

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/CS/SB 160

SPONSOR: Appropriations Committee, Judiciary Committee, Children and Families Committee and Senator Lynn

SUBJECT: Child Support

DATE: April 13, 2004                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Fav/CS
2.	Brown	Lang	JU	Fav/CS
3.			FT	Withdrawn
4.	Blizzard	Hayes	AGG	Fav/CS
5.			AP	Withdrawn: Fav/CS
6.				

**I. Summary:**

Committee Substitute for CS/CS for Senate Bill 160 sets forth the following provisions relating to child support:

- Amends a series of statutes relating to the administrative establishment of child support to recognize administrative support orders, the venue criteria, the process required for a noncustodial parent to request to proceed in circuit court, to reflect the current practice relative to establishing account numbers, and to direct challenges to income deduction orders issued through the administrative process to the Department of Revenue instead of the court;
- Deletes the requirement that the social security numbers of the children be provided on child support orders;
- When there are arrearages, retroactive support, delinquency and costs owed by the payor, provides for continued payment of the full child support obligation after the child emancipates to more quickly repay the arrearages;
- Provides that when a child support order exists for payment of multiple children together, and an obligation ceases against a child, the full obligation continues if there are arrearages or other costs owed.
- Stipulates the process for establishing a depository account for interstate Title IV-D cases;
- Amends the Child Support Enforcement Application and Program Revenue Trust Fund to reflect the current purpose, composition, and function of the trust fund;
- Permits a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury;

- Amends the processing of undistributable collections relative to the noncustodial parent's role in applying such collections to other support cases;
- Provides a procedure for the non-custodial parent to request a circuit court proceeding;
- Revises the conditions under which a mother receiving public assistance is deemed noncooperative relative to child support establishment;
- Amends the process for liquidating securities for the purpose of meeting a past due support obligation;
- Extends the date for OPPAGA to submit an evaluation report on the statewide implementation of administrative processes relating to child support;
- Creates an insurance claim data exchange to provide for the identification of settlement payments on insurance liability claims which can then be applied to child support arrearages in Title IV-D cases, on a permissive basis by the insurance entity, grants immunity to insurers who participate, and provides a monetary threshold;
- Permits the use of private process servers for the initial service of process;
- Expands the business and professional licenses for which the Department of Revenue has authority to seek denial or suspension to include all licenses issued by a state or local government licensing authority;
- Requires the Department of Revenue and Department of Corrections to jointly develop a plan for facilitating improved child support payments from incarcerated noncustodial parents upon their release.

This bill substantially amends sections 61.046, 61.13, 61.1301, 61.14, 61.181, 61.1814, 120.80, 382.013, 382.016, 409.2558, 409.2561, 409.2563, 409.25656, 409.257, 409.2572, 409.259, 409.2598, and 742.10 of the Florida Statutes. It also creates sections 409.25659 and 409.25662 of the Florida Statutes.

This bill is linked to SB 2826, a public records bill.

## II. Present Situation:

### General Background

Federal statutes provide guidance for states in establishing child support enforcement programs. Federal child support enforcement started with the enactment of Title IV-D of the Social Security Act, the Child Support Enforcement Amendments of 1984 and the Family Support Act of 1988. The Social Security Act requires states to establish Title IV-D child support enforcement agencies, serving both recipients and non-recipients of welfare benefits. The Office of Child Support Enforcement is charged with monitoring and assisting the state agencies. Each state is required to establish formulas for calculating child support orders, as guiding, but non-binding authority on the courts. The Family Support Act did create a rebuttable presumption that the formula is correct, however. Federal statutes include a list of penalties to be imposed on state governments for failure to establish child support enforcement programs. Therefore, states are under a considerable incentive to conform to federal mandate.<sup>1</sup>

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<sup>1</sup> Karen Gievers, *Listening to Silenced Voices: Examining Potential Liability of State and Private Agencies for Child Support Enforcement Violations*, 25 Nova L. Rev. 693, 697-700.

### **Administrative Establishment of Child Support Orders**

The 2001 Legislature created a pilot program in Volusia County for the administrative establishment of child support (ch. 2001-158, L.O.F.). The next year, ch. 2002-239, L.O.F., provided for the statewide application and implementation of this administrative child support establishment process. This process, which is set forth in s. 409.2563, F.S., allows the Department of Revenue to establish child support orders administratively, in lieu of a judicial proceeding, for Title IV-D cases when paternity is not an issue. In implementing this administrative child support establishment process statewide, the following inconsistencies between the administrative process and current statutes or other required procedures, as well as potential problems, have been identified by the Department of Revenue:

- The definitions in ch. 61, F.S., do not currently recognize the administrative support orders established by the department, only the orders issued by the courts. However, the provisions of ch. 61, F.S., govern aspects of the establishment of the administrative child support obligation and enforcement of these orders in addition to s. 409.2563, F.S. For example, the administrative support order is required to stipulate the obligation of the non-custodial parent to provide for the health care needs of the child, but the specifics for Title IV-D orders as it relates to providing the required health care is provided for in s. 61.13(1)(b), F.S. In addition, the income deduction orders to be included in the administrative support orders are specifically delineated in s. 61.1301, F.S. Section 409.2561, F.S., regarding the child support obligation created when public assistance is received also only recognizes court orders, not the administrative orders.
- Administrative child support orders are to incorporate an income deduction order pursuant to s. 61.1301, F.S. Separate from the administrative hearing that may be requested by the noncustodial parent to contest the entry of the administrative support order in s. 409.2563, F.S. Section 61.1301(2)(c), F.S., provides the noncustodial parent the opportunity to request a hearing to contest the enforcement of the income deduction order. However, the statute currently only provides for the noncustodial parent to apply to the court for a hearing.
- If a noncustodial parent chooses to proceed in circuit court for the determination of the child support obligation or to address issues concerning child custody or rights of parental contact, s. 409.2563(4)(m), F.S., requires that a waiver of service be sent to the noncustodial parent by regular mail and signed prior to the case being filed in circuit court. However, the rules of civil procedure require that the waiver of service be sent by certified mail and signed after the case is filed in court. The language is also not clear that the department will not provide legal representation for issues that are not eligible for federal financial participation, i.e., issues concerning custody or rights of parental contact.
- The noncustodial parent may request a hearing of the administrative support order proposed by the department. Such hearings are conducted by the Division of Administrative Hearings and governed by ch. 120, F.S., and the Uniform Rules of Procedures, unless stipulated otherwise. Chapter 28-106.207 of the Uniform Rules of Procedures requires that the hearing be held where the non-governmental party affected

by the agency action is located, i.e., most likely interpreted as the noncustodial parent, or the most convenient place for most parties. The venue applied for Title IV-D cases handled through the court system is the judicial circuit where the custodial parent resides. Noncustodial parents may request to use the court system for custody and determination of parental visitation, at which time venue under the administrative process would differ from that of the court process.

### **Income Deduction**

Florida law incorporates the provisions of the federal Consumer Credit Protection Act as relates to income deduction and only provides for a restriction on the amount of income that can be garnished under such an order.<sup>2</sup> As such, the restrictions contained in the Consumer Protection Act do not establish a maximum amount of child support that can be assessed by a court, but only address, and provide a cap for, that which is garnished.<sup>3</sup> The maximum part of the aggregate disposable earning of an individual for any workweek which is allowable through garnishment cannot exceed 60 percent of a person's disposable weekly earnings.<sup>4</sup> The court in *Garcia v. Garcia* ruled an income deduction order requiring an employer to withhold 100 percent of a payor's net pay facially defective, in violation of both statutory authority and the federal Consumer Credit Protection Act.<sup>5</sup>

### **Social Security Numbers of Court Orders**

Section 61.13(10), F.S., requires each party of a child support order to provide his or her social security number, as well as the social security numbers of the minor children. These social security numbers are to be maintained by the depository in a separate attachment in the file and are only to be disclosed to the extent required for the administration of the Title IV-D program. However, s. 61.13(1)(d), F.S., specifically requires that the actual child support orders contain the name, date of birth, and social security number of each of the children who are subjects of the order and, thus, makes the social security number of the minor children public. This provision conflicts with the limited disclosure provided for children's social security numbers in s. 61.13(10), F.S., and treats the children's social security numbers differently from the adult's social security numbers.

The issue of the confidentiality of social security numbers was specifically addressed during the 2002 session with the passage of ch. 2002-256, L.O.F. With this legislation, the Legislature recognized that the social security number can be used to acquire sensitive personal, financial, medical, or familial information and to perpetrate fraud. Social security numbers held by an agency were made confidential and exempt from public disclosure, with certain exceptions.

### **Payment of Arrearages after Emancipation**

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<sup>2</sup> s. 61.30(1)(a), F.S.

<sup>3</sup> Leonard D. Pertnoy, *Post-Judgment Relief in Domestic Relations Cases: Does This Process Ever End*, 25 Am. J. Trial Advoc. 69, 89 (2001).

<sup>4</sup> s. 61.1301(2)(e), F.S.

<sup>5</sup> 560 So.2d 403, 404-405 (Fla. Dist. Ct. App. 1990).

In general, child support is considered to be a court-imposed vested obligation. As such, a custodial parent's right to payment of child support in arrears is vested, and is not subject to retroactive modification. In *Puglia v. Puglia*, 600 So.2d 484 (Fla. Dist. Ct. App. 1992), the court held that a father could not adjust the amount of his arrearage based on the fact that the child had resided with him over time, without court approval and a prior request through a Modification of Child Support Agreement.<sup>6</sup> The court in *Florida v. Segrera* affirmed this ruling, providing that as child support obligations are the vested rights of the payee, modifications can only take effect prospectively.<sup>7</sup> Still, in order to modify the agreement, the burden is on the party requesting a change to show a change in circumstances that is substantive, material, involuntary and permanent in nature.<sup>8</sup>

Regarding a child's emancipation, it is reported by the Department of Revenue that when the last child who is subject to a child support order emancipates and the support obligation includes an amount to be paid toward the arrearage, the payment made by the noncustodial parent is limited to the amount of the existing arrearage payment because their obligation to continue to support the child has ceased. The amount of the arrearage is reported as typically between ten to twenty percent of the monthly obligation. For those noncustodial parents with income deduction orders, s. 61.1301(1)(b)2., F.S., provides that income deduction orders are to direct the employer to withhold an additional twenty percent or more of the monthly amount for the arrearage and other fees and costs owed. Without the obligation to pay the monthly support amount, the noncustodial parent is often able to pay more on the arrearages and repay the arrearages sooner than would be possible with the twenty percent amount. Currently, for Title IV-D cases, the Department of Revenue must seek judicial approval to increase the obligation towards arrearages.

### **Depository Accounts for Interstate Cases**

Interstate child support cases often require the Florida State Disbursement Unit to accept and disburse payments under another state's order (s. 88.3191, F.S.). While many of these support orders from other states have been registered in a Florida court, registration is not required for the support enforcement agency to enforce the support order (s. 88.5071, F.S.). Section 61.181, F.S., requires the clerk of the court to establish a depository for support payments and requires the depository to participate in the State Disbursement Unit which is responsible for the collection and disbursement of support payments. One function resulting from the registering of a case with the court is the directive to establish a depository account for the receipt and disbursement of the support payments. For interstate child support cases that are not registered with a Florida court, it is reported by the Department of Revenue that there is not a clearly stipulated process for establishing the depository accounts which can delay processing the support payment.

### **Child Support Enforcement Application and Program Revenue Trust Fund**

Section 61.1814, F.S., provides for the creation of the Child Support Enforcement Application and Program Revenue Trust Fund. This trust fund is to be used for the deposit of application fees

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<sup>6</sup> *Id at* 485.

<sup>7</sup> 661 So. 2d 922, 923 (Fla. Dist. Ct. App. 1995).

<sup>8</sup> *In re Marriage of Johnson*, 352 So.2d 140, 141 (Fla. Dist. Ct. App. 1977).

of nonpublic assistance applicants for child support enforcement services and for fines imposed both for failure to comply with a subpoena for information necessary to establish, modify, or enforce a child support order pursuant to s. 409.2564(8), F.S., and for failure to respond to a written request for information on the employment compensation and benefits of an employee who has a child support obligation pursuant to s. 409.2578, F.S. The Department of Revenue is responsible for the administration of the fund and reports that additional program income is deposited into this trust fund which is not reflected in the statute. Further, s. 61.1814, F.S., currently does not provide for the disposition of the federal share of the program income, investment authority, the disposition of proceeds of investment activity, the disposition of unencumbered cash at the end of the fiscal year, or the purpose of the trust fund.

The Legislature has articulated statutory criteria governing the establishment of trust funds. Section 215.3207, F.S., requires that statutory language creating a trust fund must, at a minimum, specify the following: the name of the trust fund, the agency or branch of government responsible for the administration of the trust fund, the requirements or purposes that the trust fund is established to meet, and the sources of moneys or receipts to be credited to or deposited in the trust fund.

### **Acknowledgement of Paternity**

Section 742.10, F.S., provides for the methods by which paternity may be established for children born out of wedlock and includes determination and establishment of paternity through an adjudicatory hearing, the execution of a stipulation of paternity or an affidavit acknowledging paternity by both parties that is then filed with the clerk of the court, and the execution of a voluntary notarized acknowledgement of paternity by both parties. A voluntary acknowledgment of paternity may be executed by both the mother and father at the time of birth [s. 382.013(2)(c), F.S.] for inclusion of the father's name on the birth certificate or at a later time to amend the birth certificate to add the father's name (s. 382.016, F.S.). Such acknowledgments of paternity are required to be notarized which has presented barriers to the establishment of paternity, especially at the time of birth. Specifically, it is reported by the Department of Revenue that hospitals and other birth facilities do not always have a notary available at the time the parents are prepared to execute the acknowledgment of paternity and that the parents often do not have the required identification when a document is being notarized, resulting in missed opportunities to establish paternity.

### **Allocation of Undistributable Collections**

Chapter 2001-158, L.O.F., created a framework for processing unidentifiable and undistributable collections in s. 409.2558, F.S. For undistributable collections, the department is directed to establish by rule a method for determining if a collection is undistributable to the final intended recipient. An order of priority for processing undistributable collections is delineated as follows: applying the payment to arrears on the custodial parent's case, applying the payment to any court ordered administrative costs associated with the custodial parent's case, applying the payment to another case with a different custodial parent with the noncustodial parent's permission, refunding the payment to the noncustodial parent, and, finally, if the noncustodial parent cannot be located, transferring the state share to General Revenue and crediting the federal share to the federal government. Based on the options for processing the undistributable funds, a

noncustodial parent could be refunded the undistributable collection when child support in another case is owed by refusing to grant permission to apply the collection to the other case.

### **Public Assistance Recipient Cooperation**

By accepting public assistance, recipients are creating an obligation for the assistance received to be reimbursed by the child support collected (s. 409.2561, F.S.). Individuals receiving public assistance are required in s. 409.2572, F.S., to cooperate with the Department of Revenue, including, but limited to, in identifying the father, establishing paternity, and obtaining support payments. Failure to cooperate as required by s. 409.2572, F.S., results in the recipient being deemed ineligible to receive the public assistance. Section 409.2572(2)(a), F.S., provides that if a mother identifies the possible fathers, asserts these are the only individuals who could be the fathers, and subsequent scientific tests determine that none of the identified fathers are in fact the father, the mother will be deemed noncooperative and will be ineligible to receive public assistance until the father has been identified and scientific tests have not excluded him as the father.

This application of noncooperation has been found by both state and federal courts to be inconsistent with the definition of noncooperation in federal law (*B.K. v. Department of Health and Rehabilitative Services*, 537 So.2d 633, Fla. 1<sup>st</sup> DCA 1989; *Kelly v. Department of Health and Rehabilitative Services*, 596 So.2d 130, Fla. 1<sup>st</sup> DCA 1992; and *Thomas v. Rubin*, 926 F.2d 906, 9<sup>th</sup> Cir. 1991). A recipient's statement under oath affirming her lack of additional information about another possible father establishes cooperation (*Kelly v. Department of Health and Rehabilitative Services*, 596 So.2d 130, Fla. 1<sup>st</sup> DCA 1992).

Section 409.2572, F.S., also references an outdated scientific method for identifying the father. In actual practice, the use of blood samples to confirm paternity has been replaced with the use of DNA samples.

### **Liquidation of Securities Glitch**

Section 409.25656, F.S., provides that when an individual has a support obligation that is subject to enforcement by the Department of Revenue as the state Title IV-D agency, the executive director or his designee may, after the required notice and within the specified time frame, levy upon any credit or personal property, including securities. Those entities in possession or control of such credits or personal property of the obligor are required to either transfer the credits or personal property to the department to be used to pay past due support or to pay to the department the amount owed to the obligor. Chapter 2002-173, L.O.F., amended s. 409.25656, F.S., to provide for a process and directive to security dealers for liquidating securities. The process created for those circumstances in which the value of the securities exceeds the amount of the past due child support, gives the noncustodial parent an opportunity to provide instructions as to which securities to sell. Without such instruction, the securities dealer is directed to liquidate the securities for the amount of the overdue support, less applicable commission and fees. However, as currently worded, the statutory language does not permit the

full amount of both the overdue support and the applicable commission and fees to be liquidated for payment to the department and to the securities dealer.

### **Identification of Insurance Claims**

The authority provided to the department in s. 409.25656, F.S., to levy any credit or personal property for any past due child support owed by an obligor also applies to several other types of assets and funds, such as bank accounts, vehicles, and insurance claim payments. Mechanisms have been established to identify some of these assets and funds when owned by or being provided to an obligor owing past due child support and, in some instances, mechanisms have also been authorized for the transferring of identified funds to the department to be applied to the past due support. For example, s. 409.25657 and s. 409.25658, F.S., provide mechanisms to enable financial institutions and the Department of Banking and Finance to identify obligors with past due child support and either provide the Department of Revenue with information on bank accounts of obligors with overdue amounts or to transfer unclaimed property owed by the obligor to the department. However, current statute does not require insurers to make efforts to identify obligors with past-due support and remit claim payments to the department.

A number of states are participating in the Child Support Lien Network which is a network of child support agencies operating collectively to secure insurance asset information and enforce the collection of past due support. The Child Support Lien Network has developed working arrangements with a number of insurance carriers to exchange data and match cases, which is used to identify obligors with past due support who have filed workers' compensation and personal injury lines of insurance. Florida has participated in this network since July 2002. However, it is reported by the Department of Revenue that a major portion of the insurance carriers in Florida do not have arrangements with the Child Support Lien Network to share data from which to match cases.

### **Service of Process**

When a noncustodial parent is located and the next appropriate action necessary to establish, modify, or enforce an order is to proceed in circuit court, a summons is issued to attempt service of process of the notice of court action. Section 409.257, F.S., requires that the sheriff be used to serve the notice. If the sheriff is unsuccessful, the subsequent summons issued can be sent to either the sheriff or a private process server for service. There are case situations where requesting a private process server for the initial summons may be more efficient. One such example is when the noncustodial parent resides in one county but works in another county.

### **Clerk of Court Filing Fees**

Section 409.259, F.S., sets forth the Department of Revenue's rate of payment to each clerk of the court for filing civil actions or proceedings for child support. Specifically, the clerk is to be reimbursed at the federal financial participation prevailing rate on \$40 for each civil action or proceeding filed for the non-public assistance Title IV-E cases. The department and the clerk are

required to maintain a monthly log of cases eligible for reimbursement. This log is used to determine the number of \$40 filings for which the clerk may be reimbursed. Sections 61.181(1) and 61.1826(2) and (4), F.S., provide for cooperative agreements between the department and each of the clerks of the court for the provision of the various services performed by the clerks in support of child support enforcement. Effective June 30, 2002, the costs for filings were included in these cooperative agreements.

### **Business and Professional License Suspensions**

One of the enforcement mechanisms currently provided to the Department of Revenue is the suspension or denial of certain business or professional licenses, registrations, or certificates. Specifically, s. 409.2598, F.S., authorizes the Department of Revenue to petition the court for the denial or suspension of the licenses, registrations, or certificates of a noncustodial parent who is delinquent in the payment of child support or who fails to respond to an order relating to paternity or support proceedings. Currently, the licenses, registrations, or certificates to which the department's authority to seek denial or suspension applies are as follows: health professions and occupations regulated by ch. 456, F.S., teachers certified under ch. 1012, F.S., fishing and hunting licenses and permits issued under ch. 370, F.S., and ch. 372, F.S., vessel registrations issued under s. 328.42, F.S., the professions regulated pursuant to ch. 455, F.S., and motor vehicle repairer, travel agent, and business salesperson regulated under ch. 559, F.S. Section 409.2598, F.S., authorizes the department to screen applicants for new or renewed licenses, registrations, or certificates. A process for providing notice to noncustodial parents regarding their support delinquency or their failure to comply to orders relative to paternity or child support proceedings and the impending action to deny or suspend a license, registration, or certificate is set forth in this section. This enforcement mechanism is not available to the Department of Revenue until after all other remedies have been exhausted. This provision further set forth circumstances in which it may be inappropriate for the court to deny or suspend a license, registration, or certificate.

### **Incarcerated Noncustodial Parents**

Nationally, there are approximately 1.5 million children who have a parent who is currently incarcerated and 10 million children who had a parent incarcerated at some point in their lives.<sup>9</sup> Noncustodial parents who are incarcerated are usually not meeting their child support obligation during the incarceration. Reintegration issues make reestablishing payments of child support upon release difficult, including inadequate job skills that make becoming economically self-sufficient difficult, the arrearages that have accumulated during the incarceration which seem overwhelming, and the minimal sense of responsibility for the children due to the noncustodial parents' lack of understanding of their rights and obligations and little contact with their children prior to incarceration.<sup>10</sup> A match of case records in Colorado between the Department of Corrections and Division of Child Support Enforcement revealed that approximately 30 percent of the 20,269 inmates and parolees in Colorado were noncustodial parents who had a child

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<sup>9</sup> *Every Door Closed: Facts About Parents with Criminal Records*, Center for Law and Social Policy and Community Legal Services, Inc., No. 1 of 8.

<sup>10</sup> Sachs, Heidi, *Support Services for Incarcerated and Released Noncustodial Parents*, Welfare Information Network Issue Notes, Vol. 4, No. 6, June 2000, pp. 1-2.

support obligation. These inmates represented 4 to 5 percent of Colorado's child support enforcement caseload and 3.8 percent of the child support arrearages totaling over \$53 million in unpaid support.<sup>11</sup> Similar data are not available in Florida. Incarcerated noncustodial parents are obligors whose location is known and, therefore, can be easily targeted for improving payment of child support upon release. Some states, such as Colorado, are starting to initiate efforts to address child support issues that incarcerated noncustodial parents face so they can leave their incarceration prepared and capable of paying child support.

### **III. Effect of Proposed Changes:**

#### **Administrative Establishment of Child Support Orders**

The bill amends a series of statutes to address the inconsistencies identified as it relates to recognizing administrative support orders and potential problems in the process. First, the definition of "support order" in s. 61.046, F.S., is amended to reflect not only orders for support issued by the court but also orders issued by an administrative agency of competent jurisdiction. This definition is applicable throughout ch. 61, F.S., and will, therefore, recognize the administrative support order issued by the Department of Revenue, in addition to the orders issued by the courts. Second, references to court orders of support as it applies to the child support obligation when public assistance is paid in s. 409.2561, F.S., is revised to reflect support orders generically or the establishment of support obligation by either the court or the department as provided for in s. 409.2563, F.S. Third, s. 120.80, F.S., is amended to provide for specific criteria for establishing venue for hearings held by the Division of Administrative Hearings relating to proceedings for administrative support orders. Specifically, hearings held pursuant to s. 409.2563, F.S., are to be held in the judicial circuit where the person receiving the Title IV-D services (i.e., usually the custodial parent) resides or if this person does not live in Florida, the judicial circuit where the noncustodial parent lives. The hearing may be held in another location, if agreed to by the department and respondent. Also, the authority of the administrative law judge to conduct the hearings by telephone or videoconferencing is stipulated. Section 409.263(4), F.S., that delineates the process required for a noncustodial parent to request to proceed in circuit court in lieu of the administrative process, is modified to clarify that the noncustodial parent may request to proceed in circuit court either to determine the support obligation or to address issues of custody or rights of parental contact; to require that the waiver of service be signed after the action is filed in circuit court; to remove the method of serving the waiver and, instead, provide that the referenced documents will be sent in accordance with the Rules of Civil Procedure; and to clarify that the department's participation in hearings in circuit court are limited to issues that are reimbursable under Title IV-D of the Social Security Act. Subsequent to the non-custodial parent's timely filed written request to proceed in circuit court, the administrative proceeding ceases. The current practice of notifying the depository when the administrative support order establishment process is initiated and of the depository assigning an account number at that time is articulated in s. 409.263(8), F.S. Finally, an individual whose support order was issued through the administrative process in s. 409.2563, F.S., and who wishes to contest an income deduction order, pursuant to s. 61.1301, F.S., is directed by the bill to file a

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<sup>11</sup> Pearson, Jessica, and Hardaway, Chris, *Designing Programs for Incarcerated and Paroled Obligors*, Welfare Information Network Expanded Case Study, Vol. 1 No. 1, August 2000, p. 2.

petition with the Department of Revenue for an administrative hearing, in lieu of applying to the court for a hearing.

### **Social Security Numbers on Court Orders**

The requirement that social security numbers be provided for minor children on all child support orders is deleted from s. 61.13(1)(d), F.S. Pursuant to s. 61.13(10), F.S., the social security number will still be obtained but will be maintained as a separate document. This amendment would eliminate the conflict between s. 61.13(1)(d), F.S., and s. 61.13(10), F.S., and provide the same protection to the children's social security numbers as is provided to the adult's social security number.

### **Payment of Arrearages after Emancipation**

The bill establishes in s. 61.14, F.S., the reported practice regarding the termination of the child support obligation when that child emancipates, or more specifically the child reaches the age of 18 years or the disability of non age is removed, unless otherwise ordered by the court or agreed to by the parties. The continued obligation to pay any arrearages, retroactive support, delinquency, or costs owed by the obligor is stipulated. The bill provides that in Title IV-D cases, when the current child support obligation is reduced or terminated due to the emancipation of a child and the obligor owes arrearages, retroactive support, delinquency, or costs, the obligor will be required to pay the support at the same rate that was effective prior to the emancipation until all arrearages, retroactive support, delinquency, and costs are paid in full or the order is modified. Section 61.1301, F.S., is also amended to provide that the full income deduction continues after the emancipation of a child if the Title IV-D noncustodial parent owes any arrearage, retroactive support, delinquency, or costs. This directive is included in the subsection that identifies the content of the income deduction order, the notice of rights to the obligor, the notice to the payor, and as a stated policy for collection of arrearages in Title IV-D cases. The obligor is to be notified of his or her right to request a modification of the income deduction order. The bill specifically stipulates in s. 61.1301, F.S., and s. 61.14, F.S., that this continuation of the pre-emancipation payment amount is a remedy for collection of unpaid support and applies to orders entered before, on, or after July 1, 2004. In cases of child support where multiple children are provided for as a group (rather than individually assessed for purposes of child support), and a child becomes an adult or is emancipated, the child support obligation in full continues if there are arrearages, retroactive support, delinquency and costs owed.

### **Depository Accounts for Interstate Cases**

The bill amends s.61.181, F.S., to stipulate the process for establishing a depository account for the receipt and disbursement of interstate support payments for Title IV-D cases. The department is directed to request the depository to establish an account and provide a copy of the other state's order with the request. The depository is directed to provide the account number to the department within 4 business days of receipt of the request.

### **Child Support Enforcement Application and Program Revenue Trust Fund**

Section 61.1814, F.S., is amended to reflect current purpose, composition, and function of the Child Support Enforcement Application and Program Revenue Trust Fund. Specifically, the bill expands the definition of the trust fund to include all program incomes that are currently being deposited into the trust fund. The program incomes being added are court ordered costs recovered from child support obligors, interest on child support collections, and the portion of the fees permitted to be charged on non Title IV-D cases that are processed by the State Disbursement Unit and that are not retained by the clerks. Each type of program income is required to be accounted for separately. The bill articulates the purpose of the trust fund which is to account for Title IV-D program income and to support the child support enforcement program activities. The department is permitted by the bill to invest the money in the trust fund, retain all interest earnings, and retain any balance in the trust fund at the end of the fiscal year to use for the purpose of the trust fund.

### **Acknowledgement of Paternity**

Sections 382.013, 382.016, and 742.10, F.S., are each amended to permit a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury pursuant to s. 90.525.(2), F.S. With these amendments, a voluntary acknowledgment of paternity is no longer required to be notarized. Instead, a voluntary acknowledgment that is witnessed by two individuals and signed under penalty of perjury is set forth as a form of acknowledgment that is accepted as a valid affidavit for adding the father's name to the birth certificate at the time of birth, for amending the birth certificate after the birth to add the father's name, and for establishing paternity for children born out of wedlock.

### **Allocation of Undistributable Collections**

The options available for processing undistributable collections in s. 409.2558, F.S., are amended to remove the requirement that the noncustodial parent's permission be obtained before applying the undistributable collection to another case where child support is owed. In lieu of obtaining permission, the noncustodial parent is to be provided notice of the impending intention to apply the collection to another case and of the noncustodial parent's right to contest the department's intended actions in court. In order to exert this right to contest, the noncustodial parent must file and serve a petition on the department within 30 days of the mailing of the notice. The bill further provides that if there is more than one other child support case for which the noncustodial parent owes support, the undistributable amount is to be allocated based on the method stipulated in s. 61.1301(4)(c), F.S. Specifically, s. 61.1301(4)(c), F.S., provides that the percentage to be allocated to each family is determined by dividing each support obligation by the total of all support obligations.

### **Public Assistance Recipient Cooperation**

Section 409.2572, F.S., is amended to remove the requirement that a mother is deemed noncooperative and ineligible for public assistance until a subsequent father is identified and confirmed through scientific testing to be the father if the possible fathers initially identified are determined not to be the fathers. The bill recognizes good faith efforts and provides that noncooperation is refusing, but not failing, to identify the father. With these amendments, the mother will be deemed to be cooperative pending the outcome of the scientific testing of the

subsequently named potential father or if she attests to the lack of information regarding the identity of the father of the child. This amendment will conform Florida Statute to federal law and federal and state appellate court case law. Section 409.2572, F.S., is also amended to replace the drawing of blood samples to confirm paternity with the current method of using DNA samples.

### **Liquidation of Securities Glitch**

Section 409.25656, F.S., is amended to allow for the securities which are to be used for the purpose of meeting an obligation of past due support to be liquidated in an amount that is sufficient to cover both the past due support and any applicable commissions and fees.

### **OPPAGA Report**

The deadline for OPPAGA to submit an evaluation report on the statewide implementation of the administrative processes for establishing child support is extended to June 30, 2006.

### **Identification of Insurance Claims**

Section 409.25659, F.S., is created to provide for the identification of claims on liability insurance which can then be applied to child support arrearages in Title IV-D cases. Specifically, s. 409.25659, F.S., directs the Department of Revenue to develop and operate a data match system which would identify noncustodial parents who owe past due child support and also have a claim with an insurer. This system is to be developed in consultation with at least one insurer and is to use automated data exchanges to the extent possible. The bill creates a process for insurers to provide the department with certain information of noncustodial parents whom they identify have a claim. Insurers participate on a voluntary basis. A monetary threshold is established limiting garnishment of liability claims to those cases where bodily injury exceeds \$3,000. Three options are provided by the bill for insurers to comply with this requirement: authorizing the department to obtain the information through an insurance data collection organization with which the insurer participates and submits the required claim data at least monthly; providing data on each claim electronically to the department; or receiving a data file from the department, conducting a data match, and subsequently providing the required information. Insurers that are subject to this section are entities that fall under one of the following categories of insurers: insurers authorized to transact insurance in Florida who are engaged as indemnitors, surety, or contractors in the insurance or annuity business, pursuant to s. 624.03, F.S.; eligible surplus lines insurers as provided for in Part VIII of ch. 626, F.S.; joint underwriters or joint insurers subject to s. 627.311, F.S.; and insurance risk apportionment plans operating pursuant to s. 627.351, F.S. An insurer may request a fee for conducting the data match. The department is to establish a standard fee in rule for conducting the data match which is not to exceed actual costs. The bill provides immunity to an insurer and any central reporting organization, as well as their employees and agents, from any liability for damages, whether actual or alleged, that is the result of such entity's compliance with this provision. Use of data by insurers is restricted. Finally, the Department of Revenue is authorized to adopt rules to administer this insurance claim data exchange section.

### **Service of Process**

Section 409.257, F.S., is amended to permit the use of other means of service of process as provided for by ch. 48, F.S., if determined by the department to be more effective. This amendment will allow for the use of a private process service with the initial service of process under certain circumstances.

### **Clerk of Court Filing Fees**

Section 409.259, F.S., is amended to reflect the current arrangement between the clerks and the department for reimbursement for filings through the cooperative agreements pursuant to ss. 61.181(1), and 61.1826(2) and (4), F.S., instead by separate billings for each of the filings.

### **Business and Professional License Suspensions**

Section 409.2598, F.S., is amended to include an effective date of July 1, 2004. The bill expands the licenses for which the Department of Revenue has authority to seek denial or suspension to include all licenses issued by a state or local government licensing authority. Specifically, the committee substitute replaces the references to specific chapters for which the department has current authority to seek denial or suspension of licensure, registration or certificates in s. 409.2598, F.S., with definitions of “license”, licensee” and “licensing agency”. These definitions incorporate any license, permit, certificate, registration, franchise, or other form of written permission that authorizes an individual to engage in either an occupation, business, trade, or profession or in a recreational activity when issued by a licensing agency. A licensing agency includes any department, commission, agency, or other subdivision of a state or local government that issues licenses. The licenses to which the department could seek a petition in court for denial or suspension are expanded and include, but are not necessarily limited to, the following: child care facilities; aquaculture professions; private investigators; security officers and related occupations; drinking water treatment plant operators; insurance agents and other insurance related occupations; securities and finance related professions such as mortgage brokers and collection agencies; occupations regulated by the State Fire Marshall such as fire equipment dealers, explosive dealers, and fireworks manufacturers; and law enforcement officers.

The bill removes the subsection that authorizes the department to screen all applicants for new or renewal licenses and that requires the department to certify the delinquency of the noncustodial parent. The department reports that authority to have access to information on license applicants exists in other sections of law. The certification of delinquency is an activity provided for in s. 61.14, F.S., that is conducted by the clerk when a noncustodial parent is delinquent in payment which the department reports is not performed by the Department of Revenue as set forth in this section. The amendment would, therefore, eliminate an unnecessary and unused provision. The noticing requirement is also modified in two ways. First, the manner in which the notice to the noncustodial parent is served is changed from mailing the notice certified mail to the use of first class mail. Second, the time allowed to the noncustodial parent to respond is shortened from 30 days from when service of the notice is complete to 30 days from the mailing of the notice.

### **Incarcerated Noncustodial Parents**

The bill articulates the legislative finding that children of incarcerated noncustodial parents are not receiving the child support that would support their basic needs and that addressing the child support issues of noncustodial parents could improve the payment of child support to children upon their release, as well as help develop the familial relationships that potentially reduces recidivism. The Department of Revenue is directed to identify all the inmates in the custody of the Department of Corrections who have child support orders, with the assistance of the Department of Corrections, by November 1, 2004. The Department of Corrections and Department of Revenue are directed by the bill to jointly develop a data exchange plan and a plan of recommendations that will facilitate payment of child support from the Title IV-D obligors who are in the prisons and correctional institutions under the jurisdiction of the Department of Corrections. The plan is to be developed considering the population of incarcerated noncustodial parents in the state, the barriers to noncustodial parents paying their child support, and the strategies that would strengthen their ability to pay their child support obligation upon leaving their incarceration. Minimum components of the plan are outlined in the bill and include certain data information relative to the incarcerated noncustodial parents, the potential for inmates to pay a portion of the child support obligation during incarceration, the methodology for data collection on incarcerated noncustodial parents on an ongoing basis, recommendations for strategies to educate and prepare incarcerated noncustodial parents for their child support obligation, recommendations for strategies to build collaboration between Department of Corrections and Department of Revenue, recommendations for legislative actions that would facilitate payment of the child support, and broader issues that need attention from stakeholders other than the Department of Corrections and Department of Revenue. The Department of Corrections and Department of Revenue are required to submit two reports to the Governor, President of the Senate, and Speaker of the House of Representatives. The first report is due December 31, 2004, and is to present the jointly developed plan and information collected. The second report is due December 31, 2005, and is to present the actions taken to implement the plan, barriers encountered, and any legislative actions identified to address the emerging issues.

The bill takes effect upon becoming law unless stipulated otherwise in the bill.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The insurance claim data exchange initiative established by this bill has the potential of collecting additional child support for custodial parents that would not have been previously paid. Evidence of this is the \$709,404 collected by the Department of Revenue since July 2002 through the Child Support Lien Network which does not even capture information from a major portion of the insurance carriers in Florida. (Note: This collected amount is the net collection after the Child Support Lien Network's matching fee.) This initiative will also likely result in costs to the insurance carriers to perform the required activities to match data and remit claims to the Department of Revenue.

The Department of Revenue reports that more than 19,000 children in Title IV-D cases will emancipate in 2004. A total of \$207 million is owed in past due support by the noncustodial parents of these children. If these noncustodial parents continue to pay at the same rate as prior to the emancipation for a year, the arrearages collected should increase from a projected \$4 million to over \$44 million.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

This bill will modify by statute existing court orders.

**VIII. Amendments:**

None.