

**DRAFT ARIZONA CHILD SUPPORT GUIDELINES**  
**PROPOSED EFFECTIVE DATE JANUARY 1, 2010**

**TABLE OF CONTENTS**

- I. General Information**
  - A. Purposes
  - B. Premises
  - C. Presumption
  - D. Basis of Guidelines
  
- II. Determining the Guideline Support Obligation**
  - A. Income Considered
  - B. Inclusions to Gross Income of Parties
    - 1. Gross Income
    - 2. In-Kind or Other Non-Cash Benefits
    - 3. Self-Employment
    - 4. Expense Reimbursements
    - 5. Unemployed or Underemployed
  - C. Exclusions from Gross Income
  - D. Adjustments to Income
    - 1. Spousal Maintenance
    - 2. Natural or Adopted Children
    - 3. Childcare Costs
  - E. Adjusted Gross Income
  - F. Parenting Time and Other Costs Adjustments
  - G. Preliminary Support Obligation
  - H. When a Parent's Income is More than \$12,000 Monthly
  - I. When There are More than Four Children
  - J. Additions to Support
    - 1. Childcare Costs
    - 2. Education Expenses
    - 3. Extraordinary Child
    - 4. Medical Support
  - K. Guideline Support Amount
  - L. Self Support Reserve
  - M. Travel Expenses
  
- III. Guideline Support Order**
  - A. Court's Findings
  - B. Exchange of Information
  - C. Gifts In Lieu Of Money
  - D. Dependency Exemption

#### **IV. Special Circumstances**

- A. Deviation
  - 1. By Court
  - 2. By Agreement
  - 3. When Not Considered a Deviation
- B. Multiple Children, Divided Physical Custody
- C. Multiple Children, Varying Parenting Time Schedule
- D. Third Party Caregivers
- E. Support Assigned To State
- F. Income and Benefits
  - 1. Income of a Child
  - 2. Benefits Received on Behalf of a Child
  - 3. Benefits Not Included in Parent's Income
  - 4. Disabled Adult Child
- G. Arrears
  - 1. Setting an Amount for Payment on Arrears
  - 2. When the Current Child Support Obligation Terminates
  - 3. Modification of Payment on Arrears

#### **V. Modification and Termination of Support**

- A. Duration of Child Support
- B. Modification
  - 1. Process For Modification
    - a. Standard Procedure
    - b. Simplified Procedure
    - c. By Agreement
  - 2. Limitations
    - a. Effect of Emancipation
    - b. Termination of Support
    - c. Retroactive Modification
    - d. Relief From a Child Support Judgment
    - e. Grounds for Modification

# I. General Information

## A. PURPOSES

1. To establish a standard of support for children consistent with the reasonable needs of children and the ability of parents to pay.
2. To make child support orders consistent for persons in similar circumstances and set child support amounts based on the factors in A.R.S. §25-320.
3. To give parents and courts guidance in establishing child support orders and to promote settlements.
4. To comply with state law (Arizona Revised Statutes (A.R.S. §25-320) and federal law (42 United States Code, §651 et seq., 45 Code of Federal Regulations, §302.56) and-amendments, if any.

## B. PREMISES

1. These guidelines apply to all natural children, whether born in or out of wedlock, and to all adopted children.
2. The child support obligation has priority over all other financial obligations; the existence of non-support-related financial obligations is generally not a reason for deviating from the guidelines.
3. The fact that a parent pays or receives child support does not mean that he or she may not also be entitled to spousal maintenance. If the court is establishing both child support and spousal maintenance, the court shall determine the appropriate amount of spousal maintenance first.
4. A parent's legal duty is to support his or her natural or adopted children. The support of other persons such as stepchildren or parents is not a reason for an adjustment in the amount of child support determined under the guidelines.
5. Child support is set in equal monthly amounts. Therefore, monthly figures are used to calculate the child support obligation. Average monthly figures should be used when income or expense amounts fluctuate over the course of a year.
6. The child support calculation is based on gross income.

**C. PRESUMPTION**

These guidelines apply to all actions involving establishment of current or past child support or modification of child support. The court shall order the amount determined under these guidelines absent a deviation pursuant to Section IV(A).

If the parents do not have substantially equal parenting time, and the calculation results in the parent with greater parenting time paying child support to the other parent (reflected by a negative number in the support calculation), no child support shall be ordered unless:

1. The gross monthly income of the parent with greater parenting time approaches or is greater than 300% of the other parent's income; and
2. The gross monthly income of the parent with greater parenting time approaches or is greater than \$6,000; and
3. The other parent's parenting time approaches or is greater than 130 days.

**D. BASIS OF GUIDELINES**

The Arizona Child Support Guidelines are based on the financial resources and needs of the child and of each parent, the standard of living the child would have enjoyed in a two-parent household, and the allocation of parenting time, as contemplated by A.R.S. §25-320(D). They reflect a systematic consideration of the impact of parental separation on the parents and their children to achieve outcomes that are fair to the child and both parents.

## II. Determining the Guideline Support Obligation

NOTE: Terms such as "gross income" and "adjusted gross income" as used in these guidelines do not have the same meaning as when they are used for tax purposes.

### A. INCOME CONSIDERED

Only income of persons having a legal duty of support shall be treated as income under the guidelines. For example, income of a parent's new spouse is not treated as income of that parent.

### B. INCLUSIONS TO GROSS INCOME OF PARTIES

1. Gross income includes income from any source, and may include, but is not limited to, income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits (subject to Section IV(E)) received directly by either parent and not on behalf of a child, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, recurring gifts, and prizes. Seasonal or fluctuating income shall be averaged. Income from any source that is not continuing or recurring in nature need not be included as income for child support purposes.
2. Cash value may be assigned to in-kind or other non-cash benefits or to recurring contributions from any sources that reduce living expenses.
3. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income means gross receipts minus ordinary and reasonable expenses required to produce income. Ordinary and reasonable expenses include one-half of the self-employment tax actually paid.
4. Expense reimbursements or benefits received by a parent in the course of employment or self-employment or operation of a business shall be counted as income if they are significant and reduce personal living expenses.

5. If a parent is unemployed or working below full earning capacity, the court may consider the reasons. If earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a parent up to his or her earning capacity. If the reduction in income is voluntary but reasonable, the court shall balance the benefits of that parent's decisions against the financial detriment, if any, to the child. If there is no available income information the court shall presume that each parent is capable of earning at least the applicable minimum wage and attribute that amount to the parent. If income is attributed to the parent receiving child support, appropriate childcare expenses may also be attributed. However, the court may decline to attribute income to either parent. Examples of cases in which it may be inappropriate to attribute income include, but are not limited to, the following circumstances:
  - a. A parent is physically or mentally disabled,
  - b. A parent is engaged in reasonable career or occupational training to establish basic skills or reasonably calculated to enhance earning capacity,
  - c. Emotional or physical needs of a natural or adopted child require that parent's presence in the home, or
  - d. A parent is incarcerated.

**C. EXCLUSIONS FROM GROSS INCOME**

1. Gross income does not include sums received as child support or benefits received from means-tested public assistance programs including, but not limited to, Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), Food Stamps and General Assistance.
2. Gross income does not include benefits received on behalf of a child.
3. Each parent should have the choice of working additional hours through overtime or at a second job without affecting the child support award. Generally, the court should not include income greater than what would have been earned from full-time employment. The court may, however, include income actually earned that is greater than would have been earned by full-time employment if that income was historically earned from a regular schedule and is anticipated to continue into the future. The court should generally not include additional income if earning that additional income would require an extraordinary work regimen. Determination of what constitutes an extraordinary work regimen depends upon all relevant

circumstances including the choice of jobs available within a particular occupation, working hours and working conditions.

**D. ADJUSTMENTS TO INCOME**

1. The court-ordered amount of spousal maintenance resulting from this or any other marriage, if actually being paid, shall be deducted from the gross income of the parent paying spousal maintenance. The court-ordered amount of spousal maintenance resulting from this or any other marriage, if actually being paid, shall be added to the gross income of the parent receiving spousal maintenance. Court-ordered arrearage payments shall not be included as an adjustment to gross income.
  
2. Gross income is adjusted for support of children of other relationships as described below. For purposes of this section, “children of other relationships” means natural or adopted children of either parent who are not the subject of this particular child support determination.
  - a. The amount paid in court ordered child support actually being paid shall be deducted from the gross income of the paying parent. Court ordered arrearages payments shall not be included in the adjustment.
  
  - b. An amount may be deducted from the income of a parent for support of natural or adopted children of other relationships provided other than by court order. The amount of any adjustment shall be determined by the following table:

**Adjustment for Support of Other Children**

<b>Children to adjust for</b>	<b>Total number of children the parent is legally obligated to support</b> <i>(includes children being supported by court order)</i>					
	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
<b>1</b>	<b>12.5%</b>	<b>9.5%</b>	<b>8.0%</b>	<b>7.0%</b>	<b>5.5%</b>	<b>5.0%</b>
<b>2</b>		<b>19.0%</b>	<b>15.5%</b>	<b>13.5%</b>	<b>11.5%</b>	<b>9.5%</b>
<b>3</b>			<b>23.0%</b>	<b>20.5%</b>	<b>17.0%</b>	<b>14.5%</b>
<b>4</b>				<b>27.0%</b>	<b>22.5%</b>	<b>19.5%</b>
<b>5</b>					<b>28.0%</b>	<b>24.0%</b>
<b>6</b>						<b>29.0%</b>

**E. ADJUSTED GROSS INCOME**

Adjusted gross income is gross income minus the adjustments provided in Section II(B) of these guidelines. The adjusted gross income for each parent shall be established.

**F. PARENTING TIME AND OTHER COSTS ADJUSTMENTS**

Parenting time is considered in calculating the support order. The amount of parenting time shall be entered into the guideline worksheet. For purposes of calculating parenting time days, only the time spent by a child with the noncustodial parent is considered from initiation through termination of each block of parenting time. Time that the child is in school or childcare is not considered.

First determine the total annual amount of parenting time indicated in a court order or parenting plan or by the expectation or historical practice of the parents. Using the following definitions, add together each block of parenting time to arrive at the total number of parenting time days per year. Calculate the number of parenting time days arising from any block of time the child spends with the noncustodial parent in the following manner:

1. Each block of time begins and ends when the noncustodial parent receives or returns the child from the custodial parent or from a third party with whom the custodial parent left the child. Third party includes, for example, a school or childcare provider.
2. Count one day of parenting time for each 24 hours within any block of time.
3. To the extent there is a period of less than 24 hours remaining in the block of time, after all 24-hour days are counted or for any block of time that is in total less than 24 hours in duration:
  - a. A period of 12 hours or more counts as one day.
  - b. A period of 6 to 11 hours counts as a half-day.
  - c. A period of 3 to 5 hours counts as a quarter-day.
  - d. Periods of less than 3 hours may count as a quarter-day if, during those hours, the noncustodial parent pays for routine expenses of the child, such as meals.

**EXAMPLE ONE:**

Noncustodial parent receives the child at 9:00 pm on Thursday evening and brings the child to school at 8:00 am on Monday morning, from which custodial parent picks up the child at 3:00 pm on Monday.

- a. 9:00 p.m. Thursday to 9:00 p.m. Sunday is 3 days.
- b. 9:00 p.m. Sunday to 8:00 a.m. Monday is 11 hours, which equals a half day.
- c. Total is 3 ½ days.

**EXAMPLE TWO:**

Noncustodial parent picks the child up from school at 3:00 p.m. Friday and returns the child to school at 8:00 a.m. on Monday.

- a. 3:00 p.m. Friday to 3:00 p.m. Sunday is 2 days.
- b. 3:00 p.m. Sunday to 8:00 a.m. Monday is 17 hours, which equals 1 day.
- c. Total is 3 days.

**EXAMPLE THREE:**

Noncustodial parent picks up child from soccer at noon on Saturday, and returns the child to custodial parent at 9:00 p.m. on Sunday.

- a. Noon Saturday to noon Sunday is 1 day.
- b. Noon Sunday to 9:00 p.m. Sunday is 9 hours, which equals ½ day.
- c. Total is 1 ½ days.

**G. PRELIMINARY SUPPORT OBLIGATION**

The preliminary support obligation is the support amount determined by the calculator when only each parent's adjusted gross income, the number of children subject to the support order, and the number of parenting days, have been entered.

**H. WHEN A PARENT'S INCOME IS MORE THAN \$12,000 MONTHLY**

1. OBLIGOR INCOME ONLY IS OVER \$12,000 MONTHLY

The calculator incorporated into the guidelines does not accept adjusted gross incomes in excess of \$12,000 a month for each parent. When the adjusted gross income per month for the support obligor (Parent A) exceeds \$12,000, and the adjusted gross income of the parent receiving support (Parent B) does not, then the preliminary support amount is determined as follows;

a. **Step 1.**

Determine the preliminary support amount that would apply if Parent A's adjusted gross monthly income were \$12,000.

b. **Step 2.**

Add to the preliminary support amount determined in Step 1 an additional sum that is determined by calculating an appropriate percentage of the portion of Parent A's adjusted gross monthly income that exceeds \$12,000 but is not more than \$30,000. The appropriate percentage shall set by the court from within the range indicated below, taking into consideration the factors set forth in A.R.S. § 25-320(D), including the allocation of parenting time, and the disparity in parental incomes:

At least 5%, but not more than 10%, if there is one child

At least 7%, but not more than 15%, if there are two children

At least 9%, but not more than 17%, if there are three children

At least 10%, but not more than 19%, if there are four or more children.

c. The preliminary support amount is the sum arrived at by applying Steps 1 and 2.

**EXAMPLE:**

Parent A's adjusted gross monthly income is \$25,000.00 per month; Parent B's adjusted gross monthly income is \$2,000.00 per month; Parent A has 100 days of parenting time per year. There is one child.

a. **Step 1**

The calculator returns a preliminary support amount of \$2,076, assuming Parent A earned \$12,000 per month rather than \$25,000 per month.

b. **Step 2**

Assume the court chooses 9% as the appropriate percentage in this case. Nine percent of Parent A's income in excess of \$12,000 is  $.09 \times \$13,000$ , or \$1,170.

c. The preliminary support amount is \$2,076 plus \$1,100, or \$3,176.

2. **OBLIGOR INCOME OVER \$30,000 MONTHLY**

If Parent A's monthly gross income exceeds \$30,000.00 per month, and the Parent B's monthly gross income is \$12,000 a month or less, the Preliminary Support Amount shall be calculated as if Parent A's gross income were \$30,000 monthly, unless Parent B meets the burden of establishing that a higher amount is appropriate after consideration of the factors set forth in § 25-320(D).

3. **OBLIGEE INCOME OVER \$12,000 MONTHLY**

If the adjusted gross monthly income of the parent with the greater parenting time exceeds \$12,000 monthly, the court shall set an appropriate child support order taking into consideration the factors set forth in A.R.S. § 25-320(D), including the allocation of parenting time, and the disparity in parental incomes. In setting this order, the court may consult the advisory calculator, which provides suggested preliminary support amounts for cases in which parental incomes are between \$12,000 and \$20,000 monthly. The support amounts suggested by the advisory calculator are not presumptions, and it is not a deviation from these guidelines for the court to set the support order at an amount different from that which is suggested by the advisory calculator.

**I. WHEN THERE ARE MORE THAN FOUR CHILDREN**

The calculator incorporated in these guidelines gives support amounts for up to four children. When five or more children are the subject of the support order, the court may increase the amount if it finds that a higher amount is appropriate, after consideration of the factors set forth in A.R.S. § 25-320(D).

**J. ADDITIONS TO SUPPORT**

1. **CHILDCARE COSTS**

Childcare costs appropriate to the parents' financial abilities may be added to the preliminary child support amount. Average monthly expenses for childcare should be calculated in accordance with Section I(B)(5) and shared between the parties in proportion to income.

2. **EDUCATION EXPENSES**

Any reasonable and necessary expenses for attending private or special schools or necessary expenses to meet particular educational needs of a child, when such expenses are incurred by agreement of both parents or ordered by the court. The total expense of the private or special school shall be shared by the parties in proportion to their incomes used to calculate child support or in such other proportion as the court deems appropriate under the facts of the case.

3. EXTRAORDINARY CHILD

These guidelines are designed to fit the needs of most children. The court may increase adjust the child support obligation to provide for the special needs of gifted or handicapped children.

4. MEDICAL SUPPORT

To determine the total child support obligation, the court:

Shall add to the preliminary support amount the cost of the children's medical, dental and/or vision insurance coverage, if any (this provision does not imply any obligation of either parent to provide dental or vision insurance). In determining the amount to be added, only the amount of the insurance cost attributable to the children subject of the child support order shall be included. If coverage is applicable to other persons, the total cost shall be prorated by the number of persons covered. The court may decline to credit a parent for medical, dental and/or vision insurance coverage obtained for the children if the coverage is not valid in the geographic region where the children reside. Amounts paid for cash medical support pursuant to A.R.S. §25-320(K) and/or (L), shall not be added to the preliminary support amount.

**EXAMPLE:**

Through an employment-related insurance plan, a parent provides medical insurance that covers the parent, one child who is the subject of the child support case and two other children. Under the plan, the cost of an employee's individual insurance coverage would be \$50. This parent instead pays a total of \$170 for the "family option" that provides coverage for the employee and any number of dependents. Calculate the adjustment for medical insurance as follows: Subtract the \$50 cost of individual coverage from the \$170 paid for the "family option" to find the cost of dependent coverage. The \$120 remainder then is divided by three -- the number of covered dependents. The resulting \$40 is added to the preliminary support amount as the cost of medical insurance coverage for the one child.

An order for child support shall assign responsibility for providing medical insurance for the children who are the subject of the child support order. Cash medical support shall be established pursuant to statute if the court finds that neither parent can obtain medical insurance that is accessible and available at a reasonable cost.

The court shall also specify the percentage that each parent shall pay, in excess of cash medical support, for any medical, dental and/or vision costs of the children that are not covered by insurance. For purposes of this paragraph, non-covered

"medical" means medically necessary medical, dental and/or vision care as defined by Internal Revenue Service Publication 502.

Except for good cause shown, any request for payment or reimbursement of uninsured medical, dental and/or vision costs must be provided to the other parent within 180 days after the date the services occur. The parent responsible for payment or reimbursement must pay his or her share, as ordered by the court, or make acceptable payment arrangements with the provider or person entitled to reimbursement within 45 days after receipt of the request.

Both parents should use their best efforts to obtain services that are covered by the insurance. A parent who is entitled to receive reimbursement from the other parent for medical costs not covered by insurance shall, upon request of the other parent, provide receipts or other evidence of payments actually made.

**K. GUIDELINE SUPPORT AMOUNT**

The court shall order a parent to pay child support in the amount determined by the calculator.

**L. SELF SUPPORT RESERVE**

The guideline calculator is set up to protect a minimum subsistence level for those parents obligated to pay child support whose gross monthly income is less than \$903 per month.

**M. TRAVEL EXPENSES**

The court may allocate parenting time travel expenses where one-way travel exceeds 100 miles. The court shall consider the means of the parents and may consider how their conduct (such as change of residence) has affected the costs. A party who is entitled to travel reimbursement shall, provide evidence of expenses actually paid, if requested by the other party. The amount of child support may be altered to reflect the travel related expenses.

### III. Guideline Support Order

**A. COURT'S FINDINGS**

The court shall make findings in the record as to: gross income, adjusted gross income, preliminary support obligation, and final support obligation. The findings may be made by incorporating a worksheet containing this information into the file. The child support order shall be a sum certain and shall start on a date certain. Absent good cause, the start date shall be the first day of a month. A new child support order shall be filed upon any change in the amount or due date of the child support obligation.

**B. EXCHANGE OF INFORMATION**

The court shall order that every twenty four months, financial information such as tax returns, financial affidavits, and earning statements be exchanged between the parties.

Unless the court has ordered otherwise, at the time the parties exchange financial information, they shall also exchange residential addresses and the names and addresses of their employers.

**C. GIFTS IN LIEU OF MONEY**

Once child support has been ordered by the court, the child support is to be paid in money. Gifts of clothing, etc., in lieu of money are not to be offset against the child support order except by court order.

**D. DEPENDENCY EXEMPTION**

In any case in which the current child support obligation is at least \$1,200 per year, there shall be an allocation of the federal tax exemptions applicable to the minor children which as closely as possible approximates the percentages of child support being provided by each of the parents. If it is determined that a party who is otherwise entitled to the dependency exemption based upon the above percentages will not derive a tax benefit from claiming the dependency exemption, the exemption should be allocated to the other party.

**EXAMPLE:**

Parent A's percentage of gross income is approximately 67% and parent B's percentage is approximately 33%. All payments are current. If there are three children, parent A would be entitled to claim two children and parent B would claim one child. If there is only one child, parent A would be entitled to claim the child two out of every three years, and parent B would claim the child one out of every three years.

The parent ordered to pay child support is entitled to the tax exemption for the year if both of the following are true:

1. The monthly court-ordered child support is current as of December 31 of the tax year at issue; and,
2. Any court-ordered arrearage payments due during that calendar year for which the exemption is to be claimed are current.

To be considered current the child support and arrearage payments due by December 31 of that tax year must be received by the Clearinghouse by January 15 of the next tax year. If the paying parent is current on all the court-ordered child support obligations, the other parent shall execute the necessary IRS documents to allow the paying parent to claim the exemption. If the paying parent has failed to make these payments, the other parent shall be entitled to the tax deduction for that year.

While enforceable as child support, any unpaid contributions to medical expenses or extra-curricular expenses, do not affect the entitlement to the deduction unless reduced to a judgment and due by a date certain during that tax year.

Parties may agree to resolve the federal tax exemption in a way other than described above. Such agreement must be approved by the court.

## IV. Special Circumstances

### A. DEVIATION

#### 1. BY COURT

The court may order support which is a deviation from the guidelines after considering all relevant factors, including those set forth in A.R.S. §25-320, and applicable case law, if all of the following criteria are met:

- a. Application of the guidelines is inappropriate or unjust in the particular case,
- b. The court has considered the best interests of the child(ren) in determining the amount of a deviation. A deviation that reduces the amount of child support paid is not, by itself, contrary to the best interests of the child(ren),
- c. The court makes written findings in the child support order, minute entry or child support worksheet regarding (a.) and (b.) above, the guidelines support amount and the amount after the deviation.

#### 2. BY AGREEMENT

The court may deviate from the guidelines based upon an agreement of the parties only if all of the following criteria are met:

- a. The agreement is in writing or stated on the record pursuant to Rule 69, *ARFLP*.
- b. All parties have entered into the agreement with knowledge of the guidelines child support amount.
- c. All parties have entered into the agreement free of duress and coercion.
- d. The court complies with the requirements of Section IV(A)(1).

3. IT IS NOT A DEVIATION WHEN THE COURT:

- a. Enters a zero order when the guidelines amount would be insignificant; or
- b. Rounds off the calculated child support amount to the nearest ten dollars.

Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common, as provided in A.R.S. §25-320(D)(7), may provide a basis for deviation.

**B. MULTIPLE CHILDREN, DIVIDED PHYSICAL CUSTODY**

When each parent is granted physical custody of at least one of the parties' children, each parent is obligated to contribute to the support of all the children. In that circumstance, separate child support calculations should be performed for the child or children in each parent's home. The amount of the resulting child support to be paid by the parent having the greater child support obligation shall be reduced by the amount of child support owed to that parent by the other parent.

**EXAMPLE:**

(For simplicity, this example does not consider parenting time.) Father's gross income is \$2,000 per month and he has primary care of one child. Mother's gross income is \$4,000 per month and she has primary care of two children. Prepare a parent's worksheet to determine child support for the one child in father's household. In a separate parent's worksheet determine child support for the two children in mother's home. Mother is obligated to pay \$787 for child support for the one child. This amount is reduced by the \$311 obligation owed by father to mother for the two children. Thus, the mother shall pay \$476 per month.

**C. MULTIPLE CHILDREN, VARYING PARENTING TIME SCHEDULE**

When there are multiple children who are under a different parenting time schedule from one another, the parenting time adjustment cannot be determined with the same precision as when the children are under the same schedule. In that circumstance, two separate calculations should be performed. The first should be based upon the assumption that all of the children are under the lesser parenting time schedule. The second calculation should be based upon the assumption that all of the children are under the greater parenting time schedule. The two resulting child support amounts shall represent the range of the support obligation between the two parenting time schedules. Based upon the

particular circumstances of the case, the child support award may be any amount that falls within the range of the two calculated figures.

**EXAMPLE:**

Father's gross income is \$4,000 and mother's gross income is \$4,000. The parties have three children, all of whom reside primarily with mother. One of the children has 50 days of parenting time with father and the other two children have 150 days of parenting time with father. Calculate the child support obligation for all three children assuming that they are each under the 50 day parenting time schedule. This results in a monthly obligation owed by father of \$796. Then calculate the child support obligation for all three children under the 150 day parenting time schedule. This results in a monthly obligation owed by father of \$479. The two resulting figures of \$796 and \$479 provide the range for the child support award. It is within the guideline result to utilize any appropriate amount that falls within this range.

**D. THIRD-PARTY CAREGIVERS**

When a child lives with a third-party caregiver by virtue of a court order, administrative placement by a state agency or under color of authority, the third-party caregiver may be entitled to receive child support payments from each parent on behalf of the child.

**E. SUPPORT ASSIGNED TO THE STATE**

If child support and/or cash medical support has/have been assigned to the state under A.R.S. §46-407 and/or A.R.S. §25-320(K)(1), the obligation of a parent to pay child support and/or cash medical support shall not be offset by child support arrearages that may be owed to that parent. Child support and/or cash medical support assigned to the state may not be waived or forgiven by the custodial parent.

**F. INCOME AND BENEFITS**

1. **INCOME OF A CHILD**

Income earned or money received by a child from any source other than court ordered child support shall not be counted toward either parent's child support obligation except as described below.

2. **BENEFITS RECEIVED ON BEHALF OF A CHILD**

Benefits, such as Social Security Disability (SSDI) or other insurance, received by a custodial parent on behalf of a child, as a result of contributions made by the parent paying child support shall be credited as follows:

- a. If the amount of the child's benefit for a given month is equal to or greater than the paying parent's child support obligation, then that parent's obligation is satisfied.
  - b. Any benefit received by the child for a given month in excess of the child support obligation shall not be treated as an arrearage payment nor as a credit toward future child support payments.
  - c. If the amount of the child's benefit for a given month is less than the parent's child support obligation, the parent shall pay the difference.
3. **BENEFITS NOT INCLUDED IN PARENT'S INCOME**  
Benefits received by either parent on behalf of a child are not included as gross income pursuant to Section II(C)(2).
  4. **DISABLED ADULT CHILD**  
Pursuant to A.R.S. §25-320(E) and A.R.S. §25-809(F), the court may order support to continue past the age of majority for a disabled child if the child is severely mentally or physically disabled as demonstrated by the fact that the child is unable to live independently and be self-supporting. In such a case, the court may take into account income earned or money received by or on behalf of the disabled adult child against any child support obligation.

**G. ARREARS**

1. When setting an amount for a payment on arrears, the court shall balance all relevant considerations including the total amount of arrears, the accruing interest, the time it will take the obligor to pay these amounts, the obligee's financial circumstances and the obligor's reasonable ability to pay. The court shall not set the payment on arrears at an amount less than the accruing monthly interest unless there are compelling circumstances justifying a lower payment, and the court makes a finding explaining why the amount is justified.
2. When a current child support obligation terminates, the court shall consider the amount of the monthly child support obligation at the time of termination as evidence of the amount the obligor has the ability to pay monthly towards arrears.
3. The court may modify the amount of the payment on arrears upon a showing of substantial and continuing changed circumstances.

## V. Modification and Termination Of Support

### A. DURATION OF CHILD SUPPORT

Duration of child support is governed by A.R.S. §25-320 and A.R.S. §25-501. Child support shall continue until a child reaches the age of majority unless that child is attending high school or a certified high school equivalency program at the time that the child turns 18. In that case, child support shall continue so long as the child is actually attending high school or the equivalency program but only until the child reaches 19 years of age. In some circumstances, child support may continue after a child's 19<sup>th</sup> birthday but only if the child is severely mentally or physically disabled as demonstrated by the fact that the child is unable to live independently and be self-supporting.

The child support obligation terminates on the last day of the month of the 18<sup>th</sup> birthday of the youngest child included in the order unless the youngest child will not complete high school by age 18. In that event, the termination date shall be the last day of the month in which the child graduates from high school or turns age 19, whichever occurs first. **HOWEVER, THE WAGE ASSIGNMENT MAY NOT STOP AUTOMATICALLY. IN THAT EVENT A MOTION TO STOP THE WAGE ASSIGNMENT MAY BE NECESSARY.**

### B. MODIFICATION

#### 1. PROCESS FOR MODIFICATION

Child support orders can only be modified by court order. An order to modify child support can be obtained through any of the following procedures:

#### a. STANDARD PROCEDURE

Pursuant to A.R.S. §25-327 and §25- 503, either parent or the state Title IV-D agency may ask the court to modify a child support order upon a showing of a substantial and continuing change of circumstances.

b. SIMPLIFIED PROCEDURE

Either parent or the state Title IV-D agency may request the court to modify a child support order if application of the guidelines results in an order that varies 15% or more from the existing amount. A 15% variation in the amount of the order will be considered evidence of substantial and continuing change of circumstances. A request for modification of the child support amount must be accompanied by the following documents: a completed and sworn "Parent's Worksheet For Child Support Amount," and "Affidavit of Financial Information" documentation supporting the incomes if different from the court's most recent findings regarding income of the parents (including without limit, copies of the last three years' tax returns filed by or on behalf of the applicant and/or any entity in which the applicant has an interest and the last six pay roll stubs for the applicant); the last child support order entered by the Court; evidence of whether the applicant, if the child support obligor, has paid child support for the past 12 months; and evidence of every category of adjustment within the child support worksheet (i.e., insurance expense, education expense, etc.). If the applicant is unable to provide documentation regarding the other parent's income, the requesting party shall indicate that the income amount for that parent is attributed and/or estimated and shall set forth the basis relied upon to include that income figure. The state Title IV-D agency may submit a parent's worksheet.

The simplified procedure shall not be applicable to any self-employed parties where said self-employment is a significant source of income absent the agreement of both parents. In the event a self-employed parent files a simplified modification action, the other parent shall either file a request for hearing as provided for herein, or an objection to simplified process. In the event the objection is filed, the matter shall be heard under the standard procedure.

The simplified procedure shall not be applicable to any party represented by a lawyer absent the agreement of the represented party. In the event a parent who files a simplified modification action is represented by counsel, that party is presumed to have consented to the simplified modification process. If the applicant retains counsel following the initiation of the simplified modification action and no request for hearing has been filed, the applicant may, through counsel, opt out of the simplified modification process. The other parent, if represented by counsel, and if he or she opposes proceeding by simplified process shall file an objection to simplified process within the time allowed to file a request for hearing as provided herein. In the event an objection is filed, the matter shall be heard under the standard procedure.

A copy of the request for modification of child support and the "Parent's Worksheet For Child Support Amount," including supporting documentation, showing that the proposed child support amount would vary 15% or more from the existing child support order shall be served on the other parent, or on both parents if filed by the state Title IV-D agency, pursuant to Rule 27, *ARFLP*.

If the requested modification is disputed, the parent disputing the modification must request a hearing within 20 days of service. If service is made outside the state, as provided in Rule 42, *ARFLP* the parent receiving service must request a hearing within 30 days of service.

A party requesting a hearing shall file a written request for hearing accompanied by a completed and sworn "Parent's Worksheet for Child Support Amount." Copies of the documents filed, together with the notice of hearing, shall be served on the other party and, if appropriate, the state Title IV-D agency by first class mail not less than ten judicial days prior to the hearing.

Upon proof of service and if no hearing is requested within the time allowed, the court will review the request and enter an appropriate order or set the matter for hearing.

If any party requests a hearing within the time allowed, the court shall conduct such hearing. No order shall be modified without a hearing if one is requested.

The notice provision of Rule 44 *ARFLP*, does not apply to this simplified modification procedure.

A request to modify child support, request for a hearing and notice of hearing, "parent's worksheet for child support amount" and child support order filed or served pursuant to this subsection must be made using forms approved by the Arizona Supreme Court or substantially similar forms.

Approved forms are available from the clerk of the superior court.

c. **BY AGREEMENT**

The parties may agree to modify a child support order. To become effective, the agreement must be in writing, signed by all parties, filed with the clerk of court, and approved by the court. If the agreed upon amount is different from the amount calculated under the guidelines, it must be explained as required by Section IV(A) above.

## 2. LIMITATIONS

### a. EFFECT OF EMANCIPATION

If child support is ordered for more than one child, the amount of child support does not automatically change if one of the children graduates from high school, reaches the age of majority, or is otherwise emancipated. To obtain a modification of the child support order, a request, petition or agreement must be made in writing to the court to recalculate the child support obligation pursuant to these guidelines.

### b. TERMINATION OF SUPPORT

Arizona law provides that a child support order terminates when the child or children have graduated from high school, reached the age of majority, or are otherwise emancipated.

Upon entry of an initial or modified child support order, the court shall, or in any subsequent action relating to the child support order, the court may, establish a presumptive date for the termination of the current child support obligation. The presumptive termination date shall be the last day of the month of the 18<sup>th</sup> birthday of the youngest child included in the order unless the court finds that it is projected that the youngest child will not complete high school by age 18. In that event, the presumptive termination date shall be the last day of the month of the anticipated graduation date or age 19, whichever occurs first. The administrative income withholding order issued by the department or its agent in Title IV-D cases and an order of assignment issued by the court shall include the presumptive termination date. The presumptive date may be modified upon changed circumstances. An employer or other payor of funds honoring an order of assignment or an administrative income withholding order that includes the presumptive termination date and is for current child support only, shall discontinue withholding monies after the last pay period of the month of the presumptive termination date. If the order of assignment or administrative income withholding order includes current child support and arrearage payment, notwithstanding the presumptive termination date, the employer or other payor of funds shall continue withholding the entire amount listed on the order of assignment or administrative income withholding order until further order. For purposes of determining the presumptive termination date, it is further presumed:

- i. That a child not yet in school will enter 1<sup>st</sup> grade if the child reaches age 6 on or before September 1 of the year in which the child reaches age 6; otherwise, it is presumed that the child will enter 1<sup>st</sup> grade the following year; and,

- ii. That a child will graduate in the month of May after completing the 12<sup>th</sup> grade.

Even if your child support obligation has stopped, any order of assignment may not terminate. If your order of assignment does not stop, you must go to court to get a specific order stopping the wage assignment. In a Title IV-D case, you may stop the wage assignment by contacting the IV-D agency.

- c. **RETROACTIVE MODIFICATION**

Arizona law limits retroactive modification of child support. If there is a substantial and continuing change in circumstances that a party believes would warrant modification of the child support order, the party is required to file for the necessary relief from the court.

- d. **RELIEF FROM A CHILD SUPPORT JUDGMENT**

In certain cases relief from a child support judgment may be available as provided in Rule 85(C), *ARFLP*.

- e. **GROUND FOR MODIFICATION**

A substantial variance between an existing child support order and an amount resulting from application of the most recently enacted guidelines may be considered evidence of a substantial and continuing change of circumstances for purposes of a modification. A variance of at least 15% would be evidence of a substantial and continuing change of circumstances.

The court may, in its discretion, order the modified child support be implemented over a period of not greater than eighteen (18) months and not more than three (3) graduated steps when the substantial and continuing basis for the modified child support order is the enactment of new child support guidelines and if the order modifying child support results in an increase in child support of 25% or more. This implementation shall not be considered a deviation.