

NEW CHILD SUPPORT GUIDELINES (effective January 1, 2007)

§ 19-6-15. Child support in final verdict or decree; guidelines for determining amount of award; continuation of duty to provide support; duration of support

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

(1) "Adjusted child support obligation" means the basic child support obligation adjusted by the parenting time adjustment, if applicable, health insurance, and work related child care costs.

(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 amount of support displayed on the child support obligation table which corresponds to the combined adjusted income of the custodial parent and the noncustodial parent and the number of children for whom child support is being determined. This amount is 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 percentage of income, health insurance, work related child care costs, and deviations.

(4) "Child" means child or children.

(5) Reserved.

(6) "Child support obligation table" means the chart which displays the dollar amount of the basic child support obligation corresponding to various levels of combined adjusted income of the children's parents and the number of children for whom a child support order is being established or modified. The child support obligation table shall be used to calculate the basic child support obligation according to the provisions of this Code section. For further reference see subsections (n) and (o) of this Code section.

(6.1) "Child support services" means the Office of Child Support Services within the Department of Human Resources.

(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. Where a custodial parent has not been designated or where 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. Where 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 pursuant to subsection (i) of this Code section.

(11) "Final child support order" 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. Where 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 adjustment" means an adjustment to the noncustodial parent's portion of the basic child support obligation based upon the noncustodial parent's court ordered visitation with the child. For further reference see subsection (g) 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 of filing of the initial order for each such other case is earlier than the date of filing 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) That the parent is actually supporting;

(C) Who is not subject to a preexisting child support 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 that 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, where 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 calculated as set forth 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 worksheet used to record information necessary to determine and calculate child support. In child support services cases in which neither parent prepared a worksheet, the court may rely solely on the worksheet prepared by the child support services as a basis for its order. For further reference see subsection (m) of this Code section.

(b) *Process of calculating child support.* Pursuant to this Code section, the determination of 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. Gross income shall be calculated on a monthly basis. 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 to compute the combined adjusted income;

(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 in the column underneath the number of children for whom support is being determined. 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;

(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 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 basic child support obligation and the pro rata share of the combined additional expenses shall be added together to create the adjusted child support obligation;

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

(8) In accordance with subsection (i) of this Code section, deviations subtracted from or increased to the presumptive amount of child support are 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 are not limited to, the following:

(A) High income;

(B) Low income;

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

(9) The final child support order shall be the presumptive amount of child support as increased or decreased by deviations. 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) In addition, 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; and

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

(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. The rebuttable presumptive amount of child support provided by this Code section may be increased 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 and from which parent the child is entitled to permanent support as determined by use of the worksheet;

(B) Specify as required by [Code Section 19-5-12](#) in what manner, how often, to whom, and until when the support shall be paid;

(C) Include a written finding of the parent's 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 may order that the child be covered under such health insurance;

(E) Include written findings of fact as to whether one or more of the deviations 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; and

(G) 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. 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 pursuant to the provisions of this Code section.

(4) 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. 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](#).

(5) 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.

(6) 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 these 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.

(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) Workers' compensation benefits, whether temporary or permanent;

(xv) Unemployment insurance benefits;

(xvi) Judgments recovered for personal injuries and awards from other civil actions;

(xvii) Gifts that consist of cash or other liquid instruments, or which can be converted to cash;

(xviii) Prizes;

(xix) Lottery winnings;

(xx) Alimony or maintenance received from persons other than parties to the proceeding before the court; and

(xxi) Assets which are used for the support of the family.

(B) *Self-employment income.* Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties, less ordinary and reasonable expenses necessary to produce such income. Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership, limited liability company, or closely held corporation is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operations. Ordinary and reasonable expenses of self-employment or business operations necessary to produce income do not include:

(i) Excessive promotional, travel, vehicle, or personal living expenses, depreciation on equipment, or

costs of operation of home offices; or

(ii) Amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court 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. Basic allowance for housing and subsistence and variable housing allowances for members of the armed services shall be considered income for the purposes of determining child support. Fringe benefits do 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, 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.

(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 Resources;

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

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

(v) Low-income heating and energy assistance program payments; and

(C) A nonparent custodian's gross income.

(3) *Social Security benefits.*

(A) Benefits received under Title II of the federal Social Security Act by a child on the obligor's account shall be counted as child support payments and shall be applied against the final child support order to be paid by the obligor for the child.

(B) After calculating the obligor's 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 is greater than the Social Security benefits paid on behalf of the child on the obligor's account, the obligor shall be required to pay the amount exceeding the Social Security benefit as part of the final child support order in the case.

(C) After calculating the obligor's 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 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 is met and no further child support shall be paid.

(D) Any benefit amounts under Title II of the federal Social Security Act as determined by the Social Security Administration sent to the nonparent custodian or custodial parent by the Social Security Administration for the child's benefit which are greater than the final child support order shall be retained by the nonparent custodian or custodial parent for the child's benefit and shall not be used as a reason for decreasing the final child support order or reducing arrearages.

(E) The court shall make a written finding of fact in the final child support order regarding the use of Social Security benefits in the calculation of the child support.

(4) *Reliable evidence of income.*

(A) *Imputed income.* When establishing the amount of child support, if a parent fails to produce reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to pay child support or ability to pay child support in prior years, and the court or the jury has no other reliable evidence of the parent's income or income potential, gross income for the current year shall be determined by imputing gross income based on a 40 hour workweek at minimum wage.

(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 has no other reliable evidence of that parent's income or income potential, the court may enter an order to increase the child support of the parent failing or refusing to produce evidence of income by an increment of at least 10 percent per year of that parent's pro rata share of the basic child support obligation for each year since the final child support order was entered or last modified.

(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 shall not be required to demonstrate the existence of a significant variance or other such factors required for modification of an order pursuant to subsection (k) of this Code section.

(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. In determining willful or voluntary unemployment or underemployment, the court may examine whether there is a substantial likelihood that the parent could, with reasonable effort, apply his or her education, skills, or training to produce income. Specific factors for the court 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 shall consider the following factors:

(l) 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 pursuant to a determination that gross income for the current year is based on a 40 hour workweek at minimum wage.

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 one-quarter 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 actually being paid under an order of support for a period of not less than 12 consecutive months immediately prior to the date of the hearing or such period that an order has been in effect if less than 12 months prior to the date of the hearing before the court to set, modify, or enforce child support.

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

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

(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, a IV-D agency, as defined in [Code Section 19-6-31](#), 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) *Priority of adjustments.* In multiple family situations, the adjustments to a parent's monthly gross income shall be calculated in the following order:

(i) Preexisting orders according to the date of the initial order; and

(ii) After applying the deductions on the Child Support Schedule B -- Adjusted Income for preexisting orders, if any, in subparagraph (A) of paragraph (4) of this subsection, any credit for a parent's other qualified children may be considered using the procedure set forth in subparagraph (B) of this paragraph.

(g) *Parenting time adjustment.* 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 child support 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) 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 written order of the court.

(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 health insurance that provides for the health care needs of the child can be obtained by a parent at reasonable cost, 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 or PeachCare for Kids Program shall not satisfy the requirement that the final child support order provide for the child's health care needs. Health coverage through PeachCare for Kids Program and Medicaid shall not prevent a court from ordering either or both parents to obtain other health insurance.

(3) *Uninsured health care expenses.*

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

(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.

(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.* For purposes of this subparagraph, "low-income person" means a parent whose annual gross income is at or below \$1,850.00 per month.

(i) If the noncustodial parent is a low-income person and requests a deviation on such basis, the court or the jury shall determine if the noncustodial parent will be financially able to pay the child support order and maintain at least a minimum standard of living by calculating a self-support reserve as set forth in division (ii) of this subparagraph. The court or the jury shall take into account all nonexcluded sources of income available to each parent and all reasonable expenses of each parent, ensuring that such expenses are actually paid by the parent and are clearly justified expenses. The court or the jury shall also consider the financial impact that a reduction in the amount of child support paid to the custodial parent would have on the custodial parent's household. Under no circumstances shall the amount of child support awarded to the custodial parent impair the ability of the custodial parent to maintain minimally adequate housing, food, and clothing and provide for other basic necessities for the child being supported by the court order.

(ii) To calculate the self-support reserve for the noncustodial parent, the court or the jury shall deduct

\$900.00 from the noncustodial parent's adjusted income. If the resulting amount is less than the noncustodial parent's pro rata responsibility of the presumptive amount of child support, the court or the jury may deviate from the amount of support provided for in the child support obligation table to the resulting amount. If the child support award amount would be less than \$75.00, then the minimum child support order amount shall be \$75.00.

(iii) If the custodial parent is a low-income person, the court or the jury shall subtract \$900.00 from the custodial parent's adjusted income. If the resulting amount is less than the custodial parent's pro rata responsibility of the presumptive amount of child support, the court or the jury shall not deviate from the amount of support required to be paid by the noncustodial parent as provided for in the child support obligation table.

(iv) The self-support reserve calculation described in this subparagraph shall apply only to the current child support amount and shall not prohibit an additional amount being ordered to reduce an obligor's arrears.

(v) The court shall make a written finding in its order or the jury shall find by special interrogatory that the low-income deviation from the presumptive amount of child support is clearly justified based upon the considerations and calculations described in this subparagraph.

(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 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 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 where the child is in the legal custody of the Department of Human Resources, the child protection or foster care agency of another state or territory, or any other child-caring entity, public or private, the court or 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 the expense is considered in the calculation of the final child support order for only those families actually incurring the expense. Extraordinary expenses shall be prorated between the parents.

(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 these 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, a parent, or a child of a parent's current family; 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 or when the child resides with both parents equally.

(ii) If the court or the jury determines that a parenting time deviation is applicable, then such deviation shall be applied to the noncustodial parent's basic child support obligation.

(iii) In accordance with subsection (d) of [Code Section 19-11-8](#), if any action or claim for parenting time 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 the child support services.

(3) *Nonspecific deviations.* Deviation 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. If the circumstances which supported the deviation cease to exist, the final child support order may be modified as set forth in subsection (k) of this Code section to eliminate the deviation.

(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, 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 parents' 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 where:

(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 IV-D 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 the IV-D agency 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 and returnable under the same rules of procedure applicable to divorce proceedings. 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. Where 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.

(l) *Split parenting.* In cases of split parenting, a worksheet shall be prepared separately for the child for whom the father is the custodial parent and for the child for whom the mother is the custodial parent, 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) The child support worksheet is used to record information necessary to determine and calculate child support. Schedules and worksheets shall be prepared by the parties for purposes of calculating the amount of child support. Information from the schedules shall be entered on the child support worksheet. The child support worksheet and Schedule E shall be attached to the final court order or judgment, and any schedules completed by the parties shall be filed with the clerk of court.

(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) Intentionally Omitted by TSLF

NOTES:

THE 2005 AMENDMENT, effective July 1, 2006, rewrote this Code section.

THE 2006 AMENDMENTS. --The first 2006 amendment, effective July 1, 2006, part of an Act to revise, modernize, and correct the Code, substituted "is being determined" for "are being determined" near the end of paragraph (i)(1), substituted a colon for a comma at the end of subparagraph (i)(2)(C), substituted "child-caring" for "child caring" near the middle of subparagraph (i)(4)(B), in division (i)(4)(D)(i), substituted "child-rearing" for "child rearing" in the first sentence, and substituted "case-by-case" for "case by case" near the middle of the last sentence, substituted "cost-reducing" for "cost reducing" in subdivision (i)(4)(D)(ii)(II); and substituted "attorney's fees" for "attorneys' fees" in the first sentence of paragraph (l)(2). The second 2006 amendment, effective April 28, 2006, delayed the effective date of the 2005 amendment until January 1, 2007, and also, effective January 1, 2007, rewrote this Code section. For applicability, see editor's note.

THE 2007 AMENDMENT, effective May 11, 2007, part of an Act to revise, modernize, and correct the Code, revised language and punctuation throughout this Code section; redesignated paragraph (a)(5) as paragraph (a)(6.1) and designated paragraph (a)(5) as "Reserved."; in paragraph (a)(25) and divisions (h)(3)(B)(ii) and (i)(2)(K)(iii), substituted "child support services" for "Child Support Enforcement Agency", and, in division (f)(5)(B)(iii), substituted "child support services" for "Child Support Enforcement Agency's"; in division (f)(1)(A)(vii), substituted "United States Department of Veterans Affairs" for "Veterans' Administration"; in subparagraph (f)(4)(C), substituted "leave unchanged the amount of current child support" for "the amount of current child support may remain the same"; and, in subparagraph (f)(5)(C), substituted "pursuant to this subparagraph" for "pursuant to this paragraph".

