



Family Law

The newsletter of ISBA's Section on Family Law

April 2021 • Volume 64 • Number 10 •

Child Support Guidelines and Shared Care Parenting Formulas

By *Margaret A. Bennett & Nancy Chausow Shafer*

On July 1, 2017, Illinois joined 39 other states, and the District of Columbia, Puerto Rico, and Guam in adopting the income shares model for determining child support. In 2020 the Arkansas Supreme Court established income shares child support guidelines bringing the total number of U.S. states utilizing the income shares model to 40 states.

The income shares model uses the economic data of child-rearing costs based on the income level of the parents. Most income share states obtain child-rearing financial data from the Bureau of Labor Statistics for that region. In Illinois that data is used to create the Schedule of Basic Child Support Obligation promulgated by the Illinois Department of Healthcare and Family Services. Calculating child support based on actual child-rearing costs attempts to maintain the standard of living a child would have enjoyed if the parents had not divorced or separated.

Currently, 37 states utilize a presumptive shared care parenting formula adjustment, and of those states, 20 states utilize a cross-credit formula with a 1.5 multiplier including Illinois. The cross-credit multiplier formula involves multiplying the basic child support obligation as determined by the Schedule of Basic Child Support Obligation times 1.5 (150 percent), calculating support for each parent and offsetting the support owed against each parent based on the percentage of overnights. The rationale for increasing the basic child support obligation by 150 percent is to account for the increased housing, food, transportation and other basic costs required to maintain two households to accommodate a shared parenting plan. A multiplier of 1.5 is applied to the basic child support obligation in most states using the cross-credit formula to account for the duplicated child-rearing costs between the parents' household such as housing, food, transportation, clothing and other expenses. Generally, child-rearing costs are divided into three categories: variable costs, duplicated fixed costs, and unduplicated fixed costs. Variable costs are the costs that are transferable between the parents depending on which parent will incur the expense during their parenting time (e.g., food). Duplicated fixed costs are those child rearing costs both parents incur, and parenting time could directly impact the costs of those expenses (e.g., additional housing expense needed for consistently greater share of parenting time). Unduplicated fixed costs are child-rearing costs that are not affected by the parent's time, and they are not typically or necessarily duplicated (e.g., clothing).

In Illinois, the threshold for utilizing the shared care parenting formula is 146 or more overnights per year, which is 40 percent or more of the overnights in a year. This 146 overnights provision is often referred to as a "cliff." Any amount of parenting time from 1 to 145 overnights does not result in any modification of child support. However, at 146

overnights the shared care support formula is applied, with the child support amount changing with each additional overnight. The result of application of the shared care formula to child support computations can be a significant reduction in child support. The threshold for utilizing the shared care parenting formula varies from state to state. The majority of states utilizing this approach set the threshold for applying their shared-parenting formula when the parenting time arrangements consist of both parents having the children at least 25-35 percent of the time. Several states have recently lowered their shared care parenting formula thresholds (e.g., Maryland and Vermont) resulting in more complex mathematical computation. Both Kansas and Oklahoma change the basic child support obligation multiplier based upon the number of overnights of the non-majority parent creating a stairstep child support graph.

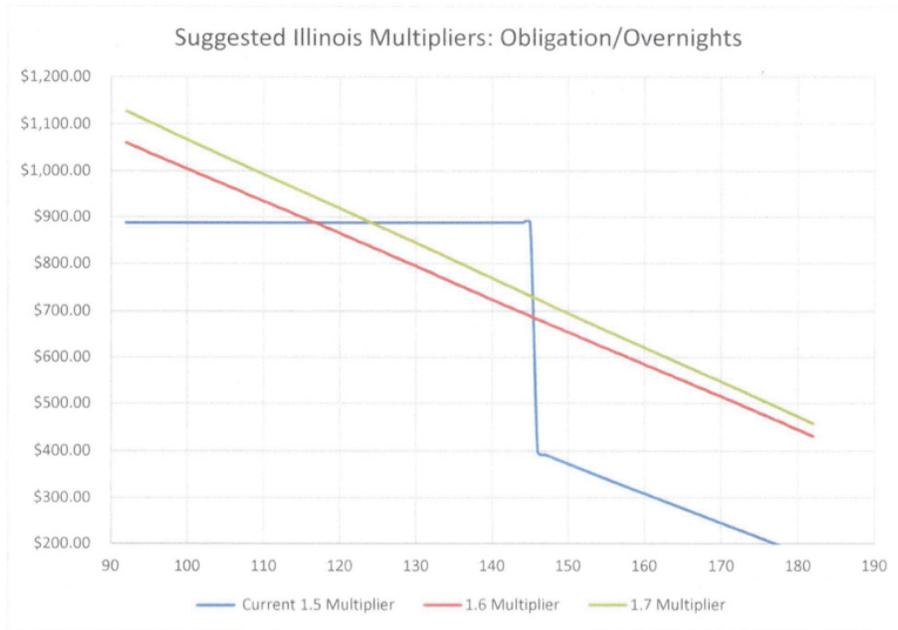
Review of the data from technical documentation provided by HFS, the authors' analysis reveals the 1.5 multiplier is too low as it does not accurately reflect shifting and shared child-rearing expenses when parents enjoy a shared care parenting plan. Review of the statistical data by the authors reveal the actual shared care costs is more accurately reflected using a multiplier of 1.66.

The basic child support obligation as impacted by shared care only if the overnights meet or exceed 40 percent was also based upon policy determination and reference to other states rather than specific statistical or empirical evidence. In the authors' opinion the duplicated fixed costs begin, and variable costs shift, beginning at a lower shared care parenting time than 146 overnights per year. However, to reduce support by applying the current shared care formula at a lower number of overnights would lead to inaccurately low child support orders insufficient for the recipient parent to adequately provide support for the child.

One of the primary purposes of the change in child support law to the income shares approach was to encourage compliance by viewing child support as an obligation of both parents. The intent is to then allocate that obligation between the parents based not only on their respective incomes, but also to adjust that amount and allocation based on the shared parenting time. The resulting increase in duplicated fixed costs, and the reallocation of variable costs form the basis of the shared parenting time approaches used in the various states. As of this writing, there is no state which has a child support formula free of criticism.

After extensive study and research by the authors, a relatively simple fix to the current child support shared care formula is advocated. By reducing the shared care child support formula threshold to 92 overnights or 25 percent of annual overnights and increasing the shared care parenting formula multiplier to 1.66, the current child support cliff would be eliminated. Efforts by non-majority parents to achieve 146 overnights would be reduced resulting in fewer parenting time disputes. For comparison, attached is a graph utilizing a multiplier of 1.5 in comparison with multipliers of 1.6 and 1.7 beginning at 92 overnights per year.

For comparison, this is the graph for the same family in Illinois, with including lines for each the current 1.5 multiplier (Starting at 146 overnights) and the proposed 1.6 and 1.7 multipliers (Starting at 92 overnights).



Note on graphs: All calculations were done with facsimile families of four where the father had a gross yearly income of \$50,000 and the mother had a gross yearly income of \$25,000, for a combined total of \$6250 gross monthly income. The calculations are also done from the father's point of view: the dollar amounts represent his payments and the overnights represent his overnights.