

New Child Support Guidelines for Georgia Senate Bill 382

New Law Effective January 1, 2007

Comparison of SB 382 and Current Law				
Topic	Current Law	SB 382	OCGA - New Version	WS & FO
Applicability	Final orders only	<ul style="list-style-type: none"> • Temporary & final orders • Applies to all cases pending after 2006 	19-6-15 (c)(1) SB 382, Section 10(b)	—
Basic Structure	Percent of Obligor Income	Income Shares	19-6-15	—
Worksheets & Schedules	None	<ul style="list-style-type: none"> • To be promulgated by the Commission • Parties to submit them to the court • Court to record findings & jury's verdict on Worksheet • Worksheet & Schedule E to be attached to final order 	19-5-12 (c), 19-6-15 (a)(25), 19-6-15 (c)(3), 19-6-15 (c)(4), 19-6-15 (m), 19-6-53 (a)(6)	FO
Defined Terms	Few	Many	19-6-15 (a)	All
List of Steps	No list, but effectively 3 steps	Lists 11 basic steps to be followed in determining child support	19-6-15 (b)	—

Abbreviations Used in This Table:

A = Schedule A B = Schedule B BCSO = Basic Child Support Obligation BIC = best interests of children CP = custodial parent
 CS = child support D = Schedule D E = Schedule E FO = Final order or judgment FT = full-time HS = high school WS = Worksheet

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Gross Income	<ul style="list-style-type: none"> General language Few specific examples Excludes needs-based income 	<ul style="list-style-type: none"> General language 21 specific examples Excludes needs-based income, child support & nonparent custodian's income 	19-6-15 (f)	WS, A, FO
Overtime, Bonuses, Commissions & Other Variable Income	<p>No provision on this except "100% of wage & salary income . . . and all other income"</p> <p>But, many courts do not count overtime, bonuses or 2nd job</p>	<p>Gross income specifically includes overtime, bonuses, commissions & tips</p> <ul style="list-style-type: none"> Requires averaging "variable" income Permits special treatment for "irregular, one-time or nonrecurring" income 	19-6-15 (f)(1)(A)(ii), 19-6-15 (f)(1)(A)(iv), 19-6-15 (f)(1)(A)(v), 19-6-15 (f)(1)(D)	A
Self-Employment Income	<ul style="list-style-type: none"> One type of income in general definition of gross income Deductible expenses that personally benefit the obligor may be included in gross income Deviation permitted for in-kind income, such as reimbursed meals or company car 	<ul style="list-style-type: none"> Defined as gross receipts minus ordinary and necessary expenses Specifies some types of expenses not considered ordinary and reasonable Amount generally will differ from determination of business income for tax purposes Adjustment to income for ½ of FICA and Medicare taxes paid 	19-6-15 (f)(1)(B), 19-6-15 (f)(5)(A)	A, B
Willful & Voluntary Unemployment & Underemployment	<p>May consider "suppression of income" as special circumstance to vary from presumptive amount</p> <p>Cases allow use of earning capacity</p>	Detailed provision listing factors to be considered in making determination; if found, then CS based on "potential income"	19-6-15 (f)(4)(D)	—

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Failure to Provide Verification of Income	<p>No provision</p> <p>In practice, many courts impute income based on historical earnings or minimum wage FT work</p>	<p>Parents must produce reliable evidence of their income</p> <p>Specific provision for imputing income if parent fails to produce and no other reliable evidence of income or income potential</p> <ul style="list-style-type: none"> • Initial Order - FT @ min. wage • Modification - Court may order increase of support by at least 10% of parent’s share of BCSO per year • May reopen if provide reliable evidence within 90 days (only to show other party’s higher income) • Issue re what is “other reliable evidence” 	<p>19-6-15 (f)(4)(A), 19-6-15 (f)(4)(B), 19-6-15 (f)(4)(C)</p>	<p>Maybe A</p>
How to Consider Other CS Obligations	<p>May consider as factor to vary from presumptive amount</p> <ul style="list-style-type: none"> • Courts varied in their application • Many courts prorated CS amount for total number of children 	<p>Very specific, 2-tiered rule</p> <ul style="list-style-type: none"> • “Preexisting Orders” subtracted from gross income • May preclude consideration of some orders where “initial order” entered after the initial order in case before the court. • Income adjustment <u>may</u> be made for “Qualified Children” in home based on “Theoretical CS Order” 	<p>19-6-15 (a)(18), 19-6-15 (a)(20), 19-6-15 (a)(22), 19-6-15 (f)(5)(B), 19-6-15 (f)(5)(C)</p>	<p>WS, B</p>

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Child Care Expenses	May consider as special circumstance to vary from presumptive amount	<ul style="list-style-type: none"> • Add child care to Basic CS amount • Only if necessary for parent to work, look for work or (if approved by Court) go to school • Pro-rate expense between parents • Give credit to parent who pays the expense 	19-6-15 (a)(24), 19-6-15 (h)(1)	WS, D, FO
Health Insurance Expense	May consider cost of “accident and sickness insurance” as special circumstance to deviate from presumptive amount	<ul style="list-style-type: none"> • Add health insurance premium to Basic CS amount • Only the cost for the children’s insurance premium • Pro-rate expense between parents • Give credit to parent who pays the expense 	19-6-15 (a)(13) 19-6-15 (h)(2)	WS, D, FO
Health Insurance Requirement	Court <i>must</i> order a parent to provide if available at reasonable cost	Court <i>may</i> order a parent to provide if available at reasonable cost	19-6-15 (a)(13), 19-6-15 (c)(2)(D), 19-6-15 (i)(2)(C)	FO
Other Health-Related Insurance (Vision & Dental)	Not mentioned separately from “accident & sickness insurance” for either required coverage or as to deviation for cost. In practice, many courts order parents to provide when reasonably available, and some deviate from guidelines amount because of the cost.	<ul style="list-style-type: none"> • Specific deviation allowed for cost, but not automatic adjustment (like there is for medical insurance) • Does not say whether or not Court can order a parent to provide. But, implies that Court can order if it is available to a parent at reasonable cost. 	19-6-15 (a)(13), 19-6-15 (c)(2)(D), 19-6-15 (i)(2)(C)	E, FO

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Uninsured Health Care Expenses	<ul style="list-style-type: none"> No requirement to address, but many courts do Often, courts order one party to pay all, or require parents to split equally 	<ul style="list-style-type: none"> Must be addressed in final order, but is not part of CS calculation To be divided <i>pro rata</i> unless court says otherwise Enforceable by parent or nonparent custodian CSE shall enforce only if reduced to judgment in sum certain amount 	19-6-15 (h)(3)	WS, FO
Obligation (BCSO) Table	<p>Small table of percentages to apply to <u>gross</u> income of obligor, based on number of children:</p> <p>1 child = 17-23% 2 children = 23-28% 3 children = 25-32% 4 children = 29-35% 5-6 children = 31-37%</p>	<p>Basic support amounts table based on:</p> <ul style="list-style-type: none"> Combined <u>adjusted</u> gross income of both parents & number of children <p>Comparison –</p> <ul style="list-style-type: none"> Below the following combined adjusted gross income levels, BCSO is more than current mid-range percentage. Above these amounts, BCSO is less than current mid-range percentage This comparison does not include deviations under the old or new law, and does not include the adjustments for child care and health insurance under the new law. <p>1 child - \$3,550 2 children - \$5,100 3 children - \$5,350 4 children - \$5,300 5 children - \$5,550 6 children - \$6,400</p>	19-6-15 (a)(3) & (6) 19-6-15 (n), 19-6-15 (o)	WS, B, E

Topic	Current Law	SB 382	OCGA - New Version	WS & FO
<p>Special Circumstances / Deviations</p>	<p>May vary presumptive award</p> <ul style="list-style-type: none"> • 17 different special circumstances • 1 non-specific special circumstance • No guidance on <i>how</i> to vary if decide to vary <p>Special Circumstances:</p> <ul style="list-style-type: none"> • Ages of children • Child’s medical expenses • Educational costs • Day-care costs • Shared physical custody and extended visitation • Party’s other support obligations • Imputed income b/c suppressed • In-kind income for self-employed • Other support provided (mortgage) • Party’s extraordinary needs • Extreme economic circumstances: <ul style="list-style-type: none"> • Unusually high debt • Income over \$75,000/year • Historical spending in family • Community cost-of-living factors 	<p>May vary presumptive award</p> <ul style="list-style-type: none"> • 11 specific deviations • 1 non-specific deviation • Must consider BIC • Must not impair CP ability to maintain basic necessities <p>Specific Deviations:</p> <ul style="list-style-type: none"> • High income (> \$30,000/mo. combined) • Low income of a parent (< \$1,850/mo) – Self-Support Reserve of \$900 • Vision & Dental Insurance costs • Life Insurance premium amount • Child & Dependent Care Tax Credit • Travel expenses for parenting time • Alimony paid by a parent • Mortgage paid or Home Provided to the CP where child resides • Assist in permanency plan if DHR custody • Extraordinary Expenses (all prorated) <ul style="list-style-type: none"> • Child’s Education (special needs or private school) • Child’s Extracurricular activities, other enhancements, if over 7% of BCSO 	<p>19-6-15 (c)(2)(E), 19-6-15 (i)</p>	<p>WS, E, FO</p>

Topic	Current Law	SB 382	OCGA - New Version	WS & FO
Parenting Time Deviation	May consider as special circumstance to vary from presumptive amount	Deviation permitted if special circumstances make presumptive amount excessive or inadequate	19-6-15 (a)(17) 19-6-15 (i)(2)(K)	Maybe WS, E, FO
Social Security Dependents' Benefits	Caselaw permits Title II benefits paid for children on obligor's account to be counted toward CS obligation	Title II benefits paid for children on obligor's account are considered CS. <ul style="list-style-type: none"> • If less than presumptive amount, obligor to pay the difference • If benefits equal to or more than presumptive amount, CS duty met & no further CS to be paid • Any benefits greater than CS amount to be kept by CP and are not a reason for decreasing CS order or reducing arrearages • Written finding of fact required in final order 	19-6-15 (f)(3)	WS, FO
Split Parenting (at least 1 child with each parent)	Not mentioned	<ul style="list-style-type: none"> • Separate worksheet to determine CS for children with each Parent • Final CS Order for each Parent 	19-6-15 (a)(21), 19-6-15 (b)(11), 19-6-15 (l)	FO
Jury's role	Determines amount of CS	<ul style="list-style-type: none"> • Determines gross income and deviations • No jury if CSS / UIFSA / URESA 	19-6-15 (c)(4) 19-6-15 (c)(6)	--
Agreements by Parties	<ul style="list-style-type: none"> • Must be reviewed by the court using guidelines • Parties must provide income and special circumstances info 	<ul style="list-style-type: none"> • Must be reviewed by the court using guidelines • Parties must provide completed worksheet & schedules 	19-6-15 (c)(5)	--

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<p>Final CS Order Requirements</p>	<p>Must include:</p> <ul style="list-style-type: none"> • Both parents' incomes • # of children covered • Presumptive award • List of special circumstances, even if no deviation from guidelines amount • Justification of why vary from guidelines • Continuing garnishment • Income deduction order <i>[separate order]</i> 	<p>Must include:</p> <ul style="list-style-type: none"> • Number of children for whom support being provided • Parents' gross incomes (finding) • Worksheet & Schedule E (attach) • Sum certain amount & from which parent • Manner, frequency, to whom, until when • Whether Health Insurance reasonably available at reasonable cost • Adjustments to BCSO for child care and health insurance expenses (if applicable) • Percentage of Uninsured Health Care Expenses to be paid by each parent • Amount of Noncustodial Parent's parenting time in visitation order • Whether any of the Deviations apply • If any Deviation applied, must state: <ul style="list-style-type: none"> • Reasons for deviation • Presumptive amount of CS • How application of guidelines unjust or inappropriate • How the BIC served by deviation 	<p>19-5-12, 19-6-15 (c)(2), 19-6-15 (f)(3), 19-6-15 (f)(5)(B)(ii), 19-6-15 (h)(1)(F), 19-6-15 (h)(2)(A)(iii), 19-6-15 (k)(4), 19-6-15 (m), 19-6-30 (a) <i>[unchanged]</i>, 19-6-32(a) and (a.1) <i>[unchanged]</i></p>	<p>FO</p>

Topic	Current Law	SB 382	OCGA - New Version	WS & FO
How Long CS Lasts	Until 18, or if in HS, up to age 20	Same as current law	19-6-15 (e)	FO
Interest on CS Judgments	<ul style="list-style-type: none"> • 12% • CSE may waive, reduce or negotiate a settlement of unreimbursed public assistance 	<ul style="list-style-type: none"> • 7% • Court has discretion to apply, waive or reduce past due interest • Specific criteria for waiver • CSE may waive, reduce or negotiate a settlement of unreimbursed public assistance 	7-4-12.1 19-11-5 [unchanged]	Maybe FO
Modification	<ul style="list-style-type: none"> • Modification cannot be retroactive • Two-year time limit on frequency of petitions by one party 	<ul style="list-style-type: none"> • Still requires substantial change in parent's income/ financial status or needs of the child • Modification based on involuntary income loss of 25% causes the attributable portion of the CS not to accrue from date of service • Two-year time limit exceptions for: <ul style="list-style-type: none"> • Failure to exercise visitation • Exercising extra visitation • Involuntary loss of income • Phase-in of big changes permitted • Order must state basis for any modification • CSE reviews & modifications still under OCGA §19-11-12 	19-6-15 (j), 19-6-15 (k), 19-11-12 [unchanged]	FO
Attorney Fees on Modification	<u>May</u> be awarded to prevailing party	<ul style="list-style-type: none"> • <u>May</u> be awarded to prevailing party • <u>Shall</u> be awarded to CP if prevails in upward modification for failure to use visitation 	19-6-15 (k)(5)	--

Topic	Current Law	SB 382	OCGA - New Version	WS & FO
Appeals	Only by leave, not by right	Same as current law	5-6-34	--
Child Support Commission	Under pre-2005 law: <ul style="list-style-type: none"> • Appointed for a few months every 4 years • No ongoing existence • No details on composition • Reviewed CS guidelines to determine if their application results in appropriate awards 	<ul style="list-style-type: none"> • Has ongoing existence • Defined composition • To recommend 1st table of CS obligations, worksheets, software & calculator, training manual • Review CS guidelines at least every 2 years • Study impact of: <ul style="list-style-type: none"> • Parenting time as deviation • Appellate courts' treatment of family law appeals 	19-6-53 (a)	--

Noteworthy Definitions in SB 382	
Parent	19-6-15 (a)(16)
Custodial Parent	19-6-15 (a)(9)
Noncustodial Parent	19-6-15 (a)(14)
Nonparent Custodian	19-6-15 (a)(15)
Split Parenting	19-6-15 (a)(21)
Health Insurance	19-6-15 (a)(13)
Uninsured Health Care Expenses	19-6-15 (a)(23)
Work Related Child Care Costs	19-6-15 (a)(24)
Preexisting Order	19-6-15 (a)(18)
Qualified Child	19-6-15 (a)(20)
Theoretical Child Support Order	19-6-15 (a)(22)

Puzzles & Interesting Language in SB 382

<p>Deviations Only Up? 19-6-15 (c)(1)</p>	<p>“ . . . The rebuttable Presumptive Amount of Child Support provided by this Code section 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.”</p> <ul style="list-style-type: none"> • <i>Does this mean that the amount may only be increased (but not reduced) based on Deviations?</i> • <i>Or, maybe it means that Deviations can only be the basis for increases (not reductions), unless the statutory language of the particular deviation specifies that it may result in a decrease?</i>
<p>Social Security Benefits and Deviation 19-6-15 (f)(3)(B) and 19-6-15 (f)(3)(C)</p>	<p>“(B) . . . if the Presumptive Amount of Child Support is greater than the Social Security benefits paid on behalf of the Child on the obligor’s account, the obligor shall be required to pay the amount exceeding the Social Security benefit as part of the Final Child Support Order in the case.</p> <p>“(C) . . . if the Presumptive Amount of Child Support is equal to or less than the Social Security benefits paid to the Nonparent Custodian or Custodial Parent on behalf of the Child on the obligor’s account, the child support responsibility of that Parent is met and no further child support shall be paid.”</p> <ul style="list-style-type: none"> • <i>Both of these provisions compare the amount of Social Security benefits paid for the children with the presumptive amount of support (rather than the final support order), but then state a conclusion about what the parent should pay (if anything).</i> • <i>Does this mean that Deviations are not permissible in this type of case?</i>

Puzzles & Interesting Language in SB 382 (continued)

<p>Reliable Evidence and Imputing Income 19-6-15 (f)(4)(A) & (B)</p>	<p>“(A) IMPUTED INCOME. . . if a Parent fails to produce reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to pay child support . . . and the Court . . . has no other reliable evidence of the Parent’s income or income potential, Gross Income for the current year shall be determined by imputing Gross Income based on a 40 hour workweek at minimum wage.”</p> <ul style="list-style-type: none"> • <i>Does this mean that income will always be imputed at the minimum wage, regardless of the Parent’s earnings history, if that Parent fails to provide paper evidence of current income?</i> • <i>Or, can the phrases “other information” and “other reliable evidence” be interpreted to permit courts to continue the practice of setting support based on testimony about a Parent’s prior earnings?</i> • <i>And, if one Parent has produced documentary evidence of his/her own income, and the other Parent has not, should the testimony of the Parent who has not produced documentation be accepted as “other reliable evidence” about his/her own income?</i>
<p>Arrears and Rehearing in Imputed Income Cases 19-6-15 (f)(4)(C)</p>	<p>“(C) REHEARING [in imputed income cases]. . .the party believing the income of the other party is higher than the amount imputed may . . .[file a motion within 90 days]. The Court may increase, decrease, or the amount of current child support may remain the same from the date of filing of either Parent’s initial filing or motion for reconsideration. While the motion for reconsideration is pending, the obligor shall be responsible for the amount of child support originally ordered. Arrearages entered in the original child support order based upon imputed income shall not be forgiven.”</p> <ul style="list-style-type: none"> • <i>This seems internally contradictory, allowing the Court to decrease support back to the date of filing, but not allowing the court to forgive arrears.</i> • <i>The only way I can figure to make it all work together is to say it means that the Court can only decrease support back to the date of filing if the parent has been paying it in the mean time (i.e., not accruing arrears).</i> • <i>Or, maybe the sentence about arrearages is limited to arrearages that were already accrued prior to the entry of the original order?</i>

Puzzles & Interesting Language in SB 382 (continued)

<p>Willful or Voluntary Unemployment or Underemployment</p> <p>19-6-15 (f)(4)(D)</p>	<p>“(D) WILLFUL OR VOLUNTARY UNEMPLOYMENT OR UNDEREMPLOYMENT. In determining whether a Parent is willfully or voluntarily unemployed or underemployed, the Court or the jury shall ascertain the reasons for the Parent’s occupational choices and assess the reasonableness of these choices In determining willful or voluntary unemployment or underemployment, the Court may examine whether there is a substantial likelihood that the Parent could, with reasonable effort, apply his or her education, skills, or training to produce income. Specific factors for the Court to consider when determining willful or voluntary unemployment or underemployment include, but are not limited to:</p> <p>(vi) . . . When considering the income potential of a Parent whose work experience is limited due to the caretaker role of that Parent, the Court shall consider the following factors: . . .”</p> <p>A determination of willful and voluntary unemployment or underemployment shall not be made when an individual is activated from the National Guard”</p> <ul style="list-style-type: none"> • <i>How do we reconcile all of the mandatory and permissive language here?</i>
<p>Involuntary Loss of Income — Service Requirement for Nonaccrual</p> <p>19-6-15 (j)(1)</p>	<p>(j) Involuntary loss of income.</p> <p>(1) In the event a Parent suffers an involuntary termination of employment, has an extended involuntary loss of average weekly hours, is involved in an organized strike, incurs a loss of health, or similar involuntary adversity resulting in a loss of income of 25 percent or more, then the portion of child support attributable to lost income shall not accrue from the date of the service of the petition for modification, provided that service is made on the other Parent.</p> <ul style="list-style-type: none"> • <i>Does the phrase at the end mean that all of the support continues to accrue, unless and until service is perfected?</i> • <i>Or, does it mean that service must be made on the other Parent, even if service has also been made on CSE or on a Nonparent Custodian?</i>

Puzzles & Interesting Language in SB 382 (continued)

<p>Adjustment for Supporting Other Children</p> <p>19-6-15 (f)(5)(B)(i) and 19-6-15 (f)(5)(C)</p> <p><i>also see</i></p> <p>19-6-15 (a)(18), 19-6-15 (a)(20) and 19-6-15 (a)(22)</p>	<p>“(B) . . . (i) In calculating the adjustment for Preexisting Orders, the Court shall include only those Preexisting Orders where the date of entry of the initial support order precedes the date of entry of the initial order in the case immediately under consideration; . . .</p> <p>“(C) THEORETICAL CHILD SUPPORT ORDERS. In addition to the adjustments to monthly Gross Income for self-employment taxes provided in subparagraph (A) of this paragraph and for Preexisting Orders provided in subparagraph (B) of this paragraph, credits for either Parent’s other Qualified Child living in the Parent’s home for whom the Parent owes a legal duty of support may be considered by the Court for the purpose of reducing the Parent’s Gross Income. . . .”</p> <ul style="list-style-type: none"> • <i>Depending on the construction of the phrase “initial order in the case,” these provisions may preclude the court from adjusting a parent’s income based on some child support orders. Unless the child lives with the Parent, the Court can only adjust the Parent’s income for supporting that Child if there is an order that meets the sequence requirement of (B)(i) above.</i> <ul style="list-style-type: none"> • <i>Without the word “initial,” (B)(i) would allow adjustment for any current child support order that was being paid by the parent. With the addition of that word, the statute seems to prohibit the court from considering any child support orders for cases in which the first order was entered after the first order concerning the children presently before the court.</i> • <i>But, what is a “case” in this context? Does it refer to all court actions concerning a particular child? Or, does it refer to a particular court case? If the latter, again the Court would be able to adjust the parent’s income based on any current support orders the parent has been paying. If the former, then the Court cannot consider any orders except ones in which the first order for a particular child was entered before the first order about the child in the present case.</i> • <i>How should Courts construe the words “initial” and “case” in this provision?</i>
<p>Schedule C — Where is it?</p>	<ul style="list-style-type: none"> • <i>You may have noticed references to Schedules A, B, D and E, and wondered what happened to Schedule C. It was the schedule designed to calculate the deduction for parenting time under HB 221, passed in 2005. However, when the automatic parenting time adjustment was replaced by the deviation, it appears that the legislators did not try to re-label the other schedules. They simply deleted the references to Schedule C.</i>

Puzzles & Interesting Language in SB 382 (continued)

<p>Deviation for Extraordinary Medical Expenses</p> <p>19-6-15 (i)(2)(J), 19-6-15 (i)(2)(J)(iii)</p>	<p>(iii) Extraordinary medical expenses. In instances of extreme economic hardship involving extraordinary medical expenses not covered by insurance, the Court or the jury may consider a Deviation from the Presumptive Amount of Child Support for extraordinary medical expenses. Such expenses may include, but are not limited to, extraordinary medical expenses of the Child, a Parent, or a Child of a Parent’s current family</p> <ul style="list-style-type: none"> • <i>Since the list is not exclusive, it seems that extraordinary expenses for the Parent’s current spouse (or other disabled or elderly family members dependent on the Parent) could also be the basis for this Deviation in an appropriate case.</i> • <i>However, Deviations based on any of the three kinds of Extraordinary Expenses in 19-6-15 (i)(2)(J) must be prorated between the Parents. Must one Parent then share the burden of extraordinary medical expenses for the other Parent or another member of that Parent’s family?</i>
<p>Nonspecific Deviations and Modification</p> <p>19-6-15 (i)(3)</p>	<p>(3) NONSPECIFIC DEVIATIONS. Deviation from the Presumptive Amount of Child Support may be appropriate for reasons in addition to those established under this subsection when the Court or the jury finds it is in the best interest of the Child. If the circumstances which supported the Deviation cease to exist, the Final Child Support Order may be modified as set forth in subsection (k) of this Code section to eliminate the Deviation.</p> <ul style="list-style-type: none"> • <i>Does the second sentence here intend to prescribe a special standard that applies only to nonspecific Deviations?</i> • <i>Or, does it apply more generally — to all situations where a Deviation has occurred?</i> • <i>And, does this sentence really say anything that would not already be true under subsection (k) anyway?</i>

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