



## Tip of the Month July 2018

### Minnesota's New Parenting Expense Adjustment in Calculating Child Support

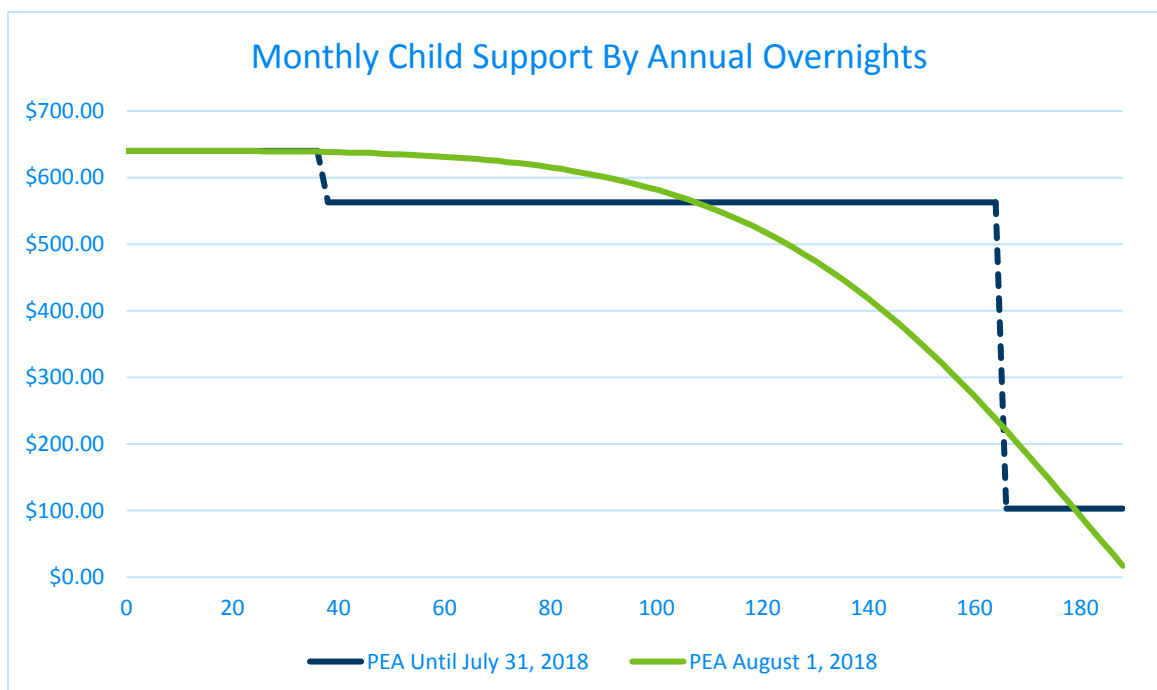
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#### Overview

A parenting expense adjustment is a reduction in basic child support given to acknowledge that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child. Effective August 1, 2018, the parenting expense adjustment (PEA) is changing in Minnesota to provide for incremental changes in support for each annual overnight. The current model is based on a three tiered system where an obligor will receive no adjustment, a 12% adjustment, or a separate formulaic adjustment when time is "presumed equal." Which adjustment is given is based on the percentage of parenting time ordered.

There are concerns that the three tiered system may not adequately account for all parenting time (especially as parenting time approaches the "presumed equal" tier at 45% time). Additionally, for parents with a schedule near the 45% mark, there may be increased conflict over parenting time since only a few nights per year may cause a huge increase or decrease in support due to the "cliff" between the 12% tier and the equal time tier.

To address these concerns, the legislature created a Child Support Work Group of legislators, professionals, and parents. With the help of an economist, the group examined options for a new PEA and made a recommendation which was codified in 2016. The new PEA provides incremental changes in child support for each overnight. The adjustment is given in a formula which outputs not only the basic support amount, but also indicates which parent is the obligor. The change between the old and new PEA is shown below.



## Formula

The new formula differs from the previous method of adjusting for parenting time because rather than being a simple deduction from a gross basic support amount, **the formula uses each parent's basic support and each parent's annual overnights averaged over two years** to produce a number which gives both the support amount and identifies which parent will owe support. The "base support" is calculated as it is now, but now both parents' base support is necessary for the calculation. Though the statute does define Parent A as the parent with the least number of overnights, the math of the formula will work if roles are reversed.

$$\frac{(A_0)^3 \cdot (B_S) - (B_0)^3 \cdot (A_S)}{(A_0)^3 + (B_0)^3}$$

$A_0$  = Parent A's court ordered annual overnights

$B_0$  = Parent B's court ordered annual overnights

$A_S$  = Parent A's base support obligation

$B_S$  = Parent B's base support obligation

Negative Result = Parent A Obligation

Positive Result = Parent B Obligation

The obligor was previously identified before application of the PEA (in most cases this was the parent with the most parenting time, but in presumed equal cases, it was the parent with the highest income). The new PEA is a function of both variables together. The output of the formula as a negative or positive integer indicates which party will pay. In certain situations where the parent with the most parenting time also has a larger income, that parent may be shown to have an obligation. To avoid a situation where a custodial parent is paying support to a noncustodial parent, **there is a presumption of a \$0 basic support obligation for a parent with 55% parenting time.**

## Getting to Overnights

In order to use the new adjustment, there must be court ordered parenting time which can be reduced to annual overnights. The total of Parent A and Parent B's overnights should equal 365. The overnights must be averaged over two years. If parenting time is being heard in the action, the order should include a number of overnights or overnight equivalents. **If a parenting time order cannot be used to determine the number of overnights or overnight equivalents, this is grounds to modify parenting time.**

If the action is for child support only, and parenting time is not in front of the court, the court will need to look to the existing parenting time order. If overnights are not specified in the order, the order may include a percentage of parenting time which can be used to calculate overnights.

**Example:** Mother is awarded 67% parenting time and Father is awarded 33% parenting time. Mother's time:  $0.67 \times 365 = 245$  overnights. Father's time:  $0.33 \times 365 = 140$  overnights.

If there is no specified overnights or percentage, a court ordered schedule may be used. To get a number of overnights from a schedule, count out the days on a calendar (remember to average over 24 months!) In the alternative, take a regular calendar and extrapolate out over the year to arrive at a number.

**Example:** Mother is awarded parenting time every Wednesday, every other weekend from Friday to Sunday, and three consecutive weeks in summer. Because Mother will have time for 4 days out of every 2 weeks, and this period is repeated 26 times, count the regular schedule by multiplying  $4 \times 26$ . To account for the three weeks, do not simply add 21 days, as some of the time was already counted. Three Wednesdays were already counted and the time will overlap either one or two weekends (2 or 4 nights, so you may choose to assume the average of 3.) Add 21 days, but take back the 6 we already counted. Mother:  $104$  regular days +  $21$  vacation –  $6$  already counted regular days =  $119$  days. Father's time is the remainder of the year,  $246$  overnights.

### Tips for Counting Overnights

- "Overnight Equivalents" may count towards annual overnights. Overnight equivalents are calculated as a method other than overnights if the parent has significant time periods on separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight.
- Beware Holiday Schedules. Some holidays are not overnights. Depending on the regular schedule of the parents, it may be reasonable to disregard a holiday schedule. For example, with a close to 50/50 parenting time schedule, the odds of the holidays evening out completely is high. However, for a parent that has only weekend visits, that parent is likely to pick up additional nights on the holidays since few holidays occur regularly on Saturday or Sunday.
- A difference of a few nights will have less impact below around 100 nights, and more impact with more overnights. Comparing outcomes using each parties' position may reveal the parties are not far apart.
- When there is no parenting time ordered, use 0 overnights for the obligor 365 for the obligee.
- Remember that low income parties are less likely to be impacted by the calculation of overnights. This is because adjustments for low income obligors often completely eliminates the PEA.

## Applying a Parenting Expense Adjustment to a Motion to Modify Child Support

When modifying a child support case, it may be appropriate to apply the previous parenting expense adjustment (the 12% reduction, or equal parenting time formula from July 31, 2018 and before.) This is only appropriate where there is no order from which overnights can be determined AND the previous order granted an adjustment. **If it is possible to use the new formula, you must use the new formula.** This will most commonly be seen in cases where a 12% reduction was ordered despite no court ordered parenting time, or with a parenting time order that granted parenting time “as agreed by the parties,” or “reasonable and liberal time.” The follow chart may help to decide which adjustment is appropriate:

Is there an existing parenting time order?	Are you able to count overnights?	Is there already an adjustment based on pre-August 2018 law?	Use this adjustment:
Yes	Yes	Yes or No	New
Yes	No	No	No adjustment – Zero overnights to Parent A
Yes	No	Yes	Previous adjustment
No	N/A	Yes	Previous adjustment
No	N/A	No	No adjustment – Zero overnights to Parent A

Remember that if you have a parenting time order but it cannot be used to determine overnights, this is a basis to modify the parenting time order.

## Summary of Statutory Changes

- **Minn. Stat. § 518.175, subd. 5** addresses the modification of parenting plan or order granting parenting time if the number of overnights cannot be determined in the current plan or order.
- **Minn. Stat. § 518A.26, subd. 14** adds a definition of “Obligor.” The definition includes a presumption that a parent with more than 55 percent court ordered parenting time has a zero dollar order. The presumption may be rebutted by showing:
  - 1) a significant income disparity which may include potential income;
  - 2) the benefit and detriment to the child and the ability of each parent to meet the needs of the child; and
  - 3) whether the application of the presumption would have an unjust or inappropriate result.
- **Minn. Stat. § 518A.34** was changed to specify that each parent’s base support must now be calculated to apply the parenting expense adjustment formula. A paragraph was also added to address split custody, which will be calculated by offsetting the higher against the lower obligation when calculations result in both parents owing to the other.
- **Minn. Stat. § 518A.35, subd. 1** clarifies that the public authority should not apply the parenting expense adjustment to either parent in a 256.87 action unless there is court-ordered parenting time.
- **Minn. Stat. § 518A.36**

**Subd. 1** mandates a two-year average for annual overnights, and adds the term “overnight equivalents.”

**Subd. 2** contains the new parenting expense adjustment formula.

**Subd. 3** deletes language referring to the equal parenting time calculation, but retains language that requires no basic support be paid when incomes and parenting time are equal.

- **Minn. Stat. § 518A.39, subd. 2**

**Subd. 2(d) and (e)** provide that the “old” adjustment may be used at the time of a modification if there is no parenting plan or order from which overnights can be determined and the adjustment was previously applied. This is a presumption which may be rebutted.

**Subd. 2(j)** includes changes signed by the Governor on May 8, 2018. It clarifies that a change of law may constitute a substantial change for purposes of modification if the standards for modifications are otherwise met. Effectively clarifying that the 20%/75 presumption is a reason to modify following a change in law.

**Subd. 2(k)** provides that at the first modification after a change of the child support guidelines, modification of basic support may be limited if a hardship is created. Hardship includes eligibility for public assistance.