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HOUSE BILL NO. 1913

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 20-108.1, 20-108.2, 53.1-41, 63.2-1921, 63.2-1952, and 63.2-1960 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 20-108.3 and by adding in Article 10 of Chapter 19 of Title 63.2 a section numbered 63.2-1961, relating to prisoners' responsibility for child support.

Patron—BaCote

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-108.1, 20-108.2, 53.1-41, 63.2-1921, 63.2-1952, and 63.2-1960 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 20-108.3 and by adding in Article 10 of Chapter 19 of Title 63.2 a section numbered 63.2-1961 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. Direct payments ordered by the court for maintaining life insurance coverage pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of the child;
6. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;
7. Any special needs of a child resulting from any physical, emotional, or medical condition;
8. Independent financial resources of the child or children;
9. Standard of living for the child or children established during the marriage;
10. Earning capacity, obligations, financial resources, and special needs of each parent;
11. Provisions made with regard to the marital property under § 20-107.3, where said property earns income or has an income-earning potential;
12. Tax consequences to the parties including claims for exemptions, child tax credit, and child care credit for dependent children;

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59 13. A written agreement, stipulation, consent order, or decree between the parties which includes the
60 amount of child support; and

61 14. Such other factors as are necessary to consider the equities for the parents and children.

62 C. In any proceeding under this title or Title 16.1 or Title 63.2 on the issue of determining child
63 support, the court shall have the authority to order a party to provide health care coverage, as defined in
64 § 63.2-1900, for dependent children if reasonable under all the circumstances and health care coverage
65 for a spouse or former spouse.

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

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

77 F. *In any proceeding under this title, Title 16.1, or Title 63.2 on the issue of determining child*
78 *support, the court or, in the case of an administrative support order entered pursuant to Chapter 19*
79 *(§ 63.2-1900 et seq.) of Title 63.2, the Department of Social Services shall order that, for any party who*
80 *is sentenced to a term of incarceration during the period he is obligated to pay support, the amount of*
81 *the award be modified in order to reflect the amount calculated under the child support guidelines set*
82 *forth in § 20-108.2. The modification may be made from the date the party is sentenced to a term of*
83 *incarceration. The court or the Department of Social Services shall also order that the party's support*
84 *obligation be tolled pursuant to § 20-108.3.*

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

88 GH. Child support payments, whether current or arrears, received by a parent for the benefit of and
89 owed to a child in the parent's custody, whether the payments were ordered under this title, Title 16.1,
90 or Title 63.2, shall not be subject to garnishment. A depository wherein child support payments have
91 been deposited on behalf of and traceable to an individual shall not be required to determine the portion
92 of deposits which are subject to garnishment.

93 § 20-108.2. Guideline for determination of child support; quadrennial review by Child Support
94 Guidelines Review Panel; executive summary.

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

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

119 SCHEDULE OF MONTHLY BASIC CHILD SUPPORT OBLIGATIONS

120 COMBINED

121	MONTHLY						
122	GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
123	INCOME	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
124	0-599	65	65	65	65	65	65
125	600	110	111	113	114	115	116
126	650	138	140	142	143	145	146
127	700	153	169	170	172	174	176
128	750	160	197	199	202	204	206
129	800	168	226	228	231	233	236
130	850	175	254	257	260	263	266
131	900	182	281	286	289	292	295
132	950	189	292	315	318	322	325
133	1000	196	304	344	348	351	355
134	1050	203	315	373	377	381	385
135	1100	210	326	402	406	410	415
136	1150	217	337	422	435	440	445
137	1200	225	348	436	465	470	475
138	1250	232	360	451	497	502	507
139	1300	241	373	467	526	536	542
140	1350	249	386	483	545	570	576
141	1400	257	398	499	563	605	611
142	1450	265	411	515	581	633	645
143	1500	274	426	533	602	656	680
144	1550	282	436	547	617	672	714
145	1600	289	447	560	632	689	737
146	1650	295	458	573	647	705	754
147	1700	302	468	587	662	721	772
148	1750	309	479	600	676	738	789
149	1800	315	488	612	690	752	805
150	1850	321	497	623	702	766	819
151	1900	326	506	634	714	779	834
152	1950	332	514	645	727	793	848
153	2000	338	523	655	739	806	862
154	2050	343	532	666	751	819	877
155	2100	349	540	677	763	833	891
156	2150	355	549	688	776	846	905
157	2200	360	558	699	788	860	920
158	2250	366	567	710	800	873	934
159	2300	371	575	721	812	886	948
160	2350	377	584	732	825	900	963
161	2400	383	593	743	837	913	977
162	2450	388	601	754	849	927	991
163	2500	394	610	765	862	940	1006
164	2550	399	619	776	874	954	1020
165	2600	405	627	787	886	967	1034
166	2650	410	635	797	897	979	1048
167	2700	415	643	806	908	991	1060
168	2750	420	651	816	919	1003	1073
169	2800	425	658	826	930	1015	1085
170	2850	430	667	836	941	1027	1098
171	2900	435	675	846	953	1039	1112
172	2950	440	683	856	964	1052	1125
173	3000	445	691	866	975	1064	1138
174	3050	450	699	876	987	1076	1152
175	3100	456	707	886	998	1089	1165
176	3150	461	715	896	1010	1101	1178

177	3200	466	723	906	1021	1114	1191
178	3250	471	732	917	1032	1126	1205
179	3300	476	740	927	1044	1139	1218
180	3350	481	748	937	1055	1151	1231
181	3400	486	756	947	1067	1164	1245
182	3450	492	764	957	1078	1176	1258
183	3500	497	772	967	1089	1189	1271
184	3550	502	780	977	1101	1201	1285
185	3600	507	788	987	1112	1213	1298
186	3650	512	797	997	1124	1226	1311
187	3700	518	806	1009	1137	1240	1326
188	3750	524	815	1020	1150	1254	1342
189	3800	530	824	1032	1163	1268	1357
190	3850	536	834	1043	1176	1283	1372
191	3900	542	843	1055	1189	1297	1387
192	3950	547	852	1066	1202	1311	1402
193	4000	553	861	1078	1214	1325	1417
194	4050	559	871	1089	1227	1339	1432
195	4100	565	880	1101	1240	1353	1448
196	4150	571	889	1112	1253	1367	1463
197	4200	577	898	1124	1266	1382	1478
198	4250	583	907	1135	1279	1396	1493
199	4300	589	917	1147	1292	1410	1508
200	4350	594	926	1158	1305	1424	1523
201	4400	600	935	1170	1318	1438	1538
202	4450	606	944	1181	1331	1452	1553
203	4500	612	954	1193	1344	1467	1569
204	4550	618	963	1204	1357	1481	1584
205	4600	624	972	1216	1370	1495	1599
206	4650	630	981	1227	1383	1509	1614
207	4700	635	989	1237	1395	1522	1627
208	4750	641	997	1247	1406	1534	1641
209	4800	646	1005	1257	1417	1546	1654
210	4850	651	1013	1267	1428	1558	1667
211	4900	656	1021	1277	1439	1570	1679
212	4950	661	1028	1286	1450	1582	1692
213	5000	666	1036	1295	1460	1593	1704
214	5050	671	1043	1305	1471	1605	1716
215	5100	675	1051	1314	1481	1616	1728
216	5150	680	1058	1323	1492	1628	1741
217	5200	685	1066	1333	1502	1640	1753
218	5250	690	1073	1342	1513	1651	1765
219	5300	695	1081	1351	1524	1663	1778
220	5350	700	1088	1361	1534	1674	1790
221	5400	705	1096	1370	1545	1686	1802
222	5450	710	1103	1379	1555	1697	1815
223	5500	714	1111	1389	1566	1709	1827
224	5550	719	1118	1398	1576	1720	1839
225	5600	724	1126	1407	1587	1732	1851
226	5650	729	1133	1417	1598	1743	1864
227	5700	734	1141	1426	1608	1755	1876
228	5750	739	1148	1435	1619	1766	1888
229	5800	744	1156	1445	1629	1778	1901
230	5850	749	1163	1454	1640	1790	1913
231	5900	753	1171	1463	1650	1801	1925
232	5950	758	1178	1473	1661	1813	1937
233	6000	763	1186	1482	1672	1824	1950

234	6050	768	1193	1491	1682	1836	1962
235	6100	773	1201	1501	1693	1847	1974
236	6150	778	1208	1510	1703	1859	1987
237	6200	783	1216	1519	1714	1870	1999
238	6250	788	1223	1529	1724	1882	2011
239	6300	792	1231	1538	1735	1893	2023
240	6350	797	1238	1547	1745	1905	2036
241	6400	802	1246	1557	1756	1916	2048
242	6450	807	1253	1566	1767	1928	2060
243	6500	812	1261	1575	1777	1940	2073
244	6550	816	1267	1583	1786	1949	2083
245	6600	820	1272	1590	1794	1957	2092
246	6650	823	1277	1597	1801	1965	2100
247	6700	827	1283	1604	1809	1974	2109
248	6750	830	1288	1610	1817	1982	2118
249	6800	834	1293	1617	1824	1990	2127
250	6850	837	1299	1624	1832	1999	2136
251	6900	841	1304	1631	1839	2007	2145
252	6950	845	1309	1637	1847	2016	2154
253	7000	848	1315	1644	1855	2024	2163
254	7050	852	1320	1651	1862	2032	2172
255	7100	855	1325	1658	1870	2041	2181
256	7150	859	1331	1665	1878	2049	2190
257	7200	862	1336	1671	1885	2057	2199
258	7250	866	1341	1678	1893	2066	2207
259	7300	870	1347	1685	1900	2074	2216
260	7350	873	1352	1692	1908	2082	2225
261	7400	877	1358	1698	1916	2091	2234
262	7450	880	1363	1705	1923	2099	2243
263	7500	884	1368	1712	1931	2108	2252
264	7550	887	1374	1719	1938	2116	2261
265	7600	891	1379	1725	1946	2124	2270
266	7650	895	1384	1732	1954	2133	2279
267	7700	898	1390	1739	1961	2141	2288
268	7750	902	1395	1746	1969	2149	2297
269	7800	905	1400	1753	1977	2158	2305
270	7850	908	1405	1758	1983	2164	2313
271	7900	910	1409	1764	1989	2171	2320
272	7950	913	1414	1770	1995	2178	2328
273	8000	916	1418	1776	2001	2185	2335
274	8050	918	1423	1781	2007	2192	2343
275	8100	921	1428	1787	2014	2198	2350
276	8150	924	1432	1793	2020	2205	2357
277	8200	927	1437	1799	2026	2212	2365
278	8250	929	1441	1804	2032	2219	2372
279	8300	932	1446	1810	2038	2226	2380
280	8350	935	1450	1816	2045	2232	2387
281	8400	937	1455	1822	2051	2239	2395
282	8450	940	1459	1827	2057	2246	2402
283	8500	943	1464	1833	2063	2253	2410
284	8550	945	1468	1839	2069	2260	2417
285	8600	948	1473	1845	2076	2266	2425
286	8650	951	1478	1850	2082	2273	2432
287	8700	954	1482	1856	2088	2280	2440
288	8750	956	1487	1862	2094	2287	2447
289	8800	959	1491	1868	2100	2294	2455

290	8850	962	1496	1873	2107	2300	2462
291	8900	964	1500	1879	2113	2307	2470
292	8950	967	1505	1885	2119	2314	2477
293	9000	970	1509	1891	2125	2321	2484
294	9050	973	1514	1896	2131	2328	2492
295	9100	975	1517	1901	2137	2334	2498
296	9150	977	1521	1905	2141	2339	2503
297	9200	979	1524	1909	2146	2344	2509
298	9250	982	1527	1914	2151	2349	2514
299	9300	984	1531	1918	2156	2354	2520
300	9350	986	1534	1922	2160	2359	2525
301	9400	988	1537	1926	2165	2365	2531
302	9450	990	1541	1930	2170	2370	2536
303	9500	993	1544	1935	2175	2375	2541
304	9550	995	1547	1939	2179	2380	2547
305	9600	997	1551	1943	2184	2385	2552
306	9650	999	1554	1947	2189	2390	2558
307	9700	1001	1557	1951	2194	2396	2563
308	9750	1003	1561	1956	2198	2401	2569
309	9800	1006	1564	1960	2203	2406	2574
310	9850	1008	1567	1964	2208	2411	2580
311	9900	1010	1571	1968	2213	2416	2585
312	9950	1012	1574	1972	2218	2421	2590
313	10000	1014	1577	1977	2222	2427	2596

314 For gross monthly income between \$10,000 and \$20,000, add the amount of child support for
 315 \$10,000 to the following percentages of gross income above \$10,000:

316	ONE	TWO	THREE	FOUR	FIVE	SIX
317	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
318	3.1%	5.1%	6.8%	7.8%	8.8%	9.5%

319 For gross monthly income between \$20,000 and \$50,000, add the amount of child support for
 320 \$20,000 to the following percentages of gross income above \$20,000:

321	ONE	TWO	THREE	FOUR	FIVE	SIX
322	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
323	2%	3.5%	5%	6%	6.9%	7.8%

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

326	ONE	TWO	THREE	FOUR	FIVE	SIX
327	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
328	1%	2%	3%	4%	5%	6%

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

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

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

- 342 1. Benefits from public assistance and social services programs as defined in § 63.2-100;
 - 343 2. Federal supplemental security income benefits;
 - 344 3. Child support received; or
 - 345 4. Income received by the payor from secondary employment income not previously included in
 346 "gross income," where the payor obtained the income to discharge a child support arrearage established
 347 by a court or administrative order and the payor is paying the arrearage pursuant to the order.
- 348 "Secondary employment income" includes but is not limited to income from an additional job, from

self-employment, or from overtime employment. The cessation of such secondary income upon the payment of the arrearage shall not be the basis for a material change in circumstances upon which a modification of child support may be based.

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

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

Where a party to the proceeding has a natural or adopted child or children in the party's household or primary physical custody, and the child or children are not the subject of the present proceeding, there is a presumption that there shall be deducted from the gross income of that party the amount as shown on the Schedule of Monthly Basic Child Support Obligations contained in subsection B that represents that party's support obligation based solely on that party's income as being the total income available for the natural or adopted child or children in the party's household or primary physical custody, who are not the subject of the present proceeding. Provided, however, that the existence of a party's financial responsibility for such a child or children shall not of itself constitute a material change in circumstances for modifying a previous order of child support in any modification proceeding. Any adjustment to gross income under this subsection 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, as determined by the court.

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

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

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

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

G. 1. Sole custody support. The sole custody total monthly child support obligation shall be established by adding (i) the monthly basic child support obligation, as determined from the schedule contained in subsection B, (ii) costs for health care coverage to the extent allowable by subsection E, and (iii) 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. Unreimbursed medical and dental expenses shall be calculated and allocated in accordance with subsection D.

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

415 For the purpose of this section and § 20-108.1, split custody shall be limited to those situations
416 where each parent has physical custody of a child or children born of the parents, born of either parent
417 and adopted by the other parent or adopted by both parents. For the purposes of calculating a child
418 support obligation where split custody exists, a separate family unit exists for each parent, and child
419 support for that family unit shall be calculated upon the number of children in that family unit who are
420 born of the parents, born of either parent and adopted by the other parent or adopted by both parents.
421 Where split custody exists, a parent is a custodial parent to the children in that parent's family unit and
422 is a noncustodial parent to the children in the other parent's family unit.

423 3. Shared custody support.

424 (a) Where a party has custody or visitation of a child or children for more than 90 days of the year,
425 as such days are defined in subdivision G 3 (c), a shared custody child support amount based on the
426 ratio in which the parents share the custody and visitation of any child or children shall be calculated in
427 accordance with this subdivision. The presumptive support to be paid shall be the shared custody
428 support amount, unless a party affirmatively shows that the sole custody support amount calculated as
429 provided in subdivision G 1 is less than the shared custody support amount. If so, the lesser amount
430 shall be the support to be paid. For the purposes of this subsection, the following shall apply:

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

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

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

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

448 (b) Support to be paid. The shared support need of the shared child or children shall be calculated
449 pursuant to subdivision G 3 (a) (iii). This amount shall then be multiplied by the other parent's custody
450 share. To that sum for each parent shall be added the other parent's cost of health care coverage to the
451 extent allowable by subsection E, plus the other parent's work-related child-care costs to the extent
452 allowable by subsection F. This total for each parent shall be multiplied by that parent's income share.
453 The support amounts thereby calculated that each parent owes the other shall be subtracted one from the
454 other and the difference shall be the shared custody support one parent owes to the other, with the payor
455 parent being the one whose shared support is the larger. Unreimbursed medical and dental expenses
456 shall be calculated and allocated in accordance with subsection D.

457 (c) Definition of a day. For the purposes of this section, "day" means a period of 24 hours; however,
458 where the parent who has the fewer number of overnight periods during the year has an overnight
459 period with a child, but has physical custody of the shared child for less than 24 hours during such
460 overnight period, there is a presumption that each parent shall be allocated one-half of a day of custody
461 for that period.

462 (d) Minimum standards. Any calculation under this subdivision shall not create or reduce a support
463 obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal
464 adequate housing and provide other basic necessities for the child. If the gross income of either party is
465 equal to or less than 150 percent of the federal poverty level promulgated by the U.S. Department of
466 Health and Human Services from time to time, then the shared custody support calculated pursuant to
467 this subsection shall not be the presumptively correct support and the court may consider whether the
468 sole custody support or the shared custody support is more just and appropriate.

469 (e) Support modification. When there has been an award of child support based on the shared
470 custody formula and one parent consistently fails to exercise custody or visitation in accordance with the
471 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.

§ 20-108.3. Tolling of child support for incarcerated parents.

A. In any proceeding under this title, Title 16.1, or Title 63.2 on the issue of determining child support, the court or, in the case of an administrative support order entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, the Department of Social Services shall order that, for any party who is sentenced to a term of incarceration during the period he is obligated to pay support, his obligation to make support payments be tolled during the term of his incarceration, unless the court or the Department determines that the party has the present financial ability to pay his child support obligation.

B. Nothing in this section shall preclude a court or the Department of Social Services from establishing the support obligation of a party who is sentenced to a term of incarceration for whom no support order has previously been entered. Any order establishing such support obligation of a party sentenced to a term of incarceration shall be tolled pursuant to subsection A.

C. A party whose child support payments have been tolled pursuant to subsection A shall remain liable for any support arrearages that accrue while his support payments have been tolled. No sooner than 90 days after the party is released from incarceration, the court or the Department of Social Services shall order the resumption of his child support payments and shall determine the amount of his support arrearage. The order of the court or the Department shall include a plan for the payment of the party's support arrearage. Any such order shall provide that all payments are to be credited to current child support obligations first, with any payment in excess of the current obligation applied to arrearages.

D. No interest, costs, fees, or other penalties shall accrue to a party whose child support payments have been tolled pursuant to subsection A for the period during which child support payments were tolled.

533 *E. Nothing in this section shall preclude a party whose child support payments have been tolled*
534 *pursuant to subsection A from seeking a modification of his child support obligation based on a*
535 *material change in circumstances upon which a modification of child support may be based that is*
536 *unrelated to his incarceration.*

537 § 53.1-41. Opportunities for work and career and technical education.

538 To the extent feasible, it shall be the duty of the Director to provide persons sentenced to the
539 Department with opportunities to work and to participate in career and technical education programs as
540 operated by the Department of Correctional Education in accordance with § 22.1-339 et seq. Such work
541 opportunities may include business, industrial, agricultural, highway maintenance and construction, and
542 work release programs as hereafter specified in this article. In addition, prisoners may be employed to
543 improve, repair, work on or cultivate public property or buildings.

544 In addition to meeting the qualifications for work performance and security compatibility, preference
545 for placement in work programs shall be given to any prisoner who requests a work assignment and
546 assigns a minimum of 50% percent of his earnings to his child support obligation.

547 *Preference for placement in work programs shall be given to prisoners who, in addition to meeting*
548 *the qualifications for work performance and security compatibility, have child support obligations.*

549 § 63.2-1921. Authority to initiate reviews of certain orders.

550 A. The Department may, pursuant to this chapter and in accordance with § 20-108.2, initiate a review
551 of the amount of support ordered by any court. If a material change in circumstances has occurred, the
552 Department shall report its findings and a proposed modified order to the court which entered the order
553 or the court having current jurisdiction. Notice of the review shall be served for each review on both
554 parties (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329, or (ii) by certified
555 mail, with proof of actual receipt by the addressee, or (iii) by the nonrequesting party executing a
556 waiver. Either party may request a hearing on the proposed modified order by filing a request with such
557 court within ~~thirty~~ 30 days of receipt of notice by the requesting party. Unless a hearing is requested
558 within the time limits, no hearing shall be required and the court shall enter the modified order, which
559 shall be effective from the date that notice of such review was served on the nonrequesting party. The
560 court shall modify any prior court order, or schedule a hearing on its motion and so notify the parties
561 and the Department. If a hearing is held, the Department shall have the burden of proof.

562 B. However, if the order being reviewed by the Department deviated from the guidelines, when
563 entered, based on one or more of the deviating factors set out in § 20-108.1 and the Department
564 determines that there has been a material change in circumstances, the procedure set forth in subsection
565 A shall not apply and the Department shall schedule a hearing with the court which entered the order or
566 the court having current jurisdiction.

567 C. A material change in circumstances shall be deemed to have occurred if the difference between
568 the existing child support award and the amount ~~which~~ *that* would result from application of the
569 guidelines is at least ~~ten~~ 10 percent of the existing child support award but not less than ~~twenty-five~~
570 ~~dollars~~ \$25 per month.

571 *D. The Department shall, pursuant to this chapter and in accordance with § 20-108.2, initiate a*
572 *review of the amount of support ordered by any court if it determines that an obligor has been*
573 *sentenced to a term of incarceration during the period he is obligated to pay support.*

574 § 63.2-1952. Interest on debts due.

575 Interest at the judgment interest rate as established by § 6.1-330.54 on any arrearage pursuant to an
576 order being enforced by the Department pursuant to this chapter shall be collected by the Commissioner
577 except in the case of a minor obligor during the period of his minority *or a prisoner during the period*
578 *of his incarceration.* The Commissioner shall maintain interest balance due accounts.

579 § 63.2-1960. Recovery of certain fees and costs.

580 The Department shall have the authority to assess and recover from the noncustodial parent in
581 proceedings to enforce child support obligations against the noncustodial parent, reasonable attorneys'
582 fees, *except in the case of a minor obligor during the period of his minority or a prisoner during the*
583 *period of his incarceration.* All such fees recovered in proceedings to collect child support arrearages
584 shall be retained by the Department in a special fund for the support of the Division of Support
585 Enforcement. The Department shall also have the authority to assess and recover costs in such cases.
586 However, the Department shall not be entitled to recover attorneys' fees or costs in any case in which
587 the noncustodial parent prevails.

588 The Department shall have the authority to assess and recover the actual costs of genetic testing
589 against the noncustodial parent if paternity is established, *except in the case of a minor obligor during*
590 *the period of his minority or a prisoner during the period of his incarceration.* Where an original test is
591 contested and additional testing is requested, the Department may require advance payment by the
592 contestant. The genetic testing costs shall be set at the rate charged the Department by the provider of
593 genetic testing services.

594 The Department shall have the authority to assess and recover the actual costs of intercept programs

from the noncustodial parent, *except in the case of a minor obligor during the period of his minority or a prisoner during the period of his incarceration.* The intercept programs' costs shall be set at the rate actually charged the Department.

The Department shall have the authority to assess and recover the actual costs of fees for service of process, and seizure and sale pursuant to a levy on a judgment in enforcement actions from the noncustodial parent, *except in the case of a minor obligor during the period of his minority or a prisoner during the period of his incarceration.*

The fees and costs that may be recovered pursuant to this section may be collected using any mechanism provided by this chapter.

§ 63.2-1961. *Reduction for timely payment of arrearages.*

In the case of a minor obligor after the period of his minority has ended or an imprisoned obligor after the period of his incarceration has ended, the Department shall reduce the total amount of arrearages due on child support obligations as follows:

1. A reduction of 5 percent of the total arrearages for six months of continued timely payments;
2. A reduction of 10 percent of the total arrearages for 12 months of continued timely payments;
3. A reduction of 15 percent of the total arrearages for 18 months of continued timely payments; and
4. A reduction of 25 percent of the total arrearages for 24 months of continued timely payments.