

**The Compliance of New Wisconsin Child Support Orders  
with the Wisconsin Guideline: Pre- and Post-2004**

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### **I. INTRODUCTION**

Wisconsin first published its percentage-of-income standard, or guideline, to set child support in 1984. This original guideline was based in part on research that estimated the amount spent on children in two-parent families. Since then, the guideline has been amended a number of times. The most recent change took effect January 1, 2004, and included significant amendments designed to address perceived inequities in the guideline.

This report focuses on the implications of the amendment to the guidelines that changed the treatment of low- and high-income payers relative to other payers and eliminated the previous requirement for uniform treatment of payers regardless of income, in relation to sole-custody cases.<sup>1</sup> In particular, this report examines the extent to which the courts have adopted the use of the new guideline in determining the amount of new orders in sole-custody cases for three groups: those with low incomes who would be subject to the change, those with high incomes who would be subject to the change, and those with mid-range incomes who should be unaffected by the change. In a subsequent report, we will consider the implications of this amendment to the guideline for payments by payers.

In this report, we examine cases from Cohorts 23 and 24 of the Court Record Data (CRD), the data set that is collected by the Institute for Research on Poverty (IRP) from files maintained in 21 county courthouses.<sup>2</sup> Cases in these cohorts petitioned the court from July 1, 2002, through June 30, 2003 (Cohort 23), and from July 1, 2003, through June 30, 2004 (Cohort 24). This selection of cases gives us the opportunity to examine the use of the guideline immediately before and immediately after the January

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<sup>1</sup>Another amendment changed the threshold for determining when a case should be defined as having shared placement and therefore be subject to a different standard than a sole-placement case. The effect of this amendment on support orders in divorce cases was addressed by the Institute for Research on Poverty in Brown and Cancian (2007). Consequently, cases with shared placement are not considered in this report.

<sup>2</sup>For a description of these cohorts, see Brown (2007).

1, 2004, effective date of the amendments to the guideline. The outline for this report is as follows.

Section II describes the changes in the guidelines that occurred effective January 1, 2004. Section III reviews the data and methodology employed during this study. We present our findings in Section IV and conclude, in Section V, with a summary and discussion of the implications of our findings for policy and future research.

## II. RECENT AMENDMENTS TO WISCONSIN'S CHILD SUPPORT GUIDELINE

Wisconsin's child support guideline was modified effective January 1, 2004, in response to concerns about inequities for payers. The modifications were made in the context of national and local discussions about the effects of child support guidelines in relation to low-income payers and, more recently, in relation to high-income payers.

The impact of guidelines on low-income payers has been a long-standing area of concern.<sup>3</sup> Several concerns exist: (1) low-income fathers may not have sufficient resources to support themselves or children in their current household if they must also make child support payments; (2) low-income fathers are less likely than other fathers to make full child support payments, which results in increased work for child support enforcement agencies; (3) the existence of high arrears or the potential to face increased enforcement may force low-income fathers to leave the traditional labor force and seek work in the informal economy; (4) the existence of high arrears or the potential to face increased enforcement may cause low-income fathers to avoid contacting or providing for their children; (5) given assortative mating on earnings, custodial mothers of children of low-income fathers may themselves have low income, and therefore have greater need for child support payments; and (6) it is not clear whether low-income status will continue over time and, if it does not, how to respond to a change in a low-income payer's status over time.

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<sup>3</sup>See, for instance, Meyer et al. (1997) and Brown (2000).

Although less frequently addressed in the literature about the impact of child support guidelines, the impact of the guidelines on high-income payers has also been discussed.<sup>4</sup> The principal concerns raised are: (1) states' guidelines may generally require higher-income fathers to pay more than they would have provided to support the child had they remained with the mother of the child; (2) national estimates of expenditures on children may not fairly capture all expenditures by high-income parents because they do not include savings made for the benefit of the child(ren); (3) enforcement of high child support orders may result in less contact and connection between the child and the father; (4) some or much of the child support paid by high-income fathers may be used to support the life style of the mother and not necessarily to support the child; and (5) high-income fathers may contribute less to their children after they reach age 18 than they would have if they had continued to reside with them.

While many of the concerns noted suggest that orders should be modified downward for low- and high-income payers, others suggest the opposite response. Consequently, it is not surprising that states have responded in a number of ways in attempting to address identified concerns regarding payers. Regarding low-income payers, some states have established guidelines in which token amounts are suggested for such payers, have identified parental needs as a reason for deviation (similar to Wisconsin's practice prior to January 1, 2004), and have set aside "self-support reserves" so that the basic needs of the parents can be met first. Many states have also permitted the practice of imputing the income of parents who appear to be underemployed; this, in effect, results in orders that are higher than would be required given the payer's current actual income.

Some states have also built into their guidelines or child support statutes mechanisms aimed at accommodating the special issues that may arise in relation to high-income payers. For instance, some states originally adopted versions of income-shares guidelines that result in gradually lowering the

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<sup>4</sup>A sample of some of this literature can be found in Comanor (2004).

percentages of income owed by high-income payers. Some states also permit courts to order parents to make payments into trust funds for the future use of their children.

Wisconsin's most recent response to concerns about the guidelines can be traced to March 2001, when the Wisconsin Department of Workforce Development (DWD) convened an advisory panel to review the state's percentage-of-income standard for child support orders.<sup>5</sup> The panel recommended that the Wisconsin child support standard should be lower for both low- and high-income payers than the existing child support guidelines. In subsequent negotiations between the Wisconsin Legislature, DWD, and various advocacy organizations, the Legislature agreed to a permissive standard for low-income payers that was somewhat different than the panel's recommendation, although still lower than the existing standard for low-income payers. The guidelines also permit courts to reduce the standard for high-income payers below the original standard, which continues to be in effect for individuals with incomes between \$950 per month and \$7,000 per month.<sup>6</sup> These changes are reflected in Figure 1, which demonstrates the changes for orders for 1 and 2 children between the pre- and post-January 1, 2004, guidelines for orders that involve sole, not shared, custody. The principal purpose of this study is to examine whether courts have adopted the use of the post-January 1, 2004, guideline in making orders.

### III. DATA AND METHODOLOGY

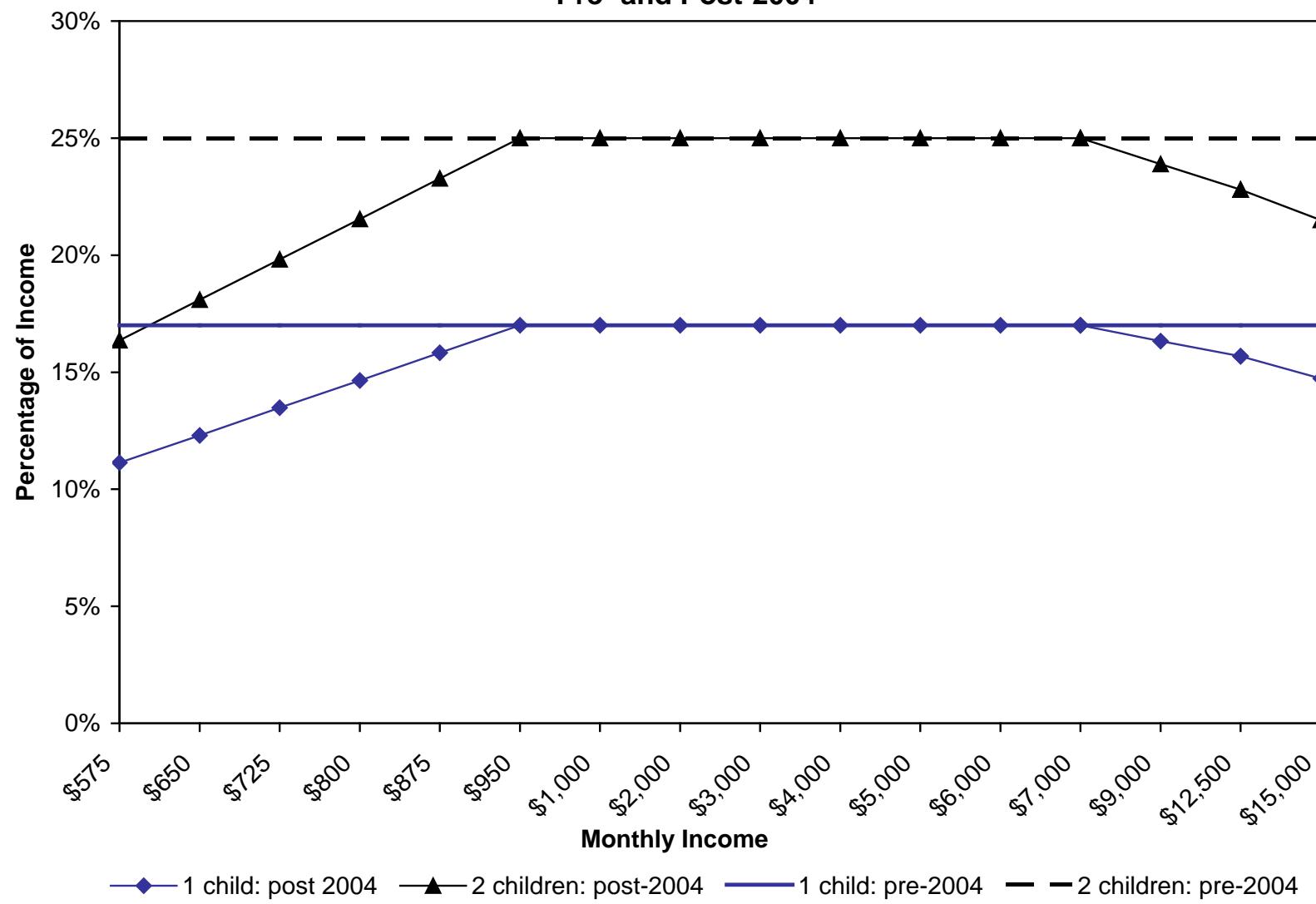
This report uses Cohorts 23 and 24 of the CRD. These cohorts consist of cases collected in 21 counties<sup>7</sup> in which the original petition was filed with the court between July 1, 2002, and about

<sup>5</sup>See the panel's report—Wisconsin Department of Workforce Development (2002)—for the panel's recommendations and a summary of their meetings.

<sup>6</sup>The complete text of the Wisconsin child support guidelines can be found at <http://www.dwd.state.wi.us/bcs/chapter.htm#guidelines>

<sup>7</sup>The 21 counties are Calumet, Clark, Dane, Dodge, Dunn, Green, Jefferson, Juneau, Keweenaw, Marathon, Milwaukee, Monroe, Oneida, Ozaukee, Price, Racine, Richland, St. Croix, Sheboygan, Waukesha, and Winnebago.

**Figure 1**  
**CS Guideline Percentages for 1 and 2 Children**  
**Pre- and Post-2004**



June 30, 2004. In addition to the date of the petition, the following criteria must also be met for cases to be eligible 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.

For the cases in the given time period that met these three criteria, all court activity was collected through approximately mid-2006.<sup>8</sup> Many cases have more than one order during the period for which IRP collected data. When possible, we attempted to use the first final order associated with the child(ren) or the divorce action that caused the petition to the court. In a few cases we selected a temporary order if that was the only order for which income information was available; however, for each case we analyzed only one order.

The initial sample consists of 3,386 orders, of which 1,582 are orders in divorce cases, 1,204 are orders in court-adjudicated paternity cases, and 600 are orders in voluntarily acknowledged paternities. Because the proportion of cases collected from the total universe of all possible cases varies from county to county, it is necessary to weight the data to eliminate any biases that might result from the differing county-to-county collection rates.<sup>9</sup> When the case counts are weighted, they represent 22,597 total orders, of which 9,036 are orders in divorce cases, 10,399 are orders in court-adjudicated paternity cases, and 3,162 are orders in voluntarily acknowledged paternity cases. We use the weighted number of orders in all subsequent analyses, including our description of the number of orders and in our analysis of outcomes.

<sup>8</sup>These dates vary somewhat by county, depending on the actual date of the IRP data collectors’ site visit.

<sup>9</sup>Weighting is needed to ensure that the proportion of paternities and divorces are accurately represented, and that the distribution of cases across the counties represents their occurrence in the universe of child support cases.

After identifying the total sample of cases included in Cohorts 23 and 24, we first eliminated 966 orders (5,415 weighted) associated with shared custody cases because the analysis in this report is limited to sole-custody cases with orders that do not appear to be serial orders. In refining the sample further, we eliminated another 1309 orders (9,955 weighted) as follows:

1. 341 (2,752 weighted) serial orders because we generally did not have enough information about the prior order to correctly calculate whether these orders complied with the guidelines;
2. 225 orders (1,868 weighted) in which the court stated that it had imputed income to the case but the level of income imputed was not recorded; and
3. 743 orders (5,335 weighted) because no income information was available in the CRD. Of those orders eliminated due to a lack of information, almost 90 percent were associated with orders in adjudicated and voluntary paternities, rather than divorce.

Ultimately, 737 orders (7,228 weighted) were identified for inclusion in the sample and analyzed to determine whether they complied with the guidelines in effect at the time of their establishment—either pre-2004 or post-2004—using the following criteria:

- Orders that are expressed as a percentage (there are very few) were determined to be consistent with the guideline if the explicit percentage delineated in them was within 1 percent of the percentages set forth in the guideline.
- Fixed-dollar orders in which the amount of the difference between the actual order and the amount of the order under the guideline was less than one percent of the payer's income were determined to be consistent with the guideline. In many cases, we also calculated the proportion of orders that fell within two percentage points of the required percentage.

In considering the sample employed as well as the criteria used for determining compliance with the guideline in our analysis, several observations can be made. First, there are alternative ways of calculating compliance. For low-income payers' orders after January 1, 2004, guidelines call for small changes in the required percentage-of-income of less than 1 percent as the payer's income rises in steps. To assess whether courts are on the correct "step" in relation to low-income payers requires an assessment of whether the order was within 0.5 percent or 0.25 percent of the required amount; this level of accuracy may be unreasonable in light of the difficulties involved in accurately determining the payer's income. We did, however, calculate compliance rates using these alternative ranges, despite these challenges. Because we found that the compliance rates were not significantly different from the compliance rates

using a 1 percent range, we chose to continue the practice from earlier reports in using 1 (and 2) percent in determining whether an order was set in compliance with the guideline.

Second, and more critical to the overall conclusions of this report, is the fact that a high proportion of orders in adjudicated paternities—43.8 percent—and voluntary paternities—24.8 percent—had no income information in the CRD.<sup>10</sup> This is comparison with 11.2 percent of orders in divorce cases. Without income information, it is impossible to assess whether the courts used the guideline in setting the orders. In an attempt to provide additional information about the income of payers, we obtained earnings income from the Wage Record maintained by the Wisconsin Department of Workforce Development Division of Unemployment Insurance. While approximately two-thirds of the orders with no income information in the CRD have reported Wage Record earnings for at least one quarter in the year preceding the time of the order, there are a number of conceptual difficulties associated with using earnings from the Wage Record to calculate compliance with child support guidelines. Chief among them is the question of what income information was available to and used by the court in setting an order. While we understand from interviews with county child support agencies that they sometimes obtain earnings information from the on-line KIDS query to the Wage Record data base, we do not see evidence that this information is entered into the court record, based on information in the CRD. Ultimately, we concluded that our current sample of Wage Record data does not appear to have any greater utility than in the past.<sup>11</sup>

<sup>10</sup>In an earlier paper, Caspar, Rothe and Yom-Tov (2006) reported that Cohort 21 of the CRD included income information for 58 percent of payers, the same as we find here for Cohorts 23 and 24. Cook and Brown (2005) estimated that Cohorts 11 and 12 (cases entering the court system from July 1, 1990, through January 31, 1993) included income information for 86 percent of the fathers in those cohorts.

<sup>11</sup>When we calculate compliance rates using Wage Record data for orders which lack income information in the CRD, overall compliance rates decline. This is the result of the very low percentage of orders that appear to be set according to the guideline when the income source is the Wage Record. For orders that have both Wage Record data and income recorded in the CRD, only one quarter of the orders have Wage Record data that is within 30 percent of the CRD-recorded income information. A disparity of less than 10 percent from the income being used by the court would be sufficient to result in an assessment of “not compliant” with the guidelines.

As a result, the sample of cases subject to analysis for the purposes of this report is limited to only those for whom income data was available in the CRD. Given the high percentage of divorce cases that have income information available, we have confidence that our analysis is broadly applicable to all divorce cases. However, given the number of orders in paternities, particularly adjudicated paternities, that were eliminated due to a lack of income information, it cannot be assumed that the orders with income that remain in our sample represent an unbiased sample of all orders in paternity cases. If our sample is not representative of all orders, then it is possible that we have a sample that is more or less likely to be out of compliance with the guidelines than is the actual universe of all orders. Therefore, the findings enumerated in the following section regarding orders in paternities, particularly adjudicated paternities, may not be generalizable beyond the sample of the cases analyzed for this report.

#### IV. FINDINGS

The following section provides a general overview of the cases included in Cohorts 23 and 24 and the compliance of orders with the guideline pre- and post-2004 overall, by the income of the payer, based on demographic characteristics, and by county.

##### General Overview: Cohorts 23 and 24 Combined

We begin our analysis with a general overview of the orders in Cohorts 23 and 24. Table 1 shows all the orders that could be considered for this analysis. As previously noted, all the data in this table and in subsequent tables are weighted to represent the actual number of orders that would exist if a random sample of the same proportion of all possible orders had been selected in each of the 21 counties that are included in the CRD.<sup>12</sup>

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<sup>12</sup>In the data collection for the CRD, the proportion of cases sampled in each county varies considerably from a very low proportion in Milwaukee to much higher proportions in small counties. The weighting is done to

**Table 1**  
**Sole-Custody Orders in Cohorts 23 and 24**

Cases	Weighted N	Serial Orders	Imputed Income	Missing Income	N Remaining
All	17,183	2,752	1,868	5,335	7,228
Divorces	5,201	282	235	580	4,103
Adjudicated paternities	9,382	2,034	1,224	4,110	2,013
Voluntary paternities	2,600	436	408	645	1,111

Within Table 1, the first row reflects the results of the process of narrowing the sample as previously articulated in the data and methodology section, beginning with the total 17,183 sole-custody cases (after eliminating the 5,415 orders associated with shared custody cases) that meet our initial criteria for inclusion and then eliminating those orders that call for a serial order calculation or have split custody, have imputed income<sup>13</sup> and have no known income.<sup>14</sup> The number of cases remaining is 7,228.

The next three rows of Table 1 disaggregate all the orders into those that occur in a divorce case, those that occur in a paternity case that was adjudicated in a court, and those that occur in paternity cases that were voluntarily acknowledged. Of the total 17,183 orders, 5,201 are those in divorce cases; 9,382 are those in cases in which paternities were adjudicated in a court; and 2,600 are those orders associated with a voluntarily acknowledged paternity. The columns labeled “imputed income” and “missing income”

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ensure that the analysis fairly represents the actual status of all orders that could potentially be included from the 21 counties from which data are collected.

<sup>13</sup> The vast majority of orders based on imputed income did not state the amount of the imputation and so were excluded as lacking income. We attempted to determine if the courts had used the federal minimum wage times 35 or 40 hours per week as a method of imputation, but could not confirm that either was the general practice.

<sup>14</sup> There are a small number of percentage-expressed orders, which are assessed according to whether the percentage is the appropriate one, as called for in the guidelines. These are included in the compliance rates.

show that all paternities, whether adjudicated in a court or voluntarily acknowledged, are more likely than divorce cases to have either missing income or to have income imputed by the court.

Table 2 reflects the proportion of orders included in our final sample of 7,228 that were determined to be below the guideline, consistent with the guideline, or above the guideline using 1 percent range as well as a more liberal 2 percent range. This determination was made based on the effective date of the order in relation to the guideline. This means that orders with effective dates pre-January 1, 2004, were assessed based on the pre-2004 guidelines and orders that were effective post-January 1, 2004, were assessed based on the post-2004 guidelines. Taken as a whole, 41 percent of orders are consistent when using the 1 percent standard. Orders in paternity cases are more likely than orders in divorce cases to comply with the guidelines at the 1 percent standard: 62 percent of voluntary paternities and 50 percent of court-adjudicated paternities comply with the guidelines, compared to only 31 percent of orders in divorce cases. As would be expected, an increase in the range in which an order is considered compliant leads to an increase in order consistency. Using the 2 percent standard, 47 percent of all orders are consistent with the guideline: 67 percent of orders in voluntary paternities, 52 percent of orders in adjudicated paternities, and 40 percent of orders in divorce cases.

**Table 2**  
**Guidelines Usage for All Sole-Custody Orders in Cohorts 23 and 24**

Cases	Consistent Defined as Within 1% of Payer's Income			Consistent Defined as Within 2% of Payer's Income		
	% below Guideline	% Consistent	% above Guideline	% below Guideline	% Consistent	% above Guideline
All	40%	41%	19%	37%	47%	16%
Divorces	43	31%	26%	39%	40%	22%
Adjudicated paternities	39	50%	11%	39%	52%	10%
Voluntary paternities	29	62%	9%	26%	67%	7%

### Pre-January 1, 2004, vs. Post-January 1, 2004, Orders

A more interesting question is whether there was a difference in compliance with the guideline depending on which guideline was in place: pre- or post—January 1, 2004.<sup>15</sup> Therefore, as a next step in the analysis, we disaggregated the orders by date of order, shown in Table 3. The top panel includes 3,465 orders that were set prior to January 1, 2004; the bottom panel includes 3,763 orders that were set after January 1, 2004.

As reflected in Table 3, using the 1 percent standard for assessing guideline compliance, 48.3 percent of all pre-January 1, 2004, cases were consistent with the guidelines. Reflecting what we saw in Table 1, orders in paternity cases are more likely to be consistent with the guidelines than are orders in divorce cases (59.5 percent for adjudicated paternities and 61.8 percent for voluntary paternities, compared to 35.4 percent for orders in divorce cases). For all types of cases, orders that are not consistent with the guidelines are more likely to be set below the guidelines (37.5 percent) than above them (14.3 percent). In analyzing orders set after January 1, 2004, we find that only 34.5 percent of orders for all three types of case are set within 1 percent of the guidelines, significantly less than the compliance rate for orders set prior to January 1, 2004. The compliance rate for orders associated with both divorce and adjudicated paternity cases is also lower among the post-2004 orders than among the pre-2004 orders. Orders in voluntarily acknowledged paternity cases, on the other hand, have about the same compliance rate both before and after January 1, 2004.

In addition, the distribution of noncompliant orders is slightly different for post-January 1, 2004, orders when compared to pre-2004 orders. Among those orders that are noncompliant, the tendency to set orders lower than the guidelines post-2004 is somewhat abated. When the courts decided not to comply

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<sup>15</sup>In this report, we sometimes resort to a shorthand version of identifying “pre-January 1, 2004” guidelines as “pre-2004,” and similarly for “post-January 1, 2004” guidelines, which are sometimes referred to as “post-2004” guidelines.

**Table 3**  
**Pre-Post January 1, 2004, Guideline Compliance by Type of Case**

	Weighted N	% below Guideline 1% (2%)	% Consistent* 1% (2%)	P  1% (2%)	% above Guideline 1% (2%)
<b>Pre-January 1, 2004</b>					
Type of case					
All	3,465	37.5% (34.1%)	48.3% (53.6%)		14.3% (12.3%)
Divorce	1,692	43.6% (38.9%)	35.4% (43.4%)		21.0% (17.7%)
Adjudicated paternity	978	33.0% (32.4%)	59.5% (60.6%)		7.5% (7.0%)
Voluntary paternity	794	30.0% (26.2%)	61.8% (66.8%)		8.3% (7.0%)
<b>Post-January 1, 2004</b>					
Type of case					
All	3,763	42.0% (39.1%)	34.5% (40.9%)	.000 (.000)	23.5% (20.0%)
Divorce	2,411	42.8% (38.4%)	28.3% (36.7%)	.001 (.001)	28.8% (24.8%)
Adjudicated paternity	1,035	45.2% (44.4%)	40.5% (43.1%)	.001 (.005)	14.3% (12.3%)
Voluntary paternity	317	25.6% (25.6%)	61.9% (65.9%)	.972 (.787)	12.5% (8.5%)

\*Orders are defined as consistent if the difference between the actual order and the amount of the order under guideline was less than one (two) percent of the payer's income.

with the guidelines in post-2004 orders, they were somewhat more likely to set those orders above the guidelines than they had been for orders set prior to January 1, 2004. As shown in the second panel of Table 2, 23.5 percent of all orders set after January 1, 2004, were above the guideline (using the 1 percent standard), compared to the 14.3 percent of orders set above the guideline prior to January 1, 2004. This tendency appears to be true for all three types of cases.

This apparent tendency to set post-2004 orders higher than required by the guideline suggests that perhaps courts were still using the pre-2004 guidelines, (as permitted in the post-2004 guidelines) which are higher for low- and high-income payers than are the post-2004 guidelines. As a partial test of this hypothesis, we examine whether some of the orders that were set after January 1, 2004, and are noncompliant were set using the pre-2004 guidelines. For completeness, we also examine whether orders set prior to January 1, 2004, that were noncompliant were set using the post-2004 guidelines. This might have occurred if courts were anticipating the changes in the guidelines because of all the public discussion about potential changes.

The results of this analysis are reflected in Table 4. Testing the 1,792 orders that were set prior to January 1, 2004, that did not comply with the pre-2004 guidelines to determine if they complied with the post-2004 guidelines, we find that very few of them (0.1 percent) comply. This suggests that courts did not anticipate the publication of the post-2004 guidelines by adopting them for early use.

The situation is slightly different for orders that were set after January 1, 2004. Of the 2,464 orders set after January 1, 2004, that did not comply with the post-2004 guidelines, 3.4 percent were compliant with the pre-2004 guidelines. Although the number of voluntarily adjudicated paternities in this group is quite small (121), 13.1 percent of these are compliant using the pre-2004 guidelines, even though these orders were set after January 1, 2004. This suggests that courts may not have fully made the adjustment to the new guideline or that they preferred to use the “old” guideline for a small portion of the cases.

**Table 4**  
**Guideline Compliance Using Time-Inappropriate Guidelines**

	Number of Noncompliant Orders Using Time- Appropriate Guidelines Weighted N	% Compliant Using Other Guideline*
<b>Pre-2004 Orders</b>		
All	1,792	0.1%
Divorce	1,092	0%
Adjudicated paternity	396	0%
Voluntary paternity	303	0.8%
<b>Post-2004 Orders</b>		
All	2,464	3.4%
Divorce	1,728	3.4%
Adjudicated paternity	616	1.7%
Voluntary paternity	121	13.1%

\*Orders are defined as consistent if the difference between the actual order and the amount of the order under the guideline was less than one percent of the payer's income.

While the continued use of the pre-2004 guidelines in setting post-January 1, 2004, orders explains part of the higher noncompliance with the new guidelines, the tendency of noncompliant orders to be higher among the post-2004 orders remains puzzling. In separate analyses (data not shown), we disaggregated the post-2004 orders by years and analyzed the compliance/noncompliance rates. We found that this tendency to set the noncompliant orders above the standard was more pronounced among divorce cases set in 2004 than among those set in 2005; however, the differences between the two years were not significant, so it is possible that the differences occurred by chance. We return to the issue of the apparent increase in noncompliant orders set above the guidelines in the next section.

#### Orders for Low- and High-Income Payers

Because the pre- and post-2004 guidelines differ specifically in their treatment of low- and high-income payers, it is important to continue the investigation of the differential use of the two sets of

guidelines with regard to how they have been applied to low- and high-income payers. Table 5 shows the extent to which orders are compliant with the guidelines, disaggregated by the monthly income of the payer. The first three panels are for low-, medium-, and high-income payers whose orders were set prior to January 1, 2004. The second three panels show low-, medium-, and high-income payers whose orders were set after January 1, 2004.

Overall, Table 5 reflects a lower rate of compliance for orders set after January 1, 2004, virtually without regard to income. For instance, the compliance rate using the 1 percent standard for payers with \$0 income drops from 67 percent to 50 percent, the compliance rate for combined low-income payers (excluding those with \$0 in income) drops from 30 percent to 14 percent, and the compliance rate for the combined medium-income payers drops from 51 percent to 38 percent. During both time periods, no orders for high-income payers were consistent with the guideline. As can be seen in the next column, the changes in the compliance rates from pre- to post-2004 are significant.

For low- and high-income payers, this might be expected, given that the guidelines for them changed effective January 1, 2004, and it might take courts some time to adjust to the new guidelines. If this were the reason, however, then we would expect that compliance rates for medium-income payers would not change very much from pre-2004 to post-2004 orders because the guidelines for medium-income payers did not change. However, the compliance rate for medium-income payers declined as significantly as did the compliance rate for other payers, suggesting that some other mechanism is contributing to the decline in guideline use. We return to this point later.

Another noticeable aspect of Table 5 is that the apparent increase from pre-2004 orders to post-2004 orders in the proportion of orders that are set higher than the guidelines would require remains consistent among low-income and medium-income payers. Among low-income payers as a group (excluding those with \$0 earnings), the proportion with orders above the guidelines rises from 28 percent among the pre-2004 orders to 45 percent in the post-2004 orders. This is perhaps to be expected, given that the guidelines were reduced for low-income payers effective January 1, 2004. Yet a similar

**Table 5**  
**Compliance Rates by Amounts of Noncustodial Parents' Monthly Incomes**  
**(Number missing = 5,335)**

	Weighted N	% below Guideline 1% (2%)	% Consistent 1% (2%)*	P  1% (2%)	% above Guideline 1% (2%)
<b>Pre-January 1, 2004</b>					
Low income					
\$0	130	0% (0%)	67% (67%)		33% (33%)
\$1.00-949.99	366	43% (43%)	30% (30%)		28% (27%)
Medium income					
\$950.00-6,999.99	2,845	38% (34%)	51% (58%)		9% (8%)
High income					
\$7,000.00+	123	72% (58%)	0% (20%)		28% (22%)
<b>Post-January 1, 2004</b>					
Low income					
\$0	235	0% (0%)	50% (50%)	.001 (.001)	50% (50%)
\$1.00-949.99	431	34% (34%)	14% (21%)	.000 (.005)	45% (45%)
Medium income					
\$950.00-6,999.99	2,955	45% (41%)	38% (45%)	.000 (.022)	17% (14%)
High income					
\$7,000.00+	143	85% (85%)	0% (0%)	.000 (.000)	15% (15%)

\*Orders are defined as consistent if the difference between the actual order and the amount of the order under the guideline was less than one percent of the payer's income.

pattern is seen among the combined medium-income payers (from 9 percent to 17 percent), although there was no change in the guidelines for this group of payers. This pattern is reversed for high-income payers.

In an effort to better understand trends in compliance, we measured how much orders deviated from the guidelines, rather than whether or not they were compliant using the 1 percent standard. Similar to our earlier methods, we calculated the actual percent of the payer's income the order represented. Table 6 shows the proportion of orders that fall within a specific range below or above the guidelines as a percentage of the payer's income, which is the same calculation used in previous tables. In considering these ranges, it is important to recall that they represent the extent to which an order deviates from a payer's income, rather than the extent to which the *order amount* deviates from the amount that would

have been required if the guidelines had been followed. For example, under the guideline, a payer with a monthly income of \$1,000 and one child should be ordered to pay 17 percent or \$170 a month. If the order were set at \$120, or \$50 less than required under the guideline, the order would be considered to be 5 percent below the guideline (\$50 is 5 percent of \$1,000). This dollar amount, however, represents a 29.4 percent deviation in the *amount* of child support to be paid (\$50 is 29.4 percent of \$170).

The first panel shows the distribution for orders set prior to January 1, 2004, and the second panel for orders set after January 1, 2004. Among all orders (from divorce, voluntary paternity, and adjudicated paternity cases) in the first panel, about 18.4 ( $2.9 + 5.4 + 4.7 + 2.1 + 1.9 + 1.4$ ) percent of orders are between 1 percent and about 5 percent of the payors' incomes of being compliant with the guidelines. This means that almost 82 percent of all cases are either compliant or are within about 5 percent of the payors' incomes of being compliant.<sup>16</sup> For orders set after January 1, 2004, as reflected in the second panel, about 58 percent are either compliant or within about 5 percent of being compliant.

When the orders are considered by type, it is clear that patterns differ across the two panels.

1. Orders in divorce cases show a decline in compliance (from 35 to 28 percent), a slight increase (from 12.8 to 13.7 percent) in orders that are set below the guidelines by 5 percent or less, and an increase (from 7.8 to 11.8 percent) of orders that are set above the guidelines by 5 percent or less.
2. Orders associated with voluntarily acknowledged paternities show the same rate of compliance (62 per cent) in both the pre- and post-2004 panels. There was a decrease (from 16.4 to 3.1 percent) in orders set below the guidelines by 5 percent or less, and a slight increase (3.1 to 4 percent) in orders set above the guidelines by 5 percent or less.
3. Orders in adjudicated paternity cases reflect a third pattern: the rate of compliance declines from pre- to post-2004 orders (59.5 percent to 40.5 percent). The proportion of orders that are set up to 5 percent below the guidelines increases from 10.7 percent to 17.4 percent, while the proportion of orders that are set up to 5 percent above the guidelines is declines very slightly (from 3.5 to 3.0 percent), although the high number of orders excluded for lack of income in both types of paternity cases increases the chances that our sample may not reflect the pattern of all paternities.

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<sup>16</sup>Recall that for an order for one child, these orders fall between 12 and 22 percent of the payors' incomes.

**Table 6**  
**Extent of Deviation**

Percentage by Which Order Differs from Guidelines	All	Type of Case		
		Divorce	Voluntary Paternity	Adj. Paternity
<b>Pre- January 1, 2004</b>				
≥15% below	15.4%	23.9%	7.9%	5.9%
>8 up to 15% below	4.8%	2.4%	3.8%	9.7%
>5 up to 8% below	4.5%	4.5%	1.9%	6.7%
>3 up to 5% below	4.7%	3.0%	8.2%	5.0%
>2 up to 3% below	5.4%	5.3%	5.9%	5.1%
>1 up to 2% below	2.9%	4.5%	2.3%	0.6%
Compliant (at 1%)	48.3%	35.4%	61.8%	59.5%
>1 up to 2% above	2.1%	3.5%	1.2%	0.5%
>2 up to 3% above	1.9%	2.5%	1.9%	1.1%
>3 up to 5% above	1.4%	1.8%	0%	1.9%
>5 up to 8% above	1.9%	2.7%	2.6%	0%
>8 up to 15% above	2.6%	4.9%	0.3%	0.4%
≥ 15% above	3.1%	3.5%	1.5%	3.6%
Payor' income = 0 and order > 0	1.2%	2.2%	0.8%	0.0%
<b>Post January 1, 2004</b>				
≥15% below	13.8%	17.0%	9.9%	7.6%
>8 up to 15% below	9.4%	6.6%	8.4%	16.0%
>5 up to 8% below	4.8%	5.6%	1.9%	3.7%
>3 up to 5% below	7.1%	6.9%	4.3%	8.5%
>2 up to 3% below	4.1%	2.4%	1.2%	8.9%
>1 up to 2% below	3.0%	4.4%	0.0%	0.6%
Compliant (at 1%)	34.5%	28.4%	61.9%	40.5%
>1 up to 2% above	3.5%	4.0%	4.0%	2.0%
>2 up to 3% above	2.4%	3.7%	0.0%	0.0%
>3 up to 5% above	3.0%	4.1%	1.0%	1.0%
>5 up to 8% above	3.6%	3.4%	0.0%	5.4
>8 up to 15% above	3.8%	5.7%	7.5%	2.1%
≥ 15% above	4.2%	4.6%	7.5%	2.1%
Payor' income = 0 and order > 0	3.1%	3.3%	0.0%	3.7%

Finally, adding in the bottom row of each panel (orders for payers who appear to have zero income, yet have a positive order) yields a proportion of orders above the guidelines for pre-2004 of 14.2 percent, compared to 19.4 percent of those set after January 1, 2004. Among divorce cases, which have the highest rates of income information to permit calculation, the increase in the proportion of orders that are set above the guidelines rises from 21.1 to 28.8 percent of cases. The increase in the proportion of orders that are set above the guidelines-compliant amounts reflects a still-unexplained change in the pattern we have observed over a number of years.

#### Other Demographic Factors: Age of Youngest Child and Number of Children

Other factors in addition to income may be related to whether or not an order is compliant with the guidelines. Two of these factors are the age of the youngest child and the number of children in a case. Therefore, we conducted an analysis of the extent of guideline compliance based on these two factors pre-and post-2004.

The analysis of compliance by youngest child's age at the time of the first order is shown in Table 7, which continues to reflect the overall decline in compliance with the guidelines for orders set after January 1, 2004, compared to those set prior to January 1, 2004, as seen in earlier tables. However, other specific observations can be made. For example, regardless of the time period, orders for children when the youngest is less than two years old are more likely to be set according to the guidelines.<sup>17</sup> For these youngest children, the compliance rates using the 1 percent standard are just over 60 percent for the earlier time frame and just over 50 percent for the post-2004 period. Nevertheless, additional analysis (data not shown) indicates that differences in the distribution of orders by the age of the youngest child is

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<sup>17</sup>Using a Student t-test, this is significant at the 5 percent level.

**Table 7**  
**Youngest Child's Age at Time of First Order**

	Weighted N	% Unable to Determine	N Remaining	% below Guideline 1% (2%)	% Consistent 1% (2%)*	P  1% (2%)	% above Guideline 1% (2%)
<b>Pre-January 1, 2004</b>							
Age							
0–2	3,425	51.5%	1,661	14.0% (26.4%)	60.7% (64.1%)		10.4% (9.6%)
3–5	1,028	37.2%	645	43.1% (38.1%)	34.3% (43.6%)		22.6% (18.3%)
6–8	590	26.1%	436	47.9% (45.5%)	36.0% (39.1%)		16.1% (15.3%)
9+	946	24.2%	717	45.6% (40.9%)	39.7% (48.3%)		14.6% (10.8%)
<b>Post-January 1, 2004</b>							
Age							
0–2	3,005	58.4%	1,251	30.4% (30.0%)	50.6% (52.2%)	.000 (.000)	19.0% (17.8%)
3–5	1,407	30.1%	972	50.8% (43.9%)	25.0% (33.4%)	.000 (.000)	24.2% (22.7%)
6–8	715	34.6%	468	37.0% (32.7%)	28.4% (38.7%)	.015 (.925)	34.6% (28.6%)
9+	1,423	24.7%	1,071	49.9% (48.1%)	27.0% (35.6%)	.000 (.000)	23.2% (16.3%)

\*Orders are defined as consistent if the difference between the actual order and the amount of the order under guideline was less than one (two) percent of the payer's income.

not a significant explanatory variable in explaining the decline in compliance rates between those orders set prior to January 1, 2004, and those set after that date.

Table 8 shows the compliance rates for the pre-January 1, 2004, and post-January 1, 2004, periods, disaggregated for the number of children. Similar to the outcomes for the disaggregation of orders by age of youngest child, the declines in compliance are significant and fairly consistent regardless of the number of children; again, the difference in distribution of the number of children is not a significant explanatory variable in explaining the decline in compliance rates over the two time periods.

### County Differences

Another factor that may be contributing to difference in compliance rates may be varying practices within particular counties included as part of the CRD. While it would be very interesting to analyze each county separately, with the exception of Milwaukee this is not possible because we have too few observations in many of the counties to disaggregate the data this way. We can, however, aggregate the data in a manner that will allow for at least some analysis of county differentials; for this report, we chose to aggregate the 21 counties according to Beale Codes, a measure of where a county falls on an urban-rural continuum.<sup>18</sup> This aggregation differs from those in earlier reports, in which we used aggregation methods that were based on county population.

The potential benefit of aggregating according to a county's place in an urban-rural continuum is that counties will be grouped according to their relative "urbanness," even if they have low populations. This tends to put some counties with small populations into relatively urban groupings because of their location within a metro area. One might expect, for example, that cases in St. Croix County, located in the St. Paul/Minneapolis metro area, are more demographically similar to cases in other counties in large

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<sup>18</sup>Beale Codes are available on the U.S. Department of Agriculture web site at:  
<http://www.ers.usda.gov/Data/RuralUrbanContinuumCodes/2003/>

**Table 8**  
**Rate of Guideline Compliance by Number of Children**

	Weighted N	% Unable to Determine	N Remaining	% below Guideline 1% (2%)	% Consistent* 1% (2%)	P  1% (2%)	% above Guideline 1% (2%)
<b>Pre-January 1, 2004</b>							
No. of children							
1	4,480	49.7%	2,251	33.9% (30.4%)	53.5% (59.4%)		12.6% (10.1%)
2	1,178	21.0%	931	43.3% (41.2%)	39.1% (42.6%)		17.6% (16.1%)
3+	355	20.3%	283	46.6% (39.9%)	36.4% (45.6%)		17.0% (14.5%)
<b>Post-January 1, 2004</b>							
No. of children							
1	4,612	50.3%	2,292	38.6% (20.9%)	38.9% (44.9%)	.000 (.000)	19.8% (16.5%)
2	1,349	24.2%	1,023	45.0% (34.8%)	26.5% (33.7%)	.000 (.000)	24.7% (21.3%)
3+	589	23.9%	448	28.1% (21.9%)	30.6% (37.1%)	.098 (.022)	39.5% (34.8%)

\*Orders are defined as consistent if the difference between the actual order and the amount of the order under guideline was less than one (two) percent of the payer's income.

metro areas than they are to cases in more rural areas. Therefore, it is may be more appropriate to group St. Croix County with other similarly situated counties rather than with counties with similar populations located in rural areas.

Therefore, using Beale Codes, we aggregated the 21 counties as follows: (1) Milwaukee; (2) counties in large (>250,000 population) metro areas: Dane, Kewaunee, Ozaukee, St. Croix and Waukesha; (3) counties in small (<250,000 population) metro areas: Calumet, Marathon, Racine, Sheboygan, Winnebago; and (4) nonmetro counties, or counties with a small urban area: Clark, Dodge, Dunn, Green, Jefferson, Juneau, Monroe, Oneida, Price, Richland.

Table 9 displays differences in compliance rates using these county groups. As we observed in tables disaggregated by demographic variables, the decline in compliance among the post-2004 set of orders is significant and is distributed somewhat evenly across all county groups. Again, changes in the distribution of orders associated with the disaggregation by county groups is not a significant explanatory variable for the decline in compliance rates for orders set prior to January 1, 2004, compared to those set after January 1, 2004.

## V. CONCLUSIONS AND SUGGESTIONS FOR ADDITIONAL RESEARCH

This is the second report to examine use of Wisconsin's guidelines for orders set after the guideline amendments that took effect on July 1, 2004. The first report (Brown and Cancian, 2007) looked at divorce cases with shared physical placement. In this report we consider sole-placement cases in divorce, voluntarily acknowledged, and court adjudicated paternities. Based on our analysis of these data, we have two major findings. First, overall compliance with the guideline is considerably lower among post-January 1, 2004, orders compared to those orders set prior to January 1, 2004. Second, compared to earlier years, non-guideline-compliant orders set in the post-January 1, 2004, period are somewhat more likely to have been set above the guideline.

At this juncture, we cannot determine with any certainty the underlying cause of these trends, although we completed alternative analyses in order to explain them. First, we tested whether courts

**Table 9**  
**Guideline Compliance by County Groups**

	Weighted N	% Unable to Determine	N Remaining	% below Guideline 1% (2%)	% Consistent* 1% (2%)	P  1% (2%)	% above Guideline 1% (2%)
<b>Pre-January 1, 2004</b>							
County Group							
Milwaukee	2,934	49.6%	1,479	41.6% (39.3%)	46.0% (49.1%)		12.4% (11.6%)
Large metro area counties	1,201	32.1%	815	37.8% (34.5%)	48.5% (54.1%)		13.7% (11.4%)
Small metro area counties	1,247	39.6%	753	29.1% (25.2%)	53.1% (60.9%)		17.8% (13.9%)
Nonmetro counties	631	33.8%	418	37.3% (31.1%)	46.9% (56.7%)		15.8% (12.2%)
<b>Post-January 1, 2004</b>							
County Group							
Milwaukee	3,662	55.4%	1,633	43.5% (41.8%)	31.8% (37.4%)	.000 (.000)	24.6% (20.9%)
Large metro area counties	1,162	20.9%	919	40.5% (35.9%)	42.0% (48.9%)	.007 (.028)	17.5% (15.2%)
Small metro area counties	1,063	31.4%	729	36.6% (34.3%)	35.9% (42.5%)	.000 (.022)	27.4% (23.2%)
Nonmetro counties	665	27.4%	483	47.8% (43.1%)	24.8% (35.8%)	.000 (.000)	24.8% (21.1%)

\*Orders are defined as consistent if the difference between the actual order and the amount of the order under guideline was less than one (two) percent of the payer's income.

might still be using the pre-2004 guidelines to set orders in the post-January 1, 2004, period. However, the evidence appears to show that this happened in only a small proportion of the cases. Second, we analyzed the effect of an increase in the number of cases in which the courts recorded that the payer had no income and nevertheless set a positive support order; these cases are all classified as being set above the amount the guidelines would require. Again, this only explains a small portion of the change in both compliance rates and noncompliant high orders. Taken together, these two reasons account for perhaps 25 percent of the observed changes.

Rather than a delay in adopting the new guideline or an increase in the number of cases without income for which an order was set, another hypothesis is that current trends are more directly attributable to an overall decline in the use of the guideline in setting orders. This hypothesis is somewhat supported by our analysis of compliance rates for medium-income payers; the compliance rates for this group of payers declined as much as compliance rates for low- and high-income payers, even though there was no change in the guidelines for medium-income payers. It is also supported by our analysis of compliance rates using county groups: the decline in compliance among the post-2004 set of orders is distributed somewhat evenly across all county groups. No one group can be singled out in relation to the identified changes.

However, as previously noted in the data and methodology section of this report, it is possible that the sample of cases in paternities, particularly adjudicated paternities, used in this analysis is not reflective of all such sole-custody cases determined during this time period. As noted, we are missing income information for about 43.8 percent of cases with adjudicated paternities and these cases were therefore excluded from the analysis. Perhaps if income information was available and we were able to ascertain whether an order complies with the guidelines, the trends identified in this report associated with paternities, particularly adjudicated paternities, would change. Of particular concern is whether the lack of information in these court cases occurs for some systematic reason that is unknown to us. We do not have

similar concerns about the trends associated with orders in divorce cases, given that income information is available for almost 89 percent of these cases.

Clearly, there are a number of questions that remain to be addressed in order to accurately analyze the extent of compliance with the guideline pre- and post-2004 for all orders and not just those for which we have income information. These questions can be separated into those that relate to determining the income of payers, the general preferences of courts making order decisions, and the extent to which practices previously considered to be deviations from the guidelines are now becoming more standardized.

*Income Information.* As noted, we are currently not able to determine the compliance of a significant number of orders in paternity cases due to a lack of income information. One question related to this lack of information is whether there are types of paternity cases for which income information is routinely not collected. Are these cases the type for which Wisconsin courts once relied on percentage-expressed orders, and thus income information was not as critical in determining the order amount? Or are there other reasons for not collecting income information? Another question is whether and how county child support officials make use of the on-line query to earnings found in the Wage Record of the Division of Unemployment Insurance in setting orders. Is the information in the Wage Record useful for the purpose of setting child support orders? A third question relates to why county child support officials may not be recording income information into the court record information. Is the information missing because it is not seen to be of utility later in the process? Is there no need to have access to the income that was used to set the original order?

*Local Preferences.* Even if income information were available, there may also be other non-income-related issues that affect the courts' decisions to use the child support guidelines. Generally, our samples are too small to permit us to examine individual county performance, although there may be demographic or geographic attributes of individual counties that might help explain the declining use of the guidelines. Is it possible that the practices of a specific county account for the trends identified in this

report? Alternatively, in some counties the decision to use the guidelines may be idiosyncratically determined by one or a small group of people whose philosophies on setting child support are unknown to us. Do the actions of individuals within the system have a significant effect on the identified trends?

*Practice Considerations.* Finally, is it possible that what appears to be a trend toward increased deviation from the guideline is rather a trend toward adjusting orders upwards due to other legitimate factors, such as the provision of support for medical or child care. In these cases, it may not be appropriate to label such as orders as non-compliant. Generally, information is not available in the court records to indicate the extent to which such factors have been considered in the establishment of an order. Is it possible that courts are more frequently taking such legitimate factors into account, leading to the establishment of higher orders than would have otherwise been expected given the guideline? Rather than an overall shift away from complying with the guidelines in establishing orders, courts may be increasing their ability to account for factors other than income in establishing orders. If such deviations are occurring on a more systemic basis because of these factors, should they be incorporated into the guidelines rather than being treated on a case-by-case basis?

All three sets of questions suggest that additional fieldwork within the CRD counties might be helpful. For example, discussion with child support and court officials could help address questions about missing income information. It could also serve to identify specific concerns, problems, or philosophical beliefs that might be related to local decision making about how orders should be set. Finally, it might allow for the identification of trends related to the consideration of other factors such as medical and child care in the establishment of orders that are not readily apparent through a review of the available data.

Presumably, one reason for requiring states to establish and monitor guidelines is to ensure that some equity exists in setting child support orders. Are families in similar circumstances being treated equitably? Are families in dissimilar circumstances being treated fairly relative to each other? Although it is difficult to provide definitive answers to these questions, it might prove useful to conduct a review of these issues, based not only on Wisconsin data, but on information from other states. In particular, are

other states witnessing the same trends as in Wisconsin? Information about trends in other states as well as local practices in Wisconsin, considered in conjunction with knowledge to be gained from an upcoming paper on the impact on payments of the recent change in guidelines, could be combined to develop a set of recommendations on next steps to understanding and improving the guideline's role in assuring that children receive the support to which they are entitled.

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