



# 2011 Revisions to the North Carolina Child Support Guidelines

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States are required by federal law to establish child support guidelines as a condition of receiving federal funding for Temporary Assistance for Needy Families (TANF) and child support enforcement programs (IV-D programs).<sup>1</sup> Once a state establishes such guidelines, federal law requires the state to review them at least once every four years to ensure that their application results in appropriate child support orders.<sup>2</sup> As part of this review, states “must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application . . . of the guidelines.”<sup>3</sup>

In response to these federal mandates, the North Carolina General Assembly enacted Section 50-13.4(c1) of the North Carolina General Statutes (hereinafter G.S.), which requires that the North Carolina Conference of Chief District Court Judges<sup>4</sup> (a) prescribe uniform statewide presumptive guidelines for the computation of child support obligations of parents; (b) develop criteria for determining when, in a particular case, application of the guidelines would be inappropriate; and (c) review the guidelines periodically, but at least once every four years, to determine whether the guidelines result in appropriate child support amounts.

Pursuant to the requirements of G.S. 50-13.4(c1), the Conference of Chief District Court Judges adopted advisory child support guidelines in 1987. In 1990, the Conference adopted mandatory presumptive guidelines. The 1990 guidelines were revised by the Conference in 1991, 1994, 1998, 2002,<sup>5</sup> and 2006.<sup>6</sup> This *Family Law Bulletin* describes the revisions to the 2006 guidelines, revisions that were adopted by the Conference of Chief District Court Judges on October 6, 2010, and that are to be applied in child support matters heard on or after January 1, 2011.<sup>7</sup>

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1. 42 U.S.C. § 667(a).

2. *Id.*

3. 45 C.F.R. § 302.56(h).

4. The chief district court judges are required by statute to conference at least once annually “upon call of the Chief Justice.” G.S. 7A-148(a). As a result of this statute, the group made up of the chief judge from each district court district in North Carolina is referred to as the Conference of Chief District Court Judges.

5. John L. Saxon, *North Carolina’s Revised Child Support Guidelines (2002)*, FAM. L. BULL. No. 13, available at [www.sog.unc.edu/pubs/electronicversions/pdfs/flb13.pdf](http://www.sog.unc.edu/pubs/electronicversions/pdfs/flb13.pdf).

6. The 2006 guidelines applied to cases heard and decided on or after October 1, 2006.

7. The 2011 Child Support Guidelines will be published on the website of the North Carolina Administrative Office of the Courts in December 2010. See [www.nccourts.org](http://www.nccourts.org). The purpose of this bulletin is

In addition to updating the Schedule of Basic Child Support Obligations to reflect the most current available economic data, the Conference also made changes to the substantive provisions within the guidelines that regulate their interpretation and application to specific cases. These changes are intended to address issues that have come to light during the four years since adoption of the 2006 Guidelines. This bulletin focuses primarily on these substantive changes and also briefly addresses the process used to develop the new Schedule of Basic Child Support Obligations.

### **Applicability of Guidelines to Domestic Violence Cases**

The first change to the substantive provisions of the guidelines clarifies that they apply to civil domestic violence protective orders entered pursuant to G.S. Chapter 50B. 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.<sup>8</sup> The North Carolina guidelines specify that they apply in "all legal proceedings involving the child support of a parent," including cases resolved by consent order. Earlier versions of the guidelines listed specific proceedings as examples, including criminal and juvenile proceedings, orders entered in UIFSA proceedings, and voluntary support agreements. The 2011 revisions add to this list of specific examples to specify that the guidelines apply to temporary support orders entered as relief in a domestic violence protective order issued pursuant to Chapter 50B.

### **Retroactive Child Support**

Orders for future child support, often referred to as "prospective" child support, generally provide for support to be paid forward in time beginning on the filing date of the complaint or the motion seeking child support. However, North Carolina law has long recognized the right of a custodial parent to seek retroactive support for up to three years before the filing of the complaint or motion.<sup>9</sup> The 2006 child support guidelines gave the trial court a choice when determining the amount of retroactive child support to be ordered in a specific case. The guidelines provided that the trial court could order retroactive support based on either (1) the noncustodial parent's fair share of the expenses actually paid by the custodial parent on behalf of the child during the three-year period immediately preceding the filing of the complaint or motion for child support or (2) the child support guidelines.

The 2011 guidelines retain the same options for the trial court but with two clarifications. First, the 2011 guidelines specify that retroactive support cannot be ordered in an amount different than an amount agreed upon by the parties in a valid unincorporated agreement in effect during the time period for which retroactive support is sought. This clarification was added in response to *Carson v. Carson*, 680 S.E.2d 885 (N.C. Ct. App. 2009), wherein the court of appeals

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to describe the changes made to the 2006 version of the guidelines. For a more thorough discussion of North Carolina child support law in general and the child support guidelines in particular, see Chapter 3: Child Support (2005), in NORTH CAROLINA TRIAL JUDGES' BENCH BOOK DISTRICT COURT: VOLUME 1, FAMILY LAW.

8. 42 U.S.C. § 667(b)(2); 45 C.F.R. § 302.56(a).

9. See, e.g., *Napowska v. Langston*, 95 N.C. App. 14, 381 S.E.2d 882 (1989).

held that the parties' responsibility for support during the time period before the child support action is filed is conclusively determined by a valid contract between the parties. According to *Carson*, when the parties' support obligation is set out in a valid contract, the trial court, absent a showing that the custodial parent incurred emergency expenses on behalf of the child that should be shared by the other parent, should not enter a support order in an amount other than the contract amount. The second clarification involves application of the guidelines to determine the amount of retroactive support. The 2011 guidelines provide that if the trial court decides to set retroactive support based on the guidelines, the court will do so "by determining the amount of support that would have been required had the guidelines been applied at the beginning of the time period for which support is sought." In other words, the trial court sets the amount of retroactive support based on both the income of the parties at the beginning of the time period for which support is sought and the guidelines in effect at that point in time.

### **Low-Income Parents**

The 2011 guidelines retain a self-sufficiency reserve for low-income obligors but update the amount of the reserve to reflect the 2009 federal poverty level for a one-person household. 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 in the care of the custodial parent.<sup>10</sup>

The 2011 revisions increase the amount of the self-sufficiency reserve from \$816 per month based on the 2006 federal poverty guideline to \$902.50 per month based on the 2009 federal poverty guideline. For obligors with an adjusted gross income of less than \$999 (previously \$950), the 2011 guidelines require, absent deviation, a minimum support order in the amount of \$50 per month.

The Schedule of Basic Support Obligations incorporates further adjustments to maintain the self-sufficiency reserve for obligors with incomes above \$999.00 per month. The obligations affected by the self-sufficiency reserve are shaded gray in the schedules. If an obligor's income falls within the shaded areas of the schedule, the child support obligation is computed using only the obligor's income. The income of the other parent is not considered in determining the basic support obligation. In addition, the guidelines specify that childcare and health insurance premiums are not included in the calculation of support but may be the basis for deviation from guideline support. The 2011 revisions clarify that childcare and health insurance premiums are not the exclusive basis for deviation when an obligor's income falls within the shaded area of the schedule. This provision was amended to specify that in addition to costs for childcare and health insurance, other extraordinary expenses with regard to a particular child also may be the basis for a deviation.

The 2011 guidelines also specify that low-income parents are not excluded from the provision allowing judges to apportion responsibility for uninsured medical or dental expenses in excess of \$250 or for other uninsured health care costs between the parties. The new guidelines state that even if an obligor's income falls within the shaded area on the child support schedules, the court has the ability to order payment of these costs in addition to the basic support obligation.

10. Saxon, *supra* note 5.

## Parents with High Combined Income

The 2006 guidelines applied to cases in which the parents' combined income did not exceed \$25,000 per month (\$300,000 per year). In cases in which the parents' income exceeded \$25,000 per month, courts were directed to determine support on a case-by-case basis "consider[ing] the reasonable needs of the child[ren] and the relative ability of each parent to pay support."

The 2011 guidelines continue to provide that the guideline schedule of support applies only to cases where the combined monthly income of the parents is \$25,000 or below. However, the new guidelines clarify that the standard for determining support in cases where income exceeds \$25,000 per month is the same standard for support set out in G.S. 50-13.4(c). The 2011 guidelines track the language of G.S. 50-13.4(c) by stating that in these cases, "the court should set support in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case."

## Income

The Schedule of Basic Child Support Obligations contained in the guidelines is based on net income converted to gross annual income by incorporating the federal tax rates, North Carolina tax rates, and FICA. Therefore, support is calculated using the parents' gross income, that is, "income before deductions for federal or state income taxes, Social Security or Medicare taxes, health insurance premiums, retirement contributions, or other amounts withheld from income."

Income always has been defined broadly in the guidelines. The court has been and continues to be instructed to include amounts received by a parent "from any source," including funds received on an irregular, nonrecurring, and one-time basis. The 2011 guidelines retain the extensive list of examples of particular types of income that should be counted as income for purposes of setting support.

The guidelines contain a much more limited list of receipts that should be excluded from income for the purpose of setting support. The 2006 guidelines exclude from income "benefits received from means-tested public assistance programs" and list as examples Temporary Assistance to Needy Families (TANF), Supplemental Social Security Income (SSI), and food stamps and general assistance. The 2011 guidelines retain the exclusion of money received from means-tested public assistance programs as well as the list of examples and also change "food stamps" to "Electronic Food and Nutrition Benefits" to reflect the current term for that assistance. In addition, the 2011 guidelines expand the list of receipts that should be excluded.

The first new exclusion is income received by a parent as support for a child who is not the subject of the action in which support is being determined. In *New Hanover Child Support Enforcement on behalf of Dillon v. Rains*, 193 N.C. App. 208, 666 S.E.2d 800 (2008), the court held that child support received by a parent for another child must be included as income to that parent because the 2006 guidelines did not specifically exclude such payments. Applying rules of "statutory construction," the court held that the Conference of Chief District Court Judges would have included the payments in the list of receipts excluded if that group had intended the amounts not be included as income. However, the court stated:

Despite our holding, we are inclined to agree with defendant that including child support payments received for one child as income when calculating the support

obligations for another child effectively reduces the amount of income available to the child for whom child support is received. . . . We would urge the Conference to closely consider the effects of including child support payments received on behalf of a child residing in the home as income and clearly indicate in the Guidelines how child support payments should be addressed when calculating payments for another child residing outside of the home.<sup>11</sup>

In response to this request from the court of appeals, the Conference did consider the issue and decided to exclude such amounts from the definition of income.

The other new exclusions from income address amounts paid by an employer directly to a third party on behalf of an employee—parent for expenses and benefits above the salary of that employee—parent. The guidelines have long specified that amounts *deducted* from an employee's salary for Social Security and Medicare taxes, FICA, retirement accounts, and insurance premiums are not excluded from a parent's gross income. However, earlier versions of the guidelines have not addressed amounts employers pay on behalf of an employee directly to a third party that normally are not considered as part of that employee's salary for income tax purposes, such as the employer's required share of Social Security and Medicare taxes and the employer's contribution to insurance premiums and retirement accounts. The 2011 guidelines address this issue and specifically exclude from income "employer contributions toward future Social Security and Medicare payments for an employee" as well as "amounts that are paid by a parent's employer directly to a third party or entity for health, disability, or life insurance or retirement benefits and are not withheld or deducted from the parent's wages, salary or pay."<sup>12</sup>

### **Social Security Benefits**

The 2011 guidelines do not change the way Social Security benefits received for the benefit of a child as a result of the disability or retirement of a parent are considered when determining that parent's support obligation. As in the 2006 guidelines, the amount received by the child is included in the parent's income, and then the amount is deducted from that parent's final child support obligation. The 2011 guidelines clarify that when the amount of Social Security benefits received by the child exceeds the child support obligation of the parent, no child support order should be entered unless the court decides deviation is appropriate. So, for example, if a parent's

11. *Dillon*, 193 N.C. App at 213, 666 S.E.2d at 803.

12. As the Conference of Chief District Court Judges was considering this issue, the North Carolina Court of Appeals issued an opinion in *Caskey v. Caskey*, 698 S.E. 712 (N.C. Ct. App. 2010). In that case, the trial court included as income to both parents all amounts listed in a document designated an "Employer Wage Affidavit." The document included salary and, in addition to salary, listed amounts the employer was obligated to pay for Medicare and Social Security taxes on behalf of the employee as well as the employer's share of payments for the employee's health, life, and disability insurance and retirement fund. The court of appeals first noted that the 2006 version of the child support guidelines did not address this issue and therefore the court was required to turn to appellate opinions from other states for guidance on the question. After a review of case law from other states, the court of appeals concluded that all such amounts generally should be excluded from income unless it can be shown that the payments are "akin to income" for the parent and enhance the employee's present ability to pay support. The Conference considered the reasoning and conclusions in *Caskey* when it adopted the new provisions in the 2011 guidelines set out above.

child support obligation is \$500 per month before the Social Security payment is deducted, and the Social Security payment to the child is \$600 per month, it is not appropriate to enter a child support order unless the court decides to deviate. The new language is intended to make it clear that it is not appropriate for the court to order the parent who is receiving Social Security benefits on behalf of the child to pay any portion of that payment to the noncustodial parent. As the Social Security Administration is responsible for designating the person who will receive the benefits on behalf of a child as well as for determining the amount the child should receive, it is improper for a trial court to order a distribution contrary to that directed by the Social Security Administration.<sup>13</sup>

### **Deduction for Preexisting Support Obligations**

Previous versions of the guidelines have provided that “current child support obligations actually made by a parent under any pre-existing court order, separation agreement or voluntary support arrangement are deducted from the parent’s gross income.” The 2011 guidelines provide that arrears payments made by a parent are not deducted from gross income.

A parent is entitled to a deduction for amounts paid toward a preexisting support obligation. An obligation is preexisting if it was in effect at the time a child support order in the pending action is entered or modified. The birth order of a child is not considered when determining whether the support obligation for that child is deducted. Rather, the date of the order or agreement is controlling. So, a judge in a pending case must deduct payments made on behalf of other children even if the child in the pending case was the first child born to that parent. The 2011 guidelines acknowledge that it often is difficult to find an equitable solution regarding support when a parent has more than one family and stress that deviation may be the only mechanism for setting appropriate support in many cases. The new guidelines bold the language about deviation to emphasize that deviation should be considered by the trial court in these cases. The guidelines also suggest that the trial court attempt to schedule cases involving a parent with multiple families for the same court date and time when possible, recognizing that trial judges may be better able to create more appropriate allocations of support if the judge has all cases in court at the same time.

The guidelines always have directed a court to deduct from a parent’s gross income an amount representing the parent’s financial responsibility for children (1) who live with the parent, (2) for whom the parent owes a legal duty of support, and (3) who are not involved in the pending child support proceedings. For example, when a noncustodial father from whom support is being sought for his first child has remarried and now has a new child with a new spouse, the father is entitled to a deduction from gross income when determining the amount of support for his first child to account for his responsibility for the new child. The 2006 guidelines provided that when the parent had a child in the home and the other parent of that child was not also living in the home, the parent was entitled to a deduction in the amount of the basic child support obligation for that child based on the parent’s income alone. However, if the other parent of the child did reside in the home, the 2006 guidelines provided that the deduction was one-half of the guideline amount for that child based on the combined income of both parents. So, in the example above, if a father lived alone with his new child, the deduction allowed in determining support for his first child was equal to his child support obligation for his new child based on his income

13. See *O’Conner v. Zelinske*, 193 N.C. App. 683, 668 S.E.2d 615 (2008).

alone. If, however, the father's new spouse who is the mother of the new child did reside in the home, the deduction was one-half of the basic obligation for the new child based on the combined income of both the father and his new spouse. This approach required that information be provided by or on behalf of a person who otherwise would not be involved in the child support matter at all, such as the father's new spouse in the example above.

The 2011 guidelines simplify this analysis by changing the rule to state that, whenever a parent from whom support is being sought has another child (1) living in the same household (2) for which that parent owes a legal duty of support, the deduction for that child will be the basic child support obligation based on obligor's income alone. Therefore, the income of that child's other parent will not be considered, regardless of whether that parent resides in the home or not.

### **Child Care Costs**

The 2011 guidelines, like the 2006 guidelines, require the court to add reasonable child care costs to the basic child support obligation when these costs are, or will be, paid in conjunction with a parent's employment or job search. These costs are subject to a 25 percent limitation when the payor is eligible to claim an income tax credit for these expenses. The 2011 guidelines clarify that child care costs incurred for other purposes, such as a custodial parent attending school, are not added to the basic child support obligation but may be the basis for deviation in the discretion of the court. In addition, to reflect the current federal tax code, the 2011 guidelines update the income levels used to determine when the 25 percent limitation applies to the child care credit.

### **Schedule of Basic Support Obligations**

The revised 2011 guidelines retain the income shares model used since the 1990 guidelines were adopted.<sup>14</sup> Also as with previous versions of the guidelines, the 2011 child support schedule was developed by Jane C. Venohr, an economist with Policy Studies, Inc., of Denver, Colorado, who worked under contract with the North Carolina Administrative Office of the Courts (AOC). Venohr created the new schedule using updated estimates of child-rearing expenditures and accounting for 2010 price levels, 2010 federal and state tax rates and FICA, and the most current poverty level (2009).<sup>15</sup> The updated estimates of child-rearing expenditures used by Venohr were provided by David Betson, professor of public policy and economics at the University of Notre Dame. Although Betson's estimates have been used to create guidelines in past years, estimates provided for the 2011 schedule were formulated using an updated measurement tool Betson created in 2010. In addition to using updated information collected from families across the country through a survey conducted by the federal Bureau of Labor Statistics between 2004 and 2009 (the 2006 guidelines used data collected between 1998 and 2004), Betson made other adjustments to his methodology in an effort to more accurately interpret data collected from low-income families and to recognize and account for installment payment purchases made by

14. For detailed discussion of the income shares model, *see* Saxon, *supra* note 5.

15. JANE C. VENOHR, NORTH CAROLINA CHILD SUPPORT GUIDELINE REVIEW PRELIMINARY, UPDATED SCHEDULES (2010) (report submitted to the North Carolina Administrative Office of the Courts on June 2, 2010).

**Table 1. Examples of Basic Child Support Obligations, Comparing 2006 and 2011**

Parents' Monthly Income	One Child			Two Children			Three Children		
	2006	2010	Change	2006	2010	Change	2006	2010	Change
\$1,050	\$92	\$50	-45.4%	\$93	\$50	-46.0%	\$94	\$50	-46.6%
\$1,150	\$160	\$114	-28.8%	\$162	\$115	-28.8%	\$164	\$117	-28.8%
\$2,500	\$486	\$444	-8.7%	\$704	\$685	-2.8%	\$830	\$837	0.9%
\$3,500	\$650	\$599	-7.8%	\$941	\$921	-2.1%	\$1,109	\$1,121	1.1%
\$5,900	\$870	\$853	-2.0%	\$1,252	\$1,301	4.0%	\$1,467	\$1,574	7.3%
\$7,100	\$926	\$928	0.2%	\$1,324	\$1,413	6.7%	\$1,542	\$1,706	10.6%
\$8,100	\$982	\$996	1.4%	\$1,402	\$1,515	8.1%	\$1,629	\$1,827	12.2%
\$11,000	\$1,168	\$1,182	1.2%	\$1,662	\$1,793	7.9%	\$1,924	\$2,157	12.1%
\$15,000	\$1,363	\$1,415	3.8%	\$1,936	\$2,146	10.9%	\$2,238	\$2,579	15.2%
\$21,000	\$1,656	\$1,802	8.8%	\$2,346	\$2,669	13.7%	\$2,707	\$3,133	15.7%
\$25,000	\$1,819	\$2,059	13.2%	\$2,571	\$3,017	17.3%	\$2,959	\$3,501	18.3%

Source: 2011 North Carolina Child Support Guidelines: Schedule of Basic Child Support Obligations.

families.<sup>16</sup> According to Venohr, the improvements Betson adopted resulted in decreases in the measurements of child-rearing expenditures at low incomes and increases in the measurements of child-rearing expenditures at higher incomes.

Venohr reported to the AOC that the schedule adopted by the Conference of Chief District Court Judges for the 2011 guidelines reflects the “best and most current economic data available.”<sup>17</sup> However, she also acknowledged that the new schedule may “produce price shocks,” given the moderate decreases for one and two children at relatively low income levels and the substantial increases at very high income levels. Table 1 provides some examples of changes in the support obligations under the new schedule to illustrate some of these percentage changes.

## Conclusion

The 2011 guidelines adopted by the Conference of Chief District Court Judges are not different in any fundamental way from those adopted in 2006. Rather, the new guidelines incorporate the most current economic data related to families and the amounts they spend on their children, and they attempt to clarify issues surrounding the application of the guidelines raised by attorneys, judges, citizens, the appellate courts, and others during the past four years. The process of review and update will begin again in 2014.

16. *Id.* According to Venohr, Betson will include a detailed description of his new measurement tool as part of his report on the updated California Child Support Guidelines to be completed this year.

17. *Id.*