

## Child Support

- ▶ Parents liable for support until child turns 18
  - Obligation continues until 20 if child is “making satisfactory progress towards graduation.”
  - GS 50-13.4(c)
- ▶ Non-parents responsible for support only if obligation is undertaken in writing – then only secondarily liable
  - Limited exception for grandparents when minor children have children
  - GS 50-13.4(b)

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## Personal Jurisdiction

- ▶ Child support requires *in personum* jurisdiction
  - Unless defendant consents, defendant must have ‘minimum contacts’ with state
  - Remember *Kulko v. Superior Ct of California*, 436 US 84 (1978)

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## Subject Matter Jurisdiction

- ▶ A state’s subject matter jurisdiction to adjudicate child support is affected by UIFSA (Uniform Instate Family Support Act)
  - NC cannot enter a new support order if there already is an order entered in another state entitled to recognition.
    - See GS 52C-2-207(d)
  - NC cannot adjudicate support if support action pending in ‘home state’ of child
    - See GS 52C-2-204

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## Child Support

- ▶ Support amount is set based on **actual present gross income** of parent
  - Unless income is "imputed" due to parent's **bad faith disregard of support obligation**
  - Imputing income means award is based on earning capacity rather than actual income
    - Cannot use minimum wage unless there a finding of bad faith

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## Income

- ▶ Definition of income is very broad
  - "includes income from any source"
  - Includes non-recurring lump sum payments
  - Definition found in Child Support Guidelines

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## Child Support: General Standard

- ▶ "...shall be 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 a particular case."
  - GS 50-13.4(c)

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## Child Support

- ▶ Guidelines supply the presumptive support obligation
  - Presumed to meet GS 50-13.4(c) standard
- ▶ NC uses “Income Shares Model” guidelines
  - Model adopted by majority of states
- ▶ Model based on premise that child should receive same percentage of parents’ combined income that child would receive if parents lived together.

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## Guidelines

- ▶ Assume most normal expenses, including taxes
- ▶ So worksheets require gross income
- ▶ Consider some expenses on case by case basis
  - Child care
  - Health care
  - Extraordinary expenses

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## Child Support

- ▶ Guidelines must be used to set prospective support unless court decides to deviate from the guidelines
- ▶ Deviation allowed when court determines guidelines “would not meet or would exceed the reasonable needs of the child... or would be otherwise unjust or inappropriate.”
  - Requires **extensive findings of fact**
- ▶ If deviate, support set by GS 50-13.4(c)

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## Guidelines

- ▶ Apply to cases where combined income is \$25,000 per month or less
- ▶ If income is higher, use GS 50-13.4
  - Need findings of fact supported by evidence

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## Child Support

- ▶ Prospective Support = Support ordered to be paid from time complaint or motion is filed forward
- ▶ Retroactive Support = Support ordered to be paid to cover time before complaint or motion is filed
  - Statute of limitations allows recovery of support up to three years before case is filed

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## Retroactive Support

- ▶ Also called 'prior maintenance'
- ▶ Reimbursement for actual expenses incurred for care of child that were not shared by the other parent
  - Parent seeking to recover must prove actual expenditures
- ▶ Since 2006: Guidelines say parent can use guidelines to establish amount rather than proving actual expenditures

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## Agreements

- ▶ Parent can contract regarding child support and those contracts are enforceable by the court
- ▶ However, court never loses authority to address needs of children
- ▶ If agreement is incorporated, it becomes a court order subject to modification as any other order for support
- ▶ If agreement is not incorporated, either party can file a new action for support pursuant to Chapter 50

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## Effect of *Unincorporated* Agreement

- ▶ On Retroactive Support:
  - *Carson v. Carson*, 680 SE2d 885 (NC App 2009)
  - Contract controls amount
  - Court can order only reimbursement for emergency expenses not covered by the agreement
- ▶ On Prospective Support:
  - *Pataky v. Pataky*, 160 NC App 289 (2003) (discussed some in *Carson*)
  - Contract controls amount unless party can show it fails to meet reasonable needs of child

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## Modification: GS 50-13.7

- ▶ Court can modify court orders only; cannot modify an *unincorporated* contract (agreement)
- ▶ Modification is 2 step process:
  - 1<sup>st</sup> step: substantial change of circumstances
  - 2<sup>nd</sup> step: new award set based on present circumstances
- ▶ Vested arrears cannot be modified
  - GS 50-13.10
  - Rule is required by federal child support enforcement program so rule is the same in every state

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## Changed Circumstances

- ▶ Substantial involuntary decrease in income of a parent
- ▶ Substantial change in the needs of the child
- ▶ 3 year order/15% change
- ▶ Significant change in custody/visitation arrangement

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## Modification

- ▶ Subject matter jurisdiction to modify order from another state controlled by UIFSA
  - See GS 52C-6-613
- ▶ If one parent continues to reside in the other state, NC can modify only if both parties consent in writing
- ▶ If neither resides in issuing state, NC can modify only if:
  - Both parties reside here, or
  - Both consent in writing, or
  - One lives here but party requesting modification does not live here (play-away rule)
  - See GS 52C-6-611

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