

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 Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1210

INTRODUCER: Judiciary Committee and Senator Soto

SUBJECT: Family Law

DATE: April 3, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.	Peterson	Hendon	CF	Pre-meeting
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1210 revises the circumstances in which a court may deviate from or approve a request to deviate from the minimum amount of support required under child support guidelines. This bill authorizes a court to deviate from the child support guidelines based on a child's visitation with a parent as provided in a court-ordered time-sharing schedule or the particular time-sharing schedule exercised by the parents.

This bill authorizes courts to take judicial notice in family cases of any court record in Florida, or of any court in a state, jurisdiction, or territory of the United States, when imminent danger is alleged, which precludes the opportunity to provide notice. If judicial notice is taken, the court must file proper notice of the matters judicially noticed within 2 business days. These provisions relate to family cases in which domestic violence is an issue.

The bill limits the authority of the Department of Revenue to determine paternity, establish an obligation of child support, or enforce or modify an existing child support obligation.

The bill would have a significant fiscal impact on the state and has an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 61.14, 61.1814, 61.30, 90.204, 409.2564, 741.30, 784.046, and 784.0485.

II. Present Situation:

Child Support Guidelines

Child support guidelines are contained in s. 61.30(6), F.S., for the use of the court in determining child support. Guidelines take into account the combined monthly net income of the parents and the number of minor children of parties involved in a child support proceeding. The guidelines establish the minimum amount of support. These amounts may be increased for additional obligations, such as child care and health insurance costs of the children.¹ The court may also depart from the child support guidelines based on factors for deviation identified in law.² These are:

- Extraordinary medical, psychological, educational, or dental expenses.
- Independent income of a child or children.
- Documented financial support of a parent.
- Seasonal variation in income.
- The age of the child.
- Special needs.
- Total available assets of the obligee, obligor, and the child.
- The impact of federal tax treatment.
- An application of the child support guidelines schedule that requires a parent to pay another person more than 55 percent of his or her gross income for a current child support obligation.
- The parenting plan, such as where a child spends a significant amount of time, but less than 20 percent of overnight stays with a parent, or the refusal of a parent to participate in a child's activities.
- Any other adjustment needed to further equity for the parties.³

The First District Court of Appeal reviewed an administrative support order which provided for a deviation from child support guidelines.⁴ The administrative support order based its decision on one of the statutory factors for deviation from the guidelines. This factor allows deviation where a child spends less than 20 percent of overnight stays with a parent based on a parenting plan. The parents in the case, however, did not have a court-ordered parenting plan. The parents were never married to each other. However, a formal parenting plan would have been required as part of a divorce proceeding. Instead, they “decided visitation among themselves.”⁵ In reversing the administrative order, the court indicated:

a parenting plan is defined in section 61.046(14) as a court-approved parenting plan with a time-sharing arrangement than can be created through mediation and later

¹ Sections 61.30(7) and (8), F.S.

² Section 61.30(11)(a), F.S.

³ Section 61.30(11)(a)1. through 11., F.S.

⁴ *Dept. of Rev. v. Daly*, 74 So. 3d 165, 166 (Fla. 1st DCA 2011).

⁵ *Id.*

approved by a court, or approved by a court where the parties cannot agree. Thus, the plain language of the statute prohibits a trial court from deviating from the guidelines based on a verbal visitation agreement even where equity compels the deviation.^{6 7}

A court is also required to adjust the allocation of the burden of a child support award on the parents if a child spends a substantial amount of time with each parent.⁸ A child spends a substantial amount of time with a parent if a parent exercises time-sharing at least 20 percent of the overnights of the year.⁹

Child Support and the Department of Revenue

The Department of Revenue (the Department), in its capacity as a Title IV-D agency, is responsible for enforcing obligations for child support.¹⁰ These responsibilities include providing “services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations.”¹¹

Judicial Notice

Florida’s evidence code allows the court to take judicial notice of various matters.¹² These include:

- Acts and resolutions of Congress and the Florida Legislature.
- Decisional, constitutional, and public statutory law of every of other state, territory, and jurisdiction of the U.S.
- Contents of the Federal Register.
- Records of any court of this state or of any court of record of the U.S. or any other U.S. state, territory, or jurisdiction.
- Rules of court of this state, the U.S., or any other U.S. state, territory, or jurisdiction.¹³

Temporary Injunction Hearings

Florida law prohibits the admission of evidence other than verified pleadings or affidavits at ex parte hearings for temporary injunctions.¹⁴ These injunctions relate to underlying allegations of domestic violence; repeat violence, sexual violence, or dating violence; and stalking. Evidence

⁶ *Id.* at 168.

⁷ The parent’s informal parenting agreement may have been an adequate basis for a court to deviate from the child support guidelines before s. 61.30, F.S., was amended in 2008. In 2008, the Legislature through s. 16, ch. 2008-61, L.O.F., replaced references to “shared parental arrangement” with “parenting plan.”

⁸ Section 61.30(11)(b), F.S.

⁹ Section 61.30(11)(b)8, F.S.

¹⁰ Section 409.25995, identifies the Department of Revenue (department) as the state Title IV-D agency. Pursuant to s. 409.2563(1)(f), F.S., a Title IV-D case is defined as a case or proceeding in which the department provides child support services within the scope of Title IV-D of the Social Security Act (42 U.S.C. ss. 651 et. seq.)

¹¹ 42 U.S.C.A. §654 (4)(A).

¹² Judicial notice is defined as “A court's acceptance, for purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact.” BLACK’S LAW DICTIONARY (9th ed. 2009).

¹³ Section 90.202, F.S.

¹⁴ Sections 741.30(5)(b), 784.046(6)(b), and 784.0485, F.S.

other than verified pleadings or affidavits may be admitted, however, if adequate notice and an opportunity to be present is provided to the respondent.

III. Effect of Proposed Changes:

This bill revises the circumstances in which a court may deviate from or approve a request to deviate from the minimum amount of support required under child support guidelines. This bill authorizes a court to deviate from the child support guidelines based on a child's visitation with a parent as provided in a court-ordered time-sharing schedule or the particular time-sharing schedule exercised by the parents.

This bill authorizes courts to take judicial notice in family cases of any court record in Florida, or of any court in a state, jurisdiction, or territory of the United States, when imminent danger is alleged, which precludes an opportunity to provide advance notice to the parties. If judicial notice is taken, the court must file proper notice of the matters judicially noticed within 2 business days. These provisions relate to family cases in which domestic violence is an issue. Family law cases include:

dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, Uniform Interstate Family Support Act, custodial care of and access to children, proceedings for temporary or concurrent custody of minor children by extended family, adoption, name change, declaratory judgment actions related to premarital, marital, or postmarital agreements, civil domestic, repeat violence, dating violence, and sexual violence injunctions, juvenile dependency, termination of parental rights, juvenile delinquency, emancipation of a minor, CINS/FINS, truancy, and modification and enforcement of orders entered in these cases.¹⁵

This bill also creates an exception to the current limits placed on admissibility of evidence at ex parte temporary injunction hearing. These hearings relate to temporary injunctions sought for domestic violence; repeat violence, sexual violence, or dating violence; and stalking. This bill will allow judicial notice to be taken of records other than verified pleadings or affidavits, without providing a respondent advance notice and an opportunity to be present.

Lastly, the bill prohibits the Department from undertaking actions to determine paternity, establish a child support obligation, or enforce or modify a support obligation unless:

- The parent or a child is receiving public assistance; or
- The custodial parent or the parent entitled to receive support has requested assistance from the Department and has applied for services under Title IV-D of the Social Security Act.

Moreover, the bill precludes the Department from providing assistance to a parent who retains private counsel, unless the parent, the other parent, or the children are receiving public assistance. The Department indicates that federal law does not provide a basis for denying

¹⁵ Rule 2.545(d)(2.), Rules of Jud. Admin.

Title IV-D services for this reason. Further, the Department believes that these changes would jeopardize federal funding for the state's child support program.¹⁶

The bill takes effect July 1, 2013.

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:

None.

C. Government Sector Impact:

The Department of Revenue expresses significant concerns relating to the changes to s. 409.2564, F.S. According to the Department, these changes do not conform to federal law and may compromise the Department's ability to receive federal money, which currently funds a majority of the state's expenses in administering the child support program. In FY 2010-11, Florida received \$178.3 million in federal reimbursement plus \$31.4 million in federal incentive funds. In FY 2011-12, Florida received \$159.9 million in federal reimbursement plus \$32.8 million in federal incentive funds. Additionally, "Having a federally approved IV-D state plan is also a condition of federal funding for the state's federal Temporary Assistance for Needy Families (TANF) block grant under Title IV-A of the Social Security Act."¹⁷

¹⁶ Department of Revenue, *2013 Bill Analysis HB 905 Amendment #1 (393985)* (March 16, 2013).

¹⁷ *Id.*

The Office of State Courts Administrator anticipates a fiscal impact resulting from the bill in the following respects:

- The bill includes amendments to ch. 61, F.S., that will impact the workload of the judiciary with regard to administrative child support cases that are heard in the circuit court and family law cases in which the parties are pro se litigants. However, the extent of the impact is unquantifiable at this time.
- The new provision amending 90.204, F.S., will affect court workload to the extent that when it is invoked, the court will be required to file notice in the pending case of the matters judicially noticed. However, fiscal impact is indeterminate.

The Department of Children and Families does not expect a fiscal impact.

VI. Technical Deficiencies:

Section 1 of the bill seeks to expand a court's authority to use time-sharing schedules that are not committed to writing when evaluating whether or not to modify an order of support. Section 61.046(23), F.S., defines "time-sharing schedule," in relevant part, as "a timetable that must be included in the parenting plan." The definition further specifies that a time-sharing schedule shall be either agreed to by the parents and approved by the court, or established by the court if the parents cannot agree. In either case, the term as used in ch. 61, F.S., necessarily is written and court approved. Thus, without amending the definition or otherwise clarifying that the new language is intended to be defined separately from the existing definition, the bill may not accomplish its objective. In addition, the bill fails to amend s. 61.30(11)(c), F.S., which provides that a parent's failure to comply with a time-sharing schedule is a substantial change of circumstances for purposes of modifying a child support award.

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 Judiciary on April 1, 2013:

The committee substitute amends s. 409.2564, F.S., to limit the situations in which a parent is eligible for assistance from the Department of Revenue (Department) in determining paternity, establishing a child support obligation, or enforcing or modifying a support obligation.

A parent is only eligible for assistance from the Department if:

- The parent or a child is receiving public assistance; or
- The custodial parent or the parent entitled to receive support has requested assistance from the department and has applied for services under Title IV-D of the Social Security Act.

The committee substitute prohibits the Department from providing assistance to a parent who has retained private counsel, unless the parent, the other parent, or the children are receiving public assistance.

B. Amendments:

None.

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