

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HCS 10-01 Child Support Enforcement

SPONSOR(S): Health Care Services Policy Committee

TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Health Care Services Policy Committee		Schoonover	Schoolfield
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

PCB HCS 10-01 makes several administrative and technical amendments to improve the effectiveness of the Child Support Enforcement program administered by the Department of Revenue (DOR). The amendments made in the bill include:

- Restores authority for Clerk of Courts to process payments for private child support cases.
- Deletes DOR authority to reduce a retroactive support obligation by 25 percent when obligor and DOR agree on terms.
- Streamlines the process to modify child support obligations and allows DOR to electronically submit financial affidavits.
- Authorizes DOR to collect non-covered medical expenses by installments, gives DOR access to health records received by the Agency for Health Care Administration (AHCA).
- Authorizes DOR to claim as program income, uncashed checks of less than \$1 or to close case balances of less than \$1.
- Clarifies terms uses in statute regarding administrative establishment of child support orders.
- Assists DOR in establishing paternity by directing the Office of Vital Statistics to amend a child’s birth certificate based on a marriage license application under oath or on a final judgment of dissolution of marriage.
- Makes permissive the requirement to DOR to request a federal waiver to provide services without the need of an application.
- Extends the deadline for DOR to implement electronic filing of documents with the court.
- Clarifies assignment of child support rights to DOR in temporary cash assistance cases.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Child support enforcement is a federally funded program that has been administered by the Department of Revenue (DOR) since 1994.¹ A "Title IV-D case" is defined as any case in which the child support enforcement agency is enforcing the child support order pursuant to Title IV-D of the Social Security Act.² DOR provides services under the federally required program in 65 counties and through contracts in two counties.³

To remain eligible for the Temporary Assistance for Needy Families (TANF) Block Grant, Florida must have a federally compliant child support program. The program must contain the following services:

- Paternity establishment;
- Support order establishment;
- Support order review and modification;
- Location of parents, employers, assets;
- Payment collection and disbursement
- Order enforcement.⁴

Paternity establishment uses all administrative and judicial actions to establish paternity. It also uses genetic testing in assisting parents in determining the biological parents. In 2009, 105,379 children were born out-of-wedlock in Florida. Of that amount, 94,775 paternity determinations were made. Currently, 100,568 children in the DOR caseload need their paternity established.⁵

DOR establishes the initial child support order and modifies existing orders when a family's circumstances change. Currently, 223,973 cases need a support order established. During FY 08-09, DOR processed \$48 million in child support collections on support orders established in that fiscal year.⁶

¹ HB 5129 (2009), Staff Analysis

² Id.

³ Miami-Dade County cases are handled by the State Attorney's Office; Manatee County cases are handled by the Clerk of Court.

⁴ Health Care Services Policy Committee Presentation by Lisa Echeverri of Department of Revenue. January 21, 2010.

⁵ Id.

⁶ Id.

DOR is responsible for several case processing activities including opening and closing cases; collecting and maintaining case, location, and financial data; and receipt and response to verbal and written inquiries. In 2009, 1.1 million cases were maintained by DOR. In FY 08-09, DOR had a 7.3 percent increase in new service requests and 6.6 percent increase in reopened cases.⁷

Child support orders are enforced by DOR by using all administrative and judicial action available. Also, the receipt and disbursement of collections are handled by DOR. In 2009, over \$1.41 billion was collected and distributed, with 98 percent of collections distributed within 24 hours. Of all parents in the DOR caseload, less than 30 percent pay their full child support obligation on a monthly basis. In addition, DOR used enforcement action on 92 percent of the support collections eventually received.⁸

Effect of Proposed Changes

Clerk's Depository and Private Child Support Cases

The bill amends s. 61.13(1)(d), F.S., to allow parties in private child support cases to request that the local clerk's depository process their support payments. DOR operates the State Disbursement Unit, which is responsible for the collection and disbursement of child support payments. The clerks of all Florida circuit courts operate a depository to perform depository functions and to receive, record, report, disburse, monitor, and otherwise handle child support payments not otherwise required to be handled by the State Disbursement Unit.⁹ In previous years, parties in private child support cases could request the local circuit court's depository to process certain payments through their office. However, in 2009, legislation was passed that unintentionally eliminated this ability.¹⁰ The effect of this change will re-create this procedure and allow payments through the depository, except for income deduction payments, which must be made through the State Disbursement Unit.

Support Obligation Modifications

The bill deletes a section of s. 409.2564(4), F.S., which gave DOR the authority to reduce by 25 percent the amount of retroactive support an obligor (parent) owed to the State, if the obligor and DOR agree on terms. The intent of this law passed in 2006, was to encourage out of court settlements and improve compliance. However, DOR has been unable to implement this provision due to the complexity of federal distribution rules which determine when arrears are owed to the State. The effect of this change is to delete a requirement in statute that DOR is currently unable to implement.

The bill amends s. 409.2564, F.S., to allow DOR to serve child support modification petitions by regular mail to parties who requested review or participated in a review. Upon receipt of the proposed order, the bill will permit either parent to object and allow for a hearing in court if the objection is timely. If objection is not timely, the bill will allow the court to enter a final modified support order with the same provisions as the proposed order. The bill also allows DOR to seek modification of the order if payment of noncovered medical expenses or required health insurance is accessible and available.

Under current law, DOR, at least every three years, reviews temporary cash assistance cases, and by request, other child support cases to determine if a support obligation modification is needed.¹¹ When a review shows a modification is warranted, DOR initiates the modification action by providing notice by personal service, followed by a hearing before a judge or hearing officer to make the final determination.¹² The effect of these changes will allow DOR to modify support orders at less cost by using regular mail for notification and avoiding unnecessary court hearings.

The bill also amends s. 61.30(15), F.S., to give DOR the option of filing a written declaration under penalty of perjury which attests to the income of a parent who receives public assistance when the

⁷ Id.

⁸ Id.

⁹ s. 61.046, F.S.

¹⁰ s. 1, Ch. 2009-180, Laws of Florida.

¹¹ s. 409.2564(11), F.S.

¹² s. 409.3564, F.S.

parent is not cooperative in providing the information. The effect of this change will expedite establishment of child support orders and allow electronic filing, making the process more efficient.

Medical Support Improvements

The bill amends s. 61.13(1)(b), F.S., to remove a reference to health insurance for determining medical support orders which was placed in statute during the 2009 Session.¹³ For cases in which only medical support is being sought, the intent was to establish a clear procedure for calculation of a percentage share to both parents for noncovered medical expenses, not health insurance. The effect of this change will correct an error and will remove health insurance expenses from the calculation of percentage share of the parents.

This bill amends s. 409.25635, F.S., to authorize DOR to collect noncovered medical expenses in installments by adding a periodic payment to an income deduction notice issued by DOR. Noncovered medical expenses mean uninsured medical, dental, or prescription medication expenses that are ordered to be paid on behalf of a child.¹⁴ Under current law, DOR is authorized to use any available administrative remedy to collect noncovered medical expenses. The effect of this change will reduce the administrative burden on DOR in collecting noncovered medical expenses.

This bill amends s. 409.910, F.S., to give DOR access to health insurance records received by the Agency for Health Care Administration (AHCA). Currently, AHCA is not authorized to share data it receives from health insurers with DOR. The effect of this change will assist DOR to identify available health insurance of parents and to enforce support orders with health insurance coverage for dependents.

Payment Processing

This bill amends s. 409.2558, F.S., to allow DOR to retain un-cashed checks of less than \$1 which are older than 180 days and balances on closed cases which are less than \$1 dollar. Currently DOR is required to continue attempts to disburse minimal collections of less than one dollar when a parent does not cash the check. DOR estimates that the cumulative amount that would be retained from un-cashed checks is less than \$300 dollars in 2009.¹⁵ The bill also establishes additional priorities for applying undistributable collections in the program. The additional priorities will allow DOR to offset cost incurred from losses resulting from bad checks or overpayments made to either parent. The effect of these changes will create additional program income for the department and greater efficiency in payment processing.

Administrative Process Improvements

The bill amends s. 409.256, F.S., to replace the term "custodian" with "caregiver" relating to administrative proceedings to establish paternity and child support. "Caregiver" will be defined as a person, other than the mother, father or alleged father, who has physical custody or with whom the child primarily resides. The term "caregiver" will replace "custodian" throughout the section. The bill also makes a technical change by eliminating all uses of "putative father" and replacing with "alleged father." Additionally, the bill makes a technical change replacing the words "informal review" with "informal discussion" to make the terminology used in s. 409.256, F.S., consistent with that used in s. 409.2563, F.S.

The bill also amends s. 409.2563, F.S. to replace the term "caretaker relative" with "caregiver" relating to child support obligations. "Caregiver" is defined the same as above in s. 409.256, F.S. Currently, the law permits either a parent or a caretaker relative to file suit to determine parental support obligations. "Caretaker relative" is defined as an adult who has assumed primary responsibility and care of the child and who is related to the child by blood or marriage.¹⁶ Thus, under current law, an adult who is not a relative and has legal custody or with whom the child resides does not have standing to file a civil action or to request an administrative hearing to determine parental support obligations. The effect of

¹³ HB 5129

¹⁴ s. 409.25635(1), F.S.

¹⁵ Email from D. Thomas, DOR dated 1-7-10.

¹⁶ s. 414.0252(11), F.S.

this bill will give those adults providing care or residence to a child, the standing to address child support obligations in a court of law or in an administrative proceeding.

Marriage Application, Dissolution of Marriage and Paternity Establishment

The bill amends s. 382.015, F.S., to require the Department of Health (DOH) and its Office of Vital Statistics (OVS) to accept as a determination of paternity a certified copy of a final judgment of dissolution of marriage that requires the former husband to pay support for the child. This will require OVS to amend a child's birth certificate to include the name of the legal father following a judgment of dissolution of marriage requiring child support pay from the former husband.

The bill will also amend s. 741.01, F.S., to require both applicants to marriage, to state under oath in writing if they are the parents of a child born in Florida and to identify children they have in common. Further the bill will amend s. 382.016, F.S., to require the OVS to amend the birth certificate upon receipt of the marriage license to reflect the marital status of the parents.

The effect of these changes will assist DOR to establish paternity in a timely fashion and maintain compliance with federal standards for the program which requires paternity to be established for 90 percent of out of wedlock births.¹⁷

Federal Waiver Request

The bill amends s. 409.2567, F.S., to make permissive instead of mandatory a current requirement in statute which directs DOR to request a federal waiver allowing them to provide services to an individual owed child support who has not made an application to DOR for assistance. The bill further provides that DOR may seek a waiver if it would result in increased federal funding over cost to the state. While current law requires DOR to seek the waiver, it has not requested it since changes to the federal funding formula of the Child Support Program regarding incentive payments has made it cost prohibitive to pursue the waiver. The effect of this change will allow DOR to seek the waiver, should the federal funding formula change and make the program cost beneficial to the state.

Electronic Filing Deadline

The bill amends s. 409.259, F.S., to remove the October 1, 2009 deadline to begin electronic filing for pleadings, returns of service, and other papers with the clerks of the circuit courts for child support cases. The bill instead creates an implementation date upon completion of the Child Support Automated Management System II (CAMS). DOR is currently developing the second phase of CAMS. Due to cost and difficulty during implementation of the electronic processing, the requirement for electronic filing of documents with the court was removed from DOR's contract with the CAMS vendor. The effect of this change will allow DOR to complete the statewide implementation of CAMS and permit DOR to work with each partner on its individual requirements and schedules to ensure they can accept electronic documents and filings.

Assignment of Rights

The bill amends s. 414.095, F.S. to specify that support rights to temporary cash assistance are assigned to the DOR. Currently, this section of law identifies "department" to mean the Department of Children and Families (DCF) as the agency who obtains the rights of assignment. The effect of this change will align chapter 414, F.S., with chapter 409, to correctly identify DOR as the agency who obtains the rights of assignment of temporary cash assistance.

B. SECTION DIRECTORY:

Section 1. Amends s. 61.13, relating to support of children; parenting and time-sharing; powers of court.

Section 2. Amends s. 61.30, relating to child support guidelines; retroactive child support.

Section 3. Amends s. 382.015, relating to new certificates of live birth; duty of clerks of court and department.

¹⁷ 45 C.F.R. 305.33(a)

Section 4. Amends s. 382.016, relating to amendment of records.

Section 5. Amends s. 409.2558, relating to support distribution and disbursement.

Section 6. Amends s. 409.2558, relating to support distribution and disbursement.

Section 7. Amends s. 409.256, relating to administrative proceeding to establish paternity or paternity and child support; order to appear for genetic testing.

Section 8. Amends s. 409.2563, relating to administrative establishment of child support obligations.

Section 9. Amends s. 409.25635, relating to determination and collection of noncovered medical expenses.

Section 10. Amends s. 409.2564, relating to actions for support.

Section 11. Amends s. 409.2567, relating to services to individuals not otherwise eligible.

Section 12. Amends s. 409.259, relating to filing fees in Title IV-D cases; electronic filing of pleadings, returns of service, and other papers.

Section 13. Amends s. 409.910, relating to responsibility for payments on behalf of Medicaid-eligible persons when other persons are liable.

Section 14. Amends s. 414.095, relating to determining eligibility for temporary cash assistance.

Section 15. Amends s. 741.01, relating to county court judge or clerk of the circuit court to issue marriage license; fee.

Section 16. Providing an effective date upon becoming law, except as otherwise specified in bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES