



Child Support Enforcement

Child Support Guidelines Fact Sheet – Proposed Changes August 1, 2010

The amount of child support a person is required to pay in North Dakota is set by a court according to child support guidelines. The guidelines are adopted by the Department of Human Services through administrative rule. State and federal law require the Department of Human Services to review the guidelines every four years to ensure that the application of the guidelines results in appropriate child support amounts being ordered by the court.

As part of the review process, the Department recently convened a drafting advisory committee. The members of the committee included two legislators, a judicial referee, an attorney in private practice, a parent who receives child support, and a parent who pays child support.

Based on the recommendations of the advisory committee, the Department is proposing several changes to the child support guidelines. The proposed changes are summarized below, and can be found on the Department's website at <http://www.nd.gov/dhs/services/childsupport/progserv/guidelines/guidelines.html>. The guidelines have already been reviewed at several four-year intervals since they were adopted. As a result, the proposed changes include several clarifications as well as some substantive changes. Some proposed changes are prompted by judicial interpretations of the current guidelines. Except as indicated below, several significant areas of the guidelines have been left unchanged.

A public hearing will be held on the proposed changes on Thursday, October 28, 2010. Written comments will be accepted until 5:00 p.m. on Monday, November 8, 2010. If you would like to request notice of the time and location of the public hearing, or if you would like to provide written comments on the proposed rules, please send the request or comments to: Rules Administrator, North Dakota Department of Human Services, State Capitol – Judicial Wing, 600 E. Boulevard Ave., Bismarck, ND 58505-0250.

Summary of Proposed Changes

Terminology Changes

The terminology throughout is updated to conform to changes in state law in accordance with 2009 SB 2042. For example, "visitation" is changed to "parenting time" and "custodial parent" is changed to "parent with primary residential responsibility."

Substantive Changes

- In determining the deduction for the hypothetical federal income tax obligation, the additional exemptions for children for whom there is no court order allocating the exemption is changed from one exemption to an amount equal to one-half of the exemption.
- The deduction for lodging expenses incurred as a condition of employment is increased from \$50 to \$63 per night.
- In situations where income is imputed based on earning capacity:
 - The definition of “earnings” is changed to include amounts received in lieu of actual earnings, such as social security benefits, workers’ compensation benefits, and unemployment insurance benefits.
 - A provision is added to specify that income may not be imputed to an obligor who is receiving SSI payments or certain other disability-related payments.
 - A methodology is created for imputing income to an obligor who is incarcerated. Under this methodology, the amount of income that may be imputed to the obligor decreases as the length of the sentence increases. Once the obligor has been incarcerated for five years, income may not be imputed in any amount.
- The definition for “equal physical custody” is changed to specify that it means an equal amount of time, as determined by the court. This change is made in response to the Supreme Court decision in Thornton v. Klose, 2010 ND 141. The members of the drafting advisory committee summarized their intent in making this change in the following Statement of Intent:

Statement of Intent: In response to the recent decision in Thornton v. Klose, the intent of the committee recommendation is to preserve existing case law that does not allow parties to create an illusion of equal primary residential responsibility, to preserve existing case law that determines whether equal primary residential responsibility exists by the specific language of the judgment, and to permit a proposed equal primary residential responsibility schedule under this section without requiring the court or parties to calculate the specific number of hours for each parent.

- A new rebuttal reason is created for situations in which an obligor’s ability to pay is increased because his or her net income, on paper, is decreased as a result of depreciation expenses. Creating this new rebuttal reason is required pursuant to 2009 HB 1329.
- The rebuttal reason for visitation travel expenses is changed to limit its applicability to situations in which the obligor is responsible for all visitation travel expenses.

- The schedule of child support amounts is changed. These changes are intended to provide some relief to obligors at the lower income levels. For example, the peak for child support as a percentage of net income is reduced by two percentage points. For one child, this means that the peak point for child support as a percentage of net income is 23% instead of 25%.

Clarifications

- The definition of “obligee” is changed to clarify that this is a person owed or alleged to be owed a duty of support on behalf of a child (i.e., in a representational capacity).
- The general instructions are changed to clarify that:
 - In an equal physical custody situation, the court is not precluded from apportioning specific child-related expenses, such as school fees, between the parents.
 - In an extended visitation situation, the order must specify the number of visitation nights.
 - In a children’s benefits situation, the court may order the obligee to reimburse the obligor for an overpayment that results when the children’s benefits are credited toward the support obligation. This change is made in response to the Supreme Court decision in Davis v. Davis, 2010 ND 67, 780 N.W.2d 787.
- In a split custody or equal physical custody situation, a support obligation must be determined and must also be specifically ordered for each parent.
- The provision for imputing income to an obligor who makes a voluntary change in employment for the purpose of reducing the support obligation is changed to clarify that the voluntary change can include becoming unemployed. This change is made in response to several Supreme Court cases, including Verhey v. McKenzie, 2009 ND 35, 763 N.W.2d 763.
- The foster or guardianship care section is changed to clarify that an intact family (in which the income of the parents is combined) means neither parent has a duty to support a child who is not also a child of the other parent.

Conforming Changes

In self-employment situations, regarding determining whether self-employment losses can be used to reduce income that is not from self-employment, references to prevailing earnings in the obligor’s community are changed to “statewide average earnings” to conform to similar concepts in imputation situations.

Areas Where No Changes Are Proposed

- Self-employment (except for the conforming change noted above).
- Multiple-family calculations (except for the terminology changes noted above).
- Extended visitation (except for the clarification and terminology changes noted above).

Technical Change

- The reference to “food stamps” is changed to “supplemental nutrition assistance program.”

For more information: Contact James C. Fleming, Acting Director/Chief Legal Counsel or Paulette Oberst, Policy Administrator, North Dakota Department of Human Services – Child Support Enforcement Division, at 701-328-3582.