

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

Form #6

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1988 APR 12 PM 2:43  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Department of Human Services TITLE NUMBER: 78

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: \_\_\_\_\_

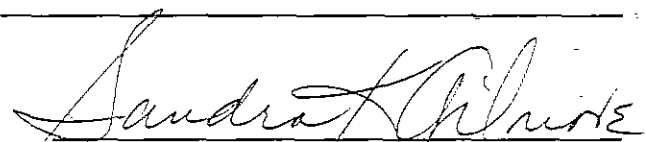
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 397

SECTION WVC §64-2-48a(2)(8), PASSED ON March 12, 1988

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: May 2, 1988

  
Sandra K. Gilmore, Director  
Child Advocate Office



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help we can get)

## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

#### DEPARTMENT OF HUMAN SERVICES GUIDELINES FOR CHILD SUPPORT AWARDS

TITLE 78, CSR, SERIES 16

#### PROMULGATION HISTORY

Date filed as an Emergency Rule -- November 6, 1987, valid from November 6, 1987 to May 1, 1988. Approved by the Secretary of State in Emergency Rule Decision No. 29-87 filed December 18, 1987.

Date filed as a Proposed Legislative Rule with notice of comment period -- November 6, 1987.

Date filed as an Agency Adopted Legislative Rule under exemption from Legislative Review in WV Code §29A-1-3 and 285 SE 2d.367 -- September 23, 1987 with an effective date of October 1, 1987. Following discussion with the Legislative Rule-Making Review Committee and staff, the Department of Human Services agreed to the interpretation that the Guidelines must follow the full application of the Administrative Procedures Act including legislative review and authorization. The September 23, 1987 filing was not a valid filing and did not go into effect as a legislative rule. The emergency legislative rule remained in effect.

Date filed as an Agency Approved Proposed Legislative Rule with the Secretary of State and the Legislative Rule-Making Review Committee -- January 6, 1988.

Date of notice of LRMRC recommendation to authorize the DHS to promulgate the legislative rule as originally filed -- January 29, 1988.

Bills of Authorization were introduced into the 1988 Legislative Session under HB 4344 and SB 425 (later amended into SB 397).

Following review by House Judiciary Committee and under the authority of WV Code §29A-2-3(g) and §29A-3-12(c), the House Judiciary Committee filed a proposed legislative rule governing Guidelines for Child Support Awards with the Secretary of State on March 5, 1988 with required amendments to the Bill of Authorization in SB 397.

SB 397 went to conference committee to resolve differences between the two houses. The result was the filing of a proposed legislative rule governing Child Support Awards by the Senate Judiciary on March 12, 1988 with required amendments to the Bill of Authorization in SB 397.

SB 397 passed March 12, 1988.

The DHS final filed Series 16, Guidelines for Child Support Awards, on April 12, 1988 to become effective May 2, 1988.

TITLE 78  
LEGISLATIVE RULES  
DEPARTMENT OF HUMAN SERVICES

SERIES 16  
GUIDELINES FOR CHILD SUPPORT AWARDS

**§78-16-1. 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. -- W. Va. Code §48A-2-8, 42 U.S.C. §667, 45 C.F.R. §302.56.

1.3. Filing date. -- April 12, 1988

1.4. Effective date. -- May 2, 1988

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.

**§78-16-2. Formula For Establishing Child Support Obligations.**

2.1. Calculation of net income. -- The amount of net income for a support obligor is computed by subtracting from the income of such support obligor the following:

2.1.1. Income tax (see Section 6);

2.1.2. Taxes withheld from income (see Section 7);

2.1.3. Deductions from income required by law (see Section 8);

2.1.4. Deductions from income required by an

employer as a condition of employment (see Section 9);

2.1.5. Deductions from income required by a union as a condition of employment (see Section 10);

2.1.6. Legitimate business expenses (see Section 11);

2.1.7. Deductions for the benefit of children (see Section 12); *and*

2.1.8. Payments for the benefit of children (see Section 13); *and*.

2.1.9. Indebtedness (see Section 14).

2.2. Determination of the self support need of an obligor. -- The court or master shall establish the self-support need of each support obligor in accordance with the provisions of Section 14 of this legislative rule.

2.3. Determination of the net income available for primary child support. -- The court or master shall determine for each support obligor the amount of "net income available for primary child support" by subtracting the self-support need of the obligor from the net income of such obligor.

2.4. Determination of the total primary child support need. -- The court or master shall establish the primary support need of each child for whom child support is sought and then total these amounts. The court or master shall add to the primary support needs of all the children in question the cost of extraordinary medical expenses and the cost of child care needed to allow a custodial parent to work, unless such expenses or costs have been deducted from income. Other expenses incurred because of the spe-

cial needs of a child may be allowed if found by the court or master to be necessary. The court or master shall deduct from the primary support needs of a child the unearned income of such child. The amount resulting from these calculations shall be the "total primary child support need."

2.5. Determination of the primary support obligation of each obligor. -- The court or master shall divide each support obligor's net income available for child support by the total net income available for child support from both obligors. The resulting percentage establishes the burden which each support obligor should carry with respect to the primary child support needs of their children. 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."

2.6. Determination of the available net income for SOLA support. -- The standard of living adjustment (SOLA) is designed to apportion the discretionary income available to a support obligor after he or she has met the obligor's self-support needs and primary support obligation. From the net income available for primary child support, as calculated in accordance with subdivision 2.3, determine the amount of discretionary income available ("available net income for SOLA support"), if any, by subtracting the following:

2.6.1. The primary support obligation calculated in accordance with subdivision 2.5; and

2.6.2. Other primary support obligations owed to children of the support obligor not of the union of the parties to the case, unless such obligations have been deducted from income.

2.7. Calculation of the SOLA support obligations. -- If discretionary income is available, a support obligor shall be required to pay, as a "SOLA support obligation", amounts calculated as percentages of discretionary income, as follows:

\* ← First child                    15%  
 Second and third child        10% each  
 Fourth, fifth, and sixth child 5% each

2.7.1. The total amount required to be paid by an obligor as SOLA support shall not exceed fifty percent of the support obligor's discretionary income un-

less the court sets forth, in writing, findings of specific need.

2.7.2. If the discretionary income of either support obligor exceeds six thousand dollars per month, or if the combined discretionary income of both support obligors exceeds eight thousand dollars per month, the court or master may not apply the percentages set forth in this section. Under such circumstances, the court shall equitably determine the SOLA support obligation so as to avoid a windfall to either support obligor or a hardship on either support obligor, and shall be cognizant of the fact that an excessive amount of SOLA support may not be in the best interests of the child or children.

2.8. Calculation of the per-child share of SOLA support. -- Upon determining the total amount required to be paid by an obligor as SOLA support, the court or master shall calculate the "per-child share of such SOLA support."

2.9. Determination of the total monthly child support obligation. -- The court or master shall determine the "total monthly child support obligation" of each support obligor by adding together the obligor's primary support obligation and SOLA support obligation.

2.9.1. In the usual case involving a noncustodial parent and a custodial parent, the custodial parent shall retain his or her child support obligation and the noncustodial parent shall pay his or her total monthly child support obligation as directed by the court or master.

2.9.2. In cases of split custody, where each support obligor is also a custodial parent, each support obligor shall retain that share of the support obligation owed to the child or children in his or her custody. After such retention, if one parent's obligation is greater than that owed by the other, the difference between the amounts owed by the support obligors shall be paid by the custodial parent owing the greater amount as directed by the court or master.

2.9.3. Where parties share physical joint custody on an equal basis, each will be considered to have the child for six (6) months during the course of year. To avoid unnecessary transfers of funds, the "pay out" of each parent for the year should be determined

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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 twelve (12) and paid monthly over the course of the year, unless the parties agree otherwise.

2.9.4. Payments to third parties in the form of home loan installments, land contract payments, rent, payments for utility services, property taxes, insurance coverage, or other expenses or charges reasonably necessary for maintenance of a residence for the support obligor's children, to the extent that such payments have been specifically denominated as child support by a court order or a valid separation agreement, shall, if actually paid, be credited against the support obligor's total monthly child support obligation: Provided, That in no event shall the credits given under this subdivision reduce the support obligor's total monthly child support obligation to an amount less than such support obligor's primary support obligation.

#### §78-16-3. "Income" Defined.

3.1. The term "income" shall mean any of the following:

3.1.1. Commissions, earnings, salaries, wages, and other income due or to be due in the future to a support obligor from his or her employer and successor employers, including fringe benefits such as business expense accounts, business credit accounts, and tangible property such as automobiles and meals, to the extent that they provide a support obligor with property or services he or she would otherwise have to provide;

3.1.2. Any payment due to a support obligor from a profit-sharing plan, a pension plan, an insurance contract, an annuity, social security, unemployment compensation, supplemental employment benefits, and workers' compensation payable under a workers' compensation law as temporary total disability benefits;

3.1.3. Any amount of money which is owing to a support obligor as a debt from an individual, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a

political subdivision of another state, or any other legal entity which is indebted to the obligor: Provided, That the court or master may disregard money owing to a support obligor as a debt upon a finding that the debt is uncollectible through reasonable collection procedures; and

3.1.4. Attributed income of the support obligor calculated in accordance with the provisions of this legislative rule.

3.1.5. At no time shall the fact that a parent has remarried, or the fact that the spouse of a remarried parent is, or is not, gainfully employed, or that said spouse has income from whatever source, be considered in determining whether or not to increase or decrease child support payments by or to the remarried parent.

3.2. To the extent practicable, all information relating to income shall be presented to the court or master based on monthly amounts. For example, when a party is paid wages weekly, the pay should be multiplied by fifty-two (52) and divided by twelve (12) to arrive at a correct monthly amount. If the court or master deems it appropriate, such information may be presented in such other form as the court or master directs.

#### §78-16-4. "Attributed Income" Defined.

4.1. The term "attributed income" shall mean income not actually earned by a support obligor, but which may be attributed to such support obligor because he or she is unemployed, is not working full time, or is working below full earning capacity.

4.1.1. Income shall not be attributed to a support obligor who is unemployed or underemployed or is otherwise working below full earning capacity if any of the following conditions exist:

4.1.1.1. Such support obligor is providing care required by the children to whom the parties owe a joint legal responsibility for support, and such children are of preschool age or are handicapped or otherwise in a situation requiring particular care by the support obligor;

4.1.1.2. Such support obligor is pursuing a plan of economic self-improvement which will result,

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within a reasonable time, in an economic benefit to the children to whom the support obligation is owed, including, but not limited to, self-employment or education;

4.1.1.3. Such support obligor is, for valid medical reasons, earning an income in an amount less than that previously earned;

4.1.1.4. Such support obligor has made diligent efforts to find and accept available suitable work or to return to customary self-employment, to no avail; or

\* 4.1.1.5. The court or master makes a finding that other circumstances exist which would make the attribution of income inequitable: Provided, That in such case, the court or master may decrease the amount of attributed income to the extent required to remove such inequity.

4.1.2. If a court or master determines that a limitation on income is not justified in that it is a result of a self-induced decline in income, a refusal to occupy time profitably, or an unwillingness to accept employment and earn an adequate sum, the court or master may consider evidence establishing the support obligor's earning capacity in the local job market, and may attribute income to such obligor.

\* 4.1.3. As an alternative to the method of determining attributed income provided for in subdivision 4.1.2, where a support obligor is remarried and is unemployed, underemployed or is otherwise working below full earning capacity, the court or master may attribute income to the support obligor in an amount not to exceed that which could be derived by the obligor from full-time employment at the current minimum wage.

(Example 1. The parties have two teenage children and are divorced. During their marriage, both support obligors worked as professionals and earned substantial incomes. Since the divorce, the ex-wife has remarried, had a child by her second marriage, and has elected not to work. Since the ex-wife's failure to work is a matter of choice, and is not based on care required by the children of her marriage to the ex-husband, the court or master may establish her earning capacity in the local job market and attribute income to her. In the alter-

native, the court or master may attribute income to her in an amount not to exceed that which she would receive from full-time employment at the current minimum wage.)

(Example 2. The support obligor formerly worked at a production job in a manufacturing plant, earning an annual income of \$24,000.00. He voluntarily left this former employment to start his own business, and is currently earning \$18,000.00 annually in this self-employed capacity. The limitation on income is self-imposed, and the court or master should attribute income to the support obligor based on his earning capabilities at the present time, rather than his actual earnings, unless the court or master determines that the self-employment of the obligor will, in a reasonable time, result in an economic benefit to the children.)

(Example 3. The support obligor has left her employment and enrolled as a full-time student, seeking a degree as a registered nurse. If the court finds that her educational plans will, within a reasonable time, result in a economic benefit to the children to whom the support obligation is owed, income will not be attributed to her.)

4.1.4. In any case attributed income shall be the lesser of the calculations made in 4.1.2 or 4.1.3. \*

↳ should be lesser - typed correctly but §78-16-5. "Earnings" Defined. original bill is incorrect

5.1. The term "earnings" shall mean compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

§78-16-6. "Income Tax" Defined.

6.1. The term "income tax" or "income taxes" shall mean personal income tax paid by a support obligor on his or her taxable income under the laws of the United States, the State of West Virginia, any sister state, any territory, any political subdivision of such governmental bodies, and any other taxing jurisdiction, foreign or domestic.

§78-16-7. "Taxes Withheld From Income" Defined.

7.1. The term "taxes withheld from income" shall

mean the amount of income tax deducted and withheld by an employer from income of a support obligor, computed in such a manner as to result, so far as is practicable, in withholding an amount substantially equivalent to the income tax estimated to be due. The amount of taxes withheld from income, to be valid as a factor in determining the amount of child support owed by a support obligor, shall be based upon the maximum number of withholding exemptions allowable under the applicable tax law.

**§78-16-8. "Deductions From Income Required By Law" Defined.**

8.1. The term "deductions from income required by law" shall mean the amount deducted and withheld by an employer from income of a support obligor as required by law, including, but not limited to, attachments, social security taxes, assessments on wages made under the provisions of any employment security law, and child support payments made pursuant to a court order or a valid written separation agreement. "Deductions from income required by law" shall not include wage attachments and suggestions which are required by law to be deducted and withheld by the employer, but which are for the enforcement of debts which would not otherwise be considered under the provisions of this legislative rule in determining a support obligor's net income.

(Example 1. The support obligor purchased, on credit, a satellite dish for personal use, defaulted on payments, and has had judgment rendered against him for the amount owing. An attachment of his wages to enforce this judgment would not be recognized as a deduction from income required by law. The underlying debt is such that it would not be considered in determining net income if it were not a wage attachment.)

(Example 2. The support obligor incurred indebtedness with a hospital for necessary hospital and medical services delivered to his dependent child, did not pay, and has had judgment rendered against him. An attachment to enforce this debt would be recognized as a deduction from income required by law, since the underlying debt was incurred for necessary health care for a dependent.)

**§78-16-9. "Deductions From Income Required By An Employer As A Condition Of Employment" De-**

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9.1. The term "deductions from income required by an employer as a condition of employment" shall mean the amount deducted and withheld by an employer from income of a support obligor as payment for uniforms, tools, equipment and other supplies necessary for the performance of services or labor on behalf of the employer. "Deductions from income required by an employer as a condition of employment" shall not include deductions for food, clothing, shelter, and other necessities of life unless, and only to the extent, that such necessities are provided for use or consumption by the support obligor's children.

**§78-16-10. "Deductions From Income Required By A Union As A Condition Of Employment" Defined**

10.1. The term "deductions from income required by a union as a condition of employment" shall mean the amount deducted and withheld by an employer from income of a support obligor as dues, fees or other assessments, for the benefit of a labor union or other employee organization, required to be withheld under the terms of a labor-management agreement.

(Example 1. As a part of the labor-management contract at the plant where the support obligor works, two (2) cents per hour is deducted from every worker's wages to support a union sponsored pre-paid legal services plan. This is a deduction from income required by a union as a condition of employment, even though no part of it may inure to the benefit of the support obligor's children.)

**§78-16-11. "Legitimate Business Expense" Defined.**

11.1. The term "legitimate business expense" or "business expense" shall mean expenses paid for or incurred by a support obligor, in connection with the performance by him or her of services for an employer or another person or as a self-employed person, which expenses are not reimburseable, and which are lawfully deductible in computing taxable income under applicable income tax laws.

**§78-16-12. "Deductions For The Benefit Of Children" Defined.**

12.1. The term "deductions for the benefit of chil-

dren" shall mean the amount deducted and withheld by an employer from income of a support obligor and paid to third parties for the benefit of the support obligor's children, including, but not limited to, hospital insurance and medical, dental or optical insurance.

12.2. Deductions for the benefit of children which are, in fact, extraordinary medical expenses, costs of child care needed to allow a custodial parent to work or other expenses incurred because of the special needs of a child, may, in the discretion of the court or master, be treated as deductions for the benefit of children and subtracted from income. If such costs and expenses are subtracted from income under subsection 2.1, they shall not be added to primary support needs under subsection 2.4. If such costs and expenses are not deducted from income, and are used in calculating the primary child support need, such deductions shall be subtracted, as child support payments, from the total monthly child support obligation of the obligor as calculated under subsection 2.9.

(Example 1. Out of each pay check received by a support obligor, a deduction is made and paid to a credit union as payments on a loan made by the credit union to the support obligor. Whether or not this is a deduction for the benefit of children depends upon the application of the loan proceeds. If, for example, the loan proceeds were used to pay for necessary orthodontic work performed on the parties' child, the deduction could, in the discretion of the court, be a deduction for the benefit of children and be subtracted from income, or, alternatively, could be subtracted from the obligor's total monthly child support obligation.)\*

**§78-16-13. "Payments For The Benefit Of Children" Defined.**

13.1. The term "payments for the benefit of children" shall mean an amount or amounts paid by a support obligor to third parties on a regular, recurring basis for the benefit of the support obligor's children, including, but not limited to, tuition, health care expenses, hospital insurance, and medical, dental or optical insurance.

13.2. Payments for the benefit of children which are, in fact, extraordinary medical expenses, costs of child care needed to allow a custodial parent to work

or other expenses incurred because of the special needs of a child, may, in the discretion of the court or master, be treated as payments for the benefits of children and subtracted from income. If such costs and expenses are subtracted from income under subsection 2.1, they shall not be added to primary support needs under subsection 2.4. If such costs and expenses are not deducted from income, and are used in calculating the primary child support need, such payments shall be subtracted, as child support payments, from the total monthly child support obligation of the obligor as calculated under subsection 2.9.

**§78-16-14. "Indebtedness" Defined.**

14.1. The term "indebtedness" means any legal or contractual obligation incurred as follows:

(1) For the necessary support of a child with regard to food, clothing, shelter and medical care;

(2) For the purpose of acquisitions or additions to or additions intended to add to the value of marital property of the parties as defined in section one, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

14.2. The court or master may disregard any debt which is incurred with the obvious intent of decreasing child support payments.

**§78-16-15. "Self-Support Need Of An Obligor" Defined.**

15.1. The term "self-support need of an obligor" or "primary self-support need of an obligor" shall mean the absolute minimum amount of income that a support obligor must retain to function at maximum productivity.

15.2. In determining self-support need of an obligor, the court or master shall consider only debts and expenses for food, clothing, shelter, medical care, and job-required transportation.

15.3. If presented, the court or master shall consider evidence of probative facts as to the needs of a support obligor with regard to a consideration of matters described in subsection 15.2, and if such evidence is convincing, may determine that a variance from

the presumptive minimum need is supported by such evidence. If such evidence is not presented, or is not convincing, the self-support need of an obligor will be the presumptive minimum need of such obligor as calculated under the provisions of Section 17.

**§78-16-16. "Primary Child Support Need" Defined.**

16.1. The term "primary child support need" shall mean the absolute minimum amount of money that a child requires for food, clothing, shelter and medical care.

16.2. The primary support need of a child will be the presumptive minimum need of such child as calculated under the provisions of Section 17, unless the court or master determines that a variance from the presumptive minimum need is supported by convincing evidence.

\* **§78-16-17. "Presumptive Minimum Need" Defined.**

17.1. The term "presumptive minimum need" shall mean the amount of money that a person is presumed to need for the necessities of life, based upon their rank in their particular household. The presumptive minimum needs of the several members of a given household are as follows:

- \* ← First member . . . . . \$450 per month
- Second member . . . . . \$180 per month
- Third and Fourth members . . . \$135 per month
- Each additional member . . . . . \$ 90 per month

\* Colon, not comma, used after Provided in original bill

17.1.1. The first member of a household is the adult head of a household: Provided: That in a case where a support obligor lives with his or her parents or other separate family, the support obligor and the children in his or her custody will be considered to be in a household by themselves. The remaining members of the household shall be ranked according to their age.

17.1.2. Four hundred fifty dollars (\$450) per month is established as the presumptive minimum need for an unmarried first member of a household.

17.1.3. Where a support obligor is remarried and both the support obligor and his or her present

↑ 1730

spouse are fully employed, they are to be treated as a unit. The minimum presumptive need of the couple would be \$730 (\$450 for the first person + \$180 for the second person in the same household + \$100 additional work-related expense for the employed spouse). The support obligor will be allowed 50% of this amount, or \$365, as his or her minimum presumptive need.

17.1.4. In a case where a support obligor is remarried and unemployed, and the court or master has attributed income to the obligor, the obligor and his or her spouse are to be treated as a unit, and the minimum presumptive need of the couple would be \$630 (\$450 for the first person + \$180 for the second person in the same household). The support obligor will be allowed 50% of this amount, or \$315, as his or her minimum presumptive need. No additional work-related expenses will be allowed, since the obligor is not employed outside of the home.

**§78-16-18. "Separation Agreement" Defined; Effect Of Separation Agreements.**

18.1. For purposes of this legislative rule, the term "separation agreement" shall have the meaning ascribed to it in subsection (h), section one, article two, chapter forty-eight of the code of West Virginia. <sup>numerical 2</sup> in original bill  
in the original bill, this is → [N. Va Code, §48-2-1(h)].

18.2. On and after the effective date of this legislative rule, where the support obligors execute a separation agreement which provides for the custody and support of the child or children of the parties, the court shall order the payment of child support in accordance with the terms of the agreement, unless the court finds:

18.2.1. That the agreement was obtained by fraud, duress, or other unconscionable conduct by one of the parties, or by a mistake of law on the part of one or both of the parties; or

18.2.2. That the parties, in the separation agreement, have not expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings; or

18.2.3. That the agreement, viewed in the context of the children having a right to share in their natural parents' level of living, and considering the best interests of the children, is so inequitable as to

in the original bill, this [W. Va. Code, §48A-2-8],

defeat the purposes and principles of section eight, article two, chapter forty-eight-a of the code of ~~West Virginia~~, and such agreement was inequitable at the time the same was ratified and approved by a court or master; or

18.3. If a separation agreement provides for amounts of child support which would not fall within the guidelines for child support awards promulgated by this legislative rule, and such amounts have been determined as a part of a broader agreement establishing the rights of the parties in such matters as disposition of their separate property or the distribution of marital property, the reason or reasons for such variance should be set forth in the agreement or made a matter of court record, in order that they may be considered in future proceedings involving child support obligations.

#### §78-16-19. Disregard Of Formula.

19.1. If, after computing the amount of a child support award in accordance with the provisions of this legislative rule, the court or master determines that the application of support guidelines are inappropriate as being contrary to the best interests of the

children and the parties, the court or master may disregard the formula and not follow the guidelines. In such instance, the court or master shall set forth, in writing, the reasons for not following the guidelines in the particular case involved.

#### §78-16-20. Effect Of Promulgation Of Rule On Existing Support Orders.

20.1. The fact that the promulgation of this legislative rule establishes guidelines for child support awards shall not, in and of itself, constitute a change of circumstances upon which an existing support order may be revised or altered. A party seeking a modification of a child support order must show a substantial change in circumstances since the entry of the existing order, regardless of whether such change was within the contemplation of the parties at the time the order was entered. The Legislature, by authorizing the promulgation of this legislative rule by general law during the regular session of the Legislature, one thousand nine hundred eighty-eight, expressly intends to overrule the decision of the Supreme Court of Appeals in Lambert v. Miller, W. Va., 358 S.E.2d 785 (1987), to the extent that the decision in such case conflicts with the provisions of this subsection 20.1.

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Director, Corporations

VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

TO: Sandy Gilmore, Child Advocate Office

FROM: RICH O. HARTMAN, DIR. ADMIN. LAW DIV.

DATE: April 14, 1988

THE ATTACHED RULE(S) RECENTLY FILED BY YOUR AGENCY HAVE BEEN ENTERED INTO THE COMPUTER. PLEASE REVIEW AND PROOF AND RETURN WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS PLEASE SIGN THIS MEMO AND RETURN TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF YOUR RULE(S) FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

*Series 16*

THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND ARE CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

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

\*\*\*\*\*

THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND NEEDS CORRECTED. THESE CORRECTIONS HAVE BEEN MARKED.

SIGNED: John T. Yeary

TITLE OF PERSON SIGNING: Staff Attorney

DATE: May 3, 1988



**HOUSE OF DELEGATES**  
**WEST VIRGINIA LEGISLATURE**  
 STATE CAPITOL — PHONE (304) 340-3200  
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**JOHN W. HATCHER, JR., Chairman**  
 COMMITTEE ON THE JUDICIARY  
 P. O. DRAWER 90  
 FAYETTEVILLE, WV 25840  
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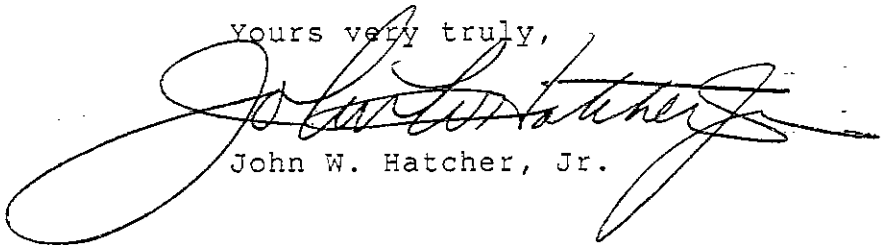
NOTICE OF FILING OF A PROPOSED LEGISLATIVE RULE BY THE HOUSE  
 COMMITTEE ON THE JUDICIARY

Agency: Child Advocate Office, Department of Human Services  
 Title Number: Title 78  
 Title of Rule: Guidelines for Child Support Awards  
 Series Number: Series 16

Pursuant to the authority granted within WV Code 29A-2-3(g) and 29A-3-12(c) the House Committee on the Judiciary tenders the above legislative rule with the Secretary of State for inclusion in the State Register.

Filed on fifth day of March, 1988

Yours very truly,



John W. Hatcher, Jr.

FILED IN THE OFFICE OF  
 THE SECRETARY OF STATE  
 THIS DATE March 5, 1988  
 ADMINISTRATIVE LAW DIVISION

WEST VIRGINIA LEGISLATIVE RULE  
DEPARTMENT OF HUMAN SERVICES  
SERIES 16

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Title: Guidelines for Child Support Awards

Section 1. General

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE March 5, 1988  
ADMINISTRATIVE LAW DIVISION

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. Formula for establishing child support obligations.

1       2.1 Calculation of net income-- The amount of net income  
2 for a support obligor is computed by subtracting from the income  
3 of such support obligor the following:

4       2.1.1 Income tax [see Section 6];

5       2.1.2 Taxes withheld from income [see Section 7];

6       2.1.3 Deductions from income required by law [see Section  
7 8];

8       2.1.4 Deductions from income required by an employer as a  
9 condition of employment [see Section 9];

10       2.1.5 Deductions from income required by a union as a  
11 condition of employment [see Section 10];

12       2.1.6 Legitimate business expenses [see Section 11];

13       2.1.7 Deductions for the benefit of children [see Section  
14 12]; and

15       2.1.8 Payments for the benefit of children [see Section 13].

16       2.2 Determination of the self support need of an obligor--  
17 The court or master shall establish the self-support need of each  
18 support obligor in accordance with the provisions of Section 14  
19 of this legislative rule.

20       2.3 Determination of the net income available for primary  
21 child support-- The court or master shall determine for each  
22 support obligor the amount of "net income available for primary  
23 child support" by subtracting the self-support need of the  
24 obligor from the net income of such obligor.

1           2.4 Determination of the total primary child support need--  
2 The court or master shall establish the primary support need of  
3 each child for whom child support is sought and then total these  
4 amounts. The court or master shall add to the primary support  
5 needs of all the children in question the cost of extraordinary  
6 medical expenses and the cost of child care needed to allow a  
7 custodial parent to work, unless such expenses or costs have been  
8 deducted from income. Other expenses incurred because of the  
9 special needs of a child may be allowed if found by the court or  
10 master to be necessary. The court or master shall deduct from  
11 the primary support needs of a child the earnings or income of  
12 such child. The amount resulting from these calculations shall  
13 be the "total primary child support need."

14           2.5 Determination of the primary support obligation of each  
15 obligor-- The court or master shall divide each support  
16 obligor's net income available for child support by the total net  
17 income available for child support from both obligors. The  
18 resulting percentage establishes the burden which each support  
19 obligor should carry with respect to the primary child support  
20 needs of their children. This percentage should then be  
21 multiplied by the total primary child support need in order to  
22 arrive at the "primary support obligation of each obligor."

23           2.6 Determination of the available net income for SOLA  
24 support-- The standard of living adjustment (SOLA) is designed  
25 to apportion the discretionary income available to a support

1 obligor after he or she has met the obligor's self-support needs  
 2 and primary support obligation. From the net income available  
 3 for primary child support, as calculated in accordance with  
 4 subdivision 2.3, determine the amount of discretionary income  
 5 available ("available net income for SOLA support"), if any, by  
 6 subtracting the following:

7 2.6.1 The primary support obligation calculated in  
 8 accordance with subdivision 2.5; and

9 2.6.2 Other primary support obligations owed to children of  
 10 the support obligor not of the union of the parties to the case,  
 11 unless such obligations have been deducted from income.

12 2.7 Calculation of the SOLA support obligation-- If  
 13 discretionary income is available, a support obligor shall be  
 14 required to pay, as a "SOLA support obligation", amounts  
 15 calculated as percentages of discretionary income, as follows:

16	First child	15%
17	Second and third child	10% each
18	Fourth, fifth, and sixth child	5% each

19  
 20 2.7.1 The total amount required to be paid by an obligor as  
 21 SOLA support shall not exceed fifty percent of the support  
 22 obligor's discretionary income unless the court sets forth, in  
 23 writing, findings of specific need.

24 2.8 Calculation of the per-child share of SOLA support--  
 25 Upon determining the total amount required to be paid by an  
 26 obligor as SOLA support, the court or master shall calculate the  
 27 "per-child share of such SOLA support."

1       2.9     Determination of the total monthly child support  
2 obligation-- The court or master shall determine the "total  
3 monthly child support obligation" of each support obligor by  
4 adding together the obligor's primary support obligation and SOLA  
5 support obligation.

6       2.9.1 In the usual case involving a noncustodial parent and  
7 a custodial parent, the custodial parent shall retain his or her  
8 child support obligation and the noncustodial parent shall pay  
9 his or her total monthly child support obligation as directed by  
10 the court or master.

11       2.9.2 In cases of split custody, where each support obligor  
12 is also a custodial parent, each support obligor shall retain  
13 that share of the support obligation owed to the child or  
14 children in his or her custody. After such retention, if one  
15 parent's obligation is greater than that owed by the other, the  
16 difference between the amounts owed by the support obligors shall  
17 be paid by the custodial parent owing the greater amount as  
18 directed by the court or master.

19       2.9.3 Where parties share physical joint custody on an equal  
20 basis, each will be considered to have the child for six months  
21 during the course of a year. To avoid unnecessary transfers of  
22 funds, the "pay out" of each parent for the year should be  
23 determined by multiplying the monthly support obligation times  
24 six months. If one parent's yearly obligation is greater than  
25 that owed by the other, the excess amount shall be divided by 12

1 and paid monthly over the course of the year, unless the parties  
2 agree otherwise.

3 2.9.4 Payments to third parties in the form of home loan  
4 installments, land contract payments, rent, payments for utility  
5 services, property taxes, insurance coverage, or other expenses  
6 or charges reasonably necessary for maintenance of a residence  
7 for the support obligor's children, to the extent that such  
8 payments have been specifically denominated as child support by a  
9 court order or a valid separation agreement, shall, if actually  
10 paid, be credited against the support obligor's total monthly  
11 child support obligation: Provided, That in no event shall the  
12 credits given under this subdivision reduce the support obligor's  
13 total monthly child support obligation to an amount less than  
14 such support obligor's primary support obligation.

15 Section 3. "Income" defined.

16 3.1 The term "income" shall mean any of the following:

17 3.1.1 Commissions, earnings, salaries, wages, and other  
18 income due or to be due in the future to a support obligor from  
19 his or her employer and successor employers, including fringe  
20 benefits such as business expense accounts, business credit  
21 accounts, and tangible property such as automobiles and meals, to  
22 the extent that they provide a support obligor with property or  
23 services he or she would otherwise have to provide;

24 3.1.2 Any payment due or to be due in the future to a  
25 support obligor from a profit-sharing plan, a pension plan, an

1 insurance contract, an annuity, social security, unemployment  
2 compensation, supplemental employment benefits, and workers'  
3 compensation payable under a workers' compensation law as  
4 temporary total disability benefits;

5 3.1.3 Any amount of money which is owing to a support  
6 obligor as a debt from an individual, partnership, association,  
7 public or private corporation, the United States or any federal  
8 agency, this state or any political subdivision of this state,  
9 any other state or a political subdivision of another state, or  
10 any other legal entity which is indebted to the obligor; and

11 3.1.4 Attributed income of the support obligor calculated in  
12 accordance with the provisions of this legislative rule.

13 3.2 All information relating to income shall be presented to  
14 the court or master based on monthly amounts. For example, when  
15 a party is paid wages weekly, the pay should be multiplied by 52  
16 and divided by 12 to arrive at a correct monthly amount.

17 Section 4. "Attributed income" defined.

18 4.1 The term "attributed income" shall mean income not  
19 actually earned by a support obligor, but which may be  
20 attributed to such support obligor because he or she is  
21 unemployed, is not working full time, or is working below full  
22 earning capacity.

23 4.1.1 Income shall not be attributed to a support obligor  
24 who is unemployed or underemployed or is otherwise working below  
25 full earning capacity if such support obligor is providing care

1 required by the children to whom the parties owe a joint legal  
2 responsibility for support.

3 4.1.2 If a court or master determines that a limitation on  
4 income is not justified in that it is a result of a self-induced  
5 decline in income, a refusal to occupy time profitably, or an  
6 unwillingness to accept employment and earn an adequate sum, the  
7 court or master may consider evidence establishing the support  
8 obligor's earning capacity in the local job market, and may  
9 attribute income to such obligor.

10 4.1.3 As an alternative to the method of determining  
11 attributed income provided for in subdivision 4.1.2, where a  
12 support obligor is remarried and is unemployed, underemployed or  
13 is otherwise working below full earning capacity, the court or  
14 master may consider evidence relating to the total monthly net  
15 income of the support obligor and his or her spouse, and may  
16 attribute income to the support obligor in an amount not to  
17 exceed fifty percent of such net monthly income or in an amount  
18 not to exceed that which could be derived from full-time  
19 employment at the current minimum wage, whichever is less.

20 [Example 1. The parties have two teenage children and  
21 are divorced. During their marriage, both support  
22 obligors worked as professionals and earned substantial  
23 incomes. Since the divorce, the ex-wife has remarried,  
24 had a child by her second marriage, and has elected not  
25 to work. Since the ex-wife's failure to work is a  
26 matter of choice, and is not based on care required by  
27 the children of her marriage to the ex-husband, the  
28 court or master may establish her earning capacity in  
29 the local job market and attribute income to her. In  
30 the alternative, the court or master may attribute  
31 income to her in an amount not to exceed fifty percent  
32 of the monthly net income of her and her spouse, or in

1 an amount not to exceed that which she would receive  
2 from full-time employment at the current minimum wage,  
3 whichever is less.]  
4

5 [Example 2. The support obligor formerly worked at a  
6 production job in a manufacturing plant, earning an  
7 annual income of \$24,000.00. He voluntarily left this  
8 former employment to start his own business, and is  
9 currently earning \$18,000.00 annually in this self-  
10 employed capacity. The limitation on income is self-  
11 imposed, and the court or master should attribute income  
12 to the support obligor based on his earning capabilities  
13 at the present time, rather than his actual earnings.]  
14

15 Section 5. "Earnings" defined.

16 5.1 The term "earnings" shall mean compensation paid or  
17 payable for personal services, whether denominated as wages,  
18 salary, commission, bonus, or otherwise, and includes periodic  
19 payments pursuant to a pension or retirement program.

20 Section 6. "Income tax" defined.

21 6.1 The term "income tax" or "income taxes" shall mean  
22 personal income tax paid by a support obligor on his or her  
23 taxable income under the laws of the United States, the State of  
24 West Virginia, any sister state, any territory, any political  
25 subdivision of such governmental bodies, and any other taxing  
26 jurisdiction, foreign or domestic.

27 Section 7. "Taxes withheld from income" defined.

28 7.1 The term "taxes withheld from income" shall mean the  
29 amount of income tax deducted and withheld by an employer from  
30 income of a support obligor, computed in such a manner as to  
31 result, so far as is practicable, in withholding an amount  
32 substantially equivalent to the income tax estimated to be due.

1 The amount of taxes withheld from income, to be valid as a factor  
2 in determining the amount of child support owed by a support  
3 obligor, shall be based upon the maximum number of withholding  
4 exemptions allowable under the applicable tax law.

5 Section 8. "Deductions from income required by law" defined.

6 8.1 The term "deductions from income required by law" shall  
7 mean the amount deducted and withheld by an employer from income  
8 of a support obligor as required by law, including, but not  
9 limited to, attachments, social security taxes, assessments on  
10 wages made under the provisions of any employment security law,  
11 and child support payments made pursuant to a court order or a  
12 valid written separation agreement. "Deductions from income  
13 required by law" shall not include wage attachments and  
14 suggestions which are required by law to be deducted and withheld  
15 by the employer, but which are for the enforcement of debts which  
16 would not otherwise be considered under the provisions of this  
17 legislative rule in determining a support obligor's net income.

18 [Example 1. The support obligor purchased, on credit, a  
19 satellite dish for personal use, defaulted on payments,  
20 and has had judgment rendered against him for the amount  
21 owing. An attachment of his wages to enforce this  
22 judgment would not be recognized as a deduction from  
23 income required by law. The underlying debt is such  
24 that it would not be considered in determining net  
25 income if it were not a wage attachment.]

26  
27 [Example 2. The support obligor incurred indebtedness  
28 with a hospital for necessary hospital and medical  
29 services delivered to his dependent child, did not pay,  
30 and has had judgment rendered against him. An  
31 attachment to enforce this debt would be recognized as a  
32 deduction from income required by law, since the  
33 underlying debt was incurred for necessary health care  
34 for a dependent.]

1  
2 Section 9. "Deductions from income required by an employer as a  
3 condition of employment" defined.

4 9.1 The term "deductions from income required by an employer  
5 as a condition of employment" shall mean the amount deducted and  
6 withheld by an employer from income of a support obligor as  
7 payment for uniforms, tools, equipment and other supplies  
8 necessary for the performance of services or labor on behalf of  
9 the employer. "Deductions from income required by an employer as  
10 a condition of employment" shall not include deductions for food,  
11 clothing, shelter, and other necessities of life unless, and only  
12 to the extent, that such necessities are provided for use or  
13 consumption by the support obligor's children.

14 Section 10. "Deductions from income required by a union as a  
15 condition of employment" defined.

16 10.1 The term "deductions from income required by a union as  
17 a condition of employment" shall mean the amount deducted and  
18 withheld by an employer from income of a support obligor as dues,  
19 fees or other assessments, for the benefit of a labor union or  
20 othe employee organization, required to be withheld under the  
21 terms of a labor-management agreement.

22 [Example 1. As a part of the labor-management contract  
23 at the plant where the support obligor works, two cents  
24 per hour is deducted from every worker's wages to  
25 support a union sponsored pre-paid legal services plan.  
26 This is a deduction from income required by a union as a  
27 condition of employment, even though no part of it may  
28 inure to the benefit of the support obligor's children.]  
29

30 Section 11. "Legitimate business expense" defined.

1           11.1 The term "legitimate business expense" or "business  
2 expense" shall mean expenses paid for or incurred by a support  
3 obligor, in connection with the performance by him or her of  
4 services for an employer or another person or as a self-employed  
5 person, which expenses are not reimburseable, and which are  
6 lawfully deductible in computing taxable income under applicable  
7 income tax laws.

8 Section 12. "Deductions for the benefit of children" defined.

9           12.1 The term "deductions for the benefit of children" shall  
10 mean the amount deducted and withheld by an employer from income  
11 of a support obligor and paid to third parties for the benefit of  
12 the support obligor's children, including, but not limited to,  
13 hospital insurance and medical, dental or optical insurance.

14           12.2 Deductions for the benefit of children which are, in  
15 fact, extraordinary medical expenses, costs of child care needed  
16 to allow a custodial parent to work or other expenses incurred  
17 because of the special needs of a child, may, in the discretion  
18 of the court or master, be treated as deductions for the benefit  
19 of children and subtracted from income. If such costs and  
20 expenses are subtracted from income under subsection 2.1, they  
21 shall not be added to primary support needs under subsection 2.4.  
22 If such costs and expenses are not deducted from income, and are  
23 used in calculating the primary child support need, such  
24 deductions shall be subtracted, as child support payments, from

1 the total monthly child support obligation of the obligor as  
2 calculated under subsection 2.9.

3 [Example 1. Out of each pay check received by a support  
4 obligor, a deduction is made and paid to a credit union  
5 as payments on a loan made by the credit union to the  
6 support obligor. Whether or not this is a deduction for  
7 the benefit of children depends upon the application of  
8 the loan proceeds. If, for example, the loan proceeds  
9 were used to pay for necessary orthodontic work  
10 performed on the parties' child, the deduction could, in  
11 the discretion of the court, be a deduction for the  
12 benefit of children and be subtracted from income, or,  
13 alternatively, could be subtracted from the obligor's  
14 total monthly child support obligation.]

15

16 Section 13. "Payments for the benefit of children" defined.

17 13.1 The term "payments for the benefit of children" shall  
18 mean an amount or amounts paid by a support obligor to third  
19 parties on a regular, recurring basis for the benefit of the  
20 support obligor's children, including, but not limited to,  
21 tuition, health care expenses, hospital insurance, and medical,  
22 dental or optical insurance.

23 13.2 Payments for the benefit of children which are, in  
24 fact, extraordinary medical expenses, costs of child care needed  
25 to allow a custodial parent to work or other expenses incurred  
26 because of the special needs of a child, may, in the discretion  
27 of the court or master, be treated as payments for the benefit of  
28 children and subtracted from income. If such costs and expenses  
29 are subtracted from income under subsection 2.1, they shall not  
30 be added to primary support needs under subsection 2.4. If such  
31 costs and expenses are not deducted from income, and are used in  
32 calculating the primary child support need, such payments shall

1 be subtracted, as child support payments, from the total monthly  
2 child support obligation of the obligor as calculated under  
3 subsection 2.9.

4 Section 14. "Self-support need of an obligor" defined.

5 14.1 The term "self-support need of an obligor" or "primary  
6 self-support need of an obligor" shall mean the absolute minimum  
7 amount of income that a support obligor must retain to function  
8 at maximum productivity.

9 14.2 In determining self-support need of an obligor, the  
10 court or master shall consider only expenses for food, clothing,  
11 shelter, medical care, and job-required transportation.

12 14.3 The self-support need of an obligor will be the  
13 presumptive minimum need of such obligor and the members of his  
14 or her household as calculated under the provisions of Section  
15 16, unless the court or master determines that a variance from  
16 the presumptive minimum need is supported by convincing evidence.

17 Section 15. "Primary child support need" defined.

18 15.1 The term "primary child support need" shall mean the  
19 absolute minimum amount of money that a child requires for food,  
20 clothing, shelter and medical care.

21 15.2 The primary support need of a child will be the  
22 presumptive minimum need of such child as calculated under the  
23 provisions of Section 16, unless the court or master determines  
24 that a variance from the presumptive minimum need is supported by  
25 convincing evidence.

1 Section 16. "Presumptive minimum need" defined.

2 16.1 The term "presumptive minimum need" shall mean the  
3 amount of money that a person is presumed to need for the  
4 necessities of life, based upon their rank in their particular  
5 household. The presumptive minimum needs of the several members  
6 of a given household are as follows:

7	First member	\$450 per month
8	Second member	\$180 per month
9	Third and Fourth members	\$135 per month
10	Each additional member	\$ 90 per month

11  
12 16.1.1 Four hundred fifty dollars (\$450) per month is  
13 established as the presumptive minimum need for an unmarried head  
14 of household who is employed.

15 16.1.2 Where a support obligor is remarried and both the  
16 support obligor and his or her present spouse are fully employed,  
17 they are to be treated as a unit. The minimum presumptive need  
18 of the couple would be \$730 (\$450 for the first person + \$180 for  
19 the second person in the same household + \$100 additional work-  
20 related expense for the employed spouse). The support obligor  
21 will be allowed 50% of this amount, or \$365, as his or her  
22 minimum presumptive need.

23 16.1.3 In a case where a support obligor is remarried and  
24 unemployed, and the court or master has attributed up to 50% of  
25 the total monthly net income of the obligor and his or her spouse  
26 to the obligor, the obligor and his or her spouse are to be  
27 treated as a unit, and the minimum presumptive need of the couple  
28 would be \$630 (\$450 for the first person + \$180 for the second

1 person in the same household). The support obligor will be  
2 allowed 50% of this amount, or \$315, as his or her minimum  
3 presumptive need. No additional work-related expenses will be  
4 allowed, since the obligor is not employed outside of the home.

5 16.1.4 Children are to be ranked within a household on the  
6 basis of age.

7 Section 17. "Separation agreement" defined; effect of separation  
8 agreements.

9 17.1 For purposes of this legislative rule, the term  
10 "separation agreement" shall have the meaning ascribed to it in  
11 subsection (h), section one, article 2, chapter forty-eight of  
12 the code [W.Va. Code, §48-2-1(h)].

13 17.2 On and after the effective date of this legislative  
14 rule, where the support obligors have executed a separation  
15 agreement which provides for the custody and support of the child  
16 or children of the parties, the court shall order the payment of  
17 child support in accordance with the terms of the agreement,  
18 unless the court finds:

19 17.2.1 That the agreement was obtained by fraud, duress, or  
20 other unconscionable conduct by one of the parties; or

21 17.2.2 That the parties, in the separation agreement, have  
22 not expressed themselves in terms which, if incorporated into a  
23 judicial order, would be enforceable by a court in future  
24 proceedings; or

1        17.2.3 That the agreement, viewed in the context of the  
2 children having a right to share in their natural parents' level  
3 of living, and considering the best interests of the children, is  
4 so inequitable as to defeat the purposes and principles of  
5 section eight, article two, chapter forty-eight-a of the code  
6 [W.Va. Code, §48A-2-8], and such agreement was inequitable at the  
7 time the same was executed; or

8        17.2.4 That the parties, prior to the agreement, were not  
9 fully informed as to how child support obligations would be  
10 structured if awards of child support were made under the  
11 guidelines promulgated pursuant to section eight, article two,  
12 chapter forty-eight-a of the code [W.Va. Code, §48A-2-8], rather  
13 than by agreement of the parties.

14        17.3 If a separation agreement provides for amounts of child  
15 support which would not fall within the guidelines for child  
16 support awards promulgated by this legislative rule, and such  
17 amounts have been determined as a part of a broader agreement  
18 establishing the rights of the parties in such matters as  
19 disposition of their separate property or the distribution of  
20 marital property, the reason or reasons for such variance should  
21 be set forth in the agreement or made a matter of court record,  
22 in order that they may be considered in future proceedings  
23 involving child support obligations.

24 Section 18. Effect of promulgation of rule on existing support  
25 orders.

1        18.1. The fact that the promulgation of this legislative rule  
2 establishes guidelines for child support awards shall not, in and  
3 of itself, constitute a circumstance upon which an existing  
4 support order may be revised or altered.



The Senate of West Virginia  
Charleston

March 12, 1988

LARRY A. TUCKER  
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COMMITTEES:  
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NATURAL RESOURCES  
RULES

NOTICE OF FILING OF A PROPOSED LEGISLATIVE  
RULE BY THE SENATE

COMMITTEE ON THE JUDICIARY

Agency: Child Advocate Office, Department of Human Services

Title Number: Title 78

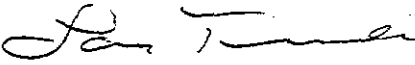
Title of Rule: Guidelines for Child Support Awards

Series Number: Series 16

Pursuant to the authority granted within WV Code 29A-2-3(g)  
and 29A-3-12(c) the Senate Committee on the Judiciary tenders  
the above legislative rule with the Secretary of State for  
inclusion in the State Register.

Filed on the twelfth day of March, 1988

Very truly yours,

  
LARRY TUCKER

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE March 13, 1988  
ADMINISTRATIVE LAW DIVISION

1 WEST VIRGINIA LEGISLATIVE RULE  
2 DEPARTMENT OF HUMAN SERVICES  
3 SERIES 16  
4  
5

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

6 Title: Guidelines for Child Support Awards

THIS DATE March 13, 1988  
ADMINISTRATIVE LAW DIVISION

7

8

9

10 Section 1. General

11 1.1 Scope--This legislative rule establishes guidelines for  
12 child support award amounts so as to ensure greater uniformity by  
13 those persons who make child support recommendations and enter  
14 child support orders and to increase predictability for parents,  
15 children, and other persons who are directly affected by child  
16 support orders.

17 1.2 Authority and Related Code Citation--West Virginia Code  
18 §48A-2-8, 42 U.S.C. §667, 45 C.F.R. §302.56.

19 1.3 Filing date--

20 1.4 Effective date--

21 1.5 Repeal of former rule--This legislative rule repeals the  
22 following West Virginia Legislative Rule: "Department of Human  
23 Services, Series 16, Guidelines for Child Support Awards," filed  
24 September 23, 1987.

25 Section 2. Formula for establishing child support obligations.

26 2.1 Calculation of net income-- The amount of net income  
27 for a support obligor is computed by subtracting from the income  
28 of such support obligor the following:

29 2.1.1 Income tax [see Section 6];

1 2.1.2 Taxes withheld from income [see Section 7];

2 2.1.3 Deductions from income required by law [see Section  
3 8];

4 2.1.4 Deductions from income required by an employer as a  
5 condition of employment [see Section 9];

6 2.1.5 Deductions from income required by a union as a  
7 condition of employment [see Section 10];

8 2.1.6 Legitimate business expenses [see Section 11];

9 2.1.7 Deductions for the benefit of children [see Section  
10 12]; and

11 2.1.8 Payments for the benefit of children [see Section 13].

12 2.1.9 Indebtedness [see Section 14].

13 2.2 Determination of the self support need of an obligor--  
14 The court or master shall establish the self-support need of each  
15 support obligor in accordance with the provisions of Section 14  
16 of this legislative rule.

17 2.3 Determination of the net income available for primary  
18 child support-- The court or master shall determine for each  
19 support obligor the amount of "net income available for primary  
20 child support" by subtracting the self-support need of the  
21 obligor from the net income of such obligor.

22 2.4 Determination of the total primary child support need--  
23 The court or master shall establish the primary support need of  
24 each child for whom child support is sought and then total these  
25 amounts. The court or master shall add to the primary support  
26 needs of all the children in question the cost of extraordinary

1 medical expenses and the cost of child care needed to allow a  
2 custodial parent to work, unless such expenses or costs have been  
3 deducted from income. Other expenses incurred because of the  
4 special needs of a child may be allowed if found by the court or  
5 master to be necessary. The court or master shall deduct from  
6 the primary support needs of a child the unearned income of such  
7 child. The amount resulting from these calculations shall be the  
8 "total primary child support need."

9       2.5 Determination of the primary support obligation of each  
10 obligor-- The court or master shall divide each support  
11 obligor's net income available for child support by the total net  
12 income available for child support from both obligors. The  
13 resulting percentage establishes the burden which each support  
14 obligor should carry with respect to the primary child support  
15 needs of their children. This percentage should then be  
16 multiplied by the total primary child support need in order to  
17 arrive at the "primary support obligation of each obligor."

18       2.6 Determination of the available net income for SOLA  
19 support-- The standard of living adjustment (SOLA) is designed  
20 to apportion the discretionary income available to a support  
21 obligor after he or she has met the obligor's self-support needs  
22 and primary support obligation. From the net income available  
23 for primary child support, as calculated in accordance with  
24 subdivision 2.3, determine the amount of discretionary income  
25 available ("available net income for SOLA support"), if any, by  
26 subtracting the following:

1       2.6.1       The primary support obligation calculated in  
2 accordance with subdivision 2.5; and

3       2.6.2       Other primary support obligations owed to children of  
4 the support obligor not of the union of the parties to the case,  
5 unless such obligations have been deducted from income.

6       2.7       Calculation of the SOLA support obligation-- If  
7 discretionary income is available, a support obligor shall be  
8 required to pay, as a "SOLA support obligation", amounts  
9 calculated as percentages of discretionary income, as follows:

10	First child	15%
11	Second and third child	10% each
12	Fourth, fifth, and sixth child	5% each

13  
14       2.7.1       The total amount required to be paid by an obligor as  
15 SOLA support shall not exceed fifty percent of the support  
16 obligor's discretionary income unless the court sets forth, in  
17 writing, findings of specific need.

18       2.7.2       If the discretionary income of either support obligor  
19 exceeds six thousand dollars per month, or if the combined  
20 discretionary income of both support obligors exceeds eight  
21 thousand dollars per month, the court or master may not apply the  
22 percentages set forth in this section. Under such circumstances,  
23 the court shall equitably determine the SOLA support obligation  
24 so as to avoid a windfall to either support obligor or a hardship  
25 on either support obligor, and shall be cognizant of the fact  
26 that an excessive amount of SOLA support may not be in the best  
27 interests of the child or children.

1       2.8     Calculation of the per-child share of SOLA support--  
2 Upon determining the total amount required to be paid by an  
3 obligor as SOLA support, the court or master shall calculate the  
4 "per-child share of such SOLA support."

5       2.9     Determination of the total monthly child support  
6 obligation-- The court or master shall determine the "total  
7 monthly child support obligation" of each support obligor by  
8 adding together the obligor's primary support obligation and SOLA  
9 support obligation.

10      2.9.1   In the usual case involving a noncustodial parent and  
11 a custodial parent, the custodial parent shall retain his or her  
12 child support obligation and the noncustodial parent shall pay  
13 his or her total monthly child support obligation as directed by  
14 the court or master.

15      2.9.2   In cases of split custody, where each support obligor  
16 is also a custodial parent, each support obligor shall retain  
17 that share of the support obligation owed to the child or  
18 children in his or her custody. After such retention, if one  
19 parent's obligation is greater than that owed by the other, the  
20 difference between the amounts owed by the support obligors shall  
21 be paid by the custodial parent owing the greater amount as  
22 directed by the court or master.

23      2.9.3   Where parties share physical joint custody on an equal  
24 basis, each will be considered to have the child for six months  
25 during the course of a year. To avoid unnecessary transfers of  
26 funds, the "pay out" of each parent for the year should be

1 determined by multiplying the monthly support obligation times  
2 six months. If one parent's yearly obligation is greater than  
3 that owed by the other, the excess amount shall be divided by 12  
4 and paid monthly over the course of the year, unless the parties  
5 agree otherwise.

6 2.9.4 Payments to third parties in the form of home loan  
7 installments, land contract payments, rent, payments for utility  
8 services, property taxes, insurance coverage, or other expenses  
9 or charges reasonably necessary for maintenance of a residence  
10 for the support obligor's children, to the extent that such  
11 payments have been specifically denominated as child support by a  
12 court order or a valid separation agreement, shall, if actually  
13 paid, be credited against the support obligor's total monthly  
14 child support obligation: Provided, That in no event shall the  
15 credits given under this subdivision reduce the support obligor's  
16 total monthly child support obligation to an amount less than  
17 such support obligor's primary support obligation.

18 Section 3. "Income" defined.

19 3.1 The term "income" shall mean any of the following:

20 3.1.1 Commissions, earnings, salaries, wages, and other  
21 income due or to be due in the future to a support obligor from  
22 his or her employer and successor employers, including fringe  
23 benefits such as business expense accounts, business credit  
24 accounts, and tangible property such as automobiles and meals, to  
25 the extent that they provide a support obligor with property or  
26 services he or she would otherwise have to provide;

1       3.1.2       Any payment due to a support obligor from a  
2 profit-sharing plan, a pension plan, an insurance contract, an  
3 annuity, social security, unemployment compensation, supplemental  
4 employment benefits, and workers' compensation payable under a  
5 workers' compensation law as temporary total disability benefits;

6       3.1.3       Any amount of money which is owing to a support  
7 obligor as a debt from an individual, partnership, association,  
8 public or private corporation, the United States or any federal  
9 agency, this state or any political subdivision of this state,  
10 any other state or a political subdivision of another state, or  
11 any other legal entity which is indebted to the obligor:  
12 Provided, That the court or master may disregard money owing to a  
13 support obligor as a debt upon a finding that the debt is  
14 uncollectible through reasonable collection procedures; and

15       3.1.4       Attributed income of the support obligor calculated in  
16 accordance with the provisions of this legislative rule.

17       3.1.5       At no time shall the fact that a parent has remarried,  
18 or the fact that the spouse of a remarried parent is, or is not,  
19 gainfully employed, or that said spouse has income from whatever  
20 source, be considered in determining whether or not to increase  
21 or decrease child support payments by or to the remarried parent.

22       3.2       To the extent practicable, all information relating to  
23 income shall be presented to the court or master based on monthly  
24 amounts. For example, when a party is paid wages weekly, the pay  
25 should be multiplied by 52 and divided by 12 to arrive at a  
26 correct monthly amount. If the court or master deems it

1 appropriate, such information may be presented in such other form  
2 as the court or master directs.

3 Section 4. "Attributed income" defined.

4 4.1 The term "attributed income" shall mean income not  
5 actually earned by a support obligor, but which may be  
6 attributed to such support obligor because he or she is  
7 unemployed, is not working full time, or is working below full  
8 earning capacity.

9 4.1.1 Income shall not be attributed to a support obligor  
10 who is unemployed or underemployed or is otherwise working below  
11 full earning capacity if any of the following conditions exist:

12 - 4.1.1.1 Such support obligor is providing care required by  
13 the children to whom the parties owe a joint legal responsibility  
14 for support, and such children are of preschool age or are  
15 handicapped-or-otherwise in a situation requiring particular care  
16 by the support obligor;

17 4.1.1.2 Such support obligor is pursuing a plan of economic  
18 self-improvement which will result, within a reasonable time, in  
19 an economic benefit to the children to whom the support  
20 obligation is owed, including, but not limited to, self-  
21 employment or education;

22 4.1.1.3. Such support obligor is, for valid medical reasons,  
23 earning an income in an amount less than that previously earned;

24 4.1.1.4 Such support obligor has made diligent efforts to  
25 find and accept available suitable work or to return to customary  
26 self-employment, to no avail; or

1       4.1.1.5    The court or master makes a finding that other  
2 circumstances exist which would make the attribution of income  
3 inequitable: Provided, That in such case, the court or master may  
4 decrease the amount of attributed income to the extent required  
5 to remove such inequity.

6       4.1.2    If a court or master determines that a limitation on  
7 income is not justified in that it is a result of a self-induced  
8 decline in income, a refusal to occupy time profitably, or an  
9 unwillingness to accept employment and earn an adequate sum, the  
10 court or master may consider evidence establishing the support  
11 obligor's earning capacity in the local job market, and may  
12 attribute income to such obligor.

13       4.1.3    As an alternative to the method of determining  
14 attributed income provided for in subdivision 4.1.2, where a  
15 support obligor is remarried and is unemployed, underemployed or  
16 is otherwise working below full earning capacity, the court or  
17 master may attribute income to the support obligor in an amount  
18 not to exceed that which could be derived by the obligor from  
19 full-time employment at the current minimum wage.

20       [Example 1. The parties have two teenage children and  
21 are divorced. During their marriage, both support  
22 obligors worked as professionals and earned substantial  
23 incomes. Since the divorce, the ex-wife has remarried,  
24 had a child by her second marriage, and has elected not  
25 to work. Since the ex-wife's failure to work is a  
26 matter of choice, and is not based on care required by  
27 the children of her marriage to the ex-husband, the  
28 court or master may establish her earning capacity in  
29 the local job market and attribute income to her. In  
30 the alternative, the court or master may attribute  
31 income to her in an amount not to exceed that which she  
32 would receive from full-time employment at the current  
33 minimum wage.]  
34

1 [Example 2. The support obligor formerly worked at a  
2 production job in a manufacturing plant, earning an  
3 annual income of \$24,000.00. He voluntarily left this  
4 former employment to start his own business, and is  
5 currently earning \$18,000.00 annually in this self-  
6 employed capacity. The limitation on income is self-  
7 imposed, and the court or master should attribute income  
8 to the support obligor based on his earning capabilities  
9 at the present time, rather than his actual earnings,  
10 unless the court or master determines that the self-  
11 employment of the obligor will, in a reasonable time,  
12 result in an economic benefit to the children.]  
13

14 [Example 3. The support obligor has left her employment  
15 and enrolled as a full-time student, seeking a degree as  
16 a registered nurse. If the court finds that her  
17 educational plans will, within a reasonable time, result  
18 in an economic benefit to the children to whom the  
19 support obligation is owed, income will not be  
20 attributed to her.]  
21

22 4.1.4 In any case attributed income shall be the lessor of  
23 the calculations made in 4.1.2 or 4.1.3.

24 Section 5. "Earnings" defined.

25 5.1 The term "earnings" shall mean compensation paid or  
26 payable for personal services, whether denominated as wages,  
27 salary, commission, bonus, or otherwise, and includes periodic  
28 payments pursuant to a pension or retirement program.

29 Section 6. "Income tax" defined.

30 6.1 The term "income tax" or "income taxes" shall mean  
31 personal income tax paid by a support obligor on his or her  
32 taxable income under the laws of the United States, the State of  
33 West Virginia, any sister state, any territory, any political  
34 subdivision of such governmental bodies, and any other taxing  
35 jurisdiction, foreign or domestic.

36 Section 7. "Taxes withheld from income" defined.

1       7.1    The term "taxes withheld from income" shall mean the  
2 amount of income tax deducted and withheld by an employer from  
3 income of a support obligor, computed in such a manner as to  
4 result, so far as is practicable, in withholding an amount  
5 substantially equivalent to the income tax estimated to be due.  
6 The amount of taxes withheld from income, to be valid as a factor  
7 in determining the amount of child support owed by a support  
8 obligor, shall be based upon the maximum number of withholding  
9 exemptions allowable under the applicable tax law.

10 Section 8. "Deductions from income required by law" defined.

11       8.1    The term "deductions from income required by law" shall  
12 mean the amount deducted and withheld by an employer from income  
13 of a support obligor as required by law, including, but not  
14 limited to, attachments, social security taxes, assessments on  
15 wages made under the provisions of any employment security law,  
16 and child support payments made pursuant to a court order or a  
17 valid written separation agreement. "Deductions from income  
18 required by law" shall not include wage attachments and  
19 suggestions which are required by law to be deducted and withheld  
20 by the employer, but which are for the enforcement of debts which  
21 would not otherwise be considered under the provisions of this  
22 legislative rule in determining a support obligor's net income.

23       [Example 1. The support obligor purchased, on credit, a  
24 satellite dish for personal use, defaulted on payments,  
25 and has had judgment rendered against him for the amount  
26 owing. An attachment of his wages to enforce this  
27 judgment would not be recognized as a deduction from  
28 income required by law. The underlying debt is such  
29 that it would not be considered in determining net  
30 income if it were not a wage attachment.]  
31

1 [Example 2. The support obligor incurred indebtedness  
2 with a hospital for necessary hospital and medical  
3 services delivered to his dependent child, did not pay,  
4 and has had judgment rendered against him. An  
5 attachment to enforce this debt would be recognized as a  
6 deduction from income required by law, since the  
7 underlying debt was incurred for necessary health care  
8 for a dependent.]  
9

10 Section 9. "Deductions from income required by an employer as a  
11 condition of employment" defined.

12 -9.1 The term "deductions from income required by an employer  
13 as a condition of employment" shall mean the amount deducted and  
14 withheld by an employer from income of a support obligor as  
15 payment for uniforms, tools, equipment and other supplies  
16 necessary for the performance of services or labor on behalf of  
17 the employer. "Deductions from income required by an employer as  
18 a condition of employment" shall not include deductions for food,  
19 clothing, shelter, and other necessities of life unless, and only  
20 to the extent, that such necessities are provided for use or  
21 consumption by the support obligor's children.

22 Section 10. "Deductions from income required by a union as a  
23 condition of employment" defined.

24 10.1 The term "deductions from income required by a union as  
25 a condition of employment" shall mean the amount deducted and  
26 withheld by an employer from income of a support obligor as dues,  
27 fees or other assessments, for the benefit of a labor union or  
28 other employee organization, required to be withheld under the  
29 terms of a labor-management agreement.

30 [Example 1. As a part of the labor-management contract  
31 at the plant where the support obligor works, two cents  
32 per hour is deducted from every worker's wages to  
33 support a union sponsored pre-paid legal services plan.

1 This is a deduction from income required by a union as a  
2 condition of employment, even though no part of it may  
3 inure to the benefit of the support obligor's children.]  
4

5 Section 11. "Legitimate business expense" defined.

6 11.1 The term "legitimate business expense" or "business  
7 expense" shall mean expenses paid for or incurred by a support  
8 obligor, in connection with the performance by him or her of  
9 services for an employer or another person or as a self-employed  
10 person, which expenses are not reimburseable, and which are  
11 lawfully deductible in computing taxable income under applicable  
12 income tax laws.

13 Section 12. "Deductions for the benefit of children" defined.

14 12.1 The term "deductions for the benefit of children" shall  
15 mean the amount deducted and withheld by an employer from income  
16 of a support obligor and paid to third parties for the benefit of  
17 the support-obligor's children, including, but not limited to,  
18 hospital insurance and medical, dental or optical insurance.

19 12.2 Deductions for the benefit of children which are, in  
20 fact, extraordinary medical expenses, costs of child care needed  
21 to allow a custodial parent to work or other expenses incurred  
22 because of the special needs of a child, may, in the discretion  
23 of the court or master, be treated as deductions for the benefit  
24 of children and subtracted from income. If such costs and  
25 expenses are subtracted from income under subsection 2.1, they  
26 shall not be added to primary support needs under subsection 2.4.  
27 If such costs and expenses are not deducted from income, and are  
28 used in calculating the primary child support need, such

1 deductions shall be subtracted, as child support payments, from  
2 the total monthly child support obligation of the obligor as  
3 calculated under subsection 2.9.

4 [Example 1. Out of each pay check received by a support  
5 obligor, a deduction is made and paid to a credit union  
6 as payments on a loan made by the credit union to the  
7 support obligor. Whether or not this is a deduction for  
8 the benefit of children depends upon the application of  
9 the loan proceeds. If, for example, the loan proceeds  
10 were used to pay for necessary orthodontic work  
11 performed on the parties' child, the deduction could, in  
12 the discretion of the court, be a deduction for the  
13 benefit of children and be subtracted from income, or,  
14 alternatively, could be subtracted from the obligor's  
15 total monthly child support obligation.]  
16

17 Section 13. "Payments for the benefit of children" defined.

18 13.1 The term "payments for the benefit of children" shall  
19 mean an amount or amounts paid by a support obligor to third  
20 parties on a regular, recurring basis for the benefit of the  
21 support obligor's children, including, but not limited to,  
22 tuition, health care expenses, hospital insurance, and medical,  
23 dental or optical insurance.

24 13.2 Payments for the benefit of children which are, in  
25 fact, extraordinary medical expenses, costs of child care needed  
26 to allow a custodial parent to work or other expenses incurred  
27 because of the special needs of a child, may, in the discretion  
28 of the court or master, be treated as payments for the benefit of  
29 children and subtracted from income. If such costs and expenses  
30 are subtracted from income under subsection 2.1, they shall not  
31 be added to primary support needs under subsection 2.4. If such  
32 costs and expenses are not deducted from income, and are used in  
33 calculating the primary child support need, such payments shall

1 be subtracted, as child support payments, from the total monthly  
2 child support obligation of the obligor as calculated under  
3 subsection 2.9.

4 Section 14. "Indebtedness" defined.

5 14.1 The term "indebtedness" means any legal or contractual  
6 obligation incurred as follows:

7 (1) For the necessary support of a child with regard to food,  
8 clothing, shelter and medical care;

9 (2) For the purpose of acquisitions or additions to or  
10 additions intended to add to the value of marital property of the  
11 parties as defined in section one, article two, chapter forty-  
12 eight of the code of West Virginia, one thousand nine hundred  
13 thirty-one, as amended.

14 14.2 The court or master may disregard any debt which is  
15 incurred with- the obvious intent of decreasing child support  
16 payments.

17 Section 15. "Self-support need of an obligor" defined.

18 15.1 The term "self-support need of an obligor" or "primary  
19 self-support need of an obligor" shall mean the absolute minimum  
20 amount of income that a support obligor must retain to function  
21 at maximum productivity.

22 15.2 In determining self-support need of an obligor, the  
23 court or master shall consider only debts and expenses for food,  
24 clothing, shelter, medical care, and job-required transportation.

25 15.3 If presented, the court or master shall consider  
26 evidence of probative facts as to the needs of a support obligor

1 with regard to a consideration of matters described in subsection  
 2 15.2, and if such evidence is convincing, may determine that a  
 3 variance from the presumptive minimum need is supported by such  
 4 evidence. If such evidence is not presented, or is not  
 5 convincing, the self-support need of an obligor will be the  
 6 presumptive minimum need of such obligor as calculated under the  
 7 provisions of Section 17.

8 Section 16. "Primary child support need" defined.

9 16.1 The term "primary child support need" shall mean the  
 10 absolute minimum amount of money that a child requires for food,  
 11 clothing, shelter and medical care.

12 16.2 The primary support need of a child will be the  
 13 presumptive minimum need of such child as calculated under the  
 14 provisions of Section 17, unless the court or master determines  
 15 that a variance from the presumptive minimum need is supported by  
 16 convincing evidence.

17 Section 17. "Presumptive minimum need" defined.

18 17.1 The term "presumptive minimum need" shall mean the  
 19 amount of money that a person is presumed to need for the  
 20 necessities of life, based upon their rank in their particular  
 21 household. The presumptive minimum needs of the several members  
 22 of a given household are as follows:

23	First member	\$450 per month
24	Second member	\$180 per month
25	Third and Fourth members	\$135 per month
26	Each additional member	\$ 90 per month

27  
 28 17.1.1 The first member of a household is the adult head of  
 29 a household: Provided: That in a case where a support obligor

1 lives with his or her parents or other separate family, the  
2 support obligor and the children in his or her custody will be  
3 considered to be in a household by themselves. The remaining  
4 members of the household shall be ranked according to their age.

5 17.1.2 Four hundred fifty dollars (\$450) per month is  
6 established as the presumptive minimum need for an unmarried  
7 first member of a household.

8 17.1.3 Where a support obligor is remarried and both the  
9 support obligor and his or her present spouse are fully employed,  
10 they are to be treated as a unit. The minimum presumptive need  
11 of the couple would be \$730 (\$450 for the first person + \$180 for  
12 the second person in the same household + \$100 additional work-  
13 related expense for the employed spouse). The support obligor  
14 will be allowed 50% of this amount, or \$365, as his or her  
15 minimum presumptive need.

16 17.1.4 In a case where a support obligor is remarried and  
17 unemployed, and the court or master has attributed income to the  
18 obligor, the obligor and his or her spouse are to be treated as a  
19 unit, and the minimum presumptive need of the couple would be  
20 \$630 (\$450 for the first person + \$180 for the second person in  
21 the same household). The support obligor will be allowed 50% of  
22 this amount, or \$315, as his or her minimum presumptive need. No  
23 additional work-related expenses will be allowed, since the  
24 obligor is not employed outside of the home.

25 Section 18. "Separation agreement" defined; effect of separation  
26 agreements.

1       18.1     For purposes of this legislative rule, the term  
2 "separation agreement" shall have the meaning ascribed to it in  
3 subsection (h), section one, article 2, chapter forty-eight of  
4 the code [W.Va. Code, §48-2-1(h)].

5       18.2     On and after the effective date of this legislative  
6 rule, where the support obligors execute a separation agreement  
7 which provides for the custody and support of the child or  
8 children of the parties, the court shall order the payment of  
9 child support in accordance with the terms of the agreement,  
10 unless the court finds:

11       18.2.1   That the agreement was obtained by fraud, duress, or  
12 other unconscionable conduct by one of the parties, or by a  
13 mistake of law on the part of one or both of the parties; or

14       18.2.2   That the parties, in the separation agreement, have  
15 not expressed--themselves in terms which, if incorporated into a  
16 judicial order, would be enforceable by a court in future  
17 proceedings; or

18       18.2.3   That the agreement, viewed in the context of the  
19 children having a right to share in their natural parents' level  
20 of living, and considering the best interests of the children, is  
21 so inequitable as to defeat the purposes and principles of  
22 section eight, article two, chapter forty-eight-a of the code  
23 [W.Va. Code, §48A-2-8], and such agreement was inequitable at the  
24 time the same was ratified and approved by a court or master; or

25       18.3     If a separation agreement provides for amounts of child  
26 support which would not fall within the guidelines for child

1 support awards promulgated by this legislative rule, and such  
2 amounts have been determined as a part of a broader agreement  
3 establishing the rights of the parties in such matters as  
4 disposition of their separate property or the distribution of  
5 marital property, the reason or reasons for such variance should  
6 be set forth in the agreement or made a matter of court record,  
7 in order that they may be considered in future proceedings  
8 involving child support obligations.

9 Section 19. Disregard of formula.

10 19.1 If, after computing the amount of a child support award  
11 in accordance with the provisions of this legislative rule, the  
12 court or master determines that the application of support  
13 guidelines are inappropriate as being contrary to the best  
14 interests of the children and the parties, the court or master  
15 may disregard the formula and not follow the guidelines. In such  
16 instance, the court or master shall set forth, in writing, the  
17 reasons for not following the guidelines in the particular case  
18 involved.

19 Section 20. Effect of promulgation of rule on existing support  
20 orders.

21 20.1 The fact that the promulgation of this legislative rule  
22 establishes guidelines for child support awards shall not, in and  
23 of itself, constitute a change of circumstances upon which an  
24 existing support order may be revised or altered. A party  
25 seeking a modification of a child support order must show a  
26 substantial change in circumstances since the entry of the

1 existing order, regardless of whether such change was within the  
2 contemplation of the parties at the time the order was entered.  
3 The Legislature, by authorizing the promulgation of this  
4 legislative rule by general law during the regular session of the  
5 Legislature, one thousand nine hundred eighty-eight, expressly  
6 intends to overrule the decision of the Supreme Court of Appeals  
7 in Lambert v. Miller, W.Va., 358 S.E.2d 785 (1987), to the extent  
8 that the decision in such case conflicts with the provisions of  
9 this subsection 20.1.