

▲ ----- | Formatted: Font: 12 pt  
**Rule 32. Child support guidelines.**

▲ ----- | Formatted: Font: 12 pt  
APPENDIX

▲ ----- | Formatted: Font: 12 pt  
**Preface relating to scope.** This rule, as amended effective October 4, 1993, shall apply to all new actions filed or proceedings instituted on or after October 4, 1993. Any actions or proceedings instituted before October 4, 1993, shall be governed by Rule 32 as it read before October 4, 1993.

▲ ----- | Formatted: Font: 12 pt  
**(A) Child support guidelines established.** Guidelines for child support are hereby established for use in any action to establish or modify child support, whether temporary or permanent. There shall be a rebuttable presumption, in any judicial or administrative proceeding for the establishment or modification of child support, that the amount of the award which would result from the application of these guidelines is the correct amount of child support to be awarded. A written finding on the record indicating that the application of the guidelines would be unjust or inappropriate shall be sufficient to rebut the presumption if the finding is based upon:

▲ ----- | Formatted: Font: 12 pt  
**(i)** A fair, written agreement between the parties establishing a different amount and stating the reasons therefor; or

▲ ----- | Formatted: Font: 12 pt  
**(ii)** A determination by the court, based upon evidence presented in court and stating the reasons therefor, that application of the guidelines would be manifestly unjust or inequitable.

▲ ----- | Formatted: Font: 12 pt  
**(1) Reasons for deviating from the guidelines.** Reasons for deviating from the guidelines may include, but are not limited to, the following:

▲ ----- | Formatted: Font: 12 pt  
**(a)** Shared physical custody or visitation rights providing for periods of physical custody or care of children by the obligor parent substantially in excess of those customarily approved or ordered by the court;

▲ ----- | Formatted: Font: 12 pt  
**(b)** Extraordinary costs of transportation for purposes of visitation borne substantially by one parent;

▲ ----- | Formatted: Font: 12 pt  
**(c)** Expenses of college education incurred prior to a child's reaching the age of majority;

▲ ----- | Formatted: Font: 12 pt  
**(d)** Assets of, or unearned income received by or on behalf of, a child or children; and

▲ ----- | Formatted: Font: 12 pt  
**(e)** Such other facts or circumstances that the court finds contribute to the best interest of the child or children for whom support is being determined.

▲ ----- | Formatted: Font: 12 pt  
The existence of one or more of the reasons enumerated in this section does not require the court to deviate from the guidelines, but such reason or reasons may be considered in deciding

whether to deviate from the guidelines. The court may deviate from the guidelines even if no reason enumerated in this section exists, if evidence of other reasons justifying deviation is presented.

Formatted: Font: 12 pt

▲ (2) **Stipulations.** Stipulations presented to the court shall be reviewed by the court before approval. No hearing shall be required; however, the court shall use the guidelines in reviewing the adequacy of child support orders negotiated by the parties and shall review income statements that fully disclose the financial status of the parties. The court, however, may accept from the parties and/or their attorneys of record a Child Support Guidelines Notice of Compliance that indicates compliance with this rule or, in the event the child support guidelines have not been met, the reason for the deviation therefrom. The form, content, and numbering scheme of the Child Support Guidelines Notice of Compliance shall be prescribed by the administrative director of courts (ADC). (See Form CS-43 following this rule.)

Formatted: Font: 12 pt

▲ (3) **Modifications.** The child support guidelines shall be used by the parties as the basis for periodic updates of child support obligations.

Formatted: Font: 12 pt

▲ (a) The provisions of any judgment respecting child support shall be modified only as to installments accruing after the filing of the petition for modification.

Formatted: Font: 12 pt

▲ (b) There shall be a rebuttable presumption that child support should be modified when the difference between the existing child support award and the amount determined by application of these guidelines varies more than ten percent (10%), unless the variation is due to the fact that the existing child support award resulted from a rebuttal of the guidelines and there has been no change in the circumstances that resulted in the rebuttal of the guidelines.

Formatted: Font: 12 pt

▲ (c) The fundamental jurisdictional requirement for the trial court to consider a modification of a child support order is that the party seeking modification must plead and prove that there has occurred a material change in circumstances that is substantial and continuing since the last order for support.

Formatted: Font: 12 pt

Formatted: Font: Bold

(d) The existence of the Child Support Guidelines or periodic changes to the Guidelines in and of themselves does not constitute proof of a material change in circumstances that is substantial and continuing. The most important factor in considering modification of child support is whether the needs of the child undergone a material change in circumstances that is substantial and continuing. Criteria for determining such changed circumstances are the increased needs of the child and the ability of the parent to respond to those needs.

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

(e) The trial court has discretion and authority to modify the child support obligation even when there is not a 10 percent variation between the current obligation and the Guidelines where petitioner has proven a material change in parties' circumstances that is substantial and continuing. Likewise, the trial court has discretion to deny a modification where the 10 percent variation is present based a proof that the obligor does not have the ability to pay the increased amount. The official Comment to Rule 32 provides that "The Guidelines will provide an adequate standard support for children, subject to the ability of their parents to pay,

and will make awards more equitable by ensuring more consistent treatment of persons in similar circumstances.”

(f) The rebuttable presumption that the amount of child support established by application of the Guidelines is correct may be rebutted upon a determination of the trial court that application of the Guidelines would be manifestly unjust or inequitable.

Formatted: Font: 12 pt

**(4) Health care needs.** All orders establishing or modifying child support shall, at a minimum, provide for the children's health care needs through health insurance coverage or other means. Normally, health insurance covering the children should be required if it is available to either parent through his or her employment or pursuant to any other group plan at a reasonable cost.

Formatted: Font: 12 pt

**(B) Definitions.**

Formatted: Font: 12 pt

**(1) Income.** For purposes of the guidelines established by this rule, income means actual gross income of a parent, if the parent is employed to full capacity, or the actual gross income the parent has the ability to earn if the parent is unemployed or underemployed.

Formatted: Font: 12 pt

**(2) Gross income.**

Formatted: Font: 12 pt

**(a)** Gross income includes income from any source, and includes, but is not limited to, salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trusts, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and preexisting periodic alimony.

Formatted: Font: 12 pt

**(b)** Gross income does not include child support received for other children or benefits received from means-tested public assistance programs, including, but not limited to, Aid to Families with Dependent Children, Supplemental Security Income, food stamps, and general assistance.

Formatted: Font: 12 pt

**(3) Self-employment income.**

Formatted: Font: 12 pt

**(a)** For income from self-employment, rent, royalties, proprietorship of business, or joint ownership of a partnership or closely held corporation, gross income means gross receipts minus ordinary and necessary expenses required to produce such income, as allowed by the Internal Revenue Service, with the exceptions noted in section (B)(3)(b).

Formatted: Font: 12 pt

**(b)** Ordinary and necessary expenses does not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating child support.

Formatted: Font: 12 pt

**(4) Other income.** Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses.

Formatted: Font: 12 pt

**(5) Unemployment; underemployment.** If the court finds that either parent is voluntarily unemployed or underemployed, it shall estimate the income that parent would otherwise have and shall impute to that parent that income; the court shall calculate child support based on that parent's imputed income. In determining the amount of income to be imputed to a parent who is unemployed or underemployed, the court should determine the employment potential and probable earning level of that parent, based on that parent's recent work history, education, and occupational qualifications, and on the prevailing job opportunities and earning levels in the community. The court may, in its discretion, take into account the presence of a young or physically or mentally disabled child necessitating the parent's need to stay in the home and therefore the inability to work.

Formatted: Font: 12 pt

**(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.

Formatted: Font: 12 pt

**(7) Health insurance premiums.**

Formatted: Font: 12 pt

**(a)** The actual cost of a premium to provide health insurance benefits for the children shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross income in the percentages indicated on the Child Support Guidelines form (Form CS-42).

Formatted: Font: 12 pt

**(b)** The amount to be added to the basic child support obligation shall be the actual amount of the total insurance premium for family/dependent coverage, regardless of whether all children covered are in the same family.

Formatted: Font: 12 pt

**(c)** After the total child support obligation is calculated and divided between the parents in proportion to their monthly adjusted gross income, the amount added pursuant to subsection (b) shall be deducted from the obligor's share of the total child support obligation, provided the obligor actually pays said premium. If the obligee is actually paying the premium, no further adjustment is necessary.

Formatted: Font: 12 pt

(d) If, at any time while a child support order providing for an insurance adjustment is in effect, such insurance coverage is allowed to lapse, is terminated, or otherwise no longer covers the children for whose benefit the order was issued, the court (i) may find the amount deducted from the obligor's child support obligation therefor to be an arrearage in the obligor's total child support obligation; (ii) may find the obligor liable for medical expenses that would otherwise have been covered under the insurance; and/or (iii) enter such other order as it shall deem appropriate.

Formatted: Font: 12 pt

▲ (8) **Child care costs.** Child care costs, incurred on behalf of the children because of employment or job search of either parent, shall be added to the basic child support obligation. Child care costs shall not exceed the amount required to provide care from a licensed source for the children, based on a schedule of guidelines developed by the Department of Human Resources. Before the Department of Human Resources implements any revision to the schedule of child care cost guidelines, it shall provide the ADC a copy of the revised schedule. The ADC shall, as soon as reasonably practicable thereafter, disseminate the revised schedule to all judges, all circuit, district, and juvenile court clerks and registers, and the Family Law Section of the Alabama State Bar. The clerk or register shall maintain the current schedule in his/her office, shall make it available for review, and shall provide copies of it on request, at the customary cost for copies of documents.

Formatted: Font: 12 pt

▲ (9) **Split custody.** In those situations where each parent has primary physical custody of one or more children, support shall be computed in the following manner:

Formatted: Font: 12 pt

▲ (a) Compute the support the father would owe to the mother for the children in her custody as if they were the only children of the two parties; then

Formatted: Font: 12 pt

▲ (b) Compute the support the mother would owe to the father for the children in his custody as if they were the only children of the two parties; then

Formatted: Font: 12 pt

▲ (c) Subtract the lesser support obligation from the greater. The parent who owes the greater obligation should be ordered to pay the difference in support to the other parent, unless the court determines, pursuant to other provisions of this rule that it should deviate from the guidelines.

Deleted: rule, that

Formatted: Font: 12 pt

▲ (C) **Determination of recommended child support obligation.**

Formatted: Font: 12 pt

▲ (1) **Basic child support obligation.** The basic child support obligation shall be determined by using the schedule of basic child support obligations. The category entitled combined gross income in the schedule means the combined monthly adjusted gross incomes of both parents. Adjusted gross income means gross income less preexisting child support obligations and less preexisting periodic alimony actually paid by a parent to a former spouse. For combined gross income amounts falling between amounts shown in the schedule, the lower value shall be used if the combined gross income falls less than halfway between the amounts shown in the schedule. Where the combined gross income falls halfway or more than halfway between two amounts, the higher value shall be used. The category entitled number of children due support in the schedule means children for whom the parents share joint legal responsibility

and for whom support is being sought. The court may use its discretion in determining child support in circumstances where combined adjusted gross income is below the lowermost levels or exceeds the uppermost levels of the schedule.

Formatted: Font: 12 pt

▲ (2) **Computation of child support.** A total child support obligation is determined by adding the basic child support obligation, work-related child care costs, and health insurance costs. The total child support obligation shall be divided between the parents in proportion to their adjusted gross incomes. The obligation of each parent is computed by multiplying the total child support obligation by each parent's percentage share of their combined adjusted gross income. The custodial parent shall be presumed to spend his or her share directly on the child.

Formatted: Font: 12 pt

▲ (3) **Rounding.** All dollar amounts used in child support calculations under this rule, including the recommended child support order, may be rounded to the nearest dollar, and all percentages may be rounded to the nearest one percent.

Formatted: Font: 12 pt

▲ (4) **Additional awards for child support.** In addition to the recommended child support order, the court may make additional awards for extraordinary medical, dental, and educational expenses if (i) the parties have in writing agreed to such awards or (ii) the court, upon reviewing the evidence, determines that such awards are in the best interest of the children and states its reasons for making such additional awards.

Formatted: Font: 12 pt

▲ (D) **Schedule of basic child support obligations.** A schedule of basic child support obligations appears as an appendix to this Rule 32.

Formatted: Font: 12 pt

▲ (E) **Standardized child support guidelines form, child support obligation income statement/affidavit form, and child support guidelines notice of compliance form.** A standardized Child Support Guidelines form and a Child Support Obligation Income Statement/Affidavit form shall be filed in each action to establish or modify child support obligations and shall be of record and shall be deemed to be incorporated by reference in the court's child support order. In conformance to Section (A)(2) of this Rule, in stipulated cases the court may accept the filing of a Child Support Guidelines Notice of Compliance form. The form, content, and numbering schemes of the Child Support Guidelines form, the Child Support Obligation Income Statement/Affidavit form, and the Child Support Guidelines Notice of Compliance form shall be prescribed by the ADC.

Formatted: Font: 12 pt

▲ (F) **Income statements.** Income statements of the parents shall be verified with documentation of both current and past earnings. Suitable documentation of current earnings includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period or shall be supplemented with such other documentation as the court directs. Intentional falsification of information presented on the Child Support Obligation Income Statement/Affidavit form shall be deemed contempt of court. Documentation of earnings used in preparing the Child Support Obligation Income Statement/Affidavit form shall be maintained by the parties and made available as directed by the court.

Formatted: Font: 12 pt

Formatted: Font: 12 pt

**(G) Review of child support guidelines.** The ADC shall, at least once every four years, review the child support guidelines and the schedule of basic child support obligations, to ensure that their application results in appropriate child support determinations. If the ADC determines that no change is required in the guidelines or in the schedule, the ADC shall so advise the Supreme Court.

(Amended 9-28-87, eff. 10-1-87; Amended 8-29-89, eff. 10-9-89; Amended 8-24-93, eff. 10-4-93.)

Formatted: Font: 12 pt

#### **Cross References.**

Formatted: Font: 12 pt

Child custody and support, generally, [30-3-1](#) et seq.

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

#### **Comment As Amended to Conform to Amendments Effective October 4, 1993**

Formatted: Font: (Default) Times New Roman, 12 pt

Rule 32 establishes guidelines as a rebuttable presumption for the ordering of child support awards. These guidelines were adopted in response to requirements set forth in the Child Support Enforcement Amendments of 1984 (P.L. 98-378) and the Family Support Act of 1988 (P.L. 100-485). The guidelines will provide an adequate standard support for children, subject to the ability of their parents to pay, and will make awards more equitable by ensuring more consistent treatment of persons in similar circumstances.

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

These guidelines are based on the income shares model developed by the National Center for State Courts and are founded on the premise that children should not be penalized as a result of the dissolution of the family unit but should continue to receive the same level of support that would have been available to them had the family unit remained intact. Under the guidelines, attorneys for the plaintiff and defendant will be required to submit a Child Support Guidelines form and Child Support Obligation Income Statement/Affidavit form in each action to establish or modify child support. The Child Support Guidelines form will set forth the combined income available to the family unit, the basic child support obligation as determined from the Schedule of Basic Child Support Obligations (Appendix to Rule 32), and adjustments to the basic obligation for work-related child care expenses and health insurance premiums. A portion of the adjusted total child support obligation is then ascribed to each parent based on his/her percentage share of the combined family income. The Child Support Guidelines form sets forth the recommended child support obligation for the noncustodial parent, which includes an adjustment for the cost of the health insurance premium if such a premium is paid by the noncustodial parent. The guidelines assume that the custodial parent will directly provide his/her proportionate share of support to the children. In addition to the recommended child support obligation, the court may make additional awards for extraordinary medical, dental, and educational expenses if the court finds such awards to be in the children's best interest or if the parents have agreed to such awards.

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

The Schedule of Basic Child Support Obligations was developed through research sponsored by the National Center for State Courts and is based on extensive economic research on the cost of supporting children at various income levels. This schedule is based on gross income and has been adjusted for Alabama's income distribution relative to the U. S. income distribution. It also

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

incorporates the 1987 federal income tax provisions as well as the withholding schedule for Alabama state income tax.

▲ Other assumptions incorporated in the Schedule of Basic Child Support Obligations include:

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ (1) Tax exemptions. The Schedule of Basic Child Support Obligations assumes that the custodial parent will take the federal and state income tax exemptions for the children in his or her custody;

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ (2) Health care costs. In respect to health care costs, the Schedule of Basic Child Support Obligations assumes unreimbursed medical costs of \$200 per family of four per year. These assumed costs include medical expenses not covered or reimbursed by health insurance or Medicaid or Medicare; and

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ (3) Visitation. The Schedule of Basic Child Support Obligations is premised on the assumption that the noncustodial parent will exercise customary visitation rights, including summer visitation. Any abatement of child support because of extraordinary visitation should be based on visitation in excess of customary visitation.

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ The schedule of basic child support obligations includes combined gross incomes ranging from \$550 to \$10,000 a month. Rule 32(C)(1) provides that the court may use its discretion in determining child support where the combined adjusted gross income is below the lowermost levels or above the uppermost levels of the schedule. To further the consistency of awards, a court may wish to issue an order establishing minimum child support obligations for combined adjusted gross incomes of less than \$550. Where the combined adjusted gross income exceeds the uppermost limit of the schedule, the amount of child support should not be extrapolated from the figures given in the schedule, but should be left to the discretion of the court.

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ Rule 32(B)(8) provides an adjustment for work-related child care costs, provided such costs do not exceed those on the schedule of guidelines for licensed child care costs published by the Alabama Department of Human Resources (DHR). The rule requires that copies of the DHR schedule of guidelines for child care costs be available through the office of the clerk or register of each court where child support actions are filed. Copies of the schedule of guidelines for child care costs should also be available in the county offices of the Department of Human Resources.

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ The Alabama child support guidelines do not specifically address the problem of establishing a support order in joint legal custody situations. Such a situation may be considered by the court as a reason for deviating from the guidelines in appropriate situations, particularly if physical custody is jointly shared by the parents. Shared physical custody, regardless of legal custodial arrangements, is an appropriate reason for deviation, Section (A)(1)(a). Shared physical custody refers to that situation where the physical placement is shared by the parents in such a manner as to assure the child frequent and continuing contact and time with both parents. Because of the infinite possibilities that exist in terms of time spent with each parent and other considerations associated with such custody, a determination of support is to be made on a case-by-case basis and is left to the sound discretion of the trial court, to be based on findings made at or after trial or upon a fair written agreement of the parties. When a shared physical custody situation results

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt



**Agreements.**

Parents cannot by mutual agreement reduce a child support court order so as to deprive their children of the support to which they are entitled, and such an agreement between the mother and the father would be a nullity. *Thompson v. Wright*, 613 So. 2d 1289, 1992 Ala. Civ. App. LEXIS 550 (Ala. Civ. App. 1992).

Although the husband cannot alleviate his child support obligations by claiming that he and the wife entered into a mutual agreement, which the wife admitted, this agreement does indicate that the husband was not guilty of contemptuous behavior in failing to comply with the judgment of divorce. *Hollis v. State*, 618 So. 2d 1350, 1992 Ala. Civ. App. LEXIS 592 (Civ. App. 1992).

When the decree fixing the amount of child support is based on an agreement between the parties, the decree should not be modified except for clear and sufficient reasons, and after thorough consideration and investigation. *Pugh v. Birdwell*, 620 So. 2d 46, 1993 Ala. Civ. App. LEXIS 64 (Civ. App. 1993).

Although the trial court set out a detailed and well-reasoned method for the parties to adjust child support when the mother's income changes, agreements between the parties have no legal effect unless approved by the court; therefore, the trial court erred in ordering the parties to compute their own child support obligation without including in its order provision for court supervision and approval of the recomputation. *Smith v. Rials*, 622 So. 2d 374, 1993 Ala. Civ. App. LEXIS 88 (Ala. Civ. App. 1993).

Provision directing the husband to recompute his child support two times per year, based upon his gross income, and to begin paying the corrected amount such recomputation is to be binding on the parties if proper procedure is followed is not erroneous if it is understood that any modification must be approved by the court. *Jeffrey v. Jeffrey*, 628 So. 2d 783, 1993 Ala. Civ. App. LEXIS 353 (Civ. App. 1993).

Party has no right to unilaterally reduce child support payments without consent from the court. *Trimble v. Trimble*, 628 So. 2d 789, 1993 Ala. Civ. App. LEXIS 362 (Ala. Civ. App. 1993).

When the judgment establishing the support obligation is based on an agreement between the parties, the decree should not be modified except for clear and sufficient reasons and after thorough consideration and investigation. *Pendegraph v. Pendegraph*, 628 So. 2d 849, 1993 Ala. Civ. App. LEXIS 404 (Ala. Civ. App. 1993).

A trial court's order enforcing a child support modification agreement was reversed where the record did not indicate the trial court had reviewed the agreement, received a notice of compliance with the child support guidelines from the parties' attorneys, referenced those guidelines, or reviewed financial statements disclosing the financial status of the parties. *Godwin v. Godwin*, 809 So. 2d 833, 2001 Ala. Civ. App. LEXIS 488 (Ala. Civ. App. 2001).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Since there had been no change in the fact that at the time of the divorce the parties had entered into an agreement regarding the amount of child support and no appeal was taken from the divorce judgment by either party, the husband could not collaterally attack the divorce judgment by arguing that the Ala. R. Jud. Admin. 32 presumption was not adequately rebutted. There was no evidence to support the judgment of the trial court insofar as it increased the wife's child-support obligation. *Reeves v. Reeves*, 894 So. 2d 712, 2004 Ala. Civ. App. LEXIS 487 (Ala. Civ. App. 2004).

Formatted: Font: (Default) Times New Roman, 12 pt

#### **Burden of proof.**

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Burden of proof on the issue of changed circumstances rests on the party seeking the modification; the modification for changed circumstances is a matter strictly within the trial court's discretion. *Osborn v. Osborn*, 628 So. 2d 785, 1993 Ala. Civ. App. LEXIS 354 (Ala. Civ. App. 1993).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Party seeking the modification has the burden to show that a material change in circumstances has occurred that is substantial and continuing. *Pendegraph v. Pendegraph*, 628 So. 2d 849, 1993 Ala. Civ. App. LEXIS 404 (Ala. Civ. App. 1993).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Prior child support award may be modified only upon proof of changed circumstances since the last judgment, with the burden of proof resting on the party seeking the modification. *Rolen v. Pickering*, 628 So. 2d 850, 1993 Ala. Civ. App. LEXIS 405 (Ala. Civ. App. 1993).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Prior child support award may be modified only with proof of changed circumstances, and the burden of proof rests with the party seeking the modification. Of paramount consideration in determining the amount of child support is the needs of the children, taking into account the parent's ability to pay. If a change of circumstances is proven, this rule establishes a rebuttable presumption that the correct amount of child support results from the application of the guidelines. *Anonymous v. Anonymous*, 646 So. 2d 28, 1993 Ala. Civ. App. LEXIS 456 (Ala. Civ. App. 1993).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

The husband failed to show any material change in circumstances not anticipated by the parties' agreement which would justify a modification where the agreement stated that child support should continue until the youngest daughter reached majority and his only basis for seeking modification was that the oldest daughter, who had reached the age of majority, had married; meanwhile, the husband's income had increased and the wife's had decreased and there was no evidence that the needs of the remaining minor child justified a decrease in child support. *Moore v. Moore*, 805 So. 2d 710, 2000 Ala. Civ. App. LEXIS 314 (Ala. Civ. App. 2000).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

#### **Change in circumstances.**

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

In determining whether there has been a sufficient change in circumstances to warrant a modification of child support, a trial court may consider the remarriage of the parties, the parties' financial needs and abilities to respond to those needs, and a party's ability to earn as opposed to actual earnings. *Thompson v. Thompson*, 521 So. 2d 46, 1988 Ala. Civ. App. LEXIS 1 (Civ. App. 1988).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ The child support guidelines in and of themselves did not constitute a material change in circumstances requiring modification of support award ordered at a time when the guidelines were not binding on the courts. *Barden v. Barden*, 560 So. 2d 1069, 1990 Ala. Civ. App. LEXIS 19 (Civ. App. 1990).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ The most important factor in considering a modification of child support is whether the needs of the child have undergone a material change. *Jackson v. Presley*, 586 So. 2d 213, 1991 Ala. Civ. App. LEXIS 361 (Ala. Civ. App. 1991).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ The fact that the guidelines were not used in the original decree but were applied in the modification hearing does not constitute a change of circumstances. *Browning v. Browning*, 626 So. 2d 649, 1993 Ala. Civ. App. LEXIS 238 (Ala. Civ. App. 1993).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ Criteria for determining changed circumstances are the increased needs of the child and the ability of the parent to respond to those needs. *Sanders v. Gilliland*, 628 So. 2d 677, 1993 Ala. Civ. App. LEXIS 296 (Ala. Civ. App. 1993), cert. denied, 1993 Ala. LEXIS 1425 (Ala. Dec. 3, 1993).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ Factors the trial court may consider include a party's ability to earn, as opposed to actual earnings, in deciding whether to terminate or reduce the amount of the award in modification proceedings. *Coleman v. Coleman*, 628 So. 2d 698, 1993 Ala. Civ. App. LEXIS 303 (Civ. App. 1993).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ Prior award of child support may be modified only upon proof of changed circumstances; the criteria for determining changed circumstances is the need of the child and the ability of the parent to respond to that need. *Mitchell v. Kelley*, 628 So. 2d 807, 1993 Ala. Civ. App. LEXIS 368 (Ala. Civ. App. 1993).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ While the most pertinent factor in determining a modification of child support is a material change in the needs, conditions, and circumstances of the children, the parent's ability to pay must also be taken into account. *Rolen v. Pickering*, 628 So. 2d 850, 1993 Ala. Civ. App. LEXIS 405 (Ala. Civ. App. 1993).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ Exorbitant spending in itself is not sufficient to prove a substantial change in circumstances; instead, it is the increased needs of the child coupled with the parent's ability to pay. *Cassick v. Morgan*, 628 So. 2d 862, 1993 Ala. Civ. App. LEXIS 419 (Ala. Civ. App. 1993).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ In order to increase an award of child support, the moving party must show a substantial and continuing material change of circumstances; showing a material change of circumstances in the needs of the children is the most pertinent factor in determining a modification of child support. *Osteen v. Osteen*, 628 So. 2d 944, 1993 Ala. Civ. App. LEXIS 475 (Ala. Civ. App. 1993).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ A prior child support order may be modified under subsection (A)(2)(i) of this rule, only upon a showing of a material change in circumstances that is substantial and continuing, and the

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

burden is on the party seeking the modification. *Griggs v. Griggs*, 638 So. 2d 916, 1994 Ala. Civ. App. LEXIS 214 (Ala. Civ. App. 1994).

Provisions of any judgment of child support shall be modified only upon a showing of a material change in circumstances since the entry of the last judgment that is substantial and continuing. *Sweeney v. Sweeney*, 640 So. 2d 956, 1994 Ala. Civ. App. LEXIS 265 (Ala. Civ. App. 1994).

Most pertinent factor in determining a modification of child support is a material change in the needs, conditions, and circumstances of the children. *Sweeney v. Sweeney*, 640 So. 2d 956, 1994 Ala. Civ. App. LEXIS 265 (Ala. Civ. App. 1994).

Prior child support award may be modified only on proof of changed circumstances, and the burden of proof rests on the party seeking the modification; the modification of child support for changed circumstances is a matter strictly within the trial court's discretion. *Cunningham v. Cunningham*, 641 So. 2d 807, 1994 Ala. Civ. App. LEXIS 72 (Ala. Civ. App. 1994), overruled in part, *T.L.D. v. C.G.*, 849 So. 2d 200, 2002 Ala. Civ. App. LEXIS 809 (Civ. App. 2002).

Provisions of any judgment of child support shall be modified only upon a showing of a material change of circumstances since the entry of the last judgment that is substantial and continuing; the modification of child support will not be disturbed on appeal unless there is an abuse of discretion. *Stevens v. Stevens*, 641 So. 2d 825, 1994 Ala. Civ. App. LEXIS 293 (Civ. App. 1994).

Exorbitant spending in itself is not sufficient to prove a substantial and continuing change in circumstances; instead, it is the increased needs of the child coupled with the parent's ability to pay. Where the record did not indicate that the minor child's needs or expenses had increased since the entry of the last judgment, where the mother failed to present evidence of a material change in the minor child's needs that is substantial and continuing, since the entry of the last judgment, the court concluded that the trial court's modification of child support was unsupported by the evidence and, consequently, constituted an abuse of discretion. Therefore, the trial court's judgment, which included the award of a \$3,500 attorney fee to the wife, was reversed and annulled, and the cause remanded. *Makar v. Makar*, 643 So. 2d 1378, 1994 Ala. Civ. App. LEXIS 270 (Civ. App. 1994).

Where father asserted that the increase in his child support obligation was made in error because the modification was less than 10%, thus creating a rebuttable presumption that there was no material change in circumstances, the father cited no authority to support his position, and the court found it unnecessary to address it. *Little v. Little*, 680 So. 2d 308, 1996 Ala. Civ. App. LEXIS 451 (Ala. Civ. App. 1996).

A 10% variance between an existing child support obligation and the amount that would be derived from application of the guidelines creates a rebuttable presumption that the obligor has experienced a material change in circumstances but is not required to show a material change in circumstances to support modification of the child support obligation; thus, a parent is entitled to have his petition for modification considered - supported by all relevant evidence - without

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

showing a 10% variance. *Wilson v. Wilson*, 702 So. 2d 477, 1997 Ala. Civ. App. LEXIS 669 (Ala. Civ. App. 1997).

▲ Ala. R. Jud. Admin. 32(A)(3)(b) established a rebuttable presumption that an existing child-support award should be modified when the difference between the existing child support award and the amount determined by application of the guidelines varied more than 10 percent, unless the variation was due to the fact that the existing child support award resulted from a rebuttal of the guidelines and there had been no change in the circumstances that resulted in the rebuttal of the guidelines. *Duke v. Duke*, 872 So. 2d 153, 2003 Ala. Civ. App. LEXIS 76 (Ala. Civ. App. 2003).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ When divorcing parents agreed the father would pay an amount of child support greater than that required by the child support guidelines, and he acknowledged that this obligation was more than the guidelines amount, and it was assumed in the best interests of the children, the father's subsequent petition to reduce child support had to show a change in the circumstances resulting in the parties' original rebuttal of the presumed child support amount. *Duke v. Duke*, 872 So. 2d 153, 2003 Ala. Civ. App. LEXIS 76 (Ala. Civ. App. 2003).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ Where the former husband's income had substantially decreased, and the former wife's income had increased, since the entry of the original child support schedule under Ala. R. Jud. Admin. 32, the trial court did not err in reducing the former husband's child support obligation from \$ 2,500 per month to \$ 1,500; although the former husband still had the ability to make the original child support payments despite a decrease in income, the former wife's income had increased substantially since the original child support award was issued. *Grimsley v. Grimsley*, 887 So. 2d 910, 2004 Ala. Civ. App. LEXIS 6 (Ala. Civ. App. 2004).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

▲ Given the rebuttable presumption that an existing child support obligation was to be modified when the difference between the existing obligation and that indicated by the guidelines in Ala. R. Jud. Admin. 32 was greater than 10 percent, and given the evidence presented by the father in an effort to rebut that presumption, the appellate court could not say that the trial court erred by modifying the father's child support obligation as the modified child support award varied more than 10 percent from the previous award. *Scott v. State ex rel. Dix*, So. 2d , 2007 Ala. Civ. App. LEXIS 201 (Mar. 16, 2007).

Formatted: Font: 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: 12 pt