

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

Comments from the Future of Florida's Families Committee

Provide limited government – Increasing the number of cases with orders based on imputed income could result in more child support hearings seeking to modify those orders. Imputation of income could also increase the number of noncustodial fathers who do not pay support, forcing mothers and their children to become dependent on public assistance.

Promote personal responsibility – The provisions of the bill have the potential to increase the number of families becoming dependent on public assistance. The bill could also lead to an increase in sanctions against lower income fathers unable to pay support orders based on imputed income.

Empower families – The provisions of the bill will not empower the majority of families seeking support orders but will, in fact, have the potential to distance lower income noncustodial fathers from their children.

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 proceedings for either the establishment of an initial support order or modification of an existing order. 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

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).

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 guideline schedule set forth in s. 61.30(6), F.S., provides 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 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 department¹⁵ 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).

³ Section 61.30(2)(c)-(3), F.S.

⁴ Section 61.30(4)-(5), F.S.

⁵ Section 61.30(6), F.S.

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.

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. 61.30.¹⁷

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

HB 919

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. 61.30(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.

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).

¹⁸ Section 409.2563(2)(a), F.S.

¹⁹ *Id.*

²⁰ *Id.* at (2)(c)1.-5, F.S.

²¹ *Id.* at (2)(f), F.S.

²² *Id.* at (5)(a), F.S.

²³ *Id.*

²⁴ *Id.* at (11), F.S.

²⁵ Section 61.30(2)(b), F.S.

²⁶ See, e.g., *Nicholas*, 870 So. 2d at 247.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Revenue, the 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.

Comments from the Future of Florida's Families Committee

The amount of the initial child support obligation is a function of several different factors, including the guidelines a state uses to calculate child support and the way the state determines the amount of income to which the guidelines should be applied, which, in many cases, may be based on the imputation of that income. The rationale for imputing income is to ensure that a parent cannot avoid the establishment of a child support obligation by failing to provide information about income or voluntarily reducing it. However, establishing an obligation based on imputed income does not ensure that payment will be made, particularly in the case of lower income parents. Setting child support

obligations at a level that exceeds a low-income parent's ability to pay may do nothing to increase the amount of child support that children receive, and may even decrease it.²⁷

- States can consider a number of policies aimed at ensuring that support orders are based more strictly on the ability of low-income fathers to pay them. Setting a realistic order improves the chances that fathers will continue to pay over time. These policies include...limiting the use of imputed income, so that orders are not routinely based on assumed earnings capacity.²⁸
- From a public policy standpoint, investment in...providing education, training and other services to these fathers to make it possible for them to be contributors to their children's well-being, is legitimized by bringing those fathers into the formal child support system. That is, public dollars are invested in improving the employment prospects of these men so that they will provide, regular on-going formal cash support to their children. In the end, this will improve the lives of children and reduce the need for government-funded assistance. Fathers, state officials and advocates involved in these efforts have all identified child support issues which make attracting fathers into the formal system difficult. Among these are...unrealistic expectations of how much current support a low income father is actually able to pay...²⁹
- Child support awards are supposed to reflect the earnings capacity of the noncustodial parent, but if the father does not show up in court to establish his earnings capacity, many states allow courts to assume, at a minimum, that the father can work a full-time minimum wage job and to impute his income at this rate. A child support order, called a default order, is then set based on this imputed income... Default orders are necessary because some dads deliberately miss their court date, but default orders that overstate fathers' ability to pay unduly penalize them and do not help their children.³⁰
- In addition to limited access to work-related programs and health care, many poor nonresident fathers face unaffordable support payments. Of the 1 million poor nonresident fathers paying child support, a quarter pay more than 50% percent of their gross income in support, while only 2% percent of non-poor fathers pay that high of a percentage. It's difficult to identify all the reasons for high child support orders relative to poor fathers' income, but high default orders appear to be one important factor.³¹
- The second prominent problem with the child support system is more subtle, but equally of concern. Some researchers and observers contend that the system can actually drive fathers – especially young, low-income, unwed fathers – away from their children. In their view, this happens because fathers are saddled with unrealistic child support orders. Unrealistic orders result from policies such as default orders, retroactive support orders, and income imputation that increase the amount of arrears beyond a father's capacity to pay. Faced with obligations in the thousands of dollars at the outset, poor unwed fathers are sometimes driven further into poverty or into the underground economy and often become resentful of the mother and even more disengaged with their children.³²
- In February 2003, the Legislature contracted with the Department of Economics at Florida State University (FSU) to provide a report analyzing a number of issues related to the child support guidelines. The final report was released in March 2004.³³ The FSU report found that parents whose actual incomes are below the poverty guideline often have income imputed to them equivalent to earning minimum wage for full-time, year-round work. This imputed income is greater than the single-

²⁷ *Dollars and Sense: Improving the Determination of Child Support Obligations for Low-Income Mothers, Fathers, and Children*. National Women's Law Center and the Center on Fathers, Families, and Public Policy. 2002.

²⁸ Vicki Turetsky, *Realistic Child Support Policies for Low Income Fathers*. Center for Law and Social Policy, 2000.

²⁹ Paula Roberts, *Setting Support When the Noncustodial Parent is Low Income*. Center for Law and Social Policy, 1999.

³⁰ Elaine Sorenson, *Obligating Dad: Helping Low-Income Noncustodial Fathers Do More for Their Children*. Urban Institute. 1999.

³¹ Elaine Sorenson. *Helping Poor Nonresident Dads Do More*. Urban Institute. 2002.

³² Paul Legler. *Low-Income Fathers and Child Support: Starting Off on the Right Track*. Policy Studies Inc. 2003.

³³ McCaleb, Macpherson, et al, *Review and Update of Florida's Child Support Guidelines*, Department of Economics, Florida State University. March 2004.

person poverty guideline. As a result the report recommended reducing reliance on imputed income, limiting this procedure to those cases where one of the parties does not appear and no information is available from any other source. The reasons given for reducing the reliance on imputed income were a federal study showing that the evidence indicates that compliance with child support orders is systematically lower in cases where income is imputed³⁴ and the opinion of experts that “it does little good to set child support awards that low-income noncustodial parents cannot pay. This only increases arrearages, creates resentment against the child support system, and puts the child support agency in the unproductive role of trying to collect money where none exists.”³⁵

In general, it can be said that policy experts in the child support arena believe that the imputation of income, particularly to low income fathers, often leads to child support obligations that are impossible for those fathers to pay. When used in cases involving lower income families, this practice typically does not lead to an increase in the amount of child support collected and distributed to children – and many times distances fathers from children that they might otherwise remain connected to.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A.

³⁴ Office of the Inspector General, The Establishment of Child Support Orders for Low-Income Noncustodial Parents, #OEI-05-99-00390, Washington, D.C.; U.S. Department of Health and Human Services (2000).

³⁵ McCaleb, *ibid*, at 46, quoting Paul Legler, *Low Income Fathers and Child Support: Starting Off on the Right Track*, Denver: Policy Studies, Inc., (2003), at 13.