# Review of the Connecticut Child Support Guidelines

**Presentation to Commission for Child Support Guidelines**

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# Historical Overview

- Federal requirements of state child support guidelines
  - 1987: States required to have advisory guidelines
  - 1989 (Family Support Act of 1988):
    - States required to have rebuttable presumptive guidelines
    - Review at least every four years
      - Consider economic data on the cost of raising children
      - Analyze guidelines deviations to keep deviations to a minimum
  - 2016: Major expansion of federal requirements
    - Added requirements of state guidelines to better address low-income families
    - Added requirements of state guidelines reviews
    - Deadline tied to state's review cycle– as late as 2025 for some states
- Connecticut's last review with technical assistance: 2012 assistance → 2015 changes

# Outline

- Federal requirements
  - Documented in state IV-D plan and approved by federal Office of Child Support Enforcement
  - CPR's role– show how other state's meet them
- Economic data
  - Summarize basis of existing schedule and what could be updated (Slide 24)
  - Review economic data on the cost of raising children (federal requirement)
  - Update core schedule:  a couple options for adjusting national data for CT incomes/costs
    - Slide 35 summarizes dollar/percentages changes
    - Layer low-income adjustment on top of schedule later
- Discussion of Next Steps
  - Other issues (e.g., subtraction for insurance premium, childcare expenses)
  - Findings from case file data
  - Analysis of labor market data
  - Update of low-income adjustment
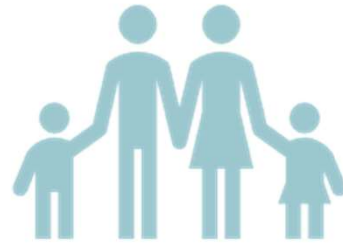
# Federal Requirements of State Guidelines

# CT's Compliance with Federal Requirements of Guidelines (red font: added in 2016)

| Requirements | CT Complies |
|---|---|
| Provide one guideline, used statewide | ☑ |
| Consider all earnings and income | ☑ |
| Be specific and numeric | ☑ |
| Provide deviation criteria & finding on record | ☑ |
| Consider specific circumstances when imputing income (e.g., literacy, age, criminal record) | ☑ tweak |
| Consider other evidence of ability to pay (e.g., verbal testimony, dept. of labor data) | ☑ tweak? |
| Consider parent's basic subsistence need | ☑ update? |
| Do not treat incarceration as voluntary unemployment | ☑ tweak? |
| Provide for child's healthcare needs | ☑ Opportunity to review? |

# Connecticut Child Support Guidelines

C.G.S.A. § 46b-215a-e

Sec. 46b-215. (Formerly Sec. 17-320). Relatives obliged to furnish support. Attorney General and attorney for town as parties. Orders.
Sec. 46b-215a. Commission for Child Support Guidelines. Duties. Members. Validity of actions taken during vacancy.
Sec. 46b-215b. Guidelines to be used in determination of amount of support and payment on arrearages and past-due support.
Sec. 46b-215c. Guidelines to be approved by legislative regulation review committee.
Sec. 46b-215d. Certain earnings not considered income for purposes of guidelines.
Sec. 46b-215e. Initial or modified support order when child support obligor is institutionalized or incarcerated. Procedure in IV-D support cases when child support obligor is incarcerated for more than ninety days.

State of Connecticut Commission for Child Support Guidelines.  (eff.  July 1. 2015.) *Child Support and Arrearage Guidelines.*  Retrieved from
https://www.jud.ct.gov/publications/childsupport/csguidelines.pdf

# Federal Requirement: Consider All Income and Evidence of Ability to Pay

| Federal Requirement | CT Provisions |
|---|---|
| 45 CFR §302.56(c)<br>The child support guidelines established under paragraph (a) of this section must at a minimum:<br>(1)  Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:<br>(i)   Takes into consideration all earnings and income of the noncustodial parent (and at the State's discretion, the custodial parent);<br><br>OCSE's explanation of the rule change cites PIQ–00–03. Retrieved from:<br>https://www.acf.hhs.gov/css/resource/state-iv-d-program-flexibility-low-income-obligors<br>*States may want to take steps to limit the imputation of income, for example, to cases in which the non-custodial parent has apparent assets and/or ability to pay, but is uncooperative. And, most importantly, States should make the maximum use of improved methods of determining income and resources of non-custodial parents, including the State and National Directories of New Hires as well as the Financial Institution Data Match (FIDM) and Multistate Financial Institution Data Match (MSFIDM).* | §46b-302 Definitions<br>(9) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.<br><br>§46b-215 (7)(B) In the determination of support due based on neglect or refusal to furnish support prior to the action, the support due for periods of time prior to the action shall be based upon the obligor's ability to pay during such prior periods, as determined in accordance with the child support guidelines established pursuant to section 46b- 215a. The state shall disclose to the court any information in its possession concerning current and past ability to pay. If no information is available to the court concerning past ability to pay, the court may determine the support due for periods of time prior to the action as if past ability to pay is equal to current ability to pay, if current ability is known. If current ability to pay is not known, the court shall determine the past ability to pay based on the obligor's work history, if known, or if not known, on the state minimum wage that was in effect during such periods, provided only actual earnings shall be used to determine ability to pay for past periods during which the obligor was a full-time high school student or was incarcerated, institutionalized or incapacitated. |

# Examples from Other States: All, Actual Income & Other Evidence of Ability to Pay

| | |
|---|---|
| *DC* | §303.4 Establishment of support obligations.<br>(b) Use appropriate State statutes, procedures, and legal processes in establishing and modifying support obligations in accordance with §302.56 of this chapter, which must include, at a minimum: (1) Taking reasonable steps to develop a sufficient factual basis for the support obligation, through such means as investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources; (2) Gathering information regarding the earnings and income of the noncustodial parent and, when earnings and income information is unavailable or insufficient in a case gathering available information about the specific circumstances of the noncustodial parent, including such factors as those listed under §302.56(c)(1)(iii) of this chapter; (3) Basing the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is unavailable or insufficient to use as the measure of the noncustodial parent's ability to pay, then the support obligation or recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent, including such factors as those listed in §302.56(c)(1)(iii) of this chapter. (4) Documenting the factual basis for the support obligation or the recommended support obligation in the case record |
| *ME* | MAINE Title 19-A, Chapter 63: §2004. Income information and child support worksheets  1. Court actions.<br>A. In a court action to determine or modify support of a minor child, the plaintiff and defendant shall exchange, prior to mediation, affidavits regarding income and assets. These affidavits must conform with the forms provided by the court and must be accompanied by supporting documentation of current income, such as pay stubs, tax returns, employer statements or, if the plaintiff or defendant is self-employed, receipts and expenses.<br>D. If a party fails to comply with this subsection, the court may, in its discretion:<br>(2) Presume for the purpose of determining a current support obligation that the party has an earning capacity equal to the average weekly wage of a worker in this State as determined by the most recent Department of Labor statistics. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the noncomplying party earns a greater or lesser actual income.<br>E. The court may admit Department of Labor statistics into evidence for purposes of computing a parental support obligation. |
| *MA* | **Source of Income**<br>For purposes of these guidelines, income is defined as gross income from whatever source, regardless of whether that income is recognized by the Internal Revenue Code or reported to the Internal Revenue Service or state Department of Revenue or other taxing authority. However, income derived from a public assistance program or benefit that is based on the person's financial circumstances (for example: TAFDC, SNAP, certain veterans' benefits and supplemental security income (SSI) benefits) shall not be counted as income for either parent.<br>D. Imputation of income<br>When the Court finds that a parent has, in whole or in part, undocumented or unreported income, the Court may reasonably impute income to the parent based on all the evidence submitted, including, but not limited to, evidence of the parent's ownership and maintenance of assets, and the parent's lifestyle, expenses and spending patterns. |
| *UT* | (b) Each parent shall provide verification of current income. Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds the verification is not reasonably available.  Verification of income from records maintained by the Department of Workforce Services may be substituted for pay stubs, employer statements, and income tax returns. |

# Federal Requirement: Income Imputation

| Federal Requirement | CT |
|---|---|
| 45 C.F.R. §302.56(c)(1)(iii) If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case. | §46b-215 (7)(B) If current ability to pay is not known, the court shall determine the past ability to pay based on the obligor's work history, if known, or if not known, on the state minimum wage that was in effect during such periods, provided only actual earnings shall be used to determine ability to pay for past periods during which the obligor was a full-time high school student or was incarcerated, institutionalized or incapacitated. §46b-215(e) In IV-D support cases, as defined in section 46b-23 l, when the child support obligor is institutionalized or incarcerated for more than ninety days, any existing support order, as defined in section 46b-23 l, shall be modified to zero dollars effective upon the date that a support enforcement officer files an affidavit in the Family Support Magistrate Division. The affidavit shall include: (1) The beginning and expected end dates of such obligor's institutionalization or incarceration; and (2) a statement by such officer that (A) a diligent search failed to identify any income or assets that could be used to satisfy the child support order while the obligor is incarcerated or institutionalized, (B) the offense for which the obligor is institutionalized or incarcerated was not an offense against the custodial party or the child subject to such support order, and (C) a notice in accordance with subsection (c) of this section was provided to the custodial party and an objection form was not received from such party. |

# Examples from Other States: Income Imputation

| | |
|---|---|
| **MA** | **D.** Imputation of income<br>When the Court finds that a parent has, in whole or in part, undocumented or unreported income, the Court may reasonably impute income to the parent based on all the evidence submitted, including, but not limited to, evidence of the parent's ownership and maintenance of assets, and the parent's lifestyle, expenses and spending patterns.<br>Expense reimbursements, in-kind payments or benefits received by a parent, personal use of business property, and payment of personal expenses by a business in the course of employment, self-employment, or operation of a business may be included as income if such payments are significant and reduce personal living expenses.<br>In circumstances where the Court finds that a parent has unreported income, the Court may adjust the amount of income upward by a reasonable percentage to take into account the absence of income taxes that normally would be due and payable on the unreported income.<br><br>E. Attribution of income<br>Income may be attributed where a finding has been made that either parent is capable of working and is unemployed or underemployed.<br>If the Court makes a determination that either parent is earning less than he or she could earn through reasonable effort, the Court should consider potential earning capacity rather than actual earnings in making its child support order.<br>The Court shall consider the age, number, needs and care of the children covered by the child support order. The Court shall also consider the specific circumstances of the parent, to the extent known and presented to the Court, including, but not limited to, the assets, residence, education, training, job skills, literacy, criminal record and other employment barriers, age, health, past employment and earnings history, as well as the parent's record of seeking work, and the availability of employment at the attributed income level, the availability of employers willing to hire the parent, and the relevant prevailing earnings level in the local community. |
| **PA** | A) Earning Capacity Limitation. The trier-of-fact:<br> (I) shall not impute to the party an earning capacity that exceeds the amount the party could earn from one full-time position; and<br> (II) shall determine a reasonable work regimen based upon the party's relevant circumstances, including the jobs available within a particular occupation, working hours and conditions, and whether a party has exerted substantial good faith efforts to find employment.<br> (B) The trier-of-fact shall base the party's earning capacity on the subdivision (d)(4)(ii) factors.<br> (C) After assessing a party's earning capacity, the trier-of-fact shall state the reasons for the assessment in writing or on the record.<br> (D) When the trier-of-fact imputes an earning capacity to a party who would incur childcare expenses if the party were employed, the trier-of-fact shall consider reasonable childcare responsibilities and expenses.<br> (ii) Factors. In determining a party's earning capacity, the trier-of-fact shall consider the party's:<br> (A) child care responsibilities and expenses;  (B) assets;  (C) residence;  (D) employment and earnings history;  (E) job skills;  (F) educational attainment;  (G) literacy;<br> (H) age;  (I) health;  (J) criminal record and other employment barriers;  (K) record of seeking work;  (L) local job market, including the availability of employers who are willing to hire the party;  (M) local community prevailing earnings level; and  (N) other relevant factors. |

# Federal Requirement: Address Subsistence Needs

| Federal Requirement | CT Provisions from Booklet |
|---|---|
| 45 CFR §302.56(c)(1)(ii) Takes into consideration the basic subsistence needs of the noncustodial parent (and at the State's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self- support reserve or some other method determined by the State | (4) Low-income adjustments<br>(A)An historical perspective<br>One of the continuing themes that surfaced throughout the commission's review process was the challenge of striking an appropriate balance between the interests of parents and children in the setting of a child support award when one or both parents are of extremely limited means. On the one hand is the child's interest in sharing equitably in the parents' income, consistent with the income shares model. On the other hand is the low-income parent's need to retain sufficient income to provide for his or her own subsistence, in order to permit such parent to play a positive role in the child's life.<br>The present commission determined that continuing the imposition of a minimal order of support even at poverty levels, as established in the 1999 guidelines and maintained in the 2005 guidelines, was consistent with the underlying public policy making parents primarily responsible for the support of their children. The imposition of an order of a specific amount of child support, no matter how minimal, in almost every case is intended to convey the important message to both parents that an obligation to support exists even where the ability to pay is limited. (See the preamble to the 2005 guidelines for a fuller historical perspective).<br>(B) Low-income adjustments in the new schedule<br>The present commission recognizes that in low-income families where the parents reside in two separate households, there will inevitably be immense financial pressures on both parents to maintain themselves and their children adequately. Nonetheless, the commission returned repeatedly in its deliberations to a concern for the best interests of the child. It therefore continues to prescribe minimal support payments for even very low-income noncustodial parents, but has tempered this determination with several further adjustments in the low-income area of the schedule, in an effort to build upon and refine the commendable work of previous commissions.<br>(i) No obligation for parents with less than $50 net income<br>The present commission retains the elimination of a child support obligation for noncustodial parents earning less than $50 per week net income instituted by the 2005 commission. Parents with such extremely low income are in truly desperate circumstances, and their first concern, even before the payment of a child support obligation, understandably is their own economic survival.<br>(ii) Increased range of low-income area<br>The 2005 guidelines phased out the low-income, darker shaded area of the schedule at the point where the obligor retained about $250 per week net income. The present commission has extended the reach of the protections associated with this area of the schedule by increasing to approximately $290 per week the level of net income at which the low-income designation ceases to apply. The effect of this change is not only to deflate the required support contribution for borderline low-income obligors, but also to extend to such obligors the additional protections accorded such obligors under other provisions of the guidelines, which are addressed elsewhere in this preamble.<br>(iii) Lower percentages in the darker shaded area<br>The commission also slightly reduced some of the percentages in the low-income area of the schedule in light of the commission extending the darker shaded area of the schedule. In the commission's view, these reductions will ultimately work to the benefit of children, while serving the immediate self-support needs oflow-income obligors, since they will assist such obligors in establishing a pattern of payment based on realistic expectations of their ability to pay. |

# Area of Child Support Schedule Adjusted for Low Income

The blue-shaded area of the existing schedule to shows where the schedule amounts have been lowered from the measurements of child-rearing expenditures to include a low-income adjustment

- CT eliminated "shaded-area" adjustment last review
- Low-income no longer applied for incomes of $490 net per week

- 2023 Federal Poverty Guidelines (FPG) for One Person = $280 per week
- 2023 State minimum wage = $14/hr
  - 40-hour workweek = $560 gross per week,
    - About $450 net per week
  - Average hours for CT private industry (Dec. 2022): 35.2 hours per week
  - Average hours for CT leisure and hospitality: (22.5 hrs)

| Combined Net Weekly Income | One Child | | Two Children | | Three Children | | Four Children | | Five Children | | Six Children | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 50 | 10.00% | 5 | 10.40% | 5 | 10.80% | 5 | 11.20% | 6 | 11.60% | 6 | 12.00% | 6 |
| 60 | 10.00% | 6 | 10.54% | 6 | 11.08% | 7 | 11.62% | 7 | 12.16% | 7 | 12.70% | 8 |
| 70 | 10.00% | 7 | 10.68% | 7 | 11.36% | 8 | 12.04% | 8 | 12.72% | 9 | 13.40% | 9 |
| 80 | 10.00% | 8 | 10.82% | 9 | 11.64% | 9 | 12.46% | 10 | 13.28% | 11 | 14.10% | 11 |
| 90 | 10.00% | 9 | 10.96% | 10 | 11.92% | 11 | 12.88% | 12 | 13.84% | 12 | 14.80% | 13 |
| 100 | 10.00% | 10 | 11.10% | 11 | 12.20% | 12 | 13.30% | 13 | 14.40% | 14 | 15.50% | 16 |
| 110 | 10.00% | 11 | 11.24% | 12 | 12.48% | 14 | 13.72% | 15 | 14.96% | 16 | 16.20% | 18 |
| 120 | 10.00% | 12 | 11.38% | 14 | 12.76% | 15 | 14.14% | 17 | 15.52% | 19 | 16.90% | 20 |
| 130 | 10.00% | 13 | 11.52% | 15 | 13.04% | 17 | 14.56% | 19 | 16.08% | 21 | 17.60% | 23 |
| 140 | 10.00% | 14 | 11.66% | 16 | 13.32% | 19 | 14.98% | 21 | 16.64% | 23 | 18.30% | 26 |
| 150 | 10.00% | 15 | 11.80% | 18 | 13.60% | 20 | 15.40% | 23 | 17.20% | 26 | 19.00% | 29 |
| 160 | 10.00% | 16 | 14.62% | 23 | 16.78% | 27 | 18.70% | 30 | 20.57% | 33 | 22.46% | 36 |
| 170 | 12.29% | 21 | 17.10% | 29 | 19.59% | 33 | 21.62% | 37 | 23.55% | 40 | 25.50% | 43 |
| 180 | 14.32% | 26 | 19.31% | 35 | 22.08% | 40 | 24.21% | 44 | 26.19% | 47 | 28.21% | 51 |
| 190 | 16.14% | 31 | 21.29% | 40 | 24.32% | 46 | 26.53% | 50 | 28.56% | 54 | 30.64% | 58 |
| 200 | 17.78% | 36 | 23.07% | 46 | 26.33% | 53 | 28.62% | 57 | 30.69% | 61 | 32.82% | 66 |
| 210 | 19.26% | 40 | 24.68% | 52 | 28.14% | 59 | 30.50% | 64 | 32.62% | 68 | 34.80% | 73 |
| 220 | 20.61% | 45 | 26.14% | 58 | 29.80% | 66 | 32.22% | 71 | 34.37% | 76 | 36.59% | 81 |
| 230 | 21.84% | 50 | 27.48% | 63 | 31.30% | 72 | 33.79% | 78 | 35.97% | 83 | 38.23% | 88 |
| 240 | 22.96% | 55 | 28.70% | 69 | 32.69% | 78 | 35.22% | 85 | 37.43% | 90 | 39.73% | 95 |
| 250 | 23.46% | 59 | 29.83% | 75 | 33.96% | 85 | 36.54% | 91 | 38.78% | 97 | 41.11% | 103 |
| 260 | 23.97% | 62 | 30.87% | 80 | 35.13% | 91 | 37.76% | 98 | 40.03% | 104 | 42.39% | 110 |
| 270 | 24.47% | 66 | 31.83% | 86 | 36.22% | 98 | 38.89% | 105 | 41.18% | 111 | 43.57% | 118 |
| 280 | 24.97% | 70 | 32.73% | 92 | 37.23% | 104 | 39.94% | 112 | 42.25% | 118 | 44.67% | 125 |
| 290 | 25.47% | 74 | 33.56% | 97 | 38.17% | 111 | 40.92% | 119 | 43.25% | 125 | 45.69% | 133 |
| 300 | 25.46% | 76 | 35.00% | 105 | 39.05% | 117 | 41.83% | 125 | 44.18% | 133 | 46.64% | 140 |
| 310 | 25.45% | 79 | 35.24% | 109 | 39.87% | 124 | 42.68% | 132 | 45.05% | 140 | 47.53% | 147 |
| 320 | 25.44% | 81 | 35.48% | 114 | 40.64% | 130 | 43.48% | 139 | 45.86% | 147 | 48.37% | 155 |
| 330 | 25.43% | 84 | 35.71% | 118 | 41.36% | 137 | 44.23% | 146 | 46.63% | 154 | 49.16% | 162 |
| 340 | 25.41% | 86 | 35.95% | 122 | 41.39% | 141 | 44.94% | 153 | 47.35% | 161 | 49.89% | 170 |
| 350 | 25.40% | 89 | 35.91% | 126 | 41.42% | 145 | 45.61% | 160 | 48.03% | 168 | 50.59% | 177 |
| 360 | 25.38% | 91 | 35.88% | 129 | 41.45% | 149 | 45.68% | 164 | 48.67% | 175 | 51.25% | 185 |
| 370 | 25.37% | 94 | 35.84% | 133 | 41.48% | 153 | 45.76% | 169 | 49.28% | 182 | 51.87% | 192 |
| 380 | 25.36% | 96 | 35.81% | 136 | 41.51% | 158 | 45.84% | 174 | 49.86% | 189 | 52.46% | 199 |
| 390 | 25.34% | 99 | 35.78% | 140 | 41.48% | 162 | 45.92% | 179 | 50.40% | 197 | 53.02% | 207 |
| 400 | 25.33% | 101 | 35.75% | 143 | 41.45% | 166 | 46.00% | 184 | 50.42% | 202 | 53.55% | 214 |
| 410 | 25.32% | 104 | 35.72% | 146 | 41.43% | 170 | 46.08% | 189 | 50.45% | 207 | 54.06% | 222 |
| 420 | 25.31% | 106 | 35.70% | 150 | 41.40% | 174 | 46.16% | 194 | 50.47% | 212 | 54.11% | 227 |
| 430 | 25.30% | 109 | 35.67% | 153 | 41.38% | 178 | 46.13% | 198 | 50.49% | 217 | 54.17% | 233 |
| 440 | 25.27% | 111 | 35.62% | 157 | 41.29% | 182 | 46.04% | 203 | 50.51% | 222 | 54.22% | 239 |
| 450 | 25.25% | 114 | 35.55% | 160 | 41.20% | 185 | 45.93% | 207 | 50.53% | 227 | 54.28% | 244 |
| 460 | 25.22% | 116 | 35.48% | 163 | 41.10% | 189 | 45.83% | 211 | 50.41% | 232 | 54.33% | 250 |
| 470 | 25.20% | 118 | 35.42% | 166 | 41.01% | 193 | 45.73% | 215 | 50.30% | 236 | 54.39% | 256 |
| 480 | 25.18% | 121 | 35.36% | 170 | 40.92% | 196 | 45.63% | 219 | 50.19% | 241 | 54.44% | 261 |
| 490 | 25.16% | 123 | 35.30% | 173 | 40.84% | 200 | 45.54% | 223 | 50.09% | 245 | 54.50% | 267 |

Self-Support Reserve: Supporting Parents with Low Incomes

The guidelines include a self-support reserve that ensures that obligated parents have sufficient income to maintain a minimum standard of living based on the 2014 federal poverty level for one person ($973 per month) for obligated parents with an adjustment gross income of less than $1,097 the Guidelines require, absent a deviation, the establishment of a minimum support order ($50). For obligated parents with adjusted gross incomes above $1,097, the Schedule of Basic Support Obligations incorporates a further adjustment to maintain the self-support reserve for the obligated parent.

If the obligated parent's adjusted gross income falls within the shaded area of the Schedule and Worksheet A is used, the basic child support obligation and the obligated parent's total child support obligation are computed using only the obligated parent's income. In these cases, childcare and health insurance premiums should not be used to calculate the child support obligation. However, payment of these costs or other extraordinary expenses by either parent may be a basis for deviation. This approach prevents disproportionate increases in the child support obligation with moderate increases in income and protects the integrity of the self-support reserve. In all other cases, the basic child support obligation is computed using the combined adjusted gross incomes of both parents.

### Schedule of Basic Support Obligations

| Combined Adjusted Gross Income | One Child | Two Children | Three Children | Four Children | Five Children | Six Children |
|---|---|---|---|---|---|---|
| 0 - 1150 | 50 | 50 | 50 | 50 | 50 | 50 |
| 1200 | 66 | 67 | 68 | 68 | 69 | 70 |
| 1250 | 101 | 102 | 103 | 104 | 105 | 106 |
| 1300 | 135 | 137 | 138 | 140 | 141 | 143 |
| 1350 | 170 | 172 | 173 | 175 | 177 | 179 |
| 1400 | 204 | 207 | 209 | 211 | 213 | 216 |
| 1450 | 239 | 241 | 244 | 247 | 249 | 252 |
| 1500 | 273 | 276 | 279 | 282 | 285 | 289 |
| 1550 | 295 | 311 | 315 | 318 | 322 | 325 |
| 1600 | 304 | 346 | 350 | 354 | 358 | 361 |
| 1650 | 313 | 381 | 385 | 390 | 394 | 398 |
| 1700 | 321 | 416 | 421 | 425 | 430 | 434 |
| 1750 | 330 | 451 | 456 | 461 | 466 | 471 |
| 1800 | 338 | 486 | 491 | 496 | 502 | 507 |
| 1850 | 347 | 520 | 526 | 531 | 537 | 543 |
| 1900 | 355 | 549 | 560 | 566 | 572 | 578 |
| 1950 | 364 | 562 | 594 | 601 | 607 | 614 |
| 2000 | 372 | 575 | 629 | 636 | 642 | 649 |
| 2050 | 381 | 588 | 663 | 670 | 677 | 685 |
| 2100 | 389 | 601 | 697 | 705 | 713 | 720 |
| 2150 | 398 | 614 | 732 | 740 | 748 | 756 |
| 2200 | 406 | 627 | 766 | 775 | 783 | 791 |
| 2250 | 415 | 641 | 784 | 809 | 818 | 827 |
| 2300 | 423 | 654 | 800 | 844 | 853 | 862 |
| 2350 | 432 | 667 | 816 | 879 | 888 | 898 |
| 2400 | 440 | 680 | 831 | 914 | 923 | 933 |
| 2450 | 449 | 693 | 847 | 947 | 959 | 969 |
| 2500 | 457 | 706 | 863 | 964 | 994 | 1004 |
| 2550 | 466 | 719 | 879 | 982 | 1029 | 1040 |
| 2600 | 474 | 732 | 895 | 1000 | 1064 | 1075 |
| 2650 | 483 | 745 | 911 | 1018 | 1099 | 1111 |
| 2700 | 491 | 758 | 927 | 1036 | 1134 | 1146 |
| 2750 | 500 | 771 | 943 | 1054 | 1159 | 1182 |
| 2800 | 508 | 785 | 959 | 1071 | 1178 | 1217 |
| 2850 | 517 | 798 | 975 | 1089 | 1198 | 1253 |
| 2900 | 525 | 811 | 991 | 1107 | 1218 | 1288 |
| 2950 | 534 | 824 | 1007 | 1125 | 1237 | 1324 |
| 3000 | 542 | 837 | 1023 | 1142 | 1257 | 1359 |
| 3050 | 551 | 850 | 1039 | 1160 | 1276 | 1387 |
| 3100 | 560 | 863 | 1055 | 1178 | 1296 | 1409 |
| 3150 | 568 | 876 | 1071 | 1196 | 1315 | 1430 |
| 3200 | 577 | 889 | 1086 | 1214 | 1335 | 1451 |

# Arizona's Self-Support Reserve (SSR) in the Worksheet

| | Paying Parent (Petitioner) | Custodian (Respondent) | Combined |
|---|---|---|---|
| Line 1: Monthly gross income | $2,400 | $1,600 | $4,000 |
| Line 2: Monthly adjusted gross income | $2,400 | $1,600 | $4,000 |
| Line 4: Basic child support obligation for 3 child(ren) | | | $1,306 |
| Line 5: Percentage share of income (each parent's income on Line 2 divided by Combined Income) | 60% | 40% | 100% |
| Line 6: Preliminary child support obligation (Multiple Line 4 by Line 5) | $784 | $522 | |
| Self-Support Reserve Test | | | |
| Line 7: Self-support reserve for petitioner | $1,921 | | |
| Line 8: Adjusted gross income less self-support reserve | $ 479 | | |
| Line 9: Child support order to be paid by petitioner (lower of Line 6 and Line 8) | $ 479 | | |

AZ sets SSR at 80% of F-T minimum wage earnings

# KY's Explicit Statement of Self-Support Reserve

(d) "Self-support reserve" means a low-income adjustment amount to the obligated parent of nine hundred fifteen dollars ($915) per month that considers the subsistence needs of the parent with a limited ability to pay in accordance with 45 C.F.R. sec. 302.56(c)(1)(ii), and as applied under subsection (3) of this section

*KY write's out the SSR-income thresholds instead of shades them*
(3)
(a)  Except as provided in paragraph (b) of this subsection, the child support obligation set forth in the child support guidelines table shall be divided between the parents in proportion to their combined monthly adjusted parental gross income.
(b)  If the monthly adjusted gross income of the obligated parent and the number of children for whom support is being determined fall within the following defined areas, which represent the self-support reserve, the basic child support obligation shall be calculated by using the monthly adjusted gross income of the obligated parent only to provide the obligated parent with the self-support reserve:
    1. Equal to or less than one thousand one hundred dollars ($1,100) with one (1) or more children;
    2. Equal to or less than one thousand three hundred dollars ($1,300) with two (2) or more children;
    3. Equal to or less than one thousand four hundred dollars ($1,400) with three (3) or more children;
    4. Equal to or less than one thousand five hundred dollars ($1,500) with four (4) or more children; or
    5. Equal to or less than one thousand six hundred dollars ($1,600) with six (6) or more children

# Federal Requirement: Incarcerated Parents

| Federal Requirement | CT Provisions |
|---|---|
| 45 CFR §302.56(c) (3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders; | Sec. 46b-215e. Initial or modified support order when child support obligor is institutionalized or incarcerated. Procedure in IV-D support cases when child support obligor is incarcerated for more than ninety days. (a) Notwithstanding any provision of the general statutes, whenever a child support obligor is institutionalized or incarcerated, the Superior Court or a family support magistrate shall establish an initial order for current support, or modify an existing order for current support, upon proper motion, based upon the obligor's present income and substantial assets, if any, in accordance with the child support guidelines established pursuant to section 46b-215a. Downward modification of an existing support order based solely on a loss of income due to incarceration or institutionalization shall not be granted in the case of a child support obligor who is incarcerated or institutionalized for an offense against the custodial party or the child subject to such support order.<br><br>(b)　　In IV-D support cases, as defined in section 46b-23 l, when the child support obligor is institutionalized or incarcerated for more than ninety days, any existing support order, as defined in section 46b-23 l, <span style="color:red">shall be modified to zero dollars effective upon the date that a support enforcement officer files an</span> affidavit in the Family Support Magistrate Division. The affidavit shall include: (1) The beginning and expected end dates of such obligor's institutionalization or incarceration; and (2) a statement by such officer that (A) a diligent search failed to identify any income or assets that could be used to satisfy the child support order while the obligor is incarcerated or institutionalized, (B) the offense for which the obligor is institutionalized or incarcerated was not an offense against the custodial party or the child subject to such support order, and (C) a notice in accordance with subsection (c) of this section was provided to the custodial party and an objection form was not received from such party. |

# Federal Requirement: Incarcerated Parents

**Provision complements 45  C.F.R.  §303.8 Review and adjustment of child support orders**
 (2) The State may elect in its State plan to initiate review of an order, after learning that a noncustodial parent will be incarcerated for more than 180 calendar days, without the need for a specific request and, upon notice to both parents, review, and if appropriate, adjust the order, in accordance with paragraph (b)(1)(i) of this section. * * * * *

**Federal View on Exceptions**
- There was a proposed federal rule change that would give states the option to make exceptions based on crimes involving domestic abuse and nonpayment of child support.  That proposed rule change was rescinded Nov. 2021.
  https://www.federalregister.gov/documents/2021/11/10/2021-24606/optional-exceptions-to-the-prohibition-against-treating-incarceration-as-voluntary-unemployment

- In a letter to Mississippi, OCSE essentially states such exceptions do not meet the requirement to base guidelines amounts on "ability to pay."

**Recent Excerpt from Delaware Guidelines Review about Exception**
https://courts.delaware.gov/forms/download.aspx?id=172308

*Incarcerated Parents After 180 days of continuous confinement, obligations established after February 1, 2019, are reduced to one-half of a minimum order, currently $60 for one child and $90 for two or more. However, persons incarcerated for a crime against the support recipient, or the children of the order cannot benefit from the reduction.*

*At the urging of the Federal Office of Child Support Enforcement (OCSE), that exception has been eliminated.*

# Federal Medical Support Change

*45 C.F.R. 302.56 (c) (*2)Address how the parents will provide for the child's health care needs through private or public health care coverage and/or through cash medical support;

*45 C.F.R. §303.31 Securing and enforcing medical support obligations.*

(a) * * *   (2) Health ~~insurance~~ care coverage includes fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health care coverage ~~which is available to either parent,~~ under which medical services could be provided to the dependent child(ren).

(3) Cash medical support or the cost of health insurance is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law, regulations, or court rule having the force of law or State child support guidelines adopted in accordance with § 302.56(c) of this chapter.

CONNECTICUT

Sec. 46b-215.(2) Any such support order in a IV-D support case shall include a provision for the health care coverage of the child. Such provision may include an order for either parent or both parents to provide such coverage under any or all of subparagraphs (A), (B) or (C) of this subdivision.

(A) The provision for health care coverage may include an order for either parent to name any child as a beneficiary of any medical or dental insurance or benefit plan carried by such parent or available to such parent at a reasonable cost, as defined in subparagraph (D) of this subdivision. If such order requires the parent to maintain insurance available through an employer, the order shall be enforced using a National Medical Support Notice as provided in section 46b-88.

(B) The provision for health care coverage may include an order for either parent to: (i) Apply for and maintain coverage on behalf of the child under the HUSKY Plan, Part B; or (ii) provide cash medical support, as described in subparagraphs (E) and (F) of this subdivision. An order under this subparagraph shall be made only if the cost to the parent obligated to maintain coverage under the HUSKY Plan, Part B, or provide cash medical support is reasonable, as defined in subparagraph (D) of this subdivision. An order under clause (i) of this subparagraph shall be made only if insurance coverage as described in subparagraph (A) of this subdivision is unavailable at reasonable cost to either parent, or inaccessible to the child.

(C) An order for payment of the child's medical and dental expenses, other than those described in clause (ii) of subparagraph (E) of this subdivision, that are not covered by insurance or reimbursed in any other manner shall be entered in accordance with the child support guidelines established pursuant to section 46b-215a.

(D) Health care coverage shall be deemed reasonable in cost if: (i) The parent obligated to maintain such coverage would qualify as a low-income obligor under the child support guidelines established pursuant to section 46b-215a, based solely on such parent's income, and the cost does not exceed five per cent of such parent's net income; or (ii) the parent obligated to maintain such coverage would not qualify as a low-income obligor under such guidelines and the cost does not exceed seven and one-half per cent of such parent's net income. In either case, net income shall be determined in accordance with the child support guidelines established pursuant to section 46b-215a. If a parent obligated to maintain insurance must obtain coverage for himself or herself to comply with the order to provide coverage for the child, reasonable cost shall be determined based on the combined cost of coverage for such parent and such child.

(E) Cash medical support means (i) an amount ordered to be paid toward the cost of premiums for health insurance coverage provided by a public entity, including the HUSKY Plan, Part A or Part B, except as provided in subparagraph (F) of this subdivision, or by another parent through employment or otherwise, or (ii) an amount ordered to be paid, either directly to a medical provider or to the person obligated to pay such provider, toward any ongoing extraordinary medical and dental expenses of the child that are not covered by insurance or reimbursed in any other manner, provided such expenses are documented and identified specifically on the record. Cash medical support, as described in clauses (i) and (ii) of this subparagraph, may be ordered in lieu of an order under subparagraph (A) of this subdivision

# Federal Requirements of State Guidelines Reviews

# 45 C.F.R 302.56 (e) and (h)

(e) The State must review, and revise, if appropriate, the child support guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropiate child support order amounts. The State shall publish on the internet and make accessible to the public all reports of the guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the next quadrennial review.

(h)As part of the review of a State's child support guidelines required under paragraph (e) of this section, a State must:
(1)  Consider economic data on the cost of raising children, labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders;
(2) Analyze case data, gathered through sampling or other methods, on the application of and deviations from the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii) of this section. The analysis must also include a compaCTson of payments on child support orders by case characteCTstics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c)(1)(ii). The analysis of the data must be used in the State's review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropCTate based on cCTteCTa established by the State under paragraph (g); and
(3)Provide a meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives. The State must also obtain the views and advice of the State child support agency funded under title IV–D of the Act.

# Plan to Fulfill Federal Requirements of Reviews

| Continued Requirement | | New Requirement | |
|---|---|---|---|
| Consider economic data on the cost of raising children | CPR preparing & on agenda today | Consider labor market data | CPR |
| | | Impact of guidelines policies on parents with low income | CPR case file scenarios |
| | | Factors that influence employment rates and compliance | |
| Consider case file data on application of and deviation from the guidelines | CPR is working with child support agency | Rates of default, imputation, and application of low-income adjustment | CPR from case file data |
| | | Comparison of payments by case characteristics including default, imputation, and application of the low-income adjustment | |
| Review, and revise, if appropriate, the child support guidelines | Commission and Legislative Regulation Review Committee | Provide meaningful opportunity for public input, including input from low-income parties | Representation on Commission and Regulation Process |
| | | Obtain the views and advice of the IV-D agency | Representatives on Commission |
| | | Publish report on internet, membership of reviewing body, and effective date of the guidelines and next review | Updated Child Support and Arrearage Guidelines if Changes |
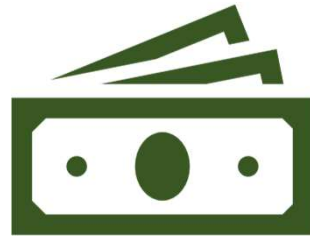
# Analysis of Economic Data on the Cost of Raising Children

# Child Support Schedule: Part Economic Data and Part Policy

Example with no income deductions or adjustments

1 Child
Parent A: $1,000
Parent B: $   500
Combined = $1,500

Basic obligation from schedule = $278

Parent A Income/Combined Income = 67%

**Order = $278 X 67% = $186 per week**

| Combined Net Weekly Income | One Child | | Two Children | | Three Children | |
|---|---|---|---|---|---|---|
| 1500 | 18.51% | 278 | 27.61% | 414 | 32.62% | 489 |
| 1510 | 18.50% | 279 | 27.59% | 417 | 32.58% | 492 |
| 1520 | 18.48% | 281 | 27.56% | 419 | 32.54% | 495 |
| 1530 | 18.47% | 283 | 27.54% | 421 | 32.51% | 497 |
| 1540 | 18.45% | 284 | 27.51% | 424 | 32.47% | 500 |
| 1550 | 18.44% | 286 | 27.49% | 426 | 32.44% | 503 |
| 1560 | 18.43% | 287 | 27.46% | 428 | 32.40% | 506 |
| 1570 | 18.41% | 289 | 27.44% | 431 | 32.37% | 508 |

# Assumptions and Data Underlying Existing Schedule & What Could Be Updated

| | Basis of Existing Schedule | Update Alternatives |
|---|---|---|
| 1. Guidelines model | Income Shares (used by 41 states) | Other models |
| 2. Price levels | March 2012 price levels | Dec. 2022 (29.4% increase) |
| 3. Measurement of child-rearing expenditures | 4th Betson-Rothbarth study (BR4) from expenditure data collected in 2004-09 | BR5 (2013-2019 expenditure data), USDA, and other studies |
| 4. Adjustments for CT higher income/cost of living | • Income realignment (CT 3rd highest state in 2010) | • Income realignment (CT is 6th highest state in 2021)<br>• Price parity (102.6)<br>• CT ranks 13th in 2021 median gross rent |
| 5. Adjusted so no decrease | Higher of existing (2005 schedule) and BR4 income aligned: 2005 schedule applies to net weekly incomes below $1,250 for 1child; $920 for 2 children; and about $600 for 3 or more children | Policy decision |
| 6. Lowest and highest income to be considered | Combined net incomes of $50 - $4,000 per week | Depends on economic basis and adjustment for CT incomes (e.g., BR study allows for up to about $5,000 per week) |
| 7. Spending more/less of after-tax income | Use actual ratios with cap | District of Columbia approach (after-tax income = expenditures, which would increase schedule amounts) |
| 8. Highly variable child-rearing expenses excluded from schedule | Childcare & healthcare expenses excluded from schedule | Various options |
| 9. Low-income adjustment & minimum order | 2012 federal poverty guidelines for 1 person = $215 per week and 10-12% minimum order at net income of $50 per month | 2023 FPG: $280 per week |

# Studies of Child-Rearing Expenditures: 10 Different Studies underlying State Guidelines

| Study Name and CES Years | Study Year | Full Reference |
|---|---|---|
| **Van der Gaag** | **1981** | **Jacques van der Gaag, On Measuring the Cost of Children, Discussion Paper No. 663-81 (Univ. of Wisconsin Inst. for Research on Poverty, 1981)** |
| **Espenshade** | **1984** | **Thomas J. Espenshade, Investing in Children: New Estimates of Parental Expenditures (Urban Inst. Press, 1984).** |
| Lewin Report (compared methods) | 1990 | Lewin/ICF. (1990). Estimates of Expenditures on Children and Child Support Guidelines. Report to U.S. Department of Health and Human Services, Office of the Assist. Secretary for Planning and Evaluation. Virginia |
| **Betson-Rothbarth 1 (BR1) CE: 1980-86** | **1990** | **David M. Betson (1990).** ***Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey*, Report to U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, University of Wisconsin Institute for Research on Poverty, Madison, WI.** |
| **BR2 and BR3 (1994-98 and 1998-2004)** | **1996 2006** | **See Betson (2021) for summaries** |
| **Betson-Rothbarth 4 (BR4) CE:  2004-09** | **2010** | **Betson, David M. (2010). "Appendix A: Parental Expenditures on Children." in Judicial Council of California,** *Review of Statewide Uniform Child Support Guideline***. San Fran-cisco, California. Retreved from: http://www.courts.ca.gov/partners/documents/2011SRL6aGuidelineReview.pdf** |
| **Rodgers-Rothbarth/NJ CE: 2000-11** | **2012** | **New Jersey Child Support Institute (March 2013).** *Quadrennial Review: Final Report, Institute for Families***, Rutgers, the State University of New Jersey, New Brunswick, NJ. Retrieved from: http://www.judiciary.state.nj.us/reports2013/F0_NJ+QuadrennialReview-Final_3.22.13_complete.pdf** |
| Comanor (CE: 2004-09) | 2015 | Comanor, William, Sarro, Mark, and Rogers, Mark. (2015). "The Monetary Cost of Raising Children." *In* (ed.) *Economic and Legal Issues in Competition, Intellectual Property, Bankruptcy, and the Cost of Raising Children* (Research in Law and Economics), Vol. 27). Emerald Group Publishing Limited, pp. 209–51 |
| **USDA (CE: 2011-2015)** | **2017** | **Lino, Mark (2017).** *Expenditures on Children by Families: 2015 Annual Report.* **U.S. Department of Agriculture, Center for Nutrion and Policy Promotion. Miscellaneous Publication No. 1528-2015, Washington, D.C. http://www.cnpp.usda.gov/publications/crc/crc2017.pdf** |
| Florida State/Rothbarth and Engel (CE: 2013-19) | 2021 | Norribin, Stefan C., et al. (Nov. 2021). *Review and Update of Florida's Child Support Guidelines*. Retrieved from http://edr.state.fl.us/Content/special-research-projects/child-support/ChildSupportGuidelinesFinalReport2021.pdf. |
| **Betson-Rothbarth (BR5) CE: 2013-19** | **2020** | **Betson, David M. (Mar 2021). "Appendix A Parental Expenditures on Children." in Venohr, J. and Matyasic, S.,** *Review of Arizona Child Support Guidelines: Findings from the Analysis of Case File Data and Updating the Child Support Schedule.* **Report to the Arizona Supreme Court Administrative Office of the Courts  https://www.azcourts.gov/Portals/74/FCIC-CSGR/SupplementalPacket-030121-FCIC-CSGRS.pdf?ver=2021-02-26-161844-187** |

Bold font indicates study in use.  Besides the 8 studies in bold above, there is an old KS study and Betson-Engel study

## Consumer Expenditure Survey

- https://www.bls.gov/cex/
- Conducted by the U.S. Bureau of Labor Statistics
- PCTmary purpose: shape market basket used to track inflation
- Ongoing survey
- About 6,000 households each quarter
- Hundreds of items
- Each household stays in for 4 quarters (earlier years: 5 quarters)
- Designed to be nationally representative
  - Also 4 regions: NE, South, Midwest and West
  - Recently added state-specific for largest states

# Comparison of Average Child-Rearing Expenditures as Percentage of Total Expenditures

Economists generally don't agree which methodology best measures actual child-rearing expenditures.

However, most economists and policymakers agree that a guidelines amount between the lowest and highest of credible measurements is within an appropriate range

STATE USAGE
- 31 states use a BR study (CO, CT, RI, OR, NH, VT, PA)
- No state uses Comanor (2015)
- MN and MD high incomes use USDA
- Several states based on older studies (CA, NY)
- NJ uses own Rothbarth study
- MA not based on study

| Economic Methodology | Economist and Data Years | Average Childrearing Expenditures as a Percentage of Total Expenditures | | |
|---|---|---|---|---|
| | | 1 Child | 2 Children | 3 Children |
| Point estimate from literature review | van der Gaag (no year specified) | 25.0% | 37.5% | 50.0% |
| Rothbarth | **Betson** | | | |
| | 2013–2019 | 24.9% | 38.4% | 47.0% |
| | 2004–2009 | 23.5% | 36.5% | 44.9% |
| | 1998–2004 | 25.2% | 36.8% | 43.8% |
| | 1996–1998 | 25.6% | 35.9% | 41.6% |
| | 1980–1986 | 24.2% | 34.2% | 39.2% |
| | **Rodgers/Replication of Betson** | | | |
| | 2004–2009 | 22.2% | 34.8% | 43.2% |
| | **Rodgers** | | | |
| | 2000–2015 | 19.2% | 24.1% | 30.8% |
| | 2004–2009 | 21.5% | 24.4% | 33.4% |
| | 2000–2011 | 21.0% | 25.0% | 31.0% |
| | **Florida State University** | | | |
| | 2013–2019 | 21.3% | 33.4% | 41.4% |
| | 2009–2015 | 24.9% | 38.3% | 46.9% |
| Engel | **Florida State University** | | | |
| | 2013–2019 | 21.5% | 33.6% | 41.6% |
| | 2009–2015 | 20.3% | 32.6% | 41.4% |
| | **Betson** | | | |
| | 1996–1998 | 32.0% | 39.0% | 49.0% |
| | 1980–1986 | 33.0% | 46.0% | 58.0% |
| | **Espenshade** | | | |
| | 1972–73 | 24.0% | 41.0% | 51.0% |
| USDA | 2011–2015 | 26.0% | 39.0% | 49.0% |

# BR Studies over Time by Income Range

# Factor 5 (slide 24) BR Average Estimates over Time
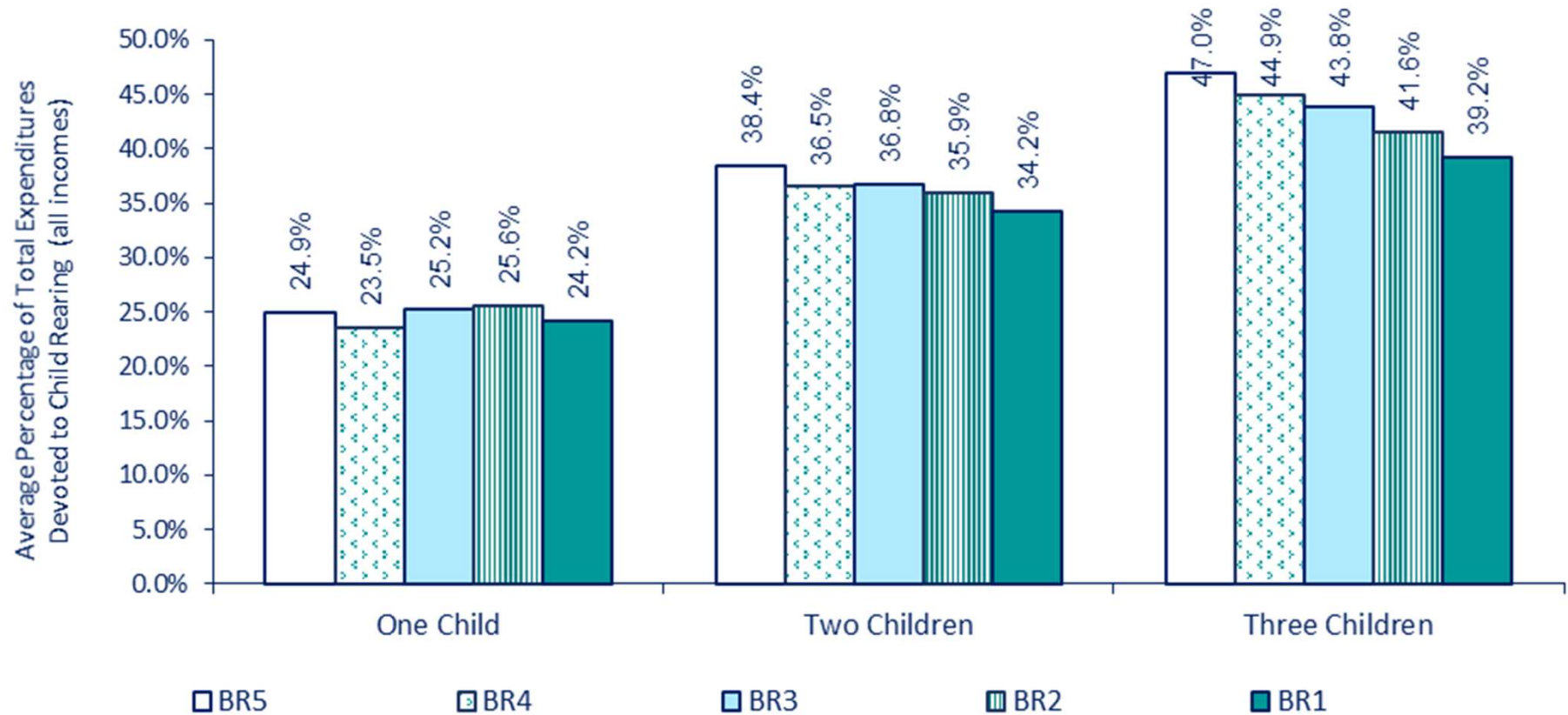
# Alternative Updates

| | Basis of Existing Schedule | Updated USDA | Updated BR (income realignment) | Updated BR (price parity) | Updated Comanor, Sarro and Rogers (CSR) |
|---|---|---|---|---|---|
| Guidelines model | Income Shares | Income Shares | | | |
| Price levels | March 2012 | Dec 2022 | | | |
| Measurement of child-rearing expenditures | BR4 | USDA | BR5 | | CSR |
| Adjustments for CT higher income | Income realignment | None | Income realignment | Price parity | None |
| Highest net weekly income | $4,000 | $3,400 | $4,900 | $5,750 | $3,000 |
| Spending more/less of after-tax income | Use actual ratios with cap | No Cap | Use actual | Use actual | N.A. |
| Highly variable child-rearing expenses excluded from schedule | Excluded | Excluded | | | |

# Factor #7 from Slide 24: Convert BR measurements from Expenditures to Net Income

- Use average expenditures to net income ratios from same CE sample, Cap expenditures so it doesn't exceed after-tax income for low incomes
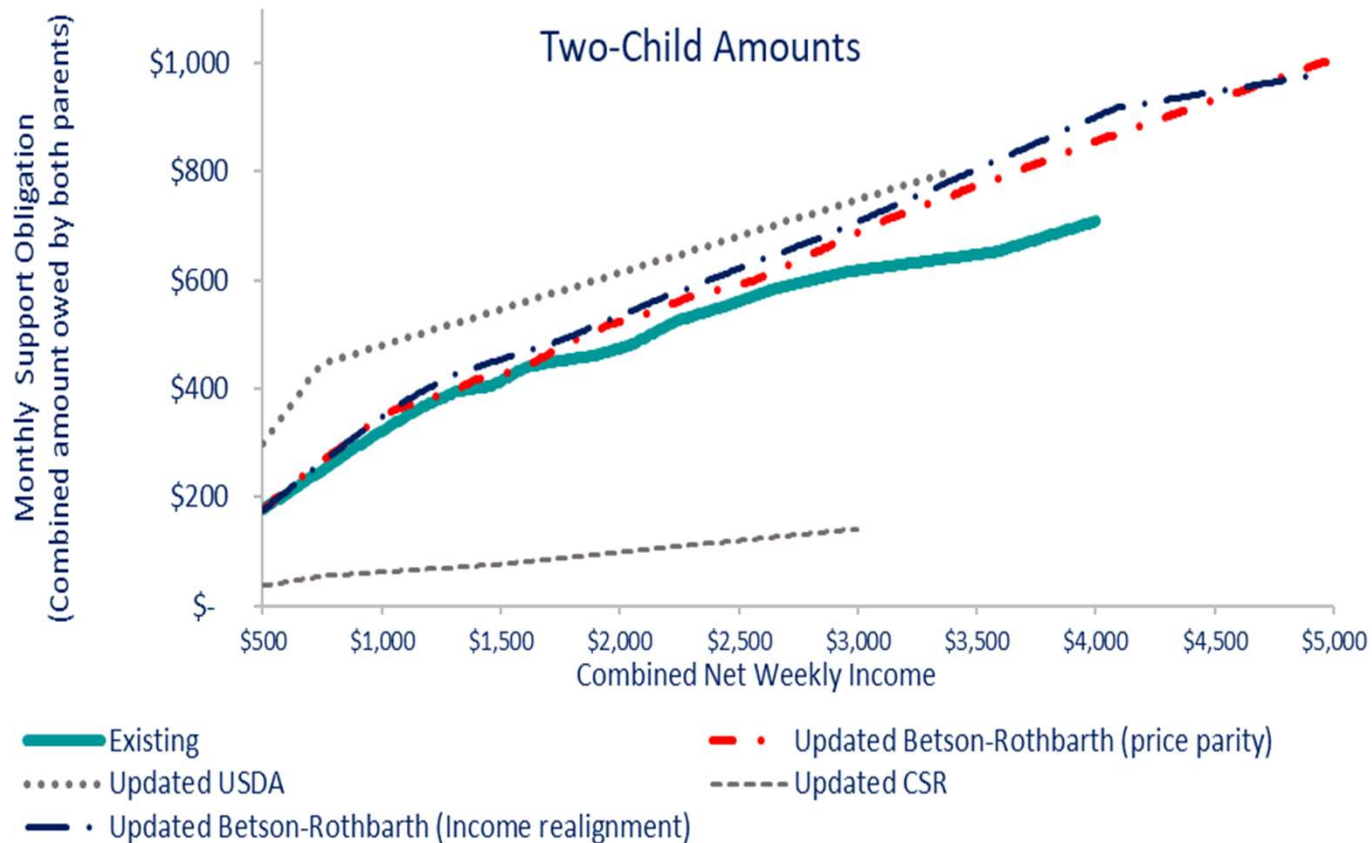- *Alternative:* Assume all net income is spent. DC uses this approach. Raises schedule amounts
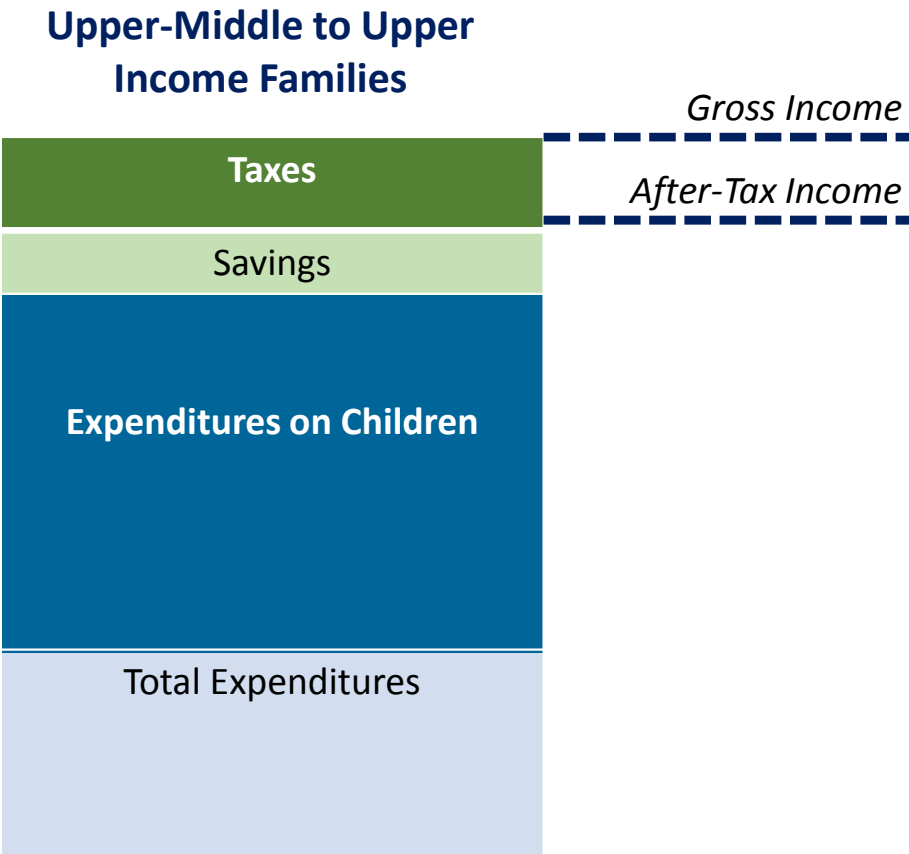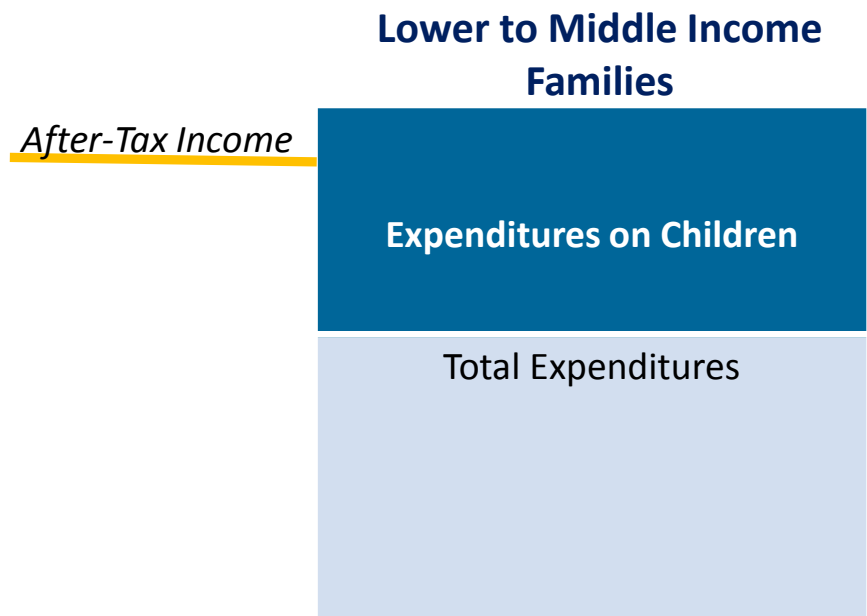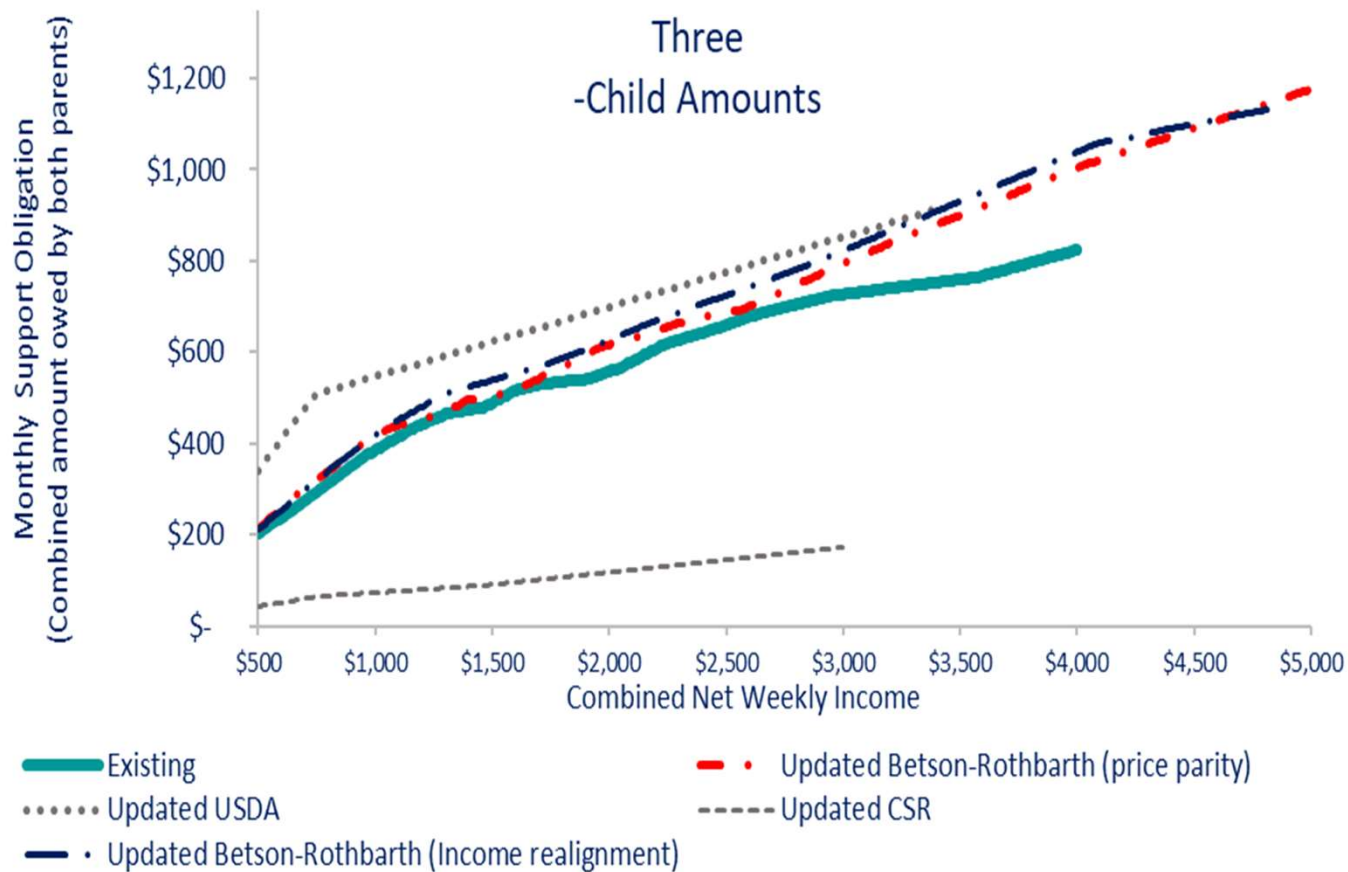
# Comparisons: 1 Child
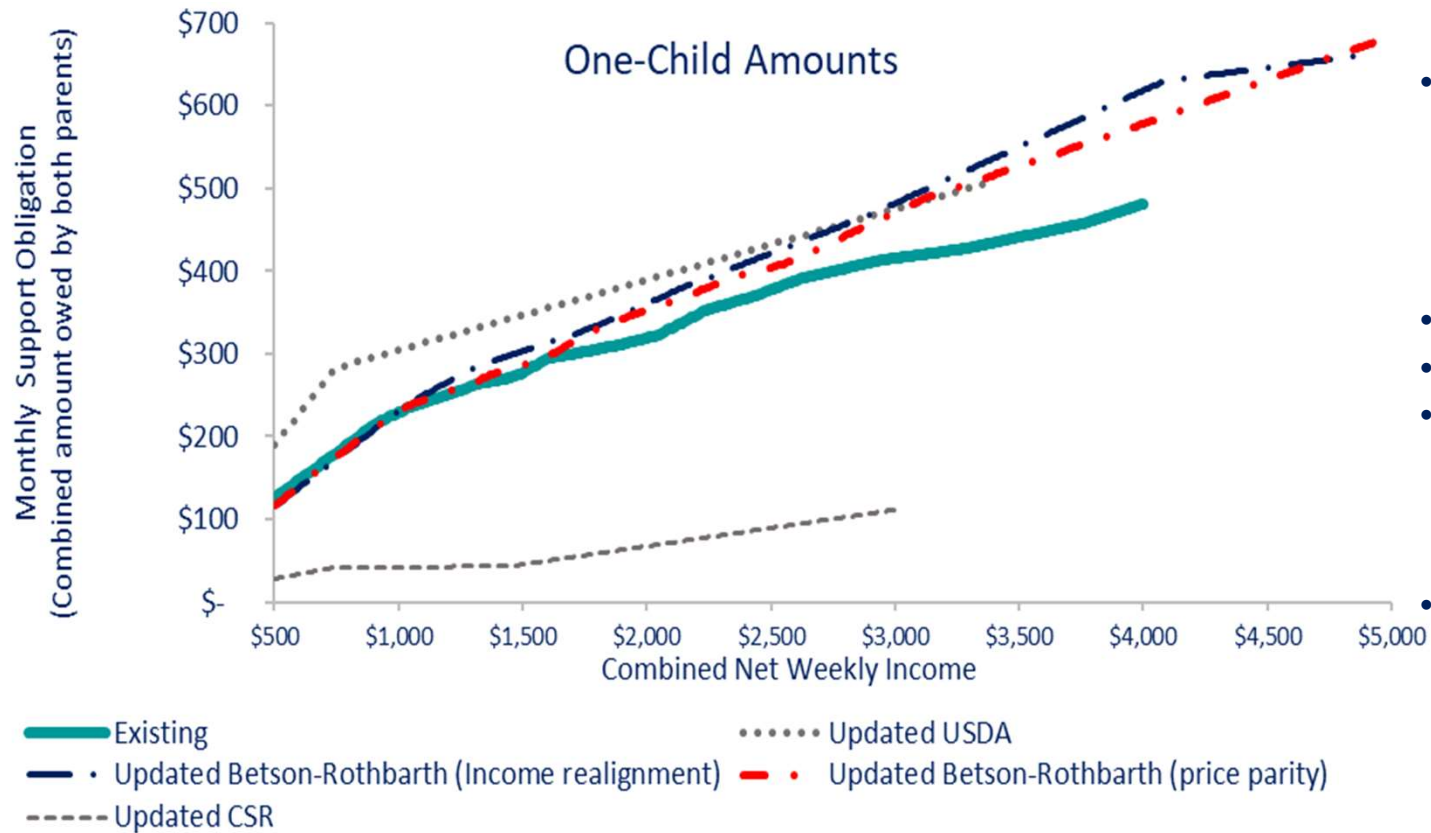


One-Child Amounts

- Comparisons start at combined net incomes of $500 per week to save discussion about updating low-income adjustment later.
- USDA is generally highest
- CSR is lowest
- BR (price parity and income realignment) generally track closely except at higher incomes
- Gap between existing and BR widens with more income

# Comparisons: 2 Children

**Two-Child Amounts**

Monthly Support Obligation (Combined amount owed by both parents) vs. Combined Net Weekly Income

Legend:
- —— Existing
- · · · · Updated USDA
- —— · Updated Betson-Rothbarth (Income realignment)
- — · Updated Betson-Rothbarth (price parity)
- - - - - Updated CSR

- Comparisons start at combined net incomes of $500 per week to save discussion about updating low-income adjustment later.
- USDA is generally highest
- CSR is lowest
- BR (price parity and income realignment) generally track closely except at higher incomes
- Gap between existing and BR widens with more income

# Comparisons: 3 Children



**Three-Child Amounts**

Monthly Support Obligation (Combined amount owed by both parents) vs Combined Net Weekly Income

Legend:
- Existing
- Updated USDA
- Updated Betson-Rothbarth (Income realignment)
- Updated Betson-Rothbarth (price parity)
- Updated CSR

- Comparisons start at combined net incomes of $500 per week to save discussion about updating low-income adjustment later.
- USDA is generally highest
- CSR is lowest
- BR (price parity and income realignment) generally track closely except at higher incomes
- Gap between existing and BR widens with more income

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# Findings about BR5 Updates from Comparisons

## Mostly Increases

| | 1 Child | | 2 Children | | 3 Children | |
|---|---|---|---|---|---|---|
| | Realign. | Price Parity | Realign. | Price Parity | Realign. | Price Parity |
| Average Increase | $59 (15%) | $43 (11%) | $74 (13%) | $54 (9%) | $84 (13%) | $60 (9%) |
| Median Increase | $44 (12%) | $31 (9%) | $59 (11%) | $37 (7%) | $65(10%) | $39 (8%) |
| Maximum | $137 (28%) | $96 (21%) | $192 (27%) | $147 (21%) | $215 (26%) | $180 (22%) |
| Weekly Combined Incomes with Increases More than 15% | > $2,930 | > $3,050 | > $3,000 | > $3,170 | > $3,070 | > $3,270 |

SOME DECREASES  for BOTH BR UPDATES
- 1 child: decrease of $1 to $10 per week for combined net incomes up to $980 per week)
  - Decreases are closest to $10 at lower incomes (i.e., about $500 per week)
  - All decreases less than 15%
- No decreases for 2+ children

# CT 2021 Median Earnings for Workers Age 25 and Older

| Highest Educational Attainment | Gross Weekly Income | |
| --- | --- | --- |
| | Males | Females |
| 1. Minimum wage earners ($14.00/hr) | $ 560 | $ 560 |
| 2. Less than High School Degree | $ 605 | $ 529 |
| 3.  High School Degree or GED | $ 868 | $ 607 |
| 4.  Some College or Associate's Degree | $ 1,052 | $ 715 |
| 5. Bachelor's Degree | $ 1,589 | $ 1,115 |
| 6. Graduate or Professional Degree | $ 2,003 | $ 1,496 |

Case scenarios:  Male is parent owing support, female is parent receiving support, no other adjustment, incomes are approximate after-tax incomes

Tax rates are approximated.

Low-income adjustment doesn't apply to Case 1 or Case 2.  This could change after low-income adjustment is updated.

# Case Scenarios: One Child
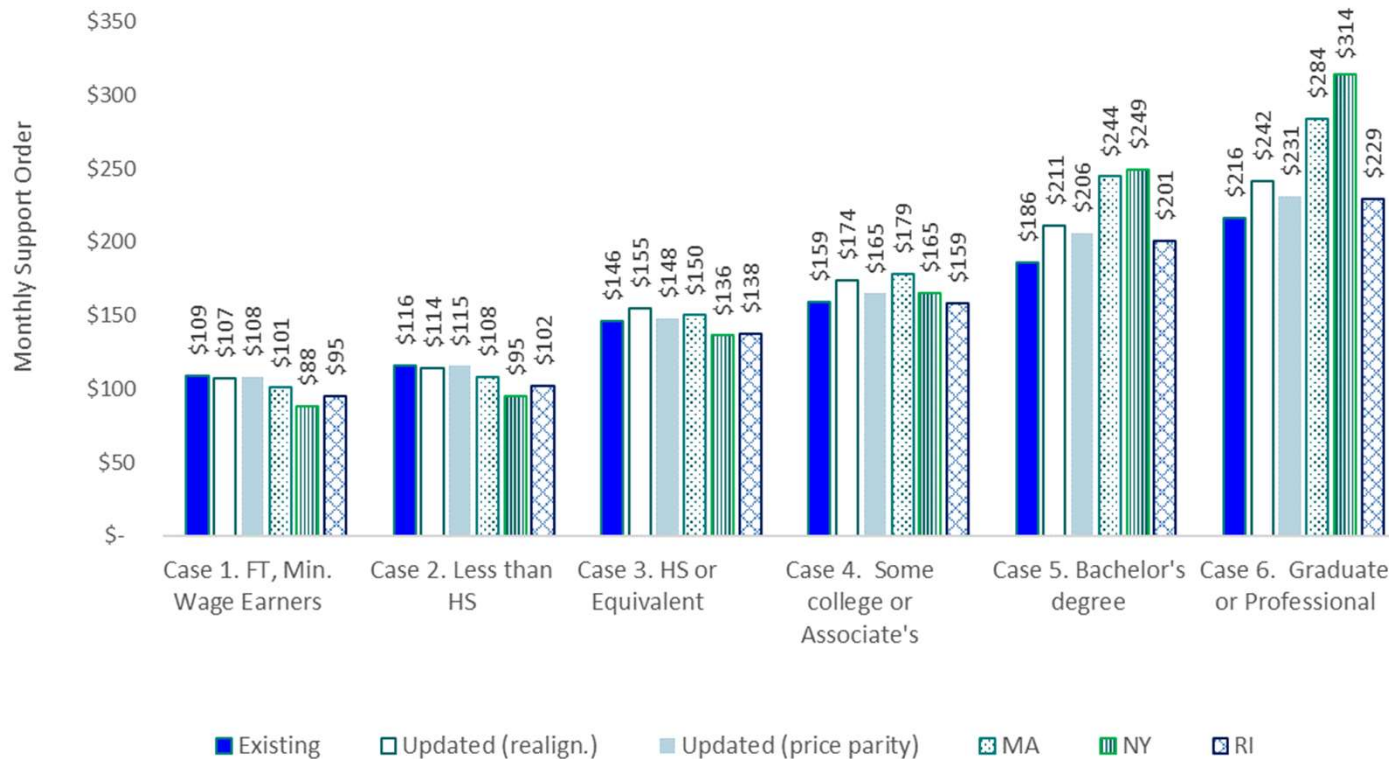


**Findings**
- Nominal decrease for Cases 1 and 2
- Small increases that become larger with more income for Cases 3-6
- CT slightly larger than other states for Case 1 and 2 (but this is before update of low-income adjustment)
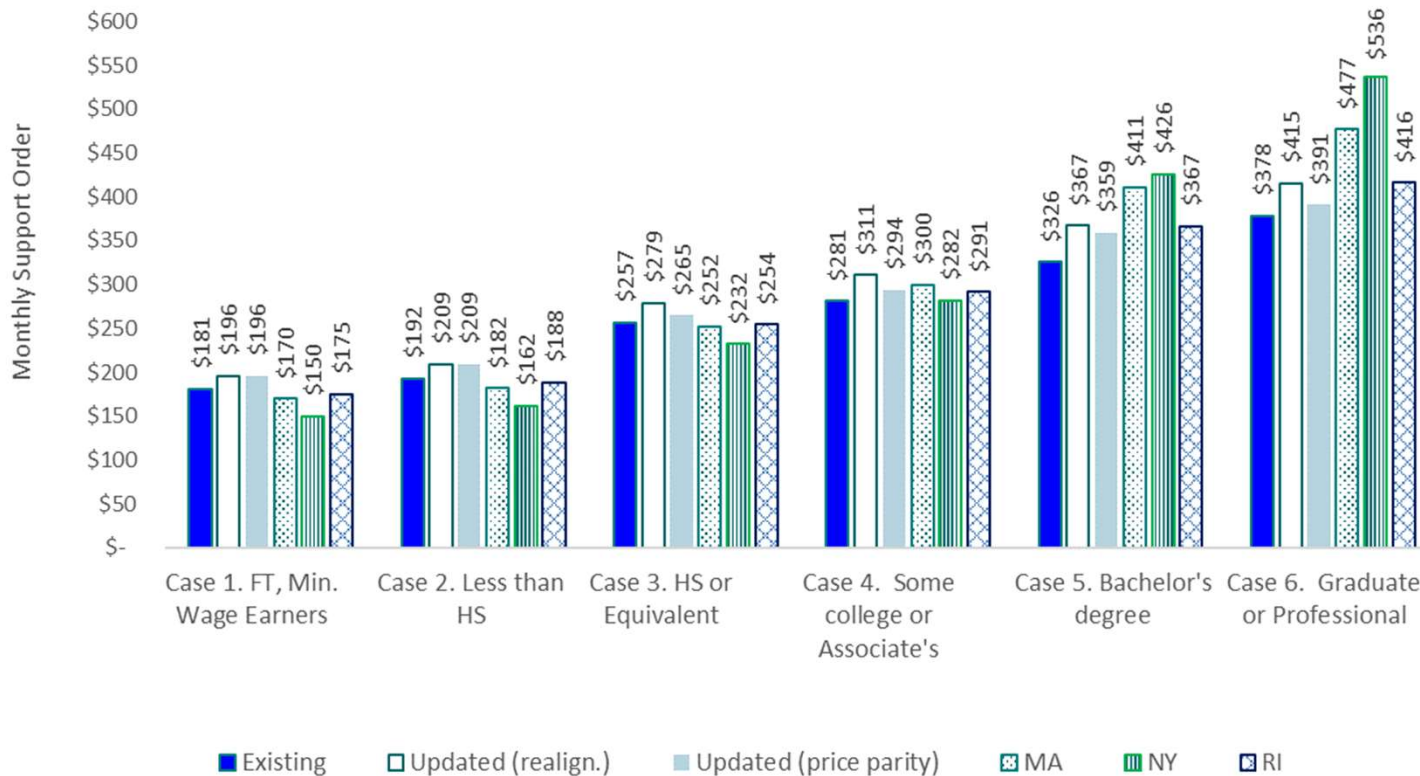- NY and MA are larger than others at high income

# Case Scenarios: Two Children
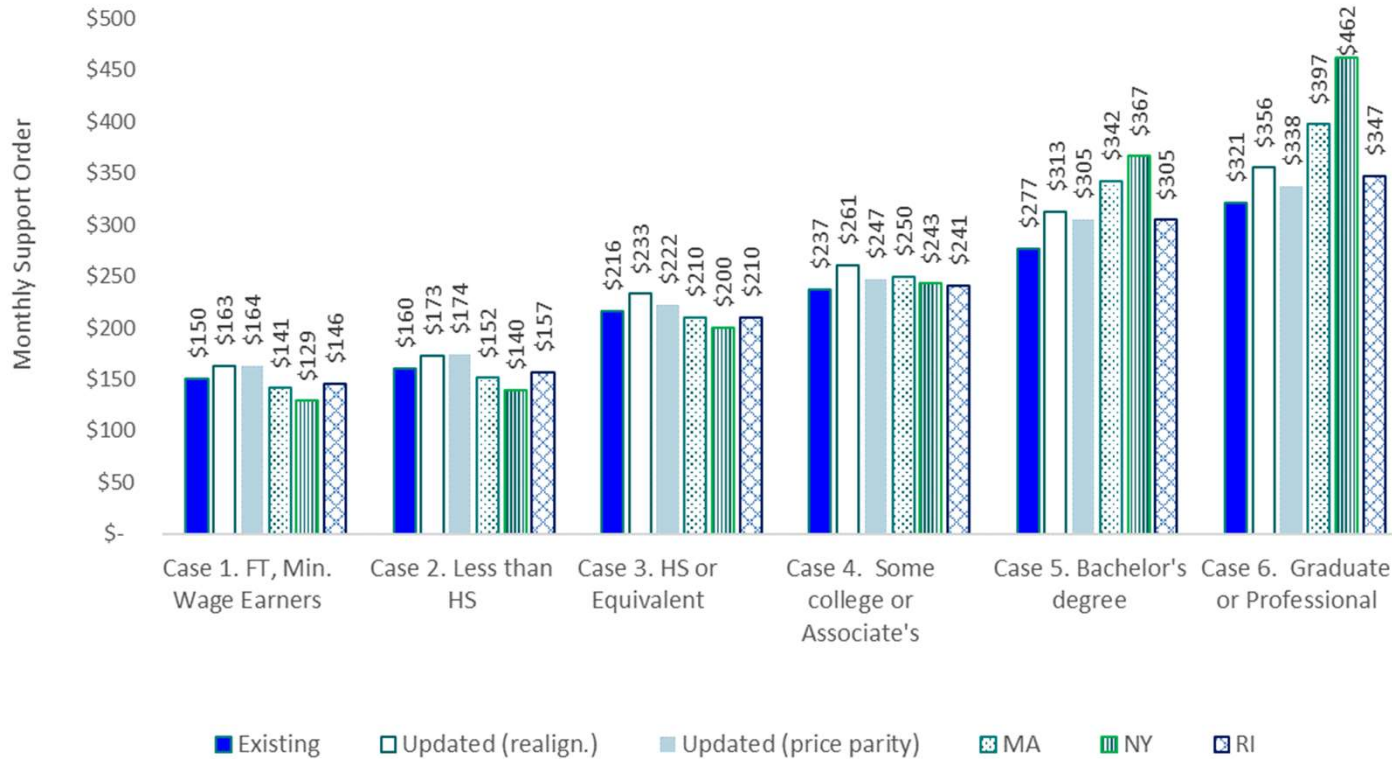


**Findings**
- Small increases that become larger with more income
- CT larger than other states for Case 1-3 (but this is before update of low-income adjustment)
- NY and MA are larger than others at high income

# Case Scenarios: Three Children



**Findings**
- Small increases that become larger with more income
- CT larger than other states for Case 1-3 (but this is before update of low-income adjustment)
- NY and MA are larger than others at high income
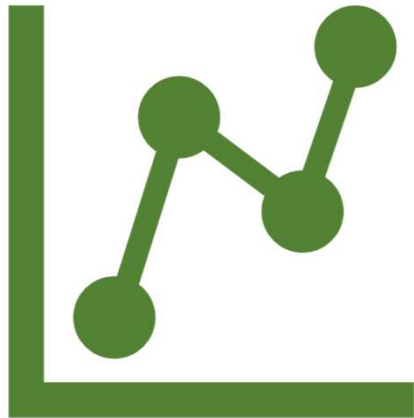
# Next Steps

# Questions and Next Steps

- Commission
  - Questions?
  - Reactions to updated schedule and options for adjusting for CT incomes/costs
  - Thoughts about low-income adjustment
  - Questions/comments concerning non-schedule issues

- Next Steps for CPR
  - Analysis of case file data and labor market data
  - Update low-income adjustment
  - Other issues (e.g., income deduction for insurance premium)

- Timelines
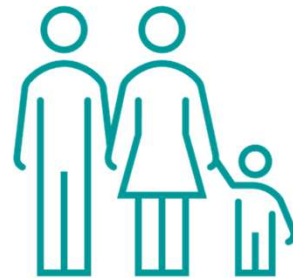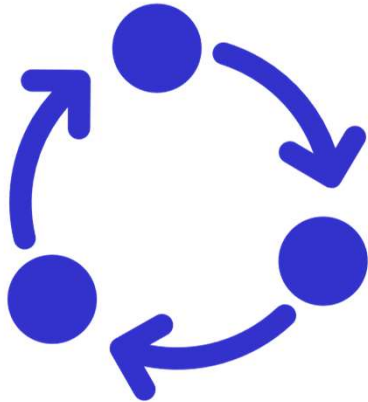
# Attachments

# 45 C.F.R. 302.56 (1 of 2)

Guidelines for setting child support orders

(a) Within 1 year after completion of the State's next quadrennial review of its child support guidelines, that commences more than 1 year after publication of the final rule, in accordance with § 302.56(e), as a condition of approval of its State plan, the State must establish one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support order amounts within the State that meet the requirements in this section.

(b)  The State must have procedures for making the guidelines available to all persons in the State.

(c)  The child support guidelines established under paragraph (a) of this section must at a minimum:

 (1)  Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:

    (i)  Takes into consideration all earnings and income of the noncustodial parent (and at the State's discretion, the custodial parent);

    (ii) Takes into consideration the basic subsistence needs of the noncustodial parent (and at the State's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self- support reserve or some other method determined by the State; and

    (iii) If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.

(2)        Address how the parents will provide for the child's health care needs through private or public health care coverage and/or through cash medical support;

(3)        Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders; and

(4)        Be based on specific descriptive and numeric criteria and result in a computation of the child support obligation.

(d)  The State must include a copy of the child support guidelines in its State plan.

Guidelines for setting child support orders

(d)  The State must include a copy of the child support guidelines in its State plan.

(e)  The State must review, and revise, if appropriate, the child support guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support order amounts. The State shall publish on the internet and make accessible to the public all reports of the guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the next quadrennial review.

(f)  The State must provide that there will be a rebuttable presumption, in any judicial or administrative proceeding for the establishment and modification of a child support order, that the amount of the order which would result from the application of the child support guidelines established under paragraph (a) of this section is the correct amount of child support to be ordered.

(g)  A written finding or specific finding on the record of a judicial or administrative proceeding for the establishment or modification of a child support order that the application of the child support guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case will be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the child support guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(h) As part of the review of a State's child support guidelines required under paragraph (e) of this section, a State must:

(1)  Consider economic data on the cost of raising children, labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders;

(2)  Analyze case data, gathered through sampling or other methods, on the application of and deviations from the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii) of this section. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c)(1)(ii). The analysis of the data must be used in the State's review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the State under paragraph (g); and

(3)  Provide a meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives. The State must also obtain the views and advice of the State child support agency funded under title IV–D of the Act.

# NOTICE RELATING TO ARTICLE

Jane Venohr, Ph.D., with the Center for Policy Research in Denver, CO, co-author of the attached article, gave express permission to share it.

# The Relationship Between Child Support and Parenting Time

## J. THOMAS OLDHAM* & JANE VENOHR**

### Introduction

When child support guidelines were initially drafted, it was assumed that in most instances, the lesser-time parent would be the father, the father would see the children infrequently, and the father would have a higher income than the mother. Today, more custodial parents are male than before,[1] the wage gap between mothers and fathers has narrowed,[2] and a substantial number of fathers are more involved in their children's lives.[3]

Decades ago, it was rare for an obligor parent to have access to his child more than every other weekend and every other holiday and approximately

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1. In 1992, only 14% of custodial parents were males, while in 2018, the percentage increased to 20%. *Compare* LYDIA SCOON-ROGERS & GORDON LESTER, U.S. CENSUS BUREAU, U.S. DEP'T OF COM., NO. P60-187, CHILD SUPPORT FOR CUSTODIAL MOTHERS AND FATHERS: 1991, at 2 (1995), https://www2.census.gov/prod2/popscan/p60-187.pdf, *with* TIMOTHY GRALL, U.S. CENSUS BUREAU, U.S. DEP'T OF COM., NO. P60-269, CUSTODIAL MOTHERS AND FATHERS AND THEIR CHILD SUPPORT: 2017, at 2 (2020), https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-269.pdf.

2. Historically, female earnings averaged about 60% of male earnings, but climbed to 79% by 2014 (approximately 83% on a weekly basis). FRANCINE BLAU & LAWRENCE KAHN, THE GENDER WAGE GAP: EXTENT, TRENDS, AND EXPLANATIONS 2 (Nat'l Bureau of Econ. Rsch. 2016), https://www.nber.org/papers/w21913.pdf.

3. Daniel R. Meyer et al., *The Growth in Shared Custody in the US: Patterns and Implications*, 55 FAM. CT. REV. 1, 2 (2017).

three weeks in the summer (or about 20% of all overnights per year).[4] Recent studies have found that shared placement has become more common.[5] Census data find that 58% of noncustodial fathers and 73% of noncustodial mothers had provisions for visitation or joint custody or both in 1991, and that the percentage increased to 81% of noncustodial parents in 2018.[6] These trends raise questions about how to calculate child support obligations in various situations, particularly when the payor parent has substantial access to the child.

This article will discuss various approaches that have been applied to how child support should be calculated (i) when the lesser-time parent has a higher income than the other parent but has substantial access, (ii) when both parents have equal joint physical custody, and (iii) when the greater-time parent has a higher income than the other parent. We will highlight the advantages and disadvantages of the various policy options.

## I. Background Information

### A. The Theoretical Foundation of Child Support Guidelines in the United States

Most states adopted child support guidelines in the late 1980s to fulfill a federal requirement that each state have advisory child support guidelines by 1987.[7] The Family Support Act of 1988 expanded the requirement from statewide advisory guidelines to require rebuttable presumptive guidelines.[8] The requirements were intended to correct several deficiencies: inconsistent order amounts among parties in similarly situated cases, inefficient adjudication of child support amounts due to

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4. For example, one study of divorced fathers in 1981 found that only 8% of all fathers had possession of their child for four or more overnights per month. *See* Frank F. Furstenberg Jr. & Christine Winquist Nord, *Parenting Apart: Patterns of Childrearing After Marital Disruption,* 47 J. Marriage & Fam. 893, 895 tbl.1, 896 (Nov. 1985).

5. *See* Meyer et al., *supra* note 3; Daniel Meyer et al., Changes in Placement After Divorce and Implications for Child Support Policy (Inst. for Rsch. on Poverty 2019); Bruce Smyth et al., *Legislating for Shared-Time Parenting After Parental Separation: Insights from Australia?,* 77 Law & Contemp. Probs. 109 (2014); Marygold S. Melli & Patricia Brown, *Exploring a New Family Form—The Shared Time Family,* 22 Int'l J. L., Pol'y & Fam. 231 (2008).

6. *See* Scoon-Rogers & Lester, *supra* note 1, at 6; Grall, *supra* note 1, at 7.

7. Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 18, 98 Stat. 1305, 1321–22.

8. Family Support Act of 1988, Pub. L. No. 100-485, § 103, 102 Stat. 2343, 2346–48.

the lack of uniform standards, and inadequate levels of support when compared to poverty levels and the cost of child-rearing.[9]

A number of different conceptual models were proposed as a foundation for the creation of child support guidelines. For example, some commentators have argued that guidelines should be crafted so that both parents will have equal living standards until the child becomes an adult.[10] However, no state has adopted this as a conceptual framework for guidelines. Instead, most states adopted a "continuity of expenditure" model of child support guidelines.[11] The principle of the continuity-of-expenditure model is that the child whose parents are living separately should receive the same level of financial support that the child would have received if the child and parents lived together as an intact family. To this end, the continuity of expenditure model is based on measurements of child-rearing expenditures in intact families. The continuity of expenditure philosophy has been implemented in the United States via the "income shares model" and the "percentage-of-obligor income model," the two major types of models for the calculation of child support. All but three states use one of these two models. The income shares model, which is used by 41 states,[12] presumes that each parent is responsible for his or her prorated share of what an intact family with the same number of children and combined parental income spends on child-rearing. The obligated parent's prorated share (based on the obligated parent's share of the total parental income) is the basis of the child support order.[13] Under the percentage-of-obligor income model, the presumptive child support amount is calculated based on only the income of the lesser-time parent.[14] States utilizing the percentage-of-obligor income model often presume that the custodial parent spends at least an equal percentage of income or dollar amount on the child as the guidelines percentage or amount.

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9. *See* ROBERT G. WILLIAMS, U.S. DEP'T OF HEALTH & HUM. SERV. OFF. OF CHILD SUPPORT ENF'T, DEVELOPMENT OF GUIDELINES FOR CHILD SUPPORT ORDERS II-2 (1987); Jane C. Venohr & Robert G. Williams, *The Implementation and Periodic Review of State Child Support Guidelines*, 33 FAM. L.Q. 7 (1999).

10. *See generally* Marsha Garrison, *Child Support Policy: Guidelines and Goals*, 33 FAM. L.Q. 157, 157 (1999) (discussing a number of possible alternate goals for child support guidelines).

11. *Id.* at 160–62, 166–69. *See* Venohr & Williams, *supra* note 9, at 12; Jane C. Venohr, *Differences in State Child Support Guidelines Amounts: Guidelines Models, Economic Basis, and Other Issues*, 29 J. AM. ACAD. MATRIM. L. 377, 385 (2017).

12. *Child Support Guideline Models*, NAT'L CONF. OF STATE LEGISLATURES (July 10, 2020), https://www.ncsl.org/research/human-services/guideline-models-by-state.aspx.

13. *See* Venohr & Williams, *supra* note 9, at 12–15.

14. *Id.* at 10–12.

## B. Federal Requirements

Federal law does not require adjustments in state guidelines for when the obligor has substantial access. Recent changes to federal requirements for state guidelines, however, attempt to make sure that states provide adjustments within their guidelines to not impoverish the obligor parent.[15] States are now required to provide a self-support reserve or a similar adjustment in their guidelines. Self-support reserves have been established so that significant child support is not required if the obligor parent's income is below a certain specified amount.[16] Most states with both a self-support reserve and an adjustment for timesharing do not allow both adjustments; rather, most take the lower of the two adjustments.

## C. Timesharing Adjustment

In the past few decades, there has been a movement toward the adoption of formulas that adjust for parenting time. In 1998, 24 states provided formulas to adjust for parenting time.[17] Today, more than two decades later, 38 states have now adopted a parenting-time adjustment formula for child support.[18] The formulas and criteria for applying them vary. As set forth in more detail below, many states have adopted rules so that, once the obligor parent has the child for at least a specified number of overnights, the presumptive child support amount is reduced as the level of access increases. In addition, some states have incorporated rules so that, even if the obligor parent has substantial access or equal physical custody, child support should not be reduced if the impact would be to impoverish the recipient parent.[19]

To the extent that states provide a timesharing adjustment formula, it is helpful to know what level of parenting time is assumed in the basic

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15. Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed. Reg. 93492, 93494–95, 93562 (Dec. 20, 2016), https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf (codified at 45 C.F.R. § 302.56(c)(ii)).

16. *See* Leslie Hodges & Lisa Klein Vogel, Inst. for Rsch. on Poverty, Univ. of Wis.–Madison, Recent Changes to State Child Support Guidelines for Low-Income Noncustodial Parents 5–6 (2019), https://www.irp.wisc.edu/wp/wp-content/uploads/2020/01/CS-2018-2020-T4.pdf.

17. *See* Venohr & Williams, *supra* note 9, at 18–19.

18. *See* Jane Venohr, Economic Basis of Minnesota Basic Schedule and Parenting-Time Expense Adjustment 8 (2015), *reprinted in* Minn. Dep't of Hum. Serv. Child Support Div., Child Support Work Group Final Report app. E at 29 (2016), https://mn.gov/dhs/assets/child_support_work_group_2016_tcm1053-166182.pdf. [hereinafter Venohr, Parenting-Time Expense Adjustment]. Venohr (2015) reports 37 states. *Id.* Since then, Illinois has also adopted a formula. *See* 750 Ill. Comp. Stat. Ann. 5/505(a)(3.8) (West 2020).

19. *E.g.*, Richardson v. Richardson, 545 S.W.3d 895, 897 (Mo. Ct. App. 2018).

formula or table. Most states using the income shares guidelines make no assumption of parenting time in their basic table. This is because most income shares tables, which contain the basic child support obligation owed by both parents for a range of combined parental incomes and number of children for whom support is being determined, are based on economic measurements of child-rearing expenditures among intact families; that is, how much is spent on the children when the parents and the children live together. In other words, there is no timesharing arrangement in the underlying economic data because the parents live together.

As mentioned earlier, the income shares model is one type of continuity of expenditures model, which means the child support obligation relates to how much would have been spent on the child in an intact family. For example, Figure 1, which is an excerpt of the Illinois income shares table, shows that the basic obligation for one child when the parents have a combined income of $7,000 net per month is $1,136 per month. This amount is based on a study of how much an intact family spends for one child on average.[20] The obligated parent's prorated share of the basic obligation in the table is the basis of the child support order. An adjustment may be layered on top of this for parenting time.[21] Pennsylvania is the only income shares state to incorporate a parenting-time adjustment into its basic table. The Pennsylvania table reflects how much is spent on a child in an intact family less what the obligated parent would need to cover most of the child's food and entertainment expenses, assuming the child is with the obligated parent 30% of the time.[22]

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20. JANE VENOHR, CTR. FOR POL'Y RSCH., TECHNICAL DOCUMENTATION: ILLINOIS SCHEDULE OF BASIC OBLIGATIONS AND STANDARDIZED NET INCOME TABLE 4 (2017), https://www.illinois.gov/hfs/SiteCollectionDocuments/TechnicalDocumentationIllinoisScheduleNetIncomeTable.pdf.

21. *See* ILL. DEP'T OF HEALTHCARE & FAM. SERVS., CHILD SUPPORT SERVS., SHARED PHYSICAL CARE SUPPORT OBLIGATION WORKSHEET, https://www.illinois.gov/hfs/SiteCollectionDocuments/StandaloneSharedPhysicalCareSupportObligationWorksheet.pdf.

22. JANE VENOHR, CTR. FOR POL'Y RSCH., 2015–2016 PENNSYLVANIA CHILD SUPPORT GUIDELINES REVIEW: ECONOMIC REVIEW AND ANALYSIS OF CASE FILE DATA 35 (2016), https://www.humanservices.state.pa.us/CSWS/CSWS/Forms/PAguidelines.pdf.

**Figure 1**[23]

*Excerpt of Illinois Income Shares Table*

| Combined Adjusted Net Income | | | One Child | Two Children | Three Children | Four Children | Five Children | Six Children |
|---|---|---|---|---|---|---|---|---|
| 6525.00 | – | 6574.99 | 1078 | 1621 | 1929 | 2155 | 2371 | 2577 |
| 6575.00 | – | 6624.99 | 1085 | 1630 | 1941 | 2168 | 2385 | 2593 |
| 6625.00 | – | 6674.99 | 1091 | 1640 | 1953 | 2181 | 2400 | 2608 |
| 6675.00 | – | 6724.99 | 1097 | 1650 | 1965 | 2195 | 2414 | 2624 |
| 6725.00 | – | 6774.99 | 1104 | 1660 | 1976 | 2208 | 2429 | 2640 |
| 6775.00 | – | 6824.99 | 1110 | 1669 | 1988 | 2221 | 2443 | 2655 |
| 6825.00 | – | 6874.99 | 1117 | 1679 | 2000 | 2234 | 2457 | 2671 |
| 6875.00 | – | 6924.99 | 1123 | 1689 | 2012 | 2247 | 2472 | 2687 |
| 6925.00 | – | 6974.99 | 1129 | 1698 | 2023 | 2260 | 2486 | 2703 |
| 6975.00 | – | 7024.99 | 1136 | 1708 | 2035 | 2273 | 2501 | 2718 |
| 7025.00 | – | 7074.99 | 1142 | 1718 | 2047 | 2286 | 2515 | 2734 |
| 7075.00 | – | 7124.99 | 1148 | 1728 | 2059 | 2300 | 2530 | 2750 |
| 7125.00 | – | 7174.99 | 1155 | 1737 | 2070 | 2313 | 2544 | 2765 |
| 7175.00 | – | 7224.99 | 1161 | 1747 | 2083 | 2326 | 2559 | 2782 |
| 7225.00 | – | 7274.99 | 1168 | 1758 | 2095 | 2340 | 2574 | 2798 |
| 7275.00 | – | 7324.99 | 1175 | 1768 | 2107 | 2354 | 2589 | 2814 |
| 7325.00 | – | 7374.99 | 1181 | 1778 | 2119 | 2367 | 2604 | 2831 |
| 7375.00 | – | 7424.99 | 1188 | 1788 | 2132 | 2381 | 2619 | 2847 |
| 7425.00 | – | 7474.99 | 1195 | 1798 | 2144 | 2395 | 2634 | 2863 |
| 7475.00 | – | 7524.99 | 1201 | 1808 | 2156 | 2408 | 2649 | 2880 |

Most percentage-of-obligor income guidelines, which is the other type of continuity of expenditures model, also relate to measurements of child-rearing expenditures in intact families. Some states (such as Wisconsin) mentioned that they adjusted the percentages to account for the child's time with the obligated parent, but did not specify what assumption was made regarding the "normal" level of contact.[24] Other percentage-of-obligor income guidelines (such as those of Alaska and Mississippi) do not clearly state that any consideration of timesharing is considered in the basic percentages.[25]

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23. For the complete table, see ILL. DEP'T OF HEALTHCARE & FAM. SERVS., CHILD SUPPORT SERVS., INCOME SHARES SCHEDULE BASED ON NET INCOME, https://www.illinois.gov/hfs/SiteCollectionDocuments/IncomeSharesScheduleBasedonNetIncome.pdf.

24. INGRID ROTHE ET AL., INST. FOR RSCH. ON POVERTY, ESTIMATES OF FAMILY EXPENDITURES FOR CHILDREN: A REVIEW OF THE LITERATURE 10 (2001).

25. MISS. CODE. ANN. § 43-19-101(1) (2020); ALASKA R. CIV. P. 90.3(a)(2).

## II. Calculating the Child Support Order When the Lesser-Time Parent Has Substantial Access and a Higher Income Than the Other Parent

### *A. Introduction*

Although most states do not contain any parenting-time assumptions in their basic guidelines tables or percentages, most states have adopted a formula pertaining to how the guidelines support amount should be reduced based on the level of access by the obligor. This is premised on the assumption that, as the obligor-parent's parenting time increases, this increases the child-rearing costs of the obligor parent and reduces the expenses of the other parent. Most states with formulas provide that the formula is to be applied presumptively if the case meets certain criteria (e.g., a shared-custody order that the obligor parent actually exercises). These states, however, disagree about whether the obligor parent should receive some support reduction starting with a relatively low level of contact, or whether such an adjustment should begin only when there is substantial access because the custodial parent's expenses are not reduced by the child spending only a small number of overnights with the other parent.

Some commentators have argued that child support should not be presumptively reduced if the obligor parent has substantial access.[26] Proponents of this view contend that it is not clear that the recipient parent's expenses will be reduced as a result of substantial access, so it is not fair to presumptively reduce support when substantial access exists. The consideration of whether the custodial parent's expenses are reduced is also echoed in a recent New York case that involved a father who had possession of his child overnight three nights per week. He argued that, due to his level of possession, his support amount should be reduced below the normal presumptive amount of child support under the guidelines. The appellate court ruled that, based on the New York law, he did not have the right to have his presumptive support amount reduced due to his substantial parenting time without showing that his expenses had increased as a result or that the other parent's expenses had decreased.[27] In this particular case, a major consideration was the presentation of evidence that the custodial

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26. *See* Karen Syma Czapanskiy, *The Shared Custody Child Support Adjustment: Not Worth the Candle*, 49 Fam. L.Q. 409 (2015).

27. Jennifer VV. v. Lawrence WW., 124 N.Y.S.3d 474, 478–79 (App. Div. 2020); *see also* N.Y. Fam. Ct. Act § 413(1)(f)(9) (McKinney 2020) ("unjust or inappropriate" deviation factors may include "(i) extraordinary expenses incurred by the non-custodial parent in exercising visitation, or (ii) expenses incurred by the non-custodial parent in extended visitation provided that the custodial parent's expenses are substantially reduced as a result thereof").

parent's expenses were not substantially reduced by the obligor parent's time with the child.[28]

A small number of states have merely treated the matter as a deviation factor, giving the court the power to reduce the presumptive award due to substantial access. In some of these states, courts have been critical of an absolute rule that an obligor should automatically get a certain reduction in child support as a result of a certain level of access.[29] Some statutes of this type (such as New Hampshire's) invite the court to consider, when deciding whether to reduce the support amount, whether the obligor's level of access reduces the expenses of the recipient parent.[30]

In contrast with the New Hampshire and New York approaches summarized above, to obtain a parenting-time adjustment under the various formulas in force among most states today, the obligor does not have to establish that his level of access reduces the expenses of the other parent. Nonetheless, some states do give the court some discretion when applying the timesharing adjustment. For example, in the District of Columbia, a timesharing adjustment is not made if the recipient parent can show that such an adjustment would be unjust or inappropriate.[31] In some other states, before a timesharing adjustment is made, the obligor parent must show that he or she contributed to the expenses of the child, in addition to paying child support.[32]

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28. *Jennifer VV.*, 124 N.Y.S.3d at 479.

29. *See In re* Marriage of Sobieski, 984 N.E.2d 163, 176 (Ill. App. Ct. 2013).

30. *See* N.H. REV. STAT. ANN. § 458-C:5(1)(h)(2)(B) (2020). The statute also allows the court to consider whether the parent with less income will have adequate resources to support the child in a similar style as the other parent. *Id.* § 458-C:5(1)(h)(2)(C).

31. D.C. CODE ANN. § 16-916.01(q)(3) (2020).

32. *E.g.*, WYO. STAT. ANN. § 20-2-304(c) (2020) (adjustment applies "[w]hen each parent keeps the children overnight for more than twenty-five percent (25%) of the year and *both parents contribute substantially to the expenses of the children*") (emphasis added). *Compare* Jensen v. Milatzo-Jensen, 297 P.3d 768, 777–778 (Wyo. 2013) (obligor parent made such a showing), *with* Fountain v. Mitros, 968 P.2d 934, 938–39 (Wyo. 1998) (obligor parent did not make such a showing). *See also* N.J. CT. R. app. IX-A § 13(b) (2020), https://njcourts.gov/attorneys/assets/rules/app9a.pdf ("In determining if such an adjustment is appropriate, the court should consider whether the non-custodial parent has incurred variable expenses for the child during PAR Time and if PAR Time has reduced the other parent's variable expenses for the child."); S.C. CODE ANN. REGS. 114-4730(A) (2020) ("For the purpose of this section, shared physical custody means that each parent has court-ordered visitation with the children overnight for more than 109 overnights each year (30%) and that both parents contribute to the expenses of the child(ren) in addition to the payment of child support.").

## B. Adjustment Criteria

### 1. TIMESHARING CRITERIA

One common criterion for obtaining a parenting-time adjustment is that the lesser-time parent must have at least a certain number of overnights per year with the child. This is the approach used in many states and some other countries. In some Western European countries, the United Kingdom, and Canada, child support is not reduced until a specified access threshold is reached. For example, in the UK, child support is reduced when the obligor has access 53 nights per year. Greater reductions occur when the obligor has access for 104, 156, and more than 175 nights. In France, child support is reduced when the obligor has the child 25% of the time. Child support is reduced in Canada when the obligor has the child 40% of the time.[33] In Australia, child support begins to be reduced due to obligor access starting with 14% of all overnights (one night per week).[34]

To make a parenting-time adjustment calculation, the country or state must specify how levels of contact are to be measured. While a few U.S. states attempt to measure time spent with each parent (e.g., one-fourth day, one-half day),[35] the most common way to measure levels of access is in terms of how many nights the child spends with the parent.[36] This is done due to the relative simplicity of this method, as well as the fact that, if a child spends the night with a parent, it is likely that the parent will provide dinner and breakfast. (Oregon generally uses overnights, but another method may be used if a parent has frequent contact that does not consist of overnights.)[37] Another related question is whether the child

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33. For a general discussion of parenting-time adjustments in various countries, see generally Elke Claessens & Dimitri Mortelmans, *Challenges for Child Support Schemes: Accounting for Shared Care and Complex Families*, 28 J. EUROPEAN SOC. POL'Y 2, 11 (2018).

34. *See* Bruce Smyth et al., *Separated Parents' Knowledge of How Changes in Parenting Time Can Affect Child Support Payments and Family Tax Benefit Splitting in Australia: A Pre/Post-Reform Comparison*, 26 AUSTL. J. FAM. L. 1, 183–84 (2012).

35. *See* VA. CODE ANN. § 20-108.2(G)(3)(c) (2020); ARIZ. REV. STAT. ANN. § 25-320(11)(C) (2020).

36. *See* MINN. STAT. § 518A.36(1)(a) (2020); WYO. STAT. ANN. § 20-2-304(c); IOWA CT. R. 9.9; NORTH CAROLINA CHILD SUPPORT GUIDELINES, Form AOC-CV-628, at 5 (Mar. 1, 2020), https://www.nccourts.gov/assets/documents/forms/a162_1.pdf?xjkR4e2imYNRbMDxJJT.1ppuFWJUuUWf; FLA. STAT. ANN. § 61.30(11)(a)(10), (b) (West 2020); 750 ILL. COMP. STAT. ANN. 5/505(a)(3.8) (West 2020); IND. CT. CHILD SUPPORT RULES & GUIDELINES, GUIDELINE 6, https://www.in.gov/judiciary/rules/child_support/#g6.

37. *See* OR. ADMIN. R. 137-050-0730(2)(c) (2020).

support should be calculated based on the parenting time set forth in the decree or the parenting time actually occurring or both.[38]

As mentioned earlier, of those states that have adopted a formula for the reduction of child support based on access levels, they do not agree regarding when the child support amount should begin to be reduced. Some states require nearly equal timesharing before the adjustment is applied. In other states, the child support amount is reduced by a small amount even with a very low level of access.[39] In the states that reduce support beginning with low levels of access, the child support reduction gradually increases as the number of overnights increases.[40] These parenting-time reduction schedules were created to attempt to give the obligor parent credit for the additional expenses that are incurred as parenting time increases.

Further, when the child support reduction starts at few overnights, there is not a precipitous drop in the guidelines support amount at any level of access. Such a precipitous drop in the child support amount with a small change in access is referred to as a "cliff effect." For example, if a substantial number of overnights are required before a parenting-time adjustment can be made, and the guidelines-calculated amount is significantly reduced with additional access, then cliff effects are created. The cliff effect becomes larger as the minimum threshold is increased.

This is shown by comparing in Figure 2 the amount of support that would be due under the Illinois child support guidelines schedule using the Illinois timesharing reduction formula, which uses a 146-overnight threshold for applying the Illinois shared physical care adjustment,[41] to how the support amount would change if the Colorado threshold of more than 92 overnights would be applied to the Illinois child support guidelines schedule.[42] (Both Illinois and Colorado use the same general timesharing adjustment

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38. *See* VENOHR, PARENTING-TIME EXPENSE ADJUSTMENT, *supra* note 18, at 8; JANE VENOHR & SAVAHANNA MATYASIC, CTR. FOR POL'Y RSCH., REVIEW OF THE ARKANSAS CHILD SUPPORT GUIDELINES: ANALYSIS OF ECONOMIC DATA, DEVELOPMENT OF INCOME SHARES CHARTS, AND OTHER CONSIDERATIONS 52 (2019), https://www.arcourts.gov/sites/default/files/formatted-files/review-of-arkansas-child-support-guidelines.pdf. *Compare* Koeneman v. Boersma, No. S-13882, 2011 WL 6116480, at *5 (Alaska Dec. 7, 2011) (parenting-time adjustment should be based on the terms of the order and not actual parenting time), *with* Cnty. of San Diego v. P.B., 55 Cal. App. 5th 1058, 1068–72 (2020) (parenting-time adjustment should be based on actual access, not terms of the order).

39. *See, e.g.,* ARIZ. CHILD SUPPORT GUIDELINES § 11 (Apr. 1, 2018), http://www.azcourts.gov/Portals/34/Forms/FamilyLaw/AOCDRS10H2018.pdf.

40. *See id.*

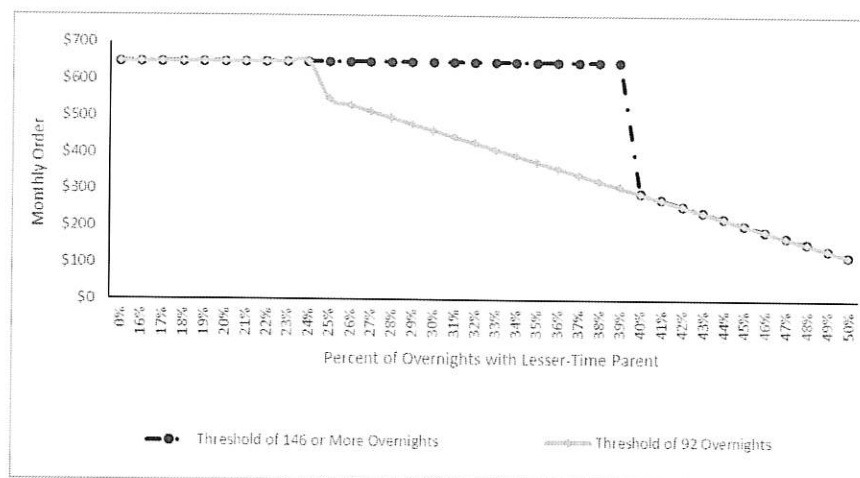41. *See* 750 ILL. COMP. STAT. ANN. 5/505(a)(3.8) (West 2020).

42. *See* COLO. REV. STAT. § 14-10-115(3)(h) (2020).

formula.[43]) The comparisons consider a scenario where the father's net income is $4,000 per month, the mother's net income is $3,000 per month, there is one child, and there are no other adjustments. It is assumed in Figure 2 that the father is the lesser-time parent. The figure shows the changes in the monthly order amount as the lesser-time parent has more time with the child. The figure starts at zero timesharing, skips to 16% timesharing, and then tracks with one percent increases in the percent of overnights until equal physical custody of 50%. (Including one percent increments from 0–16% in the figure would make the graph unwieldy to read.) The cliff effect that results from the Illinois approach is much more dramatic than the cliff effect arising from the Colorado timesharing threshold.

## Figure 2

*Illustration of the Impact of Lower and Higher*
*Timesharing Thresholds:*

(Case Scenario: Income shares calculation using the Illinois income shares Schedule for
one child where the lesser-time parent's net income = $4,000 per month and the greater-time parent's
net income = $3,000 per month.)



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43. *Compare* 750 Ill. Comp. Stat. Ann. 5/505(a)(3.8), *with* Colo. Rev. Stat. § 14-10-115(8)(b).

### 2. Timesharing Adjustments and Low-Income Recipients

One question presented by parenting-time child support reductions is whether they should be granted if they would significantly harm the financial condition of the household of the recipient parent. A few courts have not granted parenting-time reductions due to the low income of the recipient parent.[44] The parenting-time adjustment rules in Missouri, Virginia, and New Jersey provide that generally no support adjustment should presumptively occur if the recipient-parent's income is below a certain specified level.[45]

## C. Formulas for Adjusting for Timesharing

With the exception of the "cross-credit formula" (which is also called the "offset formula" in some states), no other timesharing formula is used by more than two states. The cross-credit formula is used by 23 states.[46]

### 1. Cross-Credit Formula

The cross-credit formula essentially calculates a theoretical order for each parent weighed by the percentage of time with the other parent. The parent with the larger theoretical order is the obligor parent and owes the difference between the two theoretical orders. Colorado was the first state to adopt this method and promulgated it in 1986.[47]

The first step in calculating the child support amount under an income shares approach in most states using the cross-credit formula is to

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44. *See* Milam v. Milam, 778 S.E.2d 535 (Va. Ct. App. 2015); Richardson v. Richardson, 545 S.W.3d 895 (Mo. Ct. App. 2018).

45. The Missouri guideline sets forth a level of "adjusted monthly income" of the recipient parent below which a parenting-time adjustment generally should not occur. This income level changes with the number of children in the household. *See* Directions, Comments for Use and Examples for Completion of Form No. 14, at 8, *Child Support Forms*, Mo. Courts (updated Mar. 13, 2019), https://www.courts.mo.gov/file.jsp?id=114614 [hereinafter Directions, *Mo. Child Support Forms*]. In Virginia, the adjustment is not presumptively to be made if either parent's gross income is less than or equal to 150% of the federal poverty level. *See* Va. Code Ann. § 20-108.2(G)(3)(d) (2020). In New Jersey, the adjustment is not presumptively made if the net income of the recipient parent is less than two times the poverty level for the recipient's household size. *See* N.J. Ct. R. app. IX-A § 13(b)(3) (2020), https://njcourts.gov/attorneys/assets/rules/app9a.pdf.

46. *See* Venohr, Parenting-Time Expense Adjustment, *supra* note 18, at 10, which counted 21 states in 2015. Since then, Illinois, Nevada, and North Dakota have also adopted the cross-credit formula, while Minnesota no longer uses it. *See* 750 Ill. Comp. Stat. Ann. 5/505(a) (3.8) (West 2020); Nev. Admin. Code § 425.115(3); N.D. Admin. Code 75-02-04.1-08.1 (2020); Minn. Stat. § 518A.36 (2020).

47. *See* Colo. Rev. Stat. § 14-10-115(8)(b) (2020).

increase the basic obligation owed by both parents by 50%[48] to account for some child-rearing expenses being duplicated when both parents have substantial access (i.e., the cost of housing and some transportation expenses). In other words, the cross-credit formula with such a multiplier assumes it costs more to raise a child in two households when both parents have substantial access than it does in one household. (A few states do not utilize a multiplier or use a multiplier other than 1.5.)[49]

As shown in Figure 3, each parent's share of that larger theoretical support amount is determined (under an income shares approach) based on each parent's share of combined parental income. Once each parent's shared-care enhanced child support obligation is calculated, that amount is multiplied by the percentage of overnights the child spends with the other parent. The smaller number is then subtracted from the larger number to arrive at the child support amount. The parent with the larger amount would pay the other parent the difference between the two amounts.[50]

## Figure 3

*Illustration of the Cross-Credit Adjustment*

| Line | | Parent A | Parent B | Combined |
|------|---|---------|---------|---------|
| 1 | Monthly net income | $4,000 | $3,000 | $7,000 |
| 2 | Percentage share of income | 57% | 43% | 100% |
| 3 | Basic obligation for 1 child (from Illinois Schedule) | | | $1,136 |
| 4 | Shared-care enhanced child support obligation (Line 3 multiplied by 150%) | | | $1,704 |
| 5 | Each parent's share (Line 2 × Line 4) | $971 | $733 | |
| 6 | Overnights with each parent (must total 365) | 146 | 219 | 365 |
| 7 | Percentage time with each parent (Line 6 divided by 365) | 40% | 60% | 100% |
| 8 | Each parent's obligation (for Parent A, Parent A's line 5 × Parent's B Line 7; For Parent B, Parent B's line 5 × Parent's A Line 7) | $583 | $293 | |
| 9 | Shared custody obligation (subtract smaller from larger on Line 8) | $290 | | |

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48. *E.g., id.*; 750 Ill. Comp. Stat. Ann. 5/505(a)(3.8).

49. *See* N.D. Admin. Code 75-02-04.1-08.1; Okla. Stat. tit. 43, § 118E(D)(2)(a)–(b) (2020).

50. For example, *see* Valdes v. Valdes, 154 So. 3d 1165, 1166–67 (Fla. Dist. Ct. App. 2015).

(An alternate way to make this calculation is to multiply each parent's enhanced shared-care child support amount by that parent's percentage of overnights, and then to subtract that amount from the enhanced shared-care child support amount to arrive at the amount each parent owes the other parent. Then the lower amount would be subtracted from the higher amount to arrive at the child support obligation.) Under this approach, if the shared-care child support amount is greater than the amount that would have resulted from a sole custody award, the parent normally pays the smaller amount.[51]

All states using a cross-credit approach set a certain timesharing threshold for its use. States do not agree regarding the appropriate threshold. Alaska and Vermont have chosen 30% of overnights, the District of Columbia has chosen 35%, and Illinois utilizes 40%.[52] The cross-credit approach is commonly used with an income shares approach, although a few states with percentage-of-obligor income guidelines (such as Alaska and Wisconsin) also use it.[53]

There are some strengths and weaknesses to the cross-credit with multiplier approach. The major strengths of a cross-credit formula are that it has been used for decades by many states and is easily explainable. The first weakness is that the child support is not reduced until the parenting-time level reaches the threshold. Once the parenting time reaches the threshold, child support frequently goes down substantially as parenting-time levels increase above the threshold. This creates a cliff effect. (This is evident in Figure 2.) Small variations in parenting time can result in substantial changes in child support. When there is a cliff effect, particularly a large cliff effect, there is a concern that the child support recipient may oppose the obligor's parenting time meeting the amount of timesharing required for the adjustment, while the obligor might want to meet that threshold. The result can be more litigation over parenting time.[54] Some commentators have questioned whether this is a significant

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51. *E.g.*, COLO. REV. STAT. § 14-10-115(8)(b).

52. *See* ALASKA R. CIV. P. 90.3(b), (f)(1), https://public.courts.alaska.gov/web/rules/docs/civ.pdf#page=124; D.C. CODE § 16-916.01(q)(1); VT. STAT. ANN. tit. 15, § 657(a) (2020); 750 ILL. COMP. STAT. ANN. 5/505(a)(3.8) (West 2020).

53. *See* ALASKA R. CIV. P. 90.3(a), (b), https://public.courts.alaska.gov/web/rules/docs/civ.pdf#page=124; WIS. ADMIN. CODE DCF §§ 150.03(1), 150.04(2), https://docs.legis.wisconsin.gov/code/admin_code/dcf/101_199/150.

54. In 2016, the committee reviewing the Minnesota approach stated that one primary goal was to adopt a new approach that did not have a significant cliff effect. *See* MINN. DEP'T OF HUM. SERV. CHILD SUPPORT DIV., CHILD SUPPORT WORK GROUP FINAL REPORT 3, 10–11 (2016), https://mn.gov/dhs/assets/child_support_work_group_2016_tcm1053-166182.pdf.

problem;[55] also, some parents may not be familiar with the law or may misunderstand it.

The second perceived weakness of this cross-credit approach is that it can result in the greater-time parent paying child support to the lesser-time parent if the lesser-time parent's income is substantially less than that of the other parent. While such a result is controversial in some states, it is perceived to be a desirable outcome in some other states.

## 2. MATHEMATICAL VARIATIONS TO THE CROSS-CREDIT FORMULA

There are at least two mathematical variations of the cross-credit formula. One variation is used by Michigan and Minnesota.[56] The other variation is used by Oregon.[57] The mathematical structure of these two formulas is rooted in the cross-credit formula, but they do not require a timesharing threshold for their application. These approaches have also been called "advanced math" or "non-linear" formulas because they are complicated mathematical formulas with exponential functions. The use of an exponential function allows the dollar reduction of the child support order for more overnights to increase gradually, rather than have a cliff effect. Figure 4 shows the formulas of these three states. Figure 5 compares the order amounts for the same case scenario shown in Figure 2 (the father is the lesser-time obligor parent with a net monthly income of $4,000 and the mother's net monthly income is $3,000). That is, the Michigan, Minnesota, and Oregon formulas (and a cross-credit formula with a threshold of 92 overnights) are applied on top of the Illinois child support guidelines schedule for comparison purposes to illustrate the impact of the timesharing formula, rather than the guideline support amount differences among states.

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55. *See generally* Bruce Smyth & Bryan Rogers, *Strategic Bargaining over Child Support and Parenting Time: A Critical Review of the Literature*, 25 AUSTL. J. FAM. L. 210 (2011).

56. *See* MINN. STAT. § 518A.36(2)(b) (2020); MICH. STATE CT. ADMIN. OFF., FRIEND OF THE CT. BUREAU, 2017 MICHIGAN CHILD SUPPORT FORMULA MANUAL § 3.03 (2017), https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Publications/Manuals/focb/2017MCSF.pdf.

57. OR. ADMIN. R. § 137-050-0730(6)-(7) (2020), https://oregon.public.law/rules/oar_137-050-0730.

## Figure 4

*Formulas of States That Have Modified the Cross-Credit Approach*

| | Formula |
|---|---|
| Michigan[58] | $[(A_O)^{2.5} \times (B_S) - (B_O)^{2.5} \times (A_S)]/[(A_O)^{2.5} + (B_O)^{2.5}]$ <br><br> $A_O$ Approximate percentage of overnights the children will likely spend with parent A annually <br><br> $B_O$ Approximate percentage of overnights the children will likely spend with parent B annually <br><br> $A_S$ Parent A's base support obligation <br><br> $B_S$ Parent B's base support obligation |
| Minnesota[59] | $[(A_O)^3 \times (B_S) - (B_O)^3 \times (A_S)]/[(A_O)^3 + (B_O)^3]$ <br> Same key as Michigan |
| Oregon[60] | Credit percentage $= 1/(1 + e\hat{\,}(-7.14 \times ((\text{overnights}/365) - 0.5))) - 2.74\% + (2 \times 2.74\% \times (\text{overnights}/365))$ |

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58. *See* 2017 Michigan Child Support Formula Manual, *supra* note 56, § 3.03(A)(2).
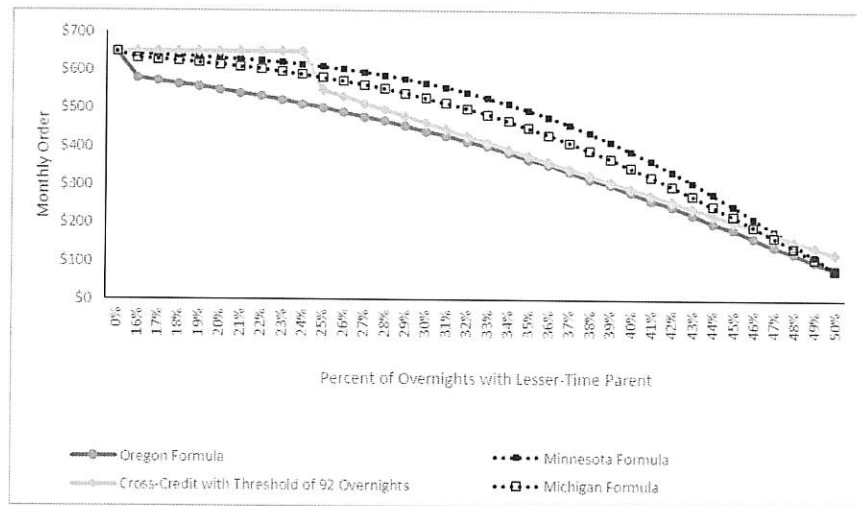59. Minn. Stat. § 518A.36(2)(b).
60. Or. Admin. R. § 137-050-0730(6).

**Figure 5**

*Comparison of Modified Cross-Credit Formulas*

(Case Scenario: Income shares calculation using the Illinois income shares Schedule for one child where the lesser-time parent's net income = $4,000 per month and the greater-time parent's net income = $3,000 per month.)



As shown in Figure 4, the elements of the Michigan and Minnesota formulas are similar to the cross-credit formula in that both consider each parent's share of the basic obligation and weight it by the percentage of time the child is with the other parent. The difference is neither the Michigan timesharing adjustment nor the Minnesota timesharing adjustment applies a multiplier to the basic obligation. Instead, both states make an exponential function of the percentage of time: Michigan takes it to the 2.5 power and Minnesota takes it to the third power, which essentially cubes it. This causes the timesharing formula to start off with small adjustments when the lesser-time parent has few overnights and increases the adjustment as the parents move toward almost equal custody.

Figure 5 shows significant differences in support amounts in the four timesharing formulas when the lesser-time parent has few overnights, but the differences in the order amounts produced by the different timesharing formulas narrow as the lesser-time parent's time with the child approaches almost equal physical custody. When the lesser-time parent has the child for 40% of the time, the order amount would be $292 per month under the cross-credit formula with a 150% multiplier, $347 per month under

the Michigan timesharing formula, $389 per month under the Minnesota timesharing formula, and $282 per month under the Oregon timesharing formula. (The reader should keep in mind that the timesharing formulas are applied to the Illinois schedule to not confound differences among the timesharing formulas with differences with state child support schedules.) Figure 5 also shows that the Michigan timesharing adjustment produces a larger reduction than the Minnesota timesharing adjustment. In other words, the higher the exponential power used in the formula, the smaller the reduction.

The Oregon formula produces the greatest adjustment at low levels of timesharing. The Oregon formula was developed by a mathematics professor to yield gradual changes when the lesser-time parent had little time with the child and larger changes when the lesser-time parent has almost equal custody, and it was also designed to track what a cross-credit formula with a 1.5 multiplier would yield at almost equal custody.[61] For ease of use, Oregon has developed a lookup table of overnights and percentage adjustments from its formula as well as an automated calculator.[62] An excerpt of the Oregon lookup table is shown in Table 1.

## Table 1

### *Excerpt of the Oregon Lookup Table*[63]

| Overnights | Credit % | Overnights | Credit % | Overnights | Credit % | Overnights | Credit % |
|---|---|---|---|---|---|---|---|
| 0 | 0.00% | 36 | 3.19% | 72 | 8.67% | 108 | 17.77% |
| 1 | 0.07% | 37 | 3.30% | 73 | 8.87% | 109 | 18.09% |
| 2 | 0.14% | 38 | 3.42% | 74 | 9.07% | 110 | 18.41% |
| 3 | 0.21% | 39 | 3.54% | 75 | 9.27% | 111 | 18.73% |
| 4 | 0.28% | 40 | 3.66% | 76 | 9.48% | 112 | 19.06% |
| 5 | 0.35% | 41 | 3.78% | 77 | 9.68% | 113 | 19.39% |
| 6 | 0.42% | 42 | 3.91% | 78 | 9.90% | 114 | 19.72% |
| 7 | 0.49% | 43 | 4.04% | 79 | 10.11% | 115 | 20.06% |

61. OR. CHILD SUPPORT PROGRAM GUIDELINES ADVISORY COMM., 2011–12 CHILD SUPPORT GUIDELINES REVIEW: GUIDELINES ADVISORY COMM. REPORT AND RECOMMENDATIONS 19–21, 19 n.6 (2012), https://justice.oregon.gov/child-support/pdf/guidelines_advisory_committee_report_and_recommendations_2011-12.pdf.

62. *See Parenting Time Calculator*, OREGON DEP'T OF JUST., CHILD SUPPORT, https://justice.oregon.gov/calculator/parenting_time/ (last visited Oct. 31, 2020).

63. OR. ADMIN. R. 137-050-0730(6), tbl. (2020), https://justice.oregon.gov/child-support/pdf/137-050-0730.pdf.

| Overnights | Credit % | Overnights | Credit % | Overnights | Credit % | Overnights | Credit % |
|---|---|---|---|---|---|---|---|
| 8 | 0.57% | 44 | 4.16% | 80 | 10.33% | 116 | 20.40% |
| 9 | 0.65% | 45 | 4.30% | 81 | 10.55% | 117 | 20.75% |
| 10 | 0.72% | 46 | 4.43% | 82 | 10.77% | 118 | 21.10% |
| 11 | 0.80% | 47 | 4.56% | 83 | 11.00% | 119 | 21.45% |
| 12 | 0.88% | 48 | 4.70% | 84 | 11.23% | 120 | 21.81% |
| 13 | 0.96% | 49 | 4.84% | 85 | 11.47% | 121 | 22.17% |
| 14 | 1.04% | 50 | 4.98% | 86 | 11.70% | 122 | 22.54% |
| 15 | 1.13% | 51 | 5.12% | 87 | 11.94% | 123 | 22.90% |
| 16 | 1.21% | 52 | 5.27% | 88 | 12.19% | 124 | 23.27% |
| 17 | 1.29% | 53 | 5.41% | 89 | 12.43% | 125 | 23.65% |
| 18 | 1.38% | 54 | 5.56% | 90 | 12.68% | 126 | 24.03% |
| 19 | 1.47% | 55 | 5.71% | 91 | 12.94% | 127 | 24.41% |
| 20 | 1.56% | 56 | 5.87% | 92 | 13.19% | 128 | 24.80% |
| 21 | 1.65% | 57 | 6.02% | 93 | 13.45% | 129 | 25.19% |
| 22 | 1.74% | 58 | 6.18% | 94 | 13.72% | 130 | 25.58% |
| 23 | 1.84% | 59 | 6.34% | 95 | 13.98% | 131 | 25.98% |
| 24 | 1.93% | 60 | 6.51% | 96 | 14.25% | 132 | 26.38% |
| 25 | 2.03% | 61 | 6.67% | 97 | 14.53% | 133 | 26.78% |
| 26 | 2.12% | 62 | 6.84% | 98 | 14.80% | 134 | 27.19% |
| 27 | 2.22% | 63 | 7.01% | 99 | 15.08% | 135 | 27.60% |
| 28 | 2.32% | 64 | 7.19% | 100 | 15.37% | 136 | 28.01% |
| 29 | 2.43% | 65 | 7.36% | 101 | 15.66% | 137 | 28.43% |
| 30 | 2.53% | 66 | 7.54% | 102 | 15.95% | 138 | 28.85% |
| 31 | 2.64% | 67 | 7.72% | 103 | 16.24% | 139 | 29.27% |
| 32 | 2.74% | 68 | 7.91% | 104 | 16.54% | 140 | 29.70% |
| 33 | 2.85% | 69 | 8.09% | 105 | 16.84% | 141 | 30.13% |
| …. | …. | … | … | … | … | … | … |

The major advantages to the mathematical variations of the cross-credit formulas are that they produce gradual reductions to the child support order as overnights increase (no cliff effect), they recognize that the rate of reduction should be less when there is little timesharing and more when there is greater timesharing, and they do not require a timesharing threshold. The disadvantages are that the formulas are not easily explainable, they cannot be calculated manually, and they can produce an adjustment at a very low number of overnights. The adjustment for a low number of overnights is a concern to policymakers who believe that the parent with more overnights does not incur a reduction in child-rearing expenditures until the child spends a substantial number of overnights with the other parent.

### 3. Variable Expenses and Fixed, Duplicated, and Nonduplicated Expenses

A few states (e.g., Arizona, Indiana, Missouri, and New Jersey) premise their parenting-time adjustments on expenses of children grouped into three categories: variable expenses (which travel with the child, such as food), duplicated fixed expenses incurred by both parents (such as the cost of housing), and nonduplicated fixed expenses (such as clothing).[64] Although this is the premise underlying the parenting-time formulas in these states, the premise is not always evident because each of these states (except New Jersey) has converted the formula to a sliding-scale lookup table. Nonetheless, Indiana, Missouri, and New Jersey specifically discuss the foundation of this adjustment in their guidelines.[65]

Indiana, Missouri, and New Jersey have not changed their underlying assumptions. Indiana assumes 35% of child-rearing costs are variable, Missouri assumes 38% are variable, and New Jersey assumes 37% are variable.[66] Another difference between the timesharing adjustments in these states is that all require a different minimum amount of overnights for an adjustment: Arizona requires at least four parenting-time days per year, Indiana generally requires at least 52 overnights per year, Missouri requires at least 36 overnights per year, and New Jersey generally does not specify a number of overnights for its adjustment for overnights not exceeding two or more per week.[67]

At low levels of obligor parenting time, such timesharing adjustments try to give the obligor credit for variable expenses only. At higher levels of parenting time, the obligor is also given credit for duplicated fixed expenses.[68] For example, New Jersey begins to include adjustments for

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64. Venohr, Parenting-Time Expense Adjustment, *supra* note 18, at 10–11. Arizona has changed its shared-parenting adjustment over the years such that it no longer obviously links to the concept of variable, duplicated fixed, unduplicated, and fixed child-rearing expenses.

65. *See* Ind. Ct. Child Support Rules & Guidelines, Guideline 6 cmt., https://www.in.gov/judiciary/rules/child_support/#g6 [hereinafter Ind. Ct. Guideline 6 cmt.]; Directions, *Mo. Child Support Forms*, *supra* note 45, at 14, Assumption 12; N.J. Ct. R. app. IX-A § 13(a), 14(g) (2020), https://njcourts.gov/attorneys/assets/rules/app9a.pdf.

66. *See* Ind. Ct. Guideline 6 cmt., *supra* note 65; Directions, *Mo. Child Support Forms*, *supra* note 45, at 14, Assumption 12; N.J. Ct. R. app. IX-A § 13(a)(3), 14(g)(1).

67. *See* Ariz. Child Support Guidelines § 11 (July 1, 2015), http://www.azcourts.gov/Portals/31/Child%20Support/2015CSGuidelinesRED.pdf; Ind. Ct. Guideline 6 cmt., *supra* note 65; Directions, *Mo. Child Support Forms*, *supra* note 45, at 14, Assumption 12; N.J. Ct. R. app. IX-A § 13.

68. For a more lengthy discussion of these schedules, see Venohr, Parenting-Time Expense Adjustment, *supra* note 18, at 10–11.

duplicated fixed expenses when the lesser-time parent has at least two overnights per week (28% timesharing).[69]

There is a dearth of research confirming whether a particular expense is variable, duplicated fixed, or nonduplicated fixed. However, most states assume housing expenses, which is the largest expenditure category, are a duplicated fixed expense. States are mixed on their treatment of transportation expenses, which are the second-largest category of expenses. Depending on the state, some or all transportation expenses are considered variable expenses.[70] Food is normally considered a variable expense. Other categories of expenses, such as clothing, entertainment, and personal items, are less clear in their categorization. Yet these expenses comprise smaller shares of total child-rearing expenditures. A 2000 survey of parental expenditures regarding the living expenses of college students explored the classification of variable/duplicated fixed/nonduplicated fixed expenses and found conflicts with state assumptions.[71] For example, many of the college students recalled that their nonresidential father purchased clothing for them,[72] while clothing is typically deemed a nonduplicated fixed expense (hence, only incurred by one parent) in the states using this classification.

Figure 6 compares the parenting-time formulas for Arizona, Indiana, Missouri, and New Jersey using the same case scenario considered in Figures 2 and 5 (the father is the lesser-time obligor parent with a net monthly income of $4,000 and the mother's net monthly income is $3,000) and applying each of the state's timesharing formulas to the Illinois income shares child support schedule. When the lesser-time parent has 40% timesharing, the order amount would be $300 per month under the Arizona timesharing formula, $272 per month under the Indiana timesharing formula, $342 per month under the Missouri timesharing formula, and $333 per month under the New Jersey timesharing formula.

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69. *See* N.J. Ct. R. app. IX-A § 13(a), 14(c)(2).

70. For example, New Jersey considers the cost of the child's transportation to be a variable expense, while Indiana considers only some of the transportation expenses. *Compare* N.J. Ct. R. app. IX-A § 13(a)(2), *with* Ind. Ct. Guideline 6 cmt., *supra* note 65.

71. *See* William V. Fabricius & Sanford L. Braver, *Non-Child Support Expenditures on Children by Nonresidential Divorced Fathers: Results of a Study*, 41 Fam. Ct. Rev. 321 (2003).

72. *Id.* at 327.

The Arizona parenting-time formula, which is shown in Table 2,[73] consists of 13 intervals. The wide range of overnights within an interval (e.g., a 16.1% adjustment for 88 to 115 overnights) causes the downward staircase effect (i.e., notches) of the Arizona timesharing formula as the lesser-time parent has more time with the child. As observed in Figure 6, the Missouri parenting-time formula also has a downward staircase effect, but because it considers more and narrower timesharing intervals (18 intervals instead of 13 intervals like Arizona does),[74] the notches under the Missouri parenting-time formula are not as dramatic as those under the Arizona parenting-time formula.

The strengths of the variable/duplicated fixed/nonduplicated fixed timesharing premise are that it has a theoretical basis, can adjust for low levels of timesharing, and can be structured not to have a cliff effect. The weaknesses include the lack of empirical evidence on whether families actually organize their child-rearing expenditures this way and what the levels for each category of expense are, as well as the lack of clarity regarding at what timesharing threshold parents should move from sharing of variable expenses only to sharing of variable expenses and duplicated fixed expenses.

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73. This is Parenting Time Table A from the Arizona Child Support Guidelines. The Guidelines also provide a Parenting Time Table B to be used when some child-rearing expenses are not substantially or equally shared in each household. ARIZ. CHILD SUPPORT GUIDELINES § 11 (Apr. 1, 2018), http://www.azcourts.gov/Portals/34/Forms/FamilyLaw/AOCDRS10H2018.pdf (depicting Parenting Time Tables A and B). Parenting Time Table B is rarely used, and there is a suggestion to eliminate it.

74. *See* Directions, *Mo. Child Support Forms, supra* note 45, at 8, Line 11 Direction.

## Figure 6

*Comparison of Variable, Duplicated Fixed, and Nonduplicated Fixed Formulas*

(Case Scenario: Income shares calculation using the Illinois income shares schedule for one child where the lesser-time parent's net income = $4,000 per month and the greater-time parent's net income = $3,000 per month.)
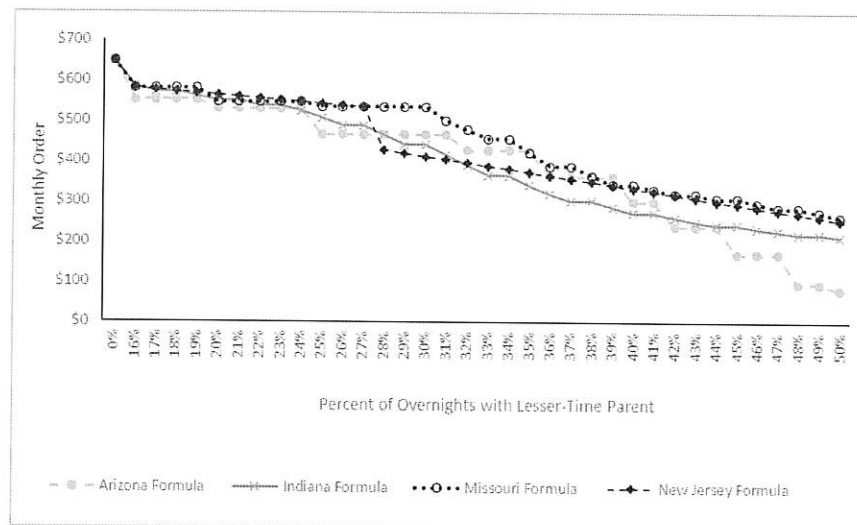
## Table 2

*Arizona's Parenting Time Table A*[75]

| Number of Parenting-Time Days | Adjustment Percentage |
| --- | --- |
| 0–3 | 0 |
| 4–20 | .012 |
| 21–38 | .031 |
| 39–57 | .050 |
| 58–72 | .085 |
| 73–87 | .105 |
| 88–115 | .161 |
| 116–129 | .195 |
| 130–142 | .253 |
| 143–152 | .307 |
| 153–162 | .362 |
| 163–172 | .422 |
| 173–182 | .486 |

### 4. OTHER FORMULAS

Some states have established a sliding scale for the reduction of child support once the level of access reaches a certain level. For example, the Iowa guidelines provide that an obligor's obligation is to be reduced by 15% for 128 to 147 nights, 20% for 148 to 166 nights, and 25% for more than 167 nights (but less than equal physical custody).[76] Iowa also provides that a cross-credit formula with a 150% multiplier should be applied when there is equal physical custody.[77] Other states with sliding scales are Delaware and Kansas.[78] The lowest adjustment percentage is 10% and the highest is 30% in these sliding-scale formulas. Pennsylvania and North Dakota essentially provide a formulaic version of the sliding scale that allows the percentage reduction to vary from 10–20% in Pennsylvania and 9–16% in North Dakota.[79] Ohio simply provides an adjustment of

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75. ARIZ. CHILD SUPPORT GUIDELINES § 11, *supra* note 73.

76. *See* IOWA CT. R. 9.9 (2020).

77. *See id.* R. 9.14(3).

78. *See* FAMILY COURT OF THE STATE OF DEL., DEL. CHILD SUPPORT FORMULA, EVALUATION AND UPDATE 43–44 (2018), https://courts.delaware.gov/forms/download.aspx?id=39228; KAN. CHILD SUPPORT GUIDELINES, § IV.E.2.b (2020), https://www.kscourts.org/KSCourts/media/KsCourts/Child%20Support%20Guidelines/KSCSG-2020withoutmarkup.pdf.

79. PA. R. CIV. P. 1910.16-4(c)(1)–(2) (2020); N.D. ADMIN. CODE 75-02-04.1-08.1 (2020).

10% for 90 or more overnights per year.[80] These percentage adjustments may be loosely linked to the concept such as variable/duplicated fixed/nonduplicated fixed child-rearing expenses, but this is not clearly stated in the guidelines.

Utah reduces its basic guidelines calculation by a factor of 0.27% for every overnight over 110 but not greater than 131 overnights.[81] For overnights exceeding 131, Utah provides a deduction factor of 0.84% for each overnight.[82] The 0.27% is the ratio of 100% divided by 365 overnights; hence, it is a per diem approach. It is not clear what the basis of the 0.84% is or why Utah set the threshold at 110 overnights. The Tennessee timesharing adjustment is also essentially a per diem adjustment. The Tennessee adjustment has a timesharing threshold of 92 overnights and is designed to result in an award of no support at 182.5 overnights when the parents have equal incomes.[83]

To that end, the Tennessee adjustment factor for 92 overnights or more is the number of overnights multiplied by .0109589 (which is 2/182.5: that is, 92 overnights is a quarter of the year and 182.5 is half the year, so the timesharing formula contains percentages needed to result in a zero order at 50%/50% timesharing).

Figure 7 illustrates the impact of these different approaches by comparing the order amounts under the Iowa, Pennsylvania, Tennessee, and Utah timesharing formulas applied to the same case scenario considered in earlier figures (the father is the lesser-time obligor parent with a net monthly income of $4,000 and the mother's net monthly income is $3,000), using the Illinois income shares child support schedule. When the lesser-time parent has the child 40% of the time, the order amount would be $479 per month under the Iowa timesharing formula, $536 under the Pennsylvania timesharing formula, $357 per month under the Tennessee timesharing formula, and $432 per month under the Utah timesharing formula. Figure 7 shows that a sliding-scale percentage such as the Iowa timesharing formula and Pennsylvania's timesharing formula produces cliff effects at each timesharing interval (128, 148, and 167 overnights in Iowa) or when the timesharing threshold is met (40% timesharing in Pennsylvania). In contrast, the per diem approaches used by Tennessee and Utah produce more gradual changes in the order amount as the child's time with the lesser-time parent increases.

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80. OHIO REV. CODE ANN. § 3119.051(a) (LexisNexis 2020).
81. UTAH CODE ANN. § 78B-12-208(3)(a) (LexisNexis 2020).
82. *Id.* § 78B-12-208(3)(b).
83. TENN. COMP. R. & REGS. § 1240-02-04-.04(7)(h)(2), (4)(i).

**Figure 7**

*Comparison of Other Formulas*

(Case Scenario: Income shares calculation using the Illinois income shares schedule for one child
where the lesser-time parent's net income = $4,000 per month and the greater-time parent's
net income = $3,000 per month.)
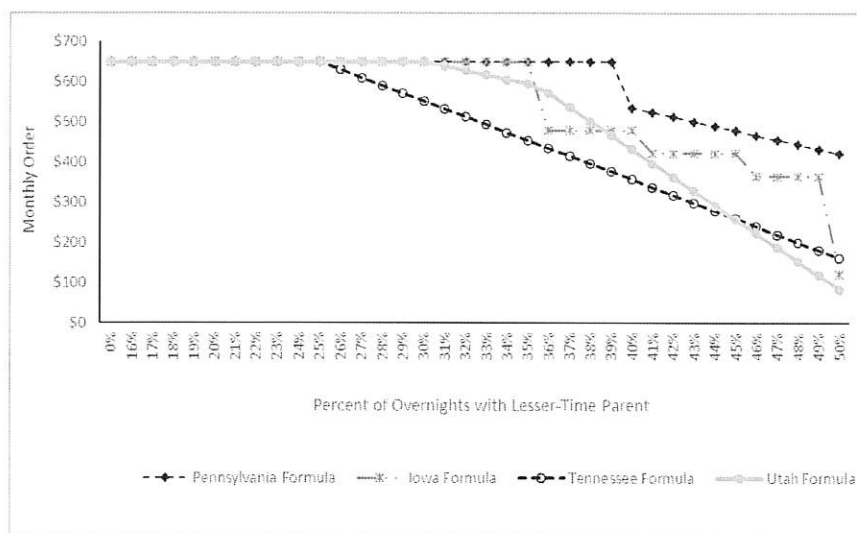


The strength of the sliding scale and per diem timesharing adjustments is that they are simple. The weaknesses are that the adjustment thresholds can still result in cliff effects and the percentage adjustments can appear arbitrary.

5. Summary of Timesharing Adjustments for When Lesser-Time Parent Has More Income

Many states have adopted formulas for reducing child support based on the obligor's parenting time. In these states, the criteria for applying the adjustment, the adjustment formulas, and formula parameters vary widely. Only the cross-credit with a 150 multiplier is used by more than two states. Due to these large variations, state timesharing formulas produce very different order amounts even when the same child support schedule is used. This is illustrated by Figure 8, which compares the 12 different timesharing formulas graphed earlier using the same case scenario (the monthly income of the lesser-time parent is $4,000 and the monthly income of the other parent is $3,000) and the Illinois income shares child support guidelines schedule, and assumes that the lesser-time parent cares

for the child 40% of the time. It shows the monthly order ranges from $272 per month using the Indiana timesharing formula to $536 per month using the Pennsylvania timesharing formula. In contrast, the sole custody order for this case in Illinois is $649 per month.

**Figure 8**

*Comparison of the 12 Formulas When Lesser-Time Parent Has Child 40% of Time*

(Case Scenario: Income shares calculation using the Illinois schedule for one child where the lesser-time parent's net income = $4,000 per month and the greater-time parent's net income = $3,000 per month.)
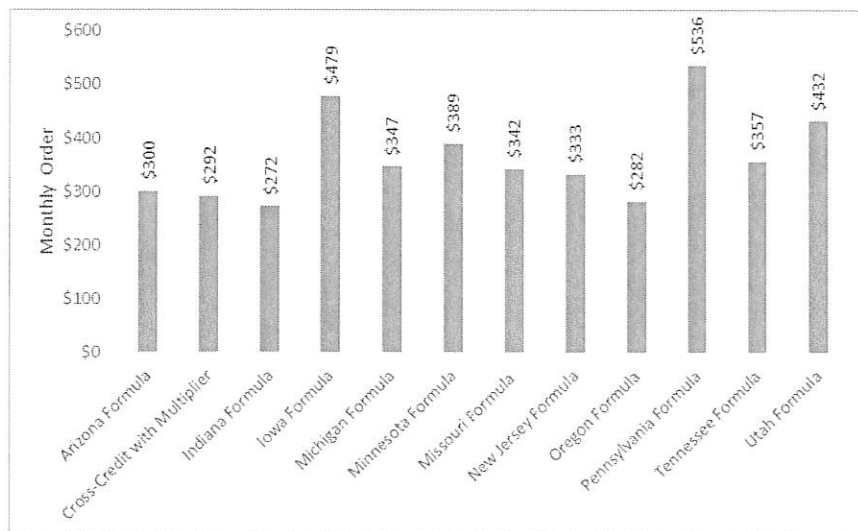


The information presented in Figure 8 should not be used to rank which state timesharing formulas produce more or less support orders. As is seen in the next section, the rankings vary with the circumstances of the case scenario being considered.

### III. Calculating the Child Support Order When Both Parents Have Equal Physical Custody

Most formulas used for the scenario where the lesser-time parent has more income and substantial access apply when both parents have equal physical custody. However, a few states with parenting-time adjustment formulas for substantial access have decided to use a different approach when parents have equal physical custody. Most states with a different

formula rely on the sliding-scale formula or the variable/duplicated fixed/nonduplicated fixed formula. These states also need to clarify what constitutes "equal physical custody." For example, would an arrangement of 45%/55% parenting time constitute equal physical custody?[84]

Some have argued that there should not be a child support obligation if there is equal physical custody. For example, in Western Europe, some countries abate child support when there is equal physical custody.[85] This approach is generally not accepted in the United States, at least when the parents have different incomes.

In most states, including all states using the cross-credit formula at lower levels of timesharing, the parenting-time adjustment approach to substantial access also applies to equal physical custody. Pursuant to the cross-credit approach discussed above, when there is equal physical custody, the higher-income parent would pay some child support to the other.[86] However, if both parents have equal incomes, no child support would be due.[87] The modifications to the cross-credit adopted in Oregon, Michigan, and Minnesota also result in no child support when there are equal physical custody and equal incomes.[88]

Not all states agree that when there are equal joint physical custody and equal income, no child support should be due. For example, in some of the states that reduce child support using the concept of variable/duplicated fixed/nonduplicated fixed expenses, such as Indiana and New Jersey, there is an assumption that, even with equal physical custody and equal incomes, one parent may be paying the nonduplicated fixed expenses relating to the child, so some child support should be due.[89] Some states with a sliding-scale percentage or a percentage formula, such as Pennsylvania, also do not produce a zero order when there are equal physical custody and equal income. Also, in some of these states, such as Iowa[90] and North Dakota,[91] there is a different formula for equal physical custody.

Figure 9 compares the results of the 12 parenting-time adjustment formulas applied to an equal physical custody situation and the Illinois

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84. *E.g.*, Bluestein v. Bluestein, 345 P.3d 1044 (Nev. 2015) (joint physical custody exists where both parents have physical custody of the child at least 40% of the time).

85. *See generally* Christine Skinner & Jacqueline Davidson, *Recent Trends in Child Maintenance Schemes in 14 Countries*, 23. INT. J. LAW, POL'Y & FAM. 25, 43–44 (2009).

86. *See* VENOHR, PARENTING-TIME EXPENSE ADJUSTMENT, *supra* note 18, at 17.

87. *Id.* at 15.

88. *Id.*

89. *Id.* at 10–12.

90. *See* IOWA CT. R. 9.14(3).

91. *Compare* N.D. ADMIN. CODE 75-02-04.1-08.1 (2020), *with* N.D. ADMIN. CODE 75-02-04.1-08.2 (2020).

income shares child support schedule. It considers two scenarios. The first scenario is the same scenario that has been considered in previous figures: There is one child, the father has a net income of $4,000 per month, and the mother has a net income of $3,000 per month. The first scenario reveals a wide variation in the results of the parenting-time formulas with the exceptions of the mathematical modifications of the cross-credit formula used by Michigan, Minnesota, and Oregon. Each of these mathematical formulas yields an order of $81 per month because of the similarities in their mathematical calculation. The parenting-time formulas of the other states all yield greater amounts. The states using the variable/duplicated fixed/nonduplicated fixed concept (with the exception of Arizona) and the percentage adjustment at equal physical custody (e.g., Pennsylvania) and Tennessee's per diem approach yield considerably higher amounts.

In the second scenario, there is still one child, but the parents have equal incomes: Each parent has a net income of $4,000 per month. Figure 9 shows 7 of the 12 timesharing formulas considered produce a zero order when there are equal physical custody and equal income. This includes the cross-credit formula with 150% multiplier, the mathematical modifications of the cross-credit approach (the Michigan, Minnesota, and Oregon parenting-time formulas), the Arizona formula (which has modified its variable/duplicated fixed/nonduplicated fixed premise to produce a zero order when there are equal physical custody and equal incomes), the Tennessee parenting-time formula (which is a per diem approach), and the Iowa parenting-time formula (which provides for a cross-credit with 150% multiplier at equal physical custody). While the Utah timesharing formula comes close to zero for the equal physical custody and equal income with a three-dollar-per-month order, the state parenting-time formulas using the pure variable/duplicated fixed/nonduplicated fixed concept do not because there is always one parent who incurs some nonduplicated fixed expenses. New Jersey assumes that the parent incurring the fixed expenses in equal physical custody is the parent with whom the child resides mostly when attending school.

The comparisons in Figure 9 should not be used to draw the conclusion that there are substantial orders for all cases involving equal physical custody and equal incomes. It is not uncommon for parties with almost equal physical custody and almost equal incomes to agree upon a zero order.

## Figure 9

### *Comparison of the 12 Formulas When There Is Equal Timesharing*

(Case Scenarios: Income shares calculation using the Illinois income shares child support schedule
for one child: In the scenario where the father has more income, his net income is $4,000 per month
and the mother's income is $3,000 per month; and in the scenario where the parents have
equal incomes, both parents have net incomes of $4,000 per month.)
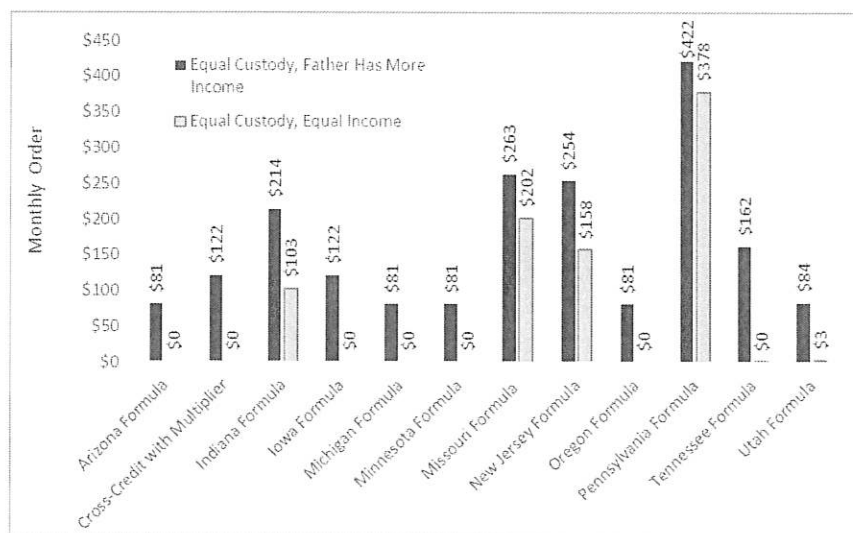


## IV. Calculating the Child Support Order When the Lesser-Time Parent Has a Lower Income Than the Other Parent

### *A. Formulas*

It is normally assumed that the lesser-time parent will pay support to the greater-time parent. One reason for this is that it was assumed that the income of the lesser-time parent would be greater than that of the other parent.[92] Should this rule extend to situations where the income of the lesser-time parent is less than that of the other parent? The underlying premise of the income shares model is that both parents should contribute financially toward the cost of raising their child in proportion to their share of the parents' combined income. For example, in a Colorado case,

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92. *See* Dudgeon v. Dudgeon, 318 S.W.3d 106, 111 (Ky. Ct. App. 2010).

the lesser-time parent with a monthly income of $2,000 was ordered to pay child support to the greater-time parent, who had a monthly income of $19,500.[93] In many such cases, the standard of living of the lower-income parent would be lower than that of the other parent, even before the income transfer required by a child support obligation.[94] Still, creating a special rule for a situation when the lesser-time parent has a lower income than the other parent would be inconsistent with the cross-credit formula, which essentially calculates a theoretical order for each parent, weights each parent's theoretical order by the child's time with the other parent, and provides that the parent with the larger amount owes the other parent the difference.[95] In other words, the cross-credit formula is just a mathematical calculation indifferent to which parent pays support in these circumstances. It is just where the numbers land.

Figure 10 compares some parenting-time formulas shown earlier for a scenario where the father is the lesser-time parent with a net income of $4,000 per month and the mother's net income is $5,000 per month. There is one child and the Illinois child support schedule is applied to each state's timesharing formula. Figure 10 shows that four of the six timesharing formulas result in the mother owing the father child support for this case scenario, even when the father is the lesser-time parent with substantial access. The obligated parent flips from the father to the mother at 45% timesharing under the cross-credit formula with the 150% multiplier, 46% timesharing under the Tennessee timesharing formula, 47% timesharing under the Oregon timesharing formula, and 50% timesharing under the Indiana timesharing formula. Although not shown, it would also flip for the Michigan and Minnesota timesharing formulas. In other words, it will flip using the cross-credit formula and mathematical modifications to the cross-credit formula. Tennessee uses a per diem formula, which will generally flip depending on the parameters. Sliding-scale percentages and formulas, such as what Pennsylvania uses, will not flip. Whether the variable/duplicated fixed/nonduplicated fixed formulas flip depends on the parameters. As shown in Figure 10, the Indiana timesharing formula, which is based on the variable/duplicated fixed/non-duplicated fixed concept, flipped, while Missouri's version of the concept did not for this particular scenario.
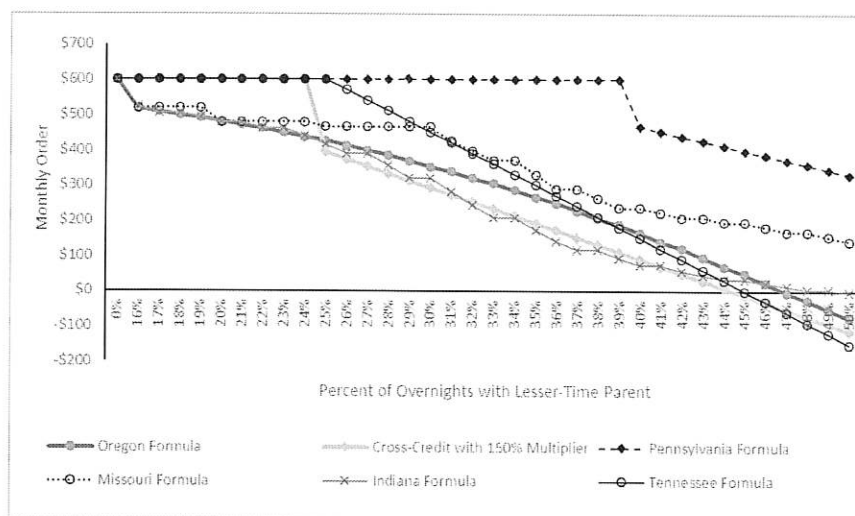
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93. *See* Marriage of Antuna, 8 P.3d 589, 596–97 (Colo. App. 2000).

94. *See generally* J. Thomas Oldham, *The Appropriate Child Support Award When the Noncustodial Parent Earns Less Than the Custodial Parent*, 31 Hous. L. Rev. 585 (1994).

95. *See supra* text accompanying notes 46–53.

**Figure 10**

*Comparison of Selected Formulas When Lesser-Time Parent Has Lower Income*

(Case Scenario: Income shares calculation using the Illinois income shares schedule for one child where the father/lesser-time parent's net income = $4,000 per month and the mother/greater-time parent's net income = $5,000 per month.)



At 50% timesharing for this scenario, the cross-credit formula with a 150% multiplier would result in the mother owing the father $113 per month, the Oregon timesharing formula would result in the mother owing the father $75 per month, the Tennessee timesharing formula would result in the mother owing the father $150 per month, the Indiana timesharing formula would result in the mother owing the father $2 per month, the Pennsylvania timesharing formula would result in the father owing the mother $331 per month, and the Missouri timesharing formula would result in the father owing the mother $141 per month. Missouri, however, does indicate a guidelines deviation could be granted for this circumstance.

The reader should note that although Figure 10 shows four of the six state timesharing formulas flip which parent is obligated to pay support, the outcome will differ depending on the circumstances of the case. The flipping could occur at a lower level of timesharing if the lesser-time parent has significantly lower income relative to the other parent. Further, a guidelines deviation may be granted for this circumstance.

A few states have adopted an absolute rule or have case law that if a greater-time parent has the child for more than a specified number of overnights, that parent cannot be ordered to pay child support.[96] Other states have adopted a presumption that the obligated parent should have a reduction in child support once the number of overnights exceed a certain number.[97]

## B. Case Law

Because courts may deviate from the guidelines when appropriate or just or in the best interest of the child, case law often informs the treatment of shared-parenting situations. Perhaps the most challenging cases of this type involve situations where the greater-time parent has a high income and the other parent has substantial access and a low income. For example, in a recent Illinois case, the father's net monthly income was almost $21,000 and the mother's net monthly income was $929.[98] The mother had substantial access, but less than 50% of all overnights.[99] Over the father's objection, the appellate court affirmed the trial court's order that the father had to pay monthly child support of $3,990.[100]

In a similar case, a New York court ruled that New York law did not give a New York court the power to order the custodial parent to pay child support, even when the greater-time parent was wealthy and the other parent had limited resources and substantial access.[101] In contrast, the Pennsylvania Supreme Court reversed the denial of a child support award against a greater-time parent when the greater-time parent had a substantially higher income than the other parent and the other parent had contact for about 27% of the year.[102] The Illinois Supreme Court has also affirmed an order finding the court had authority to require the greater-time parent to pay child support to the other parent, who had "nearly equal" time with one of the children but less-frequent contact with the other child, when the lesser-time parent's income was much lower than that of the

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96. *See* State Dep't of Hum. Servs. v. Coldwater, 364 P.3d 672 (Okla. Civ. App. 2015) (noting that the Oklahoma limit is 205 or more overnights).

97. *See* Pa. R. Civ. P. § 1910.16-4(c) (2020).

98. *See* McClure v. Haisha, 51 N.E.3d 831, 832, 833 (Ill. App. Ct. 2016).

99. *Id.* at 833.

100. *Id.* at 835–39.

101. *See* Rubin v. Salla, 964 N.Y.S.2d 41, 52 (App. Div. 2013) (Acosta, J., dissenting in part) (noting that the father, who had custody for 56% of overnights, had about $20 million in assets).

102. *See* Colonna v. Colonna, 855 A.2d 648, 651–52 (Pa. 2004). The case was remanded for further proceedings. *Id.*

greater-time parent.[103] In both of these cases, the Pennsylvania and Illinois supreme courts were generally supportive of requiring the greater-time parent to pay child support when the greater-time parent's income was significantly higher than that of the other parent.

A recent Texas case presented a similar issue. Texas relies on a percentage-of-obligor income guideline formula.[104] While the statute is not totally clear, it has been assumed by lawyers and judges that the guideline is to be applied to the income of the lesser-time parent. (Of course, the court can deviate from this presumptive amount if there is a reason to deviate.)[105] In this particular case, the parents were granted joint legal custody.[106] The father (who had a significantly higher income than the mother) was granted more than 70% of all overnights.[107] To calculate the presumptive child support award, the trial court calculated the presumptive child support award that the mother would have owed under the guidelines and subtracted it from the presumptive award that the father would have had to pay based on his income.[108] (Texas has no specific formula for reducing child support due to parenting time.) The trial court concluded that the father therefore should pay the mother monthly child support based on the difference between the two presumptive obligations because it was "in the child's best interest to have an adequate amount of resources available in each home to support the child."[109] The appellate court affirmed.[110]

The authors believe that the cases summarized above in this section create a great deal of uncertainty regarding how a child support award should be calculated if the greater-time parent has a significantly higher income than the other parent. One of the goals of child support guidelines was to create more predictability in child support awards. There seems to be some disagreement as to how guidelines should be applied when the

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103. *See In re* Marriage of Turk, 12 N.E.3d 40, 43–51 (Ill. 2014). When this article was about to be published, the Court of Special Appeals of Maryland issued an opinion affirming an award of child support from the greater-time parent to the lesser-time parent. In this case, the greater-time parent had an annual salary of approximately $1.3 million, while the other parent had an annual salary of $50,000. Kaplan v. Kaplan, No. 3387, 2020 WL 6789989, at *2–3, 11–13 (Md. Ct. Spec. App. Nov. 18, 2020).

104. *See* Tex. Fam. Code Ann. § 154.125 (West 2020).

105. *See id.* § 154.123.

106. *See In re* A.R.W., No. 05-18-00201-CV, 2019 WL 6317870, at *3 (Tex. App. 2019).

107. *Id.* at *8.

108. *Id.* at *2, *3.

109. *Id.* at *2.

110. *Id.* at *4, *9–10.

greater-time parent has a higher income than the other parent, and this uncertainty will encourage litigation.

The Georgia Supreme Court considered a case very similar to the Texas *In re A.R.W.* case discussed above. At the time this case was decided, Georgia, like Texas, relied on a percentage-of-obligor income guideline formula and had no specific formula for reducing child support due to parenting time. In a custody modification action, the court awarded the father 60% of the parenting time and the mother 40%.[111] The father had a higher income than the mother. To calculate the child support obligation, the Georgia trial court, like the court in *In re A.R.W.*, subtracted the amount that the mother would be ordered to pay under the guidelines from the presumptive amount the father would have to pay if the guideline would be applied to his income[112] and ordered the father to pay the mother the difference, which was $1,087 per month.[113] The Georgia Supreme Court ruled that the trial court had misapplied the guidelines. To calculate the presumptive award, the Georgia Supreme Court clarified that the guidelines should be applied to the income of the lesser-time parent.[114] The Georgia Supreme Court explained that the trial court can, of course, then deviate from the presumptive amount for good cause.[115] The Georgia Supreme Court stated that it could be possible to order the greater-time parent to pay child support if adequate grounds for deviation could be established to do so.[116] However, because the trial court had misapplied the guidelines, the Georgia Supreme Court reversed the child support order of the trial court and remanded the case for the trial court to recalculate child support.[117]

Perhaps some objective standard could be established to govern the award of child support when the income of the greater-time parent exceeds that of the other parent, particularly in those states that have not adopted a parenting-time adjustment formula. For example, one type of objective standard would be to specify that, if the lesser-time parent's income is less than a certain specified percentage of the income of the other parent, and the lesser-time parent has the child for at least a certain specified number of overnights, the greater-time parent can be ordered to pay child support.

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111. *See* Williamson v. Williamson, 748 S.E.2d 679, 679 (Ga. 2013).

112. *Id.* at 682.

113. *Id.* at 680.

114. *Id.* at 682–83.

115. *Id.*

116. *Id.*

117. *Id.* A concurring judge in an Illinois case made a similar point when Illinois had a percentage-of-obligor income guideline. *See In re* Marriage of Turk, 12 N.E.3d 40, 51–55 (Ill. 2014) (Theis, J., concurring).

A disadvantage of such a system is that it could create a substantial cliff effect at the threshold. As was mentioned above, a number of parenting-time adjustment approaches clarify when the greater-time parent should pay child support and the presumptive amount of the support payment.

## V. Other Concerns

One concern regarding parenting-time adjustments for child support is that, over time, parenting time will decrease. This would require the greater-time parent to go to court to modify support to reduce or eliminate the child support parenting-time reduction. One study found that, compared to the level of contact at divorce, for parents with a shared-care arrangement, there was some reduction in the level of contact for some fathers (19% of fathers with young children reduced contact, while 30% of fathers with older children reduced contact).[118]

Another concern is that timesharing will not occur as specified in the order. A Florida statute provides that, if an obligor parent does not regularly exercise the timesharing schedule set forth in the parenting plan, this is a substantial change in circumstances that can justify a modification in child support retroactive to the date the parent first failed to exercise the specified access rights.[119] A few other states have similar provisions. Some states provide a simplified procedure for an order modification if the amount of parenting time used to calculate the support amount does not actually occur on a regular basis. None of these states clarify how large the difference between the amount of timesharing that occurred and what was considered in the order is required to be eligible for a modification.

Still another concern is if a "typical" level of timesharing is assumed in the standard basic child support schedule, what should be done if the timesharing is actually less? Tennessee and Pennsylvania are the only states with guidelines that explicitly state what a standard amount of timesharing is under the guidelines. The Tennessee guideline provides what the adjustment should be if actual timesharing is more or less than the standard amount. Pennsylvania, which incorporates an adjustment for 30% timesharing of the lesser-time parent in its basic child support schedule, does not specify a formula for when actual timesharing is less than 30%. Tennessee assumes a standard amount of timesharing of 80 overnights (every other weekend, two weeks in the summer, and two weeks during holidays through the year), and also uses a per diem approach to adjust

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118. *See* Melli & Brown, *supra* note 5, at 256.
119. *See* FLA. STAT. § 61.30(11)(c) (2020).

the basic formula amount upward if the lesser-time parent has the child 68 overnights or less per year.[120] Some courts have endorsed increasing child support above the presumptive guideline amount if the obligor has little or no contact with the child.[121]

## VI. Summary and Policy Choices

This Article identifies several approaches to parenting-time adjustments in state guidelines. Some state guidelines provide for timesharing as a guideline deviation factor, while most states provide a parenting-time adjustment formula. The criteria for applying the parenting-time formula vary, but often a state-determined level of timesharing must be met before an adjustment is made.

By far the most common formula is a cross-credit formula with a specified minimum threshold of timesharing before an adjustment occurs. Three states have taken the basic concept of the cross-credit formula and mathematically modified it to result in a more gradual change in the order amount as the lesser-time parent's time with the child increases. In addition to the states that have adopted some variation of a cross-credit formula, other states use a wide variety of parenting-time formulas. None of these other formulas are identical. A few states base their timesharing adjustment on the principle that child-rearing expenses can be classified as variable, duplicated fixed, and nonduplicated fixed. Under these formulas, the lesser-time parent receives credit for variable expenses at low levels of timesharing and additional credit for variable and duplicated fixed expenses at almost equal levels of timesharing. In addition, there are states that use a sliding-scale percentage adjustment or formula and still other states that use a per diem approach for timesharing above a state-determined threshold.

The graphs in this Article reveal certain differences among the various approaches. For example, the rate of decrease due to more overnights with the child generally is more gradual under the modified cross-credit formulas as well as under Indiana's version of the variable/duplicated fixed/nonduplicated fixed timesharing formula. This occurs because a parenting-time adjustment begins at a relatively low level of access by the payor. In contrast, the cross-credit formula and sliding-scale percentages and formulas do not provide an adjustment until the specified timesharing

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120. TENN. COMP. R. & REGS. 1240-02-04-.04 (7)(a), (i) (2020).

121. *See In re* Marriage of Krieger, 199 P.3d 450, 457 (Wash. Ct. App. 2008); Gray v. Gray, 909 So. 2d 108, 114 (Miss. Ct. App. 2005).

threshold is met. The cross-credit formula can have a significant cliff effect at the timesharing threshold required for applying the adjustment. When the recipient has no income, the child support amount under the cross-credit with multiplier is greater than the amounts calculated using the mathematically modified cross-credit formulas. When both parents have equal incomes, many of the formulas go toward no child support with equal joint physical custody, while most parenting-time formulas based on the variable/duplicated fixed/nonduplicated fixed expense concept and the sliding-scale percentage or formula do not. When the lesser-time parent's income is significantly less than that of the greater-time parent, under the cross-credit and the modified cross-credit formulas and the per diem approach, the greater-time parent begins to pay support once the lesser-time parent's percentage of overnights gets close to equal timesharing, but not under most versions of the variable/duplicated fixed/nonduplicated fixed expenses model or the sliding-scale percentage or formula.

A number of the differences in results mentioned above reveal policy choices states make when adopting a parenting-time adjustment approach. First, should the adjustment be applied when the recipient's household income is below a certain level? If so, what should that level be?

The parenting-time support reduction adjustments described above presumptively apply once the obligor parent establishes that he or she meets the specified threshold for a parenting-time adjustment. Should there be any ground for not applying the parenting-time adjustment, other than the relative poverty of the recipient parent, as mentioned in the previous paragraph? If so, what other reasons should there be for not applying the adjustment?

Second, should child support be reduced if there is a relatively low level of obligor contact or should a more substantial threshold be specified before support is reduced? Note that approaches with a threshold by definition do not reduce support until the threshold level of access is reached, and then reduce support more substantially as parenting time exceeds the threshold. The cliff effect resulting from the threshold conceivably could increase litigation, which could be a concern. However, it could be argued that it is fair not to reduce child support until a certain threshold of contact is met because the recipient's expenses are not significantly reduced until the obligor's access is substantial.

Third, what should be the magnitude of the parenting-time child support reduction at various levels of contact? (Note the large variation in award amounts in Figure 8 for support when the obligor parent has possession of the child 40% of all overnights and in Figure 9 when the parties have equal physical custody.)

Fourth, should the greater-time parent ever have to pay child support to the other parent if the greater-time parent's income is significantly higher? Should it be possible for the greater-time parent to be ordered to pay a substantial amount in support if the parents' incomes are very different?

Should the same formula be used when there is substantial access by the obligor, as when there is equal joint physical custody? If a different formula is to be used, what constitutes equal joint physical custody, when a different formula would apply? Further, if two different formulas are to be used, how can the transition from one formula to the second formula be made without a cliff effect?

Finally, should the parenting-time adjustment be made based on the level of access set forth in the court order, or should the adjustment be based on the actual number of overnights, if that differs from what is set forth in the order (or if there is no order)?

## VII. Conclusion

States are required to review their child support guidelines at least once every four years.[122] Most states review their guidelines through a commission or committee that typically consists of a wide range of stakeholders, such as attorneys, judges, representatives of the state child support agency, parents, children's advocates, economists or accountants, and academicians.[123] Adopting parenting-time formulas or expanding parenting-time formulas are often issues discussed in these reviews. Committees and commissions in states without parenting-time formulas generally are interested in adopting formulas to create greater consistency in shared-parenting situations and to respond to an increased number of cases with shared parenting. Many committees and commissions in states with parenting-time formulas, particularly those that require timesharing thresholds be met before an adjustment occurs, generally seek to alleviate the cliff effect.

Committees and commissions considering parenting-time adjustment formulas share two common objectives. The first objective is to keep the adjustment simple. The common beliefs are that a simple formula is easier to explain and easier to calculate and can be calculated manually. (This is a particular concern in states without automated calculators or where judges and decision-makers with authority to issue child support orders

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122. 45 C.F.R. § 302.56(e) (2020).

123. JANE VENOHR, REVIEW OF THE NEVADA CHILD SUPPORT GUIDELINES 78–82 (2016). https://www.leg.state.nv.us/Session/79th2017/Exhibits/Senate/JUD/SJUD144D.pdf.

lack computers.) However, states often find a trade-off between keeping it simple and creating cliff effects. The second objective is to minimize parental strife regarding parenting time. The concern is that too large of an adjustment for substantial access will fuel more litigation over the obligor-parent's time with the child.

Most recently, commissions have officially and unofficially favored the Oregon formula because of its gradual support decrease as the obligated parent's time with the child increases. In addition, they are encouraged by Oregon's reports that its formula does not increase litigation because each additional overnight creates a minuscule decrease in the order amount.[124] However, final approval of any guidelines changes typically rests with the legislature or the state's supreme court, depending upon whether the state sets its guidelines via legislation, court rule, or administrative rule.[125] Legislatures and supreme courts appear to be less receptive to dramatic changes in parenting-time formulas and generally do not favor timesharing formulas (like the Oregon formula) that begin to reduce support after relatively few overnights.

The Oregon formula may seem particularly extreme in states that currently have no timesharing adjustment formula or have adopted a formula that requires a parent to have a large number of overnights before the adjustment is applied. For these states, it may be more attractive to adopt a cross-credit formula with a multiplier and a relatively low threshold, or if they have already adopted a cross-credit formula, the state could consider lowering the threshold. The effect of the change can be evaluated as a part of the next review of the state's child support guidelines to determine whether the timesharing adjustment better serves children and families.

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124. STATE OF COLORADO CHILD SUPPORT COMM'N, FINAL REPORT 17 (2016), https://childsupport.state.co.us/sites/default/files/2019-08/DCSS%20Commission%20FINAL%20PRINT%20DOCUMENT%206-17-19-smaller%20file%20%281%29%20%281%29.pdf.

125. Most states with guidelines set in administrative rule also require legislative approval for substantive guidelines changes such as those that change the state timesharing formula.