

My name is Phil Creed and I am an engineer from Ohio. I have no pending legal matters in Alabama, and in fact, have never set foot in the state of Alabama.

While I do not practice law, I nevertheless “practice math” on a daily basis as an engineer. Many states’ shortcomings in addressing child support in shared parenting arrangements comes from mathematically improbable or implausible assumptions states make in these matters. Given the similarity of Ohio and Alabama’s approaches to the matter, I humbly submit the following opinion and analysis to the committee.

I am the non-custodial parent of two daughters, and my ex-wife and I wanted to make our proceedings as amicable as possible, including the support order.

The last part proved much harder than it should have been. 38 states and DC have some statutory guidance regarding timesharing adjustments for child support. Sadly, Ohio—like Alabama—offers no statutory guidance on the matter and leaves a shared parenting adjustment strictly up to judicial discretion in the form of a deviation. Unlike most divorces, I was given a slight minority of the overnights (43% annually; 3 nights/week) but I made LESS than my ex- does. “Who owes who, and how much?” was the question. In Ohio and Alabama, the state is silent on this matter.

I went through case law, looking for something—anything—that showed a clear pattern of rulings or precedents. Sadly, the lack of statutory guidance meant the judges and attorneys in my state were essentially flying as blind as the respective parties or general laypersons. And any divorcing couple in the 12 remaining states without presumptive timesharing adjustments for support like Alabama, Texas, Arkansas, Nevada and Washington, to name a few, would be facing a similar issue.

The Family Support Act of 1988, which requires regular quadrennial reviews of states’ child support guidelines. Those guidelines, by federal law, must be “rebuttably-presumptive”, meaning assumed to be correct unless the weight of the evidence suggests otherwise. This and other aspects of that law are covered in one of the documents on your website--  
<https://www.alacourt.gov/docs/draftarticle.familylawquarterly.pdf>

The section of this paper on the Family Support Act is especially relevant to this discussion. The use of rebuttably-presumptive guidelines was mandated so that similar cases = similar support amounts, but with enough flexibility to allow different amounts under unusual circumstances. What was certainly an unusual circumstance in 1988 was shared parenting, as primary/full maternal custody was the norm at the time.

Now that shared parenting is increasingly common, many states have adopted timesharing formulas. There is a perfectly valid legal, ethical and mathematical reason to do this, since the initial guidelines adopted in the early 1990s *only assumed child-rearing expenses were incurred in the custodial parent’s household.*

This proved to be the Achilles’ Heel of the income shares method, since a shared parenting arrangement means that BOTH parents are incurring expenses. As shared parenting became more common, many lesser-time parents found themselves paying unfair support amounts on the archaic notion that only the other parent was incurring expenses.

Again, no legal expert here, but any legal presumption should not stand if the facts suggest it isn’t applicable. For instance, the presumption of innocence is voided in criminal proceedings if the weight the evidence exceeds the “beyond a reasonable doubt” hurdle.

Likewise, states increasingly saw the virtue of casting aside the presumption that only *one* household incurs expenses in shared parenting arrangements, particularly at/near 50/50 custody. They adopted a new presumption—timesharing formula adjustments—to handle these situations. Like the guidelines, the timesharing adjustments themselves can be

cast aside if there's good reason to do so (ex: 50/50 with similar incomes often "zeroes out" the support order for both parties in many states, but a judge can rule otherwise if everyday expenses are asymmetrical, one party gets a hefty inheritance, etc.)

The progression in the number of states that had timesharing adjustments in their support orders, from 24 states in 1998 to 38 states today, is noteworthy in Venohr's paper. Additionally, both New Hampshire and Kentucky—two states without statutory guidance for shared parenting support adjustments—have pending legislation (H 161 and H 404, respectively) that would address this matter; see <https://www.ncsl.org/research/human-services/child-support-and-family-law-database.aspx> for more.

38 states and DC would, in my admittedly-paltry level of legal knowledge, qualify as a "preponderance of evidence" in favor of the timesharing-formula approach for shared parenting support orders vs. Alabama's use of handling the matter as a deviation with vague or non-existence guidance.

So, the question then becomes, "which formula"? Again, Venohr's paper shows the most common is a cross-credit formula, typically with a 1.5X multiplier. In a 1.5X Cross-Credit Multiplier state (hereafter, "1.5X-CCM" in this letter), each parent's respective support order is first multiplied by the percent of overnights the other parent has the children. Then, the difference is determined between these two amounts and then multiplied by 1.5 (or 1.4 in VA) to determine the support payment.

The shared parenting multiplier is used simply because the total child-rearing expenses exceeds that of a sole-custody situation. That is, even though some costs incurred by one household when the kids are under their roof aren't incurred by the other (i.e. food), both households are incurring significant fixed costs for additional bedrooms, higher utilities, higher rents/mortgages, etc. Thus, the base combined support order—which only assumes expenses in ONE (custodial) household—is increased by the shared parenting multiplier.

Let's look at the above example of the father's and mother's guideline support amounts at \$800/mo and \$400/mo. If the father has the kids 146 nights/yr (40% of the time), the math would look like this:

Father's child support =  $1.5 \times [(\$800/\text{mo} \times 0.6) - (\$400/\text{mo} \times 0.4)] = 1.5 \times [\$480/\text{mo} - \$160/\text{mo}] = 1.5 \times \$320/\text{mo} = \mathbf{\$480/\text{mo}}$

At 50/50, the support amount would be  $1.5 \times [(\$800/\text{mo} \times 0.5) - (\$400/\text{mo} \times 0.5)] = 1.5 \times (\$400/\text{mo} - \$200/\text{mo}) = \mathbf{\$300/\text{mo}}$ .

Note that this formula not only calculates support, it can (presumptively) determine WHO pays it. The support will zero out if a parent's pro-rated share of the combined parental income matches their share of the parenting time, and if the calculated support is negative, the other parent owes. Thus, the father in the above example making 67% of the parental income would still owe some support at 60% parenting time, receive support at 75% parenting time, and zero out support with 67% of the overnights.

One peculiar trait of the 1.5X-CCM is the 50/50 amount. It is simply three-quarters of the difference between the two guideline amounts. If the guideline amounts were \$900/mo and \$300/mo, the 50/50 amount would be:

$0.75 \times (\$900/\text{mo} - \$300/\text{mo}) = 0.75 \times \$600/\text{mo} = \$450/\text{mo}$

The 1.5X-CCM formula is relatively straightforward, and works well in the 50/50 range. It does, though, have a built-in flaw—it will ALWAYS multiply the base combined support obligation by 1.5X. If one party had full custody, this formula would suggest a support amount 50% greater than guideline:

At 0% PT, father's support =  $1.5 \times (\$800/\text{mo} \times 1.0) - (\$400 \times 0) = 1.5 \times \$800/\text{mo} = \$1,200/\text{mo}$ .

A simple safeguard can be placed in state law to prevent the imposition of a calculated shared parenting support order that exceeds guideline. As one approaches full custody, the pro-rated guideline amounts are best used in place of any cross-credit multiplier system.

States using 1.5X-CCM's also incorporate arbitrary parenting time "thresholds", below which, the non-custodial parent pays the full guideline support. This often forms litigation "flash points" or "cliffs" where the difference of a few annual overnights makes a massive difference in the support amount. For instance, Illinois uses a 1.5X-CCM with a 146-day threshold. If the above father has the kids 146 overnights in Illinois, he'll pay \$480/mo. But if he has them just one fewer night, he'd owe the full \$800/mo of guideline support.

Worse, if the lower-earning MOTHER was the presumptive obligor, she would go from owing the full guideline support of \$400/mo at 145 annual overnights to being the recipient of \$120/mo in support with just ONE extra overnight.

Thresholds are ubiquitous, but, in my opinion, are poor public policy. Besides the obvious "dollars for days" compulsion to increase parenting time solely to meet the threshold, the knowledge one is paying the full support amount despite substantial parenting time is a corrosive and contradictory value judgement by the state. As if to say, "you're a parent. It's the most important job you'll ever have...but we think nothing of your contribution, since you'll pay the same amount as a completely absent parent."

So how to fix this? After all, I can call out the sins of others, but that will not make me a saint. I felt it best to actually propose a sound timesharing adjustment.

The inspiration came from Oregon, which recently revised its timesharing formula. This formula has gotten attention in other states' quadrennial guidelines reviews, and has received high marks by Oregon's bar for reducing litigation. It is based on the idea of a combined credit times a sliding scale factor. According to the pertinent documentation,

*"Commentary: The assumptions underlying the formula include:*

- Any parenting time creates some expenses for the parent
- Low levels of parenting time result in low levels of expenses, because there are fewer fixed, duplicated expenses like housing, and do not significantly decrease the expenses of the parent with greater parenting time.
- Higher levels of parenting time increase the likelihood that the parents will incur fixed, duplicated expenses.
- At equal parenting time, parents' expenses are most likely to be equal. If each parent has the child 50% of the time and parental incomes are equal, no support would be owed. However, if each parent has 50% of the parenting time and one parent's income is greater than the other parent's, the parent with the larger income would pay some support. In either case, expenses such as child care or health care coverage could cause the opposite result."

Source: <https://justice.oregon.gov/child-support/pdf/137-050-0730.pdf>

Mathematically, it can be expressed as:

Parent A support = Parent A Guideline support – (Base Combined Support) x (Parenting Time Credit), where (gulp), the Parenting Time Credit is expressed as:

"credit percentage=1/(1+e<sup>-7.14\*((overnights/365)-0.5))</sup>)-2.74%+(2\*2.74%\*(overnights/365))"

"Keep Portland Weird," apparently rubbed off on their child support calculations! That's a formula people will crunch by hand right around never, but thankfully, Oregon supplies a lookup table, since the only variable in that rather



nightmarish formula is the number of overnights.

The formula assumes no credit at 0% parenting time, a 50% credit on the \*combined\* obligation at 50/50, and a non-linear parenting time credit in between. For instance, at 100 annual overnights, the NCP would receive a 15.37% credit on the combined support order.

If the father in our prior examples had 100 annual overnights, here's the math:

Father's guideline support = \$800/mo  
Mother's guideline support = \$400/mo  
Base Combined Support Order = \$1,200/mo

Father's support @ 100 overnights = \$800/mo - (0.1537 x \$1,200/mo) = \$800/mo - \$184.44/mo = \$615.56/mo

If Oregon's formula has a weakness, it's that it doesn't have a shared-parenting multiplier. The 50/50 amount is simply half of the difference between the two guideline amounts (vs. three-quarters of the difference at 50/50 in a 1.5X-CCM state).

But it does have a peculiar trait I happened to notice: Going halfway from 0% to 50% in parenting time (25% parenting time, ~91 days) got the parenting credit to go about one-quarter of the way between 0% and 50% at 12.94%. Having 40% overnights means one has gone 80% of the way between 0% and 50%, and the credit is 32.32%, or 64% of the way between 0% and 50%.

That is, the Oregon Parenting Credit, despite its complex formula, is very close to a simple quadratic scaling factor, where  $PTC \sim 0.5 \times (\% \text{ parenting time} / 50\%)^2$

So herein, lies the idea of this formula:

- (1) Assume the guideline amounts are appropriate at 0% parenting time
- (2) Assume the 1.5X-CCM amount is appropriate at 50/50.
- (3) Transition between 0% and 50% PT with a sliding-scale factor.

Let N = non-custodial parent's guideline support  
C = custodial parent's guideline support  
P = % parenting time  
D = the **difference** between guideline support and 50/50 (recall this is  $0.75 \times (N-C)$ )

THEN:

Support = N - (PTC x D), where  $PTC = (\% \text{ parenting time} / 50\%)^2$

Example:

Father's Guideline Support = \$800/mo  
Mother's Guideline Support = \$400/mo

If the father is deemed the non-custodial parent, then

D = difference between guideline support for father and 50/50 = \$800/mo - \$300/mo = \$500/mo

This would then simplify to:

$$\text{Support} = \$800/\text{mo} - [\$500/\text{mo} \times (P/50\%)^2]$$

Here's a table showing the effect on child support as the father would go from 0% to 50% parenting time:

% Parenting Time	Parenting Time Credit = (%PT/50%) <sup>2</sup>	Support
0	0.000	\$800/mo
10	0.040	\$780/mo
20	0.160	\$720/mo
30	0.360	\$620/mo
40	0.640	\$480/mo
50	1.000	\$300/mo

If the same calculations were made with the MOTHER paying support,

NCP support = \$400/mo

D = \$400/mo - (-\$300/mo; as the mother would RECEIVE support at 50/50) = \$700/mo,

The formula would be expressed as:

$$\text{Support} = \$400/\text{mo} - [\$700/\text{mo} \times (\%PT / 50\%)^2]$$

% Parenting Time	Parenting Time Credit = (%PT/50%) <sup>2</sup>	Support
0	0.000	\$400/mo
10	0.040	\$372/mo
20	0.160	\$288/mo
30	0.360	\$148/mo
40	0.640	-\$48/mo (father pays)
50	1.000	-\$300/mo (father pays)

This formula has a sliding scale factor that is easy to calculate, and a lookup table can be provided.

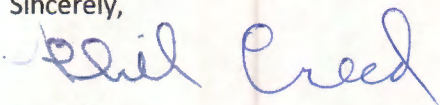
The advantages of this formula are:

- (1) Relatively easy to calculate directly, or use with a lookup table.

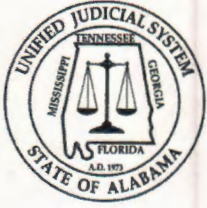
- (2) No "thresholds" of "X number of days, or bust" to focus litigation on.
- (3) No point along the curve results in a change in support worth litigating over. The gradual curve in Oregon's system is maintained, reducing the compulsion to trade "dollars for days" by more closely aligning the support amount to the parenting time and anticipated expenses.
- (4) Bridges the gradual curve of Oregon's approach with the 1.5X-CCMs used in many states, so that the amounts at 50/50 would match the states that use this approach.
- (5) Provides judges, attorneys and both parties with predictable, plausible starting points vs. the current system. A legitimate question of WHO the obligor is arises currently if the lesser-time parent also is the lower earner. This formula addresses that.

I can be reached at [4bcreed@gmail.com](mailto:4bcreed@gmail.com) if anyone has further questions.

Sincerely,



Phil Creed



## NEWS RELEASE

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### Administrative Office of Courts

FOR IMMEDIATE RELEASE

February 17, 2021

Montgomery, AL – The Alabama Advisory Committee on Child Support Guidelines and Enforcement is scheduled to have a web meeting on Friday, March 12, 2021, beginning at 10:00 A.M. Because of the COVID-19 pandemic, no in-person meeting will be held.

The Supreme Court of Alabama appoints the members of the Committee. The Committee's role is to review and make recommendations to the Supreme Court concerning the Child-Support Guidelines and Schedule of Basic Child-Support Obligations, which are used by courts in this State in determining the amounts of child support to be paid. At this meeting the Committee will continue reviewing and discussing the current Guidelines and Schedule.

Persons wishing to submit written comments and suggestions to the Committee concerning the Guidelines and Schedule may do so through the United States Mail, postmarked no later than Thursday, March 4, 2021, to the Supreme Court of Alabama Clerk's Office, Attention: Advisory Committee on Child Support Guidelines, 300 Dexter Avenue, Montgomery, AL 36104-3741. No telephone comments and suggestions will be accepted.

Persons wishing to join the web meeting should submit an e-mail no later than 5:00 P.M. Central Time on Wednesday, March 10, 2021, to [alcsge@alacourt.gov](mailto:alcsge@alacourt.gov) for instructions. The Committee will allow public comments toward the end of the meeting. Materials for this meeting may be found by accessing the following site: <http://www.alacourt.gov/ChildSupportReview.aspx>.