

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

NOV 14 4 12 PM '99

OFFICE OF THE SECRETARY OF STATE

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

Department of Health and Human Resources

AGENCY: Bureau for Child Support Enforcement TITLE NUMBER: 78

CITE AUTHORITY W. Va. Code § 48A-2-9

AMENDMENT TO AN EXISTING RULE: YES  NO  (a repeal)

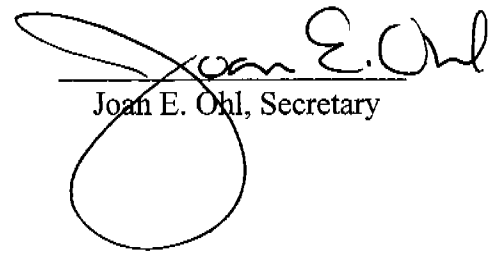
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: Guidelines for Child Support Awards

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

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

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

  
Joan E. Oehl, Secretary

\$7.40

The rule being repealed embodies the Melson Child Support Formula. This was the method used to calculate child support obligations, and was used in this state from 1987 until July 1, 1997.

The Bureau for Child Support Enforcement seeks to repeal Legislative Rule 78-16. This is necessary for the following reason: When the child support formula was originally enacted in 1987 it was to be enacted by a legislative rule. However, in 1996 when the Legislature changed the child support formula they actually codified the entire formula in section 48B of the West Virginia Code. Our agency has not, since that time, changed its legislative rule to coincide with the applicable. The repeal of this is necessary so that our legislative rule will not be in conflict with the statutes. It is not necessary to replace it with another rule, since the formula itself is codified now.

## QUESTIONNAIRE

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: August 4, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency name, Address & Phone No.) Department of Health and Human Resources  
Bureau of Child Support Enforcement

State Capitol Complex, Building 6, Room 817, Charleston, WV 25305

Telephone: (304) 558-0909

LEGISLATIVE RULE TITLE: Guidelines for Child Support Awards, 78CSR16

1. Authorizing statute(s) citation: WV Code § 48A-2-9

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 7, 1999

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) or Public Comment Period ended:

August 6, 1999

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received  X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing (be exact):

~~N/A~~ August 6, 1999

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

Beth Marquart, Director, Office of Regulatory Development

Department of Health and Human Resources

Building 3, Room 265, Capitol Complex

Charleston, West Virginia 25305

(304) 558-5598 FAX: (304) 558-6051 bethmarquart@wvdhhr.org

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Legal/Policy Unit

Bureau for Child Support Enforcement

Building 6, Room 817-B

State Capitol Complex

Charleston, West Virginia 25305 (304) 558-0909

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general

description of the issues to be decided.

N/A

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b. Date of hearing or comment period:

N/A

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:**

**Type of Rule:**     **Legislative**                       **Interpretive**                       **Procedural**

**Agency:**            Bureau for Child Support Enforcement  
                           Department of Health and Human Resources

**Address:**            Building 3, Capitol Complex  
                           Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
<b>Estimated Total Cost</b>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
<b>Personal Services</b>	0	0	0	0	0
<b>Current Expense</b>	0	0	0	0	0
<b>Repairs &amp; Alterations</b>	0	0	0	0	0
<b>Equipment</b>	0	0	0	0	0
<b>Other</b>	0	0	0	0	0
<b>Revenue</b>	0	0	0	0	0

**2. Explanation of above estimates.**

The repeal of this rule will have no effect on expenses or revenue, either for State, local, or Federal government.

**3. Objectives of this rule:**

In 1996 the West Virginia Legislature enacted West Virginia Code 48A-1B et seq. which codified the child support formula. Therefore, this legislative rule was superceded and is no longer necessary. The child support formula codified by the legislature in 1996 is not the same formula as is contained in the legislative rule sought to be repealed. Therefore, since we are bound by the legislation, the conflicting rule needs to be repealed.

Rule Title: Guidelines for Child Support Awards

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None.

C. Economic Impact on Citizens/Public at Large.

None.

Date: 7-7-99

Signature of Agency Head or Authorized Representative

[Handwritten Signature]

7:33 3 4 42 PM '99

OFFICE OF THE SECRETARY OF STATE

~~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 withhold 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);~~

~~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 special 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%~~

~~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 unless 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 of 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 non-custodial 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 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 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 findings that the debt is uncollectible through reasonable collection procedures;~~

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

~~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, 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 the 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 alternative, 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.~~

#### ~~§78-16-5. "Earnings" Defined.~~

~~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" Defined.~~

~~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 reimbursable, 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 children" 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 any 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~~

~~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 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 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.~~

~~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 defeat the purposes and principles of section eight, article two, chapter forty-eight 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.~~

~~CHILD SUPPORT FORMULA~~

~~Line 1. Monthly Net Income - Monthly net income is, Gross minus taxes and any deduction that is a condition of employment (i.e. Union dues). If the custodial parent does not have income and the child is over five (5) years you must Attribute income to them at min. wage X 40 hrs. ( I use \$ for that figure)~~

~~Line 2. Self Support Deduction - If the person is single then the self support deduction is \$450.00, if the person is married and the current spouse does not work then the deduction is \$315.00 and if the current spouse does work then the deduction is \$365.00.~~

~~Line 3. Individual Available Net for Primary Child Support - Subtract Line 2 from Line 1.~~

~~Line 4. Total Available Net for Primary Child Support - Add the Line 3 totals for both parents.~~

**STEP B**

~~Line 5. If the custodial parent is un-married then the oldest child is the 2nd person in that household and the value of that child is \$180.00. If the custodial parent is married then the oldest child is the 3rd person in the household and the value of that child is \$135.00.~~

<del>2nd person .....</del>	<del>\$180.00</del>
<del>3rd person .....</del>	<del>\$135.00</del>
<del>4th person .....</del>	<del>\$135.00</del>
<del>5th person .....</del>	<del>\$ 90.00</del>

~~Line 9. Subtotal of line 5 - 8~~

~~Line 10 - 12. Extraordinary Medical expenses are any expense that is ongoing (i.e. insulin shots, etc.) Put the monthly child care expenses of the custodial parent that allows that parent to work.~~

~~Line 13. The total of Lines 10 thur 12.~~

~~Line 14. Line 9 plus Line 13~~

~~Line 15. Unearned income of children - This is where the Law Master has been plugging~~

- ~~\_\_\_\_\_ in the social security award that the child(ren) are receiving.~~
- Line 16. ~~Total Primary Child Support Need - Line 15 from Line 14.~~
- Line 17. ~~Put in the figure that you have on line 3 from the front page.~~
- Line 18. ~~Put in the figure that you have on line 4 from the front page.~~
- Line 19. ~~Divide Line 18 into Line 17, (this should give you a figure of 1 or LESS.)~~
- Line 20. ~~Put in the figure that you have on line 16 from the front page.~~
- Line 21. ~~Individual Primary Support Obligation - Line 19 multiplied by Line 20.  
\_\_\_\_\_ (Remember Line 20 is a percentage and when you multiply be sure to use the  
\_\_\_\_\_ decimal point 65% would be .65)~~
- Line 22. ~~Put in the figure that you have on Line 3 from the front page. (This is also the  
\_\_\_\_\_ figure that is on line 17 at the top of this page)~~
- Line 23. ~~Put in the figure that is on Line 21 on this page.~~
- Line 24. ~~Other Primary Support Obligations from Child(ren) of Current Marriage -  
\_\_\_\_\_ If the NON-CUSTODIAL parent is married and has children born of that  
\_\_\_\_\_ marriage then you will have to do a separate formula for that child(ren). On  
\_\_\_\_\_ that formula the only difference will be the net income of the non-custodial  
\_\_\_\_\_ parent, which will be the figure from line 3 on the front page minus line 21 on  
\_\_\_\_\_ the 2nd page of the formula you are now doing. Work this 2nd formula ONLY  
\_\_\_\_\_ to line 21 and then plug that figure into Line 24 of the initial formula.~~
- Line 25. ~~Line 22 minus Lines 23 and 24~~
- Line 26. ~~Bring the figure from Line 25 down.~~
- Line 27. ~~Total SOLA Support percentage - this figure is printed below, if the custodial  
\_\_\_\_\_ parent has 1 child the figure is 15%, if there are 2 children it is 25%, and so on  
\_\_\_\_\_ down. Remember this is ONLY the number of children that the custodial  
\_\_\_\_\_ parent has by the non-custodial that you are working the formula for.~~
- Line 28. ~~Multiply line 26 by Line 27. Remember the figure on Line 27 is a percentage  
\_\_\_\_\_ and that when you multiply be sure to use the decimal point (i.e., 15% when  
\_\_\_\_\_ multiplied is .15)~~
- Line 29. ~~Add BOTH Lines 28~~

~~Line 30. Divide Line 29 by the number of children.~~

~~Line 31. Plug in the figure that you have on Line 21 from the second page. - -~~

~~Line 32. Plug in the figure that you have on Line 28 from the second page. On the second line (Individual Expenses from Line 13, IF USED) Leave this line blank. On the third line (Payments to Third Parties etc) leave this one blank also.~~

~~Line 33. Add lines 31 and Lines 32.~~

~~Line 34. Amount Retained By Custodial Parent - the custodial parent would retain what child support obligation that parent would owe, and the non-custodial parent would have 0 on this line.~~

~~Line 35. TOTAL MONTHLY ORDERED CHILD SUPPORT - This figure will be the Total from Line 33 for the non-custodial parent and it will be 0 for the custodial parent.~~

**PART I**

LINE 1 Monthly net income \$ \_\_\_\_\_

LINE 2 Self Support Deduction \$ \_\_\_\_\_

LINE 3 Individual Available net for Primary Child Support \$ \_\_\_\_\_

**TITLE 4 TOTAL AVAILABLE NET FOR PRIMARY CHILD SUPPORT**

LINE 4 \$ \_\_\_\_\_

LINE 5 \$ \_\_\_\_\_ person in \_\_\_\_\_ household

LINE 6 \$ \_\_\_\_\_ person in \_\_\_\_\_ household

LINE 7 \$ \_\_\_\_\_ person in \_\_\_\_\_ household

LINE 8 \$ \_\_\_\_\_ person in \_\_\_\_\_ household

LINE 9 Subtotal of Lines 5-8 \$ \_\_\_\_\_

LINE 10 Extraordinary Medical Expenses \$ \_\_\_\_\_

LINE 11 Monthly Child Care Expenses of Working Custodial Parent \$ \_\_\_\_\_

LINE 12 Other Direct Needs of Children \$ \_\_\_\_\_

LINE 13 Subtotal of Lines 10-12 \$ \_\_\_\_\_

LINE 14 Line 9 plus Line 13 \$ \_\_\_\_\_

LINE 15 Unshared Income of Child \$ \_\_\_\_\_

LINE 16 TOTAL PRIMARY CHILD SUPPORT NEED \$ \_\_\_\_\_

**STEP C**

LINE 17 Individual Available net for Primary Child Support (Line 3) \$ \_\_\_\_\_

LINE 18 Total Available Net for Primary Child Support (Line 4) \$ \_\_\_\_\_

LINE 19 Individual Share of Primary Child Support \$ \_\_\_\_\_

LINE 20 Total Primary Child Support Need (Line 16) \$ \_\_\_\_\_

LINE 21 Individual Primary Support Obligation \$ \_\_\_\_\_

**PART II. OBLIGATION OF SECOND PARENT (SOL) CHILD SUPPORT**

**STEP A**

LINE 22 Individual Available net for Primary Child Support (Line 3) \$ \_\_\_\_\_

LINE 23 Individual Primary Support Obligation (Line 21) \$ \_\_\_\_\_

LINE 24 Other Primary Support Obligations for Children of Current Marriage \$ \_\_\_\_\_

LINE 25 Individual Available net for SOLA Support \$ \_\_\_\_\_

**STEP B**

LINE 26 Individual Available net for SOLA Support (Line 25) \$ \_\_\_\_\_

LINE 27 Total SOLA Support Percentage

One child	15 percent
Two children	25 percent
Three children	35 percent
Four children	45 percent
Five children	55 percent
Six children	50 percent

LINE 28 Total SOLA amount shall not exceed 50% of the discretionary income \$ \_\_\_\_\_

LINE 29 Individual SOLA Support Obligation \$ \_\_\_\_\_

LINE 30 TOTAL SOLA SUPPORT OBLIGATION \$ \_\_\_\_\_

LINE 31 For Child Share of SOLA Support (Divide Line 30 by number of children in Part I, Step B) \$ \_\_\_\_\_

FOR A SPLIT-CUSTODY CASE, PROCEED TO PART IV.  
FOR A JOINT-CUSTODY CASE, PROCEED TO PART II.

**PART III. TOTAL MONTHLY SUPPORT OBLIGATION**

LINE 32 Individual Primary Support Obligation (Line 21) \$ \_\_\_\_\_

LINE 33 Individual SOLA Support Obligation (Line 29) \$ \_\_\_\_\_

LINE 34 Individual Expenses from Line 13, if used \$ \_\_\_\_\_

Payments to Third Parties Designated as Child Support, if paid (see Section IV on the CAP 18c) \$ \_\_\_\_\_

LINE 35 Total Monthly Child Support Obligation \$ \_\_\_\_\_

LINE 36 Amount Retained by Custodial Parent \$ \_\_\_\_\_

LINE 37 TOTAL MONTHLY OBLIGATED CHILD SUPPORT \$ \_\_\_\_\_

(Line 36) Individual Primary Support Obligation (Line 21) \$ \_\_\_\_\_ \$ \_\_\_\_\_

(Line 37) Individual SOLA Support Obligation (Line 28) \$ \_\_\_\_\_ \$ \_\_\_\_\_

(Line 38) Total Monthly Child Support Obligation \$ \_\_\_\_\_ \$ \_\_\_\_\_

**STEP B**

(Line 39) Individual Primary Support for Child(ren) in Obligor's Physical Custody (Work Part i, Step B for each household) \$ \_\_\_\_\_ \$ \_\_\_\_\_

(Line 40) Per Child Share of SOLA Support (Line 39 ÷ number of children in obligor's physical custody) \$ \_\_\_\_\_ \$ \_\_\_\_\_

(Line 41) Support Amount Retained by Custodial Parent \$ \_\_\_\_\_ \$ \_\_\_\_\_

**STEP C**

(Line 42) Total Monthly Child Support Obligation (Line 38) \$ \_\_\_\_\_ \$ \_\_\_\_\_

Individual's Expenses from Line 13, IF USED \_\_\_\_\_

Payments to Third Parties Designated as Child Support, IF PAID (see Section IV, E, on the GAO 15c) \_\_\_\_\_

(Line 43) Amount Retained by Custodial Parent (Line 41 but not more than Line 38) \_\_\_\_\_

(Line 44) TOTAL MONTHLY ORDERED CHILD SUPPORT \$ \_\_\_\_\_ \$ \_\_\_\_\_

**PART V. TOTAL MONTHLY SUPPORT OBLIGATION WHERE PARTIES SHARE PHYSICAL JOINT CUSTODY ON AN EQUAL BASIS**

**STEP A**

(Line 45) Individual Primary Support Obligation (Line 31) \$ \_\_\_\_\_ \$ \_\_\_\_\_

(Line 46) Individual SOLA Support Obligation (Line 28) \$ \_\_\_\_\_ \$ \_\_\_\_\_

Individual's Expense from Line 13, IF USED \_\_\_\_\_

Payments to Third Parties Designated as Child Support, IF PAID (See Section IV, E, on the GAO 15c) \_\_\_\_\_

(Line 47) Total Monthly Child Support Obligation \$ \_\_\_\_\_ \$ \_\_\_\_\_

**STEP B**

(Line 48) Total Monthly Child Support Obligation (Line 47) \$ \_\_\_\_\_ \$ \_\_\_\_\_

(Line 49) ÷ 6 months ÷ 6 mos

(Line 50) Individual Child Support Obligation per year \$ \_\_\_\_\_ \$ \_\_\_\_\_

**STEP C**

(Line 51) Lowest Individual Child Support Obligation per year is subtracted from Highest Individual Child Support Obligation per year (Line 50) Highest \$ \_\_\_\_\_ Lowest \$ \_\_\_\_\_

(Line 52) Total Child Support Obligation per year \$ \_\_\_\_\_

(Line 53) Twelve (12) Months 12 mos

**STEP D**

(Line 54) TOTAL MONTHLY ORDERED CHILD SUPPORT (To be paid over the course of the year by obligor with highest obligation from Line 50 unless the parties agree otherwise) \$ \_\_\_\_\_ \$ \_\_\_\_\_