

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 907

Spousal and Child Support

SPONSOR(S): Flores

TIED BILLS: None

IDEN./SIM. BILLS: SB 2246

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		Bond	De La Paz
2)	Health Care Services Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

This bill makes a number of changes to laws on child support and alimony. Significantly, this bill:

- Requires child support awards to end upon majority and, where appropriate, to account for revised child support guidelines based on remaining children owed support.
- Changes the standard for determining the amount of a child support award in cases where parents have a high income.
- Creates a rebuttable presumption that a person can earn minimum wage, and provides additional criteria for the establishment of an imputed income amount.
- Amends the child support formula to account for income tax consequences of children and their financial support.
- Allows a court to consider a situation where a child support award requires a parent to pay an amount that would lead to the parent falling below the poverty line.
- Reduces the 40% time-sharing threshold for a child support award adjustment based on time-sharing to 20%.
- Provides for the application of a partial payment of alimony similar to how partial payment of child support is applied.

This bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Termination of Child Support at Majority

In general, child support ends as the child reaches the age of majority, that is, upon the child reaching 18 years of age. However, s. 743.07(2), F.S., provides that a child support obligation may be extended beyond the 18th birthday in two different circumstances:

- If the child will continue to be dependent upon his or her parents for support beyond his or her 18th birthday because of a physical or mental incapacity that existed prior to the child turning 18.
- If the child is still in high school, performing in good faith and with a reasonable expectation of graduation before the age of 19.

An order establishing child support is a continuing obligation owed by the parent paying support. Many parents paying and receiving child support are surprised to learn that the child support obligation does not automatically end by operation of law. Instead, the parties must obtain a court order modifying the support obligation when a child reaches the age at which support should end. Where one child reaches the age of majority, the parties must return to court and re-litigate child support based on then-current incomes and the number of children remaining to whom child support applies. Obviously, couples often have two or more children of differing ages. One appellate court explained:

It is well established that a trial court may, in its discretion, award lump sum support for two or more children, rather than award a separate amount of support for each child, and that the parent paying such unallocated support "has the duty to petition the court to reduce the amount when one child attains majority." *State v. Segrera*, 661 So.2d 922, 923 (Fla. 3d DCA 1995); *Hammond v. Hammond*, 492 So.2d 837, 838 (Fla. 5th DCA 1986) (confirming that a trial court may award lump sum child support for several children and when it does so, the payor parent must "petition for an order reducing the amount when one child attains majority"). It is equally well settled that because support obligations become the vested rights of the payee and vested obligations of the payor at the time the payments are due, child support payments are not subject to retroactive modification.¹

¹ *State, Dept. of Revenue ex rel. Ortega v. Ortega*, 948 So.2d 855 (Fla.3rd DCA 2007).

This bill amends s. 61.13(1)(a), F.S., to provide that child support orders and income deduction orders entered on or after October 1, 2010, must account for the anticipated time at which the child support obligations related to dependent children should terminate. A child support award must change the support obligation at those times to account for the reduced obligation of the one child reaching the age of majority, together with the changed support obligation owed for the remaining child or children, if applicable.

Application of Alimony Payments

Section 61.14(6)(d), F.S., provides that a partial payment of a past due child support obligation is first applied to current child support due, then is applied to delinquent child support due, and then is applied to interest due on the past due payments. There is no corresponding rule regarding how to apply partial payments of alimony.

This bill amends s. 61.14(6)(d), F.S., to add a parallel rule for application of partial payments of an alimony award. This bill also amends ss. 61.14 and 742.08, F.S., to provide that interest due on past due support obligations may be enforced like any other support award, including by contempt, and to provide that interest is not due on the interest.

Child Support Guidelines Formula -- Imputed Income

In general, a court determines support obligations of the parties based on their income and, in the case of child support, the time-sharing arrangement. In some circumstances, the current income of a party does not give an accurate picture of the party's ability and duty to make support payments. Where this occurs, s. 61.30(2)(b), F.S., allows the court to impute income to that party. Imputed income is an estimate of what the party should be earning. The imputed income is then used in determining child support rather than actual income.

This bill amends s. 61.30(2)(b), F.S., related to imputed income. The bill creates a rebuttable presumption that each party can, at a minimum, earn minimum wage on a full-time basis. This presumption can be overcome by proof that the parent has a disability that makes the parent unemployable in part or in whole, that the parent should stay home to care for a child, or that there is some other circumstance other than incarceration that the parent has no control over.

This bill further provides that, for a court to impute income beyond minimum wage, the court must find that the unemployment or underemployment is voluntary and the amount and source of the imputed income, through evidence of income from available employment for which the party is suitably qualified by education, experience, current licensure, or geographic location. Imputed income may not be based on evidence of income over 5 years old. Income may not be imputed at a level that a party has never earned in the past, unless recently degreed, licensed, certified, relicensed, or recertified and thus qualified for. In any determination of imputed income beyond minimum wage, the court must also give due consideration to the parties' time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order.

This bill also amends s. 409.2563, F.S., regarding administrative establishment of child support, to provide that the minimum imputed income of a parent is the Florida minimum wage. If the parent lives in another state, that state's minimum wage applies. If no other state's minimum wage applies, the federal minimum wage applies.

Child Support Guidelines Formula -- Income Calculation

The child support guidelines formula is a formula that calculates the net income of the parents, determines a minimum child support need, and splits that need by the shared parenting plan to

calculate a presumptive child support amount owed by one parent to the other. The court may not award child support that varies from the formula by more than 5% except upon limited circumstances.

This first part of the formula is a determination of each parent's net income by subtracting various expenses from the parent's gross income. The first allowable subtraction from gross income, at s. 61.30(3)(a), F.S., is for income tax liabilities. To properly calculate the subtraction, the court is directed to calculate the appropriate income tax deduction that is expected in the immediate future. The formula does not use current income tax deductions as the case outcome typically affects and changes the income tax liabilities of the parents.²

Income tax laws provide for deductions and tax credits. A deduction reduces the gross income that is used in calculating the income tax, a tax credit is a reduction of taxes owed. Federal income tax law in the past generally prohibited tax credits from creating a negative tax situation where the federal government would owe money back to the taxpayer. That is, these tax credits were nonrefundable, they would generally be lost once a person owed no federal income tax. However, the earned income tax credit, a credit given to the working poor, was refundable under previous tax law. One aspect of the 2009 federal stimulus bill is that several tax credits have moved from nonrefundable to refundable. It is possible that a strict reading of s. 61.30(3)(a), F.S., which simply refers to deductions from income, may not allow the court to account for refundable tax credits when calculating income for child support purposes.

This bill amends s. 61.30(3)(a), F.S., to account for, in the child support formula, personal and dependency exemptions, other applicable deductions, the earned income credit, child and dependent care credits, and other allowable tax credits.

Child Support Guidelines Chart

The middle step of a child support guideline determination is reference to the minimum child support need chart at s. 61.30(6), F.S. The net income of the parents is added together to determine the combined monthly net income amount. The chart has \$50 increments starting at \$650 combined net income. The chart also contains separate columns for between one and six children. If the combined monthly net income is less than the lowest level on the chart, the court is directed to determine child support on a "case-by-case" basis. This bill amends s. 61.30(6), F.S., to eliminate the chart rows for combined monthly income at \$650, \$700, and \$750.

The chart ends at \$10,000 monthly income. Where the combined monthly net income is in excess of \$10,000 a month, the minimum child support need is the \$10,000 a month level plus a percentage of the income above \$10,000. This bill amends s. 61.30(6), F.S., to limit the use of the percentages by providing that the result of the percentage calculation may not be used to determine child support that is beyond the reasonable needs of the child or children.

Credit for Child Care Expense

One part of the child support calculation is the apportionment of child care expenses between the parents. Under current law, the parent actually paying the child care expense is only given credit for 75% of the cost of such day care. This 25% subtraction appears to have been put into law to account for the corresponding federal child care tax credit of 25%; however, higher income parents do not qualify for the full 25% credit rate under current federal tax law (some do not qualify at all) and, because the credit was nonrefundable until the 2009 tax year, lower income parents could not utilize the full 25% credit.

This bill amends ss. 61.30(7) and 61.30(10), F.S., to fully apportion child care expense without a 25% deduction. Note that other parts of this bill change s. 61.30(3)(a), F.S., to require the court to fully

² After divorce, the parents will move from married to either single or head of household. A court may award a dependency deduction to one parent or the other.

account for the effect of tax laws, including the child care tax credit actually applicable to the parties based on their financial circumstances.

Child Support Formula Adjustments

The child support formula is set forth in s. 61.30, F.S. The basic formula is provided in subsections (1) through (10), and other changes to that formula are set forth in portions of the analysis above. In short, the formula uses the adjusted incomes of the parents to develop a minimum child support need based on the chart. The minimum child support need is then increased by child care costs and health insurance costs to establish a total child support need. That total need is then multiplied by a parent's percentage share of the joint income to determine that parent's minimum child support obligation.

Section 61.30(11)(a), F.S., provides a list of factors that a court may take into account in adjusting the amount of child support after application of the base formula. Subparagraph (a)9. provides that the court may adjust child support levels when application of the formula requires a person to pay more than 55 percent of his or her gross income for child support in a single child support order. This bill adds that a court may also take into account a situation where application of the child support guidelines (in total) leaves a parent with a net income less than the current federal poverty guidelines.³

Section 61.30(11)(b), F.S., provides a court must adjust the minimum child support need where a parenting plan provides that each child spend a substantial amount of time with each parent. In short, the adjustment of child support requires a recalculation based on the percentage of overnight stays at each parent's home. Subparagraph 8. defines substantial amount of time to be where one parent has 40% or more of the overnights. This bill amends s. 61.30(11)(b)8., F.S., to change the percentage from 40% to 20%.

Petition for Child Support

Section 61.30(14), F.S., requires that every petition for child support or modification of child support must be accompanied by a financial affidavit. The respondent is likewise required to file a financial affidavit. This bill deletes the statutory requirement for financial affidavits. In that court rules require financial affidavits, this change may have no effect.

Child Support Formula -- Effect of the Dependency Exemption

One item that reduces the federal income tax liability of a person supporting a minor child or children is the dependency deduction. In general, the parent with whom the child resided for more than half of the year is entitled to the deduction unless the court orders that the dependency deduction is to be waived in favor of the other parent. For 2009, a legal dependent reduces the gross income of taxpayers entitled to the dependency deduction by \$3,650. In addition, a dependent child also entitles the taxpayer to a child tax credit of up to \$1,000 for a qualifying parent. The dependency deduction is often a greater benefit to a parent with a higher income as that parent will likely be in a higher income tax bracket, provided that the parent does not earn too much.⁴ Similarly, the child tax credit is worth the same to either party below certain income levels, but is also phased out for higher incomes, in which case it is more beneficial to give the credit to the lower income parent.⁵ Section 61.30(11)(a)8., F.S.,

³ The 2009 federal poverty guideline for a single individual is \$10,830 annually (\$902.50 a month). The 2010 guideline has not been established. See <http://aspe.hhs.gov/POVERTY/09poverty.shtml>.

⁴ A deduction reduces a taxpayer's gross income. The value of a deduction increases as income rises, as the actual benefit is reduced to the effective income tax rate of the taxpayer. For instance, a person in the 15% tax bracket only receives a \$547.50 benefit from a single dependency deduction, whereas a person in the 25% tax bracket receives an \$912.50 benefit. On the other hand, the dependency deduction starts to be phased out at an adjusted gross income of \$125,100 and above.

⁵ For the 2009 tax year, the child tax credit starts phasing out for a head of household having an adjusted gross income in excess of \$75,000. See instructions to 2009 Form 1040, at page 43.

provides that the court may adjust a child support award to account for the impact of the dependency exemption, and may order a parent to waive the deduction to the benefit of the other if the other is current in child support payments.

In the changes to s. 61.30(3), F.S. (detailed above), this bill changes the formula for child support calculation to provide that a court must take into account the tax effect of the dependency tax deduction. This bill deletes s. 61.30(11)(a)8., F.S., and creates s. 61.30(18), F.S., to provide that a court may order a parent to waive the dependency tax deduction in favor of the other parent, and removes the requirement that the other parent be current in child support before the court may order a parent to waive.

B. SECTION DIRECTORY:

Section 1 amends s. 61.13, F.S., regarding child support.

Section 2 amends s. 61.14, F.S., regarding enforcement of support.

Section 3 amends s. 61.30, F.S., regarding child support guidelines.

Section 4 amends s. 409.2563, F.S., regarding administrative establishment of child support.

Section 5 amends s. 742.031, F.S., to amend a cross-reference.

Section 6 amends s. 742.08, F.S., regarding defaults in support payments.

Section 7 provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 1 of the bill may lessen the number of child support modification cases, lowering legal costs to parents and correspondingly lowering fees earned by lawyers and other professionals.

Any bill amending the child support calculations has the potential to affect the payment and receipt of child support awards to many families. The exact impact will differ from family to family. It is expected the change in the definition of "substantial amount of time" from 40% to 20% may increase the number of families in which the child support award is adjusted for time-sharing.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a