

## ARTICLE 47.

### CHILD SUPPORT GUIDELINES

(Statutory Authority: South Carolina Code Section 43-5-580(b) and 45 CFR 302.56)

#### **114-4710.** Use of the Guidelines.

A. The Child Support Guidelines are available to be used for temporary and permanent orders, actions for separate maintenance and support, divorce and child support awards. Additionally, the guidelines are to be used to assess the adequacy of agreements for support and encourage settlement of this issue between parties.

1. In any proceeding in which child support is an issue, the amount of the award which would result from the application of these guidelines is the amount of the child support to be awarded. However, a different amount may be awarded upon a showing that application of the guidelines is inappropriate. When the court orders a child support award that varies significantly from the amount resulting from the application of the guidelines, the court shall make specific, written findings of those facts upon which it bases its conclusion supporting that award.

2. In cases where the parents' combined monthly gross income is less than \$750.00, the guidelines provide for a case-by-case determination of child support, which should ordinarily be set at no less than \$100.00 per month. In those cases, the court should take care to award an amount of child support that would not jeopardize the ability of the noncustodial parent to live at a minimum level of subsistence. However, the guidelines encourage that a specific amount of child support always be ordered to establish in the payer's mind the principle of the parent's obligation to pay as well as lay the basis for increased/decreased orders if income changes in the future.

3. These guidelines provide for calculated amounts of child support for a combined parental gross income of up to \$20,000 per month, or \$240,000 per year. Where the combined gross income is higher, courts should determine child support awards on a case-by-case basis.

B. Deviation from the guidelines should be the exception rather than the rule. When the court deviates, it must make written findings that clearly state the nature and extent of the variation from the guidelines. These Child Support Guidelines do not take into account the economic

impact of the following factors which can be possible reasons for deviation.

1. Educational expenses for the child(ren) or the spouse (i.e., those incurred for private, parochial, or trade schools, other secondary schools, or post-secondary education where there is tuition or related costs);
2. Equitable distribution of property;
3. Consumer debts;
4. Families with more than six children;
5. Unreimbursed extraordinary medical/dental expenses for the noncustodial or custodial parent;
6. Mandatory deduction of retirement pensions and union fees;
7. Child-related unreimbursed extraordinary medical expenses;
8. Monthly fixed payments imposed by court or operation of law;
9. Significant available income of the child(ren);
10. Substantial disparity of income in which the noncustodial parent's income is significantly less than the custodial parent's income, thus making it financially impracticable to pay the amount the guidelines indicate the noncustodial parent should pay. This would include situations where the noncustodial parent is disabled and cannot earn above the minimum subsistence level;

C. Alimony. Because of their unique nature, lump sum, rehabilitative and reimbursement alimony may be considered by the court as a possible reason for deviation from these guidelines;

D. Agreements Reached Between Parties. The court may deviate from the guidelines based on an agreement between the parties if both parties are represented by counsel or if, upon a thorough examination of any party not represented by counsel, the court determines the party fully understands the agreement as to child support. The court still has the discretion and the independent duty to determine if the amount is reasonable and in the best interest of the child(ren).

**114-4720.** Determination of Child Support Awards.

## A. Income

### 1. Definition

The guidelines define income as the actual gross income of the parent, if employed to full capacity, or potential income if unemployed or underemployed. Gross income is used in order to avoid contention over issues of deductibility which would otherwise arise if net income were used. The guidelines are based on the assumption that the noncustodial parent will have only one federal exemption and will have higher taxes than the custodial parent. Adjustments have been made in the Schedule of Basic Child Support Obligation for lower child support payments. Other factors included in the schedule are South Carolina taxes, FICA, and earned income.

### 2. Gross Income

Gross income includes income from any source including salaries, wages, commissions, royalties, bonuses, rents (less allowable business expenses), dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits (but not Supplemental Social Security Income), workers' compensation benefits, unemployment insurance benefits, Veterans' benefits and alimony, including alimony received as a result of another marriage and alimony which a party receives as a result of the current litigation. Unreported case income should also be included if it can be identified.

A. The court may also take into account assets available to generate income for child support. For example, the court may determine the reasonable earning potential of any asset at its market value and assess against it the current treasury bill interest rate or some other similar appropriate method of computing income.

B. In addition to determining potential earnings, the court should impute income to any non-income producing assets of either parent, if significant, other than a primary residence or personal property. Examples of such assets are vacation homes (if not maintained as rental property) and idle land. The current rate determined by the court is the rate at which income should be imputed to such nonperforming assets.

### 3. Gross income does not include:

A. Benefits received from means-tested public assistance programs, such as Temporary Assistance to Needy Families (TANF),

Supplemental Security Income (SSI), Food Stamps and General Assistance;

B. Income derived by other household members; and/or

C. In-kind income; however, the court should count as income expense reimbursements or in-kind payments received by a parent from self-employment or operation of a business if they are significant and reduce personal living expenses, such as a company car, free housing, or reimbursed meals. With regard to military allotments, individuals not receiving Housing allotments should be imputed with the BAH-II amount for dependents. This differential is consistent and unrelated to the domicile location of the service member, as well as easily obtained.

#### 4. Income from Self-Employment or Operation of a Business

For income from self-employment, proprietorship of a business, or ownership or a partnership or closely held corporation, gross income is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation, including employer's share of FICA. However, the court should exclude from those expenses amounts allowed by the Internal Revenue Service for accelerated depreciation of investment tax credits for purposes of the guidelines and add those amounts back in to determine gross income. In general, the court should carefully review income and expenses from self-employment or operation of a business to determine actual levels of gross income available to the parent to satisfy a child support obligation. As may be apparent, this amount may differ from the determination of business income for tax purposes.

#### 5. Potential Income

If the court finds that a parent is voluntarily unemployed or underemployed, it should calculate child support based on a determination of potential income which would otherwise ordinarily be available to the parent. If income is imputed to a custodial parent, the court may also impute reasonable day care expenses. Although Temporary Assistance to Needy Families (TANF) and other means-tested public assistance benefits are not included in gross income, income may be imputed to these recipients. However, the court may take into account the presence of young children or handicapped children who must be cared for by the parent, necessitating the parent's inability to work.

A. The court may also wish to factor in considerations of rehabilitative alimony in order to enable the parent to become employed.

B. In order to impute income to a parent who is unemployed or underemployed, the court should determine the employment potential and probable earnings level of the parent based on that parent's recent work history, occupational qualifications, and prevailing job opportunities and earning levels in the community.

## 6. Income Verification

Ordinarily, the court will determine income from verified financial declarations required by the Family Court rules. However, in the absence of any financial declaration, or where the amounts reflected on the financial declaration may be an issue, the court may rely on suitable documentation of current earnings, preferably for at least one month, using such documents as pay stubs, employer statements, or receipts and expenses if the parent is self-employed. Verification of current earnings, whether reflected on a financial declaration or not, can be supported with copies of the most recent tax returns filed by the payer. Income can also be verified through the Employment Security Commission or through the State Department of Revenue.

## 7. Monthly Alimony (this action)

Any award of alimony between the parties should be taken into consideration by the court when utilizing these guidelines as a deduction from the payer spouse's gross income, and as gross income received by the recipient spouse. Because of their unique nature, lump sum, rehabilitative reimbursement, or any other alimony the court may award, may be considered by the court as a possible reason for deviation from these guidelines. The purpose of this adjustment is not to give priority to alimony or child support payments, but to recognize that each parent's proportional share of total combined monthly income changes with the introduction of any alimony award between the parties, and to provide for a sharing of the Total Combined Monthly Child Support Obligation based upon each parent's actual percentage share of the total combined monthly income, taking into consideration the financial impact of any alimony award between them, rather than the parent's share of the total combined monthly income as it existed before any alimony award. Accordingly, the court, in its discretion, may consider any modification or termination of any alimony award between the parties of a child support award made under these guidelines. This adjustment does not affect the Total Combined Monthly Child Support Obligation of both parents as

determined under these guidelines, which may be determined before any determination on the issue of alimony, as the total combined monthly income of both parties will remain the same irrespective of any income shifting between the parents as the result of an alimony award.

#### 8. Other Monthly Alimony or Child Support Paid

Any previous or existing court orders requiring the payment of child support, alimony, or both, should be protected by any subsequent child support order. Alimony actually paid as a result of another marriage or child support actually paid for the benefit of children other than those considered in this computation, to the extent such payment or payments are required by a previous or existing court order, should be deducted from gross income.

#### 9. Other Children in the Home

Either parent shall receive credit for additional natural or adopted children living in the home, but not for step-children, unless a court order establishes a legal responsibility. Such credit shall be given whether or not such children are supported by a third party. The basis of this is to recognize the custodial parent's responsibility and share in supporting those other children in the home just like that parent's responsibility and share to the child or children in the present calculation.

Using the income of the parent with the additional child(ren) in the home only, the basic child support obligation for the number of additional dependents living with that parent (from the Schedule of Basic Child Support Obligations) is determined for that parent. This figure is multiplied by .75 and the resulting credit is subtracted from that parent's gross income.

#### 10. Basic Child Support Obligation

The court can determine the basic child support obligation using the Schedule of Basic Child Support Obligations. "Combined gross income" refers to the combined monthly gross incomes of the parents. Where combined gross income amounts fall between the amounts reflected in the Schedule of Basic Child Support Obligations, the court is encouraged to extrapolate upwardly to set the basic award. The number of children refers to that number for whom the parents share support responsibility and for whom support is being sought.

## 11. Self Support Reserve

A self support reserve allows a low-income noncustodial parent to retain a minimal amount of income before being assessed a full percentage of child support. This insures that the noncustodial parent has sufficient income available to maintain a minimum standard of living which does not affect negatively his or her earning capacity, incentive to continue working, and ability to provide for him or herself. These Guidelines incorporate a self support reserve of \$748.00 per month. In order to safeguard the self support reserve in cases where the noncustodial parent's income and corresponding number of children fall within the shaded area of the Schedule of Basic Child Support Obligations, the support obligation must be calculated using the noncustodial parent's income only. To include the custodial parent's income in the calculation of such cases, or include any adjustments like medical insurance or day care expense, would reduce the noncustodial parent's net income below the self support reserve.

## 12. Health Insurance

The court shall consider provisions for adequate health insurance coverage for children in every child support order. Ordinarily, the court should require coverage by that parent who can obtain the most comprehensive coverage through an employer or otherwise, at the most reasonable cost. If either parent carries health insurance for the child(ren) who is to receive support, the cost of the coverage should be added. If the employer provides some measure of coverage, only that amount actually paid by the employee or contributed by the employee should be added. Note that the portion of the health insurance premium which covers the children is the only expense that should be added. If this amount cannot be verified, the total cost of the premium should be divided by the total number of persons covered by the policy and then multiplied by the number of children in the support order. Whichever party is responsible for paying the health insurance premium will receive a credit. The guidelines are based on the assumption that the custodial parent will be responsible for up to \$250.00 per year per child in uninsured medical expenses.

Extraordinary medical expenses, not addressed in the guidelines, are defined as reasonable and necessary uninsured medical expenses in excess of \$250.00 per year per child. Under this definition, what is "reasonable and necessary" - e.g. orthodontia and professional counseling - would be at the discretion of the court. Extraordinary unreimbursed medical expenses addressed by the court shall be divided in pro rata percentages based on the proportional share of

combined monthly adjusted gross income.

### 13. Child Care Costs

The cost of day care the parent incurs due to employment or the search for employment, net of the federal income tax credit for such day care, is to be added to the basic obligation. This is to encourage parents to work and generate income for themselves as well as their children. However, day care costs must be reasonable, not to exceed the level required to provide high quality care for children from a licensed provider.

As custodial parents may be eligible for qualified tax credits, the actual day care expense should be adjusted to recognize this credit. This adjustment may take place in two ways. In cases where the custodial parent's gross income exceeds the thresholds listed below, the actual or allowed day care cost is multiplied by .75 to arrive at the adjusted amount to enter on the appropriate line 6.c.

-----

One	Two	Three	Four	Five	Six
Child	Children	Children	Children	Children	Children

-----

Custodial						
Parent	\$1,950	\$2,300	\$2,450	\$2,600	\$2,850	\$3,100
Monthly						
Income						

-----

These thresholds are based upon the standard deduction for head-of-household, dependent exemptions, and the intricate application of the child care tax credit. While these will hold true in most cases, judges can always review child care costs with the actual credit method, below.

The other method would be to take the actual costs and subtract the actual value of the federal tax credit such as determined by the last filed IRS Form 2441. This adjusted amount would then be entered on

line 6.c.

#### 14. Age Adjustment

Economic research suggests that expenditures on children increase during teenage years. Such research indicates that expenditures on children in the 12-17 age group are significantly higher than expenditures on children in the 0-11 age group. Given that child-rearing expenditures are higher for older children, an issue in the development of guidelines is whether there should be age adjustments; that is, whether the guidelines should incorporate separate scales by age of the children. However, since these guidelines are based on economic data which represent estimates of total expenditures on child rearing up to age eighteen, except for child care and most health care costs, the need for separate scales has been eliminated.

#### 15. Computation of Child Support

The court can determine a total child support obligation by adding the basic child support obligation, health insurance premium (portion covering children), and work related child care costs.

A. The total child support obligation is divided between the parents in proportion to their income. Each parent's proportional share of combined adjusted gross income must be calculated. Compute the obligation of each parent by multiplying each parent's share of income by the total child support obligation, and give the necessary credit for adjustments to the basic combined child support obligation.

B. Although a monetary obligation is computed for each parent, the guidelines presume that the custodial parent will spend that parent's share directly on the child in that parent's custody. In cases of joint custody or split custody, where both parents have responsibility of the child for a substantial portion of the time, there are provisions for adjustments.

#### **114-4730.** Unusual Custody Arrangements.

##### A. Shared Parenting Arrangements

When both parents are deemed fit, and other relevant logistical circumstances apply, shared custody should be encouraged in order to ensure the maximum involvement by both parents in the life of the child.

The shared custody adjustment, however, is advisory and not compulsory. The court should consider each case individually before applying the adjustment to ensure that it does not produce a substantial negative effect on the child(ren)'s standard of living.

For the purpose of this section, shared physical custody means that each parent has court-ordered visitation with the children overnight for more than 109 overnights each year (30%) and that both parents contribute to the expenses of the child(ren) in addition to the payment of child support. If a parent with visitation does not exercise the visitation as ordered by the court, the custodial parent may petition the court for a reversion to the level of support calculated under the guidelines without the shared parenting adjustment. The shared physical custody adjustment is an annual adjustment only and should not be used when the proportion of overnights exceeds 30% for a shorter period, e.g., a month. For example, child support is not abated during a month-long summer visitation. This adjustment should be applied without regard to legal custody of the child(ren). Legal custody refers to decision-making authority with respect to the child(ren). If the 109 overnights threshold is reached for shared physical custody, this adjustment may be applied even if one parent has sole legal custody.

1. Child support for cases with shared physical custody shall be calculated using Worksheet C. This worksheet should be used only for shared physical custody as defined above.
2. The basic child support obligation shall be multiplied by 1.5 to arrive at a shared custody basic child support obligation. The shared custody basic child support obligation is apportioned to each parent according to his or her income. In turn, a child support obligation is computed for each parent by multiplying that parent's portion of the shared custody child support obligation by the percentage of time the child(ren) spend(s) with that parent. The respective basic child support obligations are then offset, with the parent owing more basic child support paying the difference between the two amounts. The transfer for the basic obligation for the parent owing less basic child support shall be set at zero dollars.
3. Adjustments for each parent's additional direct expenses on the child(ren) are made by adding child(ren)'s share of any reimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the tribunal, less any extraordinary credits agreed to by the parent or ordered by the tribunal according to their income share. In turn, each

parent's net share of additional direct expenses is determined by subtracting the parent's actual direct expenses on the child(ren)'s share of any unreimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the tribunal from their share. The parent with a positive net share of additional direct expenses owes the other parent the amount of his or her net share of additional direct expenses. The parent with the zero or a negative net share of additional expenses owes zero dollars for additional direct expenses.

4. The final amount of the child support order is determined by summing what each parent owes for the basic support obligation and additional direct expenses as defined in subsections (2) and (3) of this section. The respective sums are then offset, with the parent owing more paying the other parent the difference between the two amounts.

#### B. Split Custody

Split custody refers to custody arrangements where there are two or more children and each parent has physical custody of at least one child. Using these guidelines, the court should determine a theoretical support payment for the child or children in the custody of the other. The obligation is then offset, with the parent owing the larger amount paying the next amount to the other parent. In split custody arrangements the guidelines arrive at separate computations for the child or children residing with each parent. The support obligation must then be prorated among all children in the household. For example, if there are three children due support, with two residing with one parent and one with the other, the court should calculate support amounts using the table for three children, with one-third of that amount being used to determine the basic child support obligation for one child and two-thirds for the other two children.

#### **114-4740.** Periodic Review.

Pursuant to Title IV-D of the Social Security Act, the Department of Social Services is required to periodically review child support orders not later than thirty-six months after the establishment of the order or the most recent review unless:

1. In a TANF case, neither party has requested a review and the Department of Social Services has determined that a review is not in the child's best interest; or

2. In a non-TANF case, neither party has requested a review.

**114-4750.** Child Support Guidelines Schedule and Worksheets.

South Carolina Child Support Guidelines Schedule and worksheets are specifically incorporated into these regulations by reference. Copies of the Schedule and worksheets are on file with the Legislative Council and may also be obtained from the State Department of Social Services and local clerks of court offices.