

# Indiana Rules of Court

## Child Support Rules and Guidelines

Adopted Effective October 1, 1989

Including Amendments Received Through January 1, 2020

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## CHILD SUPPORT RULES

### Support Rule 1. Adoption of Child Support Rules and Guidelines

The Indiana Supreme Court hereby adopts the Indiana Child Support Guidelines, as drafted by the Judicial Administration Committee and adopted by the Board of the Judicial Conference of Indiana and all subsequent amendments thereto presented by the Domestic Relations Committee of the Judicial Conference of Indiana, as the Child Support Rules and Guidelines of this Court.

### Support Rule 2. Presumption

In any proceeding for the award of child support, there shall be a rebuttable presumption that the amount of the award which would result from the application of the Indiana Child Support Guidelines is the correct amount of child support to be awarded.

### **Support Rule 3. Deviation from Guideline Amount**

If the court concludes from the evidence in a particular case that the amount of the award reached through application of the guidelines would be unjust, the court shall enter a written finding articulating the factual circumstances supporting that conclusion.

## **INDIANA CHILD SUPPORT GUIDELINES**

### **GUIDELINE 1. PREFACE**

Guidelines to determine levels of child support and educational support were developed by the Judicial Administration Committee of the Judicial Conference of Indiana and adopted by the Indiana Supreme Court. The guidelines are consistent with the provisions of Indiana Code Title 31 which place a duty for child support and educational support upon parents based upon their financial resources and needs, the standard of living the child would have enjoyed had the marriage not been dissolved or had the separation not been ordered, the physical or mental condition of the child, and the child's educational needs.

The Guidelines have three objectives:

- (1) To establish as state policy an appropriate standard of support for children, subject to the ability of parents to financially contribute to that support;
- (2) To make awards more equitable by ensuring more consistent treatment of people in similar circumstances; and,
- (3) To improve the efficiency of the court process by promoting settlements and giving courts and the parties guidelines in settling the level of awards.

The Indiana Child Support Guidelines are based on the Income Shares Model, developed by the Child Support Project of the National Center for State Courts. The Income Shares Model is predicated on the concept that the child should receive the same proportion of parental income that he or she would have received if the parents lived together. Because household spending on behalf of children is intertwined with spending on behalf of adults for most expenditure categories, it is difficult to determine the proportion allocated to children in individual cases, even with exhaustive financial information. However, a number of authoritative economic studies provide estimates of the average amount of household expenditure on children in intact households. These studies have found the proportion of household spending devoted to children is related to the level of household income and to the number and ages of children. The Indiana Child Support Guidelines relate the level of child support to income and the number of children. In order to provide simplicity in the use of the Guidelines, however, child support figures reflect a blend of all age categories weighted toward school age children.

Based on this economic evidence, the Indiana Child Support Guidelines calculate child support as the share of each parent's income estimated to have been spent on the child if the parents and child were living in an intact household. The calculated amount establishes the level of child support for both the custodial and non-custodial parent. Absent grounds for a deviation, the custodial parent should be required to make monetary payments of child support, if application of the parenting time credit would so require.

### **COMMENTARY**

**History of Development.** *In June of 1985, the Judicial Reform Committee (now the Judicial Administration Committee) of the Judicial Conference of Indiana undertook the task of developing child support guidelines for use by Indiana judges. While the need had been long recognized in Indiana, the impetus for this project came from federal statutes requiring guidelines to be in place no later than October 1, 1987. P.L. 98-378. Paradoxically, guidelines did not need to be mandatory under the 1984 federal legislation to satisfy federal requirements; they were only required to be made available to judges and other officials with authority to establish child support awards. 45 CFR Ch. III, § 302.56.*

*The final draft was completed by the Judicial Reform Committee on July 24, 1987, and was presented to the Judicial Conference of Indiana Board of Directors on September 17, 1987. The Board accepted the report of the Reform Committee, approved the Guidelines and recommended their use to the judges of Indiana in all matters of child support.*

**Family Support Act of 1988.** *On October 13, 1988, the United States Congress passed the "Family Support Act of 1988," P.L. 100-485 amending the Social Security Act by deleting the original language which made application of the Guideline discretionary and inserted in its place the following language:*

*"There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines*

would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case." P.L. 100-485, § 103(a)(2).

The original Guidelines that went into effect October 1, 1987 and their commentary were revised by the Judicial Administration Committee to reflect the requirement that child support guidelines be a rebuttable presumption. The requirement applies to all cases where support is set after October 1, 1989, including actions brought under Title IV-D of the Social Security Act (42 U.S.C.A. § 651-669). Also, after October 1, 1989, counties and individual courts may not opt to use alternate methods of establishing support. The Indiana Child Support Guidelines were required to be in use in all Indiana courts in all proceedings where child support is established or modified on and after October 1, 1989.

**Periodic Review of Guidelines and Title IV-D Awards.** The "Family Support Act of 1988" also requires that the Guidelines be reviewed at least every four years "to assure their application results in the determination of appropriate child support award amounts." P.L. 100-485, § 103(b). Further, each state must develop a procedure to ensure that all Title IV-D awards are periodically reviewed to ensure that they comply with the Guidelines. P.L. 100-485, § 103(c).

**Compliance With State Law.** The Child Support Guidelines were developed specifically to comply with federal requirements, as well as Indiana law.

**Objectives of the Indiana Child Support Guidelines.** The following three objectives are specifically articulated in the Indiana Child Support Guidelines:

1. To establish as state policy an appropriate standard of support for children, subject to the ability of parents to financially contribute to that support. When the Guidelines were first recommended for use by the Indiana Judicial Conference on September 17, 1987, many courts in the state had no guideline to establish support. Many judges had expressed the need for guidelines, but few had the resources to develop them for use in a single court system. The time, research and economic understanding necessary to develop meaningful guidelines were simply beyond the resources of most individual courts.

2. To make awards more equitable by ensuring more consistent treatment of people in similar circumstances. This consistency can be expected not only in the judgments of a particular court, but between jurisdictions as well. What is fair for a child in one court is fair to a similarly situated child in another court.

3. To improve the efficiency of the court process by promoting settlements and giving courts and the parties guidelines in settling the level of awards. In other words, when the outcome is predictable, there is no need to fight. Because the human experience provides an infinite number of variables, no guideline can cover every conceivable situation, so litigation is not completely forestalled in matters of support. If the Guidelines are consistently applied, however, those instances should be minimized.

**Economic Data Used in Developing Guidelines.** What does it take to support a child? The question is simple, but the answer is extremely complex. Yet, the question must be answered if an adequate amount of child support is to be ordered by the court. Determining the cost attributable to children is complicated by intertwined general household expenditures. Rent, transportation, and grocery costs, to mention a few, are impossible to accurately apportion between family members. In developing these Guidelines, a great deal of reliance was placed on the research of Thomas J. Espenshade, (*Investing In Children*, Urban Institute Press, 1984) generally considered the most authoritative study of household expenditure patterns. Espenshade used data from 8,547 households and from that data estimated average expenditures for children present in the home. Espenshade's estimates demonstrate that amounts spent on the children of intact households rise as family income increases. They further demonstrate at constant levels of income that expenditures decrease for each child as family size increases. These principles are reflected in the Guideline Schedules for Weekly Support Payments, which are included in the Indiana Child Support Guidelines. By demonstrating how expenditures for each child decrease as family size increases, Espenshade should have put to rest the previous practice of ordering equal amounts of support per child when two or more children are involved. Subsequent guidelines reviews have considered more current economic studies of child-rearing expenditures (e.g., Mark Lino, *Expenditures on Children by Families: 2006 Annual Report*, United States Department of Agriculture, 2007; David Betson, *State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations*, report to State of Oregon Department of Justice, 2006). These periodic guidelines reviews have concluded that the Indiana Guidelines based on the Espenshade estimates are generally within the range of more current estimates of child-rearing expenditures. A notable exception at high incomes leveled off the child support schedule for combined weekly adjusted incomes above \$4,000. In 2009 this exception was removed. The increase is now incorporated into the schedule up to combined weekly adjusted incomes of \$10,000 and a formula is provided for incomes above that amount. Previously, a formula was provided for combined weekly adjusted incomes above \$4,000.

**Income Shares Model.** After review of five approaches to the establishment of child support, the Income Shares Model was selected for the Indiana Guidelines. This model was perceived as the fairest approach for children because it is based on the premise that children should receive the same proportion of parental income after a dissolution that they would have received if the family had remained intact. Because it then apportions the cost of

children between the parents based on their means, it is also perceived as being fair to parents. In applying the Guidelines, the following steps are taken:

1. The gross income of both parents is added together after certain adjustments are made. A percentage share of income for each parent is then determined.
2. The total is taken to the support tables, referred to in the Indiana Guidelines as the Guideline Schedules for Weekly Support Payments, to determine the total cost of supporting a child or children.
3. Work-related child care expenses and the weekly costs of health insurance premiums for the child(ren) are then added to the basic child support obligation.
4. The child support obligation is then prorated between the parents, based on their proportionate share of the weekly adjusted income, hence the name "income shares."

The Income Shares Model was developed by The Institute for Court Management of the National Center for State Courts under the Child Support Guidelines Project. This approach was designed to be consistent with the Uniform Marriage and Divorce Act, the principles of which are consistent with IC 31-16-6-1. Both require the court to consider the financial resources of both parents and the standard of living the child would have enjoyed in an intact family.

**Gross Versus Net Income.** One of the policy decisions made by the Judicial Administration Committee in the early stages of developing the Guidelines was to use a gross income approach as opposed to a net income approach. Under a net income approach, extensive discovery is often required to determine the validity of deductions claimed in arriving at net income. It is believed that the use of gross income reduces discovery. (See Commentary to Guideline 3A). While the use of gross income has proven controversial, this approach is used by the majority of jurisdictions and, after a thorough review, is considered the best reasoned.

The basic support obligation would be the same whether gross income is reduced by adjustments built into the Guidelines or whether taxes are taken out and a net income option is used. A support guideline schedule consists of a column of income figures and a column of support amounts. In a gross income methodology, the tax factor is reflected in the support amount column, while in a net income guideline, the tax factor is applied to the income column. In devising the Indiana Guidelines, an average tax factor of 21.88 percent was used to adjust the support column.

Of course, taxes vary for different individuals. This is the case whether a gross or net income approach is used. Under the Indiana Guideline, where taxes vary significantly from the assumed rate of 21.88 percent, a trial court may choose to deviate from the guideline amount where the variance is substantiated by evidence at the support hearing.

**Flexibility Versus the Rebuttable Presumption.** Although application of the Guideline yields a figure that becomes a rebuttable presumption, there is room for flexibility. Guidelines are not immutable, black letter law. A strict and totally inflexible application of the Guidelines to all cases can easily lead to harsh and unreasonable results. If a judge believes that in a particular case application of the Guideline amount would be unreasonable, unjust, or inappropriate, a finding must be made that sets forth the reason for deviating from the Guideline amount. The finding need not be as formal as Findings of Fact and Conclusions of Law; the finding need only articulate the judge's reasoning. For example, if under the facts and circumstances of the case, the noncustodial parent would bear an inordinate financial burden, the following finding would justify a deviation:

"Because the noncustodial parent suffers from a chronic medical condition requiring uninsured medical expenses of \$357.00 per month, the Court believes that setting child support in the Guideline amount would be unjust and instead sets support in the amount of \$\_\_\_\_per week."

Agreed Orders submitted to the court must also comply with the "rebuttable presumption" requirement; that is, the order must recite why the order deviates from the Guideline amount.

**1. Phasing in Support Orders.** Some courts may find it desirable in modification proceedings to gradually implement the Guideline order over a period of time, especially where support computed under the Guideline is considerably higher than the amount previously paid. Enough flexibility exists in the Guidelines to permit that approach, as long as the judge's rationale is explained with an entry such as:

"The Guideline's support represents an increase of 40%, and the court finds that such an abrupt change in support obligation would render the obligor incapable of meeting his/her other established obligations. Therefore, the Court sets support in the amount of \$\_\_\_\_\_ and, on October 1, 20\_\_\_\_, it shall increase to \$\_\_\_\_\_ and, on September 1, 20\_\_\_\_, obligor shall begin paying the Guideline amount of \$\_\_\_\_\_."

**2. Situations Calling for Deviation.** An infinite number of situations may prompt a judge to deviate from the Guideline amount. For illustration only, and not as a complete list, the following examples are offered:

- One or both parties pay union dues as a condition of employment.
- A party provides support for an elderly parent.

- *The noncustodial parent purchases school clothes.*
- *The noncustodial parent has extraordinary medical expenses for himself or herself.*
- *A parent is a member of the armed forces and the military provides housing.*
- *The obligor is still making periodic payments to a former spouse pursuant to a prior Dissolution Decree.*
- *One of the parties is required to travel an unusually long distance in the course of employment on a regular or daily basis and incurs an unusually large expense for such travel, and*
- *The custodial or noncustodial parent incurs significant travel expense in exercising parenting time.*

*Again, no attempt has been made to define every possible situation that could conceivably arise when determining child support and to prescribe a specific method of handling each of them. Practitioners must keep this in mind when advising clients and when arguing to the court. Many creative suggestions will undoubtedly result. Judges must also avoid the pitfall of blind adherence to the computation for support without giving careful consideration to the variables that require changing the result in order to do justice.*

## **GUIDELINE 2. USE OF THE GUIDELINES**

The Guideline Schedules provide calculated amounts of child support. For obligors with a combined weekly adjusted income, as defined by these Guidelines, of less than \$100.00, the Guidelines provide for case-by-case determination of child support. When a parent has extremely low income the amount of child support recommended by use of the Guidelines should be carefully scrutinized. The court should consider the obligor's income and living expenses to determine the maximum amount of child support that can reasonably be ordered without denying the obligor the means for self-support at a minimum subsistence level. A numeric amount of child support shall be ordered; however, there are situations where a \$0.00 support order is appropriate.

Temporary maintenance may be awarded by the court not to exceed thirty-five percent (35%) of the obligor's weekly adjusted income. In no case shall child support and temporary maintenance exceed fifty percent (50%) of the obligor's weekly adjusted income. Temporary maintenance and/or child support may be ordered by the court either in dollar payments or "in-kind" payments of obligations.

Federal law requires the Indiana Child Support Guidelines be applied in every instance in which child support is established including, but not limited to, dissolutions of marriage, legal separations, paternity actions, juvenile proceedings, petitions to establish support and Title IV D proceedings.

Indiana requires worksheets, including a Child Support Obligation Worksheet, to assist judges, practitioners, and parents in calculating the presumptive amount of child support under the Guidelines.

## **COMMENTARY**

**Minimum Support.** *The Guideline's schedules for weekly support payments do not provide an amount of support for couples with combined weekly adjusted income of less than \$100.00. Consequently, the Guidelines do not establish a minimum support obligation. Instead the facts of each individual case must be examined and support set in such a manner that the obligor is not denied a means of self-support at a subsistence level. For example, (1) a parent who has a high parenting time credit; (2) a parent who suffers from debilitating mental illness; (3) a parent caring for a disabled child; (4) an incarcerated parent; (5) a parent or a family member with a debilitating physical health issue; or, (6) a natural disaster are significant but not exclusive factors for the court to consider in setting a child support order. The court should not automatically attribute minimum wage to parents who, for a variety of factors, are not capable of earning minimum wage.*

*Where parents live together with the child and share expenses, a child support worksheet shall be completed and a \$0.00 order may be entered as a deviation.*

**Temporary Maintenance.** *It is recommended that temporary maintenance not exceed thirty-five percent (35%) of the obligor's weekly adjusted income. The maximum award should be reserved for those instances where the custodial spouse has no income or no means of support, taking into consideration that spouse's present living arrangement (i.e., whether or not he or she lives with someone who shares or bears the majority of the living expense, lives in the marital residence with little or no expense, lives in military housing, etc.).*

*It is further recommended that the total of temporary maintenance and child support should not exceed fifty percent (50%) of the obligor's weekly adjusted income. In computing temporary maintenance, in-kind payments, such as the payment of utilities, house payments, rent, etc., should also be included in calculating the percentage limitations. Care must also be taken to ensure that the obligor is not deprived of the ability to support himself or herself.*

**Spousal Maintenance.** *It should also be emphasized that the recommendations concerning maintenance apply only to temporary maintenance, not maintenance in the Final Decree. An award of spousal maintenance in the*

*Final Decree must, of course, be made in accordance with Indiana statute. These Guidelines do not alter those requirements. Theoretically, when setting temporary maintenance, child support should come first. That is, if child support is set at forty percent (40%) of the obligor's weekly adjusted income, only a maximum of ten percent (10%) of the obligor's income would be available for maintenance. That distinction, however, makes little practical difference. As with temporary maintenance, care should be taken to leave the obligor with adequate income for subsistence. In many instances the court will have to review the impact of taxes on the obligor's income before entering an order for spousal maintenance in addition to child support to avoid injustice to the obligor.*

*The worksheet provides a deduction for spousal maintenance paid (Line 1D). Caution should be taken to assure that any credit taken is for maintenance and not for periodic payments as the result of a property settlement. No such deduction is given for amounts paid by an obligor as the result of a property settlement, although that is a factor the court may wish to consider in determining the obligor's ability to pay the scheduled amount of support at the present time. Again, flexibility was intended throughout the Guidelines and they were not intended to place the obligor in a position where he or she loses all incentive to comply with the orders of the court.*

**Guidelines to be Applied in all Matters of Child Support.** *The Indiana Child Support Guidelines shall be applied in every instance in which child support is established including, but not limited to, dissolutions of marriage, legal separations, paternity actions, juvenile proceedings, petitions to establish support and Title IV-D proceedings.*

*The Indiana legislature requires the Indiana Child Support Guidelines be applied and the Child Support Worksheet be used in determining the manner in which financial services to children that are CHINS (Child in Need of Services) or delinquent are to be repaid. Similarly, the legislature requires the court to use the Guidelines to determine the financial contribution required from each parent of a child or the guardian of the child's estate for costs associated with the institutional placement of a child.*

### **GUIDELINE 3. DETERMINATION OF CHILD SUPPORT AMOUNT**

#### **A. Definition of Weekly Gross Income.**

**1. Definition of Weekly Gross Income (Line 1 of Worksheet).** For purposes of these Guidelines, "weekly gross income" is defined as actual weekly gross income of the parent if employed to full capacity, potential income if unemployed or underemployed, and the value of "in-kind" benefits received by the parent. Weekly gross income of each parent includes income from any source, except as excluded below, and includes, but is not limited to, income from salaries, wages, commissions, bonuses, overtime, partnership distributions, dividends, severance pay, pensions, interest, trust income, annuities, structured settlements, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, inheritance, prizes, and alimony or maintenance received.

Social Security disability benefits paid for the benefit of the child must be included in the disabled parent's gross income. The disabled parent is entitled to a credit for the amount of Social Security disability benefits paid for the benefit of the child.

Certain Exclusions from Income. Specifically excluded are benefits from means-tested public assistance programs, including, but not limited to, Temporary Aid to Needy Families (TANF), Supplemental Security Income, and Food Stamps. Also excluded are survivor benefits received by or for other children residing in either parent's home.

**2. Self-Employment, Business Expenses, In-Kind Payments and Related Issues.** Weekly Gross Income from self-employment, operation of a business, rent, and royalties is defined as gross receipts minus ordinary and necessary expenses. In general, these types of income and expenses from self-employment or operation of a business should be carefully reviewed to restrict the deductions to reasonable out-of-pocket expenditures necessary to produce income. These expenditures may include a reasonable yearly deduction for necessary capital expenditures. Weekly Gross Income from self-employment may differ from a determination of business income for tax purposes.

Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business should be counted as income if they are significant and reduce personal living expenses. Such payments might include a company car, free housing, or reimbursed meals.

The self-employed shall be permitted to deduct that portion of their FICA tax payment that exceeds the FICA tax that would be paid by an employee earning the same Weekly Gross Income.

**3. Unemployed, Underemployed and Potential Income.** If a court finds a parent is voluntarily unemployed or underemployed without just cause, child support shall be calculated based on a determination of potential income. A determination of potential income shall be made by determining employment potential and probable earnings

level based on the obligor's employment and earnings history, occupational qualifications, educational attainment, literacy, age, health, criminal record or other employment barriers, prevailing job opportunities, and earnings levels in the community. If there is no employment and earnings history and no higher education or vocational training, the facts of the case may indicate that Weekly Gross Income be set at least at the federal minimum wage level, provided the resulting child support amount is set in such a manner that the obligor is not denied a means of self-support at a subsistence level.

### **COMMENTARY TO GUIDELINE 3A**

#### **Weekly Gross Income.**

**1. Child Support Calculations Generally.** *Weekly Gross Income, potential income, weekly adjusted income and basic child support obligation have very specific and well-defined meanings within the Indiana Child Support Guidelines. Their definitions are not repeated in the Commentary, but further explanation follows.*

**2. Determination of Weekly Gross Income.** *Weekly Gross Income is the starting point in determining the child support obligation, and it must be calculated for both parents. If one or both parents have no income, then potential income may be calculated and used as Weekly Gross Income. Likewise, imputed income may be substituted for, or added to, other income in arriving at Weekly Gross Income. It includes such items as free housing, a company car that may be used for personal travel, and reimbursed meals or other items received by the obligor that reduce his or her living expenses.*

*The Child Support Obligation Worksheet does not include space to calculate Weekly Gross Income. It must be calculated separately and the result entered on the worksheet.*

*In calculating Weekly Gross Income, it is helpful to begin with total income from all sources. This figure may not be the same as gross income for tax purposes. Internal Revenue Code of 1986, § 61. Means-tested public assistance programs (those based on income) are excluded from the computation of Weekly Gross Income, but other government payments, such as Social Security benefits and veterans pensions/retired pay, should be included. However, survivor benefits paid to or for the benefit of their children are not included. In cases where a custodial parent is receiving, as a representative payee for a prior born child, Social Security survivor benefits because of the death of the prior born child's parent, the court should carefully consider Line 1 C of the basic child support obligation worksheet, Legal Duty of Support for Prior-born Children. Because the deceased parent's contribution for the support of the prior born child is being partially paid by Social Security survivor benefits that are excluded from Weekly Gross Income, the court should not enter, on Line 1C, an amount that represents 100% of the cost of support for the prior born child. The income of the spouses of the parties is not included in Weekly Gross Income.*

*A court may not consider the incarceration of a parent as voluntary unemployment and his or her potential income should not be assessed for the establishment or modification of child support. I.C. 31-16-8-1 (d).*

**a. Self-Employment, Rent and Royalty Income.** *Calculating Weekly Gross Income for the self-employed or for those who receive rent and royalty income presents unique problems, and calls for careful review of expenses. The principle involved is that actual expenses are deducted, and benefits that reduce living expenses (i.e. company cars, free lodging, reimbursed meals, etc.) should be included in whole or in part. It is intended that actual out-of-pocket expenditures for the self-employed, to the extent that they are reasonable and necessary for the production of income, be deducted. Reasonable deductions for capital expenditures may be included. While income tax returns may be helpful in arriving at Weekly Gross Income for a self-employed person, the deductions allowed by the Guidelines may differ significantly from those allowed for tax purposes.*

*The self-employed pay FICA tax at twice the rate that is paid by employees. At present rates, the self-employed pay fifteen and thirty one-hundredths percent (15.30%) of their gross income to a designated maximum, while employees pay seven and sixty-five one-hundredths percent (7.65%) to the same maximum. The self-employed are therefore permitted to deduct one-half of their FICA payment when calculating Weekly Gross Income.*

**b. Overtime, Commissions, Bonuses and Other Forms of Irregular Income.** *There are numerous forms of income that are irregular or nonguaranteed, which cause difficulty in accurately determining the gross income of a party. Overtime, commissions, bonuses, periodic partnership distributions, voluntary extra work and extra hours worked by a professional are all illustrations, but far from an all-inclusive list, of such items. Each is includable in the total income approach taken by the Guidelines, but each is also very fact sensitive.*

*Each of the above items is sensitive to downturns in the economy. The fact that overtime, for example, has been consistent for three (3) years does not guarantee that it will continue in a poor economy. Further, it is not the intent of the Guidelines to require a party who has worked sixty (60) hour weeks to continue doing so indefinitely just to meet a support obligation that is based on that higher level of earnings. Care should be taken to set support based on dependable income, while at the same time providing children with the support to which they are entitled.*

*When the court determines that it is not appropriate to include irregular income in the determination of the child support obligation, the court should express its reasons. When the court determines that it is appropriate to*

include irregular income, an equitable method of treating such income may be to require the obligor to pay a fixed percentage of overtime, bonuses, etc., in child support on a periodic but predetermined basis (weekly, bi-weekly, monthly, quarterly) rather than by the process of determining the average of the irregular income by past history and including it in the obligor's gross income calculation.

One method of treating irregular income is to determine the ratio of the basic child support obligation (line 4 of the worksheet) to the combined weekly adjusted income (line 3 of the worksheet) and apply this ratio to the irregular income during a fixed period. For example, if the basic obligation was \$110.00 and the combined income was \$650.00, the ratio would be .169 ( $\$110.00 / \$650.00$ ). The order of the court would then require the obligor to make a lump sum payment of .169 of the obligor's irregular income received during the fixed period.

The use of this ratio will not result in an exact calculation of support paid on a weekly basis. It will result in an overstatement of the additional support due, and particularly so when average irregular income exceeds \$250.00 per week or exceeds 75% of the regular adjusted Weekly Gross Income. In these latter cases the obligor may seek to have the irregular income calculation redetermined by the court.

Another form of irregular income may exist when an obligor takes a part-time job for the purpose of meeting financial obligations arising from a subsequent marriage, or other circumstances. Modification of the support order to include this income or any portion of it may require that the obligor continue with that employment just to meet an increased support obligation, resulting in a disincentive to work.

Judges and practitioners should be innovative in finding ways to include income that would have benefited the family had it remained intact, but be receptive to deviations where reasons justify them. The foregoing discussion should not be interpreted to exclude consideration of irregular income of the custodial parent.

**c. Potential Income.** Potential income may be determined if a parent has no income, or only means-tested income, and is capable of earning income or capable of earning more. Obviously, a great deal of discretion will have to be used in this determination. One purpose of potential income is to discourage a parent from taking a lower paying job to avoid the payment of significant support. Another purpose is to fairly allocate the support obligation when one parent remarries and, because of the income of the new spouse, chooses not to be employed. However, attributing potential income that results in an unrealistic child support obligation may cause the accumulation of an excessive arrearage, and be contrary to the best interests of the child(ren). Research shows that on average more noncustodial parental involvement is associated with greater child educational attainment and lower juvenile delinquency. Ordering support for low-income parents at levels they can reasonably pay may improve noncustodial parent-child contact; and in turn, the outcomes for their children. The six examples which follow illustrate some of the considerations affecting attributing potential income to an unemployed or underemployed parent.

(1) When a custodial parent with young children at home has no significant skills or education and is unemployed, he or she may not be capable of entering the work force and earning enough to even cover the cost of child care. Hence, it may be inappropriate to attribute any potential income to that parent. It is not the intention of the Guidelines to force all custodial parents into the work force. Therefore, discretion must be exercised on an individual case basis to determine if it is fair under the circumstances to attribute potential income to a particular nonworking or underemployed custodial parent. The need for a custodial parent to contribute to the financial support of a child must be carefully balanced against the need for the parent's full-time presence in the home.

(2) When a parent has some history of working and is capable of entering the work force, but without just cause voluntarily fails or refuses to work or to be employed in a capacity in keeping with his or her capabilities, such a parent's potential income shall be included in the gross income of that parent. The amount to be attributed as potential income in such a case may be the amount that the evidence demonstrates he or she was capable of earning in the past. If for example the custodial parent had been a nurse or a licensed engineer, it may be unreasonable to determine his or her potential at the minimum wage level. Discretion must be exercised on an individual case basis to determine whether under the circumstances there is just cause to attribute potential income to a particular unemployed or underemployed parent.

(3) Even though an unemployed parent has never worked before, potential income should be considered for that parent if he or she voluntarily remains unemployed without justification. Absent any other evidence of potential earnings of such a parent, the federal minimum wage should be used in calculating potential income for that parent. However, the court should not add child care expense that is not actually incurred.

(4) When a parent is unemployed by reason of involuntary layoff or job termination, it still may be appropriate to include an amount in gross income representing that parent's potential income. If the involuntary layoff can be reasonably expected to be brief, potential income should be used at or near that parent's historical earning level. If the involuntary layoff will be extensive in duration, potential income may be determined based upon



such factors as the parent's unemployment compensation, job capabilities, education and whether other employment is available. Potential income equivalent to the federal minimum wage may be attributed to that parent.

(5) When a parent is unable to obtain employment because that parent suffers from debilitating mental illness, a debilitating health issue, or is caring for a disabled child, it may be inappropriate to attribute any potential income to that parent.

(6) When a parent is incarcerated and has no assets or other source of income, potential income should not be attributed.

**d. In-Kind Benefits.** Whether or not the value of in-kind benefits should be included in a parent's weekly gross income is fact-sensitive and requires careful consideration of the evidence in each case. It may be inappropriate to include as gross income occasional gifts received. However, regular and continuing payments made by a family member, subsequent spouse, roommate or live in friend that reduce the parent's costs for housing, utilities, or groceries, may be included as gross income. If there were specific living expenses being paid by a parent which are now being regularly and continually paid by that parent's current spouse or a third party, the value of those assumed expenses may be considered to be in-kind benefits and included as part of the parent's weekly gross income. The marriage of a parent to a spouse with sufficient affluence to obviate the necessity for the parent to work may give rise to a situation where either potential income or the value of in-kind benefits or both should be considered in arriving at gross income.

**e. Return from Individual Retirement Accounts and other retirement plans.** The annual return of an IRA, 401(K) or other retirement plan that is automatically reinvested does not constitute income. Where previous withdrawals from the IRA or 401(K) have been made to fund the parent's lifestyle choices or living expenses, these withdrawals may be considered "actual income" when calculating the parent's child support obligation. The withdrawals must have been received by the parent and immediately available for his or her use. The court should consider whether the early withdrawal was used to reduce the parent's current living expenses, whether it was utilized to satisfy on-going financial obligations, and whether the sums are immediately available to the parent. This is a fact-sensitive situation. Retirement funds which were in existence at the time of a dissolution and which were the subject of the property division would not be considered "income" when calculating child support.

## **B. Income Verification.**

**1. Submitting Worksheet to Court.** In all cases, a copy of the worksheet which accompanies these Guidelines shall be completed and filed with the court when the court is asked to order support. This includes cases in which agreed orders are submitted. Worksheets shall be signed by both parties, not their counsel, under penalties for perjury.

**2. Documenting Income.** Income statements of the parents shall be verified with documentation of both current and past income. Suitable documentation of current earnings includes paystubs, employer statements, or receipts and expenses if self-employed. Documentation of income may be supplemented with copies of tax returns.

### **COMMENTARY TO GUIDELINE 3B**

#### **Worksheet Documentation.**

**1. Worksheet Requirement.** Submission of the worksheet became a requirement in 1989 when use of the Guidelines became mandatory. The Family Support Act of 1988 requires that a written finding be made when establishing support. In Indiana, this is accomplished by submission of a child support worksheet. The worksheet memorializes the basis upon which the support order is established. Failure to submit a completed child support worksheet may, in the court's discretion, result in the court refusing to approve a child support order or result in a continuance of a hearing regarding child support until a completed worksheet is provided. At subsequent modification hearings the court will then have the ability to accurately determine the income claimed by each party at the time of the prior hearing.

If the parties disagree on their respective gross incomes, the court shall include in its order the gross income it determines for each party. When the court deviates from the Guideline amount, the order or decree should also include the reason or reasons for deviation. This information becomes the starting point to determine whether or not a substantial and continuing change of circumstance occurs in the future.

**2. Verification of Income.** The requirement of income verification is not a change in the law but merely a suggestion to judges that they take care in determining the income of each party. One pay stub standing alone can be very misleading, as can other forms of documentation. This is particularly true for salesmen, professionals and others who receive commissions or bonuses, or others who have the ability to defer payments, thereby distorting the true picture of their income in the short term. When in doubt, it is suggested that income tax returns for the last two or three

years be reviewed.

### C. Computation of Weekly Adjusted Income (Line 1E of Worksheet).

After Weekly Gross Income is determined, certain reductions are allowed in computing weekly adjusted income which is the amount on which child support is based. These reductions are specified below.

**1. Adjustment for Subsequent-born or Legally Adopted Child(ren) (Line 1A of Worksheet).** There shall be an adjustment to Weekly Gross Income of parents who have a legal duty or court order to support children (1) born or legally adopted subsequent to the birthdate(s) of the child(ren) subject of the child support order and (2) that parent is actually meeting or paying that obligation.

**2. Court Orders for Prior-born Child(ren) (Line 1B of Worksheet).** The amount(s) of any court order(s) for child support for prior-born children shall be deducted from Weekly Gross Income. This should include court ordered post-secondary education expenses calculated on an annual basis divided by 52 weeks. A credit shall not be given for any portion of the order addressing arrearages.

**3. Legal Duty of Support for Prior-born Child(ren) When No Court Order Exists (Line 1C of Worksheet).** Where a party has a legal duty to financially support children born prior to the child(ren) for whom support is being established, and no court order exists, an amount reasonably necessary for such support actually paid, or funds actually spent shall be deducted from weekly gross income to arrive at weekly adjusted income. This deduction is not allowed for step-children.

**4. Alimony or Maintenance (Line 1D of Worksheet).** The amount(s) of alimony ordered in decrees from foreign jurisdictions or maintenance should be deducted from Weekly Gross Income.

#### COMMENTARY TO GUIDELINE 3C

**Determining Weekly Adjusted Income.** After Weekly Gross Income is determined, the next step is to compute weekly adjusted income (Line 1E of the Worksheet). Certain deductions, discussed below, are allowed from Weekly Gross Income in arriving at weekly adjusted income.

**1. Adjustment of Weekly Gross Income for Subsequent-born or Legally Adopted Child(ren).** The adjustment should be computed as follows:

*STEP 1: Determine the number of children born or legally adopted by the parents subsequent to the birthdate(s) of the child(ren) subject of the child support order and for whom the parent has a legal duty or court order to support. The parent seeking the adjustment has the burden to prove the support is actually paid if the subsequent child does not live in the respective parent's household.*

*STEP 2: Calculate the subsequent child credit by multiplying the parent's Weekly Gross Income by the appropriate factor listed in the table below and enter the product on Line 1A on the Worksheet.*

Appropriate factors are:

1	Subsequent child	.065
2	Subsequent children	.097
3	Subsequent children	.122
4	Subsequent children	.137
5	Subsequent children	.146
6	Subsequent children	.155
7	Subsequent children	.164
8	Subsequent children	.173

**EXAMPLE:** A noncustodial parent has a Weekly Gross Income, before adjustment, of \$500.00. The custodial parent has a Weekly Gross Income, before adjustment, of \$300.00. An adjustment shall be made to the parents' respective Weekly Gross Incomes for the two (2) children born to the noncustodial parent after the birthdate(s) of the child(ren) subject of the child support order and the one (1) adopted child of the custodial parent, legally adopted after the birthdate(s) of the child(ren) subject of the child support order. The respective subsequent child adjustment to be entered on Line 1A of the Worksheet would be as follows:

Noncustodial.....\$500.00 x .097 = \$48.50 adjustment

Custodial.....\$300.00 x .065 = \$19.50 adjustment

**2. Court Orders for Prior born Child(ren).** *The party seeking the adjustment for the court ordered child support obligation bears the burden of establishing the actual existence of the order and the amount of the order.*

**3. Legal Duty to Support for Prior-born Child(ren) When No Court Order Exists.**

*A. Prior Born Child(ren) Not in the Home. A deduction is allowed for reasonably necessary support actually paid, or funds actually spent, for the child(ren) born prior to the child(ren) for whom support is being established. This is true even though that obligation has not been reduced to a court order. The party seeking the deduction bears the burden of proving the obligation and satisfaction of the obligation.*

*The court may consider evidence of those funds paid or routinely spent on behalf of the prior born child(ren).*

*For example, paternity of the prior born child was established by execution of a paternity affidavit and the parents lived together for the first two years of the child's life. The parties then separated and negotiated an agreement for the ongoing financial support of the child, without seeking a court order. Father has routinely paid \$50 per week to the mother of his prior born child and has evidence to support those payments.*

*B. Prior Born Child(ren) In the Home. A parent should be permitted to deduct his or her portion of the support obligation for prior born children living in his or her home. It is recommended that these guidelines be used to compute a deduction from weekly gross income.*

*i. Incomes of Both Parents Known: If the actual incomes of both parents of the prior born child(ren) are known, then the actual incomes should be utilized in calculating the basic child support obligation for the prior born child(ren). In order to determine the adjustment to be applied, use the Indiana Child Support Guideline Schedules for Weekly Support Payments. The percentage share of the basic child support obligation attributable to the parent seeking the adjustment should be considered the legal duty of support for the prior born child(ren) and the amount placed in Line 1.C., Child Support Obligation Worksheet.*

*ii. Income of a Parent Unknown: If actual income information for a parent of the prior-born child(ren) is unknown, the court should utilize the known income of the parent seeking the adjustment for the legal duty to support the prior born child(ren) and attribute zero (\$0.00) income to the other parent. In order to determine the adjustment to be applied, use the Indiana Child Support Guideline Schedules for Weekly Support Payments as the amount placed in Line 1.C., Child Support Obligation Worksheet.*

*If the parent seeking the adjustment has prior born children with different non-custodial parents whose incomes are unknown, the basic child support obligation shall be calculated as if the prior born children have the same noncustodial parent and the adjustment for those prior born children shall be attributed as a single legal duty, rather than the total of two or more separate and distinct legal duties.*

*a. For example, the gross weekly income of the parent seeking the adjustment is \$400.00 and there is one prior born child in the home. The gross weekly income for the other parent of the prior born child is unknown. The other parent's gross weekly income would be set at \$0.00 to determine the legal duty to support that prior born child. The legal duty to support that prior born child for the parent seeking the adjustment would be \$79.00 from the Guideline Schedules for Weekly Support Payments.*

*b. For example, the gross weekly income of the parent seeking the adjustment is \$400.00 and there are two prior born children in the home with different parents. The gross weekly incomes for those other parents of the prior born children are unknown. Those other parents' gross weekly incomes would be set at \$0.00 to determine the legal duty to support those prior born children. The legal duty to support those two prior born children for the parent seeking the adjustment would be \$119.00 from the Guideline Schedules for Weekly Support Payments.*

**4. Alimony or Maintenance.** *The final allowable deduction from Weekly Gross Income in arriving at weekly adjusted income is for alimony ordered in decrees from foreign jurisdictions or spousal maintenance. These amounts are allowable only if they arise as the result of a court order. This deduction is intended only for spousal maintenance, not for periodic payments from a property settlement although the court may consider periodic payments when determining whether or not to deviate from the guideline amount when ordering support. Refer to the discussion of temporary maintenance earlier in this commentary. (Line 1D of Worksheet).*

**D. Basic Child Support Obligation (Worksheet Line 4).**

The Basic Child Support Obligation should be determined using the attached Guideline Schedules for Weekly Support Payments. For combined weekly adjusted income amounts falling between amounts shown in the schedule, basic child support amounts should be rounded to the nearest amount. The number of children refers to children for whom the parents share joint legal responsibility and for whom support is being sought, excluding children for whom Section Two of the Post-Secondary Education Worksheet is used to determine support.

### **COMMENTARY TO GUIDELINE 3D**

#### ***Use of Guideline Schedules.***

***Combined Weekly Adjusted Income.*** After reducing Weekly Gross Income by the deductions allowed above, weekly adjusted income is computed. The next step is to add the weekly adjusted income of both parties and take the combined weekly adjusted income to the Guideline schedules for weekly support payments. In selecting the appropriate column for the determination of the basic child support obligation, it should be remembered that the number of children refers only to the number of children of this marriage for whom support is being computed, excluding children for whom a Post-Secondary Education Worksheet is used to determine support.

#### **E. Additions to the Basic Child Support Obligation.**

***1. Work-Related Child Care Expense (Worksheet Line 4A).*** Child care costs incurred due to employment or job search of both parent(s) should be added to the basic obligation. It includes the separate cost of a sitter, day care, or like care of a child or children while the parent works or actively seeks employment. Such child care costs must be reasonable and should not exceed the level required to provide quality care for the children. Continuity of child care should be considered. Child care costs required for active job searches are allowable on the same basis as costs required in connection with employment.

The parent who contracts for the child care shall be responsible for the payment to the provider of the child care. For the purpose of designating this expense on the Child Support Obligation Worksheet (Line 4A), each parent's expense shall be calculated on an annual basis divided by 52 weeks. The combined amount shall be added to the Basic Child Support Obligation and each parent shall receive a credit equal to the expense incurred by that parent as an Adjustment (Line 7 of the Worksheet).

When potential income is attributed to a party, the court should not also attribute work-related child care expense which is not actually incurred.

***2. Cost of Health Insurance for Child(ren) (Worksheet Line 4B).*** The weekly cost of health insurance premiums for the child(ren) should be added to the basic obligation whenever either parent actually incurs the premium expense or a portion of such expense. (Please refer to Guideline 7 for additional information regarding the treatment of Health Care Expenses)

***3. Extraordinary Health Care Expense.*** Please refer to Support Guideline 7 for treatment of this issue.

***4. Extraordinary Educational Expense.*** Please refer to Support Guideline 8 for treatment of this issue.

### **COMMENTARY TO GUIDELINE 3E**

#### ***Additions to the Basic Child Support Obligation.***

***1. Work-Related Child Care Expense (Worksheet Line 4A).*** One of the additions to the basic child support obligation is a reasonable child care expense incurred due to employment, or an attempt to find employment. This amount is added to the basic child support obligation in arriving at the total child support obligation.

*Work-related child care expense is an income-producing expense of the parent. Presumably, if the family remained intact, the parents would treat child care as a necessary cost of the family attributable to the children when both parents work. Therefore, the expense is one that is incurred for the benefit of the child(ren) which the parents should share.*

*In circumstances where a parent claims the work-related child care credit for tax purposes, it would be appropriate to reduce the amount claimed as work-related child care expense by the amount of tax saving to the parent. The exact amount of the credit may not be known at the time support is set, but counsel should be able to make a rough calculation as to its effect.*

*When potential income is attributed to a party, the court should not also attribute a work-related child care expense which is not actually incurred because this expense is highly speculative and difficult to adequately verify.*

***2. Cost of Health Insurance for Child(ren) (Worksheet Line 4B).*** The weekly out of pocket costs of

health insurance premiums only for the child(ren) should be added to the basic obligation so as to apportion that cost between the parents. The parent who actually pays that cost then receives a credit towards his or her child support obligation on Line 7 of the Worksheet. (See Support Guideline 3G, Adjustments to Parent's Child Support Obligation). Only that portion of the cost actually paid by a parent is added to the basic obligation. If coverage is provided without cost to the parent(s), then zero should be entered as the amount. If health insurance coverage is provided through an employer or purchased through the private market, only the child(ren)'s portion should be added. If the insurance is eligible for a federal tax credit, the amount of the credit should be subtracted from the premiums paid by the parent. In determining the amount to be added, only the amount of the insurance cost attributable to the child(ren) subject of the child support order shall be included, such as the difference between the cost of insuring a single party versus the cost of family coverage. In circumstances where coverage is applicable to persons other than the child(ren) subject of the child support order, such as other child(ren) and/or a subsequent spouse, the total cost of the insurance premium shall be prorated by the number of persons covered to determine a per person cost.

**3. Total Child Support Obligation (Worksheet Line 5).** Adding work-related child care costs, and the weekly cost of health insurance premiums for the child(ren) to the basic child support obligation results in a figure called Total Child Support Obligation. This is the basic obligation of both parents for the support of the child(ren) of the marriage, or approximately what it would cost to support the child(ren) in an intact household, excluding extraordinary health care and/or extraordinary education expenses.

#### **F. Computation of Parent's Child Support Obligation (Worksheet Line 6).**

Each parent's child support obligation is determined by multiplying his or her percentage share of total weekly adjusted income (Worksheet Line 2) times the Total Child Support Obligation (Worksheet Line 5).

**1. Division of Obligation Between Parents (Worksheet Line 6).** The total child support obligation is divided between the parents in proportion to their weekly adjusted income. A monetary obligation is computed for each parent. The custodial parent's share is presumed to be spent directly on the child. When there is near equal parenting time, and the custodial parent has significantly higher income than the noncustodial parent, application of the parenting time credit should result in an order for the child support to be paid from a custodial parent to a noncustodial parent, absent grounds for a deviation.

**2. Deviation from Guideline Amount.** If, after consideration of the factors contained in IC 31-16-6-1 and IC 31-16-6-2, the court finds that the Guideline amount is unjust or inappropriate in a particular case, the court shall state a factual basis for the deviation and proceed to enter a support amount that is deemed appropriate.

#### **COMMENTARY TO GUIDELINE 3F**

##### **Computation of Child Support.**

**1. Apportionment of Support Between Parents.** After the total child support obligation is determined, it is necessary to apportion that obligation between the parents based on their respective weekly adjusted incomes. First, a percentage is formed by dividing the weekly adjusted income of each parent by the total weekly adjusted income (Line 1E of the Worksheet). The percentages are entered on Line 2 of the Worksheet. The total child support obligation is then multiplied by the percentages on Line 2 (the percentage of total weekly adjusted income that the weekly adjusted income of each parent represents) and the resulting figure is the child support obligation of each parent. The noncustodial parent is ordered to pay his or her proportionate share of support as calculated on Line 6 of the Worksheet. Custodial parents are presumed to be meeting their obligations by direct expenditures on behalf of the child, so a support order is not entered against the custodial parent.

**2. Apportionment of Support When Incapacitated Adult Child has Earned Income.** Under certain circumstances the earned income of a child may be considered in apportioning support. In calculating a support obligation with respect to an incapacitated adult child with earned income, the support obligation may be determined by apportioning the support based upon the relative amount earned by the parents and the child.

**3. Deviation from Guideline Amount.** If the court determines that the Guideline amount is unjust, inappropriate, or denies the obligor a means of self-support at a subsistence level, a written finding shall be made setting forth the factual basis for deviation from the Guideline amount. A simple finding such as the following is sufficient: "The court finds that the presumptive amount of support calculated under the Guidelines has been rebutted for the following reasons." A pro forma finding that the Guidelines are not appropriate does not satisfy the requirement for a specific finding of inappropriateness in a particular case, which is required in an order to deviate from the Guideline amount. For further discussion of deviation from the Guideline amount, see also the Commentary to Support Guideline 1.

## **G. Adjustments to Parent's Child Support Obligation (Worksheet Line 7).**

The parent's child support obligation (Worksheet Line 7) may be subject to four (4) adjustments.

**1. Obligation from Post-Secondary Education Worksheet.** If the parents have a child who is living away from home while attending school, his or her child support obligation will reflect the adjustment found on Line J of the Post-Secondary Education Worksheet (See Support Guideline 8).

**2. Weekly Cost of Work-related Child Care Expenses.** A parent who pays a weekly child care expense should receive a credit towards his or her child support obligation. This credit is entered on the space provided on the Worksheet Line 7. The total credits claimed by the parents must equal the total amount on Line 4A. (See Support Guideline 3E Commentary).

**3. Weekly Cost of Health Insurance Premiums for Child(ren).** The parent who pays the weekly premium cost for the child(ren)'s health insurance should receive a credit towards his or her child support obligation in most circumstances. This credit is entered on the space provided on the Worksheet Line 7 and will be in an amount equal to that entered on the Worksheet Line 4B (See Support Guideline 3E Commentary).

**4. Parenting Time Credit.** The court should grant a credit toward the total amount of calculated child support for either "duplicated" or "transferred" expenses incurred by the noncustodial parent. The proper allocation of these expenses between the parents shall be based on the calculation from a Parenting Time Credit Worksheet. (See Support Guideline 6 Commentary).

### **5. Effect of Social Security Benefits.**

#### **a. Current Support Obligation**

1. Custodial parent: Social Security benefits received for a child based upon the disability of the custodial parent are not a credit toward the child support obligation of the noncustodial parent. The amount of the benefit is included in the custodial parent's income for the purpose of calculating the child support obligation, and the benefit is also a credit toward the custodial parent's child support obligation.
2. Noncustodial parent: Social Security benefits received by a custodial parent, as representative payee of the child, based upon the earnings or disability of the noncustodial parent shall be considered as a credit to satisfy the noncustodial parent's child support obligation as follows:
  - i. Social Security Retirement benefits may, at the court's discretion, be credited to the noncustodial parent's current child support obligation. The credit is not automatic. The presence of Social Security Retirement benefits is merely one factor for the court to consider in determining the child support obligation or modification of the obligation. Stultz v. Stultz, 659 N.E.2d 125 (Ind. 1995).
  - ii. Social Security Disability benefits shall be included in the Weekly Gross Income of the noncustodial parent and applied as a credit to the noncustodial parent's current child support obligation. The credit is automatic.
  - iii. Any portion of the benefit that exceeds the child support obligation shall be considered a gratuity for the benefit of the child(ren), unless there is an arrearage.
3. The filing of a petition to modify on grounds a Social Security Disability determination has been requested will not relieve the parent's obligation to pay the current support order while the disability application is pending. Filing of the petition to modify support may entitle the noncustodial parent to a retroactive reduction in support to the date of filing of the petition for modification and not the date of filing for the benefits. If the modification of support is granted, any lump sum payment of retroactive Social Security Disability benefits paid shall be credited toward the modified support obligation.

#### **b. Arrearages**

1. Credit for retroactive lump sum payment. A lump sum payment of retroactive Social Security Disability benefits shall be applied as a credit against an existing child support arrearage if the custodial parent, as representative payee, received a lump sum retroactive payment, without the requirement of a filing of a Petition to Modify Child Support. However, no credit should be allowed under the following circumstances:
  - i. A custodial parent should never be required to pay restitution to a disabled noncustodial parent for lump sum retroactive Social Security Disability benefits which exceed the amount of "court-ordered" child support. Any portion of lump sum payments of retroactive Social Security Disability benefits paid to children not credited against the existing child support arrearage is properly treated as a gratuity to the children. No credit toward future support should be granted.

- ii. No credit shall be given for a lump sum disability payment paid directly to a child who is over the age of eighteen (18). The dependency benefits paid directly to a child who has reached the age of majority under the Social Security law, rather than to the custodial parent, as representative payee, do not fulfill the obligations of court-ordered child support.
2. Application of current Social Security Disability benefits. The amount of the benefit which exceeds the child support order may be treated as an ongoing credit toward an existing arrearage.
3. In Title IV-D cases there is no credit toward the monies owed to the State of Indiana unless the retroactive benefit is actually paid to the State of Indiana. The child's Social Security benefits received and used by the custodial parent will not reduce or be credited against the noncustodial parent's obligation to reimburse the State of Indiana for Title IV-A or Title IV-E benefits previously paid on behalf of the children.
4. Modification. The award of Social Security Disability benefits retroactive to a specific date does not modify a noncustodial parent's child support obligation to the same date. The noncustodial parent's duty to pay support cannot be retroactively modified earlier than the filing date of a petition to modify child support. IC 31-16-16-6.

### **COMMENTARY TO GUIDELINE 3G**

***It is important to remember the amount of the child's Social Security benefits that exceed the current child support order will not be reflected in ISETS as a credit toward an existing arrearage unless specified in the court order. Unless the credit is recognized in ISETS, there is a chance that an arrearage notice may be issued administratively and sanctions could be entered on that arrearage.***

*Social Security benefits paid to a parent for the benefit of a minor child are included in the disabled parent's Gross Weekly Income for purposes of determining child support regardless of which parent actually receives the payment. (See Guideline 3A). This section, 3G and its commentary, address adjustments to the recommended child support obligation. Although Social Security benefits are not reflected on Line 7 of the child support Worksheet, the benefit should be considered, and its effect and application shall be included in the written order for support of that child.*

*The Guidelines make no change in the law regarding an adjustment for Social Security Retirement benefits or Supplemental Security Income (SSI). The court has discretion to allow an adjustment to a parent's child support obligation based on the amount of Social Security Retirement benefits paid for the benefit of the child due to that parent's retirement. The retirement benefit is merely one of the factors that the court should consider when making an adjustment to the child support obligation. SSI is a means-tested program and the benefit is not included in either parent's gross income. It therefore should not be considered an adjustment to either parent's child support obligation.*

*In Brown v. Brown, 849 N.E.2d 610 (Ind. 2006), Social Security Disability (SSD) benefits paid to a child were clearly recognized as earnings of the disabled parent. Id. at 614. Social Security Disability benefits paid for a child are recognized as income of the disabled parent who earned the benefits and those benefits are included in the Weekly Gross Income of that parent. See Guideline 3A. It follows then that the payment received for the benefit of the child should be applied to satisfy the disabled parent's support obligation. The child support order should state that the SSD benefit received for the child is credited as payment toward the support obligation. Any portion of the SSD benefit in excess of the current support obligation is a gratuity, unless there is an arrearage.*

*The language in Guideline 3.G.5.b.2. directs that the excess SSD benefit may be applied as payment toward an existing arrearage. Once the arrearage is satisfied, any portion of the SSD benefit that exceeds the current support obligation is considered a gratuity. The Guidelines also change the application of a lump sum SSD payment. SSD is, by definition, a substitution for a person's income lost due to a recognized disability. Further, under the Social Security Act, that individual may be entitled to a lump sum benefit retroactive to the date that his or her disability occurred and that caused the disruption in earnings. This lump sum payment is unique to SSD. The Guidelines now allow the courts to apply the lump sum SSD benefits toward an existing child support arrearage if the custodial parent, as representative payee, receives a lump sum payment. This credit is appropriate without the requirement of a filing of a Petition to Modify Child Support.*

*The Guidelines change the law regarding the application of SSD benefits. The holding in Hieston v. State, 885 N.E.2d 59 (Ind. Ct. App. 2008) and its progeny has been superseded by this change. The rationale is that the lump sum payment is merely a method of payment applied to a past support obligation not paid. The distinction is between modification of support which changes the rate of support, e.g. from \$100.00 per week to \$50.00 per week, as opposed to credit for an indirect payment. Modification of a child support obligation still requires the filing of a petition for modification as set forth in Guideline 4.*

*The lump sum payment is a method of payment that may not be specifically authorized by express court order but which should be recognized as a payment of support. Indiana case law establishes that credit can be allowed for*

payments that do not technically conform to the original support decree. For example, where the obligated parent makes payments directly to the custodial parent rather than through the clerk of the court, the Supreme Court has recognized these payments when there was sufficient proof to convince a trier of fact that the required payments were actually made. *O'Neil v. O'Neil*, 535 N.E.2d 523 (Ind. 1989), *Nill v. Martin*, 686 N.E.2d 116 (Ind. 1997). Proof of the lump sum SSD benefit payment is not difficult because the Social Security award certificate is a record easily admitted into evidence as an exception to the hearsay rule under IRE 803(6) and (8) (reports of a public agency setting forth its regularly recorded activity) and trial courts are rarely burdened with an evidentiary dispute about what was paid, when or to whom, once the Social Security records are shared. By contrast, the informal arrangement disputes between parties to modify and reduce the actual amount of weekly support below that ordered in the divorce decree are actual attempts to retroactively modify the amount of support, which are prohibited. Similar to the nonconforming payment, the lump sum payment shall be applied as a credit to an existing child support arrearage.

If there is no child support arrearage, the lump sum payment is considered gratuity. As long as there is an existing support order, there should never be an order entered that requires any excess payment of SSD or the lump sum payment to be paid back to the disabled parent.

The Guidelines exclude from the parent's Weekly Gross Income any survivor benefits received by or for other children residing in either parent's home based on the Social Security death benefits of a deceased parent of a prior-born child. See Commentary to Guideline 3(A).

#### **GUIDELINE 4. MODIFICATION**

The provisions of a child support order may be modified only if there is a substantial and continuing change of circumstances which makes the present order unreasonable or the amount of support ordered at least twelve (12) months earlier differs from the Guideline amount presently computed by more than twenty percent (20%).

#### **COMMENTARY**

**Substantial and Continuing Change of Circumstances.** A change in circumstances may include the incarceration of a parent, a change in the income of the parents, the application of a parenting plan, the failure to comply with a parenting plan, or a change in the expense of child rearing specifically considered in the Guidelines.

If the amount of support computed at the time of modification is significantly higher or significantly lower than that previously ordered and would require a drastic reduction in a parent's standard of living, consideration may be given to phasing in the change in support. This approach would allow the parent affected by the change time to make adjustments in his or her standard of living. Again, it is not the intent of the Guidelines to drive the parents into noncompliance by reducing their spendable income below subsistence level.

**Retroactive Modification.** The modification of a support obligation may only relate back to the date the petition to modify was filed, and not an earlier date, subject to two exceptions: (1) when the parties have agreed to and carried out an alternative method of payment which substantially complies with the spirit of the decree; or (2) the obligated parent takes the child into the obligated parent's home and assumes custody, provides necessities, and exercises parental control for a period of time that a permanent change of custody is exercised.

**Emancipation: Support Orders for Two or More Children.** In child support orders issued under these Guidelines, support amounts for two or more children, are stated as an in gross or total amount rather than on a per child basis. Absent judicial modification of the order, the total obligation will not decrease when the oldest child reaches nineteen (19) years of age, or the child is emancipated after the occurrence of other events. Parents should seek to modify child support orders when the legal obligation to pay child support terminates for any child or any child is emancipated. See Ind. Code § 31-16-6-6.

The concept of a pro rata delineation of support is generally inconsistent with the economic policy underlying the Guidelines (See "Economic Data Used in Developing Guidelines" in "Commentary" to Support Guideline 1). That policy recognizes that the amount of support required for two children is about 1.5 times that required to support one child. The multiplication factor decreases as the number of children increases. If support were reduced by one half when the first of two children was emancipated, the remaining amount of support would be significantly below the Guideline amount for one child at the same parental income levels.

Parents should seek to modify or terminate a support order when a child(ren) becomes emancipated under Indiana law.

#### **GUIDELINE 5. FEDERAL STATUTES**

These Guidelines have been drafted in an attempt to comply with, and should be construed to conform with



applicable federal statutes.

### COMMENTARY

*Every attempt was made to draft Guidelines for the State of Indiana that would comply with applicable federal statutes and regulations. Likewise, careful attention was paid to state law.*

### GUIDELINE 6. PARENTING TIME CREDIT

A credit should be awarded for the number of overnights each year that the child(ren) spend with the noncustodial parent.

### COMMENTARY

**Analysis of Support Guidelines.** *The Indiana Child Support Guidelines are based on the assumption the child(ren) live in one household with primary physical custody in one parent who undertakes all of the spending on behalf of the child(ren). There is a rebuttable presumption the support calculated from the Guideline support schedule is the correct amount of weekly child support to be awarded. The total amount of the anticipated average weekly spending is the Basic Child Support Obligation (Line 4 of the Worksheet).*

*The Guideline support schedules do not reflect the fact, however, when both parents exercise parenting time, out-of-pocket expenses will be incurred for the child(ren)'s care. These expenses were recognized previously by the application of a 10% visitation credit and a 50% abatement of child support during periods of extended visitation. The visitation credit was based on the regular exercise of alternate weekend visitation which is equivalent to approximately 14% of the annual overnights. With the adoption of the Indiana Parenting Time Guidelines, the noncustodial parent's share of parenting time, if exercised, is equivalent to approximately 27% of the annual overnights. As a result, these revisions provide a parenting credit based upon the number of overnights with the noncustodial parent ranging from 52 overnights annually to equal parenting time. As parenting time increases, a proportionally larger increase in the credit will occur.*

**Analysis of Parenting Time Costs.** *An examination of the costs associated with the sharing of parenting time reveals two types of expenses are incurred by both parents, transferred and duplicated expenses. A third category of expenses is controlled expenses, such as the 6% uninsured health care expense that remains the sole obligation of the parent for whom the parenting time credit is not calculated. This latter category is assumed to be equal to 15% of the Basic Child Support Obligation.*

**Transferred Expenses.** *This type of expense is incurred only when the child(ren) reside(s) with a parent and these expenses are "transferred" with the child(ren) as they move from one parent's residence to the other. Examples of this type of expense are food and the major portion of spending for transportation. When spending is transferred from one parent to the other parent, the other parent should be given a credit against that parent's child support obligation since this type of expense is included in the support calculation schedules. When parents equally share in the parenting, an assumption is made that 35% of the Basic Child Support Obligation reflects "transferred" expenses. The amount of expenses transferred from one parent to the other will depend upon the number of overnights the child(ren) spend(s) with each parent.*

**Duplicated Fixed Expenses.** *This type of expense is incurred when two households are maintained for the child(ren). An example of this type of expense is shelter costs which are not transferred when the child(ren) move(s) from one parent's residence to the other but remain fixed in each parent's household and represent duplicated expenditures. The fixed expense of the parent who has primary physical custody is included in the Guideline support schedules. However, the fixed expense of the other parent is not included in the support schedules but represents an increase in the total cost of raising the child(ren) attributed to the parenting time plan. Both parents should share in these additional costs.*

*When parents equally share in the parenting, an assumption is made that 50% of the Basic Child Support Obligation will be "duplicated." When the child(ren) spend(s) less time with one parent, the percentage of duplicated expenses will decline.*

**Controlled Expenses.** *This type of expense for the child(ren) is typically paid by the custodial parent and is not transferred or duplicated. Controlled expenses are items like clothing, education, school books and supplies, ordinary uninsured health care and personal care. For example, the custodial parent buys a winter coat for the child. The noncustodial parent will not buy another one. The custodial parent controls this type of expense. "Education" expenses include ordinary costs assessed to all students, such as textbook rental, laboratory fees, and lunches, which should be paid by the custodial parent. The cost of participating in elective school activities such as sports, performing arts and clubs, as well as related extracurricular activities are "optional" activities covered by the paragraph on "Other Extraordinary Expenses" in Guideline 8.*

The controlled expenses account for 15% of the cost of raising the child. The parenting time credit is based on the more time the parents share, the more expenses are duplicated and transferred. The controlled expenses are not shared and remain with the parent that does not get the parenting time credit. Controlled expenses are generally not a consideration unless there is equal parenting time. These categories of expenses are not pertinent for litigation. They are presented only to explain the factors used in developing the parenting time credit formula. The percentages were assigned to these categories after considering the treatment of joint custody by other states and examining published data from the Bureau of Labor Statistics' Consumer Expenditure Survey.

**Computation of Parenting Time Credit.** The computation of the parenting time credit will require a determination of the annual number of overnights of parenting time exercised by the parent who is to pay child support, the use of the standard Child Support Obligation Worksheet, a Parenting Time Table, and a Parenting Time Credit Worksheet.

An overnight will not always translate into a twenty-four hour block of time with all of the attendant costs and responsibilities. It should include, however, the costs of feeding and transporting the child, attending to school work and the like. Merely providing a child with a place to sleep in order to obtain a credit is prohibited.

The Parenting Time Table (Table PT) begins at 52 overnights annually or the equivalent of alternate weekends of parenting time only. If the parenting plan is for fewer overnights because the child is an infant or toddler (Section II A of the Parenting Time Guidelines), the court may consider granting the noncustodial parent an appropriate credit for the expenses incurred when caring for the child. If the parenting plan is for fewer overnights due to a significant geographical distance between the parties, the court may consider granting an appropriate credit. The actual cost of transportation should be treated as a separate issue.

If the parents are using the Parenting Time Guidelines without extending the weeknight period into an overnight, the noncustodial parent will be exercising approximately 96-100 overnights. The actual number of overnights may vary based on differing school calendars.

**Parenting Time Table.** The TOTAL column represents the anticipated total out-of-pocket expenses expressed as a percentage of the Basic Child Support Obligation that will be incurred by the parent who will pay child support. The total expenses are the sum of transferred and duplicated expenses. The DUPLICATED column represents the duplicated expenses and reflects the assumption that when there is an equal sharing of parenting time, 50% of the Basic Child Support Obligation will be duplicated. The Number of Annual Overnights column will determine the particular fractions of TOTAL and DUPLICATED to be used in the Parenting Time Credit Worksheet.

**TABLE PT**

ANNUAL OVERNIGHTS			
FROM	TO	TOTAL	DUPLICATED
1	51	0.000	0.000
52	55	0.062	0.011
56	60	0.070	0.014
61	65	0.080	0.020
66	70	0.093	0.028
71	75	0.108	0.038
76	80	0.127	0.052
81	85	0.150	0.070
86	90	0.178	0.093
91	95	0.211	0.122
<b>96</b>	<b>100</b>	<b>0.250</b>	<b>0.156</b>
101	105	0.294	0.195
106	110	0.341	0.237
111	115	0.388	0.280
116	120	0.434	0.321
121	125	0.476	0.358
126	130	0.513	0.390
131	135	0.544	0.417
136	140	0.570	0.438
141	145	0.591	0.454
146	150	0.609	0.467
151	155	0.623	0.476
156	160	0.634	0.483

161	165	0.644	0.488
166	170	0.652	0.491
171	175	0.660	0.494
176	180	0.666	0.495
181	183	0.675	0.500

**Parenting Time Credit Worksheet (Credit Worksheet).** In determining the credit, take the following steps:

1. Complete the Child Support Obligation Worksheet through Line 6.
2. Enter on Line 1PT of the Credit Worksheet the annual number of overnights exercised by the parent who will pay child support.
3. Enter on Line 2PT of the Credit Worksheet the Basic Child Support Obligation (Line 4 from the Child Support Obligation Worksheet).
4. Enter on Line 3PT of the Credit Worksheet the figure from the TOTAL column that corresponds to the annual overnights exercised by the parent who will pay child support.
5. Enter on Line 4PT of the Credit Worksheet the figure from the DUPLICATED column that corresponds to the annual number of overnights exercised by the parent who will pay child support.
6. Enter on Line 5PT of the Credit Worksheet the percentage share of the Combined Weekly Income of the parent who will pay child support (Line 2 of the Child Support Obligation Worksheet).
7. Complete Lines 6PT through 9PT to determine the allowable credit.
8. Enter the result from Line 9PT on Line 7 of the Child Support Obligation Worksheet as the Parenting Time Credit.
9. Apply the Line 7 Adjustments to determine the recommended Child Support Obligation (Line 8 of the Child Support Obligation Worksheet).

### PARENTING TIME CREDIT WORKSHEET

Line:		
1PT	Enter Annual Number of Overnights	
2PT	Enter Weekly Basic Child Support Obligation – BCSO (Enter Line 4 from Child Support Worksheet)	_____.
3PT	Enter Total Parenting Time Expenses as a Percentage of the BCSO (Enter Appropriate TOTAL Entry from Table PT)	_____.
4PT	Enter Duplicated Expenses as a Percentage of the BCSO (Enter Appropriate DUPLICATED Entry from Table PT)	_____.
5PT	Parent’s Share of Combined Weekly Income (Enter Line 2 from Child Support Worksheet)	_____.
6PT	Average Weekly Total Expenses during Parenting Time (Multiply Line 2PT times Line 3PT)	_____.
7PT	Average Weekly Duplicated Expenses (Multiply Line 2PT times Line 4PT)	_____.
8PT	Parent’s Share of Duplicated Expenses (Multiply Line 5PT times Line 7PT)	_____.
9PT	Allowable Expenses during Parenting Time (Line 6PT – Line 8PT)	_____.
	Enter Line 9PT on Line 7 of the Child Support Worksheet as the Parenting Time Credit	

**Application of Parenting Time Credit.** Parenting Time Credit is not automatic. The court should determine if application of the credit will jeopardize a parent’s ability to support the child(ren). If such is the case, the court should consider a deviation from the credit.

*The Parenting Time Credit is earned by performing parental obligations as scheduled and is an advancement of weekly credit. The granting of the credit is based on the expectation the parties will comply with a parenting time order.*

*A parent who does not carry out the parenting time obligation may be subject to a reduction or loss of the credit, financial restitution, or any other appropriate remedy. However, missed parenting time because of occasional illness, transportation problems or other unforeseen events should not constitute grounds for a reduction or loss of the credit, or financial restitution.*

*Consistent with Parenting Time Guidelines, if court action is initiated to reduce the parenting time credit because of a failure to exercise scheduled parenting time, the parents shall enter mediation unless otherwise ordered by the court.*

**Contents of Agreements/Decrees.** *Orders establishing custody and child support shall set forth the specifics of the parties' parenting time plan in all cases. A reference to the Indiana Parenting Time Guidelines will suffice if the parties intend to follow the Guidelines. All such entries shall be accompanied by a copy of the Child Support Obligation Worksheet and the Parenting Time Credit Worksheet.*

*In every instance the court shall designate one parent who is receiving support and shall be responsible for payment of the uninsured health care expenses up to 6% of the Basic Child Support Obligation.*

*If the court determines it is necessary to deviate from the parenting time credit, it shall state its reasons in the order.*

**Split Custody and Child Support.** *In those situations where each parent has physical custody of one or more children (split custody), it is suggested that support be computed by completing the Child Support Obligation Worksheets in the following manner:*

- 1. Compute the support a father would pay to a mother for the children in her custody as if they were the only children of the marriage.*
- 2. Compute the support a mother would pay to a father for the children in his custody as if they were the only children of the marriage.*
- 3. Subtract the lesser from the greater support amount. The parent who owes the remaining amount pays the difference to the other parent on a weekly basis.*

*This method of computation takes into account the fact that the first child in each home is the most expensive to support, as discussed in the Commentary to Guideline 1.*

**Child Support When Parenting Time is Equally Shared.** *A frequent source of confusion in determining child support arises in cases where parents equally share the parenting time with the children. Parenting time is considered equally shared when it is 181 to 183 overnights per year. To determine child support in these cases, either the mother or father must be designated as the parent who will pay the controlled expenses. Then, the other parent is given the parenting time credit. The controlled expenses remain the sole obligation of the parent for whom the parenting time credit is not calculated.*

*When both parents equally share parenting time, the court must determine which parent will pay the controlled expenses. If, for example, father is the parent paying controlled expenses, the parenting time credit will be awarded to the mother.*

*Factors courts should use in assigning the controlled expenses to a particular parent include the following areas of inquiry:*

- Which parent has traditionally paid these expenses.*
- Which parent is more likely to be able to readily pay the controlled expenses.*
- Which parent more frequently takes the child to the health care provider.*
- Which parent has traditionally been more involved in the child's school activities (since much of the controlled expenses concern school costs, such as clothes, fees, supplies, and books).*

*This determination requires a balancing of these and other factors. Once the court assigns responsibility for these controlled expenses, the court should award the other parent the parenting time credit. When the assignment of the controlled expenses occurs, calculation of the child support in shared custody situations is fairly basic, and is completed by application of the remainder of these Guidelines.*

**Cost of Transportation for Parenting Time.** *The Parenting Time Guidelines require the noncustodial parent to provide transportation for the child(ren) at the start of the scheduled parenting time, and the custodial parent to provide transportation for the child(ren) at the end of the scheduled parenting time. There is no specific provision in*

*the Child Support Guidelines for an assignment of costs or a credit for transportation on the child support worksheet. Transportation costs are part of the transferred expenses. When transportation costs are significant, the court may address transportation costs as a deviation from the child support calculated by the Worksheet, or may address transportation as a separate issue from child support. Consideration should be given to the reason for the geographic distance between the parties and the financial resources of each party. The relocation statute provides that one factor in modifying child support in conjunction with parent relocation is the hardship and expense involved for the nonrelocating individual to exercise parenting time.*

#### **GUIDELINE 7. HEALTH CARE / MEDICAL SUPPORT**

The court shall order one or both parents to provide health insurance when accessible to the child at a reasonable cost. Health insurance may be public, for example, Medicaid, or Children’s Health Insurance Program (CHIP), Hoosier Healthwise, or private, for example, Affordable Care Act (ACA) or employer-provided

**Accessibility.** Health insurance is accessible if it covers the geographic area in which the child lives. The court may consider other relevant factors such as provider network, comprehensiveness of covered services and likely continuation of coverage.

**Reasonable cost.** There is a rebuttable presumption that parents have health insurance available at a reasonable cost. The presumption may be rebutted by demonstrating that the lowest out of pocket cost of insuring the child(ren) is more than 5% of the parents’ combined gross incomes. The lowest out of pocket cost health insurance available may be public insurance.

**Cash medical support.** When health insurance is not accessible to the child(ren) at a reasonable cost, federal law requires the court to order the parties to pay cash medical support. Cash medical support is an amount ordered for medical costs not covered by insurance. The uninsured medical expense apportionment calculation on the Child Support Obligation Worksheet, “the 6% rule,” satisfies this federal requirement for a cash medical support order, when incorporated into the court order.

**Explanation of 6% rule/uninsured health care expenses.** The data upon which the Guideline schedules are based include a component for ordinary health care expenses. Ordinary uninsured health care expenses are paid by the parent who is assigned to pay the controlled expenses (the parent for whom the parenting time credit is not calculated) up to six percent (6%) of the basic child support obligation (Line 4 of the Child Support Obligation Worksheet). Extraordinary health care expenses are those uninsured expenses which are in excess of six percent (6%) of the basic obligation, and would include uninsured expenses for chronic or long term conditions of a child. Calculation of the apportionment of the health care expense obligation is a matter separate from the determination of the weekly child support obligation. These calculations shall be inserted in the space provided on the Worksheet.

**Birth expense.** The court may order the father to pay a percentage of the reasonable and necessary expenses of the mother’s pregnancy and childbirth, as part of the court’s decree in child support actions. The costs to be included in apportionment are pre-natal care, delivery, hospitalization, and post-natal care. The paternity statutes require the father to pay at least fifty percent (50%) of the mother’s pregnancy and childbirth expenses.

#### **COMMENTARY**

##### ***Health Insurance Coverage and Costs.***

*The court is federally mandated to order parents to obtain health insurance if accessible at a reasonable cost. The rebuttable presumption that all children have insurance available at a reasonable cost recognizes (1) both public and private insurance can be used to satisfy the federal mandate to insure children, (2) the availability of guaranteed acceptance for policies, and (3) the availability of tax credits for the purpose of obtaining health insurance.*

*Health insurance coverage should normally be provided by the parent who can obtain the most comprehensive coverage at the least out of pocket cost. The parents bear the burden of demonstrating to the court the out of pocket cost of health insurance for the child(ren) exceeds 5% of the parents’ combined gross incomes. A parent shall provide the court with proof of existing public or private health insurance for the child(ren) through an employer, a retirement plan, Tricare, a Veteran’s Health Care Program, Medicaid, or the Children’s Health Insurance Program (CHIP). If the child is not currently covered, the parent must provide the court with proof of the cost of health insurance. (Please refer to Guideline 3, E. 2. for additional information regarding determining the cost of insurance coverage.)*

*Where one or both parents have a history of changing jobs and/or health insurance providers both parents may be ordered to carry health insurance when it becomes available at a reasonable cost to the parents. Where one parent has a history of maintaining consistent insurance coverage for the child(ren), there may be no need to order both parents to provide health insurance for the child(ren).*

## **Parental Self-Monitoring and Compliance.**

Parents should cooperate with one another to ensure the child(ren) remain insured at all times. The court should order the parent providing health insurance to show proof of coverage and give notice of any coverage changes, including termination of coverage, to the other parent. See *Indiana Parenting Time Guidelines I, D. paragraph 5.*

**Apportionment of Uninsured Health Care Expenses.** Six percent (6%) of the support amount is for health care. The noncustodial parent is, in effect, prepaying health care expenses every time a support payment is made. Consequently, the Guidelines require that custodial parent bear the cost of uninsured health care expenses up to six percent (6%) of the Basic Child Support Obligation found on Line 4 of the Child Support Obligation Worksheet and, if applicable, the child support obligation attributable to a student living away from home (Section Two Line I of the Post-Secondary Education Worksheet).

That computation is made by multiplying the total of Line 4 and Line I by 52 (weeks) and multiplying the product of that multiplication by .06 to arrive at the amount the custodial parent must spend on the uninsured health care costs of the parties' child(ren) in any calendar year before the noncustodial parent is required to contribute toward payment of those uninsured costs. For example, if Line 4 is \$150.00 per week and Line I is \$25.00 per week, the calculation would be as follows:  $\$150.00 + \$25.00 = \$175.00 \times 52 = \$9,100.00 \times .06 = \$546.00$ .

Thus, on an annual basis, the custodial parent is required to spend \$546.00 for health care of the child(ren) before the noncustodial parent is required to contribute. The custodial parent must document the \$546.00 spent on health care and provide the documentation to the noncustodial parent.

After the custodial parent's obligation for ordinary uninsured health care expenses is computed, provision should be made for the uninsured health care expenses that may exceed that amount. The excess costs should be apportioned between the parties according to the Percentage Share of Income computed on Line 2 of the Worksheet. Where imposing such percentage share of the uninsured costs may work an injustice, the court may resort to the time-honored practice of splitting uninsured health care costs equally, or by using other methods. The court may prorate the custodial parent's uninsured health care expense contribution when appropriate.

As a practical matter, it may be wise to spell out with specificity in the order what uninsured expenses are covered and a schedule for the periodic payment of these expenses. For example, a chronic long-term condition might necessitate weekly payments of the uninsured expense. The order may include any reasonable medical, dental, hospital, pharmaceutical and psychological expenses deemed necessary for the health care of the child(ren). If it is intended that such things as aspirin, vitamins and band-aids be covered, the order should specifically state that such non-prescription health care items are covered.

There are also situations where major health care costs are incurred for a single event such as orthodontics or major injuries. For financial reasons, this may require the custodial parent to pay the provider for the amount not covered by insurance over a number of years. The 6% rule applies to expenses actually paid by the custodial parent each year.

**Birth expenses.** There is no statute of limitations barring recovery of birthing expenses, providing the paternity or child support action is timely filed. The court should be very careful to be sure the claimed expenses are both reasonable and necessary. Birthing expenses include both the expenses incurred by the child as well as by the mother, providing they are directly related to the child's birth. The court should distinguish between "postpartum expenses" and "postnatal expenses." "Postpartum" expenses are mother's expenses following the birth of the child. "Postnatal" expenses of the child are those expenses directly related to the child's birth. Between the two, only "postnatal" expenses are reimbursable.

## **GUIDELINE 8. EXTRAORDINARY EXPENSES**

### **Extraordinary Educational Expenses.**

The data upon which the Guideline schedules are based include a component for ordinary educational expenses. Any extraordinary educational expenses incurred on behalf of a child shall be considered apart from the total Basic Child Support Obligation.

Extraordinary educational expenses may be for elementary, secondary or post-secondary education, and should be limited to reasonable and necessary expenses for attending private or special schools, institutions of higher learning, and trade, business or technical schools to meet the particular educational needs of the child.

#### **Commentary**

Parents should consider whether an educational support order is necessary or appropriate to address educational needs

prior to the child reaching nineteen (19) years of age.

**a. Elementary and Secondary Education.** If the expenses are related to elementary or secondary education, the court may want to consider whether the expense is the result of a personal preference of one parent or whether both parents concur; whether the parties would have incurred the expense while the family was intact; and whether or not education of the same or higher quality is available at less cost.

**b. Post-Secondary Education.** The authority of the court to award post-secondary educational expenses is derived from IC 31-16-6-2. It is discretionary with the court to award post-secondary educational expenses and in what amount. In making such a decision, the court should consider post-secondary education to be a group effort, and weigh the ability of each parent to contribute to payment of the expense, as well as the ability of the student to pay a portion of the expense.

When determining whether or not to award post-secondary educational expenses, the court should consider each parent's income, earning ability, financial assets and liabilities. If the expected parental contribution is zero under Free Application for Federal Student Aid (FAFSA), the court should not award post-secondary educational expenses. If the court determines an award of post-secondary educational expenses would impose a substantial financial burden, an award should not be ordered.

If the court determines that an award of post-secondary educational expenses is appropriate, it should apportion the expenses between the parents and the child, taking into consideration the incomes and overall financial condition of the parents and the child, education gifts, education trust funds, and any other education savings program. The court should also take into consideration scholarships, grants, student loans, summer and school year employment and other cost-reducing programs available to the student. These latter sources of assistance should be credited to the child's share of the educational expense unless the court determines that it should credit a portion of any scholarships, grants and loans to either or both parents' share(s) of the education expense.

Current provisions of the Internal Revenue Code provide tax credits and preferences which will subsidize the cost of a child's post-secondary education. While tax planning on the part of all parties will be needed to maximize the value of these subsidies, no one party should disproportionately benefit from the tax treatment of post-secondary expenses. Courts may consider who may be entitled to claim various education tax benefits and tax exemptions for the minor child(ren) and the total value of the tax subsidies prior to assigning the financial responsibility of post-secondary expenses to the parents and the child.

A determination of what constitutes educational expenses will be necessary and will generally include tuition, books, lab fees, course related supplies, and student activity fees. Room and board may be included when the child does not reside with either parent.

The impact of an award of post-secondary educational expenses is substantial upon the custodial and non-custodial parent and a reduction of the Basic Child Support Obligation attributable to the child under the age of nineteen years will be required when the child does not reside with either parent.

The court should require that a student maintain a certain minimum level of academic performance to remain eligible for parental assistance and should include such a provision in its order. The court should also consider requiring the student or the custodial parent provide the noncustodial parent with a copy of the child's high school transcript and each semester or trimester post-secondary education grade report.

The court may limit consideration of college expenses to the cost of state supported colleges and universities or otherwise may require that the income level of the family and the achievement level of the child be sufficient to justify the expense of private school.

#### COMMENTARY

Time for Filing Petition for Post-Secondary Educational Expenses. There is a distinct difference between an order for child support and an order for post-secondary educational expenses. An order for educational expenses can continue after an order for child support has ended. If an order for child support was issued before July 1, 2012, a petition for educational support can be filed until the child reaches twenty-one (21) years of age. If an order for child support was issued or modified after June 30, 2012, a petition for educational support must be filed before the child reaches nineteen (19) years of age.

#### **c. Use of Post-Secondary Education Worksheet.**

The Worksheet makes two calculations. Section One calculates the contribution of each parent for payment of post-secondary education expenses based upon his or her percentage share of the weekly adjusted income from the Child Support Obligation Worksheet after contribution from the student toward those costs. Notwithstanding this calculation, the court retains discretion to award and determine the allocation of these expenses taking into consideration the ability of

each parent to meet these expenses and the child's reasonable ability to contribute to his or her educational expenses. The method of paying such contribution should be addressed in the court's order.

In situations when the student, under age nineteen (19), remains at home with the custodial parent while attending an institution of higher learning, generally no reduction to the noncustodial parent's support obligation will occur and Section Two of the Worksheet need not be completed.

Section Two determines the amount of each parent's weekly support obligation for the student who does not live at home year round. The amount attributable to the student while at home has been annualized to avoid weekly variations in the order. It further addresses the provisions of IC 31-16-6-2(b) which require a reduction in the child support obligation when the court orders the payment of educational expenses which are duplicated or would otherwise be paid to the custodial parent. In determining the reduction, the student is treated as emancipated. This treatment recognizes that the diminishing marginal effect of additional children is due to economies of scale in consumption and not the age of the children. A second child becomes the "first child" in terms of consumption and the custodial parent will receive Guideline child support on that basis.

Section Two applies when the parties' only child attending school does not reside with the custodial parent while attending school, as well as when the parties have more than one child and one resides away from home while attending school and the other child(ren) remain at home.

Line E of the Worksheet determines the percentage of the year the student lives at home. Line F is used to enter the Basic Child Support Obligation, from the Guideline Schedules for all of the children of the parties including the student who does not live at home year round. Line G is used to enter the amount of support for those children who are not living away from home. If the student is the only child, Line G will be \$0.00. The difference between Lines F and G is the total support obligation attributable to the student. This is entered on Line H. By multiplying the percentage of the year the student lives at home, times the support obligation attributable to the student, the Worksheet pro rates to a weekly basis the total support obligation attributed to the student. This is computed on Line I and the result is included in the uninsured health care expense calculation. The parents' pro rata share of this obligation is computed in Line J. This result is included in section 7 of the Child Support Obligation Worksheet.

**1. *The One Child Situation.*** When the parties' only child is a student who does not live at home with the custodial parent while attending school, Section Two establishes the weekly support obligation for that child on Line I. The regular Child Support Obligation Worksheet should be completed through Line 5 for that child and the annualized obligation from Line J of the Post-secondary Education Worksheet is entered on Line 7 with an explanation of the deviation in the order or decree.

**2. *The More Than One Child Situation.*** When the parties have more than one child, Section Two requires the preparation of a regular Child Support Obligation Worksheet applicable only to the child(ren) who regularly reside with the custodial parent, and for a determination of that support obligation. The annualized obligation from Line J of the Post-Secondary Education Worksheet is then inserted on Line 7 of the regular support Worksheet as an addition to the Parent's Child Support Obligation on Line 6. An explanation of the increase in the support obligation should then appear in the order or decree.

In both situations the Child Support Obligation Worksheet and the Post-Secondary Education Worksheet must be filed with the court. This includes cases in which agreed orders are submitted.

When more than one child lives away from home while attending school, Section One of the Post-Secondary Education Worksheet should be prepared for each child. However, Section Two should be completed once for all children living away from home while attending school. The number used to fill in the blank in Line E should be the average number of weeks these children live at home. For example, if one child lives at home for ten (10) weeks and another child lives at home for sixteen (16) weeks, the average number of weeks will be thirteen (13). This number would then be inserted in the blank on Line E which is then divided by 52 (weeks).

#### COMMENTARY

With the modification of the age of emancipation from age twenty-one (21) to age nineteen (19), Section Two of the Post-Secondary Education Worksheet will only be applicable in a limited number of cases. However, it remains a valuable tool to calculate child support for a child under age nineteen (19) who does not reside with either parent during the school year but returns to the home of the custodial parent during school breaks and recess. Section Two of the Post-Secondary Education Worksheet should not be utilized once the child attains age nineteen (19).

**Other Extraordinary Expenses.** The economic data used in developing the Child Support Guideline Schedules do not include components related to those expenses of an "optional" nature such as costs related to summer camp, soccer leagues, scouting and the like. When both parents agree that the child(ren) may participate in optional activities, the parents should pay their pro rata share of these expenses from line 2 of the Child Support Obligation



Worksheet. In the absence of an agreement relating to such expenses, assigning responsibility for the costs should take into account factors such as each parent's ability to pay, which parent is encouraging the activity, whether the child(ren) has/have historically participated in the activity, and the reasons a parent encourages or opposes participation in the activity. If the parents or the court determine that the child(ren) may participate in optional activities, the method of sharing the expenses shall be set forth in the entry.

#### COMMENTARY

*The costs of participating in elective school activities such as sports, performing arts and clubs, including the costs of participating in related extracurricular activities, are "Other Extraordinary Expenses."*

### **GUIDELINE 9. ACCOUNTABILITY, TAX EXEMPTIONS, ROUNDING SUPPORT AMOUNTS**

**Accountability of the Custodial Parent for Support Received.** Quite commonly noncustodial parents request, or even demand, that the custodial parent provide an accounting for how support money is spent. While recognizing that in some instances an accounting may be justified, the Committee does not recommend that it be routinely used in support orders. The Indiana Legislature recognized that an accounting may sometimes be needed when it enacted IC 31-16-9-6.

At the time of entering an order for support, or at any time thereafter, the court may make an order, upon a proper showing of the necessity, requiring the spouse or other person receiving such support payments to render an accounting to the court of future expenditures upon such terms and conditions as the court shall decree.

It is recommended that an accounting be ordered upon a showing of reasonable cause to believe that child support is not being used for the support of the child. This provision is prospective in application and discretionary with the court. An accounting may not be ordered as to support payments previously paid.

A custodial parent may be able to account for direct costs (clothing, school expenses, music lessons, etc.) but it should be remembered that it is extremely difficult to compile indirect costs (a share of housing, transportation, utilities, food, etc.) with any degree of accuracy. If a court found that a custodial parent was diverting support for his or her own personal use, the remedy is not clear. Perhaps, the scrutiny that comes with an accounting would itself resolve the problem.

**Tax Exemptions.** Development of these Guidelines did not take into consideration the awarding of the income tax exemption. Instead, it is required each case be reviewed on an individual basis and that a decision be made in the context of each case. Judges and practitioners should be aware that under current law the court cannot award an exemption to a parent, but the court may order a parent to release or sign over the exemption for one or more of the children to the other parent pursuant to Internal Revenue Code § 152(e). To effect this release, the parent releasing the exemption must sign and deliver to the other parent I.R.S. Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents. The parent claiming the exemption must then file this form with his or her tax return. The release may be made, pursuant to the Internal Revenue Code, annually, for a specified number of years or permanently. Courts shall include in the support order that a parent may only claim an exemption if the parent has paid at least ninety-five percent (95%) of their court ordered support for the calendar year in which the exemption is sought by January 31 of the following year. Shifting the exemption for dependents does not alter the filing status of either parent.

A court is required to specify in a child support order which parent may claim the child(ren) as dependents for tax purposes. In determining when to order a release of exemptions, it is required that the following factors be considered:

- (1) the value of the exemption at the marginal tax rate of each parent;
- (2) the income of each parent;
- (3) the age of the child(ren) and how long the exemption will be available;
- (4) the percentage of the cost of supporting the child(ren) borne by each parent;
- (5) the financial aid benefit for post-secondary education for the child(ren);
- (6) the financial burden assumed by each parent under the property settlement in the case; and
- (7) any other relevant factors, (including health insurance tax subsidies or tax penalties under the Affordable Care Act).

#### COMMENTARY

Under the Affordable Care Act, premium tax subsidies, dependent tax exemptions, and tax penalties for failure to provide health insurance are inextricably linked. Problems can arise when a parent purchases health insurance through the health insurance marketplace under the Affordable Care Act and needs access to premium tax subsidies in order to make the insurance affordable. Only the parent who claims a child as a dependent on a federal tax return is eligible for the subsidies and liable for the tax penalties.

**Rounding child support amounts.** The amount of child support entered as an order may be expressed as an even amount, by rounding to the nearest dollar. For example, \$50.50 is rounded to \$51.00 and \$50.49 is rounded to \$50.00.