

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 258  
House Committee Substitute Favorable 5/18/95

Short Title: Record Keeping/Child Support.

(Public)

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Sponsors:

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Referred to:

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February 23, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY THE RECORD-KEEPING RESPONSIBILITIES OF CLERKS  
3 OF SUPERIOR COURT IN IV-D CHILD SUPPORT CASES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 50-13.9 reads as rewritten:

6 **"§ 50-13.9. Procedure to insure payment of child support.**

7 (a) Upon its own motion or upon motion of either party, the court may order at any  
8 time that support payments be made to the clerk of court for remittance to the party  
9 entitled to receive the payments. For child support orders initially entered on or after  
10 January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1)  
11 shall apply.

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

15 ~~In IV-D cases, when required by federal or state law or regulations or by court order,~~ the  
16 clerk of superior court shall transmit child support payments that are made to the clerk in  
17 IV-D cases to the Department of Human Resources for appropriate distribution. In all  
18 other cases, ~~whether IV-D or non-IV-D,~~ the clerk shall transmit the payments to the

1 custodial parent or other party entitled to receive them, unless a court order requires  
2 otherwise.

3 (b1) In a IV-D case:

4 (1) The designated child support enforcement agency shall have the sole  
5 responsibility and authority for monitoring the obligor's compliance  
6 with all child support orders in the case and for initiating any  
7 enforcement procedures that it considers appropriate.

8 (2) The clerk of court shall maintain all official records in the case.

9 (3) The designated child support enforcement agency shall maintain any  
10 other records needed to monitor the obligor's compliance with or to  
11 enforce the child support orders in the case, including records showing  
12 the amount of each payment of child support received from or on behalf  
13 of the obligor, along with the dates on which each payment was  
14 received.

15 (b2) In a non-IV-D case:

16 (1) The clerk of court shall have the responsibility and authority for  
17 monitoring the obligor's compliance with all child support orders in the  
18 case and for initiating any enforcement procedures that it considers  
19 appropriate.

20 (2) The clerk of court shall maintain all official records in the case.

21 (3) The clerk of court shall maintain any other records needed to monitor  
22 the obligor's compliance with or to enforce the child support orders in  
23 the case, including records showing the amount of each payment of  
24 child support received from or on behalf of the obligor, along with the  
25 dates on which each payment was received.

26 (c) ~~The~~ In a non-IV-D case, the parties affected by the order shall inform the clerk  
27 of court of any change of address or of other condition that may affect the administration  
28 of the order. In a IV-D case, the parties affected by the order shall inform the designated  
29 child support enforcement agency of any change of address or other condition that may  
30 affect the administration of the order. The court may provide in the order that a party  
31 failing to inform the court or, as appropriate, the designated child support enforcement  
32 agency, of a change of address within a reasonable period of time may be held in civil  
33 contempt.

34 (d) In a non-IV-D case, when an obligor fails to make a required payment of child  
35 support and is in arrears, the clerk of superior court shall mail by regular mail to the last  
36 known address of the obligor a notice of delinquency. The notice shall set out the  
37 amount of child support currently due and shall demand immediate payment of said  
38 amount. The notice shall also state that failure to make immediate payment will result in  
39 the issuance by the court of an enforcement order requiring the obligor to appear before a  
40 district court judge and show cause why the support obligation should not be enforced by  
41 income withholding, contempt of court, or other appropriate means. Failure to receive the  
42 delinquency notice shall not be a defense in any subsequent proceeding. Sending the  
43 notice of delinquency shall be in the discretion of the clerk if the clerk has, during the

1 previous 12 months, sent a notice or notices of delinquency to the obligor for  
2 nonpayment, or if income withholding has been implemented against the obligor or the  
3 obligor has been previously found in contempt for nonpayment under the same child  
4 support order.

5 If the arrearage is not paid in full within 21 days after the mailing of the delinquency  
6 notice, or without waiting the 21 days if the clerk has elected not to mail a delinquency  
7 notice for any of the reasons provided herein, the clerk shall cause an enforcement order  
8 to be issued and shall issue a notice of hearing before a district court judge. The  
9 enforcement order shall order the obligor to appear and show cause why he should not be  
10 subjected to income withholding or adjudged in contempt of court, or both, and shall  
11 order the obligor to bring to the hearing records and information relating to his  
12 employment and the amount and sources of his disposable income. The enforcement  
13 order shall state:

- 14 (1) That the obligor is under a court order to provide child support, the  
15 name of each child for whose benefit support is due, and information  
16 sufficient to identify the order;
- 17 (2) That the obligor is delinquent and the amount of overdue support;
- 18 (3) That the court may order income withholding if the obligor is delinquent  
19 in an amount equal to the support due for one month;
- 20 (4) That income withholding, if implemented, will apply to the obligor's  
21 current payors and all subsequent payors and will be continued until  
22 terminated pursuant to G.S. 110-136.10;
- 23 (5) That failure to bring to the hearing records and information relating to  
24 his employment and the amount and sources of his disposable income  
25 will be grounds for contempt;
- 26 (6) That if income withholding is not an available or appropriate remedy,  
27 the court may determine whether the obligor is in contempt or whether  
28 any other enforcement remedy is appropriate.

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

36 When the matter comes before the court, the court shall proceed as in the case of a  
37 motion for income withholding under G.S. 110-136.5. If income withholding is not an  
38 available or adequate remedy, the court may proceed with contempt, imposition of a lien,  
39 or other available, appropriate enforcement remedies.

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

42 (e) The clerk of court shall maintain and make available to the district court judge  
43 a list of attorneys who are willing to undertake representation, pursuant to this section, of

1 persons to whom child support is owed. No attorney shall be placed on such list without  
2 his permission.

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

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

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

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

14 The judge may order payment of reasonable attorney's fees as provided in G.S. 50-  
15 13.6.

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

18 Sec. 2. This act becomes effective July 1, 1996.