

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1470

SPONSOR: Committee on Children and Families and Senator Mitchell

SUBJECT: Child Support

DATE: March 18, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosby</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for Senate Bill 1470 revises many provisions relating to child support including:

- providing a definition for the term “rotating custody”;
- determination, apportionment, and adjustment of a parent’s child support obligation;
- factors the court will consider when adjusting child support payments from the guideline amount;
- conditions under which the court will adjust the obligation based upon a change in circumstances;
- the presumption relating to an adult parent’s ability to work; and
- issues involving health insurance costs and noncovered medical and dental expenses.

CS/SB 1470 also provides that the same change in circumstances requirement be used in all cases, Title IV-D or non-Title IV-D, and will require court review and approval of a child support obligation which is arrived at via settlement agreement.

This bill will also require legislative review of the child support obligation system and creates the Child Support Study Commission to analyze and make recommendations regarding the system. This commission will report to the Governor, Legislature, and Chief Justice by November, 2000 and will be staffed by the Office of State Courts Administrator.

This bill substantially amends the following sections of the Florida Statutes: 61.046, 61.13, 61.14, 61.30, 409.2564, 741.0306, and 794.05.

II. Present Situation:

Child Support Cases

When the parents of a child separate, the child will maintain his or her primary residence with the “custodial parent” or the “primary residential parent.” This parent is generally the “obligee” or the person to whom child support payments are made, pursuant to the terms of a court order. The “noncustodial parent” is the parent with whom the child does not maintain primary residence and is, therefore, generally the “obligor” for child support payment purposes. These terms should not be confused with “shared parental responsibility” which is the court-ordered relationship where both parents retain full parental rights and responsibilities so that they jointly make major decisions affecting the welfare of their child. (Compare this with “sole parental responsibility” where the court orders that one parent make decisions regarding the minor child.)

In the relevant sections of law, cases are generally referred to as Title IV-D cases and non-Title IV-D cases. A Title IV-D case is a case in which persons receive services pursuant to Title IV-D of the Social Security Act, 42 U.S.C. ss. 651 et. seq. In other words, Title IV-D cases are those cases in which there is some public assistance involved. (Non-Title IV-D cases are generally private pay, non-public assistance cases.) The Title IV-D agency in Florida is the Department of Revenue.

Child Support Guidelines

A child support obligation is currently determined pursuant to the criteria set out in s. 61.30, F.S. Criteria are stated for gross income. s. 61.30(2), F.S. A number of allowable deductions are itemized at s. 61.30(3), F.S. Once a net income is determined (*see* s. 61.30(4), F.S.), the combined net income of both parents is used to determine the basic obligation of the parents. *See* ss. 61.30(5) and 61.30(6), F.S. Once a basic obligation is determined, child care costs are added to the basic obligation of the parents; prepayments by the noncustodial parent are deducted from the noncustodial parent’s child support obligation. s. 61.30(7), F.S. Similarly, health insurance costs are added to the basic obligation of the parents and any prepayments by the noncustodial parent are deducted from the noncustodial parent’s child support obligation. s. 61.30(8), F.S. Each parent’s percentage share of the child support amount is determined by dividing each parent’s net income by the combined net income. s. 61.30(9), F.S. A dollar share is determined by multiplying the combined amount by each person’s percentage share. s. 61.30(10), F.S.

Section 61.30(11), F.S., articulates the factors that the court has discretion to apply in adjusting the combined child support award. These factors include:

- extraordinary medical, psychological, educational, or dental expenses;
- any independent income of the child;
- the payment of support for a parent which regularly has been paid and for which there is a demonstrated need;
- seasonal variations in either parent’s income or expenses;
- the age of the child;
- special needs (for example, costs associated with the disability of a child);
- the particular shared parental arrangement (such as when a child spends a substantial amount of time with the secondary residential parent);

- the total available assets of all parties;
- the impact of the Internal Revenue Service dependency exemption;
- where an obligor pays 55 percent of his or her gross income for current support resulting from a single order; and
- any other adjustment which is needed to achieve an equitable result (such as existing expense or debt).

The existence of subsequently born children are not, as a rule, the basis for deviation from the guidelines; however, such issue may be raised by such parent as justification for deviation.

s. 61.30(12), F.S.

In an initial determination of child support, the court may retroactively assess the support for the preceding 24 months. s. 61.30(17), F.S.

Income will be imputed in the case of a parent who is voluntarily unemployed or underemployed. In such a case, potential and probable earnings are determined on the basis of recent work history. In order to establish this imputed income, parties must provide sufficient evidence of work history. This may be particularly problematic when the respondent fails to appear. *See* s. 61.30(2)(b), F.S.

Child Support Modification

Section 61.30(1)(b), F.S., states that, under certain circumstances, the guidelines may provide the basis for proving a substantial change in circumstances in order to obtain a modification of an existing child support order. In certain Title IV-D cases, under a three year review cycle, a change in circumstances is not required in order to obtain a modification.

Other

Section 61.30(16), F.S., provides that the Legislature shall review these guidelines at least every four years, beginning in 1997.

III. Effect of Proposed Changes:

Section 1 amends s. 61.046, F.S., regarding definitions, to define the term “rotating custody” for purposes of this chapter. Section 61.121, F.S., allows the court to order rotating custody in certain cases, but the term has never been defined.

Section 2 substantially amends s. 61.30, F.S., regarding child support guidelines, to remove the word “guidelines” from the title. For greater consistency in the application of this section, the following terms are defined and subsequently amended throughout this section as follows:

- **Basic obligation of the parents** - the amount derived from the subsection (7) of this section, as amended. This amount was formerly called the ‘minimum support need’ and is basically the result of assessing the combined net monthly income of the parents and determining the monthly need, based upon that income, per child.
- **Combined presumed child support amount** - the basic obligation of the parents, plus child care costs and health insurance costs, as provided in this section.

- **Parent's presumed child support amount** - the amount derived by apportioning the combined presumed child support amount between the parents based upon each parent's percentage share and actual dollar share of the combined support amount. This amount was previously referred to as the 'guideline' amount.
- **Total child support obligation** - the secondary (non-residential) parent's presumed child support amount and any deviation ordered.

This section is amended to require the same test for modification of a support order be used in all cases, whether Title IV-D or non-Title IV-D, and to provide a presumption that, for purposes of imputing income, a non-disabled, legally-present individual can work for an income of at least minimum wage, 35 hours per week.

Regarding health insurance costs, this section is amended to provide that when a noncustodial parent has children from more than one relationship and all children are covered under the same health insurance plan, the court may apportion payments for those costs among the various support obligations.

Section 61.30(11), F.S., articulates factors the court has discretion to use in adjusting the combined child support award. Three new factors are added as follows:

- When a parent's income is below the federal poverty guidelines and the parent's presumed child support amount requires a person to pay another person more than 50 percent of his or her net income for current support when there is a single support order;
- When a parent's income is below the federal poverty guidelines and the parent's presumed child support amount requires a person to pay another person more than 40 percent of his or her net income for current support when there are multiple support obligations; and,
- The needs of the child or children, age, station in life, standard of living, and financial status/ability of each parent.

A new subsection (19) is added to s. 61.30, F.S., to provide that, if the parents agree to a child support obligation as part of a settlement agreement, the court shall review their agreement to determine whether it provides for the appropriate amount of child support.

Section 3 amends s. 61.13, F.S., regarding custody and support, to first clarify that the court entering the initial judgment may modify, based on an involuntary substantial change of circumstances, a voluntary substantial change in circumstances when modification is found to be in the best interest of the child, or when the child reaches majority. This section is also amended to make primarily technical and conforming changes. The court may order that payment of noncovered medical, dental, and prescription medication be apportioned between the parents (changing current law, which requires the payment be made directly to the payee on a percentage basis).

Sections 4, 5, 6, and 7 are amended for technical and conforming purposes.

The Child Support Study Commission is created at Section 8 of this bill. Membership is specified and includes 18 members, appointed as follows:

- The Governor shall appoint five members, one of whom is a representative of the Department of Revenue, one of whom is a representative of the Work and Gain Economic Self-sufficiency program (WAGES), and one of whom is a member of the public.
- The President of the Senate shall appoint three members, one of whom is a representative of the Commission on Responsible Fatherhood and one of whom is a member of the public.
- The Speaker of the House of Representatives shall appoint three members, one of whom represents the interests of custodial parents and one of whom is a member of the public.
- The Chief Justice of the Supreme Court shall appoint five members.
- The President of the Florida Bar shall appoint two members from the Family Law Section.

Reimbursement for member expenses, including travel, is provided. The commission shall be appointed no later than July 15, 1999 and shall continue in existence until its duties are concluded but no later than June 30, 2001. The Office of the State Courts Administrator (OSCA) shall supply information, assistance, staff assistance, and the facilities necessary so that the commission may perform its duties. The mandate of the commission is as follows:

- Assessing the advisability of continuing with the current income-share concept based on an in-depth review of the present system;
- Considering the possibility of consolidating various child support statutes (including dissolution of marriage, paternity, etc.); and,
- Evaluating statutory changes that may be needed to clarify and simplify ch. 61.

To accomplish its mission, the commission may consult with competent, nationally recognized experts in the field, including an economist.

The Commission shall prepare a report detailing its findings and making specific legislative recommendations. This report shall be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice by November 15, 2000.

Section 9 provides an appropriation of \$175,000 from the Family Courts Trust Fund and one full time equivalent to support the first year of the Child Support Study Commission unless a similar appropriation is provided from recurring general revenue in the General Appropriations Act.

Section 10 provides this act shall take effect July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Office of State Court Administrator reports no increase in cost is indicated.

C. Government Sector Impact:

The Office of State Court Administrator (OSCA) reports that costs associated with the two year Child Support Study Commission will be approximately \$175,000 the first year and \$125,000 the second year. These costs are for a Senior Attorney, an administrative assistant, and an economist consultant, as well as a computer, meeting expenses, travel, printing, postage, and other costs.

This bill also requires that judges review parents' settlement agreements to determine if the agreed upon child support amount is minimally in compliance with the guidelines. If not, the court will determine whether the deviation is justified. Any increased judicial involvement is expected to increase costs; however, OSCA reports that such costs should be manageable with current staff and resources.

The Department of Revenue (department) reports cost to the agency as \$6587 in nonrecurring expenses. Broken down, this figure will be \$2240 from general revenue and \$4347 from the grants and donations trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The department believes that a lack of uniformity in application may result due to the absence of a definition for the term “disability” (see page 4, lines 15-19). In this same sentence, the department believes the requirement that a parent be ‘legally present’ in the United States lacks specificity. The response, however, would be that determination of whether a parent’s disability precludes that parent from working is a question for the trier of fact to resolve.

With regard to apportionment of noncovered medical, dental, and prescription medication costs (*see* Section 2 of this bill), the department indicates that the sum certain would have to appear in the court order for Title IV-D enforcement purposes.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
