

## NOTICE OF COMMENT PERIOD

The following proposed amendments to the Nebraska Child Support Guidelines originate from a report submitted to the Nebraska Supreme Court on January 3, 2011, by the 2010 Nebraska Child Support Advisory Commission. The proposed amendments published below for comment, although reformatted, are the final recommendations submitted to the Supreme Court by the commission. A copy of the proposed amendments and a PDF copy of the Report of the 2010 Nebraska Child Support Advisory Commission dated December 30, 2010, are available for review on the Nebraska Supreme Court's Web site at <http://www.supremecourt.ne.gov/rules/index.shtml>, or a hard copy may be reviewed in the Office of the Clerk of the Supreme Court and Court of Appeals upon request.

The Nebraska Supreme Court invites interested persons to comment on the proposed amendments to the Nebraska Child Support Guidelines. Anyone desiring to comment on these proposed amendments should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to [lanet.asmussen@nebraska.gov](mailto:lanet.asmussen@nebraska.gov), no later than March 31, 2011. The proposed amendments are as follows:

### CHAPTER 4 CHILDREN AND FAMILIES ARTICLE 2 CHILD SUPPORT GUIDELINES

. . . .

#### **§ 4-203. Rebuttable presumption.**

The child support guidelines shall be applied as a rebuttable presumption. All orders for child support obligations shall be established in accordance with the provisions of the guidelines unless the court finds that one or both parties have produced sufficient evidence to rebut the presumption that the guidelines should be applied. All stipulated agreements for child support

NEBRASKA ADVANCE SHEETS

must be reviewed against the guidelines and if a deviation exists and is approved by the court, specific findings giving the reason for the deviation must be made. Findings must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines. Deviations must take into consideration the best interests of the child. In the event of a deviation, the reason for the deviation shall be contained in the findings portion of the decree or order, or worksheet 5 should be completed by the court and filed in the court file. Deviations from the guidelines are permissible under the following circumstances:

(A) When there are extraordinary medical costs of either parent or child;

(B) when special needs of a disabled child exist;

(C) if total net income exceeds \$15,000 monthly, child support for amounts in excess of \$15,000 monthly may be more but shall not be less than the amount which would be computed using the \$15,000 monthly income unless other permissible deviations exist. To assist the court and not as a rebuttable presumption, the court may use the amount at \$15,000 plus: 10 percent of net income above \$15,000 for one, two, and three children; 12 percent of net income above \$15,000 for four children; 13 percent of net income for five children; and 14 percent of net income for six children. For example, if the combined net parental income is \$25,000 monthly and there is one child, the schedule amount at \$15,000 is \$2,201. Ten percent of the net income above \$15,000 is \$1,000 (\$10,000 times .10). Therefore, the basic obligation is \$3,201 (\$2,201 plus \$1,000). If the obligor's share of the total net income is 85 percent, the obligor's share of the support is \$2,721 (\$3,201 times .85).

(D) for juveniles placed in foster care; or

(E) whenever the application of the guidelines in an individual case would be unjust or inappropriate.

All orders for child support, including modifications, must include a basic income and support calculation worksheet 1, and if used, worksheet 2 or 3.

. . . .

**§ 4-205. Deductions.**

The following deductions should be annualized to arrive at monthly net income:

(A) Taxes. Standard deductions applicable to the number of exemptions provided by law will be used to establish the amount of federal and state income taxes.

(B) FICA. Social Security deductions, or any other mandatory contributions in lieu of Social Security deductions including any self-employment tax paid.

(C) Retirement. Individual contributions, in a minimum amount required by a mandatory retirement plan. Where no mandatory retirement plan exists, a deduction shall be allowed for a continuation of actual voluntary retirement contributions not to exceed 4 percent of the gross income from employment or 4 percent from the net income from self-employment.

(D) Child Support. Child support previously ordered for the monthly support obligation for other children-, to the extent that these support obligations have been paid for the 12 months immediately prior to the current action. The burden of proof of establishing the amount of any existing child support order and the amount that has been paid on that order for the 12 months immediately prior to the current action rests on the person seeking to claim the deduction. Any payment toward child support arrears shall not be included in such a deduction.

Example 1: Iowa child support order requires father to pay \$200 per month in continuing monthly support of his 10-year-old child. If he has been paying the support on time, he qualifies to receive a \$200 line item deduction on line 2(d) of worksheet 1. If he has paid only \$2,000 in support during the relevant

NEBRASKA ADVANCE SHEETS

12-month period (\$2,000 of the \$2,400 owed), he should receive a line 2(d) credit of only \$166.67 (\$2,000 divided by 12 months). If he has paid nothing, he should receive no line 2(d) credit. If he is paying more than \$200 per month, because, for example, he is on a purge order and arrears are owed, than he should only receive a \$200 line 2(d) credit.

Example 2: Kansas child support order for child who is now 25 years old. Child support arrears remain unpaid, and mother is paying those at \$250 per month pursuant to a Kansas purge order. No credit would be given in line 2(d) of worksheet 1 because the support is not for a child who remains a minor. It is not ongoing support that is being paid.

(E) Other Children. Subject to § 4-220, credit may be given for biological or adopted children for whom the obligor provides regular support.

.....

**§ 4-212. Joint physical custody.**

When a specific provision for joint physical custody is ordered and each party's parenting time exceeds 142 days per year, it is a rebuttable presumption that support shall be calculated using worksheet 3. When a specific provision for joint physical custody is ordered and one party's parenting time is 109 to 142 days per year, the use of worksheet 3 to calculate support is at the discretion of the court. If child support is determined under this paragraph, all reasonable and necessary direct expenditures made solely for the child(ren) such as clothing and extracurricular activities may shall be allocated between the parents, ~~as determined by the court~~, but shall not exceed the proportion of the obligor's parental contributions (worksheet 1, line 6). For purposes of these guidelines, a "day" shall be generally defined as including an overnight period.

.....

**§ 4-215. Child(ren)'s health insurance, nonreimbursed health care expenses, and cash medical support in Title IV-D cases.**

As required by Neb. Rev. Stat. § 43-369(2), the child support order shall address how the parents will provide for the child(ren)'s health care needs through health insurance as well as the nonreimbursed reasonable and necessary child(ren)'s health care costs that are not included in table 1 that are provided for in § 4-215(B).

(A) Health Insurance. The increased cost to the parent for health insurance for the child(ren) of the parent shall be prorated between the parents. When worksheet 1 is used, it shall be added to the monthly support from line 7, then prorated between the parents to arrive at each party's share of monthly support on line 10 of worksheet 1. The parent requesting an adjustment for health insurance premiums must submit proof of the cost for health insurance coverage of the child(ren). The parent paying the premium receives a credit against his or her share of the monthly support. If not otherwise specified in the support order, "health insurance" includes coverage for medical, dental, orthodontic, optometric, substance abuse, and mental health treatment.

(B) Health Care. Children's health care expenses are specifically included in the guidelines amount of up to \$480 per child per year. Children's health care needs are to be met by requiring either parent to provide health insurance as required by state law. All nonreimbursed reasonable and necessary children's health care costs in excess of \$480 per child per year shall be allocated to the obligor parent as determined by the court, but shall not exceed the proportion of the obligor's parental contribution (worksheet 1, line 6).

(C) Cash Medical Support and Health Care Costs for Title IV-D Cases Only.

(i) All child support orders in the Title IV-D program must address how the parties will provide for the child(ren)'s health

NEBRASKA ADVANCE SHEETS

NOTICE

vi

care needs through health care coverage and/or through cash medical support. Cash medical support or the cost of private health insurance is considered reasonable in cost if the cost to the party responsible for providing medical support for the child(ren) does not exceed 3 percent of his or her gross income. In applying the 3-percent standard, the cost is the cost of adding the child(ren) to existing health care coverage or the difference between self-only and family health care coverage. Cash medical support payment shall not be ordered if, at the time that the order is issued or modified, the responsible party's income is, or such expense would reduce the responsible party's net income, below the basic subsistence limitation provided in § 4-218. If a court orders a parent to pay cash medical support, it shall be in lieu of, and not in addition to, requiring the parent to also pay reimbursement for reasonable and necessary children's health care costs as set forth in subsection (B), above.

(ii) Birth expenses paid by the State of Nebraska are to be shared evenly between the parties, except that the judgment for birth expenses shall be capped at the lesser of 50 percent of the total birth expense or an amount equal to 3 percent of the obligated parent's monthly net income multiplied by 60, unless good cause is shown why this cap should not apply.

Example 1: Obligated parent earns net monthly income of \$1,500, according to line 3 of worksheet 1. The birth expenses are \$5,000. Half of the birth expense equals \$2,500 (half of \$5,000). Three percent of \$1,500 equals \$45 (1,500 times .03). Multiplying \$45 by 60 equals \$2,700. The judgment amount for the birth expenses is \$2,500 because it is less than \$2,700.

Example 2: Obligated parent earns net monthly income of \$1,200. The birth expenses are \$6,000. Half of the birth expense equals \$3,000 (half of \$6,000). Three percent of \$1,200 equals \$36 (1,200 times .03). Multiplying \$36 by 60 equals \$2,160. The judgment amount for the birth expenses is \$2,160 because it is less than \$3,000.

.....

**§ 4-223. Rounding to nearest whole dollar.**

Final child support should be rounded to the nearest dollar in all instances.

**§ 4-224. Residence with third party.**

If the child is residing with a third party, the court shall order each of the parents to pay to the third party their respective amounts of child support as determined by the worksheet.

. . . .

NEBRASKA ADVANCE SHEETS  
NOTICE

viii

Worksheet 5

DEVIATIONS TO CHILD SUPPORT GUIDELINES

This worksheet may be completed by the court and filed with the clerk in the event of a deviation or deviations under § 4-203 of the child support guidelines.

	Mother	Father
1. Net income of the parties as computed under worksheet 1	\$ _____	\$ _____
2. Combined monthly income	\$ _____	
3. Percent contribution of each	_____ %	_____ %
4. Monthly support for child(ren) from table 1	\$ _____	\$ _____
5. Health insurance premium	\$ _____	\$ _____
6. Total obligation	\$ _____	\$ _____
7. Each parent's monthly share	\$ _____	\$ _____
8. Each parent's credit for health premium actually paid	\$ _____	\$ _____
9. Each parent's final share of the obligation	\$ _____	\$ _____
10. Further deviations (specify)		
a. reason 1 _____	\$ _____	\$ _____
b. reason 2 _____	\$ _____	\$ _____
c. reason 3 _____	\$ _____	\$ _____
d. Total	\$ _____	\$ _____
11. Each parent's monthly share (line 9 above)	\$ _____	\$ _____
12. (+/-) Line 10d	\$ _____	\$ _____
13. Adjusted child support	\$ _____	\$ _____

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge

County Case No. CI\_\_-\_\_\_\_\_