

1 A bill to be entitled
2 An act relating to family law; amending s. 61.30,
3 F.S.; providing that the child support guidelines
4 shall provide the basis for determining whether there
5 is a substantial change in circumstances; providing
6 that the guidelines may serve as the sole basis to
7 support a modification; requiring that monthly income
8 be imputed to all unemployed or underemployed parents,
9 not just those whose unemployment or underemployment
10 was voluntary; providing for consideration of time-
11 sharing schedules or time-sharing arrangements as a
12 factor in the adjustment of awards of child support;
13 creating the Statewide Task Force on Child Support;
14 providing legislative intent; providing for
15 membership; providing for administrative support;
16 providing for meetings; specifying duties; requiring
17 reports; providing for future repeal; amending s.
18 90.204, F.S.; authorizing judges in family cases to
19 take judicial notice of certain court records without
20 prior notice to the parties when imminent danger to
21 persons or property has been alleged and it is
22 impractical to give prior notice; providing for a
23 deferred opportunity to present evidence; requiring a
24 notice of such judicial notice having been taken to be
25 filed within a specified period; providing that the
26 term "family cases" has the same meaning as provided
27 in the Rules of Judicial Administration; amending ss.
28 741.30, 784.046, and 784.0485, F.S.; creating an

29 | exception to a prohibition against using evidence
 30 | other than the verified pleading or affidavit in an ex
 31 | parte hearing for a temporary injunction for
 32 | protection against domestic violence, repeat violence,
 33 | sexual violence, dating violence, or stalking;
 34 | providing an effective date.

36 | Be It Enacted by the Legislature of the State of Florida:

38 | Section 1. Paragraph (b) of subsection (1), paragraph (b)
 39 | of subsection (2), and subsection (11) of section 61.30, Florida
 40 | Statutes, are amended to read:

41 | 61.30 Child support guidelines; retroactive child
 42 | support.—

43 | (1)

44 | (b) The guidelines shall ~~may~~ provide the basis for proving
 45 | a substantial change in circumstances upon which a modification
 46 | of an existing order will ~~may~~ be granted, such basis may be used
 47 | as the sole basis to support a modification. However, the
 48 | difference between the existing monthly obligation and the
 49 | amount provided for under the guidelines shall be at least 15
 50 | percent or \$50, whichever amount is greater, before the court
 51 | may find that the guidelines provide a substantial change in
 52 | circumstances.

53 | (2) Income shall be determined on a monthly basis for each
 54 | parent as follows:

55 | (b) Monthly income shall be imputed to an unemployed or
 56 | underemployed parent ~~if such unemployment or underemployment is~~

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57 | ~~found by the court to be voluntary on that parent's part,~~ absent
58 | a finding of fact by the court of physical or mental incapacity
59 | or other circumstances over which the parent has no control. ~~In~~
60 | ~~the event of such voluntary unemployment or underemployment,~~ The
61 | employment potential and probable earnings level of the parent
62 | shall be determined based upon his or her recent work history,
63 | occupational qualifications, and prevailing earnings level in
64 | the community if such information is available. If the
65 | information concerning a parent's income is unavailable, a
66 | parent fails to participate in a child support proceeding, or a
67 | parent fails to supply adequate financial information in a child
68 | support proceeding, income shall be automatically imputed to the
69 | parent and there is a rebuttable presumption that the parent has
70 | income equivalent to the median income of year-round full-time
71 | workers as derived from current population reports or
72 | replacement reports published by the United States Bureau of the
73 | Census. However, the court may refuse to impute income to a
74 | parent if the court finds it necessary for that parent to stay
75 | home with the child who is the subject of a child support
76 | calculation or as set forth below:

77 | 1. In order for the court to impute income at an amount
78 | other than the median income of year-round full-time workers as
79 | derived from current population reports or replacement reports
80 | published by the United States Bureau of the Census, the court
81 | must make specific findings of fact consistent with the
82 | requirements of this paragraph. The party seeking to impute
83 | income has the burden to present competent, substantial evidence
84 | that~~+~~

85 | ~~a. The unemployment or underemployment is voluntary; and~~
 86 | ~~b.~~ identifies the amount and source of the imputed income,
 87 | through evidence of income from available employment for which
 88 | the party is suitably qualified by education, experience,
 89 | current licensure, or geographic location, with due
 90 | consideration being given to the parties' time-sharing schedule
 91 | and their historical exercise of the time-sharing provided in
 92 | the parenting plan or relevant order.

93 | 2. Except as set forth in subparagraph 1., income may not
 94 | be imputed based upon:

95 | a. Income records that are more than 5 years old at the
 96 | time of the hearing or trial at which imputation is sought; or

97 | b. Income at a level that a party has never earned in the
 98 | past, unless recently degreed, licensed, certified, relicensed,
 99 | or recertified and thus qualified for, subject to geographic
 100 | location, with due consideration of the parties' existing time-
 101 | sharing schedule and their historical exercise of the time-
 102 | sharing provided in the parenting plan or relevant order.

103 | (11) (a) The court may adjust the total minimum child
 104 | support award, or either or both parents' share of the total
 105 | minimum child support award, based upon the following deviation
 106 | factors:

107 | 1. Extraordinary medical, psychological, educational, or
 108 | dental expenses.

109 | 2. Independent income of the child, not to include moneys
 110 | received by a child from supplemental security income.

111 | 3. The payment of support for a parent which has been
 112 | regularly paid and for which there is a demonstrated need.

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113 4. Seasonal variations in one or both parents' incomes or
114 expenses.

115 5. The age of the child, taking into account the greater
116 needs of older children.

117 6. Special needs, such as costs that may be associated
118 with the disability of a child, that have traditionally been met
119 within the family budget even though fulfilling those needs will
120 cause the support to exceed the presumptive amount established
121 by the guidelines.

122 7. Total available assets of the obligee, obligor, and the
123 child.

124 8. The impact of the Internal Revenue Service Child &
125 Dependent Care Tax Credit, Earned Income Tax Credit, and
126 dependency exemption and waiver of that exemption. The court may
127 order a parent to execute a waiver of the Internal Revenue
128 Service dependency exemption if the paying parent is current in
129 support payments.

130 9. An application of the child support guidelines schedule
131 that requires a person to pay another person more than 55
132 percent of his or her gross income for a child support
133 obligation for current support resulting from a single support
134 order.

135 10. The particular parenting plan, a court-ordered time-
136 sharing schedule, or a time-sharing arrangement exercised by
137 agreement of the parties, such as where the child spends a
138 significant amount of time, but less than 20 percent of the
139 overnights, with one parent, thereby reducing the financial
140 expenditures incurred by the other parent; or the refusal of a

141 parent to become involved in the activities of the child.

142 11. Any other adjustment that is needed to achieve an
 143 equitable result which may include, but not be limited to, a
 144 reasonable and necessary existing expense or debt. Such expense
 145 or debt may include, but is not limited to, a reasonable and
 146 necessary expense or debt that the parties jointly incurred
 147 during the marriage.

148 (b) Whenever a particular parenting plan, a court-ordered
 149 time-sharing schedule, or a time-sharing arrangement exercised
 150 by agreement of the parties provides that each child spend a
 151 substantial amount of time with each parent, the court shall
 152 adjust any award of child support, as follows:

153 1. In accordance with subsections (9) and (10), calculate
 154 the amount of support obligation apportioned to each parent
 155 without including day care and health insurance costs in the
 156 calculation and multiply the amount by 1.5.

157 2. Calculate the percentage of overnight stays the child
 158 spends with each parent.

159 3. Multiply each parent's support obligation as calculated
 160 in subparagraph 1. by the percentage of the other parent's
 161 overnight stays with the child as calculated in subparagraph 2.

162 4. The difference between the amounts calculated in
 163 subparagraph 3. shall be the monetary transfer necessary between
 164 the parents for the care of the child, subject to an adjustment
 165 for day care and health insurance expenses.

166 5. Pursuant to subsections (7) and (8), calculate the net
 167 amounts owed by each parent for the expenses incurred for day
 168 care and health insurance coverage for the child.

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169 6. Adjust the support obligation owed by each parent
170 pursuant to subparagraph 4. by crediting or debiting the amount
171 calculated in subparagraph 5. This amount represents the child
172 support which must be exchanged between the parents.

173 7. The court may deviate from the child support amount
174 calculated pursuant to subparagraph 6. based upon the deviation
175 factors in paragraph (a), as well as the obligee parent's low
176 income and ability to maintain the basic necessities of the home
177 for the child, the likelihood that either parent will actually
178 exercise the time-sharing schedule set forth in the parenting
179 plan, a court-ordered time-sharing schedule, or a particular
180 time-sharing arrangement exercised by agreement of the parties
181 ~~granted by the court~~, and whether all of the children are
182 exercising the same time-sharing schedule.

183 8. For purposes of adjusting any award of child support
184 under this paragraph, "substantial amount of time" means that a
185 parent exercises time-sharing at least 20 percent of the
186 overnights of the year.

187 (c) A parent's failure to regularly exercise the time-
188 sharing schedule set forth in the parenting plan, a court-
189 ~~ordered or agreed~~ time-sharing schedule, or a particular time-
190 sharing arrangement exercised by agreement of the parties not
191 caused by the other parent which resulted in the adjustment of
192 the amount of child support pursuant to subparagraph (a)10. or
193 paragraph (b) shall be deemed a substantial change of
194 circumstances for purposes of modifying the child support award.
195 A modification pursuant to this paragraph is retroactive to the
196 date the noncustodial parent first failed to regularly exercise

197 the court-ordered or agreed time-sharing schedule.

198 Section 2. Statewide Task Force on Child Support.—

199 (1) The Legislature declares that the purpose of this
 200 section is to create a task force to examine and analyze the
 201 emerging problem of inequity in child support and review the
 202 child support guidelines as provided in ss. 61.29 and 61.30,
 203 Florida Statutes, and their application in representation in the
 204 court system in Title IV-D cases and non-Title IV-D cases.

205 (2) (a) There is created within the Department of Legal
 206 Affairs the Statewide Task Force on Child Support, a task force
 207 as defined in s. 20.03, Florida Statutes. The task force is
 208 created for the express purpose of collecting, analyzing,
 209 evaluating the dollar amount of child support obligations for
 210 each income level, and exploring new methods of calculation. The
 211 task force shall provide policy recommendations and draft
 212 legislative changes considering new methods of calculations for
 213 the Legislature.

214 (b) The task force shall consist of the following members,
 215 or the member's designee:

- 216 1. The Attorney General, who shall serve as chair.
- 217 2. The Surgeon General, who shall serve as vice chair.
- 218 3. The Secretary of Children and Families.
- 219 4. The executive director of the Department of Law
 220 Enforcement.
- 221 5. A legislator appointed by the President of the Senate.
- 222 6. A legislator appointed by the Speaker of the House of
 223 Representatives.
- 224 7. Three practicing, board-certified, family law attorneys

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225 who each have at least 10 years of practice experience in the
226 state.

227 (c) Members of the task force are entitled to receive
228 reimbursement for per diem and travel expenses pursuant to s.
229 112.061, Florida Statutes.

230 (d) The Department of Legal Affairs shall provide the task
231 force with staff necessary to assist the task force in the
232 performance of its duties.

233 (3) The task force shall hold its organizational meeting
234 by August 1, 2014. Thereafter, the task force shall meet at
235 least twice per year. Additional meetings may be held if the
236 chair determines that extraordinary circumstances require an
237 additional meeting. A majority of the members of the task force
238 constitutes a quorum.

239 (4) The task force shall:

240 (a) Collect and organize data concerning existing child
241 support obligations for each income level.

242 (b) Collect and organize data concerning the costs
243 associated with child support modification and orders in the
244 court system.

245 (c) Identify available federal, state, and local programs
246 that provide services to individuals under Title IV-D.

247 (d) Require the Department of Revenue to report the exact
248 number and cost associated with Title IV-D cases, including
249 individuals who are requesting assistance regardless of
250 nonindigent status.

251 (e) Update the information in the 2008 report commissioned
252 by the Florida Legislature by Thomas S. McCaleb et al., "Review

253 and Update of Florida's Child Support Guidelines, Report to the
254 Florida Legislature" including, but not limited to:

255 1. Florida's existing schedule amounts based on the latest
256 available economic data in anticipation of the state continuing
257 to use the income shares model to incorporate more recent data
258 on family income shares allocated to children to the extent such
259 data is publicly available.

260 2. Whether the existing schedule needs to be updated to
261 reflect the effects of inflation, recommend the amounts of any
262 such update, and evaluate the methodological validity of this
263 approach.

264 3. Within the context of models other than the income
265 shares model, determine how selected other states treat the
266 apportionment of child support to accommodate visitation
267 arrangements and cases of joint or shared custody.

268 4. Within the context of models other than the income
269 shares model, evaluate the treatment of low-income parents and
270 suggest possible alternatives based on the experience in other
271 states that mitigate or avoid the anomalies created by the self-
272 support reserve in the income shares model.

273 5. Evaluate the problems created by imputation of income
274 and consider alternative methods of imputing income, including
275 the possible consequences of not imputing income, based on
276 experience in other states not using the income shares model.

277 6. Evaluate the methodological validity of adjusting the
278 schedule of obligations to account for intrastate variations in
279 the cost of living.

280 7. Itemize the tax benefits and burdens of child support

281 in regard to the child care tax credit.

282 (5) The task force shall submit an interim report of its
 283 recommendations to the President of the Senate and the Speaker
 284 of the House of Representatives by January 15, 2015, and a final
 285 report of its recommendations to the President of the Senate and
 286 the Speaker of the House of Representatives by February 15,
 287 2015.

288 (6) This section is repealed upon submission of the final
 289 report or on February 15, 2015, whichever occurs earlier.

290 Section 3. Subsection (4) is added to section 90.204,
 291 Florida Statutes, to read:

292 90.204 Determination of propriety of judicial notice and
 293 nature of matter noticed.—

294 (4) In family cases, the court may take judicial notice of
 295 a matter described in s. 90.202(6) when imminent danger to
 296 persons or property has been alleged and it is impractical to
 297 give prior notice to the parties of the intent to take judicial
 298 notice. Opportunity to present evidence relevant to the
 299 propriety of taking judicial notice under subsection (1) may be
 300 deferred until after judicial action has been taken. If judicial
 301 notice is taken under this subsection, the court shall, within 2
 302 business days, file a notice in the pending case of the matters
 303 judicially noticed. For purposes of this subsection, the term
 304 "family cases" has the same meaning as provided in the Rules of
 305 Judicial Administration.

306 Section 4. Paragraph (b) of subsection (5) of section
 307 741.30, Florida Statutes, is amended to read:

308 741.30 Domestic violence; injunction; powers and duties of

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309 court and clerk; petition; notice and hearing; temporary
310 injunction; issuance of injunction; statewide verification
311 system; enforcement; public records exemption.—

312 (5)

313 (b) Except as provided in s. 90.204, in a hearing ex parte
314 for the purpose of obtaining such ex parte temporary injunction,
315 no evidence other than verified pleadings or affidavits shall be
316 used as evidence, unless the respondent appears at the hearing
317 or has received reasonable notice of the hearing. A denial of a
318 petition for an ex parte injunction shall be by written order
319 noting the legal grounds for denial. When the only ground for
320 denial is no appearance of an immediate and present danger of
321 domestic violence, the court shall set a full hearing on the
322 petition for injunction with notice at the earliest possible
323 time. Nothing herein affects a petitioner's right to promptly
324 amend any petition, or otherwise be heard in person on any
325 petition consistent with the Florida Rules of Civil Procedure.

326 Section 5. Paragraph (b) of subsection (6) of section
327 784.046, Florida Statutes, is amended to read:

328 784.046 Action by victim of repeat violence, sexual
329 violence, or dating violence for protective injunction; dating
330 violence investigations, notice to victims, and reporting;
331 pretrial release violations; public records exemption.—

332 (6)

333 (b) Except as provided in s. 90.204, in a hearing ex parte
334 for the purpose of obtaining such temporary injunction, no
335 evidence other than the verified pleading or affidavit shall be
336 used as evidence, unless the respondent appears at the hearing

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337 or has received reasonable notice of the hearing.

338 Section 6. Paragraph (b) of subsection (5) of section
 339 784.0485, Florida Statutes, is amended to read:

340 784.0485 Stalking; injunction; powers and duties of court
 341 and clerk; petition; notice and hearing; temporary injunction;
 342 issuance of injunction; statewide verification system;
 343 enforcement.—

344 (5)

345 (b) Except as provided in s. 90.204, in a hearing ex parte
 346 for the purpose of obtaining such ex parte temporary injunction,
 347 evidence other than verified pleadings or affidavits may not be
 348 used as evidence, unless the respondent appears at the hearing
 349 or has received reasonable notice of the hearing. A denial of a
 350 petition for an ex parte injunction shall be by written order
 351 noting the legal grounds for denial. If the only ground for
 352 denial is no appearance of an immediate and present danger of
 353 stalking, the court shall set a full hearing on the petition for
 354 injunction with notice at the earliest possible time. This
 355 paragraph does not affect a petitioner's right to promptly amend
 356 any petition, or otherwise be heard in person on any petition
 357 consistent with the Florida Rules of Civil Procedure.

358 Section 7. This act shall take effect July 1, 2014.