

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 313 Child Support
SPONSOR(S): Children, Families & Seniors Subcommittee, Daniels
TIED BILLS: IDEN./SIM. **BILLS:** SB 552

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	12 Y, 0 N, As CS	Roth	Brazzell
2) Ways & Means Committee	14 Y, 0 N	Dugan	Langston
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Child support is a parent's legal obligation to contribute to the economic maintenance and education of his or her child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education.

The Department of Revenue (DOR) is the state agency responsible for child support enforcement and has the authority to take actions to ensure that children are provided for by their parents. If a parent ordered to pay child support fails to pay, there are several options DOR may use to enforce the support order. One method DOR uses is the suspension of the driver license and motor vehicle registration of an individual who owes child support (the obligor).

The bill amends s. 61.13106, F.S, to include inability to make payments as an additional circumstance that an obligor parent can use in order to contest the notice of delinquency and suspension of driver license received from DOR.

The bill allows an obligor parent to explain to the court that he or she is unable to make the delinquent child support payment, based on circumstances including, but not limited to:

- Temporary interruption in employment as the result of a natural disaster;
- Incapacitation as the result of an illness or temporary medical condition; or
- Temporary unexpected involuntary employment.

Each court has discretion to decide whether the obligor parent has demonstrated an inability to pay and whether the obligor parent's license should be suspended.

The Revenue Estimating Conference determined the bill does not have a fiscal impact on state or local funds.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Child Support

Child support is a parent's legal obligation to contribute to the economic maintenance and education of his or her child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education.¹ This obligation arises since each parent has a duty to support² his or her minor or legally dependent child.³ Child support can be entered into voluntarily, by court order, or by an administrative agency. Child support is an important source of income for millions of children in the United States. Child support payments represent on average 40 percent of income for poor custodial families who receive them; such payments lifted one million people above poverty in 2008.⁴

Establishment of Child Support Obligation

When parents live apart due to divorce or separation, the court may order a parent who owes a duty of support to a child to pay support to the other parent, or in the case of both parents, to a third party who has custody, in accordance with the guidelines schedule in s. 61.30, F.S.⁵ Section 61.30, F.S., sets forth guidelines to determine the appropriate amount of child support to be provided based on parents' income. The judicial officer is permitted to deviate from the guideline amount plus or minus 5 percent after considering all relevant factors, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent.⁶ The judicial officer is also permitted to deviate from the guideline amount more than plus or minus 5 percent, but he or she must include a written finding in the support order explaining why the guideline amount is unjust or inappropriate.⁷

Department of Revenue Child Support Program

The federal Department of Health and Human Services (HHS) coordinates with child support enforcement programs administered in each state, which perform collection and enforcement services.⁸ Each state's child support enforcement agency operates under an approved state plan based on the program standards and policy set by the federal government.⁹ In Florida, the department administering the child support program is the Department of Revenue (DOR).^{10,11} Child support payments may be handled through private attorneys; these payments are separate from state child support programs.¹²

¹ Black's Law Dictionary 100 (3rd pocket ed. 2006).

² S. 61.046(22), F.S., defines "support" as child support when the Department of Revenue is not enforcing the support obligation and it includes spousal support or alimony for the person with whom the child is living when the Department of Revenue is enforcing the support obligation. The definition applies to the use of the term throughout ch. 61, F.S.

³ S. 61.29, F.S. See generally ss. 744.301 and 744.361, F.S.

⁴ National Conference of State Legislatures, *Child Support Overview*, March 15, 2016, available at <http://www.ncsl.org/research/human-services/child-support-homepage.aspx> (last viewed March 16, 2017).

⁵ S. 61.13(1)(a), F.S.

⁶ S. 61.30(1)(a), F.S.

⁷ *Id.*

⁸ National Conference of State Legislatures, *Child Support 101: State Administration*, April 2013, available at <http://www.ncsl.org/research/human-services/child-support-administration.aspx> (last viewed March 17, 2017).

⁹ *Id.*

¹⁰ S. 409.2557(1), F.S.

¹¹ Department of Revenue, *About the Child Support Program*, 2016, available at http://floridarevenue.com/dor/childsupport/about_us.html (last viewed March 17, 2017).

¹² *Supra*, at FN 8.

Child support program structures vary widely from state to state, but at a minimum, services offered in all child support programs include:

- Locating noncustodial parents;
- Establishing paternity;
- Establishing and modifying support orders;
- Collecting support payments and enforcing child support orders; and
- Referring noncustodial parents to employment services.¹³

Any parent or person with custody of a child who needs help to establish a child support order or to collect support payments may apply for services. Individuals receiving public assistance from the state are required to participate in the state child support program.¹⁴ IV-D cases are cases in which a state provides child support services through the state or tribal IV-D program to a custodial parent. The program is funded under Title IV-D of the Social Security Act. There are three subtypes of state IV-D cases:

- **Public or Current Assistance Cases:** Parents who receive public assistance under the state's Temporary Assistance for Needy Families (TANF) program are required to assign their rights to child support payments to the state. The state automatically refers these cases to the Office of Child Support Enforcement in order to attempt to collect child support directly from the noncustodial parent.
- **Non-Public Assistance Cases:** Non-public assistance cases are those in which the family is not currently or is no longer receiving cash assistance or Medicaid but the state child support agency is providing collection services.
- **Foster Care and Adoption Assistance (IV-E Cases):** Cases where the state currently provides benefits or services for foster care maintenance to a child that meets IV-E eligibility guidelines. In these cases, someone other than a parent is caring for a child or children—this could include a relative caregiver or the foster care system. These cases are also automatically referred to the child support agency in order to attempt to recoup costs from the noncustodial parent(s).¹⁵

Non IV-D cases are cases where child support is established and maintained privately, most often following a divorce where support orders are determined as part of the divorce proceedings. Any family is eligible for support enforcement services from the state. Some private cases become state IV-D cases when they are referred to help collect unpaid child support.¹⁶

During the 2015 federal fiscal year, approximately \$32.4 billion in child support was collected on behalf of the 15.9 million children served by child support enforcement programs across the country.¹⁷ Also during that fiscal year, Florida had a total caseload of 650,421 cases and collected approximately \$1.4 billion in child support collections. However, the total amount of arrearages was approximately \$5.7 billion.¹⁸ In fiscal year 2015-2016, Florida DOR IV-D child support enforcement hearing officers held 131,474 hearings and signed 139,817 orders for child support establishment, modification, and enforcement.¹⁹

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ National Conference of State Legislatures, *2015 State by State Data on Child Support Collections*, April 25, 2016, available at <http://www.ncsl.org/research/human-services/2015-state-by-state-data-on-child-support-collections.aspx#5> (last viewed March 17, 2017).

¹⁸ *Id.*

¹⁹ Florida Courts, *Uniform Data Reporting, Child Support FY2015-16*, 2017, available at <http://www.flcourts.org/publications-reports-stats/statistics/uniform-data-reporting.shtml#Support> (last viewed March 17, 2017).

Enforcement

As the state agency designated as the agency responsible for the administration of the child support enforcement program,²⁰ DOR has the authority to take actions necessary to ensure that children are maintained from the resources of their parents.²¹ If a parent ordered to pay child support fails to pay, there are several options to enforce a support order, including both civil and criminal remedies. Civil remedies include garnishment of the obligor's²² wages,²³ an order for income deduction,²⁴ suspension or denial of certain business and professional licenses and certificates,²⁵ suspension of the person's driver license and motor vehicle registration,²⁶ and an order to seek employment or job training.²⁷

Driver License Suspension

If an obligor is 15 days delinquent in making a support payment DOR (in Title IV-D cases) or the clerk of the court (in non-IV-D cases) will provide notice to the obligor of the delinquency.²⁸ The notice must state that DOR or the clerk of the court will request the Department of Highway Safety and Motor Vehicles (DHSMV) to suspend the obligor's driver license within 20 days after the date that the notice is mailed.²⁹ The notice³⁰ lists several ways for an obligor to stop suspension of his or her license, including:

- Paying the delinquency in full;
- Entering into a written agreement for payment (with the obligee³¹ or DOR);
- Contesting the delinquency notice;
- Demonstrating that he or she is on reemployment assistance (unemployment compensation);
- Demonstrating that he or she is disabled and incapable of self-support;
- Demonstrating that he or she receives temporary cash assistance; or
- Demonstrating that he or she is making bankruptcy payments.³²

In addition, the notice states that DOR will consider the obligor's current situation and ability to pay, and that if the obligor enters into a written agreement with DOR, DOR will not have the obligor's license suspended as long as the agreed-upon payments are made. The notice also states that an obligor may contest the notice if he or she does not have the ability to make payments.³³

If an obligor's driver license is suspended, the obligor can choose to petition the court to direct DHSMV to issue a license for driving privileges restricted to business purposes only.³⁴ In Fiscal Year 2015-2016, DHSMV received 170,332 requests for driver license suspensions from DOR for failure to pay child support.³⁵

²⁰ S. 409.2557(1), F.S.

²¹ S. 409.2557(2), F.S.

²² S. 61.046, F.S. defines "obligor" as a person responsible for making payments pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.

²³ S. 61.12, F.S.

²⁴ S. 61.1301, F.S.

²⁵ S. 61.13015, F.S.

²⁶ S. 61.13016, F.S.

²⁷ S. 61.14(5)(b), F.S.

²⁸ S. 61.13016(1), F.S.

²⁹ S. 61.13016(1)(c), F.S.

³⁰ Email from Debbie Longman, Director of Office of Legislative and Cabinet Services, Department of Revenue, RE: Notice of Intent to Suspend Driver's License (March 11, 2017) on file with the Children, Families, and Seniors Subcommittee staff.

³¹ S. 61.046, F.S. defines "obligee" as the person to whom payments are made pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.

³² S. 61.13016(1)(c)1., F.S.

³³ *Supra*, at FN 30.

³⁴ S. 61.13016(2), F.S. The term "a driving privilege restricted to business purposes only" means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes. Section 322.271(1)(c)1., F.S.

³⁵ Department of Highway Safety and Motor Vehicles, *2017 Agency Legislative Bill Analysis*, February 2017, p. 3 (on file with the Children, Families, and Seniors Subcommittee staff).

In Fiscal Year 2012-2103, approximately 65 percent of the licenses suspended for failure to pay child support were reinstated within one year of the suspension. DOR officials believe that the threat of losing a driver license is one of the best compliance tools it has to enforce child support orders. In Fiscal Year 2012-2103, DOR collected approximately \$101.8 million in delinquent child support payments from parents who received a notice of suspension or whose license was suspended.³⁶

Effect of Proposed Changes

The bill amends s. 61.13106, F.S, to include inability to make payments as an additional ground that an obligor parent can use in his or her petition to contest the notice of delinquency and suspension of driver license provided by DOR.

The bill allows an obligor parent to explain to the court the reason he or she is unable to make the delinquent child support payment. The bill provides three situations of inability to pay:

- Temporary interruption in employment as the result of a natural disaster;
- Incapacitation as the result of an illness or temporary medical condition; or
- Temporary unexpected involuntary employment.

The obligor parent is not limited to these three situations, and must demonstrate to the court the reason he or she is unable to make the payment. Each court has discretion to decide whether the obligor parent has demonstrated an inability to pay and whether the obligor parent's license should be suspended.

B. SECTION DIRECTORY:

Section 1: Creates the "Florida Responsible Parent Act."

Section 2: Amends s. 61.13016, F.S., relating to suspension of driver license and motor vehicle registrations.

Section 3: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On March 31, 2017, the Revenue Estimating Conference determined the bill has no fiscal impact on state or local funds.

2. Expenditures:

DOR indicates that the bill will have an insignificant fiscal impact on state government expenditures; however, DOR and the court system may see an increase in filings by obligors in response to the notice of driver license suspension.³⁷

³⁶ Office of Program Policy Analysis and Government Accountability, *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, February 2014, p. 8, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1407rpt.pdf> (last viewed March 18, 2017).

³⁷ DOR Agency Bill Analysis, HB 313, March 24, 2017.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill facilitates a process for individuals who have an inability to pay a child support delinquency and helps them avoid suspension of their driver licenses. The bill will also help them avoid payment of a \$60 fee to reinstate those licenses.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2017, the Children, Families, and Seniors Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by removing the four specific reasons listed in the bill for an individual to challenge a possible driver license suspension notice for non-payment, and instead allowing an individual to challenge generally due to inability to pay. It also removes provisions regarding contempt of court and the tax credit program. This analysis is drafted to the committee substitute as passed by the Children, Families, and Seniors Subcommittee.