

CHILD SUPPORT 101

RICHARD D. ARNOLD

ASSISTANT ATTORNEY GENERAL

300 WEST BROADWAY, SUITE 32

COUNCIL BLUFFS, IOWA 51503-9030

(712) 242-2358 VOX

(515) 564-4128 FAX

CSRUCB-LEGAL@DHS.STATE.IA.US

IOWA CHILD SUPPORT GUIDELINES OVERVIEW

Please note that this particular presentation is intended to be only a very broad overview of the child support guidelines. My intention is to describe how the guidelines work, and emphasize a few of the problems and misconceptions that occur among attorneys and sometimes judges. This outline is not intended to be a substitute for specific legal research into the guidelines and case law that is continuing to develop in this field.

- I. **FEDERAL LAW**: States are required to enact child support guidelines by 42 U.S.C. §667 as a condition for approval (and funding) of State's CSRU program, and required to review their guidelines at least once every 4 years.¹
- II. **STATE LAW**: Iowa Code §598.21B requires the Iowa Supreme Court to "maintain uniform child support guidelines... and review the guidelines... at least once every four years." Iowa's current guidelines are found in Chapter 9, Iowa Rules of Court.²
 - A. Iowa's guidelines incorporate and require medical support provisions. Iowa Code §598.21B(1)(b) and (3). See also, Iowa Ct. R. 9.12; Iowa Code Chapter 252E.

¹ See also, 45 C.F.R. 302.56.

² "[t]he new guidelines are based upon three fundamental principles: (1) each parent has a duty to support his or her children, (2) support should correspond to the cost of raising a child, and (3) the level of support should be in proportion to each parent's income. However, the new guidelines, which are referred to as a "pure income shares model," provide a number of significant improvements over the old guidelines. Among other things, the new guidelines:

- Include a table (called the Schedule of Basic Support Obligations) that is much easier to understand and use. This table clearly shows the combined income of both parents alongside the total child support obligation of both parents.
- Provide a better way for parents to share the cost of health care insurance premiums.
- Provide an adjustment for the support obligations of non-custodial parents whose net income is below the poverty level. The purpose of this adjustment is to leave these parents with enough money to cover their basic living needs after paying child support.

The new guidelines are the result of a study by an advisory committee composed of experts in family law, economics, and child support. This study included a comparison of Iowa's guidelines, old and new, to the guidelines of other states and to data on the cost of raising a child. This study was part of the supreme court's regular four-year review of the guidelines, which is required by state and federal law." Iowa Judicial Branch News Release, "New Child Support Guidelines Take Effect July 1," June 30, 2009.

- B. Court must account for the individual facts of each case. Iowa Code §598.21B(1)(c). See also, Iowa Ct. R. 9.11 (permitting variance from the guidelines).
- C. There is a rebuttable presumption in favor of the guidelines, and the court can only consider a variation if the court makes a "...record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under the criteria prescribed by the supreme court...." Iowa Code §598.21B(1)(c) & (d); Iowa Ct. R. 9.4.

III. USING THE CHILD SUPPORT GUIDELINES:³ Calculate both parents' adjusted net monthly income using computation from Iowa R. Ct. 9.14(1).

A. Line A - Gross Monthly Income

1. Not defined in the guidelines themselves, other than references to items that are *not* included in gross income. Iowa Ct. R. 9.5 (second unnumbered paragraph following 9.5(10), and notes on the Adjusted Net Monthly Income Computation grid that gross income does not include "Public Assistance Payments or the Earned Income Tax Credit." Iowa Ct. R. 9.14(1)(Line A).
2. "All income that is not anomalous, uncertain, or speculative should be included when determining a party's child support obligations." *In re Marriage of Nelson*, 570 N.W.2d 103, 105 (Iowa 1997) (citations omitted).
3. Bonuses, overtime or incentive pay should be included if it is "reasonably expected to be received in the future. If extra income is uncertain or speculative, or if it is an anomaly, it is excluded." *Markey v. Carney*, 705 N.W.2d 13, 19 (Iowa 2005). But see, *In re Marriage of Close*, 478 N.W.2d 852 (Iowa Ct. App 1991) (Identifying distinctions between bonuses and overtime pay, the court concluded that ... "[u]nder the circumstances of this case, we believe that the inclusion of [father's] overtime pay in a determination of his monthly income would work a substantial injustice. Were we to base his support obligation in part on his overtime pay, we would clearly be requiring him to work overtime to satisfy his obligation").
4. "Income, for purposes of guidelines, need not be guaranteed. History over recent years is the best test of whether such a payment is expected or speculative. In calculating the effect of bonuses . . .

³ See, Guideline Worksheets contained in Chapter 9, Iowa Court Rules.

the court should consider and average them as earnings over recent years and decide whether the receipt of an annual payment should be reasonably expected. The same test applies to overtime pay.” *Seymour v. Hunter*, 603 N.W.2d 625, 626 (Iowa 1999).

5. The appellate courts have also included, or at least considered for inclusion or partial inclusion, income from National Guard⁴ and military BAH (basic allowance for housing) payments;⁵ incentive pay;⁶ workers’ compensation;⁷ and Native American ‘per capita’ payments,⁸ to name a few.
 6. Fluctuating income, e.g., from self-employment, farming, or other occupations where income is not relatively uniform, is generally averaged.⁹
 7. Guidelines treat Social Security Disability and Retirement benefits according to a specific statutory formula. See, Iowa Code §598.22C; *In Re Marriage of Hilmo*, 623 N.W.2d 809, 810 (Iowa 2001). See also, Iowa Ct. R. 9.4 (The appropriate amount of child support is zero if the noncustodial parent’s only income is from Supplemental Security Income).
 8. Earning Capacity or Imputed Income – See Iowa Ct. R. 9.11(4).
- B. Deductions for Lines B through G consist of deductions for federal and state taxes, Social Security and Medicare taxes, occupational license fees, union dues, and prior obligations for medical support. Note that Iowa Ct. R. 9.6 sets forth a specific method for computing the parties’ tax deductions.
- C. Deductions for prior obligations for support and qualified additional dependents (QADD), Lines I and J.
1. Both deductions cannot be used for the same child. Iowa Ct. R. 9.8(2).

⁴ *State, ex rel. Weber v. Dennison*, 498 N.W.2d 689 (Iowa 1993);

⁵ *Hixon v. Lundy*, No. 03-2106, 2004 WL 2804857, at **3 (Iowa Ct. App. Dec. 8, 2004). See also *In re Marriage of Staton*, 511 N.W.2d 418, 420 (Iowa Ct. App. 1993).

⁶ *State ex rel., Hammons v. Burge*, 503 N.W.2d 413 (Iowa 1993).

⁷ *In re Marriage of Schriener*, 695 N.W.2d 493, 498 (Iowa 2005); *In re Marriage of Swan*, 526 N.W. 2d 320, 325 (Iowa 1995).

⁸ *Seymour v. Hunter*, 603 N.W.2d 625 (Iowa 1999).

⁹ *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991); *In re Marriage of Robbins*, 510 N.W.2d 844, 846 (Iowa 1994).

2. The dates of the original court orders, rather than the dates that such orders were modified, establish a prior order. *State ex rel., Spencer v. White*, 584 N.W.2d 572 (Iowa Ct. App. 1998).

Example:

Dad ordered to pay support for child A on 1-1-2013. If child B has already been born at the time of this order, but no support has been ordered for child B, Dad can only claim a QADD for child B, and can do so even if child B still resides with Dad.

Dad ordered to pay support for child B, who has a different mother, on 1-1-14. In this order, Dad can only use the prior court order deduction for child A, and cannot use the QADD deduction.

Modification of order for child A filed on 1-1-2015. Dad can only use the QADD deduction for child B, regardless of how much he is ordered to pay in support for child B, since the original order for child B came AFTER the original order for child A.

Modification for child B filed on 1-1-2016. Dad can only use the prior court order deduction for child A, and cannot use the QADD.

3. Note that deduction for prior court ordered support is only to the extent of the current support order (no deduction is available to account for payments of delinquent support), and only to the extent actually paid.¹⁰

D. Line K: Preliminary Net Income for Each Parent: Take Line A gross monthly income, and subtract each deduction listed in Lines B through J.

E. Line L: Cash medical support ordered in this same case.

1. Determine cost of family coverage for health insurance available to a parent; subtract the cost of single coverage; calculate reasonable cost according to Iowa R. Ct. 9.12(2). If a parent has H.I. available at a reasonable cost, order a parent to provide it. The cost to the parent is not entered on Line L (see Line H of actual child support computation).
2. If H.I. is not available at a reasonable cost, calculate the amount of cash medical support that the non-custodial parent should be required to pay. The amount of cash medical support is entered on Line L.

¹⁰ Iowa Ct. R. 9.5(8); See also, *State ex rel., Davis v. Bemmer*, 497 N.W. 2d 882 (Iowa 1993).

F. Line M: Subtract Line L (if cash medical support is ordered) from Line K to arrive at the Adjusted net monthly income.

IV. USING THE CHILD SUPPORT GUIDELINES: Use the adjusted net monthly income of each parent to calculate the support obligation using the Basic Method from Iowa R. Ct. 9.14(2)(when one parent has primary physical care of the child or children).

A. Note in computation charts the addition of a 3rd computation column, entitled "Combined". The concept is that you are calculating the combined income of the parents, and determining the total amount of support that parents with that combined income should be using to support their children. This amount is then divided between the parties in proportion to their incomes.

B. Line A – calculate the total combined adjusted net monthly income of both parents.

C. Line B – determine the proportional share of the combined income attributable to each parent. Example: Custodial parent has net income of \$2,000.00; Noncustodial parent has net income of \$3,000.00. The parents' Line A combined income is \$5,000.00, and custodial parent's proportional share is 40%, and noncustodial parent's proportional share is 60%. These percentages are entered in Line B.

D. Line C – number of children for whom support is sought.

E. Line D applies in two circumstances: First, if NCP's income is in Area A of the guidelines, use only NCP's income to find the basic support amount, skip to Line G. If NCP's income is in Area B of the guidelines, enter NCP's basic support obligation and proceed to Line E. If NCP's income falls in Area C, enter N/A on Line D and proceed to Line E.

F. Line E – Use the combined income of the parents from Line A, the number of children for whom support is sought from Line G, and determine the appropriate basic support obligation from the chart found in Iowa Ct. R. 9.26.

G. Line F – to determine each parent's share of the total basic support obligation, multiply the percentage from Line B by the amount of the Line E basic support obligation.

H. Line G – If NCP's income is in Area A, use the amount calculated from Line D; If NCP's income is in Area B, use the lesser of the amount

calculated in Line D or the amount from NCP's Line F; otherwise, use the amount from NCP's Line F.

- I. Line H – If you have determined that a parent has health insurance available at a reasonable cost, and the parent will be ordered to provide it, enter the difference in cost between the single plan and a family plan. Enter the result in the appropriate column here. For example, Let's say that NCP has gross income of \$4,000 per month, and preliminary net monthly income of \$3000.00 per month. If the cost for NCP to cover only himself is \$100.00 per month, and the cost for him to provide family coverage is \$220.00 per month, we subtract the \$100.00 per month from the \$220.00 per month, and the result is \$120.00 per month. NCP's preliminary net monthly income would fall in the range at the bottom of the table from Rule 9.12(4), which shows that reasonable cost will be up to 5% of his gross monthly income. So: $\$4,000.00 \times 5\% = \200.00 . Since $\$120 < \200 , you would require NCP to provide H.I., and enter \$120.00 in Line H under NCP.
- J. Line I – Using the above example, Line I determines how much of the cost of health insurance for the child is attributable to the other parent, and adjusts the support accordingly. If the cost of adding the child is \$120.00, and NCP will be providing the coverage, CP's share of the cost would be $\$120.00 \times \text{CP's percentage of } 40\%$. So CP would owe \$48.00 to NCP for providing that coverage. In Line I (2), the result would be that you would subtract CP's share of the health insurance from NCP's child support. (Note that if CP provides the health insurance, Line I (1) would require you to add NCP's share of the health insurance to the amount he is paying in child support.
- K. Lines K through O allow for certain credits from the child support NCP would be required to pay if he is given court-ordered visitation exceeding 127 overnights per year.

V. USING THE CHILD SUPPORT GUIDELINES – SHARED PHYSICAL CARE AND SPLIT OR DIVIDED PHYSICAL CARE

1. In shared physical care cases (must be court-ordered, roughly equally shared physical care), use the computation described in Rule 9.14(3).
2. Note the differences between calculations for shared physical care computations (Iowa Ct. R. 9.14(3)) and basic support computations (Iowa Ct. R. 9.14(2)).
 - A. In shared physical care computations, there is no line to consider low income obligors.
 - B. In shared physical care computations, each parent's share of the basic support amount is calculated. However, you multiply each parent's share by 1.5 to account for the fact that each parent will have to maintain a full residence for the child. See Line F.
 - C. In shared physical care computations, you multiply the Line F result by .5, to account for the child spending 50% of their time with each parent, resulting in substantial costs to each parent.
 - D. In shared physical care computations, since each parent will be ordered to pay support to the other, the cost of health insurance provided by one parent will result in an 'add-on' to the other parent, never a subtraction. See Line I.
3. In split or divided physical care cases, where each parent has primary physical care of one or more mutual children, you perform separate guideline calculations for each set of children to calculate the full amount that each parent owes for the children in the other parent's care. Iowa Ct. R. 9.14(4)
4. In both shared physical care and split physical care cases, the payments owed by each parent can be offset as a method of payment, and the net difference paid by the party with the higher obligation. Note, however, that when one party's support is assigned to the State of Iowa, the amounts are no longer just between the parents and therefore cannot be offset.
5. Blended Custodial Orders (a combination of shared and split care) require two separate calculations.

- VI. RECENT CHANGES: The Guidelines are reviewed every four years, and changes took effect January 1, 2018. You should review the rules for how the changes will affect your cases. Chiefly, the Guidelines now do not allow the adjustments for reimbursement spousal support, but does allow adjustments for traditional or rehabilitative spousal support (see Rule 9.5(1)). Determining whether a health benefit plan is reasonable in cost now requires determining the cost to add the children on the instant case only (see Rule 9.14(5)). Orders must include “step-down” amounts – changes in child support as the number of children for who support is ordered changes (see Rule 9.14(6)). A variance (deviation) from the Guidelines amount may be had for child care expenses (see Rule 9.11A).

Another change that took effect October 1, 2018, addresses how medical support is ordered in cases where the Child Support Recovery Unit is involved. Section 252E.1A Iowa Code was amended, and a new Section 252E.1B was enacted.

VII. RECOMMENDATIONS

The single biggest recommendation that we have is to take the time to do a few ‘hypothetical’ – or real – support computations by hand (instead of using one of the programs that are out there). As you see how the numbers work out, you will begin to understand which numbers make the largest differences on the support obligations. For example, we often see a noncustodial parent argue that minimum wage income should be imputed to a custodial parent. Frequently, if the court imputes that kind of income (and allows a commensurate deduction for child care for the custodial parent), the net result on the child support obligation is extremely low. And while the programs that are used are very accurate, some of these nuances in how one set of numbers affects another set are difficult to see until you actually do some of these calculations by hand.

Information Needed When Calculating Support

Initial Determination:

What is each parent's income or earning capacity?

Initial Questions:

How many children are involved in this case?

Does either parent have other children who are dependents (under 18, or adult dependent)?

Is there an ongoing support order for those children?

Is paternity, or responsibility, established for these children?

Is either parent expecting?

Are the parents married?

How many children are the children of both parents?

Did a spouse have another child during the marriage?

Is a spouse now expecting, or could be expecting?

Does either parent have the children enrolled in a private health benefit plan?

What is single premium? What is family premium? What is the difference in premiums? What is the cost to add the children?

Is the plan at reasonable cost?

If not at reasonable cost, does the parent wish to provide the plan?

Does either parent have the children enrolled in Hawk-I?

What is the premium cost?

Does either parent have the children enrolled in Title 19 MediCare?

Support and Paternity Cases – General Information Needed

Initial Q's – These answers help determine income, allow addressing paternity issues, and determine deductions (“Child” or “Children” includes biological and/or adopted).

How many children do you have together?

How many?

Ages?

Has paternity been established for each of these children?

In whom is paternity established?

Do either of you have any other children besides the ones you have together?

Which of you have these other children?

How many?

Ages?

Has paternity been established for each of these other children?

In whom is paternity established?

Is female spouse now pregnant? (this should be asked for both male-female marriages and female-female marriages - for female-female marriages, it should be asked of both spouses; party should be directed to update this if it changes).

What is your income?

Source(s)?

Seasonal?

How long?

Provide paycheck stubs, tax returns (with schedules and W2s / 1099s).

If not working, why?

Employment history?

What is ex's income?

How do you know?

Source(s)?

Seasonal?

How long?

Ask for paycheck stubs, tax returns (with schedules and W2s / 1099s).

If not working, why?

Employment history?

Iowa Wage Survey available through Workforce Development Website is helpful.

Ask these of both parents, and note that a health benefit plan does *not* mean Title 19 Medicaid or Hawk-I. However, Chapter 252E does define these as “coverage.”

Are the children presently covered by a health insurance or medical health benefit plan?

Yes

Plan name?

Who enrolled them, who pays?

If Hawk-I, what is the total premium cost per month?

No

How are the children's health needs addressed?

Do you have a health insurance plan available for the children?

Total premium cost to cover the children?

Total premium cost just to cover you?

How many people total are covered by the plan (you, spouse, kids)?

Q's to ask before obtaining final order:

Since this action was started, have either of you had any other children, either with the soon-to-be-ex, or with someone else?

Which of you have these other children?

How many?

Ages?

Has paternity been established for each of these other children?

In whom is paternity established?

Is female spouse now pregnant? (this should be asked for both male-female marriages and female-female marriages - for female-female marriages, it should be asked of both spouses. Include a line in the findings of the final decree that no female spouse is now pregnant).

Has your income changed?

Why?

What is it now?

Has ex's income changed?

Why?

What is it now?

Has health insurance changed?

Why?

What is it now?

Generic Tips

In dissolutions, if making a finding that the husband is not the father of a child born or conceived during the marriage, carry the finding into the decretal portion of the order, and address whether that paternity is overcome.

When overcoming paternity, remember that GALs are required under both §598.21E Iowa Code and §600B.41A Iowa Code.

Remember that the presumption of parentage is created by the child being born or conceived during the marriage, which can occur in a same-gender marriage, and should be addressed.

When ordering support, ensure that Guidelines Worksheets are filed. If no Guidelines Worksheet is filed, spell out the findings for the parents' respective gross incomes and net incomes. It's easier to file a Guidelines Worksheet and incorporate it by reference into the decree.

Include changes in the amount of child support as the number of children change.

Make a finding as to the reasonable cost of a health benefit plan, so that when a person is ordered "to provide insurance if it's available at a reasonable cost," they know what "reasonable cost" means. Reasonable used to mean available; now it has a specific dollar figure attached, based on a percentage of monthly gross income.

Title 19 Medicaid and Hawk-I are not health benefit plans, but are considered health care coverage. Finding that the parents have the child enrolled in Title 19 Medicaid or Hawk-I does not dispense with the need to order medical support.

That a child is enrolled in Title 19 Medicaid or Hawk-I does not necessarily mean that an order for cash medical support is required. Follow the hierarchy set out in Chapter 252E Iowa Code, and the methods set forth in Chapter 9 Iowa Court Rules.

There's no need to re-invent support duration language if the intent is to merely mirror the statutory requirements. Cut and paste from the statute (598.1 Iowa Code), or simply reference the statute. If it is necessary to make a change from the statutory provisions, provide a specific point in time or specific event at which support ends, and leave the remainder to the statute.

While it's helpful to address support in all orders addressing custody, it's not required. If information necessary to make support determinations is lacking, the Court can always state so, and reserve the issues of child support and medical support to any interested party.

Under §252A.6 Iowa Code, support orders can run concurrently, with neither superseding the other, and payment of the higher amount satisfying the lower.

Order child support in shared and split physical care custody cases by setting forth each parent's respective child support obligation, and then offsetting the obligations as a manner of payment. The offset is not a means of arriving at a parent's final support obligation; it is only a means of payment to prevent the parents from having to exchange checks. Do not just order that "well, since each parent has the children an equal amount of time, nobody has to pay nobody nothing." If you want to reach that result, set forth the obligations, specify the offset, then deviate from the offset amount to be remitted.

When imputing income, set out the reasons for the imputation, and make the required findings, perhaps something such as "Based on past earnings and work history, and the availability of employment in this area, So-n-So has an earning capacity equivalent to \$X per hour full-time, and the same shall be imputed to So-n-So. Each parent has a duty to support their children within their means and abilities. This imputation is necessary to avoid shifting that duty to another party, and is reasonable and appropriate to do justice between the parents while providing for the needs of the children."

When deviating from the Guideline result, set out the reasons for the deviation, the resulting 'harm' or injustice if there is no deviation, and the required findings, perhaps something such as "Such-n-Such's request to deviate downward from the Guideline result from \$Y to \$Z is approved because Such-n-Such bears all travel expenses for visitation and pays all of the extensive co-pays for the child's medical treatments, the requested deviation will not negatively impact the child and helps ensure that Such-n-Such may maintain a home for the child at the child's present level, and a deviation is appropriate and necessary to do justice between the parents while providing for the needs of the child."

Don't abate child support during visitation periods. The child still has fixed expenses at the custodial parent's even during visitation. It's better to extrapolate the amount that would be abated by carrying it out over a year's period, and reducing the monthly amount accordingly (if support would be abated for one month's visitation, multiply the monthly amount of support by eleven months, divide that figure by twelve months, and use the result as the new monthly amount – make sure the deviation is accordingly set forth).