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DOMESTIC RELATIONS

Alimony and Child Support: Provide for Enforcement and Collection

CODE SECTIONS:	O.C.G.A. §§ 19-6-28 (amended), 19-11-6 (amended), 19-11-7 (amended), 19-11-8 (amended)
BILL NUMBER:	HB 302
ACT NUMBER:	163
SUMMARY:	The Act provides for service of process in proceedings to enforce alimony and child support payments, for service to be perfected, even if the respondent does not answer, and for the respondent to be charged with costs. The Act also changes the conditions under which the Department of Human Resources accepts applications for support enforcement services, provides for reimbursement of the department for attorneys' fees, and authorizes the collection of interest on judgments initiated by the department.
EFFECTIVE DATE:	July 1, 1987

History

Prior law provided for enforcement of alimony and child support payments by attachment of a contempt citation.¹ Although case law and statutory law indicate that strict enforcement of awards of alimony and child support is appropriate, a significant difference exists between what this law provides and what actually occurs. Actual collection of payments is very difficult due to the overburdened system. HB 302 is part of a comprehensive effort to provide better enforcement of these payments and originated from a 1984 conference addressing child support problems.²

1. 1985 Ga. Laws 785 (formerly found at O.C.G.A. § 19-6-28). See *Van Dyke v. Van Dyke*, 125 Ga. 491, 54 S.E. 537 (1906) (decree for permanent alimony and counsel fees enforced by attachment for contempt); *Goodrum v. Goodrum*, 202 Ga. 135, 42 S.E.2d 450 (1947) (a decree for alimony may be enforced by attachment for contempt); *Thompson v. Thompson*, 217 Ga. 649, 124 S.E.2d 76 (1962) (judgment holding defendant in contempt for failure to pay past-due alimony payments).

2. Telephone interview with Representative Mary Jane Galer, House District No. 97

The primary purpose of HB 302 is to improve the system of child support recovery by providing a more consistent approach.³

HB 302 § 1

Section 1 of the Act amends Title 19 of the Code, which relates to enforcement of child support and alimony payments. Prior law granted the court "power to subject [one owing payments] to such terms and conditions as the court may deem proper to assure compliance with its order," including a contempt citation.⁴ HB 302 amends this section to provide a method of service of process in proceedings to enforce alimony and child support payments. This procedure provides that a person attempting to enforce these payments may serve "the motion and rule nisi by first-class mail, postage prepaid, to the respondent at the respondent's last known address."⁵ If service is not acknowledged within twenty days, the petitioner shall notify the clerk of the court and the summons will be made as provided in O.C.G.A. § 9-11-4.⁶ Pursuant to this section, costs of this service will be charged to the respondent.⁷ The Senate Judiciary Committee revised this section to require that the petitioner deposit the costs of service with the court before service is made.⁸ The original version and House committee substitute provided that the respondent was responsible for payment of costs, but did not require that the petitioner deposit such costs with the court first.⁹

Subsection (c) of O.C.G.A. § 19-6-28 sets out a form for notice and acknowledgement,¹⁰ and subsection (d) provides that this form of service of process is in addition to any other method of service provided by law.¹¹

HB 302 §§ 2, 3, 4

Sections 2, 3, and 4 of HB 302 were added by the Senate Judiciary Committee. These sections amend the Code section which grants the Department of Human Resources the power to enforce child support and alimony payments owed to persons receiving public assistance. Section 2 amends O.C.G.A. § 19-11-6 and provides that the department's ability to

(Mar. 20, 1987).

3. Telephone interview with Representative Mary Jane Galer, House District No. 97 (July 12, 1987) [hereinafter Galer Interview].

4. O.C.G.A. § 19-6-28(a) (Supp. 1987) (formerly found at O.C.G.A. § 19-6-28).

5. O.C.G.A. § 19-6-28(b) (Supp. 1987).

6. *Id.* (O.C.G.A. § 9-11-4 (1982) provides for service of process generally).

7. O.C.G.A. § 19-6-28(b) (Supp. 1987). This new section provides that the respondent will be charged with costs unless he or she can establish "that there is good reason why such person should not be so charged."

8. O.C.G.A. § 19-6-28(b) (Supp. 1987).

9. See HB 302 and HB 302 (SCS), 1987 Ga. Gen. Assem.

10. O.C.G.A. § 19-6-28(c) (Supp. 1987).

11. O.C.G.A. § 19-6-28(d) (Supp. 1987).

enforce alimony payments which have been assigned to it will apply while "the dependent child is living with the spouse or former spouse, and while a child support obligation is also being enforced by the department."¹² Prior law had provided that the department's ability to enforce alimony payments applied "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."¹³ This language was changed to allow the department to enforce alimony payments even if the child is not receiving public assistance.¹⁴

Section 3 provides that the court may award attorneys' fees to the department in actions to enforce payment for dependent minor children receiving public assistance¹⁵ and may collect interest on "any judgment obtained in any support action initiated by the department."¹⁶ Also, a section was added limiting any action initiated by the department to the issue of support, and specifically excluding issues of "visitation, custody, property settlement or other similar matters."¹⁷ This limiting language was also added by section 4 of the bill to the Code section dealing with enforcement of support of abandoned children receiving public assistance.¹⁸

The Senate Judiciary Committee added a provision to the bill, which was subsequently eliminated by a Senate floor amendment. This section, which would have amended O.C.G.A. § 19-6-15, required a finding of fact by a court if a final decree of permanent support was awarded "in an amount less than the public assistance standards."¹⁹ However, because a schedule of appropriate payments is being developed and distributed to judges statewide, this revision was deemed unnecessary.²⁰ Judges throughout the state will be able to refer to the schedule when considering awards of child support. Providing a guideline to judges was determined to be an appropriate method. This method seemed a better way to handle the problem rather than trying to legislate the amount of child support payments.²¹

12. O.C.G.A. § 19-11-6(d) (Supp. 1987).

13. 1985 Ga. Laws 785 (formerly found at O.C.G.A. § 19-11-6(d)).

14. Galer Interview, *supra* note 3. This enforcement power is required under the 1984 amendments to the Child Support Enforcement Act, Pub. L. No. 98-378, 98 Stat. 1305 (codified as amended in scattered sections of 42 U.S.C.).

15. O.C.G.A. § 19-11-7(d) (Supp. 1987).

16. O.C.G.A. § 19-11-7(e) (Supp. 1987).

17. O.C.G.A. § 19-11-7(f) (Supp. 1987).

18. O.C.G.A. § 19-11-8(c) (Supp. 1987).

19. HB 302 § 1 (SCS), 1987 Ga. Gen. Assem. Concern had been expressed that children and their needs were not always being addressed during the negotiation process of divorce proceedings. One study made in Cobb County showed that 42% of the child support awards were below the standards set for public assistance payments to children. Galer Interview, *supra* note 3.

20. Galer Interview, *supra* note 3.

21. *Id.*

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HB 302 § 5

This section provides for the effective date of the Act. After the bill was passed, it was discovered that there was an "editorial error" in this section. Therefore, the Governor was asked to sign the bill into law, which he did on March 9, 1987, and it was then amended to correct this error.²²

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22. *Id.* HB 625, a bill also amending Title 19, was determined to be a convenient vehicle to correct this error. See *Selected 1987 Georgia Legislation, Persons Owing Child Support: Require Employers to Report Certain Information*, 3 GA. ST. U.L. REV. 431 (1987) (addressing requirements for employers to report certain information about employees who owe child support). See also editorial note following O.C.G.A. § 19-6-28 (Supp. 1987).