

# MONTANA CHILD SUPPORT GUIDELINES

AMENDED, EFFECTIVE JULY 1, 2012\*

ADMINISTRATIVE RULES OF MONTANA (ARM)  
Title 37, Chapter 62, Subchapter 1

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## **RULE 1: AUTHORITY, POLICY AND PURPOSE (ARM 37.62.101)**

(1) These guidelines are promulgated under the authority of 40-5-209, MCA, for the purpose of establishing a standard to be used by the district courts, child support enforcement agencies, attorneys and parents in determining child support obligations.

(2) These guidelines are based on the principle that it is the first priority of parents to meet the needs of the child according to the financial ability of the parents. In a dissolution of marriage or when parents have never been married, a child's standard of living should not, to the degree possible, be adversely affected because a child's parents are not living in the same household.

(3) These guidelines are structured to determine child support on an annual basis. Payment will be made in equal monthly installments.

(4) As required by 40-4-204, 40-5-226 and 40-6-116, MCA, these guidelines apply to contested, non-contested and default proceedings to establish or modify support orders. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

## **RULE 2: REBUTTABLE PRESUMPTION (ARM 37.62.102)**

(1) The guidelines create a presumption of the adequacy and reasonableness of child support awards. However, every case must be determined on its own merits and

circumstances and the presumption may be rebutted by evidence that a child's needs are or are not being met.

(2) At the request of one of the parties and upon consideration of the factors set out in the guidelines and in 40-4-204, 40-4-208 and 40-6-116, MCA, the final outcome of the guidelines calculation, or "bottom line", may be rebutted and a variance from the guidelines final amount may be granted. Any consideration of a variance from the guidelines must take into account the best interests of the child.

(3) The support order may vary from the bottom line in a particular case only if the decree, separation order or support order contains a specific written finding showing justification that application of the guidelines would be unjust or inappropriate, based upon evidence sufficient to rebut the presumption.

(4) Findings that rebut and vary the bottom line must include a statement of the amount of support that would have been ordered under the guidelines without the variance.

(5) Child support may vary from the bottom line based on a stipulation or agreement of the parties only if the stipulation or agreement meets the following criteria:

(a) it is in writing executed by the parties free of coercion;

(b) it contains specific justification as to why application of the guidelines is unjust or inappropriate;

(c) it contains a statement of the amount of support that would have been appropriate under the guidelines without the variance; and

(d) it has been approved by the court or in an administrative proceeding.

(6) A support order granting a variance from the bottom line, based upon the existence of a condition or the performance of an act, must provide that, upon termination of the circumstances which justify the variance, the support immediately reverts to the amount which would have been ordered under the guidelines without the variance.

(7) In contrast to the bottom line presumption, the child support guidelines include a variety of presumptions affecting particular entries or lines in the calculation intended to customize support for a particular family. "Line item" presumption refers to various provisions of the child support guidelines assuming specific fact patterns which occur in a majority of cases. If, in the case at issue, a parent can show that the facts in evidence are not consistent with the facts assumed, the facts in evidence are applied to the entry and result in a different but appropriate child support award. The entry based on the evidence rebuts the line item presumption regarding the guideline provision. For example, ARM 37.62.110(1)(b)(ii) may allow a deduction from a parent's income for "an amount equal to one-half of the primary child support allowance as found in ARM 37.62.121 for the number of other children for whom no support order exists". The rule presumes the remaining half of the child's support is the responsibility of the other parent of the child, but if, in the case at issue, there is no other parent to share responsibility, the party ordinarily entitled to the one-half deduction is allowed the full deduction. (History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98; AMD, 2012 MAR p. 747, Eff. 4/13/12.)

### **RULE 3: DEFINITIONS (ARM 37.62.103)**

For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Actual income" is defined in ARM 37.62.105.

(2) "CSED" means the child support enforcement division of the department of public health and human services.

(3) "Department" means the department of public health and human services.

(4) "Federal poverty guidelines" means the guidelines published by the U.S. Department of Health and Human Services under the authority of 42 USC 9902(2), which

will be updated periodically in the Federal Register. Such updates will be adopted by amendment to these rules as appropriate.

(5) "Guidelines" means the administrative rules for establishment of child support as provided in ARM Title 37, chapter 62, subchapter 1, as promulgated in 40-5-209, MCA.

(6) "Imputed income" is defined in ARM 37.62.106.

(7) "Legal dependent" means natural born and adopted minor children, spouses, special needs adult children, household members covered by a conservatorship or guardianship, and parent's parents living in the household who are claimed on tax returns as legal dependents.

(8) "Long distance parenting" is defined in ARM 37.62.130.

(9) "Other child" means a child whom a parent is legally obligated to support but who is not the subject of the child support calculation. A step-child is not considered an other child.

(10) "Personal allowance" is defined in ARM 37.62.114.

(11) "Primary child support allowance" is defined in ARM 37.62.121.

(12) "SOLA" means standard of living adjustment.

(13) "Standard of living" includes the necessities, comforts, and luxuries enjoyed by either parent, the child or both parents and the child, which are needed to maintain them in customary or proper community status or circumstances.

(14) "Transfer payment" is defined in ARM 37.62.134.

(15) "Underemployed" means employed less than full time, when full-time work is available in the community or the local trade area, and/or earning a wage that is less than the parent has earned in the past, or is qualified to earn, when higher paying jobs are available in the community or the local trade area, for which the parent is qualified. (History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98; AMD, 2012 MAR p. 747, Eff. 4/13/12.)

**RULE 4: DETERMINATION OF INCOME FOR CHILD SUPPORT (ARM 37.62.105)**

(1) Income for child support includes actual income, imputed income as set forth in ARM 37.62.106, or any combination thereof which fairly reflects a parent's resources available for child support. Income can never be less than zero.

(a) Parents are presumed to be capable of earning income from full-time employment; full-time employment is presumed to be 40 hours per week but may be more or less depending upon the parent's profession and/or the employer's policies;

(b) The net value of a parent's assets may be considered for child support where, in a specific case, it would be inappropriate not to do so;

(2) Actual income includes:

(a) economic benefit from whatever source derived, except as excluded in (3) of this rule, and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends, severance pay, pensions, periodic distributions from retirement plans, draws or advances against wages or salary, interest, trust income, annuities, royalties, alimony or spousal maintenance, social security benefits, veteran's benefits, workers' compensation benefits, unemployment benefits, disability payments, earned income credit and all other government payments and benefits. Income also includes capital gains net of capital losses. To the extent the net gains result from recurring transactions, they may be averaged over a period of at least three years. If the net gains are attributable to a single event or year, they may be used to represent income over one or more years.

(b) gross receipts minus reasonable and necessary expenses required for the production of income for those parents who receive income or benefits as the result of an ownership interest in a business or who are self-employed. Specifically:

(i) Straight line depreciation for vehicles, machinery and other tangible assets

may be deducted from income if the asset is required for the production of income. The party requesting such depreciation shall provide sufficient information to calculate the value and expected life of the asset. Internal Revenue Service rules apply to determine expected life of assets.

(ii) If expenses are not required for the production of income, the expenses are not allowable deductions; if business expenses include a personal component, such as personal use of business vehicles, only the business component is deductible;

(iii) a net loss in the operation of a business or farm may not offset other income. If a parent has more than one business and the businesses are related, however, the total losses of the businesses may be offset against (deducted from) the total profits. An artist, for example, whose principal income source is the sale of paintings in her gallery may also own a company that publishes calendars and other commercial uses of her paintings as a marketing tool. A loss in the operation of the publishing company may be offset against the profit in the gallery business because the two enterprises are related; and

(iv) investment losses outside the normal course of business may not reduce other income.

(c) the value of non-cash benefits including but not limited to in-kind compensation, personal use of vehicle, housing, payment of personal expenses, food, utilities, etc.;

(d) grants, scholarships, third party contributions and earned income received by parents engaged in a plan of economic self-improvement, including students. Financial subsidies or other payments intended to subsidize the parent's living expenses and not required to be repaid at some later date must be included in income for child support; and

(e) allowances for expenses, flat rate payments or per diem received, except as offset by actual expenses. Actual expenses may be considered only to the extent a party can produce receipts or other acceptable

documentation. Reimbursements of actual employment expenses may not be considered income for purposes of these rules.

(3) Income for child support does not include:

(a) income attributable to subsequent spouses, domestic associates, and other persons who are part of the parent's household;

(b) means-tested veteran's benefits;

(c) means-tested public assistance benefits including but not limited to cash assistance programs funded under the federal temporary assistance to needy families (TANF) block grant;

(d) supplemental security income (SSI);

(e) supplemental nutrition assistance program (SNAP) benefits, formerly known as food stamps;

(f) child support payments received from other sources; and

(g) adoption subsidies paid by state or federal agencies, unless expenses of the subsidized child are included in the calculation.

(4) income for child support does not include lump sum social security payments or social security benefits received by a child or on behalf of a child as the result of a parent's disability or the child's disability, whether or not the child is a child of the calculation. See ARM 37.62.144 for more information on Social Security benefits.

(5) If overtime is mandatory and the worker has no control over whether or not overtime is worked, the overtime earnings are included in income for child support. In the case of voluntary overtime earnings or earnings from a job that is in addition to a full-time job, and the earnings are expected to continue for the foreseeable future, the earnings are presumed to be available for child support and are included in the calculation subject to rebuttal of the presumption. (History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 2012 MAR p. 747, Eff. 4/13/12.)

## **RULE 5: IMPUTED INCOME FOR CHILD SUPPORT (ARM 37.62.106)**

(1) "Imputed income" means income not actually earned by a parent, but which is attributed to the parent based on the provisions of this rule. It is presumed that all parents are capable of working at least 40 hours per week at minimum wage, absent evidence to the contrary.

(2) It is appropriate to impute income to a parent, subject to the provisions of (6) of this rule, when the parent:

(a) is unemployed;

(b) is underemployed;

(c) fails to produce sufficient proof of income;

(d) has an unknown employment status; or

(e) is a student.

(3) In all cases where imputed income is appropriate, the amount is based on the following:

(a) the parent's recent work history;

(b) the parent's occupational and professional qualifications; and

(c) existing job opportunities and associated earning levels in the community or the local trade area.

(4) Imputed income may be in addition to actual income and may not necessarily reflect the same rate of pay as the actual income.

(5) Income is imputed according to a parent's status as a full- or part-time student, whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is determined, unless actual income is greater. If the student is:

(a) full-time, the parent's earning capacity is based on full-time employment for 13 weeks and approximately half of full-time employment for the remaining 39 weeks of a 12-month period; or

(b) part-time, the parent's earning capacity is based on full-time employment for a 12-month period.

(6) Income is not imputed if any of the following conditions exist:

(a) the reasonable and unreimbursed costs of child care for dependents in the parent's household would offset in whole or in substantial part, that parent's imputed income;

(b) a parent is physically or mentally disabled to the extent that the parent cannot earn income;

(c) unusual emotional and/or physical needs of a legal dependent require the parent's presence in the home.

(d) the parent has made diligent efforts to find and accept suitable work or to return to customary self-employment, to no avail; or

(e) the court or hearing officer makes a finding that other circumstances exist which make the imputation of income inequitable.

However, the amount of imputed income shall be decreased only to the extent required to remove such inequity. (History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98; AMD, 2012 MAR p. 747, Eff. 4/13/12.)

**RULE 6: INCOME VERIFICATION/  
DETERMINING ANNUAL INCOME  
(ARM 37.62.108)**

(1) A parent must swear to the accuracy and authenticity of all financial information submitted for the purpose of calculating child support.

(2) Income of the parents must be documented. This may include pay stubs, employer statements, income tax returns, and profit and loss statements. If expenses are disputed, proof may be required.

(3) To the extent possible, income for child support and expenses should be annualized to avoid the possibility of skewed application of the guidelines based on temporary or seasonal conditions. Income and expenses may be annualized using one of the two following methods:

(a) seasonal employment or fluctuating income may be averaged over a period sufficient to accurately reflect the parent's earning ability. If a parent has been self-

employed for three years or less, the profit and loss statements and income tax returns of the individual parent and the business entity for each of those years are required so that the average of the parent's self-employment income can be considered in the child support calculation. If the parent has been self-employed for more than three years, a minimum of the most recent three years' profit and loss statements and tax returns are required; or

(b) current income or expenses may be projected when a recent increase or decrease in income is expected to continue for the foreseeable future. For example, when a student graduates and obtains permanent employment, income should be projected at the new wage.

(4) Nothing in this rule shall be construed to require the use of any particular method of determining annual income if it does not accurately reflect a parent's resources available for child support.

(5) Income for child support may differ from a determination of income for tax purposes. (History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98; AMD, 2012 MAR p. 747, Eff. 4/13/12.)

**RULE 7: ALLOWABLE DEDUCTIONS FROM  
INCOME (ARM 37.62.110)**

(1) Allowable deductions from income include those required by law, those required as a condition of employment, and those necessary for the production of income. Allowable deductions may include:

(a) the amount of alimony or spousal maintenance which a parent is required to pay under a court or administrative order;

(b) for an "other child" as defined in ARM 37.62.103(9):

(i) the amount of child support due under existing court or administrative support orders; and

(ii) an amount equal to one-half of the primary child support allowance as found in ARM 37.62.121 for the number of other

children for whom no support order exists, and who:

(A) reside with the parent of the calculation; or

(B) do not reside with a parent of the calculation if a showing of ongoing support is made.

(c) the amount of any health insurance premium which either parent is required to pay under a court or administrative order for a child not of this calculation;

(d) the actual income tax liability based on tax returns. If no other information is available, use the federal and state income tax tables which show the amount of withholding for a single person with one exemption;

(e) the actual social security (FICA plus medicare) paid;

(f) court ordered payments except as excluded under ARM 37.62.111;

(g) actual unreimbursed expenses incurred as a condition of employment such as uniforms, tools, safety equipment, union dues, license fees, business use of personal vehicle and other occupational and business expenses;

(h) actual mandatory contributions toward internal revenue service (IRS) approved retirement and deferred compensation plans. Mandatory contributions are fully deductible;

(i) one-half the amount of a parent's unreimbursed payments for an "other child" for extraordinary medical expenses and child care expenses necessary to allow the parent to work, less federal tax credits;

(j) extraordinary medical expenses incurred by a parent to maintain that parent's health or earning capacity which are not reimbursed by insurance, employer, or other entity;

(k) cost of tuition, books and mandatory student fees for a parent who is a student as anticipated under ARM 37.62.106(5); and

(l) the current, annual interest on student loans, paid by a parent of the calculation for post-secondary education that has resulted in an economic benefit for the children of the calculation.

(2) Allowable deductions from income for child support differ from allowable deductions for tax purposes. (History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 1998 MAR p. 2598, Eff. 11/1/98; AMD, 2012 MAR p. 747, Eff. 4/13/12.)

#### **RULE 8: NON-ALLOWABLE DEDUCTIONS FROM INCOME (ARM 37.62.111)**

(1) Deductions which are not allowable under these rules include:

(a) payroll deductions for the convenience of the parent, such as credit union payments and savings;

(b) imputed employment-related expenses, such as imputed child care;

(c) expenses incurred for the support of a spouse capable of self-support;

(d) payments for satisfaction of judgments against a parent related to the purchase of property for the parent's personal use;

(e) bankruptcy payments except to the extent that they represent debts for expenses which would otherwise be deductible; or

(f) a step-child and associated costs. (History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98; AMD, 2012 MAR p. 747, Eff. 4/13/12.)

#### **RULE 9: PERSONAL ALLOWANCE (ARM 37.62.114)**

(1) Personal allowance is an amount which reflects 1.3 multiplied by the federal poverty guideline for a one person household. This amount is deducted when determining child support. Personal allowance is a contribution toward, but is not intended to meet the subsistence needs of parents.

(2) If a parent has legal dependents not capable of self-support and whose needs have not already been considered at ARM 37.62.110, the personal allowance may reflect the parent's responsibility by increasing the number in the household when consulting the federal poverty guideline. (History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98; AMD, 2012 MAR p. 747, Eff. 4/13/12.)

**RULE 10: INCOME AVAILABLE FOR CHILD SUPPORT (ARM 37.62.116)**

(1) Income available for support is determined by subtracting from each parent's income, the deductions allowed under ARM 37.62.110 and the amount of personal allowance determined under ARM 37.62.114. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

**RULE 11: TOTAL INCOME AVAILABLE/PARENTAL SHARE (ARM 37.62.118)**

(1) The parents' incomes available for child support are combined to determine the total income available for child support. Each income is divided by the total. The resulting factor determines each parent's share of the primary child support allowance under ARM 37.62.121 and supplements under ARM 37.62.123.

(2) For any parent whose support obligation is determined according to the provisions of ARM 37.62.126(1)(a) and (1)(b), the amount of the minimum contribution is substituted for that parent's total income available for child support for the purpose of determining each parent's share of the primary child support allowance and supplements. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

**RULE 12: PRIMARY CHILD SUPPORT ALLOWANCE (ARM 37.62.121)**

(1) Primary child support allowance is a standard amount to be applied toward a child's food, shelter, clothing and related needs and is not intended to meet the needs of a particular child. This allowance is .30 multiplied by the personal allowance found at ARM 37.62.114 for the first child. For the second and third children, the personal allowance is multiplied by .20 and added for each child. For four or more children, the personal allowance is multiplied by .10 and added for each additional child. (History: Sec. 40-5-203, MCA; IMP, Sec.

40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

**RULE 13: SUPPLEMENTS TO PRIMARY CHILD SUPPORT ALLOWANCE (ARM 37.62.123)**

(1) The primary child support allowance is supplemented by:

(a) reasonable child care costs incurred by a parent for children of the calculation as a prerequisite to employment. The child care expense is reduced by the federal dependent care tax credit;

(b) cost of health insurance coverage for the children of the calculation. Include only the actual cost of adding the children to an existing health insurance policy or the cost of a child-only policy;

(c) unreimbursed health care expenses for each child of the calculation that exceed \$250 per year and are recurring and predictable; and

(d) other needs of the child as determined by the circumstances of the case.

(2) The total supplemental needs of the child are divided proportionately between the parents according to the parental share determined under ARM 37.62.118.

(3) Each parent will receive credit for the amount of the supplemental needs paid by that parent. (History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98; AMD, 2012 MAR p. 747, Eff. 4/13/12.)

**RULE 14: PARENTING DAYS (ARM 37.62.124)**

(1) The parenting plan, referenced in 40-4-234, MCA, provides for the child's residential schedule with the parents.

(2) When the child resides primarily with one parent and does not spend more than 110 days per year with the other parent, there is no adjustment to the transfer payment due. When at least one child spends more than 110 days per year with both parents, however, or when at least one child resides primarily with each parent, the transfer payment is adjusted according to ARM 37.62.134.

(3) A "day" is defined as the majority of a 24-hour calendar period in which the child is

with or under the control of a parent. This assumes there is a correlation between time spent and resources expended for the care of the child. For purposes of this chapter, and unless otherwise agreed by the parents or specifically found by the court, the calendar period begins at midnight of the first day and ends at midnight of the second day. When the child is in the temporary care of a third party, such as in school or a day care facility, the parent who is the primary contact for the third party is the parent who has control of the child for the period of third party care. If both parents are primary contacts for a third party, or if the parents are otherwise unable to agree on the total number of days for each parent, the number of disputed days may be totaled and divided equally between the parents. (History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 2012 MAR p. 747, Eff. 4/13/12.)

**RULE 15: MINIMUM SUPPORT OBLIGATION (ARM 37.62.126)**

(1) A specific minimum contribution toward child support should be ordered in all cases when the parent's income, after deductions, is less than or equal to the parent's personal allowance or the parent's calculated child support obligation is less than 12% of that parent's income after deductions.

(a) For parents whose income, as defined in ARM 37.62.105 and 37.62.106, after deductions, as defined in ARM 37.62.110, is less than or equal to the parent's personal allowance, the minimum contribution is a portion of the income after deductions and is determined by applying the table in (3) as follows:

- (i) divide the income after deductions by the personal allowance as defined in ARM 37.62.114 to determine the income ratio;
- (ii) find the income ratio in Column A;
- (iii) locate the corresponding minimum contribution multiplier in Column B; and
- (iv) multiply the income after deductions by the minimum contribution multiplier. The result is the parent's minimum contribution.

(b) For parents whose income after deductions exceeds the personal allowance, the parent's minimum contribution is 12% of income after deductions.

(2) The minimum contributions under this rule are presumptive and may be rebutted by the circumstances of a particular case, provided there is an appropriate finding on the record.

(3) The table for determining the minimum support obligation of a parent whose income after deductions is less than or equal to the parent's personal allowance is as follows:

<u>Column A</u>		
<u>Column B</u>		
"Income Ratio"		"Minimum Contribution Multiplier"
(IR)		
If the IR is in the range:		The minimum contribution is:
.00 to .25		.00
If the IR is:		
over:	but, not over:	the multiplier is:
.25	.31	.01
.31	.38	.02
.38	.45	.03
.45	.52	.04
.52	.59	.05
.59	.66	.06
.66	.73	.07
.73	.80	.08
.80	.87	.09
.87	.94	.10
.94	1.00	.11

(History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98; AMD, 2012 MAR p. 747, Eff. 4/13/12.)

**RULE 16: INCOME AVAILABLE FOR STANDARD OF LIVING ADJUSTMENT (SOLA) (ARM 37.62.128)**

(1) The purpose of SOLA is to ensure that the child enjoys, to the extent possible, the standard of living commensurate with the parent's income. If a parent has income

available after deducting the personal allowance and the parent's share of the child support allowance as supplemented, the remaining income is subject to SOLA.

(2) SOLA is calculated by subtracting from the parent's income available for support, as provided in ARM 37.62.116 the parent's share of the primary child support allowance under ARM 37.62.121 and supplements as provided in ARM 37.62.123.

(3) If income is available for SOLA, multiply the income by the SOLA factor from the following table which corresponds to the number of children for whom support is being determined.

Number of Children	SOLA Factor
1	.14
2	.21
3	.27
4	.31
5	.35
6	.39
7	.43
8 or more	.47

(4) Income available for SOLA may not be less than zero. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

**RULE 17: LONG DISTANCE PARENTING ADJUSTMENT (ARM 37.62.130)**

(1) Long distance parenting is any travel by a parent or child to attain the goals of the parenting plan. A long distance parenting adjustment is allowed when travel by a parent or child exceeds 2,000 miles in a calendar year.

(2) The amount of income available for SOLA is reduced to the extent the actual annual expense of transportation for long distance parenting exceeds 2,000 miles multiplied by the current IRS business mileage rate (standard expense). The reduction is determined separately for each parent.

(3) The reduction is calculated as follows:

(a) multiply the parent's annual mileage driven to exercise long-distance parenting by

the current IRS business mileage rate;

(b) add the annual cost of transportation by means other than automobile;

(c) subtract the standard expense from the total of (3) (a) and (b) above; and

(d) subtract any difference greater than zero from the parent's income available for SOLA.

(4) Expenses are limited to costs of transportation and do not include meals, lodging, or other costs.

(5) A long distance parenting adjustment may not reduce income available for SOLA below zero. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

**RULE 18: TOTAL SUPPORT AMOUNT AND TRANSFER PAYMENT (ARM 37.62.134)**

(1) A total support amount is determined for each parent separately, and consists of:

(a) the parent's share of the primary child support allowance, with supplemental needs, if any, plus the parent's standard of living adjustment; or

(b) the parent's minimum support obligation determined under ARM 37.62.126.

(2) After determining each parent's obligation according to (1)(a) or (1)(b), above, each parent's obligation is allocated according to the number of days each child spends with each parent.

(a) If all the children of the calculation reside primarily with one parent and do not spend more than 110 days per year with the other parent, the annual transfer payment, defined as the net amount of child support one parent owes the other, is the same as the total, annual support amount owed by the non-residential parent.

(i) To set the amount of each child's monthly transfer payment, divide the annual transfer payment by the number of children in the calculation. Then, divide each child's annual payment by 12 and round the result according to ARM 37.62.134(2)(a)(ii), following.

(ii) The monthly transfer payment per child is rounded to whole dollars as follows: round down to the next whole dollar amounts ending in \$0.49 or less and round up for amounts ending in \$0.50 or more. The total of the rounded per child amount is the total monthly transfer payment owed by one parent to the other and/or to a third party, and due to rounding, may vary from the monthly transfer payment shown in the calculation.

(b) If any child of the calculation spends in excess of 110 days per year with both parents or if one or more children reside primarily with one parent while one or more children reside primarily with the other parent, the allocation of each parent's total support amount is determined as follows:

(i) recalculate the needs of each child separately;

(ii) recombine each parent's total support amount for each child based upon that child's proportionate need;

(iii) allocate the parent's total support amount for each child by retaining the amount for time the child spends with the parent and owing to the other parent the amount for time the child spends with the other parent;

(iv) offset the amounts each parent owes the other by subtracting the lower obligation from the higher for each of the children. The remaining balance for each child is the annual transfer payment for that child and is entered in the column of the parent owing the balance; and

(v) to set the monthly transfer payment, divide the annual transfer payment for each child by 12 and round according to (2)(a)(ii).

(A) where the calculation includes only one child, the monthly transfer payment is the total amount due from one parent to the other; or

(B) where the calculation includes two or more children, the monthly transfer payment for each child is the amount entered for the child at (2)(b)(v). The monthly transfer payment for each child is entered in the column of the parent owing the payment. Each

parent's column is totaled and the difference between mother's total and father's total is the final monthly transfer payment owed by the parent with the higher total. (History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98; AMD, 2012 MAR p. 747, Eff. 4/13/12.)

#### **RULE 19: ANTICIPATED CHANGES (ARM 37.62.140)**

(1) To the extent possible, child support orders must address children's changing needs as they grow and mature in a way that minimizes the need for future modifications. If any material change in current circumstances is anticipated within 18 months, separate child support calculations must be completed.

(2) In the initial calculation, present circumstances should be included. In the subsequent calculation(s), appropriate anticipated changes should be calculated. The child support order should provide that the amount(s) from the subsequent calculations will take effect the month following the anticipated changes. (History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98; AMD, 2012 MAR p. 747, Eff. 4/13/12.)

#### **RULE 20: SUPPORT PAYABLE IN DOLLARS (ARM 37.62.142)**

(1) The child support order is to be paid in U.S. dollars.

(2) Gifts, clothing, food, payment of expenses, etc., in lieu of dollars will not be allowed as a credit for payment of a child support obligation except by court or administrative order.

(3) Direct payments to the child, the parent or a third party will not be allowed as credit for payment of a child support obligation payable through the clerk of court, the child support enforcement division or other entity specified in the court or administrative order. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98.)

**RULE 21: SOCIAL SECURITY BENEFITS  
(ARM 37.62.144)**

(1) Social security benefits which are based on the earning record of either parent shall be considered in establishing new support orders or modification of existing orders under the following conditions:

(a) benefits received by the parent on behalf of the minor child are not to be included in that parent's gross income;

(b) the parent's obligation is satisfied if the amount of the child's benefit received for a given month as a result of that parent's earning record is equal to or greater than the parent's child support obligation. Any benefit received by the child for a given month in excess of the child support obligation is not treated as an arrearage payment or as future support;

(c) the parent must pay the difference if the amount of the child's benefit for a given month is less than the parent's child support obligation. This amount is presumed to be paid if the child resides with that parent a majority of the time; and

(d) whenever either parent receives for the benefit of the child, a lump sum payment which represents an accumulation of monthly benefits:

(i) the lump sum payment should not be treated as income of the parent; and

(ii) the lump sum should be credited to that parent's child support obligation for each month a payment accumulated for the child's benefit. (History: Sec. 40-5-203, MCA; IMP, Sec. 40-5-209, MCA; NEW, 1998 MAR p. 2066,

Eff. 11/1/98.)

**RULE 22: SUPPORT GUIDELINES TABLES/  
FORMS (ARM 37.62.148)**

(1) The Child Support Enforcement Division (CSED) has developed a child support calculation worksheet. Copies of this worksheet may be obtained from the Department of Public Health and Human Services, Child Support Enforcement Division, P.O. Box 202943, Helena, MT 59620 or any regional office. The worksheet is also available on the department's web site at [www.dphhs.mt.gov/forms/](http://www.dphhs.mt.gov/forms/)

(2) Included for use with the worksheet are a financial affidavit, necessary tables and information for completion of the guidelines calculation. To assure that these tables are current, the Child Support Enforcement Division will republish the tables annually as soon as practical after release of information upon which tables are based. The tables will be identified by the year of publication or republication.

(3) The child support guidelines worksheets, or a replica of those forms with a similar format and containing the same information, must be used in all child support calculations under the guidelines and a copy must be attached to the support order. (History: 40-5-203, MCA; IMP, 40-5-209, MCA; NEW, 1998 MAR p. 2066, Eff. 11/1/98; AMD, 2012 MAR p. 747, Eff. 4/13/12.)

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