

064651800

HOUSE BILL NO. 731

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 15, 2006)

(Patron Prior to Substitute—Delegate McQuigg)

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

Be it enacted by the General Assembly of Virginia:**1. That §§ 20-108.1 and 20-108.2 of the Code of Virginia are amended and reenacted as follows:**

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

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

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

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

1. Actual monetary support for other family members or former family members;
2. Arrangements regarding custody of the children, *including the cost of visitation travel*;
3. Imputed income to a party who is voluntarily unemployed or voluntarily under-employed; provided that income may not be imputed to the custodial parent when a child is not in school, child care services are not available and the cost of such child care services are not included in the computation, *and provided further, that any consideration of imputed income based on a change in a party's employment shall be evaluated with consideration of the good faith and reasonableness of employment decisions made by the party*;
4. Debts of either party arising during the marriage for the benefit of the child;
5. ~~Debts incurred for production of income~~;
6. Direct payments ordered by the court for ~~health care coverage~~, maintaining life insurance coverage pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of the child ~~and costs related to the provision of health care coverage pursuant to subdivision 7 of § 20-60.3~~;
7. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;
8. ~~Age, physical and mental condition of the child or children, including unreimbursed medical or dental expenses, and child-care expenses~~
6. *Any special needs of a child resulting from any physical, emotional, or medical condition*;
97. Independent financial resources, ~~if any~~, of the child or children;
108. Standard of living for the ~~family~~ *child or children* established during the marriage;
119. Earning capacity, obligations ~~and needs~~, ~~and~~ financial resources *and special needs* of each parent;
12. Education and training of the parties and the ability and opportunity of the parties to secure such education and training;
13. Contributions, ~~monetary and nonmonetary~~, of each party to the well-being of the family;
1410. Provisions made with regard to the marital property under § 20-107.3, *where such property earns income or has an income-earning potential*;
1511. Tax consequences to the parties, ~~regarding~~ *including* claims for exemptions, child tax credit

60 *and child care credit of dependent children and child care expenses;*

61 ~~1612.~~ A written agreement, *stipulation, or consent order or decree* between the parties which
62 includes the amount of child support;

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

65 ~~1813.~~ Such other factors, *including tax consequences to each party,* as are necessary to consider the
66 equities for the parents and children.

67 C. In any proceeding under this title or Title 16.1 or Title 63.2 on the issue of determining child
68 support, the court shall have the authority to order a party to provide health care coverage, as defined in
69 § 63.2-1900, for dependent children if reasonable under all the circumstances and health care coverage
70 for a spouse or former spouse.

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

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

82 *F. Notwithstanding any other provision of law, any amendments to this section shall not be*
83 *retroactive to a date before the effective date of the amendment, and shall not be the basis for a*
84 *material change in circumstances upon which a modification of child support may be based.*

85 § 20-108.2. Guideline for determination of child support; quadrennial review by Child Support
86 Guidelines Review Panel; executive summary.

87 A. There shall be a rebuttable presumption in any judicial or administrative proceeding for child
88 support under this title or Title 16.1 or 63.2, including cases involving split custody or shared custody,
89 that the amount of the award which would result from the application of the guidelines set forth in this
90 section is the correct amount of child support to be awarded. In order to rebut the presumption, the
91 court shall make written findings in the order as set out in § 20-108.1, which findings may be
92 incorporated by reference, that the application of the guidelines would be unjust or inappropriate in a
93 particular case as determined by relevant evidence pertaining to the factors set out in §§ ~~20-107.2 and~~
94 20-108.1. The Department of Social Services shall set child support at the amount resulting from
95 computations using the guidelines set out in this section pursuant to the authority granted to it in
96 Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 and subject to the provisions of § 63.2-1918.

97 B. *Basic support obligation.* For purposes of application of the guideline, a basic child support
98 obligation shall be computed using the schedule set out below. For combined monthly gross income
99 amounts falling between amounts shown in the schedule, basic child support obligation amounts shall be
100 extrapolated. However, unless one of the following exemptions applies where the sole custody child
101 support obligation as computed pursuant to subdivision G 1 is less than \$65 per month, there shall be a
102 presumptive minimum child support obligation of \$65 per month payable by the payor parent.
103 Exemptions from this presumptive minimum monthly child support obligation shall include: parents
104 unable to pay child support because they lack sufficient assets from which to pay child support and
105 who, in addition, are institutionalized in a psychiatric facility; are imprisoned with no chance of parole;
106 are medically verified to be totally and permanently disabled with no evidence of potential for paying
107 child support, including recipients of Supplemental Security Income (SSI); or are otherwise involuntarily
108 unable to produce income. "Number of children" means the number of children for whom the parents
109 share joint legal responsibility and for whom support is being sought.

110 SCHEDULE OF MONTHLY BASIC CHILD SUPPORT OBLIGATIONS

111 COMBINED

112 MONTHLY

113 GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
114 INCOME	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
115 0-599	65	65	65	65	65	65
116 600	110	111	113	114	115	116
117 650	138	140	142	143	145	146
118 700	153	169	170	172	174	176
119 750	160	197	199	202	204	206
120 800	168	226	228	231	233	236

121	850	175	254	257	260	263	266
122	900	182	281	286	289	292	295
123	950	189	292	315	318	322	325
124	1000	196	304	344	348	351	355
125	1050	203	315	373	377	381	385
126	1100	210	326	402	406	410	415
127	1150	217	337	422	435	440	445
128	1200	225	348	436	465	470	475
129	1250	232	360	451	497	502	507
130	1300	241	373	467	526	536	542
131	1350	249	386	483	545	570	576
132	1400	257	398	499	563	605	611
133	1450	265	411	515	581	633	645
134	1500	274	426	533	602	656	680
135	1550	282	436	547	617	672	714
136	1600	289	447	560	632	689	737
137	1650	295	458	573	647	705	754
138	1700	302	468	587	662	721	772
139	1750	309	479	600	676	738	789
140	1800	315	488	612	690	752	805
141	1850	321	497	623	702	766	819
142	1900	326	506	634	714	779	834
143	1950	332	514	645	727	793	848
144	2000	338	523	655	739	806	862
145	2050	343	532	666	751	819	877
146	2100	349	540	677	763	833	891
147	2150	355	549	688	776	846	905
148	2200	360	558	699	788	860	920
149	2250	366	567	710	800	873	934
150	2300	371	575	721	812	886	948
151	2350	377	584	732	825	900	963
152	2400	383	593	743	837	913	977
153	2450	388	601	754	849	927	991
154	2500	394	610	765	862	940	1006
155	2550	399	619	776	874	954	1020
156	2600	405	627	787	886	967	1034
157	2650	410	635	797	897	979	1048
158	2700	415	643	806	908	991	1060
159	2750	420	651	816	919	1003	1073
160	2800	425	658	826	930	1015	1085
161	2850	430	667	836	941	1027	1098
162	2900	435	675	846	953	1039	1112
163	2950	440	683	856	964	1052	1125
164	3000	445	691	866	975	1064	1138
165	3050	450	699	876	987	1076	1152
166	3100	456	707	886	998	1089	1165
167	3150	461	715	896	1010	1101	1178
168	3200	466	723	906	1021	1114	1191
169	3250	471	732	917	1032	1126	1205
170	3300	476	740	927	1044	1139	1218
171	3350	481	748	937	1055	1151	1231
172	3400	486	756	947	1067	1164	1245
173	3450	492	764	957	1078	1176	1258
174	3500	497	772	967	1089	1189	1271
175	3550	502	780	977	1101	1201	1285
176	3600	507	788	987	1112	1213	1298

177	3650	512	797	997	1124	1226	1311
178	3700	518	806	1009	1137	1240	1326
179	3750	524	815	1020	1150	1254	1342
180	3800	530	824	1032	1163	1268	1357
181	3850	536	834	1043	1176	1283	1372
182	3900	542	843	1055	1189	1297	1387
183	3950	547	852	1066	1202	1311	1402
184	4000	553	861	1078	1214	1325	1417
185	4050	559	871	1089	1227	1339	1432
186	4100	565	880	1101	1240	1353	1448
187	4150	571	889	1112	1253	1367	1463
188	4200	577	898	1124	1266	1382	1478
189	4250	583	907	1135	1279	1396	1493
190	4300	589	917	1147	1292	1410	1508
191	4350	594	926	1158	1305	1424	1523
192	4400	600	935	1170	1318	1438	1538
193	4450	606	944	1181	1331	1452	1553
194	4500	612	954	1193	1344	1467	1569
195	4550	618	963	1204	1357	1481	1584
196	4600	624	972	1216	1370	1495	1599
197	4650	630	981	1227	1383	1509	1614
198	4700	635	989	1237	1395	1522	1627
199	4750	641	997	1247	1406	1534	1641
200	4800	646	1005	1257	1417	1546	1654
201	4850	651	1013	1267	1428	1558	1667
202	4900	656	1021	1277	1439	1570	1679
203	4950	661	1028	1286	1450	1582	1692
204	5000	666	1036	1295	1460	1593	1704
205	5050	671	1043	1305	1471	1605	1716
206	5100	675	1051	1314	1481	1616	1728
207	5150	680	1058	1323	1492	1628	1741
208	5200	685	1066	1333	1502	1640	1753
209	5250	690	1073	1342	1513	1651	1765
210	5300	695	1081	1351	1524	1663	1778
211	5350	700	1088	1361	1534	1674	1790
212	5400	705	1096	1370	1545	1686	1802
213	5450	710	1103	1379	1555	1697	1815
214	5500	714	1111	1389	1566	1709	1827
215	5550	719	1118	1398	1576	1720	1839
216	5600	724	1126	1407	1587	1732	1851
217	5650	729	1133	1417	1598	1743	1864
218	5700	734	1141	1426	1608	1755	1876
219	5750	739	1148	1435	1619	1766	1888
220	5800	744	1156	1445	1629	1778	1901
221	5850	749	1163	1454	1640	1790	1913
222	5900	753	1171	1463	1650	1801	1925
223	5950	758	1178	1473	1661	1813	1937
224	6000	763	1186	1482	1672	1824	1950
225	6050	768	1193	1491	1682	1836	1962
226	6100	773	1201	1501	1693	1847	1974
227	6150	778	1208	1510	1703	1859	1987
228	6200	783	1216	1519	1714	1870	1999
229	6250	788	1223	1529	1724	1882	2011
230	6300	792	1231	1538	1735	1893	2023
231	6350	797	1238	1547	1745	1905	2036
232	6400	802	1246	1557	1756	1916	2048
233	6450	807	1253	1566	1767	1928	2060

234	6500	812	1261	1575	1777	1940	2073
235	6550	816	1267	1583	1786	1949	2083
236	6600	820	1272	1590	1794	1957	2092
237	6650	823	1277	1597	1801	1965	2100
238	6700	827	1283	1604	1809	1974	2109
239	6750	830	1288	1610	1817	1982	2118
240	6800	834	1293	1617	1824	1990	2127
241	6850	837	1299	1624	1832	1999	2136
242	6900	841	1304	1631	1839	2007	2145
243	6950	845	1309	1637	1847	2016	2154
244	7000	848	1315	1644	1855	2024	2163
245	7050	852	1320	1651	1862	2032	2172
246	7100	855	1325	1658	1870	2041	2181
247	7150	859	1331	1665	1878	2049	2190
248	7200	862	1336	1671	1885	2057	2199
249	7250	866	1341	1678	1893	2066	2207
250	7300	870	1347	1685	1900	2074	2216
251	7350	873	1352	1692	1908	2082	2225
252	7400	877	1358	1698	1916	2091	2234
253	7450	880	1363	1705	1923	2099	2243
254	7500	884	1368	1712	1931	2108	2252
255	7550	887	1374	1719	1938	2116	2261
256	7600	891	1379	1725	1946	2124	2270
257	7650	895	1384	1732	1954	2133	2279
258	7700	898	1390	1739	1961	2141	2288
259	7750	902	1395	1746	1969	2149	2297
260	7800	905	1400	1753	1977	2158	2305
261	7850	908	1405	1758	1983	2164	2313
262	7900	910	1409	1764	1989	2171	2320
263	7950	913	1414	1770	1995	2178	2328
264	8000	916	1418	1776	2001	2185	2335
265	8050	918	1423	1781	2007	2192	2343
266	8100	921	1428	1787	2014	2198	2350
267	8150	924	1432	1793	2020	2205	2357
268	8200	927	1437	1799	2026	2212	2365
269	8250	929	1441	1804	2032	2219	2372
270	8300	932	1446	1810	2038	2226	2380
271	8350	935	1450	1816	2045	2232	2387
272	8400	937	1455	1822	2051	2239	2395
273	8450	940	1459	1827	2057	2246	2402
274	8500	943	1464	1833	2063	2253	2410
275	8550	945	1468	1839	2069	2260	2417
276	8600	948	1473	1845	2076	2266	2425
277	8650	951	1478	1850	2082	2273	2432
278	8700	954	1482	1856	2088	2280	2440
279	8750	956	1487	1862	2094	2287	2447
280	8800	959	1491	1868	2100	2294	2455
281	8850	962	1496	1873	2107	2300	2462
282	8900	964	1500	1879	2113	2307	2470
283	8950	967	1505	1885	2119	2314	2477
284	9000	970	1509	1891	2125	2321	2484
285	9050	973	1514	1896	2131	2328	2492
286	9100	975	1517	1901	2137	2334	2498
287	9150	977	1521	1905	2141	2339	2503
288	9200	979	1524	1909	2146	2344	2509
289	9250	982	1527	1914	2151	2349	2514

290	9300	984	1531	1918	2156	2354	2520
291	9350	986	1534	1922	2160	2359	2525
292	9400	988	1537	1926	2165	2365	2531
293	9450	990	1541	1930	2170	2370	2536
294	9500	993	1544	1935	2175	2375	2541
295	9550	995	1547	1939	2179	2380	2547
296	9600	997	1551	1943	2184	2385	2552
297	9650	999	1554	1947	2189	2390	2558
298	9700	1001	1557	1951	2194	2396	2563
299	9750	1003	1561	1956	2198	2401	2569
300	9800	1006	1564	1960	2203	2406	2574
301	9850	1008	1567	1964	2208	2411	2580
302	9900	1010	1571	1968	2213	2416	2585
303	9950	1012	1574	1972	2218	2421	2590
304	10000	1014	1577	1977	2222	2427	2596

305 For gross monthly income between \$10,000 and \$20,000, add the amount of child support for
 306 \$10,000 to the following percentages of gross income above \$10,000:

307	ONE	TWO	THREE	FOUR	FIVE	SIX
308	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
309	3.1%	5.1%	6.8%	7.8%	8.8%	9.5%

310 For gross monthly income between \$20,000 and \$50,000, add the amount of child support for
 311 \$20,000 to the following percentages of gross income above \$20,000:

312	ONE	TWO	THREE	FOUR	FIVE	SIX
313	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
314	2%	3.5%	5%	6%	6.9%	7.8%

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

317	ONE	TWO	THREE	FOUR	FIVE	SIX
318	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
319	1%	2%	3%	4%	5%	6%

320 *C. 1. Definition of gross income.* For purposes of this section, "gross income" means all income from
 321 all sources, and shall include, but not be limited to, income from salaries, wages, commissions, royalties,
 322 bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social
 323 security benefits except as listed below, workers' compensation benefits, unemployment insurance
 324 benefits, disability insurance benefits, veterans' benefits, spousal support, rental income, gifts, prizes or
 325 awards.

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

332 *3. Not included in gross income.* Gross income shall be subject to deduction of reasonable business
 333 expenses for persons with income from self-employment, a partnership, or a closely held business.
 334 "Gross income" shall not include:

335 *1a.* Benefits from public assistance and social services programs as defined in § 63.2-100;

336 *2b.* Federal supplemental security income benefits;

337 *3c.* Child support received; or

338 *4d.* Income received by the payor from secondary employment income not previously included in
 339 "gross income," where the payor obtained the income to discharge a child support arrearage established
 340 by a court or administrative order and the payor is paying the arrearage pursuant to the order.
 341 "Secondary employment income" includes but is not limited to income from an additional job, from
 342 self-employment, or from overtime employment. The cessation of such secondary income upon the
 343 payment of the arrearage shall not be the basis for a material change in circumstances upon which a
 344 modification of child support may be based.

345 *4. Spousal support paid or received.* For purposes of this subsection: (i) spousal support received
 346 shall be included in gross income and spousal support paid shall be deducted from gross income when
 347 paid pursuant to an order or written agreement and (ii) one-half of any self-employment tax paid shall
 348 be deducted from gross income.

349 *5. Support of other children.*

350 *By order or agreement.* Where there is an existing court or administrative order or written agreement
 351 relating to the child or children of a party to the proceeding, who are not the child or children who are
 352 the subject of the present proceeding, then there is a presumption that there shall be deducted from the
 353 gross income of the party subject to such order or written agreement, the amount that the party is
 354 actually paying for the support of a child or children pursuant to such order or agreement.

355 *Children living in household.* Where a party to the proceeding has a natural or adopted child or
 356 children in the party's household or primary physical custody, and the child or children are not the
 357 subject of the present proceeding, there is a presumption that there shall be deducted from the gross
 358 income of that party the amount as shown on the Schedule of Monthly Basic Child Support Obligations
 359 contained in subsection B that represents that party's support obligation based solely on that party's
 360 income as being the total income available for the natural or adopted child or children in the party's
 361 household or primary physical custody, who are not the subject of the present proceeding. Provided,
 362 however, that the existence of a party's financial responsibility for such a child or children shall not of
 363 itself constitute a material change in circumstances for modifying a previous order of child support in
 364 any modification proceeding. Any adjustment to gross income under this subsection shall not create or
 365 reduce a support obligation to an amount which seriously impairs the custodial parent's ability to
 366 maintain minimal adequate housing and provide other basic necessities for the child, as determined by
 367 the court.

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

371 D. *Unreimbursed medical expenses.* Except for good cause shown or the agreement of the parties, in
 372 addition to any other child support obligations established pursuant to this section, any child support
 373 order shall provide that the parents pay in proportion to their gross incomes, as used for calculating the
 374 monthly support obligation, any reasonable and necessary unreimbursed medical or dental expenses that
 375 are in excess of \$250 for any calendar year for each child who is the subject of the obligation. The
 376 method of payment of those expenses shall be contained in the support order. Each parent shall pay his
 377 respective share of expenses as those expenses are incurred. Any amount paid under this subsection shall
 378 not be adjusted by, nor added to, the child support calculated in accordance with subsection G. For the
 379 purposes of this section, medical or dental expenses shall include but not be limited to eyeglasses,
 380 prescription medication, prosthetics, orthodontics, and mental health or developmental disabilities
 381 services, including but not limited to services provided by a social worker, psychologist, psychiatrist,
 382 counselor, or therapist.

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

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

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

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

410 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, with the noncustodial parent owing the larger amount paying the difference to the other parent. Unreimbursed medical and dental expenses shall be calculated and allocated in accordance with subsection D.

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 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. 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.

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

H. The Secretary of Health and Human Resources shall ensure that the guideline set out in this section is reviewed by October 31, 2001, and every four years thereafter, by the Child Support Guidelines Review Panel, consisting of 15 members comprised of four legislative members and 11 nonlegislative citizen members. Members shall be appointed as follows: three members of the House Committee for Courts of Justice, upon the recommendation of the chairman of such committee, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; one member of the Senate Committee for Courts of Justice, upon the recommendation of the chairman of such committee, to be appointed by the Senate Committee on Rules; and one representative of a juvenile and domestic relations district court, one representative of a circuit court, one representative of the Department of Social Services' Division of Child Support Enforcement, three members of the Virginia State Bar, two custodial parents, two noncustodial parents, and one child advocate, upon the recommendation of the Secretary of Health and Human Resources, to be appointed by the Governor. 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 as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports before the General Assembly next convenes following such review.

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

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

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

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

I. Notwithstanding any other provision of law, any amendment to this section shall not be retroactive to a date before the effective date of the amendment and shall not be the basis for a material change in circumstances upon which a modification of child support may be based.