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HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS

BILL #: HB 1689 (PCB JO 02-02)

RELATING TO: Child Support Administrative Process

SPONSOR(S): Committee on Judicial Oversight and Representative Crow

TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

(1) JUDICIAL OVERSIGHT YEAS 10 NAYS 1
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill provides for the statewide implementation of the use of administrative proceedings to establish paternity or paternity and child support and contains requirements for genetic testing. This bill also amends certain provisions related to the administrative establishment of child support obligations pursuant to a pilot program created by the Legislature during the 2001 session.

This bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes [X]	No []	N/A []
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes [X]	No []	N/A []
4.	Personal Responsibility	Yes [X]	No []	N/A []
5.	Family Empowerment	Yes [X]	No []	N/A []

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Use of Administrative Process in Child Support Enforcement

The federal Child Support Enforcement Amendments of 1984 required that each state use expedited processes and procedures for the establishment and enforcement of child support orders, including those in interstate cases. Congress added paternity establishment to the requirement in 1993. In order to comply with the federal mandate states must meet specific time frames for establishing paternity and establishing and enforcing support orders. Both the established time frames and caseload backlogs have pushed states into simplifying their processes in order to improve the efficiency of their child support system. Under the law, states could meet this requirement for expedited process in one of three ways:

> **M** states could implement a full administrative process, authorizing the IV-D agency or separate administrative hearings agency to establish and enforce IV-D orders without judicial involvement;
> **M** states could develop hybrid, or "quasi-judicial" processes in which a court-appointed master, referee or other court employee hears and decides child support issues; or
> **M** states could retain the use of judicial procedures in which judges hear and decide cases in the traditional manner.

In a 1993 report to Congress, the U.S. Commission on Interstate Child Support recommended that

> While recognizing the important role of the court in the establishment and enforcement of child support obligations, states are encouraged to simplify the IV-D child support process and make it more accessible by utilizing administrative procedures where possible. An important consideration in the decision would be the reduction in the workload of the court and reserving use of the court for those functions where a judicial officer is required.

The shift towards administrative process is also closely tied to the automation of the child support enforcement program. The Family Support Act of 1988 (FSA) required state child support enforcement (Title IV-D) agencies to develop automated systems with the capability of managing information and processing IV-D cases statewide. The deadline for certification of statewide systems was October 1997. The goal of the FSA certification standards was to increase state capacity to process cases administratively and automatically with limited caseworker intervention while at the same time expanding the amount of automated information available to state IV-D programs.

The Personal Responsibility and Work Opportunity Act of 1996 (PRWORA), or federal welfare reform, not unlike earlier federal legislation, required states to implement specific expedited and administrative procedures intended to expand the authority of the state child support agency and improve the efficiency of state child support programs. While the 1996 law did not mandate either full administrative process or state centralization, it moved states further in both directions. The new law specifically required the state IV-D agencies to handle several aspects of case processing without judicial involvement. In addition, the law required states to use a variety of administrative enforcement mechanisms that depend on automated case processing and move states further away from case-specific discretion.

Federal welfare reform also set in motion two other major changes which emphasize the need for streamlined processes. First, new welfare time limits and eligibility restrictions implemented under the newly created Temporary Assistance for Needy Families (TANF) block grant greatly increased the pressure on states to develop child support income streams for low-income families. It has been recognized that full administrative process may be the only realistic way for state IV-D agencies to meet the increased pressure to produce results. Second, a state IV-D program's ability to control and account for its caseload performance will become critical aspects of future federal performance-based funding and audit policies. Under the 1996 law, states must continuously improve their paternity establishment rate until they reach 90 percent, or face fiscal penalty. In addition, Congress directed the Secretary of Health and Human Services (HHS) to develop a performance-based incentive funding proposal and submit it to Congress by March 1997.

At the same time, the fiscal implications of maintaining existing judicial and quasi-judicial systems should lead states to reconsider their processes for establishing paternity and support obligations. While states can receive 66 percent federal reimbursement for the costs of administrative processes handled by the IV-D agency, federal reimbursement for judicial processes is limited. For example, federal reimbursement is not available to compensate judges and other court personnel, or to pay for office-related expenses. Federal welfare reform presented an opportunity for each state to assess the current structure of its IV-D program and determine whether its program structure allows child support workers to process IV-D cases quickly, cost-effectively, and fairly. In general, while no data exists, administrative processes are thought to be more efficient than judicial processes, and child support experts believe they result in better performance. In addition, administrative processes work extremely well with the new automated systems.

In the last five years, there has continued to be 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 acknowledgments and consenting affidavits. These processes have resulted in the administrative establishment of paternity for 50,304 children during 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. These methods have proven effective in collecting support efficiently without the necessity of additional judicial intervention.

During the 2001 legislative session, a pilot program for the administrative establishment of support was created in Volusia County (See Chapter #2001-158, Laws of Florida). The pilot includes Title IV-D cases that do not have an existing support order and in which paternity is not an issue. To date, results from the pilot are as follows:

Volusia County Pilot

As of January 14, 2002	Administrative		Judicial	
	Cases	Percent	Cases	Percent
Assigned to group	262	100%	261	100%
Notices mailed/judicial referrals	261	100%	252	97%
Noncustodial parents served notice	178	68%	155	59%
Noncustodial answers received	47	18%	TBD	
Proposed orders sent	141	54%		
Informal discussions/pre-trial conferences	6	2%	TBD	TBD
Hearings scheduled	7	3%	118	45%
Hearings held	4	2%	62	24%
Final orders issued	116	44%	52	20%
Cases appealed	0	0%	0	0%
Cases in locate process	20	8%	46	18%
Cases closed	28	11%	24	9%

From the Florida Department of Revenue

C. EFFECT OF PROPOSED CHANGES:

The Use of Administrative Process in Child Support Enforcement

This bill proposes the use of administrative process statewide for establishing paternity or paternity and support (See section-by-section).

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends ' 61.13016, Florida Statutes, relating to the suspension of driver's licenses and motor vehicle registrations, to authorize the Department of Highway Safety and Motor Vehicles to suspend driver's licenses and motor vehicle registrations in order to enforce compliance with an order to appear for genetic testing for the purpose of establishing paternity or paternity and child support.

Section 2. Amends ' 61.1814, Florida Statutes, relating to the Child Support Enforcement Application and Program Revenue Trust Fund, to authorize deposit of fines imposed pursuant to the newly created ' 409.2560(7)(b), Florida Statutes. Section 409.2560(7)(b), Florida Statutes, authorizes the Department of Revenue to impose a $500 administrative fine against an individual who either fails to appear for or fails to submit to ordered genetic testing without good cause.

Section 3. Amends ' 120.80, Florida Statutes, relating to exceptions and special requirements for agencies under the administrative procedures act, to add proceedings for the establishment of paternity or paternity and child support to the types of proceedings requiring the Division of Administrative Hearings to enter final orders in any cases referred by the Department of Revenue. The section also provides for judicial review.

Section 4. Amends ' 382.013, Florida Statutes, relating to birth registrations, to require that the name of the father and the surname of the child be entered on the birth certificate if paternity is determined pursuant to an administrative proceeding to establish paternity.

Section 5. Amends ' 409.2557, Florida Statutes, relating to the state agency designated to administer the child support enforcement program, to authorize the Department of Revenue to adopt rules necessary to implement administrative proceedings to establish paternity or paternity and child support, orders to appear for genetic testing, and administrative proceedings to establish child support obligations.

Section 6. Creates ' 409.2560, Florida Statutes, relating to administrative proceedings to establish paternity or paternity and child support and orders to appear for genetic testing. Specifically, the section:

M creates definitions for use in the newly created administrative process;
M specifies criteria that must be met in order for a case to be eligible for an administrative proceeding, specifies the location of hearings, and provides that there is no intention to limit the jurisdiction of the court to hear and determine issues relating to the establishment of paternity or paternity and child support;
M provides procedures in cases with multiple putative fathers and multiple children;
M delineates what the notice of an establishment proceeding must contain and the manner of service of such notice;
M provides for the process to be used to contest an order to appear for genetic testing;
M provides for the process to be used to schedule genetic testing;
M specifies remedies for failure or refusal of an individual to submit to genetic testing after having been served with an order to appear;
M provides for the Department of Revenue to send genetic testing results to the putative father, the mother, to the custodian, and to another state, if applicable;
M provides for the proposed order of paternity, the commencement of a proceeding to administratively establish support and the proposed order to paternity and child support;
M provides for an informal review of any proposed order and the process for requesting an administrative hearing;
M provides procedures for issuing a final order establishing paternity or paternity and child support and providing notice to the Office of Vital Statistics;
M provides for the right to judicial review of an order; and
M provides the Department of Revenue with rulemaking authority.

Section 7. Amends ' 409.2563, Florida Statutes, relating to the administrative establishment of child support obligations. Specifically, the section:

M creates a definition for the term “financial affidavit”;
M removes the requirement that a child support order specify a support amount for each child covered by the order;
M requires the withholding and transmittal of 40% of any unemployment compensation benefits received by the obligor;
M provides that financial affidavits other than the affidavit prescribed by the Florida Family Law Rules of Procedure may be used in the administrative establishment process; and
M provides that the notice of a proceeding for the administrative establishment of support states that the respondent may file an action in circuit court and that if such an action is filed, the administrative process ends without prejudice and the action must proceed in circuit court.

Section 8. Amends ' 742.10, Florida Statutes, relating to the establishment of paternity for children born out of wedlock, to provide that when paternity is adjudicated by the Department of Revenue administratively, it shall constitute the establishment of paternity for purposes of chapter 742, Florida Statutes.

Section 9. Amends ' 760.40, Florida Statutes, relating to genetic testing and informed consent, to provide an exception to the informed consent and confidentiality requirements for genetic testing required pursuant to an administrative proceeding.

Section 10. Provides for an effective date of upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

The Department of Revenue reports that a number of goals can be achieved through the use of administrative process in the child support enforcement process, all of which together will reduce costs to state and result in children and families receiving support sooner. The exact amount of savings to the state is unknown at this time. Specifically, the administrative process:

M Uses a more efficient process that will improve or at least help maintain performance levels and increase federal incentive earnings;
M Reduces the burden on local governments and the judicial system;
M Decreases the duplication of effort by eliminating the number of government entities working on the same cases;
M Increases collections and voluntary compliance; and
M Allows for a greater number of orders to be established more quickly.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The primary caution about the use of administrative process comes from the concern that due process will be compromised. The provisions of the administrative process proposed by this bill would appear to more than meet minimum requirements for due process of law. Additionally, other states have used similar administrative processes successfully for decades. Federal law requires states give Full Faith and Credit to administrative support orders and Florida has been enforcing administrative orders issued by other states for years.

B. RULE-MAKING AUTHORITY:

This bill authorizes the Department of Revenue to adopt rules to implement administrative proceedings to establish paternity or paternity and child support, orders to appear for genetic testing, and administrative proceedings to establish child support obligations.

C. OTHER COMMENTS:

In general, child support experts believe that administrative process is more efficient than judicial process and it results in better performance. States who have used administrative process report that it is much faster and more efficient than court processes. Administrative process also works particularly well with the increasing use of automation in the child support arena. It is a way to free up court time and capitalize on the 66% federal match for non-judicial time. It has been acknowledged that administrative hearing officers gain a great deal of perspective and specialized experience from doing child support hearings and nothing else. Judges, who rotate in and out of family law, are less likely to gain that same level of expertise in child support issues.

There is also general agreement that Maine and South Carolina have two of the strongest administrative process systems in the country – Maine has used the process with great success since the mid-1980's. The language proposed in this bill closely follows the Maine model.

In Maine, only 10% of noncustodial parents ask for a hearing. Of those who do so, 90% appear for the hearing. Because the number of hearings is small, greater time and attention can be spent resolving the issues which led to the hearing request. Maine has been able to establish more orders with available staff and orders are obtained more quickly. As a result, children and custodial parents get payments sooner. Maine emphasizes that specialists trained in the establishment

process are essential in handling these cases and that a great deal of time should be spent training these staff members.

The Office of the State Courts Administrator reports concern that use of administrative process does not support the trend among many states, including Florida, to move towards the creation of a unified family court. Part of the rationale for court reform in the area of family law can be summarized by the following:

> Traditionally, the legal system has separated civil and criminal matters, and it has distinguished among classes of cases within these categories. When applied to family law decisionmaking, this configuration has resulted in conflicting jurisdiction among courts, unpredictable outcomes, a waste of judicial and litigant resources, successive appeals, and (income withholding notice) inefficient court administration. Particularly for litigants experiencing multiple family law problems, this traditional structure has created serious negative consequences:
>
> [T]he judicial system present in most states … contributes to the demise of the family unit. Under the current system, it is not uncommon to have a family involved with one judge because of an adult abuse proceeding, a second judge because of the ensuing divorce, with still another judge because of child abuse and neglect allegations, and a fourth judge if the abuse allegation led to criminal charges. The fragmented judicial system is costly to litigants, inefficient in the use of judicial resources, and can result in the issuance of diverse or even conflicting orders affecting the family. Also, too often courthouse resolutions resolve only the legal conflicts, leaving unaddressed the underlying personal relationship and psychological disputes (See Barbara Babb, Journal of Health Care Law and Policy, 3:1, 1999).

Nonetheless, the reduction or elimination of conflicting orders is not the only goal reflected in varying models of unified family courts. One perspective includes as part of its vision, the belief that the role of the court system should be small, with only the most contentious or complicated cases reaching the traditional court system. With fewer cases, there would be a need for fewer family court judges, and those that exist would have more time to devote to each case. As a result, resources that had been spent on judges are reallocated from the back end to the front end of the system (See Pro Se Study Group Workshop Highlights, Supreme Court of Florida, 1996). This would appear to support the use of a non-judicial process for simple cases of support establishment.

In 1993, a legislatively mandated study done in Maryland identified and reported a number of impediments to family justice that are not unlike those apparent in court systems nationally. Again, it would appear that a number of those could be ameliorated through the use of administrative processes and include:

> **M** the resolution process is often time-consuming, expensive, and cumbersome, with some aspects of the dispute being adjudicated more than once;
> **M** there is inadequate resort to non-judicial resolution techniques that might provide better, quicker, cheaper, and less acrimonious solutions to many of these kinds of cases:
> **M** in some instances, judges sitting on family law cases display either a lack of interest, a lack of temperament, or a lack of understanding with respect to these cases; and
> **M** the courts are not giving proper attention to the special needs of poor people, who often cannot afford representation by counsel and need, or desire, to proceed pro se. (See Robert C. Murphy, Report of the Family Division Review Committee, 1993).

The Office of the State Courts Administrator has also expressed concern that use of administrative process will create a “two-tier” justice system, with higher income families utilizing the court system and lower income families being diverted into the administrative arena. Anecdotal evidence related to this issue suggests a public perception that a two-tier justice system already exists within the

family court system. As a rule, only lower income families utilize the IV-D system, while families with greater financial resources hire lawyers and go to court. As a result, in a system with minimal administrative options for IV-D families, they are representing themselves in court.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

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