

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.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 590

INTRODUCER: Senator Brandes

SUBJECT: Child Support and Parenting Time Plans

DATE: March 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____

I. Summary:

SB 590 authorizes the Department of Revenue (department) to establish parenting time plans agreed to by both parents in Title IV-D child support actions. The department will be required to provide parents Title IV-D Parenting Time Plans with a proposed administrative support order. The bill also creates a standard Title IV-D Parenting Time Plan that may be used by parents. In the event the parents cannot agree on a parenting time plan, they will be referred to the circuit court for the establishment of a plan. In these instances, parents will not pay a fee to file a petition to determine a parenting time plan.

The bill has an effective date of January 1, 2018, and will have a fiscal impact on the Department of Revenue and the state court system.

II. Present Situation:

Chapter 61, Florida Statutes, addresses the issues of dissolution of marriage, child support, and parenting time plans. In a dissolution of marriage, matters relating to the marriage are settled as part of the judicial proceeding or through the adoption of a marital settlement agreement. If the parties to the dissolution cannot agree then the circuit court has the jurisdiction to resolve outstanding issues.

The Florida Legislature designated the Department of Revenue as the state agency responsible for the administration of the child support enforcement program, Title IV-D of the Social Security Act, 42 USC. ss. 651 et seq.¹ As the state Title IV-D agency, the department has the authority to take actions to carry out the public policy of ensuring children are maintained from the resources of their parents to the extent possible. The department's authority includes, but is not limited to, the establishment of paternity or support obligations, as well as modifications,

¹ s. 409.2557(1), F.S.

enforcement, and collection of support obligations.² According to the department's website, as of federal fiscal year 2014, the department collected \$1.57 billion in child support whereby 98% went to the families. The remaining 2% reimbursed public assistance dollars. Additionally, \$1.02 billion in child support was collected through income withholding from the parent's paycheck. For every dollar spent the child support program collects \$5.75³.

The Title IV-D program plays a critical role in assuring that parents who live apart from their children meet their financial obligations.⁴ Child well-being is improved by positive and consistent emotional and financial support from both parents.⁵ Engaged fathering significantly enhances children's social, cognitive, and academic behavior in a positive manner.⁶

There is no systematic, efficient mechanism for families to establish parenting time agreements for children whose parents were not married at the time of their birth.⁷ While divorcing parents often establish parenting time agreements as part of the divorce proceedings in circuit court, child support systems require unmarried parents to participate in multiple, often overlapping, legal proceedings in order to resolve issues of child support and parenting time.⁸ Addressing both the calculation of child support and the amount of parenting time as part of the same process increases efficiency and reduces the burdens on parents of being involved in multiple administrative or judicial processes. A structured, formal approach to parenting time helps both parents manage their co-parenting relationship and reduce conflict, ambiguity, unpredictability about parenting time arrangements, and may increase child support compliance.⁹

A handful of states or jurisdictions (Michigan, Texas, Orange County, California, Hennepin County, Minnesota) have child support initiatives that incorporate parenting time agreements into initial child support orders, many focusing on parenting agreements where the parents already agree on the division of time.¹⁰ Texas is the most standardized, statewide program incorporating parenting time agreements into child support orders.¹¹ The Texas Family Code requires that a final order that stems from a suit affecting a parent-child relationship must include a parenting plan.¹² Unlike other states, Texas provides a statutory "standard possession order" that is presumed to provide a noncustodial parent with reasonable minimum time with his or her child and to be in the best interest of the child.¹³

² section 409.2557(2), F.S.

³ Florida Department of Revenue, Child Support Enforcement website, *available at* <http://floridarevenue.com/dor/childsupport/pdf/cs1001x.pdf> and last visited March 1, 2017.

⁴ U.S. Department of Health and Human Services, Administration for Children & Families, *Promoting Child Well-Being & Family Self-Sufficiency, Child Support and Parenting Time: Improving Coordination to Benefit Children*, Child Support Fact Sheet Series, Number 13, on file with the Senate Committee on Children, Families & Elder Affairs.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at page 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at page 3.

¹² Alicia G. Key, *Parenting Time in Texas Child Support Cases*, Family Court Review, Vol 53 No. 2, April 2015 258-266, on file with the Senate Committee on Children, Families & Elder Affairs.

¹³ See Tex. Fam. Code Section 153.252 (West 2013).

In 1989, the Texas legislature moved forward with not only the required child support guidelines as required by the federal government, but also with statutory presumptive visitation guidelines in the form of a standard order.¹⁴ If there is a history of domestic violence or sexual abuse, the standard possession order may be inapplicable. The court must consider the commission of family violence or sexual abuse in determining whether to deny, restrict, or limit the possession of a child by a noncustodial parent.¹⁵

In the initial creation of the Title IV-D program, Congress provided financial subsidies for the operation of state Title IV-D programs through financial incentives based on support collections. Because the activities that are eligible for federal funding are limited to those required to establish paternity, establish and enforce child support obligations, collect and distribute payment, and locate absent parents, most states have taken the position that child support orders obtained or issued by IV-D programs not include provisions regarding parenting time, at the risk of jeopardizing federal funding for their programs.¹⁶

Texas has managed to include parenting plans in its support order for the last 30 years by maintaining that the cost of establishing a visitation order, coinciding with the establishment of paternity and/or a support obligation is a reasonable and minimal expense that must be incurred as part of the support order establishment process. Texas has argued that its success is based on:

- the existence in Texas law of the standard possession order,
- simple child support guidelines,
- agency policies and practices with dealing with cases where any dispute regarding parenting time, and
- the agency's successful public educational and outreach activities.¹⁷

The Texas Office of Attorney General (the Title IV-D agency in Texas) has adopted policies and practices to make the visitation order establishment process highly efficient. The agency is not involved in the resolution of any disputed possession issue between the parties. Disputed cases are referred to the appropriate trial court for a final resolution of visitation disputes.¹⁸ However, the parties do not need to file additional pleadings or incur additional expense at the second hearing for a decision on the visitation issues that may be in dispute.¹⁹

In s. 409.2563, F.S., the legislative intent is clear that the jurisdiction of the circuit courts to hear and determine issues regarding child support were not limited. The intent was to provide the department with an alternative procedure to establish child support obligations in Title IV-D cases in a fair and expeditious manner when there is no court order of support.²⁰ The Legislature did not grant the department the jurisdiction to hear or determine issues of dissolution of marriage, separation, alimony or spousal support, termination of parental rights, dependency, disputed paternity except as otherwise provided in statute, or award of or change of time-

¹⁴ Key, *supra* note 4, at 111.

¹⁵ Key, *supra* at 261.

¹⁶ See 45 C.F.R., Section 304.20(b) (1982).

¹⁷ Key, *supra* at 263.

¹⁸ See Tex. Fam. Code Section 201.007(b)

¹⁹ Key, *supra* at 263.

²⁰ section 409.2568(2)(a), F.S.

sharing.²¹ In Title IV-D cases, if parents want to establish a shared parenting time schedule that is enforceable by the courts, they have to file a separate cause of action in the circuit court.

III. Effect of Proposed Changes:

Section 1 amends s. 409.2551, F.S., to provide that it is the public policy of the state to encourage frequent contact between and child and each parent and that there is no presumption against the father or mother or for or against any specific time-sharing schedule.

Section 2 amends s. 409.2554, F.S., to provide definitions for “State Case Registry”, State Disbursement Unit” and “Title IV-D Standard Parenting Time Plans”.

Section 3 amends s. 409.2557, F.S., to provide the department the authority, in addition to the establishment of paternity or support obligations, to establish Title IV-D Standard Parenting Time Plans or any other parenting time plan agreed to by the parents.

Section 4 amends s. 409.2563, F.S., to allow the department to establish parenting time plans only if the parents are in agreement. This section also provides that if the parents do not have a parenting time plan and do not agree to a Title IV-D Standard Parenting Time Plan one will not be included in the initial administrative order setting child support. A statement explaining the absence of the parenting time plan will be included with the initial administrative order setting child support.

Any notifications by the department to parents will not include a Title IV-D Standard Parenting Time Plan if Florida is not the child’s home state, when one parent does not reside in Florida, if either parent has requested nondisclosure for fear of harm from the other parent, or when the parent who owes child support is incarcerated.

The bill also provides that if both parents have agreed to a parenting time plan before the administrative support order is established, the plan will be incorporated into the administrative support order. However, the department does not have the jurisdiction to enforce any parenting time plan that is incorporated into an administrative support order.

When the department provides notice of proceeding to establish an administrative support order it shall include a copy of the Title IV-D Standard Parenting Time Plans. Copies of proposed administrative support orders provided to parents will include a copy of the Title IV-D Standard Parenting Time Plan, along with other required documents. If a hearing is held, an administrative support order will include a parenting time plan or Title IV-D Standard Parenting Time Plan agreed to by both parents.

Section 5 creates s. 409.25633, F.S., to provide that a Title IV-D Standard Parenting Time Plan must be included in any administrative action to establish child support taken by the department if the parents agree to the plan. If there is no agreement as to a parenting time plan, then the department must enter an administrative order for child support and refer the parents to a court of

²¹ section 409.2568(2)(b), F.S.

appropriate jurisdiction to establish a parenting time plan. The department must also provide information to the parents on the process to establish such plan.

This section also creates a Title IV-D Standard Parenting Time Plan for a parent that owes child support and the parents live within 100 miles of each other and the child is 3 years of age or older; for a parent that owes child support and the parents live more than 100 miles of each other and the child is 3 years of age or older. For children under the age of 3, the parents may agree on a time plan that includes more frequent visitation with shorter timeframes, gradually leading into overnight visits. The Title IV-D Standard Parenting Time Plans are not intended for use by parents and families with domestic or family violence concerns.

The department is directed to create and provide a form for a petition to establish a parenting time plan for parents who have not agreed to a parenting schedule at the time of the child support hearing. The department will provide the form to the parents but will not file the petition or represent either parent at a hearing to establish parenting time. The parents will not be required to pay a file to file the petition to establish a parenting time plan.

Section 6 amends s. 409.2564, F.S., to provide that when the department institutes an action to secure the payment of current support or any arrearage that may have accrued under an existing order of support, and a parenting time plan was not incorporated into the existing order of support and is appropriate, the department will include either an agreed-upon parenting time plan or Title IV-D Standard Parenting Time Plan.

Section 7 amends s. 409.256, F.S., to correct cross-referencing.

Section 8 amends s. 409.2572, F.S., to correct cross-referencing.

Section 9 provides a nonrecurring general revenue appropriation for contracted services to the Department of Revenue for the fiscal year 2017-2018 in the amount of \$419,520 for the purpose of implementing this act. Recurring general revenue is appropriated in the amount of \$20,729 for expenses, and \$91,127 for salaries and benefits for the fiscal year 2017-2018.

Section 10 provides an effective date of January 1, 2018.

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:

This legislation would provide parents who have children but never married the opportunity to establish an agreed upon parenting time plan and child support order at the same time. Additionally, if the parents cannot agree to a parenting time plan, the parents would be provided a form petition by the department, referred to the appropriate court and not be charged a filing fee to file the petition. The legislation also provides parents with a standard parenting time plan for parents living less than 100 miles apart, more than 100 miles apart and with children less than 3 years old, that if agreed to will be incorporated into the child support order. With more clear visitation, custodial parents may receive more child support.

C. Government Sector Impact:

The department will have to modify the Child Support Automated Management System to conform to the new requirements and develop new forms, procedures, and training. Additional resources will be required to allow time for team members to confer with parents and incorporate agreed upon parenting time plans into support orders. It is also estimated by the department that hearing times may be increased by approximately 15 minutes due to the inclusion of parenting time plans in support orders.

The department provided an updated fiscal impact than the amount stated in the bill. The initial fiscal impact was based on a fewer number of cases. The department's updated determination anticipates a nonrecurring cost for fiscal year 2017-2018 of \$690,650 for the modification of the Child Support Automated Management System to conform to the new requirements and developing new forms, procedures, and training. The department's updated fiscal impact for recurring costs are \$33,373 for expenses and \$159,012 for salaries and benefits for fiscal year 2017-2018.

The waiver of filing fees for petitions to establish parenting time schedules would impact the clerks of the courts; however, the number of cases that would require a petition to be filed is indeterminate.

The filing of a petition to establish parenting time plans by parents that cannot agree to a parenting time plan could increase the number of hearings before the courts; however, the number of hearings required is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.2551, 409.2554, 409.2557, 409.2563, 409.2564, 409.256, 409.2572
This bill creates section 409.25633 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.