

Virginia Child Support Guidelines Review Panel

September 9, 2015

10:00 a.m. – 12:00 p.m.

House Room 1, State Capitol

Meeting Minutes

Members Present:

The Honorable Deborah V. Bryan
Craig M. Burshem, Deputy Commissioner
Lawrence (Larry) Diehl, Esq.
Christine (Christie) E. Marra, Esq.
Christian R. Paasch
Kim-Marie A. Pigott-Brown
The Honorable Edward A. Robbins, Jr.
Karen H. Sampson
Russell J. Smith
Delegate Vivian E. Watts

Members Not Present:

Carol B. Gravitt, Esq.
Dennis M. Hottell, Esq.
Delegate G. Manoli Loupassi
Senator Richard H. Stuart
Delegate Ronald A. Villanueva

Staff Members Present:

Alice G. Burlinson, Esq.
Melody C. McKinley, Panel Administrator

I. Welcome

All

Craig Burshem welcomed new and returning Panel members and asked members to introduce themselves. Mr. Burshem thanked Delegate Watts for carrying the 2014 legislation based on the previous Panel's recommendations to update the guidelines schedule. Mr. Burshem noted that this Panel's report is due to the General Assembly in December 2017.

II. Overview of the Division of Child Support Enforcement

Craig Burshem

Mr. Burshem presented information about the Division of Child Support Enforcement (DCSE), including statutory authority, organizational structure, collections and debt owed, services, legal unit, and family engagement initiatives.

Mr. Burshem emphasized the federal Office of Child Support Enforcement's (OCSE) trend toward implementing a more family-centered, collaborative and proactive approach; establishing right-sized orders based on actual income to increase payment reliability and reduce or prevent arrears accumulation; and avoiding imputation of income. OCSE has a federal rule pending to address these issues.

Mr. Burshem is part of a panel of state child support directors convened by OCSE Commissioner Vicki Turetsky to study issues involving imputed income. This group will provide OCSE many real-life examples where imputing income would be appropriate. Mr. Diehl mentioned that the Richmond Bench-Bar Association will address income imputation issues at its conference on October 22, 2015.

Mr. Burshem also provided an overview of the U.S. Supreme Court's decision in [Turner v. Rogers](#), particularly the court's ruling on ability to pay and right to counsel in civil contempt cases. He also mentioned the Virginia Court of Appeals' decision in [Forte v. Commonwealth](#), where the court said, in *dicta*, that appeal bonds are not required if a party is appeal a civil contempt finding for failure to pay support. Forte has appealed the court's decision, and DCSE has filed a cross-appeal. The language has caused confusion in some jurisdictions and may significantly increase appeals to circuit court. Depending on the Virginia Supreme Court's decision, the Panel may wish to consider the possibility of clarifying the appeal bond statute ([Va. Code § 16.1-296\(H\)](#)).

Mr. Burshem suggested that the Panel may also want to consider revising Virginia's driver's license suspension requirements ([Va. Code § 46.2-320.1](#)) and noted that many judges will not consider a contempt action if a noncustodial parent's license is suspended.

In response to questions from Mr. Paasch, Mr. Burshem advised that DCSE attorneys represent DCSE, not the custodial or noncustodial parent, and that approximately 3,200 noncustodial parents per year are jailed for failure to pay support. In response to a question from Judge Bryan, Mr. Burshem noted that DCSE counsel record the number of active jail days ordered.

III. Previous Panel's Work

Alice Burlinson

Alice Burlinson, Senior Assistant Attorney General and Director of Legal Operations-Headquarters, presented information on Virginia's child support guidelines, including guidelines history, basis, and models. Virginia, along with 38 other states, uses the income shares model.

Ms. Burlinson also reviewed the work of past Panels, particularly the last Panel, which provided its *Report to the Governor and General Assembly* in 2013. Based on that Panel's recommendations, Virginia's child support guidelines schedule was updated for the first time since its inception in 1988 to reflect current economic data on the cost of raising children. In addition, the \$250 per child per year threshold for unreimbursed medical expenses was removed so that parents share all unreimbursed medical costs from the first dollar, and statutory language was added regarding the new statutory minimum child support obligation.

The previous Panel identified and discussed several other issues but decided to defer those for this Panel's consideration. Based on these issues and other suggestions, this Panel decided to consider the following items as a starting point for its work:

1. Effective dates:
 - a. Initial petitions: allow effective date other than filing date in cases where custody changed.
 - b. Modifications: allow effective date back to filing date instead of date of notice to non-requesting party.
 - c. Judge Robbins suggested ascertaining how many initial petitions and motions to amend DCSE files in a year so the Panel can determine whether it should focus its

efforts on one type of pleading or the other. Why are effective dates different for these pleadings?

2. Add notice to three-part JDR order that the order remains in effect until modified or terminated by another order.
3. Guidelines worksheet: require that worksheet be attached to all orders.
 - a. Va. Code currently requires that courts run guidelines but only mediated orders must have them attached.
 - b. Judge Robbins emphasized the importance of attaching worksheets so parties know how obligation was calculated and court will know basis of obligation for future modifications. Mr. Diehl agreed and said some circuit courts will send orders back if the guidelines are not attached. Ms. Marra noted that having guidelines attached would be especially helpful for *pro se* litigants.
 - c. Delegate Watts suggested that that Panel be aware of any cost/fiscal impact.
 - d. Judge Bryan serves on the Access to Justice Commission and said she will mention this issue.
4. Shared custody cases: Consider changing 1.4 multiplier and 90 day threshold.
 - a. Mr. Diehl was instrumental in the implementation of these factors and can provide historical information.
5. Complex cases: provide statutory guidance.
 - a. Mr. Diehl suggested looking at what other states have done. Mr. Burshem will contact other IV-D directors to find out what, if anything, their states do.
 - b. Panel staff will distribute information provided by Dr. Jane Venohr from the Center for Policy Research to the previous Panel.
 - c. Mr. Paasch has a contact in California who has done work in this area.
6. Age of children as a deviation factor:
 - a. Mr. Diehl mentioned an unpublished 2014 Court of Appeals opinion the Panel may wish to review—[*Saxon v. Lesueur*](#)—which allowed deviation based on higher expenses for an older child.
 - b. Ms. Marra suggested looking at foster care age-based maintenance rates.
7. Cost of private school as a deviation factor
 - a. Mr. Diehl noted that the Panel may want to clarify based on available case law which discusses educational needs, history, ability to pay, etc.
8. Jail sentences for civil contempt:
 - a. Judge Bryan suggested the Panel look at the average number of days people are staying in jail before purging, attempts to make a partial purge, effectiveness of various sentencing types, and court-appointed counsel issues.
9. Cost of living in various parts of state:
 - a. Delegate Watts is very interested in this issue and noted that JLARC has done studies on cost of competing adjustments for school divisions in various parts of the state; these studies may provide helpful data.

b. Ms. Burlinson noted federal law requires that guidelines apply statewide.

10. Driver's license suspension and reinstatement requirements

IV. Administrative Matters

Alice Burlinson

1. Panel Email Address and Website:

- a. Email: vaguidelinespanel@dss.virginia.gov. Emails go directly to Panel staff for response. Staff will provide emails and responses to the Panel.
- b. Website: http://dls.virginia.gov/interim_studies_child_support.html. Panel membership and meeting information, including date, time, location, agenda, materials and minutes, are posted. Reports, research and other information from the previous Panel are also available.

2. Schedule Future Meetings: Panel staff will send a Doodle survey to ascertain best dates for three meetings in 2016 (avoid Mondays and Fridays).

3. Travel Vouchers: Mileage and parking costs will be reimbursed. Samples, forms and postage-paid envelopes were provided.

4. Questions:

- a. Mr. Paasch asked about next steps. Panel staff will prepare minutes, post documents, and provide information on items for review before the next meeting.
- b. Mr. Burshem noted that the Panel should elect a chairperson at the next meeting. The chair has historically been a judge or legislator.

V. Adjourn

Craig Burshem

The Panel adjourned at 12:10 p.m.

Action Items for Staff:

- Post the following items on the Panel's website:
 - PowerPoint presentations
 - Minutes, upon approval of Panel
- Consider ways to determine jail days and effectiveness of sentencing types.
- Provide the following information to Panel:
 - The number of initial petitions and motions to amend the Division filed over the last year.
 - Research provided to previous Panel on complex cases and age-related expenses.
 - JLARC studies on cost of competing adjustments.
- Send Doodle survey to Panel members to identify dates for three Panel meetings in 2016.