

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 803 Child Support Guidelines

SPONSOR(S): Rice

TIED BILLS: None

IDEN./SIM. BILLS: SB 1762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Civil Justice Committee</u>	<u></u>	<u>Shaddock</u>	<u>Bond</u>
2) <u>Future of Florida's Families Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

One of the issues involved in the computation of child support is voluntary unemployment or underemployment of a parent. This issue often arises in the context of parents who intentionally reduce their income to avoid paying support obligations.

The bill creates a rebuttable presumption that for the purposes of establishing child support, any parent of a child in this state is presumed able to earn the federal minimum wage, or \$5.15 per hour.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility -- This bill appears to increase personal responsibility for payment of child support.

B. EFFECT OF PROPOSED CHANGES:

Background

Parents are obligated to support their minor children.¹ "The issue of voluntary unemployment or underemployment, also known as voluntary impoverishment, most often arises in the context of parents who reduce their income to avoid paying support obligations by quitting, retiring, or changing jobs."² Thus when attempting to compute child support obligations, imputation of income or attributing income to a parent even when it may not have been earned becomes important.

Current Law

The child support guidelines, at s. 61.30(1)(a), F.S., establish a presumptive amount of child support for use by a court when establishing child support. The formula used to determine the presumptive amount is based on a number of factors, income being the primary factor. The court 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. However, to vary more than five percent, the court must provide a written finding as to why payment of the guideline amount would be unjust or inappropriate.³

A court looks to the financial situation of the parents before determining the appropriate amount of child support. First, the court reviews the monthly gross income⁴ for each party. Then public assistance, if any, and allowable deductions⁵ are deducted from gross income.⁶ Finally, the net income for the parents is added together for a combined net income.⁷

After determining the combined net income figure, the court looks to the presumptive dollar amounts⁸ within the child support guidelines. These dollar amounts depend upon the combined monthly income of the parents, beginning with a minimum monthly combined income of \$650, and the number of children being supported. For example, 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.⁹ In the

¹ Elizabeth Trainor, Annotation, *Basis for imputing income for purpose of determining child support where obligor spouse is voluntarily unemployed or underemployed*, 76 A.L.R. 5th, 191 (2000).

² *Id.*

³ Section 61.30(1)(a), F.S.

⁴ Gross income includes, but is not limited to, the following: salary; bonuses, commissions, tips or similar payments; business income from self employment; disability benefits; workers' compensation benefits; unemployment compensation; pensions or retirement payments; social security benefits; spousal support from a previous marriage or court ordered in the marriage before the court; interest and dividends; rental income; income from royalties, trusts, or estates; reimbursed expenses; and gains from dealings in property. Section 61.30(2)(a), F.S.

⁵ Allowable deductions from gross income include: 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. Section 61.30(3), F.S.

⁶ Public assistance, as defined in s. 409.2554, F.S.; is not to be included in a parent's gross income. Section 61.30(2)(c), F.S.

⁷ Section 61.30(4)-(5), F.S.

⁸ Section 61.30(6), F.S.

⁹ *Id.*

event that 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."¹⁰

When computing the appropriate level of support, courts may encounter situations in which a parent has intentionally reduced their income, at times to earning no income, to avoid paying support obligations. In such a situation, a court is required to impute income to that parent. In other words, the court attributes income to a parent even when it may not have been earned. However, this imputation only occurs when the employment or underemployment is determined by the court to be voluntary on that parent's part to avoid paying child support obligations.¹¹ In so doing the trial court "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."¹²

In general, any attempt to impute income to a parent must be supported by appropriate findings.¹³ Yet it can be difficult for an order imputing income to the noncustodial parent to be upheld on appeal.¹⁴ The is one exception to imputing income is when the court finds it is necessary for the primary residential parent to stay home with the child.¹⁵

Nevertheless, imputation of income is many times more difficult than it would seem. When a parent fails to appear at a hearing determining 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 placed in a difficult position. If the department or the parent seeking child support lacks sufficient evidence of the absentee parent's income, the court is unable to determine the proper level of income to impute to the absentee parent. Although displeased with a father's absence at one such 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.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

¹⁰ *Id.*

¹¹ Section 61.30(2)(b), F.S., specifically provides:

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.

¹² *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). See also *Nicholas v. Nicholas*, 870 So. 2d 245, 247 (Fla. 2d DCA 2004) (stating "[g]enerally, a court may impute income if a spouse is earning less than he could, of there is a showing that he has the capability of earning more by using his best efforts.").

¹³ Section 61.30(2)(b), F.S.; *Neal v. Meek*, 591 So. 2d 1044, 1046 (Fla. 1st DCA 1991).

¹⁴ See *Neal*, 591 So. 2d 1046, (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.")

¹⁵ Section 61.30(2)(b), F.S.

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

¹⁷ *Id.* at 248.

¹⁸ *Id.*

In addition to proceedings in circuit court, the Department of Revenue ("DOR") has the ability to administratively establish child support obligations in Title IV-D¹⁹ cases.²⁰ This section provides DOR with a fair and expeditious method for establishing child support when there is no court order of support.²¹ DOR 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 DOR itself.²² If the noncustodial parent requests in writing, within twenty days of receipt of the department's initial notice to proceed in circuit court, DOR must terminate the administrative proceeding and file an action in circuit court.²³

In calculating the noncustodial parent's child support obligation pursuant to s. 61.30, F.S., DOR must rely on timely filed financial affidavits and other information available.²⁴ 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."²⁵ 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 DCF, vacated on appeal, or superseded by a subsequent court order.²⁶

Effect of Bill

Section 61.30(2)(b), F.S. is amended to include a rebuttable presumption that any person found to be the parent of a child or children in this state is able to earn the federal minimum wage, which is currently \$5.15 per hour. To rebut this income presumption, a parent may present contrary evidence at a noticed child support hearing to the court.²⁷

It appears that the language of the presumption is susceptible to two different interpretations. The first interpretation is that the presumption is in addition to the current requirements that the court consider the unemployed or underemployed parent's recent work history, occupational qualifications, and the prevailing earning levels in the community.²⁸ Once that has been reviewed the presumption becomes effective.

The second interpretation is that this presumption is applied to any parent at the outset of the proceedings. Every parent would be presumed to make the federal minimum wage each month, and that level of income would automatically be imputed to each parent, including a primary residential parent who remains at home. It would then be the parent's responsibility to demonstrate to the court through the parent's recent work history, occupational qualifications, and the prevailing earning levels in the community why the minimum wage would be too high or low a sum to impute to the parent.

C. SECTION DIRECTORY:

Section 1 amends s. 61.30(2)(b), F.S. and creates a rebuttable presumption that a parent is able to earn minimum wage.

Section 2 provides an effective date of July 1, 2006.

¹⁹ A Title IV-D case is defined as "a case or proceeding in which the department is providing child support services within the scope of Title IV-D of the Social Security Act" Section 409.2563(1)(f), F.S.

²⁰ Section 409.2563(2)(a), F.S.

²¹ *Id.*

²² Section 409.2563(2)(c)(1)-(5), F.S.

²³ Section 409.2563(2)(f), F.S.

²⁴ Section 409.2563(5)(a), F.S.

²⁵ *Id.*

²⁶ Section 409.2563(11).

²⁷ Section 61.30(2)(b), F.S.

²⁸ Section 61.30(2)(b), F.S.

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:

This bill has the potential to increase child support obligations.

D. FISCAL COMMENTS:

A number of examples of the potential outcomes as a result of this bill have been prepared. The following chart explains those results.²⁹

CURRENT SITUATION			
Present Monthly Income	Number of Children	Mandatory Imputed Income	Support Obligation for Child(ren)
\$0	1	\$0	\$0
\$1000	1	\$0	\$235
\$2000	2	\$0	\$686

EFFECT OF BILL ON ONE INCOME			
Present Monthly Income	Number of Children	Mandatory Imputed Income	Support Obligation for Child(ren)
\$0	1	\$825	\$190
\$1000	1	\$0	\$235
\$2000	2	\$0	\$686

EFFECT OF BILL ON TWO INCOMES			
Present Monthly Income	Number of Children	Mandatory Imputed Income	Support Obligation for Child(ren)
\$0-Father/\$0-Mother	1	\$825-Father/\$825-Mother	\$185-by obligor

²⁹ Each of the first two tables was calculated with the primary residential parent being approved by the court to remain at home with the child(ren). However, for all tables the federal minimum wage was calculated to be \$825 a month after taxes (\$5.15 multiplied by 40 hours a week, multiplied by 52 weeks in a year then divided by 12 subtracting 7.65% for social security and medicare) and that is the figure utilized in the calculations. Of course, these calculations are merely for example and do not take into account the child care, health insurance and medical costs that can effect child support obligations of the parents, nor do they consider the effect should the noncustodial parent be awarded visitation at least 40% of the overnights in a year.

EFFECT OF BILL ON TWO INCOMES			
\$1000-Father/\$1000-Mother	1	\$0	\$221-by obligor
\$2000-Father/\$2000-Mother	2	\$0	\$644-by obligor

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:

In February 2003, the Legislature contracted with the Department of Economics at Florida State University to provide a report analyzing issues related to the child support guidelines. This report was presented in March 2004.³⁰ The FSU 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.³¹ 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 imputed³² 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."³³

The Department of Revenue requests that the words "in this state" on line 29 of the bill be removed.³⁴

It is unclear why the bill ties the imputed income level to the federal minimum wage when Florida has a greater minimum wage of \$6.40 per hour.³⁵

It is unclear how the interpretation of the presumption would effect employees who are paid per-piece or commission only.

It is unclear why the bill refers to the U.S. Department of Labor when the federal minimum wage is established in 29 U.S.C. s. 206.

³⁰ McCaleb, Macpherson, et al, *Review and Update of Florida's Child Support Guidelines*, Department of Economics, Florida State University (March 5, 2004).

³¹ McCaleb, *ibid*, at 46.

³² 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).

³³ 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.

³⁴ Department of Revenue Bill Analysis, on file with Civil Justice Committee.

³⁵ *Florida's Minimum Wage*, (visited Feb. 15, 2006) <http://www.floridajobs.org/resources/fl_min_wage.html>.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a