

# *Administrative Office of the Courts*

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## **MEMORANDUM**

**TO: Tennessee Bar Associations**

**FROM: Mary Rose Zingale, Court Services Director**

**DATE: August 13, 2008**

**RE: REVISED CHILD SUPPORT GUIDELINES AND WORKSHEETS**



The Department of Human Services has advised our office that effective immediately (August 12, 2008), new child support guidelines must be applied to every judicial or administrative action to establish, modify, or enforce child support that is taken on or after August 12, 2008, regardless of when the action was initiated or filed. The following information was provided to our office from the Department of Human Services.

The amended Guidelines and the new Child Support Worksheet are available on the Internet Income Shares Tutorial website at <http://www.state.tn.us/humanserv/is/incomeshares.htm>.

### **I. HIGHLIGHTS OF THE REVISED CHILD SUPPORT GUIDELINES**

The amendments to the Child Support Guidelines are summarized below. In addition to these changes, a few other minor modifications (e.g., renumbering certain subparagraphs) were also made. To review the revised Guidelines in their entirety, go to <http://www.state.tn.us/humanserv/is/incomeshares.htm> And click on "General Documentation", then on "Guidelines/Rules.

- A. The amount of annual gross income to be imputed in establishing an initial order for support when there is no reliable evidence of income has increased. The new amounts are \$37,589 for male parents and \$29,300 for female parents. This is based on full time, year round workers' median gross income for Tennessee from the American Community Survey of 2006 from the U.S. Census Bureau.

[Chap. 1240-2-4-.04(3)(a)2(iv)(I)III]

- B. For 2008, the federal government increased the amount of gross income subject to the Social Security employment tax (FICA) to from \$90,000 to \$102,000. The revised Guidelines reflect the new amount.

[Chap. 1240-2-4-.04(4)(c) and (d)]

- C. The federal poverty level for a single adult has increased from \$9,645 to \$10,400 annual gross income. The revised Guidelines reflect the new amount.

[Chap. 1240-2-4-.05(2)(d)2(i)]

- D. In determining a parent's gross income, net capital gains are now counted. This reflects the amendment of **T.C.A. § 36-5-101(e)(1)(B) by the legislature in 2007.**

[Chap. 1240-2-4-.04(3)(a)1(xiii)]

- E. For the purpose of imputing income, criminal activity and/or incarceration shall now result in a finding of voluntary underemployment or unemployment.

The revised Guidelines state:

*“Criminal activity and/or incarceration shall not provide grounds for reduction of any child support obligation. Therefore, criminal activity and/or incarceration shall result in a finding of voluntary underemployment or unemployment under this section, and child support shall be awarded based upon this finding of voluntary underemployment or unemployment.”*

[Chap. 1240-2-4-.04(3)(a)2(i)(I)]

- F. Federal benefits received by a child on the account of a parent are counted as income to the parent on whose account the benefit is drawn (line 1a on the CS Worksheet) and later deducted to determine the Final Child Support Order (FCSO) (line 16). Before the revision, only Social Security Title II benefits were treated in this manner.

[Chap. 1240-2-4-.04(3)(a)5]

- G. The June 26, 2006 version of the CS Guidelines explain that that in fifty-fifty / equal-parenting cases, and in cases with a fifty-fifty / equal-parenting arrangement combined with a standard or a split parenting arrangement, the father would be designated as the ARP for the fifty-fifty child(ren) solely for the purpose of calculating the PTA.

This language had been found in part 4 of Chap. 1240-2-4-.04(7)(g), which is titled “Reduction in Child Support Obligation for Additional Parenting Time”.

In the amended Guidelines, this information has been reworded for added clarity and moved to Chap. 1240-2-4-.04(7)(b), titled “Parenting Time”. There it replaces the existing language in part 2.

[Chap. 1240-2-4-.04(7)(b)2]

- H. If there are multiple children for whom support is being calculated, and the ARP does not spend the same amount of time with each child, an annual average of parenting time with all of the children is calculated to determine whether to apply a parenting time adjustment (PTA). This principle did not change with the revised Guidelines.

However, prior to July 22, 2008, any children with whom the parent was spending exactly 50% of the time (182.5 days per year) were excluded from this average calculation because the PTA for fifty-fifty/equal-parenting children was calculated separately. Equal parenting time displayed on line 5a of the CS Worksheet (V3 2007, updated 7/24/07), whereas average parenting time with all other children displayed on line 5.

With the amended Guidelines, the calculation of a parent's annual average parenting time with multiple

children includes the number of parenting days with ALL children covered by the order, **including fifty-fifty/equal-parenting children** (182.5 days). As a result, line 5a ('Equal parenting time') became unnecessary and was removed from the CS Worksheet.

Example:

Three (3) children are covered by the order. The father spends a different amount of time with each child.

Child A – 65 days per year

Child B – 48 days per year

Child C – 182.5 days per year

$295.5 / 3 = 98.5$  rounded to 99 average parenting days per year for all children

In this case, the parenting time adjustment on line 6 of the CS Worksheet would be based on 99 days of parenting time per year.

[Chap. 1240-2-4-.04(7)(b)4]

- I. A statement was added to the amended Guidelines to clarify that in non-parent caretaker situations, neither parent is entitled to a parenting time adjustment (PTA) **credit** for spending more than the standard parenting time with the child(ren). This is not a change from the June 26, 2006 Guidelines currently in effect, merely a clarification.

The new subparagraph states, "*In a non-parent caretaker situation, neither parent is eligible for a parenting time adjustment*". Subsequent subparagraphs were renumbered accordingly.

NOTE: The PTA **penalty** for spending less than the standard amount of parenting time will continue to apply to all parents in all parenting arrangements, including those involving a non-parent caretaker. This, also, is not a change from the June 26, 2006 Guidelines.

[Chap. 1240-2-4-.04(7)(d)]

- J. For simplification, the revised Guidelines remove any distinction between work-related childcare expenses paid by payroll deduction and such expenses that are paid by the parent or non-parent caretaker directly to the child care provider. As a result, line 8d ('Work-related childcare – Non Payroll Deducted') was removed from the Child Support Worksheet because it was no longer be needed.

Going forward, when completing the CS Worksheet for any type of parenting arrangement, enter the work-related childcare expense on line 8c ('Work-related childcare'), in the column of the parent or caretaker who is paying or will pay the expense. The Worksheet will calculate the non-paying parent's pro rata share of the total childcare expense, include it on line 10 ('Share of additional expenses owed') for that parent, and adjust the BCSO accordingly. The parent who has been paying the expense will continue to do so.

An asterisked statement directly below line 11 in Part IV on the current version of the CS Worksheet (V3 2007, updated 7/24/07) refers to line 8d. It states "\*\*\* *Reminder - Line 8d expenses are to be paid by the child's PRP or either parent in a 50-50 situation.*" This statement has been deleted, along with line 8d.

[Chap. 1240-2-4-.04(8)(c)]

- K. A paragraph was added to the Guidelines concerning the prohibition against retroactive modifications and the fact that, by operation of law, overdue support is a judgment subject to enforcement. The intent

is to reiterate that these provisions apply to all Tennessee courts.

[Chap. 1240-2-4-.05(8)

- L. An asterisked statement directly below line 12 in Part V of the current CS Worksheet (version V3 2007, updated 7/24/07) states *“Enter the difference between the greater and smaller numbers from Line 11”*.

For clarity, it was modified on the updated Worksheet to read *“Enter the difference between the greater and smaller numbers from Line 11 except in non-parent caretaker situations”*.