

New Child Support Law: The Basics in One Hour*

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***PLUS, other major family law changes in 2006**

Overview

- Changes in Nutshell:
 - Part I – Income & Deductions
 - Part II – Parenting Expense Adjustment, Minimum Orders & Other Children
 - Part III – Child Care Support
 - Part IV – Medical Support
 - Part V – Reviews of Orders, Recodification, Financial Affidavit
 - Part VI – Application of New vs. Old Law & Modifications of Orders
- Examples of basic order calculations
- Other major family law changes
- DHS

Changes in a Nutshell – Part I, Calculating Income and Deductions

Old Law

- Only NCP income used to calculate basic support
- Used net income (with deductions for taxes, union dues, pension etc)
- Only child support orders currently being paid for another child were given credit

CP = custodial parent

NCP = noncustodial parent

New Law

- Both parent's incomes used to calculate support
- Uses gross income **(handout 1)** [DHS - web based calculator]
- Other child support orders are deducted from gross income, not contingent on whether they are actually being paid
- Income of CP may be imputed if s/he is stay-at-home parent unless MFIP **(see handout 2)**

Changes in a Nutshell – Part II, Parenting Expense Adjustment, Minimum Orders & Other Children

Old Law

- Parenting time with NCP didn't affect child support, unless joint physical custody
- If "joint physical" used *Hortis-Valento* formula (consider each parent's income and percentage of time)
- No minimum orders
- How to account for non-joint children not defined in law

New Law

- "Parenting expense adjustment" of 12% if NCP has court-ordered parenting time of 10 - 45%
- Custody label doesn't matter - Different formula if "equal" parenting time (split of 45.1 to 50 %) **(handout 3)**
- Minimum orders for low-income obligors **(handout 4)**
- How to account for non-joint children is now defined in law

Changes in a Nutshell – Part III, Child Care Support

Old Law

- Child care calculated using approximate tax credits (assume CP gets 25% of child care costs in credit)
- Child care calculated based on proportion share of incomes, after you add the basic child support obligation to the CP's income and subtract it from NCP's income

New Law

- Uses actual child care credits available to family [use state and federal tax tables]
- Child care based on same proportion of income used for basic support obligation, no additional changes

Changes in a Nutshell – Part III, Child Care Support cont.

Old Law

- If CP on child care subsidy, still determine NCP's obligation based on his proportionate share of the costs
 - Presumed unfair to allocate cost to NCP if it would put the NCP below 100 percent federal poverty guidelines

New Law

- If CP on child care subsidy, order lesser of:
 - NCP's obligation is what his child care premium would be if he were CP for this child (look at DHS tables for premiums)
 - OR amount of his obligation determined based on % share
 - unless minimum support order applies (could be less than above or \$0)

Changes in a Nutshell – Part IV,

Medical Support, Part I – better or appropriate insurance?

Old Law

- Required parent with “better” coverage to maintain coverage

New Law

- Determines “appropriate” health coverage by looking at 4 factors: (1) accessible coverage; (2) comprehensive coverage; (3) affordable coverage (“reasonable in cost”); (4) special medical needs. (each one has definition in law)
- If child is presently enrolled in coverage, court must continue that unless the parents agree otherwise or request a change (no counterpart in current law)
 - If parent requests a change, look at “appropriate” coverage – if comparable between parents, least costly is presumed appropriate

Changes in a Nutshell – Part IV,

Medical Support, Part II, New Law & Not Insured

New Law

- If child is not presently enrolled in coverage, court:
 - (1) order the parent with appropriate coverage to carry coverage or
 - (2) if both parties have appropriate coverage, order CP to carry coverage (NEW CHANGE)
 - unless parent expresses a preference for coverage with the other parent
 - **OR** hardship for NCP because already covering other children and marginal cost to add child
 - **OR** the parents agree to provide coverage and agree on allocation of the costs.

Changes in a Nutshell – Part IV, Medical Support, Part III, No Coverage Available

Old Law

- Court could require obligor to obtain insurance, or to be liable for the medical/dental expenses of the child, or pay “no less than \$50” toward costs
- If no Public Assistance, and obligee had ability to contribute, each parent to assume proportionate share of costs for child care

New Law

- Court must order the parents to contribute toward the actual health care costs on pro rata share (go back to basic % division used to calculate basic support)
 - Unless public assistance, see next slide
- Court can order the CP to apply for public health care coverage

Changes in a Nutshell – Part IV, Medical Support, Part IV, Public Assistance

Old Law

- Typically, if Public Assistance (e.g. Medical Assistance or MinnesotaCare), \$50 order for NCP

New Law

- If CP has Medical Assistance or MinnesotaCare, order lesser of:
 - NCP’s obligation is what his medical premium would be if he were CP for this child (look at DHS tables for MinnesotaCare for premiums)
 - OR amount of his obligation determined based on % share
 - unless minimum support order applies (could be less than above or \$0)

Changes in a Nutshell – Part V

Reviews, Recodification, Financial Affidavit

Old Law

- Reviews in court only by motion of party
- Child support in Minn. Stat. 518.551, other pieces relating to medical support and enforcement in other parts of statute
- Filing of documents not required with initial pleadings or court papers

New Law

- Parent can request six-month review hearing
 - review child support and parenting time
 - form automatically attached to orders under new guidelines after Jan. 1, 2007
- Child support recodification
- **“financial affidavit”** (NEW) served and filed with initial pleadings/motion documents for which a child support must be determined
 - [DHS preparing template]

Changes in a Nutshell – Part VI

Application in 2007 – FOR NEW ORDERS

- New law applies to new motions and actions filed after 1/1/07 for the **initial establishment of a child support order** but also includes motions or actions for past support or reimbursement.
 - Example: County files motion to establish child support Nov. 30, 2006. Motion is heard by child support magistrate on Jan. 15, 2007. It is decided according to the OLD LAW (unless parties agree otherwise).
 - Example: County files motion to establish child support on Jan. 2, 2007. Motion is heard by child support magistrate on Feb. 15, 2007. Motion includes claim for past child support reimbursement – current support order & past child support, even though it may involve child support from 2006, e.g., is decided under NEW LAW.

Changes in a Nutshell – Part VI

ALSO:

- Other provisions (such as collection of medical support arrears) apply to orders in effect prior to 1/1/07.
 - So, if you have an order now, the collection mechanisms in the new law apply.

Q: So how does the new law apply to child support orders established before 2007?

- The fact that there is a new child support law is NOT a basis to modify child support!
 - Must meet legal basis for modification
 - Different rules (more strict) for modification in 2007 while transitioning to new system
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Changes in a Nutshell – Part VI

Application in 2007 **FOR MODIFICATIONS**

- From January 1, 2007 through January 1, 2008, there are very strict limits on bringing modifications. (TRANSITION PERIOD)
 - 20% change in obligor's gross income;
 - Change in number of joint children for whom the obligor "is legally responsible and actually supporting";
 - A parent or caregiver of child begins to receive public assistance;
 - The child under the order becomes disabled;
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Changes in a Nutshell – Part VI

Application in 2007 **FOR MODIFICATIONS** cont.

- New child care expenses or substantial change of these expenses;
- There is a substantial change in medical expenses or change of availability of health care coverage.
 - Changes in medical or child care will only results in a modification of those section(s).

Or CONSENT of PARENTS to modify under new guidelines

Changes in a Nutshell – Part VI

Application in 2008 (**MODIFICATION STATUTE**)

- New modification law similar to old law
 - E.g., substantially decreased earnings of a party (if calculated change in order, need 20% and \$75 change in order, unless there is a minimum order)
- **Handout 5** has comparison of both laws
- Note: can't modify child support order solely because parent has a new non-joint child
- Also note: on the first modification under the new statute, "modification of basic support may be limited if the amount of the full variance would create hardship for either the obligor or the obligee."
 - i.e. court can more slowly increase/decrease order than what new guidelines say

Retroactivity vs. Arrears Management

- Old law: some exceptions that allowed a retroactive modification of support (prior to the date motion served)
 - New law. NO EXCEPTIONS. Only modify to date motion served on other party and public authority (if applicable).
 - But, a new law on “arrears management” allows the parties, including public authority, to compromise (or “adjust”) child support debt or arrearages, whether or not reduced to judgment, upon agreement of parties involved.
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Calculating Support:

Step 1. Determine gross income for each parent for purposes of child support calculation.

Step 2. Determine PICS--Parental Income for Determining Child Support (which = gross income minus the nonjoint child credit)

Step 3. Determine Combined PICS (Add each parent's PICS - divide the combined PICS into each parent's PICS and percentage).

Steps cont.

Step 4. Determine combined support obligation.

Step 5. Determine obligor's support obligation
(combined obligation X obligor's % of
combined PICS)

Step 6. Parenting Expense Adjustment.

--but wait, does minimum order apply?--

READY FOR SOME EXAMPLES?

Take a breath...turn to handouts and
follow along with your examples

EXAMPLE 1. Parents with roughly same low income (\$9/hr); no nonjoint children; with parenting expense adjustment of 12 % (has 10-45% parenting time).

- CP gross income, Hourly =\$8.50, \$1472/mo.
- NCP gross income, Hourly =\$9.00, \$1559/mo.
- No nonjoint children, so gross income step 2 same as step 1.
- Step 3: Add those two numbers together (\$3,031), take that total, and figure out each parent's % of combined income (49/51). This is % that will apply to all orders (basic, child care, medical).
- Step 4: Look at chart.

Chart (guideline) for computing basic support

Combined Income	1 child	2 children	3 children	4 children
2,900 – 2,999	596	963	1,109	1,287
3,000 – 3,099	603	975	1,122	1,302
3,100 – 3,199	613	991	1,141	1,324

EXAMPLE 1 cont.

- Step 4: Find combined support obligation for \$3031 for one child is \$603.
- Step 5: Multiply \$603 x 51 percent (\$308).
- Step 6: Apply parenting expense adjustment, if applicable (here, applies, multiply \$308 x .88 = \$271). Basic Obligation = \$271.
- Don't forget: Check to see if minimum support order applies (give self-support of \$980) - SKIP THAT STEP FOR NOW.

EXAMPLE 1 1/2. Same situation as example 1, but no parenting expense adjustment.

- Then basic obligation would be what we arrived at in Step 5, [BOX 9] = \$308
 - vs. \$271 with parenting expense adjustment

Q: What would NCP's child support have been under old law?

- \$314 (25% of net income)

EXAMPLE 2. Go back to example 1, add in two nonjoint children for NCP.

- Same incomes: CP Hourly =\$8.50, NCP Hourly =\$9.00.
- Step 2. Figure out nonjoint child deduction (max. of 2 kids).
NCP: Look at chart, for income \$1559 and two non-joint children: combined child support of \$433. Always divide by 2 (two parents – doesn't have anything to do with number of children) = \$217.
 - \$217 [BOX 2.5] is deducted from NCP's income to get gross income for purposes of calculating child support.
- Step 2: Now, CP = \$1472 [BOX 3] and NCP = \$1342 [BOX 4]
- Step 3: Add those two numbers together (\$2814), take that total, and figure out each parent's % of combined income (52/48).

EXAMPLE 2 cont.

- Step 4: Look at chart, combined support obligation for \$2814 for one child (\$589).
- Step 5: Multiply \$589 x 48 percent (\$283).
- Step 6: Apply parenting expense adjustment, if applicable (here, applies, multiply \$283 x .88 = \$249).
Basic Obligation = \$249.

Q: How does this differ from example 1? Obligation in example 1 was \$271 – here all we changed was non-joint child deduction for two children, now \$249.

- Don't forget: Check to see if minimum support order applies (give self-support of \$980)

EXAMPLE 3. New example, CP has 2x income of NCP, no nonjoint children, with parenting expense adjustment.

- CP gross income, Hourly = \$18; Monthly = \$3118.
- NCP gross income, Hourly = \$9; Monthly = \$1559.
- No nonjoint children, so gross income step 2 same as step 1.
- Step 3: Add those two numbers together (\$4677), take that total, and figure out each parent's % of combined income (67/33). This is % that will apply to all orders (basic, child care, medical).

EXAMPLE 3 cont.

- Step 4: Look at chart, find combined support obligation for \$4677 for one child (\$808).
- Step 5: Multiply \$808 x 33 percent (\$267).
- Step 6: Apply parenting expense adjustment, if applicable (here, applies, multiply \$267 x .88 = \$235). Basic Obligation = \$235.
- Don't forget: Check to see if minimum support order applies (give self-support of \$980) - SKIP THAT STEP FOR NOW.

EXAMPLE 4. Like example 3, CP has 2x income of NCP, no nonjoint children, but equal parenting time. (so use “equal parenting time” formula)

Skip to Step 5 (we’ve already calculated steps 1 - 4) – now to equal parenting time formula.

(1) Multiply Combined Support Obligation [BOX 8] x .75 (Why? Because this is what law says to do.)

□ Example 4 = $\$808 \times .75 = \606

(2) Prorate based on each parent’s proportionate share of combined PICS (BOX 6/7]

□ $\$606 \times .67 = \406 and $\$606 \times .33 = \200

(3) Subtract lower amount from higher amount

□ $\$406 - \$200 = \$206$ Child Support Obligation

EXAMPLE 5. New example, application of minimum support order for low-income obligor.

- CP receives MFIP, under law, no gross income (can’t impute or count MFIP).
- NCP gross income, Hourly = \$7; \$1212/mo., BUT he has another child support order of \$200. Gross income = $\$1212 - \$200 = \$1012$.
- No nonjoint children, so gross income step 2 same as step 1.
- Step 3: NCP will have 100% of obligation (CP no income) but obligation is only based on his income.
- Step 4: Look at chart, find combined support obligation for \$1012 for one child (\$117).
- Step 5: Multiply \$117 x 100 percent (\$117).
- Step 6: Apply parenting expense adjustment, if applicable (here, does not apply). Basic Obligation = \$117.

EXAMPLE 5. Now check to see if minimum support order applies – look at all obligations.

- Basic Support = \$116.
- Child Care Support = \$5 (Here, we're assuming that CP gets child care subsidy. If and only if CP is actually receiving subsidy, then \$5 is what the NCP would pay for his premium if he were CP for child and getting child care subsidy for child).
- Medical Support = \$24 (assumption here is child is enrolled on MA or MNCare just for these purposes. \$24 is what NCP would pay for his MinnesotaCare premium if he were CP for child & insuring child.)

Total Obligations = \$116 + \$5 + \$24 = \$145.

EXAMPLE 5.

- Self-Support Calculation.
 - Take gross income (\$1012) and subtract self support reserve (\$980 or 120% of federal poverty guidelines) = “income available for support” = \$32.
 - Here, the basic child support obligation is \$116, more than \$32, so a minimum order of \$50 (if 1-2 children) would apply.
 - See **handout 6** for example where “income available for support” is greater than minimum order, but not enough to cover all obligations.

Other Major Family Law Changes: Parenting Time 25% Presumption

- Parenting Time: “in the absence of other evidence,” now a “rebuttable presumption that a parent is entitled to receive at least 25 percent of the parenting time for the child.”
 - Calculated by overnights, or by using another method if NCP has significant time periods on separate days when the child is in the parent’s physical custody but does not stay overnight.
 - **Text of the new law is in handout 7**

Other Major Family Law Changes: CP moving out of state with child

- CP Moving out-of-State: If NCP has been given parenting time by court order, the CP must get consent of other parent or court order to move out of state (same as current law).
- If it goes to court, court must apply a “best interests” standard. [MAJOR CHANGE IN LAW]
 - Burden is on the CP to show it is in child’s best interests to move, unless that person has been the victim of domestic abuse by the other parent, burden of proof then switches to the other parent.
 - There are 8 enumerated factors for the court to consider, including child’s relationship to NCP, feasibility of preserving relationship with NCP including financial considerations, whether relocation with enhance the general quality of life for CP and child
- **Text of the new law is in handout 8**