

**ACTION TAKEN BY THE STATUTE REVIEW SUBCOMMITTEE ON
OCTOBER 12, 2005**

Subsection (f), Gross Income:

e)(f) *Gross Income.*

(1) INCLUSION TO GROSS INCOME.

(A) *ATTRIBUTABLE INCOME.* Gross ~~income~~ Income of each ~~parent~~ Parent shall be determined in the process of setting the ~~presumptive child support order~~ Presumptive Amount of Child Support and shall include all income from any source, before deductions for taxes and other deductions such as ~~preexisting child support orders~~ Preexisting Orders for child support and credits for other ~~qualified children~~ Qualified Children, whether earned or unearned, and includes, but is not limited to, the following:

- (i) Salaries;
- (ii) Commissions, fees, and tips;
- (iii) Income from self-employment;
- (iv) Bonuses;
- (v) Overtime payments;
- (vi) Severance pay;
- (vii) Recurring income from pensions or retirement plans including, but not limited to, Veterans' Administration, Railroad Retirement Board, Keoughs, and individual retirement accounts;
- (viii) Interest income;
- (ix) Dividend income;
- (x) Trust income;
- (xi) Income from annuities;
- (xii) Capital gains;
- (xiii) Disability or retirement benefits that are received from the Social Security Administration pursuant to ~~Title XI~~ **Title II** of the federal Social Security Act;
- (xiv) Workers' compensation benefits, whether temporary or permanent;
- (xv) Unemployment insurance benefits;
- (xvi) Judgments recovered for personal injuries and awards from other civil actions;
- (xvii) Gifts that consist of cash or other liquid instruments, or which can be converted to cash;
- (xviii) Prizes;
- (xix) Lottery winnings;
- (xx) Alimony or maintenance received from persons other than parties to the proceeding before the ~~court~~ Court; and
- (xxi) Assets which are used for the support of the family.

~~A)~~(B) *SELF-EMPLOYMENT INCOME.* Income from self-employment includes income from, but not limited to, 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. Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership, limited liability company, or closely held corporation is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operations. Ordinary and reasonable expenses of self-employment or business operations necessary to produce income do not include:

- (i) Excessive promotional, travel, vehicle, or personal living expenses, depreciation on equipment, or costs of operation of home offices; or
- (ii) Amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the ~~court~~ Court to be inappropriate for determining ~~gross income~~ Gross Income.

In general, income and expenses from self-employment or operation of a business should be carefully reviewed by the factfinder and the ~~court~~ Court to determine an appropriate level of gross income Gross Income available to the parent Parent to satisfy a child support obligation. Generally, this amount will differ from a determination of business income for tax purposes.

~~(B)(i) An additional deduction of 6.2 percent of FICA and 1.45 percent of medicare, or in any amount subsequently set by federal law as FICA and medicare tax, shall be deducted from a parent's gross income earned from self-employment, up to the amounts allowed under federal law.~~

~~(ii) Any self-employment tax paid shall be deducted from gross income as part of the 14 calculation of a parent's adjusted gross income.~~

(4)(A)(C) *FRINGE BENEFITS.*

Fringe benefits for inclusion as income or 'in kind' remuneration received by a ~~parent~~ Parent in the course of employment, or operation of a trade or business, shall be counted as income if they *significantly* reduce personal living expenses.

(B) Such fringe benefits might include, but are not limited to, use of a company car, housing, or room and board.

(C) Basic allowance for housing, ~~basic allowance for~~ and subsistence, and variable housing allowances for members of the armed services are considered income for the purposes of determining child support.

(D) Fringe benefits do not include employee benefits that are typically added to the salary, wage, or other compensation that a ~~parent~~ Parent may receive as a standard added benefit, including, but not limited to, employer paid portions of health insurance Health Insurance premiums or employer contributions to a retirement or pension plan.

~~(D)~~ *VARIABLE INCOME.* Variable income such as commissions, bonuses, overtime pay, and dividends shall be averaged by the ~~factfinder~~ Court over a reasonable period of time consistent with the circumstances of the case and added to a parent's Parent's fixed salary or wages to determine ~~gross income~~ Gross Income. *When income is received on an irregular, nonrecurring, or one-time basis, the ~~court~~ Court may, but is not required to, average or prorate the income over a reasonable specified period of time or require the ~~parent~~ Parent to pay as a one-time support amount a percentage of his or her nonrecurring income, taking into consideration the percentage of recurring income of that ~~parent~~ Parent.*

(2) EXCLUSIONS FROM GROSS INCOME. Excluded from Gross Income are the following:
(A) Child support payments received by either Parent for the benefit of a Child of another relationship; and

(B) Benefits received from means-tested public assistance programs such as, but not limited to:

(i) PeachCare for Kids Program, Temporary Assistance for Needy Families, or similar programs in other states or territories under Title IV-A of the federal Social Security Act;

(ii) Food stamps or the value of food assistance provided by way of electronic benefits transfer procedures by the Department of Human Resources;

(iii) Supplemental security income received under Title XVI of the federal Social Security Act;

(iv) Benefits received under Section 402(d) of the federal Social Security Act for disabled adult children of deceased disabled workers; and

(v) Low Income Heating and Energy Assistance Program payments.

(3) SOCIAL SECURITY BENEFITS.

(A) Benefits received under [Title II](#) of the federal Social Security Act by a Child on the obligor's account shall be counted as child support payments and shall be applied against the Final Child Support Order to be paid by the obligor for the Child.

(B) After calculating the obligor's Gross Income, including the countable Social Security benefits in division (1)(A)(xiii) of this subsection, and after calculating the amount of child support using the Child Support Worksheet, if the Presumptive Amount of Child Support is greater than the Social Security benefits paid on behalf of the Child on the obligor's account, the obligor shall be required to pay the amount exceeding the Social Security benefit as part of the Final Child Support Order in the case.

(C) After calculating the obligor's Gross Income, including the countable Social Security benefits in division (1)(A)(xiii) of this subsection, and after calculating the amount of child support using the Child Support Worksheet, the Presumptive Amount of Child Support is equal to or less than the Social Security benefits paid to the Nonparent Custodian on behalf of the Child on the obligor's account, the child support responsibility of that Parent is met and no further child support shall be paid.

(D) Any benefit amounts under [Title II](#) of the federal Social Security Act as determined by the Social Security Administration sent to the Nonparent Custodian by the Social Security Administration for the Child's benefit which are greater than the Final Child Support Order shall be retained by the Nonparent Custodian for the Child's benefit and shall not be used as a reason for decreasing the Final Child Support Order or reducing arrearages.

(E) The Court shall make a written finding of fact in the Final Child Support Order regarding the use of Social Security benefits in the calculation of the child support.

(4) RELIABLE EVIDENCE OF INCOME.

(A) *IMPUTED INCOME*. When establishing the amount of child support, if a Parent fails to produce reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to pay child support or ability to pay child support in prior years, and the Court has no other reliable evidence of the

Parent's income or income potential, Gross Income for the current year shall be determined by imputing Gross Income based on a 40 hour workweek at minimum wage. When cases with established orders are reviewed for modification and a Parent fails to produce reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to pay child support or ability to pay child support in prior years, and the Court has no other reliable evidence of that Parent's income or income potential, the Court may enter an order to increase the child support of the Parent failing or refusing to produce evidence of income by an increment of at least 10 percent 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.

(B) *REHEARING*. If income is imputed pursuant to subparagraph (A) of this paragraph, the party believing the income of the other party is higher than the amount imputed may provide within 90 days, upon motion to the Court, evidence necessary to determine the appropriate amount of child support based upon reliable evidence. A hearing shall be scheduled after the motion is filed. 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. While the motion for reconsideration is pending, the obligor shall be responsible for the amount of child support originally awarded. Arrearages entered in the original child support order based upon imputed income shall not be forgiven. 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.

~~A)(C)~~ *WILLFUL OR VOLUNTARY UNEMPLOYMENT OR UNDEREMPLOYMENT*. In determining ~~A determination~~ of whether a parent Parent is willfully or voluntarily unemployed or underemployed, the Court shall ascertain the reasons for the ~~parent's~~ Parent's occupational choices and assess the reasonableness of these choices in light of the ~~parent's obligation~~ Parent's responsibility to support his or her ~~child or children~~ Child and ~~to determine~~ whether such choices benefit the ~~child or children~~ Child. A determination of willful and voluntary unemployment or underemployment ~~is~~ shall not be limited to occupational choices motivated only by an intent to avoid or reduce the payment of child support. ~~A determination of willful and voluntary unemployment or underemployment~~ but can be based on any intentional choice or act that affects a ~~parent's~~ Parent's income. In determining willful or voluntary unemployment or underemployment, the Court may examine whether there is a substantial likelihood that the Parent could, with reasonable effort, apply his or her education, skills, training to produce income.

Specific factors ~~(B) Factors~~ for the ~~court~~ Court to consider when determining willful and voluntary unemployment or underemployment include, but are not limited to:

- (i) The ~~parent's~~ Parent's past and present employment;
- (ii) The ~~parent's~~ Parent's education and training;
- (iii) Whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the parent's obligation ~~Parent's responsibility~~ to support his

or her child or children Child and, to this end, whether the training or education may ultimately benefit the ~~child or children~~ Child in the case immediately under consideration by increasing the ~~parent's~~ Parent's level of support for that ~~child or those children~~ Child in the future;

(iv) A ~~parent's~~ Parent's ownership of valuable assets and resources, such as an expensive home or automobile, that appear inappropriate or unreasonable for the income claimed by the parent Parent; and

(v) The Parent's own health and ability to work outside the home; and

(v)(vi) The parent's Parent's role as caretaker of a Child of that Parent, a handicapped or seriously ill ~~child~~ Child of that Parent, or a handicapped or seriously ill adult Child of that ~~parent~~ Parent, or any other handicapped or seriously ill relative for whom that ~~parent~~ Parent has assumed the role of caretaker, which eliminates or substantially reduces the ~~parent's~~ Parent's ability to work outside the home, and the need of that ~~parent~~ Parent to continue in that role in the future.

(C) When considering the income potential of a ~~parent~~ Parent whose work experience is limited due to the caretaker role of that ~~parent~~ Parent, the court Court shall consider the following factors:

(i)(I) Whether the ~~parent~~ Parent acted in the role of full-time caretaker immediately prior to separation by the married parties or prior to the divorce or annulment of the marriage or dissolution of another relationship in which the ~~parent~~ Parent was a full-time caretaker;

(ii)(II) The length of time the ~~parent~~ Parent staying at home has remained out of the workforce for this purpose;

(iii)(III) The ~~parent's~~ Parent's education, training, and ability to work; and

(iv)(IV) Whether the ~~parent~~ Parent is caring for a ~~child or children who are~~ Child who is four years of age or younger.

(D) If the court Court determines that a ~~parent~~ Parent is willfully and voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income earning capacity, as evidenced by educational level or previous work experience. In the absence of any other reliable evidence, income may be imputed to the ~~parent~~ Parent pursuant to a determination that ~~gross income~~ Gross Income for the current year is based on a 40 hour workweek at minimum wage.

(E) A determination of willful and voluntary unemployment or underemployment shall not be made when an individual is activated from the National Guard or other armed forces unit or enlists or is drafted for full-time service in the armed forces of the United States.

8)(5) ADJUSTMENTS TO GROSS INCOME.

(A)(i) A deduction of 6.25 percent of up to \$90,000.00 of self-employment income for FICA and 1.45 percent of self-employment income for Medicare shall be deducted from a Parent's Gross Income earned from self-employment.

(ii) Any Self-Employment Taxes paid shall be deducted from Gross Income as part of the calculation of a Parent's Adjusted Income.

(B) *PREEXISTING ORDERS*. An adjustment to the parent's gross income Parent's Gross Income shall be made on the ~~child support worksheet~~ Child Support Worksheet for current preexisting orders Preexisting Orders actually being paid under an order of support for a period of not less than 12 consecutive months immediately prior to the date of the hearing or such period that an order has been in effect if less than 12 months

prior to the date of the hearing before the ~~court~~ Court to set, modify, or enforce child support.

~~(B)~~(i) In calculating the adjustment for preexisting orders Preexisting Orders, the ~~court~~ Court shall include only those ~~preexisting orders~~ Preexisting Orders where the date of entry of the initial support order precedes the date of entry of the initial order in the case immediately under consideration.

~~(C)~~(ii) The priority for preexisting orders is Preexisting Orders shall be determined by the date of the initial order in each case. Subsequent modifications of the initial support order shall not affect the priority position established by the date of the initial order. In any modification proceeding, the Court rendering the decision shall make a specific finding of the date of the initial order of the case.

~~(D)~~(iii) Adjustments are allowed for current preexisting support only to the extent that the payments are actually being paid as evidenced by documentation including, but not limited to, payment history from a court clerk, a Title IV-D agency, as defined in Code Section 19-6-31, the Department of Human Resources Child Support Enforcement Agency's computer system data base, the department's Internet child support payment history, or canceled checks or other written proof of payments paid directly. The maximum credit allowed for a ~~preexisting order~~ Preexisting Order is an average of the amount of current support actually paid under the preexisting order Preexisting Order over the past 12 months prior to the hearing date.

~~(E)~~(iv) All ~~preexisting orders~~ Preexisting Orders shall be entered on the ~~credit worksheet~~ Adjusted Income Worksheet for the purpose of calculating the total amount of the credit to be included on the ~~child support worksheet~~ Child Support Worksheet, but the preexisting orders Preexisting Orders shall not be used on the ~~credit worksheet~~ Adjusted Income Worksheet as a deduction against ~~gross income~~ Gross Income for the purpose of calculating a ~~theoretical child support order~~ Theoretical Child Support Order.

~~(F)~~(v) Payments being made by a ~~parent~~ Parent on any arrearages shall not be considered payments on ~~preexisting~~ Preexisting Orders or subsequent orders and shall not be used as a basis for reducing ~~gross income~~ Gross Income.

~~(9)~~(A)(C) *THEORETICAL SUPPORT ORDERS*. In addition to the adjustments to ~~gross income~~ Gross Income for self-employment tax self-employment taxes provided in subparagraph (B) (A) of this paragraph (3) of this subsection and for ~~preexisting orders~~ Preexisting Orders provided in ~~paragraph (8)~~ subparagraph (B) of this subsection paragraph, credits for either ~~parent's~~ Parent's other ~~child or children~~ qualified Qualified Child under this paragraph may be considered by the ~~court~~ Court for the purpose of reducing the ~~parent's gross income or as a reason for deviation~~ Parent's Gross Income. To consider a ~~parent's qualified other child or children~~ Parent's other Qualified Children for ~~credit~~ determining the Theoretical Child Support Order, a ~~parent~~ Parent must present documentary evidence of the ~~parent-child~~ Parent-Child relationship to the ~~court~~ Court. (B) Credits against Adjustments to income pursuant to this paragraph may be considered in such circumstances in which the failure to consider ~~such child or children~~ a Qualified Child would cause substantial hardship to the ~~parent~~ Parent. Use of this adjustment is appropriate to deviate from the Presumptive Amount of Child Support. Credits Adjustments may also be appropriate when a ~~child support order~~ Final Child

Support Order is modified to rebut a claim for increased child support brought by the ~~custodial parent~~ Custodial Parent. If the ~~court~~ Court, in its discretion, decides to apply this ~~credit~~ adjustment, a ~~parent's~~ Parent's current financial responsibility for his or her natural or adopted ~~child or children~~ Child who currently ~~reside~~ resides with the ~~parent~~ Parent, other than a ~~child or children~~ Child for whom child support is being determined in the pending action, shall be no greater than an amount (i) equal to the ~~basic child support obligation~~ Basic Child Support Obligation for that ~~child or those children~~ Child based on the ~~parent's~~ Parent's income if the other ~~parent~~ Parent of such ~~child or children~~ Child does not live with the ~~parent~~ Parent and ~~child or children~~ Child or (ii) one-half of the ~~basic child support obligation~~ Basic Child Support Obligation for such ~~child or children~~ Child based on the combined incomes of both of the ~~parents~~ Parents of such ~~child or children~~ Child if the other ~~parent~~ Parent of such ~~child or children~~ Child lives with the ~~parent~~ Parent and the ~~child or children~~ Child.

(C) Credits against Adjustments to income for another ~~qualified child~~ Qualified Child or other ~~qualified children~~ Qualified Children shall be calculated and recorded on the ~~credit worksheet~~ Adjusted Income Worksheet and then entered on the ~~child support worksheet~~ Child Support Worksheet for the purpose of reducing the ~~parent's gross income~~ Parent's Gross Income on the ~~child support worksheet~~ Child Support Worksheet. However, except for self-employment taxes paid, no other amounts shall be subtracted from the ~~parent's gross income on the credit worksheet when calculating a theoretical support order under this paragraph.~~

~~11~~(D) *PRIORITY OF ADJUSTMENTS*. In multiple family situations, the adjustments to a ~~parent's gross income~~ Parent's Gross Income shall be calculated in the following order:
(~~A~~)(i) Preexisting ~~orders~~ Orders according to the date of the initial order; and
(~~B~~)(ii) After applying the deductions on the ~~child support worksheet~~ Child Support Worksheet for ~~preexisting orders~~ Preexisting Orders, if any, in subparagraph (~~E~~) (A) of paragraph (~~8~~) (4) of this subsection, any credit for a ~~parent's qualified other child or children~~ Parent's other Qualified Children may be considered using the procedure set forth in subparagraph (~~A~~) (B) of this paragraph.