

**CHILD SUPPORT FOR ADULT CHILDREN**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: John E. Swallow**

AN ACT RELATING TO JUDICIAL CODE; PROVIDING DEFINITIONS; AMENDING CHILD SUPPORT PROVISIONS TO INCLUDE SUPPORT FOR ADULT INCAPACITATED CHILDREN; AND MAKING CLARIFYING AND TECHNICAL AMENDMENTS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**78-45-2**, as last amended by Chapter 232, Laws of Utah 1997

**78-45-7**, as last amended by Chapter 232, Laws of Utah 1997

**78-45-7.5**, as last amended by Chapters 29, 174 and 375, Laws of Utah 1997

**78-45-7.7**, as last amended by Chapter 118, Laws of Utah 1994

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **78-45-2** is amended to read:

**78-45-2. Definitions.**

As used in this chapter:

- (1) "Adjusted gross income" means income calculated under Subsection 78-45-7.6(1).
- (2) "Administrative agency" means the Office of Recovery Services or the Department of Human Services.
- (3) "Administrative order" means an order that has been issued by the Office of Recovery Services, the Department of Human Services, or an administrative agency of another state or other comparable jurisdiction with similar authority to that of the office.
- (4) "Base child support award" means the award that may be ordered and is calculated using the guidelines before additions for medical expenses and work-related child care costs.
- (5) "Base combined child support obligation table," "child support table," "base child support obligation table," "low income table," or "table" means the appropriate table in Section 78-45-7.14.

(6) "Child" means:

(a) a son or daughter under the age of 18 years who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(b) a son or daughter over the age of 18 years, while enrolled in high school during the normal and expected year of graduation and not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) a son or daughter of any age who is incapacitated from earning a living and ~~[is without sufficient means:]~~, if able to provide some financial resources to the family, is not able to support self by own means.

(7) "Child support" is defined in Section 62A-11-401.

(8) "Child support order" or "support order" is defined in Section 62A-11-401.

(9) "Court" means the district court or juvenile court.

(10) "Guidelines" means the child support guidelines in Sections 78-45-7.2 through 78-45-7.21.

(11) "Income" is defined in Section 62A-11-303.

(12) "IV-D" means Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq.

(13) "Joint physical custody" means the child stays with each parent overnight for more than 25% of the year, and both parents contribute to the expenses of the child in addition to paying child support.

(14) "Medical expenses" means health and dental expenses and related insurance costs.

(15) "Obligee" is defined in Section 62A-11-103.

(16) "Obligor" means any person owing a duty of support.

(17) "Office" means the Office of Recovery Services within the Department of Human Services.

(18) "Parent" includes a natural parent, or an adoptive parent, or a stepparent.

(19) "Split custody" means that each parent has physical custody of at least one of the children.

(20) "State" includes any state, territory, or possession of the United States, the District of

Columbia, and the Commonwealth of Puerto Rico.

(21) "Stepchild" means any child having a stepparent.

(22) "Stepparent" means a person ceremonially married to a child's natural or adoptive custodial parent who is not the child's natural or adoptive parent or a person living with the natural or adoptive parent as a common law spouse, whose common law marriage was entered into in this state under Section 30-1-4.5 or in any other state which recognizes the validity of common law marriages.

(23) "Work-related child care costs" means reasonable child care costs for up to a full-time work week or training schedule as necessitated by the employment or training of a parent under Section 78-45-7.17.

(24) "Worksheets" means the forms used to aid in calculating the base child support award. Section 2. Section **78-45-7** is amended to read:

**78-45-7. Determination of amount of support -- Rebuttable guidelines.**

(1) (a) Prospective support shall be equal to the amount granted by prior court order unless there has been a substantial change of circumstance on the part of the obligor or obligee or adjustment under Subsection 78-45-7.2(6) has been made.

(b) If the prior court order contains a stipulated provision for the automatic adjustment for prospective support, the prospective support shall be the amount as stated in the order, without a showing of a material change of circumstances, if the stipulated provision:

(i) is clear and unambiguous;

(ii) is self-executing;

(iii) provides for support which equals or exceeds the base child support award required by the guidelines; and

(iv) does not allow a decrease in support as a result of the obligor's voluntary reduction of income.

(2) If no prior court order exists, a substantial change in circumstances has occurred, or a petition to modify an order under Subsection 78-45-7.2(6) has been filed, the court determining the amount of prospective support shall require each party to file a proposed award of child support

using the guidelines before an order awarding child support or modifying an existing award may be granted.

(3) If the court finds sufficient evidence to rebut the guidelines, the court shall establish support after considering all relevant factors, including but not limited to:

- (a) the standard of living and situation of the parties;
- (b) the relative wealth and income of the parties;
- (c) the ability of the obligor to earn;
- (d) the ability of the obligee to earn;
- (e) the ability of an incapacitated adult child to earn, or other benefits received by the adult

child or on the adult child's behalf including Supplemental Security Income;

- ~~[(e)]~~ (f) the needs of the obligee, the obligor, and the child;
- ~~[(f)]~~ (g) the ages of the parties; and
- ~~[(g)]~~ (h) the responsibilities of the obligor and the obligee for the support of others.

(4) When no prior court order exists, the court shall determine and assess all arrearages based upon the Uniform Child Support Guidelines described in this chapter.

Section 3. Section **78-45-7.5** is amended to read:

**78-45-7.5. Determination of gross income -- Imputed income.**

(1) As used in the guidelines, "gross income" includes:

(a) prospective income from any source, including nonearned sources, except under Subsection (3); and

(b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment compensation, disability insurance benefits, and payments from "nonmeans-tested" government programs.

(2) Income from earned income sources is limited to the equivalent of one full-time 40-hour job. However, if and only if during the time prior to the original support order, the parent normally and consistently worked more than 40 hours at his job, the court may consider this extra time as a

pattern in calculating the parent's ability to provide child support.

(3) Specifically excluded from gross income are:

(a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment Program;

(b) benefits received under a housing subsidy program, the Job Training Partnership Act, Supplemental Security Income, Social Security Disability Insurance, Medicaid, Food Stamps, or General Assistance; and

(c) other similar means-tested welfare benefits received by a parent.

(4) (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.

(b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes.

(5) (a) When possible, gross income should first be computed on an annual basis and then recalculated to determine the average gross monthly income.

(b) Each parent shall provide verification of current income. Each parent shall provide year-to-date pay stubs or employer statements and complete copies of tax returns from at least the most recent year unless the court finds the verification is not reasonably available. Verification of income from records maintained by the Department of Workforce Services may be substituted for pay stubs, employer statements, and income tax returns.

(c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists.

(6) Gross income includes income imputed to the parent under Subsection (7).

(7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed or a hearing is held and a finding made that the parent is voluntarily unemployed or

underemployed.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community.

(c) If a parent has no recent work history, income shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) Income may not be imputed if any of the following conditions exist:

- (i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn;
- (ii) a parent is physically or mentally disabled to the extent he cannot earn minimum wage;
- (iii) a parent is engaged in career or occupational training to establish basic job skills; or
- (iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.

(8) (a) Gross income may not include the earnings of a minor child who is the subject of a child support award nor benefits to a minor child in the child's own right such as Supplemental Security Income.

(b) Social Security benefits received by a child due to the earnings of a parent shall be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. Other unearned income of a child may be considered as income to a parent depending upon the circumstances of each case.

Section 4. Section **78-45-7.7** is amended to read:

**78-45-7.7. Calculation of obligations.**

(1) The parents' child support obligation shall be divided between them in proportion to their adjusted gross incomes, unless the low income table is applicable.

(2) Except in cases of joint physical custody and split custody as defined in Section 78-45-2 and in cases where the obligor's adjusted gross income is \$1,050 or less monthly, the base child

support award shall be determined as follows:

(a) combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base combined child support obligation table[-]; and

(b) calculate each parent's proportionate share of the base combined child support obligation by multiplying the combined child support obligation by each parent's percentage of combined adjusted gross income.

(3) In the case of an incapacitated adult child, any amount that the incapacitated adult child can contribute to his or her support may be considered in the determination of child support and may be used to justify a reduction in the amount of support ordered, except that in the case of orders involving multiple children, the reduction shall not be greater than the effect of reducing the total number of children by one in the child support table calculation.

~~[(3)]~~ (4) In cases where the monthly adjusted gross income of the obligor is between \$650 and \$1,050, the base child support award shall be the lesser of the amount calculated in accordance with Subsection (2) and the amount calculated using the low income table.

~~[(4)]~~ (5) The base combined child support obligation table provides combined child support obligations for up to six children. For more than six children, additional amounts may be added to the base child support obligation shown. Unless rebutted by Subsection 78-45-7.2(3), the amount ordered shall not be less than the amount which would be ordered for up to six children.

~~[(5)]~~ (6) If the monthly adjusted gross income of the obligor is \$649 or less, the court or administrative agency shall determine the amount of the child support obligation on a case-by-case basis, but the base child support award shall not be less than \$20.

~~[(6)]~~ (7) The amount shown on the table is the support amount for the total number of children, not an amount per child.