

## **Minnesota's New Child Support Law: The Basics**

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Last spring the Minnesota legislature passed a bill that overhauls the decades-old child support law. As of January 1, 2007, there is a new way to calculate child support in Minnesota. This article provides a basic overview of the new child support statute, Minn. Stat. Chapter 518A.

### **Purposes of the New Law**

According to the chief author of the bill, Senator Tom Neuville, the primary goal of the new law is to create a more fair and equitable child support guideline.<sup>1</sup> Under the previous version of the statute, only the non-custodial parent's income was considered when calculating child support. In contrast, the new law is based upon an "Income Shares" model followed by a majority of states, which means that child support is determined based upon the income of both parents.

A second goal of the new law is to increase compliance with child support orders.<sup>2</sup> The underlying idea is that compliance with child support orders will increase if child support obligors feel that the order was calculated in a fair and even-handed manner. The shift to the "Income Shares" approach is the most visible way in which the new law attempts to appear more fair. The new law also incorporates current USDA economic data of the actual costs to raise children in the state of Minnesota.

A third goal of the law is to provide recognition that both parents incur expenses for the child when the child is in his or her care, which is accomplished by factoring a "parenting

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<sup>1</sup> State Senator Tom Neuville, *The New Income Shares Model for Calculating Child Support in Minnesota*, Family Law Forum, Winter 2006, Volume 15, No.1.

<sup>2</sup> *Id.*

expense adjustment” into the child support calculation.<sup>3</sup> Other stated goals of the law include simplifying the calculation of child support, and providing greater flexibility in setting child support orders.<sup>4</sup>

### **Application and Timing of the New Law**

The new statute applies to motions and actions *filed* after January 1, 2007.<sup>5</sup> This includes motions or actions for past support or reimbursement. Thus, if a child support action filed after January 1, 2007 includes a claim for two years of past support, the amount of past support due will be calculated under the new child support guidelines.<sup>6</sup>

The enforcement provisions of the new law apply to orders in effect prior to January 1, 2007.<sup>7</sup> For example, if an individual currently has a child support order, the collection mechanisms of the new law apply as of January 1, 2007.

Further, the new law will also be used in joint physical custody situations, and the *Hortis-Valento*<sup>8</sup> formula currently used, which like the new law contemplates each parent paying support while the other parent has custody of the children, will no longer be needed.

### **From Basic Support to Child Support and In Between**

All new child support orders will contain three separate amounts for each of the following: (1) basic support, (2) child care support, and (3) health care support.<sup>9</sup>

Basic support (what used to be known as “child support”) includes housing, food, clothing, transportation, education costs and other expenses related to the child’s care. The

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See Minn. Stat. §518.34 *Historical and Sttutory Notes*.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Valento v. Valento*, 385 N.W.2d 860 (Minn. Ct. App. 1986); *Hortis v. Hortis*, 367 N.W.2d 633 (Minn. Ct. App. 1985).

<sup>9</sup> Minn. Stat. §518A.26, subd. 20.

revised statute provides the steps to calculate basic support.<sup>10</sup> The Department of Human Services has also developed a web-based child support calculator that is available online at <http://childsupportcalculator.dhs.state.mn.us/>.

One of the most significant changes in the new law is that the gross income of both parents is included in support calculations and combined to determine the Parental Income Available for Child Support (PICS).<sup>11</sup> The PICS amount is important as it is also used to calculate how much each parent shall contribute to child care and health care support.

Other important changes include:

- No deductions are allowed from gross income for retirement contributions.<sup>12</sup>
- Spousal maintenance is income to the recipient for child support purposes and thus, must be determined before child support can be calculated.<sup>13</sup>
- The new statute creates “potential income,” which replaces the concept of imputed income, and applies to both parents – even if one of them is a stay at home parent.<sup>14</sup>
- There is a deduction for non-joint children (a child of one, but not both of the parties). The child must live in the parent’s household and the parent has a legal responsibility to provide for the child. The parent must not pay child support for the non-joint child. Stepchildren are not considered non-joint children.<sup>15</sup>
- A “parenting expense adjustment” applies to the obligor parent if parenting time is between 10% and 45%. This is intended to reflect a presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the

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<sup>10</sup> Minn. Stat. §§518A.27 to 518A.36.

<sup>11</sup> Minn. Stat. §518A.26 subd. 15.

<sup>12</sup> Minn. Stat. § 518A.29 (a)

<sup>13</sup> *Id.*

<sup>14</sup> Minn. Stat. §518A.32

<sup>15</sup> Minn. Stat. §518A.33

child. Non-custodial parents get a 12% discount if they care for the children between 10% and 45% of the time.<sup>16</sup>

- A Financial Affidavit is now required to help the court decide who must pay support and the amount of support. It must be served and filed with a parent's initial pleadings or motion documents in all cases where child support must be decided.<sup>17</sup>

The statute also includes steps for calculating child care support and medical support.<sup>18</sup> If the custodial parent has child care expenses, then the net child care expense per month – after deducting federal and state child care credits from the custodial parent's actual cost of child care – is divided between the parents based on the proportionate share of their combined PICS.

There are also significant changes to the medical support provision of the law. It, too, is divided proportionately between the parents, but there are additional provisions detailing how to order and collect insurance coverage and expenses. All support orders must include (1) which parent carries the insurance, (2) the cost of the premium and how the cost is allocated between parents, (3) how un-reimbursed expenses are allocated and collected by the parties, and (4) circumstances under which the obligation to provide coverage shifts to the other party.<sup>19</sup>

If appropriate health and dental insurance is available to either parent, then the court will order one parent to carry such insurance for the benefit of the minor child. "Appropriate health care coverage" is described as accessible, comprehensive and affordable and is explained in detail in the statute.<sup>20</sup> The amount of each parent's medical support obligation is then determined by multiplying the cost of such medical and dental insurance per month by the share

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<sup>16</sup> Minn. Stat. §518A.36.

<sup>17</sup> Minn. Stat. §518A.28.

<sup>18</sup> See Minn. Stat. §§518A.40 and 518A.41 respectively.

<sup>19</sup> Minn. Stat. §518A.41, subd. 2 (b).

<sup>20</sup> See Minn. Stat. § 518A.41, subd. 3.

of PICS of each parent, and the parent carrying the insurance receives a credit equal to the amount of the other parent's share. In addition, uninsured medical and dental expenses, co-pays and deductible expenses are divided between the parents according to their shares of PICS.<sup>21</sup>

If both parties have health care coverage that is comparable as to accessibility and comprehensiveness, it is presumed that the least costly coverage is the most appropriate.<sup>22</sup> If a child receives benefits from MinnesotaCare, then the non-custodial parent's income is applied to MinnesotaCare's sliding scale to determine the amount due, and the non-custodial parent's medical support obligation is the greater of that amount or \$50. The custodial parent has no medical support obligation in such cases.<sup>23</sup>

After determining the above support amounts, other factors may increase or decrease the resulting figures. For example, if one parent receives social security or veteran's benefits on behalf of the child, then that amount is subtracted from the other parent's child support obligation.<sup>24</sup> If the parent or parents cannot meet their own expenses after a presumptive child support obligation, there are adjustments that reflect that as well.<sup>25</sup>

### **Review and Modification**

Another important aspect of the new law is that every family court order or divorce decree that addresses the issues of child support, custody or parenting time will include an attached form and instructions for either party to seek a review of the order after a six month period.<sup>26</sup> The six-month review gives the parties the ability to make sure child support is current

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<sup>21</sup> Minn. Stat. §518A.41, subd. 5 (a).

<sup>22</sup> Minn. Stat. §518A.41, subd. 3 (b).

<sup>23</sup> Minn. Stat. §518A.41, subd. 4 (f) (2).

<sup>24</sup> Minn. Stat. §518A.31.

<sup>25</sup> Minn. Stat. §518A.42, subd. 1.

<sup>26</sup> Minn. Stat. §518.178.

and assess whether both parties are complying with the parenting time provisions of the order without the burden of court motions and additional filing fees.

The new law also contains changes that will affect the modification of child support orders. A child support order existing prior to January 1, 2007 is not subject to modification during the first year that the new law is in effect except under very limited circumstances set forth in the statute.<sup>27</sup> These include a 20% change in the obligor's gross income, a change in the number of joint children, a child who is the subject of the order becoming disabled, or a party beginning to receive public assistance. Unless one of the specific circumstances are met, modification will not be allowed until after January 1, 2008. However, the new law does not restrict parties from agreeing to a modification under the new law prior to that date.<sup>28</sup>

### **Conclusion**

Big changes have occurred in how you must calculate your client's child support obligation or award. Under the previous version of the law, only the obligor's net income was considered. Under the new law, the costs of raising a child are divided proportionately between the parents based on both parent's gross income. There have also been changes to parenting time presumptions, modification, and child care and medical support. Only time will tell if the revised statute will meet its stated goals of creating more equitable child support guidelines increasing compliance with child support orders.

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<sup>27</sup> Minn. Stat. §518A.39, subd. 2 (j).

<sup>28</sup> Minn. Stat. §518A.39, subd. 2 (j) (7).

dissolution, adoption, custody and third party custody, parenting access, paternity, and related appeals.