

Senate Bill 427

By: Senators Kennedy of the 18th, Stone of the 23rd, Tillery of the 19th, Cowser of the 46th, Jones II of the 22nd and others

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 19-6-15 of the Official Code of Georgia Annotated, relating to child
2 support in final verdict or decree, guidelines for determining amount of award, continuation
3 of duty to provide support, and duration of support, so as to change provisions relating to the
4 court's discretion in making a final determination of support; to enact reforms recommended
5 by the Georgia Child Support Commission; to clarify and revise a definition; to clarify the
6 process of calculating child support when there is more than one child for whom support is
7 being determined under certain circumstances; to change provisions relating to reliable
8 evidence of income, voluntary unemployment, and involuntary loss of income to account for
9 a parent's incarceration; to change provisions relating to health insurance; to change
10 provisions relating to specific deviations; to change provisions relating to work related child
11 care costs; to amend Article 1 of Chapter 11 of Title 19 of the Official Code of Georgia
12 Annotated, relating to the Child Support Recovery Act, so as to increase fees charged by the
13 department; to provide for related matters; to provide for effective dates; to repeal conflicting
14 laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **PART I**
17 **SECTION 1-1.**

18 Code Section 19-6-15 of the Official Code of Georgia Annotated, relating to child support
19 in final verdict or decree, guidelines for determining amount of award, continuation of duty
20 to provide support, and duration of support, is amended by revising paragraph (11) of
21 subsection (a) as follows:

22 "(11) 'Final child support ~~order~~ amount' means the presumptive amount of child support
23 adjusted by any deviations."

24 **SECTION 1-1A.**

25 Said Code section is further amended by revising paragraphs (9) and (11) of subsection (b)
 26 as follows:

27 "(9) Any benefits which the child receives under Title II of the federal Social Security
 28 Act shall be applied against the final child support ~~order~~ amount. The final child support
 29 amount for each parent shall be entered on the child support worksheet, together with the
 30 information from each of the utilized schedules;"

31 "(11) In a split parenting case, there shall be a separate calculation and final ~~child support~~
 32 order for each parent; and"

33 **SECTION 1-1B.**

34 Said Code section is further amended by revising paragraph (12) of subsection (b) as follows:

35 "(12) When there is more than one child for whom support is being determined, the court
 36 shall establish the amount of support and the duration of such support in accordance with
 37 subsection (e) of this Code section. When, within two years of a final order being
 38 entered, there is a likelihood that a child will become ineligible to receive support, the
 39 court may allow for the use of separate worksheets. Separate worksheets shall be utilized
 40 for such determination and show the final child support amount to be paid for all such
 41 children and the adjusted amount of support to be paid as each child becomes ineligible
 42 to receive support during such two-year period. Such worksheets shall be attached to the
 43 final ~~child support~~ order. Such order shall contain findings as required by law. A final
 44 order entered pursuant to this paragraph shall not preclude a petition for modification."

45 **SECTION 1-1C.**

46 Said Code section is further amended by revising subsection (d) as follows:

47 "(d) **Nature of guidelines; court's discretion.** In the event of a hearing or trial on the
 48 issue of child support, the guidelines enumerated in this Code section are intended by the
 49 General Assembly to be guidelines only and any court so applying these guidelines shall
 50 not abrogate its responsibility in making the final determination of child support based on
 51 the evidence presented to it at the time of the hearing or trial. A court's final determination
 52 of child support shall take into account the obligor's earnings, income, and other evidence
 53 of the obligor's ability to pay. The court shall also consider the basic subsistence needs of
 54 the parents and the child for whom support is to be provided."

SECTION 1-2.

55

56 Said Code section is further amended by revising paragraph (3) of subsection (f),
57 subparagraphs (f)(4)(A) and (f)(4)(B), and the introductory language of subparagraph
58 (f)(4)(D) as follows:

59 **"(3) Social Security benefits.**

60 (A) Benefits received under Title II of the federal Social Security Act by a child on the
61 obligor's account shall be counted as child support payments and shall be applied
62 against the final child support ~~order~~ amount to be paid by the obligor for the child.

63 (B) After calculating the obligor's monthly gross income, including the countable
64 social security benefits as specified in division (1)(A)(xiii) of this subsection, and after
65 calculating the amount of child support, if the presumptive amount of child support, as
66 increased or decreased by deviations, is greater than the social security benefits paid on
67 behalf of the child on the obligor's account, the obligor shall be required to pay the
68 amount exceeding the social security benefit as part of the final ~~child support~~ order in
69 the case.

70 (C) After calculating the obligor's monthly gross income, including the countable
71 social security benefits as specified in division (1)(A)(xiii) of this subsection, and after
72 calculating the amount of child support, if the presumptive amount of child support, as
73 increased or decreased by deviations, is equal to or less than the social security benefits
74 paid to the nonparent custodian or custodial parent on behalf of the child on the
75 obligor's account, the child support responsibility of that parent shall have been met and
76 no further child support shall be paid.

77 (D) Any benefit amounts under Title II of the federal Social Security Act as determined
78 by the Social Security Administration sent to the nonparent custodian or custodial
79 parent by the Social Security Administration for the child's benefit which are greater
80 than the final child support ~~order~~ amount shall be retained by the nonparent custodian
81 or custodial parent for the child's benefit and shall not be used as a reason for
82 decreasing the final child support ~~order~~ amount or reducing arrearages."

83 **"(A) Imputed income.** When establishing the amount of child support, if a parent fails
84 to produce reliable evidence of income, such as tax returns for prior years, check stubs,
85 or other information for determining current ability to pay child support or ability to pay
86 child support in prior years, and the court or the jury has no other reliable evidence of the
87 parent's income or income potential, gross income for the current year ~~shall be~~
88 ~~determined by imputing gross income based on a 40 hour workweek at minimum wage~~
89 may be imputed. When imputing income, the court shall take into account the specific
90 circumstances of the parent to the extent known, including such factors as the parent's
91 assets, residence, employment and earnings history, job skills, educational attainment,

92 literacy, age, health, criminal record and other employment barriers, and record of
 93 seeking work, as well as the local job market, the availability of employers willing to hire
 94 the parent, prevailing earnings level in the local community, and other relevant
 95 background factors in the case. If a parent is incarcerated, the court shall not assume
 96 an ability for earning capacity based upon pre-incarceration wages or other employment
 97 related income, but income may be imputed based upon the actual income and assets
 98 available to such incarcerated parent.

99 (B) **Modification.** When cases with established orders are reviewed for modification and
 100 a parent fails to produce reliable evidence of income, such as tax returns for prior years,
 101 check stubs, or other information for determining current ability to pay child support or
 102 ability to pay child support in prior years, and the court or jury has no other reliable
 103 evidence of such parent's income or income potential, the court or jury may impute income
 104 as set forth in subparagraph (A) of this paragraph, or may increase the child support of the
 105 parent failing or refusing to produce evidence of income by an increment of at least 10
 106 percent per year of such parent's gross income for each year since the final ~~child support~~
 107 order was entered or last modified and shall calculate the basic child support obligation
 108 using the increased amount as such parent's gross income."

109 "(D) **Willful or voluntary unemployment or underemployment.** In determining
 110 whether a parent is willfully or voluntarily unemployed or underemployed, the court
 111 or the jury shall ascertain the reasons for the parent's occupational choices and assess
 112 the reasonableness of these choices in light of the parent's responsibility to support his
 113 or her child and whether such choices benefit the child. A determination of willful or
 114 voluntary unemployment or underemployment shall not be limited to occupational
 115 choices motivated only by an intent to avoid or reduce the payment of child support but
 116 can be based on any intentional choice or act that affects a parent's income. A
 117 determination of willful or voluntary unemployment or underemployment shall not be
 118 made when an individual's incarceration prevents employment. In determining willful
 119 or voluntary unemployment or underemployment, the court may examine whether there
 120 is a substantial likelihood that the parent could, with reasonable effort, apply his or her
 121 education, skills, or training to produce income. Specific factors for the court to
 122 consider when determining willful or voluntary unemployment or underemployment
 123 include, but are not limited to:"

124 **SECTION 1-3.**

125 Said Code section is further amended by revising the introductory language of subsection (h),
 126 subparagraph (h)(1)(F), subdivision (h)(2)(B)(iii), and paragraph (3) of subsection (h) as
 127 follows:

128 "(h) **Adjusted support obligation.** The child support obligation table does not include the
 129 cost of the parent's work related child care costs, health insurance premiums, or uninsured
 130 health care expenses. The additional expenses for the child's health insurance premiums
 131 and work related child care costs shall be included in the calculations to determine child
 132 support. A nonparent custodian's expenses for work related child care costs and health
 133 insurance premiums shall be taken into account when establishing a final ~~child support~~
 134 order."

135 "(F)(i) The total amount of work related child care costs shall be divided between the
 136 parents pro rata to determine the presumptive amount of child support and shall be
 137 included in the worksheet and the final ~~child support~~ order.

138 (ii) In situations in which work related child care costs may be variable, the court or
 139 jury may, in its discretion, remove work related child care costs from the calculation
 140 of support, and divide the work related child care costs pro rata, to be paid within a
 141 time specified in the final ~~child support~~ order. If a parent or nonparent custodian fails
 142 to comply with the final ~~child support~~ order:

143 (I) The other parent or nonparent custodian may enforce payment of the work
 144 related child care costs by any means permitted by law; or

145 (II) Child support services shall pursue enforcement when such unpaid costs have
 146 been reduced to a judgment in a sum certain."

147 "(iii) Eligibility for or enrollment of the child in Medicaid, ~~or the PeachCare for Kids~~
 148 ~~Program, or other public health care program~~ shall ~~not~~ satisfy the requirement that the
 149 final ~~child support~~ order provide for the child's health care needs. Health coverage
 150 through Medicaid, the PeachCare for Kids Program and Medicaid, or other public
 151 health care program shall not prevent a court from also ordering either or both parents
 152 to obtain other health insurance for the child.

153 (3) **Uninsured health care expenses.**

154 (A) The child's uninsured health care expenses shall be the financial responsibility of
 155 both parents. The final ~~child support~~ order shall include provisions for payment of ~~the~~
 156 uninsured health care expenses; provided, however, that ~~the~~ uninsured health care
 157 expenses shall not be used for the purpose of calculating the amount of child support.
 158 The parents shall divide ~~the~~ uninsured health care expenses pro rata, unless otherwise
 159 specifically ordered by the court.

160 (B) If a parent fails to pay his or her pro rata share of the child's uninsured health care
 161 expenses, as specified in the final ~~child support~~ order, within a reasonable time after
 162 receipt of evidence documenting the uninsured portion of the expense:

163 (i) The other parent or the nonparent custodian may enforce payment of the expense
 164 by any means permitted by law; or

165 (ii) Child support services shall pursue enforcement of payment of such unpaid
 166 expenses only if the unpaid expenses have been reduced to a judgment in a sum
 167 certain amount."

168 **SECTION 1-4.**

169 Said Code section is further amended by revising subparagraph (i)(1)(A) and division
 170 (i)(2)(B)(iii) as follows:

171 "(A) The amount of child support established by this Code section and the presumptive
 172 amount of child support are rebuttable and the court or the jury may deviate from the
 173 presumptive amount of child support in compliance with this subsection. In deviating
 174 from the presumptive amount of child support, ~~primary~~ consideration shall be given to
 175 the best interest of the child for whom support under this Code section is being
 176 determined. A nonparent custodian's expenses may be the basis for a deviation as well
 177 as a noncustodial parent's ability or inability to pay the presumptive amount of child
 178 support."

179 "(iii) The court or the jury shall examine all attributable and excluded sources of
 180 income, assets, and benefits available to the noncustodial parent and may consider the
 181 noncustodial parent's basic subsistence needs and all of his or her reasonable expenses
 182 of the noncustodial parent, ensuring that such expenses are actually paid by the
 183 noncustodial parent and are clearly justified expenses."

184

185 **SECTION 1-4A.**

186 Said Code section is further amended by revising subparagraphs (i)(1)(D) and (i)(2)(J) as
 187 follows:

188 "(D) If the circumstances which supported the deviation cease to exist, the final ~~child~~
 189 ~~support~~ order may be modified as set forth in subsection (k) of this Code section to
 190 eliminate the deviation."

191 "(J) **Extraordinary expenses.** The child support obligation table includes average
 192 child rearing expenditures for families given the parents' combined adjusted income and
 193 number of children. Extraordinary expenses are in excess of average amounts
 194 estimated in the child support obligation table and are highly variable among families.
 195 Extraordinary expenses shall be considered on a case-by-case basis in the calculation
 196 of support and may form the basis for deviation from the presumptive amount of child
 197 support so that the actual amount of ~~the~~ such expense is considered in the ~~calculation~~
 198 ~~of the final child support~~ order for only those families actually incurring the expense.
 199 Extraordinary expenses shall be prorated between the parents by assigning or deducting
 200 credit for actual payments for extraordinary expenses."

201 **SECTION 1-5.**

202 Said Code section is further amended by revising paragraph (1) of subsection (j) as follows:

203 "(1) In the event a parent suffers an involuntary termination of employment, has an
 204 extended involuntary loss of average weekly hours, is involved in an organized strike,
 205 incurs a loss of health, becomes incarcerated, or similar involuntary adversity resulting
 206 in a loss of income of 25 percent or more, then the portion of child support attributable
 207 to lost income shall not accrue from the date of the service of the petition for
 208 modification, provided that service is made on the other parent. It shall not be considered
 209 an involuntary termination of employment if the parent has left the employer without
 210 good cause in connection with the parent's most recent work."

211 **PART II**

212 **SECTION 2-1.**

213 Article 1 of Chapter 11 of Title 19 of the Official Code of Georgia Annotated, relating to the
 214 Child Support Recovery Act, is amended by revising subsection (f) of Code Section 19-11-6,
 215 relating to enforcement of child support payments and alimony for public assistance
 216 recipients, as follows:

217 "(f) The department shall be authorized to charge the obligor a federal Deficit Reduction
 218 Act of 2005 fee of ~~\$25.00~~ \$35.00 for each case. Such fee shall only apply to an obligor
 219 when the obligee has never received public assistance payments pursuant to Title IV-A or
 220 Title IV-E of the federal Social Security Act. The department shall retain such fee and
 221 collect such fee through income withholding, as well as by any other enforcement remedy
 222 available to the entity within the department authorized to enforce a duty of support."

223 **SECTION 2-2.**

224 Said article is further amended by revising subsection (e) of Code Section 19-11-8, relating
 225 to the departments' duty to enforce support of abandoned minor public assistance recipient
 226 and scope of action, as follows:

227 "(e) The department shall be authorized to charge the obligor a federal Deficit Reduction
 228 Act of 2005 fee of ~~\$25.00~~ \$35.00 for each case. Such fee shall only apply to an obligor
 229 when the obligee has never received public assistance payments pursuant to Title IV-A or
 230 Title IV-E of the federal Social Security Act. The department shall retain such fee and
 231 collect such fee through income withholding, as well as by any other enforcement remedy
 232 available to the entity within the department authorized to enforce a duty of support."

233

PART III

234

SECTION 3-1.

235 This part and Part I of this Act shall become effective on July 1, 2018, and Part II of this Act
236 shall become effective on October 1, 2018.

237

SECTION 3-2.

238 All laws and parts of laws in conflict with this Act are repealed.