

**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 1648

INTRODUCER: Senator Albritton

SUBJECT: Support for Incapacitated Adult Children

DATE: February 3, 2020

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

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

---

## **I. Summary:**

SB 1648 codifies and clarifies a parent's obligation to support an incapacitated or dependent-in-fact adult child. The bill mandates that the right of a parent to receive and manage support for an incapacitated adult child must be established in a guardianship proceeding. The bill allows for the filing of suit to establish support to be filed at any time after an incapacitated adult child reaches 17 years and 6 months old. The bill provides that parents may agree in writing to extend support in an existing child support case if the agreement is submitted to the court with proper jurisdiction before the adult child reaches 18; otherwise support is required to be established in a guardianship proceeding. The bill requires support paid after the adult child reaches 18 to be paid to a court-appointed guardian.

The bill will have an indeterminate fiscal impact on the state court system and has an effective date of July 1, 2020.

## **II. Present Situation:**

### **Child Support**

Child support is a parent's legal obligation to contribute to the economic maintenance and education of his or her child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education.<sup>1</sup> This obligation arises since each parent has a duty to support<sup>2</sup> his or her minor or legally dependent child.<sup>3</sup> Child support can be entered into voluntarily, by court order, or by an administrative agency. Child support is an

---

<sup>1</sup> BLACK'S LAW DICTIONARY, 10th edition, 2014.

<sup>2</sup> s. 61.046(22), F.S., defines "support" as child support when the Department of Revenue is not enforcing the support obligation and it includes spousal support or alimony for the person with whom the child is living when the Department of Revenue is enforcing the support obligation. The definition applies to the use of the term throughout ch. 61, F.S.

<sup>3</sup> s. 61.29, F.S. See generally ss. 744.301 and 744.361, F.S.

important source of income for millions of children in the United States. Child support payments represent on average 40 percent of income for poor custodial families who receive them; such payments lifted one million people above poverty in 2008.<sup>4</sup>

### *Establishment of Child Support Obligation*

When parents live apart because they never married or are divorced or separated, the court may order a parent who owes a duty of support to a child to pay support to the other parent, or in the case of both parents, to a third party who has custody, in accordance with the guidelines schedule in s. 61.30, F.S.<sup>5</sup> Section 61.30, F.S., sets forth guidelines to determine the appropriate amount of child support according to a formula that is based on a parents' income and the amount of time that the child spends with each parent. The judicial officer is permitted to deviate from the guideline amount plus or minus 5 percent after considering all relevant factors, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent.<sup>6</sup> The judicial officer may also deviate from the guideline amount more than plus or minus 5 percent, but he or she must include a written finding in the support order explaining why the guideline amount is unjust or inappropriate.<sup>7</sup> Establishment of a child support award, or enforcement of one, may be through the judicial system or the state child support program.

### *Department of Revenue Child Support Program*

As required by Title IV-D of the Social Security Act,<sup>8</sup> the federal Department of Health and Human Services (HHS) coordinates with child support enforcement programs administered in each state, which perform collection and enforcement services.<sup>9</sup> Each state's child support enforcement agency operates under an approved state plan based on the program standards and policy set by the federal government.<sup>10</sup> In Florida, the Department of Revenue (DOR) administers the child support program.<sup>11 12</sup>

Current child support program structures vary widely from state to state, but at a minimum, services offered in all child support programs include:

- Locating noncustodial parents;
- Establishing paternity;
- Establishing and modifying support orders;
- Collecting support payments and enforcing child support orders; and

---

<sup>4</sup> National Conference of State Legislatures, *Child Support Overview*, March 15, 2016, available at <http://www.ncsl.org/research/human-services/child-support-homepage.aspx> (last viewed January 31, 2020).

<sup>5</sup> s. 61.13(1)(a), F.S.

<sup>6</sup> s. 61.30(1)(a), F.S.

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

<sup>8</sup> See 42 U.S.C. ss. 651 et seq.

<sup>9</sup> National Conference of State Legislatures, *Child Support 101: State Administration*, April 2013, available at <http://www.ncsl.org/research/human-services/child-support-administration.aspx> (last viewed January 31, 2020).

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

<sup>11</sup> s. 409.2557(1), F.S.

<sup>12</sup> Department of Revenue, *About the Child Support Program*, 2016, available at [http://floridarevenue.com/dor/childsupport/about\\_us.html](http://floridarevenue.com/dor/childsupport/about_us.html) (last viewed January 31, 2020).

- Referring noncustodial parents to employment services.<sup>13</sup>

Any parent or person with custody of a child who needs help to establish a child support order or to collect support payments may apply for services. Individuals receiving public assistance from the state are required to participate in the state child support program.<sup>14</sup> IV-D cases are cases in which a state provides child support services through the state or tribal IV-D program to a custodial parent. The program is funded under Title IV-D of the Social Security Act.

Judges issuing an administrative order for child support may include provisions for monetary support, retroactive support, health care, and other elements of support set forth under state law.<sup>15</sup> An administrative child support order has the same force and effect as a court order until and unless it is modified by the department, vacated on appeal, or superseded by a subsequent court order.<sup>16</sup> Thus, an administrative order may be enforced in the same manner as a court order, except that an administrative order may not be enforced through contempt.<sup>17</sup> Neither DOR nor the DOAH have jurisdiction to authorize a timesharing schedule, but they will recognize an informal agreement and incorporate it into the formula if agreed to by the parties. Such an informal agreement is not enforceable should one party violate the agreement. To obtain an enforceable timesharing order, or to determine timesharing where the parties do not agree, either parent at any time may file a civil action in a circuit having jurisdiction and proper venue for the filing of such an action.<sup>18</sup>

## **Guardianship**

Guardianships are trust relationships designed to protect vulnerable members of society who do not have the ability to protect themselves, such as minor children and incapacitated adults. Under a guardianship, a “guardian” is appointed to act on behalf of the vulnerable person, also called a “ward.”<sup>19</sup> There are two main forms of guardianship: (1) guardianship over the person and (2) guardianship over the property, which may be limited or plenary.<sup>20</sup> A guardian is given the legal duty and authority to care for the ward and his or her property during the ward’s infancy, disability, or incapacity.<sup>21</sup>

For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, when an individual’s mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined

---

<sup>13</sup> See footnote 9.; *see also* s. 409.2557(2), F.S.

<sup>14</sup> s. 409.2572(3), F.S.

<sup>15</sup> *See* s. 409.2563(1)(a), F.S.

<sup>16</sup> s. 409.2563(12), F.S.

<sup>17</sup> ss. 409.2563(9)(d), 409.2563(10)(d), F.S.

<sup>18</sup> s. 409.2563(2)(e), F.S.

<sup>19</sup> *See generally*, s. 744.102(9), F.S.

<sup>20</sup> Section 744.102(9), F.S.

<sup>21</sup> BLACK’S LAW DICTIONARY, 10th edition, 2014.

by a court appointed examination committee.<sup>22</sup> Once an adult is adjudicated incompetent, then a guardian may be appointed.<sup>23</sup>

For minors, i.e., an unmarried person under the age of 18,<sup>24</sup> no petition to determine incapacity need be filed<sup>25</sup> because minors are presumptively lacking in capacity by operation of law. Minors are treated differently “based upon the particular vulnerability of children, their inability to make critical decisions in an informed, mature manner, and the importance of the parental role in child rearing.”<sup>26</sup> For instance, minors are deemed not to have legal capacity to initiate legal proceedings<sup>27</sup> or enter contracts.<sup>28</sup>

The process to determine incapacity and the appointment of a guardian begins with a petition filed in the appropriate circuit court.

### **Continuing Court Jurisdiction**

The court retains jurisdiction over all guardianships and shall review the appropriateness and extent of a guardianship annually.<sup>29</sup> At any time, any interested person, including the ward, may petition the court for review alleging that the guardian is not complying with the guardianship plan or is exceeding his or her authority under the guardianship plan and is not acting in the best interest of the ward. If the petition for review is found to be without merit the court may assess costs and attorney fees against the petitioner.<sup>30</sup>

### **Support Obligations for Incapacitated Adult Children**

In some states, an exception to the rule that parents' duty to support their children ends at the children's majority occurs when the child is disabled.<sup>31</sup> In cases where the child is disabled, mentally or physically, and therefore unable to support himself/herself upon reaching the age of majority most states have adopted the rule that parents have a duty to support their adult disabled children.<sup>32</sup> Most often, courts define "disability" in economic terms, i.e., the inability of the adult disabled child to adequately care for one's self by earning a living by reason of mental or physical infirmity. States differ as to whether support for an adult disabled child is determined by

---

<sup>22</sup> See generally, s. 744.102(12), F.S.

<sup>23</sup> *D.H. v. Adept Cmty. Services, Inc.*, 43 Fla. L. Weekly S533 (Fla. Nov. 1, 2018), *reh'g denied*, SC17-829, 2018 WL 6264576 (Fla. Nov. 29, 2018) (quoting *Hayes v. Guardianship of Thompson*, 952 So.2d 498, 505 (Fla. 2006))(internal quotation marks omitted).

<sup>24</sup> Section 744.102(13), F.S.

<sup>25</sup> Fla. Prob. R. 5.555(a)-(b).

<sup>26</sup> 25 Fla. Jur 2d Family Law § 252

<sup>27</sup> *D.H. v. Adept Cmty. Services, Inc.*, 43 Fla. L. Weekly S533 (Fla. Nov. 1, 2018), *reh'g denied*, SC17-829, 2018 WL 6264576 (Fla. Nov. 29, 2018).

<sup>28</sup> 25 Fla. Jur 2d Family Law § 495.

<sup>29</sup> Section 744.372, F.S.

<sup>30</sup> Section 744.3715, F.S.

<sup>31</sup> National Conference of State Legislatures, *Termination of Child-Support – Exception for Adult Children with Disabilities*, available at <https://www.ncsl.org/research/human-services/termination-of-child-support-exception-for-adult.aspx> (last visited January 31, 2020).

<sup>32</sup> *Id.*

the state's child support guidelines or by the needs of the child as balanced by the parents' ability to provide support.<sup>33</sup>

In Florida, s. 743.07(2), F.S., provides that courts are not prohibited from requiring support for a dependent person beyond the age of 18 years when such dependency is because of a mental or physical incapacity which began prior to a person reaching majority. While courts are permitted to require support in such instances, support beyond the age of majority for incapacitated adult children is not an issue which must be addressed by courts in determining support obligations.

### III. Effect of Proposed Changes:

**Section 1** creates s. 61.1255, F.S., defining “incapacitated adult child” as an unmarried adult incapable of self-support as a result of a physical or mental incapability that began before the person reached age 18. The bill requires that the right of a parent or guardian to receive support for an incapacitated adult child must be established in a guardianship proceeding. Parents may agree in writing to extend support in an existing support matter if the agreement is submitted to the presiding court before the adult child reaches 18, otherwise support must be established in a guardianship proceeding. Support paid after the adult child reaches 18 may only be paid to the court-appointed guardian.

**Section 2** amends s. 61.13, F.S., removing references to s. 743.07(2) rendered obsolete by the bill and adding an extension for high school graduation, removing the ability of the court to extend support due to a physical or mental disability once an individual reaches the age of 18.

**Section 3** amends s. 61.29, F.S., providing that child support guidelines do not apply to support for an incapacitated adult child, and specifying that support amounts for such individuals are determined by the newly created s. 61.31, F.S.

**Section 4** amends s. 61.30, F.S., limiting the presumption that the child support guidelines currently in statute establish the amounts that the court must order in child support matters where a minor child or a child who is dependent in fact, between 18 and 19 years old, and still in high school with a reasonable expectation of graduation before 19.

**Section 5** creates s. 61.31, F.S., specifying the amount of child support to be paid for an incapacitated adult child after the individual turns 18, the terms of the support order, and the rights and duties of both parents with respect to the support order.

**Section 6** amends s. 393.12, F.S., providing that an individual being considered for appointment as a guardian does not need to be represented by an attorney unless the potential guardian is delegated the right of a parent to receive support of a person with a developmental disability. The bill provides that a petition to appoint a guardian may include a request for support payments from either or both of the parents of a person with a developmental disability.

---

<sup>33</sup> *Id.*

**Section 7** creates s. 744.1013, F.S., requiring a court to exercise jurisdiction over claims for support of an incapacitated adult child, requiring the court to determine the financial obligation in such cases, and requiring the court to enforce such obligations.

**Section 8** amends s. 744.3201, F.S., providing that a petition to a court to determine incapacity may include a request for payment of support, care, maintenance, education, or other needs of an incapacitated adult child as defined under the newly created s. 61.1255, F.S.

**Section 9** creates s. 744.422, F.S., providing that a guardian may petition the court for an order requiring either or both parents to make support payments if such payments are not provided for in an initial guardianship plan.

**Section 10** amends s. 742.031, F.S., to correct a cross-reference.

**Section 11** amends s. 742.06, F.S., providing that modifications of child support and timesharing are to be determined under chapter 61, F.S.

**Section 12** amends s. 744.3021, F.S., providing that if a petition is filed for guardianship of a minor with active an child support matter, and the child is 17 years and 6 months or older, the court division with jurisdiction over guardianship matters will have jurisdiction over the proceedings.

**Section 13** provides an effective date of July 1, 2020.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill will have an indeterminate fiscal impact on the state court system as additional support and guardianship proceedings will occur throughout the state.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 61.13, 61.29, 61.30, 393.12, 744.3201, 742.031, 742.06 and 744.3021 of the Florida Statutes.

This bill creates sections 61.1255, 61.31, 744.1013, and 744.422 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.