

O.C.G.A. § 19-6-15

Current through the 2023 Regular Session of the General Assembly.

19-6-15. Child support guidelines for determining amount of award; continuation of duty of support; duration of support.

(a) Definitions. As used in this Code section, the term:

(1) Reserved.

(2) "Adjusted income" means the determination of a parent's monthly income, calculated by deducting from that parent's monthly gross income one-half of the amount of any applicable self-employment taxes being paid by the parent, any preexisting order for current child support which is being paid by the parent, and any theoretical child support order for other qualified children, if allowed by the court. For further reference see paragraph (5) of subsection (f) of this Code section.

(3) "Basic child support obligation" means the monthly amount of support displayed on the child support obligation table which corresponds to the combined adjusted income and the number of children for whom child support is being determined.

(4) Reserved.

(5) Reserved.

(6) "Child support obligation table" means the chart set forth in subsection (o) of this Code section.

(6.1) "Child support services" means the entity within the Department of Human Services and its contractors that are authorized to enforce a duty of support.

(7) "Combined adjusted income" means the amount of adjusted income of the custodial parent added to the amount of adjusted income of the noncustodial parent.

(8) "Court" means a judge of any court of record or an administrative law judge of the Office of State Administrative Hearings.

(9) "Custodial parent" means the parent with whom the child resides more than 50 percent of the time. When a custodial parent has not been designated or when a child resides with both parents an equal amount of time, the court shall designate the custodial parent as the parent with the lesser support obligation and the other parent as the noncustodial parent. When the child resides equally with both parents and neither parent can be determined as owing a greater amount than the other, the court shall determine which parent to designate as the custodial parent for the purpose of this Code section.

(10) "Deviation" means an increase or decrease from the presumptive amount of child support if the presumed order is rebutted by evidence and the required findings of fact are made by the court or the jury pursuant to subsection (i) of this Code section.

(11) "Final child support amount" means the presumptive amount of child support adjusted by any deviations.

(12) "Gross income" means all income to be included in the calculation of child support as set forth in subsection (f) of this Code section.

(13) "Health insurance" means any general health or medical policy. For further reference see paragraph (2) of subsection (h) of this Code section.

(14) "Noncustodial parent" means the parent with whom the child resides less than 50 percent of the time or the parent who has the greater payment obligation for child support. When the child resides equally with both parents

and neither parent can be determined as owing a lesser amount than the other, the court shall determine which parent to designate as the noncustodial parent for the purpose of this Code section.

(15) "Nonparent custodian" means 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.

(16) "Parent" means a person who owes a child a duty of support pursuant to Code Section 19-7-2.

(17) "Parenting time deviation" means a deviation allowed for the noncustodial parent based upon the noncustodial parent's court ordered visitation with the child. For further reference see subsections (g) and (i) of this Code section.

(18) "Preexisting order" means:

(A) An order in another case that requires a parent to make child support payments for another child, which child support the parent is actually paying, as evidenced by documentation as provided in division (f)(5)(B)(iii) of this Code section; and

(B) That the date and time of filing with the clerk of court of the initial order for each such other case is earlier than the date and time of filing with the clerk of court of the initial order in the case immediately before the court, regardless of the age of any child in any of the cases.

(19) "Presumptive amount of child support" means the basic child support obligation including health insurance and work related child care costs.

(20) "Qualified child" or "qualified children" means any child:

(A) For whom the parent is legally responsible and in whose home the child resides;

(B) Who the parent is actually supporting;

(C) Who is not subject to a preexisting order; and

(D) Who is not before the court to set, modify, or enforce support in the case immediately under consideration.

Qualified children shall not include stepchildren or other minors in the home who the parent has no legal obligation to support.

(21) "Split parenting" can occur in a child support case only if there are two or more children of the same parents, when one parent is the custodial parent for at least one child of the parents, and the other parent is the custodial parent for at least one other child of the parents. In a split parenting case, each parent is the custodial parent of any child spending more than 50 percent of the time with that parent and is the noncustodial parent of any child spending more than 50 percent of the time with the other parent. A split parenting situation shall have two custodial parents and two noncustodial parents, but no child shall have more than one custodial parent or noncustodial parent.

(22) "Theoretical child support order" means a hypothetical child support order for qualified children as calculated in subparagraph (f)(5)(C) of this Code section which allows the court to determine the amount of child support as if a child support order existed.

(23) "Uninsured health care expenses" means a child's uninsured medical expenses including, but not limited to, health insurance copayments, deductibles, and such other costs as are 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 medical or mental health expenses, that are not covered by insurance. For further reference see paragraph (3) of subsection (h) of this Code section.

(24) "Work related child care costs" means expenses for the care of the child for whom support is being determined which are due to employment of either parent. In an appropriate case, the court may consider the child care

costs associated with a parent's job search or the training or education of a parent necessary to obtain a job or enhance earning potential, not to exceed a reasonable time as determined by the court, if the parent proves by a preponderance of the evidence that the job search, job training, or education will benefit the child being supported. The term shall be projected for the next consecutive 12 months and averaged to obtain a monthly amount. For further reference see paragraph (1) of subsection (h) of this Code section.

(25) "Worksheet" or "child support worksheet" means the document used to record information necessary to determine and calculate monthly child support. For further reference see subsection (m) of this Code section.

(a.1)

(1) As used in this chapter, the term "child" means child or children, including any unborn child with a detectable human heartbeat as such terms are defined in Code Section 1-2-1.

(2) Notwithstanding any provision of this Code section to the contrary, the maximum amount of support which the court may impose on the father of an unborn child under this Code section shall be the amount of direct medical and pregnancy related expenses of the mother of the unborn child. After birth, the provisions of this Code section shall apply in full.

(b) Process of calculating child support. Pursuant to this Code section, the determination of monthly child support shall be calculated as follows:

(1) Determine the monthly gross income of both the custodial parent and the noncustodial parent. Gross income may include imputed income, if applicable. The determination of monthly gross income shall be entered on the Child Support Schedule A — Gross Income;

(2) Adjust each parent's monthly gross income by deducting the following from the parents' monthly gross income and entering it on the Child Support Schedule B — Adjusted Income if any of the following apply:

(A) One-half of the amount of self-employment taxes;

(B) Preexisting orders; and

(C) Theoretical child support order for qualified children, if allowed by the court;

(3) Add each parent's adjusted income together;

(4) Locate the basic child support obligation by referring to the child support obligation table. Using the figure closest to the amount of the combined adjusted income, locate the amount of the basic child support obligation. If the combined adjusted income falls between the amounts shown in the table, then the basic child support obligation shall be based on the income bracket most closely matched to the combined adjusted income. The basic child support obligation amount stated in subsection (o) of this Code section shall be rebuttably presumed to be the appropriate amount of child support to be provided by the custodial parent and the noncustodial parent prior to consideration of health insurance, work related child care costs, and deviations;

(5) Calculate the pro rata share of the basic child support obligation for the custodial parent and the noncustodial parent by dividing the combined adjusted income into each parent's adjusted income to arrive at each parent's pro rata percentage of the basic child support obligation;

(6) Find the adjusted child support obligation amount by adding the additional expenses of the costs of health insurance and work related child care costs, prorating such expenses in accordance with each parent's pro rata share of the obligation and adding such expenses to the pro rata share of the basic child support obligation. The monthly cost of health insurance premiums and work related child care costs shall be entered on the Child Support Schedule D — Additional Expenses. The pro rata share of the monthly basic child support obligation and the pro rata share of the

combined additional expenses shall be added together to create the monthly adjusted child support obligation;

(7) Determine the amount of child support for the custodial parent and the noncustodial parent resulting in a monthly sum certain payment due to the custodial parent by assigning or deducting credit for actual payments for health insurance and work related child care costs from the basic child support obligation;

(8) In accordance with subsection (i) of this Code section, deviations subtracted from or added to the presumptive amount of child support shall be applied, if applicable, and if supported by the required findings of fact and application of the best interest of the child standard. The proposed deviations shall be entered on the Child Support Schedule E — Deviations. In the court's or the jury's discretion, deviations may include, but shall not be limited to, the following:

- (A)** High income;
- (B)** Low income;
- (C)** Other health related insurance;
- (D)** Life insurance;
- (E)** Child and dependent care tax credit;
- (F)** Travel expenses;
- (G)** Alimony;
- (H)** Mortgage;
- (I)** Permanency plan or foster care plan;
- (J)** Extraordinary expenses;
- (K)** Parenting time; and
- (L)** Nonspecific deviations;

(9) Any benefits which the child receives under Title II of the federal Social Security Act shall be applied against the final child support amount. The final child support amount for each parent shall be entered on the child support

worksheet, together with the information from each of the utilized schedules;

(10) The parents shall allocate the uninsured health care expenses which shall be based on the pro rata responsibility of the parents or as otherwise ordered by the court. Each parent's pro rata responsibility for uninsured health care expenses shall be entered on the child support worksheet;

(11) In a split parenting case, there shall be a separate calculation and final order for each parent; and

(12) When there is more than one child for whom support is being determined, the court shall establish the amount of support and the duration of such support in accordance with subsection (e) of this Code section. When, within two years of a final order being entered, there is a likelihood that a child will become ineligible to receive support, the court may allow for the use of separate worksheets. Separate worksheets shall show the final child support amount to be paid for all such children and the adjusted amount of support to be paid as each child becomes ineligible to receive support during such two-year period. Such worksheets shall be attached to the final order. Such order shall contain findings as required by law. A final order entered pursuant to this paragraph shall not preclude a petition for modification.

(c) Applicability and required findings.

(1) The child support guidelines contained in this Code section are a minimum basis for determining the amount of child support and shall apply as a rebuttable presumption in all legal proceedings involving the child support responsibility of a parent. This Code section shall be used when the court enters a temporary or permanent child support order in a contested or noncontested hearing or order in a civil action filed pursuant to Code Section 19-13-4. The rebuttable presumptive amount of child support provided by this Code section may be increased or decreased according to the best

interest of the child for whom support is being considered, the circumstances of the parties, the grounds for deviation set forth in subsection (i) of this Code section, 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.

(2) The provisions of this Code section shall not apply with respect to any divorce case in which there are no minor children, except to the limited extent authorized by subsection (e) of this Code section. In the final judgment or decree in a divorce case in which there are minor children, or in other cases which are governed by the provisions of this Code section, the court shall:

(A) Specify in what sum certain amount, the duration of such support, and from which parent the child is entitled to permanent support as determined by use of the worksheet or multiple worksheets when there is more than one minor child;

(B) Specify in what manner, how often, to whom, and until when the support shall be paid;

(C) Include a written finding of each parent's gross income as determined by the court or the jury;

(D) Determine whether health insurance for the child involved 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 shall 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 allowed under this Code section are applicable, and if one or more such deviations are applicable as determined by the court or the jury, the written findings of fact shall further set forth:

(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;

(G) Include a written finding regarding the use of benefits received under Title II of the federal Social Security Act in the calculation of the amount of child support; and

(H) Specify the percentage of uninsured health care expenses for which each parent shall be responsible.

(3) When child support is ordered, the party who is required to pay the child support shall not be liable to third persons for necessities furnished to the child embraced in the judgment or decree.

(4) In all cases, the parties shall submit to the court their worksheets and schedules and the presence or absence of other factors to be considered by the court or the jury pursuant to the provisions of this Code section.

(5) In any case in which the gross income of the custodial parent and the noncustodial parent is determined by a jury, the court shall charge the

provisions of this Code section applicable to the determination of gross income. The jury shall be required to return a special interrogatory determining gross income. The court shall determine adjusted income, health insurance costs, and work related child care costs. Based upon the jury's verdict as to gross income, the court shall determine the presumptive amount of child support in accordance with the provisions of this Code section. The court shall inform the jury of the presumptive amount of child support and the identity of the custodial and noncustodial parents. 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 a special interrogatory as to deviations and the final award of child support. The court shall include its findings and the jury's verdict on the child support worksheet in accordance with this Code section and Code Section 19-5-12.

(6) Nothing contained within this Code section shall prevent the parties from entering into an enforceable agreement contrary to the presumptive amount of child support which may be made the order of the court pursuant to review by the court of the adequacy of the child support amounts negotiated by the parties, including the provision for medical expenses and health insurance; provided, however, that if the agreement negotiated by the parties does not comply with the provisions contained in this Code section and does not contain findings of fact as required to support a deviation, the court shall reject such agreement.

(7) In any case filed pursuant to Chapter 11 of this title, relating to the "Child Support Recovery Act," the "Uniform Reciprocal Enforcement of Support Act," or the "Uniform Interstate Family Support Act," the court shall make all determinations of fact, including gross income and deviations, and a jury shall not hear any issue related to such cases.

(d) Nature of guidelines; court's discretion. In the event of a hearing or trial on the issue of child support, the guidelines enumerated in this Code section are intended by the General Assembly to be guidelines only and any court so

applying such guidelines shall not abrogate its responsibility in making the final determination of child support based on the evidence presented to it at the time of the hearing or trial. A court's final determination of child support shall take into account the obligor's earnings, income, and other evidence of the obligor's ability to pay. The court or the jury shall also consider the basic subsistence needs of the parents and the child for whom support is to be provided.

(e) Duration of child support responsibility. The duty to provide support for a minor child shall continue until the child reaches the age of majority, dies, marries, or becomes emancipated, whichever first occurs; provided, however, that, in any temporary, final, or modified order for child support with respect to any proceeding for divorce, separate maintenance, legitimacy, or paternity entered on or after July 1, 1992, the court, in the exercise of sound discretion, may direct either or both parents to provide financial assistance to a child who has not previously married or become emancipated, who is enrolled in and attending a secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that such financial assistance shall not be required after a child attains 20 years of age. The provisions for child support provided in this subsection may be enforced by either parent, by any nonparent custodian, by a guardian appointed to receive child support for the child for whose benefit the child support is ordered, or by the child for whose benefit the child support is ordered.

(f) Gross income.

(1) Inclusion to gross income.

(A) Attributable income. Gross income of each parent shall be determined in the process of setting the presumptive amount of child support and shall include all income from any source, before deductions for taxes and other deductions such as preexisting orders for child support and credits for other

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, United States Department of Veterans Affairs, Railroad Retirement Board, Keoghs, 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 II of the federal Social Security Act;
- (xiv)** Disability benefits that are received pursuant to the federal Veterans' Benefits Act of 2010, 38 U.S.C. Section 101, et seq.;
- (xv)** Workers' compensation benefits, whether temporary or permanent;
- (xvi)** Unemployment insurance benefits;
- (xvii)** Judgments recovered for personal injuries and awards from other civil actions;
- (xviii)** Gifts that consist of cash or other liquid instruments, or which can be converted to cash;
- (xix)** Prizes;
- (xx)** Lottery winnings;
- (xxi)** Alimony or maintenance received from persons other than parties to the proceeding before the court;
- (xxii)** Assets which are used for the support of the family; and
- (xxiii)** Other income.

(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 reasonable 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 or the jury to be inappropriate for determining gross income.

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

(C) Fringe benefits. Fringe benefits for inclusion as income or "in kind" remuneration received by a parent in the course of employment, or operation of a trade or business, shall be counted as income if the benefits significantly reduce personal living expenses. Such fringe benefits might include, but are not limited to, use of a company car, housing, or room and board. Fringe benefits shall not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit, including, but not limited to, employer paid

portions of health insurance premiums or employer contributions to a retirement or pension plan.

(D) Variable income. Variable income such as commissions, bonuses, overtime pay, military bonuses, and dividends shall be averaged by the court or the jury over a reasonable period of time consistent with the circumstances of the case and added to a parent's fixed salary or wages to determine gross income. When income is received on an irregular, nonrecurring, or one-time basis, the court or the jury may, but is not required to, average or prorate the income over a reasonable specified period of time or require the 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.

(E) Military compensation and allowances. Income for a parent who is an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the merchant marine of the United States, the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration, the National Guard, or the Air National Guard shall include:

(i) Base pay;

(ii) Drill pay;

(iii) Basic allowance for subsistence, whether paid directly to the parent or received in-kind; and

(iv) Basic allowance for housing, whether paid directly to the parent or received in-kind, determined at the parent's pay grade at the without dependent rate, but shall include only so much of the allowance that is not attributable to area variable housing costs.

Except as determined by the court or the jury, special pay or incentive pay, allowances for clothing or family separation, and reimbursed expenses related to the parent's assignment to a high cost of living location shall not be considered income for the purpose of determining gross income.

(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;

(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 Program, 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 Services;

(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;

(C) Foster care payments paid by the Department of Human Services or a licensed child-placing agency for providing foster care to a foster child in the custody of the Department of Human Services;

(D) A nonparent custodian's gross income; and

(E) Benefits received under Title IV-B or IV-E of the federal Social Security Act and state funding associated therewith for adoption assistance.

(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 amount to be paid by the obligor for the child.

(B) After calculating the obligor's monthly gross income, including the countable social security benefits as specified in division (1)(A)(xiii) of this subsection, and after calculating the amount of child support, if the presumptive amount of child support, as increased or decreased by deviations, 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 order in the case.

(C) After calculating the obligor's monthly gross income, including the countable social security benefits as specified in division (1)(A)(xiii) of this subsection, and after calculating the amount of child support, if the presumptive amount of child support, as increased or decreased by deviations, is equal to or less than the social security benefits paid to the nonparent custodian or custodial parent on behalf of the child on the obligor's account, the child support responsibility of that parent shall have been 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 or custodial parent by the Social Security Administration for the child's benefit which are greater than the final child support amount shall be

retained by the nonparent custodian or custodial parent for the child's benefit and shall not be used as a reason for decreasing the final child support amount or reducing arrearages.

(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 or the jury has no other reliable evidence of the parent's income or income potential, gross income for the current year may be imputed. When imputing income, the court or the jury shall take into account the specific circumstances of the parent to the extent known, including such factors as the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, and other relevant background factors in the case. If a parent is incarcerated, the court or the jury shall not assume an ability for earning capacity based upon pre-incarceration wages or other employment related income, but income may be imputed based upon the actual income and assets available to such incarcerated parent.

(B) Modification. 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 or the jury has no other reliable evidence of such parent's income or income potential, the court or the jury may impute income as set forth in subparagraph (A) of this paragraph, or may 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 such parent's gross income for each year since the final order was entered or last modified

and shall calculate the basic child support obligation using the increased amount as such parent's gross income.

(C) 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 leave unchanged the amount of current child support 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 ordered. 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 seeking reconsideration shall not be required to prove the existence of grounds for modification of an order pursuant to subsection (k) of this Code section.

(D) Willful or voluntary unemployment or underemployment. In determining whether a parent is willfully or voluntarily unemployed or underemployed, the court or the jury shall ascertain the reasons for the parent's occupational choices and assess the reasonableness of these choices in light of the parent's responsibility to support his or her child and whether such choices benefit the child. A determination of willful or voluntary unemployment or underemployment shall not be limited to occupational choices motivated only by an intent to avoid or reduce the payment of child support but can be based on any intentional choice or act that affects a parent's income. A determination of willful or voluntary unemployment or underemployment shall not be made when an individual's incarceration prevents employment. In determining willful or voluntary unemployment or underemployment, the court or the jury may examine whether there is a substantial likelihood that the parent could, with reasonable effort, apply his or her education, skills, or training to produce income. Specific factors for the court or the jury to

consider when determining willful or voluntary unemployment or underemployment include, but are not limited to:

(i) The parent's past and present employment;

(ii) The 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 responsibility to support his or her child and, to this end, whether the training or education may ultimately benefit the child in the case immediately under consideration by increasing the parent's level of support for that child in the future;

(iv) A 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;

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

(vi) The parent's role as caretaker of a child of that parent, a disabled or seriously ill child of that parent, or a disabled or seriously ill adult child of that parent, or any other disabled or seriously ill relative for whom that parent has assumed the role of caretaker, which eliminates or substantially reduces the parent's ability to work outside the home, and the need of that parent to continue in the role of caretaker in the future. When considering the income potential of a parent whose work experience is limited due to the caretaker role of that parent, the court or the jury shall consider the following factors:

(I) Whether the 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 was a full-time caretaker;

(II) The length of time the parent staying at home has remained out of the work force for this purpose;

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

(IV) Whether the parent is caring for a child who is four years of age or younger. If the court or the jury determines that a parent is willfully or voluntarily unemployed or underemployed, child support shall be calculated based on a determination of 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 as provided for in subparagraph (f)(4)(A) of this Code section.

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.

(5) Adjustments to gross income.

(A) Self-employment. One-half of the self-employment and Medicare taxes shall be calculated as follows:

(i) Six and two-tenths percent of self-employment income up to the maximum amount to which federal old age, survivors, and disability insurance (OASDI) applies; plus

(ii) One and forty-five one-hundredths of a percent of self-employment income for Medicare and this amount shall be deducted from a self-employed parent's monthly gross income.

(B) Preexisting orders. An adjustment to the parent's monthly gross income shall be made on the Child Support Schedule B — Adjusted Income for

current preexisting orders for a period of not less than 12 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 to set, modify, or enforce child support.

(i) In calculating the adjustment for preexisting orders, the court shall include only those preexisting orders meeting the criteria set forth in subparagraph (a)(18)(B) of this Code section;

(ii) The priority for preexisting orders shall be determined by the date and time of filing with the clerk of court of the initial order in each case. Subsequent modifications of the initial support order shall not affect the priority position established by the date and time of the initial order. In any modification proceeding, the court rendering the decision shall make a specific finding of the date, and time if known, of the initial order of the case;

(iii) Adjustments shall be 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, the child support services' computer data base, the child support payment history, or canceled checks or other written proof of payments paid directly to the other parent. The maximum credit allowed for a preexisting order is an average of the amount of current support actually paid under the preexisting order over the past 12 months prior to the hearing date;

(iv) All preexisting orders shall be entered on the Child Support Schedule B — Adjusted Income for the purpose of calculating the total amount of the credit to be included on the child support worksheet; and

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

(C) Theoretical child support orders. In addition to the adjustments to monthly gross income for self-employment taxes provided in subparagraph (A) of this paragraph and for preexisting orders provided in subparagraph (B) of this paragraph, credits for either parent's other qualified child living in the parent's home for whom the parent owes a legal duty of support may be considered by the court for the purpose of reducing the parent's gross income. To consider a parent's other qualified children for determining the theoretical child support order, a parent shall present documentary evidence of the parent-child relationship to the court. Adjustments to income pursuant to this subparagraph may be considered in such circumstances in which the failure to consider a qualified child would cause substantial hardship to the parent; provided, however, that such consideration of an adjustment shall be based upon the best interest of the child for whom child support is being awarded. If the court, in its discretion, decides to apply the qualified child adjustment, the basic child support obligation of the parent for the number of other qualified children living with such parent shall be determined based upon that parent's monthly gross income. Except for self-employment taxes paid, no other amounts shall be subtracted from the parent's monthly gross income when calculating a theoretical child support order under this subparagraph. The basic child support obligation for such parent shall be multiplied by 75 percent and the resulting amount shall be subtracted from such parent's monthly gross income and entered on the Child Support Schedule B — Adjusted Income.

(D) Multiple family situations. In multiple family situations, the priority of adjustments to a parent's monthly gross income shall be calculated in the following order:

(i) Preexisting orders according to the date and time of the initial order as set forth in subparagraph (B) of this paragraph; and

(ii) Application of any credit for a parent's other qualified children using the procedure set forth in subparagraph (C) of this paragraph.

(g) Parenting time deviation. The court or the jury may deviate from the presumptive amount of child support as set forth in subparagraph (i)(2)(K) of this Code section.

(h) Adjusted support obligation. The child support obligation table does not include the cost of the parent's work related child care costs, health insurance premiums, or uninsured health care expenses. The additional expenses for the child's health insurance premiums and work related child care costs shall be included in the calculations to determine child support. A nonparent custodian's expenses for work related child care costs and health insurance premiums shall be taken into account when establishing a final order.

(1) Work related child care costs.

(A) Work related child care 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 parents' financial abilities and to the lifestyle of the child if the parents and child were living together, shall be averaged for a monthly amount and entered on the child support worksheet in the column of the parent initially paying the expense. Work related child care costs of a nonparent custodian shall be considered when determining the amount of this expense.

(B) If a child care subsidy is being provided pursuant to a means-tested public assistance program, only the amount of the child care expense actually paid by either parent or a nonparent custodian shall be included in the calculation.

(C) If either parent is the provider of child care services to the child for whom support is being determined, the value of those services shall not be an adjustment to the basic child support obligation when calculating the support award.

(D) If child care is provided without charge to the parent, the value of these services shall not be an adjustment to the basic child support obligation. If child care is or will be provided by a person who is paid for his or her services, proof of actual cost or payment shall be shown to the court before the court includes such payment in its consideration.

(E) The amount of work related child care costs shall be determined and added as an adjustment to the basic child support obligation as "additional expenses" whether paid directly by the parent or through a payroll deduction.

(F)

(i) The total amount of work related child care costs shall be divided between the parents pro rata to determine the presumptive amount of child support and shall be included in the worksheet and the final order.

(ii) In situations in which work related child care costs may be variable, the court or the jury may, in its discretion, remove work related child care costs from the calculation of support, and divide the work related child care costs pro rata, to be paid within a time specified in the final order. If a parent or nonparent custodian fails to comply with the final order:

(I) The other parent or nonparent custodian may enforce payment of the work related child care costs by any means permitted by law; or

(II) Child support services shall pursue enforcement when such unpaid costs have been reduced to a judgment in a sum certain.

(2) Cost of health insurance premiums.

(A)

(i) The amount that is, or will be, paid by a parent for health insurance for the child for whom support is being determined shall be an adjustment to the basic child support obligation and prorated between the parents based upon their respective incomes. Payments made by a parent's employer for

health insurance and not deducted from the parent's wages shall not be included. When a child for whom support is being determined is covered by a family policy, only the health insurance premium actually attributable to that child shall be added.

(ii) The amount of the cost for the child's health insurance premium shall be determined and added as an adjustment to the basic child support obligation as "additional expenses" whether paid directly by the parent or through a payroll deduction.

(iii) The total amount of the cost for the child's health insurance premium shall be divided between the parents pro rata to determine the total presumptive amount of child support and shall be included in the Child Support Schedule D — Additional Expenses and written order of the court together with the amount of the basic child support obligation.

(B)

(i) If either parent has health insurance reasonably available at reasonable cost that provides for the health care needs of the child, then an amount to cover the cost of the premium shall be added as an adjustment to the basic child support obligation. A health insurance premium paid by a nonparent custodian shall be included when determining the amount of health insurance expense. In determining the amount to be added to the order for the health insurance cost, only the amount of the health insurance cost attributable to the child who is the subject of the order shall be included.

(ii) If coverage is applicable to other persons and the amount of the health insurance premium attributable to the child who is the subject of the current action for support is not verifiable, the total cost to the parent paying the premium shall be prorated by the number of persons covered so that only the cost attributable to the child who is the subject of the order under consideration is included. The amount of health insurance premium shall be determined by dividing the total amount of the insurance premium by the number of persons covered by the insurance policy and multiplying the

resulting amount by the number of children covered by the insurance policy. The monthly cost of health insurance premium shall be entered on the Child Support Schedule D — Additional Expenses in the column of the parent paying the premium.

(iii) Eligibility for or enrollment of the child in Medicaid, the PeachCare for Kids Program, or other public health care program shall satisfy the requirement that the final order provide for the child's health care needs. Health coverage through Medicaid, the PeachCare for Kids Program, or other public health care program shall not prevent a court from also ordering either or both parents to obtain other health insurance for the child.

(3) Uninsured health care expenses.

(A) The child's uninsured health care expenses shall be the financial responsibility of both parents. The final order shall include provisions for payment of uninsured health care expenses; provided, however, that uninsured health care expenses shall not be used for the purpose of calculating the amount of child support. The parents shall divide uninsured health care expenses pro rata, unless otherwise specifically ordered by the court.

(B) If a parent fails to pay his or her pro rata share of the child's uninsured health care expenses, as specified in the final order, within a reasonable time after receipt of evidence documenting the uninsured portion of the expense:

(i) The other parent or the nonparent custodian may enforce payment of the expense by any means permitted by law; or

(ii) Child support services shall pursue enforcement of payment of such unpaid expenses only if the unpaid expenses have been reduced to a judgment in a sum certain amount.

(i) Grounds for deviation.

(1) General principles.

(A) The amount of child support established by this Code section and the presumptive amount of child support are rebuttable and the court or the jury may deviate from the presumptive amount of child support in compliance with this subsection. In deviating from the presumptive amount of child support, consideration shall be given to the best interest of the child for whom support under this Code section is being determined. A nonparent custodian's expenses may be the basis for a deviation as well as a noncustodial parent's ability or inability to pay the presumptive amount of child support.

(B) When ordering a deviation from the presumptive amount of child support, the court or the jury shall consider all available income of the parents and shall make written findings or special interrogatory findings that an amount of child support other than the amount calculated is reasonably necessary to provide for the needs of the child for whom child support is being determined and the order or special interrogatory shall state:

(i) The reasons for the deviation 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) How, in its determination:

(I) 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.

(C) No 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, as determined by the court or the jury.

(D) If the circumstances which supported the deviation cease to exist, the final order may be modified as set forth in subsection (k) of this Code section to eliminate the deviation.

(2) Specific deviations.

(A) High income. For purposes of this subparagraph, parents are considered to be high-income parents if their combined adjusted income exceeds \$30,000.00 per month. For high-income parents, the court shall set the basic child support obligation at the highest amount allowed by the child support obligation table but the court or the jury may consider upward deviation to attain an appropriate award of child support for high-income parents which is consistent with the best interest of the child.

(B) Low income.

(i) If the noncustodial parent can provide evidence sufficient to demonstrate no earning capacity or that his or her pro rata share of the presumptive amount of child support would create an extreme economic hardship for such parent, the court or the jury may consider a low-income deviation.

(ii) A noncustodial parent whose sole source of income is supplemental security income received under Title XVI of the federal Social Security Act shall be considered to have no earning capacity.

(iii) The court or the jury shall examine all attributable and excluded sources of income, assets, and benefits available to the noncustodial parent and may

consider the noncustodial parent's basic subsistence needs and all of his or her reasonable expenses, ensuring that such expenses are actually paid by the noncustodial parent and are clearly justified expenses.

(iv) In considering a request for a low-income deviation, the court or the jury shall then weigh the income and all attributable and excluded sources of income, assets, and benefits and all reasonable expenses of each parent, the relative hardship that a reduction in the amount of child support paid to the custodial parent would have on the custodial parent's household, the needs of each parent, the needs of the child for whom child support is being determined, and the ability of the noncustodial parent to pay child support.

(v) Following a review of the noncustodial parent's gross income and expenses, and taking into account each parent's basic child support obligation adjusted by health insurance and work related child care costs and the relative hardships on the parents and the child, the court or the jury, upon request by either party or upon the court's initiative, may consider a downward deviation to attain an appropriate award of child support which is consistent with the best interest of the child.

(vi) For the purpose of calculating a low-income deviation, the noncustodial parent's minimum child support for one child shall be not less than \$100.00 per month, and such amount shall be increased by at least \$50.00 for each additional child for the same case for which child support is being ordered.

(vii) A low-income deviation granted pursuant to this subparagraph shall apply only to the current child support amount and shall not prohibit an additional amount being ordered to reduce a noncustodial parent's arrears.

(viii) If a low-income deviation is granted pursuant to this subparagraph, such deviation shall not prohibit the court or the jury from granting an increase or decrease to the presumptive amount of child support by the use of any other specific or nonspecific deviation.

(C) Other health related insurance. If the court or the jury finds that either parent has vision or dental insurance available at a reasonable cost for the child, the court or the jury may deviate from the presumptive amount of child support for the cost of such insurance.

(D) Life insurance. In accordance with Code Section 19-6-34, if the court or the jury finds that either parent has purchased life insurance on the life of either parent or the lives 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 either adding or subtracting the amount of the premium.

(E) Child and dependent care tax credit. If the court or the jury finds that one of the parents is entitled to the Child and Dependent Care Tax Credit, the court or the jury may deviate from the presumptive amount of child support in consideration of such credit.

(F) Travel expenses. 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, allocate such costs by deviation from the presumptive amount of child support, taking into consideration the circumstances of the respective parents as well as which parent moved and the reason for such move.

(G) Alimony. Actual payments of alimony shall not be considered as a deduction from gross income but may be considered as a deviation from the presumptive amount of child support. If the court or the jury considers the actual payment of alimony, the court shall make a written finding of such consideration or the jury, in its special interrogatory, shall make a written finding of such consideration as a basis for deviation from the presumptive amount of child support.

(H) Mortgage. If the noncustodial parent is providing shelter, such as paying the mortgage of the home, or has provided a home at no cost to the custodial parent in which the child resides, the court or the jury may allocate such costs or an amount equivalent to such costs by deviation from the presumptive amount of child support, taking into consideration the circumstances of the respective parents and the best interest of the child.

(I) Permanency plan or foster care plan. In cases when the child is in the legal custody of the Department of Human Services, the child protection or foster care agency of another state or territory, or any other child-caring entity, public or private, the court or the jury may consider a deviation from the presumptive amount of child support if the deviation will assist in accomplishing a permanency plan or foster care plan for the child that has a goal of returning the child to the parent or parents and the parent's need to establish an adequate household or to otherwise adequately prepare herself or himself for the return of the child clearly justifies a deviation for this purpose.

(J) Extraordinary expenses. The child support obligation table includes average child-rearing expenditures for families given the parents' combined adjusted income and number of children. Extraordinary expenses are in excess of average amounts estimated in the child support obligation table and are highly variable among families. Extraordinary expenses shall be considered on a case-by-case basis in the calculation of support and may form the basis for deviation from the presumptive amount of child support so that the actual amount of such expense is considered in the final order for only those families actually incurring the expense. Extraordinary expenses shall be prorated between the parents by assigning or deducting credit for actual payments for extraordinary expenses.

(i) Extraordinary educational expenses. Extraordinary educational expenses may be a basis for deviation from the presumptive amount of child support. 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 and secondary schooling that are appropriate to the parent's financial abilities and to the lifestyle of the child if the parents and the child were living together.

(I) In determining the amount of deviation for extraordinary educational expenses, scholarships, grants, stipends, and other cost-reducing programs received by or on behalf of the child shall be considered; and

(II) If a deviation is allowed for extraordinary educational expenses, a monthly average of the extraordinary educational expenses shall be based on evidence of prior or anticipated expenses and entered on the Child Support Schedule E — Deviations.

(ii) Special expenses incurred for child-rearing. Special expenses incurred for child-rearing, including, but not limited to, quantifiable expense variations related to the food, clothing, and hygiene costs of children at different age levels, may be a basis for a deviation from the presumptive amount of child support. Such expenses include, but are not limited 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, or cultural development of a child but not otherwise required to be used in calculating the presumptive amount of child support as are health insurance premiums and work related child care costs. A portion of the basic child support obligation is intended to cover average amounts of special expenses incurred in the rearing of a child. In order to determine if a deviation for special expenses is warranted, the court or the jury shall consider the full amount of the special expenses as described in this division; and when such special expenses exceed 7 percent of the basic child support obligation, then the additional amount of special expenses shall be considered as a deviation to cover the full amount of the special expenses.

(iii) Extraordinary medical expenses. In instances of extreme economic hardship involving extraordinary medical expenses not covered by insurance, the

court or the jury may consider a deviation from the presumptive amount of child support for extraordinary medical expenses. Such expenses may include, but are not limited to, extraordinary medical expenses of the child or a parent of the child; provided, however, that any such deviation:

(I) Shall not act to leave a child unsupported; and

(II) May be ordered for a specific period of time measured in months. When extraordinary medical expenses are claimed, the court or the jury shall consider the resources available for meeting such needs, including sources available from agencies and other adults.

(K) Parenting time.

(i) The child support obligation table is based upon expenditures for a child in intact households. The court may order or the jury may find by special interrogatory a deviation from the presumptive amount of child support when special circumstances make the presumptive amount of child support excessive or inadequate due to extended parenting time as set forth in the order of visitation, the child residing with both parents equally, or visitation rights not being utilized.

(ii) If the court or the jury determines that a parenting time deviation is applicable, then such deviation shall be included with all other deviations.

(iii) In accordance with subsection (d) of Code Section 19-11-8, if any action or claim for parenting time or a parenting time deviation is brought under this subparagraph, it shall be an action or claim solely between the custodial parent and the noncustodial parent, and not any third parties, including child support services.

(3) Nonspecific deviations. Deviations from the presumptive amount of child support may be appropriate for reasons in addition to those established

under this subsection when the court or the jury finds it is in the best interest of the child.

(j) Involuntary loss of income.

(1) In the event a parent suffers an involuntary termination of employment, has an extended involuntary loss of average weekly hours, is involved in an organized strike, incurs a loss of health, becomes incarcerated, or similar involuntary adversity resulting in a loss of income of 25 percent 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 that service is made on the other parent. It shall not be considered an involuntary termination of employment if the parent has left the employer without good cause in connection with the parent's most recent work.

(2) In the event a modification action is filed pursuant to this subsection, the court shall make every effort to expedite hearing such action.

(3) The court may, at its discretion, phase in the new child support award over a period of up to one year with the phasing in being largely evenly distributed with at least an initial immediate adjustment of not less than 25 percent of the difference and at least one intermediate adjustment prior to the final adjustment at the end of the phase-in period.

(k) Modification.

(1) Except as provided in paragraph (2) of this subsection, a parent shall not have the right to petition for modification of the child support award regardless of the length of time since the establishment of the child support award unless there is a substantial change in either parent's income and financial status or the needs of the child.

(2) No petition to modify child support may be filed by either parent within a period of two years from the date of the final order on a previous petition to modify by the same parent except when:

(A) A noncustodial parent has failed to exercise the court ordered visitation;

(B) A noncustodial parent has exercised a greater amount of visitation than was provided in the court order; or

(C) The motion to modify is based upon an involuntary loss of income as set forth in subsection (j) of this Code section.

(3)

(A) If there is a difference of at least 15 percent but less than 30 percent between a new award and a Georgia child support order entered prior to January 1, 2007, the court may, at its discretion, phase in the new child support award over a period of up to one year with the phasing in being largely evenly distributed with at least an initial immediate adjustment of not less than 25 percent of the difference and at least one intermediate adjustment prior to the final adjustment at the end of the phase-in period.

(B) If there is a difference of 30 percent or more between a new award and a Georgia child support order entered prior to January 1, 2007, the court may, at its discretion, phase in the new child support award over a period of up to two years with the phasing in being largely evenly distributed with at least an initial immediate adjustment of not less than 25 percent of the difference and at least one intermediate adjustment prior to the final adjustment at the end of the phase-in period.

(C) All child support service's case reviews and modifications shall proceed and be governed by Code Section 19-11-12. Subsequent changes to the child support obligation table shall be a reason to request a review for modification from child support services to the extent that such changes are consistent with the requirements of Code Section 19-11-12.

(4) A petition for modification shall be filed under the same rules of procedure applicable to divorce proceedings. The court may allow, upon motion, the temporary modification of a child support order pending the final trial on the petition. An order granting temporary modification shall be subject to revision by the court at any time before the final trial. A jury may be demanded on a petition for modification but the jury shall only be responsible for determining a parent's gross income and any deviations. In the hearing upon a petition for modification, testimony may be given and evidence introduced relative to the change of circumstances, income and financial status of either parent, or in the needs of the child. After hearing both parties and the evidence, the court may modify and revise the previous judgment, in accordance with the changed circumstances, income and financial status of either parent, or in the needs of the child, if such change or changes are satisfactorily proven so as to warrant the modification and revision and such modification and revisions are in the child's best interest. The court shall enter a written order specifying the basis for the modification, if any, and shall include all of the information set forth in paragraph (2) of subsection (c) of this Code section.

(5) In proceedings for the modification of a child support award pursuant to the provisions of this Code section, the court may award attorney's fees, costs, and expenses of litigation to the prevailing party as the interests of justice may require. When a custodial parent prevails in an upward modification of child support based upon the noncustodial parent's failure to be available and willing to exercise court ordered visitation, reasonable and necessary attorney's fees and expenses of litigation shall be awarded to the custodial parent.

(1) Split parenting. In cases of split parenting, a worksheet shall be prepared separately by each custodial parent for each child for whom such parent is the custodial parent, and that worksheet shall be filed with the clerk of court. For each split parenting custodial situation, the court shall determine:

(1) Which parent is the obligor;

(2) The presumptive amount of child support;

(3) The actual award of child support, if different from the presumptive amount of child support;

(4) How and when the sum certain amount of child support owed shall be paid; and

(5) Any other child support responsibilities for each parent.

(m) Worksheets.

(1) Schedules and worksheets shall be prepared by the parties for purposes of calculating the amount of child support. In child support services cases in which neither parent prepared a worksheet, the court may rely on the worksheet prepared by child support services as a basis for its order. Information from the schedules shall be entered on the child support worksheet. The child support worksheets and any schedule that was prepared for the purpose of calculating the amount of child support shall be attached to the final court order or judgment; provided, however, that any order entered pursuant to Code Section 19-13-4 shall not be required to have such worksheets and schedules attached thereto.

(2) The child support worksheet and schedules shall be promulgated by the Georgia Child Support Commission.

(n) Child support obligation table. The child support obligation table shall be proposed by the Georgia Child Support Commission and shall be as codified in subsection (o) of this Code section.

(o) Georgia Schedule of Basic Child Support Obligations.