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HOUSE BILL 542*
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Short Title: Child Support Reform.

(Public)

Sponsors:

Referred to:

April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO RESTRUCTURE THE CHILD SUPPORT SYSTEM IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. This act is the Child Support Reform Act of 1991.

Sec. 2. G.S. 110-128 reads as rewritten:

"§ 110-128. ~~Purposes.~~ **Purposes; phasing in of State-supervised child support enforcement system.**

(a) The purposes of this Article are to provide for the financial support of dependent children; to enforce spousal support when a child support order is being enforced; to provide that public assistance paid to dependent children is a supplement to the support required to be provided by the responsible parent; to provide that the payment of public assistance creates a debt to the State; to provide that the acceptance of public assistance operates as an assignment of the right to child support; to provide for the location of absent parents; to provide for ~~a determination~~ determinations that responsible ~~parent is~~ parents are able to support ~~his~~ their children; and to provide for enforcement of the responsible parent's obligation to furnish support and to provide for the establishment and administration of a program of child support enforcement in North Carolina.

(b) By October 1, 1991, the Secretary of the Department of Human Resources and the Director of the Administrative Office of the Courts shall select up to six counties in which to begin implementing a restructured child support system under this

1 Article on a demonstration basis, to determine the actual cost of providing child support
2 services under that system and to assess the mechanics of further transition to statewide
3 implementation of that system.

4 (c) On or before August 15, 1992, the Secretary of the Department of Human
5 Resources and the Director of the Administrative Office of the Courts shall submit to
6 the Child Support Oversight Commission a report of the results of operating the new
7 system in the counties selected under this section. Based on that report, budgets and
8 plans will be made to phase in the new system statewide by July 1, 1994. Before July 1,
9 1994, the new system may be implemented in any other counties selected by the
10 Secretary of the Department of Human Resources and the Director of the
11 Administrative Office of the Courts and with the approval of the county commissioners
12 of those counties, and that implementation shall be reported to the Commission. The
13 new system shall be implemented in the remaining counties of the State no later than
14 July 1, 1994."

15 Sec. 3. G.S. 110-141 reads as rewritten:

16 **"§ 110-141. Effectuation of intent of Article.**

17 (a) The North Carolina Department of Human Resources shall supervise the
18 administration of this program in accordance with federal law and shall cause the
19 provisions of this Article to be effectuated and to secure child support from absent,
20 deserting, abandoning and nonsupporting parents.

21 (b) Effective July 1, 1986, the entity, whether the board of county commissioners
22 or the Department of Human Resources, that is administering, or providing for the
23 administration of, this program in each county on June 30, 1986, shall continue to
24 administer, or provide for the administration of, this program in that county, with one
25 exception. If a county program is being administered by the Department of Human
26 Resources on June 30, 1986, and if the board of county commissioners of this county
27 desires on or after that date to assume responsibility for the administration of the
28 program, the board of county commissioners shall notify the Department of Human
29 Resources between July 1 and September 1 of the current fiscal year. The obligations of
30 the board of county commissioners to assume responsibility for the administration of the
31 program shall not begin before July 1 of the subsequent fiscal year. Until that time, it is
32 the responsibility of the Department of Human Resources to administer or provide for
33 the administration of the program in the county."

34 ~~A county may negotiate alternative arrangements to the procedure outlined in G.S.~~
35 ~~110-130 for designating a local person or agency to administer the provisions of this~~
36 ~~Article in that county.~~

37 (c) Effective July 1, 1994, the entity, whether the board of county commissioners
38 or the Department of Human Resources, that is providing for the administration of this
39 program in each county shall continue to provide for the administration of the program
40 in the county. When a board of county commissioners administers the county program,
41 the board shall enter into a cooperative agreement with the Department of Human
42 Resources in accordance with G.S. 120-70.86(e). This cooperative agreement shall set
43 forth minimum statewide performance criteria and compliance remedies.

1 (d) The Department of Human Resources shall adopt rules to implement the
2 State-supervised child support enforcement system, and shall make regular reports to
3 the Child Support Oversight Commission on rules and uniform standards being
4 developed as a part of this process."

5 Sec. 4. Chapter 50 of the General Statutes is amended by adding the
6 following Article:

7 **"ARTICLE 3.**

8 **"ENFORCEMENT OF CHILD SUPPORT IN CERTAIN COUNTIES.**

9 **"§ 50-40. Purpose and applicability.**

10 (a) The purpose of this Article is to establish the procedures for the enforcement
11 of child support in counties selected under G.S. 110-128 for the early implementation of
12 a universal, reformed State-supervised child support system on a demonstration basis.

13 (b) This Article shall apply only in the selected counties. In those counties, this
14 Article shall apply on and after the implementation date to all cases in existence on that
15 date or beginning on or after that date.

16 (c) Except to the extent that this Article specifically provides otherwise, all other
17 child support laws of this State, including those in Articles 1 and 2 of this Chapter, of
18 Chapter 49, of Chapter 52A, and of Article 9 of Chapter 110 of the General Statutes,
19 shall apply in those counties with the same force and effect as if this Article had not
20 been enacted; provided that:

21 (1) All child support cases in which payment through the clerk as defined
22 in this Article is in effect shall be treated as 'IV-D Cases' under G.S.
23 50-13.9 and under Article 9 of Chapter 110 of the General Statutes;

24 (2) G.S. 50-33(a) shall not apply to any county to which this Article
25 applies, and G.S. 50-33(b) shall apply to each of those counties as if a
26 waiver of the federal expedited process requirement had never been
27 obtained;

28 (3) G.S. 50-13.9(a) and (b) shall not apply to any case, and in cases in
29 which payment through the clerk is in effect, the information required
30 by G.S. 50-13.9(c) shall be given to the child support enforcement
31 agency; and

32 (4) The term 'judge' when used in G.S. 110-131, 110-132, 110-133, and
33 110-136, and the term 'court' when used in G.S. 110-136(c) and G.S.
34 110-136.1 shall include district court judge and child support hearing
35 officer.

36 **"§ 50-41. Definitions.**

37 (a) The definitions in G.S. 50-31 and in G.S. 110-129 apply in this Article.

38 (b) The following definitions apply in this Article:

39 (1) Implementation date. The date on which a State-supervised child
40 support system is implemented in a county under G.S. 110-128.

41 (2) Child support enforcement agency. An agency that administers the
42 State-supervised child support system in any county under the
43 provisions of Article 9 of Chapter 110 of the General Statutes and Title
44 IV-D of the Social Security Act.

1 (3) Payment through the clerk. A method of paying child support under
2 which all payments made by or for an obligor are paid to the clerk of
3 superior court for transmission to the Department of Human Resources
4 under G.S. 50-43(b).

5 (4) Direct payment. A method of paying child support under which all
6 payments made by or for an obligor are paid directly to and received
7 directly by the obligee and are not paid through the clerk.

8 **"§ 50-42. Methods of paying child support and enforcing child support orders in**
9 **existing cases.**

10 (a) In each child support case that is in existence on the implementation date:

11 (1) The operative child support order and any income withholding that has
12 been implemented in the case shall remain in full force and effect
13 unless and until it is specifically modified by the court or until it
14 expires by its own terms or by operation of law.

15 (2) All payments received by the clerk of superior court under that order
16 shall be transmitted to the Department of Human Resources or
17 disbursed to the custodial parent or other obligee, as they were being
18 transmitted or disbursed immediately before the implementation date.

19 (b) When the child support in a case is being transmitted to the Department of
20 Human Resources, the procedures of G.S. 50-43(b) shall be followed.

21 (c) When the child support in a case is being disbursed to the custodial parent or
22 other obligee:

23 (1) Any proceedings to enforce the child support orders shall be initiated
24 by the obligee personally or through a private attorney until the obligee
25 begins to receive child support services from a child support
26 enforcement agency as provided in G.S. 110-130.1;

27 (2) The clerk shall have no further responsibility or authority to monitor
28 the obligor's compliance with the operative child support order or to
29 initiate any enforcement proceedings;

30 (3) If any obligee begins to receive child support services from a child
31 support enforcement agency as provided in G.S. 110-130.1, the agency
32 shall notify the clerk. The clerk, without further court order, shall
33 transmit to the Department of Human Resources all child support
34 payments received after notification, and the procedures that apply
35 under G.S. 50-43(b) to a case in which payment through the clerk is in
36 effect shall be followed;

37 (4) If income withholding is implemented under Article 9 of Chapter 110
38 of the General Statutes by court order, the order shall provide for
39 payment through the clerk unless the requirements for direct payment
40 set forth in G.S. 50-43(c) are satisfied; and

41 (5) As soon as practical after the implementation date, the clerk and the
42 child support enforcement agency shall give all parties notice of the
43 matters set forth in this subsection and of any other information that
44 they consider relevant, and in so doing shall comply with any

1 procedures or guidelines that the Department of Human Resources and
2 the Administrative Office of the Courts may prescribe.

3 **"§ 50-43. Methods of paying child support and enforcing child support orders in**
4 **new cases and in existing cases when a modified order is entered.**

5 (a) In each child support case that is in existence on the implementation date or
6 begun on or after that date, all child support orders, whether original or modified, shall
7 provide for payment through the clerk unless the court orders direct payment under
8 subsection (c); those orders shall also contain the provisions required by G.S. 110-
9 136.3(a).

10 (b) When payment through the clerk is in effect in any case:

11 (1) All child support payments of child support made by or for the obligor
12 shall be paid to the clerk of superior court;

13 (2) Upon receipt of any child support payment, the clerk shall promptly
14 transmit the payment to the Department of Human Resources, and the
15 Department shall promptly disburse the payment to the obligee;

16 (3) The child support enforcement agency for the county shall have sole
17 responsibility and authority for monitoring the obligor's compliance
18 with all child support orders in the case and for initiating any
19 enforcement procedures that it considers appropriate;

20 (4) The clerk shall maintain all official records in the case, including
21 records showing the amount of each payment of child support received
22 from or on behalf of the obligor, along with the dates on which each
23 payment was received and was transmitted to the Department of
24 Human Resources; and

25 (5) The child support enforcement agency shall maintain any other records
26 needed to monitor the obligor's compliance with or to enforce the child
27 support orders in the case.

28 (c) The procedures for direct payment are as follows:

29 (1) The court may order direct payment when a consent to direct payment
30 and a waiver of immediate income withholding are in effect;

31 (2) Consent to direct payment and waiver of immediate income
32 withholding are in effect only if stated in a written agreement signed
33 by each party and by the attorney of record, if any, for each party, and
34 filed with the clerk;

35 (3) When direct payment is in effect:

36 a. Any proceedings to enforce the child support orders in the case
37 must be initiated by the obligee personally or through a private
38 attorney until the obligee begins to receive child support
39 services from a child support enforcement agency as provided
40 in G.S. 110-130.1;

41 b. Income withholding shall not be implemented, but the obligor
42 remains subject to income withholding as provided in G.S. 110-
43 136.3(b); and

- 1 c. If any obligee begins to receive child support services from a
 2 child support enforcement agency as provided in G.S. 110-
 3 130.1, the agency shall notify the clerk.
 4 (4) The clerk, without further notice or hearing, shall promptly enter an
 5 order for payment through the clerk whenever:
 6 a. A copy of a notice of obligation to withhold, with a copy of a
 7 certificate showing proper service on the payor named in the
 8 notice, is filed with the clerk under G.S. 110-136.4;
 9 b. The records of the court otherwise show that income
 10 withholding has been implemented under Article 9 of Chapter
 11 110 of the General Statutes; or
 12 c. A child support enforcement agency notifies the clerk that any
 13 obligee is receiving child support services under G.S. 110-
 14 130.1."

15 Sec. 5. Effective July 1, 1992, G.S. 52A-3 reads as rewritten:

16 "**§ 52A-3. Definitions.**

17 As used in this Chapter unless the context requires otherwise:

- 18 (1) 'Court' means any court of record in this State having jurisdiction to
 19 determine liability of persons for the support of dependents in any
 20 criminal proceeding, and when the context requires, means the court of
 21 any other state as defined in substantially similar reciprocal law.
 22 (2) 'Duty of support' means a duty of support whether imposed or
 23 imposable by law or by order, decree, or judgment of any court
 24 whether interlocutory or final or whether incidental to an action for
 25 divorce, separation, separate maintenance, or otherwise and includes
 26 the duty to pay arrearages of support past due and unpaid.
 27 (3) 'Governor' includes any person performing the functions of Governor
 28 or the executive authority of any state covered by this Chapter.
 29 (4) 'Initiating state' means a state in which a proceeding pursuant to this or
 30 a substantially similar reciprocal law is commenced. 'Initiating court'
 31 means the court in which a proceeding is commenced.
 32 (5) 'Law' includes both common and statute law.
 33 (6) 'Obligee' means a person including a state or political subdivision to
 34 whom a duty of support is owed or a person including a state or
 35 political subdivision that has commenced a proceeding for
 36 enforcement of an alleged duty of support or for registration of a
 37 support order. It is immaterial if the person to whom a duty of support
 38 is owed is a recipient of public assistance.
 39 (7) 'Obligor' means any person owing a duty of support or against whom a
 40 proceeding for the enforcement of a duty of support or registration of a
 41 support order is commenced.
 42 (8) 'Prosecuting attorney' means ~~the district attorney in the appropriate~~
 43 ~~place who has the duty to enforce criminal laws relating to the failure~~
 44 ~~to provide for the support of any person any attorney who represents a~~

1 child support enforcement agency under Title IV-D of the Social
 2 Security Act and Article 9 of Chapter 110 of the General Statutes in
 3 any county of this State.

4 (9) 'Register' means to record and file in the Registry of Foreign Support
 5 Orders.

6 (10) 'Registering court' means any court of this State in which a support
 7 order of a rendering state is registered.

8 (11) 'Rendering state' means a state in which the court has issued a support
 9 order for which registration is sought or granted in the court of another
 10 state.

11 (12) 'Responding state' means a state in which any responsive proceeding
 12 pursuant to the proceeding in the initiating state is commenced.
 13 'Responding court' means the court in which the responsive proceeding
 14 is commenced.

15 (13) 'State' includes a state, territory, or possession of the United States, the
 16 District of Columbia, the Commonwealth of Puerto Rico, the
 17 provinces of Canada in which reciprocity can be effected by
 18 administrative action, and any foreign jurisdiction in which this or a
 19 substantially similar reciprocal law is in effect.

20 (14) 'Support order' means any judgment, decree, or order of support in
 21 favor of an obligee whether temporary or final, or subject to
 22 modification, revocation, or remission, regardless of the kind of action
 23 or proceeding in which it is entered."

24 Sec. 6. Effective July 1, 1992, G.S. 52A-9 reads as rewritten:

25 **"§ 52A-9. How duties of support are enforced.**

26 All duties of support including the duty to pay arrearages are enforceable by action
 27 irrespective of relationship between the obligor and obligee. Jurisdiction of all
 28 proceedings hereunder shall be vested in any court of record in this State having
 29 jurisdiction to determine liability of persons for the support of dependents in any
 30 ~~criminal~~ proceeding."

31 Sec. 7. Effective July 1, 1992, G.S. 52A-10.1 reads as rewritten:

32 **"§ 52A-10.1. Official to represent obligee; responding and initiating.**

33 It shall be the duty of the ~~official who prosecutes criminal actions for the State in the~~
 34 ~~court acquiring jurisdiction prosecuting attorney~~ to appear on behalf of the obligee in
 35 proceedings under this Chapter, both when this State is the responding state and when
 36 this State is the initiating state. ~~In the event of appeal from a support order entered under~~
 37 ~~this Chapter~~ Appellate Division, the Attorney General shall represent the obligee."

38 Sec. 8. Effective July 1, 1992, G.S. 52A-10.3 is repealed.

39 Sec. 9. Effective July 1, 1993, G.S. 14-322 reads as rewritten:

40 **"§ 14-322. Abandonment and failure to support spouse and children.**

41 (a) For purposes of this Article:

42 (1) 'Supporting spouse' means a spouse, whether husband or wife, upon
 43 whom the other spouse is actually substantially dependent or from

1 whom ~~such~~ the other spouse is substantially in need of maintenance
2 and support.

3 (2) 'Dependent spouse' means a spouse, whether husband or wife, who is
4 actually substantially dependent upon the other spouse for his or her
5 maintenance and support or is substantially in need of maintenance
6 and support from the other spouse.

7 (b) Any supporting spouse who shall willfully abandon a dependent spouse
8 without providing that spouse with adequate support shall be guilty of a misdemeanor
9 and upon conviction shall be punished according to subsection (f).

10 (c) Any supporting spouse who, while living with a dependent spouse, shall
11 willfully neglect to provide adequate support for that dependent spouse shall be guilty
12 of a misdemeanor and upon conviction shall be punished according to subsection (f).

13 ~~(d) Any parent who shall willfully neglect or refuse to provide adequate support
14 for that parent's child, whether natural or adopted, and whether or not the parent
15 abandons the child shall be guilty of a misdemeanor and upon conviction shall be
16 punished according to subsection (f). Willful neglect or refusal to provide adequate
17 support of a child shall constitute a continuing offense and shall not be barred by any
18 statute of limitations until the youngest living child of the parent shall reach the age of
19 18 years.~~

20 (e) Upon conviction for an offense under this section, the court may make ~~such~~
21 an order as that will best provide for the support, as far as may be necessary, of the
22 abandoned spouse or child or both, from the property or labor of the defendant. If the
23 court requires the payment of child support, the amount of the payments shall be
24 determined as provided in G.S. 50-14.4(e).

25 (f) A first offense under this section shall be punishable by a fine not exceeding
26 five hundred dollars (\$500.00), or by imprisonment for not more than six months or
27 both. A second or subsequent offense shall be a misdemeanor punishable by fine, or by
28 imprisonment for not more than two years, or both."

29 Sec. 10. Effective July 1, 1993, Article 1 of Chapter 49 of the General
30 Statutes and G.S. 110-138.1 are repealed.

31 Sec. 11. Effective July 1, 1993, G.S. 49-14 reads as rewritten:

32 "**§ 49-14. Civil action to establish paternity.**

33 (a) The paternity of a child born out of wedlock may be established by civil
34 action at any time ~~prior to such~~ before the child's eighteenth birthday. A certified copy
35 of a certificate of birth of the child shall be attached to the complaint. ~~Such~~ The
36 establishment of paternity shall not have the effect of legitimation.

37 (b) Proof of paternity ~~pursuant to~~ under this section shall be beyond a reasonable
38 doubt.

39 (c) No such action shall be ~~commenced~~ begun nor judgment entered after the
40 death of the putative father.

41 (d) If the action to establish paternity is brought more than three years after birth
42 of a child, paternity shall not be established in a contested case without evidence from a
43 blood grouping test, or evidence that the putative father has declined an opportunity for
44 such testing. In a contested case the court shall, on motion of any party, order that the

1 alleged-parent defendant, the known natural parent, and the child submit to any blood,
 2 DNA, genetic, or other similar tests and comparisons that have been developed and
 3 adapted for purposes of establishing or disproving parentage and that are reasonably
 4 accessible to the alleged-parent defendant, the known natural parent, and the child. The
 5 results of those tests and comparisons including the statistical likelihood of the alleged
 6 parent's parentage, if available, shall be admitted in evidence when offered by a duly
 7 qualified licensed practicing physician, duly qualified immunologist, duly qualified
 8 geneticist, or other duly qualified person. The evidentiary effect of those tests and
 9 comparisons and the manner in which the expenses therefor are to be taxed as costs
 10 shall be prescribed in G.S. 8-50.1. If a jury tries the issue of parentage, the jury shall be
 11 instructed as set out in G.S. 8-50.1. There shall be no interlocutory appeal from a
 12 finding on the issue of parentage, but any error in the finding may be assigned in any
 13 appeal from, or other appellate review of, the final judgment entered in an action under
 14 this Article."

15 Sec. 12. Article 12 of Chapter 7A of the General Statutes is amended by
 16 adding two new sections to read:

17 **"§ 7A-114. Clerk of superior court as child support hearing officer.**

18 A clerk of superior court or an assistant clerk who meets the qualifications of G.S.
 19 50-39 and is properly designated under Article 2 of Chapter 50 of the General Statutes
 20 as a child support hearing officer, may serve in that capacity and exercise ex officio the
 21 authority and responsibilities conferred upon child support hearing officers by that
 22 Article, and in so doing is a judicial officer of the District Court Division of the General
 23 Court of Justice.

24 **"§ 7A-133.1. Magistrates designated as child support hearing officers not included**
 25 **in minimum or maximum for county.**

26 When a magistrate has been designated as a child support hearing officer under
 27 Article 2 of Chapter 50 of the General Statutes, that magistrate shall not be considered
 28 in determining whether the county in which he or she was appointed has the minimum
 29 or maximum number of magistrates provided for in G.S. 7A-133, if the Director of the
 30 Administrative Office of the Courts determines that the magistrate's duties as a child
 31 support hearing officer have required or are likely to require, on the average, half or
 32 more of that magistrate's time each month."

33 Sec. 13. G.S. 7A-178 reads as rewritten:

34 **"§ 7A-178. Magistrate as child support hearing officer.**

35 A magistrate who meets the qualifications of G.S. 50-39 and is properly designated
 36 pursuant to under G.S. Chapter 50, Article 2 to serve as a child support hearing officer,
 37 may serve in that capacity and has the may exercise ex officio the authority and
 38 responsibilities assigned to conferred upon child support hearing officers by Chapter 50."

39 Sec. 14. G.S. 50-13.4 reads as rewritten:

40 **"§ 50-13.4. Action for support of minor child.**

41 (a) Any parent, or any person, agency, organization or institution having custody
 42 of a minor child, or bringing an action or proceeding for the custody of such the child, or
 43 a minor child by his the child's guardian may institute an action for the support of such
 44 the child as hereinafter provided. provided in this section.

1 (b) In the absence of pleading and proof that the circumstances otherwise
2 warrant, the father and mother shall be primarily liable for the support of a minor child,
3 and any other person, agency, organization or institution standing **in loco parentis** shall
4 be secondarily liable for ~~such~~ support. Such other circumstances may include, but shall
5 not be limited to, the relative ability of all the above-mentioned parties to provide
6 support or the inability of one or more of them to provide support, and the needs and
7 estate of the child. The judge may enter an order requiring any one or more of the
8 above-mentioned parties to provide for the support of the child as may be appropriate in
9 the particular case, and if appropriate the court may authorize the application of any
10 separate estate of the child to ~~his~~ the child's support. However, the judge may not order
11 support to be paid by a person who is not the child's parent or an agency, organization
12 or institution standing **in loco parentis** absent evidence and a finding that ~~such~~ that
13 person, agency, organization or institution has voluntarily assumed the obligation of
14 support in writing. The preceding sentence shall not be construed to prevent any court
15 from ordering the support of a child by an agency of the State or county which agency
16 may be legally responsible ~~under law~~ for ~~such~~ support.

17 (c) Payments ordered for the support of a minor child shall be in such amount as
18 to meet the reasonable needs of the child for health, education, and maintenance, having
19 due regard to the estates, earnings, conditions, accustomed standard of living of the
20 child and the parties, the child care and homemaker contributions of each party, and
21 other facts of the particular case.

22 The court shall determine the amount of child support payments by applying the
23 presumptive guidelines established ~~pursuant to~~ under subsection (cl). However, upon
24 request of any party, the Court shall hear evidence, and from the evidence, find the facts
25 relating to the reasonable needs of the child for support and the relative ability of each
26 parent to provide support. If, after considering the evidence, the Court finds by the
27 greater weight of the evidence that the application of the guidelines would not meet or
28 would exceed the reasonable needs of the child considering the relative ability of each
29 parent to provide support or would be otherwise unjust or inappropriate the Court may
30 vary from the guidelines. If the court orders an amount other than the amount
31 determined by application of the presumptive guidelines, the court shall make findings
32 of fact as to the criteria that justify varying from the guidelines and the basis for the
33 amount ordered.

34 Payments ordered for the support of a child shall terminate when the child reaches
35 the age of 18 except:

- 36 (1) If the child is otherwise emancipated, payments shall terminate at that
37 time;
- 38 (2) If the child is still in primary or secondary school when he reaches age
39 18, the court in its discretion may order support payments to continue
40 until he graduates, otherwise ceases to attend school on a regular basis,
41 or reaches age 20, whichever comes first.
- 42 (3) The court may order any obligor to make support payments after the
43 child reaches the age of 18, when the payments are necessary to pay

1 any child support arrearage that accrued before the child reached the
2 age of 18.

3 (c1) Effective July 1, 1990, the Conference of Chief District Judges shall prescribe
4 uniform statewide presumptive guidelines for the computation of child support
5 obligations of each parent as provided in Chapter 50 or elsewhere in the General
6 Statutes and shall develop criteria for determining when, in a particular case, application
7 of the guidelines would be unjust or inappropriate. Prior to May 1, 1990 these
8 guidelines and criteria shall be reported to the General Assembly by the Administrative
9 Office of the Courts by delivering copies to the President Pro Tempore of the Senate
10 and the Speaker of the House of Representatives. The purpose of the guidelines and
11 criteria shall be to ensure that payments ordered for the support of a minor child are in
12 such amount as to meet the reasonable needs of the child for health, education, and
13 maintenance, having due regard to the estates, earnings, conditions, accustomed
14 standard of living of the child and the parties, the child care and homemaker
15 contributions of each party, and other facts of the particular case. The guidelines shall
16 include a procedure for setting child support, if any, in a joint or shared custody
17 arrangement which shall reflect the other statutory requirements herein.

18 Periodically, but at least once every four years, the Conference of Chief District
19 Judges shall review the guidelines to determine whether their application results in
20 appropriate child support award amounts. The Conference may modify the guidelines
21 accordingly. The Conference shall give the Department of Human Resources, the
22 Administrative Office of the Courts, and the general public an opportunity to provide
23 the Conference with information relevant to the development and review of the
24 guidelines. Any modifications of the guidelines or criteria shall be reported to the
25 General Assembly by the Administrative Office of the Courts before they become
26 effective by delivering copies to the President Pro Tempore of the Senate and the
27 Speaker of the House of Representatives. The guidelines, when adopted or modified,
28 shall be provided to the Department of Human Resources and the Administrative Office
29 of the Courts, which shall disseminate them to the public through local IV-D offices,
30 clerks of court, and the media.

31 Until July 1, 1990, the advisory guidelines adopted by the Conference of Chief
32 District Judges pursuant to this subsection as formerly written shall operate as
33 presumptive guidelines and the factors adopted by the Conference of Chief District
34 Judges pursuant to this subsection as formerly written shall constitute criteria for
35 varying from the amount of support determined by the guidelines.

36 (d) Payments for the support of a minor child shall be ordered to be paid to the
37 person having custody of the child or any other proper person, agency, organization or
38 institution, or to the court, for the benefit of ~~such~~ the child.

39 (e) Payment for the support of a minor child shall be paid by lump sum payment,
40 periodic payments, or by transfer of title or possession of personal property of any
41 interest therein, or a security interest in or possession of real property, as the court may
42 order. In every case in which payment for the support of a minor child is ordered and
43 alimony or alimony **pendente lite** is also ordered, the order shall separately state and
44 identify each allowance.

1 (f) Remedies for enforcement of support of minor children shall be available as
2 herein provided.

3 (1) The court may require the person ordered to make payments for the
4 support of a minor child to secure the same by means of a bond,
5 mortgage or deed of trust, or any other means ordinarily used to secure
6 an obligation to pay money or transfer property, or by requiring the
7 execution of an assignment of wages, salary or other income due or to
8 become due.

9 (2) If the court requires the transfer of real or personal property or an
10 interest therein as provided in subsection (e) as a part of an order for
11 payment of support for a minor child, or for the securing thereof, the
12 court may also enter an order which shall transfer title as provided in
13 G.S. 1A-1, Rule 70 and G.S. 1-228.

14 (3) The remedy of arrest and bail, as provided in Article 34 of Chapter 1
15 of the General Statutes, shall be available in actions for child-support
16 payments as in other cases.

17 (4) The remedies of attachment and garnishment, as provided in Article 35
18 of Chapter 1 of the General Statutes, shall be available in an action for
19 child-support payments as in other cases, and for ~~such~~ those purposes
20 the child or person bringing an action for child support shall be
21 deemed a creditor of the defendant. Additionally, in accordance with
22 the provisions of G.S. 110-136, a continuing wage garnishment
23 proceeding for wages due or to become due may be instituted by
24 motion in the original child support proceeding or by independent
25 action through the filing of a petition.

26 (5) The remedy of injunction, as provided in Article 37 of Chapter 1 of the
27 General Statutes and G.S. 1A-1, Rule 65, shall be available in actions
28 for child support as in other cases.

29 (6) Receivers, as provided in Article 38 of Chapter 1 of the General
30 Statutes, may be appointed in action for child support as in other cases.

31 (7) A minor child or other person for whose benefit an order for the
32 payment of child support has been entered shall be a creditor within
33 the meaning of Article 3 of Chapter 39 of the General Statutes
34 pertaining to fraudulent conveyances.

35 (8) A judgment for child support shall not be a lien against real property
36 unless the judgment expressly so provides, sets out the amount of the
37 lien in a sum certain, and adequately describes the real property
38 affected; but past due periodic payments may by motion in the cause
39 or by a separate action be reduced to judgment which shall be a lien as
40 other judgments.

41 (9) An order for the periodic payments of child support is enforceable by
42 proceedings for civil contempt, and its disobedience may be punished
43 by proceedings for criminal contempt, as provided in Chapter 5A of
44 the General Statutes.

1 Notwithstanding the provisions of G.S. 1-294, an order for the
 2 payment of child support ~~which~~that has been appealed to the appellate
 3 division is enforceable in the trial court by proceedings for civil
 4 contempt during the pendency of the appeal. Upon motion of an
 5 aggrieved party, the court of the appellate division in which the appeal
 6 is pending may stay any order for civil contempt entered for child
 7 support until the appeal is decided, if justice requires.

8 (10) The remedies provided by Chapter 1 of the General Statutes, Article
 9 28, Execution; Article 29B, Execution Sales; and Article 31,
 10 Supplemental Proceedings, shall be available for the enforcement of
 11 judgments for child support as in other cases, but amounts so payable
 12 shall not constitute a debt as to which property is exempt from
 13 execution as provided in Article 16 of Chapter 1C of the General
 14 Statutes.

15 (10a) Income withholding as provided in Article 9 of Chapter 110 of the
 16 General Statutes shall be available for enforcement of child support
 17 either by motion in the cause in the original child support case or by
 18 any independent action or proceeding provided for in that Article.

19 (11) The specific enumeration of remedies in this section shall not
 20 constitute a bar to remedies otherwise available. Each enumerated
 21 remedy may be imposed in addition to or in substitution for any other
 22 enumerated remedy, and one or more remedies may be imposed
 23 together, separately, or in the alternative."

24 Sec. 15. G.S. 52A-30.1 reads as rewritten:

25 "**§ 52A-30.1. Income withholding.**

26 Income withholding ~~pursuant to~~under G.S. 110-136.3 through 110-36.10 is available
 27 as a remedy to allow withholding from income derived in this State to enforce support
 28 orders from other states. This Chapter shall not apply when income withholding is the
 29 sole remedy being requested, but G.S. 110-136.3(d) shall apply."

30 Sec. 16. G.S. 110-129 reads as rewritten:

31 "**§ 110-129. Definitions.**

32 As used in this Article:

- 33 (1) 'Court order' means any judgment or order of the courts of this
 34 State or of another state.
 35 (2) 'Dependent child' means any person under the age of 18 who is
 36 not otherwise emancipated, married or a member of the armed
 37 forces of the United States, or any person over the age of 18 for
 38 whom a court orders that support payments continue as provided
 39 in G.S. 50-13.4(c).
 40 (3) 'Responsible parent' means the natural or adoptive parent of a
 41 dependent child who has the legal duty to support ~~said~~that child
 42 and includes the father of an illegitimate child.

- 1 (4) 'Program' means the Child Support Enforcement Program
2 established and administered ~~pursuant to~~ under the provisions of
3 this Article and Title IV-D of the Social Security Act.
- 4 (5) 'Designated representative' means any person or agency
5 designated by a board of county commissioners or the Department
6 of Human Resources to administer a program of child support
7 enforcement for a county or region of the State.
- 8 (6) 'Disposable income' means any form of periodic payment to an
9 individual, regardless of sources, including but not limited to
10 wages, salary, commission, self-employment income, bonus pay,
11 severance pay, sick pay, incentive pay, vacation pay,
12 compensation as an independent contractor, worker's
13 compensation, unemployment compensation benefits, disability,
14 annuity, survivor's benefits, pension and retirement benefits,
15 interest, dividends, rents, royalties, trust income and other similar
16 payments, which remain after the deduction of amounts for
17 federal, State, and local taxes, Social Security, and involuntary
18 retirement contributions. However, Supplemental Security
19 Income, Aid for Dependent Children, and other public assistance
20 payments shall be excluded from disposable income. For
21 employers, disposable income means 'wage' as it is defined by
22 G.S. 95-25.2(16). Unemployment compensation benefits shall be
23 treated as disposable income only for the purposes of income
24 withholding under the provisions of G.S. 110-136.4, and the
25 amount withheld shall not exceed twenty-five percent (25%) of
26 the unemployment compensation benefits.
- 27 (7) 'IV-D case' means a case in which services have been applied for
28 or are being provided by a child support enforcement agency
29 established ~~pursuant to~~ under Title IV-D of the Social Security Act
30 as amended and this Article.
- 31 (8) 'Non-IV-D case' means any case, other than a IV-D case, in which
32 child support is legally obligated to be paid.
- 33 (9) 'Initiating party' means the party, the attorney for a party, a child
34 support enforcement agency, or the clerk of superior court who
35 initiates an action, proceeding, or procedure as allowed or
36 required by law for the establishment or enforcement of a child
37 support obligation.
- 38 (10) 'Mistake of fact' means that the obligor:
39 (a) Is not in arrears in an amount equal to the support
40 payable for one month; or
41 (b) Did not request that withholding begin, if withholding
42 is pursuant to a purported request by the obligor for
43 withholding; or

- 1 (c) Is not the person subject to the court order of support
 2 for the child named in the advance notice of
 3 withholding; or
 4 (d) Does not owe the amount of current support or
 5 arrearages specified in the advance notice or motion of
 6 ~~withholding~~-withholding; or
 7 (e) Should have less withheld because the rate of
 8 withholding exceeds the amount of child support in the
 9 operative child support order.
 10 (11) 'Obligee', in a IV-D case, means the child support enforcement
 11 agency, and in a non-IV-D case means the individual to whom a
 12 duty of support is owed or the individual's legal representative.
 13 (12) 'Obligor' means the individual who owes a duty to make child
 14 support payments under a court order.
 15 (13) 'Payor' means any payor, including any federal, State, or local
 16 governmental unit, of disposable income to an obligor. When the
 17 payor is an employer, payor means employer as is defined at 29
 18 USC § 203(d) in the Fair Labor Standards Act."

19 Sec. 17. G.S. 110-136.3(d) reads as rewritten:

20 "(d) Interstate cases. An interstate case is one in which a child support order of
 21 one state is to be enforced in another state.

- 22 (1) In interstate cases withholding provisions shall apply to a child
 23 support order of this or any other state. A petition addressed to
 24 this State to enforce a child support order of another state or a
 25 petition from an initiating party in this State addressed to another
 26 state to enforce a child support order entered in this State shall
 27 include:
 28 a. A certified copy of the support order with all modifications,
 29 including any income withholding notice or order still in effect;
 30 b. A copy of the income withholding law of the jurisdiction ~~which~~
 31 that issued the support order, ~~provided that such~~ if the
 32 jurisdiction has a withholding law;
 33 c. A sworn statement of arrearages;
 34 d. The name, address, and social security number of the obligor, if
 35 known;
 36 e. The name and address of the obligor's employer or of any other
 37 source of income of the obligor derived in the state in which
 38 withholding is sought; and
 39 f. The name and address of the agency or person to whom support
 40 payments collected by income withholding shall be transmitted.

41 ~~For purposes of enforcing a petition under this subsection,~~
 42 ~~jurisdiction is limited to the purposes of income withholding.~~

- 43 (2) The law of the state in which the support order was entered shall
 44 apply in determining when withholding shall be implemented and

1 interpreting the child support order. The law and procedures of
2 the state where the obligor is employed shall apply in all other
3 respects.

4 (3) Except as otherwise provided by subdivision (2), income
5 withholding initiated under this subsection is subject to all of the
6 notice, hearing and other provisions of Chapter 110.

7 (4) In all interstate cases notices and orders to withhold shall be
8 served upon the payor by a North Carolina agency or judicial
9 officer. In all interstate non-IV-D cases, the advance notice to the
10 obligor shall be served pursuant to under G.S. 1A-1, Rule 4, Rules
11 of Civil Procedure.

12 (5) For purposes of enforcing a petition under this subsection,
13 jurisdiction is limited to income withholding and Chapter 52A
14 shall not apply, but nothing in this subsection shall preclude any
15 remedy otherwise available in a proceeding under Chapter 52A."

16 Sec. 18. Chapter 120 of the General Statutes is amended by adding a new
17 Article to read:

18 **"ARTICLE 22.**

19 **"CHILD SUPPORT OVERSIGHT COMMISSION.**

20 **"§ 120-70.85. Creation and membership of Child Support Oversight Commission.**

21 (a) The Child Support Oversight Commission is established. The Commission
22 consists of 19 members as follows:

23 (1) Five members appointed by the President Pro Tempore of the
24 Senate, each of whom shall be a member of the Senate.

25 (2) Five members appointed by the Speaker of the House of
26 Representatives, each of whom shall be a member of the House of
27 Representatives.

28 (3) Four members appointed by the Director of the Administrative
29 Office of the Courts, one of whom shall be a district court judge
30 and one of whom shall be a clerk of superior court.

31 (4) Four members appointed by the Secretary of Human Resources,
32 one of whom shall be a county director of social services and one
33 of whom shall be a director of a designated representative, as
34 defined in G.S. 110-129, that is not a county department of social
35 services.

36 (5) One member appointed by the North Carolina Association of
37 County Commissioners.

38 (b) Terms on the Commission are for two years and begin on the convening of
39 the General Assembly in each odd-numbered year, except that the terms of the initial
40 members begin on appointment and end on the date of the convening of the 1993
41 General Assembly. Members may complete a term of service on the Commission even
42 if they do not seek reelection or are not reelected to the General Assembly, but
43 resignation or removal from service in the General Assembly constitutes resignation or
44 removal from service on the Commission.

1 **"§ 120-70.86. Purpose and powers of Commission.**

2 (a) The Legislative Child Support Oversight Commission shall examine, on a
3 continuing basis, the child support enforcement system in North Carolina, to make
4 ongoing recommendations to the General Assembly on ways to improve the
5 enforcement of child support.

6 (b) The Commission's oversight duties shall include:

7 (1) A continuing oversight review of the phasing in of the State-
8 supervised child support system established under G.S. 110-
9 128(b);

10 (2) A continuing fiscal analysis of the cost of implementation of the
11 phasing in with a report on funding and other legislative
12 recommendations to the 1993 General Assembly;

13 (3) A long-term fiscal analysis of an equitable plan for State and
14 county sharing consistent with the Social Services Plan;

15 (4) An exploration of State and local cooperative agreements that
16 would maximize federal reimbursement, particularly in regard to
17 obtaining federal participation in the cost of the following
18 services: (i) sheriff's service of process costs, (ii) district attorney
19 costs, (iii) Administrative Office of the Courts systems costs and
20 (iv) Administrative Office of the Courts blood testing costs, as
21 these costs are affected by the phasing in and transferring of court
22 roles to the Department of Human Resources; and

23 (5) Continuing consultation with all State and local agencies and
24 individuals involved in child support enforcement as the
25 restructured system prescribed by G.S. 110-128(b) is being
26 implemented, and continuing consideration of problem areas and
27 possible inequities.

28 (c) The Commission may make interim reports, with any recommended
29 legislation, to the General Assembly on matters on which it may report to a regular
30 session of the General Assembly.

31 (d) No later than February 1, 1993, the Commission shall submit to the General
32 Assembly proposed legislation to recodify all North Carolina laws relating to child
33 support, including the child support and related provisions of Chapters 49, 50, 52A, and
34 110 of the General Statutes. The purpose of the recodification shall be to organize in
35 one Chapter of the General Statutes all provisions of law relating to child support so as
36 to make that law as clear, consistent, and comprehensive as possible. To assist the
37 Commission in preparing the legislation, the Commission shall appoint a drafting
38 committee, whose members need not be members of the Commission. The chair of the
39 drafting committee shall be named by the cochairs of the Commission.

40 (e) No later than February 1, 1993, the Commission shall submit to the General
41 Assembly proposed legislation to specify or clarify the terms of the cooperative
42 agreement provided for in G.S. 110-141(c), or to clarify or limit the rule-making power
43 of the Department of Human Resources under G.S. 110-141(d). The legislation shall
44 address the following issues:

- 1 (1) Performance criteria;
- 2 (2) Procedures for auditing and evaluating the parties' performance;
- 3 (3) Methods for improving the parties' performance through
- 4 incentives, including the use of any available State or federal
- 5 funds;
- 6 (4) Appropriate remedies for any party's failure to meet performance
- 7 criteria, including the sequence and procedures for applying the
- 8 remedies;
- 9 (5) The mutuality of the terms of cooperative agreements;
- 10 (6) The uniform application of performance criteria to child support
- 11 enforcement programs administered by the State, and to those
- 12 administered by a county or its designees; and
- 13 (7) Any other issues that the Commission considers appropriate.

14 **"§ 120-70.87. Organization of Commission.**

15 (a) The President Pro Tempore of the Senate and the Speaker of the House of

16 Representatives shall each designate a cochair of the Child Support Oversight

17 Commission. The Commission shall meet at least once a quarter and may meet at other

18 times upon the call of the cochairs.

19 (b) A quorum of the Commission is 10 members. No action may be taken except

20 by a majority vote at a meeting at which a quorum is present. While discharging its

21 official duties, the Commission has the powers of a commission under G.S. 120-19 and

22 G.S. 120-19.1 through G.S. 120-19.4.

23 (c) Legislative members of the Commission and of its drafting committee shall

24 receive subsistence and travel allowances at the rates established by G.S. 138-5. The

25 Legislative Services Commission through the Legislative Administrative Officer shall

26 assign professional staff to assist the Commission in its work. Upon the direction of the

27 Legislative Services Commission, the Supervisors of Clerks of the Senate and of the

28 House of Representatives shall provide clerical assistance to the Commission. The

29 expenses for clerical employees shall be borne by the Commission. All expenses of the

30 Commission shall be paid from the Child Support Reform Implementation Fund."

31 Sec. 19. The Appropriations and Budget Revenue Act of 1991, if enacted, is

32 amended by adding the following new section:

33 "PAYMENT OF CHILD SUPPORT REFORM IMPLEMENTATION EXPENSES;

34 USE OF FEDERAL MATCHING FUNDS; CREATION OF CHILD SUPPORT

35 REFORM IMPLEMENTATION FUND; AUTHORIZATION TO TRANSFER

36 FUNDS.

37 Sec. 221.5. (a) The General Assembly finds that, as a result of the enactment of

38 The Child Support Reform Act of 1991, if enacted, the Department of Human

39 Resources and the Administrative Office of the Courts and the county-administered

40 child support programs will incur certain personnel and other operating expenses, which

41 are not provided for in this act, in implementing a restructured State-supervised child

42 support system in the counties selected under G.S. 110-128, as amended by Section 1 of

43 The Child Support Reform Act of 1991, if enacted, and in preparing the report required

1 by that section; these expenses are referred to in this section as 'child support reform
2 implementation expenses'.

3 (b) There is created in the Department of Human Resources a nonreverting
4 special fund to be known as the 'Child Support Reform Implementation Fund'. All
5 federal grants and other funds available to match the costs incurred by the State in
6 operating the Administrative Office of the Courts Child Support Computer System, in
7 having district attorneys pursue URESA cases, in receipting and accounting for
8 payments in all IV-D cases newly opened by, or transferred from clerks of superior
9 court to, the child support enforcement agencies in the counties in which the
10 restructured child support system is implemented pursuant to G.S. 110-128; and any
11 other State costs for which new federal IV-D receipts can be identified and collected.
12 This fund shall be used solely to pay child support reform implementation expenses at
13 the State and county levels and funds shall be transferred from this fund to the
14 Department of Human Resources as they are required to pay those expenses.

15 (c) The Department of Human Resources and the Administrative Office of the
16 Courts shall take all steps necessary to separate out and to document all the expenses for
17 which federal receipts may be obtained for the Child Support Reform Implementation
18 Fund and to apply for any federal funds which may be available.

19 (d) No new funds are appropriated in the operating budget for the 1991-93
20 biennium to implement child support reform. Nevertheless, and notwithstanding the
21 provisions of G.S. 143-23, the Secretary of the Department of Human Resources, with
22 the approval of the Office of State Budget and Management, shall make use to the
23 extent possible, of any funds appropriated or otherwise available for the 1991-93 fiscal
24 years to make up any difference between the funds available to it from the Child
25 Support Reform Implementation Fund and the actual child support reform
26 implementation expenses it incurs.

27 (e) To account for any funds transferred from the Child Support Reform
28 Implementation Fund under subsection (b) and for funds transferred under subsection
29 (d), and to account for all child support reform implementation expenses paid from any
30 funds so transferred, the operating budgets of the Department of Human Resources for
31 the 1991-93 biennium shall include a budget purpose entitled 'Child Support Reform
32 Implementation.'

33 (f) Funds in this account shall be used to help offset increased costs to the IV-D
34 agencies for implementation of the reformed child support system."

35 Sec. 20. Except as otherwise provided herein, this act is effective upon
36 ratification.