

STORAGE NAME: h0145a.jud

DATE: April 15, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 145

RELATING TO: Child Support Guidelines

SPONSOR(S): Representative Effman

COMPANION BILL(S): SB 268

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) FAMILY LAW & CHILDREN YEAS 6 NAYS 0

(2) JUDICIARY YEAS 8 NAYS 0

(3)

(4)

(5)

I. SUMMARY:

The bill requires the court to adjust the amount of the child support award or either or both parent's share of the child support award, based upon the proportionate amount of time, in days, each child is required to live with each parent during the year. The requirement applies to any case in which children are required by court order or mediation agreement to divide their time each year between each parent and it applies to any living arrangement, whether temporary or permanent.

There is a fiscal impact from the bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

One of many variables in determining the proper amount of child support is the type of shared parental responsibility arrangement ordered by the court. In situations where the parents are granted shared parental responsibility, each parent is directly paying for a portion of the child's expenses. Each parent must pay what are usually referred to as "redundant costs". Redundant costs are those fixed expenses that both parents must pay including a bedroom for the child, furniture, toys, housing expenses and utilities. This does not mean, however, that for every dollar paid by the secondary residential parent, the expenses of the primary residential parent decrease by the same amount. The total expenditures by both parents actually increase.

While is it reasonable that there should be some adjustment to the amount of the child support award in cases of shared parental responsibility, it is difficult to determine just how much that adjustment should be. States are varied in their approach to awards that involve the issue of shared parental responsibility. In Florida it has been argued that the child support guidelines do not adequately provide for cases in which the secondary residential parent spends a considerable amount of time with the child(ren). Neither do the Florida guidelines provide a baseline for the amount of time the child(ren) spend with the secondary residential parent.

Section 61.30(11)(g), Florida Statutes, allows the court to adjust the minimum award based on:

The particular shared parental arrangement, such as where the children spend a substantial amount of their time with the secondary residential parent thereby reducing the financial expenditures incurred by the primary residential parent, or the refusal of the secondary residential parent to become involved in the activities of the child, or giving due consideration to the primary residential parent's homemaking services. If a child has visitation with a noncustodial parent for more than 28 consecutive days the court may reduce the amount of support paid to the custodial parent during the time of visitation not to exceed 50 percent of the amount awarded.

B. EFFECT OF PROPOSED CHANGES:

In cases where children are required by the court or mediation agreement to divide their time each year between each parent, the court shall adjust the amount of the child support award, or either or both parent's share of the child support award based upon the proportionate amount of time, in days, each child is required to live with each parent during the year. All living arrangements are subject to this requirement, regardless of whether they are permanent or temporary.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

Yes, it may change the amount of child support to be awarded in some cases.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 61.30, Florida Statutes, 1998 Supplement.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 61.30, Florida Statutes, 1998 Supplement, to require the court to adjust the amount of the child support award or either or both parent's share of the child support award, based upon the proportionate amount of time, in days, each child is required to live with each parent during the year. The requirement applies to any case in which children are required by court order or mediation agreement to divide their time each year between each parent and it applies to any living arrangement, whether temporary or permanent.

Section 2. Provides for an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The Department of Revenue estimates the fiscal impact of the bill to the agency to be **\$222,587**. Of this amount, **\$75,680 will come from General Revenue** and **\$146,907 will come from the Grants and Donations Trust Fund**.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state sales tax shared with municipalities.

V. COMMENTS:

Most states allow for parents to agree on or be court ordered to share parental responsibility for a child. Many states also provide for a downward modification in child support for cases with variations in custody arrangements. The major argument in favor of a shared parental responsibility adjustment is that it is better for a child to continue to have a close relationship with both parents. It is also believed that the expenses of the primary residential household are less than those of a traditional sole residential household when the child spends more time in the secondary residential household. Conversely, it is believed that the expenses of the secondary residential household are greater than those of a traditional "visiting parent's" household. The reduction in child support for shared parental responsibility is intended to allocate child support consistent with these assumptions about the expenses associated with the child.

Thus, while it seems reasonable that there should be some adjustment to the amount of the child support award in cases of shared parental responsibility, states have found it difficult to determine just how much that adjustment should be. A number of states have decided not to provide for a child support adjustment in the case of shared parental responsibility or have provided for an adjustment only in limited circumstances. The reasons given are as follows:

- states want to avoid creating an incentive for parents to try to create two households for the child to occupy when in fact they can afford only one. The allocation of inadequate resources to two households may place the child's financial security in jeopardy in the primary residential household;
- studies do not uniformly support the theory that every child benefits from continuing and extensive contact with both parents particularly where there is severe ongoing conflict between the parents. In those cases parents should not be given financial incentives to have a shared parental arrangement when it is not in the best interest of the child;
- states have expressed concern that financial adjustments for shared parental responsibility may encourage insincere negotiating related to residential arrangements designed to reduce child support awards; and
- studies have shown that the shared parental responsibility adjustment may lead to more litigation and administrative complexity in the administration of the child support process.

Not all states that provide adjustment of the child support award related to the amount of time spent with each parent use the same approach and some states that provide for adjustments based on the amount of time the child spends with each parent incorporate limits or restrictions, such as the Washington State guidelines which provide:

The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving support to meet the basic needs of the child or if the child is receiving aid to families with dependent children. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment. [Wash. Code Ann s.26.19.075(1)(d)].

Judiciary Committee staff comment:

The reference on page 2 , line 5 "to divide their time between the primary and secondary residential parents" does not indicate that the amount of time should be material. When Amendment 1 addresses this issue, it provides that the shared arrangement should involve a "substantial" amount of time. An amendment has been prepared which would make these two provisions parallel.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The **Committee on Family Law and Children** in the April 5, 1999 committee meeting adopted one amendment which is summarized as follows:

- Whenever a particular shared parental arrangement provides that each child spend a substantial amount of time with each parent, the court shall adjust any award of child support based on:
 - the amount of time each child will spend with each parent under a shared parental arrangement;
 - the needs of each child;
 - the direct and indirect financial expenses for each child;
 - the comparative income of each parent;
 - the station in life of each parent and each child;
 - the standard of living experienced by the entire family during the marriage; and
 - the financial status and ability of each parent.

- The terms "direct financial expenses" and "indirect financial expenses" are defined.

The Committee on the Judiciary adopted one amendment on April 15, 1999. It makes the language concerning spending a substantial amount of time parallel in s.61.30 (1)(a) and s. 61.30 (1)(b).

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW & CHILDREN:

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