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DOMESTIC RELATIONS Alimony and Child Support: Authorize Court Ordered Support Past Age of Majority

Scott Michael Kaye

DOMESTIC RELATIONS

Alimony and Child Support: Authorize Court Ordered Support Past Age of Majority

CODE SECTIONS:	O.C.G.A. §§ 15-11-56, 15-15-5, 19-6-15, 19-7-2, 19-7-44, 19-11-6 (amended)
BILL NUMBERS:	HB 1519, HB 1598, HB 1687
ACT NUMBERS:	1130, 1208, 1324
SUMMARY:	HB 1519 authorizes the court to order child support payments to continue until the child reaches the age of twenty. The court is only authorized to award support payment in the event that the child reaches the age of majority while in high school (secondary school) and only where such child has not previously been married or emancipated. Further, the Act gives the child a right to enforce the support obligation directly against the noncustodial parent. The Act also amends certain criteria for state aid in child support and custody cases by providing courts the discretion not to appoint a guardian ad litem under certain limited circumstances, allowing the Department of Human Resources (DHR) to continue to provide services when public aid ceases and to collect the costs from parents, and by limiting the district attorney to representing only DHR in such cases except where the district attorney's interests do not conflict with those of DHR. HB 1598 authorizes courts to order parents to reimburse DHR for support services. HB 1687 authorizes the child support receiver to assess additional collection costs against the obligated parent.
EFFECTIVE DATE:	July 1, 1992

History

Former Code section 19-6-15(a) authorized courts to order a noncustodial or joint custodial parent to pay child support to a custodial parent until the child reached the age of majority.[1] Since the General

1. 1989 Ga. Laws 861 (formerly found at O.C.G.A § 19-6-15(a) (1991)).

Assembly lowered the age of majority from twenty-one to eighteen,[2] it created an inequity in that a child turning eighteen while still in high school lost the right to child support from the noncustodial parent even though that child continued to be dependent on the custodial parent through the completion of secondary school.[3] Most children turn eighteen during their senior year of high school, if not before.[4] Therefore, child support payments under the former law could stop a year or more before the child completes secondary school.[5]

The courts and custodial parents have long been trying to find a way around this inequity.[6] The most common method has been for courts to enforce agreements for support beyond a child's minority that are entered into by the parents and incorporated into the final decree of divorce.[7] However, this method alone has proven to be insufficient.

HB 1519

The Act amends Code section 19-6-15 by adding subsections (e) and (f).[8] The Act authorizes a judge or jury to direct either or both parents "to provide financial assistance to a child"[9] who is attending secondary school and has attained the age of majority.[10] This support can be ordered in any action for divorce, separate maintenance, legitimacy, or paternity if the final order is issued on or after July 1, 1992.[11] Support can also be issued in an action for modification of any of the above orders, so long as the original order was entered on or after July 1,

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2. *See* O.C.G.A. § 39-1-1(a) (1982).

3. Postminority Support, Speech Prepared for Sen. Cathey Steinberg, Senate District No. 42 (transcript available at Georgia State University College of Law Library).

4. *Id.*

5. *Id.*

6. *Id.*

7. Letter from Donald A. Weissman to A. Quillian Baldwin, Jr., Chairman, Senate Judiciary Committee 2 (Jan. 31, 1992) (on file with Georgia State University College of Law Library) [hereinafter Weissman Letter]; *see* Anderson v. Anderson, 307 S.E.2d 483 (Ga. 1983). In at least two cases, courts have created a legal fiction to award support beyond minority. McDonald v. McDonald, 285 S.E.2d 711 (Ga. 1982); Kosikowski v. Kosikowski, 240 S.E.2d 846 (Ga. 1977). In these cases, the courts awarded alimony to the custodial parent based on her need for additional income because she was supporting dependent adult children. *McDonald*, 285 S.E.2d at 712; *Kosikowski*, 240 S.E.2d at 847-48. The current trend in awarding equitable property division in lieu of alimony prevents the use of this legal fiction later to consider the changing needs of adult children, as only alimony, not property division, can be modified. Holler v. Holler, 354 S.E.2d 140 (Ga. 1987).

8. O.C.G.A. § 19-6-15(e), (f) (Supp. 1992). The Act also amends O.C.G.A. 19-7-2 to make the language gender neutral. *See id.* § 19-7-2 (Supp. 1992).

9. *Id.* § 19-6-15(e) (Supp. 1992).

10. *Id.*

11. *Id.*

1992, and "upon a showing of a significant change of material circumstance."[12] Support payments through the completion of school can only be ordered up to age twenty and are limited to children who have not previously been married or emancipated.[13] Support can be awarded in a temporary order or final decree and is completely within the discretion of the court.[14]

The most substantial aspect of the Act is the authorization for court-awarded child support for eighteen-year-old and nineteen-year-old children who are still in secondary school. This provision extends the legal obligation to support a child while that child is still dependent on the custodial parent in order to complete his or her secondary school education.[15] The necessity of such support is based on a public policy of encouraging education and a recognition that a high school education is the bare minimum necessary to qualify for most jobs.[16] Fulton County Superior Court Judge Frank M. Eldridge also supported a provision in SB 360 that would have allowed court ordered support for postsecondary education up to age twenty-three, based on the same public policy grounds.[17] The postminority support provisions of HB 1519 originated in SB 360.[18]

SB 360, containing only the high school provision, was reported out of the House Judiciary Committee as recommended. The recommendation was changed in a special meeting of the Committee before the bill reached the House floor.[19] Thereafter, the key provision of SB 360, child support through high school, was incorporated into HB 1519 and enacted on the last day of the session.[20]

The constitutionality of ordering child support past the age of minority was questioned in the House Judiciary Committee.[21] Concerns were expressed that such a provision violated the equal

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12. *Id.* § 19-6-15(f) (Supp. 1992).
13. *Id.* § 19-6-15(e) (Supp. 1992).
14. *Id.* § 19-6-15(f) (Supp. 1992).
15. Telephone Interview with the Hon. Frank M. Eldridge, Fulton County, Georgia, Superior Court (Aug. 24, 1992) [hereinafter Eldridge Interview].
16. *Id.*
17. *Id.*
18. Telephone Interview with Sen. Cathey W. Steinberg, Senate District No. 42 (Apr. 8, 1992) [hereinafter Steinberg Interview].
19. *Id.*
20. *Id.* This last minute change was accomplished by a Conference Committee composed of Senators J. Nathan Deal, Quillian Baldwin, and Cathey W. Steinberg (author and Senate sponsor of SB 360) and Representatives Mary Margaret Oliver (House sponsor of SB 360), Tommy Chambless, and Charles A. Thomas, Jr. Steinberg Interview, *supra* note 18. The Conference Committee recommended that the Senate and House compromise and adopt the committee substitute, which was adopted as the final form of HB 1519. HB 1519 (CCS), 1992 Ga. Gen. Assem.
21. Steinberg Interview, *supra* note 18.

protection rights of divorced parents under the Fourteenth Amendment of the United States Constitution, as there is no Code provision authorizing support beyond the age of minority for the benefit of a child whose parents remain married.[22] Senator Steinberg testified that twenty states currently have legislation providing for support of postminority students until the completion of high school.[23] She also cited an Iowa statute that provided for support of a child up to age twenty-one when the child is a high school or full-time college or vocational school student.[24] The constitutionality of the Iowa statute was upheld by the Supreme Court of Iowa.[25] The court rejected the "strict scrutiny" standard, finding that divorced parents did not constitute a "suspect classification" and that no fundamental rights were impaired.[26] Instead, the court applied the lower "rational relation" standard of review and found that Iowa had a legitimate state interest in promoting education and that the statute was rationally related to protecting that interest.[27] Supporters believe that the Act would likewise withstand an equal protection challenge in Georgia.[28]

The award of child support beyond minority is left completely to the discretion of the judge or jury.[29] The Act specifically states that "the trier of fact, in the exercise of sound discretion, may direct either or both parents to provide financial assistance."[30] The only guideline written to help a court determine when to award such support is the limitation that the child must be "enrolled in and attending a secondary school, and [have] attained the age of majority before completing his or her secondary school education."[31]

Postminority support is limited to age twenty.[32] Therefore, a child "who is enrolled in and attending a secondary school"[33] is eligible for up to two additional years of support in order to complete his or her education.[34] Once the child turns twenty, however, the court no longer has the authority to grant further support regardless of the child's circumstances.[35] Additionally, a child who has been "previously married or [who has] become emancipated" is not eligible for

22. *Id.*
23. *Id.*
24. Postminority Support, *supra* note 3.
25. In re *Marriage of Vrban*, 293 N.W.2d 198 (Iowa 1980).
26. *Id.*
27. *Id.*
28. Steinberg Interview, *supra* note 18.
29. O.C.G.A. § 19-6-15(e) (Supp. 1992).
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*

postminority support.[36] This language prevents a child who has been married and remained at or returned to the home of the custodial parent, or a child who was emancipated as a minor and later returned to the custodial parent's home, from being awarded postminority support to complete secondary school education.[37] In essence, these provisions ensure that postminority support can only be awarded for the benefit of a child who, because of a late birth date or repeating a grade, needs extra time and support to complete secondary school.[38]

The Act authorizes the court to "direct either or both parents to provide financial assistance"; the assistance may be enforced by either the parent or the child.[39] Therefore, a child who now has the right to support may enforce the support obligation against one or both of his own parents.[40] Some think the child may be able to enforce the support obligation authorized under this Act by means of a contempt action against his or her parent or parents, after the child attains the age of majority.[41] This issue will have to be determined by the courts if it arises.[42]

Finally, there are several conditions or limitations written into the Act to prevent its retroactive application. First, the provisions relating to postminority support are only applicable to orders issued on or after

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36. *Id.*

37. Eldridge Interview, *supra* note 15.

38. *Id.*

39. O.C.G.A. § 19-6-15(e) (Supp. 1992).

40. *Id.* The Act reads: "[t]he provisions for support provided in this subsection may be enforced by either parent or the child for whose benefit the support is ordered." *Id.* This provision was included to address two issues. First, since the child is no longer a minor, the courts should permit him or her to assert his or her own rights. Interview with H. Martin Huddleston, Chairman, Family Law Section, State Bar of Georgia (Apr. 9, 1992) [hereinafter Huddleston Interview]. Second, fathers' rights groups and some representatives believed this provision would ensure that the added support was reaching the child or used for his or her benefit and was not used as a means of abuse of the support provisions by the custodial parent. *Id.*

41. Huddleston Interview, *supra* note 40. It is possible that where a final decree of divorce is entered on or after July 1, 1992, under which postminority support is not awarded, the child may later find himself or herself in need of postminority support to complete secondary school. *Id.* Since the provisions for support are enforceable by the child and since the order of such support is subject to modification, the child may be able to bring an action for modification on his or her own behalf, without involving the parent who received support prior to the child reaching majority. *Id.* If such an action is possible, it will be necessary to determine the defendant parent's right to counterclaim for modification. *Id.*

42. *Id.* Mr. Huddleston expressed his concern that because of this possible scenario, the Act may be vulnerable to an equal protection challenge. *Id.* Such a challenge would not be based on imposing special duties on divorced parents but on creating a special class of children eighteen and nineteen years old who have a right to sue their parents for support. *Id.*

July 1, 1992.[43] However, the order can be "a temporary order or final decree for divorce, separate maintenance, legitimation, or paternity."[44] A support obligation entered before July 1, 1992 is not subject to modification under the new Code section as the Act does not authorize courts to modify any support order issued before this date to include postminority support.[45] Furthermore, to be able to modify a support order issued after July 1, 1992, the moving party will have to show a "significant change of material circumstances."[46]

The last four sections of the Act consist of primarily "housekeeping" and "money saving" changes.[47] Section 3 of the Act amends Code section 19-7-44(a), which required the court to appoint a guardian ad litem to represent a minor child in a paternity or legitimation suit.[48] Under the Act, the court is no longer required to appoint a guardian ad litem to represent the child "[i]f the Department of Human Resources is the petitioner, and the court determines that no conflict of interest exists."[49] There are no guidelines set for determining when a conflict of interest may exist.[50] However, this provision will enable the courts and counties to save the cost of appointing a guardian ad litem in circumstances where the appointment is an unnecessary formality because the DHR is already representing the interests of the child.[51]

Section 4 of the Act gives the DHR increased flexibility in providing services and collecting support payments.[52] The DHR is now authorized to continue providing services and collecting fees for families who "cease to receive public assistance, including medical assistance."[53] Under this Code section, a child's guardian may receive

43. O.C.G.A. § 19-6-15(f) (Supp. 1992).

44. *Id.* § 19-6-15(e) (Supp. 1992).

45. *Id.* § 19-6-15(f) (Supp. 1992).

46. *Id.* A court is authorized to modify an award of child support upon the moving party "showing a change in the income and financial status of either former spouse or in the needs of the child or children." *Id.* § 19-6-19(a) (1991). Under the Act, no definition is provided for the term "significant change of material circumstances" and no allowance is made for a "change in the needs of the child." *Id.* § 19-6-15(f) (Supp. 1992).

47. Interview with Rep. Mary Margaret Oliver, House District No. 53 (Apr. 9, 1992) [hereinafter Oliver Interview].

48. 1980 Ga. Laws 1374 (formerly found at O.C.G.A. § 19-7-44(a) (1991)).

49. O.C.G.A. § 19-7-44(a) (Supp. 1992).

50. *Id.*

51. Oliver Interview, *supra* note 47. The bill originally included an amendment to O.C.G.A. § 19-7-46, which would have created a rebuttable presumption of paternity where statistical probability of the alleged father was 99 percent or greater. HB 1519, as introduced, 1992 Ga. Gen. Assem. However, this provision was not adopted as a part of the Act. *Compare* HB 1519, as introduced, 1992 Ga. Gen. Assem., *with* HB 1519 (CCS), 1992 Ga. Gen. Assem.

52. Oliver Interview, *supra* note 47; O.C.G.A. § 19-11-6(b) (Supp. 1992).

53. O.C.G.A. § 19-11-6(b) (Supp. 1992).

public assistance for the child in exchange for assigning the right to receive child support from the child's natural parents to the DHR.[54] Prior to this amendment, the DHR could still continue to collect support on behalf of the child after the child had stopped receiving public assistance.[55] The amendment only clarifies this provision by allowing the DHR to continue to provide services in addition to collecting support payments after the child ceases to receive public assistance.[56] The Act also amends the definition of public assistance to include medical services.[57]

Sections 5 and 6 of the Act clarify the duties of the district attorney in representing the DHR.[58] Section 5 adds a subsection to Code section 19-11-23 providing that "the district attorney shall represent the department and the department shall be the sole client of the district attorney."[59] Prior to this addition, the district attorney was authorized to represent the DHR in collecting child support from parents, but it was not clear whom the district attorney would represent in case of a conflict.[60] Section 6 amends Code section 19-11-53 by adding a subsection which provides that when representing the guardian of a child in directly enforcing a support obligation against the child's parents, the district attorney may only represent the guardian or petitioner "to the extent that the interests of the petitioner do not conflict with the interests of the department."[61]

Overall, the Act breaks new ground in ensuring that support obligations be equitable and sufficient to adequately support the expectations of most children to be able to complete their secondary school education.[62] The Act is narrowly drafted to prevent possible abuse or excessive litigation.[63] However, it does open the door for

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54. *Id.*

55. 1987 Ga. Laws 186 (formerly found at O.C.G.A. § 19-11-6(b) (1991)).

56. Oliver Interview, *supra* note 47.

57. O.C.G.A. § 19-11-6(b) (Supp. 1992). These changes were proposed by the DHR and were originally presented in HB 1384, parts of which were incorporated into this Act. Oliver Interview, *supra* note 47; *see* HB 1384, as introduced, 1992 Ga. Gen. Assem. HB 1384 also included provisions authorizing the DHR to charge fees and recover costs for their services and to enforce those provisions by civil action. HB 1384, as introduced, 1992 Ga. Gen Assem. The amendments to Code sections 19-11-23 and 19-11-53 were originally presented in HB 1815 but were incorporated into HB 1519 in their entirety without any amendment after passing the House of Representatives and moving most of the way through the Senate. HB 1384, as introduced, 1992 Ga. Gen. Assem.; Steinberg Interview, *supra* note 18.

58. O.C.G.A. §§ 19-11-23, -53 (Supp. 1992).

59. *Id.* § 19-11-23(b) (Supp. 1992).

60. 1989 Ga. Laws 861 (formerly found at O.C.G.A. § 19-11-23 (1991)).

61. O.C.G.A. § 19-11-53(c) (Supp. 1992).

62. Steinberg Interview, *supra* note 18.

63. *Id.*

further consideration of issues concerning child support.[64] At a minimum, it provides courts with the authority to order that a child be able to receive support while pursuing a high school degree.[65] Additionally, this Act provides children such protection without significantly interfering with the rights of noncustodial parents and uses a standard which has been constitutionally tested.[66]

HB 1598

Prior to the Act, the Code authorized the court to charge certain expenses to the county including costs of court ordered medical examinations of children and the cost of their support when the children were committed "to the legal custody of an individual or a public or private agency *other than the Department of Human Resources.*"[67] Additionally, the court was authorized to order "the parents or other persons legally obligated to care for and support the child"[68] to reimburse the county for these expenses.[69] The Act authorizes the court to order the parents or legal guardians of children who receive services from the DHR to reimburse the DHR for all or part of its expenses of caring for the child.[70]

The court may now order the parent or other obligated party to reimburse the DHR for expenses incurred in the care of a child.[71] However, the Act does not allow the court to charge the expenses incurred by the DHR to the county.[72] Therefore, the Act only makes it easier for the DHR to receive reimbursement from obligated individuals and does not impose any increased expenses on the counties.

HB 1687

The Act amends Code section 15-15-5 to allow the child support receiver to charge the paying party additional fees where the party's

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64. Huddleston Interview, *supra* note 40; *see supra* text accompanying notes 40-42.

65. Eldridge Interview, *supra* note 15.

66. *See supra* text accompanying notes 21-28.

67. 1986 Ga. Laws 1017 (formerly found at O.C.G.A. § 15-11-56(a) (1990)) (emphasis added).

68. 1986 Ga. Laws 1017 (formerly found at O.C.G.A. § 15-11-56(b)(1990)).

69. *Id.*

70. O.C.G.A. § 15-11-56(b) (Supp. 1992). The court must now also provide due notice to the parents or others, provide an opportunity to be heard, and find that the parents or others "are financially able to pay all or part of the costs and expenses." *Id.*

71. *Id.* This Code section orders such payment to be made directly to the clerk of the court and authorizes the clerk of the court to remit the payment to the DHR. *Id.*

72. *Id.* § 15-11-56(a) (Supp. 1992). The DHR is still specifically excluded from any county reimbursement. *Id.* § 15-11-56(a)(2) (Supp. 1992).

support obligation must be enforced by an action for contempt brought by the child support receiver.[73] Code section 15-15-4.1 authorizes the child support receiver "to bring an action for contempt against the person required to make [child support] payments."[74] However, former Code section 15-15-5, which authorized the child support receiver to charge the paying party a processing fee of five percent of the payment up to $2.00, did not authorize the child support receiver to charge the paying party who was in arrears for the cost of enforcing the obligation by contempt action.[75]

The Act amends this Code section to require the child support receiver "to assess and collect from the paying party all costs of court and service fees of the sheriff in any action initiated by the state."[76] The delinquent party must pay these costs with the first child support payment collected, or in five dollar installment payments with each child support payment if the party is unable to pay the entire cost in one payment.[77] The receiver's increased authority to collect additional costs from delinquent parents cannot result in a reduction in the amount of child support paid to the parent or guardian; the additional costs must come from the paying parent only.[78]

The Act allows the child support receiver to be reimbursed for the minimum costs of bringing a contempt action to enforce a court ordered support obligation. This is a small step towards assessing the actual cost of enforcing support obligations against delinquent parents. There is presently no provision for charging the delinquent party for attorney's fees or other costs of litigation incurred by the child support receiver in such actions. This Act is a step in that direction.

Scott Michael Kaye

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73. *Id.* § 15-15-5(b) (Supp. 1992).

74. *Id.* § 15-15-4.1 (1990).

75. 1980 Ga. Laws 755 (formerly found at O.C.G.A. § 15-15-5 (1990)).

76. O.C.G.A. § 15-15-5(b) (Supp. 1992). However, if the party is adjudged indigent by the court, he or she is exempt from these charges until found not to be indigent. *Id.*

77. *Id.* No standard is set for determining if the party is capable of paying the entire amount of the costs assessed in one payment. *Id.* Therefore, if this section is intended as a deterrent or fine directed at parents delinquent in paying their support obligations, it may fail to have any substantial effect due to the ease with which a parent could abuse the leniency of the enforcement provisions. Huddleston Interview, *supra* note 40.

78. *Id.* § 15-15-5(c) (Supp. 1992).