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NORTH CAROLINA'S REVISED CHILD SUPPORT GUIDELINES (2002)

■ John L. Saxon

Federal law requires each state, as a condition of receiving federal funding for the state's Temporary Assistance for Needy Families (TANF) and child support enforcement (IV-D) programs, (a) to establish, by statute or by judicial or administrative action, guidelines governing the amount of child support orders within the state, and (b) to review its child support guidelines at least once every four years to ensure that their application results in the determination of appropriate orders for child support.¹ As part of this review, the state must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of (and deviations from) its guidelines.²

Each state's child support guidelines must

1. take into consideration all earnings and income of a child's noncustodial parent;
2. be based on specific descriptive and numeric criteria and result in a computation of the parent's child support obligation; and
3. provide for the child's health care needs, through health insurance coverage or other means.³

Federal law also provides that a state's child support guidelines must create a presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the child support award determined by applying the guidelines is the correct amount of child support to be awarded under state law.⁴ This presumption, however, may be rebutted by a finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case (based on criteria established by the state).⁵

In response to these federal requirements, North Carolina's General Assembly enacted legislation requiring the state's Conference of Chief District Court Judges (a) to prescribe uniform, statewide, presumptive guidelines for computing the child support obligations of parents; (b) to develop criteria for determining when, in a particular case, application of the guidelines would be unjust or inappropriate; and (c) to review the guidelines at least once every four years and modify them to ensure that their application results in appropriate child support awards.⁶

This *Family Law Bulletin* describes the revisions to North Carolina's 1998 child support guidelines that were adopted by the Conference of Chief District Court Judges on June 17, 2002 (effective October 1, 2002).⁷ The full text of the revised (2002) child support guidelines and the revised (2002) schedule of basic child support obligations is posted on the Institute of Government's web site (<http://ncinfo.iog.unc.edu/faculty/saxon/2002guidelines.pdf>) in a

portable document format (PDF) that can be read using free Adobe Acrobat® Reader™ software.

Application of the Guidelines

Effective Date

The 2002 revisions to North Carolina's child support guidelines are effective October 1, 2002, and apply to all child support orders entered on or after that date (including new or modified child support orders that are entered on or after October 1, 2002 in child support actions that were filed before, but pending on, October 1, 2002).

The 1998 child support guidelines will continue to govern child support orders entered between October 1, 1998 and September 30, 2002, until such time as these orders are modified on or after October 1, 2002.⁸

Scope and Exceptions

Federal law requires that a state's child support guidelines be applied as a rebuttable presumption in "any judicial or administrative proceeding" involving the "award of child support."⁹ Federal regulations and policy require state courts and administrative agencies to use the state's child support guidelines when they enter new child support orders (including child support orders based on stipulated agreements between the parties) or modify existing child support orders (including child support orders modified by consent of the parties).¹⁰

State law expressly requires judges to apply North Carolina's child support guidelines as a rebuttable presumption (a) when determining a parent's child support obligation in civil actions for child support pursuant to G.S. 50-13.4, (b) in juvenile proceedings involving abused, neglected, or dependent children, (c) in criminal prosecutions involving a parent's failure to support his or her child, and (d) when requiring a parent to pay child support as a condition of probation in a criminal case.¹¹

The 1998 guidelines implemented these requirements by mandating (a) that the guidelines be applied as a rebuttable presumption with respect to all temporary and permanent child support orders entered by North Carolina courts, and (b) that judges use the guidelines to determine the adequacy of child support awards in noncontested, as well as in contested, cases.

The 2002 revisions clarify these requirements by stating that the guidelines must be applied (unless the court makes findings sufficient to rebut the presumptive

application of the guidelines) when a court enters a temporary or permanent child support order against a parent in a contested or noncontested legal proceeding involving child support, including child support orders entered in criminal and juvenile proceedings, child support proceedings under the Uniform Interstate Family Support Act, and voluntary support agreements and consent orders approved by the court.¹²

The 2002 revisions also incorporate two appellate decisions holding that North Carolina's child support guidelines do *not* apply with respect to (a) orders for "prior maintenance" (requiring a parent to reimburse a child's custodian for the parent's fair share of actual and reasonable child-related expenses paid by the custodian prior to the date an action seeking child support was filed), or (b) child support orders entered against stepparents or other persons or agencies who may be secondarily liable for child support.¹³

Although social services and child support enforcement agencies generally use the child support guidelines to determine a noncustodial parent's financial ability to reimburse the state for public assistance paid on behalf of the parent's child, the guidelines do not, by their own terms or any express provision in state law, apply to claims for repayment of public assistance pursuant to G.S. 110-135.

Deviating from the Guidelines

The purpose of North Carolina's child support guidelines is to ensure that the amount of a child support order is sufficient to meet a child's reasonable needs for health, education, and maintenance, having due regard for the estates of the child and the child's parents, the child care and homemaker contributions of each parent, and other facts of the case.¹⁴ Consistent with this purpose, the guidelines expressly restate their intent to provide adequate child support awards that are equitable to the child and both of the child's parents.

The 2002 revisions incorporate holdings by the court of appeals (a) that child support awards determined pursuant to the guidelines are presumed to meet the reasonable needs of a child considering the relative ability of the child's parents to provide support, and (b) that specific findings regarding the child's reasonable needs and the parents' ability to provide support generally are not required when the court enters an order for child support determined pursuant to the guidelines.¹⁵

Federal law, however, allows a court to "deviate" from the guidelines (that is, enter an order for child support that is more or less than the amount of child

support that would have been awarded by applying the child support guidelines) if it finds that application of the guidelines would be “unjust or inappropriate” in a particular case.¹⁶

State law similarly allows a court to deviate or “vary” from the guidelines if it finds, by the greater weight of the evidence, that application of the guidelines

1. would not meet or would exceed a child’s reasonable needs considering the relative ability of each parent to provide support; or
2. would be otherwise unjust or inappropriate.¹⁷

The 2002 revisions incorporate this statutory requirement and expressly require (consistent with a number of decisions rendered by the court of appeals) a court that deviates from the guidelines to make findings

1. stating the amount of the support that would have been required under the guidelines;
2. determining the child’s reasonable needs and the parents’ relative ability to provide support;
3. supporting the court’s conclusion that the presumptive amount of child support determined under the guidelines is inadequate or excessive or that application of the guidelines is otherwise unjust or inappropriate; and
4. stating the basis on which the court determined the amount of child support ordered.¹⁸

Deviating from the guidelines without making *all* of these required findings or without making these findings based on sufficient evidence in the record constitutes reversible error.¹⁹

North Carolina’s child support guidelines do not include detailed lists of specific factors that a court may consider when deciding whether to deviate from the guidelines.²⁰ Examination of state law, the guidelines, and decisions by the court of appeals, however, reveals several instances in which deviating from the guidelines may be warranted.

As noted above, state law expressly provides that deviation from the guidelines is warranted if the greater weight of the evidence indicates that application of the guidelines “would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support.”²¹

The 2002 revisions to North Carolina’s guidelines cite three specific situations in which deviation may be warranted:

1. when a parent pays 100% of the basic child support obligation and 100% of the health insurance premium for the child;
2. when a low-income obligor’s child support obligation is determined based on the shaded area of the child support schedule and either parent pays child care, health insurance, or

additional child-related expenses that are not included on the worksheet;

3. when either parent pays alimony to an ex-spouse.

The 2002 guidelines also retain provisions indicating the deviation may be warranted when

1. the guidelines impose a minimum \$50 per month child support obligation on a parent whose adjusted gross income is less than \$800 per month; or
2. the court has required the custodial parent to assign the tax exemption for the children to the noncustodial parent.²²

Decisions by North Carolina’s district courts and court of appeals have cited at least three other factors that may justify deviating from the child support guidelines:

1. A parent’s actual, bona fide financial inability to pay the amount of support determined pursuant to the guidelines.²³
2. A parent’s extraordinary medical expenses related to the parent’s spouse.²⁴
3. Contributions (cash or in-kind) received from a third party for a child’s support.²⁵

Deviation also may be appropriate when the facts of a particular case with respect to the parents’ incomes, child’s needs, or other relevant factors are significantly different from the assumptions that are incorporated into the child support guidelines.²⁶

But by the same token, deviation

... is not permitted ... merely because there is some minor degree of variance between the actual facts and the guidelines assumptions. If this were true, deviation would be possible in *every* case; no case will ever match the guidelines assumptions point for point. Constant and regular deviation from the guidelines would make the guidelines superfluous, for the guideline amount would never apply.²⁷

For example, although the guidelines assume that all income is taxable and the child support schedule converts net income to gross income by factoring in federal and state income taxes and federal FICA taxes, the fact that a small portion of a particular parent’s income is not subject to income or FICA taxes, standing alone, probably would not render application of the guidelines “unjust or inappropriate.”

Nor is it at all clear that the parties’ agreement or consent is a sufficient basis, standing alone, for finding that application of the guidelines is “inappropriate” and that deviation is warranted. According to the federal Office of Child Support Enforcement,

... a statement by the parties that they were fully informed of their rights, that they were not coerced into

the agreement, or that the children's needs will be adequately met does not satisfy the statutory requirement that ... the guidelines ... be [applied as] a rebuttable presumption in ordering support.²⁸

Despite this statement, however, several states' guidelines expressly allow a court to deviate based solely on the parties' consent.²⁹

Low-Income Parents

The 2002 guidelines retain a self-sufficiency reserve for low-income obligors based on the federal poverty level for a one-person household.³⁰ The purpose of this self-sufficiency reserve is to enable low-income noncustodial parents to retain enough of their income to meet their own basic needs before they are required to pay more than a minimal amount of support for the children who are in the custodial parent's care.

In some states, the self-sufficiency reserve is either subtracted from a parent's income before the parent's child support obligation is determined, or the parent's child support obligation is adjusted if the parent's income minus the child support obligation would be less than the self-sufficiency reserve.

Since 1994, North Carolina's guidelines have implemented the self-sufficiency reserve by incorporating it directly into the schedule of basic child support obligations (adjusting the basic child support amounts for low-income noncustodial parents whose incomes fall within the "shaded area" of the schedule).

The 2002 revisions increase the amount of the self-sufficiency reserve from approximately \$658 per month (based on the 1997 federal poverty guideline for one person) to \$738 per month (based on the 2002 federal poverty guideline).

Like the 1998 guidelines, the revised guidelines establish a presumptive child support obligation of \$50 for noncustodial parents with adjusted gross incomes of \$800 per month or less, and provide that the child support obligation of a noncustodial parent whose income falls within the shaded area of the child support schedule is determined without regard to the custodial parent's income.³¹

The revised guidelines, however, also provide that child care, health insurance, medical expenses, and other additional child-related expenses paid by either parent are not taken into consideration when determining the child support obligation of a noncustodial parent whose income falls within the schedule's shaded area. In other words, absent deviation, the child support obligation of a low-income noncustodial parent is equal to the amount shown in the shaded area of the schedule based on the number of children and

the noncustodial parent's income alone. So, for example, the presumptive child support obligation for three children of a noncustodial parent with an adjusted gross income of \$1,000 per month is \$129 per month regardless of the custodial parent's income, child care costs or health insurance paid by the custodial parent, or health insurance paid by the noncustodial parent.

Because only the noncustodial parent's income is considered in implementing a self-sufficiency reserve incorporated directly into a child support schedule, the reserve can be applied only in cases in which the noncustodial parent is required to pay child support to a custodial parent or other person who has primary physical custody of a child (that is, in cases in which worksheet A is used), and the 2002 revisions recognize that it *cannot* be applied in cases involving shared or split custody (worksheets B or C) when child support obligations must be calculated for both parents based on their combined incomes (and other factors) and then offset against each other.

Parents with High Combined Incomes

The 1998 guidelines applied to cases in which the parents' combined adjusted gross income did not exceed \$15,000 per month (\$180,000 per year). In cases in which the parents' combined income exceeded this amount, courts were directed to determine child support obligations on a case-by-case basis, but were prohibited from entering a child support order in an amount "lower than the maximum basic child support obligation" shown in the child support schedule.

The 2002 guidelines extend the "high end" of the child support schedule from \$15,000 to \$20,000 per month (*combined* adjusted gross income of both parents) and provide that child support obligations in cases in which the parents' combined income exceeds \$20,000 per month should be determined on a case-by-case basis considering the reasonable needs of the children and the relative ability of each parent to provide support.³² The revised guidelines note that the child support schedule may be of assistance in determining the appropriate amount of support to be awarded, but deletes the language prohibiting child support orders that are "lower than the maximum basic child support obligation" shown in the child support schedule.³³

Income Shares Model

The revised guidelines retain the income shares model that North Carolina has used since the 1990 guidelines were adopted.³⁴

The income shares model (which forms the basis for the child support guidelines in approximately 33 states) is based on the concept that the percentage of a noncustodial parent's income paid for child support should be the same as the percentage of both parents' combined income that would have been spent for the child's care and support if the child and both parents were living together as a single family.³⁵

North Carolina's income shares model is based on national data from the consumer expenditures survey conducted by the federal Bureau of Labor Statistics. The survey collects data regarding family "consumption" spending, including spending for housing, utilities, food, clothing, transportation, education, and recreation but excluding taxes and savings³⁶ by two-parent families with one, two, or three children³⁷ across more than a dozen ranges of net family incomes.³⁸

In an "intact" family (that is, a family with two parents and one or more children)

... the income of both parents is generally pooled and spent for the benefit of all household members, including [the] children. A child's portion of such expenditures includes spending for goods used only by the child, such as clothing, and also a share of goods used in common by the family, such as housing, food, household furnishings, and recreation.³⁹

Most household spending on children, however, cannot be directly observed.

Parents can separately track, and account for, spending on such categories as children's clothing, educational expenses, and child care. However, for those expenditure categories accounting for the bulk of child-related costs [(pooled family spending for food, housing, utilities, transportation, etc.)], spending on children is inextricably intertwined with spending on adults. ... To determine how much of the household [net income] is spent on children, it is necessary to devise and apply an estimation methodology that indirectly calculates the children's share [of family consumption spending].⁴⁰

North Carolina's child support guidelines use the "Robarth estimator" to determine the proportion of family consumption spending that is attributable to the family's children (that is, the "marginal cost" of the family's children).⁴¹ Applying the Robarth estimator to the relevant national consumer expenditure data indicates that although parents spend more money on children as their family income increases, the *percentage* of a family's net income that is spent on child-related expenses *decreases* as the family's net income *increases*.

Thus, one primary difference between the income shares model and the flat "percentage of income" model is that, under the latter, a noncustodial parent

pays a flat percentage of his or her income for child support that varies based on the number of children but doesn't vary based on the amount of the parent's income, while, under the former, the percentage of a noncustodial parent's income that must be paid for child support generally decreases as the noncustodial parent's income (combined with the noncustodial parent's income) increases.⁴² Apart from this difference, though, the income shares model is, in essence, mathematically equivalent to the percentage of income model when the parents have incomes that are not extremely low, extremely high, or widely divergent.⁴³

Schedule of Basic Support Obligations

North Carolina's revised 2002 child support schedule was developed by Dr. Jane C. Venohr, an economist with Policy Studies, Inc. of Denver, Colorado under contract with the North Carolina's Administrative Office of the Courts, using economic estimates prepared by Dr. David Betson of Notre Dame University based on new data from the 1996-98 consumer expenditure surveys and the Robarth estimator.⁴⁴

North Carolina's 2002 child support schedule (like the 1998 child support schedule) adjusts the national data regarding child-related spending to exclude the cost of child care, health insurance, and health care costs in excess of \$100 per year (which are treated separately under North Carolina's guidelines as additional child-related expenses in addition to a parent's basic child support obligation).

North Carolina's 2002 child support schedule (like the 1998 schedule) also adjusts the consumer expenditure survey's data regarding *net* (or "after tax") family income by assuming that all family income is subject to federal and state tax as earned income, applying the current federal and state income tax rates (and exemptions and deductions) and federal FICA tax rates on wages, and converting the survey's ranges of *net* family incomes into ranges of gross (or "before tax") incomes (because North Carolina's guidelines are based on gross, rather than net, income).⁴⁵

A side-by-side comparison of the 1998 and 2002 child support schedules shows that the basic child support obligations for very-low-income parents decreased, the child support obligations of low-income and some middle-income parents increased, and the child support obligations of higher-income parents decreased. *See* Table 1.

At least three factors account for the changes in the 2002 child support schedule.

First, the increase in the self-sufficiency reserve for low-income noncustodial parents (from \$658 per month net in 1998 to \$738 per month net in 2002) decreases the child support obligations (other than the minimum \$50 per month obligation) in the shaded area of the child support schedule.

Second, recent changes in federal and state tax rates have been factored into the 2002 child support schedule. Federal income tax rates have generally decreased as a result of the tax law changes enacted by Congress in 2001. The state income tax rate for some higher-income families, however, has increased slightly since 1998 and the wage cap on the federal Social Security (FICA) tax has also increased. Decreases in federal and state taxes effectively increase the amounts shown in the child support schedule because families have more “after tax” income available for child support.

Third, using the new Betson-Robarth estimates of family spending for children (based on consumer expenditure surveys for 1996–98 rather than 1980–86) has had a significant impact on North Carolina’s child support schedule. The 1996–98 economic data indicated that the percentage of net family income spent by lower- and middle-income families for child-related expenses *increased* compared to the data from the early and mid-1980s while the percentage of net family income spent by higher-income families for child-related expenses *decreased*.

Income and Deductions

As noted above, North Carolina’s child support guidelines are based on gross, not net, income—or,

more precisely, on adjusted gross income.⁴⁶ Adjusted gross income is gross income minus deductions for the support of a parent’s children other than those for whom support is being determined.

North Carolina’s revised child support guidelines make several changes with respect to the manner in which income and deductions from income are considered in determining a parent’s child support obligation. In some instances, these changes merely clarify or reiterate existing law. Other revisions, however, represent substantive changes in law and policy.

Irregular or Nonrecurring Income

The 1998 guidelines provided that income received by a parent on a “non-recurring” or “one time” basis was included within the definition of gross income but “should be distinguished from ongoing [or recurring] income” in determining a parent’s child support obligation. The 1998 guidelines, however, did not provide any guidance as to how nonrecurring or one-time income should be distinguished from ongoing or recurring income or how a parent’s child support obligation should be calculated when all or part of the parent’s income was received on a nonrecurring or one-time basis.

The 2002 revisions to North Carolina’s child support guidelines provide two methods of considering income that a parent receives on an “irregular, non-recurring, or one-time basis.”

First, the court may “pro-rate” or average this income over a specified period of time, convert it to a monthly amount, add it to the parent’s recurring

Table 1. Basic Child Support Obligations, 1998 and 2002

Parents’ Monthly Income	One Child			Two Children			Three Children		
	1998	2002	Change	1998	2002	Change	1998	2002	Change
\$1,000	\$164	\$126	-23.2%	\$166	\$127	-23.2%	\$168	\$129	-23.2%
\$2,000	\$370	\$408	+10.4%	\$538	\$574	+6.8%	\$635	\$664	+4.6%
\$3,000	\$517	\$567	+9.5%	\$749	\$787	+5.1%	\$881	\$915	+2.6%
\$4,000	\$638	\$698	+9.4%	\$925	\$967	+4.5%	\$1,090	\$1,108	+1.6%
\$5,000	\$697	\$777	+11.5%	\$1,010	\$1,062	+5.2%	\$1,182	\$1,202	+1.7%
\$6,000	\$773	\$840	+8.7%	\$1,115	\$1,138	+2.1%	\$1,304	\$1,280	-1.9%
\$7,000	\$861	\$904	+5.1%	\$1,240	\$1,217	-1.8%	\$1,453	\$1,365	-6.1%
\$8,000	\$944	\$923	+2.2%	\$1,359	\$1,236	-9.0%	\$1,591	\$1,381	-13.2%
\$10,000	\$1,108	\$1,064	-4.0%	\$1,595	\$1,423	-10.8%	\$1,867	\$1,583	-15.2%
\$12,000	\$1,246	\$1,183	-5.0%	\$1,801	\$1,574	-12.6%	\$2,119	\$1,741	-17.8%
\$15,000	\$1,457	\$1,325	-9.1%	\$2,107	\$1,759	-16.5%	\$2,481	\$1,944	-21.6%

monthly income, and determine the parent's child support obligation based on the parent's recurring and nonrecurring income. For example, assume a parent who receives a monthly salary of \$3,000 plus a year-end bonus of \$1,800. The court could pro-rate or average the bonus over a one-year period and calculate the parent's child support obligation on a monthly income of \$3,150—\$3,000 in recurring income plus \$150 in pro-rated nonrecurring or one-time income.

Second, the guidelines allow the court to determine a "basic" child support award based on a parent's recurring income and enter a "supplemental" award requiring the parent to pay additional child support when the parent receives nonrecurring or one-time income that was not considering in determining the basic award. The percentage of a parent's nonrecurring income paid for child support should be equivalent to the percentage of the parent's recurring income that is paid for child support. For example, assume a noncustodial parent who receives a monthly salary of \$3,000 and is ordered to pay \$600 per month in child support. If the court determines that the parent may receive a year-end bonus (and especially if the amount of the bonus is unknown), the court might order the parent to pay one-fifth of the bonus as child support in addition to the \$600 monthly child support owed under the "basic" award.

Imputing Potential Income

Like the 1998 guidelines, the 2002 revised guidelines provide that gross income generally refers to the *actual* gross income of a parent.⁴⁷ The 2002 guidelines also clarify that a parent's child support obligation generally should be calculated on the parent's *current* income (that is, the parent's income at the time the child support order is entered).⁴⁸ In determining a parent's current income, however, the guidelines continue to allow the court to require evidence of both the parent's current and past income through production of employer statements, pay stubs, tax returns, and other documentation.

The 1998 guidelines allowed, but did not require, a court to impute potential income to a noncustodial or custodial parent if the court determined that the parent was "voluntarily unemployed or underemployed."⁴⁹

The 2002 guidelines revise this section to incorporate the holdings of several recent decisions by the court of appeals regarding the circumstances in which a court may impute potential income to a parent in determining his or her child support obligation.⁵⁰

Under the 2002 guidelines, a court may impute potential income to a parent only if:

1. the parent is voluntarily unemployed or underemployed to the extent that he or she cannot provide a minimum level of support for himself or herself and his or her children when he or she is physically and mentally capable of doing so, and
2. the court finds that the parent's unemployment or underemployment is due to his or her bad faith or deliberate suppression of income to avoid or minimize his or her child support obligation.

The 2002 guidelines retain the provisions of the 1998 guidelines

1. prohibiting a court from imputing income to a parent who is mentally or physically incapacitated or is caring for a child under the age of three for whom child support is being determined;
2. requiring a court to determine a parent's potential income based on the parent's employment potential and probable earnings level considering the parent's recent work history and occupational qualifications and prevailing job opportunities and earnings levels in the community; and
3. allowing a court to base potential income on the minimum wage for a forty-hour week when a parent has no recent work history or vocational training.

Social Security Benefits

The 2002 guidelines change the way in which social security benefits received by or on behalf of a child are considered in determining a parent's support obligation for that child.

Under the federal Social Security Act, disabled or retired workers who are insured through the federal social security system are entitled to receive social security disability or retirement benefits for themselves based, in part, on their past earnings records.⁵¹ Social security disability and retirement benefits are therefore, in a sense, a partial replacement of the income a worker would have earned but for his or her disability or retirement. Social security benefits also may be paid to or on behalf of the dependent children of retired or disabled workers who receive social security benefits or to the surviving children of deceased insured workers.⁵²

Under the 1998 guidelines, social security benefits received on behalf of a child based on the obligor's disability were not considered in determining the

amount of the obligor's child support obligation.⁵³ The guidelines, however, allowed the court to waive or reduce the disabled obligor's child support obligation if it determined that, considering the social security benefits received by or on behalf of the child based on the disabled obligor's earnings record, the obligor's payment of "additional" child support was not warranted. For example, a court was allowed to reduce, on a dollar-for-dollar basis, the \$200 per month child support obligation of a disabled obligor if the custodial parent received a \$250 per month social security check for the obligor's child based on the obligor's earnings record.

The assumption underlying this provision was that the social security benefits received by or on behalf of the child of a disabled obligor represent a replacement of the income or support that the parent would have provided for the child but for the parent's disability. The 1998 guidelines, however, inadvertently allowed disabled obligors to receive a double benefit by giving them credit for social security benefits paid to their children without also having those social security benefits considered in determining their support obligations. The 1998 guidelines also failed to address situations involving a child's receipt of social security benefits based on the earnings record of a *retired* obligor, a disabled obligee, or a retired obligee.

Under the 2002 guidelines, social security benefits received on behalf of a child as a result of the disability or retirement of *either* parent are

1. included as income attributable to the parent on whose earnings record the benefits are paid (not necessarily the parent who receives the benefits on behalf of the child as the child's representative payee), and
2. deducted, dollar-for-dollar, from that parent's child support obligation.

Social security disability, retirement, or survivors benefits that a parent receives for himself or herself are included in the parent's income in determining his or her child support obligation.⁵⁴

For example, assume a disabled noncustodial parent who receives \$950 per month in social security disability benefits and a custodial parent who earns \$2,500 per month and receives \$400 per month in social security benefits for the parties' child on the noncustodial parent's earnings record. Under the revised guidelines, the noncustodial parent's basic child support obligation is \$239 per month. The obligation is calculated based on the custodial parent's \$2,500 income and the noncustodial parent's income of \$1,350 (the noncustodial parent's \$950 social security benefit plus the \$400 social security benefit

that the custodial parent receives for the child). But because the noncustodial parent's \$239 child support obligation is completely offset by the \$400 social security benefit that the child receives based on the noncustodial parent's earnings, the noncustodial parent's actual child support obligation under the 2002 guidelines is \$0.

Income of Non-Parents

The 2002 guidelines make it clear that only the income of the child's parents is considered in determining the parents' child support obligations under guidelines.⁵⁵

As noted above, the child support guidelines do not apply in determining the child support responsibilities of stepparents or other persons or agencies who may be secondarily, rather than primarily, liable for a child's support.

The guidelines also do not consider the income of a non-parent who has custody of a child when the non-parent is seeking child support from the child's parent or parents. For example, if a child's uncle and aunt have custody of the child and have filed an action seeking child support from one or both of the child's parents, the incomes of the child's parents, but not the uncle's and aunt's incomes, should be included on the child support worksheet.

Although the income of someone other than a parent generally is not considered under the child support guidelines, a third party's actual contributions for the support of a child may be a basis for deviating from the guidelines.⁵⁶

Deduction for Payments Under Pre-Existing Child Support Orders

Under the 1998 guidelines, a court was directed to deduct from a parent's gross income the amount that the parent *actually* pays under a pre-existing court order or separation agreement for the support of children other than those involved in the pending action.

The 2002 guidelines retain this requirement and extend it to actual child support payments made pursuant to a "voluntary support arrangement" if "the supporting parent has consistently paid child support for a reasonable and extended period of time."

The 2002 guidelines also make it clear that a pre-existing child support order is one that is in effect at the time a child support order in the pending action is entered or modified, regardless of whether the children for whom support is being paid under the pre-existing

order were born before or after the children involved in the pending action.⁵⁷

Deduction for a Parent's Financial Responsibility for Other Children

North Carolina's child support guidelines also direct a court to deduct from a parent's gross income an amount representing the parent's financial responsibility for children (a) who live with the parent, (b) for whom the parent owes a legal duty of support, and (c) are not involved in the pending child support proceeding.⁵⁸ For example, if a noncustodial parent remarries and the noncustodial parent and that parent's new spouse have a natural or adopted child who lives with the noncustodial parent, the guidelines require that an amount representing the noncustodial parent's responsibility for the child of the parent's second marriage be deducted from the noncustodial parent's gross income before determining the noncustodial parent's child support obligation for a child of the parent's first marriage.⁵⁹

Under the 1998 guidelines, the amount of a parent's financial responsibility for other children was one-half of the amount shown in the child support schedule for the other children based on the parent's adjusted gross income plus the adjusted gross income of the children's other parent regardless of whether the other parent was living with the parent and the other children.

Under the 2002 guidelines, the amount of a parent's financial responsibility for other children depends on whether the children's other parent lives with the parent and the other children. If the children's other parent lives with the parent and the children, the parent's deduction is the same as under the 1998 guidelines—that is, one-half of the basic child support obligation based on the combined incomes of the parent and the children's other parent. If the children's other parent does not live with the parent and the other children, the parent's deduction is the amount shown in the child support schedule for the other children based on the parent's income only.

For example, assume that a child's custodial parent has remarried, that the custodial parent and the custodial parent's new spouse are the parents of twins born to the custodial parent during the custodial parent's second marriage, that the custodial parent's gross income is \$3,000 per month, and that the custodial parent's new spouse has an adjusted gross income of \$5,000 per month. The custodial parent's deduction for financial responsibility for the twins born during the second marriage is \$618 (half of the \$1,236

basic child support obligation for two children based on a combined income of \$8,000), leaving an adjusted gross income of \$2,382.

Now assume that the custodial parent's household consists of the custodial parent, one child for whom child support is being determined, and two other children born during the custodial parent's prior marriage, and that the custodial parent's gross income is \$3,000 per month. The custodial parent's deduction for financial responsibility for the two other children is \$787 per month (the amount shown in the child support schedule for two children based on the custodial parent's \$3,000 monthly income), leaving an adjusted gross income of \$2,213 per month.

Child Care, Health Insurance, Health Care, and Other Expenses

The 2002 guidelines, like the 1998 guidelines, generally provide that child care expenses, the cost of health insurance for children, uninsured health care expenses for children, and other extraordinary child-related expenses are added to the parents' basic child support obligation and prorated between the child's parents in proportion to their respective adjusted gross incomes. If a parent pays more than his or her fair share of these additional child-related expenses, the excess is generally deducted from the parent's child support obligation.⁶⁰

The 2002 guidelines require the court to add reasonable child care costs, subject to a 25% limitation when the payor may claim an income tax credit, to the parents' basic child support obligation when these costs are, *or will be*, paid in connection with a parent's employment or job search.⁶¹ Only child care costs that are, or will be, actually paid by the payor out-of-pocket or through payroll deduction are allowed; child care costs that are paid on behalf of a parent by an employer or through public child care subsidies are not allowed.

When a third party (for example, a child's aunt) has custody of a child, incurs employment-related child care expenses for the child, and seeks child support from one or both parents, the party's child care costs should be added to the parents' basic support obligation (under column c, but not column a or b, of the worksheets) and prorated between the parents, but neither parent will receive a credit because neither parent is directly paying for child care.

The section of the revised guidelines regarding health insurance and health care for children

1. combines the portion of the 1998 guidelines regarding "extraordinary medical expenses" with the section regarding health insurance for children;

2. retains without substantive change (except as noted below) the provisions of the 1998 guidelines regarding health insurance and health care for children;
3. makes it clear that a parent's payments for health insurance must be considered if they are, *or will be*, paid by a parent;⁶²
4. makes it clear that child-related health insurance payments that are made on behalf of a parent by the parent's employer are not allowed except to the extent that the payments are deducted from the parent's earnings; and
5. provides that uninsured medical and dental expenses are allowed if they exceed \$100 per year (not \$100 per illness or condition).

The revised guidelines also add a new provision that incorporates statutory authority allowing the court to order either parent to obtain and maintain health (medical or medical and dental) insurance coverage for a child if it is actually and currently available to the parent at a reasonable cost.⁶³ The guidelines, like the statute, consider health insurance to be reasonable in cost if it is available through a parent's employment or through a group plan, regardless of delivery mechanism.

The guidelines, however, also provide that if reasonably-priced child-related health insurance is not actually available to a parent at the time a child support order is entered, the court may enter a conditional, prospective order requiring the parent to obtain reasonably-priced child-related health insurance *if and when* the parent is able to obtain reasonably-priced child-related health insurance. The intent of this last provision is to address the court of appeals' decision in *Buncombe County ex rel. Frady v. Rogers*, which held that trial courts lack the statutory authority to order a parent to provide health insurance for a child unless it is actually available to the parent at the time a child support order is entered.⁶⁴

Worksheets and Rules for Primary, Shared, and Split Custody

The 2002 guidelines, like the 1998 guidelines, provide rules for determining child support in cases involving primary, shared, or split custody.

The revised guidelines, however,

1. clarify that the child support guidelines and worksheets may not be used to determine the child support obligation of a step-parent or another person or agency who is secondarily liable for child support;
2. clarify that the income of a non-parent who has custody of a child and is seeking child

support from one or both of the child's parents is not included under either column a or b on the child support worksheets;

3. expressly require the court to use one (and only one) of the three existing child support worksheets to determine a parent's presumptive child support obligation under the guidelines;
4. incorporate the definitions of primary, shared, and split custody contained in the instructions to the child support worksheets;
5. clarify the definition of shared custody;
6. explain that the self-sufficiency reserve incorporated into the shaded area of the child support schedule cannot be used in cases involving shared or split custody; and
7. provide that if the parents share custody of at least one child, the court must use worksheet B to determine the parents' child support obligations for all of the children involved in the pending action, regardless of whether a parent has primary custody of the other child or children involved in the pending action or the parents split custody of the other child or children.

A party generally has *primary custody* of a child if the child lives with the party for at least 242 nights during the year. A party also has primary custody of a child if the child lives with the party for less than 242 nights during the year *and* the definition of shared custody does not apply. Under the child support guidelines, primary custody does not depend on whether a party has sole, exclusive, primary, or joint legal custody of the child.

In most cases involving primary custody, the noncustodial parent has secondary custody or visitation rights with respect to the child. The guidelines, however, do not provide any credit or offset to a noncustodial parent for "non-extraordinary" child-related expenses that the parent incurs while the child is visiting or living with him or her.⁶⁵ For example, assume a child who normally lives with parent X but visits parent Y every other weekend, seven holiday overnights, and 30 days during summer vacation (approximately 85 nights during the year). Under the child support guidelines, parent X has primary custody of the child, regardless of whether parent X has sole, primary, or joint legal custody, and parent Y's child support obligation will be determined by using worksheet A.

The child support worksheet for cases involving primary custody (worksheet A) must be used in cases in which

1. support is being determined for one child and the child is in the primary custody of the party seeking support, or

2. support is being determined for more than one child and *all* of the children for whom support is sought are in the primary custody of the party seeking support.

In cases involving primary custody, a child support obligation is calculated for both parents but only the noncustodial parent is ordered to pay child support.⁶⁶ The custodial parent is presumed to discharge his or her child support obligation by caring for the child and using part of his or her income plus the child support payments received from the noncustodial for the child's support.

When support is being determined for more than one child and the children's custody is *split* between the parents (that is, one parent has primary custody of one or more children, the other parent has primary custody of one or more children, and the parents do not share custody of any of the children), worksheet C must be used. Unlike cases involving shared custody, the basic child support obligation is not increased in cases involving split custody even though the parents' combined costs for caring for children in a split custody case, like the total cost of caring for children in cases involving shared custody, will generally exceed the cost of caring for children when primary custody is involved. In cases involving split custody, child support obligations are calculated for both parents based on their respective incomes and the number of children living with each parent. The parent with the higher obligation is ordered to pay the difference between his or her child support obligation and the other parent's child support obligation to the parent with the lower child support obligation.

The revised guidelines provide that parents *share* custody of a child if the child lives with each parent for at least 123 nights during the year and each parent assumes financial responsibility for the child during the time the child lives with the parent. As in child support cases involving primary custody, the fact that parents have shared or joint legal custody of a child does not necessarily mean that they share custody of a child within the meaning of the child support guidelines.

Although the definition of shared custody under the revised guidelines differs somewhat from that used in the instructions for the 1998 child support worksheets, the intent of the 2002 guidelines is similar to that of the 1998 guidelines. The child support rules for shared custody cases do not apply unless each parent is, in essence, acting as a custodial parent (that is, assuming financial responsibility for the child during the time the child lives with the parent) and "truly" sharing responsibility for the child's care and support. The mere fact that a child has extended

visitation with a parent resulting in the child's spending more than 123 nights per year with the parent does not automatically mean that the parents share custody of the child within the meaning of the child support guidelines.

When support is being determined for more than one child and the parents share custody of at least one child, worksheet B must be used even if one parent has primary custody of the other child or children or custody of the other children is split between the parents.

In child support cases involving shared custody, the parents' basic child support obligation is increased by 50% (multiplied by 1.5) to reflect the fact that both parents are acting as custodial parents and that the total cost of caring for a child in a shared custody case generally is greater than the cost of caring for the same child when primary custody is involved. Under the revised guidelines, this adjustment applies with respect to *all* of the children involved in a shared custody case, even if the parties share custody of fewer than all the children. In shared custody cases, a child support obligation is calculated for each parent based on the parents' respective incomes and the amount of time the children (including those for whom the parents do not share custody) live with the other parent. As in cases involving split custody, the parent with the higher obligation is ordered to pay the difference between his or her child support obligation and the other parent's child support obligation to the parent with the lower child support obligation.

Modification of Child Support Orders

Adoption of the revised child support guidelines does not, in and of itself, constitute a substantial change of circumstances warranting modification of existing child support orders.⁶⁷

The revised guidelines, however, retain without substantive change the language in the 1994 and 1998 guidelines providing that a difference of at least 15 percent between the amount of child support awarded under an order that is at least three years old and the amount of child support payable under the child support guidelines based on the parties' current incomes and circumstances is presumed to constitute a substantial change of circumstances allowing modification of the order.⁶⁸

The guidelines do not indicate what facts might be sufficient to rebut this presumption. Nonetheless, it seems clear that the presumption does not apply if the sole reason for the difference between the amount of

support provided under the existing child support order and the amount of support payable under the guidelines is a parent's claiming a new or increased deduction for financial responsibility for other children. It is less clear whether the fact that the amount of child support under the existing order was determined by deviating from the child support guidelines is sufficient to rebut the presumption.

Child Support Orders

The 2002 guidelines add a provision encouraging judges to incorporate or attach a copy of the child support worksheet used to determine a parent's presumptive child support obligation to all child support orders (including those in which the court deviates from the guidelines) or include the worksheet in the case file.⁶⁹

The 2002 guidelines, like the previous child support guidelines, implicitly assume that the court will enter one child support award when an obligor is required to support two or more children living with a particular obligee rather than entering separate child support awards for each child. The guidelines also assume, consistent with state law, that child support awards will be calculated as monthly obligations due and payable on the first day of each month regardless of whether the obligor's income is received on a weekly, bi-weekly, semi-monthly, monthly, or other basis.⁷⁰

Conclusion

The 2002 revisions to North Carolina's child support guidelines adopted by the Conference of Chief District Court Judges retain the fundamental structure and purpose of the 1998 child support guidelines while updating the economic data on which the schedule of basic child support obligations is based; providing clarification with respect to some of the issues that have arisen with respect to the guidelines' application; and incorporating recent appellate decisions regarding application of the child support guidelines.

The guidelines, however, cannot address every issue that may arise in determining the amount of child support that parents should pay, and the continued experience of parents, lawyers, child support agencies, and judges in using the guidelines will almost certainly reveal additional questions, issues, and problems that the Conference may address when it next reviews the guidelines.

Notes

¹ 42 U.S.C. 667(a). The current federal requirements regarding child support guidelines were enacted by Congress in the Family Support Act of 1988 (Public Law 100-485, 102 Stat. 2343). The federal Child Support Enforcement Amendments of 1984 (Public Law 98-378, 98 Stat. 1321) required states to adopt child support guidelines but did not require state courts or administrative agencies to use guidelines when entering child support orders.

² 45 C.F.R. 302.56(h). The state's analysis of the case data must be used to ensure that deviations from its guidelines are limited.

³ 45 C.F.R. 302.56(c).

⁴ 42 U.S.C. 667(b)(2); 45 C.F.R. 302.56(f).

⁵ 45 C.F.R. 302.56(g). Federal law also requires (a) that the state's criteria for rebutting the presumptive application of the child support guidelines consider the child's best interests, and (b) that findings rebutting presumptive application of the child support guidelines state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines. 45 C.F.R. 302.56(g).

⁶ G.S. 50-13.4(c1). The Conference of Chief District Court Judges adopted advisory child support guidelines in 1987. Child support awards under the 1987 guidelines were calculated based on a flat percentage of the noncustodial parent's income. In 1990, the Conference adopted mandatory, presumptive guidelines based on the income shares model (discussed in more detail in the text accompanying notes 35 through 43). The 1990 child support guidelines were revised in 1991, 1994, 1998, and 2002. The 1994 revisions and a brief history of North Carolina's child support guidelines are described in John L. Saxon, "North Carolina's Revised Child Support Guidelines," *Family Law Bulletin No. 4* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, August, 1994).

⁷ The revised guidelines were developed by a committee consisting of chief judges Elizabeth Keever, Lawrence McSwain, Joseph Setzer, and Larry Wilson.

⁸ The text of the 1998 child support guidelines and the 1998 schedule of basic child support obligations is posted on the Institute's web site (<http://ncinfo.iog.unc.edu/faculty/saxon/1998guidelines.pdf>) in a portable document format (PDF) that can be read using free Adobe Acrobat® Reader™ software.

⁹ 42 U.S.C. 667(b)(2); 45 C.F.R. 302.56(a). Federal officials have interpreted this requirement as mandating the adoption of a single, uniform, statewide guideline that must be applied in all judicial and administrative proceedings involving child support. 56

Fed. Reg. 22354 (May 15, 1991) [US DHHS ACF/OCSE Action Transmittal 91-02, available online at <http://www.acf.dhhs.gov/programs/cse/pol/at-9102.htm>].

¹⁰ 45 C.F.R. 302.56; 56 Fed. Reg. 22354 (May 15, 1991) [US DHHS ACF/OCSE Action Transmittal 91-02, available online at <http://www.acf.dhhs.gov/programs/cse/pol/at-9102.htm>].

¹¹ G.S. 50-13.4(c); G.S. 110-132(b); G.S. 7B-904(d); G.S. 14-322(e); G.S. 49-7; G.S. 15A-1343(b)(4).

¹² The requirement that the child support guidelines apply with respect to consent orders and orders entered in noncontested proceedings probably applies when child support provisions included in a property or separation agreement are incorporated into a divorce decree. If the amount of child support provided under a court-approved voluntary support agreement, consent order, or incorporated property or separation agreement is more or less than the amount of child support that would have been ordered pursuant to the child support guidelines, the court must make findings with respect to the amount of child support that would have been awarded pursuant to the guidelines and that justify deviation from the guidelines and the amount of support awarded.

¹³ *Lawrence v. Tise*, 107 N.C. App. 140, 419 S.E.2d 176 (1992); *Duffey v. Duffey*, 113 N.C. App. 382, 438 S.E.2d 445 (1994).

¹⁴ G.S. 50-13.4(c1).

¹⁵ *See Browne v. Browne*, 101 N.C. App. 617, 400 S.E.2d 736 (1991). The court, however, must make findings of fact if a party requests deviation and the request is denied. *See Buncombe County ex rel. Blair v. Jackson*, 138 N.C. App. 284, 531 S.E.2d 240 (2000).

¹⁶ 42 U.S.C. 667(b)(2).

¹⁷ G.S. 50-13.4(c). Upon timely request of a party, the court must hear evidence and make findings with respect to the child's reasonable needs and the parents' ability to provide support. The 1998 and 2002 guidelines allow a court to deviate from the guidelines on its own motion as well as on motion by a party. A party who fails to give at least ten days' notice of the party's motion to deviate from the guidelines waives his or her right to request deviation unless evidence related to deviation is introduced without objection or the court, on its own motion, considers the propriety of deviating from the guidelines. *See Browne v. Browne*, 101 N.C. App. 617, 400 S.E.2d 736 (1991).

¹⁸ *See Sain v. Sain*, 134 N.C. App. 460, 517 S.E.2d 921 (1999); *Brooker v. Brooker*, 133 N.C. App. 285, 515 S.E.2d 234 (1999); *Rowan County ex rel. Brooks v. Brooks*, 135 N.C. App. 776, 522 S.E.2d 590 (1999).

¹⁹ *See Fink v. Fink*, 120 N.C. App. 412, 462 S.E.2d 844 (1995).

²⁰ In most states, the child support guidelines provide more detailed guidance with respect to when a court may, or may not, deviate from the state's guidelines. *See* Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* (New York: Aspen Law and Business, 1996) §4.04. About a dozen states limit the grounds for deviation by providing an exclusive list of factors that will justify deviating from the guidelines. About twenty states provide a more extensive, but nonexclusive, list of factors that will justify deviation. Georgia's guidelines, for example, list seventeen specific factors (including the ages of the children; in-kind contributions or support provided by a parent; a parent's own extraordinary needs, such as medical expenses; extreme economic circumstances including unusually high debt structure or unusually high income; historical spending in the family for children which varies significantly from the guidelines; economic cost-of-living factors in the parents' communities; and extraordinary travel expenses to exercise visitation or shared physical custody) that may justify deviation. Ga. Code 19-6-15(c). Similarly, Oregon's guidelines state sixteen factors (including evidence of the other available resources of the parent; the reasonable necessities of the parent; the net income of the parent remaining after withholdings required by law or as a condition of employment; a parent's ability to borrow; the special hardships of a parent including any medical circumstances or extraordinary visitation travel related costs; the desirability of the custodial parent's remaining in the home as a full-time parent or working less than full-time to fulfill the role of parent and homemaker; the tax consequences, if any, to both parents resulting from spousal support awarded and determination of which parent will name the child as a dependent; the financial advantage afforded a parent's household by the income of a spouse or another person with whom the parent lives in a relationship similar to husband and wife or domestic partnership; prior findings in a judgment, order, decree or settlement agreement that the existing support award was made in consideration of other property, debt or financial awards; the net income of the parent remaining after payment of financial obligations mutually incurred; and the tax advantage or adverse tax effect of a party's income or benefits) that may justify deviation. Or. Admin. Rules 137-050-0330(2)(a). By contrast, the guidelines adopted by the remaining states (including those adopted by North Carolina) list only a few nonexclusive factors that justify deviation or provide

only one broad “catchall” factor (usually, that application of the guidelines would be “unjust or inappropriate”).

²¹ G.S. 50-13.4(c).

²² The value of the federal tax exemption for dependent children (and corresponding state tax exemptions) and the federal income tax credit for certain dependent children depends on the number of children, the adjusted amount of the exemption and credit, the parent’s income, and the parent’s marginal tax rates. The tax savings of the federal exemption and credit currently are approximately \$905 for a parent with a gross income of \$20,000; \$1,335 for parents with gross incomes of \$40,000 to \$70,000; \$850 for parents with gross incomes of \$90,000 to \$120,000; and \$0 to \$400 for parents with gross incomes of \$200,000 to \$250,000. See <http://www.divorceinfo.com/exemptions.htm>.

²³ See *Buncombe County ex rel. Blair v. Jackson*, 138 N.C. App. 284, 531 S.E.2d 240 (2000).

²⁴ See *State ex rel. Fisher v. Luckinoff*, 131 N.C. App. 642, 507 S.E.2d 591 (1998).

²⁵ See *Guilford County ex rel. Easter v. Easter*, 344 N.C. 166, 473 S.E.2d 6 (1996); cf. *State ex rel. Horne v. Horne*, 127 N.C. App. 387, 489 S.E.2d 431 (1997).

²⁶ Morgan, *Child Support Guidelines* §4.01.

²⁷ Morgan, *Child Support Guidelines* §4.01.

²⁸ 56 Fed. Reg. 22354 (May 15, 1991) [US DHHS ACF/OCSE Action Transmittal 91-02, available online at <http://www.acf.dhhs.gov/programs/cse/pol/at-9102.htm>].

²⁹ Morgan, *Child Support Guidelines*, §4.09[b]. By contrast, guidelines adopted by Connecticut and Washington expressly provide that an agreement between the parties is not, standing alone, a sufficient reason to deviate.

³⁰ It has been argued that while the “federal poverty level for a family of one seems initially to be a sensible choice for a self-support reserve, it necessarily incorporates what is basically a legal fiction. That is, it assumes that the parent will always be single-handedly responsible for supporting an individual household, and will have no other dependents. Yet a parent who remarries will have another person with whom to share the responsibility for rent and other expenses, and will enjoy economies of scale. A parent who has a subsequent child will have new fiscal responsibilities. One who both remarries and has a subsequent child has an entirely new mix of resources and responsibilities, quite unlike that of a sole householder. So the survival needs of a one person household, while perhaps meaningful in most cases immediately after a divorce

or separation, quickly becomes less and less relevant. Marianne Takas, “Addressing Subsequent Families in Child Support Guidelines,” Ch. 4 in Margaret Campbell Haynes, ed., *Child Support Guidelines: The Next Generation* (U.S. Dept. of Health and Human Services, 1994).

³¹ As long as the noncustodial parent’s income falls within the shaded area, it doesn’t matter that the parents’ *combined* income falls outside the shaded area.

³² It might be argued that this provision is inconsistent with federal requirements to the extent that it excludes “high combined income” cases from application of the child support guidelines. According to the federal Office of Child Support Enforcement: “... states may not simply exempt an entire category of cases with incomes above ... a specific dollar level from application of the guidelines” either expressly or by use of rebuttal criteria that “exclude an inordinate number of cases from application of the guidelines.” 56 Fed. Reg. 22354 (May 15, 1991) [US DHHS ACF/OCSE Action Transmittal 91-02, available online at <http://www.acf.dhhs.gov/programs/cse/pol/at-9102.htm>].

³³ This provision in the 1998 guidelines was deleted because it was impossible to apply in cases in which the parents’ *combined* income exceeded the amount shown in the child support schedule but the supporting parent’s income was significantly less than the maximum income level included in the schedule. For example, assume a noncustodial parent with an income of \$8,000 per month, a custodial parent with an income of \$7,000 per month, and two children. The noncustodial parent’s presumptive child support obligation (assuming no adjustments for child care, health insurance, or other additional child-related expenses) would have been \$1,124 per month (\$2,107 [the child support obligation for two children when the parents’ combined income was \$15,000] times 53% [the noncustodial parent’s share of the parents’ \$15,000 combined income]). Now assume a noncustodial parent with the same income (\$8,000), a custodial parent with slightly more income (\$7,250), and two children. A literal reading of the 1998 guidelines would have suggested that the noncustodial parent’s child support obligation could not be less than \$2,107 per month (the maximum support obligation for two children when the parents’ combined income was \$15,000).

³⁴ North Carolina’s 1987 guidelines used a flat “percentage of income” method for computing the child support obligations of noncustodial parents. Under the 1987 guidelines, the recommended child support obligation of a noncustodial parent for one child was 17 percent of the noncustodial parents’ income, 25 percent of

the noncustodial parent's income for two children, and 29 percent for three children.

³⁵ Morgan, *Child Support Guidelines*, §1.03.

³⁶ All of the states that use the income shares model base their child support guidelines on *national* economic data because valid, detailed *state-level* data is not readily available and would be expensive to obtain. More importantly, though, it is not at all clear that state-level data regarding household expenditures would differ significantly from the national data. The national data "yield estimates of the *proportion* of parental expenditures allocated to children [at different income levels]. There is no reason to believe that the *expenditure patterns* in [any particular state] would be so different that the estimates of these proportions [at the state-level] would vary much from the national estimates." Jane C. Venohr, Robert G. Williams, and David A. Price, *Review of the Arizona Child Support Schedule* (Denver: Policy Studies, Inc., 1999).

³⁷ The consumer expenditure data relate to spending by families with children between the ages of birth and 18 years and do not differentiate among children of different ages. Because the consumer expenditure surveys do not include data for families with more than three children, child support schedules for families with more than three children are based on the data for families with three children and economic estimates of spending for each additional child.

³⁸ The survey data and child support schedules based on the data provide an indication of the *average* amounts that families within specified net income ranges *spend* for household consumption items or the children's share of household consumption. They do not, strictly speaking, indicate the minimum or average *cost* a family incurs in caring for one or more children.

³⁹ Venohr, *Review of the Arizona Child Support Schedule*.

⁴⁰ Venohr, *Review of the Arizona Child Support Schedule*.

⁴¹ The Robarth estimator is one of several economic methodologies that attempt to estimate the marginal, or extra, costs of caring for children relative to household spending by families without children. Although there is no consensus among economists that any single estimator is better than another, the Robarth estimator, despite its limitations and biases, appears to be at least as strong theoretically as the other estimators and does not have any "serious problems of empirical specification." Venohr, *Review of the Arizona Child Support Schedule*. (The primary bias of the Robarth estimator is that it tends to understate child-rearing expenditures.)

⁴² "Although the name 'income shares' connotes a sharing of the support obligation between the father

and mother, the term 'shares' is intended to connote a *child's* rightful claim to parental income, as in shares of stock, or shares of ownership in an income-producing real estate unit." Morgan, *Child Support Guidelines*, §1.03, citing Robert Williams, *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report* (U.S. Department of Health and Human Services, 1987). Thus, although the income shares model graphically illustrates the fact that both parents share responsibility for supporting their child (and, thus, is perceived as fair in requiring both parents to support their child), it is not qualitatively different with respect to the issue of shared parental responsibility than the "percentage of income" model that is based solely or primarily on the noncustodial parent's income.

⁴³ See Morgan, *Child Support Guidelines*, §1.03[e]. Mathematically, the income shares formula may be expressed as $[(C + N) \times P] \times [N / (C + N)] = S$ (which, when simplified, is the same as $P \times N = S$ [which is the formula for the percentage of income model]), where C is the custodial parent's income, N is the noncustodial parent's income, P is the percentage used to determine support, and S is the amount of support owed.

⁴⁴ North Carolina's 1998 child support schedule was based on adjusted data derived from a study by Dr. Betson that applied the Robarth estimator to data from the 1980–86 consumer expenditure survey. See David M. Betson, *Alternative Estimates of the Cost of Children from the 1980–86 Consumer Expenditure Survey* (Madison, WI: University of Wisconsin Institute for Research on Poverty, 1990).

⁴⁵ The guidelines adopted by approximately 27 states use net, rather than gross, income to determine a parent's child support obligation. Morgan, *Child Support Guidelines*, §2.03. Using gross, rather than net, income to determine a parent's child support obligation under the income shares model, however, does not necessarily result in a parent's paying more child support (or a higher percentage of income for child support) because the parent's obligation, in both instances, is based on the parent's net income and the child support schedule "invisibly" applies that obligation to the parent's gross income by "automatically" factoring in the federal and state taxes that are withheld from the parent's income.

⁴⁶ Several appellate decisions have addressed issues regarding the consideration of income under the child support guidelines. See *Kennedy v. Kennedy*, 107 N.C. App. 695, 421 S.E.2d 795 (1992) (deductibility of business expenses); *Lawrence v. Tise*, 107 N.C. App. 140, 419 S.E.2d 176 (1992) (deductibility of

mortgage principal payments and other business expenses); *Barham v. Barham*, 127 N.C. App. 20, 487 S.E.2d 774 (1997) (income from subchapter S corporation); *Cauble v. Cauble*, 133 N.C. App. 390, 515 S.E.2d 708 (1999) (income from subchapter S corporation and deductibility of business expenses for depreciation and bad debts).

⁴⁷ Gross income may include “in kind” as well as cash payments if “in kind” payments (such as use of a company car, free housing, or free or reimbursed meals) are received in the course of employment, self-employment, or operation of a business and significantly reduce the parent’s personal living expenses. Gross income, however, does not include means-tested public assistance benefits (Temporary Assistance for Needy Families, Food Stamps, Medicaid, Supplemental Security Income, etc.), alimony, spousal support, or maintenance received by one parent from the other parent involved in the pending action, or reasonable and necessary expenses related to self-employment or the operation of a business.

⁴⁸ See *Hodges v. Hodges*, ___ N.C. App. ___, 556 S.E.2d 7 (2001).

⁴⁹ The court was not allowed to impute income to a physically or mentally incapacitated parent or a parent caring for a child under the age of three for whom the parties shared joint legal responsibility.

⁵⁰ See *Burnett v. Wheeler*, 128 N.C. App. 174, 493 S.E.2d 804 (1997); *Kowalick v. Kowalick*, 129 N.C. App. 781, 501 S.E.2d 671 (1998); *Chused v. Chused*, 131 N.C. App. 668, 508 S.E.2d 559 (1998); *Sharpe v. Nobles*, 127 N.C. App. 705, 493 S.E.2d 288 (1997); *Bowers v. Bowers*, 141 N.C. App. 729, 541 S.E.2d 508 (2001); *cf. Ellis v. Ellis*, 126 N.C. App. 362, 485 S.E.2d 92 (1997); *Osborne v. Osborne*, 129 N.C. App. 34, 497 S.E.2d 113 (1998).

⁵¹ Eligibility for social security benefits is described in more detail in the *Social Security Handbook* published by the federal Social Security Administration. The *Social Security Handbook* is available on-line at http://www.ssa.gov/OP_Home/handbook/ssa-hbk.htm.

⁵² Social security benefits for minor children generally are paid to the child’s custodian as representative payee on behalf of the child. *Social Security Handbook*, §§ 1602, 1608.

⁵³ Under both the 1998 and 2002 guidelines, the amount of the social security (but not SSI) disability benefits that a disabled obligor receives for himself or herself is counted as the obligor’s income in determining the obligor’s child support obligation.

⁵⁴ Supplemental Security Income (SSI) benefits that a disabled parent receives are public assistance

benefits and are not counted as income in determining the parent’s child support obligation.

⁵⁵ There are two exceptions to this rule: (1) social security benefits received by or on behalf of a child are counted as income received by the parent on whose earnings record the benefits are based; (2) the income of a parent’s spouse may be considered in determining the amount of the parent’s financial responsibility for other children.

⁵⁶ See *Guilford County ex rel. Easter v. Easter*, 344 N.C. 166, 473 S.E.2d 6 (1996); *cf. State ex rel. Horne v. Horne*, 127 N.C. App. 387, 489 S.E.2d 431 (1997).

⁵⁷ A child support order is a pre-existing order if it is in effect at the time the child support order in the pending action is entered regardless of whether it was originally entered before or after the initial order in the pending action or the children for whom support is owed were born before or after those involved in the pending action. See *Buncombe County ex rel. Blair v. Jackson*, 138 N.C. App. 284, 531 S.E.2d 240 (2000).

⁵⁸ This deduction generally does not apply to a parent’s step-children (for example, the children of a parent’s new spouse born prior to their marriage) because a step-parent generally has no legal duty to support his or her step-children.

⁵⁹ The child support guidelines expressly provide that a parent’s financial responsibility for other children does not, in and of itself, constitute a substantial change of circumstances warranting modification of an existing child support order.

⁶⁰ Under the 2002 guidelines, these rules do not apply when a noncustodial parent’s child support obligation is determined by applying the self-sufficiency reserve incorporated in the shaded area of the child support schedule. A court, however, may consider child care, health insurance, health care expenses, and other extraordinary child-related expenses as a factor in deciding whether to deviate from the guidelines in these cases.

⁶¹ It is unclear whether the guidelines allow the court to consider child care costs when they are incurred in connection with a parent’s job training or education.

⁶² When a third party (for example, a child’s aunt) has custody of a child, pays for the child’s health insurance coverage (or other health care expenses for the child), and seeks child support from one or both parents, the health insurance or health care expenses should be added to the parents’ basic support obligation (under column c, but not column a or b, of the worksheets) and prorated between the parents, but neither parent will receive a credit because neither parent is directly paying for the child’s health insurance or health care.

⁶³ G.S. 50-13.11(a1).

⁶⁴ Buncombe County *ex rel.* Frady v. Rogers, ___ N.C. App. ___, 559 S.E.2d 227 (2002).

⁶⁵ A noncustodial parent, however, may receive credit if he or she pays more than his or her fair share of child care, health insurance, health care, or extraordinary child-related expenses (including expenses incurred in transporting the child between the parents' homes for visitation).

⁶⁶ When a third party has custody of a child and seeks child support, the court should order *both* of the child's parents to pay child support if they are able to do so and the court has personal jurisdiction over them.

⁶⁷ See G.S. 50-13.7(a); Davis v. Risley, 104 N.C. App. 798, 411 S.E.2d 171 (1991).

⁶⁸ This section was added to the child support guidelines in 1994 in order to comply with a federal law requiring each state to establish a process under which child support orders in cases handled by child support enforcement (IV-D) agencies are reviewed periodically and *adjusted, if appropriate, in accordance with the state's child support guidelines.* Pub. Law 100-485 §103, 102 Stat. 2346, 42 U.S.C.

666(a)(10); 57 Fed. Reg. 61559-83 (Dec. 28, 1992); 45 C.F.R. 303.8(d). The authority of the Conference of Chief District Court Judges to adopt this provision was considered and upheld in Garrison *ex rel.* Williams v. Connor, 122 N.C. App. 702, 471 S.E.2d 644 (1996).

⁶⁹ See Hodges v. Hodges, ___ N.C. App. ___, 556 S.E.2d 7 (2001). Judges are *required* to attach a copy of the child support worksheets to orders entered in child support proceedings brought under the Uniform Interstate Family Support Act. G.S. 52C-3-305(c).

⁷⁰ See G.S. 50-13.4(c) (child support orders must be determined as a monthly obligation, due and payable on the first of the month). See also G.S. 50-13.9(a), G.S. 110-136.3(a), G.S. 110-136.4(b), G.S. 110-136.5(c1) (payment of child support via immediate income withholding is required in most IV-D and non-IV-D cases); G.S. 50-13.9(a), G.S. 110-136.8(b)(1), G.S. 110-139(f) (child support payments in all IV-D cases, in all non-IV-D cases subject to income withholding, and all other non-IV-D cases in which the obligor does not make payments directly to the obligee must be made through the state's centralized Child Support Collection and Distribution Unit).

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