

**The Florida Senate**  
**PROFESSIONAL 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, Families, and Elder Affairs Committee

BILL: SB 1996

INTRODUCER: Senator Rich

SUBJECT: Child Support

DATE: March 23, 2007

REVISED: 03/27/07

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ray</u>	<u>Jameson</u>	<u>CF</u>	<u>Fav/2 amendments</u>
2.	<u></u>	<u></u>	<u>JU</u>	<u></u>
3.	<u></u>	<u></u>	<u>GA</u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

**Please see last section for Summary of Amendments**

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

The bill amends s. 61.13, F.S., to permit all child support orders and income deduction orders entered on or after October 1, 2007, to provide for:

- The termination of child support on a child's 18<sup>th</sup> birthday unless the court rules that s. 743.07(2), F.S., applies, or unless agreed to by both parties.
- A schedule stating the amount of the monthly child support obligation and the amount the monthly obligation should be reduced as each minor child emancipates.

The bill amends s. 61.30, F.S., with provisions relating to:

- The court's right to impute income;
- Allowable deductions;
- The child support guidelines schedule;
- The requirement that costs due to a parent's employment, job search, or education are reduced by 25 percent and added to the basic support obligation;
- Parental share of the support need;
- Total minimum child support need;

- The substantial amount of time definition; and
- Split parenting arrangements.

The bill amends s. 409.2563, F.S., to include a provision relating to the calculation of the non-custodial parent's child support obligation.

The bill amends s. 409.2564, F.S., to reduce the level of arrearages that qualify for passport denial to an amount exceeding \$2,500.

The bill amends s. 409.25641, F.S., to conform the Florida Statutes to the recently enacted Federal Deficit Reduction Act of 2005.

The bill creates a provision to require the Office of Program Policy Analysis and Government Accountability to evaluate the effectiveness of the child support system currently used to comply with the federally required review of Florida's child support guidelines every four years.

The bill provides an effective date of October 1, 2007.

This bill substantially amends the following sections of the Florida Statutes: 61.13, 61.30, 409.2563, 409.2564, and 409.25641.

## **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.<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:

- Enhancement of the adequacy of child support orders;
- Improvement of the equity of orders by assuring more comparable treatment for cases with similar circumstances;
- Increased compliance as a result of the perceived fairness of child support awards; and
- Improvement in the efficiency of adjudicating child support orders.

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

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

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:<sup>3</sup>

- 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.

### **Updating Florida's Child Support Guidelines Schedule**

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 Title 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.

### **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.

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<sup>3</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.

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 in s. 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.<sup>4</sup>

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

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<sup>4</sup> s. 61.30(1)(a), F.S.

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.”<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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, and up to \$78 per month for six children.<sup>8</sup> 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.<sup>9</sup>

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 are put in a more difficult position. If 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.<sup>10</sup> 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.”<sup>11</sup> 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.”<sup>12</sup> 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.<sup>13</sup>

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<sup>5</sup> *Smith v. Smith*, 872 So. 2d 397, 398 (Fla.1<sup>st</sup> DCA 2004)(citing *Stebbins v. Stebbins*, 754 So.2d 903,907

<sup>6</sup> s. 61.30(2)(c)(3), F.S.

<sup>7</sup> s. 61.30(4)-(5), F.S.

<sup>8</sup> s. 61.30(6), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> *Nicholas v. Nicholas*, 870 So. 2d 245, 247 – 48 (Fla. 2d DCA 2004).

<sup>11</sup> *Id.* At 248.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* At 247.

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.<sup>14</sup>

### III. Effect of Proposed Changes:

#### **Child Support and Income Deduction Orders**

Currently, guideline support amounts are unallocated amounts (not per child) for cases with multiple children. The effect of the proposed language will change the guideline amount in s. 61.30, F.S., from an unallocated amount to per-child amounts.

The bill amends s. 61.13, F.S., to require that all child support orders and income deduction orders entered on or after October 1, 2007, provide for:

- The termination of child support on a child's 18<sup>th</sup> birthday unless the court rules that s. 743.07(2), F.S.,<sup>15</sup> applies, or unless agreed to by both parties.
- A schedule stating the amount of the monthly child support obligation and the amount the monthly obligation should be reduced as each minor child emancipates.

#### **Imputation of Income**

The bill amends s. 61.30, F.S., to address 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 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

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<sup>14</sup> Wright v. Dep't of Revenue, 833 So. 2d 799, 799-800 (Fla. 1<sup>st</sup> DCA 2003).

<sup>15</sup> s. 743.07, F.S., Rights, privileges, and obligations of persons 18 years of age or older. This section provides that a court may require support beyond age 18 if the child has a mental or physical disability which began before age 18, or if the dependant child is under age 19 and reasonably expects to graduate from high school before age 19.

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 Florida Evidence Code defines a presumption as an assumption of fact which the law makes from the existence of another fact or group of facts found or otherwise established. Except for presumptions that are conclusive under the law from which they arise, all presumptions are rebuttable.<sup>16</sup>

Every rebuttable presumption is either:<sup>17</sup>

- A presumption affecting the burden of producing evidence and requiring the trier of fact to assume the existence of the presumed fact, unless credible evidence sufficient to sustain a finding of the nonexistence of the presumed fact is introduced, in which event, the existence or nonexistence of the presumed fact shall be determined from the evidence without regard to the presumption; or
- A presumption affecting the burden of proof that imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact.

### **Child Support Calculation**

The bill amends s. 61.30(3), F.S., to reflect that net income is obtained by subtracting allowable deductions from gross income and includes a list of allowable deductions.

The bill amends ss. 61.30(4) and (5), F.S., to provide that net income from "each parent" is computed by subtracting allowable deductions from gross income. Each parent's net income is then added together for combined net income.

The bill reduces undue hardship on an individual whose income falls below the federal poverty guidelines by amending s. 61.30(6), F.S., to eliminate the first three tiers of child support. These three tiers cover combined, monthly, net incomes of \$650, \$700, and \$750.

The bill amends s. 61.30(7), F.S., to eliminate the requirement that costs due to a parent's employment, job search, or education are reduced by 25 percent and then added to the basic support obligation.

The bill amends s. 61.30(9), F.S., to provide that each parent's share of the support need is determined by dividing each parent's net monthly income by the combined net monthly income of both parents.

The bill amends s. 61.30(10), F.S., to provide that the total child support need is determined by adding child care costs and health insurance costs to the minimum support need.

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<sup>16</sup> s. 90.301(1) and (2), F.S.

<sup>17</sup> s. 90.302 (1) and (2), F.S.

The bill amends s. 409.2563(5)(a), F.S., to provide that the Department of Children and Family Services (DCF) shall use the Florida minimum wage, on a full time basis, unless the parent resides in another state, when calculating the noncustodial parent's child support obligation. If the parent resides in another state, the state minimum wage applicable to the parent's state of residency shall apply if it is greater than the Florida minimum wage. In the absence of a state minimum wage or if the other state's minimum wage is lower than the Florida minimum wage, the federal minimum wage applies.

#### **Split Parenting Arrangements**

The bill amends s. 61.30(11), F.S., to provide that in situations when there is a parenting arrangement, if the adjustment results in an amount that is more than the child support that was calculated without the adjustment, the court is required to order the non-adjusted amount, and the court is allowed to deviate from the child support amount based upon the low income of either parent or either parent's inability to maintain the necessities for the child. The bill changes the "substantial amount of time" definition from at least 40 percent of overnights to 20 percent of overnights.

The bill provides that for split parenting arrangements when there is more than one child in common and each parent provides the majority of overnight timesharing for at least one of the children, the court must calculate and issue a separate support order for each parent based on the number of children that spend the majority of overnight timesharing with that parent. The difference between the two orders is the amount to be paid by the parent with the higher child support amount.

The bill amends s. 409.2564(10), F.S., to reduce the level of arrearages that qualifies for certification for passport denial to an amount that exceeds \$2,500 and amends s. 409.25641, F.S., to conform with the Federal Deficit Reduction Act of 2005 and maintain compliance with federal law.

The bill creates an undesignated section of law to require the Office of Program Policy Analysis and Government Accountability to evaluate the effectiveness of the child support system currently used to comply with the federally required review of Florida's child support guidelines every four years. The evaluation shall include a comparison of all available methodologies used by other states in conducting their reviews and include recommendations for maintaining the current review process with the Legislature or transferring the responsibility to another entity. The bill requires the report be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31, 2008.

The bill provides an effective date of October 1, 2007.

#### **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.



## VIII. Summary of Amendments:

### **Barcode 812860 by Children Families and Elder Affairs:**

The amendment clarifies the “schedule” mentioned on pg. 2, line 25, of the bill as a “child support guidelines schedule,” and it clarifies that the child support guidelines schedule described in s. 61.30, F.S., is to be used to allocate the child support obligation under s. 61.13(1), F.S.

### **Barcode 933326 by Children Families and Elder Affairs:**

The technical amendment conforms the language that describes the child support calculation for administrative established orders (s. 409.2563(5)(a), F.S.) to the language describing the calculation of the judicially established orders (s. 61.30(2)(b)3., F.S.).

The amendment provides that DCF use the Florida minimum wage when calculating the noncustodial parent’s child support obligation unless the parent is a resident of another state. If the parent is a resident of another state, that state’s minimum wage applies. In the absence of a state minimum wage, the federal minimum wage determined by the U.S. Department of Labor applies.