

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/CS/SB 1470

SPONSOR: Committee on Judiciary, Committee on Children and Families and Senator Mitchell

SUBJECT: Child Support

DATE: March 31, 1999

REVISED: _____

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

I. Summary:

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

- a definition for the term “rotating custody”;
- determination, apportionment, and adjustment of a parent’s child support obligation;
- factors to consider when adjusting child support payments from the guideline amount;
- the addition of other grounds as the basis for the adjustment of a child support obligation;
- the presumption relating to an adult parent’s ability to work; and
- issues involving health insurance costs and noncovered medical and dental expenses.

It requires court review and approval of a child support obligation agreed to via settlement agreement.

This bill creates an 19-member Child Support Study Commission to analyze and make recommendations regarding the child support system for purposes of legislative review. This commission must report to the Governor, Legislature, and Chief Justice by November, 2000. The Office of State Courts Administrator will offer staff, facilities and services support for the commission.

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 court-ordered child support payments are made. 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.¹

Child support cases fall into two primary categories: Title IV-D and non-Title IV-D. A Title IV-D case involves persons who receive some form public assistance or services under the Social Security Act. *See* 42 U.S.C. §§ 651 et. seq. The Title IV-D agency in Florida is the Department of Revenue. A non-Title IV-D case is generally a private pay, non-public assistance cases.

Child Support Guidelines

A child support obligation is determined based certain statutory criteria. *See* §61.30, F.S. (Supp. 1998). Criteria are stated for gross income. §61.30(2), F.S. A number of allowable deductions are itemized. *See* §61.30(3), F.S. Once a net income is determined, the combined net income of both parents is used to determine the basic obligation of the parents. *See* §§61.30(4)-(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. *See* §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. *See* §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. *See* §61.30(9), F.S. A dollar share is determined by multiplying the combined amount by each person’s percentage share. *See* §61.30(10), F.S.

The court has discretion to apply in adjusting the combined child support award based on a consideration of the following factors:

- 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 shared parental arrangement (percentage of time spent by child with one versus another);
- the total available assets of all parties;
- the impact of the Internal Revenue Service dependency exemption;
- where an obligor pays 55 % of his or her gross income for current support resulting from a single order; and
- any other adjustment (i.e., expense or debt) which is needed to achieve an equitable result.

See §61.30(11), F.S. (Supp. 1998)

¹These terms are not be confused with “shared parental responsibility” which is the court-ordered relationship where both parents retain full parental rights and responsibilities to make jointly major decisions affecting the welfare of their child. “Sole parental responsibility” refers to one parent with court-ordered authority to make decisions regarding the minor child.)

As a rule, the existence of subsequently born children can not be the basis for a deviation from the guidelines, but a parent may raise the issue as justification for a deviation. *See* §61.30(12), F.S. (Supp. 1998)

The court may retroactively assess child support for the preceding 24 months at an initial determination. *See* §61.30(17), F.S. (Supp. 1998)

Income will be imputed in the case of a parent who is voluntarily unemployed or *underemployed*. *See* §61.30(2)(b), F.S. (Supp. 1998) 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.

Child Support Modification

A child support order may be modified when the court finds that it is in the best interests of the child, that the child has reached majority, or that there is a substantial change in circumstances of the parties. *See* §61.13(1), F.S. (Supp. 1998) A child support obligation established under a settlement agreement may be modified as equity requires when the circumstances or the financial ability of the parties or the child changes. *See* §61.14, F.S. (Supp. 1998) 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. *See* §61.30(1)(b), F.S. (Supp. 1998)²

A change in circumstances is not required in order to warrant a child-support modification in certain Title IV-D cases, which are under a three-year review cycle. *See* §§61.14(b), and 61.30(1)(c), F.S. (Supp. 1998). Federal law requires that a plan for child support in Title-IV-D cases provide a 3-year review cycle such that child support orders must be reviewed upon a request made by a parent or the State. *See* 42 U.S.C. §666(a)(10) “[N]o proof of change in circumstances [is] necessary . . .” except if the request for review falls outside the 3-year cycle. *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 61.046, F.S. (Supp. 1998), to define the term “rotating custody” for purposes of this chapter. Although the courts may order rotating custody in certain cases, the term has never been defined. *See* §61.121, F.S.

Section 2 substantially amends s. 61.30, F.S. (Supp. 1998), to define the following terms to conform with subsequent amendments throughout this section:

- *Basic obligation of the parents* - the amount derived from the child support schedule set forth in subsection (7) of s. 61.30, F.S. (Supp. 1998) as amended by this bill. 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.

²The Legislature is required to review the child support guidelines at least every four years, beginning in 1997. §61.30(16), F.S.,

- *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 guideline 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.
- *Total child support obligation* - the secondary (non-residential) parent's presumed child support amount and any deviation ordered.

This section also provides a presumption that an individual who is not disabled and legally present in the United States, may be imputed to earn an income based, at least, on minimum wage for 35 hours per week. This section also clarifies that the allowable deduction for federal, state, and local income tax shall be based on the filing status after the judgment is entered. Additionally, tax amounts withheld which exceed the tax owed may not be deducted from gross income.

This section is also amended to allow the court to apportion payment for health insurance costs among the various support obligations of a noncustodial parent with children from more than one relationship who are all covered under the same health insurance plan.

This section also adds three new factors for consideration in adjusting the combined child support award:

- When a parent's income is below the federal poverty guidelines and the parent's presumed child support guideline 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 guideline 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 provide that any child support amount established as part of a settlement agreement must be reviewed by the court to determine whether the child amount provided is appropriate and justified in accordance with factors in subsection (12) of this section, as amended, and in consideration of the best interests of the child.

Section 3 amends s. 61.13, F.S. (Supp. 1998), to clarify that the court may modify the initial judgment on support based on: a) an involuntary substantial change in circumstances of the parties or the child, b) a voluntary substantial change in circumstances of the parties solely, if the modification is found to be in the best interest of the child, or c) the child reaching majority. This amendment somewhat codifies case law. *See Overbey v. Overbey*, 698 So.2d 811 (Fla. 1997)(voluntary substantial change is insufficient to support a finding of substantial change in circumstances; evaluation of best of interest of child is needed). This section also includes

primarily technical and conforming changes. The requirement that payment of noncovered medical and dental expenses and prescription medication be made directly to the payee on a percentage basis is eliminated. The court may now apportion payment between the parents. This section corrects an inaccurate statutory cross-reference.

Sections 4, 5, 6, and 7 makes technical and conforming changes to the following sections by replacing the phrase “child support guidelines” with a cross-reference instead to the section, i.e., s. 61.30, F.S. (Supp. 1998): s. 61.14, F.S. (Supp. 1998), relating to enforcement & modification support, s. 409.2564, F.S. (Supp. 1998), relating to actions for support in Title IV-D cases, s. 741.0306, F.S. (Supp. 1998), relating to creation of a family law handbook, and s. 794.05, F.S. (Supp. 1998), relating to unlawful sexual activity with minors.

Section 8 creates an 19-member Child Support Study Commission. Members are to be appointed as follows:

- The Governor shall appoint five members, four of whom are specified as a representative of the Department of Revenue, a representative of the Work and Gain Economic Self-sufficiency program (WAGES), a licensed psychologist specializing in child development and the effects of divorce, and a member of the public.
- The President of the Senate shall appoint three members, two of whom are specified as a representative of the Commission on Responsible Fatherhood and a member of the public.
- The Speaker of the House of Representatives shall appoint three members, two of whom are specified as a representative of the public, and of the interests of custodial parents.
- The Chief Justice of the Supreme Court shall appoint five members.
- The Attorney General shall appoint one member.
- The President of the Florida Bar shall appoint two members from the Family Law Section.

Reimbursement for member expenses, including travel, is provided. Members must be appointed by July 15, 1999. The Commission’s term continues until its duties are concluded but no later than June 30, 2001. The Office of the State Courts Administrator (OSCA) is designated as the Commission’s support for information, staff, and facilities. The Commission, which may consult with competent, nationally recognized experts, including an economist, is required to make findings and recommendations regarding:

- the advisability of continuing with the current income-share concept based on an in-depth review of the present system;
- the possibility of consolidating various child support statutes (including dissolution of marriage, paternity, etc.); and,
- the statutory changes needed to clarify and simplify the provisions of ch. 61, F.S.
- ▶ the statutory changes to include custody, visitation, and child support determinations that reflect the developmental needs of the child.

The Commission is required to report its findings and specific legislative recommendations 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 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 bill may clarify the basis for establishing a parent's child support obligations. It may also prevent potential inequities among parents by clarifying when and what amount of federal, state and local income tax deductions are to be excluded from gross income, by apportioning certain health insurance costs and noncovered expenses, and by recognizing certain financial status' that may justify deviation from the child support amount.

C. Government Sector Impact:

The Office of State Court Administrator (OSCA) projects costs of approximately \$175,000 for the first year and \$125,000 for the second year (based on two-year appropriation). Costs are for a Senior Attorney, an administrative assistant, and an economic consultant, as well as a computer, meeting expenses, travel, printing, postage, and other costs. These projections made change slightly with the addition of a member to the Child Support Study Commission.

Any increased judicial involvement in reviewing parents' settlement agreements to determine the appropriateness of the child support amount, is expected to increase costs, but OSCA reports that such costs should be manageable with current staff and resources.

The Department of Revenue (DOR) anticipates a one-time nonrecurring expense of \$6,587 (i.e., \$2,240 from General Revenue Fund and \$4,347 from the Grants and Donations Trust Fund) for the revision of policy and training materials, and the establishment of conforming rules as engendered by changes to chapter 61, F.S., as provided in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The term "disability" in s. 61.30(3)(b), F.S., is undefined which may lead, according to the Department of Revenue, to a lack of uniformity in application as to whether a certain disability precluded a parent from working. Similarly, the term "legally present in the United States" lacks specificity.

The Department of Revenue also indicates that a sum certain reflecting the apportionment of noncovered medical, dental, and prescription medication costs will have to appear in the court order for Title IV-D enforcement purposes.

VIII. Amendments:

None.