

From a Cliff to a Curve: Minnesota's New Parenting Expense Adjustment

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A New Parenting Expense Adjustment (PEA)



- In 2015, the Legislature created a Child Support Work Group to recommend changes to the PEA.
- The Work Group recommended a new PEA using overnights, based on Michigan's model.
- The legislature adopted the recommendation and passed legislation in 2016 for a new parenting expense adjustment.

Changes to Minn. Stat. § 518A.36 (and other related sections) are effective August 1, 2018.

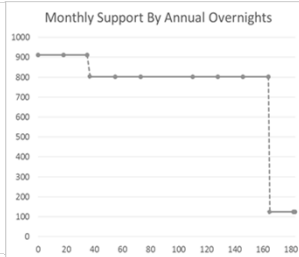
2007: PICS and a Statutory PEA

- In 2007, a statutory PEA instituted:
- Under 10% parenting time = **No adjustment to guidelines support**
 - 10 - 45% parenting time = **12% reduction to guidelines support**
 - 45.1 - 50% parenting time = **Equal parenting time formula**

One problem: "The Cliffs"

The abrupt increases between **9.9% to 10%** and **45% to 45.1%** parenting time are referred to as cliffs.

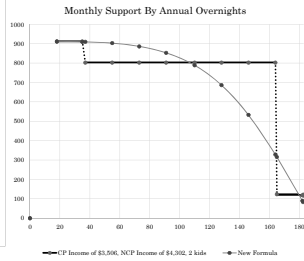
- Cliffs may encourage conflict
- Some NCP expenses may not be adequately accounted for as parenting time increases above 30%



CP income \$3,500/mo.; NCP income \$4,302/mo., 2 kids

A New Parenting Expense Adjustment

The new model eliminates the cliffs, instead creating an adjustment for each overnight, which creates a curve.



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A New Parenting Expense Adjustment

Under the new formula (everything being equal) obligors (NCP) may:

- **Pay more support** if parenting time is less than 110 overnights (10-30%)
- **Pay about the same support** if parenting time 110 - 127 overnights (30-35%)
- **Pay less support** if parenting time 128 - 164 overnights (35-45.1%)
- **Pay more support** with parenting time 164-179 overnights (45.2-49%)

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A New PEA: Statutory Changes

Statutory Implications

- 518.175, subd. 5 Modification of PT order
- 518A.26, subd. 14 Definition of obligor
- 518A.34(c) Split Custody
- 518A.35, subd. 1 Actions Under 256.87
- 518A.36 Parenting Expense Adjustment
- 518A.39, subd. 2 Modification of Support Order

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A New PEA: Statutory Changes

518A.26, subd. 14 (Definition of obligor)

- A parent with parenting time of over 55% (201 nights or more) is presumed to have a \$0 obligation
- To overcome presumption, must show:
 - Significant income disparity
 - Benefit/detriment to the child and ability of parents to meet needs of child
 - Whether would have unjust or inappropriate result

A New PEA: Statutory Changes

518A.34(c) (Split Custody)

- If the parents have split custody of joint children, child support is computed separately for each child and then offset.
- "Split custody" means that there are two or more joint children and each parent has at least one joint child more than 50 percent of the time.
 - Each parent's basic support, child care support and medical care support obligations should be included in the court order.
 - If any one support calculation results in each parent owing support to the other, the court shall offset the higher support obligation with the lower support obligation to determine the amount to be paid by the parent with the higher obligation to the parent with the lower obligation.
 - For the purpose of the cost-of-living adjustment required under section 518A.75, the adjustment must be based on each parent's basic support obligation prior to offset.

A New PEA: Statutory Changes

518A.35, subd. 1(c) and (d) (Actions Under 256.87)

- If a child is not in the custody of either parent and a support order is sought against one or both parents, the basic child support obligation shall be determined by referencing the guideline for the appropriate number of joint children, and the parent's individual parental income for determining child support, not the combined parental incomes for determining child support of the parents. Unless a parent has court-ordered parenting time, the parenting expense adjustment formula under section 518A.34 must not be applied.
- (d) If a child is in custody of either parent and a support order is sought by the public authority under section 256.87, unless the parent against whom the support order is sought has court-ordered parenting time, the support obligation must be determined by referencing the guideline for the appropriate number of joint children and the parent's individual income without application of the parenting expense adjustment formula under section 518A.34.

A New PEA: Statutory Changes

518A.36

- Order must have “percentage of parenting time,” granted or presumed
- The percentage of parenting time may be determined by calculating the number of overnights or overnight equivalents that a parent spends with a child pursuant to a court order
- Overnights required in the formula (annual, over a two year period)
- No court ordered parenting time (or plan), no adjustment!
 - Except when there is one (stay tuned)

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A New PEA: Statutory Changes

Modifications: 518A.39, subd. 2(b) and 518.175

- Support order: Can’t determine overnights OR don’t have a parenting time order, but a PEA was used in the previous support order?
 - May continue to use previously applied PEA (12% reduction or equal parenting time formula) as long as no PT modification sought. Minn. Stat. 518A.39, subd. 2(b).
- PT order: Can’t determine overnights from a parenting time order?
 - Reason to modify: “The court *shall modify* the parenting plan or order...” Minn. Stat. 518.175.

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A New Parenting Expense Adjustment

- A_o = Parent A’s annual overnights
- B_o = Parent B’s annual overnights
- A_s = Parent A’s base obligation
- B_s = Parent B’s base obligation

$$\frac{(A_o)^3 \cdot (B_s) - (B_o)^3 \cdot (A_s)}{(A_o)^3 + (B_o)^3}$$

Negative result = Parent A pays
Positive result = Parent B pays

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A New Parenting Expense Adjustment

Features of the new PEA

- Uses each parent’s base support (calculated using % of combined PICS)
- Either parent may be obligor

$$\frac{(A_o)^3 \cdot (B_s) - (B_o)^3 \cdot (A_s)}{(A_o)^3 + (B_o)^3}$$

- A_s = Parent A's base obligation
 - B_s = Parent B's base obligation
- Same as Line 6 of web calculator

3. Parental Income for Determining Child Support (PICS)	\$4300	\$3500	\$7800
4. Percentage Share of Combined PICS	55%	45%	----
5. Combined Basic Support Obligation	----	----	\$1658
6. Pro Rata Basic Support Obligation	\$912 A_s	\$746 B_s	----

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Using the Formula: Let’s do some math!

Example:

- Two Joint Children, court ordered parenting time
- Chris earns \$4,300/month and has the kids 70 nights/year (Parent A)
- Jamie earns \$3,500/month and has the kids 295 nights/year (Parent B)

↓
Combined PICS: \$7,800

↓
Combined Support: \$1,658
 ↙ $\$1,658 \times .55 = \912 (Chris) (Parent A)
 ↘ $\$1,658 \times .45 = \746 (Jamie) (Parent B)

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Using the Formula: Let’s do some math!

$$\frac{[(70 \cdot 70 \cdot 70) \cdot (746)] - [(295 \cdot 295 \cdot 295) \cdot (912)]}{[(70 \cdot 70 \cdot 70) + (295 \cdot 295 \cdot 295)]}$$

= -890.14

= \$890 owed by Parent A

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Web Calculator

m DEPARTMENT OF HUMAN SERVICES Minnesota Child Support Guidelines Calculator

Minnesota Child Support Online DHS Public Web Site

Minnesota Child Support Guidelines Calculator

This calculator now incorporates the new parenting expense adjustment effective August 1, 2018. Beginning August 1, the new adjustment will use the number of court-ordered overnights (if available) for new support orders and cases brought for modification.

You may use this calculator for court orders requiring the parenting expense adjustment effective through July 31, 2018 by following the instructions posted below, before question 15.

Please visit the [Parenting Expense Adjustment website](#) for more information.

1. What is **Parent A's** name?
2. What is **Parent B's** name?
3. What is the **U-D** case number?
4. What is the **court file** number?
5. How many **joint children** are there?

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Web Calculator

Please visit the [Parenting Expense Adjustment website](#) for more information.

1. What is **Parent A's** name?
2. What is **Parent B's** name?
3. What is the **U-D** case number?
4. What is the **court file** number?
5. How many **joint children** are there?

	Parent A	Parent B
6. What is the monthly income received ?	\$ <input type="text"/>	\$ <input type="text"/>
7. What is the potential income for each parent, if any?	\$ <input type="text"/>	\$ <input type="text"/>
8. What is the monthly amount the joint children receive in benefits from Social Security or the U.S. Department of Veterans Affairs (VA) due to a parent's eligibility?	\$ <input type="text"/>	\$ <input type="text"/>
9. If the joint children receive Social Security or VA benefits, which parent is the representative parent ?	<input type="radio"/> Parent A <input type="radio"/> Parent B	
10. What is the monthly amount each parent is ordered to pay for spousal maintenance ?	\$ <input type="text"/>	\$ <input type="text"/>
11. What is the total amount each parent is ordered to pay for monthly child support for nonjoint children ?	\$ <input type="text"/>	\$ <input type="text"/>
12. What is the number of nonjoint children living in the home?	<input type="text"/>	<input type="text"/>
13. What is the monthly cost of health care coverage for the joint children ?	\$ <input type="text"/>	\$ <input type="text"/>
14. What is the monthly cost of dental coverage for the joint children if separate from health care coverage?	\$ <input type="text"/>	\$ <input type="text"/>

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Web Calculator

question 15a, leave question 15b blank, and answer 'yes' to question 15c.

- 15a. Do you have **court ordered equal parenting time**? Yes No
- 15b. What is the **annual number of overnights** awarded to each parent by the court? Click to add a child
- 15c. If you are unable to calculate the number of overnights awarded to each parent, do you have a **current child support order** with a parenting expense adjustment? Yes No

16. Number of **joint children** receiving child care?
17. How much are the total **monthly child care costs**?
18. Which parent incurs the **child care costs**?
 No Child Care Costs No Child Care Costs
19. Does either parent receive **child care assistance** for the **joint children**?
 No Child Care Costs No Child Care Costs
20. Does **Parent B** receive **Medical Assistance** for the **joint children**? Yes No
21. Does **Parent A** receive **Medical Assistance**? Yes No

Important Disclaimer: The child support guidelines worksheet, instructions, and calculator are for information and educational use only and are not a guarantee of the amount of child support that will be ordered. The results obtained are only as accurate as the information used. The actual child support order may be affected by other factors. The Court has the final authority to determine the amount of the child support order. If this worksheet is attached to a court order, it is part of the Court's decision. This worksheet may or may not show the amount the Court decided to order. If the amount in the order is different, that is the amount to be paid.

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Web Calculator – Equal Parenting Time

*** To calculate child support using a parenting expense adjustment effective through July 31, 2018, answer "no" to question 15a, leave question 15b blank, and answer "yes" to question 15c.

15a. Do you have court ordered equal parenting time? Yes No

15b. What is the annual number of overnights awarded to each parent by the court? [Click to add a child](#)

Child	Remove this row
182.5	182.5

15c. If you are unable to calculate the number of overnights awarded to each parent, do you have a current child support order with a parenting expense adjustment? Yes No

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Web Calculator – not equal parenting time

15a. Do you have court ordered equal parenting time? Yes No

15b. What is the annual number of overnights awarded to each parent by the court? [Click to add a child](#)

Child	Remove this row
100	265

15c. If you are unable to calculate the number of overnights awarded to each parent, do you have a current child support order with a parenting expense adjustment? Yes No

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Web Calculator – using a percentage of parenting time

15a. Do you have court ordered equal parenting time? Yes No

15b. What is the annual number of overnights awarded to each parent by the court?

15c. If you are unable to calculate the number of overnights awarded to each parent, do you have a current child support order with a parenting expense adjustment? Yes No

15d. What percentage of parenting time was awarded to Parent A by the court?

If it is not possible to calculate overnights but there is a current child support order with a PEA, select the appropriate range of PT, which will apply the correct reduction under the old PEA (12% reduction or equal PT formula.

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Things that will stay the same...

- Equal income and equal parenting time will still be a \$0 basic support order
- Medical and child care expenses will still be divided between the parties based on PICS percentage
- Gross income and PICS is unchanged
- Base guideline numbers have not changed
- The existing child support calculator will remain available
- Some child support participants will (still) not be happy with the results

Practice Pointers: Continuing to Use the Old PEA

Q: Is it ever allowable to continue to use the old PEA?

A: *Yes, but only in a modification, if certain factors are met.*

Practice Pointers: Continuing to Use the Old PEA

See Minn. Stat. 518A.39, subd. 2(d): If child support was established by applying a parenting expense adjustment or presumed equal parenting time calculation under previously existing child support guidelines and

there is no parenting plan or order from which overnights or overnight equivalents can be determined,

*there is a **rebuttable presumption** that the established adjustment or calculation will continue after modification so long as the modification is not based on a change in parenting time.*

Practice Pointer: New PEA Modification

Q: Can you file for a support or parenting time modification in order to have the new PEA applied?

A: Yes, if the case meets the standards for a modification in either situation.

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Practice Pointer: Support Order Modification

If before a Judge or CSM for a child support order modification:

- Current law provides that an order that is at least 20 percent and at least \$75 per month higher or lower than the current support order is rebuttably presumed to be unreasonable and unfair. See Minn. Stat. 518A.39, subd. 2(b).
- If the application of the new PEA results in a support obligation that meets that standard, you may bring a motion for modification.
- New language: (j) ~~Except as expressly provided,~~ An enactment, amendment, or repeal of law ~~does not constitute~~ constitutes a substantial change in the circumstances for purposes of modifying a child support order when it meets the standards for modification in this section. See Minn. Stat. 518A.39, subd. 2(j).

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Practice Pointer: Split Custody

Q: What if each parent has a different parenting time with each child, for example, one parent has one child the majority of the time and the other parent has the other child the majority of the time?

A: Each child's parenting time schedule should be entered in a separate calculation/worksheet and the results of each parent's obligation from the calculation should be offset against each other. See Minn. Stat. 518A.34(c).

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General Practice Pointers

- Premise of the new PEA: types of costs change as approach 50% (more like living there, rather than visiting)
- Section 518A.26 definition of obligor presumes no payment if 55% PT
- There must be an Order for Parenting time to apply the new PEA
- Overnights must be able to be calculated to apply the new PEA (percentages, schedule, etc.)
- There will be a calendar tool that will convert an existing PT schedule into a number of overnights

FAQs

Q: What if the parents agree on a parenting time schedule in the expedited process but the magistrate does not have jurisdiction over the issue?

A: There are several options in this scenario, including:

- Give a previous parenting expense adjustment if one existed in the previous order
- Tell the parties they may file for a parenting time order in district court
- Consider asking the court to deviate based on the agreement of the parties and consideration of statutory deviation factors

FAQs

Q: What if the parents are married but separated?

A: CSD does not have a policy on how to handle these situations but are working on developing policy through the Comprehensive Legal Vision group. Consult with your county attorney on how your county should approach these situations.

Getting to Overnights

Evaluate your parenting time order!

- Is there a percentage specified?
- Is there any kind of language which may indicate 50/50?
- Do you have a schedule?

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Getting to Overnights

Percentages

Take the percentage indicated in the order, and multiply by 365.

Example: Order states that NCP's parenting time is presumed to be 25%

$.25 \times 365 = 91.25 = 91$ overnights for NCP

$.75 \times 365 = 273.75 = 274$ overnights for CP

Make sure that the numbers add up to 365: $91+274 = 365$

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Getting to Overnights

Working from a Parenting Time Schedule – Some Options

- 1) Count out on a calendar over two years, and find one year average (An online calendar tool is being formulated by CSD!)
- 2) Find a pattern, and extrapolate out over the year
- 3) MN CLE method (tri fold)
- 4) Agree on a reasonable number

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Getting to Overnights

Extrapolate a pattern over the year

Example: Every other Friday and Saturday night schedule

- 2 nights per 2 week period.
- There are 26 biweekly periods per year

26 x 2 = 52 overnights

- *BEWARE double counting holidays, vacations, and other non-standard days!*
- *The total must be an average over two years, divided by 2.*

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Getting to Overnights

MN CLE Method (Summary Guide trifold*)

- 1) Find a percentage of "regular" overnights
- 2) Figure out how much of your two year period is "regular" and multiply that by your percentage
- 3) Add in "irregular" days
- 4) Divide by two (because you have been looking at 2 years)

* Available for \$20 at: <https://www.minncle.org/PublicationDetail.aspx?ID=8009011817>

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Getting to Overnights

CLE Method Example: "Father has PT e/o weekend and 1 week per year"

- 1) Find a percentage of "regular" overnights:
26 x 2 = 52 overnights = 59/365 = 14%
- 2) Figure out how much of your two year period is "regular" by subtracting "irregular" days and multiply that by your percentage:
730 - 14 = 716 regular overnights x .14 = 100.24
Dad: 100 regular overnights over 2 years
Mom: 616 regular overnights over 2 years
- 3) Add two year average of "irregular" days to regular days:
Dad: 100 regular overnights + 14 vacation overnights = 114 overnights total
- 4) Divide by two to get one year amounts:
Dad: 114 / 2 = 57 overnights
Mom: 616 / 2 = 308 overnights

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**Examples:
Calculating Overnights**

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Thank you!
