

VIRGINIA CHILD SUPPORT GUIDELINES REVIEW PANEL

**April 27, 2016
Richmond, Virginia**



**CHILD SUPPORT GUIDELINES:
POLICY ISSUES**

Review of Panel's Duties

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- Both federal and Virginia law require that child support guidelines be reviewed every four years.
- Va. Code § 20-108.2(H):

“The Panel shall determine the adequacy of the guideline for the determination of appropriate awards for the support of children by considering current research and data on the cost of and expenditures necessary for rearing children, and any other resources it deems relevant to such review.”

2013 Panel Recommendations Enacted

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1. Updated *Schedule of Monthly Basic Child Support Obligations* based on current economic data (20-108.2(B)).
2. Removed \$250 per child per year in unreimbursed medical expenses (20-108.2(D)).
3. Added new statutory language regarding presumptive statutory minimum (20-108.2(B)).

Deferred Policy Issues

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The 2013 Panel surveyed stakeholders on several guidelines and policy issues.

- 289 respondents
 - 164 attorneys
 - 85 custodial parents (CPs) or noncustodial parents (NCPs)



Deferred Policy Issues

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The previous Panel voted to pursue several policy issues based on feedback from stakeholders but later decided to:

- Focus on updating the guidelines schedule, the \$250 threshold, and authority to set obligations below the presumptive minimum.
- Defer remaining policy issues to the next Panel.

Current Panel's Decisions

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This Panel decided at its 9/9/15 meeting to consider issues related to the following:

1. Guidelines worksheets
2. Shared custody cases
3. Complex cases
4. Age of children and cost of private school
5. Cost of living in various parts of the state



1. Guidelines Worksheets

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ISSUE:

Require that the guidelines worksheet be attached to all child support orders.



Sole Custody GL
Worksheet

1. Guidelines Worksheets

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- Mediated orders must have guidelines worksheet attached, but there is no similar requirement for other support orders.
- Having worksheet attached:
 - Provides parties with specific information about how the obligation was calculated.
 - Is helpful if the matter comes back to court at a later date for modification or other issues.

2. Shared Custody Cases

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ISSUE:

Consider changing the 1.4 multiplier and 90-day threshold for determining shared custody and calculating the support obligation.



2. Shared Custody Cases

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Virginia, like most states with a formula for shared custody, uses a “cross-credit” formula:

- Essentially calculates 2 orders – one assuming dad is obligor and the other assuming mom is the obligor.
- Weighs each order by percentage of time child spends with other parent.
- Offsets the difference.
- Parent who owes greater amount is the obligor.

2. Shared Custody Cases

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- Virginia is unique in that it relies on a lower multiplier (1.4) and lower overnight threshold (>90) than most states.
- Among the 24 states that use the cross-credit formula:

MULTIPLIER		TIMESHARING THRESHOLD	
# of States	Multiplier	# of States	Overnights
20	1.5	6	25-30% (90-106 overnights)
3	None	9	30-40% (107-145 overnights)
Virginia	1.4	5	More than 145 overnights but not quite equal
		3	Equal or nearly equal
		1	No number specified

2. Shared Custody Cases

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- Why a multiplier?
 - It costs more to raise a child in 2 households than it does in 1.
 - Some child-rearing expenses must be duplicated between the parents (e.g., housing, transportation).
 - Using a multiplier reduces the “cliff effect” that can occur when parents have nearly equal incomes and nearly equal timesharing.

2. Shared Custody Cases

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Calculating shared custody guidelines in Virginia

- If a party has custody/visitation more than 90 days of the year, the shared custody guideline is used to calculate support obligations.
- Calculate basic obligation, then multiply by 1.4.
- Multiply that amount by each parent's custody share (% of time spent with each parent).
- Subtract the parties' obligations from one another; the difference is the amount owed (payor is the party with higher obligation).



Shared Custody
GL

2. Shared Custody Cases

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Concerns about timesharing and multiplier:

- Creates an economic incentive for NCPs to want more time with child in order to lower the child support obligation.
- Creates a disincentive for CPs to give up time in order to keep the child support obligation higher.
- Threshold/lower multiplier can result in precipitous drop (“cliff effect”) to obligation amount. Reducing this effect mitigates the economic incentive/disincentive.

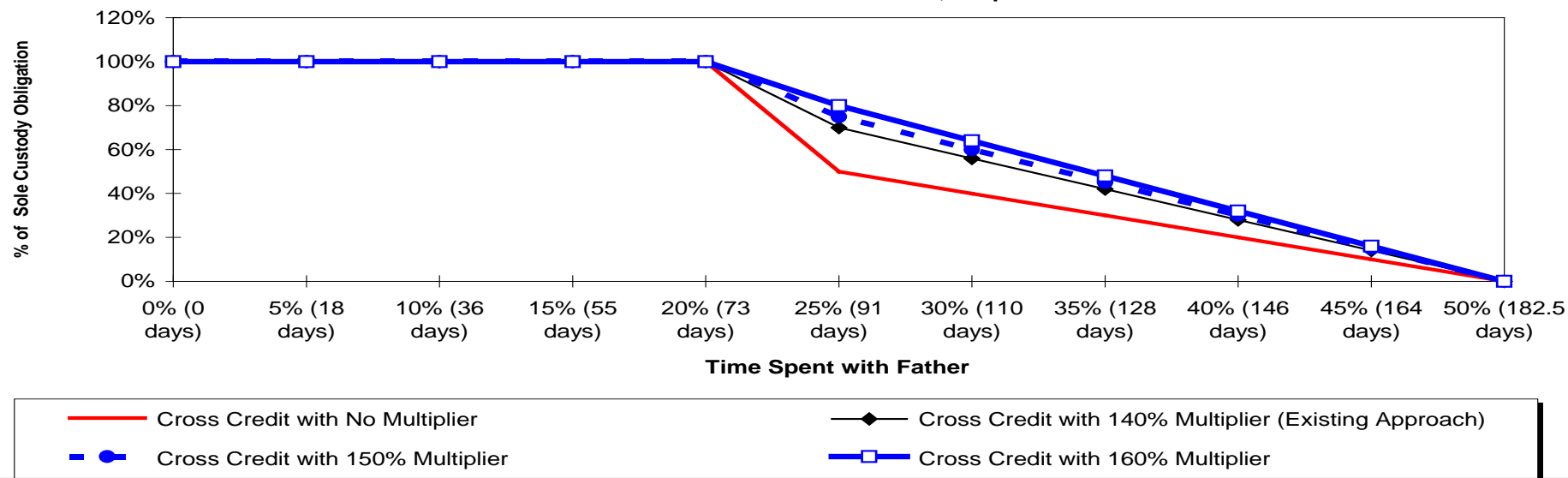
2. Shared Custody Cases

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Possible adjustments to alleviate cliff effect:

- Use 2-tier formula for timesharing
 - Iowa model:
 - ✦ Reduce obligation 15% when there are at least 128 overnights per year; gradually increase percentage when there is more timesharing.
 - ✦ Use the cross-credit formula when timesharing is nearly equal.
- Increase multiplier
 - Higher multiplier results in less dramatic cliff effect.
 - The following tables show 0, 1.4 (140%), 1.5 (150%) and 1.6 (160%) multipliers at various income levels:

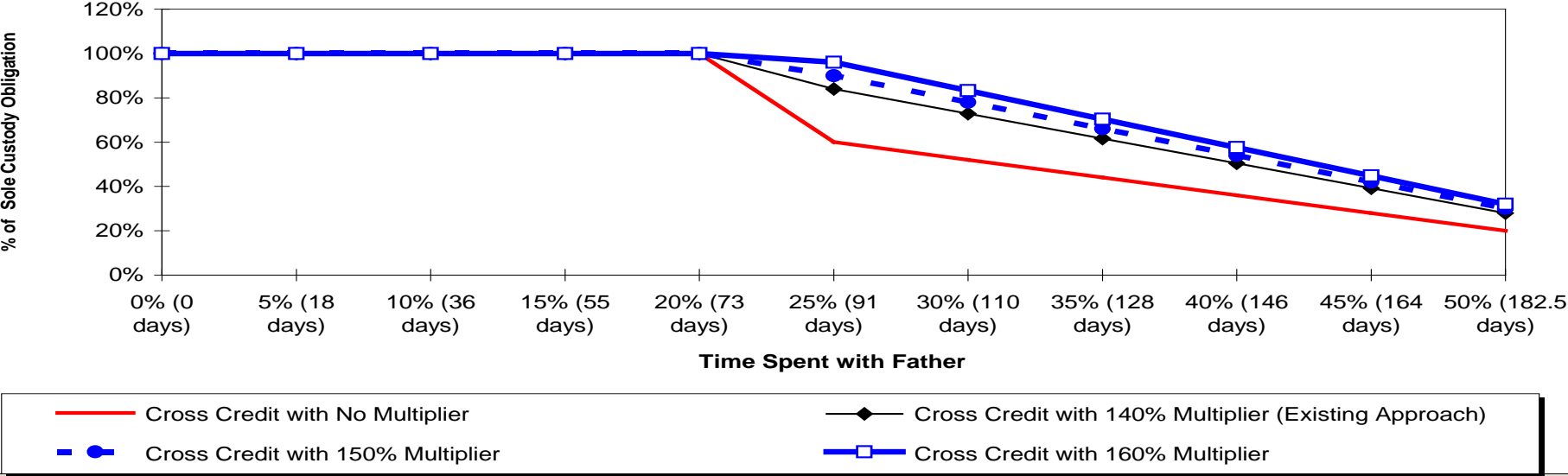
Exhibit 1:
Effect of Multiplier on Order Amounts Using Shared Physical Custody Adjustment
Equal Incomes; 2 Children
Both Parents Gross Incomes = \$5,000 per month



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%

Exhibit 2:
Effect of Multiplier on Order Amounts Using Shared Physical Custody Adjustment
2 Children

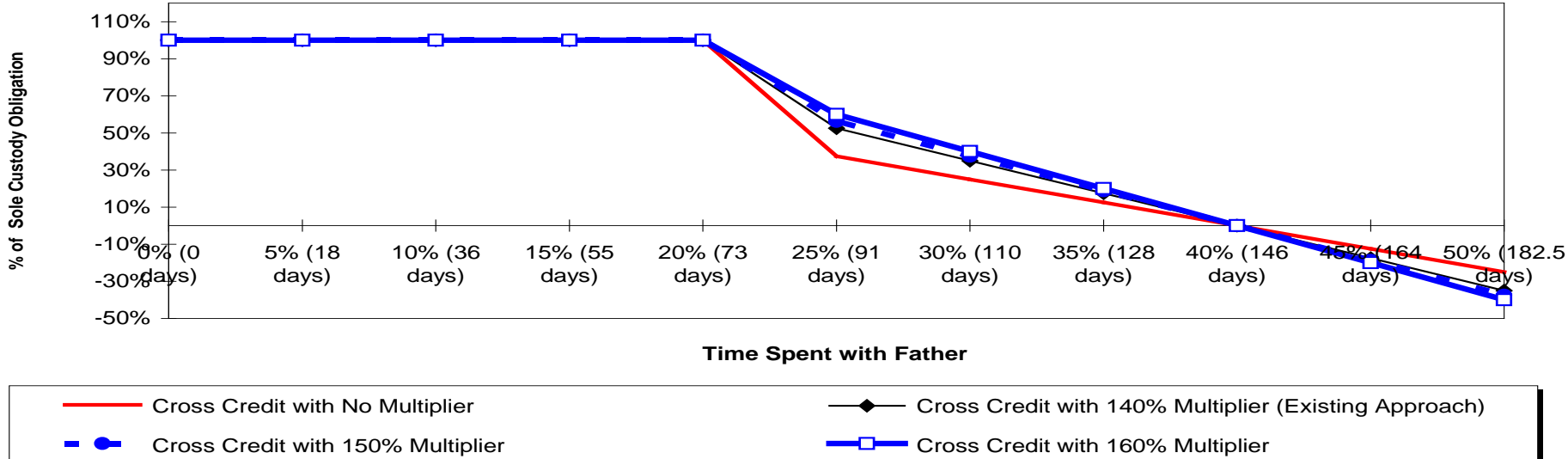
Father's Income = \$5,000 per month, Mother's Income = \$3,000 per month



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:
Effect of Multiplier on Order Amounts Using Shared Physical Custody Adjustment
2 Children

Father's Income = \$5,000 per month, Mother's Income = \$7,500 per month



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%

3. Complex Cases

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ISSUE:

Family structures are more complex and varied today than when the guidelines were enacted.

Guidelines don't contemplate more complex situations or provide guidance on handling them.



3. Complex Cases

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- More children are born out of wedlock.
- More parents are sharing custody.
- More parents have children from multiple relationships.
- A parent may be a CP on one case and an NCP on another case.
- Both parents may owe support to a third party custodian, such as a grandparent.

3. Complex Cases

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- Virginia's guidelines allow a deduction from income for a parent who financially supports biological or adopted children other than those who are the subject of matter at hand.
- The deduction may be:
 - The amount set by a court or administrative order or written agreement that the party is actually paying for support of other children, or
 - A guidelines-calculated amount for support of children who live in the parent's home (a "theoretical order").



Guidelines
Worksheet

3. Complex Cases

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- Some other states use the income of both parents who are financially obligated to support the other child to determine the “theoretical order” amount:
 - NCP of Child A remarries and has Child B with 2nd spouse.
 - In setting support for Child A, court would deduct a “theoretical order” amount for Child B’s support from NCP’s income.
 - 2nd spouse’s income would be included in determining the “theoretical order” support amount for the Child B.
 - Including 2nd spouse’s income would impact NCP’s deduction for purposes of determining his/her obligation for Child A.

3. Complex Cases

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Approaches in other states:

- Limit adjustment to prior orders or first-born children only (rationale: parent knew of prior order or child before choosing to have subsequent children).
- Equalize support between sets of children by taking a % of theoretical order.
- Redefine eligible children (e.g., stepchildren).

3. Complex Cases

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- Pennsylvania:
 - Proportionate reduction such that NCP's combined orders are < 50% of NCP's income (income withholding limit).
- Washington:
 - Whole Family Formula considers all children and income of all adults financially responsible for them.
 - Obligation amount is prorated among all children.
 - Also reduces NCP's order when CP has multiple orders.

4. Deviation Factors: Child's Age & Private School Costs

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- There is a rebuttable presumption that the obligation resulting from calculation of the guidelines is the correct amount.
- To rebut the presumption, the court must:
 - Find that the guidelines amount is unjust or inappropriate.
 - Look at evidence related to statutory deviation factors affecting the obligation, each party's ability to provide support, and the child's best interests.
- Va. Code § 20-108.1(B) sets out 15 deviation factors.

4. Deviation Factor: Age of Children

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ISSUE:

Virginia's guidelines do not take into account that older children cost more than younger children.



4. Deviation Factor: Age of Children

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- In general, expenditures on 15-17 year olds are 15-26% higher than expenditures on 0-2 year olds.
- USDA reports consider 6 age brackets: 0-2, 3-5, 6-8, 9-11, 12-14 and 15-17.
- As children move from one bracket to the next, expenditures increase 1-10% (except for 12-14 and 15-17 year age brackets which show little difference).

4. Deviation Factor: Age of Children

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- Most states do not adjust for child's age.
- A few states allow age as a deviation factor. For example, in Florida:

The court may adjust the total minimum child support award, or either or both parents' share of the total minimum child support award, based upon the following deviation factors:

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

4. Deviation Factor: Age of Children

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A few states provide separate guidelines amounts for older and younger children. For example:

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

4. Deviation Factor: Age of Children

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In Virginia, there is limited case law that suggests courts may take age-related expenses into account when considering the standard-of-living deviation factor, particularly where an obligation starts a short time before the child reaches majority.



4. Deviation Factor: Cost of Private School

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- Deviation factors do not specifically address cost of private school, but do include:
 - Direct payments ordered by the court for education expenses for the child's benefit;
 - Any special needs of a child resulting from any physical, emotional, or medical condition;
 - Child's standard of living established during the marriage;
 - Earning capacity, obligations, financial resources, and special needs of each parent;
 - Other factors necessary to consider the equities for the parents and children.

4. Deviation Factor: Cost of Private School

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With regard to private school expenses, Virginia case law holds courts may set an obligation higher than the guidelines amount if:

- There is a demonstrated need for the child to attend private school, and
- Parent has the ability to pay.



4. Deviation Factor: Cost of Private School

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In making this determination, courts must consider factors such as:

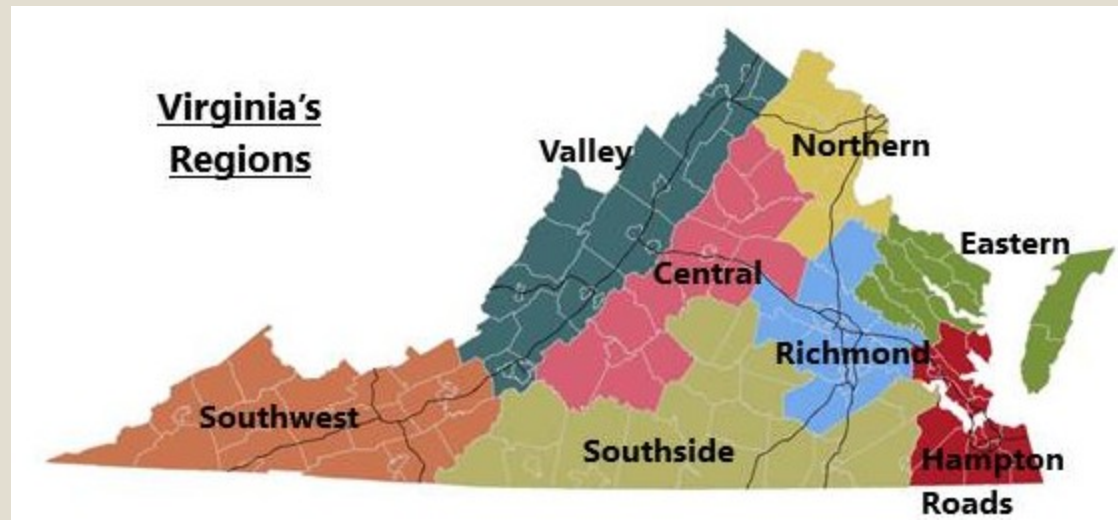
- Availability of satisfactory public schools,
- Child's attendance at private school before the parents separated/divorced, and/or
- Child's special emotional or physical needs, religious training, and family tradition.

5. Cost of Living in Various Parts of State

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ISSUE:

Guidelines do not take into account regional differences in cost of living throughout Virginia.



5. Cost of Living in Various Parts of State

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- Federal law requires that states have one set of guidelines that apply uniformly across the state.
- 45 CFR § 302.56(a):
Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amount within the State.

5. Cost of Living in Various Parts of State

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- Cost of housing varies regionally in Virginia, as in most states.
- Correlation between median housing costs and median income: areas with higher housing costs also have higher income.



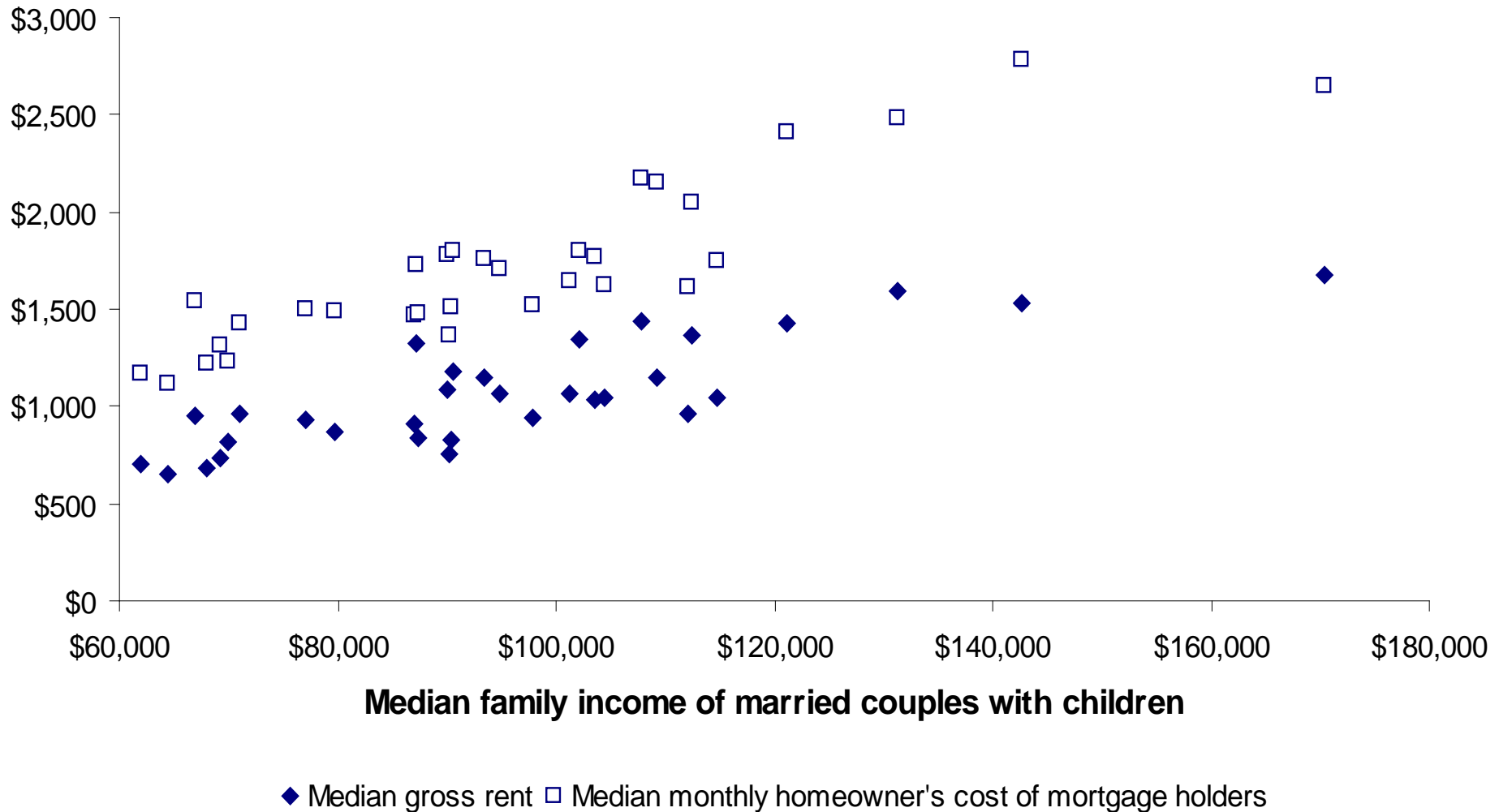
Regional Differences in Cost of Living

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%

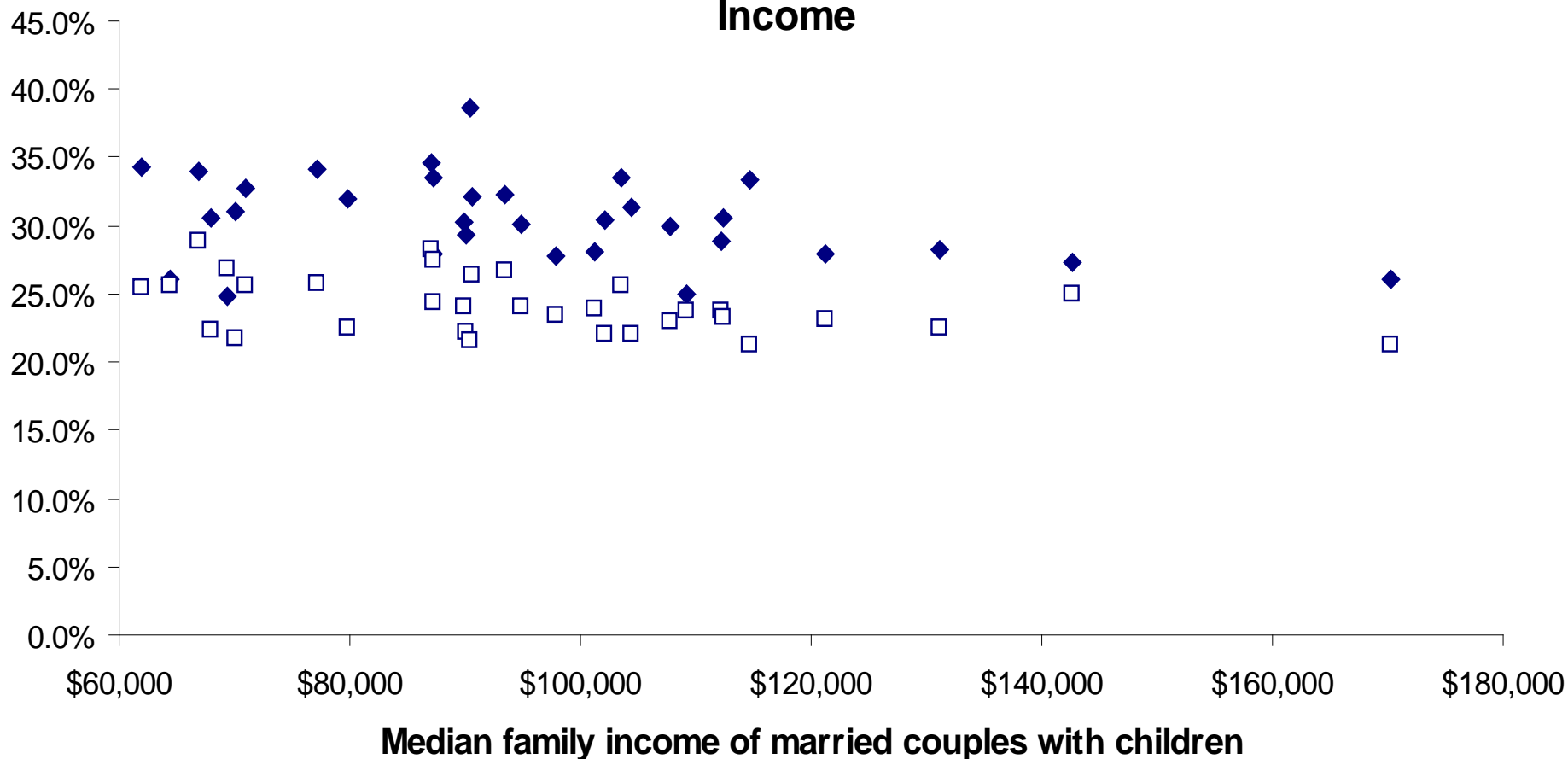
Regional Housing Costs Are Correlated with Regional Incomes

Exhibit 9: Median Income and Housing Cost



Families Devote the Same Proportion of Income to Housing Regardless of Regional Differences

Exhibit 10: Median Income and Housing Cost as a Percentage of Income



◆ Median gross rent as a percentage of household income □ Mortgage cost as a percent of income

Non-Guidelines-Related Issues

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The Panel also suggested considering:

- Adding language to JDR orders stating that order remains in effect until modified or terminated by another order.
- Allowing effective dates:
 - Other than date of filing for initial petitions.
 - Back to filing date instead of date of notice to non-requesting party.
- Civil contempt and present ability to pay.
- Procedures for driver's license suspension and reinstatement.

Non-Guidelines-Related Issues

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Since these issues are not directly related to the guidelines, they would be more appropriately addressed via other channels (i.e., Boyd-Graves Conference, Family Bar Coalition).



Other Suggestions?

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Panel Website

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- Meeting dates, agendas, materials and minutes
- Past reports, economic research, and data
- Panel email address

http://dls.virginia.gov/interim_studies_child_support.html

Staff Contacts

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