

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

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

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

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BILL: SB 702

INTRODUCER: Senator Campbell

SUBJECT: Child Support

DATE: March 3, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	<b>Pre-meeting</b>
2.			JU	
3.			AGG	
4.			AP	

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**I. Summary:**

SB 702 requires a court to suspend an order requiring a parent to pay child support while such parent is incarcerated for more than 30 days. The suspension of the child support order must remain in effect for at least 30 days after the parent is released from incarceration. Additionally, a court could not hold a parent in contempt for failure to pay child support if the parent is incarcerated for more than 30 days or during the 30 days after the parent is released from incarceration.

This bill is expected to have a fiscal impact on the Department of Revenue and the state court system.

There is an effective date of July 1, 2017.

**II. Present Situation:**

Chapter 61, F.S., addresses dissolution of marriage proceedings. It is the public policy of the state that each parent has a fundamental obligation to support his or her minor or legally dependent child. Based on this policy, the state created child support guidelines in s. 61.30, F.S., The guidelines encourage fair and efficient settlement of support issues between parents, minimizes the need for litigation and is based on the parent's combined income estimated to have been allocated to the child as if the parents and children were living in an intact household.<sup>1</sup>

Section 61.14, F.S., provides that when a parent that is obligated to pay child support (obligor) subsequently fails to do so, the court can hold a contempt hearing; however, the original order of child support creates a presumption that the obligor has the present ability to pay the child

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<sup>1</sup> Section 61.29, F.S.

support due. At the contempt hearing, the obligor has the burden of proof that he or she has the ability to pay the child support that is due. The creation of this presumption is to implement the public policy of the state that children should be supported from the resources of their parents.<sup>2</sup> If the court finds that payments due under the support order are delinquent or overdue and that the obligor is unemployed, underemployed, or has no income but is able to work or participate in job training, the court may order the obligor to seek employment. The court may also require the obligor to file reports detailing his or her efforts to seek and obtain employment, notify the court when employment, income, or property is obtained and participate in job training, job placement, or other work programs that may be available.

When a party is required by court order to make child support payments and the circumstances or the financial ability of either party changes or the child who is a beneficiary of the agreement reaches majority, either party may apply to the court for an order decreasing or increasing the amount of support.

Currently, there is no statutory requirement for suspension of support obligations if a paying parent is incarcerated. In Department of Revenue v. Jackson, 846 So.2d 486 (Fla. 2003), the Florida Supreme Court held that, for an incarcerated parent seeking to modify a child support order based solely on reduced income due to incarceration, there is no automatic reduction in the support obligation.<sup>3</sup> Under Jackson, if an incarcerated parent files a petition to modify a child support obligation, the trial court shall hold the petition in abeyance and place the matter on its inactive calendar for the term of the obligor parent's incarceration.<sup>4</sup> When the obligor parent is released, any party may schedule a hearing on the petition for modification at which time the court must consider repayment of any arrearages, taking into account the obligor's ability to pay.<sup>5</sup> While the trial court has some discretion to modify support retroactively to the date of the filing of the petition, generally support accrued during incarceration should not be reduced.<sup>6</sup> Additionally, there is no statutory requirement that contempt be denied if failure to pay support resulted from incarceration.<sup>7</sup>

### **Incarceration with Child Support Order**

There is a population of incarcerated noncustodial parents in prison for criminal offenses who have current and/or delinquent child support orders.<sup>8</sup> On average, an incarcerated parent with a child support order has the potential to leave prison with nearly \$20,000 in child support debt, having entered prison with around half that amount owed.<sup>9</sup> According to 2013 data from the Bureau of Justice about two-thirds of people in prison or jail were employed at least part time before arrest with a median income less than \$1,000 per month.<sup>10</sup>

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<sup>2</sup> Section 61.14(5)(a), F.S.

<sup>3</sup> 2017 Legislative Bill Analysis, Department of Revenue, dated February 10, 2017

<sup>4</sup> *Id.*

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

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

<sup>7</sup> *Id.*

<sup>8</sup> National Conference of State Legislatures, *Child Support and Incarceration*, February 10, 2016, available at <http://www.ncsl.org/research/human-services/child-support-and-incarceration.aspx>

<sup>9</sup> *Id.* at page 4.

<sup>10</sup> *Id.*

### **Modification during Incarceration**

In a majority of states, a material change in circumstances is required before a child support order may be modified. Some states allow incarceration to be considered a material change in circumstances while others do not allow incarceration alone to be a sufficient reason to modify.<sup>11</sup> A significant reduction in income due to a job loss or job change is generally considered a material and substance change for modification as long as the reduction or change was involuntary.<sup>12</sup> Most states treat incarceration as involuntary unemployment which would allow the obligor to request a modification except if it is determined the incarceration is related to the failure to pay or avoidance of child support.<sup>13</sup> A small number of states, including Florida, treat incarceration as voluntary unemployment because the crime, which led to the inability to work or pay child support, is considered a voluntary act and modification of child support during incarceration is not allowed.<sup>14</sup>

### **Effect of Child Support Debt on Successful Re-entry**

Upon release from incarceration, primarily low-income fathers are faced with a myriad of issues, such as housing, employment, possible health issues and family relationships to restore.<sup>15</sup> Noncustodial parents released from prison often find their credit rating is negatively affected, the possible revocation of a driver's license and if employment is found, the garnishment of wages to pay current and past due child support at a level that leaves little for living expenses.<sup>16</sup> Persons convicted of crimes often have restitution, fines, and other court costs to pay.

The noncustodial parent with child support debt faces the challenge of federal tax intercept which allows that if a parent has ever received welfare, the state may intercept federal tax refunds to repay the family's previously incurred welfare costs, even after they leave welfare.<sup>17</sup> For many fathers whose debt is out of proportion to their ability to pay, the intercept does not benefit their family. The intercept has become a substantial portion of child support collections that are retained by the government.<sup>18</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 61.13(1)(a)3, F.S., to require the court to suspend a child support order requiring payment while the obligor parent is involuntarily unemployed due to incarceration lasting longer than 30 days. The suspension of the order must continue for at least 30 days after the parent is released from incarceration.

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<sup>11</sup> *Id* at page 5.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Rebecca May, *The Effect of Child Support and Criminal Justice Systems on Low-Income Noncustodial Parents*, available at <http://www.cffpp.org/publications/Effect%20of%20Child%20Support.pdf> and on file with the Senate Committee on Children, Families and Elder Affairs.

<sup>16</sup> *Id.* at page 16.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

**Section 2** amends s. 61.13(14)(5)(a), F.S., to require a court to deny a motion for contempt for failure to pay a child support obligation while the obligor parent is involuntarily unemployed due to incarceration lasting longer than 30 days or during the 30 days after being release from incarceration.

**Section 3** provides for an effective date of July 1, 2017.

**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:

The impact on the private sector could be positive in that the obligor parent would not incur child support arrearages during his or her incarceration. This would allow the obligor parent to re-enter society without excessive child support debt, avoid contempt proceedings for failure to pay child support during incarceration and to attempt to create a meaningful relationship with his or her child(ren).

The suspension of child support obligations during a parent's incarceration can negatively impact the custodial parent. Without any support payments, the custodial parent could be required to register with the state child support enforcement agency and sign over rights to future child support payments to reimburse the state for any welfare funds paid during the non-custodial parent's incarceration. The funds, if any, collected as part of the repayment of welfare received is intercepted by the state and does not benefit the obligor parent's family.

C. Government Sector Impact:

The bill allows for the suspension of a child support obligation if the obligor parent is incarcerated for at least 30 days. There is no mention in the proposed language which state agency may be responsible for filing requests for modifications and subsequent requests for reinstatement of child support payments. The short term incarceration period

could substantially increase the number of petitions for modifications filed with the clerks of court and create a corresponding increase in hearings scheduled with the courts.

**VI. Technical Deficiencies:**

The proposed bill does not include any direction regarding the communication to the appropriate entity that an obligor parent is incarcerated for more than 30 days and any child support obligations he or she may have should be suspended. Additionally, there is no direction regarding who the appropriate entity would be that child support obligations should be reinstated.

The requirement in the proposed legislation that child support obligations be suspended for an obligor parent incarcerated for at least 30 days is a very short timeframe. The suspension of the child support payments may take most of 30 days to work its way through the court system only to have the obligor parent released. The court proceedings would then have to begin again to reinstate the child support payments. Such a short timeframe could create an administrative challenge for any entity charged with modifying such support orders, clerks required to file and provide proper notice to custodial parents of impending modifications and the judicial system for scheduling, hearing evidence and then ruling on such modifications.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 61.13 and 61.14. This bill creates s. 61.13(1)(a)3 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.