

**The Use of Wisconsin's Child Support Guidelines:
Evidence from 2000 through 2003**

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Executive Summary

Using a sample of child support cases that entered the Wisconsin family court system between July 2000 to September 2001, the authors examine child support orders to determine if they are consistent with the amounts set forth in the administrative rule that describes the percentage-expressed standard that should be used to set child support orders in Wisconsin. The authors find that in about 25 percent of the cases, the court has ordered child support but the court record does not include sufficient information to determine whether the order is consistent with Wisconsin's guidelines. In the remaining cases, about 28 percent have no order; 25 percent are below the guidelines; 39 percent are consistent with the guidelines and 7 percent are above the guidelines. Cases in which paternity has been voluntarily acknowledged are more likely to be consistent with the guidelines than are either standard court-order paternity cases or divorce cases. The authors also explore whether other factors are likely to be associated with consistency of the guidelines.

The Use of Wisconsin's Child Support Guidelines: Evidence from 2000 through 2003

I. INTRODUCTION

In a series of reports researchers at the Institute for Research on Poverty (IRP) have examined the extent to which Wisconsin's child support guidelines are used by Wisconsin courts to set child support orders.¹ This report is a continuation of that series. In it we analyze more current data than those available for the past reports. The report is of particular interest because it represents the last examination of Wisconsin's guidelines prior to the effective date (January 1, 2004) of substantial changes in the way that child support order amounts are to be calculated. These changes were being discussed beginning in the spring of 2001, when the Secretary of the Wisconsin Department of Workforce Development appointed an advisory committee to provide guidance to the Department on whether revisions to the guidelines were needed.² In a subsequent report, we will examine the use of the post-2004 guidelines. In this report we examine cases from Cohort 21 of the Court Record Database (CRD) collected by IRP. This cohort includes all new cases that came to court from July 2000 to approximately September 2001. The data for these cases have been updated, using information from KIDS, through the end of 2003.

Section II offers a brief review of the use of child support guidelines in Wisconsin. Section III describes the data and methodology used in this report, and Section IV describes our findings. Section V concludes with a summary and discussion of the findings.

¹The earlier reports in this series include: "Use of Percentage-of-Income Standard to Set Child Support: Experience in Twenty Counties, September 1987-December 1989" (Melli and Bartfeld, 1991); "The Use of Percentage of Income Standard to Set Child Support in Wisconsin: An Update" (Melli and McCall, 1993); "To What Extent Is the Percentage-of-Income Guideline Used to Set Child Support Orders in Wisconsin?" (Meyer and Hu, 1996); "Are Child Support Reforms Actually Implemented?" (Meyer, Hu and Wimer, 1998); "Use of Wisconsin's Child Support Guidelines in Paternity and Serial Obligor Cases" (Rothe, Hu and Wimer, 2000a); "Use of Wisconsin's Child Support Guidelines in Divorce and Serial Obligor Cases" (Rothe, Hu and Wimer, 2000b); "Use of Wisconsin's Guidelines: Examining Data from 1996-2000" (Rothe and Hu, 2002); "Do Child Care Costs Influence Child Support Order Amounts?" (Rothe and Yom Tov, 2005).

²See Child Support Guidelines Review Advisory Committee (2002).

II. REVIEWING CHILD SUPPORT GUIDELINES IN WISCONSIN

The Family Support Act of 1988 required states to review their child support guidelines at least once every four years to ensure that the guidelines result in “appropriate amounts of child support” (42 USC §302.56(e) and (h)). The federal government provided little guidance on how this review was to be done, although federal regulations at 45 CFR § 302.56(e) and (h) added two specific directives: (1) that states should consider economic data on the cost of raising children; and (2) that states should analyze case data gathered through sampling or other methods related to the application of, and deviations from, the guidelines to ensure that the number of deviations is limited.

Determining whether the courts have used the guidelines is not an exact science. Wisconsin’s guidelines, known as the percentage-of-income standard, are found in administrative rule DWD 40. Wisconsin courts may modify the amount of the order from that specified in the rule if the court finds, after considering a series of factors, that the use of the percentage-of-income standard is unfair to the child or to any of the parties. Federal law requires courts to state for the record that, if circumstances warrant a deviation, the record should contain the reason(s) for the deviation and the amount that the order would have been had the court not deviated. Wisconsin law (at Wis Stats. 767.25 (1n)) requires that the courts state “in writing or on the record” the amount of support that would be required using the standard, the amount by which the court order deviates from that amount, its reasons for finding that use of the percentage standard is unfair to the child or any party, and its reasons for the amount of and the basis for the modification. When the courts issue such a written finding, the record is available for CRD data collectors from IRP to examine, although it is not usually keyed into KIDS. However, if the court states its findings in the courtroom and there is no written record of the findings, there may be no

information in either KIDS or the CRD to help understand the courts' intentions when not using the standard.³

In past reports IRP has examined data from both KIDS and the CRD, sometimes augmented with earnings data from the Wage Record maintained by the Wisconsin Division of Unemployment Insurance (UI). In those reports we have sometimes noted⁴ that there is insufficient data in KIDS to permit the examination of shared-time orders because KIDS often does not contain accurate information about the proportion of time that each child spends with each parent.

The original plan for this report anticipated the use of a relatively new data field in KIDS that would contain information about the proportion of time a child spends with his or her custodial parent. The Bureau of Child Support then determined that the data in the field were not of sufficient quality to permit accurate determination of whether and how courts considered the proportion of time spent with each parent. In response, we have used only data in the CRD, which appears to provide more information about children's living arrangements. Even the CRD, however, often does not clearly indicate what information the courts had about children's living arrangements when they determined the order amounts. In addition, fewer cases include income information than was true for earlier cohorts of the CRD.⁵

³Another difficulty in determining whether the courts have used the guidelines is related to the question of what income information was available to the courts. This problem was discussed extensively in Rothe and Hu (2002).

⁴See, for instance, Rothe and Hu (2002).

⁵Cook and Brown (2005) estimated that in cohorts 11 and 12 (cases entering the court system from July 1, 1990, through January 31, 1993) income information was available for 86 percent of the fathers in the court record, while only 58 percent of the fathers have income information in the cohort we analyze here.

III. DATA AND METHODOLOGY

This report relies on Cohort 21 of the CRD, supplemented with data from KIDS. Cohort 21 consists of cases collected in 21 counties⁶ in which the original petition was filed with the court between July 1, 2000, and about September 2001. The data in all tables are weighted to reflect the likely outcomes if our sample had been drawn from the entire state. In addition to the date of the petition, the following criteria must be met in order for cases to be eligible⁷ for inclusion in the CRD:

1. The potential for child support payments exists for at least one year.
2. There is at least one minor child (who does not “age out” in less than one year after the date of the petition).
3. There is a temporary order and/or a final judgment.

Our analysis sample consists of 1,328 cases, of which 647 are divorce cases, 458 are “standard” (court-ordered) paternity cases, and 223 are voluntarily acknowledged paternities.⁸ We began with all cases in which there was a petition to the court during the period July 2000 through June 2001 (N=1,799). We examined cases in which there were any orders, and selected one order on which to focus.⁹ The decision to select a particular order for this analysis was done on a case-by-case basis. The general strategy was to select the earliest final order for which the court record also contained information necessary to calculate whether the order was established according to the guidelines. This meant that, if

⁶The 21 counties are: Calumet, Clark, Dane, Dodge, Dunn, Green, Jefferson, Juneau, Kewaunee, Marathon, Milwaukee, Monroe, Oneida, Ozaukee, Price, Racine, Richland, St. Croix, Sheboygan, Waukesha and Winnebago.

⁷A random sample of eligible cases was selected by IRP data collectors to be in the sample.

⁸Voluntarily acknowledged paternities were oversampled in this data collection. They therefore consist of a larger proportion of the sample that is true for their actual statewide occurrence. The weighted data more accurately represent their occurrence in the population.

⁹Between the time of the initial petition and December 2003, many cases with orders appeared repeatedly in court and may have obtained one or more temporary orders before obtaining a final order. A number of cases also have more than one final order. One reason for additional court appearances is to provide more or changed information to the court, and in some instances we can use this additional information to help understand the court’s reasoning. However, the existence of multiple orders, which are not always accompanied by improvements in the available information, makes the selection of the order for analysis a somewhat imprecise process.

possible, we selected orders that were associated with income information and, in the case of orders with shared placement, the proportion of placement.

Of the initial 1,799 cases, we deleted:

1. All cases with serial orders (N=136) because the record did not contain sufficient data about the order that preceded the petition in the Cohort 21 time frame;
2. 33 cases in which we were unable to identify who had custody of the child(ren);
3. 295 cases with two-part orders (deleted from our principal analysis sample, but analyzed in Appendix A);
4. 7 cases in which the first final order was set in 2004.

All cases were also updated, after the CRD field collection period, using KIDS. This enables us to observe modifications to orders that occurred through the end of 2003. Unlike earlier reports, we decided not to augment the income data in the CRD with income data from the Unemployment Insurance Wage Record.¹⁰ Similar to other reports, we use the following selective strategies to help determine if orders comply with the guidelines:

1. We assess any case with a percentage-expressed order on the basis of the explicit percentage.
2. We assess only those fixed-dollar orders for which we have some income information. Fixed-dollar orders in which the amount of the order divided by the obligor's income is within one percentage point of the required percentage are counted as consistent with the guidelines.

¹⁰In past reports, we have augmented income data found in the CRD with matched UI data. For purposes of calculating use of the guidelines, this practice has always presented a dilemma, because it was not clear that the UI data were known to the courts when they set orders. In addition, it required an assumption that the reported quarterly earnings could be equally divided by three to represent monthly earnings. For our current analysis we initially merged UI data with our sample, but the practice seemed even more problematic than usual. Because many cases frequently returned to court and some had numerous temporary orders, it was very difficult to match the timing of the reported UI data with a particular order. In addition, for cases when both CRD and UI data were present (roughly 40 percent of all cases), comparison of the two suggested that UI data were rarely comparable to the income data contained in the CRD. UI wage data for fathers are more than 50 percent higher than CRD income information among more than 85 percent of the cases which have data from both sources. In preliminary analyses, we also found that adding UI data to cases with missing income information almost always meant that the orders in those cases deviated from the guidelines. Given these problems, we decided to rely only on the income data contained in the CRD.

IV. COMPLIANCE WITH THE GUIDELINES

Table 1 shows the general use of guidelines in the analysis sample. About 25 percent (330 out of 1,328) of all cases in the sample have orders but lack sufficient information to determine whether the order falls within 1 percent of the prescribed amount. In a large proportion of these cases, the missing information is income, but a few are missing the proportion of time spent with each parent, and some are missing both income and placement information. These are shown in the columns headed “cases in which use of the guidelines cannot be determined.” The remaining 75 percent (998 cases) of the sample falls into one of four categories:

1. There is no order.
2. Below the guideline: more than 1 percent lower than the guidelines.
3. Consistent with the guideline: within 1 percent, for fixed-dollar orders.
4. Above the guideline: more than 1 percent higher than the guidelines.

Among the three types of cases shown in the table, voluntary paternity cases are most likely to be consistent with the guidelines. Only 12 percent of them have no order and 70 percent appear to be consistent with the guidelines. For standard paternity cases, 27 percent have no order and 45 percent are compliant with the guidelines. A higher proportion of divorce cases have no order (32 percent) than do the standard or voluntarily acknowledged paternity cases. For all types of cases, those with orders that are not consistent with the guidelines tend to set an order lower than the guidelines would require.

Cases with no order represent 21 percent of the total sample of 1,328. In this report we combine cases which appear to have the equivalent of a zero-amount order with cases in which there appears to be no order. Cases that appear to have no order may have language indicating that they have been held open or have other documentation that may mean that the courts intended that there be no child support obligation, at least during the time period of our analysis. In some cases, the courts have indicated that they are deviating from the guidelines by setting no order, although the reasons for deviation are sometimes hard to interpret. Other cases without an order contain no documentation in the court record to

Table 1
Use of Child Support Guidelines in Cohort 21 Cases
(Original Petition Filed with Court between July 2000 and September 2001)

Cases	N	Cases in Which Use of Guidelines Cannot be Determined	When Use of Guidelines Can be Determined				
			N	No Order	Below Guideline	Consistent with Guideline	Above Guideline
All	1,328	330	998	28%	25%	39%	7%
Divorce	647	92	555	32	27	28	12
Standard paternity	458	177	281	27	24	45	3
Voluntary paternity	223	61	162	12	15	70	4

Note: N's show unweighted sample sizes; all percentages are weighted to represent the entire state.

explain the lack of an order. In our sample of cases that have no order, about two-thirds are in shared-placement cases. This may help explain why they have no order, although in many of these cases, the courts have indicated another reason for deviating.

In previous reports we tried to evaluate whether cases with no orders were, in fact, intended to be zero orders, and, if so, whether they were below the guidelines or (in the case of zero income) consistent with the guideline. In this report, we have concluded that it is preferable to simply note the number of cases that have no order, without trying to assess whether or not they are consistent with the guidelines.

Table 2 shows deviation reasons for cases with no orders and cases with no income. A major reason (28 percent of the cases) for not setting an order is related to the sporadic or low income of the father. Another 28 percent of the cases with no orders have a reason that is related to the sharing of parental time or expenses.¹¹ The last column of Table 2 shows that in about 38 percent of cases in which we can find no income information in the CRD, there is some information contained in the deviation reason about the court's knowledge of the income of the father: the deviation reasons are either that the father has low or sporadic income (10 percent), or the order is based on imputed or potential income (28 percent).¹²

Table 3 examines in more detail the 998 cases in which there is either no order or the order provides enough information to permit us to determine whether it complies with the guidelines.¹³ In most

¹¹This is only about half the shared-placement cases that have no order.

¹²Cases without income for which we can determine compliance or noncompliance with guidelines, such as percentage-expressed orders, are not included in this table.

¹³We have included cases without orders in these tables because we think it is important to keep track of them. Having sufficient information to determine whether orders are in compliance with the guidelines generally means that we had sufficient information about the amount of the order, the number of children, the proportion of time that the child spends with each parent, and the income of one or both parents. In some instances, we do not need to know all of this information for each case; for instance, if the order is a percentage-expressed order, we did not need information about the income of the parents.

Table 2
Reasons Given by Judges for Deviating from Guidelines
in Cases with No Order or No Reported Income

Reason for Deviating from Guidelines	Cases with No Child Support Order	Cases with No Reported Income ^a
N	310	301
Mother is the custodial parent and father is incarcerated, in school, unemployed, or has low or sporadic income	28%	10%
Child support order is based on potential income	3	28
Shared placement or other effort to share expenses associated with children	28	2
A maintenance order is in place	10	1
Other reason ^b	23	35
No reason given	8	24

Note: N's show unweighted sample sizes; all percentages are weighted to represent the entire state.

^aThis column includes only those cases with no reported income for which we could not determine compliance or noncompliance with guidelines.

^bOther reasons for deviation include parental stipulation, child care expenses, child's medical costs, and father is the custodial parent while mother has low or sporadic income.

Table 3
Characteristics of Cases by Use of Child Support Guidelines

Cases	N	No Order	Percentage below Guideline	Percentage Consistent with Guideline	Percentage above Guideline
	998	28 %	25 %	39 %	7 %
Number of Children					
1 child	597	27 %	19 %	48 %	6 %
2 children	282	34	34	22	11
3 or more children	119	25	41	26	8
Youngest Child's Age at Time of First Order (45 missing)					
0–2	438	24 %	18 %	52 %	6 %
3–5	188	33	17	37	13
6–8	111	24	31	36	9
9 or older	216	39	33	20	8
Payer's Monthly Income					
Unknown	408	70 %	4 %	26 %	0 %
\$0–\$999	109	3	44	36	17
\$1,000–\$1,999	222	0	30	62	8
\$2,000–\$2,999	156	0	37	47	16
\$3,000–\$3,999	64	1	56	30	13
\$4,000–\$4,999	39	6	55	26	13
Payee's Monthly Income					
Unknown	611	47 %	16 %	34 %	2 %
\$0–\$999	93	4	32	55	9
\$1,000–\$1,999	153	1	36	46	16
\$2,000–\$2,999	101	1	43	40	16
\$3,000 or more	40	3	35	42	19
Counties					
Milwaukee	197	31 %	28 %	34 %	7 %
Other urban	325	23	22	49	7
Rural	476	29	23	38	10

Note: N's show unweighted sample sizes; all percentages are weighted to represent the entire state.

cases with no orders, however, we were unable to determine whether having no child obligation was consistent with the guidelines.

Among these 998 cases, 28 percent have no order, 39 percent are consistent with the guideline, 25 percent are below the guidelines, and 7 percent are above the guideline. Orders set for very young children (two years old or younger) more often conform to the guidelines and are less often missing. As the age of the children rises, the proportion of orders set according to the guidelines falls. Orders for children who are older than eight are least likely to be consistent with the guidelines.¹⁴

Table 3 also shows the proportion of orders using the guidelines among subgroups defined by the income of the payer (third panel) and the payee (fourth panel).¹⁵ Payers for whom we have no income information frequently have no orders, which might be construed as the outcome required by the guidelines, assuming that our lack of information means that they have no current earnings. However, many of these are also shared-placement cases, and the lack of income information may reflect the court's decision that no child support order is required regardless of the relative incomes of the parents. Payers with very low income (less than \$1000 per month) most often have orders that are set above the guidelines, while payers with substantially higher incomes (\$3,000 or more per month) are those most likely to have orders set below the guidelines. Payers with monthly incomes between \$1000 and \$3000 are the most likely to have orders consistent with the guidelines.

We have no payee income information for the majority (611 out of 998, or 61 percent) of the cases in panel four ("payee's monthly income"), although many of these appear to have no order. Because

¹⁴For each panel in Table 3, we have tested the hypothesis that the distribution of the type of order (i.e., the weighted percentages in the last 4 columns of Table 3) is independent of the distribution of the variable contained in each panel (number of children, age of youngest child, etc.) by calculating the chi-square statistic for each panel. In Table 3, we can reject the hypothesis of independence for every panel at the .01 level. This means that the differences in distributions that we observe would occur by chance less than 1 percent of all the times that we select a sample from among the relevant child support cases.

¹⁵The average monthly income for payers (excluding cases with zero income or no information) is \$1964; the average monthly income for payees (excluding cases with zero income or no information) is \$1716.

the guidelines in use at the time of this analysis required knowledge of both parents' incomes only in cases of shared placement, it is perhaps not surprising that there does not appear to be much consistent difference across payee income groups in terms of the proportion of orders that are set using the guidelines, although payees with very low incomes are somewhat more frequent recipients of orders consistent with the guidelines than are those with very high incomes. As is true generally, more orders are lower than the guidelines would require than are higher.

The final panel in Table 3 disaggregates the findings into three geographic groups: Milwaukee, other urban, and rural.¹⁶ A higher proportion of cases in Milwaukee have no orders (31 percent), followed closely by rural counties (29 percent). In other urban counties, 23 percent have no orders. Other urban counties also have a higher proportion of orders that are consistent with the guidelines (49 percent).

Tables 4, 5, and 6 repeat the analysis shown in Table 3, except that each table represents only divorce cases (Table 4), only standard paternity cases (Table 5), or only voluntarily acknowledged paternity cases (Table 6).

By comparing the first set of panels in these tables we can see, as we would expect, that there are more divorce cases with two or more children than there are in either type of paternity case. Because there are so few paternity cases with two or more children we cannot further disaggregate those tables to show cases with two children and cases with three or more children, as we do in Table 4. The paternity cases (both voluntarily acknowledged and court-ordered) having one child are more likely to have orders consistent with the guidelines than are divorce cases. As the number of children increase, the orders in divorce cases are increasingly likely to be set below the guideline. This appears to be true as well for paternity cases (both standard and voluntarily acknowledged) with two children. There are so few paternity cases with three or more children that no conclusions can be drawn.

¹⁶The other urban counties are Dane, Racine, and Waukesha. The remaining counties, excluding Milwaukee, are counted as rural.

Table 4
Characteristics of Divorce Cases by Use of Child Support Guidelines

Cases	N	No Order	Percentage below Guideline	Percentage Consistent with Guideline	Percentage above Guideline
All	555	32 %	27 %	28 %	12 %
Number of Children					
1 child	210	30 %	21 %	36 %	13 %
2 children	234	36	28	23	13
3 or more children	111	27	40	24	9
Youngest Child's Age at Time of First Order (4 missing)					
0–2	117	24 %	17 %	42 %	17 %
3–5	150	41	20	28	11
6–8	93	27	33	29	11
9 or older	191	34	35	19	11
Payer's Monthly Income					
Unknown	225	93 %	2 %	6 %	0 %
\$0–\$1,999	136	3	31	49	17
\$2,000–\$2,999	104	0	39	37	24
\$3,000–\$3,999	55	1	55	30	14
\$4,000–\$4,999	35	8	57	18	17
Payee's Monthly Income					
Unknown	252	81 %	5 %	11 %	3 %
\$0–\$1,999	168	3	40	38	19
\$2,000–\$2,999	95	1	44	38	17
\$3,000 or more	40	3	35	42	20
Counties					
Milwaukee	89	30	33	21	16
Other urban	145	31	26	34	10
Rural	321	35	25	29	11

Note: N's show unweighted sample sizes; all percentages are weighted to represent the entire state.

Table 5
Characteristics of Standard Paternity Cases by Use of Child Support Guidelines

Cases	N	No Order	Percentage below Guideline	Percentage Consistent with Guideline	Percentage above Guideline
All	281	27 %	24 %	45 %	3 %
Number of Children					
1 child	250	28 %	20 %	49 %	3 %
2 or more children	31	22	57	17	4
Youngest Child's Age at Time of First Order (33 missing)					
0–2	185	27 %	20 %	50 %	2 %
3–5	29	7	10	63	20
6 or older	34	42	26	32	0
Payer's Monthly Income					
Unknown	126 %	58 %	5 %	37 %	0 %
Less than \$1,000	41	0	61	23	16
\$1,000–\$1,999	79	0	29	67	4
\$2,000 or more	35	0	46	53	1
Counties					
Milwaukee	80 %	33 %	26 %	39 %	3 %
Other urban	95	17	23	57	4
Rural	106	11	14	70	6

Note: N's show unweighted sample sizes; all percentages are weighted to represent the entire state.

Table 6
Characteristics of Voluntarily Acknowledged Paternity Cases by Use of Child Support Guidelines

Cases	N	No Order	Percentage below Guideline	Percentage Consistent with Guideline	Percentage above Guideline
All	162	12 %	15 %	70 %	4 %
Number of Children					
1 child	137	11 %	9 %	76 %	4 %
2 or more children	25	16	46	34	4
Youngest Child's Age at Time of First Order (8 missing)					
0–2	136	10 %	12 %	75 %	4 %
3–5	9	35	0	65	0
6 or older	9	18	28	44	10
Payer's Monthly Income					
Unknown	57	36 %	3 %	61 %	0 %
Less than \$2,000	73	0	20	72	8
\$2,000 or more	32	0	22	78	0
Counties					
Milwaukee	28	14 %	25 %	54 %	7 %
Other urban	85	10	8	81	2
Rural	49	16	27	51	6

Note: N's show unweighted sample sizes; all percentages are weighted to represent the entire state.

Moving to the panels that display payer's income, Tables 5 and 6 show that all paternity cases that have no orders are those in which the payer's income is unknown. This is not true in divorce cases (Table 4), where 12 percent of the cases with no orders have income information. Most of these cases tend to have high monthly income (\$4000 or more).

The final panel in all three tables shows the compliance rate in Milwaukee, other urban, and rural counties. As noted previously, divorce cases are more likely to have no orders than are either type of paternity case. However, in Milwaukee, the rate of cases with no order is about the same for divorce and standard paternity cases, and is about twice as high as the rate for voluntarily acknowledged paternities. In other urban and rural counties, however, the rate of no or zero orders for both types of paternity cases is lower than the rate in divorce cases. Of the remaining cases (with orders), Milwaukee is less likely to have orders that comply with the guidelines, regardless of the type of case, than are other urban or rural counties.¹⁷

Table 7 measures the extent of deviations from the guidelines for cases with orders. Overall, about 55 percent of all cases have orders that appear to be compliant with the guidelines. As noted earlier, orders are more likely to be set lower than higher than the guidelines. When orders are set lower, about 24 percent of them are more than 10 percent too low, and only 8 percent are more than 10 percent too high. This table also indicates that had we set the standard for finding an order compliant with the guideline at a 10 percent deviation, rather than a 1 percent deviation, about 68 percent of the orders would have been judged to be compliant.

Table 7 shows that these overall figures disguise considerable variation between types of cases. In divorce cases, a much lower proportion of orders are set using the guidelines than among either standard

¹⁷In addition to the descriptive statistics in Tables 3, 4, 5 and 6, we tested a number of models that posit that compliance with the guidelines is a function of the various demographic variables shown in those tables. We used a series of multinomial logit regressions. In all the models, both types of paternities (but especially voluntarily acknowledged paternity) are significantly correlated with compliance, as are younger (under 3 years of age) ages of youngest children and smaller (1 child) number of children. Location played a less clear cut role.

Table 7
Extent of Deviation from the Guidelines, by Type of Case

Percentage by Which Order Differs from Guideline	Type of Case			
	All	Divorce	Standard Paternity	Voluntary Paternity
More than 60% below	2%	2%	2%	2%
36–60 % below	11	13	11	1
11–35 % below	12	14	12	7
1–10 % below	10	11	9	8
Compliant	55	41	62	79
1–10% above	3	5	0	1
11–35 % above	4	7	2	1
36–60% above	1	2	0	0
More than 60% above	3	4	2	1

Note: Table excludes 330 cases in which use of the guidelines cannot be determined, 279 cases with no orders, and an additional 31 cases in which the proportion of the deviation cannot be determined.

N = 688

or voluntarily acknowledged paternity cases (41 percent versus 62 and 79 percent, respectively). In either type of paternity case, relatively rarely are orders above the guidelines, but among divorce cases, 18 percent have orders that are higher than the guidelines. Orders in divorce cases are also somewhat more likely to be farther below the guidelines than orders in standard or voluntary paternity cases. This may reflect the fact that a higher proportion of divorce cases in our sample have higher incomes (above \$3,000 per month) than either standard or voluntary paternity cases. It may be that courts themselves tend to discount ordered amounts for higher-income payers, or this trend may reflect the negotiations of private attorneys and stipulated orders in some (probably) higher-income cases.

Table 8 shows the extent of deviations by the income level of the payers. A higher proportion of very low-income payers (below \$1,000 per month) have orders below the guidelines than do higher-income (more than \$4,000 per month) payers, but higher-income payers tend to have larger proportional downward deviations than do the lower-income payers. A slightly larger proportion of very low-income as compared to very high-income payers (17 percent for those with incomes less than \$1,000 per month, compared to 14 percent for those with incomes higher than \$4,000 per month) have orders that are above the guidelines amount, and a substantially higher proportion of very low-income payers have orders that exceed the guidelines by more than 60 percent. These may be orders that are set based on anticipation of higher earnings or expectations that the payers will work full time and earn at least the minimum hourly wage.

Overall, the rate of compliance with the guidelines seems somewhat low in comparison to findings from earlier time periods.¹⁸ A possible explanation might be related to the guidelines that took effect on January 1, 2004 (after the data analyzed for this report). The post-2004 guidelines were widely

¹⁸Earlier reports showed compliance overall for at least 50 percent of the cases with orders in which compliance could be determined. Compliance tended to be higher for divorce than paternity cases. (See Rothe and Hu, 2002.)

Table 8
Extent of Deviation from the Guidelines by Payer's Income Level

Percentage by Which Order Differs from Guideline	Payer's Monthly Income					
	Unknown	Less than \$1,000	\$1,000– \$1,999	\$2,000– \$2,999	\$3,000– \$3,999	\$4,000– \$4,999
More than 60% below	0%	1%	3%	1%	4%	2%
35–60 % below	1	9	11	9	23	24
10–35 % below	3	22	6	20	16	13
1–10 % below	8	14	10	7	13	19
Compliant	88	37	62	47	30	28
1–10% above	0	2	2	5	6	6
10–35 % above	0	4	3	9	4	2
35–60% above	0	1	1	0	1	3
More than 60% above	0	10	2	2	3	3

discussed during the time that orders were being set in the analysis reported here; perhaps courts were influenced by the discussion, or perhaps they were anticipating the need for change.

The new post-2004 guidelines, while maintaining the core of the earlier guidelines, lowered the threshold at which child support would be adjusted to account for the expenses of the noncustodial parent when the child resided with him or her. With respect to shared placement, the new guidelines state that if a child spends at least 25 percent (92 days per year) with both parents, and the amount of time is specified in the court order, then the courts may use the shared-placement guidelines, which allow for costs that both parents must incur (such as bedrooms and clothes) and continue to require knowledge of the incomes of both parents to allocate child support according to the percentage of time the child spends with each parent.

The new guidelines also reduce child support orders for very low- and high-income payers. If the paying parent is not able to earn at least \$950 per month, then the court may use the low-income guidelines, which reduce the amount of support that would be owed. If the paying parent earns more than \$84,000 per year, the court may use the high-income payer guidelines, which also reduce the amount of required support.

Because these are fairly extensive changes and were publicly debated from 2002 forward, it is possible that courts were interested in making changes reflecting the new guidelines even before 2004, perhaps because they felt that the existing guidelines were not fair to one party or the child. To understand whether this might be the case, and in anticipation of a later review of whether the courts are using the post-2004 guidelines, we used the same CRD sample to attempt to determine if some of the orders that did not comply with the pre-2004 guidelines might have been set using the post-2004 guidelines.

Because a principle change in the guidelines has to do with shared placement, we examined the living arrangements of children in shared placement cases.¹⁹ Table 9 shows the proportion of time children spent with each parent, among the 210 shared-placement cases in our sample. The vast majority (about 85 percent) of these cases consist of equal shared placement; that is, the child appears to live with each parent half of the year. Most of the remaining cases (about 13 percent) require the child to spend more time with the mother than the father. If courts had been using the threshold found in the post-2004 guidelines (25 percent of time with the noncustodial parent), at most 2 percent, or approximately 4 more cases (those between 25 and 30 percent of time with the noncustodial parent) would have been subject to the new shared-placement guidelines (not shown on table).²⁰ It may still be the case, however, that courts deviate more often in shared-placement than in sole-placement cases.

Table 10 shows compliance with the guideline for orders that differ by placement type. However, as we have noted earlier, a significant proportion of the shared-time cases have no order. This is particularly true among cases with equal shared placement—92 percent of these cases have no order. Similarly, 89 percent of primarily father-placement cases (those where the child spends more than 50 percent of the time with the father) have no orders. These cases also tend to be those in which income information is missing, so we are unable to assess whether having no order is consistent with the guidelines, under either the old or the new guidelines.²¹ Although the post-2004 guidelines involve a substantial change from the earlier guidelines with respect to shared placement cases, we are unable to

¹⁹The proportion of time with mother was calculated as the average of the minimum and maximum days per year to be spent with mother according to the CRD, expressed as a percentage of 365.

²⁰It may seem surprising that these cases were identified as shared-placement cases because the amount of time the courts expected the child to spend with the noncustodial parent is below the threshold for determining shared-placement cases according to the pre-2004 guidelines. In the CRD, shared placement can be identified in several ways (see Cook and Brown, 2005). The cases in Table 9 were all identified in the court record as requiring use of the shared-placement guidelines.

²¹Recall also from Table 2 that many of these cases have deviation reasons not related to their shared-placement status.

Table 9
Proportion of Time Children Spend with Each Parent
among Shared-Placement Cases

Percentage of Time Spent with Mother	Percentage of Cases	Percentage of Time Spent with Father
1–30%	1.0%	70–99%
31–40	0.3	60–69
41–49	0.6	51–59
50	84.5	50
51–59	9.5	41–49
60–69	1.9	31–40
70–99	2.3	1–30

N=210

Table 10
Placement of Children by Use of Child Support Guidelines

Placement of Children	N	No Order	Percentage below Guideline	Percentage Consistent with Guideline	Percentage above Guideline
All	998	28%	25%	39%	7%
Mother sole placement	733	18	28	46	8
Shared placement - more than 50% with mother	22	47	28	4	21
Shared placement - equal between mother and father	154	92	2	0	6
Split placement	8	92	5	0	3
Shared placement - more than 50% with father	25	89	7	0	4
Father sole placement	56	59	26	15	0

ascertain whether the courts were more inclined to use the post-2004 guidelines for shared placement cases.

We then tried to estimate whether any of the orders that deviate from the pre-2004 guidelines, including low-income and high income payers, might have been set using the post-2004 guidelines. We found that applying the post-2004 guideline rules to the orders with deviations did not result in a higher compliance rate for those cases. Therefore, we are unable to conclude that courts might have been using the post-2004 guidelines in anticipation of their effective date.

V. DISCUSSION AND CONCLUSIONS

Earlier IRP reports²² suggested that the rate of guideline compliance may have peaked around 1998 or 2000, with a subsequent decline in the rate of guideline utilization. This apparent trend raises the question of whether an increasing reluctance to use the guidelines reflected some societal or judicial dissatisfaction with the rules laid out in the pre-2004 percentage-of-income standard. Certainly the pressure by some advocacy groups to reduce child support orders reflected a belief that the guidelines resulted in outcomes that were unfair to one of the parties.

Although the evidence from the analysis of Cohort 21 suggests that use of the guidelines may have declined, we are unable to make precise comparisons between this analysis and earlier reports, owing to several factors: a decrease in the number of cases with income information in the court record;

²²See, e.g., Rothe and Hu (2002).

different ways of treating cases with no orders that have been used in various reports;²³ and the decline in the use of percentage-expressed orders.²⁴

Under the methodology used for this report, almost 25 percent of all cases with orders in Cohort 21 of the CRD lack sufficient information to assess whether or not the orders were set in accordance with the guidelines. In addition, over 20 percent of all cases in our sample have no order at all. Among the cases with orders that include sufficient information to determine compliance with the guidelines, only 39 percent, measured over all types of cases, are consistent with the guidelines. This is a somewhat lower use of the guidelines than has been the case in earlier cohorts.

A number of factors may help in understanding the apparent reluctance of the courts to use guidelines. First, it may be the case that an increasing number of cases are being “held open,” awaiting some event or circumstance to permit the actual setting of an order. To some extent, it may be that holding an order open has become a substitute for the use of percentage-expressed orders, in the sense that both of these options (prior to federal audit instructions to Wisconsin to eliminate percentage-expressed orders) could be used in cases where there was uncertainty about the payer’s potential income, perhaps because a parent’s employment was insecure or because a parent was incarcerated but expected to be released relatively soon.

Additionally, the current federal incentive payments may not reward states for setting orders in cases where making a collection might be difficult. Federal regulations require collections in 80 percent of arrears cases and collections that amount to 80 percent of current support. An order that is set for a case

²³Authors of earlier reports attempted to distinguish cases with no orders that appeared to be intended to have a zero child support order from other cases with no orders that may have reflected some other reasoning of the court. This was easiest to do in cases of percentage-expressed orders which had no evidence of income, but there are many fewer of these cases in Cohort 21. The authors decided against trying to replicate the estimation methods used in earlier reports because so many cases with no orders were missing necessary information.

²⁴When orders are expressed as a percentage, we can determine whether the order is consistent with the guideline without knowing the income of the payer. As more orders become expressed as fixed-dollar orders, assessment of compliance with the guidelines increasingly requires information on income.

in which no collections on current support are likely makes it more difficult to reach both of these incentive thresholds. Balancing these incentive effects is a regulation that requires 80 percent of child support enforcement cases to have an order.

We have also noted that many cases that have no orders are shared-placement cases, particularly equal shared placement. In these cases, we would expect the courts to set an order unless the parents have equal incomes or there are other extraordinary circumstances in the case. However, there is so much missing income information in the CRD that we are unable to verify whether the parents' incomes are relatively equal. Interviews with judicial officers could help determine if courts are concluding that equal shared placement should be associated with no child support order, regardless of the relative incomes of the parents.

The high proportion of cases with missing income information or no order bears monitoring. If missing income information generally reflects no or fluctuating income, which in turn results in no order, this would be consistent with the philosophy of the percentage-of-income standard that parents without income should not be required to make payments for the support of their children. However, owing to recent changes in federal law that effectively result in expenditure cuts for the administration of child support, order modifications may become increasingly difficult in cases in which parents later become able to support their children.

The adoption of the 2004 guidelines will require greater attention to data collection in order to accurately apply the guidelines. Better detail about the living arrangements of the child will be needed, and more information about the income of both parents will be required. Through 2003, this kind of information was not uniformly collected or retained in the clerks' court records. In the next report, IRP will examine this matter in the course of attempting to determine whether the new guidelines have resulted in greater acceptance by the courts than was true through 2003.

Appendix A Two-Part Orders

We use the term “two-part orders” to identify orders in which the calculation of the order is dependent on some factor that acts as a “switch” between two alternatives (e.g., \$70/week in the summer, and \$120/week otherwise, or \$250/month if there is no overtime and \$350 if the payer works overtime). It is frequently difficult to determine which part of the order is in effect, particularly for those two-part orders that switch according to an employment-related criterion. Because it is difficult to compare these orders to other, simpler, orders, we removed them from the general analysis. However, we can in many cases determine, for at least one of the parts, whether it appears to comply with the guidelines.

The top panel of Table A1 shows that 43 percent of all two-part orders have at least one part that we found compliant with the guidelines. For the remaining 57 percent of the orders, neither part appears to be within 1 percent of the amount that the guidelines call for.

The bottom panel of Table A1 shows various reasons for using a two-part order that we identified in the CRD by consolidating a much larger set of data. The largest group (34 percent) are shared-placement cases. All of these have at least one part that complies with the guideline. It should be noted that these can be determined as compliant because of the use of percentage-expressed orders as one component, so that missing income information is not a problem. As courts adapt to the elimination of percentage-expressed orders, it is likely that fewer two-part orders will have a percentage-expressed component.

The second most common type of two-part order is one that is stated in terms of a percentage of income, or a fixed amount, whichever is higher. Very few of these (10 percent) have at least one part that is consistent with the guideline. After the shared-placement cases, the group with the next highest proportion (50 percent) of orders compliant with the guidelines consists of orders that include a separate part for overtime or bonus pay. Most other types of two-part orders have low rates of compliance; the courts may be using two-part orders as a form of deliberate deviation from the guidelines.

Table A.1
Common Reasons for having Two-Part Orders by Compliance with Guidelines

Reason for Having Two-Part Order	N	Compliant with Guidelines	Deviate from Guidelines
All	289	43%	57%
Shared placement	98	100	0
Order set to be the higher of a percentage or a fixed dollar amount	55	10	90
Order includes separate rate for bonuses or overtime paid beyond regular salary	33	50	50
Order includes provisions to add or subtract amount for special circumstances associated with child	26	11	89
Other reason	40	10	90
No reason given or missing data	37	9	91

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