

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 755	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Judiciary Committee; Civil Justice Subcommittee; Steube and others	79 Y's	37 N's
COMPANION BILLS:	CS/SB 104	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 755 passed the House on April 23, 2014, was amended by the Senate on April 24, 2014, was further amended by the House on May 1, 2014, and subsequently passed the Senate on May 2, 2014.

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. 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.

Finally, the bill provides that an applicant to the Florida Bar who is an unauthorized immigrant may be admitted to the Bar by the Florida Supreme Court if certain conditions are met.

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

The bill was approved by the Governor on May 12, 2014, ch. 2014-35, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

The bill makes various changes to the operation of the state court system:

Child Support Guidelines Set by a Court

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.¹ The parenting plan is defined by statute, and must be reduced to a document endorsed by the court.² The courts do not recognize a course of dealing by the parties as a formal parenting plan when considering the amount of child support.³

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.⁴

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 that the court may consider appears both places where the term "parenting plan" appears in s. 61.30, F.S.

Judicial Notice by a Court

Judicial notice takes the place of proof, and makes evidence unnecessary.⁵ The Florida Evidence Code⁶ addresses matters that may be, or must be noticed by the judge, so that evidence of the fact is not required.⁷

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

In a recent case,¹⁰ a judge issued a domestic violence injunction¹¹ 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.¹²

¹ Section 61.30(11), F.S.

² Section 61.046(14), F.S.

³ 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).

⁴ *Id.*

⁵ *Amos v. Moseley*, 77 So. 619 (Fla. 1917).

⁶ Chapter 90, F.S.

⁷ Sections 90.201-.207, F.S.

⁸ Sections 90.203-.204, F.S.

⁹ *Id.*

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

¹¹ Domestic violence injunctions are governed by s. 741.30, F.S.

¹² *Coe* at 543.

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,"¹³ when:

- 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.¹⁴

Conforming changes are made to ss. 741.30 (domestic violence), 784.046 (repeat violence, sexual violence, and dating 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, sexual violence, dating violence, or stalking.

Admission to Practice Law in the Courts

The bill creates s. 454.021(3), F.S., to provide that an applicant to the Florida Bar who is an unauthorized immigrant may be admitted to the Bar by the Florida Supreme Court if certain conditions are met.

On March 6, 2014, the Florida Supreme Court released an advisory opinion relating to whether undocumented immigrants are eligible for admission to the Florida Bar, in response to a petition from the Florida Bar.¹⁵ The Court held that federal law prohibits specified categories of aliens from obtaining certain public benefits, which includes a professional license that is provided by appropriated funds of a state. However, the federal law in question allows a state to provide such a benefit through the enactment of a state law that affirmatively provides for such eligibility.¹⁶

This bill allows the Supreme Court to admit an applicant for admission to the Florida Bar if such applicant has:

- Been brought to the United States as a minor;
- Been present in the United States for more than 10 years;
- Received documented employment authorization from the United States Citizenship and Immigration Services;
- Been issued a social security number;
- Registered with the Selective Service System if required to do so under the Military Selective Service Act, 50 U.S.C. App. 453; and

¹³ Section 90.202(6), F.S.

¹⁴ Fla.R.Jud.Admin. 2.545(d)(2) provides: "Family cases" include dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, UIFSA, 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 [marital], or postmarital agreements, civil domestic, repeat violence, dating violence, stalking, 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 *Florida Board of Bar Examiners Re: Question as to Whether Undocumented Immigrants are Eligible for Admission to the Florida Bar*. No. SC11-2568 (March 6, 2014).

¹⁶ 8 U.S.C. Sec. 1621(d) (2012).

- Otherwise fulfilled all requirements for admission to practice of law in this state.

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.