

PROOF OF INCOME IN FAMILY LAW CASES

(4) RELIABLE EVIDENCE OF INCOME.

(A) *IMPUTED INCOME*. When establishing the amount of child support, if a parent fails to produce reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to pay child support or ability to pay child support in prior years, and the court or the jury has no other reliable evidence of the parent's income or income potential, gross income for the current year shall be determined by imputing gross income based on a 40 hour workweek at minimum wage.

(B) *MODIFICATION*. When cases with established orders are reviewed for modification and a parent fails to produce reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to pay child support or ability to pay child support in prior years, and the court or jury has no other reliable evidence of such parent's income or income potential, the court or jury may increase the child support of the parent failing or refusing to produce evidence of income by an increment of at least 10 percent per year of such parent's gross income for each year since the final child support order was entered or last modified and shall calculate the basic child support obligation using the increased amount as such parent's gross income.

(C) *REHEARING*. If income is imputed pursuant to subparagraph (A) of this paragraph, the party believing the income of the other party is higher than the amount imputed may provide within 90 days, upon motion to the court, evidence necessary to determine the appropriate amount of child support based upon reliable evidence. A hearing shall be scheduled after the motion is filed. The court may increase, decrease, or leave unchanged the amount of current child support from the date of filing of either parent's initial filing or motion for reconsideration. While the motion for reconsideration is pending, the obligor shall be responsible for the amount of child support originally ordered. Arrearages entered in the original child support order based upon imputed income shall not be forgiven. When there is reliable evidence to support a motion for reconsideration of the amount of income imputed, the party shall not be required to demonstrate that there has been a substantial change in either parent's income, financial status, the needs of the child, or other such factors required for modification of an order pursuant to subsection (k) of this Code section.

(D) *WILLFUL OR VOLUNTARY UNEMPLOYMENT OR UNDEREMPLOYMENT*. In determining whether a parent is willfully or voluntarily unemployed or underemployed, the court or the jury shall ascertain the reasons for the parent's occupational choices and assess the reasonableness of these choices in light of the parent's responsibility to support his or her child and whether such choices benefit the child. A determination of willful or voluntary unemployment or underemployment shall not be limited to occupational choices motivated only by an intent to avoid or reduce the payment of child support but can be based on any intentional choice or act that affects a parent's income. In determining willful or voluntary unemployment or underemployment, the court may examine whether there is a substantial likelihood that the parent could, with reasonable effort, apply his or her education, skills, or training to produce income. Specific factors for the court to consider when determining willful or voluntary unemployment or underemployment include, but are not limited to:

- (i) The parent's past and present employment;
- (ii) The parent's education and training;

(iii) Whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the parent's responsibility to support his or her child and, to this end, whether the training or education may ultimately benefit the child in the case immediately under consideration by increasing the parent's level of support for that child in the future;

(iv) A parent's ownership of valuable assets and resources, such as an expensive home or automobile, that appear inappropriate or unreasonable for the income claimed by the parent;

(v) The parent's own health and ability to work outside the home; and

(vi) The parent's role as caretaker of a child of that parent, a disabled or seriously ill child of that parent, or a disabled or seriously ill adult child of that parent, or any other disabled or seriously ill relative for whom that parent has assumed the role of caretaker, which eliminates or substantially reduces the parent's ability to work outside the home, and the need of that parent to continue in the role of caretaker in the future. When considering the income potential of a parent whose work experience is limited due to the caretaker role of that parent, the court shall consider the following factors:

(I) Whether the parent acted in the role of full-time caretaker immediately prior to separation by the married parties or prior to the divorce or annulment of the marriage or dissolution of another relationship in which the parent was a full-time caretaker;

(II) The length of time the parent staying at home has remained out of the work force for this purpose;

(III) The parent's education, training, and ability to work; and

(IV) Whether the parent is caring for a child who is four years of age or younger. If the court or the jury determines that a parent is willfully or voluntarily unemployed or underemployed, child support shall be calculated based on a determination of earning capacity, as evidenced by educational level or previous work experience. In the absence of any other reliable evidence, income may be imputed to the parent pursuant to a determination that gross income for the current year is based on a 40 hour workweek at minimum wage.

A determination of willful and voluntary unemployment or underemployment shall not be made when an individual is activated from the National Guard or other armed forces unit or enlists or is drafted for full-time service in the armed forces of the United States.