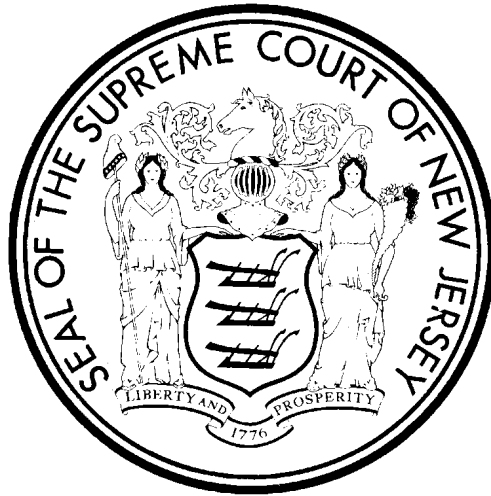


FAMILY PRACTICE COMMITTEE REPORT

Proposed Amendments to the Child Support Guidelines

Quadrennial Review and Flexibility, Efficiency and Modernization in Child Support Enforcement Programs Final Rule



**2021-2023
RULES CYCLE**

January 12, 2022
Corrected

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I. Introduction

The Supreme Court Family Practice Committee ("Committee") recommends that the Supreme Court adopt the proposed rule amendments contained in this report. The Committee also reports on other issues reviewed where it concluded no rule change or a non-rule recommendation was appropriate.

Where rule changes are proposed, deleted text is bracketed [as such], and added text is underlined as such. No change to a paragraph of the rule is indicated by ". . . no change."

II. Executive Summary

The Family Practice Committee (Committee) has continued to work on the quadrennial review of the New Jersey Child Support Guidelines, as required by federal law (42 U.S.C. §667) and federal regulation (45 C.F.R. §302.56 and 45 C.F.R. §303.4). This review is done in collaboration with the New Jersey Division of Family Development (DFD) in the Department of Human Services (DHS). DFD is New Jersey's designated Title IV-D child support agency responsible for ensuring compliance with the quadrennial review. To assist the Committee in meeting New Jersey's obligations as required by Title IV-D of the federal Social Security Act, DFD has retained the services of an economist from Rutgers University to review economic data and offer recommendations regarding changes to the guidelines (Rules of Court, Appendix IX). New Jersey's current quadrennial review will conclude December 31, 2022.

In addition to its work on the quadrennial review, the Committee also considered any rule recommendations necessary to implement the Flexibility, Efficiency and Modernization in Child Support Enforcement Programs Final Rule (Final Rule). Pursuant to the President's Executive Order 13563, States are required to revise their child support guidelines. To carry out that Executive Order, on December 20, 2016, this "Final Rule" was adopted by regulation entitled, "The Flexibility, Efficiency and Modernization in Child Support Enforcement Programs." See Federal Register, Vol. 81, No. 244. The Final Rule strengthens the Child Support Program by amending existing federal rules to: set accurate child support obligations based on the noncustodial parents' (NCP) ability to pay; increase consistent, on-time payments to families; improve child support collection rates; and reduce the accumulation of unpaid and uncollectible child support arrearages. New Jersey must implement the Final Rule by January 1, 2023.

In the 2019-2021 rules cycle, in furtherance of the quadrennial review and to implement the Final Rule, the Committee addressed the issue of adjusting the Self-Support Reserve and made recommended adjustments to the guidelines by including Social Security concurrent benefits in the list of means-tested benefits that are excluded as income in calculating child support. See [Supplemental Report of the 2019-2021 Family Practice Committee](#). The Supreme Court adopted these rule recommendations.

In the 2021-2023 rules cycle, the Committee continued its review of the child support guidelines and is making the recommendations set forth in this report. In doing so, the current quadrennial review is completed and January 1, 2022 is to be established as the start date of the next quadrennial review.

III. Discussion of Recommendations

A. Spending categories

Pursuant to 45 C.F.R. §302.56(h), as part of the State's review of the child support guidelines, States are required to consider economic data on the cost of raising children and on the incomes of the parents. Income considerations are based on local job markets (such as

unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level. Additionally, States are to consider the impact of guidelines award amounts and policies on custodial (CP) and noncustodial parents (NCP) who have family incomes below 200% of the federal poverty level. States are also to consider factors that influence employment rates among NCPs and compliance with child support orders. Accordingly, the Committee examined the percentages of the three spending categories included in the award amounts of the child support guidelines currently defined as 38% fixed costs (shelter), 37% variable costs (transportation and good), and 25% controlled costs (clothing, personal care, entertainment and miscellaneous). Based on the economist's assessment that the percentages accurately reflect the economic data available, the Committee makes no recommendation to change to these percentages.

B. Imputation of income

States must establish child support guidelines according to the requirements set forth in 45 C.F.R. §302.56. Paragraph (c) of this regulation provides that a child support order shall be based on the NCP's earnings, income and other evidence of ability to pay child support. When the NCP is voluntarily underemployed or voluntarily unemployed or their income is unknown, the court may impute income to the NCP to establish or modify a child support obligation. 45 C.F.R. §302.56(c)(1)(iii) provides factors for the court to consider when imputing income. These factors include a consideration of the NCP's specific circumstances, assets, residence, employment and earnings history, job skills, educational attainment, literacy, health, criminal record, any employment barriers, record of seeking work, local job market, availability of employers willing to hire the NCP, prevailing earnings level in the local community and any other relevant factors.

The Committee reviewed 45 C.F.R. §302.56(c)(1)(iii). The Committee also considered the economic data and recommendations of the economist. The data included information about personal factors of NCPs, such as education level, marital status, race/ethnicity, gender, and history of incarceration, and the factors' impact on earning capacity. Based on this review, the Committee recommends that the above-referenced factors should be included in subparagraph 12(a) of Appendix IX-A, which addresses imputing income to parents in cases where the court finds that a parent is voluntarily underemployed or voluntarily unemployed. Further, the Committee recommends that portions of subparagraph 12(c) that give additional guidance in imputing income should be moved to subparagraph 12(a) so that all those related items are contained in the same subparagraph.

1. Incarceration not to be considered as voluntary unemployment

Another goal of the Final Rule is to reduce the instances in which an incarcerated NCP is unable to have their child support obligation reviewed and/or modified on the grounds that they are "voluntarily unemployed." The Final Rule requires States' child support guidelines to specify that incarceration may not be treated as voluntary unemployment when establishing or modifying a child support order. 45 C.F.R. §302.56(c)(3).

To conform New Jersey's child support guidelines to the federal regulation, the Committee recommends amending subparagraph 12(a) of Appendix IX-A to state explicitly that incarceration shall not be treated as voluntary unemployment in establishing or modifying a child support obligation. With this recommendation, the Committee is mindful that there may be circumstances surrounding the NCP's incarceration that the court would determine there is just cause to establish or modify child support. Examples of such cases include incarceration of the NCP due to: a domestic violence incident or a violent crime against the CP; being incarcerated for failure to meet their child support obligation; or short-term incarceration (e.g., one night in jail). The court would consider the NCP's incarceration in light of the other factors listed in subparagraph 12(a), such as any assets that might be available to the NCP.

2. Proposed amendments to subparagraph 12(b)

Subparagraph 12(b) addresses circumstances where there is unavailable or insufficient data to determine a parent's income. The Committee recommends an expansion of the language contained in subparagraph 12(b) to provided additional guidance. The recommendation also provides guidance as to the priority in which the court considers evidence when imputing income. First, the court should rely on the parent's former income at their usual occupation. If that information is unavailable, the Committee recommends reliance on the average earnings for the parent's occupation in accordance with statistics compiled by the New Jersey Department of Labor. If that information is unavailable or insufficient, income may be imputed based on the State or federal minimum wage.

3. Proposed amendments to subparagraph 12(c)

The Committee recommends deleting 40 hours per week as the number of hours to be used for full-time employment. Not all full-time employment positions have a 40-hour work week. This narrow definition does not account for other full-time work schedules (e.g., 35-hour work week or other shift work that does not fit in a 40-hour work week). The Committee concluded that it should be left to judicial discretion to consider the facts of an individual case.

The Committee recommends relocating the text on imputation factors contained in subparagraph 12(c) to subparagraph (a) for organizational purposes.

The Committee recommends deleting citations of specific court opinions and generally referencing "case law" in new subparagraph 12(d), which addresses the court's development of a factual basis for imputing income. The Committee concluded that citing a list of cases is not exhaustive and may be inaccurate over time as new court opinions are published. This language is also intended to comply with 45 C.F.R. §303.4(b), which sets forth procedures to establish or modify child support obligations. Although 45 C.F.R. §303.4(b) references the use of "legal processes" in establishing or modifying support, the current court rules use the term "case law." Therefore, the Committee recommends including the term "case law" in new subparagraph 12(d).

45 C.F.R. §303.4(b)(1) and (b)(2) also require that when a child support obligation is established or modified, reasonable steps to develop a factual basis shall be made, and information is to be gathered regarding the earnings and income of the NCP. This includes case

conferencing and testimony from both parents. Therefore, to comply with the federal requirements, the Committee recommends providing guidance in cases where there is no income information available. In those cases, the Committee recommends including a provision in paragraph 12 that the court can adduce income information from the other parent.

4. Adoption of subparagraph 12(d)

45 C.F.R. §303.4(b)(4) further requires that the factual basis for the support obligation is to be documented in the case record. For this reason, the Committee recommends adoption of subparagraph 12(d) to memorialize that requirement. Additionally, the Committee recommends that the factual basis is to be memorialized either in writing or on the record at the court's discretion.

C. Health Insurance

Pursuant to 45 C.F.R. §303.31(a)(2), States' child support guidelines must address how the parents will provide for their children's health care needs. The regulation clarifies that parents may provide either private or public health care coverage for the children for whom support is ordered. This change increases a State's flexibility in ensuring that parents meet their medical support obligations to best suit the health care needs of their children. Therefore, the Committee recommends a conforming change to subparagraph 26(b) of Appendix IX-A.

IV. Rule Recommendation

Therefore, to conclude the current quadrennial review and comply with the Final Rule, the Committee recommends the following amendments to paragraphs 12 and 26 of Appendix IX-A of the Rules of Court:

APPENDIX IX-A
CONSIDERATIONS IN THE USE OF CHILD SUPPORT GUIDELINES
(Includes amendments through those effective _____)

1. Philosophy of the Child Support Guidelines. . . . no change.
2. Use of the Child Support Guidelines as a Rebuttable Presumption. . . . no change.
3. Deviating from the Child Support Guidelines. . . . no change.
4. The Income Shares Approach to Sharing Child-Rearing Expenses. . . . no change.
5. Economic Basis for the Child Support Guidelines. . . . no change.
6. Economic Principles Included in the Child Support Guidelines. . . . no change.
7. Assumptions Included in the Child Support Guidelines. . . . no change.

8. Expenses Included in the Child Support Schedules. . . . no change.
9. Expenses That May Be Added to the Basic Child Support Obligation. . . . no change.
10. Adjustments to the Support Obligation. . . . no change.
11. Defining Income. . . . no change.
12. Imputing Income to Parent.

The fairness of a child support award resulting from the application of these guidelines is dependent on the accurate determination of a parent's net income. If the court finds that either parent is, without just cause, voluntarily underemployed or voluntarily unemployed, it shall impute income to that parent according to the following [priorities]:

a. [impute income based on potential employment and earning capacity using the parent's work history, occupational qualifications, educational background, and prevailing job opportunities in the region. The court may impute income based on the parent's former income at that person's usual or former occupation or the average earnings for that occupation as reported by the New Jersey Department of Labor (NJDOL);] In determining whether income should be imputed to a parent and the amount of such income, the court must take into consideration the specific circumstances of the parent for whom income imputation is being considered, to the extent known, including but not limited to the following factors: assets; residence; employment and earnings history (as demonstrated by pay stubs, tax returns, Social Security record, disability statements or other records reflecting all sources of earned and unearned income); job skills; educational attainment; literacy; age; health; criminal record and other employment barriers; record of seeking work; the local job market; the availability of employers willing to hire; prevailing earnings level in the local community; what the employment status and earning capacity would have been if the family formed or remained intact; the reason and intent of the underemployment or unemployment; the ages of children in the household and child-care alternatives; and other relevant background factors in the case. Incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.

The determination of imputed income shall not be based on the gender or custodial position of the parent, except to the extent that it impacts the ability to earn factors listed above. Income of other household members, current spouses, and children shall not be used to impute income to either parent except when determining the other-dependent credit. When imputing income to a parent who is caring for young children, the parent's income share of child-care costs necessary to allow that person to work outside the home shall be deducted from the imputed income. [; or]

b. [if potential earnings cannot be determined,] If there is unavailable or insufficient evidence to determine income based on the factors in subparagraph 12(a), the court may impute income based on the parent's former income at that person's usual or former occupation or the average earnings for that occupation as reported by the New Jersey Department of Labor (NJDOL), based on the parent's most recent wage or benefit record (a minimum of two calendar

quarters) on file with the NJDOL (note: NJDOL records include wage and benefit income only and, thus, may differ from the parent's actual income). If NJDOL records or data are unavailable or insufficient to determine income, income may be imputed based on the prevailing State or federal minimum wage, whichever is higher. [; or]

c. [if a NJDOL wage or benefit record is not available, impute income based on the full-time employment (40 hours) at the prevailing New Jersey minimum wage.]

[In determining whether income should be imputed to a parent and the amount of such income, the court should consider: (1) what the employment status and earning capacity of that parent would have been if the family had remained intact or would have formed, (2) the reason and intent for the voluntary underemployment or unemployment, (3) the availability of other assets that may be used to pay support, and (4) the ages of any children in the parent's household and child-care alternatives. The determination of imputed income shall not be based on the gender or custodial position of the parent. Income of other household members, current spouses, and children shall not be used to impute income to either parent except when determining the other-dependent credit. When imputing income to a parent who is caring for young children, the parent's income share of child-care costs necessary to allow that person to work outside the home shall be deducted from the imputed income. For further information on imputing income, see *Strahan v. Strahan*, 402 N.J. Super. 298 (App. Div. 2008), *Caplan v. Caplan*, 182 N.J. 250 (2005), *Gertcher v. Gertcher*, 262 N.J. Super. 176 (Ch. Div. 1992), *Bencivenga v. Bencivenga*, 254 N.J. Super. 328 (App. Div. 1992), *Thomas v. Thomas*, 248 N.J. Super. 33 (Ch. Div. 1991), *Arribi v. Arribi*, 186 N.J. Super. 116 (Ch. Div. 1982), *Lynn v. Lynn*, 165 N.J. Super. 328 (App. Div. 1979), *Mowery v. Mowery*, 38 N.J. Super. 92 (App. Div. 1955).]

When evidence of a parent's current or prior earnings and income information is unavailable or insufficient, the court may seek any available information about the specific circumstances of that parent, which may be adduced from the other parent, to determine whether to impute income to a parent, and if so, the amount, in consideration of the factors in subparagraph 12(a) above.

d. The court shall develop a factual basis, memorializing its decision, in writing or on the record, whether to impute income to a parent and, if so, the amount, using appropriate State statutes, procedures, case law, and legal processes in establishing and modifying support obligations.

13. Adjustments for PAR Time (formerly Visitation Time) . . . no change.
14. Sharing-Parenting Arrangements. . . . no change.
15. Split-Parenting Arrangements. . . . no change.
16. Child in the Custody of a Third Party. . . . no change.
17. Adjustments of the Age of the Children. . . . no change.

18. College or Other Post-Secondary Education Expenses. . . . no change.
19. Determining Child Support and Alimony or Spousal Support Simultaneously. . . . no change.
20. Extreme Parental Income Situations. . . .no change.
21. Other Factors that May Require an Adjustment to a Guidelines-Based Award. . . . no change.
22. Stipulated Agreements. . . . no change.
23. Modification of Support Awards. . . . no change.
24. Effect of Emancipation of a Child. . . . no change.
25. Support for a Child who Reached Majority. . . . no change.
26. Health Insurance for Children.

Unless the parents agree to an alternative health care arrangement, all child support orders shall provide for the coverage of the child's health care needs (i.e., medical and dental) and health insurance (when such insurance is available to either parent at a reasonable cost). The parent's marginal cost of adding a child to a health insurance policy shall be added to the basic child support award and deducted from the paying parent's income share of the total child support award (see Appendix IX-B). The following standards shall apply when determining if a health insurance provision is appropriate and which parent should provide health insurance for the child.

a. The cost of health insurance is considered reasonable if it is employment-related or available through a group plan, regardless of the service delivery mechanism, and does not reduce the net income of the obligor below 150% of the poverty guideline for one person (after paying the child support award) or the custodial parent's net household income below 150% of the poverty guideline for the number of persons in the primary household. If sufficient income is not available to pay child support and a health insurance premium without eroding these income reserves, priority shall be given to child support.

b. Health insurance includes fees for service, health maintenance organizations (HMO), preferred provider organizations (PPO) and other types of private or public coverage under which medical services could be provided to the dependent child.

c. When reasonably priced health insurance is available to only one parent, that parent shall be ordered to provide coverage for the child.

d. If health insurance is available to both parents, the parent who can obtain the most comprehensive coverage at the least cost shall be ordered to provide health insurance for the child. Alternatively, both parents may be ordered to provide health insurance if it is available to them at a reasonable cost and the combination of plans provides the most comprehensive coverage.

e. When neither parent has access to health insurance, the parents shall be ordered to share in health expenses in accordance with their relative incomes (see paragraph 9 for the treatment of predictable and recurring unreimbursed health care expenses in excess of \$250 per child per year).

f. If the custodial parent and the child receive Medicaid, the non-custodial parent shall be ordered to enroll the child in a health insurance plan if it is available at a reasonable cost.

g. If health care insurance is not available to either parent at the time the support order is established, the court shall require that health insurance coverage be obtained for the child if it becomes available to either parent in the future. The Probation Division shall monitor the availability of health insurance for the child.

27. Unpredictable, Non-Recurring Unreimbursed Health-Care In Excess of \$250 Per Child

Per Year. . . . no change.

28. Distribution of Worksheets and Financial Affidavits. . . . no change.

29. Background Reports and Publications. . . . no change,

Note: Adopted May 13, 1997 to be effective September 1, 1997; amended July 10, 1998 to be effective September 1, 1998; amended May 25, 1999 to be effective July 1, 1999; amended April 4, 2000 to be effective immediately; paragraph 10(b) redesignated as paragraph 10(c), new paragraph 10(b) adopted, paragraphs 19 and 21 amended July 5, 2000 to be effective September 5, 2000; paragraphs 7(h), 14(e), 20(a) amended April 2, 2001 to be effective immediately; paragraphs 7(h), 14(e), 20(a) amended March 12, 2002 to be effective immediately; paragraphs 4, 7(f), 9(d), 13(b)-(d), 14(c), 14(f), 14(j), 15 amended July 12, 2002 to be effective September 3, 2002; paragraphs 7(h), 14(e), 20(a) amended March 17, 2003 to be effective immediately; amended March 15, 2004 to be effective immediately; March 14, 2005 to be effective immediately; February 14, 2006 to be effective immediately; July 27, 2006 to be effective September 1, 2006; September 11, 2006 to be effective immediately; February 13, 2007 to be effective immediately; June 15, 2007 to be effective September 1, 2007; March 11, 2008 to be effective immediately; March 24, 2009 to be effective immediately; July 16, 2009 to be effective September 1, 2009; June 14, 2011 to be effective immediately; April 24, 2012 to be effective immediately; June 4, 2013 to be effective immediately; July 9, 2013 to be effective September 1, 2013; amended April 8, 2014 to be effective immediately; amended April 21, 2015 to be effective May 1, 2015; Amended July 27, 2015 to be effective September 1, 2015; amended April 12, 2016 to be effective May 1, 2016; amended July 28, 2017 to be effective September 1,

2017; amended May 29, 2018 to be effective June 1, 2018; amended May 9, 2019 to be effective June 1, 2019; amended July 29, 2019 to be effective September 1, 2019; amended to be effective June 1, 2020; paragraphs 7(h), 20(a), and 26(a) amended July 30, 2021 to be effective September 1, 2021; paragraph 12 amended, new subparagraph 12(d) adopted, and paragraph 26 amended
to be effective.

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Respectfully submitted,



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