

SB 359

RECEIVED

96 APR -2 PM 4:48

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

SENATE BILL NO. 359

(By Senator WOOTEN, ET AL)



PASSED MARCH 9, 1996

In Effect NINETY DAYS FROM Passage

RECEIVED

96 APR -2 PM 4:48

OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA

ENROLLED

Senate Bill No. 359

(BY SENATORS WOOTON, ANDERSON, BUCKALEW, DEEM,
DITTMAR, MILLER, SCHOONOVER, SCOTT, ROSS,
WHITE AND YODER)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to repeal section six, article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section three-a, article one, chapter forty-eight-a; to repeal section seventeen, article two, of said chapter; to repeal section seven, article four of said chapter; to amend and reenact sections fifteen, fifteen-a and thirty-two, article two, chapter forty-eight of said code; to amend and reenact section three, article one, chapter forty-eight-a of said code; to amend and reenact sections one, four, twenty and twenty-three, article four, of said chapter forty-eight-a; to further amend said chapter forty-eight-a by adding thereto two new articles, designated articles one-a and one-b; to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said

code; and to amend and reenact section twenty-nine, article five, chapter sixty-one of said code, relating to domestic relations and support obligations generally; reorganizing portions of the domestic relations law to provide a new methodology for calculating child support based on income shares; providing for relief upon ordering divorce, annulment or separate maintenance; providing for medical support; establishing a valuation date for contingent and other future earned fees that are marital property; defining certain terms that have application to support enforcement; establishing guidelines for child support awards; prescribing the method of calculating a child support order; setting forth a table of monthly basic child support obligations; providing for child health care as a part of support; providing for work-related child care costs as a part of support; computing child support order in a sole custody case; computing child support in shared physical custody case; computing child support in split physical custody case; adjustment for social security benefits sent directly to a child; application of guidelines; providing for modification of support orders; allocation of tax exemption; defining indebtedness; specifying when support guidelines may be disregarded; presenting information on income based on monthly amounts; creating an additional part-time family law master; providing for circuit court review of a law master's recommended order; prescribing fees to be charged by the clerk of the circuit court; disposition of fees; and defining criminal offense of failure to meet obligation to provide support, and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

That section six, article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three-a, article one, chapter forty-eight-a be repealed; that section seventeen, article two, of said chapter be repealed; that section seven, article four of said chapter be repealed; that sections fifteen, fifteen-a and thirty-two, article two, chapter forty-eight of

said code be amended and reenacted; that section three, article one, chapter forty-eight-a of said code be amended and reenacted; that sections one, four, twenty and twenty-three, article four, of said chapter forty-eight-a be amended and reenacted; that said chapter forty-eight-a be further amended by adding thereto two new articles, designated articles one-a and one-b; that sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted; and that section twenty-nine, article five, chapter sixty-one of said code be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

1 (a) Upon ordering a divorce or granting a decree of
 2 separate maintenance, the court may require either party
 3 to pay alimony in the form of periodic installments, or a
 4 lump sum, or both, for the maintenance of the other
 5 party. Payments of alimony are to be ordinarily made
 6 from a party's income, but when the income is not
 7 sufficient to adequately provide for those payments, the
 8 court may, upon specific findings set forth in the order,
 9 order the party required to make those payments to
 10 make them from the corpus of his or her separate estate.
 11 An award of alimony shall not be disproportionate to a
 12 party's ability to pay as disclosed by the evidence before
 13 the court.

14 (b) Upon ordering the annulment of a marriage or a
 15 divorce or granting of decree of separate maintenance,
 16 the court may further order all or any part of the follow-
 17 ing relief:

18 (1) The court may provide for the custody of minor
 19 children of the parties, subject to such rights of visita-
 20 tion, both in and out of the residence of the custodial
 21 parent or other person or persons having custody, as may
 22 be appropriate under the circumstances. In every action
 23 where visitation is awarded, the court shall specify a

24 schedule for visitation by the noncustodial parent:
25 *Provided*, That with respect to any existing order which
26 provided for visitation but which does not provide a
27 specific schedule for visitation by the noncustodial
28 parent, upon motion of any party, notice of hearing and
29 hearing, the court shall issue an order which provides a
30 specific schedule of visitation by the noncustodial
31 parent;

32 (2) When the action involves a minor child or children,
33 the court shall require either party to pay child support
34 in the form of periodic installments for the maintenance
35 of the minor children of the parties in accordance with
36 support guidelines promulgated pursuant to section
37 eight, article two, chapter forty-eight-a of this code.
38 Payments of child support are to be ordinarily made
39 from a party's income, but in cases when the income is
40 not sufficient to adequately provide for those payments,
41 the court may, upon specific findings set forth in the
42 order, order the party required to make those payments
43 to make them from the corpus of his or her separate
44 estate;

45 (3) When the action involves a minor child or children,
46 the court shall provide for medical support for any minor
47 children in accordance with section fifteen-a of this
48 article;

49 (4) As an incident to requiring the payment of alimony
50 or child support, the court may order either party to
51 continue in effect existing policies of insurance covering
52 the costs of health care and hospitalization of the other
53 party: *Provided*, That if the other party is no longer
54 eligible to be covered by such insurance because of the
55 granting of an annulment or divorce, the court may
56 require a party to substitute such insurance with a new
57 policy to cover the other party or may consider the
58 prospective cost of such insurance in awarding alimony
59 to be paid in periodic installments. Payments made to an
60 insurer pursuant to this subdivision, either directly or by
61 a deduction from wages, shall be deemed to be alimony

62 or installment payments for the distribution of marital
63 property, in such proportion as the court shall direct:
64 *Provided, however,* That if the court does not set forth in
65 the order that a portion of such payments is to be
66 deemed installment payments for the distribution of
67 marital property, then all such payments made pursuant
68 to this subdivision shall be deemed to be alimony:
69 *Provided further,* That the designation of insurance
70 coverage as alimony under the provisions of this subdivi-
71 sion shall not, in and of itself, give rise to a subsequent
72 modification of the order to provide for alimony other
73 than insurance for covering the costs of health care and
74 hospitalization;

75 (5) The court may grant the exclusive use and occu-
76 pancy of the marital home to one of the parties, together
77 with all or a portion of the household goods, furniture
78 and furnishings reasonably necessary for such use and
79 occupancy. Such use and occupancy shall be for a
80 definite period, ending at a specific time set forth in the
81 order, subject to modification upon the petition of either
82 party. Except in extraordinary cases supported by
83 specific findings set forth in the order granting relief, a
84 grant of the exclusive use and occupancy of the marital
85 home shall be limited to those situations when such use
86 and occupancy is reasonably necessary to accommodate
87 the rearing of minor children of the parties. The court
88 may require payments to third parties in the form of
89 home loan installments, land contract payments, rent,
90 property taxes and insurance coverage if the amount of
91 such coverage is reduced to a fixed monetary amount set
92 forth in the court's order. When such third party pay-
93 ments are ordered, the court shall specify whether such
94 payments or portions of payments are alimony, child
95 support, a partial distribution of marital property or an
96 allocation of marital debt: *Provided,* That if the court
97 does not set forth in the order that a portion of such
98 payments is to be deemed child support or installment
99 payments for the distribution of marital property, then
100 all such payments made pursuant to this subdivision

101 shall be deemed to be alimony. When such third party
102 payments are ordered, the court shall specify whether
103 such payments or portions of payments are alimony,
104 child support, a partial distribution of marital property
105 or an allocation of marital debt. If the payments are not
106 designated in an order and the parties have waived any
107 right to receive alimony, the court may designate the
108 payments upon motion by any party. Nothing contained
109 in this subdivision shall abrogate an existing contract
110 between either of the parties and a third party or affect
111 the rights and liabilities of either party or a third party
112 under the terms of such contract;

113 (6) As an incident to requiring the payment of alimony,
114 the court may grant the exclusive use and possession of
115 one or more motor vehicles to either of the parties. The
116 court may require payments to third parties in the form
117 of automobile loan installments or insurance coverage if
118 available at reasonable rates, and any such payments
119 made pursuant to this subdivision for the benefit of the
120 other party shall be deemed to be alimony or installment
121 payments for the distribution of marital property, as the
122 court may direct. Nothing contained in this subdivision
123 shall abrogate an existing contract between either of the
124 parties and a third party or affect the rights and liabilities
125 of either party or a third party under the terms of
126 such contract;

127 (7) When the pleadings include a specific request for
128 specific property or raise issues concerning the equitable
129 division of marital property as defined in section one of
130 this article, the court shall order such relief as may be
131 required to effect a just and equitable distribution of the
132 property and to protect the equitable interests of the
133 parties therein;

134 (8) Unless a contrary disposition is ordered pursuant to
135 other provisions of this section, then upon the motion of
136 either party, the court may compel the other party to
137 deliver to the moving party any of his or her separate
138 estate which may be in the possession or control of the

139 respondent party and may make such further order as is
140 necessary to prevent either party from interfering with
141 the separate estate of the other;

142 (9) When allegations of abuse have been proven, the
143 court shall enjoin the offending party from molesting or
144 interfering with the other, or otherwise imposing any
145 restraint on the personal liberty of the other or interfer-
146 ing with the custodial or visitation rights of the other.
147 Such order may permanently enjoin the offending party
148 from entering the school, business or place of employ-
149 ment of the other for the purpose of molesting or harass-
150 ing the other; or from contacting the other, in person or
151 by telephone, for the purpose of harassment or threats;
152 or from harassing or verbally abusing the other in a
153 public place;

154 (10) The court may order either party to take necessary
155 steps to transfer utility accounts and other accounts for
156 recurring expenses from the name of one party into the
157 name of the other party or from the joint names of the
158 parties into the name of one party. Nothing contained in
159 this subdivision shall affect the liability of the parties for
160 indebtedness on any such account incurred before the
161 transfer of such account.

162 (c) When an annulment or divorce is denied, the court
163 shall retain jurisdiction of the case and may order all or
164 any portion of the relief provided for in subsections (a)
165 and (b) of this section which has been demanded or
166 prayed for in the pleadings.

167 (d) When a divorce or annulment is granted in this
168 state upon constructive service of process and personal
169 jurisdiction is thereafter obtained of the defendant in
170 such case, the court may order all or any portion of the
171 relief provided for in subsections (a) and (b) of this
172 section which has been demanded or prayed for in the
173 pleadings.

174 (e) After the entry of an order pursuant to the provi-
175 sions of this section, the court may revise the order

176 concerning the maintenance of the parties, and enter a
177 new order concerning the same, as the circumstances of
178 the parties may require.

179 The court may also from time to time afterward, upon
180 motion of either of the parties and upon proper service,
181 revise such order to grant relief pursuant to subdivision
182 (9), subsection (b) of this section, and enter a new order
183 concerning the same, as the circumstances of the parties
184 and the benefit of children may require. The court may
185 also from time to time afterward, upon the motion of
186 either of the parties or other proper person having actual
187 or legal custody of the minor child or children of the
188 parties, revise or alter the order concerning the custody
189 and support of the children, and make a new order
190 concerning the same, issuing it forthwith, as the circum-
191 stances of the parents or other proper person or persons
192 and the benefit of the children may require: *Provided,*
193 That all orders modifying child support shall be in
194 conformance with the requirements of support guide-
195 lines promulgated pursuant to article one-b, chapter
196 forty-eight-a of this code: *Provided, however,* That an
197 order providing for child support payments may be
198 revised or altered for the reason, inter alia, that the
199 existing order provides for child support payments in an
200 amount that is less than eighty-five percent or more than
201 one hundred fifteen percent of the amount that would be
202 required to be paid under the child support guidelines
203 promulgated pursuant to the provisions of said section.

204 In granting relief under this subsection, the court may,
205 when other means are not conveniently available, alter
206 any prior order of the court with respect to the distribu-
207 tion of marital property, if such property is still held by
208 the parties, and if necessary to give effect to a modifica-
209 tion of alimony, child support or child custody or neces-
210 sary to avoid an inequitable or unjust result which would
211 be caused by the manner in which the modification will
212 affect the prior distribution of marital property.

213 (f) When a separation agreement is the basis for an

214 award of alimony, the court, in approving the agreement,
215 shall examine the agreement to ascertain whether it
216 clearly provides for alimony to continue beyond the
217 death of the payor party or to cease in such event. When
218 alimony is to be paid pursuant to the terms of a separa-
219 tion agreement which does not state whether the pay-
220 ment of alimony is to continue beyond the death of the
221 payor party or is to cease, or when the parties have not
222 entered into a separation agreement and alimony is to be
223 awarded, the court shall specifically state as a part of its
224 order whether such payments of alimony are to be
225 continued beyond the death of the payor party or cease.

226 (g) When a separation agreement is the basis for an
227 award of alimony, the court, in approving the agreement,
228 shall examine the agreement to ascertain whether it
229 clearly provides for alimony to continue beyond the
230 remarriage of the payee party or to cease in such event.
231 When alimony is to be paid pursuant to the terms of a
232 separation agreement which does not state whether the
233 payment of alimony is to continue beyond the remarriage
234 of the payee party or is to cease, or when the parties have
235 not entered into a separation agreement and alimony is
236 to be awarded, the court shall specifically state as a part
237 of its order whether such payments of alimony are to be
238 continued beyond the remarriage of the payee party or
239 cease.

240 (h) In addition to the disclosure requirements set forth
241 in section thirty-three of this article, the court may order
242 accounts to be taken as to all or any part of marital
243 property or the separate estates of the parties and may
244 direct that the accounts be taken as of the date of the
245 marriage, the date upon which the parties separated or
246 any other time in assisting the court in the determination
247 and equitable division of property.

248 (i) In determining whether alimony is to be awarded, or
249 in determining the amount of alimony, if any, to be
250 awarded under the provisions of this section, the court
251 shall consider and compare the fault or misconduct of

252 either or both of the parties and the effect of such fault
253 or misconduct as a contributing factor to the deteriora-
254 tion of the marital relationship. However, alimony shall
255 not be awarded when both parties prove grounds for
256 divorce and are denied a divorce, nor shall an award of
257 alimony under the provisions of this section be ordered
258 which directs the payment of alimony to a party deter-
259 mined to be at fault, when, as a grounds granting the
260 divorce, such party is determined by the court:

261 (1) To have committed adultery; or

262 (2) To have been convicted for the commission of a
263 crime which is a felony, subsequent to the marriage if
264 such conviction has become final; or

265 (3) To have actually abandoned or deserted his or her
266 spouse for six months.

267 (j) Whenever under the terms of this section or section
268 thirteen of this article a court enters an order requiring
269 the payment of alimony or child support, if the court
270 anticipates the payment of such alimony or child support
271 or any portion thereof to be paid out of "disposable
272 retired or retainer pay" as that term is defined in 10
273 U.S.C. §1408, relating to members or former members of
274 the uniformed services of the United States, the court
275 shall specifically provide for the payment of an amount,
276 expressed in dollars or as a percentage of disposable
277 retired or retainer pay, from the disposable retired or
278 retainer pay of the payor party to the payee party.

279 (k) Any order which provides for the custody or
280 support of a minor child shall include:

281 (1) The name of the custodian;

282 (2) The amount of the support payments;

283 (3) The date the first payment is due;

284 (4) The frequency of the support payments;

285 (5) The event or events which trigger termination of the
286 support obligation;

- 287 (6) A provision regarding wage withholding;
- 288 (7) The address where payments shall be sent;
- 289 (8) A provision for medical support; and
- 290 (9) When child support guidelines are not followed, a
291 specific written finding pursuant to section eight, article
292 two, chapter forty-eight-a of this code.
- 293 (l) (1) Unless the best interests of the child require
294 otherwise, every final order and every modification order
295 which provides for the custody of a minor child of the
296 parties shall also provide for the following:
- 297 (A) The custodial parent shall be required to authorize
298 school authorities in the school in which the child is
299 enrolled to release to the noncustodial parent copies of
300 any and all information concerning the child which
301 would otherwise be properly released to the custodial
302 parent;
- 303 (B) The custodial parent shall be required, promptly
304 after receipt, to transmit to the noncustodial parent a
305 copy of the child's grades or report card and copies of
306 any other reports reflecting the status or progress of the
307 child;
- 308 (C) The custodial parent shall be required, when
309 practicable, to arrange appointments for parent-teacher
310 conferences at a time when the noncustodial parent can
311 be present;
- 312 (D) The custodial parent shall be required to authorize
313 medical providers to release to the noncustodial parent
314 copies of any and all information concerning medical
315 care provided to the child which would otherwise be
316 properly released to the custodial parent;
- 317 (E) The custodial parent shall be required to promptly
318 inform the noncustodial parent of any illness of the child
319 which requires medical attention; or, if the child is in the
320 actual physical custody of the noncustodial parent
321 during a period of visitation, the noncustodial parent

322 shall be required to promptly inform the custodial
323 parent of any illness of the child which requires medical
324 attention;

325 (F) The custodial parent shall be required to consult
326 with the noncustodial parent prior to any elective
327 surgery being performed on the child; and in the event
328 emergency medical procedures are undertaken for the
329 child which require the parental consent of either
330 parent, if time permits, the other parent shall be con-
331 sulted, or if time does not permit such consultation, the
332 other parent shall be promptly informed of such emer-
333 gency medical procedures: *Provided*, That the same duty
334 to inform the custodial parent applies to the noncusto-
335 dial parent in the event that the emergency medical
336 procedures are required while the child is in the physical
337 custody of the noncustodial parent during a period of
338 visitation: *Provided, however*, That nothing contained
339 herein shall be deemed to alter or amend the law of this
340 state as it otherwise pertains to physicians or health care
341 facilities obtaining parental consent prior to providing
342 medical care or performing medical procedures.

343 (2) In the event a custodial parent shall fail or refuse to
344 authorize the release of school or medical records as
345 provided for by subdivision (1) of this subsection, then
346 upon the ex parte application of the noncustodial parent,
347 the family law master shall prepare an order for entry by
348 the circuit court which appoints the family law master as
349 a special commissioner authorized to execute a consent
350 for the release of such records and direct it to the
351 appropriate school authorities or medical providers.

§48-2-15a. Medical support enforcement.

1 (a) For the purposes of this section:

2 (1) "Custodian for the children" means a parent, legal
3 guardian, committee or other third party appointed by
4 court order as custodian of child or children for whom
5 child support is ordered.

6 (2) "Obligated parent" means a natural or adoptive

7 parent who is required by agreement or order to pay for
8 insurance coverage and medical care, or some portion
9 thereof, for his or her child.

10 (3) "Insurance coverage" means coverage for medical,
11 dental, including orthodontic, optical, psychological,
12 psychiatric or other health care service.

13 (4) "Child" means a child to whom a duty of child
14 support is owed.

15 (5) "Medical care" means medical, dental, optical,
16 psychological, psychiatric or other health care service for
17 children in need of child support.

18 (6) "Insurer" means any company, health maintenance
19 organization, self-funded group, multiple employer
20 welfare arrangement, hospital or medical services
21 corporation, trust, group health plan, as defined in 29
22 U.S.C. §1167, Section 607(1) of the Employee Retirement
23 Income Security Act of 1974 or other entity which
24 provides insurance coverage or offers a service benefit
25 plan.

26 (b) In every action to establish or modify an order
27 which requires the payment of child support, the court
28 shall ascertain the ability of each parent to provide
29 medical care for the children of the parties. In any
30 temporary or final order establishing an award of child
31 support or any temporary or final order modifying a
32 prior order establishing an award of child support, the
33 court shall order one or more of the following:

34 (1) The court shall order either parent or both parents
35 to provide insurance coverage for a child, if such insur-
36 ance coverage is available to that parent on a group basis
37 through an employer or through an employee's union. If
38 similar insurance coverage is available to both parents,
39 the court shall order the child to be insured under the
40 insurance coverage which provides more comprehensive
41 benefits. If such insurance coverage is not available at
42 the time of the entry of the order, the order shall require
43 that if such coverage thereafter becomes available to

44 either party, that party shall promptly notify the other
45 party of the availability of insurance coverage for the
46 child.

47 (2) If the court finds that insurance coverage is not
48 available to either parent on a group basis through an
49 employer, multi-employer trust or employees' union, or
50 that the group insurer is not accessible to the parties, the
51 court may order either parent or both parents to obtain
52 insurance coverage which is otherwise available at a
53 reasonable cost.

54 (3) Based upon the respective ability of the parents to
55 pay, the court may order either parent or both parents to
56 be liable for reasonable and necessary medical care for
57 a child. The court shall specify the proportion of the
58 medical care for which each party shall be responsible.

59 (4) If insurance coverage is available, the court shall
60 also determine the amount of the annual deductible on
61 insurance coverage which is attributable to the children
62 and designate the proportion of the deductible which
63 each party shall pay.

64 (5) The order shall require the obligor to continue to
65 provide the child support enforcement division created
66 by article two, chapter forty-eight-a of this code with
67 information as to his or her employer's name and address
68 and information as to the availability of em-
69 ployer-related insurance programs providing medical
70 care coverage so long as the child continues to be eligible
71 to receive support.

72 (c) The cost of insurance coverage shall be considered
73 by the court in applying the child support guidelines
74 provided for in article one-b, chapter forty-eight-a of
75 this code.

76 (d) Within thirty days after the entry of an order
77 requiring the obligated parent to provide insurance
78 coverage for the children, that parent shall submit to the
79 custodian for the child written proof that the insurance
80 has been obtained or that an application for insurance

81 has been made. Such proof of insurance coverage shall
82 consist of, at a minimum:

83 (1) The name of the insurer;

84 (2) The policy number;

85 (3) An insurance card;

86 (4) The address to which all claims should be mailed;

87 (5) A description of any restrictions on usage, such as
88 prior approval for hospital admission, and the manner in
89 which to obtain such approval;

90 (6) A description of all deductibles; and

91 (7) Five copies of claim forms.

92 (e) The custodian for the child shall send the insurer or
93 the obligated parent's employer the children's address
94 and notice that the custodian will be submitting claims
95 on behalf of the children. Upon receipt of such notice, or
96 an order for insurance coverage under this section, the
97 obligated parent's employer, multi-employer trust or
98 union shall, upon the request of the custodian for the
99 child, release information on the coverage for the chil-
100 dren, including the name of the insurer.

101 (f) A copy of the court order for insurance coverage
102 shall not be provided to the obligated parent's employer
103 or union or the insurer unless ordered by the court, or
104 unless:

105 (1) The obligated parent, within thirty days of receiv-
106 ing effective notice of the court order, fails to provide to
107 the custodian for the child written proof that the insur-
108 ance has been obtained or that an application for insur-
109 ance has been made;

110 (2) The custodian for the child serves written notice by
111 mail at the obligated parent's last known address of
112 intention to enforce the order requiring insurance
113 coverage for the child; and

114 (3) The obligated parent fails within fifteen days after

115 the mailing of the notice to provide written proof to the
116 custodian for the child that the child has insurance
117 coverage.

118 (g) (1) Upon service of the order requiring insurance
119 coverage for the children, the employer, multi-employer
120 trust or union shall enroll the child as a beneficiary in
121 the group insurance plan and withhold any required
122 premium from the obligated parent's income or wages.

123 (2) If more than one plan is offered by the employer,
124 multi-employer trust or union, the child shall be enrolled
125 in the same plan as the obligated parent at a reasonable
126 cost.

127 (3) Insurance coverage for the child which is ordered
128 pursuant to the provisions of this section shall not be
129 terminated except as provided in subsection (j) of this
130 section.

131 (h) Where a parent is required by a court or adminis-
132 trative order to provide health coverage, which is
133 available through an employer doing business in this
134 state, the employer is required:

135 (1) To permit the parent to enroll under family cover-
136 age any child who is otherwise eligible for coverage
137 without regard to any enrollment season restrictions;

138 (2) If the parent is enrolled but fails to make applica-
139 tion to obtain coverage of the child, to enroll the child
140 under family coverage upon application by the child's
141 other parent, by the state agency administering the
142 medicaid program or by the child support enforcement
143 division;

144 (3) Not to disenroll or eliminate coverage of any such
145 child unless the employer is provided satisfactory
146 written evidence that:

147 (A) The court or administrative order is no longer in
148 effect;

149 (B) The child is or will be enrolled in comparable

150 coverage which will take effect no later than the effec-
151 tive date of disenrollment; or

152 (C) The employer has eliminated family health cover-
153 age for all of its employees;

154 (4) To withhold from the employee's compensation the
155 employee's share, if any, of premiums for health cover-
156 age and to pay this amount to the insurer: *Provided*,
157 That the amount so withheld may not exceed the maxi-
158 mum amount permitted to be withheld under 15 U.S.C.
159 §1673, Section 303(b) of the Consumer Credit Protection
160 Act.

161 (i) (1) The signature of the custodian for the child shall
162 constitute a valid authorization to the insurer for the
163 purposes of processing an insurance payment to the
164 provider of medical care for the child.

165 (2) No insurer, employer or multi-employer trust in this
166 state may refuse to honor a claim for a covered service
167 when the custodian for the child or the obligated parent
168 submits proof of payment for medical bills for the child.

169 (3) The insurer shall reimburse the custodian for the
170 child or the obligated parent who submits copies of
171 medical bills for the child with proof of payment.

172 (4) All insurers in this state shall comply with the
173 provisions of section sixteen, article fifteen, chapter
174 thirty-three of this code and section eleven, article
175 sixteen of said chapter and shall provide insurance
176 coverage for the child of a covered employee notwith-
177 standing the amount of support otherwise ordered by the
178 court and regardless of the fact that the child may not be
179 living in the home of the covered employee.

180 (j) When an order for insurance coverage for a child
181 pursuant to this section is in effect and the obligated
182 parent's employment is terminated, or the insurance
183 coverage for the child is denied, modified or terminated,
184 the insurer shall in addition to complying with the
185 requirements of article sixteen-a, chapter thirty-three of

186 this code, within ten days after the notice of change in
187 coverage is sent to the covered employee, notify the
188 custodian for the child and provide an explanation of
189 any conversion privileges available from the insurer.

190 (k) A child of an obligated parent shall remain eligible
191 for insurance coverage until the child is emancipated or
192 until the insurer under the terms of the applicable
193 insurance policy terminates said child from coverage,
194 whichever is later in time, or until further order of the
195 court.

196 (l) If the obligated parent fails to comply with the order
197 to provide insurance coverage for the child, the court
198 shall:

199 (1) Hold the obligated parent in contempt for failing or
200 refusing to provide the insurance coverage or for failing
201 or refusing to provide the information required in
202 subsection (d) of this section;

203 (2) Enter an order for a sum certain against the obli-
204 gated parent for the cost of medical care for the child
205 and any insurance premiums paid or provided for the
206 child during any period in which the obligated parent
207 failed to provide the required coverage;

208 (3) In the alternative, other enforcement remedies
209 available under sections two and three, article five,
210 chapter forty-eight-a of this code, or otherwise available
211 under law, may be used to recover from the obligated
212 parent the cost of medical care or insurance coverage for
213 the child;

214 (4) In addition to other remedies available under law,
215 the child support enforcement division may garnish the
216 wages, salary or other employment income of, and
217 withhold amounts from state tax refunds to any person
218 who:

219 (A) Is required by court or administrative order to
220 provide coverage of the cost of health services to a child
221 eligible for medical assistance under medicaid; and

222 (B) Has received payment from a third party for the
223 costs of such services but has not used the payments to
224 reimburse either the other parent or guardian of the
225 child or the provider of the services, to the extent
226 necessary to reimburse the state medicaid agency for its
227 costs: *Provided*, That claims for current and past due
228 child support shall take priority over these claims.

229 (m) Proof of failure to maintain court ordered insur-
230 ance coverage for the child constitutes a showing of
231 substantial change in circumstances or increased need
232 pursuant to section fifteen of this article, and provides a
233 basis for modification of the child support order.

§48-2-32. Marital property disposition.

1 (a) Except as otherwise provided in this section, upon
2 every judgment of annulment, divorce or separation, the
3 court shall divide the marital property of the parties
4 equally between the parties.

5 (b) In cases where the parties to an action commenced
6 under the provisions of this article have executed a
7 separation agreement, then the court shall divide the
8 marital property in accordance with the terms of the
9 agreement, unless the court finds:

10 (1) That the agreement was obtained by fraud, duress
11 or other unconscionable conduct by one of the parties; or

12 (2) That the parties, in the separation agreement, have
13 not expressed themselves in terms which, if incorporated
14 into a judicial order, would be enforceable by a court in
15 future proceedings; or

16 (3) That the agreement, viewed in the context of the
17 actual contributions of the respective parties to the net
18 value of the marital property of the parties, is so inequi-
19 table as to defeat the purposes of this section, and such
20 agreement was inequitable at the time the same was
21 executed.

22 (c) In the absence of a valid agreement, the court shall
23 presume that all marital property is to be divided equally

24 between the parties, but may alter this distribution,
25 without regard to any attribution of fault to either party
26 which may be alleged or proved in the course of the
27 action, after a consideration of the following:

28 (1) The extent to which each party has contributed to
29 the acquisition, preservation and maintenance, or
30 increase in value of marital property by monetary
31 contributions, including, but not limited to:

32 (A) Employment income and other earnings; and

33 (B) Funds which are separate property.

34 (2) The extent to which each party has contributed to
35 the acquisition, preservation and maintenance or in-
36 crease in value of marital property by nonmonetary
37 contributions, including, but not limited to:

38 (A) Homemaker services;

39 (B) Child care services;

40 (C) Labor performed without compensation, or for less
41 than adequate compensation, in a family business or
42 other business entity in which one or both of the parties
43 has an interest;

44 (D) Labor performed in the actual maintenance or
45 improvement of tangible marital property; and

46 (E) Labor performed in the management or investment
47 of assets which are marital property.

48 (3) The extent to which each party expended his or her
49 efforts during the marriage in a manner which limited or
50 decreased such party's income-earning ability or in-
51 creased the income-earning ability of the other party,
52 including, but not limited to:

53 (A) Direct or indirect contributions by either party to
54 the education or training of the other party which has
55 increased the income-earning ability of such other party;
56 and

57 (B) Foregoing by either party of employment or other

58 income-earning activity through an understanding of the
59 parties or at the insistence of the other party.

60 (4) The extent to which each party, during the mar-
61 riage, may have conducted himself or herself so as to
62 dissipate or depreciate the value of the marital property
63 of the parties: *Provided*, That except for a consideration
64 of the economic consequences of conduct as provided for
65 in this subdivision, fault or marital misconduct shall not
66 be considered by the court in determining the proper
67 distribution of marital property.

68 (d) After considering the factors set forth in subsection
69 (c) of this section, the court shall:

70 (1) Determine the net value of all marital property of
71 the parties as of the date of the commencement of the
72 action or as of such later date determined by the court to
73 be more appropriate for attaining an equitable result:
74 *Provided*, That for contractual rights to contingent and
75 other future earned fees that are considered to be marital
76 property, the valuation date is the date the parties
77 separated. Contractual agreements for contingent or
78 other future earned fees entered into during the marriage
79 and before the parties separated is marital property. The
80 court shall not delay a division of marital property by
81 retaining continuing jurisdiction over the matter until
82 the amount of the contingent or other future earned fee
83 has been ultimately decided, but shall make a valuation
84 of the contractual agreement contemporaneously with
85 the valuation of other marital property;

86 (2) Designate the property which constitutes marital
87 property, and define the interest therein to which each
88 party is entitled and the value of their respective interest
89 therein. In the case of an action wherein there is no
90 agreement between the parties and the relief demanded
91 requires the court to consider such factors as are de-
92 scribed in subdivisions (1), (2), (3) and (4), subsection (c)
93 of this section, if a consideration of factors only under
94 said subdivisions (1) and (2) would result in an unequal
95 division of marital property, and if an examination of the

96 factors described in said subdivisions (3) and (4) produce
97 a finding that a party: (A) Expended his or her efforts
98 during the marriage in a manner which limited or
99 decreased such party's income-earning ability or in-
100 creased the income-earning ability of the other party; or
101 (B) conducted himself or herself so as to dissipate or
102 depreciate the value of the marital property of the
103 parties, then the court may, in the absence of a fair and
104 just alimony award under the provisions of section
105 fifteen of this article which adequately takes into
106 account the facts which underlie the factors described in
107 subdivisions (3) and (4), subsection (c) of this section,
108 equitably adjust the definition of the parties' interest in
109 marital property, increasing the interest in marital
110 property of a party adversely affected by the factors
111 considered under said subdivisions who would otherwise
112 be awarded less than one half of the marital property, to
113 an interest not to exceed one half of the marital prop-
114 erty;

115 (3) Designate the property which constitutes separate
116 property of the respective parties or the separate prop-
117 erty of their children;

118 (4) Determine the extent to which marital property is
119 susceptible to division in accordance with the findings of
120 the court as to the respective interests of the parties
121 therein;

122 (5) In the case of any property which is not susceptible
123 to division, ascertain the projected results of a sale of
124 such property;

125 (6) Ascertain the projected effect of a division or
126 transfer of ownership of income-producing property, in
127 terms of the possible pecuniary loss to the parties or
128 other persons which may result from an impairment of
129 the property's capacity to generate earnings; and

130 (7) Transfer title to such component parts of the
131 marital property as may be necessary to achieve an
132 equitable distribution of the marital property. To make

133 such equitable distribution, the court may:

134 (A) Direct either party to transfer their interest in
135 specific property to the other party;

136 (B) Permit either party to purchase from the other
137 party their interest in specific property;

138 (C) Direct either party to pay a sum of money to the
139 other party in lieu of transferring specific property or an
140 interest therein, if necessary to adjust the equities and
141 rights of the parties, which sum may be paid in install-
142 ments or otherwise, as the court may direct;

143 (D) Direct a party to transfer his or her property to the
144 other party in substitution for property of the other
145 party of equal value which the transferor is permitted to
146 retain and assume ownership of; or

147 (E) Order a sale of specific property and an appropriate
148 division of the net proceeds of such sale: *Provided*, That
149 such sale may be by private sale, or through an agent or
150 by judicial sale, which ever would facilitate a sale within
151 a reasonable time at a fair price.

152 (e) In order to achieve the equitable distribution of
153 marital property, the court shall, unless the parties
154 otherwise agree, order, when necessary, the transfer of
155 legal title to any property of the parties, giving prefer-
156 ence to effecting equitable distribution through periodic
157 or lump sum payments: *Provided*, That the court may
158 order the transfer of legal title to motor vehicles, house-
159 hold goods and the former marital domicile without
160 regard to such preference where the court determines it
161 to be necessary or convenient. In any case involving the
162 equitable distribution of: (1) Property acquired by
163 bequest, devise, descent, distribution or gift; or (2)
164 ownership interests in a business entity, the court shall,
165 unless the parties otherwise agree, give preference to the
166 retention of the ownership interests in such property. In
167 the case of such business interests, the court shall give
168 preference to the party having the closer involvement,
169 larger ownership interest or greater dependency upon

170 the business entity for income or other resources re-
171 quired to meet responsibilities imposed under this
172 article, and shall also consider the effects of transfer or
173 retention in terms of which alternative will best serve to
174 preserve the value of the business entity or protect the
175 business entity from undue hardship or from interfer-
176 ence caused by one of the parties or by the divorce,
177 annulment or decree of separate maintenance: *Provided,*
178 *however,* That the court may, unless the parties other-
179 wise agree, sever the business relationship of the parties
180 and order the transfer of legal title to ownership inter-
181 ests in the business entity from one party to the other,
182 without regard to the limitations on the transfer of title
183 to such property otherwise provided in this subsection,
184 if such transfer is required to achieve the other purposes
185 of this article: *Provided further,* That in all such cases
186 the court shall order or the agreement of the parties shall
187 provide for equitable payment or transfer of legal title to
188 other property, of fair value in money or moneys' worth,
189 in lieu of any ownership interests in a business entity
190 which are ordered to be transferred under this subsec-
191 tion: *And provided further,* That the court may order the
192 transfer of such business interests to a third party (such
193 as the business entity itself or another principal in the
194 business entity) where the interests of the parties under
195 this article can be protected and at least one party
196 consents thereto.

197 (f) In any order which divides or transfers the title to
198 any property, determines the ownership or value of any
199 property, designates the specific property to which any
200 party is entitled or grants any monetary award, the court
201 shall set out in detail its findings of fact and conclusions
202 of law, and the reasons for dividing the property in the
203 manner adopted.

204 (g) If an order entered in accordance with the provi-
205 sions of this article requires the transfer of title to
206 property and a party fails or refuses to execute a deed or
207 other instrument necessary to convey title to such

208 property, the deed or other instrument shall be executed
209 by a special commissioner appointed by the court for the
210 purpose of effecting such transfer of title pursuant to
211 section seven, article twelve, chapter fifty-five of this
212 code.

213 (h) As to any third party, the doctrine of equitable
214 distribution of marital property and the provisions of
215 this article shall be construed as creating no interest or
216 title in property until and unless an order is entered
217 under this article judicially defining such interest or
218 approving a separation agreement which defines such
219 interest. Neither this article nor the doctrine of equita-
220 ble distribution of marital property shall be construed to
221 create community property nor any other interest or
222 estate in property except those previously recognized in
223 this state. A husband or wife may alienate property at
224 any time prior to the entry of an order under the provi-
225 sions of this article or prior to the recordation of a notice
226 of lis pendens in accordance with the provisions of
227 section thirty-five of this article, and at anytime and in
228 any manner not otherwise prohibited by an order under
229 this article, in like manner and with like effect as if this
230 article and the doctrine of equitable distribution had not
231 been adopted: *Provided*, That as to any transfer prior to
232 the entry of an order under the provisions of this article,
233 a transfer other than to a bona fide purchaser for value
234 shall be voidable if the court finds such transfer to have
235 been effected to avoid the application of the provisions
236 of this article or to otherwise be a fraudulent convey-
237 ance. Upon the entry of any order under this article or
238 the admission to record of any notice with respect to an
239 action under this article, restraining the alienation of
240 property of a party, a bona fide purchaser for value shall
241 take such title or interest as he or she might have taken
242 prior to the effective date of this section and no pur-
243 chaser for value need see to the application of the
244 proceeds of such purchase except to the extent he or she
245 would have been required so to do prior to the effective
246 date of this section: *Provided, however*, That as to third

247 parties nothing in this section shall be construed to limit
248 or otherwise defeat the interests or rights to property
249 which any husband or wife would have had in property
250 prior to the enactment of this section or prior to the
251 adoption of the doctrine of equitable distribution by the
252 supreme court of appeals on the twenty-fifth day of May,
253 one thousand nine hundred eighty-three: *Provided*
254 *further*, That no order entered under this article shall be
255 construed to defeat the title of a third party transferee
256 thereof except to the extent that the power to effect such
257 a transfer of title or interest in such property is secured
258 by a valid and duly perfected lien and, as to any personal
259 property, secured by a duly perfected security interest.

260 (i) Notwithstanding the provisions of chapter eleven of
261 this code, no transfer of interest in or title to property
262 under this section shall be taxable as a transfer of
263 property without consideration nor, except as to ali-
264 mony, create liability for sales, use, inheritance and
265 transfer or income taxes due the state or any political
266 subdivision nor require the payment of the excise tax
267 imposed under article twenty-two, chapter eleven of this
268 code.

269 (j) Whenever under the terms of this article a court
270 enters an order requiring a division of property, if the
271 court anticipates the division of property will be effected
272 by requiring sums to be paid out of "disposable retired
273 or retainer pay" as that term is defined in 10 U.S.C.
274 §1408, relating to members or former members of the
275 uniformed services of the United States, the court shall
276 specifically provide for the payment of an amount,
277 expressed in dollars or as a percentage of disposable
278 retired or retainer pay, from the disposable retired or
279 retainer pay of the payor party to the payee party.

280 (k) The amendments to this section effected by the
281 reenactment of this section during the regular session of
282 the Legislature, one thousand nine hundred ninety-six
283 are to be applied prospectively and shall have no appli-
284 cation to any action for annulment, divorce or separate

285 maintenance that was commenced on or before the
286 effective date of this section.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 1. GENERAL PROVISIONS.

§48A-1-3. Calculation of interest.

1 If an obligation to pay interest arises under this
2 chapter, the rate of interest is that specified in section
3 thirty-one, article six, chapter fifty-six of this code.
4 Interest shall accrue only upon the outstanding principal
5 of such obligation. On and after the ninth day of June,
6 one thousand nine hundred ninety-five, this section shall
7 be construed to permit the accumulation of simple
8 interest, and may not be construed to permit the com-
9 pounding of interest. Interest which accrued on unpaid
10 installments accruing before the ninth day of June, one
11 thousand nine hundred ninety-five may not be modified
12 by any court, irrespective of whether such installment
13 accrued simple or compound interest: *Provided*, That
14 unpaid installments upon which interest was com-
15 pounded before the effective date of this section shall
16 accrue only simple interest thereon on and after the
17 ninth day of June, one thousand nine hundred ninety-
18 five.

ARTICLE 1A. DEFINITIONS.

§48A-1A-1. Application of definitions.

1 For purposes of this chapter and chapter forty-eight of
2 this code, unless the context clearly requires otherwise,
3 the words and phrases defined in the following sections
4 of this article, and any variations of those words and
5 phrases required by the context, shall have the meanings
6 ascribed to them in this article.

§48A-1A-2. Adjusted Gross income.

1 (a) "Adjusted gross income" means gross income less
2 the payment of previously ordered child support, spousal
3 support or separate maintenance.

4 (2) A further deduction from gross income for addi-
5 tional dependents may be allowed by the court or master
6 if the support obligor has legal dependents other than
7 those for whom support is being determined. An adjust-
8 ment may be used in the establishment of a child support
9 order or in a review of a child support order. However,
10 in cases where a modification is sought, the adjustment
11 should not be used to the extent that it results in a
12 support amount lower than the previously existing order
13 for the children who are the subject of the modification.
14 The court or master may elect to use the following
15 adjustment because it allots equitable shares of support
16 to all of the support obligor's legal dependents. Using
17 the income of the support obligor only, determine the
18 basic child support obligation (from the Table of Basic
19 Child Support Obligations in section three, article one-b
20 of this chapter) for the number of additional legal
21 dependents living with the support obligor. Multiply
22 this figure by 0.75 and subtract this amount from the
23 support obligor's gross income.

§48A-1A-3. Attributed income.

1 (a) "Attributed income" means income not actually
2 earned by an obligor, but which may be attributed to the
3 obligor because he or she is unemployed, is not working
4 full time, or is working below full earning capacity.
5 Income may be attributed to an obligor if the court or
6 master evaluates the obligor's earning capacity in the
7 local economy (giving consideration to relevant evidence
8 that pertains to the obligor's work history, qualifica-
9 tions, education and physical or mental condition) and
10 determines that the obligor is unemployed, is not work-
11 ing full time, or is working below full earning capacity.

12 (b) If an obligor: (1) Voluntarily leaves employment or
13 voluntarily alters his or her pattern of employment so as
14 to be unemployed, underemployed or employed below
15 full earning capacity; (2) is able to work and is available
16 for full-time work for which he or she is fitted by prior
17 training or experience; and (3) is not seeking employ-

18 ment in the manner that a reasonably prudent person in
19 his or her circumstances would do, then an alternative
20 method for the court or master to determine gross
21 income is to attribute to the person an earning capacity
22 based on his or her previous income. If the obligor's
23 work history, qualifications, education or physical or
24 mental condition cannot be determined, or if there is an
25 inadequate record of the obligor's previous income, the
26 court or master may, as a minimum, base attributed
27 income on full-time employment (at forty hours per
28 week) at the federal minimum wage in effect at the time
29 the support obligation is established.

30 (c) Income shall not be attributed to an obligor who is
31 unemployed or underemployed or is otherwise working
32 below full earning capacity if any of the following
33 conditions exist:

34 (1) The parent is providing care required by the
35 children to whom the parties owe a joint legal responsi-
36 bility for support, and such children are of preschool age
37 or are handicapped or otherwise in a situation requiring
38 particular care by the parent;

39 (2) The parent is pursuing a plan of economic self-
40 improvement which will result, within a reasonable time,
41 in an economic benefit to the children to whom the
42 support obligation is owed, including, but not limited to,
43 self-employment or education: *Provided*, That if the
44 parent is involved in an educational program, the court
45 or master shall ascertain that the person is making
46 substantial progress toward completion of the program;

47 (3) The parent is, for valid medical reasons, earning an
48 income in an amount less than previously earned; or

49 (4) The court or master makes a written finding that
50 other circumstances exist which would make the attribu-
51 tion of income inequitable: *Provided*, That in such case,
52 the court or master may decrease the amount of attrib-
53 uted income to an extent required to remove such
54 inequity.

§48A-1A-4. Automatic data processing and retrieval system.

1 (a) "Automatic data processing and retrieval system"
2 means a computerized data processing system designed
3 to do the following:

4 (1) To control, account for and monitor all of the
5 factors in the support enforcement collection and
6 paternity determination process, including, but not
7 limited to:

8 (A) Identifiable correlation factors (such as social
9 security numbers, names, dates of birth, home addresses
10 and mailing addresses of any individual with respect to
11 whom support obligations are sought to be established or
12 enforced and with respect to any person to whom such
13 support obligations are owing) to assure sufficient
14 compatibility among the systems of different jurisdic-
15 tions to permit periodic screening to determine whether
16 such individual is paying or is obligated to pay support
17 in more than one jurisdiction;

18 (B) Checking of records of such individuals on a
19 periodic basis with federal, interstate, intrastate and
20 local agencies;

21 (C) Maintaining the data necessary to meet applicable
22 federal reporting requirements on a timely basis; and

23 (D) Delinquency and enforcement activities;

24 (2) To control, account for and monitor the collection
25 and distribution of support payments (both interstate
26 and intrastate) the determination, collection and distri-
27 bution of incentive payments (both interstate and
28 intrastate), and the maintenance of accounts receivable
29 on all amounts owed, collected and distributed;

30 (3) To control, account for and monitor the costs of all
31 services rendered, either directly or by exchanging
32 information with state agencies responsible for main-
33 taining financial management and expenditure informa-
34 tion;

35 (4) To provide access to the records of the department
36 of health and human resources or aid to families with
37 dependent children in order to determine if a collection
38 of a support payment causes a change affecting eligibil-
39 ity for or the amount of aid under such program;

40 (5) To provide for security against unauthorized access
41 to, or use of, the data in such system;

42 (6) To facilitate the development and improvement of
43 the income withholding and other procedures designed
44 to improve the effectiveness of support enforcement
45 through the monitoring of support payments, the mainte-
46 nance of accurate records regarding the payment of
47 support and the prompt provision of notice to appropri-
48 ate officials with respect to any arrearage in support
49 payments which may occur; and

50 (7) To provide management information on all cases
51 from initial referral or application through collection
52 and enforcement.

§48A-1A-5. Basic child support obligation.

1 “Basic child support obligation” means the base
2 amount of child support due by both parents as deter-
3 mined by the table of basic child support obligations set
4 forth in section three, article one-b of this chapter, based
5 upon the combined adjusted gross income of the parents
6 and the number of children to whom support is due.

§48A-1A-6. Chief judge.

1 “Chief judge” means the circuit judge in a judicial
2 circuit that has only one circuit judge, or the chief judge
3 of the circuit court in a judicial circuit that has two or
4 more circuit judges.

§48A-1A-7. Child support enforcement division.

1 “Child support enforcement division” means the
2 agency created under the provisions of article two of this
3 chapter, or any public or private entity or agency con-
4 tracting to provide a service. The “child advocate office”

5 or “child support enforcement division” is that agency
6 intended by the Legislature to be the single and separate
7 organizational unit of state government administering
8 programs of child and spousal support enforcement and
9 meeting the staffing and organizational requirements of
10 the secretary of the federal department of health and
11 human services. A reference in this chapter and else-
12 where in this code to the “child advocate office” shall be
13 interpreted to refer to the child support enforcement
14 division.

§48A-1A-8. Children’s advocate.

1 “Children’s advocate” or “advocate” means any public
2 or private agency, entity or person providing child
3 support enforcement services required by this chapter.
4 The term includes those persons or agencies or entities
5 providing services under the direction of or pursuant to
6 a contract with the child support enforcement division as
7 provided for in article two of this chapter and in any
8 such contract.

§48A-1A-9. Combined adjusted gross income.

1 “Combined adjusted gross income” means the com-
2 bined monthly adjusted gross incomes of both parents.

§48A-1A-10. Contingent fee agreement.

1 (a) “Contingent fee agreement” means a contract under
2 which an attorney may be compensated for work in
3 progress, dependent on the occurrence of some future
4 event which is not certain and absolute. As such, a
5 contingent fee agreement is not an asset, but is potential
6 income or income capacity. This potential income may
7 have current value, and a portion of that current value,
8 if any, may be considered to be a marital asset. In the
9 event a party seeks to quantify the current value of a
10 particular contingent fee agreement for the purpose of
11 establishing the value of the agreement as marital
12 property, the court must find that the party has proved
13 such value by a preponderance of the evidence. Factors
14 to be considered by the court include, but are not limited

15 to, the following:

16 (1) The nature of the particular case or claim which
17 underlies the agreement;

18 (2) The jurisdiction or venue of any projected trial or
19 proceeding;

20 (3) Any historical data relevant to verdicts or settle-
21 ments within the jurisdiction where the case or claim is
22 pending or may be brought;

23 (4) The terms and particulars of the agreement;

24 (5) The status of the case or claim at valuation date;

25 (6) The amount of time spent working on the case or
26 claim prior to the valuation date, and an analysis of the
27 nature of how that time was spent, including, but not
28 limited to, such activities such as investigation, research,
29 discovery, trial or appellate practice;

30 (7) The extent of the person's active role in the work in
31 process, whether as an actual participant or as an
32 indirect participant such as a partner, local counsel or
33 other ancillary role;

34 (8) The age of the case or claim;

35 (9) The expenses accrued or projected to bring the case
36 or claim to resolution, including any office overhead
37 attributable to case or claim; and

38 (10) The probable tax consequences attendant to a
39 successful resolution of the case or claim.

40 (b) The provisions of this section as enacted during the
41 regular session of the Legislature, one thousand nine
42 hundred ninety-six are to be applied prospectively and
43 shall have no application to any action for annulment,
44 divorce or separate maintenance that was commenced on
45 or before the effective date of this section.

§48A-1A-11. Court.

1 "Court" means a circuit court of this state, unless the

2 context in which such term is used clearly indicates that
3 reference to some other court is intended.

§48A-1A-12. Court of competent jurisdiction.

1 "Court of competent jurisdiction" means a circuit
2 court within this state or a court or administrative
3 agency of another state having jurisdiction and due legal
4 authority to deal with the subject matter of the estab-
5 lishment and enforcement of support obligations.
6 Whenever in this chapter reference is made to an order
7 of a court of competent jurisdiction, or similar wording,
8 such language shall be interpreted so as to include orders
9 of an administrative agency entered in a state where
10 enforceable orders may by law be properly made and
11 entered by such administrative agency.

§48A-1A-13. Custodial parent.

1 "Custodial parent" or "custodial parent of a child"
2 means a parent who has been granted custody of a child
3 by a court of competent jurisdiction. "Noncustodial
4 parent" means a parent of a child with respect to whom
5 custody has been adjudicated with the result that such
6 parent has not been granted custody of the child.

§48A-1A-14. Director.

1 "Director" means any person appointed pursuant to
2 section thirteen, article two of this chapter, who directs
3 all child support establishment and enforcement services
4 for the child support enforcement division.

§48A-1A-15. Domestic relations matter.

1 "Domestic relations matter" means any circuit court
2 proceeding involving child custody, child visitation,
3 child support or alimony.

§48A-1A-16. Employer.

1 "Employer" means any individual, sole proprietorship,
2 partnership, association, public or private corporation,
3 the United States or any federal agency, this state or any
4 political subdivision of this state, any other state or a

5 political subdivision of another state and any other legal
6 entity which hires and pays an individual for his ser-
7 vices.

§48A-1A-17. Extraordinary medical expenses.

1 “Extraordinary medical expenses” means reasonable
2 uninsured medical expenses in excess of two hundred
3 fifty dollars per year per child which are recurring and
4 can reasonably be predicted by the court or master at the
5 time of establishment or modification of a child support
6 order. Nonrecurring or subsequently occurring unin-
7 sured medical expenses in excess of two hundred fifty
8 dollars per year per child shall be separately divided
9 between the parties in proportion to their adjusted gross
10 incomes. Such expenses shall include, but not be limited
11 to, insurance copayments and deductibles, reasonable
12 costs for necessary orthodontia, dental treatment,
13 asthma treatments, physical therapy, and any uninsured
14 chronic health problem.

§48A-1A-18. Family law master.

1 “Family law master” or “master” means a person
2 appointed to such position under the provisions of
3 section one, article four of this chapter.

§48A-1A-19. Gross income.

1 (a) “Gross income” means all earned and unearned
2 income. When determining whether an income source
3 should be included in the child support calculation, the
4 court or master should consider the income source if it
5 would have been available to pay child-rearing expenses
6 had the family remained intact or, in cases involving a
7 nonmarital birth, if a household had been formed.

8 (b) “Gross income” includes, but is not limited to, the
9 following:

10 (1) Earnings in the form of salaries, wages, commis-
11 sions, fees, bonuses, profit sharing, tips and other income
12 due or to be due in the future to an obligor from his
13 employer and successor employers;

14 (2) Any payment due or to be due in the future to an
15 obligor from a pension plan, an insurance contract, an
16 annuity, social security benefits, unemployment compen-
17 sation, supplemental employment benefits, workers'
18 compensation benefits, and state lottery winnings and
19 prizes;

20 (3) Interest paid on any debt owing to the obligor as a
21 debt from an individual, partnership, association, public
22 or private corporation, the United States or any federal
23 agency, this state or any political subdivision of this
24 state, any other state or a political subdivision of another
25 state or any other legal entity;

26 (4) Expense reimbursements or in-kind payments such
27 as business expense accounts, business credit accounts,
28 and tangible property such as automobiles and meals, to
29 the extent that they provide the obligor with property or
30 services he or she would otherwise have to provide;

31 (5) Attributed income of the parent, calculated in
32 accordance with the provisions of section three, article
33 one-a of this article;

34 (6) Compensation paid for personal services as over-
35 time pay: *Provided*, That overtime compensation may be
36 excluded from gross income if the obligor with the
37 overtime income demonstrates to the court or master
38 that the overtime work is voluntarily performed and that
39 he or she did not have a previous pattern of working
40 overtime hours prior to divorce or birth of a nonmarital
41 child;

42 (7) Income from self-employment or the operation of
43 a business, minus ordinary and necessary expenses
44 which are not reimbursable, and which are lawfully
45 deductible in computing taxable income under applica-
46 ble income tax laws;

47 (8) Income from seasonal employment or other spo-
48 radic sources: *Provided*, That the amount of monthly
49 income to be included in gross income shall be deter-
50 mined by averaging the income from seasonal employ-

51 ment or other sporadic sources received during the
 52 previous thirty-six-month period or during a period
 53 beginning with the month in which the obligor first
 54 received such compensation, whichever period is shorter;

55 (9) Alimony and separate maintenance receipts.

56 (c) Depending on the circumstances of the particular
 57 case, the court or master may also include severance pay,
 58 capital gains, and net gambling, gifts or prizes as gross
 59 income.

60 (d) "Gross Income" does not include:

61 (1) Income received by other household members such
 62 as a new spouse;

63 (2) Child support received for the children of another
 64 relationship;

65 (3) Means-tested assistance such as aid to families
 66 with dependent children, supplemental security income
 67 and food stamps; and

68 (4) A child's income unless the court or master deter-
 69 mines that the child's income substantially reduces the
 70 family's living expenses.

§48A-1A-20. Guardian of the property of a child.

1 "Guardian of the property of a child" means a person
 2 lawfully invested with the power, and charged with the
 3 duty, of managing and controlling the estate of a child.

§48A-1A-21. Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act.

1 "Individual entitled to support enforcement services
 2 under the provisions of this chapter and the provisions
 3 of Title IV-D of the federal Social Security Act" means:

4 (1) An individual who has applied for or is receiving
 5 services from the child support enforcement division and
 6 who is the custodial parent of a child, or the primary

7 caretaker of a child, or the guardian of the property of a
8 child when:

9 (A) Such child has a parent and child relationship with
10 an obligor who is not such custodial parent, primary
11 caretaker or guardian; and

12 (B) The obligor with whom the child has a parent and
13 child relationship is not meeting an obligation to support
14 the child, or has not met such obligation in the past; or

15 (2) An individual who has applied for or is receiving
16 services from the child support enforcement division and
17 who is an adult or an emancipated minor whose spouse
18 or former spouse has been ordered by a court of compe-
19 tent jurisdiction to pay spousal support to the individual,
20 whether such support is denominated alimony or sepa-
21 rate maintenance, or is identified by some other termi-
22 nology, thus establishing a support obligation with
23 respect to such spouse, when the obligor required to pay
24 such spousal support is not meeting the obligation, or
25 has not met such obligation in the past; or

26 (3) Any individual who is an obligee in a support order,
27 entered by a court of competent jurisdiction after the
28 thirty-first day of December, one thousand nine hundred
29 ninety-three.

§48A-1A-22. Obligee.

1 "Obligee" means:

2 (1) An individual to whom a duty of support is or is
3 alleged to be owed or in whose favor a support order has
4 been issued or a judgment determining parentage has
5 been rendered;

6 (2) A state or political subdivision to which the rights
7 under a duty of support or support order have been
8 assigned or which has independent claims based on
9 financial assistance provided to an individual obligee; or

10 (3) An individual seeking a judgment determining
11 parentage of the individual's child.

§48A-1A-23. Obligor.

1 "Obligor" means an individual or the estate of a
2 decedent:

3 (1) Who owes or is alleged to owe a duty of support;

4 (2) Who is alleged, but has not been adjudicated, to be
5 a parent of a child; or

6 (3) Who is liable under a support order.

§48A-1A-24. Primary caretaker of a child.

1 "Primary caretaker of a child" means a parent or other
2 person having actual physical custody of a child without
3 a court order granting such custody and who has been
4 primarily responsible for exercising parental rights and
5 responsibilities with regard to such child.

§48A-1A-25. Secretary.

1 "Secretary" means the secretary of the department of
2 health and human resources.

§48A-1A-26. Shared physical custody.

1 Shared physical custody means an arrangement under
2 which each parent keeps a child or children overnight
3 for more than thirty percent of the year and under which
4 both parents contribute to the expenses of the child or
5 children in addition to the payment of child support.

§48A-1A-27. Source of income.

1 "Source of income" means an employer or successor
2 employer or any other person who owes or will owe
3 income to an obligor.

§48A-1A-28. Split physical custody.

1 "Split physical custody" means a situation where there
2 is more than one child and where each parent has
3 physical custody of at least one child.

§48A-1A-29. Support.

1 "Support" means the payment of money including

2 interest:

3 (A) For a child or spouse, ordered by a court of compe-
4 tent jurisdiction, whether the payment is ordered in an
5 emergency, temporary, permanent or modified order,
6 decree or judgment of such court, and the amount of
7 unpaid support shall bear simple interest from the date
8 it accrued, at a rate of ten dollars upon one hundred
9 dollars per annum, and proportionately for a greater or
10 lesser sum, or for a longer or shorter time;

11 (B) To third parties on behalf of a child or spouse,
12 including, but not limited to, payments to medical,
13 dental or educational providers, payments to insurers for
14 health and hospitalization insurance, payments of
15 residential rent or mortgage payments, payments on an
16 automobile or payments for day care; and/or

17 (C) For a mother, ordered by a court of competent
18 jurisdiction, for the necessary expenses incurred by or
19 for the mother in connection with her confinement or of
20 other expenses in connection with the pregnancy of the
21 mother.

§48A-1A-30. Support order.

1 "Support order" means any order of a court of compe-
2 tent jurisdiction for the payment of support, whether or
3 not for a sum certain.

§48A-1A-31. Unreimbursed health care expenses.

1 "Unreimbursed medical expenses" means the child's
2 portion of health insurance premiums and extraordinary
3 medical expenses.

§48A-1A-32. Work-related child care costs.

1 "Work-related child care costs" shall mean the cost of
2 child care the parent incurs due to employment or the
3 search for employment.

ARTICLE 1B. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48A-1B-1. General provisions.

1 (a) This section establishes guidelines for child support
2 award amounts so as to ensure greater uniformity by
3 those persons who make child support recommendations
4 and enter child support orders and to increase predict-
5 ability for parents, children and other persons who are
6 directly affected by child support orders. There shall be
7 a rebuttable presumption, in any proceeding before a
8 family law master or circuit court judge for the award of
9 child support, that the amount of the award which would
10 result from the application of these guidelines is the
11 correct amount of child support to be awarded.

12 (b) The Legislature recognizes that children have a
13 right to share in their natural parents' level of living.
14 Expenditures in families are not made in accordance
15 with subsistence level standards, but are made in pro-
16 portion to household income, and as parental incomes
17 increase or decrease, the actual dollar expenditures for
18 children also increase or decrease correspondingly. In
19 order to ensure that children properly share in their
20 parents' resources, regardless of family structure, the
21 guidelines are structured so as to provide that after a
22 consideration of respective parental incomes, that child
23 support will be related, to the extent practicable, to the
24 level of living that children would enjoy if they were
25 living in a household with both parents present.

26 (c) The guidelines promulgated under the provisions of
27 this section take into consideration the financial contri-
28 butions of both parents. The Legislature recognizes that
29 expenditures in households are made in aggregate form
30 and that total family income is pooled to determine the
31 level at which the family can live. The guidelines
32 consider the financial contributions of both parents in
33 relationship to total income, so as to establish and
34 equitably apportion the child support obligation.

35 (d) The provisions of this article which would create a
36 new method of calculating child support obligations
37 based on an income shares model shall not become
38 operative until the first day of July, one thousand nine

39 hundred ninety-seven. The child support guidelines in
40 effect on the first day of January, one thousand nine
41 hundred ninety-six, as promulgated by legislative rule,
42 shall continue in effect, notwithstanding the repeal of
43 section seventeen, article two of this chapter during the
44 regular session of the Legislature, one thousand nine
45 hundred ninety-six. To the extent that any definition set
46 forth in article one-a of this chapter is inconsistent with
47 the manner of calculating a support obligation under the
48 legislative rule establishing child support guidelines that
49 is in effect on the first day of January, one thousand nine
50 hundred ninety-six, such definition shall have no appli-
51 cation until the first day of July, one thousand nine
52 hundred ninety-seven.

§48A-1B-2. Calculation of child support order.

1 (a) Both parents' adjusted gross income, as defined in
2 section two, article one-a of this chapter, is used to
3 determine the amount of child support. Unreimbursed
4 child health care expenses and work-related child care
5 expenses are added to the basic child support obligation
6 to determine the total child support obligation. The
7 child support order is determined by dividing the total
8 child support obligation between the parents in propor-
9 tion to their income.

10 (b) The calculation of the support order amount
11 requires the use of one of two worksheets which must be
12 completed for each case. Worksheet A is used for a sole
13 physical custody arrangement. Worksheet B is used for
14 a shared physical custody arrangement.

§48A-1B-3. Basic child support obligation.

1 (a) The basic child support obligation is determined
2 from the following table of monthly basic child support
3 obligations:

4 **MONTHLY BASIC CHILD SUPPORT OBLIGATIONS**

5 Combined							
6 Adjusted							
7 Gross							
8 Monthly	One	Two	Three	Four	Five	Six	
9 Income	Child	Children	Children	Children	Children	Children	Children
10	650	50	50	50	50	50	50
11	700	71	72	73	74	75	75
12	750	101	103	104	105	106	107
13	800	135	136	138	139	141	142
14	850	168	170	172	174	176	178
15	900	184	204	206	209	211	213
16	950	193	238	240	243	246	248
17	1,000	201	272	275	278	281	284
18	1,050	210	306	309	312	316	319
19	1,100	218	329	343	347	351	354
20	1,150	227	342	377	381	385	390
21	1,200	235	355	411	416	420	425
22	1,250	243	368	436	450	455	459
23	1,300	252	381	451	484	489	494
24	1,350	261	393	465	514	524	529
25	1,400	270	405	479	529	558	564
26	1,450	279	417	493	545	590	599
27	1,500	289	429	507	560	607	634
28	1,550	298	441	521	576	624	668
29	1,600	307	453	535	591	641	686
30	1,650	316	465	549	607	658	704
31	1,700	325	477	563	623	675	722
32	1,750	334	489	578	638	692	740
33	1,800	344	501	592	654	709	758
34	1,850	353	513	606	669	726	776
35	1,900	361	525	620	685	742	794
36	1,950	370	537	634	701	759	812
37	2,000	378	549	648	716	776	831
38	2,050	386	561	662	732	793	849
39	2,100	395	573	676	747	810	867
40	2,150	403	585	690	763	827	885
41	2,200	411	597	704	778	844	903
42	2,250	420	609	718	794	860	921

43	Combined						
44	Adjusted						
45	Gross						
46	Monthly	One	Two	Three	Four	Five	Six
47	Income	Child	Children	Children	Children	Children	Children
48	2,300	428	621	732	809	877	939
49	2,350	436	633	746	825	894	957
50	2,400	445	645	760	840	911	975
51	2,450	453	657	774	856	927	992
52	2,500	460	668	787	869	942	1,008
53	2,550	467	677	798	882	956	1,023
54	2,600	474	687	809	894	969	1,037
55	2,650	480	696	820	906	982	1,051
56	2,700	487	706	831	918	995	1,065
57	2,750	494	715	842	930	1,008	1,079
58	2,800	500	725	853	942	1,022	1,093
59	2,850	507	734	864	955	1,035	1,107
60	2,900	514	744	875	967	1,048	1,122
61	2,950	520	753	886	979	1,061	1,136
62	3,000	527	763	897	991	1,074	1,150
63	3,050	534	772	908	1,003	1,088	1,164
64	3,100	540	782	919	1,016	1,101	1,178
65	3,150	546	790	929	1,026	1,113	1,191
66	3,200	551	797	937	1,036	1,123	1,201
67	3,250	556	804	946	1,045	1,133	1,212
68	3,300	560	811	954	1,054	1,143	1,223
69	3,350	565	818	963	1,064	1,153	1,234
70	3,400	570	825	971	1,073	1,163	1,245
71	3,450	575	832	980	1,083	1,174	1,256
72	3,500	579	839	988	1,092	1,184	1,267
73	3,550	584	846	997	1,101	1,194	1,277
74	3,600	589	853	1,005	1,111	1,204	1,288
75	3,650	594	860	1,014	1,120	1,214	1,299
76	3,700	598	867	1,022	1,129	1,224	1,310
77	3,750	603	874	1,030	1,138	1,234	1,320
78	3,800	608	881	1,038	1,148	1,244	1,331
79	3,850	612	887	1,046	1,156	1,253	1,341
80	3,900	616	893	1,052	1,163	1,260	1,348
81	3,950	620	898	1,058	1,169	1,267	1,356
82	4,000	624	904	1,064	1,176	1,275	1,364

83	Combined						
84	Adjusted						
85	Gross						
86	Monthly	One	Two	Three	Four	Five	Six
87	Income	Child	Children	Children	Children	Children	Children
88	4,050	628	909	1,070	1,183	1,282	1,372
89	4,100	632	915	1,076	1,190	1,289	1,380
90	4,150	636	920	1,083	1,196	1,297	1,387
91	4,200	640	926	1,089	1,203	1,304	1,395
92	4,250	644	931	1,095	1,210	1,311	1,403
93	4,300	648	937	1,101	1,217	1,319	1,411
94	4,350	652	942	1,107	1,223	1,326	1,419
95	4,400	657	948	1,113	1,230	1,333	1,427
96	4,450	661	953	1,119	1,237	1,341	1,434
97	4,500	665	959	1,125	1,244	1,348	1,442
98	4,550	669	964	1,131	1,250	1,355	1,450
99	4,600	671	969	1,136	1,255	1,361	1,456
100	4,650	674	972	1,141	1,260	1,366	1,462
101	4,700	677	976	1,145	1,265	1,372	1,468
102	4,750	679	980	1,150	1,270	1,377	1,473
103	4,800	682	984	1,154	1,275	1,382	1,479
104	4,850	684	987	1,158	1,280	1,387	1,484
105	4,900	687	991	1,163	1,285	1,392	1,490
106	4,950	689	995	1,167	1,289	1,398	1,495
107	5,000	692	998	1,171	1,294	1,403	1,501
108	5,050	694	1,002	1,176	1,299	1,408	1,506
109	5,100	697	1,006	1,180	1,304	1,413	1,512
110	5,150	700	1,010	1,185	1,309	1,419	1,518
111	5,200	703	1,014	1,189	1,314	1,424	1,524
112	5,250	704	1,015	1,191	1,317	1,427	1,527
113	5,300	709	1,023	1,200	1,326	1,437	1,538
114	5,350	714	1,030	1,208	1,335	1,447	1,549
115	5,400	719	1,037	1,216	1,344	1,457	1,559
116	5,450	725	1,045	1,225	1,353	1,467	1,570
117	5,500	730	1,052	1,233	1,363	1,477	1,580
118	5,550	735	1,059	1,241	1,372	1,487	1,591
119	5,600	740	1,066	1,250	1,381	1,497	1,602
120	5,650	745	1,074	1,258	1,390	1,507	1,612
121	5,700	750	1,081	1,266	1,399	1,517	1,623
122	5,750	756	1,088	1,275	1,409	1,527	1,634

123	Combined						
124	Adjusted						
125	Gross						
126	Monthly	One	Two	Three	Four	Five	Six
127	Income	Child	Children	Children	Children	Children	Children
128	5,800	761	1,096	1,283	1,418	1,537	1,644
129	5,850	766	1,103	1,291	1,427	1,547	1,655
130	5,900	771	1,110	1,299	1,436	1,557	1,666
131	5,950	776	1,117	1,308	1,445	1,567	1,676
132	6,000	781	1,124	1,315	1,454	1,576	1,686
133	6,050	785	1,130	1,322	1,461	1,584	1,695
134	6,100	789	1,135	1,329	1,469	1,592	1,703
135	6,150	793	1,141	1,336	1,476	1,600	1,712
136	6,200	797	1,147	1,343	1,484	1,609	1,721
137	6,250	801	1,153	1,350	1,491	1,617	1,730
138	6,300	805	1,158	1,356	1,499	1,625	1,738
139	6,350	809	1,164	1,363	1,507	1,633	1,747
140	6,400	813	1,170	1,370	1,514	1,641	1,756
141	6,450	817	1,176	1,377	1,522	1,649	1,765
142	6,500	821	1,182	1,384	1,529	1,658	1,773
143	6,550	825	1,187	1,391	1,537	1,666	1,782
144	6,600	829	1,193	1,397	1,544	1,674	1,791
145	6,650	833	1,199	1,404	1,552	1,682	1,800
146	6,700	837	1,205	1,411	1,559	1,690	1,809
147	6,750	841	1,211	1,418	1,567	1,699	1,817
148	6,800	845	1,216	1,425	1,575	1,707	1,826
149	6,850	849	1,222	1,432	1,582	1,715	1,835
150	6,900	853	1,228	1,438	1,590	1,723	1,844
151	6,950	857	1,234	1,445	1,597	1,731	1,852
152	7,000	861	1,240	1,452	1,605	1,740	1,861
153	7,050	865	1,246	1,460	1,613	1,748	1,871
154	7,100	870	1,253	1,467	1,621	1,757	1,881
155	7,150	874	1,259	1,475	1,630	1,766	1,890
156	7,200	879	1,266	1,482	1,638	1,776	1,900
157	7,250	883	1,272	1,490	1,646	1,785	1,910
158	7,300	888	1,279	1,497	1,655	1,794	1,919
159	7,350	893	1,285	1,505	1,663	1,803	1,929
160	7,400	897	1,292	1,513	1,671	1,812	1,939
161	7,450	902	1,298	1,520	1,680	1,821	1,949
162	7,500	906	1,305	1,528	1,688	1,830	1,958

163	Combined						
164	Adjusted						
165	Gross						
166	Monthly	One	Two	Three	Four	Five	Six
167	Income	Child	Children	Children	Children	Children	Children
168	7,550	911	1,311	1,535	1,697	1,839	1,968
169	7,600	915	1,318	1,543	1,705	1,848	1,978
170	7,650	920	1,324	1,550	1,713	1,857	1,987
171	7,700	925	1,331	1,558	1,722	1,866	1,997
172	7,750	929	1,337	1,566	1,730	1,875	2,007
173	7,800	934	1,344	1,573	1,738	1,884	2,017
174	7,850	938	1,350	1,581	1,747	1,894	2,026
175	7,900	943	1,357	1,588	1,755	1,903	2,036
176	7,950	947	1,363	1,596	1,763	1,912	2,046
177	8,000	952	1,370	1,603	1,772	1,921	2,055
178	8,050	956	1,376	1,611	1,780	1,930	2,065
179	8,100	961	1,383	1,619	1,789	1,939	2,075
180	8,150	966	1,389	1,626	1,797	1,948	2,084
181	8,200	970	1,396	1,634	1,805	1,957	2,094
182	8,250	975	1,402	1,641	1,814	1,966	2,104
183	8,300	979	1,409	1,649	1,822	1,975	2,114
184	8,350	984	1,415	1,656	1,830	1,984	2,123
185	8,400	988	1,422	1,664	1,839	1,993	2,133
186	8,450	992	1,428	1,671	1,846	2,002	2,142
187	8,500	996	1,433	1,678	1,854	2,010	2,151
188	8,550	1,000	1,439	1,685	1,862	2,018	2,160
189	8,600	1,004	1,445	1,692	1,869	2,027	2,168
190	8,650	1,008	1,451	1,699	1,877	2,035	2,177
191	8,700	1,012	1,457	1,706	1,885	2,043	2,186
192	8,750	1,016	1,463	1,713	1,893	2,052	2,195
193	8,800	1,020	1,469	1,720	1,900	2,060	2,204
194	8,850	1,024	1,475	1,727	1,908	2,069	2,213
195	8,900	1,028	1,480	1,734	1,916	2,077	2,222
196	8,950	1,032	1,486	1,741	1,923	2,085	2,231
197	9,000	1,036	1,492	1,748	1,931	2,094	2,240
198	9,050	1,040	1,498	1,755	1,939	2,102	2,249
199	9,100	1,044	1,504	1,762	1,946	2,110	2,258
200	9,150	1,048	1,510	1,769	1,954	2,119	2,267
201	9,200	1,053	1,516	1,776	1,962	2,127	2,276
202	9,250	1,057	1,522	1,783	1,970	2,135	2,285

203	Combined						
204	Adjusted						
205	Gross						
206	Monthly	One	Two	Three	Four	Five	Six
207	Income	Child	Children	Children	Children	Children	Children
208	9,300	1,061	1,528	1,790	1,977	2,144	2,294
209	9,350	1,065	1,533	1,797	1,985	2,152	2,302
210	9,400	1,069	1,539	1,804	1,993	2,160	2,311
211	9,450	1,073	1,545	1,811	2,000	2,169	2,320
212	9,500	1,077	1,551	1,817	2,008	2,177	2,329
213	9,550	1,081	1,557	1,824	2,016	2,185	2,338
214	9,600	1,085	1,563	1,831	2,023	2,194	2,347
215	9,650	1,089	1,569	1,838	2,031	2,202	2,356
216	9,700	1,093	1,575	1,845	2,039	2,210	2,365
217	9,750	1,097	1,581	1,853	2,047	2,219	2,375
218	9,800	1,101	1,586	1,859	2,054	2,227	2,383
219	9,850	1,104	1,591	1,865	2,061	2,234	2,391
220	9,900	1,108	1,596	1,872	2,068	2,242	2,399
221	9,950	1,111	1,601	1,878	2,075	2,249	2,407
222	10,000	1,115	1,607	1,884	2,082	2,257	2,415
223	10,050	1,118	1,612	1,890	2,089	2,264	2,423
224	10,100	1,122	1,617	1,897	2,096	2,272	2,431
225	10,150	1,126	1,622	1,903	2,103	2,279	2,439
226	10,200	1,129	1,627	1,909	2,110	2,287	2,447
227	10,250	1,133	1,632	1,915	2,116	2,294	2,455
228	10,300	1,136	1,638	1,922	2,123	2,302	2,463
229	10,350	1,140	1,643	1,928	2,130	2,309	2,471
230	10,400	1,143	1,648	1,934	2,137	2,316	2,478
231	10,450	1,146	1,652	1,939	2,143	2,323	2,486
232	10,500	1,149	1,657	1,945	2,149	2,330	2,493
233	10,550	1,153	1,662	1,951	2,156	2,337	2,500
234	10,600	1,156	1,667	1,957	2,162	2,344	2,508
235	10,650	1,159	1,672	1,962	2,168	2,351	2,515
236	10,700	1,162	1,676	1,968	2,175	2,357	2,522
237	10,750	1,166	1,681	1,974	2,181	2,364	2,530
238	10,800	1,169	1,686	1,980	2,188	2,371	2,537
239	10,850	1,172	1,691	1,985	2,194	2,378	2,545
240	10,900	1,175	1,695	1,991	2,200	2,385	2,552
241	10,950	1,178	1,700	1,997	2,207	2,392	2,559
242	11,000	1,182	1,705	2,003	2,213	2,399	2,567

243	Combined						
244	Adjusted						
245	Gross						
246	Monthly	One	Two	Three	Four	Five	Six
247	Income	Child	Children	Children	Children	Children	Children
248	11,050	1,185	1,710	2,008	2,219	2,406	2,574
249	11,100	1,188	1,714	2,014	2,226	2,412	2,581
250	11,150	1,191	1,719	2,020	2,232	2,419	2,589
251	11,200	1,195	1,724	2,026	2,238	2,426	2,596
252	11,250	1,198	1,729	2,032	2,245	2,434	2,604
253	11,300	1,202	1,736	2,039	2,254	2,443	2,614
254	11,350	1,206	1,742	2,047	2,262	2,452	2,624
255	11,400	1,210	1,748	2,055	2,270	2,461	2,633
256	11,450	1,214	1,754	2,062	2,279	2,470	2,643
257	11,500	1,219	1,760	2,070	2,287	2,479	2,653
258	11,550	1,223	1,767	2,077	2,295	2,488	2,662
259	11,600	1,227	1,773	2,085	2,304	2,497	2,672
260	11,650	1,231	1,779	2,092	2,312	2,506	2,682
261	11,700	1,235	1,785	2,100	2,320	2,516	2,691
262	11,750	1,239	1,791	2,107	2,329	2,525	2,701
263	11,800	1,243	1,798	2,115	2,337	2,534	2,711
264	11,850	1,248	1,804	2,123	2,345	2,543	2,720
265	11,900	1,252	1,810	2,130	2,354	2,552	2,730
266	11,950	1,256	1,816	2,138	2,362	2,561	2,740
267	12,000	1,260	1,822	2,145	2,370	2,570	2,750
268	12,050	1,264	1,829	2,153	2,379	2,579	2,759
269	12,100	1,268	1,835	2,160	2,387	2,588	2,769
270	12,150	1,272	1,841	2,168	2,395	2,597	2,779
271	12,200	1,277	1,847	2,175	2,404	2,606	2,788
272	12,250	1,281	1,853	2,183	2,412	2,615	2,798
273	12,300	1,285	1,860	2,191	2,421	2,624	2,808
274	12,350	1,289	1,866	2,198	2,429	2,633	2,817
275	12,400	1,293	1,872	2,206	2,437	2,642	2,827
276	12,450	1,297	1,878	2,213	2,446	2,651	2,837
277	12,500	1,301	1,884	2,221	2,454	2,660	2,846
278	12,550	1,306	1,891	2,228	2,462	2,669	2,856
279	12,600	1,310	1,897	2,236	2,471	2,678	2,866
280	12,650	1,314	1,903	2,243	2,479	2,687	2,875
281	12,700	1,318	1,909	2,251	2,487	2,697	2,885
282	12,750	1,322	1,916	2,258	2,495	2,705	2,894

283	Combined						
284	Adjusted						
285	Gross						
286	Monthly	One	Two	Three	Four	Five	Six
287	Income	Child	Children	Children	Children	Children	Children
288	12,800	1,325	1,920	2,263	2,501	2,711	2,901
289	12,850	1,328	1,924	2,268	2,507	2,717	2,907
290	12,900	1,331	1,928	2,273	2,512	2,723	2,913
291	12,950	1,334	1,933	2,278	2,518	2,729	2,920
292	13,000	1,337	1,937	2,283	2,523	2,735	2,926
293	13,050	1,340	1,941	2,288	2,529	2,741	2,933
294	13,100	1,343	1,945	2,293	2,534	2,747	2,939
295	13,150	1,346	1,950	2,298	2,540	2,753	2,945
296	13,200	1,349	1,954	2,303	2,545	2,759	2,952
297	13,250	1,352	1,958	2,308	2,551	2,765	2,958
298	13,300	1,355	1,963	2,313	2,556	2,771	2,964
299	13,350	1,358	1,967	2,318	2,562	2,777	2,971
300	13,400	1,361	1,971	2,323	2,567	2,783	2,977
301	13,450	1,364	1,975	2,328	2,573	2,789	2,984
302	13,500	1,367	1,980	2,333	2,578	2,794	2,990
303	13,550	1,370	1,984	2,338	2,584	2,800	2,996
304	13,600	1,373	1,988	2,343	2,589	2,806	3,003
305	13,650	1,376	1,993	2,348	2,595	2,812	3,009
306	13,700	1,379	1,997	2,353	2,600	2,818	3,016
307	13,750	1,382	2,001	2,358	2,606	2,824	3,022
308	13,800	1,385	2,005	2,363	2,611	2,830	3,028
309	13,850	1,388	2,010	2,368	2,617	2,836	3,035
310	13,900	1,391	2,014	2,373	2,622	2,842	3,041
311	13,950	1,394	2,018	2,378	2,628	2,848	3,048
312	14,000	1,397	2,023	2,383	2,633	2,854	3,054
313	14,050	1,400	2,027	2,388	2,639	2,860	3,060
314	14,100	1,403	2,031	2,393	2,644	2,866	3,067
315	14,150	1,406	2,035	2,398	2,650	2,872	3,073
316	14,200	1,409	2,040	2,403	2,655	2,878	3,080
317	14,250	1,412	2,044	2,408	2,661	2,884	3,086
318	14,300	1,415	2,048	2,413	2,666	2,890	3,092
319	14,350	1,418	2,052	2,418	2,672	2,896	3,099
320	14,400	1,421	2,057	2,423	2,677	2,902	3,105
321	14,450	1,424	2,061	2,428	2,683	2,908	3,112
322	14,500	1,427	2,065	2,433	2,689	2,914	3,118

323	Combined						
324	Adjusted						
325	Gross						
326	Monthly	One	Two	Three	Four	Five	Six
327	Income	Child	Children	Children	Children	Children	Children
328	14,550	1,430	2,070	2,438	2,694	2,920	3,124
329	14,600	1,433	2,074	2,443	2,700	2,926	3,131
330	14,650	1,436	2,078	2,448	2,705	2,932	3,137
331	14,700	1,439	2,082	2,453	2,711	2,938	3,144
332	14,750	1,442	2,087	2,458	2,716	2,944	3,150
333	14,800	1,445	2,091	2,463	2,722	2,950	3,156
334	14,850	1,448	2,095	2,468	2,727	2,956	3,163
335	14,900	1,451	2,100	2,473	2,733	2,962	3,169
336	14,950	1,454	2,104	2,478	2,738	2,968	3,176
337	15,000	1,457	2,108	2,483	2,744	2,974	3,182

338 (b) This subsection provides for incomes below table.
 339 If combined adjusted gross income is below six hundred
 340 fifty dollars per month, which is the lowest amount of
 341 income considered in the table of monthly basic child
 342 support obligations set forth in subsection (a) of this
 343 section, the basic child support obligation shall be set at
 344 fifty dollars per month or a discretionary amount
 345 determined by the court or master based on the resources
 346 and living expenses of the obligor and the number of
 347 children due support. The amount shall not deny the
 348 obligor the means for self-support at a minimum subsis-
 349 tence level, yet a specific amount of child support should
 350 always be ordered, no matter how minimal, to establish
 351 the principle of that parent's obligation to provide
 352 monetary support to the child or children.

353 (c) This subsection provides for incomes above table.
 354 If combined adjusted gross income is above fifteen
 355 thousand dollars per month, which is the highest amount
 356 of income considered in the table of monthly basic child
 357 support obligations set forth in subsection (a) of this
 358 section, the basic child support obligation shall not be
 359 less than it would be based on a combined adjusted gross
 360 income of fifteen thousand dollars. The court or master
 361 may also compute the basic child support obligation for

362 combined adjusted gross incomes above fifteen thousand
363 dollars by the following:

364 (1) One child — $\$1,457 + 0.088 \times$ combined adjusted
365 gross income above fifteen thousand dollars per month;

366 (2) Two children — $\$2,108 + 0.129 \times$ combined adjusted
367 gross income above fifteen thousand dollars per month;

368 (3) Three children — $\$2,483 + 0.153 \times$ combined
369 adjusted gross income above fifteen thousand dollars per
370 month;

371 (4) Four children — $\$2,744 + 0.169 \times$ combined
372 adjusted gross income above fifteen thousand dollars per
373 month;

374 (5) Five children — $\$2,974 + 0.183 \times$ combined ad-
375 justed gross income above fifteen thousand dollars per
376 month; and

377 (6) Six children — $\$3,182 + 0.196 \times$ combined adjusted
378 gross income above fifteen thousand dollars per month.

379 (d) When the amount of a support obligation exceeds
380 two thousand dollars per month per child, the court or
381 master may order a portion of the excess over two
382 thousand dollars per month to be invested or placed in
383 trust for the benefit of the child or children. The court
384 or master may place terms and conditions on the access
385 to the moneys as are in the best interests of the child or
386 children: *Provided*, That the court or master shall order
387 that all funds so invested or held in trust shall be paid
388 over and delivered to the child or children at their
389 majority or emancipation.

§48A-1B-4. Child health care.

1 (a) A child support order shall also provide for the
2 child's current and future medical needs by providing
3 relief in accordance with the provisions of section
4 fifteen-a, article two, chapter forty-eight of this code.

5 (b) The payment of a premium to provide health
6 insurance coverage on behalf of the children subject to

7 the order shall be added to the basic child support
8 obligation and shall be divided between the parents in
9 proportion to their adjusted gross income. The amount
10 to be added to the basic child support obligation shall be
11 the actual amount of the total insurance premium that is
12 attributable to the number of children due support. If
13 this amount is not available or cannot be verified, the
14 total cost of the premium should be divided by the total
15 number of persons covered by the policy. The cost per
16 person derived from this calculation shall be multiplied
17 by the number of children who are the subject of the
18 order and who are covered under the policy.

19 (c) After the total child support obligation is calcu-
20 lated and divided between the parents in proportion to
21 their adjusted gross income, the amount of the health
22 insurance premium added to the basic child support
23 obligation shall be deducted from the support obligor's
24 share of the total child support obligation if the support
25 obligor is actually paying the premium.

26 (d) Extraordinary medical expenses shall be added to
27 the basic child support obligation and shall be divided
28 between the parents in proportion to their adjusted gross
29 income.

§48A-1B-5. Work-related child care costs; deduction of tax credit.

1 (a) The amount of the federal tax credit for child care
2 expenses that can be realized by the custodial parent
3 should be deducted from work-related child care costs,
4 except that no such deduction shall be made for custo-
5 dial parents with monthly gross incomes below the
6 following amounts:

- 7 (1) One child — \$1,150;
- 8 (2) Two children — \$1,550;
- 9 (3) Three children — \$1,750;
- 10 (4) Four children — \$1,950;

11 (5) Five children — \$2,150; and

12 (6) Six children — \$2,350.

13 (b) Work related child care costs net of any adjustment
14 for the child care tax credit shall be added to the basic
15 child support obligation and shall be divided between
16 the parents in proportion to their adjusted gross income.

**§48A-1B-6. Computation of child support order in sole cus-
tody cases.**

1 (a) For sole custody cases, the total child support
2 obligation consists of the basic child support obligation
3 plus the child's share of any unreimbursed health care
4 expenses, work-related child care expenses and any
5 other extraordinary expenses agreed to by the parents or
6 ordered by the court or master less any extraordinary
7 credits agreed to by the parents or ordered by the court
8 or master.

9 (b) In a sole custody case, the total basic child support
10 obligation is divided between the parents in proportion
11 to their income. From this amount is subtracted the
12 obligor's direct expenditures of any items which were
13 added to the basic child support obligation to arrive at
14 the total child support obligation.

15 (c) Child support for sole custody cases shall be
16 calculated using the following worksheet:

Worksheet A: Sole Physical Custody		Case No. _____		
Court: _____		County: _____, West Virginia		
In re the Marriage of:		Petitioner and		Respondent
Children	Date of Birth	Children		Date of Birth
		Mother	Father	Combined
1. MONTHLY GROSS INCOME	\$	\$		
a. Minus preexisting child support payment	-	-		
b. Minus maintenance paid	-	-		
c. Minus responsibility for other children	-	-		
2. MONTHLY ADJUSTED GROSS INCOME	\$	\$		\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)		%	%	100%
4. BASIC OBLIGATION (Amount from Schedule) (Apply line 2 Combined to Child Support Schedule.)				\$
5. ADJUSTMENTS (Expenses paid directly by each parent)				
a. Work-Related Child Care Costs (Actual costs minus Federal Tax Credit.)	\$	\$		
b. Extraordinary Health Care Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$		
c. Extraordinary Expenses (Agreed to by parents or by order of the court or master.)	\$	\$		
d. Minus Extraordinary Adjustments.	\$	\$		
e. Total Adjustments (For each column, add 5a, 5b, and 5c. Subtract line 5d. Add two totals for Combined amount.)	\$	\$		\$
6. TOTAL SUPPORT OBLIGATION (Add line 4 and line 5c Combined.)				\$
7. EACH PARENT'S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION (Line 3 x line 6 for each parent.)	\$	\$		
8. NONCUSTODIAL PARENT ADJUSTMENT (Enter noncustodial parent's line 5c.)	\$	\$		
9. RECOMMENDED CHILD SUPPORT ORDER (Subtract line 8 from line 7 for the noncustodial parent only. Leave custodial parent column blank.)	\$	\$		
Comments, calculations, or rebuttals to schedule or adjustments if noncustodial parent directly pays extraordinary expenses.				
PREPARED BY:				Date:

17 (d) In a case where the actual or attributed income of
18 a party, if factored into the computation of child support
19 would result in the obligation of the other party being
20 increased rather than decreased because of a self-
21 support reserve built into the calculations, then such
22 actual or attributed income shall not be considered.

§48A-1B-7. Shared physical custody adjustment.

1 (a) Child support for cases with shared physical
 2 custody shall be calculated using the Worksheet B. The
 3 following method should be used only for shared physi-
 4 cal custody as defined in section twenty-six, article one-
 5 a of this chapter: That is, cases where each parent has
 6 the child for more than one hundred nine days per year
 7 (thirty percent). In addition, a shared physical custody
 8 adjustment shall only be made if the sum of the obligee
 9 gross adjusted monthly income and the child support
 10 order award is above two and one-half times the U.S.
 11 poverty guideline for the parent with the highest level of
 12 physical custody (if custody is not equally shared) and
 13 the number of children for whom support is being
 14 determined.

15 (b) The basic child support obligation shall be multi-
 16 plied by 1.5 to arrive at a shared custody basic child
 17 support obligation. The shared custody basic child
 18 support obligation is apportioned to each parent accord-
 19 ing to his or her income. In turn, a child support obliga-
 20 tion is computed for each parent by multiplying that
 21 parent's portion of the shared custody child support
 22 obligation by the percentage of time the child spends
 23 with the other parent. The respective child support
 24 obligations are then offset, with the parent owing more
 25 child support paying the difference between the two
 26 amounts.

27 Final adjustments are made by adding the obligor's
 28 share of the child's share of any unreimbursed health
 29 care expenses, work-related child care expenses and any
 30 other extraordinary expenses agreed to by the parents or
 31 ordered by the court or master less any credits to the
 32 obligor for the obligor's direct expenditures on the
 33 child's unreimbursed health care expenses, and extraor-
 34 dinary credits agreed to by the parents or ordered by the
 35 court or master.

36 (d) Child support for ^{shared physical} ~~sole~~ custody cases shall be ^{to be}
 37 calculated using the following worksheet:

WORKSHEET B: SHARED PHYSICAL CUSTODY CASE NO. _____

COURT: _____ COUNTY: _____, WEST VIRGINIA

In re the Marriage of: _____ Petitioner and _____ Respondent

Children	Date of Birth	Children		
				Date of Birth
		Mother	Father	Combined
1. MONTHLY GROSS INCOME		\$	\$	
a. Minus preexisting child support payment and maintenance paid		-	-	
b. Minus responsibility for other children		-	-	
2. MONTHLY ADJUSTED GROSS INCOME		\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income.)			%	100%
4. BASIC OBLIGATION (Amount from Schedule) (Apply line 2 Combined to Child Support Schedule.)				\$
5. SHARED CUSTODY BASIC OBLIGATION (line 4 x 1.50)				\$
6. EACH PARENT'S SHARE (Line 5 x each parent's line 3)		\$	\$	
7. OVERNIGHT WITH EACH PARENT (must total 365)				365
8. PERCENTAGE WITH EACH PARENT (Line 7 divided by 365)			%	100%
9. AMOUNT RETAINED (Line 6 x line 8 for each parent)		\$	\$	
10. EACH PARENT'S OBLIGATION (subtract line 9 from line 6)		\$	\$	
11. AMOUNT TRANSFERRED (subtract smaller amount on line 10 from larger amount on line 10). Parent with larger amount on line 10 pays other parent the difference.		\$	\$	
12. ADJUSTMENTS (Expenses paid directly by each parent)				
a. Work-Related Child Care Costs (Actual costs minus Federal Tax Credit.)		\$	\$	
b. Extraordinary Health Care Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.		\$	\$	
c. Extraordinary Expenses (Agreed to by parents or by order of the court or master.)		\$	\$	
d. Minus Extraordinary Adjustments		-	-	
e. Total Adjustments (For each column, add 12a, 12b, and 12c. Subtract line 12d. Add two totals for Combined amount.)		\$	\$	\$
13. EACH PARENT'S SHARE OF THE TOTAL ADJUSTMENTS (Line 3 x line 12e for each parent)		\$	\$	
14. ADJUSTMENTS PAID IN EXCESS OF SHARE (Line 12e minus line 13. If negative number, enter zero.)		\$	\$	
15. EACH PARENT'S ADJUSTED SUPPORT OBLIGATION (Line 11 minus line 14)		\$	\$	
16. RECOMMENDED CHILD SUPPORT ORDER (Subtract lesser amount from greater amount in line 15 and enter result under greater amount.)		\$	\$	
Comments, calculations, or rebuttals to schedule or adjustments if noncustodial parent directly pays extraordinary expenses.				
PREPARED BY:				Date:

§48A-1B-8. Split physical custody adjustment.

- 1 In cases with split physical custody, the court or
- 2 master shall use Worksheet A (Sole-Parenting) as set

3 forth in subsection (c), section six of this article to
4 calculate a separate child support order for each parent
5 based on the number of children in that parent's custody.
6 Instead of transferring the calculated orders between
7 parents, the two orders are offset. The difference of the
8 two orders is the child support order to be paid by the
9 parent with the higher sole-parenting order.

§48A-1B-9. Adjustment for obligor's social security benefits sent directly to the child.

1 If a proportion of the support obligor's social security
2 benefit is paid directly to the custodian of his or her
3 dependents who are the subject of the child support
4 order, the following adjustment shall be made. The total
5 amount of the social security benefit which includes the
6 amounts paid to the support obligor and the obligee shall
7 be counted as gross income to the support obligor. In
8 turn, the child support order will be calculated as
9 described in section six of this article. To arrive at the
10 final child support amount, however, the amount of the
11 social security benefits sent directly to the child's
12 household will be subtracted from the child support
13 order. If the child support order amount results in a
14 negative amount it shall be set at zero.

§48A-1B-10. Application.

1 The guidelines in child support awards apply as a
2 rebuttable presumption to all child support orders
3 established or modified in West Virginia. The guidelines
4 must be applied to all actions in which child support is
5 being determined including temporary orders, interstate
6 (URESAs and UIFSAs), domestic violence, foster care,
7 divorce, nondissolution, public assistance, nonpublic
8 assistance and support decrees arising despite non-
9 marriage of the parties. The guidelines must be used by
10 the court or master as the basis for reviewing adequacy
11 of child support levels in noncontested cases as well as
12 contested hearings.

§48A-1B-11. Modification.

1 The provisions of a child support order may be modi-
2 fied if there is a substantial and continuing change of
3 circumstances. If application of the guideline would
4 result in a new order that is more than fifteen percent
5 different, then the circumstances are considered to be a
6 substantial and continuing change.

§48A-1B-12. Tax exemption for child due support.

1 Unless otherwise agreed to by the parties, the court
2 shall allocate the right to claim dependent children for
3 income tax purposes to the custodial parent except in
4 cases of shared custody. In shared custody cases, these
5 rights shall be allocated between the parties in propor-
6 tion to their adjusted gross incomes for child support
7 calculations. In a situation where allocation would be of
8 no tax benefit to a party, the court or master need make
9 no allocation to that party.

§48A-1B-13. Indebtedness.

1 The term "indebtedness" means any legal or contrac-
2 tual obligation incurred as follows:

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

5 (2) For the purpose of acquisitions or additions to or
6 additions intended to add to the value of marital prop-
7 erty of the parties as defined in section one, article two,
8 chapter forty-eight of this code.

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

§48A-1B-14. Disregard of formula.

1 (a) If the court or master finds that the guidelines are
2 inappropriate in a specific case, the court or master may
3 either disregard the guidelines or adjust the guidelines-
4 based award to accommodate the needs of the child or
5 children or the circumstances of the parent or parents.
6 In either case, the reason for the deviation and the

7 amount of the calculated guidelines award must be
8 stated on the record (preferably in writing on the work-
9 sheet or in the order). Such findings clarify the basis of
10 the order if appealed or modified in the future.

11 (b) These guidelines do not take into account the
12 economic impact of the following factors and can be
13 possible reasons for deviation:

14 (1) Special needs of the child or support obligor;

15 (2) Educational expenses for the child or the parent
16 (i.e. those incurred for private, parochial, or trade
17 schools, other secondary schools, or post-secondary
18 education where there is tuition or costs beyond state
19 and local tax contributions);

20 (3) Families with more than six children;

21 (4) Long distance visitation costs; or

22 (5) The child resides with third party.

§48A-1B-15. Present income as monthly amounts.

1 To the extent practicable, all information relating to
2 income shall be presented to the court or master based
3 on monthly amounts. For example, when a party is paid
4 wages weekly, the pay should be multiplied by fifty-two
5 and divided by twelve to arrive at a correct monthly
6 amount. If the court or master deems appropriate, such
7 information may be presented in such other forms as the
8 court or master directs.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

**§48A-4-1. Appointment of family law masters; term of office;
vacancy; removal.**

1 (a) The family law masters holding office on the
2 effective date of this section by virtue of appointments
3 made under the prior enactments of this article shall
4 continue their service for a term of office ending on the
5 thirtieth day of June, one thousand nine hundred ninety-
6 eight. Before the first day of July, one thousand nine
7 hundred ninety-eight, the governor shall appoint family

8 law masters in such numbers and to serve from geo-
9 graphical regions of the state as provided for under the
10 provisions of section four of this article, with terms
11 commencing on the first day of July, one thousand nine
12 hundred ninety-eight, and on a like date in every fourth
13 year thereafter, and ending on the thirtieth day of June,
14 two thousand two, and on a like date in every fourth year
15 thereafter. Upon the expiration of his or her term, a
16 family law master may continue to perform the duties of
17 the office until the governor makes the appointment, or
18 for sixty days after the date of the expiration of the
19 master's term, whichever is earlier. If a vacancy occurs
20 in the office of family law master, the governor shall,
21 within thirty days after such vacancy occurs, fill the
22 vacancy by appointment for the unexpired term: *Pro-*
23 *vided*, That if the remaining portion of the unexpired
24 term to be filled is less than one year, the governor may,
25 in his or her discretion, simultaneously appoint an
26 individual to the unexpired term and to the next suc-
27 ceeding full four-year term.

28 (b) An individual may be reappointed to succeeding
29 terms as a family law master to serve in the same or a
30 different region of the state.

31 (c) Removal of a master during the term for which he
32 or she is appointed shall be as follows:

33 (1) Upon a recommendation by the judicial hearing
34 board created pursuant to the rules of procedure for the
35 handling of complaints against justices, judges, magis-
36 trates and family law masters, if the supreme court of
37 appeals shall find that a family law master has violated
38 the judicial code of ethics or that the master, because of
39 advancing years and attendant physical or mental
40 incapacity, should not continue to serve, the supreme
41 court of appeals may, in lieu of or in addition to any
42 disposition authorized by such rules, remove the family
43 law master from office; and

44 (2) The supreme court of appeals may remove a master
45 when conduct of the family law master evidences incom-

46 petence, unsatisfactory performance, misconduct,
47 neglect of duty or physical or mental disability.

§48A-4-4. Assignment of family law masters by geographical regions.

1 (a) On and after the first day of July, one thousand nine
2 hundred ninety-four, there shall be a total of twenty-six
3 family law masters, not more than fourteen of whom
4 shall be full-time masters, to serve throughout the state.
5 During the year immediately preceding the appointment
6 of law masters as provided for in section one of this
7 article, the supreme court of appeals shall apportion the
8 state into geographical regions which may be single-
9 master regions or multi-master regions, or a combination
10 of both. County boundaries shall be strictly observed
11 and no county may be divided among two or more
12 regions. Otherwise, in making such apportionment, the
13 supreme court of appeals shall construct regions which
14 provide, as nearly as is practicable, for the caseload of
15 each master to be equal to that of other masters. Mathe-
16 matical exactness as to caseload is not required and
17 deviations from an absolute standard may be based upon
18 concerns, other than caseload, including, but not limited
19 to, deviations dictated by the following considerations:

20 (1) Judicial circuits;

21 (2) Geographical features which affect the time and
22 expense of travel;

23 (3) Traditional patterns of practice by members of the
24 bar; and

25 (4) Population variances between regions.

26 (b) In the region that includes Kanawha county, of the
27 masters appointed, not less than two shall be part-time
28 masters.

29 (c) Notwithstanding the provisions of subsection (a) of
30 this section, for the time period extending from the first
31 day of August, one thousand nine hundred ninety-six,
32 until the thirtieth day of June, one thousand nine hun-

33 dred ninety-eight, there shall temporarily be a total of
34 twenty-seven family law masters, not more than fourteen
35 of whom shall be full-time masters, to serve throughout
36 the state, and the additional part-time position of family
37 law master created by this subsection shall be assigned
38 to the region that includes Marshall county.

39 (d) Nothing contained herein shall prohibit the chief
40 justice of the supreme court of appeals from temporarily
41 assigning a family law master from one geographical
42 region to another geographical region, as caseload,
43 disqualification, recusal, vacation or illness may dictate.

44 (e) The administrative office of the supreme court shall
45 promulgate any procedural rule necessary to delineate
46 the duties of the part-time and full-time law masters
47 consistent with this article.

§48A-4-20. Circuit court review of master's recommended order.

1 (a) The circuit court shall proceed to a review of the
2 recommended order of the master when:

3 (1) No petition has been filed within the time allowed,
4 or the parties have expressly waived the right to file a
5 petition;

6 (2) A petition and an answer in opposition have been
7 filed, or the time for filing an answer in opposition has
8 expired, or the parties have expressly waived the right to
9 file an answer in opposition, as the case may be.

10 (b) To the extent necessary for decision and when
11 presented, the circuit court shall decide all relevant
12 questions of law, interpret constitutional and statutory
13 provisions and determine the appropriateness of the
14 terms of the recommended order of the master.

15 (c) The circuit court shall examine the recommended
16 order of the master, along with the findings and conclu-
17 sions of the master, and may enter the recommended
18 order, may recommit the case, with instructions, for
19 further hearing before the master or may, in its discre-

20 tion, enter an order upon different terms, as the ends of
21 justice may require. Conclusions of law of the family
22 law master shall be subject to review by the circuit
23 court. The circuit court shall not follow the recommen-
24 dation, findings and conclusions of a master found to be:

25 (1) Arbitrary, capricious, an abuse of discretion or
26 otherwise not in conformance with the law;

27 (2) Contrary to constitutional right, power, privilege or
28 immunity;

29 (3) In excess of statutory jurisdiction, authority or
30 limitations or short of statutory right;

31 (4) Without observance of procedure required by law;

32 (5) Unsupported by substantial evidence; or

33 (6) Unwarranted by the facts.

34 (d) In making its determinations under this section, the
35 circuit court shall review the whole record or those parts
36 of it cited by a party. If the circuit court finds that a
37 master's recommended order is deficient as to matters
38 which might be affected by evidence not considered or
39 inadequately developed in the master's recommended
40 order, the court may recommit the recommended order
41 to the master, with instructions indicating the court's
42 opinion, or the circuit court may proceed to take such
43 evidence without recommitting the matter.

44 (e) The order of the circuit court entered pursuant to
45 the provisions of subsection (d) of this section shall be
46 entered not later than ten days after the time for filing
47 pleadings or briefs has expired or after the filing of a
48 notice or notices waiving the right to file such pleading
49 or brief.

50 (f) If a case is recommitted by the circuit court, the
51 master shall retry the matter within twenty days.

52 (g) At the time a case is recommitted, the circuit court
53 shall enter appropriate temporary orders awarding
54 custody, visitation, child support, spousal support or

55 such other temporary relief as the circumstances of the
56 parties may require.

§48A-4-23. Family law masters fund.

1 The office and the clerks of the circuit courts shall, on
2 or before the tenth day of each month, transmit all fees
3 and costs received for the services of the office under
4 this chapter to the state treasurer for deposit in the state
5 treasury to the credit of a special revenue fund to be
6 known as the “family law masters fund”, which is hereby
7 created. All moneys collected and received under this
8 chapter and paid into the state treasury and credited to
9 the “family law masters fund” shall be used by the
10 administrative office of the supreme court of appeals
11 solely for paying the costs associated with the duties
12 imposed upon the family law masters under the provi-
13 sions of this chapter which require activities by the
14 masters which are not subject to being matched with
15 federal funds or subject to reimbursement by the federal
16 government. Such moneys shall not be treated by the
17 auditor and treasurer as part of the general revenue of
18 the state.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

1 (a) The clerk of a circuit court shall charge and collect
2 for services rendered as such clerk the following fees,
3 and such fees shall be paid in advance by the parties for
4 whom such services are to be rendered:

5 For instituting any civil action under the rules of civil
6 procedure, any statutory summary proceeding, any
7 extraordinary remedy, the docketing of civil appeals, or
8 any other action, cause, suit or proceeding, seventy-five
9 dollars: *Provided*, That the fee for instituting an action
10 for divorce shall be one hundred five dollars.

11 (b) In addition to the foregoing fees, the following fees

12 shall likewise be charged and collected:

13 (1) For preparing an abstract of judgment, five dollars;

14 (2) For any transcript, copy or paper made by the clerk
15 for use in any other court or otherwise to go out of the
16 office, for each page, fifty cents;

17 (3) For action on suggestion, ten dollars;

18 (4) For issuing an execution, ten dollars;

19 (5) For issuing or renewing a suggestee execution,
20 including copies, postage, registered or certified mail
21 fees and the fee provided by section four, article five-a,
22 chapter thirty-eight of this code, three dollars;

23 (6) For vacation or modification of a suggestee execu-
24 tion, one dollar;

25 (7) For docketing and issuing an execution on a
26 transcript of judgment from magistrate's court, three
27 dollars;

28 (8) For arranging the papers in a certified question,
29 writ of error, appeal or removal to any other court, five
30 dollars;

31 (9) For postage and express and for sending or receiv-
32 ing decrees, orders or records, by mail or express, three
33 times the amount of the postage or express charges;

34 (10) For each subpoena, on the part of either plaintiff
35 or defendant, to be paid by the party requesting the
36 same, fifty cents;

37 (11) For additional service (plaintiff or appellant)
38 where any case remains on the docket longer than three
39 years, for each additional year or part year, twenty
40 dollars.

41 (c) The clerk shall tax the following fees for services in
42 any criminal case against any defendant convicted in
43 such court:

44 (1) In the case of any misdemeanor, fifty-five dollars;

45 (2) In the case of any felony, sixty-five dollars.

46 (d) No such clerk shall be required to handle or accept
47 for disbursement any fees, cost or amounts, of any other
48 officer or party not payable into the county treasury,
49 except it be on order of the court or in compliance with
50 the provisions of law governing such fees, costs or
51 accounts.

**§59-1-28a. Disposition of filing fees in divorce and other civil
actions and fees for services in criminal cases.**

1 (a) Except for those payments to be made from
2 amounts equaling filing fees received for the institution
3 of divorce actions as prescribed in subsection (b) of this
4 section, for each civil action instituted under the rules of
5 civil procedure, any statutory summary proceeding, any
6 extraordinary remedy, the docketing of civil appeals, or
7 any other action, cause, suit or proceeding in the circuit
8 court, the clerk of the court shall, at the end of each
9 month, pay into the funds or accounts described in this
10 subsection an amount equal to the amount set forth in
11 this subsection of every filing fee received for instituting
12 such action as follows:

13 (1) Into the regional jail and correctional facility
14 development fund in the state treasury established
15 pursuant to the provisions of section ten, article twenty,
16 chapter thirty-one of this code, the amount of sixty
17 dollars;

18 (2) Into the court security fund in the state treasury
19 established pursuant to the provisions of section four-
20 teen, article three, chapter fifty-one of this code, the
21 amount of five dollars.

22 (b) For each divorce action instituted in the circuit
23 court, the clerk of the court shall, at the end of each
24 month, pay into the funds or accounts in this subsection
25 an amount equal to the amount set forth in this subsec-
26 tion of every filing fee received for instituting such
27 divorce action as follows:

28 (1) Into the regional jail and correctional facility
29 development fund in the state treasury established
30 pursuant to the provisions of section ten, article twenty,
31 chapter thirty-one of this code, the amount of ten
32 dollars;

33 (2) Into the special revenue account of the state
34 treasury, established pursuant to section twenty-four,
35 article one, chapter forty-eight of this code, an amount
36 of thirty dollars;

37 (3) Into the family law masters fund in the state
38 treasury, established pursuant to section twenty-three,
39 article four, chapter forty-eight-a of this code, an
40 amount of fifty dollars; and

41 (4) Into the court security fund in the state treasury
42 established pursuant to the provisions of section four-
43 teen, article three, chapter fifty-one of this code, the
44 amount of five dollars.

45 (c) The clerk of each circuit court shall, at the end of
46 each month, pay into the regional jail and prison devel-
47 opment fund in the state treasury an amount equal to
48 forty dollars of every fee for service received in any
49 criminal case against any defendant convicted in such
50 court and shall pay an amount equal to five dollars of
51 every such fee into the court security fund in the state
52 treasury established pursuant to the provisions of section
53 fourteen, article three, chapter fifty-one of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

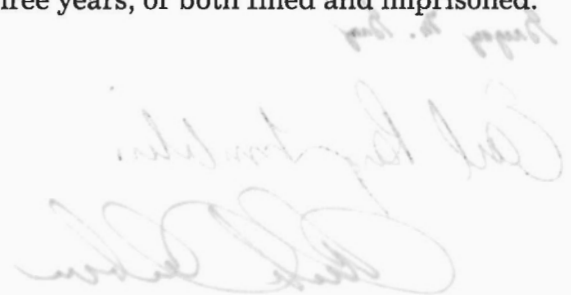
ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-29. Failure to meet an obligation to provide support to a minor; penalties.

1 (1) A person who: (a) Persistently fails to provide
2 support which he or she can reasonably provide and
3 which he or she knows he or she has a duty to provide to
4 a minor; or (b) is subject to court order to pay any
5 amount for the support of a minor child and is delin-
6 quent in meeting the full obligation established by the

7 order and has been delinquent for a period of at least six
8 months' duration, is guilty of a misdemeanor, and, upon
9 conviction thereof, shall be fined not less than one
10 hundred dollars nor more than one thousand dollars, or
11 imprisoned in the county jail for not more than one year,
12 or both fined and imprisoned.

13 (2) A person who persistently fails to provide support
14 which he or she can reasonably provide and which he or
15 she knows he or she has a duty to provide to a minor by
16 virtue of a court or administrative order and the failure
17 results in: (a) An arrearage of not less than eight thou-
18 sand dollars; or (b) twelve consecutive months without
19 payment of support, is guilty of a felony, and, upon
20 conviction thereof, shall be fined not less than one
21 hundred dollars nor more than one thousand dollars, or
22 imprisoned for not less than one year nor more than
23 three years, or both fined and imprisoned.



That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schoonover
.....
Chairman Senate Committee

Randy Seacrest
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell White
.....
Clerk of the Senate

Gregory M. Day
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Paul E. Barber
.....
Speaker House of Delegates

The within *is approved* this the *1st*
day of *April*, 1996.

Gaston Caputo
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/22/96

Time 2:57 pm