

STORAGE NAME: h2421.flc

DATE: April 24, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
ANALYSIS**

BILL #: HB 2421

RELATING TO: Child Support

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

TIED BILL(S):

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

(1) FAMILY LAW AND CHILDREN YEAS 7 NAYS 0

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I. SUMMARY:

The bill creates a new Chapter 62 of the Florida Statutes to be entitled, "Child Support Guidelines" and repeals s. 61.30, Florida Statutes, related to child support guidelines.

The bill provides new language related to legislative intent, purposes of child support guidelines, economic assumptions and principles of child support guidelines, and rebuttable presumption as it applies to support obligations. The bill creates a number of new definitions related to child support obligations and parenting arrangements. The bill expands and clarifies additions to the basic child support obligation as a result of employment and education related child care expenses, health insurance premiums, and extraordinary unreimbursed health care expenses.

The bill retains the existing economic data in the child support schedule and includes the assumptions that are built into those schedules. The bill unifies factors to be considered by the court as a basis for deviation when determining whether or not an adjustment to the child support obligation is warranted.

New language related to settlement agreements, emancipation and termination of support, and the four year review by the Legislature is also provided. The definition of income for purposes of child support is expanded and clarified. A new method of providing an adjustment based on substantial parenting time with each parent is also provided by the bill.

The bill should have no fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Prior to the enactment of the Child Support Enforcement Amendments of 1984, use of child support guidelines by states was quite limited. In the great majority of states, child support orders were set on a case by case basis with the judiciary assuming responsibility for analyzing parental resources and the needs of children in each specific family situation. While the Child Support Enforcement Amendments of 1984 required that states establish numeric guidelines to determine appropriate amounts of child support, the federal statute also specified that the guidelines "**need not be binding**" (42 U.S.C. §667).

The Family Support Act of 1988 mandated that states must provide that there shall be a **rebuttable presumption** in any proceeding for the award of child support that the amount of the award which would result from the application of the guidelines is the correct amount of child support to be awarded. The Family Support Act also provided that guidelines adopted by states take into consideration all earnings and income of the absent parent, be based on specific, descriptive and numeric criteria and result in a computation of the support obligation, and provide for the health care needs of the child. States were also required to review, and revise if necessary, their child support guidelines at least once every four years in order to ensure that guideline application results in child support award amounts that are just and appropriate. As a part of that review process, federal regulations require states to analyze case data related to the application of, and deviations from, the guidelines. States must also consider economic data related to the cost of raising children.

In a study done in 1994 for the federal Office of Child Support Enforcement, it was suggested that:

the **entity conducting the review** should **either have the authority to change the guidelines**, or is **designated as the review entity by the governmental branch that has such authority**. For example, if the guidelines are promulgated by the state supreme court, then the reviewing entity should be a committee or commission established by the supreme court. If the guidelines are legislative, presumably the Legislature should establish a legislative committee or Commission, or delegate the review role to the Executive Branch.

Beyond these federal requirements, states were given broad discretion and latitude both in establishing guidelines and in conducting guideline reviews. Florida enacted

child support guidelines for the first time during the 1987 legislative session. Those guidelines were based on the income shares model developed by Dr. Robert Williams for the federal government. During the 1989 legislative session, the guidelines were amended to become presumptive and further changes have been enacted during the past ten years to better reflect the needs of families in Florida.

Currently, the Florida Statutes contain the following provisions related to child support guidelines:

Rebuttable Presumption

Section 61.30(1)(a), Florida Statutes, provides that the amount of support determined by the guidelines presumptively establishes the amount to be ordered by the trier of fact. There is no definition of rebuttable presumption included in this section. This section of statute also provides that the trier of fact may order payment which varies plus or minus 5 percent after considering certain specified factors and implies that this can be done without written findings. This would appear to be in violation of federal law. If the trier of fact varies more than plus or minus 5 percent, written findings must be provided, but the statute does not specify factors for the court to consider in these cases.

Schedule of Economic Data

The figures in the guidelines schedule in s. 61.30(6), Florida Statutes, are based on economic estimates of child-rearing expenditures as a proportion of household consumption by Thomas Espenshade using a method developed by Engel. The Espenshade estimates are derived from national data on household expenditures from the 1972-73 Consumer Expenditure Survey conducted by the U. S. Bureau of Labor Statistics. They were updated in 1993 to include changes in the Consumer Price Index through 1992.

Health Insurance and Health Care Costs and Employment Related Child Care Costs

Section 61.30 (7), Florida Statutes, provides for the addition of child care costs that are incurred as a result of employment, job search, or education calculated to result in employment or to enhance income of current employment of either parent to the basic obligation, after the costs have been reduced by 25 percent. Credit is to be given for any moneys prepaid by the noncustodial parent.

Section 61.30(8), Florida Statutes, provides that health insurance costs related to providing health care coverage for a child and any noncovered medical, dental, and prescription medication costs are to be added to the basic obligation. Credit is to be given for any moneys prepaid by the noncustodial parent.

Deviation Factors

The statute provides a number of specified factors that the court may consider to determine whether or not an adjustment to the guidelines determined child support amount is justified. Those factors include a catchall that provides for ,”any other adjustment which is needed to achieve an equitable result”.

Prior Families

The statute provides that court-ordered support for other children which is actually paid is to be deducted from gross income.

Subsequent Families

The statute provides that the existence of subsequent children of an obligor should not generally be considered by the court as a basis for deviation. The parent with the support obligation for subsequent children may raise the existence of such children but in so doing, the income of the other parent of the subsequent children shall be considered by the court in determining whether or not to grant an adjustment to the guideline amount of support. Also, the existence of subsequent children may only be raised in a proceeding for an upward modification of an existing award and may not be applied to justify a decrease in an existing award.

Adjustments for Visitation Schedules

The statute currently provides that the court shall order payment of child support which varies from the guideline determined amount whenever any children are required by the court or mediation to spend a substantial amount of time with both parents. The statute also delineates a series of factors the court is to consider in making such an adjustment.

Section 61.30, Florida Statutes, also currently contains provisions for retroactive child support under certain specified conditions, for the four year review by the Legislature, for modification of support orders, and for orders involving parents with either extremely low or extremely high incomes.

C. EFFECT OF PROPOSED CHANGES:

The bill contains a number of provisions including:

Repealing s. 61.30, Florida Statutes, and creating a new Chapter 62, Florida Statutes, to be entitled, "Child Support Guidelines". This is to clarify that parents have a responsibility to support their children, whether they are married, unmarried or have never been married. It is also to clarify that the "child support guidelines" include the schedule of support amounts as well as other provisions related to determining child support obligations.

Attempting to make statutory language more family friendly, regardless of the status of the parents' relationship and regardless of the gender of the obligor and obligee. References to "visitation" have been replaced with "parenting time", "parties" have been redesignated as "parents", "custody" has been redesignated as "parenting arrangement" and "custodial and noncustodial parents" are referred to as "primary residential and alternate residential parents".

Adding new sections to reflect legislative findings and intent, purposes, principles, and the economic principles related to child support guidelines. These are intended to reflect some background information related to the evolution of guidelines and provide such information to parents, the judiciary, and others who work in the area of child support. New definitions have been created for use in the newly created chapter 62.

Clarifying and expanding provisions related to employment related child care costs and costs related to the provision of health insurance and other health care needs. These are to be treated as additions to the basic child support obligation. Credit is to be given for monies prepaid and the court may provide further for one parent to reimburse the other parent for unreimbursed health care expenditures.

Clarifying and expanding factors the court may consider in order to determine whether or not an adjustment to the child support obligation is warranted. These factors include, but are not limited to, extreme income of parents, educational expenses, parenting time arrangements, the age of the child, the treatment of the federal income tax exemption, and settlement agreements.

Expanding and clarifying the types of income to be considered as income for purposes of child support and the provision that these differ from types of income to be considered for income tax purposes.

Providing a threshold of time a child spends with the alternate residential parent beyond which the court shall provide an adjustment in the amount of support ordered and including the calculations for that adjustment.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 61.13, Florida Statutes, to correct a reference to s. 61.30, Florida Statutes, which is being repealed. It also provides that predictable and recurring health care expenses in excess of \$250 per year per child that are unreimbursed shall be added to the basic support obligation.

The section also provides that specific rights of access that shall not be denied to a parent solely because he or she is not the primary residential parent. Those rights include the right to in-person communication with health care and education providers unless a court order specifically revokes these rights.

Section 2. Amends s. 61.14, Florida Statutes, to correct a reference to s. 61.30, Florida Statutes. It also provides for notice to an obligor by the local depository when an obligor is 15 days delinquent in making a payment or installment of support and the amount of the delinquency is equal to or greater than the periodic payment amount ordered by the court. Finally, the section provides that the court may modify an order of support, maintenance or alimony upward or downward retroactive to the date of filing of the action as equity requires.

The section also provides that the court may modify an order of child support, maintenance, or alimony upward or downward retroactive to the date of the filing of the action as equity requires.

Section 3. Amends s. 61.181, Florida Statutes, to delete an obsolete date related to monies remitted to the department by the depository by electronic funds transfer.

Section 4. Creates Chapter 62, Florida Statutes, to consist of multiple sections, and to be entitled, "Child Support Guidelines".

Section 5. Creates s. 62.101, Florida Statutes, related to legislative findings and intent. Among other things, the Legislature intends to ensure that child support awards are

adequate to meet a child's basic needs and that those awards shall be equitably apportioned between the parents.

Section 6. Creates s. 62. 102, to provide definitions for terms used in the chapter. A number of those definitions are identical or similar to definitions existing in Chapter 61, while others are newly created for use in this chapter, to include, "basic support obligation", "child support guidelines", "child support guidelines schedule", "child support obligation", and "shared parental responsibility".

Section 7. Creates s. 62.201, Florida Statutes, related to the purposes for adopting a uniform statewide child support guideline. Those purposes include making child support awards more equitable by ensuring more consistent treatment of families in similar situations and encouraging fair and efficient settlement of conflicts between parents and minimizing the need for litigation. This language mirrors federal intent for requiring states to implement presumptive guidelines.

Section 8. Creates s. 62.202, Florida Statutes, related to the underlying principles of child support guidelines. These include recognizing that the well-being of children is of primary importance to the state and providing that both parents are mutually responsible for the support of their children and that responsibility shall be divided in proportion to the parent's respective incomes and according to their respective ability to pay.

Section 9. Creates s. 62.203, Florida Statutes, related to rebuttable presumption. The child support guidelines create a rebuttable presumption that the amount of child support awarded based on the guidelines is presumed to be the correct amount of support unless it is proven to the court that circumstances exist that make the amount unjust or inappropriate.

Section 10. Creates s. 62.204, Florida Statutes, related to the apportionment of the child support award between the parents. This section provides that the primary residential parent's share of child rearing expenses is retained by the primary residential parent and is assumed to be spent for the benefit of the child through daily living expenses. The alternate residential parent's share represents the amount of support that is paid to the primary residential parent for benefit of the child.

Section 11. Creates s. 62.205, Florida Statutes, related to the economic principles of child support guidelines. These include the fact that most expenditures made on children cannot be measured directly so economists use indirect methods of determining these costs.

Section 12. Creates s. 62.301, Florida Statutes, related to the determination of gross income. The section includes the types and sources of income to be included for purposes of child support, including earned income, business income, benefits received in place of earned income, in-kind payments, and non-income producing assets. The section also provides a floor for imputed income and provides for those types of income that are to be excluded from gross income.

Section 13. Creates s. 62.302, Florida Statutes, related to the determination of net income. The section provides for allowable deductions to gross income, including, but not limited to, federal income taxes, FICA, and deductions for mandatory union dues under certain specified circumstances.

Section 14. Creates s. 62.303, Florida Statutes, related to documentation of income. The section includes provisions for what constitutes required documentation of parental income. The section retains existing statutory requirements for affidavits and contains a new provision that the court may order an annual exchange of information between the parents on an annual basis if the court deems it necessary.

Section 15. Creates s. 62.304, Florida Statutes, related to the child support guideline schedule. It includes the basic assumptions that apply when using the guidelines schedule but retains the existing economic data in the support schedule.

Section 16. Creates s. 62.401, Florida Statutes, related to expenses to be considered by the court as additions to the basic child support obligation. These include work related child care expenses, costs related to providing health insurance for the child, and unreimbursed expenses related to health care.

Section 17. Creates s. 62.402, Florida Statutes, related to deviations from a guidelines based award. Reasons to deviate include expenses for elementary or secondary education in public, private, or special schools, parenting or visitation arrangements, age of the child, treatment of income tax exemptions, and extremely high or low incomes of parents.

Section 18. Creates s. 62.403, Florida Statutes, related to prior orders for support. The section defines "prior orders" and provides that to the extent that prior orders for support are actually being paid, they shall be deducted from the obligor's gross income before determining a child support obligation.

Section 19. Creates s. 62.404, Florida Statutes, related to support for subsequent families. It provides that the existence of subsequent children shall not generally be considered as a basis for deviation from the guidelines based award. The existence of such children may be raised as a justification for a deviation, only if the income of the other parent of the subsequent children is considered by the court in determining whether or not there is a basis for a deviation. Subsequent children may only be raised in a proceeding for an upward modification of an existing child support award.

Section 20. Creates s. 62.405, Florida Statutes, related to determination of the child support award. The section provides the steps to be taken to determine the amount of a child support obligation.

Section 21. Creates s. 62.406, Florida Statutes, to provide that when provisions for child support are included in settlement agreements reached by the parents, the court shall compare the amount of support with that which would have been ordered pursuant to the guidelines schedule. If the court approves a deviation, it must enter written findings giving the reasons for the deviation.

Section 22. Creates s. 62.501, Florida Statutes, related to modification of an existing order.

Section 23. Creates s. 62.502, Florida Statutes, related to retroactive child support. Existing language is retained and some new factors are provided for the court to consider in determining whether or not to award retroactive support.

Section 24. Creates s. 62.503, Florida Statutes, related to accountability of the obligee for child support received. The court may require the obligee, upon a showing of reasonable cause to believe that child support is not being used for the support of the child, to provide

information regarding the disposition of the support in a manner to be determined by the court. No information shall be required from the obligee if the obligor has failed to exercise parenting time rights, child support payments are in arrears, the obligor receives \$400 or less per month, or there is evidence of domestic violence or child abuse or a violation of a restraining order on the part of the obligor.

Section 25. Creates s. 62.504, Florida Statutes, related to noncooperation in public assistance cases.

Section 26. Creates s. 62.601, Florida Statutes, related to emancipation and termination of child support. The section provides that a court may order either or both parents to continue to provide support to a child who has not previously married or otherwise become emancipated, who is enrolled in and attending a secondary school and who has attained the age of majority before completing high school, provided that the support shall not be required after a child attains 20 years of age. The section also contains provisions for continuing support for a child who is dependent due to a disability.

Section 27. Creates s. 62.701, Florida Statutes, related to the review of the guidelines. The section expands current language related to the review to provide specific elements that are to be included in the legislative review of the guidelines.

Section 28. Amends s. 39.402, Florida Statutes, to correct a reference.

Section 29. Amends s. 39.508, Florida Statutes, to correct a reference.

Section 30. Amends s. 409.2564, Florida Statutes, to correct a reference.

Section 31. Amends s. 414.38, Florida Statutes, to correct a reference.

Section 32. Amends s. 742.031, Florida Statutes, to correct a reference.

Section 33. Amends s. 743.07, Florida Statutes, to conform provisions related to termination of support to newly created s. 62.702.

Section 34. Provides for the repeal of s. 61.30, Florida Statutes.

Section 35. Provides for an effective date of January 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

None.

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 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 a state tax shared with municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Family Law and Children adopted 48 amendments on 4.17.00. The substance of these amendments have been incorporated into this analysis.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

Staff Director:

Carol Preston

Carol Preston