

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.)

Prepared By: Children and Families Committee

BILL: CS/SB 1700

INTRODUCER: Children and Families Committee and Senator Rich

SUBJECT: Child Support

DATE: April 3, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Whiddon	CF	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	GA	_____
4.	_____	_____	WM	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

I. Summary:

The bill amends s. 61.30, Florida Statutes, relating to child support guidelines.

Provisions of the bill include:

- Provisions relating to the imputation of income for purposes of determining the amount of a child support award;
- Elimination of an automatic reduction in child care costs related to the 25 percent federal child care credit;
- Reduction of the 40 percent threshold in shared parenting time for a setoff in the amount of a child support award to 20 percent;
- An explanation of the term “split parenting arrangement” and direction for calculating child support awards when those arrangements exist; and
- Requirement for a study by OPPAGA to evaluate the current process for reviewing and revising Florida’s child support guidelines. A required report must contain recommendations for improving the existing process or implementing a new one.

The bill amends s. 409.2564, F.S., relating to actions for support, to reduce the arrearage threshold for denial of a passport.

The bill also amends s. 409.25641, F.S., relating to automated administrative enforcement in interstate cases, to provide states with the option of establishing a corresponding case based on another state’s administrative enforcement of an interstate case request.

This bill substantially amends sections 61.13, 61.30, 409.2564, and 409.25641, Florida Statutes.

II. Present Situation:

In 1984, Congress recognized the potential value of requiring states to implement guidelines to be used in the determination of the amount of child support obligations. The federal Child Support Amendments of 1984 required states to establish non-binding child support guidelines either by law or judicial or administrative action no later than October 1, 1987.¹ The Family Support Act of 1988 made state child support guidelines presumptive and required states to review their child support guidelines at least once every four years in order to ensure that their application results in child support award amounts that are appropriate. As a part of the review process, states must analyze case data related to the application of, and deviations from, the guidelines and they must also consider economic data related to the cost of raising children.² With the exception of these two requirements, states have broad discretion and latitude in conducting guideline reviews.

In requiring the adoption and use of presumptive guidelines, the federal government had four primary objectives:

- to enhance the adequacy of child support orders;
- to improve the equity of orders by assuring more comparable treatment for cases with similar circumstances;
- to increase compliance as a result of the perceived fairness of child support awards; and
- to improve the efficiency of adjudicating child support orders.

In spite of timely guideline reviews and some statutory changes, the Florida Legislature has not adjusted the guidelines schedule since 1993. Since the underlying data for the current schedule enacted in 1993 is the 1972-1973 Consumer Expenditure Survey, the schedule is considerably out of date. In addition, other provisions of the guidelines may no longer adequately reflect the needs and circumstances of Florida families.

In preparation for the current review, the Legislature allocated funds for an economic review of the state's child support guidelines.³ In February 2003, the Legislature contracted with the Department of Economics at Florida State University. The analysis undertaken by the researchers consisted of three tasks:

- To update the existing Florida schedule of child support obligations based on the most recent data available on expenditures on children;
- To review three special issues relating to child support guidelines and to make recommendations for changes in Florida's treatment of these issues. The three issues are the treatment of low-income parents, provisions for visitation and alternative custody arrangements, and the treatment of prior and subsequent children; and
- To review alternative models for the development of child support guidelines and possibly recommend a different model for use in Florida.

¹ Child Support Enforcement Amendments of 1984, 42 U.S.C. 657-662 (1984).

² Family Support Act of 1988, 42 U.S.C. 654, 666-667 (1988).

³ See SB 2000 (2001) and HB 27E (2002).

In addition, two issues that were not a part of the original scope of work but were addressed in the report: the treatment in the guidelines of the tax benefits associated with children and the treatment of child care related expenses.⁴

The final report was delivered to the Legislature in March 2004 and presentations were made on findings and recommendations to legislative committees. Work continued during the interims in preparation for the development of proposed legislation for possible introduction during the 2006 legislative session. Findings in the report centered around three major issues: the support schedule, the treatment of low income obligors, and the treatment of various parental sharing arrangements.

Updating Florida's Child Support Guidelines Schedule

Florida's current schedule of child support guidelines is based on the income shares model. The income shares model determines the amount of child support obligations from estimated average expenditures on children in an intact family as a function of the combined income of the parents. The model was developed by Robert Williams from an analysis of expenditures on children by Thomas Espenshade.⁵ Espenshade based his analysis on Ernst Engel's⁶ approach to comparing living standards among families.

In the schedule proposed in the FSU report, the basic support obligations are lower at most income levels than those in the current schedule, with differences being relatively small except at the higher income levels. However, the amounts in the proposed guidelines are greater than those in the existing guidelines for families with low incomes and multiple children.

Using a representative sample of Florida child support cases, it was determined that for approximately 60 percent of the Title IV-D cases in the sample the average child support payment changes very little from the current schedule. Only for the 20 percent of cases in the IV-D sample with the highest incomes would the average payment change substantially. Similarly, in 40 percent of the private cases there is almost no change in the average child support payment. For the top 20 percent the average payment decreases substantially, and the average payment for the middle 40 percent decreases slightly. Applying the proposed schedule of basic child support obligations to the actual distribution of the child support cases in Florida indicates that the effect of the proposed schedule would be minimal for most cases. Only the top 20 percent of cases ranked by income would see a significant change in the amount of child support payments. In those cases, payments would decrease substantially.

⁴ See Updating Florida's Schedule of Child Support Obligations, Final Report to the Florida Legislature, Department of Economics, Florida State University, March 5, 2004.

⁵ See Espenshade, T. J. (1973). *The Cost of Children in Urban United States*. Westport, Connecticut: Greenwood Press and Espenshade, T. J. (1984). *Investing in Children: New Estimates of Parental Expenditures*. Washington, D.C.: The Urban Institute Press.

⁶ The underlying assumption of the Engel approach is that families of a different size that spend equal proportions of their incomes on food are equally well-off. The Engel approach assumes that as total spending increases, the budget share or percent devoted to food should decrease, freeing up expenditures for other goods, and that as family size increases, the food share of the budget should also increase.

Low-Income Parents

Child support obligations that are derived from the income shares methodology typically include an adjustment for low-income parents to ensure that parents owing child support are not living in poverty due to the obligation to provide support. The low-income adjustment in Florida's current guidelines applies to only about one percent of cases and is therefore ineffective at preventing or mitigating poverty among low-income parents. This ineffectiveness is primarily a result of four features of the current guidelines:

- The use of combined income of both parents with the single person poverty threshold;
- The application of the low-income provisions to the basic obligation rather than to the total obligation;
- The failure to update the child support schedule on a regular basis to reflect increases in the poverty guideline; and
- The imputation of income.

In addition, Florida's current schedule of child support obligations is regressive, which penalizes noncustodial parents who earn additional income and therefore serves as a disincentive to work. By imposing a very high marginal rate on additional earnings, it also discourages compliance. In fact, the compliance rate among low-income noncustodial parents is very low, which in turn presents a barrier to the involvement of the noncustodial parent with the children.

Visitation and Custody

Florida law currently provides that in shared parenting arrangements where a child spends less than 40 percent of overnights per year with the noncustodial parent, the court may use that arrangement as grounds for an adjustment in the amount of the child support obligation. A shared parenting arrangement where the number of overnights spent with the noncustodial parent exceeds 40 percent requires the court to adjust the noncustodial parent's support obligation to reflect the additional costs of maintaining two households for the child.

Failure to provide any adjustment where time spent with the noncustodial parent does not equal or exceed 40 percent may act as a disincentive for regular visitation with the noncustodial parent. Further, setting a threshold results in very large changes in the noncustodial parent's child support obligation in response to very small changes in the amount of visitation. For this reason, the existence of a threshold can be a source of excessive dispute and litigation between parents.

Currently, Florida's child support guidelines are silent regarding split custody arrangements. As a result, determination of the amount of the basic support obligation in such cases is left to the discretion of the courts without any statutory guidance on dealing with this type of living arrangement. This gives rise to disparate treatment of these cases in different judicial districts and can also be a source of dispute and litigation over living arrangements. Failure to provide explicitly for split custody may discourage parents from adopting this arrangement even when it is in the best interests of the child.

Imputing Income

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.⁷

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), F.S., “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.”⁸ 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.⁹ 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.¹⁰

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.¹¹ 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.”¹²

In general, any attempt to impute income to a parent must be supported by appropriate findings, as required by s. 61.30, F.S.,¹³ yet it can be difficult for an order imputing income to the noncustodial parent to be upheld on appeal.¹⁴ One court determined that, although the record

⁷ Section 61.30(1)(a), F.S.

⁸ *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).

⁹ Section 61.30(2)(c)(3), F.S.

¹⁰ Section 61.30(4)-(5), F.S.

¹¹ Section 61.30(6), F.S.

¹² *Id.*

¹³ *Neal v. Meek*, 591 So. 2d 1044, 1046 (Fla. 1st DCA 1991).

¹⁴ *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

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.”¹⁵

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 Appeals 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.¹⁶ 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.”¹⁷ 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.”¹⁸ 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 \$445.¹⁹

The First District Court of Appeals 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), F.S.²⁰

III. Effect of Proposed Changes:

The bill retains the existing child support guidelines schedule, it continues the current treatment of low income families; it reduces the 40 percent threshold for shared parenting arrangements to 20 percent; and it defines split shared parenting arrangements and provides direction for calculating the amount of an award in such circumstances. The bill also contains the following provisions related to the child support guidelines:

- Elimination of an automatic reduction in child care costs related to the 25 percent federal child care credit and the application of the full child care cost to the basic obligation; and
- Requirement for a study by OPPAGA to evaluate the current process for reviewing and revising Florida’s child support guidelines. A required report must contain recommendations for improving the existing process or implementing a new one.

Further, the bill addresses the imputation of income by providing more specific guidance to the court. In order for the court to impute income, the court is required to make specific findings of

findings under the statute to impute such income” and failed to “determine the ‘probable earnings level’ of [the father] upon imputation of such income.”)

¹⁵ *Braman v. Braman*, 602 So. 2d 682, 683 (Fla. 2d DCA 1992).

¹⁶ *Nicholas v. Nicholas*, 870 So. 2d 245, 247-48 (Fla. 2d DCA 2004).

¹⁷ *Id.* at 248.

¹⁸ *Id.*

¹⁹ *Id.* at 247.

²⁰ *Wright v. Dep’t of Revenue*, 833 So. 2d 799, 799-800 (Fla. 1st DCA 2003).

fact, with the person seeking to impute the income having the burden to present competent substantial evidence to support the imputation. The required findings are that the underemployment or unemployment is voluntary and the source and amount of any income to be imputed.

If no evidence or mechanism for establishing a parent's gross income is available, a rebuttable presumption is created, enabling the court to impute the Florida minimum wage to a parent unless:

- The parent has a physical or mental incapacity that renders the parent unemployable or underemployed;
- The parent needs to stay home with a child who is the subject of the child support calculation proceedings and care for that child, thereby preventing the parent's employment or rendering the parent underemployed; or
- There are other circumstances over which the parent has no control, except for penal incarceration, which prevent the parent from earning an income.

If the parent is a resident of another state, the bill allows imputation of minimum wage from that state if higher than Florida's. In the absence of state minimum wage for an out-of-state parent, or when the state's minimum wage is lower than Florida's, the federal minimum wage shall apply.

The bill also limits the imputation of minimum wage by providing that records used to compute the imputed income may not be more than five years old and by providing that income may not be imputed at a level beyond a level the parent has ever earned, with some exceptions for changed circumstances.

The bill recognizes a "split parenting arrangement" when there is more than one child in common and each parent has the majority of the overnight timesharing for at least one of the children. In this instance, it requires that the court calculate and issue separate child support orders for each parent based on the number of children for which that parent has the majority of overnight timesharing, with the difference between the two calculations to be paid to the other parent by the parent with the higher child support order amount.

In addition, the bill contains two provisions related to the enforcement of child support orders:

- Reduction of the arrearage threshold for denial of a passport from \$5,000 to \$2,500; and
- Giving states the option of establishing a corresponding case based on another state's administrative enforcement of an interstate case request.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
