

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 755 Family Law

**SPONSOR(S):** Judiciary Committee; Civil Justice Subcommittee; Steube

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 104

| REFERENCE                     | ACTION              | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|-------------------------------|---------------------|---------|--|
| 1) Civil Justice Subcommittee | 13 Y, 0 N, As<br>CS | Cary    | Bond                                     |
| 2) Judiciary Committee        | 15 Y, 0 N, As<br>CS | Cary    | Havlicak                                 |
| 3) Appropriations Committee   |                     |         |  |

### SUMMARY ANALYSIS

Child support guidelines allow the court to adjust a statutory award based upon certain factors. One such factor is the "parenting plan." Currently, the parenting plan is defined by statute, and must be reduced to a document endorsed by the court. The courts do not recognize a course of dealing by the parties as a formal parenting plan when considering the amount of child support.

Recently, a number of child support cases have turned upon the lack of a written parenting plan as defined in the statute. The courts have determined that they may not take into account the amount of time that the child spends routinely with one parent or the other unless there is a written parenting plan. Courts have not considered less formal arrangements in deviating from the child support guidelines.

The bill amends child support guidelines to allow the court to take into account the parenting plan recognized by the parties, even if it is not reduced to writing, in awarding child support outside the statutory schedule.

The bill amends the Florida Evidence Code to allow the court to take judicial notice of court records in determining family law cases where there is imminent threat of harm, notice is impractical, and a later hearing is scheduled to challenge the matter. The bill adds conforming references regarding this provision to statutes which address injunctions for domestic and repeat, sexual or dating violence, and injunctions against stalking.

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

The bill has an effective date of July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Child Support Guidelines**

Child support guidelines allow the court to adjust a statutory award based upon certain factors. One such factor is the "parenting plan." Currently, deviations from the promulgated schedule of child support must be supported by the factors listed in the statute.<sup>1</sup> The parenting plan is defined by statute, and must be reduced to a document endorsed by the court.<sup>2</sup> The courts do not recognize a course of dealing by the parties as a formal parenting plan when considering the amount of child support.<sup>3</sup>

Recently, a number of child support cases have turned upon the lack of a written parenting plan as defined in the statute. The courts have determined that they may not take into account the amount of time that the child spends routinely with one parent or the other unless there is a written parenting plan. Courts have not considered less formal arrangements in deviating from the child support guidelines.<sup>4</sup>

The bill amends s. 61.30(11), F.S., to expand the court's ability to recognize a course of dealing by the parents in awarding child support outside the schedule. The bill includes in the deviation factors "a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties." This will allow the court to take into consideration the actions of the parties, even if not reduced to writing. The expanded factor which the court may consider appears both places where the term "parenting plan" appears in s. 61.30, F.S.

##### **Judicial Notice**

Judicial notice takes the place of proof, and makes evidence unnecessary.<sup>5</sup> The Florida Evidence Code<sup>6</sup> addresses matters that may be, or must be noticed by the judge, so that evidence of the fact is not required.<sup>7</sup>

Generally, notice is afforded to both parties before the court will take judicial notice of a fact.<sup>8</sup> The court must give each party an opportunity to challenge the information offered for judicial notice prior to taking it into evidence.<sup>9</sup>

In a recent case,<sup>10</sup> a judge issued a domestic violence injunction<sup>11</sup> based upon testimony she observed in a separate court matter between the parties. The ruling was entered without giving advance notice of the matter, pursuant to the current terms of the statute. Because the court essentially took judicial notice of the other hearing in ruling on the injunction, the injunction was reversed.<sup>12</sup>

The bill amends s. 90.204, F.S., to provide that in a family law case the court may take judicial notice of "records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States,"<sup>13</sup> when:

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<sup>1</sup> Section 61.30(11), F.S.

<sup>2</sup> Section 61.046(14), F.S.

<sup>3</sup> See *State Dept. of Revenue v. Kline*, 95 So.3d 440 (Fla. 1st DCA 2012); *Department of Revenue v. Dorkins*, 91 So.3d 278 (Fla. 1st DCA 2012); *Department of Revenue v. Aluscar*, 82 So.3d 1165 (Fla. 1st DCA 2012).

<sup>4</sup> *Id.*

<sup>5</sup> *Amos v. Moseley*, 77 So. 619 (Fla. 1917).

<sup>6</sup> Chapter 90, F.S.

<sup>7</sup> Sections 90.201-.207, F.S.

<sup>8</sup> Sections 90.203-.204, F.S.

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

<sup>10</sup> *Coe v. Coe*, 39 So.3d 542 (Fla. 2d DCA 2010).

<sup>11</sup> Domestic violence injunctions are governed by s. 741.30, F.S.

<sup>12</sup> *Coe* at 543.

<sup>13</sup> Section 90.202(6), F.S.

- Imminent danger has been alleged.
- It is impractical to give notice.
- A later opportunity is provided to challenge the matter noticed.

The judge must, within two business days, file a notice in the pending case of the matter judicially noticed.

The bill will allow the court to take judicial notice without further proof of court records at the state and national level in determining family law cases. Family law cases are defined by the Florida Rules of Judicial Administration.

Conforming changes are made to ss. 741.30 (domestic violence), 784.046 (repeat violence), and 784.0485 (stalking), F.S., to include court records in the evidence a judge may take into account when considering an injunction to prevent domestic violence, repeat violence, or stalking.

#### B. SECTION DIRECTORY:

Section 1 amends s. 61.30, F.S., regarding child support guidelines; retroactive child support.

Section 2 amends s. 90.204, F.S., regarding determination of propriety of judicial notice and nature of matter noticed.

Section 3 amends s. 741.30, F.S., regarding domestic violence.

Section 4 amends s. 784.046, F.S., regarding action by victim or repeat violence, sexual violence, or dating violence for protective injunction.

Section 5 amends s. 784.0485, F.S., regarding stalking.

Section 6 provides an effective date of July 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

#### D. FISCAL COMMENTS:

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The 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:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 5, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment replaces the Department of Legal Affairs with the Department of Revenue on the task force, eliminates the per diem for task force members, and provides that the Governor will appoint the private attorneys to the task force.

On April 4, 2014, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes the portions of the bill relating to imputed income and the statewide task force.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.