CHAPTER 75-02-04.1
CHILD SUPPORT GUIDELINES

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75-02-04.1-01. Definitions.

1. "Child" means any child, by birth or adoption, to whom a parent owes a duty of support.

2. "Child living with the obligor" means the obligor's child who lives with the obligor most of the year.

3. "Children's benefits" means a payment, to or on behalf of a child of the person whose income is being determined, made by a government, insurance company, trust, pension fund, or similar entity, derivative of the parent's benefits or a result of the relationship of parent and child between such person and such child. Children's benefits do not mean benefits received from public assistance programs that are means tested or provided in the form of subsidy payments made to adoptive parents.

4. a. "Gross income" means income from any source, in any form, but does not mean:

   (1) Benefits received from public assistance programs that are means tested such as the temporary assistance for needy families, supplemental security income, and supplemental nutrition assistance programs, or that are provided in the form of subsidy payments made to adoptive parents;

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

      (a) That benefit may be liquidated; and

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

   (3) Child support payments;

   (4) Atypical overtime wages or nonrecurring bonuses over which the employee does not have significant influence or control;

(5) Overseas housing-related allowances paid to an obligor who is in the military to the extent those housing-related allowances exceed the housing allowance in effect at the Minot air force base; or

(6) Nonrecurring capital gains.

b. Examples of gross income include salaries, wages, overtime wages, commissions, bonuses, employee benefits, currently deferred income, dividends, severance pay, pensions, interest, trust income, annuities income, gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, distributions of retirement benefits, receipt of previously deferred income to the extent not previously considered in determining a child support obligation for the child whose support is under consideration, veterans' benefits (including gratuitous benefits), gifts and prizes to the extent they annually exceed one thousand dollars in value, spousal support payments received, refundable tax credits, value of in-kind income received on a regular basis, children's benefits, income imputed based upon earning capacity, military subsistence payments, and net income from self-employment.

c. For purposes of this subsection, income tax due or paid is not an income tax penalty.

5. "In-kind income" means the receipt from employment or income-producing activity of any valuable right, property or property interest, other than money or money's worth, including forgiveness of debt (other than through bankruptcy), use of property, including living quarters at no charge or less than the customary charge, and the use of consumable property or services at no charge or less than the customary charge.

6. "Net income" means total gross annual income less:

a. A hypothetical federal income tax obligation based on the obligor's gross income, reduced by that part of the obligor's gross income that is not subject to federal income tax and reduced by deductions allowed in arriving at adjusted gross income under the Internal Revenue Code, and applying:

(1) The standard deduction for the tax filing status of single; and

(2) Tax tables for a single individual for the most recent year published by the internal revenue service;

b. A hypothetical state income tax obligation equal to eleven percent of the amount determined under subdivision a;

c. A hypothetical obligation for Federal Insurance Contributions Act (FICA), Railroad Retirement Tax Act (RRTA) tier I and tier II, Medicare, and self-employment tax obligations based on that part of the obligor's gross income that is subject to FICA, RRTA, Medicare, or self-employment tax under the Internal Revenue Code;

d. A portion of premium payments, made by the person whose income is being determined, for health insurance policies or health service contracts, including coverage for dental and vision care, intended to afford coverage for the child or children for whom support is being sought, determined by:

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

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

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

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

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

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

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

e. Payments made on actual medical expenses of the child or children for whom support is sought to the extent it is reasonably likely similar expenses will continue;

f. Union dues and occupational license fees if required as a condition of employment;

g. Employee retirement contributions, deducted from the employee's compensation and not otherwise deducted under this subsection, to the extent required as a condition of employment;

h. Subject to documentation, unreimbursed employee expenses for:

(1) Special equipment or clothing required as a condition of employment:

(2) Lodging expenses, not exceeding ninety-three dollars per night, incurred when engaged in travel required as a condition of employment; or

(3) Noncommuting mileage incurred for driving a personal vehicle between work locations when required as a condition of employment, computed at the rate of fifty-six cents per mile, less any actual mileage reimbursement from the employer; and

i. Employer reimbursed out-of-pocket expenses of employment, if included in gross income, but excluded from adjusted gross income on the obligor's federal income tax return.

7. "Obligee" includes, for purposes of this chapter, an obligee as defined in North Dakota Century Code section 14-09-09.10 and a person who is alleged to be owed a duty of support on behalf of a child.

8. "Obligor" includes, for purposes of this chapter, an obligor as defined in North Dakota Century Code section 14-09-09.10 and a person who is alleged to owe a duty of support.

9. "Parent with primary residential responsibility" means a parent who acts as the primary caregiver on a regular basis for a proportion of time greater than the obligor, regardless of descriptions such as "shared" or "joint" parental rights and responsibilities given in relevant judgments, decrees, or orders.

10. "Self-employment" means employment that results in an obligor earning income from any business organization or entity which the obligor is, to a significant extent, able to directly or indirectly control. For purposes of this chapter, it also includes any activity that generates income from rental property, royalties, business gains, partnerships, trusts, corporations, and any other organization or entity regardless of form and regardless of whether such activity would be considered self-employment activity under the Internal Revenue Code.

11. "Split parental rights and responsibilities" means a situation where the parents have more than one child in common, and where each parent has primary residential responsibility for at least one child.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; April 1, 2010; July 1, 2011; September 1, 2015; January 1, 2019.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

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

1. Except as provided in section 75-02-04.1-08.2, calculations of child support obligations provided for under this chapter consider and assume that one parent acts as a primary caregiver and the other parent contributes a payment of child support to the child's care. Calculation of a child support obligation under section 75-02-04.1-08.2 does not preclude a court from apportioning specific expenses related to the care of the child, such as child care expenses and school activity fees, between the parents. An apportionment under this subsection is in addition to the child support amount determined by application of this chapter.

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 sufficiently documented through the use of tax returns, current wage statements, and other information to fully apprise the court of all gross income. Where gross income is subject to fluctuation, regardless of whether the obligor is employed or self-employed, 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 have changed in the recent past or are very likely to change in the near future, consideration may be given to the new or likely future circumstances.

9. Each child support order must include a statement of the net income of the obligor used to determine the child support obligation, and how that net income was determined. If a child support order includes an adjustment for extended parenting time under section 75-02-04.1-08.1, the order must specify the number of parenting time overnights.

10. A payment of children's benefits made to or on behalf of a child who is not living with the obligor must be credited as a payment toward the obligor's child support obligation in the month (or other period) the payment is intended to cover, but may not be credited as a

payment toward the child support obligation for any other month or period. The court may order the obligee to reimburse the obligor for any overpayment that results from the credit provided in this subsection.

11. No amount may be deducted to determine net income unless that amount is included in gross income.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; July 1, 2011; January 1, 2019.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-03. Determination of child support obligation - Split custody or primary residential responsibility.

A child support obligation must be determined and specifically ordered for the child or children for whom each parent has primary residential responsibility pursuant to a court order or, if there is no court order, for whom each parent has primary physical custody. The lesser obligation is then subtracted from the greater. The difference is the child support amount owed by the parent with the greater obligation. The offset of child support obligations in this section is for payment purposes only and must be discontinued for any month in which the rights to support of a child for whom the obligation was determined are assigned to a government agency as a condition of receiving public assistance.

History: Effective February 1, 1991; amended effective August 1, 2003; October 1, 2008; July 1, 2011.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-04. Minimum support level.

Repealed effective January 1, 2018.

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

1. Net income from self-employment means total income, for internal revenue service purposes, of the obligor:

   a. Reduced by that amount, if any, of:

      (1) That total income that is not the obligor's income or that is otherwise included in gross income; and

      (2) With respect to a partnership or a small business corporation for which an election under 26 U.S.C. section 1362(a) is in effect and over which the obligor is not able to exercise direct or indirect control to a significant extent, that income of the partnership or small business corporation which is not available, and has not yet been distributed, to the obligor; and

   b. Increased by that amount, if any, for:

      (1) Business expenses attributable to the obligor or a member of the obligor's household for employee's or proprietor's benefits, pensions, and profit-sharing plans;

      (2) Payments made from the obligor's self-employment activity to a member of the obligor's household, other than the obligor, to the extent the payment exceeds the fair market value of the service furnished by the household member; and

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

2. "Member of the obligor's household" includes any individual who shares the obligor's home a substantial part of the time, without regard to whether that individual maintains another home.

3. If the tax returns are not available or do not reasonably reflect the income from self-employment, profit and loss statements which more accurately reflect the current status must be used.

4. Self-employment activities may experience significant changes in production and income over time. To the extent that information is reasonably available, the average of the most recent five years of each self-employment activity, if undertaken on a substantially similar scale, must be used to determine self-employment income. When self-employment activity has not been operated on a substantially similar scale for five years, a shorter period may be used.

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

6. When less than three years were averaged under subsection 4, a loss resulting from the averaging may be used to reduce other income that is not related to the self-employment activity that produced the loss only if the loss is not related to a hobby activity and monthly gross income, reduced by one-twelfth of the average annual self-employment loss, equals or exceeds the greatest of:

   a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage;

   b. An amount equal to six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications; or

   c. An amount equal to eighty percent of the obligor's greatest average gross monthly earnings, calculated without using self-employment losses, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court.

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

   a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage;

   b. An amount equal to six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications; or

   c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, calculated without using self-employment losses, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court.

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

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

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; July 1, 2011; September 1, 2015.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-06. Determining the cost of supporting a child living with the obligor.

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

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 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;

   b. The guidelines amount is not rebutted; and

   c. The obligor does not have extended parenting time.

4. A hypothetical amount due to each obligee under this chapter must next be determined for each obligee who is a party to the proceeding, assuming for purposes of that determination:

   a. The obligor's net income is reduced by:

(1) The amount of child support due to all other obligees, as determined under subsection 3; and

(2) The cost of supporting a child living with the obligor, who is not also the child of that obligee, as determined under section 75-02-04.1-06;

b. The guidelines amount is not rebutted;

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

d. The obligor does not have extended parenting time.

5. a. Except as provided in subdivision b, for each obligee before the court, the support obligation presumed to be the correct amount of child support is equal to one-half of the total of the two amounts determined, with respect to that obligee, under subsections 3 and 4.

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

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.

7. When determining a support amount under paragraph 1 of subdivision a of subsection 4, consider only children to whom an obligor owes a current monthly support obligation pursuant to a support order and other children under the age of eighteen to whom an obligor owes a duty of support.

History: Effective January 1, 1995; amended effective August 1, 1999; August 1, 2003; July 1, 2011.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

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

1. For purposes of this section:

a. "Earnings" includes in-kind income and amounts received in lieu of actual earnings, such as social security benefits, workers' compensation wage replacement benefits, unemployment insurance benefits, veterans' benefits, and earned income tax credits; and

b. An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than this state's statewide average earnings for persons with similar work history and occupational qualifications.

2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than the greater of:

a. Six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications; or

b. A monthly amount equal to one hundred sixty-seven times the federal hourly minimum wage.

3. Except as provided in subsections 4, 5, 6, and 7, gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed.

   a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage.

   b. An amount equal to six-tenths of this state's statewide average earnings for persons with similar work history and occupational qualifications.

   c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court, for which reliable evidence is provided.

4. Monthly gross income based on earning capacity may not be imputed under subsection 3 if:

   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) For whom the obligor has primary residential responsibility;

      (2) Who is under the age of thirteen; and

      (3) For whom there is no other adult caretaker in the obligor's home available to meet the child's needs during absence due to employment.

   b. Current medical records confirm 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 at least 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.

   d. 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.

   e. The obligor is under eighteen years of age or is under nineteen years of age and enrolled in and attending high school.

   f. The obligor is receiving:

      (1) Supplemental security income payments;

      (2) Social security disability payments;

      (3) Workers' compensation wage replacement benefits;

      (4) Total and permanent disability benefits paid by the railroad retirement board;

      (5) Pension benefits, as defined in subsection 9, paid by the veterans benefits administration; or

      (6) Disability compensation paid by the veterans benefits administration based on an overall disability rating of one hundred percent.

g. It has been less than one hundred eighty days since the obligor was released from incarceration under a sentence of at least one hundred eighty days.

h. The obligor is incarcerated under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing.

5. If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c of subsection 3, are unavailable within one hundred miles [160.93 kilometers] of the obligor's actual place of residence, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings.

6. If the obligor fails, upon reasonable request made in any proceeding to establish or review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, and if that information cannot be reasonably obtained from sources other than the obligor, income must be imputed based on the greatest of:

   a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage.

   b. An amount equal to one hundred percent of this state's statewide average earnings for persons with similar work history and occupational qualifications.

   c. An amount equal to one hundred percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court, for which reliable evidence is provided.

7. Notwithstanding subsections 4, 5, and 6, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross income equal to one hundred percent of the obligor's greatest average monthly earnings, in any twelve consecutive months included in the current calendar year and the two previous calendar years before commencement of the proceeding before the court, for which reliable evidence is provided, less actual monthly gross earnings, may be imputed without a showing that the obligor is unemployed or underemployed. For purposes of this subsection, a voluntary change in employment is a change made for the purpose of reducing the obligor's child support obligation and may include becoming unemployed, taking into consideration the obligor's standard of living, work history, education, literacy, health, age, criminal record, barriers to employment, record of seeking employment, stated reason for change in employment, likely employment status if the family before the court were intact, and any other relevant factors. The burden of proof is on the obligor to show that the change in employment was not made for the purpose of reducing the obligor's child support obligation.

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

9. For purposes of paragraph 5 of subdivision f of subsection 4, "pension benefits" means only needs-based payments made by the veterans benefits administration to war-time veterans whose income is below a yearly limit set by Congress and who are age sixty-five or older or have a total and permanent disability.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; July 1, 2011; September 1, 2015; January 1, 2018.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-08. Income of spouse.

The income and financial circumstances of the spouse of an obligor may 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; January 1, 2019.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

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

1. For purposes of this section, "extended parenting time" means parenting time between an obligor and a child living with an obligee scheduled by court order to exceed an annual total of one hundred overnights.

2. Notwithstanding any other provision of this chapter and as limited by subsection 3, if a court order provides for extended parenting time between an obligor and a child living with an obligee, the support obligation presumed to be the correct child support amount due on behalf of all children of the obligor living with the obligee must be determined under this subsection.

   a. Determine the amount otherwise due under this chapter from the obligor for those children.

   b. Divide the amount determined under subdivision a by the number of those children.

   c. For each child, multiply the number of that child's parenting time overnights times .32 and subtract the resulting amount from three hundred sixty-five.

   d. Divide the result determined under subdivision c by three hundred sixty-five.

   e. Multiply the amount determined under subdivision b times each decimal fraction determined under subdivision d.

   f. Total all amounts determined under subdivision e.

3. An adjustment for extended parenting time is not authorized if the parents of a child for whom support is being determined have equal residential responsibility according to section 75-02-04.1-08.2.

History: Effective August 1, 1999; amended effective July 1, 2011; September 1, 2015; January 1, 2019.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-08.2. Equal residential responsibility - Determination of child support obligation.

A child support obligation must be determined as described in this section in all cases in which a court orders each parent to have equal residential responsibility for their child or children. Equal residential responsibility means each parent has residential responsibility for the child or children for an equal amount of time as determined by the court. If equal residential responsibility is ordered for all the children, a child support obligation for each parent must be calculated under this chapter, and specifically ordered, assuming the other parent has primary residential responsibility for the child or children subject to the equal residential responsibility order. If equal residential responsibility is not ordered for all the children, a child support obligation must be calculated and specifically ordered for each parent for the children for whom the other parent has primary residential responsibility plus the

children for whom the parents have equal residential responsibility. The lesser obligation is then subtracted from the greater. The difference is the child support amount owed by the parent with the greater obligation. Each parent is an obligee to the extent of the other parent's calculated obligation. Each parent is an obligor to the extent of that parent's calculated obligation. The offset of child support obligations in this section is for payment purposes only and must be discontinued for any month in which the rights to support of a child for whom the obligation was determined are assigned to a government agency as a condition of receiving public assistance.

History: Effective August 1, 2003; amended effective October 1, 2008; July 1, 2011; September 1, 2015.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

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

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. Except as provided in subdivision m of subsection 2, the subsistence needs, work expenses, and daily living expenses of the obligor; or

    b. Except as provided for in subdivision n of subsection 2, the income of the obligee, which is reflected in a substantial monetary and nonmonetary contribution to the child's basic care and needs by virtue of being a parent with primary residential responsibility.

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

    a. The increased need if support for more than six children is sought in the matter before the court;

    b. The increased ability of an obligor, with a monthly net income which exceeds twenty-five thousand dollars, to provide additional child support based on demonstrated needs of the child, including, if applicable, needs arising from activities in which a child participated while the child's family was intact;

    c. The increased need if educational costs have been voluntarily incurred, at private schools, with the prior written concurrence of the obligor;

    d. The increased needs of children with disabling conditions or chronic illness;

    e. The increased needs of children age twelve and older;

    f. The increased needs of children related to the cost of child care, purchased by the obligee, for reasonable purposes related to employment, job search, education, or training;

    g. The increased ability of an obligor, whose net income has been substantially reduced as a result of depreciation and to whom income has been imputed under section 75-02-04.1-07, to provide child support;

    h. The increased ability of an obligor, who is able to secure additional income from assets, to provide child support;

i. The increased ability of an obligor, who has engaged in an asset transaction for the purpose of reducing the obligor's income available for payment of child support, to provide child support;

j. The reduced ability of an obligor who is responsible for all parenting-time expenses to provide support due to travel expenses incurred predominantly for the purpose of visiting a child who is the subject of the order taking into consideration the amount of court-ordered parenting time and, when such history is available, actual expenses and practices of the parties;

k. The reduced ability of the obligor to pay child support due to a situation, over which the obligor has little or no control, which requires the obligor to incur a continued or fixed expense for other than subsistence needs, work expenses, or daily living expenses, and which is not otherwise described in this subsection;

l. The reduced ability of the obligor to provide support due to the obligor's health care needs, to the extent that the costs of meeting those health care needs:

(1) Exceed ten percent of the obligor's gross income;

(2) Have been incurred and are reasonably certain to continue to be incurred by the obligor;

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

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

m. The reduced ability of the obligor to provide support when the obligor is in the military, is on a temporary duty assignment, and must maintain two households as a result of the assignment;

n. The reduced needs of the child to support from the obligor in situations where the net income of the obligee is at least three times higher than the net income of the obligor; or

o. The improved convenience to the parents, and negligible impact to the child, of a nominal increase in the child support obligation of the parent with the smaller obligation as determined under section 75-02-04.1-08.2, not to exceed seventy-five dollars per month, in order for the obligation of each parent to be equal prior to application of the payment offset provided in that section and eliminate any net amount being due except during months when the obligation is assigned to a government agency.

3. Assets may not be considered under subdivisions h and i of subsection 2, to the extent they:

a. Are exempt under North Dakota Century Code section 47-18-01;

b. Consist of necessary household goods and furnishings; or

c. Include one motor vehicle in which the obligor owns an equity not in excess of twenty thousand dollars.

4. For purposes of subdivision i of subsection 2, a transaction is presumed to have been made for the purpose of reducing the obligor's income available for the payment of child support if:

a. The transaction occurred after the birth of a child entitled to support;

b. The transaction occurred no more than twenty-four months before the commencement of the proceeding that initially established the support order; and

c. The obligor's income is less than it likely would have been if the transaction had not taken place.

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

6. For purposes of subdivisions a through f and subdivision o of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter. When section 75-02-04.1-03 or 75-02-04.1-08.2 applies, the adjustment must be made to the parent's obligation before the lesser obligation is subtracted from the greater obligation.

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

8. For purposes of subdivision n of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter after taking into consideration the proportion by which the obligee's net income exceeds the obligor's net income. When section 75-02-04.1-03 or 75-02-04.1-08.2 applies, the adjustment must be made to the parent's obligation before the lesser obligation is subtracted from the greater obligation.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; July 1, 2008; April 1, 2010; July 1, 2011; September 1, 2015; January 1, 2019.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-10. 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
800 or less	0	0	0	0	0	0
900	90	126	171	198	234	261
1000	140	183	232	265	305	337
1100	190	240	293	332	375	414
1200	240	296	355	399	446	490
1300	290	353	416	466	516	566
1400	316	385	453	508	563	617
1500	342	416	491	550	609	669
1600	368	448	528	592	656	720
1700	384	476	562	630	696	761
1800	400	505	596	668	736	803
1900	416	533	631	706	776	844

2000	431	562	665	744	816	885
2100	447	590	699	781	856	926
2200	463	619	733	819	896	968
2300	479	647	767	857	936	1009
2400	495	676	802	895	976	1050
2500	511	704	836	933	1017	1091
2600	527	733	870	971	1057	1133
2700	542	761	904	1009	1097	1174
2800	558	789	939	1047	1137	1215
2900	574	818	973	1084	1177	1257
3000	590	846	1007	1122	1217	1298
3100	606	875	1041	1160	1257	1339
3200	622	903	1075	1198	1297	1380
3300	637	932	1110	1236	1337	1422
3400	653	960	1144	1274	1377	1463
3500	669	989	1178	1312	1417	1504
3600	685	1017	1212	1350	1457	1545
3700	701	1045	1246	1387	1497	1587
3800	717	1074	1281	1425	1537	1628
3900	733	1102	1315	1463	1577	1669
4000	748	1131	1349	1501	1617	1710
4100	764	1159	1383	1539	1658	1752
4200	780	1188	1417	1577	1698	1793
4300	796	1216	1452	1615	1738	1834
4400	812	1245	1486	1653	1778	1876
4500	828	1273	1520	1691	1818	1917
4600	844	1302	1554	1728	1858	1958
4700	859	1330	1589	1766	1898	1999
4800	875	1358	1623	1804	1938	2041
4900	891	1387	1657	1842	1978	2082
5000	907	1415	1691	1880	2018	2123
5100	923	1444	1725	1918	2058	2164
5200	939	1472	1760	1956	2098	2206
5300	954	1501	1794	1994	2138	2247
5400	970	1529	1828	2031	2178	2288
5500	986	1558	1862	2069	2218	2330
5600	1002	1586	1896	2107	2258	2371

5700	1018	1614	1931	2145	2298	2412
5800	1034	1643	1965	2183	2339	2453
5900	1050	1671	1999	2221	2379	2495
6000	1065	1700	2033	2259	2419	2536
6100	1081	1728	2067	2297	2459	2577
6200	1097	1757	2102	2334	2499	2618
6300	1113	1785	2136	2372	2539	2660
6400	1129	1814	2170	2410	2579	2701
6500	1145	1842	2204	2448	2619	2742
6600	1161	1871	2239	2486	2659	2784
6700	1176	1899	2273	2524	2699	2825
6800	1192	1927	2307	2562	2739	2866
6900	1208	1956	2341	2600	2779	2907
7000	1224	1984	2375	2638	2819	2949
7100	1240	2013	2410	2675	2859	2990
7200	1256	2041	2444	2713	2899	3031
7300	1271	2070	2478	2751	2939	3072
7400	1287	2098	2512	2789	2979	3114
7500	1303	2127	2546	2827	3020	3155
7600	1319	2155	2581	2865	3060	3196
7700	1335	2183	2615	2903	3100	3237
7800	1351	2212	2649	2941	3140	3279
7900	1367	2240	2683	2978	3180	3320
8000	1382	2269	2717	3016	3220	3361
8100	1398	2297	2752	3054	3260	3403
8200	1414	2326	2786	3092	3300	3444
8300	1430	2354	2820	3130	3340	3485
8400	1446	2383	2854	3168	3380	3526
8500	1462	2411	2888	3206	3420	3568
8600	1478	2440	2923	3244	3460	3609
8700	1493	2468	2957	3281	3500	3650
8800	1509	2496	2991	3319	3540	3691
8900	1525	2525	3025	3357	3580	3733
9000	1541	2553	3060	3395	3620	3774
9100	1557	2582	3094	3433	3661	3815
9200	1573	2610	3128	3471	3701	3857
9300	1588	2639	3162	3509	3741	3898

9400	1604	2667	3196	3547	3781	3939
9500	1620	2696	3231	3585	3821	3980
9600	1636	2724	3265	3622	3861	4022
9700	1652	2752	3299	3660	3901	4063
9800	1668	2781	3333	3698	3941	4104
9900	1684	2809	3367	3736	3981	4145
10000	1699	2838	3402	3774	4021	4187
10100	1715	2847	3412	3785	4034	4202
10200	1730	2857	3423	3797	4047	4218
10300	1745	2866	3434	3808	4061	4233
10400	1760	2875	3444	3820	4074	4248
10500	1775	2885	3455	3831	4087	4264
10600	1789	2894	3466	3843	4100	4279
10700	1804	2904	3476	3854	4113	4295
10800	1819	2913	3487	3866	4127	4310
10900	1833	2923	3498	3878	4140	4325
11000	1848	2932	3508	3889	4153	4341
11100	1863	2941	3519	3901	4166	4356
11200	1877	2951	3529	3912	4179	4372
11300	1892	2960	3540	3924	4193	4387
11400	1906	2970	3551	3935	4206	4403
11500	1921	2979	3561	3947	4219	4418
11600	1935	2988	3572	3958	4232	4433
11700	1949	2998	3583	3970	4245	4449
11800	1964	3007	3593	3981	4258	4464
11900	1978	3017	3604	3993	4272	4480
12000	1992	3026	3615	4004	4285	4495
12100	2006	3035	3625	4016	4298	4511
12200	2020	3045	3636	4027	4311	4526
12300	2034	3054	3647	4039	4324	4541
12400	2048	3064	3657	4050	4338	4557
12500	2063	3073	3668	4062	4351	4572
12600	2076	3083	3679	4073	4364	4588
12700	2090	3092	3689	4085	4377	4603
12800	2104	3101	3700	4096	4390	4618
12900	2118	3111	3711	4108	4404	4634
13000	2132	3120	3721	4119	4417	4649

13100	2146	3130	3732	4131	4430	4665
13200	2160	3139	3743	4142	4443	4680
13300	2173	3148	3753	4154	4456	4696
13400	2187	3158	3764	4165	4469	4711
13500	2201	3167	3775	4177	4483	4726
13600	2214	3177	3785	4188	4496	4742
13700	2228	3186	3796	4200	4509	4757
13800	2241	3196	3806	4211	4522	4773
13900	2255	3205	3817	4223	4535	4788
14000	2268	3214	3828	4234	4549	4803
14100	2281	3224	3838	4246	4562	4819
14200	2295	3233	3849	4257	4575	4834
14300	2308	3243	3860	4269	4588	4850
14400	2321	3252	3870	4280	4601	4865
14500	2335	3261	3881	4292	4615	4881
14600	2348	3271	3892	4303	4628	4896
14700	2361	3280	3902	4315	4641	4911
14800	2374	3290	3913	4326	4654	4927
14900	2387	3299	3924	4338	4667	4942
15000	2400	3308	3934	4349	4681	4958
15100	2413	3318	3945	4361	4694	4973
15200	2426	3327	3956	4372	4707	4989
15300	2439	3337	3966	4384	4720	5004
15400	2452	3346	3977	4395	4733	5019
15500	2465	3356	3988	4407	4746	5035
15600	2477	3365	3998	4418	4760	5050
15700	2490	3374	4009	4430	4773	5066
15800	2503	3384	4020	4442	4786	5081
15900	2515	3393	4030	4453	4799	5096
16000	2528	3403	4041	4465	4812	5112
16100	2541	3412	4051	4476	4826	5127
16200	2553	3421	4062	4488	4839	5143
16300	2566	3431	4073	4499	4852	5158
16400	2578	3440	4083	4511	4865	5174
16500	2591	3450	4094	4522	4878	5189
16600	2603	3459	4105	4534	4892	5204
16700	2615	3468	4115	4545	4905	5220

16800	2628	3478	4126	4557	4918	5235
16900	2640	3487	4137	4568	4931	5251
17000	2652	3497	4147	4580	4944	5266
17100	2664	3506	4158	4591	4958	5282
17200	2676	3516	4169	4603	4971	5297
17300	2688	3525	4179	4614	4984	5312
17400	2700	3534	4190	4626	4997	5328
17500	2713	3544	4201	4637	5010	5343
17600	2724	3553	4211	4649	5023	5359
17700	2736	3563	4222	4660	5037	5374
17800	2748	3572	4233	4672	5050	5389
17900	2760	3581	4243	4683	5063	5405
18000	2772	3591	4254	4695	5076	5420
18100	2784	3600	4265	4706	5089	5436
18200	2796	3610	4275	4718	5103	5451
18300	2807	3619	4286	4729	5116	5467
18400	2819	3629	4297	4741	5129	5482
18500	2831	3638	4307	4752	5142	5497
18600	2842	3647	4318	4764	5155	5513
18700	2854	3657	4328	4775	5169	5528
18800	2865	3666	4339	4787	5182	5544
18900	2877	3676	4350	4798	5195	5559
19000	2888	3685	4360	4810	5208	5574
19100	2899	3694	4371	4821	5221	5590
19200	2911	3704	4382	4833	5235	5605
19300	2922	3713	4392	4844	5248	5621
19400	2933	3723	4403	4856	5261	5636
19500	2945	3732	4414	4867	5274	5652
19600	2956	3741	4424	4879	5287	5667
19700	2967	3751	4435	4890	5300	5682
19800	2978	3760	4446	4902	5314	5698
19900	2989	3770	4456	4913	5327	5713
20000	3000	3779	4467	4925	5340	5729
20100	3011	3789	4478	4936	5353	5744
20200	3022	3798	4488	4948	5366	5760
20300	3033	3807	4499	4959	5380	5775
20400	3044	3817	4510	4971	5393	5790

20500	3055	3826	4520	4982	5406	5806
20600	3065	3836	4531	4994	5419	5821
20700	3076	3845	4542	5005	5432	5837
20800	3087	3854	4552	5017	5446	5852
20900	3097	3864	4563	5029	5459	5867
21000	3108	3873	4574	5040	5472	5883
21100	3119	3883	4584	5052	5485	5898
21200	3129	3892	4595	5063	5498	5914
21300	3140	3902	4605	5075	5512	5929
21400	3150	3911	4616	5086	5525	5945
21500	3161	3920	4627	5098	5538	5960
21600	3171	3930	4637	5109	5551	5975
21700	3181	3939	4648	5121	5564	5991
21800	3192	3949	4659	5132	5577	6006
21900	3202	3958	4669	5144	5591	6022
22000	3212	3967	4680	5155	5604	6037
22100	3222	3977	4691	5167	5617	6053
22200	3232	3986	4701	5178	5630	6068
22300	3242	3996	4712	5190	5643	6083
22400	3252	4005	4723	5201	5657	6099
22500	3263	4014	4733	5213	5670	6114
22600	3272	4024	4744	5224	5683	6130
22700	3282	4033	4755	5236	5696	6145
22800	3292	4043	4765	5247	5709	6160
22900	3302	4052	4776	5259	5723	6176
23000	3312	4062	4787	5270	5736	6191
23100	3322	4071	4797	5282	5749	6207
23200	3332	4080	4808	5293	5762	6222
23300	3341	4090	4819	5305	5775	6238
23400	3351	4099	4829	5316	5788	6253
23500	3361	4109	4840	5328	5802	6268
23600	3370	4118	4850	5339	5815	6284
23700	3380	4127	4861	5351	5828	6299
23800	3389	4137	4872	5362	5841	6315
23900	3399	4146	4882	5374	5854	6330
24000	3408	4156	4893	5385	5868	6345
24100	3417	4165	4904	5397	5881	6361

24200	3427	4174	4914	5408	5894	6376
24300	3436	4184	4925	5420	5907	6392
24400	3445	4193	4936	5431	5920	6407
24500	3455	4203	4946	5443	5934	6423
24600	3464	4212	4957	5454	5947	6438
24700	3473	4222	4968	5466	5960	6453
24800	3482	4231	4978	5477	5973	6469
24900	3491	4240	4989	5489	5986	6484
25000 or more	3500	4250	5000	5500	6000	6500

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 2003; July 1, 2011; September 1, 2015; January 1, 2018; January 1, 2019.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

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

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

1. In order to determine monthly net income, it is first necessary to identify the parent or parents who have financial responsibility for any child entering foster care or guardianship care, and to determine the net income of those financially responsible parents. If the parents of a child in foster care or guardianship care reside together, and neither parent has a duty to support any child who is not also a child of the other parent, the income of the parents must be combined and treated as the income of the obligor. In all other cases, each parent is treated as an obligor, and each parent's support obligation must be separately determined.

2. Unless subsection 3 applies to the obligor, the net income and the total number of children are applied to section 75-02-04.1-10 to determine the child support amount. That child support amount is then divided by the total number of children to determine the child support obligation for each child in foster care or guardianship care. For purposes of this subsection, the "total number of children" means:

   a. If a child entering foster care or guardianship care resides in the obligor's home, the total number of children residing in the obligor's home to whom the obligor owes a duty of support, including the child or children entering foster care or guardianship care, plus any other full siblings of the child or children entering foster care or guardianship care to whom the obligor owes a duty of support who are not residing in the obligor's home; or

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

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

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

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

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

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; July 1, 2011.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

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 necessaries, 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; October 1, 2008.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667