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## DOMESTIC RELATIONS Alimony and Child Support Generally: Provide for the Direct Appeal of Child Support Final Judgments; Lower Annual Interest Rate on Past Due Child Support; Consider Both Parents' Incomes in Child Support Awards; Redefine Definition of Gross Income; Adjust Child Support Awards According to Time Spent with Child; Remove Consideration of Change in Child's Needs in Revising Alimony or Child Support; Remove References to Children and Child Support from Alimony Sections; and for Other Purposes

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## DOMESTIC RELATIONS

***Alimony and Child Support Generally: Provide for the Direct Appeal of Child Support Final Judgments; Lower Annual Interest Rate on Past Due Child Support; Consider Both Parents' Incomes in Child Support Awards; Redefine Definition of Gross Income; Adjust Child Support Awards According to Time Spent with Child; Remove Consideration of Change in Child's Needs in Revising Alimony or Child Support; Remove References to Children and Child Support from Alimony Sections; and for Other Purposes***

**CODE SECTIONS:** O.C.G.A. §§ 5-6-34 (amended), 7-4-12.1 (amended), 19-5-12 (amended), 19-6-15, -19 to -22, -24 (amended), 19-6-50 to -53 (new), 19-7-2 (amended)

**BILL NUMBER:** HB 221

**ACT NUMBER:** 52

**GEORGIA LAWS:** 2005 Ga. Laws 224

**SUMMARY:** The Act provides for changes to the calculation of child support to consider the incomes and financial situations of both parents in assessing the child support payment the noncustodial parent will make. The court shall follow worksheets and shall specify in its decrees and judgments any factors and reasons for deviations from the guidelines. The court may adjust child support awards based on the amount of time the noncustodial parent spends with the child. The Act creates the Georgia Child Support Commission, with members appointed by the Governor, to perform the tasks of gathering information relating to child support and reviewing and preparing adjustments to the child support

obligation table used in calculating awards.

**EFFECTIVE DATES:**

O.C.G.A. §§ 19-6-50 to -53, April 22, 2005;<sup>1</sup> §§ 5-6-34, 7-4-12.1, 19-5-12, 19-6-15, -19 to -22, -24, 19-7-2, July 1, 2006

*History*

Senator Seth Harp of the 29th district believed HB 221 would address perceived inequities and unfairness in Georgia's child support award system.<sup>2</sup> Senator Harp articulated several specific policy goals legislators hoped to accomplish, including increased noncustodial parental involvement, increased collection rates for child support awards, and alignment with what he viewed as a trend among other states.<sup>3</sup> The concerns Senator Harp cited as prompting the legislation include the following: Georgia's noncompliance with federal requirements to periodically reevaluate how courts calculate child support awards based on specific state economic analysis; dramatic increases in the rates of children being raised in single parent homes over the past several decades; the approximately \$1.5 billion in uncollected child support in Georgia coupled with the belief that payments exceeding 25% of disposable income cause many noncustodial parents to "drop off the map" and quit supporting their children completely; and the fact that a majority of states have abandoned the "obligor" model and now consider both incomes.<sup>4</sup> Opponents of the legislation suspect that the primary motivating concern behind the bill was several individuals' strong belief that they were paying too much in child support.<sup>5</sup> Although none of the

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1. See 2005 Ga. Laws 224, § 13, at 252. This section of the Act became effective upon approval by the Governor. See *id.*

2. See Audio Recording of House Proceedings, Mar. 10, 2005 (remarks by Rep. Sue Burmeister), [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_33078458,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_33078458,00.html) [hereinafter House Audio].

3. See Telephone Interview with Sen. Seth Harp, Senate District No. 29 (Apr. 12, 2005) [hereinafter Harp Interview].

4. *Id.*; see also Audio Recording of Senate Proceedings, Mar. 24, 2005 (remarks by Sen. Seth Harp), [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_33091490,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_33091490,00.html) [hereinafter Senate Audio].

5. See House Audio, *supra* note 2 (remarks by Reps. Mary Margaret Oliver and Nan Grogan Orrock).

proponents' concerns are new, past attempts to pass dual-income model legislation failed for lack of "traction" and failure to garner support in both the House and the Senate.<sup>6</sup>

Prior to this bill's passage, Georgia calculated child support based on child support tables that allocated 17-37% of a noncustodial parent's income, adjustable according to various factors.<sup>7</sup> Georgia law also made no provision for reducing child support payments based on time spent with the child.<sup>8</sup> Legislators expressed hope that the formula eventually recommended by the newly created Georgia Child Support Commission based on the income of both parents will get away from "outdated economic data," and that the parenting time provisions will ultimately "encourage families."<sup>9</sup> However, other legislators voiced concerns that this legislation depends heavily on the work of the Commission and could lead to prolonged litigation that would harm families, possibly resulting in "across the board" reductions in child support provided to Georgia's children.<sup>10</sup>

### *Bill Tracking of HB 221*

#### *Consideration by the House*

Representatives Burmeister, Watson, Mosby, Morgan, and Ehrhart of the 119th, 91st, 90th, 39th, 36th districts, respectively, sponsored HB 221.<sup>11</sup> The House first read the bill on February 1, 2005, and the House Judiciary Committee favorably reported the bill, by substitute, on March 10, 2005.<sup>12</sup>

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6. See Harp Interview, *supra* note 3. Senator Seth Harp and fellow proponents attempted to pass this legislation five years ago, but when first introduced, it "couldn't get traction." *Id.* SB 17, an identical bill to HB 221's initial version, was introduced by Senator Harp two years ago but lacked the support in both houses that HB 221 enjoyed this year. *Id.* See also *Review of Selected 1995 Georgia Legislation*, 12 GA. ST. U. L. REV. 169, 171 (1995).

7. 1994 Ga. Laws 1728, § 1, at 1731 (formerly found at O.C.G.A. § 19-6-15(b)(5) (2004)).

8. Compare O.C.G.A. § 19-6-15 (Supp. 2005), with 1996 Ga. Laws 453 (formerly found at O.C.G.A. § 19-6-15 (2004)).

9. See Carlos Campos, *Child Support Changes Pushed: Bill Would Affect Payment Formula*, ATLANTA J. CONST., Mar. 2, 2005, at B1; Camie Young, *Lawmakers Pass Changes to Child Support Rules*, GWINNETT DAILY POST, Apr. 1, 2005, at 10A.

10. See House Audio, *supra* note 2 (remarks by Rep. Stephanie Stuckey Benfield); Telephone Interview with Rep. Mary Margaret Oliver, House District No. 83 (Apr. 14, 2005) [hereinafter Oliver Interview].

11. See HB 221, as introduced, 2005 Ga. Gen. Assem.

12. See State of Georgia Final Composite Status Sheet, HB 221, Feb. 1, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, HB 221, Mar. 10, 2005 (May, 2005).

*The Bill, As Introduced*

The previous law in Georgia based child support payment calculations on the noncustodial parent's income and did not reduce these payments based on time the noncustodial parent spent with the child.<sup>13</sup> As introduced, the bill amended Code section 19-5-12(c) for "any case which involves the determination of child support," providing that the judgment "include provisions indicating both parties' incomes, the number of children for which support is being provided, the presumptive award calculation, and, if the presumptive award is rebutted, the award amount and the basis for the rebuttal award."<sup>14</sup>

As introduced, the bill also eliminated the use of tables for calculating support based on a percentage range of gross income according to the number of children.<sup>15</sup> The bill also amended Code section 19-6-15 to include a "Schedule of Basic Child Support Obligations," taking into account both "Combined Monthly Gross Income" and the number of children.<sup>16</sup> This section also included potential adjustments to the gross income calculations based on factors such as a second household or responsibility for other children.<sup>17</sup>

Table A provides for a downward adjustment in child support for noncustodial parenting time, beginning such downward adjustments with 1.2% at four days of time spent per year up to 48.6% for 173-182 days.<sup>18</sup> The adjustment is based on the following assumption:

[a]s the number of noncustodial parenting time days approaches equal time sharing (143 days and above), certain costs usually incurred only in the custodial household are assumed to be substantially or equally shared by both parents. These costs are for items such as the child's clothing and personal care items, entertainment, and reading materials. If this assumption is rebutted by proof that such costs are not substantially or equally

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13. See 1996 Ga. Laws 453 (formerly found at O.C.G.A. § 19-6-15 (2004)).

14. See HB 221, § 1, as introduced, 2005 Ga. Gen. Assem.

15. *Id.*

16. *Id.* § 2.

17. *Id.*

18. *Id.*

shared in each household, the appropriate adjustment for noncustodial parenting time shall be determined [per Table B].<sup>19</sup>

Table B, used for parents proven not to be “substantially or equally” sharing such costs, ranges from a 27.5% reduction for a parent spending 143 days per calendar year with the child to a 33.1% reduction for the parent spending 173-182 days per calendar year.<sup>20</sup>

### *Committee Substitute*

The House Judiciary Committee substitute substantially changed the original bill.<sup>21</sup> The substitute added three new sections before the original’s first section. These sections included a comment on the reason for evaluation of child support guidelines, a new section amending Title 5 of the Code to make a child support judgment directly appealable, and a new section amending Title 7 of the Code to lower the interest that accrues on past due child support and to grant the court “discretion in applying or waiving past due interest.”<sup>22</sup>

The Committee substitute kept the change to Code section 19-5-12(c) which considers both parties’ incomes, but then rewrote much of Code section 19-6-15 to contemplate the use of worksheets in the calculation of awards.<sup>23</sup> The Committee substitute kept most of the specific changes to the calculation of gross income, but eliminated the original version’s schedule for child support; instead, a newly created Georgia Child Support Commission will propose a table.<sup>24</sup>

Additionally, the substitute changed the floor at which noncustodial parenting time allowed a downward adjustment to child support by raising the minimum days from 4 to 100.<sup>25</sup> It also added a provision for an increase in the level of support where “the noncustodial parent spends 60 or fewer days per calendar year with a

19. *Id.*

20. *See* HB 221, § 2, as introduced, 2005 Ga. Gen. Assem.

21. *Compare* HB 221 (HCS), 2005 Ga. Gen. Assem., *with* HB 221, as introduced, 2005 Ga. Gen. Assem.

22. HB 221 (HCS), §§ 1-3, 2005 Ga. Gen. Assem.

23. *Id.* §§ 4-5.

24. *Compare* HB 221 (HCS), §§ 5, 11, 2005 Ga. Gen. Assem., *with* HB 221 § 2, as introduced, 2005 Ga. Gen. Assem.

25. *See* HB 221 (HCS), § 5, 2005 Ga. Gen. Assem. The maximum downward adjustment was raised to 50%. *Id.*

child,” allowing the court to increase the support by 10% at 60 days and up to 35% at 80 days.<sup>26</sup> Finally, the substitute changed various other Code sections to reflect references to both parents and to remove contemplation of children from alimony considerations.<sup>27</sup>

### *Floor Debate and Amendments*

During floor debate, representatives voiced support for the bill as well as concerns.<sup>28</sup> The support centered around the idea that Georgia’s previous system of calculating child support was outdated and unfair.<sup>29</sup> The concerns reflected the untested nature of the proposed changes, belief that the proposed changes would lead to across the board decreases in support for children, the linking of parenting time with support, the unknown effects of delegating this responsibility to an appointed commission, and the possibility of increased litigation.<sup>30</sup>

Representative Stan Watson of the 91st district offered Amendment 1 to the House Committee substitute.<sup>31</sup> This amendment would have raised the minimum number of days from 100 to 121 before adopting the assumption that a noncustodial parent is making greater expenditures on behalf of the child.<sup>32</sup> Representative Watson proposed the amendment in order to more closely mirror the Tennessee statute upon which the Committee based their substitute.<sup>33</sup> Representative Benfield pointed out that the “100 days” had been a compromise in the Committee between the 121 days used in the Tennessee statute and the 70-80 days that is the typical amount of time a noncustodial parent spends with their child.<sup>34</sup> The House defeated the amendment by a vote of 64 to 100.<sup>35</sup>

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26. *Id.*

27. *Id.* §§ 6-10, 12 (changing O.C.G.A. §§ 19-6-19 to -22, -24, 19-7-2).

28. See House Audio, *supra* note 2.

29. See *id.* (remarks by Reps. Sue Burmeister and Mark Hatfield).

30. See *id.* (remarks by Reps. Michele Henson, Stephanie Stuckey Benfield, Pat Gardner, and Mary Margaret Oliver).

31. See Failed House Floor Amendment to HB 221, introduced by Rep. Stan Watson, Mar. 10, 2005.

32. *Id.*

33. See House Audio, *supra* note 2 (remarks by Rep. Stan Watson). Compare HB 221 (HCS), § 5, 2005 Ga. Gen. Assem., with TENN. COMP. R. & REGS. 1240-2-4-.03(6)(e)(2) (2005).

34. See House Audio, *supra* note 2 (remarks by Rep. Stephanie Stuckey Benfield). Compare HB 221 (HCS), § 5, 2005 Ga. Gen. Assem., with TENN. COMP. R. & REGS. 1240-2-4-.03(6)(e)(2) (2005).

35. Georgia House of Representatives Voting Record, HB 221 (Mar. 10, 2005).

Representative Mary Margaret Oliver of the 83rd district proposed Amendment 2 to the House Committee substitute.<sup>36</sup> This amendment would have extended the date on which all sections of the bill—except the one creating the Georgia Child Support Commission—became effective from March 1, 2006 to July 1, 2006.<sup>37</sup> This change would have allowed more time for the General Assembly to consider proposed guidelines and formulas submitted by the new Georgia Child Support Commission.<sup>38</sup> This amendment also failed by a vote of 79 to 90.<sup>39</sup> The House passed the Committee substitute to HB 221 by a vote of 127 to 43.<sup>40</sup>

### *Consideration by the Senate*

The Senate first read HB 221 on March 11, 2005.<sup>41</sup> The Senate Judiciary Committee favorably reported the bill on March 21, 2005.<sup>42</sup>

### *Floor Debate and Amendments*

The Senate began debate on HB 221 on March 24, 2005.<sup>43</sup> Senators proposed a number of amendments from the floor at that time, adopting none that day.<sup>44</sup> Proposed amendments included an attempt by Senators Steve Henson of district 41 and Horacena Tate of district 38 to revive Representative Mary Margaret Oliver's proposed delay to the effective date of the bill because "[t]wo months is not enough time for us, for every member to get an opportunity to digest the information brought by this commission."<sup>45</sup> Senator Curt Thompson of the 5th district revisited Representative Stan Watson's proposed House amendment, arguing for raising the minimum number of days before the decrease of noncustodial parents'

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36. See Failed House Floor Amendment to HB 221, introduced by Rep. Mary Margaret Oliver, Mar. 10, 2005.

37. *Id.*

38. See House Audio, *supra* note 2 (remarks by Rep. Mary Margaret Oliver).

39. Georgia House of Representatives Voting Record, HB 221 (Mar. 10, 2005).

40. See *id.*

41. State of Georgia Final Composite Status Sheet, HB 221, Mar. 11, 2005 (May 11, 2005).

42. State of Georgia Final Composite Status Sheet, HB 221, Mar. 21, 2005 (May 11, 2005).

43. See Senate Audio, *supra* note 4.

44. *Id.*; see also Georgia Senate Voting Record, HB 221 (Mar. 24, 2005).

45. See Failed Senate Floor Amendment to HB 221, introduced by Sens. Steve Henson and Horacena Tate, Mar. 24, 2005; Senate Audio, *supra* note 4 (remarks by Sen. Steve Henson).



obligations from 100 to 121.<sup>46</sup> He argued for this amendment both to more closely model Tennessee law, as well as to address the intent of the parenting time provision, which was to help parents who are really “going above and beyond” – that is, situations where the parent is spending so much time with the child that “money is coming out of their pocket to raise that child.”<sup>47</sup>

Several senators made new proposals.<sup>48</sup> Senators David Shafer of the 48th district, Tommie Williams of the 19th district, Nancy Schaefer of the 50th district, and David Adelman of the 42nd district proposed allowing courts to award attorney’s fees to a custodial parent who successfully prevails in an upward modification of support based on the noncustodial parent’s failure to exercise visitation.<sup>49</sup> Senator Regina Thomas of the 2nd district proposed raising the threshold from a 15% change to a 25% change before a parent can petition for modification, regardless of the time, since the award’s purpose was to discourage “running back and forth to court just for meanness.”<sup>50</sup> Senator Steen Miles of the 43rd district proposed permitting modification within a shorter period of time in cases where there is a change in the needs of the child, or where actual visitation differs from contemplated visitation.<sup>51</sup> Additionally, Senators David Adelman of the 42nd and Emanuel Jones of the 10th district offered a substitute that would have limited the bill to prospective application to avoid an “avalanche” of new cases and to prevent putting people through the “heartwrenching ordeal” of adjudication when they already have decrees.<sup>52</sup>

When the bill came to a vote later that day, it lost by one vote, 28 to 19.<sup>53</sup> Senator Seth Harp of the 29th district attributed this loss to

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46. See Failed Senate Floor Amendment to HB 221, introduced by Sen. Curt Thompson, Mar. 24, 2005.

47. See Senate Audio, *supra* note 4 (remarks by Sen. Curt Thompson).

48. See Georgia Senate Voting Record, HB 221 (Mar. 24, 2005).

49. See Failed Senate Floor Amendment to HB 221, introduced by Sens. David Shafer, Tommie Williams, Nancy Schaefer, and David Adelman, Mar. 24, 2005.

50. See Failed Senate Floor Amendment to HB 221, introduced by Sen. Regina Thomas, Mar. 24, 2005; Senate Audio, *supra* note 4 (remarks by Sen. Regina Thomas).

51. See Failed Senate Floor Amendment to HB 221, introduced by Sen. Steen Miles, Mar. 24, 2005; Senate Audio, *supra* note 4 (remarks by Sen. Steen Miles).

52. See Failed Senate Floor Substitute to HB 221, introduced by Sens. David Adelman and Emanuel Jones, Mar. 24, 2005; Senate Audio, *supra* note 4 (remarks by Sens. David Adelman and Emanuel Jones).

53. Georgia Senate Voting Record, HB 221, Mar. 24, 2005. With 2 abstentions and 7 excused members, the 28 yeas were one vote shy of the 29 needed for a majority. *Id.*

the fact that one member was not paying attention, and on March 29, 2005 he prevailed in a motion for reconsideration.<sup>54</sup>

The Senate reconsidered the bill on March 31, 2005.<sup>55</sup> Senators proposed many of the same amendments, with the amendments proposing an award of attorney's fees and change in effective date meeting success.<sup>56</sup> This time, the bill passed as amended, by a vote of 32 to 19.<sup>57</sup>

### *Agreement by the House*

After passage in the Senate, the bill was transmitted back to the House that same day, where the Representatives agreed to the Senate's amendments and passed the bill by a vote of 104 to 41.<sup>58</sup>

### *Analysis*

Approximately 37 other states have enacted similar legislation adopting an income-shares model.<sup>59</sup> Only four states still follow the obligor model, considering only the noncustodial parent's income.<sup>60</sup> In adopting HB 221, Georgia is more in line with how the majority of states determine child support awards.<sup>61</sup>

Despite this increase in consistency with other states, some questions and concerns linger. The success or failure of Georgia's statute will depend in great part upon the data and suggestions of the Georgia Child Support Commission.<sup>62</sup> Because the previous system violated federal mandates on drafting guidelines, the Commission must provide adequate data or Georgia's system remains vulnerable

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54. See Harp Interview, *supra* note 3; State of Georgia Final Composite Status Sheet, HB 221, Mar. 29, 2005 (May 11, 2005).

55. State of Georgia Final Composite Status Sheet, HB 221, Mar. 31, 2005 (May 11, 2005).

56. See State of Georgia Final Composite Status Sheet, HB 221, Mar. 31, 2005 (May 11, 2005). Compare HB 221 (HCS), 2005 Ga. Gen. Assem., with HB 221 (SFA), 2005 Ga. Gen. Assem.

57. Georgia Senate Voting Record, HB 221, Mar. 31, 2005; State of Georgia Final Composite Status Sheet, HB 221, Mar. 31, 2005 (May 11, 2005).

58. Georgia House of Representatives Voting Record, HB 221, Mar. 31, 2005; State of Georgia Final Composite Status Sheet, HB 221, Mar. 31, 2005 (May 11, 2005).

59. See House Audio, *supra* note 2 (remarks by Rep. Stephanie Stuckey Benfield).

60. See Harp Interview, *supra* note 3.

61. *Id.*

62. See House Audio, *supra* note 2 (remarks by Rep. Stephanie Stuckey Benfield); Oliver Interview, *supra* note 10.

to being overturned.<sup>63</sup> In addition, the General Assembly is making a leap of faith that this program will be successful because it based the parenting time provisions on a Tennessee statute enacted too recently to judge its effectiveness.<sup>64</sup> Also, although modification requires a 15% “substantial” change, it is possible that this threshold will be too easily met, leading to prolonged and increased litigation between parents.<sup>65</sup> Because continuing animosity between parents is harmful to children, the possibility of a flood of litigation over modification questions is of critical concern.<sup>66</sup>

Georgia’s General Assembly based this statute on good intentions, but making a “major overhaul” based on limited data is always a risky proposition.<sup>67</sup> There is a hope that it will support the best interests of Georgia’s children.<sup>68</sup> As stated by Senator Renee Unterman, “whether this is the answer, I don’t know, but I’m willing to go out on a limb.”<sup>69</sup> Georgia’s children undoubtedly hope that limb is a strong one.

*Jennifer Goodwin*

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63. House Audio, *supra* note 2 (remarks by Rep. Stephanie Stuckey Benfield).

64. See House Audio, *supra* note 2 (remarks by Rep. Michele Henson). Compare O.C.G.A. § 19-6-15(j) (Supp. 2005), with TENN. COMP. R. & REGS. 1240-2-4-.03(6)(e)(2) (2005).

65. See Oliver Interview, *supra* note 10; House Audio, *supra* note 2 (remarks by Rep. Stephanie Stuckey Benfield); Senate Audio, *supra* note 4 (remarks by Sen. Regina Thomas).

66. See Oliver Interview, *supra* note 10.

67. See House Audio, *supra* note 2 (remarks by Rep. Stephanie Stuckey Benfield).

68. *Id.*

69. See Camie Young, *Lawmakers Pass Changes To Child Support Rules*, GWINNETT DAILY POST, Apr. 1, 2005, at A10 (quoting Senator Unterman).