

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 905 Family Law
SPONSOR(S): Judiciary Committee; Steube
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1210

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Ward	Bond
2) Judiciary Committee	17 Y, 0 N, As CS	Ward	Havlicak

SUMMARY ANALYSIS

The bill amends child support guidelines to add that the court may take into account the parenting plan recognized by the parties, even if it is not reduced to writing, in awarding child support outside the statutory schedule.

The bill amends the Florida Evidence Code to allow the court to take judicial notice of court records in determining family law cases where there is imminent threat of harm, notice is impractical, and a later hearing is scheduled to challenge the matter. The bill adds conforming references regarding this provision to statutes which address injunctions for domestic and repeat violence, and injunctions against stalking.

The bill adds that the Department of Revenue may not provide representation to determine paternity, to modify child support, or to seek child support unless public assistance is being received by either of the parents or the child.

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

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Child Support Guidelines

Current Situation

Child support guidelines allow the court to adjust a statutory award based upon additional factors.¹ Included in those factors which might adjust an award up or down, is the "parenting plan."² Currently, deviations from the promulgated schedule of child support must be supported by the factors listed in the statute.

The parenting plan is defined by statute and must be reduced to a document endorsed by the court.³ The courts do not recognize a course of dealing by the parties as a formal parenting plan when considering the amount of child support.⁴

Recently, a number of child support cases have been decided based upon the lack of a written parenting plan as defined in the statute. The courts have determined that they may not take into account the amount of time that the child spends routinely with one parent or the other unless there is a written parenting plan. Courts have not considered less formal arrangements in deviating from the child support guidelines.⁵

Effect of Proposed Changes

The bill amends s. 61.30, F.S., to expand the court's ability to recognize a course of dealing by the parents in awarding child support outside the schedule. The bill includes in the deviation factors of s. 61.30(11)(a), F.S., "a court ordered timesharing schedule or a timesharing schedule exercised by agreement of the parties." This will allow the court to take into consideration the actions of the parties, even if not reduced to writing. The expanded factor which the court may consider appears both places where the term "parenting plan" appears in s. 61.30, F.S.

Judicial Notice

Current Situation

Judicial notice takes the place of proof, and makes evidence unnecessary.⁶ The Florida Evidence Code⁷ addresses matters that may be, or must be noticed by the judge, so that evidence of the fact is not required.⁸

Generally, notice is afforded to both parties before the court will take judicial notice of a fact.⁹ The court must give each party an opportunity to challenge the information offered for judicial notice prior to taking it into evidence.¹⁰

¹ Section 61.30, F.S.

² Section 61.30(11)(a)10., F.S.

³ Section 61.046, F.S.

⁴ See *State Dept. of Revenue v. Kline*, 95 So.3d 440 (Fla. 1st DCA 2012); *Department of Revenue v. Dorkins*, 91 So.3d 278 (Fla. 1st DCA 2012); *Department of Revenue v. Aluscar*, 82 So.3d 1165 (Fla. 1st DCA 2012).

⁵ *Id.*

⁶ *Amos v. Moseley*, 77 So. 619 (Fla. 1917).

⁷ Chapter 90, F.S.

⁸ Sections 90.201 - 90.207, F.S.

⁹ Sections 90.203, 90.204, F.S.

¹⁰ *Id.*

In a recent case,¹¹ a judge issued a domestic violence injunction¹² based upon testimony she observed in a separate court matter between the parties. The ruling was entered without giving advance notice of the matter, pursuant to the current terms of the statute. Because the court essentially took judicial notice of the other hearing in ruling on the injunction, the injunction was reversed.¹³

Effect of Proposed Changes

The bill amends s. 90.204, F.S., to provide that in a family law case the court may take judicial notice of "records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States,"¹⁴ when:

- Imminent danger has been alleged.
- It is impractical to give notice.
- A later opportunity is provided to challenge the matter noticed.

The judge must, within 2 business days, file a notice in the pending case of the matter noticed.

The bill will allow the court to take judicial notice without further proof of court records at the state and national level in determining family law cases. Family law cases are defined by the Florida Rules of Judicial Administration.

Conforming changes are made to ss. 741.30 (domestic violence), 784.046 (repeat violence), and 784.0485 (stalking), F.S., to include court records in the evidence a judge may take into account when considering an injunction to prevent domestic or repeat violence, or stalking.

Actions for Support

Current Situation

Section 409.2564, F.S. currently provides that the Department of Revenue may file an action in the circuit court to enforce child support payments, and collect any arrearages.

Effect of Proposed Changes

The bill adds that the Department of Revenue may not undertake an action to determine paternity, to modify or seek child support unless public assistance is being received by either parent or the child, or if an application for assistance has been filed. The bill also precludes the department from representing a parent already represented in a support or paternity proceeding by a private attorney unless either parent or the child is already receiving public assistance.

The federal government pays 2/3 of the cost of operating the child support enforcement office of the Department of Revenue. In the last fiscal year Florida received \$232 million in child support enforcement funding and \$607 million in TANF funding. A state plan for child support must provide that the "state will provide services relating to the establishment of paternity or the establishment, modification or enforcement of child support obligations" with respect to each child receiving public assistance, or "any other child, if an individual applies for such services with respect to the child." 42 U.S.C. 654.

B. SECTION DIRECTORY:

Section 1 amends s. 61.30, F.S., regarding child support guidelines; retroactive child support.

¹¹ *Coe v. Coe*, 39 So.3d 542 (Fla. 2d DCA 2010).

¹² Domestic violence injunctions are governed by s. 741.30, F.S.

¹³ *Coe* at 543.

¹⁴ Section 90.202(6), F.S.

Section 2 amends s. 90.204, F.S., regarding determination of propriety of judicial notice and nature of matter noticed.

Section 3 amends s. 409.2564, F.S., regarding actions for support.

Section 4. amends s. 741.30, F.S., regarding domestic violence injunction.

Section 5 amends s. 784.046, F.S., regarding actions for repeat violence.

Section 6 amends s. 784.0485, F.S., regarding stalking injunctions and enforcement.

Section 7 amends s. 61.14, F.S., regarding enforcement and modification of support.

Section 8 amends s. 61.1814, F.S., regarding Child Support Enforcement Application and Program.

Section 9 amends s. 61.30, F.S., regarding child support guidelines.

Section 10 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill appears to have a potential impact on state revenues in the amount of \$839 million in TANF funding should the federal government choose to enforce the provisions of 42 U.S.C. ss. 651-669b.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

See revenue comments above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 14, 2013, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides that the court may take judicial notice of any matter of public record when imminent danger has been alleged, and makes conforming changes to statutes addressing stalking and domestic violence. The amendment further provides that the Department of Revenue may not bring a paternity action to establish or modify an obligation of child support unless public assistance is being received by a parent or by the child, or the custodial parent is entitled to the department's assistance as a result of federal law. The amendment also provides that in a child support enforcement or paternity action, the department may not represent a party if he or she is being represented by a private attorney unless public assistance is being received by one of the parents or the child. This analysis is drafted to the committee substitute as passed by the Judiciary Committee.