

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1060

SPONSOR: Judiciary Committee, Children and Families Committee and Senator Campbell

SUBJECT: Child Support

DATE: March 16, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Matthews</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Keating</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable</u>
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The Committee Substitute for Committee Substitute for SB 1060 revises the law governing child support as follows:

- Requires the full amount rather than the current percentage (75) of child care costs incurred as part of work or work-related expenses to be added to the basic obligation prior to the court's determination of child support.
- Adds that the court may consider any federal tax credit received for child care expenses prior to adjusting a child support award.
- Authorizes the court, upon good cause shown, rather than based upon a showing of substantial change of circumstances, to modify, vacate or set aside a temporary support order under chapters 61 and 742, F.S., prior to the entry of a final support order.
- Sets forth a list of optional dates that may serve as the date to which a final support order may be made retroactive.

In addition, s. 39.402(11), s. 39.521(2)(s), s. 61.13(1)(a) and (5), s. 61.14(1), s. 409.2563(1)(d), (2)(c), (4)(f), (5)(a), and (7)(e), s. 409.2564(12), and s. 742.031(1), F.S., are reenacted for the purpose of incorporating by reference the amendments to s. 61.30, F.S. This CS for CS substantially amends s. 61.14, 61.30, and s. 742.031 of the Florida Statutes.

## II. Present Situation:

### Child support guidelines

Established in 1987, Florida child support guidelines include a support schedule that considers both the custodial and noncustodial parents' net income to determine the basic support

obligation.<sup>1</sup> The proportion of the basic support obligation which the noncustodial parent must pay is based on the noncustodial parent's percentage of the combined net income. Added to that basic support obligation are any child care costs, health insurance costs, and noncovered medical, dental, and prescription medication expenses using the same percentage that the noncustodial parent's income represents of the total combined income.

### **Federal Child Tax Credit and Federal Tax Credit for Child and Dependent Care Expenses**

There are two distinct child tax credits recognized by federal law: the federal Child Tax Credit and the Tax Credit for Child and Dependent Care Expenses. The former refers to the maximum child tax credit (\$1,000) that a parent receives annually for each dependent child under the age of 17. *See* IRS Publication 972, Child Tax Credit, Department of Treasury. The latter credit refers to the credit (maximum of 35 percent of qualified expenses) that a parent can receive for expenses paid to care for a dependent who is under the age of 13. *See* IRS Publication 503, Child Tax Credit, Department of Treasury. Currently, the federal dependent-care tax credit is available for work-related child care expenses up to a maximum of \$3,000 for one child and \$6,000 for two or more children. The maximum adjusted gross income that qualifies for the highest percentage (35 percent) is \$15,000. The amount of the credit is determined by multiplying the eligible child care expenses by a percentage that ranges from 20-35 percent depending on adjusted gross income. Personal income tax liability is reduced by the amount of the credit. Only custodial parents may avail themselves of this credit and only if expenses are actually incurred.

In 1993, the Florida child support law was changed to allow only 75 percent of the total child care costs to be added to the basis support obligation.<sup>2</sup> The 25 percent reduction was intended to offset the benefit of any tax credit that the custodial parent presumably received for child and dependent care expenses.<sup>3</sup> The federal tax credit for child and dependent care expense is available as an employment related expense for up to \$3,000 for one child and \$6,000 for 2 or more children.<sup>4</sup> Most states calculate the cost of child care by subtracting the tax credit for child and dependent care expenses from the total amount of child care expense before adding it to the child support obligation as a mechanism to prevent the custodial parent from obtaining a "windfall" from the tax credit.<sup>5</sup> However, a 2003 informal survey of states' child care laws conducted by Connecticut showed that some states do consider the federal tax credit for child and dependent care expenses and some states did not identify how or whether the dependent care tax credit was considered. The CS for CS refers to the "impact of any Federal Child Care Tax Credit" when considering adjusting a child support award.

Child care costs may be considered in determining child support if these costs are necessary for employment, job search, or education that will result in employment or enhanced earnings from the current employment.<sup>6</sup> Payments made by the noncustodial parent for the child care costs are deducted from the noncustodial parent's child support obligation. The court may also adjust the

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<sup>1</sup> *See* ch. 87-95, L.O.F; s. 61.30, F.S.

<sup>2</sup> *See* ch. 93-208, L.O.F.

<sup>3</sup> *See* Florida House of Representatives Committee on Judiciary, Final Bill Analysis and Economic Impact Statement, April 16, 1993.

<sup>4</sup> 26 U.S.C. s. 21.

<sup>5</sup> *See* article reviewing other states' child support guidelines. Morgan, Laura, *Child Support Guidelines: Interpretation and Application*, Aspen Law and Business, New York, 1999.

<sup>6</sup> *See* s. 61.30(7), F.S.

child support award based on a number of considerations such as extraordinary medical expenses, other child support obligations, independent income of the child, special needs of the child, the age of the child, available assets, seasonal variations in income or expenses, or the impact of the Internal Revenue Service dependency exemption.<sup>7</sup>

Confusion and concern surround Florida's methodology for considering child care expenses. First, not every custodial parent is eligible to receive the tax credit for child and dependent care expenses related to employment and yet the law requires that 25 percent of these expenses are automatically discredited from the child support obligation. Second, the current guidelines provide for the deduction of federal income taxes, "adjusted for actual filing status and allowable dependents and income tax liabilities" from gross income which would account for adjusting the gross income for receipt of the tax credit for child and dependent care expenses.<sup>8</sup> As a result, the income of the tax credit for child and dependent care expenses may actually be considered once in the income calculation and again in the consideration of the 25 percent reduction of the child care cost. Third, the statute provides for consideration of only 75 percent of the child care expense but also allows for consideration of *any* payment made by the noncustodial parent (which could exceed the amount considered as the expense). As a result, sometimes 100 percent of the *payment* is considered and other times only 75 percent is considered. Four, in shared parental arrangements where each parent is spending a substantial amount of time with the child<sup>9</sup> a different methodology is used and full child care cost is considered in determining the child support award with language that specifically provides direction that the 25 percent reduction required for parents without substantial shared parenting time is *not* to be applied.

### **Temporary child support orders**

Temporary support orders may be issued upon the initial filing of petitions for dissolution of marriage, support, or determining paternity to provide the necessary child support until a final judgment is granted. Recent court cases have issued differing rulings relative to whether temporary orders are considered final for the lifespan of the order. The finality applied to the order appears to dictate the authority of the court to change, modify, or set aside an order until entry of the final decree, including the retroactive periods to which increases and decreases in orders are applied. Court cases have indicated that courts retain authority over interlocutory orders<sup>10</sup> and, therefore, have the authority to change, modify, or set aside such orders until the entry of the final decrees.<sup>11</sup> However, in some court cases such as *Kraus v. Kraus*, 749 So.2d 513 (Fla. 2d DCA 1999), a court found that an order of temporary alimony is final during its lifespan and that the increased temporary alimony award should not be retroactive to the date before the motion for increased temporary alimony was filed. A court presented the practical policy concerns relative to temporary support orders as follows:

“A temporary support order is often required at the beginning of the dissolution action, before the parties have had an opportunity to complete discovery. Given the urgency of some of these matters, the order is often entered based on an abbreviated hearing and

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<sup>7</sup> See s. 61.30(11)(a), F.S.

<sup>8</sup> See s. 61.30(3)(a), F.S.

<sup>9</sup> See s. 61.30(11)(b), F.S.

<sup>10</sup> An interlocutory order is defined as an order that relates to some intermediate matter in the case or any order other than a final order (*Black's Law Dictionary*, Seventh Edition).

<sup>11</sup> See e.g., *Wayno v. Wayno*, 756 So.2d 1025 (Fla. 5<sup>th</sup> DCA 2000); *Young v. Young*, 65 So.2d 28 (Fla. 1953).

limited evidence.... As the case progresses, the developing evidence or changes in the parties' financial circumstances may reveal inequities or errors in the prior support awards that require adjustment in the final analysis. Recently however, cases have suggested that temporary orders should enjoy a higher degree of "finality" than has been previously afforded to them."<sup>12</sup>

### **Retroactive Date of Initial and Modified Support Orders**

Current law stipulates the retroactive date to which a support order or modification may apply under different circumstances. The court has the discretion to award child support retroactively to the date the parents no longer reside together, up to 24 months, in an initial determination of child support.<sup>13</sup> For noncustodial parents whose support orders were adjusted due to shared parental arrangements and the visitation was not regularly exercised, the law permits a modified support order to be retroactive to the date the noncustodial parent first failed to regularly exercise the ordered visitation.<sup>14</sup> The law also permits the court to increase or decrease the support retroactively to the date of filing of the court action or supplemental action for modification, except as provided in s. 61.30(11)(c), F.S.<sup>15</sup>

### **III. Effect of Proposed Changes:**

The committee substitute for committee substitute for SB 1060 modifies the methodology for calculating child care expenses in determining an initial child support award. Specifically, the bill amends s. 61.30(7), F.S., to require that the *full* amount rather than 75 percent of child care costs incurred as part of work-related expenses to be considered in determining the child support obligation. A conforming amendment is also made to s. 61.30(11)(b), F.S., to eliminate reference to the 25 percent reduction in the calculations for child support when it involves substantial parenting time arrangements.

Additionally consistent with this change, s. 61.30(11)(a), F.S., is revised to add that the federal tax credit for child care expenses is added as a basis for adjusting a child support award. Under this CS for CS, the consideration of the tax credit for child and dependent care for the purpose of determining the child support award is therefore shifted from an adjustment to the child care expense at the outset to an adjustment that may be made by the court based on the actual receipt of the credit for child and dependent care expenses.

The CS for CS also amends s. 61.14, and s. 742.031, F.S., relating to modification of support and alimony orders, and determination of support in paternity actions, respectively. Amendments to both these sections authorize the court to modify, vacate, or set aside a temporary support order either before or at the time a final order is entered in a proceeding. Such modification, vacating, or setting aside of the temporary support order may be executed upon the showing of good cause and without the need to show a substantial change in circumstances which is the typical standard required now for any modification to an existing child support order or obligation.

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<sup>12</sup> Dent v. Dent, 851 So.2d 819 (Fla. 2<sup>nd</sup> DCA 2003).

<sup>13</sup> See s. 61.30(17), F.S.

<sup>14</sup> See s. 61.30(11)(c), F.S.

<sup>15</sup> See s. 61.14, F.S.,

The CS for CS specifically provides for the possible retroactive timeframes to which a modification to a temporary order may apply. Therefore, the change appears to be retroactive to either the date of the initial entry of the temporary support order, to the date of the filing of the initial petition for dissolution of marriage, the initial petition for support, or the initial petition for a determination of paternity, or the date of the supplemental petition for modification; or the date prescribed in s. 61.14(1)(a), s. 61.30(11)(c), or s. 61.30(17), F.S. As stated, it appears that the *modification* to a temporary support order really refers to a final support order which actually acts to supersede the temporary order. It is not certain whether a temporary support order in which the obligation is not actually modified but is merely finalized into a final support order would be considered a modification.

In addition, s. 39.402(11), s. 39.521(2)(s), s. 61.13(1)(a) and (5), s. 61.14(1), s. 409.2563(1)(d), (2)(c), (4)(f), (5)(a), and (7)(e), s. 409.2564(12), and s. 742.031(1), F.S., are reenacted for the purpose of incorporating by reference the amendments to s. 61.30, F.S.

The CS for CS provides for an effective date of July 1, 2004.

#### **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 impact of the shift in the method the child and dependent care tax credit is considered may result in an increase in the child support award received by the custodial parent, particularly if the child care payment has been actually paid by the custodial parent. However, in the instances where the noncustodial parent has been making the child care payment, the child support award could increase further or decrease depending on how the noncustodial parent's payment of the child care expenses was considered. Specifically, if the support was calculated exactly as articulated in statute, the child support award required of the noncustodial parent who is paying the full child care

expense would likely increase further. If the support was calculated only crediting the noncustodial parent with the 75 percent of the payment that was considered for the expense, the child support award would decrease.

Since the “modification” of a temporary support order is retroactive to the date of one of the applicable enumerated judicial events (e.g., the date of the initial entry of the temporary support order, the date of the filing of an initial petition for dissolution of marriage or petition for paternity), such retro application will affect the past obligation of a child support obligor and the expectation of a child support obligee to receive a certain amount of child support obligation unless the final support order mirrors exactly the child support obligation under the temporary order.

**C. Government Sector Impact:**

The Department of Revenue did not report a fiscal impact for the original bill SB 1060.

According to the Office of State Courts Administrator (OSCA), the elimination of the requirement that certain child care costs be reduced by 25 percent before being added to the basic obligation is likely to result in an increase in child support obligations for parents who have such child care costs. It is possible that increases in child support obligations will generate more motions for contempt for failure to pay or more requests for joint custody to offset the unexpected increases in child support obligations. However, it is indeterminate whether this will generate additional litigation and impact judicial workload. According to OSCA, the retroactivity provision may result in shorter temporary hearings because the court will be able to address a party’s previous understatement of income at subsequent hearings.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.