

MARYLAND CHILD SUPPORT GUIDELINES: REVIEW OF CASE-LEVEL DATA

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INTRODUCTION

Federal law and regulations require that, at least every four years, each state must review its child support guidelines and revise them, if appropriate, to "ensure that their application results in the determination of appropriate child support amounts" (CFR 302.56(e)). In carrying out the review, states "must consider economic data on the cost of raising children and analyze case data...on the application of, and deviations from, the guidelines" [CFR 302.56(h)]. Maryland law [Family Law Article § 12-202(c)] also requires that the Child Support Enforcement Administration (CSEA) of the Department of Human Resources periodically - at least every four years - "review the guidelines to ensure that the application of the guidelines results in the determination of appropriate child support award amounts". The Administration is required to "report its findings and recommendations to the General Assembly".

To carry out its guidelines review for the period 1993-95, the Child Support Enforcement Administration, Maryland Department of Human Resources used a bifurcated approach. It contracted with the School of Social Work, University of Maryland to assist its staff with the design and collection of data for the federally-mandated case-level portion of the study. The School also agreed to arrange for the macro-economic component - the review of the guidelines themselves mandated by federal and state law - to be carried out by Dr. Robert G. Williams of Policy Studies, Inc., who has provided technical assistance to more than 40 states in guidelines development and updating.

Pursuant to the federal and state requirements, the purpose of the macroeconomic guidelines review was to determine if the Maryland schedule was still appropriate or needed revision based on new child-rearing cost data, changes in federal, state or local income taxes and the like or, in the language of the Family Law Article, "to determine if application of the [current] guidelines resulted in...appropriate child support award amounts".

The report on the review of the guidelines schedule has been completed and, as required, will be submitted to the General Assembly.¹ Today's report is submitted pursuant to the federal requirement that case-level data also be periodically reviewed. It presents findings obtained from review of a random sample of 500 Maryland child support cases in which orders were established or modified in 1993, 1994 or 1995.

¹Robert G. Williams, David Price and Jane Venohr (1996) Economic Basis for Updated Child Support Schedule: State of Maryland, Denver: Policy Studies, Inc.

BACKGROUND

Until the mid-1980s most child support awards in this country were set on a case-by-case basis, in accordance with broadly enunciated principles of family law and judicial attempts to analyze parental resources and children's needs in each specific situation.² That situation began to change with passage of the Child Support Enforcement Amendments of 1984 (P.L.98-378) which required each state to develop a set of numerical guidelines to determine support amounts and make those guidelines available to administrative and judicial authorities who set support awards. Initially, however, those guidelines could be either binding or advisory only³ and about half the states chose the latter. There were also reports that many of these initial guidelines merely codified existing state practices which had historically resulted in inadequate awards.⁴

For these and other reasons, the Family Support Act of 1988 (P.L.100-485) made a number of substantive changes related to support guidelines. First, by October 13, 1989 it was mandated that each state would provide that "there shall be a rebuttable presumption that, in any judicial or administrative proceeding for the award of child support, the amount of the award which would result from application of the guidelines...is the correct amount of child support to be awarded" (CFR 302.56(f)). A second major strengthening of the guidelines provisions was the federal mandate that each state periodically (at least once every four years) review its guidelines schedule and revise it if need be in accordance with economic and case data (CFR 302.56(h)).

²Robert G. Williams, (1994) "An Overview of Child Support Guidelines in the United States," in Child Support Guidelines: The Next Generation, Haynes (ed.), Washington, D.C.: Office of Child Support Enforcement: 1.

³G. Diane Dodson, (1994) "Children's Standards of Living Under Child Support Guidelines: Executive Summary," in Child Support Guidelines: The Next Generation, Washington, D.C.: Office of Child Support Enforcement: 95.

⁴Marilyn Ray Smith, (1994) "Guidelines and Periodic Review and Adjustment," in Child Support Guidelines: The Next Generation, Washington, D.C.: Office of Child Support Enforcement: 72.

In mandating adoption, use and periodic review of presumptive guidelines, the federal government had three broad objectives:

- 1) To enhance the adequacy of orders for child support by making them more consistent with evidence on the costs of child rearing;
- 2) To improve the equity of orders by assuring more comparable treatment for cases with similar circumstances; and
- 3) To improve the efficiency of adjudicating child support orders by encouraging voluntary settlements and reducing the hearing time required to resolve contested cases.⁵

A. Types of Guidelines

Within the tightened guidelines parameters created by the Family Support Act and implementing regulations, however, states still have a great deal of flexibility. There are no restrictions, for example, on the type of guidelines that states may adopt or the levels of orders that result.⁶ Thus, while all states have presumptive guidelines in place, there is no standard methodology or formula in use in all states at this time. There are also no specific federal restrictions on the number or nature of reasons states may adopt as criteria for deviations from the guidelines. As a result, the range of permissible reasons which both raise and lower the guideline amount exists across the nation. As of March, 1993 a review of guidelines on file at the federal Office of Child Support Enforcement indicated that there were almost 50 different criteria being used and that the pattern across states varied widely.⁷

⁵Robert G. Williams, op.cit.: 1.

⁶Ibid: 2.

⁷David Arnaudo, "Deviation from State Child Support Guidelines," in Child Support Guidelines: The Next Generation, Washington, D.C.: Office of Child Support Enforcement, April, 1994: 86.

With regard to the basic approaches to guidelines, there are three basic models, each of which is used in more than one state.⁸ The three models are generally known as: Percentage of Income; Melson-Delaware; and Income Shares.⁹ Each of these models is briefly described below, but readers are cautioned that these general descriptions do not take into account the many variations on/adjustments to the general form of the models which exist within the states.¹⁰

1. Percentage of Income

The percentage of income approach is conceptually the simplest of the three approaches since it generally bases the support award solely on the income of the non-custodial parent; there is no adjustment for the earnings/income of the custodial parent. The percentage-of-income approach is used in about 16 states and territories; perhaps the two most widely known of these models are those in Wisconsin and Minnesota.¹¹ The essential premise of the percentage of income approach is the economic assumption that, in two parent households, a determinable and fixed percentage of parental income is typically spent on children. Using data from analyses of two-parent households' expenditures on children, the percentage is established (varying by number of children); in the general model, this percentage of the non-custodial parent's income is awarded as the child support amount.¹²

⁸Some had thought that the federal welfare and child support reform bill (i.e., The Work Opportunity.....Act) might require adoption of a national guidelines standard, but this turned out not to be the case.

⁹U.S. General Accounting Office (1993). Child Support Assurance: Effect of Applying State Guidelines to Determine Fathers' Payments. Washington, D.C.: General Accounting Office: 25-27.

¹⁰Variations exist, for example, with regard to whether a state uses gross or net income, whether child care expenses are considered part of the basic support obligation or are treated as an add-on, the extent to which -if at all -there are formulaic adjustments related to visitation, whether or not the existence of other dependents is included in the formula or as a deviation criterion and so forth.

¹¹For one of many studies of the Wisconsin approach see, for example, DelBoca and Flinn, Welfare Effects of Fixed and Percentage-Expressed Child Support Awards, Madison: Institute for Research on Poverty, August, 1994.

¹²Dodson, op.cit.: 96.

2. Melson-Delaware

This model is least common across the United States, though it is used in Delaware and a few other states. Initially developed by Judge Elwood Melson for use in his own courtroom, the Melson formula has been in statewide use in Delaware since 1979 and was the first presumptive child support standard to be used on a statewide basis.¹³ The model is based on the following principles, as outlined in a recent report by the Delaware Family Court Judiciary:

- (1) Each parent is entitled to keep a minimum amount of income for their basic needs.
- (2) The child(ren)'s basic needs are taken care of before the parents may retain any other income.
- (3) If income is available after the primary needs of the parents and the child(ren) are taken care of, the child(ren) are entitled to share in any additional income of the parent.¹⁴

The Melson-Delaware approach is similar to the income shares method in that determining the income of each parent is the point of beginning. Under Melson-Delaware, however, a "self-support reserve" is then subtracted from each parent's income, the reserve meant to represent the minimum amount that an adult needs to meet his or her own needs.¹⁵ After the reserve is subtracted, primary support needs of the child(ren) are computed, this amount likewise meant to represent the minimum amount necessary to raise the child(ren) at subsistence level. In general, when there is income remaining after these primary need calculations, a standard of living adjustment (SOLA) is made "to give the child(ren) a share in each parent's economic well-being

¹³Robert G. Williams (1994) op.cit.: 6.

¹⁴Judge Vincent J. Poppiti (1994) The Delaware Child Support Formula: Evaluation and Update, Wilmington: Family Court Judiciary: Appendix.

¹⁵As an example, in mid-1994 the Delaware Family Court Judiciary recommended a self support reserve or allowance for each parent of \$620 per month, an amount based on the assumption of full-time work at the then minimum wage \$4.25/hour.

similar to what the child(ren) would have received if the parents had remained together".¹⁶

3. Income Shares

The income shares model was the most common approach initially adopted by states (n=27 in 1989) and, since that time, several other states have also switched to this approach. At present, an income shares method is used in 34 states or territories, including Maryland. The bedrock premises of the income shares approach are:

- (1) The child should receive the same proportion of parental income that he or she would have received if the parents lived together.
- (2) In an intact household, the income of both parents is generally pooled and spent for the benefit of all household members, including any children.
- (3) A child's portion of such pooled expenditures includes spending for goods used only by the child, such as clothing, and also a share of goods used in common by the family, such as housing, food, household furnishings and recreation.¹⁷

Consistent with these premises, this model takes the income of the custodial as well as the non-custodial parent into account in determining the basic support obligation. This is accomplished, in essence, by summing parents' incomes and considering the number of children involved. To the primary support obligation resulting from this calculation are added any actual child care costs and extraordinary medical expenses.¹⁸ In general, the resulting total support obligation is then pro-rated between the parents based on their incomes.¹⁹

¹⁶Delaware Family Court Judiciary (1994), Instructions for Child Support Calculation: Preface, Form 509 Instructions, Wilmington, 1994: 1.

¹⁷Robert G. Williams (1987) Development of Guidelines for Child Support Orders, Part II, Final Report. Denver: Policy Studies, Inc.: II-69.

¹⁸A few income shares states handle child care and extraordinary medical expenses differently, but most do approach them as "add ons" to the basic support obligation.

¹⁹Dodson, op.cit.: 96.

B. Guidelines in Maryland

In response to the federal requirement to develop a uniform, statewide approach to the establishment of child support amounts Maryland, like the majority of states and territories, adopted the income shares approach. This was the approach developed and recommended for all states by the Child Support Guidelines Project, funded by the federal Office of Child Support Enforcement and administered by the National Center for State Courts. The fundamental principles of the Maryland income shares approach, as articulated by the Child Support Enforcement Administration, sound very much like those of the national guidelines advisory body.

- (1) All children have a right to receive support from their parents.
- (2) Both parents share responsibility to support their children. While the custodial parent provides valuable resources in the form of physical and emotional care, this does not relieve the parent of the responsibility to contribute to the financial support of his or her children.
- (3) The support due each child is based on the parents' respective financial resources, the needs of the child, and the standard of living the child would have enjoyed if the parents and child were living in an intact household.²⁰

Within these parameters, the Maryland income shares model has the following important features. It does incorporate a self-support reserve (essentially equal to the one-person poverty level, about \$480/month) and has done so since the original adoption of the presumptive guidelines.²¹ Also, child care, transportation, education and extraordinary medical expenses are not calculated as part of the basic support obligation, but are treated as add-ons when applicable. In addition, the model "recognizes two custody arrangements:

²⁰Child Support Enforcement Administration (1995) Child Support Guidelines Booklet. Baltimore: Department of Human Resources: 2.

²¹However, the reserve amount has not been adjusted in recent years to reflect changes in the poverty level. Adjustment to the reserve has been recommended by Policy Studies, Inc.

'sole physical custody' and 'shared physical custody' and makes adjustments based on same.²²

Consistent with federal and state requirements, Maryland must periodically review its guidelines and, if appropriate, revise them based on current economic data on child-rearing costs and other factors. The present review covers calendar years 1993 through 1995 and has been conducted in two parts. As noted, the macroeconomic review required by federal and state law was done by Policy Studies, Inc. Their report, Economic Basis for Updated Child Support Schedule, addresses the core of the guidelines, the Schedule of Basic Child Support Obligations and does propose some modifications to that Schedule. The remainder of this report describes the federally-mandated case-level review. This project was carried out by the Child Support Enforcement Administration, DHR with technical assistance from the School of Social Work, University of Maryland at Baltimore.

²²Child Support Enforcement Administration, op.cit.: 4.

STUDY DESIGN & METHODOLOGY

A case record review of a random sample of child support cases was chosen as the method for examining the use of the child support guidelines during the most recent review period (1993-95). The following paragraphs describe how the sample was selected, the data collection instrument, and the case record review procedure.

A. Sample

The study population was defined as all cases in which a support order was established or an existing order was modified to increase or decrease the amount of support during calendar years 1993, 1994 or 1995. Before drawing the study sample it was necessary to determine the number of cases needed for a valid and representative sample. During calendar years 1993-1995, 51,910 new child support orders were established. The number of modifications completed during this period was not available because conversion to the new automated system was still in progress. With technical assistance from the School of Social Work, it was decided that, to compensate for this "missing" data, the sample would be constructed such that - even if there had been twice as many modifications as new orders - study results would still lie within conventionally accepted statistical parameters (i.e., confidence level and sampling error).

To determine appropriate sample size when one's interest is learning the extent to which a certain event (i.e. guidelines are used in establishing or modifying orders) occurs in a population three questions must always be answered.²³

1. How much confidence does one want to have in the results?
2. How much sampling error is acceptable?

²³Arkin, Herbert and Raymond Colton (1963) Tables for Statisticians. New York: Barnes and Noble.

3. What is the estimated proportion of cases of the event in the population?

The first question refers to the "confidence level." In most scientific research a confidence level of 95% is considered standard. This means that if random sampling is used there is a 95% chance that the sample selected will be representative of the population from which it was drawn. The second question refers to how much, on average, sample results will vary from the population. For the current study a sampling error of 5% - also the traditional level in research - was chosen meaning that all results are expected to lie within $\pm 5\%$ of the true population values. For the present study the final question, incidence of the event in the population (i.e., use of the guidelines), was in fact one of the research questions. To determine the correct sample size an estimate that the guidelines are used in 50% of the cases was used. This is the most statistically conservative estimate and results in a larger, rather than smaller, sample size.

With these figures it was determined that a sample size of 500 cases would be more than adequate to answer the research question within the statistical parameters chosen. To ensure that the sample was representative of the entire state and that it included at least some cases from each local jurisdiction, it was stratified by county. The number of cases to be drawn in each county was calculated by multiplying the total sample size (500 cases) by the proportion of child support orders established in Maryland between 1993 and 1995 that were established within that county (see Appendix A). For example, St. Mary's county accounted for 1.64% of the child support orders established in Maryland during the study period. Multiplying 1.64% by the total sample size of 500 resulted in a sample size of eight cases for St. Mary's.

Following similar calculations for each local subdivision, a universe/population list was created by the School for each local agency. Cases were included on the lists if they met the following criteria as specified by the CSEA guidelines expert:

1a) A final order for current support was established in 1993, 1994, or 1995; **OR**

b) A modification to either increase or decrease the support ordered amount (SOA) was done in 1993, 1994, or 1995; **AND**

2a) The case was either AFDC or non-AFDC, state or federal foster care, or a responding URESA case; **AND**

b) The case had a criminal, civil, equity, non-support, or paternity and support order.

For each jurisdiction sample cases were drawn randomly by School of Social Work researchers either from a hardcopy or computerized version of the universe/population list for each local support agency. In addition, a list of oversample cases was also drawn randomly for each jurisdiction; these cases were to be used for the case record review in the event that a sample case could not be found or was not available on the day of the site visit.

B. Data Collection Instrumentation & Procedure

Data were abstracted from case records using a data collection form developed collaboratively by SSW and CSEA staff. All data were collected on-site in local support offices by a CSEA staff member or a School of Social Work researcher. Before formal data collection began, all staff pilot-tested the data collection form to ensure they were coding data in the same way.

Prior to the site visits, child support staff in each jurisdiction were given lists of sample and oversample cases; in most instances, a local agency staff person pulled case records and ensured that all records contained a copy of the support order and a completed guidelines worksheet. Completed data collection forms were returned to SSW where they were entered into an SPSS/DE database and analyzed.

FINDINGS & RECOMMENDATIONS

What did we learn as a result of this case level review, what conclusions did we reach, and what if any recommendations arise from these findings? These questions are addressed in this chapter of the report.

A. Findings

Answers to the question "what did we find?" are many and not always as straight-forward as one might think. The most important of the findings are listed below; discussion follows each item listed.

1. The vast majority of cases where the support-ordered amount differed from the guidelines-calculated amount (i.e., cases with a literal "deviation" of at least \$1 per month) were cases resolved via consent agreements, rather than cases referred to the court for adjudication.

Seventy percent of all sample cases in which the support award amount was at least \$1 more or less per month than the guidelines-calculated amount were consent cases (which, in fact, represented 70% of the entire sample). Altogether, 40% of all consent cases had an award amount which was different than the guidelines amount.

At first glance these figures may seem high, but they are consistent with existing CSEA policy concerning negotiating consent agreements. Specifically, Section 8.10(E)13-c2 says that the negotiator may deviate from the guidelines when "all parties agree on a support obligation amount". By saying that "if agreement cannot be reached by all parties, the matter shall be referred to the court for trial and adjudication", that same policy also seems to explicitly indicate that attempts to negotiate consent agreements should be made in all cases. Likewise, encouraging voluntary settlements and reducing court time was one of the three broad objectives of the federal guidelines mandate.

2. In consent cases in which the award amount was not the same as the guideline amount, the deviations all appeared to be for acceptable reasons.

Consistent with the nature of consent agreements, the most common reason by far for deviations in these cases was that all parties agreed to the support award amount. This reason was cited in 88% of all "deviating" consent cases. The second most commonly noted reason was that one of the parents resided with another child to whom (s)he also owed a duty of support. While second in frequency of occurrence, however, this reason was found in only 9% percent of consent cases with a deviation. Few other reasons were common. In two cases "use of family home or payment of mortgage" was the cited factor; in one case each the stated reason for the deviation was "extraordinary medical expenses of child" and "payment of marital debt".

What about the minority of cases in our sample (30%) that were not resolved via the consent process, but instead had their award amounts decided by the court? Here the picture was somewhat less clear, perhaps because some of the information needed was contained in court files which were not reviewed as part of this project. Additional findings specific to this cohort of cases are as follows.

3. Of adjudicated cases in our sample (30%), the rate of literal "deviation" (a difference of \$1 or more per month) was about 40%. The reasons for these variations were not available in the support agency file in a sizable minority of cases.

In about four of 10 adjudicated cases, the amount of the child support award differed from the guidelines calculation by at least \$1 per month (up or down). In many of these cases (about 45%), we were unable to determine the precise reason for the deviation. Given the adequacy and completeness of the documentation found in agency files in non-adjudicated cases we think that, in retrospect, this latter finding is probably attributable at least in part to a flaw in study design: the decision not to attempt to examine court files. This hypothesis is supported by the authors of an in-press national guidelines study who commented that "reasons were not documented in case records; however, they may be attributable to a variety of causes such as incomplete documentation of facts or **decisions contained only in the oral record for the**

case" [emphasis added].²⁴ The recommendations section of this report offers several suggestions so as to avoid this problem in future guidelines reviews.

4. Excluding cases where the reason for the deviation was not available in the file, adjudicated cases were both similar to and different from consent cases in the frequency with which various reasons were given for the deviation.

In adjudicated cases with deviations, as was true for consent cases with deviations, the most commonly documented reason was that all parties agreed. The number two reason cited in adjudicated deviation cases was also the same as the number two reason noted in consent cases: presence in the home of (an)other child(ren) to whom a parent also owed a duty to support.

Perhaps reflecting differences in the frequency with which cases with different characteristics or circumstances are likely to be resolved via court versus the consent process, we also found several reasons listed in court cases that did not show up in consent cases. In particular, although the numbers were small, the third and fourth most commonly cited reasons in court deviation cases were "absent parent unemployed or without significant income" and "other", respectively.²⁵ In one court case the notation was made that the absent parent was "on DSS/SSI".²⁶ In another court case from Baltimore City, there was notation of "10% reduction".²⁷

5. Whether consent cases or adjudicated cases, when "deviations" occurred, they were more likely to result in a lower award than in a higher award. In the vast majority of both upward and downward deviation cases, however, the orders were obtained by consent of all parties.

6. Amounts by which awards differed from the guidelines calculations did vary depending on whether the award was higher or

²⁴Margaret Campbell Haynes, Executive Summary, Washington, D.C.: CSR, Inc., 1996: ES-2.

²⁵Curiously, in two of the "AP unemployed or without substantial income" cases, the deviation was upward. The three cases listed as "other" appear not to have been based on acceptable reasons and/or to have represented errors in use of the guidelines. Two involved an allowance for medical insurance, the other deviated because the AP's self-employment costs were not verified.

²⁶According to the Family Law Article, income from means-tested programs should not be considered income for purposes of the guidelines.

²⁷We understand this may be a long-standing City practice, to offer the obligor a "10% reduction" as a means to promote achieving a consent agreement.

lower than the guidelines amount. The "deviation" amounts tended to be greater when the award amounts were higher than the guideline than when the award amount was lower than the guideline amount.

When a literal deviation in the support award of at least \$1 per month (up or down) from the guideline amount was found, it was most likely to represent a lower (65% of cases), rather than higher (35% of cases), amount than resulted from the application of the guideline. In both types of cases, however, the majority of records revealed that the award amounts had been arrived at via the consent process, rather than adjudication by the court. Among all cases with lower awards, the proportion that were consents was 66%; among those with awards higher than the guidelines, the proportion was 79%.

We also examined the monthly dollar amounts by which both types of "deviation" awards differed from the monthly amount obtained via the guidelines calculations.²⁸ In the vast majority of all cases where the support award differed from the guideline figure, the amount of the difference was \$200 or less per month. The proportions were 87% for cases with higher awards and 89% for cases with lower awards. However, the modal or typical case in each group was different. In cases where the award was lower than the guideline, the most common situation, observed in 43.5% of cases, was where the award amount was between \$1 and \$50 less (per month) than the guideline figure; in fully 70% of cases with lower awards, the award amount was between \$1 and \$100 less than the guideline figure. When the support award was set at a level higher than the guideline figure, the most common situation (45% of cases) was that where the award was between \$101 and \$150 higher than the calculation resulting from the guideline. In contrast to the 43.5% of lower award cases where the "deviation" amount was \$50 or less, only 18.8% of higher award cases "deviated" by \$50 or less.

7. Comparing the characteristics of the sample against the characteristics of cases with deviations (including consent agreements where the "deviation" occurred because "all parties agreed"), we find no evidence of differential application of the guidelines by case type, sub-type, etc.

²⁸All guideline and award amounts were converted to monthly figures for purposes of analysis.

The primary purpose of child support guidelines in general is to promote equity in the setting of support award amounts.²⁹ While most attention has been focused on equity as it pertains to custodial and non-custodial parents, one should also be concerned about equity or impartiality in the application of guidelines in cases of different types (e.g., AFDC vs non-AFDC, paternity vs civil).

To examine whether or not the guidelines seemed to have been impartially applied, we compared the distribution of various case characteristics in the total sample against the distribution of those characteristics in the cohort of cases with "deviations" (including cases where all parties agreed to the award amount). Specifically, Table 1 on the next page presents statistical comparisons of all deviation and non-deviation cases on five case characteristics: case type, case sub-type; type of order; type of action; and jurisdiction. Four of the five comparisons failed to yield statistically significant findings. That is, deviation cases do not differ from non-deviation cases on case type, sub-type, type of order (consent vs adjudicated) or type of action (new order vs modification). Deviations are just as common in AFDC cases as non-AFDC cases; orders obtained via the consent process are just as likely to be consistent with the guidelines as are adjudicated cases. AFDC cases, to illustrate, represented 49% of all sample cases and 53.5% of all cases with "deviations". Similarly, paternity cases accounted for 48% of the sample and 46.5% of cases with "deviations". The observed differences were not statistically significant and, it does not appear from these data that there is any systematic bias in the application of or deviation from the Maryland guidelines.

There is one exception to this, however. That is, as shown in Table 1, during the review period (1993-95), deviations were significantly more likely to occur in Baltimore City than in all other jurisdictions. Ascertaining the reasons for this finding is beyond the scope of this report, but the finding

²⁹See for example, Nora Schaeffer, Principles of Justice in Judgments About Child Support, Madison: Institute for Research on Poverty, December, 1987.

does suggest that guideline deviations is one area which should be closely monitored/discussed with the private vendor under the new privatization experiment now underway in the City.

Table 1
Comparisons of Case Characteristics Between Deviated and Non-Deviated Cases

Case Characteristics	Deviated	Did Not Deviate	Total	χ^2	Significance Level
Case Type				2.64	0.10
AFDC	46% (138)	53% (106)	49% (244)		
Non-AFDC	54% (163)	47% (93)	51% (256)		
Case Subtype				3.57	0.31
Paternity	49% (146)	47% (93)	48% (239)		
Non-support/criminal	9% (26)	14% (27)	11% (53)		
Civil/equity	39% (118)	35% (70)	38% (188)		
URESA	4% (11)	5% (9)	4% (20)		
Type of Agreement				0.43	0.51
Consent	75% (210)	72% (139)	74% (349)		
Order	25% (71)	28% (54)	26% (125)		
Type of Action				0.07	0.79
New establishment	77% (232)	76% (149)	77% (381)		
Modification	23% (69)	24% (47)	23% (116)		
Jurisdiction***				49.40	0.00
Baltimore City	85% (257)	57% (114)	74% (371)		
County	15% (44)	43% (85)	26% (129)		

*** Differences between deviated and non-deviated cases in case jurisdiction are significant at the $p < .001$ level.

B. Conclusions

What conclusions can be drawn based on these data and what summarizing points should be made? One facile conclusion would be that - counting any instance where the support award differed by \$1 or more per month from the guideline amount as a deviation - the literal deviation rate in sampled cases was 40%. In interpreting this literal rate, one must bear in mind that deviations in and of themselves are not necessarily bad. Rather, agency staff and the court are, within a state's deviation criteria, allowed to and should consider each case's particular circumstances in setting the award amount equal to, lower than or higher than the guidelines amount. For example, the major component of our 40% deviation cohort consists of cases in which "all parties agreed" (including the negotiator who represents the state) to an award amount which differed from the guidelines. If such cases are excluded (n=132 of 199) and the deviation rate is recalculated (n=67/500 total cases), it is 13%.

The point of the above exercise is not to minimize the importance of adherence to the guidelines in calculating recommended support amounts. Nor is it meant to imply that we found perfect compliance in this most recent case review. Rather, it is to counter the "worst case" reporting of data that was deliberately used in the report so as to avoid its being criticized for downplaying negative findings. It is also to make clear the point that deviations, so long as they are for permissible reasons, are acceptable.

Even if one chooses to use the "worst case" deviation figure reported herein - and makes the assumption that all deviations are bad - study findings are consistent with those reported in other states' studies. According to a 1994 report issued by the federal Office of Child Support Enforcement, to illustrate, a 1993 Kansas study documented a deviation rate of 60%; a 1993-94 Washington state study reported deviations in about 54% of cases.³⁰ Maryland findings with regard to the reasons for deviations are also similar to preliminary data from a very recent national case

³⁰David Arnaudo, op. cit. (1994): 85-94.

level study; there, too, the two most common reasons for deviations were, respectively, agreement between the parties and second households.³¹

So what overarching conclusions would we draw from this study? There are two. The first is that, regardless of which figure is used, knowing the numerical proportion of cases in which award amounts deviate from guideline amounts does not fully answer the question of whether or not the guidelines are being used as intended. Instead, one must also consider that one explicit purpose of the federal guidelines mandate was to "encourage voluntary settlements".³² One must also place the number in context by returning to the question - does there appear to be any systematic bias in the extent to which deviations occur? From our statistical comparisons (Table 1) this did not appear to be a problem in our state during the 1993-95 review period. Those data suggested that, consistent with federal and state intent, the need and justification for deviations from the guidelines are considered on a case-by-case basis and are not inappropriately influenced by order type, case type or sub-type.

The second big picture conclusion is that while overall guidelines application/deviation practice appears to lie well within acceptable parameters, there are several areas in which refresher training, policy clarification and/or updating should probably be undertaken. Our specific suggestions are given in the next and final section of the report.

C. Recommendations

This section speaks only to recommendations arising from the review of case records; recommendations concerning the need to update the guidelines schedule to reflect new economic data have been presented in the Policy Studies, Inc. report, separately submitted. With this caveat, what suggestions would we make? In no particular order, the following recommendations are offered for consideration.

³¹Haynes, op.cit. (1996): ES-2.

³²Robert G. Williams, op.cit. (1994): 1.

1. There is probably reason for CSEA to reiterate the importance of maintaining complete and legible documentation in local agency files on the use of and reasons for any deviations from the guidelines.

2. In particular, CSEA should consider issuing an explicit policy directive concerning guidelines documentation since conversion to the new automated system is nearly complete.

Because of the time and expense that would have been involved, this study made no attempt to examine court files or transcripts. Instead, all data were obtained from on-site review of local support agency case files. This review indicated that, for the most part, copies of guidelines worksheets are retained in case files and appear to have been properly completed. In a small number of cases, however, the worksheets were illegible to the reviewer or appeared to be poorly done. In a minority of other cases - all of them adjudicated cases - documentation of the reason why the support award amount was different from the guidelines amount could not be located in the IV-D agency file.

We believe it likely that court files did contain the "missing" data, but also think this information - especially documentation of reasons for deviations - should be present in the IV-D agency file. National data suggest that in at least some cases, the only written record of deviation reasons may be in the court's oral record.

It is both impractical and unnecessary for IV-D agencies to acquire complete court transcripts, but it should be possible for local agencies, in collaboration with the courts, to work out a method whereby the needed information could be transmitted, perhaps on a special form which could accompany the final order. Another alternative would be to adopt the approach we observed in our review of Montgomery County cases. There it was clearly written in the court order itself if the award amount was different from the guideline amount, how it differed (up or down) and why it differed.

In either case, our recommendation concerning the need to develop a fail-safe documentation system is quite similar to one which will appear in a to-be-released report on a national guidelines study. There the suggestion is that states consider "adopting more standard case documentation...[to] include a standardized worksheet

containing the final data on which the court or other decision-maker based the award decision."³³

With regard to copies of the guidelines worksheets themselves, it appears that most local agencies/agents do, as a matter of custom, place copies in case files. However, we do not believe the need, if not policy requirement, to do this has been formally communicated by CSEA in the recent past. It would be advisable for CSEA to issue a written reminder/directive on this point, however, because of local agencies' conversion to the new computer system (CSES). The new system has automated the worksheet calculation function which is a major plus. However, we have been told that, upon completion of the function, the system does not automatically save the completed worksheet. Thus, particularly in the jurisdictions which are just now converting to CSES, it is important to point this out to staff and remind them that they will have to - and always should - take action to insure that the worksheet is printed and filed in the case record.

3. CSEA may wish to review existing policy language with regard to negotiation of consent agreements and, perhaps, to clarify to local staff how this section of policy should be interpreted in light of statutory and other CSEA policy language vis-a-vis use of and deviation from guidelines. We do not believe these materials are in conflict, but it does appear that some clarification might be useful.

4. Similarly, it may be appropriate to provide some clarification for local support staff of the correct interpretation/application of extant policy language describing factors to be considered in determining whether use of the guidelines is "unjust or inappropriate".

Section 8.10(E) of the CSEA Program Policy Manual describes permissible exceptions to the use of the guidelines, sets forth factors which can be considered in making that determination and provides guidance for local staff in negotiating consent agreements. We do not believe any of the materials are in conflict, but are not certain they are as clearly stated as they could be. For example, policy states that one factor the court may consider in determining whether to deviate from the guidelines is "[the] terms of an existing separation agreement or court order". The policy on negotiating consent agreements indicates it is permissible to propose a different support award amount when "all parties agree". We are confident the intent

³³Margaret Campbell Haynes, (January 6, 1997), Fax Network Issue 97-1. Washington, D.C.: American Bar Association: 2.

of both policies is the same: to encourage voluntary settlements (i.e., consents) and for the court to be able to ratify those settlements if it deems they are appropriate. However, the exact wording of the two sections of policy seems a bit unclear as to whether all such "all parties agree" consents would qualify as "existing separation agreements".

Similarly, CSEA should also consider looking at the wording in the Family Law Article and its own Program Policy Manual concerning factors which may be considered in determining whether use of the guidelines is unjust or inappropriate. Here the purpose would not be to review the factors themselves. Rather, the intent would be to determine if the precise wording/description of the factors is as clear as it could be and determine if some explication of terms and meanings should be provided for local staff. For example, we have heard comments over time that another item used in a number of other states, "intact second family", may need to be added to the permissible Maryland list of factors that may be considered. However, existing statutory and policy language (presence in the household of either parent of children to whom the parent owes a duty of support) may - and probably does - already encompass such situations.

Similarly, CSEA may wish to consider whether it should provide more specific guidance to locals as to how these factors should be accounted for in recommending support amounts (e.g., what formulae or criteria should be used to arrive at numerical adjustments based on the presence of another child/second family). As noted in a very recent national study, the degree of specificity of states' deviation criteria varies dramatically; some (e.g., Delaware) are more general than others and provide little guidance to the decision-maker while others, like Florida, provide detailed and specific guidance to them.³⁴ Perhaps consideration of whether our state policy does or does not provide sufficient specificity to guide agents' work and insure consistent, equitable application would be an appropriate topic for discussion between CSEA and local agency directors. Our general point is that the required periodic guidelines review is an opportunity to consider policy and procedures, as

³⁴Margaret Campbell Haynes, (December 30, 1996), Fax Network Issue 96-23. Washington, D.C.: American Bar Association: unnumbered.

well as the case data and the schedule itself. For various reasons, staff review of all guidelines statutes, policies and documentation procedures for clarity and the possible need for clarification and/or change is thus recommended.

5. Related to #4, CSEA may wish to review the existing list of "acceptable" reasons for deviating from the guidelines, the purpose being to insure that the reasons do accurately reflect current realities among families.

In addition to reviewing extant materials for clarity, consistency and ease of interpretation by local support agency personnel, CSEA may wish to examine Maryland's list of acceptable deviations. Here the intent would be to determine if there is need for any additions or deletions to the list or to ascertain if the extant list is broad enough to incorporate any new realities which may have emerged.

As previously noted, states have broad discretion in establishing their own criteria and, across the nation, there are more than 50 discrete deviation reasons on file with the federal child support office. Despite the diversity, the just-completed national guidelines study reports "significant discussions or deviations" in the areas of : income determination, tax exemptions, multiple families, agreements between parties, health care, support for post-secondary education and the like. When the complete, final national study is released, it may behoove CSEA to work with local directors to review these data in some detail to ascertain if consideration should be given to making any changes to our list of acceptable reasons.

6. Although the results of our review are in line with results reported from other states with regard to the extent, nature and documentation of deviations, it would probably be wise to consider developing and offering some refresher training for local staff in the rationale and application of the guidelines and permissible reasons for deviations therefrom. This would be particularly useful if, in fact, the guidelines schedule is updated as has been recommended by Policy Studies, Inc.

This review revealed generally good compliance with the requirements and intent of the state's child support guidelines law and policy, though some areas of concern were identified. Still, though one single finding leads to this recommendation, it is the strong sense of the authors that some guidelines refresher training should be developed and made available to local staff. This training would be less about the

"math" associated with the guidelines and more focused on the rationale, intent, and policy concerning guidelines. In particular, a focus on documentation requirements and determining the applicability and interpretation of acceptable reasons for deviations should be emphasized. Just as the federal and state mandates for periodic guidelines review present opportunity to revisit policy and procedure, they are also occasion to reconsider the extent to which front-line staff may need or could benefit from additional training. We do not believe guidelines refresher training has been offered recently, but think this is an option that should at least be available to local agencies who may wish to avail themselves of same. If the recommendation of Policy Studies, Inc. To modify the Maryland guidelines schedule is adopted by the General Assembly, this would be a most timely point at which to pursue this training recommendation.

Appendix A
Universe and Sample by Jurisdiction

Jurisdiction	Universe by Juris.	% of Universe	Sample Cases
1 Allegany	1139	2.3	10
2 Anne Arundel	2255	4.5	18
3 Baltimore County	3402	6.9	28
4 Calvert	647	1.3	6
5 Caroline	376	0.8	4
6 Carroll	941	1.9	8
7 Cecil	1176	2.4	10
8 Charles	1914	3.9	16
9 Dorchester	575	1.2	5
10 Frederick	1757	3.5	14
11 Garrett	33	0.7	3
12 Harford	1191	2.4	10
13 Howard	942	1.9	8
14 Kent	190	0.4	2
15 Montgomery	2806	5.7	23
16 Prince George's	9696	19.5	78
17 Queen Anne's	216	0.4	2
18 St. Mary's	747	1.5	6
19 Somerset	457	0.9	4
20 Talbot	304	0.6	3
21 Washington	2187	4.4	18
22 Wicomico	1295	2.6	11
23 Worcester	483	1.0	4
30 Baltimore City	14591	29.4	119

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