Pointers on Georgia's New Child Support Guidelines

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I. Introduction

House Bill 221 was passed in 2005. It was the result of much discussion, debate and effort over the years on the question of whether current child support guidelines should be improved or replaced. Senate Bill 382 was passed in 2006, as a replacement for House Bill 221. This bill completely changed (and replaced) O.C.G.A. § 19-6-15, which is the Child Support Guidelines Statute. When House Bill 221 was passed, it did not include the complete mathematical formula or obligation table for computing child support amounts. Rather, the bill provided that a child support commission would study the bill and later develop an obligation table. In particular, House Bill 221 outlined that the new child support system would be an "income shares" model, similar to those systems adopted by Tennessee, West Virginia and many other states. In an income shares system, before a presumptive amount for child support is determined, many factors are considered such as the incomes of both parents, tax implications, and support obligations to other households. House Bill 221 called for the new child support provisions to be effective on July 1, 2006.

After House Bill 221 was passed, the commission met and studied various child support guideline tables and other issues pertaining to child support. When Senate Bill 382 was passed in 2006, it incorporated the commission's recommendations. The bill not only added the child support guideline obligation tables, but also it addressed many other related topics including, interest on child support arrearages, rights of appeal, and waiting periods to modify support. Most significantly, Senate Bill 382 also delayed the effective date until January 1, 2007.

There has also been much discussion about a possible bill requiring a presumption that joint custody is in the best interests of the child. However, this bill may not be presented until the Child Support Guidelines Statute is finalized, which means that the "joint custody presumption" bill may surface in the 2006-2007 legislative session.

II. House Bill 221 and Senate Bill 382

The new bills completely restructure how child support will be determined. Perhaps the most disappointing feature of Senate Bill 382 (now codified at O.C.G.A. § 19-6-15) for family law attorneys and judges is that the new guidelines will require complicated mathematics to determine child support, whereas the current guidelines make child support calculations relatively simple. However, a computer software calculator soon will be available, which will enable lawyers, litigants and judges to insert the relevant figures that will produce the suggested child support amount. Judges will still have some discretion with respect to setting amounts using the new guidelines, but the factors that are known as "special circumstances" under the current guidelines will be, for the most part, automatically factored into the initial calculation of support.

Specifically, the new child support guidelines involve three separate calculations.

The first is combining the adjusted gross incomes of both parents. The Basic Child Support Obligation ("BCSO") is then determined by referencing the obligation table, which shows various child support obligation amounts based on the number of children corresponding with the combined adjusted gross incomes of both parents. Next, the Basic Child Support Obligation is adjusted for any health insurance expenses and work related child care costs to obtain the Presumptive Amount of Child Support. This obligation is divided in proportion to the parties' incomes. (i.e. if the payor earns three times what the recipient earns, he or she will pay 3/4 of the amount of the BCSO set forth in the table.) Finally, the court, in its discretion, may then deviate from the Presumptive Amount of Child Support to determine the final child support order. The statute provides a non-exhaustive list of factors that the court can consider for deviation, including amongst others, parenting time, travel expenses, and alimony.

Other issues addressed by House Bill 221 and Senate Bill 382 include the reduction of the rate of interest from 12% to 7% on unpaid child support. Senate Bill 382 provides that all awards of child support shall accrue at an interest rate of 7% per annum, and the interest shall commence thirty days from the day the payment is due. (Codified at O.C.G.A. § 7-4-12.) Furthermore, under the new statute the trial court has the discretion to determine whether to assess or waive past due interest. In determining whether the interest should be waived, the court is required to consider whether good cause existed for the non-payment of support, whether the payment of interest would result in substantial hardship for either parent, and whether applying or reducing the interest would prevent the parent's current ability to pay support.

With respect to a trial by a judge or jury, the original version of House Bill 221 eliminated jury trials in child support cases. However Senate Bill 382 suggests that the jury would still determine the gross incomes of the parties, but the court would apply the calculation. Senate Bill 382 also allows for a judge ***or*** jury to deviate from the presumptive amount of child support. The current law under § 5-6-34 states that appeals for a final judgment of child support are discretionary. Senate Bill 382 eliminated the specific provision of this statute, which stated that such judgments were subject to a discretionary appeal. However, the presumption under the new statute is that appeals for a child support order will still be discretionary.

Both House Bill 221 and Senate Bill 382 addressed modifications of child support orders. Originally, the new guidelines would have allowed an immediate return to court to revisit (modify) child support. Then, the bill was revised such that only if there would be a 15% change in the child support obligation (based on the application of the new child support guidelines) could you return to Court immediately without the need to show any other change of circumstances (and without the need to wait two years from a prior Order of Modification). Senate Bill 382 eliminated these provisions. Therefore, under the new law, you must still show a change of circumstances or a change in the needs of the child(ren) before the Court can consider a modification (and the two year waiting period remains before a party can seek

a modification of a previous child support order, except, of course, there is no waiting period for the first attempt at modification). However, the new law provides some exceptions to the two year waiting period; at times it can be waived. These exceptions include: a) if a noncustodial parent has failed to exercise the court ordered visitation; b) if a noncustodial parent has exercised a greater amount of visitation than was provided for under the court order; or c) if the motion to modify support is based upon an involuntary loss of income as set forth under "subsection (j)" of the child support statute. Thus if a party can show one of these circumstances applies, he or she can file the modification regardless of when a previous or initial order had been entered. Additionally, in the event that a custodial parent prevails in an upward modification of a child support award based on the noncustodial parent's failure to exercise visitation, reasonable and necessary attorney's fees and expenses of litigation will be awarded.

The new law also allows for imputing income to either party to determine an appropriate child support award. With respect to determining a party's income for an initial child support order, the new statute provides the trier of fact with the authority to impute income to a party, based upon a 40 hour work week at minimum wage ***if*** the party fails to provide any reliable evidence of income, and the court or jury has no other reliable evidence of that party's income. If the court imputes income pursuant to this provision, and the other party believes that the "imputed income" should be higher, the party contesting the amount has ninety (90) days to file a motion for reconsideration wherein a hearing will be held on the matter.

In addition, in a case for modification of an existing child support order, if a party refuses to produce reliable evidence of income for determining his or her ability to pay child support, 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 to produce evidence by an increment of at least 10 percent per year of that parent's pro rata share of the basic child support obligation for each year since the order was last entered or modified.

Another new concept that will emerge once the new guidelines become effective is the "Theoretical Child Support Order." The "theoretical child support order" allows the court, when determining a parent's gross income, to give a parent credit for other "qualified children" living in that parent's home for whom he or she owes a legal duty of support. This allows the court to determine a parent's gross income, as if that parent had another child support order in place for another child. After the amount of the theoretical child support order is determined, 75% of said amount would then be deducted from the parent's gross income. Adjustments to a parent's income pursuant to the theoretical child support order provision may be considered in situations where the failure to consider a "Qualified Child" would cause substantial hardship to the parent. However any consideration of an adjustment shall be based upon the best interest of the child for whom the child support order is being determined.

The new statute also provides the trier of fact with the authority to consider whether a parent is willfully or voluntarily unemployed or underemployed. Specifically, under the new law, a judge or jury is to ascertain the reasons for the parent's occupational choices, and then assess the reasonableness of those choices in light of that parent's responsibility to support his or her child. The statute lists some factors that a court or jury should consider when determining if a parent is voluntarily unemployed or underemployed. Some factors which may be considered are the parent's past and present employment, education and training, health and ability to work outside of the home, ownership of valuable assets, and whether parent was a full-time care giver immediately prior to separation. However, in the event a parent suffers an involuntary loss of income, which results in an income loss of twenty five percent (25%) or more, then the portion of child support attributable to the lost income shall not accrue from the date of service of the petition for modification. The new law, specifically states that "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."

III. Interesting points about the new guidelines.

Unlike the current guidelines, the new child support law provides a list of what shall be included as "gross income" for child support purposes. Although what shall be included is not limited strictly to the list enumerated in the statute, some income sources that will need to be included in a party's gross income when calculating child support, in addition to wages, salaries and other compensation, include income from annuities, capital gains, disability or retirement benefits received from the Social Security Administration, worker's compensation benefits, unemployment insurance benefits, gifts, prizes, lottery winnings and alimony received from persons other than parties to the proceeding. Fringe benefits will also be included as income received by a parent if the benefits "significantly reduce personal living expenses." Therefore a company car or housing benefits will be added into a parent's gross income. However, employer paid portions of health insurance premiums or contributions to retirement plans etc. will not be considered income.

In addition, under the new guidelines, the cost of health insurance premiums for the minor child for whom support is being determined will be calculated and added as an adjustment to the basic child support obligation. The amount will then be prorated between the parents based upon their respective incomes. Although Uninsured Health Care expenses are not directly included in the child support calculations, the new guidelines provide that the expenses shall also be divided between the parents in proportion to their respective incomes. If a parent fails to pay his or her share after a "reasonable" time of receipt of evidence documenting the expense, then the other parent may enforce payment through a contempt action. The statute, however, does not define what is considered to be a "reasonable amount of time."

IV. **Conclusion**

The new guidelines will be effective January 1, 2007. With the complete revision of the entire structure of the child support guidelines, there is no doubt many questions will arise as to the application as well as the enforcement of the new law. Because the law is based upon other successful models from other states, we can be optimistic that after attorneys, litigants and judges become accustomed to the new system, it will ultimately result in a more effective and fair child support system than the present law, or will at least be less confusing than originally feared.