

Virginia Child Support Guidelines Review Panel

September 29, 2021 • 1:00 pm – 4:00 pm

House Committee Room, Pocahontas Building, Richmond, VA



Topics for discussion

Related to Federal Rule

- Health care coverage as a basis for review
- Imputation of income
- Incarceration no longer considered voluntary unemployment

Other

- Child tax credit
- Panel's report to the Governor and General Assembly

Health Care Coverage

Background

- The need to provide health care coverage must be an adequate basis to initiate modification of a support order regardless of whether an adjustment to the actual support obligation is necessary.
- The federal rule deleted prior language that prohibited consideration of Medicaid as adequate to meet a child's health care.

Health Care Coverage

Background

- Including public coverage such as Medicaid and other state health care programs for children in low-income families gives states greater flexibility to ensure that medical support is being provided for all children.
- This does not mean Medicaid *must* be considered sufficient in every case; in some cases, it may not be sufficient to meet the child's needs.

Health Care Coverage

Background

A legislative change is necessary to:

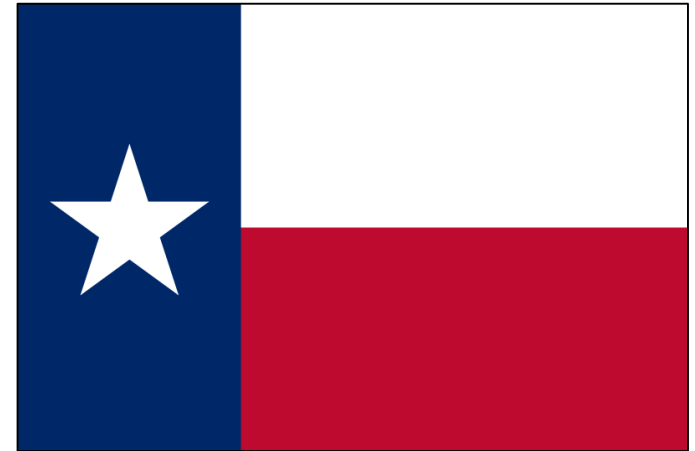
- Clarify that a change in health care coverage must be considered a material change in circumstances
- Ensure consistent treatment throughout the state



Health Care Coverage

Background

At its March 2021 meeting, the Panel asked staff to draft two proposals based on approaches used by Utah and Texas.



State	Statutory Language
Utah (any material change in coverage)	"A child support order can be modified by petition at any time if there is material change in the availability, coverage, or reasonableness of cost of health care insurance."
Texas (only if existing order does not require coverage)	"A court or administrative order for child support in a Title IV-D case may be modified at any time, and without a showing of material and substantial change in circumstances of the child or a person affected by the order, to provide for medical support or dental support of the child if the order does not provide health care coverage...or dental coverage as required."

Health Care Coverage

Current statutory language

Va. Code § 20-108. Revision and alteration of such decrees.

The court may, from time to time after decreeing as provided in § 20-107.2, on petition of either of the parents, or on its own motion or upon petition of any probation officer or the Department of Social Services, which petition shall set forth the reasons for the relief sought, revise and alter such decree concerning the care, custody, and maintenance of the children and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require.

Health Care Coverage

Current statutory language

Va. Code § 63.2-1921. Authority to initiate reviews of certain orders.

- C. A material change in circumstances shall be deemed to have occurred if the difference between the existing child support award and the amount which would result from application of the guidelines is at least 10 percent of the existing child support award but not less than \$25 per month.

Consider the following 3 options for additional language for §§ 20-108 and 63.2-1921(C):

Option	Applicability	Suggested Added Language: Va. Code §§ 20-108 and 63.2-1921(C)	Examples
1	Any change in health care coverage. (Similar to Utah)	<i>A material change in the availability, coverage, or reasonableness of cost of health care coverage for a child constitutes a material change in circumstances.</i>	Neither party had health care coverage when order is entered. 6 months later: no change in parties' income/circumstances, but mother has low-cost health care coverage available at her job now. Only changes guideline amount by 5%.
2	Only when existing order does not require health care coverage. (Similar to Texas)	<i>A court or administrative order for child support shall be modified at any time, and without a showing of a material change in circumstances, to provide for health care coverage of the child if the order does not provide health care coverage as required.</i>	Neither party has health care coverage available when order is entered. 6 months later, child is eligible for Medicaid.
3	Any change in health care coverage AND any case where existing order does not require coverage. (Combination of Utah and Texas)	<i>A court or administrative order for child support shall be modified at any time without a showing of a material change in circumstances to provide for health care coverage of the child if the order does not provide for health care coverage as required. A material change in the availability, coverage, or reasonableness of cost of health insurance coverage for a child constitutes a material change in circumstances.</i>	Father had low-cost health care coverage when order was entered, but his employer no longer offers insurance at a reasonable rate. Mother has low-cost health care coverage available to her. Change to guideline amount is less than \$25 if mother provides coverage.

Health Care Coverage

Additional suggested change to current statutory language

Va. Code § 63.2-1921. Authority to initiate reviews of certain orders.

- A. The Department [of Social Services] may, pursuant to this chapter and in accordance with 20-108.2, initiate a review of *the health care coverage and* the amount of support ordered by any court. If a material change in circumstances has occurred, the Department shall report its findings and a proposed modified order to the court which entered the order or the court that has current jurisdiction.

Health Care Coverage

Panel discussion & decisions

- Option 1, 2, or 3? (plus additional language for § 63.2-1921(A))
- Another option?



Imputing income

Background

Federal Rule Requirement

- If imputation is authorized, the guidelines must consider:
 - Noncustodial parent's (NCP's) specific circumstances (and custodial parent's (CP's) at state's discretion) to the extent known, including factors such as:

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

Imputing income

Background

Intent is to require a stronger focus on fact-gathering and setting orders based on evidence of actual income and ability to pay rather than on a standard imputed amount applied universally.



Imputing income

Background

- At its March 2021 meeting, the Panel decided to pursue a hybrid model using Delaware's statute as a guide.
- Delaware's hybrid approach uses federal rule language, Bureau of Labor Statistics data, and minimum wage.
- The Panel asked staff to draft proposed statutory language.

(d) Imputed income. -- Unemployment or underemployment that is either voluntary or due to misconduct, failure to provide sufficient documentation, or failure to appear for a hearing or mediation conference shall cause reasonable earning capacity to be imputed.

Current version:

Imputed income to a party who is voluntarily unemployed or voluntarily under-employed; provided that income may not be imputed to a custodial parent when a child is not in school, child care services are not available and the cost of such child care services are not included in the computation and provided further, that any consideration of imputed income based on a change in a party's employment shall be evaluated with consideration of the good faith and reasonableness of employment decisions made by the party, including to attend and complete an educational or vocational program likely to maintain or increase the party's earning potential.

Proposal - Make current version subsection (a) and add the following subsections:

(d) *(continued)* -- In determining whether actual employment is commensurate with training and experience and when imputing income, the Court shall consider each parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors. Except as provided in subsection (c) of this Rule, imputed income shall be calculated at not less than 40 hours of wages each week.

(b) Imputed income shall be determined by the specific circumstances of the parent, to the extent known and presented to the court, including such factors as the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, and other relevant background factors in the case.

(e) Wage surveys. -- The Court may take judicial notice of occupational wage surveys compiled by the United States Bureau of Labor Statistics (BLS) and the Office of Occupational and Labor Market Information (OOLMI) in the Delaware Department of Labor to impute or corroborate reasonable earning capacity.

(1) If a parent's reasonable earning capacity has not previously been established and the actual income expressed as an hourly wage exceeds the survey's "Entry" level wage (average of the lowest 30%) for the parent's occupation, then the rate of pay shall be presumed commensurate with the parent's training and experience.

(2) For imputation purposes, analysis should begin with the median wage for each occupation, but may be adjusted up or down between "Entry" and "Experienced" (average of the highest 70%) based upon the totality of the circumstances.

(c) Upon a party's request, the court may take judicial notice of occupational wage surveys and unemployment data compiled by the United States Bureau of Labor Statistics (BLS) in determining the specific circumstances of the parent set forth in paragraph (b).

N/A

(d) National Directory of New Hires records available in the Virginia Department of Social Services' automated system shall be admissible as evidence of current employment income or past employment and earnings history.

(f) Minimum income. -- In any instance not governed by subsections (b) or (c) of this Rule, every parent will be presumed to have a reasonable earning capacity of not less than the greater of the Federal or State statutory minimum wage at 40 hours per week (173.33 hours per month). As related to this subsection, when using the State statutory minimum wage, the Court will not utilize the statutory training wage or youth wage.

(See also (d) – "Except as provided in subsection (c) of this Rule, imputed income shall be calculated at not less than 40 hours of wages each week.")

(e) Every parent will be presumed to have a reasonable earning capacity of not less than the greater of the Federal or State statutory minimum wage. The number of hours worked per week shall be based on evidence considered in connection with paragraph b. The court shall apply this presumption when requested by the party seeking the income imputation.

(g) Unemployment. -- A person who receives unemployment compensation shall be presumed to have been terminated from employment involuntarily and without cause. Termination without receipt of unemployment compensation shall be presumed voluntary or for cause. Continued unemployment or underemployment in excess of 6 months shall be presumed voluntary.

(f) Termination of employment without receipt of unemployment compensation shall be presumed voluntary or for cause.

Imputing income

Unemployment issues

- Under Virginia law, ex-employees may be entitled to unemployment compensation even if they were fired for poor performance.
- Employer must prove:
 - *Willful* poor performance and not just actual poor performance
 - Deliberate violation of a rule
- Simple negligence does not rise to level necessary to justify a denial of unemployment benefits.

Imputing Income

Panel
discussion &
decisions

- Adopt proposed language?
- Other suggestions?



Incarceration

Background

- The federal rule requires that states not treat incarceration as voluntary unemployment for purposes of determining ability to pay when establishing or modifying a child support obligation.
- Goal: ensure that parties have realistic child support orders based on their actual present ability to pay.
- Virginia is one of only a few states that still consider incarceration to be voluntary unemployment.

Incarceration

Background

- [House Bill 2055](#) was introduced in the 2021 General Assembly Session to address this requirement.
- Amendment added an enactment clause that would have applied the provision only to orders entered on or after 7/1/21.
- Federal Office of Child Support Enforcement (OCSE):
 - Enactment clause would leave Virginia out of compliance
 - Must apply to all orders, not just those entered after a certain date

Incarceration

Background

- Due to OCSE's directive, DSS asked that the Governor strike the enactment clause.
- The Governor did not strike the clause but decided the bill would not go into effect unless re-enacted by 2022 General Assembly.
- This will require that a new bill be introduced in the 2022 Session.
- Legislation must be passed in 2022 for Virginia to be in compliance with federal law.

Incarceration

DCSE data

Virginia's Division of Child Support Enforcement (DCSE):

- Collects \$650 million annually
- Serves nearly 350,000 children – 1 in 5 children in the Commonwealth – and their parents
- Has more than 276,000 total cases

Incarceration

Impact of not passing legislation

Loss of federal funding

- \$76 million for child support program
 - 66% of DSS's total child support program funding
 - Without federal funding, DCSE could no longer operate
- Nearly \$60 million in reimbursement for TANF benefits paid (with stimulus intercepts)
- \$3 million in TANF funds

Loss of state employee jobs

- DCSE is the largest division in DSS with nearly 1,000 employees across the Commonwealth

Incarceration

Impact of not passing legislation

Loss of access to all federal collection tools including:

- Federal Parent Locator Service
- National Directory of New Hires
- Federal data matches
- Federal tax refund offsets
- Federal administrative offsets
- Passport sanctions (including ability to lift existing passport sanctions)
- Quarterly wage data

Incarceration

Impact of not passing legislation

Loss of access to all federal collection tools including:

- Federal child support portal tools
- Electronic income withholding orders and other electronic exchanges
- Federal technical assistance, training, or policy interpretation
- Federally certified computer system or funding to build it
- Performance incentives
- Intergovernmental cooperation required from other states
- Authority to assign support to the state for families in TANF or Foster Care programs so no retained collections

Incarceration

Panel discussion & decisions

- Recommend:
 - Supporting?
 - Opposing?
 - Taking no position?
- Other suggestions?



Child Tax Credit (CTC)

Background

- Initially established in 1997 to provide tax relief to families by providing a tax benefit for each qualifying dependent child.
- Funds are “a credit against the tax imposed” by the IRS in a given taxable year.
- [2021 American Rescue Plan](#) (ARP) expanded CTC to increase the amount and include a monthly payment option.

Child Tax Credit (CTC)

Background

To qualify for the full tax credit, filers must earn:

Earnings	Filing Status
Less than \$75,000	Single
Less than \$112,500	Head of household
Less than \$150,000	Jointly as married couple

Child Tax Credit (CTC)

Background

Prior to ARP

- Parents with children under 18 were eligible for up to \$2,000 per child annually.
- Parents could only claim the CTC in full when they filed a tax return.

Child Tax Credit (CTC)

Background

Under ARP

Eligible parents can receive:

- An increased amount based on child's age
- ½ of CTC in advance monthly installments

Child's Age	Total CTC	Advance Amount	Claim at Tax Filing
Under 6 years	\$3,600	\$1,800 (\$300/month)	\$1,800
6-17 years	\$3,000	\$1,500 (\$250/month)	\$1,500

Child Tax Credit (CTC)

Background

- Currently set to expire at the end of 2021.
- Unless a new law is passed, CTC will then revert back to \$2,000 per child with no advance payment option.



Child Tax Credit (CTC)

Background

- Not analogous to a stimulus payment.
- Represents only an early receipt of tax benefits, so advance payments are not taxable income.
- Advance monthly amount cannot be collected by DCSE since it is not income.

Child Tax Credit (CTC)

Action needed?

No statutory change is needed to address the expanded CTC because it:

- Is not income
- Is temporary
- Can be addressed with an existing deviation factor:
 - “Tax consequences to the parties including claims for exemptions, *child tax credit*, and child care credit for dependent children[.]” [Va. Code § 20-108.1\(B\)\(13\)](#)

Child Tax Credit (CTC)

Action needed?

- Questions and discussion



Panel's Final Report to Governor & General Assembly

- [Va. Code § 20-108.2\(H\)](#) requires the Panel to submit a report to the Governor and General Assembly by December 31, 2021.
- Staff will draft the report and distribute it to Panel members by email by October 31, 2021.
- Panel members can review the report, provide input, and suggest revisions by November 30, 2021.

Questions?



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