

## Introduction

The term "negative child support" refers to a situation where a parent's Parenting Time Credit exceeds that parent's support obligation. To understand how such a situation can arise, it helps to review the new amendments to the Indiana Child Support Rules and Guidelines ("Guidelines"), which became effective January 1, 2004, and their interplay with the Parenting Time Guidelines.

Prior to the amendments, the Guidelines provided that a parent's child support obligation could be reduced by 10% to account for the expenses of visitation. The normal amount of visitation was assumed to be every other weekend or 52 overnights per year. Although courts had discretion to make this Visitation Credit something other than 10%, there was no clear guidance about how to calculate some other amount. Some parents were given the 10% credit even though they exercised very minimal visitation while other parents were given this same 10% credit even though they exercised much more visitation than 52 overnights per year. The modern trend is for parenting time to be more equally divided between the parents as reflected in the Parenting Time Guidelines. Even without an overnight visitation on a weekday, 98 overnights per year are now common. It seemed unfair to allow no more credit for 98 overnights than for 52.

To remedy this unfairness, the Guidelines did away with the standard 10% Visitation Credit and replaced it with a variable Parenting Time Credit based on the number of overnights of parenting time exercised by the parent paying support. The new system is not without faults however. Under the variable Parenting Time Credit system, "negative child support" can occur. The term "negative child support" refers to a situation in which a parent's Parenting Time Credit is greater than that parent's support obligation. The purpose of this article is not to debate the merits of this system, but to comment on the difficulty encountered when the Parenting Time Credit is greater than the support obligation, and to suggest a remedy.

## Who Pays?

A common assumption about the basic function of any system of child support guidelines is that the guidelines determine which parent is supposed to pay child support. Under the Indiana Guidelines, this basic determination remains ambiguous. The 2004 Guidelines include this provision:

"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." (Guideline 6, Contents of Agreements/Decrees)

There is no guidance as to how to make this determination or any explanation as to why it should be necessary. In a case where the father has more income than the mother and the mother has more overnights, it should be clear that the father should pay child support. Conversely, where the mother has more income and the father has more overnights, the mother should pay child support. However, when the same parent has the most income and the most overnights, it is not so obvious who should pay. The parent who receives child support has the obligation to pay the uninsured health care expenses up to 6% of the basic child support obligation. The parent who receives child support also has the obligation to pay the other expenses in a mysterious third category.

### What Third Category?

The 2004 Guidelines identify three categories of expenses: 1) Transferred Expenses, 2) Duplicated Fixed Expenses, and 3) an unnamed third category.

“A third category of expenses, such as the 6% uninsured health care expense, remains the sole obligation of the parent for whom the parenting time credit is not calculated. This latter category is assumed to be equal to 15% of the Basic Child Support Obligation.” (Guideline 6, Analysis of Parenting Time Costs)

The first two categories of expenses are mentioned only as part of the explanation of how the table of percentages was derived. These categories are expressly “not pertinent to litigation.” (Guideline 6, Analysis of Parenting Time Costs).

It would seem that parents attempting to follow a child support order would benefit from a more detailed description of the characteristics of this third category. For the purposes of this article however, we will assume that those expenses have been identified and will ordinarily be paid by the parent who is receiving child support.

### An Illustration.

Let us consider the simple, although unlikely, case in which the parents share equal time with the only child and the parents have exactly equal incomes. Let us assume that each parent has an income of \$1000 per week and that there are no other adjustments or deductions. The combined weekly income is \$2000. From the Guideline Schedules we find that the basic child support obligation is \$268. Since each parent has half of the total income, each parent's share of the support obligation is \$134. To determine the Parenting Time Credit, we use the appropriate percentages for 183 overnights from Table PT to complete a Parenting Time Credit Worksheet. The result is that whoever is paying support will have a Parenting Time Credit of \$113.90 and so will pay child support of \$20.10 per week.

The parent receiving child support will have the obligation to pay the 6% uninsured health care expense and those other expenses in the third category, which are presumed to

total 15% of the basic child support obligation. The basic child support obligation is \$268 per week. Fifteen percent of that is \$40.20.

One parent will pay \$20.10 per week and the other parent will be responsible for expenses presumed to be \$40.20 per week. In effect, the parents contribute equally to those expenses in the third category. On paper, it does not matter which parent pays support, so long as one parent is clearly determined to be the payor and the other parent pays the proper expenses.

Figure 1 is a graph of child support as a function of overnights for this equal income situation. Starting at the upper left of this graph, the father's child support starts at \$134.00 if he exercises less than 52 overnights. For 52 or more overnights, his child support is reduced in a stepwise manner as his overnights increase.

Similarly, the mother's child support starts in the lower right of the graph at \$134.00 per week if she exercises less than 52 overnights.

Our example of each parent having 183 overnights is illustrated at the center of the graph. The two lines do not meet because one parent will pay support while the other parent pays the third category expenses.

#### Further Illustration.

Suppose now that each parent still has 183 overnights, but the father's income is \$1500 per week and the mother's income is \$500 per week. The total income remains \$2000 per week and the basic child support obligation remains \$268 per week. The father's share is \$201 and the mother's share is \$67. It is clear that the father should be paying support. Using 183 overnights for the father, his Parenting Time Credit is \$80.40. The net result is that the father should pay child support of \$120.60 per week. The mother should pay the 6% uninsured medical expenses and similar expenses, whatever they are, which are presumed to total \$40.20 per week.

This situation is illustrated by the graph in Figure 2. In the upper left, the Father's child support is \$201.00 if he has less than 52 overnights. As overnights increase, his support decreases to the \$120.60 amount at 183 overnights.

#### Half Table.

Let us take our illustration one more step. The father gets one more week with the child. Instead of each parent having an equal 183 overnights, the father has 190 overnights and the mother has 175 overnights. Again we assume the father should be paying child support. An additional seven overnights per year should have some effect on the amount of child support, but we would not expect a large change from \$120.60 per week. In order to calculate how much Parenting Time Credit the father should receive, we refer to Table PT.

We run into a dead end because Table PT ends at 183 overnights. There is no direct way to use Table PT to do a calculation for 190 overnights. Referring again to Figure 2, we see the graph for the Father's child support ends abruptly at 183 overnights.

### Should A Custodial Parent Pay Child Support?

Table PT ends at 183 overnights because, if a parent has more than 183 overnights, then that parent becomes the primary physical custodian of the child. The 2004 Guidelines appear to contain an implicit assumption that the custodial parent will never be ordered to pay child support to the non-custodial parent.

Our illustration, and cases like it, can be the basis for an argument that a custodial parent should, in some circumstances, be ordered to pay child support, and that Table PT should be extended beyond 183 overnights. If the father with 183 overnights should pay \$120.60 per week, it would seem fair for the father to pay something slightly less than \$120.60 per week if he has 190 overnights, but it does not seem fair for him to pay nothing. We need a way to calculate the father's child support in such a case.

### Negative Child Support.

What happens if we assume, just for calculation purposes, that the mother will pay child support and use the mother's 175 overnights to do the calculation? The mother's share of the support obligation is \$67 and the mother's Parenting Time Credit for 175 overnights is \$143.78. Clearly the mother should not really be paying child support, but we do not necessarily have to stop here. We can go ahead and subtract the \$143.78 credit from the \$67 support obligation to determine that the mother has a net child support obligation of negative \$76.78.

We can use this negative number as a basis for finding that the father should pay \$76.78 per week. Remember also that we did that calculation assuming that the mother would pay. This means that in this case the father should pay the 6% uninsured health care expense and those other expenses in the third category which are presumed to total \$40.20 per week. The father's total with 190 overnights is then \$116.78 which is just about what common sense told us it should be, slightly less than the \$120.60 the father paid when he had 183 overnights.

On Figure 2, the mother's line starts at the lower right. If she has no overnights, her child support obligation is \$67 per week. As her overnights increase, her child support obligation decreases. At 106 overnights, the mother's child support obligation becomes zero because her Parenting Time Credit has grown larger than her \$67 per week maximum obligation. For more than 105 overnights her child support obligation remains \$0.

This graph does not show negative child support because negative child support is not explicitly provided for in the 2004 Guidelines. However, this graph does show the gap where negative child support could be used to make a calculation. Also, the graph shows

that it would be useful to extend Table PT all the way to 365 overnights rather than stopping abruptly at 183.

#### Conclusion.

The new Child Support Rules and Guidelines accommodate the realities of modern parenting. However, there are difficulties in applying the system when the Parenting Time Credit is larger than the child support obligation for that parent. This situation can be remedied by using a negative child support calculation. However, the difficulty could be avoided altogether if Table PT were extended to the full 365 days.

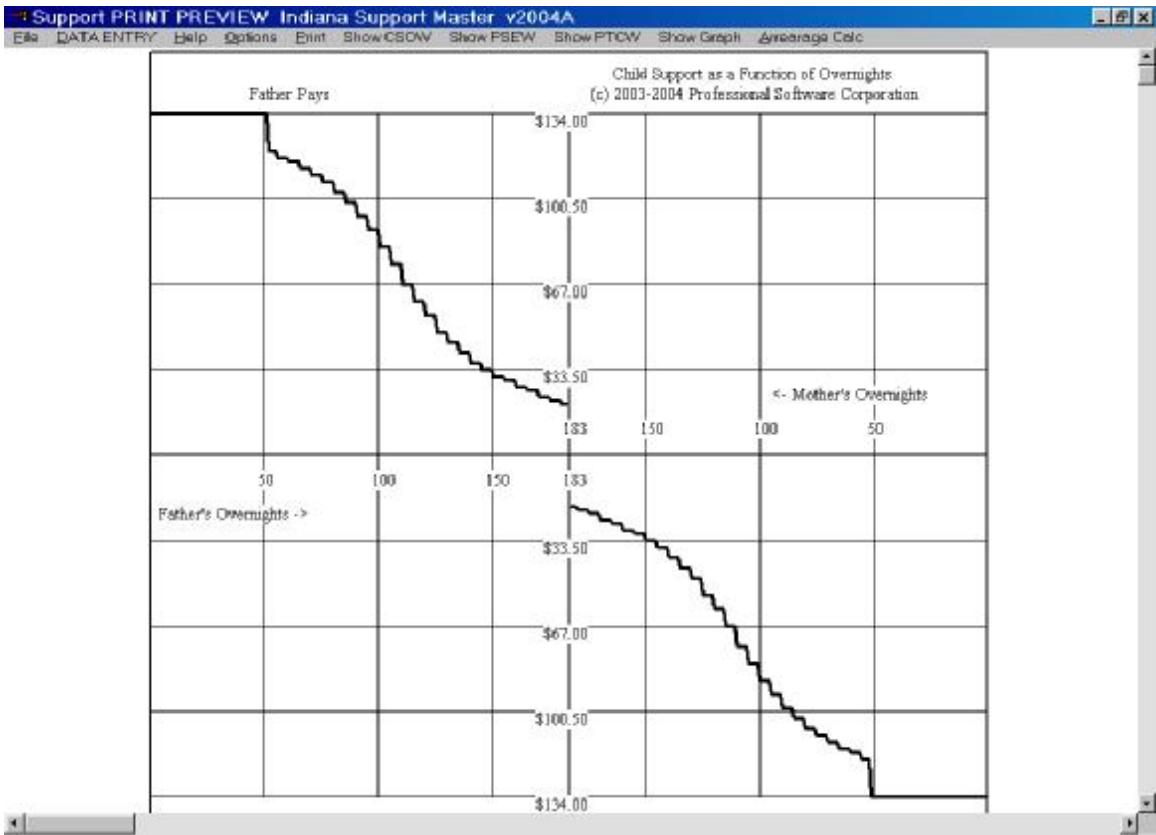


Figure 1.

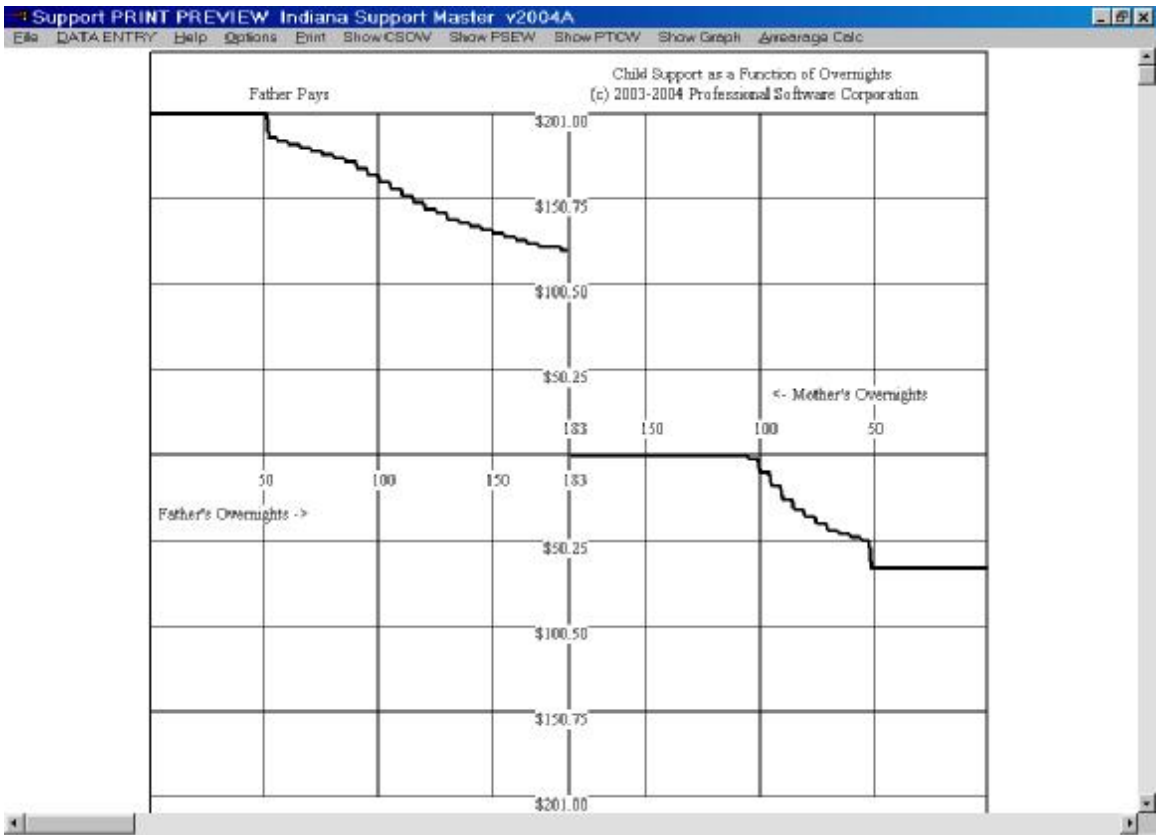


Figure 2.

Table PT

ANNUAL		OVERNIGHTS	
FROM	TO	TOTAL	DUPLICATED
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
<b>96</b>	<b>100</b>	<b>0.250</b>	<b>0.156</b>
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