

Georgia's Child Support Guidelines

Effective January 1, 2007

by Randall M. Kessler and Lauren M. Kushkin

In the 2006 legislative session, the Georgia General Assembly passed Senate Bill 382, which dramatically revised the entire structure of how child support is determined in the State of Georgia. The new statute, codified at O.C.G.A. § 19-6-15, will go into effect on Jan. 1, 2007. Child support will now be based on an “income shares” model, which takes into account the gross incomes of both parents,¹ as opposed to the previous child support guidelines (in place for almost 20 years) where the amount of child support was determined based solely upon a percentage of the non-custodial parent’s gross income.

By using an income shares model, Georgia is now in line with 36 other states that use this model as a basis for their child support guidelines. With the implementation of the new law, practitioners, judges and liti-

gants alike are faced with a new system that requires complicated mathematical formulas to determine the exact amount of child support to be paid. Thus, either manual or electronic worksheets are now necessary to determine a child support obligation.²

The goal of the legislature in revamping the child support guidelines was not only to improve the guidelines that were originally in place, but also to achieve the public policy of providing children whose parents are no longer married with the same economic standard of living as children with married parents of similar financial means.³ Despite the various changes, it is important to recognize that the General Assembly intended the new guidelines to be “guidelines only.” In fact, the statute specifically states this while also emphasizing that any court applying the guidelines shall not abrogate its responsibility in making a child support determination based on the facts and evidence presented at hearing or trial.⁴ It remains to be seen whether the new system will effectively achieve the goal of improving the process for determining child support in Georgia. This article will explore the new calculation system and will highlight some of the significant changes under the new law.

Calculations

The new process for calculating child support involves nine separate steps. The first step is to deter-

mine the monthly Gross Income (terms capitalized in this article are defined in the statute) of *each* parent.⁵ Next, each parent's Gross Income should be adjusted to arrive at the Adjusted Income of such parent.⁶ Adjustments must be made for any of the following: one-half of self-employment taxes;⁷ pre-existing child support orders;⁸ and any theoretical child support orders for qualified children.⁹ Once the adjustments, if any, are made, the third step is to combine the Adjusted Incomes of each parent to compute the Combined Adjusted Income.¹⁰ The Combined Adjusted Income is the key amount that is used to determine the Basic Child Support Obligation, which is the fourth step. The Basic Child Support Obligation is the amount presumed under the statute to be the appropriate amount of child support provided by both parents prior to the consideration of any other factors.¹¹ A Child Support Obligation Table—codified in the new regulations at O.C.G.A. § 19-6-15(o)—is used as a reference for determining the Basic Child Support Obligation corresponding to the number of children in a family and the Combined Adjusted Income of the parents. The table outlines monthly child support for up to six children in monthly increments for Combined Adjusted Incomes between \$800 and \$30,000 per month.

After the Basic Child Support Obligation is determined, calculating each parent's pro rata share of such obligation is the fifth step.¹² Next, the additional expenses for the cost of health insurance and work-related child care costs are calculated for each parent in accordance with his or her pro rata share of child support. The seventh step is to combine those amounts with each parent's pro rata share of the Basic Child Support Obligation, which creates the Adjusted Child Support Obligation.¹³ However, if either parent is already paying, or will be paying the health insurance and work-related child care costs,

then he or she will receive a credit for that expense. Step number eight is determining the Presumptive Child Support Amount by assigning or deducting such credit, as appropriate, to or from the non-custodial parent's Adjusted Child Support Obligation.¹⁴ The Presumptive Child Support Amount is the child support obligation owed, unless certain deviation factors apply. The final step is applying the deviation factors. The Final Child Support Order is the Presumptive Amount of Child Support as increased or decreased by the deviations.

ever, have eliminated the "special circumstances" provision and have replaced it with specific deviations, which are enumerated in a non-exhaustive list. The section of the statute titled "Grounds for Deviation" under the new guidelines provides a detailed guide to practitioners and judges as to how and when the deviations should be applied.¹⁶ Specifically, in making a determination for a deviation from the Presumptive Amount of Child Support, the statute provides that primary consideration is to be given to the best interest of the child for whom the support order is



Deviations and How Applied

The previous child support guidelines had a provision that allowed for a variation of the child support obligation if the trier of fact determined that certain "special circumstances" made the Presumptive Amount of Child Support either excessive or inadequate.¹⁵ The new guidelines, how-

being determined.¹⁷ Furthermore, when ordering a deviation in a child support award, the judge, after considering all of the available income of both parents, must make written findings that the amount of child support awarded is reasonably necessary to provide for the needs of the child. However, under the new guidelines, a deviation will not be entered if the reduction in child support will "seriously

impair” the ability of the custodial parent to provide and maintain what is considered to be by the court or a jury minimally adequate housing, food, clothing and other basic necessities.¹⁸

Certain factors that the legislature determined to be relevant enough to codify as specific deviations include, but are not limited to, the following: either high or low income of the parents; additional health-related insurance; life insurance; child and dependent care tax credit; travel expenses; alimony; mortgage; permanency plan or foster care plan; extraordinary expenses; nonspecific deviations; and parenting time.¹⁹ The new statute considers parents to be high income parents if they have a Combined Adjusted Income that exceeds \$30,000 per month. When setting child support for high income parents, the court is required to set the Basic Child Support Obligation at the highest amount set forth on the child support obligation table. Then the trier of fact (whether a judge or jury) can consider an upward deviation in the monthly child support obligation to create an award that is not only appropriate, but also consistent with the best interests of the child.²⁰

The new guidelines also provide for deviations in the Presumptive Child Support Amount for low income parents. A low income parent is defined under the statute as a parent whose monthly gross income is at or below \$1,850.²¹ If the non-custodial parent is the low income parent and he or she requests a devi-

ation, the court or jury is to determine if that person would be financially able to pay a child support order, while at the same time maintain a minimum standard of living. The minimum standard of living is determined by calculating a self-support reserve, which essentially deducts \$900 from the non-custodial parent’s adjusted income.²² If the resulting amount is lower than his or her pro rata share of the Presumptive Amount of Child Support, then the trier of fact can deviate to this amount. However, the minimum amount for a child support order is \$75 per month, or \$900 per year.²³ When deviating downwards for a low-income parent, the court or the jury must consider how it will financially impact the custodial parent’s household. The statute further states under this section that under no circumstances should the child support awarded impair a custodial parent’s ability to maintain adequate food, housing, clothing and basic necessities for the minor child.²⁴

Although the obligation table includes average child-rearing expenses for families, the statute allows for a deviation in child support for extraordinary expenses of the child. The extraordinary expenses can include extraordinary educational expenses associated with special needs education or private schooling, special expenses incurred for child rearing, and extraordinary medical expenses that are not covered by insurance.²⁵ The statute specifically notes that

special expenses for child rearing include summer camp, music or art lessons, travel, school sponsored extracurricular activities, and “other activities intended to enhance the athletic, social or cultural development of the child.”²⁶ As each family’s circumstances are unique, any deviation for extraordinary expenses is to be considered on a case-by-case basis. The reasoning is to ensure that this deviation is reserved for individual families who are actually incurring the additional expenses.²⁷

Additional Changes in the New Statute

Gross Income

In addition to completely restructuring how child support is calculated, the new guidelines also provide many significant changes that will affect practitioners and litigants alike. A major question that practitioners will need to address under the new law is what is to be considered “Gross Income” for child support purposes. The new statute provides that income from any source (before any tax or other deductions are applied) whether earned or unearned shall be included as Gross Income.²⁸ Unlike the old law, which stated that Gross Income included “100 percent of wage and salary income and other compensation for personal services, interest, dividends, net rental income, self-employment income, and all other incomes, except need-based public assistance,”²⁹ the new statute is much more detailed and specifically lists 21 items that must be included as Gross Income for child support purposes. Included in the list are overtime, bonuses, commissions and tips, disability or retirement benefits and assets that are used for the support of a family.³⁰ In addition, fringe benefits are to be considered income if the benefits significantly reduce the parent’s personal living expenses.³¹ Although both the old guidelines and the new statute exclude needs-based income as Gross Income for

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child support, the new statute expands the exclusions so that now, any child support received for other children, as well as a non-parent custodian's income are not included in the definition of gross income.³²

Loss of Income

The new guidelines address and codify a variety of situations that often arise in child support cases. For example, the new guidelines have provisions that specifically address what happens when a parent suffers an involuntary loss of income. When a parent is unable to afford his or her child support obligation due to an involuntarily termination from employment that results in a loss of income of at least 25 percent, the guidelines afford that parent some protection.³³ In particular, once a parent files a petition for modification of his or her support obligation, the portion of unpaid child support attributable to the lost income shall not accrue

from the date of filing the petition for modification.³⁴ In other words, an arrearage which accrues from the date of filing for unpaid child support in this situation may be "forgiven" if the loss of income is found to be involuntary. However, it is important to note that the statute specifically provides that a termination of employment will not be considered involuntary if the parent has left his or her most recent employer of his or her own volition without good cause.³⁵

Unemployed or Underemployed

To the contrary, the new guidelines afford protection to a parent when the other parent becomes voluntarily unemployed or underemployed. In those situations the court is required to determine the reasons for the parent's occupational choices. In doing so, it must assess the reasonableness of the parent's decisions in light of the parent's responsibility to support

his or her child. Most importantly, the court must determine whether the parent's choices actually benefit the child. The provision in the statute addressing this issue is broad, however, and reaches far beyond a parent's occupational decision that may be motivated solely by an intent to avoid payment of child support. Rather, the law provides that a parent can be voluntarily underemployed or unemployed based on "any intentional choice or act that affects a Parent's income."³⁶ In making a determination of voluntary unemployment or underemployment the court is to examine whether a parent is capable of applying his or her education, skills or training with reasonable effort to produce an income. The statute then provides a non-exhaustive list of factors that the court is to consider. Some of the factors to be considered include the parent's employment history, education and training, health and ability to work out-

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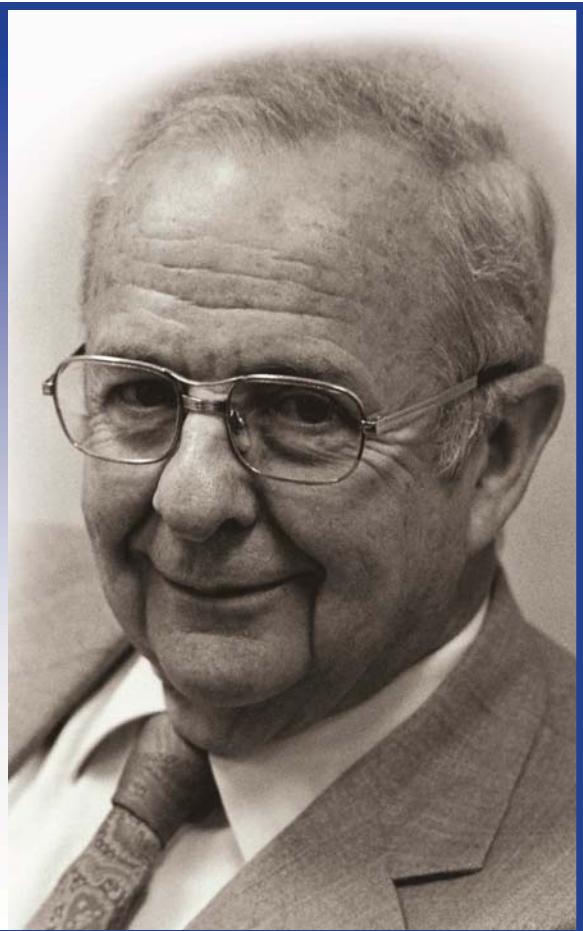
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side the home, and, the parent's role as a caretaker of the child. The statute further adds as factors for consideration whether the parent was a full time care-taker immediately prior to the separation of parents, as well as the length of time that the parent was out of the workforce to care for the child.³⁷

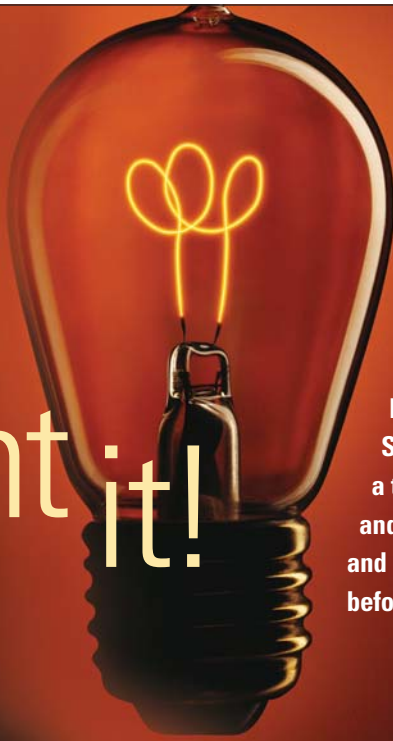
Imputing Income to a Parent

Another major change created under the new guidelines relates to imputing income to a parent. Under the prior statute, imputing income to a party due to a suppression of income was listed as one of the special circumstances for modifying a child support order. However, the new statute provides the trier of fact, when determining a party's income for an initial child support order, with the authority to impute income to a parent if he or she fails to provide any reliable evidence of income, and the court or jury has

no other reliable evidence of that party's income.³⁸ If income is imputed under this provision, it will be based upon a 40 hour work week at minimum wage. In the event that the other party believes that the "imputed income" should be higher, the party contesting the amount has 90 days to file a motion for reconsideration wherein a hearing will be held on the matter.³⁹ Additionally, in a case for modification of an existing child support order, if a party refuses to produce reliable evidence of income 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 obligation of the parent failing to produce the evidence. The increase may be 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 order was last entered or modified.⁴⁰

Modifications

Much discussion was had in the legislature and in committee meetings about the required threshold for filing a modification action. In fact, early versions of the new legislation suggested that the mere enactment of the law would constitute a change of circumstances to allow a parent to file an action to modify child support. The final, passed version of Senate Bill 382, however, did not include such language, and the mere enactment of the law will not give a parent the right to modify his or her child support obligation. Similar to the old law, a first time modification under the new law requires that a parent show a "substantial change in either Parent's income and financial status or the needs of the Child."⁴¹ This showing must be made regardless of the length of time since the date of the establishment of the initial child support award. For a second or additional modification, under the new law a parent must wait for



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a period of two years from the date of the final order on a case he or she previously filed for modification before he or she may file another petition for modification of the same child support.⁴² This two year waiting period, however, can be waived under certain circumstances. Specifically, such a waiver is permitted if the non-custodial parent fails to exercise visitation, exercises a greater amount of visitation than was set forth in the order, or if the modification is based on an involuntary loss of income.⁴³ The new statute also provides for a phase-in of the new child support order if there is a difference of at least 15 percent between the new child support award and an award entered prior to Jan. 1, 2007. The phase-in is limited to a period of one year when the difference between the two orders is at least 15 percent but less than 30 percent. If the difference between the two orders yields a 30 percent or greater change, then the phase-in period may last for up to two years.⁴⁴

Credit for Other Children

Another difference under the new law is that a parent who has an existing child support order for another child will receive a credit or adjustment to his or her Gross Income for purposes of calculating his or her child support obligation for the child at issue. Under the previous guidelines it was considered to be a special circumstance,⁴⁵ which allowed for a discretionary reduction of child support. However, now it is considered to be a mandatory adjustment. The statute specifically provides that a parent's monthly Gross Income shall be adjusted for a current, pre-existing child support order, so long as the order has been in place for a minimum of 12 consecutive months immediately prior to the hearing.⁴⁶ The maximum credit that a parent is entitled to receive for a pre-existing order is an average of the total amount of current child support actually paid over the previous 12 months.⁴⁷

A completely new concept under the new law applies to situations where a parent does not have an actual pre-existing child support order, but still provides support for another child living in the parent's home. In this situation, the new guidelines allow for the parent to receive a credit in his or her child support obligation for the support of the other child. The statute refers to this type of support as a "theoretical child support order,"⁴⁸ and it only applies to a child who is considered to be a "Qualified Child." A Qualified Child is a child that lives with the parent and for whom the parent is legally responsible. A stepchild or another minor in the home that the parent does not have a legal obligation to provide for will not be considered a "Qualified Child" under the statute.⁴⁹ The theoretical child support order is a discretionary adjustment that may be considered when calculating a parent's child support obligation. In order to have a theoretical child support order considered, the parent must submit documentary evidence of the parent-child relationship to the court. Adjustments to a parent's income may be considered in situations where the failure to consider the support for the other child would cause substantial hardship to the parent. However, any adjustment to a parent's income must be based on the best interests of the child for whom the child support order is being awarded.⁵⁰ If the court determines that an adjustment is warranted, then the Basic Child Support Obligation for the other child living with the parent shall be determined based upon that parent's monthly Gross Income. Seventy-five percent of the Basic Child Support Obligation for the other child will be subtracted from such parent's monthly Gross Income for the child support order at issue.

Deductions for Child Care and Health Insurance

Another major point to highlight in the new child support guidelines is the fact that work-related child

care costs and costs of health insurance premiums are automatically deducted and accounted for in the child support calculations. The statute specifically defines work-related child care costs as costs that are necessary for a parent's employment, education or training and are appropriate to the parent's financial abilities and to the lifestyle of the child if the parents and child were living together.⁵¹ However, the value of services for a parent who stays at home to provide child care, as well as the value of child care to a parent who is provided such care free of charge, will not be considered as adjustments to the Basic Child Support Obligation.⁵² For health insurance premiums, only the portion of the premium actually attributable to the child shall be considered. Furthermore, any employer-paid costs will not be included.⁵³ Once the total amount of child care costs and health insurance premiums are calculated, they are added as adjustments to the Basic Child Support Obligation as additional expenses and then are divided between the parents in proportion to their respective child support obligation.⁵⁴

Miscellaneous Changes

Senate Bill 382 included some additional noteworthy changes that may significantly affect the practice of domestic relations law when dealing with child support issues. With respect to the interest rate on unpaid child support, the new law reduced the interest rate on unpaid child support from 12 percent to seven percent. Interest now starts accruing 30 days from the date that the payment is due.⁵⁵ Furthermore, courts now have the discretion to either assess or waive the past interest due. In making such determination, the court is required to consider whether good cause existed for the non-payment of support, whether the payment of interest would result in a substantial hardship for either parent, and whether paying interest would prevent the parent's current ability to pay child support.⁵⁶

Another change under the new guidelines is the role of a jury in making a child support determination. Under the old law, the jury could make all economic decisions pertaining to child support. With the implementation of Senate Bill 382, juries, when requested by either party, now only determine the Gross Incomes of each parent and whether a deviation factor applies.⁵⁷ The jury is required to return a special interrogatory determining each party's Gross Income. Then, from the jury's verdict, the court determines the Presumptive Child Support Amount as well as the identity of which parent will be deemed the custodial versus non-custodial parent. At that point the jury will determine whether any deviations apply. For each deviation, if any are found, the jury is required to return a special interrogatory.⁵⁸

Foreseeable Problems/ Issues with the New Law

Although it is still too early to tell what problems will arise and how the new law will actually affect individuals with their child support awards, litigation can be anticipated as a result of a few loopholes in the drafting of the statute. For example, when dealing with a modification, the new law requires that a parent must show a substantial change in circumstances in order to have a modification of a child support order. However, the

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statute does not define what is to be considered a “substantial change.” Presumably, previous case law will provide guidance as this standard is very close to the previous standard. Additionally, the parenting time deviation allows people to use the amount of parenting time to reduce their child support obligation, but there is no automatic calculation or offset for a certain number of days spent by the non-custodial parent with the child. Some other areas of potential dispute involve the deviations for alimony and mortgage. The law provides that paying alimony can be a reason for a deviation in a child support obligation, thus requiring a determination of alimony prior to making a child support determination. Plus, a parent can also receive a deviation in child support if the non-custodial parent is paying the mortgage or has provided a home at no cost to the custodial parent where the child resides.⁵⁹ Yet this can result in complications if the custodial parent is awarded the equity in the marital residence in the property division. These are just a few of the potential problems under the new law.

Conclusion

From a practitioner’s standpoint, calculating child support is much more complicated and time consuming than it has been under the previous guidelines. The detailed law will force practitioners to study and learn the nuances to ensure that each client is receiving the best representation possible, as the new law involves much more than simply plugging numbers into a computer program. While the process of calculating child support under the new guidelines may sound complicated, the best advice is to go to the internet calculators and practice.⁶⁰ After we all become familiar with the new process, hopefully the new law will achieve its goal of improving how child support is determined in the State of Georgia and ensuring that the ultimate award of child support

will automatically consider many variables, which in the past were perhaps considered in a more discretionary manner.



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Endnotes

1. Other factors are considered, which will be explored more in-depth below.
2. The Office of Child Support Services offers three different versions of the worksheets: (1) for pro-se litigants; (2) for practitioners; and (3) for courts/administrative agencies. The Office of Child Support Services makes each of these worksheets, as well as an excel spread sheet program, available for download from the Internet 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> (Child Support Commission Website).

3. O.C.G.A. § 19-6-15(C)(1) (2007).
4. *Id.* § 19-6-15(d).
5. *Id.* § 19-6-15(b)(1).
6. A Theoretical Child Support Order is a hypothetical child support order for qualified children, which allows for the Court to determine an amount of child support as if a child support order existed. *Id.* § 19-6-15(a)(22). This aspect of the new law will be explored in greater detail under the Subsection of this Article entitled “Credit for Other Children.”
7. One-half of a parent’s self-employment and Medicare taxes is calculated by reducing the parent’s monthly gross income 6.2 percent for OASDI (federal old age, survivors, and disability insurance), and 1.45 percent for Medicare.
8. A Pre-Existing Order is defined as “[a]n order in another case that requires a Parent to make child support payments for another Child, which child support the Parent is actually paying.” O.C.G.A. § 19-6-15(a)(18)(A).
9. *Id.* § 19-6-15(b)(2).
10. *Id.* § 19-6-15(b)(3).
11. *Id.* § 19-6-15(a)(3).
12. The pro rata share is determined by dividing the Combined Adjusted Income into each parent’s adjusted income. The resulting numbers are each parent’s pro rate percentage of the basic child support obligation. *Id.* § 19-6-15(b)(5).
13. *Id.* § 19-6-15(b)(6).
14. *Id.* § 19-6-15(b)(7). Some commentators break this step into two steps – the eighth being the calculation of the credit and the ninth being the assignment or deduction of the credit – to create a 10-step process for determining the child support amount.
15. *Id.* § 19-6-15(c) (2006).
16. *Id.* § 19-6-15(i) (2007).
17. *Id.* § 19-6-15(i)(1)(A).
18. *Id.* § 19-6-15(i)(1)(C)

19. *Id.* § 19-6-15(b)(8)(A)-(K);
see also *id.* § 19-6-15(i)(2)(A)-(K).
20. *Id.* § 19-6-15(i)(2)(A).
21. *Id.* § 19-6-15(i)(2)(B).
22. *Id.* § 19-6-15(i)(2)(B)(i).
23. *Id.* § 19-6-15(i)(2)(B)(ii).
24. *Id.* § 19-6-15(i)(2)(B)(i).
25. *Id.* § 19-6-15(i)(2)(J)(i), (ii), (iii).
26. *Id.* § 19-6-15(i)(2)(J)(ii)
27. *Id.* § 19-6-15(i)(2)(J).
28. *Id.* § 19-6-15(f)(1)(A).
29. *Id.* § 19-6-15(b)(2) (2006).
30. *Id.* § 19-6-15(f)(1)(A)(i)-(xxi) (2007).
31. *Id.* § 19-6-15(f)(1)(C).
32. *Id.* §§ 19-6-15(f)(2)(A), (C)
33. The new guidelines protect parents who not only suffer an involuntary termination of employment, but also experience an extended involuntary loss of average weekly hours, are involved in an organized strike, incur a loss of health, or have other, similar, involuntary adversity that results in a loss of income of at least 25 percent. See *id.* § 19-6-15(j)(1).
34. *Id.*
35. *Id.*
36. *Id.* § 19-6-15(f)(4)(D).
37. *Id.* § 19-6-15(f)(4)(D)(i)-(vi).
38. *Id.* § 19-6-15(f)(4)(A).
39. *Id.* § 19-6-15(f)(4)(C).
40. *Id.* § 19-6-15(f)(4)(B).
41. *Id.* § 19-6-15(k)(1).
42. *Id.* § 19-6-15(k)(2).
43. *Id.* § 19-6-15(k)(2)(A)-(C).
44. *Id.* § 19-6-15(k)(3)(A)-(B).
45. Special circumstances under the old child support statute are discussed above under the Section entitled "Deviations and How Applied."
46. O.C.G.A. § 19-6-15(f)(5)(B).
47. *Id.* § 19-6-15(f)(5)(B)(iii).
48. *Id.* § 19-6-15(a)(22); see also *supra* note 6.
49. O.C.G.A. § 19-6-15(a)(20).
50. *Id.* § 19-6-15(f)(5)(C).
51. *Id.* §§ 19-6-15(h)(1)(A), (h)(2)(A)(i).
52. *Id.* § 19-6-15(h)(1)(C)-(D).
53. *Id.* § 19-6-15(h)(2)(A)(i).
54. *Id.* §§ 19-6-15(h)(1)(E)-(F), (h)(2)(A)(ii)-(iii).
55. *Id.* § 7-4-12.
56. *Id.* § 7-4-12.1.
57. *Id.* § 19-6-15(C)(4).
58. *Id.*
59. *Id.* § 19-6-15(i)(2)(H).
60. See *supra* note 2.

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