

**Virginia Child Support Guidelines Review Panel**  
**September 29, 2021**  
**1:00 p.m. – 4:00 p.m.**

**Meeting Minutes**

**Members Present (In Person):**

Craig M. Burshem, Deputy Commissioner of State Programs  
Delegate Karrie K. Delaney  
Daniel L. Gray, Esq.  
Delegate James A. (Jay) Leftwich, Jr.  
Valerie L’Herrou, Esq.  
Kimberlee H. Ramsey, Esq.  
The Honorable Edward A. Robbins, Jr., Chair  
Senator Scott A. Surovell

**Members Present (Virtual\*):**

The Honorable Deborah V. Bryan  
Dennis M. Hottell, Esq.  
Ryan Johnston  
Yvonne J. Nageotte  
Kim-marie A. Piggott-Brown

Delegate Don L. Scott, Jr.

**Members Not Present:**

Shawn Edwards

**Panel Staff Members Present:**

Mitchell Broudy, Sr. Assistant Attorney General  
Alice Burlinson, Sr. Assistant Attorney General  
Jen Krajewski, Policy Program Consultant  
Melody McKinley, Panel Administrator  
Anne Prentice, Assistant Attorney General

**Others Present:**

Barbara Lacina, Director of Division of Child Support Enforcement  
Josh Ours, Sr. Assistant Attorney General  
Delaney Perdue, Law Clerk to Judge Robbins

\*Please note: Members appearing virtually are not eligible to vote.

**I. Welcome and Introductions**

**All**

The Panel came to order at 1:13 p.m. Judge Robbins welcomed the Panel and new member Delegate Delaney.

**II. Federal Rule Requirements**

**Panel Staff**

Panel staff presented on three discussion points related to the 2016 federal rule, Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.

**A. Health care coverage as a basis for modification – Anne Prentice**

Background: The federal rule requires that the need to provide health care coverage for a child must be a basis for modification of a child support order regardless of whether an adjustment to the actual support obligation is necessary. A legislative change is required. Ms. Prentice presented three options.

Panel Discussion: The Panel discussed the concern of opening up all parts of the order due to a change in health care coverage. The Panel also discussed whether the current language is sufficient or if there is a way to limit the review to only health care. Adding health care coverage to Va. Code § 63.2-1921 would give the authority to the Division to initiate a review to add health care coverage whether or not there would be a change in the support obligation.

**Consensus:** The Panel recommends that the term “health care coverage” be added to Va. Code § 63.2-1921(A): “The Department may, pursuant to this chapter and in accordance with § 20-108.2, initiate a review of *health care coverage* or the amount of support ordered by any court.” Unanimous vote.

### **B. Imputing Income – Mitch Broudy**

Background: The federal rule requires that, if imputation is authorized, the guidelines must consider multiple factors. The intent is to require a focus on fact-gathering and orders based on ability to pay. At the March 2021 meeting of the Panel, the consensus was to pursue a hybrid model using Delaware’s statute as a guide. Mr. Broudy presented proposed legislative changes following that model.

Panel Discussion: The panel discussed a number of concerns regarding the proposal including:

Imputed income (b) – The Panel has concerns regarding the use of “shall” in this language. The suggestion was that the first sentence should be split into two sections to alleviate some of the concern. A further edit was suggested to remove “known and.”

Occupational wage surveys (c) – The Panel raised concerns about the language that provides authority for the court to take judicial notice of such surveys or data compiled by the U.S. Bureau of Labor Statistics. This could create an access to justice issue where those who are not represented by counsel are at a disadvantage.

New hire information (d) – The Panel had concerns about access to this information outside of the Department of Social Services.

Minimum wage (e) – The Panel discussed that at this time the State minimum wage is higher than the federal minimum wage. In addition, there are concerns about the language providing for the presumption that every parent has a reasonable earning capacity. The suggestion was made to change this language to indicate a rebuttable presumption. The minimum wage changes proposed are not required by the federal regulation.

Unemployment (f) – The Panel had concerns about making any presumptions based on information received from unemployment. The proposed changes in this section are not required by the federal regulation.

In addition, the Panel had some overarching concerns about ensuring that parties can depend on the results of actions in court.

**Consensus:** The Panel reached an agreement to go forward with subsection (b) with the removal of “known and.” In addition, the language should require the court to communicate its reasons for a decision. The Panel agreed unanimously.

The Panel deferred action on the remaining items, which are not required by the federal rule, to the next Panel.

### **C. Incarceration as Voluntary Unemployment – Alice Burlinson and Barbara Lacina**

Background: The federal rule requires that states not treat incarceration as voluntary unemployment when establishing or modifying a child support order. Legal issues regarding this change have been

discussed at length in previous meetings of the Panel. Ms. Lacina presented a summary of the impacts to the child support program if the Commonwealth does not pass legislation that complies with the federal regulation.

Panel Discussion: The Panel voiced many of the same concerns as in previous meetings. The Panel appreciates the impact that will be felt by the Commonwealth if the Code of Virginia is not changed during the upcoming General Assembly session. Some Panel members indicated disagreement with the policy and raised concerns about the constitutionality of the proposal. Mr. Gray, chair of the Family Law Coalition, advised that the Coalition recently decided it would oppose the proposal solely on policy grounds. The Panel also discussed the small number of cases that would be affected in comparison to the potential impacts of noncompliance. While there are concerns about parties' rights, Panel members also indicated faith in the court system to do what is right for individuals.

Consensus: Judge Robbins voted present and did not participate in discussion as this is a policy issue.

A motion to support the child support proposal on incarceration was made. The Panel discussed and determined the motion did not provide enough information to allow for a vote. A revised motion was proposed to support a bill with language matching Delegate Scott's HB 2055 from the 2021 General Assembly Session without the enactment clause. The motion failed on a vote of 2-5-1.

### **III. Other Issues**

**Alice Burlinson**

#### **A. Child Tax Credit**

The Panel asked at its March 2021 meeting that staff provide information on the temporary child tax credit under the American Rescue Plan (ARP) Act and whether child support guideline updates may be needed.

In general, the child tax credit is an amount credited against tax imposed. Prior to the recent change under the ARP, the child tax credit was \$2,000 annually applied on an annual tax return. Congress has enacted temporary changes to the tax credit to provide for receipt of a portion of the credit as a monthly payment with the remainder to be claimed on the annual tax return. In addition, the amount of the credit has been changed to \$3,600 for children under age 6 and \$3,000 for children age 6-17. The change is set to expire at the end of this year.

The child tax credit is not analogous to a stimulus payment and is not income. Va. Code § 20-108.1(B)(13) already provides a deviation factor that includes the child tax credit. No change to the guidelines is needed at this time.

Discussion: The Panel discussed and determined that if Congress extends the child tax credit in its current form, further discussion may be needed regarding possible updates to the guidelines. This item will be carried forward to the next Panel as needed.

#### **B. Panel's Report to the Governor and General Assembly**

The Panel's Report is due to the Governor and General Assembly by the first day of the 2022 General Assembly session, which is January 12, 2022. Staff will draft the report and distribute to Panel members by email no later than October 31, 2021. Panel members are asked to review the report and provide

input or suggest revisions by November 30, 2021. Staff plans to submit the report to the Governor and General Assembly by December 31, 2021.

#### **IV. Next Steps**

**All**

See Panel Report plan above.

#### **V. Administrative Matters**

**All**

##### **A. Attendance, travel/parking, etc.**

Attendance of legislative Panel members will be reported to the appropriate clerk's offices for payment of per diem. Travel reimbursement forms were made available to all Panel members who appeared in person.

##### **B. Questions**

None.

#### **VI. Adjourn**

**All**

The Panel adjourned at 4:08 p.m.

##### **Action Items for Panel Members:**

Review the draft report when received and provide feedback as necessary.

##### **Action Items for Staff:**

Prepare draft report and provide to Panel for review.