

INCOME SHARES: NEW RULES FOR CHILD- SUPPORT GUIDELINES

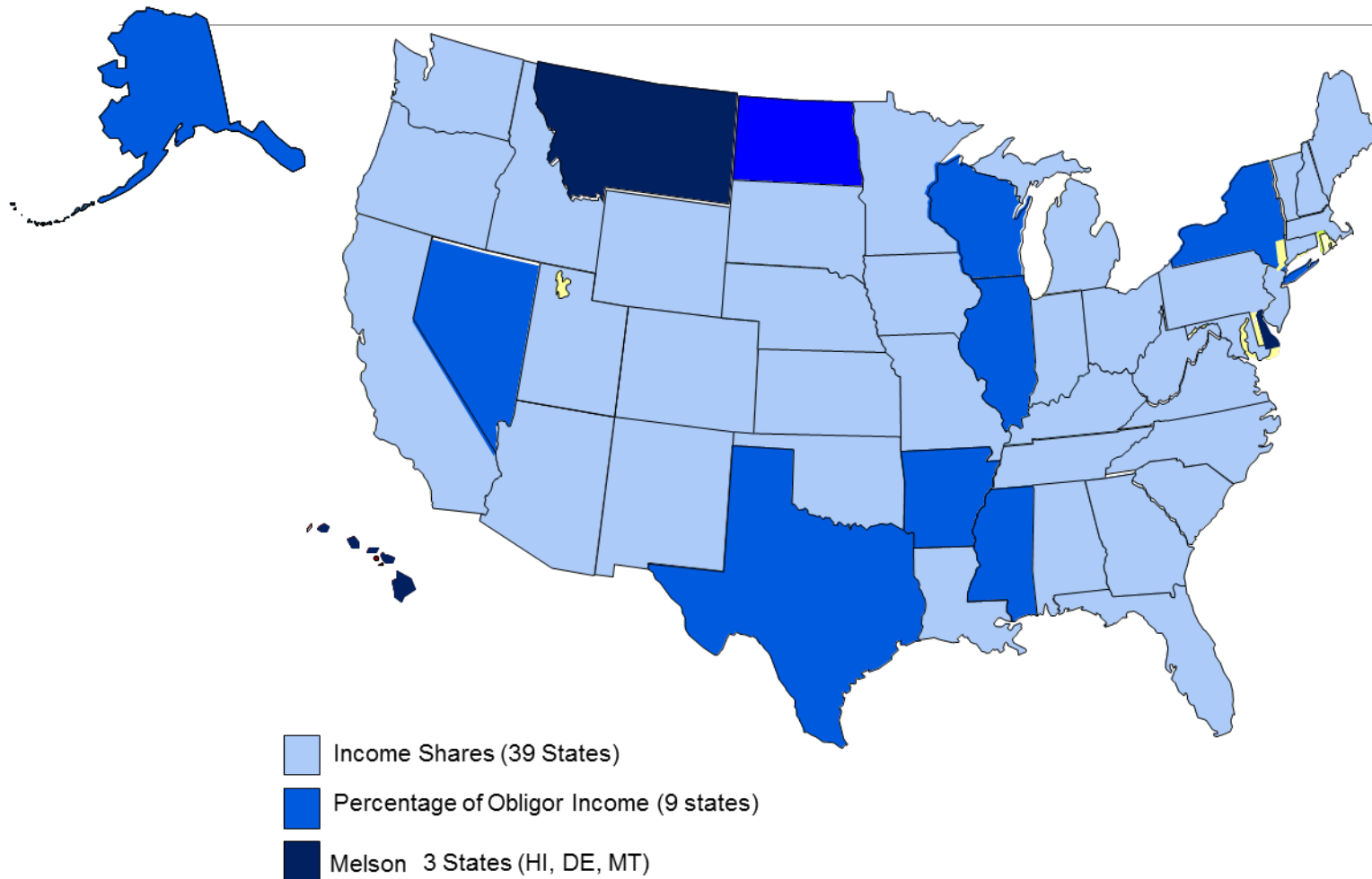
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History of Child Support Guidelines in Illinois



- ❑ Prior to 1984, Illinois law provided courts with the discretion to set support at a reasonable and necessary amount.
- ❑ In 1984, Public Act 83-1404 amended section 505 of the Illinois Marriage and Dissolution of Marriage Act to require the calculation of support by applying percentage guidelines to the obligor's **net income** dependent upon the number of children.
- ❑ The net income percentage of income model has been part of Illinois law for over **30 years**.
- ❑ The current model fails to consider both parents' income and the standard of living the child would have enjoyed had the parents stayed together.

State Usage Guidelines



What is Income Shares?

Child support amount is based on the combined income of both parents.

Requires information about both parents' incomes.

Each parent is responsible for their *prorated share* of child-rearing expenditures.

New Terminology & Definitions

Business Income

Guideline for High Income

Low Income Adjustment (self-sufficiency adjustment)

Multiple Family Adjustment

Spousal Maintenance Adjustment

UnEmployed or UnderEmployed Income Adjustment

Obligor/Obligee

Schedule of Basic Child Support Obligation (SBCSO)

Basic Child Support Obligation (BCSO)

Shared Physical Care

Split Physical Care

Standardized Net Income Conversion Table

Zero Dollar Child Support Order

Key Differences between Income Shares and Percentage of Obligor Income Models

Income Shares

- Considers both parents' incomes when determining the award.
- Each parent is responsible for their prorated share.
- Based on the cost to raise the child.

Percentage of Obligor

- Looked at only the obligor's income.
- A flat percentage is applied to the obligor's income.
- Does not directly consider the cost to raise the child.

HOW IT WORKS

Child Support amount comes from a “Schedule of Basic Child Support Obligation”

- We will ‘lookup’ the income level and # of children
- Based on expected expenditures of parents for their children at different income levels
- Created by economists based on economic data
- Not yet available - TBD

What is the Schedule of Basic Support Obligation?

Utilizes data from the Consumer Expenditure Survey put out by the Bureau of Labor Statistics;

Identifies how much parents residing together spend on their children;

Based on parents' combined income and family size.

What Does the Schedule Include?

<u>Includes</u>	<u>Excludes</u>
- o <u>Housing:</u> - o <u>Apparel</u> - o <u>Food</u> - o <u>Transportation:</u> - o <u>Entertainment:</u> - o <u>Miscellaneous:</u>	- o <u>Child care expenses</u> - o <u>Health insurance</u> - o <u>Uninsured and extraordinary medical expenses</u> - o <u>Extracurricular activities and school expenses*</u> [enhanced]

Schedule of Basic Support Obligation Descriptions

Partial List of Expenditure Items Considered in the Consumer Expenditure Survey: The Data Source Used to Estimate Child-Rearing Expenditures

Housing	Rent paid for dwellings, rent received as pay, parking fees, maintenance, and other expenses for rented dwellings; and interest on mortgages, interest on home equity loans and lines of credit, property taxes and insurance, refinancing and prepayment charges, ground rent, expenses for property management and security, homeowners' insurance, fire insurance and extended coverage, expenses for repairs and maintenance contracted out, and expenses of materials for owner-performed repairs and maintenance for dwellings used or maintained by the consumer unit. Also includes utilities, cleaning supplies, household textiles, furniture, major and small appliances and other miscellaneous household equipment (tools, plants, decorative items).
Apparel	Apparel, footwear, uniforms, diapers, alterations and repairs, dry cleaning, sent-out laundry, watches, and jewelry.
Food	Food at home purchased at grocery or other food stores, as well as meals, including tips, purchased away from home (e.g., full-service and fast-food restaurant, vending machines).
Transportation	Vehicle finance charges, gasoline and motor oil, maintenance and repairs, vehicle insurance, public transportation, leases, parking fees, and other transportation expenditures.
Entertainment	Admission to sporting events, movies, concerts, health clubs, recreational lessons, television/ Radio/sound equipment, pets, toys, hobbies, and other entertainment equipment and services.
Miscellaneous	Out of pocket healthcare, personal care, education and reading materials.

How Schedule Is Built

Exhibit 6: Composition of Average Spending by Families (adopted from Betson 2010)				
Expenditure Category	Childless Couple	One Child	Two Children	Three or More Children
Total Annual Outlays	\$51,428	\$55,968	\$59,096	\$49,491
Budget Share (Percentage of Total Outlays)				
Food	15.7%	16.0%	16.8%	18.3%
Housing	37.9%	41.2%	41.4%	40.9%
Apparel	2.6%	3.1%	3.2%	3.6%
Transportation	20.3%	19.9%	19.0%	18.4%
Entertainment	7.2%	6.4%	6.8%	6.3%
Healthcare	6.1%	5.3%	5.3%	4.6%
Personnel Care	.7%	.6%	.6%	.5%
Education and Reading	1.9%	1.8%	1.7%	1.7%
Miscellaneous	7.6%	5.7%	5.2%	5.7%

Income: All income from All sources

Non-included Income

- Public assistance programs are not included as income.
 - Temporary Assistance to Needy Families (TANF), SSI, Food Stamps.
- Benefits and income received for other children in the household are not included as income.
 - Social Security disability and retirement benefits paid for the benefit of the subject child must be included in the parent's gross income for purposes of calculating support but the parent is entitled to a support credit for the amount of the benefits paid for the child.

Guidelines: Floor and Ceiling

- The Schedule of Basic Support Obligation will include a low income adjustment for obligors earning 75% or less than the Federal Poverty Guideline.
- The Schedule of Basic Support Obligation will include combined monthly net incomes up to \$30,000 (approximates gross income of \$500,000).

When Income Exceeds the Schedule of Basic Child Support Obligation

A court has discretion when the combined adjusted net income of the parties exceeds the highest level of the schedule of basic child support obligation, except that the Basic Child Support Obligation shall **not** be less than the stated amount for the highest level of combined net income.

The highest level in the Basic Child Support Obligation Schedule is a combined net income of \$30,000 per month.

Courts can still deviate, and the upper end of the table is **not a cap** on child support.

Minimum Child Support Orders

For parents with income levels at or below 75% of the Federal Poverty Guideline, child support is \$40.00 per month per child. Total support for all children is capped at \$120 per month with all children sharing equal portions of that support.

- This minimum support amount is rebuttable and does not apply to incarcerated or incapacitated parents, where no support generally should be ordered.

(Zero dollar child support order)

Adjustments to Income

Adjustments to Income for Support Obligation

1. Business Income
2. Maintenance
3. Non shared children

Adjustments to Gross Income

Business income

Gross receipts minus ordinary business expenses

- Excluded from ordinary expenses and Court can reject
 - amounts allowable by the IRS for
 - accelerated depreciation,
 - excessive or inappropriate business deductions and/or
 - personal expenses paid through the business

Adjustments to Gross Income

In-kind benefits from employer (including self-employed)

- In-kind payments shall be considered income IF
- they are significant and
- they reduce personal living expenses.

Adjustments to Gross Income

Unemployed or Underemployed

- If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income of that party.
- Potential and Probable Earning level based on:
 - work history
 - Occupational qualifications
 - Prevailing job opportunities
 - The ownership of a substantial non-income producing asset
 - Earning levels in the community
- Rebuttable presumption of 75% of Federal Poverty Guidelines

Other Adjustmen t to Gross Income

Maintenance

- Maintenance paid or payable in the current relationship is a deduction from gross
- (soon to include prior maintenance obligations too)
- Maintenance received is included in gross income

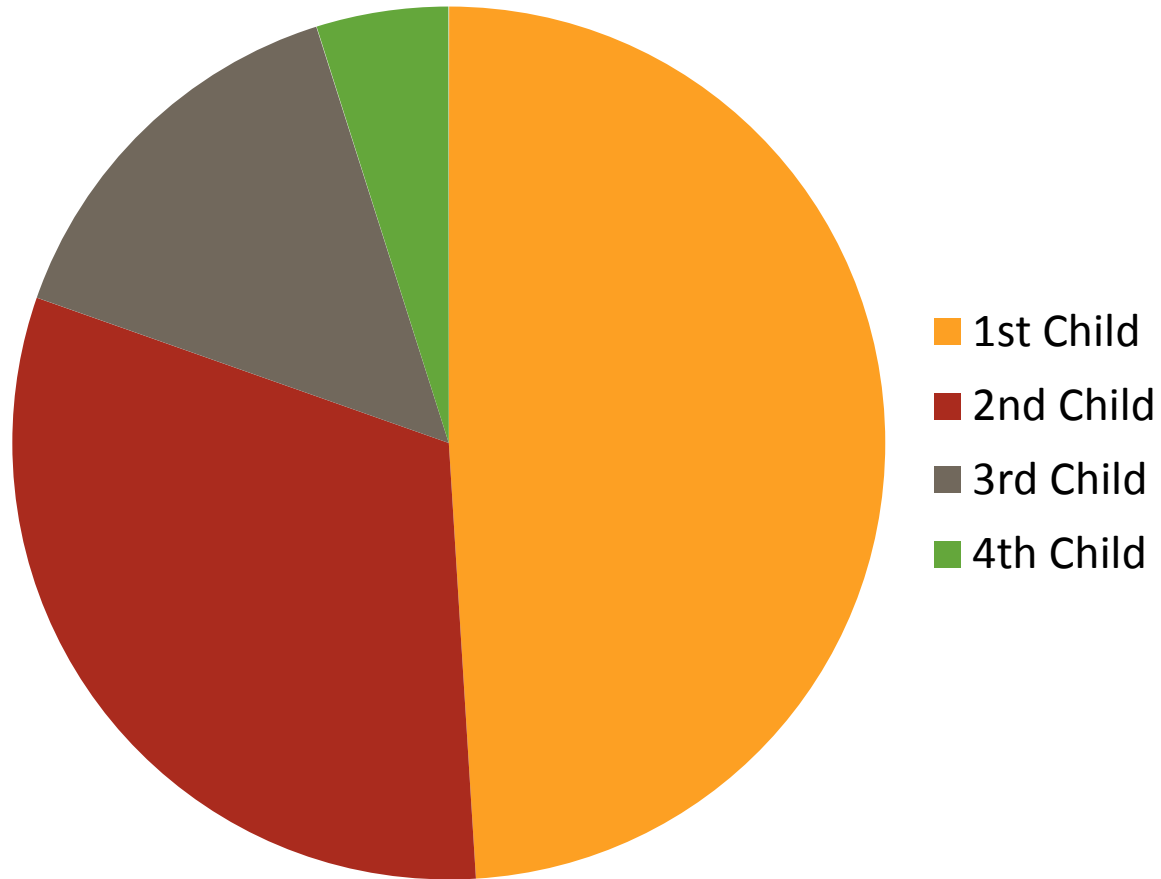
Multiple Family Obligations Adjustment

(non-shared children)

Method of Calculation

- As part of the Quadrennial Review, the Illinois Child Support Advisory Committee looked at new ways to calculate child support for parents with other family obligations
- Illinois currently is a “first in time” State.
 - First child with an established financial need is considered first, before the financial needs of subsequent born children

First in Time



Adjustment to Net Income: Support for Non-Shared Children

If paying either court ordered child support, or actually paying financial support for Child not of the relationship:

Court ordered support is completely deducted

Financial support paid not by court order permitted deduction is amount actually paid or 75% of guidelines, whichever is LESS

Deduction is from net income

TIP: get support orders for prior children

Calculating Net Income

Illinois Approach: Net Income

The income shares legislation defines net income as gross income minus *either* the standardized tax amount or the individualized tax amount.

❖ The standardized tax amount will be the default rule.

Standardized Net Income

Assumptions for calculation of Federal and State taxes:

- Standard tax deduction for single payor;
- One personal exemption;
- Applicable number of dependency exemptions for the minor children that the parties have together go to the parent with majority parenting time unless otherwise agreed;
- Social Security and Medicare tax calculated at the then current

FICA rate (or mandatory pension) and SIT.



Standardized Net Income

An HFS annual tax chart would be used to:

- Determine net income by subtracting the standard tax calculations from gross income.
- Updated to reflect any changes to the Federal, State, or FICA taxes as they occur.
- Provide the judiciary and all litigants—especially the IV-D program, *pro se* litigants – with an easy to use gross to net conversion to calculate support.

Standard doesn't always fit

- If party is remarried and files Joint:
 - Don't use standardized
- If party is Head of Household:
 - Don't use standardized
- If party itemizes deductions:
 - Don't use standardized
- If party has capital gains income
 - Don't use standardized
- If parties live in different states
 - Don't use standardized



Individualized Net Income

Individualized Net Income will apply when the following occurs:

- Agreement/stipulation by the parties;
- Court order based on documentation; or
- Either party elects to use the individualized net income after full and complete disclosure.

Individualized Net Income by Party Agreement



The parties agree to an individualized net income agreement that is different from the proposed basic standardized tax calculation guideline.

This method may be used by the court unless the court rejects the proposed method for good cause.

Individualized Net Income



All of the relevant tax attributes shall be as the parties agree **or as properly calculated.**

- filing status
- allocation of dependency exemptions
- itemized deductions for federal and state income tax purposes
- deduction for FICA and Medicare
- other relevant credit or deductions
- Business or capital gains income (losses)

Either or both parties can agree to opt-in and utilize the Individualized Net Income approach.

Temporary Child Support

- Temporary Child Support may be determined in a summary hearing.
- Eligible party can opt in to the individualized method, the tax deductions and credits shall be determined by the court on the basis of information contained in one or both parties' financial statements, Financial Affidavits, and relevant supporting documents pursuant to SCR or local rules.



The actual income shares guideline child support calculation

DISCLAIMER: NOT BASED ON REAL NUMBERS
SINCE WE DON'T YET HAVE THE SCHEDULE
OF BASIC SUPPORT OBLIGATION OR THE
GROSS TO NET CONVERSION TABLE

Calculation of Basic Child Support – Part 1

Step 1: Determine the adjusted net monthly income for each parent based on net monthly income plus or minus maintenance paid.

Step 2: Calculate each parent's percentage of the total combined net income.

Example: If Parent #1's (Mom) adjusted net monthly income = \$2,500, and Parent #2's (Dad) = \$7,500, then

Parent #1's (Mom) percentage share of the combined adjusted net monthly income = 25% and Parent #2's (Dad) percentage = 75%.



Child Support Calculation

Step 3

Based on the combined adjusted net monthly income, use the Schedule of Basic Support Obligation (BCSO) to determine the amount of the basic child support obligation.

Schedule of Basic Child Support Obligation

Monthly Income	1 Child	2 Children	3 Children	4 Children	5 Children
\$9,875.00 - \$9,224.99	\$1,429	\$2,149	\$2,561	\$2,861	\$3,147
\$9,925.00 - \$9,974.99	\$1,433	\$2,157	\$2,571	\$2,872	\$3,159
\$9,975.00 - \$10,024.99	\$1,438	\$2,164	\$2,581	\$2,882	\$3,171
\$10,025.00 - \$10,074.99	\$1,442	\$2,171	\$2,590	\$2,893	\$3,182
\$10,075.00 - \$10,074.99	\$1,447	\$2,179	\$2,600	\$2,904	\$3,194
\$10,125.00 - \$10,174.99	\$1,451	\$2,186	\$2,609	\$2,915	\$3,206

Child Support Calculation

Step 4 – Allocate the BCSO

“Easy Math” Example

If “Combined Adjusted Net Monthly Income = \$10,000 →

Monthly basic support obligation for one child = \$1,438.00

Thus, P2’s (Dad) monthly basic support obligation to P1 = $\$1,438.00 \times 75\% = \$1,078.50$

Note: Parent #1’s (Mom) obligation of \$359.50 is assumed to be utilized in the course of everyday payments for the child.

Shared Physical Care Formula

Shared Physical Care Definition

Shared physical care means that each parent has allocated parenting time of the children for at least 146 overnights per year.

Presumption: Both parents contribute to the expenses of the children in addition to the basic child support obligation.

Cross-Multiply and Set-off

Calculates support for each parent adjusted for the parenting time schedule of overnights.

50% multiplier is applied to the basic obligation to account for the duplicated child-rearing costs between the parent's households.

The 50% increase approximates the share of child-rearing expenses that are duplicated (housing, transportation, etc.).

Each parent's share of the basic obligation is cross-multiplied with the percentage of time the other parent has overnights of the child.

Calculation of Child Support with Shared Physical Care – Part 2

Review Step 3: Based on the total adjusted net monthly income, use the Schedule of Basic Child Support Obligation to determine the basic combined support obligation.

Example: If the total adjusted net monthly income = \$10,000, the monthly basic support obligation for one child is \$1,438.

Step 5: Calculate the combined monthly shared physical care support obligation by multiplying the basic combined obligation determined in **Step 3** by 1.5.

Example: $\$1,438 \times 1.5 = \$2,157$

Calculation of Child Support with Shared Physical Care – Part 3

Step 6: Determine each parent's portion of the monthly physical care support obligation by multiplying the figure determined in **Step 5** by each parent's percent share of income as determined in **Step 2**.

Example:

Parent #1's = $\$2,157 \times 25\% = \539.25

Parent #2's = $\$2,157 \times 75\% = \$1,617.75$

Step 7: Assuming the obligor exercises 146 overnights or more per year with the child, determine the percentage of time the child spends with each parent.

Example:

Parent #1 has the child for 219 overnights or 60% of the time.

Parent #2 has the child for 146 overnights, or 40% of the time.

Calculation of Child Support with Shared Physical Care – Part 4



Step 8: Cross Multiply Determine, for each parent, the support obligation owed the other parent for time spent with the child by multiplying the parent's portion of the monthly shared physical support obligation as determined in **Step 6** by the percentage of time spent with the other parent as determined in **Step 7**.

Example:

Parent #1's monthly support obligation owed to Parent #2 = $\$539.25 \times 40\%$ or $\$215.70$

Parent #2's monthly support obligation owed to Parent #1 = $\$1,617.75 \times 60\%$ or $\$970.65$

Step 9: Offset Subtract the lesser support obligation from the greater support obligation.

Example:

Parent #2's monthly support obligation is $\$970.65 - \$215.70 = \mathbf{\$754.95}$

Another example

data input

Gross Income

Dad	Mom	Combined
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Net income

Dad	Mom	Combined
\$ 9,733	\$ 4,867	\$ 14,600

Combined Net Income

66.67%

33.33%

Child Expenditure Table 2 children

\$ 3,000

Basic Child Support obligations

\$ 2,000.00	\$ 1,000.00
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BCSO Payment

\$ (2,000.00)	\$ 2,000.00
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net available support cash

\$ -	\$ 3,000.00	\$ 3,000.00
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Shared Care multiplier

1.5

Shared Care Support Obligation

\$ 4,500.00

Child Support Obligation

\$ 3,000.00	\$ 1,500.00	\$ 4,500.00
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Overnights

40%

60%

SCSO

\$ 1,800.00	\$ 600.00
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SCSO Payment

\$ (1,200.00)	\$ 1,200.00
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net available support cash

\$ 1,800.00	\$ 2,700.00	\$ 4,500.00
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Split Physical Care

Illinois now provides for a child support formula for split physical care:

More than one child and

Each parent has physical care (majority parenting time) of at least one of the children.

Calculate support by using two child support worksheets to determine the support each parent owes the other, as if the child in his or her care were the only child of the parties.

Set off: Then subtract the lesser support obligation from the greater.

Add-ons to Basic or Shared Physical Care Child Support Obligation

HEALTH INSURANCE, MEDICAL
EXPENSES, CHILD CARE AND
EXTRACURRICULAR ACTIVITIES

Health Insurance e



The total insurance premium *attributable to the child* who is the subject of the order shall be added to the basic child support obligation.

Allocated pro-rata based on their respective net incomes (Step 2)

Health Insurance



➤ Either or both parents will initiate medical coverage for the children by:

- ❑ Currently effective medical insurance policies held by the parents
- ❑ Purchase medical insurance for the children
- ❑ Provide the children with current and future medical needs through some other manner

➤ Adding dental and optical insurance will be at judicial discretion.

What if Neither Parent has Access to Health Insurance?

- One or both parents must be ordered to provide private health insurance when it becomes available.
- The parent with majority time may be ordered to provide public health insurance for the children.
- Either or both parents must be ordered to pay cash medical support that is reasonable in cost.



Medical Expenses

Unreimbursed health care expenses

Court may, in its discretion, order parents to share contribution to these obligations

Not automatically pro-rata but may often be in same percentages as net income



Child Care Expenses

Child Care expenses will be prorated and added to the basic child support obligation.

Reasonably necessary to be employed, to attend educational or vocational training to improve employment opportunities, or for job search

Includes before/after school care and camps

Extra Curricular Activities

School and
Extracurricular activity
expenses

Discretionary with court

Applies to either or both
parties

Reasonable

In addition to basic child
support obligation

Enhance the child's
development

- Educational
- Athletic
- Social
- cultural



Income Shares: New Rules for Child Support Guidelines

By: Nancy Chausow Shafer, Chausow Shafer, PC Highland Park, IL

Illinois is finally joining the 41+ other states and territories which have switched to looking at both parents' incomes in determining child support. This is a major change in how child support is computed, and may change what we see as results in the amount of child support awarded in our cases. This article will explain how the new guidelines will work, and why they are going to help make our lives as divorce practitioners easier. I will not be even trying to address all the details and intricacies of the new statute, there is no substitute for actually reading the text of the statute.

The income shares legislation was passed as HB3982, and enacted as P.A. 99-764. This law will become effective July 1, 2017. In addition, there is planned a trailer bill to correct some errors and make some changes to the statute, which is hoped to be in place by the time the statute itself becomes effective in July 2017.

First, let me note that the change in the computation method, even if the result under the new method would be substantially lower or higher, will not in and of itself be grounds for a modification of child support. Section 510 will specifically provide:

*“The court may grant a petition for modification that seeks to apply the changes made to subsection (a) of Section 505 by this amendatory Act of the 99th General Assembly to an order entered before the effective date of this amendatory Act of the 99th General Assembly only upon a finding of a substantial change in circumstances that warrants application of the changes. **The enactment of this amendatory Act of the 99th***

General Assembly itself does not constitute a substantial change in circumstances warranting a modification.” (emphasis added)

Second, the actual computation of the amount of child support cannot be found in the statute. As stated in section 505(a)(1):

“The Department of Healthcare and Family Services shall adopt rules establishing child support guidelines which include worksheets to aid in the calculation of the child support award and a table that reflects the percentage of combined net income that parents living in the same household in this State ordinarily spend on their children.”

The statute does not really define what these new guidelines will be or how these new child support guidelines will be applied. Instead, the statute delegates the responsibility for establishing the guidelines and the tables to the Department. The planned trailer bill will provide more specifics on the computation method and formula, but the actual Schedule of Child Support Obligations will still be established by the Department.

The computations themselves cannot be done until the Department issues rules, including a “Schedule of Basic Child Support Obligations” (Schedule) which will hopefully be done shortly. [In preparation for the legislation, the state did have such a table prepared in 2012, which will need to be updated]. Here’s how we expect the new child support guidelines will work:

1. Determine each party’s **net** income. We start with the definition of income, which continues to be all income from all sources, as under previous law [there are some specified exceptions for SNAP, TANF and SSI and other government benefits which basically incorporate prior case law]. Also note the statute

specifically provides: *“Spousal support or spousal maintenance received pursuant to a court order in the pending proceedings or any other proceedings must be included in the recipient's gross income for purposes of calculating the parent's child support obligation.”*

2. Next, the statute allows two methods for computing deductions for taxes from gross income to arrive at net income:
 - a. Standardized tax amount; or
 - b. Individualized tax amount.

The standardized tax amount will be based on utilizing the standard deduction, rather than itemized deductions which may exist in a particular instance. It is anticipated in the statute that the Department will publish a table reflecting the application of the standard deduction to the gross income numbers to determine net income. Many of us remember and still use the ‘DuCanto’ tax tables published each year by the law firm of Schiller, DuCanto & Fleck (SDF). The Department published tax table will likely be similar, although not as complex and complete, as the SDF version.

The standardized tax amount will be based on the support obligee, not the obligor, receiving the dependency exemptions for the children (the statute still refers to “custodial parent”, a term now not part of our statutory lexicon, and will be corrected in the trailer bill). It will also be based on the rate as a Single taxpayer, with one personal exemption. In addition to Federal and State taxes, the computation of net income will allow the deduction of Social Security and

Medicaid taxes calculated at the Federal Insurance Contributions Act rates, or mandatory pension if no Social Security deduction.

While the use of the standardized tax amount may be appealing in its relative simplicity, it is unlikely in most cases to reflect the actual net income of a party who has any itemized deductions or any complexity to their income and tax status. For those cases, most practitioners will want to utilize and advocate for the individualized tax amount to be applied to determine net income. Using the individualized tax amount to determine net income requires the use of the properly calculated state and federal taxes. In fact, failure to use the individualized tax amount may fall well short of both the amount of child support which could have been ordered and our professional obligations to our clients. This is easy to avoid by using any of the child support calculation software programs available such as Family Law Software, which properly calculate the taxes based upon input of the correct data.

3. Check for adjustments to gross or net income permitted by the statute. There are three main adjustments:
 - a. Support for non-shared child. If a parent is paying court ordered support or actually paying financial support not ordered by a court, for a child not of the relationship (marriage or never-married partners or former partners) that support is a permitted adjustment from gross income. Court ordered support is completely deducted. Financial support paid not by court order is permitted at the amount actually paid or 75% of the amount that would be ordered under the guidelines, whichever is less. This will become a

good reason to go in and get a court order for the other non-shared children. Keep in mind, that this adjustment should be done after, not before, the tax computation, since child support is not tax deductible!

- b. Maintenance paid or payable in the same proceeding to the same parent to whom child support would be payable. In addition, maintenance payments to a prior spouse is expected to be an adjustment added in the trailer bill. Note that maintenance paid to a prior spouse is not going to be an adjustment to income for that payor under this statute as currently enacted. The maintenance adjustment should be done from the gross income before determining the tax amounts, since maintenance is tax deductible and includible.
 - c. Business income is fairly well defined in the new statute. The court now has the specific authority to reject accelerated depreciation, excessive or inappropriate business deductions and/or personal expenses paid through the business.
4. Determine the combined net incomes of the two parents. This involves math, however simple this calculation may be. We generally hate math, so be prepared to pull out a calculator or the software referred to above. You will then refer to the Schedule (to be prepared by the Department) to find the appropriate level of child support obligation, based on that combined adjusted net income level and the number of children. This number is referred to in the statute as the 'Basic Child Support Obligation' (I am coining the acronym "BCSO").

5. This BCSO will then be allocated between the parties in the percentage of their respective net incomes to the combined adjusted net income. Assume the BCSO amount is \$3,000 per month for two children, and Dad earns 60% of the income, and Mom 40%, then Dad's share of the BCSO would be \$1,800, and Mom's would be \$1,200. Assume Mom is the majority parenting time parent, with more than 60% of the overnights. This would result in a payment from Dad to Mom of \$1,800. Mom's \$1,200 share remains with her, and is presumed to be used for the benefit of the child. Since we don't yet have the Schedule, it is too soon to figure out if a BCSO would be less or more than the current percentage guidelines would require. If you want a preview, and have Family Law Software, take an existing case and look at the 2017 Child Support worksheet and see how the child support results change.
6. Shared parenting time requires another two steps to the calculation. If both parents have at least 146 overnights, then the BCSO changes to a 'shared care child support obligation' (SCSO). This calculation requires first multiplying the BCSO by 1.5. The purpose of this increase from the BCSO to the SCSO is to account for the increase in costs for both parents providing shelter, food and other basic support to the child(ren) in their respective homes. The concept is that if there are least 146 overnights, the accommodations for the child(ren) will require greater costs than if the child(ren) are only there less than that. For your reference, 146 overnights translate to 40% of the overnights ($146/365=.40$), which is approximately equivalent to 6 out of 14 overnights in a regular two week parenting time schedule. Many other states have this type of enhancement of

the BCSO to reflect allocation of parenting time, and use a 1.5 multiplier. Under the previous example, the \$3,000 BCSO becomes a \$4,500 SCSO. The original allocation of the BCSO between the parents based on their respective incomes is again applied to the SCSO. In our example, the 60/40 allocation is applied to the \$4,500 SCSO. Dad is allocated \$2,700, and Mom is allocated \$1,800 of that \$4,500 SCSO.

7. Now comes the tricky part. Those allocated amounts are then cross multiplied by the allocation of parenting time to the other parent. If Dad has 40% of the parenting time, and Mom 60%, the calculation multiplies Dad's \$2,700 SCSO by .60 (the other parent's parenting time allocation) to yield \$1,620. Mom's SCSO of \$1,800 is multiplied by Dad's share of the parenting time, 40%, to yield \$720. Distinct from the BCSO, the SCSO is netted between the parties. Netting Dad's obligation (\$1,620) from Mom's (\$720) results in a payment of a support obligation from Dad to Mom of \$900. After the payment from Dad to Mom, the shared child support obligation results in Mom having a total of \$2,700 in her pocket to support the children, her own \$1,800 portion of the SCSO plus Dad's payment of \$900. Dad has \$1,800 in his pocket to support the children, his own \$2,700 portion of the SCSO minus the \$900 he pays to Mom. This reflects the shared income and allocation of parenting time for both parents. Example calculations using this scenario (wholly fictional) are below:

			Dad	Mom	Combined
Net income			\$ 11,190	\$ 7,460	\$ 18,650
Combined Net Income			60.00%	40.00%	
Child Expenditure Table			\$ 1,800.00	\$ 1,200.00	\$ 3,000
	2 children				
					1.5
Shared Care Support Obligation					\$ 4,500.00
Child Support Obligation			\$ 2,700.00	\$ 1,800.00	\$ 4,500.00
Overnights			40%	60%	
SCSO			\$ 1,620.00	\$ 720.00	\$ 900.00
net available support cash			\$ 1,800.00	\$ 2,700.00	\$ 4,500.00

The allocation of responsibility for the support of the children is now expressly a shared obligation of both parents. Under the current 'percentage of payor's income' model of computing child support obligations, the residential parent's share of the support obligation was always part of the equation, but not expressly described or quantified. By including the residential parent's share of the support obligation as part of the calculation and part of the result, it is hoped that the other parent will be more comfortable with the concept of payment of child support to that parent, resulting in less litigation and resistance to payment of support. In addition, it is hoped that the inclusion of parental time allocation in the equation will lessen the resistance to support payment. By including the parenting time allocation factor at 40% of the overnights, it is anticipated the knee-jerk demand for 50% of the time will be reduced and parenting time allocations will increasingly be based on the children's needs and not the impact on support. Note in our example, Dad's support payment to Mom went from \$1,800 to \$900 when he increased parenting time to 40% of the overnights.

Pushing for more parenting time will not always result in payment of less child support under these new guidelines, but it often will have that impact.

Good luck with the new math now required in your family law practice.

Income Shares-New Rules for Child Support Guidelines

By Margaret Bennett, Nancy Chausow Shafer and Hon. Pamela Loza

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Summary: A major change in how child support is computed, how the new guidelines will work, and why they are going to help make our lives as divorce practitioners easier.

With the enactment of P.A. 99-764, Illinois now joins 40 other states and the District of Columbia in adopting the income shares model for the calculation of child support. Illinois has utilized the percentage guideline formula to determine child support since 1984, and unofficially for many years prior. This method of calculating child support is based on a percentage of the obligor's net income with the percentage increasing for each child of the parties. The enactment of the percentage guideline statute in 1984 was prompted by the State's participation in the federal interstate child support program created by Title IV-D of the Social Security Act of 1975, which provides for federal incentive payments to states. The percentage guideline formula is now considered an outdated model for computing child support as it does not reflect actual child rearing costs or allocation of those costs between the parents. Only seven states continue to utilize the percentage guidelines method, as it is perceived as a one parent payor system which fails to consider child rearing costs. This method often causes discord between the parents and distrust of the child support system.

The income shares child support approach is an equitable and accurate method for computing child support because child support is based on data that reflects measurements of child rearing costs which are then allocated between the parents based on both parent's respective net income. The income shares model attempts to emulate the actual family child rearing expenditures incurred by the family and the sharing of those expenses by the parents prior to their divorce or separation. This approach reduces negativity between the parents thus benefiting the child. The implementation of the new child support legislation should significantly enhance child support services including the collection of child support and coordination of interstate child support.

Comparisons of the two methods show when using the income shares model child support amounts can be higher, lower, or comparable to the existing percentage guideline support depending upon the respective financial circumstances of each parent. There is a rebuttable presumption in any judicial or administrative proceeding that the amount of child support which would result from the application of the income shares guidelines is the correct amount of child support to be awarded. The statute also provides that the Act itself does not constitute a substantial change of circumstances warranting a modification. This provision was included to prevent petitions for modification being filed after the effective date of July 1, 2017 based solely on the new legislation.

The income shares model of calculating child support utilizes economic data of child rearing costs based in part on the income level of the parents. Most income shares states obtain child rearing financial data from the Bureau of Labor Statistics. Calculating child support based on actual child rearing costs provides financial protection for the child by maintaining the standard of living the child would have enjoyed if the parents had not divorced or separated.

The Schedule of Basic Support Obligation will be promulgated by the Illinois Department of Healthcare and Family Services (HFS) and updated periodically. The actual Schedule of Basic Child Support obligation will not be part of the child support statute but will be maintained by HFS and available on their website. The Schedule for child rearing costs will be based on data from the Bureau of Labor Statistics adjusted for Illinois and will be updated periodically. Illinois is utilizing, as do other income shares states, an economic research institute to prepare the new Schedule of Basic Child Support Obligation. The process will be initiated and administered by HFS, the agency responsible for insuring compliance with Illinois' federal mandate under which Illinois received over \$200,000,000 dollars per year in grants for participation and compliance with the Title IV-D program.

In anticipation of the new legislation, HFS prepared a sample expenditure table in 2012 which is available on their website. Once the updated expenditure tables are available, HFS will prepare web-based electronic worksheets. The electronic worksheets and the expenditure tables will be available to the public on their website.

Net Income

Although some states utilize gross income to calculate child support payments, Illinois made the decision to continue to utilize net income to calculate a parties' respective share of support responsibility. The definition of income for purposes of calculating child support continues to be all income from all sources as under previous law thus retaining decades of case law defining income. However, the new statute exempts certain governmental benefits from inclusions as income including TANF, SNAP and SSI.

Business income is defined in the new statute. The court now has authority to reject depreciation, excessive or inappropriate business deductions and/or personal expenses paid through a business when determining a parent's income.

The new statute allows the parties to elect one of two formulas for computing tax deductions to determining net income:

- a. The standardized (or simplified) tax amount; or
- b. The individualized tax amount.

The standardized tax formula is based on both parents having single taxpayer status, utilizing the standard deduction with one personal exemption. The standardized tax

formula will be based on the support recipient receiving the dependency exemption for the child unless otherwise agreed or determined. In addition to federal and state taxes, the computation of net income will allow the deduction for Social Security and Medicare taxes calculated at the Federal Insurance Contribution Act tax rate.

While the use of the standardized tax amount may be appealing in its relative simplicity, it is unlikely to reflect the actual net income of a party who has numerous itemized deductions. For those cases, practitioners will wish to utilize the individualized tax amount formula to determine net income. Using the individualized tax amount to determine net income requires the use of properly calculated state and federal taxes.

Failure to use the individualized tax amount may result in an inaccurate calculation of child support when a party has financially beneficial itemized deductions and/or credits which reduce taxes and increase net income. It is recommended that family law practitioners utilize one of the available software programs especially in cases where spousal support is awarded.

The Interaction between Income Shares and Spousal Maintenance

When determining the percentage of income shares between the parties in cases where spousal support is paid by one parent to the other, maintenance is subtracted from the payor parent's income and must be included in the recipient parent's income. The percentage of income shares increases the recipient parent's percentage share and conversely reduces the payor spouse's percentage share. An analysis of the interaction between the 750 ILCS 5/504 and the new 750 ILCS 5/505 have consistently shown a more equitable financial result. In fact, all states utilizing spousal maintenance guideline formulas are states which also have income shares statutes to calculate child support.

The spousal maintenance adjustment should be made from the gross income before determining the tax amounts, since maintenance is tax deductible and includable in the recipient's income. It should be noted that spousal maintenance paid to a prior spouse will also be subtracted from the obligor's income, and spousal support received from a previous spouse must also be included as income by the recipient. Commercial software programs will calculate the tax consequences of spousal support on net income when determining the percentage of income shares and the resulting child support obligation.

The Multiple Family Adjustment

If a parent is paying either court ordered support or actually paying financial support not ordered by the court, that support is a permitted adjustment from gross income. Court ordered support is completely deducted. Financial support paid not by court order is permitted at the amount actually paid or 75% of the amount that would be ordered under the income shares guidelines, whichever is less. This provision is a good reason to obtain a child support order for non-shared children. The multiple family adjustment

should be made after, not before, the tax computation, since child support is not tax deductible.

The Shared Parenting Adjustment

The new child support statute has a two-step formula for shared parenting when both parents has 146 (40%) nights or more parenting overnights per year. The first calculation is to multiply the basic support obligation as determined by the expenditure table by 1.5. Many other states have this type of enhancement of the basic child support obligation to reflect shared parenting expenses. The purpose of the increase from the basic support obligation is to account for the increase in costs for housing, food and other basic costs required to maintain two households in order to accommodate a shared parenting plan. For example, if the expenditure table reflects \$3,000 per month of child rearing expenditures, the shared parenting multiplier amount would be \$4,500 per month. The percentage of the parents' income shares are then determined. Those allocated amounts are then cross multiplied by the percentage allocation of parenting time to the other parent, and are set-off by subtracting the lesser support obligation from the greater as shown in the example.

Income Shares Child Support Worksheet				
data input		Dad	Mom	Combined
Gross Income		\$ 210,000	\$ 30,000	
Net income		\$ 8,658	\$ 6,033	\$ 14,691
Combined Net Income		59%	41%	
Child Expenditure Table		\$ 1,521.09	\$ 1,059.91	\$ 2,581
BCSO	2 children			x 1.5
Shared Care Support Obligation				\$ 3,871.50
Child Support Obligation		\$ 2,281.63	\$ 1,589.87	\$ 3,871.50
Overnights		40%	60%	
SCSO		\$ 1,368.98	\$ 635.95	\$ 733.03
net available support cash		\$ 1,548.60	\$ 2,322.90	\$ 3,871.50

Additional Child Related Expenses

Because the choice and cost of child care is unique to every family, the drafters of the new statute chose not to include child care expenses in the Schedule of Basic Support Obligation. Child care expenses will be determined separately from child support prorated in proportion to each parent's percentage share of combined parental net income, and included in the child support order. In addition to the allocation of child care costs, the court may order either or both parents to contribute to the reasonable school and extracurricular activity expenses incurred which are intended to enhance the

educational, athletic, social or cultural development of the child. The statute does not require school and extracurricular activities expenses to be allocated in proportion to each parent's percentage share of combined parental net income.

The court, in its discretion, in addition to the basic child support obligation shall also provide for the child's current and future medical needs by ordering either or both parents to initiate health insurance coverage for the child which can include dental and/or vision insurance for the child. The parent with primary physical responsibility for the child may be ordered to apply for public health insurance coverage if neither party has access to private health insurance coverage for the child. In addition, the court may also order the parents to contribute to the reasonable health care needs of the child not covered by insurance including but not limited to, unreimbursed medical, dental, orthodontic, or visual expenses and any prescription medication for the child. Health insurance premiums for the child shall be added to the basic child support obligation and divided between the parents in proportion to their respective net income which can resulting in a credit or off-set to a parent paying the entire cost of the child's health insurance coverage.

The allocation of responsibility for the support of the child will now expressly become a shared obligation of both parents. Under the current percentage guideline model, the majority parent's share of the support obligation was always part of the equation, but not expressly described or quantified. National child support expert and author, Laura Morgan, when commenting on Illinois' new child support statute stated "Adopting the Income Shares Model has proven an effective way of increasing the perception of fairness in support obligations, and thus increasing compliance with those orders. I am sure that after the initial period of adjustment practitioners will find that the perception of fairness will go a long way to settling cases." It is hoped that both parents and practitioners will find the new child support process to be transparent, fair and equitable thus increasing the parents' ability to interact in a manner that serves the best interests of the children.

ILLINOIS CHILD SUPPORT GUIDELINE CALCULATION (eff. 7/1/2017)
Using unofficial interim table, pending release of official table. Actual result will vary.

Case Name: <u>IRMO Doe</u>		County: <u>Williamson</u>
<u>Jane Doe</u>	<u>John Doe</u>	Case number: <u>17 D 99999</u>
Custodial Parent: Jane Doe Number of Children: 1		

	Jane	John	Combined
Gross Income			
1. Salary/wages, per month.	1,000	3,000	
2. Current relationship maintenance included, per month.			
3. Other Income	0	0	
4. Gross Income, per month. (lines 1 through 3)	1,000	3,000	
Deductions from Income:			
5. Federal income tax, per month.	0	0	
6. State income tax, per month.	0	0	
7. FICA tax per month.	0	0	
8. Self-Employment tax, per month.	0	0	
9. Medicare tax, per month.	0	0	
10. Mandatory retirement plan deductions, per month.	0	0	
11. Other obligations for support, per month.	0	0	
12. Current maintenance if included, per month.	0	0	
13. Adjustments so far (lines 5 through 12)	0	0	
14. Net income so far (line 4 minus line 13)	1,000	3,000	
15. Deduction for children of other relationships			
16. Total deductions (lines 13 + 15)	0	0	
17. Net Income (line 4 - line 16)	1,000	3,000	4,000
Basic Obligation (from table):			
18. Percent of combined net income (party's ln 17 / combined) ...	25.00	75.00	
19. Basic obligation and party's share	203	609	812
20. Average # of overnights	365.00	0.00	
21. Percent of overnights (line 20 / 365 days)	100.00	0.00	
22. If shared custody applies, 150% of line 19.			
23. Shared cust oblig btw parents (ln 22 * other's ln 21)			
24. Obligor's obligation (line 19 or net of parties' line 23)		609	
Further Adjustments and Credits (calculations below are for obligor, only):			
25. Minimum obligation (if Obligor gross >\$0 and < \$1,005)			
26. Greater of calculated and minimum obligation		609	
27. Child care total and obligor's share		0	0
28. Obligor's child care expenditure		0	
29. Addition to / subtraction from obligation (ln 27 - 28)		0	
30. Health insurance total and obligor's share		0	0
31. Obligor's health insurance expenditure		0	
32. Addition to / subtraction from obligation (ln 30 - 31)		0	
33. Credit to obligor for derivative social security		0	
34. Addition for extracurriculars and school expenses		0	
35. Addition for unreimbursed medical, etc.		0	
36. Total obligation (lines 26+29+32+33+34+35)		609	

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ILLINOIS CHILD SUPPORT GUIDELINE CALCULATION (eff. 7/1/2017)
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Case Name: <u>IRMO Doe</u>		County: <u>Williamson</u>
<u>Jane Doe</u>	<u>John Doe</u>	Case number: <u>17 D 99999</u>
Custodial Parent: Jane Doe Number of Children: 1		

	Jane	John	Combined
Gross Income			
1. Salary/wages, per month.	1,000	3,000	
2. Current relationship maintenance included, per month.			
3. Other Income	0	0	
4. Gross Income, per month. (lines 1 through 3)	1,000	3,000	
Deductions from Income:			
5. Federal income tax, per month.	0	0	
6. State income tax, per month.	0	0	
7. FICA tax per month.	0	0	
8. Self-Employment tax, per month.	0	0	
9. Medicare tax, per month.	0	0	
10. Mandatory retirement plan deductions, per month.	0	0	
11. Other obligations for support, per month.	0	0	
12. Current maintenance if included, per month.	0	0	
13. Adjustments so far (lines 5 through 12)	0	0	
14. Net income so far (line 4 minus line 13)	1,000	3,000	
15. Deduction for children of other relationships			
16. Total deductions (lines 13 + 15)	0	0	
17. Net Income (line 4 - line 16)	1,000	3,000	4,000
Basic Obligation (from table):			
18. Percent of combined net income (party's ln 17 / combined) ...	25.00	75.00	
19. Basic obligation and party's share	203	609	812
20. Average # of overnights	219.00	146.00	
21. Percent of overnights (line 20 / 365 days)	60.00	40.00	
22. If shared custody applies, 150% of line 19.	305	913	1,218
23. Shared cust oblig btw parents (ln 22 * other's ln 21)	122	548	
24. Obligor's obligation (line 19 or net of parties' line 23)		426	
Further Adjustments and Credits (calculations below are for obligor, only):			
25. Minimum obligation (if Obligor gross >\$0 and < \$1,005)			
26. Greater of calculated and minimum obligation		426	
27. Child care total and obligor's share		0	0
28. Obligor's child care expenditure		0	
29. Addition to / subtraction from obligation (ln 27 - 28)		0	
30. Health insurance total and obligor's share		0	0
31. Obligor's health insurance expenditure		0	
32. Addition to / subtraction from obligation (ln 30 - 31)		0	
33. Credit to obligor for derivative social security		0	
34. Addition for extracurriculars and school expenses		0	
35. Addition for unreimbursed medical, etc.		0	
36. Total obligation (lines 26+29+32+33+34+35)		426	

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<u>Jane Doe</u>	<u>John Doe</u>	Case number: <u>17 D 99999</u>
Custodial Parent: Jane Doe Number of Children: 1		

	Jane	John	Combined
Gross Income			
1. Salary/wages, per month.	1,000	3,000	
2. Current relationship maintenance included, per month.			
3. Other Income	0	0	
4. Gross Income, per month. (lines 1 through 3)	1,000	3,000	
Deductions from Income:			
5. Federal income tax, per month.	0	0	
6. State income tax, per month.	0	0	
7. FICA tax per month.	0	0	
8. Self-Employment tax, per month.	0	0	
9. Medicare tax, per month.	0	0	
10. Mandatory retirement plan deductions, per month.	0	0	
11. Other obligations for support, per month.	0	0	
12. Current maintenance if included, per month.	0	0	
13. Adjustments so far (lines 5 through 12)	0	0	
14. Net income so far (line 4 minus line 13)	1,000	3,000	
15. Deduction for children of other relationships			
16. Total deductions (lines 13 + 15)	0	0	
17. Net Income (line 4 - line 16)	1,000	3,000	4,000
Basic Obligation (from table):			
18. Percent of combined net income (party's ln 17 / combined) ...	25.00	75.00	
19. Basic obligation and party's share	203	609	812
20. Average # of overnights	219.00	146.00	
21. Percent of overnights (line 20 / 365 days)	60.00	40.00	
22. If shared custody applies, 150% of line 19.	305	913	1,218
23. Shared cust oblig btw parents (ln 22 * other's ln 21)	122	548	
24. Obligor's obligation (line 19 or net of parties' line 23)		426	
Further Adjustments and Credits (calculations below are for obligor, only):			
25. Minimum obligation (if Obligor gross >\$0 and < \$1,005)			
26. Greater of calculated and minimum obligation		426	
27. Child care total and obligor's share		375	500
28. Obligor's child care expenditure		0	
29. Addition to / subtraction from obligation (ln 27 - 28)		375	
30. Health insurance total and obligor's share		165	220
31. Obligor's health insurance expenditure		220	
32. Addition to / subtraction from obligation (ln 30 - 31)		(55)	
33. Credit to obligor for derivative social security		0	
34. Addition for extracurriculars and school expenses		0	
35. Addition for unreimbursed medical, etc.		0	
36. Total obligation (lines 26+29+32+33+34+35)		746	

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