

Judicial Child Support Enforcement Remedies (Other Than Contempt)

Remedy ¹ Legal Authority	IV-D or Non-IV-D	Arrearage “Trigger”	Willful ²	“Delinquent” ³	Notes
Income Withholding GS 110-136.3 et seq.	Non-IV-D	Arrearage equals at least one month of current support (unless “erratic”).	No	Yes (unless “erratic”)	Applies only to “periodic” payments of income. Income includes earnings from employment or self-employment (wages, salary, commissions, overtime, bonus pay, severance pay, etc.), workers compensation payments, pension and retirement benefits, annuities, dividends, etc. but <i>not</i> unemployment compensation or public assistance payments. Initial child support orders entered on or after 1/1/94 may require immediate income withholding. Withholding may include current support plus an additional amount to liquidate arrearages (or may be implemented in arrearages only cases) but may not exceed 40% of obligor’s “disposable” income (45% or 50% if there is more than one order). If there is more than one order, current support has priority over arrearages and payments are prorated based on amount of orders. Payors must make payments through centralized collection unit and are liable for failure to withhold support as required by law.
Income Withholding GS 110-136.3 et seq.	IV-D	Arrearage equals at least one month of current support.	No	No	Income includes unemployment benefits but maximum withholding rate for unemployment benefits is 25%. Obligor is subject to income withholding based on nonpayment if order was entered before 1/1/96. Income withholding may be implemented administratively without prior court order but obligor may seek judicial review. Obligor is subject to income withholding based on obligee’s request if order was entered before 1/1/89. Obligor is subject to immediate income withholding under new or modified child support orders entered on or after 1/1/89. IV-D agency may increase amount of withholding to liquidate arrearage.

¹ Use of a particular child support enforcement remedy generally does not preclude the use of other appropriate remedies. *Griffin v. Griffin*, 103 N.C. App. 65, 404 S.E.2d 478 (1991). The court is *not* required to appoint a lawyer to represent an indigent obligor in a civil child support enforcement proceeding (other than a proceeding involving civil or criminal contempt). A court may require an obligor to pay the obligee’s reasonable attorneys fees pursuant to GS 50-13.6 in connection with a civil child support enforcement proceeding.

² “No” means that a finding of “willful” nonpayment of court-ordered child support is not required. “Yes” means that the remedy requires a finding of “willful” nonpayment of support.

³ “No” means that a finding that the obligor is or has been “delinquent” in paying court-ordered child support is not required. “Yes” means that the remedy requires a finding that the obligor is or has been “delinquent.” An obligor is “delinquent” if he or she has failed to pay court-ordered child support *and* has failed to comply with the provisions of any court order requiring him or her to satisfy the child support arrearages he or she owes. *Davis v. N.C. Dept. of Human Resources*, 126 N.C. App. 383, 485 S.E.2d 342 (1997), *aff’d in part and rev’d in part* 349 N.C. 208, 505 S.E.2d 77 (1998).

Remedy Legal Authority Judgment GS 50-13.4(f)(8)	IV-D or Non-IV-D Both	Arrearage “Trigger” No arrearage trigger specified.	Willful No ⁴	“Delinquent” No	Notes Statute of limitations may be raised as defense with respect to payments due more than 10 years before motion or action. ⁵ Judgment may require liquidation of arrearage via periodic payment.
Execution of Judgment GS 50-13.4(f)(10), GS 1-302 et seq., GS 1-339.41 et seq., GS 1-352 et seq.	Both				Constitutional and statutory exemptions are inapplicable. ⁶ Judgment constitutes lien on obligor’s real property in county in which docketed. Judgment lien does not apply to property owned by obligor and spouse as tenants by the entirety. Judgment may be enforced by execution and levy with respect to tangible personal property in obligor’s possession or through supplemental proceedings with respect to intangible property, obligor’s property in possession of third parties, and debts owed to obligor by third parties.
General Lien GS 44-86, 44-87	Both	Arrearage equals at least three months of current support or \$3,000, whichever less.	No	No ⁷	Lien applies to obligor’s real and personal property (other than property owned as tenants by the entirety). Lien attaches to real property in county when docketed. Lien attaches to personal property upon levy. Perfected lien may be enforced in same manner as civil judgment (see above). Lien may be discharged by full payment to clerk or obligee.
Lien on Insurance GS 58-3-185	Both	No arrearage trigger specified.	No	No	Applies only if insurance benefit of at least \$3,000 is payable to obligor as claimant or beneficiary. Lien is subordinate to liens under GS 44-49 and 44-50 and claims of health care providers under health benefit plans other than disability income insurance. Lien attaches extrajudicially but obligor may seek judicial review and obligee may seek judicial enforcement.
Lien on Bank Account GS 110-139.2(b1)	IV-D	Arrearage equals at least six months of current support or \$1,000, whichever less.	No	No	Lien is imposed administratively without court order but obligor or co-owner may seek judicial review.

⁴ Bogan v. Bogan, 134 N.C. App. 176, 516 S.E.2d 641 (1999).

⁵ GS 1-47; State ex rel. Pruitt v. Pruitt, 94 N.C. App. 713, 380 S.E.2d 809 (1989).

⁶ GS 1C-1601(e)(9); Walker v. Walker, 204 N.C. 210, 167 S.E. 818 (1933); Barber v. Barber, 217 N.C. 422, 8 S.E.2d 204 (1940) (alimony).

⁷ Because G.S. 44-86(b) defines “delinquent” as owing arrears that equal at least \$3,000 or three months’ support, whichever is less, the definition of “delinquent” in *Davis* probably does not apply.

Remedy Legal Authority	IV-D or Non-IV-D	Arrearage “Trigger”	Willful	“Delinquent”	Notes
License Revocation GS 110-142 et seq.	IV-D	At least 90 days in arrears in making child support payments.	Yes	Yes (if IV-D agency has agreed to payment schedule)	Applies to NC drivers licenses and motor vehicle registration, and NC hunting, fishing, and trapping licenses. License revocation may be stayed on conditions requiring payment of current support and liquidation of arrearage within reasonable period of time. Initial payment on arrearage must be at least \$500 or 5% of arrearage, whichever is less. Payments for current support and arrears generally may not exceed 40% of obligor’s disposable income. State occupational, professional, and business licensing privileges may be revoked administratively without court order but obligor may seek judicial review of license revocation.
License Revocation GS 50-13.12	Non-IV-D	Arrearage equals at least one month of current support.	Yes	Yes	Applies to NC drivers licenses (regular and commercial), NC occupational, professional, and business, and NC hunting, fishing, and trapping licenses. License revocation may be stayed on conditions requiring obligor to pay current support and pay off arrearage over time. Licensing privileges may be reinstated if obligor pays arrearages.
Compliance Bond GS 50-13.4(f)(1)	Both	Arrearage trigger should be specified in bond or order.			A compliance bond secures the obligor’s <i>future</i> payment of court-ordered child support and may be forfeited, in whole or in part, upon the obligor’s <i>subsequent</i> default in paying child support. A compliance bond may be secured by cash deposit, lien, or third party sureties. Any bond that is posted as a condition of the obligor’s pretrial release is an appearance, not a compliance, bond.
Injunction GS 50-13.4(f)(5), GS 1-485 et seq., GS 1A-1, Rule 65	Both	No arrearage trigger specified.	No	No	Injunction may be issued against obligor and persons acting in concert with obligor to restrain fraudulent removal or disposition of property.
Transfer of Property GS 50-13.4(f)(2), GS 50-13.4(e), GS 1-228, GS 1A-1, Rule 70	Both	No arrearage trigger specified.	No	No	Court may order obligor to transfer title to solely-owned real property to pay child support arrears if net value of property does not exceed arrearage.
Mortgage or Security Interest GS 50-13.4(f)(1)	Both	No arrearage trigger specified.	No	No	A mortgage or other security interest in the obligor’s property secures the obligor’s <i>future</i> payment of court-ordered child support and may be enforced or foreclosed upon the obligor’s <i>subsequent</i> default in paying child support. If the court orders the obligor to execute a mortgage or security interest and the obligor refuses to do so, the court may enter an order pursuant to GS 1-228 and GS 1A-1, Rule 70 to create the mortgage or security interest.

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Legal Authority					
Fraudulent Transfer GS 50-13.4(f)(7), GS 39-23.1 et seq.	Both	No arrearage trigger specified.	No	No	Obligor’s transfer of property may be fraudulent if it is made with intent to hinder, delay, or defraud obligee.
Receiver GS 50-13.4(f)(6), GS 1-501 et seq.	Both	No arrearage trigger specified.	No	No	Court may appoint receiver to dispose of obligor’s property as required by the order, to preserve property pending appeal, or to satisfy judgment for child support when a writ of execution has been returned unsatisfied and the obligor refuses to apply his or her property to satisfy the judgment.
Assignment of Wages or Income GS 50-13.4(f)(1), GS 110-136.1, GS 95-31	Both	No arrearage trigger specified.	No	No	Obligor’s employer is not required to honor wage assignment. Workers compensation benefits are not assignable. Some public assistance and pension benefits may not be assignable.
Military Pay Allotment 42 USC 665, 32 CFR 54.3 et seq.	Non-IV-D	Arrearage equals at least two months of current support.	No	No	May be quicker, easier, and better than income withholding. Can be requested administratively without court order in IV-D cases.
Job Search and Work Activities GS 110-136.3(a1)	IV-D	No arrearage trigger specified.	No	No	May not be ordered unless income withholding cannot be implemented and obligor is not incapacitated. Work activities include community service, job search, job training, etc.
State Income Tax Refund Offset GS 105A-1 et seq	IV-D	Arrearage of at least \$50.	No	No	Applies to state income tax refunds of at least \$50. Offset is implemented administratively without court order but obligor may request administrative hearing and seek judicial review in superior court under GS Ch 150B.
Federal Income Tax Refund Offset 42 USC 664, 45 CFR 303.72	IV-D	Arrearage is at least \$500 (or at least \$150 if assigned for public assistance).	No	Yes	Offset is implemented administratively without court order but obligor may request administrative hearing and seek judicial review in superior court under GS Ch 150B.
Arrest & Bail GS 50-13.4(f)(3), GS 1-410 et seq.	Both				Arrest and bail is a pre-judgment remedy and may not be used as a remedy to collect past-due child support arrearages.
Attachment & Garnishment GS 50-13.4(f)(4), GS 1-440.2 et seq.	Both				Attachment and garnishment is a pre-judgment remedy and may not be used as a remedy to collect past-due child support arrearages.