



ADMINISTRATIVE RULES OF MONTANA



37.62.102 REBUTTABLE PRESUMPTION

- (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.

Authorizing statute(s): 40-5-203, MCA

Implementing statute(s): 40-5-209, MCA

History: NEW, 1998 MAR p. 2066, Eff. 11/1/98; AMD, 2012 MAR p. 747, Eff. 7/1/12.