

Pending Issues, Right-Sizing Orders, and Overview of Final Rule



Virginia Child Support Guidelines Review Panel
April 24, 2017
Richmond, Virginia

What's Next for the Guidelines Review Panel?

- The Panel's report is due to the General Assembly in December 2017
- Report will include information about the Panel's meetings and recommendations for action and/or legislation
- Staff will draft the report for the Panel's approval



To view the previous Panel's report, see http://dls.virginia.gov/interim_studies_child_support2.html, scroll down to "Research" and click on "Child Support Guidelines Review Panel Report – December 2013."

Attaching Worksheets to Orders

- The Panel agreed to recommend:
 - A requirement that the final guidelines calculation worksheet used to determine a support obligation must be attached to all child support orders
 - The following language should be added to Va. Code Ann. § 20-108.2(B):

The guidelines relied upon by the court or agency to reach its computation shall be attached to the order.

Update on Guidance for Complex Cases

- In response to the Panel's request, the Family Law Coalition is working with Division of Child Support Enforcement (DCSE) legal counsel and others to develop guidance for complicated family situations
- Update from Larry Diehl, Esq.



Right-Sizing Orders

- Consistent support payments help families achieve economic stability, which is especially important to low-income families
- As far back as the late 1990s, child support professionals on the national level began to recognize that:
 - Establishing child support orders based on ability to pay results in higher compliance and increased parental communication
 - Setting realistic orders improves the chances that parents will continue to pay over time
 - Obligations based on imputed income are often not related to parents' ability to pay and do not result in compliance

Right-Sizing Orders

- Engaging parents early in the process of establishing obligations is more likely to:
 - Result in realistic orders
 - Prevent default orders
 - Keep arrears from accumulating
 - Increase parental communication and involvement



Right-Sizing Orders

- Nationally, an estimated 60% of parents who don't pay support have a limited ability to pay based on factors such as:
 - Income
 - Education level
 - High rate of institutionalization
 - Intermittent employment history
- Enforcement tools may affect payment compliance of higher income obligors but are unlikely to generate payments from parents who do not have the ability to pay

Right-Sizing Orders



The majority of past-due child support is owed by a small percentage of obligors:

- 11% of obligors owe 54% of arrears
- $\frac{3}{4}$ of those obligors had no reported income or had income less than \$10,000 per year

Right-Sizing Orders

- Research over the last 20 years consistently shows parents are more likely to pay reliably if their obligation is 20% of their income or lower
- When obligations are set too high, parents:
 - Are unlikely to pay
 - Accrue arrears
 - Are likely to go into or remain in the underground economy

Right-Sizing Orders: Research

- 3 primary studies
 - Washington State – 2003
 - California – 2011
 - Maryland – 2014
- Research has focused on:
 - Maximizing collections for children
 - Increasing payment compliance
 - Preventing arrears accrual
 - Addressing barriers to payment



Right-Sizing Orders: Washington Study



- Research on right-sizing orders began with Washington State's study to address reasons for arrears growth
- Findings:
 - Parents with limited ability to pay DO pay when child support is a low percentage of their monthly income
 - Arrears grow when obligations exceed 20% of parents' gross income

Right-Sizing Orders: Washington Study



- Findings:
 - Barriers such as substance abuse, limited English, disability, being on public assistance, having multiple cases, etc., affect parents' ability to pay
 - Parents with high order amounts in relation to income (over 20%) often have multiple barriers

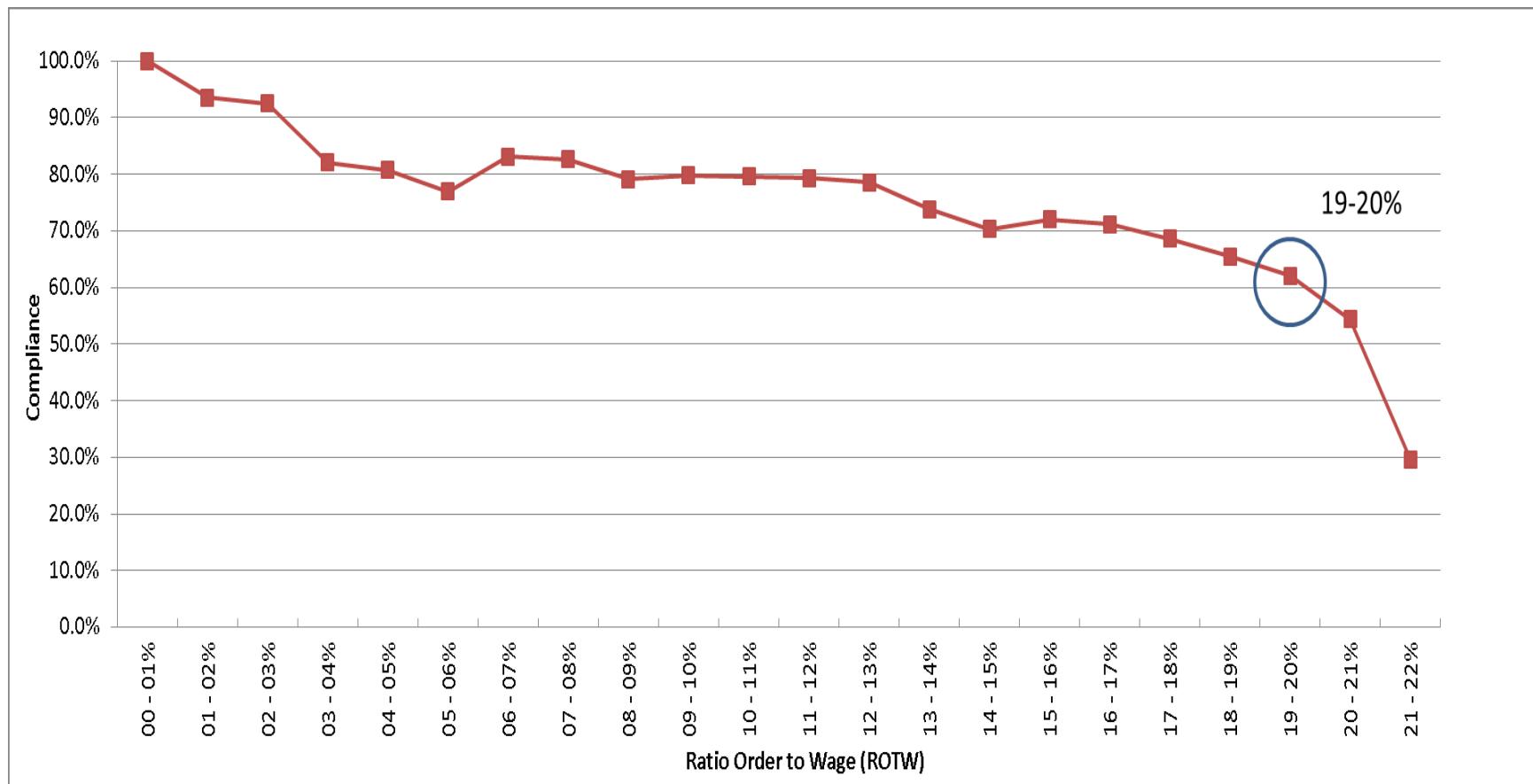


Right-Sizing Orders: California Study

- Largest study: analyzed over 102,000 cases
- Findings:
 - Ratio of Order to Wage (ROTW – obligation amount as percentage of income) is the major predictor of payment compliance and consistency even when taking other barriers into consideration
 - When ROTW is above 19-20%, compliance and payment reliability over time decrease
 - Imputing income at full-time minimum wage when actual income is not available yields little or no future child support payments

Right-Sizing Orders: California Study

Compliance by ROTW in Cases with 1 Child





Right-Sizing Orders: Maryland Study

Findings:

- The large majority of parents (80%) made at least some effort to pay support during the study year
- Low-income parents are far more likely to pay support when they perceive the obligation amount as fair and just
- Orders exceeding 30% of a parent's income resulted in large decline in collections

Right-Sizing Order: Maryland Study

Findings:

- Parents are significantly more likely to comply when obligation is consistent with actual ability to pay
- Parents who paid nothing had obligations that represented a significantly higher proportion of their income:

| Payment Amount | ROTW (Obligation as % of Income) |
|------------------------|-------------------------------------|
| \$0 | 68% |
| 100% | 18% |
| Any part of obligation | 20-30% |

Right-Sizing Orders: Maryland Study

Imputing Income:

- Basing obligations on imputed income most often creates obligations that are inconsistent with ability to pay
- Income is sometimes imputed—typically at full-time minimum wage—when a parent:
 - Is unemployed or underemployed
 - Fails to appear at court proceedings
 - Does not provide proof of employment or earnings
- An assumption that all adults should be able to find full-time work at minimum wage is questionable in current economy

Right-Sizing Orders: Maryland Study

- Compliance is markedly lower in imputed income cases
- Imputation is appropriate when parents willfully compromise their ability to pay or hide income, but in other cases....
- There is increasing evidence that imputing income at full-time minimum wage is counterproductive:
 - Custodial parent may have an unrealistic expectation of how much support they will receive
 - Paying parent may perceive order as unfair because it is based on what the court thinks the parent could earn rather than actual income

Right-Sizing Orders & the Federal Final Rule

- The new federal rule, *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs*, requires use of actual income in determining obligations
- To read the entire rule, see the *Federal Register* at:
<https://www.federalregister.gov/documents/2016/12/20/2016-29598/flexibility-efficiency-and-modernization-in-child-support-enforcement-programs>

Federal Final Rule: Overview

- *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs*
 - Issued December 2016
 - Multiple compliance dates for various sections
 - Revises existing federal regulations governing the child support enforcement program
 - The next Guidelines Review Panel will need to address several new requirements

Final Rule: Purpose

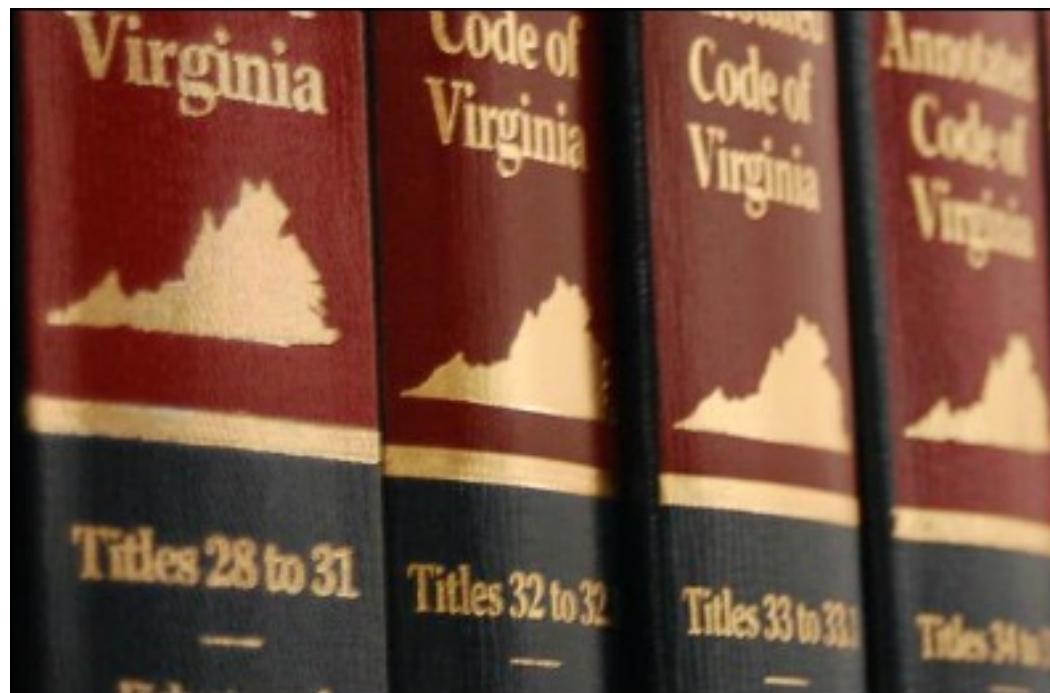
- Set accurate obligations based on parents' actual ability to pay
- Increase consistent, on-time payments
- Move non-paying cases to paying status
- Increase number of parents supporting their children
- Improve collection rates
- Reduce accumulation of unpaid and uncollectible arrears
- Incorporate technological advances and evidence-based standards that support good customer service and cost-effective management practices

Final Rule: Goals

- Increase program flexibility to better serve families
- Improve program effectiveness, efficiency, and innovation
- Improve customer service
- Remove barriers identified by employers, states, and families that impede efficient and timely payments



FINAL RULE: GUIDELINES ISSUES



45 CFR § 302.56(a) – (g)

Guidelines for setting child support awards

Changes to guidelines requirements

COMPLIANCE DATE for 302.56(a) - (g)

12/2022

45 CFR § 302.56(a) – (g)

Guidelines for setting child support awards

States must:

302.56(a): Establish one set of guidelines for setting and modifying obligations that meets new requirements within certain timeframe

302.56(b): Have procedures to make guidelines available to all persons in the state [prior version limited the availability requirement to people “whose duty it is to set child support awards amounts”].

45 CFR § 302.56(a) – (g)

Guidelines for setting child support awards

Guidelines must:

302.56(c)(1): Provide that obligations are based on the noncustodial parent's (NCP) earnings, income, and other evidence of ability to pay

- i. Consider all earnings and income of NCP*
- ii. Consider NCP's basic subsistence needs* and incorporate low-income adjustment into guidelines



*And, at the state's discretion, the custodial parent's (CP) earnings and income and/or basic subsistence needs of the CP and children

45 CFR § 302.56(a) – (g)

Guidelines for setting child support awards

- iii. If imputation is authorized, must consider NCP's specific circumstances* including:

| Age | Assets |
|--|---|
| Availability of employers willing to hire parent | Criminal record & other employment barriers |
| Educational attainment | Employment & earnings history |
| Health | Job skills |
| Literacy | Local job market |
| Prevailing community earnings level | Record of seeking work |
| Residence | Other relevant background factors |

*And, at the state's discretion, the CP's specific circumstances

45 CFR § 302.56(a) – (g)

Guidelines for setting child support awards

302.56(c)(2): Address how parents will provide for health care through **private or public** coverage and/or cash medical support [replaced health care coverage with *private or public coverage*]

302.56(c)(3): Provide that
incarceration may not be treated as voluntary unemployment in establishing or modifying obligations



45 CFR § 302.56(a) – (g)

Guidelines for setting child support awards

302.56(e): States must publish on the internet and make accessible to the public the Guidelines Review Panel's reports and membership, effective date of guidelines, and date of next quadrennial review

302.56(f): Rebuttable presumption in **establishing or modifying order** that guidelines calculation is correct amount

302.56(g): minor language changes (changes *will* to *shall* and adds *child support before guidelines*)

45 CFR § 302.56(h)

Guidelines for setting child support awards

***Changes to requirements for
quadrennial guidelines review panels***

COMPLIANCE DATE for 302.56(h)

2026

45 CFR § 302.56(h)

Guidelines for setting child support awards

Guidelines Review Panel must:

(1) Consider economic data to include

- Labor market data (unemployment rates, hours worked, etc.) by occupation and skill level for state and local job markets
- Impact of guidelines policies and amounts on CPs and NCPs with family income <200% of the federal poverty level
- Factors that influence employment rates among NCPs and compliance with current support orders

45 CFR § 302.56(h)

Guidelines for setting child support awards

(2) Analyze case data on:

- Rates of default and imputed orders and orders determined using low-income adjustment
- Comparison of payments on orders by case characteristics, including whether order was
 - Entered by default
 - Based on imputed income
 - Set using low-income adjustment

(3) Provide a meaningful opportunity for public input, including input from low-income NCPs and CPs and their representatives



Sources for Right-Sizing Orders

June Gibbs Brown, *The Establishment of Child Support Orders for Low Income Noncustodial Parents*, Department of Health & Human Services, Office of the Inspector General, 2000. <https://oig.hhs.gov/oei/reports/oei-05-99-00390.pdf> (accessed April 7, 2017).

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Carl Formoso, *Determining the Composition and Collectibility of Child Support Arrearages*, Washington Dept. of Social & Health Services, Division of Child Support, 2003.
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