

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #3

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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Department of Human Services TITLE NUMBER: 78

CITE AUTHORITY WV Code 48A-2-8; 42 USC 667; 45 CFR 302.56

AMENDMENT TO AN EXISTING RULE: YES  NO

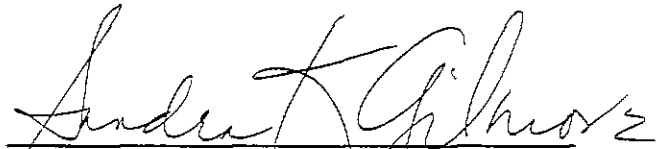
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: Guidelines for Child Support Awards

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Sandra K. Gilmore, Director  
Child Advocate Office

WEST VIRGINIA LEGISLATIVE RULE  
DEPARTMENT OF HUMAN SERVICES  
CHAPTER 48A-2-8  
SERIES 16

TITLE: Guidelines for Child Support Awards

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WEST VIRGINIA LEGISLATIVE RULE  
DEPARTMENT OF HUMAN SERVICES  
CHAPTER 48A-2-8  
SERIES 16

FILED  
DEPT. OF HUMAN SERVICES  
SERIES 16

Title: Guidelines for Child Support Awards

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Section 1. General

- 1.1 Scope--This legislative rule establishes guidelines for child support award amounts so as to ensure greater uniformity by those persons who make child support recommendations and enter child support orders and to increase predictability for parents, children, and other persons who are directly affected by child support orders.
- 1.2 Authority and Related Code Citation--West Virginia Code §48A-2-8, 42 U.S.C. §667, 45 C.F.R. §302.56.
- 1.3 Filing Date--
- 1.4 Effective Date--
- 1.5 Repeal of Former Rule--This legislative rule repeals the following West Virginia Legislative Rule: "Department of Human Services, Series 16, Guidelines for Child Support Awards," filed September 23, 1987.

Section 2. Guidelines for Child Support Awards

- 2.1 Federal law (42 U.S.C. §667) requires each state to develop guidelines for establishing amounts of child support obligations. The guidelines must be made available to all persons in the State who set child support award amounts, i.e., all Circuit Court Judges and Family Law Masters.
- 2.2 West Virginia Code §48A-2-8 requires guidelines for child support award amounts to insure greater uniformity by those persons recommending and entering child support orders and to increase the predictability for parents, children and other persons who are directly affected by child support orders. The guidelines must be

followed by the Child Advocate Office, Family Law Master and Circuit Court Judge unless they set forth in writing reasons for not following the guidelines in the particular case involved.

- 2.3 West Virginia Code §48A-2-8 also establishes criteria to be considered in formulating the guidelines. These are as follows:
1. In order to insure that children properly share in their parents' resources, the guidelines shall provide that, after a consideration of respective parental incomes, child support will be related to the level of living which the children would enjoy if they were living in a household with both parents present.
  2. The guidelines shall take into consideration the financial contribution of both parents. They are to provide for examining the financial contributions of both parents in relationship to total income so as to establish and equitably apportion the child support obligation.
  3. The guidelines shall take into consideration any pre-existing support orders.
  4. The guidelines are to provide direction in cases involving split or shared custody.
  5. Alimony is not to be included in the amount set as child support.
- 2.4 In addition to these criteria, the law requires the guidelines for child support awards to take into consideration the following underlying principles:
1. That parental expenditures on children represent a relatively constant percentage of family consumption as family consumption increases, so that as family income increases, the family's level of consumption increases, and the children should share in and benefit from this increase;
  2. That parental expenditures on children represent a declining proportion of family income as the gross income of the family increases, so that while total dollar outlays for children have a positive relationship to the family's gross income, the proportion of gross family income allotted for the children has a negative relationship to gross income;
  3. That expenditures on children vary according to the number of children in the family, and as the number of children in the family increase, the expenditures for the children as a group increase, and the expenditures on each individual child decrease; so that due to increasing economies of scale and the increased sharing of resources among family members, spending will not increase in direct proportion to the number of children;
  4. That as children grow older, expenditures on children increase,

particularly during the teenage years.

2.5 The Melson Formula, devised by a Delaware Judge and used in that State, incorporates the basic guidelines and principles necessary to satisfy both the federal and state laws. Thus, the Melson Formula is the basis for the guidelines established for the State of West Virginia.

2.6 The guidelines and procedures for their use are outlined as follows:

Part I. PRIMARY CHILD SUPPORT CALCULATION

STEP A. AVAILABLE NET FOR PRIMARY SUPPORT

1. DETERMINE EACH SUPPORT OBLIGOR'S MONTHLY NET INCOME.

- This is determined for each parent's income - the obligee and obligor. Both parents are referred to as obligors for this calculation.

- To do this add:

- a. Income from employment, as well as all other sources (such as pensions, dividends, interest, etc.); and
- b. Business expense accounts to the extent that they provide the support obligor with something he would otherwise have to provide (such as automobile, lunches, etc.).

- Subtract:

- a. Income taxes figured on the basis of the maximum allowable exemptions;
- b. Other deductions required by law, including child support payments made pursuant to a Court order;
- c. Deductions required by the employer, e.g., pensions, hospitalization, etc;
- d. Legitimate business expenses (for the self-employed obligor);
- e. Benefits such as hospitalization insurance which are maintained for the obligor's dependents.

- The guidelines are to be completed using the obligor's net monthly income. In instances where the obligor is paid other than monthly, the monthly gross is to be determined as follows:

1. Obligor paid weekly: multiply by 52 weeks and divide

- |  |   |
|--|---|
|  | by 12 months  |
| 2. Obligor paid weekly,<br>but amounts vary: | add the four<br>checks together,<br>divide by four,<br>multiply by 52<br>and divide by 12 |
| 3. Obligor paid twice<br>a month:            | multiply one<br>check by two  |
| 4. Biweekly:                                 | multiply by 26<br>weeks and divide<br>by 12   |

- Deductions for payments on consumer debts or loans will not be recognized except to the extent that such debts were incurred for indispensable items in use by the dependents or for necessary health care. Support obligors will not be allowed to reduce the child support obligation by incurring debts other than for necessities of life.
- Income so established will then be used to determine the obligor's monthly net income for the purpose of calculating child support.
- ALL INFORMATION PRESENTED IN THESE CALCULATIONS SHOULD BE BASED ON MONTHLY AMOUNTS. WHERE A PARTY IS PAID WEEKLY, THE PAY SHOULD BE MULTIPLIED BY 52 AND DIVIDED BY 12 TO ARRIVE AT A CORRECT MONTHLY AMOUNT. LIKEWISE, IN ORDER TO BE CONSIDERED, ALL CHILD CARE EXPENSES, MEDICAL INSURANCE PAYMENTS, ETC., MUST BE PRESENTED IN ACCURATE MONTHLY AMOUNTS.

2. SUBTRACT THE OBLIGOR'S SELF-SUPPORT DEDUCTION.

- Four hundred fifty dollars (\$450) a month is established as the self-support deduction for each obligor. This amount represents the minimum amount required for an adult's subsistence requirements.
- Income remaining after subtraction of the self-support deduction amount is deemed available for payment of child support. If no amount is left after subtraction of the self-support deduction, the child support amount will be set at \$50 per month.

STEP B. DETERMINE THE PRIMARY CHILD SUPPORT NEED

- The next step is to compute the PRIMARY SUPPORT NEED for each dependent child. Like the self-support

deduction, the primary support need represents the minimum amount required to maintain a child at a subsistence level.

- The primary child support need of each child in question will be considered by first determining that child's rank in the custodial parent's household and then using the appropriate figure shown below.
- The minimum needs of the several members of a household are established below. The order of household members is ranked on the basis of age:

First member (usually a parent)	\$450 a month
Second member, 40% thereof, or	\$180 a month
Third & Fourth members, 30% thereof, or	\$135 a month
Each additional member, 20% thereof, or	\$ 90 a month

- Primary support is currently set at \$180 per month for the second member of the household (a second adult or first child in a single adult family), \$135 per month for the third and fourth members, and \$90 for each member thereafter. In a case where the custodial parent lives with his/her parents or other separate family, he/she and the children will be considered to be in a household by themselves.
- Add to the total primary needs of all the children in question the cost of child care needed to allow a custodial parent to work.

STEP C. DETERMINE THE PRIMARY SUPPORT OBLIGATION OF EACH OBLIGOR

- The child's primary support needs are pro-rated between the parents based on available net income as determined in Step A.
- To arrive at the percentage for each parent, divide each support obligor's available net income for child support by the total available net income for child support. The resulting percentage (%) establishes the burden each obligor should carry with respect to their children's primary support. This percentage should then be multiplied by the total primary child support need in order to arrive at the PRIMARY SUPPORT OBLIGATION of each obligor.

PART II. STANDARD OF LIVING ADJUSTMENT (SOLA) CHILD SUPPORT CALCULATION

- SOLA is designed to apportion, as equitable considerations require, the income available to a support obligor after he has met his own primary needs and those of his dependents. This standard of living

allowance enables the child to benefit from the higher living standard of a parent.

STEP A. DETERMINE THE AVAILABLE NET INCOME FOR SOLA SUPPORT

- From each parent's AVAILABLE NET FOR PRIMARY SUPPORT established in Part I, Step A,

- Subtract:

- a. The PRIMARY SUPPORT OBLIGATION calculated in Part I, Step C;
- b. Where the support obligor has other dependents, the support obligor may be entitled to a deduction for such a dependent before calculating the SOLA obligation. If a parent does have dependents other than the child for whom support is being sought, and such other dependents are not covered by a court order, primary support amounts for such dependents are to be deducted from obligor income available for the SOLA. Thus, if a non-custodial parent has two other natural or adopted children living in the same household, and support is being calculated for one child living with the custodial parent, income available for SOLA would be reduced by the primary support amount for those two children (most likely \$270 - \$135 each as the Third and Fourth members of the household). To do this calculation, use a second form and complete Part I, Steps A, B, and C to determine the Primary Support Obligation for the children. The primary support obligations for all of these children are to be combined and deducted from the AVAILABLE NET FOR PRIMARY SUPPORT in Part II, Step A.

STEP B. CALCULATE SOLA SUPPORT OBLIGATION

- Where income is available, both support obligors shall be required to pay 15% for the first child, plus 10% each for the second and third child, plus 5% each for the fourth, fifth, and sixth child, of the AVAILABLE NET FOR SOLA SUPPORT established in Part II, Step A. Thus, the percentages used for the standard of living allowance are currently set at the following levels:

One child	15 percent
Two children	25 percent
Three children	35 percent
Four children	40 percent
Five children	45 percent
Six children	50 percent

- Total SOLA ordered shall not exceed 50% of the discretionary income.

STEP C. CALCULATE THE PER-CHILD SHARE OF SOLA SUPPORT

- Divide the total SOLA Support Obligation (mother's and father's added together) by the number of children for whom support is sought to arrive at this figure.

PART III. DETERMINATION OF PARENTS' TOTAL MONTHLY SUPPORT OBLIGATIONS

- To determine the TOTAL MONTHLY CHILD SUPPORT OBLIGATION, add the Primary Support Obligation and the individual SOLA Support Obligation together.
- Where a support obligor is also the custodial parent, the obligor retains that share of the support obligation owed to the child in his custody and pays the difference, if any, to the other custodial parent for the benefit of other children.
- The obligation will be set at \$50.00 if, according to the calculating, the obligor's total monthly child support obligation is less than \$50.00.
- These guidelines contemplate normal visitation arrangements, but non-traditional custody arrangements are recognized.
- Where parties share physical joint custody on an equal basis, each will be considered to have the child for six months during the course of a year. To avoid unnecessary transfers of funds, the "pay out" of each parent for the year should be determined by multiplying the monthly support obligation times six months. If one parent's yearly obligation is greater than that owed by the other, the excess amount shall be divided by 12 and paid monthly over the course of the year, unless the parties agree otherwise. In other words, the obligation is pro-rated based on the proportion of total time spent by the child in the physical custody of the other parent. Obligations for each of the parents are netted out, with the remainder specified as the support amount for the parent with the greater obligation.

2.7 A guidelines worksheet is attached as Appendix A.



WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES

1900 Washington Street, East

Charleston, WV 25305

Telephone (304) 348-2400

Reginia S. Lipscomb  
Commissioner

Arch A. Moore, Jr.  
Governor

CHILD ADVOCATE OFFICE

CHILD SUPPORT FORMULA

DATE: \_\_\_\_\_

Obligor's Name: \_\_\_\_\_ Number: \_\_\_\_\_

PART I. PRIMARY CHILD SUPPORT

<u>STEP A</u>	<u>FATHER</u>	<u>MOTHER</u>	<u>TOTAL</u>
Monthly Net Income	\$ _____	\$ _____	
Less Self Support	- _____	- _____	
= Individual Available Net for Primary Support	\$ _____	\$ _____	
= TOTAL AVAILABLE NET FOR PRIMARY CHILD SUPPORT.....			\$ _____

STEP B

\_\_\_\_\_, as \_\_\_\_\_ person in \_\_\_\_\_'s household \$ \_\_\_\_\_

+ \_\_\_\_\_, as \_\_\_\_\_ person in \_\_\_\_\_'s household + \_\_\_\_\_

+ \_\_\_\_\_, as \_\_\_\_\_ person in \_\_\_\_\_'s household + \_\_\_\_\_

Sub-total \$ \_\_\_\_\_

- MONTHLY CHILD CARE EXPENSES OF WORKING CUSTODIAL PARENT..... + \_\_\_\_\_

= TOTAL PRIMARY CHILD SUPPORT NEED..... \$ \_\_\_\_\_

STEP C

	<u>FATHER</u>	<u>MOTHER</u>
Individual Available Net	\$ _____	\$ _____
+ Total Available Net	+ _____	+ _____
= Share of Primary Support	_____ %	_____ %
x Primary Child Support Need	x _____	x _____
= PRIMARY SUPPORT OBLIGATION	\$ _____	\$ _____

PART II. STANDARD OF LIVING ADJUSTMENT (SOLA) CHILD SUPPORT

<u>STEP A</u>	<u>FATHER</u>	<u>MOTHER</u>
Individual Available Net for Primary Support	\$ _____	\$ _____
Less Individual Primary Support Obligation	- _____	- _____
= Individual Available Net for SOLA Support	\$ _____	\$ _____
<u>STEP B</u>		
Individual Available Net for SOLA Support	\$ _____	\$ _____
x Total SOLA Support Percentage	x _____ %	x _____ %
= Individual SOLA Support Obligation	\$ _____	\$ _____
= TOTAL SOLA SUPPORT OBLIGATION.....		\$ _____
<u>STEP C</u>		
PER-CHILD SHARE OF SOLA SUPPORT.....		\$ _____

PART III. TOTAL MONTHLY SUPPORT OBLIGATIONS

	<u>FATHER</u>	<u>MOTHER</u>
Individual Primary Support	\$ _____	\$ _____
+ Individual SOLA Support	+ _____	- _____
= Total Monthly Child Support Obligation	\$ _____	\$ _____
Less Amount Retained by Custodial Parent	- _____	- _____
= TOTAL MONTHLY ORDERED CHILD SUPPORT	\$ _____	\$ _____

This child support obligation formula has been explained to me, and

FATHER      MOTHER

           I agree with this amount.

           I do not agree with this amount and wish to make the court aware that I do not agree with the amount.

\_\_\_\_\_  
(Mother and Father's Signatures)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Paralegal)

\_\_\_\_\_  
(Typed Names of Obligors)

COMMENTS ON  
GUIDELINES FOR CHILD SUPPORT AWARDS  
BY

David B. McMahon  
Attorney at Law  
Legal Aid Society of Charleston

December 7, 1987

I have been practicing domestic relations law since 1975. I have practiced in small, medium and large counties: Kanawha County, Clay County, Putnam County and to a lesser extent Boone County. At least half of my practice for those twelve years has been domestic relations. Most of that has been divorces, but with a heavy mix of support determination, collection and enforcement actions thrown in. I represent primarily low income women though occasionally I have represented low income men. I am strongly in favor of some form guidelines for child support awards. Such a system has been used in Putnam County and I found it has yielded fair, but more expeditious and more efficient results than practicing without them.

With all this in mind, I do however have some difficulties with some aspects of your proposed guidelines.

I.

the Guidelines use fixed dollar amounts in Part I, Step A, 2 and in Part I, Step B. There are two dangers to use of these absolute figures. First, they must be updated by the issuance of a new Rule which must go through rule making procedures. This will require initiative to begin the change. This will require staff time that could be better spent elsewhere. More likely staff time will be better spent and they will not get updated. If absolute figures are going to be used they should at least be indexed to a National Economic Indicator or something of that sort to automatically correct them from year to year. Without that, these figures are likely to lay around for five or ten years without adjustment.

II.

I particularly disagree with the use of "obligor self support deduction" of \$450.00 a month in Part I Step A. The following example can best show why:

A mother and father are divorced. The mother has custody of the three children. The father has a minimum wage job pumping gas. The mother has a minimum wage job on a cash register at a retail store. They work forty hours a week at the current minimum wage of \$3.35. Their gross pay will be about \$580.00 a month. The net pay will be about \$500.00. The \$450.00 a month self support decision is taken out and leaves both the mother and the father with \$50.00 available net for support.

Following the proposed guidelines, the father will only be required to pay \$50.00 a month support. Of course, the mother theoretically will have only \$50.00 available for support of the children and so \$50.00 will be her share also. That seems equal. - Of course it is not. The children live with her. As a practical matter most, and more likely nearly all, of her income will go to supporting the children in one way or another.

So, with two minimum wage parents, the father pays \$50.00 a month child support and the mother has to support the children with almost all of her income and a parsimonious \$50.00 from her their father.

### III.

The use of the self support deduction violates West Virginia Code 48A-2-8 (1986). "Guidelines promulgated under the provisions of this section shall not be based on any scheduled minimum costs for rearing children based upon subsistence level amounts set forth by various agencies of government."

The primary thrust of this language is that the rules should require obligors to support children in an amount larger than the children's minimum needs if the obligor can afford to. If it is the intent of the language not to unreasonably limit the amount an obligor should pay, the language surely must not be read to prevent a father with \$500.00 a month income being required to pay only \$50.00 a month based on a "schedule of minimum costs for" supporting himself.

### IV.

Determining the child support need of a child based on his rank in the family as set out in Part I, Step B, appears to discriminate against a child with a step-parent. A child living with a single parent would be the second ranked member of the family and therefore entitled to \$180.00 a month. A child living with a mother and a step-father would appear to be a third ranked member of the family and get \$45.00 a month less in child

support.

There is no justification for reducing an obligor's child support obligation because the obligee parent has remarried. To do so would assume that a step-parent has an obligation to support the step-child, which is not true. It also assumes the step-parent has a job or other income.

It may facially make sense to rank a child's order in the family to determine the child's need, but the end result is that the child receives less money from an obligor parent because his custodial parent has remarried. If a step-parent is not to be considered in the ranking of family members this should be clearly set out in the guidelines.

#### V.

Again, the amounts of support required for each ranked family member are set out in absolute dollar amounts. These amounts should be indexed and the use of such figures again may violate the prohibition of "minimum costs for rearing children" in the authorizing code section.

#### VI.

The authorizing code section requires the financial contributions of each parent in relationship to their total income to be considered so as to equitably apportion the child's support obligation. However, the results of the rule you propose cut too deeply into the amount an obligor should be required to pay to support children based on resources of the obligee parent. The fact that a custodial parent has income should be considered when determining the obligor's duty to support. But the primary concern should be the obligor's ability to pay. As set out in your rule a custodial parent's income appears to reduce the obligor's duty to pay dollar for dollar. He might well be able to afford to pay more which would improve the lot of his children. But his support would be reduced because of the custodial spouse's ability to pay. The primary concern still ought to be the obligor's ability to pay, though indeed it should be balanced by the sharing of the obligation.

#### VII.

The guidelines as promulgated violate the commandment of West Virginia Code 48-2-8 (1986)(5), "that as children grow older, expenditures on children increase, particularly during the teenage years." No provision is made to increase benefits during teenage years in this formula.

### VIII.

Many obligors in West Virginia are seasonal employees. They work in construction, oil and gas, teaching and other employment which has predictable seasonable variation in income. The guidelines should make clear that the yearly average monthly income should be used and not current average month.

### IX.

I am confused by the existence of/interplay of the use of the obligor parent's duty to support other children in Part I, Step A, 1.b., "Other deductions required by law including child support payments made pursuant to a court order" and Part II, Step A.b. Does the fact that a parent has other children to support reduce the amount they are required to pay support for the children in question twice? In other words, does the obligor get to take his duty to support other children out of his duty to support other children in question twice -- a reverse double dip? Does he get to deduct the other children's support obligation both in determining his available net income and in determining his SOLA obligation?

Does the language of Part I, Step A, d. mean that in determining the available net income in determining the primary support obligation, the obligor's duty to support other children can only be considered if there is a court order. If such a duty exists but it has not been legally determined, then shouldn't the additional language of Part II, Step A, b. regarding the calculation of the duty to support the other child be included? And if so, does this all become circular? By circular, I mean does determining the amount of support for the children in question depend upon a determination of the amount of support for the children which are not in question which in turn depends on the amount of support due for the children which are in question...

### X.

Finally two small points as to form. I would think it best to explain how to calculate monthly income and other dollar amounts from weekly, bi-weekly, quarterly, etc., dollar amounts. If it was thoroughly explained once at the beginning of both the guideline and the calculation sheet, this explanation could be referred to where it becomes important throughout the calculation. It is currently too cryptically explained in several places.

Appendix A, the calculation form, is too cryptic, particularly with regard to defining monthly net income. The guidelines themselves are not designed to be a worksheet. Putting either in circulation alone would not be effective. I think a form like your Appendix A should be widely distributed. It should be made available at the offices of Circuit Clerks, Family Law Masters and Child Advocates. But it should be a page longer and include some more explanations and calculations.

Respectfully Submitted:

A handwritten signature in dark ink, appearing to read "David B. McMahon", is written over the typed name. The signature is stylized and somewhat cursive.

David B. McMahon



**WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES**

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Reginia S. Lipscomb  
Commissioner

December 24, 1987

RESPONSE TO COMMENTS  
OF  
DAVID B. MCMAHON  
ATTORNEY AT LAW  
LEGAL AID SOCIETY OF CHARLESTON

Comment I

The two other commentators suggested yearly review of fixed dollar amounts in Part 1, Step A, 2 and in Part 1, Step B. The concept of yearly review merits consideration.

Comment II

The disagreement is noted for the record but we wish the commentator had stated his alternative. The \$450.00 self-support deduction is part of Delaware's Melson Formula.

Comment III

The use of a self-support deduction does not violate WVC §48A-2-8 that the "Guidelines...not be based on any scheduled minimum costs for rearing children...." The self-support deduction relates only to the parents.

Comment IV

The comment is correct that a child living with a single parent is the second ranked member of that household while a child living with a mother and step-father is the third ranked member of that household.

Comment V

We are not clear on the meaning of the word "indexed." If it means "reviewed", please refer to the response to Comment I. The fixed dollar amounts do not refer to "minimum costs" but to "needs."

Comment VI

The West Virginia guidelines do precisely what WVC §48A-2-8(c) requires which is "equitably apportion the child support obligation" based upon each parent's financial contribution.

Comment VII

The guidelines do allow for greater support as children grow older. The order issued under the guidelines is for all of the children of the parties: it is not a per child order. Thus, even as the older children are emancipated, the order remains in effect until modified. Moreover, WVC §48A-3-6(a) specifically provides for a mechanism to review child support awards every two years. The provision allows for such review based upon the factual actualities of the case. It should be noted that although older children do cost more to raise, the income of the parent paying support often decreases over time rather than increases.

Comment VIII

There are no doubt seasonal employees in West Virginia. However, the comment seems directed toward individuals who would receive unemployment compensation. It would be unfair to the children to have a uniformly low year round support obligation.

Comment IX

The duty to support "pursuant to a court order" in Part I, Step A, 1.b. relates to support ordered by a court from a marriage other than the marriage for which the support is being calculated. The duty to support in Part II, Step A, b. relates to the duty of a parent to support a natural child of a present marriage which occurs after the marriage for which the support is being calculated. Since a parent has a duty to support a child of a later and current marriage, this obligation is not calculated in the primary support obligation but in the SOLA. Since the "pursuant to a court order" calculation relates to terminated marriages and the Part II, Step A, b. calculation relates to a current marriage, this is not a double-dip deduction.

Responding to the second paragraph, only court ordered obligations can be subtracted in Part I, Step A to determine monthly net income. Part II, Step A, b. relates only to the calculation of support for a remarried parent's present (as of the time of the calculation) family for which there would be no court order; it does not relate to a prior family where the support obligation was not established.

Comment X

We believe how to calculate monthly income from weekly, biweekly, etc. income is explained rather simply in Part I, Step A.

With regard to the second paragraph of this comment, we appreciate the suggestion, because Appendix A receives constant scrutiny and review.

4 January 88

Sandra K. Gilmore  
Sandra K. Gilmore  
Director  
Child Advocate Office

9:00 AM  
12/7/87

RECEIVED

DEC 7 1987

West Virginia NOW  
Box 3761  
Charleston WV 25337

CHILD ADVOCATE BUREAU  
CHARLESTON, WV 25305

Sandra Gilmore, Director  
Child Advocate Office  
West Virginia Department of Human Services  
1900 Washington St., East  
Charleston WV 25305

COMMENTS ON CHILD SUPPORT  
GUIDELINES

Dear Ms. Gilmore:

The West Virginia Chapter of the National Organization for Women would like to take this opportunity to make comments on the child support guidelines submitted by your office on November 11, 1987, for legislative rulemaking review. In general, these guidelines appear to be very good and should greatly improve the lives of many children in West Virginia. There are, however, several problem areas which we would like the Child Advocate Office to consider:

1. The guidelines do not supply any explanation of the method used to determine the minimum needs of the parents or of the children (p.5, Guidelines). The method should be stated. The minimum needs should be reviewed annually by the advisory committee and the Child Advocate Office.
2. There is no explanation of the method used to set the percentages of support based on the standard of living (p.6, Guidelines). This method should be based on a comparison of the costs of supporting children in single-parent families with those of intact families.
3. In determining the net monthly income (p.3, Guidelines, Part I, Step A(1)), pension and hospitalization deductions should be credited to the income of the custodial spouse if he/she does not have such benefits. Legitimate business expense deductions should be required to be specifically documented.
4. The Guidelines should define deductions for debts involving the "necessities of life" (p.4, Guidelines).

5. a.) It is not clear whether another adult in the custodial parent's household would constitute "Separate family... in a household by themselves" (Part I, Step B, p. 5) or whether the other adult would constitute the second member of the household (on the basis of age), thereby reducing the minimum needs of the children. If the second adult is not employed, it would seem particularly unfair to lower the minimum needs of the children while the household still has another mouth to feed.
  - b.) The guidelines do not address the question of whether the cost of child care may be included in the primary needs of the children where the custodial parent is going to school or looking for work. These two situations should be included as they are typically prerequisites of actual employment.
  - c.) The child care component of the primary support need should be broadened to include extraordinary medical, educational needs of the children. These expenses are contemplated by the Delaware version of this plan.
6. The present form of the guidelines does not allow for greater support as the children grow older, as directed by West Virginia Code §48A-2-8(f)(5).
  7. The guidelines permit a reduction in support in joint custody situations where the parents have equal contact with the children. Realistically, even in situations where equal physical custody is contemplated, one parent has the children more frequently. A primary physical custodian may be named in any joint custody arrangement. Because the primary physical custodian must maintain a home for the child, etc., a reduction of child support as contemplated by Part III of the guidelines is inappropriate. The Child Advocate Office should supply methodology used to arrive at the "netting-out" process; and the Child Advocate Office should conduct an investigation into on-going joint custody arrangements to develop an equitable policy for joint custody child support payments before this section of the guidelines is adopted.
  8. The guidelines, in general, will greatly change amounts of awards previously set by West Virginia courts. In order to comply with the intent of the guidelines ("to ensure greater uniformity" West Virginia Code §48A-2-8(a)), the guidelines should be available to those whose awards were set prior to October 1, 1987. Because current law requires that child support be modified only if there has been a change of circumstances, some mechanism must be adopted for reviewing past decisions.

Sincerely yours,

*Judy Seaman*  
Judy Seaman, President  
West Virginia NOW



**WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES**

1900 Washington Street, East

Arch A. Moore, Jr.  
Governor

Charleston, WV 25305

Telephone (304) 348-2400

Reginia S. Lipscomb  
Commissioner

December 24, 1987

RESPONSE TO COMMENTS  
OF  
WEST VIRGINIA NOW  
CHARLESTON, WV 25337

Comment 1.

The monetary figures of minimum needs for both parents and children are those of the Delaware Melson Formula, the formula that West Virginia's guidelines are based on. Delaware has revised the minimum needs several times since 1979 when the Melson Formula became that state's "official" guidelines. Yearly review of the minimum needs by the Child Advocate Office Advisory Committee is a worthy idea and is duly noted.

Comment 2.

The percentages used for the standard of living allowance (SOLA) calculation are those of the Melson Formula. The SOLA percentages cannot "be based upon a comparison of the costs of supporting children in single-parent families with those of intact families" as the comment suggests, because WVC §48A-2-8(b) specifically demands that "the guidelines shall... provide... child support... to the level of living which such children would enjoy if they were living in a household with both parents present."

Comment 3.

We do not understand the comment on pension and hospitalization deductions. Legitimate business expense deductions are required to be documented.

Comment 4.

The phrase "necessities of life" is read in context with the phrase "indispensable items in use by the dependents" in the prior sentence. It was not specifically defined because to do so would create an exclusionary list.

Comment 5.

- a. Another adult in the custodial parent's "new" household is not a "separate family... in a household by themselves" but is the second member of the household. However, this adult must be the spouse of the custodial parent. This is consistent with the Melson Formula.

December 24, 1987

Comments - NOW

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- b. The Melson Formula takes into consideration child care expenses only for working parents. We do not believe that calculating child care expenses for going to school or looking for work is appropriate as part of the primary child support need. Since going to school and looking for work are, as the commentator says, part of the transition from housewife to wage-earner, child care expenses for these activities should be included in a rehabilitative alimony order. Moreover, since both of these activities are done at irregular times and not on a full-time basis, it would be impossible to establish an objective cost for child care.
- c. The Melson Formula does provide for the cost of extraordinary medical (but not educational) needs of the children to determine the primary support need. This was not placed in West Virginia's guidelines because what is extraordinary is more likely to be subjective than objective decision (i.e., is orthodontia in teenagers extraordinary or ordinary). Moreover, a true extraordinary medical need provides an appropriate deviation from the guidelines. WVC §48A-2-8(a) provides that "Notwithstanding the existence of these guidelines, individual cases will still be considered on their own merits."

Comment 6.

The guidelines do allow for greater support as children grow older. The order issued under the guidelines is for all of the children of the parties; it is not a per child order. Thus, even as the older children are emancipated, the order remains in effect until modified. Moreover, WVC §48A-3-6(a) specifically provides for a mechanism to review child support awards every two years. The provision allows for such review based upon the factual actualities of the case. It should be noted that although older children do cost more to raise, the income of the parent paying support often decreases over time rather than increases.

Comment 7.

The situation discussed in this comment is appropriate for an exception to the guidelines pursuant to WVC §48A-2-8(a).

Comment 8.

We agree that, in general, the guidelines will result in higher child support orders than have previously been awarded. As discussed in Comment 6, WVC §48A-3-6(a) is an appropriate vehicle to modify an order issued prior to October 1, 1987, if the necessary criteria are met. If this comment's thrust is to require that all child support orders entered in this state prior to October 1, 1987, be computed based upon the guidelines and brought up to guidelines standards, we believe that this would require a specific legislative statute.

January 88

Sandra K. Gilmore  
Sandra K. Gilmore, Director  
Child Advocate Office

SUPREME COURT OF APPEALS  
STATE OF WEST VIRGINIA

PAUL CRABTREE  
ADMINISTRATIVE DIRECTOR  
TED PHILYAW  
DEPUTY DIRECTOR



RECEIVED  
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DEC 8 1987

CHILD ADVOCATE BUREAU  
CHARLESTON, WV 25305

December 7, 1987

Sandra K. Gilmore, Director  
Child Advocate Office  
West Virginia Department of Human Services  
1900 Washington Street, East  
Charleston, West Virginia 26305

RE: Comments Regarding Guidelines for Child Support Awards

Dear Director Gilmore:

I have reviewed the guidelines promulgated by your office and find that they represent a very positive step in providing a fair and uniform standard for the setting of child support awards in West Virginia.

Please consider the following proposals submitted for the purpose of improving the guidelines:

1) Application of Guidelines to Existing Child Support Orders - Only child support orders which are at least two years old and which allege that the guidelines will result in an increase in child support of 10% or greater can be heard by petition to modify. This application of the guidelines will constitute a change of circumstances sufficient to warrant a modification of child support and will be applicable to all child support awards entered prior to October 1, 1987 which were not calculated by use of the guidelines and which provided lower amounts than would be authorized under the guidelines.

2) Cost of Living Adjustments - Annually a committee comprised of circuit judges, family law masters, child advocates, director of the child advocate office, assistant director of the family law masters and members of the West Virginia State Bar shall review the constant figures in the formula for (1) primary support obligation of household members and (2) the percentage used to calculate the Standard of Living Adjustment (SOLA) to determine whether these figures should be increased to adjust for an increase in the cost of living in the state of West Virginia.

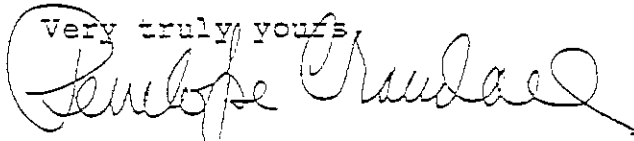
Page 2  
LETTER: SANDRA K. GILMORE  
December 7, 1987

3) Higher Cost for Teenage Children - To provide for the higher costs of raising teenage children the primary support obligation for children age 13 years and older shall be set by the child's rank in the household and age. An appropriate higher primary support obligation should be set for children age 13 years and older in the formula.

4) Deviation from the Guidelines - A deviation should only be granted where the amount mandated by the guidelines is found to be inequitable for the children. The guidelines shall be applied in all cases filed after October 1, 1987 unless reasons are set forth in writing for not following the guidelines. An agreement between the parties for an amount lower than required by the guidelines is not a sufficient reason to deviate from the guidelines.

I would be happy to discuss these proposals with you at your convenience.

Very truly yours,



PENELOPE CRANDALL  
Assistant Director for  
Family Law Masters

PC/mg



**WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES**

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Governor

Charleston, WV 25305

Telephone (304) 348-2400

Reginia S. Lipscomb  
Commissioner

December 30, 1987

RESPONSE TO COMMENTS  
OF  
MS. PENELOPE CRANDALL  
ASSISTANT DIRECTOR OF FAMILY LAW MASTERS  
SUPREME COURT OF APPEALS  
CHARLESTON, WV 25305

Comment 1.

We believe this comment is directed toward WVC §48A-3-6(a) which allows an individual to request the Child Advocate Office to review the support order once every two years. We believe that what constitutes a substantial change of circumstances and how the guidelines can be applied more equitably to pre - October 1, 1987, orders, should be addressed through a new statute or an amended WVC §48A-3-6.

Comment 2.

Yearly review of the minimum needs of parents and children is a worthy idea and is duly noted. We do not perceive the need to review the SOLA percentages. They are a fixed constant in the Melson Formula.

Comment 3.

The Melson Formula, as well as West Virginia's guidelines, results in an order which takes into account all of the children. It does not have a per child order. This comment apparently contemplates "breaking out" an order for any children over age 13 to the detriment of their younger siblings.

Comment 4.

We believe that ultimately it is a judicial decision as to whether or not there is a deviation from the guidelines. Thus, it would seem that a statute or court rule would be the avenue to define what is the standard for an order outside the guidelines.

We believe that WVC §48A-2-8 contemplates the application of the guidelines in all cases or actions filed after October 1, 1987.

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We believe that WVC §48A-2-8(e) which provides that "The guidelines shall have application to cases of divorce, paternity, actions for support, and modification thereof" implicitly prevents the circumvention of the guidelines by use of an agreement between the parties. See also the first paragraph of this comment.

4 January 1988

Sandra K. Gilmore  
Sandra K. Gilmore  
Director  
Child Advocate Office