

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

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SECTION 1. Section 75-02-04.1-01 is amended as follows:

75-02-04.1-01. Definitions.

1. "Child" means any child, by birth or adoption, to whom a parent owes a duty of support.
2. "Child living with the obligor" means the obligor's child who lives with the obligor most of the year.
3. "Children's benefits" means a payment, to or on behalf of a child of the person whose income is being determined, made by a government, insurance company, trust, pension fund, or similar entity, derivative of the parent's benefits or a result of the relationship of parent and child between such person and such child. Children's benefits do not mean benefits received from public assistance programs that are means tested or provided in the form of subsidy payments made to adoptive parents.
4. ~~"Custodial parent" means a parent who acts as the primary caregiver on a regular basis for a proportion of time greater than the obligor, regardless of custody descriptions such as "shared" or "joint" custody given in relevant judgments, decrees, or orders.~~
5. a. "Gross income" means income from any source, in any form, but does not mean:

- (1) Benefits received from public assistance programs that are means tested such as the temporary assistance for needy families, supplemental security income, and ~~food stamps~~ supplemental nutrition assistance programs, or that are provided in the form of subsidy payments made to adoptive parents;
 - (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;
 - (3) Child support payments; or
 - (4) Atypical overtime wages or nonrecurring bonuses over which the employee does not have significant influence or control.
- 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, 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.

6-5. "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.

7-6. "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, 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~~ and
- (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~~ For each child, as defined in this section, for whom there is no court order allocating the exemption or for whom it is unknown whether there is such an order, an amount equal to one-half of the exemption if that child is actually claimed on a disclosed tax return or one additional exemption for each child, as defined in this section, an amount equal to one-half of the exemption if a tax return is not disclosed; and
- (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, medicare, and self-employment tax obligations based on that part of the obligor's gross income that is subject to FICA, RRTA, 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:
 - (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 ~~fifty~~ sixty-three dollars per night ~~or actual documented costs, whichever is greater~~); 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.
- 8-7. "Obligee" includes, for purposes of this chapter, an obligee as defined in North Dakota Century Code section 14-09-09.10 and a person who is alleged to be owed a duty of support on behalf of a child.
- 9-8. "Obligor" includes, for purposes of this chapter, an obligor as defined in North Dakota Century Code section 14-09-09.10 and a person who is alleged to owe a duty of support.
9. "Parent with primary residential responsibility" means a parent who acts as the primary caregiver on a regular basis for a proportion of time greater than the obligor, regardless of descriptions such as "shared" or "joint" parental rights and responsibilities given in relevant judgments, decrees, or orders.
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 parental rights and responsibilities" means a situation where the parents have more than one child in common, and where each parent has custody of primary residential responsibility for at least one child.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; April 1, 2010; July 1, 2011.

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

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

SECTION 2. Subsections 1, 10, and 11 of section 75-02-04.1-02 are amended as follows:

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

1. 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. Calculation of a child support obligation under section 75-02-04.1-08.2 does not preclude a court from apportioning specific expenses related to the care of the child, such as child care expenses and school activity fees, between the parents. An apportionment under this subsection is in addition to the child support amount determined by application of this chapter.
10. Each child support order must include a statement of the net income of the obligor used to determine the child support obligation, and how that net income was determined. If a child support order includes an adjustment for extended parenting time under section 75-02-04.1-08.1, the order must specify the number of parenting nights.
11. A payment of children's benefits made to or on behalf of a child who is not living with the obligor must be credited as a payment toward the obligor's child support obligation in the month (or other period) the payment is intended to cover, but may not be credited as a payment toward the child support obligation for any other month or period. The court may order the obligee to reimburse the obligor for any overpayment that results from the credit provided in this subsection.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; July 1, 2011.

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

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

SECTION 3. Section 75-02-04.1-03 is amended as follows:

75-02-04.1-03. Determination of child support obligation - Split Custody or primary residential responsibility. A child support obligation must be determined and specifically ordered for the child or children in for whom each parent's custody parent has primary residential responsibility pursuant to a court order or, if there is no court order, for whom each parent has primary physical custody. The lesser obligation is then subtracted from the greater. The difference is the child support amount owed by the parent with the greater obligation. The offset of child support obligations in this section is for payment purposes only and must be discontinued for any month in which the rights to support of a child for whom the obligation was

determined are assigned to a government agency as a condition of receiving public assistance.

History: Effective February 1, 1991; amended effective August 1, 2003; October 1, 2008; July 1, 2011.

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

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

SECTION 4. Subsections 6, 7, and 9 of section 75-02-04.1-05 are amended as follows:

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

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~~ statewide average earnings of for 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 twenty-four 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~~ statewide average earnings of for 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 twenty-four months before commencement of the proceeding before the court.

9. Net income from self-employment is an example of gross income and is subject to the deductions from gross income set forth in subsection 7 6 of section 75-02-04.1-01, to the extent not already deducted when calculating net income from self-employment.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; July 1, 2011.

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

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

SECTION 5. Subsections 3, 4, and 5 of section 75-02-04.1-06.1 are amended as follows:

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

3. A hypothetical amount that reflects the cost of supporting children living with the obligor, as determined under section 75-02-04.1-06, and a hypothetical amount due to each obligee under this chapter must first be determined for the children living with the obligor and each obligee, whether or not the obligee is a party to the proceeding, assuming for purposes of that determination:
 - a. The obligor has no support obligations except to the obligee in question;
 - b. The guidelines amount is not rebutted; and
 - c. The obligor does not have extended ~~visitation~~ parenting time.
4. A hypothetical amount due to each obligee under this chapter must next be determined for each obligee who is a party to the proceeding, assuming for purposes of that determination:
 - a. The obligor's net income is reduced by:
 - (1) The amount of child support due to all other obligees, as determined under subsection 3; and
 - (2) The cost of supporting a child living with the obligor, who is not also the child of that obligee, as determined under section 75-02-04.1-06;
 - b. The guidelines amount is not rebutted;
 - c. Any support amount otherwise determined to be less than one dollar is determined to be one dollar; and
 - d. The obligor does not have extended ~~visitation~~ parenting time.
5.
 - a. Except as provided in subdivision b, for each obligee before the court, the support obligation presumed to be the correct amount of child support is equal to one-half of the total of the two amounts

determined, with respect to that obligee, under subsections 3 and 4.

- b. Any necessary determination under this section must be made before an adjustment for extended ~~visitation~~ parenting time appropriate under section 75-02-04.1-08.1. The "amount otherwise due under this chapter", for purposes of section 75-02-04.1-08.1, is equal to one-half of the total of the two amounts determined, with respect to that obligation, under subsections 3 and 4.

History: Effective January 1, 1995; amended effective August 1, 1999; August 1, 2003; July 1, 2011.

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

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

SECTION 6. Section 75-02-04.1-07 is amended as follows:

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

1. For purposes of this section:
 - a. "Earnings" includes in-kind income and amounts received in lieu of actual earnings, such as social security benefits, workers' compensation wage replacement benefits, unemployment insurance benefits, veterans' benefits, and earned income tax credits; and
 - b. An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than the statewide average earnings for persons with similar work history and occupational qualifications.
2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than:
 - a. Six-tenths of the statewide average earnings for persons with similar work history and occupational qualifications; or
 - b. A monthly amount equal to one hundred sixty-seven times the federal hourly minimum wage.
3. Except as provided in subsections 4, 5, 6, 7, 8 and ~~10~~11, 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. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage.
 - b. An amount equal to six-tenths of the statewide average earnings for 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 twenty-four months before commencement of the proceeding before the court, for which reliable evidence is provided.

4. Monthly gross income based on earning capacity may be imputed in an amount less than would be imputed under subsection 3 if the obligor shows:
 - a. The reasonable cost of child care equals or exceeds seventy percent of the income which would otherwise be imputed where the care is for the obligor's child:
 - (1) ~~Who is in the physical custody of~~ For whom the obligor has primary residential responsibility;
 - (2) Who is under the age of fourteen; and
 - (3) For whom there is no other adult caretaker in the parent's home available to meet the child's needs during absence due to employment.
 - b. The obligor suffers from a disability sufficient in severity to reasonably preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage and subdivision b of subsection 7 does not apply.
 - c. The unusual emotional or physical needs of a minor child of the obligor require the obligor's presence in the home for a proportion of the time so great as to preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.
5. Gross income based on earning capacity may not be imputed if the obligor shows that the obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and is not underemployed.
6. If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c of subsection 3, are unavailable within one hundred miles [160.93 kilometers] of the obligor's actual place of residence, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings.
7.
 - a. Monthly gross income based on earning capacity may not be imputed under subsection 3 in an amount greater than one-half of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor is under eighteen years of age or is under nineteen years of age and enrolled in and attending high school.
 - b. Monthly gross income based on earning capacity may not be imputed under subsection 3 if the obligor is receiving:
 - (1) Supplemental security income payments;
 - (2) Social security disability benefits;
 - (3) Workers' compensation wage replacement benefits; or
 - (4) Total and permanent disability benefits paid by the railroad retirement board.

8. a. If an obligor is incarcerated, monthly gross income based on earning capacity may not be imputed under subsection 3:
- (1) In an amount greater than one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for less than one year;
 - (2) In an amount greater than eighty percent of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for at least one year but less than two years;
 - (3) In an amount greater than sixty percent of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for at least two years but less than three years;
 - (4) In an amount greater than forty percent of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for at least three years but less than four years;
 - (5) In an amount greater than twenty percent of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for at least four years but less than five years; or
 - (6) In any amount if the obligor has been incarcerated for at least five years.
- b. For purposes of this subsection, "incarcerated" means physically confined to a prison, jail, or other correctional facility.
- c. In determining the length of time an obligor has been incarcerated for purposes of applying subdivision a, only continuous periods of actual confinement may be considered except that any periods representing work release may not be considered.
9. If the obligor fails, upon reasonable request made in any proceeding to establish a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, income based on earning capacity equal to the greatest of subdivisions a through c of subsection 3 must be imputed.
- 9-10. If the obligor fails, upon reasonable request made in any proceeding to review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, and if that information cannot be reasonably obtained from sources other than the obligor, income must be imputed based on the greatest of:
- a. Subdivisions a through c of subsection 3; or
 - b. The obligor's net income, at the time the child support order was entered or last modified, increased at the rate of ten percent per year.
- ~~10-11.~~ Notwithstanding subsections 4, 5, 6, and 7, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross

income equal to one hundred percent of the obligor's greatest average monthly earnings, in any twelve consecutive months beginning on or after twenty-four months before commencement of the proceeding before the court, for which reliable evidence is provided, less actual monthly gross earnings, may be imputed without a showing that the obligor is unemployed or underemployed. For purposes of this subsection, a voluntary change in employment is a change made for the purpose of reducing the obligor's child support obligation and may include becoming unemployed, taking into consideration the obligor's work history, education, health, age, stated reason for change in employment, likely employment status if the family before the court were intact, and any other relevant factors. The burden of proof is on the obligor to show that the change in employment was not made for the purpose of reducing the obligor's child support obligation.

- 44-12. Imputed income based on earning capacity is an example of gross income and is subject to the deductions from gross income set forth in subsection 7 6 of section 75-02-04.1-01.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; July 1, 2011.

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

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

SECTION 7. Section 75-02-04.1-08.1 is amended as follows:

75-02-04.1-08.1. Adjustment for extended ~~visitation~~ parenting time.

1. For purposes of this section, "~~extended visitation~~ parenting time" means ~~visitation~~ parenting time between an obligor and a child living with an obligee scheduled by court order to exceed sixty of ninety consecutive nights or an annual total of one hundred sixty-four nights.
2. Notwithstanding any other provision of this chapter, if a court order provides for extended ~~visitation~~ parenting time between an obligor and a child living with an obligee, the support obligation presumed to be the correct child support amount due on behalf of all children of the obligor living with the obligee must be determined under this subsection.
 - a. Determine the amount otherwise due under this chapter from the obligor for those children.
 - b. Divide the amount determined under subdivision a by the number of those children.
 - c. For each child, multiply the number of that child's ~~visitation~~ parenting time nights times .32 and subtract the resulting amount from three hundred sixty-five.
 - d. Divide the result determined under subdivision c by three hundred sixty-five.
 - e. Multiply the amount determined under subdivision b times each decimal fraction determined under subdivision d.

- f. Total all amounts determined under subdivision e.

History: Effective August 1, 1999; amended effective July 1, 2011.

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

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

SECTION 8. Section 75-02-04.1-08.2 is amended as follows:

75-02-04.1-08.2. Equal physical custody residential responsibility-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 residential responsibility for their child or children. Equal physical custody of residential responsibility means each parent has physical custody of residential responsibility for the child, or if there are multiple children, all of the children, exactly fifty percent of the time for an equal amount of time as determined by the court. A child support obligation for each parent must be calculated under this chapter, and specifically ordered, assuming the other parent is ~~the custodial parent of~~ has primary residential responsibility for the child or children subject to the equal physical custody residential responsibility 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. The offset of child support obligations in this section is for payment purposes only and must be discontinued for any month in which the rights to support of a child for whom the obligation was determined are assigned to a government agency as a condition of receiving public assistance.

History: Effective August 1, 2003; amended effective October 1, 2008; July 1, 2011.

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

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

SECTION 9. Section 75-02-04.1-09 is amended as follows:

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

1. The child support amount provided for under this chapter, except for subsection 2, is presumed to be the correct amount of child support. No rebuttal of the guidelines may be based upon evidence of factors described or applied in this chapter, except in subsection 2, or upon:
 - a. The subsistence needs, work expenses, and daily living expenses of the obligor; or
 - b. Except as provided for in subdivision m of subsection 2, the income of the obligee, which is reflected in a substantial monetary and nonmonetary contribution to the child's basic care and needs by virtue of being a ~~custodial parent~~ with primary residential responsibility.

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 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, whose net income has been substantially reduced as a result of depreciation and to whom income has been imputed under section 75-02-04.1-07, to provide child support.
 - h. The increased ability of an obligor, who is able to secure additional income from assets, to provide child support;
 - ~~h.i.~~ 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.j.~~ The reduced ability of the an obligor who is responsible for all parenting-time expenses to provide support due to travel expenses incurred predominantly for the purpose of visiting a child who is the subject of the order taking into consideration the amount of court-ordered ~~visitation~~ parenting time and, when such history is available, actual expenses and practices of the parties;
 - ~~j.k.~~ 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.l.~~ 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
 - l-m. The reduced needs of the child to support from the obligor in situations where the net income of the obligee is at least three times higher than the net income of the obligor.
3. Assets may not be considered under subdivisions g h and h i of subsection 2, to the extent they:
 - a. Are exempt under North Dakota Century Code section 47-18-01;
 - b. Consist of necessary household goods and furnishings; or
 - c. Include one motor vehicle in which the obligor owns an equity not in excess of twenty thousand dollars.
 4. For purposes of subdivision h i of subsection 2, a transaction is presumed to have been made for the purpose of reducing the obligor's income available for the payment of child support if:
 - a. The transaction occurred after the birth of a child entitled to support;
 - b. The transaction occurred no more than twenty-four months before the commencement of the proceeding that initially established the support order; and
 - c. The obligor's income is less than it likely would have been if the transaction had not taken place.
 5. For purposes of subdivision j k 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 k l of subsection 2, any adjustment shall be made to the obligor's net income.
 8. For purposes of subdivision l m of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter after taking into consideration the proportion by which the obligee's net income exceeds the obligor's net income.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; July 1, 2008; April 1, 2010; July 1, 2011.

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

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

SECTION 10. Section 75-02-04.1-10 is amended as follows:

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 <u>82</u>	90 <u>100</u>	105 <u>117</u>	120 <u>130</u>	130 <u>143</u>	140 <u>155</u>
600	102 <u>108</u>	126 <u>131</u>	144 <u>155</u>	162 <u>172</u>	174 <u>189</u>	192 <u>207</u>
700	133 <u>134</u>	164 <u>163</u>	189 <u>192</u>	210 <u>214</u>	231 <u>236</u>	252 <u>258</u>
800	168 <u>160</u>	200 <u>195</u>	232 <u>229</u>	264 <u>256</u>	288 <u>283</u>	320 <u>309</u>
900	207 <u>186</u>	252 <u>226</u>	288 <u>267</u>	324 <u>298</u>	360 <u>329</u>	387 <u>361</u>
1000	250 <u>212</u>	300 <u>258</u>	350 <u>304</u>	390 <u>340</u>	430 <u>376</u>	470 <u>412</u>
1100	266 <u>238</u>	328 <u>290</u>	384 <u>341</u>	428 <u>382</u>	470 <u>423</u>	511 <u>463</u>
1200	282 <u>264</u>	356 <u>321</u>	418 <u>379</u>	465 <u>424</u>	510 <u>469</u>	553 <u>515</u>
1300	298 <u>290</u>	385 <u>353</u>	452 <u>416</u>	503 <u>466</u>	550 <u>516</u>	594 <u>566</u>
1400	314 <u>316</u>	412 <u>385</u>	486 <u>453</u>	540 <u>508</u>	590 <u>563</u>	635 <u>617</u>
1500	330 <u>342</u>	441 <u>416</u>	520 <u>491</u>	578 <u>550</u>	630 <u>609</u>	677 <u>669</u>
1600	346 <u>368</u>	469 <u>448</u>	554 <u>528</u>	616 <u>592</u>	669 <u>656</u>	718 <u>720</u>
1700	362 <u>384</u>	497 <u>476</u>	588 <u>562</u>	653 <u>630</u>	709 <u>696</u>	759 <u>761</u>
1800	378 <u>400</u>	526 <u>505</u>	622 <u>596</u>	691 <u>668</u>	749 <u>736</u>	800 <u>803</u>
1900	394 <u>416</u>	554 <u>533</u>	656 <u>631</u>	728 <u>706</u>	789 <u>776</u>	842 <u>844</u>
2000	411 <u>431</u>	582 <u>562</u>	690 <u>665</u>	766 <u>744</u>	829 <u>816</u>	883 <u>885</u>
2100	427 <u>447</u>	610 <u>590</u>	724 <u>699</u>	804 <u>781</u>	869 <u>856</u>	924 <u>926</u>
2200	443 <u>463</u>	638 <u>619</u>	758 <u>733</u>	841 <u>819</u>	909 <u>896</u>	966 <u>968</u>
2300	459 <u>479</u>	667 <u>647</u>	792 <u>767</u>	879 <u>857</u>	949 <u>936</u>	1007 <u>1009</u>
2400	475 <u>495</u>	695 <u>676</u>	826 <u>802</u>	916 <u>895</u>	989 <u>976</u>	1048 <u>1050</u>
2500	492 <u>511</u>	723 <u>704</u>	860 <u>836</u>	954 <u>933</u>	1029 <u>1017</u>	1090 <u>1091</u>
2600	508 <u>527</u>	751 <u>733</u>	893 <u>870</u>	992 <u>971</u>	1068 <u>1057</u>	1134 <u>1133</u>
2700	524 <u>542</u>	779 <u>761</u>	927 <u>904</u>	1029 <u>1009</u>	1108 <u>1097</u>	1172 <u>1174</u>

2800	<u>540 558</u>	<u>808 789</u>	<u>964 939</u>	<u>4067 1047</u>	<u>4148 1137</u>	<u>4213 1215</u>
2900	<u>556 574</u>	<u>836 818</u>	<u>995 973</u>	<u>4104 1084</u>	<u>4188 1177</u>	<u>4255 1257</u>
3000	<u>572 590</u>	<u>864-846</u>	<u>4029-1007</u>	<u>4142 1122</u>	<u>4228 1217</u>	<u>4296 1298</u>
3100	<u>588 606</u>	<u>892 875</u>	<u>4063 1041</u>	<u>4180 1160</u>	<u>4268 1257</u>	<u>4337 1339</u>
3200	<u>604 622</u>	<u>920 903</u>	<u>4097 1075</u>	<u>4217 1198</u>	<u>4308 1297</u>	<u>4379 1380</u>
3300	<u>620 637</u>	<u>949 932</u>	<u>4134 1110</u>	<u>4255 1236</u>	<u>4348 1337</u>	<u>4420 1422</u>
3400	<u>636 653</u>	<u>977 960</u>	<u>4165 1144</u>	<u>4292 1274</u>	<u>4388 1377</u>	<u>4464 1463</u>
3500	<u>653 669</u>	<u>4005 989</u>	<u>4199 1178</u>	<u>4330 1312</u>	<u>4428 1417</u>	<u>4503 1504</u>
3600	<u>669 685</u>	<u>4033 1017</u>	<u>4232 1212</u>	<u>4368 1350</u>	<u>4467 1457</u>	<u>4544 1545</u>
3700	<u>685 701</u>	<u>4064 1045</u>	<u>4266 1246</u>	<u>4405 1387</u>	<u>4507 1497</u>	<u>4585-1587</u>
3800	<u>704 717</u>	<u>4090 1074</u>	<u>4300 1281</u>	<u>4443 1425</u>	<u>4547 1537</u>	<u>4626 1628</u>
3900	<u>717 733</u>	<u>4118 1102</u>	<u>4334 1315</u>	<u>4480 1463</u>	<u>4587 1577</u>	<u>4668 1669</u>
4000	<u>733 748</u>	<u>4146 1131</u>	<u>4368 1349</u>	<u>4518 1501</u>	<u>4627 1617</u>	<u>4709 1710</u>
4100	<u>749 764</u>	<u>4174 1159</u>	<u>4402 1383</u>	<u>4556 1539</u>	<u>4667 1658</u>	<u>4750 1752</u>
4200	<u>765 780</u>	<u>4202 1188</u>	<u>4436 1417</u>	<u>4593 1577</u>	<u>4707 1698</u>	<u>4792 1793</u>
4300	<u>784 796</u>	<u>4234-1216</u>	<u>4470 1452</u>	<u>4634 1615</u>	<u>4747 1738</u>	<u>4833 1834</u>
4400	<u>797 812</u>	<u>4259 1245</u>	<u>4504 1486</u>	<u>4668 1653</u>	<u>4787 1778</u>	<u>4874 1876</u>
4500	<u>814 828</u>	<u>4287 1273</u>	<u>4538 1520</u>	<u>4706 1691</u>	<u>4827-1818</u>	<u>4916 1917</u>
4600	<u>830 844</u>	<u>4315 1302</u>	<u>4574 1554</u>	<u>4744 1728</u>	<u>4866 1858</u>	<u>4957 1958</u>
4700	<u>846 859</u>	<u>4343 1330</u>	<u>4605 1589</u>	<u>4784 1766</u>	<u>4906 1898</u>	<u>4998 1999</u>
4800	<u>862 875</u>	<u>4372 1358</u>	<u>4639 1623</u>	<u>4819 1804</u>	<u>4946 1938</u>	<u>2039 2041</u>
4900	<u>878 891</u>	<u>4400 1387</u>	<u>4673 1657</u>	<u>4856 1842</u>	<u>4986 1978</u>	<u>2084 2082</u>
5000	<u>894 907</u>	<u>4428 1415</u>	<u>4707 1691</u>	<u>4894 1880</u>	<u>2026 2018</u>	<u>2122 2123</u>
5100	<u>910 923</u>	<u>4456 1444</u>	<u>4744 1725</u>	<u>4932 1918</u>	<u>2066 2058</u>	<u>2163 2164</u>
5200	<u>926 939</u>	<u>4484 1472</u>	<u>4775 1760</u>	<u>4969 1956</u>	<u>2106 2098</u>	<u>2205 2206</u>
5300	<u>942 954</u>	<u>4513 1501</u>	<u>4809 1794</u>	<u>2007 1994</u>	<u>2146 2138</u>	<u>2246 2247</u>
5400	<u>958 970</u>	<u>4544-1529</u>	<u>4843 1828</u>	<u>2044 2031</u>	<u>2186 2178</u>	<u>2287 2288</u>
5500	<u>975 986</u>	<u>4569 1558</u>	<u>4877 1862</u>	<u>2082 2069</u>	<u>2226 2218</u>	<u>2329 2330</u>
5600	<u>994 1002</u>	<u>4597 1586</u>	<u>4910 1896</u>	<u>2120 2107</u>	<u>2265 2258</u>	<u>2370 2371</u>
5700	<u>4007 1018</u>	<u>4625 1614</u>	<u>4944 1931</u>	<u>2157 2145</u>	<u>2305 2298</u>	<u>2414 2412</u>
5800	<u>4023 1034</u>	<u>4654 1643</u>	<u>4978 1965</u>	<u>2195 2183</u>	<u>2345 2339</u>	<u>2453</u>
5900	<u>4039 1050</u>	<u>4682 1671</u>	<u>2012 1999</u>	<u>2232 2221</u>	<u>2385 2379</u>	<u>2494 2495</u>
6000	<u>4055 1065</u>	<u>4710 1700</u>	<u>2046 2033</u>	<u>2270 2259</u>	<u>2425 2419</u>	<u>2535 2536</u>

6100	4071 <u>1081</u>	4738 <u>1728</u>	2080 <u>2067</u>	2308 <u>2297</u>	2465 <u>2459</u>	2576 <u>2577</u>
6200	4087 <u>1097</u>	4766 <u>1757</u>	2114 <u>2102</u>	2345 <u>2334</u>	2505 <u>2499</u>	2618 <u>2618</u>
6300	4103 <u>1113</u>	4795 <u>1785</u>	2148 <u>2136</u>	2383 <u>2372</u>	2545 <u>2539</u>	2659 <u>2660</u>
6400	4119 <u>1129</u>	4823 <u>1814</u>	2182 <u>2170</u>	2420 <u>2410</u>	2585 <u>2579</u>	2700 <u>2701</u>
6500	4136 <u>1145</u>	4851 <u>1842</u>	2216 <u>2204</u>	2458 <u>2448</u>	2625 <u>2619</u>	2742
6600	4152 <u>1161</u>	4879 <u>1871</u>	2249 <u>2239</u>	2496 <u>2486</u>	2664 <u>2659</u>	2783 <u>2784</u>
6700	4168 <u>1176</u>	4907 <u>1899</u>	2283 <u>2273</u>	2533 <u>2524</u>	2704 <u>2699</u>	2824 <u>2825</u>
6800	4184 <u>1192</u>	4936 <u>1927</u>	2317 <u>2307</u>	2571 <u>2562</u>	2744 <u>2739</u>	2865 <u>2866</u>
6900	4200 <u>1208</u>	4964 <u>1956</u>	2351 <u>2341</u>	2608 <u>2600</u>	2784 <u>2779</u>	2907
7000	4216 <u>1224</u>	4992 <u>1984</u>	2385 <u>2375</u>	2646 <u>2638</u>	2824 <u>2819</u>	2948 <u>2949</u>
7100	4232 <u>1240</u>	2020 <u>2013</u>	2419 <u>2410</u>	2684 <u>2675</u>	2864 <u>2859</u>	2989 <u>2990</u>
7200	4248 <u>1256</u>	2048 <u>2041</u>	2453 <u>2444</u>	2721 <u>2713</u>	2904 <u>2899</u>	3031
7300	4264 <u>1271</u>	2077 <u>2070</u>	2487 <u>2478</u>	2759 <u>2751</u>	2944 <u>2939</u>	3072
7400	4280 <u>1287</u>	2105 <u>2098</u>	2521 <u>2512</u>	2796 <u>2789</u>	2984 <u>2979</u>	3113 <u>3114</u>
7500	4297 <u>1303</u>	2133 <u>2127</u>	2555 <u>2546</u>	2834 <u>2827</u>	3024 <u>3020</u>	3155
7600	4313 <u>1319</u>	2161 <u>2155</u>	2588 <u>2581</u>	2872 <u>2865</u>	3063 <u>3060</u>	3196
7700	4329 <u>1335</u>	2189 <u>2183</u>	2622 <u>2615</u>	2909 <u>2903</u>	3103 <u>3100</u>	3237
7800	4345 <u>1351</u>	2218 <u>2212</u>	2656 <u>2649</u>	2947 <u>2941</u>	3143 <u>3140</u>	3278 <u>3279</u>
7900	4361 <u>1367</u>	2246 <u>2240</u>	2690 <u>2683</u>	2984 <u>2978</u>	3183 <u>3180</u>	3320
8000	4377 <u>1382</u>	2274 <u>2269</u>	2724 <u>2717</u>	3022 <u>3016</u>	3223 <u>3220</u>	3361
8100	4393 <u>1398</u>	2302 <u>2297</u>	2758 <u>2752</u>	3060 <u>3054</u>	3263 <u>3260</u>	3402 <u>3403</u>
8200	4409 <u>1414</u>	2330 <u>2326</u>	2792 <u>2786</u>	3097 <u>3092</u>	3303 <u>3300</u>	3444
8300	4425 <u>1430</u>	2359 <u>2354</u>	2826 <u>2820</u>	3135 <u>3130</u>	3343 <u>3340</u>	3485
8400	4441 <u>1446</u>	2387 <u>2383</u>	2860 <u>2854</u>	3172 <u>3168</u>	3383 <u>3380</u>	3526
8500	4458 <u>1462</u>	2415 <u>2411</u>	2894 <u>2888</u>	3210 <u>3206</u>	3423 <u>3420</u>	3568
8600	4474 <u>1478</u>	2443 <u>2440</u>	2927 <u>2923</u>	3248 <u>3244</u>	3462 <u>3460</u>	3609
8700	4490 <u>1493</u>	2471 <u>2468</u>	2961 <u>2957</u>	3285 <u>3281</u>	3502 <u>3500</u>	3650
8800	4506 <u>1509</u>	2500 <u>2496</u>	2995 <u>2991</u>	3323 <u>3319</u>	3542 <u>3540</u>	3691
8900	4522 <u>1525</u>	2528 <u>2525</u>	3029 <u>3025</u>	3360 <u>3357</u>	3582 <u>3580</u>	3733
9000	4538 <u>1541</u>	2556 <u>2553</u>	3063 <u>3060</u>	3398 <u>3395</u>	3622 <u>3620</u>	3774
9100	4554 <u>1557</u>	2584 <u>2582</u>	3097 <u>3094</u>	3436 <u>3433</u>	3662 <u>3661</u>	3815
9200	4570 <u>1573</u>	2612 <u>2610</u>	3131 <u>3128</u>	3473 <u>3471</u>	3702 <u>3701</u>	3857
9300	4586 <u>1588</u>	2641 <u>2639</u>	3165 <u>3162</u>	3511 <u>3509</u>	3742 <u>3741</u>	3898

9400	1602 <u>1604</u>	2669 <u>2667</u>	3199 <u>3196</u>	3548 <u>3547</u>	3782 <u>3781</u>	3939
9500	1619 <u>1620</u>	2697 <u>2696</u>	3233 <u>3231</u>	3586 <u>3585</u>	3822 <u>3821</u>	3981 <u>3980</u>
9600	1635 <u>1636</u>	2725 <u>2724</u>	3266 <u>3265</u>	3624 <u>3622</u>	3861	4022
9700	1651 <u>1652</u>	2753 <u>2752</u>	3300 <u>3299</u>	3661 <u>3660</u>	3901	4063
9800	1667 <u>1668</u>	2782 <u>2781</u>	3334 <u>3333</u>	3699 <u>3698</u>	3941	4104
9900	1683 <u>1684</u>	2809	3368 <u>3367</u>	3736	3981	4146 <u>4145</u>
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
11100	1876	3148	3775	4188	4460	4641
11200	1892	3176	3809	4225	4500	4683
11300	1908	3205	3843	4263	4540	4724
11400	1924	3233	3877	4300	4580	4765
11500	1941	3261	3911	4338	4620	4807
11600	1957	3289	3945	4376	4659	4848
11700	1973	3317	3978	4413	4699	4889
11800	1989	3346	4012	4451	4739	4930
11900	2005	3374	4046	4488	4779	4972
12000	2021	3402	4080	4526	4819	5013
12100	2037	3430	4114	4564	4859	5054
12200	2053	3458	4148	4601	4899	5096
12300	2069	3487	4182	4639	4939	5137
12400	2085	3515	4216	4676	4979	5178
12500	2102	3543	4250	4714	5019	5220
or more						

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 2003; July 1, 2011.

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

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

SECTION 11. Section 75-02-04.1-11 is amended as follows:

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~~ is not also a child of the other parent, 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 obligation must be separately determined.
2. Unless subsection 3 applies to the obligor, the net income and the total number of children are applied to section 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; July 1, 2011.

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

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