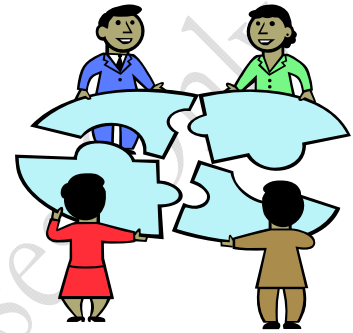


Virginia Child Support Guidelines Review: Selected Guidelines Factors



Prepared for:
2012 Virginia Child Support Guidelines Review Panel

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Points of view expressed in this document are those of the author and do not necessarily represent the official position of the Virginia Child Support Guidelines Review Panel, Court or State.

PURPOSE

The briefing addresses the following issues from the June 2012 Virginia Child Support Guidelines Panel's meeting. The issues will be discussed further at the Panel's November meeting. Other issues of discussion are: updating the schedule, retaining or increasing the minimum order, and updating the self-support reserve. (These latter issues are addressed in a separate briefing.)

Question /Issue	Description	Venohr	Family Bar	Motion	2 nd	Yea
12	Shared custody – 1.4 multiplier should stay the same	X	X	Atkinson	Cooper	All
13	Shared custody – 90 days should stay the same	X	X	Burshem	Mahoney	All
14	Guidelines should include guidance for complex cases	X	X	Mahoney	Burshem	All
17	Add HCC cost back into obligation if NCP is ordered to pay for HCC but does not; AMENDED to include same provision for child care costs	X	X	Atkinson (as amended)	Oram-Smith	All
18	Guidelines should provide guidance on payment of first \$250 unreimbursed medical expenses, especially in shared custody cases	X	X	Oram-Smith	Cooper	All
24	Consider higher cost of living in different parts of state as adjustment to guidelines or deviation	X		Burshem	Watts	All
25	Guidelines should consider disparity in cost of raising children of different ages; AMENDED to consider adding as deviation factor	X		Cooper (as amended)	Mahoney	All

12 & 13: SHARED CUSTODY: MULTIPLIER AND THRESHOLD

Issue

Most states (including Virginia) that provide a formula for shared physical custody use the cross-credit formula. The cross-credit formula essentially calculates two orders—one assuming the father is the obligor and the other assuming the mother is the obligor, weighs each of the calculated orders by the percentage of child's time spent with the other parent, and then offsets the difference. The parent owing the greater amount is the obligor. Most cross-credit formulae increase the schedule amount by 1.5 when calculating each parent's order.

Virginia's version of the cross-credit formula is unique because it relies on a lower multiplier and lower overnight threshold than most states do.

Virginia's Current Provision

Not all provisions of the shared physical custody adjustment are shown due to its length. The following are provisions relevant to the 90-day threshold and 1.4 multiplier.

§ 20-108.2.(G)(3)(a) Where a party has custody or visitation of a child or children for more than 90 days of the year, as such days are defined in subdivision G 3 (c), a shared custody child support amount based on the ratio in which the parents share the custody and visitation of any child or children shall be calculated in accordance with this subdivision. The presumptive support to be paid shall be the shared custody support amount, unless a party affirmatively shows that the sole custody support amount calculated as provided in subdivision G 1 is less than the shared custody support amount. If so, the lesser amount shall be the support to be paid. For the purposes of this subsection, the following shall apply:

(iii) Shared support need. "Shared support need" means the presumptive guideline amount of needed support for the shared child or children calculated pursuant to subsection B of this section, for the combined gross income of the parties and the number of shared children, multiplied by 1.4.

(d) shall not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child. If the gross income of either party is equal to or less than 150 percent of the federal poverty level promulgated by the U.S. Department of Health and Human Services from time to time, then the shared custody support calculated pursuant to this subsection shall not be the presumptively correct support and the court may consider whether the sole custody support or the shared custody support is more just and appropriate.

(f) In the event that the shared custody support calculation indicates that the net support is to be paid to the parent who would not be the parent receiving support pursuant to the sole custody calculation, then the shared support shall be deemed to be the lesser support.

Relevant Statistics and Other Information

The U.S. Census reports that 83 percent of custodial parents due child support payments in 2009 had arrangements for joint child custody or visitation privileges with the noncustodial parent, albeit the arrangement may not be court-ordered.¹ Virginia-specific data on the frequency of joint physical custody are not available, nor are Virginia-specific data on the frequency that the joint physical custody adjustment is applied.

Data from case file reviews conducted in other states suggest that the frequency at which orders are adjusted for custody varies with a state's guidelines' threshold for applying the custody adjustment. For example, Pennsylvania's most recent case file review found that nine percent of new orders and eight percent of modified orders were based on a shared-parenting adjustment.² The threshold for applying an adjustment is 40 percent timesharing under the Pennsylvania guidelines. In contrast, Arizona's most recent case file review found that 88 percent of its reviewed cases included an adjustment for shared-parenting time.³ Under the Arizona child support guidelines, the threshold for the adjustment is four days per year.

Approaches in Other States

- Thirty-six state guidelines provide a formula for shared-parenting time. Five of these states provide the formula within a deviation for shared-parenting time; that is, the court must first decide to deviate then can apply the formula. In most of the other

¹Grall, Timothy (2011). *Custodial Mothers and Fathers and Their Child Support: 2009*. Current Population Survey Report, P60-240, U.S. Census, Washington, D.C.

² Venohr, Jane (2012). *Review of the Pennsylvania Child Support Guidelines*. Report to the Pennsylvania Department of Public Welfare, Center for Policy Research, Denver, Co.

³ Venohr, Jane and Kaunelis, Rasa (2008). *Arizona Child Support Guidelines Review, Analysis of Case File Data*. Report to the Arizona Administrative Office of the Courts, Center for Policy Research, Denver. Co.

states, there must be a court order for shared-parenting time or an agreement between the parties. In a few states, the adjustment can be applied based on the *actual* amount of timesharing.

- The majority of states also require a certain amount of shared-parenting time before applying the formula.
- The most commonly used formula is the cross-credit formula. It is used by 24 states including Virginia. The types of formulae used in other states vary considerably. A few states make a per diem adjustment and others make a small percentage adjustment, such as a sliding scale. Still, a few other states use an adjustment developed by Professor Betson that adjusts for the child's transferable expenses (*e.g.*, food) at low levels of timesharing and adjusts for both transferable and duplicated, fixed expenses (*e.g.*, housing) at high levels of time sharing.
- In 15 states, the guidelines provide a deviation with no formula (13 states) or the guidelines do not mention shared-parenting time (2 states).

In general, CPR finds there is more controversy about guidelines adjustments for timesharing among states with no adjustment or high time-sharing thresholds.

Multiplier and Number of Overnights in the Cross-Credit Formula

Among those 24 states using the cross-credit formula, 20 states use a multiplier of 1.5, three states have no multiplier,⁴ and Virginia uses a multiplier of 1.4.

The purpose of the multiplier is two-fold.⁵ It reduces or eliminates the notch effect that can occur when parents have almost equal incomes and the threshold for applying the adjustment is nearly equal timesharing. It also acknowledges that it costs more to raise a child in two households than it does in one household. It costs more because some child-rearing expenses (*i.e.*, housing or housing and transportation) must be duplicated between the parents. When the prototype income shares model was developed in 1987, those duplicated expenses were estimated to be about 50 percent of total child-rearing expenses. The most recent Betson-Rothbarth measurements of child-rearing expenditures suggest that housing accounts for 40 percent of total family expenditures and transportation accounts for 20 percent of total family expenditures. These proportions will be higher when based on the percentage of the schedule amount because

⁴Montana requires at least 30 percent timesharing and Wyoming requires at least 40 percent timesharing. Minnesota applies the cross-credit to almost equal timesharing but has a percentage adjustment for lower amounts of timesharing.

⁵See Williams, Robert. 1987. *Development of Guidelines for Child Support Orders*, Report to the Federal Office of Child Support Enforcement, National Center for State Courts, Williamsburg, VA.

the schedule amounts exclude childcare expenses and most of the child's medical expenses.⁶

The timesharing threshold for applying the cross-credit formula is:

- 25-30 percent timesharing (approximately 90-106 overnights) in six states (*i.e.*, Alaska, Colorado, Idaho, Oregon, South Carolina, and Virginia);
- 30-40 percent timesharing (approximately 107-145 overnights) in nine states;
- more than 145 nights but not quite equal in five states; and
- equal or nearly equal in three states.

One state does not specify a threshold.

Many states specify a percentage rather than a number of overnights. For example, Alaska and Colorado use at least 25 percent timesharing, which translates to at least 92 overnights before the adjustment can be applied. In contrast, the criterion for the Virginia adjustment is “more than 90 days of the year.”

Notches and Incentives to Reach Timesharing Threshold

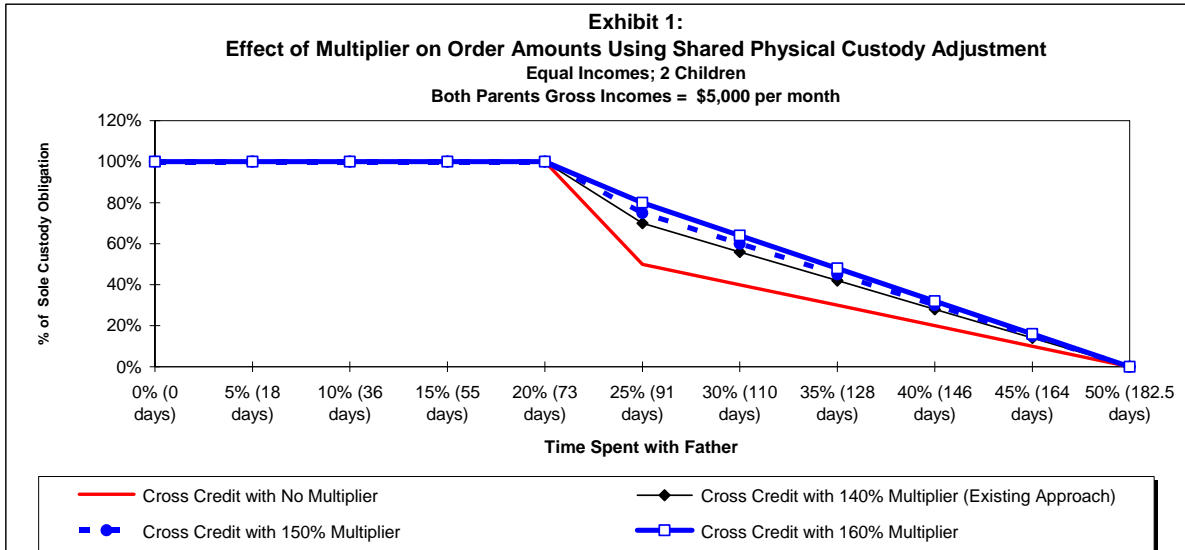
One common concern about the timesharing adjustment is that it creates an economic incentive for the noncustodial parent to want more time with the child for the purposes of lowering the child support award amount as well as an economic disincentive for the custodial parent to relinquish time with the child for the purposes of keeping the child support award amount higher. Most states are able to avoid this by first determining custody/visitation using statutes that consider such factors as the best interest of the child; then, determining the support award based on the ordered custody/visitation arrangements.

Nonetheless, there can still be some precipitous decreases to the guidelines-determined support award at the timesharing threshold. States have dealt with this issue through various methods. Some states (*e.g.*, Iowa and Vermont) have a two-tier formula. For example, Iowa lowers the obligation 15 percent when there is at least 128 overnights per year and gradually increases that percentage when there is more timesharing. When timesharing is almost equal, however, Iowa applies the cross-credit formula.

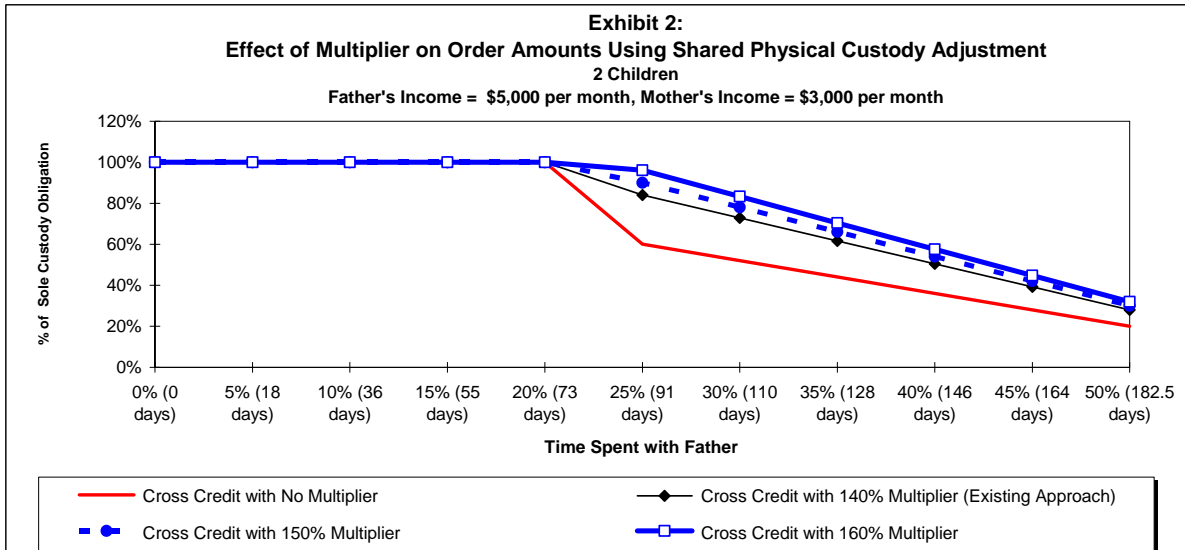
Nebraska recently added a 1.5 multiplier to its cross-credit to alleviate the precipitous decreases. Including a multiplier, and the higher the multiplier, the less the notch effect is. Exhibit 1, 2 and 3 illustrate this using a range of case examples. The exhibits consider four different multipliers; zero, 1.4 (140%), 1.5 (150%) and 1.6 (160%). Exhibit 1

⁶ Specifically, the exclusion of these expenses makes the denominator smaller, hence the proportions larger.

assumes the parents have equal income. Exhibit 2 assumes the mother's income is less than the father's income. Exhibit 3 assumes the mother's income is more than the father's income. The mother has primary custody at low levels of timesharing in all scenarios.

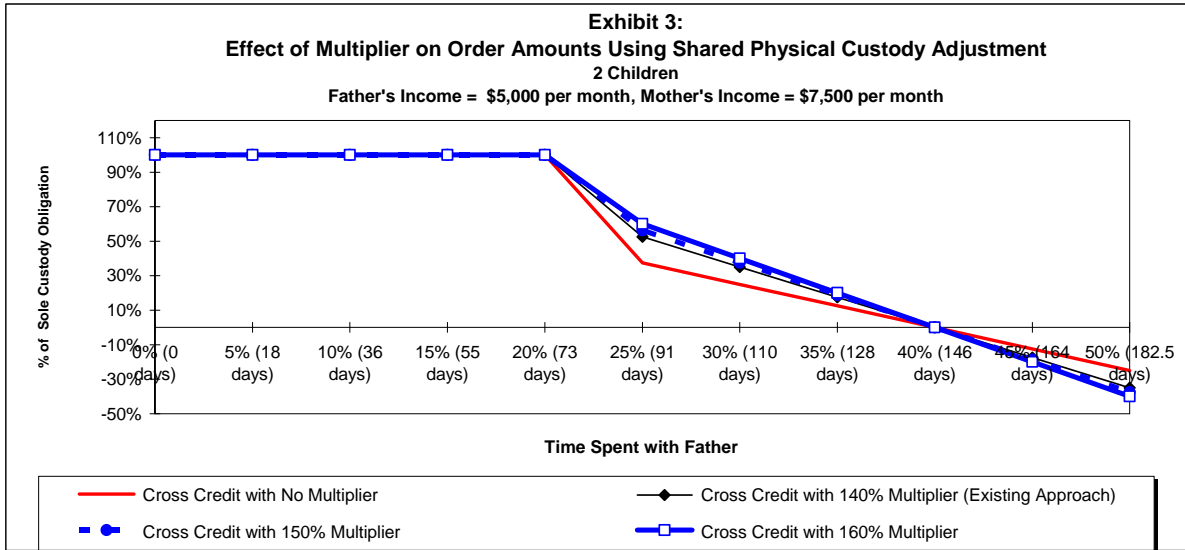


Comparison of Shared Custody Formulas									
Father's Monthly Gross Income = \$5,000, Mother's Monthly Gross Income = \$5,000									
Support Due (\$\$ per month)					% of Sole Custody Obligation				
Timesharing Arrangement (Percent)	Cross Credit with No Multiplier	Cross Credit with 140% Multiplier (Existing Approach)	Cross Credit with 150% Multiplier	Cross Credit with 160% Multiplier	Timesharing Arrangement (Percent)	Cross Credit with No Multiplier	Cross Credit with 140% Multiplier (Existing Approach)	Cross Credit with 150% Multiplier	Cross Credit with 160% Multiplier
0% (0 days)	\$789	\$789	\$789	\$789	0% (0 days)	100%	100%	100%	100%
5% (18 days)	\$789	\$789	\$789	\$789	5% (18 days)	100%	100%	100%	100%
10% (36 days)	\$789	\$789	\$789	\$789	10% (36 days)	100%	100%	100%	100%
15% (55 days)	\$789	\$789	\$789	\$789	15% (55 days)	100%	100%	100%	100%
20% (73 days)	\$789	\$789	\$789	\$789	20% (73 days)	100%	100%	100%	100%
25% (91 days)	\$394	\$552	\$591	\$631	25% (91 days)	50%	70%	75%	80%
30% (110 days)	\$315	\$442	\$473	\$505	30% (110 days)	40%	56%	60%	64%
35% (128 days)	\$237	\$331	\$355	\$378	35% (128 days)	30%	42%	45%	48%
40% (146 days)	\$158	\$221	\$237	\$252	40% (146 days)	20%	28%	30%	32%
45% (164 days)	\$79	\$110	\$118	\$126	45% (164 days)	10%	14%	15%	16%
50% (182.5 days)	\$0	\$0	\$0	\$0	50% (182.5 days)	0%	0%	0%	0%



Comparison of Shared Custody Formulas									
Father's Monthly Gross Income = \$5,000, Mother's Monthly Gross Income = \$3,000									
Support Due (\$\$ per month)					% of Sole Custody Obligation				
Timesharing Arrangement (Percent)	Cross Credit with No Multiplier	Cross Credit with 140% Multiplier (Existing Approach)	Cross Credit with 150% Multiplier	Cross Credit with 160% Multiplier	Timesharing Arrangement (Percent)	Cross Credit with No Multiplier	Cross Credit with 140% Multiplier (Existing Approach)	Cross Credit with 150% Multiplier	Cross Credit with 160% Multiplier
0% (0 days)	\$886	\$886	\$886	\$886	0% (0 days)	100%	100%	100%	100%
5% (18 days)	\$886	\$886	\$886	\$886	5% (18 days)	100%	100%	100%	100%
10% (36 days)	\$886	\$886	\$886	\$886	10% (36 days)	100%	100%	100%	100%
15% (55 days)	\$886	\$886	\$886	\$886	15% (55 days)	100%	100%	100%	100%
20% (73 days)	\$886	\$886	\$886	\$886	20% (73 days)	100%	100%	100%	100%
25% (91 days)	\$532	\$744	\$798	\$851	25% (91 days)	60%	84%	90%	96%
30% (110 days)	\$461	\$645	\$691	\$737	30% (110 days)	52%	73%	78%	83%
35% (128 days)	\$390	\$546	\$585	\$624	35% (128 days)	44%	62%	66%	70%
40% (146 days)	\$319	\$447	\$479	\$510	40% (146 days)	36%	50%	54%	58%
45% (164 days)	\$248	\$347	\$372	\$397	45% (164 days)	28%	39%	42%	45%
50% (182.5 days)	\$177	\$248	\$266	\$284	50% (182.5 days)	20%	28%	30%	32%

Exhibit 3 illustrates that the mother can become the obligor when the mother has more income than the father. Some state guidelines limit the calculation such that the parent with more custody is always the obligee and the parent with less custody is always the obligor. A notable exception to this would be equal custody cases. For this exception, these states provide that the parent with more income is the obligor.



Comparison of Shared Custody Formulas									
Father's Monthly Gross Income = \$5,000, Mother's Monthly Gross Income = \$7,500									
Support Due (\$\$ per month)					% of Sole Custody Obligation				
Timesharing Arrangement (Percent)	Cross Credit with No Multiplier	Cross Credit with 140% Multiplier (Existing Approach)	Cross Credit with 150% Multiplier	Cross Credit with 160% Multiplier	Timesharing Arrangement (Percent)	Cross Credit with No Multiplier	Cross Credit with 140% Multiplier (Existing Approach)	Cross Credit with 150% Multiplier	Cross Credit with 160% Multiplier
0% (0 days)	\$682	\$682	\$682	\$682	0% (0 days)	100%	100%	100%	100%
5% (18 days)	\$682	\$682	\$682	\$682	5% (18 days)	100%	100%	100%	100%
10% (36 days)	\$682	\$682	\$682	\$682	10% (36 days)	100%	100%	100%	100%
15% (55 days)	\$682	\$682	\$682	\$682	15% (55 days)	100%	100%	100%	100%
20% (73 days)	\$682	\$682	\$682	\$682	20% (73 days)	100%	100%	100%	100%
25% (91 days)	\$256	\$358	\$384	\$409	25% (91 days)	38%	53%	56%	60%
30% (110 days)	\$171	\$239	\$256	\$273	30% (110 days)	25%	35%	38%	40%
35% (128 days)	\$85	\$119	\$128	\$136	35% (128 days)	13%	18%	19%	20%
40% (146 days)	\$0	\$0	\$0	\$0	40% (146 days)	0%	0%	0%	0%
45% (164 days)	-\$85	-\$119	-\$128	-\$136	45% (164 days)	-13%	-18%	-19%	-20%
50% (182.5 days)	-\$171	-\$239	-\$256	-\$273	50% (182.5 days)	-25%	-35%	-38%	-40%

14. COMPLEX CASES

Issue

Family structure has become more complex in today's society. When child support guidelines were initially developed in the 1980's, the majority of children eligible for child support came from nuclear families, the mother was typically the custodial parent, and the father was typically the noncustodial parent. Today, more children are born to unmarried parents and family situations have become more diverse and complex. A mother may be the custodial parent on one case and the noncustodial parent on another case. This may occur among fathers as well. Another complexity is when both parents owe support because the child lives with a grandparent or another third party. This complexity may also be in addition to the parent being a noncustodial parent or custodial parent on another case. Still other complications exist when same-sex couples with children dissolve their relationship, particularly if the child was not legally adopted.⁷

Virginia, like most states, provides an income deduction for parents that financially support their children from another relationship. The income deduction may consist of the amount paid toward a child support order or a "dummy order" – that is, a guidelines-calculated amount for children still in the home. The vast majority of states, including Virginia, provide that the income deduction is available to noncustodial parents as well as custodial parents. Its application reduces the award amount when the noncustodial parent has additional dependents and increases it when the custodial parent has additional dependents. Few states provide that the award amount should be lowered for serial custodial parents (*i.e.*, custodial parents receiving more than one child support order) or address complexities resulting from non-adopted children of same-sex couples. Some believe the order should be less for serial custodial parents because of the economies of scale of raising more children.

Current Guidelines Provisions

§ 20-108.2(C)(4)

Where there is an existing court or administrative order or written agreement relating to the child or children of a party to the proceeding, who are not the child or children who are the subject of the present proceeding, then there is a presumption that there shall be deducted from the gross income of the party subject to such order or written agreement, the amount that the party is actually paying for the support of a child or children pursuant to such order or agreement.

Where a party to the proceeding has a natural or adopted child or children in the party's household or primary physical custody, and the child or children are not the subject of the present proceeding, there is a presumption that there shall be deducted from the gross income of that party the amount as shown on the Schedule of Monthly Basic Child Support Obligations contained in subsection B that represents

⁷ Some states have witnessed the use of the paternity acknowledgment form/birth certificate as a cheap alternative to legal adoption.

that party's support obligation based solely on that party's income as being the total income available for the natural or adopted child or children in the party's household or primary physical custody, who are not the subject of the present proceeding. Provided, however, that the existence of a party's financial responsibility for such a child or children shall not of itself constitute a material change in circumstances for modifying a previous order of child support in any modification proceeding. Any adjustment to gross income under this subsection shall not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child, as determined by the court.

Relevant Statistics and Other Information

Since Virginia-specific data are not readily available, statistics are provided from other states and the nation.

- Illinois is one of the few states to analyze the incidence of multiple orders among custodial and noncustodial parents with newly established child support orders in the Illinois IV-D caseload.⁸
 - Among custodial parents, 33 percent are a custodial parent on another case and 3 percent are a noncustodial parent on another case.
 - Among noncustodial parents, 36 percent are a noncustodial parent on another case and 4 percent are a custodial parent on another case.
 - One percent of custodial and noncustodial parents have at least two cases, are the custodial parent in at least one case, and the noncustodial parent in at least one other case.
 - Many custodial and noncustodial parents (*i.e.*, 13 and 12 percent, respectively) are a child on another case. (One circumstance in which this can occur is arrears-only cases.)
- Wisconsin is another state to analyze the incidence of multiple families from administrative child support data.⁹ They find that 31.4 percent of fathers have children with more than one mother and 30.8 percent of mothers have children with more than one father.
- Recent research finds that 26 percent of same-sex couples have children.¹⁰
- An emerging issue is the criterion that the child support for the other children must be “paid” for an income deduction. The concern is that poor noncustodial parents are not eligible for the adjustment because they cannot pay their existing orders.

Alternative Approaches in Other States

Few states have guidelines provisions for multiple families that differ significantly from Virginia's provisions. The notable exceptions are Pennsylvania and Washington. In

⁸ Venohr, Jane and Everett, Carly (2010), *Review of the Illinois Child Support Guidelines*, Report to the Illinois Child Support Advisory Committee, Center for Policy Research, Denver, CO.

⁹ Cancian, Maria and Meyer, Dan. (2006) *Alternative Approaches to Child Support Policy in the Context of Multiple-Partner Fertility* University of Wisconsin Institute for Research on Poverty, Madison, Wisconsin.

¹⁰ Burgoyne, Sarah. (2012) *Family Profile from the National Center for Family and Marriage Research (NCFMR)* at Bowling Green State University. <http://www.bgsu.edu/offices/mc/page119043.html>

addition to Pennsylvania and Washington, there are some nuances to the income deductions for a parent's other children provided in state guidelines that differ from Virginia's adjustment.

Variations in the Dummy Order

- A few states limit the adjustment to prior orders or first-born children. The rationale is that the parent or the parent's new partner knew of the prior order or child before having a second child. Criticisms of this are that some parents do not know or consider it when having a second child and that it actually is a "first-to-the-courtroom" approach. Further, many policymakers recognize that there are circumstances in which the children from different relationships should be treated equally.¹¹
- Some states provide a more expansive definition of eligible children (*e.g.*, stepchildren and own children living outside the home)
- Some states calculate the dummy order differently. Instead of using only the one parent's income, they use the incomes of both parents financially obligated to support that particular child, so this could involve the income of a subsequent spouse. Still other states take a percentage of the dummy order. For example, several income shares states take 75 percent of the dummy order because empirical evidence finds that that percentage equalizes income between the sets of children.
- In 2008, Louisiana developed a formula to address situations where the noncustodial parent had up to ten different families to support. The formula essentially equalized support between the families. The formula is being piloted in some Louisiana courts but is rarely used partly because a criterion for its application is that the noncustodial parent is currently paying support.

Pennsylvania Adjustment

As shown in Exhibit 4, the Pennsylvania guidelines provide that the obligor's child support orders can be reduced if the total of the obligor's basic child support obligations equals more than 50 percent of his or her monthly net income. The 50-percent threshold relates to the wage withholding limit on child support. The adjustment is proportional

¹¹ For example, the widely cited Colorado case that resulted in Colorado's elimination of the first-born adjustment is a case in which the father was the custodial parent of his first-born son until the son decided to live with his mother when he became a teenager. The mother sought a child support order from the father, who had since remarried and fathered several more children with his new spouse believing his first-born son would remain in his custody. Under the first-born adjustment, he could not receive an income adjustment for his subsequent children.

across all of the obligor's orders. The intent of the adjustment is to treat all children of the obligor equally and not give preference to an obligor's first or later family.

According to Pennsylvania's most recent case file review, the adjustment is applied to 10 percent of new orders and 14 percent of modified orders. The case file review also found that the adjustment reduces the order amount: the average order among cases adjusted for multiple families is \$228 per month compared to \$447 among cases with no multiple-family adjustment.

Exhibit 4: Pennsylvania Guidelines when There Are Multiple Families

Rule 1910.16-7. Support Guidelines. Awards of Child Support When There are Multiple Families.

(a) When the total of the obligor's basic child support obligations equals fifty percent or less of his or her monthly net income, there will generally be no deviation from the guideline amount of support on the ground of the existence of a new family. For example, where the obligor requests a reduction of support for one child of the first marriage on the basis that there is a new child of the second intact marriage, and the relevant monthly net incomes are \$2,500 for the obligor, \$500 for the former spouse and \$1,300 for the current spouse, the request for a reduction will be denied because the total support obligation of \$1,141 (\$593 for the first child and \$548 for the second child) is less than half of the obligor's monthly net income.

(b) When the total of the obligor's basic support obligations exceeds fifty percent of his or her monthly net income, the court may consider a proportional reduction of these obligations. Since, however, the goal of the guidelines is to treat each child equitably, in no event should either a first or later family receive preference. Nor shall the court divide the guideline amount for all of the obligor's children among the households in which those children live.

Example. The obligor is sued for support of three children of a second marriage. There is already an order in effect for two children of the first marriage. The relevant monthly net incomes are \$1,500 for the obligor, \$0 for the first spouse and \$500 for the second spouse. The obligor's basic support obligations to each family are \$531 for the two children of the first marriage and \$615 for the three children of the second marriage for a total support obligation of \$1,146. Since this total obligation leaves the obligor with only \$354 on which to live, the order for the three children of the second family is too high. However, reducing the order for three children while leaving the existing order intact would give preference to the first family, contrary to the rule. Therefore, both orders must be reduced proportionally.

(c) For purposes of this rule, the presumptive amount of the obligor's basic support obligation is calculated using only the basic guideline amounts of support, as determined from the formula in Rule 1910.16-4, and does not include any additional expenses that may be added to these amounts pursuant to Rule 1910.16-6. In calculating the presumptive amount of the obligor's basic support obligation, the court should ensure that obligor retains at least \$867 per month consistent with Rule 1910.16-2(e).

Washington's Whole Family Approach

Washington is one of a few states that provide for court discretion for the "whole family" (in other words, all of the children of both parents). Washington takes it several steps further than the states that mention it as a guidelines deviation factor. As shown in Exhibit 5, one provision that makes Washington's approach unique is that its guidelines instruct the courts to consider all income available to a parent (including the parent's spouse). Exhibit 5 also shows that the Washington guidelines provide that if the court does indeed adjust for the whole family that it consider the schedule amount in the adjustment. To that end—and what, really makes Washington unique—is the

Washington State IV-D agency’s “whole-family formula,” albeit it is an adjustment used by the agency and not part of the guidelines.

The whole family formula essentially consists of counting the total number of children (including those for whom support is being decided and those for whom support is not being decided) and the incomes of both parents’ households to determine the total number of children and income when finding the schedule amount.¹² In turn, the schedule amount is prorated among all of the children. A 2005 analysis of the whole family order found that it produces significantly lower award amounts than the “dummy order” adjustment used by Virginia and most states. The same analysis also finds that whole family formula reduces the award amount when the custodial parent has additional dependents. In contrast, the dummy order raises the award amount when the custodial parent has additional dependents.

Exhibit 5: Washington’s Whole Family Formula

RCW 26.19.075 Standards for deviation from the standard calculation.

(e) Children from other relationships. The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.

(i) The child support schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.

(ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.

(iii) When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.

(iv) When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.

(2) All income and resources of the parties before the court, new spouses or new domestic partners, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.

(3) The court shall enter findings that specify reasons for any deviation or any denial of a party’s request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.

(4) When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.

(5) Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation.

A 2003 analysis of Washington case file data¹³ found that 29 percent of orders contained deviations for additional dependents and the whole family formula was used to calculate

¹² Venohr, Jane and Griffith, Tracy (2005). *Washington State Child Support Schedule: Selected Issues Affecting Predictability and Adequacy*, Report to Washington Department of Social and Health Services, Policy Studies Inc. Denver, Co. <http://www.dshs.wa.gov/pdf/esa/dcs/reports/AppendixIV-d.pdf>

¹³ Kate Stirling, Professor of Economics, University of Puget Sound, *A Review of the Washington State Child Support Schedule*, Report to Washington State Division of Child Support (March 2003).

the support award amount in about half of those deviations. The most recent Washington child support guidelines review committee recommends putting the formula in the guidelines and other refinements, including a clarifying definition of additional dependents and advising against applying the adjustment when the custodial household has very low income.

17. UNPAID, ORDERED HEALTHCARE COSTS

Issue

A perennial problem is when the noncustodial parent is ordered to provide the child's health insurance and receives an adjustment to the order amount for the cost of insuring the child but then does not actually provide health insurance. When this occurs, the order amount was set too low and an upward order modification may be appropriate.

Current Guidelines Provisions

G. 1. Sole custody support. The sole custody total monthly child support obligation shall be established by adding (i) the monthly basic child support obligation, as determined from the schedule contained in subsection B, (ii) costs for health care coverage to the extent allowable by subsection E, and (iii) work-related child-care costs and taking into consideration all the factors set forth in subsection B of § [20-108.1](#). The total monthly child support obligation shall be divided between the parents in the same proportion as their monthly gross incomes bear to their monthly combined gross income. The monthly obligation of each parent shall be computed by multiplying each parent's percentage of the parents' monthly combined gross income by the total monthly child support obligation.

However, the monthly obligation of the noncustodial parent shall be reduced by the cost for health care coverage to the extent allowable by subsection E when paid directly by the noncustodial parent or that parent's spouse. Unreimbursed medical and dental expenses shall be calculated and allocated in accordance with subsection D.

Relevant Statistics and Other Information

- A review of several state-specific studies containing medical support data from IV-D and non-IV-D orders found that that the parent ordered to provide insurance is typically almost equally divided between mothers and fathers.¹⁴ The same review found that the parent ordered to provide private health insurance in IV-D cases is somewhat more likely to be the noncustodial parent.
- According to data from the 2008 Virginia DCSE caseload, 42 percent of DCSE children were covered through Medicaid/SCHIP, 20 percent were covered through private insurance, and 38 percent lacked coverage.¹⁵

¹⁴ Venohr, Jane and Everett, Carly (2010), *Review of the Illinois Child Support Guidelines*, Report to the Illinois Child Support Advisory Committee, Center for Policy Research, Denver, Co.

¹⁵ Young, Nick (2009). *Medical Support - Innovative Solutions*. Presentation to the National Child Support Enforcement Policy Briefing. Washington, D.C. (Feb. 6, 2009).

- Health insurance is provided as ordered in 27.5 percent of Virginia IV-D cases and 33.3 percent of IV-D cases nationally.¹⁶

Program administrators and policy experts question the future role and need for child medical support in light of healthcare reform but the federal Office of Child Support Enforcement has not issued any rule changes that eliminate requirements to establish and enforce medical support orders among IV-D cases.¹⁷

Alternatives

A few state guidelines (*e.g.*, Ohio and Oregon, as shown in Exhibit 6) provide that a child support order contain two order amounts: one if the noncustodial parent provides health insurance; and the other if the noncustodial parent does not. This allows for the order amount to change depending on the noncustodial parent's provision of healthcare coverage administratively and without a court modification. The Ohio child support guidelines review committee, however, recommends replacing the Ohio provision with the assumption that the custodial parent provides the child's health insurance. Ohio believes this would be simpler to administer and consistent with mandatory healthcare coverage under healthcare reform once it is implemented. Although the details of how healthcare reform will work are still being developed, it appears that IRS rules addressing which parent is responsible for mandatory healthcare coverage for the child will be consistent with IRS rules on which parent claims the child as a dependent for the Earned Income Tax Credit, which can only be claimed by one parent. However, detailed rulemaking or clarifications have not been issued yet.

Exhibit 6 Excerpts from Oregon and Ohio
<p>Oregon Department of Justice Procedural Rules 137-050-0700</p> <p>(10) A medical support clause may be contingent in that it may order a party to provide private health care coverage and may order an amount of cash medical to be paid any time private health care coverage is unavailable to that party. If cash medical support is ordered due to private health care coverage being unavailable to a party, the order may also provide that any time private health care coverage is available to that party it will be provided instead of cash medical support.</p>
<p>OHIO 3119.30</p> <p>(E) The obligor shall begin payment of any cash medical support on the first day of the month immediately following the month in which private health insurance coverage is unavailable or terminates and shall cease payment on the last day of the month immediately preceding the month in which private health insurance coverage begins or resumes. During the period when cash medical support is required to be paid, the obligor or obligee must immediately inform the child support enforcement agency that health insurance coverage for the children has become available.</p>

¹⁶ U.S. Department of Health and Human Services, Office of Child Support Enforcement, (May 2011), Office of Child Support Enforcement FY 2010 Preliminary Report, Washington, D.C.

¹⁷ See Williams, Robert and Alisha Griffin, *Affordable Care Act and the IV-D Program*, Presentation to the Western Interstate Child Support Enforcement Association, Jackson Hole, Wyoming Oct 2, 2012, Available from <http://www.wicsec.org/2012conferencematerials.aspx>

(Ohio Calculation)

WHEN HEALTH INSURANCE IS PROVIDED WHEN HEALTH INSURANCE IS NOT PROVIDED

28. FINAL CHILD SUPPORT FIGURE: (This amount reflects final annual child support obligation; in Col. I, enter line 23c plus or minus any amounts indicated in line 27a or 27b; in Col. II, enter line 26c plus or minus any amounts indicated in line 27a or 27b) \$..... \$..... Father/Mother, OBLIGOR

29. FOR DECREE: Child support per month (divide obligor's annual share, line 28, by 12) plus any processing charge \$..... \$.....

30. FINAL CASH MEDICAL SUPPORT FIGURE: (this amount reflects the final, annual cash medical support to be paid by the obligor when neither parent provides health insurance coverage for the child; enter obligor's cash medical support amount from line 20b \$.....)

18. UNREIMBURSED MEDICAL EXPENSES

Issue

Most income shares schedules include \$250 per child per year for the child's unreimbursed medical costs. The inclusion intends to cover likely out-of-pocket medical expenses incurred for a child such as co-pays for well visits and over-the-counter medicines such as aspirin. Most income shares guidelines provide that the child's unreimbursed medical expenses above this threshold are to be prorated between the parents. The parent incurring the expense will notify the other parent of his or her prorated share. If the other parent does not pay, the parent can bring the issue to the court or child support agency to seek enforcement.

There is some confusion about which parent is responsible for the first \$250 in shared custody cases.

Current Guidelines Provisions

D. Except for good cause shown or the agreement of the parties, in addition to any other child support obligations established pursuant to this section, any child support order shall provide that the parents pay in proportion to their gross incomes, as used for calculating the monthly support obligation, any reasonable and necessary unreimbursed medical or dental expenses that are in excess of \$250 for any calendar year for each child who is the subject of the obligation. The method of payment of those expenses shall be contained in the support order. Each parent shall pay his respective share of expenses as those expenses are incurred. Any amount paid under this subsection shall not be adjusted by, nor added to, the child support calculated in accordance with subsection G. For the purposes of this section, medical or dental expenses shall include but not be limited to eyeglasses, prescription medication, prosthetics, orthodontics, and mental health or developmental disabilities services, including but not limited to services provided by a social worker, psychologist, psychiatrist, counselor, or therapist.

Approaches in Other States

Most states like Virginia do not clarify which parent is responsible for the first \$250 in unreimbursed medical expenses in shared-parenting situations. Among the few states that provide clarifying information, it is typically the parent with primary physical custody that is responsible for the first \$250. (For example, see South Dakota's provision in Exhibit 7.) However, this does not solve the issue for equal custody cases. For these

unique situations, some states require or encourage parents to develop parenting plans that specifies which parent is responsible for child-rearing expense (See South Dakota in Exhibit 7.)

Exhibit 7 Excerpts from Selected States' Guidelines on Parent's Responsibility for Ordinary Medical Expenses and Sharing of Expenses in Shared Custody Situations
<p>Kansas</p> <p>Base support mainly considers the cost of supporting a child who lives in one household. When a parent cares for a child overnight, that parent should cover many of the child's unduplicated costs, while the other parent will not have to spend as much money for food, utility, and other costs for the child.</p>
<p>South Dakota</p> <p>The parent that has primary physical custody of the child is responsible for the first two hundred fifty dollars of health care costs each calendar year.</p> <p>If the parents have agreed in writing to a detailed shared parenting plan which provides that the child will reside no less than one hundred eighty nights per calendar year in each parent's home, and that the parents will share the duties and responsibilities of parenting the child and the expenses of the child in proportion to their incomes, and the shared parenting plan has been incorporated in the custody order, the court may, if deemed appropriate under the circumstances, grant a cross credit on the amount of the child support obligation based on the number of nights the child resides with each parent.</p>

24. REGIONAL DIFFERENCES IN COST OF LIVING

Issue

The cost of housing varies regionally within Virginia as it does in many states. However, federal regulation requires states to have one set of state guidelines to be used by all decision-makers setting child support orders.

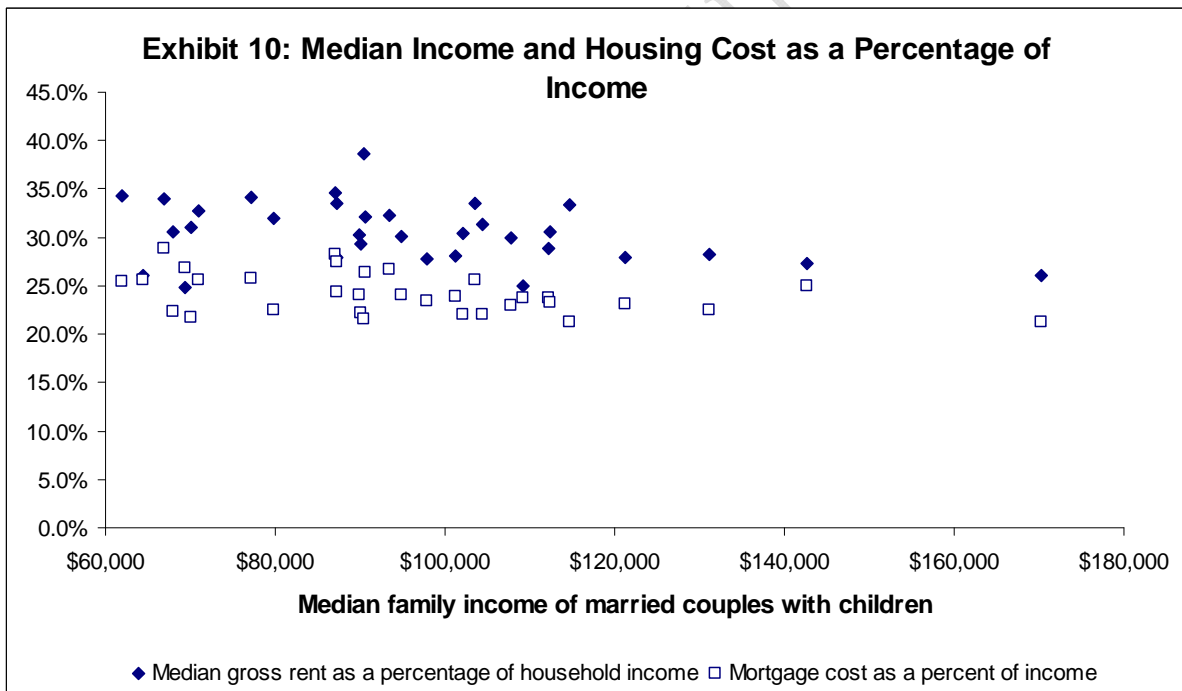
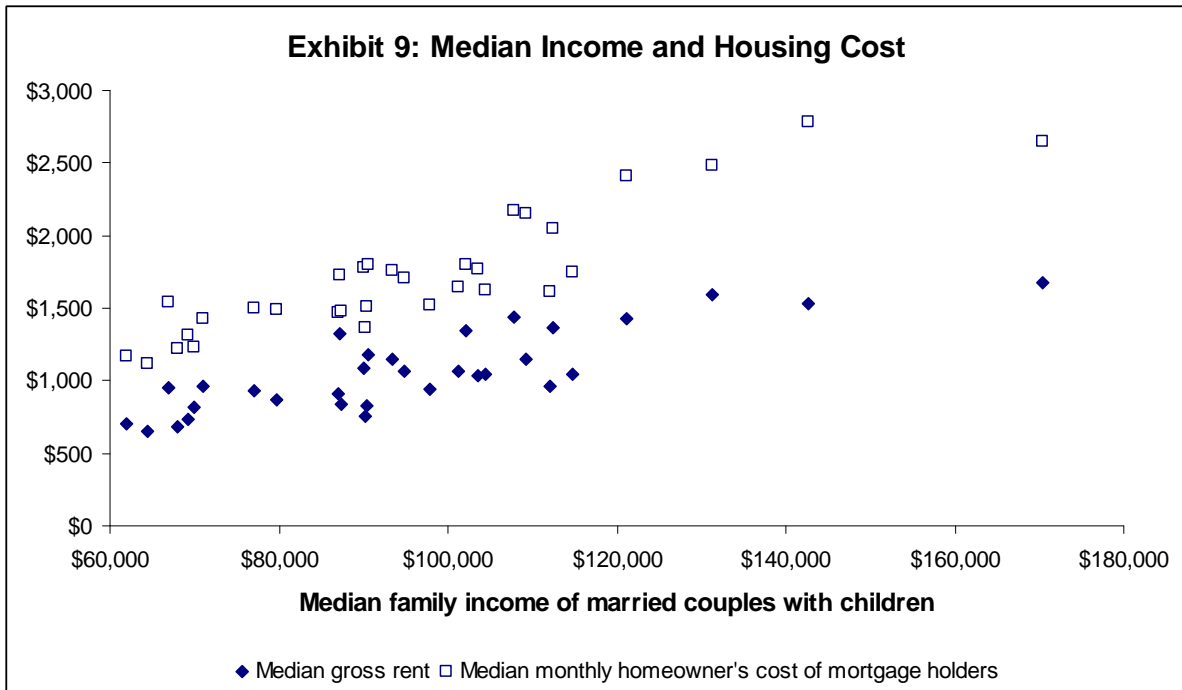
Relevant Statistics

Exhibit 8 shows the median incomes and housing costs of Virginia counties and cities.¹⁸ Median gross rent ranges from \$647 per month in Roanoke City to \$1,647 per month in Arlington County. Median family income among married couples with children ranges from \$61,971 in Lynchburg city to \$170,352 in Arlington County. Exhibit 9 shows a correlation between median housing cost and median income; that is, counties and cities with higher incomes also have higher housing costs. Under the statewide guidelines, higher incomes would have higher order amounts. In effect, the higher incomes in a region compensate for higher housing costs in a region.

¹⁸ U.S. Census 2011 American Community Survey.

Exhibit 10 shows there is no correlation between median income and percentage of income devoted to rent or homeowner costs; that is, regardless of income, renters and homeowners devote the same percentage of income to housing cost. If there were a correlation, an adjustment for regional housing costs would be appropriate.

Exhibit 8: Median Income and Housing Costs					
	Median family income of married couples with children	Median gross rent	Median monthly homeowner's cost of mortgage holders	Median gross rent as a percentage of household income	Mortgage cost as a percent of income
USA	\$79,746	\$871	\$1,486	31.9%	22.5%
Virginia	94,885	\$1,062	\$1,707	30.1%	24.0%
Albemarle County, Virginia	\$114,759	\$1,041	\$1,745	33.4%	21.3%
Alexandria city, Virginia	\$121,175	\$1,426	\$2,408	28.0%	23.1%
Arlington County, Virginia	\$170,352	\$1,673	\$2,646	26.1%	21.2%
Augusta County, Virginia	\$67,935	\$682	\$1,220	30.5%	22.4%
Bedford County, Virginia	\$70,007	\$819	\$1,232	31.1%	21.8%
Chesapeake city, Virginia	\$93,454	\$1,144	\$1,760	32.2%	26.7%
Chesterfield County, Virginia	\$101,212	\$1,062	\$1,647	28.1%	23.9%
Fairfax County, Virginia	\$131,203	\$1,592	\$2,484	28.2%	22.5%
Fauquier County, Virginia	\$109,166	\$1,147	\$2,155	25.0%	23.7%
Frederick County, Virginia	\$104,425	\$1,044	\$1,626	31.4%	22.1%
Hampton city, Virginia	\$77,092	\$927	\$1,503	34.1%	25.8%
Hanover County, Virginia	\$112,146	\$963	\$1,615	28.8%	23.8%
Henrico County, Virginia	\$97,796	\$944	\$1,518	27.8%	23.4%
James City County, Virginia	\$89,994	\$1,085	\$1,776	30.2%	24.1%
Loudoun County, Virginia	\$142,684	\$1,530	\$2,785	27.3%	25.0%
Lynchburg city, Virginia	\$61,971	\$707	\$1,174	34.3%	25.4%
Montgomery County, Virginia	\$90,407	\$830	\$1,506	38.7%	21.5%
Newport News city, Virginia	\$70,997	\$964	\$1,430	32.8%	25.6%
Norfolk city, Virginia	\$66,983	\$949	\$1,546	34.0%	28.9%
Portsmouth city, Virginia	\$87,009	\$908	\$1,473	34.6%	28.2%
Prince William County, Virginia	\$107,765	\$1,441	\$2,175	29.9%	22.9%
Richmond city, Virginia	\$87,303	\$842	\$1,475	33.5%	27.4%
Roanoke city, Virginia	\$64,383	\$647	\$1,114	26.1%	25.6%
Roanoke County, Virginia	\$90,160	\$759	\$1,370	29.4%	22.2%
Rockingham County, Virginia	\$69,311	\$735	\$1,314	24.9%	26.9%
Spotsylvania County, Virginia	\$87,266	\$1,321	\$1,724	28.0%	24.3%
Stafford County, Virginia	\$112,362	\$1,365	\$2,046	30.6%	23.3%
Suffolk city, Virginia	\$103,562	\$1,032	\$1,771	33.5%	25.6%
Virginia Beach city, Virginia	\$90,586	\$1,183	\$1,802	32.1%	26.4%
York County, Virginia	\$102,138	\$1,348	\$1,797	30.4%	22.1%



Experiences of Other States

No state currently varies its guidelines amount within the state for geographical differences in housing costs. However, until the early 1990's, some California counties had guidelines amount that varied from the statewide guideline. The federal Office of

Child Support Enforcement (OCSE) notified California of the issue. Shortly afterwards, California adopt one uniform state guideline.

25. CHILD'S AGE

Issue

Most states do not adjust their schedules/formulae for the child's age.

Relevant Statistics

The economic data on whether older children cost more than younger children is mixed. Betson finds no statistical difference using the Rothbarth methodology. In general, the USDA¹⁹ finds that expenditures on older children are more than expenditures on younger children. The USDA reports child-rearing expenditures for six age brackets (0-2 years old, 3-5 years old, 6-8 years old, 9-11 years old, 12-14 years old and 15-17 years old). The USDA finds that children 6-8 years old are the least expensive. Younger children are more expensive than 6-8 years old mostly due to childcare and education expenses and older children are more expensive than 6-9 years old mostly due to more food and health care expenses.

When childcare and education and health care expenses are excluded — because they are also excluded from the child support schedule— the USDA findings suggest the following.

- In all, expenditures on 15-17 years old are 15 to 26 percent more than expenditures on 0-2 years. The percentage increase varies by whether the children are from low-, middle- or high-income families.
- As children move from one age bracket to the next age bracket, expenditures increase by about 1 to 10 percent between each bracket. A notable exception is teenagers. There is little difference between expenditures on 15-17 years old and expenditures on 12-14 years old.

Another consideration is the age of the children when the order is established. At the time of the initial order establishment, children are generally younger among never-married parents than divorcing parents. Married parents tend to divorce when their children are older. Yet, a child support order is typically not established immediately

¹⁹ Lino, Mark. 2012. *Expenditures on Children by Families, 2011*, United States Department of Agriculture Center for Nutrition Policy and Promotion, Miscellaneous Publication Number 1528-2011.

following a birth of a child to unmarried parents. Instead, the parents may continue their romantic involvement for several years and the child may be pre-school or school-age before the relationship dissolves and the child support order is established.

Experiences of Other States

Few states (*e.g.*, Kansas, Maine, and Washington) provide separate schedule amounts for younger and older children. These states provide a higher amount for older children.

Kansas	Maine	Washington
Ages 6-11 years: 15% more than ages 0-5 years Ages 12-17 years: 8% more than ages 6-11 years	Ages 0-11 years: 92.7% of average for all ages Ages 12-17 years: 114.6% of average for all years	Ages 11-17 years: 24% more than ages 0-11

In practice, however, many parents fail to modify their orders upward when their children become older. Maine's adjustment is based on information from Espenshade, which is the same study of child-rearing expenditures that forms the basis of the existing Virginia schedule. A few states (*e.g.*, District of Columbia and Massachusetts recently eliminated their age-adjusted schedules. Still, a few other states provide that the child's age can be used as a deviation factor. For example, one of Florida's deviation criteria is:

The age of the child, taking into account the greater needs of older children.