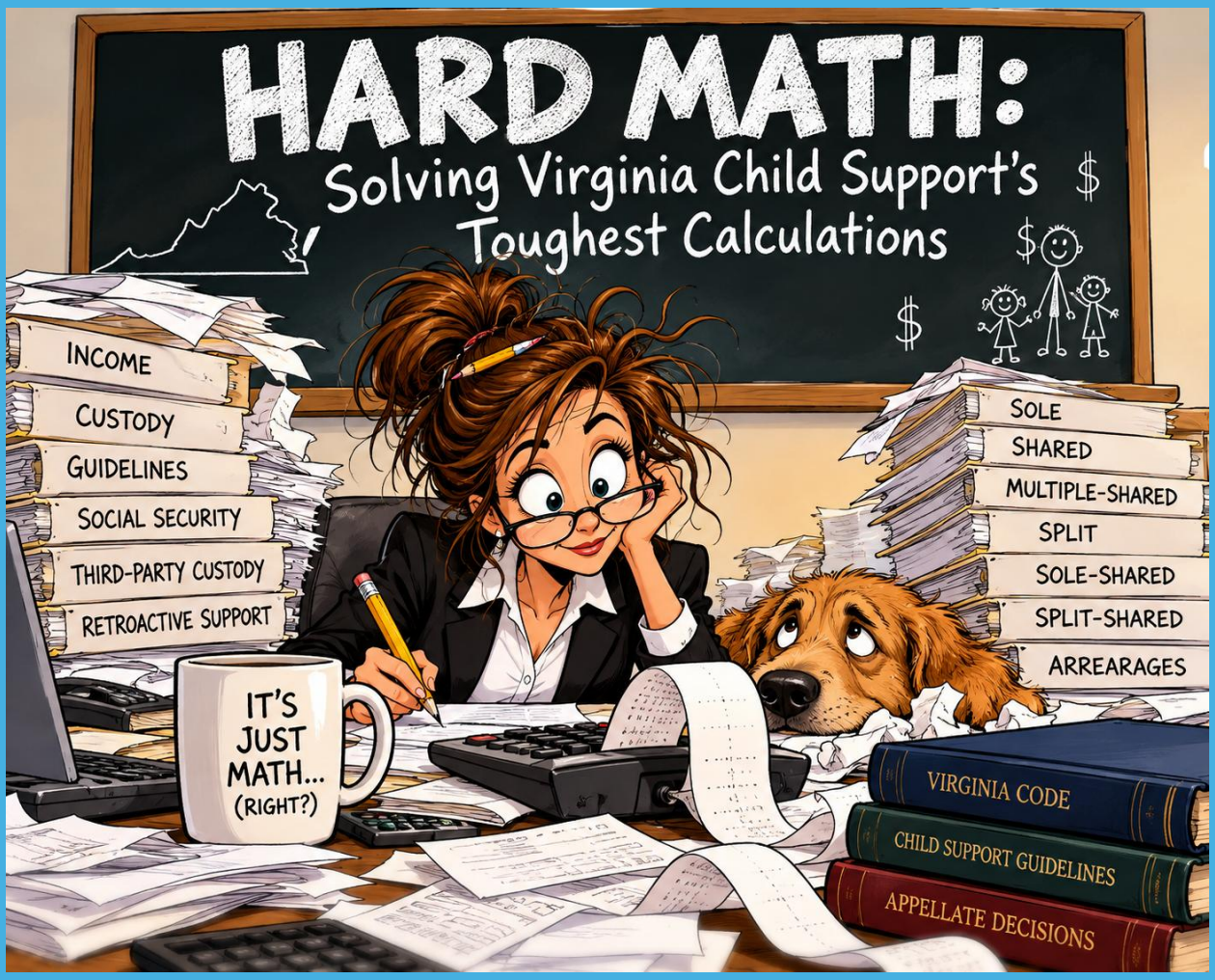

1.5-hour CLE

Virginia Beach Bar Association's Juvenile Court Liaison Committee

Time: 12:00 to 1:30
October 30, 2026
Virginia Beach Law Library

CLE Title: Hard Math: Solving Virginia Child Support's Toughest Calculations

Bio:

Mitchell D. Broudy is a Senior Assistant Attorney General in the Eastern Virginia Regional Legal Division, specializing in child support enforcement. He has practiced law in Virginia since 1985.

He holds a B.A. in Political Science from James Madison University, a J.D. from Mercer University, and an M.P.A. from Old Dominion University. Before joining the Attorney General's Office in 2001, he served as an Assistant Commonwealth's Attorney and as a Partner at Broudy & Broudy, P.C.

Mr. Broudy has chaired the Virginia State Bar Family Law Section Board of Governors and the Virginia Beach Bar Association's Juvenile Court Liaison Committee. He also contributes to interagency efforts to improve mediators' child support calculations and helped draft Virginia's complex child support guidelines.

His work has been recognized with the 2021 Governor's Honor Award for Innovative Spirit, the 2021 Governor's Award for Excellence in Service to the Commonwealth, and the Virginia State Bar's 2018 Family Law Service Award.

CLE Description:

Hard Math: Solving Virginia Child Support's Toughest Calculations is a practical CLE focused on some of the most difficult mathematical issues arising under the Virginia Child Support Guidelines. The program examines fluctuating income, Social Security benefits, sole, shared, multiple-shared, split, sole-shared and split-shared custody calculations, third-party custody, and retroactive support and arrearages. Virginia statutes and appellate decisions are integrated throughout, with an emphasis on selecting the correct numbers, time periods, expenses, custody structure, and statutory formula before performing the calculation. The central lesson is simple: the arithmetic can be perfectly correct and the child support calculation can still be wrong.

Module 1 — Fluctuating Income

The Mortgage Broker: Which Income Number Do You Use?

Michael is a residential mortgage broker whose compensation consists primarily of commissions. His earnings rise and fall with the mortgage market. When mortgage rates are low and refinancing and home-purchase activity are strong, Michael earns substantially more. When rates rise and mortgage activity slows, his commissions decline. His reported gross income for the last five years was $325,000 in 2021, $225,000 in 2022, $115,000 in 2023, $105,000 in 2024, and $135,000 in 2025.

Michael is now before the court for a child-support determination in September 2026. His most recent pay stub, for the pay period ending September 18, 2026, shows year-to-date gross income of $46,890.62. The question sounds simple: What monthly income should the court use for Michael?

Start With the Statute

Under Va. Code § 20-108.2(C), the presumptive guideline begins with the parents' gross income, broadly defined as “all income from all sources.” That includes commissions. The objective at the presumptive-guideline stage is to determine Michael's actual current gross income, not simply to select the highest, lowest, or average income figure appearing in his earnings history.

The difficulty is that Michael does not receive the same amount every month. With fluctuating commission income, the lawyer must determine what period of earnings provides the most reliable measure of current income.

Method One — Annualize the 2026 Year-to-Date Income

Michael's September 18 pay stub shows $46,890.62 year to date. September 18 is the 261st day of 2026. Annualizing that figure produces approximately $65,575 per year, or $5,464.58 per month.

That calculation is mathematically correct. But is it the correct measure of Michael's current income?

If Michael's commissions have been relatively consistent throughout 2026, annualizing his year-to-date earnings may provide a reasonable estimate. But suppose the evidence shows that mortgage activity recently increased and Michael's commissions have risen substantially during the last several months. The year-to-date calculation would continue

to carry forward the unusually weak income from the beginning of the year and could therefore understate what Michael is currently earning.

The lesson is important: year-to-date income is a method of determining current income; it is not automatically the answer.

Method Two — Average the Five Years

Another lawyer might look at Michael's dramatic income fluctuations and average the five completed years. His earnings from 2021 through 2025 total $905,000. Dividing by five produces average annual income of $181,000, or $15,083.33 per month.

Again, the arithmetic is easy. The legal problem is whether that historical average represents Michael's actual current income.

In Tidwell v. Late, 67 Va. App. 668, 799 S.E.2d 696 (2017), the Court of Appeals rejected the use of an historical income average as a substitute for a parent's known current income in calculating the presumptive guideline. The guideline calculation under § 20-108.2 begins with actual gross income. Evidence of prior earnings may remain highly relevant, but it cannot simply replace reliable evidence of what the parent is presently earning.

Applied here, averaging Michael's extraordinary 2021 and 2022 earnings with his much lower recent earnings could produce a number that describes Michael's past, rather than his present financial circumstances.

Method Three — Use a Representative Current Period

There is another possibility. Suppose Michael's most recent commission statements show that his income has materially increased during the last six months. Counsel could argue that a sufficiently long and representative period of recent earnings provides a better measure of Michael's current commission income than either the full 2026 year-to-date figure or a five-year historical average.

Ranghelli v. Ranghelli, Record No. 1766-18-4 (Va. Ct. App. May 7, 2019) (unpublished) is useful for illustrating the distinction. The parent was a commission salesperson, and the trial court averaged approximately 26 weeks of current pay information, rather than relying upon an earlier period of unemployment. The Court of Appeals affirmed. Although Ranghelli is unpublished, it illustrates an important difference from Tidwell: averaging current fluctuating earnings to determine current income is different from averaging historical income to replace known current income.

The length of the averaging period matters. One unusually large commission check should not necessarily be multiplied by twelve and called annual income. Conversely, a year-to-

date figure may cease to be representative when the evidence demonstrates a significant and sustained change in earnings. The appropriate period should be long enough to smooth ordinary commission fluctuations but recent enough to reflect the parent's present earning circumstances.

What Role Does Michael's Five-Year History Play?

Michael's historical earnings are not irrelevant merely because they should not automatically be averaged into the presumptive guideline. They may raise a different question: Why is Michael earning so much less now than he earned before?

If Michael is genuinely earning less because the mortgage market deteriorated, the evidence may support his lower current income. But suppose Michael voluntarily reduced his workload, stopped pursuing available business, or otherwise chose to earn substantially less despite having the ability and opportunity to earn more. That moves the analysis beyond determining actual income under § 20-108.2 and into the deviation provisions of Va. Code § 20-108.1(B).

Under § 20-108.1(B)(3), the court may consider imputed income to a party who is voluntarily unemployed or voluntarily underemployed. Separately, § 20-108.1(B)(11) permits consideration of the parties' earning capacity, obligations, financial resources, and special needs. The court should first calculate the presumptive guideline using the income properly determined under § 20-108.2 and then determine whether the evidence supports a deviation under § 20-108.1.

This distinction is central to Tidwell. Historical earnings may be relevant evidence of earning capacity, even when they cannot simply be substituted for actual current income in the presumptive guideline.

Judge's Challenge

Assume Michael argues that the court must use $5,464.58 per month because that is what his September 18 year-to-date pay stub annualizes to. Mother argues that the court should use the five-year average of $15,083.33 per month because Michael's income fluctuates.

Which one is correct?

Potentially, neither. The court's task is not to choose mechanically between YTD income and a historical average. It is to determine Michael's actual current gross income from the most reliable evidence available. If his recent commissions demonstrate a sustained increase, a representative recent period may better measure current income. If the lower 2026 income accurately reflects the current mortgage market, the year-to-date evidence

may be more persuasive. And if Michael is voluntarily earning below his capacity, that presents a separate deviation issue under § 20-108.1(B).

Find the Mistake

The lawyer adds Michael's five annual income figures, divides by five, divides again by twelve, and tells the judge:

“Michael's guideline income is $15,083.33 per month because averaging is the fairest way to deal with fluctuating income.”

The math is perfect.

The mistake is assuming that because the income fluctuates, historical averaging automatically determines gross income under § 20-108.2(C). Under Tidwell, historical income cannot simply replace reliable evidence of current actual income. The lawyer must first determine Michael's current income. Historical earnings may then become relevant to whether a deviation based on voluntary underemployment or earning capacity is warranted under § 20-108.1(B).

Module 1 Takeaway

With fluctuating income, do not start by asking what averaging formula to use. Start by asking what period most accurately establishes the parent's current gross income. Year-to-date income may be appropriate, but it can become misleading when earnings have materially changed during the year. A representative period of recent earnings may sometimes provide the better measure. Historical earnings remain important, but ordinarily they should not be substituted for known current income merely because averaging produces a smoother number.

The central teaching point is:

THE ARITHMETIC MAY BE PERFECTLY CORRECT WHILE THE AVERAGING PERIOD MAKES THE ANSWER WRONG.

And keep the two stages separate:

CURRENT ACTUAL INCOME → § 20-108.2

IMPUTATION / EARNING CAPACITY / DEVIATION → § 20-108.1(B)

Module 2 — Social Security Benefits

Identify the Benefit Before You Do the Math

Social Security benefits are not all treated alike under the Virginia child-support guidelines. Under Va. Code § 20-108.2(C), gross income generally includes Social Security and disability insurance benefits, while federal Supplemental Security Income ("SSI") is expressly excluded. The statute also provides a specific method for benefits paid to a child because of a parent's disability. When a parent's gross income includes disability insurance benefits, it also includes amounts paid to or for the child that are derived from that parent's disability entitlement. To the extent those derivative benefits are included in the parent's gross income, that parent receives a credit against his or her ongoing basic child-support obligation. The first questions should therefore be: What is the benefit? Whose Social Security record generated it? Who receives it?

The Basic Derivative-Benefit Calculation

Assume Father is the noncustodial parent. He receives $2,600 per month in SSDI and earns another $1,400 per month from employment. Mother earns $5,200 per month. Their 15-year-old son, Michael, receives an $850 monthly derivative Social Security benefit based upon Father's disability.

Under § 20-108.2(C), Michael's $850 derivative benefit is included in Father's gross income because it is derived from Father's disability entitlement. Father's guideline income is therefore $4,850 per month: $2,600 SSDI + $1,400 employment income + $850 derivative benefit. The presumptive guideline is calculated using that income, and Father then receives an $850 credit against his basic child-support obligation.

The calculation is:

ADD → CALCULATE → CREDIT.

In Whitaker v. Colbert, 18 Va. App. 202, 442 S.E.2d 429 (1994), the Court of Appeals explained that a child's derivative disability benefit arises from the disabled parent's employment record and serves, in part, as a substitute for the parent's lost earning ability. The current language of § 20-108.2(C) expressly provides the inclusion-and-credit methodology.

Who Receives the Child's Benefit?

In the ordinary case, Mother, as the custodial parent, receives Michael's $850 derivative benefit. Because the benefit derives from Father's disability entitlement, § 20-108.2(C)

includes it in Father's gross income. The guideline is calculated, and Father receives the statutory credit.

But change one fact. Suppose Father, the noncustodial parent, is Michael's representative payee and actually receives the $850 derivative benefit himself. Section 20-108.2(C) addresses amounts “paid to or for the child” that are derived from the parent's disability entitlement. The credit should not be applied mechanically without determining whether the $850 is actually being used for Michael's support. Otherwise, Father could retain the $850 while also reducing the support paid to Mother by $850, leaving the custodial household without either amount. Counsel should determine where the child's money is going and whether Father is using it for Michael's expenses, such as work-related child care or health insurance, while also avoiding any double credit for expenses already included in the guideline.

Reverse the Parents

Now reverse the facts. Suppose Mother is the disabled custodial parent, and Michael receives an $850 derivative benefit generated by Mother's Social Security disability entitlement. Father is the noncustodial parent and owes support.

Under § 20-108.2(C), the derivative benefit is included in Mother's gross income because it is “derived by the child from the parent's entitlement to disability insurance benefits.” The statute then provides that, to the extent those derivative benefits are included in a parent's gross income, “that parent shall be entitled to a credit” against his or her ongoing basic child-support obligation.

Accordingly, Father does not receive an $850 credit merely because Michael receives a Social Security benefit. The benefit is included in Mother's income, and the statutory credit belongs to Mother, the parent whose disability entitlement generated the benefit.

Teaching point: The derivative benefit and the corresponding credit follow the disabled parent whose Social Security entitlement generated the benefit—not whichever parent happens to owe support.

When the Derivative Benefit Exceeds Support

Suppose Father's basic child-support obligation is $600 per month, while Michael receives an $850 monthly derivative benefit based upon Father's disability. The derivative benefit satisfies Father's $600 basic obligation, leaving an excess of $250.

Under § 20-108.2(C), the excess may be applied to child-support arrearages. Commonwealth v. Skeens, 18 Va. App. 154, 442 S.E.2d 432 (1994) likewise recognizes the court's authority, under equitable principles, to credit derivative Social Security disability benefits against accumulated child-support arrears.

There is a stopping point. In Mosley v. Mosley, 30 Va. App. 733, 519 S.E.2d 403 (1999), the Court held that excess dependent Social Security disability benefits could not be used to satisfy the parent's spousal-support arrearage or equitable-distribution obligation. The child's benefit does not become a general credit against the parent's other debts.

The complete sequence is:

ADD → CALCULATE → CREDIT → CHECK CHILD-SUPPORT ARREARS → STOP.

Michael Returns — “It's SSI”

Fast forward. Michael suffered a serious workplace injury at age 19 that left him disabled. Years later, Michael has a child of his own and appears before the court concerning his own child-support obligation. Michael reports $1,200 per month in employment income and $1,800 per month that he calls “SSI.” He tells the court, “It's SSI, so it doesn't count.”

That should raise red flags. Michael's claimed benefit is unusually large for SSI; his disability began before age 22; his father received SSDI; Michael previously received a Social Security benefit based upon Father's record; and no one has obtained Michael's Social Security award or benefit-verification letter.

The Social Security documentation reveals that Michael is not receiving SSI. He receives Disabled Adult Child (“DAC”) benefits based upon his father's Social Security earnings record. Federal authority for DAC benefits includes 42 U.S.C. § 402(d) and 20 C.F.R. § 404.350. A qualifying disability generally must have begun before age 22. Michael's injury at age 19 therefore supplies an important eligibility fact; the injury itself does not create the DAC entitlement.

DAC is a Title II Social Security benefit, not SSI. Under § 20-108.2(C), Michael's monthly gross income therefore includes his $1,200 employment income plus his $1,800 DAC benefit, for total gross income of $3,000 per month.

Teaching point: Don't accept the label. Identify the benefit.

What If It Really Is SSI?

If Michael actually receives Supplemental Security Income, the result is different. Va. Code § 20-108.2(C) expressly excludes federal SSI benefits from gross income. In Bennett v. Commonwealth, Department of Social Services, 22 Va. App. 684, 472 S.E.2d 668 (1996), the Court distinguished SSI from derivative Social Security disability benefits. SSI does not derive from a parent's employment record and therefore does not generate the same derivative-benefit credit.

Likewise, in Humphries v. Buchanan, 80 Va. App. 774, 900 S.E.2d 550 (2024) (en banc), the Court held that a disabled adult child's SSI could not be treated as an "independent financial resource" under Va. Code § 20-108.1(B)(9) to reduce the parent's support obligation.

SSI and the Minimum Support Obligation

SSI raises one additional issue. Although § 20-108.2(C) excludes SSI from gross income, counsel should also check § 20-108.2(B) before imposing the presumptive minimum child-support obligation. Subsection (B) provides an exception for a parent who lacks sufficient assets to pay support and is medically verified to be totally and permanently disabled with no evidence of a potential for paying child support, including an SSI recipient. Thus, SSI does not automatically mean zero support, but an otherwise qualifying SSI recipient may be exempt from the presumptive minimum.

Teaching point: SSI → EXCLUDE FROM INCOME → CHECK THE § 20-108.2(B) MINIMUM-SUPPORT EXCEPTION.

Lump-Sum Social Security Awards

Finally, suppose Social Security makes a retroactive lump-sum derivative payment. Michael receives $10,200 representing twelve months of $850 derivative benefits. Counsel should determine what months the award covers rather than treating the entire $10,200 as income or a credit arising in the month the check was received.

Under Skeens, derivative Social Security disability benefits may be credited against child-support arrearages, subject to the equitable circumstances of the case. Patton v. Patton, Record No. 1851-96-4 (Va. Ct. App. July 1, 1997) (unpublished) may be used as an illustration involving a lump-sum Social Security disability payment. Mosley supplies the

boundary: an excess child-related Social Security benefit does not become a credit against spousal support, equitable distribution, or other unrelated obligations.

Module 2 Takeaway

The arithmetic in Social Security cases is usually not the difficult part. Identifying the benefit is. Before completing the guideline, determine what benefit is being paid, whose Social Security record generated it, who receives it, and what period it covers. Obtain the Social Security award or benefit-verification letter rather than relying on what the party calls the benefit.

For derivative disability benefits:

ADD → CALCULATE → CREDIT → CHECK CHILD-SUPPORT ARREARS → STOP.

For SSI:

EXCLUDE FROM INCOME → CHECK THE MINIMUM-SUPPORT EXCEPTION.

And whenever a party says, “It's SSI,” the practical response is:

“Show me the Social Security letter.”

Module 3 — Shared and Multiple-Shared Custody: From Counting Days to the Final Number

Primary Authority: Va. Code § 20-108.2(G)(3) and (4)

Shared custody presents two mathematical questions: **How many custody days does each parent have, and what do those days do to the support calculation?** Multiple-shared custody uses the same basic framework but adjusts the custody share when shared children have different schedules.

1. Count the Days Before Doing the Math

Shared custody applies when a parent has custody or visitation for **more than 90 days per year**. Section 20-108.2(G)(3) bases the custody share on actual or anticipated physical custody over a one-year period and provides the statutory rules for determining what constitutes a day.

The practical method is:

START WITH THE ORDER → BUILD THE CALENDAR → OVERLAY HOLIDAYS AND BREAKS → REMOVE OVERLAPS → COUNT EACH DAY ONCE.

An overnight does not automatically equal one statutory day. *Ewing v. Ewing*, 21 Va. App. 34, 461 S.E.2d 417 (1995) (en banc), addresses the statutory meaning of a day. In *Gaione v. Gaione*, Record No. 1315-02-2 (Va. Ct. App. Nov. 19, 2002) (unpublished), Father claimed 114 days, but application of the statutory day-counting rules produced only 77.

A useful screening device is the **25% Eyeball Test**. Ninety days is approximately 25% of the year. If the schedule is anywhere near that line, stop estimating and construct the calendar.

90 DAYS OR LESS → SOLE. MORE THAN 90 DAYS → SHARED.

2. Understand What the Shared Calculation Is Doing

Under § 20-108.2(G)(3), the basic support obligation attributable to the shared children is multiplied by **1.4** to determine the shared support need. The multiplier reflects the additional costs associated with supporting children in two households.

The easiest way to understand the remaining calculation is as **reciprocal reimbursement**. Each parent directly supports the children while they are in that parent's household, and the guideline determines the other parent's contribution based on income and custody shares. The reciprocal obligations are then offset.

This explains why **50/50 custody does not necessarily mean zero support**. If parenting time is equal but incomes are unequal, the higher-income parent may still owe support.

The same concept helps place qualifying child-care and health-care expenses correctly: identify **which household incurs the expense and how the statute allocates the other parent's contribution**.

SHARED CUSTODY = 1.4 SHARED SUPPORT NEED + RECIPROCAL CONTRIBUTIONS – OFFSET.

3. The Shared Number Does Not Always Control

Calculating the shared guideline is not necessarily the end of the analysis.

Lesser-Support Rule

Sections G(3)(a) and G(3)(f) should be read together.

If the sole and shared calculations identify the **same recipient**, compare the amounts. If the sole amount is affirmatively shown to be less, the lesser-support provision applies.

If the calculations identify **different recipients**, G(3)(f) provides that the shared amount is deemed the lesser support for purposes of the comparison.

SAME RECIPIENT → COMPARE THE DOLLARS.
DIFFERENT RECIPIENT → SHARED IS DEEMED LESSER.

As a practical mathematical shortcut, the lesser-support issue is principally worth watching when the parent with fewer days has approximately **91–104 days and a very high income share**. At approximately 105 days or more, the basic shared-support calculation ordinarily cannot exceed the corresponding sole amount. This is a mathematical shortcut, not a statutory rule, and additional expenses can affect the analysis.

Poverty Safeguard

Section G(3)(d) provides an additional safeguard when a parent's income is at or below **150% of the applicable federal poverty level**. In that circumstance, the shared calculation is not presumptively correct, and the court may consider whether the sole or shared result is more just and appropriate.

Milam v. Milam, 65 Va. App. 439, 778 S.E.2d 535 (2015), illustrates application of this protection where the shared calculation threatened the low-income parent's ability to maintain adequate housing and provide the children's basic necessities.

SHARED + VERY LOW INCOME → CHECK THE 150% POVERTY SAFEGUARD.

Section G(3)(e) also permits modification when a parent consistently fails to exercise the custody or visitation upon which the shared award was based.

4. Multiple-Shared Custody: Same Concept, Different Schedules

Section 20-108.2(G)(4) addresses the situation in which **multiple shared children have different custody schedules**.

Suppose Father has Anna for 120 days and Ben for 160 days. Rather than performing a separate shared calculation for each child, the multiple-shared guideline uses the average:

(120 + 160) ÷ 2 = 140 days.

The resulting custody share is then used in the shared-custody calculation.

SHARED: SAME SCHEDULE → USE THAT CUSTODY SHARE.
MULTIPLE-SHARED: DIFFERENT SCHEDULES → AVERAGE THE DAYS → RUN ONE SHARED CALCULATION.

The important point is that multiple-shared is **not per-child support math**. It is principally a method for determining the custody share when shared children have different schedules.

Takeaway

Shared custody requires the attorney to get several things right before trusting the calculator: **the days, the custody share, the 1.4 multiplier, the reciprocal obligations, and the statutory safeguards.** Multiple-shared simply adds an averaging step when the shared children have different schedules.

BUILD THE CALENDAR → DETERMINE THE CUSTODY SHARE → APPLY 1.4 → CALCULATE RECIPROCAL SUPPORT → CHECK THE STATUTORY SAFEGUARDS.

The calculator gives you a number. The statute tells you whether that number controls.

Module 4 — Split Custody: Two Family Units and Reciprocal Reimbursement

Primary Authority: Va. Code § 20-108.2(G)(2)

Split custody illustrates a recurring theme in child-support calculations: **the hard math is often not the arithmetic. It is knowing which numbers belong in the calculation and where they belong.** Under Virginia Code § 20-108.2(G)(2), split custody exists when each parent has physical custody of one or more of the parties' children. Each parent is therefore both a custodial parent and a noncustodial parent, depending upon which child is being considered. Two concepts make the calculation much easier to understand: **two family units** and **reciprocal reimbursement**.

Two Family Units

Assume Mother and Father have two children. Anna lives with Mother and Ben lives with Father. Mother earns $7,200 per month and Father earns $4,800, producing combined monthly gross income of $12,000. Mother has 60% of the combined income and Father has 40%.

For split-custody purposes, the children are separated into **two family units**. Anna constitutes Mother's family unit, while Ben constitutes Father's family unit. This determines which basic child support obligation from the statutory schedule applies to each side of the calculation.

At $12,000 combined monthly income, the basic child support obligation for two children is **$2,059**. But we do not divide $2,059 by two. Each family unit contains one child, and the statutory basic support obligation for one child at $12,000 combined income is **$1,420**. Accordingly, $1,420 is the basic support amount used for each family unit.

This is an important example of the hard-math theme. Dividing $2,059 by two would be simple arithmetic, but it would produce the wrong starting point because it misunderstands the statutory calculation.

TWO FAMILY UNITS ≠ DIVIDE THE TWO-CHILD GUIDELINE IN HALF.

Reciprocal Reimbursement — Look Across the Aisle

The second concept is **reciprocal reimbursement**. Mother directly supports Anna in Mother's household, so Father owes his proportionate contribution toward Anna's support. Father directly supports Ben in Father's household, so Mother owes her proportionate contribution toward Ben's support. Section 20-108.2(G)(2) calculates those two obligations and offsets one against the other.

This explains where the numbers belong. When calculating **Father's obligation**, look across the aisle to **Mother's family unit**—Anna and the qualifying expenses Mother pays for Anna. When calculating **Mother's obligation**, look across the aisle to **Father's family unit**—Ben and the qualifying expenses Father pays for Ben.

Suppose Mother pays $600 per month in qualifying work-related child care for Anna, while Father pays $200 per month for qualifying health-care coverage for Ben. Mother's $600 child-care expense belongs on the side of the calculation determining **Father's contribution toward Mother's family unit**. Father's $200 health-care expense belongs on the side determining **Mother's contribution toward Father's family unit**, with the applicable statutory treatment of a directly paid health-care expense.

After each parent's obligation toward the other parent's family unit is determined, the two obligations are offset. The parent owing the greater amount pays the difference.

A useful way to avoid putting the right number in the wrong place is:

DON'T FOLLOW THE COLUMN. FOLLOW THE MONEY.

Ask three questions: **Who is paying whom? Which child is the receiving parent supporting? Which qualifying expenses is the receiving parent paying?**

Why This Is "Hard Math"

The arithmetic in split custody is not particularly difficult. The challenge is correctly constructing the calculation.

An attorney can multiply every number correctly and still reach the wrong answer by using the $2,059 two-child guideline instead of recognizing two one-child family units. The attorney can correctly use the $1,420 one-child guideline and still reach the wrong answer by placing Anna, Ben, the $600 daycare expense, or the $200 health-care expense on the wrong side of the calculation.

That is precisely the theme running through this CLE:

THE ARITHMETIC CAN BE PERFECT AND THE ANSWER CAN STILL BE WRONG.

In fluctuating-income cases, the difficult question was which income figure belongs in the calculation. In shared custody, it was which days count and what the reciprocal calculation represents. In split custody, it is **which children and expenses belong in each family unit and which parent is contributing toward the other household**.

Feldman v. Feldman

Feldman v. Feldman, Record No. 0086-03-2 (Va. Ct. App. 2004) (unpublished), provides a useful illustration of the two-family-unit concept. The parties initially had split custody, with one child residing with each parent and their reciprocal support obligations being offset. When the child residing with Father later moved to Mother's household, the factual basis for the split-custody calculation disappeared and Father's child-support obligation increased.

Although *Feldman* is unpublished and should not be read as establishing the mechanics of § 20-108.2(G)(2), its facts illustrate the economic premise behind the statute. While there are two family units, each parent directly supports the child in that parent's household and the other parent contributes toward that support. When the children no longer reside in separate family units, the split-custody calculation no longer fits.

Takeaway

Split custody becomes much easier when the lawyer understands the structure before doing the arithmetic. First, identify the **two family units** and use the statutory basic support obligation applicable to the number of children in each unit. Second, think in terms of **reciprocal reimbursement**: look across the aisle to the child and qualifying expenses in the other parent's household. Finally, calculate the two obligations and offset them.

TWO FAMILY UNITS → LOOK ACROSS THE AISLE → OFFSET THE OBLIGATIONS.

The hard math is not multiplication. It is putting the right number in the right place.

Module 5 — Sole-Sharedand Split-SharedCustody:Per-Child Math

Primary Authority: Va. Code § 20-108.2(G)(5) and (6)

Sole-shared and split-shared custody involve children subject to different custody arrangements. Both guidelines solve that problem through **per-child math**: determine the basic child support obligation for all the parties' children, divide it by the number of children, allocate the resulting amount among the different custody arrangements, and then apply the appropriate custody formula.

PER-CHILD FIRST. CUSTODY FORMULA SECOND.

Sole-Shared: One Family Unit + Shared Children

Under § 20-108.2(G)(5), one parent has sole custody of one or more children while the parents share custody of one or more other children.

Suppose Anna lives primarily with Mother, while Ben and Claire are shared. If the basic support obligation for all three children is $3,000, the per-child amount is **$1,000**.

Anna's $1,000 is calculated under the **sole-custody guideline**. Ben and Claire's combined $2,000 is calculated under the **shared-custody guideline**, including the 1.4 shared-support multiplier and custody shares. The resulting obligations are then added or offset as required by the statute.

The important point is:

THE 1.4 MULTIPLIER APPLIES TO THE SHARED CHILDREN—not the entire three-child obligation.

Split-Shared: Two Family Units + Shared Children

Section 20-108.2(G)(6) is different. Each parent has sole custody of at least one child, and the parents share custody of at least one additional child.

Suppose Anna lives primarily with Mother, Ben lives primarily with Father, and Claire is shared. Using the same $3,000 basic obligation, each child is initially allocated **$1,000**. Anna and Ben constitute the **split-custody component**, so their combined $2,000 is processed under the split-custody provisions. Claire's $1,000 is the **shared-custody component** and is processed under the shared-custody provisions, including the 1.4 multiplier and custody shares. The resulting obligations are then added or offset.

The distinction from the previous module is critical:

SPLIT CUSTODY → TWO FAMILY UNITS.

SPLIT-SHARED → TWO FAMILY UNITS + SHARED CHILDREN + PER-CHILD MATH.

The Hard-Math Takeaway

The arithmetic is easy. The difficult part is **classifying the children before doing the arithmetic**. Do not independently look up a one-child obligation for one group and a two-child obligation for another. Sections G(5) and G(6) require us to begin with **all the children**, determine the per-child amount, and then apply the appropriate custody formula.

ALL CHILDREN → BASIC OBLIGATION → PER CHILD → CUSTODY FORMULA → ADD OR OFFSET

This is another example of our central theme:

THE ARITHMETIC CAN BE PERFECT AND THE ANSWER CAN STILL BE WRONG.

And it sets up the next guideline perfectly:

Do not carry this per-child method into multiple-shared custody. Multiple-shared uses different math.

Module 6 — Third-Party Custody:The CustodianIs Not Another Parent

Primary Authority: Va. Code §§ 20-108.1 and 20-108.2

Third-party custody changes **who cares for the child**, but it does not transform the custodian into another parent for purposes of calculating child support. The parents remain legally responsible for supporting their children. That distinction determines whose income is used, which expenses enter the presumptive guideline, and what happens when a parent also has physical custody of the children.

THE THIRD PARTY MAY RECEIVE SUPPORT WITHOUT BECOMING A PARENT FOR PURPOSES OF THE GUIDELINE.

1. Whose Income Counts?

Assume Grandmother Helen has custody of Anna and Ben. Mother, Emily, earns $12,000 per month, and Father, Paul, earns $9,500 per month.

The guideline calculation uses **Mother's and Father's incomes—not Helen's income**.

In *Russell v. Russell*, 35 Va. App. 360, 545 S.E.2d 548 (2001), the trial court included the incomes of the child's parents and grandparents when calculating support. The Court of Appeals reversed. Custody did not impose upon the grandparents the parents' legal obligation to support their child. The parents remained responsible for that support.

Helen may therefore receive and spend child support on behalf of the children without her income becoming part of the parents' combined gross income.

CUSTODY DOES NOT MAKE THE CUSTODIAN A THIRD PARENT.

2. Expenses Paid by the Third-Party Custodian: Daycare Is Different from Health Coverage

Excluding Helen's income does not mean expenses she incurs for the children are necessarily excluded. Virginia Code § 20-108.2 treats **work-related child care and health-care coverage differently**.

Suppose Helen works and pays **$1,000 per month in qualifying work-related daycare** for Anna and Ben. Section 20-108.2(F) provides for reasonable child-care costs incurred because of employment and speaks in terms of expenses incurred by the **custodial parent**. In the child-support context, a third-party physical custodian entitled to receive support on behalf of the children falls within the statutory concept of a custodial parent. Accordingly, Helen's qualifying work-related daycare is included in the **presumptive guideline calculation**, even though Helen's income is not.

Health-care coverage is different. Section 20-108.2(E) specifically provides for adding qualifying health-care coverage costs paid by **a parent or that parent's spouse**. It does not similarly provide for health-insurance premiums paid by a third-party custodian.

Thus, if Helen pays $300 per month to insure Anna and Ben through her employer, that $300 should not simply be inserted into the presumptive guideline as though Helen were a parent. Instead, the expense may be considered as a basis for **deviation under § 20-108.1**, with the findings necessary to support a departure from the presumptive guideline.

The distinction is statutory:

WORK-RELATED DAYCARE → § 20-108.2(F) → INCLUDE IN THE PRESUMPTIVE GUIDELINE.

THIRD-PARTY HEALTH COVERAGE → NOT WITHIN THE PARENT/PARENT'S-SPOUSE LANGUAGE OF § 20-108.2(E) → CONSIDER UNDER § 20-108.1 AS A DEVIATION.

THIRD-PARTY INCOME → DO NOT INCLUDE.

This is another example of the hard-math problem: **before allocating an expense, determine whether the statute permits that number to enter the presumptive calculation at all.**

3. What Looks Like Split Custody May Not Be Split Custody

Now change the facts. Helen has custody of Anna, while Father has Ben living in his household.

Although the physical arrangement resembles split custody, it is not the ordinary split-custody calculation under § 20-108.2(G)(2). In statutory split custody, each **parent** has physical custody of one or more children, creating reciprocal parental support obligations that are ultimately offset.

Helen has no parental support obligation. There is therefore **nothing to net against Father's obligation**.

Support for Anna should instead be calculated under the **sole-custody guideline**. Because Ben resides with Father and is not a subject of Anna's support proceeding, Father's income receives the applicable adjustment under § 20-108.2(C) for his support of another qualifying child residing in his household. The resulting adjusted parental incomes are then used to calculate support for Anna.

PARENT–PARENT SPLIT → TWO FAMILY UNITS → RECIPROCAL OBLIGATIONS → OFFSET.

PARENT–THIRD-PARTY ARRANGEMENT → SOLE GUIDELINE → INCOME ADJUSTMENT FOR THE OTHER CHILD → NO OFFSET.

The physical arrangement may look similar. **The legal mathematics are not.**

4. What If the Third Party and a Parent Share Physical Custody?

The more difficult situation arises when Helen and one parent actually share the child's physical custody.

Suppose Helen has Anna for **245 days** and Mother has Anna for **120 days**.

The ordinary shared-custody formula does not fit neatly because § 20-108.2(G)(3) is constructed around parental income shares, parental custody shares, reciprocal parental obligations, and an offset. Under *Russell*, Helen does not acquire a parent's support obligation merely because she has physical custody.

The **sole-custody guideline therefore provides the presumptive starting point**. Mother's substantial physical custody, however, may justify a deviation under § 20-108.1.

One reasonable way to quantify the requested deviation is to borrow the mathematics of the shared-custody guideline without treating Helen as a parent.

First, determine the **shared support need** by applying the statutory 1.4 multiplier to the basic support obligation. Next, determine **Helen's custody share** based upon the portion of the year Anna resides in Helen's household. Apply Mother's percentage of the parents' combined income to the support need attributable to Helen's custody share.

Helen's qualifying work-related daycare is included because § 20-108.2(F) permits qualifying child-care expenses incurred by the custodial parent to enter the presumptive calculation. If Helen pays health-care coverage for Anna, however, that expense is addressed separately in the deviation analysis because § 20-108.2(E) limits its presumptive treatment to coverage paid by a parent or that parent's spouse.

Most importantly, **do not calculate a reciprocal support obligation from Helen to Mother**. Helen has no parental support obligation, so there is nothing to offset.

PARENT–PARENT SHARED CUSTODY → RECIPROCAL OBLIGATIONS + OFFSET.

PARENT–THIRD-PARTY SHARED TIME → SOLE GUIDELINE IS PRESUMPTIVE; SHARED-CUSTODY MATH MAY INFORM A DEVIATION → NO OFFSET.

The shared-custody mathematics in this situation are not themselves the presumptive statutory guideline. They provide a rational method for demonstrating how Mother's substantial physical custody affects the economic circumstances and for quantifying a

requested deviation. The court must make the findings required by § 20-108.1 before departing from the presumptive amount.

Takeaway

Third-party custody requires the lawyer to distinguish **who has custody from who has the legal obligation of parental support**.

The practical analysis is:

WHO ARE THE PARENTS? → WHO HAS THE CHILD? → WHO PAID THE EXPENSE? → DOES THAT EXPENSE BELONG IN THE GUIDELINE OR IN THE DEVIATION ANALYSIS?

The answers determine the math.

Third-party income is excluded. Qualifying work-related daycare paid by the custodian is included in the presumptive guideline. Health-care coverage paid by the third party is considered through deviation. A parent–third-party split arrangement uses the sole guideline with the appropriate income adjustment and no netting. Parent–third-party shared physical custody likewise begins with the sole guideline, but shared-custody mathematics can provide a principled basis for a deviation—again, without creating a fictional support obligation from the third party.

THE ARITHMETIC CAN BE PERFECT AND THE ANSWER CAN STILL BE WRONG IF THE WRONG PERSON OR THE WRONG EXPENSE IS PUT INTO THE FORMULA.

Module 7 — Arrearages: Reconstruct the Account

An arrearage calculation is not simply the current support amount multiplied by the number of months involved. The attorney must identify the correct **effective date, support amount for each period, existing arrears, payments and interest**. In a modification proceeding, Va. Code § 20-108 limits how far back the modified obligation may reach. See also Va. Code §§ 20-60.3 and 63.2-1916. When retroactive liability is being determined, § 20-108.2(C) expressly permits the court or administrative agency to use the parties' gross monthly income averaged over the period of retroactivity. See *Coleman v. Coleman*, Record No. 1146-23-2 (Va. Ct. App. Dec. 3, 2024) (unpublished). The lesson from our earlier fluctuating-income discussion therefore changes in the retroactive setting: **averaging may be appropriate, but average the right period.**

The account must then be reconstructed over time. Do not apply today's support amount to the entire retroactive period. Identify each support amount and the period during which it applies, prorate a partial month when necessary, carry forward any existing arrearage, and credit payments as they are made. Our demonstration begins with an $800 order and then changes to **$1,200 effective January 12, 2022; $1,450 effective July 1, 2023; $1,050 effective January 1, 2025; and $1,350 effective January 1, 2026.** It also begins with $4,500 in existing principal arrears and $350 in interest. The fiscal record demonstrates how those amounts and the obligor's sporadic payments affect the balance over time. Arrearage Calculator2

Payment allocation can become particularly important when an obligor has more than one DCSE case. **Current support is paid first.** If the available payment is insufficient to satisfy current support on all cases, the money is allocated among the cases proportionately according to the current-support obligation on each case. Once current support has been satisfied, remaining funds are allocated toward arrears under DCSE's applicable allocation rules. Thus, the amount an obligor pays to DCSE is not necessarily the amount credited to the particular case being examined.

Interest is another part of the reconstruction. Va. Code § 20-78.2 provides for interest on support arrearages at the judgment rate; see also Va. Code §§ 6.2-302 and **8.01-382**. Interest must be calculated as the account develops rather than by simply multiplying the final arrearage by an annual interest rate. Section 20-78.2 also permits an obligee to **waive collection of interest in writing submitted to the court**; an obligee cannot waive interest belonging to the Commonwealth. In our demonstration, the fiscal record ultimately shows **$67,658.11 in principal arrears and $9,922.49 in interest, for total arrears of $77,580.60.** Arrearage Calculator2

EFFECTIVE DATE → SUPPORT AMOUNT(S) → PRIOR ARREARS → PAYMENTS → ALLOCATION → INTEREST → BALANCE

The calculator does the arithmetic. The lawyer supplies the right numbers and dates.