

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

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 change provisions relating
5 to reliable evidence of income, voluntary unemployment, and involuntary loss of income to
6 account for a parent's incarceration; to change provisions relating to health insurance; to
7 change provisions relating to specific and nonspecific deviations; to change provisions
8 relating to work related child care costs; to provide for related matters; to repeal conflicting
9 laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Code Section 19-6-15 of the Official Code of Georgia Annotated, relating to child support
13 in final verdict or decree, guidelines for determining amount of award, continuation of duty
14 to provide support, and duration of support, is amended by revising subsection (d) as follows:
15 **"(d) Nature of guidelines; court's discretion.** In the event of a hearing or trial on the
16 issue of child support, the guidelines enumerated in this Code section are intended by the
17 General Assembly to be guidelines only and any court so applying these guidelines shall
18 not abrogate its responsibility in making the final determination of child support based on
19 the evidence presented to it at the time of the hearing or trial. A court's final determination
20 of child support shall take into account the obligor's earnings, income, and other evidence
21 of the obligor's ability to pay. The court shall also consider the basic subsistence needs of
22 the parents and the child for whom support is to be provided."

23 style="text-align:center">**SECTION 2.**

24 Said Code section is further amended by revising subparagraphs (f)(4)(A) and (f)(4)(B) and
25 the introductory language of subparagraph (f)(4)(D) as follows:

26 "(A) **Imputed income.** When establishing the amount of child support, if a parent fails
27 to produce reliable evidence of income, such as tax returns for prior years, check stubs,
28 or other information for determining current ability to pay child support or ability to
29 pay child support in prior years, and the court or the jury has no other reliable evidence
30 of the parent's income or income potential, gross income for the current year ~~shall be~~
31 ~~determined by imputing gross income based on a 40 hour workweek at minimum wage~~
32 may be imputed. When imputing income, the court shall take into account the specific
33 circumstances of the parent to the extent known, including such factors as the parent's
34 assets, residence, employment and earnings history, job skills, educational attainment,
35 literacy, age, health, criminal record and other employment barriers, and record of
36 seeking work, as well as the local job market, the availability of employers willing to
37 hire the parent, prevailing earnings level in the local community, and other relevant
38 background factors in the case. If a parent is incarcerated, income shall not be imputed
39 based upon pre-incarceration wages or other employment related income, but may be
40 imputed based on the actual income and assets available to such incarcerated parent.

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

52 "(D) **Willful or voluntary unemployment or underemployment.** In determining
53 whether a parent is willfully or voluntarily unemployed or underemployed, the court
54 or the jury shall ascertain the reasons for the parent's occupational choices and assess
55 the reasonableness of these choices in light of the parent's responsibility to support his
56 or her child and whether such choices benefit the child. A determination of willful or
57 voluntary unemployment or underemployment shall not be limited to occupational
58 choices motivated only by an intent to avoid or reduce the payment of child support but
59 can be based on any intentional choice or act that affects a parent's income. A
60 determination of willful or voluntary unemployment or underemployment shall not be
61 made when an individual's incarceration prevents employment. In determining willful
62 or voluntary unemployment or underemployment, the court may examine whether there

63 is a substantial likelihood that the parent could, with reasonable effort, apply his or her
 64 education, skills, or training to produce income. Specific factors for the court to
 65 consider when determining willful or voluntary unemployment or underemployment
 66 include, but are not limited to:"

67 **SECTION 3.**

68 Said Code section is further amended by revising division (h)(2)(B)(iii) as follows:

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

75 **SECTION 4.**

76 Said Code section is further amended by revising subparagraph (i)(1)(A), division
 77 (i)(2)(B)(iii), and paragraph (3) of subsection (i) as follows:

78 "(A) The amount of child support established by this Code section and the presumptive
 79 amount of child support are rebuttable and the court or the jury may deviate from the
 80 presumptive amount of child support in compliance with this subsection. In deviating
 81 from the presumptive amount of child support, primary consideration shall be given to
 82 the best interest of the child for whom support under this Code section is being
 83 determined. A nonparent custodian's expenses may be the basis for a deviation as well
 84 as a parent's ability or inability to pay the presumptive amount of child support."

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

90 "(3) **Nonspecific deviations.** Deviations from the presumptive amount of child support
 91 may be appropriate for reasons in addition to those established under this subsection
 92 when the court or the jury finds it is in the best interest of the child. A nonspecific
 93 deviation may also be used when the court or the jury finds that the noncustodial parent
 94 has a limited ability to pay the presumptive amount of child support."

95 **SECTION 5.**

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

