

Comments on the Final Report – Residential Time Credit

Dr. David Betson

I was disheartened that the work group failed to arrive at a consensus on the formulation of a residential credit. Of all of the items taken up by the work group, this issue was the most important. While we can all debate whether or not spending on children have risen or fallen since the child support guidelines were first adopted, it is clear that non-custodial parents are spending more time with their children. The residential credit is a necessary feature of today's guidelines. The credit should be given not to reward or to provide incentives for non-custodial parents to spend time with their children but to fairly recognize the additional expenses that non-custodial parents incur. These expenses were never conceived in the original child support guidelines because the original guidelines adopted by most states implicitly assumed that the child would spend the vast majority of time if not the entirety of time with one parent.

Watching the videos of the discussions of the residential time credit, it became evident that the work group didn't understand my proposal for the credit. Upon reading the description of my proposal in the Final Report this impression was confirmed. While I am not sure from where this description was taken, the use of formulas to explain my proposed credit made it seem more complicated than it truly is. To provide an explanation of my proposed credit, I have included the appropriate pages from the Indiana Child Support Guidelines (Administrative Rules of the Courts) that describe the Parenting Time Credit (or Residential Credit). I encourage you to read this commentary and compare the worksheets with the others being proposed.

With regards to the complexity of the credit, you can see that the credit worksheet is nine lines long the same length as both of the other credits being suggested. When the credit was first being discussed in Indiana, the same litany of complaints were leveled against it – it is too complex and pro se parents would never be able to understand it. A second concern was that granting a credit for the time with children will only increase litigation and further clog the courts. But after three years of use in Indiana, the experience with the credit has shown these initial concerns to be misplaced. It is understandable to those seeking the credit and even those parents who represent themselves. But more importantly, judges report that there has been no increase in the number of cases litigating the number of overnights.

As the testimony of many lower time parents demonstrated, both parents will often provide a bedroom for the child(ren) as well as other duplicated items. The cost of these items does not cease to exist when the child is not residing with the parent. These types of expenditures imply that the cost of shared parenting will be greater

than if sole parenting is pursued. The purpose of the ‘multiplier’ is to account for these additional costs. To ignore these costs (assume a ‘zero’ multiplier) is to implicitly tell higher time parents that the child support guidelines will only consider expenses they incur when the child(ren) reside with them. If the parent incurs a direct expense for the child(ren) when the child(ren) do not reside with them such as a bedroom then the parent will be responsible for the entirety of these expenses – no sharing of these expenses will be considered in the guideline determination if the child(ren) is not present with them. I would believe it would be the height of irony that if a residential credit was implemented to recognize the out of pocket child related expenses incurred by the lower time parent, we then turn around and ignore the on going expenses incurred by the higher time parent. Solving one problem by creating another problem is not good policy.

The Family Law Section of the Washington State Bar’s position is that both thresholds and a multiplier must be reflected in the credit while the Judges Association have adopted a position they would oppose any feature that created more litigation. The real obstacle to agreement is the threshold especially if the threshold is set in excess of 30% of overnights. The Judges Association believe that thresholds especially if the threshold is set higher than the typical level of overnights will lead to more litigation in order to secure a residential credit. I would agree with them. This leads to the question of why should the credit have a threshold? There are two reasons. First, the threshold can represent the level of overnights where the state believes the lower time parent incurs the duplicated expenses such as housing and these expenses are incurred to benefit the child(ren) not the parent. For example, the lower time parent could have a bedroom for the child(ren) but also use it as a home office during the time the child(ren) are not residing in their home. Even if these duplicated expenses are not incurred by the lower time parent, they should receive a credit against their support obligation for the expenses that are incurred in their household but not in the higher time parent’s home.

The second reason often provided for the threshold is that the lower time parent should only receive a credit after they have made a ‘substantial’ commitment of time to their children. The first rationale is based upon an assumption of ‘fact’ while the second rationale clearly reflects the desire that the credit should be given to create an incentive for the lower time parent to spend time with their children.

Since I don’t believe that the credit should be used to provide incentives but to recognize that the lower time parent is both paying support and incurring expenses during the time the child(ren) reside with them, I would not favor the use of thresholds. I would find the use of thresholds appropriate only in the case where the State has adopted a minimum time that a parent should spend with their child(ren) and the threshold for the credit should be set at that level of time.

The purpose of my proposed credit was to recognize the presence of duplicated costs in shared parenting while at the same time not employing a threshold. In my

proposal, the multiplier is ‘phased in’ – as the child(ren) spend more time with the lower time parent, the multiplier increases from zero to 50% (the multiplier favored by the Bar). In many ways, my proposal is an attempt of a compromise between the Bar and Judges Associations.

As the commentary from the Indiana Guidelines states, the credit is based upon the following assumptions:

- At a maximum, 50% of the Basic Child Support Obligation (BCSO or Economic Table) is duplicated in the lower time parent’s home,
- 15% of the BCSO is ‘controlled’ by the higher time parent – these expenses remain as the responsibility of the higher time parent to pay,
- 35% of the BCSO ‘follows the child(ren)’ as they move from home to home – they are ‘transferred’ from higher to lower time parent when the child moves from home to home, and
- The relationship between time spend with the lower time parent the amount of duplicated expenses incurred.

Each of these assumptions can be changed within the proposed framework of my credit. I would be willing to provide the State with alternative tables to use the credit determination (Table PT in the Indiana Guidelines below) to reflect the assumptions the State would wish to make.

Sincerely,

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Commentary (Taken from the Indiana Child Support Guidelines)

Parenting Time and Child Support

Analysis of Support Guidelines. The Indiana Child Support Guidelines are based on the assumption the child(ren) live in one household with primary physical custody who undertakes all of the spending on behalf of the child(ren). There is a rebuttable presumption the support calculated from the Guideline support schedule is the correct amount of weekly child support to be awarded. The total amount of the anticipated average weekly spending is the Basic Child Support Obligation (Line 4 of the Worksheet). The Guideline support schedules do not reflect the fact, however, when both parents exercise parenting time, out-of-pocket expenses will be incurred for the child(ren)'s care. These expenses were recognized previously by the application of a 10% visitation credit and a 50% abatement of child support during periods of extended visitation. The visitation credit was based on the regular exercise of alternate weekend visitation which is equivalent to approximately 14% of the annual overnights. With the adoption of the Indiana Parenting Time Guidelines, the noncustodial parent's share of parenting time, if exercised, is equivalent to approximately 27% of the annual overnights. As a result, these revisions provide a parenting credit based upon the number of overnights with the noncustodial parent ranging from 52 overnights annually to equal parenting time. As parenting time increases, a proportionally larger increase in the credit will occur.

Modification of Child Support Based on Parenting Time.

A change in a child support order through the application of a parenting time credit does not constitute good cause for modification of the order unless the modification meets the requirements of Guideline 4.

Analysis of Parenting Time Costs.

An examination of the costs associated with the sharing of parenting time reveals two types of expenses are incurred by both parents, transferred and duplicated expenses. A third category of expenses, such as the 6% uninsured health care expense, remains the sole obligation of the parent for whom the parenting time credit is not calculated. This latter category is assumed to be equal to 15% of the Basic Child Support Obligation.

Transferred Expenses. This type of expense is incurred only when the child(ren) reside with a parent and these expenses are "*transferred*" with the child(ren) as they move from one parent's residence to the other. Examples of this type of expense are food and the major portion of spending for transportation. When spending is transferred from one parent to the other parent, the other parent should be given a credit against that parent's child support obligation since this type of expense is included in the support calculation schedules. When parents equally share in the parenting, an assumption is made that 35% of the Basic Child Support Obligation reflects "*transferred*" expenses. The amount of expenses transferred from one parent to the other will depend upon the number of overnights the child(ren) spend with each parent.

Duplicated Fixed Expenses. This type of expense is incurred when two households are maintained for the children. An example of this type of expense is shelter costs which are not transferred when the child(ren) move from one parent's residence to the other but remain *fixed* in each parent's household and represent *duplicated* expenditures. The fixed expense of the parent who has primary physical custody is included in the Guideline support

schedules. However, the fixed expense of the other parent is not included in the support schedules but represents an increase in the total cost of raising the child(ren) attributed to the parenting time plan. Both parents should share in these additional costs. When parents equally share in the parenting, an assumption is made that 50% of the Basic Child Support Obligation will be “*duplicated*.” When the child(ren) spend less time with one parent, the percentage of duplicated expenses will decline. These categories of expenses are not pertinent for litigation. They are presented only to explain the factors used in developing the parenting time credit formula. The percentages were assigned to these categories after considering the treatment of joint custody by other states and examining published data from the Bureau of Labor Statistics’ Consumer Expenditure Survey.

Computation of Parenting Time Credit.

The apportionment of credit for “*transferred*” and “*duplicated*” expenses will require a determination of the annual number of overnights of parenting time exercised by the parent who is to pay child support, the use of the standard Child Support Obligation Worksheet, a Parenting Time Table, and a Parenting Time Credit Worksheet.

An *overnight* will not always translate into a twenty-four hour block of time with all of the attendant costs and responsibilities. It should include, however, the costs of feeding and transporting the child, attending to school work and the like. Merely providing a child with a place to sleep in order to obtain a credit is prohibited.

The Parenting Time Table (Table PT) begins at 52 overnights annually or the equivalent of alternate weekends of parenting time only. If the parenting plan is for fewer overnights because the child is an infant or toddler (Section II A of the Parenting Time Guidelines), the court may consider granting the noncustodial parent an appropriate credit for the expenses incurred when caring for the child. If the parenting plan is for fewer overnights due to a significant geographical distance between the parties, the court may consider granting an appropriate credit. The actual cost of transportation should be treated as a separate issue. If the parents are using the Parenting Time Guidelines without extending the weeknight period into an overnight, the noncustodial parent will be exercising approximately 98 overnights.

Parenting Time Table. The TOTAL column represents the anticipated total out-of-pocket expenses expressed as a percentage of the Basic Child Support Obligation that will be incurred by the parent who will pay child support. The total expenses are the sum of transferred and duplicated expenses.

The DUPLICATED column represents the duplicated expenses and reflects the assumption that when there is an equal sharing of parenting time, 50% of the Basic Child Support Obligation will be duplicated. The *Number of Annual Overnights* column will determine the particular fractions of TOTAL and DUPLICATED to be used in the Parenting Time Credit Worksheet.

TABLE PT

Annual of	Number Overnights	TOTAL	DUPPLICATED
1	51	0.000	0.000
52	55	0.062	0.011
56	60	0.070	0.014
61	65	0.080	0.020
66	70	0.093	0.028
71	75	0.108	0.038
76	80	0.127	0.052
81	85	0.150	0.070
86	90	0.178	0.093
91	95	0.211	0.122
96	100	0.250	0.156
101	105	0.294	0.195
106	110	0.341	0.237
111	115	0.388	0.280
116	120	0.434	0.321
121	125	0.476	0.358
126	130	0.513	0.390
131	135	0.544	0.417
136	140	0.570	0.438
141	145	0.591	0.454
146	150	0.609	0.467
151	155	0.623	0.476
156	160	0.634	0.483
161	165	0.644	0.488
166	170	0.652	0.491
171	175	0.660	0.494
176	180	0.666	0.495
181	183	0.675	0.500

Parenting Time Credit Worksheet (Credit Worksheet). In determining the credit, take the following steps:

1. Complete the Child Support Obligation Worksheet through Line 6.
2. Enter on Line 1PT of the Credit Worksheet the annual number of overnights exercised by the parent who will pay child support.
3. Enter on Line 2PT of the Credit Worksheet the Basic Child Support Obligation (Line 4 from the Child Support Obligation Worksheet).
4. Enter on Line 3PT of the Credit Worksheet the figure from the TOTAL column that corresponds to the annual overnights exercised by the parent who will pay child support.
5. Enter on Line 4PT of the Credit Worksheet the figure from the DUPLICATED column that corresponds to the annual number of overnights exercised by the parent who will pay child support.

6. Enter on Line 5PT of the Credit Worksheet the percentage share of the Combined Weekly Income of the parent who will pay child support (Line 2 of the Child Support Obligation Worksheet).
7. Complete Lines 6PT through 9PT to determine the allowable credit.
8. Enter the result from Line 9PT on Line 7 of the Child Support Obligation Worksheet as the Parenting Time Credit.
9. Apply the Line 7 Adjustments to determine the recommended Child Support Obligation (Line 8 of the Child Support Obligation Worksheet).

PARENTING TIME CREDIT WORKSHEET

Line:		
1PT	Enter Annual Number of Overnights	
2PT	Enter Weekly Basic Child Support Obligation – BCSO (Enter Line 4 from Child Support Worksheet)	_____.____
3PT	Enter Total Shared Parenting Time Expenses as a Percentage of the BCSO (Enter Appropriate TOTAL Entry from Table PT)	.____
4PT	Enter Duplicated Expenses as a Percentage of the BCSO (Enter Appropriate DUPLICATED Entry from Table PT)	.____
5PT	Parent’s Share of Combined Weekly Income (Enter Line 2 from Child Support Worksheet)	.____
6PT	Average Weekly Total Expenses during Shared Parenting Time (Multiply Line 2PT times Line 3PT)	_____.____
7PT	Average Weekly Duplicated Expenses (Multiply Line 2PT times Line 4PT)	_____.____
8PT	Parent’s Share of Duplicated Expenses (Multiply Line 5PT times Line 7PT)	_____.____
9PT	Allowable Expenses during Shared Parenting Time (Line 6PT – Line 8PT)	_____.____
	Enter Line 9PT on Line 7 of the Child Support Worksheet as the Parenting Time Credit	

Application of Parenting Time Credit. Parenting Time Credit is not automatic. The court should determine if the application of the credit will jeopardize a parent’s ability to support the child(ren). If such is the case, the court should consider a deviation from the credit. The Parenting Time Credit is earned by performing parental obligations as scheduled and is an advancement of weekly credit. The granting of the credit is based on the expectation the parties will comply with a parenting time order. A parent who does not carry out the parenting time obligation may be subject to a reduction or loss of the credit, financial restitution, or any other appropriate remedy. However, missed parenting time because of occasional illness, transportation problems or other unforeseen events should not constitute grounds for a reduction or loss of the credit, or financial restitution. Consistent with Parenting Time Guideline Section 1, E.2., if court action is initiated to reduce the parenting time credit because of a failure to exercise scheduled parenting time, the parents shall enter mediation unless otherwise ordered by the court.