

**§125B.070. Amount of payment: Definitions; adjustment of presumptive maximum amount based on change in Consumer Price Index.**

1. As used in this section and NRS [125B.080](#), unless the context otherwise requires:

(a) "Gross monthly income" means the total amount of income received each month from any source of a person who is not self-employed or the gross income from any source of a self-employed person, after deduction of all legitimate business expenses, but without deduction for personal income taxes, contributions for retirement benefits, contributions to a pension or for any other personal expenses.

(b) "Obligation for support" means the sum certain dollar amount determined according to the following schedule:

(1) For one child, 18 percent;

(2) For two children, 25 percent;

(3) For three children, 29 percent;

(4) For four children, 31 percent; and

(5) For each additional child, an additional 2 percent, of a parent's gross monthly income, but not more than the presumptive maximum amount per month per child set forth for the parent in subsection 2 for an obligation for support determined pursuant to subparagraphs (1) to (4), inclusive, unless the court sets forth findings of fact as to the basis for a different amount pursuant to subsection 6 of NRS 125B.080.

2. For the purposes of paragraph (b) of subsection 1, the presumptive maximum amount per month per child for an obligation for support, as adjusted pursuant to subsection 3, is:

**INCOME RANGE PRESUMPTIVE MAXIMUM AMOUNT**

The Presumptive Maximum Amount the Parent May Be Required To Pay If the Parent's Gross But Less Per Month Per Child Pursuant to Monthly Income is At Least Than Paragraph (b) of Subsection 1 is:

\$0 to \$4,168	\$508
4,168 to 6,251	559
6,251 to 8,334	610
8,334 to 10,418	660
10,418 to 12,501	711
12,501 to 14,583	762

If a parent's gross monthly income is equal to or greater than \$14,583, the presumptive maximum amount the parent may be required to pay pursuant to paragraph (b) of subsection 1 is \$813. [adjusted for fiscal year 2003]

3. The amounts set forth in subsection 2 for each income range and the corresponding amount of the obligation for support must be adjusted on July 1 of each year for the fiscal year beginning that day and ending June 30 in a rounded dollar amount corresponding to the percentage of increase or

decrease in the Consumer Price Index (All Items) published by the United States Department of Labor for the preceding calendar year. On April 1 of each year, the office of court administrator shall determine the amount of the increase or decrease required by this subsection, establish the adjusted amounts to take effect on July 1 of that year and notify each district court of the adjusted amounts.

4. As used in this section, "office of court administrator" means the office of court administrator created pursuant to NRS [1.320](#).

## History

(1987, ch. 813, § 2, p. 2267; 1991, ch. 448, § 1, p. 1334; 2001, ch. 386, § 1, p. 1865.)

## Annotations

**Effective date.** - Acts 2001, ch. 386, § 3, provides: "This act becomes effective on April 1, 2002, for the purpose of allowing the office of court administrator to adjust the presumptive maximum amount per month per child for an obligation for support pursuant to subsection 3 of NRS [125B.070](#), as amended by this act, and on July 1, 2002, for all other purposes."

**Effect of Amendment.** - The 2001 amendment, in subdivision 1(a), substituted "income received each month from any source of a person who is not self-employed" for "income from any source of a wage-earning employee"; in subdivision 1(b), inserted "sum certain dollar"; in subdivision 1(b)(5), substituted "the presumptive maximum amount per month per child set for the parent in subsection 2" for "\$500 per month per child"; rewrote subsection 2, adding the table; and added subsections 3 and 4.

### CASE NOTES

**Overtime should be included** as part of income calculation if it is substantial and can be determined accurately. *Scott v. Scott*, [107 Nev. 837, 822 P.2d 654](#) (1991).

**Application of child support formula is the rule.** - Because of the presumptive nature of the formula, application of the formula must be the rule, and deviation from the formula for the benefit of the secondary custodian must be the exception, and the secondary custodian has the burden of showing any unfairness that might result from that custodian's having to pay the full formula amount. *Barbagallo v. Barbagallo*, [105 Nev. 546, 779 P.2d 532](#) (1989).

A district court has limited discretion to deviate from child support guidelines provided by this section, and any such deviation must be based upon the statutory factors provided under NRS [125B.080](#) 9. *Anastassatos v. Anastassatos*, [112 Nev. 317, 913 P.2d 652](#) (1996).

**Deviation must be supported by written findings.** - Where either an increase or reduction in the formula amount is ordered, the deviation from the formula should be supported by written findings of fact and a statement of reasons. *Barbagallo v. Barbagallo*, [105 Nev. 546, 779 P.2d 532](#) (1989).

The compelling force of the statutory guidelines is of such a magnitude that in the event of a deviation from the statutory formula by a district court, the justification for the nonconformity must be specified in written findings of fact. *Anastassatos v. Anastassatos*, [112 Nev. 317, 913 P.2d 652](#) (1996).

The terms of the district court's order did not adequately support a deviation from the statutory formula, and the district court's failure to set forth findings of fact as to the basis for the deviation constituted reversible error. *Anastassatos v. Anastassatos*, [112 Nev. 317, 913 P.2d 652](#) (1996).

District court did not abuse its discretion in departing from the statutory child support formula and increasing child support based on the vast differences in the parties' financial resources and the increased expenses of a teenager. *Love v. Love*, [114 Nev. 572, 959 P.2d 523](#) (1998).

**The support guidelines intentionally depart from traditional practice** in which courts exercised broad discretion in determining child support awards. *Westgate v. Westgate*, [110 Nev. 1377, 887 P.2d 737](#) (1994).

**Award in excess of statutory amount may be based on factor other than need.** - There is nothing in this section or NRS [125B.080](#) to preclude the district court from awarding an additional amount of child support based on some factor other than increased need. *Herz v. Gabler-Herz*, [107 Nev. 117, 808 P.2d 1](#) (1991).

**Child support formula applicable in joint and shared custody cases.** - The child support formula mandated by NRS 125B.080 and subdivision 1(b) does apply in joint and shared custody cases. *Barbagallo v. Barbagallo*, 105 Nev. 546, 779 P.2d 532 (1989).

**Reduction of child support formula amounts.** - Because of the probable increases in overall expenses in joint physical custody cases and because of the danger inherent in reducing child support payments made to a primary custodian, the courts should exercise considerable caution before reducing the formula amounts. *Barbagallo v. Barbagallo*, [105 Nev. 546, 779 P.2d 532](#) (1989).

**The secondary custodian must pay to the primary custodian the full formula amount** unless the secondary custodian sustains the burden of showing that substantial injustice would result in requiring him or her to pay the full formula amount. *Barbagallo v. Barbagallo*, [105 Nev. 546, 779 P.2d 532](#) (1989).

**There is no power in the courts to devise a new formula** based on the number of children who happen to have been born to the paying parent at the time application of the statutory formula is sought by the receiving parent. *Hoover v. Hoover*, [106 Nev. 388, 793 P.2d 1329](#) (1990).

**Income of father is discoverable** in support action. *Chambers ex rel. Cochran v. Sanderson*, [107 Nev. 846, 822 P.2d 657](#) (1991).

**"Self-employed person"** refers to the parent, as this section concerns the parent's "gross monthly income." *Rodgers v. Rodgers*, [110 Nev. 1370, 887 P.2d 269](#) (1994).

**"Gross monthly income"** must be limited to the parent's income from employment. *Rodgers v. Rodgers*, [110 Nev. 1370, 887 P.2d 269](#) (1994).

The statutory definition of "gross monthly income" does not include a parent's community property interest in a new spouse's earnings. *Rodgers v. Rodgers*, [110 Nev. 1370, 887 P.2d 269](#) (1994).

**Jurisdiction.** - By filing the motion for relief, the wife's intent was to seek review and modification of the child support award to comply with the statutory formula set forth in this section. Therefore, the district court had jurisdiction to hear the wife's motion pursuant to NRS [125B.145](#) 1(b) regardless

of the wife's inaccurate citation to NRCP [60\(b\)](#). Jackson v. Jackson, [111 Nev. 1551, 907 P.2d 990](#) (1995).

**Social security disability benefits.** - The excess of the amount paid in social security disability benefits over the amount owed as child support may be credited towards child support arrearages, with certain limitations. Hern v. Erhardt, [113 Nev. 1330, 948 P.2d 1195](#) (1997).

The excess of social security disability benefits may not be applied to compensate for child support arrearages which accrued prior to the onset of the disability or after its termination. Hern v. Erhardt, [113 Nev. 1330, 948 P.2d 1195](#) (1997).

The critical time period with respect to applying social security disability benefits as a credit against child support arrearages is when the parent under a support obligation becomes disabled, not when the dependent child begins receiving social security disability benefits. The parent under the support obligation is entitled to a credit against an arrearage which arises after the parent becomes disabled and because of a lapse in time between the onset of the disability and the date on which social security benefits are paid for the child. Hern v. Erhardt, [113 Nev. 1330, 948 P.2d 1195](#) (1997).

**Cited in:** Perri v. Gubler, [105 Nev. 687, 782 P.2d 1312](#) (1989); Lewis v. Hicks, [108 Nev. 1107, 843 P.2d 828](#) (1992)

**NRS 125B.080:**

1. A court shall apply the appropriate formula set forth in subsection 2 of NRS 125B.070 to:

(a) Determine the required support in any contested case involving the support of children.

(b) Regarding any request filed after July 1, 1987, change the amount of the required support of children.

2. If the parties agree as to the amount of support required, the parties shall certify that the amount of support is consistent with the appropriate formula set forth in paragraph (b) of subsection 1 of NRS 125B.070. If the amount of support deviates from the formula, the parties must stipulate sufficient facts in accordance with subsection 9 which justify the deviation to the court, and the court shall make a written finding thereon. Any inaccuracy or falsification of financial information which results in an inappropriate award of support is grounds for a motion to modify or adjust the award.

3. If the parties disagree as to the amount of the gross monthly income of either party, the court shall determine the amount and may direct either party to furnish financial information or other records, including income tax returns for the preceding 3 years. Once a court has established an obligation for support by reference to a formula set forth in paragraph (b) of subsection 1 of NRS 125B.070, any subsequent modification or adjustment of that support must be based upon changed circumstances or as a result of a review conducted pursuant to NRS 125B.145.

4. Notwithstanding the formulas set forth in paragraph (b) of subsection 1 of NRS 125B.070, the minimum amount of support that may be awarded by a court in any case is \$100.00 per month per child, unless the court makes a written finding that the obligor is unable to pay the

minimum amount. Willful underemployment or unemployment is not a sufficient cause to deviate from the awarding of at least the minimum amount.

5. It is presumed that the basic needs of a child are met by the formulas set forth in paragraph (b) of subsection 1 of NRS 125B.070. This presumption may be rebutted by evidence proving that the needs of a particular child are not met by the applicable formula.

6. If the amount of the awarded support of a child is greater or less than the amount which would be established under the applicable formula, the court shall:

(a) Set forth findings of fact as to the basis for the deviation from the formula; and

(b) Provide in the findings of fact the amount of support that would have been established under the applicable formula.

7. Expenses for health care which are not reimbursed, including expenses for medical, surgical, dental, orthodontic and optical expenses, must be borne equally by both parents in the absence of extraordinary circumstances.

8. If a parent who has an obligation for support is willfully underemployed or unemployed, to avoid an obligation for support of a child, that obligation must be based upon the parent's true potential earning capacity.

9. The court shall consider the following factors when adjusting the amount of support of a child upon specific findings of fact:

(a) The cost of health insurance;

(b) The cost of child care;

(c) Any special educational needs of the child;

(d) The age of the child;

(e) The responsibility of the parents for the support of others;

(f) The value of services contributed by either parent;

(g) Any public assistance paid to support the child;

(h) Any expenses reasonably related to the mother's pregnancy and confinement;

(i) The costs of transportation of the child to and from visitation if the custodial parent moved with the child from the jurisdiction of the court which ordered the support and the noncustodial parent remained;

(j) The amount of time the child spends with each parent;

(k) Any other necessary expenses for the benefit of the child; and

(l) The relative income of both parents.