

# EXHIBIT #1

## FLS'S PROPOSED DEFINITIONS OF CUSTODY

### TYPES OF LEGAL CUSTODY

Sole	Joint
one parent would have sole and unfettered discretion to make all decisions on any issue(s) regarding the child without need to consult the other parent	<i>both</i> parents have an equal right and responsibility to make decisions associated with the health, education, and welfare of the children, even though primary physical custody may be with one of the parents

### TYPES OF PHYSICAL CUSTODY

Sole	Joint	Primary
one parent is awarded 100% of physical custody. The other parent has the obligation to pay child support but would be excluded from any visitation rights or right to communication of any type with the minor child	an order awarding each of the parents significant, but not necessarily equal, period of time during which a child resides with or is under the care and supervision of each of the parents. Joint physical custody shall be shared by the parents in such a way as to assure the child of frequent, continuing and meaningful contact with both parents	where one parent provides the child's residence for majority of the time

# **EXHIBIT #2**

### **Purpose and Goals of Child Support Awards**

The first important work in Nevada seeking to address the subject of child support was the 1985 report of the Nevada Commission on Child Support Enforcement, which was given to Governor Richard H. Bryan in October, 1985. It included the topic of "establishment of child support guidelines" as one of eight issues requiring further study.<sup>1</sup> This was part of the nation-wide dialogue, spurred by federal studies and statutes, designed to improve the adequacy, consistency, and predictability of child support awards throughout the country.<sup>2</sup>

The Commission believed that child support should ensure that children benefit from the same proportion of parental income in a divided household as they have in an intact family. This philosophy was not entirely embodied in the Nevada child support statute enacted in 1987, which contains elements of both income sharing and needs satisfaction approaches to child support. One commentator suggested that States were unwilling to enact guidelines that would actually ensure maintenance of children's standard of living, because it would be impossible to raise the standard of living for a child without also raising that of the child's primary custodian, and there was reluctance to adopt any standard that appeared to award "hidden alimony."<sup>3</sup>

Nevertheless, the Nevada child support guidelines were derived from the Wisconsin Guidelines, making Nevada one of half a dozen "percentage of income" guideline States.<sup>4</sup> This

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<sup>1</sup> See 1985 Report at 36.

<sup>2</sup> See Family Support Act of 1988, Pub. Law No. 100-485, 102 Stat. 2343 (October 13, 1988). The law essentially required every State to adopt some sort of child support guideline.

<sup>3</sup> See Dodson, *A Guide to the Guidelines*, Family Advocate 4, 6 Spring 1988 (reprinted in 1989 legislative history of A.B. 85 at 1064).

<sup>4</sup> See 1989 Legislative History of A.B. 85 at 222-246.

theoretical model *presumes* a contribution from the custodial parent, and *calculates* a contribution from the non-custodian as a percentage of income to support the child in the primary household. The Nevada (Wisconsin) approach is a minority position – the bulk of States use some variation of the “income shares” model, in which both parents’ incomes are explicitly used in the child support calculation formula.<sup>5</sup>

As this Court discussed in the original *Rivero Opinion*, AB 424 was introduced in 1987, and at one point included a provision setting off child support for shared custody over a 40% time-share threshold. The legislature considered a number of proposed hypotheticals intended to reflect likely factual scenarios to which the guidelines would apply.<sup>6</sup> Ultimately, that provision was deleted; another provision, which ultimately became the statutory “ceiling” provision (called a “cap” in this part of the legislative history), was added.<sup>7</sup>

When the Senate Judiciary Committee examined the revised bill, there was a consensus that the ceiling should be removed,<sup>8</sup> but it survived conference committee, with the caveat that the ceiling was not to apply if “the court sets forth findings of fact as to the basis for a different amount pursuant to subsection 5 of section 3 of this act.”<sup>9</sup>

The full history of the development of the Nevada child support guidelines is beyond the scope of this brief, but was discussed at some length in the reports of the Nevada Child Support

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<sup>5</sup> See Child Support Guidelines: The Next Generation (U.S. Dept. of HHS, 1994); Evaluation of Child Support Guidelines (U.S. Dept. of HHS, 1996).

<sup>6</sup> See 1987 Legislative History of A.B. 424 at 18.

<sup>7</sup> See 1987 Legislative History of A.B. 424 at 72-73.

<sup>8</sup> See 1987 Legislative History of A.B. 424 at 87.

<sup>9</sup> See 1987 Legislative History of A.B. 424 at 96.

Statute Review Committees of 1992 and 1996, as this Court has occasionally noted.<sup>10</sup> Both reports remain available for background.<sup>11</sup>

Various tweaks were added in 1989 (medical expense sharing), and afterward, most notably in 2001, when the presumptive maximum was changed to a sliding scale, arranged in income brackets, starting with those who made up to \$50,000 per year. The original legislation would have adjusted the original \$500 to what inflation would have made equivalent from 1987 to 2001 – to \$785. Fearing political opposition, the sponsors of the change reduced that number to \$500, increasing at the rate of \$50 for each \$25,000 of additional income, to the top bracket, of those who earned more than \$750,000 (for whom it was \$800). The statute (NRS 125B.070) provided that the presumptive maximums would be “adjusted” from those amounts each year based on the percentage of increase or decrease in the Consumer Price Index for the prior year.

Some commentators have remained concerned that the 2001 re-indexing actually had the effect of reducing child support in the bulk of cases, from levels that were already deemed inadequate, and expressed the opinion that the statutory scheme should be revised to increase awards, but that in any event nothing should be permitted to reduce those support awards any further.<sup>12</sup>

It was with an eye toward the original goals of fostering adequacy, consistency, and predictability in child support awards that the Section has responded to this Court’s request to review and comment upon the *Rivero* secondary formula to be utilized when parents share substantial, but not equal, custody.

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<sup>10</sup> See discussion of Committee report in *Lewis v. Hicks*, 108 Nev. 1107, 843 P.2d 828 (1992).

<sup>11</sup> Both reports are posted at [http://www.willicklawgroup.com/child\\_support](http://www.willicklawgroup.com/child_support).

<sup>12</sup> See Marshal Willick, *What Almost Happened to Child Support in Nevada, and Why We Still Have to Fix It*, Nev. Lawyer, June, 2007, at 36, reprinted at [http://www.willicklawgroup.com/child\\_support](http://www.willicklawgroup.com/child_support).

# **EXHIBIT #3**

## THE RIVERO FORMULA

### I. THE NEED FOR AN ADJUSTMENT FOR "SHARED CUSTODY": REDUNDANT COSTS

One of the most important variables in determining the proper amount of child support is the form of custody ordered by the court. Embedded in the child support guidelines of all the states is the presumption that the court will order "standard visitation" of 20% overnight visitation with the non-custodial parent. This 20% figure is based on 73 days: every other weekend (52 days), plus two weeks in summer (14 days), plus Mother's Day or Father's Day (1 day), plus Thanksgiving or Christmas (2 days), plus birthdays (2 days), plus a miscellaneous day (1 day). See Karen Czapanskiy, "Child Support, Visitation, Shared Custody and Split Custody," in *Child Support Guidelines: The Next Generation* 43, 44 (U.S. Dep't Health & Human Services, Office of Child Support Enforcement, 1994); Karen Czapanskiy, *Child Support and Visitation: Rethinking the Connection*, 20 Rut.-Cam. L.J. 619 (1989). When the parents have some form of shared physical custody that is over this 20%, the presumption embedded in the guidelines no longer applies, and an adjustment to the support order should be made.

That some kind of adjustment should be made is based on the recognition that in cases of shared custody, each parent is directly paying part of the child's both fixed and non-fixed expenses. This does not mean, however, that for every dollar that the non-custodial parent pays in expenses, the custodial parent's expenses decrease, so that child support is a zero sum game. Rather, the total of expenditures by both parents increase with greater visitation by the non-custodial parent: non-custodial parent's expenses



increase, and the custodial parent's expenses do not decrease by the same amount. This result is predicated on the fact that each parent pays "redundant costs." Redundant costs are fixed expenses that both parents must pay, for example, a bedroom for the child, basic furniture and toys, housing expenses, utilities, etc. See, e.g., *Travers v. Travers*, 665 So. 2d 625 (La. Ct. App. 1995) (under shared custody formula, each parent is treated as a separate household with custody of half of total number of children, so that support reflects the cost of separate homes and savings from discontinuous custody). Child support guidelines at least implicitly recognize this point by providing that as the number of children in a family goes up, the amount of support devoted to each child goes down. The guidelines recognize that the amount needed to support two children is less than twice the amount needed to support one child, because certain household expenses are shared. It is this same point that must underlie the discussion of shared custody. Thus, while there should be some adjustment to the amount of support for shared physical custody, it is difficult for a child support formula to determine how much that adjustment should be. *Bast v. Rossoff*, 91 N.Y.2d 723, 675 N.Y.S.2d 19 (1998) (noting different methods used to accommodate redundant costs and problems inherent in each method). See Marygold S. Melli and Patricia R. Brown, *The Economics of Shared Custody: Developing an Equitable Formula for Dual Residence*, 31 Houston L. Rev. 544 (1994); Karen A. Getman, "A Critique of the Effect of Non-Traditional Visitation and Custody Arrangements on Child Support Awards Under Current Guidelines and Formulas," in *Essentials of Child Support Guidelines Development: Economic Issues and Policy Considerations* 127 (Women's Legal Defense Fund, 1987).

The need to make some kind of adjustment for shared custody/extended visitation is acute. Families are establishing joint custody arrangements at increasingly higher rates. The 1995 Census Bureau report for the year 1991 showed that 73% of non-custodial mothers and 58% of non-custodial fathers had extensive visitation privileges or joint custody. United States Department of Health and Human Services, *Final Report: Evaluation of Child Support Guidelines, Volume I* at 3-39 (1996). Because of the need to make some kind of adjustment for shared custody, the various support guidelines in the United States have incorporated provisions that make such an adjustment, but the guidelines vary considerably in how that adjustment is calculated.

## **II. THE FIRST VARIABLE: WHAT IS "CUSTODY"**

The first variable in how the guidelines approach "shared custody" is how the term "custody" itself is defined. First, some states' guidelines define custody in terms of *overnight* visitation: Alaska, Colorado, Hawaii, Idaho, Maryland, Michigan, North Carolina, Tennessee, Wyoming. Second, other states' guidelines define some custody as being with the non-custodial parent a percentage of *time*: Alabama, Arizona, California, District of Columbia, Louisiana, Maine, Mississippi, Missouri, Oregon, South Dakota, Washington, West Virginia. Third, some states' guidelines define custody in terms of a *percentage of the year* the child spends with the non-custodial parent: New Mexico, Vermont, Wisconsin. Two states define custody as a *day*.

Where the definition is overnight visitation, determining whether the non-custodial parent has taken "custody" is not difficult. *E.g.*, *In re Marriage of Southwell*, 119 Or. App.

366, 851 P.2d 599 (1993) (time with father to apply shared custody means overnights, not hours, where Colorado guideline defines shared custody as more than 92 overnights).

Where the definition is more amorphous, such as *time* or *day*, the results can be varied. In *In re Marriage of Southwell*, 119 Or. App. 366, 851 P.2d 599 (1993), for example, the court was faced with interpreting the Oregon guidelines, which provide that there shall be a special formula based on the *time* spent with the non-custodial parent. The court determined that *time* meant the number of overnights the child spent with the non-custodial parent. After all, when a child spends the night with a parent, that parent is responsible for dinner, bedtime, and breakfast, and perhaps even lunch if the child needs to bring lunch to school. See also District of Columbia Child Support Guidelines Worksheet, which asks parents how many "days" are spent with the child, and defines a "day" as 18 out of 24 hours.

In another example, however, the court in *Ewing v. Ewing*, 21 Va. App. 34, 461 S.E.2d 417 (1995), was called upon to interpret the Virginia guidelines, which provide that a parent has "shared custody" where a parent has custody of the child for at least 110 "days" of the year. In that case, the court determined that "day" should be defined not as overnight visitation, but as any *continuous* 24-hour period. Accord *In re Marriage of Hansen*, 81 Wash. App. 494, 914 P.2d 799 (1996) (any period totalling twenty-four continuous hours is "custody", not common-law definition of day, which is midnight to midnight). *Ewing* and *Hansen* decisions are flawed, because under the definition of "day" adopted by these courts, it is possible that a non-custodial parent, exercising extensive visitation up to 180 overnights a year, and thus incurring equal cost in child-rearing to the

custodial parent, would never have even one full "day" of visitation, leaving the parties with the anomalous and ridiculous result that there are no days in a year. Because the Virginia Child Support Guidelines make an adjustment for shared custody when a parent has 110 "days" of visitation, the Virginia Child Support Guidelines were rendered meaningless as the result of the *Ewing* decision. Indeed, anecdotal evidence from attorneys in Culpepper County, Virginia, have shown that one judge consistently orders visitation in a way in which neither parent ever has "custody" under the *Ewing* definition. See *Brown v. Brown*, VLW 096-8-172 (Va. Cir. Ct. 1996) (by using *Ewing* definition of day, father was able to eliminate his child support obligation).

### **III. THE SECOND VARIABLE: WHAT IS "SHARED" CUSTODY?**

Once it is determined that a non-custodial parent does, indeed, have "custody," the next step is to determine whether the parents have "shared custody" or "extraordinary visitation." The various guidelines have addressed this question in basically three ways: (1) substantially equal time, (2) time greater than a threshold amount of somewhere between 20% and 40%, or (3) shared custody/extraordinary visitation as a deviation factor.

First, in some states, where a child spends "substantially equal" amounts of time with each parent, the parents have "shared custody." In New Mexico, the distinction is made by calling equal custody "equal responsibility" and calling custody in excess of 30% "shared responsibility." Yet, even in these "equal time" states, such as Hawaii, Kansas, and New Mexico, an adjustment is made for visitation in excess of 30% but less than 50%. Where this adjustment is made for custody over 20% but less than 50%, the adjustment

is in the nature of an adjustment for extraordinary visitation. In Idaho, however, the test is not equal time, but equal sharing of costs and at least 35% overnight visitation.

These "substantially equal time" states are assuming that where each parent has substantially equal time, then the parents have substantially equal costs. If this test is met, the guidelines provide for a specific calculation of the guideline amount that is different from non-shared custody (called, in contrast, sole custody).

The method adopted by these "substantially equal" custody states is cumbersome, because two, not one, calculations must be made, for custody over the threshold adopted: a special formula for custody between the threshold and equal visitation, and a special formula for substantially equal custody. A less cumbersome methodology could be adopted by having one test for all custody over a particular threshold, and that is what is done by a number of states.

Second, some states provide that once a threshold amount of visitation in excess of the "ordinary" 20% visitation is met, the support will be adjusted on a sliding scale to reflect the amount of time the children spend with each parent. Again, these states are making an assumption that when substantial amounts of time are spent with the child, then the costs to the noncustodial parent go up. The thresholds vary from state to state. For example, in Alaska, the threshold is 30% visitation; in Colorado, the threshold is 92 overnights; the District of Columbia requires 40% visitation; in Maryland, the proportionate calculation does not come into play until the child spends 35% of the time with the noncustodial parent; in Michigan, the threshold is 128 days; in North Carolina, the threshold is 123 days; in Oregon, the threshold is 35% custody; in Utah, the threshold is overnight visitation for more than 25% of the year; in Vermont, the threshold is 30%

visitation; in Virginia, the threshold is 110 days of the year; in Wisconsin, the threshold is 30% custody.

It is extremely important to note that in these "sliding scale" states, the adjustment is not made for the *entire* amount of custody the non-custodial parent assumes, but only the custody the noncustodial parent assumes in excess of the 20% custody assumed in the guidelines. This is accomplished by means of a multiplier. Because of redundant costs, when parents have a form of shared custody, a multiplier is often applied to the amount of support to be apportioned. Most often, the multiplier is 1.5.

Where the statute specifies the threshold amount of custody that must be met before the shared custody formula is applied, it is error for the court to apply that formula in the absence of evidence that the threshold has been met. *In re Marriage of Redford*, 776 P.2d 1149 (Colo. Ct. App. 1989); *In re Marriage of Southwell*, 119 Or. App. 336, 851 P.2d 599 (1993). It is also error for the court not to apply the formula when the evidence indicates that the formula should be applied. *Wright v. Gregorio*, 855 P.2d 772 (Alaska 1993); *Eddie v. Eddie*, 201 Mich. App. 509, 506 N.W.2d 591 (1993); *Cranston v. Cranston*, 879 P.2d 345 (Wyo. 1994); see also *Molstad v. Molstad*, 193 Wis. 2d 602, 535 N.W.2d 63 (1995) (court should consider fact that one parent has custody 30% of time).

The major drawback of this methodology has been the anecdotal reports that some noncustodial parents will negotiate for custody that reaches the threshold in order to obtain the benefit of the discount, but will then not exercise this visitation. This drawback, however, can be dealt with in the guidelines by providing for an automatic modification of child support if visitation is not exercised.

Third and finally, some states view shared custody as a deviational factor only. The court will not apply any special formula, but will figure the presumptive amount based on sole custody, and then deviate from that amount. These states make no assumption that increased time with a child translates into increased costs for the noncustodial parent and decreased costs for custodial parent. Rather, each case must be examined on its facts.

Typical of the reasoning of states that have adopted this method is Alabama's:

The Alabama child support guidelines do not specifically address the problem of establishing a support order in joint legal custody situations. Such a situation may be considered by the court as a reason for deviating from the guidelines in appropriate situations, particularly if physical custody is jointly shared by the parents. . . . Because of the infinite possibilities that exist in terms of time spent with each parent and other considerations associated with such custody, a determination of support is to be made on a case-by-case basis.

Ala. R. Jud. Admin. 32, Comment. The child support guidelines of Connecticut and Indiana have an identical provision. This method is indistinguishable from granting a deviation based on extraordinary visitation. *See, e.g., Matter v. Burkenstock*, 666 So. 2d 1168 (La. Ct. App. 1995) (father despite being designated primary custodial parent, custody arrangement was more in nature of shared equal custody, so father should pay support to mother); *Bast v. Rossoff*, 91 N.Y.2d 723, 675 N.Y.S.2d 19 (1998) (basic percentages of New York's child support standards act do not apply in situations where parents share physical custody; drafters did not contemplate shared custody, and court consider the total circumstances in both parents' homes to set support amount); *Eickelberger v. Eickelberger*, 93 Ohio App. 3d 221, 638 N.E.2d 130 (1994) (court deviated from guidelines because parents had adopted a shared parenting plan, apportioning education, insurance, clothing, other expenses).

**V. THE FOURTH VARIABLE: CUSTODY THAT IS MORE THAN ORDINARY, BUT LESS THAN SHARED UNDER THE STATUTORY DEFINITION**

Extraordinary visitation as a deviation factor arises in two different scenarios under the guidelines. First, the guidelines may provide that shared custody, the particular custodial arrangements, or extraordinary visitation are all deviation factors. *E.g.*, *Gray v. Gray*, 885 S.W.2d 353 (Tenn. Ct. App. 1994) (guidelines do not apply in cases of shared custody, split custody, and extended visitation; determination of proper support in those cases should be made on case by case basis). Second, the guidelines might provide that "shared custody" comes into play when the non-custodial parent reaches a particular threshold amount of visitation, usually somewhere above 30%. In this latter scenario, visitation above the presumed 20% amount under the guidelines, but below the threshold amount for shared custody, is extraordinary visitation, and such extraordinary visitation may necessitate deviation. In both these cases, the court must decide whether to deviate from the presumed guideline amount because of the amount of time the children spend with the non-custodial parent. *E.g.*, *LaLiberte v. LaLiberte*, 105 Ohio App. 3d 207, 663 N.E.2d 974 (1995).

In considering whether to deviate for extraordinary visitation, the courts have developed a two part test. First, the court will determine if the visitation is in fact "extraordinary." Visitation that is little over the standard 20% will usually not be considered extraordinary visitation warranting deviation. *See, e.g.*, *Flanagan v. Flanagan*, 656 So. 2d 1228 (Ala. Civ. App. 1995) (one month visitation in summer is not extraordinary visitation); *In re Marriage of Hornung*, 480 N.W.2d 91 (Iowa Ct. App. 1991) (visitation amounting to



21% of time for father was not reason for deviation); *Temple v. Temple*, 651 So. 2d 466 (La. Ct. App. 1995) (statute does not require deviation for extensive visitation; deviation not required, especially where there is no extended continuous period of visitation); *Schubert v. Tolivar*, 905 S.W.2d 924 (Mo. Ct. App. 1995) (father who had custody for two weeks at end of each of three summer months was not entitled to deviation for extraordinary visitation, since he did not ever have children for 30 day stretch); *Susan M. v. Louis N.*, 206 A.D.2d 612, 614 N.Y.S.2d 584 (1994) (partaking of regular visitation is not a reason to deviate down from the guidelines); *Gaudette v. Gaudette*, 192 A.D.2d 779, 596 N.Y.S.2d 173 (1993) (every weekend visitation does not constitute extraordinary visitation); *Connor v. Connor*, 434 Pa. Super. 288, 642 A.2d 1136 (1994) (27% visitation not extraordinary).

Second, the court will focus its inquiry on whether the extra time spent with the non-custodial parent results in a greater financial burden on the non-custodial parent and in a concomitant lesser financial burden on the custodial parent.

The Washington State guidelines state the test clearly:

The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving support to meet the basic needs of the child or if the child is receiving aid to families with dependent children. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

The many cases that have considered extraordinary visitation as a deviation factor have echoed this test: a deviation may not be had unless there is evidence that the

extended visitation has a concrete economic impact on the non-custodial parent and the custodial parent. *Turinsky v. Long*, 910 P.2d 590 (Alaska 1996); *Renfro v. Renfro*, 848 P.2d 803 (Alaska 1993) (adjustment based on expenses incurred during visitation should at least be considered by court, even if deviation is not ultimately granted); *Pridgeon v. Pridgeon*, 632 So. 2d 257 (Fla. Dist. Ct. App. 1994) (child's extended visitation with father can be considered in making award where extended stays have the effect of reducing the custodial parent's expenses); *Marmaduke v. Marmaduke*, 640 N.E.2d 441 (Ind. Ct. App. 1994) (where father had custody close to 50%, proper to deviate to compensate for added expenses); *Terpstra v. Terpstra*, 588 N.E.2d 592 (Ind. Ct. App. 1992) (close to 50% custody warranted deviation where there was evidence concerning noncustodial parent's expenses); *In re Marriage of Cray*, 18 Kan. App. 2d 15, 846 P.2d 944 (1993) (court may deviate for extensive visitation); *Remson v. Remson*, 672 So. 2d 409 (La. Ct. App. 1996) (court would reduce father's obligation because of economic impact of extended visitation); *Brazan v. Brazan*, 638 So. 2d 1176 (La. Ct. App. 1994) (where father had child 50% of the time, court would deviate to account for such arrangement, since father paid for child care and medical insurance); *Montet v. Montet*, 629 So. 2d 538 (La. Ct. App. 1993) (joint custody is reason for deviation where the parents contribute equally in the day-to-day care of the child); *Hoffman v. Hoffman*, 870 S.W.2d 480 (Mo. Ct. App. 1994) (noncustodial father not entitled to reduction in support, despite claim that children were with him 36% of the time, where there was no evidence concerning economic impact); *Kappelmann v. Kappelmann*, 218 A.D.2d 698, 630 N.Y.S.2d 555 (1995) (father entitled to adjustment in support for summer months children spent with him); *Narvae v. Freestone*, 281 N.J. Super.

484, 658 A.2d 736 (1995) (father who had custody 39% of time was entitled to credit on support where such custody had an impact on the father's expenses, in that he was responsible for child care); *Mocnik v. Mocnik*, 838 P.2d 500 (Okla. 1992) (reduction in support allowed due to extensive visitation in summer months). *Cf. Garrod v. Garrod*, 590 N.E.2d 163 (Ind. Ct. App. 1992) (no deviation in guidelines although custody approached 40%, where trial court did not find economic impact on noncustodial parent); *In re Marriage of Toedter*, 473 N.W.2d 233 (Iowa Ct. App. 1991) (support not reduced during periods of visitation where there was no evidence the custodial parent had reduced expenses); *Bronstein v. Bronstein*, 203 A.D.2d 703, 610 N.Y.S.2d 638 (1994) (extra visitation exercised by father did not warrant deviation where there was no evidence of the financial impact such visitation had on the custodial parent); *Martin v. Martin*, 66 Ohio St. 3d 110, 609 N.E.2d 537 (1993) (the adoption of a joint parenting plan does not, in and of itself, mandate deviation from the guidelines); *Anzalone v. Anzalone*, 449 Pa. Super. 201, 673 A.2d 377 (1996) (where father had 40% custody, deviation in amount of 50% was not appropriate; father may "extra" expenses claimed father would have paid for anyway); *Baumgartner v. Moore*, 14 Va. App. 696, 419 S.E.2d 291 (1992) (deviation not warranted where noncustodial parent was unable to show that expenses were greater than those contemplated by legislature in guidelines). *See also* Annotation, *Right to Credit on Accrued Support Payments for Time Child is in Father's Custody or for Other Voluntary Expenditures*, 47 A.L.R.3d 1031 (1973).

Where a court does decide to deviate because of extraordinary visitation, the court may deviate only for those expenses above and beyond the expenses that the guidelines

presume the noncustodial parent will pay. In other words, since the guidelines assume 20% custody in the basic figures, where parents share custody 50%/50%, the adjustment should be only the extra 30%, not 50%. *Prosser v. Cook*, 185 Wis. 2d 745, 519 N.W.2d 649 (Ct. App. 1994). See also *Matula v. Bower*, 634 N.E.2d 537 (Ind. Ct. App. 1994) (court would not deviate additionally for father's claimed clothing, medical, and education expenses, where court already reduced presumptive award by 10% to account for expenses associated with extended visitation).

A deviation because of extraordinary visitation can lead to the interesting result that the custodial parent must pay the non-custodial parent support. This occurred in *Little v. Little*, 441 Pa. Super. 176, 657 A.2d 12 (1995). In that case, after a modification of custody proceeding, the father was awarded custody of the parties' two children and the father's obligation to pay child support was vacated. The mother later requested modification of the support order, requesting that the custodial father pay her support for the time she exercised her visitation. The trial court denied the request, but the superior court reversed, holding that visitation with the mother was so extensive, it should be more properly labeled "shared custody." Given the extensive amount of time the children are in the custody of the mother, the mother's limited income versus the father's \$20,000 per month income, an award of support to the non-custodial parent was proper. Accord *Clarke v. Clarke*, 619 So. 2d 1046 (Fla. Dist. Ct. App. 1993) (although mother was non-custodial parent, visitation was so substantial that it was like shared custody; given disparities in income, mother properly received support); *LeBlanc v. LeBlanc*, 597 A.2d 62 (Me. 1991) (where mother and father shared parental rights, mother had child more than 30% of time, even though

father was designated as primary residential care provider, father was properly ordered to pay support to mother); *Matz v. Matz*, 166 Wis. 2d 326, 479 N.W.2d 245 (Ct. App. 1991) (in joint legal custody situation, there is no rule that parent with primary physical placement cannot be ordered to pay support to the non-primary parent). *See also Sillis v. Hernandez*, 608 So. 2d 289 (La. Ct. App. 1992) (mother had right to receive support from father during three summer months father was domiciliary parent in absence of judgment stating support would cease for those months); *Leone v. Leone*, 917 S.W.2d 608 (Mo. Ct. App. 1996) (mother gets support during school year, father gets support during summer months).

**Table**

**STATE BY STATE TREATMENT OF SHARED CUSTODY**

STATE	New Formula for Equal Custody	Sliding Scale Based on % Time	Deviation Factor
Alabama			X
Alaska		X	
Arizona	X	X	
Arkansas		X	
California			X
Colorado		X	
Connecticut			X
Delaware	X		
D.C.		X	
Florida		X	
Georgia			X
Hawaii	X		
Idaho	X		
Illinois			X
Indiana		X	
Iowa		X	
Kansas		X	
Kentucky			X
Louisiana	X		X

			X
Maine		X	
Maryland			X
Massachusetts	X	X	
Michigan		X	
Minnesota	X		X
Mississippi			X
Missouri			X
Montana			X
Nebraska	X	X	
Nevada			X
New Hampshire		X	
New Jersey			
New Mexico	X		X
New York		X	
North Carolina		X	
North Dakota	X		X
Ohio		X	
Oklahoma		X	
Oregon		X	
Pennsylvania			X
Rhode Island		X	
South Carolina		X	
South Dakota		X	
Tennessee			X
Texas		X	
Utah		X	
Vermont		X	
Virginia			X
Washington		X	
West Virginia		X	
Wisconsin		X	
Wyoming			

(Note that in this table, some states have two X marks. For example, in Louisiana, there is a set formula for equal custody, but extensive time is a deviation factor.)

**Table**

**STATE BY STATE SURVEY OF  
CHILD SUPPORT FORMULAS IN SHARED CUSTODY SITUATIONS**

**(1) Alaska Rules of Civil Procedure, Rule 90.3**

(b) Shared, Divided, and Hybrid Physical Custody.

(1) Shared Physical Custody. A child support award in a case in which the parents are awarded shared physical custody as defined by paragraph (f) will be calculated by:

(A) Calculating the annual amount each parent would pay to the other parent under paragraph (a) assuming the other parent had primary custody. In this calculation the income limit in subparagraph (c)(2) and the minimum support amount in subparagraph (c)(3) apply.

(B) Multiplying this amount for each parent by the percentage of time the other parent will have physical custody of the children. However, if the court finds that the percentage of time each parent will have physical custody will not accurately reflect the ratio of funds each parent will directly spend on supporting the children, the court shall vary this percentage to reflect its findings.

(C) The parent with the larger figure calculated in the preceding subparagraph is the obligor parent and the annual award is equal to the difference between the two figures multiplied by 1.5. However, if this figure is higher than the amount of support which would be calculated under paragraph (a) assuming primary custody, the annual support is the amount calculated under paragraph (a).

(D) The child support award is to be paid in 12 equal monthly installments except as follows:

(i) if shared custody is based on the obligor parent having physical custody for periods of 30 consecutive days or more, the total annual award may be paid in equal installments over those months in which the obligor parent does not have physical custody; or

(ii) if the obligor parent's income is seasonal, the court may order unequal monthly support payments as provided in subparagraph (c)(5).

(E) The child support order must state that failure to exercise sufficient physical custody to qualify for shared physical custody under this rule is grounds for modification of the child support order. Denial of visitation by the custodial parent is not cause to increase

child support.

## **(2) Arizona Child Support Guidelines (2005)**

Because the Schedule of Basic Child Support Obligations is based on expenditures for children in intact households, there is no consideration for costs associated with parenting time. When parenting time is exercised by the noncustodial parent, a portion of the costs for children normally expended by the custodial parent shifts to the noncustodial parent. Accordingly, unless it is apparent from the circumstances that the noncustodial parent will not incur costs for the children during parenting time, when proof establishes that parenting time is or is expected to be exercised by the noncustodial parent, an adjustment shall be made to that parent's proportionate share of the Total Child Support Obligation. To calculate child support in equal custody cases, see Section 12.

For purposes of calculating parenting time days, only the time spent by a child with the noncustodial parent is considered. Time that the child is in school or childcare is not considered.

To adjust for the costs of parenting time, first determine the total annual amount of parenting time indicated in a court order or parenting plan or by the expectation or historical practice of the parents. Using the following definitions, add together each block of parenting time to arrive at the total number of parenting time days per year. Calculate the number of parenting time days arising from any block of time the child spends with the noncustodial parent in the following manner:

- A. Each block of time begins and ends when the noncustodial parent receives or returns the child from the custodial parent or from a third party with whom the custodial parent left the child. Third party includes, for example, a school or childcare provider.
- B. Count one day of parenting time for each 24 hours within any block of time.
- C. To the extent there is a period of less than 24 hours remaining in the block of time, after all 24-hour days are counted or for any block of time which is in total less than 24 hours in duration:
  - 1. A period of 12 hours or more counts as one day.
  - 2. A period of 6 to 11 hours counts as a half-day.
  - 3. A period of 3 to 5 hours counts as a quarter-day.
  - 4. Periods of less than 3 hours may count as a quarter-day if, during those hours, the noncustodial parent pays for routine expenses of the child, such as meals.

After determining the total number of parenting time days, refer to "Parenting Time Table A" below. The left column of the table sets forth numbers of parenting time days in increasingly higher ranges. Adjacent to each range is an adjustment percentage. The parenting time adjustment is calculated as follows: locate the total number of parenting time days per year in the left column of "Parenting Time Table A" and select the adjustment percentage from the adjacent column. Multiply the Basic Child Support



Obligation determined under Section 8 by the appropriate adjustment percentage. The number resulting from this multiplication then is subtracted from the proportionate share of the Total Child Support Obligation of the parent who exercises parenting time. As the number of parenting time days approaches equal time sharing (143 days and above), certain costs usually incurred only in the custodial household are assumed to be substantially or equally shared by both parents. These costs are for items such as the child's clothing and personal care items, entertainment and reading materials. If this assumption is rebutted by proof, for example, that such costs are not substantially or equally shared in each household, only "Parenting Time Table B" must be used to calculate the parenting time adjustment for this range of days. Locate the total number of parenting time days per year in the left column of "Parenting Time Table B" and select the adjustment percentage from the adjacent column. Multiply the Basic Child Support Obligation determined under Section 8 by the appropriate adjustment percentage. The number resulting from this multiplication then is subtracted from the proportionate share of the Total Child Support Obligation of the parent who exercises parenting time.

**(3) California Fam. Code § 4055**

(a) The statewide uniform guideline for determining child support orders is as follows:  $CS = K (HN - (H\%) (TN))$ .

(b) (1) The components of the formula are as follows:

(A) CS = child support amount.

(B) K = amount of both parents' income to be allocated for child support as set forth in paragraph (3).

(C) HN = high earner's net monthly disposable income.

(D) H% = approximate percentage of time that the high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% equals the average of the approximate percentages of time the high earner parent spends with each child.

(E) TN = total net monthly disposable income of both parties.

**(4) Colorado Stat. Ann. § 14-10-115**

"Shared physical care", for the purposes of the child support guidelines and schedule of basic child support obligations specified in this section, and as further specified in paragraph (b) of subsection (8) of this section, means that each parent keeps the children overnight for more than ninety-two overnights each year and that both parents contribute to the expenses of the children in addition to the payment of child support. Because shared physical care presumes that certain basic expenses for the children will be duplicated, an adjustment for shared physical care is made by multiplying the basic child support obligation by one and fifty hundredths (1.50). In cases of shared physical care, each parent's adjusted basic child support obligation obtained by application of paragraph (b) of subsection (7) of this section shall first be divided

between the parents in proportion to their respective adjusted gross incomes. Each parent's share of the adjusted basic child support obligation shall then be multiplied by the percentage of time the children spend with the other parent to determine the theoretical basic child support obligation owed to the other parent. To these amounts shall be added each parent's proportionate share of work-related net child care costs, extraordinary medical expenses, and extraordinary adjustments to the schedule of basic child support obligations. The parent owing the greater amount of child support shall owe the difference between the two amounts as a child support order minus any ordered direct payments made on behalf of the children for work-related net child care costs, extraordinary medical expenses, or extraordinary adjustments to the schedule of basic child support obligations. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

#### **(5) Delaware Child Support Formula**

When a child spends more than 109 overnights per year in the home of the parent from whom support is sought, that parent may retain a percentage of the primary support allowance and the parents' combined SOLA. To determine the credit, enter on Line 21A the percentage from the following table corresponding to the number of annual overnights. Then multiply the percentage by Line 19 of THE OTHER PARENT and enter the result on Line 21B. If there are multiple children in different ranges, the percentages should be averaged. In all cases where the percentage is less than 50% the overnights must be evidenced by a Court order or written agreement, and Line 21B shall not exceed their own SOLA obligation (Line 17a).

#### **Annual Overnights Percentage**

Up to 109	0%
110 to 132	10%
133 to 150	20%
151 to 164	30%
165 to 174	40%
175 +	50%

#### **(6) District of Columbia Code § 16-916.01**

(q)(1) Where a child spends 35% or more of the time during the year with each parent, there shall be a presumption that the parents have shared physical custody of the child. The child support obligation shall be calculated according to the following procedure:

(A) Determine the adjusted basic child support obligation by calculating the basic child support obligation pursuant to subsection (f)(2) of this section and multiplying it by 1.5.

(B) Determine each parent's proportionate share of the adjusted basic child support obligation based on each parent's share of combined adjusted gross income.

(C) Determine the amount of child support to be retained by each parent by multiplying each parent's share of the adjusted basic child support obligation by the percentage of time the child spends with the relevant parent.

(D) Subtract the amount of child support to be retained by each parent from the relevant parent's share of the adjusted basic child support obligation to determine the amount of each parent's child support obligation.

(E) The parent owing the greater amount under subparagraph (D) of this paragraph shall be the parent with a legal duty to pay support, and shall pay the difference between the 2 amounts to the other parent.

(F) Additions to and deductions from the parents' respective shares of the adjusted basic child support obligation determined under subparagraph (D) of this paragraph, shall be made as specified in subsections (i) through (1) of this section.

(G) A child support obligation calculated based on shared physical custody shall not exceed the amount that the parent with a legal duty to pay support would pay if this parent's child support obligation were calculated based on the other parent's sole custody pursuant to subsection (f) of this section.

(2) Where the presumption of shared physical custody does not apply because the child does not spend 35% or more of the time during the year with each parent, the judicial officer shall presumptively calculate the child support obligation based on sole physical custody pursuant to subsection (f) of this section.

(3) If the presumption of shared physical custody applies pursuant to paragraph (1) of this subsection, either parent may rebut this presumption by proving that the method of calculating the child support obligation based on shared physical custody would be unjust or inappropriate because of the parents' particular arrangements for the custody of the child. If a parent rebuts this presumption, the judicial officer shall calculate the child support obligation based on sole physical custody pursuant to subsection (f) of this section.

(4) If the presumption of shared physical custody does not apply pursuant to paragraph (1) of this subsection, either parent may rebut the presumption that the support obligation should be calculated based on sole physical custody pursuant to subsection (f) of this section by proving that use of that method would be unjust or inappropriate based on the parents' particular arrangements for the custody of the child and that a calculation based on shared physical custody would yield a fair and just result. If a parent rebuts the presumption that the child support obligation should be calculated based on sole physical custody under this paragraph, the judicial officer shall calculate the child support obligation based on shared physical custody pursuant to paragraph (1) of this subsection.

(5) Where a parent has challenged the applicability of either method for calculating the child support obligation under this subsection, the judicial officer shall issue written factual findings stating the reason for using either the shared custody or sole custody method of calculation.

(6) Worksheet (B) in Appendix III may be used to calculate the child support obligation under this subsection.

**(7) Florida Stat. Ann. § 61.30**

(b) Whenever a particular parenting plan provides that each child spend a substantial amount of time with each parent, the court shall adjust any award of child support, as follows:

1. In accordance with subsections (9) and (10), calculate the amount of support obligation apportioned to each parent without including day care and health insurance costs in the calculation and multiply the amount by 1.5.

2. Calculate the percentage of overnight stays the child spends with each parent.

3. Multiply each parent's support obligation as calculated in subparagraph 1. by the percentage of the other parent's overnight stays with the child as calculated in subparagraph 2.

4. The difference between the amounts calculated in subparagraph 3. shall be the monetary transfer necessary between the parents for the care of the child, subject to an adjustment for day care and health insurance expenses.

5. Pursuant to subsections (7) and (8), calculate the net amounts owed by each parent for the expenses incurred for day care and health insurance coverage for the child. Day care shall be calculated without regard to the 25-percent reduction applied by subsection (7).

6. Adjust the support obligation owed by each parent pursuant to subparagraph 4. by crediting or debiting the amount calculated in subparagraph 5. This amount represents the child support which must be exchanged between the parents.

7. The court may deviate from the child support amount calculated pursuant to subparagraph 6. based upon the deviation factors in paragraph (a), as well as the obligee parent's low income and ability to maintain the basic necessities of the home for the child, the likelihood that either parent will actually exercise the time-sharing schedule set forth in the parenting plan granted by the court, and whether all of the children are exercising the same time-sharing schedule.

8. For purposes of adjusting any award of child support under this paragraph, "substantial amount of time" means that a parent exercises visitation at least 40 percent of the overnights of the year.

(c) A parent's failure to regularly exercise the court-ordered or agreed time-sharing schedule not caused by the other parent which resulted in the adjustment of the amount of child support pursuant to subparagraph (a)10. or paragraph (b) shall be deemed a substantial change of circumstances for purposes of modifying the child support award. A modification pursuant to this paragraph shall be retroactive to the date the noncustodial parent first failed to regularly exercise the court-ordered or agreed time-sharing schedule.

#### **(8) Indiana Child Support Guidelines**

The apportionment of credit for "transferred" and "duplicated" expenses will require a determination of the annual number of overnights of parenting time exercised by the parent who is to pay child support, the use of the standard Child Support Obligation Worksheet, a Parenting Time Table, and a Parenting Time Credit Worksheet.

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

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

If the parents are using the Parenting Time Guidelines without extending the weeknight

period into an overnight, the noncustodial parent will be exercising approximately 98 overnights.

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

#### **(9) Iowa Child Support Guidelines (2004)**

If the noncustodial parent's court-ordered visitation exceeds 127 days per year, the noncustodial parent shall receive a credit to the guideline amount of child support in accordance with the following table:

Days	Credit
128-147	15%
148-166	20%
167 or more but less than equally shared physical care	25%

For the purposes of this credit, "days" means overnights spent caring for the child. Failure to exercise court-ordered visitation may be a basis for modification. The credit for extraordinary visitation shall not reduce a child support obligation below the minimum amount required by the guidelines (\$50 for one child, \$75 for two children, \$100 for three children, or \$125 for four or more children).

#### **(10) Kansas Child Support Guidelines (2007)**

The court may consider the amount of time that the parent spends with the child. If the child spends 35% or more of the child's time with the parent not having primary residency, the court shall determine whether an adjustment in child support is appropriate. In calculating the parenting time adjustment, the child's time at school or in day care shall not be considered. To assist the court, the following table may be used to calculate the amount of parenting time adjustment. The adjustment percentage should be averaged if there is more than one child and if the percentages are not the same for each child. The Basic Child Support Obligation (line D.9) is then multiplied by the appropriate Parenting Time Adjustment Percentage using the following table. The Parenting Time Adjustment Percentage and the amount is entered on Line E.2.

Nonresidential Parent's

% of Child's Time	Parenting Time Adjustment
35%-39%	5%
40%-44%	10%
45%-49%	15%

c. Equal Parenting Time Adjustment: In situations where the court has not approved the use of the shared expense formula (III.B.7) but has determined that equal parenting time is in the best interest of the minor child, the parent who is designated by the court to pay the child(ren)'s direct expenses shall receive child support from the other parent. The parent paying the monthly support shall receive a 20% parenting time adjustment. The percentage adjustment should be applied to Line D.9 and then entered on line E.

2. This adjustment is given in recognition that the parent has the child or children in their care approximately half of the time during which they are assuming substantial additional costs and the other parent is relieved of a substantial amount of additional costs.

d. Extended Parenting Time Adjustment: In situations where a child spends fourteen (14) or more consecutive days with the parent not having primary residency, the support amount of the parent not having primary residency, the support amount of the parent not having primary residency from Line F.5 (calculated without a Parenting Time adjustment) may be proportionately reduced by up to 50% of the monthly support from Line F.5. Brief parenting time with the parent having primary residency shall not be deemed to interrupt the consecutive nature of the time. The amount allowed should be entered on Line E.2.

e. Non-Exercise of Parenting Time Adjustment: The court may make an adjustment based on the historical non-exercise of parenting time as set forth in the parenting plan. The amount allowed should be entered on line E.2 of the child support worksheet.

**(11) Maryland Fam. Law Code § 12-201, 12-204**

(1) "Shared physical custody" means that each parent keeps the child or children overnight for more than 35% of the year and that both parents contribute to the expenses of the child or children in addition to the payment of child support.

(2) Subject to paragraph (1) of this subsection, the court may base a child support award on shared physical custody:

- (i) solely on the amount of visitation awarded; and
- (ii) regardless of whether joint custody has been granted.

(1) In cases of shared physical custody, the adjusted basic child support obligation shall first be divided between the parents in proportion to their respective adjusted actual incomes.

(2) Each parent's share of the adjusted basic child support obligation shall then be multiplied by the percentage of time the child or children spend with the other parent to

determine the theoretical basic child support obligation owed to the other parent.  
 (3) Subject to the provisions of paragraphs (4) and (5) of this subsection, the parent owing the greater amount under paragraph (2) of this subsection shall owe the difference in the 2 amounts as child support.

## **(12) Michigan Child Support Formula Manual**

A) Presuming that as parents spend more time with their children they will directly contribute a greater share of the children's expenses, a base support obligation needs to offset some of the costs and savings associated with time spent with each parent.

(1) Base support mainly considers the cost of supporting a child who lives in one household. When a parent cares for a child overnight, that parent should cover many of the child's unduplicated costs, while the other parent will not have to spend as much money for food, utility, and other costs for the child.

(2) Apply the following Parental Time Offset Equation to adjust base support to reflect some of the cost shifts and savings associated with the child spending time with both parents:

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

$A_o$  = Approximate annual number of overnights the children will likely spend with parent A

$B_o$  = Approximate annual number of overnights the children will likely spend with parent B

$A_s$  = Parent A's base support obligation

$B_s$  = Parent B's base support obligation

**Note:** A negative result means that parent A pays and a positive result means parent B pays.

B) An offset for parental time generally applies to every support determination whether in an initial determination or subsequent modification, whether or not previously given.

C) Apply the parental time offset to adjust a base support obligation whenever the approximate annual number of overnights that each parent will likely provide care for the children-in-common can be determined. When possible, determine the approximate number based on past practice.

(1) When different children spend different numbers of overnights with the parents, use the average of the children's overnights.

(2) Absent credible evidence of changed practices, presume the same approximate number that was used in determining the most recent support order.

(3) In cases without a past determination or other credible evidence, presume the approximate number of overnights granted in the terms of the current custody or parenting time order.

(4) Credit a parent for overnights a child lawfully and actually spends with that parent including those exercised outside the terms of the currently effective order. This may happen by agreement, or when one parent voluntarily foregoes time granted in the order. Do not consider overnights exercised in violation of an order.

(a) If a parent produces credible evidence that the approximate number exercised differs from the number granted by the custody or parenting time order, credit the



number according to the evidence without requiring someone to formally petition to modify the custody or parenting time order.

(b) When the most recent support order deviated based on an agreement to use a number of overnights that differed from actual practice, absent some other change warranting modification, credible evidence of changed practices only includes an order changing the custody or parenting time schedule.

### **(13) Minnesota Stat. § 518A.36**

(a) The parenting expense adjustment under this section reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child, including, but not limited to, food, transportation, recreation, and household expenses. Every child support order shall specify the percentage of parenting time granted to or presumed for each parent. For purposes of this section, the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time. The percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent, or by using a method other than overnights if the parent has significant time periods on separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight. The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.

(b) If there is not a court order awarding parenting time, the court shall determine the child support award without consideration of the parenting expense adjustment. If a parenting time order is subsequently issued or is issued in the same proceeding, then the child support order shall include application of the parenting expense adjustment. Subd. 2. Calculation of parenting expense adjustment. The obligor is entitled to a parenting expense adjustment calculated as provided in this subdivision. The court shall: (1) find the adjustment percentage corresponding to the percentage of parenting time allowed to the obligor below:

Percentage Range of Adjustment	Parenting Time Percentage
(i) less than 10 percent	no adjustment
(ii) 10 percent to 45 percent	12 percent
(iii) 45.1 percent to 50 percent	presume parenting time is equal

(2) multiply the adjustment percentage by the obligor's basic child support obligation to arrive at the parenting expense adjustment; and (3) subtract the parenting expense adjustment from the obligor's basic child support obligation. The result is the obligor's basic support obligation after parenting expense adjustment.

### **(14) New Jersey Child Support Guidelines (2004)**

Appendix IX-F sole-parenting awards are adjusted for shared-parenting by calculating

the PAR's income share of the total two-household expenses (the basic support obligation plus the PAR's time adjusted-fixed expenses) for the child and then deducting the PAR's time-adjusted fixed and variable expenses for the child. This mechanism adjusts the award to accommodate the PAR's fixed and variable expenses incurred while the child is with that parent and the PPR's reduced variable expenses while the child is not in that parent's household. The PAR's income share of the net supplemental expenses (e.g., child care, court-approved special needs) is added to the PAR's adjusted basic obligation. Detailed instructions and a worksheet for calculating shared-parenting awards are provided in Appendices IX-B and IX-D respectively.

#### **(15) North Carolina Child Support Guidelines (2006)**

In cases involving shared custody, the parents' combined basic support obligation is increased by 50% (multiplied by 1.5) and is allocated between the parents based on their respective incomes and the amount of time the children live with the other parent. The adjustment based on the amount of time the children live with the other parent is calculated for all of the children regardless of whether a parent has primary, shared, or split custody of a child. After child support obligations are calculated for both parents, the parent with the higher child support obligation is ordered to pay the difference between his or her presumptive child support obligation and the other parent's presumptive child support obligation.

#### **(16) North Dakota Child Support Guidelines (2008), N.D. Admin. Code § 75-02-04.1-08.1**

1. For purposes of this section, "extended visitation" means visitation between an obligor and a child living with an obligee scheduled by court order to exceed sixty of ninety consecutive nights or an annual total of one hundred sixty-four nights.
2. Notwithstanding any other provision of this chapter, if a court order provides for extended visitation between an obligor and a child living with an obligee, the support obligation presumed to be the correct child support amount due on behalf of all children of the obligor living with the obligee must be determined under this subsection.
  - a. Determine the amount otherwise due under this chapter from the obligor for those children.
  - b. Divide the amount determined under subdivision a by the number of those children.
  - c. For each child, multiply the number of that child's visitation nights times .32 and subtract the resulting amount from three hundred sixty-five.
  - d. Divide the result determined under subdivision c by three hundred sixty-five.
  - e. Multiply the amount determined under subdivision b times each decimal fraction determined under subdivision d.
  - f. Total all amounts determined under subdivision e.

**(17) Oklahoma Stat. tit. 43, § 118E**

**A. Parenting time adjustment.**

1. The adjustment may be granted based upon a court order or agreement that the noncustodial parent is granted at least one hundred twenty-one (121) overnights of parenting time per twelve-month period with the children in the case under consideration.

2. Average parenting time. If there are multiple children for whom support is being calculated, and the parent seeking the parenting time adjustment is spending a different amount of time with each child, then an annual average of parenting time with all of the children shall be calculated.

**B.** In cases of split physical custody, either parent may be eligible for a parenting time adjustment.

**C.** Parenting time adjustments are not mandatory, but presumptive. The presumption may be rebutted in a case where the circumstances indicate the adjustment is not in the best interest of the child or that the increased parenting time by the noncustodial parent does not result in greater expenditures which would justify a reduction in the support obligation.

**D.** Reduction in child support obligation for additional parenting time.

1. If the parent receiving the parenting time adjustment is granted one hundred twenty-one (121) or more overnights of parenting time per twelve-month period with a child, or an average of one hundred twenty-one (121) overnights with all applicable children, a reduction to the child support obligation of the parent may be made as set forth in this section.

2. A parenting time adjustment shall be made to the base monthly child support obligation by the following formula: The total combined base monthly child support obligation shall be multiplied by a factor determined by the number of overnights granted to the noncustodial parent. The result shall be designated the adjusted combined child support obligation. In a case where the noncustodial parent is granted:

a. one hundred twenty-one (121) overnights to one hundred thirty-one (131) overnights, the factor shall be two (2),

b. one hundred thirty-two (132) overnights to one hundred forty-three (143) overnights, the factor shall be one and three-quarters (1.75), or

c. one hundred forty-four (144) or more overnights, the factor shall be one and one-half

(1.5).

3. To determine the adjusted child support obligation of each parent, the adjusted combined child support obligation shall be divided between the parents in proportion to their respective adjusted gross incomes.

4. a. The percentage of time a child spends with each parent shall be calculated by determining the number of overnights for each parent and dividing that number by three hundred sixty-five (365).

b. The share of the adjusted combined child support obligation for each parent shall then be multiplied by the percentage of time the child spends with the other parent to determine the base child support obligation owed to the other parent.

c. The respective adjusted base child support obligations for each parent are then offset, with the parent owing more base child support paying the difference between the two amounts to the other parent. The base child support obligation of the parent owing the lesser amount is then set at zero dollars (\$0.00).

5. The parent owing the greater amount of base child support shall pay the difference between the two amounts as a child support order. In no event shall the provisions of this paragraph be construed to authorize or allow the payment of child support by a parent having more than two hundred five (205) overnights.

E. 1. Failure to exercise or exercising more than the number of overnights upon which the parenting time adjustment is based, is a material change of circumstances.

2. If the court finds that the obligor has failed to exercise a significant number of the overnights provided in the court order necessary to receive the parenting time adjustment, in a proceeding to modify the child support order, the court may establish the amount that the obligor has underpaid due to the application of the parenting time adjustment as a child support judgment that may be enforced in the same manner as any other child support judgment.

3. The court may rule that the obligor will not receive the parenting time adjustment for the next twelve-month period. After a twelve-month period during which the obligor did not receive the parenting time adjustment, the obligor may petition the court to modify the child support order. The obligor may be granted a prospective parenting time adjustment upon a showing that the obligor has actually exercised the threshold number of overnights in the preceding twelve months. No retroactive modification or credit from the child support guidelines amount shall be granted based on this section.

#### **(18) Oregon Child Support Guidelines, Administrative Regulations § 137-050-0455**

(1) If there is a current written parenting time agreement or court order providing for

parenting time and/or the parents have split custody, the percentage of overall parenting time for each parent must be calculated as follows:

- (a) Determine the average number of overnights using two consecutive years.
- (b) Multiply the number of joint minor children by 365 to arrive at a total number of minor child overnights. Add together the total number of overnights the parent is allowed with each joint minor child and divide the parenting time overnights by the total number of minor child overnights.
- (c) If the parents have split custody but no current written parenting time agreement or court order providing for parenting time, each parent will be attributed 365 days for the minor child(ren) in the parents physical custody.
- (d) Notwithstanding the calculation provided in subsections (1)(b) and (1)(c), the percentage of parenting time may be determined using a method other than overnights if the parents have an alternative parenting time schedule in which a parent has significant time periods where the minor child is in the parents physical custody but does not stay overnight.
- (2) If the court or administrative law judge determines actual parenting time exercised by a parent is different than what is provided in a written parenting plan or court order, the percentage of parenting time may be calculated using the actual parenting time exercised by the parent.
- (3) If there is no written parenting time agreement or court order providing for parenting time, the parent having primary physical custody shall be treated as having 100 percent of the parenting time.
- (4) No parenting time will be attributed to either parent for a child who is a child attending school as defined in ORS 107.108 and OAR 137-055-5110.

...

- (1) This rule applies when the overall parenting time calculated pursuant to OAR 137-050-0450 is 25 percent or greater for each parent.
- (2) Parent B will be entitled to a parenting time credit for joint minor children only and will be calculated as follows:
  - (a) Multiply the Basic Child Support Obligation for Joint Minor Child(ren), from OAR 137-050-0330 section (7), by 1.5 (150%).
  - (b) Multiply each parents percentage share of income by the amount in subsection (a).

(c) Multiply the amount for each parent in subsection (b) by the percentage time with each parent.

(d) Subtract the amount in subsection (c) from the amount in subsection (b) for each parent.

(3) If the parenting time is equal, the expenses for the children are equally shared and the adjusted gross incomes of the parents also are equal, no support shall be paid.

(4) If the parenting time is equal but the parents adjusted gross incomes are not equal, the parent having the greater adjusted gross income shall be obligated for the amount of basic child support needed to equalize the basic child support to each parent, calculated as follows:

(a) After the basic child support obligation has been prorated between the parents, subtract the lower amount from the higher amount and divide the balance in half.

(b) The resulting figure is the obligation after parenting time credit for the parent with the greater adjusted gross income.

(5) This parenting time credit reflects the presumption that while exercising parenting time, a parent is responsible for and incurs the costs of caring for the child, including but not limited to, food, clothing, transportation, recreation and household expenses.

#### **(19) Pennsylvania Code Rule 1910.16-4**

(1) When the children spend 40% or more of their time during the year with the obligor, a rebuttable presumption arises that the obligor is entitled to a reduction in the basic support obligation to reflect this time. Except as provided in subsections (2) and (3) below, the reduction shall be calculated pursuant to the formula set forth in Part II of subdivision (a) of this rule. For purposes of this provision, the time spent with the children shall be determined by the number of overnights they spend during the year with the obligor.

(2) Without regard to which parent initiated the support action, when the children spend equal time with both parents, the Part II formula cannot be applied unless the obligor is the parent with the higher income. In no event shall an order be entered requiring the parent with the lower income to pay basic child support to the parent with the higher income. However, nothing in this subdivision shall prevent the entry of an order requiring the parent with less income to contribute to additional expenses pursuant to Rule 1910.16-6. Pursuant to either party's initiating a support action, the trier of fact may enter an order against either party based upon the evidence presented without regard to which party initiated the action. If application of the formula in Part II results in the obligee receiving a larger share of the parties' combined income in cases in which the parties share custody equally, then the court shall adjust the support obligation so that the combined income is allocated equally between the two households.

## **(20) South Carolina Child Support Guidelines (2006)**

The basic child support obligation shall be multiplied by 1.5 to arrive at a shared custody basic child support obligation. The shared custody basic child support obligation is apportioned to each parent according to his or her income. In turn, a child support obligation is computed for each parent by multiplying that parent's portion of the shared custody child support obligation by the percentage of time the children spend with that parent. The respective basic child support obligations are then offset, with the parent owing more basic child support paying the difference between the two amounts. The transfer for the basic obligation for the parent owing less basic child support shall be set at zero dollars.

## **(21) South Dakota Cod. Laws § 25-7-6.14**

Abatement of portion of child support--Shared responsibility cross credit. As used in this section, basic visitation means a parenting plan whereby one parent has physical custody and the other parent has visitation with the child of the parties. In a basic visitation situation, unless the parties otherwise agree and the agreement is approved by the court, the court may, if deemed appropriate under the circumstances, order an abatement of not less than thirty-eight percent nor more than sixty-six percent of the child support if:

- (1) A child spends ten or more days in a month with the obligor; and
- (2) The days of visitation and the abatement amount are specified in the court order.

The court shall allow the abatement to the obligor in the month in which the visitation is exercised, unless otherwise ordered. The abatement shall be pro-rated to the days of visitation. It shall be presumed that the visitation is exercised. If the visitation exercised substantially deviates from the visitation ordered, either party may file a petition for modification without showing any other change in circumstances.

As used in this section, shared responsibility means a parenting plan whereby each parent provides a suitable home for the child of the parties, the court order allows the child to spend at least one hundred twenty days in a calendar year in each home, and the parents have agreed in writing to share the duties, responsibilities, and expenses of parenting, including expenses for the child's education, recreation, and entertainment activities. In a shared responsibility situation, unless the parties otherwise agree and the agreement is approved by the court, the court may, if deemed appropriate under the circumstances, order a shared responsibility cross credit. The cross credit shall be calculated by multiplying the combined child support obligation using both parents' monthly net incomes by 1.5 to arrive at a shared custody child support obligation. The shared custody child support obligation shall be apportioned to each parent according to his or her net income. A child support obligation is computed for each parent by multiplying that parent's portion of the shared custody child support obligation by the percentage of time the child spends with the other parent. The respective child support obligations are offset, with the parent owing more child support paying the difference between the two amounts. It shall be presumed that the shared responsibility parenting

plan is exercised. If the parenting plan exercised substantially deviates from the parenting plan ordered, either party may file a petition for modification without showing any other change in circumstances.

The court shall consider each case individually before granting either the basic visitation or shared responsibility adjustment to insure that the adjustment does not place an undue hardship on the custodial parent or have a substantial negative effect on the child's standard of living.

## **(22) Tennessee Dept. of Human Services Rule 1240-2-4-.04**

1. If the ARP spends ninety-two (92) or more days per calendar year with a child, or an average of ninety-two (92) days with all applicable children, an assumption is made that the ARP is making greater expenditures on the child during his/her parenting time for transferred costs such as food and/or is making greater expenditures for child-rearing expenses for items that are duplicated between the two (2) households (e.g., housing or clothing). A reduction to the ARP's child support obligation may be made to account for these transferred and duplicated expenses, as set forth in this chapter. The amount of the additional expenses is determined by using a mathematical formula that changes according to the number of days the ARP spends with the child and the amount of the BCSO. The mathematical formula is called a "variable multiplier."

2. Upon reaching the threshold of ninety-two (92) days, the variable multiplier shall be applied to the BCSO, which will increase the amount of the BCSO in relation to the ARP's parenting time, in order to account for the child-rearing expenses incurred by the ARP during parenting time. These additional expenses are divided between the parents according to each parent's PI. The PRP's share of these additional expenses represents an amount owed by the PRP to the ARP and is applied as a credit against the ARP's obligation to the PRP.

3. The presumption that more parenting time by the ARP results in greater expenditures which should result in a reduction to the ARP's support obligation may be rebutted by evidence.

4. Calculation of the Parenting Time Credit.

(i) First, the variable multiplier is determined by multiplying a standard per diem of .0109589 [2 / 182.5] by the ARP's parenting time determined pursuant to paragraph (7)(b) above. For example, the 94 days of parenting time calculated in the example from paragraph (7)(b)4(i) is multiplied by .0109589, resulting in a variable multiplier of 1.0301366 [94 x .0109589].

(ii) Second, the variable multiplier calculated in subpart (i) above is applied to the amount of the parties' total BCSO, which results in an adjusted BCSO. For example, application of the variable multiplier determined above for ninety-four (94) days of parenting time to a BCSO of one thousand dollars (\$1000) would result in an adjusted BCSO of one thousand thirty dollars and fourteen cents (\$1030.14) [ $\$1000 \times$



1.0301366].

(iii) Third, the amount of the BCSO is subtracted from the adjusted BCSO. The difference is the child-rearing expenses associated with the ARP's additional parenting time. In the example above, the additional childrearing expenses associated with the ninety-four (94) days of parenting time would be thirty dollars and fourteen cents (\$30.14) [ $\$1030.14 - \$1000$ ].

(iv) The additional child-rearing expenses determined in subpart (iii) above are pro-rated between the parents according to each parent's percentage of income (PI). The PRP's share of these additional expenses is applied as an adjustment against the ARP's pro-rata share of the original BCSO. For instance, if the PRP's PI is forty percent (40%), the PRP's share of the additional expenses in the example above would be twelve dollars and six cents (\$12.06) [ $\$30.14 \times 40\%$ ]. The twelve dollars and six cents (\$12.06) is applied as a credit against the ARP's share of the BCSO, resulting in a child support obligation for the ARP of five hundred eighty-seven dollars and ninety-four cents (\$587.94) [ $\$1000 \times 60\% = \$600 - \$12.06$ ].

### **(23) Utah Code § 78B-12-208**

In cases of joint physical custody, the base child support award shall be determined as follows:

(1) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table.

(2) Calculate each parent's proportionate share of the base combined child support obligation by multiplying the base combined child support obligation by each parent's percentage of combined adjusted gross income. The amounts so calculated are the base child support obligation due from each parent for support of the children.

(3) If the obligor's time with the children exceeds 110 overnights, the obligation shall be calculated further as follows:

(a) if the amount of time to be spent with the children is between 110 and 131 overnights, multiply the number of overnights over 110 by .0027, then multiply the result by the base combined child support obligation, and then subtract the result from the obligor's payment as determined by Subsection (2) to arrive at the obligor's payment; or

(b) if the amount of time to be spent with the children is 131 overnights or more, multiply the number of overnights over 130 by .0084, then multiply the result by the base combined child support obligation, and then subtract the result from the obligor's payment as determined in Subsection (3)(a) to arrive at the obligor's payment.

**(24) Vermont Stat. tit. 15, § 657**

(a) When each parent exercises physical custody for 30 percent or more of a calendar year, the total child support obligation shall be increased by 50 percent to reflect the additional costs of maintaining two households. Each parental support obligation shall be determined by dividing the total support obligation between the parents in proportion to their respective available incomes and in proportion to the amount of time each parent exercises physical custody. The parental support obligations shall then be offset, with the parent owing the larger amount being required to pay the difference between the two amounts to the other parent.

(b) When one parent exercises physical custody for 25 percent or more but less than 30 percent of a calendar year, each parent's respective share of the total support obligation shall be determined in accordance with a shared costs table adopted by the agency of human services by rule. The shared costs table shall be developed in such a way as to minimize economic disputes over parent-child contact or visitation and shall reflect the additional costs of maintaining two households by increasing the total support obligation by 50 percent.

(c) In no event shall a parent be required to pay child support under subsection (a) or (b) of this section in an amount greater than the amount that would have been ordered under the support guidelines.

(d) For purposes of this section, "physical custody" means keeping the children overnight. The parent having custody for the greater period of time shall be considered the custodial parent for the purposes of section 661 of this title.

(e) When each parent has physical custody of at least one of the children, a theoretical support payment shall be determined for each parent for the children in the custody of the other, prorating the obligations among all children in the household. The obligations shall then be offset, with the parent owing the larger amount being required to pay the difference between the two amounts to the other parent.

**(25) Virginia Stat. § 20-108.2**

(a) Where a party has custody or visitation of a child or children for more than 90 days of the year, as such days are defined in subdivision G 3 (c), a shared custody child support amount based on the ratio in which the parents share the custody and visitation of any child or children shall be calculated in accordance with this subdivision. The presumptive support to be paid shall be the shared custody support amount, unless a party affirmatively shows that the sole custody support amount calculated as provided in subdivision G 1 is less than the shared custody support amount. If so, the lesser amount shall be the support to be paid. For the purposes of this subsection, the following shall apply:

(i) Income share. "Income share" means a parent's percentage of the combined monthly gross income of both parents. The income share of a parent is that parent's gross income divided by the combined gross incomes of the parties.

(ii) Custody share. "Custody share" means the number of days that a parent has physical custody, whether by sole custody, joint legal or joint residential custody, or visitation, of a shared child per year divided by the number of days in the year. The actual or anticipated "custody share" of the parent who has or will have fewer days of physical custody shall be calculated for a one-year period. The "custody share" of the other parent shall be presumed to be the number of days in the year less the number of days calculated as the first parent's "custody share." For purposes of this calculation, the year may begin on such date as is determined in the discretion of the court, and the day may begin at such time as is determined in the discretion of the court. For purposes of this calculation, a day shall be as defined in subdivision G 3 (c).

(iii) Shared support need. "Shared support need" means the presumptive guideline amount of needed support for the shared child or children calculated pursuant to subsection B of this section, for the combined gross income of the parties and the number of shared children, multiplied by 1.4.

(iv) Sole custody support. "Sole custody support" means the support amount determined in accordance with subdivision G 1.

(b) Support to be paid. The shared support need of the shared child or children shall be calculated pursuant to subdivision G 3 (a) (iii). This amount shall then be multiplied by the other parent's custody share. To that sum for each parent shall be added the other parent's cost of health care coverage to the extent allowable by subsection E, plus the other parent's work-related child-care costs to the extent allowable by subsection F. This total for each parent shall be multiplied by that parent's income share. The support amounts thereby calculated that each parent owes the other shall be subtracted one from the other and the difference shall be the shared custody support one parent owes to the other, with the payor parent being the one whose shared support is the larger. Unreimbursed medical and dental expenses shall be calculated and allocated in accordance with subsection D.

(c) Definition of a day. For the purposes of this section, "day" means a period of 24 hours; however, where the parent who has the fewer number of overnight periods during the year has an overnight period with a child, but has physical custody of the shared child for less than 24 hours during such overnight period, there is a presumption that each parent shall be allocated one-half of a day of custody for that period.

## **(26) West Virginia Stat. § 48-13-501**

Child support for cases with extended shared parenting is calculated using Worksheet B. The following method is used only for extended shared parenting: That is, in cases

where each parent has the child for more than one hundred twenty-seven days per year (thirty-five percent).

(1) The basic child support obligation is multiplied by 1.5 to arrive at a shared parenting basic child support obligation. The shared parenting basic child support obligation is apportioned to each parent according to his or her income. In turn, a child support obligation is computed for each parent by multiplying that parent's portion of the shared parenting child support obligation by the percentage of time the child spends with the other parent. The respective basic child support obligations are then offset, with the parent owing more basic child support paying the difference between the two amounts. The transfer for the basic obligation for the parent owing less basic child support shall be set at zero dollars.

(2) Adjustments for each parent's additional direct expenses on the child are made by apportioning the sum of the parent's direct expenditures on the child's share of any unreimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the court less any extraordinary credits agreed to by the parents or ordered by the court to each parent according to their income share. In turn each parent's net share of additional direct expenses is determined by subtracting the parent's actual direct expenses on the child's share of any unreimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or by the court less any extraordinary credits agreed to by the parents or ordered by the court from their share. The parent with a positive net share of additional direct expenses owes the other parent the amount of his or her net share of additional direct expenses. The parent with zero or a negative net share of additional direct expenses owes zero dollars for additional direct expenses.

(3) The final amount of the child support order is determined by summing what each parent owes for the basic support obligation and additional direct expenses as defined in subdivisions (1) and (2) of this section. The respective sums are then offset, with the parent owing more paying the other parent the difference between the two amounts.

#### **(27) Wisconsin DCF 150.04**

(a) The shared-placement formula may be applied when both of the following conditions are met:

1. Both parents have court-ordered periods of placement of at least 25% or 92 days a year. The period of placement for each parent shall be determined by calculating the number of overnights or equivalent care ordered to be provided by the parent and dividing that number by 365. The combined periods of placement for both parents shall equal 100%.

2. Each parent is ordered by the court to assume the child's basic support costs in proportion to the time that the parent has placement of the child.

(b) The child support obligations for parents who meet the requirements of par. (a) may

be determined as follows:

1. Determine each parent's monthly income available for child support under s. DCF 150.03 (1). In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time under s. DCF 150.03 (3), the court shall consider benefits to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more.
2. Multiply each parent's monthly income available for child support by the appropriate percentage standard under s. DCF 150.03 (1).
3. Multiply each amount determined under subd. 2. by 150%.
4. Multiply the amount determined for each parent under subd. 3. by the proportion of the time that the child spends with the other parent to determine each parent's child support obligation.
5. Offset resulting amounts under subd. 4. against each other. The parent with a greater child support obligation is the shared-placement payer. The shared-placement payer shall pay the lesser of the amount determined under this subd. or the amount determined using the appropriate percentage standard under s. DCF 150.03 (1). If the shared-placement payer is also a low-income payer, the child support obligation may be the lesser of the amount determined under this subd. or under sub. (4).
6. In addition to the child support obligation determined under subd. 5., the court shall assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. The court shall direct the manner of payment of a variable cost order to be either between the parents or from a parent to a third-party service provider. The court shall not direct payment of variable costs to be made to the department or the department's designee, except as incorporated in the fixed sum or percentage expressed child support order.

#### **(28) Wyoming Stat. 20-2-304**

When each parent keeps the children overnight for more than forty percent (40%) of the year and both parents contribute substantially to the expenses of the children in addition to the payment of child support, a joint presumptive support obligation shall be determined by use of the tables. After the joint presumptive child support obligation is derived from column three of the tables, that amount shall be divided between the parents in proportion to the net income of each. The proportionate share of the total obligation of each parent shall then be multiplied by the percentage of time the children spend with the other parent to determine the theoretical support obligation owed to the other parent. The parent owing the greater amount of child support shall pay the difference between the two (2) amounts as the net child support obligation.

# **EXHIBIT #4**

Hypothetical. The parties have two children. Father ("F") earns \$8,000 per month and has the children 15% of the time. Mother ("M") earns \$2,000 per month and has the children 85% of the time.

- (a) Determine whether the minority time-share parent is exercising less time than 20% or more time than 40% with the child. If so, proceed to the next step.

F is exercising 15% of the time with the child. Thus, we proceed to the next step.

- (b) If the minority time-share parent is exercising less time than 20%, determine if guideline support was reduced by the presumptive maximum set out in NRS 125B.070. If so, the range of potential upward deviation for this factor is the difference between the presumptive maximum and the percentage of income for support set out in NRS 125B.070(1)(b). If not, the range of potential deviation for this factor is based on the trial court's determination of the increased costs being incurred in the majority time-share parent's household by virtue of the lack of the minority time-share parent's visitation.

1. NRS 125B.070(1)(b)(2)  
 $\$8,000 \times 0.25 = \$2,000$
2. Application of Presumptive Maximum  
 $726 \times 2 = \$1,452$

Range of potential upward deviation is \$548 (\$2,000 - \$1,452).

- (c) If the minority time-share parent is exercising more time than 40%, determine what child support would be calculated as being if the parents had exactly equal custody, under the *Wright/Wesley* offset methodology. The range of potential downward deviation for this factor is the difference between guideline support and support calculated under the *Wright/Wesley* offset methodology.

Not applicable.

- (d) If a *prima facie* case is made for deviation in either direction, determine whether the benefit that would be enjoyed by the deviation-seeking party and the child is greater, lesser, or the same as the detriment that would be suffered by the other party and the child. Only where the benefit is greater than the detriment – usually measured by comparison of household income – would the deviation be granted.

The benefit of the additional \$548 per month to M and child, who have income of \$2,000 per month, would greatly outweigh the benefit to F and child, who have income of \$8,000 per month. Thus, the deviation would be granted and support would be set at \$2,000 per month.

Hypothetical. The parties have two children. Father ("F") earns \$2,000 per month and has the children 15% of the time. Mother ("M") earns \$6,000 per month and has the children 85% of the time.

- (a) Determine whether the minority time-share parent is exercising less time than 20% or more time than 40% with the child. If so, proceed to the next step.

F is exercising 15% of the time with the child. Thus, we proceed to the next step.

- (b) If the minority time-share parent is exercising less time than 20%, determine if guideline support was reduced by the presumptive maximum set out in NRS 125B.070. If so, the range of potential upward deviation for this factor is the difference between the presumptive maximum and the percentage of income for support set out in NRS 125B.070(1)(b). If not, the range of potential deviation for this factor is based on the trial court's determination of the increased costs being incurred in the majority time-share parent's household by virtue of the lack of the minority time-share parent's visitation.

1. NRS 125B.070(1)(b)(2)

$$\$2,000 \times 0.25 = \$500$$

2. Application of Presumptive Maximum

The presumptive maximum of \$604 is greater than the formula amount of \$500. Thus the presumptive maximum is not applicable.

**Range of potential upward deviation is \$0** (support was not reduced by the presumptive maximum amount). However, the Court could increase support based on a determination of the increased costs being incurred in the majority time-share parent's household by virtue of the lack of the minority-time share parent's visitation.

- (c) If the minority time-share parent is exercising more time than 40%, determine what child support would be calculated as being if the parents had exactly equal custody, under the Wright/Wesley offset methodology. The range of potential downward deviation for this factor is the difference between guideline support and support calculated under the Wright/Wesley offset methodology.

Not applicable.

- (d) If a prima facie case is made for deviation in either direction, determine whether the benefit that would be enjoyed by the deviation-seeking party and the child is greater, lesser, or the same as the detriment that would be suffered by the other party and the child. Only where the benefit is greater than the detriment – usually measured by comparison of household income – would the deviation be granted.

The benefit of any upward deviation to M and child, who have income of \$6,000 per month, would be insignificant compared to the benefit to F and child, who have income of \$2,000 per month. Thus, no deviation would be granted and support would be set at \$500 per month.

EXHIBIT 4-B



I Hypothetical. The parties have one child. Father ("F") earns \$10,000 per month and has the children 43% of the time. Mother ("M") earns \$5,000 per month and has the children 57% of the time.

- (a) Determine whether the minority time-share parent is exercising less time than 20% or more time than 40% with the child. If so, proceed to the next step.

F is exercising 43% of the time with the child. Thus, we proceed to the next step.

- (b) If the minority time-share parent is exercising less time than 20%, determine if guideline support was reduced by the presumptive maximum set out in NRS 125B.070. If so, the range of potential upward deviation for this factor is the difference between the presumptive maximum and the percentage of income for support set out in NRS 125B.070(1)(b). If not, the range of potential deviation for this factor is based on the trial court's determination of the increased costs being incurred in the majority time-share parent's household by virtue of the lack of the minority time-share parent's visitation.

Not applicable.

- (c) If the minority time-share parent is exercising more time than 40%, determine what child support would be calculated as being if the parents had exactly equal custody, under the *Wright/Wesley* offset methodology. The range of potential downward deviation for this factor is the difference between guideline support and support calculated under the *Wright/Wesley* offset methodology.

1. NRS 125B.070(1)(b)(2)  
 $\$10,000 \times 0.18 = \$1,800$

Presumptive Maximum of \$785 applies

2. Wright/Wesley  
F:  $\$10,000 \times 0.18 = \$1,800$   
M:  $\$5,000 \times 0.18 = \$900$

Subtract smaller from larger:  $\$1,800 - \$900 = \$900$

Presumptive Maximum of \$664 applies

Range of potential downward deviation is \$121 (\$785 - \$664).

- (d) If a *prima facie* case is made for deviation in either direction, determine whether the benefit that would be enjoyed by the deviation-seeking party and the child is greater, lesser, or the same as the detriment that would be suffered by the other party and the child. Only where the benefit is greater than the detriment – usually measured by comparison of household income – would the deviation be granted.

The benefit of any downward deviation to F and child, who have income of \$10,000 per month, would be insignificant compared to the benefit to M and child, who have income of \$5,000 per month. Thus, no deviation would be granted and support would be set at \$785 per month.

Hypothetical. The parties have one child. Father ("F") earns \$5,000 per month and has the children 43% of the time. Mother ("M") earns \$10,000 per month and has the children 57% of the time.

- (a) Determine whether the minority time-share parent is exercising less time than 20% or more time than 40% with the child. If so, proceed to the next step.

F is exercising 43% of the time with the child. Thus, we proceed to the next step.

- (b) If the minority time-share parent is exercising less time than 20%, determine if guideline support was reduced by the presumptive maximum set out in NRS 125B.070. If so, the range of potential upward deviation for this factor is the difference between the presumptive maximum and the percentage of income for support set out in NRS 125B.070(1)(b). If not, the range of potential deviation for this factor is based on the trial court's determination of the increased costs being incurred in the majority time-share parent's household by virtue of the lack of the minority time-share parent's visitation.

Not applicable.

- (c) If the minority time-share parent is exercising more time than 40%, determine what child support would be calculated as being if the parents had exactly equal custody, under the *Wright/Wesley* offset methodology. The range of potential downward deviation for this factor is the difference between guideline support and support calculated under the *Wright/Wesley* offset methodology.

1. NRS 125B.070(1)(b)(2)

F:  $\$5,000 \times 0.18 = \$900$

Presumptive Maximum of \$664 applies

2. Wright/Wesley

F:  $\$5,000 \times 0.18 = \$900$

M:  $\$10,000 \times 0.18 = \$1,800$

Subtract smaller from larger:  $\$1,800 - \$900 = \$900$

Presumptive Maximum of \$664 applies (note: M would pay F \$664)

Range of potential downward deviation is \$1,328 (if this Court allows support to flow "uphill" from a majority time-share parent to a minority time-share parent) or \$664 (if this Court does not allow support to flow "uphill").

- (d) If a *prima facie* case is made for deviation in either direction, determine whether the benefit that would be enjoyed by the deviation-seeking party and the child is greater, lesser, or the same as the detriment that would be suffered by the other party and the child. Only where the benefit is greater than the detriment – usually measured by comparison of household income – would the deviation be granted.

The benefit of any downward deviation to F and child, who have income of \$5,000 per month, would outweigh the benefit to M and child, who have income of \$10,000 per month. If this Court allows support to flow “uphill” (i.e. from the majority-time share parent to the minority time-share parent), then the deviation would be granted and M would pay F \$664 per month. If this Court does not allow support to flow “uphill,” then the deviation would be granted and support would be set at zero.

# **EXHIBIT #5**

## MEASUREMENTS OF "TIME"

As detailed in the *Brief*, no single measurement of "time" is probably adequate for all cases, because the purpose of the measurement is to approximate direct expenditures made on a child, and a great number of possible facts can disconnect time-share from actual expenditures relating to a child.

The reader is cautioned that the approximations can be altered to some degree by such random events of which parent has the starting week, or whether the schedule starts on January 1 or somewhere in the middle of a year. Even a leap year can alter the math.

Nevertheless, for many cases, a short-hand "translation" of various custodial schedules to percentage of time share might be useful, and the following approximations are provided for that purpose.

### STANDARD SCHEDULES<sup>1</sup>

Every other weekend (52 days), plus two weeks in summer (14 days), plus Mother's Day or Father's Day (1 day), plus Thanksgiving or Christmas (2 days), plus birthdays (2 days), plus a miscellaneous day (1 day): 20% (73 days) overnights.<sup>2</sup>

Every other weekend: 14%.

First, third and alternate fifth weekends: 14%.

Second, fourth and alternate fifth weekends: 14%.

First, third and fifth weekends: 15%.

Second, fourth and fifth weekends: 15%.

Every other weekend, plus one evening per week: 16%.

Alternating extended weekends: 21%.

Alternating extended weekends plus one evening per week: 23%.

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<sup>1</sup> Presumes 6:00 p.m. exchanges.

<sup>2</sup> See Karen Czapanskiy, "Child Support, Visitation, Shared Custody and Split Custody," in *Child Support Guidelines: The Next Generation* 43, 44 (U.S. Dep't Health & Human Services, Office of Child Support Enforcement, 1994); Karen Czapanskiy, *Child Support and Visitation: Rethinking the Connection*, 20 Rut.-Cam. L.J. 619 (1989).

Every other weekend, plus one overnight per week: 29%.

Every weekend: 29%.

Alternating extended weekends plus one overnight per week: 36%.

4/3 custody split: 43%.

Alternating weeks: 50%.

#### OVERNIGHTS<sup>3</sup>

10% = 37.

15% = 55.

20% = 73.

25% = 91.

30% = 110.

35% = 128.

40% = 146.

45% = 164.

50% = 183.

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<sup>3</sup> Requires rounding. Any percentages .5 or above, rounded up.