

## *Residential Credit*

While I didn't participate in the first subcommittee meeting, I did listen to the conversation. The summary provided by Mr. Spring as well as the conversation was helpful in focusing my thoughts on the issues the subcommittee and by extension the working group need to decide. The following are my comments and concerns.

I believe that any discussion of the issue should begin with a declaration of the objectives or goals of the proposal in order to frame the discussion within the broader working group. Here is my attempt to summarize the objectives of the residential credit.

### *Objective of the residential credit:*

The Economic Table (Basic Child Support Obligation) assumes the child reside with one parent (custodial parent) and consequently reflects the presumed level of out of pocket expenditures that the custodial parent will make on behalf of the child. The non-custodial parent's child support payment reflects the NCP's share of these expenditures.

The current calculation of the non-custodial parent's obligation doesn't account for NCP's out of pocket expenditures made when the child reside with them. A portion of the NCP's expenditures on the child represent expenditures that would have been made by the CP if the child would have continued to reside with the CP. But these expenditures are 'transferred' to the NCP when the child's residence changes. Examples of these types of expenses are food and transportation.

However, another portion of the expenses incurred by the NCP represent additional expenses compared to the situation when the child would reside with only one parent. For example, the NCP may provide a bedroom in their home for the exclusive use of the child. The Basic Child Support Obligation envisions only one bedroom for the child not two. Consequently the total spending on the child increases when expenses incurred by the CP are duplicated by the NCP to accommodate the presence of the child in their respective households.

The purpose of the residential credit is provide for an accounting of the total expenditures being made on behalf of the child by each parent and to maintain the sharing of the total cost of the child in proportion to their ability to pay (net incomes).

### *Elaboration of Transferred Expenses:*

A reoccurring complaint I have heard from NCPs was that they were paying 'twice' for the upbringing of their child – once in their child support payments and a second time when the child visited with them. To underscore their frustration, they would point to the food they were providing their children during the time they had with their children and note that they were also paying for a meal that was not being eaten at the CP's household. While paying twice was an overstatement, their complaints did have a basis of truth.

Let us consider a meal that costs \$4 (don't put too much into the level of the cost of the meal, it was chosen just to make a point). If the child eats that meal in the CP's household, the NCP will be paying their share of the cost of the meal through the child support payment. Let us assume the NCP's share of combined net income is 60% so implicitly, the NCP would be contributing \$2.40 through their child support payment. Since the CP pays \$4 for the meal but receives \$2.40 in payment from the NCP, the CP implicitly pays \$1.60 for the meal – their 'fair' share of 40%.

Now assume the meal is not eaten with the CP but the NCP. The NCP will have to pay \$4 for the meal out of their own pocket but have already paid \$2.40 for a meal that wasn't eaten in the CP. The total cost of the meal becomes \$6.40 for NCP. What is the solution? Deduct from the NCP's child support payment the cost of the meal that was transferred to them, in this case \$4. The effect of this credit would result in a transfer from the CP to the NCP of \$1.60 ( $\$2.40 - \$4 = -\$1.60$ ) – the CP's share of the \$4 meal eaten the NCP household.

To generalize this idea, let us assume that T ( $T \leq 1.0$ ) represents the proportion of the BCSO that is transferred between households when the child change their residence and R denoted the percentage of overnights the child spend with the NCP. The appropriate residential credit would equal

$$\text{Credit for Transferred Expenses} = R \times T \times \text{BCSO},$$

where if S is the NCP's share of the combined net income. The NCP's child support obligation would equal

$$\text{NCP Obligation} = S \times \text{BCSO} - R \times T \times \text{BCSO}.$$

The term  $S \times \text{BCSO}$  represents the total obligation of the NCP assuming the total cost of raising the child didn't rise when there are more than one residence of the child. Consequently, the NCP would owe this to CP if there was no change in residency of the child. But as the child change their residency, the NCP incurs expenses depending upon the proportion of time the child spend with them. This amount would equal  $R \times T \times \text{BCSO}$  and should be credited against their obligation. Note if R is equal to zero then no credit is given.

#### *Elaboration of Duplicated Expenses:*

The concept of a transferred expense reflects the situation that if one parent incurs the expense while the child is with them, the other parent doesn't incur that expense. But as Mr. Hartley remarked in the subcommittee's conversation, if the NCP has a bedroom for the child, the cost of that bedroom doesn't stop when they aren't there. While it was not said, I will assume that cost of the bedroom in the CP's household doesn't stop either when the child isn't there but with the NCP. I would also infer if the child never resided in the NCP's household, the NCP would not incur any cost of additional living space for the child. The logical implication is that when a child resides in more than one residence then the total cost of the child is more than what it would be if they reside in only one residence. These additional costs reflect the spending on the child that must be 'duplicated' across the two households to facilitate two residencies for the child.

The current child support guidelines do not account for these additional costs of duplicating spending on children to provide two residencies for the child. What is the appropriate treatment of these duplicated expenses? First it is to recognize that the total financial costs of shared parenting exceed those of a single residency when spending has to be duplicated. Secondly, the credit should reflect the level of duplicated spending by the NCP and the responsibility of the CP to share in these additional expenses. For example, let us assume that an additional bedroom for the child in the NCP household would cost \$200 per month. If the NCP's share of combined income is 60% then their share of these additional costs would be \$120 but they have paid \$200. Consequently, an appropriate credit would be equal to \$80 or the difference between the additional costs paid entirely by the NCP and the share of these expenses the NCP should have paid.

Let D represent the proportion of the BCSO that will be duplicated in a shared parenting situation, consequently the credit for duplicated expenses would be equal to

$$\text{Credit for Duplicated Expenses} = D \times \text{BCSO} - S \times D \times \text{BCSO} = (1-S) \times D \times \text{BCSO}$$

or equivalently stated the credit is equal to the CP's share of the additional expenses for shared parenting.

In implementing the residential credit, it is difficult to know at what level of shared parenting (R) will the NCP incur these expenses? This is what the threshold issue is all about – can we determine a priori level of time spent with the NCP where it is reasonable to assume that the NCP has incurred these duplicated costs? My approach that the state of Indiana adopted (not New Jersey) has been to phase in these duplicated costs. In the summary, it was said that I have proposed a 15% threshold. This is not correct. Given that duplicated expenses are phased in, I have argued they should begin immediately but the amount attributed to duplicated expenses is quite small but as the percentage of overnights increase, the expected amount of duplicated expenses rises. The 15% threshold was a choice made by the State of Indiana. Indiana has adopted a set of parenting time guidelines where the minimum amount of time is around 15%. The Court decided that if a parent was unwilling or unable to meet the minimum time with their children then they should not receive any credit. Other states have proposed only accounting for any expenses incurred by the NCP after the percentage of overnights exceed a given level – say 35%. I personally don't find this appropriate since it ignores the presence of transferred expenses that will occur with many less overnights than 35%. An alternative that has not been given much consideration is to make this portion of the residential credit a matter of fact for the court to determine but to give a credit based upon the transferred expenses that would start at very low percentages of overnights if not on the first overnight.

*My Proposed Residential Credit:*

Assuming the NCP has incurred duplicated expenses in their household, the residential credit needs to account for both transferred and duplicated expenses, consequently the credit should be equal to

$$\text{Proposed Residential Credit} = R \times T \times \text{BCSO} + (1-S) \times D \times \text{BCSO}.$$

The net child support obligation for the NCP would then equal

$$\text{NCP Obligation} = S \times \text{BCSO} - \{R \times T \times \text{BCSO} + (1-S) \times D \times \text{BCSO}\}$$

or

$$S \times (1 + D) \times \text{BCSO} - R \times T \times \text{BCSO} - D \times \text{BCSO}$$

In words, the net obligation (after residential credit is applied) of the NCP to the CP should be equal to the NCP's share of total spending on the child ((1+D) x BCSO) minus the expenses they have incurred during the time the child has resided with them (transferred expenses (RxTxBCSO) plus any duplicated expenses (DxBCSO)).

*Comparison to Alternative Proposals*

Mr. Spring and Mr. Hartley have suggested they would favor a credit computed in the following manner. Convert the total obligation of both parents (BCSO) into a daily amount – in other words divide by 365 days. The residential credit would equal the number of overnights with the NCP times this per diem obligation. Recognizing that

the number of overnights divided by 365 is equivalent to R – the proportion of overnights – this residential credit would be equal to

$$\text{Alternative Credit I} = R \times \text{BCSO}$$

This credit would be equal to the credit we arrived at above only when there were no duplicated expenses ( $D=0$ ) and all of the expenses were transferred to the parent with the child ( $T=1$ ). While we can differ on whether shared parenting leads to any duplicated expenses for the NCP, I am concerned with the assumption that all of the expenses move with the child. While some expenditures envisioned in the BCSO such as food are 'transferred' to the parent where the child resides, the cost of shelter will not cease when the child is with the NCP. To devise a credit that is based upon the assumption that expenditures envisioned in the BCSO are transferred when they aren't will result in burdening the CP who will be asked to shoulder a higher proportion of the expenses than is implied by their share of combined net income. Yes there is an element of simplicity this approach has but I am personally uncomfortable with its assumptions and how it violates the principles of fairness implicit in the child support guidelines. It should be noted that three states (Hawaii, Montana, and Wisconsin) have adopted a 'per diem' approach to determining the residential credit.

If the working group chooses to ignore the possibility of duplicated expenses, I would be much more comfortable recognizing that not all of the expenses can be transferred to NCP but only a proportion of them. Above we have assumed that this proportion was represented by T and hence alternative to the Spring and Hartley proposal would be to give a per diem credit on the proportion of the BCSO that are transferred along with the child

$$\text{Alternative Credit II} = R \times T \times \text{BCSO}.$$

Other states have used what is called a cross-crediting approach. These states have adopted thresholds that the credit can't be applied until a NCP has the child at least 30 to 35% of the total number of overnights. Once the NCP has reach this level of shared parenting, the NCP is assumed to have incurred duplicated expenses. Most states have assumed that D is equal .50 (50%) that leads to a 'multiplier' of 1.50 ( $1+D$ ). This multiplier is then multiplied by the BCSO to represent the total costs of raising the child given the assumption the NCP has incurred duplicated expenses. While it might not be obvious, the cross crediting procedure used by the states essentially results in a credit equal to the number of overnights with the NCP times the per diem higher cost of raising the child under shared parenting arrangements ( $(1+D)\text{BCSO}/365$ ). In terms of our notation, the third alternative credit can be written as

$$\text{Cross-Credit Approach} = R \times (1+D) \times \text{BCSO} - S \times D \times \text{BCSO}.$$

(It should be noted that the Cross-Crediting approach doesn't compute a credit that is applied against the obligation assuming no shared parenting but computes a net obligation directly. What is shown here is the 'implicit' credit in order to compare it directly to other approaches.) If this credit is then applied against the NCP's obligation assuming no shared parenting ( $S \times \text{BCSO}$ ), the after credit obligations is equal to

$$S \times \text{BCSO} - \{ R \times (1+D) \times \text{BCSO} - S \times D \times \text{BCSO} \} = S \times (1+D) \times \text{BCSO} - R \times (1+D) \times \text{BCSO}$$

In others the NCP's obligation is equal to their share of the total expenses of shared parenting ( $S(1+D)\text{BCSO}$ ) minus a 'per diem' amount of these higher costs times the number of overnights spent with the NCP.

The cross-credit approach assumes that the higher cost of shared parenting is transferred with the child from parent to parent. In my opinion, this assumption doesn't make sense. As I have shown in another document that has been distributed to

the working group, when the cross-crediting method is applied the share of total expenses paid by the parents is no longer equal to the share of the combined net incomes. We should note that Alternative I and the cross-credit approach will yield the same net obligations if D is equal to zero – there are no duplicated expenses – the only difference between Mr. Spring and Mr. Hartley’s proposal (Alternative I) and the Cross-Crediting procedures proposed by Mr. Williams of PSI is the assumption pertaining to the amount of duplicated expenses incurred by the NCP.

#### *Potential Values for T and D:*

As I have noted the states that have used either cross-crediting approach or my preferred approach have assumed that D is either .45 (45%) or .50 (50%) reflecting the budget share of shelter expenses in families with children. The cross-crediting approach doesn’t require any further assumptions but my approach does need to know the proportion of expenses that move with the child. Both New Jersey and Indiana have implicitly assume that T is equal to .40 (40%). Given both states have assumed that D is equal to 50%, it would imply that 10% of the total expenses are neither transferred nor duplicated. These expenses are denoted as ‘controlled’ expenses and reflect those expenses implied in the BCSO that will be assumed to remain under the direction of the CP. Examples of these types of expenses are ‘ordinary’ medical expenses and clothing.

#### *Implementation Issues:*

1) Should a parenting plan be required – most certainly. Since each of these credits base their calculation on the percentage of overnights there should be agreement between all parties on exactly how many overnights there will be.

2) Should the credit be permissive or presumptive – here I assume the intent of the question was the following: should the credit continue to be a deviation or should it be part of the rebuttable presumption in the guidelines? Personally I believe that guidelines need to recognize the financial contributions that parents make to raising their children especially when they both actively engage in parenting. Not to do so, undermines the credibility of the guidelines and consequently I believe the residential or shared parent credit should be available when appropriate when both parents do share the responsibility of parenting. For that reason I believe the residential should be ‘presumptive’ and ‘above the line’. However, if others disagree and wish to keep the credit at the discretion of the courts I would still argue that it would be beneficial to provide a formula for judges to use when they provide the residential credit.

3) What if the parents are low-income? If we impute minimum wage net incomes to individuals, each parent would have \$1,224 of net income. If we average the two age categories by the relative number of years you can be in each category (A and B columns) then even for one child the BCSO would \$556 and each parent would be obligated to pay \$273 for the child. This is not counting any medical or child care obligations. If the self-support reserve is \$1,000, the NCP would be limited to a payment of \$224. To reduce the payment even further due to a residential credit that includes any duplicated expenses doesn’t seem appropriate in my mind. However, I could be convinced that accounting for any transferred expenses does make sense.

I think this issue really assumes the credit is part of the rebuttable presumption. If so then the question is one of placement and how it should interact with other credits given to reduce the obligation of the NCP. A simple question is whether the residential credit should be before or after the Self-Support Reserve? My preference is after so if the NCP applies the self-support reserve then they would be limited to a credit based upon the transferred expenses incurred to the number of overnights. I would also

instruct the courts to determine whether there is sufficient monies left available to the CP household – if not then the residential credit should not be given.

4) What if the primary residential parent is on TANF? While I disagree that this will be rare, I personally don't believe that child support should be reduced except due to the self support reserve. See above.

7) What happens with other child support expenses like child care? I agree with the agreement of the subcommittee expressed in Mr. Spring's summary.

### *Additional Issues*

I think there are four issues that haven't been explicitly addressed in the discussion.

8) Implicitly the discussion has been assuming that the credits will be given on a prospective basis (the monthly child support obligation is adjusted to reflect the anticipated number of overnights with the NCP during the year, not just the month) versus a historical adjustment (once the overnights have occurred then the adjustment is made on the next month's obligation). For many good reasons I favor the prospective approach but if we go in that direction, we should suggest a procedure (due process that is easily accessible) by which the obligation can be modified if the promise of the overnights doesn't materialize.

9) When the NCP's share of combined net income is less than 50% it is very likely that the credits can exceed the NCP's share of the BCSO and the application of the credits will result in a negative award. The negative award implies that a payment should be made from the CP to NCP. Now it might seem strange but in my opinion it is the appropriate thing to do if the credit has been appropriately structured (reflects the level of expenses and who is making them).

10) Can parents acting pro se compute and understand these credits? In Indiana, there was great concern over this especially in small counties. But the use of the electronic worksheets available on the web (through public library access) has made it possible for parents to compute their child support. The question of understanding is still an open question.

11) Will this cause more discord in the courts as parents now have an incentive to argue over the number of overnights? As long as one doesn't include thresholds that create large reductions in support once the thresholds have been met, I don't believe so. The experience in Indiana has actually been the opposite. While it was anticipated by the legal profession there would be increases in the discord between the parties, there is little to no reported (by judges and lawyers both) increase in disagreements in divorce proceedings. In fact, some have reported a slightly more cordial atmosphere in the proceeding as NCPs are satisfied that the expenses they will be incurring will be recognized in the determination of the child support awards.

## Explanation of Attached Excel Sheet

I have attached an Excel worksheet (RCredit.xls) to allow you to examine how the alternative credits would reduce the NCP's child support obligation at various levels of shared parenting time (R ranges from 0% to 50% of the overnights in 5% intervals).

In the blue box, you can change CP and NCP's net income amounts as well as the number of children the impact of various residential credits are then shown below in the colored areas by reporting the net child support obligation of the NCP (after the credit is applied) and the percentage difference between the post credit award and the award if no credit is given.

Assumptions made in the child support calculations:

- 1) I have averaged the age brackets (A and B) using the following formula  $N(2A+B)/3$  reflecting the number of years in each category for N number of children, otherwise the BCSO should be reflective of the current Washington State Economic Table,
- 2) The obligation only reflects the award based upon the BCSO only – child care and medical expenses are not reflected in the calculations, and
- 3) The self-support reserve has not been reflected in the calculations.

The first column reflects the NCP's obligation if no credit is given.

The next column is Alternative I credit assuming no threshold. If you want to impose in your mind a threshold say at 20% then until the NCP's time with the children exceeded 20%, the NCP's obligation would be the same as if there was no credit given.

The next column is the Alternative II credit that assumes that 40% of the BCSO is transferred with the child. Again there was not threshold imposed here.

The next column represents the Cross-Crediting procedure where the amount of duplicated expenses is 50% and a 30% threshold of overnights is imposed.

The final column is the Indiana Credit where no threshold is applied. Implicit in these calculations are the assumptions that 40% of the BCSO is transferred and when the duplicated expenses are fully phased in they represent 50% of the BCSO. The document that has been distributed details how I have phased in the duplicated expenses.