

Child Support Guidelines Brief: Credit for Other Children

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Points of view expressed in this document are those of the author and do not necessarily represent the official position of the Child Support Guidelines Committee or the Court.

PURPOSE OF BRIEF

The purpose of this brief is to revisit the 2006 Child Support Guidelines Committee recommendation pertaining to additional dependents. As summarized on pages 2-3, the Supreme Court expressed concerns with the Committee's recommendation.

Page 3 provides two case examples to help the Committee walk through how additional dependents are currently treated and decide whether it would be more appropriate or just to treat additional dependents differently. The case examples may also be useful to determine whether the current provision needs clarification. The Brief concludes with examples of provisions pertaining to additional dependents from other state guidelines. They are provided to assist Committee members with crafting a new recommendation should that be the Committee decides to head.

EXISTING PROVISION

[Alabama Rule 32 (6) Preexisting child support obligation]

The amount of child support actually being paid by a parent pursuant to an order for support of other children shall be deducted from that parent's "gross income." If a parent is legally responsible for and is actually providing support for other children, but not pursuant to an order of support, a deduction for an "imputed preexisting child support obligation" may be made from that parent's gross income. The imputed preexisting child support obligation shall be that amount specified in the schedule of basic child support obligations based on that parent's unadjusted gross income and the number of other children for whom that parent is legally responsible. "Other children" means children who are not the subject of the particular child support determination being made. If the proceeding is one to modify an existing award of support, no deduction should be made for other children born or adopted after the initial award of support was entered, except for support paid pursuant to another order of support.

RECOMMENDATION OF 2005 COMMITTEE

(a) The noncustodial parent should be given credit for preexisting other children, with a valid court order and proof of current payment.

(b) The noncustodial parent should be given credit for after-born children, with a valid court order and proof of payment. If a credit is sought for after-born children in an 'intact household,' this issue should be in the judge's discretion whether or not to deviate from the guidelines.

INTENT OF RECOMMENDATION

The Committee's discussion is recorded in the June 30, 2006 Committee meeting minutes, which are available from the Internet at: <http://www.alacourt.gov/review.html>.

The Committee's recommendations pertaining to additional dependents include three recommendations.

- a) Treat "prior born" and "after born" children with a valid court order similarly (see recommendation on page 12 of minutes, Lines 14-23).
- b) Preserve requirement of a valid court order to obtain an adjustment; that is, parents who don't have court orders but have proof of payment will not receive a presumptive adjustment (see recommendation on page 13, lines 3-22)
- c) Allow the courts to deviate for additional dependents who are not covered by a court order but live with that parent in an intact household (see recommendation on page 31 lines 20-23 and page 32, lines 1-6).

In addition, Committee members clarified that the adjustments were to be applied to either parent, regardless of their gender or whether the parent was the custodial or noncustodial parent.

Definition of "Intact Household." The Committee discussed what "intact household" meant. The primary situation the Committee was trying to address was the additional children of a parent who is now remarried and lives with his second spouse and their child(ren). The Committee also discussed other situations, some based on actual cases and others that were atypical but brought up to illustrate why a presumptive adjustment may not be appropriate. These situations include:

- additional children of a parent who cohabitates with the parent of the other child but they are not in a common law marriage or civil marriage;
- stepchildren living with the parent (i.e., the children are not the parent's biological children);
- additional children from another relationship (i.e., a second spouse) but the child lives with the parent and his/her third spouse;
- never-married custodial parents who have children with more than one partner; and,
- children in a same sex marriage (e.g., couple married in Massachusetts and moved to Alabama).

It appears that the Committee decided upon a "deviation factor" rather than a presumptive adjustment for children not subject to a court order because Committee members considered a variety of case scenarios where adjustment would be and would not be appropriate.

Children of Never-Married Custodial Parents. Most of the scenarios discussed by the Committee involved re-married parents or parents living in a marriage-like situation. In its discussion, it appears the Committee may have overlooked addressing never-married custodial parents who have children with more than one partner.

SUPREME COURT'S RESPONSE

The Court expressed two reservations.

1. First, they are concerned that after-born additional dependents of noncustodial and custodial parents be treated similarly, particularly if the additional dependent of the noncustodial parent was covered by a court order and the additional dependent of a custodial parent was not covered by a court order. The recommendation provides for a presumptive adjustment when there is a court order covering an additional dependent, but a deviation when there is not a court order. The latter is more likely to be the situation of a custodial parent.

2. Secondly, they ask whether the Committee is recommending another policy other than the present rule which gives preference to the “first family” children and allows an adjustment for all after-born children through judge’s discretion, when warranted in exception cases.

The term, “intact household.” One issue raised by the Courts in a subsequent meeting with the Committee chair is the term, “intact household.” The meaning and significance of that term is not clear and can be confusing.

TWO CASE SCENARIOS TO CONSIDER

CASE 1: Noncustodial Parent: 5 children from 5 different mothers

- Child A (born 1995): lives with noncustodial parent
- Child B (born 1998): court order established in 1998, noncustodial parent pays it
- Child C (born 2000): support is being determined for Child C in 2007 (at first, mother did not file support because she did not want the dad to know, but she changed her mind and filed for support when the child reached age 7)
- Child D (born 2003): court order established in 2004, noncustodial parent pays it
- Child E (born 2006): lives with noncustodial parent

In Case 1, none of the mothers have additional dependents.

Determination of Support for Child C

In determining the support award for Child C, for which additional children would the noncustodial parent receive credit under the current provision for any of his children and does a Committee believe another treatment would be more just and appropriate?

- (i) credit for court-ordered support paid for Child B, who was born prior to Child C?
- (ii) credit for court-ordered support paid for Child D, who was born after Child C?
- (iii) imputed obligation for Child A who resides with the parent and born prior to Child C?
- (iv) imputed obligation for Child E who resides with the parent and born after Child C?

CASE 2: Custodial Parent: 3 children from 2 different fathers, all of the children currently live with the mother.

- Child F (born 1996, Dad is X): lives with custodial parent, no support order from Dad X
- Child G (born 2006, Dad is Y): lives with custodial parent
- Child H (born 2007, Dad is X): lives with custodial parent, no support order from Dad X
Dad X cannot be located. Dad Y has no other children.

Determination of Support for Child G:

In determining the support award for Child G, for which additional children would the custodial parent receive credit under the current provision and would the Committee recommend something other that would be more just or appropriate?

- (v) imputed obligation for Child F who resides with the parent and born prior to Child G?
- (vi) imputed obligation for Child H who resides with the parent and born after Child G?

TREATMENT IN OTHER STATES

Most state guidelines provide an adjustment similar to the Alabama adjustment; that is, they subtract the actual amount paid if there is court-ordered support and calculate an “imputed child support obligation” when there is not a court order. Several state guidelines, but not the majority, limit the “imputed child support obligation” to prior born children.

In addition, some state guidelines only subtract 50 or 75 percent of the “imputed child support obligation.” The 50 percent is based on the premise that the additional dependent has another parent who is also providing financial support to that child. The 75 percent serves the purpose of equalizing the proportion of income available to the children for whom support is being determined and the additional dependents.

No state uses the term, “children in an intact household,” rather most states specify the adjustment applies to other minor children for whom the parent has a legal duty to financially support. Oregon will not calculate an “imputed child support obligation” in TANF cases.

Georgia

C) *THEORETICAL CHILD SUPPORT ORDERS*. In addition to the adjustments to monthly Gross Income for self-employment taxes provided in subparagraph (A) of this paragraph and for Preexisting Orders provided in subparagraph (B) of this paragraph, credits for either Parents other Qualified Child living in the Parent's home for whom the Parent owes a legal duty of support may be considered by the Court for the purpose of reducing the Parent's Gross Income. To consider a Parent's other Qualified Children for determining the Theoretical Child Support Order, a Parent shall present documentary evidence of the Parent-Child relationship to the Court. Adjustments to income pursuant to this paragraph may be considered in such circumstances in which the failure to consider a Qualified Child would cause substantial hardship to the Parent; provided, however, that such consideration of an adjustment shall be based upon the best interest of the Child for whom child support is being awarded. If the Court, in its discretion, decides to apply the Qualified Child adjustment, the Basic Child Support Obligation of the Parent for the number of other Qualified Children living with such Parent shall be determined based upon that Parent's monthly Gross Income. Except for self-employment taxes paid, no other amounts shall be subtracted from the Parent's monthly Gross Income when calculating a Theoretical Child Support Order under this subparagraph. The Basic Child Support Obligation for such Parent shall be multiplied by 75 percent and the resulting amount shall be subtracted from such Parent's monthly Gross Income and entered on the Child Support Schedule B – Adjusted Income.

(D) *PRIORITY OF ADJUSTMENTS*. In multiple family situations, the adjustments to a Parent's monthly Gross Income shall be calculated in the following order:

- (i) Preexisting Orders according to the date of the initial order; and
- (ii) After applying the deductions on the Child Support Schedule B – Adjusted Income for Preexisting Orders, if any, in subparagraph (A) of paragraph (4) of this subsection, any credit for a Parent's.....

Oregon 137-050-0400

Nonjoint Children

(1) When either or both parents of the joint child subject to this determination are legally responsible for a nonjoint child who resides in that parent's household, or a nonjoint child to whom or on whose behalf a parent owes an ongoing child support obligation under a court or administrative order, a credit for this obligation shall be calculated pursuant to this rule. The credit does not apply to parents receiving TANF if that parent's gross income is calculated using OAR 137-050-0340(4).

(2) Subtract from a parent's gross income the amount of any spousal support a court orders that parent to pay, and add to a parent's gross income any spousal support the parent is entitled to receive as allowed by OAR 137-050-0390.

- (3) Determine the number of nonjoint children in the parent's immediate household, and the number of non-joint children to whom the parent has been ordered to pay support by prior court or administrative order. The result is "total nonjoint children."
- (4) Using the scale as established in OAR 137-050-0490, determine the basic child support obligation for the nonjoint child or children by using the income of the parent for whom the credit is being calculated and adjusting that income for spousal support, if applicable, according to subsection (2) of this rule, and using the number of "total nonjoint children" in subsection (3) of this rule.
- (5) Subtract the amount calculated in subsection (4) of this rule from the parent's gross income.

518A.33, Minnesota Statutes 2006

- (c) The deduction for nonjoint children is 50 percent of the guideline amount determined under paragraph (b).

South Carolina

D. Other Children in the Home.

Either parent shall receive credit for additional natural or adopted children living in the home, but not for stepchildren, unless a court order established a legal responsibility. Using the income of the parent with the additional child(ren) in the home only, the basic child support obligation for the number of additional dependents living with that parent (from the Schedule of Basic Child Support Obligations) is determined for that parent. This figure is multiplied by .75 and the resulting credit is subtracted from that parent's gross income.

NEW JERSEY

10. Adjustments to the Support Obligation - The factors listed below may require an adjustment to the basic child support obligation.

a. Other Legal Dependents of Either Parent - These guidelines include a mechanism to apportion a parent's income to all of his or her legal dependents regardless of the timing of their birth or family association (i.e., if a divorced parent remarries and has children, that parent's income should be shared by all children born to that parent). Legal dependents include adopted or natural children of either parent who are less than 18 years of age or more than 18 years of age and still attending high school or other secondary school. Stepchildren are not considered legal dependents unless a court has found that the stepparent has a legal responsibility for the stepchildren. When considering the use of this adjustment, the following principles shall apply:

- (1) this adjustment shall be used only if requested by a serial-family parent and the income, if any, of the other parent of the secondary family is provided to the court;
- (2) if the other parent in the secondary family is voluntarily unemployed or underemployed, the court shall impute income to that person (see paragraph 12) to determine the serial family parent's obligation to the children in the secondary family;
- (3) this adjustment may be applied to other dependents born before or after the child for whom support is being determined;
- (4) this adjustment may be requested by either or both parents (custodial and/or non-custodial);
- (5) the adjustment may be applied when the initial award is entered or during subsequent modifications of the support order.