

# Child Support in Virginia

In Virginia, judges must first calculate child support using a formula commonly referred to as the child support guidelines. In order for the judge to calculate child support, the judge will need to know each party's monthly gross income, any employment-related day care expenses for the child, and any monthly cost for health care premiums attributable to the child. The *Virginia Code* defines "gross income" as all income from all sources, and includes, but is not limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits (with some exceptions), workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, rental income, gifts, prizes and awards. Some examples of income found in the case law include gifts from parents, inheritances, voluntary contributions to retirement plans and capital gains (after determining how much is actually income and not capital recoupment).

If either parent is self-employed, a partner in a partnership, or a principal in a closely held business, the judge may deduct from that gross income of the business reasonable business expenses and one-half of the self-employment taxes paid by that parent. If either parent has another child from a prior marriage or relationship, the court may give that parent an adjustment in the child support calculation. If there is an existing court order or a written agreement setting forth the amount of child support to be paid for that other child, that amount set forth in the order or agreement will be deducted from the parent's monthly gross income when calculating child support. If there is no order or written agreement in effect for that other child, the court may deduct from that parent's income the amount he or she would pay according to the schedule set forth in the Code of Virginia based on that parent's monthly gross income. If spousal support is paid by one parent to the other, it is included in the recipient's gross income and deducted from the payor's gross income.

Once the judge determines the gross income for both parties and applies any deductions, the judge must refer to the chart set forth in the child support guidelines statute to determine the basic support obligation for that child. To that amount, he adds the employment-related day care expenses for that child, and any monthly costs for health care and dental premiums attributable to the child. Having added all those figures together, the judge then allocates an amount of child support to the non-custodial parent proportional to that parent's share of the combined gross income. If the non-custodial parent provides the health insurance, that parent receives a deduction from their child support amount based upon the amount of that monthly health care premium.

There is a different calculation if a parent exceeds ninety (90) days of visitation per year. In order to use this calculation, the judge must know the number of days each party has custody/visitation. For purposes of this calculation, a day means a period of twenty-four (24) hours. However, if the parent with the least number of days has a period of time that includes an overnight but is not twenty-four (24) hours, that period shall be calculated as one-half of a day.

The amount of child support calculated pursuant to the guidelines is presumed to be correct. However, either parent may request that the court raise or lower that amount. The factors that the court is to consider are as follows:

1. Actual monetary support for other family members or former family members;
2. Arrangements regarding custody of the children;
3. Imputed income to a party who is voluntarily unemployed or voluntarily under-employed; provided that income may not be imputed to the custodial parent when a child is not in school, child care services are not available and the costs of such child care services are not included in the computation, and the good faith and reasonableness of changes in employment made by a party;
4. Debts of either party arising from the marriage for the benefit of the child;
5. Direct payments ordered by the court for health care coverage, maintaining life insurance coverage (for the child), education expenses or other court ordered direct payments for the benefits of the child and costs related to the provision of health care coverage;
6. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;
7. Age, physical and mental condition of the child or children, including extraordinary medical or dental expenses, and child-care expenses;
8. Independent financial resources, if any, of the child or children;
9. Standard of living for the family established during the marriage;
10. Earning capacity, obligations and needs, and financial resources of each parent;
11. Provisions made with regard to the marital property;
12. Tax consequences to the parties regarding claims for dependent children and child care expenses;
13. A written agreement between the parties which includes the amount of child support; A pendente lite decree, which includes the amount of child support, agreed to by both parties or by counsel for the parties; and
14. Such other factors, including tax consequences to each party, as are necessary to consider the equities for the parents and children.

The most common “deviation factor” is income “imputed” to a parent who is underemployed or unemployed. Usually, that deviation factor applies when a parent has had a voluntary reduction

in income through changing professions or taking a lower-paying job. Also, the courts have imputed income to a parent who has chosen to have a child during a second marriage and stay at home to take care of that child. In addition, courts have also allowed for an upward deviation for private school when there has been evidence of the parent's ability to pay and a history of the children being in private school before the separation.

The court has authority to determine which parent receives the dependency exemption for a child and the child tax credit for a child. If there is a child care expense related to the employment of the custodial parent, the amount of the child care is included in the guideline calculation. However, effective July 1, 2004, the amount of child care expense may be reduced by the amount of the tax benefit the custodial parent receives for the child care deduction.

Effective July 1, 2004, any medical, dental, vision care, orthodontic or mental health expenses of a child that are not covered by insurance and exceed \$100.00 per child are to be shared by each parent proportional to their gross income

*Prepared by the Family Law Section of the VIRGINIA STATE BAR*