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Volume II – Jurisdictional Summaries

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Review of International Child Support Models Volume II.

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Introduction

Volume II contains a Summary Report for each of the ten jurisdictions included in this study. Each jurisdictional summary provides a high-level description of the child support model used to assist parents and legal professionals to determine child support amounts.

Child support models are complex. They usually consist of a guideline that includes a formula that sets out the way in which the child support amount is to be calculated, as well as accompanying rules that are either administrative or provided in legislation. These rules guide the courts and/or administrators to correctly and efficiently calculate child support amounts. Each model also includes a mechanism(s) for administration that can range from a court-based system to an administrative agency, or both.

Each summary report provides a description of the rules applied in typical situations as opposed to itemizing all the exceptions that can occur based on various case circumstances.

Each jurisdictional summary is presented in five parts:

- Part 1 provides a general overview of the jurisdiction's legislation. It also provides a general description of the current child support model. Finally, it describes the various ways parents can obtain a child support amount and explains the calculations in the formula.
- Part 2 provides a description of the elements contained in the child support model such as the data source used to determine the expenditures as well as the approach used to apportion the amount the two parents will share. In addition, a summary of the legislation and/or administrative rules used in conjunction with the formula to generate final child support amounts is included.
- Part 3 provides a summary of the major changes made to the child support guideline legislation.
- Part 4 presents a summary of the available literature that assesses the model.
- Part 5 provides the calculations used by their online calculator tool and presents the results from case scenarios to assist the reader in understanding how the child support amounts are calculated.

Two appendices are included for each summary. Appendix A contains the references as well as the name(s) of the jurisdictional representatives consulted to prepare the report for that jurisdiction. Appendix B provides two case scenarios to illustrate the calculations used to generate a child support amount.

In reading the jurisdictional summaries please note the following:

- 1) The authors take full responsibility for any errors in the descriptions of the child support models. Despite the excellent cooperation the authors received from the jurisdictional representatives and the robust material on each jurisdiction's website, the models are very complex. As well, in most jurisdictions the legislation has changed

significantly over time, and it was not always possible to track the various changes. Finally, the majority of jurisdictions do not provide step-by-step descriptions of their formula. Rather, they provide online calculators to assist parents and family law professionals in determining a child support amount. Embedded in these online calculators are the relevant rules and automated calculations. The authors have tried their best to provide accurate written descriptions of the calculations that need to be completed to arrive at a child support amount in the relevant jurisdiction.

- 2) Each jurisdiction uses terminology that is unique. For ease of reading, the authors use “jurisdiction neutral” terms in the summary reports. If a jurisdiction uses a term that is not the same as the “jurisdiction neutral” term, a footnote is provided that provides the term used in that jurisdiction. The only exception pertains to the terms used in the formula calculations as these refer to specific calculations. These terms have been italicized to assist the reader. A glossary of the “jurisdiction neutral” terms can be found in Volume I.
- 3) This study commenced in December 2018 and was completed in August 2019. During interviews with several jurisdictions, mention was made of either pending updates to their online calculators or upcoming changes to either their child support legislation or administrative model. The reports reflect the information as of August 2019.

Finally, the authors could not have completed this report without the cooperation provided by the jurisdictional representatives who graciously provided their time and expertise. We sincerely thank them for their patience as we contacted them on several occasions to review the drafts of their jurisdictional summary and to seek clarification on various aspects of their child support model.

A – State of Delaware

Part 1: Description of the Child Support Model

A. Overview

In 1984, due to the varied procedures and extensive judicial discretion yielding inconsistent child support award decisions, the US Congress enacted the *Child Support Enforcement Amendments*. These amendments required states to adopt state-wide advisory child support guidelines by October 1, 1987, based upon “specific and numeric criteria”. However, judges were allowed discretion as to whether to follow the guidelines.¹ Although states established guidelines in accordance with the legislation, inconsistencies continued.²

As a result, Congress promulgated the *Family Support Act of 1988*.³ The Act not only affirmed the use of mathematical child support guidelines but also mandated the use of guidelines as a rebuttable presumption in the determination of child support awards. Further, the Act stipulated that each State must review their guidelines every four years to ensure that their application results in the determination of appropriate child support amounts.⁴

Delaware enacted its model and formula in 1986 in its “*Family Court Rules of Civil Procedure*”.⁵ The Delaware Child Support Model⁶ is based on the following three principles:

- Each parent is entitled to keep a minimum amount of income for his or her basic needs.
- The Melson Formula is considered a rebuttable presumption for calculating child support obligations within Delaware. If the Court finds that the application of the Formula is inequitable in a given case, it must state on the record the result of a calculation pursuant to the Formula and why the application of the Formula would be unjust or inappropriate.⁷
- The Melson Formula is unique in that incorporates both the income shares and the percentage of income models in the child support formula calculations.

¹ Child Support Enforcement Amendments of 1984, pub. L. No. 93-378, 98 Stat. 1305, <https://www.govinfo.gov/content/pkg/STATUTE-98/pdf/STATUTE-98-Pg1305.pdf>.

² Marigold S. Melli, *A Brief History and Description of the Wisconsin Percentage Standard for Child Support*.

³ *Family Support Act of 1988*, Pub. L. No. 100-485, 102 Stat. 2343., <https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg2343.pdf>.

⁴ Ibid.

⁵ *Family Court Rules Of Civil Procedure, Rules 500 to 509*.

⁶ Delaware Child Support Model is referred to as the “Delaware Child Support Formula” or the “Melson Formula” in material contained on various websites used in this study.

⁷ *Family Court Rules of Civil Procedure, Rule 500*.

The calculations contained in the first part of the formula are based on the income shares model.⁸ In these calculations, the amount that is determined to be the basic needs for the child, is shared in proportion to both parent's income. The calculations in the second part of the formula are based on a percentage of income model.⁹ In these calculations any income remaining for either parent after an amount is deducted for their basic needs, is shared with the child. This is referred to as their "excess" income. This amount is apportioned by multiplying the same percentage (fixed and based on the number of children) of the excess income of each of the parents.

Furthermore, the Melson Formula contains a number of other elements in the calculations to determine the final child support amount. These include: the number of nights the child spends with each parent, extra expenses incurred for the child such as childcare, tuition costs and health insurance, and a self - protection amount for the paying parent.¹⁰ These elements appear at different parts of the formula, and each is explained in more detail and their place in the calculations below in Part C.

To assist parents and family justice officials in determining child support, the Delaware Division of Child Support Services (DCSS), provides various services.¹¹ In addition to establishing child support amounts, the DCSS provides a variety of other services for parents, employers, and child support agencies in other states. These services include establishing paternity, locating a delinquent paying parent, and providing information to parents on how child support is established in Delaware.

As well, they develop and maintain tools to assist parents and family justice officials in determining child support amounts. This includes an online calculator called the *Delaware Child Support Formula Calculation*¹² that incorporates all the factors necessary to generate a final child support amount. Various forms and written instructions for completing child support calculations¹³ are also made available.

The Melson Formula and the accompanying legislation are reviewed and updated every four years.¹⁴ The various percentages and numerical values contained in the formula itself, such as the *Self-support Allowance* for the parent and the standard of living adjustment amounts, are updated every two years.¹⁵ The Family Court Judiciary convenes a committee (the committee) two years after the last review, to begin work on the next review. The committee is presided over by the Chief Judge of the Family Division. Each review period has resulted in changes to the Delaware Formula.

⁸ The amount is shared in proportion to each parent's income.

⁹ The percentages used in this second set of calculations are predetermined based on the number of children.

¹⁰ This amount is designed to ensure that the paying parent has income available to support him or herself.

¹¹ Department of Child Support Services main website: <https://www.dhss.delaware.gov/dcsc/>.

¹² The online calculator may be found at: <https://courts.delaware.gov/family/supportcalculator/Disclaimer.aspx>.

¹³ Form 509I, Rev 2/19, The Family Court of the State of Delaware, *Instructions For Child Support Calculation (2019)*, <https://courts.delaware.gov/Forms/Download.aspx?id=109568>. Accessed 2019.

¹⁴ The most recent review was completed in 2018; see The Honorable Michael K. Newell, Chief Judge, *Report of the Family Court Judiciary*, The Family Court of the State of Delaware, Delaware Child Support Formula Evaluation and Update, November 8, 2018, <https://courts.delaware.gov/forms/download.aspx?id=39228>.

¹⁵ *Family Court Civil Procedure Rule 500 (b)*.

B. How can Parents Obtain a Child Support Award?

In Delaware, either parent can file for a support petition requesting the Court to order the other parent to pay child support. Upon filing the petition, they are required to attend a mediation conference where a Family Court Mediator will be assigned to their case. Using the Melson Formula, the Family Court Mediator will calculate the child support amount and assist the parents in reaching an agreement as to the amount to be paid. The parents may agree to the amount obtained using the Formula, or they may agree to deviate from that amount. If the parents cannot agree, a court hearing will be set to determine the child support amount. In these hearings, the Melson Formula will be used.

As well, either parent also has the option of using the services provided by DCSS. Should they choose this option, DCSS files all actions and pursues any administrative remedies, such as the enforcement of any orders.

C. How the Formula Works¹⁶

Part 2 of this summary report includes the specific elements and relevant detailed calculations contained in the formula. However, to assist the reader in understanding the overall approach to the formula calculations, the following is a summary of the four steps that are contained in the Melson Formula. They are as follows:

Step 1 - Calculate each parent's percentage *Share of Total Net¹⁷ Income Available for Primary Support*

The calculations start with determining the gross annual incomes of both parents and then using various deductions to convert it to a monthly net income.

First, a *Self-support Allowance*¹⁸ is subtracted from both parents' monthly gross incomes.

Then, if applicable, an adjustment for other dependent children is made. Either parent's available income (minus the *Self-support Allowance*) can be reduced by 30% in recognition of their duty to support other dependent children. Stepchildren are excluded in this calculation.

This results in an amount for each parent that is entitled the *Net Income Available for Primary Support*. These amounts are added together to produce the *Total Net Income Available for Primary Support*.

Finally, each parent's *Net Income available for Primary Support* is divided by the *Total Net Income Available for Primary Support* to produce their respective percentage *Share of Net Income Available (for Primary Support)*.

¹⁶ The terms used in this section and the remainder of this summary report are the terminology used by Delaware in their online calculator. An example of the output from the online calculator is displayed in Appendix B – Case Scenarios. These terms have been italicised in this summary.

¹⁷ “Net income” is defined here and throughout the summary as income after the *Self Support Allowance* has been subtracted. It does not mean after-tax income.

¹⁸ The Self-Support Allowance is set at 110% of the Federal Poverty Guideline for a one-person household.

Step 2 - Calculate the *Child(ren)’s Primary Support Need*

In this step, the *Child(ren)’s Primary Support Need* (which is an amount that represents the expenditures needed to cover the basic needs of a child) is calculated by using pre-determined *Primary Support Allowance* amounts. These amounts are built into the Formula online tool and vary by the number of children.

Added to this amount are three other applicable expenses. These are: childcare expenses necessary for the parent to work, expenses for private school tuition, and health insurance. This produces what is referred to as the *Total Primary Need* for the children of the action.

The *Total Primary Need* is then multiplied by each parent’s percentage *Share of Total Net Income available for Primary Support*. This calculation results in an amount that represents each parent’s respective *Primary Support Obligation*.

Step 3 - Calculate the *Standard of Living Adjustment (SOLA)*

Provided that there is “excess” income after subtracting the *Primary Support Obligation* from each parent’s *Net Income Available for Primary Support*, a *SOLA* is calculated. This “excess” amount is called the monthly *Net Income available for SOLA*. This allows the child to share in any excess income that the parents may have after meeting their own and their child’s basic needs.

If the *Net Income Available for SOLA* exceeds \$15,000,¹⁹ then 20% of the amount that exceeds \$15,000 is calculated and is identified as the *High Income Offset*.²⁰ This amount is subtracted from the *Net Income Available for SOLA*.

The *SOLA* percentage, which is the same for both parents, is then identified based on the number of children.²¹ The *Net Income Available for SOLA* is multiplied by the *SOLA* percentage. This generates each parent’s *SOLA* amount. These are added together to obtain the *Total SOLA*, which is then divided by the number of children to produce a *Per Child SOLA*.

Finally, each parent’s *Primary Support Obligation* amount (calculated in Step 2) is added to their *SOLA* amount to arrive at the *Gross Obligation* for each parent.

Step 4 - Calculate Credits, Self-Support Protection Amounts and the final *Monthly Net Obligation*

In this step, if applicable, three types of credits are calculated that can reduce the final *Monthly Net Obligation* (which is the final child support amount to be paid). As well, a final calculation is completed to ensure that the *Gross Monthly Obligation* for each parent does not cause undue hardship as a result of them having pre-existing child support obligations for children living in other households. This calculation is referred to as a *Self-Support Protection Amount*.

¹⁹ All amounts are in US dollars. To convert to CDN dollars: \$1CDN=\$0.76US.

²⁰ If the *Net Income Available for Primary Support* is less than \$15,000, then the actual amount is used.

²¹ The *SOLA* percentages are 1 child, 12%; 2 children, 17%; 3 children, 21%; and each additional child, 2%.

The first credit calculated for both parents is their *Primary and SOLA Retained* amount. This amount is calculated by first multiplying the *Per Child SOLA* amount by the number of children (of the action) living in their respective household, and then adding their respective *Primary Support Allowance* amount.²²

The second credit available to both parents is the calculation of a *Parenting Time Adjustment* amount. This amount reduces the *Gross Obligation* for each parent and is designed to acknowledge the costs associated with a greater amount of parenting time. To calculate the second credit, each parent's *Parenting Time Percentage*²³ is multiplied by **the other parent's** *Primary and SOLA Retained* amount.²⁴

The third credit is called *Itemized Primary* and recognizes any direct payments by either parent for expenses itemized in Step 2 above, i.e. childcare, primary school tuition and health insurance²⁵. For each parent, these expenses are totalled.

These three credits - the *Primary and SOLA Retained*, the *Itemized Primary* and the *Parenting Time Adjustment* - are then subtracted from the *Gross Obligation* to produce the *Monthly Net Obligation*.

A final assessment is then made to ensure that the paying parent is paying an amount within their means. This calculation results in a *Self-Support Protection* amount.

This amount is a percentage of the *Net Income Available for Primary Support*. The percentage used is based on whether the parent is supporting children in other households. If the parent is supporting children in three or more households (i.e. has three separate child support orders), the percentage is set at 30% of *Net Income Available for Primary Support*. If they are supporting children in less than three households then the percentage is 45%. The percentage is multiplied by their *Net Income Available for Primary Support* to obtain their *Self Support Protection* amount. This is the maximum support obligation that can be ordered.

The ***Final Monthly Net Obligation*** is the lesser of the two amounts - the *Self-support Protection* amount or the *Monthly Net Obligation*.

²² This amount is always \$0 for the parent who does not have shared (or split) arrangements with the child because the values for number of children living in their household and their Primary Support Allowance are zero.

²³ Parenting Time Adjustment percentages are: less than 80 overnights, 0%; 80-124 overnights, 10%; 124-163 overnights, 30%.

²⁴ There will only be a credit for the parent who spends fewer than 163 nights with their children. This amount or credit is zero for the parent with over 163 nights with the children.

²⁵ These three types of expenses are also included in the calculations completed in step 2 of the application of the formula.

Part 2: Elements of the Child Support Model

A. Data Source Used to Determine Expenditures on the Children

How are expenditures for the child determined?

Three amounts are used in the Formula that are predetermined and are set using the Federal Poverty Guidelines published in the Federal Register by the United States Department of Health and Human Services.²⁶

How are the expenditures reflected in the Formula calculations?

These data sources are used to set the amounts for each of the following components:

- The first is the *Self-Support Allowance* for each parent. For 2019, the *Self-Support Allowance* for each parent is \$1140 per month. This amount is set at 110% of the Federal Poverty Guideline for a one-person household.
- The second is the *Primary Support Allowance* for each child. This is an amount that is deemed to meet the children's basic needs, which are the minimum levels as outlined in the data set used for the development of the federal poverty guidelines. The *Primary Support Allowance* is comprised of two components:
 - The first is a "per household" component. This amount is set at 25% of the *Self-Support Allowance* for the parent - minus \$72 per month. Rounded to the nearest multiple of 10, this amount is currently set at \$210 per month. This is an amount that is set regardless of the number of children that are the subject of the award.
 - The second is a "per child" component. This amount is currently set at 25% of the *Self-Support Allowance* for the parent plus \$24 –or \$310 per month. To calculate the *Primary Support Allowance*, the "per child" component (\$310 per month) is multiplied by the number of children, and then added to the "per household" amount (\$210 per month).
- The third is the SOLA. After satisfying the parent's and children's primary needs, the SOLA allows each child to share in each parent's economic wellbeing – just as they would have, had the family remained intact. The amount of the SOLA is determined by multiplying predetermined percentages (based on the number of children) by the "excess" income of each of the parents.

B. Approach Used to Apportion the Amount that the Two Parents will Share

The Melson Formula uses a two-part apportioning method for determining the final child support amount:

- The first part, which is common to all income shares models, adds their *Net Incomes Available for Support* together and divides each by the total to produce their respective percentage share of the *Total Net Income Available for Primary Support*. These percentages are applied to the *Primary Support Amount* to determine each parent's share. These shares are called the parents' *Primary Support Obligation*.

²⁶ The U.S. Department of Health and Human Services publishes the annual *Federal Poverty Guidelines*: <https://www.govinfo.gov/content/pkg/FR-2018-01-18/pdf/2018-00814.pdf>

- The second part, however, employs a percentage of income model to calculate the *SOLA* that represents an amount, if applicable, that allows the child to share in any excess income of the parents provided that the basic needs of the parents and child have been met. Predetermined percentages are used (based on the number of children) and applied to the excess income of each parent to generate a *SOLA* amount.

These two amounts are added together to generate the final child support amount.

C. Accompanying Policy/Legislation (Rules)

i) Determination of income²⁷

The philosophy underpinning the model is based on the “ability to pay” of both parents.

Both parents must provide their gross income.²⁸ Gross income includes all types of income: wages (salaries, commissions, bonuses, and other income), income earned as an independent contractor, and all other taxable income that does not come from earnings (e.g. dividends, severance pay, pensions, workers' compensation, alimony received, etc.).

The Formula includes a *Self-Support Allowance* for each parent. As noted above, for 2019 the *Self-support Allowance* for each parent is \$1140 per month.

There are a limited number of *Allowable Deductions* from gross income, that when applicable, are subtracted from gross income. These deductions include: medical and disability insurance premiums, pension deductions, union dues, and court ordered spousal support.

Lastly, if applicable, there is a deduction for *Other Dependents* from a parent’s available income to recognize the parent’s duty to support all their children. Stepchildren are excluded and children outside the household are only counted if there is a court order for support or there is a pattern of support established. This is called an *Adjustment for Other Dependents* and the claiming parent’s income (following subtraction of allowable deductions and the *Self-Support Allowance*) is reduced by 30%.

With the exception of disability income that a child may receive, the guidelines only require the parent's income. No other income from a child is included in the calculations. Disability income for a child normally comes from the Social Security System and if the payment is made due to the child's disability, then the income is attributed to the household in which the child primarily resides. If the payment is a dependent benefit made on account of the obligated parent's disability, then it is attributed as income to the disabled parent. However, in these situations, the parent gets a dollar for dollar credit for the dependent benefit disbursed to the child's household.

²⁷ Income can be inputted as annual, monthly, weekly or hourly in the calculator and then it is converted to monthly for the remainder of the calculations.

²⁸ Proof of income is stated as: adequate supporting documentation (of income) commonly includes but is not limited to each parent's most recent tax returns, W-2 Forms, three most recent pay stubs, documentation of payments from Social Security, Unemployment Compensation, Worker's Compensation, a recent physician's statement as to any claimed disability, and receipts for child care payments and private school costs.

ii) Income attribution

If a parent is unemployed, underemployed, or fails to provide adequate documentation of their wages, the court may attribute income to them. In order to determine how much income will be attributed to the parent, the court examines earnings history, employment qualifications, and the current job market.

Built into the model is the assumption that every parent has a “capacity to earn” at least an amount that is equivalent to half of the state-wide median wage for a 40-hour week.²⁹

iii) Impact of custody and parenting time

The Melson Formula incorporates the amount of time parents spend with their children into the construction of the formula. The type of parenting time or custody arrangement (shared parenting or high access) affects where in the application of the formula, adjustments are made.

Shared parenting

To be considered to have shared equal placement, each parent must have the child over 163 nights per year (45% of the year). In these cases, a child is counted as one-half (.5) and this is applied to the **per child component** of the *Primary Support Allowance* (i.e. .5 times \$310=\$165). This calculation is completed early on in the formula application³⁰ and affects all other steps in the formula as it identifies the number of children in the household.

Parenting time

Where the child has primary residence with one of the parents and the other parent has the child between 80 to 124 overnights per year, there is a 10% adjustment. If the number of overnights per year is between 125 and 163, a 30% adjustment is made. This adjustment is made after calculating the *Primary Support Obligation* and the *SOLA* and is subtracted from the *Gross Obligation*. It forms part of the final calculations that are completed to determine the *Monthly Net Obligation*. This calculation allows the parent to retain a percentage of the *Primary Support Allowance* and the parents combined *SOLA*, and results in credits that reduce the *Final Net Obligation*. It is designed to recognize the time the parent spends with the child. If the paying parent has the child less than 79 nights per year, no credit is provided.

Split custody

In cases of split custody, and where they each have the children for over 163 overnights, both parents complete the calculations using the formula based on the number of children they have in their care. The parent with the higher *Monthly Net Obligation* will pay the difference to the other parent.

iv) Special expenses

Childcare costs, medical expenses (not including insurance premiums) and private tuition are called *Primary Expenses* and are included in the formula as part of the calculation of the

²⁹ *Frequently asked Questions about Child Support*, Delaware State, Courts database, revised 2018, 25, <https://www.dhss.delaware.gov/dcsc/faq.html>.

³⁰ This calculation is done in step 2 of the formula calculation.

child's *Primary Support Need*. All of these expenses must be verified and agreed upon by the parents.³¹

v) Concept of undue hardship

Included in the Melson Formula is a final step in the calculation that is designed to ensure that the final child support amount for the paying parent does not cause undue hardship as a result of existing support obligations for other children in other households. This calculation is referred to as a *Self-Support Protection Amount*. This calculation sets a maximum support obligation that the *Monthly Net Obligation* calculated by the formula cannot exceed. The threshold is calculated as a percentage of the parent's *Net Income Available for Primary Support*.

vi) Other circumstances that could be considered that may result in a variation to the formula amount

- Disabled parents who qualify for a government disability benefit are assessed on a case-by-case basis. There are no special provisions for disabled children.
- Variations to a child support amount are allowable before 2.5 years after the order is made, provided that there is a substantial change in circumstances not caused by the petitioner's voluntary or wrongful conduct and the variation results in more than 10%. There are no such requirements for variations after 2.5 years.
- Administrative adjustments by the Division of Child Support Services (DCSS) can be made when a change occurs that is required by law – such as when a parent under a current child support order misses their payments for one calendar month. An arrears payment will automatically be added to the order.
- The coming into force of any changes to the legislation does not in and of itself, constitute grounds for a modification to the child support amounts.

vii) Other considerations

Age of the child: Child support orders automatically terminate when all minor children have reached the age of 18 and have graduated from high school. If the child is over 18 and has not finished high school, the child support will terminate when the child is 19 or when the child receives a high school diploma – whichever occurs first.

Minimum support: if the children reside in a sole custody situation (less than 79 overnights), the Court can impose a minimum order of no less than \$100 per month for one child and \$170 per month for more than one child.

Maximum support: There is no stated maximum support, however, the SOLA calculation includes a *High Income Offset* that seeks to reduce the amount of support paid at high-income levels, e.g. those earning over \$180,000 per year. The offset amount is 20% of income in excess of \$15,000 a month, which is subtracted from a parent's *Net Income Available for SOLA*.

³¹ *Family Court Civil Procedure Rule 503 (b) (2) Childcare, (3) Health Insurance Premiums, (4)(c) Private Tuition.*

Part 3: Summary of Key Changes to the Child Support Guideline Legislation

A. Overview of the Changes

This section summarizes the key amendments to the child support legislation. The first set of amendments occurred in 1990. Two changes are noteworthy:

- Amendments were made to not allow the inclusion of childcare expenses as an add-on to the Children's Primary Support Need as they were considered to be included in the Primary Support Allowance; and
- The definition of income was modified to exclude the income of a person co-habiting with either parent.

Over the next twelve years (1990 – 2002) various amendments to the child support legislation were made, however, these changes mainly pertained to clarifying the definition of income. The clarifications included what constitutes income for the purposes of child support, how to treat income that parents may have earned from a second form of employment, as well as other minor amendments.

2002

The next major change to the legislation occurred in 2002 when amendments were made to change the calculations of the combined *SOLA* and the *Primary Support Allowance* depending on the amount of time the child spent with the paying parent. Prior to 2002, both of those adjustments were shared equally between the parents if the child resided in each parent's home an equal amount of time. Under the amendments, the formula was changed to give parent's with whom the child resides more than 30% but less than half the number of overnights, the opportunity to share in a portion of the combined SOLA.

As well, the legislation was amended to change the calculations in the formula for other dependent children. Instead of deducting an amount for those children after the final child support amount was determined, the calculations were amended to require a deduction of an amount for other dependent children from the gross income calculation. In addition, there were also a series of amendments that further clarified how deductions from income for pension contributions and other minor deductions were to be treated.

2014

In 2014, further amendments were made pertaining to the number of overnights the child spent with each parent and how these would be categorized. In these amendments, the ranges of the number of overnights were changed. The "number of overnight" bands were collapsed from six to four, and the lowest threshold number of overnights that provided the parent spending time with the child with a credit for their time, was changed from 109 (30%) to 79 (22%) overnights.

2015³²

Significant changes occurred again in 2015. These amendments resulted in further to changes to the way in which the formula calculations took into consideration any existing financial responsibilities that either parent had for other minor children from other relationships. Prior to this revision, the Court reduced the parent's available income for primary support by only taking 83% of the parent's available income if there was one other child, 73% if there were two other children, and 67% for three or more children. In order to simplify the calculation, the parent's available income for primary support was reduced by 30% regardless of the number of other children they support.

As well, the number of overnights to trigger a "parenting time adjustment" for the support payer was revised. Prior to January 1, 2015, a parent was entitled to a 10%, 20%, 30%, or 40% adjustment to his/her support obligation based on the number of overnights the child spent with the parent, i.e. four bands of parenting time. The requirement for a parenting time adjustment was simplified to two bands: 80 to 124 overnights per year results in a 10% adjustment and 125 to 163 overnights per year results in a 30% adjustment.

2019³³

The committee completed their last review in November 2018 and issued their report recommending adjustments to the Melson Formula. These recommendations have been accepted and came into effect on February 1, 2019.³⁴ These recommendations complement the changes to the federal regulations that are a result of the United States Supreme Court ruling in *Turner v. Rogers* whereby the Court upheld that the ability to pay is a critical element in any child support enforcement proceeding.

The changes included:

- Eliminating deductions for taxes on income (federal, state and city) and social security and thus using the parents' gross incomes as opposed to net incomes for the calculations.
- Raising the *Self-Support Allowance* amount and lowering the (SOLA) percentages by number of children³⁵ in order to account for the change from net to gross income.
- Revising the SOLA calculation. Currently, if either parent's net available income for the SOLA exceeds \$15,000 per month (approximately \$200,000 total earnings per year), each parent's net income available for the SOLA is to be reduced by 20% of the combined excess.

³² The Yeager Law Firm LLC, *Top 5 Changes to Delaware Child Support Formula, Effective January 1, 2015*, <http://www.yeagerfamilylaw.com/blog/2015/9/13/top-5-changes-to-delaware-child-support-formula-effective-january-1-2015>.

The Castro Firm Inc., <http://thecastrofirm.com/how-is-child-support-calculated-in-delaware/>.

³³ The Honourable Michael K. Newell, Chief Judge, *Report of the Family Court Judiciary*.

³⁴ In the *Family Court of the State of Delaware Order Amending Rules 500, 501, 502, 503, 504, 506, 507, And 508 And Adding Rules 509 And 510 of the Family Court Rules of Civil Procedure*. November 8, 2018, <https://courts.delaware.gov/rules/pdf/Family2019ChildSupportRulesAmendment-500-510.pdf>

³⁵ For one child: from 19% to 12%; 2 children: from 27% to 17%; 3 children: from 33% to 21%; each additional child: from 4% to 2%.

As well, several changes were implemented that were designed to recognize the difficulties that lower income parents face in providing for themselves and their children. These included:

- Increasing the numerical amounts for primary allowances for children and the parents' *Self-support Allowance*.
- Adjusting the child support obligation of paying parents who are incarcerated.
- Providing clarification on how to impute income.
- Lowering the self-support protection mechanism in cases when a parent has children in 3 or more households to support.

B. Overview of Leading Case Law on the Child Support Model

- *Ford v. Ford*, 609 A. 2d 25 (Del. Supr. 1991)³⁶ – The Delaware Supreme Court cautioned that the Melson Formula calculation should not become a method for the transfer of wealth from one parent to the other parent.
- *Dalton v. Clanton*, Del. Supr. 559 A.2d 1197 (1989)³⁷ – Criteria on when the application of the Formula would be unjust or inappropriate.
- *Turner v. Rogers*, 564 U.S. 431 (2011)³⁸ – Ability to pay as a critical element in enforcement proceedings.

Part 4: Summary of the Literature that Assesses the Model

A review of the available literature on the advantages and disadvantages of the various elements of the Delaware model revealed the following.³⁹

A. Advantages

- The underlying philosophy is fair and equitable in that it sequences a parent's obligations. The Formula holds parents responsible for meeting their own essential needs first, the essential needs of their children second, and the "affluence-related" needs of their children last.⁴⁰
- The approach has the effect of simultaneously maintaining accuracy and enhancing equity in the determination of support.⁴¹

³⁶ *Ford v. Ford*. <https://law.justia.com/cases/delaware/supreme-court/1991/600-a-2d-25-5.html>.

³⁷ *Dalton v. Clanton*. <https://law.justia.com/cases/delaware/supreme-court/1989/559-a-2d-1197-5.html>.

³⁸ *Turner v. Rogers*. <https://supreme.justia.com/cases/federal/us/564/431/>.

³⁹ The reader should note that these are the views of the authors of the information that was reviewed and are not the views of the authors of this summary report.

⁴⁰ Jo Michelle Beld, *Improving Child Support Guidelines in Minnesota: The "Shared Responsibility" Model for the Determination of Child Support*, William Mitchell Law Review, Volume 28, Issue 2 Article 9, 2000, <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1663&context=wmlr>.

⁴¹ *Ibid*.

- Through the use of a *Self-support Allowance*, the model is more equitable for parents with limited ability to pay.⁴²
- Produces less extreme differences in living standards where one parent has a very low income and the other parent has significantly higher income.⁴³
- It is the only model that strives to address the prevention of poverty. The model does this by setting basic child support and parental self-support reserves at a percentage of the federal poverty guidelines.⁴⁴

B. Disadvantages

- Poverty figures used in the Formula are what the federal government uses as a measure of the relative wellbeing of the nation's citizens and is the basis for the level of federal funding paid to states to provide for food supplements and various welfare-related programs. It represents a minimum standard of living recognized as the level below which citizens shouldn't live. It is assumed that the standard of living established by the poverty guidelines does indeed provide a minimum subsistence standard for food, housing and other needs. Critics of the Melson Formula argue that the use of those levels understates a person's subsistence needs, while others claim they exaggerate those needs.⁴⁵
- The poverty levels used also make no distinction between adults and children. The initial level for a one-person household is supplemented by a standard amount for each person added, either child or adult, and regardless of the size of the household. A three-person household consisting of two adults and one child has the same value as a one adult, two children household, making the values not reliable. It is important to note, that the Delaware Review Panel recently recognized this problem and have revised the calculations used for the self-support reserves.⁴⁶

Part 5: Selected Case Scenarios Using the Melson Formula

Delaware provides a calculator tool on its website. The following tables present the results from two case scenarios – one simple and one complex. All amounts are in US dollars.

Case Scenario 1: Fred and Jane have two children, Tom and Sally, both under the age of 18. There are no other dependent children. Fred has care and custody of Tom and Sally for 50 overnights per year. The parents have annual gross incomes of \$50,000 (Fred) and \$30,000 (Jane).

	Monthly Net Obligation
Simple Case Scenario: two children, no shared care, no other dependents, single wage earners.	\$990 US / month

⁴² Ibid.

⁴³ *Child Support Guidelines: A Primer*, 26 Clearinghouse Rev. 734, 739 (1993), N. Erickson.

⁴⁴ Nancy S. Erickson, "The guidelines review project: a primer for the participants," Guidelines Review Project, State of Montana, 2009.

⁴⁵ Ibid.

⁴⁶ Ibid.

Case Scenario 2: Jonathan and Frieda have one child named Sandy. She is under the age of 18; Jonathan has care and custody of Sandy for 140 overnights per year. Jonathan is also the parent of a dependent child named Gino, who he lives with. He is under the age of 18. Jonathan resides with Gino. Frieda has an annual gross income of \$150,000 and pays alimony to a previous spouse of \$9600 annually. Jonathan has an annual gross income of \$400,000, plus a second job that provides him with \$10,000 annually. He also makes \$5000/month pension contributions. Jonathan also pays private tuition fees for Sandy of \$6,000 annually.

All amounts are in US dollars.

	Monthly Net Obligation
Case Scenario: one child, Sandy. Jonathan has care of Sally for 140 nights. Jonathan has one other dependent child, Gino, who he lives with. Both parents are high-income earners, with various deductions.	\$1194 US / month

The detailed calculations for the two scenarios are attached as Appendix B.

Appendix A: References

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Contact Person

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Commissioner
Family Court of the State of Delaware.

Appendix B: Two Case Scenarios

Case Scenario 1: Simple

Period Covered: Jan. 2019 to Dec. 2019					FRED Father	JANE Mother
Net Income Available						
1 Gross Income	Wages	2d Job	Other	Self		
Father	\$4167	\$0	\$0	\$0	\$4167	
Mother	\$2500	\$0	\$0	\$0		\$2500
2 Self-Employment Adjustment (7% of Documented Self-Employment Income to the extent wages and self-employment income do not exceed \$11075)					\$0	\$0
3 Allowable Deductions	Pension	Union Dues	Disability	Other		
Father	\$0	\$0	\$0	\$0	\$0	
Mother	\$0	\$0	\$0	\$0		\$0
4 Health Insurance	On Child	%	Allowance	Not on Child		
Father	\$0	50%	\$0	\$0	\$0	
Mother	\$0	50%	\$0	\$0		\$0
5 Self Support Allowance					\$1140	\$1140
6 Net Income after Self Support (Line 1 – Lines 2, 3, 4 and 5)					\$3027	\$1360
7 A - Does the parent support other dependent children?					No	No
B - Adjustment for Other Dependents (If Line 7A is 'Yes', then 70%; otherwise 100%)					100%	100%
8 Net Income Available for Primary Support (Line 6 × Line 7B)					\$3027	\$1360
Total Net Income Available for Primary Support					\$4387	
Child(ren)'s Primary Support Need						
9 Share of Net Available (Line 8 ÷ Line 8 Total; 50% nonparent override)					69%	31%
10 Number of children of this union in each home					0	2
Total number of children of this union in each home					2	
11 Primary Support Allowance (Line 10 × \$310 + 210)					\$0	\$830
12 A - Childcare expenses necessary for parent to work					\$0	\$0
B - Private School Tuition					\$0	\$0
C - Health Insurance for child (premium not deducted on Line 4)					\$0	\$0
13 Total Primary Need (Line 11 + Lines 12A, B and C)					\$0	\$830
Total Primary Support Need					\$830	
14 Primary Support Obligation (Line 9 × Line 13 Total)					\$573	\$257
Standard of Living Adjustment (SOLA)						
15 Net Income Available for SOLA					\$2454	\$1103
16 A - Excess SOLA (Line 15 – \$15000, but not less than 0)					\$0	\$0
Total Excess SOLA					\$0	
B - High Income Offset (20% of Line 16A Total)					\$0	\$0
17 SOLA Percentage (Table)					17%	17%
18 A - SOLA (Line 15 – Line 16B) × Line 17					\$417	\$188
Total SOLA					\$605	
B - Per child SOLA (Line 18A Total ÷ Line 10 Total)					\$302	
Credits						

19 Gross Obligation (Line 14 + Line 18A)	\$990	\$445
20 Primary and SOLA retained (Line 10 × Line 18B + Line 11)	\$0	\$1434
21 Itemized Primary (Line 12A + Line 12B + Line 12C)	\$0	\$0
22 A - Parenting Time Percentage (80-124 Overnights, 10%; 125-163, 30%)	0%	0%
B - Parenting Time Adjustment (Line 22A × other parent's Line 20)	\$0	\$0
23 A - Does the parent support children in 3 or more households?	No	No
B - Self Support Protection Percentage (If Line 23A = Yes, then 30%; if No, then 45%)	45%	45%
C - Self Support Protection (Line 8 × Line 23B)	\$1362	\$612
24. Monthly Net Obligation (Line 19 – Lines 20, 21 and 22B but not more than 23C)	\$990	\$0

Case Scenario 2: Complex

Period Covered: Jan, 2019 to Dec, 2019					JONATHAN Father	FRIEDA Mother
Net Income Available						
1 Gross Income	Wages	2d Job	Other	Self		
Father	\$33333	\$833	\$0	\$0	\$34166	
Mother	\$12500	\$0	\$0	\$0		\$12500
2 Self-Employment Adjustment (7% of Documented Self-Employment Income to the extent wages and self-employment income do not exceed \$11075)					\$0	\$0
3 Allowable Deductions	Pension	Union Dues	Disability	Other		
Father	\$5000	\$0	\$0	\$0	\$5000	
Mother	\$0	\$0	\$0	\$800		\$800
4 Health Insurance	On Child	%	Allowance	Not on Child		
Father	\$0	75%	\$0	\$0	\$0	
Mother	\$0	50%	\$0	\$0		\$0
5 Self Support Allowance					\$1140	\$1140
6 Net Income after Self Support (Line 1 – Lines 2, 3, 4 and 5)					\$28026	\$10560
7 A - Does the parent support other dependent children?					Yes	No
B - Adjustment for Other Dependents (If Line 7A is 'Yes', then 70%; otherwise 100%)					70%	100%
8 Net Income Available for Primary Support (Line 6 × Line 7B)					\$19618	\$10560
Total Net Income Available for Primary Support					\$30178	
Child(ren)'s Primary Support Need						
9 Share of Net Available (Line 8 ÷ Line 8 Total; 50% nonparent override)					65%	35%
10 Number of children of this union in each home					0	1
Total number of children of this union in each home					1	
11 Primary Support Allowance (Line 10 × \$310 + 210)					\$0	\$520
12 A - Childcare expenses necessary for parent to work					\$0	\$0
B - Private School Tuition					\$500	\$0
C - Health Insurance for child (premium not deducted on Line 4)					\$0	\$0
13 Total Primary Need (Line 11 + Lines 12A, B and C)					\$500	\$520
Total Primary Support Need					\$1020	
14 Primary Support Obligation (Line 9 × Line 13 Total)					\$663	\$357
Standard of Living Adjustment (SOLA)						
15 Net Income Available for SOLA					\$18955	\$10203
16 A - Excess SOLA (Line 15 – \$15000, but not less than 0)					\$3955	\$0
Total Excess SOLA					\$3955	
B - High Income Offset (20% of Line 16A Total)					\$791	\$791
17 SOLA Percentage (Table)					12%	12%
18 A - SOLA (Line 15 – Line 16B × Line 17)					\$2180	\$1129
Total SOLA					\$3309	
B - Per child SOLA (Line 18A Total ÷ Line 10 Total)					\$3309	
Credits						
19 Gross Obligation (Line 14 + Line 18A)					\$2843	\$1486
20 Primary and SOLA retained (Line 10 × Line 18B + Line 11)					\$0	\$3829
21 Itemized Primary (Line 12A + Line 12B + Line 12C)					\$500	\$0

22 A - Parenting Time Percentage (80-124 Overnights, 10%; 125-163, 30%)	30%	0%
B - Parenting Time Adjustment (Line 22A x other parent's Line 20)	\$1149	\$0
23 A - Does the parent support children in 3 or more households?	No	No
B - Self Support Protection Percentage (If Line 23A = Yes, then 30%; if No, then 45%)	45%	45%
C - Self Support Protection (Line 8 x Line 23B)	\$8828	\$4752
24. Monthly Net Obligation (Line 19 – Lines 20, 21 and 22B but not more than 23C)	\$1194	\$0

B – State of Illinois

Part 1: Description of the Child Support Model

A. Overview

In 1984, due to the varied procedures and extensive judicial discretion that yielded inconsistent child support award decisions, the US Congress enacted the *Child Support Enforcement Amendments of 1984*.⁴⁷ These amendments required states to adopt state wide advisory child support guidelines that were based on specific and numeric criteria by October 1, 1987. However, judges were allowed discretion as to whether to follow the guidelines. Although states established guidelines in accordance with the legislation, inconsistencies continued.⁴⁸

As a result, Congress promulgated the *Family Support Act of 1988*.⁴⁹ This Act not only affirmed the use of child support guidelines but also mandated the use of the guidelines as a rebuttable presumption in the determination of child support amounts. Further, the Act stipulated that each state must review their guidelines every four years to ensure that their application results in the determination of appropriate child support amounts.

In 1984, Illinois enacted in its statutes⁵⁰ a fixed percentage model, or what was then referred to in their legislation as the *Obligor⁵¹ Net Income Model*.⁵² In this model, the appropriate child support amount⁵³ was determined by applying a fixed percentage, which varied by the number of children subject to the order, to the income of the parent required to pay child support.

Part 3 of this *Summary Report* highlights the various changes since 1984 to the Illinois child support legislation. However it is important to note that in 2017, legislation was introduced that resulted in significant changes to the way in which child support was to be determined. This included moving from a fixed percentage model to an income shares model to determine the relevant child support amount.

⁴⁷ *Child Support Enforcement Amendments of 1984*; pub. L. No. 93-378, 98 Stat. 1305).

<https://www.govinfo.gov/content/pkg/STATUTE-98/pdf/STATUTE-98-Pg1305.pdf>

⁴⁸ Marigold S. Melli, *A Brief History and Description of the Wisconsin Percentage Standard for Child Support*.

⁴⁹ *Family Support Act of 1988*, Pub.L. No. 100-485, 102 Stat. 2343

<https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg2343.pdf>

⁵⁰ Illinois Statutes Chapter 750. Families § 5/505. Child support; contempt; penalties
<http://www.ilga.gov/legislation/ilcs/documents/075000050K505.htm>. Hereafter cited as 750 ILCS 5/505.

⁵¹ Referred to as the paying parent in the Glossary of jurisdiction neutral terms.

⁵² Nancy Chausow Shafer, *Income Shares is Here: Now What? Implementation Issues and Some Possible Solutions*, The Journal of The DuPage County Bar Association, 2017.

<https://www.dcba.org/mpage/vol300917art4>

⁵³ Often referred to as the child support obligation in Illinois.

The current Illinois child support model is referred to as the **Illinois Child Support Guidelines** and is set out in legislation in the *Illinois Marriage and Dissolution of Marriage Act*.⁵⁴

Included in the legislation is the rationale underlying the guideline:⁵⁵

- To establish as state policy an adequate standard of support for children, subject to the ability of parents to pay;
- To make awards more equitable by ensuring more consistent treatment of persons in similar circumstances;
- To improve the efficiency of the court process by promoting settlements and giving courts and the parties guidance in establishing levels of awards;
- To calculate child support based upon the parents' combined adjusted net income estimated to have been allocated to the child if the parents and children were living in an intact household;
- To adjust the child support based upon the needs of the children; and
- To allocate the amount of child support to be paid by each parent based upon the child support and the child's physical care arrangements.

The guidelines provide a rebuttable presumption for calculating child support amounts within the state of Illinois. The guidelines may be rebutted in whole or in part however, every order rebutting the guidelines must state the reason for the deviation. The family court is required to issue child support amounts in accordance with the guidelines unless applying the guidelines would be unjust, inappropriate or not in the best interests of the children.

The Illinois Guidelines consider several factors:

- The incomes of both parents;
- How many nights the child spends with each parent;
- Whether one or more children are living with a parent in a shared or split custody situation;
- Whether either parent is paying for a prior child support obligation or has other minor children living in the household for whom they have legal responsibility; and
- Other special circumstances such as the cost of extraordinary expenses such as health insurance premiums, medical costs, tuition and childcare.

B. How can Parents Obtain a Child Support Award?

In Illinois, either parent can file for a support petition requesting the court to order the other parent to pay child support. In these cases, the court is required to use the Illinois Guidelines.

⁵⁴ *FAMILIES (750 ILCS 5/)* *Illinois Marriage and Dissolution of Marriage Act*.
<http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=2086&ChapterID=59>

⁵⁵ *Public Act 100-0923, Section 505*

Child support can also be determined through an administrative rather than a judicial system in Illinois. The Division of Child Support Services (DCSS) of the Illinois Department of Healthcare and Family Services (IDHFS)⁵⁶ is federally mandated to assist any parent who requests services,⁵⁷ or who receives certain types of financial assistance,⁵⁸ and is seeking financial support for a child, as well as the establishment of paternity and/or support for a child in their care. Should either parent choose this option, DCSS files all actions and pursues any administrative remedies, such as the enforcement of any orders. In addition to establishing child support amounts, the DCSS provides a variety of other services for parents, employers, and other child support agencies such as establishing paternity, locating a delinquent paying parent, and providing information to parents on how child support is established in Illinois.

If the child or the parent requesting child support receives social assistance or public benefits from the state, the determination and enforcement of child support is done by DCSS. Whether the services provided by DCSS are mandatory or discretionary depends on the type of social assistance benefits received. For example, all parents in receipt of child support payments, who are referred to as *obligees* under the Illinois model, and who receive the Temporary Assistance for Needy Families (TANF), are automatically provided with child support services from DCSS. TANF clients must cooperate with DCSS in order to keep receiving these benefits.

Obligees who receive medical assistance benefits are automatically offered child support services, but are not required to use the services of DCSS. In these cases, the services are optional and the receipt and amount of the benefits received are not affected if the parent chooses to not use the services.

C. How the Formula Works

To assist parents in determining their child support obligations, the DCSS is required to create and publish an online calculator tool called an *Income Shares Estimator*.⁵⁹ In addition, they are required to develop two other schedules. The first is an *Income Shares Schedule Based on Net Income*⁶⁰ that reflects economic data on how much two parents typically spend on their children for a range of family incomes and number of children. The second is a *Gross to Net Income Conversion Table Using Standardized Tax Amounts* that computes net income by deducting the standardized tax amount from gross income.⁶¹ The online calculator, related worksheets and relevant tables provide parents with the tools they require to develop an estimate of the possible child support award for their circumstances.

As noted above, the Illinois Child Support Guidelines also allow for adjustments to the basic child support amount for additional expenses required for the child such as childcare, tuition and medical expenses. As well, provisions exist to accommodate shared and split custody arrangements. Part 2 of this *Summary Report* includes the specific elements and relevant detailed calculations contained in the formula. To assist the reader in understanding the application of the Illinois Guidelines in a *simple case* where the child spends less than 40% of

⁵⁶ 750 ILCS 5/505 (a) (1).

⁵⁷ Services to individuals not receiving Title IV-A assistance, 45 C.F.R. § 302.33.

⁵⁸ Establishing Paternity and securing support, 45 C.F.R. § 302.31.

⁵⁹ The online calculator can be found at:

<https://www.illinois.gov/hfs/ChildSupport/parents/Pages/ChildSupportEstimator.aspx>.

⁶⁰ Public Act 100-0923, Section 505(a)(1).

⁶¹ Public Act 100-0923, Section 505(a)(3) C (II).

the time on an annual basis with the paying parent, the following six steps are completed to calculate the child support amount:

Step 1 - Determine each parent's income

The gross monthly income of each parent is determined.

Step 2 - Determine each parent's monthly Net Income Available for Child Support and combine them to generate *Combined Adjusted Net Monthly Income*

Using the *Gross to Net Income Conversion Table*, the net monthly incomes for both parents are determined. This results in the *Adjusted Net Monthly Income* for each parent. These amounts are calculated, and the result is called the *Combined Adjusted Net Monthly Income*.

Step 3 - Determine the proportional share of income for each parent

Each parent's percentage share is calculated by dividing the *Combined Adjusted Net Monthly Income* by each parent's *Adjusted Net Monthly Income*.

Step 4 - Determine the basic child support obligation

Using the table *Income Shares Schedule Based on Net Income*, the appropriate basic child support obligation based on the *Combined Adjusted Net Monthly Income* and relevant number of children is determined.

Step 5 - Determine each parent's share of the basic child support obligation

Each parent's contribution is then determined by multiplying each parent's percentage share by the appropriate amount determined using the *Income Shares Schedule Based on Net Income*.

Step 6 - Add proportional shares of other expenses to basic child support obligation.

If applicable, each parent's proportional share of health insurance premiums/coverage; and other expenses for: extracurricular activities or school expenses; or childcare expenses are calculated. These amounts are part of the online calculation but **are not added** to the final child support amount.

A seventh step is completed to reflect an allowance for shared or split physical care, if applicable.

Part 2: Elements of the Child Support Model

A. Data Source used to Determine Expenditures on the Children

How are expenditures for the child determined?

As noted earlier, the general premise of an income shares model is that each parent is responsible for their share of the prorated expenses of raising their children.

The DCSS is required to create a table or schedule of *basic child support obligations* that reflects economic data on how much two parents in an intact family typically spend on their children. DCSS has done so and it is called the *Income Shares Schedule Based on Net Income*.⁶² These economic data are collected for a range of family incomes and number of children. Using these data, a schedule is developed that consists of a chart that allows parents to determine their basic child support obligation according to their combined net income and the number of children for which support is being calculated.

Measurements of child-rearing expenditures underlying the amounts contained in the *Income Shares Schedule Based on Net Income* are based on the Betson-Rothbarth (“BR”) methodology of estimating child rearing expenditures.⁶³ In simple terms, the BR approach is a “marginal cost” approach that compares expenditures of two sets of equally well off households – one set consists of a couple with children and the second set consists of couples without children. The difference in expenditures is assumed to be the cost spent on raising the child.⁶⁴

The data used to develop this methodology are derived from the United States Department of Agriculture (USDA) Consumer Expenditure Survey administered by the Bureau of Labor Statistics.⁶⁵

In turn, the Centre for Policy Research converted them to 2017 price levels (i.e., February 2017) using changes in the Consumer Price Index. The BR measurements only cover one, two, and three children. The number of families in the Consumer Expenditure Survey (CES) with four or more children is insufficient to produce reliable estimates. For many child support guidelines, the National Research Council’s equivalence scale, as shown below, is used to extend the three-child estimate to four and more children.⁶⁶

Several adjustments have been made to the methodology to ensure there is no double counting of expenditures and to ensure consistency with the accompanying policy that allows for variations to the schedule amounts, such as shared physical care.⁶⁷

⁶² Jane Venohr, 2018, *Addendum to the Illinois Schedule of Basic Obligations and Standardized Net Income Table*, https://www.illinois.gov/hfs/SiteCollectionDocuments/2018Addendum_Basic_Obligations.pdf.

⁶³ Jane Venohr, *Technical Documentation: Illinois Schedule of Basic Obligations and Standardized Net Income Table* Submitted to: Illinois Department of Healthcare and Family Services Division of Child Support Services, June 12, 2017, 5-12, <https://www.illinois.gov/hfs/SiteCollectionDocuments/TechnicalDocumentationIllinoisScheduleNetIncomeTable.pdf>.

⁶⁴ Jane C. Venohr (2017) *Differences in State Child Support Guideline Amounts: Guidelines Models, Economic Basis, and other Issues*. Journal of the American Academy of Matrimonial Lawyers, Vol 29.No. 2.

⁶⁵ *Consumer Expenditure Survey (CEX)*, Bureau of Statistics, US Department of Labor. <https://www.bls.gov/cex/>

⁶⁶ Jane Venohr, *Technical Documentation: Illinois Schedule of Basic Obligations and Standardized Net Income Table* Submitted to: Illinois Department of Healthcare and Family Services Division of Child Support Services, June 12, 2017. 1. <https://www.illinois.gov/hfs/SiteCollectionDocuments/TechnicalDocumentationIllinoisScheduleNetIncomeTable.pdf>

⁶⁷ *Ibid.*, 4.

How are the expenditures reflected in the formula calculations?

As noted earlier, application of the guideline requires the use of pre-determined lookup tables one of which is entitled *Income Shares Schedule Based on Net Income*.⁶⁸ This table incorporates economic data on how much two parents typically spend on their children for a range of family incomes and number of children. This table allows parents to look up their monthly combined available net income and match it to the basic child support obligations (basic child costs), based on the number of children for which support is being calculated. This table sets out the combined monthly income of the two parents in income bands and number of children (1 to 6). The first income band is \$775.00 - \$824.99 per month of combined income while the last income band is \$29,975.00 - \$30,024.99.⁶⁹

The tables do not include childcare, the cost of the child's health insurance premium, and any out-of-pocket expenses for the child's healthcare. The guidelines calculation considers the actual amounts expended for these items on a case-by-case basis.⁷⁰

These tables are updated every four years with the most recent update being completed in 2018.⁷¹

B. Approach Used to Apportion the Amount that the Two Parents Will Share

The Illinois Child Support Guidelines are based on an income shares model. In this model the formula includes calculations that require information on the net incomes of both parents. To determine the amount of available income for child support, the incomes of both parents are added together to produce their combined net income amount. Their respective income percentages are then calculated. This percentage is multiplied by the child support obligation amount to determine the child support amount that the paying parent is responsible for.

C. Accompanying Policy/Legislation (Rules)

i) Determination of income

Both parents must provide their gross income. Gross income includes all types of income: wages (salaries, commissions, bonuses, and other income), income earned as an independent contractor, and all other taxable income that does not come from earnings, (e.g. dividends, severance pay, pensions, workers' compensation, alimony received, etc.).

Gross income does not include income received from means tested public assistance programs, such as Temporary Assistance to Needy Families, Supplemental Security Programs etc., or benefits and income received by the parent for other children in the household.

⁶⁸ The two tables are entitled the *Income Shares Schedule Based on Net Income* which contains the child support amounts by the parent's combined net income, by number of children and the *Gross to Net Income Conversion Table Using Standardized Tax Amounts* which is used to convert gross income to net income using standardized adjustments for taxes.

⁶⁹ All amounts are in US dollars. To convert to CDN dollars: \$1CDN=\$0.76US.

⁷⁰ Jane Venohr, *Economic Basis of Updated Child Support Tables for Vermont*, 18.

⁷¹ Jane Venohr, *Addendum to the Illinois Schedule of Basic Obligations and Standardized Net Income Table*, 2018.

The gross income is then converted to net income using either a standardized or individualized approach as outlined below.

As indicated earlier, the DCSS is required to develop and provide a standardized *Gross to Net Income Conversion Table Using Standardized Tax Amounts* that assists parents in converting their gross income to net income. This table essentially computes net income by deducting the standardized tax amount from gross income. The Act defines what standardized tax amounts are to be used⁷² and includes a list of allowable deductions including:

- The total of federal and state income taxes for a single person claiming the standard tax deduction;
- A personal exemption; and
- The applicable number of dependency exemptions for the minor child or children of the parties, including the social security tax and the Medicaid tax calculated at the *Federal Insurance Contributions Act* rate.⁷³

Once both parties have determined their respective gross income amounts, they are required to use this table to determine their net monthly income, which will be used to calculate the joint child support obligation. The *Gross to Net Income Conversion Table Using Standardized Tax Amounts* contains gross to net income conversions for the receiving parent, by the number of children, and a separate column for the gross to net conversion for the paying parent.

Provided that certain criteria are met,⁷⁴ the Act allows parties to use an individualized approach that consists of determining the specific tax conversion from gross to net income for that person, for the purposes of the child support calculations and not use the standardized conversion table. For example, if both parties agree to individualized tax calculations or when the majority of a party's income is derived from the ownership of a small business income, the individualized approach is used.

*Adjustments to net income*⁷⁵

Illinois provides for adjustments to each parent's net income for "dependents", i.e. children and spouses, who they are either paying support for and/or who they are legally responsible for. These are called a *Multi-family Adjustment* and deductions may be made under the following circumstances:

- Where there is a court order for child support being paid, that amount may be deducted from the parent's net income;
- Where there is no court order but it is established that a parent has responsibility for a child either living inside or outside of their household, the court shall deduct from the parent's net income the amount of financial support actually paid by the parent for the child, or 75% of the support the parent should pay under the child support guidelines

⁷² 2018 *Gross to Net Income Conversion Table Using Standardized Tax Amounts*, <https://www.illinois.gov/hfs/SiteCollectionDocuments/GrosstoNetIncomeConversionTableUsingStandardizedTaxAmounts.pdf>.

⁷³ Public Act 99-0764, Section 505, (a) 3 Income (C).

⁷⁴ Public Act 99-0764 Section 505, (a) 3 Income (D).

⁷⁵ (750 ILCS 5/505) 3. Income f. Adjustments to Income.

(before this adjustment), whichever is less. Only the responsible parent's income is to be used; and

- Where there are obligations pursuant to a court order for spousal maintenance in the pending proceeding actually paid or payable to the same party to whom child support is to be payable, or actually paid to a former spouse pursuant to a court order, that amount shall be deducted from the parent's after-tax income unless the maintenance obligation is tax deductible to the paying parent for federal income tax purposes. In these cases it must be deducted from the paying parent's gross income for purposes of calculating the parent's child support obligation.

ii) Income attribution

Unemployment or underemployment: If a parent is voluntarily unemployed or underemployed, child support is calculated based on the determination of potential income. A determination of potential income is made by ascertaining employment potential and the probable earnings level based on the paying parent's work history, occupational qualifications, prevailing job opportunities, the ownership by a parent of a substantial non-income producing asset, and earning levels in the community.⁷⁶

If there is insufficient work history to determine employment potential and probable earnings level, there is a rebuttable presumption that the parent's potential income is 75% of the most recent United States Department of Health and Human Services Federal Poverty Guidelines for a family of one person.⁷⁷

iii) Impact of custody and parenting time

Non-Shared Parenting Time

There is no calculation for care of a child if the time spent with a parent is under 146 overnights (40%) on an annual basis.

Shared Parenting Time

If each of the parents is responsible for the child for at least 146 overnight stays per year, the case is considered to be a *shared parenting situation*. In these situations, the *Basic Support Obligation* is multiplied by 1.5 to establish the *Shared Physical Care Support Obligation*.⁷⁸

- This amount is then prorated between the parties based on the combined net incomes of both parties.
- Then, the child support amount is calculated for each parent by multiplying that parent's portion of the *Shared Physical Care Support Obligation* by the amount of time the child spends with the other parent. For example, if one parent has the child for 200 overnights and the other for 165, then their respective portions would be 55% and 45%, and these percentages are then applied to each parent's *Shared Physical Care Support Obligation*.

⁷⁶ Public Act 99-0764, Section 505, (a) 3.2 Unemployment or underemployment.

⁷⁷ Ibid.

⁷⁸ Public Act 99-0764, Section 505, (a) 3.8 Shared Parenting.

- Finally, the respective *Shared Physical Care Support Obligations* are compared, with the parent owing more child support paying the difference between the two *Shared Physical Care Support Obligation* amounts.

Split parenting

In split parenting situations, where there is more than one child and each parent has physical custody of at least one but not all children, the support is calculated by completing two worksheets. Each worksheet is completed by calculating what the first parent would owe to the other parent if the child in their care were the only child. The parent who owes the greater obligation is ordered to pay the difference in support to the other parent. In split custody arrangements, the courts have the discretion to deviate from the guidelines.⁷⁹

iv) Special expenses

All costs are apportioned between the parents based on the percentage of their combined child support income.⁸⁰ The costs include:

- **Costs for special medical or development needs:** These are considered a deviation from the rebuttable presumption from the calculated formula child support amount. In these cases, the court must provide reasons for deviation in writing;
- **Extracurricular activities and school expenses:** The court, in its discretion, in addition to the basic child support obligation, may order either or both parents owing a duty of support to the child to contribute to the reasonable school and extracurricular activity expenses incurred, which are intended to enhance the educational, athletic, social, or cultural development of the child; and⁸¹
- **Childcare expenses:** The court, in its discretion, in addition to the basic child support obligation, may order either or both parents owing a duty of support to the child to contribute to the reasonable childcare expenses of the child. The childcare expenses shall be made payable directly to a party or directly to the childcare provider at the time of services.⁸²

v) Concept of undue hardship

The guidelines can be rebutted upon a preponderance of evidence that the results are not in the best interests of the child or are inequitable to the parties. As well, the guidelines can be rebutted in whole or in part. Every order rebutting the guidelines must state the reason for the deviation. The court may decline to adopt any agreement deviating from the guidelines that is clearly contrary to the best interests of the child.

⁷⁹ *Public Act 99-0764, Section 505, (a) 3.9 Split Care.*

⁸⁰ Since there are no guidelines for these amounts and any amount that is established is done under the discretion of the judge (if support is being sought judicially) or by an administrative law judge (if support is being sought administratively) then the relevant factors must be weighed and a determination made, as to whether an award should be established and if so, the amount of the award.

⁸¹ *Public Act 99-0764, Section 505, (a) 3.6.*

⁸² *Public Act 99-0764, Section 505, (a) 3.7.*

vi) Variations or modifications to orders

A modification is a change to an existing judicial or administrative child support order. The modification processed by DCSS applies only to the child support provision of the order and/or the provision for the child's health care. Judicial orders are modified through the courts and administrative orders are modified through DCSS.

Not less than once every three years, DCSS notifies each parent subject to a child support order of the right to request a review of their order, and the appropriate place and way in which the request should be made.

Orders qualify for the modification review process if one of the following conditions exists:

- At least three (3) years have passed since the establishment of the order or the last modification review; or
- There is a substantial change in the noncustodial parent's income; or
- The order does not address healthcare coverage for the child; or
- That the modified child support amount deviates from the previous Illinois guidelines amount by more than 20% and at least \$10.

A written request for a review is received by DCSS from the custodial parent, noncustodial parent, or another state. After the request for a modification review is received by DCSS, both parents are sent a notice stating whether or not their order qualifies for a modification review. This usually occurs within 30 days after the receipt of the request by DCSS. This time frame may vary depending on the workload of the office completing the review.^{83, 84}

vii) Other considerations

Age of the child: Child support orders automatically terminate when all minor children have reached the age of 18 years old and have graduated from high school. If the child is over 18 and has not finished high school, the child support will terminate when the child is 19 or when the child receives a high school diploma – whichever occurs first.

Minimum support: For a parent with gross income either at or below 75% of the Federal Poverty Level, child support is set at \$40.00 per month per child with a cap set at \$120 per month. In cases where parents have no gross income and receive means-tested income; who cannot work for medical reasons; or are incarcerated; or in an institution, there is a rebuttable presumption that the \$40 per month minimum order is inapplicable and a \$0 amount can be ordered.

Maximum support levels: The *Schedule of Basic Child Support Obligations* sets out amounts of child support up to a combined monthly net income of \$30,000 per month. Courts may use their discretion to determine the appropriate child support amount beyond

⁸³ *What You Need to Know About the Modification Review Process for Child Support Orders* State of Illinois Department of Healthcare and Family Services.

<https://www.illinois.gov/hfs/SiteCollectionDocuments/hfs3588.pdf>

⁸⁴ (750 ILCS 5/510) (from Ch. 40, par. 510) Sec. 510. Modification and termination of provisions for maintenance, support, educational expenses, and property disposition.

that monthly net income amount. However, the obligation shall not be less than the amount determined at the highest combined monthly net income category.

Part 3: Summary of Key Changes to the Child Support Guidelines Legislation

A. Overview of the Changes

As noted earlier, historically the Illinois Child Support Guidelines Model was based on the percentage of the paying parent's income. This model determined a child support amount using the number of children the paying parent shared with the other parent. Then, using the number of children as a guide, the model prescribed a percentage of their income that was to be used to determine the child support amount. This methodology assumes a similar contribution on the part of both parents. The percentage of the paying parent's income that is used dates back to 1984 when child support legislation was first introduced in Illinois. The percentages used in this early fixed percentage of income model were: 20% for one child; 25% for two children, and 32% for three children.⁸⁵

From 1984 to 2003 there were no substantial changes to the guidelines or the percentage-based child support awards.

2003⁸⁶

The percentages to be applied to the paying parent's income were changed to the following:

- 20% for one child;
- 28% for two children;
- 32% for three children;
- 40% for four children;
- 45% for five children; or
- 50% for six or more children.

2017

Following the mandated review in 2010 by the Illinois Child Support Advisory Committee and after 7 years of extensive consultations, several amendments came into effect that significantly changed the way child support was to be calculated. Included in these changes was moving from a fixed percentage model to an income shares model as the basis for the calculations of child support.⁸⁷

A summary of the reasons for the change were as follows:

⁸⁵ Bob Sampson, *Professor's research leads to new state law on child support*, 2003, <https://news.illinois.edu/view/6367/211982>.

⁸⁶ *Public Act 093-1061*, 2003.

⁸⁷ Jane Venohr, *Technical Documentation: Illinois Schedule of Basic Obligations and Standardized Net Income Table*, 1.

- As a result of the narrowing of the income gap between the incomes of the parties (paying parent and party receiving support), it was decided that the income of both parents should be considered in the calculation of child support.⁸⁸ Using a fixed percentage model, the income of the receiving parent was not relevant in the determination of the child support award. In situations where the paying parent was earning significantly more than the party receiving support, using a fixed percentage model, they would be paying a larger share of the child's expenses. However, as the income gap between the parties closes, the argument could be made that the percentage amount of the child's expenses that the paying parent was required to pay was not fair and equitable;
- There was an overall perceived unfairness because the income of the custodial parent was not taken into account in the determination of child support amounts;⁸⁹ and
- Former rules did not take into account parenting time.⁹⁰

In addition to the change from a fixed percentage model to an income shares model, several other significant changes were made:⁹¹

- The requirement for DCSS to provide online tools and worksheets;
- The use of expenditure data children in intact families to determine the basic child support amounts;
- The use of standardized tables to convert gross monthly income to net monthly income; and
- Provisions to adjust the basic child support amount to reflect shared parenting and split custody arrangements.

2019

As of February 2019, further amendments were made to the Illinois Child Support Guidelines in accordance with *Public Act 099-0746*:⁹²

- On January 1, 2019, the US federal government under the *Tax Cuts and Jobs Act 2017*⁹³ maintenance (alimony) is no longer tax-deductible to the paying spouse and it is no longer included in the calculation of gross income for the recipient parent; and

⁸⁸ Ibid.

⁸⁹ A. Traub & Associates, *New Child Support Law Now in Effect*; Posted on October 16, 2017 in Child Support Blog. <https://www.atclaw.com/divorce-lawyers-illinois/new-child-support-law-in-effect>.

⁹⁰ The Palmisano Law Group, Orland Park, IL. <https://www.palmisanolawgroup.com/family-law/child-cusotdy-visitation/>.

⁹¹ *Public Act 100-0923*, Section 10. The Illinois Marriage and Dissolution of Marriage Act is amended by changing Sections 504, 505, and 510. <http://www.ilga.gov/legislation/publicacts/100/PDF/100-0923.pdf>.

⁹² On August 12, 2016, *Public Act 99-0764* was signed into law that changed the manner in which Illinois divorce courts calculate child support. The law became effective on July 1, 2017 and modified two sections of the *Illinois Marriage and Dissolution of Marriage Act* ("The IMDMA"), specifically 750 ILCS 5/505 and 750 ILCS 5/510. <http://www.ilga.gov/legislation/publicacts/99/PDF/099-0764.pdf>.

⁹³ Federal *Tax Cuts and Jobs Act*, *Public Law 115-97*: n 11051. <https://www.govinfo.gov/content/pkg/PLAW-115publ97/html/PLAW-115publ97.htm>.

- As a result of these federal tax reforms, the 2019 Illinois amendments included modifications to the definition of gross and net incomes for both parties and how to treat maintenance orders pre-2019 and post-2019.⁹⁴

B. Overview of Commentary and Leading Case Law on the Child Support Model

There has only been one specific case identified that has resulted in any legislative changes to the Illinois Child Support Guidelines and that concerned the calculation of support for “multiple families”, i.e. a paying parent has obligations for children from a previous relationship. In 1997, the Potts case⁹⁵ established the concept of “first in time”, meaning that the first child born was due the largest portion of support and that children born subsequently would be due a percentage of the remaining net income after subtracting support for the child who was first-born.

Part 4: Summary of the Literature that Assesses the Model

No formal evaluations or studies have been conducted to examine the effectiveness, fairness or efficiency of the Illinois model. However, a review of the available literature on the advantages and disadvantages of the various elements of the Illinois model revealed the following opinions on the model.⁹⁶

A. Advantages

- Underlying philosophy is fair and equitable in that it uses the income of both parents.^{97, 98}
- The income shares model is used by the majority of states and is the most commonly used method – that in of itself indicates that it is one of the more accepted approaches to determining child support.^{99, 100}
- Changes in approach in 2017 responded to growing dissatisfaction from parents and family law professionals concerning the inequities in child support amounts from using the previous fixed percentage model.¹⁰¹

⁹⁴ Ill. *Public Act 100-0923* Section 10. The Illinois Marriage and Dissolution of Marriage Act is amended by changing Sections 504, 505, and 510.

⁹⁵ *In re Marriage of Potts*, 297 Ill. App. 3d 110 (Ill. App. Ct. 1998). <https://casetext.com/case/in-re-marriage-of-potts>

⁹⁶ The reader should note that these are the views of the authors of the information that was reviewed and are not the views of the authors of this summary report.

⁹⁷ J. David Sanders, *Shared Responsibility: Time for Illinois to adopt the income shares model of child Support*, Southern University Law Journal Vol.38, 2014.

⁹⁸ Nancy Chausow Shafer, *Income Shares is Here: Now What? Implementation Issues and Some Possible Solutions*, The Journal of The DuPage County Bar Association, 2017, <https://www.dcba.org/mpage/vol300917art4>.

⁹⁹ Sanders, David.

¹⁰⁰ Shafer, Nancy.

¹⁰¹ Sanders, David.

B. Disadvantages

- The rules and calculations are complex. Users must have access to a computer and worksheets etc. The rules and calculations are not easy for parents to understand.¹⁰²
- Calculations from gross to net income are cumbersome and too generic, which argues for the use of individualized tax calculations. Parties can opt to not use tables. However, grounds are limited and it is too early to determine level of effort required to present information to the Courts to justify a deviation from the table amounts. Concerns also have been raised about how variable income is to be treated by the Courts.¹⁰³
- How the calculations underpinning the table *Income Shares Schedule Based on Net Income* were developed is not easy to understand. Consequently, it is difficult to argue for exceptions to the basic amount, such as the potential increases in the costs of raising children as a result of regional variations.¹⁰⁴
- Inherent methodological concerns underpinning the *Income Shares Schedule Based on Net Income*, which uses expenditure data on two parent families, when research shows patterns of expenditures differ in one-parent families.¹⁰⁵
- Potential of abuse concerning how parents calculate the number of overnights.¹⁰⁶

Part 5: Selected Case Scenarios Using the Illinois Guideline

Illinois provides a calculator tool on its website. The following tables provide the results using two case scenarios – one simple, one complex. All amounts are in US dollars. The detailed calculations for the two scenarios using the Illinois online calculator – *Income Shares Estimator* are attached as Appendix B.

Case Scenario 1: Fred and Jane have one child named Sally. Sally is under the age of 18. Fred has care and custody of Sally for 50 overnights per year. The parents have annual gross incomes of \$50,000 (Fred) and \$30,000 (Jane).

	Monthly Net Obligation
Case Scenario 1: one child, no shared care, no other dependents, single wage earners.	\$597.29

Case Scenario 2: Joe and Carla have one child named Beth. Beth is under the age of 18. Carla has an annual gross income of \$30,000. Joe has an annual gross income of \$50,000. Joe has care and custody of Beth for 180 overnights per year. Joe is also the parent of a dependent child named Sam who is also under the age of 18. Sam resides with Joe. The cost to Joe to support Sam is \$500 monthly. Joe also pays childcare expenses for Beth of \$12,000

¹⁰² Shafer, Nancy.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Venohr, Jane (2017).

¹⁰⁶ Shafer, Nancy.

annually, or \$1000 per month. As well, Carla pays for extracurricular activities for Beth - \$2600 annually for these activities - or \$216 per month.

	Monthly Net Obligation
Case Scenario 2: one child, shared care and one other dependent child, middle-income earners.	Child Support Obligation: \$108.00 Extracurricular activities: \$123.89 Childcare Expenses: \$571.80 Total: \$803.69

Appendix A: References

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<https://www.illinois.gov/hfs/SiteCollectionDocuments/TechnicalDocumentationIllinoisScheduleNetIncomeTable.pdf>

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Appendix B: Two Case Scenarios

Case Scenario 1: Simple

# of children for whom support is sought 1 (Sally)				A	B	C
				Parent A Jane	Parent B Fred	Combined Total
Determination of Net Monthly Income	1	Gross Monthly Income from All Sources (includes maintenance received if established prior to 2019 and social security dependent benefits for subject child paid on behalf of the retired / disabled parent, less maintenance paid / payable if established prior to 2019; excludes means tested benefits (e.g., TANF, SSI, SNAP, etc.) and benefits / income received for non-subject child.)	1	\$2,500.00	\$4,166.67	
	2	Standardized Net Income (Using Standardized Net Income Conversion Table)	2	\$2,033.00	\$3,215.00	
	3	Individualized Net Income (Requires joint stipulation or court determination)	3			
	4	Maintenance received if established after January 1, 2019, or by agreement of the parties	4	\$0.00	\$0.00	
	5	Maintenance paid / payable if established after January 1, 2019 or by agreement of the parties	5	\$0.00	\$0.00	
	6	Multi-family Adjustment with Order: (Amount paid pursuant to the other terms of the order.) o child(ren) for parent A o child(ren) for parent B	6	\$0.00	\$0.00	
	7	Multi-family Adjustment without Order : (Lesser of amount paid or 75% of the support that should be paid solely on requesting parent's income.) o child(ren) for parent A o child(ren) for parent B	7	\$0.00	\$0.00	
	8	Adjusted Net Income (Add each parent's line 4 to line 2 or 3, then subtract line 5, line 6, and/or line 7 from that sum to determine his/her adjusted net monthly income to be used in the following steps. Next, add 8A and 8B to determine 8C.)	8	\$2,033.00	\$3,215.00	\$5,248.00
Computation of Basic Child Support Obligation	9	Each Parent's Percentage Share of Adjusted Net Income (Each parent's line 8 divided by 8C.)	9	38.74 %	61.26 %	
	10	Basic Child Support Obligation Based on Combined Adjusted Net Income (Using 8C, find the corresponding combined net income on the Schedule of Basic Child Support Obligations.)	10			\$975.00

	11	Each Parent's Contribution toward the Basic Child Support Obligation (Line 10C multiplied by each parent's line 9.)	11	\$377.72	\$597.29	
Health Insurance Coverage	12	Cost of Child's Health Insurance Premium (Actual amount of the total health insurance premium attributable to the subject child, placed in the column of the providing parent)	12			
	13	Each Parent's Share of the Child's Health Insurance Premium (Line 12A or B multiplied by each parent's line 9.)	13	\$0.00	\$0.00	
*Other Expenses	14	*Extraordinary Extracurricular Activities and School Expenses (Basic extracurricular activities and school expenses are included in the Schedule and Basic Child Support Obligation. Total cost entered in 14C. Then, to determine each parent's share, multiply 14C by each parent's line 9.)	14	\$0.00	\$0.00	\$0.00
	15	*Child Care Expenses *(Total cost entered in 15C. Then, to determine each parent's share, multiply 15C by each parent's line 9.)	15	\$0.00	\$0.00	\$0.00
		Child Support Obligation (If insurance is being provided by the parent who is also the obligor, then the obligee's share of health insurance from line 13 is subtracted from obligor's line 11, unless obligee's net income (line 2 or 3) is less than 133% of the Federal Poverty Guidelines, with the resulting amount appearing at right. If insurance is being provided by the parent who is the obligee, then amount at right will be line 11. The obligor's share of the health insurance from line 13 will appear below and is ultimately added to the obligation.)		\$0.00	\$597.29	
		Health Insurance Obligation (If insurance is being provided by the parent who is the obligee, then amount at right will be his/her line 13 and is ultimately added to the obligation, unless the obligor's net income (line 2 or 3) is less than 133% of the Federal Poverty Guidelines. If insurance is being provided by the parent who is the obligor, then the obligee's share of health insurance from line 13 is subtracted from obligor's line 11 with the resulting amount appearing as the Child Support Obligation and the number at right will be zero.)		\$0.00	\$0.00	

*Although depicted above, items listed in the Other Expenses section (Extraordinary Extracurricular Activities and School Expenses) are NOT included in the amounts shown as Child Support Obligation or Health Insurance Obligation. The court, in its discretion, may order either or both parents to contribute to these Other Expenses.

Case Scenario 2: Complex

				A	B	C
				Parent A Joe	Parent B Beth	Combined Total
Determination of Net Monthly Income	1	Gross Monthly Income from All Sources (Includes maintenance received if established prior to 2019 and social security dependent benefits for subject child paid on behalf of the retired / disabled parent, less maintenance paid / payable if established prior to 2019; excludes means tested benefits (e.g., TANF, SSI, SNAP, etc.) and benefits / income received for non-subject child.)	1	\$2,500.00	\$4,166.67	
	2	Standardized Net Income (Using Standardized Net Income Conversion Table)	2	\$2,033.00	\$3,215.00	
	3	Individualized Net Income (Requires joint stipulation or court determination)	3			
	4	Maintenance received if established after January 1, 2019, or by agreement of the parties	4	\$0.00	\$0.00	
	5	Maintenance paid / payable if established after January 1, 2019, or by agreement of the parties	5	\$0.00	\$0.00	
	6	Multi-Family Adjustment with Order: (Amount paid pursuant to the terms of the order.) o child(ren) for Parent A o child(ren) for Parent B	6	\$0.00	\$0.00	
	7	Multi-Family adjustment without Order: (Lesser of amount paid or 75% of the support that should be paid based solely on requesting parent's income.) o child(ren) for Parent A 1 child(ren) for Parent B	7	\$0.00	\$500.00	
	8	Adjusted Net Income (Add each parent's line 4 to line 2 or 3, then subtract line 5, line 6, and/or line 7 from that sum to determine his/her adjusted net monthly income to be used in the following steps. Next, add 8A and 8B to determine 8C.)	8	\$2,033.00	\$2,715.00	\$4,748.00
Computation of Basic Child Support Obligation	9	Each parent's percentage Share of Adjusted Net Income (Each parent's line 8 divided by 8C.)	9	42.82 %	57.18 %	
	10	Basic Child Support Obligation based on Combined Adjusted Net Income (Using 8C, find the corresponding combined net income on the Schedule of Basic Child Support Obligations)	10			\$916.00
	11	Each Parent's Contribution toward the Basic Child Support Obligation (Line 10C multiplied by each parent's line 9.)	11	\$0.00	\$0.00	

Shared Physical Care	12	Shared Physical Care Support Obligation (Line 10C multiplied by 1.5.)	12			\$1,374.00
	13	Each Parent's Share of the Shared Physical Care Support Obligation (12C multiplied by each parent's line 9.)	13	\$588.35	\$785.65	
	14	Number of Overnights per Year with the Child	14	185	180	365
	15	Percentage of time with Each Parent (Each parent's line 14 divided by 14C.)	15	50.68 %	49.32 %	
	16	Each Parent's Calculated Shared Care Child support Obligation (Multiply each parent's line 13 by the other parent's line 15.)	16	\$290.17	\$398.17	
	17	Resulting Shared Care Child Support Obligation (Subtract Lesser of 16A or 16B from the Greater of 16A or 16B. Enter the difference in the column of the greater value from line 16.)	17	\$0.00	\$108.00	
Health Insurance Coverage	18	Cost of Child's Health Insurance Premium (Actual amount of the total health insurance premium attributable to the subject child, placed in the column of the providing parent.	18			
	19	Each Parent's Share of the Child's Health Insurance Premium (Line 18A or B multiplied by each parent's line 9.)	19	\$0.00	\$0.00	
*Other Expenses	20	*Extraordinary Extracurricular Activities and School Expenses (Basic extracurricular activities and school expenses are included in the Schedule of Basic Child Support Obligation. Total cost entered in 20C. Then, to determine each parent's share, multiply 20C by each parent's line 9.)	20	\$92.78	\$123.89	\$216.67
	21	* Child Care Expenses *(Total cost entered in 21C. Then, to determine each parent's share, multiply 21C by each parent's line 9.)	21	\$428.20	\$571.80	\$1 000.00
		Child Support Obligation (If the insurance is being provided by the parent who is also the obligor, then the obligee's share of health insurance from line 19 is subtracted from obligor's line 17, unless obligee's net income (line 2 or 3) is less than 133% of the Federal Poverty Guidelines, with the resulting amount appearing at right. If insurance is being provided by the parent who is the obligee, then amount at right will be line 17. The obligor's share of the health insurance from line 19 will appear below and is ultimately added to the obligation.)		\$0.00	\$108.00	

		Health Insurance Obligation (If insurance is being provided by the parent who is the obligee, then amount at right will be his/her line 19 and is ultimately added to the obligation, unless the obligor's net income (line 2 or 3) is less than 133% of the Federal Poverty Guidelines. If insurance is being provided by the parent who is the obligor, then the obligee's share of health insurance from line 19 is subtracted from obligor's line 17 with the resulting amount appearing as the Child Support Obligation and the number at right will be zero.)		\$0.00	\$0.00	
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Calculation completed: 08-13-2019

*Although depicted above, items listed in the Other Expenses section (Extraordinary Extracurricular Activities and School Expenses and Child Care Expenses) are NOT included in the amounts shown as Child Support Obligation or Health Insurance Obligation. The court, in its discretion, may order either or both parents to contribute to these Other Expenses.

C – State of Vermont

Part 1: Description of the Child Support Model

A. Overview

In 1984, due to the varied procedures and extensive judicial discretion yielding inconsistent child support award decisions, the US Congress enacted the *Child Support Enforcement Amendments*.¹⁰⁷ These amendments required states to adopt state-wide advisory child support guidelines by October 1, 1987, based upon “specific and numeric criteria”. However, judges were allowed discretion as to whether to follow the guidelines. Although states established guidelines in accordance with the legislation, inconsistencies continued.¹⁰⁸

As a result, Congress promulgated the *Family Support Act of 1988*.¹⁰⁹ The Act not only affirmed the use of mathematical child support guidelines but also mandated the use of guidelines as a rebuttable presumption in the determination of child support amounts. Further, the Act stipulated that each state must review their guidelines every four years to ensure that their application results in the determination of appropriate child support amounts.

In complying with the above federal requirements, the State of Vermont adopted the income shares model that was developed as part of the 1984-87 National Child Support Guidelines Project.¹¹⁰ Vermont enacted its first child support legislation in 1985 and the resulting legislation articulated the objectives that embody the current approach to determining child support. The Vermont Child Support Guidelines are prescribed in state statute (15 Vermont Statutes Annotated (V.S.A.) §650-670)¹¹¹ and are set by administrative rules.¹¹²

The statute sets out the objectives of the child support guidelines and states that the best interests of the child should guide the court when determining child support. Several factors are to be considered and are set out in the statute.¹¹³

¹⁰⁷ Child Support Enforcement Amendments of 1984; pub. L. No. 93-378, 98 Stat. 1305, <https://www.govinfo.gov/content/pkg/STATUTE-98/pdf/STATUTE-98-Pg1305.pdf>.

¹⁰⁸ Marigold S. Melli, *A Brief History and Description of the Wisconsin Percentage Standard for Child Support*.

¹⁰⁹ *Family Support Act of 1988*, Pub.L. No. 100-485, 102 Stat. 2343, <https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg2343.pdf>.

¹¹⁰ Jane Venohr, *Economic Basis of Updated Child Support Tables for Vermont*, p.5.

¹¹¹ Full title of statute is: *Title 15: Domestic Relations Chapter 011: Annulment and Divorce: Subchapter 003A: Child Custody and Support*. <https://legislature.vermont.gov/statutes/section/15/011/00650>.

¹¹² Full title of rules is: *Code of Vermont Rules (CVR) Agency 13. Agency of Human Services sub-Agency 161. Office of Child Support chapter 001. Child Support Guidelines*. For later citations, this will be shortened to: CVR 13 161 001.

¹¹³ 15 V.S.A. §650.

The guidelines provide a rebuttable presumption for calculating child support obligations. The guidelines' amount may be rebutted in whole or in part. However, every order rebutting the guidelines' amount shall state the reason for the deviation. The family court must issue child support "obligations" in accordance with these guidelines unless applying them would be unjust, inappropriate or not in the best interests of the children.

The Vermont Child Support Guidelines are referred to as an income-shares model. As stated in the statute, one of the underlying assumptions of this model is that both parents contribute to the financial support of the child.¹¹⁴ As a result, the incomes of both parents are used to determine the support obligation. Another assumption underlying this model is that children should be entitled to the same level of expenditures that they would have received had the parents lived together and combined their resources. Hence, embedded in the model is a measurement of how much families spend on their children.

As set out in statute, the Secretary of Human Services is required to administer the guidelines and produce tools and required forms to allow parents and the court to calculate child support amounts.¹¹⁵

To assist parents in calculating their child support obligation, the Office of Child Support (OCS), Department for Children and Families, Vermont Agency of Human Services, provides tools such as worksheets and an online calculator as well as in-person support provided by case managers. In addition to determining child support amounts, the OCS provides a variety of other services for parents, family officials, employers, and other child support agencies, including enforcement measures, establishing paternity, locating delinquent parents and providing general information on how child support is administered in Vermont.

A key component of the tools provided by the OCS to assist parents and legal professionals in determining child support amounts is the production of three sets of tables. These tables are constructed based on the different parenting time arrangements: sole, split and shared custody.

The Vermont Child Support Guidelines consider several factors:¹¹⁶

- How many nights the child spends with each parent;
- Whether either parent is paying for a prior child support obligation or has other minor children living in the household;
- Whether one or more children are living with the other parent in a shared or split physical custody situation;¹¹⁷
- The ability of the parents to pay child support. This is done through the inclusion of a self-support reserve in the calculation; and

¹¹⁴ 15 V.S.A. §654.

¹¹⁵ 15 V.S.A. §654.

¹¹⁶ CVR 13 161 001 Child Support Guidelines.

¹¹⁷ 15 V.S.A. §657.

- Other special circumstances, such as the cost of extraordinary educational or medical expenses for the child, income received by the child, or the cost of child care required so that the parent can either go to work or school.

With court approval, if both parents agree that the guidelines amounts are unfair, they can depart from the guidelines. As well, if either parent believes the amount using the guidelines is unfair to either himself or herself or the child, they can request a deviation hearing. The factors that the court may consider in assessing the request to deviate from the guidelines include but are not limited to:¹¹⁸

- The financial resources of the child, custodial and the noncustodial parent;
- Any costs for the educational, physical and emotional needs of the child;
- Any extraordinary travel expenses incurred by either parent to maintain contact with the child; and
- The standard of living the child would have enjoyed had the parents stayed together.

Another unique feature of the Vermont Guidelines is the concept of a “maintenance supplement”. This provision in the statute allows a party to request a child support supplement to the child support amount in an effort to correct any disparity that may have resulted in a lower standard of living for the child than the child would have had if the family remained intact. In these circumstances, the courts are required to look at the respective financial circumstances of both parties including their assets and liabilities.¹¹⁹

B. How can Parents Obtain a Child Support Award?

In Vermont, parents have three options¹²⁰ to arrange child support. They can opt for:

- 1) Parent negotiated child support arrangements – Should either parent choose this option, they may use the guidelines as a reference point, although this is not compulsory. If both parties negotiate a child support amount, they have the option of submitting an agreement (referred to as a stipulated agreement) in writing to the court, and the judge will finalize the child support order.
- 2) Use the services of the OCS – Either parent can apply to use the services. These services include establishing parentage, establishing an order for child and medical support, modifying or enforcing an existing order, and locating a noncustodial parent. If children are either receiving social assistance or Medicaid or are receiving any services from the OCS, by law, the State of Vermont is required to establish a medical support and/or child support order. The only exceptions are when the OCS or the parent in receipt of support deems (and provides good cause) that it is not in the child’s best interests to do so, such as in cases of domestic violence or child abuse.¹²¹ In these situations, the case is referred to the courts.

OCS will apply the child support guidelines. Should either party not agree with the child support amount, they may elect to go before a judge.

¹¹⁸ *Child Support in Vermont – A Handbook for Parents*, Vermont, Department of Children and Families, 17.

¹¹⁹ 15 V.S.A § 661.

¹²⁰ *Child Support in Vermont - A Handbook for Parents*. Vermont Department for Children and Families, 13.

¹²¹ *Child Support in Vermont - A Handbook for Parents*. Vermont Department for Children and Families, 14.

- 3) Seek a court order for maintenance – In these situations parents usually cannot agree on a child support amount and they do not want to use or are not required to use the services of the OCS. In these cases, the judge will use the guidelines but can also deviate from the guidelines amount if there are extra expenses, which can be taken into account if warranted.

All cases of child support are heard in the Family Division of Superior Court in Vermont. In an effort to assist families, case managers are available to assist parties to prepare for any hearings, help them understand their rights and responsibilities and answer any questions about the court process.

C. How the Formula Works¹²²

In Vermont, the determination of child support obligations requires a number of steps and the use of different tables depending on the shared and/or split custody arrangements. The OSC also provides an online calculator tool¹²³ to assist parents in assessing potential child support amounts based on their circumstances.

Part 2 of this *Summary Report* includes the specific elements and relevant detailed calculations contained in the formula. To assist the reader in understanding the application of the Vermont Guidelines, in a *simple* sole custody situation where the child resides with the receiving parent for more than 75% of the time, the following steps are completed:

Step 1 - Determine each parent's gross income

Both parents must first disclose their gross income and determine the number of children who will be the subject of the order. If either parent is self-employed or is receiving or paying spousal support, an adjustment is made to their monthly gross income.

Step 2 - Determine each parent's Monthly Net Income Available for Child Support

Using the tax conversion table (Adjusted Gross To After Tax Income Conversion Table for Sole and Split Custody Cases – After Tax Incomes for Custodial and Noncustodial Parents and Different Numbers of Children)¹²⁴, each parent's monthly gross income is converted into a net income; this income becomes the Monthly After Tax Income. If either parent has a payment for a pre-existing child support order, health insurance costs or an amount for any additional dependents, these costs are subtracted from their respective Monthly Net Income Available for Child Support amount.

¹²² The terms used in this section and the remainder of this Summary are the titles used by Vermont in their online calculator and displayed in Appendix B Case Scenarios. These terms have been italicised.

¹²³ The online calculator can be found at: <https://dcf.vermont.gov/ocs/parents/calculator>

¹²⁴ <https://dcf.vermont.gov/sites/dcf/files/OCS/Docs/Sole-Split.pdf>. There is second tax conversion table for shared custody situations entitled the *Adjusted Gross to After Tax Income Conversion Table for Shared Custody Cases – After Tax Incomes for Either Parent and Different Numbers of Children*.
<https://dcf.vermont.gov/sites/dcf/files/OCS/Docs/Shared.pdf>.

Step 3 - Determine the proportional share of income for each parent

Divide their monthly net incomes by their combined net income to generate their proportional share of their combined income.

Step 4 - Determine the Child Support Guidelines Amount

Using the Guidelines Table (referred to as the *Vermont Table of Intact Family Expenditures on Children*), determine the relevant child expenditures based on the combined monthly net income of both parties and number of children. This is termed the *Child Support Guidelines Amount*.

Step 5 - Determine the Combined Family Expenditures

Add to the amount in Step 4 any qualified childcare expenses, extraordinary medical or educational expenses, this results in the *Combined Family Expenditures*.

Step 6 - Determine each parent's share of Combined Family Expenditures

Multiply each parent's proportional share of their combined incomes (Step 3) by the *Combined Family Expenditures*. This is their respective *Parental Support Obligation*.

Step 7 - Determine the ability to pay for the paying parent

Subtract the Self-Support Reserve¹²⁵ from their Monthly Net Income Available for Child Support (from Step 2) to produce the Income Available for Support. The Final Monthly Support Payable is either the paying parent's Parental Support Obligation **or** Income Available for Support, whichever is **less**.

In more complex cases where the child spends more than 25% of nights with each parent, or in split custody cases, separate worksheets, Tax Tables and Guidelines Tables must be used.

In cases where the child stays with the parent at least 25% of all overnights, the *Child Support Guidelines Amount*, is multiplied by 1.5. This additional amount is to account for the cost of maintaining two households. Similar to the situation of less than 25%, any extraordinary medical or educational costs, such as childcare, are added to this "higher" *Child Support Guidelines Amount* to produce the *Combined Family Expenditures*. These total costs are then shared according to the parents' proportional share of their income.

In split custody cases, each parent completes the appropriate worksheet according to the number of children in their care. Then, the parent with the higher final child support obligation will pay the other parent the difference in their amounts.

¹²⁵ *CVR 13 161 001 Child Support Guidelines. 2) 1. Self-support Reserve.* The Self-Support Reserve for an individual is calculated at 120 percent of the United States Department of Health and Human Services poverty guideline per year for a single individual.

Part 2: Elements of the Child Support Model

A. Data Source Used to Determine Expenditures on the Children

How are expenditures for the child determined?

As noted earlier, the general premise of any income shares model is that each parent is responsible for their share of the prorated expenses of raising their children. As with all models, a key component of the income shares model is to determine the expenditures on the child that the parents will share in proportion to their income.

The Department for Children and Families, Vermont Agency of Human Services, is required by statute to create a guideline for child support that reflects the percent of combined available income that intact families in Vermont ordinarily spend on their children. This guideline is also to be based on the financial needs of Vermont children established by reliable data that reflects their need.¹²⁶

Measurements of child-rearing expenditures underlying the amounts contained in the original Guideline Table are based on the Betson-Rothbarth methodology of estimating child rearing expenditures.¹²⁷

In simple terms, this approach is a “marginal cost” approach that compares expenditures of two sets of equally well-off households. One set consists of couples with children and the second set consists of couples without children. The difference in expenditures is assumed to be the cost spent on child rearing.¹²⁸

Several adjustments have been made to the methodology to ensure there is no double counting of expenditures (for such items as medical care, health insurance premiums and childcare) and to ensure consistency with the accompanying policy that allows for variations to the schedule amounts (such as in cases of split or shared custody). As well, there is no adjustment made to the expenditure data underlying the table for the child’s age.¹²⁹

The data used to develop the amounts contained in the Guideline Table are derived from the 2004-2009 USDA Consumer Expenditure Survey administered by the Bureau of Labor Statistics.¹³⁰

How are the expenditures reflected in the formula calculations?

Application of the guideline requires the use of the *Vermont Table of Intact Family Expenditures on Children* that is provided by the Office of Child Support. The table reflects the expenditures on children and forms a key component of the Vermont Guidelines. It was first developed in 1996 and has since been updated. It incorporates economic data on how much two parents typically spend on their children for a range of family incomes and number

¹²⁶ 15 V.S.A. §654

¹²⁷ The Betson-Rothbarth (BR) measurements form the basis of 30 US state guidelines including Vermont’s Guidelines Table. Jane Venohr, *Economic Basis of Updated Child Support Tables for Vermont*, 8.

¹²⁸ *Ibid.*, 10.

¹²⁹ *Ibid.*, 18.

¹³⁰ *Ibid.*, 18.

of children. This table allows parents to look up their monthly combined net income available and match it to the appropriate income band to find the basic child support obligation (basic child costs), based on the number of children for which support is being calculated. This table sets out the combined monthly income of the two parents in income bands and number of children (1 to 6). The first income band is \$625 - \$674 per month of combined income while the last income band is \$24,975 - \$25,025.¹³¹

The Guidelines Tables do not include childcare, the cost of the child's health insurance premium, nor any out-of-pocket expenses for the child's healthcare. The guidelines calculation considers the actual amounts expended for these items on a case-by-case basis.¹³²

The table is updated every four years with the next revisions expected shortly.

B. Approach Used to Apportion the Amount that the Two Parents will Share

Vermont uses an Income Shares model. As with all income shares models, the calculations involve adding the two parents' net incomes together, and in this case, the "*Adjusted Monthly Net Income*", to produce a total. By dividing each parent's net income amount by their combined net income amount, their respective "income" percentages are produced. This percentage is then multiplied by the child support obligation amount to determine the child support amount the paying parent is responsible for. This amount is called the *Parental Support Obligation*.

C. Accompanying Policy/Legislation (Rules)

i) Determination of income

The application of the Vermont Guidelines requires the monthly net incomes for both parents. To arrive at these amounts, the gross income for both parents is first determined. The statute requires that both parents complete, exchange and file with the court an affidavit that sets out each parent's gross income and assets.¹³³

Gross income is defined as all income and earnings from all sources. The income may or may not be taxable. Income can be in the form of money, property, or services.

Gross income includes:¹³⁴

- Wages, salaries, earnings, tips, interest, capital gains, commissions, and bonuses;
- Worker's compensation or other personal injury awards intended to replace income;
- Unemployment insurance;
- Income continuation benefits and Social Security Disability Income payments;

¹³¹ All amounts are in US dollars. To convert to CDN dollars: \$1CDN=\$0.76US.

¹³² Jane Venohr, *Economic Basis of Updated Child Support Tables for Vermont*, 18.

¹³³ 15 V.S.A. §661.

¹³⁴ 15 V.S.A. §653 Definitions; 5 (A) Gross Income.

- Contributions to retirement and cafeteria plans and undistributed income of a corporation; and
- Military allowances and veterans disability benefits.

Gross income does not include:¹³⁵

- Child support payments received; and
- The amount of money from means tested public assistance programs such as: Temporary Assistance for Needy Families, Supplemental Income, the Supplemental Nutrition Assistance Program, and General Assistance.

Conversion of monthly gross income to net income

As discussed earlier, each parent's monthly gross income is converted into net monthly-adjusted income. This is because the *Vermont Table of Intact Family Expenditures on Children* is based on the net combined available income of both parents. In order to assist parents in the tax conversion calculations, Vermont developed two Tax Tables. These Tax Conversion Tables convert gross income to net income using standardized adjustments for taxes.

The first is the Adjusted Gross to After Tax Income Conversion Table for Sole and Split Custody Cases – After Tax Incomes for Custodial and Noncustodial Parents and Different Numbers of Children. The second is the table to be used in shared custody situations and is entitled the Adjusted Gross to After Tax Income Conversion Table for Shared Custody Cases – After Tax Incomes for Either Parent and Different Numbers of Children.

Essentially the tables show a gross income with a corresponding net income reflecting deductions for standard federal and state income taxes and inflationary increases to deductions and exemptions as well as increases to the tax brackets and various earned income tax credits. The Tax Tables themselves are reviewed every four years. However, the amounts for the self-support reserve, the regular tax rate and maximum taxable earnings are reviewed and updated annually. They are adjusted to reflect changes in federal tax rates and the cost of living as indicated by the Consumer Price Index for the preceding year.¹³⁶

Adjustment for other dependent children

If applicable and after the net monthly incomes are determined for both parents, an adjustment for additional dependent children may be made. Dependent children include natural, adopted and/or stepchildren for whom the parent has a legal duty to support. The amount for this adjustment is estimated by using the relevant amount obtained from the *Vermont Table of Intact Family Expenditures on Children* based only on the claiming parent's net income. This amount is then subtracted from the *Monthly Net Income Available for Child Support* of that parent.¹³⁷

¹³⁵ 15 V.S.A. §653 Definitions; 5 (B).

¹³⁶ 13 161 001. Child Support Guidelines. 2.

¹³⁷ 15 V.S.A. §656a Adjustment for additional dependents.

ii) Income attribution

If a parent is unemployed, underemployed, or fails to provide adequate documentation of their wages, the court may attribute income to them. In order to determine how much income will be attributed to the parent, the court examines earnings history, employment qualifications and the current job market.¹³⁸

iii) Impact of custody and parenting time

Accounting for the custody and parenting time arrangements are integral to the Vermont Guidelines calculations.

When each parent exercises physical custody for 30% of the time or more, the parents are considered to have shared physical custody of the child. Under the guidelines, physical custody means having the child stay overnight. In these cases, the parents use the *Tax Conversion Table from Gross Income to Net Income in Shared Custody Situations*. As well, the child support obligation is determined by multiplying the relevant *Vermont Table of Intact Family Expenditures on Children* amount by 1.5 to reflect the increased costs of having a shared parenting arrangement.

At this point in the calculations and if applicable, extraordinary medical, educational costs as well as childcare are added to produce a *Combined Family Expenditure* amount. Each parent's child support obligation is then determined by dividing the *Combined Family Expenditures* amount between the parents in proportion to their respective *Monthly Net Income Available for Child Support*.

Finally, in shared physical custody cases, the paying parent's proportion of time spent with the child is multiplied by the *Child Support Guidelines Amount* (that was multiplied by 1.5) to produce their "credit". This amount accounts for their additional costs of shared physical custody. This credit is subtracted from their *Parental Support Obligation* to produce their *Adjusted Shared Custody Child Support Amount*.

In situations where the one parent exercises physical custody between 25% and 30% of the time, the parents use the *Tax Conversion Table from Gross Income to Net Income in Shared Custody Situations*. However, a reduction in their credit is calculated when the time spent is below the threshold of 30% of time spent with the child.¹³⁹

In split custody arrangements, where either one of the parents has custody of one or more children, a theoretical support payment is determined for each parent based on the number of children in the other parent's household and then a calculation is done to compare the two amounts. The person with the larger obligation is required to pay the other parent the difference between the two amounts.¹⁴⁰

¹³⁸ 15 V.S.A. §653. *Definitions*; 5 (A) (iii).

¹³⁹ 15 V.S.A. §657. (b) 25-30% overnights.

¹⁴⁰ 15 V.S.A. § 657. (e) *Split physical custody*.

iv) Special expenses

Expenses for special educational costs, qualified childcare costs¹⁴¹ and medical expenses¹⁴² are added to the amount obtained from the *Vermont Table of Intact Family Expenditures on Children*, to form the *Combined Family Expenditures* amount. This amount is then multiplied by each parent's proportional share of income to produce the amount that the paying parent is obligated to pay – the *Parent Support Obligation*.¹⁴³

v) Concept of undue hardship

Included in the Vermont Guidelines is an “ability to pay” calculation that essentially acts like a *Self-Support Reserve*. This amount is updated annually and is set at \$1249 per month (for 2019). This amount is calculated at 120% of the U.S. Department of Health and Human Services poverty Guideline per year for a single adult.

To assess the paying parent's ability to pay, the *Self-Support Reserve* is subtracted from their *Monthly Net Income Available for Child Support*. If the result is less than the *Parental Support Obligation* (in cases with less than 25% of time spent) or the *Adjusted Shared Custody Child Support Obligation* (over 25% time spent), then this lesser amount becomes the child support amount payable. This calculation is to ensure that the paying parent has at least the *Self-Support Reserve* after paying their child support obligation to support themselves.¹⁴⁴

vi) Other circumstances that could be considered that may result in a variation or modification to the Monthly Support Payable

Variation or modification of an order:

On motion of either parent, the OCS, any other person to whom support has previously been granted, or any person previously responsible for support, and upon a showing of a real, substantial and unanticipated change of circumstances, the court may annul, vary, or modify a child support order, whether or not the order is based upon a stipulation or agreement. If the court has not modified the child support order for at least three years, the court may waive the requirement to show a real, substantial, and unanticipated change of circumstances.¹⁴⁵

The OCS may independently file a motion to modify child support if a party is or will be incarcerated for more than 90 days, if the family has reunited or is living together, if the child is no longer living with the payee, or if a party receives means-tested¹⁴⁶ government benefits.

A child support order that varies more than ten percent from the amounts calculated under the Vermont Guidelines shall be considered a real, substantial, and unanticipated change of circumstances.

¹⁴¹ 15 V.S.A. §653 Definitions; 2 Child Care Costs.

¹⁴² 15 V.S.A. §653 Definitions; 4 Extraordinary Expenses – related to special educational needs of the child and/or, include but not be limited to uninsured annual medical expenses in excess of \$ 200.00.

¹⁴³ 15 V.S.A. §653 Definitions; 9. Total Support Obligation.

¹⁴⁴ 15 V.S.A. § 656 (c).

¹⁴⁵ 15 V.S.A. § 660. Modification.

¹⁴⁶ A means test is a determination of whether an individual or family is eligible for government assistance, based upon whether the individual or family possesses the means to do without that help.

They are the following:

- Receipt of workers' compensation, disability benefits, or means-tested public assistance benefits;
- Unemployment compensation, unless the period of unemployment was considered when the child support order was established; and
- Incarceration for more than 90 days, unless incarceration is for failure to pay child support.

Maintenance supplement:

A unique feature of the Vermont child support guidelines is the concept of a maintenance supplement.¹⁴⁷ Although the Office of Child Support staff is not required to calculate or establish maintenance supplements as policy, this statute provision is available in the legislation and can be considered by the courts. This provision allows a party to request a child support supplement to the child support amount in an effort to correct any disparity that may have resulted in a lower standard of living for the child than the child would have had if the family remained intact. In these circumstances, the courts are required to look at the respective financial circumstances of both parties including their assets (but not the income of a new spouse) and liabilities.

vii) Other considerations

Age of the child: Child support orders automatically terminate when all minor children have reached 18 years of age and have graduated from high school. If the child is over 18 and has not finished high school, child support will terminate when the child is 19 or when the child receives a high school diploma – whichever occurs first.

Minimum support: The statute does not specify a minimum child support amount. However, the court has the discretion to take the income level of the parent into consideration when setting a child support amount, or deviating from the use of the guidelines.¹⁴⁸

Maximum support: The court may use its discretion in determining child support in circumstances where combined available income exceeds the uppermost levels of the support guidelines (\$300,300 per year).¹⁴⁹

Administrative reviews: The OCS can make these reviews when a change occurs that is required by law, such as when a parent under a current child support order misses their payments for one calendar month. An arrears payment will automatically be added to the order.¹⁵⁰

¹⁴⁷ 15 V.S.A. § 661.

¹⁴⁸ CVR 13 161 001 *Child Support Guidelines (Vermont Child Support Legislation: Title 15: Domestic Relations Chapter 011: Annulment and Divorce: Subchapter 003A: Child Custody and Support.)*

¹⁴⁹ 15 V.S.A. § 656 (d).

¹⁵⁰ CVR 13 161 002. *Office of Child Support Administrative Review.*

Part 3: Summary of Key Changes to the Child Support Guidelines Legislation

A. Overview of the Changes

A review of the websites accompanied by information obtained through interviews reveals that there have not been any significant changes to the Vermont Child Support Guidelines legislation since its inception. Provisions for recognizing other dependent children for whom the parents are legally responsible have been in place since the early 1900s. The expenditure table, which is incorporated into their guidelines, has been in place since 1996 and is updated every four years.

B. Overview of Leading Case Law on the Child Support Model

There has not been any specific case law identified that has resulted in any legislative changes to the Vermont Child Support Guidelines. However, a 2000 Supreme Court of Vermont decision in *Canton v. Young* was influential in that it helped clarify the definition of income for the purposes of child support determination.¹⁵¹ As a result of this decision, the legislation on child support now requires that any payments received for disability benefits by either of the parents is to be included in the calculation of the parents' gross income. Disability payments that the child may receive had already been taken into consideration in the calculations, and the payments received for the child are treated as a credit towards the paying payments child support amounts.

Part 4: Summary of the Literature that Assesses the Model

There have not been any formal evaluations or studies conducted to examine the effectiveness, fairness or efficiency of the Vermont Child Support Guidelines. However, a review of the available literature on the advantages and disadvantages of the Vermont model revealed the following:¹⁵²

A. Advantages

- Underlying philosophy of the model is fair and equitable since it uses the income of both parents.¹⁵³
- The Income Shares model is used by the majority of states and is the most commonly used method, that in of itself indicates that it is one of the more accepted approaches to determining child support.¹⁵⁴

¹⁵¹ *Canton v. Young*, 171 Vt. 635, 769 A.2d 1286 <https://caselaw.findlaw.com/vt-supreme-court/1244907.html>.

¹⁵² The readers should note that these are the views of the authors of the information that was reviewed and are not the views of the authors of this summary report.

¹⁵³ Jane Venohr, *Child Support Guidelines and Guideline Reviews: State Differences and Common Issues*.

¹⁵⁴ Jane Venohr, *Economic Basis of Updated Child Support Tables for Vermont*, and, *Differences in State Child Support Guidelines Amounts: Guidelines Models, Economic Basis, and Other Issues*.

- Authors of the Vermont Guidelines have responded to the growing dissatisfaction from parents and family law professionals concerning the inequities in child support amounts in cases of shared custody.¹⁵⁵
- Current guidelines incorporate provisions that encourage both parents to maintain relationships with their children by allowing for a more equitable sharing of child expenditures – arguing that increased access is in the best interests of the child.¹⁵⁶

B. Disadvantages

- The rules and calculations are complex. Users must have access to a computer and worksheets. Moreover, the rules and calculations are not always easy for parents to understand.¹⁵⁷
- Calculations underpinning the *Vermont Table of Intact Family Expenditures on Children* are not easy to understand. Consequently, it is difficult to argue for exceptions to the basic amount, such as the potential increases in the costs of raising children as a result of regional variations.¹⁵⁸
- Concerns have been raised about the inherent methodology underpinning the amounts contained in the *Vermont Table of Intact Family Expenditures on Children*. Expenditure data on two parent families is used, when research shows patterns of expenditures differ in one-parent families.¹⁵⁹

Part 5: Selected Case Scenarios Using the Vermont Guidelines

The OCS provides an online calculator tool¹⁶⁰ and worksheets on its website. The following tables provide the results from two case scenarios – one simple and one complex (all amounts are in US dollars).

Case Scenario 1: Fred and Jane have one child, Sally, who is under the age of 18. They have no other dependent children. Fred has “sole” custody of Sally for 300 overnights per year. The parents have annual gross incomes of \$50,000 (Fred) and \$30,000 (Jane).

	Monthly Net Obligation
Case Scenario 1: one child, no shared parenting time, no other dependents, both single wage earners.	\$386

¹⁵⁵ Michelle Turnelli and Aaron Thomas, *Joint Custody Presumption in Vermont: A proposal for Co-Parenting. Can Children Express Preference in Vermont Custody Proceedings?* And Jane Venohr, *Differences in State Child Support Guidelines Amounts: Guidelines Models, Economic Basis, and Other Issues*.

¹⁵⁶ Michelle Turnelli and Aaron Thomas, *Joint Custody Presumption in Vermont: A proposal for Co-Parenting*.

¹⁵⁷ Jane Venohr, *Economic Basis of Updated Child Support Tables for Vermont*.

¹⁵⁸ Marygold S Melli, *A Brief History and Description of the Wisconsin Percentage Standard for Child Support*.

¹⁵⁹ Jane Venohr, *Economic Basis of Updated Child Support Tables for Vermont*.

¹⁶⁰ The online calculator may be found at: <https://childsupportcalculator.ahs.state.vt.us/-/expert>.

Case Scenario 2: Jack and Lynn have separated and have one child, Tom, who is under the age of 18 and for whom Lynn is seeking child support. Jack has care of Tom for 35% (128 overnights per year). Jack also has an existing child support order for \$200 per month. Jack has an annual gross income of \$50,000. Lynn has an annual gross income of \$30,000. Lynn pays \$1,000/month in childcare costs for Tom.

	Monthly Net Obligation
Case Scenario 2: one child, shared care and existing child support order, childcare expenses.	\$895.58

The detailed calculations for the two scenarios are attached as Appendix B.

Appendix A: References

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Vermont Child Support Legislation: *Title 15: Domestic Relations Chapter 011: Annulment And Divorce: Subchapter 003A: Child Custody And Support.*
<https://legislature.vermont.gov/statutes/section/15/011/00650>

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Appendix B: Two Case Scenarios

Case Scenario 1: Simple

Family Court			
(CP):	Fred	Worksheet	Sole custody
(NCP):	Jane	County:	
		Docket:	
Children			
Number of children			1
Percentage of Time with Children	82 %	18 %	100 %
Number of Additional Dependents	0	0	0
Part 1. Monthly Available Income	CP	NCP	Combined
1. Monthly Gross Income	\$4,166.00	\$2,500.00	
a. Self Employment / Spousal Support	\$0	\$0	
2. Monthly Adjusted Gross Income	\$4,166.00	\$2,500.00	
3. Monthly After Tax Income	\$3,475.00	\$2,051.00	
a. Pre-existing Child Support	\$0	\$0	
b. Health Insurance	\$0	\$0	
c. Additional Adjustment	\$0	\$0	
4. Monthly Unadjusted Available Income	\$3,475.00	\$2,051.00	
a. Additional Dependent Adjustment	\$0	\$0	
5. Monthly Available Income	\$3,475.00	\$2,051.00	\$5,526.00
Part 2: Calculating Support Obligation	CP	NCP	Combined
6. Porportional Share of Income	62.88 %	37.12 %	
7. Child Support Guideline Amount			\$1,040.00
a. Qualified Child Care	\$0	\$0	
b. Medical Expenses	\$0	\$0	
c. Educational Expenses	\$0	\$0	
8. Combined Family Expenditures			\$1,040.00
9. Parental Support Obligation	\$654.00	\$386.00	
Part 3: Ability to Pay Calculation	CP	NCP	Combined
10. Self-Support Reserve	\$	\$1,249.00	
11. Income Available for Support	\$	\$802.00	
12. Monthly Support Payable	\$	\$386.00	
13. Monthly Incomes (after support)	\$3,861.00	\$1,665.00	
Income Breakdown	CP	NCP	

Taxed (W2)	\$4,166.00	\$2,500.00	
Self-employment	\$0	\$0	
Non-taxed	\$0	\$0	

Case Scenario 2: Complex

Family Court			
(CP):	Jack	Worksheet	Shared
(NCP):	Lynn	County:	
		Docket:	
Children			
Tom, 01/01/2009			
Custody Information	Parent A	Parent B	Total
Number of children			1
Percentage of Time with Children	35 %	65 %	100 %
Number of Additional Dependents	0	0	0
Part 1. Monthly Available Income	Parent A	Parent B	Combined
1. Monthly Gross Income	\$4,166.00	\$2,500.00	
a. Self Employment / Spousal Support	\$0	\$0	
2. Monthly Adjusted Gross Income	\$4,166.00	\$2,500.00	
3. Monthly After Tax Income	\$3,403.00	\$2,335.00	
a. Pre-existing Child Support	\$200	\$0	
b. Health Insurance	\$0	\$0	
c. Additional Adjustment	\$0	\$0	
4. Monthly Unadjusted Available Income	\$3,203.00	\$2,335.00	
a. Additional Dependent Adjustment	\$0	\$0	
5. Monthly Available Income	\$3,203.00	\$2,335.00	\$5,538.00
Part 2.: Calculating Support Obligation	Parent A	Parent B	Combined
6. Porportional Share of Income	57.84 %	42.16 %	
7. Child Support Guideline Amount			\$1,040.00
8. Multiply Line 7 * 1.5			\$1,560.00
a. Qualified Child Care	\$0	\$932.50	
b. Medical Expenses	\$0	\$0	
c. Educational Expenses	\$0	\$0	
9. Totals of Lines 8a, 8b et 8 c	\$0	\$932.50	\$932.50
10. Combined Family Expenditures			\$2,492.50
11. Parental Support Obligation	\$1,441.58	\$1,050.92	
Part 3.: Shared Custody Calculations			
12. Expenditure Adjustment	\$	\$932.50	
13. Minus credit for time spent with Parent B	\$	\$1,014.00	

14. Plus adjustment for families where child spend at least 25% but less than 30% of time with Parent B	\$	\$0	
15. Adjusted Shared Custody Child Support Obligation	\$	\$ -895.58	
Part 4.: Ability to Pay Calculator	Parent A	Parent B	Combined
16. Self-Support Reserve	\$1,249.00		
17. Income Available for Support	\$1,954.00		
18. Monthly Support Payable	\$895.58		
19. Monthly Incomes (after support)	\$2,307.42	\$3,260.58	
Income Breakdown	Parent A	Parent B	
Taxed (W2)	\$4,166.00	\$2,500.00	
Self-employment	\$0	\$0	
Non-taxed	\$0	\$0	

D – State of Wisconsin

Part 1: Description of the Child Support Model

A. Overview

Wisconsin is considered to be a pioneer in developing approaches to the determination of child support through the use of guidelines. Wisconsin has had a standardized method in place to assist parents and family law officials in the calculation of child support since the early 1980's.¹⁶¹ Wisconsin was well ahead of any federal government reforms.¹⁶² Following the recommendations contained in the Institute for Research on Poverty 1982 Study Report, *Child Support: Weaknesses of the Old and Features of a Proposed New System*, the state of Wisconsin implemented the child support assurance system in stages.¹⁶³ The percentage of income standard was made an option for the courts to use in 1983 and became the presumptive child support obligation as of July 1987.¹⁶⁴

The percentage rates that were applied to the gross income of the noncustodial parent were: 17% for one child; 25% for two; 29% for three; 31% for four, and 34% for five or more children. The child support amount was to be collected through a payroll withholding system or taken from social security payments or income taxes.¹⁶⁵

Since the 1980s, like most jurisdictions with child support models that include standard formulas, rules and regulations guiding their application, Wisconsin's child support model has undergone changes over time. The more recent changes are detailed below in Part 3.

Currently, Wisconsin continues to use the percentage of income¹⁶⁶ model for determining child support obligations for parents. The rules for setting the percentage of income model are contained in Wisconsin's Administrative Code for the Department of Children and Families (DCF): *Chapter 49 DCF 150 Child Support Percentage of Income Standard*.¹⁶⁷

It provides a rebuttable presumption for calculating child support obligations. The guideline amount may be rebutted in whole or in part; however, every order rebutting the guideline

¹⁶¹ Marygold S. Melli, *A Brief History and Description of the Wisconsin Percentage Standard for Child Support*, Wisconsin Family Impact Seminars, 1991; and, Irwin Garfinkel, *The Evolution of Child Support Policy*. 1988.

¹⁶² *Child Support Enforcement Amendments of 1984*; pub. L. No. 93-378, 98 Stat. 1305) <https://www.govinfo.gov/content/pkg/STATUTE-98/pdf/STATUTE-98-Pg1305.pdf> *Family Support Act of 1988*, Pub.L. No. 100-485, 102 Stat. 2343 <https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg2343.pdf>.

¹⁶³ Irwin Garfinkel and Marygold Melli, *Child Support: Weaknesses of the Old and Features of a Proposed New System*, Vol. 1, IRP Special Report no. 32A, 1982

¹⁶⁴ *Ibid.*

¹⁶⁵ *Family Support Act of 1988*, Pub.L. No. 100-485, 102 Stat. 2343

¹⁶⁶ Sometimes referred to as the flat percentage model.

¹⁶⁷ *Chapter 49 DCF 150 Child Support Percentage of Income Standard*. 2018, http://docs.legis.wisconsin.gov/code/admin_code/DCF/101_199/150.

amount shall state the reason for the deviation. The family court will issue child support “obligations” in accordance with these Guidelines unless applying the guidelines would be unjust, inappropriate or not in the best interests of the children.

The principles underlying the Wisconsin Guidelines are clearly stipulated in their administrative rules and are as follows:

- The standard is based on the principle that a child's standard of living should, to the degree possible, not be adversely affected because his or her parents are not living together;
- It determines the percentage of a parent's income and potential income from assets that parents should contribute toward the support of children if the family does not remain together;
- The standard determines the minimum amount each parent is expected to contribute to the support of his or her children;
- It expects that the custodial parent share his or her income directly with their children; and
- It also presumes that the basic needs of the children are being met. This latter presumption may be rebutted by clear and convincing evidence that the needs of the children are not being met.

B. How can Parents Obtain a Child Support Award?

In Wisconsin, only the courts can set a child support order. To assist parents, the Wisconsin Child Support Program (of the Department of Children and Families) provides services to assist parents to establish orders (as well as establish paternity, locate parents, financial services, etc.). All families with a court order for support (child support, alimony/maintenance, and family support) receive financial management services. Families needing help with child support may apply to their local child support agencies for case management services (commonly called child support services). There is no application fee. Families receiving public assistance automatically receive case management services.¹⁶⁸

C. How the Formula Works

Wisconsin uses a percentage of income approach, which basically requires the income of the paying parent and the number of children for whom support is being considered. Depending on the characteristics of the case, one of six formulas is used to determine the appropriate child support award.¹⁶⁹

¹⁶⁸ *Facts about Child Support*, Wisconsin Child Support Program, <https://dcf.wisconsin.gov/files/publications/pdf/760.pdf>.

¹⁶⁹ The format for this part of the Wisconsin Summary does not resemble the other jurisdictional summaries as the application of the formula it is not a “step-by-step” calculation. Once the circumstances of the case are determined the parties choose the appropriate formula that applies in their case. Then, various calculations are completed.

The first formula is referred to as the *Standard Guidelines*.¹⁷⁰ Three criteria must be met to use the *Standard Guidelines*:

- The case involves sole custody of the children;
- The paying parent has an income that falls between \$1,350 and \$7,000¹⁷¹ per month (\$16,200 - \$84,000 annually); and¹⁷²
- The paying parent has no prior child support obligations.

In these cases, the calculations are very straightforward. A *Percentage Standard* is applied to the gross income of the paying parent to determine a standard amount of child support. The *Percentage Standard* is: 17% of the income of the paying parent for 1 child, 25% for 2, 29% for 3, 31% for 4 and 34% for 5 or more children.¹⁷³

If parents have case circumstances that do not meet the criteria for using the *Standard Guidelines*, then one of six additional formulas is applied. The use of one of these six formulas is an exception to the *Standard Guidelines* and the courts must concur with their use.¹⁷⁴ These formulas are listed under the title: *Determining the child support obligation in special circumstances*.¹⁷⁵ The case circumstances that dictate which one of the six formulas is to be used are as follows:

- 1) *Serial family cases*¹⁷⁶ – For a serial-family parent where the child support obligation incurred for a marital or non-marital child in a subsequent family. The child support obligation must be as a result of a court order.

In cases where the court agrees that there is more than one child support obligation for a paying parent, it will first subtract the amount of the existing child support obligation from the parent's monthly income available for the new child support obligation. The *percentage standard* that is used in the *Standard Guidelines* is then applied to this adjusted monthly income.

- 2) *Shared placement cases*¹⁷⁷ – Where parents have custody arrangements that allow for at least 25% of the time with the noncustodial parent. These cases require information on the monthly income for both parents.

In cases where courts agree to the use of the shared-placement formula (the order must state that the parents will share the placement of their children for at least 25% of the time (at least 92 days/year)) and the court has ordered each parent to assume the child's basic support costs in proportion to the time that the parent has placement

¹⁷⁰ Teresa Wall-Cyb, *Child Support Laws in Wisconsin*, DivorceNet.

¹⁷¹ All amounts are in US dollars. To convert to CDN dollars: \$1CDN=\$0.76US.

¹⁷² These cases do not involve extra expenses for the children and are sole custody cases with less than 92 overnights by the paying parent.

¹⁷³ Wisconsin has used these same percentages of income since the introduction of their child support formula in the 1980s.

¹⁷⁴ Teresa Wall-Cyb, *Child Support Laws in Wisconsin*, DivorceNet.

¹⁷⁵ These are detailed in Family and Economic Security DCF 150.04 (1) to (6), *Determining the child support obligation in special circumstances*.

¹⁷⁶ DCF 150.04(1) *Determining the child support obligation of a serial-family parent*.

¹⁷⁷ DCF 150.04(2) *Determining the child support obligation of shared-placement parents*.

of the child, the *Percentage Standard* in the *Standard Guidelines* is used. This *percentage standard is applied to the monthly net incomes of both parents*. The results are then multiplied by 150%. This multiplier is designed to account for each parent's share of the children's basic support costs (food, shelter, clothing, etc.). Then, each parent's percentage of time with the child is calculated and **applied to the other parent's basic obligation**. The two results are subtracted from one another and the parent with the positive amount is the paying parent.

- 3) *Split-placement cases*¹⁷⁸ – Where there is more than one child and the children split residence time with both parents. These cases require information on the monthly income for both parents.

In cases of split placement, the *Percentage Standard* that is used in the *Standard Guidelines* is **divided by the number of children**: for 2 children: $25\%/2=12.5\%$; $29\%/3=9.67\%$ for 3; $31\%/4=7.75\%$ for 4, and $34\%/5=6.8\%$ for five. This provides a per child percentage. Then, based on the number of children each parent has, for example if one parent has three children and the other has one child, then their respective percentages would be: 3 times $7.75\%=23.25\%$ and 7.75% . These percentages are multiplied by **the other parent's monthly net income**. The resulting figures are compared, and the parent with the higher amount pays that amount to the other parent.

- 4) *High-income payer cases*¹⁷⁹ – Where the gross income from all sources of the paying parent is \$7,000 month or more (\$84,000 per year).

In cases where the court agrees to the use of the high-income formula, there are two sets of percentages. If the income is greater than or equal to \$7,000 and less than or equal to \$12,500, then the percentage that applies, by number of children, is 80% of the *Percentage Standard*. If the income is greater than \$12,500, then the percentage that applies, by number of children, is 60% of the *Percentage Standard*.

- 5) *Low-income payer cases*¹⁸⁰ – Where the gross income from all sources of the paying parent is less than 150% of the Federal Poverty Guidelines (FPG)¹⁸¹ for a single person.

¹⁷⁸ DCF 150.04 (3) *Determining the child support obligations of split-placement parents.*

¹⁷⁹ DCF 150.04 (5) *Determining the child support obligation of a high-income payer.*

(c) The court may apply the following percentages to the portion of a payer's monthly income available for child support that is greater than or equal to \$7,000 and less than or equal to \$12,500:

1. 14% for one child; 2. 20% for 2 children; 3. 23% for 3 children; 4. 25% for 4 children; 5. 27% for 5 or more children. Note: A monthly income of \$7,000 is an annual income of \$84,000 and a monthly income of \$12,500 is an annual income of \$150,000. The percentages that apply to income between \$84,000 and \$150,000 are approximately 80% of the full percentage standards.

(d) The court may apply the following percentages to the portion of a payer's monthly income available for child support that is greater than \$12,500:

1. 10% for one child; 2. 15% for 2 children; 3. 17% for 3 children; 4. 19% for 4 children; 5. 20% for 5 or more children. Note: A monthly income of \$12,500 is an annual income of \$150,000. The standards that apply to income over \$150,000 are approximately 60% of the full percentage standards.

¹⁸⁰ DCF 150.04 (4) *Determining the child support obligation of a low-income payer.*

¹⁸¹ *Federal Poverty Guidelines*, Office of the Assistant Secretary for Planning and Evaluation.

<https://aspe.hhs.gov/poverty-guidelines>.

In cases where the court agrees to the use of the low-income formula, the *Percentage Standard* that is used in the *Standard Guidelines* that is applied to the paying parent's income to determine the relevant child support amount is lower. The table of child support obligations for low-income payers is provided in legislation¹⁸² (Appendix C). It shows the child support amounts at each income level (from 75% to 150% of FPG) by the number of children (one to five). The percentages of income used to generate child support amounts at each income level are also provided. These percentages increase linearly as income increases, ending with the *Percentage Standard*. For example, for one child the percentage of income starts at 11.22% for the lowest income, and increases to 17% at the highest income, which is 150% of the FPG. Lastly, if a payer's monthly income available for child support is below 75% of the FPG, the court may order an amount appropriate to the payer's total economic circumstances.¹⁸³

- 6) *Combination of special circumstances* – The court may apply any combination of special circumstance provisions as noted above (case circumstances 1 to 5) to determine a child support obligation if the criteria apply and the combination of provisions is not specifically prohibited.¹⁸⁴

Furthermore, either parent can request a deviation to any of the six formulas if they provide evidence that the use of the applicable formula relevant to their case circumstance is unfair to the child or to any of the parties. Various reasons for consideration for a deviation include:

- The financial resources of the child;
- The financial resources of both parents;
- Maintenance received by either party;
- The cost of childcare if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home;
- The award of substantial periods of physical placement to both parents;
- Extraordinary travel expenses incurred in exercising the right to periods of physical placement;
- The physical, mental, and emotional health needs of the child, including any costs for health insurance;
- The child's educational needs;
- The tax consequences to each party;
- The best interests of the child;
- The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community; and

¹⁸² Chapter DCF 150 APPENDIX C Child Support Obligation of Low-Income Payers at 75% to 150% of the 2019 Federal Poverty Guidelines.

¹⁸³ DCF 150.04 (4)(a) Low-income payers use Appendix C “Child Support Obligation of Low-Income Payers at 75% to 150% of the 2018 Federal Poverty Guidelines”.

¹⁸⁴ DCF 150.04 (6) (a) General.

- Any other factors which the court determines relevant.¹⁸⁵

If the court finds that use of the applicable guidelines is unfair to the child or the requesting party, the court shall state in writing or on the record: the amount of support that would be required by using the *Percentage Standard*; the amount by which the court's order deviates from that amount; its reasons for finding that use of the *Percentage Standard* is unfair to the child or the party; its reasons for the amount of the modification and, the basis for the modification.¹⁸⁶

Part 2: Elements of the Child Support Model

A. Data Source Used to Determine expenditures on the Children

How are expenditures for the child determined?

The percentages used in the Wisconsin Guidelines were chosen based on extensive research that was undertaken by the Institute for Research on Poverty.¹⁸⁷

Following the research and analysis of various economic approaches to determining what parents spend on their children, researchers at the Institute concluded that the proportion of income devoted to a first child varies from between 16 to 24% for one child in intact families. They also found that the share of income spent on the second and third child was about half of what was spent on the first.

The guiding principle in Wisconsin was the concept of “continuity of expenditure”. This means that children should not be adversely affected because their parents do not live together. Thus estimates of expenditures on children in intact families are the basic comparison point for the “costs” of children.¹⁸⁸

Upon considering several factors, such as balancing the conflicting objectives of ensuring that the needs of the child are met while also ensuring an appropriate standard of living for the paying parent, as well as recognizing that establishing a child support standard cannot be a purely scientific exercise, the authors of the Wisconsin percentage-of-income standard determined the support rates for the paying parent. These rates were 17% of the gross income of the paying parent for 1 child, 25% for 2, 29% for 3, 31% for 4 and 34% for 5 or more children.¹⁸⁹ These percentages are the same percentages that were used in the early 1980s, when the state of Wisconsin first developed their child support policy.

¹⁸⁵ DCF 150.03 (11) Deviation from the Percentage Standard.

¹⁸⁶ Chapter 767 Actions Affecting The Family, 767.511 Child Support.

¹⁸⁷ Marygold S. Melli, *A Brief History and Description of the Wisconsin Percentage Standard for Child Support*, Wisconsin Family Impact Seminars, 1991.

¹⁸⁸ Daniel Meyer, overview on *Cost of Children and Expenditures on Children*, Institute for Research on Poverty, 2011.

¹⁸⁹ Marygold S. Melli, *A Brief History and Description of the Wisconsin Percentage Standard for Child Support*, Wisconsin Family Impact Seminars, 1991.

How are the expenditures reflected in the formula calculations?

The Wisconsin Child Support Program provides online calculators to estimate the amount of child support under various case circumstances. As well, it provides two lookup tables: A *Child Support Percentage Conversion Table*¹⁹⁰ and A *Child Support Obligation for Low Income Payers at 75% to 150% of the 2019 Federal Poverty Guidelines*.¹⁹¹

B. Approach Used to Apportion the Amount that the Two Parents will Share

Wisconsin uses the percentage of income formula to determine the child support amount. The basic formula is called the *Standard Guidelines*. As mentioned above, depending on the circumstances, a number of different formulas are applied. These circumstances pertain to the income level of the paying parent and the custody arrangements and/or the presence of dependent children. Wisconsin uses the same percentage of income formula, but adjusts the *Percentage Standard* that is used in the application of the relevant formula to reflect different family circumstances.

C. Accompanying Policy/Legislation (Rules)

i) Determination of income

The Wisconsin Guidelines require the use of the gross income of the paying parent when determining the amount with which to apply the *percentage standard*. Gross income is defined as all income and earnings from all sources. The income may or may not be taxable. Income can be in the form of money, property, or services.

Gross income includes:¹⁹²

- Wages, salaries, earnings, tips, interest, capital gains, commissions, and bonuses;
- Worker's compensation or other personal injury awards intended to replace income;
- Unemployment insurance;
- Income continuation benefits and Social Security Disability Income (SSDI) payments;
- Contributions to retirement and cafeteria plans and undistributed income of a corporation; and
- Military allowances and veterans disability benefits.

Gross income does not include:

- Child support; and
- Any public assistance payments, Supplemental Security Income (SSI)¹⁹³, etc.

¹⁹⁰ DCF 150 APPENDIX A.

¹⁹¹ DCF 150 APPENDIX C.

¹⁹² DCF 150.02(13)(a) *Definitions – “Gross Income”*. This part lists all the types of income to be included for each parent. Sub-paragraph 10. Lists all the exclusions.

¹⁹³ Supplemental Security Income (SSI) is a monthly cash benefit paid by the federal Social Security Administration and state Department of Health Services to people in financial need who are 65 years old or older or people of any age who are blind or disabled.

ii) Income attribution¹⁹⁴

The court may impute income based on earning capacity. In situations where the income of a parent is less than the parent's earning capacity or is unknown, the court may impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent's community. As an alternative to imputed income, the court may order the parent who is not a custodial parent to search for a job or participate in a work experience and job training program.

The court may also impute a reasonable earning potential to a parent's assets if the court finds both of the following: The parent has ownership and control over any real or personal property, including but not limited to, life insurance, cash and deposit accounts, stocks and bonds, business interests, net proceeds resulting from worker's compensation or other personal injury awards not intended to replace income, and cash and corporate income in a corporation in which the parent has an ownership interest sufficient to individually exercise control and the cash or corporate income is not included as gross income under s. DCF 150.02 (13).

iii) Impact of custody and parenting time

As noted above, if the child spends more than 25% of the time with the noncustodial parent, and/or if there is more than one child and the children are split between the parents, or when the parenting plan combines both shared and split placement, a deviation to the use of the *Standard Guideline* applies. As indicated above, this will result using the *Percentage Standard* but in a modified manner.

iv) Impact of special expenses or “variable costs”

In Wisconsin, special expenses or “variable costs” refer to the reasonable costs above basic support costs incurred by or on behalf of a child. These costs include but are not limited to, the cost of childcare, tuition, a child's special needs, and other activities that involve substantial cost. Under DCF 150, **these costs are only applied** in “shared-placement” or in “a combination of special circumstances”. The costs are to be split in proportion to each parent’s time spent with the child. Furthermore, these costs are to be split between the parents in shared-placement cases based on their proportion of time with the child. Also, the court is to determine how the monies are transferred as these amounts are not collected nor enforced by the Child Support Program.

For medical costs, Wisconsin rules under *DCF 150.05 Medical Support*, lay out the circumstances and rules for assigning the parents responsibility for providing the child with a private insurance, if applicable and available.

v) Concept of undue hardship

The guidelines shall be rebutted upon a preponderance of the evidence that the results are not in the best interests of the child or are inequitable to the parties. The guidelines may be rebutted in whole or in part. Every order rebutting the formula shall state the reason for the

¹⁹⁴ DCF 150.03 paragraphs (3) & (4).

deviation. The court may decline to adopt any agreement deviating from the guidelines that is clearly contrary to the best interests of the child.

vi) Variations to child support orders

Once a child support order has been established, it can only be changed if there has been a substantial change in circumstances. Examples of what constitutes a change in circumstances include:

- A substantial change in the income of either party. The definition of “substantial” is often based on the facts of the situation but usually this requires a change in gross income of at least \$5,000 per year or more and results in a substantial change to the child support award;
- At least 33 months has passed since the last child support order, a substantial change in circumstances is presumed to have occurred;
- A child “ages out” by reaching the age of 18 or graduates from high school;
- A change in the placement schedule;
- A move by one party or the other resulting in additional transportation costs;
- A substantial change in the needs of either parent or the child. For example, if a child develops special needs, incurs unusual costs or if a parent becomes disabled;
- The coming into force of any changes to the legislation does not in and of itself, constitute grounds for a modification to the child support amounts;
- A change in “variable costs” does not constitute a change in circumstances for the purpose of modification; and
- Administrative adjustments can be made when a change occurs that is required by law – such as when a parent under a current child support order misses their payments for one calendar month. An arrears payment may be added to the order.

vii) Other considerations

Age of the Child: Child support orders automatically terminate when all minor children have reached 18 years of age and have graduated from high school. If the child is over 18 and has not finished high school, the child support will terminate when the child is 19 or when the child receives a high school diploma – whichever occurs first.

Minimum Support: Wisconsin does not have a minimum order amount.

Maximum Support: Wisconsin does not have a maximum order amount.

Part 3: Summary of Key Changes to the Child Support Guidelines Legislation

A. Overview of the Changes

The Wisconsin policy to ensure the financial support to children of divorced or separated families started in 1982 as a Child Support Assurance System, where all parents living apart from their children were obligated to share their income with their children. The rate at which

their income was to be shared was set out in an administrative code and normally depended on the number of children who were owed support.¹⁹⁵

In 1983, the percentage of income model was made an option for courts in the state of Wisconsin to consider when they were determining child support awards. Under this type of model, the child support payment was determined based on the income of the paying parent. The percentage that was applied to that income increased as the number of children increased. For Wisconsin, the percentages to be applied to the net income of the paying parent is set out in their Administrative Code¹⁹⁶ and is administered by the Department of Children and Families.

Further amendments occurred in 1987, when the Guidelines became presumptive.¹⁹⁷

2004

In 2004, there was change in the treatment of shared placement cases eliminating the “bands” of time that the child spends with the paying parent. Prior to these changes, the “bands” of time that were used in the formula calculations created “cliffs” in the award results.¹⁹⁸ The “bands of time” were eliminated, and the lowest threshold of time that the child could spend with the paying parent before the case was considered to not be a sole custody situation was reduced to 25%. From this threshold and over, the parents are considered to have a shared placement case.

At the same time, Wisconsin added provisions to address low-and high-income paying parents. It introduced income limits to define each category and developed two formulas designed to calculate child support amounts for paying parents who had incomes that fell into these two different income categories.

2017

The federal government passed its *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule*¹⁹⁹ to among other requirements, include a rule that incorporated the longstanding federal requirement that child support orders reflect the noncustodial parents’ ability to pay established under income-based guidelines adopted by each state. This was done with the goal of increasing the accuracy of the child support orders, thus increasing the likelihood of payment.²⁰⁰

¹⁹⁵ Marygold S Melli, *A Brief History and Description of the Wisconsin Percentage Standard for Child Support*, Wisconsin Family Impact Seminars, 1991.

¹⁹⁶ The formula is contained in *DCF 150*. https://docs.legis.wisconsin.gov/code/admin_code/dcf/101_199/150.

¹⁹⁷ *Ibid*.

¹⁹⁸ “Cliffs” were endpoints where the amount of child support could change significantly with only a small change of time spent with the child (2%).

¹⁹⁹ *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule*. Office of Child Support Enforcement, Administration of Children and Families, US Department of Human and Health Services, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf>.

²⁰⁰ *Final Rule Summary* fact sheet, 2017, https://www.acf.hhs.gov/sites/default/files/programs/css/fem_final_rule_summary.pdf.

2018

By federal legislation, Wisconsin's Guidelines have to be reviewed and updated every 4 years.²⁰¹

The latest review took place in the spring of 2015. An advisory panel comprised of representatives from the judiciary, public interest groups and the Department of Children and Families completed their report and made a series of recommendations to the Department of Children and Families for their consideration.²⁰²

In July 2018 a series of revisions were made to *DCF 150*.²⁰³ Of particular note, changes were made pertaining to:

- The definition of variable costs to include transportation costs and the requirement for the listing of the variable costs to be agreed to by both parties or ordered by the courts.
- Changes to what is considered “equivalent care” and calculating “overnights” to include the consideration of “blocks of hours” during the day spent with the child and changes to the calculations for determining the number of overnights.
- Changes to the income threshold for the inclusion of medical support.
- Adjustments to the definition of income such as the inclusion/deduction of payments received for social security benefits, and employer paid pension contributions and Veteran's disability compensation benefits.

B. Overview of Leading Case Law on the Child Support Model

There has not been any specific case law identified that has resulted in any legislative changes to the Wisconsin Child Support Guidelines.

Part 4: Summary of the Literature that Assesses the Model

There have been no formal evaluations conducted on the Wisconsin Child Support Guidelines. A review of the available literature on the advantages and disadvantages of the various elements of the Wisconsin Child Support Guidelines revealed the following:²⁰⁴

²⁰¹ *Child Support Enforcement Amendments of 1984; Pub. L. No. 93-378, 98 Stat. 1305.*

²⁰² For more details on the recent changes to the Wisconsin Child Support Guidelines please refer to the *Child Support Guidelines Review, Advisory Committee Report to Wisconsin Department of Children and Families*, September 2015, <https://bloximages.chicago2.vip.townnews.com/wiscnews.com/content/tncms/assets/v3/editorial/d/01/d01c3d01-34f8-5680-bbe0-aa5644ab4897/58598f208a4c7.pdf.pdf>.

²⁰³ Murphy Desmond Lawyers S.C. 2018 *Wisconsin Child Support Changes (DCF 150 Rule Revisions)*, 2019. <https://www.murphydesmond.com/?t=40&an=79946&format=xml&p=4827>.

²⁰⁴ It should also be noted that the advantages and disadvantages listed below are those of the authors of the sources of information that were reviewed for this study.

A. Advantages

- Because the income of the noncustodial parent is the only income required in the calculation of child support, application of the Guidelines is easier to apply than other models such as income shares or the Delaware model.²⁰⁵
- Because the Wisconsin Guidelines are not based on actual expenditures for special expenses or “variable costs” and these costs are not considered in the child support calculations, the application of the Guidelines are easier to administer and update.²⁰⁶
- Simplicity of the guidelines enhances public understanding and hence support for the policy.²⁰⁷

B. Disadvantages

- Perceived unfairness as the percentage of income model does not take into consideration the income of the non-paying parent – especially in cases where the non-paying parent has income levels that are higher than the paying parent.
- Formula and percentages used to determine child support amounts in cases where the paying parent earns more than \$7000 per month is unfair and not equitable as they pay a smaller percentage of their monthly income than those paying parents earning less than \$1,350 per month.²⁰⁸
- The *Percentage Standard* is inherently flawed because it is based on a methodology to estimate the costs of raising children in intact two-parent families.²⁰⁹
- The provisions in legislation with respect to the definition of gross income are too broad and overestimate available income for the paying parent.²¹⁰
- Even though the underlying assumption is that the non-paying parent shares their income with the children that live with them, they do not have to account for how they spend those resources. Also, in certain circumstances, the non-paying parent in a high-income case may not have to supplement the child support with an equivalent percentage of their own income. The result is that the paying parent bears the entire financial burden of the child’s expenditures.²¹¹

It should be noted that the advantages and disadvantages listed above are those of the authors of papers that have been reviewed for this study, and are not based on the results of any formal evaluations or studies conducted to examine the effectiveness, fairness or efficiency of the Wisconsin Child Support Guidelines. As well, several of the advantages and disadvantages

²⁰⁵ Marygold S. Melli, *A Brief History and Description of the Wisconsin Percentage Standard for Child Support*, Wisconsin Family Impact Seminars, 1991.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Teresa Wall-Cyb, *Child Support laws in Wisconsin*, Divorce Net, and Molly Beck, State proposes to reduce amount wealthy parents pay in child support.

²⁰⁹ Kelly M. Dodd, *Poor Little Rich kids: Revising Wisconsin’s Child Support Payment System to Accommodate High-Income Payers*.

²¹⁰ Ibid.

²¹¹ Ibid.

noted pertain to not only the Wisconsin Child Support Guidelines, but to all guidelines that have an approach based on a percentage of income model.

Part 5: Selected Case Scenarios Using the Formula

The Wisconsin Department of Children and Families provides a calculator tool and worksheets on its website. The detailed calculations for the two scenarios are attached as Appendix B. The following provides the results from two case scenarios:

(All amounts are in US dollars.)

Case Scenario 1: Split custody. Fred (Parent B) and Jane (Parent A) have two children – Sally, age 8 and Sam, age 10 and no other dependent children. Each parent has one child for a majority of the year, with less than 92 overnights for either child at the other parent’s household. Fred has an annual gross income of \$50,000 (\$4166/month) and Jane has an annual gross income of \$30,000 (\$2500/month).

	Monthly Net Obligation
Case Scenario 1: two children in split custody, one with each parent, no shared care, no other dependents.	\$208.25

Case Scenario 2: Shared Placement. Fred and Jane have one child, Sally age 8. Fred has care and custody of Sally for 130 overnights per year. Fred has an annual gross income of \$50,000 (\$4166/month) and Jane has an annual gross income of \$30,000 (\$2500/month).

	Monthly Net Obligation
Case Scenario 2: one child, shared care.	\$456.91

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Appendix B: Two Case Scenarios

Case Scenario 1: Split-Placement

ENTER the number of children in this case	2	
Percentage Standard for this number of children	25%	
Percent for each child	12.50%	
	Parent A	Parent B
ENTER each parent's income available for child support	\$2,500.00	\$4,166.00
ENTER number of child/children living with each parent ("TRUE" if number of children living with Parent A + Parent B equal the number of children in this case (Line 1))	1	1
Percent for each parent for Split-Placement	12.50%	12.50%
Estimated share of support for each parent	\$312.50	\$520.75
Estimated monthly support amount to be paid by each parent	\$0	\$208.25
Disclaimer: This calculator estimates support based on the Split-Placement formula found in DCF 150 . The use of this formula is at the court's discretion		
Areas shaded in grey are locked to protect formulas		

Case Scenario 2: Shared Placement

Step One: Determine what each parent's obligation would be under the percent standard.

Multiply each parent's monthly income available for child support by the appropriate percent for the number of children.

Parent with less time:		Parent with more time:	
\$4,166.00	Monthly income	\$2,500.00	Monthly income
17.00%	Appropriate percent	17.00%	Appropriate percent
\$708.22	Percent standard obligation	\$425.00	Percent standard obligation

Step Two: Calculate each parent's household maintenance expenditure.

Multiply each parent's monthly obligation by 150 percent (1.5).

\$708.22	Percent standard obligation	\$425.00	Percent standard obligation
1.5	(150 percent)	1.5	(150 percent)
\$1,062.33	Per month	\$637.50	Per month

Step Three: Determine the proportion of time the child spends with each parent.

Divide the number of overnights with the parent by 365.

130.0	Overnights, divided by	235.0	Overnights, divided by
365	Overnights in a year	365	Overnights in a year
35.62%	Percent of year	64.38%	Percent of year
Note: If the percentage is less than 25 percent, stop. You may not use this formula.		Note: If the percentage is more than 75 percent, stop. You may not use this formula.	

Step Four: Determine each parent's child support obligation.

Multiply the amount from step 2 by the percent of time the child spends with the other parent.

\$1,062.33	Amount from Step Two	\$637.50	Amount from Step Two
64.38%	Percent with other parent	35.62%	Percent with other parent
\$683.97	Obligation	\$227.05	Obligation

Step Five: Determine the amount the paying parent owes.

Calculate the difference between the two amounts reached in Step Four.

\$683.97	\$227.05	\$456.91	Amount paying parent will owe
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If the result of Step Five is **positive**, this is the amount the parent with **less** time will owe.

If the result of Step Five is **negative**, this is the amount the parent with **more** time will owe.

If the result of Step Five is more than the parent's percent standard obligation as determined in Step One, that parent will owe the amount in Step One.

Note:

Payment of variable costs would be in addition to this calculation. Either parent may be ordered to pay variable costs. Variable costs would include childcare, tuition, a child's special needs, and other activities that involve substantial cost.

E – Australia

Part 1: Description of the Child Support Model

A. Overview

For the past 40 years, Australia has been developing policy in the area of child support. Research from that era revealed that:

- There had been an increase in poverty among female-headed sole-parent families, from 38% in 1972-73 to 50% in 1981-82.²¹²
- In 1983, relatively few noncustodial parents actually made payments to custodial parents. Where payments were made, they were at relatively low levels. It also seemed that the court-based system was deficient in collecting and enforcing maintenance payments.²¹³

The child support scheme was introduced in 1988 in response to concerns about the adequacy of court-ordered child support amounts and the difficulties that existed in the collection of those amounts in Australia. There were also concerns about the poverty of women and children following separation and divorce and the increasing government expenditure for maintaining children where the other parent did not contribute towards their upbringing.²¹⁴

When the scheme was introduced, child support was generally based on a percentage of the paying parent's income, with the percentage increasing as the number of children increased.

When the scheme was first introduced, the Australian Taxation Office was given responsibility for collecting and enforcing child support payments and from 1989, for assessing how much child support should be paid through the Child Support Agency.

In 2011, the Child Support Agency ceased to exist and was transferred to the Department of Human Services (DHS). Currently, the Department of Social Services (DSS) is responsible for the child support legislation and advises the federal government on policy development with regard to the child support scheme. The DHS delivers child support services formerly under the Child Support Agency according to the legislation. Specifically, DHS determines the amount of financial support and conducts child support assessments. They also ensure that child support payments are made in a timely, accurate and efficient manner.

²¹² Meredith Edwards, *The Child Support Scheme: What innovative collaboration can achieve*, 2019, 139.

²¹³ *Ibid.*, 140.

²¹⁴ *History of the Child Support Scheme*, Families and Children, Department of Social Services (DSS), <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/history-of-the-child-support-scheme>.

There are two primary pieces of child support legislation. They are the Child Support (Registration and Collection) Act 1988²¹⁵ and the Child Support (Assessment) Act 1989.²¹⁶

The Child Support (Registration and Collection) Act 1988 created the position of “Child Support Registrar” (‘the Registrar’) who held the powers under the Acts, and delegated and authorized the use of these powers by others.

Since its introduction in 1988, Australia’s Child Support Program (CSP) has had a number of formal reviews. These have included assessments of the administration of the program, reviews of the policy rationale concerning elements of the formula, the rules accompanying the formula, payment and collection methods, and tools and support available for parents. After each of these reviews, reforms were introduced. Further details on the major reforms to Australia’s Child Support Model are provided below in Part 3.

The goals and principles of Australia’s CSP are outlined in its legislation and are as follows:²¹⁷

- The principal object of this Act is to ensure that children receive a proper level of financial support from their parents;
- Particular objects of this Act include ensuring:
 - that the level of financial support to be provided by parents for their children is determined according to their capacity to provide financial support and, in particular, that parents with a like capacity to provide financial support for their children should provide like amounts of financial support;
 - that the level of financial support to be provided by parents for their children should be determined in accordance with the costs of the children;
 - that persons who provide ongoing daily care for children should be able to have the level of financial support to be provided for the children readily determined without the need to resort to court proceedings;
 - that children share in changes in the standard of living of both their parents, whether or not they are living with both or either of them; and
 - that Australia is in a position to give effect to its obligations under international agreements or arrangements relating to maintenance obligations arising from family relationship, parentage or marriage.

The formula underpinning the model is based on the income shares model. The underlying assumptions of this model are that the incomes of both parents are required in the determination of a monthly child support amount and that expenditures on children are based on research that identified what percentage of each parent’s income is spent on children.

The basic information required to generate a child support amount using the formula is:

- The annual incomes of both parents;

²¹⁵ *Child Support (Registration and Collection) Act 1988*, <https://www.legislation.gov.au/Details/C2018C00277>

²¹⁶ *Child Support (Assessment) Act 1989*,
<https://www.legislation.gov.au/Details/C2018C00289>

²¹⁷ *Child Support (Assessment) Act 1989, Section 4, Objects.*

- The number and age of children;
- The amount of care provided to the child from each parent (number/percentage of overnights);²¹⁸ and
- The presence of other dependent children not part of the assessment.

The formula does not contain any other factors in the calculations such as expenses for childcare, medical services, tuition and extracurricular activities. These are dealt with outside the formula and are assessed through an administrative review process.

B. How can Parents Obtain a Child Support Award?

Australia's CSP has been operating for over a quarter of a century. Today, parents have several options to arrange child support. They may:

- Self-manage their child support arrangement. In practice this means that the parents have no regular contact with the DHS and consequently have no "child support case" that is enforceable;
- Parents may request that the DHS determine the amount of child support payable (usually using the formula assessment) and arrange for the transfer of the amount payable privately between themselves. This is referred to as a "private collect"; or
- Parents may request that the DHS determine the amount of child support payable and collect the amounts from the payer and transfer them to the payee. This is referred to as "child support collect".

Child Support and the Family Tax Benefit

The Family Tax Benefit is an Australian Government payment that helps with the cost of raising children. It is a means tested payment available to both intact and separated families.

Child Support and the Family Tax Benefit (FTB) are closely linked. A parent who claims FTB is required to take reasonable maintenance action if they want to receive more than the minimum (or "base") rate. Reasonable maintenance action is demonstrated by having an active child support assessment registered with the DHS. If parents do not apply for child support - that is, if they do not take reasonable maintenance action - they will only be entitled to receive the minimum rate of FTB.²¹⁹ As a parent's child support entitlement increases, their FTB entitlement will generally decrease.

To assist parents in conducting their own formula assessment to determine a child support amount, the DHS provides an online calculator tool available called the *Child Support Estimator*.²²⁰ As well, the DHS develops and provides various look-up tables, information and

²¹⁸ If either of the parent's care is less than 14% (52 overnights) during the year, the cost percentage is 0%.

²¹⁹ Parents may seek an exemption from taking reasonable maintenance action (for example, if there are family and domestic violence issues present). If a parent successfully applies for an exemption, they may be paid the maximum rate of FTB without having to apply for a child support assessment.

²²⁰ Australia's Child Support Estimator can be found on the DHS website at:

<https://processing.csa.gov.au/estimator/About.aspx>

tools all designed to encourage parents to familiarize themselves with the process and calculations used to determine child support amounts.

In addition to establishing and administering the assessment of child support amounts, the DHS is responsible for collecting, dispersing and enforcing the payments of child support amounts.

C. How the Formula Works²²¹

There are eight steps in calculating a basic child support assessment in Australia.²²² As well two tables are required to complete the calculations. They are:

- A Cost Percentage Table that sets out percentages that correspond to the amount of time each child spends with either parent; and
- A Costs of the Children Table that sets out the applicable costs of raising a child by combined income level of the parents, age and number of children.

Included in Part 2 of this *Summary Report* are further details on the construction of the Tables and the specific elements and relevant detailed calculations contained in the formula.

However, to assist the reader in understanding the overall approach and elements considered in the formula calculations, a high-level summary of the eight steps is as follows:

Step 1 - Determine each parent's *Adjustable Taxable Income* and *Child Support Income*

The first step in the calculations requires the determination of the relevant income for each parent that is available for child support. This calculation starts with the last relevant year of income for each parent. Various other income source adjustments, if applicable, are made that result in the calculation of a final amount of income that is called the *Adjusted Taxable Income* for each parent.

From this amount, both parents deduct a *Self-support Amount* that is designed to allow the parents to sustain themselves.

Then, two other deductions are allowable depending on the case circumstances:

- The *Relevant Dependent Child Amount*. This is an amount that recognizes the financial obligations of the parent for their other legal dependents for which there is no other child support assessment.

²²¹ The terms used in this section and the remainder of this Summary are the titles used by Australia in their online calculator and displayed in Appendix B Case Scenarios. These terms have been italicised.

²²² These eight steps can be found on the DHS website at:
<https://www.humanservices.gov.au/individuals/services/child-support/child-support-assessment/how-we-work-out-your-assessment/basic-formula-eightstep>.

- *And/or a Multi-case allowance.*²²³ This is an amount that recognizes the financial obligations of the parent for their other legal dependants for which there is another child support assessment.

These amounts are deducted from each parent's *Adjusted Taxable Income* and the remaining amount is called *Child Support Income*.

Step 2 - Determine the *Combined Child Support Income*

This calculation is done by adding the *Child Support Income* of both parents amounts together, producing the *Combined Child Support Income*.

Step 3 - Determine each parent's *Income Percentage*

The next step is to divide each parent's *Child Support Income* amount by the *Combined Child Support Income* to determine their respective *Income Percentage*.

Step 4 - Determine each parent's *Care Percentage*²²⁴ for each child

In this step the actual percentage of care for each parent is determined by dividing the number of overnights that are spent with the child by 365.

Step 5 - Determine each parent's *Cost Percentage*²²⁵ and *Child Support Percentage*

To complete this step, using each parent's *Care Percentage* calculated in Step 4, the relevant *Cost Percentage* is ascertained from the *Cost Percentage Table*. Then, for each parent, their *Cost Percentage* amount is subtracted from their *Income Percentage* amount calculated in Step 3. The result is their *Child Support Percentage*.

Step 6 - Determine which parent is to pay child support

In this calculation, the parent with the positive percentage is deemed to be the parent to pay child support.

²²³ For parents who have "relevant dependent children", who are not the subject of this particular child support determination process, the "relevant dependent child amount" is deducted from the *Adjusted Taxable Income*. For parents who have responsibility for child support for children in another child support case, the multi-case allowance is deducted from the *Adjusted Taxable Income*. The relevant dependent child amount and the multi-case allowance are determined by using the same child expenditure table (the *Costs of the Children Table*) used to determine the amount for the child or children for whom support is being determined.

²²⁴ *Care Percentages* are usually determined according to the number of overnight stays during a care period, but daytime care may occasionally be factored in, depending on the circumstances.

²²⁵ *Cost Percentage* is the term used to represent the "amount of costs to care for the child" when the child is with each parent, usually calculated as a percentage of overnights, however daytime care may occasionally be factored in, depending on the circumstances.

Step 7 - Determine the applicable *Cost for the Child* amount

In this step the applicable *Cost for the Child* is calculated by taking the *Combined Child Support Income* amount calculated in Step 2 and finding the appropriate income category, by age and number of children, in the *Costs of the Children Table*.

Step 8 - Calculate the *Annual Amount of Child Support*

This final calculation is completed by applying the paying parent's *Child Support Percentage* to the *Cost for the Child* amount determined in Step 7.

Please see the Appendix B for detailed calculations using two case scenarios.

Part 2: Elements of the Child Support Model

A. Data source used to determine expenditures on the children

How are expenditures²²⁶ for the child determined?

The Australian approach is based on the principle that parents should continue to support their children in accordance with their financial capacity just as they would have, had they continued living together. This can be accomplished by providing either direct care, by providing a child support amount to the receiving parent, or a combination of both.

The Fogarty Committee, which provided the policy guidance that resulted in the first Australian scheme, relied on data that resulted in estimates of the percentage of gross income that is spent on children in an intact relationship, based on the combined income level of the parents and number of children.²²⁷

The current approach to determining the expenditures on children relies on studies on the “costs of children” conducted in 2005 by the Ministerial Taskforce on Child Support.²²⁸ The Taskforce recommended that the costs of children used in the formula should be expressed as a percentage of the combined income of the two parents (after their respective *Self-support Allowances* have been subtracted); and should reflect that:²²⁹

- Each additional child costs less than the child before it and that after three children, costs stabilize;
- While absolute costs or spending on children increases as income increases, the percentage of income decreases; and
- Older children cost more than younger children.

²²⁶ In Australia, expenditures on children are usually referred to as “costs of children”.

²²⁷ *From conflict to cooperation: Inquiry into the Child Support Program*, 2015, 58.

²²⁸ *In the Best Interests of Children - Reforming the Child Support Scheme*, Report of the Ministerial Taskforce on Child Support, 2005.

²²⁹ *Ibid.*, 149.

How are the costs of children reflected in the formula calculations?

The formula assessment uses a *Costs of the Children Table* (2019)²³⁰ to establish the costs of children in the determination of child support amounts. The *Table* sets out percentages of the combined parents' *Child Support Income* amounts. The percentages represent 'net' costs after their Family Tax Benefit is taken into account and the deduction for the *Self-support Allowance* for each parent, is made. This represents how much of each additional dollar of child support income in each "average weekly earnings"²³¹ band, is attributed to the costs of the children.

The *Table* contains percentages based on three variables: level of income, age of children and the number of children.

The *Child Support Guide* (2019) contains a version of the *Table*.²³² In the first row, the column heading of the *Table* contains the various applicable income levels.

- There are five categories of income at intervals of 0.5 of the Male Total Average Weekly Earnings (MTAWE) starting at 0.5 of the MTAWE and increasing to 2.5 times the MTAWE.²³³ In the row below these proportions of MTAWE, are the annualized MTAWE amount categories.

The rows of the *Table* show the three age groupings of children by the number of children.

They show:

- All children, aged 0-12;
- All children (or oldest three) aged 13 and over; and
- A mix of ages: at least one child aged 0-12 and 1 or 2 children aged 13 and over.

Each age grouping of children is further broken down by the number of children - one, two and three or more.

Finally, each *Table* cell contains a base amount of child support and a percentage of the lowest income amount in that category. The percentage is expressed as "cents on the dollar", e.g. \$0.15 of each \$1.00.

The lowest income amount in the category is subtracted from the combined parents' *Child Support Income* amount. This amount is then multiplied by the percentage in the cell. This calculated amount is added to the base amount and provides total amount of *costs of the children* in those particular circumstances.

²³⁰ *Child Support Guide*, 2019, 2.4.2 Formula Tables & Values, <http://guides.dss.gov.au/child-support-guide>.

²³¹ The annualised MTAWE figure for a relevant June quarter means the figure that is 52 times the amount set out for the reference period in the quarter under the headings "Average Weekly Earnings—Trend—Males—All Employees Total Earnings" in a document published by the Australian Statistician entitled "Average Weekly Earnings, Australia".

²³² See footnote 15.

²³³ The *Costs of Children Table* is updated each year to recognize the changes in MTAWE.

B. Approach used to Apportion the Amount that the Two Parents will Share

Australia's approach to apportioning amounts for the parents to share is a modified version of an income shares model. While it requires both parents' incomes and expenditures of children like an income shares model, it includes the amount of time spent (represented by percentage of care) in all cases.

Thus, the formula looks like this:

(A minus B) times C, where:

A is each parent's *Income Percentage* share;

B is each parent's *Cost Percentage*; and

C is the amount obtained from the *Costs of Children Table*.

The parent with the positive amount is the paying parent and will be obligated to pay their calculated amount.

For all assessments, child support payable is worked out under the formula in relation to each child and the rates for all of the children are combined to arrive at the final rate under the assessment for all children.

C. Accompanying Policy/Legislation (Rules)

i) Determination of income for child support purposes

The formula assessment relies on the "last relevant year of income" for each parent. This amount is the income for the person's last available financial year before the child support period started (a new child support period generally starts every 12 months).

Generally, a parent's taxable income is the amount assessed by the Australian Tax Office (ATO) under the *Income Tax Assessment Act* for the relevant year of income.

In addition to the person's taxable income, other income components are included in the determination of the *Adjusted Taxable Income*. The *Adjusted Taxable Income* is the total of:

- taxable income;
- reportable fringe benefits;
- reportable superannuation contributions;
- total net investment losses;
- certain tax free pensions and benefits; and
- target foreign income.

Certain amounts – if applicable – are deducted from the *Adjusted Taxable Income* to form the *Child Support*:

- *Self-support amount*: This amount is subtracted from both parents' incomes **in all cases**. It is set at one-third of the annualized MTAW and updated each year. In 2019, the amount is set at \$25,038.²³⁴
- *Relevant Dependent Child Amount*:²³⁵ In cases where parents qualify for this deduction, they may subtract an additional amount from their *Adjusted Taxable Income*. A *Relevant Dependent Child Amount* is determined by using only their *Adjusted Taxable Income* amount minus the *Self-support Amount* and looking up the appropriate cell in the *Costs of Children Table* based on that parent's level of income, and number and age of the relevant dependent children. An adjustment is made to the amount based on the *percentage of care* the parent has of the relevant dependent child, which must be at least 35% care. The resulting *Cost Percentage* is multiplied by the amount found in the *Costs of the Children Table* to generate the *Relevant Dependent Child Amount*. If applicable, either parent may claim this deduction.
- *Multi-case allowance*. If a parent has been assessed for the costs of the children of more than one relationship (that is, the parent has multiple child support cases) then a *Multi-case Allowance* is deducted from the parent's *Adjusted Taxable Income* when working out their child support income.^{236, 237} If applicable, either parent may claim this deduction.

ii) Registrar's determination of last relevant year of income

If the Registrar²³⁸ has not been able to obtain an assessment of taxable income from the ATO for the last relevant year of income, the Registrar may determine an *Adjusted Taxable Income* amount for the parent. These incomes are sometimes called "provisional incomes". A provisional income may be:

- The income for the last relevant year of income as declared by the parent (if the Registrar is satisfied that it is likely to be correct); or
- The amount earned in the immediately previous last relevant year of income, adjusted for inflation; or
- An amount determined from other information sources (especially Government pensions or benefits); or
- An ATO tax assessment for a year prior to the immediately previous last year of income, adjusted for inflation, and higher than 2/3 MTAW; or
- 2/3 MTAW.

²³⁴ All amounts are in AU dollars. To convert to CDN dollars: \$1CDN=\$1.09 AU.

²³⁵ A relevant dependent child in relation to a parent means a child, or in limited circumstances, a step-child, of the parent under the age of 18.

²³⁶ Calculations for the multi-case allowance can be found in Child Support (Assessment) Act 1989, Section 47, Working out multi-case allowances. Examples can be found in the Child Support Guide, 2019, 2.4.6 Costs of the Child, Calculating the costs of a child - multiple case method.

²³⁷ Data from the Child Support Program estimates that between 7-8% of their caseload include multiple child support cases.

²³⁸ The Registrar is authorized by Parliament, through the *CSA Act* and the *CSRC Act*, to make decisions on child support cases under those Acts.

The use of 2/3 MTAWWE is intended to cover circumstances where a parent has never filed a tax return, or where the Registrar is unable to ascertain a person's tax file number.²³⁹

iii) Custody and parenting time²⁴⁰

Australia has definitions for what they term *regular care* and *shared care*:

- A person has *regular care* of a child if the person's percentage of care for the child during a care period is at least 14% but less than 35%; and
- A person has *shared care* of a child if the person's percentage of care for the child during a care period is at least 35% but not more than 65%.

As shown in the table below, Australia has seven bands of parenting time that are used to determine the *Cost Percentage* rate that will be used in the formula calculations to recognize their care of the child. Actual percentages of overnights are calculated and then a *Cost Percentage* is determined using the *Cost Percentage Table* below. As outlined above, the *Cost Percentage* is integrated into the apportioning method.

Cost Percentage Table

Percentage of Care	Cost Percentage
0 to less than 14%	Nil
14% to less than 35%	24%
35% to less than 48%	25% plus 2% for each percentage point over 35%
48% to 52%	50%
More than 52% to 65%	51% plus 2% for each percentage point over 53%
More than 65% to 86%	76%
More than 86% to 100%	100%

iv) Updating of values

Basic values used in calculating child support assessments are to be updated before the end of each calendar year or financial year²⁴¹ and must be published in the Australian Government Gazette by June 30th each year for all child support periods starting in the following calendar year. These are:

- The minimum annual rate of child support;
- The fixed annual rate of child support; and
- The Costs of the Children Table, incorporating:
 - The annualised Male Total Average Weekly Earnings (MTAWWE) figure, and

²³⁹ *Child Support Guide*, 2019, 2.4.4.40 Determination of Adjusted Taxable Income.

²⁴⁰ The language used in Australia's Child Support Scheme is "percentage of care" of the children. The term "custody" is not used.

²⁴¹ In Australia the financial year runs from 1 July to the following 30 June.

- Other amounts in the table worked out using the annualised MTAW figure.

Values that are updated before the end of each financial year are the Average Weekly Earnings (AWE) amount for the quarter ending on 31 December of that year.

The updated values are used for all child support periods starting in the following calendar or financial year, as appropriate.

v) Other considerations

Age of the Child: Child support assessments automatically terminate when all minor children have reached the age of 18 years. If the child turns 18 while in full time secondary education ('high school') then the payee of the child support assessment may apply for the assessment to be extended to the child's last day of school for the school year. The assessment is not extended beyond the end of the school year in which the child turned 18.

Minimum Support: A minimum annual amount of child support is set each year. This amount is payable where the formula assessment results in an amount of less than the minimum annual rate. However, the minimum annual rate is not payable for a child if the payer has at least 14% care of that child. For child support assessments commencing between 1 January 2019 and 31 December 2019 the minimum annual rate is \$435/year (around \$36 / month).

Maximum Support: The child expenditure amounts in the last row of the *Cost of the Children Table* are used for *combined child support incomes* that exceed 2.5 times the MTAW. For the 2019 year that amount was \$187,785 AU annually.²⁴²

vi) Change of Assessment in Special Circumstances – education, medical, special needs, etc. and Undue Hardship

The formula assessment is flexible and accounts for the changing circumstances of most separated families. Almost all child support assessments are calculated using the child support formula. However, if parents or children have special circumstances, the formula assessment may not provide a fair level of child support.

If a parent is of the opinion that's this is the case, they can apply for a "Change of assessment in special circumstances". The Registrar also has the power to initiate a change of assessment, but only where the Registrar believes that the income, earning capacity, property and the financial resources of either parent is not accurately reflected in the assessment.

The change of assessment process takes into account the comprehensive circumstances of the parents. A decision may result in an increase or decrease in the amount of child support payable. The decision maker is not limited to making a decision that supports the claim of the applicant.

²⁴² *Child Support (Assessment) Act 1989, Schedule 1*. The marginal expenditures on children does not increase. The relevant amounts to be inserted in a child expenditure table in this row are therefore the maximum amounts from the row immediately above it.

The Registrar can only change an assessment if one or more of the reasons are established in the special circumstances of the case. The reasons below range from the extra needs of the children to circumstances of a parent with extraordinary costs.

There are ten reasons for a change in a formula assessment.²⁴³ They are:

1. The costs of maintaining a child are significantly affected by high costs of enabling a parent to spend time with, or communicate with, the child;
2. The costs of maintaining a child are significantly affected by high costs associated with the child's special needs;
3. The costs of maintaining a child are significantly affected by high costs of caring for, educating or training the child in the way both parents intended;
4. The child support assessment is unfair because of the child's income, earning capacity, property or financial resources;
5. The child support assessment is unfair because the payer has paid or transferred money, goods or property to the child, the payee, or a third party for the benefit of the child;
6. The costs of maintaining a child are significantly affected by the high childcare costs for the child (and the child is under 12 years of age);
7. The parent's necessary expenses significantly affect their capacity to support the child;
8. The child support assessment is unfair because of the income, earning capacity, property or financial resources of one or both parents; and
9. The parent's capacity to support the child is significantly affected by:
 - their duty to maintain another child or person.
 - their necessary expenses in supporting another child or person they have a responsibility to maintain.²⁴⁴
 - their high costs of enabling them to spend time with or communicate with, another child or person they have a duty to maintain.
10. The parent's responsibility to maintain a resident child significantly reduces their capacity to support the child support child.

vii) Court orders and child support

The Australian Child Support Scheme is predominantly an administrative scheme, with little direct involvement of the Courts for most child support cases.

However, a limited number of cases can be affected by a wide variety of court orders:

- Orders in relation to the care and parenting of children (which are not “child support” orders, but may have some impact on a child support case);

²⁴³ Reasons can be found in the *Child Support Guide*, <http://guides.dss.gov.au/child-support-guide/2/6>.

²⁴⁴ This ground relates to a parent providing support to a resident child for whom they do not have a legal duty, but for whom they are providing support because neither legal parent is able to support the child.

- Declarations in relation to parentage of a child for child support purposes (open jurisdiction);
- Orders staying the collection of child support (limited jurisdiction for courts to make these orders); and
- Orders changing the amount of child support payable (similar to ‘Change of Assessment in Special Circumstance’ above, limited jurisdiction for courts to make these orders).

In addition, a parent can apply directly to a court if they are dissatisfied with a limited number of Registrar decisions under the CSA Act. However, for most decisions it is necessary for the Registrar to have dealt with an objection about the decision and for the Administrative Appeals Tribunal to have undertaken a first review of the objection decision before the parent can make their court application. In those cases, the parent can only appeal to a court if they think that there has been an error of law.

Part 3: Summary of Key Changes to the Child Support Guidelines Legislation

A. Overview of the Changes

In Australia, the introduction of Child Support Legislation came into effect in 1988. Included in these reforms was the move from a judicial model for the determination of child support to an administrative model that included the determination, registration and collection of child support awards being housed in the Child Support Agency of the Australia Taxation Office. The introduction of child support guidelines was also included in these reforms. The model underpinning the formula calculations was a “percentage of income” model.²⁴⁵

The original child support percentages payable (on the payer’s income) were: 18% for 1 child, 27% for 2 children, 32% for 3 children, 34% for 4 children and 36% for 5 children or more. The amount of child support payable was reduced if the payee had a (relatively) high income.

Since 1988, Australia has undergone a number of reviews of their Child Support Model. A summary of these reviews as well as the changes brought about as a result of the findings, are presented below.

1993-94 Joint Select Committee Inquiry^{246, 247}

The first major inquiry into the operation and effectiveness of the 1988 scheme was conducted in 1993-94. Although the Committee supported the continuation of the scheme, it found significant problems with its design and operation. In total they made 163 recommendations.

Some of the key changes resulting from this inquiry were:

²⁴⁵ The original version of the *Child Support (Assessment) Act*, as enacted in 1989, s 37.

²⁴⁶ The DSS website on Families and Children provides an overview of the history of child support reforms in Australia at <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/history-of-the-child-support-scheme>.

²⁴⁷ *Child Support Scheme: An examination of the operation and effectiveness of the scheme*, Joint Select Committee on Certain Family Law Issues, November 1994.

- The introduction of a \$260 a year minimum child support liability;
- An increase to the amount of the self- support reserve for the paying parent;
- A decrease to the receiving parent's 'disregarded income amount';
- The ability to credit up to 25 per cent of the monthly child support amount liability through specified in-kind payments; and
- The introduction of an internal review process (called an objection) that allows parents a mechanism to dispute the assessment provided by the administrative body.

2003 Standing Committee inquiry into child custody arrangements

The second review was conducted in 2003, when the House of Representatives Standing Committee on Family and Community Affairs undertook an inquiry on child custody arrangements in the event of family breakdown. This inquiry was the result of growing concerns from separated fathers wanting more day-to-day care of their children and ongoing public concern about aspects of the scheme. The Committee's report, *Every Picture Tells a Story*,²⁴⁸ recommended changes to the presumptions included in the child support legislation regarding shared care, and recommended that a ministerial taskforce be established to examine the child support formula.

2008 – 2013

Building on the recommendations of the House Standing Committee in their report *Every Picture Tells a Story* and the Government's response to this review, in 2005 a Ministerial Task Force was struck to conduct yet a further review. Their analysis culminated in a Ministerial Taskforce on Child Support report entitled *In the Best Interests of Children*.²⁴⁹ The result of this Task Force review saw the heralding in of a series of major reforms to the Child Support Scheme, especially regarding the way the child support amounts were to be calculated.

Changes included:

- Moving from a flat percentage model to an income shares model. This resulted in replacing the "percentage of liable parent's income" model for an "income shares" model;
- The inclusion of both parents incomes being required to complete a child support assessment;
- Expenditures on children to be used in the formula were to be based on new research that examined the costs of raising children in Australia. These changes also resulted in the introduction of the *Costs of Children Table* and the estimated costs of children being based on:
- The level of combined incomes of the parents;
- The age of the children (now two categories: 0-12 and 13 and over);

²⁴⁸ *Every Picture Tells a Story*, December 2003. Find the Government's Response: *A new family law system* Government Response to *Every Picture Tells a Story*, June 2005.

²⁴⁹ *In the Best Interests of Children - Reforming the Child Support Scheme*, Report of the Ministerial Taskforce on Child Support, 2005.

- The number of children (reduced from “four or more” children previously, to “three or more”); and
- Changes that included a reduction of the threshold of care for both parents that ultimately impacted the applicable amount of child support. The threshold for care was reduced to 14% (52 nights or more a year, or one night a week). Prior to this amendment, the threshold for care was 30%.

2014-15 Parliamentary Inquiry

The latest review was a Parliamentary Inquiry that was tasked to examine:

- The methods used by DHS to collect payments in arrears and manage overpayments;
- Whether the child support system is flexible enough to accommodate the changing circumstances of families;
- The alignment of the child support and family assistance frameworks;
- The linkages between Family Court decisions and Child Support's policies and processes; and
- How the scheme could provide better outcomes for high conflict families.

The Committee's report: *From Conflict to Cooperation: Inquiry into the Child Support Program*,²⁵⁰ was tabled in Parliament on July 20, 2015.

Overall, the Inquiry found that the current child support scheme works well in the majority of cases. The report contained 25 recommendations that addressed the policy framework underlying the child support legislation, the administration of the scheme by DHS, the adequacy of funding for family support services, and the enforcement of tax return filing.

The Government accepted 18 of the 25 recommendations and tabled their response in Parliament on August 31, 2016.²⁵¹ The recommendations covered all aspects of the Child Support Program. For the purposes of this report on Child Support Models, the Committee recommended, and the government agreed, to a review of the following components of the child support formula. These are:

- the self-support amount and the indexation mechanism;
- the cost of children table and indexation mechanism; and
- the use of gross income levels.

The objective of the review was to assess whether adjustments and/or design changes should be made to the above components to ensure the amount of child support calculated under the formula remains appropriate and up to date.²⁵²

²⁵⁰ *From conflict to cooperation: Inquiry into the Child Support Program*, 2015.

²⁵¹ Australian Government response to the House of Representatives Standing Committee on Social Policy and Legal Affairs report: *From conflict to cooperation – Inquiry into the Child Support Program*, August 2016.

²⁵² *Ibid.*

B. Overview of Leading Case Law on the Child Support Model

The main drivers of the reforms in Australia have been as a result of the Inquiries, Task Forces and formal Parliamentary Reviews conducted over the years, not case law.

Part 4: Summary of the Literature that Assesses the Model

In addition to the numerous findings and recommendations contained above in the various formal reviews of the Child Support Model in Australia, a further review of the available literature on the advantages and disadvantages of the elements of the Model revealed the following opinions²⁵³ about the model:

A. Advantages

- Although the child support system is not perfect, it works well in the majority of cases. Data from studies conducted by the Australian Institute of Family Studies (AIFS) indicate that the majority of separated parents establish cooperative relationships with each other and meet their child support obligations. Submissions from professional bodies also argued that the scheme usually works. National Legal Aid concluded that, despite the system's complexity, the Child Support Program could be considered generally effective, while similar conclusions were reached by Family and Relationship Services Australia, and the Queensland Law Society.²⁵⁴
- In programmatic terms, the Child Support Scheme can be considered a success in achieving its main aims: it increased the proportion of children of separated parents who received support and the amount paid and as a result, assisted in reducing poverty among sole-parent families; and it also increased the revenue for the government, leading to greater fairness for taxpayers.²⁵⁵

B. Disadvantages

- Child support disputes cannot currently be arbitrated. Parties should be able to choose to have child support issues determined by an arbitrator if they agree that the award will become a child support agreement.²⁵⁶
- The Australian child support system currently impacts the lives of approximately 1.5 million separated parents and 1.1 million children (Child Support Agency [CSA], 2009; see also Australian Bureau of Statistics [ABS], 2011). Yet the evidence base that informs child support policy is relatively thin. Over the past decade, 20 Australian peer-reviewed empirical studies have been published that focus specifically on child support. Given that 'good policy requires good data', a lack of available evidence in the child support context makes it difficult to develop, assess and refine child support

²⁵³ The reader should note that these are the views of the authors of the information that was reviewed and are not the views of the authors of this summary report.

²⁵⁴ *From conflict to cooperation: Inquiry into the Child Support Program*, June 2015.

²⁵⁵ Meredith Edwards, *The Child Support Scheme: What innovative collaboration can achieve*. P. 142.

²⁵⁶ *Family Law for the Future - An Inquiry into the Family Law System*. Australia Law Reform Commission Report 135, March 2019.

policy – especially the impacts that the Scheme has on the lives of Australian children and their parents.²⁵⁷

Part 5: Selected Case Scenarios Using the Australia Formula Assessment

The Department of Human Services provides an online calculator tool on its website. The following section provides the results from two case scenarios. All amounts are in Australian dollars.

Case Scenario 1: Jane and Fred have one child, Sally - who is under the age of 12. Fred has one dependent child, Sam - who is under the age of 18. Sam lives with Fred year-round. Fred takes care of Sally for 70 overnights. The parents have annual taxable incomes of \$50,000 for Fred, and \$30,000 for Jane.

	Monthly Child Support Amount
Case Scenario 1: one child, 70 overnights of care with Fred, one dependent with Fred.	\$206

Case Scenario 2: Andrea and Brian have two children: Linda, who is under the age of 12 and Tom who is over the age of 13 but is younger than 18. Brian has Linda for 60 overnights and Tom for 140 overnights per year. The parents have annual taxable incomes of \$50,000 for Brian and \$30,000 for Linda.

	Monthly Child Support Amount
Case Scenario 2: two children, different percentage of care with each	\$335

²⁵⁷ Kay Cook and Hayley Mckenzie; Tess Knight, *Child support research in Australia: A critical review*, 2011, 110.

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Appendix B: Two Case Scenarios

Case Scenario 1

The estimate is based on information provided by parents. If any information is incorrect, the estimate will be incorrect.			
Estimated amount of child support payable by Fred			
Per year:	\$2,475.00		
Per month:	\$206.00		
Per fortnight:	\$95.00		
Per week:	\$47.00		
Child support formula – eight steps			
Step 1 -3: Income			
		Fred	Jane
	Adjusted taxable income	\$50,000.00	\$30,000.00
	Minus a self-support amount	\$25,038.00	\$25,038.00
	Minus a relevant dependent child amount	\$4,244.00	\$0.00
Step 1 ->	Child support income	\$20,718.00	\$4,962.00
Step 2 ->	Combined child support income	\$25,680.00	
Step 3 ->	Income percentage	80.68 %	19.32 %
Step 4-5: Care of the child support children			
	Sally		
		Fred	Jane
	Care per year	70	295
	Care level	Regular care	Primary care
Step 4 ->	Income percentage	19.00 %	81.00 %
Step 5 ->	Cost percentage	24.00 %	76.00 %
Step 6: Child support Percentage			
Fred	Income percentage	80.68 %	
Child	Cost percentage	Child support percentage	
Sally	24.00 %	56.68 %	
Sally	Income percentage	19.32 %	
Child	Cost percentage	Child support percentage	
Sally	76.00 %	-56.68 %	
Step 7: Costs of the Children			
Parents' combined income	\$25,680.00		
Number of children	1		
Child	Cost of this child	Calculations	

Sally	\$4,366.00	Income bracket base amount:	\$0.00
		+ (plus) Income bracket additional amount	
		Amount over cutoff	\$0.00
		X (multiplied by) Income bracket additional percentage	0.17
		=(equals)	\$0.00
		=(equals) Total cost of children	\$4,366.00
		/ (divided by) number of children	1
		=(equals)Cost of this child	\$4,366.00

Relevant dependent children

To recognise the care a parent provides for other dependent children, a relevant dependent child amount is deducted from the parent's adjusted taxable income before applying the remainder of the formula.

The cost of raising these children (that must live with a parent for at least 128 nights of the year) are calculated in the same way as the cost of a child by taking into account (only) the parent's child support income.

Step 8: Amount payable.				
Child	Cost of the child		Child support percentage	
Sally	\$4,366.00	X 56.68 %	\$2,475.00	per year payable by: Fred
			\$2,475.00	Total payable by Fred
The estimated annual rate per year can be broken down further as:				
Child	Estimated amount: week	Estimated amount: fortnight (bi-weekly)	Estimated amount: month	
Sally	\$47.00	\$95.00	\$206.00	
Total payable by Fred	\$47.00	\$95.00	\$206.00	

Case Scenario 2

Estimated amount of child support payable by Brian			
Per year:	\$4,016.00		
Per month:	\$335.00		
Per fortnight:	\$154.00		
Per week:	\$77.00		
Child support formula – eight steps:			
Step 1-3: Income			
		Brian	Andrea
	Adjusted taxable income	\$50,000.00	\$30,000.00
	Minus a self-support amount	\$25,038.00	\$25,038.00
	Minus a relevant dependent child amount	\$0.00	\$0.00
Step 1 ->	Child support income	\$24,962.00	\$4,962.00
Step 2 ->	Combined child support income	\$29,924.00	
Step 3 ->	Income percentage	83.42 %	16.58 %
Step 4 -5: Care of the child support children			
	Linda		
		Brian	Andrea
	Care per year	60	305
	Care level	Regular care	Primary care
Step 4 ->	Care percentage	16.00 %	84.00 %
Step 5 ->	Cost percentage	24.00 %	76.00 %
	Tom		
		Brian	Andrea
	Care per year	140	225
	Care level	Shared care	Shared care
Step 4 ->	Care percentage	38.00 %	62.00 %
Step 5 ->	Cost percentage	31.00 %	69.00 %

Step 6: Child Support percentage			
Brian	Income percentage	83.42 %	
Child	Cost percentage	Child support percentage	
Linda	24.00 %	59.42 %	
Tom	31.00 %	52.42 %	
Andrea	Income percentage	16.58 %	
Child	Cost percentage	Child support percentage	
Linda	76.00 %	-59.42 %	
Tom	69.00 %	-52.42 %	
Step 7: Costs of the Children			
Parents' combined income	\$29,924.00		
Number of children	2		
Enfant	Coût de l'enfant	Calculs	
Linda	\$3,591.00	Income bracket base amount:	\$0.00
		+ (plus) Income bracket additional amount	
		Amount over cutoff	\$0.00
		X (multiplied by) Income bracket additional percentage	0.24
		=(equals)	\$0.00
		=(equals) Total cost of children	\$7,182.00
		/ (divided by) number of children	2
		=(equals)Cost of this child	\$3,591.00
Tom	\$3,591.00	Income bracket base amount:	\$0.00
		+ (plus) Income bracket additional amount	
		Amount over cutoff	\$0.00
		X (multiplied by) Income bracket additional percentage	0.24
		=(equals)	\$0.00
		=(equals) Total cost of children	\$7,182.00
		/ (divided by) number of children	2
		=(equals)Cost of this child	\$3,591.00

Step 8: Amount payable				
Child	Cost of the child	Child support percentage	Estimated amount payable	
Linda	\$3,591.00	X 59.42 %	\$2,134.00	per year payable by: Brian
Tom	\$3,591.00	X 52.42 %	\$1,882.00	per year payable by: Brian
			\$4,016.00	Total payable by Brian
The estimated annual rate per year can be broken down further as:				
Child	Estimated amount: week	Estimated amount: fortnight (bi-weekly)		Estimated amount: month
Linda	\$41.00	\$82.00		\$178.00
Tom	\$36.00	\$72.00		\$157.00
Total payable by Brian	\$77.00	\$154.00		\$335.00

F – France

Part 1: Description of the Child Support Model

A. Overview

In France, matters pertaining to children such as parental responsibility, child support and guardianship are codified in the French Civil Code (FCC).²⁵⁸ Family court judges²⁵⁹ have exclusive jurisdiction to rule on child support²⁶⁰ during the course of divorce proceedings or when unmarried parents are separating.

However, in some cases of parental agreement, the child support amount can be registered by a notary (for a divorce) or a social security office (referred to B below).

France doesn't have a formal child support model or a formula set out in legislation for the calculation of child support. However, family court judges are guided by several underlying principles relating to the responsibilities of parents towards their children that the court must take into consideration when determining child support amounts. Thus, while the method for determining child support amounts is based on the discretion of the judiciary, they must hold parents responsible in making decisions regarding their children. A summary of these principles follows.

Firstly, the FCC clearly states that the separation of the parents does not affect the rules and principles governing the exercise of parental responsibility.²⁶¹ In practical terms, this means that separated parents, regardless of their marital status, continue to exercise joint parental responsibility over their children. In exceptional circumstances, such as in cases of physical abuse and gross negligence, the court can and will give exclusive and sole exercise of parental responsibility to one of the parents.²⁶²

Secondly, the maintenance of children provisions contained in the FCC impose a duty on both parents regardless of their marital status, to contribute financially to the well-being and education of their children.

²⁵⁸ The sections of the French Civil Code dealing with parental responsibility and child support can be found in: *Book I: People; Title IX: Parental authority; Chapter I: Parental authority in relation to the person of the child; Section 1: The exercise of parental authority. Articles 373-2-1 to 373-2-11*, <https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006165499&cidTexte=LEGITEXT00006070721&dateTexte=20130701>.

²⁵⁹ France does not have an administrative agency to determine, administer or collect child support.

²⁶⁰ For the purposes of consistency, the term “child support” is used in this summary in place of the French term “pension alimentaire”, which translates in English to “alimony”.

²⁶¹ *Article 373-2, FCC.*

²⁶² Charlotte Butriuille, *Family Law in France: Overview*, Cardew Partner, CNBBC Avocats, 2019.

Thirdly, although French law does not recognize the right of a minor child to be a party to a proceeding related to them, they have a right to be heard in all proceedings that concern them. An appointed legal aid lawyer can either assist them or, if the child is capable of judgment, they can be heard at the judge's discretion.²⁶³

While France has had a strictly court-based, discretionary system for determining child support amounts, it has moved recently to standardize some practices for the courts by providing tools for judges, parents and family justice officials. These include the introduction in 2010 of a "*Barème des pensions alimentaires*"²⁶⁴ – a *Table of Child Support*²⁶⁵ – to standardize child support amounts for all family courts in France. The *Table* is based on a fixed percentage model. Its use is discretionary for the courts and is updated and published annually.

The *Table* contains amounts that are "per child". In consulting the *Table* information, three factors are required. These are:

- The monthly income level (in 100 EUR²⁶⁶ increments) of the paying parent;²⁶⁷
- The amount of time spent with the child; and
- The number of children.

This chart, along with an online calculator²⁶⁸ is available on the Ministry of Justice website.

The child support amount is payable to the parent with whom the child is primarily residing.²⁶⁹ In cases where the child alternates residence between the two parents, the child support payment is required to be paid provided that the receiving parent has an income level that justifies receiving a monthly support in order to cover the child's daily needs.

Child support is payable in various ways, but often takes the form of a monthly child support payment. This payment is indexed using the Consumer Price Index annually and is linked to the living costs in the region in France where the child primarily resides.

Child support can also, in all or in part, take the form of a direct contribution to the costs and expenses incurred on behalf of the child, such as the payment of school fees. It can also take the form of a right to the use of a home. Rarely, and if justified by the financial situation of the paying parent, it can be payable by way of a lump sum payment to an accredited organization

²⁶³ Article 388, FCC As well, if a child who is capable of discernment requests to be heard, such a hearing cannot be refused by the judge.

²⁶⁴ The Barème or *Table* can be found at: <https://www.justice.fr/simulateurs/pensions/bareme>.

²⁶⁵ This Barème or *Table* is central to France's efforts to standardize child support amounts across courts and jurisdictions in France and will be referred to hereafter as the "*Table*".

²⁶⁶ All amounts are in euros. To convert to CDN dollars: \$1CDN=\$0.667euros.

²⁶⁷ France uses the terms "*debtor*" and "*creditor*" for paying parent and receiving parent respectively.

²⁶⁸ The online calculator can be found at: <https://www.justice.fr/simulateurs/pensions> or at <https://www.service-public.fr/simulateur/calcul/pension-alimentaire>. Both only provide estimates of the amount of child support and are not legally binding.

²⁶⁹ Article 373-2-2, FCC.

who in turn will allocate the child a yearly amount to cover their needs or by way of allocating income-producing assets for the benefit of the child.²⁷⁰

B. How can Parents Obtain a Child Support Amount?

As noted earlier, jurisdiction pertaining to family law in France resides solely with the courts.²⁷¹ That being said, parents have four options to arrange child support. They can opt for:

- 1) *Family negotiated maintenance arrangements.* Regardless of the marital status of the parents, a couple can determine their own child support arrangement (both custody and a child support amount) by way of a private agreement. These private arrangements are not enforceable and if one of the parents refuses to comply with the agreement, the other parent will be required to apply to the court to obtain an order that can then be enforced.²⁷²
- 2) *Seek a court order.* In cases where the couple decides to obtain a court order, a family court judge will rule on the matter of parental responsibility, residence, the amount of contact each parent will have with the child, and the amount of child support that is to be paid.²⁷³

If the couple is married, a conciliation hearing is the first step in divorce proceedings. During this process, the judge will review the facts with the parties. Should the case proceed to trial, the judge will take the results of the conciliation hearing into account when determining the final child support amount and custody arrangement.

- 3) *Use the services of a social security office.* France's system of social security offices provides services to assist separating/divorcing parents, as well as obtain various other services. This agency is a non-government agency called *Caisses d'allocations familiales* (CAF).²⁷⁴ It also provides financial assistance to parents who have a child support order, as it will provide an allowance to single parents, living alone with at least one dependent child, where the child is not receiving any support from one or both parents, or as a top-up to a low child support award. The family support allowance can also be paid in advance if the other parent is in arrears on their child support payments. Child support amounts can also be used by CAF when unmarried parents agree with the child support amount. In these cases, CAF has to apply the Table of Child Support²⁷⁵. As well, the child support amounts are registered by CAF and parents do not need to proceed to family court to obtain an enforceable child support order because titles delivered by CAF are already enforceable.

²⁷⁰ Article 373-2-3, FCC.

²⁷¹ Article 373, FCC.

²⁷² The Law Office of Jeremy D. Morley, International Family Law, 2019. <https://www.international-divorce.com/France-Child-Support.htm>.

²⁷³ Ibid.

²⁷⁴ This translates into Family Allowance Funds and is basically provides all family benefits and services to residents of France.

²⁷⁵ See Decree No. 2018-656 of 24 July 2018 and Arrêté of 25 June 2018 on the allocation of child support and the enforcement title coming from article L. 582-2 of the Social security code. In particular, these texts describe the Formula used by the Table of Child Support.

- 4) *Use of a Qualified Notary.* Another service provided for a fee (50 euros) is a notary or qualified private lawyer, who is designated to finalize the agreement of divorced parents on issues related to their children upon a separation/divorce. In these cases, parents who are in agreement with respect to their child support amount can use the services of the notary who will then register the order with the court.²⁷⁶ In these cases parents are free to consult, but are not obligated to use, the *Table of Child Support* when they determine their child support obligation.

C. How the Formula Works

As noted earlier, France does not mandate the use of child support guidelines. However, the French Ministry of Justice does provide guidance to the courts by publishing the *Table of Child Support* that includes the basic elements of a formula. Although there are no prescribed “steps” to use the *Table of Child Support* (nor the online calculator), parents require three pieces of information. These are:

- The monthly gross income of the paying parent;
- The number of children in the family; and
- The type of residence arrangement in place (alternating residence, classic visitation rights or reduced visitation rights).

Once parents agree on these three pieces of information, they may consult The *Table of Child Support* that provides the “percentage of the child average expenses”, that generates the relevant child support amount. The child support amounts presented are “per child”.

As mentioned earlier, an online calculator is also available for parents and family law professionals. It is only indicative and the final child support amount, if parents appear before a judge, may be different than the amounts generated by using the online calculator.

Part 2: Elements of the Child Support Model

A. Data Source used to Determine Expenditures on the Children

How are expenditures for the child determined?

The expenditures on children are based on average costs of children in intact families.²⁷⁷ These average expenditures are converted into the percentages of expenditures on the child that the average intact family would spend. To determine the costs of maintenance and education of children, the scale is based on the econometric work of L’Institut national de la statistique et des études économiques (INSEE) based on the survey “Family Budget”, which proposes an average value of the relative cost of the child, regardless of age, sibling rank, or

²⁷⁶ Journal du Net (JDN) <https://www.journaldunet.fr/patrimoine/guide-des-finances-personnelles/1201957-divorce-sans-juge-2019-loi-prix-et-notaire/>.

²⁷⁷ Bourreau-Dubois, Cécile and Bruno Jeandidier, *What can we expect from a child support schedule?* Revue française d’économie. 2012/4 (Volume XXVII), pages 213 to 248 <https://www.cairn.info/revue-francaise-d-economie-2012-4-page-213.htm-re16no16>. This is a Google Translation of the article from French to English.

parental income level. These data explain the choices that were made in the elaboration of the *Table of Child Support*.²⁷⁸

How are the expenditures reflected in the formula calculations?

The expenditures are represented as “percentages of income” amounts in the *Table*. The *Table* indicates the percentage of income above each column broken down by the number of children (one to six) and the type of parenting time for the paying parent – reduced, classic and alternating.²⁷⁹

B. Approach used to Apportion the Amount that the Two Parents will Share

France uses a fixed percentage of income model to determine child support amounts. The percentages are shown in the *Table* and are “per child” percentages. The percentages decrease as the amount of time spent increases. Below are the percentages:

Table of Percentages of Income used to generate the *Table of Child Support Amounts*

No. of Children / Type of Parenting Arrangement	Per Child			All Children		
	Reduced	Classic	Alternating	Reduced	Classic	Alternating
One	18.0	13.8	9.0	18.0	13.8	9.0
Two	15.5	11.5	7.8	31.0	23.0	15.6
Three	13.3	10.0	6.7	39.9	30.0	19.1
Four	11.7	8.8	5.9	46.8	35.2	23.6
Five	10.6	8.0	5.3	53.0	40.0	26.5
Six	9.5	7.2	5.3	57.0	43.2	28.8

C. Accompanying Policy/Legislation (Rules)

i) Determination of income

The paying parent's personal resources that are taxable, as well as social benefits, are taken into account, with the exception of those aimed at improving the standard of living of children (e.g. family benefits).

Self-support Amount: This fixed amount is deducted from the paying parent's income. It represents a “subsistence level” corresponding to the amount of the Revenue Active Solidarity

²⁷⁸ See in particular the following research: Monsieur Jean-Michel Hourriez et Madame Lucile Olier, *Niveau de vie et taille du ménage : estimations d'une échelle d'équivalence*, Economie et statistique, N°308-310, Octobre 1998, 65-94.

²⁷⁹ The definitions of these types of parenting time are described in section C (iii) of this summary.

(RSA).²⁸⁰ The amount of the RSA is updated annually. For 2019, the amount of the deduction is 550 €/ month.

ii) **Income attribution**

If a parent does not provide sufficient or in the court's opinion accurate, income information, the judge will order the parent to produce tax records and wage/salary slips to find the correct income level.

iii) **Impact of Custody and Parenting Time**

The general principle contained in the FCC²⁸¹ is that a shared/alternate residence order can be made in favor of both parents when the circumstances permit. In most cases, this means that the child will reside with each parent on an alternate week basis. However, this doesn't mean that the child will spend an equal amount of time at the home of each parent.²⁸² Often the judge will order that the primary residence of the child should be with one parent. The other parent is then granted visitation rights that can take the form of regular visits or overnight stays. In addition, there are three types of custody. The following describes the three types.

Reduced: This form of custody occurs when the residence of the child is primarily with one parent and the other parent's residence time is less than 1/4 of the overall residence time. This may include infrequent access and accommodation due to unavailability of the parent, or simple access without accommodation. This occurs if the parent does not have adequate housing, if adequate accommodation is not available, or if it is not in the best interests of the child to have additional access to the other parent.

Classical: This form of custody occurs when the residence is fixed mainly by one of the parents and the residence time of the other parent is equivalent to 1/4 or more of the total residence time (for example one weekend out of two, and half of the school holidays).

Alternate: This occurs when the children live alternately in the home of each parent. Alternate residence may be used as a contribution to the maintenance and upbringing of children when parents cannot agree on the sharing of child-related costs according to their resources or when one parent cannot bear the financial burden of the alternating residence alone.

In cases of **shared residence**, where each parent spends an equal amount of time with the child, no child support payment is required – except in situations where the two parents' income and resources are not the same.

²⁸⁰ The Revenue Active Solidarity (RSA) provides people without resources with a minimum level of income that varies according to the composition of the household. The RSA is open, under certain conditions, to people aged 25 or over and young workers aged 18 to 24 if they are single parents or have a certain working life.

<https://www.service-public.fr/particuliers/vosdroits/N19775>.

²⁸¹ Article 372-2-9, FCC.

²⁸² The Law Office of Jeremy D. Morley, International Family Law, 2019.

iv) Dependent Children

When calculating the amount of child support payable, all the children for which the paying parent has legal liability is used. This means that no child has priority over another child. This is because the underlying policy is that the paying parent has a (financial) responsibility towards each of those children.²⁸³ As the amounts generated by using the *Table of Child Support* is on a “per child” basis, the amount for the child who is the subject of the child support calculation is easily determined.

v) Special expenses

In France, the determination of child support does not recognize *per se*, special expenses such as extra medical or private tuition etc. The individual court and judge has the discretion to include any expenses they deem appropriate in the determination of a child support amount.

vi) Concept of Undue Hardship

In France, the determination of child support does not recognize the concept of undue hardship, or the inability to pay. The courts and judges consider specific case circumstances as they arise.

vii) Other circumstances that could be considered that may result in a variation or modification to the monthly support payable

In the case of new elements in the personal and/or financial situation of the paying or receiving parent, it is possible to request from judge a revision to the child support amount. In these cases the amount may be modified (upwards or downwards).

In France, mechanisms are available to adjust the child support amount to reflect yearly changes to the Consumer Price Index. In order to reassess the amount of the support, the judgment or order made by a judge must mention the indexation of the award to reflect changes to the Consumer Price Index. Depending on the rise or fall of this index, there may be a revaluation of the amount of support.²⁸⁴

Parents may also update their child support amounts to reflect the current Consumer Price Index²⁸⁵ using an online tool.²⁸⁶ To use the tool, parents enter the date of the last update and the appropriate Consumer Price Index and the tool will generate both the detailed calculations and the “new” child support amount to be paid. In general, the revaluation is scheduled every year on a fixed date (e.g. the anniversary date of judgment).

²⁸³ Definition of “number of children of the paying parent” provided in the online calculator at <https://www.service-public.fr/simulateur/calcul/pension-alimentaire>.

²⁸⁴ Reassessment of child support. <https://www.justice.fr/fiche/reevaluation-pension-alimentaire>. Parents may calculate the change themselves; instructions are provided on the website.

²⁸⁵ The court order (The Judgement) or order of the family court shall specify the benchmark, the date of the first reassessment, the index used for the revaluation, the periodicity of the updating of the child support amount.

²⁸⁶ The National Institute of Statistics and Economic Studies provides an online tool to update child support amounts based on the Consumer Price Index. <https://www.insee.fr/fr/information/1300608?cas=A>.

viii) Other considerations

Age of the child: Parents have the obligation to provide material support to their adult child if they are not financially independent. The amount of this assistance varies according to the resources of the paying parent and the needs of the child. Once a child is in a position to cover their own needs and has completed, where applicable, secondary or tertiary/university education, child support is payable directly to the child.²⁸⁷

Minimum support: The *Table of Child Support* only applies to the paying parent whose monthly income and resources are EUR 700 or more.

Maximum support: The *Table of Child Support* only applies to the paying parent whose income and resources are 5,000 €/ month or less, however the online calculators can generate child support amounts for incomes greater than 5000 €/ month.

Non-payment of support: The non-payment of child support is a crime. A person who doesn't pay their child support obligation for two months is guilty of a crime of "abandonment of the family". The penalties can range from a prison term of two years to a fine of 15000 euros, or a combination of the two forms of penalties.²⁸⁸

Part 3: Summary of the Key Changes to the Child Support Guidelines Legislation

A. Overview of the Changes

As noted earlier, France does not have legislation that sets out the requirement or prescribes a child support guideline to determine child support amounts. However, contained in the FCC are principles that underlie judicial decision making in this area. These principles have changed over time and are summarized below.

There is a long history in France that requires parents to take mutual responsibility for their children. Starting in 1970,²⁸⁹ reforms to the FCC broadly acknowledged the responsibilities of both parents and required them to exercise these responsibilities in a manner that was in the "best interests of the child". Further reforms in 1985²⁹⁰ abolished the only advantage the father had retained under the previous 1970 reforms, which was with respect to the administration of the child's property. Then again in 1987, further reforms²⁹¹ modified the rules concerning the exercising of parental responsibilities after divorce, as well as for all other non-married parents. In 1993, further amendments to the FCC²⁹² clearly articulated the principle of joint parental responsibilities with respect to their children (*autorité parentale conjointe*) for divorced or separated parents as well as for non-married parents.

²⁸⁷ Article 373-2-5, FCC.

²⁸⁸ Handbook: La pension alimentaire, http://www.justice.gouv.fr/publication/fp_pension_alimentaire.pdf

²⁸⁹ Act No. 70-459 of 4 June 1970.

²⁹⁰ Law No. 85-1372 of 23 December 1985.

²⁹¹ Act No. 87-570 of 22 July 1987.

²⁹² Law No. 93-22 of 8 January 1993.

The next set of reforms to the FCC occurred in 2002.²⁹³ Although the 2002 reforms no longer mentioned the three terms that, up until 2002 referred to custody arrangements, day to day supervision and education, the reforms still referenced the general components of parental responsibilities (garde, surveillance, éducation). French authors assert that these three fundamental parental tasks still exist and remain part of the parental responsibilities.²⁹⁴ “Garde” meant that the parents should live with their child or, more generally, determine where their child should live. It is therefore part of the “communauté de vie” (living together, community of living) between parents and children. “Surveillance”, is a term no longer used in the new legal provisions; however, it still exists as a parental duty to take care of, to protect, and to pay attention to the child and their needs.²⁹⁵ The new terminology now requires that the exercise of parental responsibilities should be used to protect the child’s safety, health and morality. Education is still mentioned in the legal provisions of the FCC concerning the parental authority.

The 2002 reforms²⁹⁶ also provided a new definition for autorité parentale (parental authority). The new definition was a collection of rights and duties aimed at ensuring that the child’s interests are to always be taken into account.²⁹⁷ These reforms modernized the exercise of parental responsibility and improved the principle of equality between the parents (coparentalité). They also included amendments to the FCC that made it very clear that all children are equal (the law no longer uses the terms *filiation légitime* and *filiation naturelle* with respect to parental responsibilities). Finally, legal provisions concerning parental responsibilities after divorce were put in the section containing the general rules on parental responsibilities under a broad heading regardless of the parents’ marital status.²⁹⁸

2011 - Towards better harmonization of amounts²⁹⁹

Noting some discrepancies between the amounts of child support allocated from one jurisdiction to another, the Ministry of Justice proposed the use of a *Table of Child Support* (Barème des pensions alimentaires) that sets out child support amounts for magistrates and parties.

The view was that this type of tool is both useful for legal professionals in facilitating their decision, and for litigants in making justice more transparent and understandable to all. Originally, the table was only used in a selected few courts in France. However, based on a study conducted by the Court of Appeal of Toulouse, its use is now extended to all the national territory. This type of tool is both useful for legal professionals in facilitating their decisions, and for litigants in making justice more transparent and understandable to all.³⁰⁰

²⁹³ Act No. 2002-305 of 4 March 2002.

²⁹⁴ The Law Office of Jeremy D. Morley, International Family Law, 2019.

²⁹⁵ Art. 371-1 FCC.

²⁹⁶ LAW No. 2002-305 of March 4th, 2002 relative to the parental authority, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000776352&categorieLien=id>

²⁹⁷ Art. 371-1 FCC.

²⁹⁸ Prof. Frédérique Ferrand, Parental Responsibilities – National Report : France, University of Lyon, <http://ceflonline.net/wp-content/uploads/France-Parental-Responsibilities.pdf>.

²⁹⁹ Child support: Towards better harmonization of amounts, May 2011 <http://www.justice.gouv.fr/justice-civile-11861/pensions-alimentaires-20077.html>.

³⁰⁰ <http://www.justice.gouv.fr/justice-civile-11861/pensions-alimentaires-20077.html>.

2019

France is presently undergoing a review of the *Table* and the determination of child support by the courts to examine various components of their present Child Support Model such as the percentage of the child average expense, categories of parenting time, use of a self-support reserve (RSA), etc. The completion date and implementation of changes are expected to be effective at the end of 2019 or beginning of 2020.

Part 4: Summary of the Literature that Assesses the Model

There have not been any formal or informal evaluations of the way in which child support is determined in France. A review of the available literature on the advantages and disadvantages of the elements of the Model revealed the following opinions:³⁰¹

A. Advantages

- ...the introduction of a scale has the advantage of improving the degree of information of the parties and of guaranteeing greater predictability in the sense that it clarifies the calculation rules on which the judge will rely on calculate the amount of support and the criteria that will be used to make this calculation.³⁰²

B. Disadvantages

- Child support levels are generally low.³⁰³

Part 5: Selected Case Scenarios

The following table provides the outcomes from two case scenarios using the online calculator on Sevice-France.fr.³⁰⁴ These scenarios illustrate the basics of formula assessment in France. (All amounts in € EUR.)

Case Scenario 1: Jean-Pierre and Marie are separated and have one child, Phillip, aged 7. Jean-Pierre has a monthly income of 4167,00 €. They have an “alternating” residence agreement for parenting time for Phillip, however, Marie does not have the financial resources to raise Phillip on her own.

	Monthly Child Support Amount
Case Scenario 1: one child, alternating parenting arrangement.	325.00 €/ month

Case Scenario 2: Andre and Isabelle are divorcing and have two children: Charles, aged 12 and Emile, aged 6. Andre has a monthly income of 2900,00 €. Andre has a “classic” parenting

³⁰¹ The reader should note that these are the views of the authors of the information that was reviewed and are not the views of the authors of this summary report.

³⁰² Cécile Bourreau-Dubois and Bruno Jeandidier, *What can we expect from a child support schedule?* in *Revue française d'économie* 2012/4 (Volume XXVII), 213 to 248, <https://www.cairn.info/revue-francaise-d-economie-2012-4-page-213.htm>.

³⁰³ The Law Office of Jeremy D. Morley, *International Family Law*, 2019.

³⁰⁴ <https://www.service-public.fr/simulateur/calcul/pension-alimentaire>.

(equivalent to at least 1/4 (25%) of parenting time) arrangement with Isabelle for spending time with Charles and Emile.

	Monthly Child Support Amount
Case Scenario 2: two children, classic parenting arrangement care.	538€/ month

Appendix A: References

- The Sections of the *French Civil Code* dealing with parental responsibility and child support can be found in: *Book I: People; Title IX: Parental authority; Chapter I: Parental authority in relation to the person of the child; Section 1: The exercise of parental authority. Articles 373-2-1 to 373-2-11.*
<https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006165499&cidTexte=LEGITEXT000006070721&dateTexte=20130701>
- Bourreau-Dubois, Cécile and Jeandidier, Bruno. "Que peut-on attendre d'un barème de pension alimentaire pour enfant ?," *Revue française d'économie*, Presses de Sciences-Po, vol. 0(4): 213-248.
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<http://www.justice.gouv.fr/justice-civile-11861/pensions-alimentaires-20077.html>
- France. Ministry of Justice. Handbook: *La Pension Alimentaire*.
http://www.justice.gouv.fr/publication/fp_pension_alimentaire.pdf
- The Law Office of Jeremy D. Morley. "France Child Support."
<https://www.international-divorce.com/France-Child-Support.htm>

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Appendix B: Two Case Scenarios

Case Scenario 1

Alimony Calculation Simulator

The amount of the child support per child is calculated in proportion to the income of the paying parent, after the deduction of a subsistence level corresponding to the amount of the RSA.

This proportion is different depending on the total number of dependent children of the paying parent (regardless of the union they were born from) and the extent of access and accommodation (reduced, classic, or alternating without sharing unplanned costs).

Income and children

* Net monthly income of the paying parent: 4167,00 €

* Category of access and accommodation: Alternating

* Number of children of the paying parent: 1

Applicable rate per child: 9.00%

Child Support Amount per child: **325.00 €**

Total amount: **325.00 €**

Case Scenario 2

Alimony Calculation Simulator

The amount of the child support amount per child is calculated in proportion to the income of the paying parent, after the deduction of a subsistence level corresponding to the amount of the RSA.

This proportion is different depending on the total number of dependent children of the paying parent (regardless of the union they were born from) and the extent of access and accommodation (reduced, classic, or alternating without sharing unplanned costs).

Income and children

* Net monthly income of the paying parent: 2900,00 €

* Category of access and accommodation: Classic

* Number of children of the paying parent: 2

Applicable rate per child: 11.5%

Child Support Amount per child: **269.00 €**

Total amount: **538€**

G – New Zealand

Part 1: Description of the Child Support Model

A. Overview

The consideration of various approaches and models to determine child support in New Zealand began in the early 1980s. The impetus for policy reform in the area of child support was largely as the result of the changing structure of families in New Zealand. The concept of a family nucleus consisting of a mother, father and 2.2 children was no longer the norm. During the period 1976-1991, the number of sole parent families increased by an average of 6% per year.³⁰⁵

As the number of sole parent families increased, so did the cost to taxpayers. Parents who were not living with their children were not continuing to provide financial support for those children. This meant that the responsibility to financially provide for these children had shifted to the taxpayer through the provision of various social benefits, such as the Domestic Purposes Benefit.³⁰⁶

The change in family composition together with the escalating costs of social benefits to single parents provided the incentive for the introduction of the *Child Support Act of 1991* (CSA). The CSA was brought into force on December 18, 1991 and was based on a percentage of income model (flat percentage model).

Since 1991 several significant changes (including a transition to an income shares model) have been made to the approach used by New Zealand to determine child support. An overview of these changes can be found in Part 3 of this report.

The formula and accompanying rules that are currently used in New Zealand to determine child support are set out in the CSA.³⁰⁷

Under the Act, the Commissioner of Inland Revenue (IRD) of New Zealand is responsible for conducting a formula assessment to determine the amount of applicable child support for:

- Parents who are required to use the services of the IRD because they are in receipt of a social security benefit;³⁰⁸ or

³⁰⁵ Maria Deligiannis, *A Critical Analysis of the Child Support System in New Zealand*, Victoria University of Wellington, 1996, 6.

³⁰⁶ *Ibid.*, 6,

³⁰⁷ *Child Support Act 1991*, Reprint as at April 1, 2019,

<http://www.legislation.govt.nz/act/public/1991/0142/latest/DLM253151.html?src=qs>.

³⁰⁸ *Child Support Act 1991*, Section 9.

- Parents and carers³⁰⁹ who request their services because they cannot agree on a child support amount.

It is important to note that in New Zealand, if a person is entitled to and receives social security benefits, and their circumstances entitles them to a child support order, IRD has the mandate to ensure child support is determined and collected. In these cases, the custodial parent will receive their entire social benefit, however IRD will retain the child support amount collected as an offset to the social benefit paid.³¹⁰

Under Section 4 of the CSA: the main objectives of the Act are:

- To affirm the right of children to be maintained by their parents;
- To affirm the obligation of parents to maintain their children;
- To provide that the level of financial support to be paid by parents for their children is to be determined according to their relative capacity to provide financial support and their relative levels of provision of care;
- To ensure that parents with a like capacity to provide financial support for their children should provide like amounts of financial support;
- To provide legislatively fixed standards in accordance with which the level of financial support to be provided by parents for their children should be determined; and
- To ensure that the costs to the State of providing an adequate level of financial support for children is offset by the collection of a fair contribution from liable parents.

The formula underpinning the model is a modified version of the income shares model. The underlying assumptions of this model are that the incomes of both parents are required in the determination of a monthly child support amount and that expenditures on children are based on research that identified what percentage of the parent's income is spent on children.

The basic information required to generate a child support amount using the formula is:

- The annual incomes of both parents;
- The number and age of children;
- The amount of care provided to the child from each parent (number/percentage of overnights);³¹¹ and
- The presence of other dependent children not part of the assessment.

The formula does not contain any other factors in the formula calculations such as childcare costs, medical, school, and extracurricular activities. These are dealt with outside the formula and are assessed through an administrative review process.

B. How Can Parents Obtain a Child Support Award?

In New Zealand, parents have three options to arrange child support.

³⁰⁹ The term “carer” is used in the New Zealand literature to identify parents and/or those individuals who have care for a child who is not their own. This summary does not describe child support arrangements for carers.

³¹⁰ *Child Support Act 1991, Section 4, Object (j)*.

³¹¹ If either of the parent's care is less than 28% (103 overnights) during the year, this amount is 0%.

- 1) Parents can decide to negotiate a child support agreement between them. Should parents choose this option, they are encouraged to use the online calculator and supporting Tables produced by IRD, however the child support guideline is not mandatory. In these cases there is no court process that will ratify the private arrangement. As well, although the parties may have negotiated a private arrangement and child support amount, they may still request IRD to administer the financial arrangement.³¹²
- 2) Parties can request the services of IRD to obtain a formula assessment. For those parents who would like assistance or if they cannot agree to a child support amount and are not receiving a social security benefit, they may request the assistance of the IRD to determine the amount of child support payable. In conducting a formula assessment, IRD is mandated to use the formula as legislated in the CSA.
- 3) Parties are required to use the services of IRD if one or both of the parents or carers of a qualifying child³¹³ receives a social security benefit – which are benefits at a sole parent rate or the unsupported child benefit. In these cases, IRD is mandated to establish and administer the assessment of the child support amount. They are also responsible for collecting, dispersing as well as enforcing child support payments.

Parents or parties to a child support assessment may object to the assessment completed by IRD. An objection to an assessment is under s 91 of the CSA and can be made on the basis that IRD has gotten the amount incorrect, i.e. the annual or monthly rate has not been correctly calculated, the number of dates for which child support is payable is incorrect, or the annual rate of child support is incorrect because IRD has failed to give effect to a provision of the CSA. Following the decision of the objection, if they are still in disagreement with the outcome, they may appeal to the Family Court.^{314, 315}

To assist parents in conducting their own formula assessment to determine a child support amount, IRD provides an online calculator tool called the *Child support – liability/entitlement calculator*.³¹⁶ As well, they develop and provide various lookup tables, information and tools all designed to encourage parents to familiarize themselves with the process and calculations used to determine child support amounts.

C. How the Formula Works

Included in Part 2 of this *Summary Report* are further details on the specific elements and relevant detailed calculations contained in the formula. However, to assist the reader in understanding the overall approach and elements considered in the formula calculations, a high-level summary of the five steps is as follows:³¹⁷

³¹² Under this option, parents are also able to register their agreement with IRD for administration purposes.

³¹³ *Child Support Act 1991. Section 5*. A qualified child is a child under the age of 18 (or still attending school at 18), is not financially independent, is a resident of New Zealand, and is not living with another person in a marriage, civil union or de facto relationship.

³¹⁴ While Family Court is an option, it is used very rarely.

³¹⁵ *Helping you to understand child support and the Family Court*. Inland Revenue, IR174, August 2018, <https://www.classic.ird.govt.nz/forms-guides/keyword/childsupport/liable-parents/ir174-helping-understand-child-support-family-court.html>.

³¹⁶ New Zealand's online calculator can be found on the IRD website:

<https://www.classic.ird.govt.nz/calculators/tool-name/tools-c/calculator-child-support-liability-entitlement.html>.

³¹⁷ More detailed information on the components in each of the Steps is contained in Part 2.

Step 1 - Determine each parent's income available for child support

The amount of income available for child support is referred to as the parent's *Child Support Income*. It is calculated by determining their respective *Annual Adjusted Taxable Incomes*, and then subtracting their applicable allowances. Each parent's *Child Support Income* is divided by their total *Child Support Income* to produce their respective *Percentage Share of Combined Child Support Income*.

Step 2 - Calculate the amount of time the child is in the care of both parents

The *Care Cost Percentage* for each parent is based on the percentage of overnights each parent spends with the child. Both parents must have over 28% of care annually. If not, the *Care Cost Percentage* is zero for the paying parent³¹⁸ and 100% for the receiving parent. The percentage to be used in the formula calculations is found by consulting the *Care Cost Table*.³¹⁹

Step 3 - Determine the *Percentage of Income Less Care Cost Percentage* amount

The *Care Cost Percentage* found in the *Care Cost Table* is then **subtracted** from the *Percentage share of Combined Child Support Income*. The result is called the *Percentage of Income Less Care Cost Percentage*.

Step 4 - Determine the basic child support amount

This calculation is done by using the combined *Child Support Income* of both parents and consulting the *Child Support Expenditure Table*.³²⁰ This Table sets out the annual cost of raising children by the relevant income category and by the number and age of children.

Step 5 - Calculate the monthly child support liability for each parent

This amount is calculated using the amount found in the *Child Support Expenditure Table* in Step 4 and multiplying that amount by the *Percentage of income Less Care Cost Percentage*.

Please consult Appendix B to see the two case scenarios that allow the reader to fully understand the calculations required.

Part 2: Elements of the Child Support

A. Data Source Used to Determine Expenditures on the Children

New Zealand uses “actual costs of children” to represent the costs of children that parents are expected to share in proportion to their incomes. In 2009, IRD conducted a study³²¹ on the

³¹⁸ The paying parent is often referred to as the “liable parent” in New Zealand.

³¹⁹ The “Care Cost” lookup table is used to find the *Care Cost Percentage*. *Child Support Act 1991, Schedule 2*.

³²⁰ The 2020 *Child Expenditure Table* can be found on IRD website at: <https://www.ird.govt.nz/topics/child-support/how-much-will-i-get-or-pay/child-support-expenditure-tables-for-2020>.

³²¹ Iris Claus, Paul Kilford, Geoff Leggett, and Xin Wang, *Costs of raising children*, Centre for Applied Macroeconomic Analysis, Australian National University, Inland Revenue, March 2010,

costs of raising children in New Zealand that identified the percentage of income parents in intact families spend on their children. Furthermore, the study found that the lower the income, the higher the proportion of income is spent on children (while those with higher incomes spend more in actual amounts) and that the cost of raising children increases with the children's ages.

To derive the information contained in the *Child Expenditure Table*³²² in Schedule 3 of the CSA, the actual amounts of expenditures on children determined in the 2009 study have been converted to percentages of income. The percentages represent marginal expenditures, which represents how much each additional dollar of child support income in an "average weekly earnings"³²³ band, is to be treated as expenditures on children. The Table contains percentages based on three variables: income, age of children and number of children.

How are the expenditures reflected in the formula calculations?

The IRD website publishes an updated version of the Table each year. The material on the IRD website is divided into three tables. Each of the three tables contains a specific age grouping of children by the number of children. The first table shows all children, aged 0-12; the second table, all children (or oldest 3), aged 13 and over; and the third table is a mix of ages: at least one child aged 0-12 and 1 or 2 children aged 13 and over.

- Each of these three tables contains two variables. They are:
- Income: rather than a multiplier (0.5, 1.0, 1.5, 2.0, 2.5 and over) of the "average weekly earnings" as in the legislation, all child support income amounts have been annualized and presented in five categories; and
- Number of children: one, two and three or more.

B. Approach Used to Apportion the Amount that the Two Parents Will Share

The apportioning method underlying the New Zealand formula is a modified version of the Income Shares model. It requires the calculation of two percentages for each parent:

- The first is their respective percentage of their combined incomes. This is called each parent's *Percentage Share of Combined Income* amount; and
- The second is the Percentage of Care Cost.

The *Percentage of Care Cost* amount is then subtracted from the *Percentage of Combined Income* amount. This produces a final percentage for both parents. The parent with the higher positive percentage is required to pay the amount generated by applying their final percentage to the child's expenditures, which is obtained by using their combined *Child Support Income* amount in the *Child Expenditures Table*.

https://www.parliament.nz/resource/mi-nz/50SCSS_ADV_00DBHOH_BILL11136_1_A260678/15786a574783a7659e2a3fee9bc67a0e549d02b2

³²² *Child Support Act 1991, Schedule 3.*

³²³ Average weekly earnings as published by Statistics New Zealand (for all industries, males and females combined) for the June quarter in the immediately preceding child support year. The weekly earnings are annualised in the *Child Expenditure Table*. <https://www.ird.govt.nz/topics/child-support/how-much-will-i-get-or-pay/child-support-expenditure-tables-for-2020>.

C. Accompanying Policy/Legislation (Rules)

i) Determination of income for child support purposes³²⁴

For the purposes of determining child support, if parents earn a salary or a wage, IRD uses their taxable incomes³²⁵ for the previous calendar year.

In cases where income is derived from other sources (overseas income or from a business etc.), the taxable income for purposes of child support is assessed based on the tax returns filed from two years previous (from 1 April to 31 March). This corresponds with the requirement to file an IR3.³²⁶ In addition, an inflation factor is added to the derived amounts.³²⁷

Three types of allowances are then subtracted from their *Adjusted Taxable Income* amount.

The first deduction is the *Living Allowance* that is applicable for both parents and is completed in all assessments.

- An amount for a *Living Allowance* is subtracted from both parents *Adjusted Taxable Income* amounts (for example, the amount for April 1, 2019 to March 31, 2020 was \$20,051).³²⁸ The *Living Allowance* is calculated annually and is based on the social security benefit a single person with one or more dependent child would receive in that year. This amount is legislated and is derived from the *Social Security Act 2018*.³²⁹

Two other deductions, *Dependent Child Allowance* and *Multi-group Allowance* are only allowed when applicable.

- Each parent's incomes may be further reduced if they qualify for a *Dependent Child Allowance*.³³⁰ This allowance is for children who are not the subject of the primary formula assessment but are in the care of one of the parents for at least 28% of the time. To complete this calculation, the parent who is claiming the *Dependent Child Allowance* ascertains the applicable *Percentage of Care Cost* amount and multiplies this number by the amount obtained from the *Child Expenditure Table* for that relevant child. In referencing this Table, the parent will use only their *Adjusted Taxable Income* amount and the number and age group of the dependent children. They will then divide this amount by the number of dependent children to determine a "per child" *Dependent Child Allowance* amount. If there is more than one dependent child, several calculations are required.

³²⁴ Because Inland Revenue of New Zealand administers the Child Support Scheme, documentation related to parents' types of income and their amounts of recent taxable incomes, is available.

³²⁵ Income is entered into the online calculator as annual adjusted taxable income.

³²⁶ Residents must file an IR3 return if they earned income other than salary, wages, interest, dividends, and/or taxable Māori authority distributions.

³²⁷ *Child Support Act 1991 Section 38*.

³²⁸ All amounts are in NZ dollars. To convert to CDN dollars: \$1CDN=\$1.142 NZ.

³²⁹ *Social Security Act 2018. Schedule 4 Rates of Benefits* - the rate set out in clause 1(c) of Part 3.

³³⁰ The principle underlying this factor is that all children are treated the same and recognizes a parent's (financial) responsibility to all their children.

- Each parent's income may be further reduced if they qualify for a *Multi-group Allowance* when that parent has qualifying children³³¹ from two or more *Child Support Groups*.³³² Essentially, the *Multi-Group Allowance* is an amount calculated for each *Child Support Group* and is deducted from the claiming parent for each formula assessment. The first step is to calculate the *Multi-Group Allowance* for each *Child Support Group* using only the parent's adjusted taxable income (after the *Living and Dependent Child Allowances* have been deducted) and looking up the appropriate amount in the *Child Expenditure Table*. Once this step has been completed for each child, formula assessments are completed for each *Child Support Group*. The *Multi-group Allowance* for children from other *Child Support Group* is then deducted from the parent's *Adjusted Taxable Income* amount. It should be noted that the calculation of the *Multi-Group Allowance* will require doing a reassessment of all existing child support assessments as any additional qualifying child from a separate *Child Support Group* affects existing child support calculations relevant to the parent.

ii) Income attribution³³³

If a parent believes that their taxable income will be lower than the amount -calculated by IRD in completing the formula assessment, they may apply to IRD to have their income estimated for the purposes of their child support assessment. If the estimate is accepted by IRD, their child support will be reassessed.

Parents can request an estimate of their income if their:

- Year-to-date income (if any) plus estimated taxable income has been reduced by 15% or more from the original *Adjusted Taxable Income* amount used in the original child support assessment; and
- "Annualized estimated taxable income" is less than the original *Adjusted Taxable Income* used to complete the parent's assessment.

iii) Impact of custody and parenting time

Parenting agreements for the care³³⁴ arrangements of the child are the responsibility of the Ministry of Justice³³⁵ and are not part of New Zealand's Child Support Scheme. IRD will rely on written parenting agreements to confirm the care arrangements for formula assessments, particularly when there is a disagreement.

As noted above, the amount of care of the children is an integral part of the child support formula assessment calculations. Included in the formula is a calculation that is designed to

³³¹ A 'qualifying child' is the child that is the subject of the child support assessment.

³³² "Child Support Groups" is a term used to identify children from previous relationships for which a parent has a financial responsibility, i.e. a child support order to pay. *Child Support Act 1991, Section 36 Multi-group Allowance*.

³³³ More detail on "estimating taxable income" can be found on IRD's website at:

<https://www.classic.ird.govt.nz/forms-guides/keyword/childsupport/ir151-child-support-estimating-your-income.html>.

³³⁴ New Zealand uses the term "care" for child support purposes. A percentage of care above 28% (more than 103 overnights) is considered "shared care".

³³⁵ Information on care arrangements for children can be found on the Ministry of Justice website at:

<https://www.justice.govt.nz/family/care-of-children/>.

recognize the costs associated with the amount of time that the child is “under the care” of either parent. This element is called the *Care Cost Percentage*. It is determined as follows:

- Each parent calculates his or her percentage of care (determined by the number of overnights) for the child³³⁶. Each parent must have care of the child for at least 28% of the time (103 nights in a year, two days a week). If less than 103 nights in a year, their *Care Cost Percentage* is zero.
- Once the actual percentage of care is calculated, the percentage to use in the formula is found in the *Care Cost*³³⁷ Table. Then each parent’s *Care Cost Percentage* is subtracted from their respective *Percentage Share of Combined Child Support Income* to determine who is the paying parent and how much child support is to be paid.
- The paying parent is the parent whose final percentage is positive, after subtracting the *Care Cost Percentage* from their *Percentage Share of Combined Child Support Income*.

For split custody situations, where there are two or more qualifying children and each parent has at least one of the children for a majority of the time, child support amounts are determined for each parent’s household and are based on the level of income and the percentage of parenting time each parent spends with the child in the other household. A child support amount is calculated for all the children residing with each parent. The child support amounts that are calculated for each parent are then “offset” (or netted off against each other) and the parent with the positive balance pays the other parent.

iv) Special expenses

Additional expenses such as the extra costs for medical, education and/or special needs for the child are not included in the formula calculations. Rather, they are dealt with as a departure from the guideline amount (see section below).

v) Undue hardship

It is important to note that in New Zealand, there is no concept of “undue hardship” *per se* when determining a child support assessment. Either parent can ask for a departure from the formula if they meet one of the 12 *Grounds for Administrative Review (Grounds)*, but “undue hardship” is not a reason in its own right.³³⁸ These *Grounds* are essentially available to allow for special circumstances to be taken into consideration in situations where it is believed that the *Ground* in question is not adequately covered by the Formula.

The twelve *Grounds for Administrative Review*³³⁹ are as follows:

- 1) The parent has a duty to maintain another child (or children) or person;

³³⁶ Parents can calculate their annual percentage by using the online tool called the “Child Support Nights per year calculator” on the IRD’s website at: <https://www.classic.ird.govt.nz/calculators/tool-name/tools-c/calculator-child-support-liability-entitlement.html>.

³³⁷ The “Care Cost” lookup table is used to identify their *Care Cost Percentage*. *Child Support Act, 1991*, Schedule 2. It is also available on Inland Revenue’s webpages under “What a child support formula assessment is” at <https://www.ird.govt.nz/childsupport/assessment/assess/formula/what-formula-assessment-is.html> - 03.

³³⁸ This means that the parent does not have to demonstrate that the *Ground* causes them “undue hardship”.

³³⁹ Detail on “reviews of child support assessments” can be found on IRD’s website at: <https://www.ird.govt.nz/childsupport/assessment/reviews/grounds/>.

- 2) It costs the parent extra to cover the special needs of another child (or children) or person the parent has a duty to maintain;
- 3) The parent has necessary expenses in supporting themselves;
- 4) The parent has necessary expenses in supporting another child (or children) or person the parent has a duty to maintain;
- 5) The parent's contact costs are more than 5% of their adjusted taxable income;
- 6) It costs the parent extra to cover the child's (or children's) special needs;
- 7) It costs the parent extra to care for, educate or train the child (or children) in the way that was expected by either parent;
- 8) The child support assessment doesn't take into account the income, earning capacity, property and financial resources of either parent or the child (or children);
- 9) The child support assessment doesn't take into account that the parent has previously made payments, transfers or property settlements for the benefit of the child (or children);
- 10) The parent still has a financial interest in a property that the other person is entitled to live in;
- 11) The child support assessment includes extra income earned from additional work to cover costs of re-establishment after separation; and
- 12) The paying parent would like their child support liability offset against child support owed to them.

Administrative reviews are based on the Family Court departure order process. Although IRD staff coordinates and completes all paperwork for the individual reviews, a Review Officer completes the actual review and recommends to the IRD senior management whether a departure is justified. Review officers have experience in the legal system and generally follow precedents set by past court cases.

vi) Variations or modifications to orders³⁴⁰

A Child Support Order can be modified or varied by the IRD provided that it is satisfied that:

- Making the variation is justified because of a change in the circumstances of the child, the receiving carer, or a liable parent. As well, the Commissioner must be satisfied that a different result would have been reached had the information been available; or
- Making the variation is justified because of a change in the all groups index number of the New Zealand Consumer Price Index since the order was made or last varied. At least 12 months must have elapsed since the order was made, or was last varied having regard to such a change.

vii) Other considerations

Age of the child: Child support assessments automatically terminate for each child when they have reached 18 years of age unless they are still in high school. If the child is over 18 and

³⁴⁰ *Child Support Act 1991. Section 112 (4) (a)&(b); (8).* Note, these types of actions do not occur often.

has not finished high school, child support will terminate when the child is 19 or when the child leaves school, whichever occurs first.

Minimum support: A minimum annual amount of child support is set each year and is adjusted for inflation. For the child support year April 1, 2019 to March 31, 2020, the amount is \$936/year or \$78 / month.³⁴¹ In addition, there are exemptions from the payment of financial support in the following cases:³⁴²

- for hospital patients, in respect of periods of long-term hospitalization;
- for prisoners, in respect of periods of long-term imprisonment;
- for liable parents under the age of 16 years; and
- for victims of sex offences,³⁴³ regardless of income.

Maximum support: The child expenditure amounts in the last row of the *Expenditure on Children Table* are used for income amounts that exceed 2.5 times the Average Weekly Earnings. For the 2020 year (April 1, 2019 – March 31, 2020) that amount was \$153,376 NZ annually.³⁴⁴

Adjustments: The income categories for the *Expenditure on Children Table*, the *Living Allowances* and the minimum support amounts are updated annually by an inflation factor.

Part 3: Summary of Key Changes to the Child Support Legislation

A. Overview of the Changes

New Zealand first introduced a legislated formula in the CSA.³⁴⁵ From the inception of the CSA (1991 to 2015), the New Zealand formula was a basic “percentage of income” formula where:

(a – b) x c, where:

“a” is the child support income amount.

“b” is a prescribed living allowance.

“c” is the child support percentage representing the amount of expenditures on children.

In the late 2000s until early 2010, New Zealand contemplated major reforms to its child support policies and administration. The reasons for the reforms and the recommended

³⁴¹ *Child Support Act 1991. Section 72.*

³⁴² The first three in this list are subject to income tests.

³⁴³ *Child Support Act 1991. Section 89Y.*

³⁴⁴ *Child Support Act 1991. Schedule 3, Expenditure on Children:* The marginal expenditure on children does not increase. The relevant amounts to be inserted in a child expenditure table in this row are therefore the maximum amounts from the row immediately above it.

³⁴⁵ Maria Deligiannis, *A Critical Analysis of the Child Support System in New Zealand*, Victoria University of Wellington, 1996, 6.

changes emanated from public consultation³⁴⁶ and are outlined in the *Regulatory Impact Statement* (RIS), 2011,³⁴⁷ published by Inland Revenue.

In summary, the main reasons for reforming the child support system as stated in the above reports were:

- The current child support system did not always adequately take the individual circumstances of parents into account resulting in some parents being less willing to meet their payment obligations;³⁴⁸ and
- Social changes since the introduction of the scheme in 1991 had resulted in a greater emphasis on separated parents sharing the care of their children. As well, the higher participation rate in the workforce of receiving parents resulted in parents claiming that the formula approach was not equitable, as it only considered the income of the paying parent.³⁴⁹

The next major set of changes to the legislation occurred in 2015 and then again in 2016. Highlights of these reforms are as follows:

2015³⁵⁰

- Formula assessment calculations were changed to include the incomes of both parents. Prior to this, only the liable parent's income was used.
- Expenditures on children to be used in the formula were changed to reflect estimated average expenditures for raising children in New Zealand.³⁵¹ These changes resulted in expenditures now being based on:
 - The level of combined incomes of the parents;
 - The age of the children (now two categories: 0-12 and 12 and over); and
 - The number of children (reduced from "four or more" children previously, to "three or more").
- A reduction was also made to the threshold of time spent with the child for both parents that impacted the applicable amount of child support to be paid. On 1 April 2015, the threshold for care was reduced to 28% (103 nights or more per a year, or two nights a week) and a tiered system for all amounts of time spent was introduced. Prior to this amendment, the threshold for care was 40%.
- For both parents, the formula assessments were revised to include allowances for any other children who live with them **and** for whom they are the legal parent. This allowance was based on the children's ages, and the current cost of raising children in

³⁴⁶ Results of the public consultation are summarized in the report, *Supporting children: A summary of feedback on the discussion document*; Inland Revenue, July 2011, <http://taxpolicy.ird.govt.nz/sites/default/files/2011-other-supporting-children-feedback-summary.pdf>.

³⁴⁷ Regulatory Impact Statement, Child support scheme reform, Agency Impact Statement, Inland Revenue, July 2011, <https://taxpolicy.ird.govt.nz/sites/default/files/2011-ris-child-support.doc>.

³⁴⁸ *Ibid.*, 1.

³⁴⁹ *Ibid.*, 5.

³⁵⁰ *Child Support Amendment Act 2013*. This act came into effect in 2015, <http://www.legislation.govt.nz/act/public/2013/0012/52.0/DLM4071711.html>.

³⁵¹ *Supra*, notes 7, 15.

New Zealand. Conversely, parents' assessments no longer were to include allowances for partners, or children living with them for whom they are not a legal parent.

2016

- The qualifying age for children eligible for child support was lowered from 19 to 18, unless the 18-year-old child is still enrolled in and attending school.
- Addition of two more grounds for administrative review. These were:
 - Ground 11: The child support assessment includes extra income earned from additional work to cover costs of re-establishment after separation; and
 - Ground 12: The paying parent would like their child support liability offset against child support owed to them.

B. Overview of Leading Case Law on the Child Support Model

There is no “leading” case law addressing New Zealand’s child support model that resulted in significant changes to their legislation. It is a highly administrative system and thus may adjust its practices or interpretation of legislation as result of decisions being appealed in court.

Part 4: Summary of the Literature that Assesses the Model

No formal evaluations or studies have been conducted to examine the effectiveness, fairness or efficiency of the New Zealand model, most likely because the major changes are fairly recent. It should also be noted that the advantages and disadvantages listed below are those of the authors of the sources of information that have been reviewed for this study.

A review of the available literature on the advantages and disadvantages of the various elements of the New Zealand model revealed the following opinions on the model:

A. Advantages

- Changes introduced by the *Child Support Amendment Act 2013* are far less onerous in that the notion of shared care has been expanded to include a lower proportion of a child's daily care. As well, the changes reflect adjustments for the time the child spends in the care of each parent, which better recognizes shared parenting.³⁵²
- The adjustments made to the formula in 2013 also take into account the age of the children concerned. As Atkin explained: "The new formula recognizes that a teenager costs more to feed and clothe than a younger child. Thus a liable parent pays more for a child aged 13 or over." It considers the "child expenditure amount" for a qualifying child, which is based on the age group of the child...³⁵³

³⁵² Mark Henaghan and Ruth Ballantyne. Bill Atkin: *A Fierce Defender of Children's Rights and Proponent of Child-Focused Legislation*. 2017. Authors are quoting from Bill Atkin's book: "Financial Support: Who Supports Whom?" in Bill Atkin and Mark Henaghan (editors) *Family Law Policy in New Zealand* (4th edition LexisNexis, Wellington, 2013).

³⁵³ Ibid.

B. Disadvantages

- Significant reforms made in 2013 “...recognized that the scheme still remained focused on “formulaic assessment, departures and enforcement”. Atkin emphasized that while the reform was “the most significant” one to date, it was “not as a complete overhaul” as he (Atkin) originally envisaged”.³⁵⁴
- Exclusion of childcare costs: “...childcare fees and the opportunity costs of caring for children are not included in the expenditure on children estimates which (child support) liability is based on. New Zealand childcare costs are often high, even for those receiving the targeted Childcare Subsidy.”³⁵⁵

Part 5: Selected Case Scenarios

The following table provides the outcomes from two case scenarios that illustrate the formula assessment calculations. All amounts are in \$NZ.

Case Scenario 1: Liam and Kirsty separated in February 2019 and have taxable incomes of \$53,152 and \$50,292 respectively. Together they have two children, Joshua aged 7 and Olivia aged 10. Joshua and Olivia both spend alternate weeks (Monday to Friday) at each parent's house, but they spend every weekend with Liam. Liam has care of the children for 65% of the time and Kirsty has them for the remaining 35%. Because both Kirsty and Liam look after their children for more than 28% of the time, these percentages will be used when working out the child support assessment. Kirsty pays Liam child support.

	Monthly Child Support Amount
Case Scenario 1: two children, shared care, no other dependents, single wage earners.	\$282.40 / month

Case Scenario 2: Cameron and Holly have two children together from their relationship, Thomas aged 14 and Ben aged 13. Holly is the main carer of Thomas and Ben. Cameron does look after Thomas and Ben some of the time during the year, but not enough for it to be recognized for child support purposes. Cameron is in a new relationship and has another child; Lisa aged 5, who lives with him 100% of the time. Cameron and Holly are both in full-time employment. Cameron earns \$45,092 a year before tax and Holly earns \$53,152 a year before tax. As Cameron also has a responsibility to care for his daughter Lisa, this is considered when calculating the child support he has to pay for Thomas and Ben.

	Monthly Child Support Amount
Case Scenario 2: two children, no care, one other dependent child, single wage earners.	\$498.40/ month

³⁵⁴ Ibid.

³⁵⁵ Women's Policy Action Tank: *New Zealand's Child Support Reforms - An Opportunity Lost* February 27, 2017. <http://www.powertopersuade.org.au/blog/womens-policy-action-tank-new-zealands-child-support-reforms-an-opportunity-lost/27/2/2017>.

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Appendix B: Two Case Scenarios

Case Scenario 1: Recognised (shared) care and both parents are working

Calculation	Liam	Kirsty
Taxable income	\$53,152	\$50,292
Less living allowance	\$19,867	\$19,867
Child support income	\$33,285	\$30,425

Liam and Kirsty's combined child support income is \$63,710

Percentage share of combined child support income	52.24%	47.76%
Care cost percentage	75%	25%
Percentage of income less care cost percentage	-22.76%	22.76%

Because Kirsty's income percentage less care cost percentage is positive, she is assessed as the liable parent and is required to pay 22.76% of the annual cost of raising Joshua and Olivia.

The annual cost of raising Joshua and Olivia based on Liam and Kirsty's combined child support income and using the child expenditure table is \$14,888.80.

Kirsty's liability \$14,888.80 x 22.76% is \$3,388.69

Kirsty is assessed to pay an annual amount of \$3,388.69 or **\$282.40** per month, for the care of Joshua and Olivia.

Case Scenario 2: No shared care, dependent children present and both parents are working

Calculation	Holly	Cameron
Taxable income	\$53,152	\$45,092
Less living allowance	\$19,867	\$19,867
Less dependent child allowance	\$0.00	\$4,288.25
Child support income	\$33,285	\$20,936.75

Cameron and Holly's combined child support income is \$54,221.75

Percentage share of combined child support income	61.39%	38.61%
Care cost percentage	100%	0%
Percentage of income less care cost percentage	-38.61%	38.61%

Because Cameron's income percentage less care cost percentage is positive, he is assessed as the liable parent and is required to pay 38.61% of the annual cost of raising Thomas and Ben.

The annual cost of raising Thomas and Ben based on Cameron and Holly's combined child support income and using the child expenditure table is \$15,488.81

Cameron's liability $\$15,488.81 \times 38.61\%$ is \$5,980.25

Cameron is assessed to pay an annual amount of \$5,980.25 or **\$498.40** per month, for the care of Thomas and Ben.

H – Norway

Part 1: Description of the Child Support Model

A. Overview

In Norway, the *Children Act of 1981*³⁵⁶ regulates the legal relationship between children and their parents, including the establishment of child support. A parent's obligation to maintain their child is clearly outlined in the *Act*³⁵⁷ and requires them to bear the expenses of maintaining and educating their child according to the child's ability and aptitude and the parent's financial circumstances, when the child himself or herself does not have the requisite means. Both parents have a mutual obligation to contribute what is necessary, each according to his or her ability.

The *Act*³⁵⁸ states that if one of the parents, or both parents do not live with the child, the parents are obligated to pay for the upbringing and education of the child. The following objectives are to be met:³⁵⁹

- The need for resources shall be shared between the parents after an assessment of each parent's economic capacity and their ability to provide;
- The rules shall encourage continued care of both parents; and
- Provision must be made for the arrangements of private agreements for child support.

In 1989, standardised guidelines³⁶⁰ came into effect to replace the discretionary system that was in place to determine child support.³⁶¹ The intent was to simplify the method of determining child support using a fixed percentage of income model. The application of the 1989 guidelines required information on three factors:

- The income of the paying parent;
- The number of children the paying parent was financially responsible for; and
- The financial obligations for any other biological children the paying parent may be responsible for.

A child support amount³⁶² was determined by applying a fixed percentage to the paying parent's³⁶³ income. These percentages were:

³⁵⁶ *The Children Act 1981*. <https://www.regjeringen.no/en/dokumenter/the-children-act/id448389/>.

³⁵⁷ *The Children Act 1981*, Section 66.

³⁵⁸ *The Children Act 1981*, Section 67.

³⁵⁹ *Circular Main No55 No. 2 — Act relating to children and parents* Chapter 8 and 9 General Part

³⁶⁰ *Ibid.* 1.2.5 Changes in 1989.

³⁶¹ However, in certain cases where certain conditions were met, child support amounts could still be determined by discretion.

³⁶² The term child support amount or award is referred to as “maintenance” or “contribution” in Norway.

³⁶³ The term “paying parent” is often referred to as the “liable parent” or “contributor”, and the receiving parent is the “beneficiary” in Norway.

- 11 per cent of the gross income for one child;
- 18 per cent for two;
- 24 per cent for three; and
- 28 per cent for four or more children.

If the paying parent had additional biological children with a new partner, their financial liability was to be divided equally between the children. No allowances or financial deductions from the gross income of the paying parent were made for relevant stepchildren.

In 2003, the model underpinning the guidelines changed from a fixed percentage of income to an income shares model.³⁶⁴ Under the current legislation, the following four factors are considered in the formula calculations:

- The gross income of both parties;
- The costs of raising children;
- The amount of time the paying parent spends with the child; and
- An assessment of the ability of the paying parent to pay the child support amount.

Furthermore, the actual costs of children are used as the starting point for the assessment. Estimates of costs are found in the “standard family budget” developed by the National Institute for Consumer Research (Statens Institutt for Forbruksforskning, SIFO)³⁶⁵, which estimates the expenditure for a family with a “reasonable” living standard. An amount which represents a child benefit, and tax deductions for childcare are to be deducted from these estimates, since these expenses are covered by the state rather than by the custodial parent. Estimates for housing expenditures as well as costs for childcare are also included in the “standard family budget” amount.

The following briefly describes how Norway administers their Child Support Model.

Under the Directorate of Labour and Welfare (NAV) there are two entities responsible for child support.

The first is the NAV Family Benefits and Pensions. As the central authority for the determination and administration of child support, their overall mandate is to assess and make an administrative decision on how much child support the paying parent is required to pay to the receiving parent. It should also be noted that NAV has the authority to recognize foreign orders.

The second relevant entity in Norway is the Collection Agency of the Labour and Welfare Administration. Their mandate is to collect the child support amount on behalf of the receiving parent for both national and foreign orders in Norway. As well, they are the Requesting Agency for collection abroad.

Lastly, Norway has a unique approach to the manner in which they link child support and social benefits. Under legislation entitled the *Advance Payment of Maintenance Act of 1989*,³⁶⁶ Norway can advance payments of unpaid support to the receiving parent living in Norway. It is an amount that can be paid on certain conditions when the child support is not paid on time, or when it is less than the receiving parent would be entitled to in social

³⁶⁴ *Circular Main No55 No. 2 — Act relating to children and parents* Chapter 8 and 9 General Part.

³⁶⁵ Consumption Research Norway (SIFO).

³⁶⁶ *Act of 17 February 1989 No. 2 on Advance Payment of Maintenance Contributions*.

benefits. To receive advance payments for a child under the age of 18, there are certain criteria that must be met:

- The child must live with the parent permanently;
- The child cannot live with both parents, the custodial parent can be either single or living together with someone other than the mother / father of the child; and
- The child support payments must be collected through NAV, because NAV must receive reimbursement from the child support for the advance payments of child support.

If the above criteria are met, the parent with whom the child resides may receive advance payments (on behalf of the child) of child support up to and including, the month he or she turns 18. The advance payments of child support are means-tested with the amount of the advance payment of child support depending on how much the receiving parent earns, the number of children and whether they live alone or have a co-habiting partner.³⁶⁷

B. How Can Parents Obtain a Child Support Award?

For parents to obtain child support, they may either enter into a private agreement on child support or apply for the calculation to be completed by NAV. In special cases the court can also establish child support.

- **Private Agreement:** Parents may enter into a private agreement on child support without involving NAV. The use of the guidelines are discretionary and parties may use them as a tool in their decision making process. If both parties agree to a child support amount, the agreement is as binding as a decision by NAV. Also, by entering into a private agreement, parents do not need to pay a fee to NAV. Although the agreement is private, the parents may decide to have the maintenance payments collected and forwarded by NAV. They must then submit an agreement together with an application for collection of child support payments. Collection by NAV is free of charge. If the receiving parent receives an advanced support payment, the child support must be administered by NAV.
- **NAV - Family Benefits and Pensions:** If the parents cannot agree to a child support amount, or either party decides they do not want to negotiate a private agreement, either party can apply to have the amount of child support determined by NAV. In making their determination, NAV will use the guidelines, as they are mandatory. Once NAV has determined the relevant child support amount based on the information both parties are required to provide NAV make a decision. Both parties are given the opportunity to appeal the decision and provide additional relevant information. NAV uphold or alter the decision made.

C. How the Formula Works

To assist parents in determining the relevant child support amount, an online calculator tool is available. It is developed by NAV and is referred to as the “Contributions Calculator”.³⁶⁸

³⁶⁷ NAV website: *Advance payments of child support*,

<https://www.nav.no/en/Home/Benefits+and+services/Relatert+informasjon/advance-payments-of-child-support>.

³⁶⁸ NAV online calculator can be accessed and navigated in English using Google’s “Translate this page” feature, <https://tjenester.nav.no/bidragkalkulator/innledning?66>. The calculation is based on the information the parents

Included in Part 2 of this *Summary Report* are further details on the specific elements and relevant detailed calculations contained in the formula. However, to assist the reader in understanding the overall approach and elements considered in the formula calculations, a high-level summary of the six steps are as follows:

Step 1 - Determine the *Personal Gross Income* for each parent and calculate their respective share of their *Combined Personal Gross Incomes*

In this calculation the gross income amounts for each parent are established. This amount is called their *Personal Gross Income*. These two amounts are then added together. Then, each parent's *Distribution Percentage* is calculated by determining their respective share of their combined *Personal Gross Incomes*.

Step 2 - Determine the *Maintenance Cost* for the child

This calculation is completed by adding all the children's "consumption" costs together and subtracting any child benefits. The result is an amount entitled the *Maintenance Cost*.³⁶⁹

Step 3 - Determine each parent's share of the *Maintenance Cost*

This amount is calculated by multiplying the paying parent's *Distribution Percentage* by the *Maintenance Cost* amount.

Step 4 - Determine the *Togetherness Amount*

In this calculation the *Togetherness Amount* is determined by consulting a lookup table that sets out various categories of percentage time that the parent spends with the child, taking into account the age of the child. Using this table, a *Togetherness Amount* is determined.

Step 5 - Determine the *Final Guidance Amount*

The paying parent's share of the *Maintenance Cost* is then adjusted to reflect the percentage of time the child is in his/her care. This calculation consists of subtracting the *Togetherness Amount* from the paying parent's final share of the *Maintenance Cost* amount. The result is an amount called the *Final Guidance Amount*.

Step 6 - Determine the *Monthly Contribution Capability*

Finally, a check on the paying parent's ability to pay is conducted. A *Monthly Contribution Capability* amount is calculated by subtracting a number of items from the income of the paying parent. These items are amounts for: Social security tax, tax deductions, the paying parent's own maintenance costs and building expenses, and if applicable, costs to maintain their children in their own household.

The resulting amount is then compared to the paying parent's share from Steps 5 above. The lower of the two amounts is determined to be the *Final Guidance Amount*.

provide. When NAV determines child support, NAV collects information from employers and public registers, as well as documented information from the parties.

³⁶⁹ These costs and calculations are embedded in the online calculator and are not adjustable online.

Included in Appendix B are two case scenarios that will allow the reader to more fully understand the calculations required in the Norway Guidelines.

Part 2: Elements of the Child Support Model

A. Data Source Used to Determine Expenditures on the Children

How are expenditures for the child determined?

A key component of the determination of child support in Norway is a calculation that determines the expenses for the child that is then prorated between the two parents. The calculation to determine the expenses on the child is called the *Maintenance Cost*. The *Maintenance Cost* consists of fixed expenses for the children that increase with the age of the child. There are five fixed expense categories based on the age band the child falls within and for whom child support is being determined. The five age bands are: 0-5 years of age, 6-10 years, 11-14 years, 15-18 years, and 19 years and older.

The types of expenditures that are included in the *Maintenance Cost* amounts are comprised of three categories of expenses for the child:

- 1) Consumption expenses: These expenses consist of:
 - Individual expenses: Food and drink, clothing and shoes, health and hygiene, play and leisure, infant equipment (only the youngest age group);
 - The child's share of household-specific expenses: relevant groceries, household items, furniture, telephone and media use, video costs etc.; and
 - The child's share of transportation expenses: These expenses are comprised of the predetermined costs to maintain a car and expenses for the use of public transport. This category does not include costs pertaining to transport in connection with activities that are "social" in nature.
- 2) Building expenses: Included in these expenses are the child's share of the housing costs. These expenses are set as a fixed amount, based on the average actual consumption expenditures according to Statistics Norway's consumer surveys. The following expense items are included: interest on loans, rent, insurance, fees, maintenance, light and fuel. Loan deductions are not included.
- 3) Supervision expenses: This category of expenses pertains to the costs of childcare such as kindergarten, day care, and school leisure schemes for 11 months of the year (one month is free of charge and is often a holiday month).

The expenses are based on general consumption expenses. Both the individual-specific and the household-specific expenses are determined on the basis of a reference budget for consumption expenditures designed by the National Institute for Consumer Research (SIFO).³⁷⁰

³⁷⁰ Reference Budget for Consumer Expenditures, <http://www.hioa.no/eng/About-HiOA/Centre-for-Welfare-and-Labour-Research/SIFO/Reference-Budget-for-Consumer-Expenditures>.

How are the expenditures reflected in the formula calculations?

The expenses outlined above, i.e. consumption, building and supervision, are embedded in the online calculator. The parents may either use these expenditures provided by SIFO in the online calculator or, if they are entering into a private agreement, they may substitute their own amounts of expenditures on the child within their agreement.

In either method, all amounts are totalled, and the standard child benefit is subtracted to produce the *Maintenance Cost* for each child.

B. Approach Used to Apportion the Amount that the Two Parents will Share

The apportioning method used in the Norway child support model is an income shares approach. It requires the calculation of the *Distribution Percentage* for the paying parent that is based on the paying parent's share of the parents' combined annual gross incomes.

For example, in straightforward cases where the paying parent spends less than two nights a month with the child and that parent lives alone, the *Maintenance Cost* is multiplied by the paying parent's *Distribution Percentage* to produce the *Final Guidance Amount*.

C. Accompanying Policy/Legislation (Rules)

i) Determination of income for child support purposes³⁷¹

Norway calculates the income available for the determination of child support by starting with the determination of each parent's *Gross Personal Income* (wages, salaries, etc.) plus any net capital income in excess of NOK 10,000.³⁷² This amount is termed the *Contributor's Income* for the paying parent and *Beneficiary's Income* for the receiving parent.

The calculation of the income for each party includes:

- Gross personal income, for example: annual income from employers including holiday pay, overtime payment and other supplements, and taxable benefit from insurance, use of car, telephony and media;
- Funding for healthcare, directors' fees, private pension and insurance payments;
- Positive net capital income exceeding NOK 10,000, for example: dividends, interest income and sale of real estate;
- Benefits from NAV that are taxable, for example: sickness benefit, unemployment benefit, work allowance, disability benefit, transitional benefit; and
- Other benefits from NAV that must be counted for the recipient of the allowance: cash benefit for the child with child support, extended child benefit and extra child allowance.

The *Beneficiary's* (the parent who receives the child support on behalf of the child) *income* is calculated in the same manner as the paying parent. However, amounts for certain income

³⁷¹ *How is child support calculated?* Published 31.05.2013 | Last Modified 04.07.2018, <https://www.nav.no/no/Person/Familie/Barne+og+ektefellebidrag/Barnebidrag/Barnebidrag/Hvordan+NAV+beregner+barnebidraget> (translated).

³⁷² All amounts are in Norway krone. To convert to CDN dollars: \$1CDN=NOK 6.467.

sources are added, if applicable. These are: extended child benefits received, extra child allowance, and the benefit of any special allowances provided by the state for a single parent.

Finally, if the child has income higher than a certain amount (30 times the full monthly advance payment), then it is included in the total combined income of the parents.

NAV may, notwithstanding the duty of confidentiality, demand that it be provided with all necessary information from employers, the tax authorities, the Norwegian Labour and Welfare Service and from insurance companies, banks and others who safeguard or manage assets.³⁷³

ii) Income estimation³⁷⁴

NAV has discretion to attribute income to either parent if they are of the view that the amount of income that they are claiming is lower than what is reasonable based on their earning potential. NAV will use their discretion in determining their income and will base it on what the parent could have potentially earned in income.³⁷⁵

iii) Custody and parenting time³⁷⁶

The amount of overnight time that the child spends with the paying parent is an element that reduces the *Maintenance Cost* for the child.

The amount of overnight time spent with the parent is classified into five categories. These categories are called *Collaboration Classes*.³⁷⁷ Each *Class* is based on the number of nights in a month the paying parent spends with the child. Furthermore, each of the *classes* is further broken down into five age categories. Thus, the deduction is determined based on the age of the child and the extent of the *Togetherness*. For each category of *Class* and age of child, a cost is set. This cost is called a “*Togetherness Amount*”.

The following expenses are included in the *Togetherness Amount*:

- Food and drink;
- Health and hygiene;
- Play and leisure;
- Transportation; and
- Building expenses (for collaboration classes 03 and 04 only).

Any travel expenses incurred in meeting the child are not included in this calculation.

Norway provides parents with the following lookup table to determine the paying parent’s *Togetherness Amount*. The table displays the *Togetherness Amount* until July 1st 2019 based on the number of nights or days per month the paying parent spends with the child and the age of the child.

³⁷³ *The Children Act 1981, Section 70.*

³⁷⁴ *How is child support calculated?* Published 31.05.2013 | Last Modified 04.07.2018.

³⁷⁵ *Ibid.*

³⁷⁶ *Ibid.*

³⁷⁷ Collaboration Class indicates a category of parenting time.

Table of Togetherness Amounts by Collaboration Class and Age of Child

The age of the child	0 - 5 years	6 - 10 years	11 - 14 years	15 - 18 years	19 years
1. Collaboration class 00 (0 - 1.99 nights / days per month)	NOK 0	NOK 0	NOK 0	NOK 0	NOK 0
2. Collaboration class 01 (2 - 3.99 nights / days per month)	NOK 215	NOK 312	NOK 390	NOK 450	NOK 450
3. Collaboration class 02 (4 - 8.99 nights per month)	NOK 712	NOK 1,034	NOK 1,293	NOK 1,490	NOK 1,490
4. Collaboration class 03 (9 - 13.99 nights per month)	NOK 2,029	NOK 2,478	NOK 2,839	NOK 3,115	NOK 3,115
5. Collaboration class 04 (14 - 15 nights per month)	NOK 2,548	NOK 3,111	NOK 3,565	NOK 3,910	NOK 3,910

The Togetherness Amount is subtracted from the Maintenance Cost to obtain the Final Guidance Amount.

*Shared residence*³⁷⁸

When the child has a shared residence, the child lives with both parents and has two addresses. Shared residence is not the same as the child having contact with each parent half the time. Shared residence means that the larger decisions about the child's daily life are taken jointly by the parents. In order for NAV to base its agreement on a shared residence agreement, it must be documented in writing.

When the child has a shared residence, it is assumed that both parents have equal expenses for the child. The one with the lowest income can request child support from the other parent.

When calculating the contribution, it is based on the costs of the child in the relevant age class. This expense is to be shared between the parents according to their proportion of combined income, so that it shows how many percent of the *maintenance cost* each parent should cover. Since the paying parent already covers half by the child living there, half the child's costs are subtracted from their share of the costs using their proportion of combined income to arrive at the *Final Guidance Amount*.

iv) Special expenses³⁷⁹

Limited special expenses are eligible for consideration to establish an extraordinary child support decision. The documented amount is in such cases shared proportionally between the parents. Examples include the cost of braces, glasses and lenses. Not included are other special expenses such as the cost of recreational activities including sports equipment,

³⁷⁸ *Contributions when the child has a shared residence*, Published 11.06.2015 | Last Modified 25.01.2018, <https://www.nav.no/no/Person/Familie/Barne+og+ektefellebidrag/Relatert+informasjon/bidrag-når-barnet-har-delt-bosted>.

³⁷⁹ Contributions to special expenses, <https://www.nav.no/no/Person/Familie/Barne+og+ektefellebidrag/særtilskudd>.

musical instruments or travel. The parent who incurs these expenses may apply to NAV to have them considered in the determination of an extraordinary decision.

v) Concept of undue hardship³⁸⁰

As part of the formula (and the online calculations), an assessment of the ability of the paying parent to pay the *Final Guidance Amount* is the last step in the calculation of child support. The purpose of this assessment is to ensure that paying parents have the ability to pay the applicable child support amount, and at the same time, have enough funds left to support themselves and any other children for whom they are legally liable and that reside in their household.

The assessment includes a number of eligible deductions from the paying parent's gross income. The deductions are amounts for: the social security tax, any tax requirements, expenditures on their own "maintenance" (equivalent to a self-support reserve), their own building expenses, and, if applicable, an amount for any dependent children living with them. The result is an amount that is called the paying parent's *Monthly Contribution Capability*. This *Monthly Contribution Capability* amount is compared to the paying parent's *Final Guidance Amount*. Whichever amount is less, becomes the *Final Guidance Amount*.

vi) Updating of child support amounts and/or other circumstances that could be considered that may result in a variation to the formula amount

Updating of amounts:³⁸¹ All fixed maintenance payments to children are index-linked pursuant to the provisions of Section 73 of the *Child Support Act 1981* unless otherwise determined in the decision or the agreement. Indexation is linked to any change in the Consumer Price Index issued by Statistics Norway. The *Final Guidance Amount* is adjusted each year on the basis of the change in the Consumer Price Index amount for the month of January compared to the Consumer Price Index amount at the time of the previous adjustment. Each adjustment applies to maintenance payment instalments effective from July 1st.

Other dependent children living with paying parent: If the paying parent pays child support to multiple receiving parents and does not have enough income to pay all the contributions, the other child support amounts may be reduced.

Variations: A claim may be made to modify child support payments determined by an administrative body, if there are special reasons for doing so. The reasons can be as a result of a change in the age of the child, a change in income, residence or time spent with the child.

vii) Other considerations

Age of the child: By statute, child support decisions terminate the month the child turns 18. An extension for child support beyond the age of 18 requires that the child attend secondary school. When the child turns 18, the child becomes a legal party to the proceedings and they must put forward any claim for support. Attendance at a university normally does not qualify for a consideration of child support.

³⁸⁰ *How is child support calculated?* Published 31.05.2013 | Last Modified 04.07.2018.

³⁸¹ *Children Act 1981*, Chapter 8, Section 73. Indexation of maintenance payment.

Minimum support: There is no minimum support amount.

Maximum support: There is no fixed “maximum” amount of child support, however, as outlined above, the formula calculations include a limit on the amount of child support based on the paying parent’s ability to pay. There are also two other “limits” that can be considered. These are: the paying parent shall not pay more than 5/6 (or 83.3%) of the *Maintenance Cost* of the child nor shall they pay more than 25% of the calculated gross income before any allowance.

Part 3: Summary of Key Changes to the Child Support Guidelines Legislation

A. Overview of the Changes

In 1981, the *Children Act of 1956* was replaced by the *Children Act of 1981*. The intention of the *1981 Act* was to provide for a total “child-free” place for children born in and outside of marriage. The law was intended to promote equality between children born in and outside marriage, equality between the parents of the child, and to strengthen the independence of the child in relation to their parents.³⁸²

Up until 1989, the calculation of child support was determined at the discretion of the court. However, in 1989, in an effort to allow parents to ascertain the amount of child support without having to necessarily appear before a judge, child support guidelines were introduced. Under the *Children Act of 1981*, the relevant child support amount was determined as a fixed percentage of the paying parent’s income.

In 1992, the responsibility for establishing and collecting child support amounts was transferred from the Municipal Contribution Services to the National Insurance Service (NAV). The objective of the transfer of tasks to NAV was to improve the efficiency of distributing payments and to provide better service to the parents, who often receive benefits from a social security reporting office. As well, NAV was the same body that administered the pension scheme and social security benefits making the delivery of services needed by separating/divorcing parents more seamless. As of 2006, NAV was given the authority to not only establish and collect child support amounts but also to recognize foreign child support decisions. Thus, no child support orders are required to be registered with the courts.³⁸³

In 2003, further changes were made to Norway’s Child Support Model. Most importantly, the model underpinning the guidelines changed from a fixed percentage to an income shares model. The rationale for the change was that family circumstances had changed since the initial implementation of a formula in 1989 (a fixed percentage model). In Norway, societal changes have resulted in a “more equal” division of labour between parents resulting in greater wage parity and a greater emphasis was placed on the continued joint responsibility/management of the children.³⁸⁴

³⁸² *Circular Main No55 No. 2 — Act relating to children and parents Chapter 8 and 9 General Part.*

³⁸³ *Ibid.*

³⁸⁴ *Ibid.*

In 2009, based on the results of an evaluation³⁸⁵ that examined the child support legislation, further amendments were made that so that NAV automatically adjust the child support amounts when the child changed age groups in National cases.

B. Overview of Leading Case Law on the Child Support Model

There is no leading case law in Norway on child support that had a significant impact on their child support model or its rules.

Part 4: Summary of the Literature that Assesses the Model

There has only been one evaluation³⁸⁶ conducted to examine the effectiveness, fairness or efficiency of the Norway Child Support Model. As noted earlier, this evaluation has resulted in several changes to the current approach to determining child support amounts. In addition to this evaluation, a review of the available literature on the advantages and disadvantages of the Norway model revealed the following:³⁸⁷

A. Advantages

- None noted.

B. Disadvantages

- The assumptions underpinning the “costs of children” are unclear. The SIFO budget standards are made to cover a “reasonable” level of consumption, defined as “a level acceptable to most people”. They fulfil common standards of health and nutrition and enable full participation in common leisure activities for all members of the household. While policy makers have clear opinions about the gendered division of labour, their assumptions about costs of children are far less well founded. Children of parents living apart shall have a “reasonable” standard of living, which keeps them fed and healthy and allows them to participate in low-cost leisure activities, but the “costs of children” amounts do not accommodate the needs of children who take part in more expensive activities.³⁸⁸

Part 5: Selected Case Scenarios using Norway Guidelines

The following table provides the outcomes from two case scenarios that illustrate the formula assessment. These cases have been calculated using NAV’s online calculator.

All dollar amounts are in \$NOK and converted to \$CDN where convenient.

Case Scenario 1: Two parents, Fred and Jane, separate. They have one child, Sally. She is under the age of 12. Fred has no regular overnights with Sally as he lives a considerable distance away. There are no other expenses for Sally. Fred makes NOK 329,100 per year

³⁸⁵ Royal Crown for the Purpose of Children and Working. *Evaluation of the new legislation on children’s contributions*. Report No. 19 (2006-2007) (translated).

³⁸⁶ Ibid.

³⁸⁷ The reader should note that these are the views of the authors of the information that was reviewed and are not the views of the authors of this summary report.

³⁸⁸ Anne Skevik, 10.

(approximately \$50,000 CDN per year) and Jane makes NOK 200,000 per year (approximately \$30,000 CDN per year).

	Monthly Child Support Amount
Case Scenario 1: one child, no overnights for paying parent, no other dependents, receiving parent has childcare expenses, both are wage earners.	NOK 3 300 (\$501 CDN/ month)

Case Scenario 2: Two parents, Martin and Julie, separate. They have one child – Emma. She is under the age of 12. Martin has regular three overnights per month with Emma. Julie has monthly childcare expenses (“supervisory expenses”) for Emma of NOK 2 278 per month. Martin has a new family and a dependent child, Neil, aged 2 whom he lives with 100% of the year. Martin makes NOK 658,700 per year (approximately \$100,000 CDN per year) and Julie makes NOK 200,000 per year (approximately \$30,000 CDN per year).

	Monthly Child Support Amount
Case Scenario 2: one child, 3 overnights/ month for paying parent, paying parent has one other dependent, receiving parent has childcare expenses, both are wage earners, paying parent has relatively high income.	NOK 6 968 (\$1059 CDN/ month)

Appendix A: References

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Appendix B: Two Case Scenarios

Case Scenario 1: One child, no shared care

Based on registered information, the maintenance cost and the basis for the proportional distribution are calculated.

THE CONTRIBUTOR'S (FRED) INCOME AND ABILITY TO CONTRIBUTE

Personal income	329100
+ net capital income (in excess of 10,000)	0
= Income contribution subject (IBP)	329100
- Social security tax	26986
- tax deductions	46954
- own maintenance	103884
- own building expenses	111636
- Maintain own children own household	0
= Capacity per year:	39640
= Monthly contribution capability:	NOK 3,303

BENEFICIARY'S (1) (JANE) INCOME

personal income	200000
+ extended child benefit	0
+ childcare allowance	0
+ net capital income (in excess of 10,000)	0
+ benefit of special allowance for single parent	0
= Income Beneficiary (IBM)	NOK 200,000

MAINTENANCE COST, BENEFICIARY (1) - CHILDREN (01/01/2009) (SALLY)

consumption Expenditure	4992
+ housing costs	2692
+ supervisory costs	0

- ordinary child benefit	970
Amount	NOK 6,714

The distribution ratio is calculated by the ratio between the recipient's income and the recipient's (and possibly the child's) income.

IBP / (IBP + IBM + IBB)

329,100 / (329,100 + 200,000 + 0) = 0.622

DISTRIBUTION PERCENTAGE: 62.2 %

**THE MAINTENANCE COST MULTIPLIED BY THE DISTRIBUTION RATIO
BEFORE MAXIMUM LIMITS**

Amount NOK 4,176

SOCIAL SECURITY ALLOWANCE - BENEFICIARY (1) - CHILD (01/01/2009)

The age of the child		0 - 5 years	6 - 10 years	11 - 14 years	15 - 18 years	19 years - >
Collaboration class 00	(0 - 1.99 nights /days per month)	NOK 0	NOK 0	NOK 0	NOK 0	NOK 0
Collaboration class 01	(2 - 3.99 nights / days per month)	NOK 215	NOK 312	NOK 390	NOK 450	NOK 450
Collaboration class 02	(4 - 8.99 nights per month)	NOK 712	NOK 1.034	NOK 1,293	NOK 1,490	NOK 1,490
Collaboration class 03	(9 - 13.99 nights per month)	NOK 2,029	NOK 2,478	NOK 2,839	NOK 3,115	NOK 3,115
Collaboration class 04	(14 - 15 nights per month)	NOK 2,548	NOK 3,111	NOK 3,565	NOK 3,910	NOK 3,910

TOGETHERNESS AMOUNT NOK 0

CONTRIBUTIONS AFTER THE ALLOWANCE

Amount **NOK 3,303**

GUIDANCE AMOUNT

Amount **NOK 3,300**

MAXIMUM BOUNDARIES

The allowance is limited to the cost of providing the child (the maintenance cost). Then there are maximum limits for how much the contributor will pay off the cost.

Total contributory capacity of all children:	NOK 3,303	Total allowance (all children) before meeting must not exceed the contribution capacity. Contribution ability = Income subject to contributions - Social security tax - tax deduction - deduction for own maintenance - housing expenses - maintenance for own child in own household.
Maximum total contribution (all children) from IBP:	NOK 6,856	Contributions before meeting shall not exceed 25 % of the recipient's income basis.

The contribution cannot be set higher than 5/6 (83.3%) of the maintenance cost.

Case Scenario 2: One child, one dependent child for contributor, and 3 overnights/month for contributor

Based on registered information, the maintenance cost and the basis for the proportional distribution are calculated.

THE CONTRIBUTOR'S INCOME AND ABILITY TO CONTRIBUTE

personal income	658200
+ net capital income (in excess of 10,000)	0
= Income contribution subject (IBP)	658200
- Social security tax	53972
- tax deductions	136841
- own maintenance	103884
- own building expenses	111636
- Maintain own children own household (Neil)	41004
= Capacity per year:	210863
= Monthly contribution capability:	NOK 17,572

BENEFICIARY'S (1) INCOME

personal income	200000
+ extended child benefit	0
+ childcare allowance	0
+ net capital income (in excess of 10,000)	0
+ benefit of special allowance for single parent	0
= Income Beneficiary (IBM)	NOK 200,000

MAINTENANCE COST, BENEFICIARY (1) - CHILDREN (01/01/2009)

Consumption Expenditure	4992
+ housing costs	2692
+ supervisory costs	2 778
- ordinary child benefit	970
Amount	NOK 9,492

The distribution ratio is calculated by the ratio between the recipient's income and the recipient's (and possibly the child's) income.

$$\text{IBP} / (\text{IBP} + \text{IBM} + \text{IBB})$$

$$658,200 / (658,200 + 200,000 + 0) = 0.767$$

Distribution Percentage: 76.7 %

THE MAINTENANCE COST MULTIPLIED BY THE DISTRIBUTION RATIO BEFORE MAXIMUM LIMITS

Amount NOK 7,280

SOCIAL SECURITY ALLOWANCE - BENEFICIARY (1) - CHILD (01/01/2009)

The age of the child		0 - 5 years	6 - 10 years	11 - 14 years	15 - 18 years	19 years - >
Collaboration class 00	(0 - 1.99 nights / days per month)	NOK 0	NOK 0	NOK 0	NOK 0	NOK 0
Collaboration class 01	(2 - 3.99 nights / days per month)	NOK 215	NOK 312	NOK 390	NOK 450	NOK 450
Collaboration class 02	(4 - 8.99 nights per month)	NOK 712	NOK 1,034	NOK 1,293	NOK 1,490	NOK 1,490
Collaboration class 03	(9 - 13.99 nights per month)	NOK 2,029	NOK 2,478	NOK 2,839	NOK 3,115	NOK 3,115
Collaboration class 04	(14 - 15 nights per month)	NOK 2,548	NOK 3,111	NOK 3,565	NOK 3,910	NOK 3,910

TOGETHERNESS AMOUNT NOK 312

CONTRIBUTIONS AFTER THE ALLOWANCE

Amount **NOK 6,968**

GUIDANCE AMOUNT

Amount **NOK 6,970**

MAXIMUM BOUNDARIES

The allowance is limited to the cost of providing the child (the maintenance cost). Then there are maximum limits for how much the contributor will pay off the cost.

Total contributory capacity of all children:	NOK 17,572	Total allowance (all children) before meeting must not exceed the contribution capacity. Contribution ability = Income subject to contributions - Social security tax - tax deduction - deduction for own maintenance - housing expenses - maintenance for own child in own household.
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Maximum total contribution (all children) from IBP:	NOK 13,713	Contributions before meeting shall not exceed 25 % of the recipient's income basis.
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The contribution cannot be set higher than 5/6 (83.3%) of the maintenance cost.

I – Sweden

Part 1: Description of the Child Support Model

A. Overview

In the last few decades, family law in Sweden has undergone major revisions. A new *Marriage Code*³⁸⁹ that came into force in the 1980s was the first piece of legislation that clearly outlined responsibilities that both parents had towards their children.³⁹⁰ Under this *Code*, “Spouses should show each other respect and loyalty. They shall jointly provide a nurturing home for children, and in consultation, work for the family’s best.” Furthermore, “The costs of supporting the child shall be borne by the parents between them, each according to their capacity.”³⁹¹

In the 1990s the rules on the custody of children following the separation of parents were modernized and a greater emphasis was placed on finding solutions by consensus between the parties for the support and wellbeing of the children, including the determination of child support amounts.

In 1997, amendments to the *Children and Parents Code*³⁹² Chapter 7 updated the rules that determine child support. In Sweden, a parent not living with their child is required to pay “underhållsbidrag” (maintenance allowance or child support)³⁹³ as parents are obliged to financially support their children. When deciding on the appropriate amount of child support in an agreement, the parents are to take into consideration the financial needs of the child and the economic situation of both parents. Once parents have agreed on a child support amount, the terms of the arrangement may be written in the form of a contract or an oral agreement. In situations where parents have agreed to “joint custody” and the child resides with each parent approximately half of the time, no child support payment is required.

Sweden does not have a formal set of rules or formula calculations set out in legislation for the determination of child support. Child support amounts are determined through the court process. The Social Insurance Agency of Sweden (Försäkringskassan) has been mandated to assist parents by providing information on their website³⁹⁴ concerning options parents should consider when divorcing or separating. As well, the necessary forms and brochures to assist parents in the determination of child support amounts are provided. They also developed and

³⁸⁹ *Marriage Code* (1987:230). <https://www.icj.org/wp-content/uploads/2013/05/Sweden-Marriage-Code-1987-eng.pdf>.

³⁹⁰ *Marriage Code* (1987:230) First Division, General, Chapter 1.

³⁹¹ *The Children and Parents Code*, Chapter 7, Section 1.

³⁹² *The Children and Parents Code Chapter 7*, Swedish code of Statutes SFS 1949:381: Unofficial translation. <https://www.icj.org/wp-content/uploads/1998/10/Sweden-Act-on-The-Children-and-Parents-Code-1998-eng.pdf>

³⁹³ The term child support will be used throughout the remainder of this Summary for consistency and to distinguish it from the amounts provided to the child from the state called “maintenance support” when child support is not paid.

³⁹⁴ Social Insurance Agency website:

https://www.forsakringskassan.se/privatpers/foralder/for_foraldrar_som_inte_lever_ihop.

maintain an online calculator to assist parents in estimating an appropriate amount of child support given their circumstances, e.g. income level, age and number of children, and parenting arrangements, etc. The steps used in this calculator form the basis of the formula description contained in this *Summary*.

The child support model is based on an income shares model, where both parents' incomes are required. It uses direct costs of the child (budget-based approach) that the parents will share in proportion to their income. Provisions are also included in the formula to allow for deductions to the child support amount for any access or overnight time spent with the child by the paying parent. As well, provisions are included in the formula to allow for deductions from the income available for child support for both parents for:

- Basic expenses for themselves including living and housing expenses;
- Other dependent children for whom either parent is legally responsible; and
- A dependent spouse (though a number of rules are present before this deduction can be applied).³⁹⁵

In Sweden, a child may be entitled to *Maintenance Support* in cases where a parent who is required to pay child support, doesn't pay. *Maintenance Support* is a fixed monthly amount³⁹⁶ paid by the government to the parent with whom the child resides.³⁹⁷ In addition, if both parents are in a low income situation and the amount of child support determined using the guidelines is lower than the fixed *Maintenance Support* amount provided by the government, then the parent with whom the child resides will receive the difference between what is to be paid by the paying parent and the current monthly *Maintenance Support* amount. To obtain *Maintenance Support* certain conditions must be met: the parents must not live together and the child must permanently reside with only one of the parents. If the paying parent does not pay their child support obligation, then arrears will include the amounts of *Maintenance Support* that have been sent to the receiving parent.

In Sweden, the child support legally belongs to the child, but is paid to the parent. The parent with whom the child resides receives the support on behalf of the child until 18, after which it is paid to the child directly. For a child that is still in high school or an equivalent institution, the child support may be extended until the child turns 21.

B. How can Parents Obtain a Child Support Award?

Parents who no longer live together and have a child have two options for determining a child support amount:³⁹⁸

- 1) If parents are in agreement, they may enter into a private oral or a written agreement. If they do so, they are not obligated to inform the Social Insurance Agency, nor do they need to register it with the Agency or court; or
- 2) If they cannot agree on how to resolve issues related to parenting time, decision-making, living arrangements and child support, they can turn to their municipality to get help through a "cooperation discussion". The cooperation discussion is an

³⁹⁵ *The Children and Parents Code, Chapter 7, Section 3.*

³⁹⁶ These amounts are currently SEK 1,573 per month until the child turns 15. After the child turns 15, the amount is SEK 2,073 per month.

³⁹⁷ The Social Insurance Agency also administers this program.

³⁹⁸ Child support when the child lives with you. Social Insurance Agency.

opportunity for the parents to find common solutions that are in the child's best interest without having to go to court. The cooperation discussion is free of charge. If the parents have had cooperation discussions and received help from the Social Insurance Agency but still cannot agree on issues relating to the child, they can take the matter to the district court.

Consistent with the objectives of the 1980 *Marriage Code*,³⁹⁹ the overarching philosophy in Sweden today is that parents continue to have a responsibility to nurture and to provide for their children after separation or divorce. To support this philosophy the government provides the services and supports that encourage cooperation between the parents when dealing with issues related to the child including the determination of child support. In Sweden, using the court system is the last resort.

C. How the Formula Works

To assist parents in the determination of a child support amount, there is an online calculator tool available called the “Contributions Calculator”.⁴⁰⁰ Because Sweden has a discretionary child support model with no formula calculations to determine child support amounts, there are no formal steps *per se*. However, below is a summary of the six data entry steps that parents must complete when using the online calculator.⁴⁰¹

Step 1 - Determine the *Gross Income* for both parents

In this calculation information on the gross incomes of both parents, the age and gender (optional) of each child and which parent the child lives with a majority of the time, is required.

Step 2 - Determine the *Monthly Surplus Income* for each parent

This calculation is done by subtracting from each parent’s *Gross Income*, an amount for taxes and living expenses (akin to a self-support reserve) - up to a maximum of SEK⁴⁰² 4,550 per month and for reasonable housing expenses. The amount remaining after these deductions is called the parent’s *Monthly Surplus Income*. Also, where applicable, a deduction may be made for a dependent spouse and/or children living with the paying parent. See below Section C. i) Determination of income, for more detail on the conditions for using this deduction.

Step 3 - Calculate each *Parent’s Percentage Share*

This step is completed by dividing the Combined Monthly Surplus Incomes by each parent’s Monthly Surplus Income to produce each Parent’s Percentage Share.

Step 4 - Determine the *monthly Costs of the Child*

In this calculation, the parents have three options for determining the *Costs of the Child*. These are:

³⁹⁹ *Marriage Code* (1987:230).

⁴⁰⁰ Sweden has an online calculator for parents to work out their own child support amounts.

⁴⁰¹ A number of the entries required in the online calculator are prefilled, however parents may change the values to suit their situation.

⁴⁰² All amounts are in Swedish krona (SEK). To convert to CDN dollars: \$1CDN=SEK 7.032.

- 1) Agreeing between themselves on the actual expenditures on the child;
- 2) Using the prefilled itemized expenses on children provided by the Swedish Consumer Agency;⁴⁰³ or
- 3) Using “template numbers” which are based on the price base amount⁴⁰⁴, by age of the child. These amounts are broken down by age: 0-6 years old, 65% of price base amount; 7-12 years old, 80% of price base amount and for 13 and over, 95% of price base amount. (Note for 2019, the price base amount is SEK 46,500, about \$6,600 CDN.)

Step 5 - Calculate each parent’s contribution to the monthly *Costs of the Child*

This is determined by multiplying the monthly *Costs of the Child* determined in Step 4 by each *Parent’s Percentage Share* completed in Step 3.

Step 6 - Adjust the monthly child support amount for time spent

If applicable, adjust the monthly child support amount for time spent with the paying parent. In situations where the child temporarily lives with the paying parent for at least 6 days of the month or for 5 consecutive days, adjustments to the monthly child support amount can be considered. In these cases a deduction of 1/40 of the child support amount per day that the child is in the care of the other parent, can be made. This step is not included in the online calculator.

Appendix B provides detailed calculations on two case scenarios in-order to allow the reader to more fully understand the calculations required.

Part 2: Elements of the Child Support

A. Data source used to determine expenditures on the children

*How are expenditures for the child determined?*⁴⁰⁵

To determine the costs of raising children, parents can either agree on the monthly expenditures that are spent on the child or they can use the amounts provided by the Swedish Consumer Agency mentioned above. The Agency provides the average monthly expenditures on children, broken down by age and gender of children in Sweden.

These costs are worked out for each child individually. “Costs for basic needs” include: average monthly amounts spent on children in Sweden for food, hygiene, clothes and shoes, leisure time and fun activities, mobile phone costs (for children over age 11), and insurance. Other non-standard expenses may be added to these costs and can include: childcare expenses, expensive recreational activities, any school fees, costs related to a special diet, and anything else not included in the base costs. All these “costs” are added together to provide the monthly *Costs of the Child*.

⁴⁰³ Sweden Consumer Agency, English website, <https://www.konsumentverket.se/languages/english-engelska/>.

⁴⁰⁴ The price base amount is the amount calculated and published by Sweden’s Statistics Agency.

⁴⁰⁵ As shown in the Steps for calculating child support above, parents have three options to determine the costs of the child.

Subtracted from the total *Costs of the Child* above is the standard monthly Child Allowance of 1,250 SEK (about \$200). If the child has other income (e.g. income earned, etc.), it is also subtracted from the *Costs of the Child* calculated above.

The final amount is the *Costs of the Child*.

B. Approach Used to Apportion the Amount that the Two Parents will Share

The apportioning method of the Swedish formula is based on the income shares model.

The calculation requires the incomes of both parents to determine their percentage share of their combined incomes. This percentage amount is then applied to the *Costs for the Child* amount to arrive at a final child support amount.

C. Accompanying Policy/Legislation (Rules)

i) Determination of income

Gross to net

Under the guidelines, income available for child support is determined by calculating the two separating parents' *Surplus Incomes*. These two amounts are added together and each parent's percentage of that total is determined.

For both parents, the calculation of income available for child support includes exactly the same items. The calculations begin with their monthly *Gross Income*. Monthly *Gross Income* includes salary and other income that is taxed. Examples of this are any sickness benefits, unemployment benefits, parental benefits, study grants, student loans, or pensions.

Subtracted from the *Gross Income* is the percentage of federal tax (31%)⁴⁰⁶ to be paid on income. Other income may be included such as any return on capital and using the net amount after tax at a rate of 30%.

Self-support reserve

Subtracted from this net income are the parent's monthly living expenses – or a self-support reserve. These include: food, clothing, electricity, telephone, TV, insurance premiums, and travel to and from work. The maximum amount for living expenses when calculating child support is SEK 4,550 per month (approx. \$650 CDN per month). Also subtracted from the net income amounts are any housing expenses. The rules pertaining to this cost are:

- Expenses if the parent lives in a rental flat, rent is considered to be the housing cost.
- Expenses if the parent is living in tenant-owned housing. The housing cost includes the housing association fee and interest on any loans, but not installment payments.
- Expenses if the parent lives in a house. The housing cost includes interest on the loan and operating costs, but not installment payments.

⁴⁰⁶ The tax varies depending on which municipality a person lives in, normally 30-35%. 31% is average of what they pay in Sweden in tax.

- Expenses if the parent is receiving a housing allowance or housing supplement. This amount must be subtracted from the housing cost.

*Adjustment for other dependents: spouses and children*⁴⁰⁷

The parent can also set aside (reserve) an amount for maintenance of a spouse with whom they permanently live, for example following remarriage. The standard amount is then calculated, year by year, to be 60% of the price base amount⁴⁰⁸ in addition to housing expenses. If the new spouse earns an income, the reserve amount is reduced. For an amount to be deducted for that spouse, it is not enough that the new spouse has no income or only a low income. To qualify for the deduction, special reasons can be considered, such as the new spouse has children of pre-school age and cannot work or has difficulties in obtaining gainful employment.

With regards to other dependent children, the paying parent may deduct for each dependent child an amount, that together with the amount that is to be paid to the parent for the child for whom child support is being determined, constitutes up to 40% of the applicable price base amount.⁴⁰⁹ However, the court may determine another amount if the circumstances give cause to do so.

The extent to which the surplus income of the parent liable to pay child support should be used for child support for a dependent child depends, among other things, on the needs of the child, and the other parent's capacity to bear the maintenance expenses. If child support is to be paid for several children, the child support determined for each child is less.

Finally, parents can deduct other expenses from their income such as the cost of expensive medicine, the additional cost of maintaining two households, or costs expended to purchase clothes required to work.

ii) Income attribution

In Sweden, tax records are public. Thus, if a parent does not provide their income information the courts will use these records to determine recent past earnings. Also, if a parent is underemployed or avoiding employment though qualified, the court has the discretion to establish an appropriate income level for the determination of child support.⁴¹⁰

iii) Impact of custody and parenting time

In Sweden, if a child is born to parents who are legally married, the parents automatically have joint custody of that child. If the parents marry after the child is born, they automatically obtain joint custody by virtue of the fact that they are legally married.

If the parents separate or divorce, joint custody continues to apply without the court having to make any decision to this effect in connection with the divorce. This applies provided that neither of the parents has requested that the joint custody arrangement be dissolved.

⁴⁰⁷ *Family Law Information on the Rules (Sweden)*. This brochure is produced by the Ministry of Justice. Translated by James Hurst, English Law Translations, Revised Edition 2013, pp. 41-42.

⁴⁰⁸ The "base amount" is set according to the *National Insurance Act (1962:381)*.

⁴⁰⁹ *Ibid.*

⁴¹⁰ Case law on the issue of imputing income provided: Swedish Supreme Court, NJA: 1985:141.

Furthermore, it must not be incompatible with the best interests of the child that joint custody continues.

A child of unmarried parents is in the sole custody of the mother, even if the parents are cohabitees. However, the parents may, by joint application to the Tax Agency or the social welfare committee in conjunction with acknowledgement of paternity or acknowledgement of parenthood for the woman, obtain joint custody by registration.

If the child resides with both parents for an equal amount of time, neither parent is obliged to pay child support, regardless of any differences in income.

Under the Swedish model, a deduction from the child support amount for time spent with the paying parent is considered in situations where the child temporarily resides with the paying parent for at least 6 days of the month or for 5 consecutive days. In these cases a deduction of 1/40 of the child support amount per day that the child is in the care of the other parent, can be made. This amount is then subtracted from the monthly child support amount.

The following is an example of how the calculation is completed.

Assuming the child support amount is SEK 2,500 per month and the child lives with the paying parent for one week (7 days) per month, the deduction is as follows.

$$1/40 \times 2\,500 = \text{SEK } 62.50 \text{ per day}$$

$$\text{SEK } 62.5 \text{ per day} \times 7 \text{ days} = \text{SEK } 437.50 \text{ per month}$$

The deduction is then rounded down to SEK 437 per month.

It should be noted that the deduction for parenting time does not reduce the regular monthly child support amount. Rather, since child support is paid one month in advance, the deduction can only be made after the child has spent the time with the paying parent. Thus, the deduction is applicable on the next monthly payment unless the person receiving the child support agrees that the applicable deduction can be made in advance.

iv) Special expenses

Sweden's child support legislation is silent on the issue of special expenses. That is to say that they are not mentioned in the Child and Parent Code sections dealing with child support specifically. However, consideration of the costs for medical, private tuition and extracurricular activities may be covered, if applicable.

v) Concept of undue hardship

If the paying parent does not have the ability to pay, child support will not be ordered nor agreed to.

vi) Other circumstances that could be considered that may result in a variation or modification to the Monthly Support Payable

As noted earlier, child support amounts are either determined by a judge through the court process or by an agreement between the parties. If the parties agree, they can amend the child support amount by writing a new agreement. This also applies in cases where the child support amount was previously decided by a judge. If the parties cannot agree, they must apply to a court in order to have a previously decided child support amount amended. The

court can amend the child support if the circumstances have changed. However, the courts will not consider every change in circumstance as a reason for amending the child support order. Generally, the change in circumstance must be significant and judges have discretion as to whether the child support amount should be amended.

As well, the court can also adjust an agreement that, in their opinion, is unreasonable considering the circumstances of the parties at the time the agreement was established. In addition, provisions also exist for the repayment of a child support amount already received.

Finally, in cases where apart from yearly indexation changes, a child support amount has not been revised in six years, the court may reconsider the child support amount without having to state any special reasons for reconsideration.

vii) Other considerations

Age of the Child: By statute, child support decisions terminate the month the child turns 18. Any extension for child support beyond the age of 18 requires that the child attend a secondary school. When the child turns 18, the child becomes a legal party to the proceedings and the child must put forward the claim for support. The child is entitled to child support up until their 21st birthday. For schooling, studies in compulsory school or upper secondary school and other comparable basic education are included. Parents should share with each other — according to their ability — the costs of the child's maintenance.⁴¹¹

Minimum Support: A parent who does not have any capacity to contribute to their child's support is not liable to pay maintenance.

Maximum Support: There is no set upper limit in terms of the amount of support a parent may pay.

Adjustments: The child support is index-linked to ensure that it retains its original value. It is adapted according to alterations in the price base amount under the *National Insurance Act*. Since 1983 the child support amount has usually been altered on 1 February of every year. The Swedish Social Insurance Agency determines each year whether and by what percentage, the child support amounts should be altered.

Part 3: Summary of Key Changes to the Child Support Guidelines Legislation

A. Overview of the Changes

While no significant changes have been made to the manner in which child support is to be determined, the system pertaining to *Maintenance Support* (which is the amount paid by the government to receiving parents) has seen a number of changes. These changes have all resulted in increases to the fixed amounts to be paid. Briefly these are:

1997-2006 – A fixed amount of SEK 1173 was established.

2006-2015 – This amount was increased to SEK 1273.

⁴¹¹ *Children and Parents Code, Chapter 7, Section 1.*

2015 – Changes were made that resulted in refining the fixed amount by age category of the child. As well, the amount was increased for older children: 0-14 SEK 1273, 15 and over, SEK 1573.

2016 – Changes were made to the mandate of the Social Insurance Agency pertaining to cases that were paid in full for six consecutive months. In these cases, provided that there were no circumstances of domestic violence, the parents were required to administer their own agreements.

2018 – Changes to the rate were again made for children aged: 0-14, SEK 1573; 15 and over, SEK 1723

2019 – Changes included the addition of another age category as well as increases to the benefit amounts; 0-11 SEK 1573; 12-14 SEK1723, and 15 and over SEK2073.

B. Overview of Leading Case Law on the Child Support Model

There is no case law pertaining to the determination of child support as Sweden does not have a formal set of rules or formula calculations set out in legislation.

Part 4: Summary of the Literature that Assesses the Model

There was no research or commentary found that assessed the elements of the Swedish Child Support Model.

Part 5: Selected Case Scenarios Using the Sweden's Guidelines

The following table provides the outcomes from two case scenarios that illustrate the formula assessment. These cases have been calculated using Sweden's online calculator.

Case Scenario 1: Two parents, Karl and Eva, separate. They have one child – Freja, age 5. Eva has monthly childcare expenses (5 000 SEK / per month). Karl makes 349 450 SEK annually (approximately \$50,000 CDN) and Eva makes 210 000 SEK annually (approximately \$30,000 CDN).

All dollar amounts are in \$SEK and converted to \$CDN where appropriate.

	Monthly Child Support Amount
Case Scenario 1: one child with childcare expenses	Karl to pay Eva: 5 730 SEK \$820 CDN/ month

Case Scenario 2: Two parents, Fred and Jane, separate. They have two children – Sally age 6 and Tom age 14. Fred makes 349 450 SEK annually (approximately \$50,000 CDN) and Jane makes 210 000 SEK annually (approximately \$30,000 CDN)

	Monthly Child Support Amount
Case Scenario 2: two children	Fred to pay Jane for Sally: 1 186 SEK Fred to pay Jane for Tom: 2 236 SEK Total: 3 422 SEK (\$490 CDN/month)

Appendix A: References

PERFAR: Population Europe Resource Finder and Archive. “Family Policies: Sweden (2014).”
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Sweden. Government Offices of Sweden. “Parents and Children – Brief Information about Current Legislation.”
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Appendix B: Two Case Scenarios

Case Scenario 1: One child with childcare

Summation		
Children	Cost	
Freja, 5 years	6 060 SEK	
Parents	Surplus	
Eva	425 SEK	
Karl	7 386 SEK	
Child support and agreement template		
Suggested child support:		
	Freja	5 730 SEK
	Child support that Karl shall pay to Eva	
	Total child support:	5 730 SEK
Cost of Freja		
Base costs		
	Food	860 SEK
	Hygiene	140 SEK
	Clothes and shoes	710 SEK
	Leisure time and fun	450 SEK
	Mobile phone	0 SEK
	Insurance	150 SEK
	Total costs	2 310 SEK
Childcare		
	Full time	5 000 SEK
Child allowance and other income		-1 250 SEK
Cost of Freja		6 060 SEK/month
Income and expenses for Eva		
Income		
	Income	12 075 SEK
	Total income	12 075 SEK
Expenses		
	Housing cost	7 000 SEK

	Living expenses	4 650 SEK
	Total expenses	11 650 SEK
	Surplus pour Eva	425 SEK/month
Income and expenses for Karl		
Income		
	Income	20 036 SEK
	Total income	20 036 SEK
Expenses		
	Housing cost	8 000 SEK
	Living expenses	4 650 SEK
	Total expenses	12 650 SEK
Surplus for Karl		7 386 SEK/month

Case Scenario 2: Two children with daycare expenses

Summation		
Children	Cost	
Sally, 6 years	1 400 SEK	
Tom, 14 years	2 640 SEK	
Parents	Surplus	
Jane	1 425 SEK	
Fred	7 886 SEK	
Child support and agreement template		
Suggested child support:		
Sally	1 186 SEK	
Fred shall pay to Jane		
Tom	2 236 SEK	
Fred shall pay to Jane		
Total child support:		3 422 SEK
Cost of Sally		
Base costs		
	Food	1 200 SEK
	Hygiene	140 SEK
	Clothes and shoes	710 SEK
	Leisure time and fun	450 SEK
	Mobile phone	0 SEK
	Insurance	150 SEK
	Total costs	2 650 SEK
Child allowance and other income		-1 250 SEK
Costs of Sally		1 400 SEK/month
Costs of Tom		
Base costs		
	Food	1 820 SEK
	Hygiene	250 SEK
	Clothes and shoes	720 SEK
	Leisure time and fun	730 SEK
	Mobile phone	200 SEK
	Insurance	170 SEK

Total costs		3 890 SEK
Child allowance and other income		-1 250 SEK
Costs of Tom		2 640 SEK/month
Income and expenses for Jane		
Income		
	Income	12 075 SEK
Total income		12 075 SEK
Expenses		
	Housing cost	6 000 SEK
	Living expenses	4 650 SEK
	Total expenses	10 650 SEK
Surplus for Jane		1 425 SEK/month
Income and expenses for Fred		
Income		
	Income	20 036 SEK
Total income		20 036 SEK
Expenses		
	Housing cost	7 500 SEK
	Living expenses	4 650 SEK
Surplus for Fred		7 886 SEK/month

J – United Kingdom

Part 1: Description of the Child Support Model

A. Introduction

Over the past 30 years the United Kingdom (UK) Child Support Model has undergone a number of changes both to their legislation that sets out how child maintenance⁴¹² is to be determined and the administrative body mandated to calculate and enforce child maintenance⁴¹³ (child support) agreements.

Following the enactment of its child support legislation in 1991 entitled the *Child Support Act, 1991*,⁴¹⁴ the UK created the Child Support Agency (CSA) in 1993. The purpose of the CSA was to ensure that parents living apart from their children contribute towards their expenditures by paying child maintenance. This was achieved by ensuring that child support amounts were calculated by using a standardized process and that the relevant payments were made in a timely manner through an enforcement mechanism.⁴¹⁵

The 1991 *Act* provides that each parent of a qualifying child is responsible for maintaining the child. For the purposes of this *Act*, an absent parent shall be taken to have met their responsibility to maintain any qualifying child by making periodic payments of maintenance with respect to the child of such an amount, and at such intervals, as may be determined in accordance with the provisions of this *Act*.⁴¹⁶ As well, where a maintenance assessment made under this *Act* requires the making of periodical payments, it shall be the duty of the absent parent with respect to whom the assessment was made, to make those payments. Finally as a general principle, the *Act* states that “Where, in any case which falls to be dealt with under this *Act*, the Secretary of State or any child support officer is considering the exercise of any discretionary power conferred by this *Act*, he shall have regard to the welfare of any child likely to be affected by his decision.”⁴¹⁷

Since 1993, several changes have been made to both the legislation to determine child support but also to the administrative mechanism mandated to calculate and enforce a maintenance payment.⁴¹⁸ Most recently in 2012, a new child support system was introduced. Changes were made to the formula to calculate child maintenance, to make it simpler and fairer and the Child Maintenance Service (CMS) was introduced, now the responsibility of the Department of

⁴¹² The UK uses the term “child maintenance” for child support.

⁴¹³ For the purpose of Summary, the United Kingdom term “maintenance” is used to mean “child support”.

⁴¹⁴ *Child Support Act 1991* c.48 <http://www.legislation.gov.uk/ukpga/1991/48/contents/enacted>.

⁴¹⁵ *Your child maintenance assessment and help in meeting exceptional circumstances*, Child Support Agency 2013. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/317504/csa2024-1993-scheme-rules.pdf.

⁴¹⁶ *Child Support Act, 1991, Section 1*.

⁴¹⁷ *Child Support Act, 1991, Section 2*.

⁴¹⁸ *Child Maintenance and Other Payments Act 2008* (c. 6) Schedule 4 — *Changes to the calculation of maintenance*. http://www.legislation.gov.uk/ukpga/2008/6/pdfs/ukpga_20080006_en.pdf.

Works and Pensions.⁴¹⁹ The CMS replaced the Child Support Agency, which was beset with well-documented problems.

It is worth noting that, in Northern Ireland the administration of child support is a devolved matter. While they run a broadly similar scheme as the rest of Great Britain, the legislation, and responsibility for delivering the Child Maintenance Service in Northern Ireland is the responsibility of the Northern Ireland executive.

Although an overview of the major changes to the UK Model are outlined in more detail in Part 3 of this Summary, it is important to note that the 1991 Act sets out primary law which provides for the current UK Child Support Model. It has been amended over time, and new regulations introduced which set out how the scheme operates.

The UK Child Support Model is called a “fixed percentage model” as it requires the application of pre-determined percentages that take into account the number of children and the gross income of the paying parent⁴²⁰. It does not require the income of the receiving parent⁴²¹ with whom the children reside. Depending on the case circumstances, the formula incorporates additional calculations that take into account other children the paying parent is responsible for, as well as the amount of time (over a certain threshold) that is spent with any child for whom maintenance is sought.

The 2012 statutory formula for the determination of child maintenance requires information on:

- The gross weekly income of the parent who must pay maintenance;
- The number of children for whom maintenance is being sought (referred to as *qualifying children*);
- Whether the parent who pays maintenance has other children for which the paying parent or their partner receives a Child Benefit (referred to as *relevant other children*); and
- Whether the parent who pays maintenance shares the care of the children.

There are five “rates” of maintenance that correspond to the social and/or financial circumstances of the paying parent. Each “rate” corresponds to the paying parent’s gross weekly income, and where there is sufficient income, the percentages of income are based on the number of children.

B. How can Parents Obtain a Child Support Award?

Today in the UK, parents have three options to arrange child support (maintenance). They can opt for:

- 1) *Family-based child maintenance arrangements*. Provided that both parties agree to this option, it is regarded as the quickest and easiest way to arrange child maintenance

⁴¹⁹ *The Child Support Maintenance Calculation Regulations 2012*, http://www.legislation.gov.uk/ukxi/2012/2677/pdfs/ukxi_20122677_en.pdf.

⁴²⁰ Referred to as a non-resident parent.

⁴²¹ Referred to as a resident parent.

and is encouraged by the CMS.⁴²² Parties have the option to use the guidelines and formula as a reference point – or not. However, these agreements are not legally binding and therefore cannot be enforced in a court of law. Parties, however, still have the option to obtain a court order from the courts. These are formal agreements made by the parents and approved by the court. In these cases, after a 12-month period, either parent can apply to have their case transferred to the CMS.⁴²³

- 2) *Use of the 2012 government scheme.* The Child Maintenance Service (CMS) is open to all new applicants who are unable to make a family-based arrangement. All cases under legislation prior to 2012 (notably under the 1993 and 2003 Schemes) continue under the former Scheme rules and are administered by the older Child Support Agency. To have their case administered under the 2012 Scheme, parents must close their former case and reapply to the CMS. By 2020, it is expected that the Child Support Agency will be closed.⁴²⁴ Although parents can apply to use the services of the CMS, a fee structure has been put in place to encourage parents to agree to child maintenance amounts between themselves.⁴²⁵ Furthermore, parents are required to participate in a Maintenance Options program prior to applying to the CMS.
- 3) *Seek a Court order for maintenance.* In the United Kingdom, the government discourages parents from using the court system to obtain a child support order as shown in 1) and 2) above. However, in rare cases in which parents have obtained a divorce order through the court system they may also have a child support determination included in the order. As well, the court system is also used in cases where parents do not qualify for entry into the CMS. This is usually because:
 - One of the parties resides outside of the UK;
 - Family violence may be an issue;
 - There are extra expenses that the CMS will not be able to take into account when making a maintenance calculation such as expenses to cover education or the extra costs of a child's disability; and
 - The paying parent has a very high income and the custodial parent is seeking more maintenance than would be awarded under the CMS calculation.⁴²⁶

In addition, receipt of child maintenance does not affect the eligibility or the level of social benefits that a receiving parent is entitled to. This applies to all child maintenance payments regardless of how they are determined, such as family-based arrangements, statutory child maintenance arrangements and court orders.⁴²⁷

⁴²² *Your guide to child maintenance in the UK*, TransferWise content team, 2017.

<https://transferwise.com/us/blog/uk-child-maintenance-payments>

⁴²³ Citizens Advice. Provides several webpages describing how to access the CMS, how to calculate maintenance, etc. <https://www.citizensadvice.org.uk/resources-and-tools/search-navigation-tools/Search/?q=child+maintenance&c=SERP-PUBLIC&page=1>.

⁴²⁴ *Child Maintenance Service*, House of Commons, Work and Pensions Committee, Fourteenth Report of Session, 2016–17.

⁴²⁵ *How we work out child maintenance? A step-by-step guide*. Child Maintenance Service, February 2017. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672432/how-we-work-out-child-maintenance.pdf.

⁴²⁶ Ibid.

⁴²⁷ *How child maintenance affect benefits*. NIDIRECT, Government Services, <https://www.nidirect.gov.uk/articles/how-child-maintenance-affect-benefits>

C. How the Formula Works

The CMS provides information on their website to help parents understand the guidelines and to assist them in determining a child maintenance amount based on their family circumstances. As well, they have developed an online Child Maintenance Calculator.⁴²⁸ Various tables of percentages, based on the income level of the paying parent and the number of qualifying and relevant children, must be consulted to complete the necessary calculations.

The current UK formula is essentially a six-step calculation.⁴²⁹ Below is a high-level summary of the steps. However further details on the components of the calculations and the necessary tables to be consulted are contained in Part 2 of this *Summary*.

Step 1 - Determine the *annual taxable gross income* of the paying parent

Once this amount is ascertained the amount is converted to a weekly gross income amount.

Step 2 - Determine the factors that may reduce the payer's income

From the *annual taxable gross income* of the paying parent, two adjustments may be made to reduce the gross weekly income available for support, when applicable. These are: amounts for any pension contributions and the number of other *relevant children* the paying parent supports in their household.

Step 3 - Determine which of the five-child maintenance rates is to be used based on the income level of the paying parent

In this step, based on the income of the paying parent, one of five tables is consulted.

Step 4 - Determine the number of *qualified children* for whom the paying parent must pay maintenance

Step 5 - Calculate the *weekly child maintenance amount*

This requires the application of the rate determined in Step 3, to the gross income of the paying parent, based on the number of *qualifying children*.

Step 6 - *Adjust the weekly child maintenance amount* depending on the average number of “shared care” nights a week

Please see Part 5 for an example of a case scenario that describes the above noted steps using simulated case information.

This process is repeated annually on an ‘annual review date’ to ensure that the maintenance calculation is up to date and reflects the parents’ circumstances. Certain other changes can be made at any point in the life of a case.

⁴²⁸ Child Maintenance Calculator, <https://www.gov.uk/calculate-your-child-maintenance>

⁴²⁹ Child Maintenance Service, February 2017.

Part 2: Elements of the Child Support Model

A. Data Sources Used to Determine Expenditures on the Children

How are expenditures for the child determined?

The calculation represents an amount of money that is broadly similar with the amount that a paying parent would spend on the child if they were still living with them.

There is information concerning the rationale for setting the percentages of income that are used to calculate a liability within each of the bands (see below); they are based on a model for the average cost of raising a child. The White Paper “A New Contract for Welfare: Children’s Rights and Parental Responsibilities” (published July 1999) states:⁴³⁰

We believe children should come first. Parents who live together expect to meet their children’s needs first – and this applies equally where parents have separated. This means that non-resident parents should plan their lives on the basis of the income that they have after meeting their responsibilities to their children.

It uses the example of 15% for one child on the Basic rate. That 15% is explained as “roughly half the average that an intact two-parent family spends on a child”. The main citation is the study “Small Fortunes: spending on children, childhood poverty and parental sacrifice” (Middleton et al, 1997).

How are the expenditures reflected in the formula calculations?

The expenditures for the child are reflected as a percentage of a parent’s gross income and represent their “share” of those expenditures.

B. Approach Used to Apportion the Amount that the Two Parents will Share

As indicated earlier, the model in the UK is based on a fixed percentage model, with only the income of the paying parent being used to calculate the amount of child maintenance to be paid.

There are five “rates” that are based on the paying parent’s financial circumstances.⁴³¹ This ‘banded’ approach was first adopted in 2003 and was subject to public consultation in 1998 / 1999. The stated policy rationale for adopting the system was to reduce the considerable complexity of the previous system, make the calculation more stable overall and easier for clients to understand. This method was maintained in the new scheme introduced in 2012. The following describes each of the five rates:

- 1) **The nil rate** – the paying parent is not required to pay maintenance in cases where they are:
 - A prisoner;
 - A child under 16 (20 if in school);

⁴³⁰ The White Paper *A New Contract for Welfare: Children’s Rights and Parents’ Responsibilities*, Department of Social Security, United Kingdom, 1999, London: Stationery Office.

⁴³¹ Several websites reference four rates; in these sites they do not consider the “nil” rate as a “rate”.

- A 16-to-19-year-old who has left school but is registered for certain types of government-approved training courses;
 - Aged 16 or 17 and you or your partner is getting Income Support or some form of financial allowances/assistance from the UK;
 - Residing in a medical or assisted living facility; and
 - Gross income is less than £7432 a week.
- 2) **The flat rate** – the paying parent is required to pay a flat maintenance amount of £7 a week, regardless of the number of children for whom maintenance is being sought as well as the number of children in either household, in cases where they do not qualify to pay the nil rate and:
- Their gross weekly income is less than £100 a week; and
 - They or their current partner receives social or unemployment assistance, or pension benefits from the UK.

As well, in these cases, if the paying parent’s current partner also has to pay maintenance at the flat rate for their maintenance obligations and either the paying parent or the partner receives one or more of the various income supports from the UK government, then both parties are only required to pay half of the flat rate – £3.50/week.

- 3) **The reduced rate** – The paying parent pays a reduced rate if their weekly gross income is more than £100 but less than £200. The rates vary depending on the number of *qualifying children* the paying parent must pay maintenance for.
- 4) In situations where the paying parent has no other *relevant children* to support, the reduced rate is calculated as follows:
- £7 for the first £100 of weekly income; and
 - Then a fixed percentage or “rate” is applied to the remaining income between £100 and £200.

Number of qualifying children	Standard amount for the first £100 of income	Percentage of remaining gross weekly income up to £200
1	£7	17%
2	£7	25%
3 or more	£7	31%

- 5) **Basic rate⁴³³ and “basic rate plus”⁴³⁴** – The paying parent must pay these rates if they do not qualify to pay the nil, flat, default or reduced rate. They also must have a

⁴³² All amounts are in United Kingdom pounds (£). To convert to CDN dollars: \$1CDN=£0.597.

⁴³³ Basic rate applies when the paying parent’s gross weekly income is £200 to £800.

⁴³⁴ “Basic rate plus” applies when the paying parent’s gross weekly income is over £800 up to a maximum of £3000. The first £800 of income is taken into account using the basic rate.

gross weekly income of more than £200 but less than £3000 per week. The rate to be paid varies on the number of qualifying children.⁴³⁵

Number of qualifying children	% Applied to the first £800 of gross weekly income (basic rate)	% Applied to gross weekly income over £800 (up to a limit of £3000) (basic rate plus)
1	12%	9%
2	16%	12%
3 or more	19%	15%

- 6) **Default rate** – This rate is used when the CMS does not have sufficient income information to make a calculation. In these cases, the default rate is £39 per week for one child, £51 per week for two children and £64 per week for three or more children.

C. Accompanying Policy/Legislation (Rules)

i) Determination of income

The starting point for the calculations under the UK model is the annual taxable gross income of the paying parent. Income is defined as earnings from employment, self-employment declared to HMRC, occupational or personal pensions and other benefits.⁴³⁶ Gross income means income before any tax or national insurance or pension contributions are deducted.

The income information is requested from HMRC automatically, where the CMS is provided the gross annual income figure for the paying parent's most recent complete tax year in the last six years - this is referred to as 'Historic Income'.

Where a paying parent's actual income at the time of the calculation is different from the figure received from HMRC, the parent can request to be moved to a 'Current Income' calculation, provided the figure is at least 25% different than the figure received from HMRC (or the CMS was unable to request a figure). Once evidence of the income has been provided the calculation will be based on that figure until the annual review date.

If a paying parent's income decreases before the annual review date, a parent can request a change to 'Current Income' at any point during the year, provided the change is at least 25%.

Deductions from income

- Contributions or payments made to a personal or occupational pension scheme are deducted when calculating the available gross income.
- The CMS also has the discretion to either adjust the weekly amount of gross income to be used in the calculation if there is evidence of additional income, or reduce it if there

⁴³⁵ Child Maintenance Service, February 2017.

⁴³⁶ Ibid.

are work related costs or expenses that a paying parent must incur. Either party can apply to have these adjustments considered by the CMS via an application.⁴³⁷

- A paying parent may request that the CMS take certain *special variation expenses*⁴³⁸ into account. These are called a *variation from the maintenance calculation* and can reduce the paying parent's gross income. Depending on the type of expense and its periodicity, the paying parent's income may be adjusted accordingly. An application for a *special variation expense* may be made for:
 - The cost of keeping up regular contact with a child a parent is paying child maintenance for – for example, the cost of fuel to travel to the child's home (must be at least £10 a week),
 - Costs connected with supporting a child with a disability or a long-term illness who lives with the paying parent or their partner,
 - Repaying debts from a former relationship, e.g. repaying a car loan for a car the receiving parent has kept (must be at least £10 a week),
 - Boarding school fees for a child or children that qualify for child maintenance but only the everyday living costs or 'boarding' part of the fees (must be at least £10 a week) and,
 - Making payments on a mortgage, loan or insurance policy for the home that the paying parent and receiving parent used to share – the receiving parent and the child or children must still live in the home and the paying parent must have no legal or 'equitable' interest in it (must be at least £10 a week).

A paying parent is not entitled to request a *variation from the maintenance calculation* if their gross income is less than £7 a week or if they are in receipt of social benefits.

Dependent Children

As mentioned above, the calculation of child maintenance allows a deduction from a paying parent's gross income when they have *relevant other children*.⁴³⁹ However, the reduction only occurs if the paying parent's weekly income falls into one of two "rates":

- a) if their income falls between £100 and £200 per week, *the reduced rate*, then the following table of percentages applies:

⁴³⁷ Ibid.

⁴³⁸ *The Child Support Maintenance Calculation Regulations 2012, Chapter 2 Grounds for Variation: Special Expenses*. Also, see Child Maintenance Service, February 2017, *How is child maintenance worked out? Gathering information and calculation*, 37, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672432/how-we-work-out-child-maintenance.pdf.

⁴³⁹ *Child Support Act, 1991, Section 10C (2)* References in this Part of this Schedule to "relevant other children" are to (a) children other than qualifying children in respect of whom the non-resident parent or his partner receives child benefit under Part IX of the Social Security Contributions and Benefits Act 1992.

	Number of relevant other children of the non-resident parent	Percentage of remaining gross weekly income up to £200
1 qualifying child of the non-resident parent	1	14.1
	2	13.2
	3 or more	12.4
2 qualifying children of the non-resident parent	1	21.2
	2	19.9
	3 or more	18.9
3 or more qualifying children of the non-resident parent	1	26.4
	2	24.9
	3 or more	23.8

b) if their income falls between £200 and £3000 per week, the basic rate, then the following percentages apply:

- 11% where the non-resident parent has one relevant other child;
- 14% where the non-resident parent has two relevant other children; and
- 16% where the non-resident parent has three or more relevant other children.⁴⁴⁰

ii) Income attribution

If the paying parent does not provide sufficient income information and if the information cannot be obtained from the paying parent's tax records, then a *Default maintenance decision* will be made. The following amounts will then apply:

- £39 a week for one child;
- £51 a week for two children; and
- £64 a week for three or more children.

It is important to note that these amounts are weekly totals and not an amount 'per child'.

iii) Impact of custody and parenting time

A key component of the calculation is an adjustment to the maintenance amount if the qualifying child resides overnight with the paying parent at least one night per week, on

⁴⁴⁰ *Child Maintenance and Other Payments Act 2008 (c. 6) Schedule 4 — Changes to the calculation of maintenance.* http://www.legislation.gov.uk/ukpga/2008/6/pdfs/ukpga_20080006_en.pdf.

average per year. This is referred to as *shared care*. There are four “shared care bands” that determine the amount of the reduction to the child maintenance amount:⁴⁴¹

- 52-103 nights: results in 1/7th reduction;
- 104-155 nights: results in 2/7th reduction;
- 156-174 nights: results in 3/7th reduction; and
- More than 175 nights: results in a 50% reduction.

There is no reduction in maintenance amounts if the child resides with the paying parent for 51 nights or less per year. As well, if evidence is provided that the day-to-day care is shared equally between the two parents, then the paying parent does not pay maintenance for the child.⁴⁴²

iv) Additional expenses, special expenses for medical, school, etc.

Adjustments for special expenses are detailed above in the section pertaining to the determination of income.

v) Concept of undue hardship

Adjustments for the concept of “undue hardship” (e.g. additional expenses, debts, etc.) are considered as “special variation expenses” and if approved, are deducted from the paying parent’s income.

vi) Other circumstances that could be considered that may result in a variation to the formula amount

Mandatory reconsideration is permissible under the current 2012 scheme if either parent is of the view that the child support decision made by the CMS is wrong. Should either parent not agree with the decision emanating from this reconsideration, an application would be required and the case would then be referred to the courts.

vii) Annual Review⁴⁴³

An annual review of each child maintenance case is completed by the CMS and occurs every 12 months based on the anniversary date that the paying parent was advised that there was a child maintenance application. The purpose of the review is to ensure that the maintenance amount reflects the most recent income information available for the paying parent.

⁴⁴¹ There may be different family circumstances – for example, two children qualify for maintenance but only one is in “shared care”. Separate calculations are performed in these circumstances. See Child Maintenance Service, February 2017.

⁴⁴² *Child support Maintenance Calculation regulations 2012 Regulation 50(2)*.

⁴⁴³ *The Annual Review – how it works. A guide for paying parents and receiving parents*. Child Maintenance Service. 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/261704/the-annual-review.pdf.

Thirty days prior to the annual review date, CMS obtains the latest available gross income information given to HMRC by the paying parent, their employer or a third party (such as their accountant). CMS will also verify if the paying parent is in receipt of social benefits.

Both the paying parent and the receiving parent are informed in writing twenty days prior to the annual review date to advise them of the recalculation and the decision that has been taken by CMS. Both parties have 20 days to provide additional information that will then be used by CMS to reconsider their recalculation.

The annual review date decision lasts until the next annual review (that will take place 12 months later) unless there are significant changes that are brought to the attention of the CMS prior to that date.

viii) Other considerations

Age of the child: Maintenance terminates when the child reaches 16 (or 20 if they're in full-time education).

Minimum support: See information on “rates” above in Part 2.

Maximum support: There is no maximum amount of support to be paid. However there is an upper limit (£3000) on the amount of weekly gross income that CMS can consider in their calculation of child maintenance. If the paying parent’s gross weekly income is more than £3,000, the receiving parent may apply to the courts for extra child maintenance.

Part 3: Summary of Key Changes to the Child Support Guideline Legislation

A. Overview of the Changes

1991 and 1993

In the 1990 White Paper, *Children Come First*,⁴⁴⁴ the establishment of a formula-based system for the assessment of child maintenance was proposed. This represented a significant break with the past, for prior to this, matters of child support had been a matter of family law, and hence fallen under the jurisdiction of the courts. Their administration had thus been discretionary and characteristically variable. Under the 1990 proposals the calculation of child maintenance would in future be standardized and consistent, while the administration of the system - in other words, the assessment, collection and enforcement of child support would be the responsibility of a bureaucratic arm of the Department for Social Security: the Child Support Agency (CSA).⁴⁴⁵

In 1991, the *Child Support Act 1991*⁴⁴⁶ was introduced following previous years of several major pieces of legislation that started to codify the requirement for financial assistance from

⁴⁴⁴ In late 1990 the British government published a two-volume White Paper, *Children Come First: The Government's Proposals on the Maintenance of Children*, announcing its intention to establish a Child Support Agency (CSA) and a formula-based system for assessing child maintenance amounts.

⁴⁴⁵ Thomas Nutt, *The Child Support Agency and the Old Poor Law*, 2006. <http://www.historyandpolicy.org/policy-papers/papers/the-child-support-agency-and-the-old-poor-law>.

⁴⁴⁶ *Child Support Act 1991* c.48.

fathers, regardless of their marital status or relationship⁴⁴⁷. The purpose of this Act was to enforce the requirement that all parents who were liable to pay support to their partners were required to do so.

In 1993, to assist in the enforcement of the Act, the CSA was created.⁴⁴⁸ The CSA had fairly wide sweeping powers that ranged from applying a complex formula to determine the appropriate child support award, to enforce the maintenance of child support payments through various means including an “attachment of earnings” that could result in a deduction of the child maintenance award at the source of income.⁴⁴⁹ The formula underlying the guideline and contained in *The Child Support Act 1991* was very complex and could only be determined through the use of technology and a sophisticated computer system.⁴⁵⁰

2003

The government introduced reforms in 2003 that were designed to simplify the formula used to determine child support/maintenance amounts, to create new enforcement powers and to improve the services provided by the CSA.⁴⁵¹

These reforms were introduced as a result of significant public backlash including:

- Concerns about the complexity of the formula;
- No apparent increase in the proportion of lone mothers receiving child support payments; and
- Criticism that the bureaucracy of the CSA was unwieldy resulting in a significant backlog in the processing of applications for child maintenance.

The 2003 formula was a “fixed percentage model” and child maintenance was established as a percentage of the non-resident parent’s net income. As with all fixed percentage models, it varied with the number of children and it did not take into account the income of the receiving parent. It was introduced to replace a more complex and sophisticated formula in the hope that by simplifying the process, more parents would receive child support. The fixed percentages introduced were: 15 per cent for one child, 20 per cent for two children, and 25 per cent for three or more children. The application of the percentages was based on the net income of the paying parent.⁴⁵²

⁴⁴⁷ For example, the National Assistance Act in 1948, the Maintenance Orders Act in 1958, the Matrimonial Causes Act in 1973, the Social Security Act in 1986.

⁴⁴⁸ The UK’s Child Support Act, Centre for Public Impact, August 18, 2017.

<https://www.centreforpublicimpact.org/case-study/child-support-act-uk/>

⁴⁴⁹ Ibid.

⁴⁵⁰ Please see the leaflet from the Child Support Agency, *Your child maintenance assessment and help in meeting exceptional circumstances*, 2013, for more information on how maintenance was calculated from 1991 to 2003.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/317504/csa2024-1993-scheme-rules.pdf.

⁴⁵¹ Christine Skinner, Jonathan Bradshaw and Jacqueline Davidson, *Child Support Policy: An international perspective*, Department for Work and Pensions Research Report No 405, 2007.

<https://www.york.ac.uk/inst/spru/pubs/pdf/rrep405.pdf>.

⁴⁵² James Stewart, Edward Floyd and Rebecca Dziobon, Penningtons, Overview. *Family law in the UK (England and Wales)*, Manches, LLP.

Following further public outcry as a result of an ever increasing backlog of child support claims, errors in calculations, high administrative costs, as well as concerns that the policy underpinning the guidelines did not keep up with the changing family structures, new reforms came into force in 2008.⁴⁵³

2008⁴⁵⁴

The *Child Maintenance and Other Payments Act 2008* (c. 6) came into effect and included the following changes:

- The creation of The Child Maintenance and Enforcement Commission (the Commission) to undertake administration and enacting of regulations under the *Child Support Act 1991*.
- The calculation of maintenance by:
 - Changing to the use of gross income as opposed to net income as the starting point in the formula calculations using HM Revenue and Customs (HMRC) gross income data. Tax credits are no longer included as income, however pension contributions are still deductible.
 - Changing the basic (percentage) rates that are applied to the gross income of the paying parent to:
 - 12% where the non-resident parent has one *qualifying child*; 16% where the non-resident parent has two *qualifying children*; and 19% where the non-resident parent has three or more *qualifying children*.
 - If the gross weekly income of the non-resident parent exceeds £800, the basic rate is the addition of the amount found by applying the percentages above to the first £800 of that income and the following percentages to the remainder — 9% where the non-resident parent has one *qualifying child*; 12% where the non-resident parent has two *qualifying children*; and, 15% where the non-resident parent has three or more *qualifying children*.
 - Consideration in the formula calculations for other non-qualifying children: if the non-resident parent also has one or more *relevant other children*, gross weekly income is reduced by the following percentage: 12% where the non-resident parent *has one relevant other child*; 16% where the non-resident parent has two *relevant other children*; and, 19% where the non-resident parent has three or *more relevant other children*.
 - Increases to the flat rate and minimum amounts of liability. The basic amount increased from £5 to £7— (minimum amount of liability in the case of reduced rate).

⁴⁵³ *Child Maintenance and Other Payments Act 2008* (c. 6) Schedule 4 — Changes to the calculation of maintenance.

http://www.legislation.gov.uk/ukpga/2008/6/pdfs/ukpga_20080006_en.pdf

⁴⁵⁴ Ibid.

- Weekly income: amount increased of the upper limit for Basic Rate Plus from £2,000 to £3,000.

2012⁴⁵⁵

Though the changes in 2012 did not address the child support formula itself, a new Child Maintenance Service (CMS) was introduced, along with a new child maintenance scheme. The CMS is delivered through the Department for Work and Pensions in Great Britain and separately, the Department for Communities in Northern Ireland.

There are several key features that were introduced in 2012 that are worthy of note:

- A new Agency, called the Child Maintenance Service (CMS), was created and replaced the CSA as the administrative body responsible for implementing the 2012 reforms.
- Greater emphasis was placed on the benefits of parents arranging their own maintenance payments, promoting the option of Family-based Arrangements.⁴⁵⁶ This was partly accomplished by charging a fee to use the services of the CMS.
- Allowances were introduced for children living with the paying parent, children for whom maintenance is payable, and shared care arrangements made between the parents.
- The formula does not allow for consideration of any other factors in its calculations such as add-ons for other expenses for the children. These expenses include childcare, medical and school costs as well as extracurricular activities. These expenses are NOT included in the assessment completed by the CMS. However, should parents opt to arrange their own private agreement or seek a court order, these expenses may be considered.
- To assist parents in conducting their own “formula assessment” to determine a child support amount, an online calculator tool was made available as well as several workbooks and online aids.⁴⁵⁷
- In cases where a government scheme is being used, all child maintenance orders get reviewed and updated by the CSA 12 months after the commencement date of the order.⁴⁵⁸
- To ensure a more efficient and streamlined assessment, the CMS obtains all income information from HRMC. Her Majesty's Revenue and Customs is a non-ministerial department of the UK Government responsible for the collection of taxes, the payment of some forms of state support and the administration of other regulatory regimes including the national minimum wages.⁴⁵⁹ This was a key feature of the 2012 changes

⁴⁵⁵ *The Child Support Maintenance Calculation Regulations 2012*,

http://www.legislation.gov.uk/ukxi/2012/2677/pdfs/ukxi_20122677_en.pdf.

⁴⁵⁶ CM options and CMS. Andy Smith, NACSA, <https://nacsa.co.uk>.

⁴⁵⁷ Child Maintenance Service, February 2017. *How is child maintenance worked out? Gathering information and calculation*,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672432/how-we-work-out-child-maintenance.pdf.

⁴⁵⁸ Ibid.

⁴⁵⁹ Ibid.

and allows the CMS to quickly obtain up to date and accurate income information as well as conduct the annual assessments.

There are three statutory child support schemes that operated under the *Child Support Act 1991*. Two of the schemes reflect child support legislation that came into effect in 1993 and 2003. These legacy schemes were closed to new applicants and the CMS began receiving a small number of new cases in December 2012 and took on all new applications from November 2013. The process of closing existing CSA cases was completed in December 2018. Cases are not directly transferred between schemes: the CSA case is closed and a new application, if necessary, is made to the CMS regime.⁴⁶⁰

B. Overview of leading case law on the child support model

There is no case law that has had a major impact on the UK child support model.

Part 4: Summary of the Literature that Assesses the Model

A long history of concerns about the manner in which child support has been administered in the UK exists in the literature. The literature written prior to the changes introduced in 2012 can be briefly summarized into three categories:

- 1) The administrative mechanism (CSA) did not function well.⁴⁶¹
 - Inexperienced staff, lack of a service culture.
 - Assessments were not accurate and there was a significant backlog in caseload (well over 11 million cases in the system) resulting in clients amassing arrears before an award was made.
 - Lack of proper IT systems to manage the increasing caseload and failures in the management of the procurement of new IT systems.⁴⁶²
- 2) Underlying policy flaws.⁴⁶³
 - Paternity issues weren't addressed, resulting in loopholes (no requirement for DNA testing).
 - The inability to enforce orders, resulting in millions of dollars of maintenance awards that were not being paid or collected. As a result the number of parents coming out of poverty as a result of receiving maintenance, did not increase.
 - There was no incentive to pay maintenance, as the child benefit/social assistance amounts if the paying parent was in default, were often higher than the maintenance amount.
 - There was a view that the formula created winners and losers as only the income of the paying parent was taken into account.

⁴⁶⁰ Ibid.

⁴⁶¹ Child Maintenance Options and Child Maintenance Service, NACSA.

⁴⁶² Ken Sanderson *Child Support Agency*, Families Need Fathers – January 2012.

<https://www.politics.co.uk/reference/child-support-agency>

⁴⁶³ Ibid.

- The model did not recognize other children that the paying parent may have been supporting. As well, it didn't reflect the changes in parenting arrangements and family structure – shared parenting, second families etc.

3) Complexity of the formula itself⁴⁶⁴

- Formula calculations were impossible to comprehend without the use of online systems.
- Use of net income as the starting point resulted in confusion about what deductions were admissible causing complexities in the calculations.

At the same time as the 2012 reforms to the UK's Child Support Model, the Nuffield Foundation surveyed the British public about "how much should the state calculate that a paying parent should pay?"⁴⁶⁵ Some of the findings were:

- On average, the amounts that the public thinks the law should require non-resident parents to pay are higher than those set by the current statutory child maintenance formula;
- Like the statutory formula, the public would require non-resident parents who earn more to pay more in child maintenance. But, unlike the statutory formula which uses a fixed percentage to calculate maintenance obligations, the public adopts a more redistributive approach, with higher-earning parents paying a higher percentage of their income in child maintenance; and
- Overall, the public would require child maintenance amounts that go further than the current statutory formula in reducing living standard differences between the households of separated parents.

Part 5: Case Scenario Using the UK Guideline

The UK online calculator does not provide an illustration of the step-by-step calculations. Consequently, the following section illustrates how the formula would be applied using a specific case example.

The six steps – an example

Stephen is a paying parent with two children who qualify for child maintenance. Each child has a different parent who is eligible to receive child support from Stephen. The two parents are named Nicola and Sue. Stephen also supports one other *relevant child*. As well, his gross income is different from the tax records. In addition, he pays into private pension scheme.

Stephen has shared care of the child who lives with Nicola for 115 nights a year. The second child resides with Sue and Stephen does not have shared care of this child.

Step 1 - Gross annual income

Information obtained from HM Revenue & Customs indicates that Stephen's gross annual income for the tax year 2011/12 is **£70,000**.

However, Stephen provides proof that his current gross annual income is actually **£30,000**. Because there is at least a 25 percent difference between the two amounts,

⁴⁶⁴ *The Child Support Maintenance Calculation Regulations 2012.*

⁴⁶⁵ Bryson, C., Ellman, I. M., McKay, S. and Miles, J. (2015) *Child maintenance: how would the British public calculate what the State should require parents to pay?* London: Nuffield Foundation.

the lower figure is used by CMS in the formula calculation to determine his child maintenance amount.

Step 2 - Deductions from income

Reduction for private pension payments

Stephen provides proof that his yearly payments into a private pension are **£3,000**. His gross annual income figure is therefore reduced by this amount to **£27,000**.

There are no other factors that reduce Stephen's income calculation. The next step is to convert Stephen's gross annual income figure of £27,000 to a weekly amount. (Divide £27,000 by 365, and then multiply the result by 7).

Stephen's **gross weekly income** is therefore **£517.81**.

Reduction for other children the paying parent supports

Because Stephen has **one** child for whom he receives a Child Benefit, his gross weekly income of £517.81 is reduced by **11 per cent**.

This works out to be a reduction of **£56.96**.

This means the **new amount of gross weekly income** used to calculate Stephen's maintenance after the reduction is **£460.85**.

Step 3 - Child maintenance rates

The amount of Stephen's gross weekly income after Step 2 is **£460.85**. This means the **Basic rate** is used to work out his payments.

Step 4 - Number of Qualifying Children

Stephen has **two children** who he must pay child maintenance for.

Step 5 - Weekly amount of child maintenance

Because Stephen has two children who he must pay child maintenance for, he pays 16 per cent of his gross weekly income after Step 2 as child maintenance. 16 percent of £460.85 results in a weekly amount of £73.74. This is the weekly amount of child maintenance that Stephen must pay before shared care arrangements are taken into consideration.

Step 6 - Shared care

One of the children Stephen pays child maintenance for lives with Nicola. The other one lives with Sue. Stephen has shared care of the child who lives with Nicola for 115 nights a year. To determine the shared care reduction, Stephen's weekly amount of maintenance (**£73.74**) is split between the two children he pays child maintenance for. This results in a weekly amount of **£36.87** for each child.

To take shared care into account, the amount of child maintenance Stephen pays for the child who regularly stays overnight with him, is reduced.

Stephen has shared care of one child for between 104 and 155 nights a year. Because of this, the reduction for shared care of that child is $\frac{2}{7}$ ^{ths} of £36.87. This results in a deduction of **£10.53**.

As a result, Stephen's **total weekly child maintenance** payment after all six steps is **£63.21**. (Subtracting **£10.53** from **£73.74** - which was Stephen's weekly amount of child maintenance derived in Step 5).

From this total, Nicola would receive **£26.34** each week after the reduction for shared care. Sue would receive **£36.87** each week.

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