

**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 Appropriations

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BILL: CS/SB 590

INTRODUCER: Judiciary Committee and Senator Brandes and others

SUBJECT: Child Support and Parenting Time Plans

DATE: April 24, 2017

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2. <u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
3. <u>Blizzard</u>	<u>Betta</u>	<u>AGG</u>	<b>Recommend: Fav/CS</b>
4. <u>Blizzard</u>	<u>Hansen</u>	<u>AP</u>	<b>Pre-meeting</b>

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 590 authorizes the Department of Revenue (department) to establish parenting time plans agreed to by both parents in Title IV-D child support actions. The department will be required to provide parents Title IV-D Parenting Time Plans with a proposed administrative support order. The bill also creates a standard Title IV-D Parenting Time Plan that may be used by parents. In the event the parents cannot agree on a parenting time plan, they will be referred to the circuit court for the establishment of a plan. In these instances, parents will not pay a fee to file a petition to determine a parenting time plan.

The bill has a significant impact on the Department of Revenue and includes an appropriation of \$531,376 from the General Revenue Fund to carry out the provisions in the bill. The bill has an indeterminate impact on the workload of the state court system. See Section V.

The bill takes effect January 1, 2018.

**II. Present Situation:**

Chapter 61, F.S., addresses the issues of dissolution of marriage, child support, and parenting time plans. In a dissolution of marriage, matters relating to the marriage are settled as part of the judicial proceeding or through the adoption of a marital settlement agreement. If the parties to

the dissolution cannot agree then the circuit court has the jurisdiction to resolve outstanding issues.

The Legislature designated the Department of Revenue (department) as the state agency responsible for the administration of the child support enforcement program, Title IV-D of the Social Security Act, 42 USC. ss. 651 et seq.<sup>1</sup> As the state Title IV-D agency, the department has the authority to take actions to carry out the public policy of ensuring children are maintained from the resources of their parents to the extent possible. The department's authority includes, but is not limited to, the establishment of paternity or support obligations, as well as modifications, enforcement, and collection of support obligations.<sup>2</sup> According to the department's website, as of federal fiscal year 2014, the department collected \$1.57 billion in child support whereby 98 percent went to the families. The remaining 2 percent reimbursed public assistance dollars. Additionally, \$1.02 billion in child support was collected through income withholding from the parent's paycheck. For every dollar spent the child support program collects \$5.75<sup>3</sup>.

The Title IV-D program plays a critical role in assuring that parents who live apart from their children meet their financial obligations.<sup>4</sup> Child well-being is improved by positive and consistent emotional and financial support from both parents.<sup>5</sup> Engaged fathering significantly enhances children's social, cognitive, and academic behavior in a positive manner.<sup>6</sup>

There is no systematic, efficient mechanism for families to establish parenting time agreements for children whose parents were not married at the time of their birth.<sup>7</sup> While divorcing parents often establish parenting time agreements as part of the divorce proceedings in circuit court, child support systems require unmarried parents to participate in multiple, often overlapping, legal proceedings in order to resolve issues of child support and parenting time.<sup>8</sup> Addressing both the calculation of child support and the amount of parenting time as part of the same process increases efficiency and reduces the burdens on parents of being involved in multiple administrative or judicial processes. A structured, formal approach to parenting time helps both parents manage their co-parenting relationship and reduce conflict, ambiguity, unpredictability about parenting time arrangements, and may increase child support compliance.<sup>9</sup>

A handful of states or jurisdictions (Michigan, Texas, Orange County, California, Hennepin County, Minnesota) have child support initiatives that incorporate parenting time agreements into initial child support orders, many focusing on parenting agreements where the parents

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<sup>1</sup> s. 409.2557(1), F.S.

<sup>2</sup> section 409.2557(2), F.S.

<sup>3</sup> Florida Department of Revenue, Child Support Enforcement website, *available at* <http://floridarevenue.com/dor/childsupport/pdf/cs1001x.pdf> and last visited March 1, 2017.

<sup>4</sup> U.S. Department of Health and Human Services, Administration for Children & Families, *Promoting Child Well-Being & Family Self-Sufficiency, Child Support and Parenting Time: Improving Coordination to Benefit Children*, Child Support Fact Sheet Series, Number 13, on file with the Senate Committee on Children, Families & Elder Affairs.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at page 2.

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

already agree on the division of time.<sup>10</sup> Texas is the most standardized, statewide program incorporating parenting time agreements into child support orders.<sup>11</sup> The Texas Family Code requires that a final order that stems from a suit affecting a parent-child relationship must include a parenting plan.<sup>12</sup> Unlike other states, Texas provides a statutory “standard possession order” that is presumed to provide a noncustodial parent with reasonable minimum time with his or her child and to be in the best interest of the child.<sup>13</sup>

In 1989, the Texas Legislature moved forward with not only the required child support guidelines as required by the federal government, but also with statutory presumptive visitation guidelines in the form of a standard order.<sup>14</sup> If there is a history of domestic violence or sexual abuse, the standard possession order may be inapplicable. The court must consider the commission of family violence or sexual abuse in determining whether to deny, restrict, or limit the possession of a child by a noncustodial parent.<sup>15</sup>

In the initial creation of the Title IV-D program, the United States Congress provided financial subsidies for the operation of state Title IV-D programs through financial incentives based on support collections. Because the activities that are eligible for federal funding are limited to those required to establish paternity, establish and enforce child support obligations, collect and distribute payment, and locate absent parents, most states have taken the position that child support orders obtained or issued by IV-D programs not include provisions regarding parenting time, at the risk of jeopardizing federal funding for their programs.<sup>16</sup>

Texas has managed to include parenting plans in its support order for the last 30 years by maintaining that the cost of establishing a visitation order, coinciding with the establishment of paternity and/or a support obligation is a reasonable and minimal expense that must be incurred as part of the support order establishment process. Texas has argued that its success is based on:

- The existence in Texas law of the standard possession order,
- Simple child support guidelines,
- Agency policies and practices with dealing with cases where any dispute regarding parenting time, and
- The agency’s successful public educational and outreach activities.<sup>17</sup>

The Texas Office of Attorney General (the Title IV-D agency in Texas) has adopted policies and practices to make the visitation order establishment process highly efficient. The agency is not involved in the resolution of any disputed possession issue between the parties. Disputed cases are referred to the appropriate trial court for a final resolution of visitation disputes.<sup>18</sup> However,

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at page 3.

<sup>12</sup> Alicia G. Key, *Parenting Time in Texas Child Support Cases*, Family Court Review, Vol 53 No. 2, April 2015 258-266, on file with the Senate Committee on Children, Families & Elder Affairs.

<sup>13</sup> See Tex. Fam. Code Section 153.252 (West 2013).

<sup>14</sup> Key, *supra* note 4, at 111.

<sup>15</sup> Key, *supra* at 261.

<sup>16</sup> See 45 C.F.R., Section 304.20(b) (1982).

<sup>17</sup> Key, *supra* at 263.

<sup>18</sup> See Tex. Fam. Code Section 201.007(b)

the parties do not need to file additional pleadings or incur additional expense at the second hearing for a decision on the visitation issues that may be in dispute.<sup>19</sup>

In s. 409.2563, F.S., the legislative intent is clear that the jurisdiction of the circuit courts to hear and determine issues regarding child support were not limited. The intent was to provide the department with an alternative procedure to establish child support obligations in Title IV-D cases in a fair and expeditious manner when there is no court order of support.<sup>20</sup> The Legislature did not grant the department the jurisdiction to hear or determine issues of dissolution of marriage, separation, alimony or spousal support, termination of parental rights, dependency, disputed paternity except as otherwise provided in statute, or award of or change of time-sharing.<sup>21</sup> In Title IV-D cases, if parents want to establish a shared parenting time schedule that is enforceable by the courts, they have to file a separate cause of action in the circuit court.

### III. Effect of Proposed Changes:

**Section 1** amends s. 409.2551, F.S., to provide that it is the public policy of the state to encourage frequent contact between child and each parent and that there is no presumption against the father or mother or for or against any specific time-sharing schedule when a parenting time plan is created.

**Section 2** amends s. 409.2554, F.S., to provide definitions for “State Case Registry,” “State Disbursement Unit,” and “Title IV-D Standard Parenting Time Plans.”

**Section 3** amends s. 409.2557, F.S., to provide the department the authority to establish Title IV-D Standard Parenting Time Plans or any other parenting time plan agreed to by the parents.

**Section 4** amends s. 409.2563, F.S., to allow the department to establish parenting time plans only if the parents are in agreement. This section also provides that, if the parents do not have a parenting time plan and do not agree to a Title IV-D Standard Parenting Time Plan, a time plan will not be included in the initial administrative order setting child support. A statement explaining the absence of the parenting time plan will be included with the initial administrative order setting child support.

Any notifications by the department to parents will not include a Title IV-D Standard Parenting Time Plan if Florida is not the child’s home state, one parent does not reside in Florida, either parent has requested nondisclosure for fear of harm from the other parent, or the parent who owes child support is incarcerated.

The bill also provides that if both parents have agreed to a parenting time plan before the administrative support order is established, the plan will be incorporated into the administrative support order. However, the department does not have the jurisdiction to enforce any parenting time plan that is incorporated into an administrative support order. When the department provides notice of proceeding to establish an administrative support order it must include a copy of the Title IV-D Standard Parenting Time Plans. Copies of proposed administrative support

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<sup>19</sup> Key, *supra* at 263.

<sup>20</sup> section 409.2568(2)(a), F.S.

<sup>21</sup> section 409.2568(2)(b), F.S.

orders provided to parents will include a copy of the Title IV-D Standard Parenting Time Plan, along with other required documents. If a hearing is held, an administrative support order will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents.

**Section 5** creates s. 409.25633, F.S., to provide that a Title IV-D Standard Parenting Time Plan must be included in any administrative action to establish child support taken by the department if the parents agree to the plan. If there is no agreement as to a parenting time plan, then the department must enter an administrative order for child support and refer the parents to a court of appropriate jurisdiction to establish a parenting time plan. The department must also provide information to the parents on the process to establish such plan.

This section also creates a Title IV-D Standard Parenting Time Plan for a parent that owes child support and the parents live within 100 miles of each other and the child is three years of age or older, and for a parent that owes child support and the parents live more than 100 miles of each other and the child is three years of age or older. For children under the age of three, the parents may agree on a time plan that includes more frequent visitation with shorter timeframes, gradually leading into overnight visits. The Title IV-D Standard Parenting Time Plans are not intended for use by parents and families with domestic or family violence concerns.

The department is directed to create and provide a form for a petition to establish a parenting time plan for parents who have not agreed to a parenting schedule at the time of the child support hearing. The department will provide the form to the parents but will not file the petition or represent either parent at a hearing to establish parenting time. The parents will not be required to pay a fee to file the petition to establish a parenting time plan.

**Section 6** amends s. 409.2564, F.S., to provide that when the department institutes an action to secure the payment of current support or any arrearage that may have accrued under an existing order of support, and a parenting time plan was not incorporated into the existing order of support and is appropriate, the department will include either an agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan.

**Section 7** amends s. 409.256, F.S., to correct cross-references.

**Section 8** amends s. 409.2572, F.S., to correct cross-references.

**Section 9** provides an appropriation to the Department of Revenue of \$419,520 in nonrecurring general revenue and \$111,856 in recurring general revenue for the 2017-2018 fiscal year to implement the provisions in the bill.

**Section 10** provides an effective date of January 1, 2018.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

This bill provides what appears to be a simple and cost-effective means of determining parenting time plans to separated or never-married parents who generally have a low income. If the parents can agree on the standard parenting time plan or another parenting time plan, they will not need to proceed in circuit court and incur the related costs to acquire a parenting time order.

**C. Government Sector Impact:**

The Department of Revenue (department) estimates the costs to implement the provisions of the bill to be \$1,041,126 in general revenue funding.<sup>22</sup> Of that amount, \$690,650 in nonrecurring general revenue will be required to update the department's Child Support Automated Management System to meet new requirements, and \$350,476 in recurring general revenue is needed to develop and deploy new forms, notices, procedures, and training.

Currently, the bill includes an appropriation to the department of \$531,376 in general revenue. The department indicates the amount appropriated is not sufficient to carry out the requirements in the bill.

The impact on the workload of the state court system is indeterminate but is expected to be insignificant. The bill waives the filing fee for parents who go through the Title IV-D

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<sup>22</sup> *Department of Revenue Legislative Bill Analysis for SB 590*, April 6, 2016 (on file with Appropriations Subcommittee on General Government).

administrative action but cannot agree on a parenting time plan, and who then proceed in circuit court. Currently, the parent who files an action in circuit court presumably must pay the filing fee. However, the number of these cases currently filed each year, as well as the number that will be filed under the bill, is unknown.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 409.2551, 409.2554, 409.2557, 409.2563, 409.2564, 409.256, and 409.2572.

This bill creates section 409.25633 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

**CS by Judiciary on March 28, 2017:**

Clarifies that the parents in a Title IV-D action to determine paternity or to establish or modify child support must be presented with a Title IV-D Standard Parenting Time Plan, and that the standard plan or another parenting time plan must be incorporated in the administrative order resulting from the action if the parents agree to one of the plans.

**B. Amendments:**

None.