

992822126

HOUSE BILL NO. 2407

Offered January 21, 1999

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

Patron—Barlow

Referred to Committee for Courts of Justice

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

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

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

B. For purposes of application of the guideline, a basic child support obligation shall be computed using the schedule set out below. For combined monthly gross income amounts falling between amounts shown in the schedule, basic child support obligation amounts shall be extrapolated. However, where the combined monthly gross income is less than \$599, the presumptive child support obligation shall be \$65 per month. "Number of children" shall mean 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	ONE	TWO	THREE	FOUR	FIVE	SIX
INCOME	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	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

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

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

170	3750	524	815	1020	1150	1254	1342
171							
172	3800	530	824	1032	1163	1268	1357
173							
174	3850	536	834	1043	1176	1283	1372
175							
176	3900	542	843	1055	1189	1297	1387
177							
178	3950	547	852	1066	1202	1311	1402
179							
180	4000	553	861	1078	1214	1325	1417
181							
182	4050	559	871	1089	1227	1339	1432
183							
184	4100	565	880	1101	1240	1353	1448
185							
186	4150	571	889	1112	1253	1367	1463
187							
188	4200	577	898	1124	1266	1382	1478
189							
190	4250	583	907	1135	1279	1396	1493
191							
192	4300	589	917	1147	1292	1410	1508
193							
194	4350	594	926	1158	1305	1424	1523
195							
196	4400	600	935	1170	1318	1438	1538
197							
198	4450	606	944	1181	1331	1452	1553
199							
200	4500	612	954	1193	1344	1467	1569
201							
202	4550	618	963	1204	1357	1481	1584
203							
204	4600	624	972	1216	1370	1495	1599
205							
206	4650	630	981	1227	1383	1509	1614
207							
208	4700	635	989	1237	1395	1522	1627
209							
210	4750	641	997	1247	1406	1534	1641
211							
212	4800	646	1005	1257	1417	1546	1654
213							
214	4850	651	1013	1267	1428	1558	1667
215							
216	4900	656	1021	1277	1439	1570	1679
217							
218	4950	661	1028	1286	1450	1582	1692
219							
220	5000	666	1036	1295	1460	1593	1704
221							
222	5050	671	1043	1305	1471	1605	1716
223							
224	5100	675	1051	1314	1481	1616	1728
225							
226	5150	680	1058	1323	1492	1628	1741

227							
228	5200	685	1066	1333	1502	1640	1753
229							
230	5250	690	1073	1342	1513	1651	1765
231							
232	5300	695	1081	1351	1524	1663	1778
233							
234	5350	700	1088	1361	1534	1674	1790
235							
236	5400	705	1096	1370	1545	1686	1802
237							
238	5450	710	1103	1379	1555	1697	1815
239							
240	5500	714	1111	1389	1566	1709	1827
241							
242	5550	719	1118	1398	1576	1720	1839
243							
244	5600	724	1126	1407	1587	1732	1851
245							
246	5650	729	1133	1417	1598	1743	1864
247							
248	5700	734	1141	1426	1608	1755	1876
249							
250	5750	739	1148	1435	1619	1766	1888
251							
252	5800	744	1156	1445	1629	1778	1901
253							
254	5850	749	1163	1454	1640	1790	1913
255							
256	5900	753	1171	1463	1650	1801	1925
257							
258	5950	758	1178	1473	1661	1813	1937
259							
260	6000	763	1186	1482	1672	1824	1950
261							
262	6050	768	1193	1491	1682	1836	1962
263							
264	6100	773	1201	1501	1693	1847	1974
265							
266	6150	778	1208	1510	1703	1859	1987
267							
268	6200	783	1216	1519	1714	1870	1999
269							
270	6250	788	1223	1529	1724	1882	2011
271							
272	6300	792	1231	1538	1735	1893	2023
273							
274	6350	797	1238	1547	1745	1905	2036
275							
276	6400	802	1246	1557	1756	1916	2048
277							
278	6450	807	1253	1566	1767	1928	2060
279							
280	6500	812	1261	1575	1777	1940	2073
281							
282	6550	816	1267	1583	1786	1949	2083

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

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

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

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

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

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

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

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

ONE	TWO	THREE	FOUR	FIVE	SIX
CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN

1% 2% 3% 4% 5% 6%

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

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

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

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

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

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

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

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

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

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

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

514 between the amounts owed by each parent to the other parent, with the parent owing the larger amount
515 paying the difference to the other parent.

516 To compute the monthly amount to be paid by one parent to the other parent, the following
517 calculations shall be made: *Shared custody support*.

518 (a) The "basic child support obligation" of each parent shall be the "total shared support" multiplied
519 by the other parent's "custody share." The "total shared support" of both parties equals statutory
520 guideline amount determined pursuant to subsection B for the combined income of the parties and the
521 number of shared children multiplied by 1.25. A parent's "custody share" equals the number of days that
522 parent has physical custody of a shared child per year divided by the number of days in the year. Where
523 a party shows that he has custody or visitation of a child or children for more than ninety days of the
524 year, as such days are defined in subdivision G 3 (c), a shared custody child support amount shall be
525 calculated based on the ratio in which the parents share the custody and visitation of any child or
526 children and a sole custody amount shall be calculated in accordance with subsections B, C, D, E, and
527 F of this section. The presumptive total support to be paid shall be the lesser amount of the two
528 calculated amounts of support as provided in subdivision G 3 (b). For the purposes of this subsection,
529 the following shall apply:

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

533 (ii) *Custody share*. Each parent's "custody share" equals the number of days that parent has physical
534 custody, whether by sole custody, joint legal or joint residential custody, or visitation, of a shared child
535 per year divided by the number of days in the year. All days in a year shall be allocated between the
536 parents such that the sums of each parent's days, over a one-year period, or anticipated to be over a
537 one-year period, are equal to the total number of days in the year. For purposes of this calculation, the
538 year may begin on such date as is determined in the discretion of the court, and the day may begin at
539 such time as is determined in the discretion of the court. For purposes of this calculation, a day shall
540 be as defined in subdivision G 3 (c).

541 (iii) *Shared support need*. "Shared support need" means the presumptive guideline amount of needed
542 support for the shared child or children calculated pursuant to subsection B of this section, for the
543 combined gross income of the parties and the number of shared children, multiplied by 1.5.

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

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

557 (b) To each parent's "basic child support obligation" shall be added the other parent's costs of health
558 care coverage, to the extent allowable by subsection E, and the other parent's work-related child care
559 costs to the extent allowable by subsection F. Support to be paid. If the shared custody support
560 calculated pursuant to subdivision (a)(v) is less than the sole custody support calculated pursuant to
561 subdivision (a)(iv), then shared custody support shall be paid. If the sole custody support calculated
562 pursuant to subdivision (a)(iv) is less than the shared custody support calculated pursuant to subdivision
563 (a)(v), then sole custody support shall be paid.

564 (c) The obligation of each parent to the other shall be then computed by multiplying each parent's
565 percentage of the parents' monthly combined gross income by the support obligation obtained in
566 subdivision G 3 (b).

567 The shared custody rules set forth herein apply when each parent has physical custody of a child or
568 children born of the parties, born of either parent and adopted by the other parent, or adopted by both
569 parents, for more than 110 days of the year.

570 *Definition of a day*. For the purposes of this section, "day" means a period of twenty-four hours;
571 however, where the parent who has the fewer number of overnight periods during the year has an
572 overnight period with a child, but has physical custody of the shared child for less than twenty-four
573 hours during such overnight period, then the parents shall each be allocated one-half of a day of
574 custody for that period. If the court determines that the application of the definition of a day as set forth
575 herein would be unjust or inappropriate, then the court, in its discretion, may allocate a day, or a

576 half-day, to one parent or the other.

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

583 (e) *Support modification.* When there has been an award of child support based on the shared
584 custody formula and one parent consistently fails to exercise custody or visitation as reasonably
585 contemplated by the parties or the court when the award was made, there shall be a rebuttable
586 presumption that the support award should be modified, when the difference between such award and an
587 award based upon the custody or visitation actually exercised varies by ten percent or more,
588 considering any deviation factors which may have been applied in the previous award. When the
589 existing award was based upon a deviation from the presumptive guideline, such deviation factors shall
590 also be considered when determining a modification.

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