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LEGISLATIVE ACTION

Senate

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House

The Committee on Children, Families, and Elder Affairs
(Campbell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 47 - 112

and insert:

3. An order requiring a parent to make child support payments must be suspended in accordance with s. 61.31 while the obligor is involuntarily unemployed as a result of his or her incarceration for more than 1 year. The suspension must continue for at least 30 days after such parent is released from incarceration.



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11 Section 2. Paragraph (a) of subsection (1) and paragraph
12 (a) of subsection (5) of section 61.14, Florida Statutes, are
13 amended to read:

14 61.14 Enforcement and modification of support, maintenance,
15 or alimony agreements or orders.—

16 (1) (a) When the parties enter into an agreement for
17 payments for, or instead of, support, maintenance, or alimony,
18 whether in connection with a proceeding for dissolution or
19 separate maintenance or with any voluntary property settlement,
20 or when a party is required by court order to make any payments,
21 and the circumstances or the financial ability of either party
22 changes or the child who is a beneficiary of an agreement or
23 court order as described herein reaches majority after the
24 execution of the agreement or the rendition of the order, either
25 party may apply to the circuit court of the circuit in which the
26 parties, or either of them, resided at the date of the execution
27 of the agreement or reside at the date of the application, or in
28 which the agreement was executed or in which the order was
29 rendered, for an order decreasing or increasing the amount of
30 support, maintenance, or alimony, and the court has jurisdiction
31 to make orders as equity requires, with due regard to the
32 changed circumstances or the financial ability of the parties or
33 the child, decreasing, increasing, or confirming the amount of
34 separate support, maintenance, or alimony provided for in the
35 agreement or order. A finding that medical insurance is
36 reasonably available or the child support guidelines schedule in
37 s. 61.30 may constitute changed circumstances. The court shall
38 suspend an order requiring a parent to make child support
39 payments while that parent is involuntarily unemployed as a



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40 result of his or her incarceration for more than 1 year. The
41 suspension must continue for at least 30 days after the parent
42 is released from incarceration. Except as otherwise provided in
43 s. 61.30(11)(c), the court may modify an order of support,
44 maintenance, or alimony by increasing or decreasing the support,
45 maintenance, or alimony retroactively to the date of the filing
46 of the action or supplemental action for modification as equity
47 requires, giving due regard to the changed circumstances or the
48 financial ability of the parties or the child.

49 (5)(a) When a court of competent jurisdiction enters an
50 order for the payment of alimony or child support or both, the
51 court shall make a finding of the obligor's imputed or actual
52 present ability to comply with the order. If the obligor
53 subsequently fails to pay alimony or support and a contempt
54 hearing is held, the original order of the court creates a
55 presumption that the obligor has the present ability to pay the
56 alimony or support and to purge himself or herself from the
57 contempt. At the contempt hearing, the obligor shall have the
58 burden of proof to show that he or she lacks the ability to
59 purge himself or herself from the contempt. This presumption is
60 adopted as a presumption under s. 90.302(2) to implement the
61 public policy of this state that children shall be maintained
62 from the resources of their parents and as provided for in s.
63 409.2551, and that spouses be maintained as provided for in s.
64 61.08. The court shall state in its order the reasons for
65 granting or denying the contempt. The court shall deny the
66 contempt if the obligor failed to make child support payments
67 while he or she was involuntarily unemployed as a result of his
68 or her incarceration lasting longer than 1 year or during the 30



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69 days after the obligor was released from incarceration.

70 Section 3. Section 61.31, Florida Statutes, is created to
71 read:

72 61.31 Suspension of order of child support during
73 incarceration.-

74 (1) As used in this section, the term:

75 (a) "Incarcerated" includes, but is not limited to,
76 involuntary confinement in a state prison.

77 (b) "Suspend" means to set to \$0, by operation of law
78 pursuant to this section, the payment due on the current child
79 support order, an arrears payment on a preexisting arrears
80 balance, or interest on arrears created during a qualifying
81 period of incarceration for the period during which the obligor
82 is incarcerated.

83 (2) An order for support of a child shall be suspended for
84 any period exceeding 1 calendar year during which the person
85 ordered to pay support is incarcerated, unless one of the
86 following conditions exists:

87 (a) The obligor has the means to make child support
88 payments during his or her incarceration.

89 (b) The obligor is incarcerated for an offense constituting
90 domestic violence against the obligee parent or supported child,
91 or for an offense that could be enjoined by a protective order,
92 or as a result of his or her failure to comply with a court
93 order to pay child support.

94 (3) The Department of Corrections shall provide monthly to
95 the state courts a file that contains information on individuals
96 who are identified as having a child support obligation during
97 the intake process of the state prison system. A court, or the



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98 department in a Title IV-D case, must suspend the child support
99 obligation during the period of incarceration.

100 (4) A child support payment that has been suspended under
101 this section will resume on the first day of the first full
102 month after the release of the obligor in the amount previously
103 ordered.

104 (5) The court or the department, as appropriate, shall
105 notify the obligee of the suspension of child support payments
106 during the period of incarceration.

107 (6) If a child support order has not been entered before a
108 parent's incarceration, a court or the department may establish
109 paternity of a child with an incarcerated parent but may not
110 enter an order of child support until the obligor is released
111 from the state prison system.

112 (7) This section does not preclude a parent from seeking a
113 modification of the child support order.

114 (8) The department may adopt rules to implement and
115 administer this section.

116 Section 4. Present subsection (13) of section 409.2564,
117 Florida Statutes, is redesignated as subsection (14), and new
118 subsection (13) is added to that section, to read:

119 409.2564 Actions for support.—

120 (13) In cases in which the obligor is involuntarily
121 unemployed as a result of his or her incarceration for more than
122 1 year, the department must act in accordance with s. 61.31. The
123 department may, upon written notice of the proposed adjustment
124 to the obligor and obligee, administratively adjust account
125 balances for a child support order suspended pursuant to this
126 section if all of the following occur:



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127 (a) The agency verifies that arrears and interest have
128 accrued in violation of this section.

129 (b) The agency verifies that the conditions set forth in s.
130 61.31(2) do not exist.

131 (c) The obligor and obligee do not object within 30 days of
132 receipt of the notice of the proposed adjustment to the
133 administrative adjustment by the department.

134 Section 5. This act shall take effect January 1, 2018.

135
136 ===== T I T L E A M E N D M E N T =====

137 And the title is amended as follows:

138 Delete line 8

139 and insert:

140 certain circumstances; creating s. 61.31, F.S.;

141 defining terms; providing that an order for support of

142 a child must be suspended under certain circumstances;

143 providing exceptions; requiring the Department of

144 Corrections to submit a monthly file to the state

145 courts that identifies individuals that have child

146 support obligations; requiring a court or the

147 Department of Revenue to suspend the child support

148 obligation for a specified period; requiring the

149 notify the Department of Revenue to notify the obligee

150 of the suspension of support payments due to the

151 incarceration of the obligor; providing that a court

152 or the department may establish paternity for a child

153 with an incarcerated parent; providing that a court or

154 the department may not establish a child support

155 payment obligation for an incarcerated parent;



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156 amending s. 409.2564, F.S.; providing that s. 61.31,
157 F.S. applies in Title IV-D cases; authorizing the
158 department to administratively adjust account balances
159 for a child support order under certain circumstances;
160 providing an effective date.