

## **The Use of Child Support Guidelines in Wisconsin: 2007 to 2009**

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### **I. INTRODUCTION**

Wisconsin, like all states, has established presumptive guidelines to be used by courts and administrative officials when setting child support obligations. In this report, we use data on a sample of court cases in Wisconsin to assess the extent to which these guidelines are followed in divorce and paternity cases entering the courts during the 2007 to 2009 period. Additionally, we examine court records for any explicit statements about reasons for deviating from those guidelines, and we examine the characteristics of cases in which child support orders do not appear to conform with the state's guidelines.

This report continues an ongoing series of reports prepared by the Institute for Research on Poverty which have examined the use of child support guidelines in the state over the last few decades. Most recently, a comprehensive report (Cook and Brown, 2013) examined guidelines usage from 1996 through 2006, and found declines in guidelines use over time and growth in the share of cases without orders. That report also highlighted differences in guidelines usage between paternity and divorce cases, as well as differences across cases with varying placement arrangements—themes we continue to examine here. The current report serves largely as an update to past work, with new information about the composition of cases that do not conform to guidelines.<sup>1</sup>

Although we discuss guidelines usage overall, there are in fact a series of guidelines intended to handle a range of circumstances spanning shared placement, high and low income

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<sup>1</sup>Earlier guidelines reports include Brown and Cancian 2007; Rothe et al 2007; Caspar, Rothe, and Yom-Tov 2006; Cook 2002; Rothe and Hu 2002; Rothe, Hu and Wimer 2000a and 2000b; Meyer and Hu 1996; Melli and McCall 1993; Melli and Bartfeld 1991.

payers, serial families, and split placement.<sup>2</sup> In our calculations of guidelines usage, we consider the guideline or guidelines that appear to be applicable to the circumstances of each case. It should be noted that while guideline calculations are considered presumptively correct under federal and state law, they are not mandatory. Courts are permitted to modify the order amount if they find that the guidelines calculation results in an order that is “unfair to the children or to any of the parties.” In such cases, the court is required by state law (Wis. Stats. 767.25(1n)) to state “in writing or on the record” the order calculated from the guidelines, the amount of the modification, and the reasons for finding the modification necessary. Thus, nonconformance with the numeric guidelines should not be necessarily interpreted as noncompliance with the underlying law, in that deviations are permitted as described above. We examine the extent to which such deviations are found in the written record (such as court findings, orders, or minutes), recognizing that our data do not necessarily contain all statements considered part of the record.

## **II. DATA AND METHODS**

To assess guidelines usage, we follow the example of previous IRP reports on child support guidelines and use data from the Wisconsin Court Record Data (CRD), a sample of child support-related cases coming to court in 21 Wisconsin counties (Brown, Roan and Marshall, 1997).<sup>3</sup> We focus on the most recent data in the CRD: cohorts 28 and 29, which comprise cases entering the courts during 2007 to 2009. All cases selected for inclusion in the CRD have the

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<sup>2</sup>Wisconsin’s guidelines are issued as Chapter DCF 150 of the Wisconsin Administrative Code.

<sup>3</sup>Calumet, Clark, Dane, Dodge, Dunn, Green, Jefferson, Juneau, Kewaunee, Marathon, Milwaukee, Monroe, Oneida, Ozaukee, Price, Racine, Richland, St. Croix, Sheboygan, Waukesha, and Winnebago.

potential for child support payments for at least one year. Our analyses are weighted to adjust for sampling differences between large and small counties.

Our total sample consists of 1,512 cases roughly evenly divided between the two cohorts. We examine the initial child support order established in the case at the time of final judgment. We eliminate cases in which the parents reconciled or are living together at the time of the final judgment; cases in which there has yet to be a final judgment; cases in which there was no physical placement order; cases in which the children were placed with a third party; and cases in which the parents have split placement of the children (often with a split of sole placement of one child, and shared placement of another child—such that the appropriate child support guideline is undetermined).

To calculate the appropriate guidelines-based order, we identify the placement arrangements ordered for the case (based on the number of nights per year with each parent) to determine whether the shared placement formula should be used.<sup>4</sup> We then used the income of the parents, the number of children, and the placement arrangement to calculate the expected order amount based on the appropriate formula.

There are several types of cases in which the guideline-specified amount is not completely clear; a brief discussion of the treatment of the most common of these cases follows (following the same treatment used in Cook and Brown, 2013). Under Chapter 150.03.3, courts are permitted, under certain circumstances, to set an order based on imputed income, rather than actual income. We base our calculation of orders consistent with the guideline only on the actual income amount recorded in the CRD, if available. Under Chapter 150.05.1(b), the court “may

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<sup>4</sup>See Brown and Cook (2011) for a full report on placement arrangements ordered in Wisconsin for previous CRD cohorts

incorporate responsibility for a contribution to the cost of private health insurance as an upward or downward adjustment to a payor's child support obligation." For example, if the payee is paying for insurance, the payor may be asked to share in this cost, increasing the order; if the payor is paying for insurance, the order might be adjusted downward. We have not attempted to incorporate potential adjustments that might reflect health insurance payments, although we do show percentages of mother-sole and equal-shared placement cases where judges have referenced such expenses in justifying a deviation from the guidelines. Another example of a difficult case is a "multipart" order—some orders are for different amounts in different types of circumstances (for example, the order amount may change after a house has been sold); in these cases we determine consistency with the guidelines based on the circumstance in effect at the time of final judgment. Finally, in cases in which the noncustodial parent has no income, "no order" can be seen as consistent with the guidelines; we have therefore classified cases with no income and no order as "consistent," despite the absence of an order.

Some cases did not include enough information for the guideline amount to be calculated. In sole placement cases, the missing information was generally the income of the payor; in shared placement cases, the missing information could be either the income of one or both parents, or the percentage of placement time accorded to each parent. When such cases have an order, they are included in the "Consistency Not Known" category.

After we calculate the guidelines-prescribed order amount for the case, we transform both it and the actual order amount into a percentage of the payor's income. We consider orders consistent with the guideline if they are within one percentage above or below the requisite percentage (for example, 16–18 percent of income in a standard one-child case), or within \$50 of the guidelines-specified amount. In cases where more than one guideline could potentially apply,

we consider a case to be guidelines compliant if it conforms to any guideline that is potentially relevant in the particular case, including the percentage standard, the serial family guideline, the low-income or high-income guideline, and the shared placement guideline. For all guidelines, we use a range of 1 percentage point or \$50 above or below the guidelines-specified amount to assess compliance.

### **III. RESULTS**

#### **A. Use of Guidelines**

We begin by showing the disposition of all cases in our sample with regards to guidelines use (Table 1a). We differentiate between three broad groups: cases with no orders which lack evidence of conforming to any relevant guideline (referred to as “No Child Support Order”)<sup>5</sup>; cases with orders, but insufficient evidence to determine whether the orders conform to guidelines (referred to as “Consistency Not Known”); and cases that have sufficient information to determine whether they conform to relevant guidelines (referred to as “Consistency Known”). Within the third group, per the criteria described earlier, we further differentiate among cases with orders that conform to guidelines (including no-order cases, if warranted by the guidelines); cases with above-guidelines orders; and cases with below-guidelines orders.

Column A shows the disposition of all cases in our sample, including those with and without orders as well as with and without sufficient information to assess guidelines conformance. Across the two cohorts, almost one-quarter of the cases (23 percent) lack support orders, yet have no evidence in the record that this lack of orders is consistent with any relevant

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<sup>5</sup>This category includes no-order cases that appear to be inconsistent with the guidelines (51 percent of cases in this category) and no-order cases where consistency with the guidelines cannot be determined (49 percent).

**Table 1a**  
**Compliance with Guidelines: IVD and Non-IVD Cases, 2007–2009**

	(A) Percentage of All Cases	(B) Percentage of Classifiable Cases
<b>All Cases</b>		
<i>N</i>	3,008	1,788
No Child Support Order <sup>a</sup>	23.3%	
Consistency Not Known	19.3%	
Consistency Known	57.4%	
Order Lower than Guidelines	13.8%	24.1%
Consistent with Guidelines (1%) <sup>b</sup>	33.5%	58.3%
Order Higher than Guidelines	10.1%	17.6%
<b>Paternity Cases</b>		
<i>N</i>	1,533	852
No Child Support Order <sup>a</sup>	19.8%	
Consistency Not Known	27.9%	
Consistency Known	52.3%	
Order Lower than Guidelines	12.6%	24.1%
Consistent with Guidelines (1%) <sup>b</sup>	34.7%	66.3%
Order Higher than Guidelines	5.0%	9.6%
<b>Divorce Cases</b>		
<i>N</i>	1,475	936
No Child Support Order <sup>a</sup>	27.9%	
Consistency Not Known	7.9%	
Consistency Known	64.2%	
Order Lower than Guidelines	15.4%	24.0%
Consistent with Guidelines (1%) <sup>b</sup>	31.8%	49.6%
Order Higher than Guidelines	17.0%	26.4%

**Notes:** Data are from cohorts 28–29 of the WCRD. All percentages weighted to reflect sampling differences in large and small counties.

<sup>a</sup>Includes no-order cases that are known to be inconsistent with the guidelines and those for who consistency could not be determined. Excludes “no order” cases which are consistent with guidelines. As noted below, such cases are included in the “consistent with guidelines” category.

<sup>b</sup>Includes some no-order cases in which an award of zero dollars would be consistent with the guidelines.

guidelines. This includes no-orders cases that clearly appear noncompliant, as well as no-order cases that are missing information needed to adequately assess compliance. An additional 19 percent of all cases have an order in which consistency with the guidelines is unknown due to missing information. The remaining 57 percent have sufficient info to assess guidelines conformity (we refer to these orders in our discussion as “classifiable orders”), including those no-order cases where the lack of an order is consistent with the guidelines. Where consistency with the guidelines can be determined, one-third of the total sample is clearly in compliance with the guidelines, 14 percent of the total sample has orders below guidelines-specified amounts, and 18 percent has orders exceed guidelines-specified amounts. Column B looks only at the subset of cases with classifiable orders (including non-order cases when lack of an order appears compliant); among this subset, we find that 58 percent of cases are in conformance, 24 percent are too low, and 18 percent are too high, relative to what we calculate under the guidelines.

These patterns differ somewhat between paternity and divorce cases. Paternity cases are less likely to lack child support orders without evidence that no order is warranted (20 percent as compared to 28 percent of divorce cases). On the other hand, paternity cases are much more likely than divorce cases to have orders of unknown consistency with guidelines—28 percent, as compared to 8 percent of divorce cases. Just over half of paternity cases have classifiable orders, as do almost two-thirds (64 percent) of divorce cases. Focusing specifically on the classifiable orders (column B), the orders in paternity cases are more likely to be consistent with guidelines—66 percent as compared to 50 percent of divorce cases; equally likely to be below guidelines (24 percent for both groups), and less likely to exceed guidelines (9 percent, as compared to 26 percent for divorce cases).



Overall, it appears that compliance with the guidelines is quite modest, consistent with past analyses. This is particularly true when one considers the almost one-quarter of cases that lack orders yet have no information suggesting an order should not be in effect. Divorce cases appear to have less conformance with the guidelines than paternity cases, both in lower use in cases with classifiable orders, and in a larger share of no-order cases.

The difference between paternity and divorce cases may reflect, in part, the higher involvement of child support agencies in the former. We thus present a similar analysis in Table 1b, limited to the subset of cases that have IV-D involvement at the time of the court hearing. There is very little difference in the paternity sample when compared to our initial analysis of all paternity cases—which is to be expected as a large majority of paternity cases are in the IV-D subsample. On the other hand, only a minority of divorce cases are in the IV-D subsample. When limited to IV-D cases, paternity and divorce cases are similarly likely to lack an order. Among those with classifiable orders, though, paternity cases continue to have guidelines-conforming orders at a substantially higher rate than divorce cases (66 percent versus 44 percent), while divorce cases are far more likely to have orders that exceed guidelines.

#### B. Use of Guidelines by Placement Type and Other Characteristics

A common finding in past analyses of guidelines conformance has been differential use of the guidelines in sole placement as compared to shared placement cases. We examine this in Table 2, limiting our analysis to divorce cases and looking separately at the three most frequent placement categories: mother-sole placement, equal-shared placement, and mother-primary placement (defined as 51–75 percent of time with the mother and 25–49 percent of time with the father). As with the previous tables, column A shows the full sample, while column B shows the subset with classifiable orders.

**Table 1b**  
**Compliance with Guidelines: IVD Cases Only**

	(A) Percentage of All Cases	(B) Percentage of Classifiable Cases
<b>All Cases</b>		
<i>N</i>	2,004	1,180
No Child Support Order <sup>a</sup>	19.5%	
Consistency Not Known	24.9%	
Consistency Known	55.7%	
Order Lower than Guidelines	13.6%	24.4%
Consistent with Guidelines (1%) <sup>b</sup>	34.1%	61.2%
Order Higher than Guidelines	8.0%	14.3%
<b>Paternity Cases</b>		
<i>N</i>	1,497	841
No Child Support Order <sup>a</sup>	19.7%	
Consistency Not Known	27.7%	
Consistency Known	52.6%	
Order Lower than Guidelines	12.8%	24.2%
Consistent with Guidelines (1%) <sup>b</sup>	35.0%	66.4%
Order Higher than Guidelines	4.9%	9.4%
<b>Divorce Cases</b>		
<i>N</i>	507	339
No Child Support Order <sup>a</sup>	18.3%	
Consistency Not Known	12.3%	
Consistency Known	69.3%	
Order Lower than Guidelines	17.4%	25.1%
Consistent with Guidelines (1%) <sup>b</sup>	30.3%	43.7%
Order Higher than Guidelines	21.6%	31.2%

**Notes:** Data are from cohorts 28–29 of the WCRD. All percentages weighted to reflect sampling differences in large and small counties.

<sup>a</sup>Includes no-order cases that are known to be inconsistent with the guidelines and those for who consistency could not be determined. Excludes “no order” cases which are consistent with guidelines. As noted below, such cases are included in the “consistent with guidelines” category.

<sup>b</sup>Includes some no-order cases in which an award of zero dollars would be consistent with the guidelines.

**Table 2**  
**Compliance with Guidelines, Divorce Cases by Placement Arrangements**

	(A) Percentage of All Cases	(B) Percentage of Classifiable Cases
<b>Mother Sole Placement:</b>		
<i>N</i>	644	490
No Child Support Order <sup>a</sup>	14.4%	
Consistency Not Known	9.9%	
Consistency Known	75.7%	
Order Lower than Guidelines	18.3%	24.2%
Consistent with Guidelines (1%) <sup>b</sup>	45.0%	59.4%
Order Higher than Guidelines	12.4%	16.4%
<b>Equal Shared Physical Placement:</b>		
<i>N</i>	496	232
No Child Support Order (a)	44.5%	
Consistency Not Known	6.5%	
Consistency Known	49.0%	
Order Lower than Guidelines	13.0%	26.5%
Consistent with Guidelines (1%) <sup>c</sup>	20.6%	42.1%
Order Higher than Guidelines	15.4%	31.4%
<b>Unequal Shared Placement, Mother Primary:</b>		
<i>N</i>	216	157
No Child Support Order <sup>a</sup>	21.1%	
Consistency Not Known	6.4%	
Consistency Known	72.6%	
Order Lower than Guidelines	17.4%	23.9%
Consistent with Guidelines (1%) <sup>c</sup>	18.6%	25.6%
Order Higher than Guidelines	36.6%	50.5%

**Notes:** Data are from cohorts 28–29 of the WCRD. All percentages weighted to reflect sampling differences in large and small counties.

<sup>a</sup>Includes no-order cases that are known to be inconsistent with the guidelines and those for who consistency could not be determined. Excludes “no order” cases which are consistent with guidelines. As noted below, such cases are included in the “consistent with guidelines” category.

<sup>b</sup>Includes some no-order cases in which an award of zero dollars would be consistent with the guidelines.

<sup>c</sup>Includes some no-order cases in which an award of less than \$50 dollars would be consistent with the shared placement guidelines.

There are notable differences among groups, consistent with the findings in past guidelines reports. These involve differences in the prevalence of orders and, when classifiable orders are present, differences in the extent of guidelines conformance. Sole-mother placement cases are most likely to have a classifiable order (76 percent) and least likely to lack an order altogether (14 percent), compared to other placement groups; and among mother-sole placement cases with classifiable orders, such orders are much more likely than in other groups to be compliant with guidelines (59 percent), and least likely to exceed the guidelines (16 percent). In contrast, almost half (44 percent) of equal-shared placement cases lack an order (with no evidence that this is in conformance with the guidelines). Note that these low rates of guideline compliance are not merely capturing the very low orders that result from application of guidelines in equal-shared cases with similar incomes; when guidelines-based orders would be \$50 or less per month, we consider the case to have a guidelines-conforming order, and such cases are thus not included in the 44 percent of no-order cases. In addition to a high no-order rate, only 42 percent of classifiable orders in equal-shared cases conform with guidelines, while around one-quarter are too low and close to one-third are too high. In the case of mother-primary shared placement, most notable is the very low share of guidelines-conforming orders when classifiable orders are present: only one-quarter of such orders conform to the guidelines, another quarter are too low, and half exceed guidelines-based amounts. These different patterns across groups suggest that guidelines-based orders may be perceived very differently by key decision makers depending on the placement arrangements, and thus the relevant guidelines, that are in place.

We also examine differences in guidelines use by case characteristics (Table 3). Here, column A shows the share of cases without orders (unless such lack of order conforms to

**Table 3**  
**Compliance with Guidelines by Case Characteristics, 2007–2009**

	(A)	(B)	(C)	Classifiable Cases			
				(D)	(E)	(F)	
	<i>N</i>	No Order <sup>a</sup>	Consistency Not Known	Consistency Known	Below Guidelines	Consistent With Guideline <sup>b</sup>	Above Guidelines
All Cases	3,008	23.3%	19.3%	57.4%	24.1%	58.3%	17.6%
Case Type							
Voluntary Paternity	511	20.9%	18.2%	60.8%	19.3%	68.3%	12.4%
Adjudicated Paternity	1,022	19.6%	30.3%	50.2%	25.6%	65.7%	8.7%
Divorce	1,475	27.9%	7.9%	64.2%	24.0%	49.6%	26.4%
County							
Milwaukee	715	21.8%	28.5%	49.7%	31.7%	52.4%	15.9%
Other Urban Counties	1,511	24.0%	11.3%	64.7%	18.7%	62.3%	19.0%
Rural	782	26.7%	12.8%	60.5%	20.5%	61.8%	17.6%
Number of Children							
1	1,765	22.0%	21.3%	56.7%	21.8%	64.1%	14.1%
2	886	26.8%	16.5%	56.8%	27.4%	52.0%	20.6%
3 or More	357	20.6%	16.7%	62.7%	26.7%	46.4%	26.9%
Age of Youngest Child							
0–2	1,731	20.4%	25.5%	54.1%	24.4%	61.3%	14.3%
3–5	531	23.9%	11.8%	64.3%	27.4%	51.8%	20.7%
6–10	432	26.6%	7.8%	65.6%	19.5%	54.9%	25.5%
11–18	312	35.0%	8.5%	56.6%	23.0%	57.5%	19.5%
Parent's Combined Total Income (from CRD or UI)							
No Earnings	936	23.1%	32.8%	44.1%	17.1%	71.2%	11.7%
\$1–\$25,000	481	20.1%	31.7%	48.2%	17.1%	64.4%	18.6%
\$25,000–\$50,000	561	19.7%	9.5%	70.8%	28.3%	56.4%	15.2%
\$50,000–\$75,000	432	24.0%	5.5%	70.4%	29.3%	50.6%	20.1%
\$75,000–\$100,000	280	27.2%	4.2%	68.6%	29.4%	46.2%	24.4%
\$100,000 or more	318	31.4%	3.4%	65.1%	27.5%	47.9%	24.6%
Child Support Order Decision							
By Stipulation	1,505	30.7%	8.2%	61.1%	24.0%	51.3%	24.7%
By Judge/Family Court Commissioner	1,503	17.8%	27.5%	54.7%	24.1%	64.1%	11.8%

**Notes:** Data are from cohorts 28–29 of the WCRD. All percentages are weighted to reflect sampling differences in large and small counties.

<sup>a</sup>Includes no-order cases that are known to be inconsistent with the guidelines and those for who consistency could not be determined. Excludes “no order” cases which are consistent with guidelines. As noted below, such cases are included in the “consistent with guidelines” category.

<sup>b</sup>Includes some no-order cases in which an award of zero dollars would be consistent with the guidelines.

guidelines); columns B and C show the share of cases with orders of unknown and known guidelines conformance, respectively; and columns D through F show, among the cases with classifiable orders, the extent to which those orders are low, conforming, or high. We classify cases by location, number of children, age of youngest child, combined parental income, and source of child support decision (i.e., by stipulation versus by judge or Family Court Commissioner). It is important to keep in mind that we only look at one case dimension at a time, so this analysis does not control for multiple ways in which cases differ. In this discussion, we simply highlight some of the notable patterns.

Differences by location are modest, with somewhat lower guidelines compliance in Milwaukee than elsewhere, and a larger share of below-guideline orders. Use of the guidelines declines as number of children increases. There are not clear trends in guidelines use by children's age, other than an increase in the share of no-order cases among cases with older children. Stipulated cases are more likely to lack an order than are cases settled by a judge or Family Court Commissioner (31 percent versus 18 percent); and classifiable orders in such cases are less likely to be guidelines conforming and more likely to exceed guidelines than are court-settled cases.

Most notable in these results are the income patterns. The share of cases with no order increases as combined income increases—from 20 percent of cases in the \$1 to \$25,000 and \$25,000 to \$50,000 ranges and increasing to 31 percent when income exceeds \$100,000. More pronounced is the decline in conformance with the guidelines among classifiable orders, as income grows, declining steadily from 71 percent of cases with no income to 48 percent of orders in the highest income group. Both below-guideline and above-guideline orders increase over this range. Note that the differential use in higher income cases is not a reflection of

different child support guidelines, as we treat orders as guideline-compliant if they meet either the regular or (when relevant) the alternative high or low income guideline. However, the lower use of guidelines in higher-income cases is consistent with the lower use in shared placement cases, which are more widespread among higher-income cases.

### C. Explicit Deviations from Guidelines

Although use of guidelines is presumptive, the courts are also permitted to deviate from the guidelines-based amounts as described previously, if evidence indicates that the use of the guidelines would result in an unfair order. Thus, nonconformance with the guidelines does not necessarily imply nonconformance with the relevant law. However, in cases where the guidelines are not used because they are deemed to be unfair in a particular case, the law does require that the reasons for the deviation be included in the court record. Note that this may include reasons in the written record (such as court orders, findings or minutes)—which we have access to in our data—as well as reasons stated in court but not necessarily in the written record. Because we do not review court transcripts, we are not able to capture such statements that may have occurred; we thus report only on written reasons for deviations that are included in the filed court record.

In Table 4, we present a summary of the explicit deviations or considerations listed in the court records, looking at three of the most common placement situations: paternity cases with sole-mother placement; divorce cases with sole-mother placement; and divorce cases with equal-shared placement. Within each group, we look separately at five categories of cases, analogous to the categories used in earlier tables: (A) those with no child support order; (B) those with an order but without enough information to calculate consistency with the guidelines; (C) those with an order lower than what the guidelines would call for; (D) those with guidelines-conforming orders; and (E) those with an order higher than called for by the guidelines.

**Table 4**  
**Reasons for Deviation from Child Support Guidelines, 2007-2009**

	(A)	(B)	(C)	(D) and (E)	
	No Order <sup>a</sup>	Consistency Not Known	Below Guidelines	Classifiable Cases	
				Consistent With Guidelines <sup>b</sup>	Above Guidelines
<b>Mother Sole Placement:</b>					
Paternity Cases (Adjudicated and Voluntary Paternity Acknowledgment)					
<i>N</i>	212	327	146	578	58
No Written Reason for Deviation	83.6%	97.8%	89.4%	91.2%	93.3%
Written Reason for Deviation	16.4%	2.2%	10.6%	8.8%	6.7%
Deviation Reason:					
<i>Parental Earnings or Employment</i>	5.3%	0.6%	3.2%	5.6%	0.8%
<i>Household Costs</i>	1.9%	0.4%	3.8%	1.2%	5.9%
Medical or Health Insurance Costs	0.0%	0.1%	0.8%	0.2%	4.5%
Child Care Costs	0.2%	0.0%	0.3%	0.1%	3.7%
Divorce Cases					
<i>N</i>	82	72	111	295	84
No Written Reason for Deviation	60.8%	90.2%	79.3%	94.0%	95.5%
Written Reason for Deviation	39.2%	9.8%	20.7%	6.0%	4.5%
Deviation Reason:					
<i>Parental Earnings or Employment</i>	13.6%	5.1%	2.8%	4.6%	3.9%
<i>Household Costs</i>	15.9%	3.8%	15.4%	1.8%	0.6%
Medical or Health Insurance Costs	2.7%	2.3%	7.6%	1.5%	0.6%
Child Care Costs	4.0%	0.0%	3.1%	0.0%	0.0%
<b>Equal Shared Placement Divorce Cases</b>					
<i>N</i>	229	35	60	104	68
No Written Reason for Deviation	54.0%	89.9%	64.8%	72.3%	89.0%
Written Reason for Deviation	46.0%	10.1%	35.2%	27.7%	11.0%
Deviation Reason:					
<i>Parental Earnings or Employment</i>	18.6%	0.0%	6.9%	14.3%	1.7%
<i>Household Costs</i>	39.0%	2.4%	32.2%	18.8%	6.1%
Medical or Health Insurance Costs	7.2%	0.8%	24.3%	2.7%	4.5%
Child Care Costs	1.8%	0.0%	2.3%	0.0%	0.0%

**Notes:** Data are from cohorts 28–29 of the WCRD. All percentages are weighted to reflect sampling differences in large and small counties.

Categories of deviation types are not mutually exclusive, as the judge in the case can note more than one reason for deviation.

<sup>a</sup>Includes no-order cases that are known to be inconsistent with the guidelines and those for who consistency could not be determined. Excludes “no order” cases which are consistent with guidelines. As noted below, such cases are included in the “consistent with guidelines” category.

<sup>b</sup>Includes some no-order cases in which an award of zero dollars would be consistent with the guidelines.



For those cases with an explicit written reason for deviation, we have categorized the reasons given into two general groups: (1) reasons involving the earnings or employment capability of one or both parents—including, for instance, reasons such as high earnings, sporadic earnings, low earnings, unemployment, or issues with employability (such as that a parent is a minor, a student, or has a temporary or permanent disability); and (2) reasons having to do with household costs or payments for one or both parents, which could include (for example) payments made to one parent’s household by the other parent, continued payment of the mortgage until the house is sold, payment of child care costs, or payment of medical or health insurance costs. From the household cost and payment category we have also broken out the two most common subcategories: medical or health insurance costs and child care costs. Note that there may be multiple reasons given for a deviation in a given case, and not all of the written reasons for deviations were able to be categorized using available data.

We note several patterns in these data. First, across case types and guidelines-use categories, the majority of cases have no written reasons for deviations—even among those categories in which the guidelines do not appear to have been used. Second, and not surprisingly, written reasons for deviations are most frequent when guidelines do not appear to have been used—with the largest share of cases having explicit deviations in the no-order group, followed by the below-guidelines group. Third, the prevalence of written reasons for deviations appears somewhat more common in divorce than paternity cases. Looking only at the sole placement cases, only 16 percent of paternity cases without orders contain a written reason—less than half of the 39 percent rate found in sole placement no-order divorce cases. When orders in these groups are present but below guidelines-based amounts, written reasons are provided in 11 percent of paternity cases as compared to 21 percent of divorce cases. Fourth, written reasons for

deviations are more common among divorce cases with equal-shared placement than those with sole placement. This is true for no-order cases (46 percent versus 39 percent with written reasons); for below-guidelines cases (35 percent versus 21 percent); for above-guidelines cases (11 percent versus 4 percent); and, surprisingly, even for guidelines-conforming cases (28 percent versus 6 percent). We also note that explicit deviations are provided even in cases that appear to have child support orders consistent with the guidelines; because we use a fairly generous definition of guidelines consistency, these may be cases that we classify as consistent but that the judge considers inconsistent and hence provides a justification.

#### D. Composition of Nonconforming Cases

The above analyses have focused on the extent of guidelines compliance, overall and among subgroups. Here, we shift our focus and look at a related question: What are the predominant characteristics of cases with nonconforming orders? To examine this, we look at the composition of cases in which the guidelines do not appear to be used (Table 5). While the information in Table 3 allows us to identify the types of cases with greater likelihood of guidelines usage, this perspective may be useful for policymakers interested in targeting cases where orders do not conform to guidelines. We look only at cases with nonconforming orders, rather than at cases with no orders. While the latter can also be considered to be nonconforming, our interest here is in those cases where an actual order was issued, yet where that order differed from what the guidelines would indicate. We show the composition of all cases with nonconforming orders, and also show separate breakdowns for high and low orders relative to guidelines.

More than half of the nonconforming orders are in divorce cases (58 percent), while one-third are in adjudicated paternities and 9 percent are in voluntary paternities. Divorce cases are

**Table 5**  
**Composition of Nonconforming Cases**

	Nonconforming Cases		
	All	Below Guidelines	Above Guidelines
<i>N</i>	693	374	319
Case Type			
Voluntary Paternity	9.2%	9.7%	8.6%
Adjudicated Paternity	32.9%	42.5%	19.7%
Divorce	57.9%	47.8%	71.7%
Placement Type			
Mother Sole	62.9%	74.9%	46.5%
Mother Primary	16.7%	9.1%	27.2%
50-50 Shared	17.8%	14.5%	22.4%
Father Primary	0.6%	0.3%	1.0%
Father Sole	2.0%	1.3%	2.9%
Parent's Combined Total Income(from CRD or UI)			
No Earnings	17.2%	17.7%	16.6%
\$1–\$25,000	12.4%	10.3%	15.3%
\$25,000–\$50,000	24.0%	27.0%	19.8%
\$50,000–\$75,000	18.8%	19.3%	18.1%
\$75,000–\$100,000	12.9%	12.3%	13.9%
\$100,000 or more	14.7%	13.4%	16.3%
Child Support Order Decision			
By Stipulation	52.6%	44.9%	63.2%
By Judge/Family Court Commissioner	47.4%	55.1%	36.8%
Child Support Enforcement Type			
Non-IVD cases	37.8%	32.1%	45.6%
IVD cases	62.2%	67.9%	54.4%

**Notes:** Data are from cohorts 28–29 of the WCRD. All percentages are weighted to reflect sampling differences in large and small counties.

more common among nonconforming orders that exceed the guidelines (72 percent) than among those that fall below guidelines (48 percent).

Almost two-thirds of all nonconforming orders are in mother-sole placement cases, while about one-third are in shared placement cases. Below-guidelines orders have a much larger share of sole-mother placement cases than do above-guidelines orders—75 percent versus 47 percent. Conversely, about half of the above-guidelines orders involve shared placement, about twice the share as in the below-guidelines orders.

In terms of income distribution, parents with nonconforming orders are quite variable. For instance, 17 percent have no income in the record; 12 percent have income below \$25,000; and at the other end of the spectrum, 15 percent have incomes above \$100,000. This pattern is broadly similar for both below-guidelines and above-guidelines orders.

Nonconforming orders are roughly as likely to have been reached by stipulation as to have been issued by a judge or Family Court Commissioner (53 percent versus 47 percent). Below-guidelines orders are more likely than above-guidelines orders to be issued by a judge (55 percent versus 37 percent), while above-guidelines orders are more likely than their below-guidelines counterparts to be reached by stipulation (63 percent versus 35 percent). Finally, almost two-thirds of nonconforming cases (62 percent) are in the IV-D system, including 68 percent of below-guidelines and 54 percent of above-guidelines orders.

#### **IV. CONCLUSION**

This report, part of an ongoing series, documents the extent to which guidelines were used in divorce and paternity cases in Wisconsin during the 2007 to 2009 period; documents the extent to which written reasons for deviating from guidelines are evident in the written court records; and provides a profile of nonconforming cases. We confirm that, consistent with trends

previously documented (Cook and Brown, 2013)<sup>6</sup>, the use of child support guidelines continues to be modest at best, and that this holds across case types and characteristics. Our report focuses on use of the guidelines, not on conformance with the underlying legislation—an important distinction, in that judges are explicitly afforded the discretion to deviate from formula-based guidelines in certain circumstances so long as reasons are provided as part of the record. Overall, the relatively low guidelines use does suggest that in a nontrivial share of cases, the amounts indicated by the numeric guidelines do not conform to what the courts consider appropriate.

Of all cases in our sample, only one-third clearly conformed to guidelines, while 14 percent had orders that appeared too low and 10 percent had orders that appeared too high. Additionally, 19 percent had orders for which we could not assess guidelines conformity due to insufficient information about income or placement, while about one-quarter of cases lacked orders and had no evidence in the record suggesting that the lack of order was consistent with guidelines on the basis of income or placement arrangements. Looking only at the subset of cases for which compliance could be ascertained, 58 percent of cases were in conformance with guidelines—roughly the same as in each of the cohorts since 2003 (Cook and Brown 2013).

Conformance with guidelines does vary to some degree across case characteristics, in ways largely consistent with past findings. Guidelines conformance is less common in divorce relative to paternity cases, as evidenced by the former's larger share of cases with no orders, as well as lower rate of conformance when orders are in place; these differences persist even when limited to cases in the IV-D system. Among divorce cases, guidelines appear much less likely to

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<sup>6</sup>Appendix Table 1 shows compliance in previous cohorts as reported in Cook and Brown (2013). Among cases where consistency is known Cook and Brown show that 61 percent of cases from 1996 to 2007 are consistent with the guidelines, compared to 58% in the 2007 to 2009 cohort analyzed in the present paper.

be used in shared placement cases as compared to mother-sole placement cases, and nonconforming orders in shared placement cases are more likely to be too high than too low, although deviations occur frequently in both directions. Furthermore, there are more likely to be reasons in the written court record to justify deviations in nonconforming divorce as compared to paternity cases. Among divorce cases, written reasons are more common among nonconforming shared placement cases as compared to their sole placement counterparts. Finally, among nonconforming shared placement cases, written reasons are more common when orders are too low vis-à-vis guidelines than when orders are too high.

Overall, the evidence suggests that there may be the greatest deviation from guidelines-based orders in the case of shared placement, at least as evidenced by actual patterns of guidelines use and by evidence of explicit statements of reasons for nonconformance. At the same time, when we look at all nonconforming orders, we find that a substantial majority are sole-mother placement cases; as such, an effort to strengthen the use of guidelines would need to target not only shared placement cases, where non-usage is higher, but sole-placement cases, which make up the largest overall share of cases.

The patterns documented here and in past reports tell a fairly consistent story of inconsistent guidelines use, yet do not, in the end, explain why courts are deviating from guidelines at the rates documented. Our analysis of the characteristics of nonconforming cases reveals that such cases include sizable shares of both divorce and nonmarital cases; cases in and out of the IV-D system; cases with varying placement arrangements; and families across the income distribution. Because the majority of nonconforming cases do not have a reason stated in the written record, a more nuanced understanding of what decision processes underlie use and non-use of guidelines is warranted. Absent an improvement in the recording of relevant

information in court documents, such an understanding would be best achieved via studies that ask key players (judges, court commissioners, and parents) directly about how they decide on orders, and such work would greatly enhance our understanding in this area.

**Appendix Table 1 (From Cook and Brown, 2013)  
Compliance with Guidelines in previous cohorts**

	Cohort & Petition Dates								All Cases
	17 1996–97	18 1997–98	21 2000–01	23 2002–03	24 2003–04	25 2004–05	26 2005–06	27 2006–07	
<b>All Cases</b>									
<i>N</i>	1,184	1,156	1,687	1,609	1,579	1,572	1,561	1,561	11,909
Inconsistent No Child Support Order <sup>a</sup>	12.6%	13.9%	11.8%	15.9%	20.1%	21.3%	20.9%	21.5%	17.3%
An Order: Consistency Not Known	21.0%	20.5%	24.4%	13.9%	21.0%	20.3%	20.0%	18.9%	20.0%
An Order: Consistency Known:	66.4%	65.6%	63.8%	70.2%	58.9%	58.4%	59.1%	59.5%	62.7%
Order Lower Than Guidelines <sup>b</sup>	23.0%	22.0%	23.5%	15.5%	20.1%	25.6%	23.1%	19.4%	21.5%
Consistent with Guidelines (1%) <sup>c</sup>	65.4%	66.5%	58.9%	65.3%	57.2%	55.3%	58.3%	60.0%	60.9%
Order Higher Than Guidelines	11.6%	11.5%	17.6%	19.2%	22.6%	19.1%	18.6%	20.6%	17.6%
<b>Paternity Cases</b>									
<i>N</i>	430	425	821	845	835	810	803	792	5,761
Inconsistent No Child Support Order <sup>a</sup>	9.8%	13.4%	8.0%	12.5%	18.9%	20.1%	18.2%	16.6%	14.8%
An Order: Consistency Not Known	33.0%	31.0%	36.4%	19.6%	30.6%	26.8%	27.2%	28.9%	29.0%
An Order: Consistency Known:	57.2%	55.6%	55.6%	67.9%	50.5%	53.1%	54.6%	54.5%	56.2%
Order Lower Than Guidelines <sup>b</sup>	29.2%	23.8%	21.4%	12.9%	17.1%	25.8%	19.5%	14.8%	20.1%
Consistent with Guidelines (1%) <sup>c</sup>	67.1%	68.8%	68.5%	74.7%	68.3%	64.3%	69.5%	72.8%	69.5%
Order Higher Than Guidelines	3.7%	7.4%	10.1%	12.4%	14.6%	9.9%	11.0%	12.4%	10.4%
<b>Divorce Cases</b>									
<i>N</i>	754	731	866	764	744	762	758	769	6,148
Inconsistent No Child Support Order <sup>a</sup>	15.4%	14.3%	17.3%	21.0%	21.9%	23.0%	24.8%	27.6%	20.5%
An Order: Consistency Not Known	9.1%	9.7%	6.8%	5.3%	7.1%	10.7%	9.6%	6.7%	8.1%
An Order: Consistency Known:	75.5%	76.0%	75.9%	73.7%	71.1%	66.3%	65.6%	65.7%	71.3%
Order Lower Than Guidelines <sup>b</sup>	18.3%	20.6%	25.8%	19.1%	23.3%	25.3%	27.4%	24.2%	22.9%
Consistent with Guidelines (1%) <sup>c</sup>	64.2%	64.7%	48.6%	52.3%	45.8%	44.5%	44.6%	46.9%	52.0%
Order Higher Than Guidelines	17.5%	14.7%	25.6%	28.6%	30.9%	30.2%	28.0%	28.9%	25.1%

**Source:** Cook, Steven T. and Patricia Brown. 2013. The Use of Child Support Guidelines in Wisconsin: 1996–2007. Report to the Wisconsin Department of Children and Families. Madison, WI: Institute for Research on Poverty.

**Notes:** All percentages weighted to reflect sampling differences in large and small counties.

<sup>a</sup>This category excludes some “no order” cases which are consistent with one or another of the available guidelines. If a zero order or “no order” can be considered consistent, this case is included in the “consistent with guidelines” category. See text for a list of these types of cases.

<sup>b</sup>Includes some two-part orders where the current part is for zero dollars, but the future order is for a positive dollar amount.

<sup>c</sup>Includes some “no order” cases in which an award of zero dollars would be consistent with one or another of the guidelines.



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