

**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: Judiciary Committee

BILL: CS/SB 2870

INTRODUCER: Judiciary Committee and Children, Families, and Elder Affairs Committee

SUBJECT: Child Support Enforcement

DATE: April 18, 2007

REVISED: \_\_\_\_\_

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Ray     | Jameson        | CF        | <b>Favorable</b> |
| 2. | Daniell | Maclure        | JU        | <b>Fav/CS</b>    |
| 3. |         |                | GA        |                  |
| 4. |         |                |           |                  |
| 5. |         |                |           |                  |
| 6. |         |                |           |                  |

**I. Summary:**

In 2006, the Florida Supreme Court found that a legal father, i.e., a man married to the child’s mother at the time of birth, is an indispensable party in an action to determine paternity and to place support obligations on another man.<sup>1</sup> In some cases the whereabouts of the legal father are unknown, and he cannot be served because current law does not permit service of process by publication in paternity actions. This bill permits service of process by publication on a legal father in a paternity action in which another man is alleged to be the biological father of the child after a diligent search and inquiry to locate the legal father is completed.

Additionally, the bill codifies the federal requirement regarding the mandatory annual fee for support services provided by the Department of Revenue (department), as well as the federal requirement that states report individuals who owe arrearages of child support in an amount exceeding \$2,500, so that the federal government can deny that person a passport. The bill permits the department to waive electronic remittance of child support payments in specified circumstances. Finally, the bill requires the department to use automated administrative enforcement when responding to a request by another state to enforce support orders.

This bill substantially amends the following sections of the Florida Statutes: 49.011, 61.1814, 61.1824, 409.2564, 409.25641, 409.2567, 409.257, and 742.09.

<sup>1</sup> *Dep’t of Revenue v. Cummings*, 930 So. 2d 604 (Fla. 2006).

## II. Present Situation:

### Service of Process

Service of process is the formal delivery of a writ, summons, or other legal process or notice.<sup>2</sup> Statutes governing service of process are strictly construed to ensure that defendants receive notice of an action against them and have the opportunity to protect their rights.<sup>3</sup>

Service of process can be effectuated in several ways. Personal service is the primary method of obtaining jurisdiction over the person of the defendant, and it is the most effective method of giving notice to the defendant that a suit has been commenced against him or her.<sup>4</sup> Service of original process is made by delivering a copy of the process to the person to be served with a copy of the complaint, petition, or other initial pleading or paper.<sup>5</sup>

In designated types of cases, service of process by publication is authorized in place of personal service on a party.<sup>6</sup> Service of process by publication is generally the service of process on an absent or nonresident defendant by publishing a notice in a newspaper or other public medium.<sup>7</sup> The purpose of providing service of process by publication “is to give a nonresident, or an unknown, absent, or concealed defendant an opportunity to come into court and defend the suit against him or her within the time specified in the order to appear.”<sup>8</sup> Statutes allowing service by publication must provide for sufficient notice of the action to be fair to the defendants and to satisfy the due process requirements of the state and federal constitutions.<sup>9</sup>

Section 49.031, F.S., provides that in order to serve process by publication, the plaintiff must file a sworn statement containing certain information. Section 49.041, F.S., provides that the sworn statement must state that a diligent search and inquiry has been made to discover the name and residence of the person being served by publication, the person’s age if known, and whether the residence of the person is unknown, in another state, or in the state, but that the person has been absent from the state for more than 60 days.

Section 49.011, F.S., provides that service of process by publication may be had in any action or proceeding:

- To enforce any legal or equitable lien or claim to any title or interest in real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state;
- To quiet title or remove any encumbrance, lien, or cloud on the title to any real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state;

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<sup>2</sup> BLACK’S LAW DICTIONARY (8th ed. 2004).

<sup>3</sup> *Shepherd v. Deutsche Bank Trust Co. Americas*, 922 So. 2d 340, 343 (Fla. 5th DCA 2006).

<sup>4</sup> *Bedford Computer Corp. v. Graphic Press, Inc.*, 484 So. 2d 1225, 1227 (Fla. 1986).

<sup>5</sup> Section 48.031(1)(a), F.S.

<sup>6</sup> Section 49.011, F.S.

<sup>7</sup> BLACK’S LAW DICTIONARY (8th ed. 2004).

<sup>8</sup> 41A FLA. JUR. 2D *Process* s. 48 (2007); see also *Seiton v. Miami Roofing & Sheet Metal*, 10 So. 2d 428, 429 (Fla. 1942).

<sup>9</sup> 41A FLA. JUR. 2D *Process* s. 48 (2007); see also *Gribbel v. Henderson*, 10 So. 2d 734, 741 (Fla. 1942).

- To partition real or personal property within the jurisdiction of the court;
- For dissolution or annulment of marriage;
- For the construction of any will, deed, contract, or other written instrument and for a judicial declaration or enforcement of any legal or equitable right, title, claim, lien, or interest thereunder;
- To reestablish a lost instrument or record which has or should have its situs within the jurisdiction of the court;
- In which a writ of replevin, garnishment, or attachment has been issued and executed;
- In which any other writ or process has been issued and executed which places any property, fund, or debt in the custody of a court;
- To revive a judgment by motion or scire facias;<sup>10</sup>
- For adoption;
- In which personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States;
- In probate or guardianship proceedings in which personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States;
- For termination of parental rights pursuant to part IX of ch. 39, F.S.; and
- For temporary custody of a minor child, under ss. 751.01-751.05, F.S.<sup>11</sup>

Service of process by publication in other types of actions is improper.<sup>12</sup> Therefore, service of process by publication is not currently allowed in any action to determine paternity because it is not expressly provided for in the statute.<sup>13</sup>

At common law, Lord Mansfield's Rule, which prohibited either a husband or a wife from testifying that a child born during the marriage was not the marital father's child, indirectly implemented a policy that children need families and heritage more than biological fathers need rights or responsibilities.<sup>14</sup> This rule aided the legal presumption that when a child is born to a married woman, the child's "legal father" is the mother's husband.<sup>15</sup> The "legal father" is also presumed to be the person whose name is on the child's birth certificate.<sup>16</sup> As genetic testing developed, any interested party had the opportunity to overcome the presumption of legitimacy, and as a result, the courts could no longer consistently select marital fathers as legal fathers.<sup>17</sup> Consequently, when a dispute arises as to who the actual biological father of a child is, for purposes of establishing child support, a determination of paternity action is filed to determine the biological father.

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<sup>10</sup> Scire Facias is "a writ requiring the person against whom it is issued to appear and show cause why some matter of record should not be annulled or vacated, or why a dormant judgment against that person should not be revived." BLACK'S LAW DICTIONARY (8th ed. 2004).

<sup>11</sup> Section 49.011, F.S.

<sup>12</sup> *Giron v. Ugly Mortg., Inc.*, 935 So. 2d 580, 582 (Fla. 3d DCA 2006).

<sup>13</sup> *See Drucker v. Fernandez*, 288 So. 2d 283 (Fla. 3d DCA 1974) (jurisdiction to determine the question of paternity cannot be acquired through service of process by publication).

<sup>14</sup> Chris W. Altenbernd, *Quasi-Marital Children: The Common Law's Failure in Privette and Daniel Calls for Statutory Reform*, 26 FLA. ST. U. L. REV. 219, 236 (1999).

<sup>15</sup> *See Id.* (stating that the presumption of legitimacy presumes that a child of marriage is a marital child).

<sup>16</sup> *Cummings*, 930 So. 2d at 608.

<sup>17</sup> Altenbernd, *supra* note 14, at 237.

The Department of Revenue (department) has been granted the authority to help obtain and enforce court-ordered child support obligations.<sup>18</sup> In many cases the department must file a petition with the court to establish paternity before the department can request the court to order child support payments. Previously, when filing a paternity action, the department served standardized complaints on the alleged biological father and attempted to provide a Notice of Action to the legal father.

In *Department of Revenue v. Cummings*, 930 So. 2d 604 (Fla. 2006), the Florida Supreme Court ruled that in a judicial action to determine paternity and obtain a support order against an alleged biological father, if the child has a legal father – meaning the mother was married to a different man when the child was born – the legal father must be made a party to the action. As an indispensable party,<sup>19</sup> the legal father must be served with legal process before a final judgment and support order can be obtained. In some cases the whereabouts of the legal father are unknown and he cannot be served personally. As noted by the Court in its opinion, current law does not permit service of process by publication in paternity actions;<sup>20</sup> yet under federal law<sup>21</sup> the state is still required to pursue paternity establishment and child support enforcement in these cases. Therefore, because service of process cannot be made, these paternity and support cases often cannot be resolved.

Section 409.257, F.S., provides the department’s authority for service of process. This provision requires service by the sheriff, or by any means permitted under ch. 48, F.S. Currently s. 409.257, F.S., does not authorize service of process by publication.

Section 742.09, F.S., provides that it is a first-degree misdemeanor for any owner, publisher, or operator of any newspaper, magazine, radio station, or other publication of any kind, or any person responsible therefore, or any radio broadcaster, to publish the name of any party in a determination of parentage action or proceeding.

## **Fees**

The Department of Revenue (department) is required to deposit Title IV-D<sup>22</sup> program income into the Child Support Enforcement Application and Program Revenue Trust Fund.<sup>23</sup> Program income includes interest, fees, costs, and fines collected by the department. Pursuant to federal regulation, the state is required to exclude from its quarterly expenditure claims an amount equal to: (a) all fees collected during the quarter under the Title IV-D state plan; and (b) all interest and other income earned during the quarter resulting from services provided under the IV-D state plan.<sup>24</sup>

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<sup>18</sup> Section 20.21(2)(h), F.S.

<sup>19</sup> An indispensable party is “one whose interest in the controversy makes it impossible to completely adjudicate the matter without affecting either that party’s interest or the interests of another party in the action.” *Cummings*, 930 So. 2d at 607.

<sup>20</sup> *Cummings*, 930 So. 2d at 609.

<sup>21</sup> 42 U.S.C. s. 654(4).

<sup>22</sup> A Title IV-D case is “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, 42 U.S.C. ss. 651 *et seq.*” Section 409.2563(1)(f), F.S.

<sup>23</sup> Section 61.1814(2), F.S.

<sup>24</sup> 45 C.F.R. s. 304.50.

Pursuant to 42 U.S.C. s. 654(4), the state plan for child and spousal support must provide services relating to the establishment of paternity or establishment, modification, or enforcement of child support obligations under the plan, and enforce specified support obligations. In addition, the state plan must provide for collection and disbursement of child support payments.<sup>25</sup>

Federal law requires the imposition of an application fee for furnishing these services.<sup>26</sup> States are required to impose a \$25 annual fee in each Title IV-D case in which the state has collected at least \$500 during the year and the custodial parent has never received cash assistance under the state's Title IV-A block grant.<sup>27</sup> Under federal law, a state may deduct the fee from support payments payable to the custodial parent, collect it from the noncustodial parent, in which case the fee payment must be separately identified as distinct from support, or pay the fee out of state funds. Under any scenario, a state must declare the total fees due for the year as program income and deduct the federal share of the fees from the state's claims for federal IV-D matching funds.

There is no such fee under current Florida law.

### **State Disbursement Unit**

Employers who are required to remit sales and unemployment tax payments electronically<sup>28</sup> to the Department of Revenue (department) are also required to remit child support payments and associated data electronically to the State Disbursement Unit when the child support is deducted by the employer under an income deduction order or notice.<sup>29</sup> Current law permits the department to grant a waiver from the requirement to remit tax payments electronically, but does not permit the department to grant a waiver from the requirement to remit child support payments electronically.<sup>30</sup> Waivers may be granted when extenuating circumstances are present. Examples of situations in which a waiver may be granted include, but are not limited to:

- The taxpayer does not currently file information or data electronically with any business or government agency;
- The taxpayer does not have a compatible computer that meets or exceeds the department's minimum standards;
- The taxpayer needs additional time to program his or her computer;
- Complying with this requirement causes the taxpayer financial hardship; or

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<sup>25</sup> 42 U.S.C. s. 654(5).

<sup>26</sup> 42 U.S.C. s. 654(6)(B) (amended by s. 7310 of the Deficit Reduction Act of 2005, at <http://thomas.loc.gov/> (last visited March 29, 2007)).

<sup>27</sup> Under federal law, Title IV-A block grant refers to federal Temporary Assistance for Needy Families (TANF). 42 U.S.C. s. 601 *et seq.* In Florida, Title IV-A block grant means "temporary cash assistance" as defined by s. 414.0252(12), F.S.

<sup>28</sup> Employers who employed 10 or more employees in any quarter during the preceding state fiscal year or who were subject to and paid tax to the Department of Revenue in an amount of \$30,000 or more are required to remit sales and unemployment tax payments electronically.

<sup>29</sup> Section 61.1824(6), F.S.

<sup>30</sup> Section 213.755(9), F.S.

- Complying with this requirement conflicts with the taxpayer's business procedures.<sup>31</sup>

### **Denial, Revocation, or Limitation of United States Passport**

Section 409.2564(10), F.S.,<sup>32</sup> requires the Department of Revenue (department) to report an individual who owes more than \$5,000 in support arrearages to the United States Department of Health and Human Services. This information is then sent to the United States Secretary of State, who is required to deny passport applications of reported individuals.

Section 7303 of the Deficit Reduction Act of 2005, which amended 42 U.S.C. s. 652(k)(1), lowered the arrearage amount that triggers passport denial to \$2,500.

### **Interstate Enforcement**

Under s. 409.25641, F.S., when requested to do so by another state, the Department of Revenue (department) must use "automated administrative enforcement, as defined in the Social Security Act," to assist the other state in enforcing child support orders and must promptly report the results to the requesting state.

## **III. Effect of Proposed Changes:**

### **Service of Process**

This bill amends s. 49.011, F.S., to add determination of paternity to the list of actions or proceedings where service of process by publication is allowed. However, the bill limits service of process by publication to the legal father in a paternity action in which another man is alleged to be the child's biological father, in which case it is necessary to serve the legal father in order to establish paternity. This change in law will address the Florida Supreme Court's opinion in *Department of Revenue v. Cummings*, 930 So. 2d 604 (Fla. 2006), by specifically allowing notice to the legal father by publication.

Section 409.257, F.S., is amended to conform to the changes in s. 49.011, F.S., specifically permitting the Department of Revenue (department) to provide service of process by publication on the legal father in any action or proceeding to determine paternity, which may result in termination of the legal father's parental rights, in which another man is alleged to be the biological father. However, before the department may make service of process by publication, it must conduct a diligent search and inquiry to locate the legal father. These inquiries include:

- (a) The person's current address, or any previous address, through an inquiry of the United States Postal Service through the Freedom of Information Act;
- (b) The last known employment of the person, including the name and address of the person's employer;

<sup>31</sup> *Id.*

<sup>32</sup> Section 409.2564(10), F.S., is consistent with 42 U.S.C. s. 652(k)(1).

- (c) Regulatory agencies, including those regulating licensing in the area where the person last resided;
- (d) Names and addresses of relatives to the extent such can be reasonably obtained from the petitioner or other sources, contacts with those relatives, and inquiry as to the person's last known address. The petitioner shall pursue any leads of any addresses to which the person may have moved;
- (e) Information as to whether or not the person may have died and, if so, the date and location;
- (f) Telephone listings in the area where the person last resided;
- (g) Inquiries of law enforcement agencies in the area where the person last resided;
- (h) Highway patrol records in the state where the person last resided;
- (i) Department of Corrections records in the state where the person last resided;
- (j) Hospitals in the area where the person last resided;
- (k) Records of utility companies, including water, sewer, cable television, and electric companies, in the area where the person last resided;
- (l) Records of the Armed Forces of the United States as to whether there is any information as to the person;
- (m) Records of the tax assessor and tax collector in the area where the person last resided; and
- (n) Search of one Internet databank locator service.<sup>33</sup>

The bill provides that the petitioner must execute an affidavit of diligent search and file it with the court, confirming completion of each aspect of the diligent search and specifying the results. If, after the diligent search, the legal father cannot be located, the department can conduct service of process by publication in the manner provided in ch. 49, F.S. The notice must be published in the county where the legal father was last known to have resided, and the clerk of the circuit court must mail a copy of the notice to the legal father at his last known address. This provision of the bill allows the department, consistent with *Cummings*, to obtain a judgment of paternity and child support order against the child's biological father when the legal father cannot be located.

This bill amends the criminal offense in s. 742.09, F.S., to provide that it will not be a first-degree misdemeanor for a newspaper, magazine, or other publication to publish the name of any

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<sup>33</sup> Section 63.088(5), F.S.

party in a paternity action or proceeding when it is for the purpose of serving process by publication in a determination of paternity action or proceeding.

### **Fees**

This bill amends s. 61.1814, F.S., to provide that program income received by the Department of Revenue (department) includes the annual fee required under s. 409.2567, F.S. This is the \$25 annual fee required under federal law<sup>34</sup> for furnishing services under the state plan for child and spousal support.

This bill amends s. 409.2567, F.S., to implement 42 U.S.C. s. 654(6)(B), as amended by s. 7310 of the Deficit Reduction Act of 2005, by requiring the department to pay the federally mandated annual fee of \$25 in cases of an individual who has never received assistance under a state program and for whom the state has collected at least \$500 in support. According to the department, it would be difficult to collect the fee from the noncustodial parent because of federal requirements, and the State would end up paying the fee in the end.

### **State Disbursement Unit**

This bill amends s. 61.1824, F.S., to permit the Department of Revenue (department) to waive the requirement for employers complying with an income deduction order or notice to remit child support payments electronically. The bill adopts the same standards that apply to waivers for electronic remittance of tax payments under s. 213.755(9), F.S. A waiver may be granted to an employer that is unable to comply despite good faith efforts or due to circumstances beyond the employer's reasonable control. Grounds for approving a waiver include, but are not limited to:

- The employer does not have a computer that meets the minimum standards necessary for electronic remittance;
- Additional time is needed to program the employer's computer;
- The employer does not currently file data electronically with any business or government agency;
- Compliance conflicts with the employer's business procedures; and
- Compliance would cause a financial hardship.

The bill also amends s. 61.1824, F.S., by inserting cross references to ss. 213.755 and 443.163, F.S., in order to ensure the same requirements for electronic remittance of tax payments and child support payments.

### **Denial, Revocation, or Limitation of United States Passport**

This bill amends s. 409.2564(10), F.S., to comply with federal law, which has lowered the child support arrearage amount that will result in a denial of a United States passport from \$5,000 to \$2,500. The bill also makes technical changes and removes unnecessary words.

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<sup>34</sup> See 42 U.S.C. s. 654(6)(B).



**Interstate Enforcement**

This bill amends s. 409.25641, F.S., to implement s. 7301(g) of the Deficit Reduction Act of 2005, amending 42 U.S.C. s. 666(a)(14)(A)(iii), which authorizes an assisting state to establish a corresponding case based on another state's request for automated administrative enforcement. Previously, federal law had prohibited states from creating Title IV-D cases on state IV-D automated systems to process these requests. The bill permits the Department of Revenue to implement the change in federal law by inserting a reference to 42 U.S.C. s. 666(a)(14)(A).

**Effective Date**

This act shall take effect upon becoming a law.

**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:**

To the extent the Department of Revenue (department) utilizes the publication method of serving process in a paternity proceeding, there is a possibility that more paternity establishment and child support enforcement cases can be resolved.

**C. Government Sector Impact:**

It appears that this bill could have a minimal negative impact on county workload and revenues in counties making money off of the fee charged by the sheriff to perfect service of process because under this bill, a person or the department could serve notice through publication and avoid the fee that would normally be charged by the sheriff. However, in counties where the cost associated with perfecting service of process is more than the fee collected, this bill could potentially reduce county expenditures by reducing the number of process notices that a sheriff might otherwise be required to serve.

However, if the department chooses to use the publication method of serving process in a paternity proceeding, as provided by this bill, then the department will have to pay the costs that are charged by the newspaper or magazine to print such legal notice, as well as any costs associated with conducting the diligent search and inquiry required by the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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