

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1292

Short Title: Child Support Relief.

(Public)

Sponsors: Representative B. Ethridge.

Referred to: Judiciary.

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE RELIEF TO CLERKS OF COURT IN HANDLING CHILD
SUPPORT CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-13.4(d) reads as rewritten:

"(d) Payments for the support of a minor child shall be ordered to be paid to the person having custody of the child or any other proper person, agency, organization or institution, or upon failure of the supporting party to comply with a previously entered order to support, or for other good cause found, to the court, for the benefit of such child."

Sec. 2. G.S. 50-13.9 reads as rewritten:

"§ 50-13.9. Procedure to insure payment of child support.

(a) Upon its own motion or upon motion of either party, and upon finding that the supporting party has failed to comply with a previously entered order to support, or for other good cause found, the court may order at any time that support payments be made to the clerk of court for remittance to the party entitled to receive the payments.

(b) After entry of such an order by the court, the clerk of court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

In IV-D cases, when required by federal or state law or regulations or by court order, the clerk of superior court shall transmit child support payments that are made to the clerk to the Department of Human Resources for appropriate distribution. In all other cases, whether IV-D or non-IV-D, the clerk shall transmit the payments to the custodial parent or other party entitled to receive them, unless a court order requires otherwise.

1 Attorney fees, alimony, and incidents of child support other than cash payment,
2 including but not limited to medical expenses, insurance, tuition, and mortgage
3 payments, shall not be paid through or enforced by the Clerk of Superior Court.

4 (c) The parties affected by the order shall inform the clerk of court of any change
5 of address or of other condition that may affect the administration of the order. The
6 court may provide in the order that a party failing to inform the court of a change of
7 address within a reasonable period of time may be held in civil contempt.

8 (d) In a non-IV-D case, when an obligor fails to make a required payment of
9 child support and is in arrears, the clerk of superior court shall mail by regular mail to
10 the last known address of the obligor a notice of delinquency. The notice shall set out
11 the amount of child support currently due and shall demand immediate payment of said
12 amount. The notice shall also state that failure to make immediate payment will result in
13 the issuance by the court of an enforcement order requiring the obligor to appear before
14 a district court judge and show cause why the support obligation should not be enforced
15 by income withholding, contempt of court, or other appropriate means. Failure to
16 receive the delinquency notice shall not be a defense in any subsequent proceeding. ~~If~~
17 Sending the notice of delinquency shall be in the discretion of the clerk if the clerk has
18 previously sent a notice or notices of delinquency to the obligor for nonpayment, or if
19 income withholding has been implemented against the obligor or the obligor has been
20 previously found in contempt for nonpayment under the same child support order;
21 ~~sending the notice of delinquency shall be in the discretion of the clerk.~~

22 If the arrearage is not paid in full within 21 days after the mailing of the delinquency
23 notice, ~~or is not paid within 30 days after the obligor becomes delinquent if the clerk has~~
24 ~~elected not to send a delinquency notice, the clerk~~ if the clerk has previously sent a
25 notice or notices of delinquency to the obligor for non-payment, or for other reasons
26 herein provided, and has elected not to send a delinquency notice, the clerk, without
27 considering the 21 days herein provided for making payment, shall cause an
28 enforcement order to be issued and shall issue a notice of hearing before a district court
29 judge. The enforcement order shall order the obligor to appear and show cause why he
30 should not be subjected to income withholding or adjudged in contempt of court, or
31 both, and shall order the obligor to bring to the hearing records and information relating
32 to his employment and the amount and sources of his disposable income. The
33 enforcement order shall state:

- 34 (1) That the obligor is under a court order to provide child support, the
35 name of each child for whose benefit support is due, and information
36 sufficient to identify the order;
- 37 (2) That the obligor is delinquent and the amount of overdue support;
- 38 (3) That the court may order income withholding if the obligor is
39 delinquent in an amount equal to the support due for one month;
- 40 (4) That income withholding, if implemented, will apply to the obligor's
41 current payors and all subsequent payors and will be continued until
42 terminated pursuant to G.S. 110-136.10;

1 (5) That failure to bring to the hearing records and information relating to
2 his employment and the amount and sources of his disposable income
3 will be grounds for contempt;

4 (6) That if income withholding is not an available or appropriate remedy,
5 the court may determine whether the obligor is in contempt of whether
6 any other enforcement remedy is appropriate.

7 The enforcement order may be signed by the clerk or a district court judge, and shall be
8 served on the obligor pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. The clerk
9 shall also notify the party to whom support is owed of the pending hearing. The clerk
10 may withdraw the order to the supporting party upon receipt of the delinquent payment.
11 On motion of the person to whom support is owed, with the approval of the district
12 court judge, if he finds it is in the best interest of the child, no enforcement order shall
13 be issued.

14 When the matter comes before the court, the court shall make a specific finding of
15 fact of the amount of arrearages as of the day of the hearing and shall proceed as in the
16 case of a motion for income withholding under G.S. 110-136.5. If income withholding
17 is not an available or adequate remedy, the court may proceed with contempt,
18 imposition of a lien, or other available, appropriate enforcement remedies that will
19 assure payment of regular child support and will eliminate the arrearages over a
20 reasonable period of time.

21 This subsection shall apply only to non-IV-D cases, except that the clerk shall issue
22 an enforcement order in a IV-D case when requested to do so by an IV-D obligee.

23 (e) The clerk of court shall maintain and make available to the district court
24 judge a list of attorneys who are willing to undertake representation, pursuant to this
25 section, of persons to whom child support is owed. No attorney shall be placed on such
26 list without his permission.

27 (f) At least seven days prior to an enforcement hearing as set forth in subsection
28 (d), the clerk must notify the district court judge of all cases to be heard for enforcement
29 at the next term, and the judge shall appoint an attorney from the list described in
30 subsection (e) to represent each party to whom support payments are owed if the judge
31 deems it to be in the best interest of the child for whom support is being paid, unless:

32 (1) The attorney of record for the party to whom support payments are
33 owed has notified the clerk of court that he will appear for said party;

34 or

35 (2) The party to whom support payments are owed requests the judge not
36 to appoint an attorney; or

37 (3) An attorney for the enforcement of child support obligations pursuant
38 to Title IV, Part D, of the Social Security Act as amended is available.

39 The judge may order payment of reasonable attorney's fees as provided in G.S. 50-
40 13.6.

41 (g) Nothing in this section shall preclude the independent initiation by a party of
42 proceedings for civil contempt or for income withholding."

43 Sec. 3. G.S. 50-13.10(d) reads as rewritten:

1 "(d) For purposes of this section, a child support payment or the relevant portion
2 thereof, is not past due, and no arrearage accrues:

3 (1) From and after the date of the death of the minor child for whose
4 support the payment, or relevant portion, is made;

5 (2) From and after the date of the death of the supporting party;

6 (3) During any period of 30 days or longer when the child is or the
7 children are living with the supporting party pursuant to a valid court
8 order or to an express or implied written or oral agreement temporarily
9 transferring primary custody to the supporting party provided:

10 a. The supporting party shall have furnished written notice of the
11 temporary custody transfer to the clerk before the payment due
12 date identifying the time period that the transfer of temporary
13 custody will be in effect, and proof that a copy of the written
14 notice has been served on the custodial party pursuant to Rule 5
15 of the Rules of Civil Procedure, G.S. 1A-1; and

16 b. The party to whom support payments are owed has not filed
17 objection within five days of receipt of actual notice of the
18 cessation of payments.

19 The clerk may enter credit as he determines proper based on the
20 written notice, unless credit for the time the child is with the
21 supporting party is either verified by the custodial parent or by court
22 order;

23 (4) During any period when the supporting party is incarcerated, is not on
24 work release, and has no resources with which to make the payment."

25 Sec. 4. This act shall become effective October 1, 1989.