

## MEMORANDUM

TO: Advisory Committee on Child Support Guidelines and Enforcement

FROM: Subcommittee on Non-parent Custodian Income and Child Support Calculation

RE: Recommendation of Subcommittee on Non-parent Custodian Income and Child Support Calculation

DATE: June 23, 2023

The Subcommittee proposes that the Advisory Committee on Child Support Guidelines and Enforcement recommend to the Supreme Court of Alabama that subsection (7) be added to Rule 32 (C) to address the calculation of child support when a non-parent has custody of the child. The recommendation for the proposed amendment is as follows:

“(7) In those situations where neither parent has physical custody of one or more children, the income of the non-parent custodian(s) shall not be used to calculate support. Support shall be calculated by treating one parent as the plaintiff and the other parent as the defendant on the Child-Support Guidelines form (Form CS-42), regardless of their actual party status in the case. The monthly gross income of each parent shall be their actual or imputed income. If one parent is deceased, that parent’s income may be imputed with the full amount of any third-party payments paid for the children based on the deceased parent’s earnings record or other eligibility requirement attributable to the deceased parent. Work-related child-care costs or health care coverage paid by a parent shall be included on the Child-Support Guidelines form (Form CS-42) as provided for elsewhere in this rule. Work-related child-care costs or health care coverage paid by a non-parent custodian shall not be included. Upon completion of the Child-Support Guidelines form (Form CS-42), each parent(s) shall pay to the non-parent custodian(s) the “Recommended Child-Support Order” designated for that parent on Line 13 of the Child-Support Guidelines. A parent may receive credit for their support obligation for third-party payments paid for the children based on the support obligor's earnings record or other eligibility requirement as provide for in this rule.”

### Proposed Committee Comments to Amendment to Rule 32, Ala.R.Jud.Admin.

“Committee Comments to Amendment to Rule 32, Ala.R.Jud.Admin. effective \_\_\_\_\_, 202\_\_\_. Rule 32 was amended effective \_\_\_\_\_, 202\_\_ to provide for the calculation of child support when a non-parent has custody of one or more children. The purpose of the amendment was to clarify the income to be used or imputed and the expenses that should be included in the calculation.”

**CHILD SUPPORT GUIDELINES**

Case Number

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY, ALABAMA  
 (Circuit or District) (Name of County)

\_\_\_\_\_ v. \_\_\_\_\_  
 Plaintiff Defendant

| Children |  | Date of Birth | Children           |          | Date of Birth |
|----------|--|---------------|--------------------|----------|---------------|
|          |  |               |                    |          |               |
|          |  |               |                    |          |               |
|          |  |               |                    |          |               |
|          |  |               | Number of Children |          |               |
| Line     | Item   | Plaintiff     | Defendant          | Combined |               |
| 1        | MONTHLY GROSS INCOME   | \$            | \$                 | \$ 0     |               |
| 1a       | Minus Preexisting Child Support Payments   | -             | -                  | -        |               |
| 1b       | Minus Preexisting Periodic Alimony Payments  | -             | -                  | -        |               |
| 2        | MONTHLY ADJUSTED GROSS INCOME<br>(Line 1 - Line 1a - Line 1b)  | \$            | \$                 | \$       |               |
| 3        | PERCENTAGE SHARE OF INCOME<br>(Income on Line 2 divided by Combined Income)                              | 0%            | 0%                 | 100%     |               |
| 4        | BASIC CHILD SUPPORT OBLIGATION<br>(Apply Line 2 Combined to Schedule of Basic Child Support Obligations) |               |                    | \$ 0     |               |
| 5        | WORK-RELATED CHILD-CARE COSTS (Paid by Either Parent)  | \$            | \$                 | + 0      |               |
| 6        | HEALTH-CARE-COVERAGE COSTS (Paid by Either Parent)   | \$            | \$                 | + 0      |               |
| 7        | TOTAL CHILD-SUPPORT OBLIGATION<br>(Combined Line 4 + Line 5 + Line 6)                                    | 0             | 0                  | \$ 0     |               |
| 8        | EACH PARENT'S CHILD SUPPORT OBLIGATION (Line 3 x Line 7)   | \$            | \$                 |          |               |
| 9        | TOTAL COSTS PAID BY EACH PARENT (Line 5 + Line 6)  | -             | -                  |          |               |
| 10       | EACH PARENT'S ADJUSTED CHILD-SUPPORT OBLIGATION<br>(Line 8 - Line 9. If less than \$0, enter \$0.)       | \$            | \$                 |          |               |
|          | <b>Self-Support Reserve (SSR)</b>  |               |                    |          |               |
| 11       | INCOME AVAILABLE AFTER SSR<br>(Line 2 - SSR of \$981. If less than \$0, enter \$0.)                      | \$            | \$                 |          |               |
| 12       | INCOME AVAILABLE FOR SUPPORT<br>(85% of Line 11. If less than \$50, enter \$50 minimum obligation.)      | \$            | \$                 |          |               |
|          | <b>Recommended Child Support Order</b>   |               |                    |          |               |
| 13       | RECOMMENDED CHILD-SUPPORT ORDER<br>(Lesser of Lines 10 and 12)   | \$            | \$                 |          |               |

Comments, Calculations, or Rebuttals to Guidelines:

Prepared By:

Date:

To: Alabama Advisory Committee on Child Support Guidelines and Enforcement

From: Jane Venohr, CPR

Date: Mar. 17, 2023

RE: Should grandparent income be excluded in non-parent custodian cases?

There are several circumstances in which a grandparent may be involved with a child support case. This raises the question whether the income of a grandparent (or nonparent caretaker) should be considered in any of these circumstances. This memorandum is directed at clarifying in which circumstances the committee believes that grandparent's income should be/should not be considered; and, if so how. It also intends for the committee to decide how to determine support against biological parent(s) when the child lives with a nonparent caretaker.

Questions for the committee are listed on page 2. The questions also list options and the advantages and disadvantages of those options. There are 5 questions with several subquestions: 1a, 1b, 2, 3, 4a, 4b, 4c, 4d, and 5.

**The three main ways that a grandparent may be involved with a child support case are:**

1. *The grandparent is the custodian of the child and the biological parent(s) have a legal financial responsibility to the children. The grandparent seeks support from the biological parent(s).*
  - This was the topic of the February memorandum. Few state guidelines address how child support shall be calculated in this situation, but among those that do, none consider the income of the grandparent.
  - This example appears to be similar to the situation in T.T.T. v. R.H., 999 So. 2d 544 (Ala. Civ. App. 2008). In this case, the Alabama Court of Civil Appeals affirmed the juvenile court's award of custody of the child to the maternal grandparents and its finding that the father voluntarily relinquished custody of the child. However, the Alabama Court of Civil Appeals reversed the juvenile court's judgment using the amount received from Social Security by the child as the maternal grandparents' income stating that the maternal grandparents' gross monthly income should have been used to calculate the monthly child support amount due and remanded the case back to the juvenile court on this matter.
2. *The grandparents obtain custody of the children, then divorce, and one grandparent obtains child support from the other grandparent.*
  - This was the situation in Pruitt v. Pruitt, 669 So. 2d 931 (Ala. Civ. App. 1995) that is cited in O.L.D. v. J.C., 769 So. 2d 299 (Ala. Civ. App. 1999).
    - It shall be noted that the latter case was a custody issue between the father and maternal grandmother (where the mother was deceased).
    - The trial court had awarded temporary custody of child to grandmother and ordered father to pay child support. The Alabama Court of Civil Appeals affirmed the court's award of custody to the grandmother.

- How child support was calculated was not evident in the ruling. It was only noted that there were no guidelines form nor income statement/affidavit as required. The Court of Civil Appeals remanded the child support order.
- This can also occur in other states due to “*in loco parentis*,” that is, the grandparent is standing in place of the parent(s). CPR has not seen this issue addressed in child support guidelines, but it may be addressed in a particular state’s statute overseeing parental responsibility and financial responsibility of children (e.g., statutes noting the responsibilities of parents).

**3. The child’s parent is a minor of the grandparent(s), and the state provides for grandparent liability of their minor children.**

### Alabama’s Approach to Each of the Three Ways Grandparents Can Be Involved

#### **#1: Grandparent is custodian and child support is set against biological parent(s).**

Caselaw (T.T.T. v. R.H., 999 So. 2d 544 (Ala. Civ. App. 2008)) sets a precedent that this can occur.

It was CPR’s understanding that the committee was attempting to address #1 because of inconsistent calculations across the state. Still, it is important to understand Alabama’s treatment of #2 and #3 so it does not unintentionally interact with Alabama’s desired policy outcome of #1. If the committee believes it is important to set a formula for this circumstance, more questions are contained in #4.

#### **#2: Grandparents obtain custody, then divorce and one grandparent seeks child support from the other grandparent.**

Caselaw (Pruitt v. Pruitt, 669 So. 2d 931 (Ala. Civ. App. 1995)) sets a precedent that this can occur.

**#3: Some states provide for grandparent liability when public assistance is received by the grandchildren born to the grandparents’ minor children.** According to recent research,<sup>1</sup>12 states have statutes that establish grandparent liability for support. Alabama was not one of them. More information about this type of grandparent liability can be found at the end of this document.

### Questions for the Committee

#### **#1a. Does the committee want to explore adding a provision that specifies how to calculate support for a nonparent caretaker against the biological parent(s)?**

*Advantage.* Provides more consistency and predictability for cases with these circumstances.

*Disadvantages.*

- Reduces judicial discretion. Due to the unique circumstances of each case, judicial discretion may be appropriate.

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<sup>1</sup> Venohr, Jane; Matyasic, Savannah; Haynes, Margaret; and Thies, Garrett. (Dec. 2022.) Retrieved from <https://www.dhhs.nh.gov/sites/g/files/ehbemt476/files/documents2/css-2022-nh-child-support-guidelines-review-report.pdf>

- According to the joint federal letter dated July 29, 2022<sup>2</sup> states should not order child support against the biological parent when the goal of the permanency plan is family reunification and child support can interrupt that process. If this is a concern of the committee, this could be an issue beyond the scope of the child support guidelines. As pointed out by Mr. Robert Maddox, part of the Alabama Juvenile Justice Act, specifically in the dependency part of the Act in Section 12-15-314, subsection (e) provides that the court shall order child support in dependency cases if the “. . . parent . . . or legal custodian . . . has resources for child support. . . in conformity with the Child Support Guidelines as set out in Rule 32. . . .”

The statute is shown on the next page.

(e) When a child is placed in the legal custody of the Department of Human Resources or any other department, agency, organization, entity, or person pursuant to this section and when the parent, legal guardian, or legal custodian of the child has resources for child support, the juvenile court shall order child support in conformity with the Child Support Guidelines as set out in Rule 32, Alabama Rules of Judicial Administration. The child support shall be paid to the Department of Human Resources or department, agency, any other organization, entity, or person in whose legal custody the child is placed and may be expended for those matters that are necessary for the welfare and well-being of those children placed in the Department of Human Resources or any other departments, agencies, organizations, entities, or person. In these cases, the juvenile court shall issue income withholding orders subject to state law. Any petition alleging dependency of a child filed by the Department of Human Resources shall contain a request for child support.

**#1b. Should the committee address the dependency statute, Section 12-15-314, subsection (e)?**

YES— It is appropriate to address in statute. If so, the question is how since the committee’s charge is to the child support guidelines, not the dependency statute.

NO— The guidelines can address the issue without changing the dependency statute because:

- The statute provides for the consideration of the resources of the parent from whom child support is being sought. The guidelines address the resources of the parent who has zero income or income eligible for the self-support reserve adjustment. This parent may be the parent from whom support is being sought in a dependency case.
- The statute just says that the guidelines must be applied and does not prescribe a guidelines formula for dependency cases.

*Table 1: Miscellaneous Statutory Provisions*

|   |
|---|
| <p><b><u>Section 30-3D-102 (Part of the Uniform Interstate Family Support Act)</u></b><br/> <b>Definitions.</b><br/> In this chapter:<br/> (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.<br/> (2) "Child-support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.<br/> (4) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.</p> <p><b><u>Section 30-3-155</u></b><br/> <b>Determination of child support.</b><br/> In making a determination of child support, the court shall apply Rule 32 of the Alabama Rules of Judicial Administration.</p> |
|---|

<sup>2</sup> Retrieved from

[https://www.acf.hhs.gov/sites/default/files/documents/cb/letter\\_regarding\\_assignment\\_rights\\_child\\_support\\_for\\_children\\_foster\\_care.pdf](https://www.acf.hhs.gov/sites/default/files/documents/cb/letter_regarding_assignment_rights_child_support_for_children_foster_care.pdf).

**#2 Does the committee believe more specification to the guidelines is needed, appropriate, and in the best interest of the child to address situations where the grandparents obtain custody, then divorce, and one grandparent seeks child support from the other grandparent or that O.L.D. v. J.C. adequately addresses this?**

YES, need more specification— Need to develop more briefing materials

NO, caselaw sufficiently addresses the issue— No more consideration necessary

**#3 Is the committee interested in adding a provision for grandparent liability for public assistance provided to grandchildren of the grandparent’s unwed minor children?**

YES— See end of document and possibly develop more briefing materials

NO— No more consideration necessary

**#4 Additional considerations if Answer to #1 is Yes**

**4a. Should income of the nonparent caretaker be explicitly excluded in the calculation of support?**

NO: There is a rationale to hold the biological parents and nonparent caretaker financially responsible based on the T.T.T. v. R.H. precedent.

YES

- It is the biological parents’ responsibility not the nonparent caretaker’s responsibility
- Keeps the calculation simple
- All states that have official provisions do not consider the income of the nonparent caretaker

**4a.1. Where should the provision be placed in the guidelines (see Table 2)?**

- **GA specifically excludes the caretaker’s income in the definition of income** (see Table 3.)

*Advantages:* Direct and simply stated. Could be easily included to Alabama guidelines paragraph, Rule 32(B)(2)(b) “. . . ‘[g]ross income’ does not include child support received for other children or benefits received...”

*Disadvantage:* For clarity, should be provided with rest of calculation that specifies how to use the incomes of the biological parent(s)

- **NC provides a separate section** (see Table 3.)  
*Advantage:* Everything a guidelines user needs to know about adjusting for non-parent caretaker is in one place  
*Disadvantages:* Lengthens and adds complexity to the guidelines
- **Implicitly excluded in other states** by no mention of nonparent caretaker’s income but mentioning incomes of biological parent
  - *Advantage:* More judicial discretion
  - *Disadvantage:* Could lead to inconsistent interpretation

*Table 2: Possible locations for adding a provision to the Alabama guidelines to address determination of support in nonparent caretaker cases.*

|          |  |
|----------|--|
| Option A | Adding it to the paragraph defining income exclusions – Rule 32(B)(2)(b) |
|----------|--|



|          |  |
|----------|--|
|          | <p>“... '[g]ross income' does not include...”</p> <p><i>Advantage:</i> Simple</p> <p><i>Disadvantage:</i> Not appropriate place for details on how to use the biological parent's incomes</p>  |
| Option B | <p>Adding it after this provision in Rule 32</p> <p>“(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. . . .”</p> <p><i>Advantage:</i> Orders among nonparent caretakers may be temporary or permanent</p> <p><i>Disadvantage:</i> Distracts from the rest of this paragraph, which is very general. Nonparent caretaker situation is a very specific issue.</p> |
| Option C | Add a paragraph just before the section on split custody   |

Table 3: Provisions from Selected States

| State    | Clearly excludes income of caretaker | How  | Provision  |
|----------|--------------------------------------|--|--|
| Arkansas | Yes                                  | <ul style="list-style-type: none"> <li>• Specifies provision is for Third-party custody circumstance</li> <li>• Specifies order is against parent</li> <li>• Specifies that if only one parent, use 100% of that income</li> </ul> | <p>Third-party Custody:<br/>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 apportioned by the court if only one parent is available, as a deviation from these Guidelines</p> |
| GA       | Yes                                  | <ul style="list-style-type: none"> <li>• Clearly defines nonparent custodian</li> <li>• Specifically excludes non parent's custodian's gross income in the definition of income</li> </ul>   | <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>1.Exclusions from gross income. Excluded from gross income are the following:<br/>C. A nonparent custodian's gross income; and</p>  |
| NC       | Yes                                  | Clearly states it in its provision that a child support obligation must be determined using one of the guidelines worksheets   | <p>Child Support Worksheets<br/>A parent's presumptive child support obligation under the guidelines must be determine using one of the attached child support worksheets.</p> <p>The child support worksheets must include the incomes of both parents, regardless of whether one parent is seeing child support from the other parent or a third party is seeing child support from one or both parents. The child support worksheet may be used to calculate the child support obligation of a stepparent or other party who is secondarily liable for child support. Do not include the income of an individual who is not the parent of a child for whom support is being determined on the worksheets.</p>   |



**4b. Use income of one parent or incomes of both parents (where income may be imputed to one parent if unknown). Which of the approaches below are most appropriate for Alabama?**

|  | Advantages  | Disadvantages   |
|--|---|---|
| (i) Use income of the parent for whom support is being determined only even if income of the other parent is known (e.g., MN)                                      | <ul style="list-style-type: none"> <li>• Consistent outcome regardless whether other parent's income is known</li> <li>• Requires the most dollars for the child</li> </ul> | <ul style="list-style-type: none"> <li>• Doesn't recognize that child has more than one parent with financial responsibility</li> <li>• Produces more than what would be expended for the child if both parents are ordered</li> <li>• If ability-to-pay is an issue, raises order</li> </ul> |
| (ii) Use whatever information is available; i.e., if both parents' incomes are available use both and if only one parent's income is available, use one (e.g., TN) | <ul style="list-style-type: none"> <li>• Uses the best information available</li> </ul>   | <ul style="list-style-type: none"> <li>• Inconsistent outcomes depending on whether other parent's income is known</li> </ul>   |
| (iii) Use both parents' incomes and impute income if one parent's income is unknown  | <ul style="list-style-type: none"> <li>• More consistent outcome than (ii)</li> </ul>   | <ul style="list-style-type: none"> <li>• Requires income imputation policy</li> <li>• Income may be imputed below or above actual income</li> </ul>   |
| (iv) Do not specify (e.g., GA)   | <ul style="list-style-type: none"> <li>• Judicial discretion and consideration of the specific circumstances</li> </ul>   | <ul style="list-style-type: none"> <li>• Inconsistent outcomes</li> </ul>   |

**4c. What to do if the biological parents still live together?**

- Consider income of the parents separately and calculate two orders (one for each parent)
  - *Advantage:* Consistent with considering income of one parent
  - *Disadvantage:* Total child support higher than child-rearing expenditures if each parent has an order determined with his or her individual income only
- Consider income of both parents (calculate one order owed by both parents)
  - *Advantage:* Consistent with considering incomes of both parents even if income is imputed to at least one parent
  - *Disadvantage:* Developing a consistent income imputation policy when the incomes of at least one parent is not known
- Judicial discretion
  - *Advantage:* Consider specific circumstances of the case
  - *Disadvantage:* Could lead to inconsistent outcomes; may be too few cases worthwhile to prescribe formula.

**4d. Whether to consider add-ons (e.g., childcare and healthcare costs) of the nonparent caretaker for the children?**

- Yes
  - *Advantage:* Expenses are real (GA and TN)
  - *Disadvantage:* Increases and complicates order
- Consider income of both parents
  - *Advantage:* Consistent with considering incomes of both parents even if income is imputed to at least one parent
  - *Disadvantage:* Developing a consistent income imputation policy when the incomes of at least one parent is not known

**#5. Are there other statutes and caselaw that should be considered?** Committee members and Court staff have brought up relevant statutes and caselaw. Are there more?

## Grandparent Liability for Minor Parents

The textbox shows North Carolina's provision to illustrate what is met by this.

NC G.S. § 50-13.4. In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the support of a minor child. In the absence of pleading and proof that the circumstances otherwise warrant, parents of a minor, unemancipated child who is the custodial or noncustodial parent of a child shall share this primary liability for their grandchild's support with the minor parent, the court determining the proper share, until the minor parent reaches the age of 18 or becomes emancipated. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated. In the absence of pleading and proof that the circumstances otherwise warrant, any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for such support. Such other circumstances may include, but shall not be limited to, the relative ability of all the above-mentioned parties to provide support or the inability of one or more of them to provide support, and the needs and estate of the child. The judge may enter an order requiring any one or more of the above-mentioned parties to provide for the support of the child as may be appropriate in the particular case, and if appropriate the court may authorize the application of any separate estate of the child to his support. However, the judge may not order support to be paid by a person who is not the child's parent or an agency, organization or institution standing in loco parentis absent evidence and a finding that such person, agency, organization or institution has voluntarily assumed the obligation of support in writing.

Recently, New Hampshire extensively reviewed the topic in response to a state legislative audit that found that state laws were not clear on grandparents' liability to provide support to their grandchildren under certain circumstances. The specific state law allows the state human services agency to recover from grandparents, public assistance rendered to their grandchildren when they are born to unwed minor parents. However, state law also requires any child support obligation to be set according to the state child support guidelines. Albeit, New Hampshire estimates only 1% of current support orders involve a minor parent outside the home with children on public assistance, the calculation of support in these cases is confusing.

One possible rationale for not holding grandparents liable is a reluctance to hold grandparents accountable for the actions of their minor children; particularly, when the grandparents may face other issues with aging and limited budgets. Another rationale is the strain that a child support order could have on the parent-child relationship. Moreover, the calculation can be complicated. Criteria for applying the adjustment must be established (e.g., does it apply to all cases or just public assistance cases; should grandparents living with the grandchildren be excluded from liability; shall the adjustment apply to both maternal and paternal grandparents, and is it secondary to the minor children's ability to contribute to the children).