Georgia State University Law Review

Volume 1
Issue 2 *Spring 1985*

Article 26

5-15-2012

DOMESTIC RELATIONS Child/Spousal Support: Obligations

Georgia State University Law Review

Follow this and additional works at: http://scholarworks.gsu.edu/gsulr

Part of the Law Commons

Recommended Citation
Georgia State University Law Review (1984) "DOMESTIC RELATIONS Child/Spousal Support: Obligations," *Georgia State University Law Review*: Vol. 1: Iss. 2, Article 26.
Available at: http://scholarworks.gsu.edu/gsulr/vol1/iss2/26

This Peach Sheet is brought to you for free and open access by the College of Law Publications at ScholarWorks @ Georgia State University. It has been accepted for inclusion in Georgia State University Law Review by an authorized administrator of ScholarWorks @ Georgia State University. For more information, please contact scholarworks@gsu.edu.

DOMESTIC RELATIONS

Child/Spousal Support: Obligations

CODE SECTION:	O.C.G.A. §§ 18-4-20 (amended), 18-4-130 — 18-4-135 (new), 19-6-28 — 19-6-30 (new), 19-11-6 — 19-11-8 (new), 19-11-20 (amended), 19-11-25 (new), 19-11-26 (new), 19-11-53 (amended), 48-7-161 (new) and 48-7-165 (amended)
BILL NUMBER:	HB 155
ACT NUMBER:	565
SUMMARY:	The Act strengthens the enforcement of child and spousal support obligations.

History

The Child Support Recovery Act was enacted in 1973.[1] The Legislature has since made significant changes to reflect a growing impatience with parents who fail to support their children.

O.C.G.A. § 19-11-9(d) allowed the Department of Human Resources to disseminate information for the purpose of "locating an absent parent to enforce his obligation of support." O.C.G.A. § 19-11-14 permitted a civil action against the father of children born out of wedlock for support when there has been a formal acknowledgement or an adjudication of paternity.

Changes in garnishment proceedings were made in 1983. O.C.G.A. § 19-11-19 defined disposable income and earnings. The thirty day period after receiving notification of either court ordered or agreed child support ran from the due date specified by the court order. Prior to the institution of garnishment proceedings, the Department of Human Resources was required to hold a hearing to determine any defenses, legal excuse, or the amount owed except in cases where a court order for child support had been issued.[2]

With regard to legal services, the provisions allowing county district attorneys to represent the Department were expanded. A sliding scale application fee was established to help defray costs.[3]

The Act is a major overhaul of statutes relative to enforcement of child support obligations. It attempts to conform state law to new federal legis-

1. 1973 Ga. Laws 192.
2. 1983 Ga. Laws 1816, 1817-18 at § 2.
3. *Id.* at § 4.

Published by ScholarWorks @ Georgia State University, 1984

HeinOnline -- 1 Ga. St. U. L. Rev. 303 1984-1985

lation, the Child Support Enforcement Amendments of 1984,[4] which mandate state action to strengthen civil support statutes. The federal legislation mandated several criteria for continued state participation in Aid to Families with Dependant Children:

1) new procedures for withholding support,
2) expediting processes in judicial and administrative actions,
3) capturing state income tax returns,
4) imposing liens on real and personal property,
5) establishing paternity,
6) bonding or some form of security device that conforms with state due process requirements,
7) making information regarding amounts owed available to consumer reporting agencies, and
8) instituting procedures for withholding wages to cover arrearages without filing service applications.[5]

HB 155

A new Article 7, codified at O.C.G.A. §§ 18-4-130 — 18-4-135, creates an on-going writ of garnishment for the purpose of withholding earnings for the enforcement of a judgment for periodic support of a family member. The term "judgment" is expansively defined in O.C.G.A. § 18-4-131(5) to include registered judgments of other states and judgments entered pursuant to criminal abandonment proceedings. The Act also added language referring to the final administrative order of another state. These changes reflect the federal legislative mandate for a more uniform national approach. The remainder of the new Article 7 makes technical changes regarding the computation of the amounts subject to garnishment, the answer filing procedures, and the payment schedules. Additional answers must be filed, if the original arrearage has not been completely paid off, until all periodic support payments are current.[6]

O.C.G.A. § 19-6-28 gives the court greater discretion in drafting and enforcing support orders. O.C.G.A. § 19-6-29 allows courts to inquire into the availability of accident and sickness insurance. If such coverage is found to be reasonably available, then the court has the discretion to include it in the support order. O.C.G.A. § 19-11-26 provides for investigation by the Department of Human Resources into the availability to an obligor of insurance at a reasonable cost. The Department may request the court to have such coverage included in the support order. O.C.G.A.

4. Child Support Enforcement Amendments of 1984, Pub. L. No. 98-383, 98 Stat. 1305.
5. Pub. L. No. 98-378, 98 Stat. 1305, 1306-11 (1984).
6. O.C.G.A. § 18-4-134 (Supp. 1985).

HeinOnline -- 1 Ga. St. U. L. Rev. 304 1984-1985

§ 19-6-30 requires a standardized notice regarding risk of garnishment for nonpayment in all support orders "entered or modified on or after July 1, 1985." Orders prior to July 1, 1985 are "construed as a matter of law to contain the [notice] provision . . . ."

O.C.G.A. § 19-11-6(a) includes foster care maintenance payments as public assistance. O.C.G.A. § 19-11-6(d) directs the Department to accept applications for alimony enforcement under certain conditions. These conditions include assignment of the right of alimony to the Department of Human Resources, "a court order for alimony, while the spouse is receiving public assistance, and while the spouse is receiving public assistance for a child of the spouse ordered to pay alimony."

O.C.G.A. § 19-11-7, regarding the right of the Department of Human Resources to bring an action of support, has been interpreted as a subrogation provision.[7] O.C.G.A. § 19-11-7(c) states that any action brought by the Department of Human Resources is limited to the issue of support and specifically excludes "issues of visitation, custody, property settlement, or other similar matters . . . ."

O.C.G.A. § 19-11-8(b) removes discretionary language and requires that the Department of Human Resources accept applications for child support enforcement services even where the child receives no public assistance.

O.C.G.A. § 19-11-25 provides that the amount of overdue support shall be made available to a consumer reporting agency upon its request. A notice requirement and opportunity to contest the accuracy of the information are included. The Department may collect a fee, limited to actual cost, for furnishing the information. If the amount owed is less than $1,000, the release of the information is discretionary. O.C.G.A. § 19-11-53 allows district attorneys to collect application fees pursuant to representing petitioners in court proceedings.

Lastly, two technical changes were made to O.C.G.A. §§ 48-7-161 and 48-7-165. These changes reflect the increased authority of the Department in representing the interests of the child and allow consolidation of hearings to contest payment of past due support by the Internal Revenue Service.

7. Burns v. Swinney, 168 Ga. App. 902, 903, 310 S.E.2d 733, 734 (1983).

HeinOnline -- 1 Ga. St. U. L. Rev. 305 1984-1985