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1.0 Introduction

The Minnesota Legislature dramatically changed child support law with the enactments of the “new” child support law codified in chapter 518A. The effective date of the law is found at Sec.44.Laws 2005, Chapter 164, Section 32.

The provisions of this act apply to all support orders in effect prior to January 1, 2007, except that the provisions used to calculate parties’ support obligations apply to actions or motions filed after January 1, 2007. The provisions of this act used to calculate parties’ support obligations apply to actions or motions for past support or reimbursement filed after January 1, 2007.

In 2007, the Minnesota Legislature made clarifying revisions in Chapter 118. Most of these changes are effective January 1, 2008. This article provides an overview of the current child support law, an explanation of how to calculate child support, examples of results, and the basis for seeking modification. No appellate law yet exists.

Synopsis of the income shares concept

Child support is based on the comparative gross incomes of the parents. Child support has three components: basic support, medical support, and child care support. Consideration is given for parenting time and for children of other relationships.

2.0 Definitions

518A. 26, Subd.4. **Basic support** means the basic support obligation computed under section 518A.34. Basic support includes the dollar amount ordered for a child’s housing, food, clothing, transportation, education costs, and other expenses relating to the child’s care. Basic support does not include monetary contributions for a child’s child care expenses and medical and dental expenses.

518A.26, Subd.8. **Gross income** means the gross income of the parent calculated under section 518A.29.

518A.32, Subd.1. **Potential income**. 1. General: If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of income, child support must be calculated based on a determination of potential income.

Comment: In 2007, this statute was clarified to provide its applicability to reimbursement and to less than full time employment. Also, potential income is not to be used when a parent is disabled. This provision is retroactive to January 1, 2007.

518A26, Subd.15. **Parental income** for determining child support (PICS) means gross income minus deductions for non-joint children.

518A26, Subd.11. **Joint child** means the dependent child who is the child of both parents in the support proceeding.

518A26, Subd.12. **Non-joint child** means the legal child of one, but not both of the parents in the support proceeding. Non-joint does not include stepchildren.

518A36, Subd.2. **Calculation of Parenting time adjustment**

Percentage range of parenting time	Adjustment percentage
less than 10%	no adjustment
10%-45%	12%
45.1-50%	presume parenting time is equal

3.0 Calculation of child support

In a straightforward case involving two fully employed parents, all that is needed to do the calculation is the amount of monthly gross income for each parent, the court ordered access schedule for the parents, the cost of medical and dental insurance, the cost of child care, and the existence of other support obligations or non-joint children in both homes.

Use the Web calculator found at dhs.state.mn.us.

Following is the worksheet and then an explanation of the calculation with statutory references. The web calculator uses a question/answer format to calculate the guideline figures.

4. Guidelines worksheet from the WEB calculator

(TO BE DONE BY PUBLISHER)

5.0 Explanation of calculation Use column A for the obligor and B for the obligee

Income

Line 1a. Statutory cite 518A.29(a) Gross income includes any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, self-employment, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments.

Line 1b Statutory cite 518A29(a) Gross income includes child(ren)'s disability benefits derived from a parent's disability.

Line 1c Statutory cite 518A.32 Potential income is calculated when a parent is voluntarily unemployed, underemployed, or employed on a less than fulltime basis. It is rebuttably presumed that a parent can be gainfully employed on a full time basis.

There are 3 ways to determine:

- 1) Based on employment potential and work history
- 2) Based on re-employment or worker's comp, or
- 3) 150% of minimum federal or state wage, whichever is higher

When not to calculate potential income;

- 1) Unemployment or underemployment is temporary and will ultimately lead to an increase in income
- 2) The unemployment or underemployment represents a bona fide career change
- 3) If the parent receives temporary assistance to a needy family (TANF) cash grant, includes MFIP. However, if the parent receives earned income and MFIP, the income is counted.

Comments: See 518A32, Subd5. Regarding stay at home caretakers: Income may be imputed to caretakers of non-joint children.

Line 1d Statutory cite 518A.29(g) Subtract Spousal maintenance orders

Line 1e Subtract child support order(s) obligated to be paid for non-joint children.

Note: The obligor is given credit for the Court ordered obligations in lines 1d and 1e, regardless of compliance with the Court's orders. Also, the birth order of the children is not significant, so that child support orders for later born children must be subtracted.

Adjustments

2a and 2b. Statutory cite 518A.33 Number of non-joint child(ren) in the home

Either parent may receive a "credit" for up to two non-joint children if those children live primarily in the parents' household and the parent isn't also paying child support for those children. The credit is calculated as 50% of the basic support amount.

Line 3 Statutory cite 518A.34 Parental income for determining child support (PICS)

Column A plus Column B equals combined amount (called PICS).

Look at the guidelines contained in 518A.35 based on the PICS and the number of children. Find the number (automatically done by Web calculator) and put in line 5.

Line 6 Statutory cite 518A.34(5) Pro rata basic support obligation

Determine parent A's share by multiplying the % from line 4.

Comment: The idea is that the amount of support found in the table (found after 518A.35, subd 2) is reflective of the amount of money the parents would spend on children given their incomes and apportioned by percentage of income. If a parent receives MFIP, their PIC is zero. When a CP earns substantially higher income than the NCP, the figure found in the table is probably higher than if the parties' incomes are similar.

What is the maximum basic support?

If parents have a combined PICS of \$15,000 per month, the support is \$1883 for one child and \$4319 for six children. This amount is for basic support only.

Line 7 Statutory cite 518A.36 Basic support after parenting time adjustment

% of parenting time by Court Order

Less than 10%	no adjustment
10-45%	12%
45.1-50%	presume parenting time is equal

How do you calculate parenting time?

Calculation based on the number of overnights that a child spends with a parent, or by using a method other than overnights if the parent has significant time periods on separate days. The web calculator has a special worksheet for this calculation.

Comment: The parenting time adjustment applies only to basic support and not to medical support or childcare support. The court is interpreting reasonable parenting time to equate to a 12% adjustment. There are just three categories, unlike some other states which have more specific designations.

Line 8 Statutory cite 518A.40 Child care support

Basically, child care costs are apportioned between the parents based on their PICS. The WEB calculator is programmed to estimate federal and state childcare credits.

What if the obligor (Parent A) earns a low income?

The WEB calculator does a calculation of what the co-pay would be if the obligor was eligible for and receiving a child care subsidy, if the obligee is receiving a subsidy. In other words, Parent A has the advantage of paying the reduced rate based on his income as if he was receiving the subsidy.

Comment: The sliding fee schedule is updated on July 1 of each year. In July of 2007, there was a short period of time when the WEB calculator had not been updated and

therefore produced a different result than the PRISM worksheets. Private attorneys must remember to have their clients provide verification of the cost of childcare. Affidavits by the childcare provider are acceptable.

Line 9 Statutory cite 518A.41 Medical Support

In a nutshell, the parent with existing coverage will be ordered to maintain it and the cost is split between the parties according to their PICS. However, medical support is complex and there is a separate chapter devoted to this subject. The custodian of the child can be an obligor for medical support. If the non-custodial parent is ordered to maintain medical and dental insurance, the custodial parent is ordered to pay according to the PICS.

If parents have HSA accounts available through employment, whereby medical insurance and or medical expenses are paid with pretax dollars, the WEB calculator does not compute the tax advantages of such programs..

Line 10 Statutory cite 518A. subd.4 (2) Medical support public coverage

If neither party has health insurance, and a joint child is receiving MA or MinnesotaCare, the other parent will be ordered to contribute toward the cost. The amount of the contribution is what he would pay if eligible for public coverage. If not eligible, the full premium cost of the public coverage can be ordered.

Line 11 Statutory cite 518A.subd.5 Share of uninsured and/or unreimbursed medical expenses

These expenses are divided between the parties based on their respective PICS or as otherwise agreed.

Comment: HSA and or pretax medical reimbursement plans can vary greatly. Employers may or may not contribute toward the plans. This formula does not differentiate any of these plans from ordinary out of pocket expenses paid with taxed income.

Line 12 Net child support obligation

Line 13 Statutory cite 518A.31 Child(ren)'s Social Security/Veteran's benefits derived from parent's eligibility. These benefits are deducted as a direct credit toward the child support obligation. The credit for dependent social security benefits is a holdover from prior law.

Line 14 Statutory cite 518A.34 Total child support obligation

This amount is the basic support after the parenting time adjustment, medical support, and childcare.

Comment: this is not the end of the calculation, however.

Line 15 Statutory cite 518A.42 Ability to pay calculation:

Repeat the income from line 1
The obligor is given a "self support reserve" equal to 120% of the federal poverty guidelines for one person. This amount is adjusted annually.

Comment: The self-support reserve is the same regardless of whether there are non-joint children in Parent A's household.

Line 16 The amount as of February 2007 is \$1021. It will be updated every year. The calculator will subtract the child support from the gross income and determine whether any adjustment is necessary.

Lines 17-20 The calculator will separately calculate whether there is an adjustment for medical, childcare, or basic support.

Lines 22 Statutory cite 518A.42.Subd.2 Presumptive minimum orders.

Used with income below self-support

1-2 children	\$50 month
3-4 children	\$75 month
5 or more	\$100 month

6.0 IVD services: Offset

If child support is collected by the local IV-D (child support) agency, the statewide computer (PRISM) is programmed so the income withholding notice reflects the offset amount for collection. For example: Parent A is ordered to pay \$400

per month basic support and \$200 per month childcare, and ordered to provide medical insurance at a cost of \$200 per month. Parent B is ordered to contribute \$100 per month toward medical insurance. The income withholding notice will ask A's employer to withhold \$500 per month and enforce the medical insurance coverage. However, when the cost of living increase is done biannually, it will be done on the full \$400 basic support, not the offset amount.

Also, if the obligor has numerous child support obligations, there may be insufficient income to pay all of them. First of all, the obligor has the protections of the Federal Consumer Protection Act, United States Code, title 15, section 1673(b). See 518A53, subd.5: Payor of funds responsibilities. The public authority distributes the money on a pro rata basis. For example, if the obligation for the first family is \$600 per month, and the obligation for the second family is \$200 per month, and the sum of \$400 is collected, it will distribute \$300 to the first family and \$100 to the second.

7.0 Modification of child support

A. Statutory cite 518A.39, subd.2(j) During the calendar year 2007:

There is a general rule against modifications during the first year, **exceptions** (the following are paraphrased):

- 1) at least a 20% change in the gross income of the obligor,
- 2) there is a change in the number of joint children,
- 3) a caregiver or parent begins to receive public assistance,
- 4) additional or reduced work or education related childcare expenses,
- 5) change in availability or cost of health care coverage,
- 6) child becomes disabled, or
- 7) both parents consent

B. Statutory authority 518A.39, subd 2. After January 1, 2008.

- 1) substantially increased or decreased gross income of an obligor or obligee
- 2) substantially increased or decreased need of an obligor or obligee or children
- 3) receipt of public assistance
- 4) change in the cost of living
- 5) extraordinary medical expenses not covered
- 6) a change in the availability of appropriate health care coverage or a substantial change in the cost (Note: this is a new provision)

7) emancipation of a child.

Comment; Mn. Statute 518A.39, subd.5(a) addresses how to handle emancipation of older children. Remember not to automatically use the percentages used under the old guidelines (the 30% to 25% deduction.

There is a rebuttable presumption the existing order is unreasonable and unfair if the application of the new guidelines results in a calculation that is at least 20% and at least \$75 per month higher or lower.

Query: Whether the entire new support calculation (basic and medical and child care) or just the basic support is compared to the terms of the existing order.

The argument in favor of including it all is that the definition of child support includes all three components. Increased medical costs are a basis to modify support, not just medical support. The argument against considering anything other than basic support is that the statute references 518A35. This issue is likely to be litigated.

C. First modification after the income share guidelines

Modification may be limited if the amount of the full variance would create hardship on the obligor or obligee. 518A.39.subd2(k)

8) Change in child care expenses

Statutory cite 518A.40,subd 4 (new) If the public authority is involved in collection, but the childcare is not assigned (meaning there is no subsidy), the public authority must suspend, when

- 1) either party informs the agency that no childcare costs are being incurred
- 2) the public authority verifies the information with the obligee, child care must be suspended on the first of the month following the date the public authority receives verification. If the public authority can't verify the information, there is a provision to continue collection.

9) Cost of Living (COLA)

Statutory cite 518A.75 (new)

Clarification that cost of living increases apply only to basic support.

MFSRC conference October, 2007
Issues in guidelines implementation

Prepared by Theresa Farrell-Strauss Sr assistant Hennepin County Attorney

A) Parenting Time
The guidelines allow a parenting time deduction for **court ordered** parenting time. Reasonable parenting time is interpreted to give a 12% adjustment. Many cases have no court ordered time, including actions pursuant to Mn. Statute .256.87. These parties may have signed recognitions of parentage (ROPs) or they may be married. The latter are the most troublesome. If there is not a custody order for married parents, both have equal access rights to the children. "Under our law, 'the father and mother are the natural guardians of the minor children, and, if not unsuitable, are equally entitled to their custody.'" Willmore v Willmore, 273 Minn. 537, 143 N.W.2d 630 (Minn. 1966), n. 2 (quoting Spratt v Spratt, 151 Minn. 458. 464, 187 N.W. 227, 229 (Minn. 1922)). One practical way magistrates have dealt with this issue is to inquire of the parties about access time. If the parties generally agree what the access schedule is, the magistrates often grant a parenting time credit.

B) Split custody
The guidelines formula does not address an arrangement whereby one parent has one or more joint children and the other parent has one or more joint children. In an earlier version of the income shares bill, it was addressed, but it did not pass. Here are several options discussed at the Family Law Institute in 2007:

- 1) Do two different calculations and then do an offset.
Mother is parent A and Father is parent B with #
Father is parent A and Mother is parent B with #
Offset the numbers above.
- 2) Do the calculation for the parent with most of the children, then pro-rate.
- 3) Do the calculation for the parent with fewer children, then pro-rate
- 4) Do a guidelines calculation and give each parent a credit for non-joint children in their home for the children who are really joint.

- 5) Determine the parenting time for each child and the parents' proportional time and use the worksheets to determine support
- 6) Do a guidelines calculation as if the children were all in one home, then equalize the amount for each child.(FIN plan seems to look at the aggregate percentage of parenting time)

It is this author's opinion that option one is most frequently utilized. Be aware that the examples above result in dramatically different results.

C) Deviations

Federal law addresses the guidelines and deviation. 42 U.S.C. sec 667(b)(2)(2007) provides

There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. **A written finding or a specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case. (emphasis added)**

Mn. Statute 518A.43 subd.1 provides among other reasons, deviation from the presumptive child support obligation computed under Mn. Statute 518A.34 is intended to encourage prompt and regular payments of regular child support and to prevent either parent or the joint children from living in poverty.

Several factors are enumerated as a basis to deviate in Mn. Statute 518A.43, subd.1. (paraphrased)

- 1) all earnings, income, circumstances, and resources of each parent including real and personal property
- 2) extraordinary financial needs and resources, physical and emotional condition, and educational needs of the child to be supported
- 3) the standard of living the child would enjoy if the parents were together

- 4) which parent receives the income tax dependency exemption
- 5) the parents debts as provided in subsection 2
- 6) the obligors total payments for court ordered child support
- (new)7)a child resides in a foreign country and the standard of living is substantially higher or lower

If the court decides to deviate, written findings are required. Mn. Statute 518A.37

Practitioners Martin L. Swaden and Linda Olup write that the new section in the guidelines is to encourage prompt payment and prevent either parent or the children from living in poverty “by giving consideration to those special situations in which the new child support law may not provide a fair and equitable result”. 14 Minn. Prac., Family Law (7.11 (2d.ed))referencing Mn. Stat 518.714, repealed in 2005 and renumbered 518A.43.

The statute’s author, Senator Tom Neuville writes the purpose of the section is to “send a message to courts that they should allow deviation in order to create fair child support orders.” Neuville, 15 Fam.L.F. 4, at 5(Minn State Bar Ass’n) (Winter 2006)

Although we do not yet have any caselaw on the income share guidelines, there is substantial caselaw on deviations, generally.

Swick v Swick, 467 N.W.2d 328 (Minn Ct. App. 1991)

“The court should not apply the guidelines blindly, but rather should consider them as one of the many factors in the support determination.”

The trial court is expected to make findings on the children’s needs and the needs and the needs and resources of the parents.

Nicollet County v Larson, 413 N.W. 217 (Minn. Ct. App. 1987)

Statutory child support guidelines chart should be used only as a starting point for the determination of child support awards and court must make specific findings on the

factors which it has considered, whether or not the award deviates from the guidelines including financial resources and needs of the child and of both custodial and con-custodial parent. (Nicollet 413 N.W.2d at 220, citing Moylan v Moylan, 384 n.w.2d 859, 863 (Minn. 1986).

Tips: on the reality of court hearings:

It's very important that attorneys or pro se parties have documentation of the facts. The court wants income verification, verification of the costs of medical and dental insurance (including the difference between individual and family coverage), and child care expenses. Practitioners are usually not used to verifying childcare expenses, but this can be easily accomplished in the form of an affidavit. It is also essential to verify whether non-joint children are the legal children of the parents. There is no credit for children of spouses or significant others absent an adoption of those children. There is no explicit rule or statute that requires the court to make findings on the parties' living expenses.

There is a prevailing attitude among parties, lawyers and the Bench, that now that we have the new guidelines based on both parties' incomes, the results are fair. The results may be fair, but they may be higher or lower than the parties anticipated. When the parties have the guideline worksheets available at the hearing, they have the opportunity to agree, or to request a deviation. If the parties have not provided information prior to the hearing, cases are often taken under advisement, so that the pro se parties do not know what the result will be. The court may not have a statement of the parties living expenses or debt. So, the court doesn't have information to support a deviation or even to know whether one is sought. This author's opinion is that there is an assumption that deviations will be unusual.

In cases where a party receives public assistance, defined in Mn. Statute 256.741, the county may decide to not seek childcare or medical support. Technically, reservation of an issue is a deviation.

D. Relative caretaker or foster placement

Basic support is based on each parent individual parental income (PIC), not the combined parental income'.

Mn. Statute 518A.35(c) Comment: In these kinds of cases, usually, only Parent A has a legal responsibility to the child. The relative caretakers' income is not considered. If a child is in placement, the county may pursue parents for a parental support contribution pursuant to Mn. Statute 256.87. If the family is intact, this statute would provide that two separate calculations be done, one for each parent. It is this author's experience that the court will combine the parents' income because it indicates the parents' joint ability and standard of living.

Summary

The WEB calculator is easy to use as long as all the needed information is available. The self-support reserve is a long over due recognition that custodial parents need to have enough money to survive. Practitioners and pro se parties are encouraged to prepare for hearings by having the proper documentation of the facts. If the proposed guideline results are not acceptable to both parties, a deviation may be requested. Although there is no appellate law interpreting the new guidelines, the court always has the discretion and the duty to determine the fairness of the final result. The next section has several examples of outcomes.

EXHIBIT OF RESULTS: \$12 hr = \$2080 month

A	B	Non-Joint Children	Medical	Childcare	Parenting Time	Result One Child	Result Two Children
2080	2080	2 with A	\$250 pd by A	0	12% (10-45)	Basic \$268 -Med <u>(140)</u> \$128	Basic \$417 -Med <u>(140)</u> \$277
2080	2080	2 with A	MA or MNCare	0	12% (10-45)	Basic \$268 +Med <u>36</u> \$304	Basic \$417 +Med <u>40</u> \$457
2080	2080	2 with A	MA or MNCare	0	No P.T.	Basic \$304 +Med <u>36</u> \$340	Basic \$474 +Med <u>40</u> \$514
2080	2080	2 with B	MA or MNCare	0	No P.T.	Basic \$387 +Med <u>56</u> \$443	Basic \$603 +Med <u>59</u> \$662
2080	2080		MA or MNCare	0	No P.T.	Basic \$373 +Med <u>56</u> \$429	
2080	0 MFIP		MA or MNCare	0	No P.T.	Basic \$517 +Med <u>56</u> \$573	
1599	0		MA or MNCare	0	12% (10-45)	Basic \$257	Basic \$297
1599	\$1.00*		MA or MNCare	0	12% (10-45)	Basic \$297	Basic \$442
4000	6000	0	\$200 pd by A	0	44% 45%	A pays \$729, B pays 120 Med B pays \$430 to A+ 120 Med	

* Yes, an income of \$1 per month to the custodial parent increases the child support by \$40. per mo.

SPLIT CUSTODY

Ramsey County Methods (ver. 10/3/07)

How should guidelines support be calculated in a scenario where parents share “split custody?” Split custody means that Mom has sole physical custody at least one child and Dad has sole physical at least one child; the parents do not share joint physical custody.

Several options are available for calculating support in a split custody scenario (this is not an exclusive list, but just some options):

1. Guidelines calculation for each parent and offset the obligations:
 - a. Mom is parent A and Dad is parent B with two children
 - b. Dad is parent A and Mom is parent B with one child
 - c. Offset the difference of the obligations and the parent owing more child support pays that amount to the other parent.
2. Guidelines calculation for three children with Dad (who has more of the joint children in his custody than Mom) as parent B, and prorate the guidelines support into thirds, and basically redirect two thirds of the guidelines support back to Dad.
3. Guidelines calculation for three children with Mom as parent B (particularly if there is no court order giving Dad custody of the two children – but for this calculation, assume Dad has the two children on MFIP), and prorate the guidelines support into thirds, and have Mom pay Dad 2/3 of the guidelines support.
4. Guidelines calculation giving Mom a non-joint child credit for 1 child, and Dad a non-joint child credit for 2 children.
5. Determine the parenting time available for the children involved, and the parents’ proportional share of that parenting time, and use the worksheets to determine support (Example to follow).
6. Guidelines calculation as if the children were all in one home and then equalize the amount each child gets and then offset the amounts (Example to follow).

EXAMPLES:

For the examples below, assume the parties have three joint children: Mom has sole physical custody of one child, and Dad has sole physical custody of two children. How should support be calculated? Is the answer the same whether this is a custodial arrangement rather than court ordered custody (i.e. Recognition of Parentage case with no custody order)? Is the answer the same if one of the parties is receiving MFIP (Cash assistance public assistance)? There is a joint custody or equal custody calculation, but not a split custody calculation – what do we do about these split custody cases?

Example 1 uses the fifth method above, determining the parenting time available for the children involved and the parents’ proportional share of the parenting time. The facts are explained in the example.

Examples 2-4 use the sixth method above, equalizing the amount of support each child gets and then offsetting the amounts. There are examples with 2 and 3 children varying in whose home they live. There are also examples where Parent B is receiving MFIP.

EXAMPLE 1: Split Custody – 3 Children – Calculation Based on Parenting Time

Mom and Dad have 3 children. There are 1,095 total days of parenting time available (365 x 3). The following are several different scenarios regarding custody and parenting time with a determination of the parenting time available for the children involved, and the parents' proportional share of that parenting time. Attorneys who have used this method use the worksheets to determine support based on the proportional share of parenting time. Nobody seems enamored with the results.

Scenario A	Child 1	Dad = 274 days (75%) ¹	Mom = 91 days (25%)
	Child 2	Dad = 274 days (75%)	Mom = 91 days (25%)
	Child 3	Dad = 91 days (25%)	Mom = 274 days (75%)
		Dad's total = 639 days	Mom's total = 456 days
		639/1095 = 58%	456/1095 = 42%

Mom should pay Dad basic support for 3 children after receiving a 12% PEA.

Scenario B	Child 1	Dad = 274 days (75%)	Mom = 91 days (25%)
	Child 2	Dad = 274 days (75%)	Mom = 91 days (25%)
	Child 3	Dad = 182.5 days (50%)	Mom = 182.5 days (50%)
		Dad's total = 730.5 days	Mom's total = 364.5 days
		730/1095 = 67%	364/1095 = 33%

Mom should pay Dad basic support for 3 children after receiving a 12% PEA.

Scenario C	Child 1	Dad = 365 days (100%)	Mom = 0 days (0%)
	Child 2	Dad = 274 days (75%)	Mom = 91 days (25%)
	Child 3	Dad = 274 days (75%)	Mom = 91 days (25%)
		Dad's total 913 days	Mom's total 182 days
		182/1095 = 83%	913/1095 = 17%

Mom should pay Dad basic support for 3 children after receiving a 12% PEA.

Scenario D	Child 1	Dad = 274 days (75%)	Mom = 91 days (25%)
	Child 2	Dad = 274 days (75%)	Mom = 91 days (75%)
	Child 3	Dad = 0 days (0%)	Mom = 365 days (100%)
		Dad's total = 548 days	Mom's total = 547 days
		548/1095 = 50%	547/1095 = 50%

There should be an equal parenting time calculation (the 45%-50% calculation).

¹ In each of the scenarios, if a 70%/30% split of time (255 days/110 days) is ordered rather than the 75%/25% split of time (274 days/91days), the end result is the same.

**EXAMPLE 2A: Split Custody – 2 Children
Calculation Based on Equalization**

	Parent A 1 Child	Parent B 1 Child	Combined 2 Children
Monthly income received	\$4,000	\$3,000	
Monthly gross income	\$4,000	\$3,000	
PICS	\$4,000	\$3,000	\$7,000
Combined PICS %	57%	43%	
Combined Basic Support			\$1,547
Basic Support	\$881.80		

The following calculation considers combined basic support, which is the cost of raising the two children, divided between the two children. Balance the cost of raising children by making sure the children in the two households has the same money available to them. In this case:

$$\$1,547 / 2 = \$773.50$$

$$\$881.80 - \$773.50 = \$108.30$$

Parent A to pay Parent B \$108.30 per month

**EXAMPLE 2B: Split Custody – 2 Children; MFIP
Calculation Based on Equalization**

	Parent A 1 Child	Parent B 1 Child	Combined 2 Children
Monthly income received	\$4,000	\$0 (MFIP)	
Monthly gross income	\$4,000	\$0	
PICS	\$4,000	\$0	\$4,000
Combined PICS %	100%	0%	
Combined Basic Support			\$1,116
Basic Support	\$1,116		

The following calculation considers combined basic support, which is the cost of raising the two children, divided between the two children. Balance the cost of raising children by making sure the children in the two households has the same money available to them. In this case:

$$\$1,116 / 2 = \$558.00$$

$$\$1,116 - \$558 = \$558$$

Parent A to pay Parent B \$558.00 per month

**EXAMPLE 3A: Split Custody – 3 Children; Parent B 2 Children
Calculation Based on Equalization**

	Parent A 1 Child	Parent B 2 Children	Combined 3 Children
Monthly income received	\$4,000	\$3,000	
Monthly gross income	\$4,000	\$3,000	
PICS	\$4,000	\$3,000	\$7,000
Combined PICS %	57%	43%	
Combined Basic Support			\$1,778
Basic Support	\$1,013.46		

The following calculation considers combined basic support, which is the cost of raising the two children, divided between the two children. Balance the cost of raising children by making sure the children in the two households has the same money available to them. In this case:

$$\$1,778 / 3 = \$592.67$$

$$\$1,013.46 - \$592.67 = \$420.79$$

Parent A to pay Parent B \$420.79 per month

EXAMPLE 3B: Split Custody – 3 Children; Parent B 2 Children; MFIP Calculation Based on Equalization

	Parent A 1 Child	Parent B 2 Children	Combined 3 Children
Monthly income received	\$4,000	\$0 (MFIP)	
Monthly gross income	\$4,000	\$0	
PICS	\$4,000	\$0	\$4,000
Combined PICS %	100%	0%	
Combined Basic Support			\$1,288
Basic Support	\$1,288		

The following calculation considers combined basic support, which is the cost of raising the two children, divided between the two children. Balance the cost of raising children by making sure the children in the two households has the same money available to them. In this case:

$$\$1,288 / 3 = \$429.33$$

$$\$1,288 - \$429.33 = \$858.67$$

Parent A to pay Parent B \$858.37 per month

**EXAMPLE 4A: Split Custody – 3 Children; Parent B 1 Child
Calculation Based on Equalization**

	Parent A 2 Children	Parent B 1 Child	Combined 3 Children
Monthly income received	\$4,000	\$3,000	
Monthly gross income	\$4,000	\$3,000	
PICS	\$4,000	\$3,000	\$7,000
Combined PICS %	57%	43%	
Combined Basic Support			\$1,778
Basic Support	\$1,013.46		

The following calculation considers combined basic support, which is the cost of raising the two children, divided between the two children. Balance the cost of raising children by making sure the children in the two households has the same money available to them. In this case:

$$\$1,778 / 3 = \$592.67 \times 2 = \$1,185.34$$

$$\$1,185.34 - \$1,013.46 = \$171.88$$

Parent B to pay Parent A \$171.88 per month

EXAMPLE 4B: Split Custody – 3 Children; Parent B 1 Child; MFIP Calculation Based on Equalization

	Parent A 2 Children	Parent B 1 Child	Combined 3 Children
Monthly income received	\$4,000	\$0 (MFIP)	
Monthly gross income	\$4,000	\$0	
PICS	\$4,000	\$0	\$4,000
Combined PICS %	100%	0%	
Combined Basic Support			\$1,288
Basic Support	\$1,288		

The following calculation considers combined basic support, which is the cost of raising the two children, divided between the two children. Balance the cost of raising children by making sure the children in the two households has the same money available to them. In this case:

$$\$1,288 / 3 = \$429.33 \times 2 = \$858.66$$

$$\$1,288 - \$858.66 = \$429.34$$

Parent A to pay Parent B \$429.34 per month

What does Oregon do? Why should we care what Oregon does?

Some of the subsequent changes to the child support guidelines as passed in 2005 and changed in 2006 were taken directly from the State of Oregon's guidelines.

Since there is no clear method on how to determine support in split custody cases, it may be valuable to know how Oregon deals with the issue (of course, keeping in mind Minnesota did not adopt all of Oregon's guidelines and certainly did not adopt Oregon's case law relating to guidelines). Oregon uses the percentage of overall parenting time, like in Example 1 above, but Oregon's web calculator puts the parent with the most parenting time as Parent A, which is different than Minnesota's web calculator which labels parents according to the parent that has more or less income.

Some shared income states use the offset method of determining each parents support obligation and offsetting the two obligations. Whichever parent would owe more would owe the difference between the two obligations. Other shared income states have a special worksheet to determine calculations, while others do not address the issue in its statutes or calculator.

IMPUTING INCOME

Gross Income

- 518A.29(a) – Gross income includes Potential Income under 518A.32.

Potential Income
518A.32

- Subd. 1 – Child Support **must** be based on potential income if:
 - Parent is voluntarily unemployed, underemployed, or employed less than FT, or
 - No direct evidence of any income.
 - Rebuttable presumption that a parent can be gainfully employed FT
 - FT means 40 hrs/week – **except:**

Potential Income
518A.32

- In those industries, trades, or professions in which most employers, due to custom, practice, or agreement, use a normal work week of more or less than 40 hours in a week.

How do you Determine Potential Income?

- 518A.32, Subd. 2
- Must use one of the following methods, as appropriate:
 - (1) Parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community.

How do you Determine Potential Income?

- 518A.32, Subd. 2
 - (2) Actual amount of Unemployment Compensation or Workers Compensation benefits received by a parent.
 - (3) Amount of income a parent could earn working FT at 150% of current Federal or State Minimum Wage, **whichever is higher.**

When is a Parent not Voluntarily Un/Under-Employed?

- 518A.32, Subd. 3 – Parent not voluntarily un/under-employed if they can show:
 - (1) un/under – employment is temporary and will ultimately lead to an increase in income; or
 - (2) un/under-employment represents a bona fide career change that outweighs the adverse effects of that parents diminished income on the child.

When is a Parent not Voluntarily Un/Under-Employed?

- 518A.32, Subd. 4 – If a parent is receiving TANF cash grant – can not impute potential income.

When is a Parent not Voluntarily Un/Under-Employed?

- 518A.32, Subd. 5 – Stay at Home Parent.
 - The court may consider the following factors when determining whether the parent is voluntarily unemployed or underemployed:
 - (1) the parties' parenting and child care arrangements before the child support action;
 - (2) the stay-at-home parent's employment history, recency of employment, earnings, and the availability of jobs within the community for an individual with the parent's qualifications;

When is a Parent not Voluntarily Un/Under-Employed?

– (3) the relationship between the employment-related expenses, including, but not limited to, child care and transportation costs required for the parent to be employed, and the income the stay-at-home parent could receive from available jobs within the community for an individual with the parent's qualifications;

(4) the child's age and health, including whether the child is physically or mentally disabled; and

(5) the availability of child care providers.

When is a Parent not Voluntarily Un/Under-Employed?

- 518A.32, Subd. 5 – Stay at Home Parent
– does not apply if the parent stays at home only to care for other nonjoint children.

When is a Parent not Voluntarily Un/Under-Employed?

- 518A.32, Subd. 6 – Self-employed Parent
– A self-employed parent is not considered to be voluntarily unemployed or underemployed if that parent can show that the parent's net self-employment income is lower because of economic conditions that are directly related to the source or sources of that parent's income.

Other Considerations

- 518A.42, Subd. 2 – States that if the court finds the obligor receives no income and completely lacks the ability to earn income, the parent does not have to even pay the minimum support amount.
