

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 Criminal Justice

BILL: SB 552

INTRODUCER: Senator Bracy

SUBJECT: Child Support

DATE: March 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CJ	Pre-meeting
2.			CF	
3.			AP	

I. Summary:

SB 552 amends provisions related to the failure to pay support. An obligor can stop suspension of his or her driver license if he or she can demonstrate that he or she:

- Is unable to pay support due to an act of God.
- Is unable to pay support due to a medical emergency involving him or her.
- Is unable to pay support due to sudden involuntary unemployment beyond his or her control.
- Has been ordered by the court to be placed in a work release program or under supervised home confinement without electronic monitoring for failure to pay support.

Additionally, a court shall *not* find an obligor in contempt for failure to pay support if he or she demonstrates inability to pay child support due to:

- An act of God.
- A medical emergency involving him or her.
- Sudden involuntary unemployment beyond his or her control.

The bill then allows a court to order an obligor who the court finds has demonstrated one of the above failures to pay child support to work release or home confinement without electronic monitoring.

The bill requires the Department of Economic Opportunity to develop and administer a program to provide tax credits to business entities that employ obligors ordered to be placed in work release programs or supervised home confinement without electronic monitoring.

II. Present Situation:

Support

Parents have a duty to support¹ their child until the child turns 18 years of age.² “Public policy favors imposing on parents an obligation to contribute to the child’s support.”³ The obligation 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.⁴

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.⁵ 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.⁶

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 obligor⁷ 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.”⁸

Civil remedies include garnishment of the obligor’s wages,⁹ an order for income deduction,¹⁰ suspension or denial of certain business and professional licenses and certificates,¹¹ suspension

¹ 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.

² 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).

³ *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.

⁴ *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.

⁵ Section 61.09, F.S.

⁶ Section 61.30(1)(a), F.S.

⁷ 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.”

⁸ 4-70 Florida Family Law s. 70.23 (Complaint for Enforcement).

⁹ Section 61.12, F.S.

¹⁰ Section 61.1301, F.S.

¹¹ Section 61.13015, F.S.

of the person's driver license and motor vehicle registration,¹² and an order to seek employment or job training.¹³

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;
- Demonstrating that he or she is on reemployment assistance (unemployment compensation);
- Demonstrating that he or she receives temporary cash assistance; or
- Demonstrating that he or she is disabled and incapable of self-support.¹⁴

The obligor can 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.¹⁵

Additionally, a court can hold the obligor in contempt for willfully not paying support.¹⁶ The original order for the payment of support creates a presumption that the obligor has the ability to pay the support. At the contempt hearing, the obligor has the burden of proof to show that he or she lacks the ability to “purge himself or herself from the contempt.”¹⁷ If the obligor can show that he or she lacks the ability to pay the support, for example by showing that his or her income has been significantly reduced by economic circumstances beyond his or her control or that he or she is temporarily unable to pay due to involuntary unemployment, then the court may find the obligor to not be in contempt and temporarily suspend the payment of support.¹⁸ Incarceration in and of itself is not an excuse for failure to pay support.¹⁹

There is currently no statutory excusal for failure to pay support due to an act of God, a medical emergency, or sudden involuntary unemployment.

¹² Section 61.13016, F.S.

¹³ Section 61.14(5)(b), F.S.

¹⁴ Section 61.13016(1), F.S.

¹⁵ 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.

¹⁶ See s. 38.23, F.S. Contempt is a refusal to obey an order of the court.

¹⁷ Section 61.14(5)(a), F.S.

¹⁸ 4-70 Florida Family Law § 70.24 (Civil Contempt).

¹⁹ “[A]n incarcerated parent may not automatically have his or her child support payment obligations modified based solely on a reduction in income resulting from incarceration. We reject the per se rule that would permit incarceration to be utilized as a basis to modify support, which would be tantamount to authorizing a suspension or abatement of support obligations in disguise and provide the alternative--a flexible procedure designed to encourage and accommodate the payment of support obligations.” *Dep't of Revenue v. Jackson*, 846 So. 2d 486, 494 (Fla. 2003).

“If the court grants the motion for contempt, the court may impose appropriate sanctions to obtain compliance with the order including incarceration, attorneys’ fees, suit money and costs, compensatory or coercive fines, and any other coercive sanction or relief permitted by law.”²⁰

Civil and Criminal Contempt Incarceration

Civil and criminal contempt hearings for failure to pay support both can result in incarceration of an obligor, but their purposes are different:

[T]he purpose of a *civil* contempt proceeding is to obtain *compliance* on the part of a person subject to an order of the court. Because incarceration is utilized solely to obtain compliance, it must be used only when the contemnor has the ability to comply. This ability to comply is the contemnor’s “key to his cell.” The purpose of *criminal* contempt, on the other hand, is to *punish*. Criminal contempt proceedings are utilized to vindicate the authority of the court or to punish for an intentional violation of an order of the court.²¹

Incarceration for civil contempt can only be imposed if the court makes a finding that the obligor has the “ability to purge himself of contempt.” The “ability” exists if the obligor is earning a paycheck or if he or she has other assets available to him or her that could be used to pay the support.²²

In imposing incarceration for contempt, the court does not necessarily have to order the obligor to work release or home confinement. However, “work release is often used as a child support enforcement tool.”²³

Work Release

Work release allows certain inmates to work at paid employment in the community during confinement. They must return to the custody of the Department of Corrections or the county facility at the end of each work period.²⁴ The inmate is required to set up a plan for the disbursement of his or her earnings, and such plan must include a provision that “no less than 10% of net income will go toward the support of any dependents the inmate may have.”²⁵

²⁰ Fla. Fam. L. R. P. 12.615(d)(2). “Once the court finds that a civil contempt has occurred, it must determine what alternatives are appropriate to obtain compliance with the court order.” *Bowen v. Bowen*, 471 So. 2d 1274, 1279 (Fla. 1985).

²¹ *Bowen v. Bowen*, 471 So. 2d 1274, 1277 (Fla. 1985) (citations omitted) (emphasis in original). “Civil contempt protects the rights of a petitioner by compelling the responding party to obey a previously issued court order. Criminal contempt, on the other hand, is punitive in nature, and is used by a court to punish persons who show disrespect to the court or who intentionally violate a court order.” 4-70 Florida Family Law § 70.24 (Civil Contempt) (citations omitted).

²² The court is “not limited to the amount of cash immediately available to the contemnor; rather, the court may look to all assets from which the amount might be obtained.” *Bowen v. Bowen*, 471 So. 2d 1274, 1279 (Fla. 1985).

²³ *Bergen County Bd. of Services v. Steinhauer*, 294 N.J. Super. 507, 516 (Ch. Div. 1996).

²⁴ Sections 945.091(1)(b) and 951.24, F.S. See Department of Corrections, *Frequently Asked Questions Regarding Work Release*, available at <http://www.dc.state.fl.us/oth/inmates/wr.html> (last visited March 1, 2017).

²⁵ Rule 33-601.602(11)(c) and (j), F.A.C. (Community Release Programs). Section 945.091(3), F.S., allows the Department of Corrections to adopt rules related to the disbursement of earnings of inmates.

Additionally, under county programs, wages or salary earned can be paid by the sheriff for support pursuant to a court order.²⁶

Home Confinement

Home confinement, or community control, is “a form of intensive, supervised custody in the community, including surveillance on weekends and holidays.”²⁷ It is an individualized program where the offender’s freedom is restricted within the community, home, or noninstitutional residential placement. The court determines the specific sanctions, such as electronic monitoring, imposed on the offender. Home confinement allows an offender to work while serving his or her sentence.²⁸

Florida Taxes

The Florida Constitution permits the state to levy a tax pursuant to law, and the local governments to levy ad valorem taxes and any other tax that is provided by law.²⁹ The Legislature has enacted numerous taxes and fees and has granted the local governments authority to raise revenues for specific purposes. The Florida Revenue Estimating Conference maintains the Florida Tax Handbook, which provides information about these various revenue sources.³⁰ The Legislature has also enacted numerous laws that provide for exemptions and credits to the revenue sources.³¹

The DOR is responsible for tax collection and enforcement and audits related to such taxes collected.³² Some tax credits are administered by the DOR, while others are administered by another agency. For example, the Department of Economic Opportunity (DEO) administers the rural job tax credit; the DEO accepts applications for the tax credit, reviews the application to determine if it meets the requirements and criteria for the tax credit, and then notifies the DOR of approved applicants. The DOR ensures that anyone claiming the credit on a tax return is eligible to take the credit. The statute for the rural job tax credit sets forth specific criteria, such as eligible applicants and tax credit award amounts.³³

III. Effect of Proposed Changes:

Loss of Driver License for Failure to Pay Support (Section 2)

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,

²⁶ Section 951.24(3)(a), F.S.

²⁷ Section 948.001(3), F.S.

²⁸ *Id.* Sections 948.01 and 948.11, F.S.

²⁹ Article VII, s. 1, Fla. Const.

³⁰ Florida Revenue Estimating Conference, *2016 Florida Tax Handbook*, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2016.pdf> (last visited March 1, 2017).

³¹ *See generally id.*

³² Section 20.21(2)(c) and (d), F.S.

³³ Section 288.098, F.S.

F.S., to add additional ways for an obligor to stop suspension of his or her license to include demonstration that he or she:

- Is unable to pay support due to an act of God.
- Is unable to pay support due to a medical emergency involving him or her.
- Is unable to pay support due to sudden involuntary unemployment beyond his or her control.
- Has been ordered by the court to be placed in a work release program or under supervised home confinement without electronic monitoring for failure to pay support.³⁴

The obligor must provide applicable documentation to the DOR of such circumstances before the expiration of the 20-day notice period in order to avoid suspension of his or her driver license.

Contempt Orders (Section 3)

The bill amends s. 61.14(5)(a), F.S., to require a court to find that an obligor is *not* in contempt for failure to pay support if he or she demonstrates inability to pay *child* support due to:

- An act of God.³⁵
- A medical emergency involving him or her.³⁶
- Sudden involuntary unemployment beyond his or her control.

The bill then allows a court to order an obligor who the court finds has demonstrated one of the above failures to pay *child* support to work release or supervised home confinement without electronic monitoring.³⁷

Tax Credits (Section 4)

The bill requires the DEO to develop and administer a program to provide tax credits to business entities that employ obligors ordered to be placed in work release programs or supervised home confinement without electronic monitoring. The bill requires the DEO to adopt rules to implement such a program. See Section IV. Constitutional Issues below.

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not specify the amount of tax credits allowed or the taxes against which a credit is allowed. Therefore, the impact on local revenues is unknown. It is unclear if the bill would be a mandate or not.

³⁴ It is unclear if the person has to be in the work release program or under supervised home confinement at the time of delinquency or just ordered to be placed in such programs.

³⁵ While undefined in the bill, other statutes define “act of God” as “an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.” See ss. 376.16, 376.308, 377.371, and 403.727, F.S.

³⁶ It is unclear if “involving” means that the obligor was the person with the medical emergency or if he or she was “involved” in an emergency, even if he or she was not the injured, sick, etc., person.

³⁷ The bill refers specifically to *child* support. See footnote 1.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:**Contempt Orders (Section 3)**

Under current law, a court can order an obligor to be incarcerated after being found in contempt for failure to pay support. In section 3, the bill appears to allow a court to also order an obligor to be incarcerated after being found not in contempt for failure to pay support for specified reasons. The court must find that the obligor failed to pay support for the specified reason. Allowing a court to order incarceration (even if it is work release or supervised home confinement without electronic monitoring) without a finding of contempt or violation of criminal law may violate the obligor's right not to be imprisoned for a debt under Art. I, s. 11 of the Florida Constitution and due process rights under the U.S. Constitution.³⁸

Tax Credits (Section 4)

Section 4 of the bill directs the DEO to develop and administer a tax credit program for businesses that employ individuals ordered to work release or home confinement without electronic monitoring as part of a civil contempt order. The bill gives the DEO unbridled discretion in developing and administering the program. As such, this provision may be found to be unconstitutional under Art. II, s. 3 of the Florida Constitution.³⁹

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

The fiscal impact is indeterminate. The bill does not specify the amount of tax credits allowed or the taxes against which a credit is allowed. Therefore, the impact on state and local revenues is unknown.

B. Private Sector Impact:

An obligator who fails to pay child support and is able to show the circumstances provided in the bill will benefit by not being held in contempt and will be able to retain

³⁸ Article 1, s. 11, Fla. Const. *See* 26 Fla. Jur. Family Law s. 1345; 11 Fla. Jur. Contempt s. 58; 10A Fla. Jur. Constitutional Law s. 347; and *Gregory v. Rice*, 727 So. 2d 251, 256 (Fla. 1999) (Incarceration to obtain compliance with a court order may indeed be warranted when a contemnor has the ability to comply with the order and willfully refuses to do so, but incarceration for the simple failure to pay a debt is clearly prohibited.).

³⁹ "Under this doctrine [of nondelegation of legislative power] fundamental and primary policy decisions shall be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program." *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1978). *See also Fla. Dep't of State v. Martin*, 916 So. 2d 763, (Fla. 2005).

his or her driver license. However, the obligator may be ordered to work release or home confinement without electronic monitoring.

C. Government Sector Impact:

The DOR indicates that the bill will have an insignificant fiscal impact on department expenditures.

The fiscal impact on the DEO is indeterminate to develop and administer the tax credit program required by the bill.

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the DEO to adopt rules to develop and administer a program to provide tax credits to business entities that employ obligors ordered to be placed in work release programs or supervised home confinement without electronic monitoring.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.13016 and 61.14.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.