



Oregon Department of Justice

Oregon Child Support Program

Supporting Parents to Support Children

Issue title: Guidelines Review Paper on Parenting Time Credit

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ISSUE IN BRIEF: Federal law requires states to regularly review their guidelines for setting child support orders ([45 CFR 302.56](#)). As part of the Oregon Child Support Program Guidelines Review Project, we are reviewing the parenting time credit rule to determine whether any changes are needed. The Center for Policy Research (CPR) wrote an economic study¹ that addresses the different guidelines factors (income, self-support reserve, obligation scale, parenting time, medical expenses, etc.) and how socioeconomic trends impact them. This paper addresses issues raised by the CPR economic study regarding the current parenting time credit rule ([OAR 137-050-0730](#)).

BACKGROUND: Oregon's parenting time formula is designed to produce gradual changes to the support amount as the parents share more time. It starts with zero credit for no parenting time, produces small percentage credits as the lesser-time parent gains more parenting time, increases rapidly to 50% credit near 50% parenting time, and then gradually increases again to 100% credit at 100% parenting time. According to the 2023 Center for Policy Research (CPR) economic study, Oregon's formula is considered to be one of the best. They recommended minor adjustments:

1. **Clarify what is meant by averaging two consecutive years of overnights when the commentary states that speculative data cannot be used.**
2. **Require explanation of how specific expenses are to be shared when a timesharing adjustment is applied.**
3. **Clearly state that the order can be modified if overnights are not being exercised as considered in the child support order.**
4. **Monitor the appropriateness of the formula in equal or near-equal custody cases when there is disparate income.**
5. **Do not apply the minimum order on top of the parenting-time credit formula.**
6. **In addition to the issues identified by CPR, we also think the rule provision that addresses using blocks of time, rather than overnights, to determine parenting time should be clarified further.**

ANALYSIS:

1. **Clarify what is meant by averaging two consecutive years of overnights when the commentary states that speculative data cannot be used.**

Subsection (2)(a) of the rule says to determine the average number of overnights using two consecutive years. The corresponding commentary explains that parenting time must be calculated on actual planned overnights that total 365 days, and therefore speculative or unknown data cannot be used. The commentary provides an example of an unquantifiable period as *the child will spend time during the summer months with the father*. The number of overnights cannot be counted as it's

¹ *Review of the Oregon Child Support Guideline: Economic Data on Cost of Raising Children, Scale Update, and Other Issues* (Center for Policy Research, July 2023).

unknown. Whereas quantifiable periods, *the child will spend Memorial Day weekend with the mother*, are countable.

The CPR economic study also noted that using the average of two consecutive years of overnights may not be practical to obtain and suggested the guidelines include a statement that says *the expectation is that the parenting plan will be followed and average the number of overnights over two years, recognizing that the timesharing arrangement may differ from one year to the next due to holidays*.

OPTIONS CONSIDERED:

The existing commentary in the rule provides a fairly comprehensive explanation; however, the fact this issue was specifically pointed out indicates it's either insufficient or it's unclear. Consider expanding on the explanation or incorporating it into the rule text. The recommended language from the CPR economic study would help to further explain why overnights are averaged over two years.

Pro: Addresses an issue that has been identified as confusing.

Con: None identified.

2. Require explanation of how specific expenses are to be shared when a timesharing adjustment is applied.

If known or ordered in a parenting time agreement, expenses related to child-rearing or uninsured medical expenses can be included in the calculation as a rebuttal ([OAR 137-050-0760](#)). This results in prorating costs between the parents based on their percentage share of their combined income. Unknown expenses related to child-rearing or uninsured medical expenses cannot be included in a calculation but could potentially be included in future modifications using a rebuttal. That said, sharing of expenses in relation to shared parenting time is not addressed in the parenting time credit rule. One has to know to look in the rebuttal rule to find any information on this, which is not very user friendly or obvious.

OPTIONS CONSIDERED:

Consider including either a rule provision or commentary in the Parenting Time rule to specifically acknowledge that unless part of an order for parenting time or unless specifically known, these types of expenses are not included.

Consider including a cross reference to the specific sections in the Rebuttal rule about extracurricular activities, extraordinary medical expenses, and extraordinary needs of the child, which are comprehensively addressed in the commentary.

Pro: Addresses an issue that has been identified as lacking.

Con: None identified.

3. Clearly state that the order can be modified if overnights are not being exercised as considered in the child support order.

In cases where the family is currently receiving Temporary Assistance for Needy Families (TANF) assistance or upon request, the program will initiate a periodic review if 35 months have passed since the date the most recent support order took effect. If the order is less than three years old, a change to a written parenting time agreement or order qualifies as a change in circumstances. Upon request, the order will be reviewed and modified if it is found the existing order is not in substantial compliance with the guidelines.²

² [OAR 137-055-3430](#) (1) For purposes of this rule: "Substantial compliance" means that the difference between the

In the survey sent out to participants, there were a few responses indicating parents were uncomfortable asking for a modification because it could make the other parent angry or that there could be repercussions. It was suggested that mandatory reviews would relieve this concern. It is permissible under ORS 25.287 to initiate a modification once an order is at least three years old, regardless of TANF status; however, this is a program policy³ choice rather than a guidelines issues.

OPTIONS CONSIDERED:

Modifications are addressed in program rules, forms, and the website. Although a change in parenting time is a change in circumstances that qualifies for the order to be reviewed, making parents aware that a modification is an option is not a parenting time credit issue or a guideline rules issue.

While this information is available in different formats, the survey responses suggest it isn't sufficient. On a program level, and not in the context of the guidelines review, we may want to evaluate how we interact with our participants to determine if there are other ways to get information about the program and our services out to more people.

In addition, consider further clarifying the rule language and commentary regarding parenting time plans that aren't followed. Emphasize that a parenting plan is not "current" when it is not followed, and in those circumstances, no parenting time credit is given. The parties can obtain a new parenting plan, or an Administrative Law Judge may make a finding of actual parenting time for purposes of calculating support.

4. Monitor the appropriateness of the formula in equal or near-equal custody cases when there is disparate income.

For the 2010 guidelines, it was understood that when the parent had a greater percentage of combined income than of parenting time, that parent would be the obligated parent. However, it was not anticipated that the obligation would flip any time. All other things held equal, a parent with slightly more parenting time could be the paying parent when that parent had a significantly greater income. The 2012 guideline review⁴ sought to correct this issue. To address this and other issues with the parenting credit formula, a graduated curve formula was adopted. This allowed a smaller credit for even minimal parenting time, and the credit increased rapidly as parenting time approached 50/50%. With this formula, the obligation can still flip when parenting time is equal or near equal and the parent with the most overnights also has a significantly higher income, but the majority agreed that this was an appropriate outcome as it helps to equalize the households.

Since the last review, we've found that the obligation can also flip when both parents have very low incomes, but due to receipt of disability payments or very low actual income, a parent at or slightly above minimum wage may be found to have the obligation to pay even though they have the most overnights. Though the math is correct, outcomes such as these are not scenarios we anticipated. When the calculation flips, it can be difficult to explain why the parent with the most parenting time must pay support. It's also somewhat cumbersome for staff as a new case must be created, and in some cases, an application for services must be obtained from the new receiving party. A child attending school adds another layer of complexity that can make these cases challenging to work through.

existing support order and the amount calculated using current guidelines is not greater than \$50 or 15% of the current guideline amount, whichever is less.

³ [OAR 137-055-3420](#) (2) provides that the administrator will initiate a periodic review if 35 months have passed since the date the most recent support order took effect and the family is currently receiving TANF.

⁴ [2012 GAC Report](#)

All that said, the CPR report found that there is insufficient information to definitively conclude that the existing credit is unfair or inappropriate. They recommended Oregon continue to monitor these cases and consider information as it becomes available.

OPTIONS CONSIDERED:

(a) Maintain status quo

Pro: Presumes application of the guideline rule is just and appropriate

Pro: No clear evidence suggesting the result is unfair or inappropriate

Pro: Seeks to equalize households

Con: Difficult to explain

Con: Can be difficult to prepare documents in Origin (Oregon Child Support Program case management system)

Con: Child Attending School complicates these cases

(b) Enter a zero order instead of allowing it to flip

Pro: Easier for the caseworker to process and explain

Con: Parent who would receive support should be given the choice

Con: Calculation indicates that the obligation should flip

5. Do not apply the minimum order on top of the parenting-time credit formula.

The CPR report pointed out that most states do not apply a minimum order to shared parenting time situations. It further notes that the application of the minimum order in scenarios with significant parenting time can create some anomalous outcomes. For example, in two recent cases with similar findings, 12 hours (one overnight) made the difference of \$39 per month. The minimum order did not apply to the scenario with 182.5/182.5 overnights, resulting in a \$61 per month order, but it did apply to the scenario with 182/183 overnights, resulting in support being bumped up to \$100 per month.

The previous parenting time formula had a threshold set at 25% (which is approximately 91 overnights). Once that threshold was reached, a credit was applied. The difference of three overnights (88 overnights versus 91) would have a significant impact on the child support amount. But it also would apply the same credit for 130 overnights as 91. The current graduated curve formula is more nuanced and applies credit as parenting time increases—gradually at first, then more rapidly as the number approaches 50%. This eliminates the large jumps in credit from occurring. Applying the minimum order to cases with parenting time appears to be counterintuitive and undermines the integrity of the formula. Excluding only cases with exactly 50/50 parenting appears to be an arbitrary choice.

Brief history of the minimum order:

- The \$50 Minimum Order rule has been in effect since at least 1989: OAR 137-050-0470.
- Effective May 12, 2002, this rule was repealed due to the determination that there should be no set minimum order amount. The rationale given was that by utilizing the calculations as found in OAR 137-050-0465 and 137-050-0475, child support practitioners would be able to arrive at a fair and reasonable child support obligation.
- Effective January 4, 2010, OAR 137-050-0755 was adopted, stating that regardless of the computation, a parent is presumed to be able to pay \$100 per month, except in limited circumstances, such as when parenting time is equal.

More discussion on the minimum order is included in the Guideline Review Issue Research Paper on Income.

OPTIONS CONSIDERED:

(a) Don't apply the minimum order presumption to situations with shared parenting time

Pro: Begins with the assumption that the amount of credit, as indicated by formula, and the guideline amount, as determined by application of the guideline rules, are just and appropriate

Pro: Policy is consistent with other states

b) Expand the percentage to include situations with a smaller share of the parenting time (e.g., situations with at least 40/60% up to 50/50% shared parenting time are excepted from the minimum order)

Pro: Includes situations where the time isn't exactly equal but there is still a significant amount of parenting time

Con: Creates a threshold. Puts the focus on making sure the correct number is used (e.g., minimum order applies if noncustodial parent has 144 overnights but does not apply to 146 overnights)

c) Maintain status quo

Pro: Requires no changes to rule or programming

Con: Inconsistent practice from other states

Con: Overrides the guideline amount as determined by application of the parenting time formula and guideline rules

Con: Undermines the use of actual income

6. In addition to the issues identified by CPR, we also think the rule provision that addresses using blocks of time, rather than overnights, to determine parenting time should be clarified further.

The current rule language provides that parenting time may be determined using a method other than overnights if the parents have an alternative parenting time schedule in which a parent has significant time periods where the minor child is in the parent's physical custody but does not stay overnight. For example, in lieu of overnights, 12 continuous hours may be counted as one day. Additionally, blocks of time of four hours up to 12-hours may be counted as half-days, but not in conjunction with overnights. Regardless of the method used, blocks of time may not be used to equal more than one full day per 24-hour period.

This language is intended to offer flexibility but also causes confusion. Specifically, if a 12-hour block is counted as one day, then two 12-hour blocks in a day could potentially entitle two people to credit for the same 24-hour period. Then it goes on to say that regardless of how it's calculated, blocks of time may not be used to equal more than one full day per 24-hour period. This could be interpreted as being contradictory. We should consider expanding this section and clarifying the commentary to make it clearer.

GUIDELINES RULES IMPACTED:

OAR 137-050-0730 Parenting Time Credit