

2000 SESSION

INTRODUCED

004376684

HOUSE BILL NO. 5

Offered January 12, 2000

Prefiled November 14, 1999

A BILL to amend and reenact § 20-108.2 of the Code of Virginia, relating to determination of child support.

Patron—Cranwell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 20-108.2 of the Code of Virginia is amended and reenacted as follows:

§ 20-108.2. Guideline for determination of child support.

A. There shall be a rebuttable presumption in any judicial or administrative proceeding for child support under this title or Title 16.1 or 63.1, including cases involving split custody or shared custody, that the amount of the award which would result from the application of the guidelines set forth in this section is the correct amount of child support to be awarded. In order to rebut the presumption, the court shall make written findings in the order as set out in § 20-108.1, which findings may be incorporated by reference, that the application of the guidelines would be unjust or inappropriate in a particular case as determined by relevant evidence pertaining to the factors set out in §§ 20-107.2 and 20-108.1. The Department of Social Services shall set child support at the amount resulting from computations using the guidelines set out in this section pursuant to the authority granted to it in Chapter 13 (§ 63.1-249 et seq.) of Title 63.1 and subject to the provisions of § 63.1-264.2.

B. For purposes of application of the guideline, a basic child support obligation shall be computed using the schedule set out below. For combined monthly gross income amounts falling between amounts shown in the schedule, basic child support obligation amounts shall be extrapolated. However, where the combined monthly gross income is less than \$599, the presumptive child support obligation shall be \$65 per month. "Number of children" means the number of children for whom the parents share joint legal responsibility and for whom support is being sought.

SCHEDULE OF MONTHLY BASIC CHILD SUPPORT OBLIGATIONS

COMBINED

MONTHLY

GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
0-599	65	65	65	65	65	65
600	110	111	113	114	115	116
650	138	140	142	143	145	146
700	153	169	170	172	174	176
750	160	197	199	202	204	206
800	168	226	228	231	233	236
850	175	254	257	260	263	266

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57	900	182	281	286	289	292	295
58							
59	950	189	292	315	318	322	325
60							
61	1000	196	304	344	348	351	355
62							
63	1050	203	315	373	377	381	385
64							
65	1100	210	326	402	406	410	415
66							
67	1150	217	337	422	435	440	445
68							
69	1200	225	348	436	465	470	475
70							
71	1250	232	360	451	497	502	507
72							
73	1300	241	373	467	526	536	542
74							
75	1350	249	386	483	545	570	576
76							
77	1400	257	398	499	563	605	611
78							
79	1450	265	411	515	581	633	645
80							
81	1500	274	426	533	602	656	680
82							
83	1550	282	436	547	617	672	714
84							
85	1600	289	447	560	632	689	737
86							
87	1650	295	458	573	647	705	754
88							
89	1700	302	468	587	662	721	772
90							
91	1750	309	479	600	676	738	789
92							
93	1800	315	488	612	690	752	805
94							
95	1850	321	497	623	702	766	819
96							
97	1900	326	506	634	714	779	834
98							
99	1950	332	514	645	727	793	848
100							
101	2000	338	523	655	739	806	862
102							
103	2050	343	532	666	751	819	877
104							
105	2100	349	540	677	763	833	891
106							
107	2150	355	549	688	776	846	905
108							
109	2200	360	558	699	788	860	920
110							
111	2250	366	567	710	800	873	934
112							
113	2300	371	575	721	812	886	948

114							
115	2350	377	584	732	825	900	963
116							
117	2400	383	593	743	837	913	977
118							
119	2450	388	601	754	849	927	991
120							
121	2500	394	610	765	862	940	1006
122							
123	2550	399	619	776	874	954	1020
124							
125	2600	405	627	787	886	967	1034
126							
127	2650	410	635	797	897	979	1048
128							
129	2700	415	643	806	908	991	1060
130							
131	2750	420	651	816	919	1003	1073
132							
133	2800	425	658	826	930	1015	1085
134							
135	2850	430	667	836	941	1027	1098
136							
137	2900	435	675	846	953	1039	1112
138							
139	2950	440	683	856	964	1052	1125
140							
141	3000	445	691	866	975	1064	1138
142							
143	3050	450	699	876	987	1076	1152
144							
145	3100	456	707	886	998	1089	1165
146							
147	3150	461	715	896	1010	1101	1178
148							
149	3200	466	723	906	1021	1114	1191
150							
151	3250	471	732	917	1032	1126	1205
152							
153	3300	476	740	927	1044	1139	1218
154							
155	3350	481	748	937	1055	1151	1231
156							
157	3400	486	756	947	1067	1164	1245
158							
159	3450	492	764	957	1078	1176	1258
160							
161	3500	497	772	967	1089	1189	1271
162							
163	3550	502	780	977	1101	1201	1285
164							
165	3600	507	788	987	1112	1213	1298
166							
167	3650	512	797	997	1124	1226	1311
168							
169	3700	518	806	1009	1137	1240	1326

170							
171	3750	524	815	1020	1150	1254	1342
172							
173	3800	530	824	1032	1163	1268	1357
174							
175	3850	536	834	1043	1176	1283	1372
176							
177	3900	542	843	1055	1189	1297	1387
178							
179	3950	547	852	1066	1202	1311	1402
180							
181	4000	553	861	1078	1214	1325	1417
182							
183	4050	559	871	1089	1227	1339	1432
184							
185	4100	565	880	1101	1240	1353	1448
186							
187	4150	571	889	1112	1253	1367	1463
188							
189	4200	577	898	1124	1266	1382	1478
190							
191	4250	583	907	1135	1279	1396	1493
192							
193	4300	589	917	1147	1292	1410	1508
194							
195	4350	594	926	1158	1305	1424	1523
196							
197	4400	600	935	1170	1318	1438	1538
198							
199	4450	606	944	1181	1331	1452	1553
200							
201	4500	612	954	1193	1344	1467	1569
202							
203	4550	618	963	1204	1357	1481	1584
204							
205	4600	624	972	1216	1370	1495	1599
206							
207	4650	630	981	1227	1383	1509	1614
208							
209	4700	635	989	1237	1395	1522	1627
210							
211	4750	641	997	1247	1406	1534	1641
212							
213	4800	646	1005	1257	1417	1546	1654
214							
215	4850	651	1013	1267	1428	1558	1667
216							
217	4900	656	1021	1277	1439	1570	1679
218							
219	4950	661	1028	1286	1450	1582	1692
220							
221	5000	666	1036	1295	1460	1593	1704
222							
223	5050	671	1043	1305	1471	1605	1716
224							
225	5100	675	1051	1314	1481	1616	1728
226							

227	5150	680	1058	1323	1492	1628	1741
228							
229	5200	685	1066	1333	1502	1640	1753
230							
231	5250	690	1073	1342	1513	1651	1765
232							
233	5300	695	1081	1351	1524	1663	1778
234							
235	5350	700	1088	1361	1534	1674	1790
236							
237	5400	705	1096	1370	1545	1686	1802
238							
239	5450	710	1103	1379	1555	1697	1815
240							
241	5500	714	1111	1389	1566	1709	1827
242							
243	5550	719	1118	1398	1576	1720	1839
244							
245	5600	724	1126	1407	1587	1732	1851
246							
247	5650	729	1133	1417	1598	1743	1864
248							
249	5700	734	1141	1426	1608	1755	1876
250							
251	5750	739	1148	1435	1619	1766	1888
252							
253	5800	744	1156	1445	1629	1778	1901
254							
255	5850	749	1163	1454	1640	1790	1913
256							
257	5900	753	1171	1463	1650	1801	1925
258							
259	5950	758	1178	1473	1661	1813	1937
260							
261	6000	763	1186	1482	1672	1824	1950
262							
263	6050	768	1193	1491	1682	1836	1962
264							
265	6100	773	1201	1501	1693	1847	1974
266							
267	6150	778	1208	1510	1703	1859	1987
268							
269	6200	783	1216	1519	1714	1870	1999
270							
271	6250	788	1223	1529	1724	1882	2011
272							
273	6300	792	1231	1538	1735	1893	2023
274							
275	6350	797	1238	1547	1745	1905	2036
276							
277	6400	802	1246	1557	1756	1916	2048
278							
279	6450	807	1253	1566	1767	1928	2060
280							
281	6500	812	1261	1575	1777	1940	2073
282							

283	6550	816	1267	1583	1786	1949	2083
284							
285	6600	820	1272	1590	1794	1957	2092
286							
287	6650	823	1277	1597	1801	1965	2100
288							
289	6700	827	1283	1604	1809	1974	2109
290							
291	6750	830	1288	1610	1817	1982	2118
292							
293	6800	834	1293	1617	1824	1990	2127
294							
295	6850	837	1299	1624	1832	1999	2136
296							
297	6900	841	1304	1631	1839	2007	2145
298							
299	6950	845	1309	1637	1847	2016	2154
300							
301	7000	848	1315	1644	1855	2024	2163
302							
303	7050	852	1320	1651	1862	2032	2172
304							
305	7100	855	1325	1658	1870	2041	2181
306							
307	7150	859	1331	1665	1878	2049	2190
308							
309	7200	862	1336	1671	1885	2057	2199
310							
311	7250	866	1341	1678	1893	2066	2207
312							
313	7300	870	1347	1685	1900	2074	2216
314							
315	7350	873	1352	1692	1908	2082	2225
316							
317	7400	877	1358	1698	1916	2091	2234
318							
319	7450	880	1363	1705	1923	2099	2243
320							
321	7500	884	1368	1712	1931	2108	2252
322							
323	7550	887	1374	1719	1938	2116	2261
324							
325	7600	891	1379	1725	1946	2124	2270
326							
327	7650	895	1384	1732	1954	2133	2279
328							
329	7700	898	1390	1739	1961	2141	2288
330							
331	7750	902	1395	1746	1969	2149	2297
332							
333	7800	905	1400	1753	1977	2158	2305
334							
335	7850	908	1405	1758	1983	2164	2313
336							
337	7900	910	1409	1764	1989	2171	2320
338							
339	7950	913	1414	1770	1995	2178	2328

340							
341	8000	916	1418	1776	2001	2185	2335
342							
343	8050	918	1423	1781	2007	2192	2343
344							
345	8100	921	1428	1787	2014	2198	2350
346							
347	8150	924	1432	1793	2020	2205	2357
348							
349	8200	927	1437	1799	2026	2212	2365
350							
351	8250	929	1441	1804	2032	2219	2372
352							
353	8300	932	1446	1810	2038	2226	2380
354							
355	8350	935	1450	1816	2045	2232	2387
356							
357	8400	937	1455	1822	2051	2239	2395
358							
359	8450	940	1459	1827	2057	2246	2402
360							
361	8500	943	1464	1833	2063	2253	2410
362							
363	8550	945	1468	1839	2069	2260	2417
364							
365	8600	948	1473	1845	2076	2266	2425
366							
367	8650	951	1478	1850	2082	2273	2432
368							
369	8700	954	1482	1856	2088	2280	2440
370							
371	8750	956	1487	1862	2094	2287	2447
372							
373	8800	959	1491	1868	2100	2294	2455
374							
375	8850	962	1496	1873	2107	2300	2462
376							
377	8900	964	1500	1879	2113	2307	2470
378							
379	8950	967	1505	1885	2119	2314	2477
380							
381	9000	970	1509	1891	2125	2321	2484
382							
383	9050	973	1514	1896	2131	2328	2492
384							
385	9100	975	1517	1901	2137	2334	2498
386							
387	9150	977	1521	1905	2141	2339	2503
388							
389	9200	979	1524	1909	2146	2344	2509
390							
391	9250	982	1527	1914	2151	2349	2514
392							
393	9300	984	1531	1918	2156	2354	2520
394							
395	9350	986	1534	1922	2160	2359	2525

396							
397	9400	988	1537	1926	2165	2365	2531
398							
399	9450	990	1541	1930	2170	2370	2536
400							
401	9500	993	1544	1935	2175	2375	2541
402							
403	9550	995	1547	1939	2179	2380	2547
404							
405	9600	997	1551	1943	2184	2385	2552
406							
407	9650	999	1554	1947	2189	2390	2558
408							
409	9700	1001	1557	1951	2194	2396	2563
410							
411	9750	1003	1561	1956	2198	2401	2569
412							
413	9800	1006	1564	1960	2203	2406	2574
414							
415	9850	1008	1567	1964	2208	2411	2580
416							
417	9900	1010	1571	1968	2213	2416	2585
418							
419	9950	1012	1574	1972	2218	2421	2590
420							
421	10000	1014	1577	1977	2222	2427	2596
422							
423							
424							

For gross monthly income between \$10,000 and \$20,000, add the amount of child -
support for \$10,000 to the following percentages of gross income above \$10,000:

ONE	TWO	THREE	FOUR	FIVE	SIX
CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
3.1%	5.1%	6.8%	7.8%	8.8%	9.5%

For gross monthly income between \$20,000 and \$50,000, add the amount of child -
support for \$20,000 to the following percentages of gross income above \$20,000:

ONE	TWO	THREE	FOUR	FIVE	SIX
CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
2%	3.5%	5%	6%	6.9%	7.8%

For gross monthly income over \$50,000, add the amount of child support for \$50-
,000 to the following percentages of gross income above \$50,000:

ONE	TWO	THREE	FOUR	FIVE	SIX
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CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
1%	2%	3%	4%	5%	6%

C. For purposes of this section, "gross income" means all income from all sources, and shall include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits except as listed below, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, rental income, gifts, prizes or awards.

If a parent's gross income includes disability insurance benefits, it shall also include any amounts paid to or for the child who is the subject of the order and derived by the child from the parent's entitlement to disability insurance benefits. To the extent that such derivative benefits are included in a parent's gross income, that parent shall be entitled to a credit against his or her on-going basic child support obligation for any such amounts, and, if the amount of the credit exceeds the parent's basic child support obligations, the credit may be used to reduce arrearages.

Gross income shall be subject to deduction of reasonable business expenses for persons with income from self-employment, a partnership, or a closely held business. "Gross income" shall not include benefits from public assistance programs as defined in § 63.1-87, federal supplemental security income benefits, or child support received. For purposes of this subsection, spousal support included in gross income shall be limited to spousal support paid pursuant to a pre-existing order or written agreement and spousal support shall be deducted from the gross income of the payor when paid pursuant to a pre-existing order or written agreement between the parties to the present proceeding.

In cases in which retroactive liability for support is being determined, the court or administrative agency may use the gross monthly income of the parties averaged over the period of retroactivity.

D. Any extraordinary medical and dental expenses for treatment of the child or children shall be added to the basic child support obligation. For purposes of this section, extraordinary medical and dental expenses are uninsured expenses in excess of \$100 for a single illness or condition and shall include but not be limited to eyeglasses, prescription medication, prostheses, and mental health services whether provided by a social worker, psychologist, psychiatrist, or counselor.

E. Any costs for health care coverage as defined in § 63.1-250, when actually being paid by a parent, to the extent such costs are directly allocable to the child or children, and which are the extra costs of covering the child or children beyond whatever coverage the parent providing the coverage would otherwise have, shall be added to the basic child support obligation.

F. Any child-care costs incurred on behalf of the child or children due to employment of the custodial parent shall be added to the basic child support obligation. Child-care costs shall not exceed the amount required to provide quality care from a licensed source. When requested by the noncustodial parent, the court may require the custodial parent to present documentation to verify the costs incurred for child care under this subsection. Where appropriate, the court shall consider the willingness and availability of the noncustodial parent to provide child care personally in determining whether child-care costs are necessary or excessive.

G. 1. Sole custody support. The sole custody total monthly child support obligation shall be established by adding (i) the monthly basic child support obligation, as determined from the schedule contained in subsection B of this section, (ii) all extraordinary medical expenses, (iii) costs for health care coverage to the extent allowable by subsection E, and (iv) work-related child-care costs and taking into consideration all the factors set forth in subsection B of § 20-108.1. The total monthly child support obligation shall be divided between the parents in the same proportion as their monthly gross incomes bear to their monthly combined gross income. The monthly obligation of each parent shall be computed by multiplying each parent's percentage of the parents' monthly combined gross income by the total monthly child support obligation.

However, the monthly obligation of the noncustodial parent shall be reduced by the cost for health care coverage to the extent allowable by subsection E when paid directly by the noncustodial parent.

2. Split custody support. In cases involving split custody, the amount of child support to be paid shall be the difference between the amounts owed by each parent as a noncustodial parent, computed in accordance with subdivision 1 of this subsection, with the noncustodial parent owing the larger amount paying the difference to the other parent.

For the purpose of this section and § 20-108.1, split custody shall be limited to those situations where each parent has physical custody of a child or children born of the parents, born of either parent and adopted by the other parent or adopted by both parents. For the purposes of calculating a child support obligation where split custody exists, a separate family unit exists for each parent, and child support for that family unit shall be calculated upon the number of children in that family unit who are born of the parents, born of either parent and adopted by the other parent or adopted by both parents.

514 Where split custody exists, a parent is a custodial parent to the children in that parent's family unit and
515 is a noncustodial parent to the children in the other parent's family unit.

516 3. Shared custody support.

517 (a) Where a party has custody or visitation of a child or children for more than ninety days of the
518 year, as such days are defined in subdivision G 3 (c), a shared custody child support amount based on
519 the ratio in which the parents share the custody and visitation of any child or children shall be
520 calculated in accordance with this subdivision. The presumptive support to be paid shall be the shared
521 custody support amount, unless a party affirmatively shows that the sole custody support amount
522 calculated as provided in subdivision G 1 is less than the shared custody support amount. If so, the
523 lesser amount shall be the support to be paid. For the purposes of this subsection, the following shall
524 apply:

525 (i) Income share. "Income share" means a parent's percentage of the combined monthly gross income
526 of both parents. The income share of a parent is that parent's gross income divided by the combined
527 gross incomes of the parties.

528 (ii) Custody share. "Custody share" means the number of days that a parent has physical custody,
529 whether by sole custody, joint legal or joint residential custody, or visitation, of a shared child per year
530 divided by the number of days in the year. The actual or anticipated "custody share" of the parent who
531 has or will have fewer days of physical custody shall be calculated for a one-year period. The "custody
532 share" of the other parent shall be presumed to be the number of days in the year less the number of
533 days calculated as the first parent's "custody share." For purposes of this calculation, the year may begin
534 on such date as is determined in the discretion of the court, and the day may begin at such time as is
535 determined in the discretion of the court. For purposes of this calculation, a day shall be as defined in
536 subdivision G 3 (c).

537 (iii) Shared support need. "Shared support need" means the presumptive guideline amount of needed
538 support for the shared child or children calculated pursuant to subsection B of this section, for the
539 combined gross income of the parties and the number of shared children, multiplied by 1.4.

540 (iv) Sole custody support. "Sole custody support" means the support amount determined in
541 accordance with subdivision G 1.

542 (b) Support to be paid. The shared support need of the shared child or children shall be calculated
543 pursuant to subdivision G 3 (a) (iii). This amount shall then be multiplied by the other parent's custody
544 share. To that sum for each parent shall be added the other parent's cost of health care coverage to the
545 extent allowable by subsection E, plus the other parent's work-related child-care costs to the extent
546 allowable by subsection F. This total for each parent shall be multiplied by that parent's income share.
547 The support amounts thereby calculated that each parent owes the other shall be subtracted one from the
548 other and the difference shall be the shared custody support one parent owes to the other, with the payor
549 parent being the one whose shared support is the larger. Any extraordinary medical and dental expenses,
550 to the extent allowable by subsection D, shall be shared directly by the parents in accordance with their
551 income shares, and shall not be adjusted by the custody share, and this amount shall be added to the
552 shared custody support amount as calculated herein.

553 (c) Definition of a day. For the purposes of this section, "day" means a period of twenty-four hours;
554 however, where the parent who has the fewer number of overnight periods during the year has an
555 overnight period with a child, but has physical custody of the shared child for less than twenty-four
556 hours during such overnight period, there is a presumption that each parent shall be allocated one-half of
557 a day of custody for that period.

558 (d) Minimum standards. Any calculation under this subdivision shall not create or reduce a support
559 obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal
560 adequate housing and provide other basic necessities for the child. If the gross income of the payee is
561 equal to or less than 150 percent of the federal poverty level promulgated by the U.S. Department of
562 Health and Human Services from time to time, there shall be a presumption that the sole custody
563 guideline calculation shall apply.

564 (e) Support modification. When there has been an award of child support based on the shared
565 custody formula and one parent consistently fails to exercise custody or visitation in accordance with the
566 parent's custody share upon which the award was based, there shall be a rebuttable presumption that the
567 support award should be modified.

568 H. The Secretary of Health and Human Resources shall ensure that the guideline set out in this
569 section is reviewed by July 1, 1990 2000, and every four two years thereafter, by a panel which includes
570 representatives of the courts, the executive branch, the General Assembly, the bar, custodial and
571 noncustodial parents and child advocates. The panel shall determine the adequacy of the guideline for
572 the determination of appropriate awards for the support of children by considering current research and
573 data on the cost of and expenditures necessary for rearing children, and any other resources it deems
574 relevant to such review. The panel shall report its findings to the General Assembly before it next
575 convenes following such review.