

NORTH CAROLINA GENERAL ASSEMBLY  
1975 SESSION

CHAPTER 827  
HOUSE BILL 1105

AN ACT TO REVISE THE GENERAL STATUTES TO PROVIDE THAT DEPENDENT CHILDREN ARE AFFORDED SUPPORT BY THE RESPONSIBLE PARENT.

The General Assembly of North Carolina enacts:

**Section 1.** There is hereby added a new Chapter of the General Statutes of North Carolina immediately following Chapter 110, to be designated Chapter 110 A, and to read as follows:

**"CHAPTER 110A.**

**"Child Support.**

**"§ 110A-1. Purposes.** — The purposes of this Chapter are to provide for the financial support of dependent children; to provide that public assistance paid to needy children is a supplement to the support provided by the responsible parent; to provide that the payment of public assistance creates a debt to the State; to provide that the acceptance of public assistance operates as an assignment of the right to child support; to provide for the location of absent parents; to provide for a determination that a responsible parent is able to support his children; and to provide for enforcement of the responsible parent's obligation to furnish support.

**"§ 110A-2. Definitions.** — As used in this Chapter:

(a) 'Court order' means any judgment or order of the courts of this State or of another state.

(b) 'Dependent child' means any person under the age of 18 who is not otherwise emancipated, married or a member of the Armed Forces of the United States.

(c) 'Responsible parent' means the natural or adoptive parent of a dependent child who has the legal duty to support said child and includes the father of an illegitimate child if paternity has been established in a judicial proceeding or if he has acknowledged paternity in open court or by verified written statement.

**"§ 110A-3. Action by the designated representatives of the county commissioners.** — Any county interested in the paternity and/or support of a dependent child may, if the mother, custodian, or guardian of the child neglects to bring such action, institute civil proceedings against the responsible parent of the child and may take up and pursue any action commenced by the mother, custodian or guardian for the maintenance of the child, including any ancillary action to establish paternity, if she fails to prosecute to final judgment. Such action shall be undertaken by the designated representative of the county commissioners in the county where the mother of the child resides or is found, in the county where the father resides or is found, or in the county where the child resides or is found. Any legal proceeding instituted under this section may be based upon information or belief. The parent of the child may be subpoenaed for testimony at the trial of the action to establish the paternity of and/or to obtain support for the child either instituted or taken up by the designated representative of the county commissioners. The husband-wife privilege shall not be grounds for excusing the mother or father from testifying at the trial nor shall said privilege be grounds for the exclusion of confidential communications between husband and wife. If a parent called for examination declines to answer upon the grounds that his testimony may tend to incriminate him, the court may require him to answer in which event he shall not thereafter be prosecuted for any criminal

act involved in the conception of the child whose paternity is in issue and/or for whom support is sought, except for perjury committed in this testimony.

**"§ 110A-4. Compelling disclosure of information respecting the non-supporting responsible parent of a child receiving public assistance.** — (a) If a parent of any dependent child receiving public assistance fails or refuses to cooperate with the county in locating and securing support from a non-supporting responsible parent, this parent may be cited to appear before any judge of the district court and compelled to disclose such information under oath and/or may be declared ineligible for public assistance by the county department of social services for as long as he fails to cooperate.

(b) Any parent who, having been cited to appear before a judge of the district court pursuant to subsection (a), fails or refuses to appear or fails or refuses to provide the information requested may be found to be in contempt of said court and may be fined not more than one hundred dollars (\$100.00) or imprisoned not more than six months or both.

(c) Any parent who is declared ineligible for public assistance by the county department of social services shall have his needs excluded from consideration in determining the amount of the grant, and the needs of the remaining family members shall be met in the form of a protective payment in accordance with G.S. 108-50.

**"§ 110A-5. Acknowledgment of paternity and agreement to support.** — (a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written acknowledgment of paternity executed by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child and filed with and approved by a judge of the district court in the county where the mother of the child resides or is found, or in the county where the putative father resides or is found, or in the county where the child resides or is found shall have the same force and effect as a judgment of that court; and a written agreement to support said child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged before a clerk or assistant clerk of superior court and filed with, and approved by a judge of the district court, at any time, shall have the same force and effect, retroactively or prospectively, in accordance with the terms of said agreement, as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. Payments under such agreement shall be made through the clerk of superior court and in those cases of dependent children receiving public assistance shall be directed to the North Carolina Department of Human Resources. Such written affirmations, acknowledgments and agreements to support shall be sworn to, and shall be binding on the person executing the same whether he is an adult or a minor. Such mother shall not be excused from making such affirmation on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation.

(b) At any time after the filing with the district court of an acknowledgment of paternity, upon the application of any interested party, the court or any judge thereof shall cause a summons signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter an order for the support of the child by periodic payments, which order may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action under this subsection on the acknowledgment of paternity previously filed with said court. Provided that, in the case of a child, who upon reaching the age of 18 years is mentally or physically incapable of self-support, the putative father shall not be relieved of the duty of support unless said child is a long-term patient in a facility owned or

operated by the North Carolina Division of Mental Health. The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court. All such payments shall be made through the clerk of superior court and in those cases of dependent children receiving public assistance shall be directed to the North Carolina Department of Human Resources.

**"§ 110A-6. Agreements of support.** — In lieu of or in conclusion of any legal proceeding instituted to obtain support for a dependent child from the responsible parent, a written agreement to support said child by periodic payments executed by the responsible parent when acknowledged before a clerk or assistant clerk of superior court and filed with and approved by a judge of the district court in the county where the mother of the child resides or is found, or in the county where the father resides or is found, or in the county where the child resides or is found shall have the same force and effect, retroactively and prospectively, in accordance with the terms of said agreement, as an order of support entered by the court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. Payments under such agreement shall be made through the clerk of superior court and in those cases of dependent children receiving public assistance shall be directed to the North Carolina Department of Human Resources.

**"§ 110A-7. Filing of agreements; disclosure.** — All agreements entered into under the provisions of G.S. 110A-5 and G.S. 110A-6 shall be filed by the clerk of superior court in the county in which they are entered, any filing fees to be taxed to the responsible parent, and no information concerning any such agreement, the parties thereto or the contents thereof may be disclosed other than to the North Carolina Department of Human Resources, the county department of social services, the designated representative of the county commissioners, or the State Registrar of Vital Statistics except on order of a judge of this State.

**"§ 110A-8. Debt to State created.** — Payment of public assistance to or on behalf of a dependent child creates a debt due and owing the State by the responsible parent or parents of the child. Provided, however, that where a court has ordered child support incident to a final divorce decree or other final order for child support, the debt shall be limited to the amount specified in the decree or order. This liability shall attach only with respect to the period of time during which public assistance is granted and only if the responsible parent or parents were financially able to furnish support during this period.

The United States, the State of North Carolina, and any county within the State which has provided public assistance to or on behalf of a dependent child shall be entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid.

No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance. The county attorney shall represent the State in all proceedings brought under this section.

**"§ 110A-9. Garnishment for enforcement of child support obligation.** — (a) Notwithstanding any other provision of the law, in any case in which a responsible parent is under a court order or has entered into a written agreement pursuant to G.S. 110A-5 or G.S. 110A-6 to provide child support, a judge of the district court in the county where the mother of the child resides or is found, or in the county where the father resides or is found, or in the county where the child resides or is found may enter an order of garnishment whereby no more than twenty percent (20%) of the responsible parent's monthly disposable earnings shall be garnished for the support of his minor child. For purposes of this section, 'disposable earnings' is defined as that part of the compensation paid or payable to the responsible parent for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension or retirement program) which remains after

the deduction of any amounts required by law to be withheld. The garnishee is the person, firm, association, or corporation by whom the responsible parent is employed.

(b) The mother, father, custodian, or guardian of the child or any county interested in the support of a dependent child may petition the court for an order of garnishment. The petition shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to G.S. 110A-5 or G.S. 110A-6 to provide child support, that said parent is delinquent in such child support or has been erratic in making child support payments, the name and address of the employer of the responsible parent, the responsible parent's monthly disposable earnings from said employer(which may be based upon information and belief), and the amount sought to be garnished, not to exceed twenty percent (20%) of the responsible parent's monthly disposable earnings. The petition shall be served on both the responsible parent and his alleged employer in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The responsible parent and his alleged employer shall have 20 days from the date of service or 30 days from the date stated in the notice of service of process by publication to respond to the petition for garnishment.

(c) A hearing on the petition shall be held within 10 days after the time for response has elapsed or within 10 days after the responses of both the responsible parent and the garnishee have actually been filed. Following the hearing the court may enter an order of garnishment not to exceed twenty percent (20%) of the responsible parent's monthly disposable earnings. If an order of garnishment is entered, a copy of same shall be served on the responsible parent and the garnishee either personally or by registered mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount to be garnished for each pay period. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(d) Upon receipt of an order of garnishment, the garnishee shall transmit without delay to the clerk of superior court the amount ordered by the court to be garnished. These funds shall be disbursed to the party designated by the court which in those cases of dependent children receiving public assistance shall be the North Carolina Department of Human Resources.

(e) Any garnishee violating the terms of an order of garnishment shall be subject to punishment as for contempt.

**"§ 110A-10. Acceptance of public assistance constitutes assignment of support rights to the county."** — By accepting public assistance for or on behalf of a dependent child or children, the recipient shall be deemed to have made an assignment to the county from which such assistance was received of the right to any child support owed for the child or children up to the amount of public assistance paid. The county shall be subrogated to the right of the child or children or the person having custody to initiate a support action under this Chapter and to recover any payments ordered by the court of this or any other state.

**"§ 110A-11. Duty of county to obtain support."** — Whenever a county department of social services receives an application for public assistance on behalf of a dependent child, and it shall appear to the satisfaction of the county department that the child has been abandoned by one or both responsible parents, or that the responsible parent(s) has failed to provide support for the child, the county department shall notify the designated representative of the county commissioners who shall take appropriate action under this Chapter to provide that the parent(s) responsible supports the child.

**"§ 110A-12. Location of absent parents."** — The Department of Human Resources shall attempt to locate absent parents for the purpose of establishing paternity of and/or securing support for dependent children. The department is to serve as a registry for the receipt of information which directly relates to the identity or location of absent parents, to assist any governmental agency or department in locating an absent parent, to answer interstate inquiries concerning deserting parents, and to develop guidelines for coordinating activities with any

governmental department, board, commission, bureau or agency in providing information necessary for the location of absent parents.

In order to carry out the responsibilities imposed under this Chapter, the department may request from any governmental department, board, commission, bureau or agency information and assistance. All State, county and city agencies, officers and employees shall cooperate with the department in the location of parents who have abandoned and deserted children with all pertinent information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential. All records maintained by the department pertaining to child support enforcement shall be confidential, and only duly authorized representatives of social service agencies, public officials with child support enforcement and related duties, and members of legislative committees shall have access to these records.

**"§ 110A-13. Conformity with federal requirements.** — Nothing in this Chapter is intended to conflict with any provision of federal law or to result in the loss of federal funds.

**"§ 110A-14. Effectuation of intent of Chapter.** — The North Carolina Department of Human Resources shall supervise the administration of this program in accordance with federal law and shall cause the provisions of this Chapter to be effectuated and to secure child support from absent, deserting, abandoning and non-supporting parents. The Department of Human Resources and a county may negotiate alternative arrangements to the procedure as outlined in G.S. 110A-3 for designating a local agency to administer the provisions of this act in said county."

**Sec. 2.** In the event any section, subsection, sentence, clause or phrase of this Chapter shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses or phrases of this Chapter, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof.

**Sec. 3.** This act shall become effective July 1, 1975.

In the General Assembly read three times and ratified, this the 25th day of June, 1975.