

NORTH DAKOTA ADMINISTRATIVE CODE

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Addendum

January 2018

**Prepared by the Legislative Council staff
for the
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DEPARTMENT OF HUMAN SERVICES

JANUARY 2018

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

[Repealed effective January 1, 2018.](#)

~~—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

75-02-04.1-07. 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, 8, 9, 10, and 11, gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed.
 - a. A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage.
 - b. An amount equal to six-tenths of 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 ~~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) For whom the obligor has primary residential responsibility;
 - (2) Who is under the age of ~~fourteen~~thirteen; and
 - (3) For whom there is no other adult caretaker in the ~~parent's~~obligor's home available to meet the child's needs during absence due to employment.
 - b. ~~The~~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 ~~and subdivision b of subsection 7 does not apply~~.
 - c. The unusual emotional or physical needs of a minor child of the obligor require the obligor's presence in the home for a proportion of the time so great as to preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.
 - 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. Gross income based on earning capacity may not be imputed if the obligor shows that the obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and is not underemployed.~~

~~6. If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c of subsection 3, are unavailable within one hundred miles [160.93 kilometers] of the obligor's actual place of residence, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings.~~

~~7. a. Unless subdivision b applies, monthly gross income based on earning capacity may not be imputed under subsection 3 in an amount greater than one-half of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor is under eighteen years of age or is under nineteen years of age and enrolled in and attending high school.~~

~~b. Monthly gross income based on earning capacity may not be imputed under subsection 3 if the obligor is receiving:~~

~~(1) Supplemental security income payments;~~

~~(2) Social security disability benefits;~~

~~(3) Workers' compensation wage replacement benefits; or~~

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

~~8. a. Unless subdivision d applies, if an obligor is incarcerated, monthly gross income based on earning capacity may not be imputed under subsection 3:~~

- ~~(1) In an amount greater than one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for less than one year;~~
- ~~(2) In an amount greater than eighty percent of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for at least one year but less than two years;~~
- ~~(3) In an amount greater than sixty percent of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for at least two years but less than three years;~~
- ~~(4) In an amount greater than forty percent of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for at least three years but less than four years;~~
- ~~(5) In an amount greater than twenty percent of one hundred sixty-seven times the federal hourly minimum wage, less actual gross earnings, if the obligor has been incarcerated for at least four years but less than five years; or~~
- ~~(6) In any amount if the obligor has been incarcerated for at least five years.~~

~~b. For purposes of this subsection, "incarcerated" means physically confined to a prison, jail, or other correctional facility.~~

~~c. In determining the length of time an obligor has been incarcerated for purposes of applying subdivision a, only continuous periods of actual confinement may be considered except that any periods representing work release may not be considered.~~

~~d. If an incarcerated obligor is receiving, or immediately prior to incarceration was receiving, any payment listed in subdivision b of subsection 7, income may not be imputed in any amount.~~

9.6. 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 ninetyone 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.

~~10. If the obligor fails, upon reasonable request made in any proceeding to review a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, and if that information cannot be reasonably obtained from sources other than the obligor, income must be imputed based on the greatest of:~~

~~a. Subdivisions a through c of subsection 3; or~~

~~b. The obligor's net income, at the time the child support order was entered or last modified, increased at the rate of ten percent per year.~~

~~41.7.~~ Notwithstanding subsections 4, 5, and 6, and 7, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross income equal to one hundred percent of the obligor's greatest average monthly earnings, in any twelve consecutive months 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.

~~42.8.~~ 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

75-02-04.1-10. 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 <u>700</u> or less	14 <u>140</u>	17 <u>170</u>	20 <u>200</u>	22 <u>220</u>	24 <u>240</u>	26 <u>260</u>
200	28	34	40	44	48	52
300	42	51	60	66	72	78
400	56	68	80	88	96	104
500	82	100	117	130	143	155
600	108	131	155	172	189	207
700	134	163	192	214	236	258
800	160	195	229	256	283	309
900	186	226	267	298	329	361
1000	212	258	304	340	376	412

1100	238	290	341	382	423	463
1200	264	321	379	424	469	515
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](#).

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

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