

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 Judiciary

BILL: SB 590

INTRODUCER: Senators Brandes and Stargel

SUBJECT: Child Support and Parenting Time Plans

DATE: March 27, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Favorable
2.	Stallard	Cibula	JU	Pre-meeting
3.			AGG	
4.			AP	

I. Summary:

SB 590 authorizes the Department of Revenue, in certain child support cases, to offer the parents a standard parenting time plan, and to incorporate the plan into an administrative child support order if the parents agree to be bound by the plan. However, if the parents cannot agree to be bound by either the standard parenting time plan or an alternative plan, the Department must refer the parents to the circuit court for resolution of the matter.

The content of the standard parenting time plan changes depending on the circumstances of each case. However, under what is presumably the most common set of circumstances set forth in the bill—the child is at least 3 years of age and the parents live with 100 miles of each other—the parent who owes support must have parenting time with the child every other weekend, one evening per week, every other Thanksgiving break, part of each winter break, every other spring break, and for 2 weeks during the summer.

The bill does not authorize the Department or the Division of Administrative Hearings to change existing child support or timesharing orders, such as those entered by a circuit court.

II. Present Situation:

Child Support and Parenting Time Plans

Cases of Divorcing Parents of Children Uninvolved in the Welfare System

Perhaps divorce is the circumstance that most often comes to mind when contemplating the determination of child support and parenting time plans. And the laws pertaining to divorce, as well as to the matters that are resolved through a divorce proceeding—e.g., child support and parenting time—are set forth in ch. 61, F.S.

Cases Involving Welfare Recipients Who May Never have Married or are not Divorced

However, it is often the case that support is owed for a child who is on welfare and whose mother and father were never married, or who are married and separated. Because these parents never went through the ch. 61, F.S. process, child support was never determined or ordered, and for that matter, neither was parenting time. And in these cases—referred to as Title IV-D¹ cases—the state and federal governments take a particular interest in compelling child support payment because the government is having to spend taxpayer dollars to support a child who should be supported by (both) of his or her parents.

Title IV-D cases are so called because they fall under the child-support-enforcement program named for Title IV-D of the federal Social Security Act. Under Title IV-D, the federal government covers the bulk of costs incurred by states in administering the program. But, among several other requirements for receiving this federal money, each state must designate a Title IV-D agency. In this state, the Title IV-D agency is the Department of Revenue (Department).² The Department's authority in this regard is set forth in statute:

The department in its capacity as the state Title IV-D agency shall have the authority to take actions necessary to carry out the public policy of ensuring that children are maintained from the resources of their parents to the extent possible. The department's authority shall include, but not be limited to, the establishment of paternity or support obligations, as well as the modification, enforcement, and collection of support obligations.³

As such, the Department is not (expressly) granted the authority to determine parenting time under state or federal law. Accordingly, the statute that sets forth the detailed process for the Department, in conjunction with the Division of Administrative Hearings (DOAH), to determine and enforce child support in Title IV-D cases⁴ makes no mention of the Department (or DOAH) also determining parenting time.

Therefore, a non-custodial parent may be forced by the Department to pay child support by way of the statutory proceeding, but this parent must undertake a separate proceeding in court if he or she wants an order determining his or her right to parenting time with the child. Naturally, this additional proceeding can be costly to all involved, considering the filing fee, time, and potential attorneys' fees and costs involved in petitioning the court. Some question why, if the parents agree as to a parenting plan, this could not or should not be established simultaneously with the proceeding to determine child support.

¹ That is, Title IV-D of the Social Security Act, 42 USC. ss. 651 et seq., pertaining to the enforcement of child support in cases where a child is on welfare.

² Section 409.2557(1), F.S.

³ Section 409.2557(2), F.S.

⁴ Section 409.2563, F.S. However, this section is not intended to limit the jurisdiction of the circuit courts to hear and determine issues regarding child support. The intent, rather, is 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.

Process for Title IV-D Child Support Action

If a circuit court has not already entered an order of child support, the Department may initiate a Title IV-D case to determine child support. To initiate the proceeding, the Department sends notice to both parents. This notice must include, among other things, that:⁵

- The Department intends to establish an administrative child support order;
- Both parents must submit a financial affidavit within 20 days;
- The Department will calculate child support obligations and incorporate these into a proposed administrative order;
- The parent from whom support is sought will have 20 days from the service of the proposed administrative order to request a hearing, which will occur at DOAH, and that if this hearing is not requested, the proposed order will be entered;
- Either parent may choose instead to proceed in circuit court, and that the circuit court's order supersedes the administrative order; and
- The Department or DOAH do not have the jurisdiction to establish or change custody, time-sharing, or parental contact rights.

After the notice is sent, and after any hearing requested is complete, the Department (or DOAH, if there was a hearing) will enter an administrative support order,⁶ which the Department has the authority to enforce.

Alternatively, as mentioned in the notice requirements, the parent from whom support is sought may forego the entire administrative process to proceed instead in circuit court.

III. Effect of Proposed Changes:

Overview

The bill authorizes the Department of Revenue, in certain child support cases, to offer the parents a standard parenting time plan, and to incorporate the plan into the administrative child support order if the parents agree to be bound by the plan.⁷ However, if the parents cannot agree to the standard plan or an alternative plan, the Department must refer the parents to the circuit court for resolution.

The bill does not authorize the Department or DOAH to change existing child support or timesharing orders, such as those entered by a circuit court.

⁵ See s. 409.2563(4), F.S.

⁶ Of course, DOAH, may also enter a final order denying an administrative support order, if forced child support is not legally justified.

⁷ Texas has been setting parenting time responsibilities at the same time as child support for nearly 30 years. There, the standard time plan is presumed to be in the child's best interests. The particular guidelines have been in place, virtually unchanged, since 1989. And this system has gained the support of both the Texas judicial system and the family bar in Texas. *Child Support and Parenting Time Orders*, NCSL.org, <http://www.ncsl.org/research/human-services/child-support-and-parenting-time-orders.aspx> (last visited Mar. 26, 2017).

Standard Title IV-D Parenting Time Plan

The bill requires the Department to offer the standard parenting time plan to the parents in any administrative action taken by the Title IV-D program to determine paternity or to establish or modify support. Then, if the parents agree on the standard parenting time plan or another parenting time plan, the Department must incorporate the plan into the administrative order resolving the action. If no parenting time plan (standard or otherwise) is agreed to in the case, the Department must refer the parents to the circuit court for resolution.

Contents of Parenting Time Plan

The standard plan contents vary depending on whether the parents live within 100 miles of each other and whether the child is under 3 years of age.

If the parents live within 100 miles of each other and the child is at least 3 years of age, the parent who owes support must have parenting time with the child every other weekend, one evening per week, every other Thanksgiving break, part of winter break, every other spring break, and for 2 weeks during the summer.

If the parents do not live within 100 miles of each other and the child is at least 3 years of age, the parents may agree to the previous arrangement, or the parent who owes support may have parenting time with the child as follows: one weekend per month and 42 days during summer break.

If the child is under 3 years of age, the parents may agree to a plan that includes more frequent, but shorter visits, leading into overnight visits, and then into the standard plan or another agreed plan.

How the Standard Parenting Time Plan or Other Parenting Time Plan is Established

A parenting time plan—whether the standard plan or another agreed-to plan—is established as part of the Department of Revenue’s existing Title IV-D child support proceeding. As such, the process to establish a parenting time plan is worked into the existing process of a Title IV-D child support action as follows.

As in current law, if a circuit court has not already entered an order of child support, the Department may initiate a Title IV-D case to determine child support. To initiate the proceeding, the Department sends notice, along with a copy of the standard parenting plan, to both parents. This notice must include the child support components, as under current law, but must also incorporate information regarding the parenting time plans. Specifically, the notice must include, among other things, that:⁸

- The Department intends to establish an administrative child support order;
- The Department will incorporate a parenting time plan or the standard time plan, if agreed to by both parents, into the administrative support order;
- Both parents must submit a financial affidavit within 20 days;

⁸ See s. 409.2563(4), F.S.

- The Department will calculate child support obligations and incorporate these into a proposed administrative order;
- The parent from whom support is sought will have 20 days from the service of the proposed administrative order to request a hearing, which will occur at DOAH, and that if this hearing is not requested, the proposed order will be entered and will include any *agreed-upon* parenting time plan;
- The Department does not have jurisdiction to enforce any parenting time plan;
- Either parent may choose instead to proceed in circuit court, and that the circuit court's order supersedes the administrative order; and
- The Department or DOAH do not have the jurisdiction to establish or change custody, time-sharing, or parental contact rights.

As under current law, after this notice is sent, and after any hearing requested is complete, the Department (or DOAH, if there was a hearing) will enter an administrative support order,⁹ which the Department has the authority to enforce.¹⁰ Under the bill, the order will include any agreed-to parenting time plan, but the Department does *not* have jurisdiction to enforce any parenting time plan.

However, if the parents in a Title IV-D proceeding do not agree to a parenting time plan, the parents will be referred to the circuit court for the establishment of a plan.

Limitations on the Use of the Standard Parenting Time Plan

The standard parenting time plan may not be included in a Title IV-D administrative support order if the parents do not agree to abide by the plan. Also, the plan may not be included in the order if the parents already have a judicially-established parenting time plan.

Additionally, the bill includes language intended to exclude the use of the plan when necessary to protect the safety of the child. Specifically, it states that the standard plan is “not intended” for use by parents and families with domestic violence “concerns.” Also, if a parent becomes concerned about the safety of the child after the entry of the administrative support order, the parent may petition a court of appropriate jurisdiction to modify the plan.

Effective Date

The bill takes effect January 1, 2018.

⁹ Of course, DOAH may also enter a final order denying an administrative support order, if child support is not legally justified.

¹⁰ Alternatively, as mentioned in the notice requirements, the parent from whom support is sought may forego the entire administrative process to proceed instead in circuit court.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

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 bill provides separated or never-married parents who are generally low-income with what appears to be a simple and cost-effective means of determining parenting time plans. If the parents can agree on the standard parenting time plan or another parenting time plan, they will not need to proceed in circuit court, and incur the related costs, in order to acquire a parenting time order.

C. Government Sector Impact:

The Department's Legislative Bill Analysis states that the "the current appropriation in the bill is not sufficient to cover estimated costs." The Department states that it needs a one-time expenditure of \$690,650 to update its Child Support Automated Management System to meet the requirements in the bill, which is \$270,000 more than the bill appropriates as a one-time expenditure. Also, the Department states that the \$111,856 that the bill appropriates in recurring general revenue funds is approximately \$590,000 short of what will be required.

The bill's fiscal impact on the courts is unknown. The bill waives the filing fee for parents who go through the Title IV-D administrative action but who cannot agree on a parenting time plan, and who then proceed in circuit court. Currently, the parent who files an action in circuit court presumably must pay the filing fee. However, the number of these cases currently filed each year, as well as the number that will be filed under the bill, is unknown.

VI. Technical Deficiencies:

The first sentence of new s. 409.25633, F.S., is unclear, and may be missing a word or a comma.

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, and 409.2572.

This bill creates section 409.25633, 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.