

005189448

SENATE BILL NO. 275

Offered January 18, 2000

A BILL to amend and reenact §§ 20-108.2 and 63.1-251 of the Code of Virginia, relating to child support guideline; public assistance debt.

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 20-108.2 and 63.1-251 of the Code of Virginia are 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, *unless one of the following exemptions applies*, where the combined monthly gross income is less than \$599, the presumptive child support obligation shall be \$65 per month. *Exemptions from this presumptive minimum monthly child support obligation shall include: parents unable to pay child support because they lack sufficient assets from which to pay child support and who, in addition, are institutionalized in a psychiatric facility; are imprisoned with no chance of parole; are medically verified to be totally and permanently disabled with no evidence of potential for paying child support, including recipients of Supplemental Security Income (SSI); or are otherwise involuntarily unable to produce income, or for other good cause shown.* "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
900	182	281	286	289	292	295
950	189	292	315	318	322	325
1000	196	304	344	348	351	355
1050	203	315	373	377	381	385
1100	210	326	402	406	410	415
1150	217	337	422	435	440	445
1200	225	348	436	465	470	475
1250	232	360	451	497	502	507
1300	241	373	467	526	536	542
1350	249	386	483	545	570	576
1400	257	398	499	563	605	611

INTRODUCED

SB275

58	1450	265	411	515	581	633	645
59	1500	274	426	533	602	656	680
60	1550	282	436	547	617	672	714
61	1600	289	447	560	632	689	737
62	1650	295	458	573	647	705	754
63	1700	302	468	587	662	721	772
64	1750	309	479	600	676	738	789
65	1800	315	488	612	690	752	805
66	1850	321	497	623	702	766	819
67	1900	326	506	634	714	779	834
68	1950	332	514	645	727	793	848
69	2000	338	523	655	739	806	862
70	2050	343	532	666	751	819	877
71	2100	349	540	677	763	833	891
72	2150	355	549	688	776	846	905
73	2200	360	558	699	788	860	920
74	2250	366	567	710	800	873	934
75	2300	371	575	721	812	886	948
76	2350	377	584	732	825	900	963
77	2400	383	593	743	837	913	977
78	2450	388	601	754	849	927	991
79	2500	394	610	765	862	940	1006
80	2550	399	619	776	874	954	1020
81	2600	405	627	787	886	967	1034
82	2650	410	635	797	897	979	1048
83	2700	415	643	806	908	991	1060
84	2750	420	651	816	919	1003	1073
85	2800	425	658	826	930	1015	1085
86	2850	430	667	836	941	1027	1098
87	2900	435	675	846	953	1039	1112
88	2950	440	683	856	964	1052	1125
89	3000	445	691	866	975	1064	1138
90	3050	450	699	876	987	1076	1152
91	3100	456	707	886	998	1089	1165
92	3150	461	715	896	1010	1101	1178
93	3200	466	723	906	1021	1114	1191
94	3250	471	732	917	1032	1126	1205
95	3300	476	740	927	1044	1139	1218
96	3350	481	748	937	1055	1151	1231
97	3400	486	756	947	1067	1164	1245
98	3450	492	764	957	1078	1176	1258
99	3500	497	772	967	1089	1189	1271
100	3550	502	780	977	1101	1201	1285
101	3600	507	788	987	1112	1213	1298
102	3650	512	797	997	1124	1226	1311
103	3700	518	806	1009	1137	1240	1326
104	3750	524	815	1020	1150	1254	1342
105	3800	530	824	1032	1163	1268	1357
106	3850	536	834	1043	1176	1283	1372
107	3900	542	843	1055	1189	1297	1387
108	3950	547	852	1066	1202	1311	1402
109	4000	553	861	1078	1214	1325	1417
110	4050	559	871	1089	1227	1339	1432
111	4100	565	880	1101	1240	1353	1448
112	4150	571	889	1112	1253	1367	1463
113	4200	577	898	1124	1266	1382	1478
114	4250	583	907	1135	1279	1396	1493

115	4300	589	917	1147	1292	1410	1508
116	4350	594	926	1158	1305	1424	1523
117	4400	600	935	1170	1318	1438	1538
118	4450	606	944	1181	1331	1452	1553
119	4500	612	954	1193	1344	1467	1569
120	4550	618	963	1204	1357	1481	1584
121	4600	624	972	1216	1370	1495	1599
122	4650	630	981	1227	1383	1509	1614
123	4700	635	989	1237	1395	1522	1627
124	4750	641	997	1247	1406	1534	1641
125	4800	646	1005	1257	1417	1546	1654
126	4850	651	1013	1267	1428	1558	1667
127	4900	656	1021	1277	1439	1570	1679
128	4950	661	1028	1286	1450	1582	1692
129	5000	666	1036	1295	1460	1593	1704
130	5050	671	1043	1305	1471	1605	1716
131	5100	675	1051	1314	1481	1616	1728
132	5150	680	1058	1323	1492	1628	1741
133	5200	685	1066	1333	1502	1640	1753
134	5250	690	1073	1342	1513	1651	1765
135	5300	695	1081	1351	1524	1663	1778
136	5350	700	1088	1361	1534	1674	1790
137	5400	705	1096	1370	1545	1686	1802
138	5450	710	1103	1379	1555	1697	1815
139	5500	714	1111	1389	1566	1709	1827
140	5550	719	1118	1398	1576	1720	1839
141	5600	724	1126	1407	1587	1732	1851
142	5650	729	1133	1417	1598	1743	1864
143	5700	734	1141	1426	1608	1755	1876
144	5750	739	1148	1435	1619	1766	1888
145	5800	744	1156	1445	1629	1778	1901
146	5850	749	1163	1454	1640	1790	1913
147	5900	753	1171	1463	1650	1801	1925
148	5950	758	1178	1473	1661	1813	1937
149	6000	763	1186	1482	1672	1824	1950
150	6050	768	1193	1491	1682	1836	1962
151	6100	773	1201	1501	1693	1847	1974
152	6150	778	1208	1510	1703	1859	1987
153	6200	783	1216	1519	1714	1870	1999
154	6250	788	1223	1529	1724	1882	2011
155	6300	792	1231	1538	1735	1893	2023
156	6350	797	1238	1547	1745	1905	2036
157	6400	802	1246	1557	1756	1916	2048
158	6450	807	1253	1566	1767	1928	2060
159	6500	812	1261	1575	1777	1940	2073
160	6550	816	1267	1583	1786	1949	2083
161	6600	820	1272	1590	1794	1957	2092
162	6650	823	1277	1597	1801	1965	2100
163	6700	827	1283	1604	1809	1974	2109
164	6750	830	1288	1610	1817	1982	2118
165	6800	834	1293	1617	1824	1990	2127
166	6850	837	1299	1624	1832	1999	2136
167	6900	841	1304	1631	1839	2007	2145
168	6950	845	1309	1637	1847	2016	2154
169	7000	848	1315	1644	1855	2024	2163
170	7050	852	1320	1651	1862	2032	2172

171	7100	855	1325	1658	1870	2041	2181
172	7150	859	1331	1665	1878	2049	2190
173	7200	862	1336	1671	1885	2057	2199
174	7250	866	1341	1678	1893	2066	2207
175	7300	870	1347	1685	1900	2074	2216
176	7350	873	1352	1692	1908	2082	2225
177	7400	877	1358	1698	1916	2091	2234
178	7450	880	1363	1705	1923	2099	2243
179	7500	884	1368	1712	1931	2108	2252
180	7550	887	1374	1719	1938	2116	2261
181	7600	891	1379	1725	1946	2124	2270
182	7650	895	1384	1732	1954	2133	2279
183	7700	898	1390	1739	1961	2141	2288
184	7750	902	1395	1746	1969	2149	2297
185	7800	905	1400	1753	1977	2158	2305
186	7850	908	1405	1758	1983	2164	2313
187	7900	910	1409	1764	1989	2171	2320
188	7950	913	1414	1770	1995	2178	2328
189	8000	916	1418	1776	2001	2185	2335
190	8050	918	1423	1781	2007	2192	2343
191	8100	921	1428	1787	2014	2198	2350
192	8150	924	1432	1793	2020	2205	2357
193	8200	927	1437	1799	2026	2212	2365
194	8250	929	1441	1804	2032	2219	2372
195	8300	932	1446	1810	2038	2226	2380
196	8350	935	1450	1816	2045	2232	2387
197	8400	937	1455	1822	2051	2239	2395
198	8450	940	1459	1827	2057	2246	2402
199	8500	943	1464	1833	2063	2253	2410
200	8550	945	1468	1839	2069	2260	2417
201	8600	948	1473	1845	2076	2266	2425
202	8650	951	1478	1850	2082	2273	2432
203	8700	954	1482	1856	2088	2280	2440
204	8750	956	1487	1862	2094	2287	2447
205	8800	959	1491	1868	2100	2294	2455
206	8850	962	1496	1873	2107	2300	2462
207	8900	964	1500	1879	2113	2307	2470
208	8950	967	1505	1885	2119	2314	2477
209	9000	970	1509	1891	2125	2321	2484
210	9050	973	1514	1896	2131	2328	2492
211	9100	975	1517	1901	2137	2334	2498
212	9150	977	1521	1905	2141	2339	2503
213	9200	979	1524	1909	2146	2344	2509
214	9250	982	1527	1914	2151	2349	2514
215	9300	984	1531	1918	2156	2354	2520
216	9350	986	1534	1922	2160	2359	2525
217	9400	988	1537	1926	2165	2365	2531
218	9450	990	1541	1930	2170	2370	2536
219	9500	993	1544	1935	2175	2375	2541
220	9550	995	1547	1939	2179	2380	2547
221	9600	997	1551	1943	2184	2385	2552
222	9650	999	1554	1947	2189	2390	2558
223	9700	1001	1557	1951	2194	2396	2563
224	9750	1003	1561	1956	2198	2401	2569
225	9800	1006	1564	1960	2203	2406	2574
226	9850	1008	1567	1964	2208	2411	2580
227	9900	1010	1571	1968	2213	2416	2585

228	9950	1012	1574	1972	2218	2421	2590
229	10000	1014	1577	1977	2222	2427	2596

230

231 For gross monthly income between \$10,000 and \$20,000, add the amount of child support for
 232 \$10,000 to the following percentages of gross income above \$10,000:

233	ONE	TWO	THREE	FOUR	FIVE	SIX
234	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
235	3.1%	5.1%	6.8%	7.8%	8.8%	9.5%

236

237 For gross monthly income between \$20,000 and \$50,000, add the amount of child support for
 238 \$20,000 to the following percentages of gross income above \$20,000:

239	ONE	TWO	THREE	FOUR	FIVE	SIX
240	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
241	2%	3.5%	5%	6%	6.9%	7.8%

242

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

245	ONE	TWO	THREE	FOUR	FIVE	SIX
246	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
247	1%	2%	3%	4%	5%	6%

248

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

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

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

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

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

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

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

285 G. 1. Sole custody support. The sole custody total monthly child support obligation shall be
 286 established by adding (i) the monthly basic child support obligation, as determined from the schedule
 287 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. Where split custody exists, a parent is a custodial parent to the children in that parent's family unit and is a noncustodial parent to the children in the other parent's family unit.

3. Shared custody support.

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

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

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

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

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

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

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

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

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

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

§ 63.1-251. Payment of public assistance for child or caretaker constitutes debt to Department by responsible persons; limitations; Department subrogated to rights.

Any payment of public assistance money made to or for the benefit of any dependent child or children or their caretaker creates a debt due and owing to the Department by the person or persons who are responsible for support of such children or caretaker in an amount equal to the amount of public assistance money so paid. However, if a caretaker receives AFDC payments for some of the caretaker's dependent children but not for other children pursuant to § 63.1-105.7, the caretaker shall receive the total amount of support collected for the children for whom no AFDC benefits are received. Such support payments shall not create a debt due and owing to the Department and the value of such payments shall not be counted as income for purposes of AFDC eligibility and grant determination. Where there has been a court order for support, final decree of divorce ordering support, or administrative order under the provisions of this chapter for support, the debt shall be limited to the amount of such order or decree. The Commissioner, pursuant to § 63.1-264, shall establish the debt in an amount determined to be consistent with a responsible person's ability to pay. The Department shall have the right to petition the appropriate court for modification of a court order on the same grounds as either party to such cause. *Any debt created under this section shall be limited retroactively to the date the Department exercised due diligence in the service of notice in accordance with § 63.1-252.1.*

The Department shall be subrogated to the right of such child or children or caretaker to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the Commonwealth of Virginia to obtain reimbursement of moneys thus expended and may collect on behalf of any such child, children or caretaker any amount contained in any court order of support or any administrative order of support regardless of whether or not the amount of such orders exceeds the amount of public assistance paid. Any support paid in excess of the total amount of public assistance paid shall be returned to the caretaker by the Department. If a court order for support or final decree of divorce ordering support enters judgment for an amount of support to be paid by such responsible person, the Department shall be subrogated to the debt created by such order, and said money judgment shall be deemed to be in favor of the Department. In any judicial proceeding brought by an attorney on behalf of the Department pursuant to this section to enforce a support obligation in which the Department prevails, attorney's fees shall be assessed pursuant to § 63.1-274.10.

The Department shall have the authority to pursue establishment and enforcement actions against the person responsible for support after the closure of the public assistance case unless the caretaker notifies the Department in writing that child support enforcement services are no longer desired.

Debt created by an administrative support order under this section shall not be incurred by nor at any time be collected from a responsible person who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status. Recipients of federal supplemental security income shall not be subject to the establishment of an administrative support order while they receive benefits from that source.