

“2001 Legislature Changes to Nevada’s Child Support Laws”

Attention Family Law Practitioners & Judges:

Child Support-related Amendments to Nevada statutes will take effect next year. The Nevada Legislature recently passed assembly bill 37, which makes those changes. It has two effective dates, as noted in the Bill itself: “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.” This Bill does several important things about which family law judges and practitioners and the general public should be aware:

1. THE SUM CERTAIN DOLLAR AMOUNT NOW REQUIRED.

The simplest of the changes is the requirement that the amount of child support be stated as a “sum certain dollar amount.” This is a minor change in concept but has two important consequences:

1. It signals the demise of those troublesome percentage orders. Those are the ones that recite the support obligation as a percentage only, leaving out a specific dollar amount; 2. It helps to assure that employers in other states direct, interstate income withholding notice/order. UIFSA, codified in Nevada as NRS Chapter 130, allows employers to refuse to comply with income withholding notices if the order for support is not stated as a sum certain. It is a provision designed to encourage employer compliance with income withholding laws by keeping to a minimum the time, effort and cost for an employer to comply with income withholding requirements. Hopefully, lawyers won’t throw the sum certain into doubt by throwing into the support order one or more contingencies, which affect the amount of child support actually payable.

TRY USING NEVADA AVERAGE WAGE OBLIGOR’S INCOME UNKNOWN:

What if you do not know the obligor’s income? How do you set a sum certain dollar amount when your client has no idea what the obligor earns and you can not find that information yourself? Try this idea: Impute the obligor Nevada’s “Average Wage.” What is that and where is the statutory authority for that?

The “Nevada Average Wage,” is the gross monthly income “average” Nevada earns, as determined by the employment security division of the department of employment, training and rehabilitation. The Nevada State Welfare Division provides to the Family Support Division of the Clark County D.A.’s Office, (DAFS), a year-by-year chart of the Nevada Average Wage since 1990.

According to this chart, which brings us through 1999, the Nevada Average Wage for 1999 was two thousand five hundred twenty-seven and 33/100 (\$2,527.33). Apply the proper percentage formula to that figure to arrive at a support obligation when you cannot ascertain the obligor’s income. The statute, which references this use of a Nevada Average Wage, is hidden in NRS Chapter 425 which is entitled, “Support of Dependent Children.” Specifically, the reference is found at NRS 425.360(3). It says: “3. If there is no court order for support, or if the order provides that no support is due but the facts on which the order was based have changed, the amount due is the amount computed pursuant to NRS 125B.070 and 125B.080, using the Nevada Average wage determined by the employment security division of the department of employment, training and rehabilitation, if the gross income of the responsible parent cannot be otherwise ascertained.”

This subscription appears in a section, which deals with reimbursement to the State of Nevada for

public assistance paid to support the obligor's children. Whether this may be applied to private Family Law cases is something which is not addressed by statute or case law here in Nevada. However, it would seem that what's good for the State ought to be good for the private litigant in need of a child support order, too. Especially is that true when the law says that the child support obligation must be stated as a sum certain dollar amount.

2. NEW PRESUMPTIVE MAXIMUMS FOR CHILD SUPPORT

Child support in Nevada will have new upper limits-yes, plural-beginning July 1, 2002, the \$500 per month per child presumptive maximums, which correlate to income ranges.

The presumptive maximum amount per month per child:

<u>At Least</u>		<u>Not></u>	<u>Max.</u>
\$0	-	\$4,167	\$500
\$4,168	-	\$6,250	\$550
\$6,251	-	\$8,333	\$600
\$8,334	-	\$10,417	\$650
\$10,418	-	\$12,500	\$700
\$12,501	-	\$14,583	\$750

“If a parent gross monthly income is greater than \$14,583, the presumptive maximum amount the parent may be required to pay pursuant to paragraph (b) of subsection 1 is \$800.00.”

The presumptive maximum was raised from \$500 because it had not been adjusted by the legislature since first set at \$500 in 1987, said Elana Hatch, chief Deputy District Attorney in the Family Support Division of the Clark County, Nevada, D.A.'s Office, who put much time and work into the effort to bring Nevada's child support maximums up to date. In researching the presumptive maximum issue, Hatch learned that by November 2000 it took \$757.92 to buy what \$500 bought when it was established as the presumptive maximum in 1987.

Hatch knew that raising the maximum amount of child support from \$500 per month per child to \$758 per month would be a very emotional and controversial issue. Such would no doubt see such a jump as too much and too sudden, on the other hand, 13 years without an adjustment suggested that it was high time the issue was revisited.

Those significantly involved in getting AB 37 passed agree that the bill passed because the organizations interested in the amendments chose to work together in a cooperative, consensus-building effort. The Clark County D.A.'s Office, the Nevada Trial Lawyers Association and the Nevada District Attorney's Association were among those who sought and built a coalition for passage. It was a lot of work but a true pleasure to see such a cooperative spirit. Hatch said, as she recalled how she frequently shuttled back and forth between the interested groups to build and maintain consensus.

The group and their members have much praise for one another. Hatch said that Todd Torvinen was a real workhorse. Torvinen has a dual role in the process. In his role as a member of the State Bar of Nevada he transmitted to the Legislature the State Bar's recommendations as required under NRS 125B.070(2). Then, in his role as a member of the domestic relations section of the Nevada Trial

Lawyer's Association, he lobbied for and testified on behalf of the increases. Myra Sheehan, president of the NTLA; was a great help also, as were, said Torvinen, attorneys Ann McCarthy and Valerie Cooney, who he added, put a great deal of work into the cause.

The hard work and cooperation of the organizations and individuals involved has given Nevada a new presumptive maximum law which ties child support presumptive maximums to different income ranges. It is a measure designed to afford relief to those on both sides of the fence.

3. YEARLY CONSUMER PRICE INDEX ADJUSTMENT TO CAPS.

Immediately following the language about the new maximum amounts, the Legislature has provided for a yearly adjustment on July 1 in those maximums, based upon the consumer price index.

And, AB 37 provides for an "office of court administrator" to advise the courts of the new, as adjusted presumptive maximum amounts. Here is what the Bill says:

"3. The amounts set forth 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 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; established 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."

4. CHANGE (CLARIFICATION)IN DEVIATION FACTOR (e) RESPONSIBILITY TO SUPPORT OTHERS:

The factors for which a court is permitted to deviate from the formula amount in setting child support are listed at NRS 125B.080(9). Subsection (e) allows deviation for the obligor's responsibility for the support of others. Assembly Bill 37 adds one fairly significant word to that subsection, inserting the word, "legal" in front of the word "responsibility." The message appears to be that deviation for the support of "others" is now permitted only if the obligor has a "legal" responsibility to support the "other." This suggests an obligor who claims he has another child to support may not be given a deviation for his other child unless the obligor can show he is under a court order to support the other child or, at the very least, unless he can show he has formally acknowledged paternity and/or is named on the child's birth certificate.

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ENDNOTES

- i. I have yet to find out what sort of "average" that average is. Is it the mean income? The median? Or, the most frequently seen? (The Mode). One of these days I'll try calling the employment security division to try to find out.
- ii. According to the chart, for the four years preceding 1999, the average wages were 1998: \$2,446.73; 1997: \$ 2,318.07; 1996: \$2,237.93; and for 1995: \$2,142.31.
- iii. Hatch says this figure is based on an average involving all urban consumers in United States cities.
- iv. That was the provision that required the State Bar to review the child support formula every

four years and report to the Legislature the State Bar's findings and any proposed amendments. The section is eliminated by AB 37, as the Bill contains a cost of living adjustment clause tied to the Consumer Price Index.