

To: Alabama Advisory Committee on Child Support Guidelines and Enforcement

From: Jane Venohr, CPR

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RE: Parenting Time Adjustments

This memorandum explores five major considerations in shared-parenting adjustments.

1. Criteria for applying the adjustment (e.g., court-ordered shared custody arrangement, agreed-to-by-parents, actual)
2. Definition of “days” or “overnights” and addressing non-traditional work schedules
3. Actual formula
 - Threshold of overnights for applying
 - Whether formula produces \$0 order when parents have equal incomes and timesharing is 50%/50%
4. Modification if timesharing does not occur as considered in the order
5. Miscellaneous considerations

General Background Statistics

Adjustments for shared-parenting time are important. Research generally shows that children do better when both parents are in their children’s lives.¹ Father involvement can improve a child’s academic success, reduce levels of delinquency, and promote the child’s social and emotional well-being.² Based on 2015 national data, 48 percent of the custodial parents who were supposed to receive child support reported that the other parent had visitation privileges and 31 percent reported that the other parent had joint custody, either legal or physical or both.³ Having visitation privileges or joint custody is only part of picture. Another consideration is whether the other parent exercises shared parenting through visitation or physical custody. A 2011 national study finds that among fathers and children living separately, 22 percent have contact more than once a week, 29 percent have contact one to four times a month, 21 percent have contact several times a year, and 27 percent have no visits.⁴

Issue 1: Criteria for Applying the Timesharing

Exhibit 1: Advantages and Disadvantages of Specific Criterion/Criteria

Criterion/Criteria	Major Advantage	Major Disadvantage
Court-ordered time-sharing	Evidence is clear	parents, particularly low-income parents, may not have or have the resources to obtain a court-ordered timesharing order
Written parenting-time plan agreed to by both parents	Easier for parents to obtain than court order	Not binding, Should Alabama courts provide a parenting plan template like Arizona, Indiana, and Missouri do? ⁵

¹ For example, see U.S. Department of Health and Human Services, Administration for Children and Families. (n.d.) *Pathways to Fatherhood*. Retrieved from <http://www.acf.hhs.gov/programs/ofa/programs/healthy-marriage/responsible-fatherhood>.

² Osborne, Cynthia and Ankrum, Nora. (April 2015). “Understanding Today’s Changing Families.” *Family Court Review*, Vol. 53, No. 2. pp 221–232.

³ Grall, Timothy. (January 2018.). *Custodial Mothers and Fathers and Their Child Support: 2015 Current Population Reports*, U.S. Census Bureau. Retrieved from <https://www.census.gov/content/dam/Census/library/publications/2018/demo/P60-262.pdf> ,

⁴ Livingston, Gretchen, and Parker, Kim. (June 2011). *A Tale of Two Fathers: More Are Active, but More Are Absent*. Pew Social & Demographic Trends. Retrieved from. <https://www.pewresearch.org/wp-content/uploads/sites/3/2011/06/fathers-FINAL-report.pdf> .

⁵ For example, see Missouri at <https://www.courts.mo.gov/file.jsp?id=92420>.

Actual or exercised parenting time	Captures the actual circumstances of the case	Evidence on “actual” is difficult to ascertain
Exercised AND court-ordered or written	Thorough	Still “exercised” is still difficult to ascertain

Exhibit 2: Examples of Criteria from Selected States

State	Summary	Criteria
FL	Deviation with formula	(11)(a) The court may adjust the total minimum child support award, or either or both parents’ share of the total minimum child support award, based upon the following deviation factors:(b) Whenever a particular parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties provides that each child spend a substantial amount of time with each parent, the court shall adjust any award of child support, as follows:
LA	Several options	§315.9. Effect of shared custodial arrangement A.(1) "Shared custody" means that each parent has physical custody of the child for an approximately equal amount of time. (2) If there is a joint custody order or joint plan for implementation providing for shared custody, or if the court finds by a preponderance of the evidence that shared custody exists , the basic child support obligation shall first be multiplied by one and one-half and then divided between the parents in proportion to their respective adjusted gross incomes.
MO	Ordered & exercised	This adjustment is based on the number of periods of overnight visitation or custody per year awarded to and exercised by the parent obligated to pay support under any order or judgment.
OK	Ordered or agreed	§43-118E. Parenting time adjustment - Reduction in child support obligation. A. Parenting time adjustment. 1. The adjustment may be granted based upon a court order or agreement that the noncustodial parent is granted at least one hundred twenty-one (121) overnights of parenting time per twelve-month period with the children in the case under consideration. 2. Average parenting time. If there are multiple children for whom support is being calculated, and the parent seeking the parenting time adjustment is spending a different amount of time with each child, then an annual average of parenting time with all of the children shall be calculated. B. In cases of split physical custody, either parent may be eligible for a parenting time adjustment.
OR	Court ordered or written parenting plan	(2) If there is a current² written parenting time agreement or court order providing for parenting time, calculate each parent's overnights for the minor children ³ as follows ⁴ :
WV	No criteria other than threshold	Child support for cases with extended shared parenting is calculated using Worksheet B. The following method is used only for extended shared parenting: That is, in cases where each parent has the child for more than one hundred twenty-seven days per year (thirty-five percent).

Issue 2: Defining Days or Overnights

The examples are from the least to most restrictive.

Exhibit 3: Definition of Days/Overnights

State	Overview of Measurement	Excerpt
MO	Court-ordered overnights	This adjustment is based on the number of periods of overnight visitation or custody per year awarded to and exercised by the parent obligated to pay support under any order or judgment.
MN	Permissible to use something other than overnights if the parent has significant time periods	The percentage of parenting time may be determined by calculating the number of overnights or overnight equivalents that a parent spends with a child pursuant to a court order. For purposes of this section, overnight equivalents are calculated by using 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.
IN	Recognizes "overnight" will not always mean 24-hour block. Encourages consideration of whether party feed or transported child	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.
LA	Court discretion but no less than 4 hours can constitute a day	A day for the purposes of this Paragraph shall be determined by the court; however, in no instance shall less than four hours of physical custody of the child constitute a day.
TN	More than 12 consecutive hours	(10) "Days" — For purposes of this chapter, a "day" of parenting time occurs when the child spends more than twelve (12) consecutive hours in a twenty-four (24) hour period under the care, control or direct supervision of one parent or caretaker. The twenty-four (24) hour period need not be the same as a twenty-four (24) hour calendar day. Accordingly, a "day" of parenting time may encompass either an overnight period or a daytime period, or a combination thereof.
OR	Alternatives such as 12-hr blocks, but never less than 12 hour blocks	(a) Determine the average number of overnights using two consecutive years. ⁵ (c) Notwithstanding the calculation provided in subsections (2)(a) and (2)(b), parenting time may be determined using a method other than overnights if the parents have an alternative parenting time schedule in which a parent has significant time periods where the minor child is in the parent's physical custody but does not stay overnight. For example, in lieu of overnights, 12 continuous hours may be counted as one day. Additionally, blocks of time of four hours up to 12-hours may be counted as half-days, but not in conjunction with overnights. Regardless of the method used, blocks of time may not be used to equal more than one full day per 24-hour period. ⁵ Commentary: Parenting time cannot be calculated using speculative data. Since parenting time is calculated based on 365 days in a year, averaged over two consecutive years, practitioners may calculate the number of days spent with the parent for known periods of time (E.g., "The child will spend Memorial Day weekend with the Mother,": quantifiable as 3 overnights). Unknown or unquantifiable periods of time would not be calculated (E.g., "The child will spend time during the summer months with the Father": unquantifiable period of time; no overnights can be calculated). The determination of overnights applies to the parenting plan that will be followed while the new support order is in effect.
AZ	Breaks down to 3-hour blocks	To adjust for the costs of parenting time, first determine the total annual amount of parenting time indicated in a court order, a parenting plan, by the parents' expectation, or by historical practice. Using the following for guidance, add together each block of parenting time to arrive at the total number of parenting-time days per year. Calculate the number of parenting-time days arising from any block of time the child spends with the parent with less parenting time in the following manner: 1. Count 1 day of parenting time for each 24 hours within any block of time; and

State	Overview of Measurement	Excerpt
		<p>2. To the extent there is a period of less than 24 hours remaining in the block of time, after all 24-hour days are counted or for any block of time which is in total less than 24 hours in duration:</p> <p>a. A period of 12 hours or more counts as 1 day;</p> <p>b. A period of 6 to 11 hours counts as a 1/2-day;</p> <p>c. A period of 3 to 5 hours counts as a 1/4-day; and</p> <p>d. Periods of less than 3 hours may count as a 1/4-day if, during those hours, the parent with less parenting time pays for routine expenses of the child, such as meals.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>Example 1: Bailey and Jules have 1 child. Bailey has less parenting time than Jules. In alternating weeks, Bailey receives the child at 8:00 p.m. on Thursday and returns the child to Jules at 7:00 a.m. on Monday.</p> <p>8:00 p.m. Thursday to 8:00 p.m. Sunday is 3 days. 8:00 p.m. Sunday to 7:00 a.m. Monday is 11 hours, which equals a 1/2 day. Total parenting time for Bailey is 3 and 1/2 days for that alternating week.</p> </div> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>Example 2: Alex and Kendall have 1 child. Alex has less parenting time than Kendall. Alex picks the child up at 3:00 p.m. Friday and returns the child to Kendall at 8:00 a.m. on Monday.</p> <p>3:00 p.m. Friday to 3:00 p.m. Sunday is 2 days. 3:00 p.m. Sunday to 8:00 a.m. Monday is 17 hours, which equals 1 day. Total parenting time for Alex is 3 days for that week.</p> </div> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>Example 3: Angel and Harper have 1 child. Angel has less parenting time than Harper. Angel picks up the child at noon on Saturday and returns the child to Harper at 9:00 p.m. on Sunday.</p> <p>Noon Saturday to noon Sunday is 1 day. Noon Sunday to 9:00 p.m. Sunday is 9 hours, which equals 1/2 day. Total parenting time for Angel is 1 and 1/2 days for that week.</p> </div>

Issue 3: Actual Formula

Since most states base their child support chart or formula on child-rearing expenditures in intact families, the chart or basic formula reflects the cost of raising the child in one household. Nonetheless, most state guidelines (41 states) provide a formula for shared physical custody or the nonresidential parent's time with the child.

More information about the formulas will be provided at subsequent meetings. Exhibit 4: State Formulas Exhibit 4 summarizes the formulas used by across the nation. The most common is a "cross-credit with 1.5 multiplier." The cross-credit steps are:

- Multiply basic obligation (amount in schedule using the combined income of the parents) by 150% to account for it costs 50% more to raise a child in two households than one household because of duplicated housing and transportation cost.
- Calculate a theoretical order for each parent.
- Multiple each parent's theoretical order by the percentage of the child's time with the other parent; in other words, each parent is only financially responsible for the time that the child is with the other parent.
- Subtract the larger amount from the lower amount in the previous step. The difference is the child support order owed by the parent with more income.

The cross-credit requires the use of a timesharing threshold for applying the formula. This is because the 150% will produce a higher order than a sole-custody order at low levels of time sharing depending on the incomes of the parties. Exhibit 5 shows timesharing thresholds. Many cross-credit states simply provide that the timesharing-adjusted order can not be more than the sole-custody order to address the anomalies.

Case scenarios comparing some of the formulas are attached at the end of the memorandum.

Exhibit 4: State Formulas

Formula	States
Cross-Credit with 1.5 Multiplier	18 states (AK, CO, DC, IL, ID, FL, LA, ME, MD, NE, NC, NM, SC, SD, VT, WV, WY, WI)
Cross-Credit with No or Alternative Multiplier	4 states (MT, NV, OK, VA)
Simple Percentage or Sliding Scale Adjustment	7 states (AZ, DE, IA, KS, KY (eff late 2022) OH, UT)
Consideration of Transferable and Fixed Expenses	3 states (IN, MO, NJ)
Non-Linear Formulas	3 states (MI, MN, OR)
Per Diem Adjustment	4 states (HI, PA*, ND, TN)
Unique Formula	2 states (CA, MA)
States with a Formula	41 states
States without a Formula	10 states (AL, AR, CT, GA, MS, RI, NH, NY, TX, WA)

Exhibit 5: Threshold for Applying Parenting-Time Formula

Threshold for Shared-Parenting Time Adjustment	States
1-10% parenting time	8 states (AZ, CA, MI, MN, MO, NV, NJ, OR)
11-15% parenting time	1 state (IN)
16-20% parenting time	1 (FL)
21-25% parenting time	8 states (CO, DE, ID, KY, TN, VT, VA, WI)
26-30% parenting time	7 states (AK, MT, NE, ND, NM, SC, UT)
31-35% parenting time	8 states (DC, IA, KS, MA, MD, NC, OK, WV)
36-40% parenting time	4 states (HI, IL, PA, WY)
41-45% parenting time	None
46-50% parenting time	4 states (KS, LA, ME, SD)
States with a Formula	41 states
States without a Formula	10 states (AL, AR, CT, GA, MS, RI, NH, NY, TX, WA)

*Nevada doesn't specify a threshold.

Issue 4: Modification if Timesharing Doesn't Occur as Considered in Order Calculation

Factors to consider:

- Timesharing may not occur due to illness, weather, natural disaster, pandemic or etc... (see Kentucky)
- Research shows that one of the major reason timesharing does not occur is the primary custodial parent withholds timesharing

Exhibit 6: Modifications when Timesharing Doesn't Occur as Considered in Order Calculation

State		Provision
IN	Modification criterion	<p>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.</p> <p>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.</p> <p>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.</p>
MI	21 overnight difference	<p>3.03(D) If a substantial difference occurs in the number of overnights used to set the order and those actually exercised (at least 21 overnights or that causes a change of circumstances exceeding the modification threshold (\$4.05)), either parent or a support recipient may seek adjustment by filing a motion to modify the order.</p> <p>3.03(E) So the court can know if circumstances have changed at the time of a subsequent determination, every child support order must indicate whether it includes a parental time offset and the number of overnights used in its calculation</p>
OK	May order judgment	<p>E. 1. Failure to exercise or exercising more than the number of overnights upon which the parenting time adjustment is based, is a material change of circumstances.</p> <p>2. If the court finds that the obligor has failed to exercise a significant number of the overnights provided in the court order necessary to receive the parenting time adjustment, in a proceeding to modify the child support order, the court may establish the amount that the obligor has underpaid due to the application of the parenting time adjustment as a child support judgment that may be enforced in the same manner as any other child support judgment.</p> <p>3. The court may rule that the obligor will not receive the parenting time adjustment for the next twelve-month period. After a twelve-month period during which the obligor did not receive the parenting time adjustment, the obligor may petition the court to modify the child support order. The obligor may be granted a prospective parenting time adjustment upon a showing that the obligor has actually exercised the threshold number of overnights in the preceding twelve (12) months. No retroactive modification or credit from the child support guidelines amount shall be granted based on this section.</p>
	Draft KY (not introduced)	<p>403.213 Criteria for modification of orders for child support and for health care -- Effects of emancipation and death of obligated parent -- Commission to review guidelines.</p> <p>(1) The Kentucky child support guidelines may be used by the parent, custodian, or agency substantially contributing to the support of the child as the basis for periodic updates of child support obligations and for modification of child support orders for health care. The provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of a material change in circumstances that is substantial and continuing. If there is an adjustment for shared parenting-time as provided for in KRS 403.212 and the number of overnights used for that adjustment are not exercised for a substantial and continued period of time, this is considered a material change in circumstance that may warrant a modification.</p>

Issue 5: Other Issues

- Not apply both the timesharing adjustment and the low-income adjustment. Provide that the lower of the two calculations is applied.
- Prohibiting timesharing adjustment if custodial household's income is below poverty

Tennessee Formula

) These Guidelines presume that, in Tennessee, when parents live separately, the children will typically reside primarily with one parent, the PRP, and stay with the other parent, the ARP, a minimum of every other weekend from Friday to Sunday, two (2) weeks in the summer, and two (2) weeks during holidays throughout the year, for a total of eighty (80) days per year. The Guidelines also recognize that some families may have different parenting situations and, thus, allow for an adjustment in the child support obligation, as appropriate, in compliance with the criteria specified below.

(b) Parenting Time.

1. The adjustment is based upon the ARP's number of days of parenting time with the children in the case under consideration.

2. Fifty-Fifty / Equal-Parenting Situations.

In this situation, there is ...

(i) Fifty-Fifty / Equal-Parenting. ..

(ii) Fifty-Fifty / Equal-Parenting Combined with Split Parenting. ...

(iii) Fifty-Fifty / Equal-Parenting Combined with Standard Parenting. ...

(h) Reduction in Child Support Obligation for Additional Parenting Time.

1. If the ARP spends ninety-two (92) or more days per calendar year with a child, or an average of ninety-two (92) days with all applicable children, an assumption is made that the ARP is making greater expenditures on the child during his/her parenting time for transferred costs such as food and/or is making greater expenditures for child-rearing expenses for items that are duplicated between the two (2) households (e.g., housing or clothing). A reduction to the ARP's child support obligation may be made to account for these transferred and duplicated expenses, as set forth in this chapter. The amount of the additional expenses is determined by using a mathematical formula that changes according to the number of days the ARP spends with the child and the amount of the BCSO. The mathematical formula is called a "variable multiplier."

2. Upon reaching the threshold of ninety-two (92) days, the variable multiplier shall be applied to the BCSO, which will increase the amount of the BCSO in relation to the ARP's parenting time, in order to account for the child-rearing expenses incurred by the ARP during parenting time. These additional expenses are divided between the parents according to each parent's PI. The PRP's share of these additional expenses represents an amount owed by the PRP to the ARP and is applied as a credit against the ARP's obligation to the PRP.

3. The presumption that more parenting time by the ARP results in greater expenditures which should result in a reduction to the ARP's support obligation may be rebutted by evidence.

4. Calculation of the Parenting Time Credit.

(i) First, the variable multiplier is determined by multiplying a standard per diem of .0109589 [2 / 182.5] by the ARP's parenting time determined pursuant to paragraph (7)(b) above. For example, the 94 days of parenting time calculated in the example from paragraph (7)(b)4(i) is multiplied by .0109589, resulting in a variable multiplier of 1.0301366 [94 x .0109589].

(ii) Second, the variable multiplier calculated in subpart (i) above is applied to the amount of the parties' total BCSO, which results in an adjusted BCSO. For example, application of the variable multiplier determined above for ninety-four (94) days of parenting time to a BCSO of one thousand dollars (\$1000) would result in an adjusted BCSO of one thousand thirty dollars and fourteen cents (\$1030.14) [$\1000×1.0301366].

(iii) Third, the amount of the BCSO is subtracted from the adjusted BCSO. The difference is the child-rearing expenses associated with the ARP's additional parenting time. In the example above, the additional child-rearing expenses associated with the ninety-four (94) days of parenting time would be thirty dollars and fourteen cents (\$30.14) [$\$1030.14 - \1000].

(iv) The additional child-rearing expenses determined in subpart (iii) above are prorated between the parents according to each parent's percentage of income (PI). The PRP's share of these additional expenses is applied as an adjustment against the ARP's pro-rata share of the original BCSO. For instance, if the PRP's PI is forty percent (40%), the PRP's share of the additional expenses in the example above would be twelve dollars and six cents (\$12.06) [$\$30.14 \times 40\%$]. The twelve dollars and six cents (\$12.06) is applied as a credit against the ARP's share of the BCSO, resulting in a child support obligation for the ARP of five hundred eighty seven dollars and ninety-four cents (\$587.94) [$\$1000 \times 60\% = \$600 - \12.06].



