

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 907 Spousal and Child Support  
**SPONSOR(S):** Civil Justice & Courts Policy Committee; Flores  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 2246

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	13 Y, 0 N, As CS	Bond	De La Paz
2)	Health Care Services Policy Committee		Schoonover	Schoolfield
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

### SUMMARY ANALYSIS

This bill makes a number of changes to laws on child support and alimony. Significantly, this bill:

- Requires child support awards to end automatically upon majority and, where appropriate, to account for revised child support guidelines based on remaining children owed support.
- Enacts basic principles of child support awards.
- Provides that a parent who refuses to provide financial information may have the average wage in the community imputed to him or her.
- Eliminates the 25% reduction in actual child care expenses paid, thereby requiring full credit to the parent paying child care expenses.
- Requires the court to fully account for the effect of federal tax deductions and credits when determining the appropriate child support award.
- Eliminates the 40% time-sharing threshold for a child support award adjustment, requiring all child support awards to be adjusted for time-sharing.

This bill does not appear to have a fiscal impact on state or local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Termination of Child Support at Majority**

In general, child support ends as the child reaches the age of majority, that is, upon the child reaching 18 years of age. However, s. 743.07(2), F.S., provides that a child support obligation may be extended beyond the 18th birthday in two different circumstances:

- If the child will continue to be dependent upon his or her parents for support beyond his or her 18th birthday because of a physical or mental incapacity that existed prior to the child turning 18.
- If the child is still in high school, performing in good faith and with a reasonable expectation of graduation before the age of 19.

An order establishing child support is a continuing obligation owed by the parent paying support. Many parents paying and receiving child support are surprised to learn that the child support obligation does not automatically end by operation of law. Instead, the parties must obtain a court order modifying the support obligation when a child reaches the age at which support should end.<sup>1</sup> Where one child reaches the age of majority, the parties must return to court and re-litigate child support based on then-current incomes and the number of children remaining to whom child support applies. Obviously, couples often have two or more children of differing ages. One appellate court explained:

It is well established that a trial court may, in its discretion, award lump sum support for two or more children, rather than award a separate amount of support for each child, and that the parent paying such unallocated support "has the duty to petition the court to reduce the amount when one child attains majority." *State v. Segrera*, 661 So.2d 922, 923 (Fla. 3d DCA 1995); *Hammond v. Hammond*, 492 So.2d 837, 838 (Fla. 5th DCA 1986) (confirming that a trial court may award lump sum child support for several children and when it does so, the payor parent must "petition for an order reducing the amount when one child attains majority"). It is equally well settled that because support obligations become the vested rights of the payee and vested obligations of the payor at the time the payments are due, child support payments are not subject to retroactive modification.<sup>2</sup>

<sup>1</sup> s. 61.13, F.S.

<sup>2</sup> *State, Dept. of Revenue ex rel. Ortega v. Ortega*, 948 So.2d 855 (Fla.3rd DCA 2007).

This bill amends s. 61.13(1)(a), F.S., to provide that child support orders and income deduction orders entered on or after October 1, 2010, must account for the anticipated time at which the child support obligations related to dependent children should terminate. A child support award must change the support obligation at those times to account for the reduced obligation of the one child reaching the age of majority, together with the changed support obligation owed for the remaining child or children, if applicable.

### **Child Support Guidelines - Principles**

Current statutory law does not provide principles that a court should follow when establishing or modifying child support obligations. This bill creates s. 61.29, F.S., to establish the following principles that a court must follow when establishing or modifying child support obligations:

- A parent's first and principal obligation is to support his or her minor child.
- Both parents are mutually responsible for the support of their children.
- Each parent should pay for the support of the children according to a parent's ability to pay.
- Children should share in the standard of living of both parents. Child support may therefore be appropriately used to improve the standard of living of the children's primary residence in order to improve the lives of the children.
- The guidelines schedule takes into account each parent's actual income and level of responsibility for the children.
- It is presumed that the parent having primary physical responsibility for the children contributes a significant portion of his or her available resources for the support of the children.
- The guidelines schedule is based on the parents' combined net income estimated to have been allocated to the child if the parents and children were living in an intact household.
- The guidelines schedule encourages fair and efficient settlement of conflicts between parents and minimizes the need for litigation.

### **Child Support Guidelines Formula -- Imputed Income**

In general, a court determines support obligations of the parties based on their income and, in the case of child support, the time-sharing arrangement.<sup>3</sup> In some circumstances, the current income of a party does not give an accurate picture of the party's ability and duty to make support payments. Where this occurs, s. 61.30(2)(b), F.S., allows the court to impute income to that party. Imputed income is an estimate of what the party should be earning. The imputed income is then used in determining child support rather than actual income.

This bill amends s. 61.30(2)(b), F.S., related to imputed income. If a parent does not provide income information, earnings must be imputed at the median wage for all full-time workers. According to the U.S. Census Bureau, median income for a single earner in Florida in 2008 was \$41,226.<sup>4</sup> In comparison, the income of an individual based solely on minimum wage is \$15,068.40.<sup>5</sup> This bill further provides that, for a court to impute income, the court must find that the unemployment or underemployment is voluntary and must determine whether subsequent underemployment resulted from pursuit of own interests or from less than diligent efforts to find suitable employment. The bill also provides that the burden of proof is on the parent seeking to impute income to the other.

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<sup>3</sup> s. 61.30, F.S.

<sup>4</sup> U.S. Census Bureau, <http://www.census.gov/hhes/www/income/medincearnersandstate.xls> (Last visited 3/12/2010).

<sup>5</sup> \$7.25 per hour effective July 24, 2009, the minimum wage is \$7.25 per hour. Multiplied by 40 hours per week and assuming 4.33 weeks in a month, yearly gross income at minimum wage in 2010 is \$15,068.40.

## Child Support Guidelines Chart

A child support guideline determination references the minimum child support need chart at s. 61.30(6), F.S. The net income of the parents is added together to determine the combined monthly net income amount. The chart has \$50 increments starting at \$650 combined net income. The chart also contains separate columns for between one and six children. If the combined monthly net income is less than the lowest level on the chart (\$650), the court is directed to determine child support on a "case-by-case" basis.

This bill amends s. 61.30(6), F.S., as it refers to the low income calculation of child support, change the reference to "combined income" to a reference to the net income of the obligor parent only (net income is less than \$650 a month). The child support payment required of a parent whose net income is less than \$650 a month is the lesser of the case-by-case child support amount determination in s. 61.30(6), F.S., and 90 percent of the difference between the obligor parent's monthly net income and the current federal poverty guidelines for a single individual.<sup>6</sup>

## Child Support Guidelines Formula - Credit for Child Care Expense

One part of the child support calculation is the apportionment of child care expenses between the parents. Under current law, the parent actually paying the child care expense is only given credit for 75% of the cost of such day care.<sup>7</sup> This 25% subtraction appears to have been put into law to account for the corresponding federal child care tax credit of 25%; however, higher income parents do not qualify for the full 25% credit rate under current federal tax law (some do not qualify at all) and, because the credit was nonrefundable until the 2009 tax year, lower income parents could not utilize the full 25% credit.

This bill amends s. 61.30(7), F.S., to fully apportion child care expense without a 25% deduction. Note that other parts of this bill change s. 61.30(11)(a), F.S., to require the court to account for the effect of tax laws, including the child care tax credit actually applicable to the parties based on their financial circumstances.

## Child Support Guidelines Formula -- Tax Credits

The child support guidelines formula is a formula that calculates the net income of the parents, determines a minimum child support need, and splits that need by the shared parenting plan to calculate a presumptive child support amount owed by one parent to the other. The court may not award child support that varies from the formula by more than 5% except upon limited circumstances.<sup>8</sup>

This first part of the formula is a determination of each parent's net income by subtracting various expenses from the parent's gross income. The first allowable subtraction from gross income, at s. 61.30(3)(a), F.S., is for income tax liabilities. To properly calculate the subtraction, the court is directed to calculate the appropriate income tax deduction that is expected in the immediate future. The formula does not use current income tax deductions as the case outcome typically affects and changes the income tax liabilities of the parents.<sup>9</sup>

Income tax laws provide for deductions and tax credits. A deduction reduces the gross income that is used in calculating the income tax, a tax credit is a reduction of taxes owed. Federal income tax law in the past generally prohibited tax credits from creating a negative tax situation where the federal government would owe money back to the taxpayer. In tax parlance, these tax credits were

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<sup>6</sup> As of 3/12/2010, the federal poverty guideline for a single individual is \$10,830.00.  
<http://aspe.hhs.gov/POVERTY/09poverty.shtml> (last visited 3/12/2010).

<sup>7</sup> s. 61.30(7), F.S.

<sup>8</sup> s. 61.30(1)(a), F.S.

<sup>9</sup> After divorce, the parents will move from married to either single or head of household. Also, the court may award a dependency deduction to one parent or the other.

"nonrefundable", they would generally be lost once a person owed no federal income tax. However, the earned income tax credit, a credit given to the working poor, was refundable under previous tax law. One aspect of the 2009 federal stimulus bill is that several tax credits have moved from nonrefundable to refundable, and thus may have the effect of increasing a parent's net. It is possible that a strict reading of s. 61.30(3)(a), F.S., which simply refers to deductions from income, may not allow the court to account for refundable tax credits when calculating income for child support purposes.

This bill amends s. 61.30(11)(a), F.S., to account for, in the child support formula, the Child & Dependent Care Tax Credit and the Earned Income Tax Credit, in addition to other tax items in current law. The effect is to account for refundable tax credits in a parent's net income used to calculate child support.

### **Child Support Formula Adjustment for Timesharing**

The child support formula is set forth in s. 61.30, F.S. The basic formula is provided in subsections (1) through (10), and other changes to that formula are set forth in portions of the analysis above. In short, the formula uses the adjusted incomes of the parents to develop a minimum child support need based on the chart. The minimum child support need is then increased by child care costs and health insurance costs to establish a total child support need. That total need is then multiplied by a parent's percentage share of the joint income to determine that parent's minimum child support obligation.

Section 61.30(11)(b), F.S., provides that a court must adjust the minimum child support need where a parenting plan provides that each child spend a substantial amount of time with each parent. In short, the adjustment of child support requires a recalculation based on the percentage of overnight stays at each parent's home. Subparagraph 8. defines the term substantial amount of time to be where one parent has 40% or more of the overnights of the year.

This bill amends s. 61.30(11), F.S., to remove the references to substantial amount of time. The effect is that nearly all child support calculations will require adjustment based on the timesharing arrangement.<sup>10</sup>

When adjusting for timesharing arrangements, current law requires that the base child support obligation (without day care and health insurance costs) is to be multiplied by 1.5, which is then apportioned between the parties based on their relative timesharing share. The effect of using a 1.5 multiplier is to lessen the financial impact on a parent receiving child support where substantial timesharing would otherwise substantially reduce the child support award. This bill amends s. 61.30(11), F.S., to eliminate the 1.5 multiplier, thereby requiring all child support awards to be directly affected by the timesharing arrangement.

The effect of these changes will create a timesharing adjustment to the child support amount that applies to all levels of shared parenting but increases with the amount of the noncustodial parent's parenting time. In the example below and other possible scenarios, it appears that the proposed changes would result in a lower payment by the non-custodial parent.

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<sup>10</sup> There would be no timesharing adjustment in cases where the court orders that a parent have no contact with the child.

Example

Custodial Parent's Support Obligation: \$1,000/Month  
Non-Custodial Support Obligation: \$2,500/Month

*Current Law*

Steps Under 61.30(11)(b):

1. Multiply each parents support obligation by 1.5  
Custodial:  $\$1,000/\text{Month} \times 1.5 = \$1,500$   
Non-Custodial:  $\$2,500/\text{Month} \times 1.5 = \$3,750$
2. Percentage of Overnight Stays with each Parent  
60%/40%
3. Multiply each parent's support obligation calculated in 1. by the % of the other parent's overnight stays  
Custodial:  $\$1,500 \times 40\% = \$600$   
Non-Custodial:  $\$3,750 \times 60\% = \$2250$
4. The difference between the amounts calculated in 3. is the amount owed to the custodial parent  
 $2250-600 = \mathbf{\$1650}$

Under the current formula, prior to adjustments for day care and health insurance, the non-custodial parents would pay the custodial parent \$1,650/month

*Proposed Changes*

1. Custodial Parent's Support Obligation = \$1,000/Month  
Non-Custodial Support Obligation = \$2,500/Month
2. Percentage of Overnight Stays with each Parent  
60%/40%
3. Multiply each parent's support obligation calculated in 1. by the sum of 1 and the smaller % in 2.  
Custodial Parent:  $\$1,000(1+40\%) = \$1,400$   
Non-custodial Parent:  $\$2,500(1+40\%) = \$3,500$
4. Multiply each parent's support obligation calculated in 3. by % of the other parent's overnight stays  
Custodial:  $\$1,400(.40) = \$560$   
Non-Custodial:  $\$3,500(.60) = \$2100$
5. The difference between the amounts calculated in 4. is the amount paid to the custodial parent  
 $\$2,100 - \$560 = \mathbf{\$1,540}$

B. SECTION DIRECTORY:

Section 1 amends s. 61.13, F.S., regarding calculation of child support obligations.

Section 2 creates s. 61.29, F.S., providing guidelines and principles for the setting of child support obligations.

Section 3 amends s. 61.30, F.S, regarding child support guidelines.

Section 4 provides an effective date of January 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None.
2. Expenditures:  
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 1 of the bill may lessen the number of child support modification cases, lowering legal costs to parents and correspondingly lowering fees earned by lawyers and other professionals.

Any bill amending the child support calculations has the potential to affect the payment and receipt of child support awards to many families. The exact impact will differ from family to family.

The changes to the child support formula (timesharing adjustment in all cases, repeal of the 1.5 multiplier) may substantially alter the result of the formula for most families. The effect cannot be quantified as the percentage change one way or another will differ based on relative incomes and timesharing arrangements.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The effective date of the bill was changed to January 1, 2011, but Section 1 of the bill contains a requirement that becomes effective October 1, 2010. Either the effective date or the text of Section 1 should be amended to conform with one another.

Lines 318-332: It appears the language in this section is intended to create two options in determining an obligor parent's payment if his/her income is less than \$650/month. However, the construction of the sections is confusing because paragraph 1. states that the parent's income should be determined on a case-by-case basis. Then paragraph 2. states that the obligor parent's child support payment shall be the lesser of actual dollar share of the total minimum support amount as determined in paragraph 1., and 90% of the difference between two specified amounts. Reference of choosing the lesser of the two amounts would be better placed in parentheses (a).

Lines 374-375 provides an update to account for tax credits. However, the proposed change does not account for future changes by the federal government relating to tax credits and children.

#### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 9, 2010, the Civil Justice & Courts Policy Committee adopted one amendment to this bill, which amendment conformed the bill to the Senate companion. The amendment:

- Removed provisions regarding application of alimony payments.
- Added principles for child support.
- Removed the presumption, for purposes of imputed income, that a parent can earn the minimum wage.
- Added that, where the parent does not provide information regarding income, the court must impute income at the median full-time income for workers.
- Removed changes to imputed income within the laws on administrative establishment of child support.
- Removed changes to the child support chart.
- Changed for formula for low income obligor parents (net income less than \$650 a month).
- Removed changes that might have limited child support obligations of high income obligor parents (net income of greater than \$10,000 a month).
- Removed a provision that would have prohibited a child support award from leaving a parent with net income below the poverty guidelines.
- Removed the reduction of the 40% level for substantial time with a child to 20%, making the adjustment for timesharing applicable in all cases.
- Repeals the 1.5 multiplier from the child support formula.
- Removed from the bill repeal of the financial affidavit.
- Removed from the bill conforming changes in the law related to administrative establishment of a child support obligation.
- Removed change that would have prohibited compound interest on child support arrearages.
- Moved the effective date of the bill back 3 months to January 1, 2011.

The bill was then reported favorably as a committee substitute.