

STORAGE NAME: h2149.jud

DATE: April 14, 1999

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

BILL #: HB 2149

RELATING TO: Child Support Enforcement

SPONSOR(S): The Committee on Family Law and Children and Representative Roberts

COMPANION BILL(S): SB 808

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

- (1) FAMILY LAW AND CHILDREN YEAS 5 NAYS 0
- (2) JUDICIARY
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The bill amends sections of Chapter 61 and Chapter 409, Florida Statutes, relating to child support enforcement.

The bill provides a time frame related to the suspension of an obligor's driver's license or motor vehicle registration as a result of a delinquency in child support payments and requires that the full names, dates of birth, and social security numbers of any minor children be included as a separate attachment to the pleading for dissolution of marriage and to child support orders.

The bill clarifies the definition of what constitutes a family violence indicator as it relates to information provided to the State Case Registry. It also clarifies that in public assistance cases, as in non-public assistance cases, retroactive child support obligations are determined in accordance with the child support guidelines in s. 61.30, Florida Statutes.

The bill requires the inclusion of the "average daily account balance" in the information that financial institutions must provide to the Department of Revenue for an obligor who owes past due child support and it removes the statutory requirement that the Department of Revenue and the Department of Insurance enter into cooperative agreements to share insurance information.

The bill provides the Department of Revenue the statutory authority to impose a fine for failure to comply with a subpoena for information necessary to establish, modify, or enforce a child support order.

The bill has a fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Change of Payee

When a child support order is entered, a noncustodial parent (obligor) is ordered to pay support to a specific custodial parent (obligee) for the child(ren). Pursuant to federal regulations (45 C.F.R. s. 302.38), if the custodial parent named in the order receives public assistance, the State retains the court-ordered support payments that are paid to reimburse the State and the Federal government for the public assistance that was paid on behalf of the family. If the party caring for the child(ren) and receiving public assistance for the child(ren) changes from the payee named in the court order to another individual (caretaker relative), the State must forward payments received to the payee named in the order, who is no longer providing care for the child(ren). Currently the State does not have the statutory authority to retain support payments until a new court order is established or the existing order is modified to specify the new payee.

Retroactive Child Support

Federal regulations (45 CFR 302.56) require that presumptive guidelines must be used in setting any child support award. A conflict currently exists between s. 61.30(7), Florida Statutes, 1998 Supplement, and s. 409.2561(1), Florida Statutes, 1998 Supplement, related to the application of the child support guidelines to determine the amount of retroactive support due in public assistance cases. Section 61.30(17), Florida Statutes, allows the court to award child support retroactively and requires the court to apply the guidelines in effect at the time of the hearing when determining the amount of retroactive support. Section 409.2561(1), Florida Statutes, requires the establishment of the debt for retroactive periods be based on the amount of public assistance paid, rather than the child support guideline amount.

Subpoenas and Fines

Federal welfare reform (The Personal Responsibility and Work Opportunity Reconciliation Act of 1996) requires that state Child Support Enforcement programs have the authority to subpoena any financial or other information needed in order to establish, modify, or enforce a child support order, and to impose penalties for failure to respond to such a subpoena. Until the 1998 session, s. 409.2564, Florida Statutes, contained language enabling the department to levy a fine for failure to comply with an administrative subpoena in child support actions. CS/CS/HB 271 (s. 24, chapter 98-397, Laws of Florida) removed the ability of the Department of Revenue to levy a fine for failure to comply with an administrative subpoena in child support actions.

Information Sharing and Data Transfer

Section 409.2561, Florida Statutes, requires that the Executive Director of the Department of Revenue and the Commissioner of the Department of Insurance to enter into a cooperative agreement for the purpose of requesting and obtaining insurance information. The Child Support Enforcement Program currently exchanges insurance coverage information with the Department of Children and Family Services who in turn exchanges with the Agency of Health Care Administration (AHCA). AHCA exchanges with the Department of Insurance but the Department of Revenue and the Department of Insurance have no direct link.

Section 409.25657, Florida Statutes, provides that financial institutions, when conducting a data match, furnish the department with in-depth information on each obligor who maintains an account and who owes past due child support. Financial institutions are currently not required to provide an average daily account balance. Without this account balance information, the department could request levies on accounts with very low or even zero or negative balances.

Administrative Procedures

Under recent revisions to the Administrative Procedures Act, the Department of Revenue is required to identify all rules which exceed specific statutory authority. The department did this in 1998. However, two rules included on the department's list were not authorized in the 1998 rules authorizing bill. Therefore, the statutory authority does not currently exist for two existing departmental rules related to reconsideration and recovery.

B. EFFECT OF PROPOSED CHANGES:

Change of Payee

The bill provides that, effective January 1, 2000, the court-ordered obligation of an obligor to comply with an existing child support order continues when a caretaker relative obtains physical custody of the child for whom the support order was issued and the caretaker relative receives TANF for the child. Upon written notice to both the obligor and payee, the Department of Revenue may redirect payments made pursuant to the support order for distribution and disbursement. If a timely petition is filed by either the obligor or the payee contesting the redirection of payments, the department may not redirect payments until the court rules on the petition.

The Department of Revenue may, after notice to the obligor, the payee, and the caretaker relative(s), redirect payments in the following circumstances:

- a caretaker relative stops receiving TANF and the child returns to the physical custody of the payee;
- a caretaker relative stops receiving TANF and another caretaker relative obtains physical custody of the child and begins receiving TANF for the child.

The section requires the Department of Revenue to provide a copy of a notice to redirect payment to the court. Rulemaking authority is provided to the department to implement these provisions.

Retroactive Child Support

The bill amends s. 409.2561(1), Florida Statutes, 1998 Supplement, to provide that in public assistance cases, as in non-public assistance cases, obligations for retroactive child support are determined in accordance with the child support guidelines and that payment of public assistance money to or on behalf of dependent children creates an obligation in an amount determined by application of the current child support guidelines in s. 61.30, Florida Statutes, to the applicable period.

Subpoenas and Fines

The bill amends s. 409.2564, Florida Statutes, 1998 Supplement, to provide the Child Support Enforcement Program the authority to impose a fine for failure to comply with a subpoena. The department may impose an administrative fine not to exceed \$500 and may seek to collect those fines by filing a petition in the circuit court of the judicial circuit in which the person against whom the fine was imposed lives. Fines collected pursuant to this provision are to be deposited into the Child Support Enforcement Application and Program Revenue Trust Fund.

Information Sharing and Data Transfer

The bill removes the statutory requirement that the Department of Revenue and the Department of Insurance share insurance information. This is done to delete an obsolete cooperation requirement that has not been used since the Child Support Enforcement Program was transferred from the former Department of Health and Rehabilitative Services to the Department of Revenue.

The bill also amends s. 409.25657, Florida Statutes, to require financial institutions to provide the Department of Revenue with the average daily account balance of child support obligors.

Administrative Procedures

The bill amends s. 409.2558, Florida Statutes, to provide authority for the Department of Revenue to promulgate rules for review of agency action and recovery of overpayments.

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?

Yes, it provides the Department of Revenue with statutory authority for Rules 12E-1.006 and 12E-1.022, Florida Administrative Code, related to reconsideration of collections and distributions and recovery of overpayments.

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

Yes, it provides authority for the Department of Revenue to impose an administrative fine for failure to comply with an administrative subpoena. It also provides the department with the authority to redirect child support payments in certain circumstances.

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

No.

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?

No.

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

No.

4. Individual Freedom:

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

No.

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

No.

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?

N/A

- 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:

Sections 61.052, 61.13, 61.1301, 61.13016, 61.14, 61.1824, 61.1825, 61.1826, 409.2558, 409.2561, 409.2564, 409.25641, 409.25656, 409.25657, 409.2577, and s. 741.04 Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 61.052, Florida Statutes, 1998 Supplement, to require that the full names, dates of birth, and social security numbers of each of the minor children of a marriage are provided as a separate attachment to the pleading for a dissolution of marriage.

Section 2. Amends s. 61.13, Florida Statutes, 1998 Supplement, to require that the full name, date of birth, and social security number of each minor child that is the subject of a child support order are to be provided as a separate attachment in the file at the time an order for child support is entered.

Section 3. Amends s. 61.1301, Florida Statutes, 1998 Supplement, to clarify the requirement that all child support payments in those cases, both IV-D and non IV-D, in which the initial support order was entered in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction, shall be made directly to the State Disbursement Unit.

Section 4. Amends s. 61.13016, Florida Statutes, to provide a time frame for delinquency in payment after which the clerk must suspend the driver's license or motor vehicle registration upon the request of the custodial parent. The suspension could occur when an obligor is 15 days delinquent in making a child support payment.

Section 5. Amends s. 61.1824, Florida Statutes, 1998 Supplement, to provide that effective October 1, 1999, or such earlier date as the State Disbursement Unit becomes operational, all support payments that come under the requirements of this section shall be made payable to and delivered to the State Disbursement Unit.

Section 6. Amends s. 61.1825, Florida Statutes, 1998 Supplement, to clarify the definition of what constitutes a family violence indicator in the information that is required to be reported to the State Case Registry. A family violence indicator must be placed on a record when:

- a party executes a sworn statement requesting the placement of an indicator which states that the party has reason to believe that the release of information may result in harm to the party or the child. This must be accompanied by a court determination of domestic violence or child abuse as evidenced by:
 - a final injunction issued pursuant to chapter 741 or chapter 784, Florida Statutes;
 - a judgment that indicates a finding of domestic violence;
 - a dependency order entered pursuant to chapter 39, Florida Statutes; or

- a criminal conviction that resulted from domestic violence;
- a party provides documentation of participation in the address confidentiality program under s. 741.403, Florida Statutes; or
- the department has received information from the Domestic and Repeat Violence Injunction Statewide Verification System that a court has granted the party a domestic violence or repeat violence injunction.

Section 7. Amends s. 61.1826, Florida Statutes, 1998 Supplement, to provide that under certain specified circumstances, if a depository fails to comply with the material terms of the cooperative agreement between the Department of Revenue and the Florida Association of Court Clerks, the county officer or officers responsible for the failure to comply are subject to the sanctions provided in Article IV of the State Constitution.

Section 8. Amends s. 61.14, Florida Statutes, 1998 Supplement, to remove a duplicative requirement.

Section 9. Amends s. 409.2558, Florida Statutes, 1998 Supplement, to provide the Department of Revenue statutory authority for Rules 12E-1.006 and 12E-1.022, Florida Administrative Code, related to reconsideration of collections and distributions and recovery of overpayments.

The section provides that an individual receiving collection and distribution services of the Department's Child Support Enforcement Program may request a reconsideration by the Department related to the amount collected, the date collected, the amount distributed, the distribution time, or the calculation of an arrearage. The section also provides that the Department shall establish by rule a reconsideration procedure which must include an opportunity for recipients of services to review and contest actions of the Department and a procedure to recover overpayments of child support made to obligees as a result of fraud or error.

The section provides that, effective January 1, 2000, the court-ordered obligation of an obligor to comply with an existing child support order continues when a caretaker relative obtains physical custody of the child for whom the support order was issued and the caretaker relative receives TANF for the child. Upon written notice to both the obligor and payee, the Department of Revenue may redirect payments made pursuant to the support order for distribution and disbursement. If a timely petition is filed by either the obligor or the payee contesting the redirection of payments, the department may not redirect payments until the court rules on the petition.

The Department of Revenue may, after notice to the obligor, the payee, and the caretaker relative(s), redirect payments in the following circumstances:

- a caretaker relative stops receiving TANF and the child returns to the physical custody of the payee;
- a caretaker relative stops receiving TANF and another caretaker relative obtains physical custody of the child and begins receiving TANF for the child.

The section requires the Department of Revenue to provide a copy of a notice to redirect payment to the court. Rulemaking authority is provided to the department to implement these provisions.

Section 10. Amends s. 409.2561, Florida Statutes, 1998 Supplement, to clarify that in public assistance cases, as in non-public assistance cases, retroactive child support obligations are determined in accordance with the child support guidelines. Payment of public assistance money to or on behalf of a dependent child creates an obligation in an amount determined by application of the current child support guidelines in s. 61.30, Florida Statutes, to the applicable period.

The section also removes the statutory requirement that the Department of Revenue and the Department of Insurance enter into cooperative agreements to share insurance information.

Section 11. Amends s. 409.2564, Florida Statutes, 1998 Supplement, to authorize the Department of Revenue to impose a fine for failure to comply with an administrative subpoena for financial or other information necessary to establish, modify, or enforce a child support order. The section also

provides for interstate applicability of the subpoena powers of the Florida Department of Revenue and the IV-D programs of other states.

Section 12. Amends s. 409.25641, Florida Statutes, 1998 Supplement, to remove the statutory definition for “automated administrative enforcement” and incorporate a new definition by reference to the Social Security Act.

Section 13. Amends s. 409.25656, Florida Statutes, 1998 Supplement, to allow the obligor to consent in writing to the levy before the 30 day waiting period ends, so that the freeze on the bank account can be lifted sooner.

Section 14. Amends s. 409. 25657, Florida Statutes, to require the inclusion of the “average daily account balance” in the information that financial institutions must provide to the Department of Revenue on an obligor who owes past due child support.

The section also allows financial institutions to provide a list of their account holders to the Department of Revenue and to allow the Department to conduct the data matches. Use of this information is limited to Title IV-D purposes.

The section also provides that the development and operation of the financial institution data match program include coordination with the Federal Parent Locator Service in cases of financial institutions doing business in more than one state.

Section 15. Amends s. 409.2577, Florida Statutes, 1998 Supplement, to remove a duplicative sentence.

Section 16. Amends s. 741.04, Florida Statutes, 1998 Supplement, to clarify that a county court judge or a clerk of the circuit court may not refuse to issue a marriage license to individuals who are not citizens of the United States if they are unable to provide a social security number, alien registration number, or other identification number on the marriage license application.

Section 17. Provides appropriations of \$24,480 from General Revenue and \$47,520 from the Grants and Donations Trust Fund to the Department of Revenue to implement the provisions of s. 409.25657, Florida Statutes.

Section 18. Provides appropriations of \$73,778 from General Revenue and \$143,216 from the Grants and Donations Trust Fund to the Department of Revenue to implement the provisions of s. 409.2558(2), Florida Statutes.

Section 19. Provides an effective date of July 1, 1999, with the exception of sections that specify otherwise.

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:
 N/A

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:
 See fiscal comments.
- 2. Direct Private Sector Benefits:
 N/A
- 3. Effects on Competition, Private Enterprise and Employment Markets:
 N/A

D. FISCAL COMMENTS:

Costs to the Department of Revenue to administer the bill.

	Current Fiscal Year	Next Fiscal Year
A. Nonrecurring		
Expense		\$ 944
Data Processing		\$288,000
B. Recurring		
C. Total		
		\$288,994
	General Revenue	\$ 98,258
	Grants and Donations Trust Fund	\$190,736

The bill also authorizes the department to impose an administrative fine of not more than \$500 for failure to comply with a subpoena which could have an impact on the private sector.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the 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 a state tax shared with counties or municipalities.

V. COMMENTS:

Committee on Family Law and Children

The term "caretaker relative" used in this bill should not be confused with the term "relative caregiver" as it relates to the Relative Caregiver Program in s. 39.5085, Florida Statutes.

The Work and Gain Economic Self sufficiency (WAGES) Program does not impose time limits on relative caretakers (residential custodians other than the mother or father). It is possible that as time limits for assistance expire for parents, there could be an increase in the number of relative caretaker cases.

The need to obtain a new court order or have an existing court order modified to specify a new payee may cause the Child Support Enforcement Program to be out of compliance with federal requirements (45 C.F.R. s. 302.32) for timely child support payment processing.

The Family Court Steering Committee opposes the administrative change of a payee in child support cases when a relative caretaker obtains physical custody of the child(ren). This would constitute an administrative modification of a court order. Judges consider many factors when entering orders for child support and a change in the child's residence may change those factors. The Committee feels that such a change should be reviewed by the court to ensure that the support order is still appropriate.

The Family Court Steering Committee also opposes the Department of Revenue having the authority to impose a fine for failure to comply with an administrative subpoena.

Judiciary Committee staff comments:

No provision is made for the redaction of social security numbers on public records, yet -- particularly in that portion of Section 1 amending 61.13 (1)(d)1 to require a child support order to contain the social security numbers of all children to whom the order relates -- this information is required to be furnished and is ordinarily recorded in the official records of the counties. For this provision to succeed, a provision for redaction or a change in the public records law will be needed.

Section 9 indicates that if a depository fails to comply with the material terms of the cooperative agreement, the failure will subject the county officer to Article IV sanctions, but excludes "noncurable default resulting from circumstances outside the control of the depository." As written, the bill does not serve adequate notice upon local officials as to what circumstances would constitute a defense to Article IV sanctions.

Section 10 concerns child support distribution and disbursement. When a recipient requests a reconciliation accounting, the bill provides for an informal procedure before the individual is entitled to a hearing under Chapter 120. But when the department believes its records indicate that an overpayment has been made to an obligee, the bill authorizes the department to establish by rule a procedure to recover the overpayment. Obviously, such a determination by the agency would involve the substantial interests of the person allegedly "overpaid," and a 120.57 hearing must be provided to the party; just as the hearing must be furnished to an allegedly "underpaid" obligee.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Family Law and Children adopted 12 amendments to the PCB during the March 18 and March 30, 1999. Those amendments are summarized as follows:

- **Amends s. 61.181, Florida Statutes, 1998 Supplement**, to provide for the collection of a fee for non title IV-D cases required to be processed by the State Disbursement Unit. If a payment is made to the Unit which is not accompanied by the fee, no deduction shall be made from the support payment for payment of the fee.
- **Amends s. 61.1301, Florida Statutes**, to remove the requirement that child support payors in certain specified cases are not obligated to a fee payment.
- **Amends s. 61.13016, Florida Statutes**, to conform language within the section related to child support payment delinquencies.
- **Amends s. 409.2577, Florida Statutes, 1998 Supplement**, to provide that the department shall, upon request, make parent locator service information available to any agency providing child support enforcement services to non IV-D clients.
- **Amends s. 409.2564, Florida Statutes, 1998 Supplement**, to provide that when the Department of Revenue files a petition for modification of a child support order and the petition is accompanied by a verified motion signed by the department to redirect payment in certain specified circumstances when families are receiving TANF funding, the court shall enter a temporary, ex parte order within 5 days that redirects the child support payments pending a final order. The court may also grant such relief that the court deems proper.
- **Amends s. 409.2558, Florida Statutes, 1998 Supplement**, to remove the language related to redirection of payment by the Department of Revenue.
- Amends the appropriations language to correct a statutory reference.
- Amends the appropriations language to correct a date.
- **Amends s. 61.1825, Florida Statutes, 1998 Supplement**, to clarify domestic violence indicators.
- Provides for an **additional appropriation of \$50,770** to the Department of Revenue.
- Clarifies the funding source for cost for full participation by Miami-Dade, Seminole, and Collier County depositories in the statewide data collection and reporting systems.
- Clarifies penalty language for noncurable default on the part of a depository.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:
Prepared by:

Staff Director:

Carol E. Preston

Carol E. Preston

STORAGE NAME: h2149.jud
DATE: April 14, 1999
PAGE 12

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Jo Ann Levin

Don Rubottom