

No. 1989-81

## AN ACT

HB 1633

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for periodic review of support guidelines; providing for genetic tests in relation to paternity disputes; providing for mandatory attachment of income in orders of support; and providing for a periodic review of support orders.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 4322, 4343, 4348(a) and (b) and 4352 of Title 23 of the Pennsylvania Consolidated Statutes are amended to read:

§ 4322. Support **[guidelines]** *guideline*.

**[The courts of common pleas shall develop guidelines for child and spousal support]** (a) *Statewide guideline*.—*Child and spousal support shall be awarded pursuant to a Statewide guideline as established by general rule by the Supreme Court*, so that persons similarly situated shall be treated similarly. The **[guidelines]** *guideline* shall be based upon the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support. In determining the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support, the **[guidelines]** *guideline* shall place primary emphasis on the net incomes and earning capacities of the parties, with allowable deviations for unusual needs, extraordinary expenses and other factors, such as the parties' assets, as warrant special attention. *The guideline so developed shall be reviewed at least once every four years.*

(b) *Rebuttable presumption*.—*There shall be a rebuttable presumption, in any judicial or expedited process, that the amount of the award which would result from the application of such guideline is the correct amount of support to be awarded. A written finding or specific finding on the record that the application of the guideline would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, provided that the finding is based upon criteria established by the Supreme Court by general rule within one year of the effective date of this act.*

§ 4343. Paternity.

(a) Determination.—Where the paternity of a child born out of wedlock is disputed, the determination of paternity shall be made by the court in a civil action without a jury unless either party demands trial by jury. The burden of proof shall be by a preponderance of the evidence.

(b) Limitation of actions.—

(1) An action or proceeding under this chapter to establish the paternity of a child born out of wedlock must be commenced within 18 years of the date of birth of the child.

*(2) As of August 16, 1984, the requirement of paragraph (b)(1) shall also apply to any child for whom paternity has not yet been established and any child for whom a paternity action was brought but dismissed because of a prior statute of limitations of less than 18 years.*

*(c) Genetic tests.—*

*(1) Upon the request of any party to an action to establish paternity, the court shall require the child and the parties to submit to genetic tests.*

*(2) Genetic test results shall be considered prima facie evidence of paternity.*

*(3) To ensure the integrity of the specimen and that the proper chain of custody has been maintained, the genetic tests of the biological mother, the child or children in question and the alleged father should be conducted by an established genetic-testing laboratory in the course of its regularly conducted business activity, and certified records should be issued. The laboratory must be certified by either the American Association of Blood Banks or the American Association for Histocompatibility and Immunogenetics.*

*(4) A fee for performing genetic tests may be imposed on any individual who is not a recipient of public assistance. The amount of the fee will be in accordance with applicable Federal regulation.*

§ 4348. Attachment of income.

*(a) Existing and certain future orders.—[As to orders of support entered prior to the effective date of this part, the obligor's income shall be attached pursuant to this section where the obligor is in arrears in an amount equal to or greater than one month's support obligation or at such earlier date as the court may designate. The domestic relations sections shall mail notice to obligors of existing orders informing them of the passage of this part and the attachment procedure which shall be applied if the obligor falls into arrears as specified by this section. This notice requirement shall not apply to obligors whose existing orders of support contain mandatory attachment provisions.] All orders of support existing as of the effective date of this provision, as well as all orders of support entered or modified after the effective date of this provision but before June 30, 1990, shall provide for mandatory attachment of income:*

*(1) if the obligor is in arrears in payment in an amount equal to or greater than one month's support obligation;*

*(2) at the request of the obligor;*

*(3) at the request of the obligee; or*

*(4) as of July 1, 1991, except as provided by subsection (b)(1) and (2).*

*(b) Future orders.—[As of the effective date of this part, all orders of support entered or modified by courts of this Commonwealth shall provide for the mandatory attachment of the obligor's income where the obligor is in arrears in an amount equal to or greater than one month's support obligation or at such earlier date as the court may designate.] All orders of support entered or modified on or after July 1, 1990, shall, as part of the order, provide for the mandatory attachment of income unless:*

**(1) the obligor is not in arrears in payment in an amount equal to or greater of one month's support obligation; and**

**(2) (i) one of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or**

**(ii) A written agreement is reached between the parties which provides for an alternative arrangement.**

The court may, on its own motion, order the attachment of the obligor's income where the court has a reasonable basis to believe the obligor will not comply with the order of support. In making this determination, the court may consider evidence of the person's previous violations of orders entered in any jurisdiction or evidence that the obligor has attempted to conceal income or to transfer, convey or encumber property in order to reduce the obligor's support obligation. Attachment shall occur without amendment to the order of support.

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§ 4352. Continuing jurisdiction over support orders.

(a) General rule.—The court making an order of support shall at all times maintain jurisdiction of the matter for the purpose of enforcement of the order and for the purpose of increasing, decreasing, modifying or rescinding the order without limiting the right of the obligee to institute additional proceedings for support in any county in which the obligor resides or in which property of the obligor is situated. *A method shall be developed for the automatic review of each order of support at least once every three years from the date of establishment or the most recent review, for the purpose of making any appropriate increase, decrease, modification or rescission of the order. If, however, it is determined that such a review would not be in the best interests of the child and neither parent has requested a review in the interim, no review shall be required.*

(b) Notice.—*Each parent subject to a child support order is to be notified 30 days in advance of the commencement of such a review:*

**(1) of the right of such parent to request a review of the order;**

**(2) of a proposed adjustment (or determination that there should be no change) in the order; and**

**(3) such parent is afforded 30 days from the date of the notice to initiate a challenge to the adjustment (or determination).**

[(b)] (c) Transfer of action.—Where neither party to the action resides or is employed in the county wherein the support action was filed, the court may transfer the matter to any county wherein either party resides or where the defendant is regularly employed. If one of the parties resides outside of this Commonwealth, the action may be transferred to the county of residence or employment of the other party.

[(c)] (d) Arrears as judgments.—On and after the date it is due, each and every support obligation shall constitute a judgment against the obligor by operation of law, with the full force, effect and attributes of a judgment of court, including the ability to be enforced, and shall be entitled as a judgment to full faith and credit in this or any other state. Past due support obligations shall not become a lien upon the real and personal property of

the person ordered to make such payments until the judgment or order has been entered of record in the office of the clerk of the court of common pleas in the county where the real or personal property owned by the person obligated to pay support is located or in the office of the clerk of the branch of the court of common pleas embracing such county in accordance with 42 Pa.C.S. § 4303 (relating to effect of judgments and orders as liens). Execution shall issue thereon pursuant to the Rules of Civil Procedure. The obligation for payment of arrears or past due support shall terminate by operation of law when all arrears or past due support has been paid.

**[(d)] (e)** Retroactive modification of arrears.—No court shall modify or remit any support obligation, on or after the date it is due, except with respect to any period during which there is pending a petition for modification. If a petition for modification was filed, modification may be applied to the period beginning on the date that notice of such petition was given, either directly or through the appropriate agent, to the obligee or, where the obligee was the petitioner, to the obligor. However, modification may be applied to an earlier period if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition. In the case of an emancipated child, arrears shall not accrue from and after the date of the emancipation of the child for whose support the payment is made.

**[(e)] (f)** Foreign support orders.—Subject to the limitations in subsection **[(c)] (d)**, the court may modify or remit any support obligation under registered foreign support orders when the foreign court declines, surrenders or determines that it is an inappropriate forum to modify the decree.

**[(f)] (g)** Notice to obligors and obligees.—The domestic relations section shall mail notice to obligors and obligees of existing orders informing them that such orders may attain the status of a judgment by operation of law. The notice shall explain the nature of a judgment by operation of law and its effect. Further, the notice shall advise each party to a support proceeding of the party's duty to advise the domestic relations section of material changes in circumstance and of the necessity to promptly request a modification as soon as circumstances change.

**[(g)] (h)** Applicability.—This section applies to all support orders whether entered under this chapter or any other statute.

Section 2. This act shall take effect immediately.

APPROVED—The 20th day of December, A. D. 1989.

ROBERT P. CASEY