

The Senate Committee on Judiciary offered the following substitute to SB 427:

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 amend Article 1 of Chapter 11 of Title 19 of the  
9 Official Code of Georgia Annotated, relating to the Child Support Recovery Act, so as to  
10 increase fees charged by the department; to provide for related matters; to provide for  
11 effective dates; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 PART I  
14 SECTION 1-1.

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

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

**SECTION 1-2.**

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

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

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

"(D) **Willful or voluntary unemployment or underemployment.** In determining whether a parent is willfully or voluntarily unemployed or underemployed, the court or the jury shall ascertain the reasons for the parent's occupational choices and assess the reasonableness of these choices in light of the parent's responsibility to support his or her child and whether such choices benefit the child. A determination of willful or voluntary unemployment or underemployment shall not be limited to occupational choices motivated only by an intent to avoid or reduce the payment of child support but can be based on any intentional choice or act that affects a parent's income. A

63 determination of willful or voluntary unemployment or underemployment shall not be  
 64 made when an individual's incarceration prevents employment. In determining willful  
 65 or voluntary unemployment or underemployment, the court may examine whether there  
 66 is a substantial likelihood that the parent could, with reasonable effort, apply his or her  
 67 education, skills, or training to produce income. Specific factors for the court to  
 68 consider when determining willful or voluntary unemployment or underemployment  
 69 include, but are not limited to:"

70 **SECTION 1-3.**

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

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

78 **SECTION 1-4.**

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

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

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

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

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**SECTION 1-5.**

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

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

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**PART II**

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**SECTION 2-1.**

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

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

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**SECTION 2-2.**

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

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

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**PART III**

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**SECTION 3-1.**

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

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shall become effective on October 1, 2018.

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**SECTION 3-2.**

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