

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 Judiciary Committee

BILL: CS/CS/SB 694

INTRODUCER: Judiciary Committee, Children, Families, and Elder Affairs Committee, and Senator Storms

SUBJECT: Child Support

DATE: March 29, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	Fav/CS
2.	Daniell	Maclure	JU	Fav/CS
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill makes multiple amendments to the statutes relating to child support enforcement to improve the effectiveness of the program administered by the Department of Revenue (DOR or department). Specifically, the bill:

- Provides for the use of the clerk of court's depository in private child support cases;
- Makes support obligation modifications;
- Authorizes DOR to collect noncovered medical expenses in installments and gives DOR access to health insurance records received by the Agency for Health Care Administration;
- Authorizes DOR to claim as program income uncashed checks of less than \$1;
- Clarifies terms used during the administrative establishment of child support orders;
- Directs the Office of Vital Statistics to amend a child's birth certificate based on a marriage license application or a final judgment of dissolution of marriage;
- Makes it discretionary for 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; and
- Clarifies assignment of child support rights to DOR in temporary cash assistance cases.

This bill substantially amends the following sections of the Florida Statutes: 61.13, 61.30, 382.015, 382.016, 409.2558, 409.256, 409.2563, 409.25635, 409.2564, 409.2567, 409.259, 409.910, 414.095, and 741.101. This bill reenacts sections 61.14 and 61.30, Florida Statutes.

II. Present Situation:¹

Child support enforcement is a federally funded program that has been administered by the Department of Revenue (DOR or department) since 1994. 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. The department provides services under the federally required program in 65 counties and through contracts in two counties.²

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; and
- Order enforcement.

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 number, 94,775 paternity determinations were made. Currently, 100,568 children in the DOR caseload need their paternity established.

The department establishes the initial child support order and modifies existing orders when a family’s circumstances change. During FY 08-09, DOR processed \$48 million in child support collections on support orders established in that fiscal year.

Some child support orders are established by DOR administratively, as provided by s. 409.2563, F.S. Last year the department established over 12,000 administrative support orders. Prior to beginning the administrative process, DOR screens cases for complex circumstances and, if identified, it will proceed with those cases judicially.

¹ The information contained in the Present Situation of this bill analysis is replicated from the professional staff analysis for CS/SB 694 by the Senate Committee on Children, Families, and Elder Affairs (Mar. 9, 2010), *available at* <http://www.flsenate.gov/data/session/2010/Senate/bills/analysis/pdf/2010s0694.cf.pdf> (last visited Mar. 21, 2010).

² Miami-Dade County cases are handled by the state attorney’s office, and Manatee County cases are handled by the clerk of court.

Under s. 409.2563(4)-(7), F.S., the department issues a proposed order after notice and a requirement for full financial disclosure by the parties. If a request for an administrative hearing in response to the proposed order is not made timely, the department renders a final order that incorporates the terms of the proposed order.³

The department is responsible for some case-processing activities including opening and closing cases; collecting and maintaining case, location, and financial data; and receiving and responding 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.

Child support orders are enforced by DOR, as well as the receipt and disbursement of collections. 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, fewer than 30 percent pay their full child support obligation on a monthly basis. In addition, DOR initiated enforcement actions on 92 percent of the support collections eventually received.

III. Effect of Proposed Changes:

Clerk's Depository in Private Child Support Cases (Section 1)

The Department of Revenue (DOR or department) 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 alimony and child support payments not otherwise required to be processed by the State Disbursement Unit.”⁴ In previous years, parties in private child support cases could request the local circuit court's depository to process certain payments through their offices. However, in 2009, legislation was passed that inadvertently eliminated this ability.⁵ The bill amends s. 61.13(1)(d), F.S., to reinstate the ability of parties in private child support cases to request that the local clerk's depository process their support payments.

Support Obligation Modifications (Sections 2, 9, 15, and 16)

The bill removes language from s. 409.2564(4), F.S., which gave DOR the authority to reduce the amount of retroactive support an obligor (parent) owed to the state by 25 percent, if the obligor and DOR agreed on the terms. The intent of this law, which was passed in 2006, was to encourage out-of-court settlements and to improve compliance. However, DOR has been unable to implement this provision due to the complexity of federal distribution rules that determine when arrears are owed to the state.

³ In contested cases, there is a formal hearing before the Division of Administrative Hearings.

⁴ Section 61.046(4), F.S. The State Disbursement Unit provides “one central address for collection and disbursement of child support payments made in cases enforced by the department pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the department in which the support order was initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.” Section 61.046(20), F.S.

⁵ Chapter 2009-180, s. 1, Laws of Fla.

The bill amends s. 409.2564(11), F.S., relating to modification of a support order, to require that if DOR seeks to modify a support order entered by the circuit court, then DOR must file, along with the petition, a child support guideline worksheet, any financial affidavits received from the parties or completed by the department as part of the support order review, and a proposed modified order. The department must serve a copy of the petition, proposed order, and other documents to the party who requested the review of a support order by registered mail, restricted delivery. The party who did not request the review may be served in the same manner or by personal service. The bill also allows DOR to seek modification of the support order if it does not provide for payment of noncovered medical expenses or require health insurance and it is accessible and available. In each case, the order may not be modified absent an evidentiary hearing.

The changes to s. 409.2564, F.S., are effective November 1, 2010. The bill reenacts ss. 61.14(1)(c) and 61.30(1)(c), F.S., also effective November 1, 2010, to incorporate the amendments made to s. 409.2564, F.S., by the bill.

The bill also amends s. 61.30(15), F.S., effective July 1, 2010, 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 parent is not cooperative in providing the information. This will expedite establishment of child support orders and allow electronic filing.

Medical Support Improvements (Sections 1, 8, and 12)

The bill amends s. 61.13(1)(b), F.S., to remove an erroneous reference to health insurance in the determination of medical support orders. Only noncovered medical expenses are to be considered.

This bill amends s. 409.25635(7), F.S., effective October 1, 2010, to authorize DOR to collect noncovered medical expenses in installments by adding a periodic payment to an income deduction notice issued by DOR, thereby reducing an administrative burden on the department. Noncovered medical expenses mean uninsured medical, dental, or prescription medication expenses that are ordered to be paid on behalf of a child.⁶

Section 409.910(20), F.S., is amended to give DOR access to health insurance records received by the Agency for Health Care Administration. These records will assist DOR in identifying available health insurance of parents and in enforcing support orders containing health insurance coverage for dependents.

Payment Processing (Section 5)

This bill amends s. 409.2558(3), F.S., effective July 1, 2010, to allow DOR to retain uncashed paper checks of less than \$1 which are older than 180 days and balances on closed cases which are less than \$1. Current law requires DOR to continue attempts to disburse minimal collections of less than \$1 when a parent does not cash the check. The department estimates that the

⁶ Section 409.25635(1), F.S.

cumulative amount that would have been retained from uncashed checks in 2009 was less than \$300.

The bill also establishes additional priorities for applying undistributable collections in the program. The additional priorities will allow DOR to offset costs incurred from losses resulting from bad checks or overpayments made to either parent. These changes will create additional program income for the department and greater efficiency in payment processing.

Administrative Process Improvements (Sections 6 and 7)

The bill amends s. 409.256, F.S., relating to administrative proceedings to establish paternity and child support, to replace the term “custodian” with “caregiver.” A “caregiver” is defined as “a person, other than the mother, father, or a putative father, who has physical custody of a child or with whom the child primarily resides.”

The bill also amends s. 409.2563, F.S., relating to administrative establishment of child support obligations, to replace the term “caretaker relative” with “caregiver.” The definition provided for “caregiver” matches the definition provided in s. 409.256, F.S. This change 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.

The bill provides DOR the discretion to refer a case to the Division of Administrative Hearings (DOAH) for a formal hearing when an evidentiary hearing is needed to resolve complicated factual issues. In cases where there is conflicting information, such as a complex financial situation or a complicated guidelines-deviation issue, it can be difficult for the department to prepare a proposed order. The relatively few cases⁷ with these characteristics often result in an evidentiary hearing as the process unfolds. Rather than attempting to prepare a proposed order based on incomplete or conflicting information, authorizing the department to refer the case to DOAH earlier in the process will result in more timely support orders and will allow the department to devote more of its resources to resolving routine matters.

Paternity Establishment via Marriage Applications and Judgments of Dissolution of Marriage (Sections 3, 4, and 14)

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 payment from the former husband. Additionally, s. 382.016, F.S., is amended to require OVS to amend a child’s birth certificate upon receipt of the marriage license to reflect the marital status of the parents.

According to DOH, currently the OVS will create a new birth certificate upon a final decree of paternity or Acknowledgement of Paternity from both parents and amend marital status upon the request of the parents and proof of marriage. The changes made by the bill:

⁷ The department estimates that there are fewer than 100 of these types of cases.

Will require Bureau of Vital Statistics to verify with court if another man is listed as father and not mentioned in Final Decree of Dissolution of Marriage.

. . . .

May require parents' to obtain Legal Change of Name for child to change child's surname if not addressed elsewhere in documentation received to file new birth record. If multiple registrants are named and birth occurred out-of-state, bill does not clarify who will notify the other states such as Clerk of Court. Out of state marriage records could create problem of litigating the validity of the marriages.⁸

Section 741.01, F.S., is amended to provide that a marriage application must allow both parties to the marriage to state under oath in writing if they are the parents of a child born in Florida and to identify the children they have in common. The name of any children recorded by both parties must be transmitted to DOH along with the original marriage license and endorsements. According to DOH, it does not currently file new birth certificates based on a marriage record. This change may produce additional work for the clerks of court and will require the creation of additional reports to identify children of the marriage.⁹

These changes will assist DOR in establishing paternity in a timely fashion and maintaining compliance with federal standards for the program, which require paternity to be established for 90 percent of out-of-wedlock births.¹⁰

Federal Waiver Request (Section 10)

The bill amends s. 409.2567, F.S., to make it permissive, rather than mandatory, for 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 also provides that DOR may seek a waiver if it would result in an increase of federal funding over the additional costs to the state. 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 (Section 11)

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, and requires that it be implemented upon completion of the Child Support Automated Management System II (CAMS).

The department is currently developing the second phase of CAMS. Due to unexpected implementation issues, the requirement for electronic filing of documents with the court was

⁸ Florida Dep't of Health, *Bill Analysis, Economic Statement, and Fiscal Note HB 7083* (Mar. 11, 2010) (on file with the Committee on Judiciary) (HB 7083 is the companion bill to SB 694).

⁹ *Id.*

¹⁰ Conversation with Debbie Thomas, Dep't of Revenue (Mar. 23, 2010).

removed from DOR's contract with the CAMS vendor. The change to s. 409.259, F.S., will allow DOR to complete the statewide implementation of CAMS and require DOR to work with each partner to ensure it can accept electronic documents and filings in Title IV-D cases.

Assignment of Rights (Section 13)

The bill amends s. 414.095, F.S., to correctly identify DOR as the agency that obtains the rights of assignment of temporary cash assistance, aligning ch. 414, F.S., with ch. 409, F.S.

Effective Date (Section 17)

The bill provides that, except as otherwise specifically provided in the bill, it shall take effect upon becoming a law.

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:

None.

C. Government Sector Impact:

If the Department of Revenue's (DOR or department) review of a support order indicates that the order should be modified, the bill requires DOR to provide service of process to the party requesting review of the order by "registered mail, restricted delivery." There may be a small fiscal impact on the department due to this service of process requirement.

The bill provides for additional ways that a person may request a new birth certificate from the Office of Vital Statistics (OVS). It is unknown at this time if more people will

request new birth certificates because of the bill, which could result in additional workload on OVS.

VI. Technical Deficiencies:

Under current law, the Department of Revenue (DOR or department) is permitted to serve notice of a proceeding for the establishment of administrative support orders by:

- Personal service by an authorized department employee;
- Any means authorized for service of process in a civil action; or
- Certified mail, restricted delivery, return receipt requested.¹¹

If the latter method is used, the following restrictions apply:

Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally.¹²

Lines 1282-1295 of the bill, relating to modification of support orders, require that “A copy of the petition, proposed order, and other documents shall be served by registered mail, restricted delivery on a party who requested review of a support order.” The party who did not request the review may be served in the same manner or by personal service. It appears that the bill does not contemplate service being affected on the party requesting the review by any other method than “registered mail, restricted delivery.”

The Legislature may wish to consider amending the bill to require consistent methods for service of process under all circumstances.

Additionally, according to the Department of Health:

The bill does not amend Section 382.013(2), Florida Statutes, which provides the method by which paternity is established for purposes of a birth record at the time of birth. The failure to amend Section 382.013, Florida Statutes, creates the potential for conflict. For example, Section 382.013(2)(c), Florida Statutes provides, in pertinent part, that “If the mother is not married at the time of the birth, the name of the father may not be entered on the birth certificate without the execution signed by both the mother and the person to be named as the father.” Under the proposed legislation, an unmarried mother could give birth to a child,

¹¹ Section 409.2563(4), F.S.

¹² *Id.*

get married within the 5 day period before the certificate of live birth is filed with the bureau, and purportedly file the marriage record as proof of paternity for the child, which is in conflict with the requirements for establishing paternity listed in Section 382.013(2)(c), Florida Statutes.¹³

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Judiciary on March 26, 2010:

The committee substitute changes the effective date of the reenactment of ss. 61.14(1)(c) and 61.30(1)(c), F.S., from becoming a law to November 1, 2010, to coincide with the effective date of the changes made to s. 409.2564, F.S.

CS by Children, Families, and Elder Affairs on March 9, 2010:

The committee substitute amends the manner by which the Department of Revenue may serve notice when seeking to modify a support order, as well as making evidentiary hearings mandatory in those cases. In addition, the bill mandates that the clerks of court, Office of State Courts Administrator, sheriffs, Office of the Attorney General, and the department implement electronic filing in Title IV-D cases.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹³ Florida Dep't of Health, *supra* note 8.