

SUMMARY OF COMMENTS
RECEIVED IN REGARD TO PROPOSED AMENDMENTS TO
N.D. ADMIN. CODE CH. 75-02-04.1
Child Support Guidelines

Public hearings were conducted on September 28, 1998, in Fargo, and on September 30, 1998, in Bismarck, concerning proposed amendments to N.D. Admin. Code ch. 75-02-04.1, Child Support Guidelines

Thirty-four commentors provided written comments during the comment period. Thirty-two oral comments were received at the public hearings. Thirteen commentors provided both written and oral comments. In all, comments were received from 53 commentors.

Individuals providing oral comment were asked to state their name and print their name and home town for the record. Not all oral commentors provided those written notations. Identification of those commentors is based upon the recording of oral testimony. We have attempted to provide a likely or plausible spelling of those names.

Some commentors identified themselves as representing a particular entity or group. The list of commentors identifies the entity or organization represented if the commentor identified that representation. The commentors, their home towns (if provided), and the entity or organization represented (if provided) were:

1. Lee Armstrong, Dickinson, Southwest Area CSEU
2. Sandi Aurand, Fargo, WEPT
3. Tammy Jo Baker
4. Pamela J. Beauclair, Fargo
5. Susan Beehler, Mandan, R-Kids
6. Daniel E. Bertsch, Fargo
7. Daniel Biesheuvel, Bismarck, R-Kids
8. Wanda Biesheuvel, Bismarck
9. Dave Boatz, Fargo
10. Greg Boyer, Mandan
11. Wendy Boyer, Mandan
12. Bruce D. Carlisle, Fargo
13. Courtney Carlisle, Fargo
14. Lynn Carlisle, Fargo
15. Paul Dorn
16. Jan DeRemer, Grand Forks
17. Carla Engen
18. Joan England, Fargo
19. Bob Freed, Bismarck
20. Darrell Getz, Rhame
21. Loralyn K. Hegland, Bismarck, Bismarck RCSEU

22. Tina M. Heinrich, Minot, Minot RCSEU
23. Kenneth Hendrickson, Bismarck
24. Guy W. Johnson, Moorhead
25. Sheila K. Keller, Bismarck, Bismarck RCSEU
26. Bill Kerzmann, Bismarck
27. Jeff Knoll, Fargo
28. Jim Kopp, Mandan, R-Kids
29. Ranee Kringen, Williston, Williston RCSEU
30. Dan Lawrence, Bismarck
31. Tim Mahoney, Fargo
32. Thomas K. Metelmann, District Judge, Langdon
33. Karen Moore
34. Christopher J. Nelson, Fargo
35. Philip Papineau, Fargo, WEPT
36. Sharon Papineau, Fargo
37. Brian Peterson, Fargo
38. Terry Peterson, Bismarck
39. Rhonda R. Pierce, Bismarck, Bismarck RCSEU
40. Ken Retzlaff, Ellendale
41. Dorene Rurup, Moorhead
42. Larry Rurup, Moorhead
43. Susan R. Schmidt, Bismarck, Bismarck RCSEU
44. Steve Simonson, Minot, Minot RCSEU
45. Tammie Smith, Erie
46. Barb Swank
47. Jim Swank
48. Chad Tosterud, Fargo, WEPT
49. Leslie Volachenko, Bismarck
50. Dominic F. Volesky, Bismarck
51. Paul J. Wohnoutka, CPA, Bismarck
52. Crystal Wosick, Fargo
53. Kathy Ziegelmann, Fargo, Southeast RCSEU

Thirty-three commentators identified themselves as obligors or spouses of obligors. Only four commentators identified themselves as custodial parents. Thus, the comments overwhelmingly reflect the views of persons who pay child support and the spouses of those persons, rather than persons who receive child support.

The commentators who are obligors or spouses of obligors typically expressed dissatisfaction with the outcome of child support guidelines, but also typically expressed dissatisfaction with courts, visitation issues, issues concerning separation from their children, issues concerning the use of child support funds by the custodial parent, and other matters outside the scope of these rules. These comments are acknowledged. However, comments that address issues that do not relate directly to the calculation of child support obligations cannot be resolved or even constructively addressed in this summary.

To the extent possible, comments are summarized with reference to the specific part of the guidelines to which the comment is directed. General comments are summarized under headings suggested by the subject of the comment.

STATUTORY CHANGES

While these comments were under consideration, several bills were introduced into the 1999 Legislative Assembly that had potential to significantly alter the effect and functioning of N.D. Admin. Code ch. 75-02-04.1. We determined to delay finalization of amendments to chapter 75-02-04.1 until final legislative action on relevant bills. When some of the relevant bills were enacted into law, we determined to delay finalization of amendments so the relevant legislation and the amendments to chapter 75-02-04.1 would go into effect on the same date (August 1, 1999).

The legislation that affects chapter 75-02-04.1 includes 1999 House Bill 1028 and 1999 Senate Bill 2039, both of which actually amend N.D.C.C. § 14-09-09.7(1) (which authorizes the Department of Human Services to establish child support guidelines) and 1999 Senate Bill 2171, which substantially alters the foster care law in North Dakota. In order to avoid conflicts, the provisions of House Bill 1028 and Senate Bill 2039 (including a relevant Senate statement of intent) and relevant portions of Senate Bill 2171 are incorporated into the final rule. The effect of each of those bills on the final rule is:

- House Bill 1028 -

1999 House Bill 1028 amends subdivision a of subsection 1 of section 14-09-09.7 to read as follows:

- a. Include consideration of gross income. For purposes of the guidelines, gross income does not include an employee benefit over which the employee does not have significant influence or control over the nature or amount unless:
 - (1) That benefit may be liquidated; and
 - (2) Liquidation of that benefit does not result in the employee incurring an income tax penalty.

In order to incorporate these provisions, we amended the definition of "gross income," at 75-02-04.1-01(5), to specify that employee benefits over which the employee does not have

significant influence or control are not included in gross income, unless the exception provided in House Bill 1028 applies. In addition, we substantially changed section 75-02-04.1-05, Determination of Net Income from Self-Employment, to assure that employee benefits are reflected in gross income unless those benefits meet the test created by House Bill 1028. The process for determining net income from self-employment now begins with the "total income" for Internal Revenue Service purposes (e.g., line 22 on 1998 IRS Form 1040) of the obligor's business. "Total income" is then reduced by any part of total income that is not the obligor's income from self-employment (e.g., amounts paid to other employees). Then, to this reduced total income, specified business expenses are added to the extent those expenses constitute employee benefits, pensions, and profit-sharing plans attributable to members of the obligor's household, and travel, meals, and entertainment. Business expenses for payments made to members of the obligor's household are also added, to the extent the payment exceeds the fair market value of services furnished by that household member. These provisions permit recognition of employee benefits, for self-employed persons, consistent with treatment for employees required by House Bill 1028.

Absent these changes to section 75-02-04.1-05, the legislative requirements of House Bill 1028 would be meaningless in cases involving self-employed obligors. That is because both the existing and proposed provisions of section 75-02-04.1-05 used "adjusted gross income for federal income tax purposes" as a base for establishing "net income from self-employment." The "adjusted gross income" (line 31 of 1998 IRS Form 1040) is the obligor's total income minus, among other things, IRA deductions, self-employed health insurance deductions, and Keogh and SEP plan deductions. Relying on the "adjusted gross income" line would, contrary to the requirements of House Bill 1028, allow a self-employed obligor to deduct employee benefits that are subject to the obligor's control.

- Senate Bill 2039 -

1999 Senate Bill 2039 requires these guidelines to "[i]nclude consideration of extended periods of time a minor child spends with the child's obligor parent." The Senate Judiciary Committee included a "statement of intent" as follows:

It is the intent of this amendment to direct the Department of Human Services to include in the child support guidelines consideration of extended periods of time a minor child spends with the child's obligor parent. The guidelines should consider extended periods of time to mean those situations where an obligor

parent has custody of the child for 60 out of 90 consecutive days, or in instances where the parties will have joint physical custody with the child residing with each parent close to equal time. The phrase 'close to equal time' shall mean where each parent has physical custody of the child at least 45% of the time.

The House Judiciary Committee was informed of the Senate Committee action, and made no objection.

The department's proposed amendments included a proposed new section 75-02-04.1-08.1, Adjustment for Extended Visitation. The proposed new section described a process generally consistent with both Senate Bill 2039 and the statement of intent. The proposed new section also used two circumstances to trigger an extended visitation calculation. The proposed triggers were visitation scheduled by court order to exceed 60 of 90 consecutive nights or an annual total of 120 nights. The statement of intent is consistent with the first trigger. In order to comply with the statement of intent, it is necessary to extend the second trigger to visitation scheduled by court order to exceed an annual total of 164 nights.

In addition, it is necessary to establish the order by which adjustments for multiple-family cases and adjustments for extended visitation are made. In order to avoid the possibility that adjustments for extended visitation adversely affect support for children of the obligor who do not enjoy extended visitation, the determination of the support amount in multiple-family cases must be made first. Thus, even though no change was proposed to section 75-02-04.1-06.1, Determination of Support Amount in Multiple-Family cases, the final rule includes changes to that section to establish that the extended visitation calculation is made after the multiple-family calculation.

- Senate Bill 2171 -

The provisions of chapter 75-02-04.1 have, since 1991, reflected the consideration of parent's responsibility to support children in foster care. 1999 Senate Bill 2171 limits the amount of time a child may spend in foster care, and requires court consideration of alternatives for children who cannot return to their parent's home. A favored alternative is an appointment of a fit and willing relative or other appropriate individual as the child's legal guardian. Such an appointment may be made either by the juvenile court (N.D.C.C. § 27-20-03(3), as amended by section 4 of Senate Bill 2171) or the district court (N.D.C.C. ch. 30.1-27). In neither event is the child's parent relieved of any duty of support. In order to accommodate the guardianship provisions of Senate Bill 2171, while continuing to assure that the child support guidelines apply in all cases (as

required by 42 U.S.C. § 667(b) (2)), we have made parallel references to guardianship care and foster care in a proposed new provisions for deviations under subsection 2 of section 75-02-04.1-09, and in section 75-02-04.1-11, now renamed "parental responsibility for children in foster care or guardianship care."

GENERAL COMMENTS

- Comments About the Department or Rulemaking Process -

One commentor asserted that most emotionally disturbed children come from single-parent homes and ask why the department is so insistent on promoting the involvement of only one parent and destroying lives. No change based upon this comment is recommended. The commentor appears to posit a cause and effect relationship between single parenthood and children becoming emotionally disturbed. If there is a relationship, the cause is undoubtedly more complicated than the marital status of the child's parents. Moreover, the department, and the guidelines, do not promote the involvement of only one parent or the destruction of lives. There is evidence that noncustodial parents who pay child support are more active and involved in the lives of their children. The effective enforcement of a child support obligation not only serves the needs of the child, it may have the long-term benefit of enhancing the relationship between the child and the noncustodial parent.

One commentor complained that a regional child support enforcement unit was slow in responding to his request to establish paternity to his children, and also complained that the child support office did not assist with visitation. The commentor also expressed a concern that a woman could legally give birth to a child without notifying the father. The commentor asserted that the workers, processes, and rules regarding child support and visitation obviously need to be completely re-engineered. No change based upon this comment is recommended. The commentor has suggested no particular change, and the commentor's complaints do not reflect the application of child support guidelines.

One commentor asserted that the Department of Human Services isn't concerned about children, and argued that the department's real concern is "the \$3.52 that they receive from the federal government for every one dollar in child support that they collect." The commentor is mistaken. The statistic cited relates to the cost effectiveness of the program. That is, during the period reflected by the statistic, the department

succeeded in collecting \$3.52 in child support for each dollar spent in that effort. No change based upon this comment is recommended.

One commentor railed against "the system" from stealing from children a respectful relationship with both parents, from stealing children's lives by having them commute long distance when the obligee decides to move away, and for stealing from children financially with excessive legal and court costs. Whatever part of the system makes this commentor unhappy, these concerns do not relate to the child support guidelines. No change based upon these comments is recommended.

One commentor noted that worksheets are used in calculating child support. The commentor suggested that the worksheets be included in the guidelines. No change based upon this comment is recommended. The worksheets are intended to assist individuals who use them in making calculations. Worksheets have been developed by individuals engaged in the private practice of law as well as the department. These documents do not conform to the style and format guidelines for administrative rules and could not be usefully made to conform. In addition, worksheets may need changing in response to federal and state tax laws and judicial decisions that interpret the guidelines and other laws.

One commentor said that he had tried to become a member of the drafting advisory committee that recommended proposed changes in the guidelines. The commentor speculated that because he is not "an attorney or something," he couldn't be on the committee. No change based upon this comment is recommended. Nonlegislative members of the committee were selected both to provide a balanced perspective and to secure expertise relevant to the guidelines. Most, but not all, were legally trained.

One commentor criticized the entire proposal, suggesting that it may be "based on some hypothetical example created by some think tank or by some unique case law developed by some other state." No change based upon this comment is recommended. The guidelines have been, from the beginning, based largely on long existing North Dakota law and practices. They are neither created by some think tank or reflective of some unique case law developed by some other state. Ironically, this commentor also advocates adoption of the income shares model, which was created by Virginia academicians with federal grant funding.

One commentor asserts an understanding that the guidelines that the federal government set out when they first required each state to come up with guidelines primarily noted that both parents should share equally in the financial support of the child. No change based upon this comment is recommended. The commentor's understanding is incorrect. The requirements for state guidelines, as added October 16, 1984, by Section 18(a) of

Pub. L. 98-378, and as amended on October 13, 1988 by Section 103(a) and (b) of Pub. L. 100-485, contain no indication that both parents should share equally in the financial support of the child. These provisions are codified at 42 U.S.C. § 667. In addition, implementing federal regulations, at 45 CFR § 302.56, adopted June 7, 1985, do not now, and never have, required that both parents share equally in the financial support of the child.

One commentor asserted that the guidelines do not acknowledge the fact that noncustodial parents also have expenses. No change based upon the comment is recommended. The commentor's understanding of the guidelines is incorrect. The guidelines have historically considered both the needs of the child and the ability of the obligor to pay. At very low income levels, the exclusive consideration is the ability of the obligor to pay.

One commentor asserted that the department was a pawn and an excuse for legislative inaction. No change based upon this comment is recommended. There has consistently been legislative consideration and action with respect to child support determinations in every legislative session since 1987. Legislative concern has focused on enhancing the effectiveness of child support collection activities. The legislature has repeatedly examined child support guidelines and has instituted changes when it collectively saw a need.

One commentor complained about the notice of rulemaking. The commentor suggested that there was a conspiracy between the department and newspapers to keep information about the public hearings out of the news. The commentor also suggested that all obligors receive notice of the public hearings, but did not suggest custodial parents receive a similar notice. No change based upon this comment is recommended. The department published notices of the rulemaking in daily newspapers as required by law. In addition, the department mailed specific notices of rulemaking to individuals known to be interested in this hearing. The person making this comment received such a notice.

One commentor objected to a presentation made by the department to the Interim Legislative Committee on Child Support with respect to the income shares model. No change based upon this comment is recommended. The comment is not addressed in any way to the proposed amendments to the child support guidelines. In addition, it is necessary when comparing income shares models and the obligor model to consider child care as child care costs is an essential part of the functioning of the income shares model.

One commentor described concerns about the failure of her exhusband to pay even the obligated amount of \$88 per month in support for four children. The commentor noted that her exhusband

had moved to Washington state and claims not to work, even though she believes he is working for cash and keeping all of his assets in his mother's name. No change based upon this comment is recommended. The commentor's concerns are related to enforcement of child support obligations, rather than the accurate establishment of appropriate child support obligations.

- Comments About Comments -

Two commentors, both custodial parents, expressed outrage over statements made by other commentors concerning the cost of providing care to children. These commentors identified types of costs that were ignored by the observations of some commentors. No change based upon these comments is recommended. The guidelines are based on data that includes costs such as those described by these commentors.

One commentor analyzed the comments of others saying she had heard complaints from custodial parents and their spouses about inability to pay bills and expenses, and from time to time a buzz word about what's in the best interests of the child. The commentor observed that there is excessive animosity, and suggested getting past all of that and doing what's best for children. The commentor suggested recognizing that there may not be enough money for everyone to have what they want, and opening a constructive dialogue with the ex-spouse. No change based upon this comment is recommended because the commentor seeks none. The comments accurately describe the problem and suggest a reasonable solution, albeit one beyond the power of the department to implement.

One commentor observed hearing commentors who are obligors complain that the child support guidelines deny them the opportunity to maintain some desirable standard of living and to continue on with their lives by having as many additional children as they desire. The commentor noted that the guidelines are based largely on the obligor's ability to pay, and that obligors are given deductions to reflect the cost of supporting all children to whom they owe a duty of support. The commentor also noted that the guidelines do not consider the actual cost of raising a child, to the detriment of custodial parents. We recommend no change based upon this comment because the commentor suggests none.

One commentor observed that far more obligors exercise their opportunity to comment than do obligees. The commentor observes that a reason few custodial parents present comments may be because they are used to sitting back and taking what they get, which is often precious little. The commentor observed that she had long ago decided that it was more helpful to move forward with her life and support her child on her own, rather than

lamenting the trifling amount paid by her ex-husband. The commentor also observed that custodial parents don't have the time or energy to rant and rave before the legislature because they are too busy supporting children.

- Suggested Use of "Income Shares" Guidelines -

Several commentors urged the department consider the use of an income shares guidelines model. Some of these commentors urged consideration of the South Dakota or Utah approaches. One commentor noted that an income shares model would not change the amount of the obligations. No change based upon these comments is recommended.

In 1990, the department proposed guidelines based upon the income shares model. Of the 138 identified commentors, 22 expressed some preference for the income shares model. Since that time, bills to require the use of an income shares model have been defeated by several legislative assemblies. The latest such bill to fail was 1999 House Bill 1280. The defeat of each bill appears to coincide with legislative committees forming an accurate understanding of the effect and cost of implementing an income shares model.

The commentors were typically obligors or their spouses who thought use of an income shares model would reduce their child support obligation. There is usually no material difference between child support amounts set using the income shares model and child support amounts set using the obligor model, as long as both methods are based upon similar understandings of the cost of raising children. North Dakota's guidelines are based on Thomas J. Espenshade's Investing in Children: New Estimates of Parental Expenditures (Urban Inst. Press: Wash. 1984). The United States Department of Health and Human Services, in a 1987 publication, Development of Guidelines for Child Support Orders, said that Dr. Espenshade's "work seems to provide the most credible economic foundation for development of child support guidelines." Id., p. II-19. Many states that developed income shares guidelines appear to have relied, as North Dakota did, on Dr. Espenshade's work.

One commentor supported the drafting committee's decision to maintain the obligor model, instead of adopting an income shares model. The commentor suggested that the income shares model results are not greatly different than those produced by the obligor model, while the obligor model is substantially less costly to administer. No change based upon the comment is recommended as the commentor seeks none. The commentor's observations are consistent with information gathered by the department and the 1997-99 Interim Legislative Child Support Committee.

- Perceived Effect on Custodial Parents -

One commentator noted the guidelines do not take into consideration the cost of raising a child. The commentator noted that courts very seldom order an upward deviation (under section 75-02-04.1-09(2)), and speculated that upward deviation is uncommon because, since the guidelines are based on an obligor's ability to pay, the courts believe the presumptively correct amount is all the obligor can afford to pay. The commentator noted a substantial number of downward deviations, and also noted one member of the judiciary has developed what the commentator describes as a "general hardship" deviation. The commentator noted that under this deviation, the judge has allowed downward deviations for student loan payments, travel costs to and from work, the cost for "dressy clothing in an office job," and for an obligor's own medical expenses without regard to whether the expense meets the requirements of section 75-02-04.1-09(2) (j). The commentator observed that the willingness to deviate downward and the unwillingness to deviate upward results in the negation of the upward deviation provisions which attempt to consider the actual costs of raising a child. The commentator observed that the obligor is given the breaks, and every time that happens, the obligee "bites the bullet." We recommend no change based upon this comment. If a particular judge provides a deviation in a particular case that is not supported by the law, the remedy is to appeal the decision. It is true that downward deviations have the effect of thrusting a greater part of the cost of raising a child upon the custodial parent. That is one reason the existing provisions of section 75-02-04.1-09(2) provide for deviations (whether upward or downward) only in specified circumstances, and why there is no "general hardship" deviation available.

- Perceived Effect on Noncustodial Parents -

One commentator announced, as state president of the organization, that WEPT ("We're Essential Parents Too") believes as an organization that there is bias against noncustodial parents. No change based upon this comment is recommended. This rulemaking is not intended to, and probably could not, dissuade any organization from a belief that its members are subject to bias. However, the assertion of bias was not supported by evidence or even by a claim of evidence.

Three commentators asserted that the guidelines have destroyed families by causing people who have married noncustodial parents to leave the new marriage. One commentator also asserted that "lives have been destroyed" and claimed to "know a number of noncustodial parents who have taken their own lives." Another commentator also claimed the guidelines caused suicides. The

commentors' attribution of the described conduct to the guidelines constitutes gross hyperbole. To the extent these comments are not fabrication, they oversimplify the bases for complicated human behavior. The ideas asserted by these commentors cannot be taken as mere naive misunderstanding. They are extraordinarily mean spirited. No change based upon these comments is recommended.

One commentor asserted that she saw nothing to benefit the child in the proposed changes and asked if the plan was to bleed noncustodial parents dry. No change based upon this comment is recommended. The effect of most of the proposed changes, where applicable, would be to reduce child support obligations. This certainly does not contribute to "bleeding anyone dry."

One commentor asked why obligors are required to pay for things in addition to child support. The commentor indicated that obligors are "asked to pay for half of the child's child care expenses, medical insurance, unreimbursed medical expenses, dental expenses, etc." No change based upon this comment is recommended. No aspect of the guidelines or proposed amendments to the guidelines imposes the requirement this commentor has described. Contrary to the commentor's suggestions, the guidelines do not require half of these expenses to be paid by the obligor. North Dakota statutes or court orders may impose such requirements, but amendments to the guidelines would not alter that fact.

One commentor identified as a problem the situation of the man acting essentially as a house husband who, upon divorce, does not get custody because he cannot afford it, with the result that the children see this father without a good standard of living. No change based upon this comment is recommended. First of all, if the individual in question is actually the child's primary care giver (hence, "house husband"), it is peculiar, but not a function of the guidelines, that the female bread winner would receive custody of the children because "she's the only one who can afford it." The more common occurrence is that identification of the parent with the greater earning potential has far less influence on establishing custody than identifying the parent who has the stronger relationship with children. Even assuming the accuracy of the unusual situation posed by the commentor, the problem for most families is the insufficiency of income to support two households in the manner in which that income supported a single household. Ample statistical evidence indicates that children typically are familiar with the more impoverished of the two households because they are typically a member of the more impoverished household following dissolution of their parents' relationship. That problem is not solved by reducing child support obligations so as to permit the noncustodial parent a lifestyle that is more impressive to visiting children.

One commentor saw the child support guidelines as intended to punish the obligor. The commentor saw the guidelines as unfair, and asserted that support of the child should be the responsibility of both parents, not just the noncustodial parent. No change based upon this comment is recommended. The comment ignores the fact that custodial parents must actually provide whatever care a child needs, while the noncustodial parent can satisfy that obligation by paying a known amount. To the extent the guidelines produce unfair outcomes, the bias is primarily against the custodial parent. That outcome results, among other things, from the fact that the guidelines consider the obligor's ability to pay, as well as the needs of the child. The custodial parent is expected to meet the needs of the child, even though the obligor's ability to pay means the obligor is able to pay only a tiny fraction of the cost of caring for the child. The commentor's suggestion that the guidelines punish the obligor, either in effect or by intention, finds no support in fact.

-Complaints About Custodial Parents -

One commentor represented custodial parents as greedy and interested in securing income from their children's fathers, and as seeking divorce for the money. These representations were presented as unsourced quotes. Even if the purportedly quoted statements were actually made, the statements are neither true nor typical. No change based upon these comments is recommended.

One commentor asserted that the guidelines promote "a something for nothing attitude to both the custodial parent and the children involved," and explains that "this is because the noncustodial parent does not have any legal means to provide parental income since the custodial parent one hundred percent of the time can overrule them. No change based upon this comment is recommended. Any limitation upon the noncustodial parent's participation in decisions about a child is the result of the individual being a noncustodial parent, and not a result of the guidelines.

One commentor complained that when establishing child support, a custodial parent claimed monthly expenses for the child which were discontinued after the divorce was final. No change based upon this comment is recommended. The guidelines do not provide for establishing a child support obligation based upon the custodial parent's reported expenditures. Only a deviation from the guidelines would be based upon such evidence.

Several commentors complained that there is no process in place to assure that custodial parents spend child support payments on children. One commentor asserted that parents who receive child

support should have to show receipts for whatever that money is going to. One commentor observed that if the custodial parent is not spending child support moneys provided for the child, an investigation would likely show neglect and open the possibility of a change of custody. No change based upon these comments is recommended. The department has no authority to establish, by rule, a mechanism to assure that child support payments are actually spent on the children to be supported. However, as explained in response to comments made with respect to section 75-02-04.1-10, the amount of child support established under the guidelines is substantially less than the cost of raising children, as measured by surveys of the United States Department of Agriculture. Unless a child support payment essentially equals the cost of raising a child, there is no sound policy reason for establishing a mechanism to assure child support payments are actually spent on children. And, if the child support amount paid were sufficient to support a child without contribution from the custodial parent, any gain resulting from verifying that expenditures are made on the child might well be offset by the cost and intrusiveness of the verification process. A verification process such as that urged by the commentors would be far more intrusive than the income verification process used in establishing child support obligations.

One commentor stated that the guidelines have the effect of inviting custodial parents to jump all over noncustodial parents. The commentor indicated that custodial parents who don't like the divorced noncustodial parent find it is in their financial interests to harass noncustodial parents in the courts. No change based upon this comment is recommended. To the extent the conduct complained of actually occurs, it results from either the adversarial process for resolving domestic relations matters or unresolved negative feelings about former partners. It is inappropriate to attribute either circumstance to the guidelines.

One commentor asserted that a custodial parent had moved to another state with the child, but did not inform the noncustodial parent. The commentor complained that without funds to hire a lawyer, a noncustodial parent could do nothing about such conduct. No change based upon this comment is recommended. The department does not have authority to address visitation issues in this rulemaking. The department does not have authority to provide legal services to address custody disputes.

- Visitation and Custody Issues -

Several commentors asserted that the guidelines should make some accommodation for the expenses noncustodial parents incur in maintaining a relationship with their children. Some commentors

argue that the guidelines have historically refused to acknowledge these costs. The commentators' premise is inaccurate. The guidelines have long included a provision allowing a deviation that reflects the reduced ability of the obligor to provide support due to travel expenses incurred for a visitation. N.D. Admin. Code § 75-02-04.1-09(2)(i). In addition, this rulemaking proposed new section 75-02-04.1-08.1 to provide an adjustment for the cost of extended visitation.

One commentator challenged the Department of Human Services to put departmental money on the line and put some effort into visitation enforcement. No change based upon the comment is recommended. The department has no money appropriated to put into visitation enforcement. The department cannot use funds appropriated for some other purpose to establish a visitation enforcement process.

One commentator argued that children should always be in joint physical custody unless it is proven that one parent isn't responsible or has a drug or alcohol problem. No change based upon this comment is recommended. The department has no authority to prescribe custody arrangements.

- Review of Child Support Orders -

Three commentators asserted that the child support guidelines should make provision for expedited reviews in case of loss of employment or income. No change based upon this comment is recommended. The department is without authority to direct the conduct of judicial review proceedings.

One commentator noted that child support obligations are reviewable and subject to change if facts support the change. The commentator also noted that persons who are unable to pay child support because of a disability are not found in contempt. No change based upon this comment is recommended because the commentator sought none.

One commentator asserted that child support offices ought to provide free reviews of child support orders more often. No change based upon this comment is recommended. The proposed amendments address the determination of child support obligations, not the circumstances which call for redetermination. The conduct of reviews is time consuming and expensive. Reviews that are "free" to the parties are done at the expense of taxpayers. Those who believe it is good public policy to conduct reviews more often need to prevail upon county commissions (that fund those services) to appropriate more money for those services.

- Judicial Procedure Issues -

One commentor asserted that the guidelines should require that there be an emergency modification of the child support obligation provided for either side when there is a change in circumstances that could be detrimental to the children. No change based upon this comment is recommended. Modification is a judicial procedure, and it is beyond the department's authority to establish such a procedure.

One commentor asked that the department do something to make it easier for noncustodial parents to get into court to seek a downward modification of a child support obligation. No change based upon this comment is recommended. The proposed rules address the process for determining the amount of child support. They do not address the process by which an individual accesses the court. The department does not have authority to establish or alter judicial processes.

One commentor complained that no provisions are made to allow a parent to make a pro se motion for modification. No change based upon this comment is recommended. There is currently no prohibition upon an obligor pursuing a pro se motion except, perhaps, the obligor's unfamiliarity with the process. More significantly, however, the department has no authority to direct practice in judicial matters.

One commentor asserted that the child support guidelines "seem to be interpreted in a matter that puts a tremendous burden upon the obligor to prove that his or her reduction in income was beyond his or her control." No change based upon this comment is recommended. Any person bringing a motion for reduction of child support will bear the burden of supporting that motion. Neither the child support guidelines nor interpretations of the child support guidelines impose that burden. Under current North Dakota law, an obligor need show only that the amount of child support payment is not consistent with that required under the guidelines, in order to secure a revision, provided at least one year has passed. N.D.C.C. § 14-09-08.4(4). If less than a year has passed, a party seeking amendment must show a material change of circumstances. These requirements are neither as onerous as suggested by the commentor nor the result of interpretations of the guidelines.

One commentor argued that the best interests of the child are served by "having both parents involved, whatever that takes." The commentor questioned whether persons seeking downward modifications were really considering the best interests of the children or something else. No change based upon this comment is recommended as the commentor suggested none.

One commentor asserted that any room for interpretation left in the guidelines was a weak link. The commentor based that observation on a previous comment, and argued that the regional child support office may be interpreting the guidelines differently than the committee proposing them. No change based upon this comment is recommended. The commentor lodged this observation as a general complaint, but identified no specific part of the guidelines that might be excessively open to interpretation. Then, in stark contrast to his criticism that the guidelines are excessively open to interpretation, the commentor argued against using formulas to arrive at child support obligations, and complained that the "guidelines don't focus on individualizing anything." It is unclear whether the commentor recommends very rigid guidelines or very "loose" guidelines.

One commentor recommended that parents who receive child support should have random drug testing. No change based upon this comment is recommended. The department has no authority to impose such a requirement. The commentor's suggestion is extremely intrusive. If drug use by a custodial parent is adversely affecting a child, existing laws respecting child abuse and neglect and custody can address the problem.

One commentor complained that one party to the proceeding has to hire his or her own attorney and the other party gets a free attorney. The commentor is not correct. Neither party is provided a free attorney in child support matters. In North Dakota, the state is a real party in interest in child support matters, and regional child support enforcement office attorneys represent the interests of the people of the state of North Dakota. The law specifically provides that there is no attorney-client relationship between the regional child support enforcement office attorney and any party other than the people of the state of North Dakota. See N.D.C.C. §§ 14-09-09.26 and 14-09-09.27. If either party in a child support matter seeks representation, he or she is responsible for the attorney's fees unless the court determines that one party must pay some or all of the other party's attorney's fees.

One commentor, a custodial parent, described the difficulty she faces as a result of nonpayment of child support. She also described the efforts of her former husband to avoid paying child support by moving from job to job. No change based upon this comment is recommended. The child support guidelines are not a device for enforcing child support obligations, but rather for accurately setting those obligations.

- Suggested Refinements to the Guidelines -

One commentor suggested the guidelines add a formula to address the receipt of one-time payments. The commentor offered a formula based upon a Nebraska case. No change based upon this comment is recommended. No such proposal was submitted for public comment by the department or the Guidelines Advisory Committee. We recommend the number of cases involving receipt of one-time payments be monitored, and that establishing a formula such as that suggested by the commentor be considered at a subsequent review of child support guidelines.

One commentor noted that federal requirements surrounding the child support program seem to assume that generous and affordable medical insurance benefits are available to the obligor. The commentor noted this apparent assumption is untrue. The commentor's suggestion was that the guidelines provide for a dollar-specific medical support award, or providing an upward deviation to increase the child support to allow custodial parents to maintain at least a modest insurance policy. No change based upon this comment is recommended. No such proposal was submitted for public comment by the department or by the Guidelines Advisory Committee. We recommend that the effect of federal requirements regarding medical support be monitored and that creating realistic and enforceable medical support orders be considered at a subsequent review of child support guidelines.

One commentor recommended consideration be given to revising the "grid" in section 75-02-04.1-10. The commentor observed that, because the grid reflects income amounts in \$100 increments, low income individuals may pay significantly different proportions of their income in child support. The commentor suggested elimination of the "grid" and replacement with specific percentages of net income. No change based upon this comment is recommended. No such proposal was submitted for public comment by the department or by the Guidelines Advisory Committee. The commentor's suggestion has some merit, but would create the same problem at the particular levels of income that require a change in the percentage of net income appropriate for support. We recommend review of the grid, determination if some more sophisticated system could avoid the inequities identified by the commentor, and that any such more sophisticated system be considered at a subsequent review of child support guidelines.

SPECIFIC COMMENTS

75-02-04.1-01(1): Two commentors were concerned that this definition of child, amended to exclude "stepchild," would discriminate against a stepchild. No change based upon this comment is recommended. These guidelines are intended to address a duty to support natural or adopted children. They are not intended to address any assumed responsibility by an adult to support a stepchild. This is not discrimination in the negative sense, but rather is recognition that the liability of a stepparent to support is only with respect to stepchildren received into the stepparent's family, and that a stepparent has no liability for support of stepchildren not received into that stepparent's family. See N.D.C.C. § 14-09-09.

75-02-04.1-01(3): One commentor sought an explanation of what deceased person could be referred to in this definition of children's benefits. The deceased person was typically a parent, and the proposed amendment was intended to assure that the surviving parent gets credit for the benefit against that surviving parent's child support obligation. See N.D. Admin. Code § 75-02-04.1-02(11).

One commentor expressed a concern that recognizing, as children's benefits, payments that are a result of a relationship of parent and child between a deceased person and a child would lead to those payments being made to the state. The commentor's concern is not well-founded. The phrase was included in the proposed rule so that a surviving parent could get credit against a child support obligation under subsection 11 of section 75-02-04.1-02.

One commentor objected to consideration of children's benefits based upon a relationship between a deceased person and the child when determining the support obligation of any surviving person. The commentor observed that the benefit in question substitutes for the stream of income that the child would receive if the deceased parent were still alive, and that the proposed amendment would adversely affect children by allowing those benefits to substitute for a stream of income from the surviving parent. Four other commentors suggested the consideration of children's benefits from deceased individuals would, in effect, be far more broad than merely allowing some relief for the surviving spouse with a child in foster care. These commentors pointed out that adopting stepparents would similarly benefit, as could parents who both survive if the children's benefit is derived from a deceased person who is not a parent.

Based upon these comments, we recommend that the proposed change to this subsection be omitted from the final rule. The proposed amendment would produce unintended consequences potentially adverse to children.

75-02-04.1-01(5): One commentor sought clarification of the term "employee benefits," as added to the explanation of "gross income." The language was included because it is consistent with the broad definition of gross income. The idea was to identify specific types of employee benefits that should not be counted and provide for deductions in arriving at net income.

Two commentors recommended that the definition of "gross income" not include overtime wages. One commentor asserted that consideration of an annuity payout as income should be limited to growth on the annuity. Seven commentors theorized that including "child support benefits received from any source except the custodial parent" in "gross income" may discriminate against a child not involved in a particular case. Two other commentors recommended these payments be removed from the definition of "gross income," but provided no rationale. Four other commentors sought clarification and limits on the amount of child support to be considered as income. One commentor objected to consideration of earned income tax credits as "gross income." One commentor objected that the definition of "gross income" includes items that are then deducted in arriving at net income. The commentor described that as confusing. No change based upon these comments is recommended. The legislature has generally defined the term "income." That definition, at N.D.C.C. § 14-09-09.10(8), is extremely broad. It is inconsistent with the general understanding of the term "gross income" to establish a definition more narrow than "income." As a result, the existing definition of "gross income," which is not changed by this proposal, closely parallels the statutory definition of "income." The changes in the examples provided of "gross income" are intended only to clarify matters that have been subject to confusion or litigation. Except to the extent a specific statute limits the meaning of "gross income," the department can limit income to be recognized for child support purposes only by defining "net income." The legislature considered and rejected the idea of excluding income from second jobs and overtime in defeating House Bill 1029.

Child support payments were proposed for inclusion within the general understanding of "gross income" because the Advisory Committee heard reports of inconsistent treatment of these funds. If child support payments are received from the custodial parent, it can only be because the case involves split custody. Including consideration of child support income would confound determination of the correct amount of support in a split custody case. See N.D. Admin. Code § 75-02-04.1-03. Child support payments received by an obligor are intended to benefit the supported child. That expectation is not completely consistent with the definition of "income" at N.D.C.C. § 14-09-09.10(8). Based upon these comments, it is recommended that child support received not be considered as gross income.

One commentor asked if net losses from rents would be considered as a deduction inasmuch as net income is considered as income. No change based upon this comment is recommended. Net losses are not income, and so cannot be included within the definition of "gross income."

One commentor asserted that a 401k retirement plan should not be considered in gross income. Two commentors objected to including employee benefits that the employee has no power to liquidate. Another commentor was concerned about difficulty in securing necessary information from employers. Yet another commentor objected to any retirement benefits being included in gross income. When proposed, the department had no authority to exclude any item of income from the definition of "gross income" except for public assistance benefits. Retirement benefits were specifically included as income. See N.D.C.C. § 14-09-09.10(8). See also *Lawrence v. Delkamp*, 1998 ND 178, 584 N.W.2d 515. However, House Bill 1028 provides for the exclusion of certain employee benefits from gross income. Based upon that bill, we have altered the definition of "gross income" consistent with these comments.

Three commentors raised concerns about including "eligible earned income tax credits" as an example of gross income. Two of those commentors took issue with the requirement that "eligibility" be considered, seeing that as unduly complicating the process. Two of the commentors were concerned that the earned income tax credit is something like a means-tested public assistance program. Based upon these comments, we recommend that the word "eligible" be removed (so that those calculating child support will not need to determine if an individual was or was not actually eligible for an earned income tax credit), but that the earned income tax credit be retained as an example of gross income. While the payment is means-tested, it is in the nature of a reverse income tax, and not a public assistance program.

One commentor recommended that infrequent gifts and prizes be removed from the definition of gross income, citing the inconsistency between considering prize or gift income and the instruction in section 75-02-04.1-02 that consideration be given to likely future circumstances if the prior circumstances are very likely to change in the near future. The comment identifies the usual basis by which prizes and gifts are actually excluded in establishing child support amounts. However, based upon this comment, it is recommended that gifts and prizes that annually exceed \$1,000 in value be considered, rather than only gifts or prizes that each exceed \$1,000 in value.

One commentor asked why previously deferred income should be included. No change based upon this comment is recommended. Income previously deferred is currently available. It is within the statutory definition of income.

One commentor argued against consideration of net income from self-employment, asserting that it should not be legal to take a "net income" and put it back into the gross income category. No change based upon this comment is recommended. The net income from self-employment calculation (75-02-04.1-05) is undertaken to assure that the amounts included in gross income are only those that realistically reflect funds a self-employed individual has the power to make available.

75-02-04.1-01(6): One commentor complained that the proposed amendments consider employee benefits that are not cash-in-hand, such as a car allowance. Based upon this comment, upon other similar comments, and upon the provisions of amendments to N.D.C.C. § 14-09-09.7 made by the 1999 Legislative Assembly, it is recommended that the definition of "gross income" be revised to end consideration of certain employee benefits as a part of "gross income," and thus avoid any need to deduct the value of those benefits in calculating "net income."

Two commentors, husband and wife, complained about consideration of capital gains and depreciation as income. The proposed amendments eliminate consideration of depreciation as income. The proposed amendments do not alter the practice of considering gains as income. No change based upon this comment is recommended.

One person objected to the consideration of in-kind income (as defined in this subsection), theorizing that debt forgiveness, free living quarters, and the use of consumable property is most likely provided because the person did not have the income to pay for it. No change based upon this comment is recommended. Even if the individual receiving in-kind income does not have other income sufficient to pay for the value received in kind, the availability of those in-kind benefits allows that individual to enjoy a standard of living beyond that enjoyed by a similarly situated individual who has no in-kind income. It also allows the individual receiving in-kind income greater flexibility in the use of income that is not in kind. This definition, and consideration of the defined term as a part of gross income, affords similar treatment for people with similar disposable incomes.

Two commentors expressed concern about the use of the term "consumable property" in the definition of "in-kind income." These commentors suggested that the phrase was only intended to include "consumable goods," and sought clarification. Based upon these comments, we recommend that in-kind income include "the use of consumable property or services at no charge or less than the customary charge."

75-02-04.1-01(7): Two commentors asked that employee benefits be excluded from guidelines' consideration. The department proposed that employee benefits be excluded if not currently received to the extent the obligor lacked influence as to whether those benefits would have been received. House Bill 1028 makes a similar provision, but does so by omitting those benefits from inclusion in gross income. Based upon this comment, we recommend that the definition of "net income" be revised to reflect the requirements of House Bill 1028 by removing proposed subdivision i.

One commentor asked why employer-provided retirement benefits should be deducted in calculating net income. The amendments originally proposed were based upon the fact that gross income is, and under the definition of income in N.D.C.C. § 14-09-09.10, must be, very broad. However, based upon this and similar comments, and upon amendments to N.D.C.C. § 14-09-09.7 made by the 1999 Legislative Assembly, we recommend the definition of "gross income" be revised and the definition of "net income" also be revised to eliminate reference to any amounts not first included in gross income.

One commentor agreed that changing the definition of "net income" to consider "annual," rather than "monthly" income is congruent with the use of "monthly" elsewhere in the chapter. One commentor took a contrary position. The second commentor is incorrect. Section 75-02-04.1-02(6) instructs that the annual total of all income considered in determining a child support obligation must be determined and then divided by 12 in order to determine the obligor's monthly net income. The second commentor also asserted that a provision should be included to use present and probable future earnings if different than historical adjusted gross income. No change based upon these comments is recommended. Section 75-02-04.1-02(8) instructs to use past circumstances unless changes are very likely to occur in the future.

One commentor argued that the guidelines do not permit a deduction for the cost of child support paid. No change based upon this comment is recommended. While the commentor is correct that child support paid is not deducted in arriving at net income, child support responsibilities are considered in the determination of support amounts in multi-family cases. See section 75-02-04.1-06.1.

Three commentors asserted that more than \$30 per night should be deductible for lodging expenses incurred while engaged in travel required as a condition of employment. A commentor argued that IRS allows \$50 per night. No change based upon these comments is recommended. The IRS deduction is for the purpose of establishing taxes. This deduction is for the purpose of establishing the amount of support provided to the obligor's child.

While the IRS may not have a good reason for asking an obligor to stay in an economy hotel, the obligor's child, who will otherwise be forced to a more meager assistance, can legitimately make that request.

Five commentators disagreed with the idea of using North Dakota's income tax rate of 14% of the federal tax. Four commentators saw that approach as generally fair and realistic, as well as far simpler than using (or attempting to use) taxes imposed under the laws of other states or political subdivisions. No change based upon these comments is recommended. Most child support obligations calculated under these guidelines are for North Dakota obligors, and the proposed practice simplifies calculations.

One commentator asked about the proposed change to subdivision i with respect to employer expenses. The purpose of the change is to allow a deduction for specified employee expenses whether or not incurred on a regular basis and whether or not reimbursed by the employer. If reimbursed by the employer, the reimbursement must be treated as income. No change based upon this comment is recommended as the commentator sought only clarification.

One commentator asserted that if health insurance is provided, then the credit amount should be subtracted from the child support amount. No change based upon this comment is recommended. No such change was proposed. This subsection already provides for the deduction of the cost of providing health insurance in calculating net income.

One commentator asked why not just use the federal definition of net adjusted income from the tax form. No change based upon this comment is recommended. The IRS Form 1040 does not include a line for "net adjusted income." If the commentator intended to refer to "adjusted gross income," that amount would conflict with the policies established by the legislature in House Bill 1028 inasmuch as the adjusted gross income reflects deductions available to self-employed persons for employee benefits that a self-employed individual has significant influence or control over.

One commentator argued that obligors should be allowed a 10% deduction for retirement and another 5% deduction for health care needs. No change based upon this comment is recommended. The assumption underlying this comment is that the obligor's retirement plans override the immediate needs of the obligor's children. The opposite is true. Moreover, the child support guidelines in North Dakota generally result in ordered support in amounts substantially below nationwide averages. This indicates that the guidelines, as applied, allow obligors an opportunity to plan for health care and retirement.

Three commentators asserted that it would be appropriate to calculate a deduction for federal income tax expense consistent with the obligor's actual income tax expense. Four commentators supported the approach of the Child Support Advisory Committee's proposed simplification for calculating the deduction for a federal income tax obligation by allowing all parties essentially the same tax treatment. Finally, one commentator suggested that the committee's proposal was incomplete in that it did not explain the significance of allowing the tax filing status of single. Based upon these comments, we recommend several minor alterations to the language of the provisions of subdivisions a, b, and c concerning income tax obligations, but we also recommend retaining the concepts recommended by the Child Support Guidelines Advisory Committee. The recommended changes include:

1. Treating the tax obligations as "hypothetical" because they are not intended to precisely mirror the actually imposed tax obligation (an approach generally consistent with existing practice; *see Hallock v. Mickels*, 507 N.W.2d 541 (N.D. 1993), *Schleicher v. Schleicher*, 551 N.W.2d 766 (N.D. 1996), and *Steffes v. Steffes*, 1997 ND 49, 560 N.W.2d 888);
2. A recognition that only the part of the obligor's gross income that is subject to tax should be subject to deductions under these subdivisions;
3. Clarification that the tax filing status of single defines the standard deduction to be applied;
4. Recognition that exemptions for children should be recognized, even though a tax return is not disclosed; and
5. Treatment of Railroad Retirement Tax Act contributions.

One commentator agreed that occupational licensing fees should be allowed as a deduction in arriving at net income, but suggested that student loan payments be deducted as well. No change based upon this comment is recommended. An obligor's children typically receive lower support amounts during times the obligor is a student. The commentator's suggestion would oblige the obligor's children to continue to receive reduced support after the obligor has secured a higher education, and the benefits of that education have become available to the obligor.

One commentator expressed a view that, in addition to union dues and occupational license fees, obligors should be permitted to deduct any unreimbursed fee or expense required to maintain a license that is required as a condition of employment. No change based upon this comment is recommended. While the comment suggests a reasonable treatment, it would open a loophole

for the deduction of substantial expenses associated with securing continuing education. We recommend that this issue be studied, and that consideration be given to the development of a carefully crafted and limited provision for deducting unreimbursed expenses required to maintain a license required as a condition of employment.

Four commentors supported a deduction for employer-reimbursed, out-of-pocket expenses, in limited circumstances, as provided in subdivision i of subsection 7. One commentor recommended an alteration in the calculation for a deduction of health insurance premiums, as provided in subdivision d. We recommend no change based upon this comment. No change was proposed to subdivision d. Moreover, subdivision d was adopted because previous provisions for deduction of health insurance costs were subject to varying interpretations and applications. Finally, the difference in the deducted amount recommended by the commentor and the amount provided under subdivision d is unlikely to be material.

One commentor observed that it would be simpler and less confusing to simply exclude specific reimbursed out-of-pocket expenses of employment from the definition of gross income, rather than adding them to gross income and then deducting them, as provided in subdivision i. No change based upon this comment is recommended. While the commentor's suggestion is consistent with simplicity, it is inconsistent with the statutory definition of "income."

Six commentors expressed concerns about the deduction for employer-provided retirement benefits and other employment benefits as described in subdivision j. The commentors observed that the proposed language is unclear. Two commentors suggested it would be simpler to not include these amounts in gross income, rather than first including the amounts and then deducting them. Based upon these comments, but also based upon the provisions of House Bill 1028, we recommend that the language proposed for inclusion as subdivision j be removed. The alterations to the definition of gross income required by House Bill 1028 address the concerns of the Guidelines Advisory Committee that led to the development of subdivision j.

75-02-04.1-01(7)(a)(3) (formerly 75-02-04.1-01(7)(a)(4)): Two commentors objected to the idea that the federal tax obligation deduction reflect exemptions for each child for whom the obligor may lawfully claim an exemption. The commentors suggested that this is inconsistent with assuming the obligor's filing status is one of a single taxpayer and also may present a problem because the obligor may be entitled to claim a stepchild because he or she is filing a joint return with a new spouse or because the stepchild resides in his or her home and the other parent is providing less than 50% of the cost of support. Based upon

these comments, and in order to retain some manner of simplicity, we recommend the application of an additional exemption for each child actually claimed on a disclosed tax return, or, if a tax return is not disclosed, an exemption for each child as defined in this section (to mean any child, by birth or adoption, to whom the parent owes a duty of support).

75-02-04.1-01(8) and (9) (formerly 75-02-04.1-01(9) and (10)): One commentor objected to the definitions of "obligee" and "obligor," opposing any reference to an individual who is "alleged to be owed a duty of support" ("obligee") and a person who is "alleged to owe a duty of support" ("obligor"). The commentor contends that no person should be treated as owing support until a court has determined the support obligation exists. We recommend no change based upon this comment. No change was proposed to these subsections by the Guidelines Advisory Committee. Implementation of the obligor's suggestion would prevent any calculation of a child support obligation until after a paternity determination had been made. The effect would be to unduly delay the establishment of support amounts in paternity cases and, in some cases, would require additional court proceedings.

75-02-04.1-01(10) (formerly 75-02-04.1-01(11)): One commentor recommended that the guidelines include a definition of "shared custody" to reflect cases in which the parties actually have, and agree they actually have, a shared custody arrangement. Another commentor suggested some mechanism to reflect the situation in which there is no true custodial parent if each parent has 50% of the child's time. We recommend no change based upon these comments. The suggestion would encourage arrangements that typically exist only on paper (because, except for every fourth year, there are 365 nights in each year, rendering an actual ordered equal distribution of the child's time impossible). The solution to the dilemma of "nearly equal" time spent by each parent with the child is that required by Senate Bill 2039, and new section 75-02-04.1-08.1.

75-02-04.1-02(7) and (8): One commentor complained about the manner in which the guidelines project income. The commentor explained that her concern was based upon projections of her husband's net income that did not materialize because of cut-backs by her husband's employer. No change based upon this comment is recommended. Existing subsection 7 provides that when income is subject to fluctuation, information reflecting and covering a period of time sufficient to reveal a likely extent of fluctuations must be provided. Subsection 8 provides that calculations are ordinarily based upon recent past circumstances because past circumstances are typically a reliable indicator of future circumstances, but also provides that if

circumstances that materially affect the child support obligation are very likely to change in the near future, consideration may be given to the likely future circumstances. The problem was not in the process, but in the fact information about the employer's cutbacks was not used (and may have been unknown) when calculations were made. The commentor's observations suggest the need to seek to have the order establishing the child support obligation amended, rather than a need to amend the guidelines.

75-02-04.1-02(11): One commentor complained of unfair treatment, asserting that he had not received credit for over \$10,000 paid to his child in Social Security disability benefits resulting from the father's disability. No change based upon this comment is recommended. No change was proposed to this subsection. It specifically provides for a payment of children's benefits to be credited as a payment towards the obligor's child support obligation in the month the payment is intended to cover. If the commentor was not afforded that credit, the problem does not lie with the guidelines.

75-02-04.1-05: One commentor asked about the purpose for removing the provision for adding back expenses allowed for taxation purposes, but which do not require actual expenditures, and also deleting the provision for deducting principal payments. The purpose for the change is to avoid complexity and allow more close tracking with IRS practices. The practice eliminated was originally intended to recognize that out-of-pocket payments on an amortized loan reflect interest and principal, rather than interest and depreciation (as recognized for IRS purposes), producing a more accurate estimation of the cash available to pay child support. The provisions nonetheless caused confusion, were costly to administer, and were open to manipulation. No change based upon this comment is recommended as the commentor only sought clarification.

Nine commentors addressed proposed amendments to this section. The commentors generally objected to the difficulty of determining if a self-employed person was deferring excess income. Several commentors observed that the required use of adjusted gross income, for federal income tax purposes, as a base would allow self-employed persons (who can control their employee benefits) to enjoy income deductions forbidden to other obligors. The commentors also expressed a view that the five-year income average used in farming cases largely resolves any concern that a farming obligor is effectively deferring unusual amounts of income. Some of the commentors expressed severe reservations about the cost of developing evidence of excessive deferrals, as contrasted to the benefit gained.

Based upon these comments, and in recognition that the proposed amendments would afford self-employed obligors opportunities to deduct the cost of employee benefits when that deduction would not be permitted under House Bill 1028, we recommend that this section be substantially rewritten. The significant changes include:

1. Using the obligor's "total income," for Internal Revenue Service purposes, as the base for calculation, rather than "adjusted gross income";
2. Preventing any deduction, as a business expense, for employers' or proprietors' benefits, pensions, or profit-sharing plans attributable to any member of the obligor's household, expenses for travel, meals, or entertainment, and payments made to the obligor's household (other than the obligor) to the extent the payment exceeds fair market value of the services furnished by the household member;
3. Generally requiring reliance upon income tax returns unless they are not available;
4. Eliminating the deferred income consideration in both farm and non-farm businesses;
5. Applying the five-year averaging to all businesses, rather than only farm businesses;
6. Eliminating existing subsection 4, intended to allow recognition of income diverted for capital acquisition purchases (because its provisions are essentially meaningless after subsection 2 is eliminated);
7. Eliminating proposed subsection 6, concerning the calculation of net income from rents, originally intended to identify diversion of rental income to asset acquisition or to other family members (because the elimination of deductions for principal payments and the consideration of payments made to members of the obligor's household addresses the same problem);
8. Eliminating consideration of elections to expense depreciable business assets under IRS Code § 179 (because averaging business income over five years will reduce advantages the obligor could otherwise gain by expensing the cost of depreciable assets under section 179);
9. Concurrently eliminating proposed definitional provisions intended to address self-employed individuals' ability to shift income to alternate years (75-02-04.1-01(7)(k) and (l) and 75-02-04.1-01(11)); and

10. Concurrently incorporating the relevant features of the definition of "net income from self-employment" at 75-02-04.1-01(8).

Self-employed individuals are comparatively more able to manipulate income and expenses to produce a reportable income, for IRS purposes, that is less than their apparent income. Those practices, while acceptable for IRS purposes, may conflict with the goal of establishing a child support obligation consistent with the standard of living a child would have enjoyed if that child's parents and the child lived in the same household. We recommend amendments to section 75-02-04.1-05 that should serve to identify common and significant opportunities for manipulation that have the potential to produce adverse consequences for the obligor's children. The intent, insofar as may be possible, is to place self-employed and employed obligors on a level playing field.

75-02-04.1-05(2) (proposed for deletion): Two commentators noted that removal of this subsection eliminates deduction of principal payments on nondepreciable assets. The commentators suggested that those costs should be deducted from gross income, even though the IRS does not permit a deduction in determining taxable income. No change based upon these comments is recommended. The acquisition of nondepreciable assets does not alter the obligor's balance sheet. If an obligor has cash available (through income or otherwise), and uses that cash to purchase an asset, the obligor's net worth is not altered. The subsection proposed for deletion permitted deduction of principal payments in lieu of deduction for depreciation expense. In the future, depreciation expense will be deducted. There is neither precedent nor principle to support initiating a deduction for the acquisition of nondepreciable assets.

75-02-04.1-05(3): An amendment to this subsection was proposed to recognize the decrease in income reflected when a farmer holds an unusually large amount of produce off the market. One commentator objected, asserting that there should also be an increase in income recognized when a farmer markets more produce than usual. Based upon this comment, and upon the comments discussed under the heading 75-02-04.1-05, we recommend that the amendment proposed for this subsection not be implemented.

75-02-04.1-05(6): This proposed new subsection would address the calculation of net income from rents. Subdivision b of this subsection would allow a reduction in that calculation if the obligor has to pay some other interest holder under an agreement that was fairly negotiated at arms-length. One commentator asked for the meaning of "at arms-length." The phrase means an arrangement beyond the reach of personal influence or control. That is, parties to an agreement have dealt "at arms-length" when each looks to his or her own interest and is not subject to

the other's influence or control. In the context of this subsection, if an obligor was one of several partners in a real estate limited partnership, the arrangement would almost certainly be at arms-length. If the obligor and the obligor's spouse owned rental property, an agreement that the spouse would receive all of the net income from rents would almost certainly not be at arms-length. No change based upon this comment is recommended as the commentor sought none. However, based on the comments discussed under the heading 75-02-04.1-05, we recommend this proposed subsection not be implemented.

75-02-04.1-06: Two commentors, husband and wife, complained about the application of the guidelines in circumstances where they had a child and the husband was an obligor from a prior marriage. The commentors theorized that they would be financially better off if they divorced. No change based upon this comment is recommended. The proposed amendments to this section would increase the recognized cost of supporting a child living with the obligor. The amount recognized would be essentially the same as the amount the obligor would be obliged to pay for the support of a second family subsequent to a divorce. Contrary to the commentors' assertions, this proposal creates no financial incentive for divorce. The commentor's purported need to divorce because of the guidelines is nonsensical.

The amendment proposed for this section would allow a deduction for the cost of supporting a child living with the obligor that is calculated and based on the same schedule as the calculation for those children the obligor has a duty to support, but who do not live with the obligor. Several commentors strenuously objected to provisions in this section that consider the income of the other parent of a child who lives with the obligor when that other parent also lives with the obligor. One commentor objected to imputing income of the obligor's spouse in determining the cost of supporting a child living with the obligor. One commentor asserted that this section should be changed to treat the cost of supporting a child living with the obligor in the same manner as calculated for other families in multi-family cases. One commentor advised that she had kept her own income completely separate from her husband's in order to avoid consideration of her income in determining her husband's child support obligation. One commentor objected to the addition of a phrase recognizing the responsibility of the other parent of a child to whom the obligor owes a duty to support, but who do not live with the other parent. The commentor perceived this as tantamount to taking the food from the obligor's child and giving it to another child who is already getting support from the obligor accustomed to a higher standard of living. One commentor asserted that the income of the obligor's spouse is none of the

obligee's concern, and objected to the requirement (in subsection 4) that the obligor's spouse's income be disclosed in order for the obligor to receive a deduction for the cost of supporting the mutual child of the obligor and the obligor's spouse.

One commentor observed that consideration of the income of the obligor's spouse amounted to using an income shares approach for establishing the obligor's duty to support a child living with the obligor. The commentor is correct.

Other commentors recommended that, for simplicity, the income of the other parent of the obligor's child should be ignored. Two commentors recommended eliminating any consideration of the income of the obligor's spouse, and then combining 75-02-04.1-06 with 75-02-04.1-06.1. Based upon these comments and upon the fact that use of an income shares model seldom results in a material difference over using the obligor model, we recommend that the determination of the cost of supporting a child living with the obligor be undertaken without reference to the income of that child's other parent, who also lives with the obligor. The effect of this recommended change is to shorten the rule and simplify the calculation.

75-02-04.1-06.1: One commentor objected to this section on multiple-family cases, arguing that it is unfair to pre-existing children for a person who is unable to support those children to bring additional children into the world. No change based upon this comment is recommended. No change was proposed to this section. This section reflects a decision to abandon the prior preference for the "first child" or "first family" because, in effect, it had become a preference for the children supported under the first child support order to be entered.

One commentor asserted that her husband did not receive sufficient credit for the costs of supporting his family with her in the process of establishing his support obligation to a previous family. The commentor suggested it would be appropriate to determine the support obligation for all of her husband's children, then divide that amount by the total number of his children and award a per-child amount to the children in her husband's first family. No change based upon this comment is recommended. No change was proposed to this section. The commentor's suggestion ignores economies of scale that are enjoyed by families with larger numbers of children. The changes proposed to section 75-02-04.1-06, which have the effect of treating the cost of supporting children living with the obligor in exactly the same fashion as the cost of supporting children who do not live with the obligor, may achieve some of the change sought by this commentor.

Consistent with the requirements of Senate Bill 2039, section 75-02-04.1-08.1 describes an adjustment to support obligations based on extended visitation. In order to assure consistent outcomes, it is necessary to establish which comes first, the multiple-family calculation or the extended visitation adjustment, in cases involving both. We determined that undertaking the extended visitation adjustment first could adversely affect support for children of the obligor who do not enjoy the extended visitation. We recommend amendments to section 75-02-04.1-06.1 to assure that any extended visitation adjustment is made after determination of support amounts in multiple-family cases.

75-02-04.1-07: One commentor criticized the practice of imputing income based on earning capacity. The commentor argued that when noncustodial parents have lost jobs, it is usually due to severe depression because of divorce and inequities of the system. The commentor sees this as leading to imputation of income, and asserts "this is the reason for the greater number of arrears." No change based upon this comment is recommended. The commentor's factual assertions are not supported by any research and are almost certainly incorrect. While depression may certainly follow a divorce, it is unclear that "the inequities of the system" produce depression. It also has not been demonstrated that the usual cause of job loss among noncustodial parents is depression. It is true that obligors have their income imputed on their potential and not their current earnings. That is precisely the point of imputing income. However, existence of arrears is not primarily traceable to imputing income.

One commentor asserted that imputing income is wrong, arguing that you can't dictate someone's income. The commentor likened imputing income to over-taxation, saying it discourages upward mobility of the noncustodial parent. No change based upon this comment is recommended. The purpose of imputing income is not to "dictate someone's income." Rather, it is to establish a child support amount that reasonably reflects an obligor's earning capacity. Parents have a duty to provide that child suitable support. N.D.C.C. § 14-09-08. A willful failure to pay ordered child support is a crime. N.D.C.C. § 12.1-37-01. This section operates only with respect to parents who have the ability to earn income. It is not overtaxation. Contrary to the commentor's suggestion, it encourages, rather discourages, upward mobility of an obligor.

75-02-04.1-07(1): One commentor recommended that the definition of "community" be amended to refer to areas within 50 miles of the obligor's actual place of residence, rather than within 100 miles, asserting that is a requirement of the unemployment insurance program. One commentor assumed that the purpose of

treating the "community" as including any place within 100 miles of where the obligor lives is that all places within 100 miles would have the same "economic status," and objected for that reason. One commentor pointed out that the definition of "community" being within 100 miles of where you live has nothing to do with where you need to look for work. Rather, it has to do with the area considered in establishing prevailing earnings for the purpose of determining if the obligor is underemployed.

No change based upon these comments is recommended. No amendment to this definition was proposed. The unemployment insurance program requires, among other things, that an individual be able to work, be available for suitable work, and be actively seeking work, without specifying the distance an individual must travel to actively seek work. See N.D.C.C. § 52-06-01(3). However, an individual can be disqualified for unemployment compensation benefits for a voluntary quit without good cause unless the individual leaves work which is 200 road miles or more from the individual's home to accept a bona fide job offer at a closer location. There is not a general 50-mile job search standard. Neither it is unusual for individuals to travel 100 miles in search of employment.

75-02-04.1-07(2): One commentor objected to the presumption that an obligor is underemployed with gross earnings less than six-tenths of prevailing amounts earned in the community by persons with similar work history and occupational qualifications. The commentor complained that this created a problem for an obligor living in a small community, with no available job, who was qualified for a high paying job in a nearby larger community. No change based upon this comment is recommended. People with a duty to support children have a responsibility to locate employment for which they are qualified. Parents who voluntarily earn less than six-tenths of what they are capable of earning cannot insist that their children suffer as a consequence of that choice.

Two commentors suggested the establishment of a presumption of underemployment of an individual who earns less than could be earned by full-time employment at the minimum wage. Based upon this comment, we recommend that such a presumption be established. The effect is to shift to a parent who earns less than minimum wage the burden of demonstrating that he or she is not underemployed.

75-02-04.1-07(3): One commentor objected to provisions of this subsection that impute income at minimum wage. The commentor theorized that tax deductions from a minimum wage job would impose hardship on individuals who actually earn only minimum wage. We recommend no change based upon this comment. No

change was proposed to this policy. More significantly, the imputation is of gross income. Calculation of net income recognizes the taxes imposed.

One commentor argued that income would be imputed at 90% of the obligor's greatest average monthly gross earnings in any 12 consecutive months beginning within 36 months before the commencement of the proceeding before the court, even if income was lost due to an injury or other disability. We recommend no change based upon this comment. An obligor may avoid imputation of income by showing a disability, by showing the obligor must care for children, by showing the obligor must pay for child care that exceeds 70% of the income otherwise to be imputed, by showing that he or she is not underemployed, or by showing that employment opportunities sufficient to produce the imputed income are not available in the community.

75-02-04.1-07(4): Subdivision b allows for imputing income at a lower level if the obligor shows the obligor suffers from a disability sufficient in severity to reasonably preclude the obligor from employment at minimum wage. One commentor complained (incorrectly) that even a disability that restricts the ability to work is insufficient to avoid imputation of income. One commentor asserted that the child support office is not in a position to determine the severity of a disability nor to determine a disability's effect on a person's employability. This commentor recommended that the guidelines be clear that the individual with a disability needs to show how his or her disability affects employability through documentation. No change based upon these comments is recommended. No change was proposed to this provision. The guidelines already specify that the showing of the effect of the disability is the obligor's responsibility, and already specify that an obligor who makes the necessary showing may avoid imputation of income.

One commentor argued that it is inappropriate to base a calculation of the reasonable cost of child care on 70% of income that is most likely not being made. This commentor also complained that the obligor should not have to show there is no other adult caretaker available. We recommend no change based upon these comments. The provisions addressed by this commentor are intended to allow an obligor to avoid imputation of income if, in order to earn that income, the obligor would be obliged to spend most of the income on child care. No amendment to this subsection was proposed, and the commentor has offered no constructive suggestion for change.

75-02-04.1-07(7) and (8): One commentor opposed these subsections, which describe the action to be taken if the obligor fails, upon reasonable request, to furnish reliable information concerning the obligor's gross income from earnings. This commentor complains that, if you cannot tie denied visitation to

child support, you cannot tie withheld information to imputing income. We recommend no change based upon this comment. The commentor's observation is nonsense.

75-02-04.1-07(9): Six commentors objected to this new subsection that allows imputing income if an obligor makes a voluntary change in employment resulting in a reduction of income. One commentor was concerned that it may be inappropriate to eliminate the need to establish unemployment or underemployment in applicable cases. One commentor asserted that this treats noncustodial parents as second-class citizens. Another commentor saw this as doing psychological damage to the obligor. Other commentors asserted that this provision reduces the obligor's employment choices.

Six commentors supported this new subsection, explaining that obligors should not be able to impose reductions in child support by voluntary changes in employment. One commentor recommended averaging all months within the previous 36, rather than averaging the 12 highest earning months within the previous 36.

No change based upon these comments is recommended. It has long been the practice in North Dakota to not allow for a reduction in a child support obligation based upon the obligor's voluntary change of employment. However, in *Nelson v. Nelson*, 547 N.W.2d 741 (N.D. 1996), the North Dakota Supreme Court held that the child support guidelines had the effect of terminating that practice. Because the department had not intended that outcome, this subsection was added to permit the long-standing North Dakota practice to resume. The only change is that voluntary changes in employment could affect a child support determination for no longer than 36 months after the change took place.

75-02-04.1-08.1: This proposed new section would provide an adjustment in cases of court-ordered visitation.

One commentor expressed general and unqualified approval of this section. Another commentor expressed general and qualified approval of this section.

One commentor expressed general approval of the provision for extended visitation, but asserted that the standard is too rigorous, and the deduction insufficient. Two commentors asserted that this section isn't fair and urged a mechanism whereby the obligor wouldn't pay child support when caring for the children. One commentor suggested the child support obligation be reduced by 75 to 100% for each day of visitation, not just for extended visitation. One commentor said that this section would not help her noncustodial-husband because the visitation would not meet the extended visitation test. No change based upon these comments is recommended.

The proposed new section actually operates to reduce the child support obligation for periods of time the child spends with the obligor. The reduction appears smaller because it is in effect the entire year, rather than just during the time visitation is occurring.

As will be discussed in full later, the proposed reduction of two-thirds of the child support amount, for days of visitation in extended visitation, greatly exceeds the savings by the custodial parent. The suggested increase to 75 to 100% is in conflict with available data.

One commentator questioned why the proposed rule requires the extended visitation to be described in a court order. No change based upon this comment is recommended. The mechanism for establishing whether extended visitation existed was designed to avoid repeated litigation or dispute over the amount of actual visitation. This is done by determining that extended visitation exists only if the visitation is described in the court order. That court order, at the same time, can accommodate the extended visitation with an adjustment to the child support obligation. If actual visitation proves inconsistent with ordered visitation, the parties can return to court and get both the visitation and the child support adjusted at the same time.

One commentator suggested use of a visitation table, with a specific percentage adjustment associated with a range of visitation nights. The commentator's suggestion would produce an outcome similar to that of the proposed rule, but would not account for cases involving two or more children who may be on different visitation schedules.

One commentator complained that the obligor may have to pay full child support during summer months when the child is living with the obligor. One purpose of proposing this section is to address the problem the commentator describes.

One commentator didn't support this proposed new section, and suggested both that the department should "streamline the guidelines," but be "individualistic too." The commentator suggested no alternative that would accomplish these conflicting goals.

Four commentators agreed that some recognition of extended visitation may be appropriate, but recommended a deviation, under section 75-02-04.1-09(2). Four other commentators strongly disagreed with an extended visitation adjustment, but also argued that any adjustment should be limited to deviations under section 75-02-04.1-09(2).

Six commentators strongly opposed any adjustment for extended visitation. Among their objections:

1. The adjustment would serve to reduce already meager and diminished standards of living enjoyed by custodial parents and the children they care for;
2. When extended visitation of children requiring child care occurs in the community in which the custodial parent lives, the custodial parent typically will be obligated to continue paying for child care expenses;
3. The proposal does not distinguish between extended visitation with the noncustodial parent and extended visitation with other relatives;
4. Support amounts based on the obligor's ability to pay do not reflect the obligee's cost of caring for the child, and thus the obligor should not receive the benefit of a reduction in child support based on a reduction in the obligee's costs of caring for the child;
5. Children should not have rigid visitation schedules, as required by the proposed rule;
6. The proposed rule benefits obligors by allowing a reduction in a specific obligation, while the custodial parent is left with an unrestricted duty to cover all expenses, certain or unexpected, not offset by the support payments;
7. Obligor would be entitled to the reduction based on court ordered visitation, whether or not the visitation occurs;
8. The proposed rule will escalate litigation over visitation by tying extended visitation to the amount of child support;
9. The actual reduction in expenses of caring for a child, during periods of visitation, is limited, and primarily consists of reduction in food costs;
10. Older children will have commitments that will cause them to resist extended visitation, even if scheduled by court order;
11. The adjustment for extended visitation departs from long-established North Dakota law and policy keeping the issues of visitation and support separate;
12. The concept underlying the proposed adjustment is in conflict with 75-02-04.1-02(2), which provides that time spent with the obligor does not substitute for child support;

13. Allowing a reduction in support to facilitate visitation requires the child, in effect, to trade one right (support) for another (association with the noncustodial parent), in derogation of the child's best interests;
14. The proposed rule has internal contradictions in that it is not unequivocally based on visitation scheduled in a court order;
15. The formula used is completely arbitrary, assuming a two-thirds reduction in the custodial parent's cost of care during periods of visitation, although no data supports that reduction;
16. The formula is unduly complicated and burdensome; and
17. The custodial parent will now have a reason to resist visitation that reaches one of the extended visitation triggers.

In reviewing Senate Bill 2039, which requires consideration of extended visitation, the Senate Human Services Committee inserted a statement of intent that would describe an extended period of time to include situations where an obligor parent has custody of the child for 60 out of 90 consecutive days or where parties with joint physical custody have the child residing with each parent close to equal time, with each parent having physical custody at least 45% of the time (or at least 164 nights). The legislature did not forbid careful consideration of the appropriate adjustment to be made to reflect reduction in the costs incurred by the custodial parent in caring for the child. The department has analyzed available information concerning both the cost of caring for children and the components of that cost. See Attachment 4. The available data suggest that approximately 32% of the cost of caring for a child is associated with expenses that are relieved during the child's temporary absence. The proposed rule assumed that two-thirds of the cost would be relieved. Based on the comments, and on the data, we recommend that the relevant factor be reduced from two-thirds (.667) to .32.

Based on comments concerning the complexity of the rule, we recommend revisions that render the instructions in a sequence of declaratory sentences.

Based on comments concerning internal contradictions, we recommend revisions to subsection 2 to remove any doubt that the adjustment is based on visitation scheduled by court order.

Several of the other comments, while perhaps objectively correct, cannot be addressed because of the requirements of Senate Bill 2039 and the statement of intent associated with it. We do

not recommend that the adjustment be based on other than visitation scheduled by court order. If the parties do not actually engage in the scheduled visitation, the appropriate solution is to revisit the court order, not to seek support adjustments (or a lack of adjustment) that are at odds with the visitation order. By considering only visitation scheduled by court order, the entanglements between child support determinations and visitation determinations are reduced.

75-02-04.1-09: One commentor complained that it is difficult for a noncustodial parent to secure a downward deviation. One commentor suggested that no deviations be permitted, citing the commentor's belief that judges are biased and use their discretion in an unfair way. No change based upon these comments is recommended. It is not necessarily difficult for a noncustodial parent to secure a downward deviation. Someone seeking a downward deviation must establish the need for that downward deviation, applying criteria which take into consideration the best interests of the child. There is no general evidence of bias in the application of deviations.

One commentor asserted that there should be deviation for an illness or major catastrophe, citing the Grand Forks flood or having cancer. No change based upon this comment is recommended. The existing guidelines accommodate situations over which the obligor has little or no control and which require the obligor to incur a continued or fixed expense other than subsistence need work expense or daily living expenses. Existing deviations are available in response to the reduced ability of the obligor to provide support due to the obligor's health care needs.

One commentor objected to the proposed provision for deviation to reflect the obligor's reduced ability to provide support when two or more children are in foster care. The commentor argues that providing for a deviation in this instance requires court time. The commentor suggests that the proposed amendments to section 75-02-04.1-11, specifying that support orders in foster care must include consideration of section 75-02-04.1-06, concerning the costs of supporting a child living with the obligor, and section 75-02-04.1-06.1, concerning support amounts in multiple-family cases, adequately address the problem. We do not recommend a change based upon this comment. While the commentor is probably correct with respect to most foster care cases, these are often difficult cases, and some may require specific judicial determination.

75-02-04.1-10: Some commentors (who are obligors or spouses of obligors) objected to the amount of ordered child support identified or complained about the amount of discretionary income

remaining after meeting child support obligations and paying ordinary living expenses. Assuming those calculations are accurate, the commentators miss two points: (1) the insufficiency of their incomes to support themselves and their children, in separate households, at a standard of living similar to that enjoyed when they shared a single household; and (2) the fact that the child support obligation, if paid, is far from sufficient to meet the actual costs of supporting their children. That these commentators proposed to relieve their own financial hardship by imposing a greater hardship on their children severely undercuts commentators' claims that their demands are based on "fairness" or "reasonableness."

One commentator noted that while the child support guidelines provide for a payment that meets slightly more than half the cost of supporting a child in most cases, the law requires, in some instances, that the obligor also provide medical insurance for the child. No change based upon this comment is recommended. The guidelines specifically allow a deduction, in calculating net income, of the portion of premium payments for health insurance policies that afford coverage to the child or children for whom support is sought.

One commentator observed that the child support guidelines' amounts considerably exceed the amounts provided to families on public assistance (TANF). No change based upon this comment is recommended. The commentator is correct. However, the public assistance benefit is determined in large part by appropriations available to make the payment. In addition, TANF beneficiaries typically receive medical assistance, Food Stamps, Fuel Assistance, and Child Care Assistance. The combined value of these non-cash benefits typically exceeds the value of a TANF grant.

Several commentators stated their income and the amount of support they are ordered to pay, and then argued, with various explanations, why they perceived this amount to be excessive. Several commentators estimated the cost of providing for a child's needs at \$250-\$300 per month. One commentator asserted that a noncustodial parent should never have to pay more than one-half of that cost, or \$150 per month, per child. One commentator thought that obligors with very low income (using an example of \$400 per month) should not be required to pay child support. One commentator, a child, asserted that her custodial parent did not spend on her the amount paid by her noncustodial parent. No change based upon these comments is recommended. There was no change proposed to section 75-02-04.1-10. The amounts specified are not high compared to child support guidelines amounts in other states and are also not high compared to research concerning the actual cost of providing care for children. The commentators typically did not take into account all of the costs of raising children.

Since 1988, all states have been surveyed to identify the actual application of each state's guidelines on a set of scenarios. The 1997 survey is the most recently published. Attachment 1 reflects this survey. The five scenarios involve different income levels and are described on the first page of Attachment 1 as Cases A, B, C, D, and E. The remaining pages of Attachment 1 reflect the child support amounts in each state, ranked from highest to lowest.

In Case A, the lowest income level, 31 states set higher child support obligations. In Case B, 35 states set higher child support. In Case C, 40 states set higher child support. In Case D, 37 states set higher child support. And in Case E, with the highest monthly income, 12 states set higher child support obligations.

Attachment 1 demonstrates that North Dakota is, except for the highest income levels, a state that imposes relatively low child support obligations. That is reflected in the fact that the custodial parents of children whose obligors who are in the USDA low income category pay half of the direct cost of supporting the child. Custodial parents of children whose obligors are at USDA's middle income level pay approximately one-third of the cost of supporting the child. Custodial parents of children whose obligors are in the USDA high income category pay nearly thirty percent of the cost of supporting the child. In addition, custodial parents bear most of the non-cash costs of supporting children. Those non-cash costs include time spent in child care, attending school conferences, transporting children to and from activities (and often school), and house work such as cooking, cleaning, and doing laundry.

Attachment 2 consists of two tables from the most recent annual publication by the United States Department of Agriculture on Expenditures on Children by Families. The tables provided by the USDA consider before-tax income and vary slightly with the age of the child. There are two USDA tables that apply to North Dakota, one to urban areas and one to rural areas.

In order to compare USDA's before-tax income figures with the child support guidelines, Attachment 2 reflects calculated net income for child support purposes, using an average annual expenditure per child, and the USDA's adjustments to account for families of one, two, and three children. Attachment 3 reflects those calculations. For purposes of comparison, the urban figures were used as those reflect slightly lower incomes and slightly lower per-child expenditures.

For persons with very low incomes (less than \$1,000 per month net income), the guidelines effectively consider only the obligor's ability to pay support. It is inescapable that children of such persons will not be adequately supported by the

obligor's payment. However, that is no reason to require no payment. The children involved may be significantly better off for receiving even small amounts of child support. In addition, there is evidence of a strong correlation between payment of child support and active and positive involvement in the child's life by the noncustodial parent.

Attachment 3 demonstrates that at the lowest of the three USDA annual income levels (\$22,300 gross; \$17,939 net), the child support amount pays approximately half of the cost of meeting the child's needs. At the USDA gross annual income level of \$47,500 (\$34,519 net), the child support amount provides approximately two-thirds of the cost of meeting the child's needs. At the USDA annual income level of \$89,900 (\$59,343 net), the child support obligation pays slightly over 70% of the cost of meeting the child's needs.

75-02-04.1-11: Two commentors recommended that this section not be amended. One of these commentors expressed a concern that the proposed changes might increase the child support obligation of some individuals with children in foster care. No change based upon these comments is recommended. The only individuals who might see any increase are those whose obligations has been limited based on an incorrect understanding that the only cost of foster care is the cost of paying a foster care grant to foster parents. The amendment to subsection 1 is intended to clarify that foster care cases involving the cost of supporting a child living with the obligor and multi-family cases should include consideration of the relevant sections of this chapter. The amendments to subsection 3 are intended to clarify that the cap on support for foster care cases is based upon the cost of meeting the child's needs, and not only the cost of a foster care grant.

One commentor recommended that both parents be required to support a child in foster care. The guidelines already include that requirement. We recommend no change based upon this comment.

One commentor agreed that the problems that led to the proposed amendments to this section are real, but rejected the proposed amendments and suggested no alternatives. No change based on this comment is recommended.

One commentor recommended revision of the second sentence in subsection 1. The commentor's suggested clarification is not helpful. No change based upon this comment is recommended.

Two commentors suggested that changes to this section made in 1995 be abandoned, and that foster care cases have support amounts determined by establishing a support amount for all

children in the family, dividing by the number of children, and awarding the "per-child" amount for each child in foster care. No change based upon these comments is recommended. The suggestion is not compatible with multiple-family provisions.

One commentor suggested that foster care guidelines be separated because their circumstances are different, and addressed differently. No change based upon this comment is recommended. This section provides for separate and somewhat different treatment of foster care matters. However, federal law requires a state's child support guidelines to apply to all cases. 42 U.S.C. § 667(b)(2).

One commentor questioned how the cost of meeting a child's needs could be determined in a foster care setting. The cost of providing care for such a child is determinable because the costs are incurred at government expense, and government officials are obliged to maintain records. However, a review of relevant federal regulations at 45 CFR 302.52 reveals that federal law governing distribution of support collected in foster care cases contemplates collections that exceed the amount of the foster care maintenance payment. Those federal regulations require that the excess funds be paid to the state agency responsible for supervising the child's placement and care, and also require that state agency to "use the money in the manner it determines will serve the best interests of the child" 45 CFR 302.52(b)(2). Consistent with that federal regulation, there is no reason to include subsection 3 in this rule, and it is recommended the subsection be deleted.

Prepared by:

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June 14, 1999

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**INTERSTATE COMPARISONS OF CHILD SUPPORT ORDERS
USING STATE GUIDELINES**

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SCENARIOS

Mother and father are divorced. Father lives alone. Mother and the party's two children, ages 7 and 13, live together. Father pays union dues of \$30 per month and the health insurance for the two children at \$25 per month. Mother incurs monthly employment-related child care expenses of \$150. There are no extenuating factors to be added or considered for this unit. The gross combined monthly income for this family is as follows:

Case A: Combined \$	830	Father - \$	530	Mother - \$	300
Case B: Combined \$	1,200	Father - \$	720	Mother - \$	480
Case C: Combined \$	2,500	Father - \$	1,500	Mother - \$	1,000
Case D: Combined \$	4,400	Father - \$	2,640	Mother - \$	1,760
Case E: Combined \$	10,500	Father - \$	6,300	Mother - \$	4,200

Case A - 1997

Rank	State	Amount
1	South Dakota	275
2	Rhode Island	252
3	Maryland	249
4	California	236
5	Alabama	234
6	Colorado	231
7	Virginia	231
8	Kentucky	221
9	Indiana	215
10	Georgia	210
11	Louisiana	207
12	Nevada	200
13	Kansas	188
14	New Mexico	183
15	Oklahoma	171
16	Tennessee	153
17	Ohio	150
18	Missouri	149
19	Florida	135
20	Wisconsin	133
21	Michigan	128
22	Idaho	122
23	New Jersey	112
24	Texas	109
25	Wyoming	105
26	Illinois	102
27	Hawaii	100
28	Mississippi	92

Case A - 1997, cont.



Rank	State	Amount
29	Delaware	91
30	Utah	83
31	Oregon	73
32	North Dakota	68
33	Minnesota	62
34	South Carolina	58
35	Maine	52
36	District of Columbia	50
37	Iowa	50
38	Nebraska	50
39	New Hampshire	50
40	North Carolina	50
41	Washington	50
42	West Virginia	50
43	Alaska	38
44	New York	25
45	Montana	6
46	Connecticut	0
	Arizona	CD
	Arkansas	CD
	Massachusetts	CD
	Pennsylvania	CD
	Vermont	CD

CD= Court Discretion

mean	126
median	111
standard deviation	76

Case B - 1997

Rank	State	Amount
1	Indiana	327
2	Rhode Island	315
3	Maryland	295
4	Kentucky	293
5	Louisiana	292
6	New Mexico	291
7	Maine	290
8	Virginia	289
9	Alabama	280
10	California	278
11	Ohio	278
12	South Dakota	275
13	New Jersey	267
14	Missouri	265
15	Colorado	261
16	Florida	261
17	Pennsylvania	257
18	Kansas	227
19	Georgia	210
20	District of Columbia	208
21	Tennessee	200
22	Wyoming	200
23	Iowa	189
24	South Carolina	183
25	Nevada	180
26	Wisconsin	180
27	Oklahoma	171
28	Idaho	166

Case B - 1997, cont.

Rank	State	Amount
29	Oregon	159
30	Arkansas	150
31	Texas	147
32	Michigan	141
33	Massachusetts	137
34	Illinois	136
35	Utah	131
36	North Dakota	126
37	Mississippi	124
38	West Virginia	117
39	Hawaii	100
40	Delaware	91
41	Minnesota	84
42	Arizona	75
43	North Carolina	57
44	Nebraska	50
45	New Hampshire	50
46	New York	50
47	Washington	50
48	Alaska	38
49	Montana	15
50	Connecticut	0
	Vermont	CD

CD= Court Discretion

mean	179
median	180
standard deviation	91

Case C - 1997

Rank	State	Amount
1	Arizona	782
2	Indiana	692
3	Washington	641
4	South Dakota	486
5	Rhode Island	480
6	California	478
7	Massachusetts	471
8	Hawaii	470
9	Michigan	468
10	New Mexico	468
11	Delaware	467
12	Ohio	465
13	Florida	463
14	North Carolina	463
15	South Carolina	463
16	District of Columbia	458
17	New Jersey	452
18	Louisiana	451
19	Maryland	449
20	Missouri	447
21	Utah	447
22	Virginia	446
23	Kentucky	445
24	Maine	437
25	New York	436
26	Alabama	433
27	Vermont	428
28	New Hampshire	424

Case C - 1997, cont.

Rank	State	Amount
29	Pennsylvania	415
30	Colorado	409
31	Connecticut	404
32	Tennessee	393
33	Kansas	390
34	Nebraska	390
35	Georgia	383
36	Minnesota	376
37	Nevada	375
38	Wisconsin	375
39	West Virginia	364
40	Iowa	358
41	North Dakota	356
42	Wyoming	348
43	Idaho	345
44	Oregon	343
45	Alaska	312
46	Arkansas	305
47	Texas	298
48	Oklahoma	295
49	Illinois	294
50	Montana	261
51	Mississippi	251



mean	424
median	435
standard deviation	96

Case D - 1997

Rank	State	Amount
1	Indiana	899
2	District of Columbia	821
3	Massachusetts	789
4	California	770
5	Florida	721
6	New Jersey	710
7	Connecticut	703
8	New York	699
9	Nebraska	677
10	Rhode Island	677
11	Georgia	673
12	Louisiana	667
13	New Hampshire	667
14	Tennessee	665
15	Nevada	660
16	Wisconsin	660
17	Michigan	657
18	Maryland	655
19	South Dakota	652
20	Vermont	642
21	Virginia	641
22	Washington	641
23	Kentucky	637
24	Alabama	634
25	Arizona	628
26	Delaware	626
27	Maine	619
28	Utah	616

Case D - 1997, cont.

Rank	State	Amount
29	Colorado	610
30	Hawaii	610
31	Missouri	609
32	Ohio	609
33	Minnesota	606
34	North Carolina	600
35	New Mexico	588
36	Oregon	587
37	Kansas	582
38	North Dakota	582
39	South Carolina	574
40	Idaho	566
41	Iowa	566
42	Pennsylvania	554
43	Alaska	546
44	West Virginia	539
45	Wyoming	519
46	Texas	517
47	Illinois	485
48	Arkansas	475
49	Montana	456
50	Mississippi	427
51	Oklahoma	415



mean	624
median	628
standard deviation	92

Case E - 1997

Rank	State	Amount
1	West Virginia	1742
2	Georgia	1607
3	Nevada	1575
4	Wisconsin	1575
5	New York	1548
6	District of Columbia	1495
7	New Hampshire	1473
8	Indiana	1462
9	California	1457
10	Tennessee	1422
11	New Jersey	1389
12	Hawaii	1260
13	North Dakota	1231
14	Minnesota	1228
15	Connecticut	1198
16	Kansas	1195
17	Alaska	1193
18	Florida	1186
19	Rhode Island	1170
20	Delaware	1157
21	Texas	1114
22	New Mexico	1095
23	Michigan	1078
24	Colorado	1066
25	Arizona	1061
26	Maryland	1060
27	Washington	1054
28	Louisiana	1052



Case E - 1997, cont.

Rank	State	Amount
29	Iowa	1047
30	Ohio	1045
31	Virginia	1042
32	Nebraska	1035
33	Missouri	1032
34	South Dakota	1032
35	Maine	1031
36	Oregon	1027
37	Arkansas	1025
38	Vermont	1025
39	Illinois	1020
40	Kentucky	1017
41	North Carolina	1012
42	South Carolina	1000
43	Idaho	913
44	Mississippi	908
45	Montana	908
46	Wyoming	882
47	Oklahoma	801
	Alabama	CD
	Massachusetts	CD
	Pennsylvania	CD
	Utah	CD

CD= Court Discretion

mean	1175
median	1078
standard deviation	220

Table 5. Estimated annual expenditures* on a child by husband-wife families, urban Midwest,† 1997

Age of child	Total	Housing	Food	Transportation	Clothing	Health care	Child care and education	Miscellaneous‡
Before-tax income: Less than \$35,700 (Average=\$22,300)								
0-2	\$5,270	\$1,970	\$760	\$640	\$350	\$360	\$670	\$520
3-5	5,400	1,960	850	620	340	340	750	540
6-8	5,540	1,920	1,100	720	380	390	450	580
9-11	5,640	1,770	1,340	790	430	430	270	610
12-14	6,400	1,950	1,400	920	720	440	190	780
15-17	6,330	1,570	1,530	1,260	630	460	320	560
Total	\$103,740	\$33,420	\$20,940	\$14,850	\$8,550	\$7,260	\$7,950	\$10,770
Before-tax income: \$35,700 to \$60,100 (Average=\$47,500)								
0-2	\$7,540	\$2,740	\$920	\$1,010	\$420	\$490	\$1,110	\$850
3-5	7,760	2,730	1,070	990	410	460	1,230	870
6-8	7,830	2,690	1,370	1,100	450	530	790	900
9-11	7,870	2,540	1,640	1,170	500	570	510	940
12-14	8,560	2,720	1,640	1,290	850	580	380	1,100
15-17	8,720	2,340	1,840	1,650	750	600	650	890
Total	\$144,840	\$47,280	\$25,440	\$21,630	\$10,140	\$9,690	\$14,010	\$16,650
Before-tax income: More than \$60,100 (Average=\$89,900)								
0-2	\$11,350	\$4,410	\$1,230	\$1,460	\$550	\$570	\$1,690	\$1,440
3-5	11,620	4,390	1,400	1,440	540	550	1,840	1,460
6-8	11,550	4,350	1,690	1,540	590	620	1,260	1,500
9-11	11,500	4,200	1,980	1,610	640	660	870	1,540
12-14	12,330	4,390	2,070	1,740	1,070	680	680	1,700
15-17	12,650	4,010	2,190	2,110	970	700	1,190	1,480
Total	\$213,000	\$77,250	\$31,680	\$29,700	\$13,080	\$11,340	\$22,590	\$27,360

*Estimates are based on 1990-92 Consumer Expenditure Survey data updated to 1997 dollars using the regional Consumer Price Index. The figures represent estimated expenses on the younger child in a two-child family. Estimates are about the same for the older child, so to calculate expenses for two children, figures should be summed for the appropriate age categories. To estimate expenses for an only child, multiply the total expense for the appropriate age category by 1.24. To estimate expenses for each child in a family with three or more children, multiply the total expense for each appropriate age category by 0.77. For expenses on all children in a family, these totals should be summed.

†The Midwest region consists of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

‡Miscellaneous expenses include personal care items, entertainment, and reading materials.

Table 6. Estimated annual expenditures* on a child by husband-wife families, Rural areas,† 1997

Age of child	Total	Housing	Food	Transportation	Clothing	Health care	Child care and education	Miscellaneous‡
Before-tax income: Less than \$35,900 (Average=\$22,400)								
0-2	\$5,310	\$1,660	\$770	\$830	\$360	\$440	\$700	\$550
3-5	5,460	1,650	870	810	350	420	790	570
6-8	5,600	1,610	1,130	920	390	480	470	600
9-11	5,690	1,450	1,370	990	440	520	280	640
12-14	6,460	1,640	1,430	1,110	750	530	200	800
15-17	6,410	1,260	1,560	1,460	660	550	330	590
Total	\$104,790	\$27,810	\$21,390	\$18,360	\$8,850	\$8,820	\$8,310	\$11,250
Before-tax income: \$35,900 to \$60,400 (Average=\$47,800)								
0-2	\$7,640	\$2,450	\$940	\$1,210	\$430	\$580	\$1,160	\$870
3-5	7,850	2,430	1,090	1,180	420	550	1,290	890
6-8	7,900	2,390	1,390	1,290	460	630	820	920
9-11	7,950	2,240	1,660	1,360	520	670	540	960
12-14	8,630	2,420	1,660	1,480	870	680	400	1,120
15-17	8,820	2,040	1,860	1,840	780	710	680	910
Total	\$146,370	\$41,910	\$25,800	\$25,080	\$10,440	\$11,460	\$14,670	\$17,010
Before-tax income: More than \$60,400 (Average=\$90,500)								
0-2	\$11,470	\$4,130	\$1,240	\$1,650	\$560	\$670	\$1,760	\$1,460
3-5	11,750	4,120	1,410	1,630	550	640	1,920	1,480
6-8	11,680	4,080	1,710	1,730	600	730	1,320	1,510
9-11	11,630	3,930	2,000	1,800	660	770	920	1,550
12-14	12,450	4,110	2,100	1,930	1,100	790	710	1,710
15-17	12,800	3,730	2,220	2,310	990	810	1,240	1,500
Total	\$215,340	\$72,300	\$32,040	\$33,150	\$13,380	\$13,230	\$23,610	\$27,630

Estimates are based on 1990-92 Consumer Expenditure Survey data updated to 1997 dollars using the population size Consumer Price Index. The figures represent estimated expenses on the younger child in a two-child family. Estimates are about the same for the older child, so to calculate expenses for two children, figures should be summed for the appropriate age categories. To estimate expenses for an only child, multiply the total expense for the appropriate age category by 1.24. To estimate expenses for each child in a family with three or more children, multiply the total expense for each appropriate age category by 0.77. For expenses on all children in a family, these totals should be summed.

†Rural areas are places of fewer than 2,500 people outside a Metropolitan Statistical Area.

‡Miscellaneous expenses include personal care items, entertainment, and reading materials.

USDA Annual Income	Annual Net Income	Monthly Net Income
\$22,300	\$17,939	\$1,495
\$47,500	\$34,519	\$2,877
\$89,900	\$59,343	\$4,945

1 Child		
Guide-line	USDA Expend.	Percent
\$330	\$596	55%
\$556	\$831	67%
\$878	\$1,223	72%

2 Children		
Guide-line	USDA Expend.	Percent
\$441	\$961	46%
\$836	\$1,341	62%
\$1,400	\$1,972	71%

3 Children		
Guide-line	USDA Expend.	Percent
\$520	\$1,109	47%
\$995	\$1,549	64%
\$1,673	\$2,278	73%

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NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

INTEROFFICE MEMORANDUM

DATE: 6-7-99

Blaine
RECEIVED
 JUN 10 1999

TO: Mike Schwindt, Director of Child Support Enforcement Unit

FROM: LeRoy Bollinger, Research & Statistics

OFFICE OF
ECONOMIC ASSISTANCE

SUBJ: Child Support Guidelines - Estimated Computations to Be Considered For Possible Use in Deductions for Extended Visits (As per the Statement of Intent of Engrossed Senate Bill No. 2039)

The estimated computations to be considered for possible use in deductions for extended visits are attached. If the guidelines are not agreeable to you, please feel free to make changes. The guidelines were calculated using the following steps (Refer to attached pages for visual reference of the steps):

- 1) The annual expenditures on a child were gathered from the USDA report entitled "Expenditures on Children by Families - 1998 Annual Report". The guidelines reported here utilized the following tables:
 - A. Estimated annual expenditures on a child by husband-wife families, United States (Before-tax Income: Less than \$36,000)
 - B. Estimated annual expenditures on a child by single parent families, United States (Before-tax Income: Less than \$36,000)
 - C. Estimated annual expenditures on a child by husband-wife families, Urban Midwest (Before-tax Income: Less than \$36,300)
 - D. Estimated annual expenditures on a child by husband-wife families, Rural (Before-tax Income: Less than \$36,400)

- 2) The following tables were estimated by creating ratios using the above tables:
 - A. Estimated annual expenditures on a child by single parent families, Urban Midwest (Before-tax Income: Less than \$36,300)
 - B. Estimated annual expenditures on a child by single parent families, Rural (Before-tax Income: Less than \$36,400)

- 3) The following table was created by averaging the two tables created in step 2:
 - A. Estimated annual expenditures on a child by single parent families, Urban Midwest and Rural Averaged (Before-tax Income: Less than \$36,400)

(CONT)

- 4) The table created in step 3 was transformed into percentages, resulting in type of expenditure expressed as percent of total (by age category).
- 5) The percentage of variable and fixed child care expenditures for each expenditure category was estimated:
 - A. Variable expenditures - Custodial parent's expenditures that are reduced during the time the child is in the noncustodial parent's care.
 - B. Fixed (Non-Variable) expenditures - Expenditures that are used to maintain the child's living arrangements with the custodial parent. These expenditures are not reduced when the child is not in the custodial parent's home.
- 6) The type of expenditure expressed as a percent (step 4) was multiplied by the percent of the category that is variable (step 5). Then the individual expenditure categories were summed into the "Total" column.
- 7) Population estimates for ND by age: 1997. Source: Population Estimation Program, Population Division, U.S. Bureau of the Census, Washington, DC 20233.
- 8) The "final" estimated computations to be considered for possible use in deductions for extended visits (see below) were calculated by computing a weighted average of the "Total" Columns (in step 6) based on North Dakota census data for the respective age categories (step 7).

Age of Child	Deduction
0-17	31.9%

Annual Expenditures on Children by Families - 1998*

STEP 1

(Before-tax income: Less than \$36,000)

Husband-Wife Families - United States								
Age of Child	Total	Housing	Food	Transportation	Clothing	Health Care	Child Care and Education	Miscellaneous
0-2	5,950	2,270	850	720	390	410	720	590
3-5	6,080	2,240	940	690	380	390	820	600
6-8	6,180	2,170	1,210	810	420	450	480	540
9-11	6,210	1,980	1,450	880	470	490	290	670
12-14	7,020	2,180	1,520	990	780	500	210	840
15-17	8,920	1,780	1,650	1,330	690	530	340	620
Total	115,020	37,740	22,860	16,280	9,390	8,310	8,580	11,880

(Before-tax income: Less than \$36,000)

Single Parent Families - United States								
Age of Child	Total	Housing	Food	Transportation	Clothing	Health Care	Child Care and Education	Miscellaneous
0-2	5,010	2,040	940	670	350	200	450	360
3-5	5,640	2,320	980	590	370	290	620	470
6-8	6,340	2,460	1,240	680	430	340	560	630
9-11	5,940	2,360	1,440	490	440	430	270	510
12-14	6,400	2,370	1,440	560	740	460	340	490
15-17	7,120	2,510	1,570	890	860	460	250	570
Total	109,350	42,180	22,830	11,640	9,570	6,540	7,500	9,090

(Before-tax income: Less than \$36,000)

Husband-Wife Families - Urban Midwest								
Age of Child	Total	Housing	Food	Transportation	Clothing	Health Care	Child Care and Education	Miscellaneous
0-2	5,390	2,020	770	630	350	380	710	530
3-5	5,530	2,000	870	610	340	360	800	550
6-8	5,660	1,960	1,130	710	390	410	470	590
9-11	5,730	1,810	1,370	780	430	440	280	620
12-14	6,510	2,000	1,430	910	730	450	200	790
15-17	6,440	1,610	1,560	1,240	640	480	340	570
Total	105,780	34,200	22,860	14,640	8,840	7,560	8,400	10,950

(Before-tax income: Less than \$36,000)

Husband-Wife Families - Rural								
Age of Child	Total	Housing	Food	Transportation	Clothing	Health Care	Child Care and Education	Miscellaneous
0-2	5,390	1,690	790	810	370	450	720	560
3-5	5,530	1,670	890	790	360	430	810	580
6-8	5,680	1,630	1,150	890	410	500	480	620
9-11	5,780	1,480	1,390	960	450	530	290	680
12-14	6,560	1,670	1,480	1,080	770	550	210	820
15-17	6,480	1,280	1,590	1,420	680	570	340	600
Total	106,200	28,290	21,810	17,850	9,120	9,080	8,560	11,520

STEP 2

(Before-tax income: Less than \$36,000)

Single Parent Families - Urban Midwest*								
Age of Child	Total	Housing	Food	Transportation	Clothing	Health Care	Child Care and Education	Miscellaneous
0-2	4,520	1,820	850	590	310	190	440	320
3-5	5,130	2,070	910	520	330	270	600	430
6-8	5,820	2,220	1,160	600	400	310	550	580
9-11	5,490	2,180	1,360	430	400	390	260	470
12-14	5,910	2,170	1,350	510	690	410	320	460
15-17	6,810	2,300	1,480	830	800	420	260	520
Total	102,010	38,220	22,830	10,480	8,810	5,950	7,340	8,380

(Before-tax income: Less than \$36,000)

Single-Parent Families - Rural*								
Age of Child	Total	Housing	Food	Transportation	Clothing	Health Care	Child Care and Education	Miscellaneous
0-2	4,480	1,520	870	750	330	220	450	340
3-5	5,070	1,730	930	680	350	320	610	450
6-8	5,750	1,850	1,180	750	420	380	560	610
9-11	5,350	1,780	1,380	530	420	470	270	500
12-14	5,870	1,820	1,360	810	730	510	340	480
15-17	6,440	1,830	1,510	950	850	490	260	550
Total	98,860	31,580	21,780	12,780	9,290	7,150	7,470	8,810

STEP 3

(Before-tax income: Less than \$36,000)

Single Parent Families - Urban Midwest and Rural Averaged*								
Age of Child	Total	Housing	Food	Transportation	Clothing	Health Care	Child Care and Education	Miscellaneous
0-2	4,510	1,670	860	670	320	210	450	330
3-5	5,110	1,900	920	600	340	300	610	440
6-8	5,810	2,040	1,170	680	410	350	560	600
9-11	5,430	1,980	1,370	480	410	430	270	490
12-14	5,900	2,000	1,370	560	710	480	330	470
15-17	6,550	2,070	1,500	890	830	460	260	540
Total	100,450	34,900	22,310	11,630	9,050	6,550	7,410	8,600

*First four tables are from the source: USDA's "Expenditures on Children by Families - 1998 Annual Report"; Last three tables are estimated using first four tables.

Note: Yearly expenditures on child care/education may appear low. However, approximately 50 percent of families in the USDA study had no child care/education expenditure. In addition, the child care/education category excludes expenditures made by people outside the household and by the government.

Note: See "Categories of Household Expenditures" attachment for detailed information on expenditure categories.

Child Support Guidelines
Estimated Computations to Be Considered For Possible Use
in Deductions for Extended Visits*

STEP 3 Estimated Annual expenditures on a child, 1998
 (From Prev. Page) Single Parent - Urban Midwest and Rural Averaged[†]
 Before-tax income: Less than \$38,400

Age of Child	Total	Housing	Food	Transportation	Clothing	Health Care	Child Care and Education	Miscellaneous
0-2	4,510	1,670	860	670	320	210	450	330
3-5	5,110	1,900	920	600	340	300	610	440
6-8	5,810	2,040	1,170	680	410	350	560	600
9-11	5,430	1,980	1,370	480	410	430	270	490
12-14	5,900	2,000	1,370	560	710	460	330	470
15-17	6,550	2,070	1,500	890	830	460	260	540
Total	100,450	34,900	22,310	11,630	9,050	6,550	7,410	8,600

STEP 4 Type of Expenditure Expressed as Percent of Total (By Age Category)

Age of Child	Total	Housing	Food	Transportation	Clothing	Health Care	Child Care and Education	Miscellaneous
0-2	100.0%	37.0%	19.1%	14.9%	7.1%	4.7%	10.0%	7.3%
3-5	100.0%	37.2%	18.0%	11.7%	6.7%	5.9%	11.9%	8.6%
6-8	100.0%	35.1%	20.1%	11.7%	7.1%	6.0%	9.6%	10.3%
9-11	100.0%	36.5%	25.2%	8.8%	7.6%	7.9%	5.0%	9.0%
12-14	100.0%	33.9%	23.2%	9.5%	12.0%	7.8%	5.6%	9.0%
15-17	100.0%	31.6%	22.9%	13.6%	12.7%	7.0%	4.0%	9.2%
Total	100.0%	34.7%	22.2%	11.6%	9.0%	6.5%	7.4%	8.6%

STEP 5 Percent of Category (by age) that is Variable (i.e. follows the child)

Age of Child	Total	Housing	Food	Transportation	Clothing*	Health Care	Child Care and Education	Miscellaneous
0-2		1.0%	100.0%	5.0%	50.0%	5.0%	20.0%	75.0%
3-5		1.0%	100.0%	5.0%	10.0%	5.0%	20.0%	75.0%
6-8		1.0%	100.0%	5.0%	10.0%	5.0%	20.0%	75.0%
9-11		1.0%	100.0%	5.0%	10.0%	5.0%	20.0%	75.0%
12-14		1.0%	100.0%	5.0%	10.0%	5.0%	5.0%	75.0%
15-17		1.0%	100.0%	5.0%	10.0%	5.0%	5.0%	75.0%
Average		1.0%	100.0%	5.0%	16.7%	5.0%	15.0%	75.0%

Each category consists of two percentages: 1) variable percentage - percentage of costs incurred by the custodial parent that are reduced when the child is not cared for by the custodial parent; and, 2) fixed (non-variable) percentage - a percentage necessary to maintain the child's living arrangements with the custodial parent

*The 'clothing' category includes diapers, resulting in a larger variable cost for children 0-2

STEP 6 Type of Expenditure Expressed as Percent (Step 4) Multiplied by Percent of Category that is Variable (Step 5)

Age of Child	Total	Housing	Food	Transportation	Clothing	Health Care	Child Care and Education	Miscellaneous
0-2	31.4%	0.4%	19.1%	0.7%	3.5%	0.2%	2.0%	5.5%
3-5	28.8%	0.4%	18.0%	0.6%	0.7%	0.3%	2.4%	6.5%
6-8	31.8%	0.4%	20.1%	0.6%	0.7%	0.3%	1.9%	7.7%
9-11	35.0%	0.4%	25.2%	0.4%	0.8%	0.4%	1.0%	6.8%
12-14	31.9%	0.3%	23.2%	0.5%	1.2%	0.4%	0.3%	5.0%
15-17	31.9%	0.3%	22.9%	0.7%	1.3%	0.4%	0.2%	6.2%
Average		0.3%	22.2%	0.8%	1.5%	0.3%	1.1%	6.4%

STEP 7 Population Estimates for ND by age: 1987

Age of Child	Total ND Population	Percent of Total
0-2	24,239	14.7%
3-5	24,782	15.0%
6-8	25,961	15.7%
9-11	28,445	17.2%
12-14	30,157	18.3%
15-17	31,824	19.1%
Total	165,208	100.0%

Source: Population Estimation Program, Population Division, U.S. Bureau of the Census, Washington, DC 20233

STEP 8 The Final Estimated Computations to be Considered For Possible Use in Deductions for Extended Visits (A Weighted Average of Step 6 by Step 7)

Age of Child	Total Deduction
0-17	31.9%

*As per the Statement of Intent of Engrassed Senate Bill No. 2039

[†]Estimated using USDA's "Expenditures on Children by Families - 1998 Annual Report"

Note: See "Categories of Household Expenditures" attachment for detailed information on expenditure categories

Categories of Household Expenditures

Housing expenses include shelter (mortgage interest, property taxes, or rent; maintenance and repairs; and insurance), utilities (gas, electricity, fuel, telephone, and water), and house furnishings and equipment (furniture, floor coverings, major appliances, and small appliances). It should be noted that for homeowners, housing expenses do not include mortgage principle payments; such payments are considered in the CE to be part of savings. So total dollars allocated to housing by homeowners are underestimated in this report.

Food expenses include food and nonalcoholic beverages purchased at grocery, convenience, and specialty stores, including purchases with food stamps; dining at restaurants; and household expenditures on school meals.

Transportation expenses include the net outlay on purchase of new and used vehicles, vehicle finance charges, gasoline and motor oil, maintenance and repairs, insurance, and public transportation.

Clothing expenses include children's apparel such as diapers, shirts, pants, dresses, and suits; footwear; and clothing services such as dry cleaning, alterations and repair, and storage.

Health care expenses include medical and dental services not covered by insurance, prescription drugs and medical supplies not covered by insurance, and health insurance premiums not paid by employer or other organization.

Child care and education expenses include day care tuition and supplies; baby-sitting; and elementary and high school tuition, books, and supplies.

Miscellaneous expenses include personal care items, entertainment, and reading materials.

Source: Page 2 of USDA's "Expenditures on Children by Families - 1998 Annual Report"