

House Bill 381

By: Representatives Efration of the 104th, Barr of the 103rd, and Oliver of the 82nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 19-6-15, relating to child support guidelines for determining amount
2 of award, continuation of duty of support, and duration of support, so as to revise and correct
3 defined terms and terminology, grammar, and punctuation; to remove alimony as a specific
4 deviation in certain circumstances; to exclude certain adoption assistance benefits from gross
5 income; to clarify provisions relating to willful or voluntary unemployment or
6 underemployment; to provide for related matters; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Code Section 19-6-15, relating to child support guidelines for determining amount of award,
11 continuation of duty of support, and duration of support, is amended by revising subsection
12 (a) as follows:

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

14 (1) Reserved.

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

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

24 (4) 'Child' means child or children.

25 (5) Reserved.

- 26 (6) 'Child support obligation table' means the chart set forth in subsection (o) of this
27 Code section.
- 28 (6.1) 'Child support services' means the entity within the Department of Human Services
29 and its contractors that are authorized to enforce a duty of support.
- 30 (7) 'Combined adjusted income' means the amount of adjusted income of the custodial
31 parent added to the amount of adjusted income of the noncustodial parent.
- 32 (8) 'Court' means a judge of any court of record or an administrative law judge of the
33 Office of State Administrative Hearings.
- 34 (9) 'Custodial parent' means the parent with whom the child resides more than 50 percent
35 of the time. ~~Where~~ When a custodial parent has not been designated or ~~where~~ when a
36 child resides with both parents an equal amount of time, the court shall designate the
37 custodial parent as the parent with the lesser support obligation and the other parent as
38 the noncustodial parent. ~~Where~~ When the child resides equally with both parents and
39 neither parent can be determined as owing a greater amount than the other, the court shall
40 determine which parent to designate as the custodial parent ~~for the purpose of this Code~~
41 ~~section.~~
- 42 (10) 'Deviation' means an increase or decrease from the presumptive amount of child
43 support if the presumed order is rebutted by evidence and the required findings of fact are
44 made by the court or the jury ~~pursuant to subsection (i) of this Code section.~~
- 45 (11) 'Final child support amount' means the presumptive amount of child support
46 adjusted by any deviations.
- 47 (12) 'Gross income' means all income to be included in the calculation of child support
48 ~~as set forth in subsection (f) of this Code section.~~
- 49 (13) 'Health insurance' means any general health or medical policy. ~~For further reference~~
50 ~~see paragraph (2) of subsection (h) of this Code section.~~
- 51 (14) 'Noncustodial parent' means the parent with whom the child resides less than 50
52 percent of the time or the parent who has the greater payment obligation for child support.
53 ~~Where~~ When the child resides equally with both parents and neither parent can be
54 determined as owing a lesser amount than the other, the court shall determine which
55 parent to designate as the noncustodial parent ~~for the purpose of this Code section.~~
- 56 (15) 'Nonparent custodian' means an individual who has been granted legal custody of
57 a child, or an individual who has a legal right to seek, modify, or enforce a child support
58 order.
- 59 (16) 'Parent' means a person who owes a child a duty of support pursuant to Code
60 Section 19-7-2.

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

64 (18) 'Preexisting order' means:

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

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

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

74 (20) 'Qualified child' or 'qualified children' means any child:

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

76 (B) Who ~~That~~ the parent is actually supporting;

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

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

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

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

90 (22) 'Theoretical child support order' means a hypothetical child support order for
 91 qualified children as calculated ~~as set forth~~ in subparagraph (f)(5)(C) of this Code section
 92 which allows the court or the jury to determine the amount of child support as if a child
 93 support order existed.

94 (23) 'Uninsured health care expenses' means a child's uninsured medical expenses
 95 including, but not limited to, health insurance copayments, deductibles, and such other
 96 costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments,
 97 physical therapy, vision care, and any acute or chronic medical or health problem or

98 mental health illness, including counseling and other medical or mental health expenses,
 99 that are not covered by insurance. ~~For further reference see paragraph (3) of~~
 100 ~~subsection (h) of this Code section.~~

101 (24) 'Work related child care costs' means expenses for the care of the child for whom
 102 support is being determined which are due to employment of either parent. In an
 103 appropriate case, the court or the jury may consider the child care costs associated with
 104 a parent's job search or the training or education of a parent necessary to obtain a job or
 105 enhance earning potential, not to exceed a reasonable time as determined by the court, if
 106 the parent proves by a preponderance of the evidence that the job search, job training, or
 107 education will benefit the child being supported. The term shall be projected for the next
 108 consecutive 12 months and averaged to obtain a monthly amount. ~~For further reference~~
 109 ~~see paragraph (1) of subsection (h) of this Code section.~~

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

113 **SECTION 2.**

114 Said Code section is further amended by revising paragraph (8) of subsection (b) as follows:

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

- 121 (A) High income;
- 122 (B) Low income;
- 123 (C) Other health related insurance;
- 124 (D) Life insurance;
- 125 (E) Child and dependent care tax credit;
- 126 (F) Travel expenses;
- 127 ~~(G) Alimony;~~
- 128 ~~(H)~~(G) Mortgage;
- 129 ~~(I)~~(H) Permanency plan or foster care plan;
- 130 ~~(J)~~(I) Extraordinary expenses;
- 131 ~~(K)~~(J) Parenting time; and
- 132 ~~(L)~~(K) Nonspecific deviations;"

133 **SECTION 3.**

134 Said Code section is further amended by revising paragraph (4) of subsection (c) as follows:

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

138 **SECTION 4.**

139 Said Code section is further amended by revising subsection (d) as follows:

140 "(d) **Nature of guidelines; court's discretion.** In the event of a hearing or trial on the
 141 issue of child support, the guidelines enumerated in this Code section are intended by the
 142 General Assembly to be guidelines only and any court so applying ~~these~~ such guidelines
 143 shall not abrogate its responsibility in making the final determination of child support based
 144 on the evidence presented to it at the time of the hearing or trial. A court's final
 145 determination of child support shall take into account the obligor's earnings, income, and
 146 other evidence of the obligor's ability to pay. The court or the jury shall also consider the
 147 basic subsistence needs of the parents and the child for whom support is to be provided."

148 **SECTION 5.**

149 Said Code section is further amended by revising division (f)(1)(A)(vii); subparagraph
 150 (f)(1)(E); paragraph (2) of subsection (f); subparagraphs (f)(4)(A), (f)(4)(B), and (f)(4)(D);
 151 division (f)(5)(B)(i); and subparagraph (f)(5)(C) as follows:

152 "(vii) Recurring income from pensions or retirement plans, including, but not limited
 153 to, United States Department of Veterans Affairs, Railroad Retirement Board,
 154 Keoghs, and individual retirement accounts;"

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

- 160 (i) Base pay;
- 161 (ii) Drill pay;
- 162 (iii) Basic allowance for subsistence, whether paid directly to the parent or received
 163 in-kind; and
- 164 (iv) Basic allowance for housing, whether paid directly to the parent or received
 165 in-kind, determined at the parent's pay grade at the without dependent rate, but shall
 166 include only so much of the allowance that is not attributable to area variable housing
 167 costs.

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

172 (2) **Exclusions from gross income.** Excluded from gross income are the following:

173 (A) Child support payments received by either parent for the benefit of a child of
 174 another relationship;

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

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

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

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

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

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

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

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

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

193 "(A) **Imputed income.** When establishing the amount of child support, if a parent fails
 194 to produce reliable evidence of income, such as tax returns for prior years, check stubs,
 195 or other information for determining current ability to pay child support or ability to
 196 pay child support in prior years, and the court or the jury has no other reliable evidence
 197 of the parent's income or income potential, gross income for the current year may be
 198 imputed. When imputing income, the court or the jury shall take into account the
 199 specific circumstances of the parent to the extent known, including such factors as the
 200 parent's assets, residence, employment and earnings history, job skills, educational
 201 attainment, literacy, age, health, criminal record and other employment barriers, and
 202 record of seeking work, as well as the local job market, the availability of employers
 203 willing to hire the parent, prevailing earnings level in the local community, and other
 204 relevant background factors in the case. If a parent is incarcerated, the court or the jury

205 shall not assume an ability for earning capacity based upon pre-incarceration wages or
206 other employment related income, but income may be imputed based upon the actual
207 income and assets available to such incarcerated parent.

208 **(B) Modification.** When cases with established orders are reviewed for modification
209 and a parent fails to produce reliable evidence of income, such as tax returns for prior
210 years, check stubs, or other information for determining current ability to pay child
211 support or ability to pay child support in prior years, and the court or the jury has no
212 other reliable evidence of such parent's income or income potential, the court or the jury
213 may impute income as set forth in subparagraph (A) of this paragraph, or may increase
214 the child support of the parent failing or refusing to produce evidence of income by an
215 increment of at least 10 percent per year of such parent's gross income for each year
216 since the final order was entered or last modified and shall calculate the basic child
217 support obligation using the increased amount as such parent's gross income."

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

- 233 (i) The parent's past and present employment;
- 234 (ii) The parent's education and training;
- 235 (iii) Whether unemployment or underemployment for the purpose of pursuing
236 additional training or education is reasonable in light of the parent's responsibility to
237 support his or her child and, to this end, whether the training or education may
238 ultimately benefit the child in the case immediately under consideration by increasing
239 the parent's level of support for that child in the future;

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

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

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

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

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

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

259 (IV) Whether the parent is caring for a child who is four years of age or younger.

260 If the court or the jury determines that a parent is willfully or voluntarily
 261 unemployed or underemployed, child support ~~shall~~ may be calculated based on a
 262 determination of earning capacity, as evidenced by educational level or previous
 263 work experience. In the absence of any other reliable evidence, income may be
 264 imputed to the parent ~~pursuant to a determination that gross income for the current~~
 265 ~~year is based on a 40-hour workweek at minimum wage.~~

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

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

273 "(C) **Theoretical child support orders.** In addition to the adjustments to monthly
 274 gross income for self-employment taxes provided in subparagraph (A) of this paragraph
 275 and for preexisting orders provided in subparagraph (B) of this paragraph, credits for
 276 either parent's other qualified child living in the parent's home for whom the parent

277 owes a legal duty of support may be considered by the court or the jury for the purpose
 278 of reducing the parent's gross income. To consider a parent's other qualified children
 279 for determining the theoretical child support order, a parent shall present documentary
 280 evidence of the parent-child relationship to the court or the jury. Adjustments to
 281 income pursuant to this subparagraph may be considered in such circumstances in
 282 which the failure to consider a qualified child would cause substantial hardship to the
 283 parent; provided, however, that such consideration of an adjustment shall be based upon
 284 the best interest of the child for whom child support is being awarded. If the court or
 285 the jury, in its discretion, decides to apply the qualified child adjustment, the basic child
 286 support obligation of the parent for the number of other qualified children living with
 287 such parent shall be determined based upon that parent's monthly gross income. Except
 288 for self-employment taxes paid, no other amounts shall be subtracted from the parent's
 289 monthly gross income when calculating a theoretical child support order under this
 290 subparagraph. The basic child support obligation for such parent shall be multiplied by
 291 75 percent and the resulting amount shall be subtracted from such parent's monthly
 292 gross income and entered on the Child Support Schedule B – Adjusted Income."

293 **SECTION 6.**

294 Said Code section is further amended by revising subparagraphs (h)(1)(A) and (h)(1)(D) and
 295 division (h)(1)(F)(ii) as follows:

296 "(A) Work related child care costs necessary for the parent's employment, education,
 297 or vocational training that are determined by the court or the jury to be appropriate, and
 298 that are appropriate to the parents' financial abilities and to the lifestyle of the child if
 299 the parents and child were living together, shall be averaged for a monthly amount and
 300 entered on the child support worksheet in the column of the parent initially paying the
 301 expense. Work related child care costs of a nonparent custodian shall be considered
 302 when determining the amount of this expense."

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

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

- 313 (I) The other parent or nonparent custodian may enforce payment of the work
 314 related child care costs by any means permitted by law; or
 315 (II) Child support services shall pursue enforcement when such unpaid costs have
 316 been reduced to a judgment in a sum certain."

317 SECTION 7.

318 Said Code section is further amended by revising divisions (i)(2)(B)(i) and (i)(2)(B)(viii),
 319 subparagraph (i)(2)(C), and subparagraphs (i)(2)(F) through (i)(2)(K) as follows:

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

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

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

332 "(F) **Travel expenses.** If court ordered visitation related travel expenses are substantial
 333 due to the distance between the parents, the court may order the allocation of such costs
 334 or the jury may, by a finding in its special interrogatory, allocate such costs by
 335 deviation from the presumptive amount of child support, taking into consideration the
 336 circumstances of the respective parents as well as which parent moved and the reason
 337 for such move.

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

344 ~~(H)~~(G) **Mortgage.** If the noncustodial parent is providing shelter, such as paying the
 345 mortgage of the home, or has provided a home at no cost to the custodial parent in
 346 which the child resides, the court or the jury may allocate such costs or an amount
 347 equivalent to such costs by deviation from the presumptive amount of child support,

348 taking into consideration the circumstances of the respective parents and the best
349 interest of the child.

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

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

368 (i) **Extraordinary educational expenses.** Extraordinary educational expenses may
369 be a basis for deviation from the presumptive amount of child support. Extraordinary
370 educational expenses include, but are not limited to, tuition, room and board, lab fees,
371 books, fees, and other reasonable and necessary expenses associated with special
372 needs education or private elementary and secondary schooling that are appropriate
373 to the parent's financial abilities and to the lifestyle of the child if the parents and the
374 child were living together.

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

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

382 (ii) **Special expenses incurred for ~~child-rearing~~ child-rearing.** Special expenses
383 incurred for ~~child-rearing~~ child-rearing, including, but not limited to, quantifiable
384 expense variations related to the food, clothing, and hygiene costs of children at

385 different age levels, may be a basis for a deviation from the presumptive amount of
 386 child support. Such expenses include, but are not limited to, summer camp; music or
 387 art lessons; travel; school sponsored extracurricular activities, such as band, clubs, and
 388 athletics; and other activities intended to enhance the athletic, social, or cultural
 389 development of a child but not otherwise required to be used in calculating the
 390 presumptive amount of child support as are health insurance premiums and work
 391 related child care costs. A portion of the basic child support obligation is intended to
 392 cover average amounts of special expenses incurred in the rearing of a child. In order
 393 to determine if a deviation for special expenses is warranted, the court or the jury shall
 394 consider the full amount of the special expenses as described in this division; and
 395 when ~~these~~ such special expenses exceed 7 percent of the basic child support
 396 obligation, then the additional amount of special expenses shall be considered as a
 397 deviation to cover the full amount of the special expenses.

398 (iii) **Extraordinary medical expenses.** In instances of extreme economic hardship
 399 involving extraordinary medical expenses not covered by insurance, the court or the
 400 jury may consider a deviation from the presumptive amount of child support for
 401 extraordinary medical expenses. Such expenses may include, but are not limited to,
 402 extraordinary medical expenses of the child or a parent of the child; provided,
 403 however, that any such deviation:

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

405 (II) May be ordered for a specific period of time measured in months.

406 When extraordinary medical expenses are claimed, the court or the jury shall consider
 407 the resources available for meeting such needs, including sources available from
 408 agencies and other adults.

409 ~~(K)~~(J) **Parenting time.**

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

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

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

422

SECTION 8.

423 Said Code section is further amended by revising paragraphs (2) and (5) of subsection (k) as
424 follows:

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

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

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

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

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

440

SECTION 9.

441 Said Code section is further amended by revising subsection (n) as follows:

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

445

SECTION 10.

446 All laws and parts of laws in conflict with this Act are repealed.