity to examine the other party under oath in preparation for trial; each spouse is questioned by the other’s lawyer for this purpose. If there is a dispute regarding custody or access to the children, an assessment by a psychiatrist, psychologist, or a social worker may also be done. As an assessment and examinations for discovery proceed, or more typically after they are completed, negotiations may begin or continue and minutes of settlement or a separation agreement may result and the divorce may proceed as if it were uncontested. If the parties enter into a separation agreement at any point, they may file a document with the court indicating that it will proceed by consent which, in most jurisdictions, does not require an oral hearing.

Failure of negotiations after examination for discovery usually results in a trial, where each party presents evidence on each of the issues in dispute. The final decision is made by the judge. The judge’s rulings on child support and other issues are included in the divorce order and, if no appeal is filed, the divorce takes effect 31 days later.

5.0 FACTORS AFFECTING CASE PROCESSING

A number of factors may affect the process of divorce and the determining of child support in Canada. These factors, which relate to the broader issues of information, advice, and administration of proceedings, vary considerably from site to site in this study, and they are analyzed below.

5.1 Information on Separation and Divorce

The amount, source, and accessibility of basic information for the public regarding divorce and child support varies across the study sites.

⁵ In Saskatchewan, after the parties have indicated that they are ready to proceed to trial, a pre-trial hearing conducted by a Judge of the Court of Queen’s Bench (who will not be the trial judge) must be held. This hearing is attended by the parties and their counsel, and its purpose is to mediate a settlement or, if this cannot be done, to obtain agreement on as many issues as possible in order to reduce the length of the trial. Pre-trial conferences are also held in St. John’s and at some locations in Ontario.

Public Information Services

In addition to the information packages on the Federal Child Support Guidelines and other materials provided by the federal government for distribution by the provincial and territorial governments, at most sites information has been provided directly to the public by the specialized child support units or indirectly through local public legal education groups. Public information meetings have been held or are planned in Ottawa, Winnipeg, Edmonton, Yellowknife, Whitehorse and throughout New Brunswick and Saskatchewan. These information services are, for the most part, provided by public legal education programs or designated professionals (see Sections 5.2 and 5.4 below).

Divorce and child support kits with standard forms are almost universally available. In many jurisdictions they are provided by the public legal education groups; in others they are developed and sold by private bodies. For example, in St. John's, Newfoundland they are sold by the Women's Centre, whereas they are sold by private companies in Ontario, Alberta, and British Columbia, and are available at stationery stores. In Nova Scotia and Saskatchewan these kits are being developed through court services. It appears that many of the kits prepared by private companies have been updated to include information on the Guidelines. Most of those prepared by court services or non-governmental agencies are in the process of being updated. The divorce self-help kit in Saskatchewan has been updated to include the Guidelines and is available for \$25 at Court of Queen's Bench locations. As part of the Child Support Guidelines initiative, Saskatchewan Justice developed a free variation kit, to help parents vary their child support orders without counsel.

A number of the sites have telephone law lines. However, these lines differ in a number of ways. In Prince Edward Island and Alberta, a nominal fee is charged for use of a law line and the clients can be given both information and a referral to a lawyer. In Manitoba, the Community Legal Education Association operates lawyer referral lines and legal information lines staffed by paid lawyers. In Yellowknife, the law lines are free but they operate mainly as a referral system and are staffed by volunteer lawyers. Saskatchewan has a toll-free line that provides free information to the public about the Guidelines. A lawyer referral line dealing specifically with Guidelines issues has also been established by the Law Society and paid for by Saskatchewan Justice. Through this referral line, individuals can meet with a family law lawyer for half an hour or more to discuss their situation for a nominal fee. In Whitehorse, the law line is accessible to all Yukon communities and is staffed by one full-time lawyer.

5.2 Child Support Guidelines Resources

All of the study sites have designated staff to provide services relating to the Guidelines. Most of these positions are jointly funded by the province or territory and the Department of Justice Canada. However, the services provided and how they are delivered vary. Three types of service provision models can be identified as follows:

- 1) services provided as part of court services offices;
- 2) services provided through partnerships with other agencies; and
- 3) services provided by distinct units or programs.

Services Provided through Court Services Offices

In most sites, court services staff provide information on child support. Nine of the provincial or territorial jurisdictions have implemented this type of model (Halifax, Charlottetown, Fredericton, London, Toronto, Ottawa, Saskatchewan, Whitehorse, and Yellowknife). In this model, one to five staff are dedicated to work out of the court services office. Their functions include providing information to the public through general advertising, mail-outs, information sessions and telephone information lines, as well as providing information to individuals on request. In some locations, such as Prince Edward Island and Ontario, the staff may also provide information directly to the court, legal aid and duty counsel. In Charlottetown, the child support officer prepares the final draft of the court order when the parties are not represented. In Saskatchewan, toll-free telephone line operators provide information and mail-outs, and also organize parent education sessions for the public.

In two locations, there are also government staff outside the court who deal with child support. In Prince Edward Island, there are two family support order program workers at the social assistance office who are mandated to help clients on social assistance deal with issues regarding the Guidelines. In Yellowknife, a worker at the Maintenance Enforcement office provides advice regarding variations (including tax issues).

Services Provided through Other Agencies

In Newfoundland and New Brunswick, information regarding the Guidelines is provided through partnership with other agencies. In Newfoundland, the Departments of Justice and Human Resources and Employment jointly fund 11 Support Application Workers across the province. The workers provide assistance to clients of social services who are involved in child support issues and help the general public obtain or vary child support orders.

In New Brunswick there are no offices that specifically handle issues related to the Guidelines. However, in addition to the court-based services discussed above, a toll-free line available to the public for child support information is provided in partnership with the Public Legal Education and Information Service of New Brunswick.

Specialized Child Support Units

Winnipeg, Edmonton and British Columbia have specialized child support units. These units vary considerably in their structure and functions.

In Winnipeg, the Child Support Guidelines Centre provides court process and legal information services, as well as parent education services for separating or divorcing parents. The Centre is staffed by the equivalent of nine full-time positions which cover most of the province.

Edmonton has a Child Support Centre (CSC) located in the Court of Queen's Bench. The office is staffed by two lawyers and two clerks. The CSC has two primary roles in assisting the public. The first is to assist the legal community, affiliated service agencies and the public by providing information and material about the Guidelines and the court process. The second role is to assist the courts. The CSC does this by providing legal research and consultation on specific issues

pertaining to the Guidelines, child support and family matters. It also provides computer training on child support programs; makes staff available during Family Chambers; helps review all applications for consent orders and desk divorces with respect to calculations under the Guidelines and compares them with supporting materials. The CSC also ensures the proposed order conforms with section 13 of the Guidelines and the Alberta Rules of Court; provides training and information sessions on the Guidelines to the North (Rural) Judicial Districts; provides training and information sessions on the review procedures for child support applications and acts as friend of the Court for Queen's Bench Confirmation Hearings which confirm child support orders made in another jurisdiction in cases where one parent does not live in Alberta. The CSC has also developed court procedure packages for Queen's Bench family law applications dealing with issues such as custody and access, spousal support, arrears or stay of enforcement and restraining orders.

In British Columbia, 31 child support clerks are located in various justice centres (not necessarily courts). These clerks provide information to parents about the Child Support Guidelines, as well as dispute resolution options, and can help parents prepare court documents for child support applications.

5.3 Advice

The distinction between providing legal information and giving legal advice is critical. Only lawyers should be giving legal advice about a specific situation, and this should be directed to a particular client within the context of a professional relationship. It appears that most parties involved in divorces obtain legal advice at some point in the process. This includes privately retained counsel as well as lawyers paid by legal aid. Others may have obtained legal advice through telephone consultations usually referred to as law lines.

Legal aid has changed considerably in the last several years, and the majority of those involved in family law disputes have lost legal aid resources. While legal aid is still available for restricted purposes in many sites, it is usually not available for divorce proceedings. Legal aid is often available only for family law cases involving violence or other criminal matters.

The site interviews indicated that legal aid in divorce or support cases is currently available in all cases for low-income persons in only four jurisdictions: Manitoba, Saskatchewan, Northwest Territories and Alberta. All of these locations perform "needs" testing to determine the financial means of their clients. In some sites in Newfoundland, Ontario and British Columbia, legal aid is available for low income persons in critical or urgent situations, such as those involving domestic violence. In Nova Scotia and the Yukon, needs-tested legal aid is available to the point where the client files the divorce petition. Only in New Brunswick are legal aid services available to all beneficiaries of child support without needs testing. However, these services are available in family cases only to the point where the client files a petition for divorce.

5.4 Education Programs for Separating Parents

While education programs for separating and divorcing parents are not formally linked to the Guidelines initiatives, these programs provide information regarding the Guidelines to separating

and divorcing parents. There is great interest across Canada in programs that provide parents with information about the effects of separation and divorce on their children, as well as provide information about legal issues such as child support. Currently, court-based programs are operating in St. John's, Halifax, London, Winnipeg, Edmonton, and throughout Saskatchewan and British Columbia. Programs are under development in several other sites.

Alberta is the only province where the parenting education program is mandatory for separating and divorcing parents prior to receiving a court order. In British Columbia, a pilot project for mandatory parent education was implemented in 1998. The parenting programs in other jurisdictions are optional. However, in all locations judges may require parents to take a parenting program as a condition of custody and access. In Halifax, court costs are levied against those who do not attend.

The content of the programs is relatively consistent, including such topics as:

- stages of separation and divorce;
- effects of divorce on children;
- effects of divorce on parents;
- communication and relationship skills;
- information about other services, such as mediation and counselling; and
- legal issues.

Some programs, such as Edmonton's "Parenting after Separation Seminars" and Manitoba's "For the Sake of the Children," have special sessions for high conflict cases and cases where domestic violence may be an issue.

Most courses take between three and six hours in two or three sessions and are conducted as group presentations varying from 10 participants to 30 or 40. In Halifax and London, the presenters are trained volunteers who have a professional background. In Saskatchewan, the presenters were initially lawyers who volunteered their time. The facilitators for these sessions are now from the Family Law Support Service Branch (Court Services) and Mediation Services of Saskatchewan Justice. In other locations, the presenters are either salaried or paid on a fee-for-service basis.

5.5 Types of Divorce

Most divorces in Canada are uncontested and are granted without a personal appearance in court by either party. Only in St. John's must the petitioner appear before a judge, even in an uncontested divorce, in what is known as a "forthwith divorce." Uncontested divorces without a hearing are referred to as "paper divorces" in Nova Scotia and Saskatchewan; as "affidavit divorces" in New Brunswick, Prince Edward Island, Ontario, and Manitoba; and as "desk divorces" in Alberta, British Columbia, Yukon, and the Northwest Territories.

The other type of divorce found in all jurisdictions is a "trial divorce," which occurs when the granting of a divorce, or much more typically a corollary issue like child support, is contested. In St. John's, and some of the locations in Ontario, pre-trial settlement conferences are conducted

by a judge (other than the one who will conduct the trial) using a number of different dispute resolution techniques.

A number of sites also identify a third type of divorce. These are called “oral hearings” in Ontario and Manitoba and “chambers divorces” in Prince Edward Island, Saskatchewan, British Columbia, Yukon, and the Northwest Territories. In Alberta, it is called a “special trial.” These proceedings are usually oral hearings, where at least one of the parties or their legal counsel appear. Evidence in most locations is generally presented by affidavit at these hearings.

5.6 Preparation of the Order

Once the judge makes a decision regarding the divorce and child support (called a Divorce Judgment in Figure 1), a written order must be prepared. In almost all the study locations, the legal counsel for the petitioner or respondent is responsible for drafting the interim or final order, which is then usually checked by a clerk. In some jurisdictions (for example, St. John’s, Halifax, and Charlottetown), the clerk or child support officer prepares the interim or final order in cases where parties are not represented. In Whitehorse, the filing clerk ensures that specific pieces of information are included in the order.

Edmonton appears to be the only site where all uncontested draft orders and contested applications brought by unrepresented parties are checked by the Child Support Centre staff against the Guidelines, and compliance with section 13 of the Guidelines is ensured. If the parties have agreed to a different amount, Centre staff notify the Judge.

In over half of the jurisdictions where legal counsel prepares the draft order, the time lag between the divorce judgment and the filing of the order (issued and entered) can often be lengthy, taking up to eight or nine months. This, of course, does not nullify the divorce order, which takes effect 31 days after the divorce judgment.

The language of the orders is also problematic. While some of the language of the Guidelines seems to have been readily adopted (such as, sole and split custody), terms like “joint guardianship,” “joint custody,” and “joint legal custody” simultaneously appear in orders. While these terms usually mean “joint decision making,” their meaning is ambiguous.

Many jurisdictions have standard court order forms that have incorporated the requirements and language of the Guidelines (for example, St. John’s, Edmonton, Halifax, and Saskatchewan). In Saskatchewan, the provincial *Family Maintenance Act* contains these forms. However, in the Family Law Division in Saskatchewan there is not a specific form, but there are practice directive issues. Other jurisdictions, such as Prince Edward Island and Manitoba, are revising order forms to incorporate the Guidelines. Manitoba is developing automated court orders to standardize and speed up the production of final orders. A number of other jurisdictions have expressed an interest in Manitoba’s model.

6.0 CONCLUSIONS

Given the qualitative nature of the information used to produce this part of the report and the limitations of the study (identified in Section 2.2 above), it is difficult to draw firm conclusions. However, descriptions of the processes of divorce and child support orders across Canada lead us to some broad conclusions and some insight into what might be important for the successful implementation of the Federal Child Support Guidelines. Four general observations that can be derived from the information in this report are briefly discussed below.

Progress Towards Full Implementation

Based on site visits and follow up telephone interviews, it is clear that staff at the study sites are strongly committed to the full implementation of the Guidelines. While the rapid change and the variation in the rate of change from site to site make it difficult to study the implementation of the Guidelines, such variation also creates a natural experiment from which to draw valuable information.

Variations in the Process

Although all divorces in Canada are governed by the *Divorce Act*, and there is basically one general divorce process as described in Figure 1, the report highlights a number of issues concerning the availability of information, legal advice or administrative procedures that can help or hinder divorcing couples through the process. Further, the report highlights the importance of administrative supports, such as Child Support Centre staff checking applications in Edmonton, in ensuring consistent treatment of spouses and children. These factors vary among study sites and even within some jurisdictions. Therefore, the processing of divorce cases varies widely in different parts of the country.

More consistency in treatment of cases involving children is one of the objectives of the Guidelines. How various aspects of the divorce process increase or decrease consistency should be an important component in any review of the Guidelines.

Importance of Administrative Procedures

This report illustrates the importance of using standardized administrative procedures in implementing the Guidelines. Particularly important is the use of standardized court order forms to collect and list Guidelines information. In locations where standard procedures and forms have been implemented, the use of the Guidelines is virtually universal.

Importance of Having the Judges Commit to the Process

In locations where key judges actively support the Guidelines, implementation seems to be occurring faster. Practice directives from Chief Judges seem to be very effective in supporting the use of the Guidelines.

PART 2: FINDINGS OF THE PILOT SURVEY

7.0 INTRODUCTION

7.1 Study Approach

This part of the report presents a summary of the analysis of the data generated from this pilot project. Section 8.0 discusses the methods used to collect the data for the pilot survey project. The findings will be presented in Section 9.0 according to the major sections of the survey instrument: case characteristics, child support award and table amounts, special or extraordinary expenses, undue hardship and variations. All figures for this part of the report are contained in Appendix A. Appendix B contains a copy of the survey instrument.

8.0 METHODOLOGY

8.1 Research Design and Procedures

The pilot survey on child support orders was designed to record all court decisions under the *Divorce Act* involving children at each participating site. 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 which are silent on child support even though children are involved;
- orders varying divorce judgments; and
- final divorce judgments that contain corollary relief orders.

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 collected data for the pilot survey in at least one site. As Quebec's system of determining child support awards is different than other Canadian jurisdictions, a separate methodology for collecting and analyzing its data is presently being developed. The sites that collected data for the pilot survey are:

- St. John's, Newfoundland;
- Halifax, Nova Scotia;
- Charlottetown and Summerside, Prince Edward Island;
- Fredericton, New Brunswick;
- Ottawa, Toronto, and London, Ontario;
- Winnipeg, Manitoba;
- Most court sites in Saskatchewan;

- Edmonton, Alberta (as of October 1998, data were also collected in Calgary);
- Victoria, British Columbia;
- Yellowknife, Northwest Territories; and
- Whitehorse, Yukon.

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

Completed questionnaires were sent directly to Neurofinance Inc. in Montreal, which is the contractor responsible for entering the data and maintaining the database. The data analyzed in this report is the version of the database received by the Canadian Research Institute for Law and the Family (CRILF) on November 4, 1998, and includes all valid cases (8,233) entered in the database through November 2, 1998.⁶ Figure 2 presents the number and percentage of cases included in this database by province or territory of origin. Almost one-half of the total number of cases (45.8 percent) were from Ontario, followed by 21 percent from Alberta, 11.3 percent from Saskatchewan, and 7.7 percent from Nova Scotia. The large number of Ontario cases reflects the fact that this is the most populous jurisdiction participating in the project, as well as the fact that three court sites are participating in this province. Similarly, the large number of cases from Saskatchewan is due to the fact that most Family Courts in the province are participating. The jurisdictions with the fewest number of cases in the study are the Northwest Territories (18), Yukon (32), and New Brunswick (36). Due to the wide discrepancy in the number of cases contained in the database across jurisdictions, as well as the relatively few cases from some provinces or territories, this report will not present a detailed analysis of data for each jurisdiction.

8.2 Data Quality Issues

Issues related to the quality of the data must be addressed in a project such as this, in which different persons across the country are responsible for collecting the relevant data and completing the survey instrument. Staff turnover at some sites also creates data quality issues. However, with few exceptions, there is little reason to believe that any systematic errors or biases have greatly affected the validity of the data set.

One potential bias 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 lead to some variables being underreported in the survey, it should not compromise the quality of the data provided. Appendix C contains a table indicating the number of valid

⁶ For a case to be considered finished, data must be coded in each of three mandatory variables: type of divorce order or variation, date of judgment, and child support award amount. A total of 95 cases (1.1%) had missing data on one or more of these variables, and thus were excluded from analysis. The total number of cases received by CRILF was 8,328.

responses and missing responses for each questionnaire item for which a valid response would be expected for each case.

As noted below, some items on the survey instrument were problematic. Revision of these items for purposes of ongoing data collection should improve quality of these data.

Representatives from the CRILF, the field managers, and the Child Support Team, Department of Justice Canada, visited each site and met with most of the data capture clerks and conducted data capture training sessions early in 1998. Further, a coding manual was developed for the questionnaire that details the information to be coded for each item. Since January 1998, CRILF has maintained a toll-free help line for data capture clerks to call if they have any questions regarding the appropriate way to code particular cases. In addition, many items on the instrument provided for write-in responses in cases where the pre-coded alternatives were inappropriate. These write-in opportunities were used quite extensively, and these open-ended responses were coded at CRILF and included in the data analysis where appropriate.

One particular item to note as a possible problem is Question 13 - Total Child Support Award Amount. As initially intended, an amount of \$0 should only be entered for this item if the judgment or order specifically indicates that a child support award in the amount of \$0 had been made. However, it is possible that in some cases where an order was silent on child support, an amount of \$0 was entered, thus making it impossible to distinguish between silent orders and those with a valid amount of \$0. For this reason, we have adopted the most conservative approach to this issue, and excluded all cases with a \$0 child support award amount (1,096) for any analyses using the child support award amount.

8.3 Data Analysis Strategy

This survey summarizes the quantitative data obtained from responses to the questionnaire by presenting the frequency distributions. In cases where descriptive statistics are presented, both the medians (the point above and below which 50 percent of the cases fall) and the means (or average) are presented because the median is less sensitive to the effects of extreme scores. Medians are presented on figures only. Results are presented according to the major sections of the survey instrument.

8.4 Limitations of the Study

The major limitation of the study is that the cases do not necessarily represent all child support cases in Canada. Therefore, results should not be generalized to the population as a whole or to individual provinces or territories. There are two reasons for this limitation. First, in most participating jurisdictions, a single court site has been selected for the survey, and the cases at that court site cannot be viewed as a random sample of all cases in that jurisdiction. Second, almost one-half of the cases in the present database come from Ontario. The data should be regarded as a summary of what is happening at selected sites across the country. However, a study is presently being conducted to examine the representatives of the sites selected.

9.0 FINDINGS OF THE PILOT SURVEY

9.1 Case Characteristics

Source of Child Support Order Information

Data capture clerks were required to determine whether the source of data for each survey instrument was a divorce order, a divorce judgment or a variation order. They were also required to indicate the type of judgment or order used. Cases were not entered in the database if it was not clear whether the case was a divorce action. Of the 8,233 cases, 67.3 percent were divorce orders or judgments, 12.5 percent were interim orders and 20.2 percent were variation orders.

Figure 3 presents a breakdown of the types of divorce orders or judgments used to complete the survey instrument. The most common type of divorce order or judgment used was “support order/judgment (issued and entered)” at 40.4 percent, followed by “support order/ judgment (not yet issued and entered)” at 21.3 percent. In addition to the four categories provided on the instrument, in 20.5 percent of the cases data capture clerks wrote in an alternative in the “other” category. The most frequent write-in category was “divorce judgment” at 15.7 percent. The most common write-ins have been coded and are also shown in the figure. A substantially higher proportion of cases that had “divorce judgment” written in also had a \$0 amount entered for child support award (36.2 percent) than in the total sample (13.3 percent). This suggests that many of these cases did not address, or were silent on, child support.

Figure 4 presents a breakdown of the types of variation orders used to complete the survey instrument. Of a total of 1,661 variations, over two-thirds (72.1 percent) were orders that had been issued and entered, followed by 274 orders, representing 16.5 percent, that were not yet issued and entered. Few orders were interim variations (7.6 percent) or fell into the “other” category (3.9 percent).

Disposition of Order

Figure 5 presents the final disposition of the divorce orders. The majority of orders were uncontested (49.5 percent) or consent orders (39.3 percent). Only 11.2 percent of orders were contested and required a trial.

Legal Representation

Table 2 indicates the number of cases in which there was legal representation for the mother, the father, or a government agency out of the total of responses that were not missing information. In 74.2 percent of cases, the mother had legal representation, compared to 59 percent of cases in which the father had legal representation. A total of 3,825 cases, representing 46.5 percent of the total sample had legal representation for both the mother and the father. Very few cases (2.3 percent) had legal representation for a government agency.

Table 2
Legal Representation in Case

	Representation for Mother		Representation for Father		Representation for Government Agency	
	n	%	n	%	n	%
Yes	6,045	74.2	4,780	59.0	125	2.3
No	1,535	18.8	2,504	30.9	5,082	91.9
Unknown	568	7.0	815	10.1	323	5.8
Total	8,148	100.0	8,099	100.0	5,530	100.0

Missing cases for Mother = 85; Missing cases for Father = 134; Missing cases for Government Agency = 2,703
Total N = 8,233

Support and Custody Issues Dealt With

Figure 6 presents the support and custody issues that were addressed in the divorce order, the judgment or the variation order. Almost one-half of the cases (45.7 percent) addressed child support and custody issues, while almost one-quarter (22 percent) addressed only child support. Almost one-third of the cases (29.4 percent) indicated that spousal support was addressed in addition to child support or child support and custody, although the amount of spousal support was listed as \$0 or left blank in almost three-quarters of these cases.

Access Restrictions

The item on access restrictions was not analyzed in detail because there was some confusion about the interpretation of the item by some data capture clerks. While the item dealt with restrictions on access and thus the response term “none” means unrestricted access, some data capture clerks interpreted “none” to mean no access granted. Thus, the relatively large number of cases (71.2 percent of valid responses) that were coded as “none” contain some unknown proportion of cases in which no access was allowed. For this reason, it would be misleading to present a further analysis of this item. For Phase 2 of the project, this item has been clarified as “access terms.”

Spousal Awards

A total of 746 cases (9.1 percent of the total sample) had a valid (non-zero) spousal support award amount other than \$0. It should be noted that, due to the nature of the survey, these only represent cases in which children were involved. Of these cases, the majority (85.2 percent) had awards that were payable monthly. (One extreme case was dropped from the analysis.) In 95 cases, or 12.7 percent of the total, the award was a lump sum, and in only 14 cases (1.9 percent) was an annual spousal support amount specified.

The median monthly spousal award amount was \$675 (mean = \$1,124), with a range of \$1 through \$20,000 and the majority of the monthly awards (71.4 percent) were \$1000 or less. The median lump sum award was \$14,400 (mean = \$29,248), with a range of \$400 to \$200,000. Twelve of the fourteen cases of annual spousal support had an amount of \$1, while one case had an amount of \$10, and one case had an amount of \$3,600. It should be noted that spousal awards are considered after child support and, for this reason, are sometimes quite low. However, these amounts are often entered so that they can be reconsidered at a later time.

A total of 714 spousal support cases specified the paying spouse. In 709 cases, representing 99.3 percent of the sample, the husband was the paying spouse, while in only 5 cases, representing 0.7 percent, the wife was the payer.

Number of Children in Case

The survey instrument allows for data on up to six children to be specified. Figure 7 indicates the percentage of cases involving each number of children, where children were actually specified. Approximately equal numbers of cases had one or two children (41.3 percent and 43.2 percent, respectively), while the proportions of cases that had three or more children were considerably lower. Because few cases involved four or more children, they are collapsed into a single category.

Type of Custody

Figure 8 presents the type of custody arrangement in the cases according to the definitions of custody provided in the Guidelines. Custody arrangements could not be determined in 10.6 percent of cases. In the majority of cases (72.8 percent), the mother had sole custody, while the father had sole custody in 6.3 percent of cases. Shared custody, where a child spends at least 40 percent of the time with each parent, and split custody, where one or more children have primary residence with the mother and one or more children have primary residence with the father, were relatively infrequent at 6.6 percent and 3.7 percent, respectively.

9.2 Child Support Awards and Table Amounts

Determination of Award Amount

Figure 9 indicates the method used to determine the amount of the child support award according to the information available to the data capture clerks. In 3,835 cases (47.2 percent of valid responses to this item) the file indicated that the Guidelines were followed. The second most frequently used method, as determined from the write-in responses, was prior consent or agreement (1,431 cases; 17.6 percent). In almost one-quarter of the cases (23.1 percent), the method used for determining the support amount was coded as “not stated.” It is very likely, however, that some portion of the cases marked as “not stated” or “previous order or agreement” did in fact use the Guidelines. Therefore, analyses using this variable should be interpreted with caution.

Child Support Award Amounts and Paying Parent

Data were available on monthly child support award amounts for a total of 7,057 cases, representing 85.7 percent of the total. As noted above, cases with an amount of \$0 were excluded from these analyses. In addition, four cases that indicated monthly child support amounts of \$30,000 or greater were excluded as these were likely errors. Across all cases, the median monthly child support amount was \$413 (mean = \$563), and ranged from \$1 through \$14,200.

In the cases in which the paying parent was specified, the father was the payer in 94.3 percent of the cases (6,555) while the mother was the payer in 5.7 percent of cases (397). Information on the paying parent was missing in 105 cases with valid child support award amounts.

Given the substantial number of cases in which a child support award amount of \$0 was entered (n = 1,094; 13.3 percent of total cases), as well as the ambiguity regarding what this amount means, a series of subsidiary analyses was conducted using only these cases to determine their relationship to other key variables in the survey. (See discussion in Section 8.2 above.) Only 40 cases (3.6 percent of the 1,094) had a valid spousal award amount coded. An income for the paying parent was entered in 25.2 percent of these cases and missing in the remaining 74.8 percent, lending support to the interpretation that at least some of the cases that had \$0 entered for the child support award amount did, in fact, have child support awarded, but that the amount was unavailable. A total of 135 cases (12.3 percent of the 1,096) indicated that special or extraordinary expenses were awarded, although only 7 cases had an actual amount for special expenses entered.

Specification of Parents' Income

A question on the survey instrument requests that the annual income of both the paying parent and the receiving parent, as used to determine Guidelines table amounts or a "different amount," be specified. An income for the paying parent was specified in 5,622 cases (68.3 percent of the total sample) and was coded as "not stated" in the remaining 2,611 cases. As would be expected since the receiving parent's income is not required in straightforward applications of the Guidelines, a receiving parent's income was specified in fewer cases (3,069; 37.3 percent of the total).

The median annual income for paying parent's income was \$34,725 (mean = \$41,486) and ranged from \$0 through \$3,322,592. The median income for receiving parents was \$21,093 (mean = \$23,929), and ranged from \$0 through \$357,500.

Paying Parent's Income and Child Support Award Amount

For purposes of examining the relationship between paying parent's income and child support award amounts, income was collapsed into seven categories:

\$0 – \$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.

A separate category of \$150,000 and greater was created due to the special treatment of this income level in the Child Support Guidelines. For purposes of the following analyses, only cases of sole custody are included (79.1 percent of valid cases on type of custody), since these cases represent those in which the most straightforward application of the Guidelines would be expected.

Figures 10 through 12 present the median child support award amounts for each income level for all cases with non-missing data including one, two and three children, respectively. Data are not analyzed separately for cases including more than three children due to the low numbers of these cases. The pattern of findings is quite consistent across the number of children, and indicates a steady increase in amount of child support awards as income of the paying parent increases. For cases involving one child, the median support award amount ranges from \$118 for the lowest income level to \$1,500 for the highest income level. The range for cases involving two children is \$190 through \$2,573 and for three children is \$191 through \$3,444.

Figure 13 presents the median child support award amount for each income level for cases including one, two, and three children in the same graph. The extent of the increase across income levels is quite consistent across the number of children. Further, this figure illustrates that average child support award amounts are consistently higher within each income level as the number of children increases.

Award Termination Provisions and Cost of Living Clauses

Table 3 presents the number and percentage of cases in the total sample that had cost of living clauses and provisions for terminating child support payments. Provisions for terminating payments were more common and were included in almost one-quarter of cases (23.4 percent) for which data were not missing on this variable. Cost of living clauses were included in 11.9 percent of cases.

**Table 3
Number of Cases Including Award Termination Provisions and Cost of Living Clauses**

	Award Termination Provision		Cost of Living Clause	
	N	%	N	%
Yes	1,839	23.4	923	11.9
No	6,011	76.6	6,823	88.1
Total	7,850	100.0	7,746	100.0

Missing cases for Award Termination Provision = 383; Missing cases for Cost of Living Clause = 487
Total N = 8,233

Child Support Awards and Table Amounts

One survey item asks for the Guidelines table amount for the paying parent, as well as the table amount for the receiving parent in cases where custody is shared or split. Data capture clerks were instructed to include these amounts only if they were specified in the order or judgment or supporting documentation. Of the 3,835 cases in which it was stated that the Guidelines were followed, 2,576 cases (67.2 percent) specified a table amount, in contrast to 42.3 percent of the total cases in the sample. Of a total of 308 cases specified as “Guidelines followed” and as having shared or split custody, 95 cases (30.8 percent) also had a table amount for the receiving parent entered on the instrument.

Discretionary Awards for Children at or over the Age of Majority

This item was rarely completed on the survey instrument, which suggests that either discretionary awards for children at or over the age of majority are rarely used or the information regarding these awards was not readily accessible 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 awards for some children over the age of majority are included in the total child support amount, or reflected in special expenses for post-secondary education. For the 26 children over the age of majority who had discretionary amounts entered, the amounts ranged from \$75 to \$1,541 per month.

9.3 Special or Extraordinary Expenses

Award of Special or Extraordinary Expenses

The survey instrument contains three separate sections related to special or extraordinary expenses. The first piece of information requested is whether special or extraordinary expenses were awarded. For those cases in which expenses were awarded, the amount or proportion of the total expenses to be paid by the paying parent was requested. Finally, the instrument asks which specific expenses were awarded, whether the children to whom the expenses related were specified, and the amount to be paid by each parent.⁷

Figure 14 presents the proportion of the total cases that specified special or extraordinary expenses. In the total sample, 31.2 percent of cases were reported as having these expenses. In 21.7 percent the amount or proportion of the paying parent's share of these expenses was specified, while in 9.5 percent the amount or proportion was not specified.⁸

Both the amount and the proportion of special expenses were specified in 28.2 percent of cases in which special or extraordinary expenses were awarded; the amount only was specified in 36.3 percent of cases and the proportion only was specified in 35.5 percent of cases.

Of the 1,094 cases that had the amount of the paying parent's special or extraordinary expenses specified, the median monthly amount of the paying parent's share of special or extraordinary expenses was \$116 (mean = \$183) and ranged from \$2 to \$5,900. Of the 1,081 cases in which the paying parent's proportion of special expenses was specified, the proportion varied from 4 percent to 100 percent. The most common proportion specified was 50 percent, in 362 cases, followed by 100 percent in 169 cases.

⁷ Because many of the files did not specify the children to whom the expenses related or the amount to be paid by each parent, this item was modified on the revised survey instrument for Phase 2.

⁸ Twenty cases in which it was stated that the amount and/or proportion was specified nevertheless had 0 entered for both amount and proportion. Since it is not possible to distinguish between a valid value of 0 and missing data, these cases are excluded from the following analyses. In addition, one case that had a percentage of 308 was also excluded since this was likely an error.

Type of Special or Extraordinary Expenses Awarded

Section 7 of the Guidelines allows the court to award special or extraordinary expenses in one or more of six categories. Figure 15 presents the number and proportion of cases out of the total sample in which each specific type of expense was awarded. The most commonly awarded type of expense was medical or dental insurance premiums (9.7 percent of total cases). This was followed by extracurricular activities at 9.3 percent, and child care or day care at 8.5 percent. The least frequently awarded expenses were primary/secondary education (4.7 percent) and post-secondary education (6.9 percent).

Figure 16 indicates the number of special or extraordinary expense categories that applied in cases where specific expenses were coded on the survey instrument. The majority of cases had one expense (49.3 percent), with considerably fewer cases having two (24.4 percent) or more (26.4 percent) expenses.

Section 13(e) of the Guidelines requires that, in the case of special or extraordinary expenses, the child to whom each expense relates be specified in the order. Table 4 presents the number and proportion of cases in which each expense was awarded that specified the children to whom the expense amount related. In cases involving only one child, it is not necessary to specify that child for purposes of special or extraordinary expenses. Therefore, these numbers may be artificially low and should be treated with caution. Further, there are likely to be situations in which the paying parent is required to contribute to a special or extraordinary expense for all of the children, in which case individual children may not be specified.

**Table 4
Number of Cases that Specified the Children to Whom
Each Special or Extraordinary Expense Amount Related**

Expense	Children Specified	
	N	%
Child care/Day care (n = 699)	323	46.2
Medical/dental insurance premiums (n = 795)	184	23.1
Health-related expenses (n = 692)	183	26.4
Primary/secondary education (n = 389)	161	41.4
Post-secondary education (n = 565)	117	20.7
Extracurricular activities (n = 767)	271	35.3

Total N = 8,233

The survey instrument also requests the amount and proportion of each special or extraordinary expense to be paid by the mother and the father. These data are not analyzed because there are a substantial number of \$0 amounts for both parents. These amounts could represent any of three possible scenarios:

- the amounts are missing from the original judgment or order and may have been coded as \$0;
- the amount to be paid by each parent was included in the original judgment or order as a proportion rather than a dollar figure; and
- there was a valid amount of \$0 for a parent’s contribution to the expense.

Thus, analysis of these data would be quite misleading.

Item 23.7 of the survey instrument asks for the “total accepted special or extraordinary expenses amount” and whether this amount was to be paid monthly or annually. These data were not analyzed because they were missing in over 75 percent of the cases in which special or extraordinary expenses were awarded.

A total of 912 cases had “other” arrangements, outside of section 7 special or extraordinary expenses, as write-ins. Almost one-half of these cases (n = 438; 48 percent) related to payments for life insurance and other investments for the children, such as registered education savings plans.

Paying Parent’s Income and Special or Extraordinary Expenses

To examine the relationship between the paying parent’s income and the award of special or extraordinary expenses, the same income categories used in the earlier analyses were employed. Once again, the following analyses were only conducted on sole custody cases since these cases represent those in which the most straightforward application of the Guidelines would be expected. Figure 17 presents the number and percentage of cases within each income level that had special or extraordinary expenses awarded. There was a consistent increase in the proportion of cases with special or extraordinary expenses awarded as income level increased. At the lowest income level, only 11.5 percent of cases had special expenses awarded; this proportion increased to 59.5 percent at the highest income level.

Figure 18 presents the median amount per month of special or extraordinary expenses (for those cases with amount specified) within each income level. There was a steady increase in the amount of special expenses awarded with increasing income levels. The median special expense awarded at the lowest income level was \$57 (mean = \$70); this amount increased to \$710 (mean = \$683) at the highest income level.

9.4 Undue Hardship

Undue hardship applications were identified in only 49 (0.6 percent) of the total cases in the sample.⁹ Of these applications, 42 were brought by the paying parent and 6 were brought by the receiving parent. There was one case where both parents were applicants. Information on whether the incomes of other household members were used in the standard of living test was missing or coded as “not stated” for all of these cases.

Of the 42 applications brought by the paying parent, 23 resulted in a decrease of the Guidelines amount, 8 were denied, 1 resulted in an order amount higher than the Guidelines amount, and the outcome of 10 applications was unknown or missing. Of the 6 applications by the receiving parent, 2 resulted in an increase of the Guidelines amount, 3 were denied, and 1 resulted in an order that was less than the Guidelines amount. The one case that involved a cross-application resulted in an increase of the Guidelines amount.

⁹ It should be noted that the data probably do not reflect the number of cases in which undue hardship is raised. If a claim for undue hardship is raised and subsequently fails, there may be no record of the application on the case file.

In line with the requirements of Section 10(6) of the Guidelines, reasons noted in the order or judgment were coded on the instrument in 24 cases. Reasons were not given in any case where the payment amount was increased. Reasons given in cases where the payment amount was decreased included:*

- Respondent's tuition fees were deducted from his gross annual income to provide a lesser amount of maintenance payable.
- Payments of \$437/month would cause undue hardship on himself or the children.
- Respondent is unemployed.
- Father has two other children, standard of living in father's household lower than in mother's household.
- Modification of child support amount when father is not employed.
- Section 10(2): "Even if no payment was required, father would not have a higher standard of living than mother."
- Payer assumed debts of marriage.
- Respondent stands in loco parentis of three children and pays significant special or extraordinary expenses for children of the marriage.
- Obligation to support another child.
- Payer will be incurring increased access costs.
- The payer will be attending school from September to December 1998.

Reasons given in cases where the application for undue hardship was denied included:*

- The standard of living in father's household [is] higher than the one in mother's household.
- Undue hardship claimed due to access cost (mother living in California). Denied because already accounted for in original judgment.
- In the instant case, the Applicant has argued she is not claiming that a reduction of support from the previous agreement amount to the table amount constitutes, in and of itself, undue hardship ... I would dismiss the applicant's claim of undue hardship.
- In this case, the evidence as to hardship is insufficient. The applicant has failed to meet the first test of section 10 and I am unable to find "hardship." Accordingly, I cannot then proceed to a comparison of household incomes ...

* Editor's Note: The following statements are direct quotes from judgments or orders.

9.5 Variations

As noted above, the pilot survey database included 1,661 cases involving variations to child support orders. Figure 19 presents the application for a variation order by the applying parent. In 51.9 percent of cases where data were available, the applicant was the receiving parent. The paying parent was the applicant in 40.3 percent of cases, and in 7.8 percent of cases, parents were cross-applicants.

As indicated in Figure 20, the most common reason for variation applications was the implementation of the Guidelines (35 percent of applications where data were available). This was followed by change in income, representing 14.1 percent. In a substantial number of cases, the “other” category for this item was selected. However, the write-in responses were very inconsistent and only the categories “change in custody,” “no longer child of marriage,” and “other change in circumstance,” could be quantified. The amount of the original order was available for 1,207 or 72.7 percent, of the variation cases and ranged from \$0 to \$8000, with a median of \$400 (mean = \$520).

As indicated in Figure 21, of 1,508 variation applications with valid data, 603 (40 percent) resulted in a decrease of the face-value amount, while 29 percent resulted in an increase of the face-value amount. The application was denied in 1.6 percent of cases and was not stated in 29.4 percent of cases. While 40 percent of variation applications resulted in a decrease, changes in the tax treatment mean that a decrease in the face-value amount does not necessarily mean a decrease in child support to the receiving parent, depending on the receiving parent’s income. Before the tax changes, receiving parents paid tax on child support awards, meaning that the net amount was less than the award amount if the recipient’s total income was high enough to be taxable. Since child support awards are no longer taxable, a decrease in the award could result in an actual increase in the net amount for the receiving parent. However, since paying parents can no longer claim child support as a tax deduction, an increase in the face-value amount always means that the paying parent pays more child support and that the receiving parent receives more support.

Of applications brought by the paying parent, 64.4 percent resulted in a decrease of the face-value amount, 10 percent resulted in an increase, 2.5 percent were denied and in 23.2 percent of cases the order did not state whether there was an increase or a decrease. Of applications brought by the receiving parent, 44.6 percent resulted in an increase of the face-value amount, 22 percent resulted in a decrease, 0.9 percent were denied, and the results of 32.6 percent were not stated. Of the cross-applications, the majority resulted in a decrease of the face-value amount (28.8 percent). Fewer cases resulted in an increase (19.5 percent) or denial of the application (1.7 percent). Of the cross-applications, the results of 50 percent were not stated.

Some comments noted in the variation order in cases where the face-value amount was increased follow:*

- Original order was for one child in the custody of the father. Maintenance was to be increased yearly on the basis of inflation. The mother now has custody of the child.
- Original order was for no support.
- Petitioner will be recipient of child tax benefit.

Some comments in cases where the amount was decreased follow:*

- Only one child remaining a child of the marriage.
- Child support suspended pending applicant's return to employment.
- Support being paid by another party.
- Father owes arrears set at \$150/month. While this is being paid, child support for the mother is set at \$199/month.
- Arrears also to be paid.
- Father unemployed and must support three other young children.
- Change of custody of one child.
- Aunt receives \$500 for child 2 as room and board, the father now has custody of child 1.
- Issue of permanent residence sent to trial, maintenance order suspended until then.
- No support in exchange for no access.
- Due to the mother moving to Manitoba, the judge ordered that no maintenance will be paid by either party.
- Decreased for months of strike.
- Child now 22 and finished post-secondary education.
- Child now independent.
- Reduced until applicant has a better ability to pay child support.

10.0 CONCLUSIONS

The pilot phase of the Survey on Child Support Awards has provided a great deal of valuable information. This phase has provided detailed documentation on the process of separation and divorce in most provinces and territories across Canada. In addition, the data collected on child support awards in divorce cases provides a snapshot of the implementation of the Federal Child Support Guidelines. The pilot phase of the project demonstrates the importance of on-going information and data collection and suggests that the transition to Phase 2 of the project is a worthwhile undertaking. Phase 2 will be an important component of the longer-term monitoring of the progress of the federal Child Support Initiative. This section briefly discusses issues to be considered in the transition to Phase 2.

* Editor's Note: The following statements are direct quotes from judgments or orders.

10.1 The Process of Divorce

As indicated in Part 1 of this report, while the actual process of divorce is governed by the federal *Divorce Act* and, thus, is relatively standard across all jurisdictions in Canada, there is considerable variability in the procedures and supports available for divorcing couples across the provinces and territories. Part 1 indicated that many jurisdictions have implemented, or are in the process of implementing, innovative procedures and programs and it is very likely that this will continue throughout the Child Support Initiative and beyond. The Department of Justice Canada may wish to consider reviewing and updating the information presented in Part 1 on a periodic basis in order to track changes implemented across Canada. This type of analysis could be useful in updating jurisdictions on initiatives that are being undertaken elsewhere.

10.2 On-going Data Collection

As indicated in Part 2 of this report, the Pilot Survey on Child Support Awards has collected a great deal of useful information on the implementation and use of the Guidelines. However, as noted at various points throughout Part 2, several items in the pilot survey instrument proved to be problematic for a variety of reasons. Some of these problems were related to different interpretations of the information required for certain items by the data capture clerks. In other cases, the problems were related to the different amounts of information available to the clerks at different sites, as well as the timing of the data entry. The Department of Justice Canada has completed consultations with representatives of the participating jurisdictions regarding the contents of the survey instrument. The revised instrument and coding manual prepared for use in Phase 2 should effectively deal with many of the problems identified in the pilot phase. Appendix D contains a summary of changes made to the pilot survey instrument for Phase 2 data collection and Appendix E contains the revised form.

Face-to-face training with data capture clerks was conducted on the revised form, coding manual, and data entry software at each site in the fall of 1998 by representatives from CRILF, Neurofinance Inc. and the Child Support Team. This training should help standardize data collection procedures to the extent possible across participating sites. The movement of almost all sites to the use of the data entry software should also enhance data quality. Additionally, the toll-free help line established at CRILF to handle problems encountered by data capture clerks during the pilot phase will be maintained throughout Phase 2.

Several provinces and territories have expressed an interest in collecting data on orders arising from provincial or territorial legislation as well as those under the federal *Divorce Act*. The revised survey instrument can be redesigned to collect both provincial or territorial and federal cases with relatively minor modifications, and this process is underway. The redesigned instrument will soon be pilot tested.

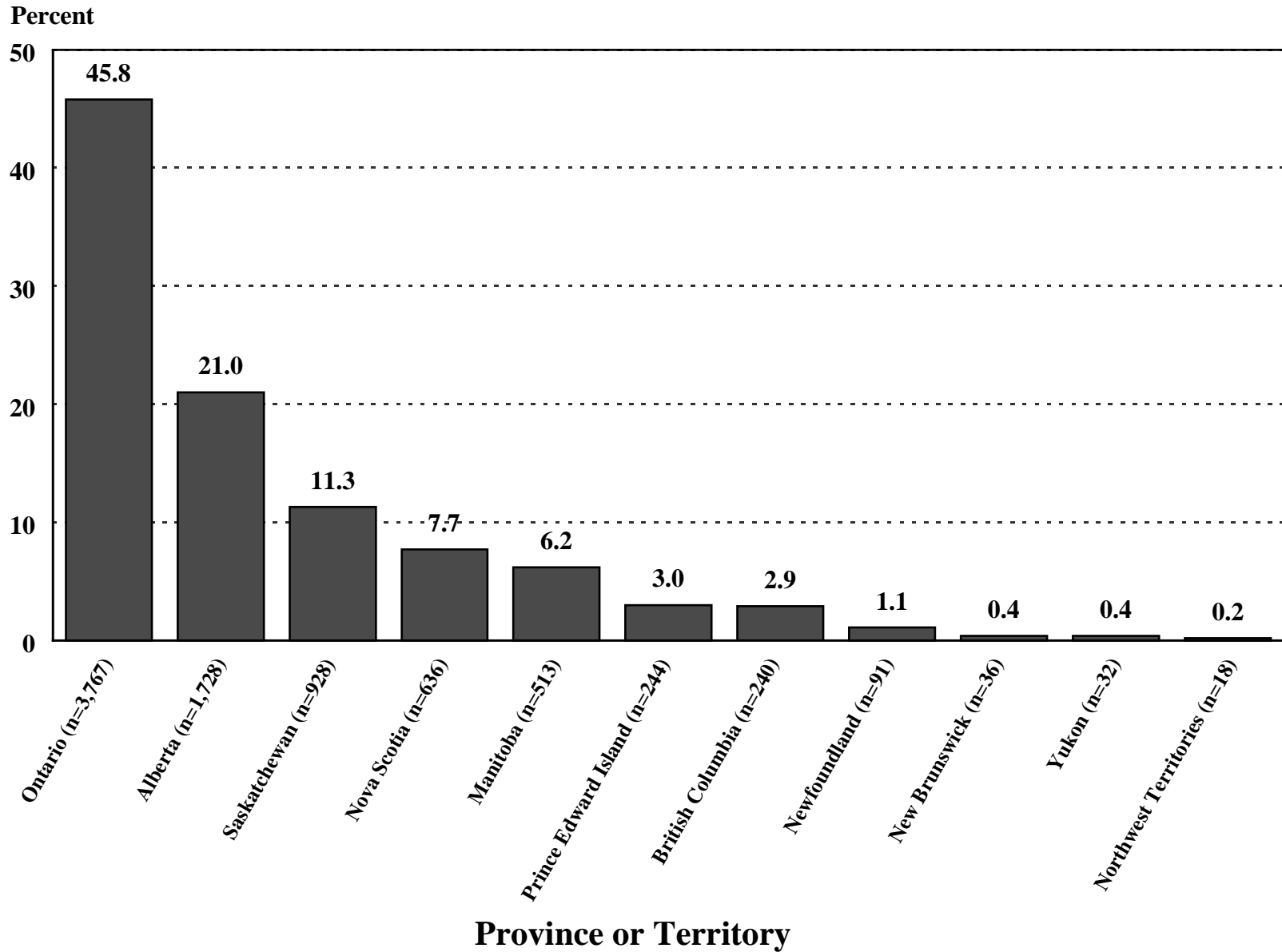
APPENDIX A

FIGURES

LIST OF FIGURES

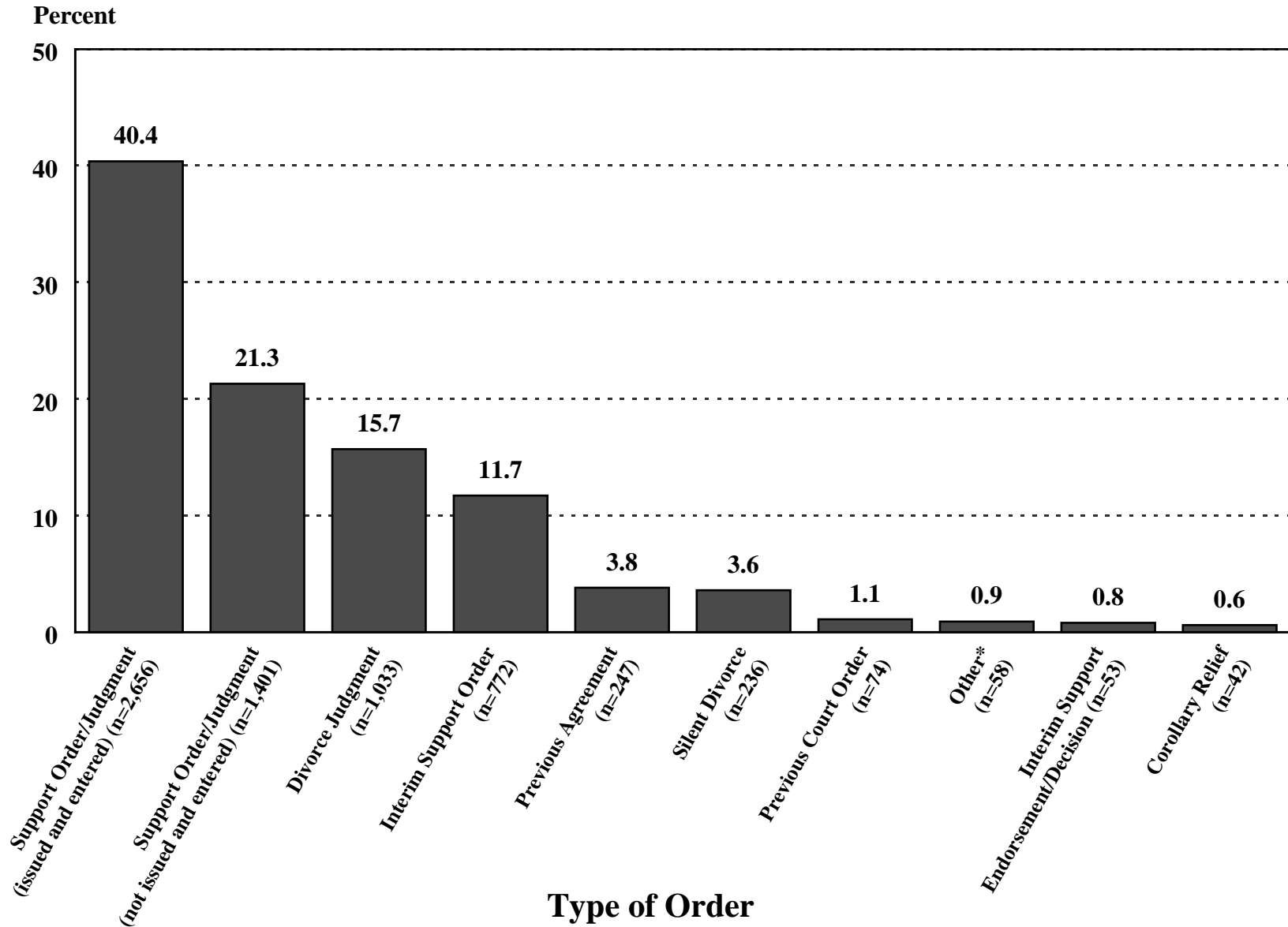
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Figure 2: Percentage of Cases from Each Participating Province or Territory



Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998.
Total N = 8,233.

Figure 3: Type of Divorce Order or Judgment

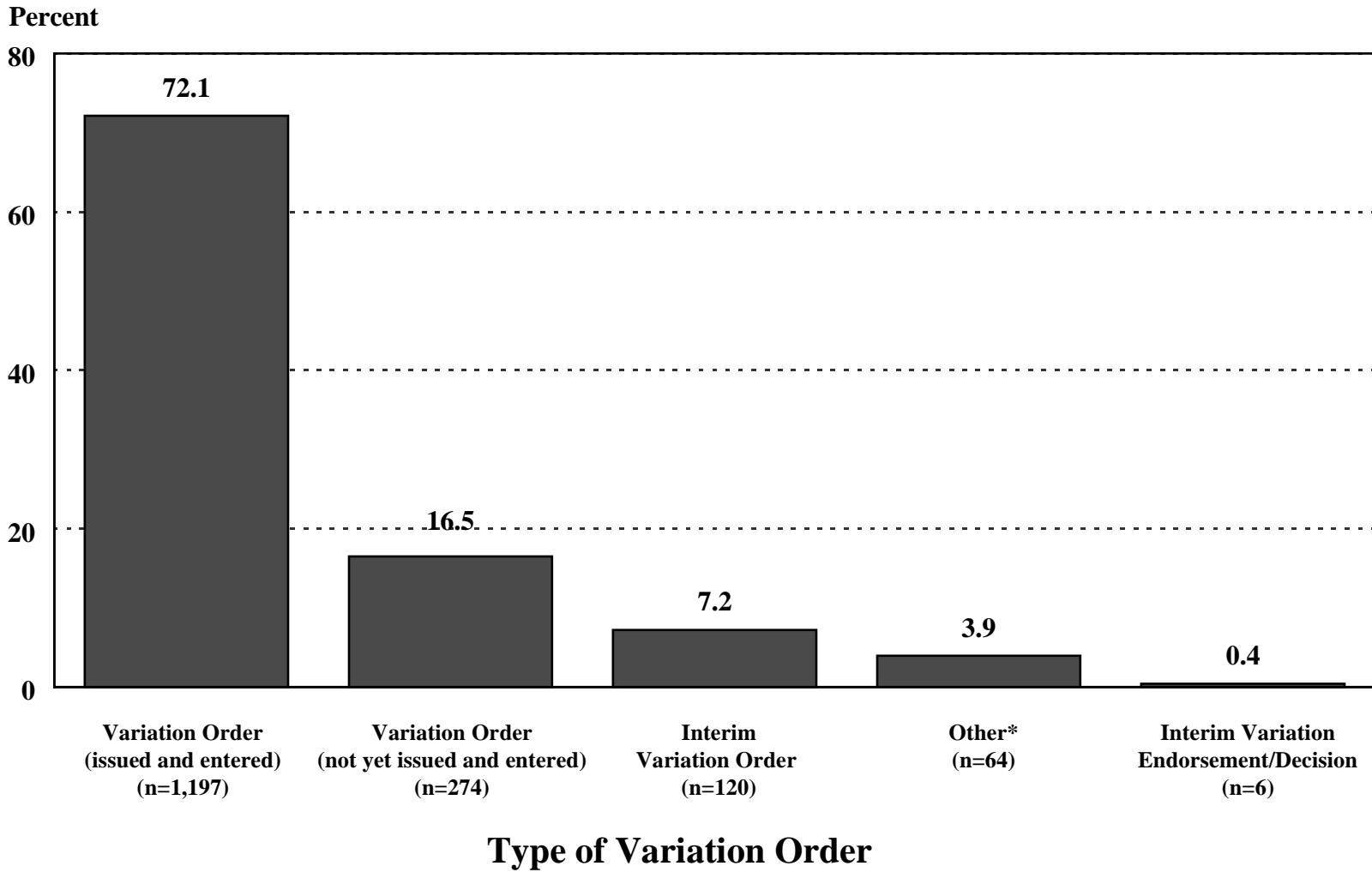


Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998.

Total Number of Divorce Orders = 6,572.

* Other includes such things as custody change, access change, and maintenance.

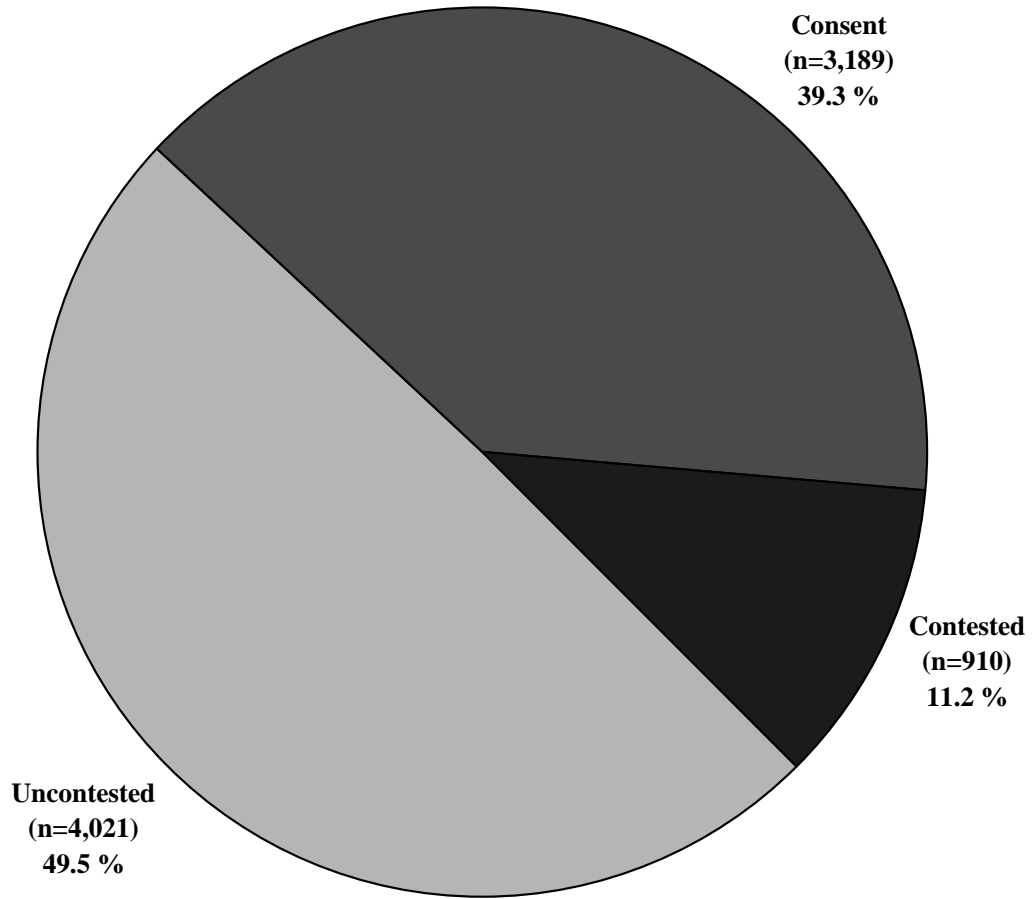
Figure 4: Types of Variation Orders



Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total Number of Variation Orders = 1,661.

* Other includes such things as first order, variation settlement, and provincial order.

Figure 5: Disposition of Divorce Orders

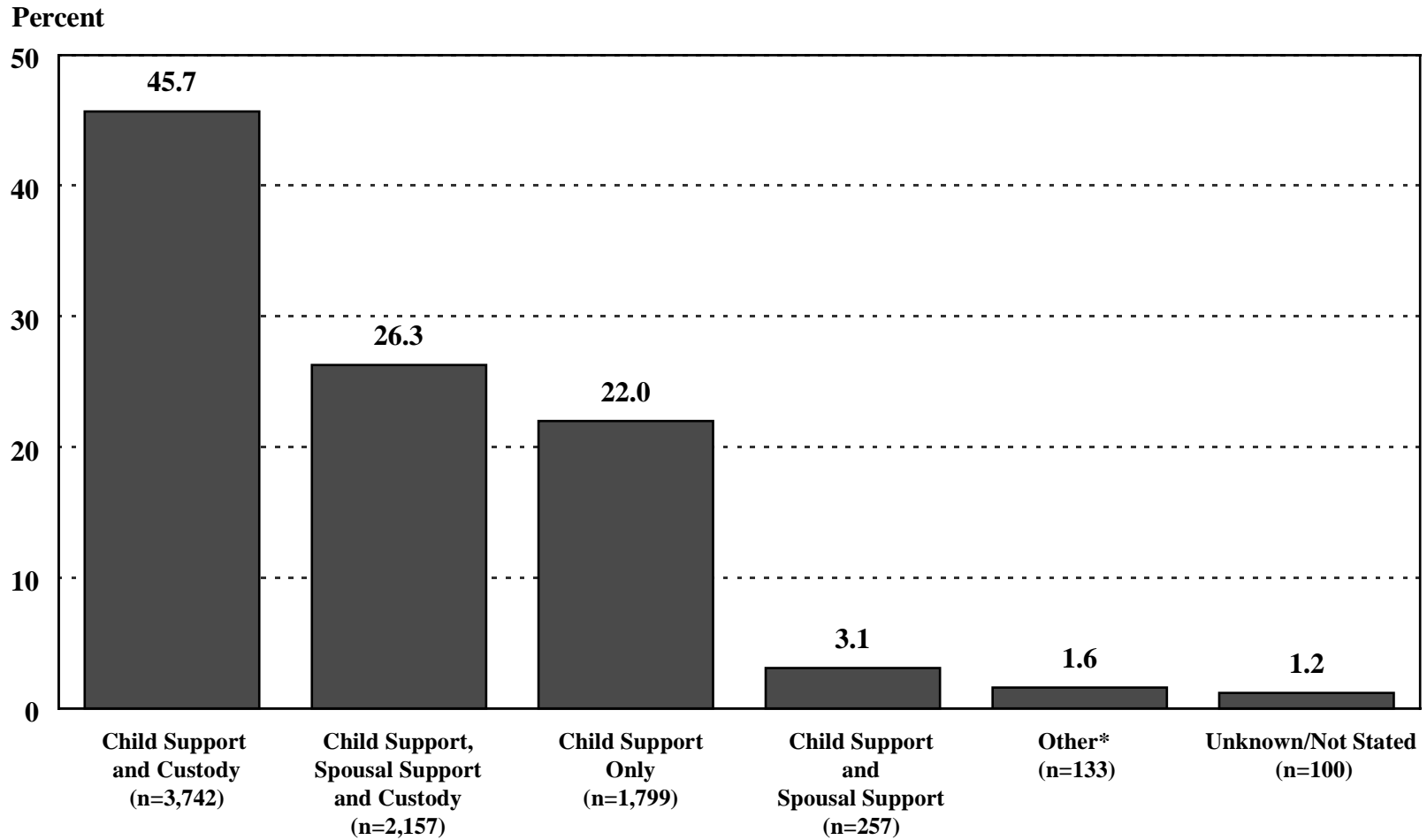


Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998.

Total N = 8,233.

Missing Cases = 113.

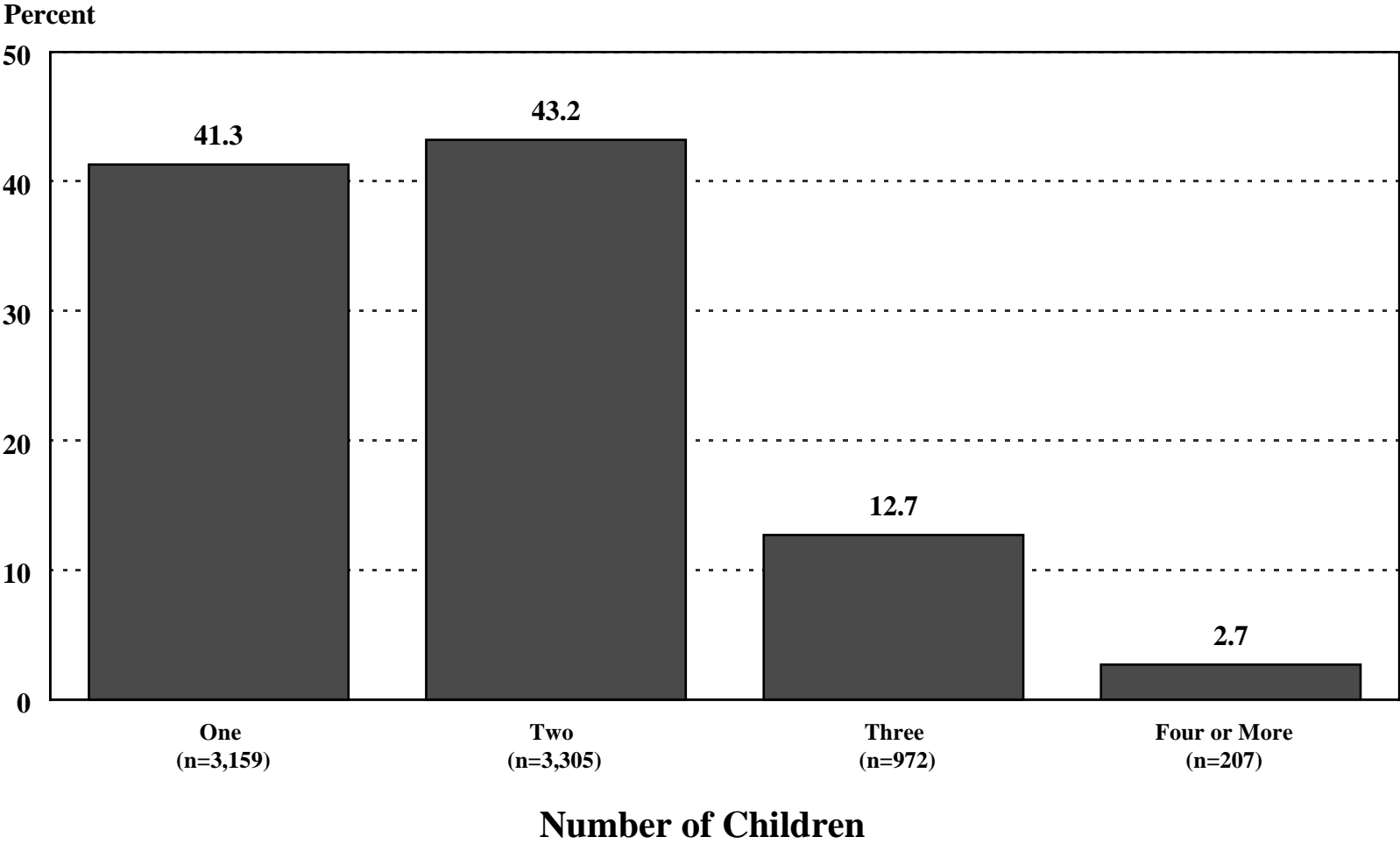
Figure 6: Support and Custody Issues Dealt With in Court Orders



Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total N = 8,233. Missing Cases = 45.

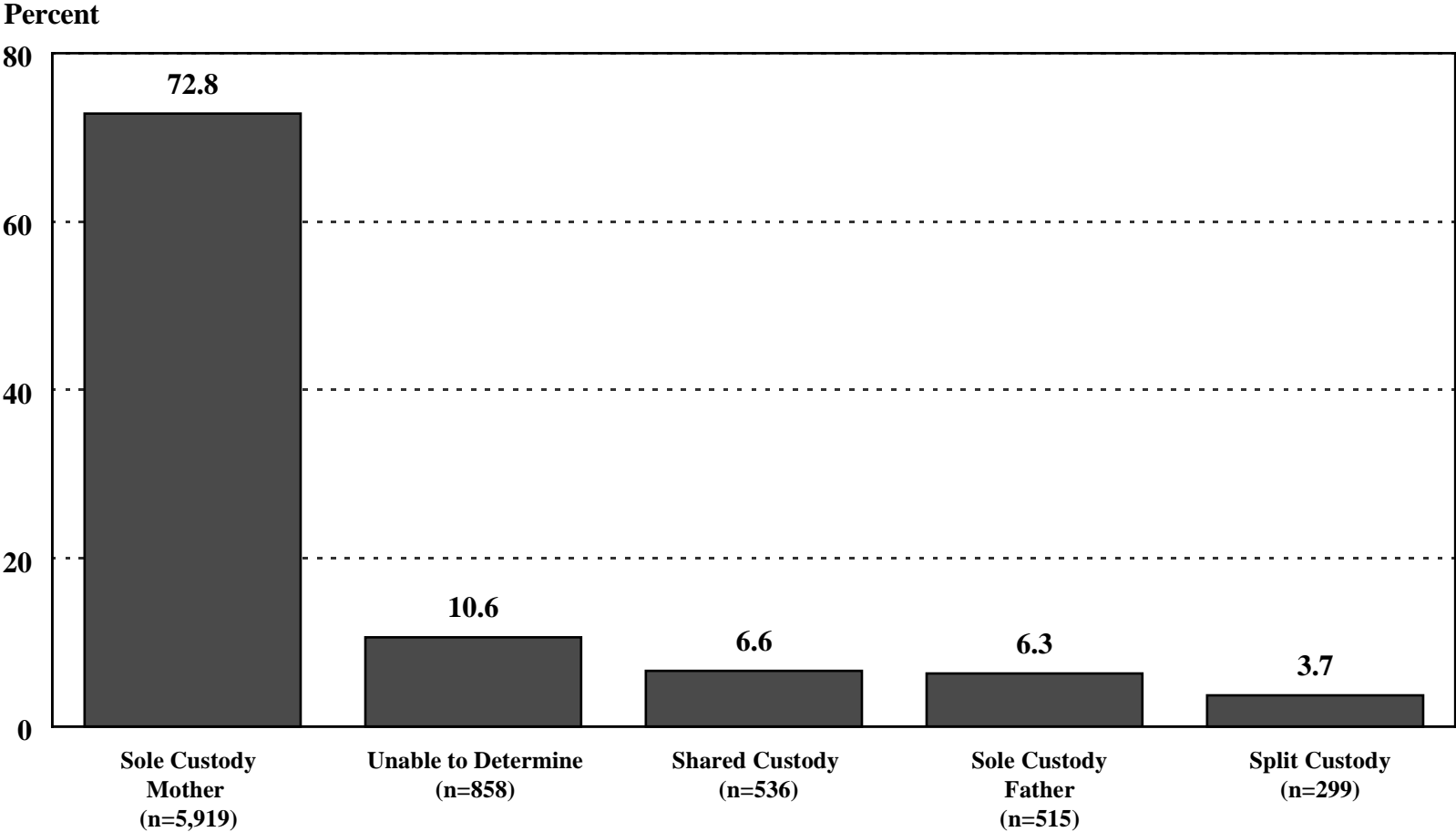
* Other includes such things as child support not dealt with, access, and custody.

Figure 7: Number of Children in Case



Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total N = 8,233. Missing Cases = 590.

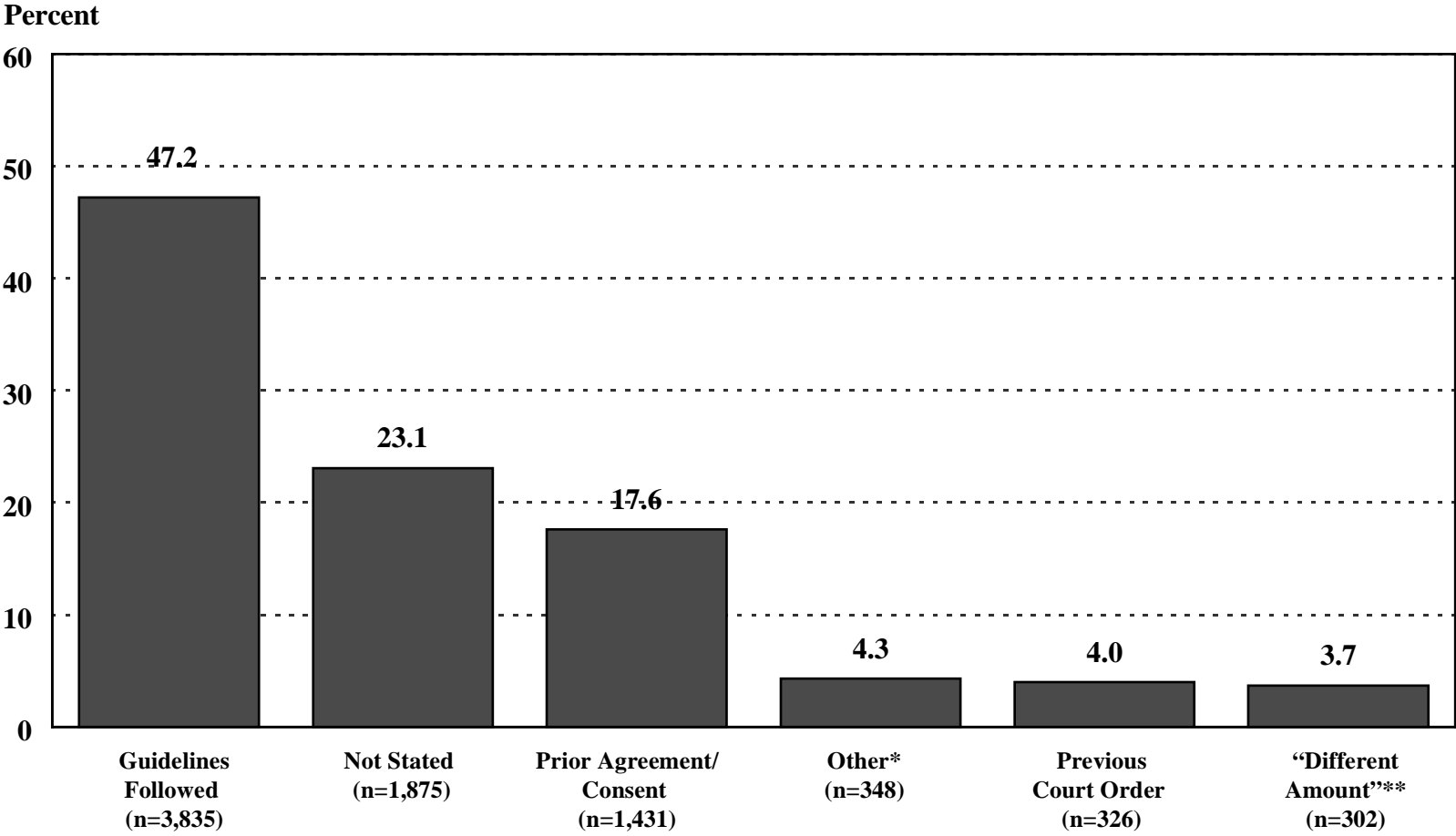
Figure 8: Type of Custody Arrangements



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Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total N = 8,233. Missing Cases = 106.

Figure 9: How Award Amount was Determined

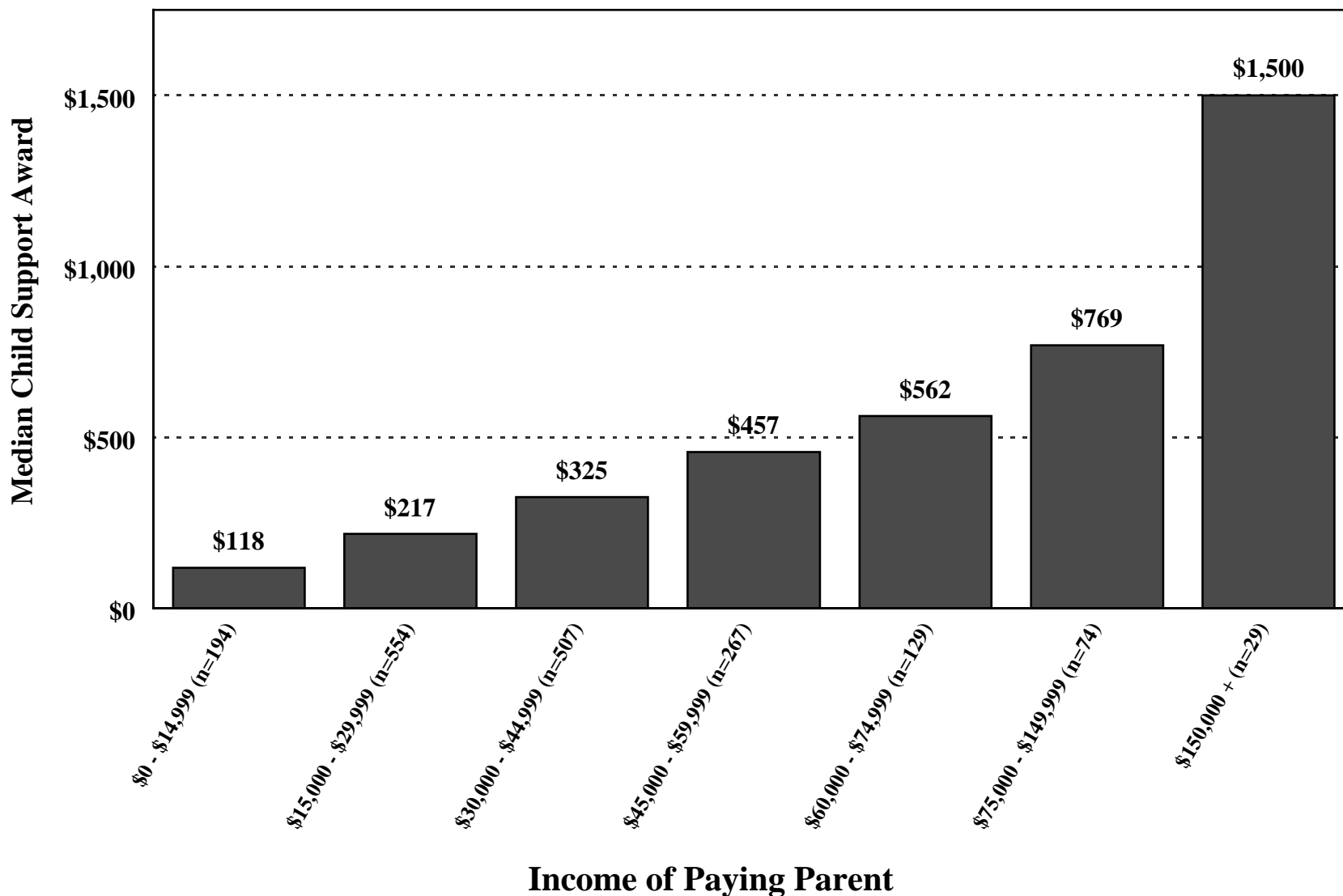


Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total N = 8,233. Missing Cases = 116.

* Other includes such things as parental advisor, other family law acts, and child's expenses.

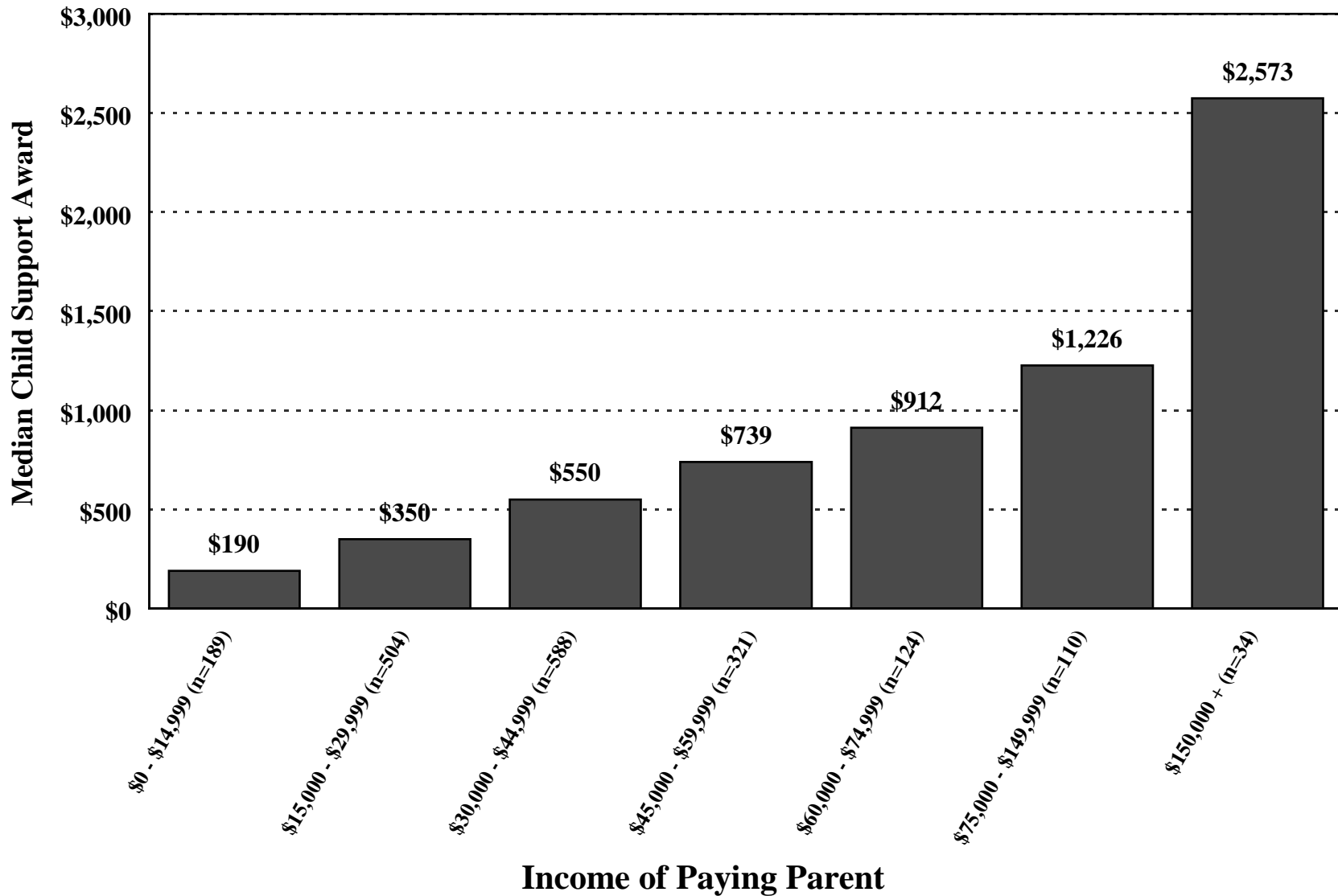
** 'Different Amount' determined using paragraphs 15.1(5), 15.1(7), 17(6.4), 17(6.5) of the Divorce Act.

Figure 10: Median Monthly Child Support Award Amount by Income of Paying Parent in Sole Custody Cases With One Child



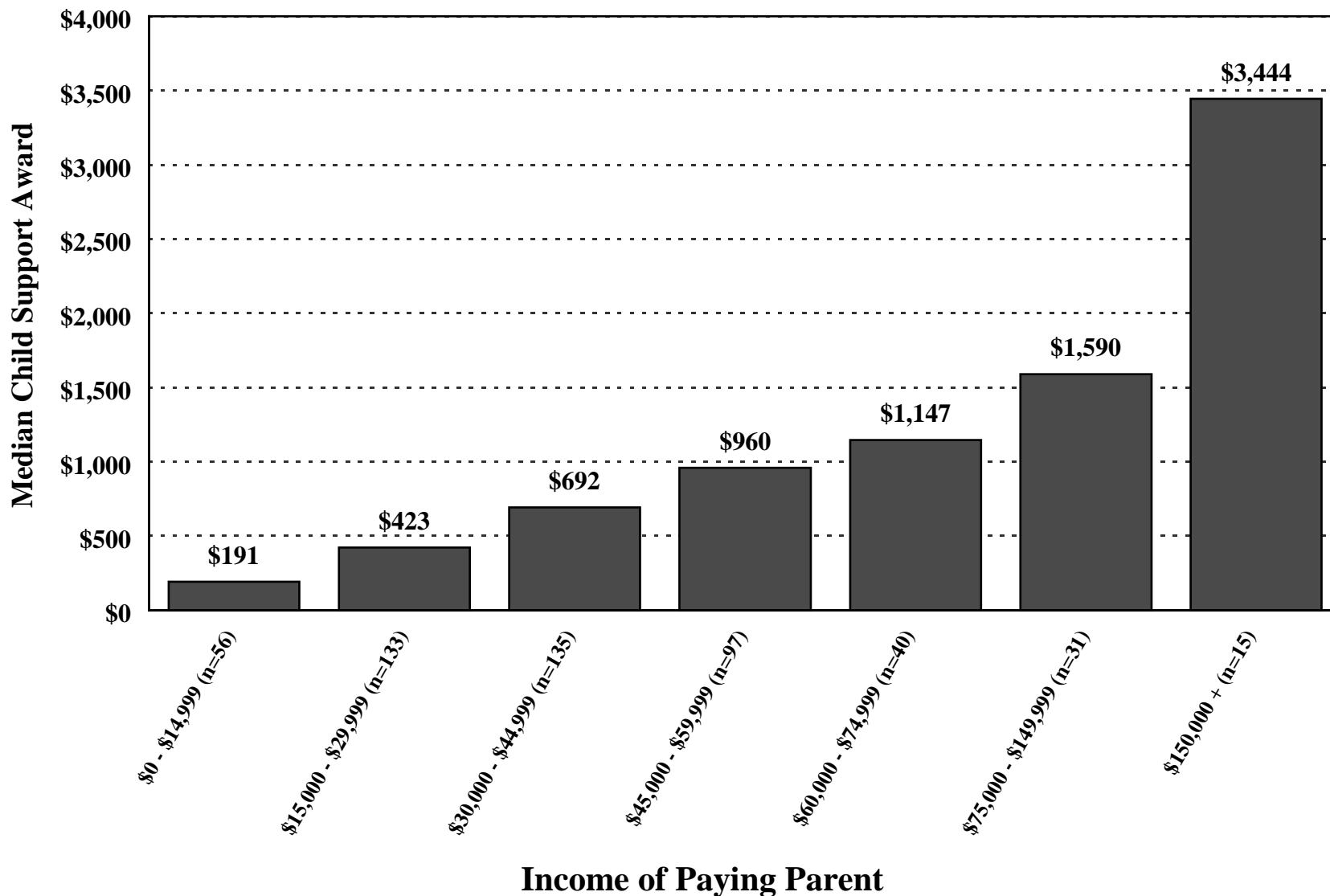
Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Cases analyzed = 1,754. Total N = 8,233. Cases with missing data on paying parent income (n=2,611) and/or number of children (n=590) and/or child support amount (n=1,176) are excluded from the relevant analyses.

Figure 11: Median Monthly Child Support Award Amount by Income of Paying Parent in Sole Custody Cases With Two Children



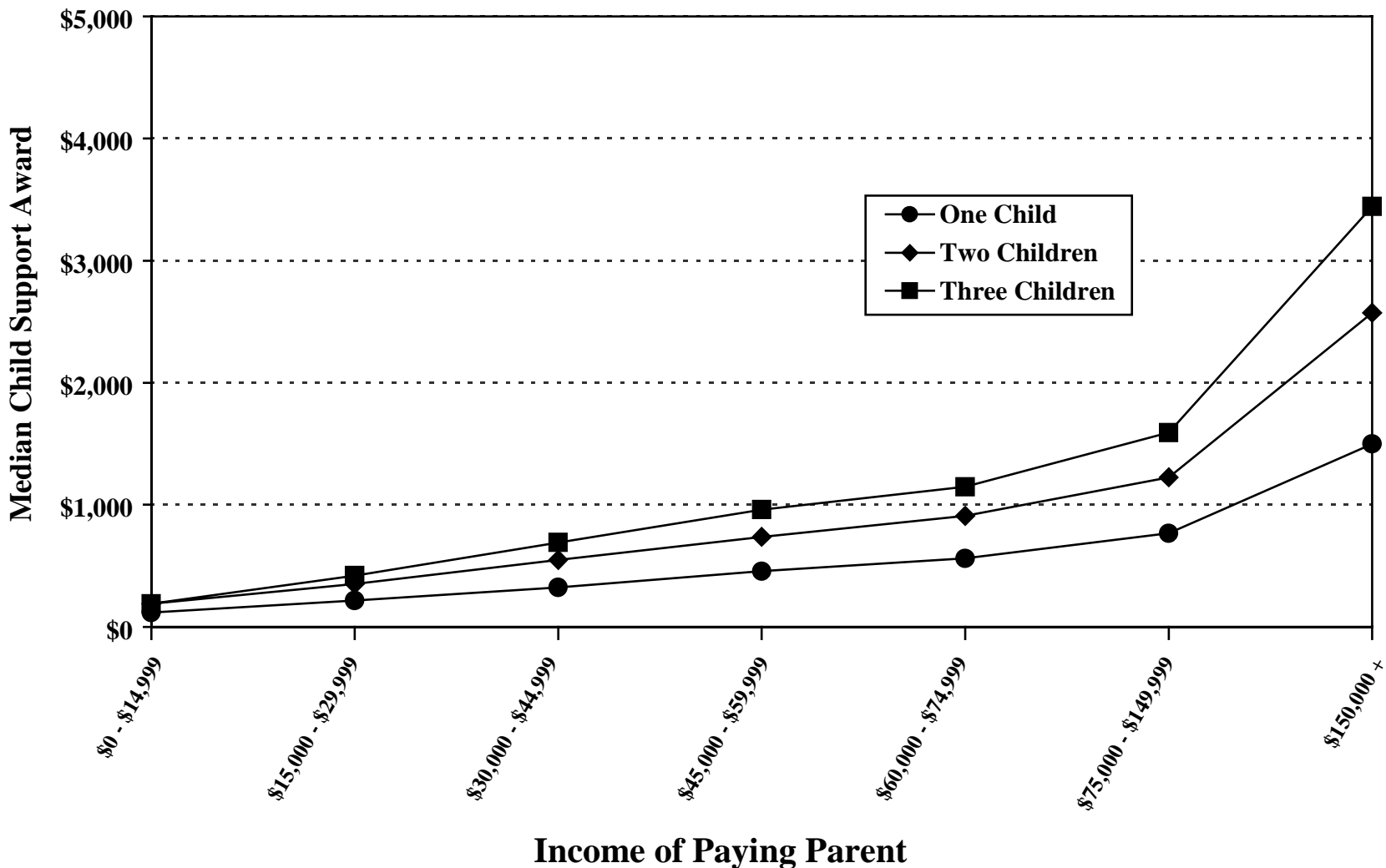
Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total N = 8,233. Cases analyzed = 1,870. Cases with missing data on paying parent income (n=2,611) and/or number of children (n=590) and/or child support amount (n=1,176) are excluded from the relevant analyses.

Figure 12: Median Monthly Child Support Award Amount by Income of Paying Parent in Sole Custody Cases With Three Children



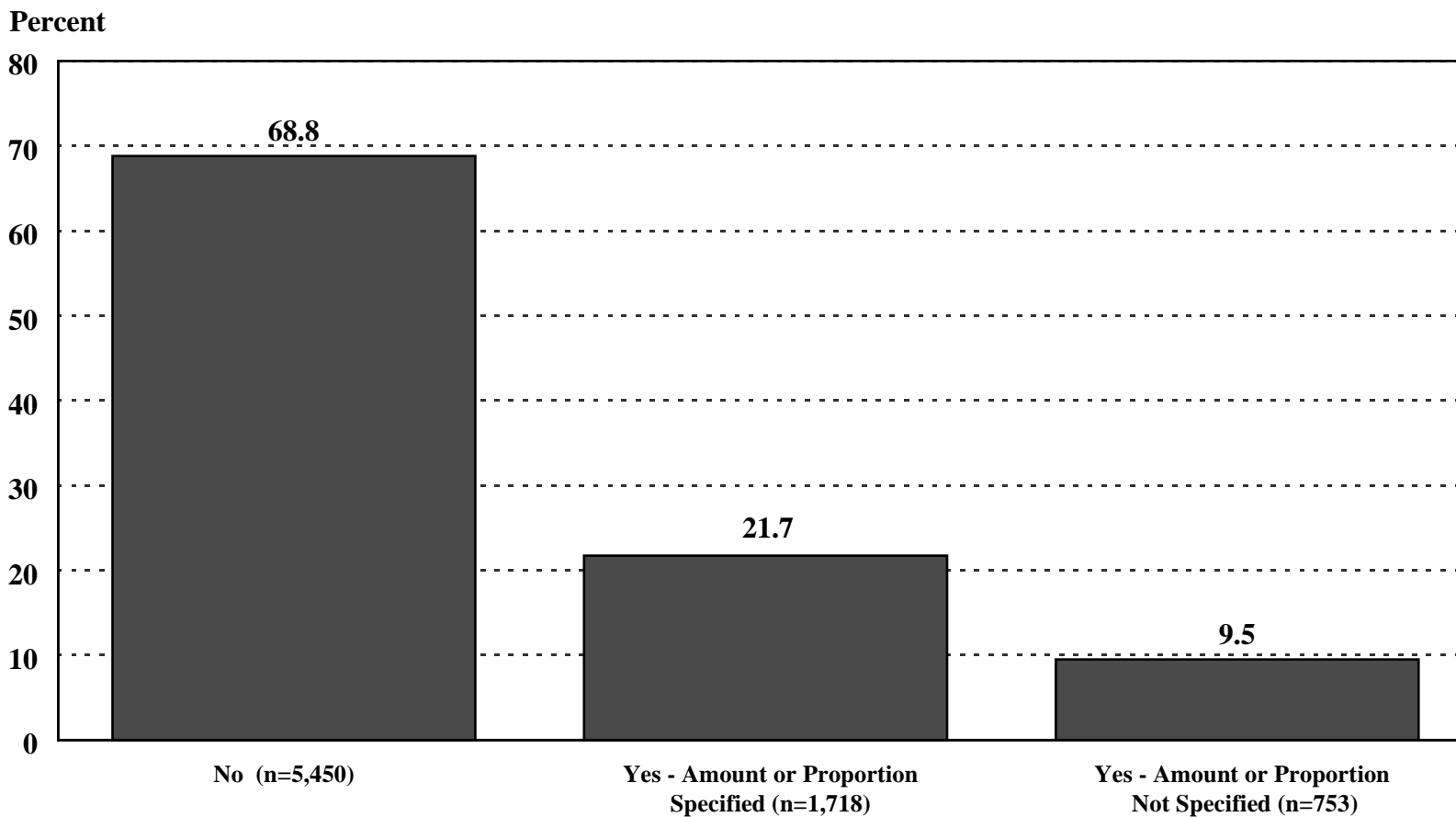
Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total N = 8,233. Cases analyzed = 507. Cases with missing data on paying parent income (n=2,611) and/or number of children (n=590) and/or child support amount (n=1,176) are excluded from the relevant analyses.

Figure 13: Median Monthly Child Support Award Amount by Income of Paying Parent in Sole Custody Cases With One, Two, or Three Children



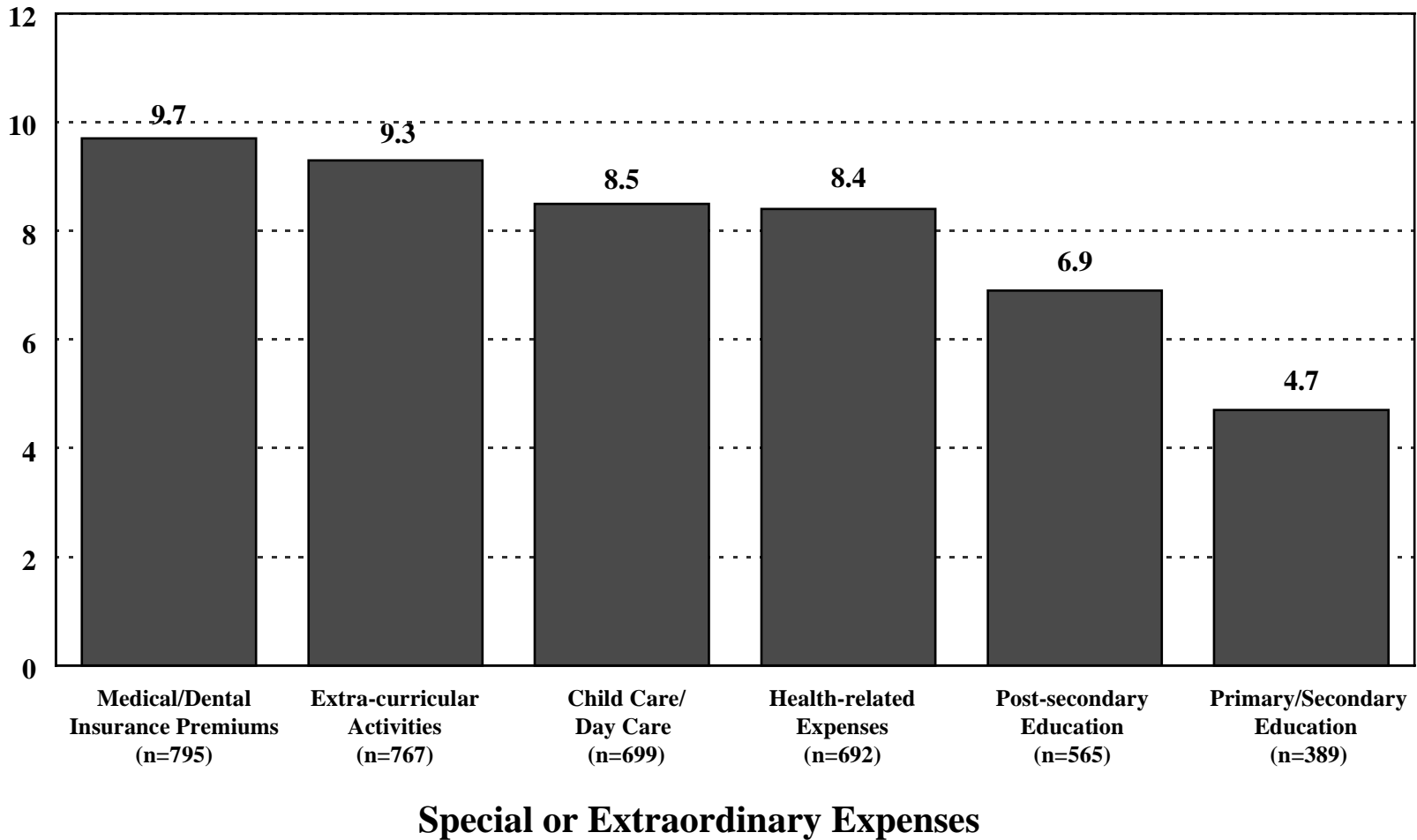
Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total N = 8,233. Cases analyzed with one child = 1,754; cases with two children = 1,870; cases with three children = 507. Cases with missing data on paying parent income (n=2,611) and/or number of children (n=590) and/or child support amount (n=1,176) are excluded from the relevant analyses.

Figure 14: Percentage of Cases in Which Special or Extraordinary Expenses Were Awarded



Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total N = 8,233. Missing Cases = 312.

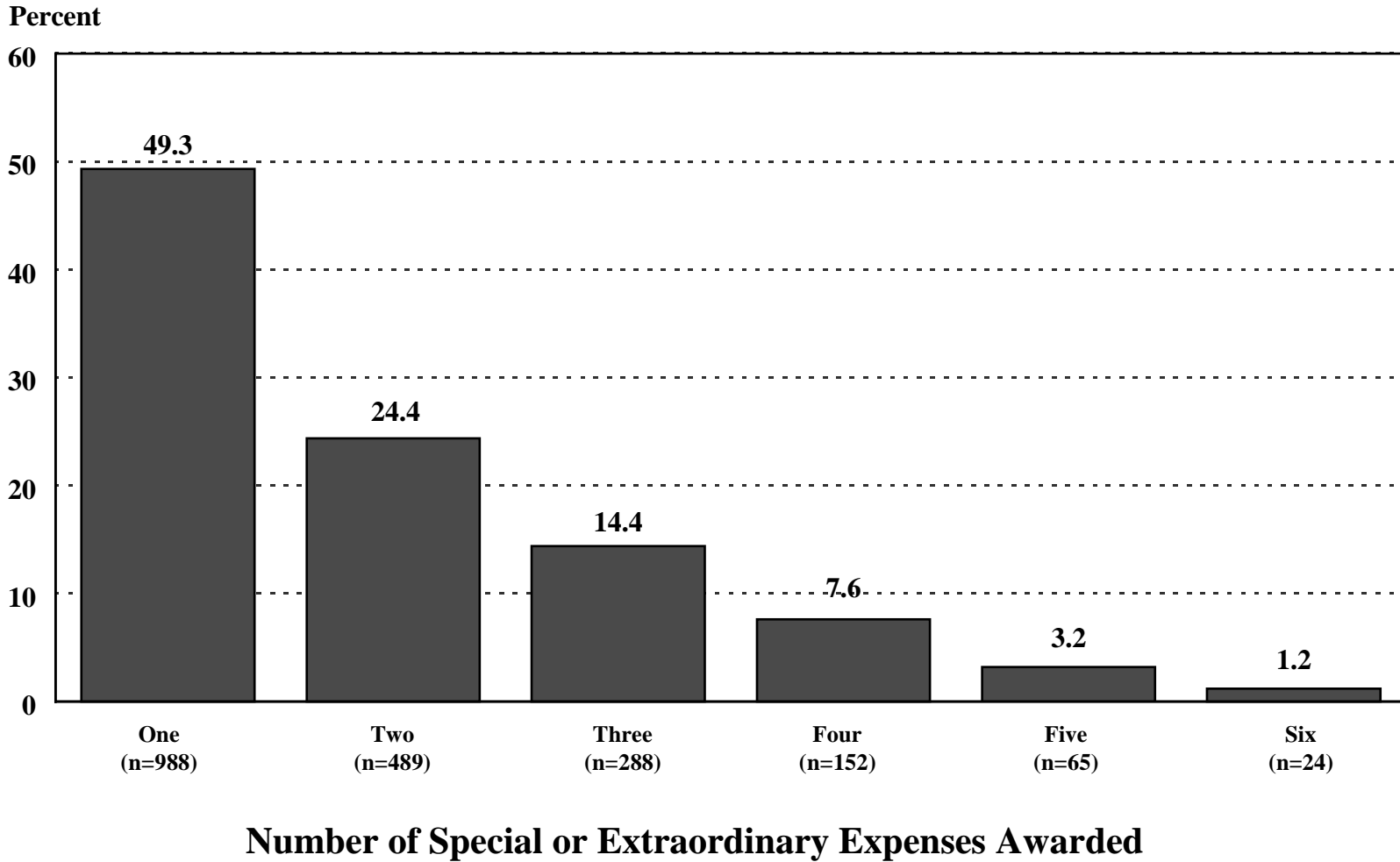
Figure 15: Percentage of Cases Specifying Special or Extraordinary Expenses Under Section 7 of the Guidelines
Percent



Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998.
Total N = 8,233.

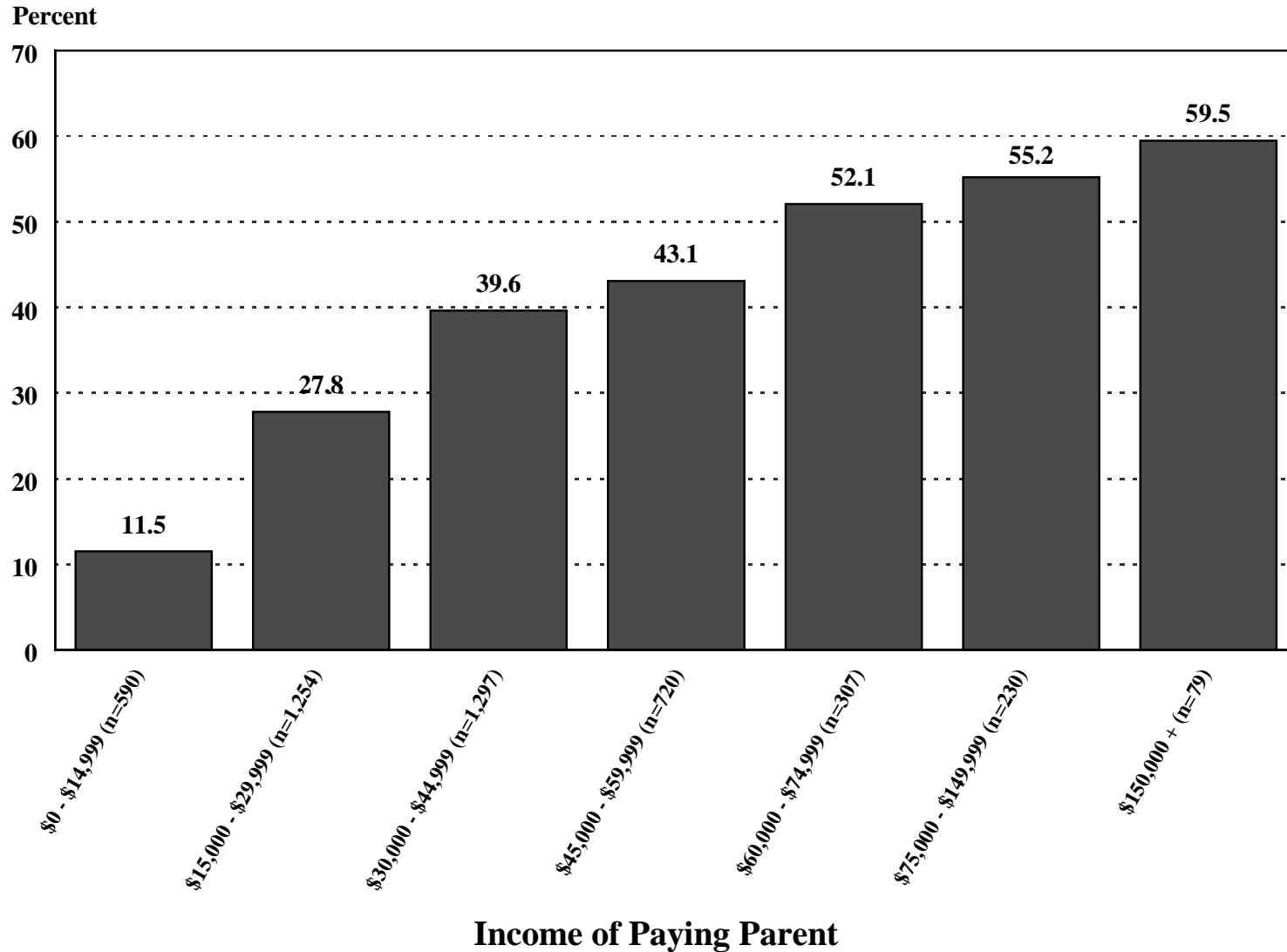
These categories are not mutually exclusive and more than one expense can be specified in a case.

Figure 16: Number of Special or Extraordinary Expenses Awarded in Those Cases in Which Specific Expense Categories Were Available



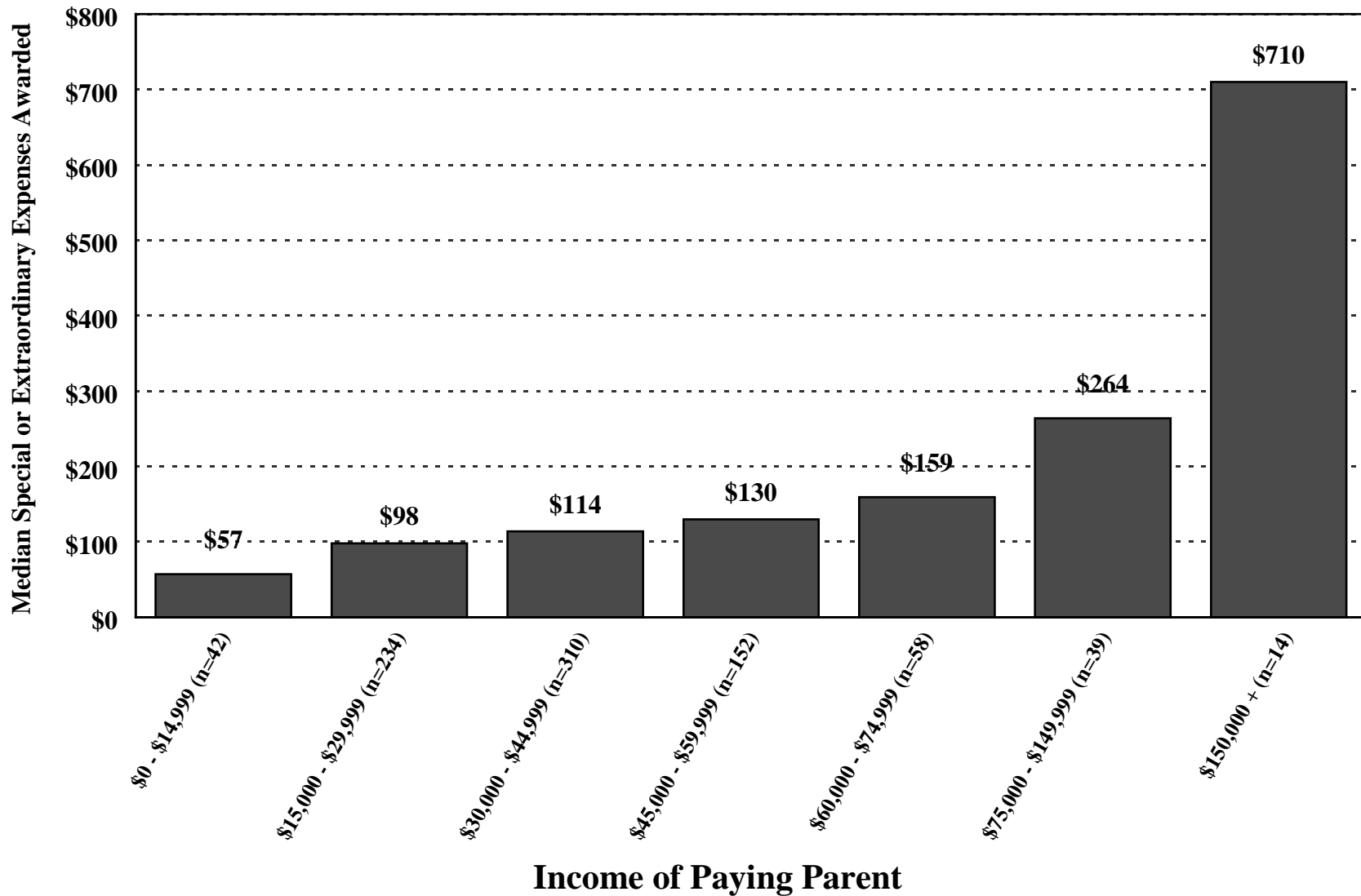
Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total N = 8,233. Only includes cases in which specific expense categories were available (n=2,006).

Figure 17: Percentage of Cases Having Special or Extraordinary Expenses Awarded, by Income of Paying Parent in Sole Custody Cases



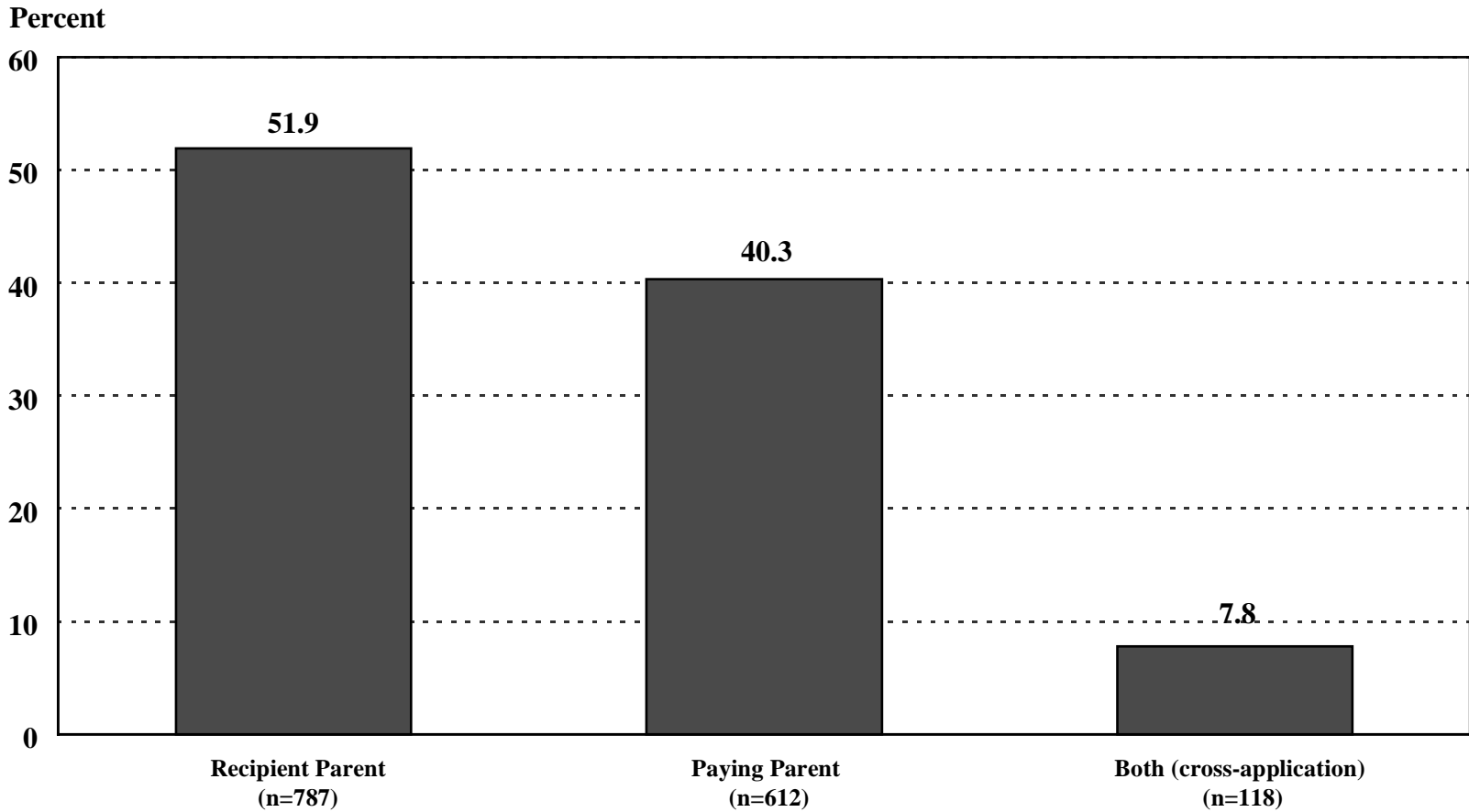
Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total N = 8,233. Cases analyzed = 4,477. N's refer to the total number of cases within each income level. Cases with missing data on paying parent income (n=2,611) and/or whether special or extraordinary expenses are awarded (n=312) are excluded from the analysis.

Figure 18: Median Special or Extraordinary Expenses Awarded per Month by Paying Parent Income for Sole Custody Cases



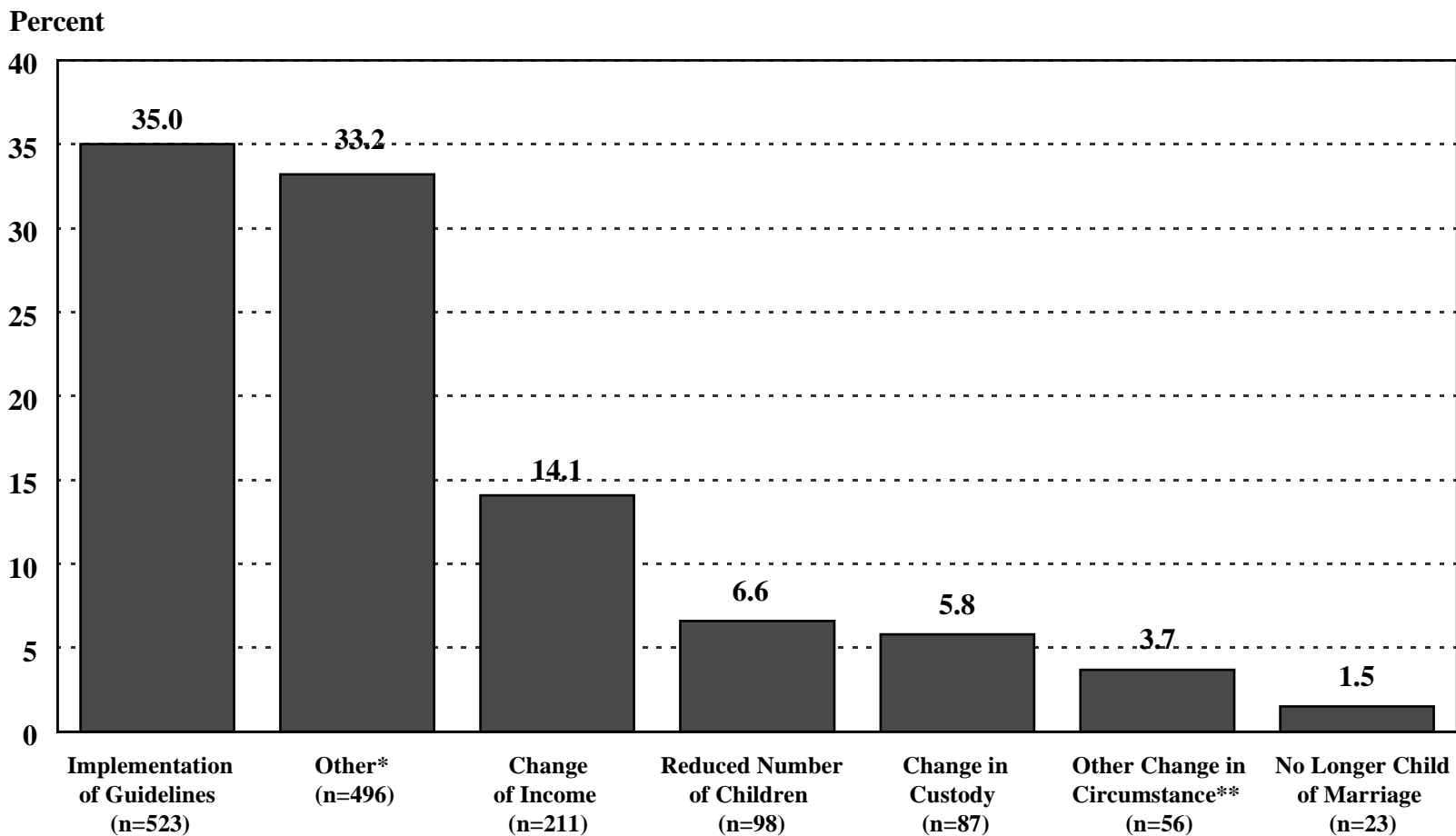
Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total N = 8,233. Cases analyzed = 849. Cases with missing data on paying parent income (n=2,611) and/or amount of special or extraordinary expenses (n=7,139) are excluded from this analysis.

Figure 19: Applicant for Variation Order



Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. **Total Number of Variation Orders = 1,661. Missing Cases = 144.**

Figure 20: Reasons for Variation Application



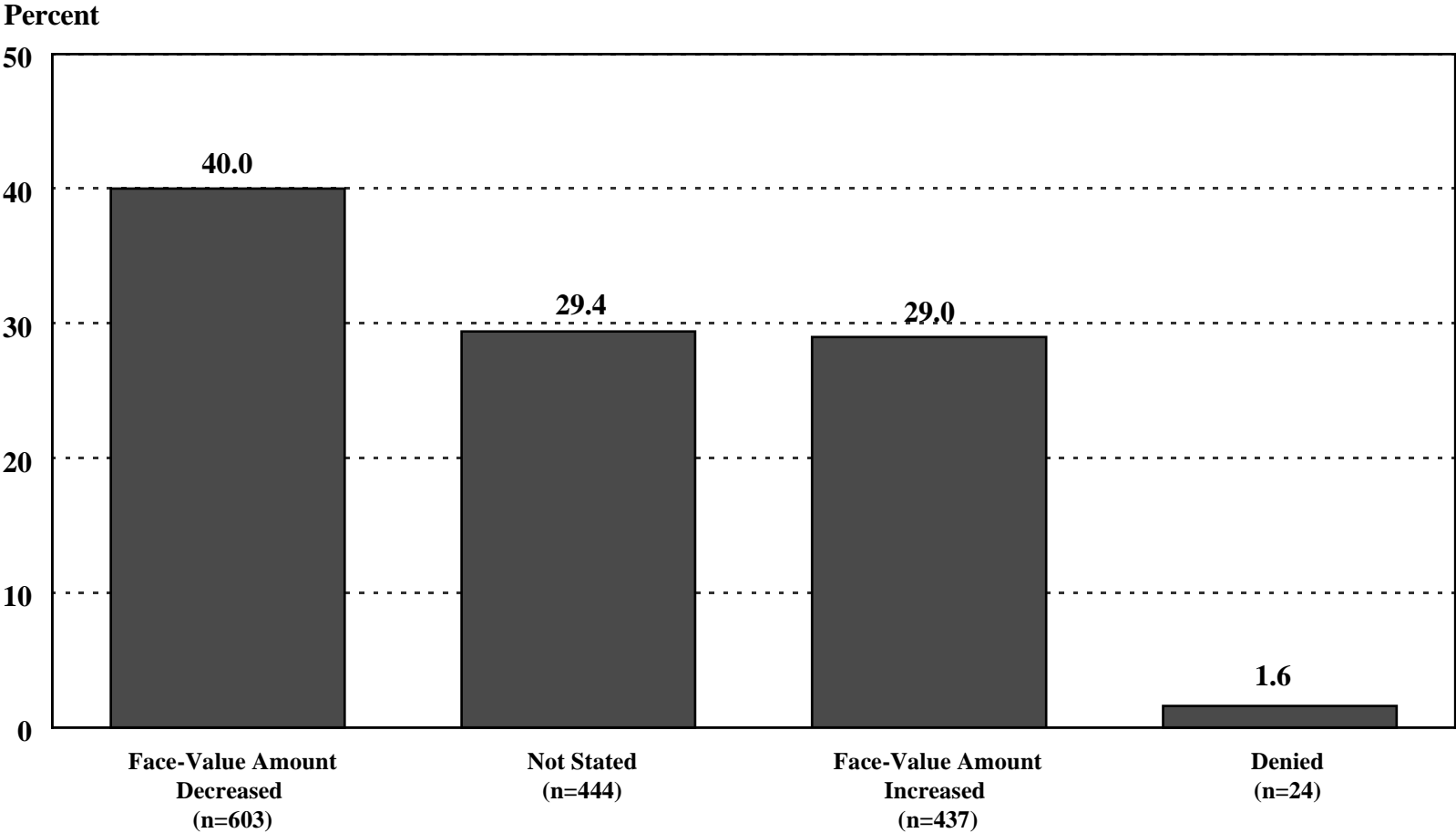
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Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total Number of Variation Orders = 1,661. Missing Cases = 167.

* Other includes such things as agreement of parties, access, review ordered and termination, as well as cases in which unknown or not stated were written in by the data capture clerk.

** Other change in circumstance includes such things as supporting other children, change of jurisdiction, and child's expenses increasing.

Figure 21: Decision of Variation Application



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Source of Data: Pilot Survey on Child Support Awards. Includes data collected from the beginning of the project through November 2, 1998. Total Number of Variation Orders = 1,661. Missing Cases = 153.

APPENDIX B

DATA COLLECTION INSTRUMENT FOR PILOT PHASE

APPENDIX C

**NUMBER OF VALID AND MISSING CASES FOR
INDIVIDUAL QUESTIONNAIRE ITEMS THAT SHOULD
HAVE BEEN COMPLETED FOR ALL CASES**

**Number of Valid and Missing Cases for
Individual Questionnaire Items that
Should Have Been Completed for All Cases**

Questionnaire Item	Valid Cases		Missing Cases
	Known	Unknown/ Not Stated/ Not Applicable *	
1) Court File Number	8,233	N/A	0
2) Court Identifier	8,232	N/A	1
3.1/3.2) Divorce Order/Variation Order	8,233	N/A	0
4) Disposition of Order	8,120	N/A	113
5.1) Legal Representation for Mother	7,580	568	85
5.2) Legal Representation for Father	7,284	815	134
5.3) Legal Representation for Government Agency	5,207	323	2,703
6) Date of Judgment	8,233	N/A	0
7) Support and Custody Issues Dealt With	8,088	100	45
8) Access Restrictions	6,807	N/A	1,426
9) Spousal Award (check field)	4,952	2,471	810
10a) Mother's Province of Residence	7,686	540	7
10b) Father's Province of Residence	7,647	576	10
11a) Residence of Child 1 Specified	7,107	N/A	1,126
11b) Year of Birth of Child 1 Specified	7,643	N/A	590
12) Type of Custody	7,269	858	106
13) Total Monthly Child Support Award Amount	7,057	N/A	1,196 (includes 1,094 cases with \$0 entered)
14.1) Paying Parent Income	5,622	2,611	0
16) How Was Award Amount Determined?	6,242	1,875	116
17) Award Termination Provision?	7,850	N/A	383
18) Is There a Cost of Living (Inflation) Clause?	7,746	N/A	487
19) Table Amount for Paying Parent	3,486	4,747	0
22) Special or Extraordinary Expenses Awarded?	7,291		312
25) Applicant for Undue Hardship	49	7,814	370

* Only items which had valid response options for Unknown/Not Stated/Not Applicable are included in this column.

APPENDIX D

SUMMARY OF REVISIONS MADE TO PILOT SURVEY INSTRUMENT FOR PHASE 2 DATA COLLECTION

Summary of Revisions Made to Pilot Survey Instrument for Phase 2 Data Collection

Questionnaire Item On Revised Form	Type Of Change	Reason For Change
Initial Item – Source Documents Used	Addition of item	Provide a clear indication of the documents available to data capture clerks for completing the case.
3.1) Divorce Order/Judgment	Change of response alternatives	Combine alternatives from the pilot survey that were essentially synonymous.
3.2) Variation Order	Change of response alternatives	Combine alternatives from the pilot survey that were essentially synonymous.
4) Disposition of Order	Add response alternative	Allow for coding of cases where disposition was unknown.
6.1) Date Issued and Entered	Addition of item	Allow the capture of the date an order is issued and entered as distinct from date of judgment.
7) Issues Dealt With in Order/Judgment	Change to multiple response item and addition of alternatives	Allows the capture of more issues that may be dealt with and the coding of all issues dealt with.
7.1) Issues Dealt With in Supporting Documents	Addition of item	Allow a distinction between issues dealt with in order or judgment and those dealt with in other documents.
8) Access Terms	Change of item wording	Clarification of previous item (Access Restrictions) which was confusing because it was unclear what it referred to.
9) Spousal Award Amount (check field)	Addition of response alternative	Allow for specification of spousal awards that do not fit into the available payment frequency categories.
10) Province of Residence of Parents	Addition of response alternative	Allow for coding of cases in which one or both parents reside in Nunavut.
10.1, 10.1a, 10.1b) Number of Children in Case	Addition of items	Allow for specification of number of children and whether they are treated as under or above the age of majority without relying on data from question 11.
11) Principal Residence of Each Child and Child's Year of Birth	Addition of response options	Allow for coding of children with "other" principal residences or with principal residence not stated.
12) Type of Custody Arrangements under the Guidelines	Addition of response alternatives	Allow for coding of cases in which there may be multiple custody arrangements when more than one child is present.
13) Total Child Support Award Amount	Change to multiple response item and addition of response alternatives	Allow for capture of child support information where payment frequency is other than monthly. Clarify when an actual award of \$0 has been made.
13.1) Paying Parent	Addition of response alternatives	Allow for cases where a party other than a parent is paying child support as well as cases where the payer is not applicable.

Questionnaire Item On Revised Form	Type Of Change	Reason For Change
14) Annual Income Used to Determine Table Amounts...	Addition of write-in item	Allow for specification of source of income information if other than order or judgment.
15) Annual Income Used to Determine Each Parent's Share of Special Expenses	Addition of write-in item	Allow for specification of source of income information if other than order or judgment.
16) How Was Award Amount Determined?	Addition of response alternatives	Allow for distinction between use of federal and provincial or territorial Guidelines. Allow for specification of cases which involve support, but do not indicate how it was calculated and cases in which support was addressed in a previous order or agreement.
18) For All Post-May 1997 orders/judgments, which of the following...	Addition of item	Collect data on the information contained in the actual order or judgment (as opposed to supporting material) to allow for assessment of compliance with section 13 of the Guidelines.
19) Table Amount for Paying Parent as Stated in the Order or Other Supporting Documents	Change of question stem	Specify that the Guidelines table amount should only be entered if it was specified in documents available to data capture clerks. (Clerks should never look up the amount in the tables.)
20) If Custody is Shared or Split – Table Amount...	Change of question stem	Specify that the Guidelines table amount should only be entered if it was specified in documents available to data capture clerks. (Clerks should never look up the amount in the tables.)
22) Special or Extraordinary Expenses Awarded under Section 7 of the Guidelines	Change to multiple response item	Allow for coding of cases where there may be multiple special or extraordinary expenses that are paid on different schedules.
23) Process for Determining Special or Extraordinary Expenses	Change of response options Addition of a write-in comment field	Due to low frequency of response on pilot survey with respect to whether number of children were specified for each special or extraordinary expense and the amount of each expense to be paid by the mother and the father, these response options were dropped.
30) Reasons for Variation	Change of response options	Bring the wording of this item in line with the Guidelines by adding "other change of circumstances."
32.1) Indicate Whether the Original Order Was For:	Addition of item	Allow for specification of what the original order that is under application for variation included.
33) Decision:	Addition of response option	Allow for capture of variation applications that resulted in a termination order.

APPENDIX E

**REVISED SURVEY INSTRUMENT FOR
PHASE 2 DATA COLLECTION**

