



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Promote personal responsibility** – The bill lowers the threshold for the amount of arrearage owed by a child support obligor for purposes of passport denial.

**Empower families** – If child support award amounts better reflect shared parenting arrangements, collections may increase and noncustodial parents may spend more time with their children.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

In 1984, Congress recognized the potential value in requiring states to implement guidelines to be used in the determination of the amount of the child support obligation. 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.<sup>1</sup> 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.<sup>2</sup> 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.

The Florida House of Representatives has traditionally taken the lead in completing the reviews to meet the federal mandate. 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for the current schedule enacted in 1993 is the 1972-1973 Consumer Expenditure Survey, the schedule is considerably out of date.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.<sup>3</sup> 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:

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<sup>1</sup> Child Support Enforcement Amendments of 1984, 42 U.S.C. ss. 657-662 (1984).

<sup>2</sup> Family Support Act of 1988, 42 U.S.C. ss. 654, 666-667 (1988).

<sup>3</sup> See SB 2000 (2001) and HB 27E (2002).

- 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.

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.<sup>4</sup>

The final report was delivered to the Legislature in March 2004, and presentations were made on findings and recommendations to the Future of Florida's Families Committee during the 2004 and 2005 legislative sessions. 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.<sup>5</sup> Espenshade based his analysis on Ernst Engel's<sup>6</sup> 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% 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% of cases in the IV-D sample with the highest incomes would the average payment change substantially. Similarly, in 40% of the private cases there is almost no change in the average child support payment. For the top 20% the average payment decreases substantially, and the average payment for the middle 40% 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% of cases ranked by income would see a significant change in the amount of child support payments. In those cases, payments would decrease substantially.

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

<sup>5</sup> 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.

<sup>6</sup> 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 1% 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.

## **The Bill**

With regard to the three major sets of findings resulting from the FSU study, the bill retains the existing child support guidelines schedule, it continues the current treatment of low income families, it reduces the 40% threshold for shared parenting arrangements to 20%, 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:

- New 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% federal child care credit; and
- Requirement of a study by Office of Program Policy Analysis and Governmental Accountability ("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.

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; and
- Giving states the option of establishing a corresponding case based on another state's administrative enforcement of an interstate case request.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 61.13, F.S., relating to custody and support of children, visitation rights, and the powers of the court in making orders.

**Section 2.** Amends s. 61.30, F.S., relating to the child support guidelines and retroactive support.

**Section 3.** Amends s. 409.2564, F.S., relating to actions for support.

**Section 4.** Amends s. 409.25641, F.S., relating to procedures for processing automated administrative enforcement requests.

**Section 5.** Requires an evaluation and a report by OPPAGA related to the 4 year guideline review.

**Section 6.** Provides an effective date of October 1, 2006, unless otherwise provided.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.