

10-1-1995

DOMESTIC RELATIONS Alimony and Child Support Generally: Amend Child Support Calculations

Vicki Lynn Bell

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

Vicki Lynn Bell, *DOMESTIC RELATIONS Alimony and Child Support Generally: Amend Child Support Calculations*, 12 GA. ST. U. L. REV. (1995).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol12/iss1/42>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

DOMESTIC RELATIONS

Alimony and Child Support Generally: Amend Child Support Calculations

CODE SECTIONS: O.C.G.A. §§ 19-5-12, 19-6-15 (amended), -34 (new), 19-11-9.2 (amended)

BILL NUMBER: HB 72

ACT NUMBER: 326

GEORGIA LAWS: 1995 Ga. Laws 603

SUMMARY: The Act amends the method for calculating child support awards to require fact finders in divorce cases to consider eighteen factors before determining the child support obligations of the parents. If, after considering these factors, the court finds the statutory set percentage of gross income either inadequate or excessive, the court must vary the child support obligation accordingly. The Act enhances the "Final Decree and Order" form to require additional information regarding how the child support calculation was determined. The Act allows judges to order one or both parents to obtain and maintain life insurance for the benefit of their minor children. Additionally, the Act encourages judges to require mediation in contested divorces. Finally, the Act extends the state registry of new and rehired employees until May 1, 1997.

EFFECTIVE DATE: April 18, 1995, O.C.G.A. § 19-11-9.2;¹ July 1, 1995, §§ 19-5-12, 19-6-15, -34

History

Georgia's child support guidelines were adopted in 1989.² The

1. This section of the Act became effective upon approval by the Governor.

2. 1989 Ga. Laws 861 (formerly found at O.C.G.A. § 19-6-15 (Supp.

guidelines were based on a "percentage of gross income" model.³ In determining a child support award in a divorce case, fact finders multiplied the noncustodial parent's income by a flat percentage based on the number of children,⁴ but were allowed to vary the amount of child support after considering several "special circumstances."⁵

Under the provisions of the Family Support Act of 1988,⁶ states were required to review child support guidelines every four years "to ensure that their application results in the determination of appropriate child support award amounts."⁷

Governor Zell Miller created the Georgia Commission on Child Support (Commission) on November 16, 1992,⁸ pursuant to the Family Support Act of 1988⁹ and state law.¹⁰ After reviewing child support literature, conducting public hearings, and consulting child support experts, the Commission recommended retention of the current system of determining child support based on gross income.¹¹ However, the Commission

1993)); *see also* *Legislative Review*, 6 GA. ST. U. L. REV. 227 (1989).

3. *Legislative Review*, *supra* note 2, at 228.

4. 1989 Ga. Laws 861 (formerly found at O.C.G.A. § 19-6-15(b)(5) (Supp. 1993)).

5. *Id.* § 1, at 863-64 (formerly found at O.C.G.A. § 19-6-15(c) (Supp. 1993)). These "special circumstances," among others, include the age of the child, medical care costs, day care costs, shared custody arrangements, a parent's own extraordinary needs, and extreme economic circumstances. *Id.*

6. Pub. L. No. 100-485, § 103(b) (1988) (codified at 42 U.S.C. § 667 (1989)).

7. *Id.*; *see also* 1989 Ga. Laws 861, § 1, at 865 (formerly found at O.C.G.A. § 19-6-15 (d) (Supp. 1993)). For a general overview of the Family Support Act of 1988 and its history, see Margaret Campbell Haynes, *Understanding the Guidelines and the Rules*, FAMILY ADVOCATE, Fall 1993, at 14.

8. GEORGIA COMMISSION ON CHILD SUPPORT, REPORT TO THE GOVERNOR 1 (July 1, 1993) (available in Georgia State University College of Law Library) [hereinafter COMMISSION REPORT]. The Commission members were the Honorable John Girardeau, Ms. Ruth Claiborne, Ms. Arlene Galbert, the Honorable Mary Margaret Oliver, the Honorable Charles Thomas, Mr. Barry McGough, Ms. Stephanie Seate, Mr. Horace Burmeister, the Honorable Tom Cauthorn, Ms. LaCretia Head, Justice Carol Hunstein, and Mr. Mark Van Brackle. *Id.*

9. Pub. L. No. 100-485, § 103(b) (1988) (codified at 42 U.S.C. § 667 (1989)); COMMISSION REPORT, *supra* note 8, at 1.

10. 1989 Ga. Laws 861 (formerly found at O.C.G.A. § 19-6-15(d) (Supp. 1993)); COMMISSION REPORT, *supra* note 8, at 1.

11. COMMISSION REPORT, *supra* note 8, at 1-2. This was recommended "[i]n

recommended that the law be changed to require the trier of fact to consider special circumstances and to “make a written finding of the presence or absence of special circumstances in the final verdict or decree.”¹² In addition, the Commission recommended that a written statement “be required whenever a private agreement results in a variance from the statutory guidelines.”¹³ The Commission proposed a bill incorporating its recommended changes.¹⁴

However, during the 1994 legislative session, an “income shares”¹⁵ bill was introduced by Representative Tom Campbell.¹⁶ This bill was modeled after the Florida child support statute.¹⁷ The bill passed the House of Representatives as a substitute for another child support bill,¹⁸ but the bill failed in the Senate Judiciary Committee.¹⁹

During the same session, the General Assembly created the Joint Study Committee on Child Support (Joint Committee).²⁰

recognition of the difficulties entailed in determining ‘net income’ for purposes of computing a support obligation.” COMMISSION REPORT, *supra* note 8, at 2.

12. COMMISSION REPORT, *supra* note 8, at 2.

13. COMMISSION REPORT, *supra* note 8, at 2.

14. COMMISSION REPORT, *supra* note 8, at App. 2.

15. For more information on the “income shares” model, see Haynes, *supra* note 7, at 16.

16. HB 1356, as introduced, 1994 Ga. Gen. Assem.; see also Telephone Interview with Rep. Tom Campbell, House District No. 42 (Apr. 5, 1995) [hereinafter Campbell Interview]; Telephone Interview with Rep. Cathy Cox, House District No. 160 (Apr. 7, 1995) [hereinafter Cox Interview].

17. Campbell Interview, *supra* note 16; see FLA. STAT. ANN. § 16.30 (West Supp. 1995).

18. Campbell Interview, *supra* note 16.

19. Campbell Interview, *supra* note 16.

20. 1994 Ga. Laws 1728, § 4, at 1739 (codified at O.C.G.A. § 19-11-31(a) (Supp. 1994)); see FINAL REPORT OF THE JOINT STUDY COMMITTEE ON CHILD SUPPORT (Dec. 31, 1994) [hereinafter JOINT COMMITTEE REPORT] (available in Georgia State University College of Law Library). The Committee members were the Honorable G.B. “Jake” Pollard, Jr., and the Honorable Cathy Cox, Co-Chairs, the Honorable Charles C. “Chuck” Clay, the Honorable Tom Cauthorn, the Honorable Walter Ray, the Honorable Jim Martin, the Honorable Nadine Thomas, the Honorable Billy Randall, Mr. J. Stephen Clifford, Mr. Kent Earnhardt, Ms. Marti Keller, Ms. Vicki McLennan, Mr. Gary Lindsey, and the Honorable Lawton Stephens. *Id.* at Attach. 2. See generally *Legislative Review*, 11 GA. ST. U. L. REV. 171 (1994).

Between August and December 1994, the Joint Committee met seven times to review the findings of previous commissions, to hear presentations on alternate child support models, to review relevant case law, and to make recommendations for statutory changes.²¹ Among other things, the Joint Committee recommended that the "General Assembly provide a statutory form for a child support order to state each party's gross income and other specific economic issues and reasons, if any, for deviations from the guidelines in the final judgement and decree."²²

Further, the Joint Committee adopted the following recommendations of the Commission:

An amendment of § 19-6-15 to require that the trier of fact consider special circumstances and make a written finding of the presence or absence of special circumstances in the final verdict or decree;

An amendment to the guidelines to consider the costs of extraordinary health care (or all health care if no insurance is available) in calculating the support order; and

An amendment to the guidelines to require consideration of the noncustodial parent's extraordinary expenses for travel relating to visitation and shared physical custody.²³

21. JOINT COMMITTEE REPORT, *supra* note 20, at 1, 2.

22. JOINT COMMITTEE REPORT, *supra* note 20, at 2. This recommendation was in response to the holding of *Ehlers v. Ehlers*, 449 S.E.2d 840 (Ga. 1994). See JOINT COMMITTEE REPORT, *supra* note 20, at 2; see also Cox Interview, *supra* note 16. In *Ehlers*, the Georgia Supreme Court held that the trier of fact, in determining a child support award, must provide written findings whenever they depart from the state guidelines. *Ehlers*, 449 S.E.2d at 842. The court stressed

the need for written findings, especially in cases . . . where the obligor's income is disputed. In the absence of such findings, it is difficult for a reviewing court to determine whether or not the guidelines were adhered to, or departed from. Accordingly, we urge the trial courts to enter written findings or specific findings on the record in *all* child support guideline cases.

Id. (emphasis added); see also *Ehlers*, 449 S.E.2d at 843 (Hunstein, J., concurring) (encouraging the General Assembly to amend the child support guidelines to mandate written findings in all cases).

23. JOINT COMMITTEE REPORT, *supra* note 20, at 3-4. These proposals were incorporated into the original HB 548. HB 548, as introduced, 1995 Ga. Gen. Assem.

The Joint Committee also heard testimony from Dr. Robert Williams regarding the “income shares” model of calculating child support.²⁴ However, a majority of the Joint Committee favored the Commission’s proposed modifications of Georgia’s current “percentage of gross income” model over adoption of an “income shares” plan.²⁵ The Joint Committee proposed model legislation²⁶ which was subsequently introduced in both the House of Representatives²⁷ and the Senate²⁸ during the 1995 legislative session.

However, Representative William C. “Billy” Randall also introduced child support legislation during the 1995 session.²⁹ This bill, HB 72, incorporated the “income shares” model and was based on Alabama’s child support guidelines.³⁰ Representative

24. JOINT COMMITTEE REPORT, *supra* note 20, at 4.

25. JOINT COMMITTEE REPORT, *supra* note 20, at 4. The final vote on adoption of the Joint Committee Report was six to three in favor of adoption. Record of Proceedings in the House Special Judiciary Committee (Jan. 19, 1995) (available in Georgia State University College of Law Library). However, a few members of the Joint Committee still favored the adoption of an “income shares” model. See JOINT COMMITTEE REPORT, *supra* note 20, at Attach. 5.

26. JOINT COMMITTEE REPORT, *supra* note 20, at 3.

27. HB 548, as introduced, 1995 Ga. Gen. Assem. The sponsor of the bill was Rep. Cathy Cox, House District No. 160. *Id.*

28. SB 290, as introduced, 1995 Ga. Gen. Assem. The sponsor of the bill was Sen. G.B. “Jake” Pollard, Jr., Senate District No. 24. *Id.*

29. HB 72, as introduced, 1995 Ga. Gen. Assem. Rep. Randall was a member of the Joint Study Committee on Child Support, although he did not attend any of the meetings because he “honestly felt that it would not do any good.” Telephone Interview, Rep. William C. “Billy” Randall, House District No. 127 (Apr. 5, 1995) [hereinafter Randall Interview]. Rep. Randall stated that he previously deferred to the Governor’s Commission on Child Support, but believed that it had not adequately addressed the issues surrounding child support. *Id.* His perception was that the Joint Committee would “end up with the same results”; therefore, he did not participate. *Id.* See generally *Speak Up for Children*, ATLANTA J. & CONST., Jan. 22, 1995, at B6.

30. Compare HB 72, as introduced, 1995 Ga. Gen. Assem. with ALA. ADMIN. CODE, r. 32 (1990); Randall Interview, *supra* note 29; Campbell Interview, *supra* note 16; Cox Interview, *supra* note 16. Alabama’s guidelines were chosen based upon the recommendation of Dr. Robert Williams, an “income shares” model expert, because Georgia’s cost of living more closely resembled that of Alabama than that of Florida. Campbell Interview, *supra* note 16. See generally Carrie Teegardin, *Legislature ’95: Child Support Bill May Stir War of Sexes*, ATLANTA CONST., Feb. 3, 1995,

Randall introduced the bill because, based on his experience as an attorney handling domestic matters, he believed that the method of calculating child support based on gross income was "unfair to the non-custodial parent," because that parent does not have access to the total amount of money.³¹

HB 72

HB 72 was introduced on the first day of the 1995 legislative session, January 9, 1995.³² HB 72, as introduced, would have required both parents to pay a proportionate share of child support costs based upon their "adjusted gross income."³³ HB 72 also included a comprehensive schedule of child support awards.³⁴ The bill was assigned to the House Special Judiciary Committee,³⁵ which was chaired by Representative Randall.³⁶

On February 2, 1995, HB 72 was favorably reported from the House Special Judiciary Committee.³⁷ On the same day, HB 548 was introduced by Representative Cathy Cox.³⁸ HB 548 was based on the proposed legislation that emerged from the Joint Study Committee on Child Support.³⁹

at B4. This bill was supported by organizations representing noncustodial parents, including the Georgia Council for Children's Rights, which asserted that the current system awarded "so much money to middle- and high-income custodial parents that it actually gives women a financial incentive to get pregnant or divorce their husbands." Carrie Teegardin, *House Rejects Change in Child Support System*, ATLANTA J. & CONST., Feb. 22, 1995, at F1. However, because of the perception that the bill would lower child support awards for most children, the Women's Legislative Caucus targeted the bill for defeat. *Id.*; see also Cox Interview, *supra* note 16; Randall Interview, *supra* note 29.

31. Randall Interview, *supra* note 29; see also Record of Proceedings in the House Judiciary Committee (Jan. 19, 1995) (available in Georgia State University College of Law Library).

32. Final Composite Status Sheet, Mar. 17, 1995.

33. HB 72, as introduced, 1995 Ga. Gen. Assem.; Randall Interview, *supra* note 29.

34. HB 72, as introduced, 1995 Ga. Gen. Assem.

35. Final Composite Status Sheet, Mar. 17, 1995.

36. MEMBERS OF THE GENERAL ASSEMBLY OF GEORGIA 108 (1995).

37. Final Composite Status Sheet, Mar. 17, 1995.

38. *Id.*; HB 548, as introduced, 1995 Ga. Gen. Assem.

39. Cox Interview, *supra* note 16; Compare JOINT COMMITTEE REPORT, *supra* note 20, at 3, Attach. 4 with HB 548, as introduced, 1995 Ga. Gen. Assem.

As originally drafted, HB 548 would have expanded the existing "Final Judgment and Decree" form⁴⁰ to require a written finding of any "special circumstances," as defined in Code section 19-6-15.⁴¹ Written findings would have been required in both contested and uncontested divorces.⁴²

HB 548 would have also required the fact finder to "consider varying" the flat percentage amount of support upon a finding of "special circumstances."⁴³ Additional "special circumstances" were proposed, including "[e]xtraordinary travel expenses to exercise visitation or shared physical custody."⁴⁴

HB 548 was assigned to the House Judiciary Committee,⁴⁵ which amended the bill so that the factors in the "Final Judgment and Decree" form authorized by Code section 19-5-12 were consistent with the factors listed in Code section 19-6-15.⁴⁶ The bill was also amended to require that the finder of fact specifically list the presence or absence of special circumstances.⁴⁷ Further, the bill was amended to clarify that the parents' obligation to provide accident and sickness insurance would last only as long as the obligation to provide support.⁴⁸ This committee substitute unanimously passed the House Judiciary Committee on February 17, 1995.⁴⁹

HB 72 was considered by the House of Representatives on February 21, 1995.⁵⁰ Representatives Randall and Campbell endorsed the bill before the House.⁵¹ Although admitting that

40. 1979 Ga. Laws 466, § 4, at 470-71 (formerly found at O.C.G.A. § 19-5-12 (1991)).

41. HB 548, as introduced, 1995 Ga. Gen. Assem.

42. *Id.*; Cox Interview, *supra* note 16; *see also* O.C.G.A. § 19-6-15(a) (Supp. 1995). According to Rep. Cox, child support awards made during uncontested divorces are sometimes modified later, making it necessary to have a comprehensive written statement as to how the parties reached a specific settlement. Cox Interview, *supra* note 16. This provision is consistent with the Georgia Supreme Court's holding in *Ehlers*. *Ehlers v. Ehlers*, 449 S.E.2d 840, 842 (1994).

43. HB 548, as introduced, 1995 Ga. Gen. Assem.

44. *Id.*

45. Final Composite Status Sheet, Mar. 17, 1995.

46. *See* HB 548 (HCS), 1995 Ga. Gen. Assem.

47. *Id.*

48. *Id.*

49. Final Composite Status Sheet, Mar. 17, 1995; *see also* Cox Interview, *supra* note 16.

50. Final Composite Status Sheet, Mar. 17, 1995.

51. Record of Proceedings on the House Floor (Feb. 21, 1995) [hereinafter

HB 72 was not about "dead beat dads," Representative Campbell asserted that Georgia would achieve greater child support payment compliance with an "income share" model.⁵² Although members of the House Special Judiciary Committee had expressed concern about the current laws' adverse effects on fathers with low incomes,⁵³ Representative Campbell stated that HB 72 would actually result in higher child support obligations for low income, noncustodial parents.⁵⁴ However, child support awards would be lowered for parents with moderate or high incomes.⁵⁵

When questioned about the appropriateness of basing child support awards on Alabama's cost of living, which is lower than Georgia's, Representative Campbell acknowledged that the figures listed in HB 72 were based on the cost of raising a child in Alabama, but stated that this situation was consistent with other southeastern states, including North and South Carolina.⁵⁶ He also stated that the purpose of child support was not to compensate the custodial parent for time and effort involved in raising a child, but only to "offset actual hard core out-of-pocket expenses".⁵⁷

Representative Cox introduced a floor substitute to HB 72, which was the committee substitute to HB 548.⁵⁸ Representative Cox expressed concerns about HB 72, as proposed by Representative Randall, and addressed questions from the House members about her floor substitute.⁵⁹

House Debate] (available in Georgia State University College of Law Library).

52. *Id.*

53. Record of Proceedings in the House Special Judiciary Committee (Jan. 19, 1995) (available in Georgia State University College of Law Library). Committee members were told that low-income fathers were being put in jail because they were unable to afford the child support obligations calculated under the current guidelines. *Id.*

54. House Debate, *supra* note 51. According to Rep. Cox, this will result in more low-income parents being jailed for nonpayment of support. House Debate, *supra* note 51.

55. House Debate, *supra* note 51.

56. House Debate, *supra* note 51.

57. House Debate, *supra* note 51; *see also* Campbell Interview, *supra* note 16.

58. Compare HB 72 (HFS), 1995 Ga. Gen. Assem. with HB 548 (HCS), 1995 Ga. Gen. Assem.

59. *See Lawmakers '95* (GPTV broadcast, Feb. 21, 1995) (videotape

During her speech to the House members, Representative Cox noted that when Alabama adopted its child support schedule, it took national figures on the costs to raise a child and reduced the amounts proportionally to Alabama's lower income figures, as compared to the national average.⁶⁰ Representative Cox also referred to several pages of support figures⁶¹ and cautioned the legislators that if HB 72 was adopted as proposed, Georgia's General Assembly would have to adjust the figures for inflation annually.⁶² She stressed that, in almost every category, child support awards in Georgia would be lowered under HB 72.⁶³

In contrast, Representative Cox stated that the proposed floor substitute to HB 72 retained the flat percentage formula, but required judges to consider several factors currently in the law and to make written findings before setting a child support award.⁶⁴

An amendment to the Cox floor substitute, proposed by Representative Ray Holland of District No. 157, would have created a presumption that couples entering into uncontested divorces and custody arrangements had taken into consideration the gross income of both parties.⁶⁵ However, as pointed out by Representative Jim Martin of District No. 47, many settlements from uncontested divorces are eventually modified.⁶⁶ Without the information regarding how support figures were determined, appellate courts would not have the information they would need to review adjustments.⁶⁷ The amendment was defeated by voice vote.⁶⁸

available in Georgia State University College of Law Library).

60. House Debate, *supra* note 51; *see also* ALA. ADMIN. CODE, r. 32 official cmt. (1990). For example, Rep. Cox noted that Alabama's approximate median family income is \$25,000, whereas Georgia's median income is \$28,000. House Debate, *supra* note 51. Alabama also has lower housing costs than Georgia. House Debate, *supra* note 51.

61. HB 72, as introduced, 1995 Ga. Gen. Assem.

62. House Debate, *supra* note 51.

63. House Debate, *supra* note 51.

64. House Debate, *supra* note 51.

65. House Debate, *supra* note 51; *see also* Cox Interview, *supra* note 16.

66. House Debate, *supra* note 51.

67. House Debate, *supra* note 51; *see also* Cox Interview, *supra* note 16. *See generally* Haynes, *supra* note 7, at 17 (noting Congress' intention that settlement agreements include a written explanation of any deviations from the child support guidelines) (citing 56 Fed. Reg. 22,347 (1991)).

68. Cox Interview, *supra* note 16.

Representative Jeff Brown of District No. 130 proposed an amendment to both child support bills under consideration that inserted a new section 3 to read as follows: "It is the intention of this bill to encourage judges in divorce cases to require all couples involved in contested divorces to go to mediation to attempt a mutually agreeable settlement."⁶⁹ This amendment passed in the House by voice vote.⁷⁰

Representative Denny M. Dobbs of District No. 92 proposed an amendment to the Cox floor substitute which amended Code section 19-6-15 (c) to read "[t]he trier of fact *shall vary* the final award of child support."⁷¹ This amendment mandated that judges increase or decrease support obligations upon the finding of a special circumstance, as delineated in subsection (c)(1) to (18).⁷² The amendment was also adopted in the House by voice vote.⁷³

Representative Cox's floor substitute to HB 72, as amended, was adopted by the full House by a vote of 95 to 76.⁷⁴ A motion to reconsider the vote to adopt the substitute failed.⁷⁵ The substitute version of HB 72 was then passed by a vote of 175 to 0.⁷⁶

HB 72 went to the Senate where it was assigned to the Senate Judiciary Committee.⁷⁷ The Senate Judiciary Committee made minor technical changes to the bill's title and provisions.⁷⁸ The

69. HB 72 (HFSFA), 1995 Ga. Gen. Assem. (Brown amendment). This amendment was not codified. 1995 Ga. Laws 603, § 4, at 611. Rep. Cox was not opposed to the amendment, but recommended to Rep. Brown that it be attached instead to another bill dealing with mediation, which was pending in a committee. Cox Interview, *supra* note 16. This amendment was later restricted to only apply to sections 1 and 2 of the Act. *See* 1995 Ga. Laws 603, § 4, at 611.

70. *See* HB 72 (HFSFA), 1995 Ga. Gen. Assem. (Brown amendment).

71. *Id.* (Dobbs amendment) (emphasis added).

72. *Id.*; Cox Interview, *supra* note 16.

73. *See* HB 72 (HFSFA), 1995 Ga. Gen. Assem. (Dobbs amendment).

74. Georgia House of Representatives Voting Record, HB 72 (Feb. 21, 1995) [hereinafter Voting Record] (available in Georgia State University College of Law Library). Because HB 72 passed in the House, Rep. Cox no longer pursued passage of HB 548. Cox Interview, *supra* note 16.

75. Voting Record, *supra* note 74.

76. *Id.*; *see also Slow, Steady on Child Support*, ATLANTA CONST., Feb. 24, 1995, at A10.

77. Final Composite Status Sheet, Mar. 17, 1995.

78. HB 72 (SCS), 1995 Ga. Gen. Assem.

Committee also included language requiring garnishment and income deduction provisions in child support orders.⁷⁹ In addition, the Dobbs amendment, which requires the trier of fact to vary the child support obligation upon a finding of special circumstances,⁸⁰ was amended to provide that the award be varied only upon a finding that “special circumstances [make] the presumptive amount of support either excessive or inadequate.”⁸¹ The Senate Judiciary Committee passed the committee substitute on March 13, 1995.⁸²

HB 72 was considered by the full Senate on March 15, 1995.⁸³ Senator Mark Taylor of District No. 12, on behalf of the Georgia Department of Human Resources (DHR), proposed an amendment on the Senate floor that extended the state registry of new and rehired employees until May 1, 1997.⁸⁴ This registry

79. *Id.*; see also 1989 Ga. Laws 861, §§ 2-3, at 865-70 (codified at O.C.G.A. §§ 19-6-30, 32 (Supp. 1993)).

80. HB 72 (SCS), 1995 Ga. Gen. Assem.

81. *Id.* Both Rep. Cox and the Department of Human Resources (DHR) were concerned that, without the qualifying language, the Dobbs amendment would have required a variance of the award in every case, thereby losing the consistency of child support awards throughout the state, which was the primary justification for adoption of the guidelines. Cox Interview, *supra* note 16. As Rep. Cox points out, at least one “special circumstance” will apply to all families—the ages of the children. If, upon applying a flat percentage to a parent’s income, a judge varies it in every case, then the presumption of an appropriate award is lost. Therefore, the qualifying language requires the fact finder to vary the award *only* when the special circumstances make it unfair, either because it is too high or too low. Cox Interview, *supra* note 16.

82. Final Composite Status Sheet, Mar. 17, 1995.

83. *Id.* March 15, 1995 was the thirty-ninth day of the 1995 Legislative Session. Cox Interview, *supra* note 16.

84. HB 72 (SCSFA), 1995 Ga. Gen. Assem; Telephone Interview, Thomas Wade, Assistant Commissioner for Policy and Government Services, Georgia Department of Human Resources (Apr. 7, 1995) [hereinafter Wade Interview]. In the first two years of operation, the registry has helped the DHR identify over 112,000 individuals who owed some child support. *Id.* This development has translated into the identification of approximately ten million dollars a month in support owed to Georgia’s children. *Id.* In addition, the amendment provides for access by other government agencies to the registry for limited purposes, including determining eligibility for needs-based programs and unemployment benefits. *Id.* By sharing the information with the Department of Labor, the registry may also eventually eliminate the need for one of the current reports required from employers by the state. *Id.*

is used by the DHR's Child Support Recovery Unit as a tool for locating people who are employed, but are not paying child support.⁸⁵ Without the amendment, the registry would have automatically expired on May 1, 1995.⁸⁶ The DHR amendment to HB 72 also changed the current reporting requirements to allow an employer ten days to report a new or rehired employee, instead of just five.⁸⁷ This change gives employers more "turn-around time" without inhibiting the effectiveness of the registry.⁸⁸ The amendment was adopted by the Senate by a vote of 40 to 0.⁸⁹

Senator Mary Margaret Oliver of District No. 42 moved to amend HB 72 by inserting the language of SB 423,⁹⁰ which had previously passed the Senate by unanimous vote.⁹¹ The amendment allows a court to include in the child support order a requirement that one or both parents obtain and maintain life insurance for the benefit of the child.⁹² The amendment was adopted by a vote of 43 to 0.⁹³

Finally, Senator John "J.L." Black of the 53rd District moved to amend HB 72 by including a provision from SB 219, which addressed the issue of a parent's interference with the custody of a child by the other parent.⁹⁴ The amendment would have

85. *Id.*; Record of Proceedings on the Senate Floor (Mar. 15, 1995) [hereinafter Senate Debate] (available in Georgia State University College of Law Library).

86. 1993 Ga. Laws 1983 (formerly found at O.C.G.A. § 19-11-9.2(f) (Supp. 1993)).

87. HB 72 (SCSFA), 1995 Ga. Gen. Assem. (Taylor amendment).

88. Wade Interview, *supra* note 84.

89. Senate Debate, *supra* note 85.

90. SB 423, as introduced, 1995 Ga. Gen. Assem.

91. Senate Debate, *supra* note 85; *see also* Final Composite Status Sheet, Mar. 17, 1995.

92. HB 72 (SCSFA), 1995 Ga. Gen. Assem. (Oliver amendment). According to Rep. Cox, some courts have refused to require parents to maintain life insurance for the benefit of their child, reasoning that a parent's obligation to their child ends at the parent's death. Cox Interview, *supra* note 16; *see* Gardner v. Gardner, 441 S.E.2d 666, 667 (Ga. 1994); Clovin v. Clovin, 233 S.E.2d 151, 152-53 (Ga. 1977). However, even if a noncustodial parent is obligated to and pays a substantial child support award, the award might be meaningless if the parent dies before the child reaches maturity. Cox Interview, *supra* note 16. Therefore, asserts Rep. Cox, in some cases, life insurance is appropriate and "good protection" for a child. Cox Interview, *supra* note 16.

93. Senate Debate, *supra* note 85.

94. SB 219, as introduced, 1995 Ga. Gen. Assem. Sen. Black co-sponsored

allowed for the prosecution of parents, whether custodial or noncustodial, who were more than forty minutes late in presenting a child for transfer to the other parent.⁹⁵ The amendment was considered and defeated by a vote of 14 to 37.⁹⁶

The Senate substitute to HB 72 was adopted by a vote of 51 to 1.⁹⁷ On the same day, the House of Representatives agreed to the bill, with one substantive change, which allowed parents to agree to provide "life insurance that differs from or exceeds the terms"⁹⁸ authorized by the Oliver amendment.⁹⁹

The Senate agreed to the change,¹⁰⁰ and Governor Miller signed the bill into law on April 18, 1995.¹⁰¹

SB 219. *See also* 1987 Ga. Laws 561 (codified at O.C.G.A. § 16-4-45 (1992)).

95. SB 219, as introduced, 1995 Ga. Gen. Assem.

96. Senate Debate, *supra* note 85. Supporters of the amendment insisted that it was necessary to give rights to noncustodial parents. They asserted that, since noncustodial parents can already be charged if they are late bringing a child back from visitation, this amendment would serve as an "equalizer," exposing both parents to penalties for noncompliance with visitation. During Senate floor debate, Sen. Mary Margaret Oliver noted that the original intent of the amendment was to prosecute parents who kidnap their children; however, this amendment would have held a parent criminally liable if the child refused to go to the other parent's home. Sen. Oliver asserted that the amended law would be used to threaten women and children and would provide only "more weapons for [divorced parents] to beat each other up with." Sen. Steve Langford of Senate District No. 29, in speaking against the amendment, noted that the "hardest job is a single parent," and if anyone deserves punishment "momma should be the last." Senate Debate, *supra* note 85.

97. Senate Debate, *supra* note 85.

98. *Compare* HB 72 (SCSFA), 1995 Ga. Gen. Assem. *with* O.C.G.A. § 19-6-34(e) (Supp. 1995).

99. *See supra* note 92. This amendment was proposed on the House floor during the agreement process by Rep. Tommy Chambless of House District No. 163. Cox Interview, *supra* note 16. Rep. Chambless is the Chair of the House Judiciary Committee. Cox Interview, *supra* note 16. According to Rep. Cox, the floor amendment was proposed to allow parents to agree to provide additional life insurance for the benefit of their children. Cox Interview, *supra* note 16. For example, the amendment allows parents to maintain the life insurance past the child's majority age while the child is still in college. Cox Interview, *supra* note 16.

100. Cox Interview, *supra* note 16; Final Composite Status Sheet, Mar. 17, 1995.

101. Final Composite Status Sheet, Mar. 17, 1995.

Summary

The Act makes a variety of substantive changes to the previous child support guidelines, as well as to other parts of the Code. It requires the trier of fact to consider the gross incomes of both parents and eighteen factors or "special circumstances" when determining the amount of child support obligation from the noncustodial parent.¹⁰² These factors must be used to vary the support obligation when the presence of such factors makes the "presumptive amount of support either excessive or inadequate."¹⁰³

The Act amends the factors to include "[e]xtraordinary travel expenses to exercise visitation or shared physical custody,"¹⁰⁴ and to clarify the consideration of "extraordinary medical costs"¹⁰⁵ and "[e]xtreme economic circumstances."¹⁰⁶

The trier of fact must then specially record the presence or absence of any factors that affected the support obligation on an enhanced "Final Judgment and Decree" form.¹⁰⁷ This amended form is consistent with the language of Code section 19-6-15.¹⁰⁸ The Act also requires the court to include in the child support order provisions concerning garnishment for support and income deduction orders.¹⁰⁹

According to the text of section 4 of the Act, the intent of sections 1 and 2 is to "encourage judges in divorce cases to

102. O.C.G.A. § 19-6-15(c) (Supp. 1995). The "special circumstances" include factors such as the ages of the children, extraordinary medical costs, other support obligations of the parent, extreme economic conditions (including high debts or high income level), and extraordinary expenses related to exercising visitation. *Id.*

103. *Id.* The "presumptive amount of support" is calculated by multiplying the noncustodial or "obligor" parent's gross income by a flat percentage based on the number of children. *See id.* § 19-6-15(b)(5).

104. *Id.* § 19-6-15(c)(17).

105. *Id.* § 19-6-15(c)(2). Out-of-pocket medical costs are to be considered separately from the cost of accident and sickness insurance. *Id.*

106. *Id.* § 19-6-15(c)(11).

107. *Id.* § 19-5-12; *see also id.* § 19-6-15(a). When divorcing parents enter into an enforceable agreement pursuant to review by the courts, the parents must also include a written statement, which is in accordance with O.C.G.A. § 19-6-15(c). *Id.*

108. *Compare id.* § 19-5-12 *with id.* § 19-6-15.

109. *Id.* § 19-6-15(c).

require all couples involved in contested divorces to go to mediation to attempt a mutually agreeable settlement.”¹¹⁰

In addition, the Act allows a judge to order one or both parents to obtain and maintain life insurance for the benefit of their minor children.¹¹¹ However, the parents may agree to provide insurance that differs from or exceeds that which is ordered by the court.¹¹²

Finally, the Act extends the deadline for maintenance of a Georgia Department of Human Resources registry of new and rehired employees.¹¹³ This registry would have expired on May 1, 1995, if it had not been extended by the General Assembly.¹¹⁴

Vicki Lynn Bell

110. 1995 Ga. Laws 603, § 4, at 611. This section of the Act was not codified. *See id.*

111. O.C.G.A. § 19-6-34 (Supp. 1995).

112. *Id.* § 19-6-34(e).

113. *Id.* § 19-11-9.2.

114. 1993 Ga. Laws 1983 (formerly found at O.C.G.A. § 19-11-9.2(f) (Supp. 1993)).