

FATHERHOOD ENGAGEMENT



 D.C.S. Education

 Custody/Paternity Education

 Child Support Education

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FATHERHOOD ENGAGEMENT

D.C.S. EDUCATION



Things to keep in mind about the Indiana Department of Child Services (DCS):

1. Child Placement

Contrary to common belief, the children are not always placed in with the father if removed from the mother. Here are common questions asked by DCS concerning the non-offending parent's ability to receive custody of the child.

- a. Has paternity been legally established?
- b. Are there legal court documents proving the father's relational and financial support?
- c. Does the father have a criminal record?
- d. Is the father clean of drug use?
- e. Does the father have a stable life? (e.g. employment, residence, etc.)
- f. Is there anyone in the father's home or life who has a record or uses drugs?
- g. Does the father have a healthy relationship with the children?

If the DCS Family Case Manager (FCM) or the court feels that the father does not qualify due to any of these issues, the child will be placed elsewhere.

2. Department of Child Services (DCS) legal requirements.

Commonly people are very upset and hostile towards the DCS process. However, DCS is required by Indiana state law to take certain steps to ensure the child's (children's) safety. These include:

- a. DCS must make it their primary goal to reunify the children with (1) custodial parent or (2) in the event of joint custody to the parent from who the children were taken.
- b. DCS is required to move to terminate the rights of BOTH parents within 15 months if the children have been removed from the home for 12 months and if there is no provable progress on the part of the parents.
- c. After the 15 months to determine whether or not to terminate parental rights, DCS has another 7 months to carry through with a plan designed to accomplish the decision of the court. (A total maximum time of 22 months.)
- d. A DCS file can only be opened for a maximum 22 months. However, DCS can petition the court to terminate a parent's rights at any point and could close the DCS file at any point.
- e. DCS must keep all reports made to the hotline anonymous. They cannot tell the parent who placed a call concerning the child's (or children's) well being.

3. Department of Child Services (DCS) options.

In addition to the legal requirements of DCS, they are also given legal authority to take certain steps to ensure the safety of the child. These can be upheld, altered or overturned by the court.

- a. DCS does have the ability to follow up on any reports made to them.

- b. DCS has the ability to place the children with whom they believe can be the most stable home.
- c. DCS can direct both sets of parents to take a single, weekly, or random drug screenings.
- d. DCS can direct both parents to participate in services designed to aid the parents in accomplishing the goal of reunification. (e.g. counseling, home based services, etc.)
- e. DCS can set the amount of visits, time of visits, and type of visits that both parents may have.

Once DCS removes a child from the home the DCS worker is the authority in charge of what steps the parents must take to gain reunification with the child. This remains the situation until the initial court hearing. At this point the judge determines what steps the parents need to take by court order. Prior to the initial hearing, the court often accepts the recommendation/position of the DCS worker.

4. The Court's responsibilities.

There are some things that only the court can do.

- a. The court must agree with the child's (or children's) removal from parental care. If not, the children must be returned to the home.
- b. If the court orders the parents to take steps towards unification, those steps are legally binding and must be followed for reunification to take place.
- c. Only the court can make the decision to terminate a parent's rights to their children. DCS does not have the ability on their own and must petition the court to take such a step.

5. Non-Custodial Parent's options.

There are options for the non-custodial parents to help the process along.

- a. Establishing Paternity. In order to be given the legal rights and responsibilities of a parent, paternity must first be established. Paternity can be established through a number of different ways. Please See attached Establishing Paternity Document.
- b. If the father is not the custodial parent, he can petition that he be made the legal custodial parent in civil court. Please see attached Custodial Parent Document.
- c. It is also in the father's best interest to work alongside with DCS as the family moves through the case file process even if it is challenging for the father to do so.

6. Parties commonly involved in the process.

- a. You and your legal representative
- b. Your children & their (possible) legal representative (Guardian Ad Litem)
- c. The mother and her legal representative
- d. Department of Child Services (DCS) Family Case Manager (FCM) and Legal Representation
- e. Court System (presided over by an elected local judge)
- f. Service Providers (e.g. SCAN, Bowen, residential care, etc.)

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 2: Administration of Child Welfare	Effective Date: April 1, 2013
	Section 5: Administrative Appeal Hearings	Version: 4

STATEMENTS OF PURPOSE

The Indiana Department of Child Services (DCS) recognizes the right of the perpetrator to request an Administrative Appeal Hearing if substantiated allegations of Child Abuse and/or Neglect (CA/N) are upheld in the DCS Administrative Review. The process outlined herein will apply to all substantiated CA/N determinations made on or after October 15, 2006.

If the substantiated assessment is against a minor perpetrator, the request for an Administrative Appeal Hearing must be made by the child's parent, guardian, attorney, Guardian ad Litem (GAL), or Court Appointed Special Advocate (CASA).

DCS requires that all requests for Administrative Appeal Hearing by a perpetrator utilize the [Request for an Administrative Appeal Hearing for Child Abuse or Neglect Substantiation \(SF 54776\)](#) and that the request be received by DCS Hearings and Appeals within **30 calendar days** (if request hand delivered) or **33 calendar days** (if request mailed) from the date identified on the [Notice of Right to Administrative Appeal of a Child Abuse or Neglect Determination \(SF 55148\)](#).

Note: If the request for an Administrative Appeal is received on a day that the DCS Hearings and Appeals is closed, the next business day is considered the receipt date. If the request deadline is on a day that the DCS local office is closed, the deadline is extended to the next business day.

If the substantiated assessment is against a DCS Employee or a child care worker as defined in DCS policies [2.3 Child Care Worker Assessment Review Process](#) and [2.4 Assessment and Review of DCS Staff Alleged Perpetrators](#), the Administrative Appeal Hearing will be held within **20 calendar days** of the date the request is received by Hearings and Appeals, unless the perpetrator (appellant) waives the time limit in writing as outlined in [465 IAC 3-3-9](#).

Note: If the perpetrator is a DCS employee or a child care worker, DCS cannot ask for a continuance. See [465 IAC 3-3-18](#).

DCS will hold all other hearings within **90 calendar days** from the date the request is received by Hearings and Appeals unless the appeal is stayed or continued pursuant to applicable law or rule.

A person who is denied administrative review may file a request to reconsider the denial. If upon reconsideration, the denial is upheld, the person may administratively appeal that decision. Any administrative appeal will be limited to the denial itself, as a procedural issue, and will not include the merits of the underlying substantiation. If the denial is upheld, the ALJ decision will be the final DCS decision. If the denial is reversed, the case will be remanded to DCS so that an administrative review can be conducted.

The DCS Hearings and Appeals unit will notify the appellant and the DCS local office in writing of the hearing date, via mail or email, at least **10 calendar days** in advance.

Note: An appellant is the person identified as a substantiated perpetrator of child abuse and/or neglect who has completed an administrative review by DCS and has submitted a complete request for an administrative appeal hearing.

DCS acknowledges that the appellant has the right to bring witnesses and/or legal counsel to the hearing to present relevant evidence and cross examine DCS's witnesses.

Note: For those administrative appeals that were stayed before the effective date of this policy, the administrative appeal process must be reactivated in accordance with the stay letter or order of Stay provided to the appellant.

DCS will not conduct an Administrative Appeal Hearing and will order a Stay of the Administrative Appeal process if a motion is filed by either the appellant or the DCS local office and documentation is filed with Hearings and Appeals to show that one of the following applies:

1. A Child in Need of Services (CHINS) petition has been filed based on the facts of the substantiated assessment, until the court has ruled on the petition:
 - a. Any request received for an Administrative Appeal will be stayed due to a pending CHINS matter by submitting the Preliminary Inquiry and CHINS Petition and/or other appropriate supporting documentation, and
 - b. During the Stay, the substantiation will remain on the Child Protection Index (CPI).
2. Criminal charges or a Juvenile Delinquency Petition (JD) have been filed based on the same facts and circumstances that the report of CA/N was substantiated, until the case is resolved:
 - a. Any request received for an Administrative Appeal will be stayed due to a pending criminal or JD matter by submitting a Probable Cause Affidavit, charging information and/or other supporting documentation, and
 - b. During the Stay, the substantiation will remain on the CPI.
3. An Informal Adjustment (IA) has been filed and is pending. A copy of the filed IA will suffice as supporting documentation. During the Stay, the substantiation will remain on the CPI.
4. DCS has received notification from the County Prosecutor's Office that criminal charges are under review based on the same facts and circumstances which resulted in the classification of allegations as substantiated against the perpetrator who has requested an Appeal Hearing.

Note: The DCS local office or appellant must notify Hearings and Appeals by notice or motion to request that the Administrative Appeal process be stayed.

When appropriate, either the DCS local office or appellant may request that the administrative appeal process be reactivated or dismissed, in accordance with the order of stay of the Administrative Law Judge (ALJ).

Note: The Stayed case will remain open on the Hearings and Appeals docket until it is concluded by a final ALJ decision.

The DCS Administrative Appeal Hearing will be conducted and decisions issued in accordance with the procedures outlined in [465 IAC 3-3](#).

The presiding ALJ will issue a written decision:

1. Within 15 calendar days after completion of the hearing or closure of the hearing record for child care workers and DCS Employees; or
2. Within 30 calendar days after completion of the hearing or closure of the hearing record for all other perpetrators.

The ALJ's decision will be the **final** decision of DCS regarding the classification of the Child Protective Services (CPS) assessment and report, subject to the right to judicial review as provided in [IC 4-21.5-5](#).

Note: This policy does not apply to any Administrative Appeal other than the substantiation of allegations of CA/N by DCS.

Code References

1. [IC 31-33-26: Child Protection Index](#)
2. [IC 4-21.5-5 Judicial Review](#)
3. [465 IAC 3: Administrative Reviews and Hearings](#)

PROCEDURE

The perpetrator will request an Administrative Appeal Hearing by submitting a copy of the following documents to DCS Hearings and Appeals, within **30 calendar days** of the date on the [Notice of Right to Administrative Appeal for a Child Abuse or Neglect Determination \(SF 55148\)](#):

1. The [Notice of Right to Administrative Appeal for a Child Abuse or Neglect Determination \(SF 55148\)](#);
2. The [Assessment of Alleged Child Abuse and Neglect \(SF 113\)](#); and
3. A [Request for an Administrative Appeal Hearing for Child Abuse or Neglect Substantiation \(SF 54776\)](#).

An additional **three (3) days** will be allowed for mail time.

Note: If the request is received on a Saturday, Sunday, or legal holiday under state statute the next business day is to be considered the receipt date.

When a request for a hearing is received DCS Hearings and Appeals will:

1. Record the case in the DCS hearing tracking system;
2. Assign the case to a DCS Administrative Law Judge (ALJ);
3. Schedule a hearing; and
4. Notify the perpetrator (appellant), the appellant's representative (if applicable), the ALJ, the DCS Local Office Director (LOD), and the DCS Staff Attorney of the date, time and specific location of the hearing.

Note: If concerns for the security of any witness or employee comes to the attention of a DCS employee, the employee is to notify the Hearings and Appeals, and DCS LOD where the hearing is being conducted.

At the hearing, the DCS local office representative will:

1. Review assessment documentation prior to the hearing; and
2. Bring supporting documentation to be entered as evidence and witnesses to the hearing. Exhibits should be appropriately redacted to eliminate all Social Security numbers, identification of the report source, and any other information necessary for redaction.

The ALJ will:

1. Conduct a hearing in accordance with the procedures specified in [465 IAC 3-3](#); and
2. Issue a written decision:
 - a. Within 15 calendar days after completion of the hearing or closure of the hearing record for child care workers, and DCS employees, or
 - b. Within 30 calendar days after completion of the hearing or closure of the hearing record for all other hearings of substantiated assessments of CA/N.

After the hearing, the DCS Hearings and Appeals Coordinator will ensure that all of the following persons are notified of the decision:

1. The appellant (perpetrator);
2. The appellant's (perpetrator's) representative or legal counsel, if applicable;
3. The DCS LOD of the county who assessed the case;
4. The RM; and
5. DCS Staff Attorney.

Note: All distribution of notices and orders to the DCS LOD, DCS Staff Attorney, and RM will be emailed in PDF format. Assessments completed by the Institutional Child Protective Services (ICPS) Unit will also be notified of the ALJ decision.

The RM, DCS LOD or the Program Manager for the Institutional Child Protective Services (ICPS) Unit will ensure that DCS complies with the decision issued by the ALJ, including any remand.

PRACTICE GUIDANCE

Hand Delivery

Hand delivery requires successful face-to-face contact with the alleged perpetrator and a documented contact in the case management .

Preparation for a Scheduled Administrative Appeal Hearing

The DCS local office should prepare exhibits and witnesses for an Administrative Appeal Hearing in the same manner as if it were preparing for a CHINS Juvenile Court Fact Finding Hearing. Thorough records and documentation should be compiled and presented at the Administrative Appeal Hearing as DCS local office exhibits. DCS must prove by a preponderance of credible evidence that child abuse and/or neglect occurred and that the appellant is responsible for the child's abuse and/or neglect.

Presenting the DCS Case at the Hearing

At the Administrative Appeal Hearing, the DCS case may be presented by a Family Case Manager (FCM), FCM Supervisor, Program Manager for the Institutional Assessment Unit and/or DCS Staff Attorney. The DCS LOD may decide who is best able to represent the Agency. The appellant may present his or her case personally or through counsel or other representative. Each party has the right to bring witnesses to the hearing, present relevant evidence and cross examine the other parties' witnesses.

Provide copies of interviews or video recordings at the Hearing

The use of audio or video recordings, including forensic interviews, can be helpful in proving a DCS case. If submitted as an exhibit, it must be in a format that can be played at the hearing (laptop computer, recorder, etc.).

Note: All exhibits must be provided to the ALJ with a copy to the opposing party.

Final Decision of DCS

The ALJ's decision will be the final decision of DCS regarding the classification of the CPS assessment and report, subject to judicial review as provided in [IC 4-21.5-5](#).

FORMS AND TOOLS

1. [Request for an Administrative Appeal Hearing for Child Abuse or Neglect Substantiation \(SF 54776\)](#) – Available in case management system
2. [Notice of Right to Administrative Appeal for a Child Abuse or Neglect Determination \(SF 55148\)](#) – Available in the case management system
3. [Assessment of Child Abuse or Neglect \(SF 113\)](#) – Available in the case management system

RELATED INFORMATION

Location of Hearings

All hearings for child care workers and DCS employees will be held in Indianapolis, unless the perpetrator/appellant, in writing, both:

1. Requests that the hearing be held in another location; and
2. Requests an extension of the hearing time limits and waives an expedited hearing.

All other hearings will be held in a pre-determined centralized location near the county of residence of the appellant. The ALJ may order a hearing site other than those identified in the event of natural disaster or other reason as determined by the ALJ. The locations are as follows:

Appellant resides in:	Hearing will be held in:
Region 1, Region 2	Gary, Indiana
Region 3,4, 6 (Miami, Fulton and Wabash County), 7 (Blackford, Grant, Jay and Randolph County)	Fort Wayne, Indiana
Regions 5, 6 (Cass and Howard County), 7 (Delaware County), 8, 9, 10, 11, 12, 14 (Johnson County and Shelby County)	Indianapolis, Indiana
Regions 13, 14 (Bartholomew, Jackson, Jennings County), 15, 18 (Clark, Floyd, and Scott County)	Seymour, Indiana
Regions 16, 17, 18 (Harrison, and Washington County)	Jasper, Indiana

Note: Hearings may also be conducted via telephone or video conference if approved by the ALJ.

FATHERHOOD ENGAGEMENT

PATERNITY



Establishing Paternity

What Is Paternity?

Paternity means fatherhood. Establishing paternity gives your child a legal father.

Why is establishing paternity important?

Establishing paternity can make a difference for your child's whole life. If the parents are not married to each other at the time of conception or when the child is born, they should both think about establishing paternity now.

Even if the parents live together or plan to marry, establishing paternity assures the child and parents certain rights.

IDENTITY It is important to know who we are. By knowing both parents, a child will gain a sense of belonging.

FINANCIAL If paternity is not established, your child could be denied some benefits:

1. Social Security for a deceased or disabled parent
2. Inheritance rights
3. Veteran's benefits
4. Life insurance
5. Health insurance

The law requires both parents to support their child. Establishing paternity is the first step in making plans to provide the financial support your child will need in a way that is fair to both parents.

Establishing paternity can make it possible to collect support later, even if the father cannot or will not pay support now.

MEDICAL It is important for parents and a child to know of inherited health problems from either side of the family. Also, medical insurance might be available for a child through a parent's employer, union, or military service.

RELATIONSHIPS

BOTH PARENTS have:

- A right to establish a healthy relationship with; and,
- The responsibility to care for their son or daughter.

Making the relationship legal from the beginning:

- Provides a greater opportunity for a healthy relationship; and,
- Ensures the father's rights to a relationship with his child.

BIRTH CERTIFICATE AND NAME

If paternity is established:

- The birth certificate will show the father's name; and,
- The child may have either the father's or mother's last name.

If the parents are not married when the child is born and paternity is not established:

- The father will not be listed on the birth certificate; and,
- The child will have the mother's last name.
-

CUSTODY Legal and physical custody of a child may be changed by a court in a proceeding under Indiana law.

Physical Custody The mother will have primary physical custody of the child.

Legal Custody The mother will have sole legal custody of the child unless:

- The Paternity Affidavit is signed after July 1, 2010; and,
- Both parents agree to joint legal custody; and,
- All the steps required to establish joint legal custody are completed.

Legal custody identifies who will have the authority and responsibility for major decisions about your child's upbringing. This includes:

- Decisions about the child's education, health care, and religious training; and,
- Access to the child's school and medical records.

Joint Legal Custody means both mother and father share the authority and responsibility associated with legal custody.

For joint legal custody to exist based on a Paternity Affidavit, all of the following must be done:

- Both parents must agree to joint legal custody.
- Both parents must indicate their agreement to share joint legal custody by checking the two option boxes in Section F, item 1 on the Paternity Affidavit.
- Both parents must sign Section F, item 1 and initial items 2 and 3 on the Paternity Affidavit.
- Both parents must sign Section E of the Paternity Affidavit after July 1, 2010.
- Genetic testing must be performed by an accredited laboratory. A home paternity test would not be admissible for legal purposes.
- The test results must show the man who signed the Paternity Affidavit to be the biological father.
- The test results must be submitted to a local health department within 60 days of the child's birth. **IF**

the genetic test proves the man is not the father, OR if you fail to provide the results to the local health department within 60 days of the child's birth:

- The joint legal custody agreement will be void; and,
- The mother will have sole legal custody; and,
- The establishment of paternity is still valid ; and,
- The man who signed the Paternity Affidavit will still be the legal father of the child.

How is paternity established?

MARRIAGE A man is presumed to be a child's father if:

- He and his wife are married when the child is born; or,
- If the child is born not later than 300 days after the marriage ends.

If a husband says he is not the child's father or another man claims to be the child's father, a court may require a genetic test to determine paternity.

PATERNITY AFFIDAVITS

AT THE HOSPITAL Parents can establish paternity within the first 72 hours after their child's birth by both parents completing and signing a Paternity Affidavit at the hospital. This is the easiest way to establish this legal relationship between the child and father.

AT THE LOCAL HEALTH DEPARTMENT Paternity can also be established by completing a Paternity Affidavit at the local health department:

- Any time before the child is emancipated (age 19 unless otherwise ordered by a court),
- As long as no father is listed on the birth certificate.

COURT DETERMINATION Paternity may be established by filing a paternity action in court. Parents may agree to the paternity or may request a genetic test.

If a man has signed a Paternity Affidavit and then wants genetic testing, he must request it within 60 days of the date he signed the Affidavit or the court can deny his request.

Your legal rights and responsibilities regarding Paternity Affidavits

THINGS TO KNOW IN GENERAL

Signing a Paternity affidavit is voluntary.

You may not be able to reverse paternity and its legal responsibilities once you sign a Paternity Affidavit.

Information about your child's paternity and the process to establish paternity will be treated confidentially by hospital staff, the Health Department, the Prosecutor's Office and attorneys.

If you have not signed a Paternity Affidavit and are afraid to establish paternity because of domestic violence, you should contact the Prosecutor's Office. They can provide privacy protection.

Since signing a Paternity Affidavit has legal consequences, you may want to consult an attorney before signing.

You must receive both written and oral information about your alternatives, rights, and responsibilities, and the effects of signing a Paternity Affidavit.

BEGINNING JULY 1, 2010

- If you are under age 18 you must be given a chance to consult with an adult you choose before signing a Paternity Affidavit.
- The Paternity Affidavit must be presented to each parent separately and without the presence of the other parent.

Otherwise the signed Paternity Affidavit will be voidable.

A man has the right to request a court hearing if he is not sure he is the father of the child.

The father can sign a Paternity Affidavit even if he is married to someone else.

If you are the presumed father, and

- You do not establish paternity now,
- But you want the right to notice and a hearing regarding any adoption of the child, you must register with the Indiana Putative Father Registry through the Indiana State Department of Health at (317) 233-7085.

A woman who knowingly or intentionally falsely names a man as the child's biological father commits a Class A misdemeanor.

If the mother is receiving public assistance (TANF or Medicaid), she may be required to cooperate in establishing paternity and obtaining a support order or face losing those benefits.

If a Paternity Affidavit has NOT been signed and either parent is unsure of the paternity of the child, they may contact the Prosecuting Attorney's office in their county for help establishing paternity.

The custodial party may contact the Prosecuting Attorney's Office in their county for the child support services listed below through the IV-D program. There is a small fee if the parent is not receiving public assistance.

- Establishing paternity
- Finding the absent parent
- Getting a court order for the payment of child support and medical support
- Enforcing child support and medical support orders

If paternity is established, the child's mother or the IV-D agency has a right to obtain a child support and medical support order requiring the father to pay support, and they may collect on those orders.

Things to Know If a Paternity Affidavit Is Completed

- No further court action is required to establish the paternity of the child.
- No additional evidence of paternity is required for child support and medical support payments to be ordered.

- The custody rights of the parents are specified in the Paternity Affidavit unless determined otherwise by a court. *(See Custody.)*
- The father will have parenting time as outlined by the Indiana Parenting Time Guidelines, unless a court rules differently.
- A man has the right to withdraw/rescind his acknowledgment of paternity only within sixty (60) days of the date the Paternity Affidavit is completed. To do so, he must file an action in a court with jurisdiction over paternity and may need to submit to and pay for genetic testing.
- After 60 days the father may not be able to reverse paternity, even if genetic tests prove the child is not his.
- The mother does not have the right to withdraw/rescind her acknowledgment of paternity.

Why do I need to think about this at the time of the child's birth?

- You do not need to sign a Paternity Affidavit now. It is your right to obtain a genetic test first. But if you choose to establish paternity, there are reasons to begin the process immediately.
- If you want parenting time over and above what is outlined in the Indiana Parenting Time Guidelines, contact an attorney. *(See GETTING LEGAL HELP for free legal representation if you cannot afford an attorney.)*
- If you both sign the Paternity Affidavit, you will not need to have a court hearing to establish legal paternity.
- If you complete the Paternity Affidavit before completing the birth certificate, the child may carry the father's name and you can avoid the trouble and expense of having it changed later.
- Completing the Paternity Affidavit before applying for your child's Social Security number will ensure the child's information is correct the first time.
- Child and medical support orders can be established more quickly when paternity has already been established.

IMPORTANT RESOURCES

www.IN.gov/dcs

GETTING LEGAL HELP

Indiana Bar Association 317-639-5465

www.indianajustice.org

www.in.gov/judiciary/selfservice

www.in.gov/dcs/support

INDIANA PUTATIVE FATHER REGISTRY

317-233-7085

www.in.gov/isdh/20371.htm

Indiana Parenting Time & Child Support Guidelines

www.in.gov/judiciary/childsupport

CHILD SUPPORT KIDS LINE

800-840-8757

www.in.gov/dcs/support

CHILD ABUSE & NEGLECT HOTLINE

800-800-5556

www.in.gov/dcs/2398.htm

9/12/2013



PATERNITY AFFIDAVIT - HOSPITAL USE

State Form 44780 (R6 / 7-10)
INDIANA STATE DEPARTMENT OF HEALTH

Statutory Authority IC 16-37-2
Confidential: IC 16-37-1-10

Local Health Department Number	File Date (mm/dd/yyyy)	State File Number	PA Number
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Before I signed any section of this affidavit I was allowed to review it alone and without the presence of the person listed in Section B.
Also, I was given the opportunity to consult with an adult of my choosing.

Signature of Mother

Before I signed any section of this affidavit I was allowed to review it alone and without the presence of the person listed in Section C.
Also, I was given the opportunity to consult with an adult of my choosing.

Signature of Father

SECTION A - ACKNOWLEDGEMENT OF PATERNITY

We, _____ and _____ have read and understand the consequences, alternatives, rights and responsibilities regarding this affidavit and being duly sworn upon oath depose and say:

I, _____ am the biological father of _____, the Child referred to in

SECTION D of this affidavit who was born on _____ in _____ at _____, _____ State

_____ Hospital or address of location of birth

I, _____ whose maiden name is _____, am the mother

of the child referred to in Section D of this affidavit and that _____ is the biological father of that child.

Therefore, I wish for the birth certificate to identify him as the father.

SECTION B - BIOLOGICAL FATHER'S FACTS OF BIRTH

Full Legal Name	Social Security Number (Pursuant to IC 16-37-2-2.1 (e)(4))	Race (optional)
Date of Birth (mm/dd/yyyy)	Place of Birth (city, state, and county)	
Current Address (number and street, city, state, and ZIP code)		Telephone number ()
Name of employer (optional)		
Address of employer (number and street, city, state, and ZIP code) (optional)		
Medical insurance company (optional)	Policy number (optional)	

SECTION C - BIOLOGICAL MOTHER'S FACTS OF BIRTH

Full Legal Name	Social Security Number (Pursuant to IC 16-37-2-2.1 (e)(4))	Race (optional)
Date of Birth (mm/dd/yyyy)	Place of Birth (city, state, and county)	
Current Address (number and street, city, state, and ZIP code)		Telephone number ()
Name of employer (optional)		
Address of employer (number and street, city, state, and ZIP code) (optional)		
Medical insurance company (optional)	Policy number (optional)	

SECTION D - CHILD'S NAME ON INDIANA CERTIFICATE OF BIRTH

It is our mutual desire that the name of our child on the Indiana Certificate of Birth shall be recorded as:

First	Middle	Last
Gender of Child ☐ Male ☐ Female ☐ Not Determined		
If known, last four (4) digits child's Social Security Number X X X - X X -		

Local Health Department Number	File Date (mm/dd/yyyy)	State File Number	PA Number
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SECTION E – NOTICE OF CONSEQUENCES, ALTERNATIVES, RIGHTS AND RESPONSIBILITIES

By signing this affidavit, I acknowledge that I have read and understand all of the following:

1. **A man should NOT sign this form if he is not sure he is the biological father.** I may seek a genetic test before signing this form. Signing a Paternity Affidavit is voluntary. I may not be able to reverse paternity and the legal responsibilities of support associated with it, once I sign a Paternity Affidavit.
2. I may sign a Paternity Affidavit at the local Health Department at any time before the child's emancipation, as long as there is no father listed on the birth certificate.
3. A woman who knowingly or intentionally falsely names a man as the child's biological father commits a Class A misdemeanor.
4. I received both written and verbal information about the legal effects of signing a Paternity Affidavit.
5. Since this form has legal consequences, I may want to consult an attorney before signing.
6. This affidavit is void if signed more than seventy-two (72) hours after the birth of the child or if signed after the mother has executed a consent to adoption and a petition to adopt has been filed.
7. If I am the presumed father and do not establish paternity now, but want the right to notice and a hearing regarding any adoption of the child, I must register with the Indiana Putative Father Registry through the Indiana State Department of Health.
8. If the mother is receiving or plans to receive public assistance (TANF or Medicaid), she may be required to cooperate in establishing paternity and obtaining a support order or face losing those benefits.
9. If I do not sign a Paternity Affidavit and am unsure about the paternity of the child, I may contact the Prosecuting Attorney's office in my county for help establishing paternity. They will help arrange tests to establish paternity.
10. The custodial party may contact the Prosecuting Attorney's Office in their county for the child support services below through the IV-D program. There is a small fee if the parent is not receiving public assistance.
 - Establishing paternity
 - Finding the absent parent
 - Getting a court order for the payment of child support and medical support
 - Enforcing child support and medical support orders
11. The completion of this legal document establishes paternity with no further court action required and gives the mother or the IV-D agency the right to obtain a child support order requiring the father to pay support.
12. The father will have parenting time as outlined by the Indiana Parenting Time Guidelines, unless a court rules differently. See www.in.gov/judiciary/rules/parenting.
13. A man has the right to withdraw/rescind his acknowledgment of paternity only within sixty (60) days of the date the Paternity Affidavit is completed. To do so he must file an action in a court with jurisdiction over paternity and may need to submit to and pay for genetic testing per IC 16-37-2-2.1(i-j). After sixty (60) days the father may not be able to reverse paternity, even if genetic tests prove he is not the biological father.

Signature of Mother	Date (mm/dd/yyyy)
Signature of Father	Date (mm/dd/yyyy)

SECTION F – ESTABLISHMENT OF JOINT LEGAL CUSTODY

If both mother and father agree, they may complete this section of the Paternity Affidavit to elect to share joint legal custody of the child named in Section D. Joint legal custody means both mother and father share authority and responsibility for the major decisions concerning the child's upbringing, including the child's education, health care and religious training. Also mother and father have equal access to the child's school and medical records. *(Both signatures are required to share joint legal custody.)*

1. ☐ I wish to share joint legal custody of this child with the father listed in Section B of this affidavit.
Signature of Mother (go to 2, then 3): _____
☐ I wish to share joint legal custody of this child with the mother listed in Section C of this affidavit.
Signature of Father (go to 2, then 3): _____
2. If you have chosen to share joint legal custody, the mother still has primary physical custody of the child unless another determination is made in a court proceeding under Indiana Code 31-14. Initials of Mother: _____ Initials of Father: _____
3. If you agree to share joint legal custody, you **MUST** submit the results of a genetic test, performed by an accredited laboratory no later than sixty (60) days after the child's birth, that indicate the father listed in Section B is the biological father of the child. Otherwise, your agreement to share joint legal custody will be void. However the establishment of paternity **IS** still **VALID**. Initials of Mother: _____ Initials of Father: _____
4. ☐ I do **NOT** wish to share joint legal custody of this child and I understand this affidavit may still be used to establish paternity if the other sections are properly completed. *(Only one signature is required but both may sign.)*
Signature of Mother (go to 5): _____
Signature of Father (go to 5): _____
5. If you have chosen **NOT** to share joint legal custody, the mother has **SOLE** legal custody unless another determination is made in a court proceeding under Indiana Code 31-14. However the establishment of paternity (SECTIONS A - E) **IS** still **VALID**.
Initials of Mother: _____ Initials of Father: _____

Subscribed and sworn to before me, the undersigned, a Notary Public, in and for said county, this _____ day of _____, 2_____.

Signature of Notary	My Commission Expires (mm,dd,yyyy)
Printed Name of Notary	County of Residence



**LOCAL HEALTH DEPARTMENT PATERNITY AFFIDAVIT –
CHILD LESS THAN SIXTY (60) DAYS OLD**

State Form 54308 (R2 / 7-10)
INDIANA STATE DEPARTMENT OF HEALTH

Statutory Authority IC 16-37-2
Confidential: IC 16-37-1-10

Local Health Department Number	File Date (mm/dd/yyyy)	State File Number	PA Number
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Before I signed any section of this affidavit I was allowed to review it alone and without the presence of the person listed in Section B.
Also, I was given the opportunity to consult with an adult of my choosing.

Signature of Mother

Before I signed any section of this affidavit I was allowed to review it alone and without the presence of the person listed in Section C.
Also, I was given the opportunity to consult with an adult of my choosing.

Signature of Father

SECTION A – ACKNOWLEDGEMENT OF PATERNITY

We, Father's full legal name and Mother's full legal name have read and understand the consequences, alternatives, rights and responsibilities regarding this affidavit and being duly sworn upon oath depose and say:

I, Father's full legal name am the biological father of Child's full name at birth – last name same as Mother, the Child referred to in

SECTION D of this affidavit who was born on (mm/dd/yyyy) in City at County, State

Hospital or address of location of birth
I, Mother's full legal name whose maiden name is Mother's full maiden name, am the mother of the child referred to in Section D of this affidavit and that Father's full legal name is the biological father of that child.
Therefore, I wish for the birth certificate to identify him as the father.

SECTION B – BIOLOGICAL FATHER'S FACTS OF BIRTH

Full Legal Name	Social Security Number (Pursuant to IC 16-37-2-2.1 (e)(4))	Race (optional)
Date of Birth (mm/dd/yyyy)	Place of Birth (city, state, and county)	
Current Address (number and street, city, state, and ZIP code)	Telephone number ()	
Name of employer (optional)		
Address of employer (number and street, city, state, and ZIP code) (optional)		
Medical insurance company (optional)	Policy number (optional)	

SECTION C – BIOLOGICAL MOTHER'S FACTS OF BIRTH

Full Legal Name	Social Security Number (Pursuant to IC 16-37-2-2.1 (e)(4))	Race (optional)
Date of Birth (mm/dd/yyyy)	Place of Birth (city, state, and county)	
Current Address (number and street, city, state, and ZIP code)	Telephone number ()	
Name of employer (optional)		
Address of employer (number and street, city, state, and ZIP code) (optional)		
Medical insurance company (optional)	Policy number (optional)	

SECTION D – CHILD'S NAME ON INDIANA CERTIFICATE OF BIRTH

It is our mutual desire that the name of our child on the Indiana Certificate of Birth shall be recorded as:

First	Middle	Last
Gender of Child ☐ Male ☐ Female ☐ Not Determined		
If known, last four (4) digits child's Social Security Number X X X - X X -		

Local Health Department Number	File Date (mm/dd/yyyy)	State File Number	PA Number
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SECTION E – NOTICE OF CONSEQUENCES, ALTERNATIVES, RIGHTS AND RESPONSIBILITIES

By signing this affidavit, I acknowledge that I have read and understand all of the following:

1. **A man should NOT sign this form if he is not sure he is the biological father.** I may seek a genetic test before signing this form. Signing a Paternity Affidavit is voluntary. I may not be able to reverse paternity and the legal responsibilities of support associated with it, once I sign a Paternity Affidavit.
2. I may sign a Paternity Affidavit at the local Health Department at any time before the child's emancipation, as long as there is no father listed on the birth certificate.
3. A woman who knowingly or intentionally falsely names a man as the child's biological father commits a Class A misdemeanor.
4. I received both written and verbal information about the legal effects of signing a Paternity Affidavit.
5. Since this form has legal consequences, I may want to consult an attorney before signing.
6. This affidavit is void if signed after the mother has executed a consent to adoption and a petition to adopt has been filed.
7. If I am the presumed father and do not establish paternity now, but want the right to notice and a hearing regarding any adoption of the child, I must register with the Indiana Putative Father Registry through the Indiana State Department of Health.
8. If the mother is receiving or plans to receive public assistance (TANF or Medicaid), she may be required to cooperate in establishing paternity and obtaining a support order or face losing those benefits.
9. If I do not sign a Paternity Affidavit and am unsure about the paternity of the child, I may contact the Prosecuting Attorney's office in my county for help establishing paternity. They will help arrange tests to establish paternity.
10. The custodial party may contact the Prosecuting Attorney's Office in their county for the child support services below through the IV-D program. There is a small fee if the parent is not receiving public assistance.
 - Establishing paternity
 - Getting a court order for the payment of child support and medical support
 - Finding the absent parent
 - Enforcing child support and medical support orders
11. The completion of this legal document establishes paternity with no further court action required and gives the mother or the IV-D agency the right to obtain a child support order requiring the father to pay support.
12. The father will have parenting time as outlined by the Indiana Parenting Time Guidelines, unless a court rules differently. See www.in.gov/judiciary/rules/parenting.
13. A man has the right to withdraw/rescind his acknowledgment of paternity only within sixty (60) days of the date the Paternity Affidavit is completed. To do so he must file an action in a court with jurisdiction over paternity and may need to submit to and pay for genetic testing per IC 16-37-2-2.1(i-j). After sixty (60) days the father may not be able to reverse paternity, even if genetic tests prove he is not the biological father.

Signature of Mother	Date (mm/dd/yyyy)
Signature of Father	Date (mm/dd/yyyy)

SECTION F – ESTABLISHMENT OF JOINT LEGAL CUSTODY

If both mother and father agree, they may complete this section of the Paternity Affidavit to elect to share joint legal custody of the child named in Section D. Joint legal custody means both mother and father share authority and responsibility for the major decisions concerning the child's upbringing, including the child's education, health care and religious training. Also mother and father have equal access to the child's school and medical records. (Both signatures are required to share joint legal custody.)

1. ☐ I wish to share joint legal custody of this child with the father listed in Section B of this affidavit.
Signature of Mother (go to 2, then 3): _____
☐ I wish to share joint legal custody of this child with the mother listed in Section C of this affidavit.
Signature of Father (go to 2, then 3): _____
2. If you have chosen to share joint legal custody, the mother still has primary physical custody of the child unless another determination is made in a court proceeding under Indiana Code 31-14. Initials of Mother: _____ Initials of Father: _____
3. If you agree to share joint legal custody, you MUST submit the results of a genetic test, performed by an accredited laboratory no later than sixty (60) days after the child's birth, that indicate the father listed in Section B is the biological father of the child. Otherwise, your agreement to share joint legal custody will be void. However the establishment of paternity IS still VALID. Initials of Mother: _____ Initials of Father: _____
4. ☐ I do NOT wish to share joint legal custody of this child and I understand this affidavit may still be used to establish paternity if the other sections are properly completed. (Only one signature is required but both may sign.)
Signature of Mother (go to 5): _____
Signature of Father (go to 5): _____
5. If you have chosen NOT to share joint legal custody, the mother has SOLE legal custody unless another determination is made in a court proceeding under Indiana Code 31-14. However the establishment of paternity (SECTIONS A - E) IS still VALID.
Initials of Mother: _____ Initials of Father: _____

Subscribed and sworn to before me, the undersigned, a Notary Public, in and for said county, this _____ day of _____, 2_____.	
Signature of Notary	My Commission Expires (mm,dd,yyyy)
Printed Name of Notary	County of Residence



**LOCAL HEALTH DEPARTMENT PATERNITY AFFIDAVIT –
CHILD MORE THAN SIXTY (60) DAYS OLD**

State Form 48467 (R4 / 7-10)
INDIANA STATE DEPARTMENT OF HEALTH

Statutory Authority IC 16-37-2
Confidential: IC 16-37-1-10

Local Health Department Number	File Date (mm/dd/yyyy)	State File Number	PA Number
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Before I signed any section of this affidavit I was allowed to review it alone and without the presence of the person listed in Section B.
Also, I was given the opportunity to consult with an adult of my choosing.

Signature of Mother

Before I signed any section of this affidavit I was allowed to review it alone and without the presence of the person listed in Section C.
Also, I was given the opportunity to consult with an adult of my choosing.

Signature of Father

SECTION A – ACKNOWLEDGEMENT OF PATERNITY

We, _____ and _____ have read and understand the consequences, alternatives, rights and responsibilities regarding this affidavit and being duly sworn upon oath depose and say:

I, _____ am the biological father of _____, the Child referred to in

SECTION D of this affidavit who was born on _____ in _____ at _____, _____ State

_____ Hospital or address of location of birth

I, _____ whose maiden name is _____, am the mother

of the child referred to in Section D of this affidavit and that _____ is the biological father of that child.

Therefore, I wish for the birth certificate to identify him as the father.

SECTION B – BIOLOGICAL FATHER'S FACTS OF BIRTH

Full Legal Name	Social Security Number (Pursuant to IC 16-37-2-2.1 (e)(4))	Race (optional)
Date of Birth (mm/dd/yyyy)	Place of Birth (city, state, and county)	
Current Address (number and street, city, state, and ZIP code)		Telephone number ()
Name of employer (optional)		
Address of employer (number and street, city, state, and ZIP code) (optional)		
Medical insurance company (optional)		Policy number (optional)

SECTION C – BIOLOGICAL MOTHER'S FACTS OF BIRTH

Full Legal Name	Social Security Number (Pursuant to IC 16-37-2-2.1 (e)(4))	Race (optional)
Date of Birth (mm/dd/yyyy)	Place of Birth (city, state, and county)	
Current Address (number and street, city, state, and ZIP code)		Telephone number ()
Name of employer (optional)		
Address of employer (number and street, city, state, and ZIP code) (optional)		
Medical insurance company (optional)		Policy number (optional)

SECTION D – CHILD'S NAME ON INDIANA CERTIFICATE OF BIRTH

It is our mutual desire that the name of our child on the Indiana Certificate of Birth shall be recorded as:

First	Middle	Last
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Gender of Child ☐ Male ☐ Female ☐ Not Determined	If known, last four (4) digits child's Social Security Number X X X - X X -
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The child is more than sixty (60) days old. Initials of Mother: _____ Initials of Father: _____

Local Health Department Number	File Date (mm/dd/yyyy)	State File Number	PA Number
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SECTION E – NOTICE OF CONSEQUENCES, ALTERNATIVES, RIGHTS AND RESPONSIBILITIES

By signing this affidavit, I acknowledge that I have read and understand all of the following:

1. **A man should NOT sign this form if he is not sure he is the biological father.** I may seek a genetic test before signing this form. Signing a Paternity Affidavit is voluntary. I may not be able to reverse paternity and the legal responsibilities of support associated with it, once I sign a Paternity Affidavit.
2. I may sign a Paternity Affidavit at the local Health Department at any time before the child's emancipation, as long as there is no father listed on the birth certificate.
3. A woman who knowingly or intentionally falsely names a man as the child's biological father commits a Class A misdemeanor.
4. I received both written and verbal information about the legal effects of signing a Paternity Affidavit.
5. Since this form has legal consequences, I may want to consult an attorney before signing.
6. This affidavit is void if signed after the mother has executed a consent to adoption and a petition to **adopt** has been filed.
7. If I am the presumed father and do not establish paternity now, but want the right to notice and a **hearing** regarding any adoption of the child, I must register with the Indiana Putative Father Registry through the Indiana State Department of Health.
8. If the mother is receiving or plans to receive public assistance (TANF or Medicaid), she may be required to cooperate in establishing paternity and obtaining a support order or face losing those benefits.
9. If I do not sign a Paternity Affidavit and am unsure about the paternity of the child, I may contact the Prosecuting Attorney's office in my county for help establishing paternity. They will help arrange tests to establish paternity.
10. The custodial party may contact the Prosecuting Attorney's Office in their county for the child support services below through the IV-D program. There is a small fee if the parent is not receiving public assistance.
 - Establishing paternity
 - Finding the absent parent
 - Getting a court order for the payment of child support and medical support
 - Enforcing child support and medical support orders
11. The completion of this legal document establishes paternity with no further court action required and gives the mother or the IV-D agency the right to obtain a child support order requiring the father to pay support.
12. The father will have parenting time as outlined by the Indiana Parenting Time Guidelines, unless a court rules differently. See www.in.gov/judiciary/rules/parenting.
13. A man has the right to withdraw/rescind his acknowledgment of paternity only within sixty (60) days of the date the Paternity Affidavit is completed. To do so he must file an action in a court with jurisdiction over paternity and may need to submit to and pay for genetic testing per IC 16-37-2-2.1(i-j). After sixty (60) days the father may not be able to reverse paternity, even if genetic tests prove he is not the biological father.

Signature of Mother	Date (mm/dd/yyyy)
Signature of Father	Date (mm/dd/yyyy)

Subscribed and sworn to before me, the undersigned, a Notary Public, in and for said county, this _____ day of _____, 2_____.	
Signature of Notary	My Commission Expires (mm,dd,yyyy)
Printed Name of Notary	County of Residence

Indiana Rules of Court
Indiana Parenting Time Guidelines

Including Amendments Received Through January 1, 2020

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RULE

PARENTING TIME RULE. ADOPTION OF PARENTING TIME RULE AND GUIDELINES

The Indiana Supreme Court hereby adopts the Indiana Parenting Time Guidelines, as drafted by the Domestic Relations Committee and adopted by the Board of the Judicial Conference of Indiana and all subsequent amendments thereto presented by the Domestic Relations Committee of the Judicial Conference of Indiana, as the Parenting Time Rule and Guidelines of this Court.

GUIDELINES

PREAMBLE

The Indiana Parenting Time Guidelines are based on the premise that it is usually in a child's best interest to have frequent, meaningful and continuing contact with each parent. It is assumed that both parents nurture their child in important ways, significant to the development and well being of the child. The Guidelines

also acknowledge that scheduling parenting time is more difficult when separate households are involved and requires persistent effort and communication between parents to promote the best interest of the children involved. The purpose of these guidelines is to provide a model which may be adjusted depending upon the unique needs and circumstances of each family. These guidelines are based upon the developmental stages of children. The members of the Domestic Relations Committee of the Judicial Conference of Indiana developed the guidelines after reviewing the current and relevant literature concerning visitation, the visitation guidelines of other geographic areas, and the input of child development experts and family law practitioners. Committee members also relied upon data from surveys of judges, attorneys, and mental health professionals who work with children, reviews of court files, and a public hearing.

A child whose parents live apart has special needs related to the parent-child relationship. A child's needs and ability to cope with the parent's situation change as the child matures. Parents should consider these needs as they negotiate parenting time. They should be flexible and create a parenting time agreement which addresses the unique needs of the child and their circumstances. Parents and attorneys should always demonstrate a spirit of cooperation. The Indiana Parenting Time Guidelines are designed to assist parents and courts in the development of their own parenting plans. In the event the parties cannot create their own parenting time agreement, these guidelines represent the minimum time a parent should have to maintain frequent, meaningful, and continuing contact with a child.

A. A CHILD'S BASIC NEEDS

To insure more responsible parenting and to promote the healthy adjustment and growth of a child each parent should recognize and address a child's basic needs:

1. To know that the parents' decision to live apart is not the child's fault.
2. To develop and maintain an independent relationship with each parent and to have the continuing care and guidance from each parent.
3. To be free from having to side with either parent and to be free from conflict between the parents.
4. To have a relaxed, secure relationship with each parent without being placed in a position to manipulate one parent against the other.
5. To enjoy regular and consistent time with each parent.
6. To be financially supported by each parent, regardless of how much time each parent spends with the child.
7. To be physically safe and adequately supervised when in the care of each parent and to have a stable, consistent and responsible child care arrangement when not supervised by a parent.
8. To develop and maintain meaningful relationships with other significant adults (grandparents, stepparents and other relatives) as long as these relationships do not interfere with or replace the child's primary relationship with the parents.

B. PURPOSE OF COMMENTARY FOLLOWING GUIDELINE.

Many of the guidelines are followed by a commentary further explaining the guideline or setting forth the child centered philosophy behind the guideline. The commentary is not an enforceable rule but provides guidance in applying the guideline.

Commentary

1. Use of Term "Parenting Time." Throughout these Guidelines the words "parenting time" have been used instead of the word "visitation" so as to emphasize the importance of the time a parent spends with a child. The concept that a non-custodial parent "visits" with a child does not convey the reality of the continuing parent-child relationship.

2. Minimum Time Concept. The concept that these Guidelines represent the minimum time a non-custodial parent should spend with a child when the parties are unable to reach their own agreement. These guidelines should not be interpreted as a limitation of time imposed by the court. They are not meant to foreclose the parents from agreeing to, or the court from granting, such additional or reduced parenting

time as may be in the best interest of the child in any given case. In addressing all parenting time issues, both parents should exercise sensibility, flexibility and reasonableness.

3. Parenting Time Plans or Calendars. It will often be helpful for the parents to actually create a year-long parenting time calendar or schedules. This may include a calendar in which the parties have charted an entire year of parenting time. Forecasting a year ahead helps the parents anticipate and plan for holidays, birthdays, and school vacations. The parenting time calendar may include agreed upon deviations from the Guidelines, which recognize the specialized needs of the children and parents. Parenting Time Calendars may be helpful in arranging holidays, extended summer, and/or when the parents live at a distance and frequent travel arrangements are needed. Indiana's family resource website, which includes information to develop Parenting Time Plans is <http://courts.in.gov/selfservice/2332.htm>.

C. SCOPE OF APPLICATION

1. Generally. These Guidelines are applicable to all child custody situations, including paternity cases and cases involving joint legal custody where one person has primary physical custody. However, they are not applicable to situations involving family violence, substance abuse, risk of flight with a child, or any other circumstances the court reasonably believes endanger the child's physical health or safety, or significantly impair the child's emotional development. In such cases one or both parents may have legal, psychological, substance abuse or emotional problems that may need to be addressed before these Guidelines can be employed. The type of help that is needed in such cases is beyond the scope of these Guidelines.

2. Amendments. Existing parenting time orders on the date of adoption of these amendments shall be enforced according to the parenting time guidelines that were in effect on the date the parenting time order was issued. Changes to the Indiana Parenting Time Guidelines do not alone constitute good cause for amendment of an existing parenting time order; however, a court or parties to a proceeding may refer to these guidelines in making changes to a parenting time order after the effective date of the guidelines.

Commentary

Parents who agree that current changes to the Indiana Parenting Time Guidelines are in their child's best interests should file their written agreement with the court for approval. Parents may agree to some or all of the changes to the Indiana Parenting Time Guidelines and should be specific in their written agreement.

3. Presumption. There is a presumption that the Indiana Parenting Time Guidelines are applicable in all cases. Deviations from these Guidelines by either the parties or the court that result in parenting time less than the minimum time set forth below must be accompanied by a written explanation indicating why the deviation is necessary or appropriate in the case. A court is not required to give a written explanation as to why a parent is awarded more time with the child than the minimum in these guidelines.

Commentary

The written explanation need not be as formal as Findings of Fact and Conclusions of Law; however, it must state the reason(s) for the deviation. Because the parenting time guidelines are minimum standards, it is recommended parents and courts not "default" to these guidelines in lieu of a consideration of the best parenting time plan.

SECTION I. GENERAL RULES APPLICABLE TO PARENTING TIME

A. COMMUNICATIONS

1. Between Parents. Parents shall at all times keep each other advised of their home and work addresses, telephone numbers and email addresses. Notice of any change in this information shall be given to the other parent in writing. All communications concerning a child shall be conducted between the parents. Any communication shall occur at reasonable times and places unless circumstances require otherwise. A child shall not be used to exchange documents or financial information between parents.

2. With A Child Generally. A child and a parent shall be entitled to private communications without interference from the other parent. A child shall never be used by one parent to spy or report on the other. Each parent shall encourage the child to respect and love the other parent. Parents shall at all times avoid speaking negatively about each other in or near the presence of the child, and they shall firmly discourage such conduct by relatives or friends.

3. With A Child By Telephone. Both parents shall have reasonable phone access to their child. Telephone communication with the child by either parent to the residence where the child is located shall be conducted at reasonable hours, shall be of reasonable duration, and at reasonable intervals, without interference from the other parent.

If a parent uses an answering machine, voice mail or a pager, messages left for a child shall be promptly communicated to the child and the call returned.

Commentary

Parents should agree on a specified time for telephone calls so that a child will be available to receive the call. The parent initiating the call should bear the expense of the call. A child may, of course, call either parent, though at reasonable hours, frequencies, and at the cost of the parent called if it is a long distance call.

Examples of unacceptable interference with communication include a parent refusing to answer a phone or refusing to allow the child or others to answer; a parent recording phone conversations between the other parent and the child; turning off the phone or using a call blocking mechanism or otherwise denying the other parent telephone contact with the child.

4. With A Child By Mail. A parent and a child shall have a right to communicate privately by e-mail and faxes, and by cards, letters, and packages, without interference by the other parent.

Commentary

A parent should not impose obstacles to mail communications. For example, if a custodial parent has a rural address, the parent should maintain a mailbox to receive mail at that address. A parent who receives a communication for a child shall promptly deliver it to the child.

5. Electronic Communication. The same provisions above apply to electronic communications of any kind. However, these provisions shall not be construed to interfere with the authority of either parent to impose reasonable restrictions to a child's access to the Internet.

6. Emergency Notification. For emergency notification purposes, whenever a child travels out of the area with either parent, one of the following shall be provided to the other parent: An itinerary of travel dates, destinations, and places where the child or the traveling parent can be reached, or the name and telephone number of an available third person who knows where the child or parent may be located.

7. Communication between parent and child. Each parent is encouraged to promote a positive relationship between the children and the other parent. It is important, therefore, that communication remain open, positive and frequent. Regular phone contact is an important tool in maintaining a parent/child relationship as well as other forms of contact such as letter, e-mail and other more technologically advanced communications systems such as video chat and Skype. No person shall block reasonable phone or other communication access between a parent and child or monitor such communications. A parent who receives a communication for a child shall promptly deliver it to the child. Both parents shall promptly provide the other parent with updated cell and landline phone numbers and e-mail addresses when there has been a change.

Commentary

It is important for a child to have as much contact with both parents as possible. Interference with reasonable communication between a parent and child, including monitoring of that communication is destructive not only to the child's relationship with the other parent, but is also destructive to the child. Attempts to block access to and contact with the other parent may violate these parenting time guidelines. These types of behaviors may lead to sanctions, a change of parenting time, or in some cases, a change of custody. The prohibition applies equally to both parents.

B. IMPLEMENTING PARENTING TIME

1. Transportation Responsibilities. Unless otherwise agreed between the parents, the parent receiving the child shall provide transportation for the child at the start of the scheduled parenting time and the other parent shall provide transportation for the child at the end of the scheduled parenting time.

Commentary

1. Presence Of Both Parents. *Both parents should be present at the time of the exchange and should make every reasonable effort to personally transport the child. On those occasions when a parent is unable to be present at the time of the exchange or it becomes necessary for the child to be transported by someone other than a parent, this should be communicated to the other parent in advance if possible. In such cases, the person present at the exchange, or transporting the child, should be a responsible adult with whom the child is familiar and comfortable.*

2. Distance/Cost As Factors. *Where the distance between the parents' residences is such that extended driving time is necessary, the parents should agree on a location for the exchange of the child. The cost of transportation should be shared based on consideration of various factors, including the distance involved, the financial resources of the parents, the reason why the distances exist, and the family situation of each parent at that time.*

3. Parental Hostility. *In a situation where hostility between parents makes it impracticable to exchange a child at the parents' residences, the exchange of the child should take place at a neutral site.*

2. Punctuality. Each parent shall have the child ready for exchange at the beginning and at the end of the scheduled parenting time and shall be on time in picking up and returning the child. The parents shall communicate as early as possible regarding any situation that would interfere with the timely exchange of the child. Both parents have a duty to communicate any time the exchange is delayed. When no communication is initiated by the delaying parent, and pick up or return of a child does not occur within a reasonable time, the time and conditions of the exchange may be rescheduled at a time and place convenient to the parent not responsible for the delay.

Commentary

Punctuality is a matter of courtesy to the child and impacts the child's sense of security and well-being. Parents should make every effort to pick up and return a child at the agreed time, and not substantially earlier or later. Parents should recognize, however, that circumstances occur that require leeway in the scheduled times. What constitutes unreasonable time is fact sensitive. Parents are encouraged to include in their parenting plans what constitutes an unreasonable time.

3. Clothing. The custodial parent shall send an appropriate and adequate supply of clean clothing with the child and the non-custodial parent shall return such clothing in a clean condition. Each parent shall advise the other, as far in advance as possible, of any special activities so that the appropriate clothing may be available to the child.

Commentary

It is the responsibility of both parents to ensure their child is properly clothed. The non-custodial parent may wish to have a basic supply of clothing available for the child at his or her home.

4. Privacy of Residence. A parent may not enter the residence of the other, except by express permission of the other parent, regardless of whether a parent retains a property interest in the residence of the other. Accordingly, the child shall be picked up at the front entrance of the appropriate residence unless the parents agree otherwise. The person delivering the child shall not leave until the child is safely inside.

C. CHANGES IN SCHEDULED PARENTING TIME

Introduction

Parents should recognize there will be occasions when modification of the existing parenting schedule will be necessary. Parents should exercise reasonable judgment in their dealings with each other and with their child. Parents should be flexible in scheduling parenting time and should consider the benefits to the child of frequent, meaningful and regular contact with each parent and the schedules of the child and each parent.

1. Scheduled Parenting Time To Occur As Planned. Parenting time is both a right and a responsibility, and scheduled parenting time shall occur as planned. Both parents are jointly responsible for following the parenting time orders. A child shall not make parenting time decisions. If a parent is unable to provide personal care for the child during scheduled parenting time, then that parent shall provide alternate child care or pay the reasonable costs of child care caused by the failure to exercise the scheduled parenting time.

Commentary

Parents should understand it is important for a child to experience consistent and ongoing parenting time. A child is entitled to rely on spending time with each parent in a predictable way and adjusts better after a routine has been established and followed. A parent who consistently cancels scheduled parenting time sends a very harmful message to the child that the child is not a priority in that parent's life. In addition to disappointing a child, the voluntary cancellation of scheduled parenting time by one parent may interfere with the plans of the other parent or cause the other parent to incur child care and other costs.

Parents share a joint and equal responsibility for following parenting time orders. A child shares none of this responsibility and should not be permitted to shoulder the burden of this decision. See also Section E. 3.

Unacceptable excuses for denying parenting time include the following:

The child unjustifiably hesitates or refuses to go.

The child has a minor illness.

The child has to go somewhere.

The child is not home.

The noncustodial parent is behind in support.

The custodial parent does not want the child to go.

The weather is bad (unless the weather makes travel unsafe).

The child has no clothes to wear.

The other parent failed to meet preconditions established by the custodial parent.

2. Adjustments to Schedule / “Make Up” Time. Whenever there is a need to adjust the established parenting schedules because of events outside the normal family routine, the parent who becomes aware of the circumstance shall notify the other parent as far in advance as possible. Both parents shall then attempt to reach a mutually acceptable adjustment to the parenting schedule.

If an adjustment results in one parent losing scheduled parenting time with the child, “make-up” time should be exercised as soon as possible. If the parents cannot agree on “make-up” time, the parent who lost the time shall select the “make-up” time within one month of the missed time.

Commentary

There will be occasions when scheduled parenting times may need to be adjusted because of illnesses or special family events such as weddings, funerals, reunions, and the like. Each parent should accommodate the other in making the adjustment so that the child may attend the family event. After considering the child's best interests, the parent who lost parenting time may decide to forego the "make-up" time.

3. Opportunity for Additional Parenting Time. When it becomes necessary that a child be cared for by a person other than a parent or a responsible household family member, the parent needing the child care shall first offer the other parent the opportunity for additional parenting time, if providing the child care by the other parent is practical considering the time available and the distance between residences. The other parent is under no obligation to provide the child care. If the other parent elects to provide this care, it shall be done at no cost and without affecting child support. The parent exercising additional parenting time shall provide the necessary transportation unless the parties otherwise agree.

Commentary

The rule providing for opportunities for additional parenting time promotes the concept that a child receives greater benefit from being with a parent rather than a child care provider who is not a household family member. The household family member is defined as an adult person residing in the household, who is related to the child by blood, marriage or adoption. The rule is also intended to be practical. When a parent's work schedule or other regular activities require hiring or arranging for a child care provider who is not a household family member, the other parent should be given the opportunity to provide the care. Distance, transportation or time may make the rule impractical. The period of absence which triggers the exchange will vary depending upon the circumstances of the parties. Parents should agree on the amount of child care time and the circumstances that require the offer be made. It is presumed that this rule applies in all cases which the guidelines cover; however, the parties or a trial court may, within discretion, determine that a deviation is necessary or appropriate. Any such deviation must be accompanied by a written explanation. See Shelton v. Shelton, 840 N.E.2d 835 (Ind. 2006)

This section is sometimes mistakenly referred to as the "right of first refusal." It is more accurate to refer to this section as an opportunity to exercise additional parenting time.

D. EXCHANGE OF INFORMATION

Introduction

Parents should obtain and share information about their children. Parents should take the initiative to obtain information about their child from the various providers of services. Each parent is responsible to establish a relationship with the child's school, health care provider and other service provider. A child may suffer inconvenience, embarrassment, and physical or emotional harm when parents fail to actively obtain and share information.

1. School Records. Under Indiana law, both parents are entitled to direct access to their child's school records, Indiana Code § 20-33-7-2. Each parent should obtain school information on their own without depending on the other parent. A parent shall not interfere with the right of the other parent to communicate directly with school personnel concerning a child. The noncustodial parent shall be listed as an emergency contact unless there are special circumstances concerning child endangerment.

2. School Activities. Each parent shall promptly notify the other parent of all information about school activities, which is not accessible to the other parent. A parent shall not interfere with the right of the other parent to communicate directly with school personnel concerning a child's school activities. The parent exercising parenting time shall be responsible to transport the child to school related activities.

Commentary

Each parent with knowledge of the child's event should promptly inform the other parent of the date, time, place and event. The opportunity for a child to attend a school function should not be denied solely because a parent is not able to attend the function. The child should be permitted to attend the function with the available parent. Scheduled parenting time should not be used as an excuse to deny the child's participation in school related activities, including practices and rehearsals.

3. Other Activities. Each parent shall promptly notify the other parent of all organized events in a child's life which permit parental and family participation. A parent shall not interfere with the opportunity of the other parent to volunteer for or participate in a child's activities.

Commentary

Each parent should have the opportunity to participate in other activities involving the child even if that activity does not occur during his or her parenting time. This includes activities such as church functions, athletic events, scouting and the like. It is important to understand that a child is more likely to enjoy these experiences when supported by both parents.

4. Health Information. Under Indiana law, both parents are entitled to direct access to their child's medical records, Indiana Code § 16-39-1-7; and mental health records, Indiana Code § 16-39-2-9.

- a. If a child is undergoing evaluation or treatment, the custodial parent shall communicate that fact to the non-custodial parent.
- b. Each parent shall immediately notify the other of any medical emergencies or illness of the child that requires medical attention.
- c. If a child is taking prescription medication or under a health care directive, the custodial parent shall provide the noncustodial parent with a sufficient amount of medication and instructions whenever the noncustodial parent is exercising parenting time. Medical instructions from a health care provider shall be followed.
- d. If required by the health care provider, the custodial parent shall give written authorization to the child's health care providers, permitting an ongoing release of all information regarding the child to the non-custodial parent including the right of the provider to discuss the child's situation with the non-custodial parent.

Commentary

Each parent has the responsibility to become informed and participate in ongoing therapies and treatments prescribed for a child and to ensure that medications are administered as prescribed. An evaluation or treatment for a child includes medical, dental, educational, and mental health services.

5. Insurance. A parent who has insurance coverage on the child shall supply the other parent with current insurance cards, an explanation of benefits, and a list of insurer-approved or HMO-qualified health care providers in the area where each parent lives. If the insurance company requires specific forms, the insured parent shall provide those forms to the other parent.

Commentary

Qualified health care orders may permit the parent to communicate with the medical health care insurance provider.

E. RESOLUTION OF PROBLEMS AND RELOCATION

1. Disagreements Generally. When a disagreement occurs regarding parenting time and the requirements of these Guidelines, both parents shall make every effort to discuss options, including mediation, in an attempt to resolve the dispute before going to court.

2. Mediation. If court action is initiated, the parents shall enter into mediation unless otherwise ordered by the court.

3. Child Hesitation. If a child is reluctant to participate in parenting time, each parent shall be responsible to ensure the child complies with the scheduled parenting time. In no event shall a child be allowed to make the decision on whether scheduled parenting time takes place.

Commentary

In most cases, when a child hesitates to spend time with a parent, it is the result of naturally occurring changes in the life of a child. The child can be helped to overcome hesitation if the parents listen to the child, speak to each other and practically address the child's needs.

Parents should inquire why a child is reluctant to spend time with a parent. If a parent believes that a child's safety is compromised in the care of the other parent, that parent should take steps to protect the child, but must recognize the rights of the other parent. This situation must be promptly resolved by both parents. Family counseling may be appropriate. If the parents cannot resolve the situation, either parent may seek the assistance of the court.

4. Relocation. When either parent or other person who has custody or parenting time considers a change of residence, a 90 day advance notice of the intent to move must be provided to the other parent or person.

Commentary

1. Impact Of Move. *Parents should recognize the impact that a change of residence may have on a child and on the established parenting time. The welfare of the child should be a priority in making the decision to move.*

2. Indiana Law. *Indiana law (Ind. Code § 31-17-2.2) requires all individuals who have (or who are seeking) child custody or parenting time, and who intend to relocate their residence to provide notice to an individual who has (or is seeking) child custody, parenting time or grandparent visitation. The notice must be made by registered or certified mail not later than 90 days before the individual intends to move. The relocating party's notice must provide certain specified and detailed information about the move. This information includes: the new address; new phone numbers; the date of the proposed move; a stated reason for the move; a proposed new parenting time schedule; and must include certain statements regarding the rights of the non-relocating party. The notice must also be filed with the Court. The notice is required for **all proposed moves** by custodial **and** non custodial parents in all cases when the proposed move involves a change of the primary residence for a period of at least sixty (60) days. This is true even when a person plans to move across the street or across town, and when a party plans on moving across the state or the country, or to another country.*

5. Withholding Support or Parenting Time. Neither parenting time nor child support shall be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for noncompliance. A child has the right both to support and parenting time, neither of which is dependent upon the other. If there is a violation of either requirement, the remedy is to apply to the court for appropriate sanctions.

6. Enforcement of Parenting Time.

- A. *Contempt Sanctions.* Court orders regarding parenting time must be followed by both parents. Unjustified violations of any of the provisions contained in the order may subject the offender to contempt sanctions. These sanctions may include fine, imprisonment, and/or community service.
- B. *Injunctive Relief.* Under Indiana law, a noncustodial parent who regularly pays support and is barred from parenting time by the custodial parent may file an application for an injunction to enforce parenting time under Ind. Code § 31-17-4-4.
- C. *Criminal Penalties.* Interference with custody or visitation rights may be a crime. Ind. Code § 35-42-3-4.
- D. *Attorney Fees.* In any court action to enforce an order granting or denying parenting time, a court may award reasonable attorney fees and expenses of litigation. A court may consider whether the parent seeking attorney fees substantially prevailed and whether the parent violating the order did so knowingly or intentionally. A court can also award attorney fees and expenses against a parent who pursues a frivolous or vexatious court action.

SECTION II. SPECIFIC PARENTING TIME PROVISIONS

A. INTRODUCTION

The best parenting plan is one created by parents which fulfills the unique needs of the child and the parents. Parents should attempt to create their own parenting plan which is in the best interests of the child. If an agreement is reached, the parenting plan shall be reduced to writing, signed by both parties, and filed for approval by the court in order to be enforceable. When the parties cannot reach an agreement on a parenting plan, the specific provisions which follow are designed to assist parents and the court in the development of a parenting plan. They represent the minimum recommended time a parent should have to maintain frequent, meaningful, and continuing contact with a child.

For identification purposes, the following provisions set forth parenting time for the non-custodial parent and assume the other parent has sole custody or primary physical custody in a joint legal custody situation. These identifiers are not meant to diminish or raise either person's status as a parent.

B. OVERNIGHT PARENTING TIME.

Unless it can be demonstrated by the custodial parent that the non-custodial parent has not had regular care responsibilities for the child, parenting time shall include overnights. If the non-custodial parent has not previously exercised regular care responsibilities for the child, then parenting time shall not include overnights prior to the child's third birthday, except as provided in subsection C. below.

Commentary

1. Assumptions. The provisions identify parenting time for the non-custodial parent and assume that one parent has sole custody or primary physical custody of a child, that both parents are fit and proper, that both parents have adequately bonded with the child, and that both parents are willing to parent the child. They further assume that the parents are respectful of each other and will cooperate with each other to promote the best interests of the child. Finally, the provisions assume that each parent is responsible for the nurturing and care of the child. Parenting time is both a right and a trust and parents are expected to assume full responsibility for the child during their individual parenting time.

2. Lack of Contact. Where there is a significant lack of contact between a parent and a child, there may be no bond, or emotional connection, between the parent and the child. It is recommended that scheduled parenting time be "phased in" to permit the parent and child to adjust to their situation. It may be necessary for an evaluation of the current relationship (or lack thereof) between the parent and the child in order to recommend a parenting time plan. A guardian ad litem, a mental health professional, a representative from a domestic relations counseling bureau or any other neutral evaluator may be used for this task.

3. Age Categories. The chronological age ranges set forth in the specific provisions are estimates of the developmental stages of children since children mature at different times.

4. Multiple Children of Different Ages. When a family has children of different ages, the presumption is that all the children should remain together during the exercise of parenting time. However, the standards set for a young child should not be ignored, and there will be situations where not all of the children participate in parenting time together. On the other hand, when there are younger and older children, it will generally be appropriate to accelerate, to some extent, the time when the younger children move into overnight or weekend parenting time, to keep sibling relationships intact.

5. Non-traditional Work Schedules. For parents with non-traditional work schedules, who may regularly work weekends, weekday parenting time should be substituted for the weekend time designated in these rules. Similar consideration should also be given to parents with other kinds of non-traditional work hours.

C. INFANTS AND TODDLERS

1. Introduction

The first few years of a child's life are recognized as being critical to that child's ultimate development. Infants (under eighteen months) and toddlers (eighteen months to three years) have a great need for continuous contact with the primary care giver who provides a sense of security, nurturing and predictability. It is thought best if scheduled parenting time in infancy be minimally disruptive to the infant's schedule.

Commentary

1. Both Parents Necessary. It is critical that a child be afforded ample opportunity to bond with both parents. A young child thrives when both parents take an active role in parenting. There is a positive relationship between the degree of involvement of mothers and fathers and the social, emotional, and cognitive growth of a child. Both parents can care for their child with equal effectiveness and their parenting styles may make significant contributions to the development of the child. Parents, therefore, must be flexible in creating for each other opportunities to share both the routine and special events of their child's early development.

2. Frequency Versus Duration. Infants and young children have a limited but evolving sense of time. These children also have a limited ability to recall persons not directly in front of them. For infants, short frequent visits are much better than longer visits spaced farther apart. From the vantage point of the young child, daily contact with each parent is ideal. If workable, it is recommended that no more than two days go by without contact with the noncustodial parent. A parent who cannot visit often may desire to

increase the duration of visits but this practice is not recommended for infants. Frequent and predictable parenting time is best.

3. *Overnight contact between parents and very young children can provide opportunities for them to grow as a family. At the same time, when very young children experience sudden changes in their night time care routines, especially when these changes include separation from the usual caretaker, they can become frightened and unhappy. Under these circumstances, they may find it difficult to relax and thrive, even when offered excellent care.*

4. *When a very young child is accustomed to receiving regular, hands-on care from both parents, the child should continue to receive this care when the parents separate. Regardless of custodial status, a parent who has regularly cared for the child prior to separation should exercise overnight parenting time. When a parent has not provided regular hands-on care for the child prior to separation, overnight parenting time is not recommended until the parent and the child have developed a predictable and comfortable daytime care taking routine.*

2. Parenting Time In Early Infancy. (Birth through Age 9 Months)

(A) Birth through Age 4 Months:

- (1) Three (3) non-consecutive “days” per week of two (2) hours in length.
- (2) All scheduled holidays of two (2) hours in length.
- (3) Overnight if the noncustodial parent has exercised regular care responsibilities for the child but not to exceed one (1) 24 hour period per week.

Commentary

Parenting time should occur in a stable place and without disruption of an infant's established routine.

(B) Age 5 Months through Age 9 Months:

- (1) Three (3) non-consecutive “days” per week of three (3) hours per day. The child is to be returned at least one (1) hour before evening bedtime.
- (2) All scheduled holidays of three (3) hours in length. The child is to be returned at least one (1) hour before evening bedtime.
- (3) Overnight if the noncustodial parent has exercised regular care responsibilities for the child but not to exceed one (1) 24 hour period per week.

3. Parenting Time In Later Infancy (Age 10 Months through Age 36 Months)

(A) Age 10 Months through Age 12 Months:

- (1) Three (3) non-consecutive “days” per week, with one day on a “non-work” day for eight (8) hours. The other days shall be for three (3) hours each day. The child is to be returned at least one (1) hour before evening bedtime.
- (2) All scheduled holidays for eight (8) hours. The child is to be returned at least one (1) hour before evening bedtime.
- (3) Overnight if the noncustodial parent has exercised regular care responsibilities for the child but not to exceed one (1) 24 hour period per week.

(B) Age 13 Months through Age 18 Months:

- (1) Three (3) non-consecutive “days” per week, with one day on a “non-work” day for ten (10) hours. The other days shall be for three (3) hours each day. The child is to be returned at least one (1) hour before evening bedtime.
- (2) All scheduled holidays for eight (8) hours. The child is to be returned at least (1) hour before evening bedtime.

- (3) Overnight if the noncustodial parent has exercised regular care responsibilities for the child but not to exceed one (1) 24 hour period per week.
- (C) Age 19 Months through 36 Months:
 - (1) Alternate weekends on Saturdays for ten (10) hours and on Sundays for ten (10) hours. The child is to be returned at least one hour before bedtime, unless overnight is appropriate.
 - (2) One (1) “day” preferably in mid-week for three (3) hours, the child to be returned at least one (1) hour before evening bedtime, unless overnight during the week is appropriate.
 - (3) All scheduled holidays for ten (10) hours. The child is to be returned one hour before bedtime.
 - (4) If the non-custodial parent who did not initially have regular care responsibilities has exercised the scheduled parenting time under these guidelines for at least nine (9) continuous months, regular parenting time as indicated in section II. D. 1. below may take place.

Commentary

Parenting Time Guideline II. C. 3. (C) (4) is intended to provide a way to shorten the last age-based parenting time stage when the infant is sufficiently bonded to the non-custodial parent so that the infant is able to regularly go back and forth, and particularly wake-up in a different place, without development-retarding strain. If this is not occurring, the provision should not be utilized. The nine (9) month provision is applicable only within the 19 to 36 month section. Therefore, as a practical matter, the provision could not shorten this stage until the infant is at least 28 months old. The provision applies equally to all non-custodial parents.

D. PARENTING TIME - CHILD 3 YEARS OF AGE AND OLDER

1. Regular Parenting Time

- (a) On alternating weekends from Friday at 6:00 P.M. until Sunday at 6:00 P.M. (the times may change to fit the parents' schedules);
- (b) One (1) evening per week, preferably in mid-week, for a period of up to four hours but the child shall be returned no later than 9:00 p.m; and,
- (c) On all scheduled holidays.

Commentary

Where the distance from the non-custodial parent's residence makes it reasonable, the weekday period may be extended to an overnight stay. In such circumstances, the responsibility of feeding the child the next morning, getting the child to school or day care, or returning the child to the residence of the custodial parent, if the child is not in school, shall be on the non-custodial parent.

2. Extended Parenting Time (Child 3 through 4 Years Old)

The noncustodial parent shall have up to four (4) non-consecutive weeks during the year beginning at 4:00 P.M. on Sunday until 4:00 P.M. on the following Sunday. The non-custodial parent shall give at least sixty (60) days advance notice of the use of a particular week.

3. Extended Parenting Time (Child 5 and older)

One-half of the Summer Vacation. The summer vacation begins the day after school lets out for the summer, and ends the day before school resumes for the new school year. The time may be either consecutive or split into two (2) segments. The noncustodial parent shall give notice to the custodial parent of the selection by April 1 of each year. If such notice is not given, the custodial parent shall make the selection and notify the other parent. All notices shall be given in writing and verbally. A timely selection may not be rejected by the other parent. Notice of an employer's restrictions on the vacation time of either parent shall be delivered to the other parent as soon as that information is available. In scheduling parenting time the employer imposed restrictions on either parent's time shall be considered by the parents in arranging their time with their child.

If a child attends a school that has a year-round or balanced calendar, the noncustodial parent's extended parenting time shall be one-half of the time for fall and spring school breaks. Unless otherwise agreed to by the parents or ordered by the trial court, the noncustodial parent shall exercise parenting time the first

half of school break in odd years, and the second half of school break in even years. Absent an agreement of the parties, the first half of the break will begin two hours after the child is released from the school, and the second half of the period will end at 6:00 p.m. on the day before school begins again. Summer Vacation should be shared equally between parents as provided in the paragraph above. Winter break/Christmas vacation should be shared as provided in the Holiday Parenting Time Schedule.

If a child attends summer school, the parent exercising parenting time shall be responsible for the child's transportation to and attendance at school.

During any extended summer period of more than two (2) consecutive weeks with the non-custodial parent, the custodial parent shall have the benefit of the regular parenting time schedule set forth above, which includes alternating weekends and mid-week parenting time, unless impracticable because of distance created by out of town vacations.

Similarly, during the summer period when the children are with the custodial parent for more than two (2) consecutive weeks, the non-custodial parent's regular parenting time continues, which includes alternating weekends and mid-week parenting time, unless impracticable because of distance created by out of town vacations.

The selection of a parent's summer parenting time shall not deprive the other parent of the Holiday Parenting Time Schedule below. See Section II. F.

E. PARENTING TIME FOR THE ADOLESCENT AND TEENAGER

- 1. Regular Parenting Time.** Regular parenting time by the noncustodial parent on alternating weekends, during holidays, and for an extended time during the summer months as set forth in the Parenting Time Guidelines (Section II. D.) shall apply to the adolescent and teenager.

Commentary

1. A Teenager Needs Both Parents. Adolescence is a stage of child development in which parents play an extremely important role. The single most important factor in keeping a teenager safe is a strong connection to the family. The responsibility to help a teenager maintain this connection to the family rests with the parents, regardless of their relationship. The parents must help the teenager balance the need for independence with the need to be an active part of the family. To accomplish this, they must spend time with the teenager. Parents must help the adolescent become a responsible adult. A teenager should safely learn life's lessons if the parents provide the rules which prevent dangerous mistakes.

2. Anchors of Adolescence. Regardless of whether the parents live together or apart, an adolescent can be made to feel part of a supportive, helpful family. Things that can help this occur include:

Regular time spent in the company of each parent. Parents need to be available for conversation and recreation. They need to teach a teenager skills that will help the teen in adult life.

Regular time spent in the company of siblings. Regardless of personality and age differences, siblings who spend time together can form a family community that can be a tremendous support in adult life. If the children do not create natural opportunities for them to want to do things together, the parents will need to create reasons for this to occur.

Emphasis on worthwhile values. Parent and teens together should invest time in wholesome activities that teach a teenager important lessons. If a teenager identifies with worthwhile values, the teen is more likely to have a positive self-image.

Time spent with good friends. A parent's expectations can influence a teenager's choice of friends. Meet your teenager's friends and their parents and interact with them as guests in your home. This will increase the likelihood that your teenager's friends will be people who are comfortable in the environment that is good for the teen.

Clear rules that are agreed upon by both parents. As a child matures, it is very important that the teen knows rules of acceptable behavior. The chances of this occurring are much better if both parents agree in these important areas. When parents jointly set the standard of behavior for their teen, the chances of the child accepting those values are greatly increased.

Good decisions/greater freedoms. A teenager who does what is expected should be offered more freedom and a wider range of choices. It is helpful if a teenager is reminded of the good decisions that have

caused the teen to be given more privileges. If a teen is helped to see that privileges are earned and not natural “rights” he or she will be more likely to realize that the key to getting more freedom is to behave well. If rules are not followed, appropriate consequences should result. A teenager who does not make good use of independence should have less of it.

3. Decision Making In Parenting A Teenager. *The rearing of a teenager requires parents to make decisions about what their teen should be allowed to do, when, and with whom. At the same time, parents who live apart may have difficulty communicating with each other.*

If parents are not able to agree, the teenager, who very much wants freedom from adult authority, should never be used as the “tie breaker.” When parents live apart, it is more likely that a child will be required to make decisions, not as a healthy part of development, but simply to resolve disagreements between the parents.

As a general rule, a teenager should be involved in making important decisions if the parents agree the opportunity to make the decision is valuable, and the value of that opportunity outweighs any possible harm of a poor decision. If the parents feel the welfare of the child is dependent on the decision made, and if they allow the child to make a decision simply because they cannot agree, the parents are in danger of failing the child.

Example #1

Mary Jones and John Jones disagree as to whether or not their daughter, Sally, should study a foreign language in middle school. Mary feels that this early exposure to a foreign language will offer Sally an advantage when she continues this study in high school. John would like Sally to have the opportunity to develop her artistic talents through electives in drawing and painting. The Jones agree that Sally's success and happiness will in large part be determined by her motivation. They agree that Sally should decide between a foreign language and art, and that they will support whatever decision she makes.

***Comment:** Mary and John feel that Sally is mature enough to think about what interests her and makes her happy. They feel that an opportunity to do this in choosing an elective will be an important experience for Mary--more important than the relative merits of foreign language or art study to Sally's academic career. This is a good example of parents agreeing to involve the adolescent in making a decision that resolves their own disagreement.*

Example #2

Tom Smith and Sue Smith cannot come to a visitation agreement. Tom believes their 17 year old son, Pete, should have visitation at a time to be determined by Pete. Tom feels that, if Pete is given a visitation schedule, he will feel that he is being forced to see his father. Tom further believes this will weaken his relationship with his son. Sue believes a clear plan regarding the time Tom and Pete spend together should be established. She says if Pete is not given a firm expectation of when he will be with Tom, it will be too easy for other activities in Pete's life to crowd out this priority. Unable to resolve this question, Tom and Sue give Pete the option of deciding if he would like a visitation schedule or if he would like to be free to see his father whenever he pleases.

***Comment:** Tom and Sue each feel the quality of Pete's relationship with Tom will depend on the way that visitation is structured. Each believes that, if Pete makes the wrong choice, the problems that follow could impact him throughout his adult life. They have placed the responsibility for the decision on Pete, not because the chance to make such a decision will help him, but because they cannot resolve the matter between themselves. This is a poor reason for entrusting an adolescent with such an important decision.*

2. Special Considerations. In exercising parenting time with a teenager, the non-custodial parent shall make reasonable efforts to accommodate a teenager's participation in his or her regular academic, extracurricular and social activities.

Commentary

Making Regular Parenting Time Workable. Parents must develop a parenting plan that evolves or changes as the teen matures. The needs of the child at age thirteen will be very different from the needs of that same child at age seventeen. Parents also must develop a parenting plan that assures regular involvement of both parents. This can be a particular challenge when the teen is involved with school, activities, and friends, and becomes even more difficult when the parents live some distance apart.

When parents differ in their views of which freedoms should be given and which should be withheld, the parents must be sufficiently united to keep the teenager from assuming responsibilities when the child is not ready. At the same time, the parents must respect that they will run their homes differently because they are living apart.

Living apart challenges parents to teach their child that different ways of doing things can work for different parents. They must see that their child needs to work especially hard to adapt to two distinct ways of doing things. Not all differences mean that one parent is right and one parent is wrong. The key is for parents to realize different homes can produce a well-adjusted teen.

Example: The Student Athlete

Jim Doe and Jane Doe have been divorced for 3 years. Their oldest child, Jeremy, is beginning high school. Throughout his middle school years, Jeremy was active in football. Practices were held after school and games took place on weekends. Jeremy had spent alternating weekends and one night each week with his noncustodial parent. The parent who had Jeremy took him to practices and games during the time they were together. On week nights with the noncustodial parent, this usually consisted of dinner and conversation. Weekends with both parents included homework, chores, play, and family outings.

Jeremy's high school coach is serious about football. Jeremy loves the sport. Coach expects Jeremy to work out with teammates throughout the early summer. In August, practice occurs three times a day. Once school begins, Jeremy will practice after school for several hours each day. In addition, he is taking some difficult courses and expects that several hours of study will be needed each night. Jeremy will have games on Friday nights. Because of his busy weekend schedule, he expects that Saturdays will be his only time to be with friends.

Discussion

On the surface, a traditional parenting plan, placing Jeremy with his noncustodial parent on alternating weekends and one night each week, would not seem to work. Jeremy's athletic and academic demands will require him to work hard on weeknight evenings. Jeremy's parents agree he needs time to be with friends and he should be allowed to make social plans on Saturdays. They recognize Sundays will often need to be devoted to homework projects which do not fit into the busy weekday schedule.

A Possible Solution

Jeremy's parents want him to enjoy sports and have friends. Yet, they also want him to have the benefits of being actively raised by two parents. They want him to grow to become an adult who sees that balancing family, work, and play is important. They want to teach him how to do this.

Jeremy's parents have agreed to maintain their previous supervision plan. However, they have also agreed on some changes. Jeremy's noncustodial parent will come to the community of the custodial parent for midweek visitation. Regardless of how busy he is, Jeremy needs to eat. The noncustodial parent plans to take Jeremy to dinner at a restaurant that offers quick but healthy meals. They will spend the rest of the time at a local library where Jeremy can study. The noncustodial parent can offer help as needed or simply enjoy a good book. Jeremy's parents plan to purchase an inexpensive laptop computer to assist him when he works at the library.

Jeremy's parents plan that alternating weekends will continue to be spent with the noncustodial parent. They, like many parents of adolescents, understand Jeremy wants to be with his friends more than he wants to be with them. They recognize that, on weekends, they are offering more supervision and Jeremy's friends are getting more time. Yet, they also see the need to help Jeremy establish active family membership as one of his priorities.

F. HOLIDAY PARENTING TIME SCHEDULE

1. Conflicts Between Regular and Holiday Weekends.

The Holiday Parenting Time Schedule shall take precedence over regularly scheduled and extended parenting time. Extended parenting time takes precedence over regular parenting time unless otherwise indicated in these Guidelines.

Alternating weekends shall be maintained throughout the year as follows. If a parent misses a regular weekend because it is the other parent's holiday, it will be lost. If a parent receives two consecutive weekends because of a holiday, that parent shall have the third weekend also. Regular alternating weekends shall continue throughout the year.

Commentary

A parent may receive three (3) consecutive weekends due to a holiday. It is anticipated that missed weekends due to holidays will balance out for each parent given the alternating schedule for the holidays provided for in these guidelines.

When the court orders a change of physical custody, the court should consider whether the Holiday Schedule change should start at the beginning of the calendar year, at the beginning or the end of the child's school year, or immediately.

2. Holiday Schedule. The following parenting times are applicable in all situations referenced in these Guidelines as "scheduled holidays" with the limitations applied as indicated for children under the age of three (3) years.

A. Special Days.

- [1] Mother's Day. With the child's mother from Friday at 6:00 P.M. until Sunday at 6:00 P.M.
- [2] Father's Day. With the child's father from Friday at 6:00 P.M. until Sunday at 6:00 P.M.
- [3] Child's Birthday. In even numbered years the non-custodial parent shall have all of the children on each child's birthday from 9:00 A.M. until 9:00 P.M. However, if the birthday falls on a school day, then from 5:00 P.M. until 8:00 P.M.

In odd numbered years the non-custodial parent shall have all of the children on each child's birthday on the day before the child's birthday from 9:00 A.M. until 9:00 P.M., however, if such day falls on a school day, then from 5:00 P.M. until 8:00 P.M.

- [4] Parent's Birthday. From 9:00 A.M. until 9:00 P.M. with that parent, however, if the parent's birthday falls on a school day, then from 5:00 P.M. until 8:00 P.M.
- [5] When the child's birthday falls within a Special Day, Holiday, or Christmas vacation, the child's birthday shall be celebrated with the parent having the child during that time period.
When the parent's birthday falls within a Special Day, Holiday or Christmas vacation, the Special Day, Holiday or Christmas vacation takes precedence.

B. Christmas Vacation.

The Christmas vacation shall be defined as beginning on the last day of school and ending the last day before school begins again. Absent agreement of the parties, the first half of the period will begin two hours after the child is released from school. The second half of the period will end at 6:00 p.m. on the day before school begins again.

Each party will receive one half (1/2) of the total days of the Christmas vacation, on an alternating basis as follows:

1. In even numbered years, the custodial parent shall have the first one half (1/2) of the Christmas vacation and non-custodial parent shall have the second one half (1/2) of the Christmas vacation.
2. In odd numbered years, the non-custodial parent shall have the first one half (1/2) of the Christmas vacation and custodial parent shall have the second one half (1/2) of the Christmas vacation.
3. In those years when Christmas does not fall in a parent's week, that parent shall have the child from Noon to 9:00 P.M. on Christmas Day.
4. No exchanges under this portion of the rule shall occur after 9:00 p.m. and before 8:00 a.m., absent agreement of the parties.

New Year's Eve and New Year's Day shall not be considered separate holidays under the Parenting Time Guidelines.

C. Holidays.

The following holidays shall be exercised by the noncustodial parent in even numbered years and the custodial parent in odd numbered years:

- [1] Martin Luther King Day. If observed by the child's school, from Friday at 6:00 P.M. until Monday at 7:00 P.M.
- [2] Presidents' Day. If observed by the child's school, from Friday at 6:00 P.M. until Monday at 7:00 P.M.
- [3] Memorial Day. From Friday at 6:00 P.M. until Monday at 7:00 P.M.
- [4] Labor Day. From Friday at 6:00 P.M. until Monday at 7:00 P.M.
- [5] Thanksgiving. From 6:00 P.M. on Wednesday until 7:00 P.M. on Sunday.

The following holidays shall be exercised by the noncustodial parent in odd numbered years and the custodial parent in even numbered years:

- [1] Spring Break. From two hours after the child is released from school on the child's last day of school before Spring Break, and ending 7:00 p.m. on the last day before school begins again.
- [2] Easter. From Friday at 6:00 P.M. until Sunday at 7:00 P.M.
- [3] Fourth of July. From 6:00 P.M. on July 3rd until 10:00 A.M. on July 5th.
- [4] Fall Break. From two hours after the child is released from school on the child's last day of school before Fall Break and ending 7:00 p.m. of the last day before school begins again.
- [5] Halloween. On Halloween evening from 6:00 P.M. until 9:00 P.M. or at such time as coincides with the scheduled time for trick or treating in the community where the non-custodial parent resides.

3. Religious Holidays. Religious based holidays shall be considered by the parties and added to the foregoing holiday schedule when appropriate. The addition of such holidays shall not affect the Christmas vacation parenting time, however, they may affect the Christmas day and Easter parenting time

Commentary

Recognizing there are individuals of varying faiths who celebrate holidays other than those set out in the guidelines, the parties should try to work out a holiday visitation schedule that fairly divides the holidays which they celebrate over a two-year period in as equal a manner as possible.

SECTION III. PARENTING TIME WHEN DISTANCE IS A MAJOR FACTOR

Where there is a significant geographical distance between the parents, scheduling parenting time is fact sensitive and requires consideration of many factors which include: employment schedules, the costs and time of travel, the financial situation of each parent, the frequency of the parenting time and others.

1. General Rules Applicable. The general rules regarding parenting time as set forth in Section 1 of these guidelines shall apply.

2. Parenting Time Schedule. The parents shall make every effort to establish a reasonable parenting time schedule.

Commentary

When distance is a major factor, the following parenting time schedule may be helpful:

(A) Child Under 3 Years Of Age. *For a child under 3 years of age, the noncustodial parent shall have the option to exercise parenting time, in the community of the custodial parent, up to two five hour periods each week. The five hour period may occur on Saturday and Sunday on alternate weekends only.*

(B) Child 3 and 4 Years of Age. *For a child 3 and 4 years of age, up to six (6) one week segments annually, each separated by at least (6) weeks. Including the pickup and return of the child, no segment shall exceed eight (8) days.*

(C) Child 5 Years of Age and Older. *For a child 5 years of age and older who attends a school with a traditional school calendar, seven (7) weeks of the school summer vacation period and seven (7) days of the school winter vacation plus the entire spring break, including both weekends if applicable. Such parenting time, however, shall be arranged so that the custodial parent shall have religious holidays, if celebrated, in alternate years.*

If the child attends a school with a year-round or balanced calendar, the noncustodial parent's parenting time should be adjusted so that the noncustodial parent and child spend at least as much time together as they would under a traditional school calendar.

3. Priority of Summer Visitation. Summer parenting time with the non-custodial parent shall take precedence over summer activities (such as Little League) when parenting time cannot be reasonably scheduled around such events. Under such circumstances, the non-custodial parent shall attempt to enroll the child in a similar activity in his or her community.

4. Extended Parenting Time Notice. The noncustodial parent shall give notice to the custodial parent of the selection by April 1 of each year. If such notice is not given, the custodial parent shall make the selection.

5. Special Notice of Availability. When the non-custodial parent is in the area where the child resides, or when the child is in the area where the non-custodial parent resides, liberal parenting time shall be allowed. The parents shall provide notice to each other, as far in advance as possible, of such parenting opportunities.

SECTION IV. PARALLEL PARENTING

Scope. Parallel parenting is a deviation from the parenting time guidelines, Sections I, II, and III. Its application should be limited to cases where the court determines the parties are high conflict and a Parallel Parenting Plan Court Order is necessary to stop ongoing high conflict that is endangering the well-being of the child. "High conflict parents" mean parties who demonstrate a pattern of ongoing litigation, chronic anger and distrust, inability to communicate about and cooperate in the care of the child, or other behaviors placing the child's well-being at risk. In such cases the court may deviate from the parenting time guidelines to reduce the adverse effects on the children. The contact between high conflict parents should be minimized or eliminated, at least until the parental conflict is under control.

In parallel parenting, each parent makes day-to-day decisions about the child while the child is with the parent. With parallel parenting, communication between the parents is limited, except in emergencies, and the communication is usually in writing. Appropriate counseling professionals are recommended to help parents handle parallel parenting arrangements. Parallel parenting may also be appropriate to phase out supervised parenting time. Parallel parenting is not a permanent arrangement.

Commentary

High conflict parents constantly argue with each other in the presence of the children. They often blame the other parent for their problems. Some parents make negative comments to the children about the other parent. Children of high conflict parents may develop emotional and behavioral problems. For example, they may become fearful, develop low self-esteem, think they are the cause of their parents' fighting, or find themselves having to choose between their parents. Parallel parenting may be used to bridge between supervised parenting time and guideline parenting time. Of course, the best interests and safety of the children are paramount in all situations.

The court should recognize the danger that one parent could unilaterally create a high conflict situation. This behavior should not be rewarded by limiting the parenting time of the other parent.

1. **Limitations of Parallel Parenting.** Joint legal custody of children is normally inappropriate in parallel parenting situations. Rather, sole legal custody is the norm in parallel parenting cases. Additionally, mid week parenting time is not usually proper in parallel parenting cases, due to the higher level of contact and cooperation that is required to implement mid week parenting time. Similarly, in parallel parenting cases, "Make Up" time and the "Opportunity for Additional Parenting Time" are generally inappropriate.
2. **Education.** In some communities, parents can attend high conflict resolution classes or cooperative parenting classes. In these classes, parents learn that any continuing conflict between them will likely have a long-term negative effect on their children. They also learn skills to be better co-parents.
3. **Parallel Parenting Plan Court Order.** In ordering the parties to parent according to a parallel parenting plan, the court must enter a written explanation regardless if the parties agree, indicating why the deviation from the regular Indiana Parenting Time Guidelines is necessary or appropriate. The court order shall detail the specific provisions of the plan.

Commentary

The specific court order for parallel parenting in any individual case should include a consideration of the topics in the Appendix, which is a recommended model parallel parenting plan court order. This order should address "hot topic" issues for each family, and should also include any other provisions the court deems appropriate to the family. Several of the provisions in the model order would be applicable to nearly all cases where parallel parenting is appropriate. Other provisions would be applicable only in certain circumstances. Some of these provisions require the court to make and enter a choice among various options, including Section 2.2 of the model order. The court should modify the order to fit the circumstances of the parties and needs of the children.

4. **Mandatory Review Hearing.** In all cases, a hearing must be held to review a parallel parenting court order at least every 180 days. At this hearing, the court shall hear evidence and determine whether the parallel parenting plan order should continue, be modified or ended.

SECTION V.PARENTING COORDINATION

A. GENERAL PROVISIONS

1. Parenting coordination is a court ordered, child-focused dispute resolution process in which a Parenting Coordinator is appointed to assist high conflict parties by accessing and managing conflicts, redirecting the focus of the parties to the needs of the child, and educating the parties on how to make decisions that are in the best interest of the child.
2. A Parenting Coordinator is an individual appointed by a Court to conduct parenting coordination.
3. "High conflict parties" are parties who have had ongoing disagreements and conflict. The disagreements and conflict center on the parties' inability to communicate and resolve issues regarding

the care of the child, a parenting time schedule, or any other issues that have adversely affected the child.

4. Nothing in this guideline limits, supersedes, or divests the court of its exclusive jurisdiction to determine issues of parenting time, custody, and child support.
5. These guidelines apply to all Parenting Coordinator appointments made after the effective date of the adoption of these guidelines and do not modify an existing parenting coordination order. These guidelines do not limit a party's right to file for modification under existing Indiana law.

B. QUALIFICATIONS

1. The Parenting Coordinator shall be a registered Indiana Domestic Relations Mediator, with additional training or experience in parenting coordination satisfactory to the court making the appointment.
2. An individual who does not meet the mediation registration requirements of B(1), but has served as a Parenting Coordinator in an Indiana Circuit, Superior, or Juvenile Court prior to the effective date of these guidelines, may obtain a waiver from the court in which the person served. However, a person receiving such a waiver shall fully comply with all qualification requirements within (2) years from the date these guidelines are adopted.

C. APPOINTMENT AND TERMS OF SERVICE

1. A Parenting Coordinator shall serve by agreement of the parties or formal order of the court, which shall clearly and specifically define the Parenting Coordinator's scope of authority and responsibilities.
2. Simultaneously with, or after entry of a Parenting time order, the court may with consent of the parties, or on its own motion, appoint a Parenting Coordinator when it is in the child's best interest to do so.
3. When the court on its own motion appoints a Parenting Coordinator without the consent of both parties, the order appointing a Parenting Coordinator must include a written explanation why the appointment is appropriate in the case.
4. A court order is necessary to provide the Parenting Coordinator authority under these guidelines to obtain information, and serve and make recommendations as specified in the order.
5. In cases where domestic abuse or domestic violence is alleged, suspected, or present, the appointment of a Parenting Coordinator may be contraindicated. If the court appoints a Parenting Coordinator in such a case, the person who is or may be the victim of domestic abuse or domestic violence should be fully informed about the parenting coordination process and of the option to have a support person present at parenting coordination sessions. Appropriate procedures should be in place to provide for the safety of all persons involved in the parenting coordination process. Procedures should be in place for the parenting coordinator to terminate a parenting coordination session if there is a continued threat of domestic abuse, domestic violence, or coercion between the parties.
6. In addition to the court order for Parenting Coordination, a written agreement between the parties and the Parenting Coordinator shall be used to detail specific issues not contained in the court order, such as fee payments, billing practices and retainers. The court has the discretion to apportion the fee between the parties absent an agreement.
7. The parties may agree on the length of appointment, but an initial term of appointment shall not exceed two years. For good cause shown, the court may extend the appointment of the Parenting Coordinator.
8. The court may terminate the service of the Parenting Coordinator at any time upon finding that there is no longer a need for the services or for other good cause. Good cause may include a finding that domestic violence issues or other circumstances exist that appear to compromise the safety of any person or the integrity of the process. The appointment may be terminated if further efforts by the Parenting Coordinator would be contrary to the best interests of the child; the child has reached the age of majority; or the child no longer lives with a party.
9. The Parenting Coordinator may provide notice to the parties and the court of his or her intent to resign at any time. The court may approve the resignation and discharge the Parenting Coordinator without a hearing unless a party files a written objection within 10 days of the notice and requests a hearing.

10. No party may terminate the services of a court appointed Parenting Coordinator without an order of the court. Absent egregious abuse of discretion or a substantial and unexpected change in circumstances, no party may request a judicial review of the appointment within the first six months of the appointment. Nevertheless, the court may terminate the appointment of a Parenting Coordinator at any time.
11. After the initial six-month period, a party may petition the court for termination of the appointment. Upon a finding that the Parenting Coordinator has exceeded his or her mandate; has acted in a manner inconsistent with this guideline; has demonstrated bias; or for other good cause the court may terminate the appointment.
12. After the initial six-month period, the parties may jointly request the termination of the parenting coordination process or motion for the modification of the terms of the appointment. Modification or termination of the terms of the appointment may be entered by the court for good cause shown as long as the modification or termination is in the best interest of the child.

D. RESPONSIBILITIES OF PARENTING COORDINATOR

1. The role of the Parenting Coordinator includes: assessing the family and the litigation history; educating the parties as to the impact their behavior has on the child; facilitating conflict management; and assisting the parties in the development of parenting plans and alternative resolutions to other disputes.
2. A Parenting Coordinator shall comply with the requirements of and act in accordance with the appointment order issued by the court.
3. A Parenting Coordinator may communicate with the parties, their counsel of record, the child or children involved, and the court. All communications shall preserve the integrity of the parenting coordination process and consider the safety of the parties and child. The Parenting Coordinator should adhere to any protection orders, and take whatever measures may be necessary to ensure the safety of the parties, a child and the Parenting Coordinator.
4. The Parenting Coordinator shall have the right to review documents that are pertinent to the parenting coordination process. The Parenting Coordinator shall request a release from the parties, or an order of the court, when necessary.
5. In the event the parties are not able to decide or resolve disputes on their own or with the suggestions of the Parenting Coordinator, the Parenting Coordinator is empowered to make reports or recommendations to the parties and the court for further consideration as set forth in section (E) below.
6. A Parenting Coordinator shall have no ex parte communications with the appointing court regarding substantive matters or issues on the merits of the case.
7. A Parenting Coordinator shall not offer legal advice.
8. A Parenting Coordinator has an ongoing duty to report any activity, criminal or otherwise, that adversely affects the Parenting Coordinator's ability to perform the functions of a Parenting Coordinator.
9. A Parenting Coordinator shall report child abuse or neglect as obligated by law.
10. A Parenting Coordinator shall inform the parties that the Parenting Coordinator will report any suspected child abuse or neglect and any apparent serious risk of harm to a family member or a third party to child protective services, law enforcement, or other appropriate authority.
11. A Parenting Coordinator shall maintain independence; objectivity; and impartiality, including avoiding the appearance of partiality, in dealings with parties and professionals, both in and out of the courtroom.
12. A Parenting Coordinator shall not serve in multiple roles in a case that creates a conflict of interest. A person who has served as a Parenting Coordinator in a proceeding may act as a Parenting Coordinator in subsequent disputes between the parties. However, the Parenting Coordinator shall decline to act in any capacity except as a Parenting Coordinator unless the subsequent association is clearly distinct from services provided in the parenting coordination process. The Parenting Coordinator is required to utilize an effective system to identify potential conflict of interest at the time of appointment.

13. A Parenting Coordinator shall avoid any clear conflict of interest arising from any relationship or activity, including but not limited to those of employment or business or from professional or personal contacts with parties or others involved in the case. A Parenting Coordinator shall avoid self-dealing or associations from which the Parenting Coordinator may benefit, directly or indirectly, except from services as a Parenting Coordinator.
14. A Parenting Coordinator shall advise the appointing court and the parties of any potential conflict of interest, and of any action taken or proposed, to resolve the conflict. After the appropriate disclosure, the Parenting Coordinator may continue to serve with the written agreement of all parties. However, if a conflict of interest clearly impairs a Parenting Coordinator's impartiality, the Parenting Coordinator shall withdraw or be removed.

E. REPORTS, RECOMMENDATIONS, AND COURT ACTION

1. A written agreement, which seeks to modify a court order, signed by the parties and the Parenting Coordinator shall be submitted to the court for consideration within twenty (20) days of the agreement being signed. Copies of the document submitted shall be provided to the parties and their counsel. There shall be no ex parte communication with the court.
2. A Parenting Coordinator's recommendations, which are not agreed to by the parties, may be submitted by the Parenting Coordinator as a written report to the court for consideration. The written report shall include an explanation as to how the recommended change is expected to benefit the family as a whole. The Parenting Coordinator's written report must contain a certificate of service which indicates that the Parenting Coordinator has sent a copy of the report to each party and their counsel.
3. Any party may file with the court and serve on the Parenting Coordinator and all other parties an objection to the written report within ten (10) days after the report is filed with the court, or within another time as the court may direct.
4. Responses to the objections shall be filed with the court and served on the Parenting Coordinator and all other parties within ten (10) days after the objection is served.
5. The court, upon receipt of a report and recommendation may take any of the following three actions.
 - a. If the court finds that time is of the essence, the court may approve the recommendation and immediately adopt it as an interim order of the court. However, if a party files an objection to the recommendation, the court shall set an expedited hearing to consider the recommendation and arguments of the parties in favor of and opposing the recommendation.
 - b. The court may reject the recommendation in whole or in part. However, if a party files an objection to the recommendation or objects to the court's rejection of all or part of the recommendation, the court shall set a hearing to consider the recommendation and arguments of the parties in favor of and opposing the recommendation.
 - c. The court may take no immediate action upon the recommendation. Upon the court's own motion or upon the request of any party, the court may set a hearing regarding the recommendation on the court's calendar.
6. The Parenting Coordinator shall submit a written report to the parties and their counsel at the completion of the Parenting Coordinator's services, and may also submit interim reports as appropriate.
7. All submissions to the court shall comply with the Rules on Access to Court Records.

F. CONFIDENTIALITY

1. Communications made as part of parenting coordination, including communications between the parties and their children and the parenting coordinator, communications between the parenting coordinator and other relevant parties or persons, and communications with the court, shall not be confidential except as provided by law.
2. Nothing in this Guideline is intended to create a privileged or therapist-client privileged communication.

APPENDIX. MODEL PARALLEL PARENTING PLAN ORDER

The following is a suggested Model Order For Parallel Parenting, which may be used in implementing these rules.

MODEL PARALLEL PARENTING PLAN ORDER

The court concludes the parties are high conflict parents, as defined in the Indiana Parenting Time Guidelines.

The court finds high conflict because of the following behavior(s):

- ___ a pattern of ongoing litigation;
 - ___ chronic anger and distrust;
 - ___ inability to communicate about the child;
 - ___ inability to cooperate in the care of the child; or
 - ___ other behaviors placing the child's well-being at risk:
-

[OR The court finds parallel parenting is appropriate to phase out supervised parenting time.]

Accordingly, the court deviates from the Indiana Parenting Time Guidelines, and now Orders the following Parallel Parenting Plan.

1. RESPONSIBILITIES AND DECISION-MAKING

- 1.1 Each parent has a responsibility to provide for the physical and emotional needs of the child. Both parents are very important to the child and the child needs both parents to be active parents throughout their lives. Both parents must respect each parent's separate role with the child. Each parent must put the **child's needs first** in planning and making arrangements involving the child.
- 1.2 When the child is scheduled to be with Father, then Father is the "on-duty" parent. When the child is scheduled to be with Mother, then Mother is the "on-duty" parent.
- 1.3 The on-duty parent shall make decisions about the **day to day care and control** of the child.
- 1.4 This decision making is not to be confused with legal custody decision making concerning education, health care and religious upbringing of the child. These more significant decisions continue to be the exclusive responsibility of the parent who has been designated as the sole custodial parent.
- 1.5 In making decisions about the **day to day care and control** of the child, neither parent shall schedule activities for the child during the time the other parent is on-duty without prior agreement of the on-duty parent.
- 1.6 Parents share a joint and equal responsibility for following parenting time orders. The child shares none of this responsibility and should not be permitted to shoulder the burden of this decision.
- 1.7 Unacceptable excuses for one parent denying parenting time to the other include the following:
 - The child unjustifiably hesitates or refuses to go.
 - The child has a minor illness.
 - The child has to go somewhere.
 - The child is not home.
 - The noncustodial parent is behind in support.
 - The custodial parent does not want the child to go.
 - The weather is bad.
 - The child has no clothes to wear.
 - The other parent failed to meet preconditions established by the custodial parent.

2. REGULAR PARENTING TIME

- 2.1 The parents shall follow this specific schedule so the child understands the schedule.
- 2.2 ☐ *Mother*, or ☐ *Father* has sole custody of the child. The noncustodial parent shall have regular contact with the child as listed below:
- ☐ Every other weekend, from 6:00 p.m. on Friday until 6:00 p.m. on Sunday.
- ☐ Every other Saturday, from _____ a.m. until _____ p.m.
- ☐ Every other Saturday and Sunday from _____ a.m. until _____ p.m. each day.
- ☐ _____
- ☐ _____

3. SUMMER PARENTING TIME SCHEDULE *(use only if summer is different than the Regular Parenting Time outlined above.)*

- 3.1 Mother shall be on-duty and the child will be with Mother as follows:

- 3.2 Father shall be on duty and the child will be with Father as follows:

4. HOLIDAY SCHEDULE

- 4.1 Holiday Schedule Priority. The below detailed holiday schedule overrides the above Regular Parenting Time Schedule. For listed holidays other than Spring Break and Christmas Break, when a holiday falls on a weekend, the parent who is on-duty for that holiday will be on-duty for the entire weekend unless specifically stated otherwise. It is possible under some circumstances that the holiday schedule could result in the child spending three (3) weekends in a row with the same parent.
- 4.2 On New Year's Eve/Day, **Martin Luther King Day**, **President's Day**, **Easter**, **Memorial Day**, **4th of July**, **Labor Day**, Halloween, Fall Break, birthdays of the child and parents, and all other holidays / special days not specifically listed below, the child shall remain with the parent they are normally scheduled to be with that day, as provided in the Regular Parenting Time Schedule.
- 4.3 Spring Break. The child shall spend Spring Break with Father in odd numbered years and with Mother in even numbered years. This period shall be from two hours after the child is released from school before Spring Break, and ending at 7:00 pm of the last day before school begins again.
- 4.4 Mother's Day and Father's Day. The child shall spend Mother's Day weekend with Mother, and Father's Day weekend with Father each year. These periods shall be from Friday at 6:00 p.m. until Sunday at 6:00 p.m.
- 4.5 Thanksgiving. The child shall spend the Thanksgiving holiday, from two hours after the child is released from school Wednesday until Sunday at 7:00 p.m. with Father in odd numbered years, and with Mother in even numbered years.
- 4.6 Christmas.
- a. The Christmas vacation shall be defined as beginning on the last day of school and ending the last day before school begins again. Absent agreement of the parties, the first half of the period will begin two hours after the child is released from school. The second half of the period will end at 6:00 p.m. on the day before school begins again.
- Each party will receive one half (1/2) of the total days of the Christmas vacation, on an alternating basis as follows:
1. In even numbered years, the custodial parent shall have the first one half (1/2) of the Christmas vacation and non-custodial parent shall have the second one half (1/2) of the Christmas vacation.
 2. In odd numbered years, the non-custodial parent shall have the first one half (1/2) of the Christmas vacation and custodial parent shall have the second one half (1/2) of the Christmas vacation.

3. In those years when Christmas does not fall in a parent's week, that parent shall have the child from Noon to 9:00 P.M. on Christmas Day.
4. No exchanges under this portion of the rule shall occur after 9:00 p.m. and before 8:00 a.m., absent agreement of the parties.

Or

- b. The child shall celebrate **Christmas** Eve, December 24, from 9:00 a.m. until 9:00 p.m. with Mother in odd numbered years, and with Father in even numbered years. The child shall celebrate **Christmas** Day, December 25, from 9:00 p.m. on December 24 until 6:00 p.m. on December 25 with Father in odd numbered years, and with Mother in even numbered years. At 6:00 p.m. on December 25, the Regular Parenting Time Schedule resumes.

Or

- c. Other: _____

5. TRANSPORTATION OF THE CHILD

- 5.1 The parents shall arrive on time to drop off and pick up the child. The parents shall deliver the child's clothing, school supplies and belongings at the same time they deliver the child. The parents shall always attempt to return the child's clothing in a clean condition.
- 5.2 When the child is scheduled to return to Father, then *Father shall pick the child up at [] Mother's home or [] _____.*
- 5.3 When the child is scheduled to return to Mother, then Mother shall pick the child up at [] *Father's home or [] _____.*
- 5.4 Special Provisions Regarding Exchange Participation: *(if necessary)*
Other than the parents, only _____ shall be present when the child is exchanged. _____.
- 5.5 A parent may not enter the residence of the other, except by express invitation, regardless of whether a parent retains a property interest in the residence of the other. Accordingly, the child shall be picked up at the front entrance of the appropriate residence or other location unless the parents agree otherwise. The person delivering the child shall not leave until the child is safely inside.

6. EMERGENCY CHANGES IN THE REGULAR PARENTING TIME SCHEDULE

- 6.1 Although the child needs living arrangements that are **predictable**, if an unexpected or unavoidable emergency comes up, the parents shall give each other as much notice as possible.
- 6.2 If unable to agree on a requested change to the schedule, the Regular Parenting Time Schedule shall be followed. If an emergency results in the need for child care, the on-duty parent shall make the child care arrangements and pay for the cost of child care, unless otherwise agreed.
- 6.3 Unless the parents agree, any missed parenting time shall not later be made up.

7. COMMUNICATION

- 7.1 Communication Book. The parents shall always use a "communication book" to communicate with each other on the child's education, health care, and activities. The communication book should be a spiral or hardbound notebook. The communication book will travel with the child, so that information about the child will be transmitted between the parents with minimal contact between parents.
- 7.2 Neutrality of the Child. To keep the child out of the middle of the parents' relationship and any conflict that may arise between the parents, the parents shall not:
 - Ask the child about the other parent.
 - Ask the child to give messages to the other parent.
 - Make unkind or negative statements about the other parent around the child.
 - Allow other people to make unkind or negative statements about the other parent around the child.

- 7.3 Dignity and Respect. The parents shall treat each other with dignity and respect in the presence of the child. The parents shall keep conversations short and calm when exchanging the child so the child will not become afraid or anxious.
- 7.4 Telephone Contact. The child may have private telephone access to the other parent ☐ at all times or ☐ between the hours of _____ and _____. The parents shall encourage and help the child stay in touch with the other parent.
- 7.5 The parents shall not interfere with communication between the child and the other parent by actions such as: refusing to answer a phone or refusing to allow the child or others to answer; recording phone conversations between the other parent and the child; turning off the phone or using a call blocking mechanism or otherwise denying the other parent telephone or electronic contact with the child.
- 7.6 Notice of Travel. Before leaving on out of town travel, the parents shall provide each other the address and phone number where the child can be reached if they will be away from home for more than 48 hours.
- 7.7 The parents shall at all times keep each other advised of their home and work addresses and telephone numbers. Notice of any change in this information shall be given to the other parent in the communication book at the next exchange.

8. SAFETY *(use the following provisions only as necessary)*

- 8.1 Neither parent shall operate a vehicle when impaired by use of alcohol or drugs.
- 8.2 ☐ Mother ☐ Father ☐ Both parents shall not use alcohol or non-prescribed drugs when they are the on-duty parent.
- 8.3 The parents shall not leave the child _____ unattended at any time.
- 8.4 ☐ Mother ☐ Father ☐ Both parents *shall not use, nor allow anyone else to use, physical discipline with the child.*
- 8.5 _____ *shall not use physical discipline with the child.*
- 8.6 *All contact between the child and _____ shall be supervised by _____.*
- 8.7 *Neither parent shall allow the child to be in the presence of*

9. EDUCATION

- 9.1 The custodial parent shall determine where the child attends school.
- 9.2 Both parents shall instruct the child's schools to list each parent and their respective addresses and telephone numbers on the school's records.
- 9.3 Each parent will maintain contact with the child's schools to find out about the child's needs, progress, grades, parent-teacher conferences, and other special events.
- 9.4 The parents shall use the "communication book" to share information about the child's school progress, behavior and events.

10. EXTENDED FAMILY

- 10.1 The child will usually benefit from maintaining ties with grandparents, relatives and people important to them. The parents shall help the child continue to be in contact with these people.
- 10.2 However, as provided above at "SAFETY," ☐ *all contact between the child and _____ shall be supervised by _____*
☐ *neither parent shall allow the child to be in the presence of*

11. CHILD CARE

- 11.1 Arranging for normal, day-to-day work-related child care for the child is the responsibility of the ☐ custodial parent ☐ on-duty parent.
- 11.2 When occasional other situations require child care for the child when the child is with the on-duty parent, the on-duty parent is not required to offer the other parent the chance to provide this care before seeking someone else to care for the child. However, in such situations, the on-duty parent shall

make any needed occasional child care arrangements, and the on-duty parent shall pay the cost of that child care.

11.3 Only the following listed persons may provide occasional child care for the child:

_____.

11.4 If the ☐ Mother ☐ Father anticipates being unable to personally supervise the child during the parent's entire scheduled on-duty time, the ☐ Mother ☐ Father must notify the other parent as soon as possible, and that parent's on-duty time for that ☐ day ☐ weekend will be cancelled, and not made up at any later time.

12. HEALTH CARE

12.1 Major decisions about health care (such as the need for surgery, glasses, contacts, prescription medications, orthodontia, etc., and the need for regular, on-going medical appointments and treatments, etc.) shall be made by the custodial parent.

12.2 Each parent has a right to the child's medical, dental, optical and other health care information and records. Each parent will contact the child's health care providers to find out about the child's health care needs, treatments and progress. The custodial parent shall give written authorization to the child's health care providers, permitting an ongoing release of all information regarding the child to the non-custodial parent including the right of the provider to discuss the child's situation with the non-custodial parent.

12.3 The parents shall use the "communication book" to communicate with each other on all health care issues for the child.

12.4 The on-duty parent shall make sure the child takes all prescription medication and follow all prescribed health care treatments.

12.5 In medical emergencies concerning the child, the on-duty parent shall notify the other parent of the emergency as soon as it is possible. In such emergencies, each parent can consent to emergency medical treatment for the child, as needed.

13. RELOCATION FROM CURRENT RESIDENCE

13.1 When either parent considers a change of residence, a 90 day advance notice of the intent to move must be provided to the other parent and filed with the court.

13.2 The Indiana Parenting Time Guidelines have a more detailed discussion of the statutory notice requirements at Section I.E.4, "Relocation."

14. EVENT ATTENDANCE

14.1 When the child is participating in a sports team, club, religious, or other such event at school or elsewhere, ☐ only the on-duty parent ☐ both parents may attend the event.

14.2 The custodial parent is permitted to enroll the child in _____ extracurricular activity. The non-custodial parent shall encourage this participation.

15. A CHILD'S BASIC NEEDS

To insure more responsible parenting and to promote the healthy adjustment and growth of the child, each parent should recognize and address the child's basic needs. Those needs include the following:

15.1 To know that the parents' decision to live apart is not the child's fault.

15.2 To develop and maintain an independent relationship with each parent and to have the continuing care and guidance from each parent.

15.3 To be free from having to side with either parent and to be free from conflict between the parents.

15.4 To have a relaxed, secure relationship with each parent without being placed in a position to manipulate one parent against the other.

15.5 To enjoy consistent time with each parent.

15.6 To be financially supported by each parent, regardless of how much time each parent spends with the child.

- 15.7 To be physically safe and adequately supervised when in the care of each parent and to have a stable, consistent and responsible child care arrangement when not supervised by a parent.
- 15.8 To develop and maintain meaningful relationships with other significant adults (grandparents, stepparents and other relatives) as long as these relationships do not interfere with or replace the child's primary relationship with the parents.

16. RESOLVING DISPUTES

- 16.1 *Because this is an Order of the court, both parents must continue to follow this Parallel Parenting Plan even if the other parent does not.*
- 16.2 When the parents cannot agree on the meaning or application of some part of this Parallel Parenting Plan, or if a significant change (such as a move or remarriage) causes conflict between the parents, both parents shall make a good faith effort to resolve those differences before returning to the court for relief. In most situations, the court will require the parents to attend mediation before any court hearing will be conducted.
- 16.3 The parties shall attend _____ counseling / parenting education program.

17. MANDATORY REVIEW HEARING

- 17.1 A mandatory review hearing is set on _____, 20__, at _____ a.m./p.m. in this court. Both parents shall appear at this hearing with counsel of record. [Note: The date shall be set within 180 days of the entry of this order]

DATE: _____, 20__

COMMISSIONER/MAGISTRATE/JUDGE

The above entry is adopted as the Order of the Court on this same date.

JUDGE

Copies to: Attorney for Petitioner,
Attorney for Respondent,
Mediator:

DATE OF NOTICE:

INITIAL OF PERSON WHO NOTIFIED PARTIES: COURT CLERK OTHER

FATHERHOOD ENGAGEMENT

DIVORCE, VISITATION,
CHILD SUPPORT



Divorce

Prepared by:

Indiana Legal Services, Inc.

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Information Available on the
web www.indianajustice.org

What does it mean to file for divorce?

When you file for divorce, you are asking the court to end your marriage. The court will divide the property and debts. If you and your spouse have children, the court will issue custody, visitation and child support orders. A divorce is also called a “dissolution of marriage.”

What do I have to prove to get a divorce?

You have to prove there has been an “irretrievable breakdown” of your marriage. This means that there is no chance you and your spouse can stay married. You do not have to prove that you or your spouse did anything wrong. But you do have to prove that you or your spouse have lived in Indiana for the last six months.

What happens when I file for divorce?

There is a \$129 filing fee. If you cannot afford to pay the fee, you can ask the court to let you file a divorce without paying the fee. The court will then decide whether you can afford to pay the filing fee or not.

Shortly after you file for divorce the court will often have a hearing. At this hearing, the court will issue temporary orders concerning children, property, debts or anything else that cannot wait until the final hearing. You have to wait

for at least 60 days after you file the divorce before you can get the divorce finalized. After the 60 days are up, you can ask the court to schedule a final divorce hearing. At that hearing, the court will issue final orders concerning children, property, and debts of the marriage.

How do I finalize the divorce?

If you and your spouse agree on everything, you can give the agreement to the court and the court will finalize the divorce. You do not have to go to court for a hearing if you and your spouse have an agreement. An attorney can help with the proper paperwork.

If you and your spouse do not agree, the court will have a final hearing. At the hearing, both you and your spouse (and maybe other witnesses) will tell the court what you each should have out of the divorce. The court will then grant the divorce, and issue final orders concerning any children from the marriage, and the property and debts of the marriage. The wife can also ask that her maiden name (or other former name) be given back to her.

How will our property be divided?

In general, the court will divide the property evenly between the two spouses. However, the court may give one spouse more property than the other spouse if the court has good reasons to

do this. The court can look at several factors, including:

6. Which spouse provided the money for the property;
7. Whether the property was given as a gift to one of the spouses;
8. The current financial situation of each spouse; and
9. The earnings or earnings ability of each spouse.

How will the court decide custody and visitation?

Both the husband and wife have equal rights to custody of the children. The court will determine what is in the best interests of the children. The court can consider:

- The age and sex of each child;
- The wishes of the children and the parents;
- The relationships among the children, their parents and other significant people;
- The children's adjustment to their home, school and community;
- The physical and mental health of the children and parents; and
- Evidence of a pattern of domestic abuse.

The parent who does not have custody is usually given visitation. Indiana has "Parenting Time Guidelines" which say what visitation should be given. The visitation is different for different ages of children. Your local court can give you a copy of these Guidelines.

Will the non-custodial parent have to pay child support?

Yes. The court usually will order the non-custodial parent to pay child support. Indiana has Child Support Guidelines that help the court determine the amount of child support. The guidelines use both parents' incomes to determine the amount of child support. The following web-site may help you estimate your child support:

www.indygov.org/cgi-bin/courts/support.cgi

What if my ex-spouse does not follow the divorce order?

If your ex-spouse does not follow the court's orders, you can take the ex-spouse back to court for a "contempt" hearing. The court can order your ex-spouse to follow the divorce order, and can even punish the person for not following the court's order.

Will the court grant a divorce if the woman is currently pregnant?

The court can grant the divorce while the woman is pregnant. If the husband and wife agree that the child is not a child from the marriage, the court can grant the divorce and will state in the

divorce order that the unborn child is "not a child of the marriage." If the husband and/or wife believe the child is a child of the marriage, the court can grant the divorce but the parties will have to go back to court after the child is born to determine issues concerning the child.

Last Revised 11/2002 Special Code: 1320200

To Submit an Application for Legal Assistance, Call ILS Intake:

<i>Anderson:</i>	<i>Bloomington:</i>
1-800-385-3541 or	1-877-323-6260 or
1-765-644-2816	1-812-335-2610

<i>Evansville:</i>	<i>Fort Wayne:</i>
1-800-852-3477 or	1-877-323-6260 or
1-812-426-1295	1-260-424-9155

<i>Gary:</i>	<i>Hammond:</i>
1-888-255-5104 or	1-219-853-2360
1-219-886-3161	

<i>Indianapolis:</i>	<i>Lafayette:</i>
1-800-869-0212 or	1-800-382-7581 or
1-317-631-9410	1-765-423-5327

<i>New Albany:</i>	<i>South Bend:</i>
1-800-892-2776 or	1-800-288-8121 or
1-812-945-4123	1-574-234-8121

Español 1-877-323-6260

Modifying Child Custody

Indiana Legal Services

Ensuring Equal Access to Justice

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The court can change a custody order if it is in the best interests of the child, and if there has been a substantial change in one of the factors courts think about when making custody decisions.

My ex-wife has custody of our children, and I want custody. Do I have to go to court to change custody?

Generally, you should go through the court to change custody. If you don't, then the original court orders will still be in effect. You could end up with the children living with you, and still have to pay child support, if the original court order had you paying child support.

If you and your ex-wife agree on changing custody, you can generally get custody modified without a court hearing. However, you should still have the court approve your agreement and change the court's order to make your custody a legal arrangement.

I want to modify custody to get custody of my child, but my ex-husband does not agree. Will the court change custody?

The court can change custody even if both parents don't agree. However, it is difficult to get a court to change custody, because courts don't like to move children around a lot.

You will need to prove that it is in the best interests of the child to change custody AND that there has been a substantial change in one or more of these factors:

- The age and sex of the child.
- The wishes of the child's parent or parents.
- The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- The interaction and interrelationship of the child with the child's parents, siblings and other people who affect the child's best interests.
- The child's adjustment to the child's home, school, and community.
- The mental and physical health of all individuals involved.
- Evidence of a pattern of domestic or family violence by either parent.
- Evidence that the child has been cared for by someone other than a parent for at least six months to a year, depending on the child's age. This person is called a "de facto custodian". If there is a "de facto custodian," the court shall consider:
 - The wishes of the child's de facto custodian.
 - The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.
 - The intent of the child's parent in placing the child with the de facto custodian.
 - The circumstances under which the child was allowed to remain in the custody of the de facto

custodian, including whether the child was placed with the de facto custodian to allow the parent now seeking custody to work, look for work, or go to school.

What are some examples of situations where a court might change custody?

Of course, every case is different and depends on the circumstances of that case. Possible reasons for changing custody could include:

- Children getting older and wanting to live with the other parent, especially if the children are not doing well in school in their current home.
- If the custodial parent remarries and the new spouse is abusive to anyone in the home or if the new living situation is harmful to the child in other ways.
- If the custodial parent plans to move away to a place where the children have no family or friends.

These are just examples; a court may or may not change custody based on any of these facts.

What should I do if I want to get custody of my child from the other parent?

If you and the other parent can talk about this, you may want to discuss it with the other parent and see if you can reach an agreement. If you cannot reach an agreement, you will need to go to court and ask the court to change the custody order.

Before you go to court, you should think specifically of what reasons you have for changing custody, and what evidence you have to support these reasons. The court will probably not change custody unless you have good reasons for changing it, and proof to back up your reasons.

You can also ask the court to order a custody evaluation. This is a report done by a professional who would interview the parties and make a recommendation to the court concerning custody.

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<http://www.indianalegalservices.org/node/28/modifying-child-custody>

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Indiana Rules of Court

Child Support Rules and Guidelines

Adopted Effective October 1, 1989
Including Amendments Received Through January 1, 2020

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Additional Documents

- Child Support Obligation Worksheet (CSOW)
- Parenting Time Credit Worksheet
- Post-Secondary Education Worksheet (PSEW)
- Guideline Schedules for Weekly Support Payments

CHILD SUPPORT RULES

Support Rule 1. Adoption of Child Support Rules and Guidelines

The Indiana Supreme Court hereby adopts the Indiana Child Support Guidelines, as drafted by the Judicial Administration Committee and adopted by the Board of the Judicial Conference of Indiana and all

subsequent amendments thereto presented by the Domestic Relations Committee of the Judicial Conference of Indiana, as the Child Support Rules and Guidelines of this Court.

Support Rule 2. Presumption

In any proceeding for the award of child support, there shall be a rebuttable presumption that the amount of the award which would result from the application of the Indiana Child Support Guidelines is the correct amount of child support to be awarded.

Support Rule 3. Deviation from Guideline Amount

If the court concludes from the evidence in a particular case that the amount of the award reached through application of the guidelines would be unjust, the court shall enter a written finding articulating the factual circumstances supporting that conclusion.

INDIANA CHILD SUPPORT GUIDELINES

GUIDELINE 1. PREFACE

Guidelines to determine levels of child support and educational support were developed by the Judicial Administration Committee of the Judicial Conference of Indiana and adopted by the Indiana Supreme Court. The guidelines are consistent with the provisions of Indiana Code Title 31 which place a duty for child support and educational support upon parents based upon their financial resources and needs, the standard of living the child would have enjoyed had the marriage not been dissolved or had the separation not been ordered, the physical or mental condition of the child, and the child's educational needs.

The Guidelines have three objectives:

- (1) To establish as state policy an appropriate standard of support for children, subject to the ability of parents to financially contribute to that support;
- (2) To make awards more equitable by ensuring more consistent treatment of people in similar circumstances; and,
- (3) To improve the efficiency of the court process by promoting settlements and giving courts and the parties guidelines in settling the level of awards.

The Indiana Child Support Guidelines are based on the Income Shares Model, developed by the Child Support Project of the National Center for State Courts. The Income Shares Model is predicated on the concept that the child should receive the same proportion of parental income that he or she would have received if the parents lived together. Because household spending on behalf of children is intertwined with spending on behalf of adults for most expenditure categories, it is difficult to determine the proportion allocated to children in individual cases, even with exhaustive financial information. However, a number of authoritative economic studies provide estimates of the average amount of household expenditure on children in intact households. These studies have found the proportion of household spending devoted to children is related to the level of household income and to the number and ages of children. The Indiana Child Support Guidelines relate the level of child support to income and the number of children. In order to provide simplicity in the use of the Guidelines, however, child support figures reflect a blend of all age categories weighted toward school age children.

Based on this economic evidence, the Indiana Child Support Guidelines calculate child support as the share of each parent's income estimated to have been spent on the child if the parents and child were living in an intact household. The calculated amount establishes the level of child support for both the custodial and non-custodial parent. Absent grounds for a deviation, the custodial parent should be required to make monetary payments of child support, if application of the parenting time credit would so require.

COMMENTARY

History of Development. In June of 1985, the Judicial Reform Committee (now the Judicial Administration Committee) of the Judicial Conference of Indiana undertook the task of developing child support guidelines for use by Indiana judges. While the need had been long recognized in Indiana, the impetus for this project came from federal statutes requiring guidelines to be in place no later than October 1, 1987. P.L. 98-378. Paradoxically, guidelines did not need to be mandatory under the 1984 federal legislation

to satisfy federal requirements; they were only required to be made available to judges and other officials with authority to establish child support awards. 45 CFR Ch. III, § 302.56.

The final draft was completed by the Judicial Reform Committee on July 24, 1987, and was presented to the Judicial Conference of Indiana Board of Directors on September 17, 1987. The Board accepted the report of the Reform Committee, approved the Guidelines and recommended their use to the judges of Indiana in all matters of child support.

Family Support Act of 1988. On October 13, 1988, the United States Congress passed the "Family Support Act of 1988," P.L. 100-485 amending the Social Security Act by deleting the original language which made application of the Guideline discretionary and inserted in its place the following language:

"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 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." P.L. 100-485, § 103(a)(2).

The original Guidelines that went into effect October 1, 1987 and their commentary were revised by the Judicial Administration Committee to reflect the requirement that child support guidelines be a rebuttable presumption. The requirement applies to all cases where support is set after October 1, 1989, including actions brought under Title IV-D of the Social Security Act (42 U.S.C.A. § 651-669). Also, after October 1, 1989, counties and individual courts may not opt to use alternate methods of establishing support. The Indiana Child Support Guidelines were required to be in use in all Indiana courts in all proceedings where child support is established or modified on and after October 1, 1989.

Periodic Review of Guidelines and Title IV-D Awards. The "Family Support Act of 1988" also requires that the Guidelines be reviewed at least every four years "to assure their application results in the determination of appropriate child support award amounts." P.L. 100-485, § 103(b). Further, each state must develop a procedure to ensure that all Title IV-D awards are periodically reviewed to ensure that they comply with the Guidelines. P.L. 100-485, § 103(c).

Compliance With State Law. The Child Support Guidelines were developed specifically to comply with federal requirements, as well as Indiana law.

Objectives of the Indiana Child Support Guidelines. The following three objectives are specifically articulated in the Indiana Child Support Guidelines:

1. To establish as state policy an appropriate standard of support for children, subject to the ability of parents to financially contribute to that support. When the Guidelines were first recommended for use by the Indiana Judicial Conference on September 17, 1987, many courts in the state had no guideline to establish support. Many judges had expressed the need for guidelines, but few had the resources to develop them for use in a single court system. The time, research and economic understanding necessary to develop meaningful guidelines were simply beyond the resources of most individual courts.

2. To make awards more equitable by ensuring more consistent treatment of people in similar circumstances. This consistency can be expected not only in the judgments of a particular court, but between jurisdictions as well. What is fair for a child in one court is fair to a similarly situated child in another court.

3. To improve the efficiency of the court process by promoting settlements and giving courts and the parties guidelines in settling the level of awards. In other words, when the outcome is predictable, there is no need to fight. Because the human experience provides an infinite number of variables, no guideline can cover every conceivable situation, so litigation is not completely forestalled in matters of support. If the Guidelines are consistently applied, however, those instances should be minimized.

Economic Data Used in Developing Guidelines. What does it take to support a child? The question is simple, but the answer is extremely complex. Yet, the question must be answered if an adequate amount of child support is to be ordered by the court. Determining the cost attributable to children is complicated by intertwined general household expenditures. Rent, transportation, and grocery costs, to mention a few, are impossible to accurately apportion between family members. In developing these Guidelines, a great deal of reliance was placed on the research of Thomas J. Espenshade, (*Investing In Children*, Urban Institute Press, 1984) generally considered the most authoritative study of household expenditure patterns. Espenshade used data from 8,547 households and from that data estimated average expenditures for children present in the home. Espenshade's estimates demonstrate that amounts spent on the children of intact households rise as family income increases. They further demonstrate at constant levels of income that expenditures decrease for each child as family size increases. These principles are reflected in the Guideline Schedules for Weekly Support Payments, which are included in the Indiana Child Support Guidelines. By demonstrating how expenditures for each child decrease as family size increases, Espenshade should

have put to rest the previous practice of ordering equal amounts of support per child when two or more children are involved. Subsequent guidelines reviews have considered more current economic studies of child-rearing expenditures (e.g., Mark Lino, *Expenditures on Children by Families: 2006 Annual Report*, United States Department of Agriculture, 2007; David Betson, *State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations*, report to State of Oregon Department of Justice, 2006). These periodic guidelines reviews have concluded that the Indiana Guidelines based on the Espenshade estimates are generally within the range of more current estimates of child-rearing expenditures. A notable exception at high incomes leveled off the child support schedule for combined weekly adjusted incomes above \$4,000. In 2009 this exception was removed. The increase is now incorporated into the schedule up to combined weekly adjusted incomes of \$10,000 and a formula is provided for incomes above that amount. Previously, a formula was provided for combined weekly adjusted incomes above \$4,000.

Income Shares Model. After review of five approaches to the establishment of child support, the Income Shares Model was selected for the Indiana Guidelines. This model was perceived as the fairest approach for children because it is based on the premise that children should receive the same proportion of parental income after a dissolution that they would have received if the family had remained intact. Because it then apportions the cost of children between the parents based on their means, it is also perceived as being fair to parents. In applying the Guidelines, the following steps are taken:

1. The gross income of both parents is added together after certain adjustments are made. A percentage share of income for each parent is then determined.
2. The total is taken to the support tables, referred to in the Indiana Guidelines as the Guideline Schedules for Weekly Support Payments, to determine the total cost of supporting a child or children.
3. Work-related child care expenses and the weekly costs of health insurance premiums for the child(ren) are then added to the basic child support obligation.
4. The child support obligation is then prorated between the parents, based on their proportionate share of the weekly adjusted income, hence the name "income shares."

The Income Shares Model was developed by The Institute for Court Management of the National Center for State Courts under the Child Support Guidelines Project. This approach was designed to be consistent with the Uniform Marriage and Divorce Act, the principles of which are consistent with IC 31-16-6-1. Both require the court to consider the financial resources of both parents and the standard of living the child would have enjoyed in an intact family.

Gross Versus Net Income. One of the policy decisions made by the Judicial Administration Committee in the early stages of developing the Guidelines was to use a gross income approach as opposed to a net income approach. Under a net income approach, extensive discovery is often required to determine the validity of deductions claimed in arriving at net income. It is believed that the use of gross income reduces discovery. (See Commentary to Guideline 3A). While the use of gross income has proven controversial, this approach is used by the majority of jurisdictions and, after a thorough review, is considered the best reasoned.

The basic support obligation would be the same whether gross income is reduced by adjustments built into the Guidelines or whether taxes are taken out and a net income option is used. A support guideline schedule consists of a column of income figures and a column of support amounts. In a gross income methodology, the tax factor is reflected in the support amount column, while in a net income guideline, the tax factor is applied to the income column. In devising the Indiana Guidelines, an average tax factor of 21.88 percent was used to adjust the support column.

Of course, taxes vary for different individuals. This is the case whether a gross or net income approach is used. Under the Indiana Guideline, where taxes vary significantly from the assumed rate of 21.88 percent, a trial court may choose to deviate from the guideline amount where the variance is substantiated by evidence at the support hearing.

Flexibility Versus the Rebuttable Presumption. Although application of the Guideline yields a figure that becomes a rebuttable presumption, there is room for flexibility. Guidelines are not immutable, black letter law. A strict and totally inflexible application of the Guidelines to all cases can easily lead to harsh and unreasonable results. If a judge believes that in a particular case application of the Guideline amount would be unreasonable, unjust, or inappropriate, a finding must be made that sets forth the reason for deviating from the Guideline amount. The finding need not be as formal as Findings of Fact and Conclusions of Law; the finding need only articulate the judge's reasoning. For example, if under the facts and circumstances of the case, the noncustodial parent would bear an inordinate financial burden, the following finding would justify a deviation:

"Because the noncustodial parent suffers from a chronic medical condition requiring uninsured medical expenses of \$357.00 per month, the Court believes that setting child support in the Guideline amount would be unjust and instead sets support in the amount of \$____per week."

Agreed Orders submitted to the court must also comply with the "rebuttable presumption" requirement; that is, the order must recite why the order deviates from the Guideline amount.

1. Phasing in Support Orders. *Some courts may find it desirable in modification proceedings to gradually implement the Guideline order over a period of time, especially where support computed under the Guideline is considerably higher than the amount previously paid. Enough flexibility exists in the Guidelines to permit that approach, as long as the judge's rationale is explained with an entry such as:*

"The Guideline's support represents an increase of 40%, and the court finds that such an abrupt change in support obligation would render the obligor incapable of meeting his/her other established obligations. Therefore, the Court sets support in the amount of \$_____ and, on October 1, 20____, it shall increase to \$_____ and, on September 1, 20____, obligor shall begin paying the Guideline amount of \$_____."

2. Situations Calling for Deviation. *An infinite number of situations may prompt a judge to deviate from the Guideline amount. For illustration only, and not as a complete list, the following examples are offered:*

- *One or both parties pay union dues as a condition of employment.*
- *A party provides support for an elderly parent.*
- *The noncustodial parent purchases school clothes.*
- *The noncustodial parent has extraordinary medical expenses for himself or herself.*
- *A parent is a member of the armed forces and the military provides housing.*
- *The obligor is still making periodic payments to a former spouse pursuant to a prior Dissolution Decree.*
- *One of the parties is required to travel an unusually long distance in the course of employment on a regular or daily basis and incurs an unusually large expense for such travel, and*
- *The custodial or noncustodial parent incurs significant travel expense in exercising parenting time.*

Again, no attempt has been made to define every possible situation that could conceivably arise when determining child support and to prescribe a specific method of handling each of them. Practitioners must keep this in mind when advising clients and when arguing to the court. Many creative suggestions will undoubtedly result. Judges must also avoid the pitfall of blind adherence to the computation for support without giving careful consideration to the variables that require changing the result in order to do justice.

GUIDELINE 2. USE OF THE GUIDELINES

The Guideline Schedules provide calculated amounts of child support. For obligors with a combined weekly adjusted income, as defined by these Guidelines, of less than \$100.00, the Guidelines provide for case-by-case determination of child support. When a parent has extremely low income the amount of child support recommended by use of the Guidelines should be carefully scrutinized. The court should consider the obligor's income and living expenses to determine the maximum amount of child support that can reasonably be ordered without denying the obligor the means for self-support at a minimum subsistence level. A numeric amount of child support shall be ordered; however, there are situations where a \$0.00 support order is appropriate.

Temporary maintenance may be awarded by the court not to exceed thirty-five percent (35%) of the obligor's weekly adjusted income. In no case shall child support and temporary maintenance exceed fifty percent (50%) of the obligor's weekly adjusted income. Temporary maintenance and/or child support may be ordered by the court either in dollar payments or "in-kind" payments of obligations.

Federal law requires the Indiana Child Support Guidelines be applied in every instance in which child support is established including, but not limited to, dissolutions of marriage, legal separations, paternity actions, juvenile proceedings, petitions to establish support and Title IV D proceedings.

Indiana requires worksheets, including a Child Support Obligation Worksheet, to assist judges, practitioners, and parents in calculating the presumptive amount of child support under the Guidelines.

COMMENTARY

Minimum Support. *The Guideline's schedules for weekly support payments do not provide an amount of support for couples with combined weekly adjusted income of less than \$100.00. Consequently, the Guidelines do not establish a minimum support obligation. Instead the facts of each individual case must be examined and support set in such a manner that the obligor is not denied a means of self-support at a subsistence level. For example, (1) a parent who has a high parenting time credit; (2) a parent who suffers from debilitating mental illness; (3) a parent caring for a disabled child; (4) an incarcerated parent; (5) a parent or a family member with a debilitating physical health issue; or, (6) a natural disaster are significant but not exclusive factors for the court to consider in setting a child support order. The court should not automatically attribute minimum wage to parents who, for a variety of factors, are not capable of earning minimum wage.*

Where parents live together with the child and share expenses, a child support worksheet shall be completed and a \$0.00 order may be entered as a deviation.

Temporary Maintenance. *It is recommended that temporary maintenance not exceed thirty-five percent (35%) of the obligor's weekly adjusted income. The maximum award should be reserved for those instances where the custodial spouse has no income or no means of support, taking into consideration that spouse's present living arrangement (i.e., whether or not he or she lives with someone who shares or bears the majority of the living expense, lives in the marital residence with little or no expense, lives in military housing, etc.).*

It is further recommended that the total of temporary maintenance and child support should not exceed fifty percent (50%) of the obligor's weekly adjusted income. In computing temporary maintenance, in-kind payments, such as the payment of utilities, house payments, rent, etc., should also be included in calculating the percentage limitations. Care must also be taken to ensure that the obligor is not deprived of the ability to support himself or herself.

Spousal Maintenance. *It should also be emphasized that the recommendations concerning maintenance apply only to temporary maintenance, not maintenance in the Final Decree. An award of spousal maintenance in the Final Decree must, of course, be made in accordance with Indiana statute. These Guidelines do not alter those requirements. Theoretically, when setting temporary maintenance, child support should come first. That is, if child support is set at forty percent (40%) of the obligor's weekly adjusted income, only a maximum of ten percent (10%) of the obligor's income would be available for maintenance. That distinction, however, makes little practical difference. As with temporary maintenance, care should be taken to leave the obligor with adequate income for subsistence. In many instances the court will have to review the impact of taxes on the obligor's income before entering an order for spousal maintenance in addition to child support to avoid injustice to the obligor.*

The worksheet provides a deduction for spousal maintenance paid (Line 1D). Caution should be taken to assure that any credit taken is for maintenance and not for periodic payments as the result of a property settlement. No such deduction is given for amounts paid by an obligor as the result of a property settlement, although that is a factor the court may wish to consider in determining the obligor's ability to pay the scheduled amount of support at the present time. Again, flexibility was intended throughout the Guidelines and they were not intended to place the obligor in a position where he or she loses all incentive to comply with the orders of the court.

Guidelines to be Applied in all Matters of Child Support. *The Indiana Child Support Guidelines shall be applied in every instance in which child support is established including, but not limited to, dissolutions of marriage, legal separations, paternity actions, juvenile proceedings, petitions to establish support and Title IV-D proceedings.*

The Indiana legislature requires the Indiana Child Support Guidelines be applied and the Child Support Worksheet be used in determining the manner in which financial services to children that are CHINS (Child in Need of Services) or delinquent are to be repaid. Similarly, the legislature requires the court to use the Guidelines to determine the financial contribution required from each parent of a child or the guardian of the child's estate for costs associated with the institutional placement of a child.

GUIDELINE 3. DETERMINATION OF CHILD SUPPORT AMOUNT

A. Definition of Weekly Gross Income.

1. Definition of Weekly Gross Income (Line 1 of Worksheet). For purposes of these Guidelines, "weekly gross income" is defined as actual weekly gross income of the parent if employed to full capacity, potential income if unemployed or underemployed, and the value of "in-kind" benefits received by the parent. Weekly gross income of each parent includes income from any source, except as excluded below, and includes, but is not limited to, income from salaries, wages, commissions, bonuses, overtime, partnership distributions, dividends, severance pay, pensions, interest, trust income, annuities, structured settlements, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, inheritance, prizes, and alimony or maintenance received.

Social Security disability benefits paid for the benefit of the child must be included in the disabled parent's gross income. The disabled parent is entitled to a credit for the amount of Social Security disability benefits paid for the benefit of the child.

Certain Exclusions from Income. Specifically excluded are benefits from means-tested public assistance programs, including, but not limited to, Temporary Aid to Needy Families (TANF), Supplemental Security Income, and Food Stamps. Also excluded are survivor benefits received by or for other children residing in either parent's home.

2. Self-Employment, Business Expenses, In-Kind Payments and Related Issues. Weekly Gross Income from self-employment, operation of a business, rent, and royalties is defined as gross receipts minus ordinary and necessary expenses. In general, these types of income and expenses from self-employment or operation of a business should be carefully reviewed to restrict the deductions to reasonable out-of-pocket expenditures necessary to produce income. These expenditures may include a reasonable yearly deduction for necessary capital expenditures. Weekly Gross Income from self-employment may differ from a determination of business income for tax purposes.

Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business should be counted as income if they are significant and reduce personal living expenses. Such payments might include a company car, free housing, or reimbursed meals.

The self-employed shall be permitted to deduct that portion of their FICA tax payment that exceeds the FICA tax that would be paid by an employee earning the same Weekly Gross Income.

3. Unemployed, Underemployed and Potential Income. If a court finds a parent is voluntarily unemployed or underemployed without just cause, child support shall be calculated based on a determination of potential income. A determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's employment and earnings history, occupational qualifications, educational attainment, literacy, age, health, criminal record or other employment barriers, prevailing job opportunities, and earnings levels in the community. If there is no employment and earnings history and no higher education or vocational training, the facts of the case may indicate that Weekly Gross Income be set at least at the federal minimum wage level, provided the resulting child support amount is set in such a manner that the obligor is not denied a means of self-support at a subsistence level.

COMMENTARY TO GUIDELINE 3A

Weekly Gross Income.

1. Child Support Calculations Generally. *Weekly Gross Income, potential income, weekly adjusted income and basic child support obligation have very specific and well-defined meanings within the Indiana Child Support Guidelines. Their definitions are not repeated in the Commentary, but further explanation follows.*

2. Determination of Weekly Gross Income. *Weekly Gross Income is the starting point in determining the child support obligation, and it must be calculated for both parents. If one or both parents have no income, then potential income may be calculated and used as Weekly Gross Income. Likewise, imputed income may be substituted for, or added to, other income in arriving at Weekly Gross Income. It includes such items as free housing, a company car that may be used for personal travel, and reimbursed meals or other items received by the obligor that reduce his or her living expenses.*

The Child Support Obligation Worksheet does not include space to calculate Weekly Gross Income. It must be calculated separately and the result entered on the worksheet.

In calculating Weekly Gross Income, it is helpful to begin with total income from all sources. This figure may not be the same as gross income for tax purposes. Internal Revenue Code of 1986, § 61. Means-tested public assistance programs (those based on income) are excluded from the computation of Weekly Gross Income, but other government payments, such as Social Security benefits and veterans pensions/retired pay, should be included. However, survivor benefits paid to or for the benefit of their children are not included. In cases where a custodial parent is receiving, as a representative payee for a prior born child, Social Security survivor benefits because of the death of the prior born child's parent, the court should carefully consider Line 1 C of the basic child support obligation worksheet, Legal Duty of Support for Prior-born Children. Because the deceased parent's contribution for the support of the prior born child is being partially paid by Social Security survivor benefits that are excluded from Weekly Gross Income, the court should not enter, on Line 1C, an amount that represents 100% of the cost of support for the prior born child. The income of the spouses of the parties is not included in Weekly Gross Income.

A court may not consider the incarceration of a parent as voluntary unemployment and his or her potential income should not be assessed for the establishment or modification of child support. I.C. 31-16-8-1 (d).

a. Self-Employment, Rent and Royalty Income. *Calculating Weekly Gross Income for the self-employed or for those who receive rent and royalty income presents unique problems, and calls for careful review of expenses. The principle involved is that actual expenses are deducted, and benefits that reduce living expenses (i.e. company cars, free lodging, reimbursed meals, etc.) should be included in whole or in part. It is intended that actual out-of-pocket expenditures for the self-employed, to the extent that they are reasonable and necessary for the production of income, be deducted. Reasonable deductions for capital expenditures may be included. While income tax returns may be helpful in arriving at Weekly Gross Income for a self-employed person, the deductions allowed by the Guidelines may differ significantly from those allowed for tax purposes.*

The self-employed pay FICA tax at twice the rate that is paid by employees. At present rates, the self-employed pay fifteen and thirty one-hundredths percent (15.30%) of their gross income to a designated maximum, while employees pay seven and sixty-five one-hundredths percent (7.65%) to the same maximum. The self-employed are therefore permitted to deduct one-half of their FICA payment when calculating Weekly Gross Income.

b. Overtime, Commissions, Bonuses and Other Forms of Irregular Income. *There are numerous forms of income that are irregular or nonguaranteed, which cause difficulty in accurately determining the gross income of a party. Overtime, commissions, bonuses, periodic partnership distributions, voluntary extra work and extra hours worked by a professional are all illustrations, but far from an all-inclusive list, of such items. Each is includable in the total income approach taken by the Guidelines, but each is also very fact sensitive.*

Each of the above items is sensitive to downturns in the economy. The fact that overtime, for example, has been consistent for three (3) years does not guarantee that it will continue in a poor economy. Further, it is not the intent of the Guidelines to require a party who has worked sixty (60) hour weeks to continue doing so indefinitely just to meet a support obligation that is based on that higher level of earnings. Care should be taken to set support based on dependable income, while at the same time providing children with the support to which they are entitled.

When the court determines that it is not appropriate to include irregular income in the determination of the child support obligation, the court should express its reasons. When the court determines that it is appropriate to include irregular income, an equitable method of treating such income may be to require the obligor to pay a fixed percentage of overtime, bonuses, etc., in child support on a periodic but predetermined basis (weekly, bi-weekly, monthly, quarterly) rather than by the process of determining the average of the irregular income by past history and including it in the obligor's gross income calculation.

One method of treating irregular income is to determine the ratio of the basic child support obligation (line 4 of the worksheet) to the combined weekly adjusted income (line 3 of the worksheet) and apply this ratio to the irregular income during a fixed period. For example, if the basic obligation was \$110.00 and the combined income was \$650.00, the ratio would be .169 ($\$110.00 / \650.00). The order of the court would then require the obligor to make a lump sum payment of .169 of the obligor's irregular income received during the fixed period.

The use of this ratio will not result in an exact calculation of support paid on a weekly basis. It will result in an overstatement of the additional support due, and particularly so when average irregular income exceeds \$250.00 per week or exceeds 75% of the regular adjusted Weekly Gross Income. In these latter cases the obligor may seek to have the irregular income calculation redetermined by the court.

Another form of irregular income may exist when an obligor takes a part-time job for the purpose of meeting financial obligations arising from a subsequent marriage, or other circumstances. Modification of the support order to include this income or any portion of it may require that the obligor continue with that employment just to meet an increased support obligation, resulting in a disincentive to work.

Judges and practitioners should be innovative in finding ways to include income that would have benefited the family had it remained intact, but be receptive to deviations where reasons justify them. The foregoing discussion should not be interpreted to exclude consideration of irregular income of the custodial parent.

c. Potential Income. *Potential income may be determined if a parent has no income, or only means-tested income, and is capable of earning income or capable of earning more. Obviously, a great deal of discretion will have to be used in this determination. One purpose of potential income is to discourage a parent from taking a lower paying job to avoid the payment of significant support. Another purpose is to fairly allocate the support obligation when one parent remarries and, because of the income of the new spouse, chooses not to be employed. However, attributing potential income that results in an unrealistic child support obligation may cause the accumulation of an excessive arrearage, and be contrary to the best interests of the child(ren). Research shows that on average more noncustodial parental involvement is associated with greater child educational attainment and lower juvenile delinquency. Ordering support for low-income parents at levels they can reasonably pay may improve noncustodial parent-child contact; and in turn, the outcomes for their children. The six examples which follow illustrate some of the considerations affecting attributing potential income to an unemployed or underemployed parent.*

(1) When a custodial parent with young children at home has no significant skills or education and is unemployed, he or she may not be capable of entering the work force and earning enough to even cover the cost of child care. Hence, it may be inappropriate to attribute any potential income to that parent. It is not the intention of the Guidelines to force all custodial parents into the work force. Therefore, discretion must be exercised on an individual case basis to determine if it is fair under the circumstances to attribute potential income to a particular nonworking or underemployed custodial parent. The need for a custodial parent to contribute to the financial support of a child must be carefully balanced against the need for the parent's full-time presence in the home.

(2) When a parent has some history of working and is capable of entering the work force, but without just cause voluntarily fails or refuses to work or to be employed in a capacity in keeping with his or her capabilities, such a parent's potential income shall be included in the gross income of that parent. The amount to be attributed as potential income in such a case may be the amount that the evidence demonstrates he or she was capable of earning in the past. If for example the custodial parent had been a nurse or a licensed engineer, it may be unreasonable to determine his or her potential at the minimum wage level. Discretion must be exercised on an individual case basis to determine whether under the circumstances there is just cause to attribute potential income to a particular unemployed or underemployed parent.

(3) Even though an unemployed parent has never worked before, potential income should be considered for that parent if he or she voluntarily remains unemployed without justification. Absent any other evidence of potential earnings of such a parent, the federal minimum wage should be used in calculating potential income for that parent. However, the court should not add child care expense that is not actually incurred.

(4) When a parent is unemployed by reason of involuntary layoff or job termination, it still may be appropriate to include an amount in gross income representing that parent's potential income. If the involuntary layoff can be reasonably expected to be brief, potential income should be used at or near that parent's historical earning level. If the involuntary layoff will be extensive in duration, potential income may be determined based upon such factors as the parent's unemployment compensation, job

capabilities, education and whether other employment is available. Potential income equivalent to the federal minimum wage may be attributed to that parent.

(5) When a parent is unable to obtain employment because that parent suffers from debilitating mental illness, a debilitating health issue, or is caring for a disabled child, it may be inappropriate to attribute any potential income to that parent.

(6) When a parent is incarcerated and has no assets or other source of income, potential income should not be attributed.

d. In-Kind Benefits. Whether or not the value of in-kind benefits should be included in a parent's weekly gross income is fact-sensitive and requires careful consideration of the evidence in each case. It may be inappropriate to include as gross income occasional gifts received. However, regular and continuing payments made by a family member, subsequent spouse, roommate or live in friend that reduce the parent's costs for housing, utilities, or groceries, may be included as gross income. If there were specific living expenses being paid by a parent which are now being regularly and continually paid by that parent's current spouse or a third party, the value of those assumed expenses may be considered to be in-kind benefits and included as part of the parent's weekly gross income. The marriage of a parent to a spouse with sufficient affluence to obviate the necessity for the parent to work may give rise to a situation where either potential income or the value of in-kind benefits or both should be considered in arriving at gross income.

e. Return from Individual Retirement Accounts and other retirement plans. The annual return of an IRA, 401(K) or other retirement plan that is automatically reinvested does not constitute income. Where previous withdrawals from the IRA or 401(K) have been made to fund the parent's lifestyle choices or living expenses, these withdrawals may be considered "actual income" when calculating the parent's child support obligation. The withdrawals must have been received by the parent and immediately available for his or her use. The court should consider whether the early withdrawal was used to reduce the parent's current living expenses, whether it was utilized to satisfy on-going financial obligations, and whether the sums are immediately available to the parent. This is a fact-sensitive situation. Retirement funds which were in existence at the time of a dissolution and which were the subject of the property division would not be considered "income" when calculating child support.

B. Income Verification.

1. Submitting Worksheet to Court. In all cases, a copy of the worksheet which accompanies these Guidelines shall be completed and filed with the court when the court is asked to order support. This includes cases in which agreed orders are submitted. Worksheets shall be signed by both parties, not their counsel, under penalties for perjury.

2. Documenting Income. Income statements of the parents shall be verified with documentation of both current and past income. Suitable documentation of current earnings includes paystubs, employer statements, or receipts and expenses if self-employed. Documentation of income may be supplemented with copies of tax returns.

COMMENTARY TO GUIDELINE 3B

Worksheet Documentation.

1. Worksheet Requirement. Submission of the worksheet became a requirement in 1989 when use of the Guidelines became mandatory. The Family Support Act of 1988 requires that a written finding be made when establishing support. In Indiana, this is accomplished by submission of a child support worksheet. The worksheet memorializes the basis upon which the support order is established. Failure to submit a completed child support worksheet may, in the court's discretion, result in the court refusing to approve a child support order or result in a continuance of a hearing regarding child support until a completed worksheet is provided. At subsequent modification hearings the court will then have the ability to accurately determine the income claimed by each party at the time of the prior hearing.

If the parties disagree on their respective gross incomes, the court shall include in its order the gross income it determines for each party. When the court deviates from the Guideline amount, the order or decree should also include the reason or reasons for deviation. This information becomes the starting point to determine whether or not a substantial and continuing change of circumstance occurs in the future.

2. Verification of Income. The requirement of income verification is not a change in the law but merely a suggestion to judges that they take care in determining the income of each party. One pay stub standing alone can be very misleading, as can other forms of documentation. This is particularly true for salesmen, professionals and others who receive commissions or bonuses, or others who have the ability to defer payments, thereby distorting the true picture of their income in the short term. When in doubt, it is suggested that income tax returns for the last two or three years be reviewed.

C. Computation of Weekly Adjusted Income (Line 1E of Worksheet).

After Weekly Gross Income is determined, certain reductions are allowed in computing weekly adjusted income which is the amount on which child support is based. These reductions are specified below.

1. Adjustment for Subsequent-born or Legally Adopted Child(ren) (Line 1A of Worksheet). There shall be an adjustment to Weekly Gross Income of parents who have a legal duty or court order to support children (1) born or legally adopted subsequent to the birthdate(s) of the child(ren) subject of the child support order and (2) that parent is actually meeting or paying that obligation.

2. Court Orders for Prior-born Child(ren) (Line 1B of Worksheet). The amount(s) of any court order(s) for child support for prior-born children shall be deducted from Weekly Gross Income. This should include court ordered post-secondary education expenses calculated on an annual basis divided by 52 weeks. A credit shall not be given for any portion of the order addressing arrearages.

3. Legal Duty of Support for Prior-born Child(ren) When No Court Order Exists (Line 1C of Worksheet). Where a party has a legal duty to financially support children born prior to the child(ren) for whom support is being established, and no court order exists, an amount reasonably necessary for such support actually paid, or funds actually spent shall be deducted from weekly gross income to arrive at weekly adjusted income. This deduction is not allowed for step-children.

4. Alimony or Maintenance (Line 1D of Worksheet). The amount(s) of alimony ordered in decrees from foreign jurisdictions or maintenance should be deducted from Weekly Gross Income.

COMMENTARY TO GUIDELINE 3C

Determining Weekly Adjusted Income. After Weekly Gross Income is determined, the next step is to compute weekly adjusted income (Line 1E of the Worksheet). Certain deductions, discussed below, are allowed from Weekly Gross Income in arriving at weekly adjusted income.

1. Adjustment of Weekly Gross Income for Subsequent-born or Legally Adopted Child(ren). The adjustment should be computed as follows:

STEP 1: Determine the number of children born or legally adopted by the parents subsequent to the birthdate(s) of the child(ren) subject of the child support order and for whom the parent has a legal duty or court order to support. The parent seeking the adjustment has the burden to prove the support is actually paid if the subsequent child does not live in the respective parent's household.

STEP 2: Calculate the subsequent child credit by multiplying the parent's Weekly Gross Income by the appropriate factor listed in the table below and enter the product on Line 1A on the Worksheet.

Appropriate factors are:

- | | | |
|---|---------------------|------|
| 1 | Subsequent child | .065 |
| 2 | Subsequent children | .097 |
| 3 | Subsequent children | .122 |
| 4 | Subsequent children | .137 |
| 5 | Subsequent children | .146 |
| 6 | Subsequent children | .155 |
| 7 | Subsequent children | .164 |
| 8 | Subsequent children | .173 |

EXAMPLE: A noncustodial parent has a Weekly Gross Income, before adjustment, of \$500.00. The custodial parent has a Weekly Gross Income, before adjustment, of \$300.00. An adjustment shall be made to the parents' respective Weekly Gross Incomes for the two (2) children born to the noncustodial parent after the birthdate(s) of the child(ren) subject of the child support order and the one (1) adopted child of the custodial parent, legally adopted after the birthdate(s) of the child(ren) subject of the child support order. The respective subsequent child adjustment to be entered on Line 1A of the Worksheet would be as follows:

Noncustodial.....\$500.00 x .097 = \$48.50 adjustment

Custodial.....\$300.00 x .065 = \$19.50 adjustment

2. Court Orders for Prior born Child(ren). *The party seeking the adjustment for the court ordered child support obligation bears the burden of establishing the actual existence of the order and the amount of the order.*

3. Legal Duty to Support for Prior-born Child(ren) When No Court Order Exists.

A. Prior Born Child(ren) Not in the Home. A deduction is allowed for reasonably necessary support actually paid, or funds actually spent, for the child(ren) born prior to the child(ren) for whom support is being established. This is true even though that obligation has not been reduced to a court order. The party seeking the deduction bears the burden of proving the obligation and satisfaction of the obligation.

The court may consider evidence of those funds paid or routinely spent on behalf of the prior born child(ren).

For example, paternity of the prior born child was established by execution of a paternity affidavit and the parents lived together for the first two years of the child's life. The parties then separated and negotiated an agreement for the ongoing financial support of the child, without seeking a court order. Father has routinely paid \$50 per week to the mother of his prior born child and has evidence to support those payments.

B. Prior Born Child(ren) In the Home. A parent should be permitted to deduct his or her portion of the support obligation for prior born children living in his or her home. It is recommended that these guidelines be used to compute a deduction from weekly gross income.

i. Incomes of Both Parents Known: If the actual incomes of both parents of the prior born child(ren) are known, then the actual incomes should be utilized in calculating the basic child support obligation for the prior born child(ren). In order to determine the adjustment to be applied, use the Indiana Child Support Guideline Schedules for Weekly Support Payments. The percentage share of the basic child support obligation attributable to the parent seeking the adjustment should be considered the legal duty of support for the prior born child(ren) and the amount placed in Line 1.C., Child Support Obligation Worksheet.

ii. Income of a Parent Unknown: If actual income information for a parent of the prior-born child(ren) is unknown, the court should utilize the known income of the parent seeking the adjustment for the legal duty to support the prior born child(ren) and attribute zero (\$0.00) income to the other parent. In order to determine the adjustment to be applied, use the Indiana Child Support Guideline Schedules for Weekly Support Payments as the amount placed in Line 1.C., Child Support Obligation Worksheet.

If the parent seeking the adjustment has prior born children with different non-custodial parents whose incomes are unknown, the basic child support obligation shall be calculated as if the prior born children have the same noncustodial parent and the adjustment for those prior born children shall be attributed as a single legal duty, rather than the total of two or more separate and distinct legal duties.

a. For example, the gross weekly income of the parent seeking the adjustment is \$400.00 and there is one prior born child in the home. The gross weekly income for the other

parent of the prior born child is unknown. The other parent's gross weekly income would be set at \$0.00 to determine the legal duty to support that prior born child. The legal duty to support that prior born child for the parent seeking the adjustment would be \$79.00 from the Guideline Schedules for Weekly Support Payments.

b. For example, the gross weekly income of the parent seeking the adjustment is \$400.00 and there are two prior born children in the home with different parents. The gross weekly incomes for those other parents of the prior born children are unknown. Those other parents' gross weekly incomes would be set at \$0.00 to determine the legal duty to support those prior born children. The legal duty to support those two prior born children for the parent seeking the adjustment would be \$119.00 from the Guideline Schedules for Weekly Support Payments.

4. Alimony or Maintenance. *The final allowable deduction from Weekly Gross Income in arriving at weekly adjusted income is for alimony ordered in decrees from foreign jurisdictions or spousal maintenance. These amounts are allowable only if they arise as the result of a court order. This deduction is intended only for spousal maintenance, not for periodic payments from a property settlement although the court may consider periodic payments when determining whether or not to deviate from the guideline amount when ordering support. Refer to the discussion of temporary maintenance earlier in this commentary. (Line 1D of Worksheet).*

D. Basic Child Support Obligation (Worksheet Line 4).

The Basic Child Support Obligation should be determined using the attached Guideline Schedules for Weekly Support Payments. For combined weekly adjusted income amounts falling between amounts shown in the schedule, basic child support amounts should be rounded to the nearest amount. The number of children refers to children for whom the parents share joint legal responsibility and for whom support is being sought, excluding children for whom Section Two of the Post-Secondary Education Worksheet is used to determine support.

COMMENTARY TO GUIDELINE 3D

Use of Guideline Schedules.

Combined Weekly Adjusted Income. *After reducing Weekly Gross Income by the deductions allowed above, weekly adjusted income is computed. The next step is to add the weekly adjusted income of both parties and take the combined weekly adjusted income to the Guideline schedules for weekly support payments. In selecting the appropriate column for the determination of the basic child support obligation, it should be remembered that the number of children refers only to the number of children of this marriage for whom support is being computed, excluding children for whom a Post-Secondary Education Worksheet is used to determine support.*

E. Additions to the Basic Child Support Obligation.

1. Work-Related Child Care Expense (Worksheet Line 4A). Child care costs incurred due to employment or job search of both parent(s) should be added to the basic obligation. It includes the separate cost of a sitter, day care, or like care of a child or children while the parent works or actively seeks employment. Such child care costs must be reasonable and should not exceed the level required to provide quality care for the children. Continuity of child care should be considered. Child care costs required for active job searches are allowable on the same basis as costs required in connection with employment.

The parent who contracts for the child care shall be responsible for the payment to the provider of the child care. For the purpose of designating this expense on the Child Support Obligation Worksheet (Line 4A), each parent's expense shall be calculated on an annual basis divided by 52 weeks. The combined amount shall be added to the Basic Child Support Obligation and each parent shall receive a credit equal to the expense incurred by that parent as an Adjustment (Line 7 of the Worksheet).

When potential income is attributed to a party, the court should not also attribute work-related child care expense which is not actually incurred.

2. Cost of Health Insurance for Child(ren) (Worksheet Line 4B). The weekly cost of health insurance premiums for the child(ren) should be added to the basic obligation whenever either parent actually incurs the premium expense or a portion of such expense. (Please refer to Guideline 7 for additional information regarding the treatment of Health Care Expenses)

3. Extraordinary Health Care Expense. Please refer to Support Guideline 7 for treatment of this issue.

4. Extraordinary Educational Expense. Please refer to Support Guideline 8 for treatment of this issue.

COMMENTARY TO GUIDELINE 3E

Additions to the Basic Child Support Obligation.

1. Work-Related Child Care Expense (Worksheet Line 4A). One of the additions to the basic child support obligation is a reasonable child care expense incurred due to employment, or an attempt to find employment. This amount is added to the basic child support obligation in arriving at the total child support obligation.

Work-related child care expense is an income-producing expense of the parent. Presumably, if the family remained intact, the parents would treat child care as a necessary cost of the family attributable to the children when both parents work. Therefore, the expense is one that is incurred for the benefit of the child(ren) which the parents should share.

In circumstances where a parent claims the work-related child care credit for tax purposes, it would be appropriate to reduce the amount claimed as work-related child care expense by the amount of tax saving to the parent. The exact amount of the credit may not be known at the time support is set, but counsel should be able to make a rough calculation as to its effect.

When potential income is attributed to a party, the court should not also attribute a work-related child care expense which is not actually incurred because this expense is highly speculative and difficult to adequately verify.

2. Cost of Health Insurance for Child(ren) (Worksheet Line 4B). The weekly out of pocket costs of health insurance premiums only for the child(ren) should be added to the basic obligation so as to apportion that cost between the parents. The parent who actually pays that cost then receives a credit towards his or her child support obligation on Line 7 of the Worksheet. (See Support Guideline 3G. Adjustments to Parent's Child Support Obligation). Only that portion of the cost actually paid by a parent is added to the basic obligation. If coverage is provided without cost to the parent(s), then zero should be entered as the amount. If health insurance coverage is provided through an employer or purchased through the private market, only the child(ren)'s portion should be added. If the insurance is eligible for a federal tax credit, the amount of the credit should be subtracted from the premiums paid by the parent. In determining the amount to be added, only the amount of the insurance cost attributable to the child(ren) subject of the child support order shall be included, such as the difference between the cost of insuring a single party versus the cost of family coverage. In circumstances where coverage is applicable to persons other than the child(ren) subject of the child support order, such as other child(ren) and/or a subsequent spouse, the total cost of the insurance premium shall be prorated by the number of persons covered to determine a per person cost.

3. Total Child Support Obligation (Worksheet Line 5). Adding work-related child care costs, and the weekly cost of health insurance premiums for the child(ren) to the basic child support obligation results in a figure called Total Child Support Obligation. This is the basic obligation of both parents for the support of the child(ren) of the marriage, or approximately what it would cost to support the child(ren) in an intact household, excluding extraordinary health care and/or extraordinary education expenses.

F. Computation of Parent's Child Support Obligation (Worksheet Line 6).

Each parent's child support obligation is determined by multiplying his or her percentage share of total weekly adjusted income (Worksheet Line 2) times the Total Child Support Obligation (Worksheet Line 5).

1. Division of Obligation Between Parents (Worksheet Line 6). The total child support obligation is divided between the parents in proportion to their weekly adjusted income. A monetary obligation is computed for each parent. The custodial parent's share is presumed to be spent directly on the child. When there is near equal parenting time, and the custodial parent has significantly higher income than the noncustodial parent, application of the parenting time credit should result in an order for the child support to be paid from a custodial parent to a noncustodial parent, absent grounds for a deviation.

2. Deviation from Guideline Amount. If, after consideration of the factors contained in IC 31-16-6-1 and IC 31-16-6-2, the court finds that the Guideline amount is unjust or inappropriate in a particular case, the court shall state a factual basis for the deviation and proceed to enter a support amount that is deemed appropriate.

COMMENTARY TO GUIDELINE 3F

Computation of Child Support.

1. Apportionment of Support Between Parents. After the total child support obligation is determined, it is necessary to apportion that obligation between the parents based on their respective weekly adjusted incomes. First, a percentage is formed by dividing the weekly adjusted income of each parent by the total weekly adjusted income (Line 1E of the Worksheet). The percentages are entered on Line 2 of the Worksheet. The total child support obligation is then multiplied by the percentages on Line 2 (the percentage of total weekly adjusted income that the weekly adjusted income of each parent represents) and the resulting figure is the child support obligation of each parent. The noncustodial parent is ordered to pay his or her proportionate share of support as calculated on Line 6 of the Worksheet. Custodial parents are presumed to be meeting their obligations by direct expenditures on behalf of the child, so a support order is not entered against the custodial parent.

2. Apportionment of Support When Incapacitated Adult Child has Earned Income. Under certain circumstances the earned income of a child may be considered in apportioning support. In calculating a support obligation with respect to an incapacitated adult child with earned income, the support obligation may be determined by apportioning the support based upon the relative amount earned by the parents and the child.

3. Deviation from Guideline Amount. If the court determines that the Guideline amount is unjust, inappropriate, or denies the obligor a means of self-support at a subsistence level, a written finding shall be made setting forth the factual basis for deviation from the Guideline amount. A simple finding such as the following is sufficient: "The court finds that the presumptive amount of support calculated under the Guidelines has been rebutted for the following reasons." A pro forma finding that the Guidelines are not appropriate does not satisfy the requirement for a specific finding of inappropriateness in a particular case, which is required in an order to deviate from the Guideline amount. For further discussion of deviation from the Guideline amount, see also the Commentary to Support Guideline 1.

G. Adjustments to Parent's Child Support Obligation (Worksheet Line 7).

The parent's child support obligation (Worksheet Line 7) may be subject to four (4) adjustments.

1. Obligation from Post-Secondary Education Worksheet. If the parents have a child who is living away from home while attending school, his or her child support obligation will reflect the adjustment found on Line J of the Post-Secondary Education Worksheet (See Support Guideline 8).

2. Weekly Cost of Work-related Child Care Expenses. A parent who pays a weekly child care expense should receive a credit towards his or her child support obligation. This credit is entered on the space provided on the Worksheet Line 7. The total credits claimed by the parents must equal the total amount on Line 4A. (See Support Guideline 3E Commentary).

3. Weekly Cost of Health Insurance Premiums for Child(ren). The parent who pays the weekly premium cost for the child(ren)'s health insurance should receive a credit towards his or her child support obligation in most circumstances. This credit is entered on the space provided on the Worksheet Line 7 and will be in an amount equal to that entered on the Worksheet Line 4B (See Support Guideline 3E Commentary).

4. Parenting Time Credit. The court should grant a credit toward the total amount of calculated child support for either “duplicated” or “transferred” expenses incurred by the noncustodial parent. The proper allocation of these expenses between the parents shall be based on the calculation from a Parenting Time Credit Worksheet. (See Support Guideline 6 Commentary).

5. Effect of Social Security Benefits.

a. *Current Support Obligation*

1. Custodial parent: Social Security benefits received for a child based upon the disability of the custodial parent are not a credit toward the child support obligation of the noncustodial parent. The amount of the benefit is included in the custodial parent’s income for the purpose of calculating the child support obligation, and the benefit is also a credit toward the custodial parent’s child support obligation.
2. Noncustodial parent: Social Security benefits received by a custodial parent, as representative payee of the child, based upon the earnings or disability of the noncustodial parent shall be considered as a credit to satisfy the noncustodial parent’s child support obligation as follows:
 - i. Social Security Retirement benefits may, at the court’s discretion, be credited to the noncustodial parent’s current child support obligation. The credit is not automatic. The presence of Social Security Retirement benefits is merely one factor for the court to consider in determining the child support obligation or modification of the obligation. Stultz v. Stultz, 659 N.E.2d 125 (Ind. 1995).
 - ii. Social Security Disability benefits shall be included in the Weekly Gross Income of the noncustodial parent and applied as a credit to the noncustodial parent’s current child support obligation. The credit is automatic.
 - iii. Any portion of the benefit that exceeds the child support obligation shall be considered a gratuity for the benefit of the child(ren), unless there is an arrearage.
3. The filing of a petition to modify on grounds a Social Security Disability determination has been requested will not relieve the parent’s obligation to pay the current support order while the disability application is pending. Filing of the petition to modify support may entitle the noncustodial parent to a retroactive reduction in support to the date of filing of the petition for modification and not the date of filing for the benefits. If the modification of support is granted, any lump sum payment of retroactive Social Security Disability benefits paid shall be credited toward the modified support obligation.

b. *Arrearages*

1. Credit for retroactive lump sum payment. A lump sum payment of retroactive Social Security Disability benefits shall be applied as a credit against an existing child support arrearage if the custodial parent, as representative payee, received a lump sum retroactive payment, without the requirement of a filing of a Petition to Modify Child Support. However, no credit should be allowed under the following circumstances:
 - i. A custodial parent should never be required to pay restitution to a disabled noncustodial parent for lump sum retroactive Social Security Disability benefits which exceed the amount of “court-ordered” child support. Any portion of lump sum payments of retroactive Social Security Disability benefits paid to children not credited against the existing child support arrearage is properly treated as a gratuity to the children. No credit toward future support should be granted.
 - ii. No credit shall be given for a lump sum disability payment paid directly to a child who is over the age of eighteen (18). The dependency benefits paid directly to a child who has reached the age of majority under the Social Security law, rather than to the custodial parent, as representative payee, do not fulfill the obligations of court-ordered child support.

2. Application of current Social Security Disability benefits. The amount of the benefit which exceeds the child support order may be treated as an ongoing credit toward an existing arrearage.
3. In Title IV-D cases there is no credit toward the monies owed to the State of Indiana unless the retroactive benefit is actually paid to the State of Indiana. The child's Social Security benefits received and used by the custodial parent will not reduce or be credited against the noncustodial parent's obligation to reimburse the State of Indiana for Title IV-A or Title IV-E benefits previously paid on behalf of the children.
4. Modification. The award of Social Security Disability benefits retroactive to a specific date does not modify a noncustodial parent's child support obligation to the same date. The noncustodial parent's duty to pay support cannot be retroactively modified earlier than the filing date of a petition to modify child support. IC 31-16-16-6.

COMMENTARY TO GUIDELINE 3G

It is important to remember the amount of the child's Social Security benefits that exceed the current child support order will not be reflected in ISETS as a credit toward an existing arrearage unless specified in the court order. Unless the credit is recognized in ISETS, there is a chance that an arrearage notice may be issued administratively and sanctions could be entered on that arrearage.

Social Security benefits paid to a parent for the benefit of a minor child are included in the disabled parent's Gross Weekly Income for purposes of determining child support regardless of which parent actually receives the payment. (See Guideline 3A). This section, 3G and its commentary, address adjustments to the recommended child support obligation. Although Social Security benefits are not reflected on Line 7 of the child support Worksheet, the benefit should be considered, and its effect and application shall be included in the written order for support of that child.

The Guidelines make no change in the law regarding an adjustment for Social Security Retirement benefits or Supplemental Security Income (SSI). The court has discretion to allow an adjustment to a parent's child support obligation based on the amount of Social Security Retirement benefits paid for the benefit of the child due to that parent's retirement. The retirement benefit is merely one of the factors that the court should consider when making an adjustment to the child support obligation. SSI is a means-tested program and the benefit is not included in either parent's gross income. It therefore should not be considered an adjustment to either parent's child support obligation.

In Brown v. Brown, 849 N.E.2d 610 (Ind. 2006), Social Security Disability (SSD) benefits paid to a child were clearly recognized as earnings of the disabled parent. *Id.* at 614. Social Security Disability benefits paid for a child are recognized as income of the disabled parent who earned the benefits and those benefits are included in the Weekly Gross Income of that parent. See Guideline 3A. It follows then that the payment received for the benefit of the child should be applied to satisfy the disabled parent's support obligation. The child support order should state that the SSD benefit received for the child is credited as payment toward the support obligation. Any portion of the SSD benefit in excess of the current support obligation is a gratuity, unless there is an arrearage.

The language in Guideline 3.G.5.b.2. directs that the excess SSD benefit may be applied as payment toward an existing arrearage. Once the arrearage is satisfied, any portion of the SSD benefit that exceeds the current support obligation is considered a gratuity. The Guidelines also change the application of a lump sum SSD payment. SSD is, by definition, a substitution for a person's income lost due to a recognized disability. Further, under the Social Security Act, that individual may be entitled to a lump sum benefit retroactive to the date that his or her disability occurred and that caused the disruption in earnings. This lump sum payment is unique to SSD. The Guidelines now allow the courts to apply the lump sum SSD benefits toward an existing child support arrearage if the custodial parent, as representative payee, receives a lump sum payment. This credit is appropriate without the requirement of a filing of a Petition to Modify Child Support.

The Guidelines change the law regarding the application of SSD benefits. The holding in Hieston v. State, 885 N.E.2d 59 (Ind. Ct. App. 2008) and its progeny has been superseded by this change. The rationale is that the lump sum payment is merely a method of payment applied to a past support obligation not paid.

The distinction is between modification of support which changes the rate of support, e.g. from \$100.00 per week to \$50.00 per week, as opposed to credit for an indirect payment. Modification of a child support obligation still requires the filing of a petition for modification as set forth in Guideline 4.

The lump sum payment is a method of payment that may not be specifically authorized by express court order but which should be recognized as a payment of support. Indiana case law establishes that credit can be allowed for payments that do not technically conform to the original support decree. For example, where the obligated parent makes payments directly to the custodial parent rather than through the clerk of the court, the Supreme Court has recognized these payments when there was sufficient proof to convince a trier of fact that the required payments were actually made. *O'Neil v. O'Neil*, 535 N.E.2d 523 (Ind. 1989), *Nil v. Martin*, 686 N.E.2d 116 (Ind. 1997). Proof of the lump sum SSD benefit payment is not difficult because the Social Security award certificate is a record easily admitted into evidence as an exception to the hearsay rule under IRE 803(6) and (8) (reports of a public agency setting forth its regularly recorded activity) and trial courts are rarely burdened with an evidentiary dispute about what was paid, when or to whom, once the Social Security records are shared. By contrast, the informal arrangement disputes between parties to modify and reduce the actual amount of weekly support below that ordered in the divorce decree are actual attempts to retroactively modify the amount of support, which are prohibited. Similar to the nonconforming payment, the lump sum payment shall be applied as a credit to an existing child support arrearage.

If there is no child support arrearage, the lump sum payment is considered gratuity. As long as there is an existing support order, there should never be an order entered that requires any excess payment of SSD or the lump sum payment to be paid back to the disabled parent.

The Guidelines exclude from the parent's Weekly Gross Income any survivor benefits received by or for other children residing in either parent's home based on the Social Security death benefits of a deceased parent of a prior-born child. See Commentary to Guideline 3(A).

GUIDELINE 4. MODIFICATION

The provisions of a child support order may be modified only if there is a substantial and continuing change of circumstances which makes the present order unreasonable or the amount of support ordered at least twelve (12) months earlier differs from the Guideline amount presently computed by more than twenty percent (20%).

COMMENTARY

Substantial and Continuing Change of Circumstances. A change in circumstances may include the incarceration of a parent, a change in the income of the parents, the application of a parenting plan, the failure to comply with a parenting plan, or a change in the expense of child rearing specifically considered in the Guidelines.

If the amount of support computed at the time of modification is significantly higher or significantly lower than that previously ordered and would require a drastic reduction in a parent's standard of living, consideration may be given to phasing in the change in support. This approach would allow the parent affected by the change time to make adjustments in his or her standard of living. Again, it is not the intent of the Guidelines to drive the parents into noncompliance by reducing their spendable income below subsistence level.

Retroactive Modification. The modification of a support obligation may only relate back to the date the petition to modify was filed, and not an earlier date, subject to two exceptions: (1) when the parties have agreed to and carried out an alternative method of payment which substantially complies with the spirit of the decree; or (2) the obligated parent takes the child into the obligated parent's home and assumes custody, provides necessities, and exercises parental control for a period of time that a permanent change of custody is exercised.

Emancipation: Support Orders for Two or More Children. In child support orders issued under these Guidelines, support amounts for two or more children, are stated as an in gross or total amount rather than on a per child basis. Absent judicial modification of the order, the total obligation will not decrease when the oldest child reaches nineteen (19) years of age, or the child is emancipated after the occurrence of other events. Parents should seek to modify child support orders when the legal obligation to pay child support terminates for any child or any child is emancipated. See Ind. Code § 31-16-6-6.

The concept of a pro rata delineation of support is generally inconsistent with the economic policy underlying the Guidelines (See "Economic Data Used in Developing Guidelines" in "Commentary" to Support

Guideline 1). That policy recognizes that the amount of support required for two children is about 1.5 times that required to support one child. The multiplication factor decreases as the number of children increases. If support were reduced by one half when the first of two children was emancipated, the remaining amount of support would be significantly below the Guideline amount for one child at the same parental income levels.

Parents should seek to modify or terminate a support order when a child(ren) becomes emancipated under Indiana law.

GUIDELINE 5. FEDERAL STATUTES

These Guidelines have been drafted in an attempt to comply with, and should be construed to conform with applicable federal statutes.

COMMENTARY

Every attempt was made to draft Guidelines for the State of Indiana that would comply with applicable federal statutes and regulations. Likewise, careful attention was paid to state law.

GUIDELINE 6. PARENTING TIME CREDIT

A credit should be awarded for the number of overnights each year that the child(ren) spend with the noncustodial parent.

COMMENTARY

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 in one parent 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.

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 is controlled expenses, such as the 6% uninsured health care expense that 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(s) 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(s) with each parent.*

Duplicated Fixed Expenses. This type of expense is incurred when two households are maintained for the child(ren). An example of this type of expense is shelter costs which are not transferred when the child(ren) move(s) 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(s) less time with one parent, the percentage of duplicated expenses will decline.

Controlled Expenses. This type of expense for the child(ren) is typically paid by the custodial parent and is not transferred or duplicated. Controlled expenses are items like clothing, education, school books and supplies, ordinary uninsured health care and personal care. For example, the custodial parent buys a winter coat for the child. The noncustodial parent will not buy another one. The custodial parent controls this type of expense. "Education" expenses include ordinary costs assessed to all students, such as textbook rental, laboratory fees, and lunches, which should be paid by the custodial parent. The cost of participating in elective school activities such as sports, performing arts and clubs, as well as related extracurricular activities are "optional" activities covered by the paragraph on "Other Extraordinary Expenses" in Guideline 8.

The controlled expenses account for 15% of the cost of raising the child. The parenting time credit is based on the more time the parents share, the more expenses are duplicated and transferred. The controlled expenses are not shared and remain with the parent that does not get the parenting time credit. Controlled expenses are generally not a consideration unless there is equal parenting time. 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 computation of the parenting time credit 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 96-100 overnights. The actual number of overnights may vary based on differing school calendars.

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 OVERNIGHTS			DUPLICATED
FROM	TO	TOTAL	
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 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 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 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 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 Guidelines, 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.

Contents of Agreements/Decrees. Orders establishing custody and child support shall set forth the specifics of the parties' parenting time plan in all cases. A reference to the Indiana Parenting Time Guidelines will suffice if the parties intend to follow the Guidelines. All such entries shall be accompanied by a copy of the Child Support Obligation Worksheet and the Parenting Time Credit Worksheet.

In every instance the court shall designate one parent who is receiving support and shall be responsible for payment of the uninsured health care expenses up to 6% of the Basic Child Support Obligation.

If the court determines it is necessary to deviate from the parenting time credit, it shall state its reasons in the order.

Split Custody and Child Support. *In those situations where each parent has physical custody of one or more children (split custody), it is suggested that support be computed by completing the Child Support Obligation Worksheets in the following manner:*

- 1. Compute the support a father would pay to a mother for the children in her custody as if they were the only children of the marriage.*
- 2. Compute the support a mother would pay to a father for the children in his custody as if they were the only children of the marriage.*
- 3. Subtract the lesser from the greater support amount. The parent who owes the remaining amount pays the difference to the other parent on a weekly basis.*

This method of computation takes into account the fact that the first child in each home is the most expensive to support, as discussed in the Commentary to Guideline 1.

Child Support When Parenting Time is Equally Shared. *A frequent source of confusion in determining child support arises in cases where parents equally share the parenting time with the children. Parenting time is considered equally shared when it is 181 to 183 overnights per year. To determine child support in these cases, either the mother or father must be designated as the parent who will pay the controlled expenses. Then, the other parent is given the parenting time credit. The controlled expenses remain the sole obligation of the parent for whom the parenting time credit is not calculated.*

When both parents equally share parenting time, the court must determine which parent will pay the controlled expenses. If, for example, father is the parent paying controlled expenses, the parenting time credit will be awarded to the mother.

Factors courts should use in assigning the controlled expenses to a particular parent include the following areas of inquiry:

- Which parent has traditionally paid these expenses.*
- Which parent is more likely to be able to readily pay the controlled expenses.*
- Which parent more frequently takes the child to the health care provider.*
- Which parent has traditionally been more involved in the child's school activities (since much of the controlled expenses concern school costs, such as clothes, fees, supplies, and books).*

This determination requires a balancing of these and other factors. Once the court assigns responsibility for these controlled expenses, the court should award the other parent the parenting time credit. When the assignment of the controlled expenses occurs, calculation of the child support in shared custody situations is fairly basic, and is completed by application of the remainder of these Guidelines.

Cost of Transportation for Parenting Time. *The Parenting Time Guidelines require the noncustodial parent to provide transportation for the child(ren) at the start of the scheduled parenting time, and the custodial parent to provide transportation for the child(ren) at the end of the scheduled parenting time. There is no specific provision in the Child Support Guidelines for an assignment of costs or a credit for transportation on the child support worksheet. Transportation costs are part of the transferred expenses. When transportation costs are significant, the court may address transportation costs as a deviation from the child support calculated by the Worksheet, or may address transportation as a separate issue from child support. Consideration should be given to the reason for the geographic distance between the parties and the financial resources of each party. The relocation statute provides that one factor in modifying child support in conjunction with parent relocation is the hardship and expense involved for the nonrelocating individual to exercise parenting time.*

GUIDELINE 7. HEALTH CARE / MEDICAL SUPPORT

The court shall order one or both parents to provide health insurance when accessible to the child at a reasonable cost. Health insurance may be public, for example, Medicaid, or Children's Health Insurance Program (CHIP), Hoosier Healthwise, or private, for example, Affordable Care Act (ACA) or employer-provided

Accessibility. Health insurance is accessible if it covers the geographic area in which the child lives. The court may consider other relevant factors such as provider network, comprehensiveness of covered services and likely continuation of coverage.

Reasonable cost. There is a rebuttable presumption that parents have health insurance available at a reasonable cost. The presumption may be rebutted by demonstrating that the lowest out of pocket cost of insuring the child(ren) is more than 5% of the parents' combined gross incomes. The lowest out of pocket cost health insurance available may be public insurance.

Cash medical support. When health insurance is not accessible to the child(ren) at a reasonable cost, federal law requires the court to order the parties to pay cash medical support. Cash medical support is an amount ordered for medical costs not covered by insurance. The uninsured medical expense apportionment calculation on the Child Support Obligation Worksheet, "the 6% rule," satisfies this federal requirement for a cash medical support order, when incorporated into the court order.

Explanation of 6% rule/uninsured health care expenses. The data upon which the Guideline schedules are based include a component for ordinary health care expenses. Ordinary uninsured health care expenses are paid by the parent who is assigned to pay the controlled expenses (the parent for whom the parenting time credit is not calculated) up to six percent (6%) of the basic child support obligation (Line 4 of the Child Support Obligation Worksheet). Extraordinary health care expenses are those uninsured expenses which are in excess of six percent (6%) of the basic obligation, and would include uninsured expenses for chronic or long term conditions of a child. Calculation of the apportionment of the health care expense obligation is a matter separate from the determination of the weekly child support obligation. These calculations shall be inserted in the space provided on the Worksheet.

Birth expense. The court may order the father to pay a percentage of the reasonable and necessary expenses of the mother's pregnancy and childbirth, as part of the court's decree in child support actions. The costs to be included in apportionment are pre-natal care, delivery, hospitalization, and post-natal care. The paternity statutes require the father to pay at least fifty percent (50%) of the mother's pregnancy and childbirth expenses.

COMMENTARY

Health Insurance Coverage and Costs.

The court is federally mandated to order parents to obtain health insurance if accessible at a reasonable cost. The rebuttable presumption that all children have insurance available at a reasonable cost recognizes (1) both public and private insurance can be used to satisfy the federal mandate to insure children, (2) the availability of guaranteed acceptance for policies, and (3) the availability of tax credits for the purpose of obtaining health insurance.

Health insurance coverage should normally be provided by the parent who can obtain the most comprehensive coverage at the least out of pocket cost. The parents bear the burden of demonstrating to the court the out of pocket cost of health insurance for the child(ren) exceeds 5% of the parents' combined gross incomes. A parent shall provide the court with proof of existing public or private health insurance for the child(ren) through an employer, a retirement plan, Tricare, a Veteran's Health Care Program, Medicaid, or the Children's Health Insurance Program (CHIP). If the child is not currently covered, the parent must provide the court with proof of the cost of health insurance. (Please refer to Guideline 3, E. 2. for additional information regarding determining the cost of insurance coverage.)

Where one or both parents have a history of changing jobs and/or health insurance providers both parents may be ordered to carry health insurance when it becomes available at a reasonable cost to the

parents. Where one parent has a history of maintaining consistent insurance coverage for the child(ren), there may be no need to order both parents to provide health insurance for the child(ren).

Parental Self-Monitoring and Compliance.

Parents should cooperate with one another to ensure the child(ren) remain insured at all times. The court should order the parent providing health insurance to show proof of coverage and give notice of any coverage changes, including termination of coverage, to the other parent. See *Indiana Parenting Time Guidelines I, D. paragraph 5.*

Apportionment of Uninsured Health Care Expenses. Six percent (6%) of the support amount is for health care. The noncustodial parent is, in effect, prepaying health care expenses every time a support payment is made. Consequently, the Guidelines require that custodial parent bear the cost of uninsured health care expenses up to six percent (6%) of the Basic Child Support Obligation found on Line 4 of the Child Support Obligation Worksheet and, if applicable, the child support obligation attributable to a student living away from home (Section Two Line I of the Post-Secondary Education Worksheet).

That computation is made by multiplying the total of Line 4 and Line I by 52 (weeks) and multiplying the product of that multiplication by .06 to arrive at the amount the custodial parent must spend on the uninsured health care costs of the parties' child(ren) in any calendar year before the noncustodial parent is required to contribute toward payment of those uninsured costs. For example, if Line 4 is \$150.00 per week and Line I is \$25.00 per week, the calculation would be as follows: $\$150.00 + \$25.00 = \$175.00 \times 52 = \$9,100.00 \times .06 = \$546.00$.

Thus, on an annual basis, the custodial parent is required to spend \$546.00 for health care of the child(ren) before the noncustodial parent is required to contribute. The custodial parent must document the \$546.00 spent on health care and provide the documentation to the noncustodial parent.

After the custodial parent's obligation for ordinary uninsured health care expenses is computed, provision should be made for the uninsured health care expenses that may exceed that amount. The excess costs should be apportioned between the parties according to the Percentage Share of Income computed on Line 2 of the Worksheet. Where imposing such percentage share of the uninsured costs may work an injustice, the court may resort to the time-honored practice of splitting uninsured health care costs equally, or by using other methods. The court may prorate the custodial parent's uninsured health care expense contribution when appropriate.

As a practical matter, it may be wise to spell out with specificity in the order what uninsured expenses are covered and a schedule for the periodic payment of these expenses. For example, a chronic long-term condition might necessitate weekly payments of the uninsured expense. The order may include any reasonable medical, dental, hospital, pharmaceutical and psychological expenses deemed necessary for the health care of the child(ren). If it is intended that such things as aspirin, vitamins and band-aids be covered, the order should specifically state that such non-prescription health care items are covered.

There are also situations where major health care costs are incurred for a single event such as orthodontics or major injuries. For financial reasons, this may require the custodial parent to pay the provider for the amount not covered by insurance over a number of years. The 6% rule applies to expenses actually paid by the custodial parent each year.

Birth expenses. There is no statute of limitations barring recovery of birthing expenses, providing the paternity or child support action is timely filed. The court should be very careful to be sure the claimed expenses are both reasonable and necessary. Birthing expenses include both the expenses incurred by the child as well as by the mother, providing they are directly related to the child's birth. The court should distinguish between "postpartum expenses" and "postnatal expenses." "Postpartum" expenses are mother's expenses following the birth of the child. "Postnatal" expenses of the child are those expenses directly related to the child's birth. Between the two, only "postnatal" expenses are reimbursable.

GUIDELINE 8. EXTRAORDINARY EXPENSES

Extraordinary Educational Expenses.

The data upon which the Guideline schedules are based include a component for ordinary educational expenses. Any extraordinary educational expenses incurred on behalf of a child shall be considered apart from the total Basic Child Support Obligation.

Extraordinary educational expenses may be for elementary, secondary or post-secondary education, and should be limited to reasonable and necessary expenses for attending private or special schools, institutions of higher learning, and trade, business or technical schools to meet the particular educational needs of the child.

Commentary

Parents should consider whether an educational support order is necessary or appropriate to address educational needs prior to the child reaching nineteen (19) years of age.

a. Elementary and Secondary Education. If the expenses are related to elementary or secondary education, the court may want to consider whether the expense is the result of a personal preference of one parent or whether both parents concur; whether the parties would have incurred the expense while the family was intact; and whether or not education of the same or higher quality is available at less cost.

b. Post-Secondary Education. The authority of the court to award post-secondary educational expenses is derived from IC 31-16-6-2. It is discretionary with the court to award post-secondary educational expenses and in what amount. In making such a decision, the court should consider post-secondary education to be a group effort, and weigh the ability of each parent to contribute to payment of the expense, as well as the ability of the student to pay a portion of the expense.

When determining whether or not to award post-secondary educational expenses, the court should consider each parent's income, earning ability, financial assets and liabilities. If the expected parental contribution is zero under Free Application for Federal Student Aid (FAFSA), the court should not award post-secondary educational expenses. If the court determines an award of post-secondary educational expenses would impose a substantial financial burden, an award should not be ordered.

If the court determines that an award of post-secondary educational expenses is appropriate, it should apportion the expenses between the parents and the child, taking into consideration the incomes and overall financial condition of the parents and the child, education gifts, education trust funds, and any other education savings program. The court should also take into consideration scholarships, grants, student loans, summer and school year employment and other cost-reducing programs available to the student. These latter sources of assistance should be credited to the child's share of the educational expense unless the court determines that it should credit a portion of any scholarships, grants and loans to either or both parents' share(s) of the education expense.

Current provisions of the Internal Revenue Code provide tax credits and preferences which will subsidize the cost of a child's post-secondary education. While tax planning on the part of all parties will be needed to maximize the value of these subsidies, no one party should disproportionately benefit from the tax treatment of post-secondary expenses. Courts may consider who may be entitled to claim various education tax benefits and tax exemptions for the minor child(ren) and the total value of the tax subsidies prior to assigning the financial responsibility of post-secondary expenses to the parents and the child.

A determination of what constitutes educational expenses will be necessary and will generally include tuition, books, lab fees, course related supplies, and student activity fees. Room and board may be included when the child does not reside with either parent.

The impact of an award of post-secondary educational expenses is substantial upon the custodial and non-custodial parent and a reduction of the Basic Child Support Obligation attributable to the child under the age of nineteen years will be required when the child does not reside with either parent.

The court should require that a student maintain a certain minimum level of academic performance to remain eligible for parental assistance and should include such a provision in its order. The court should also

consider requiring the student or the custodial parent provide the noncustodial parent with a copy of the child's high school transcript and each semester or trimester post-secondary education grade report.

The court may limit consideration of college expenses to the cost of state supported colleges and universities or otherwise may require that the income level of the family and the achievement level of the child be sufficient to justify the expense of private school.

COMMENTARY

Time for Filing Petition for Post-Secondary Educational Expenses. There is a distinct difference between an order for child support and an order for post-secondary educational expenses. An order for educational expenses can continue after an order for child support has ended. If an order for child support was issued before July 1, 2012, a petition for educational support can be filed until the child reaches twenty-one (21) years of age. If an order for child support was issued or modified after June 30, 2012, a petition for educational support must be filed before the child reaches nineteen (19) years of age.

c. Use of Post-Secondary Education Worksheet.

The Worksheet makes two calculations. Section One calculates the contribution of each parent for payment of post-secondary education expenses based upon his or her percentage share of the weekly adjusted income from the Child Support Obligation Worksheet after contribution from the student toward those costs. Notwithstanding this calculation, the court retains discretion to award and determine the allocation of these expenses taking into consideration the ability of each parent to meet these expenses and the child's reasonable ability to contribute to his or her educational expenses. The method of paying such contribution should be addressed in the court's order.

In situations when the student, under age nineteen (19), remains at home with the custodial parent while attending an institution of higher learning, generally no reduction to the noncustodial parent's support obligation will occur and Section Two of the Worksheet need not be completed.

Section Two determines the amount of each parent's weekly support obligation for the student who does not live at home year round. The amount attributable to the student while at home has been annualized to avoid weekly variations in the order. It further addresses the provisions of IC 31-16-6-2(b) which require a reduction in the child support obligation when the court orders the payment of educational expenses which are duplicated or would otherwise be paid to the custodial parent. In determining the reduction, the student is treated as emancipated. This treatment recognizes that the diminishing marginal effect of additional children is due to economies of scale in consumption and not the age of the children. A second child becomes the "first child" in terms of consumption and the custodial parent will receive Guideline child support on that basis.

Section Two applies when the parties' only child attending school does not reside with the custodial parent while attending school, as well as when the parties have more than one child and one resides away from home while attending school and the other child(ren) remain at home.

Line E of the Worksheet determines the percentage of the year the student lives at home. Line F is used to enter the Basic Child Support Obligation, from the Guideline Schedules for all of the children of the parties including the student who does not live at home year round. Line G is used to enter the amount of support for those children who are not living away from home. If the student is the only child, Line G will be \$0.00. The difference between Lines F and G is the total support obligation attributable to the student. This is entered on Line H. By multiplying the percentage of the year the student lives at home, times the support obligation attributable to the student, the Worksheet pro rates to a weekly basis the total support obligation attributed to the student. This is computed on Line I and the result is included in the uninsured health care expense calculation. The parents' pro rata share of this obligation is computed in Line J. This result is included in section 7 of the Child Support Obligation Worksheet.

1. The One Child Situation. When the parties' only child is a student who does not live at home with the custodial parent while attending school, Section Two establishes the weekly support obligation for that child on Line I. The regular Child Support Obligation Worksheet should be completed through Line 5 for that child and the annualized obligation from Line J of the Post-secondary Education Worksheet is entered on Line 7 with an explanation of the deviation in the order or decree.

2. The More Than One Child Situation. When the parties have more than one child, Section Two requires the preparation of a regular Child Support Obligation Worksheet applicable only to the child(ren) who regularly reside with the custodial parent, and for a determination of that support obligation. The annualized obligation from Line J of the Post-Secondary Education Worksheet is then inserted on Line 7 of the regular support Worksheet as an addition to the Parent's Child Support Obligation on Line 6. An explanation of the increase in the support obligation should then appear in the order or decree.

In both situations the Child Support Obligation Worksheet and the Post-Secondary Education Worksheet must be filed with the court. This includes cases in which agreed orders are submitted.

When more than one child lives away from home while attending school, Section One of the Post-Secondary Education Worksheet should be prepared for each child. However, Section Two should be completed once for all children living away from home while attending school. The number used to fill in the blank in Line E should be the average number of weeks these children live at home. For example, if one child lives at home for ten (10) weeks and another child lives at home for sixteen (16) weeks, the average number of weeks will be thirteen (13). This number would then be inserted in the blank on Line E which is then divided by 52 (weeks).

COMMENTARY

With the modification of the age of emancipation from age twenty-one (21) to age nineteen (19), Section Two of the Post-Secondary Education Worksheet will only be applicable in a limited number of cases. However, it remains a valuable tool to calculate child support for a child under age nineteen (19) who does not reside with either parent during the school year but returns to the home of the custodial parent during school breaks and recess. Section Two of the Post-Secondary Education Worksheet should not be utilized once the child attains age nineteen (19).

Other Extraordinary Expenses. The economic data used in developing the Child Support Guideline Schedules do not include components related to those expenses of an "optional" nature such as costs related to summer camp, soccer leagues, scouting and the like. When both parents agree that the child(ren) may participate in optional activities, the parents should pay their pro rata share of these expenses from line 2 of the Child Support Obligation Worksheet. In the absence of an agreement relating to such expenses, assigning responsibility for the costs should take into account factors such as each parent's ability to pay, which parent is encouraging the activity, whether the child(ren) has/have historically participated in the activity, and the reasons a parent encourages or opposes participation in the activity. If the parents or the court determine that the child(ren) may participate in optional activities, the method of sharing the expenses shall be set forth in the entry.

COMMENTARY

The costs of participating in elective school activities such as sports, performing arts and clubs, including the costs of participating in related extracurricular activities, are "Other Extraordinary Expenses."

GUIDELINE 9. ACCOUNTABILITY, TAX EXEMPTIONS, ROUNDING SUPPORT AMOUNTS

Accountability of the Custodial Parent for Support Received. Quite commonly noncustodial parents request, or even demand, that the custodial parent provide an accounting for how support money is spent. While recognizing that in some instances an accounting may be justified, the Committee does not recommend that it be routinely used in support orders. The Indiana Legislature recognized that an accounting may sometimes be needed when it enacted IC 31-16-9-6.

At the time of entering an order for support, or at any time thereafter, the court may make an order, upon a proper showing of the necessity, requiring the spouse or other person receiving such support payments to render an accounting to the court of future expenditures upon such terms and conditions as the court shall decree.

It is recommended that an accounting be ordered upon a showing of reasonable cause to believe that child support is not being used for the support of the child. This provision is prospective in application and discretionary with the court. An accounting may not be ordered as to support payments previously paid.

A custodial parent may be able to account for direct costs (clothing, school expenses, music lessons, etc.) but it should be remembered that it is extremely difficult to compile indirect costs (a share of housing, transportation, utilities, food, etc.) with any degree of accuracy. If a court found that a custodial parent was diverting support for his or her own personal use, the remedy is not clear. Perhaps, the scrutiny that comes with an accounting would itself resolve the problem.

Tax Exemptions. Development of these Guidelines did not take into consideration the awarding of the income tax exemption. Instead, it is required each case be reviewed on an individual basis and that a decision be made in the context of each case. Judges and practitioners should be aware that under current law the court cannot award an exemption to a parent, but the court may order a parent to release or sign over the exemption for one or more of the children to the other parent pursuant to Internal Revenue Code § 152(e). To effect this release, the parent releasing the exemption must sign and deliver to the other parent I.R.S. Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents. The parent claiming the exemption must then file this form with his or her tax return. The release may be made, pursuant to the Internal Revenue Code, annually, for a specified number of years or permanently. Courts shall include in the support order that a parent may only claim an exemption if the parent has paid at least ninety-five percent (95%) of their court ordered support for the calendar year in which the exemption is sought by January 31 of the following year. Shifting the exemption for dependents does not alter the filing status of either parent.

A court is required to specify in a child support order which parent may claim the child(ren) as dependents for tax purposes. In determining when to order a release of exemptions, it is required that the following factors be considered:

- (1) the value of the exemption at the marginal tax rate of each parent;
- (2) the income of each parent;
- (3) the age of the child(ren) and how long the exemption will be available;
- (4) the percentage of the cost of supporting the child(ren) borne by each parent;
- (5) the financial aid benefit for post-secondary education for the child(ren);
- (6) the financial burden assumed by each parent under the property settlement in the case; and
- (7) any other relevant factors,(including health insurance tax subsidies or tax penalties under the Affordable Care Act).

COMMENTARY

Under the Affordable Care Act, premium tax subsidies, dependent tax exemptions, and tax penalties for failure to provide health insurance are inextricably linked. Problems can arise when a parent purchases health insurance through the health insurance marketplace under the Affordable Care Act and needs access to premium tax subsidies in order to make the insurance affordable. Only the parent who claims a child as a dependent on a federal tax return is eligible for the subsidies and liable for the tax penalties.

Rounding child support amounts. The amount of child support entered as an order may be expressed as an even amount, by rounding to the nearest dollar. For example, \$50.50 is rounded to \$51.00 and \$50.49 is rounded to \$50.00.

ADDITIONAL DOCUMENTS:

The following documents are available in Rich Text and PDF formats. Click the icon corresponding to your preferred format to open the documents below.

Amended Child Support Obligation Worksheet	MS Word	Adobe PDF
Parenting Time Credit Worksheet	MS Word	Adobe PDF
Amended Post-Secondary Education Worksheet	MS Word	Adobe PDF
Amended Guideline Schedules for Weekly Support Payments	MS Word	Adobe PDF