

FAMILY LAW

CS/SB 152 — Alimony

by Judiciary Committee and Senator Siplin

This committee substitute amends s. 61.14, F.S., to authorize a court to reduce or terminate an alimony award upon specific written findings that a supportive relationship exists between the recipient and a third party. These provisions apply to relationships between a recipient of alimony and a third party who are not related but live together.

Judicial Criteria

The court is required to consider certain factors, including the extent to which:

- The obligee and the other person hold themselves out as a married couple;
- Assets or income are pooled or financial interdependence exists;
- The obligee and the other person have supported each other;
- Valuable services are performed for each other, or the other's company or employer;
- The obligee and the other person have created or enhanced something of value; and
- An express or implied agreement exists regarding property sharing or support.

Additional factors for the court to consider are the length of time that the obligee and the other person have lived together in a permanent place of abode; whether property has been jointly purchased; and whether the obligee and the other person have provided support to the children of one another, regardless of whether legally obligated to do so.

Policy

The committee substitute specifies that the provisions do not eliminate the requirement that every marriage in this state must be licensed to be valid, and do not recognize common law marriage. Instead, this legislation recognizes that relationships exist that provide economic support equal to that of a marriage, and that alimony may be modified upon a showing of equivalent equitable circumstances. Proof that a relationship is conjugal is not a prerequisite to a modification of alimony.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 34-6; House 68-44

CS/SB 348 — Family Court Efficiency

by Health and Human Services Appropriations Committee and Senators Lynn, Rich, and Bullard

This committee substitute creates s. 25.375, F.S., to facilitate a uniform system of judicial case management. This committee substitute also makes various changes to Florida's laws on dependency (ch. 39, F.S.), child custody (ch. 61, F.S.), domestic violence (ch. 741, F.S.), and child support (ch. 409, F.S.) to improve the efficiency and operation of the court's response to issues affecting children.

Personal Identifier

The Supreme Court is authorized to create a unique identifier for each person to identify all court cases related to that person or his or her family, by collecting part of the person's social security number. The Supreme Court, the Criminal and Juvenile Justice Information System Council, the Article V Technology Board, and the Florida Association of State Court Clerks are required to make recommendations to the Governor and the Legislature by January 2, 2006 regarding the creation and implementation of a unique personal identifier.

Issues Relating to Children

The committee substitute amends various provisions relating to legal actions and agency participation involving children:

- A final order entered in an adjudicatory hearing is admissible in evidence in certain subsequent court hearings relating to children.
- Parenting courses must be approved by the Department of Children and Family Services, and the department is required to maintain and provide a list of current parenting course providers to each judicial circuit.
- Parents in a dissolution action are required to complete parenting courses within 45 days after a dissolution petition is filed, unless excused by the court.
- Temporary custody orders remain valid until the order expires or until replaced by a subsequent order.
- The Department of Corrections is replaced by the Department of Children and Family Services as the agency designated to certify batterers' intervention programs.

If approved by the Governor, these provisions take effect July 1, 2005.

Vote: Senate 40-0; House 111-0

CRIMINAL LAW

HB 285 — Right to Speedy Trial

by Rep. Hukill and others (CS/SB 214 by Judiciary Committee and Senator Lynn)

This bill creates an unnumbered section of statute to provide a victim and the state with a right to a speedy trial. The state attorney is authorized to file a demand for speedy trial in misdemeanor and felony cases, provided that the state has met its discovery obligations, the court has granted at least three continuances upon the defendant's request, and, either:

- For a felony case, it is not resolved in 125 days after formal charges are filed and the defendant is arrested or served with a notice to appear; or
- For a misdemeanor case, it is not resolved in 45 days after formal charges are filed and the defendant is arrested or served with a notice to appear.

Court Procedure

The trial court is required to schedule a calendar call within five days of the filing of speedy trial demand, at which time the trial must be scheduled to begin no earlier than five days or later than 45 days after the calendar call. Additionally, the trial court is authorized to delay the trial date for up to 30 additional days where the defendant shows that a necessary witness failed to appear at both a properly served deposition and a subsequently scheduled, court-ordered deposition. Where the court grants counsel a motion to withdraw and appoints other counsel, the trial date may also be postponed for 30 to 70 days. Each of these time periods is extendable to prevent deprivation of the defendant's due process rights.

If approved by the Governor, these provisions take effect July 1, 2005.

Vote: Senate 38-0; House 113-1

CS/SB 512 — Protective Injunctions

by Children and Families Committee and Senators Aronberg and Lynn

This bill amends s. 784.046, F.S., to heighten evidentiary requirements for a parent or legal guardian of a minor living at home filing a petition for a protective injunction on the minor's behalf, when the party named in the petition is also a parent, stepparent, or legal guardian.

In instances where a sworn protective injunction petition is filed by a parent or guardian on behalf of a minor living at home, based on allegations of repeat, sexual, or dating violence, different standards of evidence are required depending on the relationship between the minor and the party named in the petition. These are:

- If the party against whom the protective injunction is sought is also a parent, stepparent, or legal guardian of the minor child, the parent or legal guardian petitioner must have eye-witnessed the violence, or have direct physical evidence or affidavits from eyewitnesses of the specific incidents that form the basis of the petition;
- In all other cases, the petitioner is only required to have reasonable cause to believe that the minor has been victimized by repeat, sexual, or dating violence.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 40-0; House 117-0

DEBTORS AND CREDITORS

CS/CS/SB 370 — Procedures for the Satisfaction of Debts

by Justice Appropriations Committee; Judiciary Committee; and Senator Campbell

The committee substitute makes clarifying and technical changes to provisions in Florida law relating to judgment liens, garnishment, and security interests in mortgages. The committee substitute amends various sections of statute to:

- Clarify provisions relating to the responsibilities of a clerk of court regarding the satisfaction of a judgment lien.
- Clarify provisions relating to the timing for filing a judgment lien certificate.
- Clarify provisions regarding instructions to the sheriff and record-keeping by the Department of State.
- Remove an unnecessary sentence that has been read to require the filing of a judgment lien certificate as a condition precedent to seeking garnishment.
- Make clarifying changes to the “Uniform Out-of-Country Foreign Money-Judgment Recognition Act.”
- Make clarifying changes to provisions relating to the execution of liens and execution sales to recognize the possibility of multiple judgment lien creditors and give control over the mailing of notices to the sheriff.
- Recognize that the provisions of s. 56.27, F.S., apply to liens on real property, as well as liens on personal property.

- Remove the requirement of having an execution levied on the assets of a judgment debtor prior to initiating proceedings supplementary to identify assets of the judgment debtor.
- Permit judgment holders to choose either a writ of execution or writ of garnishment to collect a judgment.
- Extend the time by one business day for the garnishee to act expeditiously on the writ.
- Extend by one business day the amount of time in which a judgment holder must object to a judgment debtor's claims of exemption from garnishment, and allow the plaintiff to extend the writ for an additional 6 months.
- Provide that a homestead property owner may use the notice of homestead provisions for liens based on foreign judgments.
- Provide a clarifying reference within the definition of "lien creditor" in the Uniform Commercial Code provisions of Florida law relating to secured transactions.
- Clarify that a security interest in a mortgage is perfected by possession or filing of the promissory note made in connection with the mortgage.
- Clarify that, for transactions involving real property, creditors and subsequent purchasers may rely on the records filed with the clerk of court as opposed to Uniform Commercial Code filings.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided.

Vote: Senate 39-0; House 115-0

CS/SB 660 — Assets Held in Benefit Plans

by Banking and Insurance Committee and Senators Carlton and Posey

This committee substitute revises several provisions of law related to estate and tax planning.

Assets Exempt from Creditor Claims

Funds held in the Florida Prepaid College Program and the Florida College Savings Program are exempt from creditor claims under existing Florida law. The committee substitute provides that Coverdell Education Savings Accounts, which are tax-advantaged accounts used to save for education expenses, are accorded the same treatment.

The committee substitute increases the creditor protection afforded individual retirement accounts and tax-qualified employee benefit plans. The committee substitute also includes governmental and church plans that are tax-exempt in the exemption from creditor claims.

Benefit Plans

The committee substitute broadens the definition of the term “benefit plan” to mean a retirement plan that may include, but is not limited to, any pension, profit-sharing, stock bonus, or stock-ownership plan or individual retirement account. The committee substitute then provides that these benefit plans may be delivered to a custodian for the benefit of a minor, to a child’s parents as natural guardians, or to a trustee designated by the owner of the benefit plan upon the death of the owner. The committee substitute also raises from \$10,000 to \$15,000 the amount that may be given to a custodian by certain persons without court involvement.

Additionally, the committee substitute defines the term “qualified minor’s trust” as a trust that complies with s. 2503(c) of the Internal Revenue Code. That code provision requires that trusts for the benefit of persons under the age of 21 distribute their assets to the beneficiary when the beneficiary reaches the age of 21. The committee substitute further provides that an adult custodian of property for a minor may transfer the custodial property into a qualified minor’s trust.

Hurricane Savings Accounts

The committee substitute provides that the assets in a hurricane savings account are exempt from creditor claims if they are accorded a tax-advantaged status by the federal government. The purpose of the account is to cover losses from hurricanes, rising flood waters, and other catastrophic windstorm events.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 40-0; House 118-0

JUDICIARY/LITIGATION

HB 1935 — State Judicial System

by Judiciary Committee and Rep. Simmons and others (CS/CS/SB 2542 by Justice Appropriations Committee; Judiciary Committee; and Senators Smith and Fasano)

This bill addresses the state’s continued implementation of Revision 7 to Article V of the State Constitution. In addition to making technical or administrative refinements to the state judicial system, the bill includes the following significant provisions.

Determination of Indigent Status

The bill substantially revises the existing statutory determination of indigency provisions under s. 27.52, F.S., to focus the provisions principally on criminal cases, and creates a new, separate section (s. 57.082, F.S.) relating to determinations of indigent status in eligible civil cases. Both sections prescribe:

- Procedures for applying to the clerk of court for a determination of indigent status;
- Criteria to be used by the clerk in reviewing applications;
- Procedures for an applicant to seek judicial review of a clerk’s determination;
- Conditions under which the court may appoint counsel on an interim basis;
- First-degree criminal penalties for knowingly providing false information to the clerk or court in seeking a determination of indigent status.

The criminal indigency provisions also prescribe that a person who is eligible for representation by a public defender but who is represented by private counsel not appointed by the court, or who is representing himself or herself, may be deemed “indigent for costs,” enabling the person to access public funding for services, such as expert witnesses, which are often associated with a legal defense.

Clerk of Court Budget Authority

The bill authorizes the Legislative Budget Commission to approve an increase to a clerk of court’s maximum annual budget if: 1) the additional funding is necessary to pay the cost of performing new or additional functions stemming from changes in law or court rules; or 2) the additional funding is necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature. Before the commission may approve an increase, the Clerks of Court Operations Corporation must report on whether the clerk is meeting or exceeding established performance standards for measures on fiscal management, operational efficiency, and effective revenue collection.

Teen Courts

Currently, s. 939.185, F.S., authorizes teen court programs to receive funding from a portion of a \$65 surcharge on criminal convictions. This bill amends s. 938.19, F.S., to authorize counties to assess a mandatory court cost of up to \$3 on persons convicted of, or pleading guilty to, a violation of a criminal law or a municipal or county ordinance, or who pay a fine or civil penalty for a state uniform traffic control violation. The moneys are to be used for the purpose of funding teen court programs. The bill prohibits a teen court from receiving funding under the existing

authority in s. 939.185, F.S., and from receiving funding under the new authority established in s. 938.19, F.S.

Appropriations

The bill provides the following appropriations:

- \$1.5 million in recurring funds from the General Revenue Fund to the Justice Administrative Commission (commission) for public defender due process services for FY 2005-2006;
- \$800,000 in recurring funds from the General Revenue Fund to the commission for state attorney due process services for FY 2005-2006;
- \$182,885 in recurring funds from the General Revenue Fund to the State Attorney for the Eleventh Judicial Circuit for state attorney operations for FY 2005-2006.

The bill also increases the maximum annual budget for the clerk of the circuit of Miami-Dade County by \$3.8 million for county FY 2004-2005.

Other Significant Provisions

In addition, the bill:

- Delineates the appointment and funding responsibilities for competency experts;
- Specifies that 56.4 percent of the remainder of any civil penalties received by a county court for violations that occurred within the unincorporated area of certain consolidated governments are to be deposited into the fine and forfeiture fund;
- Authorizes certain consolidated governments to impose, until September 30, 2007, surcharges on noncriminal traffic infractions and criminal traffic violations, as well as in cases in which a person pleads guilty to, or is convicted of, a felony, misdemeanor, or criminal traffic offense, in order to replace fine revenue that the government deposits into the clerk's fine and forfeiture fund;
- Extends from 2006 to 2007 the deadline for clerks to assume responsibility for redaction of social security numbers in court records;
- Requires the Justice Administrative Commission (commission) to develop a schedule for partial payment of private court-appointed attorneys in criminal cases that are not resolved within six months;

- Establishes a process for the commission to transfer funds among state attorney or public defender offices to deal with office deficits in a contracted due process services appropriations category;
- Allows the state to fund mental health professionals required in civil cases as an element of court-appointed counsel;
- Directs trial court administrators to recover expenditures for state-funded services that have been furnished to users who have the ability to pay;
- Provides authority for a county and the chief judge of a circuit to enter into an agreement for the county to fund personnel positions for the circuit;
- Directs the circuit Article V indigent services committee in the Eleventh Circuit to track, during the period of October 2005 through September 2007, data on the race, sex, and national origin of attorneys appointed by the court from the circuit's registry of attorneys available to represent indigent defendants;
- Increases the service fee for the return of a suspended license to \$47.50 from \$35;
- Authorizes the clerk of court to withhold from the return of a cash bond posted by a person other than a bail bond agent amounts necessary to pay any unpaid court fees, court costs, and criminal penalties;
- Prohibits a clerk of the court from discontinuing functions being performed, as of July 1, 2004, in support of the trial courts, except under specific conditions;
- Revises the formula in s. 218.245, F.S., under which certain revenues are allotted and shared with a unit of local government which is consolidated as provided under the State Constitution;
- Prohibits a traffic hearing officer from suspending a defendant's driver's license;
- Establishes procedures for a court to retain jurisdiction over a child who has been directed to pay restitution in a juvenile delinquency case;
- Limits an arbitrator's charge to \$1,500 per diem, unless the parties agree otherwise; and
- Eliminates the Article V Indigent Services Advisory Board, effective July 1, 2006.

If approved by the Governor, these provisions take effect July 1, 2005, except as otherwise provided in the legislation.

Vote: Senate 39-0; House 115-1

CS/CS/CS/SB 2048 — Judges

by Ways and Means Committee; Justice Appropriations Committee; Judiciary Committee; and Senator Crist

The committee substitute provides for the creation of 55 judicial offices to be filled by gubernatorial appointment. Approximately one-half of the offices take effect in November 2005. The remaining offices take effect on January 2, 2006. Thirty-five of the offices are for circuit court judge. Twenty of the offices are for county court judge.

Additionally, the committee substitute makes an appropriation to fund 120 full-time positions with the circuit and county courts.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided in the committee substitute.

Vote: Senate 40-0; House 113-3

HB 135 — Liability/Street Light Providers

by Rep. Stansel and others (SB 1790 by Judiciary Committee)

This bill provides immunity from lawsuits alleging negligent streetlight maintenance. The immunity applies to streetlight providers that repair inoperative streetlights within certain time periods and inform customers how to report outages. Generally, a streetlight provider must repair inoperative street lights within 60 days of actual notice of an outage. More complex repairs, however, must be made within 180 days, with some exceptions. The time period in which repairs must be made is extended to 365 days after the cessation of a state of emergency for streetlight providers affected by the state of emergency.

If approved by the Governor, these provisions take effect upon becoming law and apply to causes of action that accrue on or after the effective date.

Vote: Senate 37-1; House 112-1

HB 523 — Evidence

by Rep. Flores and others (CS/SB 988 by Judiciary Committee and Senator Campbell)

The bill repeals s. 90.602, F.S., the “Dead Man’s Statute,” which prohibits an interested person from testifying as to an oral communication with a now deceased or incompetent person. Testimony from interested persons regarding oral communications can be considered by the trier of fact, if otherwise relevant and admissible under the rules of evidence, instead of being automatically rejected because of the status of the person seeking to introduce the testimony.

In addition to repealing the Dead Man’s Statute, this bill creates a new hearsay exception that allows the introduction of a written or oral statement previously made by an unavailable

declarant, when other testimony from the declarant on the same topic has already been introduced by an adverse party.

If approved by the Governor, these provisions take effect July 1, 2005.

Vote: Senate 39-0; House 110-1

PUBLIC RECORDS

HB 1699 — Domestic Violence Cases/OGSR

by Governmental Operations Committee and Rep. Kottkamp (SB 726 by Judiciary Committee)

This bill amends s. 787.03, F.S., which is the public records exemption authorized in interference with custody cases. The bill narrows the public records exemption for certain information given to a sheriff or state attorney by someone who takes a child or incompetent person and seeks to avoid prosecution for the crime of interference with custody.

Interference with Custody

The crime of interference with custody occurs when a child or incompetent person is taken from another's custody. The law recognizes certain defenses for a person who commits an interference with custody. To have the defense available, the person who took the child or incompetent person must file a report with the sheriff's or state attorney's office within ten days. This report must include:

- Identification information about the person and child;
- Contact information about the person and child; and
- The underlying reasons why the person was taken.

Public Records Exemption

When the public records exemption relating to an interference-with-custody situation was originally created, the Legislature made confidential and exempt from disclosure information provided to a sheriff or state attorney. This bill removes from the exemption the piece of information relating to the underlying reasons for taking the child from another person's custody, consistent with the narrow scope required under Florida's public record law.

Open Government Sunset Review

The existing exemption is scheduled to repeal on October 2, 2005. This bill extends the narrowed public records exemption until October 2, 2006, subject to review and reenactment by the Legislature beyond that date.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 39-0; House 111-0

CS/SB 798 — Minor/Termination/Pregnancy/Public Records

by Governmental Oversight and Productivity Committee and Senators Webster, Fasano, and Dockery

This committee substitute provides the public records exemption relating to court records containing information about a minor seeking judicial approval for a termination of pregnancy subject to the parental notification provisions, which also passed this session. This bill amends s. 390.01116, F.S., to keep confidential and exempt from disclosure certain information contained in court records in parental notification waiver hearings. This exemption provides for effective implementation of Florida's parental notification law as it ensures confidentiality for minors who are seeking to terminate a pregnancy.

Parental Notification

Committee Substitute for Senate Bill 1908 requires a minor to notify her parent or legal guardian prior to terminating her pregnancy. (See the Health Care Committee's session summary of CS/SB 1908.) A judicial waiver process is provided in CS/SB 1908, which permits a minor to petition the court for a waiver to the notification requirement. The court is authorized to waive notice, upon reaching certain findings, such as a medical emergency exists, the minor is sufficiently mature to make the decision independently, abuse is present, or that notice is not in the best interest of the minor. The substantive bill provides for confidentiality of all hearings, but does not address the court record. This public records exemption makes confidential and exempt any information from the court record that can be used to identify the minor, and applies to records held by the court at both the circuit and appellate levels.

Public Necessity Statement

As provided in the public necessity statement, this committee substitute is necessary to:

- Protect the minor's right of privacy, as guaranteed in both the federal constitution and Article I, Section 23 of the Florida Constitution;
- Protect a minor's safety in instances where child abuse or sexual abuse is present, which is admissible as evidence in these hearings;
- Comply with U.S. Supreme Court rulings; and
- Ensure that the state's parental notification program is properly administered.

Open Government Sunset Review

This public records exemption is subject to repeal on October 2, 2010, unless the Legislature reviews and saves the exemption from repeal through reenactment by that date.

If approved by the Governor, these provisions take effect the day that Florida's parental notification bill takes effect, which is upon adoption of rules by the Supreme Court or no later than July 1, 2005.

Vote: Senate 40-0; House 117-0

MISCELLANEOUS

CS/SB 1184 — Transportation Access

by Community Affairs Committee and Senator Fasano

The committee substitute permits the creation of a statutory way of necessity to landlocked property regardless of whether the property is inside or outside of a municipality. Additionally, a statutory way of necessity may be used to provide access from a landlocked property to a private road in which the owner of the landlocked property has vested easement rights. The purpose of a statutory way of necessity is to provide a means for persons and vehicles to enter and exit landlocked property and to permit access to utility services. The owner of land through which a statutory way of necessity is created is entitled to compensation. In the event that the provisions of CS/SB 1184 are found unconstitutional, the law with respect to statutory ways of necessity will revert to the law in existence prior to the passage of CS/SB 1184.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 39-0; House 117-0

CS/SB 1368 — Disclaimer of Property Interests Act

by Judiciary Committee and Senator Aronberg

This committee substitute repeals Florida's existing statutory disclaimer statutes, s. 689.21 and s. 732.801, F.S., governing disclaimer of non-testamentary property interests and testamentary property interests, respectively. In place of the repealed statutes, the committee substitute creates a new chapter in the Florida Statutes, ch. 739, which will apply regardless of the nature of the property interest to be disclaimed. The committee substitute is based upon the Uniform Disclaimer of Property Interests Act (the "UDPIA") developed by the National Conference of Commissioners on Uniform State Laws (the "NCCUSL") in 1999. Although the language of the committee substitute is based upon UDPIA, there are slight revisions to allow for nuances of Florida law.

The new chapter retains a great deal of the current principles codified in the existing sections of the Florida Statutes that would be repealed by the committee substitute, and modifies disclaimer of property interests as follows:

- Expands the power to disclaim to allow disclaimer of fiduciary powers and fiduciary assets.
- Removes the statute of limitations for a disclaimer of property interest.
- Removes the filing requirement for disclaimer of property interests that are not real estate.
- Allows courts to give greater weight to the totality of the circumstances when considering disclaimers made for minors or incapacitated persons.
- Addresses the effect of a failed disclaimer.

If approved by the Governor, these provisions take effect July 1, 2005.

Vote: Senate 39-0; House 115-0