

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/SB 1284

SPONSOR: Committee on Children and Families and Senator Peadar

SUBJECT: Child Support Enforcement

DATE: April 11, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

CS/SB 1284 includes these provisions relating to child support enforcement:

- Statutory authority is expressly provided to allow for the collection of spousal support in cases where the child support obligation is being enforced by the Department of Revenue.
- A written declaration is authorized as an alternative to requiring a notarized affidavit for administratively ordering genetic testing to determine paternity.
- The state agencies responsible for determining good cause for not cooperating with child support enforcement and for determining actual cooperation are modified to comply with federal law, and the food stamp recipients required to cooperate with child support enforcement are redefined.
- The conditions under which a family violence indicator may be placed on a child support enforcement case are expanded.
- Methods for processing unidentifiable and undistributable collections are established.
- Statutory provisions providing for the conditions by which a driver's license and motor vehicle registration can be suspended are amended to conform with another section of law.
- Driver's license photographs are made available to the Department of Revenue to facilitate the service of process in Title IV-D cases.
- The requirement for providing notice for each update of information to consumer reporting agencies on overdue child support is eliminated.
- Statutory authority is provided for collecting child support from workers' compensation lump-sum payments.
- The type of circuit court action required to contest a notice of intent to levy is specified.
- Judgment of operation of law for delinquent child support payments is expanded to include the payments ordered to be paid through the State Disbursement Unit and to comply with federal law.

- The section of law which permits the withholding of motor vehicle impact fee refunds for non-custodial parents who are delinquent in their child support obligation is repealed.
- A disregard of secondary employment income is provided for when there are subsequent children.
- The Department of Revenue's authority to petition the court to suspend professional licenses is expanded to include the Department of Business and Professional Regulation licensing chapter.
- Modifications are made to the entering of income deduction orders, modifying of support orders and notices of delinquency.
- A methodology is provided for calculating support when the child spends substantial time with the non-custodial parent.
- A pilot program is established for administratively establishing child support orders.

This bill substantially amends the following sections of the Florida Statutes: 24.115, 61.046, 61.11, 61.13, 61.1301, 61.13015, 61.13016, 61.13017, 61.1354, 61.14, 61.181, 61.1824, 61.1825, 61.30, 69.041, 213.053, 231.097, 320.05, 322.058, 322.142, 328.42, 409.2554, 409.2557, 409.25575, 409.2558, 409.2561, 409.2564, 409.25645, 409.2565, 409.25656, 409.25657, 409.25658, 409.2572, 409.2578, 409.2579, 409.2594, 409.2598, 414.065, 414.095, 414.32, 440.20, 440.22, 443.051, 455.203, 456.004, 559.79, 742.12, and 943.053. Section 61.13017 and 409.2591 of the Florida Statutes is repealed. Section 409.2563 of the Florida Statutes is created.

II. Present Situation:

Collection of Spousal Support

Federal law (42 U.S.C.654) requires that the Title IV-D agency in each state provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations. Federal regulations (45 CFR 302.31) provide that this includes securing support for a spouse or former spouse who is living with the child or children, if a support obligation has been established for that spouse and the child support obligation is being enforced by the state's Title IV-D agency.

Federal law defines the term "support order" as meaning a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement . . . [42 U.S.C. 653(p)].

Currently, a number of sections of Florida Statutes provide the Department of Revenue (DOR), the state's Title IV-D agency, with the authority to take enforcement action specifically for child support delinquencies. While DOR exercises its enforcement authority for both child and spousal support for Title IV-D cases, statutory language could be interpreted to limit the department's ability to enforce appropriate past-due spousal support obligations as required by federal law.

Administrative Orders for Genetic Testing

In order to establish paternity, genetic testing of the child, mother and alleged father may be required. Section 742.12, F.S., allows the court to require that scientific testing be conducted to show probability of paternity. DOR is authorized under s. 409.25645, F.S., to use administrative orders to require genetic testing in Title IV-D cases. The administrative order requires an affidavit from the child's mother stating that the putative father is or may be the father of the child. Section 90.50(1), F.S., requires that affidavits be notarized. Obtaining a notarized signature can delay DOR's initiation of the administrative order for the genetic testing process. Section 92.525, F.S., provides for verification of a document either by oath or affirmation taken pursuant to s. 90.50, F.S., or by signing a written declaration.

Food Stamp Provisions

Title 42, U.S.C. 654 (29), requires that individuals who have applied for or are receiving assistance from the Food Stamp Program cooperate with the state in establishing paternity and in establishing, modifying or enforcing a support order for any child of the individual. The agency administering the Food Stamp Program (in Florida, the Department of Children and Family Services) is required, pursuant to Title 7, U.S.C. 2015(1)(2), to determine if either the custodial or non-custodial parent has good cause for not cooperating with the Child Support Enforcement Program. The federal rules, however, are unclear and potentially allow some flexibility as to whether the Title IV-E agency or Food Stamp Program determines good cause for non-custodial parents. If good cause does not exist and the parent is required to cooperate, the Title IV-D agency is required to determine whether a custodial parent in the food stamp program has actually cooperated with the Child Support Enforcement Program. In Florida law, however, DOR (instead of the Department of Children and Family Services as required by federal law) is charged with determining if a food stamp recipient has good cause for not cooperating with the Child Support Enforcement Program (s. 414.32(1)(a) and (b), F.S.). In addition, there is not clear placement with DOR of the responsibility for determining actual cooperation of food stamp recipients. Also, currently the designation of food stamp recipients who are required to cooperate with the Child Support Enforcement Program includes all food stamp recipients, regardless of whether they have a child who has an absent parent. [ss. 409.2554(7) and 414.32, F.S.].

Federal law requires that certain public assistance recipients, i.e. recipients of Temporary Assistance to Needy Families (TANF) and Title IV-E (foster care), assign their rights to child support to the state for the purposes of retaining child support funds for reimbursement of the public assistance [Title 42, U.S.C 608(a)(3) and 45 CFR 301.1]. Currently, s. 409.2561, F.S., which provides for the assignment of rights to child support, applies to persons receiving "public assistance." The term "public assistance" which is defined in s. 409.2554(7), F.S., includes not only TANF and Title IV-E assistance, but also Medicaid, and therefore, provides for an assignment of child support rights beyond the programs stipulated in federal law. Cooperation with the Child Support Enforcement Program is a requirement for some individuals' Medicaid eligibility. However, parents or caretakers who apply for Medicaid on behalf of a child only are specifically excluded from the cooperation requirement.

Family Violence Indicator

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 required states to establish and maintain a State Case Registry. Information contained in the State Case Registry must be transmitted to the Federal Case Registry which other states access for location information for the limited purposes of establishing paternity; establishing, modifying, or enforcing child support obligations; or making or enforcing child custody or visitation orders. In order to protect location information in the State and Federal Case Registries when the safety of parties or children could be jeopardized by disclosure, states are required to have procedures for placement of family violence indicators.

In 1999, legislation was passed which prescribed that a family violence indicator must be placed on a State Case Registry when a party executes a sworn statement requesting an indicator and they have reason to believe that the release of the information to the Federal Case Registry may result in physical or emotional harm to the party or the child (ch. 99-375, L.O.F.). Federal requirements compel states to place the family violence indicator on a case if there is reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the party or child. A recent federal policy directive provided that a protective order was reasonable evidence of domestic violence or abuse, a provision not included in Florida law as a trigger for placing a family violence indicator on a case.

Unidentifiable and Undistributable Collections

Currently, s. 409.2591, F.S., requires all collections received by DOR which are **unidentifiable** as to the specific child support account against which they should be credited to be held in a special fund. If these funds are still unidentifiable 90 days after receipt, they are to revert to General Revenue. Federal regulations provide that such collections deposited into General Revenue must be considered as program income and, as a result, an amount equal to the federal financial participation (66 percent) must be transferred to the federal government (OCSE-PIQ-90-02). Florida law does not provide for either transferring the amount considered the program income to the federal government, depositing only the state portion of unidentifiable collections, a method for determining when collections are to be considered unidentifiable, or retrieval of these monies if the collection is later identified. DOR reports that the level of funds considered “unidentifiable” changes constantly. However, it is estimated that there is currently \$222,000 in unidentifiable collections.

When DOR receives a payment that it cannot distribute to the intended recipient due to insufficient information, the payment is referred to as **undistributable**. This happens most often when a party moves and does not notify DOR of the address change. Florida law does not specify how these monies are to be handled. The federal Office of Child Support Enforcement has stated that processing undistributable payments should be a matter of state law but that if such collections are treated as unclaimed property or become property of the state, they are to be considered as program income and an amount equal to the federal financial participation (66 percent) must be transferred to the federal government (OCSE-PIQ-88-07). Florida law does not provide for either a method for determining when collections are to be considered undistributable, transferring the amount considered the program income to the federal government, depositing only the state portion of undistributable collections, returning an

undistributable collection to the noncustodial parent, or retrieval of these monies if a parent is later located. DOR estimates that there is currently \$1 million in undistributable collections and again notes the changing nature of the level of these funds.

Driver's License and Motor Vehicle Impact Fees

Section 61.13016, F.S., provides that the driver's license and motor vehicle registration of an individual who is delinquent in paying child support can be suspended. The process for notifying the Department of Highway Safety and Motor Vehicles (DHSMV) of the delinquency is provided with a companion provision in s. 322.058, F.S., for the DHSMV to suspend the driver's license and motor vehicle registration upon notification from the Title IV-D agency, depository or clerk of the courts of a delinquent child support obligation. However, s. 61.13016, F.S., also provides for such suspension if the individual obligated to pay child support fails to comply with a subpoena or a similar order to appear or show cause relating to paternity or child support proceedings which is not provided for in the companion s. 322.058, F.S., provision. The DHSMV is not authorized to either suspend a driver's license and motor vehicle registration based on the above conditions or to reinstate the license and registration based on compliance with these conditions.

Photographs of non-custodial parents are not usually available to the Child Support Enforcement Program to assist in efforts to personally serve certain legal notices, such as subpoenas, pleadings and summons. Currently, only descriptive information is available to assist process servers to accurately identify individuals and complete services of process. Digitized driver's license photographs (images) are available but only to law enforcement agencies [s. 322.142(4), F.S.].

In 1990, the Florida Legislature passed an act imposing a \$295 impact fee on cars purchased or titled in other states that then are registered in Florida by persons having or establishing permanent residency in this state. The Supreme Court in 1994 held that the impact fee discriminated against out-of-state economic interests and that a full refund was an appropriate remedy (See Department of Revenue v. Kuhnlein, 646 So. 2d 717). Section 61.13017, F.S., was created in 1995 to withhold and apply to the child support obligation refunds of the motor vehicle impact fee if a non-custodial parent owed delinquent child support. This provision is obsolete since all refunds to be garnished have been paid.

Consumer Reporting Notice Requirement

DOR is required to provide periodic information on overdue child support for their Title IV-D cases to consumer reporting agencies, pursuant to s. 61.1354, F.S. A written notice is required to be sent to the obligor by DOR at least 15 days prior to the release of the information notifying the non-custodial parent of DOR's authority to provide this information, the amount of the overdue support and their right to a hearing with DOR. Existing language is unclear as to whether a notice and option for a hearing is to be provided with every update or prior to the initiation of the process. Given the department's current practice of providing monthly updates to the consumer reporting agencies for Title IV-D cases, provision of prior notices would be administratively cumbersome. This section also provides for both Title IV-D cases to request a hearing with DOR and for non-Title IV-D cases to request a hearing with the courts to contest the accuracy of the information. However, depositories are not required to provide periodic

reporting of overdue child support for non-title IV-D cases to consumer reporting agencies. Further, s. 61.1354, F.S., refers inconsistently to “credit” reporting agencies and to “consumer” reporting agencies.

Workers’ Compensation Settlements

Chapter 440, F.S., provides that it is the intent of the Legislature that the Workers’ Compensation Law be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker’s return to gainful reemployment at a reasonable cost to the employer. The chapter also provides that workers’ compensation benefits may be paid in either installments or, upon joint petition of all interested parties, a lump-sum settlement. For the purposes of computing child support obligations, s. 61.30(2)(a)5., F.S., provides that workers’ compensation benefits be considered as income. Section 61.14(8), F.S., provides that, notwithstanding the provisions of s. 440.22, F.S., any compensation due or that may become due an employee under ch. 440, F.S., is exempt from garnishment, attachment, execution, and assignment of income, except for the purposes of enforcing child or spousal support obligations.

In reviewing and approving the settlement package for the lump-sum payment, many of the Judges of Compensation Claims have initiated procedures for considering child support obligations. Support for assigning workers’ compensation settlement to child support arrearage was provided in the Bryant v Bryant case decided by the Second District of the District Court of Appeal on July 23, 1993 where the court ruled in favor of a former wife who filed a petition requesting that the court to order her former husband to pay child support arrearage out of his workers’ compensation settlement. However, there is currently no provision in Florida law for judges hearing compensation claims to consider or provide for the recovery of past due support amounts when approving settlements.

Suspension of Professional License

A custodial parent may petition the court to suspend or deny the license or certificate issued pursuant to chapters 231, 409, 455, 456, and 559, F.S., of a non-custodial parent who is delinquent in paying the child support (s. 61.13015, F.S.). The Department of Revenue is provided with the same enforcement option for non-custodial parents in s. 409.2598, F.S.; however, the licenses issued pursuant to ch. 455, F.S., are not included in those licenses, registrations or certificates which the department has the authority to petition the court to suspend. Chapter 455, F.S., contains the Department of Business and Professional Regulation’s (DBPR) general provisions. In particular, ch. 455, F.S., provides the licensing provisions for all professions regulated by DBPR.

Garnishment Requirement

Section 409.25656, F.S., provides that if a person has a child support obligation which is subject to enforcement by DOR, a past due and/or overdue support obligation notice may be given to all persons who have any credits or personal property belonging to the child support obligor. A levy on the credits, personal property or debts may be made but only after DOR has notified the obligor in writing of the intention to make such levy. The obligor may contest the notice of intent

to levy by filing an action in circuit court or by filing a petition under the applicable provisions of ch. 120, F.S. The provision does not stipulate any specifics relative to the court action required if a circuit court challenge is utilized. As a result, a supplemental action in an already existing child support case or a separate action which has the potential to be in another county some distance from the court charged with enforcing the support order could be filed.

Judgment by Operation of Law

Title 42, U.S.C. 666(a)(9) requires that each state have a provision for delinquent child support payments to become a judgment of operation of law. Section 61.14(6), F.S., provides that support payments that become due and are unpaid are delinquent and that this delinquent payment becomes a final judgment of operation of law after notice to the obligor and time for response is provided to the obligor. This judgment of operation of law has the full force and attributes of a judgment entered in court and applies to child support payments made through the local depository. However, the State Disbursement Unit, which was created in law in 1999 (ch. 98-397, L.O.F.), now receives certain support payments that were previously paid to the local depository, pursuant to s. 61.1824, F.S. Section 61.14, F.S., was not amended to provide for the delinquent child support payment made through the State Disbursement Unit to become a judgment of operation of law.

Adjustments in Child Support Orders for Visitation Schedules

One of the many variables considered when determining the appropriate amount of child support is the type of shared parental responsibility arrangement ordered by the court. While most states agree that it is reasonable that there should be some adjustment to the amount of the child support obligation in cases of shared parental responsibility, it is difficult to determine just how much that adjustment should be and on what basis it should be determined. Section 61.20(11)(b), F.S., provides that the court shall order payment of child support which varies from the guidelines determined amount whenever a shared parental arrangement provides that a child spends a "substantial" amount of time with both parents. The statute also delineates a series of factors the court is to consider in making such an adjustment. However, what level of visitation constitutes a substantial amount of time is not defined, nor is any methodology provided for determining the deviation from the child support guidelines.

Subsequent Families and Secondary Incomes

Section 61.30(12), F.S., provides that the existence of subsequent children of a non-custodial parent should not generally be considered by the court as a basis for deviation from the child support guidelines. The parent with the support obligation for subsequent children may raise the existence of such children but in so doing, the income of the other parent of the subsequent children is to be considered by the court in determining whether or not to grant an adjustment to the guideline amount of support. Also, the existence of subsequent children may only be raised in a proceeding for an upward modification of an existing award for the initial children and may not be applied to justify a decrease in an existing award.

Administrative Process

The federal Child Support Amendments of 1984 required that each state use expedited processes and procedures for the establishment of child support orders. In general, administrative processes are thought to be more efficient than judicial processes and child support experts believe they result in better performance. The primary caution about the use of administrative processes comes from the concern that due process will be compromised.

In the last 5 years, there has been a push at the federal level to increase the use of administrative processes in the area of child support enforcement. The Florida Legislature has enacted an administrative process to establish paternity through the use of voluntary acknowledgements and consenting affidavits. These processes have resulted in the administrative establishment of paternity for 50,304 children during the calendar year 2000 as reported by the Office of Vital Statistics. Other administrative remedies focus on the area of enforcement of unpaid support including the suspension of driver's licenses, levies against bank accounts, IRS and lottery intercepts, liens on real and personal property, judgments by operation of law and income deductions. Further, a joint study is currently underway with the Department of Revenue and the Office of States Courts Administrator to examine and improve the movement of child support cases through the judicial system.

Income Deduction Orders

When an order establishing, enforcing or modifying a child or spousal support obligation is issued, the court is directed, pursuant to s. 61.1301, F.S., to enter an income deduction order. The income deduction order requires an employer or other payor to deduct the ordered amount from the non-custodial parent's paycheck and direct the payment to the State Disbursement Unit. Section 61.30(1)(a), F.S., specifically excludes temporary orders from the support obligations upon which an income deduction order can be applied.

Notification of Delinquency

When a non-custodial parent is 15 days delinquent in paying the support obligation, the clerk of the courts is required to serve notice on the non-custodial parent with the amount of the delinquency, that a judgment of operation of law is pending and that the delinquency amount, as well as all costs and fees associated with the delinquency, must be paid [s. 61.14(6)(b), F.S.]. Any amount of delinquency generates a notice. The Department of Revenue also serves notice of delinquency when a non-custodial parent is 15 days delinquent in support payments (s. 61.13016, F.S.) informing the non-custodial parent that DHSMV will be given notice to suspend the driver's license and motor vehicle registration in 20 days unless the delinquency is paid in full and any delinquency fees are paid. While the notice of the pending driver's license and motor vehicle registration suspension requires payment of any delinquency fees, it is unclear whether this includes all costs and fees associated with the delinquency, as is required for the clerk's notice.

Modification of Support Orders

Either the custodial parent or non-custodial parent may apply to the court for a modification in the support order as a result of changes in circumstance or financial ability (s. 61.14, F.S.). The court is provided with the jurisdiction to modify support orders as equity requires. Due to the nature of the judicial system there is always a period of time between when a request for a modification of support is made by filing a pleading and the actual date of a trial on that issue. Direction is not provided to the court as to the retroactive application of any modification back to the date of the filing.

III. Effect of Proposed Changes:

Collection of Spousal Support

A new definition is provided in s. 61.046, F.S., for “support” and the definition of “support” is amended in s. 409.2554, F.S., to both include spousal support if the child support obligation is being enforced by DOR and to provide a separate definition for cases not enforced by DOR to include only the child support. The definition of “support order” in s. 61.046, F.S., is amended to provide for not only an order for the support and maintenance of a child but also, when the child support obligation is being enforced by DOR, for the order of support and maintenance of the child and the spouse.

References to “child support” in the following statutory provisions are changed to “support” or are modified in other forms to include spousal support in the enforcement actions which DOR is provided authority to take:

- Section 24.115(4), F.S.: Payment of lottery prizes and transmission of the prize to cover all debts to a state agency.
- Section 61.11(2)(a), F.S.: Court issuance of a writ of bodily attachment in connection with a court-ordered support obligation.
- Section 61.13(9)(a), F.S.: Requirement of each party to any support proceeding to file certain information with the State Case Registry.
- Section 61.13015(1), F.S.: Obligee petitioning of the court for the suspension or denial of certain professional licenses or certificates of an obligor with a delinquent support obligation.
- Section 61.13016(1), F.S.: Suspension of the driver’s license and motor vehicle registration of a support obligor who is delinquent in payment.
- Section 61.13017, F.S.: Withholding of a refund on a motor vehicle impact fee if the support obligor is delinquent in payment.
- Section 61.1354(3), F.S.: Sharing of information between consumer reporting agencies and DOR in determining an individual’s capacity to make support or child support payments.
- Section 61.181, F.S.: Depository for support payments.
- Section 61.1824(1), F.S.: Support cases handled by the State Disbursement Unit.
- Section 69.041(4), F.S.: DOR’s right to participate in the disbursement of funds remaining as a result of a judicial sales procedure pertaining to a support order.
- Section 213.053(15), F.S.: DOR disclosing confidential information to assist in locating parents who owe support.

- Section 231.097, F.S.: Screening of applicants for new or renewal teaching certificates by DOR to assure compliance with a support obligation.
- Section 320.05(2), F.S.: Department of Highway Safety and Motor Vehicle disclosing information on a motor vehicle registration to DOR to assist in locating individuals who owe support.
- Section 322.058, F.S.: Suspension of driving privileges due to support delinquencies.
- Section 409.2557(3), F.S.: DOR's rulemaking authority, including rules pertaining to support obligors and support payments.
- Section 409.25575, F.S.: Encouragement to DOR to privatize support services.
- Section 409.2558, F.S.: DOR's distribution of support payments.
- Section 409.2561, F.S.: Section heading on support obligation when public assistance is paid.
- Section 409.2564, F.S.: Action DOR may take to as it pertains to support.
- Section 409.2565, F.S.: Making available for publication a listing of cases in which the payment of support is overdue.
- Section 409.25656, F.S.: Garnishment of credits and personal property for past due support.
- Section 409.25657, F.S.: Requirements for financial institutions pertaining to providing information on individuals with a past due support obligation.
- Section 409.25658, F.S.: Use of unclaimed property for past due support.
- Section 409.2567, F.S.: Offering support services for all dependent children, including public assistance recipients and non-public assistance families.
- Section 409.2572, F.S.: Requiring recipients of public assistance to cooperate in paying any support received to DOR.
- Section 409.2578, F.S.: Access to employment information for the purposes of establishing a child support obligation or enforcing a support obligation.
- Section 409.2579, F.S.: Confidentiality of information.
- Section 409.2594(2), F.S.: DOR's maintenance of records to evaluate the effectiveness of the program including the money generated through the collection of support of dependent children.
- Section 409.2598, F.S.: Suspension of certain licenses of obligors with delinquent support obligations.
- Section 414.065(5), F.S.: Work activity requirements and the authority of the court to order a non-custodial parent who is delinquent in support payments to obtain employment.
- Section 414.095(8), F.S.: Determining eligibility for temporary cash assistance and the assignment of support.
- Section 443.051, F.S.: Deducting and withholding owed support obligations from unemployment compensation.
- Section 455.203(9), F.S.: Authorizing the Department of Business and Professional Regulation to suspend or deny the license of a person with a delinquent support obligation.
- Section 456.004(9), F.S.: Authorizing the Department of Health to suspend or deny the license of a person with a delinquent support obligation.
- Section 559.79(3), F.S.: Authorizing the Department of Business and Professional Regulation to suspend or deny the license of a person with a delinquent support obligation.
- Section 943.053(5), F.S.: Allowing the Department of Law Enforcement to provide DOR with certain criminal records for the purpose of locating persons who owe support.

“Child” support is expressly specified in s. 409.2564, F.S., to allow for a review of only child support orders every 3 years. The review of only child support orders every 3 years is appropriate since DOR’s responsibility relative to spousal support does not include modifying the order.

Based on DOR’s report that all child support enforcement actions have historically been applied to spousal support, it would appear that these modifications would not change current practice but instead provide clear statutory authority for this category of cases.

Administrative Orders for Genetic Testing

Sections 409.25645 and 742.12(2), F.S., are amended to authorize genetic testing in paternity establishment proceedings on the basis of a written declaration, as provided in s. 92.525(2), F.S. These modifications would allow genetic testing to proceed without the need for a notarized statement.

Food Stamps Provisions

The bill amends ss. 414.32(1)(a) and (b), F.S., to require that the Food Stamp Office determine if the custodial parent has good cause for not cooperating with the Child Support Enforcement Program. However, if Department of Children and Family Services obtains written authorization from the U.S. Department of Agriculture (the federal agency responsible for the Food Stamp Program), DOR will continue to determine good cause. The use of the term “public assistance” is replaced with temporary cash assistance and Title IV-E in s. 409.2561, F.S., to accurately identify those public assistance recipients who are required to assign rights to child support. The definition of “public assistance” in s. 409.2554(7), F.S., is amended to include only individuals who receive food stamps on behalf of a child under 18 years of age who has an absent parent. This would eliminate the requirement for food stamp recipients without children or an absent parent for whom child support is to be required to cooperate with the Child Support Enforcement Program. Section 409.2572(3), F.S., is amended to use the newly defined “public assistance” which specifically includes food stamp recipients with children in DOR’s scope of responsibility for determining cooperation with the Child Support Enforcement Program. Section 409.2572, F.S., requiring cooperation with the Child Support Enforcement Program is amended to exclude child only Medicaid cases.

Family Violence Indicator

The bill amends s. 61.1825, F.S., to provide two additional conditions for identifying when a family violence indicator must be placed on a child support enforcement case and transmitted to the Federal Case Registry to prevent the disclosure of information on the case when release of the information may result in harm to the individual or child. These conditions are when a temporary or final injunction for protection against domestic violence, repeat violence or by a court from another state has been granted and when the Domestic and Repeat Violence Injunction Statewide Verification System indicates that a party has been granted a domestic violence or repeat violence injunction. The addition of these two conditions for determining when a family violence indicator must be added offers more immediate protection for the victims since they would not have to take the extra step to issue a sworn statement if there was an

injunction. It also provides greater assurance that Florida is in full compliance with federal regulations relative to this issue.

Unidentifiable and Undistributable Collections

The bill repeals s. 409.259, F.S., and creates a method to process unidentifiable and undistributable collections in s. 409.2558, F.S. Definitions of “unidentifiable collections” and “undistributable collections” are added to s. 409.2554, F.S., the definitions section for the Title IV-D Child Support Enforcement Program. Section 409.2558, F.S., is expanded to set forth the methods for processing unidentifiable and undistributable collections. For undistributable collections, the department is directed to establish by rule a method for determining if a collection or refund to a non-custodial parent is undistributable to the final recipient. An order of priority for processing undistributable collections is delineated, including payment of the federal share and crediting the state’s share in the general revenue fund, if the non-custodial parent cannot be located to return the payment. For unidentifiable collections, the department is again directed to establish by rule a method for determining if a collection is unidentifiable at which time the federal share is credited to the federal government and the state share to the general revenue fund. The opportunity to reclaim collections if the appropriate party is identified or located is established, and rulemaking authority for the section is provided. These provisions will provide a mechanism for final disposition of undistributable and unidentifiable collections. DOR is directed to ascertain recommendations from interested parties as it develops rules for undistributable collections as a mechanism for providing direction to the process of determining when a collection is undistributable and how the collection can be reclaimed. A report to the legislature on the recommendations obtained and DOR’s response is required.

Driver’s License and Motor Vehicle Impact Fee

Section 322.058, F.S., which provides for the Department of Highway Safety and Motor Vehicles to suspend the driver’s license and motor vehicle registration when notice is received of a delinquent child support obligation, is expanded to allow for such suspension if the individual has failed to comply with a subpoena, order to appear, order to show cause or similar order. This conforms s. 322.058, F.S. with s. 61.13016, F.S. These conditions under which the license and registration can be suspended are also identified as conditions by which the license and registration can be reinstated. The Department of Highway Safety and Motor Vehicles noted that “similar orders” does not provide for a clear identification of how the department is required to process the cases.

The bill amends s. 322.142(4), F.S., to allow driver’s license photographs to be made available to the DOR based on an interagency agreement with the Department of Highway Safety and Motor Vehicles to facilitate the service of process in Title IV-D cases. This will allow driver’s license photographs to be included in the service of process packages for use by law enforcement personnel and private process servers to effectuate accurate identification of the individuals being served thereby reducing services attempts.

Section 61.13017, F.S., permitting the withholding of motor vehicle impact fee refunds of non-custodial parents who are delinquent in their child support obligation is repealed.

Consumer Reporting Notice Requirement

Section 61.1354(2), F.S., is amended to require DOR to provide written notice to a non-custodial parent at least 15 days prior to the initial release of information to consumer reporting agencies and to specify that no further notice or opportunity for a hearing is required prior to periodic updates. This modification clarifies the notice and codifies in law the current practice of the department. Reference to “credit” reporting agencies is changed to “consumer” reporting agencies to provide a consistent use of terms.

Workers’ Compensation Settlement

Sections 61.14(8), and 440.20, F.S., are amended to provide that when Judges of Compensation Claims review lump-sum workers’ compensation payment settlements they are to consider the interests of the worker and the worker’s family when approving the settlement. Such settlement must provide for appropriate recovery of child support arrearages. The sources of income identified in s. 61.30, F.S., to be considered in determining child support obligation is clarified to include all workers’ compensation benefits and settlements which provides clear statutory authority for considering workers’ compensation settlements.

Suspension of Professional License

The Department of Revenue’s authority to petition the court to deny or suspend licenses, registrations and certificates of non-custodial parents with delinquent child support obligations is expanded in s. 409.2598, F.S., to include ch. 455, F.S., which provides for the licensing of all professionals regulated by DBPR.

Garnishment Requirement

Section 409.25656(8), F.S., is amended to provide that an obligor may contest DOR’s notice of intent to levy by filing an action in the existing circuit court case. This provision clarifies that an obligor who wishes to contest a notice of intent to levy issued by DOR must file an action in the existing circuit court case and cannot file a separate action in another court.

Judgment by Operation of Law

Section 61.14(6), F.S., is amended to add the State Disbursement Unit to the entities through which support payments are collected and disbursed and require that the judgment by operation of law provisions include delinquent support payments ordered to be paid to the State Disbursement Unit.

Adjustments in Child Support Orders for Visitation Schedules

Section 61.30(11), F.S., is amended to stipulate that a child who spends at least 40 percent of the overnights with the non-custodial parent is considered to be spending a “significant” amount of time for purposes of a shared parental arrangement. Adjustments can be made to the minimum child support award if there is a shared parental arrangement and the child spends less than 40 percent of overnight stays with the non-custodial parent. However, a formula is provided for

shared parental arrangements that exceed this threshold that must be used in adjusting the child support award.

Subsequent Families and Secondary Incomes

Section 61.30(12), F.S., is amended to allow the court to disregard the income from secondary employment for the purposes of calculating the child support obligation, if there are subsequent children and if the court determines the secondary employment was obtained primarily to support the subsequent children.

Administrative Process

The bill provides for the establishment of a pilot program for administratively establishing child support orders. The process set forth provides for the Department of Revenue to calculate the non-custodial parent's child support obligation under the existing child support guidelines based on prescribed information and affidavits to be provided by both parents. A proposed administrative support order is sent to both parents. The non-custodial parents are notified of their right to request a hearing before the Division of Administrative Hearing. Either parent may at any time file a civil action in circuit court to determine the non-custodial parent's child support obligation. The bill sets forth provisions for establishing the proposed administrative order, requesting a hearing, the filing of the administrative order with the court, collection and enforcement, judicial review and modifications of the administrative order. The pilot is established in a county to be selected by the Department of Revenue based on parameters outlined in the bill. The Office of Program Policy Analysis and Government Accountability is to conduct an evaluation. A final report is to be submitted January 31, 2004 to the Governor, Cabinet and Legislature. The pilot program expires June 30, 2004 unless continued by the Legislature.

Income Deduction Orders

Section 61.1301, F.S., is amended to permit the court to enter an income deduction order whenever the court enters a temporary order establishing support or a temporary order enforcing or modifying a temporary order of support. This section is also amended to encourage the court to request at the time the income deduction order is entered that the payment cycle reflect that of the payor.

Notice of Delinquency

Section 61.13016, F.S., is amended to clarify that all costs and fees accrued from the date of the notice to the date the delinquency is paid must be paid to prevent the suspension of the driver's license. With this amendment, the required delinquency payment for the suspension of driver's license is made consistent with the clerk's required delinquency payment. Section 61.14(6)(b), F.S., is amended to provide that a delinquency notice would not be sent to the obligor until the amount of the delinquency is greater than the amount of the periodic payment amount ordered by the court.

Modification of Support Orders

Section 61.14(1), F.S., is amended to permit the court to modify a support order retroactive to the date of filing as equity requires. Such modification may be by increasing or decreasing the support order and is to consider changed circumstances and financial ability in determining the retroactive application of the modification.

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:

None.

C. Government Sector Impact:

Both the Department of Labor and Employment Security and the Department of Highway Safety and Motor Vehicles report that this bill will have no fiscal impact on their departments.

The Department of Revenue reports that this bill will have no fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
