

Virginia Child Support Guidelines Review Panel
October 26, 2020
1:00 p.m. – 4:00 p.m.
Virtual Meeting via Zoom

Meeting Minutes

Members Present:

The Honorable Deborah V. Bryan
Craig Burshem, Deputy Commissioner of State Programs
Valerie L’Herrou, Esq.
Dennis M. Hottell, Esq.
Delegate James A. (Jay) Leftwich, Jr.
Yvonne J. Nageotte
Kim-Marie A. Piggott-Brown
Kimberlee H. Ramsey, Esq.
The Honorable Edward A. Robbins, Jr., Chair
Delegate Jennifer D. Carroll Foy
Delegate Don L. Scott
Senator Scott A. Surovell

Members Not Present:

Shawn Edwards
Ryan Johnston

Panel Staff Members Present:

Juliet Bates, Assistant Attorney General III
Mitchell Broudy, Sr. Assistant Attorney General
Alice Burlinson, Sr. Assistant Attorney General,
DCSE Director of Legal Operations
Jen Krajewski, DCSE Policy Program Consultant
Melody McKinley, Panel Administrator
Anne Prentice, Assistant Attorney General III

Others Present:

Barbara Lacina, Director of Division of Child
Support Enforcement
Sandy Tobias, Office of the Attorney General,
Child Support Section Paralegal

I. Welcome

All

Judge Robbins welcomed the Panel.

II. Introductions

All

Members and staff introduced themselves. Craig Burshem introduced Barbara Lacina as the new Director of the Division of Child Support Enforcement.

III. Federal Final Rule Requirements

Juliet Bates

Juliet Bates led the presentation on the 2016 federal final rule requirements, which must be enacted by the end of 2023. The Panel’s report to the General Assembly is due in December 2021. Judge Robbins led the discussion of each of the five decision points below.

Panel Decision Point 1: Ability to Pay – The final rule requires that the guidelines must provide that child support orders are based on a noncustodial parent’s (NCP) earnings, income, and other evidence of ability to pay. The Panel agreed that the current guidelines already address this requirement. There was a recommendation that DCSE, rather than the Panel, propose any legislation, if necessary. No action is required by the Panel. There was also a consensus that adding a statutory definition of ability to pay is unnecessary.

Panel Decision Point 2: Low-Income Adjustment – The final rule requires that the guidelines must consider basic subsistence needs of NCPs with limited ability to pay by incorporating a low-income adjustment.

The Panel that recommended updating the guidelines schedule in 2013 also decided not to include a self-support reserve. Instead, that Panel recommended adding language to allow that, if an obligor’s gross income is equal to or less than 150% of the federal poverty level, the court, upon hearing evidence that there is no ability to pay, may set the obligation below the presumptive statutory minimum provided that doing so does not result in an obligation that seriously impairs the custodial parent’s ability to provide adequate housing and other basic necessities for the child. This addresses the low-income issue. The federal government has previously indicated that it does not consider this sufficient; however, DCSE may need to ask for a formal opinion. A question was raised of whether the Panel could use the cost of living index or some other benchmark to account for regional differences; however, under federal law, the same set of guidelines must be applied statewide.

Panel Decision Point 3: Imputing Income – The final rule requires that if imputation is authorized, the guidelines must consider the NCP’s specific circumstances.

There was discussion regarding whether there is government data that could be used in place of expert witnesses. The Panel needs to keep in mind DCSE cases versus self-represented litigants. The Panel voiced concerns about the time and experts required for such an in-depth analysis. The consensus was to recommend codifying an unpublished 2013 Court of Appeals case, [Milam v. Milam](#), which requires evidence for imputation. Panel staff will conduct further research to determine how other states have approached this requirement.

Panel Decision Point 4: Incarceration as Voluntary Unemployment – The final rule requires that incarceration may not be treated as voluntary unemployment in establishing or modifying child support obligations.

This is a policy decision. While the federal rule only applies to IV-D cases (DCSE cases), a statutory change that applies only to DCSE cases would result in different treatment of incarcerated parents. Virginia is one of only a few states that does not permit modification or suspension of child support orders during periods of incarceration ([Child Support and Incarceration](#), National Conference of State Legislatures, March 4, 2019). Possibilities include a reduction to the statutory minimum or pausing the order during incarceration. The consensus is to go forward with some form of relief and recommend overturning the current case law. A recommendation was also made to include language to provide complete relief including from civil show causes for nonpayment during and directly following incarceration. Judge Robbins and Judge Bryan took no part in the Panel discussion concerning the policy aspects of this issue.

Panel Decision Point 5: Health care as a basis for review – The final rule requires that health care needs must be an adequate basis to initiate review and adjustment of a child support order regardless of whether an adjustment to the support obligation itself is necessary.

The Panel raised concerns about the impact on the court’s docket. There would likely be an influx of cases. Panel staff will research the intent of this provision and how other states are handling it.

IV. Other Suggestions for Panel Review

All

None.

V. Administrative Items

All

- a. Resignation of Panel member, Lawrence (Larry) D. Diehl, Esq. Letter of resignation is attached and incorporated by reference.
- b. Future meetings: Panel staff will coordinate possible dates after the General Assembly session with legislators and send a Doodle survey to Panel members.
- c. Questions: None.

VI. Adjourn

The Panel adjourned at 3:44 p.m.

Action Items for Panel Members:

- Legislators: provide available March dates to the Panel administrator for next meeting.
- Other members: respond to Doodle poll regarding next meeting date.

Action Items for Staff:

- Research how other states are using imputation criteria. Are there specific and measurable methods that can be used for benchmarking imputation criteria?
- Research what other states are doing regarding the incarceration issue.
- Look at the comments to the federal rule for guidance on the reasoning behind the required health care change.
- Research how other states have addressed the health care change.
- Coordinate meeting dates with the legislative panel members and send a Doodle survey to the Panel members to select a date for the next meeting.