

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 104

INTRODUCER: Judiciary Committee and Senator Soto

SUBJECT: Family Law

DATE: April 17, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 104 allows a court to deviate from the minimum amount of support required under child support guidelines based on a court-ordered time-sharing schedule or the time-sharing schedule exercised by the parents. This will allow the court to better recognize the support of the non-custodial parent.

The bill also authorizes courts to take judicial notice in family cases of any court record in Florida or of the United States, when imminent danger is alleged. Although the exigency of the situation waives the requirement to provide a pre-hearing notice to the parties, the court must file a subsequent proper notice within two business days of the hearing. These provisions are limited to family cases in which domestic violence is an issue.

**II. Present Situation:**

**Child Support Guidelines**

Child support guidelines are contained in s. 61.30(6), F.S., for the use of the court in determining child support. Guidelines take into account the combined monthly net income of the parents and the number of minor children of parties involved in a child support proceeding. The guidelines establish the minimum amount of support required for a child. These amounts may be increased for additional obligations, such as child care and health insurance costs of the children.<sup>1</sup> The

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<sup>1</sup> Sections 61.30(7) and (8), F.S.

court may also depart from the child support guidelines based on factors for deviation identified in law.<sup>2</sup> These are:

- Extraordinary medical, psychological, educational, or dental expenses.
- Independent income of a child or children.
- Documented financial support of a parent.
- Seasonal variation in income.
- The age of the child.
- Special needs of the child.
- Total available assets of the obligee, obligor, and the child.
- The impact of federal tax treatment.
- An application of the child support guidelines schedule that requires a parent to pay another person more than 55 percent of his or her gross income for a current child support obligation.
- The parenting plan, such as where a child spends a significant amount of time, but less than 20 percent of overnight stays with a parent, or the refusal of a parent to participate in a child's activities.
- Any other adjustment needed to further equity for the parties.<sup>3</sup>

The First District Court of Appeal reviewed an administrative support order that provided for a deviation from the child support guidelines.<sup>4</sup> The administrative support order based its decision on one of the statutory factors for deviation from the guidelines. This factor allows deviation where a child spends less than 20 percent of overnight stays with a parent based on a parenting plan. The parents in the case, however, did not have a court-ordered parenting plan. Although Florida law would have required a formal parenting plan as part of a divorce proceeding, the couple never married. Instead, they “decided visitation among themselves.”<sup>5</sup> In reversing the administrative order, the court indicated:

a parenting plan is defined in section 61.046(14) as a court-approved parenting plan with a time-sharing arrangement that can be created through mediation and later approved by a court, or approved by a court where the parties cannot agree. Thus, the plain language of the statute prohibits a trial court from deviating from the guidelines based on a verbal visitation agreement even where equity compels the deviation.<sup>6,7</sup>

A court is also required to adjust the allocation of the burden of a child support award on the parents if a child spends a substantial amount of time with each parent.<sup>8</sup> A child spends a substantial amount of time with a parent if a parent exercises time-sharing at least 20 percent of the overnights of the year.<sup>9</sup>

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<sup>2</sup> Section 61.30(11)(a), F.S.

<sup>3</sup> Section 61.30(11)(a)1. through 11., F.S.

<sup>4</sup> *Dept. of Rev. v. Daly*, 74 So. 3d 165, 166 (Fla. 1st DCA 2011).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 168.

<sup>7</sup> The parent's informal parenting agreement may have been an adequate basis for a court to deviate from the child support guidelines before s. 61.30, F.S., was amended in 2008. In 2008, the Legislature through s. 16, ch. 2008-61, L.O.F., replaced references to “shared parental arrangement” with “parenting plan.”

<sup>8</sup> Section 61.30(11)(b), F.S.

<sup>9</sup> Section 61.30(11)(b)8. F.S.

## Judicial Notice

Florida's evidence code allows the court to take judicial notice<sup>10</sup> of:

- Acts and resolutions of Congress and the Florida Legislature.
- Decisional, constitutional, and public statutory law of every of other state, territory, and jurisdiction of the U.S.
- Contents of the Federal Register.
- Records of any court of this state or of any court of record of the U.S. or any other U.S. state, territory, or jurisdiction.
- Rules of court of this state, the U.S., or any other U.S. state, territory, or jurisdiction.<sup>11</sup>

## Temporary Injunction Hearings

Florida law prohibits the admission of evidence other than verified pleadings or affidavits at ex parte hearings for temporary injunctions.<sup>12</sup> These injunctions relate to underlying allegations of domestic violence; repeat violence, sexual violence, or dating violence; and stalking. Evidence other than verified pleadings or affidavits may be admitted only if the respondent appears at the hearing or has received reasonable notice of the hearing.

### III. Effect of Proposed Changes:

**Section 1** amends s. 61.30, F.S., to revise the circumstances in which a court may deviate from or approve a request to deviate from the minimum amount of support required under the child support guidelines. A court may deviate from the child support guidelines based on a child's visitation with a parent as provided in a court-ordered time-sharing schedule or the time-sharing schedule exercised by the parents.

**Section 2** amends s. 90.204, F.S., to authorize courts to take judicial notice in family cases of any court record in Florida, or of any court in a state, jurisdiction, or territory of the United States, when imminent danger is alleged, which precludes an opportunity to provide advance notice to the parties. If judicial notice is taken, the court must file proper notice of the matters judicially noticed within two business days. These provisions relate to family cases in which domestic violence is an issue. Family law cases include:

dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, Uniform Interstate Family Support Act, custodial care of and access to children, proceedings for temporary or concurrent custody of minor children by extended family, adoption, name change, declaratory judgment actions related to premarital, marital, or postmarital agreements, civil domestic, repeat violence, dating violence, and sexual violence injunctions, juvenile dependency, termination of parental rights, juvenile delinquency, emancipation of a minor,

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<sup>10</sup> Judicial notice is defined as "A court's acceptance, for purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact." BLACK'S LAW DICTIONARY (9th ed. 2009).

<sup>11</sup> Section 90.202, F.S.

<sup>12</sup> Sections 741.30(5)(b), 784.046(6)(b), and 784.0485, F.S.

CINS/FINS, truancy, and modification and enforcement of orders entered in these cases.<sup>13</sup>

**Sections 3, 4, and 5** amends ss. 741.30, 784.046, and 784.0485, F.S., respectively, to provide a waiver to due process requirements for the admissibility of evidence at ex parte temporary injunction hearings. These hearings relate to temporary injunctions sought for domestic violence, repeat violence, sexual violence or dating violence, and stalking. This bill will allow judicial notice to be taken of records other than verified pleadings or affidavits, without providing a respondent advance notice and an opportunity to be present.

**Section 6** of the bill provides an effective date of July 1, 2014.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of State Courts Administrator anticipates a potential fiscal impact resulting from the bill due to the following:

- Recognition of an informal time-sharing arrangement will impact judicial workload for administrative child support cases that are heard in the circuit court and family law cases in which the parties are pro se litigants. However, the impact is unquantifiable at this time.

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<sup>13</sup> Rule 2.545(d)(2.), Rules of Jud. Admin.

- The waiver of due process requirements in temporary injunction cases will affect court workload to the extent that the court is subsequently required to file notice of the matters judicially noticed. However, fiscal impact is indeterminate.<sup>14</sup>

The Department of Children and Families does not expect a fiscal impact.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 61.30, 90.204, 741.30, 784.046, and 784.0485.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on April 1, 2014:**

The committee substitute makes a technical change which removes legislative intent language.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>14</sup> Office of State Courts Administrator, *Judicial Impact Statement, Senate Bill 104* (Nov.18, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>15</sup> Department of Children and Families, *Senate Bill 104 Fiscal Analysis* (Oct. 17, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).