

To: Alabama Advisory Committee on Child Support Guidelines and Enforcement
 From: Jane Venohr, CPR
 Date: Feb. 6, 2023
 RE: Calculation of Support in Non-Parent Custodian Cases

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Questions Posed by Committee Members

1. Should the non-parent custodian’s income be used in lieu of the missing parent’s income and the guidelines calculated as normal?
2. Should the non-parent custodian’s income be excluded and the guidelines calculated based solely upon the income of the parent that is a party to the case, making that parent responsible for 100% of the support based on their income only?
3. Should the non-parent custodian’s income be excluded and the guidelines calculated upon the income of the parent that is a party to the case AND the income of the non-party parent if their income is known or can be ascertained?

States Reviewed by CPR

CPR reviewed the guidelines of 16 states to determine if there was any mention of non-parent, custodian cases. Neighboring states were reviewed as well as states where CPR knew there was an issue with calculating support in non-parent custodian cases at some time. CPR also asked states they were in contact with in the last week: California, Georgia, Kentucky, and West Virginia.

Summary of Findings

The findings from these states are shown in the landscape table at the end of this document.

Among the 16 states,

- Only 4 states (Arkansas, Georgia, Minnesota, and Tennessee) addressed non-parent custodian cases in their guidelines;
- Another 3 states (Iowa, Florida, and Colorado) addressed the issue in their state statutes overseeing the child support program (Iowa), child welfare (Florida), or their administrative process (Colorado).

Among the 7 states addressing the issue,

- All have income shares guidelines;
- None consider the income of the non-parent custodian;
- Arkansas and Tennessee considers the income of each parent if information is available; otherwise, they only consider the income of the parent for whom support is being ordered;
- Colorado, Iowa, and Florida either explicitly consider the actual or imputed income of the other parent (Colorado) or have strong language that appears to require the consideration of the other parent's income in any child support calculation regardless of whether it is a non-parent custodian case (Iowa and Florida);
- Minnesota specifically provides for the consideration of 100% economic responsibility of the parent for whom support is being determined even when the order is being established for each parent; and
- Georgia does not specify.

Additionally, Arkansas, Georgia, and Tennessee provide for the consideration of the non-parent custodian's childcare and other add-ons. In fact, Tennessee's child support worksheet provides a separate worksheet for it. Tennessee's provisions are attached to the memorandum.

Answers to Questions

Use of the Non-Parent Custodian's Income (Answer to Question 1)

CPR found no state that considers the non-parent custodian's income in its guidelines or anywhere in their state statute. In states without provisions, most said they never consider the non-parent's custodian's income. The only notable exception came from a discussion with a Kentucky IV-D administrator who was unsure of local judge practices.

100% Economic Responsibility of the Parent from Whom Support Is Being Sought (Answer to Question 2)

Arkansas and Tennessee provide for 100% economic responsibility when income information is not available from the other parent. Minnesota also requires 100% economic responsibility in all situations even when an order is being established against both the mother and father.

The Parent from Whom Support Is Being Sought Is Prorated (Answer to Question 3)

Arkansas and Tennessee provide for this when income information is available from each party. Colorado always provides for it and requires income imputation if the party's income is not available at minimum wage. Iowa and Florida's strong income imputation policies (that include the use of median or minimum wage when appropriate) appear to apply in all cases regardless whether it.

Advantages and Disadvantages

The obvious advantage of the Arkansas and Tennessee approach is it uses the best income available. The obvious advantage of the Minnesota, Colorado, Iowa, and Florida approach is it provides for more consistent treatment. Income imputation to the other parent (Colorado, Iowa and Florida) provide a lower order amount, which may be more affordable.

Recent Federal Letter on IV-E Foster Care Referrals to IV-D Child Support

The U.S. Department of Health and Human Services Children’s Bureau and Office of Child Support Enforcement issued a joint letter July 29, 2022¹ encouraging that state IV-E agencies only refer appropriate cases to the state IV-D agency. The letter emphasizes the importance of recognizing that many parents live in poverty and cannot afford to offset the cost of their child placed in foster care; and can negatively impact a family trying to develop and maintain familial and economic stability to reunify with their children.

As show below, Alabama statute allows for this consideration by the use of the word, “may” in its statute.

Section 38-10-32

Action to assure that parents of child in department's custody or receiving maintenance payments provide support.

The department **may** take action under this article or any other appropriate state and federal statutes to assure that the parent or parents of a child in the custody and care of the department or otherwise receiving foster care maintenance payments under Title IV-E of the Social Security Act, provide support for such child. An order for support **may** be made at the time custody is granted to the department and may be made a part of the custody order.

University of Wisconsin conducted an in-depth study of Wisconsin children who were removed from parental care and placed out of home.² They found that most had child support already ordered; new orders were established for 38% of nonresident fathers; new orders were established for 22% of resident mothers; and that each \$100 more ordered in child support against the mother lengthened the child’s time in foster care (and delayed family reunification) by 6.6 months. The study indicates that may because of the increased financial burden to the mother.

¹ Retrieved from

https://www.acf.hhs.gov/sites/default/files/documents/cb/letter_regarding_assignment_rights_child_support_for_children_foster_care.pdf.

² Cancian, Maria, and et. al. (Jan. 2017.) “Making parents pay: The unintended consequences of charging parents for foster care.” *Children and Youth Services Review*. Vol. 72, pp. 100-110.

<https://www.sciencedirect.com/science/article/pii/S0190740916303425>

Specific Provisions of Reviewed States

	State Child Support Guidelines			Other Statute	Unique Provision	Consideration of income of non-parent caretaker	Consideration of income of other, unlocated parent
	Terminology	Non-Relative Caretaker Specifically Mentioned	Consideration of Income Specified				
AR	“payor” and “payee”	Yes, “third-party custody”	Third-party Custody: When one or more children are not in the care of either biological parent, a child-support order can issue against each parent. The support amount is calculated by using the Worksheet and computing the obligation of each parent by multiplying each parent’s share of income by the total child-support obligation. Both parties shall owe his or her total child-support obligation as a money judgment of child support to the third-party caretaker or guardian. If only one parent is available, that parent’s sole income shall be used to determine the total gross income and one hundred percent of the basic child-support obligation shall be given to that parent. If the third party caretaker or guardian incurs costs for health insurance premiums, extraordinary medical expenses, and childcare expenses, those expenses may be apportioned pro rata between the parents, or	Not Reviewed	Consideration of third-party add-ons (childcare)	No	Use both parents’ incomes if available; otherwise, use only income of the parent from whom support is being sought

State Child Support Guidelines			Other Statute	Unique Provision	Consideration of income of non-parent caretaker	Consideration of income of other, unlocated parent	
Terminology	Non-Relative Caretaker Specifically Mentioned	Consideration of Income Specified					
		apportioned by the court if only one parent is available, as a deviation from these Guidelines					
CO	"parties," "obligor," "obligee"	No	No	FOSTER CARE...statement regarding both parents' gross income, including a worksheet to calculate the fee according to the child support guidelines, in the social study for the court to consider in ordering the fee to be paid. The county department shall submit a guideline worksheet to the court.D. When a fee is being established for a foster care case and either paternity cannot be established or the absent parent cannot be located, minimum wage is imputed to the absent parent to determine the fee paid by the custodial parent, only if there is no economic reliable evidence of the absent parent's income or income history.E. In cases where both parents are not in the home , the foster care fee shall be calculated using child support guidelines as follows:1. Calculate the mother's and father's income in the appropriate columns on the Sole Physical Custody Worksheet A.2. Insert the number of birth and adoptive children in the home, not in placement, on line 1-C of the child support guideline worksheet in both the mother and father.3. Calculate the remainder of Worksheet A to determine each parent's foster care fee amount.F. In cases where both parents reside in the same home, separate orders are required for each custodial parent to reflect their foster care fee amount. Even though both parents reside in the same home, the foster care fee shall be calculated using the same method as used when both parents are not in the home.G. As a result of using child support guidelines, the Department will claim Federal Financial Participation for all activities associated with the establishment and collection of foster care fees, only for new cases or old cases that are reviewed and have the fee set under the guidelines. In addition:1. Foster care fee collections set under guidelines shall be reported to IV-D as child support collections.2. Activities related to foster care fee establishment under the child support guidelines can be considered a IV-D activity and staff can be billed to IV-D.3	If parents live together and child lives with non-relative; calculate order separately for each parent	Never	Yes if known; otherwise impute at minimum wage
IA	'parties," "payor," "payee,"	No	No	Statute on child support agency's duties (1) Exempt income. The following income of the parent is exempt in the establishment or modification of support:	Addresses how to calculate	Never	Not explicit, but appears to

State Child Support Guidelines			Other Statute	Unique Provision	Consideration of income of non-parent caretaker	Consideration of income of other, unlocated parent
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“noncustodial parent” “custodial parent”			<p>e. Income of a guardian who is not the child's parent. Statute on child support agency addresses when parent has some children in home and other children in foster care (4)Foster care case. In a foster care case, the child support recovery unit may deviate from the guidelines by applying a 30 percent flat rate deduction for parents who provide financial documentation. The flat rate deduction represents expenses under the case permanency plan and financial hardship allowances or other circumstances contemplated in Iowa Code section 234.39. CSRU shall calculate the support obligation of the parents of children in foster care when the parents have a legal obligation for additional dependents in the home, as follows: The support obligation of each parent shall be calculated by allowing all deductions the parent is eligible for under the child support guidelines as provided in rule 441-99.2(234,252B) and by using the guidelines schedule corresponding to the sum of the children in the home for whom the parent has a legal obligation and the children in foster care. The calculated support amount shall be divided by the total number of children in foster care and in the home to compute the support obligation of the parent for each child in foster care.</p>	order when parent has children living with parent and children living with non-relative		be used if evidence is available and imputed if no evidence is found
FL	“obligor-parent,” “parent”	No	<p>SOCIAL WELFARE STATUTE. (1) Any payment of temporary cash or Title IV-E assistance made to, or for the benefit of, any dependent child creates an obligation in an amount determined pursuant to the child support guidelines. ... If there is no prior support order, the court, or the department as provided by s. 409.2563, shall establish the liability of the obligor, if any, by applying the child support guidelines. (b) “Caregiver” means a person, other than the mother, father, or putative father, who has physical custody of the child or with whom the child primarily resides.</p> <p>409.2563 Administrative establishment of child support obligations.— http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0409/Sections/0409.2563.html</p>	Administrative process appears to require use of each parent’s income from financial affidavit or evidence, and income imputation if neither	Couldn’t find	Appears to require consideration of both parents’ incomes

	State Child Support Guidelines			Other Statute	Unique Provision	Consideration of income of non-parent caretaker	Consideration of income of other, unlocated parent
	Terminology	Non-Relative Caretaker Specifically Mentioned	Consideration of Income Specified				
GA	“non-custodial” and “custodial” and “non-parent custodial”	<p>"Nonparent custodian" means an individual who has been granted legal custody of a child, or an individual who has a legal right to seek, modify, or enforce a child support order.</p>	<p>Deviations. In the court's or the jury's discretion, deviations may include, but shall not be limited to, the following”</p> <p>H. Permanency plan or foster care plan;</p> <p>Exclusions from gross income. Excluded from gross income are the following:</p> <p>B. Foster care payments paid by the Department of Human Services or a licensed child-placing agency for providing foster care to a foster child in the custody of the Department of Human Services;</p> <p>C. A nonparent custodian's gross income; and</p> <p>D. Benefits received under Title IV-B or IV-E of the federal Social Security Act and state funding associated therewith for adoption assistance.</p>	Not Reviewed	Guidelines provides consideration of nonparent’s childcare expenses	Never	Varies by judge, may impute (confirmed by court liaison to child support)
KY	“obligor”	No	No	Did not locate another statute mentioning child support		Varies by judge	Varies by judge (confirmed by IVD director)

State Child Support Guidelines			Other Statute	Unique Provision	Consideration of income of non-parent caretaker	Consideration of income of other, unlocated parent	
Terminology	Non-Relative Caretaker Specifically Mentioned	Consideration of Income Specified					
LA	"parties"	No	No	Children's Code. D. An order for a parental contribution to the cost of care and treatment in accordance with this Article shall not be considered child support pursuant to R.S. 9:315 et seq [the state child support guidelines]. The court shall not order a contribution for the cost of care and treatment in accordance with this Article if the parent is obligated to pay child support pursuant to R.S. 9:315 et seq. If a valid child support order has been signed in accordance with R.S. 9:315 et seq., a previous order for parental contribution to the cost of care and treatment shall terminate by operation of law.	Cost of care is different from child support and should not order both	Couldn't determine	Couldn't determine
MN	"obligor," "obligee"	"child is not in the custody of either parent"	(c) If a child is not in the custody of either parent and a support order is sought against one or both parents, the basic child support obligation shall be determined by referencing the guideline for the appropriate number of joint children, and the parent's individual parental income for determining child support, not the combined parental incomes for determining child support of the parents. Unless a parent has court-ordered A parenting time, the parenting expense adjustment formula under section 518A.34 must not be applied. (d) If a child is not residing with the parent that has court-ordered or statutory custody and a support order is sought under section 256.87 against one or	CONTRIBUTIONS OF PARENT Separate orders for each parent only using that parent's income. Adjustment for court-ordered timesharing applies if child is not in the custody of the parent; does not apply if child is not residing with custodian	No	Only consider income of parent for whom support is being determined	

State Child Support Guidelines			Other Statute	Unique Provision	Consideration of income of non-parent caretaker	Consideration of income of other, unlocated parent
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		both parents, the basic support obligation must be determined by referencing the guideline for the appropriate number of joint children and the parent's individual income without application of the parenting expense adjustment formula under section 518A.34.				
TN	See attachment: TN defines "caretaker"	See attachment: TN provides separate worksheet If custody or guardianship of a child is awarded to a person or entity other than a parent of the child as defined in 1240-02-04-.02(15), the child support obligation shall be calculated on the Worksheet according to the rules for standard parenting, and each parent will be responsible for paying his/her share of the final obligation to the non-parent caretaker of the child. If only one parent is available, then that parent's income alone is considered in establishing the childsupport award. The income of a non-parent caretaker is not considered. If the tribunal is able to order both parents to pay support for the children, the	Not reviewed	Worksheet that lists all three parties	No	If both available, consider both. If one available, consider that one.

State Child Support Guidelines				Other Statute	Unique Provision	Consideration of income of non-parent caretaker	Consideration of income of other, unlocated parent
Terminology	Non-Relative Caretaker Specifically Mentioned	Consideration of Income Specified					
			tribunal shall assign each parent a Pro Rata share of the additional expenses				
WV	No	No		Not investigated		Never	Varies by judge, may impute (confirmed by IVD director)
Other state guidelines reviewed where there was no mention: CA, NE, NJ, OK, SD, WA							

Excerpt from Tennessee's Guidelines

(6) "Caretaker" — The person or entity providing primary care and supervision of a child. The caretaker is the child's Primary Residential Parent. The caretaker may be a parent of the child, a non-parent person or agency who voluntarily or, pursuant to tribunal order or other legal arrangement, is providing care and supervision of the child (for example, the child's grandparent). A caretaker may be a private or public agency or person not related to the child providing custodial care and supervision for the child through voluntary or involuntary placement by the child's parent, non-parent relative, or other designated caretaker, or by court order or other legal arrangement (for example, a foster parent). In these rules, the designation "non-parent caretaker" refers to a private or public agency, a non-parent person who may or may not be related to the child, or another designated caretaker who provides the primary care and supervision for the child

(d) In a non-parent caretaker situation, neither parent is eligible for a parenting time adjustment. However, a SSR may be applicable.

(32) "Work-Related Childcare Costs." (a) For the purposes of this chapter, work-related childcare costs mean expenses for the care of the child for whom support is being determined which are due to employment of either parent or non-parent caretaker. 5. Amounts paid by a non-parent caretaker for either child care or health care expenses shall be included in the calculation for payment by the parents

(iv) Non-parent Caretaker Situations. (I) If only one parent is available, a BCSO shall be calculated based upon the Adjusted Gross Income of that parent. (II) If both parents are available, a BCSO shall be calculated based upon the combined Adjusted Gross Income of both parents. (III) The amount calculated pursuant to item (I) or (II) above shall be entered in the column of the non-parent caretaker on Line 4

(iv) Non-parent Caretaker Situations. (I) If only one parent is available, one hundred percent (100%) of the BCSO entered on Line 4 shall be transferred to the parent's column on Line 4a. (II) If both parents are available, each parent's pro-rata share of the BCSO from Line 4 shall be calculated and entered in the appropriate column on Line 4a.

Tennessee Guidelines Worksheet

The next page has an excerpt of the Tennessee worksheet. It indicates that income of the non-parent caretaker should not be considered by shading that column.

(Rule 1240-02-04-.08, continued)

(4) Child Support Worksheet.

State of Tennessee – Child Support Worksheet

Part I. Identification

Indicate the status of each parent or caretaker by placing an "X" in the appropriate column

	PRP	ARP	SPLIT
Name of Mother or Parent 1: _____			
Name of Father or Parent 2: _____			
Name of non-parent Caretaker: _____			
TCSES case #: _____			
Docket #: _____			
Court name: _____			

Name(s) of Child(ren)	Date of Birth	Days with Mother or Parent 1	Days with Father or Parent 2	Days with Caretaker

Part II. Adjusted Gross Income

	Mother or Parent 1 / Column A	Father or Parent 2 / Column B	Non-parent Caretaker / Column C
1 Monthly Gross Income	\$	\$	
1a Federal benefit for child	+	+	
1b Self-employment tax paid	-	-	
1c Subtotal	\$	\$	
1d Credit for In-Home Children	-	-	
1e Credit for Not In Home Children	-	-	
2 Adjusted Gross Income (AGI)	\$	\$	
2a Combined Adjusted Gross Income	\$	\$	
3 Percentage Share of Income (PI)	%	%	
3a Means-tested Income only (Y/N)			

Use Credit Worksheet to calculate line items **1d** and **1e**.

Part III. Parents' Share of BCSO

	\$	\$	\$
4 BCSO allotted to primary parent's household	\$	\$	\$
4a Share of BCSO owed to primary parent	\$	\$	
4b BCSO if Self Support Reserve (SSR) is applied	\$	\$	
5 ARP parent's average parenting time			
5a Parenting time adjustment (68 or less days)	\$	\$	
5b Adjusted BCSO (68 or less days)	\$	\$	
6a Parenting time adjustment (92 or more days)	\$	\$	
6b Adjusted BCSO (92 or more days)	\$	\$	
7 Calculated BCSO	\$	\$	