

THE RELATIONSHIP BETWEEN CHILD SUPPORT AND PARENTING TIME

J. Thomas Oldham*

Jane Venohr**

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Section I: Introduction

When child support guidelines were initially drafted, it was assumed that in most instances the lesser-time parent would be the father, the father would see the children infrequently, and the father would have a higher income than the mother. Today, more custodial parents are male,¹ the wage gap between mothers and fathers has narrowed,² and a substantial number of fathers are more involved in their children's lives.³

Decades ago, it was rare for an obligor parent to have access to his child more than every other weekend and approximately three weeks in the summer (or about 20% of all overnights per year).⁴ More recent studies have found that it has become significantly more common for obligated parents to have more frequent access to their child.⁵ Equal joint physical custody is also increasingly common. Census data finds that 58 percent of obligor parents had provisions for visitation or joint custody or both in 1991, and that the percentage increased to 81 percent in 2017.⁶ These trends raise questions about how to calculate a child support obligation in various situations, particularly when the payor parent has substantial access to the child.

This article will discuss various approaches that have been applied to how child support should be calculated (i) when the lesser-time parent has a higher income than the other parent but has substantial access, (ii) when both parents have equal joint physical custody, and (iii) when the greater-time parent has a higher income than the other parent. We will highlight the advantages and disadvantages of the various policy options.

Section II: Background Information

Subsection A: The Theoretical Foundation of Child Support Guidelines in the U. S.

Most states adopted child support guidelines in the late 1980's to fulfill a federal requirement that each state have advisory child support guidelines by 1987.⁷ The Family Support Act of 1988 expanded the requirement from statewide advisory guidelines to require rebuttable presumptive guidelines.⁸ The requirements were intended to correct several deficiencies: inconsistent order amounts among parties in similarly situated cases, inefficient adjudication of child support amounts due to the lack of uniform standards, and inadequate levels of support when compared to poverty levels and the cost of child rearing.⁹

A number of different conceptual models were proposed as a foundation for the creation of child support guidelines. For example, some commentators have argued that guidelines should be crafted so that both parents will have equal living standards until the child becomes an adult.¹⁰ However, no state has adopted this as a conceptual framework for guidelines. Instead, most states adopted a "continuity of expenditure" model of child support guidelines.¹¹ The principle of the continuity of expenditure model is that the child whose parents are living separately should receive the same level of financial support that the child would have received if the child and parents lived together as an intact family. To this end, the continuity of expenditure model is based on measurements of child-rearing expenditures in intact families. The continuity of expenditure philosophy has been implemented in the U. S. via the "income shares model" and the "percentage of obligor income model," the two major types of models for the calculation of child support. All but three states use one of these two models. The income shares model, which is used by 41 states, presumes that each parent is responsible for his or her prorated share of what an intact family with the same number of

children and combined parental income spends on child-rearing, with the obligated parent's prorated share (based on the obligated parent's share of the total parental income) being the basis of the child support order.¹² Under the percentage of obligor income model, the presumptive child support amount is calculated based on only the income of the lesser-time parent.¹³ States utilizing the percentage-of-obligor income model presume that the custodial parent spends at least an equal percentage of income or dollar amount on the child as the guidelines percentage.

Subsection B: Federal Requirements

Federal law does not require adjustments in state guidelines for when the obligor has substantial access. Recent changes to federal requirements for state guidelines, however, attempt to make sure that states provide adjustments within their guidelines to not impoverish the obligor parent.¹⁴ States are now required to provide a self-support reserve or a similar adjustment in their guidelines. Self-support reserves have been established so that significant child support is not required if the obligor parent's income is below a certain specified amount.¹⁵ Most states with both a self-support reserve and an adjustment for timesharing do not allow both adjustments; rather, most take the lower of the two adjustments.

Subsection C: Time-Sharing Adjustment

There has been a movement toward the adoption of formulas that adjust for parenting time in the past few decades. In 1998, 24 states provided formulas to adjust for parenting time.¹⁶ Today, more than two decades later, 38 states have now adopted a parenting-time adjustment formula for child support.¹⁷ The formulas and criteria for applying them vary. As

set forth in more detail below, many states have adopted rules so that, once the obligor parent has the child for at least a specified number of overnights, the presumptive child support amount is reduced as the level of access increases. In addition, some states have incorporated rules so that, even if the obligor parent has substantial access or equal physical custody, child support should not be reduced if the impact would be to impoverish the recipient parent.¹⁸

To the extent that states provide a timesharing adjustment formula, it is helpful to know what level of parenting time is assumed in the basic formula or table. Most states using the income shares guidelines make no assumption of parenting time in their basic table. This is because most income shares tables, which contain the basic child support obligation owed by both parents for a range of combined parental incomes and number of children for whom support is being determined, are based on economic measurements of child-rearing expenditures among intact families; that is, how much is spent on the children when the parents and the children live together. In other words, there is no timesharing arrangement in the underlying economic data because the parents live together.

As mentioned earlier, the income shares model is one type of continuity of expenditures model where continuity of expenditures means the child support obligation relates to how much would have been spent on the child in an intact family. For example, Figure 1, which is an excerpt of the Illinois income shares table, shows that the basic obligation for one child when the parents have a combined income of \$7,000 net per month is \$1,136 per month. This amount is based on a study of how much an intact family spends for one child on average.¹⁹ The obligated parent's prorated share of the basic obligation in the table is the basis of the child support order. An adjustment may be layered on top of this for parenting time. Pennsylvania

is the only income shares state to incorporate a parenting-time adjustment into its basic table. The Pennsylvania table reflects how much is spent on a child in an intact family less what the obligated parent would need to cover most of the child's food and entertainment expenses assuming the child is with the obligated parent 30 percent of the time.²⁰

Figure 1 here

Most percentage of obligor income guidelines, which is the other type of continuity of expenditures model, also relate to measurements of child-rearing expenditures in intact families. Some (such as New York and Wisconsin) mention that they adjusted the percentages to account for the child's time with the obligated parent, but do not specify what assumption was made regarding the "normal" level of contact.²¹ Other percentage-of-obligor guidelines (such as Alaska and Mississippi) do not clearly state that any consideration of timesharing is considered in the basic percentages.

Section III: Calculating the Child Support Order When the Lesser-Time Parent Has Substantial Access and a Higher Income than the Other Parent

Subsection A: Introduction

Although most states do not contain any parenting-time assumption in their basic guidelines table or percentages, most states have adopted a formula pertaining to how the

guidelines support amount should be reduced based on the level of access by the obligor. This is premised on the assumption that, as the obligor-parent's parenting time increases, this increases the child-rearing costs of the obligor parent and reduces the expenses of the other parent. Most states with formulas provide that the formula is to be applied presumptively if the case meets certain criteria (*e.g.*, a shared-custody order that the obligor parent actually exercises). These states, however, disagree whether the obligor parent should receive some support reduction starting with a relatively low level of contact, or whether such an adjustment should begin only when there is substantial access because the custodial parent's expenses are not reduced by the child spending only a few overnights with the other parent.

Some commentators have argued that child support should not be presumptively reduced if the obligor parent has substantial access.²² Proponents of this view contend that it is not clear that the recipient parent's expenses will be reduced as a result of substantial access, so it is not fair to presumptively reduce support when substantial access exists. The consideration of whether the custodial parent's expenses are reduced is also echoed in a recent New York case that involved a father who had possession of his child overnight 3 nights per week. He argued that, due to his level of possession, his support amount should be reduced below the normal presumptive amount of child support under the guidelines. The appellate court ruled that, based on the New York law, he did not have the right to have his support amount presumptively reduced due to his substantial parenting time, without showing that his expenses had increased as a result or that the other parent's expenses had decreased.²³ In this particular case, a major consideration was the presentation of evidence that the custodial parent's expenses were not substantially reduced by the obligor parent's time with the child.²⁴

A small number of states have merely treated the matter as a deviation factor, giving the court the power to reduce the presumptive award due to substantial access. In some of these states, courts have been critical of an absolute rule that an obligor should automatically get a certain reduction in child support as a result of a certain level of access.²⁵ Some statutes of this type (such as New Hampshire) invite the court to consider, when deciding whether to reduce the support amount, whether the obligor's level of access reduces the expenses of the recipient parent.²⁶

In contrast with the New Hampshire and New York approaches summarized above, to obtain a parenting-time adjustment under the various formulas in force among most states today, the obligor does not have to establish that his level of access reduces the expenses of the other parent. Nonetheless, some state do give the court some discretion when applying the timesharing adjustment. For example, in the District of Columbia a timesharing adjustment is not made if the recipient parent can show that such as adjustment would be unjust or inappropriate.²⁷ In some other states, before a timesharing adjustment is made, the obligor parent must show that he or she contributed to the expenses of the child, in addition to paying child support.²⁸

Subsection B. Adjustment Criteria

Subsection 1. Timesharing Criterion

One of the most common criterion for obtaining a parenting-time adjustment is that the lesser-time parent must have at least a certain number of overnights per year with the child. This is the approach used in many states and some other countries. In some Western European countries, the UK, and Canada, child support is not reduced until a specified access threshold is reached. For example, in the UK child support is reduced when the obligor has access 53 nights

per year. Greater reductions occur when the obligor has access for 104, 156 and more than 175 nights. In France, child support is reduced when the obligor has the child 25% of the time. Child support is reduced in Canada when the obligor has the child 40% of the time.²⁹ In Australia, child support begins to be reduced due to obligor access starting with 14% of all overnights (one night per week).³⁰

To make a parenting-time adjustment calculation, the country or state must specify how levels of contact are to be measured. While a few U. S. states attempt to measure time spent with each parent (e.g., ¼ day, ½ day, and etc..),³¹ the most common way to measure levels of access is in terms of how many nights the child spends with the parent.³² This is done due to its level of relative simplicity as well as the fact that, if a child spends the night with a parent, it is likely that the parent will provide dinner and breakfast. (Oregon generally uses overnights, but another method may be used if a parent has frequent contact that are not overnights.)³³ Another related question is whether the child support should be calculated based on the parenting time set forth in the decree or the parenting time actually occurring or both.³⁴

As mentioned earlier, of those states that have adopted a formula for the reduction of child support based on access levels, they do not agree regarding when the child support amount should begin to be reduced. Some states require nearly equal timesharing before the adjustment is applied. In other states, the child support amount is reduced by a small amount even with a very low level of access.³⁵ In the states that reduce support beginning with low levels of access, the child support reduction gradually increases as the number of overnights increases. These parenting-time reduction schedules were created to attempt to give the

obligor parent credit for the additional expenses that are incurred as parenting time increases (and to reflect the fact that the greater-time parent's expenses presumably are also reduced).

Further, when the child support reduction starts at few overnights, there is not a precipitous drop in the guidelines support amount at any level of access. (Such a precipitous drop in the child support amount with a small change in access is referred to as a "cliff effect.") In contrast, if a substantial number of overnights is required before a parenting-time adjustment can be made, and then support begins to be significantly reduced with additional access, cliff effects are created. The cliff effect becomes larger as the minimum threshold is increased.

This is shown by comparing in Figure 2 the amount of support that would be due under the Illinois child support guidelines schedule using the Illinois timesharing reduction formula, which uses a 146 overnight threshold for applying the Illinois shared physical care adjustment,³⁶ to how the support amount would change if the Colorado threshold of more than 92 overnights would be applied to the Illinois child support guidelines schedule.³⁷ (Both Illinois and Colorado use the same general timesharing adjustment formula.) The comparisons consider a scenario where the father's net income is \$4,000 per month, the mother's net income is \$3,000 per month, there is one child, and no other adjustments. It is assumed in Figure 2 that the father is the lesser-time parent. The figure shows the changes in the monthly order amount as the lesser-time parent has more time with the child. The figure starts at zero timesharing, skips to 16% timesharing and then tracks with 1% increases in the time until equal physical custody of 50%. (Including 1% increments from 0-16% in the figure would make the graph unwieldy to read.)

Figure 2 here

Subsection 2. Time-Sharing Adjustments and Low-Income Recipients

One question presented by parenting-time child support reductions is whether they should be granted if they would significantly harm the financial condition of the household of the recipient parent. A few courts have not granted parenting-time reductions due to the low income of the recipient parent.³⁸ The parenting-time adjustment rules in Missouri, Virginia and New Jersey provide that no support adjustment should occur if the recipient-parent's income is below a certain specified level.³⁹

Subsection C. Formulas for Adjusting for Timesharing

With the exception of the "cross-credit formula" (which is also called the offset formula in some states), no other timesharing formula is used by more than two states. The cross-credit formula is used by 23 states.

Subsection 1: Cross-Credit Formula

The cross-credit formula essentially calculates a theoretical order for each parent weighed by the timesharing arrangement. The parent with the larger theoretical order is the obligor parent and owes the difference between the two theoretical orders. Colorado was the first state to adopt this method and promulgated it in 1986.

The first step in calculating the child support amount under an income shares approach in most states using the cross-credit formula is to increase the basic obligation owed by both parents by 50 percent to account for some child-rearing expenses being duplicated when both

parents have substantial access (*i.e.*, the cost of housing and some transportation expenses). In other words, the cross-credit formula with such a multiplier assumes it costs more to raise a child in two households when both parents have substantial access than it does in one household. (A few states do not utilize a multiplier or use a multiplier other than 1.5.)

Figure 3 here

As shown in Figure 3, each parent's share of that larger theoretical support amount is determined (under an income shares approach) based on each parent's share of combined parental income. Once each parent's shared-care enhanced child support obligation is calculated, that amount is multiplied by the percentage of overnights the child spends with the other parent. The smaller number is then subtracted from the larger number to arrive at the presumptive child support amount. The parent with the larger presumptive amount would pay the other parent the difference between the two amounts.⁴⁰

(An alternate way to make this calculation is to multiply each parent's enhanced shared care child support amount by that parent's percentage of overnights, and then to subtract that amount from the enhanced shared care child support amount to arrive at the amount each parent owes the other parent. Then the lower amount would be subtracted from the higher amount to arrive at the presumptive child support obligation.) Under this approach, if the shared-care child support amount is greater than the amount that would have resulted from sole custody award, the parent normally pays the smaller amount.

All states using a cross-credit approach set a certain timesharing threshold for its use. States do not agree regarding the appropriate threshold. Alaska and Vermont have chosen 30% of overnights, the District of Columbia has chosen 35% and Illinois utilizes 40%. The cross-credit approach is commonly used with an income shares approach, although a few states with percentage-of-obligor income guidelines (such as Alaska and Wisconsin) also use it.

There are some strengths and weaknesses to the cross-credit with multiplier approach. The major strengths of a cross-credit formula are that it has been used for decades by many states and it is easily explainable. The first weakness is that the child support is not reduced until the parenting-time level reaches the threshold. Once the parenting time reaches the threshold, child support frequently goes down substantially as parenting time levels increase above the threshold. This creates a “cliff effect.” (This is evident in Figure 2.) Small variations in parenting time can result in substantial changes in child support. When there is a cliff effect, particularly a large cliff effect, there is a concern that the child support recipient may oppose the obligor’s parenting time exceeding the threshold, while the obligor might want his parenting time to exceed the threshold. The result can be more litigation over parenting time.⁴¹ Some commentators have questioned whether this is a significant problem, because many parents are ignorant of the law or misunderstand it.⁴²

The second perceived weakness of this cross-credit approach is that it can result in the greater-time parent paying child support to the lesser-time parent if the lesser-time parent’s income is less than that of the other parent. While such a result is controversial in some states, it is perceived to be a desirable outcome in many states.

Subsection 2: Mathematical Variations to the Cross-Credit Formula

There are at least two mathematical variations of the cross-credit formula. One variation is used by Michigan and Minnesota.⁴³ The other variation is used by Oregon.⁴⁴ The mathematical structure of these two formulas is rooted in the cross-credit formula, but they do not require a time-sharing threshold for their application. These approaches have also been called “advanced math” or “non-linear” formulas because they are complicated mathematical formulas with exponential functions. The use of an exponential function allows the dollar reduction of the child support order for more overnights to increase gradually, rather than have a cliff effect. Figure 4 shows the formulas of these three states. Figure 5 compares the order amounts for the same case scenario shown in Figure 2 (the father is the lesser-time obligor parent with a net monthly income of \$4000 and the mother’s net monthly income is \$3000) ; that is, the Michigan, Minnesota, and Oregon formulas (and a cross-credit formula) are applied on top of the Illinois child support guidelines schedule for comparison purposes to illustrate the impact of the timesharing formula rather than the guideline support amount differences among states.

Figure 4 here

Figure 5 here

As shown in Figure 4, the elements of the Michigan and Minnesota formulas are similar to the cross-credit formula in that both consider each parent’s share of the basic obligation and weigh it by the percentage of time the child is with the other parent. The difference is neither

the Michigan timesharing adjustment nor the Minnesota timesharing adjustment apply a multiplier to the basic obligation. Instead, both states make an exponential function of the percentage of time: Michigan takes it to the 2.5 power and Minnesota takes it to the third power, which essentially cubes it. This causes the timesharing formula to start off with small adjustments when the lesser-time parent has few overnights and increases the adjustment as the parents move toward almost equal custody.

Figure 5 shows significant differences in support amounts in the four timesharing formulas when the lesser-time parent has few overnights, but the differences in the order amounts produced by the different timesharing formulas narrow as the lesser-parent's time with the child approaches almost equal physical custody. When the lesser-time parent has the child for 40% of the time, the order amount would be \$292 per month under the cross-credit formula with a 150% multiplier, \$347 per month under the Michigan timesharing formula, \$389 per month under the Minnesota timesharing formula, and \$282 per month under the Oregon timesharing formula. (The reader should keep in mind that the timesharing formulas are applied to the Illinois schedule to not confound differences among the timesharing formulas with differences with state child support schedules.) Figure 5 also shows that the Michigan timesharing adjustment produces a larger reduction than the Minnesota timesharing adjustment. In other words, the higher the exponential power used in the formula, the smaller the reduction.

The Oregon formula produces the greatest adjustment at low levels of timesharing. The Oregon formula was developed by a mathematics professor to yield gradual changes when the lesser-time parent had little time with the child, larger changes when the lesser-time parent has

almost equal custody, and to track with what a cross-credit formula with a 1.5 multiplier would yield at almost equal custody. For ease of use, Oregon has developed a lookup table of overnights and percentage adjustments from its formula as well as an automated calculator. An excerpt of the Oregon lookup table is shown in Table 1.

Table 1 here

The major advantages to the mathematical variations of the cross-credit formulas are that they produce gradual reductions to the child support order as overnights increase (no cliff effect), and they recognize that the rate of reduction should be less when there is little timesharing and more when there is greater timesharing, and the formulas do not require a timesharing threshold. The disadvantages are that the formulas are not easily explainable, cannot be calculated manually, and that they can produce an adjustment at very low number of overnights, which is a concern to policymakers who believe that the parent with more overnights does not incur a reduction in child-rearing expenditures until the child spends a substantial number of overnights with the other parent.

Subsection 3: Variable Expenses and Fixed, Duplicated and Non-Duplicated Expenses

A few states (*e.g.*, Arizona, Indiana, Missouri, and New Jersey) premise their parenting-time adjustments on expenses of children grouped into three categories: variable expenses (which travel with the child); duplicated fixed expenses incurred by both parents (such as the cost of

housing); and non-duplicated fixed expenses (such as clothing).⁴⁵ Although this is the premise underlying the parenting-time formulas in these states, the premise is not evident because each of these states (except New Jersey) have converted the formula to a sliding scale lookup table. Nonetheless, Indiana, Missouri, and New Jersey specifically discuss the foundation of this adjustment in their guidelines.⁴⁶ Arizona, however, does not, probably because Arizona has modified its adjustment several times over the past few decades to the point that this underlying principle has been lost.

When Arizona first developed its formula, it assumed 38% of all child-rearing expenses were variable, but due to several modifications to the Arizona timesharing formula over time, the Arizona timesharing formula no longer reflects a pure version of the variable and duplicated/non-duplicated fixed expenses concept. Indiana, Missouri, and New Jersey have not changed their underlying assumption. Indiana assumes 35% of child-rearing costs are variable, Missouri assumes 38% are variable, and New Jersey assumes 37% are variable. Another difference between the timesharing adjustments in these states is that all require a different minimum amount of overnights for an adjustment: Arizona requires at least 4 overnights per year, Indiana requires at least 52 overnights per year, Missouri requires at least 36 overnights per year, and New Jersey requires at least 37 overnights per year.

At low levels of obligor parenting time, such timesharing adjustments try to give the obligor credit for variable expenses only. At higher levels of parenting time, the obligor is also given credit for duplicated fixed expenses.⁴⁷ For example, New Jersey begins to include adjustments for duplicated fixed expenses when the lesser-time parent has at least two overnights per week (28% timesharing).

Which expenses are categorized as variable, duplicated fixed, or non-duplicated fixed are generally subjective and state determined. There is a dearth of research confirming whether a particular expense is variable, duplicated fixed or non-duplicated fixed. However, most states assume housing expenses, which is the largest expenditure category, are a duplicated fixed expense. States are mixed on their treatment of transportation and food expenses, which are the second and third largest categories of expenses. Depending on the state, some or all transportation expenses are considered duplicated fixed expenses. Food is normally considered a variable expense. Other categories of expenses, such as clothing, entertainment, and personal items, are less clear in their categorization. Yet these expenses comprise smaller shares of total child-rearing expenditures. A 2000 survey of parental expenditures regarding the living expenses of college students explored the classification of variable/duplicated fixed/non-duplicated fixed expenses and found conflicts with state assumptions.⁴⁸ For example, many of the college students recalled that their non-residential father purchased clothing for them, while clothing is typically deemed a non-duplicated fixed expense (hence, only incurred by one parent) in the states using this classification.

Figure 6 compares the parenting-time formulas for Arizona, Indiana, Missouri, and New Jersey using the same case scenario considered in Figures 2 and 5 (the father is the lesser-time obligor parent with a net monthly income of \$4000 and the mother's net monthly income is \$3000) and applying each of the state's timesharing formulas to the Illinois child support schedule. When the lesser-time parent has 40% timesharing, the order amount would be \$300 per month under the Arizona timesharing formula, \$272 per month under the Indiana

timesharing formula, \$342 per month under the Missouri timesharing formula, and \$333 per month under the New Jersey timesharing formula.

The Arizona parenting-time formula, which is shown in Table 2,⁴⁹ consists of 13 intervals. The wide range of overnights within an interval (*e.g.*, a 16.1% adjustment for 88 – 115 overnights) causes the downward staircase effect (*i.e.*, notches) of the Arizona timesharing formula as the lesser-time parent has more time with the child. As observed in Figure 6, the Missouri parenting-time formula also has a downward staircase effect but because they consider more and narrower timesharing intervals (18 intervals instead of 13 intervals like Arizona does), the notches under the Missouri parenting-time formula are not as dramatic as those under the Arizona parenting-time formula.

The strengths of the variable/duplicated fixed/non-duplicated fixed timesharing premise are that it has a theoretical basis, can adjust for low levels of timesharing, and can be structured not to have a cliff effect. One of its weaknesses is the lack of empirical evidence on whether families actually organize their child-rearing expenditures this way, what the levels for each category of expense are, and the lack of clarity regarding at what timesharing threshold parents should move from sharing of variable expenses only to sharing of variable expenses and duplicated fixed expenses.

Figure 6 here

Table 2 here

Subsection 4: Other Formulas

Some states have established a sliding scale for the reduction of child support once the level of access reaches a certain level. For example, the Iowa guidelines provide that an

obligor's obligation is to be reduced by 15% for 128-147 nights, 20% for 148-166 nights and 25% for more than 167 nights (but less than equal physical custody).⁵⁰ Iowa also provides that the cross-credit formula with a 150% multiplier should be applied when there is equal physical custody. Other states with sliding scales are Delaware and Kansas.⁵¹ The lowest adjustment percentage is 10% and the highest is 30% in these sliding scale formulas. Pennsylvania and North Dakota essentially provide a formulaic version of the sliding scale that allows the percentage reduction to vary from 10-20% in Pennsylvania and roughly about 15-30% in North Dakota.⁵² Ohio simply provides an adjustment of 10% for 90 or more overnights per year.⁵³ These percentage adjustments may be loosely linked to the concept such as variable/duplicated fixed/non-duplicated fixed child-rearing expenses, but this is not clearly stated in the guidelines.

Utah reduces its basic guidelines calculation by a factor of 0.27% for every overnight over 110 but not greater than 131 overnights.⁵⁴ For overnights more than 131, Utah provides a deduction factor of 0.84% for each overnight. The 0.27% is the ratio of 100% divided by 365 overnights; hence is a per diem approach. It is not clear what the basis of the 0.84% is or why Utah set the threshold at 110 overnights. The Tennessee timesharing adjustment is also essentially a per diem adjustment. The Tennessee adjustment has a timesharing threshold of 92 overnights and is designed to result in an award of no support at 182.5 overnights when the parents have equal incomes.⁵⁵ To that end, the Tennessee adjustment factor for 92 overnights or more is the number of overnights multiplied by .0109589 (which is $2/182.5$: that is, 92 overnights is quarter of the year and 182.5 is half the year so the timesharing formula contains percentages needed to result in a zero order at 50%/50% timesharing).

Figure 7 illustrates the impact of these different approaches by comparing the order amounts under the Iowa, Pennsylvania, Tennessee, and Utah timesharing formulas applied to the same case scenario considered in earlier Figures (the father is the lesser-time obligor parent with a net monthly income of \$4000 and the mother's net monthly income is \$3000) and using the Illinois child support schedule. When the lesser-time parent has the child 40% of the time, the order amount would be \$479 per month under the Iowa timesharing formula, \$536 under the Pennsylvania timesharing formula, \$357 per month under the Tennessee timesharing formula, and \$432 per month under the Utah timesharing formula. Figure 7 shows that the sliding-scale percentage such as the Iowa timesharing formula and Pennsylvania's timesharing formula produce cliff effects at each timesharing interval (128, 148, and 167 overnights in Iowa) or when the timesharing threshold is met (40% timesharing in Pennsylvania). In contrast, the per diem approaches used by Tennessee and Utah produce more gradual changes in the order amount as the child's time with the lesser-time parent increases.

Figure 7 here

The strength of the sliding scale and per diem timesharing adjustments is that they are simple. The weaknesses are that the adjustment thresholds can still result in cliff effects and the percentage adjustments can appear arbitrary.

Subsection 5: Summary of Timesharing Adjustments for when Lesser-Parent Has More Income

Many states have adopted a formula for reducing child support based on the obligor's parenting time. In these states, the criteria for applying the adjustment, the adjustment formulas, and formula parameters vary widely. Only the cross-credit with a 150 multiplier is used by more than two states. Due to these large variations, state timesharing formulas produce very different order amounts even when the same child support schedule is used. This is illustrated by Figure 8, which compares the 12 different timesharing formulas graphed earlier using the same case scenario (the monthly income of the lesser-time parent is \$4,000 and the monthly income of the other parent is \$3,000), the Illinois child support guidelines schedule, and assumes that the lesser-time parent cares for the child 40% of the time. It shows the monthly order ranges from \$272 per month using the Indiana timesharing formula to \$536 per month using the Pennsylvania timesharing formula. In contrast, the sole custody order for this case in Illinois is \$649 per month. (See child support obligation shown in Figure 2 for an obligor with access levels less than the threshold.)

Figure 8 here

The information presented in Figure 8 should not be used to rank which state timesharing formulas produce more or less support orders. As seen in the next section, the rankings vary with the circumstances of the case scenario being considered.

Section IV. Calculating the Child Support Order When Both Parents Have Equal Physical Custody

Most formulas used for the scenario where the lesser-time parent has more income apply when both parents have equal physical custody. However, a few states with parenting-time adjustment formulas for substantial access have decided to use a different approach when parents have equal physical custody. Most of these states with a different formula rely on the sliding scale formula or the variable/duplicated fixed/non-duplicated fixed formula. These states also need to clarify what constitutes “equal physical custody.” For example, would an arrangement of 45%/55% parenting time constitute equal physical custody?⁵⁶

Some have argued that there should be no child support obligation if there is equal physical custody. For example, in Western Europe, some countries abate child support when there is equal physical custody.⁵⁷ This approach is generally not accepted in the U.S., at least when the parents have different incomes.

In most states, including all states using the cross-credit formula, the parenting-time adjustment approach to substantial access also applies to equal physical custody. Pursuant to the cross-credit approach discussed above, when there is equal physical custody the higher-income parent would pay some child support to the other.⁵⁸ However, if both parents have equal incomes, no child support would be due.⁵⁹ The modifications to the cross-credit adopted in Oregon, Michigan, and Minnesota also result in no child support when there is equal physical custody and equal incomes.⁶⁰

Not all states agree that when there is equal joint physical custody and equal income no child support should be due. For example, in some of the states that reduce child support using the concept of variable/duplicated fixed/non-duplicated fixed expenses, such as Indiana and New

Jersey, there is an assumption that, even with equal physical custody and equal incomes, one parent may be paying the non-duplicated fixed expenses relating to the child, so some child support should be due.⁶¹ Some states with a sliding scale percentage or a percentage formula, such as Pennsylvania, also do not produce a zero order when there is equal custody and equal income. Also, in some of these states, such as Iowa, as mentioned earlier,⁶² and North Dakota,⁶³ there is a different formula for equal custody.

Figure 9 compares the results of the 12 parenting-time adjustment formulas applied to an equal custody situation and the Illinois child support schedule. It considers two scenarios. The first scenario is the same scenario that has been considered in previous figures: there is one child, the father has a net income of \$4,000 per month, and the mother has a net income of \$3,000 per month. The first scenario reveals wide variation in the results of the parenting-time formulas with the exceptions of the mathematical modifications of the cross-credit formula used by Michigan, Minnesota, and Oregon. Each of these mathematical formulas yields an order of \$81 per month because of the similarities in their mathematical calculation. The parenting-time formulas of the other states all yield greater amounts. The states using the variable/duplicated fixed/non-duplicated fixed concept (with the exception of Arizona) and the percentage adjustment at equal physical custody (*e.g.*, Pennsylvania) and Tennessee's per diem approach yield considerably higher amounts.

In the second scenario, there is still one child, but the parents have equal incomes: each parent has a net income of \$4,000 per month. Figure 9 shows seven of the 12 timesharing formulas considered produce a zero order when there is equal physical custody and equal income. This includes the cross-credit formula with 150 percent multiplier, the mathematical

modifications of the cross-credit approach (the Michigan, Minnesota, and Oregon parenting-time formulas), the Arizona formula (which has modified its variable/duplicated fixed/non-duplicated fixed premise to produce a zero order when there is equal physical custody and equal incomes), the Tennessee parenting-time formula (which is a per diem approach), and the Iowa parenting-time formula (which provides for a cross-credit with 150 percent multiplier at equal physical custody.) While the Utah timesharing formula comes close to zero for the equal physical custody and equal income with a \$3 per month order, the state parenting-time formulas using the pure variable/duplicated fixed/non-duplicated fixed concept do not because there is always one parent that incurs some non-duplicated fixed expenses. New Jersey assumes that the parent incurring the fixed expenses in equal physical custody is the parent with whom the child resides with mostly when attending school.

The comparisons in Figure 9 should not be used to draw the conclusion that there are substantial orders for all cases involving equal physical custody and equal incomes. It is not uncommon for parties with almost equal physical custody and almost equal incomes to agree upon a zero order.

Figure 9 here

Section V. Calculating the Child Support Order When the Lesser-Time Parent has a Lower Income Than the Other Parent

Subsection A: Formulas

It is normally assumed that the lesser-time parent will pay support to the greater-time parent. One reason for this is that it was assumed that the income of the lesser-time parent would be greater than that of the other parent.⁶⁴ Should this rule extend to situations where the income of the lesser-time parent is less than that of the other parent? Case law suggests that such a rule would be consistent with the continuity of expenditure philosophy that both parents should contribute financially toward the cost of raising their child, regardless of the differences in their incomes.⁶⁵ But in many such cases the standard of living of the lower-income parent would be lower than that of the other parent, even before the income transfer required by a child support obligation.⁶⁶ Still, creating a special rule for a situation when the lesser-time parent has a lower income than the other parent would be inconsistent with the cross-credit formula, which essentially calculates a theoretical order for each parent, weighs each parent's theoretical order by the child's time with the other parent, and the parent with larger amount owes the other parent the difference. In other words, the cross-credit formula is just a mathematical calculation indifferent to which parent pays support in this circumstances. It is just where the numbers land.

Figure 10 compares some parenting-time formulas shown earlier for a scenario where the father is the lesser-time parent with a net income is \$4,000 per month and the mother's net income is \$5,000 per month. There is one child and the Illinois child support schedule is applied to each state's timesharing formula. Figure 10 shows that four of the six timesharing formulas result in the mother owing the father child support for this case scenario, even when the father is the lesser-time parent with substantial access. The obligated parent flips from the father to

the mother at 45% timesharing under the cross-credit formula with the 150% multiplier, 46% timesharing under the Tennessee timesharing formula, 47% timesharing under the Oregon timesharing formula and 50% timesharing formula under the Indiana timesharing formula. Although not shown, it would also flip for the Michigan and Minnesota timesharing formulas. In other words, it will flip using the cross-credit formula and mathematical modifications to the cross-credit formula. Tennessee uses a per diem formula, which will generally flip depending on the parameters. Sliding scale percentages and formulas, such as what Pennsylvania uses, will not flip. Whether the variable/duplicated fixed/non-duplicated fixed formulas flip depends on the parameters. As shown in Figure 10, the Indiana timesharing formula, which is based on the variable/duplicated fixed/non-duplicated fixed concept, flipped, while Missouri's version of the concept did not.

Figure 10 here

At 50-percent timesharing for this scenario, the cross-credit formula with a 150% multiplier would result in the mother owing the father \$113 per month, the Oregon timesharing formula would result in the mother owing the father \$75 per month, the Tennessee timesharing formula would result in the mother owing the father \$150 per month, the Indiana timesharing formula would result in the mother owing the father \$2 per month, while the Pennsylvania timesharing formula would result in the father owing the mother \$331 per month, and the Missouri timesharing formula would result in the father owing the mother

\$141 per month. Missouri, however, does indicate a guidelines deviation could be granted for this circumstance.

The reader should note that although Figure 10 shows four of the six state timesharing formulas flip which parent is obligated to pay support, the outcome will differ depending on the circumstances of the case. The flipping could occur at a lower level of timesharing, if the lesser-time parent has significantly lower income relative to the other parent. Further, a guidelines deviation may be granted for this circumstance.

A few states have adopted an absolute rule or have caselaw that if a greater-time parent has the child for more than a specified number of overnights, that parent cannot be ordered to pay child support.⁶⁷ Other states have adopted a presumption that the greater-time parent should not be ordered to pay child support once the number of overnights exceed a certain number.

Section B. Caselaw

Because courts can always deviate from the guideline when appropriate or just or in the best interest of the child, case law often informs the treatment of shared-parenting situations. Perhaps the most challenging cases of this type involve situations where the greater-time parent has a high income and the other parent has substantial access and a low income. For example, in a recent Illinois case the father's gross annual income was \$933,000 and the mother's net monthly income was \$929. The mother had substantial access, but less than 50% of all overnights. Over the father's objection, the appellate court affirmed the trial court's order that the father had to pay monthly child support of \$3,990.⁶⁸

In a similar case, a New York court ruled that New York law did not give a New York court the power to order the custodial parent to pay child support, even when the greater-time parent

was wealthy and the other parent was poor and had substantial access.⁶⁹ In contrast, the Pennsylvania Supreme Court affirmed a child support award against a greater-time parent when the greater-time parent had a substantially higher income than the other parent and the other parent had only a “normal” level of contact.⁷⁰ The Illinois Supreme Court has also affirmed an order requiring the greater-time parent to pay child support to the other parent, even though the other parent had only “normal” (perhaps less than normal) access rights, when the lesser-time parent’s income was much lower than that of the greater-time parent.⁷¹ In both of these cases the Pennsylvania and Illinois Supreme Courts were generally supportive of requiring the greater-time parent to pay child support when the greater-time parent’s income was significantly higher than that of the other parent.

A recent Texas case presented a similar issue. Texas relies on a percentage of obligor income guidelines formula. While the statute is not totally clear, it has been assumed by lawyers and judges that the guideline is to be applied to the income of the lesser-time parent. (Of course, the court can deviate from this presumptive amount if there is a reason to deviate.) In this particular case, the parents were granted joint legal custody. The father (who had a significantly higher income than the mother) was granted more than 70% of all overnights. To calculate the presumptive child support award, the trial court subtracted the presumptive child support award that the mother would have owed under the guidelines and subtracted it from the presumptive award that the father would have had to pay based on his income. (Texas has no specific formula for reducing child support due to parenting time.) The trial court concluded that the father therefore should pay the mother monthly child support of \$1,360 (the difference between the two presumptive obligations) because it was “in the child’s best

interest to have an adequate amount of resources available in each home to support the child.” The appellate court affirmed.⁷²

The authors believe that the cases summarized above in this section create a great deal of uncertainty regarding how a child support award should be calculated if the greater-time parent has a significantly higher income than the other parent. One of the goals of child support guidelines was to create more predictability in child support awards. There seems to be some disagreement how guidelines should be applied when the greater-time parent has a higher income than the other parent, and this uncertainty will encourage litigation.

The Georgia Supreme Court considered a case very similar to the Texas A.R.W. case discussed above. At the time this case was decided, Georgia, like Texas, relied on a percentage of obligor income guideline formula and had no specific formula for reducing child support due to parenting time. In a custody modification action, the court awarded the father 60% of the parenting time and the mother 40%. The father had a higher income than the mother. To calculate the child support obligation, the Georgia trial court, like the court in A.R.W., subtracted the presumptive amount that the mother would be ordered to pay under the guidelines from the presumptive amount the father would have to pay if the guideline would be applied to his income. The trial court subtracted the amount the mother would be ordered to pay from the amount the father would have to pay and ordered the father to pay the mother the difference, which was \$1,087 per month. The Georgia Supreme Court ruled that the trial court had misapplied the guidelines. To calculate the presumptive award, the Georgia Supreme Court clarified that the guidelines should be applied to the income of the lesser-time parent. The Georgia Supreme Court explained that the trial court can, of course, then deviate

from the presumptive amount for good cause. The Georgia Supreme Court stated that it could be possible to order the greater-time parent to pay child support if adequate grounds for deviation could be established to do so. However, because the trial court had made no findings justifying a reduction in the mother's presumptive obligation, the Georgia Supreme Court reversed the order of the trial court.⁷³

Perhaps some objective standard could be established to govern the award of child support when the income of the greater-time parent exceeds that of the other parent, particularly in those states that have not adopted a parenting-time adjustment formula. For example, one type of objective standard would be to specify that, if the lesser-time parent's income is less than a certain specified percentage of the income of the other parent, and the lesser-time parent has the child for at least a certain specified number of overnights, the greater-time parent can be ordered to pay child support. A disadvantage of such a system is that it could create a substantial cliff effect at the threshold. As was mentioned above, a number of parenting-time adjustment approaches clarify when the greater-time parent should pay child support and the presumptive amount of the support payment.

VI. Other Concerns

One concern regarding parenting-time adjustments for child support is that, over time, parenting time will decrease. This would require the greater-time parent to go to court to modify support to reduce or eliminate the child support parenting time reduction. One study found that, compared to the level of contact at divorce, for parents with a shared-care arrangement there was some reduction in the level of contact for some fathers (19% of fathers

with young children reduced contact, while 30% of fathers with older children reduced contact).⁷⁴

Another concern is that timesharing will not occur as specified in the order. A Florida statute provides that, if an obligor parent does not regularly exercise the time sharing schedule set forth in the parenting plan, this is a substantial change in circumstances which can justify a modification in child support retroactive to the date the parent first failed to exercise the specified access rights.⁷⁵ A few other states have similar provisions. Some states provide a simplified procedure for an order modification if the amount of parenting time used to calculate the support amount does not actually occur on a regular basis. None of these states clarify how large the difference between the amount of timesharing that occurred and what was considered in the order to be eligible for a modification.

Still another concern is if a “normal” level of timesharing is assumed in the standard basic child support schedule, what should be done if the timesharing is actually less? Tennessee and Pennsylvania are the only state guidelines that explicitly state what a standard amount of timesharing is under the guidelines. The Tennessee guideline provides what the adjustment should be if actual timesharing is more or less than the standard amount. Pennsylvania, which incorporates an adjustment for 30% timesharing of the lesser-time parent in its basic child support schedule, does not specify a formula for when actual timesharing is less than 30%. Tennessee assumes a standard amount of timesharing of 80 overnights (every other weekend, two weeks in the summer and two weeks during holidays through the year) and also uses a per diem approach to adjust the basic formula amount upward if the lesser-time parent has the child 68 overnights or less per year.⁷⁶ Some courts have endorsed

increasing child support above the presumptive guideline amount if the obligor has little or no contact with the child.⁷⁷

Section VII. Summary and Policy Choices

This paper identifies several approaches to parenting-time adjustments in state guidelines. Some state guidelines provide for timesharing as a guideline deviation factor, while most states provide a parenting-time adjustment formula. The criteria for applying the parenting-time formula vary but often a state-determined level of timesharing must be met before an adjustment is made.

By far the most common formula is a cross-credit formula with a specified minimum threshold of timesharing before an adjustment occurs. Three states have taken the basic concept of the cross-credit formula and mathematically modified it to result in a more gradual change in the order amount as the lesser-time parent's time with the child increases. In addition to the states that have adopted some variation of a cross-credit formula, other states use a wide variety of parenting-time formulas. None of these other formulas are identical. A few states base their timesharing adjustment on the principle that child-rearing expenses can be classified as variable, duplicated fixed, and non-duplicated fixed. Under these formulas, the lesser-time parent receives credit for variable expenses at low levels of timesharing and additional credit for variable and duplicated fixed expenses at almost equal levels of timesharing. In addition, there are states that use a sliding scale percentage adjustment or formula and still other states that use a per diem approach for timesharing above a state-determined threshold.

The graphs reveal certain differences among the various approaches. For example, the rate of decrease due to more overnights with the child generally is more gradual under the modified cross-credit formulas as well as under Indiana's version of the variable/duplicated fixed/non-duplicated fixed timesharing formula. This occurs because a parenting-time adjustment begins at a relatively low level of access by the payor. In contrast, the cross-credit formula and sliding scale percentages and formulas do not provide an adjustment until the specified threshold is met. The cross-credit formula can have a significant cliff effect at the timesharing threshold required for applying the adjustment. When the recipient has no income, the child support amount under the cross-credit with multiplier is greater than the amounts calculated using the mathematically modified cross-credit formulas. When both parents have equal incomes, many of the formulas go toward no child support with equal joint custody, while most parenting-time formulas based on the variable/duplicated fixed/non-duplicated fixed expense concept and the sliding scale percentage or formula do not. When the lesser-time parent's income is significantly less than that of the greater-time parent, under the cross-credit and the modified cross credit formulas and the per diem approach, the greater-time parent begins to pay support once the lesser-time parent's percentage of overnights gets close to equal timesharing, but not under most versions of the variable/duplicated fixed/non-duplicated fixed expenses model or the sliding scale percentage or formula .

A number of the differences in results mentioned above reveal policy choices states make when adopting a parenting-time adjustment approach. First, should the adjustment be applied when the recipient's household income is below a certain level? If, so, what should that level be?

The parenting-time support reduction adjustments described above presumptively apply once the obligor parent establishes that he or she meets the specified threshold for a parenting-time adjustment. Should there be any ground for not applying the parenting-time adjustment, other than the relative poverty of the recipient parent, as mentioned in the previous paragraph? If so, what other reasons should there be for not applying the adjustment?

Second, should child support be reduced if there is a relatively low level of obligor contact or should a more substantial threshold be specified before support is reduced? Note that approaches with a threshold by definition do not reduce support until the threshold level of access is reached, and then reduce support more substantially as parenting time exceeds the threshold. The cliff effect resulting from the threshold conceivably could increase litigation, which could be a concern. It could be argued that it is fair not to reduce child support until a certain threshold of contact is met, because the recipient's expenses are not significantly reduced until the obligor's access is substantial.

Third, what should be the magnitude of the parenting-time child support reduction at various levels of contact? (Note the large variation in award amounts in Figure 8 for support when the obligor parent has possession of the child 40% of all overnights and in Figure 9 when the parties have equal physical custody.)

Fourth, should the greater-time parent ever have to pay child support to the other parent if the greater-time parent's income is significantly higher? Should it be possible for the greater-time parent to be ordered to pay a substantial amount in support if the parents' incomes are very different?

Should the same formula be used when there is substantial access by the obligor as when there is equal joint physical custody? If a different formula is to be used, what constitutes equal joint physical custody, when a different formula would apply? Further, if two different formulas are to be used, how can the transition from one formula to the second formula be made without a cliff effect?

Finally, should the parenting-time adjustment be made based on the level of access set forth in the court order, or should the adjustment be based on the actual number of overnights, if that differs from what is set forth in the order (or if there is no order)?

Section VIII. Conclusion:

State Guidelines Reviews

States are required to review their child support guidelines at least once every four years.⁷⁸ Most states review their guidelines through a commission or committee that typically consists of a wide range of stakeholders, such as attorneys, judges, representatives of the state child support agency, parents, children's advocates, economists or accountants, and academicians.⁷⁹ Adopting a parenting-time formula or expanding the parenting-time formula are often issues discussed in these reviews. Committees and commissions in states without parenting-time formulas generally are interested in adopting a formula to create greater consistency in shared-parenting situations and to respond to an increased number of cases with shared parenting. Many committees and commissions in states with parenting-time formulas, particularly those that require timesharing thresholds before an adjustment occurs, generally seek to alleviate the cliff effect.

Committees and commissions considering parenting-time adjustment formulas share two common objectives. The first objective is to keep the adjustment simple. The common

beliefs are that a simple formula is easier to explain, easier to calculate and can be calculated manually. (This is a particular concern in states without automated calculators or where judges and decision makers with authority to issue child support orders lack computers.) However, states often find a trade-off between keeping it simple and creating cliff effects. The second objective is to minimize parental strife regarding parenting time. The concern is that too large of an adjustment for substantial access will fuel more litigation over the obligor-parent's time with the child.

Most recently, commissions have officially and unofficially favored the Oregon formula because of its gradual support decrease as the obligated parent's time with the child increases. In addition, they are encouraged by Oregon's reports that its formula does not increase litigation because each additional overnight creates a minuscule decrease in the order amount.⁸⁰ However, final approval of any guidelines changes typically rests with the legislature or the state's supreme court, depending upon whether the state sets its guidelines via legislation or court rule or administrative rule.⁸¹ Legislatures and supreme courts appear to be less receptive to dramatic changes in parenting-time formulas and generally do not favor timesharing formulas, like the Oregon formula, that begin to reduce support after relatively few overnights.

Figure 1

Excerpt of Illinois Income Shares Table								
Combined Net Income			One Child	Two Children	Three Children	Four Children	Five Children	Six Children
6525.00	-	6574.99	1078	1621	1929	2155	2371	2577
6575.00	-	6624.99	1085	1630	1941	2168	2385	2593
6625.00	-	6674.99	1091	1640	1953	2181	2400	2608
6675.00	-	6724.99	1097	1650	1965	2195	2414	2624
6725.00	-	6774.99	1104	1660	1976	2208	2429	2640
6775.00	-	6824.99	1110	1669	1988	2221	2443	2655
6825.00	-	6874.99	1117	1679	2000	2234	2457	2671
6875.00	-	6924.99	1123	1689	2012	2247	2472	2687
6925.00	-	6974.99	1129	1698	2023	2260	2486	2703
6975.00	-	7024.99	1136	1708	2035	2273	2501	2718
7025.00	-	7074.99	1142	1718	2047	2286	2515	2734
7075.00	-	7124.99	1148	1728	2059	2300	2530	2750
7125.00	-	7174.99	1155	1737	2070	2313	2544	2765
7175.00	-	7224.99	1161	1747	2083	2326	2559	2782
7225.00	-	7274.99	1168	1758	2095	2340	2574	2798
7275.00	-	7324.99	1175	1768	2107	2354	2589	2814
7325.00	-	7374.99	1181	1778	2119	2367	2604	2831
7375.00	-	7424.99	1188	1788	2132	2381	2619	2847
7425.00	-	7474.99	1195	1798	2144	2395	2634	2863
7475.00	-	7524.99	1201	1808	2156	2408	2649	2880

Figure 2

Illustration of the Impact of Lower and Higher Timesharing Thresholds:

(Case Scenario: income shares calculation using the Illinois schedule for one child where the lesser-time parent's net income = \$4,000 per month, and the greater-time parent's net income = \$3,000 per month.)

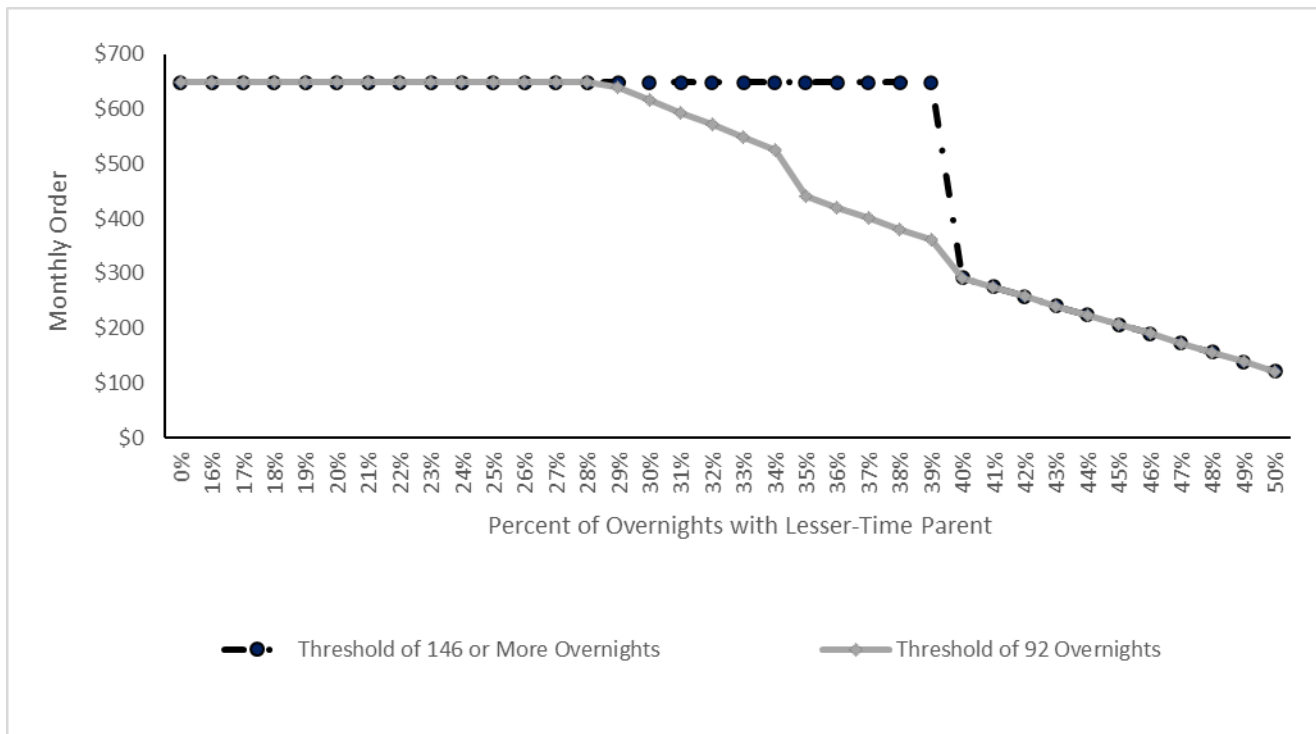


Figure 3

Illustration of the Cross-Credit Adjustment

Line		Father	Mother	Combined
1	Monthly Net Income	\$4,000	\$3,000	\$7,000
2	Percentage Share of Income	57%	43%	100%
3	Basic Obligation for 1 Child (from Illinois Schedule)			\$1,136
4	Shared-Care Enhanced Child Support Obligation (Line 3 multiplied by 150%)			\$1,704
5	Each Parent's Share (Line 2 x each parent's Line 4)	\$971	\$733	
6	Overnights with Each Parent (must total 365)	146	219	365
7	Percentage Time with Each Parent (Line 6 divided by 365)	40%	60%	100%
8	Each Parent's Obligation (For Parent A, Parent A's line 5 X Parent's B Line 7; For Parent B, Parent B's line 5 x Parent's A Line 7)	\$584	\$292	
9	Shared Custody Obligation (Subtract smaller from larger on Line 8)	\$292		

Figure 4

Formulas of States that Have Modified the Cross-Credit Approach

	Formula
Michigan ⁸²	$\frac{[(A_o)^{2.5} (B_s) - (B_o)^{2.5} (A_s)]}{[(A_o)^{2.5} + (B_o)^{2.5}]}$ <p> A_o Approximate percentage of overnights the children will likely spend with parent A annually B_o Approximate percentage of overnights the children will likely spend with parent B annually A_s Parent A's base support obligation B_s Parent B's base support obligation </p>
Minnesota ⁸³	$\frac{[(A_o)^3 (B_s) - (B_o)^3 (A_s)]}{[(A_o)^3 + (B_o)^3]}$ <p>Same as Michigan</p>
Oregon ⁸⁴	<p>Credit percentage = $1/(1+e^{(-7.14*((\text{overnights}/365)-0.5))})-2.74\%+(2*2.74\%*(\text{overnights}/365))$</p>

Figure 5

Comparison of Modified Cross-Credit Formulas

(Case Scenario: income shares calculation using the Illinois schedule for one child where the lesser-time parent's net income = \$4,000 per month, and the greater-time parent's net income = \$3,000 per month.)

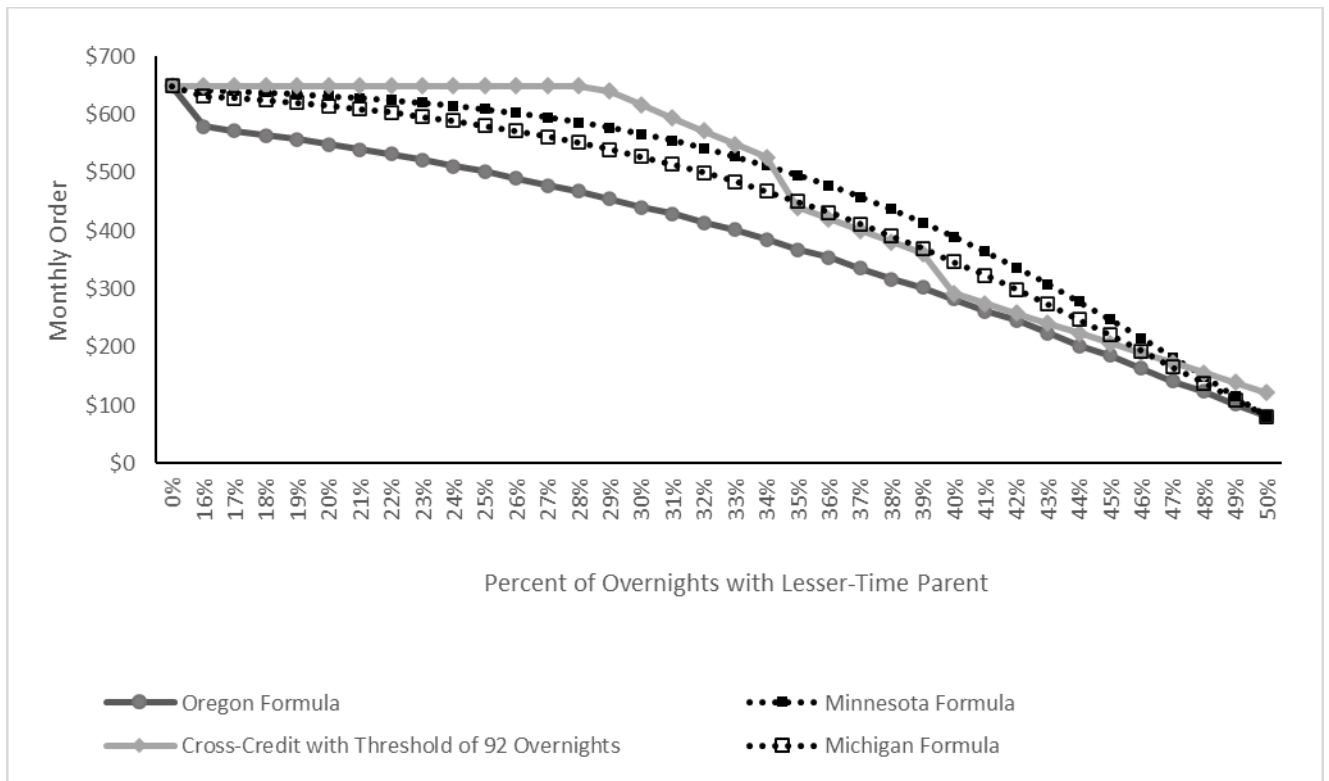


Table 1*Excerpt of the Oregon Lookup Table*

<i>Overnights</i>	<i>Credit %</i>	<i>Overnights</i>	<i>Credit %</i>	<i>Overnights</i>	<i>Credit %</i>	<i>Overnights</i>	<i>Credit %</i>
0	0	36	0.0319	72	0.0867	108	0.1777
1	0.0007	37	0.033	73	0.0887	109	0.1809
2	0.0014	38	0.0342	74	0.0907	110	0.1841
3	0.0021	39	0.0354	75	0.0927	111	0.1873
4	0.0028	40	0.0366	76	0.0948	112	0.1906
5	0.0035	41	0.0378	77	0.0968	113	0.1939
6	0.0042	42	0.0391	78	0.099	114	0.1972
7	0.0049	43	0.0404	79	0.1011	115	0.2006
8	0.0057	44	0.0416	80	0.1033	116	0.204
9	0.0065	45	0.043	81	0.1055	117	0.2075
10	0.0072	46	0.0443	82	0.1077	118	0.211
11	0.008	47	0.0456	83	0.11	119	0.2145
12	0.0088	48	0.047	84	0.1123	120	0.2181
13	0.0096	49	0.0484	85	0.1147	121	0.2217
14	0.0104	50	0.0498	86	0.117	122	0.2254
15	0.0113	51	0.0512	87	0.1194	123	0.229
16	0.0121	52	0.0527	88	0.1219	124	0.2327
17	0.0129	53	0.0541	89	0.1243	125	0.2365
18	0.0138	54	0.0556	90	0.1268	126	0.2403
19	0.0147	55	0.0571	91	0.1294	127	0.2441
20	0.0156	56	0.0587	92	0.1319	128	0.248
21	0.0165	57	0.0602	93	0.1345	129	0.2519
22	0.0174	58	0.0618	94	0.1372	130	0.2558
23	0.0184	59	0.0634	95	0.1398	131	0.2598
24	0.0193	60	0.0651	96	0.1425	132	0.2638
25	0.0203	61	0.0667	97	0.1453	133	0.2678
26	0.0212	62	0.0684	98	0.148	134	0.2719
27	0.0222	63	0.0701	99	0.1508	135	0.276
28	0.0232	64	0.0719	100	0.1537	136	0.2801
29	0.0243	65	0.0736	101	0.1566	137	0.2843
30	0.0253	66	0.0754	102	0.1595	138	0.2885
31	0.0264	67	0.0772	103	0.1624	139	0.2927
32	0.0274	68	0.0791	104	0.1654	140	0.297
33	0.0285	69	0.0809	105	0.1684	141	0.3013
34	0.0296	70	0.0828	106	0.1715	142	0.3056
35	0.0308	71	0.0847	107	0.1746	143	0.31
...

Figure 6

Comparison of Variable, Duplicated Fixed, and Non-Duplicated Fixed Formulas

(Case Scenario: income shares calculation using the Illinois schedule for one child where the lesser-time parent's net income = \$4,000 per month, and the greater-time parent's net income = \$3,000 per month.)

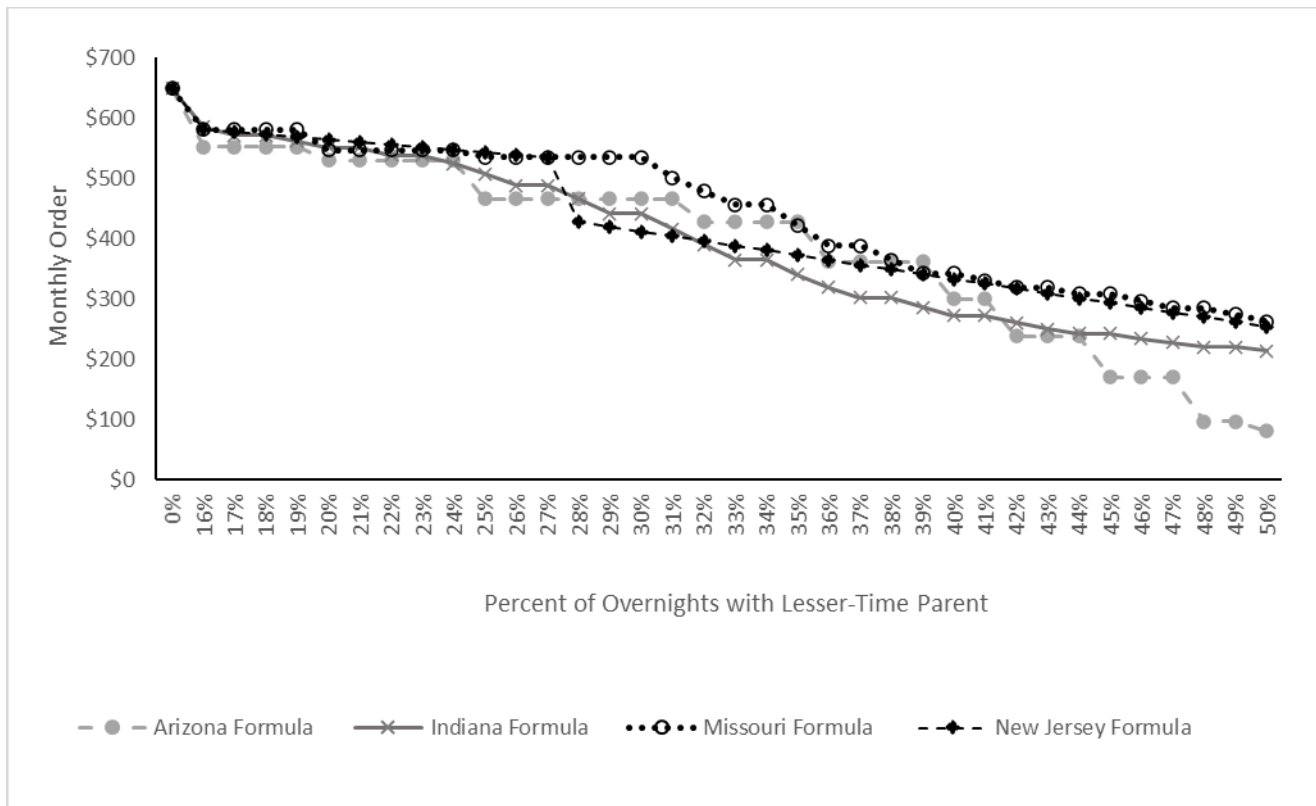


Table 2

Arizona's Parenting Time Table A

Number of Parenting Time Days	Adjustment Percentage
0 - 3	0
4 - 20	.012
21 - 38	.031
39 - 57	.050
58 - 72	.085
72 - 87	.105
88 - 115	.161
116 - 129	.195
130 - 142	.253
143 - 152	.307
153 - 162	.362
163 - 172	.422
173 - 182	.486

Figure 7

Comparison of Other Formulas

(Case Scenario: income shares calculation using the Illinois schedule for one child where the lesser-time parent's net income = \$4,000 per month, and the greater-time parent's net income = \$3,000 per month.)

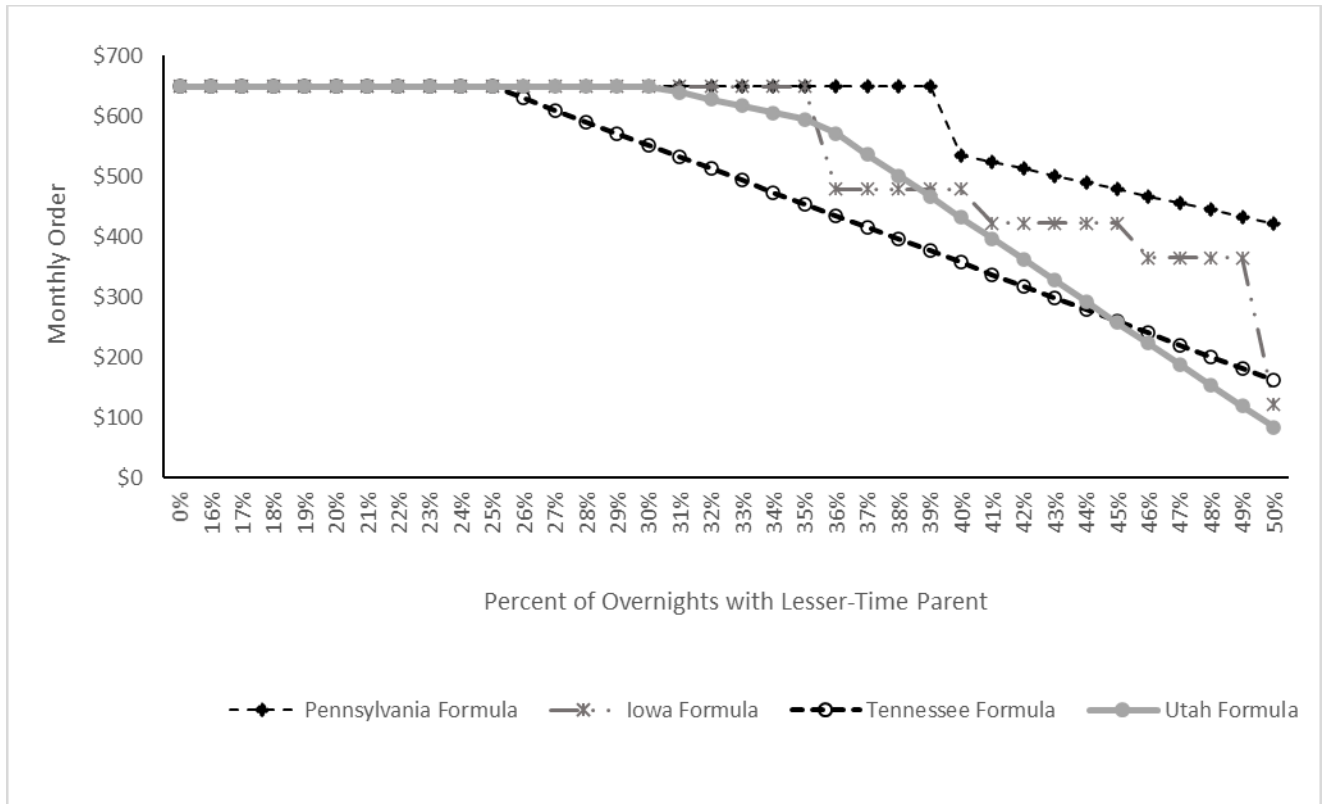


Figure 8

Comparison of the 12 Formulas when Lesser-Time Parent Has Child 40% of Time

(Case Scenario: income shares calculation using the Illinois schedule for one child where the lesser-time parent's net income = \$4,000 per month, and the greater-time parent's net income = \$3,000 per month.)

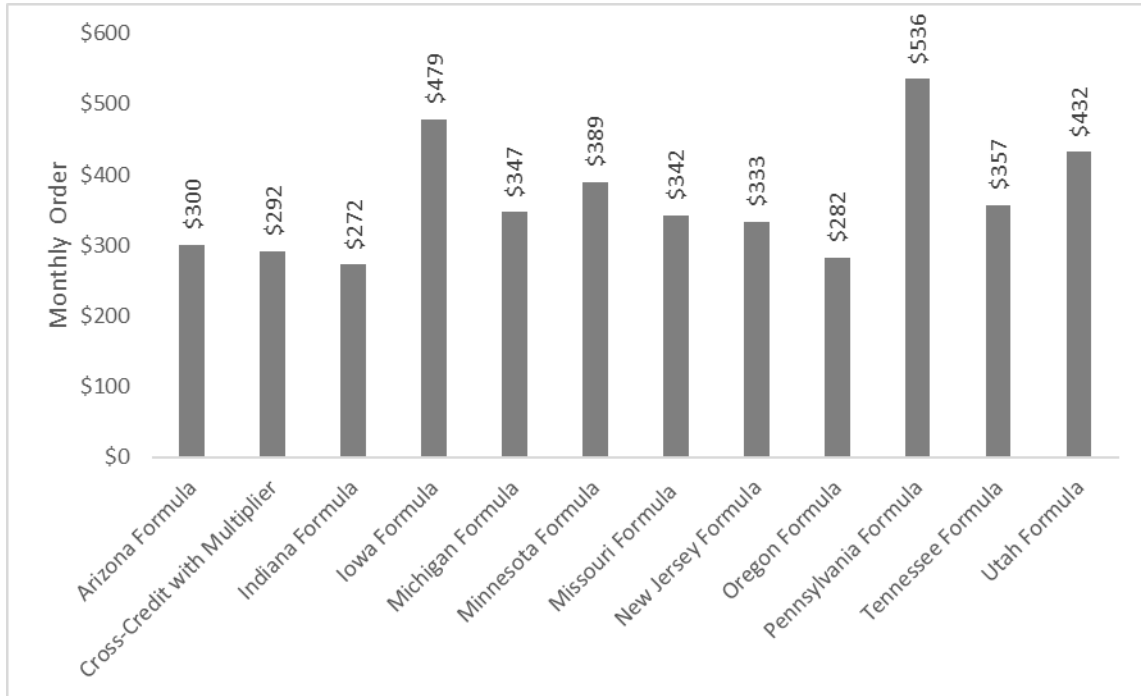


Figure 9

Comparison of the 12 Formulas when There is Equal Timesharing

(Case Scenarios: income shares calculation using the Illinois child support schedule for one child; and in scenario where father has more income, his net income is \$4,000 per month and the mother's income is \$3,000 per month; and, in the scenario where the parents have equal incomes, both parents have net incomes of \$4,000 per month)

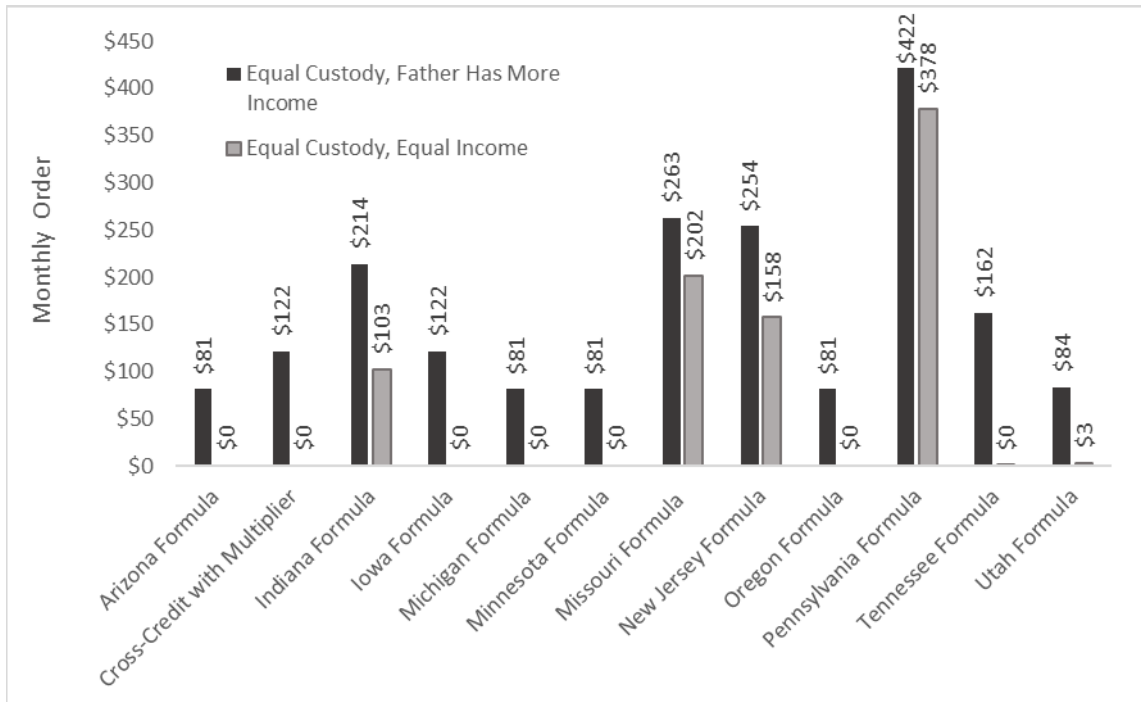
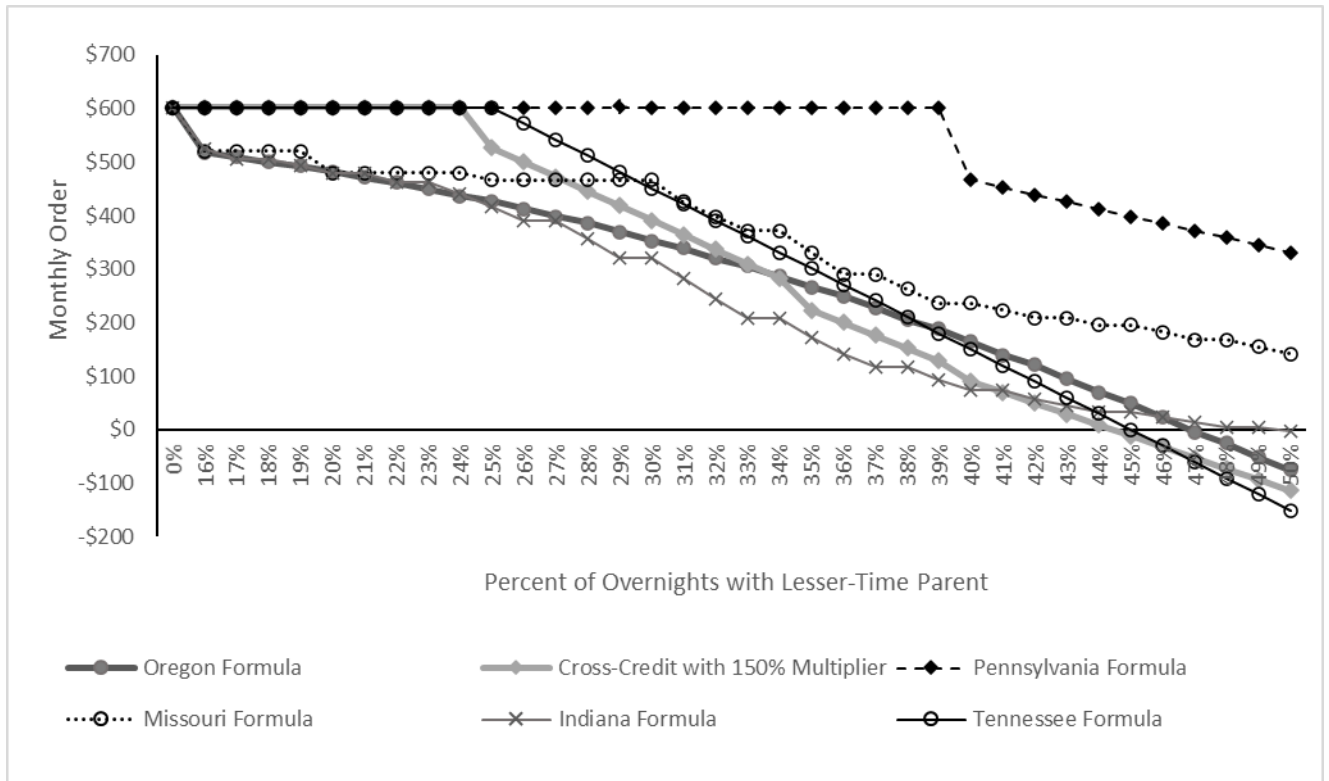


Figure 10

Comparison of Selected Formulas when Lesser-Time Parent Has Lower Income

(Case Scenario: income shares calculation using the Illinois schedule for one child where the lesser-time parent's net income = \$4,000 per month, and the greater-time parent's net income = \$5,000 per month.)



* John Freeman Professor of Law, University of Houston.

** Center for Policy Research.

¹In 1991, only 14 percent of custodial parents were males, while in 2017, the percentage increased to 20 percent. (Lydia Scoon-Rogers and Gordon H. Lester, “Child Support for Custodial Mothers and Fathers: 1991. U.S. Current Population Reports Consumer Income Series P60-187. August (1995)), and Timothy Grall, “Custodial Mothers and Fathers and Their Child Support: 2017,” U.S. Census Current Population Reports, P60-269, May (2020).

²Historically, female earnings averaged about 60 percent of male earnings, but have climbed to 83 percent by 2014. (Francine D. Blau and Lawrence M. Kahn. “the Gender Wage Gap: Extent, Trends, and Explanations. National Bureau of Economic Research (NBER) Working Paper Series, Working Paper 21913. (January 2016))

³See D.R. Meyer, M. Cancian & S. Cook, “The Growth in Shared Custody in the United States: Patterns and Implications,” 55 *Fam. Ct. Rev.* 500 (2017).

⁴For example, one study of divorced fathers in 1981 found that only 8% of all fathers had possession of their child for 4 or more overnights per month. See Frank F. Furstenberg, Jr. & Christine Winquist Nord, “Parenting Apart: Patterns of Childrearing After Marital Disruption,” *J. Marr. & Fam.* 893, 895 Table 1 (Nov. 1985).

⁵See Meyer et al, *supra* n. ____.; Daniel R. Meyer, Marcia J. Carson & Md Moshi Ul Alam, “Changes in Placement after Divorce and Implications for Child Support Policy,” Institute for Research on Poverty, U. of Wisconsin-Madison (Dec. 20, 2019). Bruce Smyth, Richard Chisholm & Vu Son, “Legislating for Shared-Time Parenting after Parental Separation: Insights from Australia?,” 77 *Law & Contemp. Prob.* 109 (2014).; Marygold S., Melli & Patricia Brown, “Exploring a New Family Form- The Shared Time Family,” 22 *Int. J. Law, Policy & Fam.* 231 (2008).

⁶See Scoon-Rogers and Lester, *supra* n. ____.; Grall, *supra* n. ____.

⁷The 1984 Amendments of the Social Security Act (Public Law 98-378).

⁸1988 Family Support Act (Public Law 100-485).

⁹See Robert G. Williams, “Development of Child Support Guidelines,” U.S. Department of Health and Human Service Office of Child Support Enforcement. September (1987), page II-2 and Jane C. Venohr & Robert G. Williams, “The Implementation and Periodic Review of State Child Support Guidelines,” 33 *Fam. L. Q.* 7 (1999).

¹⁰See generally Marsha Garrison, “Child Support Policy: Guidelines and Goals,” 33 *Fam. L. Q.* 157 (1999) (discussing a number of possible alternate goals for child support guidelines).

¹¹See Garrison, *supra* n. ____.; See Venohr & Williams *supra* n. ____.; Jane C. Venohr, “Differences in State Child Support Guidelines Amounts: Guideline Models, Economic Basis, and Other Issues,” 29 *J. Am. Acad. Mat. Law.* 377 (2017).

¹²See Venohr & Williams, *supra* note. ____.

¹³*Id.*

¹⁴U.S. Department of Health and Human Services. (Dec. 20, 2016). “Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.” *Federal Register*, Vol. 81, No. 244, p. 93562. <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-29598.pdf>

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- ¹⁵ See Leslie Hodges & Lisa Klein Vogel, “Recent Changes to State Child Support Guidelines for Low-Income Noncustodial Parents,” Institute for Research on Poverty, U. of Wisconsin-Madison, August 2019.
- ¹⁶ See Williams and Venohr, page 19.
- ¹⁷ See Jane Venohr, “Economic Basis Of Minnesota Basic Schedule and Parenting-Time Expense Adjustment,” Sept. 16, 2015, attached as an exhibit to the Minnesota Child Support Work Group Final Report, Jan. 29, 2016 (hereafter referred to as “Venohr, Parenting- time Expense Adjustment”). Venohr (2015) reports 37 states. Since then, Illinois has also adapted a formula.
- ¹⁸ See *Richardson v Richardson*, 545 SW3d 895 (Mo. App. 2018).
- ¹⁹ Jane Venohr, “Technical Documentation: Illinois Schedule of Basic Obligations and Standardized Net Income Table.” (June 12, 2017) at page 4.
- ²⁰ Jane Venohr, “2015-2016 Pennsylvania Child Support Guidelines Review: Economic Review and Analysis of Case File Data” (March 31, 2016) at page 35.
- ²¹ Jane Venohr. “Review of the Nevada Child Support Guidelines.” (October 2016), page 5.
- ²² See Karen Syma Czapanskiy, “The Shared Custody Child Support Adjustment: Not Worth the Candle,” 49 Fam. L. Q. 409 (2015).
- ²³ *Jennifer VV v. Lawrence WW*, 124 N.Y.S.3d 474, 183 A.D.3d 1202 (2020).
- ²⁴ *Supra* note __ *Jennifer VV. v. Lawrence*, 2020.
- ²⁵ See *Marriage of Sobieski*, 2013 Il. App. 2d 11146, 984 NE2d 163.
- ²⁶ See N.H. Rev. Stat. sec. 458-C:5. The statute also allows the court to consider whether the recipient parent will have adequate resources to support the child in a similar style as the other parent.
- ²⁷ D.C. Stat. sec. 16-916.01.
- ²⁸ Md. Fam. Code tit. 12, subtitle 2; Wyoming Child Support Guidelines. Compare *Jensen v. Milatzo-Jensen*, 297 P.3d 768 (Wyo. 2013) (obligor parent made such a showing) with *Fountain v. Mitros*, 968 P.2d 934 (Wyo. 1998) (obligor parent did not make such a showing).
- ²⁹ For a general discussion of parenting-time adjustments in various countries see generally Elke Claessens & Dimitri Mortelmans, “Challenges for Child Support Schemes: Accounting for Shared Care and Complex Families,” 28 J. European Social Policy 211 (2018).
- ³⁰ See Bruce Smyth, Bryan Rodgers, Vu Son, Liz Allen & Maria Vnuk, “Separated Parents’ Knowledge Of How Changes in Parenting Time Can Affect Child Support Payments and Family Tax Benefit Splitting in Australia: A Pre/Post-Reform Comparison,” 26 Aust. J. Fam. L. 1 (2012).
- ³¹ See Va. Stat. sec. 20-108.2; Ariz. Stat. sec. 25-320.
- ³² see Minn. Stat. Ann. Sec. 518A.36; Wyo. Stat. Ann. sec. 20-2-304 ©.; Iowa Code Ann. Rule 9.9; N.C. Child Support Guidelines; Fla. Stat. 61.30; Ill. Stat.750 sec. 5/505; Indiana Child Support Guidelines.
- ³³ See Oregon Administrative Rules 137-050-0730.
- ³⁴ See Jane Venohr, “Economic Basis Of Minnesota Basic Schedule and Parenting-Time Expense Adjustment,” Sept. 16, 2015, attached as an exhibit to the Minnesota child Support Work Group Final Report, Jan. 29, 2016 (hereafter referred to as “Venohr, Parenting- time Expense Adjustment”) see also, *Koeneman v. Boersma*, 2011 WL 6116480 (Alaska) (parenting time adjustment should be based on the terms of the order and not actual parenting time). See Venohr et al, Kentucky Guideline Memorandum, at Exhibit 2, page 7.
- ³⁵ See sec 11 of Arizona Child Support Guidelines.

³⁶ See 750 ILCS 5/505(a)(3.8).

³⁷ See Colo. Rev. Stat. §14-10-115(1)(h).

³⁸ See *Milan v Milan*, 65 Va. App. 439 (2015); *Richardson v Richardson*, 545 SW3d 895 (Mo. App. 2018).

³⁹ The Missouri guideline sets forth a level of “adjusted monthly income” of the recipient parent below which a parenting-time adjustment should not occur. This income level changes with the number of children in the household. See Mo. Rules Ann., Supreme Court Rule of Civil Procedure, Form 14. In Virginia, the adjustment is not to be made if the recipient-parent’s gross income is less than 150% of the federal poverty level. See Va. Stat. sec. 20-108.2. In New Jersey, no adjustment should be made if the net income of the recipient parent is less than 2 times the poverty level for the recipient’s household size. See N. J. Stat. Ann., Rule of Practice, App. 9-A.

⁴⁰ For example, see *Valdes v. Valdes*, 154 So.3d 1165 (Fla. App. 2015).

⁴¹ In 2016, the committee reviewing the Minnesota approach stated that one primary goal was to adopt a new approach that did not have a significant cliff effect.

⁴² See Bruce Smyth & Bryan Rogers, “Strategic Bargaining Over Child Support and Parenting Time: A Critical Review of the Literature,” 25 Aust. J. Fam. L. 210 (2011).

⁴³ See Michigan State Court Administrative Office, Friend of the Court Bureau. “2017 Michigan Child Support Formula Manual” and Minnesota Statutes, Chapter 518A.36.

⁴⁴ Oregon Department of Justice, Child Support Guidelines Rules 137-050-0730.

⁴⁵ Arizona has changed its shared-parenting adjustment over the years such that it no longer obviously links to the concept of variable, duplicated fixed, unduplicated, and fixed child-rearing expenses.

⁴⁶ See Indiana Rules of Court: Child Support Rules and Guidelines; Missouri Child Support Guidelines Directions, Comments for Use and Examples for Completion of Form No. 14; and New Jersey Rule 5-6a Child Support Guidelines.

⁴⁷ For a more lengthy discussion of these schedules, See Venohr, Parenting-Time Expense Adjustment , at page 10.

⁴⁸ See William V. Fabricius and Sanford L. Braver, “Non-Child Support Expenditures on Children by Nonresidential Divorced Fathers: Results of a Study. *Family Court Review*, Vol. 41, No. X July 2003.

⁴⁹ This is Parenting Time Table A from the Arizona Child Support Guidelines. The Guidelines also provides a Parenting Time Table B to be used when some child-rearing expenses are not substantially or equally shared in each household. Parenting Time Table B is rarely used and there is a suggestion to eliminate it.

⁵⁰ See Iowa Code Ann. Rule 9.9.

⁵¹ See the Family Court of the State of Delaware, “Delaware Child Support Formula, Evaluation and Update.” (Nov. 2018); and Kansas Judicial Branch, “Kansas Child Support Guidelines.”

⁵² 231 Pa. Code Rule 1910.16-4 and North Dakota Administrative Code Chapter 75-02-04.1 1.

⁵³ Ohio Revised Code §3119.051.

⁵⁴ Utah Code 78B-12-208.

⁵⁵ Rules of Tennessee Department of Human Services Child Support Services Division 1240-02-04.

⁵⁶ See generally, *Bluestein v. Bluestein*, 131 Nev. 106, 345 P3d 1044 (Nev. 2015) (joint physical custody exists where both parents have physical custody of the child at least 40% of the time).

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- ⁵⁷ See generally Christine Skinner & Jacqueline Davidson, “Recent Trends in Child Maintenance Schemes in 14 Countries,” 23. Int. J. Law, Policy & Fam. 25, 44 (2009).
- ⁵⁸ See Venohr, Parenting-Time Expense Adjustment, at page 16.
- ⁵⁹ See Venohr, Parenting-Time Expense Adjustment, at page 15.
- ⁶⁰ See Venohr, Parenting-Time Expense Adjustment, at pages 15-17.
- ⁶¹ See Venohr, Parenting-Time Expense Adjustment, at pages 10-12.
- ⁶² See note ___ and accompanying text supra.
- ⁶³ Compare N. D. Admin. Code sec. 75-02-04.1-08.1 with sec. 75-02-04.1-08.2.
- ⁶⁴ See *Dudgeon v Dudgeon*, 318 SW3d 106 (Ky. App. 2010).
- ⁶⁵ See *Marriage of Antuna*, 8 P3d 589 (Colo. App. 2000).
- ⁶⁶ See generally J. Thomas Oldham, “The Appropriate Child Support Award When the Noncustodial Parent Earns Less Than the Custodial Parent,” 31 Hou. L. Rev. 585 (1994).
- ⁶⁷ See *State Dept. of Human Services v. Coldwater*, 364 P3d 672 (Okla. App. 2015) (noting that the Oklahoma limit is 205 or more overnights).
- ⁶⁸ See *McClure v Haisha*, 51 NE3d 831 (Ill. App. 2016).
- ⁶⁹ See *Rubin v Della Salla*, 107 AD3d 60, 964 NYS2d 41 (App. Div. 2013).
- ⁷⁰ See *Colonna v Colonna*, 581 Pa. 1, 855 A2d 648 (2004).
- ⁷¹ See *Marriage of Turk*, 12 NE3d 40 (Ill. 2014).
- ⁷² See *Interest of A.R.W.*, 2019 WL 6317870 (Tex. App.).
- ⁷³ See *Williamson v Williamson*, 293 Ga. 721, 748 SE2d 679 (2013). A Concurring judge in an Illinois case made a similar point when Illinois had a percentage of obligor income guideline. See *Marriage of Turk*, 12 NE3d 40, 51 (Theis, J., concurring).
- ⁷⁴ See *Melli & Brown supra*, 22 Int. J. L. Policy & Fam. 231, 256.
- ⁷⁵ See Fla. Stat. sec. 61.30.
- ⁷⁶ Rules of Tennessee Department of Human Services Child Support Services Division 1240-02-4-.04(7).
- ⁷⁷ See *Marriage of Krieger and Walker*, 147 Wash. App. 952, 199 P3d 450 (Wash. App. 2008). See also, *Gray v. Gray*, 909 So.2d 108 (Miss. App. 2005).
- ⁷⁸ 45 C.F.R. 302.56(e.)
- ⁷⁹ *Supra* note ___ Jane Venohr. (October 2016), page 78.
- ⁸⁰ State of Colorado, *Child Support Commission: Final Report*. July (2016). Page 17.
- ⁸¹ Most states with guidelines set in administrative rule also require legislative approval for substantive guidelines changes such as changing the state timesharing formula.
- ⁸² Michigan State Court Administrative Office, Friend of the Court Bureau. “2017 Michigan Child Support Formula Manual.”
- ⁸³ Minnesota Statutes, Chapter 518A.36.
- ⁸⁴ Oregon Department of Justice, Child Support Guidelines Rules 137-050-0730.