

# 2004 RECONVENED SESSION

## SENATE SUBSTITUTE

040608800

**SENATE BILL NO. 208**  
**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
(Proposed by the Governor  
on April 15, 2004)

(Patron Prior to Substitute—Senator Quayle)

*A BILL to amend and reenact §§ 20-60.3, 20-108.1, and 20-108.2 of the Code of Virginia, relating to child support.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 20-60.3, 20-108.1 and 20-108.2 of the Code of Virginia are amended and reenacted as follows:**

§ 20-60.3. Contents of support orders.

All orders directing the payment of spousal support where there are minor children whom the parties have a mutual duty to support and all orders directing the payment of child support, including those orders confirming separation agreements, entered on or after October 1, 1985, whether they are original orders or modifications of existing orders, shall contain the following:

1. Notice that support payments may be withheld as they become due pursuant to § 20-79.1 or § 20-79.2, from income as defined in § 63.2-1900, without further amendments of this order or having to file an application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to § 20-79.1;

2. Notice that support payments may be withheld pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 without further amendments to the order upon application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2;

3. The names and dates of birth of each child to whom a duty of support is then owed by the person responsible for support;

4. If known, the name, date of birth and social security number of each parent of the child and, if different and if known, the name, date of birth and social security number of the person responsible for support and, unless otherwise ordered, each parent or responsible person's residential and, if different, mailing address, residential and employer telephone number, driver's license number, and the name and address of his or her employer; however, when a protective order has been issued or the court otherwise finds reason to believe that a party is at risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be included in the order;

5. On and after July 1, 1994, notice that a petition may be filed for suspension of any license, certificate, registration or other authorization to engage in a profession, trade, business or occupation issued by the Commonwealth to a person responsible for support as provided in § 63.2-1937 upon a delinquency for a period of 90 days or more or in an amount of \$5,000 or more. The order shall indicate whether either or both parents currently hold such an authorization and, if so, the type of authorization held;

6. The amount of periodic support expressed in fixed sums, together with the payment interval, the date payments are due, and the date the first payment is due;

7. a. An order for health care coverage, including the health insurance policy information, for dependent children pursuant to §§ 20-108.1 and 20-108.2 if available at reasonable cost as defined in § 63.2-1900 and a statement as to whether there is an order for health care coverage for a spouse or former spouse; and

b. A statement as to whether any ~~extraordinary~~ *unreimbursed* medical expenses are to be paid by or reimbursed to a party pursuant to ~~subsection~~ *subsections D and subdivision G 3* of § 20-108.2, and if such expenses are ordered, then the provisions *as governing* how such payment is to be made;

8. If support arrearages exist, (i) to whom an arrearage is owed and the amount of the arrearage, (ii) the period of time for which such arrearage is calculated, and (iii) a direction that all payments are to be credited to current support obligations first, with any payment in excess of the current obligation applied to arrearages;

9. If child support payments are ordered to be paid through the Department of Social Services or directly to the obligee, and unless the court for good cause shown orders otherwise, the parties shall give each other and the court and, when payments are to be made through the Department, the Department of Social Services at least 30 days' written notice, in advance, of any change of address and any change of telephone number within 30 days after the change;

10. If child support payments are ordered to be paid through the Department of Social Services, a provision requiring an obligor to keep the Department of Social Services informed of the name, address

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60 and telephone number of his current employer, or if payments are ordered to be paid directly to the  
61 obligee, a provision requiring an obligor to keep the court informed of the name, address and telephone  
62 number of his current employer;

63 11. The separate amounts due to each person under the order, unless the court specifically orders a  
64 unitary award of child and spousal support due or the order affirms a separation agreement containing  
65 provision for such unitary award;

66 12. Notice that in determination of a support obligation, the support obligation as it becomes due and  
67 unpaid creates a judgment by operation of law; and

68 13. Notice that on and after July 1, 1994, the Department of Social Services may, pursuant to  
69 Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 and in accordance with §§ 20-108.2 and 63.2-1921,  
70 initiate a review of the amount of support ordered by any court.

71 The provisions of this section shall not apply to divorce decrees where there are no minor children  
72 whom the parties have a mutual duty to support.

73 § 20-108.1. Determination of child or spousal support.

74 A. In any proceeding on the issue of determining spousal support, the court shall consider all  
75 evidence presented relevant to any issues joined in that proceeding. The court's decision shall be  
76 rendered based upon the evidence relevant to each individual case.

77 B. In any proceeding on the issue of determining child support under this title or Title 16.1 or Title  
78 63.2, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The  
79 court's decision in any such proceeding shall be rendered upon the evidence relevant to each individual  
80 case. However, there shall be a rebuttable presumption in any judicial or administrative proceeding for  
81 child support, including cases involving split custody or shared custody, that the amount of the award  
82 which would result from the application of the guidelines set out in § 20-108.2 is the correct amount of  
83 child support to be awarded. Liability for support shall be determined retroactively for the period  
84 measured from the date that the proceeding was commenced by the filing of an action with the court  
85 provided the complainant exercised due diligence in the service of the respondent or, if earlier, the date  
86 an order of the Department of Social Services entered pursuant to Title 63.2 and directing payment of  
87 support was delivered to the sheriff or process server for service on the obligor.

88 In order to rebut the presumption, the court shall make written findings in the order, which findings  
89 may be incorporated by reference, that the application of such guidelines would be unjust or  
90 inappropriate in a particular case. The finding that rebuts the guidelines shall state the amount of support  
91 that would have been required under the guidelines, shall give a justification of why the order varies  
92 from the guidelines, and shall be determined by relevant evidence pertaining to the following factors  
93 affecting the obligation, the ability of each party to provide child support, and the best interests of the  
94 child:

95 1. Actual monetary support for other family members or former family members;

96 2. Arrangements regarding custody of the children;

97 3. Imputed income to a party who is voluntarily unemployed or voluntarily under-employed;  
98 provided that income may not be imputed to the custodial parent when a child is not in school, child  
99 care services are not available and the cost of such child care services are not included in the  
100 computation;

101 4. Debts of either party arising during the marriage for the benefit of the child;

102 5. Debts incurred for production of income;

103 6. Direct payments ordered by the court for health care coverage, maintaining life insurance coverage  
104 pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of  
105 the child and costs related to the provision of health care coverage pursuant to subdivision 7 of  
106 § 20-60.3;

107 7. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;

108 8. Age, physical and mental condition of the child or children, including ~~extraordinary~~ *unreimbursed*  
109 medical or dental expenses, and child-care expenses;

110 9. Independent financial resources, if any, of the child or children;

111 10. Standard of living for the family established during the marriage;

112 11. Earning capacity, obligations and needs, and financial resources of each parent;

113 12. Education and training of the parties and the ability and opportunity of the parties to secure such  
114 education and training;

115 13. Contributions, monetary and nonmonetary, of each party to the well-being of the family;

116 14. Provisions made with regard to the marital property under § 20-107.3;

117 15. Tax consequences to the parties regarding claims for dependent children and child care expenses;

118 16. A written agreement between the parties which includes the amount of child support;

119 17. A pendente lite decree, which includes the amount of child support, agreed to by both parties or  
120 by counsel for the parties; and

121 18. Such other factors, including tax consequences to each party, as are necessary to consider the

equities for the parents and children.

C. In any proceeding under this title or Title 16.1 or Title 63.2 on the issue of determining child support, the court shall have the authority to order a party to provide health care coverage, as defined in § 63.2-1900, for dependent children if reasonable under all the circumstances and health care coverage for a spouse or former spouse.

D. In any proceeding under this title, Title 16.1 or Title 63.2 on the issue of determining child support, the court shall have the authority to order a party to (i) maintain any existing life insurance policy on the life of either party provided the party so ordered has the right to designate a beneficiary and (ii) designate a child or children of the parties as the beneficiary of all or a portion of such life insurance for so long as the party so ordered has a statutory obligation to pay child support for the child or children.

E. Except when the parties have otherwise agreed, in any proceeding under this title, Title 16.1 or Title 63.2 on the issue of determining child support, the court shall have the authority to and may, in its discretion, order one party to execute all appropriate tax forms or waivers to grant to the other party the right to take the income tax dependency exemption for any tax year or future years, for any child or children of the parties for federal and state income tax purposes.

§ 20-108.2. Guideline for determination of child support; quadrennial review by Child Support Guidelines Review Panel; executive summary.

A. There shall be a rebuttable presumption in any judicial or administrative proceeding for child support under this title or Title 16.1 or 63.2, 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 19 (§ 63.2-1900 et seq.) of Title 63.2 and subject to the provisions of § 63.2-1918.

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 sole custody child support obligation as computed pursuant to subdivision G. 1. is less than \$65 per month, there shall be a presumptive minimum child support obligation of \$65 per month payable by the payor parent. 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. "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

<b>182</b>	1250	232	360	451	497	502	507
<b>183</b>	1300	241	373	467	526	536	542
<b>184</b>	1350	249	386	483	545	570	576
<b>185</b>	1400	257	398	499	563	605	611
<b>186</b>	1450	265	411	515	581	633	645
<b>187</b>	1500	274	426	533	602	656	680
<b>188</b>	1550	282	436	547	617	672	714
<b>189</b>	1600	289	447	560	632	689	737
<b>190</b>	1650	295	458	573	647	705	754
<b>191</b>	1700	302	468	587	662	721	772
<b>192</b>	1750	309	479	600	676	738	789
<b>193</b>	1800	315	488	612	690	752	805
<b>194</b>	1850	321	497	623	702	766	819
<b>195</b>	1900	326	506	634	714	779	834
<b>196</b>	1950	332	514	645	727	793	848
<b>197</b>	2000	338	523	655	739	806	862
<b>198</b>	2050	343	532	666	751	819	877
<b>199</b>	2100	349	540	677	763	833	891
<b>200</b>	2150	355	549	688	776	846	905
<b>201</b>	2200	360	558	699	788	860	920
<b>202</b>	2250	366	567	710	800	873	934
<b>203</b>	2300	371	575	721	812	886	948
<b>204</b>	2350	377	584	732	825	900	963
<b>205</b>	2400	383	593	743	837	913	977
<b>206</b>	2450	388	601	754	849	927	991
<b>207</b>	2500	394	610	765	862	940	1006
<b>208</b>	2550	399	619	776	874	954	1020
<b>209</b>	2600	405	627	787	886	967	1034
<b>210</b>	2650	410	635	797	897	979	1048
<b>211</b>	2700	415	643	806	908	991	1060
<b>212</b>	2750	420	651	816	919	1003	1073
<b>213</b>	2800	425	658	826	930	1015	1085
<b>214</b>	2850	430	667	836	941	1027	1098
<b>215</b>	2900	435	675	846	953	1039	1112
<b>216</b>	2950	440	683	856	964	1052	1125
<b>217</b>	3000	445	691	866	975	1064	1138
<b>218</b>	3050	450	699	876	987	1076	1152
<b>219</b>	3100	456	707	886	998	1089	1165
<b>220</b>	3150	461	715	896	1010	1101	1178
<b>221</b>	3200	466	723	906	1021	1114	1191
<b>222</b>	3250	471	732	917	1032	1126	1205
<b>223</b>	3300	476	740	927	1044	1139	1218
<b>224</b>	3350	481	748	937	1055	1151	1231
<b>225</b>	3400	486	756	947	1067	1164	1245
<b>226</b>	3450	492	764	957	1078	1176	1258
<b>227</b>	3500	497	772	967	1089	1189	1271
<b>228</b>	3550	502	780	977	1101	1201	1285
<b>229</b>	3600	507	788	987	1112	1213	1298
<b>230</b>	3650	512	797	997	1124	1226	1311
<b>231</b>	3700	518	806	1009	1137	1240	1326
<b>232</b>	3750	524	815	1020	1150	1254	1342
<b>233</b>	3800	530	824	1032	1163	1268	1357
<b>234</b>	3850	536	834	1043	1176	1283	1372
<b>235</b>	3900	542	843	1055	1189	1297	1387
<b>236</b>	3950	547	852	1066	1202	1311	1402
<b>237</b>	4000	553	861	1078	1214	1325	1417
<b>238</b>	4050	559	871	1089	1227	1339	1432

<b>239</b>	4100	565	880	1101	1240	1353	1448
<b>240</b>	4150	571	889	1112	1253	1367	1463
<b>241</b>	4200	577	898	1124	1266	1382	1478
<b>242</b>	4250	583	907	1135	1279	1396	1493
<b>243</b>	4300	589	917	1147	1292	1410	1508
<b>244</b>	4350	594	926	1158	1305	1424	1523
<b>245</b>	4400	600	935	1170	1318	1438	1538
<b>246</b>	4450	606	944	1181	1331	1452	1553
<b>247</b>	4500	612	954	1193	1344	1467	1569
<b>248</b>	4550	618	963	1204	1357	1481	1584
<b>249</b>	4600	624	972	1216	1370	1495	1599
<b>250</b>	4650	630	981	1227	1383	1509	1614
<b>251</b>	4700	635	989	1237	1395	1522	1627
<b>252</b>	4750	641	997	1247	1406	1534	1641
<b>253</b>	4800	646	1005	1257	1417	1546	1654
<b>254</b>	4850	651	1013	1267	1428	1558	1667
<b>255</b>	4900	656	1021	1277	1439	1570	1679
<b>256</b>	4950	661	1028	1286	1450	1582	1692
<b>257</b>	5000	666	1036	1295	1460	1593	1704
<b>258</b>	5050	671	1043	1305	1471	1605	1716
<b>259</b>	5100	675	1051	1314	1481	1616	1728
<b>260</b>	5150	680	1058	1323	1492	1628	1741
<b>261</b>	5200	685	1066	1333	1502	1640	1753
<b>262</b>	5250	690	1073	1342	1513	1651	1765
<b>263</b>	5300	695	1081	1351	1524	1663	1778
<b>264</b>	5350	700	1088	1361	1534	1674	1790
<b>265</b>	5400	705	1096	1370	1545	1686	1802
<b>266</b>	5450	710	1103	1379	1555	1697	1815
<b>267</b>	5500	714	1111	1389	1566	1709	1827
<b>268</b>	5550	719	1118	1398	1576	1720	1839
<b>269</b>	5600	724	1126	1407	1587	1732	1851
<b>270</b>	5650	729	1133	1417	1598	1743	1864
<b>271</b>	5700	734	1141	1426	1608	1755	1876
<b>272</b>	5750	739	1148	1435	1619	1766	1888
<b>273</b>	5800	744	1156	1445	1629	1778	1901
<b>274</b>	5850	749	1163	1454	1640	1790	1913
<b>275</b>	5900	753	1171	1463	1650	1801	1925
<b>276</b>	5950	758	1178	1473	1661	1813	1937
<b>277</b>	6000	763	1186	1482	1672	1824	1950
<b>278</b>	6050	768	1193	1491	1682	1836	1962
<b>279</b>	6100	773	1201	1501	1693	1847	1974
<b>280</b>	6150	778	1208	1510	1703	1859	1987
<b>281</b>	6200	783	1216	1519	1714	1870	1999
<b>282</b>	6250	788	1223	1529	1724	1882	2011
<b>283</b>	6300	792	1231	1538	1735	1893	2023
<b>284</b>	6350	797	1238	1547	1745	1905	2036
<b>285</b>	6400	802	1246	1557	1756	1916	2048
<b>286</b>	6450	807	1253	1566	1767	1928	2060
<b>287</b>	6500	812	1261	1575	1777	1940	2073
<b>288</b>	6550	816	1267	1583	1786	1949	2083
<b>289</b>	6600	820	1272	1590	1794	1957	2092
<b>290</b>	6650	823	1277	1597	1801	1965	2100
<b>291</b>	6700	827	1283	1604	1809	1974	2109
<b>292</b>	6750	830	1288	1610	1817	1982	2118
<b>293</b>	6800	834	1293	1617	1824	1990	2127
<b>294</b>	6850	837	1299	1624	1832	1999	2136

<b>295</b>	6900	841	1304	1631	1839	2007	2145
<b>296</b>	6950	845	1309	1637	1847	2016	2154
<b>297</b>	7000	848	1315	1644	1855	2024	2163
<b>298</b>	7050	852	1320	1651	1862	2032	2172
<b>299</b>	7100	855	1325	1658	1870	2041	2181
<b>300</b>	7150	859	1331	1665	1878	2049	2190
<b>301</b>	7200	862	1336	1671	1885	2057	2199
<b>302</b>	7250	866	1341	1678	1893	2066	2207
<b>303</b>	7300	870	1347	1685	1900	2074	2216
<b>304</b>	7350	873	1352	1692	1908	2082	2225
<b>305</b>	7400	877	1358	1698	1916	2091	2234
<b>306</b>	7450	880	1363	1705	1923	2099	2243
<b>307</b>	7500	884	1368	1712	1931	2108	2252
<b>308</b>	7550	887	1374	1719	1938	2116	2261
<b>309</b>	7600	891	1379	1725	1946	2124	2270
<b>310</b>	7650	895	1384	1732	1954	2133	2279
<b>311</b>	7700	898	1390	1739	1961	2141	2288
<b>312</b>	7750	902	1395	1746	1969	2149	2297
<b>313</b>	7800	905	1400	1753	1977	2158	2305
<b>314</b>	7850	908	1405	1758	1983	2164	2313
<b>315</b>	7900	910	1409	1764	1989	2171	2320
<b>316</b>	7950	913	1414	1770	1995	2178	2328
<b>317</b>	8000	916	1418	1776	2001	2185	2335
<b>318</b>	8050	918	1423	1781	2007	2192	2343
<b>319</b>	8100	921	1428	1787	2014	2198	2350
<b>320</b>	8150	924	1432	1793	2020	2205	2357
<b>321</b>	8200	927	1437	1799	2026	2212	2365
<b>322</b>	8250	929	1441	1804	2032	2219	2372
<b>323</b>	8300	932	1446	1810	2038	2226	2380
<b>324</b>	8350	935	1450	1816	2045	2232	2387
<b>325</b>	8400	937	1455	1822	2051	2239	2395
<b>326</b>	8450	940	1459	1827	2057	2246	2402
<b>327</b>	8500	943	1464	1833	2063	2253	2410
<b>328</b>	8550	945	1468	1839	2069	2260	2417
<b>329</b>	8600	948	1473	1845	2076	2266	2425
<b>330</b>	8650	951	1478	1850	2082	2273	2432
<b>331</b>	8700	954	1482	1856	2088	2280	2440
<b>332</b>	8750	956	1487	1862	2094	2287	2447
<b>333</b>	8800	959	1491	1868	2100	2294	2455
<b>334</b>	8850	962	1496	1873	2107	2300	2462
<b>335</b>	8900	964	1500	1879	2113	2307	2470
<b>336</b>	8950	967	1505	1885	2119	2314	2477
<b>337</b>	9000	970	1509	1891	2125	2321	2484
<b>338</b>	9050	973	1514	1896	2131	2328	2492
<b>339</b>	9100	975	1517	1901	2137	2334	2498
<b>340</b>	9150	977	1521	1905	2141	2339	2503
<b>341</b>	9200	979	1524	1909	2146	2344	2509
<b>342</b>	9250	982	1527	1914	2151	2349	2514
<b>343</b>	9300	984	1531	1918	2156	2354	2520
<b>344</b>	9350	986	1534	1922	2160	2359	2525
<b>345</b>	9400	988	1537	1926	2165	2365	2531
<b>346</b>	9450	990	1541	1930	2170	2370	2536
<b>347</b>	9500	993	1544	1935	2175	2375	2541
<b>348</b>	9550	995	1547	1939	2179	2380	2547
<b>349</b>	9600	997	1551	1943	2184	2385	2552
<b>350</b>	9650	999	1554	1947	2189	2390	2558
<b>351</b>	9700	1001	1557	1951	2194	2396	2563

352	9750	1003	1561	1956	2198	2401	2569
353	9800	1006	1564	1960	2203	2406	2574
354	9850	1008	1567	1964	2208	2411	2580
355	9900	1010	1571	1968	2213	2416	2585
356	9950	1012	1574	1972	2218	2421	2590
357	10000	1014	1577	1977	2222	2427	2596

358

359 For gross monthly income between \$10,000 and \$20,000, add the amount of child support for  
 360 \$10,000 to the following percentages of gross income above \$10,000:

361	ONE	TWO	THREE	FOUR	FIVE	SIX
362	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
363	3.1%	5.1%	6.8%	7.8%	8.8%	9.5%

364

365 For gross monthly income between \$20,000 and \$50,000, add the amount of child support for  
 366 \$20,000 to the following percentages of gross income above \$20,000:

367	ONE	TWO	THREE	FOUR	FIVE	SIX
368	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
369	2%	3.5%	5%	6%	6.9%	7.8%

370

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

373	ONE	TWO	THREE	FOUR	FIVE	SIX
374	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
375	1%	2%	3%	4%	5%	6%

376

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

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

388 Gross income shall be subject to deduction of reasonable business expenses for persons with income  
 389 from self-employment, a partnership, or a closely held business. "Gross income" shall not include

390 ~~benefits~~ : 1. Benefits from public assistance and social services programs as defined in § 63.2-100;

391 ~~federal~~ ; 2. Federal supplemental security income benefits; ~~or~~

392 ~~child~~ ; 3. Child support received; ~~or~~

393 4. *Income received by the payor from secondary employment income not previously included in*  
 394 *"gross income," where the payor obtained the income to discharge a child support arrearage established*  
 395 *by a court or administrative order and the payor is paying the arrearage pursuant to the order.*  
 396 *"Secondary employment income" includes but is not limited to income from an additional job, from*  
 397 *self-employment, or from overtime employment. The cessation of such secondary income upon the*  
 398 *payment of the arrearage shall not be the basis for a material change in circumstances upon which a*  
 399 *modification of child support may be based.*

400 For purposes of this subsection: (i) spousal support received shall be included in gross income and  
 401 spousal support paid shall be deducted from gross income when paid pursuant to an order or written  
 402 agreement and (ii) one-half of any self-employment tax paid shall be deducted from gross income.

403 Where there is an existing court or administrative order or written agreement relating to the child or  
 404 children of a party to the proceeding, who are not the child or children who are the subject of the  
 405 present proceeding, then there is a presumption that there shall be deducted from the gross income of  
 406 the party subject to such order or written agreement, the amount that the party is actually paying for the  
 407 support of a child or children pursuant to such order or agreement.

408 Where a party to the proceeding has a natural or adopted child or children in the party's household  
 409 or primary physical custody, and the child or children are not the subject of the present proceeding,  
 410 there is a presumption that there shall be deducted from the gross income of that party the amount as  
 411 shown on the Schedule of Monthly Basic Child Support Obligations contained in subsection B that

412 represents that party's support obligation based solely on that party's income as being the total income  
413 available for the natural or adopted child or children in the party's household or primary physical  
414 custody, who are not the subject of the present proceeding. Provided, however, that the existence of a  
415 party's financial responsibility for such a child or children shall not of itself constitute a material change  
416 in circumstances for modifying a previous order of child support in any modification proceeding. Any  
417 adjustment to gross income under this subsection shall not create or reduce a support obligation to an  
418 amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and  
419 provide other basic necessities for the child, as determined by the court.

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

422 D. Any ~~extraordinary medical and dental expenses for treatment of the child or children shall be~~  
423 ~~added to the basic child support obligation. For purposes of this section, extraordinary medical and~~  
424 ~~dental expenses are uninsured expenses in excess of \$100 for a single illness or condition and shall~~  
425 ~~include but not be limited to eyeglasses, prescription medication, prostheses, and mental health services~~  
426 ~~whether provided by a social worker, psychologist, psychiatrist, or counselor Except for good cause~~  
427 ~~shown or the agreement of the parties, in addition to any other child support obligations established~~  
428 ~~pursuant to this section, any child support order shall provide that the parents pay in proportion to~~  
429 ~~their gross incomes, as used for calculating the monthly support obligation, any reasonable and~~  
430 ~~necessary unreimbursed medical or dental expenses that are in excess of \$250 for any calendar year for~~  
431 ~~each child who is the subject of the obligation. The method of payment of those expenses shall be~~  
432 ~~contained in the support order. Each parent shall pay his respective share of expenses as those expenses~~  
433 ~~are incurred. Any amount paid under this subsection shall not be adjusted by, nor added to, the child~~  
434 ~~support calculated in accordance with subsection G. For the purposes of this section, medical or dental~~  
435 ~~expenses shall include but not be limited to eyeglasses, prescription medication, prosthetics,~~  
436 ~~orthodontics, and mental health or developmental disabilities services, including but not limited to~~  
437 ~~services provided by a social worker, psychologist, psychiatrist, counselor, or therapist.~~

438 E. Any costs for health care coverage as defined in § 63.2-1900 and dental care coverage, when  
439 actually being paid by a parent, to the extent such costs are directly allocable to the child or children,  
440 and which are the extra costs of covering the child or children beyond whatever coverage the parent  
441 providing the coverage would otherwise have, shall be added to the basic child support obligation.

442 F. Any child-care costs incurred on behalf of the child or children due to employment of the  
443 custodial parent shall be added to the basic child support obligation. Child-care costs shall not exceed  
444 the amount required to provide quality care from a licensed source. When requested by the noncustodial  
445 parent, the court may require the custodial parent to present documentation to verify the costs incurred  
446 for child care under this subsection. Where appropriate, the court shall consider the willingness and  
447 availability of the noncustodial parent to provide child care personally in determining whether child-care  
448 costs are necessary or excessive. *Upon the request of either party, and upon a showing of the tax*  
449 *savings a party derives from child-care cost deductions or credits, the court shall factor actual tax*  
450 *consequences into its calculation of the child-care costs to be added to the basic child support*  
451 *obligation.*

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

461 However, the monthly obligation of the noncustodial parent shall be reduced by the cost for health  
462 care coverage to the extent allowable by subsection E when paid directly by the noncustodial parent.  
463 *Unreimbursed medical and dental expenses shall be calculated and allocated in accordance with*  
464 *subsection D.*

465 2. Split custody support. In cases involving split custody, the amount of child support to be paid  
466 shall be the difference between the amounts owed by each parent as a noncustodial parent, computed in  
467 accordance with subdivision 1, with the noncustodial parent owing the larger amount paying the  
468 difference to the other parent. *Unreimbursed medical and dental expenses shall be calculated and*  
469 *allocated in accordance with subsection D.*

470 For the purpose of this section and § 20-108.1, split custody shall be limited to those situations  
471 where each parent has physical custody of a child or children born of the parents, born of either parent  
472 and adopted by the other parent or adopted by both parents. For the purposes of calculating a child  
473 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 90 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. The parents shall pay their respective shares of these extraordinary medical expenses as they are incurred, and they are not added to each party's shared custody support owed to the other party. The method of payment of said allowable expenses shall be contained in the support order. When the shared support is compared to the sole custody support to determine which is the lesser support, pursuant to subdivision G 3 (a), the extraordinary medical expenses shall not enter into either calculation. Unreimbursed medical and dental expenses shall be calculated and allocated in accordance with subsection D.~~

(c) Definition of a day. For the purposes of this section, "day" means a period of 24 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 24 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 either party 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, then the shared custody support calculated pursuant to this subsection shall not be the presumptively correct support and the court may consider whether the sole custody support or the shared custody support is more just and appropriate.

(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.

535 (f) In the event that the shared custody support calculation indicates that the net support is to be paid  
536 to the parent who would not be the parent receiving support pursuant to the sole custody calculation,  
537 then the shared support shall be deemed to be the lesser support.

538 H. The Secretary of Health and Human Resources shall ensure that the guideline set out in this  
539 section is reviewed by October 31, 2001, and every ~~three~~ *four* years thereafter, by the Child Support  
540 Guidelines Review Panel, consisting of 15 members that include four legislative members and 11  
541 nonlegislative citizen members. Members shall be appointed as follows: three members of the House  
542 Committee for Courts of Justice, upon the recommendation of the chairman of such committee, to be  
543 appointed by the Speaker of the House of Delegates in accordance with the principles of proportional  
544 representation contained in the Rules of the House of Delegates; one member of the Senate Committee  
545 for Courts of Justice, upon the recommendation of the chairman of such committee, to be appointed by  
546 the Senate Committee on Privileges and Elections; and one representative of a juvenile and domestic  
547 relations district court, one representative of a circuit court, one representative of the Department of  
548 Social Services' Division of Child Support Enforcement, three members of the Virginia State Bar, two  
549 custodial parents, two noncustodial parents, and one child advocate, upon the recommendation of the  
550 Secretary of Health and Human Resources, to be appointed by the Governor. The Panel shall determine  
551 the adequacy of the guideline for the determination of appropriate awards for the support of children by  
552 considering current research and data on the cost of and expenditures necessary for rearing children, and  
553 any other resources it deems relevant to such review. The Panel shall report its findings to the General  
554 Assembly as provided in the procedures of the Division of Legislative Automated Systems for the  
555 processing of legislative documents and reports before the General Assembly next convenes following  
556 such review.

557 Legislative members shall serve terms coincident with their terms of office. Nonlegislative citizen  
558 members shall serve at the pleasure of the Governor. All members may be reappointed. Appointments to  
559 fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall  
560 be filled in the same manner as the original appointments.

561 Legislative members shall receive such compensation as provided in § 30-19.12, and nonlegislative  
562 citizen members shall receive such compensation for the performance of their duties as provided in  
563 § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the  
564 performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of  
565 compensation and expenses of the members shall be provided by the Department of Social Services.

566 The Department of Social Services shall provide staff support to the Panel. All agencies of the  
567 Commonwealth shall provide assistance to the Panel, upon request.

568 The chairman of the Panel shall submit to the Governor and the General Assembly a ~~triennial~~  
569 *quadrennial* executive summary of the interim activity and work of the Panel no later than the first day  
570 of 2005 2006 regular session of the General Assembly and every ~~three~~ *four* years thereafter. The  
571 executive summary shall be submitted as provided in the procedures of the Division of Legislative  
572 Automated Systems for the processing of legislative documents and reports and shall be posted on the  
573 General Assembly's website.