



# **GUIDE TO IMPLEMENTATION OF THE NEW CHILD SUPPORT GUIDELINES**

*Prepared by the Staff of the Child Support Commission  
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## Introduction

Recent legislation, effective January 1, 2007, will dramatically revise O.C.G.A. §19-6-15, the statute which sets out the child support guidelines. In an attempt to guide the frequent users of the child support guidelines and provide recommendations for best practices relating to those changes, this “Guide” has been developed to interpret and help implement Senate Bill 382. **While the contents of the Implementation Guide have been prepared by the Commission Staff to assist professionals, it has not to date been adopted by the Child Support Commission and should not be cited as authority.**

Please note that following the effective date of the revised guidelines, questions will arise that were not explored or anticipated previously. Thus, this Guide will most likely be an ever evolving document to ensure those matters are considered and covered within this document. As you encounter new issues or come across questions, please share those thoughts and questions with us so that we can update this Guide. You may contact us at [childsupport@gaaoc.us](mailto:childsupport@gaaoc.us). For additional information and to view updated versions of this guide, please also review the Child Support Commission’s website at: [www.georgiacourts.org/childsupp.html](http://www.georgiacourts.org/childsupp.html).

We hope you will find this Guide helpful, instructional and informative.

The Child Support Commission would also like to take this opportunity to acknowledge the following individuals’ contribution to the development of this Implementation Guide:

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## **Step by Step Process of Calculating Child Support\*:**

Effective January 1, 2007 and pursuant to §19-6-15, as revised—

1. Determine the gross monthly income of both the mother and father. Gross income shall be calculated on a monthly basis and each parent enters the amount on Schedule A.

2. The gross income of either parent may be reduced based upon one or more of the following reasons, and calculated on Schedule B:

Is either parent self employed?

- If so, adjust each parent's monthly gross income by reducing the gross income by 6.2% of OASDI (up to the annual maximum amount for OASDI), and 1.45% for Medicare.

Has either parent been paying preexisting child support orders?

- If so, reduce the monthly gross income by the amount of monthly current support the parent has been paying consistently for a specific period (12 months if order has been in effect for at least one year). If less than full payments have been made, use the average of the amount of current support actually paid.

Is either parent supporting his or her other children living in the home, who are not the subject of the case before the court or any other child support order?

- If so, the court may in its discretion find that: a) the failure to consider the parent's other child in the home would cause a substantial hardship to the parent and b) such adjustment is in the best interest of the child in the current case, and calculate a Theoretical Support Order. To calculate: using the Basic Child Support Obligation Table, locate the Basic Child Support Obligation by determining the dollar figure corresponding to that parent's gross income and the number of qualified other children. Multiply that dollar figure by 75 % and reduce the parent's gross income by that number.

3. Add each parent's adjusted income together to arrive at the combined adjusted income amount.

4. Go to the Child Support Obligation Table and locate the dollar figure which corresponds with the combined adjusted income amount and the number of children for whom support is being determined.

5. Divide the combined adjusted income into each parent's adjusted gross income to calculate each parent's pro rata share of the child support. The pro rata share is expressed as a percentage.

Multiply each parent's pro rata percentage by the Basic Child Support Obligation amount to determine each parent's child support responsibility. When required, from this point forward, pro rate the expenses between the parties using those same pro rata percentages.

6. If there are health insurance premiums and/or work related child care costs, insert these costs on Schedule D. These costs are added together and pro rated between the parties. If either parent is already paying these costs, credit the parent who is paying or will pay the expense. The prorated Basic Child Support Obligation, after the adjustments for health insurance and work related child care costs, results in the Presumptive Amount of Child Support.

7. If there are no deviations, the noncustodial parent owes the custodial parent the Presumptive Amount of Child Support, which is the total of his or her pro rata share of the Basic Child Support Obligation and the mandatory additional expenses of health insurance and work related child care costs.

8. If there are deviations, the Presumptive Amount of Child Support may be deviated upward or downward, if applicable, and the calculations are entered on Schedule E. Any deviated amount from the Presumptive Amount of Child Support must be supported by the court's written findings or a jury's special interrogatory findings. The findings of fact shall state the reasons for the deviation; the amount

of child support that would have been required if the Presumptive Amount of Child Support had not been rebutted; and both of the following: (1) the application of the Presumptive Amount of Child Support would be unjust or inappropriate considering the relative ability of each parent to pay; and (2) how the best interest of the child for whom support is being determined will be served by deviating from the Presumptive Amount of Child Support.

**\_ Specific Deviations:** The court or jury may deviate from the Presumptive Amount of Child Support by applying specific deviations set forth in the Guidelines.

- On a case by case basis, if the parties prove extraordinary educational expenses, extraordinary medical expenses and/or special expenses incurred for child rearing, these expenses are to be pro rated between the parties. Where special expenses exist, the amount of special expenses must exceed a 7% of the Basic Child Support Obligation threshold. Additional special expenses over the threshold can be considered, if appropriate.
- If a noncustodial parent's gross income is at or below \$1850 per month, consider whether a low income deviation would be appropriate. To calculate whether the noncustodial parent's Presumptive Amount of Child Support may be adjusted by ensuring that the noncustodial parent has a self support reserve (\$900 per month): a) Subtract \$900 from the noncustodial parent's adjusted income. b) If the resulting amount is less than the noncustodial parent's pro rata responsibility of the Presumptive Amount of Child Support, then the Presumptive Amount may be deviated. c) However, the calculation will not be complete until the court or jury considers the financial impact that a reduction in the amount of child support paid to the custodial parent would have on the custodial parent's household. No award shall impair the ability of the custodial parent to maintain minimally adequate housing, food, clothing and other basic necessities for the child.
- Other specific deviations include upward deviations for high income, and deviations for parenting time, travel expenses for visitation, dental, vision or life insurance, child and dependent tax care credit, permanency of foster care plan, payment of alimony or a mortgage or shelter provided to custodial parent.

**\_ Nonspecific Deviations:** However, the court may also deviate for any other reason when appropriate if in the best interest of the child.

9. After adjusting the Presumptive Amount of Child Support for any potential deviations, the resulting dollar amount equals the Final Child Support Order amount. This amount will be entered on the Child Support Worksheet.

10. At the bottom of the Worksheet, specify the percentage of the allocation of uninsured health care expenses between the parents, either pro rata or as otherwise specified by the court. These expenses are not a part of the support awarded or part of the calculation but indicated here for future reference when the uninsured health care expenses come due.

\*Please note that the basic steps listed above are only just that, the basic steps. For more thorough details regarding each of the steps and provisions found within the child support guidelines, please review Senate Bill 382, which effective January 1, 2007 will be codified as O.C.G.A. §19-6-15.

Access the Electronic Worksheet created to assist in calculating child support, which will provide both consistent calculations and forms. You can find the electronic worksheet at:

<http://ocse.dhr.georgia.gov/portal/site/DHR-OCSE/> (the Office of Child Support Services Constituent Portal) or <http://www.georgiacourts.org/childsupp.html> (the Child Support Commission Website)

## PART A. DEFINITIONS

The revised child support guidelines will contain a definition section, similar to what is found in other states and other Georgia statutory chapters. See Subsection (a). The intent of a definition section is to identify and define terms which may not be ones Georgia's judges and practitioners are familiar with as Georgia moves from a Flat Percentage to an Income Shares Guidelines model. In addition, the definition section should provide a helpful guide to those litigants who are not familiar with the issues of child support, the child support process or other domestic relations topics. Also, please note that the most relevant parts of the new law are cited throughout this Guide to enable the reader to quickly locate the appropriate sections of the statute.<sup>1</sup>

### **1. How does Adjusted Income differ from Adjusted Child Support Obligation?**

These two terms discuss different operations within the new guidelines' formula. The first step in calculation, just as in the pre-2007 §19-6-15, is calculating Gross Income. The difference in this Income Shares' model versus the pre-2007 §19-6-15 is that Gross Income is adjusted downward in three possible ways. See (a)(2) and (f)(5).

The three ways in which a parent's Gross Income can be adjusted are by subtracting the following: (1) one-half of any applicable self-employment taxes being paid by the parent; (2) the amount of preexisting child support orders either parent is actually paying and which predates the original date of the current case; and (3) at the court's discretion, a "theoretical" child support order for other qualified children in the home. The amounts for the above, if applicable to either parent, are deducted from the parent's Gross Income to arrive at each parent's Adjusted Income amount. The Adjusted Incomes of both parents are combined to total the Combined Adjusted Income amount.

The Combined Adjusted Income amount is then taken to the Child Support Obligation Table to find the corresponding Basic Child Support Obligation Amount, based on the number of children for whom support is being calculated in this case.

By contrast, the Adjusted Child Support Obligation involves a later operation in the process. After the Basic Child Support Obligation amount is derived from the Child Support Obligation Table, it is pro rated between the parents based on each parent's percentage share of the Combined Adjusted Income amount. Each parent's obligation is then adjusted upward for the parent's pro rata share of the costs of Health Insurance Premiums and Work Related Child Care. The resulting combined amount is the Adjusted Child Support Obligation. The parent actually paying the costs of the child's Health Insurance premiums and Work Related Child Care Costs will be provided with a credit for those actual payments. The resulting sum certain amount equals the Presumptive Amount of Child Support. See (a)(1) of the guidelines, as revised.

<sup>1</sup> To avoid repetition, citations to parts of the revised O.C.G.A. §19-6-15, effective January 1, 2007, will be simply shown as subparagraphs, e.g., (a)(2) or (f)(5).



Originally, a Parenting Time Adjustment was considered part of the Adjusted Child Support Obligation. However, the final version of Senate Bill 382 changed its classification to a deviation. See (a)(1).

**2. How is the self-employment tax adjustment derived and how does it differ from the definition of “self-employment” found within this code section?**

Self-employment income is income that should be included within the calculation of one’s Gross Income. If you review the definition under the “Gross Income” Subsection (f), the definition of “self-employment income” is very broad and includes income from rental properties, royalties, proprietorship of a business or joint ownership of a partnership, limited liability company or closely held corporation. See (f)(1)(B). Gross Income from self employment may not be the same amount as is stated on a person’s income tax return. See (f)(1)(B)

By comparison, the parent may adjust his or her Gross Income by one-half of the self-employment taxes assessed to the parent on their Gross Income from self employment to arrive at the Adjusted Income amount. See (f)(5)(A). The percentage amount of self-employment taxes (FICA and Medicare) in which one may deduct from his or her monthly Gross Income for purposes of the child support calculation is set out in both the statute and the appropriate Worksheet/Schedule (Schedule B). Do not further divide that amount by one-half, as the amounts stated reflect the appropriate amount. Further, only the first \$94,200 of one’s combined wages, tips and net earnings in 2006 is subject to the 12.4% of the OASDI tax. To check on the maximum taxable earnings allowed for each subsequent tax year, see IRS Publication No. 533 for years after 2006.

**3. What does ‘Basic Child Support Obligation’ mean?**

The Basic Child Support Obligation amount comes from the Child Support Obligation Table. The Combined Adjusted Incomes are cross-referenced with the number of children involved in this particular action to determine the Basic Child Support Obligation amount. The “number of children” refers to children for whom the parents share a joint legal responsibility to support and for whom support is being determined in the present case. Each parent’s share (variously called the percentage of income, proportionate or pro rata share) of the Basic Child Support Obligation is determined by prorating the Basic Child Support Obligation between the parents in the same proportion as each parent’s Adjusted Income is to the Combined Adjusted Income. The term, Basic Child Support Obligation, may be abbreviated or referred to as the “BCSO.” See (a)(3) and (a)(6).

The custodial parent is presumed to spend his or her prorated share directly on the children. The noncustodial parent’s share becomes the basis for the child support order amount. There may be additional adjustments for Work Related Child Care expenses, Health Insurance premiums, Deviations and other factors.

Example on How to Calculate Percentage of Income to Obtain each Parent's Proportionate Share of the Basic Child Support Obligation Amount: Combined Adjusted Income is \$10,000/per month. The father's Adjusted Income is \$6,000/month. Divide the father's Adjusted Income by the Combined Adjusted Income of \$10,000 per month. The result is the father's share of the Combined Adjusted Income (\$6,000 divided by \$10,000= 60%). The father's share is 60%; the mother's share then would be 40%.

#### **4. What is the 'Child Support Obligation Table?**

The Child Support Obligation Table is the central mechanism of the guidelines, and is based on economic data which represent adjusted estimates of average total expenditures in intact families for children between birth and age 18, excluding child care and health insurance. See (i)(2)(K)(1).

The Child Support Obligation Table is based upon national data obtained from the Consumer Expenditure Survey ("CEX") for the period of 1996-1999 which is conducted by the Bureau of Labor Statistics (BLS), to estimate child-rearing expenditures. It is the most comprehensive and detailed survey conducted on expenditures. The CEX surveys over 7,000 households weekly or quarterly on expenditures, income and household characteristics (e.g., family size). Policy Studies, Inc., "Technical Documentation: Georgia Child Support Guidelines Obligation Table," December 2005; "Georgia Child Support Commission Final Report," January 2006.

The Georgia Child Support Commission then updated the estimates to current price levels. All states use the Consumer Price Index ("CPI") to adjust to current price levels. Many states also realign estimates to account for state and national average income differences, if significant. However, the Commission and its Economic Task Force found that the variance from the national average income was not significant, as the median family incomes of Georgia and the U.S. are \$49,745 and \$53,692 per year, respectively. One of the most recent studies of total family expenditures used by the Georgia Child Support Commission in developing its Table reported that the average percent of total family expenditures spent on specific categories (excluding work related child care costs, health insurance premiums and uninsured health care expenses) was: 41 percent on housing; 21 percent on food; 14 percent on transportation; 7 percent on entertainment; 6 percent on apparel; 5 percent on medical; and 7 percent on other items. Id.

### **5. What is the difference between the Presumptive Amount of Child Support and the Final Child Support Order?**

The Presumptive Amount of Child Support means the total amount resulting from adjusting the Basic Child Support Obligation by the pro rated amounts of health insurance and work related child care costs. To obtain a sum certain single payment due to the custodial parent, credit for actual payments of health insurance and work related child care costs each parent actually pays or will be paying are then given to the paying parent. See (a)(19).

In contrast, the Final Child Support Order is the Presumptive Amount of Child Support as increased or decreased by any Deviations. The Final Child Support Order amount for each parent is to be entered on the Child Support Worksheet, but only the noncustodial parent is ordered to pay his or her amount to the custodial parent. See (a)(11).

### **6. What is included as 'Health Insurance,' as defined by this Code Section?**

"Health Insurance" definition has been narrowed from including "accident, sickness, health, medical, or dental insurance" in previous legislation to only "any general health or medical policy." Now, there is a specific deviation, titled "Other Health Related Insurance." Other Health Related Insurance is defined in the Deviation section as "...if either Parent has vision or dental insurance available at a reasonable cost for the Child, it may be a reason for the court or jury to deviate from the Presumptive Amount of Child Support for the cost of such insurance." (a)(13) and See (i)(2)(C).

Therefore, Health Insurance, as defined, is an adjustment to the Basic Child Support Obligation while other forms of health insurance will be treated as a Deviation from the Presumptive Amount of Child Support.

### **7. What qualifies as a 'Preexisting Order,' as defined by this Code Section?**

A preexisting child support order is the basis for another adjustment to a parent's Gross Income, in addition to self-employment tax and, if applicable, other Qualified Children in the home. See (a)(18) and (f)(5)(B). For a parent to be eligible to deduct preexisting child support order amounts from his or her Gross Income, the order from the other case must clearly exhibit that the parent has a duty to make current child support payments for another child and the parent is actually paying current support (not just arrearage payments). Payments made by the parent on any arrearages shall not be considered payments on preexisting orders and shall not be used as a basis for reducing one's Gross Income.

Proof must be presented which shows that the preexisting child support order is actually being paid under an order of support for a period of not less than twelve consecutive months immediately prior to the date of hearing or such period that an order has been in effect if less than twelve months prior to the date of the hearing to set,

modify or enforce child support under the present case. See (f)(5)(B). In essence, there must be a record that one has been paying regularly for a set period of time.

Please note that the maximum credit allowed for a preexisting child support order is an average of the amount of current support actually paid under the preexisting order over the past twelve months prior to the hearing date. See (f)(5)(B)(iii). Thus, the Guidelines, effective January 2007, seem to indicate that one can receive credit for preexisting orders by showing proof that the parent was paying on a consistent basis, even if the current support was not being paid in full. At the same time, if the parent is not paying in full, the parent will not receive credit for the full amount of the preexisting order.

Further, for a preexisting child support order to qualify, the date of filing of the initial order in such other case must evidence that it precedes the date of filing of the initial order in the case before the court. If either case has been modified, the court must ascertain that the date of the initial order was prior to the initial date in the present case. See (a)(18)(B). (See also following example.)

Example of Initial Date of Filing: A divorce judgment with a child support order was entered in 1994. A second divorce action entered a child support order in 1998, and then a third one in 2004. The 1998 case is now being modified in 2007. The only case which will be considered as a pre-existing order is the 1994 order.

To assist the court, the litigants, their representatives and IV-D Agency in determining the filing date of the initial order, the court rendering the decision in a modification case must make a specific finding of the date of the initial order of the case. See (f)(5)(B)(ii). It would also be a helpful finding by the court in any child support order (not only in modification cases.) See also (f)(5)(D) regarding Priority of Adjustments.

Documentation that the preexisting child support orders is actually being paid includes, but is not limited to, payment history from a court clerk, Office of Child Support Services or IV-D Agency from another state, Office of Child Support Services' computer data base, the child support payment history, cancelled checks or other written proof of payments paid directly to the other parent. See (f)(5)(B)(2)(iii).

**8. What does 'Theoretical Child Support Order' mean and how do you calculate it?**

A third way a parent may adjust his or her Gross Income is for other children in the home of that parent ("other Qualified Child living in the parent's home"). The parent must prove the parent-child relationship by documentary evidence. See (f)(5)(C). A "Qualified Child" is defined as any child for whom: (1) the parent owes a legal duty to support and is actually supporting; (2) the child is residing in the parent's home; (3) who is not subject to a preexisting child support order; and (4) who is not before the

court to set, modify or enforce support in the case immediately under consideration. See (a)(20).

This adjustment is at the court's discretion and the parent must qualify under the substantial hardship test. See (a)(20), (a)(22) and (f)(5)(C). Basically, the parent must prove that it would pose a substantial hardship to the parent not to consider the other children in the home as a means for reducing that parent's income. In addition to the substantial hardship test, the parent seeking the adjustment of his or her Gross Income for other children in the home must also show why this adjustment is in the best interest of the child for whom support is being determined. See (f)(5)(C).

Therefore, to qualify for this adjustment at the court's discretion, the party must show to the court that (a) his or her children fit the definition of "qualified" other children in the home; (b) he or she meets the substantial hardship test; and (c) that an adjustment for Other Qualified Children living in the home meets the best interest standard of the child in the present case.

To calculate the adjustment, one creates a "Theoretical Support Order" as if a child support order existed for the other Qualified Child in the parent's home. The steps in calculating are as follows:

- (1) Take the Gross Income of the parent of the Qualified Other Child, which may be adjusted for self-employment taxes paid (not preexisting child support orders);
- (2) Go to the Child Support Obligation Table and find the Basic Child Support Obligation for that one parent, using only the parent's own income and the number of children considered as "Qualified Other Children;"
- (3) The Basic Child Support Obligation amount for such parent and the Qualified Children shall be multiplied by 75%;
- (4) The resulting amount may at the discretion of the court be subtracted from the parent's monthly Gross Income and entered on the Child Support Schedule B— Adjusted Income.

Example of this Adjustment: A parent having a gross monthly income of \$2,000 supports a natural minor child living with the parent, who is not the subject of the child support case before the court and for whom no child support order exists. The parent is not self employed and pays no self-employment tax, so the Gross Income is not adjusted. To create the Theoretical Support Order for this one qualified other child in the household, locate \$2,000 in the Combined Adjusted Income column of the Georgia Schedule of Basic Child Support Obligations. Select the amount in the column for one child which is \$437. Multiply 75% of \$437 and the resulting amount is \$327. The parent's Gross Income may be reduced by \$327, resulting in an Adjusted Income of \$1,673 if the court also finds that not allowing the reduction would pose a substantial hardship on the parent and that it is in the best interest of the child for whom support is being calculated in the current case.

**9. What is meant by ‘Uninsured Health Care Expenses’ and how does it differ from the deviation of ‘Extraordinary Medical Expenses?’**

Uninsured Health Care Expenses is defined as the child’s uninsured medical expenses including, but not limited to, health insurance co-payments, deductibles and such other costs as deemed reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any acute or chronic medical or health problem or mental health illness, including counseling and other mental health expenses that are not covered by insurance. However, since these are future expenses and an indefinite and variable amount, they can not be calculated into the current support order amount. Instead, these expenses must be addressed in the final order. Therefore, they are addressed by a future divided share of responsibility for each parent. The court has the option of dividing the Uninsured Health Care Expenses pursuant to the same percentage of income determined by dividing each parent’s Adjusted Income by the Combined Adjusted Income of both parents, or by allocating another percentage, as deemed appropriate. See (a)(23) and (h)(3).

Example: The father’s percentage of Combined Adjusted Income is 60% and the mother’s percentage of Combined Adjusted Income is 40%, which is each parent’s pro rata share of the Basic Child Support Obligation. In this example, the pro rata responsibility for future Uninsured Medical Expenses could be 40% for the mother and 60% for the father, unless the court specifies otherwise. The court could decide that instead of the 40/60 pro rata responsibility, these expenses will be divided 50/50, 0/100, or any other percentage the court deems appropriate.

By comparison, “Extraordinary Medical Expenses” may be considered by the court as a Deviation. See (i)(2)(J)(iii). Extraordinary Medical Expenses are those extraordinary medical expenses not covered by insurance for the child, the parent, or a child of a parent’s current family, but may only be considered in cases of extreme economic hardship.<sup>2</sup> See (i)(2)(J)(iii). A parent seeks a Deviation due to these Extraordinary Medical Expenses. The Court must consider that the Deviation on this ground shall leave no child unsupported and must consider the resources available for meeting such needs, including resources available from agencies and other adults. See (i)(2)(J)(iii).

Example: The noncustodial parent of the child for whom support is being calculated has had a bout of colon cancer during the past year, and has had extraordinary medical expenses involving the treatment which were not covered by insurance. As a result, the noncustodial parent is seeking a deviation due to the catastrophic effects these expenses have had on his or her financial status and the ability

<sup>2</sup> A question has been raised about pro rating Extraordinary Medical Expenses when it involves anyone in the family besides the child for whom support is being determined. Subsection (i)(2)(J)(iii) does not mention pro rating the expenses; however, the more general language in (i)(2)(J) provides that “[e]xtraordinary expenses shall be prorated between the Parents.” (i)(2)(J). When the expenses are not for one of the parties’ children, pro rating the expense may not seem equitable, but the court will need to interpret and reconcile these statutory provisions.

to pay outstanding medical expenses. The deviation may be ordered for a specific number of months or indefinitely.

**10. Why is it important to use the Electronic Worksheet developed under the auspices of the Child Support Commission?**

The Electronic Worksheet will automatically calculate child support for the user based on the information that the user enters. In addition, the electronic Worksheet will have an option that will allow users to be guided through the Worksheet by a series of questions. Users will only be asked for information that is relevant to them based on their previous answers. This will make calculating child support easier, quicker and more accurate than the manual Worksheet. The electronic Worksheet can be saved by the user to be completed at a later time. Once completed, the user can submit it directly to the court. The court will be able to access the Worksheet applicable to cases assigned to that judge, as well as be able to accept or reject the Schedules submitted with the Worksheet.

The Worksheet and Schedules used in calculating child support and being presented to the court are those which are promulgated by the Child Support Commission. See (a)(25) and (m). The parties are to submit the Worksheet and Schedules to the court complete with their financial information. The court is to record its findings or the jury's verdict on the Worksheet and appropriate Schedules and the Worksheet and Schedule E (pertaining to deviations) are to be attached to the order. The Commission will continually be evaluating the effectiveness of the Worksheet and may from time to time make adjustments. The current version of the Worksheet and Schedules is hosted at the Office of Child Support Services' website, <http://ocse.dhr.georgia.gov/portal/site/DHR-OCSE/>, and will also be available on the Commission's website [www.georgiacourts.org/childsupp.html](http://www.georgiacourts.org/childsupp.html), prior to the statute effective date of January 1, 2007.

To create uniformity and consistency, and aid in submission and collection of data, it is important that only the official Commission version of the Worksheet/Schedules is used by both litigants and the courts. See (m)(2). This will ensure accuracy and consistency with the calculations. Otherwise, the award amounts could vary widely, and could provide disparate results.

The electronic Worksheet being developed will be offered as a free automated calculator and there will be several versions available, appropriate for different users. Each of these versions will be calibrated to ensure consistent calculated results. They should also dramatically decrease the time it takes to determine child support orders under the new guidelines.

## **PART B. PROCESS OF CALCULATING CHILD SUPPORT**

### **1. What is the purpose of having the step by step process in the statute?**

Subsection (b) was added on the recommendation of the Child Support Commission. The Commission's subcommittee charged with reviewing the statute noticed early in their course of review that the statute did not specifically tell a party or the court how to calculate child support. Thus, with the assistance of the Family Law Section of the State Bar, this entire new subsection was added to serve as a road map to litigants and the court on how to calculate child support to determine the Final Order Amount.

This subsection sets out the basic steps to be followed in determining child support. Moving from a Flat Percentage Guideline Model to an Income Shares one is a major change for Georgians. The Income Shares Model involves multi-steps and uses both a Child Support Obligation Table in the calculation of the parents' Basic Child Support Obligation and a Worksheet to tabulate the step by step calculation. The intent then of this subsection is to help identify those steps and assist in educating those who are going through the process for the first time or serve as a guide for the more frequent user of the guidelines.

### **2. How do the Worksheet and Schedules fit within the step by step process of calculating child support?**

Within each step of the process of calculating child support found under Subsection (b), the appropriate Worksheet or Schedule to be used or applied at that stage is given. See Subsection (b).

### **3. What is the relationship between the manual Worksheet and the electronic Worksheet?**

The manual Worksheet and the electronic Worksheet are identical in substance and format. The difference is in the functionality of the versions. The manual version requires the user to read and consider every field, and to manually calculate child support. The electronic Worksheet guides the user through the various schedules associated with the Worksheet with a series of questions requiring the user to only complete fields that are relevant to the user's circumstances. The user's responses on the schedules will automatically be entered on the Worksheet resulting in a child support amount. Because the electronic Worksheet will automatically calculate child support based on the user's responses, manual calculations are not required.

### **4. What happens when calculating the Adjusted Income of each party and the combined amount falls between the amounts shown on the Child Support Obligation Table?**

If the Combined Adjusted Income of the parties falls between amounts shown on the Child Support Obligation Table, then the amount on the Table that is closest to the



combined amount should be used. See (b)(4). For example, if the Combined Adjusted Income of the parties is between \$2,000--\$2,024, the \$2,000 Combined Adjusted Income found on the Table would be used. If the Combined Adjusted Income of the parties is between \$2,025 and \$2,050, the \$2,050 Combined Adjusted Income found on the Table would be used.

## **PART C. APPLICABILITY AND REQUIRED FINDINGS**

### **1. Do the revised guidelines apply to temporary orders, as well as final orders?**

A major change or revision to the guidelines is that they will be applicable to all child support orders, regardless if temporary or final. The pre-2007 guidelines, in O.C.G.A. §19-6-15, applied to only final orders, even though in practice the guidelines have often been applied to temporary orders as well. As revised, §19-6-15 states that the guidelines “shall be used when the Court enters a temporary or permanent child support order in a contested or noncontested hearing.” (c)(1).

### **2. May the court diverge from the child support guidelines, as set forth in Code Section 19-6-15, particularly from the Final Child Support Order amount, if the amount is not in the best interest of the child?**

The Presumptive Amount of Child Support serves as a rebuttable presumption. It can be deviated from if it serves the best interest of the child to increase the amount of support. See (c)(1). The factors the court may look at in determining whether the presumption has been rebutted include: (1) best interest of the child; (2) the circumstances of the parties; (3) the grounds for Deviation as set forth in the Deviation subsection of this code; and (4) to achieve the state policy of “affording the children of unmarried parents, to the extent possible, the same economic standard of living enjoyed by children living in intact families consisting of parents with similar financial means.” (c)(1). (See also, Part D within this Guide).

### **3. May parties entering into a settlement agreement depart from the child support guidelines, as set forth in Code Section 19-6-15?**

Parties may enter into an enforceable agreement contrary to the Presumptive Amount of Child Support. The agreement may, in turn, be made the order of the court, pursuant to the court’s review of the adequacy of the child support payment negotiated by the parties, including the provision for medical expenses and health insurance coverage. If the agreement negotiated by the parties does not comply with provisions contained in the guidelines and does not contain findings of fact as required to support a deviation from the Presumptive Amount of Child Support, the court shall reject the agreement. See (c)(5).

#### **4. What are the requirements of an order, governed by this Code Section?**

Subsection (c) of the guidelines details the required court findings in all cases governed by this code section. The requirements are as follows:

- (a) Specify in what sum certain amount and from which parent the child is entitled to permanent support;
- (b) Specify (as required by O.C.G.A. §19-6-12) in what manner, how often, to whom, and until when the support shall be paid;
- (c) Include a written finding of the parent's (both parents) gross income as determined by the court or jury;
- (d) Determine whether health insurance for the child in this action is reasonably available at a reasonable cost to either parent. If the health insurance is reasonably available at a reasonable cost to the parent, then the court may order that the child be covered under such health insurance;
- (e) Include written findings of fact as to whether one or more of the Deviations are applicable as determined by the court or jury, and if so the written findings of fact shall include:
  - (i) The reasons the court or the jury deviated from the Presumptive Amount of Child Support;
  - (ii) The amount of child support that would have been required under this code section if the Presumptive Amount of Child Support had not been rebutted; and
  - (iii) A finding that states how the court's or the jury's application of the child support guidelines would be unjust or inappropriate considering the relative ability of each Parent to provide support and how the best interest of the Child who is subject to the child support determination is served by Deviation from the Presumptive Amount of Child Support;
- (f) Specify the amount of the noncustodial parent's parenting time as set forth in the order of visitation; and
- (G) Specify the percentage of Uninsured Health Care Expenses for which each parent shall be responsible.

Also, not listed under Subsection (c) is the requirement found in Subsection (f), the Gross Income Subsection, requiring the court to make a written finding of fact in the Order regarding the use of Social Security benefits in the calculation of the child support. See (f)(3)(E). For further reference on calculating Social Security Benefits received under Title II of the Federal Social Security Act by a child on the obligor's account, see Part F of this Guide.

The Child Support Worksheet and Schedule E are to be attached to the Court's Final Child Support Order. See (m)(1).

**5. Is there still a requirement within the Order to specify the amount of the noncustodial parent’s parenting time or amount ordered for visitation?**

Yes. This requirement still applies even though “parenting time,” through Senate Bill 382 and codified as O.C.G.A. §19-6-15 (effective January 1, 2007), has been changed from a presumptive adjustment of the Basic Child Support Obligation to a discretionary specific deviation which is determined by the court or jury. See (c)(2)(F). Pursuant to the statute, it is clear that the amount of parenting time specified within the Order is the amount of the noncustodial parent’s court ordered visitation with the child, regardless of whether the court or jury determined that a parenting time deviation was applicable. From a reading of the definition of “Parenting Time” in (a)(17) and as explained in the Deviation Subsection (i)(2)(K)(i), the term “Parenting Time” without a modifier of “adjustment” or “deviation” implies that it means the time the noncustodial parent spends visiting the child or children through court ordered visitation

In Senate Bill 382, the Child Support Commission was given the duty “to study the impact of having parenting time serve as a deviation to the presumptive amount of child support and make recommendations concerning the utilization of the parenting time adjustment.” O.C.G.A. §19-6-53(13). By continuing to require that the Order specifies the amount of the noncustodial parent’s parenting time or the amount ordered for visitation, it will provide the Commission with the data necessary to study the impact of having parenting time serve as a deviation.

**6. Does the amount of support have to be a sum certain or can it be included in the Order as a percentage?**

In Subsection (c) of the guidelines, detailing the required court findings, there is a requirement that the amount of support be specified in a sum certain amount. See (c)(2)(A). An amount specified as a percentage is not permitted under the new law. The requirement is in part due to the fact that the Georgia Child Support Recovery Act considers unpaid child support, including medical support, to be a judgment by operation of law. Federal law requires that any such judgment be reduced to a specific dollar amount prior to being enforced by the State’s Child Support Enforcement Agency (Office of Child Support Services). See O.C.G.A. §19-11-18(b)(1); 42 U.S.C. §§ 652(f), 666(a)(9)(A), 666(a)(19); 45 CFR §§ 302.50(e), 302.70(a)(9)(i).

**7. If a request for a jury trial is made, what issues may a jury determine?**

Subsection (c) of the guidelines sets forth the court process when a request for a jury trial is made. In claims involving child support, the jury shall only determine the amount of Gross Income and any possible deviations from the Presumptive Amount of Child Support. Subsection (c)(4) details the jury process by stating: (1) the court shall charge the provisions of this Code Section applicable to the determination of Gross Income; (2) the jury shall then be required to return a special interrogatory determining Gross Income; (3) based upon the jury’s verdict as to Gross Income, the court shall determine the Presumptive Amount of Child Support; (4) in the final instructions to the jury, the court shall charge the provisions of this Code Section applicable to the

determination of deviations and the jury shall be required to return another special interrogatory as to the Deviations and the final award of Child Support. The court shall include its findings and the jury's verdict on the Child Support Worksheet which shall be attached to the Court Order. Schedule E, pertaining to deviations, shall also be attached. See (c)(4).

Questions have arisen whether a determination of "Adjusted Income" should be considered a jury question. The guidelines only state that "the Court shall charge the provisions of this Code section applicable to the determination of gross income." (c)(4). An argument can be made that the adjustment of Gross Income under (f)(5) falls within the Gross Income subsection (f) of the guidelines, so the jury right applies.

However, within the provisions of (f)(5) on Adjusted Income, a jury is not referred to at all, and it speaks only of "the Court" making the determinations. See (f)(5). By comparison, "Court or jury" is indicated throughout the other provisions of the Gross Income subsection. Moreover, within the Child Support Commission's Comments to the Legislature [addendum to the Commission's Final Report, dated January 1, 2006] it states under Subsection (c) that: "Following the Court or Jury's determination of gross income, the Court shall make a finding of the Adjusted Income, the Basic Child Support Obligation and all Additional Expenses to arrive at the Presumptive Amount of Child Support. Then it will be either the Court or Jury who shall determine if this amount shall be deviated in determining the final award of child support." "Child Support Commission's Final Report" [addendum], January 2006. Thus, it will be up to the court to interpret and harmonize the two provisions in order to decide the scope of the jury's role.

Jury trials on the issue of child support may be requested in initial determinations as well as in modifications, except in Title IV-D cases.

#### **8. Why are Title IV-D cases exempted from jury determinations of fact?**

The court, and not a jury, shall make all determinations of fact in cases brought by the Office of Child Support Services pursuant to Chapter 11 of Title 19 of the Georgia Code. This includes any case filed pursuant to the Child Support Recovery Act, the Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act. The Office of Child Support Services is governed by the Georgia Administrative Procedure Act which does not contemplate the use of a jury in the administrative hearing process. In addition, the Georgia Supreme Court has held that there is no fundamental right to a jury trial in cases brought by the Office of Child Support Services. See, O.C.G.A. §§ 19-11-4, 50-13-13; Kelley v. Ga. Dep't of Human Res., 269 Ga. 384 (1998).

## **PART D. NATURE OF GUIDELINES; COURT'S DISCRETION**

As stated in the pre-2007 law and in Subsection (c) of the revised statute, the guidelines are intended to be only guidelines. They may be rebutted based on the reliable evidence, specifically if the amount calculated fails to be in the child's best interest. (See also, Part C of this Guide, in that the rebuttable Presumptive Amount of Child Support may be increased according to the best interest of the child.)

## **PART E. DURATION OF CHILD SUPPORT RESPONSIBILITY**

The duration of child support responsibility, as stated in Subsection (e) of the revised guidelines, reflects the previous statutory language. In addition, this subsection sets out who may enforce the order for child support. Besides the other parent, a nonparent custodian may enforce, as well as a guardian for the child and the child for whose benefit the child support is ordered. This provision as to who has standing to enforce reflects current case law. Please note that the definition for a nonparent custodian is "an individual who has been granted legal custody of a child, or an individual who has a legal right to seek, modify, or enforce a child support order." (a)(15).

## **PART F. GROSS INCOME**

This subsection is by far the longest and most thorough of all the subsections of the revised child support guidelines. This subsection is organized to ensure there is a clear understanding as to what is included and excluded from Gross Income. See (f)(1) and (f)(2). In addition, paragraphs clearly explain the role of Social Security Benefits, both as inclusions and exclusions from Gross Income. See (f)(3). An entire section is also devoted to "reliable evidence of income" which may determine whether one's income is to be imputed and how to determine income potential, especially if it is determined that one is willfully under- or unemployed. See (f)(4). Finally, the last section details the three ways in which one's Gross Income may be adjusted to determine the Adjusted Income. See (f)(5). The parents' Adjusted Incomes are added together to determine the Combined Adjusted Income. The parties take this amount to the Obligation Table to locate the parties' Basic Child Support Obligation amount, and also to determine the percentage share of the Basic Child Support Obligation.

### **1. What is included as Gross Income?**

Under the pre-2007 guidelines, gross income was "100 percent of wage and salary income and other compensation for personal services, interest, dividends, net rental income, self-employment income, and all other income, except need-based public assistance..." The new guidelines contain basically the same definition but with more specificity by including twenty one specific examples of what is considered income, such as salary, commission, fees, tips, income from self-employment, bonuses, overtime payments, severance pay, interest income, dividend income, trust income, capital gains

and so forth. Further, there are detailed paragraphs defining “fringe benefits” and “variable income” and when and how they are to be calculated and included as a part of gross income. See (f)(1)(a).

#### Fringe Benefits.

Fringe benefits are defined as those benefits or in kind remuneration which are received by the parent in the course of employment or in the operation of a business. Those benefits should be counted as income if the benefits significantly reduce personal living expenses. Examples given in the statute are use of a company car, housing or room and board. Basic variable housing allowances for members of the armed services shall also be considered income for the purposes of determining child support. Keep in mind, though, that fringe benefits defined here for the purpose of inclusion to gross income do not include typical employee benefits added to one’s wage or salaries, such as the employer’s contribution to a health insurance plan or employer contributions to a retirement or pension plan. See (f)(1)(C).

#### Variable Income.

Variable income is also further defined, as those situations when commissions, bonuses, employee dividends and overtime pay fluctuate. To calculate variable income as inclusion to one’s Gross Income, the following formula is suggested within the statute as a guide to the court or jury when income is received on an irregular basis: the court or jury may average or prorate the income over a reasonable specified period of time, consistent with the circumstances of the case. The averaged amount is then added to the parent’s fixed salary or wages to determine the Gross Income. See (f)(1)(D).

However, when the income is received as a one-time occurrence or nonrecurring basis, the court or jury may require the parent to pay a percentage of his or her income as a one time support amount. Please remember that the final support amount must be in a sum certain to ensure its processing and enforcement through the Family Support Registry and to ensure the amount paid is consistent with the amount ordered.

#### Self-employment

Self-Employment income is still considered as an inclusion to Gross Income. As with the definition of Gross Income, itself, the definition of self-employment income is more specific than what was found in the pre-2007 guidelines. In fact, in the pre-2007 guidelines, it only received a mention. Under the revised guidelines, the definition is quite broad and may be more encompassing than what is considered business income for tax purposes. The definition of self-employment income includes, but not limited to, income from business operations, work as an independent contractor or consultant, sales of goods or services and rental properties, less ordinary and reasonable expenses necessary to produce such income (gross income from the preceding types of business endeavors – ordinary and reasonable expenses necessary to produce such income = self-employment income). Self-employment income can also be income from rent, royalties,

proprietorship of a business or joint ownership of a partnership, limited liability company or closely held corporation, and is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operations (gross receipts from the preceding income – ordinary and necessary expenses required for self-employment or business operations=self employment income). Ordinary and reasonable/necessary expenses of self-employment or business operation necessary to produce income does not include excessive promotional, travel, vehicle or personal living expenses, depreciation on equipment, or costs of operating home offices. It also does not include amounts allowable by the IRS for the accelerated component of depreciation expenses, or investment tax credit or other business expenses determined by the court or jury to be inappropriate for determining Gross Income. See (f)(1)(B).

Generally, as a cautionary note within the new guidelines, income and expenses from self-employment income should be carefully reviewed by the court, as it will generally differ from a determination of business income for tax purposes.

## **2. When are Social Security Benefits excluded from income?**

Social Security Benefits are for the most part included as income, except if needs based, such as Supplemental Security Income (“SSI”) received under Title XVI of the federal Social Security Act. See (f)(3). In addition, benefits received under Section 402(d) of the federal Social Security Act for a disabled adult child of a deceased disabled worker who was fully insured are excluded from income. See 42 U.S.C. §402(d).

Subsection (f) does provide guidance on how to calculate the Final Child Support Order if the child or children are receiving Title II benefits on the obligor’s account. If the benefits received by the child are less than the Presumptive Amount of Child Support, the obligor or noncustodial parent is to pay the difference. If the benefits to the child are equal or more than Presumptive Amount of Child Support, the noncustodial parent’s obligation to pay support is met, and no further child support will be owed. Any benefits received by the child which are greater than the Presumptive Amount of Child Amount is not to be considered as a decrease in the amount of child support owed or be applied to arrearages. See (f)(3).

In the situation that the Presumptive Amount of Child Support is greater, equal or less than the Social Security Benefits paid on behalf of the child on the obligor’s account, the Final Child Support Order Amount may be adjusted taking this consideration into account. Id. However, the intent behind comparing the Presumptive Amount with that of the Social Security benefits is that it would not negate the parties’ ability to still seek specific or nonspecific deviations, as set forth in Subsection (i) of this Code Section. Deviations remain permissible in such a case, and will most likely be reviewed and determined by the court or jury prior to comparing that resulting amount (adjustment of the Presumptive Amount of Child Support) with the amount of Social Security benefits paid for the children. See (f)(3)(B)and (C).

### **3. What else should be considered exclusions of income?**

In addition to Social Security Benefits, child support payments received by the parent for the benefit of other children in the household should be excluded. See (f)(2). Benefits related to means tested public assistance programs are also excluded. In addition to SSI benefits, this will include PeachCare for Kids Program, Temporary Assistance for Needy Families (TANF), or similar programs falling under Title IV-A of the federal Social Security Act. Food stamps or the value of food assistance is also excluded, as well as low income heating and energy assistance program payments.

Only the parents' income is to be included in the calculation of Gross Income. The income of the stepparent or the parent's new spouse is not to be included. Also, the nonparent custodian's Gross Income is not calculated. While the nonparent custodian's expenses may be figured into the calculations, only the parents are responsible for paying child support, and thus, only the parents' income is calculated to determine the Basic Child Support Obligation.

### **4. What should be considered reliable evidences of income?**

Reliable evidence is referenced throughout the guidelines, but as to reliable evidence of one's income, the revised guidelines, effective January 1, 2007, provides some examples, such as tax returns from prior years, check stubs and other information for determining current ability to pay child support or ability to pay child support in prior years. See (f)(4). In determining the parent's ability to pay, the court may look at not only the parent's ability to pay, but also the capacity to earn or income potential as well. Evidence of earning potential or capability could be considered reliable evidence of income, including evidence of past and present employment and education and training. See (f)(4)(d)(i)(ii).

In modification cases where a parent fails to produce reliable evidence of income, the court may enter an order increasing the child support of the parent failing to produce evidence of income by an increment of at least 10% per year of that parent's pro rata share of the Basic Child Support Obligation for each year since the Final Child Support Order was entered or last modified. See (f)(4)(B).

There are factors to guide the court in determining whether the parent is willful or voluntarily unemployed or under-employed. If the parent fails to provide reliable evidence of income and there is no reliable evidence of income potential, Gross Income for the current year shall be determined by imputing Gross Income based on a forty hour workweek at minimum wage. See (f)(4)(A).

### **5. When is one able to seek a rehearing on the issue of reliable evidence of income?**

If at the original hearing, a parent does not provide reliable evidence of income or income potential, the other party believing the parent's income may be higher than the amount imputed, may within 90 days, file a motion with the court seeking a



rehearing and provide the court reliable evidence necessary to determine the appropriate amount of child support. See (f)(4)(C). At the rehearing, the court may increase, decrease, or the amount of current child support may remain the same from the date of filing of either parent's initial filing or motion for reconsideration. However, while the motion for reconsideration or rehearing is pending, the noncustodial parent shall remain responsible for the amount of child support originally ordered. Id. If arrearages were part of the original order, they shall not be forgiven even if the child support amount is modified through a rehearing. See (f)(4)(C). Further, if the order is reconsidered and a new determination is made, the child support owed prior to the new court hearing is still due.

Please note that the last line of (f)(4)(C) contains language which is a remnant of an earlier version of Senate Bill 382 instead of the final passed version. The line now states: "When there is reliable evidence to support a motion for reconsideration of the amount of income imputed, the party shall not be required to demonstrate the existence of a significant variance or other such factors required for modification of an order pursuant to subsection (k) of this Code section." However, under the revised guidelines, parties no longer are required to demonstrate the existence of a significant variance required for a modification. Instead, general modification law of "a substantial change in either parents' income and financial status or the needs of the Child" applies. (k)(1). However, this referral to an earlier version of the legislation does not impact the intended meaning of this sentence. This sentence merely indicates that a Motion for Reconsideration under this subsection is not to be considered the same as a petition for modification, as defined and set forth in subsection (k).

#### **6. What are the factors the court is to look at regarding the issue of unemployed/underemployment?**

In determining whether the parent is willfully or voluntarily unemployed or underemployed, the court or jury shall ascertain the reasons for the parent's occupational choices and determine the reasonableness of these choices in light of the parent's responsibility to support his or her children and the child's best interest. See (f)(4)(D). The determination need not be limited to only whether the occupational choices were motivated by intent to avoid or reduce the payment of child support, but whether there was any intentional act that affected the parent's income. Senate Bill 382 provides the court or jury with a test in making the determination: whether there is a substantial likelihood that the parent could, with reasonable effort, apply his or her education, skills, or training to produce income. Additionally, the new guidelines provide the following list of factors which the court or jury may consider when examining the situation:

- Parent's past and present employment;
- Parent's education and training;

- c. Whether the parent is unemployed to pursue training or education and is this reasonable in light of the parent's responsibility to the child and whether the training will benefit the child;
- d. Whether the parent owns valuable assets and resources which seems inappropriate for the amount of income being claimed;
- e. Whether parent's own health and ability to work allows one to work outside the home; and
- f. Parent's role as caretaker of the child in the current case, a disabled or seriously ill child of the parent, an adult disabled child of the parent, or any other disabled or seriously ill relative for whom the parent has assumed the role of caretaker and substantially reduces the parent's ability to work outside the home.

Also, when considering the income potential of a parent whose work experience has been limited to serving as a caretaker of a child, the court shall consider the following:

- Whether the parent acted in the role of full time caretaker immediately prior to the dissolution of the relationship or prior to a divorce or separation;
- The length of time the parent staying at home remained out of the workforce for this purpose;
- The parent's education, training and ability to work; and
- Whether the parent is caring for a child four years of age or younger. See (f)(4)(D).

If the court does determine the parent is willfully or voluntary unemployed or underemployed, the child support should be based on the earning capacity of the parent, analyzing the educational level or previous work experience. In the absence of reliable evidence to this effect, the court may impute Gross Income based on a forty hour workweek at minimum wage. See (f)(4)(D)(IV).

### **7. How is Gross Income adjusted and what is considered discretionary with the court?**

After one's Gross Income is calculated, the parent is able to adjust the Gross Income by any of the following: self-employment taxes being paid by the parent; preexisting child support orders actually paid (not including arrears); and at the court's discretion, other qualified children in the home. See (a)(2) and (f)(5). For further explanation as to how the parent is to adjust his or her Gross Income by the self-employment taxes assessed to the parent, please see Part A, Question 2 of this Guide. As to calculating the adjustment for a preexisting child support order, please refer to Part A, Question 7 response of this Guide for further explanation.

Also, please review Part A, Question 8 of this Guide for a further explanation on how to calculate the Theoretical Support Order for Other Qualified Children, if applicable. However, this third means by which income may be adjusted is discretionary with the court. Basically, it is a three step scrutiny. First, the parent of the

other children in the home must prove that the parent is legally responsible for the child and the child still resides in the parent's home; the parent is actually supporting the child; the child is not subject to a preexisting support order; and the child or a support order for this child is not before the court to set, modify or enforce support. Next, the parent must show why if the court did not consider these other children in the home it would pose a substantial hardship on the parent. Finally, the parent must prove to the court that consideration of these other children in the home and calculating a Theoretical Support Order (as if an order actually existed) would be in the child of the present case's best interest. See also (a)(20) and (f)(5)(C).

**8. How does the child's best interest fit with the substantial hardship test found within the provision of Theoretical Child Support Orders?**

The parent must provide evidence as to why not having this adjustment would create a substantial hardship for this parent. Even if the parent is able to meet all of the other qualifications required under the Theoretical Child Support provision of the statute, the court still must determine whether allowing this adjustment of income would be in the child of the current case's best interest taking into consideration the state's policy of affording to children of unmarried parents, to the extent possible, the same economic standard of living enjoyed by children living in intact families consisting of parents with similar financial means. See (f)(5)(C) and (c)(1). This adjustment should not be at the detriment of the child for whom support is being calculated in the current case.

**9. What is the role of the jury and how does the right to a jury trial to determine gross income and possible deviations conflict with Chapter 11 of Title 19?**

In child support matters, the jury shall only determine the amount of Gross Income and any possible deviations from the Presumptive Amount of Child Support. Subsection (c)(4) details the jury process by stating: (1) the court shall charge the provisions of this Code Section applicable to the determination of Gross Income; (2) the jury shall then be required to return a special interrogatory determining Gross Income; (3) based upon the jury's verdict as to Gross Income, the court shall determine the Presumptive Amount of Child Support; and (4) in the final instructions to the jury, the court shall charge the provisions of this Code Section applicable to the determination of Deviations and the jury shall be required to return another special interrogatory as to the Deviations and the final award of Child Support. The court shall include its findings and the jury's verdict on the Child Support Worksheet which shall be attached to the Court Order. Schedule E, pertaining to deviations, shall also be attached, if applicable. See (c)(4).

However, an exception to the above would be those cases falling within Chapter 11 of Title 19 of the Georgia Code. The court, and not a jury, shall make all determinations of fact in any case brought by the Office of Child Support Services pursuant to the Child Support Recovery Act, the Uniform Reciprocal Enforcement of

Support Act or the Uniform Interstate Family Support Act. See (c)(6) and Part C, Question 6 of this Guide.

### **PART G. PARENTING TIME ADJUSTMENT**

The Parenting Time Adjustment was changed substantially in the final version of Senate Bill 382, from being a presumptive means of adjusting the Basic Child Support Obligation to a potential deviation from the Presumptive Amount of Child Support. In other words, Parenting Time changed from being an adjustment of the Basic Child Support to a Deviation, at either the court's discretion or jury determination. This provision will be discussed in more detail below in Part I, along with the other Deviations set out in subsection (i) of the new law.

### **PART H. ADJUSTED SUPPORT OBLIGATION**

This subsection was named "Adjusted Support Obligation" to clarify the progress of the child support calculation steps. For by this point in the process, Gross Income has been calculated and then adjusted. The parents' Adjusted Incomes are combined to determine the Basic Child Support Obligation found in the Child Support Obligation Table. The next step is to possibly adjust the Basic Child Support Obligation by the amount of Health Insurance premiums paid or will be paid and Work Related Child Care Costs paid or will be paid.

The Child Support Obligation Table does not include the costs of the parent's Work Related Child Care Costs and Health Insurance premiums. Therefore, the additional expenses for the child's Health Insurance premium and Work Related Child Care Costs shall be included in the calculations to determine child support. The schedules are set up to do so immediately after determining the Basic Child Support Obligation. After credits are added or deducted as to who is actually paying these additional costs, the resulting amount is to be considered the Presumptive Amount of Child Support. See Subsection (h) and Policy Studies, Inc., "Technical Documentation: Georgia Child Support Guidelines Obligation Table," December 2005; "Georgia Child Support Commission Final Report," January 2006.

The subsection on "Adjusted Support Obligations" within the revised guidelines, effective January 1, 2007, also contains a provision on "Uninsured Health Care Expenses." See (h)(3). Following determination of the Final Child Support Order amount, the order will specify the percentage of Uninsured Health Care Expenses for which each parent (only parent, not a third party) shall be responsible. See (c)(2)(G). The Worksheet will also have a space to indicate each parent's future responsibility for the Uninsured Health Care Expenses. See (b)(10). Yet, the Uninsured Health Care Expenses are not part of the actual calculation.

**1. How does one give credit for Work Related Child Care Costs and/or Health Insurance if a parent is paying it directly or through another source?**

If either Parent is actually paying the Work Related Child Care Costs and/or Health Insurance premiums for the child in the current case, that parent may get a credit for that what he or she is actually paying for these expenses through a separate source. See (b)(7). The intent behind this is if the parent is already paying the child's Health Insurance premium through payroll deduction or by direct payment prior to the establishment of this child support order, the parent should be credited for the payment so that the insurance coverage is not interrupted. Most Health Insurance plans will not accept less than full payment from the responsible parent, if the amount of the order was changed to a pro rata responsibility for the Health Insurance costs. Similarly if the parent is paying the Work Related Child Care expenses prior to the establishment or modification of this order, the parent will get credit for that payment. These credits are allowed so that the expense is not included in the child support order twice and to assure that the paying parent is ultimately paying only his/her portion of the expense.

Additionally, if the evidence shows that the parent is entering the workforce and will have expenses related to Work Related Child Care Costs and/or Health Insurance costs for the child, the parent should present proof of what those actual costs will be to the court before the court includes such payment in its consideration. See (g)(1)(D).

**2. Is the cost of Health Insurance included in the calculation if the insurance is paid by another source, other than either parent?**

Payments made by a parent's employer for Health Insurance and not deducted from the parent's wages, shall not be included. See (h)(2)(A)(i). However, a Health Insurance premium paid by a nonparent custodian shall be included when determining the amount of Health Insurance expense. See (h)(2)(B)(i). While a nonparent custodian's income is not figured into the calculation, the nonparent custodian's expenses are figured to aid in capturing the child rearing expenditures and, in turn, the child support obligation. However, if one other than the parent or nonparent custodian pays or will pay the Health Insurance, it will not be included in the calculation. For example, if a grandparent pays the Health Insurance costs and the grandparent is not a custodian of the child, the costs of insurance that the grandparent is paying is not calculated into the amount of child support. Further, health coverage through PeachCare for Kids Program and Medicaid will not prevent a court from ordering either or both parents to obtain other or additional Health Insurance. See (g)(2)(B)(iii).

**3. How do you determine the amount of the child's Health Insurance costs?**

If the Health Insurance coverage obtained is applicable to persons other than just the child, the insurance company often can provide a verified statement as to the amount of the premium which is attributable to the child or children who are the subject of the current action for support. Only the amount attributable to the child or children, who are the subject of the current action, can be considered as an adjustment of the support obligation. However, if information regarding the premium amount

attributable to the child is not obtainable, then a simple calculation can be conducted to determine the amount. To do so, divide the total amount of the insurance premium by the number of persons covered by the insurance policy and multiply the resulting amount by the number of children covered by the insurance policy. See, (h)(2)(B)(ii).

Example: Through an employment-related insurance plan, a parent provides medical insurance that covers the parent, one child who is the subject of the child support case and two other children. This parent pays a total of \$170 for the "family option" that provides coverage for the employee and any number of dependents. To calculate the amount attributable to the child, divide the four persons covered into \$170, which would equal \$42.50. The resulting \$42.50 is added to the Basic Child Support Obligation as the Health insurance costs for the one child for whom support is being calculated.

#### **4. Are Work Related Child Care Costs adjustments to the Basic Child Support Obligation available for education and vocational training, as it may be for the parent's employment?**

The revised guidelines clearly define Work Related Child Care Costs as those costs necessary for the parent's employment, education or vocational training that are determined by the court to be appropriate and that are appropriate to the parent's financial abilities and to the lifestyle of the child if the parents and child were living together. Thus, the court may consider but would need to make a determination if appropriate to the parent's financial abilities and lifestyle of the child. See (h)(1)(A).

#### **5. What are some of the exceptions to a parent receiving credit for Work Related Child Care expenses?**

The section on Work Related Child Care Costs includes a number of exceptions as to what should be included in the calculation. See (h)(1)(B) through (D). For example, if a child care subsidy is being provided pursuant to a means-tested public assistance program, only the amount of the child care expenses actually paid by either the parent or nonparent custodian shall be included in the calculation. (h)(1)(B). Further, if work related child care is or will be provided by a person who is being paid for his or her services, proof of actual costs or payment must be presented to the court. (h)(1)(D). Proof is required even if a family member is the one who is providing the service and is being paid for his or her services. If child care is being provided without charge, by a family member, the parent, or anyone else, the value of those services shall not be an adjustment to the Basic Child Support Obligation. (h)(1)(C) and (D).

#### **6. How do the nonparent custodian's expenses get figured in for both Work Related Child Care Costs and Health Insurance costs?**

Work Related Child Care Costs and Health Insurance premium costs paid by a nonparent custodian shall be considered when determining the amount of this expense. See (h)(1)(A) and (B) and (h)(2)(B)(i). The definition of a nonparent custodian is "a legal custodian or a person or entity who otherwise has standing to seek, modify or enforce

child support.” See (a)(15). However, while the nonparent custodian’s expenses are figured in here and there will be an area designated on Schedule D regarding Adjusted Support Obligation, the nonparent custodian is neither responsible nor will be ordered to pay child support through the child support guidelines, as set forth in §19-6-15. See, (f)(2)(C).

#### **7. How are Uninsured Health Care Expenses calculated?**

Uninsured Health Care Expenses shall be the financial responsibility of both parents, but is not calculated into the amount of child support. The term, Uninsured Health Care Expenses, is defined within the revised statute’s definition section, (a)(23), as the child’s uninsured medical expenses including, but not limited to, health insurance co-payments, deductibles and such other costs as deemed reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any acute or chronic medical or health problem or mental health illness, including counseling and other mental health expenses, that are not covered by insurance. (a)(23) However, since these are future expenses and an indefinite and variable amount, they can not be calculated into the current support order amount. Therefore, it is a future divided share of responsibility for each parent, with the parents dividing the Uninsured Health Care Expenses pursuant to same the percentage of income or pro rata shares as was done with the parents’ Adjusted Income. However, the court may specify a different division, other than the pro rata share, for Uninsured Health Care Expenses. See (a)(23) and (h)(3). The specified percentage of Uninsured Health Care Expenses for which each parent shall be responsible is to be included in the court order. See (c)(2)(G). There will also be a space at the bottom of the Child Support Worksheet for the court to indicate this percentage. See Child Support Worksheet.

#### **8. How can the IV-D agency enforce Uninsured Health Care Expenses?**

If a parent fails to pay his or her pro rata share or the amount otherwise specified by the court for the child’s Uninsured Health Care Expenses, as set forth in the child support order/Child Support Worksheet, the other parent or nonparent custodian may enforce payment of the expense. However, the IV-D agency (Office of Child Support Services) can only enforce unpaid Uninsured Health Care Expenses after the unpaid expense has been reduced to a judgment in a sum certain amount. See (h)(3)(B)(ii). The Georgia Child Support Recovery Act considers unpaid child support, including medical support, to be a judgment by operation of law. Federal law requires that any such judgment be reduced to a specific dollar amount prior to being enforced by the Office of Child Support Services. See O.C.G.A. §19-11-18(b)(1); 42 U.S.C. §§ 652(f), 666(a)(9)(A), 666(a)(19); 45 CFR §§ 302.50(e), 302.70(a)(9)(i).

## **PART I. DEVIATIONS**

The Presumptive Amount of Child Support is rebuttable and the court or jury may deviate from the Presumptive Amount of Child Support. There are eleven specific Deviations listed within the new guidelines, plus an additional nonspecific category. See (i)(2). Similarly, the pre-2007 guidelines contain a list of seventeen special circumstances, which the court may consider as a basis for deviation when the “presence of one or more of the following special circumstances makes the presumptive amount of support either excessive or inadequate,” along with an eighteenth factor which is similar to the nonspecific deviation included in the revised guidelines. For the most part, the seventeen listed special circumstances have been incorporated into the new law as specific Deviations or as a part of calculating the Presumptive Amount of Child Support, such as preexisting child support orders, child care costs and health insurance premium costs.

Before the court or jury may deviate from the Presumptive Amount of Child Support under the new law, it must determine that the Presumptive Amount of Child Support would be “unjust or inappropriate,” and that deviation is in the child’s best interest. (i)(1)(B)(iii). In addition, the revised guidelines also contain a provision which states that “[n]o Deviation in the Presumptive Amount of Child Support shall be made which seriously impairs the ability of the Custodial Parent to maintain minimally adequate housing, food and clothing for the Child being supported by the order and to provide other basic necessities... .” (i)(1)(C).

Subsection (c) contains a statement that the child support guidelines are a minimum basis for determining the amount of child support and shall apply as a rebuttable presumption. The rebuttable Presumptive Amount of Child Support may be increased according to the best interest of the child for whom support is being calculated, as well as a review of the circumstances of the parties, the grounds for deviation, and to achieve the state policy of affording to children of unmarried parents, to the extent possible, the same economic standard of living enjoyed by children living in intact families consisting of parents with similar financial means. (c)(1). Questions, then, have arisen as to whether the court may only increase (as opposed to decrease) the Presumptive Amount of Child Support if the presumptive amount is rebutted.

Yet, when also taking into account the circumstances of the parties as stated above, as well as subsection (d) which states that the guidelines are to be only guidelines and the court when hearing evidence shall not abrogate its responsibility in making its final determination based on the evidence, it seems clear that the court or jury may deviate downward from the Presumptive Amount of Child Support. Additionally, the definition for “Deviation” found within the definition section states it is an “increase” or “decrease” from the Presumptive Amount of Child Support. (a)(10). The overriding criterion, though, is whether the Deviation is in the child’s best interest.



**1. Are written grounds for deviations still required, and where are they to be included?**

The court or jury are still required to make written findings or special interrogatory findings that an amount of child support other than the amount calculated as the Presumptive Amount of Child Support is reasonably necessary to provide for the needs of the child for whom support is being determined. See (i)(1)(B).

The order or special interrogatory shall state:

- (a) The reasons for the Deviation from the Presumptive Amount of Child Support;
- (b) The amount of child support that would have been required under the guidelines if the Presumptive Amount of Child Support had not been rebutted; and
- (c) How, in its determination:
  - (i) the application of the Presumptive Amount of Child Support would be unjust or inappropriate; and
  - (ii) the best interest of the child for whom support is being determined will be served by Deviation from the Presumptive Amount of Child Support. (i)(1)(B).

**2. When does the court look at a possible Deviation of child support for high income families?**

The Child Support Obligation Table provides obligation amounts for combined incomes up to \$30,000 per month or \$360,000 per year. Where the income exceeds that amount, the court shall set the Basic Child Support Obligation at the highest amounts allowed by the Child Support Obligation Table (using an income of \$30,000/month), or the court or jury may consider deviating upward to attain an appropriate amount of child support for high income parents which are consistent with the best interest of the child. See (i)(2)(A). If the court or jury determines that there should be an upward adjustment over the amount for \$30,000 a month combined income based on the number of children for whom support is being calculated, the method of calculation will be at the court's discretion or jury determination. The overriding criterion will be the child's best interest. Id.

**3. What is the Self Support Reserve and/or Low Income Deviation and how is it calculated?**

For a noncustodial parent who is defined as a low income person (defined as having Gross Income of \$1,850 per month or less), the court or jury may consider calculating whether a self support reserve would be necessary. While some states provide a self support reserve within their basic child support obligation table in the form of a very low minimum order amount mandated for incomes below a certain level, Georgia has chosen instead to go with a possible low income deviation which has a self support reserve incorporated into the formula. The Self Support Reserve is at the court or jury's discretion, and should not be considered as an automatic low income adjustment. In performing the Self Support Reserve test, the court or jury will first

determine if the noncustodial parent is financially able both to pay the child support order and to maintain at least a minimum standard of living, and will then determine if the custodial parent is also financially able to provide the basic necessities for the child if the low income deviation is applied. See (i)(2)(B).

How to calculate the low income Deviation, if the noncustodial parent meets the \$1,850 Gross Income threshold:

Deduct \$900 (the Self Support Reserve amount) from the noncustodial parent's Adjusted Income. If the resulting amount is less than the Presumptive Amount of Child Support for the noncustodial parent, the court may deviate from the Presumptive Amount of Child Support to the resulting amount. However, if the result is less than \$75, it must be raised to \$75, which is the minimum amount of support that can be ordered because of this Deviation. Please note that the minimum amount of \$75 amount applies only to this low income Deviation, and not to the entire guidelines, nor is there a minimum order amount indicated on the Child Support Obligation Table. See (i)(2)(B)(ii).

The court or jury must also consider the financial impact the reduction would have on the custodial parent's household before reducing the amount of child support based on the low income Deviation. Further, a possible reduction of child support under this Deviation does not prohibit an additional amount to be ordered to reduce an obligor's arrears. Moreover, the statute does not limit the court from adding or subtracting other potential Deviations from the amount set by the low income Deviation if it is applied. Therefore, it will be up to the court or jury's determination whether additional Deviations, up or down, are to be made to this amount. See (f)((2)(B)(iii).

#### An Example of the Self Support Reserve Test in determining a Low Income Adjustment:

Before applying the Self Support Reserve Test, the noncustodial parent's pro rata share of the Presumptive Amount of Child Support is \$223. The Adjusted Income of the noncustodial parent is \$950. Subtracting the Self Support Reserve amount of \$900 from the noncustodial parent's Adjusted Income of \$950 leaves \$50. Because this resulting amount is less than the \$223 Presumptive Amount of Child Support, the court may reduce the Presumptive Amount of Child Support to the resulting amount. Since \$50 is less than \$75, the minimum order amount pertaining to the low income deviation, then the support amount should be at least \$75. However, before making any reduction, the court or jury must examine the support capability of the custodial parent, using the same Self Support Reserve Test applied to the noncustodial parent.

In this example, the custodial parent's Gross Income qualifies the parent as a low income person, and the proportionate share of the Presumptive Amount of Child Support is calculated under the guidelines to be \$214. This parent's Adjusted Income is

\$910. Subtracting the Self Support Reserve of \$900 from the custodial parent's Adjusted Income of \$910 leaves \$10. Because this resulting amount is less than the custodial parent's proportionate share of the Presumptive Amount of Child Support, the Self Support Reserve and low income Deviation must be denied to the noncustodial parent. It is evident that the custodial parent's ability to provide for the child would be harmed by the reduction of the noncustodial parent's support amount from \$223 to \$75.

**4. What if the parent's Combined Adjusted Income is less than \$800 (the lowest Combined Adjusted Income figure found on the Child Support Obligation Table)?**

Additionally, the Child Support Guidelines are silent on the amount of the Basic Child Support Obligation when the Combined Adjusted Income of the parents is less than \$800 per month. The lowest amount of Combined Adjusted Income found on the Child Support Obligation Table is at \$800. Thus, in a situation where the Combined Adjusted Incomes is less than \$800, the court, in its discretion, may consider setting the Basic Child Support Obligation amount at the lowest amount allowed by the Child Support Obligation Table. However, the court or jury may deviate from that amount under the Nonspecific Deviation provision, (i)(3), to attain an appropriate award of child support for low income parents when it finds it is in the best interest of the child. This is similar to the policy set forth in the high income Deviation provision. See (b)(4),(i)(2)(A) and (i)(3).

**5. What do you do if there are more than six children within a child support order?**

Similarly, the statute is also silent on the Basic Child Support Obligation if there are more than six children for whom child support is being calculated. Thus, again, it would be at the court's discretion to set it at the Basic Child Support Obligation for six children or deviate upward to attain an appropriate obligation amount which is consistent with the best interest of the child. See also (b)(4).

**6. What is "Other Health Related Insurance" and when should this and life insurance for the benefit of the children be considered by the court as a Deviation?**

If the court or jury finds that either parent has vision or dental insurance available at a reasonable cost for the child, the court may deviate from the Presumptive Amount of Child Support for the costs of such insurance. See (i)(2)(C). Pursuant to §196-34, as revised (effective January 1, 2007), if the court or jury finds that either parent has purchased life insurance on the life of either parent or the life of both parents for the benefit of the child, the court may deviate from the Presumptive Amount of Child Support for the cost of such insurance by adding or subtracting the amount of the premium. Specifically, §19-6-34(b), as revised, states that "[t]he amount of the premium for such life insurance may be considered as a deviation to the presumptive amount of child support pursuant to the provisions of §19-6-15." See (i)(2)(C) and (D).

**7. What is the definition of Child and Dependent Care Tax Credit which is included as one of the possible specific deviations within Subsection (i)?**

This is a federal tax credit, and is defined by the Internal Revenue Services as: If a parent paid someone to care for his or her child or a dependent so he or she could work or look for work, one may be able to reduce his or her tax by claiming the Child and Dependent Care Credit on the parent's federal income tax return. A parent may also be able to claim the credit if the parent paid someone to care for a child who is under age 13 or for a spouse or a dependent of any age who is physically or mentally incapable of self-care. The credit is a percentage of the amount of work-related child and dependent care expenses the parent paid to a care provider. The credit can be up to 35% of one's qualifying expenses, depending upon the total income. To qualify, one must have earned income from wages, salaries, tips or other taxable employee compensation or net earnings from self-employment. To claim the credit, the dependent must live with the parent for more than half of the taxable year. Internal Revenue Service, Department of the U.S. Treasury, "Claiming the Child and Dependent Care Credit," IRS Tax Tip 2006-46, 2006.

If the court or jury finds that one of the parents is entitled or received this tax credit, the court or jury may consider deviating from the Presumptive Amount of Child Support in consideration of this tax credit. See (i)(2)(E). Please note, though, that this is not the same as the child dependency exemption or as the child tax credit.

**8. When should Visitation Related Travel Expenses be considered as a Deviation?**

If court ordered visitation related travel expenses are substantial due to the distance between the parents, the court may order the allocation of such costs or the jury may by a finding in its special interrogatory an allocation of the costs by a deviation of the Presumptive Amount of Child Support. See (i)(2)(F). The circumstances of the respective parents, as well as which parent moved and the reason for the move may be considered.

**9. When is alimony to be considered a Deviation as opposed to being considered in the calculation of income?**

Actual payments of alimony are not a means to adjust one's income; however, it may be considered by the court or jury to be a deviation from the Presumptive Amount of Child Support. See (i)(2)(G).

**10. What does the mortgage Deviation mean and why included in this list?**

If the noncustodial parent is providing shelter, such as providing a home at no cost to the custodial parent or paying the mortgage of the house where the child whom support is being calculated resides, the court or jury may allocate such costs or an amount equivalent to such costs as a deviation from the Presumptive Amount of Child Support. In doing so, the court or jury may take into consideration the circumstances of the respective parents and the best interest of the child. See (i)(2)(H).

### **11. What is meant by Permanency Plan or Foster Care Plan?**

In cases where the child, for whom support is being calculated, is in the legal custody of the Department of Human Resources, the child protection or foster care agency of another state or territory, or any other child-caring entity, public or private, the court or jury may consider a deviation from the Presumptive Amount of Child Support if the deviation will assist in accomplishing the Permanency Plan or Foster Care Plan for the Child that has a goal of returning the child to the parent or parents. For example, the parent may need to establish an adequate household or to otherwise adequately prepare himself or herself for the return of the child, and therefore, the court may want to consider deviating from the Presumptive Amount of Child Support in this instance. The court or jury may consider this Deviation in light of whether it is in the child's best interest. See (i)(2)(I).

### **12. What are Extraordinary Expenses and how are they calculated?**

The data and estimates of a family's child rearing expenditures which were the basis of Georgia's Child Support Obligation Table include only average child rearing expenditures. For example, only approximately seven percent of the total child rearing expenses was spent on the child's entertainment. Policy Studies, Inc., "Technical Documentation: Georgia Child Support Guidelines Obligation Table," December 2005.

Extraordinary expenses are those expenses in excess of average child rearing expenditure amounts estimated in the Child Support Obligation Table, and are to be considered on a case-by-case basis. The amounts of extraordinary expenses are highly variable among families. (i)(2)(J). Therefore, extraordinary expenses may form the basis for a deviation to the Presumptive Amount of Child Support so that the actual amount of the expense is considered for only those families incurring the expenses. Id. The court and jury may consider this Deviation as to whether it is in the best interest of the child.

While the term, "Extraordinary Expenses," represents the category of expenses, the expenses are further divided into:

- (a) Extraordinary Educational Expenses;
- (b) Special Expenses incurred for child rearing; and
- (c) Extraordinary Medical Expenses. All of the extraordinary expenses are prorated between the parents. See (i)(2)(J).

Extraordinary educational expenses include, but are not limited to, tuition, room and board, lab fees, books, fees and other reasonable and necessary expenses associated with special needs education or private elementary or secondary school education that are appropriate to the Parents financial abilities and to the lifestyle of the child if the parents and the child were living together. Grants, scholarships and other cost-reducing programs received by or on behalf of the child should be considered. A monthly average should be determined based on evidence or actual or anticipated

expenses. These expenses should be entered on Schedule E. If awarded, these expenses shall be prorated between the parents. See (i)(2)(J)(i).

Extraordinary medical expenses are those expenses which are incurred by a child, a parent, or a child of a parent's current family which are not covered by insurance and which cause extreme economic hardship. The Court or the jury may consider the resources available for meeting these needs, including resources from agencies and from other adults. If such a Deviation is considered, it shall not act to leave a child for whom support is being determined unsupported and may be ordered for a specific time measured in months. For further explanation and description of extraordinary medical expenses, please refer to Part A, Question 10 of this Guide. See also (i)(2)(J)(iii). Special Expenses are dealt with further in the next question, Question 13.

### **13. How are Special Expenses calculated?**

Special expenses incurred for child rearing, include but are not limited to those expenses related to summer camp; music or art lessons; travel; school sponsored extracurricular activities, such as band, clubs and athletics; and "other activities intended to enhance the athletic, social and cultural development of a child." (i)(2)(J)(ii). Also, special expenses may include food, clothing and hygiene of children which could vary due to different age levels. Id. Examples would be diaper costs for the very young child and clothing costs for the teenager.

The calculation for special expenses differs somewhat from the other categories of extraordinary expenses. To calculate the deviation, multiply .07 times the Basic Child Support Obligation. The court or jury shall then consider the full amount of the special expenses to be applied as a Deviation. When those special expenses exceeds seven percent of the Basic Child Support Obligation amount, then the amount exceeding the seven percent shall be considered as the Deviation amount, and prorated between the parties. (i)(2)(ii). This is to take into account the 7% which is built into the Child Support Obligation Table for these expenses. Policy Studies, Inc., "Technical Documentation: Georgia Child Support Guidelines Obligation Table," December 2005.

#### Example of Special Expenses Deviation:

The Basic Child Support Obligation for one child, based on the Combined Adjusted Income of the child's parents (\$7200) is \$1083. The child has been singing with her school choirs since elementary school. She has tried out for her high school "Show Choir" and has been accepted. This group travels in-state to various competitions, and stages two scheduled concerts per school year. The cost is averaged over the school year to equal \$175 per month. The custodial parent seeks a Deviation for special expenses. To calculate, take the Basic Child Support Obligation amount of \$1083 x 7% (.07), which equals \$75.81, the minimum amount needed to consider special expenses. Since the actual expense exceeds \$75.81, the court may consider the additional amount as a special expenses Deviation. In this case, the court may subtract \$75.81 from \$175, which

equals \$99.19. That amount, if granted as special expense Deviation, is prorated between the parties based on their percentage of income.

**14. How do you calculate Parenting Time as a potential Deviation, and at what point do you calculate it on the Worksheet and Schedules?**

For the courts, the definitions involving Parenting Time Adjustment, such as “Day” and a threshold of what percentage of extended parenting time would qualify for an adjustment were removed, transforming the definition and when and how much to deviate at the court’s discretion.

While now considered as a potential deviation, the overall definition and purpose of Parenting Time remains the same. The Child Support Obligation Table is based on the expenditures for the child in intact households and therefore, there is no consideration for costs associated with court ordered visitation. Costs associated with visitation, exceeding the standard visitation period, may make the Presumptive Amount of Child Support excessive or inadequate. At the court’s discretion, it may order or the jury may find by special interrogatory that the Presumptive Amount of Child Support is excessive or inadequate due to extended parenting time. See (i)(2)(K)(i).

As stated in subsection (i)(2)(K)(ii) of the guidelines, effective January 2007, the court or jury may determine that a deviation for Parenting Time is applicable. The amount to be deviated for the Parenting Time will be indicated on Schedule E. Yet, unlike most of the other specific deviations, as detailed in Subsection (i) and found on Schedule E, there is not a straight addition to or deduction from the Presumptive Amount of Child Support with the Parenting Time deviation. The Parenting Time Deviation, if applicable, is applied to the noncustodial parent’s Basic Child Support Obligation for a specific deviation amount. See (i)(2)(K)(ii).

Please note that this adjustment must be made to the noncustodial parent’s portion of the Basic Child Support Obligation to ensure that fixed expenses, such as health insurance and work related child care costs are not affected by an adjustment. Further, the definition clarifies that consideration is given to only the amount of visitation set forth in a court order, and not just the amount that a parent claims the child actually visits. See (a)(17) and (i)(2)(K)(ii).

**15. Why are attorneys prosecuting Child Support enforcement or establishment cases exempted from seeking a Parenting Time Deviation or are not considered a party to the action?**

In accordance with subsection (d) of Code Section 19-11-8, “any action initiated by the department...shall be limited solely to the issue of support and shall exclude issues of visitation, custody, property settlement, or other similar matters otherwise joinable by the parties.” The Office of Child Support Services therefore will not be involved with any action or claim related to visitation, including actions for contempt brought by the Custodial Parent against the Noncustodial Parent for failure to exercise the court ordered visitation upon which the Parenting Time Adjustment Deviation is based.

The Office of Child Support Services will apply the Parenting Time Adjustment Deviation to the Presumptive Amount of Child Support when there is a court order for visitation and the parents agree to the amount of the Parenting Time Adjustment Deviation to be applied to the Presumptive Amount of Child Support. If both these criteria are not met, then the Office of Child Support Services will direct the parents to the Court and will not apply the Parenting Time Adjustment Deviation.

#### **16. What is a Non-Specific Deviation?**

A non-specific deviation is similar to the special circumstance, listed as number 18, in the former guidelines which states, “[a]ny other factor which the trier of fact deems to be required by the ends of justice.” The new guidelines states that a deviation from the Presumptive Amount of Child Support may be appropriate for reasons in addition to the specific ones listed in the Deviation Subsection (i) of the Act if the court or jury finds it is in the best interest of the Child. See (i)(3).

If the circumstances which supported the deviation cease to exist, the Final Child Support Order may be modified.

### **PART J. INVOLUNTARY LOSS OF INCOME**

This is a new provision or addition to the child support guidelines. It applies to those individuals who have had an involuntary loss of income of 25% or more, and who petition the court for a modification of support on those grounds. The policy behind this provision is recognition that such a loss of income would substantially change the amount of Combined Adjusted Income upon which the Basic Child Support Obligation is based. This provision applies to either parent, the noncustodial or custodial parent. See (j)(1). It does not apply where the parent has left the employer without good cause in connection with the parent’s most recent work. Id.

The involuntary loss of income provision only applies to an employer’s action of involuntary termination of employment, extended involuntary loss of average weekly hours, the parent has been involved in an organized strike, incurs a loss of health or similar involuntary adversity. See (j)(i).

If such an adversity or loss of income occurs resulting in a loss of income of 25% or more, then the portion of child support attributable to lost income shall not accrue from the date of the service of the petition for modification, provided the service is made on the other parent. (j)(1). Senate Bill 382 altered the provision of former law which prohibited the modification of support prior to the date of the actual order, which may create a hardship upon the parent who had involuntarily lost income. Under 42 U.S.C. §666 (a)(9)(C) and 45 CFR§§302.70, 303.106(b), states are required to have in place laws that prohibit the retroactive modification of a child support obligation. The one exception is that states are permitted to modify “with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given.” Id. To ensure compliance and avoid a conflict of laws,



the portion of child support attributable to lost income shall not accrue from the date of service. Also, note that the provision states specifically service is made on the other Parent, as opposed to a third party involved in the action. See (j)(1).

Further, while this provision calls for the court to make every effort to expedite hearing such action, current child support will accrue until the court order is entered reducing support. See (j)(2). If the court does modify the current support, the court may phase in the new support amount, including the overpayment or recoupment to avoid a sharp impact. The court may phase in over a period of one year, with the phasing in being largely evenly distributed, with at least one initial immediate adjustment of not less than 25% of the difference and at least one intermediate adjustment prior to final adjustment at the end of the phase in period. See (j)(2) and (3).

For the reasons listed above and those found in Subsection (j) regarding Involuntary Loss of Income, one can modify a modified child support order as an exception to the two year rule as set out in the Modification Subsection or Subsection (k).

## **PART K. MODIFICATION**

### **1. What is the modification law for child support orders under the new guidelines?**

The threshold requirement for a modification of a child support order is whether there has been a substantial change in either parent's income and financial status or the needs of the child. See (k)(1). This is general modification law as set forth in O.C.G.A. §19-6-19.

However, it is important to note that effective January 1, 2007, the provisions regarding modification law pertaining to the support of the children in O.C.G.A. §§19-6-19 through 19-6-21, and §19-6-24 are repealed. Instead, Senate Bill 382, which is the basis for the revised child support guidelines, incorporated general modification law (as found previously in these repealed statutes) into Subsection (k) of the new guidelines.

### **2. What is the two year rule and what are the exceptions to this rule, set forth in 19-6-15?**

The two year rule, as stated in prior §19-6-19(a), has now been incorporated into the guidelines under (k)(2). However, a list of three exceptions has been added to the two year rule. These are: (1) noncustodial parent has failed to exercise the court ordered visitation; (2) a noncustodial parent has exercised a greater amount of visitation than what was provided in the court order; or (3) The motion to modify is based upon an involuntary loss of income as stated above or found in Subsection (j). See (k)(2).

### **3. How does this subsection reconcile with Code Section 19-11-12 and Title IV-D Cases?**

An exception to general modification language is Title IV-D case reviews and modifications, which are governed by O.C.G.A. §19-11-12. Under subsection (c) of

Code Section 19-11-12, subsequent changes to the Child Support Obligation Table shall be a reason to request a review for modification from the IV-D Agency (Office of Child Support Services).

The IV-D Agency commences a 36 month review cycle after the establishment of an order, modification of an order or a determination of no change to the child support order. The purpose of the cycle is to give the parties a right to have the order reviewed at least once every 36 months. When reviewing, the IV-D Agency shall review the court orders for possible modification.

If the parties request a review in less than 36 months and the requesting party demonstrates a substantial change in circumstances, the IV-D Agency will seek to modify in accordance with the current guidelines. In this instance, a substantial change in circumstances exists if the calculated support award is a 15% or greater increase or decrease than the current support award resulting in a minimum \$25.00 per month increase or decrease. See Ga. Comp. R. & Regs. r. 290-7-1-.06.

If the request for review occurs after 36 months, the requesting party will not be required to demonstrate a substantial change in circumstances, the need for additional support or that the needs of the child have decreased. Instead, the sole basis for a recommended change in the award of support is a significant inconsistency between the current child support order and the amount of child support which would result from the application of the new guidelines, effective January 1, 2007. See (j)(3)(C).

#### **PART L. SPLIT PARENTING**

This provision was put into the Guidelines to make a clear distinction between split parenting and shared parenting. Split parenting is the situation when one parent has custody of at least one of the children from the former relationship, and the other parent has custody of at least one other child from the same relationship. In a situation, such as this, a Child Support Worksheet will be prepared separately for the child for whom the father is the custodial parent and for the child for whom the mother is the custodial parent. When split parenting occurs, the court shall determine which parent is the obligor and the other requirements of an order, as set forth in Subsection (c) of the guidelines, effective January 1, 2007. The Worksheet and Schedules will be reconciled and the court will order what amount of child support should be paid.

#### **PART M. WORKSHEET AND SCHEDULES**

The Worksheet and Schedules used in calculating child support and being presented to the court are those which are promulgated by the Child Support Commission. See (a)(25) and (m). The parties are to submit the Worksheet and Schedules to the court complete with their financial information. The court is to record its findings

or the jury's verdict on the Worksheet and appropriate Schedules. The Worksheet and Schedule E (pertaining to deviations) are to be attached to the order.

In addition, the Child Support Commission, pursuant to Code Section 19-6-53(7) caused to be developed software and a calculator associated with the use of the Child Support Obligation Table and the actual calculation of a Final Child Support Order. The Commission assigned the Office of Child Support Services to develop the software, and the finished version will be available in several versions, from a litigant version to a judges' version. There will also be an attorneys' version and an Office of Child Support Services Agents' and Attorneys' version. The electronic calculator or electronic worksheet, as it is being called, will be internet based. It will also be downloadable for those who do not have access to the internet. The guided version for the litigant will be web-based and question driven to assist those who are not as familiar with the child support guidelines, terms and the method of calculation. In addition, litigants through the guided questions will be aided in the types of documentation which will be required. The user will also be able to save his or her calculations to allow one to retrieve the documentation and finish the calculation at a later time. Upon completing the calculation and reviewing one's entries, the litigant can then submit to the court, which will be "saved" on a court only access website.

When one finishes calculating with the electronic worksheet, the printed copy is uniform with the manual Worksheet/Schedules. To avoid variances in the amount of calculation and create uniformity in awards and forms, as well as aiding the citizens and courts of the state to electronically file and submit documents to each other, it is strongly encouraged that only the electronic software the Commission is having developed be used upon the effective date of the revised guidelines.

#### **OTHER PROVISIONS OR CODE SECTIONS REVISED BY THE RECENT CHILD SUPPORT LEGISLATION**

##### **1. What is the new rate of interest and when does it go into effect?**

Effective January 1, 2007, all awards of child support expressed in monetary amounts shall accrue interest at the rate of 7 percent per annum commencing thirty days from the day such award or payment is due. See, §7-4-12.1 (as revised January 1, 2007) or SB 382 (Section 2).

The court has discretion in applying, waiving or reducing past due interest after considering whether:

- (a) Good cause existed for the nonpayment of the child support;
- (b) Payment of the interest would result in substantial and unreasonable hardship for the parent owing the interest;
- (c) Applying, waiving, or reducing the interest would enhance or detract from the parent's current ability to pay child support; and

(d) The waiver or reduction of interest would result in substantial and unreasonable hardship to the parent to whom interest is owed.

This Code section does not nullify the authority of the Office of Child Support Services to waive, reduce or negotiate payment of unreimbursed public assistance owed to the State in accordance with subsection (b) of Code Section 19-11-5.

**2. What changes were made to the form of a judgment found in Code Section 19-5-12?**

The form of the judgment requirements will change with the implementation of the new guidelines. Previously, the requirements were the parents' incomes, the number of children involved, the Presumptive Amount of Child Support, the list of the eighteen special circumstances, and justification for deviations from the Guidelines. In contrast, the form of the judgment set forth in Senate Bill 382 includes provisions indicating:

- Both parents' incomes;
- The number of children for whom support is being provided;
- The presumptive amount of child support, and if rebutted, the award amount and the basis for the rebuttal award;
- The final judgment shall be in a sum certain amount of support to be paid;
- An attachment of the Child Support Worksheet, which contains additional required information; and
- An attachment of Schedule E which concerns Deviations. It will state on that the reason for the deviation; presumptive amount of Child Support; how application of the guidelines is unjust or inappropriate; and how the best interest of the child is being served by the deviation. See also SB 382 (Section 3).

**3. How often will the Commission review the Child Support Obligation Table to ensure it is current with the cost of living estimates for Georgia?**

Pursuant to the recent child support legislation, the Child Support Commission has a duty to determine periodically and at least every two years, if the child support obligation table results in appropriate presumptive awards. However, the Commission in November 2005 voted that annual adjustments be made using the Consumer Price Index to capture inflation effects. See SB 382 (Section 6) or §19-6-53 (effective January 1, 2007).