

Memorandum

To: Alabama Advisory Committee on Child Support Guidelines and Enforcement

From: Subcommittee on Child Support Guidelines and Schedule Update

Date: September 28, 2021

Re: Recommendations from the Subcommittee on Child Support Guidelines and Schedule Update

This memorandum sets forth the questions to be answered by the Committee with regard to updating the Child-Support Guidelines and the Schedule of Basic Child Support Obligations ("the Schedule") along with the recommendations of the Subcommittee and the rationale behind those recommendations. There are ^{four}~~three~~ main issues to be addressed: (1) Whether any changes to the Schedule should be made; (2) What changes should be made with regard to the Self-Support Reserve ("SSR") Adjustment; (3) Should there be any changes made to the Minimum Order requirement?; and (4) Should there be an adjustment in the Form CS-42 worksheet ("the worksheet") for the payment of work-related child-care

costs?¹

I. Whether any changes to the Schedule should be made?

We first look to whether any changes to the Schedule should be made.

A. Whether to update the Schedule?

The committee must decide whether the current Schedule ² should be updated. The Subcommittee recommends that the committee update the current Schedule. The Schedule was most recently updated effective January 1, 2009, almost 13 years ago. An update will cause the Schedule to reflect the most recent economic data available.

B. What methodology to use if the Schedule is updated?

If the Schedule is to be updated, we must determine what methodology to use. The six methodologies discussed by Dr. Venohr were (1) the Betson-Rothbarth 5 adjusted for Alabama prices, (2) the Betson-Rothbarth 5 realigned for Alabama incomes, (3) the Betson-Rothbarth 5

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Note that citations to transcripts are the transcripts of the Committee meetings and citations to memos are to memos drafted by Dr. Jane Venohr.

²Appendix to Rule 32, Ala. R. Jud. Admin.

using United States prices, (4) the United States Department of Agriculture ("USDA") measurements for the Southern Region, (5) the Rodgers-Rothbarth, and (6) the Comanor.

The Subcommittee recommends that the Schedule be updated using the Betson-Rothbarth 5 realigned for Alabama incomes. Dr. Venohr noted that most states use the Betson-Rothbarth methodology.³ When the Schedule was most recently updated, the methodology used was the Betson-Rothbarth realigned for Alabama incomes. Dr. Venohr recommended that Alabama continue to use that method (with the updated data) as opposed to the Betson-Rothbarth adjusted for Alabama prices. Dr. Venohr has explained:

"Using price parity adjusts the schedule amounts across income ranges by the same percentage reduction whereas an adjustment for income recognizes that budget shares vary by income level (e.g., lower incomes spend a larger share on food and higher incomes spend a larger share on housing) and food prices have generally not increased as much as housing prices. This allows the reduction to vary across incomes."⁴

She noted that, "by adjusting for income rather than price parity, you're

³3/12/21 transcript.

⁴9/16/21 email correspondence

more likely to be fair and appropriate for ... low income[individuals who are] spending more on food shares."⁵

C. Should there be a cap on the percentage of increases?

The Committee must decide if there should there be a cap on the percentage that a child-support order may increase as a result of the application of the new schedule. Implementing a cap would ensure that no obligor's child-support obligation would increase more than a certain percentage, such as 10 or 15 percent.

Dr. Venohr pointed out to the Committee that the large increases in child-support obligations due to the application of the new schedule would primarily affect higher incomes.⁶ She noted that some states have implemented a cap on increases; however, in most of those states, the resulting child-support obligation using the USDA data is lower than the resulting child-support obligation using the Betson-Rothbarth

⁵1/7/21 transcript

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The Subcommittee also notes that Dr. Venohr pointed out that the largest decrease in the child-support obligation of lower-income obligors would be \$25. Because of the small maximum decrease, a cap on the lower end is not necessary. 1/7/21 transcript.

methodology. Dr. Venohr pointed out that, on the other hand, the increases in the obligations of higher-income obligors in Alabama using the Betson-Rothbarth methodology are not any greater than they would be if we were to use the USDA methodology, which includes information for incomes up to \$17,000 per month. In conclusion, Dr. Venohr noted that "there [is] no economic evidence that says [Alabama] ha[s] to or should" cap the amount of increases in the child-support obligation.⁷

We note, however, that there is a concern that certain obligors will experience some "sticker shock" as a result of increases in their child-support obligation under the new schedule. There is also a concern about obligee parents filing to increase child support and flooding the courts. Dr. Venohr estimated, though, that only approximately 5-7% of child support orders would increase more than 10% (which is the percentage at which a material change in circumstances is presumed).

The Subcommittee was unable to come to a consensus with regard to this issue, but the majority of the subcommittee members were not in favor of a cap. Additional information and discussion will be forthcoming.

⁷3/12/21 transcript

D. Should the maximum combined monthly gross income in the
Schedule be expanded?

The current schedule only addresses combined monthly gross income amounts up to \$20,000. The current data allows for the Schedule to be expanded to address combined monthly gross incomes up to \$30,000. Because incomes have increased since the Schedule was updated and because the data for higher incomes is available, the Subcommittee recommends expanding the Schedule to include combined monthly gross incomes up to \$30,000 to aid parties, attorneys, and judges in setting an appropriate child-support obligation.

II. What changes should be made with regard to the SSR Adjustment?

The next issue that must be addressed is what changes should be made with regard to the SSR Adjustment. "New federal regulation ... requires the consideration of the basic subsistence of the noncustodial parent."⁸ Currently, Alabama addresses that concern through the implementation of a SSR adjustment built into the Schedule. The following specific questions must be answered:

⁸12/1/20 memo

A. Should the amount of the SSR be updated?

The Subcommittee recommends updating the amount of the SSR to the 2021 federal poverty levels, adjusted for Alabama incomes. This update to the SSR amount will be consistent with the updates to the Schedule and would result in a SSR of \$981.

B. Should Alabama change the manner in which the SSR adjustment is implemented?

1. Should the SSR Adjustment remain built into the Schedule or should it be calculated in the Worksheet?

Currently, the SSR adjustment is built into the Schedule. We have the options of keeping the SSR adjustment built into the Schedule or adding the SSR adjustment calculation in the Worksheet.⁹ Dr. Venohr recommended adding the SSR adjustment to the Worksheet. She explained that showing the calculation would aid in transparency.¹⁰ Additionally, the amount of the SSR could be updated easily without

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We note that the SSR adjustment will apply only to the obligor regardless of which method is used.

¹⁰3/8/21 Memo

updating the entire schedule.¹¹ She noted that that flexibility "is an added advantage due to the uncertainty of federal minimum wage changes."¹²

The Subcommittee agrees with the recommendation to add SSR adjustment calculation to the worksheet, although we note that there was

11

Moreover, Dr. Venohr explained in her 12/1/20 memo:

"[I]f Alabama were to include a parenting-time adjustment in its worksheet, most states apply either the shared-parenting time adjustment or the low-income adjustment, not both. Further, most states have separate worksheets for sole-custody orders and shared-physical custody orders. This eases the design of the worksheets to accommodate including or not including a low-income adjustment."

She explained that she does recommend that a parent should be eligible for *either* the SSR adjustment *or* a joint parenting adjustment. Having the SSR adjustment built into the Schedule (as opposed to calculating the SSR adjustment in the worksheet) could make this calculation more complicated.

12

Dr. Venohr noted: "The major disadvantage [to adding the SSR adjustment calculation to the worksheet] is it makes the worksheet more cumbersome, requires changes to automated guidelines calculators when changed, and yields the same SSR-adjusted amount regardless of the number of children unless another line is added to the worksheet." ____ transcript. She also noted that adding an economic incentive is more cumbersome. 12/31/21 memo. (For complete pros and cons list, see p. 3 of the 12/31/21 memo)

not a clear consensus among the full Committee when this issue was discussed.

2. Should the SSR adjustment be Calculated *after or before* the
Calculation of Childcare and Health-Insurance Expenses?

Dr. Venohr noted the advantage of calculating the SSR adjustment after considering the childcare and health-insurance costs is that "it prioritizes the subsistence needs of the obligated parent first." However, she explained that, on the other hand, "somebody has to pay childcare expenses or be responsible for them financially."¹³ She noted that whether to place the SSR adjustment lines before or after the childcare and health-insurance expenses is not "a big issue because it just does [not] happen that very often that those expenses are considered in the low income area of the Schedule."¹⁴

The Subcommittee has reviewed sample worksheets having the SSR adjustment calculated before those expenses and a sample worksheet having the SSR adjustment calculated after those expenses. The sample

¹³3/12/21 transcript

¹⁴3/12/21 transcript

worksheet having the SSR adjustment calculated after childcare and health-insurance expenses is considerably less complicated than having the SSR adjustment calculated before the childcare and health-insurance expenses. Because of the infrequency of cases in which the order that the SSR adjustment is calculated will make a difference and in order to preserve the simplicity of the worksheet, the Subcommittee recommends placement the SSR adjustment calculation *after* the calculation of childcare and health-insurance expenses.¹⁵

C. Should there be an economic incentive calculated with the SSR adjustment and, if so, what amount? Additionally, should the amount vary with the number of children?

Dr. Venohr explained that "an economic incentive is necessary to address payroll taxes."¹⁶ She gave the following example:

"[A]ssume an obligor has a gross income of \$1,157 per month, which is \$100 less than full-time earnings at the current minimum wage of \$7.25 per hour (\$1,257 per month). The maximum amount of child support that could be ordered assuming a [SSR] of \$1,063 is \$94 per month. So strict application of the SSR would assign every additional dollar of

¹⁵See West Virginia worksheet for an example.

¹⁶9/16/21 email correspondence

additional income to child support. The reality, however, is that the obligated parent incurs payroll taxes on that additional \$100 in income."¹⁷

To apply an economic incentive, the amount of income available for support after adjusting for the SSR will be multiplied by a certain percentage so that not all of the increased earnings are considered in determining the child-support obligation.

Dr. Venohr explained that, when the SSR adjustment was automatically included in the Schedule amounts, a tax rate assumption was included. However, if we move the SSR adjustment calculation to the worksheet, in order to account for taxes, there must be an economic incentive added.

1. Should there be an economic incentive and, if so, how much?

The Subcommittee recommends that there be an economic incentive at least to address the issue of payroll taxes. To address payroll taxes, the Subcommittee recommends using a percentage of 85%. The Federal and State payroll taxes for full-time minimum wage is 13%. Rounding to 85% addresses the payroll taxes and also allows the obligor to keep a small

¹⁷12/31/20 memo.

portion of his or her increased earnings. Dr. Venohr explained to the Subcommittee that lowering the percentage below 85% to allow the obligor parent to retain more of his or her increased earnings could encourage that parent to work more and increase earnings in the long term which would, in turn, benefit the child. The Subcommittee recommends implementing an economic incentive using a percentage of no greater than 85% so that payroll taxes are addressed. The Committee may also consider whether to use a lower percentage to allow the obligor to retain a greater portion of his or her increased earnings.

2. Should the percentage used to calculate the economic incentive
change with the number of children for whom support is being
determined?

There is an option to have the percentage used to calculate the economic incentive change as the number of children for whom support is being determined increases. Doing so would recognize the reality that, as the number of children increases, a higher percentage of a parent's income is used for child support. However, the majority of child-support orders in Alabama are for one child, and using a variable percentage would

somewhat complicate the calculation. Professor Davis noted that, when you are considering a low income, varying the percentage by 5 to 10% will not make a large difference. Based on the foregoing reasons, the Subcommittee recommends not changing the percentage with the number of children for whom support is being determined.¹⁸

III. Should the current minimum order of \$50 remain in effect?

Dr. Venohr explained in her May 13, 2021, memo:

"A minimum order typically applies when income is less than the SSR. Note that the amount of the minimum order is a policy decision. Most states use \$50 per month, although several states use more or less. Some states leave it to court discretion."

Dr. Venohr explained to the Subcommittee that a 1987 publication aimed at helping states develop child-support guidelines recommended that states adopt a minimum order to demonstrate that all parents, no matter how low his or her income, have a responsibility to support the child.

Dr. Venohr pointed out that the minimum order would not apply if income of at least minimum wage was imputed. Moreover, the committee

¹⁸4/23/21 transcript

has decided to recommend an amendment that provides, in pertinent part:

"If the obligor has no gross income and receives only means-tested assistance, there is a rebuttable presumption that a zero dollar order shall be entered. If the obligor has no gross income and is incarcerated or institutionalized for a period of more than 180 consecutive calendar days, there is a rebuttable presumption that a zero dollar order shall be entered."

Currently, the minimum child-support order that may be entered is \$50. Therefore, if a parent's income is below the SSR amount, a minimum order of \$50 would be entered. Dr. Venohr noted that the \$50 minimum order has been in place since Alabama promulgated child-support guidelines and that, if we adjusted for inflation, that \$50 would be closer to \$100.¹⁹ Dr. Venohr also posed the question of whether the minimum order should increase with the number of children.²⁰

The subcommittee recommends that, if the zero-order provision does not apply, there shall be a rebuttable presumption that a \$50 minimum obligation, less any payments for health-care coverage and work-related child-care costs, shall be entered. In no event shall an order of less than

¹⁹4/23/21 transcript

²⁰10/29/20 memo

zero dollars be entered.

IV. Should there be an adjustment in the Worksheet for the payment of
work-related child-care costs?

Currently, the Worksheet considers both work-related child-care costs and health-care-coverage costs in determining the total child-support obligation. However, there is only an adjustment for the payment of health-care-coverage costs. As a matter of fairness and consistency, the subcommittee recommends that an adjustment for work-related child-care costs be added to the Worksheet.

Conclusion

In conclusion, the committee must vote on the following:

1) Whether any changes to the Schedule should be made?

* Should we update the Schedule? The Subcommittee recommends answering in the affirmative.

* What methodology to use if the Schedule is updated? The Subcommittee recommends using the Betson-Rothbarth 5 realigned for Alabama incomes.

* Whether to implement a cap on percentage increases? The

Subcommittee does not have a consensus with regard to this issue, but the majority of the subcommittee members were not in favor of a cap.

* Whether the maximum combined monthly gross income in the Schedule should be expanded? The Subcommittee recommends answering in the affirmative.

2) What changes should be made with regard to the SSR Adjustment?

*Should the amount of the SSR be updated? The Subcommittee recommends updating the amount of the SSR to the 2021 federal poverty levels, adjusted for Alabama incomes, \$981.

* Should Alabama change the manner in which the SSR adjustment is implemented? The Subcommittee recommends adding the calculation of the SSR adjustment to the worksheet after the calculation of childcare and health-insurance expenses.

* Should there be an economic incentive calculated with the SSR adjustment and, if so, how much? The Subcommittee recommends implementing an economic incentive by using a percentage of 85% to address payroll taxes and to allow the obligor to retain a small portion of

his or her increased earnings.

* Should the percentage used to calculate the economic incentive increase as the number of children at issue increases? The Subcommittee recommends NOT varying the percentages with the number of children.

3) Should the current "minimum order" of \$50 remain in effect?

The subcommittee recommends that, if the zero-order provision does not apply, there shall be a rebuttable presumption that a \$50 minimum obligation, less any payments for health-care coverage and work-related child-care costs, shall be entered. In no event shall an order of less than zero dollars be entered.

4) Should there be an adjustment in the Worksheet for the payment of work-related child-care costs? The Subcommittee recommends answering in the affirmative.