

MEMORANDUM

TO: Zee Williams, Chair, Child Support Advisory Committee
Pam Lowry, Title IV-D Administrator, Illinois Department of
Healthcare and Family Services

FROM: Diane Potts, Chair, Income Shares Workgroup 1

SUBJECT: Proposed Gross Income Alternative

DATE: March 1, 2013

I. HISTORY AND PURPOSE

In 2011, the Child Support Advisory Committee (CSAC) recommended adopting a gross income calculation method, instead of the current net income approach, for the new income shares legislation. The Illinois State Bar Association, Family Law Section Council, thereafter voted unanimously to oppose a statutory change to a gross income calculation method.

The purpose of this memorandum is to propose an alternative. As explained, a standardized net income calculation method would capture the benefits of gross income while retaining a net income calculation option for the private bar.

II. STANDARDIZED NET INCOME

The standardized net income calculation method recognizes that most child support cases are not complex, and there is little difference in support using a gross versus net income calculation for low to lower-middle income families. The standardized net income approach provides significant benefits to the child support program, judiciary, and *pro se* litigants because it uses a simple statutory calculation method for all cases *unless* the parties opt for individualized tax calculations.

I met with David Hopkins from the ISBA's Family Law Section Council on Friday, February 21, 2013, and we examined two State statutes with standardized net income: Texas and Iowa. The relevant portions are attached, and the standardized net income proposal below for the CSAC to consider was developed from these statutes.

A new "Guideline Method for Computing Taxes" provision would be added to section 505 of the Illinois Marriage and Dissolution of Marriage Act that sets forth a uniform method for calculating tax deductions from gross income. The standardized method will *not* apply where there is: (1) a stipulation of the parties; (2) court order; (3) or where either party has opted to use the taxes set forth in the parties' financial affidavits, tax returns, and other financial documents after full and complete financial disclosure pursuant to local circuit court rule.

The standardized guideline method for computing taxes would closely mirror the Texas model. The Department of Healthcare and Family Services will annually promulgate a tax chart that computes a parent's net monthly income from gross income. The tax chart will assume a single person tax status¹ and the standard income tax deduction, and contain a gross to net conversion at each income level. The deduction subtracted from gross income will include the applicable federal income tax, state income tax, and Federal Insurance Act Contributions (FICA) tax for each income level.

The chart would mirror the Texas model, but contain a personal exemption

¹ More than 70% of children in the Title IV-D program are born to single mothers.

variable, up to 5 personal exemptions, at each income level. The chart below is intended to illustrate a gross to net income conversion at \$1,300 per month.

Gross to Net Income Conversion by Personal Exemption					
Column A	B	C	D	E	F
Monthly Gross Income	1	2	3	4	5+
\$1,300	\$1,062	\$1,106	\$1,148	\$1,170	\$1,179

Column A: Parent’s total gross monthly income

Column B: Parent’s standardized net monthly income calculated by subtracting from gross monthly income the total tax deductions for a parent with one personal exemption (namely, himself/herself) at that monthly gross income level. The total tax deductions are the: (1) monthly federal tax owed for a single person, standard deduction, one personal exemption; (2) monthly state tax owed for a single person, standard deduction, one personal exemption; and (3) monthly FICA tax owed.

Column C: Parent’s standardized net monthly income calculated by subtracting from gross monthly income the total tax deductions for a parent with two personal exemptions (themselves and one child) at that specific monthly gross income level.

Columns D through F: Standard net monthly income at each specific monthly gross income level for parents with 3, 4, or 5 and up personal exemptions.

The Title IV-D agency would annually publish an Appendix to the tax chart that details the amount of federal income tax, state income tax, and FICA tax for each income level and personal exemption. The Appendix would include the sources for the

deduction amount, as well as an explanation on how to utilize the tax chart.

The benefits to this approach are significant. The Department would have the power and ability to adjust the standardized tax deductions annually, and capture any and all fluctuations in the applicable tax rates. In Illinois, all three taxes (federal, state, and FICA) have fluctuated in the last few years, and the standardized approach effectively and inexpensively addresses such changes on a State-wide level, without statutory amendments or electronic calculator reprogramming.

Further, the tax chart is simple to use, which is an enormous benefit to the Title IV-D program, the judiciary, and *pro se* litigants. It would save substantial time for the State. With over 66,000 new support orders in the Title IV-D child support program entered annually, a standard tax chart would be superior to the current method of manually calculating the tax deductions in every child support case.

III. RECOMMENDATION

I recommend that the CSAC reconsider its vote on adopting gross income for income shares, and consider the standardized net income approach outlined here. If the CSAC reconsiders the issue and votes to adopt the standardized net income approach, I further recommend that the CSAC reconvene Workgroup 1 to consider specific statutory language effectuating a standardized net income approach for consideration of the CSAC at its next meeting. Finally, I recommend that David Hopkins be appointed as an *ad hoc* member of Workgroup 1 to assist with the specific statutory language for opting out of standardized net income approach.

V.T.C.A., Family Code § 154.061

C**Effective: [See Text Amendments]**

Vernon's Texas Statutes and Codes Annotated Currentness

Family Code (Refs & Annos)

Title 5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship (Refs & Annos)

Subtitle B. Suits Affecting the Parent-Child Relationship

▣ Chapter 154. Child Support (Refs & Annos)

▣ Subchapter B. Computing Net Resources Available for Payment of Child Support

→ § 154.061. Computing Net Monthly Income

(a) Whenever feasible, gross income should first be computed on an annual basis and then should be recalculated to determine average monthly gross income.

(b) The Title IV-D agency shall annually promulgate tax charts to compute net monthly income, subtracting from gross income social security taxes and federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

CREDIT(S)

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995.

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

Prior Laws:

Acts 1989, 71st Leg., ch. 617, § 6.

V.T.C.A., Family Code § 14.053(a), (h).

2012 Electronic Pocket Part Update

Pursuant to § 154.061(b) of the Texas Family Code, the Office of the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income.

INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§ 154.061-154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

Reason for Revision:

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312 (HR 4853) was amended on February 22, 2012 by the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 (HR 3630), Section 1001, 126 Stat. 156, 158 (2012). The rate for Old-Age, Survivors and Disability Insurance Taxes is revised to 4.2% for employed persons and 10.4% self-employed persons. These charts should be used for the remainder of 2012.

EMPLOYED PERSONS
2012 REVISED TAX CHART

Monthly Gross Wages	Social Security Taxes		Federal Income Taxes**	Net Monthly Income
	Old-Age, Survivors and Disability Insurance Taxes (4.2%)*	Hospital (Medicare) Insurance Taxes (1.45%)*		
100.00	4.20	1.45	0.00	94.35
200.00	8.40	2.90	0.00	188.70
300.00	12.60	4.35	0.00	283.05
400.00	16.80	5.80	0.00	377.40
500.00	21.00	7.25	0.00	471.75
600.00	25.20	8.70	0.00	566.10
700.00	29.40	10.15	0.00	660.45
800.00	33.60	11.60	0.00	754.80
900.00	37.80	13.05	8.75	840.40
1,000.00	42.00	14.50	18.75	924.75
1,100.00	46.20	15.95	28.75	1,009.10
1,200.00	50.40	17.40	38.75	1,093.45
1,256.67***	52.78	18.22	44.42	1,141.25
1,300.00	54.60	18.85	48.75	1,177.80
1,400.00	58.80	20.30	58.75	1,262.15
1,500.00	63.00	21.75	68.75	1,346.50
1,600.00	67.20	23.20	81.88	1,427.72
1,700.00	71.40	24.65	96.88	1,507.07

V.T.C.A., Family Code § 154.061

1,800.00	75.60	26.10	111.88	1,586.42
1,900.00	79.80	27.55	126.88	1,665.77
2,000.00	84.00	29.00	141.88	1,745.12
2,100.00	88.20	30.45	156.88	1,824.47
2,200.00	92.40	31.90	171.88	1,903.82
2,300.00	96.60	33.35	186.88	1,983.17
2,400.00	100.80	34.80	201.88	2,062.52
2,500.00	105.00	36.25	216.88	2,141.87
2,600.00	109.20	37.70	231.88	2,221.22
2,700.00	113.40	39.15	246.88	2,300.57
2,800.00	117.60	40.60	261.88	2,379.92
2,900.00	121.80	42.05	276.88	2,459.27
3,000.00	126.00	43.50	291.88	2,538.62
3,100.00	130.20	44.95	306.88	2,617.97
3,200.00	134.40	46.40	321.88	2,697.32
3,300.00	138.60	47.85	336.88	2,776.67
3,400.00	142.80	49.30	351.88	2,856.02
3,500.00	147.00	50.75	366.88	2,935.37
3,600.00	151.20	52.20	381.88	3,014.72
3,700.00	155.40	53.65	396.88	3,094.07
3,800.00	159.60	55.10	416.04	3,169.26
3,900.00	163.80	56.55	441.04	3,238.61
4,000.00	168.00	58.00	466.04	3,307.96
4,250.00	178.50	61.63	528.54	3,481.33
4,500.00	189.00	65.25	591.04	3,654.71
4,750.00	199.50	68.88	653.54	3,828.08
5,000.00	210.00	72.50	716.04	4,001.46
5,250.00	220.50	76.13	778.54	4,174.83
5,500.00	231.00	79.75	841.04	4,338.21
5,750.00	241.50	83.38	903.54	4,521.58
6,000.00	252.00	87.00	966.04	4,694.96
6,250.00	262.50	90.63	1,028.54	4,868.33
6,500.00	273.00	94.25	1,091.04	5,041.71
6,750.00	283.50	97.88	1,153.54	5,215.08
7,000.00	294.00	101.50	1,216.04	5,388.46
7,500.00	315.00	108.75	1,341.04	5,735.21
8,000.00	336.00	116.00	1,467.54	6,080.46
8,500.00	357.00	123.25	1,607.54	6,412.21
9,000.00	378.00	130.50	1,747.54	6,743.96
9,500.00	385.35****	137.75	1,887.54	7,089.36
10,000.00	385.35	145.00	2,027.54	7,442.11
10,082.06*****	385.35	146.19	2,050.52	7,500.00
10,500.00	385.35	152.25	2,167.54	7,794.86
11,000.00	385.35	159.50	2,307.54	8,147.61
11,500.00	385.35	166.75	2,447.54	8,500.36

CHAPTER 9 CHILD SUPPORT GUIDELINES

Rule 9.1 Guidelines adopted. The supreme court has undertaken to prescribe uniform child support guidelines and criteria pursuant to the federal Family Support Act of 1988, Pub. L. No. 100-485 and Iowa Code section 598.21B. The child support guidelines contained in this chapter are hereby adopted, effective July 1, 2009. The guidelines shall apply to cases pending on July 1, 2009. [Court Order November 9, 2001, effective February 15, 2002; September 23, 2004, effective November 1, 2004; March 9, 2009, effective July 1, 2009]

Rule 9.2 Applicability. These guidelines are established for use by the courts of this state in determining the amount of child support. The guidelines are applicable to modification of child support orders as provided in Iowa Code section 598.21C(2). [Court Order November 9, 2001, effective February 15, 2002; March 9, 2009, effective July 1, 2009]

Rule 9.3 Purpose.

9.3(1) Purpose. The purpose of the guidelines is to provide for the best interests of the children by recognizing the duty of both parents to provide adequate support for their children in proportion to their respective incomes. While the guidelines cannot take into account the specific facts of individual cases, they will normally provide reasonable support.

9.3(2) Low-income adjustment. The basic support obligation amounts have been adjusted in the shaded area of the schedule for low-income obligated (noncustodial) parents. The objective of the adjustment is to strike a balance between adequately supporting the obligated parent's children and allowing the obligated parent to live at least at a subsistence level. The adjustment is based on the following: (1) requiring a support order no matter how little the obligated parent's income is, (2) increasing the support amount for more children, (3) maintaining an incentive to work for the obligated parent, and (4) gradually phasing out the adjustment with increased income.

a. In accordance with this objective, except as provided in *(b)*, only the obligated parent's adjusted net income is used in the shaded area of the schedule. The combined adjusted net incomes of both parents are used in the remaining (nonshaded) area of the schedule.

b. In cases of joint (equally shared) physical care, the low-income adjustment is not applicable, and the parents' combined adjusted net incomes as shown in the shaded area of the schedule are used. [Court Order November 9, 2001, effective February 15, 2002; March 9, 2009, effective July 1, 2009]

Rule 9.4 Guidelines — rebuttable presumption. In ordering child support, the court should determine the amount of support specified by the guidelines. There shall be a rebuttable presumption that the amount of child

support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. That amount may be adjusted upward or downward, however, if the court finds such adjustment necessary to provide for the needs of the children or to do justice between the parties under the special circumstances of the case. The appropriate amount of child support is zero if the noncustodial parent's only income is from Supplemental Security Income (SSI) paid pursuant to 42 U.S.C. 1381a. [Court Order November 9, 2001, effective February 15, 2002; March 9, 2009, effective July 1, 2009]

Rule 9.5 Net monthly income. In the guidelines the term "net monthly income" means gross monthly income less deductions for the following:

9.5(1) Federal income tax (calculated pursuant to the guideline method).

9.5(2) State income tax (calculated pursuant to the guideline method).

9.5(3) Social security deductions.

9.5(4) Mandatory pension deductions.

9.5(5) Union dues.

9.5(6) Actual medical support paid pursuant to court order or administrative order in another order for other children, not the pending matter.

9.5(7) Cash medical support ordered in this pending matter as determined by the medical support table in rule 9.12.

9.5(8) Prior obligation of child support and spousal support actually paid pursuant to court or administrative order.

9.5(9) Qualified additional dependent deductions.

9.5(10) Actual child care expense while custodial parent is employed, less the appropriate income tax credit.

Other items, such as credit union payments, charitable deductions, savings or thrift plans, and voluntary pension plans, are not to be deducted from a parent's income, since the needs of the children must have a higher priority than voluntary savings or payment of indebtedness.

Gross monthly income does not include public assistance payments or the earned income tax credit. To determine gross income, the court shall not impute income under rule 9.11 except:

a. Pursuant to agreement of the parties, or

b. Upon request of a party, and a written determination is made by the court under rule 9.11. [Court Order November 9, 2001, effective February 15, 2002; September 23, 2004, effective November 1, 2004; March 9, 2009, effective July 1, 2009]

Rule 9.6 Guideline method for computing taxes. For purposes of computing the taxes to be deducted from a

parent's gross income, the following uniform rules shall be used:

9.6(1) An unmarried parent shall be assigned either single or head of household filing status. Head of household filing status shall be assigned if a parent is the custodial parent of one or more of the mutual children of the parents.

9.6(2) A married parent shall be assigned married filing separate status.

9.6(3) If the parents have joint (equally shared) physical care of their mutual children, an unmarried parent shall be assigned head of household filing status and a married parent shall be assigned married filing separate status.

9.6(4) The standard deduction applicable to the parent's filing status under rule 9.6(1), 9.6(2) or 9.6(3) shall be used.

9.6(5) Each parent shall be assigned one personal exemption for the parent. The custodial parent shall be assigned one additional dependent exemption for each mutual child of the parents, unless a parent provides information that the noncustodial parent has been allocated the dependent exemption for such child. In cases of joint (equally shared) or split physical care, the dependent exemption(s) for the mutual child(ren) of the parties shall be assigned according to the order or decree establishing the joint or split care arrangement.

If the amount of federal and/or state income tax actually being paid by the parent differs substantially from the amount(s) determined by the guideline method of computing taxes, the court may consider whether the difference is sufficient reason to adjust the child support under the criteria in rule 9.11. This rule does not preclude alternate methods of computation by the Child Support Recovery Unit as authorized by Iowa Code section 252B.7A. [Court Order September 23, 2004, effective November 1, 2004; March 9, 2009, effective July 1, 2009]

Rule 9.7 Qualified additional dependent deduction.

To establish a qualified additional dependent deduction, the requesting parent must demonstrate a legal obligation to the child(ren) under Iowa Code section 252A.3. Ways to demonstrate a legal obligation to the child(ren) include:

9.7(1) By order of a court of competent jurisdiction or by administrative order when authorized by state law.

9.7(2) By the statement of the person admitting paternity in court and upon concurrence of the mother. If the mother was married, at the time of conception, birth, or at any time during the period between conception and birth of the child, to an individual other than the person admitting paternity, the individual to whom the mother was married at the time of conception, birth, or at any time during the period between conception and birth must deny paternity in order to establish the paternity of the person admitting paternity upon the sole basis of the admission.

9.7(3) By the filing and registration by the state registrar of an affidavit of paternity executed on or after July 1, 1993, as provided in Iowa Code section 252A.3A, provided that the mother of the child was unmarried at the time of conception, birth, and at any time during the period between conception and birth of the child or if the mother was married at the time of conception, birth, or at any time during the period between conception and birth of the child, a court of competent jurisdiction has determined that the individual to whom the mother was married at the time is not the father of the child.

9.7(4) By a child being born during the marriage unless the paternity has been determined otherwise by a court of competent jurisdiction. [Court Order November 9, 2001, effective February 15, 2002; September 23, 2004, effective November 1, 2004; March 9, 2009, effective July 1, 2009]

Rule 9.8 Deduction amount and use.

9.8(1) The monthly deduction for qualified additional dependents of a parent (custodial or noncustodial) shall be:

a. 8% of the parent's gross monthly income (to a maximum of \$800 per month) for one (1) child.

b. 12% of the parent's gross monthly income (to a maximum of \$1200 per month) for two (2) children.

c. 14% of the parent's gross monthly income (to a maximum of \$1400 per month) for three (3) children.

d. 15% of the parent's gross monthly income (to a maximum of \$1500 per month) for four (4) children.

e. 16% of the parent's gross monthly income (to a maximum of \$1600 per month) for five (5) or more children.

9.8(2) The qualified additional dependent deduction can be used for the establishment of original orders or in proceedings to modify an existing order. However, the deduction cannot be used to affect the threshold determination of eligibility for a downward modification of an existing order. After the threshold determination has been met, the deduction shall be used in the determination of the net monthly income. A deduction may be taken for a prior obligation for support actually paid (rule 9.5(8)) or a qualified additional dependent deduction (rule 9.5(9)) but both deductions cannot be used for the same child. A qualified additional dependent deduction cannot be claimed for a child for whom there is a prior court or administrative support order. [Court Order November 9, 2001, effective February 15, 2002; September 23, 2004, effective November 1, 2004; March 9, 2009, effective July 1, 2009]

Rule 9.9 Extraordinary visitation credit. If the noncustodial parent's court-ordered visitation exceeds 127 days per year, the noncustodial parent shall receive a credit to the noncustodial parent's share of the basic support obligation in accordance with the following table:

<u>Days</u>	<u>Credit</u>
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. [Court Order September 23, 2004, effective November 1, 2004; March 9, 2009, effective July 1, 2009]

Rule 9.10 Child support guidelines worksheet. All parties shall file a child support guidelines worksheet prior to a support hearing or the establishment of a support order. The parties shall use Form 1 that accompanies these rules, unless both parties agree to use Form 2. The Child Support Recovery Unit (CSRU) shall use Form 2. [Court Order November 9, 2001, effective February 15, 2002; September 23, 2004, effective November 1, 2004]

Rule 9.11 Variance from guidelines. The court shall not vary from the amount of child support which would result from application of the guidelines without a written finding that the guidelines would be unjust or inappropriate as determined under the following criteria:

9.11(1) Substantial injustice would result to the payor, payee, or child.

9.11(2) Adjustments are necessary to provide for the needs of the child or to do justice between the parties, payor, or payee under the special circumstances of the case.

9.11(3) Circumstances contemplated in Iowa Code section 234.39.

9.11(4) The court shall not use earning capacity rather than actual earnings unless a written determination is made that, if actual earnings were used, substantial injustice would occur or adjustments would be necessary to provide for the needs of the child or to do justice between the parties. [Court Order November 9, 2001, effective February 15, 2002; September 23, 2004, effective November 1, 2004; March 9, 2009, effective July 1, 2009]

Rule 9.12 Medical support order.

9.12(1) The court shall enter an order for medical support as required by statute. For purposes of Iowa Code section 252E.1A, the table contained in rule 9.12(4) is established for use by the courts of this state in determining reasonable cost for a health benefit plan and a reasonable amount in lieu of a health benefit plan (cash medical support). The sum certain dollar amount determined shall be stated in the order, as an amount in addition to the child support amount.

9.12(2) Refer to the table in rule 9.12(4) to determine if the parent has health insurance available at "reasonable cost." Find the appropriate cell for the parent's net income (as determined by the guidelines) and for the correct number of children. Multiply the parent's gross income by the percentage in that cell. If the amount is equal to or more than the cost of the child's portion of the health insurance premium (family cost minus single cost), it is available at "reasonable cost." For minimum orders (net incomes 0 - 850), "reasonable cost" is zero or no cost.

9.12(3) If neither parent has health insurance available at "reasonable cost," if appropriate according to Iowa Code section 252E.1A, the court shall order cash medical support. Refer to the table in rule 9.12(4) to determine the amount of cash medical support. Find the appropriate cell for the parent's preliminary net income (gross income minus all appropriate deductions other than cash medical support in the pending matter) and for the correct number of children. Multiply the parent's gross income by the percentage in that cell to get the cash medical support amount. For minimum orders (net incomes 0 - 850), cash medical support is not ordered.

Use the adjusted net income (preliminary net income minus the amount of cash medical support in the pending matter) for the correct number of children on the Schedule of Basic Support Obligations to find the appropriate amount of child support. Once the adjusted net income has been determined, do not allow another deduction for cash medical support.

3rd Draft

5/505. Child support; contempt; penalties.

(a) Purpose.

The child support guidelines and schedule of basic child support obligations have the following purposes:

- (1) To establish as state policy an adequate standard of support for children, subject to the ability of parents to pay;
- (2) To make awards more equitable by ensuring more consistent treatment of persons in similar circumstances, and
- (3) To reduce conflicts between parents and improve the efficiency of the court process by promoting settlements and giving courts and the parties guidance in establishing levels of awards.

(b) Applicability.

In a proceeding for dissolution of marriage, legal separation, declaration of invalidity of marriage, dissolution of a civil union, a proceeding for child support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, a proceeding for modification of a previous order for child support under Section 510 of this Act, or any proceeding authorized under Section 501 or 601 of this Act, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable and necessary for his support, without regard to marital misconduct. The duty of support owed to a child includes the obligation to provide for the reasonable and necessary physical, mental and emotional health needs of the child. For purposes of this section, the term “child” shall include any child under age 18 and any child under age 19 who is still attending high school.

The court shall determine the minimum amount of support by using the following guidelines: **Insert Income Shares Model Guidelines Here**

<u>Number of Children</u>	<u>Percent of Supporting Party's Net Income</u>
1	20%
2	28%
3	32%
4	40%
5	45%
6 or more	50%

(c) Definition of Income

1) “Gross income” is defined as the total of all income from all sources. Specifically excluded from gross income are benefits received by the parent from means tested public assistance programs, including but not limited to Temporary Assistance to Needy Families (TANF), Supplemental Security Income, and Supplemental Nutrition Assistance Program (SNAP). Also specifically excluded from gross income are benefits and income received by the parent for other children in the household including but not limited to child support and survivor benefits. Social security disability and retirement benefits paid for the benefit of the subject child must be included in the disabled or retired parent’s gross income for purposes of calculating the parent’s child support obligation, but the parent is entitled to a child support credit for the amount of benefits paid for the child.

2) Treatment of Business Income

Gross income from the operation of a business (including, but not limited to, a sole proprietorship, partnership, or corporation) or from self-employment, rent, or royalties, is defined as gross receipts minus cost of goods sold minus ordinary and necessary expenses required to operate the business. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, and business losses. Any other business expenses determined judicially or administratively to be inappropriate or excessive for determining gross income for purposes of calculating child support shall not be considered ordinary and necessary expenses.

3) Treatment of Self-Employment Income

Self-employed parents shall be permitted to deduct as an ordinary and necessary expense that portion of their FICA tax payment that exceeds the FICA tax that would be paid by an employee earning the same Gross Income. Expense reimbursements or in-kind payments received by a parent in the course of any employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses, including but not limited to a company car, free housing or housing allowance, or reimbursed meals.

4) Treatment of Unemployment or Underemployment

If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income. A determination of potential income shall be made by determining employment potential and probably earnings level based on the obligor’s work history, occupational qualifications, prevailing job opportunities, and earnings levels in the community. If there is insufficient work history to determine employment potential and probably earnings level, there shall be

a rebuttable presumption that the parent's potential income is 75% of the federal poverty guidelines for a family of 1 person.

***Discuss how to treat income received from military benefits**

(4) The above guidelines shall be applied in each case unless the court makes a finding that application of the guidelines would be inappropriate, after considering the best interests of the child in light of evidence including but not limited to one or more of the following relevant factors:

(a) Split Custody – In those situations where each parent has primary physical custody of one or more of their children, support shall be computed in the following manner:

1. Compute the support each parent would owe for the children in their custody as if they were the only children of the two parties; then
2. Subtract the lesser support obligation from the greater and the parent who owes the greater will owe the differential to the other parent. unless the court determines, pursuant to other provisions of this rule, that it should deviate from the guidelines.

(b) Multiple Orders – The amount of prior obligations of child support and spousal support pursuant to court or administrative order actually paid by a parent with an order for support of other children not of this relationship shall be deducted from that parent's [] income.

(c) Excessive Court-Ordered Life Insurance **(NEED MORE LANGUAGE HERE)**

(d) After-School Activities – Extraordinary special expenses incurred or child rearing, including, but not limited to, quantifiable expense variations related to the food, clothing, and hygiene costs of children at different age levels, may be a basis for a deviation from the presumptive amounts of child support. Such expenses include, but are not limited to, summer camp; music or art lessons; travel; school sponsored extracurricular activities, such as band, clubs, and athletics; and other activities intended to enhance the athletic, social, or cultural development of a child but not otherwise required to be used in calculating the presumptive amount of child support as are health insurance premiums and work related child care costs. A portion of the basic child support obligation is intended to cover average amounts of special expenses incurred in the rearing of a child.

(e) Court-Ordered Garnishment – No deviation unless other than for child support.

(f) Excessive Transportation Expenses for children or exercising parenting time.
(NEED MORE LANGUAGE HERE)

(g) Child Care Expenses – When agreed to by the parties or at court discretion, child care expenses paid directly, by both or either party, to child care provider shall appear in the support order as a below the line adjustment. If child care expenses are not included in the support order or if obligor pays direct to child care provider, then delinquent child care payments must be reduced to judgment prior to enforcement.

(h) Shared Parenting – In cases where a court has entered an order of shared parenting, the deviation in the basic child support obligation shall be increased for each overnight (of the obligor parent) exceeding 146 and to a maximum of 182.5 overnights. In cases of modification of an order for support based on a deviation for shared parenting the deviation previously ordered shall continue to apply upon showing of the consistent exercise of shared parenting of 146 or more overnights (by the obligor) on an annual basis.

If the court deviates from the guidelines, the court's finding shall state the amount of support that would have been required under the guidelines, if determinable. The court shall include the reason or reasons for the variance from the guidelines.

5) Minimum Orders

There shall be a rebuttable presumption in any judicial or administrative proceeding for child support that the amount of the award which would result from the application of the guidelines set forth herein is the correct amount of child support to be awarded.

There shall be a rebuttable presumption that a minimum child support obligation of \$40 per month, per child, will be entered for a payor parent who has actual or imputed income at or less than 75% of the federal poverty level for a family of 1 person, with a maximum total child support obligation for that payor of \$120 per month to be divided equally among all of the payor parent's children. For parents with no gross income (including those who receive only means-tested assistance) and who cannot work due to a medically prove disability, incarceration, or institutionalization, there is a rebuttable presumption that the \$40 per month minimum support order is inappropriate and a zero dollar order shall be entered.

- (2) "Net income" is defined as the total of all income from all sources, minus the following deductions:
- (a) ~~Federal income tax (properly calculated withholding or estimated payments)~~
 - (b) ~~State income tax (properly calculated withholding or estimated payments)~~
 - (c) ~~Social Security (FICA payments);~~
 - (d) ~~Mandatory retirement contributions required by law or as a condition of employment;~~
 - (e) ~~Union dues;~~
 - (f) ~~Dependent and individual health/hospitalizations insurance premiums and life insurance premiums for life insurance. Ordered by the court to reasonably secure child support or support ordered pursuant to Section 513, any such order to entail provisions on which the parties agree or, otherwise, in accordance with the limitations set forth in subsection 504(f)(1) and (2)~~

- (6) In orders issued pursuant to this section, the court shall also provide for the child's or children's current and future medical needs by ordering either parent or both parents to initiate medical or medical coverage for the child or children through currently effective medical or medical insurance policies held by the parent or parents, purchase medical or medical and dental insurance for the child or children, or provide the child or children with current and future medical needs through some other manner. If a parent has been directed to provide insurance pursuant to this section and that parent's spouse provides the insurance for the benefit of the child or children either directly or through employment, a credit on the child support worksheet shall be given to the parent in the same manner as if the premium were paid by the parent. If dental is included as part of the employer's medical plan, it will be covered. Otherwise, adding that coverage of dental and optical should be at judicial discretion.
- (7) The order must contain a statement providing that if the designated parent's health care coverage provides for covered services for dependent children beyond the age of majority, then any unmarried children up to twenty-six (26) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the insured parent for maintenance and support shall be covered.

If neither parent has access to appropriate, available private health care coverage:

- (a) One or both parents must be ordered to provide private health care coverage at any time whenever it becomes available;
- (b) The party with custody of the child may be ordered to provide public health care coverage for the child; and
- (c) Either or both parents must be ordered to pay cash medical support that is reasonable in cost, or the order must include a finding explaining why cash medical support is not ordered. If cash medical support is ordered due to private health care coverage being unavailable to a party, the order may also provide that any time private health care coverage is available to that party it will be provided instead of cash medical support. The amount to be added to the basic child support obligation shall be the actual amount of the total insurance premium that is attributable to the child who is the subject of the order. If this amount is not available or cannot be verified, the total cost of the premium should be divided by the total number of persons covered by the policy. The cost per person derived from this calculation shall be multiplied by the number of children who are the subject of the order and who are covered under the policy. This amount shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross incomes. After the total child support obligation is calculated and divided between the parents in proportion to their adjusted

gross incomes, the amount calculated shall be deducted from the obligor's share of the total child support obligation if the obligor is actually paying the premium. If the obligee is actually paying the premium, no further adjustment is necessary. Prior to allowing the health insurance adjustment, the parent requesting the adjustment must submit proof that the child or children have been enrolled in a health insurance plan and must submit proof of the cost of the premium. The court shall require the parent receiving the adjustment to submit annually proof of continued coverage of the child or children to the child support enforcement unit and to the other parent.

A reasonable cost for providing private health care coverage for the children does not exceed 5 percent of the providing parent's gross income.

Parents with a net income below 133 percent of the federal poverty level or whose child is covered by Medicaid or State Children's Health Insurance Program (SCHIP) based on that parent's income should not be ordered to contribute toward or provide private coverage, unless private coverage is obtainable without any financial contribution by that parent.

- ~~(3) In cases where the court order provides for health/hospitalization insurance coverage pursuant to Section 505.2 of this Act, the premiums for that insurance, or that portion of the premiums for which the supporting party is responsible in the case of insurance provided through an employer's health insurance plan where the employer pays a portion of the premiums, shall be subtracted from net income in determining the minimum amount of support to be ordered.~~
- (8) Definition of Child Care Expenses – Actual annualized monthly child care expenses reasonably necessary to enable either or both parents, or non-custodial parent to be employed, or attend education and training activities, or job search (includes after school care and all work related child care expenses incurred while receiving education or training to improve employment opportunities). Deposits for the retention of securing placement in childcare programs shall be included. Child care expenses include camp when school is not in session. Parties may agree on additional day camps. Overnight camp, summer school, or tutoring programs are not included. Child care expenses due to a child's special needs shall be considered a deviation factor.

Child care expenses shall be calculated as set forth in this provision, and prorated in proportion to each parent's percentage share of combined parental adjusted gross income, and added to the basic child support obligation as a line item adjustment. The obligor's net portion of actual child care expenses shall appear in the support order as a child care support obligation to be paid. The obligee's share of child care expenses is directly contributed as expenses occurred. Child care expenses shall be adequate to obtain quality care, to the extent reasonable and necessary to care for the child(ren).

The family's actual child care reasonable expenses should be used. When actual childcare expenses vary, the actual child care expenses shall be averaged over the most recent twelve month period of time. When the parent is temporarily unemployed or temporarily not attending school, then child care expenses shall be based upon prospective expenses to be incurred upon return to employment.

Expenses shall be based upon "actual" days attended not "eligible days." Child care expenses do not include: amounts paid by subsidies received through a private plan or governmental subsidies provided by an employer or insurance policy, reimbursements, any credit (including the federal child care tax credit), or payments requiring to retain a space for the child. The actual child care costs incurred, less the federal income tax credit for child care, as determined by the custodial parent's most recent IRS Form 2441, shall be added to the custodial parent's basic child support obligation. For purposes of the federal tax credit for child care, only the custodial parent having the child greater than 50% of the time may claim the tax credit. If non-custodial parent has child care expenses, child care expenses shall not be reduced by federal tax credit.

Documentation of child care expenses, and verification of employment, school attendance, or job search are required. Dependent Care Flex Spending Accounts (pre-tax income) shall be included in the computation of a parent's income when the funds are expended for child care expenses, as herein defined. Documentation of expenditures is required. An order for child care expenses may be modified upon a showing of a substantial change in circumstances. Persons incurring child care expenses shall notify obligor within 14 days of any change in the amount of child care costs that would affect the annualized child care amount as determined in the support order.

4.5 (a) In a proceeding for child support following an action under this act ~~dissolution of the marriage by a court~~, by a court that lacked personal jurisdiction over the absent spouse, and in which the court is requiring payment of support for the period before the date an order for current support is entered, there is a rebuttable presumption that the supporting party's net income for the prior period was the same as his or her net income at the time the order for current support is entered.

Failure of either parent to comply with an order to pay support shall be punishable as in other cases of contempt. In addition to other penalties provided by law the Court may, after finding the parent guilty of contempt, order that the parent be:

- (1) placed on probation with such conditions of probation as the court deems advisable.
- (2) sentenced to periodic imprisonment for a period not to exceed 6 months; provided, however, that the Court may permit the parent to be released for periods of time during the day or night to:
 - (A) work; or
 - (B) conduct a business or other self-employed occupation.

The Court may further order any part or all of the earnings of a parent during sentence of periodic imprisonment paid to the clerk of the Circuit court or to the parent having custody or to the guardian having custody of the children of the sentenced parent for the support of said children until further order of Court.

If there is a unity of interest and ownership sufficient to render no financial separation between a non-custodial parent and another person or persons or business entity, the court may pierce the ownership veil of the person, persons, or business entity to discover assets of the no-custodial parent held in the name of that person, those persons, or that business entity. The following circumstances are sufficient to authorize a court to order discovery of the assets of a person, persons, or business entity and to compel the application of any discovered assets toward payment on the judgment for support.

- (1) The non-custodial parent and the person, persons, or business entity maintain records together;
- (2) The non-custodial parent and the person, persons, or business entity fail to maintain an arms length relationship between themselves with regard to any assets.
- (3) The non-custodial parent transfers assets to the person, persons, or business entity with the intent to perpetrate a fraud on the custodial parent.

With respect to assets which are real property, no order entered under this paragraph shall affect the rights of bona fide purchasers, mortgages, judgment creditors, or other lien holders who acquire their interests in the property prior to the time a notice of lis pendens pursuant to the Code of Civil Procedure or a copy of the order is placed of record in the office of the recorder of deeds for the county in which the real property is located.

The court may also order in cases where the parent is 90 days or more delinquent in payment of support or has been adjudicated in arrears in an amount equal to 90 days obligation or more, that the parent's Illinois driving privileges be suspended until the court determines that the parent is in compliance with the order of support. The court may also order that the parent be issued a family financial responsibility driving permit that would allow limited driving privileges for employment and medical purposes in accordance with Section 7-702.1 of the Illinois Vehicle Code. The clerk of the circuit court shall certify the order suspending the driving privileges of the parent or granting the issuance of a family financial responsibility driving permit to the Secretary of State on forms prescribed by the Secretary. Upon receipt of the authenticated documents, the Secretary of State shall suspend the parent's driving privileges until further order of the court and shall, if ordered by the court, subject to the provisions of Section

7-702.1 of the Illinois Vehicle Code, issue a family financial responsibility driving permit to the parent.

In addition to the penalties or punishment that may be imposed under this Section, any person whose conduct constitutes a violation of Section 15 of the Non-Support Punishment Act may be prosecuted under that Act, and a person convicted under that Act may be sentenced in accordance with that Act. The sentence may include but need not be limited to a requirement that the person perform community service under Section 50 of that Act or participate in a work alternative program under Section 50 of that Act. A person may not be required to participate in a work alternative program under Section 50 of that Act if the person is currently participating in a work program pursuant to Section 505.1 of this Act.

- (b) A support obligation, or any portion of a support obligation, which becomes due and remains unpaid as of the end of each month, excluding the child support that was due for that month to the extent that it was not paid in that month, shall accrue simple interest as set forth in Section 12-109 of the Code of Civil Procedure. An order for support entered or modified on or after January 1, 2006 shall contain a statement that a support obligation required under the order, or any portion of a support obligation required under the order, that becomes due and remains unpaid as of the end of each month, excluding the child support that was due for that month to the extent that it was not paid in that month, shall accrue simple interest as set forth in Section 12-109 of the Code of Civil Procedure. Failure to include the statement in the order for support does not affect the validity of the order or the accrual of interest as provided in this section.

~~(c) A one-time charge of 20% is imposed upon the amount of past due child support owed on July 1, 1988 which has accrued under a support order entered by the court. The charge shall be imposed in accordance with the provisions of Section 10-21 of the Illinois Public Aid Code and shall be enforced by the court upon petition.~~

- (c) Any new or existing support order entered by the court under this Section shall be deemed to be a series of judgments against the person obligated to pay support thereunder, each such judgment to be in the amount of each payment or installment of support and each such judgment to be deemed entered as of the date the corresponding payment or installment becomes due under the terms of the support order. Each such judgment shall have the full force, effect and attributes of any other judgment of this State, including the ability to be enforced. Notwithstanding any other State or local law to the contrary, a lien arises by operation of law against the real and personal property of the noncustodial parents for each installment of overdue support owed by the noncustodial parent.

- (e) (d) When child support is to be paid through the clerk of the court in a county of 1,000,000 inhabitants or less, the order shall direct the obligor to pay to the clerk, in addition to the child support payments, all fees imposed by the county board under paragraph (3) of subsection (u) of Section 27.1 of the Clerks of Courts Act. Unless paid in cash or pursuant to an order for withholding, the payment of the fee shall be by a separate instrument from the support payments and shall be made to the order of the clerk.
- (f) (e) All orders for support, when entered or modified, shall include a provision requiring the obligor to notify the court and, in cases in which a party is receiving child and spouse services under Article X of the Illinois Public Aid Code, the Department of Healthcare and Family Services, within 7 days, (i) of the name and address of any new employer of the obligor,, (ii) whether the obligor has access to health insurance coverage through the employer or other group coverage and, if so, the policy name and number and the names of persons covered under the policy, and (iii) of any new residential or mailing address or telephone number of the non-custodial parent. In any subsequent action to enforce a support order, upon a sufficient showing that a diligent effort has been made to ascertain the location of the non-custodial parent, service of process or provision of notice necessary in the case may be made at the last known address of the non-custodial parent in any manner expressly provided by the Code of Civil Procedure or this Act, which service shall be sufficient for purposes of due process.
- (g) (f) An order for support shall include a date on which the current support obligation terminates. The termination date shall be no earlier than the date on which the child covered by the order will attain the age of 18. However, if the child will not graduate from high school until after attaining the age of 18, then the termination date shall be no earlier than the earlier of the date on which the child's high school graduation will occur or the date on which the child will attain the age of 19. The order for support shall state that the termination date does not apply to any arrearage that may remain unpaid on that date. Nothing in this subsection shall be construed to prevent the court from modifying the order or terminating the order in the event the child is otherwise emancipated.
- (g-5) (g) If there is an unpaid arrearage or delinquency (as those terms are defined in the Income Withholding for Support Act) equal to at least one month's support obligation on the termination date stated in the order for support or, if there is no termination date stated in the order, on the date the child attains the age of majority or is otherwise emancipated, the periodic amount required to be paid for current support of that child immediately prior to that date shall automatically continue to be an obligation, not as current support but as periodic payment toward satisfaction of the unpaid arrearage or delinquency. That periodic

payment shall be in addition to any periodic payment previously required for satisfaction of the arrearage or delinquency. The total periodic amount to be paid toward satisfaction of the arrearage or delinquency may be enforced and collected by any method provided by law for enforcement and collection of child support, including but not limited to income withholding under the Income Withholding for Support Act. Each order for support entered or modified on or after the effective date of this amendatory Act of the 93rd General Assembly must contain statements notifying the parties of the requirements of this subsection. Failure to include the statement in the order for support does not affect the validity of the order or the operation of the provisions of this subsection with regard to the order. This subsection shall not be construed to prevent or affect the establishment or modification of any order for support of a minor child or the establishment or modification of an order for support of a non-minor child or educational expenses under Section 513 of this Act.

- (h) An order entered under this Section shall include a provision requiring the obligor to report to the obligee and to the clerk of court within 10 days each time the obligor obtains new employment, and each time the obligor's employment is terminated for any reason. The report shall be in writing and shall, in the case of new employment, include the name and address of the new employer. Failure to report new employment or the termination of current employment, if coupled with nonpayment of support for a period in excess of 60 days, is indirect criminal contempt. For any obligor arrested for failure to report new employment bond shall be set in the amount of the child support that should have been paid during the period of unreported employment. An order entered under this Section shall also include a provision requiring the obligor and obligee parents to advise each other of a change in residence within 5 days of the change except when the court finds that the physical, mental, or emotional health of a party or that of a child, or both, would be seriously endangered by disclosure of the party's address.
- (i) The court does not lose the powers of contempt, driver's license suspension, or other child support enforcement mechanisms, including, but not limited to, criminal prosecution as set forth in this Act, upon the emancipation for the minor child or children.

Child Support Advisory Committee Key Performance Indicators Quarterly Review

1 Support Order Establishment													
	FFY07	FFY08	FFY09	FFY10	FFY11	FFY12	FFY13	FFY14					
1st Quarter	67.09%	74.03%	77.93%	72.72%	77.32%	79.58%	81.34%	0.00%					
2nd Quarter	70.23%	74.27%	78.46%	71.83%	78.48%	80.77%	0.00%	0.00%					
3rd Quarter	73.39%	75.49%	78.74%	61.38%**	79.57%	81.03%	0.00%	0.00%					
4th Quarter	74.47%	77.32%	79.22%	77.66%	80.13%	81.02%	0.00%	0.00%					

2 Current Collections Percent													
	FFY07	FFY08	FFY09	FFY10	FFY11	FFY12	FFY13	FFY14					
1st Quarter	51.28%	53.74%	56.35%	58.52%	57.71%	58.64%	59.67%	0.00%					
2nd Quarter	51.91%	54.40%	56.90%	58.28%	58.46%	59.22%	0.00%	0.00%					
3rd Quarter	52.33%	54.76%	57.63%	58.26%	58.60%	59.33%	0.00%	0.00%					
4th Quarter	53.12%	55.41%	58.03%	57.85%	58.62%	59.14%	0.00%	0.00%					

3 Arrears Debt Percent													
	FFY07	FFY08	FFY09	FFY10	FFY11	FFY12	FFY13	FFY14					
1st Quarter	35.93%	37.60%	43.04%	43.13%	42.05%	42.57%	42.70%	0.00%					
2nd Quarter	44.27%	45.94%	51.46%	52.41%	51.76%	52.22%	0.00%	0.00%					
3rd Quarter	50.69%	52.62%	59.60%	58.24%	57.68%	57.47%	0.00%	0.00%					
4th Quarter	53.65%	59.19%	62.55%	61.33%	61.19%	60.42%	0.00%	0.00%					

4 Caseload													
	FFY07	FFY08	FFY09	FFY10	FFY11	FFY12	FFY13	FFY14					
1st Quarter	N/A	523,303	504,176	518,354	530,176	517,113	495,396	-					
2nd Quarter	N/A	524,317	495,860	553,208	526,215	512,454	-	-					
3rd Quarter	N/A	517,616	500,548	659,545	515,827	499,484	-	-					
4th Quarter	N/A	505,284	493,559	530,682	509,995	495,966	-	-					

#2 is Current Support Paid Divided by Current Support Due, this always represents dollars collected vs. dollars due
 #3 is Number of Arrears Cases Where a Payment is Collected Divided by the Number of Cases With Arrears Due, this always is represented by cases
 Note: 1st Quarter covers October to December
 **IV-A interface problem caused fluctuation