

Commentary on Statutory Language of Georgia House Bill 221, as Enacted 2005*

June 20, 2005

The following issues largely follow in sequence found in HB221 as passed by the legislature.

Cites below are in reference to sub-sections in O.C.G.A. Section 19-6-15 except for at the very end of the commentary there is one section of commentary on O.C.G.A. Section 19-6-19 as noted.

Repetitive definitions regarding ‘caretaker’ and ‘custodial parent’ [Subsections (a)(4) and (a)(8)]

It is not clear why ‘caretaker’ is needed as a defined term if ‘custodial parent’ is defined to include nonparent caretakers.

See:

(4) 'Caretaker' means the person or entity providing care and supervision of a child more than 50 percent of the time. The caretaker may be the child's custodial parent. The caretaker may be a parent of the child or a nonparent relative of the child who voluntarily or otherwise, pursuant to court order or other legal arrangement, is providing care and supervision of the child. A caretaker may also be a private or public agency providing custodial care and supervision for the child through voluntary placement by the child's parent, nonparent relative, or other designated caretaker or by court order or other legal arrangement.

(8) 'Custodial parent' means the parent with whom the child or children resides more than 50 percent of the time. The term also means a nonparent caretaker who has been given physical custody of the child or children. If each parent spends exactly 50 percent of the time with the child or children, then the court shall designate the parent with the lesser child support obligation as the custodial parent and the other parent as the noncustodial parent. If a custodial parent has not been designated, the caretaker with whom the child resides more than 50 percent of the time shall be the custodial parent.

Definition of a day for parenting time is highly prejudicial [Subsection (a)(9)]

For parenting time issues, the definition of a “day” at more than 12 hours with or under a parent’s control is highly biased against recognizing where child costs occur—especially when incurred by non-custodial parents. For example, nearly all work week/school week overnights that a non-custodial parent has will count as time with the custodial parent

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even though it is the non-custodial parent incurring the costs. The true intent of the parenting time adjustment is to apply the principle of equal duty of support. The percentage credit methodology is a short-hand technique for cross crediting. With such a high threshold for receiving credit for parenting time (more than 12 hours), this is a severe limitation on applying the principle of equal duty of support.

See:

(9) 'Day' or 'days' means that a child spends more than 12 hours of a calendar day with or under the control of a parent and that parent expends a reasonable amount of resources on the child during such time period, such as the cost of a meal or other costs directly related to the care and supervision of the child. Partial days of parenting time that are not consistent with this definition shall not be considered a 'day' under the child support guidelines. A 'day' under the control of a parent includes a day the child is not in the parents' home, but is under the parents' control, for example, with the parents' permission at camp or with friends.

It would be more economically sound to simply break the day into quarters and allocate between the parents that way. Or allow half-days to either parent for a given day. It would not be difficult to identify a number of common “parenting plans” and have a table of each parent’s days.

Intact family standard of living presents policy problems and possible legal issues for rebuttal [Subsection (b)(1)]

It is economically unsound to state that the purpose of the guidelines is “to achieve a 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.” Importantly, this policy conflicts with case facts—that is, guidelines are applied to non-intact families. This raises an issue of whether the guidelines should always be rebutted—otherwise, there should be an adjustment in the cost table taking into account that there is additional “adult overhead” for an additional mortgage or rent payment and for additional utilities—thereby reducing available income compared to what is assumed.

One example clarifies the economic (and likely legal) unsoundness of the intact family standard. For a one-child family, with each parent grossing \$4,000 in monthly income, as an intact family, the standard of living is based on \$8,000 in combined income and “adult overhead” based on mortgage/rent for just one house and related utilities for one house. For the same family after divorce, each parent has \$4,000 monthly gross income for each household. Additionally, there are two mortgage/rent payments and two sets of utilities payments. The intact family standard says that the child will be supported at an \$8,000 life style while the parents have \$4,000 each for their life style. The intact family standard says that the child has a right to a higher standard of living than either parent.

See:

(b)(1) The child support guidelines contained in this Code section are a minimum basis for determining child support obligations and shall apply as a rebuttable presumption in all legal proceedings involving the child support obligation of a parent, including, but not limited to, orders entered in criminal and juvenile proceedings, orders entered pursuant to Article 3 of Chapter 11 of this title, the 'Uniform Interstate Family Support Act,' and voluntary support agreements and consent orders approved by the court. The child support guidelines do not apply to orders for prior maintenance for reimbursement of child care costs incurred prior to the date an action for child support is filed or to child support orders entered against stepparents or other persons or agencies secondarily liable for child support. The child support guidelines shall be used when the court enters a temporary or permanent child support order in a contested or noncontested hearing. The rebuttable presumption award provided by these child support guidelines 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.

Ambiguity regarding whether “court” is just the “bench” or inclusive of “jury” regarding who has responsibility of determining the actual award [Subsection (b)(2)]

Basically, is it just the bench (judge) that determines the award or does “court” include the jury as the fact-finder regarding the actual award.

See:

(2) The provisions of this Code section shall not apply with respect to any divorce case in which there are no minor children, and in a divorce case in which there are no minor children the requirements of this Code section for findings of fact and inclusion of findings in the verdict or decree shall not apply except to the limited extent authorized by subsection (d) of this Code section. In the final verdict 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 trier of fact court shall;

(A) Specify specify in what amount and from which party the minor children are entitled to permanent support. The final verdict or decree shall further specify as determined by use of the worksheets;

(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; The final verdict or decree shall further include

(C) Include a written finding of the gross income of the father and the mother as determined by the factfinder;

(D) Determine whether health insurance for the child or children involved is reasonably available at a reasonable cost to either parent. If the insurance policy is reasonably available at a reasonable cost to the parent, then the court may order that the child or children be covered under such insurance; and
(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, the written findings of fact shall further set forth:

Best interests of the child standard for rebuttal likely conflicts with needs and ability to pay standard [Subsection (b)(2)(E)(iii)]

Requiring a showing of a deviation award to be in the best interests of the child or children creates a difficult hurdle for deviating. More importantly, this standard and requirement likely conflict with the standard of needs and ability to pay. Either the “best interests” standard should be eliminated or language should be added to the effect that it is presumed that a deviation award that is based on a needs and ability to pay standard is in the child’s best interests. The best interest standard should be clarified in terms of how it is the court’s responsibility to base the award on the evidence before the court (statutory language)—and this can best be done in terms of the needs and ability to pay standard. Without such clarification to the relationship of needs and ability to pay, the best interest standard could in practice rise to the level of being irrebuttable.

See:

(iii) A finding that states how application of the child support guidelines would be unjust or inappropriate in the case immediately under consideration considering the relative ability of each parent to provide support and how the best interests of the child or children who are subject to the support award determination are served by deviation from the presumptive guideline amount.

Regarding the requirement to base the award on the evidence before the court, see:

(c) In the event of a hearing or trial on the issue of child support, the These 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.

The “best interest of the child” standard should be clarified so as to not conflict with the requirement to base the award on evidence before the court and on a needs and ability to pay standard.

The issue of the extent of the authority of a jury is further raised in Subsection (b)(3).

Does HB 221 limit the responsibility of a jury “solely” to being able to determine gross income and not the actual award?

See:

(3) When support is awarded, the party who is required to pay the support shall not be liable to third persons for necessities furnished to the child or children embraced in the verdict judgment or decree. In any contested case, the parties shall submit to the court their proposed findings regarding the gross income of the father and the mother worksheets and the presence or absence of special circumstances other factors to be considered by the court pursuant to the provisions of this Code section. In any case in which child support is the gross incomes of the father and the mother are determined by a jury, the court shall charge the provisions of this Code section applicable to the determination of gross income and the jury shall be required to return a special interrogatory similar to the form of the order contained in Code Section 19-5-12 regarding the gross income of the father and the mother and the presence or absence of special circumstances. Based upon the jury's verdict as to gross income, the court shall determine the child support obligation in accordance with the provisions of this Code section. Furthermore, nothing

The language is vague--after a jury determines gross income, the "court" determines the award. It is not clear if "court" is inclusive of a jury or is limited to the bench. The language should be clarified so that there is no limitation on what the jury can decide--as long as it is procedurally correct. A review of case law (Georgia Department of Human Resources v. Kelly, 1998) indicates that there is no constitutional right to a jury trial for child support hearings. However, it has become traditional and expected that a jury trial is an option and should be retained—especially for cases that either party believes a judge is unwilling to properly consider all circumstances.

Treatment of alimony in income definition conflicts with needs and ability to pay standard [Subsection (e)(1)(A)(xx)]

The guidelines specifically exclude alimony between parties in the particular case from being adjustments to income. That is, if a non-custodial parent is paying alimony to an ex-spouse for the same case as child support, that income is still treated as income for the non-custodial parent for child support purposes and not for the receiving parent. This conflicts with the standard of needs and ability to pay—the paying parent does not have that income available to pay child support but is treated as such in the presumptive calculation. Many states attribute the alimony income to the parent that receives it and deducts it from the paying parent's income. There also is unequal treatment in the guidelines on this issue. For alimony not related to the case before the court, alimony is treated as part of the receiving parent's income.

See:

(e) Gross income.

(1)(A) Gross income of each parent shall be determined in the process of setting the presumptive child support order and shall include all income from any source, before deductions for taxes and other deductions such as preexisting child support orders 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, Veterans Administration, Railroad Retirement Board, Keoughs, 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 XI of the federal Social Security Act;

(xiv) Worker's 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.

The self-employment tax deduction to gross income is confusing and possibly double counted [Subsection (e)(3)(B)(i) and (ii)]

The economic concept is that self-employed persons pay not only the Social Security and Medicare taxes paid by payroll workers but also pay that portion paid by employment establishments. Gross income for self-employed should be on the same basis as that for those on a payroll for a company. What should be deducted is most clearly stated on IRS Form 1040 for calculating adjusted gross income. One simply deducts one-half of self-employment taxes. HB 221 language is confusing on this issue.

See:

(B)(i) An additional deduction of 6.2 percent of FICA and 1.45 percent of medicare, or in any amount subsequently set by federal law as FICA and medicare tax, shall be deducted from a parents gross income earned from self-employment, up to the amounts allowed under federal law.

(ii) Any self-employment tax paid shall be deducted from gross income as part of the calculation of a parents adjusted gross income.

This language could be interpreted to mean deducting all of the self-employment tax when what is appropriate is to deduct one-half of the self-employment tax.

For income imputation when a parent is willfully or voluntarily underemployed, the language is somewhat contradictory and likely biased [Subsection (e)(7)(A)]

Income imputation language appears to have a bias that a parent must always take a higher paying job unless it can be shown that a lesser paying job benefits the child or children. This section raises the issue that courts may only allow custodial parents to take lesser paying jobs or become underemployed. This raises the question of how one could apply such a standard to the custodial parent (to spend more time with the child) and not apply it to a non-custodial parent for the same reason? Additionally, at what point does a parent have the right to make a career decision that clearly and adequately supports the child but at a lesser standard of living than that based on a job that is undesirable by the parent but higher paying? The language in its current form seems to preclude any lesser paying job unless somehow the child benefits. Such a standard would never be applied to married parents who adequately provide for their children.

See:

(7)(A) A determination of whether a parent is willfully or voluntarily unemployed or underemployed shall ascertain the reasons for the parents occupational choices and assess the reasonableness of these choices in light of the parents obligation to support his or her child or children and to determine whether such choices benefit the child or children. A determination of willful and voluntary unemployment or underemployment is not limited to occupational choices motivated only by an intent to avoid or reduce the payment of child support. A determination of willful and voluntary unemployment or underemployment can be based on any intentional choice or act that affects a parents income.

A return to a strict standard of “intent to avoid or reduce the payment of child support” likely avoids wrongly imputing income for legitimate career decisions which still result in adequate support for the children.

Regarding imputing income for underemployed caretakers of children four years of age or younger, it likely is appropriate that serial relationships not be used to avoid the duty of support [Subsection (e)(7)(C)(iv)]

Current language simply states:

(iv) Whether the parent is caring for a child or children who are four years of age or younger.

It may be appropriate to add to the end of this clause: “in the instant case” or similar language.

Regarding imputing income for those activated for military service, it is appropriate that part-time service be acknowledged as appropriate. [Subsection (e)(7)(E)]

Current language only recognizes full-time activation by the National Guard or other military service to preclude imputing income. However, language should entertain the possibility that part-time activation could result in less income for a parent.

See:

(E) 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.

It may be appropriate to simply insert “full-time or part-time” after “is activated.” Also, the word “from” in “from the National Guard” should be changed to “by.”

Language for not taking into account an obligor’s payment on child support arrearages appears to be in the form of an irrebuttable presumption, violating federal requirements [Subsection (e)(7)(F)]

This subsection precludes payment on arrearages for reducing adjusted gross income. In general, this may be appropriate but current language appears to preclude any such adjustment under any circumstances. This violates the needs and ability to pay standard and violates federal requirements that the guidelines must be fully rebuttable. It may be appropriate to state that this exclusion is presumptive but that such payments on arrearages may be considered as a deviation factor.

See:

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

At a minimum, “presumptively” should be inserted just before “shall not be considered” and just before “shall not be used.” And then add at the end of this subsection, “Payments on arrearages may be considered as a deviation for calculating adjusted gross income when the finder of fact finds such omission to be unjust and inappropriate” (or to that effect).

Not presumptively treating payments of alimony as an exclusion to income violates the principle of ability to pay [Subsection (e)(10)]

See:

(10) Actual payments of alimony should not be considered as a deduction from gross income but may be considered as a factor to vary from the final presumptive child support order. If the court considers the actual payment of alimony, the court shall make a written finding of such consideration as a basis for deviation from the final presumptive child support order.

Alimony received increases that parent's ability to pay and alimony paid reduces that parent's ability to pay child support and gross income should be adjusted presumptive for both.

Child care costs ignore offsets from child care tax credits [Subsection (g)(1)]

For child care expenses as an add-on, there is no consideration for child care tax credits. The non-custodial parent partially will be double-paying these costs. Child care costs should be net of child care tax credits. Child care tax credits can reduce child care costs by as much as 25 percent.

If adjustments to gross income are precluded when the custodial parent's ability to provide minimal needs of the children, the same preclusions should protect the ability of the non-custodial parent to provide minimal needs of the children [Subsection (h)(5)]

See:

(5) No adjustment to gross income shall be made in the calculation of a child support obligation which seriously impairs the ability of the custodial parent in the case immediately under consideration to maintain minimally adequate housing, food, and clothing for the child or children being supported by the order and to provide other basic necessities, as determined by the court.

If the non-custodial parent has parenting time, the basic needs of the children should be protected in both households—not just in the custodial household. It is likely appropriate to insert “or non-custodial” immediately after “custodial” in the phrase “ability of the custodial parent.”

Best interest of the child requirement is vague and should be made to conform to needs and ability to pay standard [Subsection (i)(2)(C)(ii)]

Based on the standard of needs and ability to pay, any deviation award would be based on appropriate spending on the children (their needs) according to the evidence before the

court and would be based on the parents' ability to pay. Yet, how would any court or jury be instructed to evaluate how to reconcile the concepts of needs and ability to pay with best interest of the child? The best interest should be embedded in evidentiary based needs. Thus, the best interest standard at best is redundant under a needs and ability to pay standard and at worst is confusing, biased toward creating artificial hurdles for rebuttal and may rise to the level of being irrebuttable. The best interest of the child standard should be clarified to be met whenever an award is found to be based on the needs of the children (according to the evidence) and allocated according to the parents' ability to pay.

See:

(2) When ordering a deviation from the presumptive amount of child support established by the child support guidelines, the courts order shall contain written findings of fact stating:

(A) The reasons for the change or deviation from the presumptive child support order;

(B) The amount of child support that would have been required under the child support guidelines if the presumptive child support order had not been rebutted; and

(C) How, in its determination,

(i) Application of the child support guidelines would be unjust or inappropriate in the case immediately under consideration; and

(ii) The best interests of the child for whom support is being determined will be served by deviation from the presumptive child support order.

Deviation limitations regarding ensuring minimal needs being met should apply to both custodial and non-custodial parents [Subsection (i)(2)(C)]

See:

No deviation in the amount of the child support obligation shall be made which seriously impairs the ability of the custodial parent in the case immediately under consideration to maintain minimally adequate housing, food, and clothing for the child or children being supported by the order and to provide other basic necessities, as determined by the court.

If the non-custodial has parenting time, the children should have the same guarantees in both households. Separately, there may be an issue of whether these guarantees apply to ensuring covering just the children's cost of these provisions. That is, if the custodial parent is not providing minimal housing for himself or herself (as if the custodial parent had no children), is the non-custodial parent responsible for providing housing for the custodial parent separate from the children's share? If both the non-custodial parent and custodial parent are low income parents, should means based income be included in the child support calculation?

At a minimum, “or non-custodial” should be inserted after “custodial” in the phrase “ability of the custodial parent.”

High income case language should be edited to reflect limits of child cost data validity, needs of the children according to the evidence, and to eliminate implied irrebuttable subsections [Subsection (i)(3)(A) and (B)]

See:

(3)(A) For purposes of this paragraph, parents are considered to be high-income parents if their combined adjusted gross income exceeds \$20,000.00 per month.
(B) For high-income parents, the court shall set the child support obligation at the highest amount allowed by the child support obligation table but may consider upward deviation to attain an appropriate award of child support for high-income parents which is considered in the best interest of the child or children.

First, it is not yet known at what income level the child support obligation table has valid data (the cost table has not yet been finalized). That is, if valid data stop at \$10,000 per month in combined adjusted gross income, then the presumptive table should stop at that level. The cost schedule should not be extrapolated to income levels not supported by valid data. Most likely, this level will be in the annual income range of \$125,000 to \$150,000—notably below the \$20,000 per month figure.

This section indicates that for the upper limit of the cost table, deviation awards may be higher but does not indicate that deviation awards may be lower. This makes the presumption partially irrebuttable. After “consider upward” should be inserted “or downward.”

The best interest of the child standard again is nebulous. This phrase should be eliminated or the phrase “as based upon the needs of the children according to the evidence before the court and the ability of the parents to pay” should be added to the end of the best interest clause. Texas adds language to the effect, “No award above the presumptive minimum shall exceed 100 percent of the proven needs of the child or children.” The bottom line is that an above-cost-table case should be fully rebuttable in either direction if supported by the evidence on the children’s needs.

The parenting time credit percentage and parenting time add-on percentage language is vague regarding which number of children to use when more than one child has parenting time, there are different parenting time amounts for some of the children, and some children lead to differing parenting time credits or add-ons [Subsection (j)]

It appears that it is not clear that when some children qualify a parent for a parenting time credit (or add-on) whether that percentage applies to the obligation for all of the children or just for an obligation calculated just for the children resulting in the credit or add-on.

If the credit or add-on applies to the obligation for all children, then the credit or add-on does not reflect true equal duty of support and is economically unsound.

The simplest solution is to simply average the parenting times for all children—not just those falling into a given credit or add-on category.

See:

(j)(1) The child support guidelines presume that when parents live separately, the child or children will typically reside primarily with the custodial parent and stay overnight with the noncustodial parent a minimum of every other weekend from Friday to Sunday, two weeks in the summer, and two weeks during holidays throughout the year, for a total of 80 days per year. The child support guidelines also recognize that some families may have different parenting situations and thus allow for an adjustment in the noncustodial parents child support obligation, as appropriate, in compliance with the criteria specified in this subsection. The calculations made for each parenting situation shall be based on specific factual information regarding the amount of time each parent has with the child.

(2)(A) If the noncustodial parent spends 100 or more days per calendar year with a child or children, an assumption is made that the noncustodial parent is making greater expenditures on the child or children due to the duplication of some child rearing expenditures between the two households, for example, housing or food, and a reduction to the noncustodial parents child support obligation may be made to account for these expenses.

(B) The noncustodial parents child support obligation may be reduced for the days of additional parenting time based upon the following schedule:

<u>Number of Days</u>	<u>Percent Reduction in Support</u>
<u>100 -136 days</u>	<u>10 percent</u>
<u>137 -151 days</u>	<u>20 percent</u>
<u>152 -166 days</u>	<u>30 percent</u>
<u>167 -181 days</u>	<u>40 percent</u>
<u>182 or more days</u>	<u>50 percent</u>

(C) The presumption that more parenting time by the noncustodial parent shall result in a reduction to the noncustodial parents support obligation may be rebutted by evidence.

(D) If there is more than one child in the case with whom the noncustodial parent spends 100 days or more per year, and the noncustodial parent is spending different amounts of time with each child, then the time the noncustodial parent spends with each child shall be averaged to determine the parenting time adjustment.

(3)(A) If the noncustodial parent spends 60 or fewer days per calendar year with a child or children, an assumption is made that the custodial parent is making greater expenditures on the child or children for items such as food and baby-sitting associated with the increased parenting time by the custodial parent, and an increase in the noncustodial parents child support obligation may be made.

(B) The noncustodial parent's child support obligation may be increased for the reduction in days of the noncustodial parent's parenting time based upon the following schedule:

<u>Number of Days</u>	<u>Percent Increase in Support</u>
<u>60-39 days</u>	<u>10 percent</u>
<u>38-24 days</u>	<u>20 percent</u>
<u>23-9 days</u>	<u>30 percent</u>
<u>8-0 days</u>	<u>35 percent</u>

(C) The presumption that less parenting time by the noncustodial parent shall result in an increase to the noncustodial parent's support obligation may be rebutted by evidence.

(D) If there is more than one child in the case with whom the noncustodial parent spends 60 or fewer days per year, and the noncustodial parent is spending different amounts of time with each child, then the time the noncustodial parent spends with each child is averaged to determine the parenting time adjustment.

(4) If there are additional children for whom support is being calculated with whom the noncustodial parent spends more than 60 days but less than 100 days per calendar year, the days with these children are not included in the calculation for the parenting time adjustment.

(5) If a child support obligation is being calculated for multiple children, and the noncustodial parent spends 100 days or more per year with at least one child and 60 or fewer days with at least one child, then the percentage increase is offset against the percentage decrease and the resulting percentage is applied to the child support obligation.

Two year limitation on modification conflicts with federal requirements for material change as basis for modification and that guidelines be the same for all cases [Subsection (I)(3)]

See:

(3) 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 by the same parent except where the child support obligation table created by the Georgia Child Support Commission creates a difference of 15 percent or more between a new award and a prior award.

Federal regulations require that there be one set of guidelines for all cases—including administrative and otherwise. See 45 CFR 302.56.

Federal regulations require that for administrative hearings for Title IV-D cases, that a substantial material change is all that is necessary for being entitled to a modification outside of the “3-year cycle.”

See 45 CFR 303.8(b)(5):

(5) The State must have procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under paragraph (b)(1) of this section, the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 467(a) of the Act.

If a substantial material change is all that is necessary to obtain an administrative modification without time limit, then the same standard should apply to all cases.

Additionally, the current standard of 15 percent difference between the current award and new award ignores the standard of needs and ability to pay. To take into account needs and ability to pay, a moderate change in either parent's income or in the child's needs should trigger entitlement to a modification hearing.

HB 221 strikes in O.C.G.A. Section 19-6-19 should be restored in full to restore a standard of material change for modification based on change in financial status of either parent or in the needs of the child.

New Section 19-6-19 is as follows as enacted in HB 221:

(a) The judgment of a court providing permanent alimony for the support of a spouse rendered on or after July 1, 1977, shall be subject to revision upon petition filed by either former spouse showing a change in the income and financial status of either former spouse. ~~The judgment of a court providing permanent alimony for the support of a child or children rendered on or after July 1, 1977, shall be subject to revision upon petition filed by either former spouse showing a change in the income and financial status of either former spouse or in the needs of the child or children.~~ In either case a Δ petition shall be filed and returnable under the same rules of procedure applicable to divorce proceedings. No petition may be filed by either former spouse under this subsection within a period of two years from the date of the final order on a previous petition by the same former spouse. After hearing both parties and the evidence, the jury, or the judge where a jury is not demanded by either party, may modify and revise the previous judgment, in accordance with the changed income and financial status of either former spouse in the case of permanent alimony for the support of a former spouse, or in accordance with the changed income and financial status of either former spouse ~~or in the needs of the child or children in the case of permanent alimony for the support of a child or children,~~ if such a change in the income and financial status is satisfactorily proved so as to warrant the modification and revision. In the hearing upon a petition filed as provided in this subsection, testimony may be given and evidence introduced relative to the income and financial status of either former spouse.

(b) Subsequent to a final judgment of divorce awarding periodic payment of alimony for the support of a spouse, the voluntary cohabitation of such former

spouse with a third party in a meretricious relationship shall also be grounds to modify provisions made for periodic payments of permanent alimony for the support of the former spouse. As used in this subsection, the word 'cohabitation' means dwelling together continuously and openly in a meretricious relationship with another person, regardless of the sex of the other person. In the event the petitioner does not prevail in the petition for modification on the ground set forth in this subsection, the petitioner shall be liable for reasonable attorney's fees incurred by the respondent for the defense of the action.

(c) When an action for revision of a judgment for permanent alimony under this Code section is pending, the court in its discretion may allow, upon motion, the temporary modification of such a judgment, pending the final trial on the petition. In considering an application for temporary modification under this subsection, the court shall consider evidence of any changed circumstances of the parties and the reasonable probability of the petitioner obtaining revision upon final trial. The order granting temporary modification shall be subject to revision by the court at any time before final trial.

(d) In proceedings for the modification of alimony for the support of a spouse ~~or child~~ 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.

Restoring this stricken language also restores the full right to a jury trial for child support in private party actions.

However, the two-year limitation on modifications should be stricken in Section 19-6-19 in order to comply with federal requirements that a substantial material change trigger the right to a modification hearing.