HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 919 Child Support Guidelines
SPONSOR(S): Rice
TIED BILLS: **IDEN./SIM. BILLS:** SB 1924

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Lammers	Billmeier
2) Future of Florida's Families Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

HB 919 provides that for purposes of establishing child support, any parent of a child in this state shall be presumed able to earn the federal minimum wage. This presumption is rebuttable upon the parent's presentation of evidence to the contrary at a noticed hearing before a trier of fact.

This bill has no significant fiscal impact.

This bill shall take effect on July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility—This bill creates a rebuttable presumption that any parent can earn the federal minimum wage for purposes of imputing income in child support cases.

B. EFFECT OF PROPOSED CHANGES:

Current Child Support Guidelines

The child support guidelines of section 61.30(1)(a), F.S., establish a presumptive amount of support for the trier of fact to order in an initial order or modification of child support. The trier of fact may vary the amount of the award plus or minus five percent from the amount stated in the guidelines, after consideration of all relevant factors, but for a variation of more than five percent, the trier of fact must provide a written finding as to why payment of the guideline amount would be unjust or inappropriate.[1]

Section 61.30(2)(b), F.S., provides that:

> Income on a monthly basis shall be imputed to an unemployed or underemployed parent when such employment or underemployment is found to be voluntary on that parent's part, absent physical or mental incapacity or other circumstances over which the parent has no control. In the event of such voluntary unemployment or underemployment, the employment potential and probable earnings level of the parent shall be determined based upon his or her recent work history, occupational qualifications, and prevailing earnings level in the community; however, the court may refuse to impute income to a primary residential parent if the court finds it necessary for the parent to stay home with the child.

In applying s. 61.30(2)(b), "the trial judge must find that the parent owing a duty of support has the actual ability to earn more than he or she is currently earning, and that he or she is deliberately refusing to return to work at that higher capacity to avoid support obligations."[2] The court shall exclude from the parent's gross income public assistance, as defined in s. 409.2554, F.S., federal, state, and local income tax deductions, mandatory union dues and retirement payments, health insurance payments, court-ordered support for other children when that support is actually paid, and spousal support paid pursuant to court order.[3] Net income for the obligor and obligee shall be computed by subtracting allowable deductions from gross income, and the net income for the obligor and obligee shall be added together for a combined net income.[4]

The child support guidelines set forth in s. 61.30(6), F.S., provide presumptive dollar amounts for the support of one or more children, depending upon the combined monthly income of the parents, beginning with a minimum monthly combined income of $650. The child support need for parents with a combined monthly available income of $650 is $74 per month for one child, up to $78 per month for six children.[5] When the combined monthly income is less than $650 per month, "the parent should be

[1] Section 61.30(1)(a), F.S.
[2] *Smith v. Smith*, 872 So. 2d 397, 398 (Fla. 1st DCA 2004) (citing *Stebbins v. Stebbins*, 754 So. 2d 903, 907 (Fla. 1st DCA 2000)) (internal quotations omitted).
[3] Section 61.30(2)(c)-(3), F.S.
[4] Section 61.30(4)-(5), F.S.
[5] Section 61.30(6), F.S.

ordered to pay a child support amount, determined on a case-by-case basis, to establish the principle of payment and lay the basis for increased orders should the parent's income increase in the future."[6]

In general, any attempt to impute income to a parent must be supported by appropriate findings, as required by s. 61.30.[7] Yet it can be difficult for an order imputing income to the noncustodial parent to be upheld on appeal.[8] One court determined that, although the record suggested that the noncustodial mother was voluntarily unemployed and capable of earning a minimum wage, the trial court had improperly imputed an earning capacity of the "minimum wage for a forty hour week."[9]

When a parent fails to appear at a hearing to determine child support, the trial court and the party seeking to enforce the child support payments, typically the Department of Revenue (department) or the child's other parent, are put in a more difficult position. If the department or the parent seeking child support lacks sufficient evidence of the absentee parent's income, the trial court is unable to determine the proper level of income to impute to the absentee parent. Although displeased with the father's absence at such a hearing, the Second District Court of Appeal reversed an award of child support because the evidence was insufficient to support the trial court's imputation of $30,000 annual income to the father.[10] On remand, the trial court was ordered to consider any further evidence presented by the mother that might show that the father was "earning less than he could, and has the capability of earning more by using his best efforts."[11] If the mother could not provide sufficient evidence of the father's earning capability, the father's child support payment was to be "based on his actual income."[12] From the financial records the mother had already submitted in the case, it appears that the father's monthly earnings the previous year had been approximately $445.[13]

In Pinellas County, at least one trial court judge has created a standard order for use in child support cases when the parent fails to appear at the final hearing.[14] This order sets forth that, according to the case law, imputation of income must be supported by competent, substantial evidence, and the order notes that the recommended final order from the department[15] does not contain the specific findings of fact necessary to comply with s. 61.30(2)(b). This standard order then states that the court declines entry of the recommended final judgment, without prejudice for further hearing and presentation of evidence meeting the requirements of s. 61.30(2)(b).

According to the department, this bill will assist efforts of the Child Support Enforcement Program by authorizing courts to impute income when the noncustodial parent fails to appear and there is no evidence regarding the noncustodial parent's employment status and earning capability.[16] The First District Court of Appeal has affirmed a trial court's finding that a father was voluntarily unemployed, while at the same time remanding for reevaluation of the imputed income of that father in accordance with s. 61.30(2)(b)-(6).[17]

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[6] *Id.*
[7] *Neal v. Meek*, 591 So. 2d 1044, 1046 (Fla. 1st DCA 1991).
[8] *See id.* (reversing the imputation of income and remanding for appropriate factual findings, noting that "it is apparent that the trial court desired to impute income to [the father]," but the court "did not make the requisite findings under the statute to impute such income" and failed to "determine the 'probable earnings level' of [the father] upon imputation of such income.")
[9] *Braman v. Braman*, 602 So. 2d 682, 683 (Fla. 2d DCA 1992).
[10] *Nicholas v. Nicholas*, 870 So. 2d 245, 247-48 (Fla. 2d DCA 2004).
[11] *Id.* at 248.
[12] *Id.*
[13] *Id.* at 247.
[14] On file with Civil Justice Committee.
[15] The department is often the petitioner in child support cases.
[16] Department of Revenue Bill Analysis, on file with Civil Justice Committee.
[17] *Wright v. Dep't of Revenue*, 833 So. 2d 799, 799-800 (Fla. 1st DCA 2003).

In addition to proceedings in the circuit court, the department has the ability to administratively establish child support obligations in Title IV-D cases.[18] The purpose of this section is not to limit the jurisdiction of the circuit courts, but to provide the department with a fair and expeditious method for establishing child support when there is no court order of support.[19] The department may use this administrative procedure on behalf of an applicant, recipient, or former recipient of public assistance, an individual who has applied for services, a state or local government of another state, or on behalf of the child or the department itself.[20] If the noncustodial parent requests in writing, within twenty days of receipt of the department's initial notice that the department proceed in circuit court, the department must terminate the administrative proceeding and file an action in circuit court.[21] In calculating the noncustodial parent's child support obligation pursuant to s. 61.30, the department shall rely on any timely filed financial affidavits and other information available to the department.[22] However, "[i]f there is a lack of sufficient reliable information concerning a parent's actual earnings for a current or past pay period, it shall be presumed for the purpose of establishing a support obligation that the parent had an earning capacity equal to the federal minimum wage during the applicable period."[23] An administrative support order issued under this section has the same force and effect as a court order and remains in effect until modified by the department, vacated on appeal, or superseded by a subsequent court order.[24]

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This bill amends s. 61.30(2)(b) to state that any person found to be the parent of a child or children in this state is presumed to be able to earn the federal minimum wage. This presumption is in addition to the current requirements that the trier of fact consider the parent's recent work history, occupational qualifications, and the prevailing earning levels in the community.[25] While considering all of these requirements, it appears that appellate courts have focused heavily on evidence of the parent's previous income when imputing income for purposes of child support.[26]

To rebut the minimum-wage income presumption, a parent may present evidence at a noticed hearing at which child support is to be established by the trier of fact. The bill retains the trial court's current authority to find that it is necessary for a parent to stay home with a child rather than work.

C. SECTION DIRECTORY:

Section 1. Amends s. 61.31(2)(b), F.S., to create a rebuttable presumption that any parent of a child in this state is presumed to be able to earn the minimum wage. Provides that the parent may rebut this presumption at a noticed hearing.

Section 2. Establishes an enactment date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[18] Section 409.2563(2)(a), F.S.
[19] *Id*.
[20] *Id.* at (2)(c)1.-5.
[21] *Id.* at (2)(f).
[22] *Id*. at (5)(a).
[23] *Id.*
[24] *Id.* at (11).
[25] Section 61.30(2)(b), F.S.
[26] *See, e.g., Nicholas*, 870 So. 2d at 247.

2. Expenditures:

According to the Department of Revenue, this bill has no fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not establish rule-making authority in any administrative agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A.