

CHILD SUPPORT GUIDELINES AND CHILD CUSTODY AND VISITATION - BACKGROUND MEMORANDUM

INTRODUCTION

House Concurrent Resolution No. 3031 directs the Legislative Council to study the issues of fairness and equity as they relate to child support guidelines and the issuance and enforcement of child custody and visitation orders (Appendix "A" attached). This resolution focuses on three issues--fairness and equity of child support guidelines, issuance and enforcement of child custody orders, and issuance and enforcement of visitation orders. The issue of visitation rights of the noncustodial parent is a part of the broader issue of child custody; therefore, visitation and custody orders will be addressed together in this memorandum.

1997 LEGISLATION Legislation Enacted

House Concurrent Resolution No. 3034 directed a study of the impact of divorce on children and issues of equity and fairness as they relate to custody determinations, visitation orders, and child support obligations. The Legislative Council did not prioritize this resolution for study.

Senate Concurrent Resolution No. 4048 directed a study of the interrelationship of the postjudgment issues of child support and visitation, including the accountability of both parents to honor divorce orders and the development of a parenting education program that addresses the impact of divorce on children. The Legislative Council did not prioritize this resolution for study.

Section 14 of House Bill No. 1041 requires a study of the provision of child support services and child care licensing in this state.

House Bill No. 1226 provides for the welfare reform legislation necessary to bring the state into compliance with federal welfare legislation and includes numerous child support enforcement provisions.

Senate Bill No. 2167 limits postjudgment custody modifications within two years after entry of a custody order unless modification is necessary to serve the best interest of the child and there is persistent and willful denial or interference with visitation, the child is in danger, or there has been a de facto change in custody.

Senate Bill No. 2280 requires the Department of Human Services to request a child support enforcement agency to enter a child support withholding

order within 20 days of the date the income withholding is determined appropriate or the date of receipt of information necessary to carry out the withholding.

Senate Bill No. 2357 requires a court to award attorney's fees and costs if the court finds that the custodial parent has willfully and persistently denied visitation rights to the noncustodial parent.

Defeated Legislation

House Bill No. 1244 would have required a court to order the obligor in a child support case to submit nonreimbursable medical expenses to the clerk of court as disbursements taxed in judgment. The bill failed to pass the House.

House Bill No. 1258 would have imposed a 90-day waiting period from the date of filing a divorce petition before the court may enter a final decree, during which time the parties would have been required to attend parent education courses. The bill failed to pass the House.

House Bill No. 1308 would have required the court to weigh heavily in favor of changing custody the court-ordered placement in foster care of any child who resides or has resided in the household of the custodial parent. The bill failed to pass the House.

House Bill No. 1317 would have changed the basis for calculation of gross income and expense deduction in determining child support by referencing the Internal Revenue Service Code and would have required the use of a five-year average of net income to determine the net income of a self-employed individual. The bill failed to pass the House.

Senate Bill No. 2390 would have required the inclusion of a spouse's income in child support calculations. The bill failed to pass the House.

PRIOR STUDIES

During the 1993-94 interim, the Judiciary Committee, as directed by Senate Concurrent Resolution No. 4057, studied the Uniform Interstate Family Support Act and the Act's relationship to existing North Dakota law and the desirability of adopting the Act. The committee recommended adoption of the Act.

The 1991-92 Administrative Rules Committee, pursuant to Section 24 of Senate Bill No. 2002, studied the impact of various child support guideline models on family units, on the quality of the relationships among the persons in the families, and on children who receive child support. The committee

recommended guidelines that incorporate a modified income shares model.

Also during the 1991-92 interim, the Budget Committee on Human Services, pursuant to Senate Concurrent Resolution No. 4050, studied the distribution of child support enforcement incentive payments made by the federal government. The committee recommended a child support incentives account funded with money from the federal child support incentives, with distributions made to child support education programs.

The 1987-88 Budget Committee on Human Services received information on allocation of federal child support enforcement incentives.

CHILD SUPPORT GUIDELINES

Federal Statutory Provisions

One portion of the 1996 federal welfare reform legislation--42 U.S.C. 602(a)(2)--provides that a state's eligibility to receive a block grant for temporary assistance for needy families (TANF) is in part dependent on "certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the state plan approved under" the Child Support Enforcement Act.

The Child Support Enforcement Act requires states to enact certain remedies and procedures to improve child support collections. The Child Support Enforcement Act is found in Sections 651 through 669 of Title 42 of the United States Code.

Federal law regarding state guidelines for child support awards provides in 42 U.S.C. 667(a) and (b):

- (a) Establishment of guidelines; method
 - Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State.
 - The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.
- (b) Availability of guidelines; rebuttable presumption
 - (1) The guidelines established pursuant to subsection (a) of this section shall be made available to all judges or other officials who have the power to determine child support awards within such State.
 - (2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the

award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.

- (c) The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines. (emphasis added)

The federal Personal Responsibility and Work Opportunities Reconciliation Act of 1996 amended 42 U.S.C. 666 to address the federal requirements for state statutorily prescribed procedures to improve the effectiveness of child support enforcement (Appendix "B" attached). The prescribed state statutory procedures addressed in the Act include income withholding, expedited procedures, state income tax returns, liens, determination of paternity, guarantees, arrearages, support order review and adjustment, parent location networks, Social Security numbers, interstate child support orders, license suspension, financial institution data matching, children with minor parents, and health care coverage. The 1997 Legislative Assembly enacted House Bill No. 1226 to implement the federal requirements. The Legislative Council's interim Welfare Reform Committee is studying welfare reform issues during this interim.

North Dakota Statutory Provisions

North Dakota's child support guidelines law is found in North Dakota Century Code (NDCC) Section 14-09-09.7. This section was enacted in 1983 when the Legislative Assembly patterned North Dakota's child support program after Utah's. A portion of North Dakota Century Code Section 14-09-09.7, as created in 1983, required the Department of Human Services to assemble information and create a scale of suggested minimum contributions to be used in determining the amount a parent might be expected to contribute in child support. The scale was not obligatory and the department testified that it anticipated the vast majority of administrative child support orders would be entered as a consequence of the agreement of the parties involved. This law was amended in 1987 but in 1990 the resulting guidelines were ruled invalid because the guidelines had not been adopted in accordance with NDCC Chapter 28-32. *Huber v. Jahner*, 460 N.W.2d 717 (1990).

The 1989 Legislative Assembly enacted Senate Bill No. 2245 to implement the 1988 amendments to federal law. The bill was drafted by the Department of Human Services with substantial advice from the Juvenile Procedures Committee of the Judicial Conference.

North Dakota Century Code Section 14-09-09.7, which was amended in 1989, 1993, and 1997, provides:

Child support guidelines.

1. The department of human services shall establish child support guidelines to assist courts in determining the amount that a parent should be expected to contribute toward the support of the child under this section. The guidelines must:
 - a. Include consideration of gross income.
 - b. Authorize an expense deduction for determining net income.
 - c. Designate other available resources to be considered.
 - d. Specify the circumstances which should be considered in reducing support contributions on the basis of hardship.
2. The department shall accept and compile pertinent and reliable information from any available source in order to establish the child support guidelines. Copies of the guidelines must be made available to courts, state's attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this chapter.
3. There is a rebuttable presumption that the amount of child support that would result from the application of the child support guidelines is the correct amount of child support. The presumption may be rebutted if a preponderance of the evidence in a contested matter establishes, applying criteria established by the public authority which take into consideration the best interests of the child, that the child support amount established under the guidelines is not the correct amount of child support. A written finding or a specific finding on the record must be made if the court determines that the presumption has been rebutted. The finding must:

- a. State the child support amount determined through application of the guidelines;
 - b. Identify the criteria that rebut the presumption of correctness of that amount; and
 - c. State the child support amount determined after application of the criteria that rebut the presumption.
4. The department shall institute a new rulemaking proceedings under section 28-32-02 relating to the child support guidelines to ensure that the application of the guidelines results in the determination of appropriate child support award amounts. The initial rulemaking proceeding must be commenced with a notice of proposed adoption, amendment, or repeal by August 1, 1998, and subsequent rulemaking proceedings must be so commenced at least once every four years thereafter. Before commencing any rulemaking proceeding under this section, the department shall convene a drafting advisory committee that includes two members of the legislative assembly appointed by the chairman of the legislative council.

North Dakota Century Code Section 14-09-08.4, as created in 1989 and amended in 1991, 1993, and 1997, provides:

Periodic review of child support orders.

1. Each child support order must be reviewed by the child support agency no less frequently than thirty-six months after the establishment of the order or the most recent amendment or review of the order by the court or child support agency unless:
 - a. In the case of an order with respect to which there is in effect an assignment under chapter 50-09 or 50-24.1, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or
 - b. In the case of any other order neither the obligor nor the obligee has requested review.
2. Each child support order, in which there is in effect an assignment under chapter 50-09 or with respect to which either the obligor or the obligee has requested

review, must be reviewed by the child support agency if:

- a. More than twelve months have passed since the establishment of the order or the most recent amendment or review of that order by the court or child support agency, whichever is later; and
 - b. The order provides for no child support and was based on a finding that the obligor has no ability to pay child support.
3. If, upon review, the child support agency determines that the order provides for child support payments in an amount that is inconsistent with the amount that would be required by the child support guidelines established under subsection 1 of section 14-09-09.7, the child support agency may seek an amendment of the order. If the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by those guidelines, the child support agency shall seek an amendment of the order.
 4. If a child support order sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines, whether or not the motion or petition for amendment arises out of a periodic review of a child support order, and whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the order sought to be amended, the party seeking amendment must also show a material change of circumstances.
 5. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 18 or 20 of section 50-06-05.1, chapter 50-09, or chapter 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable

cost to a child who is the subject of a child support order constitutes a material change of circumstances. The need to provide for a child's health care needs, through health insurance or other means, constitutes a material change of circumstances.

NORTH DAKOTA ADMINISTRATIVE RULES

Introduction

North Dakota Century Code Section 14-09-09.7 requires the Department of Human Services to adopt child support guidelines and requires that the child support guidelines consider gross income, recognize expenses to determine net income, designate financial resources to consider, and specify the circumstances to consider in reducing support contributions due to hardship. State law does not dictate the model to be used by the Department of Human Services in establishing the guidelines and does not specify whether the income of both parents is to be considered in support decisions. The department's administrative rules addressing child support guidelines are found in North Dakota Administrative Code Chapter 75-02-04.1 (Appendix "C" attached).

History

The Department of Human Services is required to establish a scale of suggested minimum contributions for child support. The scale of minimum contributions established by the department in 1983 and amended in 1987 was not established through the rulemaking process. The 1989 Legislative Assembly amended NDCC Section 14-09-09.7 to require the adoption of guidelines by the department and to provide a rebuttable presumption that the guidelines provide for the correct amount of child support. In September 1990 the North Dakota Court of Appeals declared the guidelines invalid. The court held that because the guidelines were substantive rules, they should have been adopted in accordance with Chapter 28-32. *Huber v. Jahner*, 460 N.W.2d 717 (N.D. 1990).

In 1989 the department determined that the guidelines should be adopted in the form of administrative rules to assure that the guidelines have the force and effect of law as provided for by NDCC Section 28-32-03. In addition, the department determined that the publication of the guidelines in the Administrative Code would make the guidelines readily available to courts and state's attorneys, as required by Section 14-09-09.7(2).

On January 5, 1990, the department initially proposed to adopt child support guidelines as administrative rules. As required by law, the department requested public comments and announced a public hearing.

On February 9, 1990, the department conducted a public hearing concerning the proposed rules.

The oral comments received at the hearing and the written comments received before and during the hearing generally opposed the proposed rules. The interim Administrative Rules Committee members also received public comment opposing the proposed rules. Upon review of those comments, the department withdrew the proposed rules.

The department began drafting guidelines based on the "income shares" model. During the development of that model, the department solicited comments from the Juvenile Procedures Committee, a committee established by the North Dakota Supreme Court. Committee members recommended that an income shares model not be adopted. The department then developed guidelines based on the "obligor" model. The obligor model bore some resemblance to the previously existing guidelines but incorporated changes to reflect the suggestions made with respect to the withdrawn rules.

On September 26, 1990, the department proposed rules in the alternative. The two alternatives were the income shares model, developed early in 1990, and the obligor model, developed after receiving comments from the Juvenile Procedures Committee. The department's proposals were widely disseminated and debated. The department received a combination of written and oral comments from 138 commentators. The department specifically asked commentators to indicate whether they preferred the income shares model or the obligor model. The commentators who expressed a preference were almost equally divided, with most of the attorneys and judges who offered comment preferring the obligor model. The reasons given were varied, but most who preferred the obligor model were concerned about the additional judicial and legal time that would be required to develop and consider financial information about two persons, rather than one person.

The department opted to adopt the proposed rules based on the obligor model. The rules became effective February 1, 1991. The department's stated reasons for adopting the obligor model over the income shares model included the department's opinion that the income shares model was more complex and thus would increase litigation costs, lead to more requests for review, be more difficult to use in emergency cases, and although the income shares model appeared more fair, in most cases there would be little or no difference in award amounts.

Legislation introduced in 1991, 1993, and 1995 would have provided for adoption of an income shares model for the child support guidelines, but in each case the legislation failed to pass.

The department adopted many minor and technical changes to the child support guidelines effective

January 1, 1995. The changes provided for recognition of all of the obligor's child support duties in determining the obligation in each case, imputing income based on earning capacity, determining the cost of supporting a child living with the obligor who is not also a child of the obligee, and for determining support amounts in multiple-family cases. The rules also made changes in the criteria for rebuttal of the amount determined by application of the child support guidelines.

CHILD SUPPORT GUIDELINE MODELS

Much of the debate over child support guidelines in recent years has centered on the appropriate model to be used to establish support orders. The income shares model, the obligor model, and the Melson Delaware model are the three basic approaches that have been used by states to determine child support orders.

Income Shares Model

The income shares model is based on two assumptions:

1. The support available to the child should be based on the combined income of the two parents.
2. The child should receive the same proportion of parental income that the child would have received if the parents lived together.

These assumptions are predicated on recent studies that have found that expenditures on children amount to a consistent proportion of household consumption and that this proportion varies systematically with the level of household income and the number and age of children.

Application of the model involves:

1. Determining combined adjusted income of parents, with some allowable deductions, and the percentage of income contributed by each parent;
2. Determining the combined obligation of parents toward the support of their children from the available economic evidence, less medical and child care expenses; and
3. Apportioning the obligation to parents in the percentages determined for their incomes.

Additional adjustments are made in some states for split, shared, or joint custody arrangements. The custodial parent is presumed to spend the designated percentage on the child and the noncustodial parent must pay the percentage of the obligation determined for that parent to the custodial parent. Work-related child care expenses and extraordinary medical expenses are allotted between the parents in proportion to their net incomes and ordered as additional child support.

Obligor Income Model

The obligor income model establishes a percentage of the obligor's income, usually net after required tax deductions, to be paid based on the available economic evidence on the cost of rearing children. In some states, a flat percentage is used. In others, the percentage varies by number of children or economic factors.

Melson Delaware Model

The Melson Delaware formula combines a cost-sharing and income-sharing approach. The model, developed by Judge Elwood Melson, has been used in Delaware since 1979. It defines the basic amount required to support a child and apportions that amount between parents based on the relative disposable incomes. The formula then adds a standard of living adjustment that each parent may pay. The standard of living adjustment is 15 percent of net income for the first child and 10 percent for each additional child. The standard of living adjustment is not applied to the obligor until the obligor's income is sufficient to support the obligor minimally. Once this minimal income level is reached, the next increments of income are used for child support until the children reach the same poverty level of support. Beyond this level, the income-sharing formula is used to determine the portion of the obligor's remaining income that must be contributed for child support. The formula takes into account child care and medical expenses. The formula as developed was the most complicated but in 1990 Delaware made major changes to simplify the formula.

The following information regarding which of the three model types states use to implement child support guidelines is current through May 1, 1996.

STATE-BY-STATE MODEL OF IMPLEMENTATION OF GUIDELINES

State	Income Shares	Percentage of Income	Melson Delaware Formula
Alabama	X		
Alaska		X(F)*	
Arizona	X		
Arkansas		X(V)**	
California	X	X(V)**	
Colorado	X		
Connecticut	X		
Delaware			X
District of Columbia		X(V)**	
Florida	X		
Georgia	X	X(F)*	
Hawaii			
Idaho	X		
Illinois		X(F)*	

State	Income Shares	Percentage of Income	Melson Delaware Formula
Indiana	X		
Iowa	X		
Kansas	X		
Kentucky	X		
Louisiana	X		
Maine	X		
Maryland	X		
Massachusetts		X(V)**	
Michigan	X		
Minnesota		X(V)**	
Mississippi		X(F)*	
Missouri	X		
Montana			X
Nebraska	X		
Nevada		X(F)*	
New Hampshire	X		
New Jersey	X		
New Mexico	X		
New York	X		
North Carolina	X		
North Dakota		X(V)*	
Ohio	X		
Oklahoma	X		
Oregon	X		
Pennsylvania	X		
Rhode Island	X		
South Carolina	X		
South Dakota	X		
Tennessee		X(F)*	
Texas		X(F)*	
Utah	X		
Vermont	X		
Virginia	X		
Washington	X		
West Virginia			X
Wisconsin		X(F)*	
Wyoming		X(V)**	

*(F) = flat percentage model
 **(V) = varying percentage model

CHILD CUSTODY ORDERS AND VISITATION ORDERS

North Dakota Statutory Provisions

Initial Determination

Child custody determinations are based on North Dakota statutes. North Dakota Century Code Section 14-09-04 provides the mother and father of a legitimate unmarried minor child are entitled equally to custody of the child. Under Section 14-09-05, when maternity and paternity of an illegitimate child are positively established, the custody rights are equal as between the mother and father and must serve the best interests of the child.

Child custody often becomes an issue when a mother and father live separate and apart from each other. Section 14-09-06 provides:

The husband and father and wife and mother have equal rights with regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other, and when they so live in a state of separation without being divorced, the district court or judge thereof, upon application of either, may grant a writ of habeas corpus to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of such child to either for such time and under such regulations as the case may require. The decision of the court or judge must be guided by the rules provided by law for awarding the custody of a minor or the appointment of a general guardian.

Child custody determinations must promote the best interests and welfare of the child (North Dakota Century Code Section 14-09-06.1). Regardless of whether the parents are married, Section 14-09-06.2(1) lists the factors considered in determining the best interests and welfare of a child, providing:

For the purpose of custody, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:

- a. The love, affection, and other emotional ties existing between the parents and child.
- b. The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child.
- c. The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.
- d. The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- e. The permanence, as a family unit, of the existing or proposed custodial home.
- f. The moral fitness of the parents.
- g. The mental and physical health of the parents.
- h. The home, school, and community record of the child.

- i. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
- j. Evidence of domestic violence. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent's participation as a custodial parent. The court shall cite specific findings of fact to show that the custody or visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards custody to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.
- k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury,

assault, or the fear of physical harm, bodily injury, or assault, on other persons.

- l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.
- m. Any other factors considered by the court to be relevant to a particular child custody dispute.

Because of their interrelated nature, visitation is frequently considered at the same time custody is determined. North Dakota case law indicates a trial court may consider the parents' attitudes regarding visitation when the court determines child custody. For example, where the trial court found a mother had a hostile attitude toward visitations between a child and father but, in contrast, the father had expressed a willingness to foster and encourage regular visitations between the mother and child, the court gave this factor significant weight in deciding to place the child in the father's custody; it was appropriate for the court to do so, because visitation between a child and a noncustodial parent is presumed to be in the best interests of the child and hostility of a custodial parent toward such visitations could be detrimental to the child's best interests. *Schmidkunz v. Schmidkunz*, 529 N.W.2d 857 (N.D. 1995); see also *McAdams v. McAdams*, 530 N.W.2d 647 (N.D. 1995) (split custody is proper when one parent prevents visitation by the noncustodial parent because the split custody award furthers the child's best interests in maintaining a stable relationship with the noncustodial parent).

Although the North Dakota Supreme Court has determined that visitation with the noncustodial parent is presumed to be in the best interests of a child, the primary purpose of visitation is to promote the best interests of the child and not the wishes or desires of the parents. *Reinecke v. Griffeth*, 533 N.W.2d 695 (N.D. 1995). Denial of visitation rights should be the exception and not the rule; the exception should be only when it is in the best interests of the child. See *C.B.D. v. W.E.B.*, 298 N.W.2d 493 (N.D. 1980) (trial court properly denied father of an illegitimate child visitation rights as being in the best interest of the child where father had no contact and had not supported the child over the past two and one-half years, had denied that he was the father of the child, and there was a pending marriage by the mother of the child and the possibility of adoption of the child by the mother's future husband). The court also has determined that a showing by a preponderance of the evidence authorizes the finding that "visitation is likely to endanger the child's physical or emotional health," which justifies curtailment of visitation. *Healy v. Healy*, 397 N.W.2d 71 (N.D. 1986).

North Dakota Century Code Section 14-05-22 addresses visitation issues in divorce proceedings, providing:

1. In an action for divorce, the court, before or after judgment, may give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may vacate or modify the same at any time. Any award or change of custody must be made in accordance with the provisions of chapter 14-09.
2. After making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health.
3. If the court finds that a parent has perpetrated domestic violence and that parent does not have custody, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, the court shall allow only supervised child visitation with that parent unless there is a showing by clear and convincing evidence that unsupervised visitation would not endanger the child's physical or emotional health.
4. If any court finds that a parent has sexually abused the parent's child, the court shall prohibit all visitation and contact between the abusive parent and the child until the court finds that the abusive parent has successfully completed a treatment program designed for such sexual abusers, and that supervised visitation is in the child's best interest. Contact between the abusive parent and the child may be allowed only in a therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment program, and only when the therapist for the abusive parent and the therapist for the abused child agree that it serves a therapeutic purpose and is in the best interests of the child.

5. In any custody or visitation proceeding in which a parent is found to have perpetrated domestic violence, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, all court costs, attorneys' fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.

Enforcement

Enforcement of a child custody order or visitation order is essentially the same as enforcement of any court order. The enforcement tool available to a court is contempt proceedings. Additionally, 1997 legislation created NDCC Section 14-09-24, which provides that in a child visitation proceeding, the court is required to award the noncustodial parent reasonable attorney's fees and costs if the court determines there has been willful and persistent denial of visitation rights by the custodial parent with respect to the minor child.

Modification

Unlike when the trial court makes an original award of custody between parents based on a determination, the single issue of what is in the child's best interests when the trial court considers a request to modify a custody award, it must determine two issues: (1) whether, on the basis of facts that have arisen since the earlier order or on the basis of facts that were unknown to the court at the time of the earlier order, there has been a material change in the circumstances of the child or the parties since the earlier custody award; and, if so, (2) whether the modification is necessary to serve the best interests of the child. The parent seeking to modify custody has the burden of showing both that a circumstance changed significantly and that this change so adversely affected the child that custody should be changed. *Gould v. Miller*, 488 N.W.2d 42 (N.D. 1992).

The North Dakota Supreme Court has determined frustration of visitation does not in and of itself constitute a sufficient change in circumstances to warrant a change in custody. Before visitation problems justify changing custody, there must be a finding that the visitation problems worked against the child's best interests. *Blotske v. Leidholm*, 487 N.W.2d 607 (N.D. 1992); see *Miller v. Miller*, 305 N.W.2d 666 (N.D. 1981) (custodial parent's frustration of noncustodial

parent's visitation privileges in and of itself does not constitute a sufficient change of circumstances to warrant a change in custody). Additionally, as amended in 1997, NDCC Section 14-09-06.6 limits postjudgment custody modifications within two years after entry of a custody order unless modification is necessary to serve the best interests of the child and there is persistent and willful denial or interference with visitation, the child is in danger, or there has been a de facto change in custody.

North Dakota Century Code Section 14-09-07 limits when a custodial parent may change the residence of a child to another state. Modification proceedings frequently accompany legal proceedings initiated when a custodial parent seeks to change the residence of a child. Section 14-09-07 provides:

A parent entitled to the custody of a child may not change the residence of the child to another state except upon order of the court or with the consent of the noncustodial parent, if the noncustodial parent has been given visitation rights by the decree. A court order is not required if the noncustodial parent (1) has not exercised visitation rights for a period of one year or (2) has moved to another state and is more than fifty miles [80.47 kilometers] from the residence of the custodial parent.

Mediation

Although typically in child custody cases the determination of the best interests and welfare of a child is made by the court, NDCC Chapter 14-09.1 provides for voluntary mediation in custody determinations. Section 14-09.1-02 provides:

In any proceeding involving an order, modification of an order, or enforcement of an order for the custody, support, or visitation of a child in which the custody or visitation issue is contested, the court may order mediation at the parties' own expense. The court may not order mediation if the custody, support, or visitation issue involves or may involve physical or sexual abuse of any party or the child of any party to the proceeding.

UNIFORM AND MODEL ACTS

The Uniform Interstate Family Support Act, which was adopted in 1995, is codified as NDCC Chapter 14-12.2. The Uniform Interstate Family Support Act replaced the Revised Uniform Reciprocal Enforcement of Support Act, which was codified as Chapter 14-12.1. The Revised Uniform Reciprocal Enforcement of Support Act was adopted in 1969 and repealed in 1995. The Uniform Interstate Family

Support Act was amended in 1997 by House Bill No. 1093.

The Uniform Child Custody Jurisdiction Act, which was adopted in 1969, is codified as Chapter 14-14.

APPROACH TO STUDY Child Support Guidelines

A 1994 study for the United States Department of Health and Human Services Office of Child Support Enforcement indicates what issues are typically addressed when states review child support guidelines. Based on this federal study, the following issues may be helpful in organizing a study of child support guidelines:

1. Child-rearing cost.
2. Guideline model.
3. Who owes child support:
 - a. Noncustodial parent.
 - b. Custodial parent.
 - c. A parent's new spouse or partner.
 - d. Child's grandparents.
4. How long is child support owed.
5. Determining the income available for child support:
 - a. Net vs. gross income.
 - b. Definition of "income."
 - (1) Salary and wages (overtime).
 - (2) Commissions.
 - (3) Bonuses.
 - (4) Tips and perquisites.
 - (5) Rental income.
 - (6) Estate or trust income.
 - (7) Royalties.
 - (8) Interest, dividends, annuities.
 - (9) Social Security or supplemental security income.
 - (10) Veterans' benefits, unemployment compensation, workers' compensation.
 - (11) Retirement, pension.
 - (12) Proceeds from contractual agreements.
 - (13) Self-employment earnings.
 - (14) Alimony.
 - (15) Unearned income.
 - (16) In-kind compensation.
 - (17) Welfare (means tested).
 - (18) Military benefits.
 - (19) Imputed or attributed income.
 - (a) When should it be imputed.
 - (b) How much income should be attributed.
6. Adjustments to income:
 - a. Self-support reserves.

- b. Child care expenses.
- c. Health insurance premiums.
- d. Multiple families.
7. Application of the guideline formula:
 - a. Application of guideline to specific income levels.
 - b. Nonincome obligors.
 - c. Self-support reserves.
 - d. Minimum support obligation.
 - e. High-income obligors.
8. Child's need as a guideline calculation factor:
 - a. Age as a determiner of need.
9. Custody and care issues:
 - a. Traditional sole custody and the calculation of support.
 - b. Shared/joint custody.
 - c. Split custody.
 - d. State custody.
10. Guideline handling of multiple family cases:
 - a. Incorporating multiple families into guideline formula.
 - b. Discretionary treatment of multiple-family cases.
11. Child care costs.
12. Medical insurance premiums.
13. Extraordinary medical expenses.
14. Postsecondary education.
15. Obligee accountability.
16. Award modifications.
17. Automatic award adjustments.
18. Retroactive child support.
19. Arrears.

Initial organization of the study approach should consider whether child support guidelines should continue to be developed by administrative rule, what model to use, how the amount of net income should be determined, and the amount of money needed to raise a child.

Child Custody and Visitation

The legislative history of House Concurrent Resolution No. 3031 indicates a strong impetus behind the study is frustration on the part of noncustodial parents regarding payment of child support accompanied with the inability to exercise visitation. Special interests include custodial parents, noncustodial parents, and the best interests of the children. Due to the very broad nature of child custody and visitation orders, in order to successfully complete this study, it may be necessary to immediately identify specific areas of interest and limit the study to these areas.

ATTACH:3

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

**HOUSE CONCURRENT RESOLUTION NO. 3031
(Representatives Drovdal, Delmore, Kempenich)
(Senators Krauter, Urlacher)**

A concurrent resolution directing the Legislative Council to study the issues of fairness and equity as they relate to child support guidelines and the issuance and enforcement of child custody and visitation orders.

WHEREAS, approximately 70 percent of the caseload of North Dakota courts involves issues related to family law, including divorce, custody, visitation, and child support as well as modifications to custody, visitation, and child support orders; and

WHEREAS, every child has a right to be guided, nurtured, and supported emotionally, physically, and financially by both parents regardless of the parents' marital status; and

WHEREAS, North Dakota law provides that for the purposes of determining custody, there is no presumption as to which parent will better promote the best interests of the child; and

WHEREAS, North Dakota law provides that each parent has a mutual duty to support a child of the parents; and

WHEREAS, concerns have been expressed that there are inequities in the enforcement of child custody and visitation orders and in the child support guidelines as they relate to persons who are obligors;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF
NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the issues of fairness and equity as they relate to child support guidelines and the issuance and enforcement of child custody and visitation orders; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-sixth Legislative Assembly.

Filed March 28, 1997

42 § 664**PUBLIC HEALTH AND WELFARE****Note 7**

entitled to father's Internal Revenue Service (IRS) tax refunds which had been intercepted to pay father's Aid to Families with Dependent Children (AFDC) debt and back child support arrearage; parties had not stipulated that husband would receive intercepted refunds, and court's finding that it was in best interest of child for residential parent, father, to have intercepted funds was not sufficient reason to give money to him. State, Dept. of Health and Rehabilitative Services on Behalf of Cutrone v. Cutrone, Fla.App. 2 Dist.1994, 636 So.2d 531.

13. Interest

Rogers v. Bucks County Domestic Relations Section, E.D.Pa.1991, 773 F.Supp. 768, [main volume] affirmed 969 F.2d 1268.

Parents on whose behalf federal tax refunds had been intercepted for payment of past-due child support were not entitled to receive interest earned by agencies when those refunds were held for up to six months in interest-bearing accounts; there was no property interest created by Pennsylvania law, federal statute or regulation upon which claim for unjustly compensated taking could be based. Rogers v. Bucks County Domestic Relations Section, E.D.Pa. 1991, 773 F.Supp. 768, affirmed 969 F.2d 1268.

§ 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

(1)(A) Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan.

(B) Procedures under which the income of a person with a support obligation imposed by a support order issued (or modified) in the State before October 1, 1996, if not otherwise subject to withholding under subsection (b) of this section, shall become subject to withholding as provided in subsection (b) of this section if arrearages occur, without the need for a judicial or administrative hearing.

(2) Expedited administrative and judicial procedures (including the procedures specified in subsection (c) of this section) for establishing paternity and for establishing, modifying, and enforcing support obligations. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement or paternity establishment within the political subdivision (in accordance with the general rule for exemptions under subsection (d) of this section).

(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—

(A) any refund of State income tax which would otherwise be payable to a noncustodial parent will be reduced, after notice has been sent to that noncustodial parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such noncustodial parent;

(B) the amount by which such refund is reduced shall be distributed in accordance with section 657(b)(4) or (d)(3) of this title in the case of overdue support assigned to a State pursuant to section 602(a)(26) or 671(a)(17) of this title, or, in any other case, shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

(C) notice of the noncustodial parent's social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

(4) Liens

Procedures under which—

(A) liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State; and

(B) the State accords full faith and credit to liens described in subparagraph (A) arising in another State, when the State agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the State, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

(5) Procedures concerning paternity establishment

(A) Establishment process available from birth until age 18

(i) Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age.

(ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

(B) Procedures concerning genetic testing

(i) Genetic testing required in certain contested cases

Procedures under which the State is required, in a contested paternity case (unless otherwise barred by State law) to require the child and all other parties (other than individuals found under section 654(29) of this title to have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party—

(I) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(II) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(ii) Other requirements

Procedures which require the State agency, in any case in which the agency orders genetic testing—

(I) to pay costs of such tests, subject to recoupment (if the State so elects) from the alleged father if paternity is established; and

(II) to obtain additional testing in any case if an original test result is contested, upon request and advance payment by the contestant.

(C) Voluntary paternity acknowledgment

(i) Simple civil process

Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknowledgment of paternity, the mother and the putative father must be given notice, orally and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities that arise from, signing the acknowledgment.

(ii) Hospital-based program

Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child.

(iii) Paternity establishment services

(I) State-offered services

Such procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.

(II) Regulations**(aa) Services offered by hospitals and birth record agencies**

The Secretary shall prescribe regulations governing voluntary paternity establishment services offered by hospitals and birth record agencies.

(bb) Services offered by other entities

The Secretary shall prescribe regulations specifying the types of other entities that may offer voluntary paternity establishment services, and governing the provision of such services, which shall include a requirement that such an entity must use the same notice provisions used by, use the same materials used by, provide the personnel providing such services with the same training provided by, and evaluate the provision of such services in the same manner as the provision of such services is evaluated by, voluntary paternity establishment programs of hospitals and birth record agencies.

(iv) Use of paternity acknowledgment affidavit

Such procedures must require the State to develop and use an affidavit for the voluntary acknowledgment of paternity which includes the minimum requirements of the affidavit specified by the Secretary under section 652(a)(7) of this title for the voluntary acknowledgment of paternity, and to give full faith and credit to such an affidavit signed in any other State according to its procedures.

(D) Status of signed paternity acknowledgment**(i) Inclusion in birth records**

Procedures under which the name of the father shall be included on the record of birth of the child of unmarried parents only if—

(I) the father and mother have signed a voluntary acknowledgment of paternity; or

(II) a court or an administrative agency of competent jurisdiction has issued an adjudication of paternity.

Nothing in this clause shall preclude a State agency from obtaining an admission of paternity from the father for submission in a judicial or administrative proceeding, or prohibit the issuance of an order in a judicial or administrative proceeding which bases a legal finding of paternity on an admission of paternity by the father and any other additional showing required by State law.

(ii) Legal finding of paternity

Procedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of—

(I) 60 days; or

(II) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.

(iii) Contest

Procedures under which, after the 60-day period referred to in clause (ii), a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

(E) Bar on acknowledgment ratification proceedings

Procedures under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

(F) Admissibility of genetic testing results

Procedures—

(i) requiring the admission into evidence, for purposes of establishing paternity, of the results of any genetic test that is—

(I) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary; and

(II) performed by a laboratory approved by such an accreditation body;

(ii) requiring an objection to genetic testing results to be made in writing not later than a specified number of days before any hearing at which the results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of the results); and

(iii) making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

(G) Presumption of paternity in certain cases

Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

(H) Default orders

Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law.

(I) No right to jury trial

Procedures providing that the parties to an action to establish paternity are not entitled to a trial by jury.

(J) Temporary support order based on probable paternity in contested cases

Procedures which require that a temporary order be issued, upon motion by a party, requiring the provision of child support pending an administrative or judicial determination of parentage, if there is clear and convincing evidence of paternity (on the basis of genetic tests or other evidence).

(K) Proof of certain support and paternity establishment costs

Procedures under which bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

(L) Standing of putative fathers

Procedures ensuring that the putative father has a reasonable opportunity to initiate a paternity action.

(M) Filing of acknowledgments and adjudications in State registry of birth records

Procedures under which voluntary acknowledgments and adjudications of paternity by judicial or administrative processes are filed with the State registry of birth records for comparison with information in the State case registry.

(6) Procedures which require that a noncustodial parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such noncustodial parent of the proposed action and of the

procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

(7) Reporting arrearages to credit bureaus

(A) In general

Procedures (subject to safeguards pursuant to subparagraph (B)) requiring the State to report periodically to consumer reporting agencies (as defined in section 1681a(f) of Title 15) the name of any noncustodial parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent.

(B) Safeguards

Procedures ensuring that, in carrying out subparagraph (A), information with respect to a noncustodial parent is reported—

(i) only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information; and

(ii) only to an entity that has furnished evidence satisfactory to the State that the entity is a consumer reporting agency (as so defined).

(8)(A) Procedures under which all child support orders not described in subparagraph (B) will include provision for withholding from income, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

(i) The income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such income shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

(ii) The requirements of subsection (b)(1) of this section (which shall apply in the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b) of this section, where applicable.

(iv) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

(B) entitled as a judgment to full faith and credit in such State and in any other State, and

(C) not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

(10) Review and adjustment of support orders upon request

(A) 3-year cycle**(i) In general**

Procedures under which every 3 years (or such shorter cycle as the State may determine), upon the request of either parent, or, if there is an assignment under part A of this subchapter, upon the request of the State agency under the State plan or of either parent, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved—

(I) review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(II) apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(III) use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.

(ii) Opportunity to request review of adjustment

If the State elects to conduct the review under subclause (II) or (III) of clause (i), procedures which permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 667(a) of this title.

(iii) No proof of change in circumstances necessary in 3-year cycle review

Procedures which provide that any adjustment under clause (i) shall be made without a requirement for proof or showing of a change in circumstances.

(B) Proof of substantial change in circumstances necessary in request for review outside 3-year cycle

Procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under clause (i), the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title.

(C) Notice of right to review

Procedures which require the State to provide notice not less than once every 3 years to the parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order pursuant to this paragraph. The notice may be included in the order.

(11) Procedures under which a State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

(12) Locator information from interstate networks

Procedures to ensure that all Federal and State agencies conducting activities under this part have access to any system used by the State to locate an individual for purposes relating to motor vehicles or law enforcement.

(13) Recording of social security numbers in certain family matters

Procedures requiring that the social security number of—

(A) any applicant for a professional license, commercial driver's license, occupational license, or marriage license be recorded on the application;

(B) any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment be placed in the records relating to the matter; and

(C) any individual who has died be placed in the records relating to the death and be recorded on the death certificate.

For purposes of subparagraph (A), if a State allows the use of a number other than the social security number, the State shall so advise any applicants.

(14) Administrative enforcement in interstate cases

Procedures under which—

(A)(i) the State shall respond within 5 business days to a request made by another State to enforce a support order; and

(ii) the term "business day" means a day on which State offices are open for regular business;

(B) the State may, by electronic or other means, transmit to another State a request for assistance in a case involving the enforcement of a support order, which request—

(i) shall include such information as will enable the State to which the request is transmitted to compare the information about the case to the information in the data bases of the State; and

(ii) shall constitute a certification by the requesting State—

(I) of the amount of support under the order the payment of which is in arrears; and

(II) that the requesting State has complied with all procedural due process requirements applicable to the case;

(C) if the State provides assistance to another State pursuant to this paragraph with respect to a case, neither State shall consider the case to be transferred to the caseload of such other State; and

(D) the State shall maintain records of—

(i) the number of such requests for assistance received by the State;

(ii) the number of cases for which the State collected support in response to such a request; and

(iii) the amount of such collected support.

(15) Procedures to ensure that persons owing past-due support work or have a plan for payment of such support

(A) In general

Procedures under which the State has the authority, in any case in which an individual owes past-due support with respect to a child receiving assistance under a State program funded under part A of this subchapter, to issue an order or to request that a court or an administrative process established pursuant to State law issue an order that requires the individual to—

(i) pay such support in accordance with a plan approved by the court, or, at the option of the State, a plan approved by the State agency administering the State program under this part; or

(ii) if the individual is subject to such a plan and is not incapacitated, participate in such work activities (as defined in section 607(d) of this title) as the court, or, at the option of the State, the State agency administering the State program under this part, deems appropriate.

(B) Past-due support defined

For purposes of subparagraph (A), the term "past-due support" means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.

(16) Authority to withhold or suspend licenses

Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses of individuals owing overdue support

or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

(17) Financial institution data matches

(A) In general

Procedures under which the State agency shall enter into agreements with financial institutions doing business in the State—

(i) to develop and operate, in coordination with such financial institutions, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the State by name and social security number or other taxpayer identification number; and

(ii) in response to a notice of lien or levy, encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien pursuant to paragraph (4).

(B) Reasonable fees

The State agency may pay a reasonable fee to a financial institution for conducting the data match provided for in subparagraph (A)(i), not to exceed the actual costs incurred by such financial institution.

(C) Liability

A financial institution shall not be liable under any Federal or State law to any person—

(i) for any disclosure of information to the State agency under subparagraph (A)(i);

(ii) for encumbering or surrendering any assets held by such financial institution in response to a notice of lien or levy issued by the State agency as provided for in subparagraph (A)(ii); or

(iii) for any other action taken in good faith to comply with the requirements of subparagraph (A).

(D) Definitions

For purposes of this paragraph—

(i) Financial institution

The term "financial institution" has the meaning given to such term by section 659a(d)(1) of this title.

(ii) Account

The term "account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(18) Enforcement of orders against paternal or maternal grandparents

Procedures under which, at the State's option, any child support order enforced under this part with respect to a child of minor parents, if the custodial parent of such child is receiving assistance under the State program under part A of this subchapter, shall be enforceable, jointly and severally, against the parents of the noncustodial parent of such child.

(19) Health care coverage

Procedures under which all child support orders enforced pursuant to this part shall include a provision for the health care coverage of the child, and in the case in which a noncustodial parent provides such coverage and changes employment, and the new employer provides health care coverage, the State agency shall transfer notice of the provision to the employer, which notice shall operate to enroll the child

in the noncustodial parent's health plan, unless the noncustodial parent contests the notice.

Notwithstanding section 654(20)(B) of this title, the procedures which are required under paragraphs (3), (4), (6), (7), and (15) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the noncustodial parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

(b) Withholding from income of amounts payable as support

The procedures referred to in subsection (a)(1)(A) of this section (relating to the withholding from income of amounts payable as support) must provide for the following:

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's income must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 1673(b) of Title 15. If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 1673(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for aid under part A of this subchapter) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

(3)(A) The income of a noncustodial parent shall be subject to such withholding, regardless of whether support payments by such parent are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after October 13, 1988, on the effective date of the order; except that such income shall not be subject to such withholding under this subparagraph in any case where (i) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement.

(B) The income of a noncustodial parent shall become subject to such withholding, in the case of income not subject to withholding under subparagraph (A), on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of—

(i) the date as of which the noncustodial parent requests that such withholding begin,

(ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or

(iii) such earlier date as the State may select.

(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and the State must send notice to each noncustodial parent to whom paragraph (1) applies—

(i) that the withholding has commenced; and

(ii) of the procedures to follow if the noncustodial parent desires to contest such withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact.

(B) The notice under subparagraph (A) of this paragraph shall include the information provided to the employer under paragraph (6)(A).

(5) Such withholding must be administered by the State through the State disbursement unit established pursuant to section 654b of this title, in accordance with the requirements of section 654b of this title.

(6)(A)(i) The employer of any noncustodial parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such noncustodial parent's income the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the State disbursement unit within 7 business days after the date the amount would (but for this subsection) have been paid or credited to the employee, for distribution in accordance with this part. The employer shall withhold funds as directed in the notice, except that when an employer receives an income withholding order issued by another State, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining—

(I) the employer's fee for processing an income withholding order;

(II) the maximum amount permitted to be withheld from the obligor's income;

(III) the time periods within which the employer must implement the income withholding order and forward the child support payment;

(IV) the priorities for withholding and allocating income withheld for multiple child support obligees; and

(V) any withholding terms or conditions not specified in the order.

An employer who complies with an income withholding notice that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice.

(ii) The notice given to the employer shall be in a standard format prescribed by the Secretary, and contain only such information as may be necessary for the employer to comply with the withholding order.

(iii) As used in this subparagraph, the term "business day" means a day on which State offices are open for regular business.

(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

(C) The employer must be held liable to the State for any amount which such employer fails to withhold from income due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(D) Provision must be made for the imposition of a fine against any employer who—

(i) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer; or

(ii) fails to withhold support from income or to pay such amounts to the State disbursement unit in accordance with this subsection.

(7) Support collection under this subsection must be given priority over any other legal process under State law against the same income.

(8) For purposes of subsection (a) of this section and this subsection, the term "income" means any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program, and interest.

(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure

that child support owed by noncustodial parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

(10) Provision must be made for terminating withholding.

(11) Procedures under which the agency administering the State plan approved under this part may execute a withholding order without advance notice to the obligor, including issuing the withholding order through electronic means.

(c) Expedited procedures

The procedures specified in this subsection are the following:

(1) Administrative action by State agency

Procedures which give the State agency the authority to take the following actions relating to establishment of paternity or to establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of State agencies of other States to take the following actions:

(A) Genetic testing

To order genetic testing for the purpose of paternity establishment as provided in subsection (a)(5) of this section.

(B) Financial or other information

To subpoena any financial or other information needed to establish, modify, or enforce a support order, and to impose penalties for failure to respond to such a subpoena.

(C) Response to State agency request

To require all entities in the State (including for-profit, nonprofit, and governmental employers) to provide promptly, in response to a request by the State agency of that or any other State administering a program under this part, information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, and to sanction failure to respond to any such request.

(D) Access to information contained in certain records

To obtain access, subject to safeguards on privacy and information security, and subject to the nonliability of entities that afford such access under this subparagraph, to information contained in the following records (including automated access, in the case of records maintained in automated data bases):

(i) Records of other State and local government agencies, including—

(I) vital statistics (including records of marriage, birth, and divorce);

(II) State and local tax and revenue records (including information on residence address, employer, income and assets);

(III) records concerning real and titled personal property;

(IV) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;

(V) employment security records;

(VI) records of agencies administering public assistance programs;

(VII) records of the motor vehicle department; and

(VIII) corrections records.

(ii) Certain records held by private entities with respect to individuals who owe or are owed support (or against or with respect to whom a support obligation is sought), consisting of—

(I) the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies,

pursuant to an administrative subpoena authorized by subparagraph (B); and

(II) information (including information on assets and liabilities) on such individuals held by financial institutions.

(E) Change in payee

In cases in which support is subject to an assignment in order to comply with a requirement imposed pursuant to part A of this subchapter or section 1396k of this title, or to a requirement to pay through the State disbursement unit established pursuant to section 654b of this title, upon providing notice to obligor and obligee, to direct the obligor or other payor to change the payee to the appropriate government entity.

(F) Income withholding

To order income withholding in accordance with subsections (a)(1)(A) and (b) of this section.

(G) Securing assets

In cases in which there is a support arrearage, to secure assets to satisfy the arrearage by—

(i) intercepting or seizing periodic or lump-sum payments from—

(I) a State or local agency, including unemployment compensation, workers' compensation, and other benefits; and

(II) judgments, settlements, and lotteries;

(ii) attaching and seizing assets of the obligor held in financial institutions;

(iii) attaching public and private retirement funds; and

(iv) imposing liens in accordance with subsection (a)(4) of this section and, in appropriate cases, to force sale of property and distribution of proceeds.

(H) Increase monthly payments

For the purpose of securing overdue support, to increase the amount of monthly support payments to include amounts for arrearages, subject to such conditions or limitations as the State may provide.

Such procedures shall be subject to due process safeguards, including (as appropriate) requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal.

(2) Substantive and procedural rules

The expedited procedures required under subsection (a)(2) of this section shall include the following rules and authority, applicable with respect to all proceedings to establish paternity or to establish, modify, or enforce support orders:

(A) Locator information; presumptions concerning notice

Procedures under which—

(i) each party to any paternity or child support proceeding is required (subject to privacy safeguards) to file with the tribunal and the State case registry upon entry of an order, and to update as appropriate, information on location and identity of the party, including Social Security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of employer; and

(ii) in any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the tribunal may deem State due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the tribunal pursuant to clause (i).

(B) Statewide jurisdiction

Procedures under which—

(i) the State agency and any administrative or judicial tribunal with authority to hear child support and paternity cases exerts statewide jurisdiction over the parties; and

(ii) in a State in which orders are issued by courts or administrative tribunals, a case may be transferred between local jurisdictions in the State without need for any additional filing by the petitioner, or service of process upon the respondent, to retain jurisdiction over the parties.

(3) Coordination with ERISA

Notwithstanding subsection (d) of section 514 of the Employee Retirement Income Security Act of 1974 (relating to effect on other laws), [29 U.S.C.A. § 1144], nothing in this subsection shall be construed to alter, amend, modify, invalidate, impair, or supersede subsections (a), (b), and (c) of such section 514 [29 U.S.C.A. § 1144(a), (b), and (c)] as it applies with respect to any procedure referred to in paragraph (1) and any expedited procedure referred to in paragraph (2), except to the extent that such procedure would be consistent with the requirements of section 206(d)(3) of such Act (relating to qualified domestic relations orders) [29 U.S.C.A. § 1056(d)(3)] or the requirements of section 609(a) of such Act (relating to qualified medical child support orders) [29 U.S.C.A. § 1169(a)] if the reference in such section 206(d)(3) [29 U.S.C.A. § 1056(d)(3)] to a domestic relations order and the reference in such section 609(a) [29 U.S.C.A. § 1169(a)] to a medical child support order were a reference to a support order referred to in paragraphs (1) and (2) relating to the same matters, respectively.

(d) Exemption of States

If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

(e) "Overdue support" defined

For purposes of this section, the term "overdue support" means the amount of a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the noncustodial parent's spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of section 654(4) of this title. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply independently to each procedure specified under this section.

(f) Uniform Interstate Family Support Act

In order to satisfy section 654(20)(A) of this title, on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, together with any amendments officially adopted before January 1, 1998 by the National Conference of Commissioners on Uniform State Laws.

(g) Laws voiding fraudulent transfers

In order to satisfy section 454(20)(A), each State must have in effect—

- (1)(A) the Uniform Fraudulent Conveyance Act of 1981;
- (B) the Uniform Fraudulent Transfer Act of 1984; or

(C) another law, specifying indicia of fraud which create a prima facie case that a debtor transferred income or property to avoid payment to a child support creditor, which the Secretary finds affords comparable rights to child support creditors; and

(2) procedures under which, in any case in which the State knows of a transfer by a child support debtor with respect to which such a prima facie case is established, the State must—

(A) seek to void such transfer; or

(B) obtain a settlement in the best interests of the child support creditor.

(Aug. 14, 1985, c. 531, Title IV, § 466, as added Aug. 16, 1984, Pub.L. 98-378, § 3(b), 98 Stat. 1306, and amended Oct. 21, 1986, Pub.L. 99-509, Title IX, § 9103(a), 100 Stat. 1973; Oct. 13, 1988, Pub.L. 100-485, Title I, §§ 101(a), (b), 103(c), 111(b), (e), 102 Stat. 2344 to 2346, 2349, 2350; Nov. 10, 1988, Pub.L. 100-647, Title VIII, § 8106(4), 102 Stat. 3797; Aug. 10, 1993, Pub.L. 103-66, Title XIII, § 13721(b), 107 Stat. 659; Oct. 31, 1994, Pub.L. 103-432, Title II, § 212(a), 108 Stat. 4460; Aug. 22, 1996, Pub.L. 104-193, Title I, § 108(c)(14), (15), Title III, §§ 301(c)(3), (4), 314, 315, 317, 321, 323, 325(a), 331(a), 351, 364, 365, 367, 368, 369, 372, 373, 382, 395(d)(1)(H), (d)(2)(D), 110 Stat. 2166, 2200, 2212 to 2214, 2220 to 2222, 2224, 2227, 2239, 2249 to 2251, 2254, 2255, 2257, 2259, 2260.)

Amendment of Subsec. (a)(3)(B)

Pub.L. 104-193, Title I, §§ 108(c)(14), 116, Aug. 22, 1996, 110 Stat. 2166, 2181, provided that, effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, subsec. (a)(3)(B) is amended by striking "602(a)(26)" and inserting "608(a)(3)".

Amendment of Subsec. (b)(2)

Pub.L. 104-193, Title I, §§ 108(c)(15), 116, Aug. 22, 1996, 110 Stat. 2166, 2181, provided that, effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, subsec. (b)(2) is amended by striking "aid" and inserting "assistance under a State program funded".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1993 Acts. House Report No. 103-111 and House Conference Report No. 103-213, see 1993 U.S. Code Cong. and Adm. News, p. 378.

1996 Acts. House Report No. 104-651 and House Conference Report No. 104-725, see 1996 U.S. Code Cong. and Adm. News, p. 2183.

References in Text

Part A of this subchapter, referred to in subsecs. (a)(10), (15), (18), (b)(2), and (c)(1)(E), is classified to section 601 et seq. of this title.

ERISA, referred to in subsec. (c)(3), is the Employee Retirement Income Security Act of 1974, Pub.L. 93-406, Sept. 2, 1974, 88 Stat. 832, as amended, which is classified principally to chapter 18 (section 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Amendments

1994 Amendments. Subsec. (a)(7). Pub.L. 103-432, § 212(a)(1), substituted "Procedures which require the State to periodically report to consumer reporting agencies (as defined in section 1681a(f) of Title 15) the name of any parent who owes overdue support and is at least 2

months delinquent in the payment of such support and the amount of such delinquency" for "Procedures by which information regarding the amount of overdue support owed by an absent parent residing in the State will be made available to any consumer reporting agency (as defined in section 1681a(f) of Title 15) upon the request of such agency".

Subsec. (a)(7)(C). Pub.L. 103-432, § 212(a)(2), substituted current provisions for "a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting agency by the State."

1993 Amendments. Subsec. (a)(2). Pub.L. 103-66, § 13721(b)(1), deleted "at the option of the State," following "(B)" and inserted "or paternity establishment".

Subsec. (a)(5)(C) to (H). Pub.L. 103-66, § 13721(b)(2), added subpars. (C) to (H).

Subsec. (a)(11). Pub.L. 103-66, § 13721(b)(2), added par. (11).

1988 Amendments. Subsec. (a)(8). Pub.L. 100-485, § 103(b), designated existing provisions as subpar. (A), and, as so designated, substituted "not described in subpar. (B)" for "which are issued or modified in the State", and added subpar. (B).

Effective Dates

1996 Acts. For effective date of Title III of Pub.L. 104-193, see section 396(a) to (c) of Pub.L. 104-193, set out as a note under section 654 of this title.

1994 Acts. Section 212(b) of Pub.L. 103-432 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1995."

1993 Acts. Amendment by section 13721(b) of Pub.L. 103-66, effective with respect to a State, on the later of Oct. 1, 1993, or the date of enactment by the State legislature of all laws required by such amendments, but not later than the first day of the first calendar quarter beginning after the close of the first regular session (in the case of a State having a 2-year legislative session, each year shall be deemed a separate regular session) of the State legislature that begins after Aug. 10, 1993, see section 13721(c) of Pub.L. 103-66 set out as a note under section 652 of this title.

Commission on Interstate Child Support

Section 126 of Pub.L. 100-485, as amended by Pub.L. 101-508, Title V, § 5012(a), Nov. 5, 1990, 104 Stat. 1388-221; Pub.L. 102-318, Title V, § 534(a), July 3, 1992, 106 Stat. 317, provided that:

"(a) **Establishment of Commission.**—There is hereby established a Commission to be known as the Commission on Interstate Child Support (in this section referred to as the 'Commission') to be composed of 15 members appointed in accordance with subsection (b)(1).

"(b) **Appointment and term of members; vacancies; transaction of business.**—(1) Members of the Commission shall be appointed as follows from among individuals knowledgeable in matters involving interstate child support:

"(A) Four members shall be appointed jointly by the Majority and Minority Leaders of the Senate, in consultation with the chairman and ranking minority member of the Committee on Finance of the Senate.

"(B) Four members shall be appointed jointly by the Speaker of the House and the Minority Leader of the House, in consultation with the chairman and ranking minority member of the Committee on Ways and Means of the House of Representatives.

"(C) Seven members shall be appointed by the Secretary of Health and Human Services (in this section referred to as the 'Secretary').

"(2) Members of the Commission shall serve for the life of the Commission. A vacancy on the Commission shall be filled in the manner in which the original appointment was made and shall not affect the powers or duties of the Commission.

"(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business. Decisions of the Commission shall be according to the vote of simple majority of those present and voting at a properly called meeting.

"(4) The members of the Commission shall be appointed by July 1, 1989. The first meeting of the Commission shall be called by the Secretary

as promptly as possible after all such members are appointed. At such meeting, the members of the Commission shall select a chairman from among such members and shall meet thereafter at the call of the chairman or of a majority of the members.

"(c) **Basic pay.**—(1) Members of the Commission shall serve as such without pay.

"(2) Members of the Commission shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the government service are allowed travel expenses under section 5708 of title 5 of the United States Code [section 5708 of Title 5, Government Organizations and Employees].

"(d) **Duties of the Commission.**—(1) During the fiscal year 1991, the Commission shall hold one or more national conferences on interstate child support reform for the purpose of assisting the Commission in preparing the report required under paragraph (2).

"(2) Not later than August 1, 1992, the Commission shall submit a report to the Congress that contains recommendations for—

"(A) improving the interstate establishment and enforcement of child support awards, and

"(B) revising the Uniform Reciprocal Enforcement of Support Act.

"(e) **Powers of the Commission.**—(1) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States Government.

"(2) The Commission may accept, use, and dispose of donations of money and property and may accept such volunteer services of individuals as it deems appropriate.

"(3) The Commission may procure supplies, services, and property, and make contracts (but only to the extent or in such amounts as are provided in appropriation Acts).

"(4) For purposes of carrying out its duties under subsection (d), the Commission may adopt such rules for its organization and procedures as it deems appropriate.

"(5)(A) Individuals may be appointed to serve the Commission without regard to the provisions of title 5 [Title 5] that govern appointments in the competitive service, without regard to the competitive service, and without regard to the classification system in chapter 53 of title 5, United States Code [chapter 53 of Title 5]. The chairman of the Commission may fix the compensation of the Executive Director at a rate that shall not exceed the maximum rate of the basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code [Title 5].

"(B) The Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission. Such personnel may be appointed without regard to the provisions of title 5, United States Code [Title 5], governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and sub-

chapter III of chapter 53 of such title [chapter 51 and subchapter III of Title 5] relating to classification and General Schedule pay rates.

"(C) On the request of the chairman, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section without regard to section 3341 of title 5, United States Code [section 3341 of Title 5].

"(f) Termination of the Commission.—(1) The Commission shall terminate on September 30, 1992.

"(2) Any funds held by the Commission on the date of termination of the Commission shall be deposited in the general fund of the Treasury of the United States and credited as miscellaneous receipts. Any property (other than funds) held by the Commission on such date shall be disposed of as excess or surplus property.

"(g) Authorization of appropriations.—For the purpose of carrying out this section, there is authorized to be appropriated \$2,000,000."

[Section 534(b) of Pub.L. 102-318 provided that: "The amendments made by this section [amending section 126 of Pub.L. 100-485, set out above] shall take effect on June 30, 1992."]

[Pub.L. 101-508, Title V, § 5012(b), provided that the amendments to subsecs. (d) and (f) of this note and the enactment of subsec. (e)(5) of this note, shall take effect on Nov. 5, 1990.]

Demonstration Projects for Evaluating Model Procedures for Reviewing Child Support Awards

Section 103(e) of Pub.L. 100-485 authorized an agreement between the Secretary of Health and Human Services and each State submitting an application for the purpose of conducting a demonstration project to test and evaluate model procedures for reviewing child support award amounts, directed that such projects be commenced not later than Sept. 30, 1989, and be conducted for a 2-year period, and directed the Secretary to report the results of such projects to Congress not later than 6 months after all projects are completed.

LIBRARY REFERENCES

Law Review and Journal Commentaries

Beyond jurisprudential midrash: Toward a human solution to Title IV-D child support enforcement problems across Indian country borders. Nancy Rank, 33 *Ariz.L.Rev.* 337 (1991).

Data processing and government administration: Failure of the American legal response to

the computer. Paul Schwartz, 43 *Hastings L.J.* 1321 (1992).

Preserving the purchasing power of child support awards: can the use of escalator clauses be justified after the Family Support Act? 69 *Ind. L.J.* 921 (1993-1994).

NOTES OF DECISIONS

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Retroactive modification of child support order 2

2. Retroactive modification of child support order

Child support award reducing pendente lite child support obligation of husband, which was established after full divorce trial but made effective on first day of trial, was not retroactive modification of child support prohibited by provision of Child Support Enforcement Amendments (CESA) and related state statute. *Mallamo v. Mallamo*, N.J.Super.A.D.1995, 654 A.2d 474, 280 N.J.Super. 8.

Trial court was prohibited from ordering father to pay child support retroactive to date prior to filing of application to modify. *Dean v. Dean*, Neb.App.1996, 552 N.W.2d 310, 4 Neb. 914.

Statutory prohibition against retroactive modification of child support order did not bar order

requiring former wife to reimburse Department of Human Services (DHS) for one half of AFDC (Aid to Families With Dependent Children) paid to former husband during four-month period when he was unemployed and was acting as custodial parent and when former wife was employed and had ability to pay child support. *State ex rel. Dept. of Human Services v. Flo*, Iowa 1991, 477 N.W.2d 383.

3. Persons entitled to bring motion for modification

District attorney had preexisting relationship with child support order, and thus, district attorney had authority to bring motion to modify child support order in compliance with child support guidelines, where district attorney, at request of mother, had started proceedings to garnish father's wages and had previously issued notice of intent to enforce support order because of late payments. *Matter of Marriage of Nash*, Or.App.1994, 867 P.2d 528, 126 Or.App. 39.

§ 667. State guidelines for child support awards

LIBRARY REFERENCES

Law Review and Journal Commentaries

Maturity, Difference, and Mystery: Children's Perspectives and the Law. Wendy Anton Fitzgerald, 36 *Ariz.L.Rev.* 11 (1994).

CHAPTER 75-02-04.1
Child Support Guidelines

Section

- 75-02-04.1-01. Definitions
- 75-02-04.1-02. Determination of support amount - General instructions
- 75-02-04.1-03. Determination of support amount - Split custody
- 75-02-04.1-04. Minimum support level
- 75-02-04.1-05. Determination of net income from self-employment
- 75-02-04.1-06. Determining the cost of supporting a child living with the obligor
- 75-02-04.1-06.1. Determination of support amount in multiple-family cases
- 75-02-04.1-07. Imputing income based on earning capacity
- 75-02-04.1-08. Income of spouse
- 75-02-04.1-09. Criteria for rebuttal of guideline amount
- 75-02-04.1-10. Child support amount
- 75-02-04.1-11. Parental responsibility for children in foster care
- 75-02-04.1-12. Uncontested proceedings
- 75-02-04.1-13. Application

Objection

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO NORTH DAKOTA ADMINISTRATIVE CODE CHAPTER 75-02-04.1 RELATING TO CHILD SUPPORT GUIDELINES.

The committee objects to this rule because:

1. Both parents have a legal duty to support their children.
2. Any guidelines adopted to ensure proper child support amounts are paid upon divorce must be based on the best interests of the child.
3. The obligor model adopted by the Department of Human Services establishes child support amounts by using a percentage of the obligor's income and does not take into consideration the income of the custodial parent.
4. The income shares model considered, but not adopted, by the department combines the income of both parents and requires the parties to contribute child support in proportion to the income each receives.
5. Public opinion expressed by the parties directly affected (the parents) strongly supports the income shares model over the obligor model because of the inherent fairness of that proposal. The best interests of the child would be better served by adoption of the income shares model as it would provide not only sufficient financial resources for the child but should provide for more harmonious relationships due to the fairness of the income shares model.

Section 28-32-03.3 provides that after the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs.

History: Effective August 9, 1991.

General Authority: NDCC 28-32-03.3

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 means tested public assistance programs.
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. "Gross income" means income from any source, in any form, but does not mean benefits received from means tested public assistance programs such as aid to families with dependent children, supplemental security income, and food stamps. Gross income includes salaries, wages, overtime wages, commissions, bonuses, deferred income, dividends, severance pay, pensions, interest, trust income, annuities income, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, retirement benefits, veterans' benefits (including gratuitous benefits), gifts and prizes to the extent each exceeds one thousand dollars in value, spousal support payments received, cash 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.
6. "In-kind income" means the receipt 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 at no charge or less than the customary charge.
7. "Net income" means total gross monthly income less:

- a. Federal income tax obligation based on application of standard deductions and tax tables;
 - b. State income tax obligation based on application of standard deductions and tax tables;
 - c. Federal Insurance Contributions Act (FICA) and medicare deductions or obligations;
 - 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;
 - e. Payments made on actual medical expenses of the child or children for whom support is being sought;
 - f. Union dues where required as a condition of employment;
 - g. Employee retirement contributions, deducted from the employee's compensation, other than FICA, where required as a condition of employment; and
 - 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 or actual lodging costs, whichever is less), incurred on a regular basis, but not reimbursed by the employer.
8. "Net income from self-employment" means gross income of any organization or entity which employs the obligor, but which the obligor is to a significant extent able to control, less actual expenditures attributable to the cost of producing income to that organization or entity.
9. "Obligee" includes, for purposes of this chapter, an obligee as defined in subsection 8 of North Dakota Century Code section 14-09-09.10 and a person who is alleged to be owed a duty of support.
10. "Obligor" includes, for purposes of this chapter, an obligor as defined in subsection 9 of North Dakota Century Code section 14-09-09.10 and a person who is alleged to owe a duty of support.
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.

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

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

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

1. 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.

2. Calculations assume that the care given to the child during temporary periods when the child resides with the obligor or the obligor's relatives do not substitute for the child support obligation.

3. Net income received by an obligor from all sources must be considered in the determination of available money for child support.

4. The result of all calculations which determine a monetary amount ending in fifty cents or more must be rounded up to the nearest whole dollar, and must otherwise be rounded down to the nearest whole dollar.

5. In applying the child support guidelines, an obligor's monthly net income amount ending in fifty dollars or more must be rounded up to the nearest one hundred dollars, and must otherwise be rounded down to the nearest one hundred dollars.

6. The annual total of all income considered in determining a child support obligation must be determined and then divided by twelve in order to determine the obligor's monthly net income.

7. Income must be 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.

8. Calculations made under this chapter are ordinarily based upon recent past circumstances because past circumstances are typically a reliable indicator of future circumstances, particularly circumstances concerning income. 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.

9. Determination of a child support obligation is appropriate in any matter where the child and both of the child's parents do not reside together.

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.

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.

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

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

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

75-02-04.1-03. Determination of support amount - Split custody

A support amount must be determined for the child or children in each parent's sole custody. The lesser amount 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.

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

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

75-02-04.1-04. Minimum support level

A support obligation should be established in each case where the obligor has any income. Even though the obligor's payment is far from sufficient to meet the child's needs, considerations of policy require that all parents understand the parental duty to support children to the extent of the parent's ability. Equally important considerations of policy require the fostering of relationships between parents and children which may arise out of the recognition of parental duty.

History: Effective February 1, 1991.

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

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

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

1. Expenses attributable to the cost of producing income vary from business to business. Deducting expenses from the gross income of the business determines the adjusted gross income, according to internal revenue service terminology. If the latest tax return is not available or does not reasonably reflect the income from the business, a profit and loss statement which will more accurately reflect the current status of the business must be used.

2. After adjusted gross income from self-employment is determined, all business expenses allowed for taxation purposes, but which do not require actual expenditures, such as depreciation, must be added to determine net income from self-employment. Business costs actually incurred

and paid, but not expensed for internal revenue service purposes, such as principal payments on business loans (to the extent there is a net reduction in total principal obligations incurred in purchasing depreciable assets), may be deducted to determine net income from self-employment.

3. Farm businesses 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 farm operations, if undertaken on a substantially similar scale, should be used to determine farm income.

4. Land costs are a significant part of farm expenses. Because farmlands are used both for the production of income and for investment purposes, for the purpose of making determinations under this section, deduction of business costs relating to the purchase of land is limited to the lesser of:

- a. The fair rental value of the land being purchased; or
- b. The total principal and interest payments actually made toward the purchase of the land.

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

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

Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 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 if this section is followed.

1. When the other parent of a child living with the obligor does not live with the obligor, the cost of supporting that child is determined by:

- a. Applying the obligor's net income and the total number of children to whom the obligor owes a duty of support, to section 75-02-04.1-10;
- b. Dividing the amount determined under subdivision a by the total number of children to whom the obligor owes a duty of support; and
- c. Multiplying the amount determined under subdivision b times the total number of children to whom the obligor owes a duty of support and who are also living with the obligor.

2. When the other parent of a child living with the obligor also lives with the obligor, the cost of supporting that child is determined by:

- a. Applying the combined total net income of the obligor and the other parent and the total number of children to whom the obligor or the other parent owes a duty of support, to section

75-02-04.1-10;

b. Dividing the amount determined under subdivision a by the total number of children to whom the obligor or the other parent owes a duty of support;

c. Multiplying the amount determined under subdivision b times the total number of children to whom the obligor owes a duty of support and who are also living with the obligor;

d. Dividing the obligor's net income by the combined total net income of the obligor and the other parent; and

e. Multiplying the amount determined under subdivision c times the decimal fraction determined under subdivision d.

3. For purposes of the calculation described in subsection 2, income may not be imputed under section 75-02-04.1-08.

4. When the other parent of a child living with the obligor also lives with the obligor, no deduction for the cost of supporting that child may be made, under subsection 4 of section 75-02-04.1-06.1, from the obligor's income if the obligor fails to furnish reliable information sufficient to determine the other parent's income.

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

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

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

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

1. This section must be used to determine the child support amount presumed to be the correct amount of child support in all cases involving an obligor who:

a. Owes duties of support payable to two or more obligees; or

b. Owes a duty of support to at least one obligee and also owes a duty of support to a child living with the obligor who is not also the child of that obligee.

2. If a court consolidates proceedings involving an obligor and two or more obligees, the court must determine all obligations that may be determined in the consolidated proceeding without regard to whom the initial moving party may be.

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; and

b. The guidelines amount is not rebutted.

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; and

c. Any support amount otherwise determined to be less than one dollar is determined to be one dollar.

5. 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.

6. The fact, if it is a fact, that the obligor is required to pay, or pays, a different amount than the hypothetical amounts determined under subsections 3 and 4 is not a basis for deviation from the procedure described in this section.

History: Effective January 1, 1995.

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

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

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

1. For purposes of this section:

a. "Community" includes any place within one hundred miles [160.93 kilometers] of the obligor's actual place of residence; and

b. An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than prevailing amounts earned in the community by 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 six-tenths of prevailing amounts earned in the community by persons with similar work

history and occupational qualifications.

3. Except as provided in subsections 4 and 5, 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 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 months beginning on or after thirty-six 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 the obligor;

(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.

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 in the community, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings.

7. 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.

8. 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, income must be imputed based on the greatest of:

- a. Subdivisions a through c of subsection 3; or
- b. The obligor's income, at the time the child support order was entered or last modified, increased at the rate of ten percent per year.

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

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

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

75-02-04.1-08. Income of spouse

The income and financial circumstances of the spouse of an obligor should not be considered as income for child support purposes unless the spouse's income and financial circumstances are, to a significant extent, subject to control by the obligor as where the obligor is a principal in a business employing the spouse.

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

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

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

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. 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.

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 thousand 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 for the purpose of visiting a child who is the subject of the order;

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; or

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.

3. Assets may not be considered under subdivisions g and h 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 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:
- The transaction occurred after the birth of a child entitled to support;
 - The transaction occurred no more than twenty-four months before the commencement of the proceeding that initially established the support order; and
 - 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 of subsection 2, a situation over which the obligor has little or no control does not exist if the situation arises out of discretionary purchases or illegal activity.

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

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

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

or more

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

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

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

75-02-04.1-11. Parental responsibility for children in foster 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.

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, and to determine the net income of those financially responsible parents. If the parents of a child in foster 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, 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 must be separately determined.

2. Each child in foster care is treated as an obligee, and support obligations must be separately determined for each such child.

3. If the support obligations determined under this section for a child or children in foster care exceed the cost of foster care, the support obligations must be reduced (proportionately if there is more than one obligor) to an amount equal to the cost of foster care.

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

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

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

75-02-04.1-12. Uncontested proceedings

In a proceeding where the obligor appears, but does not resist the child support amount sought by the obligee, and in proceedings where the parties agree or stipulate to a child support amount, credible evidence describing the obligor's income and financial circumstances, which demonstrates that the uncontested or agreed amount of child support conforms to the requirements of this chapter, must be presented.

History: Effective February 1, 1991.

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

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

75-02-04.1-13. Application

The child support guideline schedule amount is rebuttably presumed to be the correct amount of child support in all child support determinations, including both temporary and permanent determinations, and including determinations necessitated by actions for the support of children of married persons, actions seeking domestic violence protection orders, actions arising out of divorce, actions arising out of paternity determinations, actions based upon a claim for necessities, actions arising out of juvenile court proceedings, interstate actions for the support of children in which a court of this state has the authority to establish or modify a support order, and actions to modify orders for the support of children. The fact that two or more such actions may be consolidated for trial or otherwise joined for convenient consideration of facts does not prevent the application of this chapter to those actions.

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

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

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