

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 2166

INTRODUCER: Committee on Children, Families, and Elder Affairs and Senator Hill

SUBJECT: Spousal and Child Support

DATE: April 7, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Walsh	CF	Fav/CS
2.			JU	
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Committee Substitute for Senate Bill 2166 amends s. 61.075, F.S., to provide that a court must make certain findings when ordering deferred payment of a distribution of marital assets.

The bill amends s. 61.14, F.S., to specify how payments of alimony or spousal support judgments are to be applied.

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

- The use of Florida’s minimum wage;
- Allowable deductions from net income; and
- Overnight time-sharing;

The bill amends s. 409.2563, F.S., relating to the use of the Florida minimum wage.

The bill amends s. 742.08, F.S., providing that interest on support judgments is enforceable using all methods available to enforce support orders.

The bill provides an effective date of October 1, 2009.

This bill substantially amends ss. 61.075; 61.14; 61.30; 409.2563; and 742.08, F.S.

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 Enforcement 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.

The Florida schedule of obligations was reviewed in 1992 and updated in 1993 to reflect changes in the Consumer Price Index. The guidelines were reviewed again in 1997 and in 2004,³ both times with recommendations for significant changes in the schedule and the underlying methodology. Neither set of recommendations was adopted by the Legislature. Although specific provisions of the guidelines have been modified, the schedule that specifies the dollar amount of child support obligation for each income level has remained unchanged since 1993. The most recent review was conducted by Florida State University (FSU), under contract to the Legislature in 2008, and includes a recommendation to adopt an updated schedule of child support obligation to replace the 1993 schedule.⁴

Section 61.13(1)(a), F.S., provides that in a ch. 61 proceeding, the court may order either or both parents to pay support in accordance with the guidelines in s. 61.30, F.S., and the court initially entering the support order shall have continuing jurisdiction to modify the amount, terms, and conditions of the child support payment.

Application of Payments

Section 61.14(6)(d), F.S., provides that a partial payment of a past due child support obligation is first applied to current child support due, then is applied to delinquent child support due, and then is applied to interest due on the past due payments. There is no corresponding rule regarding how to apply partial alimony payments.

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 Thomas S. McCaleb, David Macpherson, and Stefan Norrbin, *Review and Update of Florida's Child Support Guidelines, Report to the Florida Legislature*, Department of Economics, Florida State University, March 5, 2004.

⁴ Thomas S. McCaleb, David Macpherson, and Stefan Norrbin, *Review and Update of Florida's Child Support Guidelines, Report to the Florida Legislature*, Department of Economics, Florida State University, November 17, 2008.

Imputed Income

A court determines support obligations of the parties based on their incomes.⁵ Child support is based primarily on an income-based formula.⁶ In some circumstances, the current income of a party does not give an accurate picture of the party's ability and duty to make support payments. Where this occurs, s. 61.30(2)(b), F.S., allows the court to impute income to that party. Imputed income is an estimate of what the party should be earning. The imputed income is then used in determining child support rather than actual income.

Income is usually imputed as if the parent earned the minimum wage.

Child Support Formula

It is possible under the current child support formula for a parent to have most of the overnights with a child and still be required to pay child support payments to the other parent. Section 61.30(11), F.S., provides a list of factors that a court may take into account in adjusting the amount of child support after application of the base formula. The court may adjust child support levels when application of the formula requires a person to pay more than 55 percent of his or her gross income for child support in a single child support order.⁷

Dependency Exemption

One item that reduces the federal income tax liability of an individual or legally married couple is the dependency deduction. In general, the parent with whom the child resided for more than half of the year is entitled to the deduction unless the court orders that the dependency deduction is to be waived in favor of the other parent. While the child tax credit provides the same benefit to either parent, the dependency deduction is often a greater benefit to a parent with a higher income as that parent will likely be in a higher income tax bracket.⁸ The court **may** adjust a child support award to account for the impact of the dependency exemption, and may order a parent to waive the deduction to the benefit of the other if the other is current in child support payments.⁹

Alimony

Under Florida law, in a dissolution of marriage proceeding, the court may grant alimony to either party, either to balance an inequitable property division or to ensure support to a financially dependent spouse.¹⁰ Alimony is based primarily on need and ability to pay, so an alimony award is not appropriate when the requesting spouse has no need for support or when the paying spouse does not have the ability to pay.¹¹

⁵ Section 61.30(6), F.S.

⁶ Thomas S. McCaleb, David Macpherson, and Stefan Norrbin, *Review and Update of Florida's Child Support Guidelines, Report to the Florida Legislature*, Department of Economics, Florida State University, November 17, 2008.

⁷ Section 61.30(11)(a)9., F.S.

⁸ A deduction reduces a taxpayer's gross income. The value of a deduction increases as income rises, as the actual benefit is reduced to the effective income tax rate of the taxpayer. For instance, a person in the 15% tax bracket only receives a \$525 benefit from a single dependency deduction, whereas a person in the 25% tax bracket receives an \$875 benefit.

⁹ Section 61.30(11)(a)8., F.S.

¹⁰ Section 61.08(1), F.S. *See also*, Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78 Fla. Bar J. 71 (October 2004).

¹¹ *See Schlagel v. Schlagel*, 973 So.2d 672, 676 (Fla. 2d DCA 2008). *See also*, Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78 Fla. Bar J. 71 (October 2004).

In determining a proper award of alimony, the court is required to consider all relevant factors including:

- The standard of living established during the marriage;
- The duration of the marriage;¹²
- The age, physical, and emotional condition of each party;
- The financial resources and liabilities of each party, both marital and nonmarital;
- If applicable, the time necessary for either party to acquire the education or training necessary for the party to find employment;
- Each party's contribution to the marriage, including, but not limited to, homemaking services, child care, education, and career building of the other party; and
- All sources of income available to either party.¹³

The court may consider any other factor necessary to do equity and justice between the parties,¹⁴ and may order that the alimony be secured with life insurance or other assets.

Alimony may be temporary or permanent, paid periodically or in a lump sum or both.¹⁵ Lump sum alimony may take the form of "bridge-the-gap" alimony, which is intended only for short-term assistance with legitimate, identifiable short-term needs, or rehabilitative alimony, which requires the party seeking support to provide the court with a rehabilitative plan including the purpose of the rehabilitation, the areas in which rehabilitation is needed, and the actual amount of money necessary for rehabilitation. Lump sum alimony may be paid in periodic payments.¹⁶

III. Effect of Proposed Changes:

Section 1

Committee Substitute for Senate Bill 2166 amends s. 61.075, F.S., to provide that when a court orders a deferred payment of a distribution of marital assets, the court must require security and provide a reasonable rate of interest, or recognize the time value of money. The bill further requires that the court make written findings of fact relating to any deferred payment, security, or lack thereof.

Section 2

The bill amends s. 61.14, F.S., providing that past due alimony or spousal support payments are applied first to the current alimony or spousal support due, then to the delinquent principal amount due, and finally to any interest that has accrued on the past due amount.

¹² In a long-term marriage, there is a presumption in favor of permanent alimony. *See Schlagel v. Schlagel*, 973 So.2d 672, 676 (Fla. 2d DCA 2008). The definition of a long-term marriage is not settled, although several courts have held that seventeen years or longer is long-term. *See Hill v. Hooten*, 776 So.2d 1004, 1007 (Fla. 5th DCA 2001). *See also, Zeigler v. Zeigler*, 635 So.2d 50, 54 (Fla. 1st DCA 1994), holding that a marriage of 13.5 years is "neither a short-term nor a long-term marriage, but rather falls in the 'grey area' where a determination of entitlement to permanent alimony will be decided based upon a review of the other pertinent factors without the benefit of a presumption in favor or against permanent alimony."

¹³ Section 61.08(2), F.S.

¹⁴ *Id.*

¹⁵ Section 61.08(1), F.S.

¹⁶ Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78 Fla. Bar J. 71 (October 2004).

The bill also provides that interest on alimony or spousal support arrearage payments is enforceable through the same methods used to enforce a support order, including contempt of court. No interest will accrue on postjudgement interest.

Section 3

The bill amends s. 61.30(2), F.S., to create a rebuttable presumption enabling the court to impute the Florida minimum wage on a full-time basis to 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 provides that the minimum wage law of the parent's resident state shall apply. In the absence of a state minimum wage for an out-of-state parent, the federal minimum wage shall apply.

The bill amends s. 61.30(3), F.S., to provide that the allowable deductions of federal, state, and local income taxes, are to be calculated using a parent's gross income, personal and dependency exemptions, applicable deductions, earned income credits, child and dependent care credits, and other tax credits.

The bill also changes the formula for child support calculation to provide that a court **must** take into account the tax effect of the dependency tax deduction.

The bill amends s. 61.30(7), F.S., to eliminate the requirement that child care costs, due to a parent's employment, job search, or education, and incurred to result in employment or enhanced income, are reduced by 25 percent before being added to the basic support obligation.

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. In addition, the bill provides the parent with less than 20 percent of overnight time-sharing shall pay the total child support need to the parent with more than 80 percent of overnight time-sharing.

The bill amends s. 61.30(11), F.S., removing a provision allowing the court to adjust the total minimum child support award by considering the impact of an Internal Revenue Service (IRS) dependency exemption and waiver of the exemption. It also removes a reference to the court ordering a parent to sign a waiver of the exemption if the parent is current in his or her support payments.

The bill provides that a court may adjust the total minimum child support award when the guidelines indicate a party's net income is lower than the current federal poverty guidelines.

The bill creates subsection (18) of s. 61.30, F.S., to provide that a court may order a parent to waive the dependency tax deduction in favor of the other parent.

Section 4

The bill amends s. 409.2563(5)(a), F.S., to provide a rebuttable presumption that the department establish a support obligation for a parent using the Florida minimum wage, on a full time basis, unless the parent resides in another state. If the parent resides in another state, the state minimum wage applicable to the parent's state of residency shall apply. In the absence of a state minimum wage, the federal minimum wage applies.

Section 5

The bill amends s. 742.08, F.S., to provide that interest on support judgments are enforceable through the same methods used to enforce a support order, including contempt of court, and that interest shall not accrue on postjudgment interest.

Section 6

The bill has an effective date of October 1, 2009.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Any bill relating to Florida's child support guidelines will have an effect on Florida families. However, the impact will differ from family to family.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on April 6, 2009:

Committee Substitute for Senate Bill 2166 provides that a court, when ordering deferred payment of a lump sum in a proceeding for dissolution of marriage, conform to certain criteria.

The bill removes language which requires that a schedule specifying the amount of child support due when one child reaches the age of majority be included in the initial support order. This language was problematic for two reasons. First, the language presumed that a court could determine, years in advance, facts that may not be known, such as whether a child was “performing in good faith with reasonable expectation of graduation.” Second, the language suggested that a change in a parent’s financial situation would have no bearing on a new support obligation.

The bill removes language relating to the imputation of income. Although a recent review of Florida’s child support guidelines recommended reducing the reliance on imputed income, the language appeared to lock Florida into using minimum wage for imputation even when the courts had information on an individual’s earning ability.

The bill removes language eliminating the first three levels of the support guidelines because it created an incentive for a parent to hide or not increase his or her income in order to pay a lower level of child support.

The bill removes language prohibiting child support beyond the amount necessary to satisfy a child’s reasonable needs, for income levels above \$10,000 per month because of the provisions potential effect of limiting the amount of support provided to children of high income parents.

The bill restores current law allowing the court to consider agreements between the parties reached through mediation when determining the amount of retroactive support or a modification to a child support award.

The bill changes the effective date.

B. Amendments:

None.