

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 552

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Child Support

DATE: March 28, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CJ	Fav/CS
2.			CF	
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 552 adds a new ground to those already allowed for an obligor to contest a notice of delinquency in support payments issued by the Department of Revenue in circuit court. The obligor may show that he or she has no ability to make payments towards the delinquency due to circumstances that include, but are not limited to:

- Temporary interruption in employment due to a natural disaster.
- Incapacitation as a result of an illness or temporary medical condition.
- Temporary, unexpected involuntary unemployment.

**II. Present Situation:**

**Support**

Parents have a duty to support<sup>1</sup> their child until the child turns 18 years of age.<sup>2</sup> “Public policy favors imposing on parents an obligation to contribute to the child’s support.”<sup>3</sup> The obligation

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<sup>1</sup> Section 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.

<sup>2</sup> Section 61.29, F.S. See generally ss. 744.301 and 744.361, F.S. See also 2-33 Florida Family Law s. 33.01 (Parents’ Duty to Support Child).

<sup>3</sup> *Mitchell v. Mitchell*, 841 So. 2d 564 570, (Fla. 2nd DCA 2003). In fact, s. 856.04, F.S., provides that it is a third degree felony for a parent to desert his or her child or to withhold from the child the means of support.

exists even if the parents are not married, and can exist when the parents are married, but the child is not the biological child of the husband or if a person contractually agrees to support the child.<sup>4</sup>

A parent caring for a child can seek a court order for support either through dissolution of marriage or through an order for alimony and support of the child without seeking a dissolution of marriage.<sup>5</sup> Section 61.30, F.S., sets forth guidelines to determine the appropriate amount of support to be provided. A court is permitted to deviate from the guideline amount “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,” but the deviation must be part of a written finding in the support order explaining why the guideline amount is unjust or inappropriate.<sup>6</sup>

### **Failure to Pay Support**

There are several options to enforce a support order, including both civil and criminal remedies. In an enforcement action, “the court must determine whether a valid support order exists, the terms of payment contained in the order, and whether the obligor<sup>7</sup> has complied with its terms. If a court determines that arrearages are due under a support order, it may also inquire into the reasons why the payments were not made and whether nonpayment can be legally excused.”<sup>8</sup>

Civil remedies include garnishment of the obligor’s wages,<sup>9</sup> an order for income deduction,<sup>10</sup> suspension or denial of certain business and professional licenses and certificates,<sup>11</sup> suspension of the person’s driver license and motor vehicle registration,<sup>12</sup> and an order to seek employment or job training.<sup>13</sup>

Specifically related to suspension of a driver license, if an obligor is 15 days delinquent in making a support payment, then the Department of Revenue (DOR) can provide notice to the obligor of the delinquency. The notice must state that the DOR will request the Department of Highway Safety and Motor Vehicles to suspend the driver license within 20 days of the date of the notice from the DOR. There are several ways for an obligor to stop suspension of his or her license, including:

- Paying the delinquency in full;
- Contesting the delinquency notice by filing a petition in circuit court;
- Demonstrating that he or she is on reemployment assistance (unemployment compensation);
- Demonstrating that he or she receives temporary cash assistance; or

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<sup>4</sup> See 2-33 Florida Family Law s. 33.01 (Parents’ Duty to Support Child) for a discussion on situations where the duty of providing support arises.

<sup>5</sup> Section 61.09, F.S.

<sup>6</sup> Section 61.30(1)(a), F.S.

<sup>7</sup> Section 61.046(13), F.S., defines “obligor” to mean “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.”

<sup>8</sup> 4-70 Florida Family Law s. 70.23 (Complaint for Enforcement).

<sup>9</sup> Section 61.12, F.S.

<sup>10</sup> Section 61.1301, F.S.

<sup>11</sup> Section 61.13015, F.S.

<sup>12</sup> Section 61.13016, F.S.

<sup>13</sup> Section 61.14(5)(b), F.S.

- Demonstrating that he or she is disabled and incapable of self-support.<sup>14</sup>

If the obligor chooses to contest the delinquency notice in circuit court, the grounds for the petition must be mistake of fact regarding the existence of delinquency or the identity of the obligor. The petition has to be served on the DOR. The court must hear a timely filed petition within 15 days and enter an order resolving the petition within 10 days of the hearing. A timely filed petition stays the notice of delinquency by the DOR until the court enters an order resolving the matter.

The obligor can also petition a court to direct the Department of Highway Safety and Motor Vehicles to issue a license for driving privileges restricted to business purposes only.<sup>15</sup>

### III. Effect of Proposed Changes:

Section 61.13016, F.S., allows the DOR to request the Department of Highway Safety and Motor Vehicles to suspend an obligor's driver license within 20 days of the date of the notice from the DOR that the obligor is delinquent in making support payments. The bill amends s. 61.13016, F.S., to add additional grounds for an obligor to petition the circuit court to contest the notice of delinquency. The obligor can contest the notice by showing that he or she has no ability to make payments towards the delinquency in support payments due to circumstances that include, but are not limited to:

- Temporary interruption in employment due to a natural disaster.
- Incapacitation as a result of an illness or temporary medical condition.
- Temporary, unexpected involuntary unemployment.

The bill is effective July 1, 2017.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>14</sup> Section 61.13016(1), F.S.

<sup>15</sup> Section 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.

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

None.

**B. Private Sector Impact:**

An obligor who fails to pay child support and is able to show the circumstances provided in the bill will benefit by being able to retain his or her driver license.

**C. Government Sector Impact:**

The DOR indicates that the bill will have an insignificant fiscal impact on department expenditures.<sup>16</sup>

Any impact on the state court system is unknown at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 61.13016 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 27, 2017:**

The committee substitute substantially rewrote the bill. The CS added grounds for an obligor to petition a circuit court to contest a notice of delinquency in support payments. It removed the following provisions:

- Allowing an obligor to demonstrate to the DOR certain conditions in order to stop suspension of his or her driver license.
- Allowing an obligor to avoid being held in contempt of court by demonstrating certain conditions.
- Allowing a court to order an obligor to work release or supervised home confinement without electronic monitoring under certain conditions.
- Requiring the Department of Economic Opportunity to develop and administer a program to provide tax credits to business entities that employ obligors ordered to be

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<sup>16</sup> DOR, 2017 Agency Legislative Bill Analysis CS/HB 313, March 24, 2017.

placed in work release programs or supervised home confinement without electronic monitoring.

**B. Amendments:**

None.

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

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