

PROPOSED CHANGES TO THE CHILD SUPPORT GUIDELINES
EFFECTIVE JANUARY 1, 2015

1. The new guidelines will be effective for actions **heard** on or after January 1, 2015.

2. **Retroactive Child Support:** The 2006 guidelines added a provision on how to calculate retroactive support – support due for the period prior to the filing of a child support action. The guidelines could be applied to determine the amount of child support due based on the income of the parties at the beginning of the retroactive period or the amount of support could be based on evidence of actual monies expended for the children. The second provision was based on case law. In 2014, the Court of Appeals ruled that the guidelines could not be used to determine retroactive child support but rather that the amount due could only be based on evidence of actual expenditures pursuant to case law. *Respass v Respass* (Court of Appeals – March 4, 2014). In direct response to that ruling, the 2014 Legislature amended NCGS 50 – 13.4(c1) to provide that ‘the Conference of Chief District Court Judges shall prescribe uniform statewide presumptive guidelines for the computation of child support obligations, including retroactive support obligations’. This amendment was effective July 22, 2014.

3. **Self-Support Reserve:** The guidelines include a self-support reserve that insures that obligors have sufficient income to maintain a minimum standard of living based on the federal poverty level. The new guidelines reflect the 2014 federal poverty level for one person (**973.00/net per month**). This means that obligors with an income of less than 1150.00 per month pay a minimum of 50.00 per month (leaving them with a gross of 1097 and a net of 973).

4. **Assumptions and Expenses:** The last sentence in the third paragraph has been stricken. The guidelines assume that the parent receiving support claims the tax exemption for the child or children. This last sentence suggested that the court consider deviating from the guidelines if the parent receiving support had minimal or no income tax liability. This sentence was stricken because many factors go into a determination of who should have the tax exemption and that determination is more complex than this sentence suggested. A parent with limited income might be eligible for the federal earned income credit and therefore need to claim the child as a dependent. In true shared custody cases, the IRS automatically allocates the tax exemption to the parent with the greater income. Judges should be aware of the issue of the tax exemption and may want to deviate or reassign the exemption but the committee felt that the last sentence as it appeared could be misleading and simplistic.

5. **Income:** Two additional types of income were specifically added to the definition of income. **Adoption Assistance Benefits** was added to the paragraph on benefits that should **not** be included as income in determining child support awards. These funds may be provided to an adoptive parent to meet the special needs of an adopted child. The court may consider the receipt of such funds in determining the needs of a child in non-guideline cases or when there is a request to deviate because of a child's needs but the funds should not be included in the parent's income.

Many veterans receive disability benefits from the Veterans' Administration. When veterans receive such benefits, they may be eligible for an additional benefit on behalf of their dependents. This dependency payment is similar to the payment for a dependent child by social security. The guidelines now treat this VA benefit for a child in the same manner as benefits paid on behalf of a child based on the parent's social security disability or retirement.

The guidelines now make it clear that when those Social Security or VA benefits are based on the **obligor's** disability or retirement and exceed the **obligor's** child support obligation, no order for prospective child support should be entered unless the court chooses to deviate.

Under imputed income, the guidelines now provide that potential income may not be imputed to a parent exercising **primary** custody of a child who is under the age of three years when that child is the subject of the child support being determined. This is a clarification and not a change.

6. **Existing Support Obligations:** The term 'pre-existing' has been changed to 'existing' in this section. The intent is to make it clear that any order or voluntary payment of child support for other children should be considered in determining the amount of child support 'regardless of whether the child or children for whom support is being paid were born before or after the child or children for whom support is being determined' or when the order was entered.

The language related to alimony payments has been modified to make it clear that alimony payments by a parent to any person are not deducted from that parent's gross income. Alimony is treated like any other debt of a party.

7. **Child Care Costs:** Parents are eligible for child care tax credits ranging from 20% to 35% of actual costs up to a maximum of 3,000 paid per year for 1 child or 6,000 paid

for more than one child. The maximum tax credit available for one child is 1,050 per year if the parent earns less than 15,000 per year and has a tax liability of at least that amount. The guidelines previously provided that only 75% of child care costs would be included in the guidelines if the custodial parent's income was above a certain dollar amount. The language related to using 75% or 100% of child care costs has been deleted and 100% of work related or job search child care costs should be used in every case although the court may elect to deviate from the guidelines based on evidence of actual child care tax credits.

8. Health Insurance and Health Care Costs: The third paragraph of this section covers the case where neither parent currently has health insurance for the minor child and provides that the Court may order either parent to obtain health insurance for the child if it is available or becomes available at a reasonable cost. Pursuant to federal regulation, 'reasonable cost' was defined to include any employment related or group health insurance. In 2008, the federal regulation requiring this definition was withdrawn and reasonable was redefined to be a percentage of gross income. However, the legislature had incorporated the federal requirement in NCGS 50 – 13.11(a1) and therefore we have referenced that statute. In determining what a 'reasonable cost' is for other insurance, the court may look to the Affordable Care Act, some percentage of a parent's gross income, or other available evidence.

9. Child Support Worksheets: In this section, a parent with primary custody was defined as a parent with whom the child lived for at least 243 nights during the year. The instructions for Worksheet A defined a parent with primary custody as a parent with whom the child lived for more than 243 nights per year. Both have now been changed to '243 nights or more during the year'.

10. Child Support Obligation: The actual guidelines for child support have been updated to take into consideration 2014 price levels, 2014 federal and state income taxes and FICA, and the 2014 federal poverty level.