

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 444
SENATE BILL 258

AN ACT TO CLARIFY THE RECORD-KEEPING RESPONSIBILITIES OF
CLERKS OF SUPERIOR COURT IN IV-D CHILD SUPPORT CASES.

The General Assembly of North Carolina enacts:

Section 1. 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, 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. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply.

(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 in IV-D cases 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.

(b1) In a IV-D case:

- (1) The designated child support enforcement agency shall have the sole responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate.
- (2) The clerk of court shall maintain all official records in the case.
- (3) The designated child support enforcement agency shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received.

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

- (1) The clerk of court shall have the responsibility and authority for monitoring the obligor's compliance with all child support orders in the

case and for initiating any enforcement procedures that it considers appropriate.

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

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

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

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

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

(1) That the obligor is under a court order to provide child support, the name of each child for whose benefit support is due, and information sufficient to identify the order;

(2) That the obligor is delinquent and the amount of overdue support;

- (3) That the court may order income withholding if the obligor is delinquent in an amount equal to the support due for one month;
- (4) That income withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10;
- (5) That failure to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income will be grounds for contempt;
- (6) That if income withholding is not an available or appropriate remedy, the court may determine whether the obligor is in contempt or whether any other enforcement remedy is appropriate.

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

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

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

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

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

- (1) The attorney of record for the party to whom support payments are owed has notified the clerk of court that he will appear for said party;
or
- (2) The party to whom support payments are owed requests the judge not to appoint an attorney; or
- (3) An attorney for the enforcement of child support obligations pursuant to Title IV, Part D, of the Social Security Act as amended is available.

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

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

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

In the General Assembly read three times and ratified this the 18th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives