

**CHAPTER 75-02-04.1
CHILD SUPPORT GUIDELINES**

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75-02-04.1-01. Definitions.

5. a. "Gross income" means income from any source, in any form, but does not mean:
- (1) Benefits received from means tested public assistance programs such as temporary assistance to needy families, supplemental security income, and food

stamps;

(2) Employee benefits over which the employee does not have significant influence or control over the nature or amount unless:

(a) That benefit may be liquidated; and

(b) Liquidation of that benefit does not result in the employee incurring an income tax penalty; or

(3) Child support payments.

b. Examples of gross income include salaries, wages, overtime wages, commissions, bonuses, employee benefits, currently deferred income, dividends, severance pay, pensions, interest, trust income, annuities income, gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, distributions of retirement benefits, receipt of previously deferred income to the extent not previously considered in determining a child support obligation for the child whose support is under consideration, veterans' benefits (including gratuitous benefits), gifts and prizes to the extent

they annually exceed one thousand dollars in value, spousal support payments received, ~~earned income~~ refundable tax credits, value of in-kind income received on a regular basis, children's benefits, income imputed based upon earning capacity, military subsistence payments, and net income from self-employment.

- c. For purposes of this subsection, income tax due or paid is not an income tax penalty.
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6. "In-kind income" means the receipt from employment or income-producing activity of any valuable right, property or property interest, other than money or money's worth, including forgiveness of debt (other than through bankruptcy), use of property, including living quarters at no charge or less than the customary charge, and the use of consumable property or services at no charge or less than the customary charge.
 7. "Net income" means total gross annual income less:
 - a. A hypothetical federal income tax obligation based on the obligor's gross income, reduced by that part of the obligor's gross income that is not subject to federal income tax and

reduced by deductions allowed in arriving at adjusted gross income under the Internal Revenue Code, and applying:

- (1) The standard deduction for the tax filing status of single;
- (2) One exemption for the obligor;
- (3) (a) One additional exemption for each child, as defined in this section, actually claimed on a disclosed income tax return or one additional exemption for each child, as defined in this section, if a tax return is not disclosed; and, that the obligor is allowed to claim pursuant to a court order unless the obligor and obligee alternate claiming the exemption for the child pursuant to the court order, in which case, an amount equal to one-half of the exemption; or
 - (b) If there is no court order allocating the exemption, or if it is unknown whether there is such a court order, then one additional exemption for each child, as defined in this section, actually claimed on a disclosed tax return or one additional exemption for

each child, as defined in this section, if a tax return is not disclosed.

- (4) Tax tables for a single individual for the most recent year published by the internal revenue service, reduced by one child tax credit for each child's exemption considered under paragraph 3, provided such child is a qualifying child for purposes of the child tax credit;
- b. A hypothetical state income tax obligation equal to fourteen percent of the amount determined under subdivision a without reduction for child tax credits;
- c. A hypothetical obligation for Federal Insurance Contributions Act (FICA), Railroad Retirement Tax Act (RRTA) tier I and tier II, ~~and medicare deductions or,~~ and self-employment tax obligations based on that part of the obligor's gross income that is subject to FICA, RRTA, ~~or medicare~~ or self-employment tax under the Internal Revenue Code;
- d. A portion of premium payments, made by the person whose income is being determined, for health insurance policies or health service contracts, intended to afford coverage for the

child or children for whom support is being sought, determined by dividing the payment by the total number of persons covered and multiplying the result times the number of such children:

(1) If the cost of single coverage for the obligor and the number of persons associated with the premium payment are known:

(a) Reducing the premium payment by the cost for single coverage for the obligor;

(b) Dividing the difference by the total number of persons, exclusive of the obligor, associated with the premium payment; and

(c) Multiplying the result times the number of insured children for whom support is being sought; or

(2) If the cost of single coverage for the obligor is not known:

(a) Dividing the payment by the total number of persons covered; and

(b) Multiplying the result times the number of insured children for whom support is being sought;

- e. Payments made on actual medical expenses of the child or children for whom support is sought to the extent it is reasonably likely similar expenses will continue;
- f. Union dues and occupational license fees if required as a condition of employment;
- g. Employee retirement contributions, deducted from the employee's compensation and not otherwise deducted under this subsection, to the extent required as a condition of employment;
- h. Employee expenses for special equipment or clothing required as a condition of employment or for lodging expenses incurred when engaged in travel required as a condition of employment (limited to thirty dollars per night); and
- i. Employer reimbursed out-of-pocket expenses of employment, if included in gross income, but excluded from adjusted gross

income on the obligor's federal income tax return.

8. "Obligee" includes, for purposes of this chapter, an obligee as defined in ~~subsection 8 of North Dakota Century Code~~ section 14-09-09.10 of the North Dakota Century Code and a person who is alleged to be owed a duty of support.
9. "Obligor" includes, for purposes of this chapter, an obligor as defined in ~~subsection 9 of North Dakota Century Code~~ section 14-09-09.10 of the North Dakota Century Code and a person who is alleged to owe a duty of support.
10. "Self-employment" means employment that results in an obligor earning income from any business organization or entity which the obligor is, to a significant extent, able to directly or indirectly control. For purposes of this chapter, it also includes any activity that generates income from rental property, royalties, business gains, partnerships, trusts, corporations, and any other organization or entity regardless of form and regardless of whether such activity would be considered self-employment activity under the Internal Revenue Code.
11. "Split custody" means a situation where the parents have more than

one child in common, and where each parent has sole custody of at least one child.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7; 50-09-02(4216); 42 USC 667

75-02-04.1-02. Determination of support amount - General instructions.

1. Calculations Except as provided in section 75-02-04.1-08.2, calculations of child support obligations provided for under this chapter consider and assume that one parent acts as a primary caregiver and the other parent contributes a payment of child support to the child's care.

7. Income must be sufficiently documented through the use of tax returns, current wage statements, and other information sufficiently to fully apprise the court of all gross income. Where gross income is subject to fluctuation, particularly in instances involving self-employment, information reflecting and covering a period of time

sufficient to reveal the likely extent of fluctuations must be provided.

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History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(4216); 42 USC 667

75-02-04.1-03. Determination of child support amount obligation - Split custody. A child support amount obligation must be determined for the child or children in each parent's sole custody. The lesser amount obligation is then subtracted from the greater. The difference is the child support amount owed by the parent with the greater obligation.

History: Effective February 1, 1991; amended August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(4216); 42 USC 667

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75-02-04.1-05. Determination of net income from self-employment.

1. Net income from self-employment means total income, for internal revenue service purposes, of the obligor and the obligor's business, reduced by the amount, if any, of that total income that is not the obligor's income from self-employment, plus:
 - a. ~~Business expenses attributable to the obligor or a member of the obligor's household for~~ Reduced by that amount, if any, of:

- (1) ~~Employee's or proprietor's benefits, pensions, and profit-sharing plans~~ That total income that is not the obligor's income or that is otherwise included in gross income; and
 - (2) ~~Travel, meals, or entertainment~~ With respect to a partnership or a small business corporation for which an election under 26 U.S.C. section 1362(a) is in effect and over which the obligor is not able to exercise direct or indirect control to a significant extent, that income of the partnership or small business corporation which is not available, and has not yet been distributed, to the obligor; and
- b. ~~Payments made to a member of the obligor's household, other than the obligor, to the extent the payment exceeds the fair market value of the service furnished by the household member~~ Increased by that amount, if any, for:
- (1) Business expenses attributable to the obligor or a member of the obligor's household for employee's or proprietor's benefits, pensions, and profit-sharing plans;
 - (2) Payments made from the obligor's self-employment activity to a member of the obligor's household, other than the obligor, to

the extent the payment exceeds the fair market value of the service furnished by the household member; and

(3) With respect to a corporation that pays its own tax over which the obligor is able to exercise direct or indirect control to a significant extent, the taxable income of the corporation, less the corporation's federal income tax, multiplied by seventy percent of the obligor's ownership interest in the corporation.

2. "Member of the obligor's household" includes any individual who shares the obligor's home a substantial part of the time, without regard to whether that individual maintains another home.
3. ~~The "obligor's business" includes any business organization or entity which the obligor is, to a significant extent, able to directly or indirectly control.~~
4. If the tax returns are not available or do not reasonably reflect the income from the business self-employment, profit and loss statements which more accurately reflect the current status of the business must be used.
- 5 4. ~~Businesses~~ Self-employment activities may experience significant changes in production and income over time. To the extent that information is reasonably available, the average of the most recent five years of ~~business operations~~

each self-employment activity, if undertaken on a substantially similar scale, must be used to determine business self-employment income. When self-employment activity has not been operated on a substantially similar scale for five years, a shorter period may be used.

5. When averaging self-employment income pursuant to subsection 4, no amount may be included in income for one year that was previously included in income for any other year during the period being averaged.

6. When less than three years were averaged under subsection 4, a loss resulting from the averaging may be used to reduce income that is not related to self-employment only if the loss is not related to a hobby activity and monthly gross income, reduced by one-twelfth of the average annual self-employment loss, equals or exceeds the greatest of:
 - a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage;

 - b. An amount equal to six-tenths of prevailing gross earnings of persons with similar work history and occupational qualifications who work in any place within one hundred miles [160.93 kilometers] of the obligor's actual place of residence; or

- c. An amount equal to eighty percent of the obligor's greatest average gross monthly earnings, calculated without using self-employment losses, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court.

- 7. When three or more years were averaged under subsection 4, a loss resulting from the averaging may be used to reduce income that is not related to self-employment only if the loss is not related to a hobby activity, losses were calculated for no more than forty percent of the years averaged, and monthly gross income, reduced by one-twelfth of the average annual self-employment loss, equals or exceeds the greatest of:

 - a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage;
 - b. An amount equal to six-tenths of prevailing gross earnings of persons with similar work history and occupational qualifications who work in any place within one hundred miles [160.93 kilometers] of the obligor's actual place of residence; or
 - c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, calculated without using self-employment losses, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court.

8. For purposes of subsections 6 and 7, an activity is presumed to be a hobby activity if the result from averaging is a loss. The presumption may be rebutted if the obligor shows that the activity is not done primarily for enjoyment purposes, is a vocation and not an avocation and, in the context of the child support obligation, there is a reasonable expectation that the children will receive long-term benefits.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(~~42~~16); 42 USC 667

75-02-04.1-06. Determining the cost of supporting a child living with the obligor. The cost of supporting a child living with the obligor, who is not also a child of the obligee, may be deducted from net income under subsection 4 of section 75-02-04.1-06.1 and is determined by applying the obligor's net income and the total number of children living with the obligor, who are not also children of the obligee, to whom the obligor owes a duty of support, to section 75-02-04.1-10.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(~~42~~16); 42 USC 667

75-02-04.1-06.1. Determination of support amount in multiple-family cases.

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7. When determining a support amount under paragraph one of subdivision a of subsection four, consider only children to whom an obligor owes a current monthly support obligation pursuant to a support order and other children under the age of eighteen to whom an obligor owes a duty of support.

History: Effective January 1, 1995; amended effective August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(~~12~~16); 42 USC 667

75-02-04.1-07. Imputing income based on earning capacity.

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2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than:
 - a. Six-tenths of prevailing amounts earned in the community by persons with similar work history and occupational qualifications;
or
 - b. ~~One~~ A monthly amount equal to one hundred sixty-seven times

the federal hourly minimum wage.

3. Except as provided in subsections 4, 5, and 9, monthly gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed.
 - a. An A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage.
 - b. An amount equal to six-tenths of prevailing gross monthly earnings in the community of persons with similar work history and occupational qualifications.
 - c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court, for which reliable evidence is provided.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(~~12~~16); 42 USC 667

75-02-04.1-08.2. Equal physical custody - determination of child support obligation. A child support obligation must be determined as described in this section in all cases in which a court orders each parent to have equal physical custody of their child or children. Equal physical custody means each parent has physical custody of the child, or if there are multiple children, all of the children, exactly fifty percent of the time. A child support obligation for each parent must be calculated under this chapter assuming the other parent is the custodial parent of the child or children subject to the equal physical custody order. The lesser obligation is then subtracted from the greater. The difference is the child support amount owed by the parent with the greater obligation. Each parent is an obligee to the extent of the other parent's calculated obligation. Each parent is an obligor to the extent of that parent's calculated obligation.

History: Effective August 1, 2003.

General Authority: NDCC 50-06-16; 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-09. Criteria for rebuttal of guideline amount.

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2. The presumption that the amount of child support that would result from the application of this chapter, except for this subsection, is the correct amount of child support is rebutted only if a preponderance of the evidence establishes that a deviation from the guidelines is in the best interest of the supported children and:

- a. The increased need if support for more than six children is sought in the matter before the court;
- b. The increased ability of an obligor, with a monthly net income which exceeds ~~ten~~ twelve thousand five hundred dollars, to provide child support;
- c. The increased need if educational costs have been voluntarily incurred, at private schools, with the prior written concurrence of the obligor;
- d. The increased needs of children with disabling conditions or chronic illness;
- e. The increased needs of children age twelve and older;
- f. The increased needs of children related to the cost of child care, purchased by the obligee, for reasonable purposes related to employment, job search, education, or training;
- g. The increased ability of an obligor, who is able to secure additional income from assets, to provide child support;

- h. The increased ability of an obligor, who has engaged in an asset transaction for the purpose of reducing the obligor's income available for payment of child support, to provide child support;
- i. The reduced ability of the obligor to provide support due to travel expenses incurred ~~solely~~ predominantly for the purpose of visiting a child who is the subject of the order taking into consideration the amount of court ordered visitation and, when such history is available, actual expenses and practices of the parties;
- j. The reduced ability of the obligor to pay child support due to a situation, over which the obligor has little or no control, which requires the obligor to incur a continued or fixed expense for other than subsistence needs, work expenses, or daily living expenses, and which is not otherwise described in this subsection;
- k. The reduced ability of the obligor to provide support due to the obligor's health care needs, to the extent that the costs of meeting those health care needs:
 - (1) Exceed ten percent of the obligor's gross income;
 - (2) Have been incurred and are reasonably certain to continue

to be incurred by the obligor;

(3) Are not subject to payment or reimbursement from any source except the obligor's income; and

(4) Are necessary to prevent or delay the death of the obligor or to avoid a significant loss of income to the obligor; or

I. The reduced ability of the obligor to provide support when ~~two or more of the obligor's children are in foster care or guardianship care~~ calculation of the obligation otherwise reflects consideration of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control.

...

5. For purposes of subdivision j of subsection 2, a situation over which the obligor has little or no control does not exist if the situation arises out of spousal support payments, discretionary purchases, or illegal activity.

6. For purposes of subdivisions a through f of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter.

7. For purposes of subdivisions g through l of subsection 2, any adjustment shall be made to the obligor's net income.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(4216); 42 USC 667

75-02-04.1-10. Child support amount. The amount of child support payable by the obligor is determined by the application of the following schedule to the obligor's monthly net income and the number of children for whom support is being sought in the matter before the court.

Obligor's Monthly Net Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
100 or less	14	17	20	22	24	26
200	28	34	40	44	48	52
300	42	51	60	66	72	78
400	56	68	80	88	96	104
500	75	90	105	120	130	140
600	102	126	144	162	174	192
700	133	161	189	210	231	252
800	168	200	232	264	288	320
900	207	252	288	324	360	387
1000	250	300	350	390	430	470
1100	266	328	384	428	470	511
1200	282	356	418	465	510	553
1300	298	385	452	503	550	594
1400	314	412	486	540	590	635
1500	330	441	520	578	630	677
1600	346	469	554	616	669	718
1700	362	497	588	653	709	759
1800	378	526	622	691	749	800

1900	394	554	656	728	789	842
2000	411	582	690	766	829	883
2100	427	610	724	804	869	924
2200	443	638	758	841	909	966
2300	459	667	792	879	949	1007
2400	475	695	826	916	989	1048
2500	492	723	860	954	1029	1090
2600	508	751	893	992	1068	1131
2700	524	779	927	1029	1108	1172
2800	540	808	961	1067	1148	1213
2900	556	836	995	1104	1188	1255
3000	572	864	1029	1142	1228	1296
3100	588	892	1063	1180	1268	1337
3200	604	920	1097	1217	1308	1379
3300	620	949	1131	1255	1348	1420
3400	636	977	1165	1292	1388	1461
3500	653	1005	1199	1330	1428	1503
3600	669	1033	1232	1368	1467	1544
3700	685	1061	1266	1405	1507	1585
3800	701	1090	1300	1443	1547	1626
3900	717	1118	1334	1480	1587	1668
4000	733	1146	1368	1518	1627	1709
4100	749	1174	1402	1556	1667	1750
4200	765	1202	1436	1593	1707	1792
4300	781	1231	1470	1631	1747	1833
4400	797	1259	1504	1668	1787	1874
4500	814	1287	1538	1706	1827	1916
4600	830	1315	1571	1744	1866	1957
4700	846	1343	1605	1781	1906	1998
4800	862	1372	1639	1819	1946	2039
4900	878	1400	1673	1856	1986	2081
5000	894	1428	1707	1894	2026	2122
5100	910	1456	1741	1932	2066	2163
5200	926	1484	1775	1969	2106	2205
5300	942	1513	1809	2007	2146	2246
5400	958	1541	1843	2044	2186	2287
5500	975	1569	1877	2082	2226	2329
5600	991	1597	1910	2120	2265	2370
5700	1007	1625	1944	2157	2305	2411
5800	1023	1654	1978	2195	2345	2453
5900	1039	1682	2012	2232	2385	2494
6000	1055	1710	2046	2270	2425	2535
6100	1071	1738	2080	2308	2465	2576
6200	1087	1766	2114	2345	2505	2618
6300	1103	1795	2148	2383	2545	2659
6400	1119	1823	2182	2420	2585	2700

6500	1136	1851	2216	2458	2625	2742
6600	1152	1879	2249	2496	2664	2783
6700	1168	1907	2283	2533	2704	2824
6800	1184	1936	2317	2571	2744	2865
6900	1200	1964	2351	2608	2784	2907
7000	1216	1992	2385	2646	2824	2948
7100	1232	2020	2419	2684	2864	2989
7200	1248	2048	2453	2721	2904	3031
7300	1264	2077	2487	2759	2944	3072
7400	1280	2105	2521	2796	2984	3113
7500	1297	2133	2555	2834	3024	3155
7600	1313	2161	2588	2872	3063	3196
7700	1329	2189	2622	2909	3103	3237
7800	1345	2218	2656	2947	3143	3278
7900	1361	2246	2690	2984	3183	3320
8000	1377	2274	2724	3022	3223	3361
8100	1393	2302	2758	3060	3263	3402
8200	1409	2330	2792	3097	3303	3444
8300	1425	2359	2826	3135	3343	3485
8400	1441	2387	2860	3172	3383	3526
8500	1458	2415	2894	3210	3423	3568
8600	1474	2443	2927	3248	3462	3609
8700	1490	2471	2961	3285	3502	3650
8800	1506	2500	2995	3323	3542	3691
8900	1522	2528	3029	3360	3582	3733
9000	1538	2556	3063	3398	3622	3774
9100	1554	2584	3097	3436	3662	3815
9200	1570	2612	3131	3473	3702	3857
9300	1586	2641	3165	3511	3742	3898
9400	1602	2669	3199	3548	3782	3939
9500	1619	2697	3233	3586	3822	3981
9600	1635	2725	3266	3624	3861	4022
9700	1651	2753	3300	3661	3901	4063
9800	1667	2782	3334	3699	3941	4104
9900	1683	2809	3368	3736	3981	4146
10000	1699	2838	3402	3774	4021	4187
10100	1715	2866	3436	3812	4061	4228
10200	1731	2894	3470	3849	4101	4270
10300	1747	2923	3504	3887	4141	4311
10400	1763	2951	3538	3924	4181	4352
10500	1780	2979	3572	3962	4221	4394
10600	1796	3007	3605	4000	4260	4435
10700	1812	3035	3639	4037	4300	4476
10800	1828	3064	3673	4075	4340	4517
10900	1844	3092	3707	4112	4380	4559
11000	1860	3120	3741	4150	4420	4600

<u>11100</u>	<u>1876</u>	<u>3148</u>	<u>3775</u>	<u>4188</u>	<u>4460</u>	<u>4641</u>
<u>11200</u>	<u>1892</u>	<u>3176</u>	<u>3809</u>	<u>4225</u>	<u>4500</u>	<u>4683</u>
<u>11300</u>	<u>1908</u>	<u>3205</u>	<u>3843</u>	<u>4263</u>	<u>4540</u>	<u>4724</u>
<u>11400</u>	<u>1924</u>	<u>3233</u>	<u>3877</u>	<u>4300</u>	<u>4580</u>	<u>4765</u>
<u>11500</u>	<u>1941</u>	<u>3261</u>	<u>3911</u>	<u>4338</u>	<u>4620</u>	<u>4807</u>
<u>11600</u>	<u>1957</u>	<u>3289</u>	<u>3945</u>	<u>4376</u>	<u>4659</u>	<u>4848</u>
<u>11700</u>	<u>1973</u>	<u>3317</u>	<u>3978</u>	<u>4413</u>	<u>4699</u>	<u>4889</u>
<u>11800</u>	<u>1989</u>	<u>3346</u>	<u>4012</u>	<u>4451</u>	<u>4739</u>	<u>4930</u>
<u>11900</u>	<u>2005</u>	<u>3374</u>	<u>4046</u>	<u>4488</u>	<u>4779</u>	<u>4972</u>
<u>12000</u>	<u>2021</u>	<u>3402</u>	<u>4080</u>	<u>4526</u>	<u>4819</u>	<u>5013</u>
<u>12100</u>	<u>2037</u>	<u>3430</u>	<u>4114</u>	<u>4564</u>	<u>4859</u>	<u>5054</u>
<u>12200</u>	<u>2053</u>	<u>3458</u>	<u>4148</u>	<u>4601</u>	<u>4899</u>	<u>5096</u>
<u>12300</u>	<u>2069</u>	<u>3487</u>	<u>4182</u>	<u>4639</u>	<u>4939</u>	<u>5137</u>
<u>12400</u>	<u>2085</u>	<u>3515</u>	<u>4216</u>	<u>4676</u>	<u>4979</u>	<u>5178</u>
<u>12500</u>	<u>2102</u>	<u>3543</u>	<u>4250</u>	<u>4714</u>	<u>5019</u>	<u>5220</u>
or more						

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(4216); 42 USC 667

75-02-04.1-11. Parental responsibility for children in foster care or guardianship care. It is important that parents maintain a tie to and responsibility for their child when that child is in foster care. Financial responsibility for the support of that child is one component of the maintenance of the relationship of parent and child. Parents of a child subject to a guardianship order under North Dakota Century Code chapter 27-20 or 30.1-27 remain financially responsible for the support of that child.

1. In order to determine monthly net income, it is first necessary to identify the parent or parents who have financial responsibility for any child entering foster care or guardianship care, and to determine the net income of those financially responsible parents. If the parents of a child in

foster care or guardianship care reside together, and neither parent has a duty to support any child who does not either reside with the parents or receive foster care or guardianship care, the income of the parents must be combined and treated as the income of the obligor. In all other cases, each parent is treated as an obligor, and each parent's support obligations obligation must be separately determined. ~~If an obligor under this section has a child living with the obligor, the support obligation must be determined through applications of sections 75-02-04.1-06 and 75-02-04.1-06.1.~~

2. ~~Each child in foster care or guardianship care is treated as an obligee, and support obligations must be separately determined for each such child. Unless subsection 3 applies to the obligor, the net income and the total number of children are applied to 75-02-04.1-10 to determine the child support amount. That child support amount is then divided by the total number of children to determine the child support obligation for each child in foster care or guardianship care. For purposes of this subsection, the "total number of children" means:~~

- a. If a child entering foster care or guardianship care resides in the obligor's home, the total number of children residing in the obligor's home to whom the obligor owes a duty of support, including the child or children entering foster care or guardianship care, plus any

other full siblings of the child or children entering foster care or guardianship care to whom the obligor owes a duty of support who are not residing in the obligor's home; or

b. If no child entering foster care or guardianship care resides in the obligor's home, the child or children entering foster care or guardianship care plus the full siblings of the child or children entering foster care or guardianship care to whom the obligor owes a duty of support.

3. If an obligor owes a duty of support to any child other than the child or children described in subdivision a or b of subsection 2, as applicable to that obligor, the support obligation must be determined through application of section 75-02-04.1-06.1 such that:

a. The total number of children, as described in subdivision a or b of subsection 2, as applicable to that obligor, are treated as one obligee; and

b. The amount resulting from the application of section 75-02-04.1-06.1 for the children described in subdivision a or b of subsection 2, as applicable to that obligor, is divided by the total number of such children to determine the child support obligation

for each child in foster care or guardianship care.

4. For purposes of subsection 2, a full sibling of the child or children entering foster care or guardianship care is a brother or sister who has both parents in common with the child or children entering foster care or guardianship care.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(1216); 42 USC 667

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