

CHAPTER NO. 361

SENATE BILL NO. 518

By Jackson, Curtis S. Person, Jr., Cohen, Miller, Fowler

Substituted for: House Bill No. 1119

**By Shepard, Maddox, Black, Winningham, Ulysses Jones, Brenda Turner, John DeBerry,
Wood, Gresham, Hensley**

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 2, Part 3 and Title 36, Chapter 5, relative to child support.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-2-311(a)(11), is amended by deleting that subdivision in its entirety and substituting instead the following:

36-2-311. (a) (11) (A) Determination of child support pursuant to Chapter 5 of this title. When making retroactive support awards pursuant to the child support guidelines established pursuant to this subsection, the court shall consider the following factors as a basis for deviation from the presumption in the child support guidelines that child and medical support for the benefit of the child shall be awarded retroactively to the date of the child's birth:

(i) the extent to which the father did not know, and could not have known, of the existence of the child, the birth of the child, his possible parentage of the child or the location of the child;

(ii) the extent to which the mother intentionally, and without good cause, failed or refused to notify the father of the existence of the child, the birth of the child, the father's possible parentage of the child or the location of the child; and

(iii) the attempts, if any, by the child's mother or caretaker to notify the father of the mother's pregnancy, or the existence of the child, the father's possible parentage or the location of the child.

(B) In cases in which the presumption of the application of the guidelines is rebutted by clear and convincing evidence, the court shall deviate from the child support guidelines to reduce, in whole or in part, any retroactive support. The court must make a written finding that application of the guidelines would be unjust or inappropriate in order to provide for the best interests of the child or the equity between the parties.

(C) Deviations shall not be granted in circumstances where, based upon clear and convincing evidence:

(i) the father has a demonstrated history of violence or domestic violence toward the mother, the child's caretaker or the child;

(ii) the child is the product of rape or incest of the mother by the father of the child;

(iii) the mother or caretaker of the child, or the child has a reasonable apprehension of harm from the father or those acting on his behalf toward the mother, the child's caretaker or the child; or

(iv) the father or those acting on his behalf, has abused or neglected the child.

(D) Nothing in this subdivision shall limit the right of the state of Tennessee to recover from the father expenditures made by the state for the benefit of the child, or the right, or obligation, of the Title IV-D child support agency to pursue retroactive support for the custodial parent or caretaker of the child where appropriate.

(E) Any amounts of retroactive support ordered that have been assigned to the state of Tennessee pursuant to Section 71-3-124 shall be subject to the child support distribution requirements of 42 U.S.C. 657. In such cases, the court order shall contain any language necessary to allow the state to recover the assigned support amounts.

(F) In making any deviations from awarding retroactive support, the court shall make written findings of fact and conclusions of law to support the basis for the deviation, and shall include in the order the total amount of retroactive support that would have been paid retroactively to the birth of the child, had a deviation not been made by the court.

SECTION 2. Tennessee Code Annotated, Section 36-5-101(e)(1), is amended by adding the following as new items to that section:

(C) When making retroactive support awards pursuant to the child support guidelines established pursuant to this subsection, in cases where the parents of the minor child are separated or divorced, but where the court has not entered an order of child support, the court shall consider the following factors as a basis for deviation from the presumption in the child support guidelines that child and medical support for the benefit of the child shall be awarded retroactively to the date of the parents' separation or divorce:

(i) whether the remaining spouse knew or could have known of the location of the child or children who had been removed from the marital home by the abandoning spouse; or

(ii) whether the abandoning spouse, or other caretaker of the child, intentionally, and without good cause, failed or refused to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse; and

(iii) the attempts, if any, by the abandoning spouse, or other caretaker of the child, to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse.

(D) In cases in which the presumption of the application of the guidelines is rebutted by clear and convincing evidence, the court shall deviate from the child support guidelines to reduce, in whole or in part, any retroactive support. The court must make a written finding that application of the guidelines would be unjust or inappropriate in order to provide for the best interests of the child or the equity between the parties.

(E) Deviations shall not be granted in circumstances where, based upon clear and convincing evidence:

(i) the remaining spouse has a demonstrated history of violence or domestic violence toward the abandoning spouse, the child's caretaker or the child;

(ii) the child is the product of rape or incest of the mother by the father of the child;

(iii) the abandoning spouse has a reasonable apprehension of harm from the remaining spouse or those acting on the remaining spouse's behalf toward the abandoning spouse or the child; or

(iv) the remaining spouse, or those acting on the remaining spouse's behalf, has abused or neglected the child.

(F) In making any deviations from awarding child and medical support retroactively to the separation or divorce of the parties, the court shall make written findings of fact and conclusions of law to support the basis for the deviation, and shall include in the order the total amount of retroactive child and medical support that would have been paid retroactively to the separation or divorce of the parties, had a deviation not been made by the court.

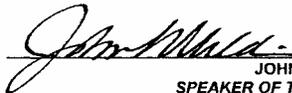
(G) Nothing in this subdivision shall limit the right of the state of Tennessee to recover from the father or the remaining spouse expenditures made by the state for the benefit of the child, or the right, or obligation, of the Title IV-D child support agency to pursue retroactive support for the custodial parent or caretaker of the child where appropriate.

(H) Any amounts of retroactive support ordered that have been assigned to the state of Tennessee pursuant to Section 71-3-124 shall be subject to the child support distribution requirements of 42 U.S.C. 657. In such cases, the court order shall contain any language necessary to allow the state to recover the assigned support amounts.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect upon becoming law, the public welfare requiring it and shall apply to any pending case in which the judgment of the trial court has not become final by such effective date.

PASSED: May 29, 2003


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 17th day of June 2003


PHIL BREDESEN, GOVERNOR