

We have new Child Support Guidelines.

Our [new guidelines](#) apply to actions *heard* on or after January 1, 2015.

They reflect the 2014 tax rates, Consumer Price Index and federal poverty level (the new poverty level increased the income level below which a parent qualifies for the self-support reserve). In addition, the Conference of Chief District Court Judges tweaked several substantive provisions. Thanks to Chief Judge Beth Keever, chair of the subcommittee responsible for reviewing the guidelines and making recommendations to the full Conference, for her contribution to this summary of those changes.

1. Retroactive support: Guideline support requires evidence of the actual income of the parties but not much else. While prospective support is set using the guidelines, case law long has required that retroactive support must be based on evidence of 1) actual expenses incurred on behalf of a child before the action was filed and 2) the parents' relative incomes and ability to contribute to support at the time the expenses were incurred. Many parents have difficulty meeting this burden of proof. Seeing no public policy justification for this distinction, the Conference of Chief Judges amended the guidelines in 2006 to give the trial court the option of basing retroactive support on the guidelines. However, in [Respass v. Respass, 754 SE2d 691 \(N.C. App., 2014\)](#), the court held that G.S. [50-13.4\(c1\)](#) does not give the Conference of Chief Judges authority to "change case law." In response, the [2014 General Assembly amended GS 50-13.4\(c1\)](#) to specify that the chief judges have authority to develop guidelines for both prospective and retroactive support. The 2015 guidelines reference *Respass* and the statutory amendment, and authorize the trial court to base an order of retroactive support *either* on actual expenses or on the guidelines.
2. Allocation of tax exemptions: The guidelines assume the parent who receives child support claims the child tax exemption. If this assumption is inaccurate in a specific case, the court may consider deviation. The 2011 guidelines stated: "If the parent who receives support has minimal or no income tax liability, the court may consider requiring the custodial parent to assign the exemption to the supporting parent and deviate from the guidelines." The 2015 guidelines delete that sentence, in recognition that the determination of which parent should have the tax exemption can be complex.
3. Definition of Income. The 2015 Guidelines:
 - Codify the holding in [Gaston County v. Miller, 168 N.C. App. 577 \(2005\)](#), that adoption benefits belong to the adopted child and are not income of the parents.
 - Specify that Veterans' Disability Benefits received by a child on behalf of a disabled parent are treated the same as Social Security benefits. The amount of the benefits are added to the disabled parent's income and subtracted from that parent's child support obligation.
 - Specify that when the total retirement or disability benefits received by a child based on the *obligor's* disability or retirement exceed the *obligor's* total child support

payment, no order of support should be entered unless the court chooses to deviate from the guidelines. The change was made to clarify that the guidelines do not suggest that no support order should be entered when benefits based on the *obligee's* disability or retirement exceed the *obligee's* portion of the support obligation.

4. Imputing Income: The 2015 Guidelines clarify that the prohibition against imputing income to a parent who is caring for a child under the age of three and for whom support is being determined applies only to the parent exercising *primary* custody of a child.
5. Consideration of existing child support and alimony obligations: The Chief Judges replaced the term “pre-existing support obligations” with “existing support obligations.” The change clarifies that *any* payment of child support should be considered regardless of whether the child for whom support is being paid was born before or after the child for whom support is being determined or when the order was entered. Regarding spousal support, the 2015 Guidelines clarify that “[*a*]ny payment of alimony made by a parent to *any* person is not deducted from gross income but may be considered as a factor to vary from the final presumptive child support obligation.” (emphasis added).
6. Child care costs: The 2015 Guidelines remove all assumptions about child care credits and provide that 100% of child care costs should be deducted from the income of all parents. This change puts the burden on parents to show when the actual use of the tax credit justifies deviation.
7. Health Insurance: A court must order a parent to maintain health insurance for a child when it is available to that parent at a reasonable cost. In compliance with then-existing federal child support regulations, the original Guidelines provided that insurance is available at a reasonable cost whenever it is available to a parent through his or her employment. The federal regulations no longer contain this provision; however, [GS 50-13.4](#) retains that definition of reasonable cost. The 2015 Guidelines state only that coverage must be ordered when available to a parent at a reasonable cost and reference the statutory definition.
8. Definition of primary custody: The 2015 Guidelines and Worksheet instructions now mirror one another. Both state that primary custody means “243 nights or more during the year.”