2016 CHILD SUPPORT BENCHBOOK

(updated May, 2016)

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CHILD SUPPORT LEGAL OUTLINE

I. CHILD SUPPORT GENERALLY

A. Authority to determine child support

- Article V, Sections 5 and 6 of the Florida Constitution grant the circuit and county courts jurisdiction to hear cases prescribed by general law.

- Article V, Section 1 of the Florida Constitution grants administrative officers quasi-judicial power in matters connected with the functions of their offices.

- Rule 12.491, Fla. Fam. L. R. P., applies to the proceedings for establishment, enforcement, or modification of child support when a party seeking support is receiving services pursuant to Title IV-D of the Social Security Act (42 U.S.C. §§651 *et. seq.*) and to non Title IV-D proceedings upon administrative order of the chief justice.
  - Child support hearing officers must be members of the Florida Bar unless waived. Rule 12.491(c), Fla. Fam. L. R. P.
  - A support enforcement hearing officer does not have the authority to hear contested paternity cases; however, the officer can accept voluntary acknowledgment of paternity and support liability and stipulated agreements setting the amount of support to be paid. Rule 12.491(e), Fla. Fam. L. R. P.

B. Custodial relationships/Parties

- The Florida Legislature has determined that each parent has a fundamental obligation to support his or her minor or legally dependent child. §61.29(1), Florida Statutes; Martland v. Arabia, 987 So. 2d 118 (Fla. 4th DCA 2008). Public policy favors imposing on parents an obligation to contribute to a child's support. Mitchell v. Mitchell, 841 So. 2d 564 (Fla. 2d DCA 2003).

- While the child is a minor, a parent or legal guardian may file the appropriate action to enforce the right to child support on behalf of the minor. Lawrence v. Hershey, 890 So. 2d 350 (Fla. 4th DCA 2004).

- Florida law provides that support may be required for an adult dependent "child" who, because of mental or physical incapacity beginning prior to the child reaching majority, is unable to support herself. If the adult child satisfies the requirements of §743.07(2), Florida Statutes, both parents may be responsible for support. Lawrence v. Hershey, 890 So. 2d 350 (Fla. 4th DCA 2004).

- A court may also require support for a dependent person between the ages of 18 and 19 who is still in high school and performing in good faith with a reasonable expectation of graduation before the age of 19. §743.07(2), Florida Statutes.

- The court may at any time order either or both parents who owe 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 child support guidelines. §61.13(1)(a), Florida Statutes.

- Child support is a right that belongs to the child and may not be contracted away by the parents. It is a dual obligation imposed on the parents by the state. A custodial parent's waiver of a child's right to support is contrary to public policy and unenforceable by the courts because it is not in the best interests of the child. Dechant v. Fla. Dept. of Revenue, 915 So. 2d 215 (Fla. 3d DCA 2011).

- Any party affected by the order of a child support hearing officer may move to vacate the order by filing a motion to vacate within 10 days from the date of entry. Any party may file a cross-motion to vacate within 5 days of service of a motion to vacate. A motion to vacate the order shall be heard within 10 days after the movant applies for a hearing on the motion. Rule 12.491(f), Fla. Fam. L. R. P. For the purpose of hearing on a motion to vacate, the party seeking review must provide a record to the court. The record consists of the court file, including the transcript of the proceedings, and all depositions and evidence presented to the hearing officer. Rule 12.491(h) Fla. Fam. L. R. P. The transcript of all relevant proceedings shall

be delivered to the judge and provided to opposing counsel **not less than 48 hours before the hearing** on the motion to vacate.

- Any party affected by the hearing officer's order may file a supplemental petition to modify the order at any time. The party seeking review must provide a record to the court. The record consists of the court file, including the transcript of the proceedings, and all depositions and evidence presented to the hearing officer. Rule 12.491(h) Fla. Fam. L. R. P.

- Dissolution of marriage is not required to seek child support. §61.09, Florida Statutes.

C. Jurisdiction and venue

- Jurisdiction. The court initially entering an order requiring one or both parents to make child support payments has continuing jurisdiction after the entry of the initial order, as long as this state remains the residence of either party or the child(ren), to modify the amount and terms and conditions of the child support payments if the modification is found by the court to be in the best interests of the child; when the child reaches majority; if there is a substantial change in the circumstances of the parties; if §743.07(2), Florida Statutes, applies; or when a child is emancipated, marries, joins the armed services, or dies. §§61.13(1)(a)(2), 88.2051(1)(a), Florida Statutes.

- Venue. Venue for the enforcement of child support and alimony awards is in the county in which the petitioner resides or the support or alimony obligor is found. §61.17(1)(a), Florida Statutes. *See also* Bryant v. Bryant, 566 So. 2d 65 (Fla. 5th DCA 1990).

- Venue for the modification of child support or alimony awards is in the circuit court of the circuit (1) in which either of the parties resided at the date of the execution of their settlement agreement or (2) in which either resides at the time of the filing of the modification action, or (3) in which the agreement was executed **or** the support order was rendered. §§61.14(1)(a), 61.13(1)(a), Florida Statutes. *See also* DeMauro v. DeMauro, 737 So. 2d 566 (Fla. 3d DCA 1999); Thomas v. Plowmaker, 679 So. 2d 864 (Fla. 3d DCA 1996).

D. Procedures

- IV-D Counsel: The Department of Revenue must provide the same IV-D services to families that do not receive public assistance that it provides to those who do. Therefore, in IV-D cases, IV-D attorneys can be used in all child support proceedings. Thaysen v. Thaysen, 583 So. 2d 663, 666 (Fla. 1991).

- Each party is required to provide his or her social security number and date of birth to the court, as well as the name, date of birth, and social security number of each minor child. Disclosure of social security numbers obtained is limited to the purpose of administration of the Title IV-D program for child support enforcement. §61.13(8), Florida Statutes.

- Adjudication of obligation to support spouse or minor child unconnected with dissolution: Except when relief is afforded by some other pending civil action or proceeding, a spouse residing in this state apart from his or her spouse and minor child, whether or not such separation is through his or her fault, may obtain an adjudication of obligation to maintain the spouse and minor child, if any. The court shall adjudicate his or her financial obligations to the spouse and child and shall establish the parenting plan [term defined in statute, §61.046(14), Florida Statutes] for the parties. Such an action does not preclude either party from maintaining any other proceeding for other or additional relief at any time. §61.10, Florida Statutes.

E. Factors to be considered when awarding support

- The starting point for determining the amount of support owed is set forth in the child support guidelines. §61.30, Florida Statutes; Martland v. Arabia, 987 So. 2d 118 (Fla. 4th DCA 2008).

- A child support determination lies within the trial court's discretion subject to the statutory guidelines and the reasonableness test. Whight v. Whight, 635 So. 2d 135 (Fla. 1st DCA 1994).

- If the trial court wants to deviate from the presumptive child support amount by more than five percent, the final judgment must include findings of fact to support the deviation and explain why the guidelines amount is

unjust or inappropriate. §61.30(1)(a), Florida Statutes; Quinn v. Quinn, 169 So.3d 268, (Fla 2d DCA 2015).

- Contracts regarding the support of minor children are subject to the plenary power of the state to control and regulate, and subject to the court's discretion to enforce. The mere existence of an agreement addressing support for minor children does not permit the court to disregard the statute's explicit limitations on modifying support, imputing income, or awarding retroactive support. Burkley v. Burkley, 911 So. 2d 262 (Fla. 5th DCA 2005).

- Contract law rather than statutory law governs promises exceeding the scope of Chapter 61. These include agreements providing support beyond the age of majority or providing more child support than required by statute. Burkley v. Burkley, 911 So. 2d 262 (Fla. 5th DCA 2005).

- The trial court must consider the overall financial circumstances of both parents before awarding child support. §61.30, Florida Statutes; Martland v. Arabia, 987 So. 2d 118 (Fla. 4th DCA 2008).

- Child support must be based on the legal earning capacity of the parent and not on the amount the parent earns through illegal activities. Crossin v. Crossin, 979 So. 2d 298 (Fla. 4th DCA 2008).

- A court may require 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 such person reaching majority or if the person is between the ages of 18 and 19 and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19. §743.07(2), Florida Statutes.

- When a party is willfully earning less than the person has the ability to earn through his or her best efforts, the court can impute income if: (1) the termination of income was voluntary, and (2) any subsequent underemployment resulted from the spouse's pursuit of his own interests or through less than diligent and bona fide efforts to find employment paying income at a level equal to or better than that formerly received. Guard v. Guard, 993 So. 2d 1086 (Fla. 5th DCA 2008).

F. Temporary vs. permanent support

- A temporary support order is often required at the beginning of a case before the parties have an opportunity to complete discovery. Given the urgency, the court may sometimes order temporary support in an abbreviated hearing with limited evidence and later readdress the issue. Dent v. Dent, 851 So. 2d 819 (Fla. 2d DCA 2003).

- A trial court cannot retroactively increase temporary child support payments for a period before the date the motion seeking the increase is filed. Flores v. Flores, 874 So. 2d 1211 (Fla. 4th DCA 2004).

- A trial court does have the authority to retroactively reduce a parent's obligation for temporary child support. Flores v. Flores, 874 So. 2d 1211 (Fla. 4th DCA 2004).

- The child support guidelines apply to temporary support orders as well as support orders entered after final hearings. Hauser v. Hauser, 778 So. 2d 309 (Fla. 1st DCA 2000); Migliore v. Migliore, 792 So. 2d 1276 (Fla. 4th DCA 2001).

- Temporary order due to the child's placement change
  - When the Department of Revenue files a petition for modification and the petition is accompanied by a verified motion signed by the Department of Revenue to redirect payment alleging that:
    - The child is residing with a relative caretaker that receives temporary cash assistance or
    - The child was formerly residing with a relative caretaker, the child support payments were redirected to the relative caretaker, and the child is now residing with the original payee, then the court shall enter a temporary order, ex parte, within 5 days that redirects the child support payments to the relative caretaker or original payee pending a final hearing and may grant such relief as the court deems proper. Upon the filing of a verified motion by the Department of Revenue to redirect payment, the relative caretaker is deemed a party to the proceedings. §409.2564(12)(a), Florida Statutes.

G. Concealment/parental interference with time-sharing schedule

- When a parent who is ordered to pay child support or alimony fails to pay, the parent who should have received the child support or alimony may not refuse to honor the time-sharing schedule (term defined in statute, §61.046(23), Florida Statutes), presently in effect between the parents. §61.13(4)(a), Florida Statutes.

- When a parent refuses to honor the other parent's rights under the time-sharing schedule, the parent whose time-sharing rights were violated shall continue to pay any ordered child support or alimony. §61.13(4)(b), Florida Statutes.

- The court should also examine the conduct of the custodial parent. The non-custodial parent is excused from paying child support during the time of concealment. Courts have distinguished between interference with visitation and actual concealment since the remedies for interference with visitation rights are not available when the custodial parent's whereabouts are unknown. Hoffman v. Foley, 541 So. 2d 145 (Fla. 3d DCA 1989).

H. Inability to Waive Obligation

- Waiver is the intentional or voluntary relinquishment of a known right, or conduct which implies the relinquishment of a known right. The three elements of waiver are: (1) the existence at the time of the waiver of a right, privilege, advantage, or benefit which may be waived; (2) the actual or constructive knowledge of the right; and (3) the intention to relinquish the right. Bishop v. Bishop, 858 So. 2d 1234 (Fla. 5th DCA 2003).

- A parent cannot waive all arrears when the Department of Revenue is a party and public assistance monies have been paid. The Department of Revenue is an essential party to a public assistance case and Department of Revenue must be noticed or a party to any stipulation between the mother and father. Dept. of Revenue v. Pericola, 662 So. 2d 386 (Fla. 5th DCA 1995).

- Waiver cannot be found due to a delay in seeking child support. Bishop v. Bishop, 858 So. 2d 1234 (Fla. 5th DCA 2003).

- Even if a parent's expenses exceed her income, this reason is not, in and of itself, sufficient for a waiver of the parent's obligation to pay support. Florida Dept. of Revenue ex rel. Bloemendal v. Hodge, 754 So. 2d 845 (Fla. 2d DCA 2000).

II. ESTABLISHING PATERNITY

The courts have long held that the "highest spiritual and moral concepts, as well as the law, demand that the father, as far as his means reasonably permit, support them and this is a continuing duty until the children reach their majority or become self-supporting." Bezanilla v.Bezanilla, 65 So. 2d 754 (Fla. 1953). However, before the duty of child support can be imposed, the court must determine whether or not paternity has been established for the child. These methods include:

- The child was conceived and/or born while the parties were married;
- The parent has voluntarily signed a sworn paternity affidavit or acknowledgment;
- The parents are named on the child's birth certificate;
- Paternity has been established by a court or administrative proceeding; or
- Paternity has been raised and determined within an adjudicatory hearing brought under the statutes governing inheritance, or dependency under workers' compensation or similar compensation programs.

NOTE: Fla. Fam. L. R. P. 12.491(e) provides that a child support enforcement hearing officer does not have the authority to hear contested paternity cases.

A. Establishment of Paternity for Children Born Out of Wedlock

- Except as provided by dependency proceedings in chapter 39, Florida Statutes, and adoption proceedings in chapter 63, Florida Statutes, §742.10, Florida Statutes, provides the primary jurisdiction and procedures for the determination of paternity for children born out of wedlock.

- Any action relating to the determination of paternity must be brought within four (4) years from the date the child reaches the age of majority. Pursuant to §742.10, Florida Statutes, paternity can be established by:
  - An affidavit acknowledging paternity or a stipulation of paternity executed by both parties and filed with the clerk of court;
  - An affidavit, a notarized voluntary acknowledgment of paternity, or a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury as provided for in §382.013 or §382.016, Florida Statutes, and is executed by both parties;
  - Paternity is adjudicated by the Department of Revenue as provided in §409.256, Florida Statutes.
  - Paternity is adjudicated by the Court as provided in Chapter 742 of the Florida Statutes.

B. Affidavits and Voluntary Acknowledgments - §742.10(1), Florida Statutes

- **Acknowledgment.** If adjudicatory proceedings were not held, a notarized voluntary acknowledgment of paternity or voluntary acknowledgment of paternity witnessed by two individuals and signed under penalty of perjury creates a rebuttable presumption of paternity. If signed under penalty of perjury pursuant to §92.525(2), Florida Statutes, the written declaration:
    - Means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true";
    - Must be followed by the signature of the person making the declaration;
    - If the verification on information or belief is permitted by law, the words "to the best of my knowledge and belief" may be added;
    - Declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

NOTE: A person who knowingly makes a false declaration is guilty of the crime of perjury by false declaration, a third degree felony, punishable by up to five years or $5,000.00.

- Both parents must provide their social security numbers on any acknowledgment of paternity, consent affidavit, or stipulation of paternity.
- Rescinding. Acknowledgement may be rescinded within 60 days after the date the acknowledgment was signed or the date of an administrative or judicial proceeding relating to the child in which the signatory is a party, whichever is earlier.
- Challenge. After 60 days, a signed voluntary acknowledgment constitutes an establishment of paternity and may be challenged in court only on the basis of:
    - Fraud,
    - Duress, or
    - Material Mistake of Fact
- The burden of proof is on the challenger, and child support will not be suspended except upon a finding of good cause by the court. §742.10(4), Florida Statutes.
- A verified motion pursuant to Rule 12.540 and §742.10(4) claiming that recent DNA testing excluded the petitioner as the father of the child may be sufficient to establish a material mistake of fact. State, Dept. of

Revenue, Office of Child Support Enforcement v. Ductant, 957 So. 2d 658, 660 (Fla. 3d DCA 2007).

- Ratification. Judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity. §742.10(5), Florida Statutes.

- In many cases, the legal father will file a request or motion for genetic testing when a petition is filed to establish child support. The legal father will acknowledge that he signed the affidavit or birth certificate and is now questioning the paternity; however, the request or motion is devoid of any allegations of fraud, duress, material mistake of fact, or newly discovered evidence. Further, the motion is not a proper petition to disestablish paternity pursuant to §742.18, Florida Statutes. Absent such allegations, no good cause is shown to justify an order requiring the mother and child to submit to genetic testing. State, Dept. of Revenue ex rel. Chambers v. Travis, 971 So. 2d 157, 162 (Fla. 1st DCA 2007); Dept. of Revenue ex rel. T.E.P. v. Price, 958 So. 2d 1045 (Fla. 2d DCA 2007).

- "No party to any family law proceeding is entitled to an order requiring another party to submit to genetic testing unless (1) the proceedings place paternity 'in controversy' and (2) 'good cause' exists for the testing." State, Dept. of Revenue ex rel. Chambers v. Travis, 971 So. 2d 157 *at* 162. "Regarding the first requirement, paternity can be placed 'in controversy' during proceedings conducted by a child support enforcement hearing officer if the purported father files documentation alleging that he is not the biological father or by asserting that he has not acknowledged his fatherhood in an affidavit executed in conformity with §742.10(1)." State, Dept. of Revenue ex rel. Carnley v. Lynch, 53 So. 3d 1154 (Fla. 1st DCA 2011). However, absent proof to support the allegations, such as a copy of the child's birth certificate showing he did not sign the document or other evidence to support the claims, the legal father failed to show good cause to justify paternity testing. *Id. at* 1157.

C. Birth Certificates - §382.013(2), Florida Statutes

- **Affidavit.** 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 of an affidavit signed by both the mother and the person to be named as the father. §382.013(2)(c), Florida Statutes.

- Note: The facility shall give notice orally or through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights, including, if one parent is a minor, any rights afforded due to minority status, and responsibilities that arise from signing an acknowledgment of paternity, as well as information provided by the Title IV-D agency regarding the benefits of voluntary establishment of paternity.
- Upon the request of the mother and the person to be named as the father, the facility shall assist in the execution of the affidavit, a notarized voluntary acknowledgment of paternity, or a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury as specified by §92.525(2), Florida Statutes.

- Court Determination. If the paternity of the child is determined by a court of competent jurisdiction, the surname of the child shall be entered on the certificate in accordance with the finding and order of the court. §382.013(2)(d), Florida Statutes.

- Marriage. If the mother and father marry each other at any time after the child's birth, upon receipt of a marriage license that identifies any such child, the birth certificate shall be amended with regard to the parents' marital status as though the parents were married at the time of birth. §382.10(2)(d), Florida Statutes.

- Dissolution of Marriage. If there is a final judgment of dissolution of marriage which requires the former husband to pay child support for the child, the name of the father and the surname of the child shall be entered on the birth certificate in accordance with the finding and order of the court. §382.10(2)(d), Florida Statutes.

- Administrative Determination. If the paternity of the child is determined pursuant to §409.256, the name of the father and the surname of the child shall be entered on the certificate in accordance with the finding and order of the Department of Revenue. §382.013(2)(e), Florida Statutes.

D. Court Proceedings - Chapter 742, Florida Statutes

- **Proceedings.** When paternity has not been established by law or otherwise, an action may be brought by:
  - Any woman who is pregnant or has a child;
  - Any man who has reason to believe that he is the father of a child; or
  - Any child.

- **Venue.** The case must be filed in the circuit court of the county where the plaintiff resides or the county where the defendant resides. §742.021, Florida Statutes.

- **Long Arm Jurisdiction.** Engaging in the act of sexual intercourse within the state with respect to which a child may have been conceived, submits a person, whether or not a citizen or resident of the state, to the jurisdiction of the court of the state. §48.193(1)(h), Florida Statutes.

- **Constructive Service.** Except as to legal fathers, the service of process statute does not permit constructive service of process in paternity cases. Florida Dept. of Revenue v. Cummings, 930 So. 2d 604, 609 (Fla. 2006). Specifically, it should be noted that §49.011, Florida Statutes, does not include paternity actions.

- **Constructive Service-Legal Father.** Constructive service may be used to determine paternity, but only as to the legal father in a paternity action in which another man is alleged to be the biological father, in which case it is necessary to serve process on the legal father in order to establish paternity with regard to the alleged biological father. §49.011(15), Florida Statutes.

E. Scientific Testing - §742.12, Florida Statutes

- A test may be ordered upon the request of a party providing a sworn statement or written declaration alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties or providing a sworn statement or written declaration denying paternity and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties. §742.12(2), Florida Statutes.

- The order for scientific testing must inform each person to be tested of the procedure and requirements for objecting to the test results.

- The test must be conducted by a qualified technical laboratory. §742.12(1), Florida Statutes.

- A statistical probability of 95% or more creates a rebuttable presumption that the alleged father is the biological father of the child. §742.12(4), Florida Statutes.

- The test results, together with the opinions and conclusions of the test laboratory, shall be filed with the court. Any objection to the test results must be made in writing and must be filed with the court at least 10 days prior to the hearing. If no objection is filed, the test results shall be admitted into evidence without the need for predicate to be laid or third-party foundation testimony to be presented. §742.12(3), Florida Statutes.

- A party may still call outside expert witness(es) to refute or support the testing procedure or results, or the mathematical theory on which they are based. §742.12(3), Florida Statutes.

- Second Test. If the test results or the expert analysis of the inherited characteristics is disputed, the court, upon reasonable request of a party, shall order that an additional test be made by the same laboratory or an independent laboratory at the expense of the requesting party. §742.12(5), Florida Statutes.

- The Florida Statute regarding a second test is directory and not mandatory. Dept. of Revenue ex rel. of Glover v. Smatt, 679 So. 2d 1191 (Fla. 5th DCA 1996).

- "This statute imposes an obligation on the moving party to establish good cause before a successive test can be ordered." Southwick v. Dept. of Revenue ex rel. Mulloy, 750 So. 2d 32 (Fla. 2d DCA 1998). A mere dissatisfaction with the results of the first test is not good cause. *Id*.

F. Trial

- Hearings for the purpose of establishing or refuting the allegations of the paternity complaint and answer shall be held in chambers and may be restricted to persons, in addition to the parties involved and their counsel, as the judge in his or her discretion may direct. §742.031(1), Florida Statutes.

- Parties have right to a jury trial in paternity actions. B.J.Y. v. M.A., 617 So. 2d 1061 (Fla. 1993).

- Relief from Judgment. A motion for relief from judgment pursuant to rules 12.540 and 1.540 (Not a Petition to Disestablish Paternity pursuant to §742.18, Florida Statutes) must be filed within one year absent extrinsic fraud or fraud upon the court. Dept. of Revenue, State of Florida v. Myrick, 706 So. 2d 104 (Fla. 5th DCA 1998).

G. Administrative Establishment of Paternity - §409.256, Florida Statutes

- The Department of Revenue is authorized by law to initiate administrative proceedings to establish paternity or establish paternity and child support, orders to appear for genetic testing, and administrative proceedings to establish child support obligations. §§409.256, 409.2563, Florida Statutes. In 2005, the Florida legislature enacted Chapter 2005-39, Laws of Florida, establishing an administrative procedure for the establishment of child support. The Department of Revenue is entitled to render a final order of paternity or final order of paternity and child support. If a timely request for hearing is filed, the matter is referred to the Division of Administrative Hearings. Chapter 120 and the uniform rules of procedure govern the conduct of the proceedings. A final order rendered pursuant to this section has the same effect as a judgment entered by the court pursuant to chapter 742. Once the Department of Revenue commences an action by serving the respondent with the Notice of Proceeding to Establish Paternity by certified mail or by service of process, all further service is by regular mail. This includes notice that the Department of Revenue intends to seek child support in conjunction with the paternity action.

- In enacting the legislation, the Legislature specifically states that it "does not intend to limit the jurisdiction of the circuit courts to hear and determine issues regarding establishment of paternity. This section is intended to provide the Department of Revenue with an alternative

procedure for establishing paternity and child support obligation in Title IV-D cases. This section does not prohibit a person who has standing from filing a civil action in circuit court for a determination of paternity or of child support obligations." §409.256(2)(f), Florida Statutes.

- Proceedings. The Department of Revenue may commence a paternity proceeding if:
  - The child's paternity has not been established.
  - No one is named as the father on the child's birth certificate or the person named as the father is the putative father named in an affidavit or written declaration.
  - The child's mother was unmarried when the child was conceived and born.
  - The Department of Revenue is providing services under Title IV-D.
  - The child's mother or a putative father has stated in an affidavit, or in a written declaration that the putative father is or may be the child's biological father.

  §409.256(2)(a), Florida Statutes.

- The affidavit or written declaration must set forth the factual basis for the allegation of paternity as provided in §742.12(2), Florida Statutes, i.e., facts establishing a reasonable possibility of the requisite sexual contact between the parties or providing a sworn statement or written declaration denying paternity and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

- Long Arm Jurisdiction. The Department of Revenue may proceed against a nonresident over whom the State may assert personal jurisdiction under chapter 48 or chapter 88. §409.256(2)(c), Florida Statutes.

- Location of Hearings. Whenever practicable, hearings by the Division of Administrative Hearings shall be held in the judicial circuit where the person receiving service under Title IV-D resides, or if such person does not reside in the state, in the judicial circuit where the respondent resides. If agreed, hearings may be held in another location. If ordered by the administrative law judge, a hearing may be conducted telephonically or by videoconference. §409.256(2)(e), Florida Statutes.

- Multiple Putative Fathers; Multiple Children. §409.256(3), Florida Statutes.

- If more than one putative father has been named, the Department of Revenue may proceed against a single father or may proceed simultaneously against more than one putative father.
- If a putative father has been named as a possible father of more than one child born to the same mother, the Department of Revenue may proceed to establish paternity of each child in the same proceeding.

- Notice of Proceedings - §409.256(4), Florida Statutes.
  - The Department of Revenue commences a proceeding by serving the respondent with a notice. The notice must state:
    - That the Department of Revenue has commenced an administrative proceeding to establish whether the putative father is the biological father of the child named in the notice.
    - The name and date of birth of the child and the name of the child's mother.
    - That the putative father has been named in an affidavit or written declaration that states the putative father is or may be the child's biological father.
    - That the respondent is required to submit to genetic testing.
    - That genetic testing will establish either a high degree of probability that the putative father is the biological father of the child or that the putative father cannot be the biological father of the child.
    - That if the results of the genetic test do not indicate a statistical probability of paternity that equals or exceeds 99 percent, the paternity proceeding in connection with the child shall cease unless a second or subsequent test is required.
    - That if the results of the genetic test indicate a statistical probability of paternity that equals or exceeds 99 percent, the Department of Revenue may:
      - Issue a proposed order of paternity that the respondent may consent to or contest at an administrative hearing; or
      - Commence a proceeding to establish an administrative support order for the child. Notice of the proceeding shall be provided to the respondent by regular mail.
    - That, if the genetic test results indicate a statistical probability of paternity that equals or exceeds 99% and a proceeding to establish an administrative support order is commenced, the Department of Revenue shall issue a proposed order that addresses paternity and

child support. The respondent may consent to or contest the proposed order at an administrative hearing.
    - That if a proposed order of paternity or proposed order of both paternity and child support is not contested, the Department of Revenue shall adopt the proposed order and render a final order.
    - That, until the proceeding is ended, the respondent shall notify the Department of Revenue in writing of any change in address and that the respondent shall be deemed to have received any subsequent order, notice, or other paper mailed to the most recent address provided or, if not provided, to the service address.
    - That the respondent may file an action in circuit court for a determination of paternity, child support obligations, or both.
    - That if the respondent files an action in circuit court and serves the Department of Revenue with a copy of the petition or complaint within 20 days after being served notice, the administrative process ends without prejudice and the action must proceed in circuit court.
    - That, if paternity is established, the putative father may file a petition in circuit court for a determination of matters relating to custody and rights of parental contact.
        - The order to appear for genetic testing may be served at the same time or separately.
        - A copy of the affidavit or written declaration shall be provided.

- Service. §409.256(4), Florida Statutes.
    - Respondents may be served by certified mail, restricted delivery, return receipt requested, or by service of process.
    - If person other than the addressee signs, the Department of Revenue shall attempt to contact the addressee by telephone to confirm receipt. If the Department of Revenue is unable to confirm, service is not complete and the Department of Revenue shall attempt personal service.
    - The Department of Revenue or an authorized agent may serve notice or order for genetic testing and execute affidavit of service.

- Genetic Testing. §409.256(4)(c), Florida Statutes.
    - Order to Appear for Genetic Testing shall inform the person ordered to appear:

- That the Department of Revenue has commenced an administrative procedure to establish whether the putative father is the biological father of the child.
- The name and date of birth of the child and the name of the child's mother.
- That the putative father has been named in an affidavit or written declaration that states the putative father is or may be the child's biological father.
- The date, time, and place that the person ordered to appear must appear to provide a sample for genetic testing.
- That if the person has custody of the child, the person must submit the child for testing.
- That when samples are provided, the person ordered to appear shall verify his or her identity and the identity of the child by presenting a photo identification.
- That the Department of Revenue shall pay the cost of the testing and shall provide a copy of the test results.
- That if the person ordered to appear does not appear or refuses to submit to genetic testing without good cause, the Department of Revenue may take one or more of the following actions:
  - Commence proceedings to suspend the driver's license and motor vehicle registration as provided in §61.13016, Florida Statutes;
  - Impose an administrative fine against the person in the amount of $500.00;
  - File a petition in the circuit court for the child and an order for costs, including costs of the genetic testing.
- That the person ordered to appear may contest the order by filing a written request for informal review within 15 days after service, with further rights to an administrative hearing following the informal review.

- Contesting an Order to Appear for Genetic Testing. §409.256(5), Florida Statutes.
  - Informal Review. A person ordered to appear may contest by filing a written request for informal review with the Department of Revenue within 15 days after service of the order. After review, the Department of Revenue shall notify the person in writing whether it intends to proceed.

- Administrative Hearing. After informal review and within 15 days after mailing of the Department of Revenue's intent to proceed, a person ordered to appear may file a request for administrative hearing stating specific reasons why they should not be ordered to submit to genetic testing. Administrative hearings are governed by chapter 120 and the uniform rules of procedure.
- Waiver. If a request for informal review or administrative hearing is not timely filed, the person ordered to appear is deemed to have waived the right to a hearing.
- The Department of Revenue may not proceed until:
  - After notifying of intent to proceed after informal review, a timely request for hearing is not filed;
  - The person ordered to appear withdraws the request for a hearing or informal review; or
  - The Division of Administrative Hearings issues an order that the person must submit for testing or issues an order closing the division's file and the order is final.

- Scheduling of Genetic Testing. §409.256(6), Florida Statutes.
  - Notice. The Department of Revenue shall notify, in writing, the person ordered to appear of the date, time, and location of the appointment and the requirement to provide photo identification.
  - Reschedule. The Department of Revenue shall reschedule:
    - One time without cause, if a request is made in advance of the initial test date.
    - One time if a person shows good cause for failure to appear for the test. The request must be filed within 20 days after scheduled test date and must state facts and circumstances supporting claim. The Department of Revenue shall notify the person in writing whether or not it accepts or rejects the person's claim of good cause.
    - One time upon the request of a person sanctioned for failure to appear.
- Second Test.
  - A person ordered to appear may obtain a second test by filing a written request with the Department of Revenue within 15 days after the mailing of initial testing results and upon payment in advance for the full cost of a second test.

    - The Department of Revenue may schedule and require a subsequent test if it has reason to believe the results of the prior test may not be reliable.
        - Failure or Refusal to Submit to Genetic Testing. §409.256(7), Florida Statutes.
- If a person who is served with an order to appear for genetic testing fails to appear without good cause or refuses to submit to testing without good cause, the Department of Revenue may take one or more of the following actions:
    - Commence a proceeding to suspend the driver's license and motor vehicle registration of the person ordered to appear as provided in §61.13016, Florida Statutes. Pursuant to §322.058(2), Florida Statutes, the suspended driver's license and motor vehicle registration may be reinstated when the person ordered to appear complies with the order for genetic testing.
    - Impose an administrative fine against the person in the amount of $500.00. The Department of Revenue may collect an administrative fine by using civil remedies or other statutory means available to the department for collecting support.
      OR
    - File a petition in circuit court to establish paternity, obtain a support order for the child, and seek reimbursement from the person ordered to appear for the full cost of genetic testing incurred by the department.
- Test Results. §409.256(7), Florida Statutes.
    - A copy of the test results are sent to the parties. If the results do not indicate a statistical probability of paternity that equals or exceeds 99%, the paternity proceeding will cease.
- Proposed Order of Paternity. §409.256(9), Florida Statutes.
    - If the probability of paternity equals or exceed 99%, the Department of Revenue may:
        - Issue a proposed order of paternity; or
        - Delay issuing a proposed order, commence by regular mail an administrative proceeding to establish a support order pursuant to §409.2563, Florida Statutes, and issue a single proposed order that addresses paternity and child support.
- The proposed order of paternity must:
    - State proposed findings of fact and conclusions of law.
    - Include a copy of the results of genetic testing.

    - Include notice of the respondent's right to informal review and to contest the proposed order at an administrative hearing.
- The Department of Revenue shall serve the proposed order by regular mail.
- Informal Review; Administrative Hearing. §409.256(10), Florida Statutes.
    - Within 10 days after mailing or other service of proposed order, the respondent may contact a representative of the Department of Revenue to request an informal review.
    - Within 20 days after the mailing of a proposed order or 10 days after the mailing of a notice of conclusion of informal review, whichever is later, the respondent may request an administrative hearing in writing. The request must state the specific objections to the proposed order, proposed genetic tests, or both. Failure to file a timely request is deemed a waiver of the right to a hearing.
    - If a timely request is made, the Department of Revenue shall refer the hearing request to the Division of Administrative hearings for a chapter 120 proceeding.
    - The genetic test results shall be admitted into evidence and made part of the record. A statistical probability of 99% creates a presumption that the putative father is the biological father of child. The presumption may be overcome only by clear and convincing evidence. The respondent or the Department of Revenue may call expert witness(es) to refute or support the testing procedure, results, or mathematical theory. Verified documentation of the chain of custody of the samples is competent evidence.

- Final Order. §409.256(11), Florida Statutes.
    - Administrative Hearing. If a hearing is held the administrative law judge shall issue a final order that adjudicates paternity or, if appropriate, paternity and child support.
    - Department Issuance. If the respondent does not file a timely request for a hearing or consent in writing to the entry of a final order without a hearing, the Department of Revenue may render a final order of paternity or paternity and child support.
    - Copies. The Department of Revenue shall mail a copy of the final order to the putative father, mother, and caregiver, if any, and notify the respondent of the right to seek judicial review of the final order in accordance with §120.68.

- Effectiveness. A final order rendered pursuant to this section has the same effect as a judgment entered by the court pursuant to chapter 742.

- Judicial Review. The respondent and the department have the right to seek judicial review in accordance with §120.68, Florida Statutes.
- Mailing Address. Until the proceeding has ended, a respondent served with a notice of a proceeding must inform the Department of Revenue in writing of any change of mailing address and is deemed to have received any subsequent order, notice, or other paper mailed to that address or the address where the respondent was served, if a more recent address has not been provided.

H. Probate

- Paternity may be established in the course of probate proceedings. In re Estate of Smith, 685 So. 2d 1206, 1208 (Fla. 1996). §742.10(1), Florida Statutes, confirms this by stating that "if the establishment of paternity has been raised and determined within an adjudicatory hearing brought under the statutes governing inheritance . . . such adjudication constitutes the establishment of paternity for purposes of this chapter." Pursuant to §732.108(2), Florida Statutes, for the purpose of intestate succession, when a child has not been adopted, and is born out of wedlock, the child is a descendant of his or her father and is one of the natural kindred of all members of the father's family if:
  - The natural parents participated in a marriage ceremony before or after the birth of the person born out of wedlock, even though the attempted marriage is void.
  - The paternity of the father is established by an adjudication before or after the death of the father. Chapter 95 (statute of limitations) shall not apply in determining heirs in a probate proceeding under this paragraph.
  - The paternity of the father is acknowledged in writing by the father.

- However, the courts have found that §732.108(2)(b), Florida Statutes, does not create a separate independent case of action to establish paternity. It merely explains the effect of an adjudication of paternity. *Id*; Glover v. Miller, 947 So. 2d 1254, 1257 (Fla. 4th DCA 2007).

I. Declaratory Relief

- Paternity may be determined in an action for declaratory relief, including an action brought by a trustee to determine the beneficiaries of a trust. Doe v. Suntrust Bank, 32 So. 3d 133 (Fla. 2d DCA 2010); Knauer v. Barnett, 360 So. 2d 399 (Fla. 1978).

- Workers' Compensation §440.02(6), Florida Statutes. For the purposes of Workers' Compensation, a child includes:
  - A posthumous child,
  - A child legally adopted prior to the injury of the employee, or
  - A stepchild or acknowledged child born out of wedlock who is dependent upon the deceased, but does not include married children unless wholly dependent on the employee.

J. Children Conceived or Born During Wedlock

- In determining the establishment of child support for a child conceived or born during a marriage, the court must determine:
  - Was the child conceived or born during an intact marriage;
  - Was the child conceived or born prior to the marriage, but the parties subsequently married;
  - Is the husband indicated on the birth certificate;
  - Does the husband dispute that he is the biological father of the child and any obligation to pay child support.
- Presumption of legitimacy. The law in Florida is clear that a child born or conceived during a lawful marriage is legitimate child of the husband and wife. Adoption of Baby James Doe, 572 So. 2d 986, 988 (Fla. 1st DCA 1990). The child born or conceived during such marriage is presumed to be the child of both the husband and the wife. Fla. Dept. of Revenue v. Cummings, 930 So. 2d at 607 (Fla. 2006). This presumption of legitimacy is one of the strongest rebuttable presumptions known to law. *Id*. "It is a presumption which operates in family law settings to prevent a husband's rights from being terminated and for the child's best interests in his or her legitimacy and support from his or her father." Daniels v. Greenfield, 15 So. 3d 908, 914 (Fla. 4th DCA 2009). "A person seeking to challenge the child's paternity must overcome the strong, albeit rebuttable, presumption of legitimacy." Nevitt v. Bonomo, 53 So. 3d 1078, 1081 (Fla. 1st DCA 2010).

K. Legal vs. Biological Father

- Legal Father. The Supreme Court has defined a "legal father" as "the man to whom the mother was married when the child was born and whose name appears on the birth certificate." G.F.C. v. S.G., 686 So. 2d 1382, 1384 (Fla. 5th DCA 1997); Dept. of Health & Rehabilitative Services v. Privette, 617 So. 2d 305, 307 (Fla. 1993); J.A.I. v. B.R., 160 So. 3d 473(Fla. 2d DCA 2015). The law has repeatedly held that when a child is born into an intact marriage and is recognized by the husband and the wife as their child, "the husband is deemed the legal father to the exclusion of all others," and a man claiming to be the child's biological father has no common law, statutory, or constitutional right to sue for paternity G.F.C., 686 So. 2d at 1384; Bellomo v. Gagliano, 815 So. 2d 721, 722 (Fla. 5th DCA 2002). The mother's husband remains the legal father unless and until the court effects a substitution. Shuler v. Guardian Ad Litem Program, 17 So. 3d 333, 335 (Fla. 5th DCA 2009). For the purposes of the establishment of child support, a "legal father is an indispensable party in any action to determine paternity and to place support obligation on another man unless it is conclusively established that the legal father's rights to the child have been divested by some earlier judgment." Cummings, 930 So. 2d *at* 609. Therefore, an action for the establishment of child support must include the legal father even though another claims to be the biological father.

- Intact Marriage. An intact marriage has been defined as "the existence of a marriage without the pendency of divorce proceedings." Lander v. Smith, 906 So. 2d 1130, 1134 (Fla. 4th DCA 2005); Nevitt v. Bonomo, 53 So. 3d 1078, 1082 (Fla. 1st DCA 2010). *See also* S.B. v. D.H., 736 So. 2d 766, 767 (Fla. 2d DCA 1999)(So long as the husband and wife are married and have no pending divorce proceeding, we will not authorize the trial court to conduct any qualitative evaluation of whether the marriage is "intact."). The bonds of matrimony are either terminated by death or by proceedings filed pursuant to Chapter 61 of the Florida Statutes. Lohman v. Carnahan, 963 So. 2d 985, 987 (Fla. 4th DCA 2007).

- Birth Certificate. If the mother is married at the time of birth, the name of the husband shall be entered on the birth certificate as the father of the child, unless paternity has been determined otherwise by a court of competent jurisdiction. §382.013(2)(a), Florida Statutes.
    - If there is a final judgment of dissolution of marriage which requires the former husband to pay child support for the child, the name of the father and the surname of the child shall be entered on the birth

certificate in accordance with the finding and order of the court. §382.013(2)(d), Florida Statutes.

- Birth Certificate -- Deceased Husband. If the husband dies while the mother is pregnant but before the birth of the child, the name of the deceased husband shall be entered on the birth certificate as the father of the child, unless paternity has been determined otherwise by a court of competent jurisdiction. §382.013(2)(b), Florida Statutes.

- Subsequent Marriage. If the mother of any child born out of wedlock and the reputed father shall at any time after its birth intermarry, the child shall in all respects be deemed and held to be the child of the husband and wife, as though born within wedlock. §742.091, Florida Statutes; I.A. v. H.H., 710 So. 2d 162 (Fla. 2d DCA 1998) (marriage two months after birth of child); Harris v. Harris, 753 So. 2d 774 (Fla. 5th DCA 2000) (marriage nine months after birth).

  NOTE: Record of the proceedings in such cases shall be sealed against public inspection in the interests of the child.

  However, the court has permitted a paternity case to proceed when the mother married a man after she was served with the paternity action and the second man acknowledged that he was the father of the child. T.B. v. M.M., 945 So. 2d 637 (Fla. 2d DCA 2006). *See also*, J.W.T. v. S.T., 974 So. 2d 436 (Fla. 2d DCA 2007) (Dismissal of paternity action by biological father was reversed when mother had previously commenced a paternity action against the father which was voluntarily dismissed after marrying husband. The timing of the actions suggested an attempt to deny biological father's right to determine paternity).

- Non-Biological Legal Father. As established in the case of Daniel v. Daniel, 695 So. 2d 1253 (Fla. 1997), a husband has no legal duty to provide for the support of a minor child of the marriage who is neither his natural nor his adopted child and for whose care and support he had not contracted. Under the facts of Daniel, paternity was not contested and the parties stipulated that the husband was not the biological father of the child, and that the husband did not assert any legal rights as a legal father during the couple's marriage.
  The issue frequently arises in child support cases when the mother of the child is still married and bears a child or children purportedly fathered by

another man. As stated in Fla. Dept. of Revenue v. Cummings, 930 So. 2d *at* 609 (Fla. 2006), for the purposes of the establishment of child support, a "legal father is an indispensable party in any action to determine paternity and to place support obligation on another man unless it is conclusively established that the legal father's rights to the child have been divested by some earlier judgment." Therefore, the legal father's rights to the child must be divested by a final judgment of dissolution of marriage or other order disestablishing paternity before child support can be sought from a putative biological father.

NOTE: A legal father may be equitably stopped from disavowing his status as a child's legal father in cases where he has acted as the child's father, enjoyed the benefits of a biological father such as the love of the child and status as a father, and prevented the child from knowing the biological father or receiving support. C.C.A. v. J.M.A., 744 So. 2d 515 (Fla. 2d DCA 1999), review granted, 762 So. 2d 916 (Fla. 2000), and review dismissed as improvidently granted by J.M.C. v. C.C.A., 803 So. 2d 705 (Fla. 2001).

- Biological Father. The issue frequently arises in child support cases when the mother of the child is still married and bears a child or children purportedly fathered by another man. In such cases, the biological father may seek to intervene. The courts have long held that a "man who fathers a child with a woman married to another man generally has no parental rights or responsibilities to the child." Shuler, 17 So. 3d *at* 335 (Fla. 5th DCA 2009). "…(W)here a child is born to an intact marriage and is recognized by the husband and wife as their child, the husband is deemed the legal father to the exclusion of all others and a man claiming to be the child's biological father has no common law, statutory or constitutional right to sue for paternity." Bellomo, 815 So. 2d *at* 722, citing to G.F.C., 686 So. 2d *at* 1384 (Fla. 5th DCA 1997).

  Part of the basis for this argument is that §742.10, Florida Statutes, states that the "chapter provides the primary jurisdiction and procedures for the determination of paternity for children born out of wedlock." (Emphasis added.) §742.011, Florida Statutes, provides that a paternity action may be brought so long as paternity had not already been established by "law or otherwise." Paternity would be established "by law" when there is an adjudication of paternity, the filing of the acknowledgements or stipulations, or administrative establishment. "Paternity would 'otherwise'

be established when a child is born to an intact marriage and recognized by the husband and wife as being their child," G.F.C., 686 So. 2d *at* 1386.
The prevailing law in the state of Florida is that a putative father has no right to initiate a paternity action concerning the child of an intact marriage if both the married woman and her husband object. G.F.C.; I.A. v. H.H., 710 So. 2d 162 (Fla. 2d DCA 1998); Johnson v. Ruby, 771 So. 2d 1275 (Fla. 4th DCA 2000); Bellomo, 815 So. 2d *at* 722; Tijerino v. Estrella, 843 So. 2d 984 (Fla. 3d DCA 2003). In S.D. v. A.G., 764 So. 2d 807, 809 (Fla. 2d DCA 2000), the court expanded the holding so that a "putative father is not entitled to intervene in a divorce proceeding to seek a determination of paternity concerning a quasi-marital child where:

- The husband and wife have stipulated or agreed that the child should be treated like any other marital child;
- The putative father waited more than 2 ½ years from the birth of the child to initiate any proceeding and has not alleged any fraud or concealment of any critical fact by the husband and wife;
- The putative father has not alleged that he established a parental-style bond with the child; and
- The putative father has not alleged a basis to terminate the legal father's rights under chapter 39, Florida Statutes."

Based upon the reasoning that paternity has been otherwise established, the court has not allowed a wife to maintain an action for paternity where 771the legal father signed the birth certificate, subsequently married the mother, and participated in raising the child since birth. Williams-Raymond v. Jones, 954 So. 2d 721 (Fla. 4th DCA 2007). In the pivotal case of Dept. of Health & Rehabilitative Services v. Privette, 617 So. 2d 305, (Fla. 1993), the court held that in a case where a legal father may lose his parental rights, "before a blood test can be ordered in this type of case, the trial court is required to hear argument of the parties, including the legal father, if he chooses to appear, and a guardian ad litem appointed to represent the child."

- Limited Rights for Biological Fathers. Some courts have, parenthetically, recognized a potential limited right for a man to pursue a paternity action for a child born during an intact marriage. In such cases, the man "would be required to at least allege that a developed relationship exists between himself and the child; an allegation of mere biological link to the child would not suffice. G.F.C., 686 So. 2d *at* 1386. *See also*, Bellomo, 815 So. 2d

at 722; Fernandez v. McKenney, 776 So. 2d 1118, 1121 (Fla. 5th DCA 2001)(Sharp, J. concurring); Fernandez v. Fernandez, 857 So. 2d 997 (Fla. 5th DCA 2003). In Lander v. Smith, 906 So. 2d 1130 (Fla. 4th DCA 2005), the court allowed a case to proceed by a putative biological father for a child he fathered with the mother when she was married to but separated from her husband, where his name appeared on the birth certificate in contravention of §382.013(2)(a), Florida Statutes, where it was uncontested that he was the biological father, where the husband lacked access to the mother during the time of conception, and where he provided support and established a relationship with the child. *See also*, L.J. v. A.S., 25 So. 3d 1284 (Fla. 2d DCA 2010) (The trial court erred in summarily dismissing the putative father's petition based upon a lack of standing without first allowing a hearing to establish such standing when the child at issue has a biological father who is willing, able, and eager to parent and support the child; a legal father who is not; and a mother who wishes to deprive the child of a real father by declining to institute proceedings to divest the ex-husband of legal parental rights); Nevitt v. Bonomo, 53 So. 3d 1078, 1081 (Fla. 1st DCA 2010) (The court erred in dismissing a paternity complaint for a child conceived during a marriage but born after divorce even though a nunc pro tunc order vacating the final judgment of dissolution of marriage was entered. At the time the paternity action was filed and the child was born, the divorce proceeding was pending.).

However, at least one court has rejected this "hypothetical" exception as invalid and refused to accept it. Slowinski v. Sweeney, 64 So. 3d 128 (Fla. 1st DCA 2011).

III. DISESTABLISHMENT OF PATERNITY

A. Relief from Judgment, Decrees, or Orders - Rule 1.540 Fla. R. Civ. P., Rule 12.540 Fla. Fam. L. R. P.

- Prior to enactment of §742.18, Florida Statutes, the Florida Supreme Court held that a "final judgment of dissolution of marriage which establishes a child support obligation for a former husband is a final determination of paternity. Any subsequent challenge of paternity must be brought under the provisions of Fla. R. Civ. P. 1.540." D. F. v. Dept. of Revenue ex rel L.F., 823 So. 2d 97, 100 (Fla. 2002). Based upon the rule, relief from a judgment based upon intrinsic fraud must be brought within one (1) year of its entry. Parker v. Parker, 950 So. 2d 388 (Fla. 2007). Such time limitation also applies to final judgments of paternity. Dept. of Revenue ex rel. Stephens v. Boswell, 915 So. 2d 717 (Fla. 5th DCA 2005).

- Intrinsic fraud applies to fraudulent conduct that arises within a proceeding and pertains to issues that have been or could have been tried. Extrinsic fraud involves conduct which is collateral to the issues tried in a case. In other words, extrinsic fraud occurs where a defendant has somehow been prevented from participating in a cause. In Parker, the Court held that a wife's misrepresentation of paternity in a dissolution of marriage proceeding is a matter of intrinsic fraud which must be brought within one year of entry of the judgment. Parker, 950 So. 2d *at* 391. Similarly, fraudulent inducement to stipulate to paternity is intrinsic fraud which must be raised within the time allowed under Rule 1.540(b). Dept. of Revenue ex rel. Stephens v. Boswell, 915 So. 2d at 723 (Fla. 5th DCA 2005).

B. Statutory Disestablishment

- In 2006 the Legislature enacted Chapter 2006-265, whereby a male may seek to disestablish paternity or terminate a child support obligation. Effective June 20, 2006, Section 742.18, Florida Statutes, established the circumstances, procedures, and effect of a petition filed pursuant to the statute. The statute created a new cause of action which does not require allegations of fraud. Johnston v. Johnston, 979 So. 2d 337 (Fla. 1st DCA 2008). The petitions may even be filed by former husbands long after the entry of a final judgment of dissolution of marriage. (17 years) *Id. at* 338. Such petition must be filed prior to the child's 18th birthday. If the petition is granted, the legitimacy of a child born during a lawful marriage is not

affected. §742.18(9), Florida Statutes. Further, the filing of a petition to disestablish paternity does not preclude an individual from seeking relief from a final judgment, decree, order, or proceedings pursuant to Rule 1.540, Fla. R. Civ. P., or from challenging a paternity determination pursuant to §742.10(4), Florida Statutes. The requirements for disestablishment of paternity include:

- Petition. §742.18(1), Florida Statutes.
  - Must be filed by a male.
  - In a circuit court having jurisdiction over child support obligation or, if child support was determined administratively and not ratified by a court, in the circuit court where the mother or legal guardian or custodian resides. If the mother or legal guardian or custodian are no longer in the state of Florida, the petition may be filed in the circuit court where the petitioner resides.
  - Must be served on the mother or other legal guardian or custodian of the child.
  - Must Include:
    - Affidavit - Newly Discovered Evidence stating that newly discovered evidence relating to the paternity of the child has come to the petitioner's knowledge since the initial paternity determination or establishment of child support obligation.
      - As long as the results meet the statute's other requirements, DNA test results from a test performed after the initial determination of paternity do satisfy the statutory requirement for newly discovered evidence, even if the respondent had suspicions that he was the father of the child prior to the initial establishment of paternity. P.G. v. E.W, 75 So. 3d 777 (Fla. 2d DCA 2011). However, the court certified conflict with the First District Court's decision in Hooks v. Quaintance, 71 So. 3d 908, 911 (Fla. 1st DCA 2011), in which the court held that "the plain language in §742.18 requires a showing of newly discovered evidence in addition to DNA test results indicating that the male is not the father of the child."
    - Scientific Test Result administered within 90 days prior to filing which indicates that the petitioner cannot be the father of the child, OR an affidavit stating that he did not have access to the child prior

to the filing of the petition. The petitioner may file a petition requesting testing if he does not have access to the child.

- Affidavit - Child Support stating that the petitioner:
  - Is current on all child support payments for the child at issue, OR
  - That he has substantially complied with his child support obligation and that any delinquency in his child support obligation arose from his inability for just cause to pay the delinquent child support when it became due.

- Scientific Testing. §742.18(7), Florida Statutes.
  - If the scientific test results are provided solely by the petitioner, the court on its own motion may, and on the petition of any party shall, order the child and the petitioner to submit to the applicable tests. Such testing must be done not more than 30 days after the court issues the order.
  - If the petitioner willfully fails to submit to testing, or if the mother or legal guardian or custodian of the child willfully fails to submit the child for testing, the court shall issue an order determining the relief on the petition against the party in noncompliance. If good cause is shown, such failure shall not be considered willful. *See* Dept. of Revenue ex rel. M.J.W. v. G.A.T., Jr., 76 So.3d 1083 (Fla. 2d DCA 2011).
  - Nothing in this paragraph prevents a child from reestablishing paternity under §742.10, Florida Statutes.
  - The party requesting scientific testing shall pay any fees charged for the tests. If the custodian of the child is receiving services from the administrative agency in its role as an agency providing enforcement of child support orders, that agency shall pay the costs of the testing if it requests and may seek reimbursement for the fees from the person against whom the court assesses the costs.

- Order. §742.18(2), Florida Statutes.
  - Required Findings: The court shall grant the relief upon a finding of all of the following:
    - Newly discovered evidence relating to the paternity of the child has come to the petitioner's knowledge since the initial paternity determination or establishment of a child support obligation.
    - The scientific test was properly conducted.
    - That the petitioner is current on all child support payments for the child or that he has substantially complied with his child support

obligation and that any delinquency in his child support obligation arose from his inability for just cause to pay the delinquent child support when it became due.
    - That the petitioner has not adopted the child.
    - That the child was not conceived by artificial insemination while the petitioner and the child's mother were in wedlock.
    - The petitioner did not act to prevent the biological father of the child from asserting his paternal rights with respect for the child.
    - The child was younger than 18 years of age when the petition was filed.

- Prohibitive Conduct. §742.18(3), Florida Statutes. The court shall not set aside the paternity determination or child support if the petitioner engaged in the following conduct after learning that he was not the biological father of the child:
    - Married the mother of the child while known as the reputed father in accordance with §742.091, Florida Statutes, and voluntarily assumed the parental obligation and duty to pay child support;
    - Acknowledged his paternity of the child in a sworn statement;
    - Consented to be named as the child's biological father on the child's birth certificate;
    - Voluntarily promised in writing to support the child and was required to support the child based on that promise;
    - Received written notice from any state agency or any court directing him to submit to scientific testing which he disregarded; or
    - Signed a voluntary acknowledgment of paternity as provided in §742.10(4), Florida Statutes.

- Payment of child support. §742.18(5-6), Florida Statutes.
    - The duty to pay child support and other legal obligations for the child can only be suspended for good cause. However, the court may order the child support to be held in the registry of the court until a final determination of paternity has been made.
    - If the relief is granted, such relief shall be limited to the issues of prospective child support payments and termination of paternal rights, custody, and visitation rights. The petitioner's previous status continues in existence until an order granting relief is rendered. All previous lawful actions are confirmed retroactively, but not prospectively.

- This section does not create a cause of action to recover previously paid child support.
- If relief on the petition is not granted, the court shall assess the costs of the action and attorney's fees against the petitioner. §742.18(10), Florida Statutes.

IV. ESTABLISHING SUPPORT ORDERS

A. Generally

- The court may at any time order either or both parents who owe 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 child support guidelines schedule. §61.13(1)(a), Florida Statutes.

- All child support orders and income deduction orders entered must provide:
    - For child support to terminate on a child's 18th birthday unless the court finds or previously found that §743.07(2), Florida Statutes, applies, or is otherwise agreed to by the parties;
    - A schedule, based on the record existing at the time of the order, stating the amount of the monthly child support obligation for all the minor children at the time of the order and the amount of child support that will be owed for any remaining children after one or more of the children are no longer entitled to receive child support; and
    - The month, day, and year that the reduction or termination of child support becomes effective.
      §61.13(1)(a), Florida Statutes.

- All child support orders shall provide the full name and date of birth of each minor child who is the subject of the child support order. §61.13(1)(d), Florida Statutes.

- Every petition for child support or for modification of child support shall be accompanied by an affidavit which shows the party's income, allowable deductions, and net income computed in accordance with this section. The affidavit shall be served at the same time that the petition is served. The respondent, whether or not a stipulation is entered, shall make an affidavit which shows the party's income, allowable deductions, and net income computed in accordance with this section. The respondent shall include his or her affidavit with the answer to the petition or as soon thereafter as is practicable, but in any case at least 72 hours prior to any hearing on the finances of either party. §61.30(14), Florida Statutes.

B. Health Insurance

- Each order for support shall contain a provision for health insurance for the minor child when health insurance is reasonable in cost and accessible to the child.

- Health insurance is presumed to be reasonable in cost if the incremental cost of adding health insurance for the child or children does not exceed 5 percent of the gross income of the parent responsible for providing health insurance.

- Health insurance is accessible to the child if the health insurance is available to be used in the county of the child's primary residence or in another county if the parent who has the most time under the time-sharing schedule agrees. If the time-sharing schedule provides for equal time-sharing, health insurance is accessible to the child if the health insurance is available to be used in either county where the child resides or in another county if both parents agree. The court may require the obligor to provide health insurance or to reimburse the obligee for the cost of health insurance for the minor child when insurance is provided by the obligee.

- The court may deviate from what is presumed reasonable in cost only upon a written finding explaining its determination why ordering or not ordering the provision of health insurance or the reimbursement of the obligee's cost for providing health insurance for the minor child would be unjust or inappropriate.

- The court shall apportion the cost of health insurance, and any non-covered medical, dental, and prescription medication expenses of the child, to both parties by adding the cost to the basic obligation. The court may order that payment of non-covered medical, dental, and prescription medication expenses of the minor child be made directly to the obligee on a percentage basis. §61.13(1)(b), Florida Statutes.

- After the health insurance costs are added to the basic obligation, any moneys prepaid by a parent for health-related costs for the child or children of this action shall be deducted from that parent's child support obligation for that child or those children. §61.30(8), Florida Statutes.

C. Withholding

- The union or employer shall withhold in the following order:
  - Current support
  - Premium payments for health insurance
  - Past due support
  - Other medical support or insurance
    §61.13(1)(b)(5), Florida Statutes.

- If the combined amount to be withheld for current support plus the premium payment for health insurance exceeds the amount allowed under the Consumer Credit Protection Act, and the health insurance cannot be obtained unless the full amount of the premium is paid, the union or employer may not withhold the premium payment. However, the union or employer shall withhold the maximum allowed in the following order:
  - Current support
  - Past due support
  - Other medical support or insurance
    §61.13(1)(b)(5), Florida Statutes.

- The court cannot place a restriction on the Department of Revenue's statutory authority to withhold 40% of unemployment compensation benefits to satisfy a parent's child support obligations. Dept. of Revenue v. Varela, 67 So. 3d 1205, (Fla. 4th DCA 2011).

D. Life Insurance

To the extent necessary to protect an award of child support, the court may order the obligor to purchase or maintain a life insurance policy or a bond, or to otherwise secure the child support award with any other assets which may be suitable for that purpose. §61.13(1)(c), Florida Statutes.

E. Income deduction

If both parties request and the court finds that it is in the best interest of the child, support payments need not be subject to immediate income deduction. §61.13(1)(d)(2), Florida Statutes.

- Support orders that are not subject to immediate income deduction may be directed through the depository or made payable directly to the obligee. Payments made by immediate income deduction shall be made to the State Disbursement Unit.
- The court shall provide a copy of the order to the depository.

§61.13(1)(d)(2), Florida Statutes.

- For support orders payable directly to the obligee, any party, or the Department of Revenue in a IV-D case, may subsequently file an affidavit with the depository alleging a default in payment of child support and stating that the party wishes to require that payments be made through the depository. The party shall provide copies of the affidavit to the court and to each other party. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be paid through the depository, except that income deduction payments shall be made to the State Disbursement Unit. §61.13(1)(d)(3), Florida Statutes.

F. Mediation

- The court may refer the parties to mediation. §61.183(1), Florida Statutes.

- Costs: In Title IV-D cases, any costs, including filing fees, recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be assessed only against the non-prevailing obligor after the court makes a determination of the non-prevailing obligor's ability to pay such costs and fees. §61.183(1), Florida Statutes.

- Confidentiality: Any information from the files, reports, case summaries, mediator's notes, or other communications or materials relating to a mediation proceeding pursuant to this section obtained by any person performing mediation duties is exempt from inspection and copying. §61.183(3), Florida Statutes.

G. Arriving at the correct amount

Generally

- The child support guideline amount presumptively establishes the amount the court shall order as child support in an initial or modification proceeding for such support. §61.30(1)(a), Florida Statutes.

- The court may order payment of child support which varies, plus or minus 5 percent, from the guideline amount, 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. §61.30(1)(a), Florida Statutes.

- The court may order payment of child support in an amount which varies more than 5 percent from such guideline amount only upon a written finding explaining why ordering payment of such guideline amount would be unjust or inappropriate. §61.30(1)(a), Florida Statutes.

- The court shall order payment of child support which varies from the guideline amount whenever any of the children are required by court order or mediation agreement to spend a substantial amount of time [term defined in statute, §61.30(11)(b)8, Florida Statutes] with either parent, either temporarily or permanently. §61.30(1)(a), Florida Statutes.

- The guidelines may provide the basis for proving a substantial change in circumstances upon which a modification of an existing order may be granted. However, the difference between the existing monthly obligation and the amount provided for under the guidelines shall be at least 15 percent or $50, whichever amount is greater, before the court may find that the guidelines provide a substantial change in circumstances. §61.30(1)(b), Florida Statutes.

- For each support order reviewed by the Department of Revenue, if the amount of the child support award under the order differs by at least 10 percent but not less than $25 from the amount that would be awarded, the Department of Revenue shall seek to have the order modified and any modification shall be made without a requirement for proof or showing of a change in circumstances. §61.30(1)(c), Florida Statutes.

- Each parent's percentage share of the child support need shall be determined by dividing each parent's net monthly income by the combined net monthly income. §61.30(9), Florida Statutes.

- Each parent's actual dollar share of the total minimum child support need shall be determined by multiplying the minimum child support need by each parent's percentage share of the combined monthly net income. §61.30(10), Florida Statutes.

- If the recurring income is not sufficient to meet the needs of the child, the court may order child support to be paid from nonrecurring income or assets. §61.30(13), Florida Statutes.

Gross Income

Gross income includes but is not limited to the following:

- Salary or wages.
- Bonuses, commissions, allowances, overtime, tips, and other similar payments.
- Business income from sources such as self-employment, partnership, close corporations, and independent contracts. "Business income" means gross receipts minus ordinary and necessary expenses required to produce income.
- Disability benefits.
- All workers' compensation benefits and settlements.
- Unemployment compensation.
- Pension, retirement, or annuity payments.
- Social security benefits.
- Spousal support received from a previous marriage or court ordered in the marriage before the court.
- Interest and dividends. Rental income, which is gross receipts minus ordinary and necessary expenses required to produce the income.
- Income from royalties, trusts, or estates.
- Reimbursed expenses or in kind payments to the extent that they reduce living expenses.
- Gains derived from dealings in property, unless the gain is nonrecurring. §61.30(2), Florida Statutes.

Public assistance shall be excluded from gross income. §61.30(2)(c), Florida Statutes.

Unemployed or Underemployed parents

Monthly income shall be imputed to an unemployed or underemployed parent if such unemployment or underemployment is found by the court to be voluntary on that parent's part, absent a finding of fact by the court of physical or mental incapacity or other circumstances over which the parent has no control. In the event of such voluntary unemployment or underemployment, the employment potential and

probable earnings level of the parent shall be determined based upon his or her recent work history, occupational qualifications, and prevailing earnings level in the community if such information is available. §61.30(2)(b), Florida Statutes.

No information available/imputing income

If the information concerning a parent's income is unavailable, a parent fails to participate in a child support proceeding, or a parent fails to supply adequate financial information in a child support proceeding, income shall be automatically imputed to the parent and there is a rebuttable presumption that the parent has income equivalent to the median income of year-round full-time workers as derived from current population reports or replacement reports published by the United States Bureau of the Census. §61.30(2)(b), Florida Statutes.

- The court may refuse to impute income to a parent if the court finds it necessary for that parent to stay home with the child. §61.30(2)(b), Florida Statutes.

- In order for the court to impute income at an amount other than the median income, the court must make specific findings of fact. The party seeking to impute income has the burden to present competent, substantial evidence that:
  - the unemployment or underemployment is voluntary; and
  - Identifies the amount and source of the imputed income, through evidence of income from available employment for which the party is suitably qualified by education, experience, current licensure, or geographic location, with due consideration being given to the parties' time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan [term defined in statute, §61.046(14), Florida Statutes] or relevant order. §61.30(2)(b)(1), Florida Statutes.

- For purposes of establishing an obligation for support, if a person who is receiving public assistance is found to be non-cooperative, the Department of Revenue may submit to the court an affidavit or written declaration signed under penalty of perjury attesting to the income of that parent based upon information available to the Department of Revenue. §61.30(15), Florida Statutes.

- Income may not be imputed based upon:

- Income records that are more than 5 years old at the time of the hearing or trial at which imputation is sought; or
- Income at a level that a party has never earned in the past, unless recently degreed, licensed, certified, relicensed, or recertified and thus qualified for, subject to geographic location, with due consideration of the parties' existing time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order. §61.30(2)(b)(2), Florida Statutes.

Net income

The child support guidelines are based on the parents' combined net income estimated to have been allocated to the child as if the parents and children were living in an intact household. §61.29, Florida Statutes.

- Net income is obtained by subtracting allowable deductions from gross income. Allowable deductions include:
  - Federal, state, and local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.
  - Federal insurance contributions or self-employment tax.
  - Mandatory union dues.
  - Mandatory retirement payments.
  - Health insurance payments, excluding payments for coverage of the minor child.
  - Court-ordered support for other children which is actually paid.
  - Spousal support paid pursuant to a court order from a previous marriage or the marriage before the court.

  §61.30(3), Florida Statutes.

  - Net income for each parent shall be computed by subtracting allowable deductions from gross income. §61.30(4), Florida Statutes.
  - Net income for each parent shall be added together for a combined net income. §61.30(5), Florida Statutes.

If the obligor parent's net income is less than the amount in the guidelines schedule:

- The parent should be ordered to pay a child support amount, determined on a case-by-case basis, to establish the principle of payment and lay the basis for increased support orders should the parent's income increase.

- The obligor parent's child support payment shall be the lesser of the obligor parent's actual dollar share of the total minimum child support amount and 90 percent of the difference between the obligor parent's monthly net income and the current poverty guidelines as periodically updated in the Federal Register by the United States Department of Health and Human Services pursuant to 42 U.S.C. s. 9902(2) for a single individual living alone.
    - For combined monthly net income greater than the amount in the guidelines schedule, the obligation is the minimum amount of support provided by the guidelines schedule plus the following percentages multiplied by the amount of income over $10,000: Child or Children
      One Two Three Four Five Six
      5.0% 7.5% 9.5% 11.0% 12.0% 12.5%
      §61.30(6), Florida Statutes.

- Speed Credit - The child support guidelines allow for a deduction from gross income for support that is actually paid for later born children by court ordered support. It is within the court's discretion to subtract the amount of child support the payor would have been required to pay for the two children's support if the payor and the payee's spouse had divorced, or to consider the pre-existing support obligation in computing child support. Speed v. Dept. of Revenue, 749 So. 2d 510 (Fla. 2d DCA 1999).

Table 1 Guidelines - Schedule effective as of May, 2016.

Guidelines Schedule						
COMBINED MONTHLY NET INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
800	190	211	213	216	218	220
850	202	257	259	262	265	268
900	213	302	305	309	312	315
950	224	347	351	355	359	363
1000	235	365	397	402	406	410
1050	246	382	443	448	453	458
1100	258	400	489	495	500	505
1150	269	417	522	541	547	553
1200	280	435	544	588	594	600

1250	290	451	565	634	641	648
1300	300	467	584	659	688	695
1350	310	482	603	681	735	743
1400	320	498	623	702	765	790
1450	330	513	642	724	789	838
1500	340	529	662	746	813	869
1550	350	544	681	768	836	895
1600	360	560	701	790	860	920
1650	370	575	720	812	884	945
1700	380	591	740	833	907	971
1750	390	606	759	855	931	996
1800	400	622	779	877	955	1022
1850	410	638	798	900	979	1048
1900	421	654	818	923	1004	1074
1950	431	670	839	946	1029	1101
2000	442	686	859	968	1054	1128
2050	452	702	879	991	1079	1154
2100	463	718	899	1014	1104	1181
2150	473	734	919	1037	1129	1207
2200	484	751	940	1060	1154	1234
2250	494	767	960	1082	1179	1261
2300	505	783	980	1105	1204	1287
2350	515	799	1000	1128	1229	1314
2400	526	815	1020	1151	1254	1340
2450	536	831	1041	1174	1279	1367
2500	547	847	1061	1196	1304	1394
2550	557	864	1081	1219	1329	1420
2600	568	880	1101	1242	1354	1447
2650	578	896	1121	1265	1379	1473
2700	588	912	1141	1287	1403	1500
2750	597	927	1160	1308	1426	1524
2800	607	941	1178	1328	1448	1549
2850	616	956	1197	1349	1471	1573
2900	626	971	1215	1370	1494	1598
2950	635	986	1234	1391	1517	1622
3000	644	1001	1252	1412	1540	1647
3050	654	1016	1271	1433	1563	1671

3100	663	1031	1289	1453	1586	1695
3150	673	1045	1308	1474	1608	1720
3200	682	1060	1327	1495	1631	1744
3250	691	1075	1345	1516	1654	1769
3300	701	1090	1364	1537	1677	1793
3350	710	1105	1382	1558	1700	1818
3400	720	1120	1401	1579	1723	1842
3450	729	1135	1419	1599	1745	1867
3500	738	1149	1438	1620	1768	1891
3550	748	1164	1456	1641	1791	1915
3600	757	1179	1475	1662	1814	1940
3650	767	1194	1493	1683	1837	1964
3700	776	1208	1503	1702	1857	1987
3750	784	1221	1520	1721	1878	2009
3800	793	1234	1536	1740	1899	2031
3850	802	1248	1553	1759	1920	2053
3900	811	1261	1570	1778	1940	2075
3950	819	1275	1587	1797	1961	2097
4000	828	1288	1603	1816	1982	2119
4050	837	1302	1620	1835	2002	2141
4100	846	1315	1637	1854	2023	2163
4150	854	1329	1654	1873	2044	2185
4200	863	1342	1670	1892	2064	2207
4250	872	1355	1687	1911	2085	2229
4300	881	1369	1704	1930	2106	2251
4350	889	1382	1721	1949	2127	2273
4400	898	1396	1737	1968	2147	2295
4450	907	1409	1754	1987	2168	2317
4500	916	1423	1771	2006	2189	2339
4550	924	1436	1788	2024	2209	2361
4660	933	1450	1804	2043	2230	2384
4650	942	1463	1821	2062	2251	2406
4700	951	1477	1838	2081	2271	2428
4750	959	1490	1855	2100	2292	2450
4800	968	1503	1871	2119	2313	2472
4850	977	1517	1888	2138	2334	2494
4900	986	1530	1905	2157	2354	2516

4950	993	1542	1927	2174	2372	2535
5000	1000	1551	1939	2188	2387	2551
5050	1006	1561	1952	2202	2402	2567
5100	1013	1571	1964	2215	2417	2583
5150	1019	1580	1976	2229	2432	2599
5200	1025	1590	1988	2243	2447	2615
5250	1032	1599	2000	2256	2462	2631
5300	1038	1609	2012	2270	2477	2647
5350	1045	1619	2024	2283	2492	2663
5400	1051	1628	2037	2297	2507	2679
5450	1057	1638	2049	2311	2522	2695
5500	1064	1647	2061	2324	2537	2711
5550	1070	1657	2073	2338	2552	2727
5600	1077	1667	2085	2352	2567	2743
5650	1083	1676	2097	2365	2582	2759
5700	1089	1686	2109	2379	2597	2775
5750	1096	1695	2122	2393	2612	2791
5800	1102	1705	2134	2406	2627	2807
5850	1107	1713	2144	2418	2639	2820
5900	1111	1721	2155	2429	2651	2833
5950	1116	1729	2165	2440	2663	2847
6000	1121	1737	2175	2451	2676	2860
6050	1126	1746	2185	2462	2688	2874
6100	1131	1754	2196	2473	2700	2887
6150	1136	1762	2206	2484	2712	2900
6200	1141	1770	2216	2495	2724	2914
6250	1145	1778	2227	2506	2737	2927
6300	1150	1786	2237	2517	2749	2941
6350	1155	1795	2247	2529	2761	2954
6400	1160	1803	2258	2540	2773	2967
6450	1165	1811	2268	2551	2785	2981
6500	1170	1819	2278	2562	2798	2994
6550	1175	1827	2288	2573	2810	3008
6600	1179	1835	2299	2584	2822	3021
6650	1184	1843	2309	2595	2834	3034
6700	1189	1850	2317	2604	2845	3045
6750	1193	1856	2325	2613	2854	3055

6800	1196	1862	2332	2621	2863	3064
6850	1200	1868	2340	2630	2872	3074
6900	1204	1873	2347	2639	2882	3084
6950	1208	1879	2355	2647	2891	3094
7000	1212	1885	2362	2656	2900	3103
7050	1216	1891	2370	2664	2909	3113
7100	1220	1897	2378	2673	2919	3123
7150	1224	1903	2385	2681	2928	3133
7200	1228	1909	2393	2690	2937	3142
7250	1232	1915	2400	2698	2946	3152
7300	1235	1921	2408	2707	2956	3162
7350	1239	1927	2415	2716	2965	3172
7400	1243	1933	2423	2724	2974	3181
7450	1247	1939	2430	2733	2983	3191
7500	1251	1945	2438	2741	2993	3201
7550	1255	1951	2446	2750	3002	3211
7600	1259	1957	2453	2758	3011	3220
7650	1263	1963	2461	2767	3020	3230
7700	1267	1967	2468	2775	3030	3240
7750	1271	1975	2476	2784	3039	3250
7800	1274	1981	2483	2792	3048	3259
7850	1278	1987	2491	2801	3057	3269
7900	1282	1992	2498	2810	3067	3279
7950	1286	1998	2506	2818	3076	3289
8000	1290	2004	2513	2828	3085	3298
8050	1294	2010	2521	2835	3094	3308
8100	1298	2016	2529	2844	3104	3318
8150	1302	2022	2536	2852	3113	3328
8200	1306	2028	2544	2861	3122	3337
8250	1310	2034	2551	2869	3131	3347
8300	1313	2040	2559	2878	3141	3357
8350	1317	2046	2566	2887	3150	3367
8400	1321	2052	2574	2895	3159	3376
8450	1325	2058	2581	2904	3168	3386
8500	1329	2064	2589	2912	3178	3396
8550	1333	2070	2597	2921	3187	3406
8600	1337	2076	2604	2929	3196	3415

8650	1341	2082	2612	2938	3205	3425
8700	1345	2088	2619	2946	3215	3435
8750	1349	2094	2627	2955	3224	3445
8800	1352	2100	2634	2963	3233	3454
8850	1356	2106	2642	2972	3242	3464
8900	1360	2111	2649	2981	3252	3474
8950	1364	2117	2657	2989	3261	3484
9000	1368	2123	2664	2998	3270	3493
9050	1372	2129	2672	3006	3279	3503
9100	1376	2135	2680	3015	3289	3513
9150	1380	2141	2687	3023	3298	3523
9200	1384	2147	2695	3032	3307	3532
9250	1388	2153	2702	3040	3316	3542
9300	1391	2159	2710	3049	3326	3552
9350	1395	2165	2717	3058	3335	3562
9400	1399	2171	2725	3066	3344	3571
9450	1403	2177	2732	3075	3353	3581
9500	1407	2183	2740	3083	3363	3591
9550	1411	2189	2748	3092	3372	3601
9660	1415	2195	2755	3100	3381	3610
9600	1415	2195	2755	3100	3381	3610
9650	1419	2201	2763	3109	3390	3620
9700	1422	2206	2767	3115	3396	3628
9750	1425	2210	2772	3121	3402	3634
9800	1427	2213	2776	3126	3408	3641
9850	1430	2217	2781	3132	3414	3647
9900	1432	2221	2786	3137	3420	3653
9950	1435	2225	2791	3143	3426	3659
10000	1437	2228	2795	3148	3432	3666

Deviation from the Statutory Amount

The court may order payment of child support which varies, plus or minus 5 percent, from the guideline amount, 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. §61.30(1)(a), Florida Statutes.

The court may order payment of child support in an amount which varies more than 5 percent from such guideline amount only upon a written finding explaining why ordering payment of such guideline amount would be unjust or inappropriate. §61.30(1)(a), Florida Statutes.

The court shall order payment of child support which varies from the guideline amount whenever any of the children are required by court order or mediation agreement to spend a substantial amount of time with either parent, either temporarily or permanently. §61.30(1)(a), Florida Statutes. *See* Dept. of Revenue ex. Rel. Sherman v. Daly, 74 So. 3d 165, (Fla. 1st DCA 2011) (underlying order providing for deviation due to verbal visitation agreement was reversed because the Legislature has expressed its intention to authorize deviations from the child support guidelines only where there exists a written, court-authorized parenting-plan).

In determining child support, a trial court must either follow the statutory guidelines or make findings and give reasons explaining any deviation. Morrow v. Frommer, 913 So. 2d 1195 (Fla. 4th DCA 2005).

The court may adjust the total minimum child support award, or either or both parents' share of the total minimum child support award, based upon the following deviation factors:

- Extraordinary medical, psychological, educational, or dental expenses.
- Independent income of the child, not to include moneys received by a child from supplemental security income.
- The payment of support from a parent which has been regularly paid and for which there is a demonstrated need.
- Seasonal variations in one or both parents' incomes or expenses.
- The age of the child, taking into account the greater needs of older children.
- Special needs, such as costs that may be associated with the disability of a child, that have traditionally been met within the family budget even though fulfilling those needs will cause the support to exceed the presumptive amount established by the guidelines.
- Total available assets of the obligee, obligor, and the child.
- The impact of the Internal Revenue Service Child & Dependent Care Tax Credit, Earned Income Tax Credit, and dependency exemption and waiver of that exemption. The court may order a parent to execute a waiver of the

Internal Revenue Service dependency exemption if the paying parent is current in support payments.

- An application of the child support guidelines schedule that requires a person to pay another person more than 55 percent of his or her gross income for a child support obligation for current support resulting from a single support order.
- The particular parenting plan, such as where the child spends a significant amount of time, but less than 20 percent of the overnights, with one parent, thereby reducing the financial expenditures incurred by the other parent; or the refusal of a parent to become involved in the activities of the child.
- "Parenting plan" means a document created to govern the relationship between the parents relating to decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and child.

  The parenting plan must be:
  1. Developed and agreed to by the parents and approved by a court; or
  2. Established by the court, with or without the use of a court-ordered parenting plan recommendation, if the parents cannot agree to a plan or the parents agreed to a plan that is not approved by the court.
  §61.046(14), Florida Statutes.

- "Time-sharing schedule" means a timetable that must be included in the parenting plan that specifies the time, including overnights and holidays, that a minor child will spend with each parent. The time-sharing schedule shall be:
  1. Developed and agreed to by the parents of a minor child and approved by the court; or
  2. Established by the court if the parents cannot agree or if their agreed-upon schedule is not approved by the court.
  §61.046(23), Florida Statutes.

- For purposes of adjusting any award of child support under this section, **"substantial amount of time"** means that a parent exercises time-sharing at least 20 percent of the overnights of the year. §61.30(11)(b)8, Florida Statutes. (Emphasis added.)

- Any other adjustment that is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt. Such expense or debt may include, but is not limited to, a

reasonable and necessary expense or debt that the parties jointly incurred during the marriage.
§61.30(11)(a), Florida Statutes.

Whenever a particular parenting plan provides that each child spend a substantial amount of time with each parent, the court shall adjust any award of child support, as follows:

- Calculate the amount of support obligation apportioned to each parent without including day care and health insurance costs in the calculation and multiply the amount by 1.5.
- Calculate the percentage of overnight stays the child spends with each parent.
- Multiply each parent's support obligation as calculated by the percentage of the other parent's overnight stays with the child.
- The difference between the amounts shall be the monetary transfer necessary between the parents for the care of the child, subject to an adjustment for day care and health insurance expenses.
- Calculate the net amounts owed by each parent for the expenses incurred for day care and health insurance coverage for the child.
- Adjust the support obligation owed by each parent by crediting or debiting the amount calculated above. This amount represents the child support which must be exchanged between the parents. §61.30(11)(b), Florida Statutes.

The court may deviate from the child support amount calculated based upon the obligee parent's low income and ability to maintain the basic necessities of the home for the child, the likelihood that either parent will actually exercise the time-sharing schedule set forth in the parenting plan granted by the court, and whether all of the children are exercising the same time-sharing schedule. §61.30(11)(b)(7), Florida Statutes.

For purposes of adjusting any award of child support, "substantial amount of time" means that a parent exercises time-sharing at least 20 percent of the overnights of the year. §61.30(11)(b)(8), Florida Statutes.

Child Care

Child care costs incurred due to employment, job search, or education calculated to result in employment or to enhance the income of the current employment of either

parent shall be added to the basic obligation. After the child care costs are added, any moneys prepaid by a parent for child care costs for the child or children of this action shall be deducted from that parent's child support obligation for that child or those children. Child care costs may not exceed the level required to provide quality care from a licensed source. §61.30(7), Florida Statutes.

Retroactive Awards

In an initial determination of child support, the court has discretion to award child support retroactive to the date when the parents did not reside together in the same household with the child, not to exceed a period of 24 months preceding the filing of the petition, regardless of whether that date precedes the filing of the petition. In determining the retroactive award in such cases, the court shall consider the following:

- The court shall apply the guidelines schedule in effect at the time of the hearing subject to the obligor's demonstration of his or her actual income during the retroactive period. Failure of the obligor to so demonstrate shall result in the court using the obligor's income at the time of the hearing in computing child support for the retroactive period. In IV-D cases, even if the obligor does not demonstrate the actual income during the retroactive period, if Department of Revenue has obtained records that do show the actual amount, then the information Department of Revenue has must be used by the court using the obligor's income at the time of the hearing in computing child support for the retroactive period. Salters v. Dept. of Revenue, Child Support Enforcement Program obo Mobley, 32 So. 3d 777 (Fla. 2d DCA 2010).
- All actual payments made by a parent to the other parent or the child or third parties for the benefit of the child throughout the proposed retroactive period.
- The court should consider an installment payment plan for the payment of retroactive child support.

  §61.30(17), Florida Statutes.

Establishing income deduction orders

Upon the entry of an order establishing or enforcing child support, or for alimony and child support, other than a temporary order, the court shall enter a separate order for income deduction if one has not been entered. §61.1301(1)(a), Florida Statutes.

Upon the entry of a temporary order establishing support or the entry of a temporary order enforcing or modifying a temporary order of support, the court may enter a separate order of income deduction. §61.1301(1)(a), Florida Statutes.

Copies of the income deduction order shall be served on the obligee and obligor. If the order establishing, enforcing, or modifying the obligation directs that payments be made through the depository, the court shall provide to the depository a copy of the order as well. §61.1301(1)(a), Florida Statutes.

If the obligee is a recipient of Title IV-D services, the court shall furnish to the Department of Revenue (as the state's Title IV-D agency) a copy of the income deduction order and the order establishing, enforcing, or modifying the obligation. §61.1301(1)(a), Florida Statutes.

The income deduction notice must state that it is based upon a valid support order and that it contains an income deduction requirement or upon a separate income deduction order. The income deduction notice must contain the notice to payor provisions and the case number, the court that entered the order, and the date entered. §61.1301(1)(a)(2), Florida Statutes.

In non-Title IV-D cases, the income deduction notice must be accompanied by a copy of the support order upon which the notice is based. In Title IV-D cases, upon request of a payor, the Title IV-D agency shall furnish the payor a copy of the income deduction order. §61.1301(1)(a)(4), Florida Statutes.

The income deduction order shall:

- Direct a payor to deduct from all income due and payable to an obligor the amount required by the court to meet the obligor's support obligation including any attorney's fees or costs owed and forward the deducted amount pursuant to the order.
- State the amount of arrearage owed, if any, and direct a payor to withhold an additional 20 percent or more of the periodic amount specified in the order establishing, enforcing, or modifying the obligation, until full payment is made of any arrearage, attorney's fees and costs owed, provided no deduction shall be applied to attorney's fees and costs until the full amount of any arrearage is paid.
- Provide that if a delinquency accrues after the order establishing, modifying, or enforcing the obligation has been entered and there is no

order for repayment of the delinquency or a preexisting arrearage, a payor shall deduct an additional 20 percent of the current support obligation or other amount agreed to by the parties until the delinquency and any attorney's fees and costs are paid in full. No deduction may be applied to attorney's fees and costs until the delinquency is paid in full.

- Direct a payor not to deduct in excess of the amounts allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b).
- Direct whether a payor shall deduct all, a specified portion, or no income which is paid in the form of a bonus or other similar one-time payment, up to the amount of arrearage reported in the income deduction notice or the remaining balance thereof, and forward the payment to the governmental depository. For purposes of this subparagraph, "bonus" means a payment in addition to an obligor's usual compensation and which is in addition to any amounts contracted for or otherwise legally due and shall not include any commission payments due an obligor.
- In Title IV-D cases, direct a payor to provide to the court depository the date on which each deduction is made.
- In Title IV-D cases, if an obligation to pay current support is reduced or terminated due to emancipation of a child and the obligor owes an arrearage, retroactive support, delinquency, or costs, direct the payor to continue the income deduction at the rate in effect immediately prior to emancipation until all arrearages, retroactive support, delinquencies, and costs are paid in full or until the amount of withholding is modified.
- Direct that all payments in those cases in which the obligee is receiving Title IV-D services and in those cases in which the obligee is not receiving Title IV-D services in which the initial support order was 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, be made payable to and delivered to the State Disbursement Unit. Notwithstanding any other statutory provision to the contrary, funds received by the State Disbursement Unit shall be held, administered, and disbursed by the State Disbursement Unit pursuant to the provisions of this chapter.
  §61.1301(1)(b), Florida Statutes.

- The income deduction order is effective immediately unless the court upon good cause shown finds that the income deduction order shall be effective upon a delinquency in an amount specified by the court but not to exceed 1 month's payment, pursuant to the order establishing, enforcing, or modifying the obligation. §61.1301(1)(c), Florida Statutes.

- In order to find good cause, the court must at a minimum make written findings that:
  - Explain why implementing immediate income deduction would not be in the child's best interest;
  - There is proof of timely payment of the previously ordered obligation without an income deduction order in cases of modification; and
  - There is an agreement by the obligor to advise the IV-D agency and court depository of any change in payor and health insurance; or
    - There is a signed written agreement providing an alternative arrangement between the obligor and the obligee and, at the option of the IV-D agency, by the IV-D agency in IV-D cases in which there is an assignment of support rights to the state, reviewed and entered in the record by the court. §61.1301(1)(c), Florida Statutes.

- The income deduction order shall be effective as long as the order upon which it is based is effective or until further order of the court. In those cases in which the obligee is receiving Title IV-D services and in those cases in which the obligee is not receiving Title IV-D services in which the initial support order was 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, such payments shall be made payable to and delivered to the State Disbursement Unit. §61.1301(1)(d), Florida Statutes.

- When the court orders the income deduction to be effective immediately, the court shall furnish to the obligor a statement of his or her rights, remedies, and duties in regard to the income deduction order. The statement shall state:
  - All fees or interest which shall be imposed.
  - The total amount of income to be deducted for each pay period until the arrearage, if any, is paid in full and shall state the total amount of income to be deducted for each pay period thereafter. The amount deducted may not be in excess of that allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b), as amended.
  - That the income deduction order applies to current and subsequent payors and periods of employment.
  - That a copy of the income deduction order or, in Title IV-D cases, the income deduction notice, will be served on the obligor's payor or payors.

- That enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount owed pursuant to the order establishing, enforcing, or modifying the obligation, the arrearages, or the identity of the obligor, the payor, or the obligee.
- That the obligor is required to notify the obligee and, when the obligee is receiving IV-D services, the IV-D agency within 7 days of changes in the obligor's address, payors, and the addresses of his or her payors.
- That in a Title IV-D case, if an obligation to pay current support is reduced or terminated due to emancipation of a child and the obligor owes an arrearage, retroactive support, delinquency, or costs, income deduction continues at the rate in effect immediately prior to emancipation until all arrearages, retroactive support, delinquencies, and costs are paid in full or until the amount of withholding is modified. §61.1301(1)(e), Florida Statutes.

- Delinquencies:
  - If a support order was entered before January 1, 1994, the court orders the income deduction to be effective upon a delinquency, or a delinquency has accrued under an order entered before July 1, 2006, that established, modified, or enforced the obligation and there is no order for repayment of the delinquency or a preexisting arrearage, the obligee or, in Title IV-D cases, the Title IV-D agency may enforce the income deduction by serving a notice of delinquency on the obligor. §61.1301(1)(f), Florida Statutes.

- The notice of delinquency shall state:
  - The terms of the order establishing, enforcing, or modifying the obligation.
  - The period of delinquency and the total amount of the delinquency as of the date the notice is mailed.
  - All fees or interest which may be imposed.
  - The total amount of income to be deducted for each pay period until the arrearage, and all applicable fees and interest, is paid in full and shall state the total amount of income to be deducted for each pay period thereafter. The amount deducted may not be in excess of that allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b), as amended.
  - That the income deduction order applies to current and subsequent payors and periods of employment.

- That a copy of the notice of delinquency will be served on the obligor's payor or payors, together with a copy of the income deduction order or, in Title IV-D cases, the income deduction notice, unless the obligor applies to the court to contest enforcement of the income deduction. If the income deduction order being enforced was rendered by the Title IV-D agency pursuant to §409.2563, Florida Statutes, and the obligor contests the deduction, the obligor shall file a petition for an administrative hearing with the Title IV-D agency. The application or petition shall be filed within 15 days after the date the notice of delinquency was served.
- That enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount owed pursuant to the order establishing, enforcing, or modifying the obligation, the amount of arrearages, or the identity of the obligor, the payor, or the obligee.
- That the obligor is required to notify the obligee of the obligor's current address and current payors and of the address of current payors. All changes shall be reported by the obligor within 7 days. If the IV-D agency is enforcing the order, the obligor shall make these notifications to the agency instead of to the obligee. §61.1301(1)(f), Florida Statutes.

The failure of the obligor to receive the notice of delinquency does not preclude subsequent service of the income deduction order or, in Title IV-D cases, the income deduction notice on the obligor's payor. A notice of delinquency which fails to state an arrearage does not mean that an arrearage is not owed. §61.1301(1)(f)(2), Florida Statutes.

Enforcement of income deduction orders

Service

The obligee or his or her agent shall serve an income deduction order and notice to payor, or, in Title IV-D cases, the Department of Revenue shall issue an income deduction notice, and in the case of a delinquency a notice of delinquency, on the obligor's payor unless the obligor has applied for a hearing to contest the enforcement of the income deduction.

- Service by or upon any person who is a party to a proceeding under this section shall be made in the manner prescribed in the Florida Rules of Civil Procedure for service upon parties.

- Service upon an obligor's payor or successor payor under this section shall be made by prepaid certified mail, return receipt requested, or in the manner prescribed in chapter 48, Florida Statutes.
  §61.1301(2)(a), Florida Statutes.

Hearing

The obligor, within 15 days after service of a notice of delinquency, may apply for a hearing to contest the enforcement of the income deduction on the ground of mistake of fact regarding the amount owed, the amount of the arrearage, or the identity of the obligor, the payor, or the obligee. §61.1301(2)(c)(1), Florida Statutes.

- The obligor shall send a copy of the pleading to the obligee and, if the obligee is receiving IV-D services, to the IV-D agency. The timely filing of the pleading shall stay service of an income deduction order or, in Title IV-D cases, income deduction notice on all payors of the obligor until a hearing is held and a determination is made as to whether enforcement of the income deduction order is proper. The payment of a delinquent obligation by an obligor upon entry of an income deduction order shall not preclude service of the income deduction order or, in Title IV-D cases, an income deduction notice on the obligor's payor. §61.1301(2)(c)(1), Florida Statutes.
- When an obligor timely requests a hearing to contest enforcement of an income deduction order, the court, after due notice to all parties and the IV-D agency if the obligee is receiving IV-D services, shall hear the matter within 20 days after the application is filed. The court shall enter an order resolving the matter within 10 days after the hearing. A copy of this order shall be served on the parties and the IV-D agency if the obligee is receiving IV-D services. If the court determines that income deduction is proper, it shall specify the date the income deduction order must be served on the obligor's payor. §61.1301(2)(c)(2), Florida Statutes.
- When a court determines that an income deduction order is proper, the obligee or his or her agent shall cause a copy of the notice of delinquency to be served on the obligor's payors. A copy of the income deduction order or, in Title IV-D cases, income deduction notice, and in the case of a delinquency a notice of delinquency, shall also be furnished to the obligor. §61.1301(2)(d), Florida Statutes.
- The notice to payor or, in Title IV-D cases, income deduction notice shall contain only information necessary for the payor to comply with the order providing for income deduction. The notice shall:
  - Provide the obligor's social security number.

- Require the payor to deduct from the obligor's income the amount specified in the income deduction order, and in the case of a delinquency the amount specified in the notice of delinquency, and to pay that amount to the obligee or to the depository, as appropriate. The amount actually deducted plus all administrative charges shall not be in excess of the amount allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b);
- Instruct the payor to implement income deduction no later than the first payment date which occurs more than 14 days after the date the income deduction notice was served on the payor, and the payor shall conform the amount specified in the income deduction order or, in Title IV-D cases, income deduction notice to the obligor's pay cycle. The court should request at the time of the order that the payment cycle reflect that of the payor;
- Instruct the payor to forward, within 2 days after each date the obligor is entitled to payment from the payor, to the obligee or to the depository the amount deducted from the obligor's income, a statement as to whether the amount totally or partially satisfies the periodic amount specified in the income deduction order or, in Title IV-D cases, income deduction notice, and the specific date each deduction is made. If the IV-D agency is enforcing the order, the payor shall make these notifications to the agency instead of the obligee;
- Specify that if a payor fails to deduct the proper amount from the obligor's income, the payor is liable for the amount the payor should have deducted, plus costs, interest, and reasonable attorney's fees;
- Provide that the payor may collect up to $5 against the obligor's income to reimburse the payor for administrative costs for the first income deduction and up to $2 for each deduction thereafter;
- State that the notice to payor or, in Title IV-D cases, income deduction notice, and in the case of a delinquency the notice of delinquency, are binding on the payor until further notice by the obligee, IV-D agency, or the court or until the payor no longer provides income to the obligor;
- Instruct the payor that, when he or she no longer provides income to the obligor, he or she shall notify the obligee and shall also provide the obligor's last known address and the name and address of the obligor's new payor, if known; and that, if the payor violates this provision, the payor is subject to a civil penalty not to exceed $250 for the first violation or $500 for any subsequent violation. If the IV-D agency is enforcing the order, the payor shall make these notifications to the

agency instead of to the obligee. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order;

- State that the payor shall not discharge, refuse to employ, or take disciplinary action against an obligor because of the requirement for income deduction and shall state that a violation of this provision subjects the payor to a civil penalty not to exceed $250 for the first violation or $500 for any subsequent violation. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction, if any alimony or child support obligation is owing. If no alimony or child support obligation is owing, the penalty shall be paid to the obligor;
- State that an obligor may bring a civil action in the courts of this state against a payor who refuses to employ, discharges, or otherwise disciplines an obligor because of income deduction. The obligor is entitled to reinstatement and all wages and benefits lost, plus reasonable attorney's fees and costs incurred;
- Inform the payor that the requirement for income deduction has priority over all other legal processes under state law pertaining to the same income and that payment, as required by the notice to payor or income deduction notice, is a complete defense by the payor against any claims of the obligor or his or her creditors as to the sum paid;
- Inform the payor that, when the payor receives notices to payor or income deduction notices requiring that the income of two or more obligors be deducted and sent to the same depository, the payor may combine the amounts that are to be paid to the depository in a single payment as long as the payments attributable to each obligor are clearly identified;
- Inform the payor that if the payor receives more than one notice to payor or income deduction notice against the same obligor, the payor shall contact the court or, in Title IV-D cases, the Title IV-D agency for further instructions. Upon being so contacted, the court or, in Title IV-D cases when all the cases upon which the notices are based are Title IV-D cases, the Title IV-D agency shall allocate amounts available for income deduction as provided in subsection (4); and
- State that in a Title IV-D case, if an obligation to pay current support is reduced or terminated due to the emancipation of a child and the obligor owes an arrearage, retroactive support, delinquency, or costs, income deduction continues at the rate in effect immediately prior to

emancipation until all arrearages, retroactive support, delinquencies, and costs are paid in full or until the amount of withholding is modified. §61.1301(2)(e), Florida Statutes.

- At any time an income deduction order is being enforced, the obligor may apply to the court for a hearing to contest the continued enforcement of the income deduction with a copy to the obligee and, in IV-D cases, to the IV-D agency. If the income deduction order being enforced was rendered by the IV-D agency and the obligor contests the withholding, the obligor shall file a petition for an administrative hearing with the IV-D agency. The application or petition does not affect the continued enforcement of the income deduction until the court or IV-D agency, if applicable, enters an order granting relief to the obligor. The obligee or the IV-D agency is released from liability for improper receipt of moneys pursuant to an income deduction order upon return to the appropriate party of any moneys received. §61.1301(2)(f), Florida Statutes.

- An obligee or his or her agent shall enforce an income deduction order against an obligor's successor payor who is located in this state in the same manner prescribed in this section for the enforcement of an income deduction order against a payor. §61.1301(2)(g), Florida Statutes.

- When an income deduction order is to be enforced against a payor located outside the state, the obligee who is receiving IV-D services or his or her agent shall promptly request the agency responsible for income deduction in the other state to enforce the income deduction order. The request shall contain all information necessary to enforce the income deduction order, including the amount to be periodically deducted, a copy of the order establishing, enforcing, or modifying the obligation, and a statement of arrearages, if applicable. §61.1301(2)(h)(1), Florida Statutes.

- When there is more than one income deduction notice against the same obligor, the amounts available for income deduction must be allocated among all obligee families as follows:
  - For computation purposes, all obligations must be converted to a common payroll frequency, and the percentage of deduction allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b), as amended, must be determined. The amount of income

available for deduction is determined by multiplying that percentage by the obligor's net income.

- If the total monthly support obligation to all families is less than the amount of income available for deduction, the full amount of each obligation must be deducted.
- If the total monthly support obligation to all families is greater than the amount of income available for deduction, the amount of the deduction must be prorated, giving priority to current support, so that each family is allocated a percentage of the amount deducted. The percentage to be allocated to each family is determined by dividing each current support obligation by the total of all current support obligations. If the total of all current support obligations is less than the income available for deduction, and past due support is owed to more than one family, then the remainder of the available income must be prorated so that each family is allocated a percentage of the remaining income available for deduction. The percentage to be allocated to each family is determined by dividing each past due support obligation by the total of all past due support obligations. §61.1301(4), Florida Statutes.

For income deduction orders entered before July 1, 2004, the Department of Revenue shall send by certified mail, restricted delivery, return receipt requested, a notice to the obligor at the most recent address provided by the obligor to the tribunal that issued the order or a more recent address if known, notice of this requirement, that the obligor may contest the withholding as provided by paragraph (2)(f), and that the obligor may request the tribunal that issued the income deduction to modify the amount of the withholding. This paragraph provides an additional remedy for collection of unpaid support and applies to cases in which a support order or income deduction order was entered before, on, or after July 1, 2004. §61.1301(3)(b), Florida Statutes.

If a delinquency accrues after an order establishing, modifying, or enforcing a support obligation has been entered, an income deduction order entered after July 1, 2006, is in effect, and there is no order for repayment of the delinquency or a preexisting arrearage, a payor who is served with an income deduction order or, in a Title IV-D case, an income deduction notice shall deduct an additional 20 percent of the current support obligation or other amount agreed to by the parties until the delinquency and any attorney's fees and costs are paid in full. No deduction may be applied to attorney's fees and costs until the delinquency is paid in full. §61.1301(3)(c), Florida Statutes.

Interstate orders

- When the IV-D agency is requested by the agency responsible for income deduction in another state to enforce an income deduction order against a payor located in this state for the benefit of an obligee who is being provided IV-D services by the agency in the other state, the IV-D agency shall act promptly pursuant to the applicable provisions of this section. §61.1301(2)(h)(2), Florida Statutes.

- When an obligor who is subject to an income deduction order enforced against a payor located in this state for the benefit of an obligee who is being provided IV-D services by the agency responsible for income deduction in another state terminates his or her relationship with his or her payor, the IV-D agency shall notify the agency in the other state and provide it with the name and address of the obligor and the address of any new payor of the obligor, if known. §61.1301(2)(h)(3), Florida Statutes.

- The procedural rules and laws of this state govern the procedural aspects of income deduction whenever the agency responsible for income deduction in another state requests the enforcement of an income deduction order in this state. §61.1301(2)(h)(4)(a), Florida Statutes.

- Except with respect to when withholding must be implemented, which is controlled by the state where the order establishing, enforcing, or modifying the obligation was entered, the substantive law of this state shall apply whenever the agency responsible for income deduction in another state requests the enforcement of an income deduction in this state. §61.1301(2)(h)(4)(b), Florida Statutes.

- When the IV-D agency is requested by an agency responsible for income deduction in another state to implement income deduction against a payor located in this state for the benefit of an obligee who is being provided IV-D services by the agency in the other state or when the IV-D agency in this state initiates an income deduction request on behalf of an obligee receiving IV-D services in this state against a payor in another state, pursuant to this section or the Uniform Interstate Family Support Act, the IV-D agency shall file the interstate income deduction documents, or an affidavit of such request when the income deduction documents are not available, with the depository and if the IV-D agency in this state is

responding to a request from another state, provide copies to the payor and obligor. §61.1301(2)(h)(4)(c), Florida Statutes.

- The depository created pursuant to §61.181 shall accept the interstate income deduction documents or affidavit and shall establish an account for the receipt and disbursement of child support or child support and alimony payments and advise the IV-D agency of the account number in writing within 2 days after receipt of the documents or affidavit. §61.1301(2)(h)(4)(c), Florida Statutes.

Employer action

A person may not discharge, refuse to employ, or take disciplinary action against an employee because of the enforcement of an income deduction order. An employer who violates this subsection is subject to a civil penalty not to exceed $250 for the first violation or $500 for any subsequent violation. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction, if any alimony or child support is owing. If no alimony or child support is owing, the penalty shall be paid to the obligor. §61.1301(2)(j)(1), Florida Statutes.

Arrearages

In a Title IV-D case, if an obligation to pay current support is reduced or terminated due to the emancipation of a child and the obligor owes an arrearage, retroactive support, delinquency, or costs, income deduction continues at the rate in effect immediately prior to emancipation until all arrearages, retroactive support, delinquencies, and costs are paid in full or until the amount of withholding is modified. Any income-deducted amount that is in excess of the obligation to pay current support shall be credited against the arrearages, retroactive support, delinquency, and costs owed by the obligor. §61.1301(3)(b), Florida Statutes.

State Disbursement Unit/depository/direct pay

- The clerk of the court operates the child support depository, and each depository participates in the State Disbursement Unit.

- Payments on non-Title IV-D cases without income deduction orders shall not be sent to the State Disbursement Unit. §61.181(1)(a), Florida Statutes.

- For payments not required to be processed through the State Disbursement Unit, the depository shall collect and distribute all support payments paid

into the depository to the appropriate party. §61.181(3)(a), Florida Statutes.

- When time-sharing of a child is relinquished by a parent who is entitled to receive child support moneys from the depository to the custody of a licensed or registered long-term care child agency, that agency may request from the court an order directing child support payments that would otherwise be distributed to the parent be distributed to the agency for the period of time that the child is with the agency. Thereafter, payments shall be distributed to the agency as if the agency were the parent until further order of the court. §61.181(3)(d), Florida Statutes.

State Disbursement Unit

The State Disbursement Unit is responsible for the collection and disbursement of payments for:

- All support cases enforced by the Department of Revenue pursuant to Title IV-D of the Social Security Act; and
- All child support cases not being enforced by the Department of Revenue pursuant to Title IV-D of the Social Security Act in which the initial support order was 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. §61.1824(1), Florida Statutes.

The State Disbursement Unit shall perform the following functions:

- Disburse all receipts from intercepts, including, but not limited to, United States Internal Revenue Service, unemployment compensation, lottery, and administrative offset intercepts.
- Provide employers and payors with one address to which all income deduction collections are sent.
- When there is more than one income deduction order being enforced against the same obligor by the payor, allocate the amounts available for income deduction.
- To the extent feasible, use automated procedures for the collection and disbursement of support payments, including, but not limited to, having procedures for:
    - Receipt of payments from obligors, employers, other states and jurisdictions, and other entities.
    - Timely disbursement of payments to obligees, the Department of Revenue, and other state Title IV-D agencies.

- Accurate identification of payment source and amount.
- Furnishing any parent, upon request, timely information on the current status of support payments under an order requiring payments to be made by or to the parent.
- Electronic disbursement of support payments to obligees. §61.1824(3), Florida Statutes.

The Clerk of the Circuit Court is the official record keeper for child support payments. Payment information for payments received by the SDU is provided daily to the Clerks through an automated interface.

Certified copies of payment records maintained by a depository shall, without further proof, be admitted into evidence in any legal proceeding in this state. §61.1301(2)(i), Florida Statutes.

The depository created pursuant to §61.181 shall accept the interstate income deduction documents or affidavit and shall establish an account for the receipt and disbursement of child support or child support and alimony payments and advise the IV-D agency of the account number in writing within 2 days after receipt of the documents or affidavit. §61.1301(2)(h)(4)(c), Florida Statutes.

Extraordinary expenses

The court may adjust the total minimum child support award, or either or both parents' share of the total minimum child support award, based upon extraordinary medical, psychological, educational, or dental expenses. §61.30(11)(a), Florida Statutes.

Private educational expenses may be awarded only where the non-custodial parent has the ability to pay for that private school. Pollow v. Pollow, 712 So. 2d 1235 (Fla. 4th DCA 1998).

A provision in a final decree of dissolution which required the father to pay tuition for private school with no limitation expressed should be construed to require the payment of tuition in a reasonable amount. Fox v. Haislett, 388 So. 2d 1261 (Fla. 2d DCA 1980).

Tax exemptions

Section 61.30(11)(a), Florida Statutes, authorizes the courts to take into account the impact of the dependency exemption and waiver of that exemption when determining child support.

The court does not have the power to allocate the federal tax dependency exemption. However, it can require the custodial parent to transfer the exemption to the noncustodial parent through the execution of a waiver if the non-custodial parent is current with his/her support payments. Geddies v. Geddies, 43 So. 3d 888 (Fla. 1st DCA 2010).

Child support schedule in subsequent child situations

- If a parent with a support obligation has other children living with him or her who were born or adopted after the support obligation arose, the court, when considering an upward modification of an existing award, may disregard the income from secondary employment obtained in addition to the parent's primary employment if the court determines that the employment was obtained primarily to support the subsequent children. §61.30(12)(a), Florida Statutes.

- Except as provided above, the existence of such subsequent children should not as a general rule be considered by the court as a basis for disregarding the amount provided in the guidelines schedule. The parent with a support obligation for subsequent children may raise the existence of such subsequent children as a justification for deviation from the guidelines schedule. However, the income of the other parent of the subsequent children shall be considered by the court in determining whether or not there is a basis for deviation from the guideline amount. §61.30(12)(b), Florida Statutes.

- The issue of subsequent children may only be raised in a proceeding for an upward modification of an existing award and may not be applied to justify a decrease in an existing award. §61.30(12)(c), Florida Statutes.

- Unless there are special circumstances, subsequent children will not justify a deviation from the child support guidelines. Mena v. Mena, 967 So. 2d 360 (Fla. 4th DCA 2007).

V. COLLECTION AND ENFORCEMENT OF SUPPORT

A. Generally

- Venue - Venue for the collection and/or enforcement of child support is the county in which the petitioner resides or in which the obligor for the support is found. §61.17(1)(a), Florida Statutes.

- *Enforcement (Also see previous section on income deduction orders*)
  - Enforcement of child support is initially accomplished by the entry of an income deduction order. §61.1301(1)(a), Florida Statutes.
  - The entry of an income deduction order is mandatory for enforcement of current support and arrearages. §61.1301. *See* Dept. of Revenue v. Laporte, 735 So. 2d 574 (2d DCA 1999).
  - An income deduction order is effective immediately. The Court has discretion to stay the effective date of an income deduction order until the payments are one month delinquent. §61.1301(1)(c), Florida Statutes.
  - The Court must find good cause to stay an income deduction order. A showing of good cause must include:
    - Written findings that explain why implementing an income deduction would not be in the child's best interest,
    - In the case of modification, proof of timely payment of the previously ordered obligation without an income deduction order, and
    - Either an agreement by the obligor to advise the Title IV-D agency of a change in employment or health insurance coverage, or a signed written agreement providing an alternative agreement between the obligor and obligee. §61.1301(1)(c), Florida Statutes.
  - In extraordinary or compelling circumstances, a court may decline to enforce a past-due obligation to pay child support. Fox v. Haislett, 388 So. 2d 1261(Fla. 2d DCA 1980).

B. Methods for Enforcement/Collection

Garnishment

- Federal pay is subject to garnishment for members of the military and civil employees of the United States. 42 U.S.C. 659 (Social Security Act, section 459 added by Pub.L. 93-647, part B, sec. 101(a), 88 Stat. 2357, as amended

by the Tax Reform and Simplification Act of 1977, Pub.L. 95-30, title V, sec. 502, 91 Stat. 157).

- Suspension of an obligor's driver's license and/or vehicle registration. §61.13016, Florida Statutes.

- The suspension process may be initiated by the Title IV-D agency, or, upon request of the obligee, the depository or the Clerk of the Court once an obligor becomes delinquent.
  §61.13016, Florida Statutes.

- The obligor must file a petition to contest a notification that his or her license is being suspended within 20 days of notification. §61.13016(1)(c)(1)(c), Florida Statutes.

- The court must hear the motion contesting the driver's license suspension within 15 days of the filing of a motion. An order must be entered within 10 days of the hearing. §61.13016(2)(b), Florida Statutes.

- The court must treat the sanction of a driver's license suspension in the same manner as a contempt sanction for which the court must find a present ability to pay any purge amount set. Larsen v. Larsen, 901 So. 2d 327 (Fla. 4th DCA 2005).

Writs

- When either party is about to remove himself or his property out of the state, or fraudulently convey or conceal it, the court may award a ne exeat or injunction against the party or the property and make such orders as will secure support to the party who should receive it. §61.11(1), Florida Statutes.

- The writ must include, at a minimum, information on the respondent's physical description and location as is required for entry of the writ into the Florida Crime Information Center telecommunications system. The writ shall direct that service and execution of the writ may be made on any day of the week and any time of the day or night. §61.11(2)(a), Florida Statutes.

- The writ shall be enforceable in all counties of the state. §61.11(2)(c), Florida Statutes.

- Attachment or garnishment of the salary of the parent. §61.12, Florida Statutes.

- Denial or suspension of professional licenses or certificates. This suspension process may be initiated by an obligee and covers all licenses issued pursuant to Chapters 409, 455, 456, 559, and 1012, Florida Statutes. §61.13015(1), Florida Statutes.

Some of the types of licenses or certificates that may be suspended:

- Family foster homes
- Child placing agencies
- Certified public accountants
- Real estate
- Teaching
- Physicians, including Osteopathic Doctors
- Nursing
- Pharmacist
- Collection agents

- The party seeking enforcement must give notice of the delinquency to the obligor that he or she is delinquent and that the obligor has 30 days in which to pay the delinquency or to reach an agreement for payment of the delinquency. This notice must provide that if payment is not made or an agreement cannot be reached, the license or certificate may be denied or suspended. §61.13015(2), Florida Statutes.

- If the delinquency is not paid or an agreement is not reached within 30 days, a second notice must be sent giving the obligor 30 days to either pay the delinquency or reach an agreement for payment of the delinquency. If the obligor fails to respond to either notice or fails to pay the delinquency or reach an agreement, the obligee may petition the court to deny the application or suspend the license or certificate. §61.13015(3), Florida Statutes.

- The court may find that denial or suspension is inappropriate if:

- Irreparable harm would occur to the obligor or would not accomplish the objective of a denial or a suspension; or
- The obligor demonstrates a good faith effort to reach an agreement with the obligee. §61.13015(3)(a-b), Florida Statutes.
- The court may not deny or suspend a license if an alternative remedy exists which would accomplish the objective of collecting a delinquency. §61.13015(3), Florida Statutes.
- The Department of Revenue initiates suspension of occupational and professional licenses administratively in Title IV-D cases as authorized by §409.2598, Florida Statutes.
- Lien on proceeds of lump sum workmen's compensation settlement. §61.14 (8)(a), Florida Statutes.
- Civil Contempt: This procedure is to compel compliance with a court order. The requirements for proceeding on a Motion for Civil Contempt are:
  - Filing of a motion.
  - Actual notice to obligor. The notice must contain the following language (in bold): FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE COURT ISSUING A WRIT OF BODILY ATTACHMENT FOR YOUR ARREST. IF YOU ARE ARRESTED, YOU MAY BE HELD IN JAIL UP TO 48 HOURS BEFORE A HEARING IS HELD.
  - Hearing.
    Fla. Fam. L. R. P. 12.615(a-c).

- When a court of competent jurisdiction enters an order for the payment of child support, the court shall make a finding of the obligor's imputed or actual present ability to comply with the order. If the obligor subsequently fails to pay alimony or support and a contempt hearing is held, the original order of the court creates a presumption that the obligor has the present ability to pay the alimony or support and to purge himself or herself from the contempt. At the contempt hearing, the obligor shall have the burden of proof to show that he or she lacks the ability to purge himself or herself from the contempt. The court shall state in its order the reasons for granting or denying the contempt. §61.14(5)(a), Florida Statutes.

- The requirements for a finding of indirect civil contempt after hearing the evidence presented:

- The movant must show that a prior court order directed the party to pay the support and that the party in default has failed to make the ordered payments.
- The defaulting party must then dispel the presumption of ability to pay by demonstrating that, due to circumstances beyond his control which intervened since the time the order directing him to pay was entered, he no longer has the ability to meet his support obligations.
- The court must then evaluate the evidence to determine whether it is sufficient to justify a finding that the defaulting party has willfully violated the court order.
- If the court finds that a civil contempt has occurred, it must determine what alternatives are appropriate to obtain compliance with the court order.
- If incarceration is appropriate, the court must make a separate, affirmative finding that the contemnor possesses the present ability to comply with the purge conditions set forth in the contempt order, and may look at all assets from which the amount might be obtained.
  Bowen v. Bowen, 471 So. 2d 1274 (Fla. 1985).

- Recommended orders from a hearing officer must contain detailed findings of fact to support the recommendation. Gregory v. Rice, 727 So. 2d 251 (Fla. 1999).

- The sanctions which may be imposed may include:
  - Incarceration. The purpose of a civil contempt proceeding is to obtain compliance with a court order. Because incarceration is utilized solely to obtain compliance and not to punish, it must be used only when the contemnor has the ability to comply. Bowen v. Bowen, 471 So. 2d 1274 (Fla. 1985).
    - Note: There are no circumstances in which a parent is entitled to court-appointed counsel in a civil contempt proceeding for failure to pay child support because if the parent has the ability to pay, there is no indigency, and if the parent is indigent, there is no threat of imprisonment. Bowen v. Bowen, 471 So. 2d 1274 (Fla. 1985). However, *see* Turner v. Rodgers, 131 S.Ct. 2507 (2011), which holds that although the due process clause does not automatically require the state to provide counsel to indigent parents subject to a civil contempt proceeding, certain safeguards should be required so that the civil proceeding is fair. The state must have adequate procedural

safeguards that assure a fundamentally fair determination of whether the noncustodial parent has the present ability to comply with the contempt order. It noted that the following procedures, if employed together, could significantly reduce the risk of an erroneous deprivation of liberty: 1) notice to the defendant that his "ability to pay" is a critical issue in the contempt proceeding; 2) the use of a form (or the equivalent) to elicit relevant financial information; 3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status, (e.g., those triggered by his responses on the form); and 4) an express finding by the court that the defendant has the ability to pay.

  - A purge must be reasonable. The Court may look at all the obligor's assets to determine his or her ability to purge. Pompey v. Cochran, 685 So. 2d 1007 (Fla. 4th DCA 1997).

- If obligor is unemployed or underemployed, the Court may order that he or she:
  - Seek employment;
  - File periodic reports with the Court detailing the obligor's efforts to obtain employment;
  - Notify the Court that he or she has obtained employment, income or property; or
  - Participate in job training, job placement or other work programs §61.14 (5)(b), Florida Statutes.

- The Court may issue an Order for a writ of bodily attachment when an obligor has been duly notified and fails or refuses to appear for a hearing. Fla. Fam. L. R. P. 12.615 (c)(2)(b).

Direct Criminal Contempt: Criminal contempt proceedings are appropriate when the party in default has continually and willfully neglected his support obligations, or has affirmatively acted to divest himself of assets and property. This procedure is used to punish the contemnor. Bowen v. Bowen, 471 So. 2d 1274 (Fla. 1985).

The requirements for proceeding on a Motion for Indirect Criminal Contempt are:

- An affidavit based on personal knowledge, and
- An Order to Show Cause detailing all essential facts as to the criminal contempt charge.
- Appointment of a public defender.

- Trial.
- If contemnor is found guilty, he or she must have an opportunity to present mitigating circumstances.
  Fla. R. Crim. Pr. 3.840.

- The defendants in criminal proceedings are entitled to the same constitutional due process protections afforded criminal defendants in more typical criminal proceedings. Sando v. State, 972 So. 2d 271 (Fla. 4th DCA 2008).

- Attorney's Fees
  - After considering the financial resources of both parties, the court may order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending, enforcing, or modifying child support and appeals.
  - If a non compliant party is without justification for failing to follow a court order, the court may not award attorney's fees, suit money, and costs to the noncompliant party.
  - No corroborating expert testimony is necessary.
  - The trial court maintains continuing jurisdiction to make temporary attorney's fees and costs awards reasonably necessary to prosecute or defend an appeal.
  - Fees may be assessed against the Department of Revenue pursuant to s. 57.105(1), Florida Statutes.
    §61.16(1), Florida Statutes.

ADDITIONAL COLLECTION METHODS AVAILABLE SOLELY TO TITLE IV-D AGENCY

In addition to the above methods for enforcement and collection of child support, the Title IV-D agency, designated in Florida as the Florida Department of Revenue, has the following additional options to enforce and collect child support:

- Interception of unemployment compensation benefits. §443.051, Florida Statutes.
- Interception of Federal Income Tax Refund. §409.2557(3)(j), Florida Statutes; 42 U.S.C.A. § 664.
- Collection of Florida Lottery prize winnings §24.115(4), Florida Statutes.
- Denial, revocation, or limitation of United States Passport. §409.2557(3)(j), Florida Statutes; 42 U.S.C.A. § 652. *See also* Dept. of Revenue v Walton, 12 So. 3d 921 (Fla. 1st DCA 2009) and Dept. of Revenue ex rel. Jackson v.

Nesbitt, 975 So. 2d 549 (Fla. 4th DCA 2008) (Trial court not authorized to order Department of Revenue to remove passport restrictions).

Bank levies. §409.25656, Florida Statutes; 42 U.S.C.A. § 666.

- Credit reporting. §61.1354, Florida Statutes; 42 U.S.C.A. § 666.
- Interception of unclaimed property. §409.25658, Florida Statutes.
- Administrative offset of Federal vendor payments. 31 U.S.C.A. § 3716.

VI. INTERSTATE AND INTERNATIONAL FULL FAITH AND CREDIT

(Note: Chapter 88, Florida Statutes, has been amended to encompass UIFSA 2008 with a future implementation date.)

C. Full Faith and Credit

- Federal law requires states to give full faith and credit to orders from other states. U.S.C.A. Const. Art. 4, § 1.
- In the Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. § 1738B (1994), Congress established national standards for determining jurisdiction to issue a child support order and the effect courts must give to orders from other states. Under this act, courts must enforce a child support order from another state if it is consistent with FFCCSOA. Also, a court cannot modify the order of another state unless the new state has jurisdiction, and the issuing state must no longer have continuing exclusive jurisdiction.
- The court was required to enforce a child support provision of an Alabama divorce decree which obligated the father to support an adult child while child was in college, even though Florida courts do not award child support to adult children. Elortegui v. Elortegui, 616 So. 2d 69 (Fla. 3d DCA 1993).
- Judgments are only entitled to full faith and credit as to the individuals who were parties to the other court's proceedings or who were given notice and an opportunity to be heard. MacRai-Billewicz v. Billewicz, 67 So. 3d 226 (Fla. 2d DCA 2010).

D. The Uniform Interstate Family Support Act

- The Uniform Interstate Family Support Act (UIFSA) was originally enacted in 1996 and addresses the complications found in enforcing child support orders across state lines. Florida adopted UIFSA (1996) effective July 1, 1997, which was codified in Chapter 88, Florida Statutes. Unless otherwise noted, the sections of Chapter 88 referenced in this section will take effect upon the earlier of 90 days following Congress amending 42 U.S.C. s. 666(f) to allow or require states to adopt the 2008 version of the Uniform Interstate Family Support Act, or 90 days following the state obtaining a waiver of its state plan requirement under Title IV-D of the Social Security

Act. UIFSA provides national uniform rules for the enforcement of family support orders by:

- Addressing jurisdiction standards, including continuing exclusive jurisdiction (CEJ).
- Establishing rules to determine which state has issued the controlling order if proceedings have occurred in multiple jurisdictions.
- Providing rules for modification of other state's orders.

E. Jurisdiction

- In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:
  - The individual is personally served with citation, summons, or notice within this state;
  - The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
  - The individual resided with the child in this state;
  - The individual resided in this state and provided prenatal expenses or support for the child;
  - The child resides in this state as a result of the acts or directives of the individual;
  - The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
  - The individual asserted parentage of a child in a tribunal or in a putative father registry maintained in this state by the appropriate agency; or
  - There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction. §88.2011, Florida Statutes.

- Personal jurisdiction in a proceeding relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order. §88.2021, Florida Statutes.

- A tribunal may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state or a foreign country only if:
  - The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign

country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;
  - The contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and
  - If relevant, this state is the home state of the child.
    §88.2041(1), Florida Statutes.

- A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:
  - The petition or comparable pleading in the other state or the foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;
  - The contesting party timely challenges the exercise of jurisdiction in this state; and
  - If relevant, the other state or the foreign country is the home state of the child.
    §88.2041(2), Florida Statutes.

- A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:
  - At the time of the filing of a request for modification, this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

  - Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.
    §88.2051(1), Florida Statutes.

- A tribunal of this state that has issued a child support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:
  - All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or
  - Its order is not the controlling order.
    §88.2051(2), Florida Statutes.

- If a tribunal of another state has issued a child support order pursuant to this act or a law substantially similar to this act which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state. §88.2051(3), Florida Statutes.

- A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state. §88.2051(4), Florida Statutes.

- A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing exclusive jurisdiction in the issuing tribunal. §88.2051(5), Florida Statutes.

- A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:
    - The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or
    - A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.
    - §88.2061(1), Florida Statutes.

- A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order. §88.2061(2), Florida Statutes.

- If a proceeding is brought under this act and only one tribunal has issued a child support order, the order of that tribunal controls and must be recognized. §88.2071(1), Florida Statutes.

- If a proceeding is brought under this act, and two or more child support orders have been issued by tribunals of this state, another state, or a foreign country with regard to the same obligor and the same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized :
    - If only one of the tribunals would have continuing, exclusive jurisdiction under this act, the order of that tribunal controls.

- If more than one of the tribunals would have continuing, exclusive jurisdiction under this act:
  - An order issued by a tribunal in the current home state of the child controls; or
  - If an order has not been issued in the current home state of the child, the order most recently issued controls.
- If none of the tribunals would have continuing, exclusive jurisdiction under this act, the tribunal of this state shall issue a child support order, which controls.
  §88.2071(2), Florida Statutes.

- If two or more child support orders have been issued for the same obligor and the same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection (2). The request may be filed with a registration for enforcement or registration for modification pursuant to part VI of this chapter, or may be filed as a separate proceeding. §88.2071(3), Florida Statutes.

- A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination. §88.2071(4), Florida Statutes.

- The tribunal that issued the controlling order under subsection (1), subsection (2), or subsection (3) has continuing jurisdiction to the extent provided in s. 88.2051 or s. 88.2061. §88.2071(5), Florida Statutes.

- A tribunal of this state that determines by order which is the controlling order under paragraph (2)(a), paragraph (2)(b), or subsection (3) or that issues a new controlling order under paragraph (2)(c) shall state in that order:
  - The basis upon which the tribunal made its determination;
  - The amount of prospective support, if any; and
  - The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by s. 88.2091.
    §88.2071(6), Florida Statutes.

- Within 30 days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that

fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order. §88.2071(7), Florida Statutes.

- An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this act. §88.2071(8), Florida Statutes.

F. Petition to establish support order/temporary orders

- If a support order entitled to recognition under this act has not been issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:

  - The individual seeking the order resides outside this state; or
  - The support enforcement agency seeking the order is located outside this state.
    §88.4011(1), Florida Statutes.

- The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

  - A presumed father of the child;
  - Petitioning to have his paternity adjudicated;
  - Identified as the father of the child through genetic testing;
  - An alleged father who has declined to submit to genetic testing;
  - Shown by clear and convincing evidence to be the father of the child;
  - An acknowledged father
  - The mother of the child; or
  - An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.
    §88.4011(2), Florida Statutes.

- Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to §88.3051, Florida Statutes. §88.4011(3), Florida Statutes.

G. Direct Enforcement of Order from another State without Registration

- An income-withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under Florida's income deduction law or payor without first filing a petition or comparable pleading or registering the order with a tribunal of this state. §88.5011, Florida Statutes.

- An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state. §88.5051, Florida Statutes.

- An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. The obligor shall give notice of the contest to:
  - A support enforcement agency providing services to the obligee;
  - Each employer that has directly received an income-withholding order; and
  - The person or agency designated to receive payments in the income-withholding order, or if no person or agency is designated, to the obligee.

    §88.5061, Florida Statutes.

H. Registration for Enforcement

- A support order or an income-withholding order issued in another state or a foreign support order may be registered in this state for enforcement. §88.6011, Florida Statutes.

- The registering tribunal must send notice to the non-registering party accompanied by a copy of the registered order. §88.6051, Florida Statutes. Service of process is not required. Department of Revenue v. Cuevas, 862 So. 2d 810 (Fla. 4th DCA 2003). The registration is complete upon filing. If no contest is filed within 20 days after notice of registration, the order is confirmed by operation of law.

- A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state. §88.6031(1), Florida Statutes.

- A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state. §88.6031(2), Florida Statutes.

- Except as otherwise provided in this act, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction. §88.6031(3), Florida Statutes.

- A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:
  - The issuing tribunal lacked personal jurisdiction over the contesting party;
  - The order was obtained by fraud;
  - The order has been vacated, suspended, or modified by a later order;
  - The issuing tribunal has stayed the order pending appeal;
  - There is a defense under the law of this state to the remedy sought;
  - Full or partial payment has been made;
  - The statute of limitation under s. 88.6041 precludes enforcement of some or all of the alleged arrearages; or
  - The alleged controlling order is not the controlling order. §88.6071(1), Florida Statutes.

I. Modification

- A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in §§88.6011-88.6081 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification. §88.6091, Florida Statutes.

- If §88.6131 does not apply, upon petition, a tribunal of this state may modify a child support order issued in another state which is registered in this state if, after notice and hearing, the tribunal finds that:
  - The following requirements are met:
    - 1. Neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;
    - 2. A petitioner who is a nonresident of this state seeks modification; and

        - 3. The respondent is subject to the personal jurisdiction of the tribunal of this state; or
    - This state is the state of residence of the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing exclusive jurisdiction.
      §88.6111(1), Florida Statutes.

- Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner. §88.6111(2), Florida Statutes.

- A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under §88.2071 establishes the aspects of the support order which are non-modifiable. §88.6111(3), Florida Statutes.

- In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state. §88.6111(4), Florida Statutes.

- On issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal of continuing exclusive jurisdiction. §88.6111(5), Florida Statutes.

- Notwithstanding subsections (1)-(5) and §88.2011(2), a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:
    - One party resides in another state; and
    - The other party resides outside the United States.
      §88.6111(6), Florida Statutes.

VII. MODIFICATION OF CHILD SUPPORT ORDERS

Note: the Florida Bar Continuing Legal Education Department has an excellent chapter on modification of child support that has been included in this Benchbook. *See tab 2.*

A. Generally

- At any time, any party, including the IV-D agency, may apply to the court to:
  - Modify, suspend, or terminate the income deduction order in accordance with a modification, suspension, or termination of the support provisions in the underlying order; or
  - Modify the amount of income deducted when the arrearage has been paid. §61.1301(1)(g), Florida Statutes.

- Pursuant to §61.13(1)(a), Florida Statutes, child support payments may be modified when in the best interests of the child, when the child reaches majority, or when there is a substantial change in the circumstances of the parties.

- The change in circumstances must be significant, material, involuntary, and permanent in nature. Hand v. Kushmer, 673 So. 2d 926 (Fla 2d DCA 1996); Bunassar v. Diaz, 804 So. 2d 487 (Fla. 3d DCA 2001).

- When the amount of child support is based upon an agreement by the parties, a heavier burden rests upon the party seeking a modification than would otherwise be required. Hand v. Kushmer, 673 So. 2d 926 (Fla 2d DCA 1996).

- A parent's failure to regularly exercise the court-ordered or agreed time-sharing schedule not caused by the other parent shall be deemed a substantial change of circumstances for purposes of modifying the child support award. A modification is retroactive to the date the noncustodial parent first failed to regularly exercise the court-ordered or agreed time-sharing schedule. §61.30(11)(c), Florida Statutes.

B. Change of circumstance

- Party seeking modification of child support payments has burden of showing the change in circumstances. Hand v. Kushmer, 673 So. 2d 926 (Fla 2d DCA 1996).

- Temporary modification due to military service. If a temporary order is issued, the court may address the issue of support by:
  - Entering an order of temporary support from the service member to the other parent;
  - Requiring the service member to enroll the child as a military dependent with DEERs, TriCare, or other similar benefits available to military dependents as provided by the service member's branch of service; or
  - Suspending, abating, or reducing the child support obligation of the non-service member until the custody judgment or time-share order previously in effect is reinstated. §61.13002(6), Florida Statutes.

C. Streamlined judicial modification upon Department of Revenue agency review. §409.2564(11), Florida Statutes.

- The Department of Revenue is mandated in §409.2564(11)(a), Florida Statutes, to review child support orders in IV-D cases at least once every 3 years when requested by either party, or when support rights are assigned to the state. The Department of Revenue may seek modification of the order if appropriate.

- If the Department of Revenue seeks to modify the order, the department shall file:
  - a petition
  - a child support guideline worksheet
  - any financial affidavits
  - a proposed modified order that includes findings as to the source and amount of income
  - a notice that informs the parties of the requirement to file an objection or a request for hearing with the court if the party wants a court hearing on the petition to modify. §409.2564(11)(b), Florida Statutes.

- If a party wishes to obtain a court hearing on a petition to modify a support order, a party who is served by regular mail must file an objection to the proposed order or a request for hearing with the court within 30 days after the date on which the petition, proposed order, and other documents were mailed. §409.2564(11)(c), Florida Statutes.

- If a party is served personally, to obtain a court hearing on a petition to modify the party must file an objection to the proposed order or a request

for hearing with the court within 30 days after the date of receipt of the petition, proposed order, and other documents. §409.2564(11)(c), Florida Statutes.

- If a timely objection or request for hearing is not filed with the court, the court may modify the support order without a hearing in accordance with the terms of the proposed order. §409.2564(11)(d), Florida Statutes.

- If a support order does not provide for payment of non-covered medical expenses or require health insurance for the minor child and health insurance is accessible and available at a reasonable cost, the Department of Revenue shall seek to have the order modified. Any modification shall be made without a requirement for proof or showing of a change in circumstances. §409.2564(11)(e), Florida Statutes.

Appeals:

- Appellate courts use the abuse of discretion standard when reviewing a trial court's order in a child support modification proceeding. Martland v. Arabia, 987 So. 2d 118 (Fla. 4th DCA 2008).

VIII. CHILD SUPPORT IN TITLE IV-D CASES

A. Generally

- Any payment of temporary cash or Title IV-E assistance made to, or for the benefit of, any dependent child creates an obligation in an amount determined pursuant to the child support guidelines. §409.2561(1), Florida Statutes.

- Once a custodian receives state public assistance benefits on behalf of the child(ren) because of a lack of direct viable financial support from the mother or father, the custodian subrogates their rights to collecting child support to the State of Florida through the Department of Revenue which establishes and enforces a child support obligation. The state shall retain amounts collected only to the extent necessary to reimburse amounts paid to the family as assistance by the state. §409.2561(1), Florida Statutes.

- If there has been a prior support order or final judgment of dissolution of marriage establishing an obligation of support, the obligation is limited to the amount provided by such support order or decree. §409.2561(1), Florida Statutes.

- If there is no prior court order establishing an obligation of support, the court shall establish the liability of the obligor for payment of public assistance monies by applying the child support guidelines in §61.30 for the public assistance period. Dept. of Revenue v. Nelson, 717 So. 2d 201 (Fla. 5th DCA 1998).

- Arrearages/Reimbursement - Under §61.30(17), Florida Statutes, retroactive support is limited to two-years back from the date of filing. An exception exists when a petition is dismissed due to inability to serve the respondent. See DOR v Lovins, 798 So. 2d 891 (Fla. 4th DCA 2001). While the actual child support arrears can only relate back to the filing date of the support petition, any portion of the retroactive award which is reimbursement to the state for public assistance funds under §409.234 can embody expenditures for public assistance which pre-date the filing of the petition. Gherardi v. Gherardi, 712 So. 2d 1236 (Fla. 4th DCA 1998).

- The parent cannot waive all arrears when the Department of Revenue is a party and public assistance was paid to the parent. In this case, the Department of Revenue was also not noticed or made a party to the stipulation between the mother and the father. Dept. of Revenue v. Pericola, 662 So. 2d 386 (Fla. 5th DCA 1995).

- No retroactive reimbursement during parent's incarceration. The state's subrogation rights are no greater than the parent's. Since the father could not support the children during a period of incarceration, the state was not entitled to reimbursement of AFDC assistance funds paid to the mother during his period of incarceration. Under the facts of this case, the mother and children could not have obtained support from the father during imprisonment because he was unable to provide for them financially. H.R.S. v. Hatfield, 522 So. 2d 61 (Fla. 2d DCA 1988). However, recent case law holds that a parent facing incarceration can be ordered to pay support and the arrears will accumulate during the incarceration. *See* McCall v. Martin, 34 So. 3d 121 (Fla. 4th DCA 2010).

- Limitation on amount that can be reimbursed. The reimbursable obligation of the father is limited to the amount he could have paid. The reimbursement may be less than the actual public assistance paid if the father is indigent. D.H.S. v. Huffman, 332 S.E. 2d 866 (Va. SCT 1985).

- By accepting temporary cash assistance or Title IV-E assistance, the recipient assigns to the Department of Revenue any right, title, and interest to support the recipient may be owed. §409.2561(2)(a), Florida Statutes.

- Note: If the parents of the child were actually providing regular monthly financial support for their child to the actual custodian of the child, then the custodian would not have the need to secure public assistance from the state to help support the child.

- Likewise, the occasional situation will arise, after hearing evidence and testimony in the court proceeding, where it becomes apparent the custodian of the child may be committing public assistance fraud(see §414.39, Florida Statutes) by not actually meeting the legal requirements for receipt of public assistance monies from the state (i.e. the child is not actually in their physical custody, or, there is actually an "intact" family but the custodian is receiving public assistance by stating in the request

paperwork for public assistance that there is no intact family). You will have to address these potential issues as they may come up on a case-by-case basis.

B. Cases Involving the Parents

- The most typical action brought by the Department of Revenue related to public assistance issues involves an enforcement action, a Petition for Support, or a Paternity Complaint on behalf of the Parent/Custodian of the child who is receiving public assistance of some kind (food stamps/monthly cash assistance/Medicaid) from the state based upon their reporting that the non-custodial parent is not financially supporting the child and not living in the same household.

- On occasion, you will have a case where the mother and father are both present in court and the mother is stating to the court that she does not want to place the father on child support because he "helps" on a regular basis with the child(ren); the father is likewise stating that he pays the mother some monies from time to time, visits and exercises agreed-upon visitation, and that he always provides other support or necessities for the child(ren) when he can. The salient issue that can arise in this scenario is the mother is receiving public assistance on behalf of the child(ren) and that establishment of a child support obligation from the father must be pursued under applicable law unless the mother gives up certain public assistance entitlements. The support rights of a public assistance recipient are assigned to the state by operation of law. §§ 409.2561(2)(a) and 414.095, Florida Statutes.

- If the mother does decide to "opt" out of the public assistance system, the father would still be financially liable for any previous public assistance paid out to the mother on behalf of the child and a reasonable monthly payment plan would have to be agreed upon, or court ordered, between the father and the Department of Revenue.

C. Cases Involving Third-Party Custodians and the Parents

- Another typical public assistance scenario arises when the department filed actions for child support against the mother or father, and the minor child is being raised/housed by a third-party custodian who is receiving public

assistance to help them financially support the child. The parent must reimburse the state for the public assistance expenditure. The four most typical scenarios are:

- where there is a relative custody order in place for the child under a Chapter 751 proceeding awarding a third-party legal custody of the child to the third-party custodian.
- where there is/has been a Department of Children and Families dependency case under Chapter 39 involving child abuse or neglect and there is a court order giving that third-party custodian legal custody of the child. Please note that the custody in these cases may be temporary while the parent completes a case plan for return of their children to their physical custody or may be permanent if the parent failed to complete a case plan and the dependency court "closed" the case with the child in the formal legal custody of the third-party custodian.
    - Note that in many of these cases, the third-party custodian is often receiving monthly "Relative Caregiver Funds" which is a form of public assistance (a monthly cash subsidy) to help raise the child. In these cases, the parents of the child are financially responsible for reimbursing the state for the monies being paid to the third-party custodian.
- where there is no formal legal custody order giving the third-party "custody" of the child but there is an informal agreement to have the third-party custodian raise the children because of incapacity or inability of the parent to raise and provide for the child financially themselves due to incarceration or substance abuse issues.
- A de facto change or assumption of physical custody/residence of the child, where the grandmother or another blood relative of the child assumes day to day responsibility for care of the child.

- There are many times in court on these third-party custodian child support cases when the parties, who may not understand the legal requirements of PA cases, raise the following issues:
    - Legal custody. The court should explain to the parties that while the parent may be living in the home with the custodian or actively involved in the child's life, they may not have "legal" custody of the child. If the custodian is the party receiving public assistance on behalf of the child, the parent is still responsible for the payment of child support to the state.

- Action against the other parent. The department may often file a separate action against each parent, but the court only has jurisdiction over the case at bar.
- IV-D lawyers represent the department and not either party to a case so they can appear to establish and enforce support against the obligor and then appear in the same case to argue for a downward modification which benefits the obligor. Dept. of Revenue v. Collingwood, 43 So. 3d 952 (Fla. 1st DCA 2010); Rule 12.040(2)(c), Fla. Family Law Rules of Proc..
- The department has to follow federal requirements in federal income tax intercept and passport cases, which are administrative, and the circuit court has no jurisdiction to order the department to lift the federal passport restrictions or limit the department's income tax intercepts.
- A court cannot retrospectively modify an administrative support order.

IX. CHILD SUPPORT IN DEPENDENCY CASES

The Department of Children and Families (DCF) is the state agency responsible for litigation of child dependency cases. §39.01(21), Florida Statutes. The Department of Revenue is charged with enforcing support orders obtained in dependency proceedings for children adjudicated to be dependent. §39.521(1)(d)7, Florida Statutes.

A. Dependency Child Support Checklist

At the Initial Dependency Hearing:

- Determine whether or not paternity has been previously established. Methods for determining paternity include:
  - The parent has voluntarily signed a sworn paternity affidavit,
  - The father is named on the child's birth certificate,
  - The child was conceived and born while the mother was married,
  - The putative father is discovered through DNA testing, and/or
  - Paternity is established by a court or administrative proceeding.
- If paternity has not been established:
  - Have parent swear under oath that he/she is the parent and adjudicate him/her as the parent or,
  - Order a DNA test.
- Verify whether or not child support has already been established.
- If it has, transfer it to the dependency court for enforcement and compliance monitoring.
- If it has not, proceed with ordering child support in current case.
- Set the paternity/child support hearing in conjunction with the next dependency hearing.
- Confirm the order includes:
  - Notice that paternity and child support will be established at the next hearing,
  - A requirement that the parents provide the financial information needed to determine child support within 28 days to the court and to DCF, and
  - An order for a DNA test, if necessary.

At the Subsequent Paternity/Child Support Hearing (ideally in conjunction with the subsequent dependency hearing):

- Establish paternity, if not already done, and adjudicate the mother/father as the parent of the child.

- Determine and set child support.
- Include the following in the child support order:
  - Amount of child support to be paid and to whom,
  - A provision for health insurance and non-covered medical expenses,
  - Income deduction and State Disbursement Unit information,
  - The full name and date of birth of each minor child, and
  - When the first payment is due and where it should be sent.

Follow-up and Compliance options.

- The obligee or their attorney may initiate contempt.
- The court can hold a compliance review hearing:
  - Review hearings can occur in conjunction with judicial review or other regularly scheduled dependency hearings, if properly noticed.
- The respondent must provide proof of payment or that he/she lacks the ability to pay.
- If the respondent fails to provide proof of payment the court can:
  - Order the parent to seek employment or job training;
  - Issue an order to show cause. Offending parent can be found in civil contempt and jailed up to 179 days;
    - Contempt order must contain a purge amount.
    - Contemnor must have the ability to pay the purge amount.
  - Issue a writ of attachment;
  - Garnish the salary of the parent;
  - Suspend the driver's license and motor vehicle registration; and/or
  - Allow the Department of Revenue to seek other enforcement options.

Modification and Termination.

- Child support payments can be modified when:
  - The modification is found necessary by the court and is in the best interests of the child,
  - When the child reaches 18 years of age, or
  - When there is a substantial change in the circumstances of the parties.
- If modifications occur, the court should require the clerk's office to notify the State Disbursement Unit of the changes.
- If an Income Deduction Order is facilitating payment, the court should enter an Order to Vacate and require that a copy be sent by the clerk to the employer and the State Disbursement Unit.
- Upon closure of the dependency case, advise the parents that:

- If they need help with enforcement, the case can be transferred to family court and they or counsel can proceed with enforcement, but the case will receive a new case number, and
- Filing fees may be assessed.

B. Model for Child Support in Dependency Cases

Introduction

This model serves as suggested guidelines for how child support should be handled in dependency cases. Its purpose is to provide guidance on issues related to child support in dependency proceedings so that Florida's children receive the financial support they need. According to the principles of unified family court as described in In re Report of Family Court Steering Committee, 794 So. 2d 518 (Fla. 2001), the best practice is to handle the child support matter before the same judge hearing the dependency case to avoid conflicting orders and multiple court appearances by the parties, as well as to increase efficiency and wisely utilize court resources.

The Process

Initial Hearing: At the shelter hearing (or the arraignment hearing if there is not a shelter hearing), the court should:

- Determine whether or not paternity has ever been established for the child. Methods for determining paternity: (Chapters 742, 382, Florida Statutes)
  - The parent has voluntarily signed a sworn paternity affidavit. §742.10(4), Florida Statutes. Other forms of voluntary acknowledgement are permitted under §742.10(1) Florida Statutes. Also, paternity may have been established judicially or voluntarily in another state. See §742.105, Florida Statutes.
  - The father is named on the child's birth certificate. The father must have signed a paternity affidavit before his name was put on the birth certificate. §382.013(2)(c), Florida Statutes.
  - If the mother was married when the child was conceived and born, the husband is considered the legal father of the child. §742.11, 382.013(2)(a), Florida Statutes.
  - The putative father is found to be the biological father through genetic testing. §742.12, Florida Statutes.

- Paternity is established by a court of competent jurisdiction under §382.015, Florida Statutes, or determined through administrative proceedings under §409.256, Florida Statutes. The judge may access the JIS system to verify previous court orders.

- If paternity has not been established, have parent swear under oath that he/she is the parent of the child and adjudicate him/her as the parent, or order a DNA test for the father if he is contesting paternity. §§742.10(4), 742.12(1), Florida Statutes. Payment for the DNA testing is governed by §742.12(7), Florida Statutes.

- Verify whether or not child support has already been established in another court or under the Title IV-D process in which the Department of Revenue is a party. If it has, transfer it to the dependency court. Rule 8.205(a) allows child support cases to be transferred and handled in dependency court. If it has not, proceed with ordering child support in current case. §39.402(11)(a), Florida Statutes.

  - A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement. §80.6011, Florida Statutes.

- Set the next child support hearing in conjunction with the next regularly scheduled dependency hearing. §39.402(16), Florida Statutes.

- The initial shelter order should:

  - Give the putative father and all other parties notice of the proceeding to establish paternity and child support at the next hearing. §§409.256(4), 742.021, Florida Statutes.

  - Require the parents to provide to DCF and the court the financial information necessary to accurately calculate child support within 28 days. §39.402(11)(a), Florida Statutes. The court should require that all parties fill out the financial affidavits and other forms before the next hearing to save time. (See "e" below.)

  - Order a DNA test to establish paternity, if needed. §742.12(1), Florida Statutes. Payment for the DNA testing is governed by §§742.12(7), 742.18(7)(c), Florida Statutes.

- Forms parent must fill out to receive child support (Courts could request that the clerk have these forms and any Department of Revenue application forms available for the litigants.):
    - Family Law Financial Affidavit, Fla. Fam. L. R. P. Form 12.902(b) or (c).
    - Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit, Florida Supreme Court Approved Family Law Form 12.902(d).
    - Child Support Guidelines Worksheet, Fla. Fam. L. R. P. Form 12.902(e).
    - Notice of Social Security Number, Florida Supreme Court Approved Family Law Form 12.902(j).
    - Notice of Related Case Form. Florida Rule of Judicial Administration 2.085(d).
    - In addition to the required forms, it will be helpful if the parent lists such information as the other parent's place of employment, pay stub information, a W-2 form, or a recent tax return. If the parent does not know this information but can obtain it and bring it to the hearing, advise him or her to do so.

At the Paternity/Child Support Hearing:

- Establish paternity, if not already done, and adjudicate the father as the parent of the child. Once paternity is established, the birth record needs to be updated at the Office of Vital Statistics to appropriately record the establishment of paternity. The CLS attorney should complete the top portion of the Department of Health form DH673 using information from the birth record. Next, a certified copy of the paternity adjudication with the father's name should be provided to the Clerk of the Court who then submits the record to the Office of Vital Statistics. A separate paternity order should be used for this purpose to ensure dependency information is kept confidential. The birth record is then updated with the father's name and the official record shows that paternity is no longer an issue. Florida Supreme Court Approved Family Law Form 12.983(g) Final Judgment of Paternity can be used for this purpose.
    - If a party still disputes paternity, they may request a jury trial. B.J.Y. v. M.A., 617 So. 2d 1061 (Fla. 1993).

NOTE: The 3rd DCA held that the trial court has no jurisdiction to determine a disputed issue of paternity in a dependency proceeding under Chapter 39 in N.D. v. DCFS, 961 So.2s 1027 (Fla. 3rd DCA 2007); however, several other districts disagree. [*See*: T.J. v. Department of Children and Families, 860 So. 2d 517 (Fla. 4th DCA 2003) (Trial court erred in not applying clear and convincing standard to paternity evidence as required in §§ 742.031, 742.10(1), Florida Statutes); In Interest of J.M., 499 So. 2d 929 (Fla. 1st DCA 1986) (A circuit court has inherent and continuing jurisdiction to entertain matters pertaining to child custody and to enter any order appropriate to a child's welfare.); Dept. of Revenue v. Yambert, 883 So. 2d 881(Fla. 5th DCA 2004) (Department of Revenue was forced to establish paternity and child support obligation when dependency court had ordered DNA testing but failed to issue an order adjudicating paternity.); In re S.M., 874 So. 2d 720 (Fla. 2nd DCA 2004) (Circuit court erred in ordering E.K., an out-of-state resident with absolutely no connections to Florida, to submit to paternity testing before moving forward with the dependency action. The paternity action must occur in the state having personal jurisdiction over the parent.)] Also, §39.521(1)(d)(7) states: "The court may exercise jurisdiction over all child support matters, shall adjudicate the financial obligation, including health insurance, of the child's parents or guardian, and shall enforce the financial obligation as provided in chapter 61."

Set child support

- Child support is based on the parent's net monthly income. The child support guideline amount chart is found in §61.30, Florida Statutes. The court can vary from the amount prescribed in this chart by 5% after considering all relevant factors including the needs of the child, age, station in life, standard of living, and financial status and ability of each parent. If they do vary by more than 5%, they must have a written finding justifying the variance in the order. §61.30(1)(a), Florida Statutes.

- If the child will spend a substantial amount of time with each parent, the amount of child support should be adjusted accordingly. *See* §61.30(1)(a) and §61.30(11)(b), Florida Statutes. If financial affidavits are filled out before court by both parties, it will save court time. Child support can be calculated by using FinPlan, Divorce Power Analyzer, or similar software. The amount can also be calculated manually by using the Child Support Guidelines Worksheet, Fla. Fam. L. R. P. 12.902(e).

- The judge should explain the following to both parties when ordering child support:
  - This is permanent child support. The order for child support will only end when the child turns 18 or if it is modified by the court. §61.14, Florida Statutes. (Exception: §743.07(2), Florida Statutes, provides that dependent children can continue to receive support when the dependency is based upon mental or physical incapacity which began prior to the child reaching the age of majority, or if the person is between ages 18-19 and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19.)
  - It is the parent's/guardian's responsibility to notify their attorney or case manager if payments are not made. The attorney or case manager must report this information to the court.
  - The court's options for enforcing the child support order (order to show cause, contempt. *See generally* §§ 61.16, 61.17, Florida Statutes; Rule 8.285; and section 2(c)below of this document.).
  - The responsibilities of the petitioner and respondent to notify the court if the award needs to be modified due to a change in circumstance. §61.14(1)(a), Florida Statutes.

- An order separate from the dependency hearing order should be written by the parent's attorney or the Children's Legal Services attorney, once paternity is established and should include:
  - The amount of child support to be paid and to whom.
  - A provision for health care insurance if it is reasonable in cost and accessible to the child.
  - The court may also order retroactive child support. *See* §61.30(17), Florida Statutes.
  - A provision for payment of non-covered medical expenses.
  - Income Deduction Orders are the preferred method for collecting child support payments and should be ordered whenever possible. §61.1301, Florida Statutes. The obligee or his/her agent should serve the Income Deduction Order on the obligor's employer within two business days by certified mail. §61.1301(2)(b)(2), Florida Statutes. The amount of time it takes for the obligee to receive payment varies greatly depending on the employer and payroll procedures, therefore, the judge should consider alternative payment methods for the initial payment or payments.
  - In cases in which support has already been established under Title IV-D where the Department of Revenue is a party, and in all other types of

family law cases utilizing an income deduction order, the judge shall order child support payments to be made through the State Disbursement Unit pursuant to §61.181, Florida Statutes. Income deduction orders should be used whenever possible; however, if payments are not being made by income deduction order, the judge shall order that child support be paid through the depository unless both parties request and the court finds that direct payments are in the best interest of the child pursuant to §61.13(1)(d), Florida Statutes. Direct payments to the parent or caretaker should be avoided as this may increase the likelihood of disputes as to what was or was not actually paid.

- In non IV-E cases, the child support money should be sent to DCF at the following address:

  Department of Children and Families
  Cash Receipt Section
  1317 Winewood Blvd.
  Building 1, Room 403
  Tallahassee, Florida 32399

- The full name and date of birth of each minor child who is the subject of the child support order must be included in the order. The parent should be notified when his or her first payment is due and where the check should be sent. In addition, the court case number, the name of the person obligated to pay, and the name of the person to whom the payment is being made must be included with payments. It would be helpful if the following information was included as standard language on notices of hearings:

"The first child support payment shall be due on (date) and is payable to the State of Florida Disbursement Unit, P.O. Box 8500, Tallahassee, Florida 32314-8500. Include the COUNTY, COURT CASE NUMBER, and NAME of the person to whom the payment is being made, and your NAME on each payment. No credit for payment will be given to you for any payment given directly to the custodial parent or caregiver."

- If the child is in licensed care, the parent can be ordered to pay child support to the Department of Children and Families to reimburse the department for costs associated with the child's care. §§39.0135, 984.22(3), Florida Statutes.

- Before leaving court, both parents should receive documentation showing the judge's decision on child support, and the parent payor should receive information on how payments should be made. If income deduction is being used, both parents should receive information on when payment will begin and how payments will be made until the Income Deduction Order takes effect.

- If a change of placement is done during a dependency case, the order should contain specific language that states the date the payments should stop to the previous payee, the new payee's full name, the amount of the payment, and the date the payments should start to the new payee. A better practice would be to do an entirely separate order that redirects payment as of the date of the change of placement so that the clerk knows where to direct the money. If the clerk doesn't have an order specifying not only the change in placement but also the change in payee, it could significantly delay the money reaching the new caretaker of the child.

- In termination of parental rights cases where child support has been previously ordered, the court should address child support in the final order, notify the Department of Revenue, and specify:
  - The date the parent is to stop paying child support, and
  - Determine if the parent should continue to pay arrearages.

Follow-Up and Compliance

Follow-up and compliance with child support can be done in several different ways:

- DCF Case Managers could use a tickler system that initiates compliance checks at key points in time. The tickler system should be used in the following manner:
  - The system may be set up as either an automated electronic system or a manual case file system.
  - The tickler system should alert the case manager to the timeframe or deadline contained in the child support order. Many times, child support is an integral part of the case plan and the case manager must monitor compliance along with the other case plan tasks.
  - After the deadline passes, if the respondent has not produced documentation of payment, the case manager should alert the court and proceed according to circuit procedures.

- The obligee or their attorney may initiate contempt proceedings if they are not receiving support pursuant to the court order.

- Compliance review hearings should be conducted in the following manner:
  - The court can review compliance with child support payments at the same time the court is conducting its judicial review, permanency review hearings, or other dependency hearings if the hearing is properly noticed. If compliance is not occurring, the court can set a separate compliance hearing with the respondent being the only person required to attend.
  - At the compliance hearing the respondent must provide proof and documentation that child support is being paid as ordered by the court and that he or she is complying with all the requirements of the child support order, or that he or she lacks the ability to pay. §61.14(5)(a), Florida Statutes.

- If the respondent fails to provide proof of child support payments or other requirements at or before the scheduled review hearings, the court can:

  - Order the parent to seek employment or job training. §61.14(5)(b), Florida Statutes.
  - Issue an Order to Show Cause; a hearing date should be set before the court for no later than two weeks. The offending parent can be found in civil contempt and jail time of up to 179 days may be ordered. Payor should be able to make full payment to purge the contempt. §61.14(5)(a), §38.22, Florida Statutes. [Note: The contemnor must have the present ability to pay a monetary purge under Bowen v. Bowen, 471 So. 2d 1274, 1279 (Fla. 1985), and Gregory v. Rice, 727 So. 2d 251 (Fla. 1999). *See also* Family Law Rule of Procedure 12.615.]
  - Issue a writ of attachment. §61.11, Florida Statutes.
  - Garnish the salary of the parent. §61.12, Florida Statutes.
  - The driver's license and motor vehicle registration of a support obligor may be suspended if the obligor is delinquent in payment or has failed to comply with subpoenas or a similar order to appear or show cause relating to paternity or support proceedings. §61.13016(1), Florida Statutes.
  - Allow the Department of Revenue, the state's child support enforcement agency, to enforce the child support order. §39.521(d)(7), Florida

Statutes. The parent may be directed to apply for help through the Department of Revenue and file the necessary petition. However, since it is often difficult for the Department of Revenue to get a copy of a dependency order, a promising practice would be for the court to enter a separate child support order and then transfer it to the family division for enforcement under a new case number. Although this is an option, ideally the court would handle enforcement during the dependency proceedings unless enforcement becomes extremely difficult.

- The respondent should have the opportunity to provide proof of compliance to either the clerk or designee prior to the scheduled review hearing. If proof is provided early, the respondent should then be excused from attending the hearing and should be provided with a document indicating that he or she was excused.

Modifications and Termination

- Child support payments can be re-examined when:
  - The modification is found necessary by the court and is in the best interests of the child.
  - When the child reaches 18 years of age and it may be best for the court to extend the child support order prior to the 18th birthday.
  - When there is a substantial change in the circumstances of the parties. §61.13(1)(a), Florida Statutes.

- When there is a modification or termination of child support payments made through the State Disbursement Unit, the clerk's office must notify the State Disbursement Unit of the changes. In addition, if an Income Deduction Order is facilitating payment, an Order to Vacate should be sent by the clerk to the employer and the State Disbursement Unit when a modification or termination is entered.

- Upon closure of the dependency case, the court should advise the parents that if they require help with enforcement or other issues, the case can be transferred to family court and will receive a new case number. Filing fees may be assessed. The court should collaborate with the clerk's office when establishing the transfer to determine the best transfer procedure. Once the procedure is determined, the court should provide a handout to the parents that outlines the process and directions the parents need to follow.

X. CHILD SUPPORT IN DOMESTIC VIOLENCE CASES

- If the court determines that an injunction will be issued, the court shall also rule on such matters as contact between the parties, use of the residence, temporary custody and visitation, temporary child support, and temporary child support. Rule 12.610(c)(1)(C)(v), Fla. Fam. L. R. P.

- Temporary child support is to be awarded on the same basis as provided in chapter 61. §741.30(6)(a)(4), Florida Statutes.

- As petitioners seek safety for themselves and their children, financial needs are also a concern. At the same time, petitioners sometimes fear that seeking temporary child support will alert the respondent to their address, require physical contact during courtroom proceedings, revive efforts for visitation or child custody, or anger the respondent further. Therefore, while petitioners are aware that child support will help with the care of their children, they are also wary that it may compromise their safety.

- This promising practices model serves as suggested guidelines for how child support should be handled in domestic violence cases. Its purpose is to provide guidance on issues related to temporary child support in domestic violence injunction proceedings so petitioners may pursue child support safely and knowledgably.

The Intake Process

Make sure the petitioner understands all parts of the Petition for Injunction for Protection against Domestic Violence. In particular, make sure that the petitioner is aware that he or she may seek temporary child support from the respondent if the respondent is the legal parent or adoptive parent of a minor child or children. *See* §§741.30(6)(a)(4), 61.13(1)(a), 39.402(11)(a), Florida Statutes; Fla. Fam. L. R. P. Form 12.980(a), section VI(3).

- Find out whether paternity has ever been established and if the petitioner is already receiving child support in another case. Also ask whether the mother was legally married to a man who is not the other party in the current case when the child(ren) was conceived or born. If paternity has never been established, inform the petitioner that initiating a paternity case is one way to have child support established on a permanent basis.

- If the petitioner fears disclosing his or her address in Section I of the Petition for Injunction for Protection against Domestic Violence, make sure that the petitioner is aware that he or she can keep this information confidential. If desired, have the petitioner write "confidential" in the spaces provided in Section I, number 1, and then have the petitioner complete and file the Florida Supreme Court Approved Form 12.980(h), Petitioner's Request for Confidential Filing of Address.

- If the petitioner wishes to seek child support, make sure that Section VI is filled out completely and accurately. In addition, make sure that the petitioner also completes:
  - Family Law Financial Affidavit, Fla. Fam. L. R. P. Form 12.902(b) or (c);
  - Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit, Florida Supreme Court Approved Family Law Form 12.902(d);
  - Child Support Guidelines Worksheet, Fla. Fam. L. R. P. Form 12.902(e);
  - Notice of Social Security Number, Florida Supreme Court Approved Family Law Form 12.902(j); and
  - A Notice of Related Case Form if applicable.

- In addition to the required forms, it will be helpful for the establishment of temporary child support if the petitioner lists such information as the respondent's place of employment along with the address, phone number, fax number, rate of pay, pay stub information, a W-2 form, or a recent tax return. If the petitioner does not know this information but can obtain it and bring it to the hearing, advise him or her to do so.

- Prior to the return hearing, make sure to check for related cases to see if child support has already been established.

In Court

- If the petitioner requests temporary child support in the petition, the judge must address it in the domestic violence hearing pursuant to §741.2902(2)(d), Florida Statutes, regardless of whether other paternity, divorce, or related cases are pending. It is the best practice for the presiding judge to consider and order temporary child support at the injunction hearing to alleviate the need for the petitioner to return to court, to prevent additional contacts between the petitioner and the respondent, and to ensure that temporary child support is ordered and

hopefully received by the petitioner as soon as possible. Victims of domestic violence are often in need of child support immediately as they may lose their regular means of support when they file a petition for an injunction. Other family court cases may take months to resolve and in the meantime the children of victims of domestic violence still need to be supported. Lastly, an order for temporary child support becomes ineffective upon the entry of an order pertaining to child support in a pending or subsequent civil case pursuant to §741.30(6)(a)(4), Florida Statutes, so no two orders will conflict.

- If the petitioner does not include a request for temporary child support in the Petition for Injunction for Protection against Domestic Violence the judge should not address child support unless the respondent is present and waives notice.

- While the judge can always calculate temporary child support during the hearing, the following two options can save court time and promote accuracy:
  - Financial affidavits are filled out in court or ahead of time by both parties, and child support is calculated on the spot by using FinPlan, Divorce Power Analyzer, or similar software.
  - Financial affidavits are filled out in court or ahead of time by both parties, and the domestic violence case manager calculates the guidelines amount of child support manually using Form 12.902(e), Child Support Guidelines Worksheet.

- In Title IV-D cases and in all cases utilizing an income deduction order, the judge shall order temporary child support payments to be made through the State Disbursement Unit pursuant to §61.181, Florida Statutes. Income deduction orders should be used whenever possible; however, if payments are not being made by an income deduction order, the judge shall order that temporary child support be paid through the depository unless both parties request and the court finds that direct payments are in the best interest of the child pursuant to §61.13(1)(d), Florida Statutes. Direct payments to the petitioner should be avoided as this may increase the likelihood of contact between the petitioner and the respondent or disputes as to what was or was not actually paid.

- Each child support order shall provide the full name and date of birth of each minor child who is the subject of the child support order. The respondent should be notified when his or her first payment is due and where the check should be sent. In addition to the court case number, the name of the person obligated to pay and the name of the person to whom the payment is being made must be included with payments. It would be helpful after each hearing for the respondent to receive a paper reminding him or her of this information. An example of this is:

The first payment shall be due on (date) and is payable to the State of Florida Disbursement Unit, PO Box 8500 Tallahassee, FL 32314-8500. Include the COUNTY, COURT CASE NUMBER, and NAME of the person to whom the payment is being made, and your NAME, on each payment. No credit for payment will be given to you for any payment given directly to the custodial parent.

- Income Deduction Orders are the preferred method for collecting child support payments and should be ordered whenever possible. The deputy clerk or other designee should mail or fax the Income Deduction Order to the obligor's employer within two business days. The amount of time it takes for the obligee to receive payment varies greatly depending on the employer and payroll procedures; therefore, the judge should consider alternative payment methods for the initial payment or payments.

- When ordering temporary child support the judge should explain the following to both parties:
  - That this is temporary child support. The order for temporary child support will end when the injunction expires, or when a child support order is entered in another case;
  - The options for securing long-term child support, such as a paternity hearing;
  - That it is the petitioner's responsibility to notify the court if payments are not made;
  - The court's options for enforcing the child support order; and
  - The responsibilities of the petitioner and respondent to notify the court if the award needs to be modified due to a change in circumstance.

- Before leaving court, both parties should receive documentation showing the judge's decision on temporary child support, and the respondent should receive information on how payments should be made. If income deduction is being used, both the respondent and petitioner should receive

information on when payment will begin and how payments will be made until the Income Deduction Order takes effect.

Follow-Up and Compliance

Follow-up and compliance with temporary child support can be done in several different ways:

- One such method is the use of a tickler system that initiates compliance checks at key points in time. The tickler system should be used in the following manner:
  - The system may be set up as either an automated electronic system or a manual case file system.
  - The tickler system should alert the case manager to the timeframe or deadline contained in the injunction order for temporary child support payments.
  - After the deadline passes, if the respondent has not produced documentation of payment, the case manager should alert the court and proceed according to circuit procedures.

- A second method is the use of compliance review hearings. These hearings should be conducted in the following manner:
  - An order setting review hearings for compliance with temporary child support and all other conditions of the injunction - such as batterers intervention participation - should be issued at the final hearing. Compliance hearings should be set for 30 days and 60 days after issuance of the final judgment with the respondent being the only person required to attend.
  - At the compliance hearing the respondent must provide proof and documentation that child support is being paid as ordered by the court and that he or she is complying with all the requirements of the final judgment.
  - If the respondent fails to provide proof of child support payments or other requirements at or before the scheduled review hearings, an Order to Show Cause should be issued and a hearing date should be set before the court for no later than two weeks.
  - The respondent should have the opportunity to provide proof of compliance to either the clerk or designee prior to the scheduled review hearing. If proof is provided early, the respondent should then be

excused from attending the hearing and should be provided with a document indicating that he or she was excused.

- If there is nonpayment of child support after the completion of the compliance review hearings, the petitioner should file a Motion for Enforcement with the clerk or obtain the services of the Department of Revenue Child Support Enforcement Unit to enforce compliance. The petitioner should be made aware of this responsibility in writing by the court at the end of the final hearing.

Modifications and Termination

- The petitioner or the respondent may request a modification of an injunction or a dismissal of an injunction using the appropriate Florida Supreme Court approved Family Law Form.
- If requested, domestic violence coordinators should provide information and referrals to both the petitioner and the respondent regarding changes to or termination of the injunction.
- Upon filing, the motion to modify or terminate the injunction will be sent to the signing judge for review and a hearing will be scheduled if necessary.

When there is a modification or termination of an injunction requiring temporary child support payments made to the State Disbursement Unit, the clerk's office must notify the State Disbursement Unit of the changes. In addition, if an Income Deduction Order is facilitating payment, an Order to Vacate should be sent by the clerk to the employer and the State Disbursement Unit when a modification or termination is entered.

XI. CHILD SUPPORT IN DISSOLUTION CASES

- Commencement of a proceeding for dissolution of marriage or for alimony and child support; dissolution questionnaire. §§61.043, 409.2561, Florida Statutes. (1) A proceeding for dissolution of marriage or a proceeding under §61.09 shall be commenced by filing in the circuit court a petition entitled "In re the marriage of _____, husband, and _____, wife." A copy of the petition together with a copy of a summons shall be served upon the other party to the marriage in the same manner as service of papers in civil actions generally.

- Recent years have seen a number of legislative changes within chapter 61, Florida Statutes. Subject to a few exceptions, the concepts of parenting plans and time-sharing have replaced time-honored terms of custody and visitation. Provisions governing child support in dissolution cases have been amended as well. While the underlying premise for distribution of marital assets is equitable division, the starting point for child support is the recognition in the statutes that "each parent has a fundamental obligation to support his or her minor child." §61.29(1), Florida Statutes. How this obligation is allocated between the parents with the backdrop of dissolution of marriage proceedings is the focus of this outline; allocations specific to certain family situations may also be presented in marital settlement agreements. It should be noted that dissolution is not required for imposition of a child support obligation; *see* §61.09, Florida Statutes.

- Calculation **of Support**: (See Child Support Guidelines for more information)

- Section 61.30, Florida Statutes, is the starting point for determining the amount of child support owed; subsection (6) contains the schedule to be applied to the combined net income of the parents as if they and the children "were living in an intact household." §61.29(2), Florida Statutes. The guidelines apply to both temporary and permanent orders for support. Gross and net income is discussed in §§61.30(2)-(5), Florida Statutes.

- Form reference: Fla. Fam. L. R. P. Form 12.902(e), Child Support Guidelines Worksheet.

- **Deviation or Variation from the Guidelines**: A judge may order payment of child support, varying within 5% from the amount given in the guidelines, upon consideration of the factors set forth in §61.30(1)(a), Florida Statutes; a variance of more than 5% must be accompanied by written findings explaining why ordering support equal to the guidelines amount would be either unjust or inappropriate. Deviation factors are enumerated in §61.30(11), Florida Statutes.

- Form reference: Florida Supreme Court Approved Family Law Form 12.943, Motion to Deviate from Child Support Guidelines.

- **Department of Revenue**: Please refer to the section within this bench book on Department of Revenue Administrative Orders.

- **Enforcement of Support**: Pursuant to §61.1301(1)(a), Florida Statutes, any order establishing, enforcing, or modifying a child support obligation, other than an order for temporary support, must be accompanied by a separate order for an income deduction, if one has not already been entered. In accordance with §61.1301, Florida Statutes, income deduction orders may be issued in both Title IV-D and non-Title IV-D cases; however, immediate implementation of an income deduction order may be deferred in certain circumstances. Deferral generally requires: a showing that immediate implementation is not in the best interests of the minor child; proof of past timely support payments without an income deduction order; and either an agreement by the obligor to advise the Title IV-D agency of any change in payor and/or health insurance or an agreement signed by obligor and obligee providing an alternative arrangement. Payments are made to either the State Disbursement Unit or to a central depository within the office of the clerk of court (*See* Fla. Fam. L. R. P. 12.996(a), Income Deduction Order, for the order issued in non-Title IV-D cases.). An action for enforcement of child support may be brought in the county in which either the obligee or obligor resides. Depending on the circumstances, methods for enforcement may include garnishment; suspension of the obligor's driver's license or registration; or interception of unemployment compensation, federal tax refunds, and lottery winnings. Continued refusal to meet a court-ordered child support obligation may also subject an obligor to indirect civil contempt proceedings (See Writ of Bodily Attachment below). Direct criminal contempt proceedings may be used if the obligor has either continually and willfully neglected his or her support obligations or has affirmatively divested himself or herself of assets. Bowen v. Bowen, 471 So. 2d 1274 (Fla. 1985).

- **High School Students**: Pursuant to §743.07(2), Florida Statutes, the court may require support for a dependent between the ages of 18 and 19, who is still attending high school, so long as the student is "performing in good faith with a reasonable expectation of graduation before the age of 19."

- **Disabled students**: The court may require support for a dependent child beyond the age of 18 if the dependency is because of a metal or physical disability that began prior to the child reaching the age of majority.

- **Income (Gross and Net)**: Gross income is defined in §61.30(2)(a), Florida Statutes. Subtracting allowable deductions from gross income yields net income; allowable deductions are found in §61.30(3). The child support guidelines rely on the combined net incomes of the parents to determine the minimum required for child support.

- **Income (Imputed)**: Only legal income can be considered. Crossin v. Crossin, 979 So. 2d 298 (Fla. 4th DCA 2008).

    - Income is imputed to a voluntarily unemployed or underemployed parent and in absence of a factual finding of either physical or mental incapacity or circumstances beyond the parent's control; the imputation must be based on competent, substantial evidence. The mechanics of imputation of income are found in §61.30(2)(b); that section also authorizes the court to refuse to impute income to a parent when the court finds that it is necessary for that parent to stay home with a child. With the exception of a parent who has recently graduated or has recently become licensed or certified, income cannot be imputed at a higher level than the parent ever earned. Neither incarceration resulting from a crime tied to child support block nor a parent's financial reversal caused by the costs of defending against a crime related to the child support obligation necessarily bar imputation of income. Mascola v. Lusskin, 727 So. 2d 328 (Fla. 4th DCA 1999); Waskin v.Waskin, 484 So. 2d 1277 (Fla. 3d DCA 1986).

- **Income Deduction Orders**: Permissible with entry of temporary order establishing support or temporary order enforcing or modifying a temporary order of support; mandatory with other orders establishing, modifying, or enforcing obligations or alimony and/or child support. Payments may be made either through the depository within the clerk's office or to the State Disbursement Unit, depending on how payment is ordered. An income deduction order is effective immediately, unless the court defers it, "upon

good cause shown," and with written findings satisfying §61.1301(b)8, Florida Statutes. Forms for income deduction orders were most recently revised in June, 2011.

- Form references: Fla. Fam. L. R. P. Forms 12.996(a), Income Deduction Order (Non-Title IV-D case) and 12.996(b), Notice to Payor.

- **Information to be Submitted to the Court**: Social security number and date of birth of each party; name, date of birth, and social security number of each minor child. §61.13(8), Florida Statutes.

- **Insurance (Health and Life)**: Every order imposing a child support obligation must contain a provision for health insurance for the minor children "when health insurance is reasonable in cost and accessible to the child." §61.13(1)(b), Florida Statutes.

  Reasonableness generally means that the cost does not exceed 5% of the gross income of the parent responsible for providing it; accessibility means that it may be used in the children's home county, "or in another county if the parent who has the most time under the time-sharing plan agrees." In circumstances of equal time-sharing, accessible means either the child's home county or another if both parents agree. The details of health insurance for minor children are spelled out in §61.13(1)(b). Section 61.13(1)(c) authorizes a court having imposed a child support obligation to order the obligor to either purchase or maintain life insurance to secure the obligation. Although there is no "reasonableness" requirement for life insurance in the statute, there are cases on that point.

- **Methods of Payment**: Section 61.1301(1)(a), Florida Statutes, requires issuance of a separate income deduction order to accompany any non-temporary order establishing, enforcing, or modifying an order for child support, if one has not already been entered; however, depending on circumstances, immediate implementation of the income deduction order may be deferred. Generally, payments made in accordance with an income deduction order are made to either the State Disbursement Unit or the central depository within the clerk's office. (Please see Enforcement above).

- **Military Parents**: When a temporary order is entered under §61.13002, Florida Statutes, the court may address child support by: "entering an order of temporary support from the service member to the other parent under §61.30; requiring the service member to enroll the child as a military dependent with

DEERs, TriCare, or other similar benefits available to military dependents as provided by the service member's branch of service and federal regulations; or suspending, abating, or reducing the child support obligation of the non-service member until the custody judgment or time-share order previously in effect is reinstated." Section 61.13002 applies only to temporary modifications due to military service; permanent change of station moves by military personnel are governed by the provisions regarding relocation, §61.13001, Florida Statutes.

- Form references: Florida Supreme Court Approved Family Law Forms 12.905(d), Supplemental Petition for Temporary Modification of Parenting Issues for Child(ren) of Parent Activated, Deployed, or Temporarily Assigned to Military Service; and 12.950(a), (c), (d), (e), (f), and (i), regarding relocation.

- **Modification of Support**: There are numerous justifications a parent may present when petitioning for modification of child support, but vital to a request for modification is either: (1) a substantial change in circumstances or in the financial ability of either party, which occurs subsequent to the imposition of the child support obligation, whether that obligation is agreed to or court-ordered; or (2) a child or children who benefit from the obligation are no longer entitled to support, leading to a reduction or termination of the obligation. §§61.13, 61.14, Florida Statutes.

- **Obligation for Support**: "Each parent has a fundamental obligation to support his or her minor or legally dependent child." §61.29(1), Florida Statutes.

- **Overnights**: The number of overnights comes into play when deviation from the guidelines is being considered. "Substantial amount of time," as defined in §61.30(11)(b)8, Florida Statutes, means that a parent exercises time-sharing of at least 20% of the overnights in a year. A parenting arrangement in which "the child spends a significant amount of time, but less than 20% of the overnights with one parent," is a factor for deviation under §61.30(11)(a)10. The threshold percentage of overnights required to be considered "substantial" has been the subject of legislative action within the past few years; it was recently reduced from 40% to 20%. The number of overnights must be entered on the guidelines worksheet, form 12.902(e). §61.30(11), Florida Statutes.

- **Reduction or Termination of Support**: Unless §743.07(2), Florida Statutes, applies (see High School Students above) or the parties agree otherwise, a parent's obligation for child support terminates on a child's 18th birthday, at which time, the overall obligation for any remaining minor or dependent children is reduced in accordance with the schedule required by

§61.13(1)(a)(1)b, Florida Statutes. That schedule must specify the date of reduction or termination. §61.13(1)(a), Florida Statutes.

- **Retroactive Support**: In its initial determination of child support in a dissolution of marriage proceeding, the court has the discretion to "award child support retroactive to the date when the parents did not reside together in the same household with the child, not to exceed a period of 24 months preceding filing of the petition, regardless of whether that date precedes the filing of the petition." §61.30(17), Florida Statutes. Section 61.14(1)(a), Florida Statutes, allows the court to modify an order of support by increasing or decreasing the support retroactively to the date of filing of the initial or supplemental petition for modification, "as equity requires," unless otherwise provided in §61.30(17). Retroactive child support may be awarded in temporary orders.

- **Service**: Service of process by publication (constructive service) is permitted for dissolution or annulment of marriage; cases involving either alimony or child support require personal service. §49.011(4), Florida Statutes.

- **State Disbursement Unit**: The State Disbursement Unit is the agency responsible for collection and disbursement of child support payments in all Title IV-D cases and in non-Title IV-D cases in which the initial support order was issued in Florida after January 1, 1994, and in which the obligor's child support obligation is paid through income deduction.

- **Tax Issues**: As these issues may be complicated, they are outside of the scope of this outline; however, the question of whether one parent receives the federal income tax dependency or whether the tax credit rotates between parents should be considered during the dissolution proceedings. Although a court is not authorized to allocate the dependency exemption, it can require a custodial parent to transfer it to the non-custodial parent so long as the non-custodial parent is current with support payments. (Geddies v. Geddies, 43 So. 3d 888 (Fla. 1st DCA 2010). By whom child support payments are deducted and to whom they are taxed should also be taken into consideration as unallocated support payments may be viewed as alimony by the IRS. It is important that the parties consult attorneys and/or accountants regarding taxation issues.

- **Temporary Support**: The child support guidelines (see above) apply to temporary support orders. A trial court may retroactively reduce a parent's obligation for temporary child support, but cannot retroactively increase temporary child support payments for the period prior to the date the motion

to increase the child support is filed, Flores v. Flores, 874 So. 2d 1211 (Fla. 4th DCA 2004).

- **Termination of Support**: (see Reduction or Termination of Support above)
- **Title IV-D Payments**: Title IV-D cases have some administrative remedies for non-payment of child support that non-Title IV-D do not, such as interception of unemployment compensation benefits, federal tax refunds, and lottery winnings.
- **Writs of Bodily Attachment**: (also see Enforcement) Issuance of this writ in connection with a court-ordered child support obligation must include a physical description, as required by §61.11(2)(a), Florida Statutes, and must advise the contemnor how he or she can purge the contempt. The writ must include the amount of the purge payment and how it is to be allocated between unpaid support, and other amounts owing such as the sheriff's fee or Department of Revenue costs. *See also* Florida Supreme Court Approved Family Law Form 12.962, Writ of Bodily Attachment.

XII. DEPARTMENT OF REVENUE ADMINISTRATIVE SUPPORT ORDERS

- Child support orders in Title IV-D cases can now be established administratively by the Florida Department of Revenue in a quasi-judicial procedure. It does not supplant or replace the traditional judicial process, but provides an alternative procedure when there is not a judicial support order. §409.2563(2)(a), Florida Statutes.

- **The Department of Revenue is authorized to order genetic testing and establish paternity administratively. A final order determining paternity must be based on genetic testing results equal to or greater than a 99% probability of paternity. A final order of paternity entered by the Department of Revenue has the same force and effect as a paternity judgment entered by the circuit court under Chapter 742, Florida Statutes. §409.256, Florida Statutes.**

- The Department of Revenue may modify or terminate its administrative order, unless the circuit court has taken jurisdiction by issuing a prospective superseding order. §409.2563(10)(d), Florida Statutes.

- Evidentiary hearings are conducted by the Division of Administrative Hearings. §409.2563(6), Florida Statutes.

- The administrative procedure only allows the establishment of child support obligations. The Division of Administrative Hearings does not have jurisdiction to hear or determine dissolution of marriage, separation, alimony or spousal support, termination of parental rights, dependency, disputed paternity (except as provided in §409.256, Florida Statutes) or award of or change to time sharing. §409.2563(2)(b), Florida Statutes.

    - The Department of Revenue was obligated to terminate an administrative proceeding to establish child support and continue in circuit court once the father requested paternity testing in circuit court. Neither the Department of Revenue nor the Division of Administrative Hearings had jurisdiction to hear or determine issues of disputed paternity. Mendez v. Dept. of Revenue, 898 So. 2d 1060 (Fla. 2d DCA 2005).

- When paternity has already been established by affidavit, a birth certificate, or a prior judicial proceeding, the father is not a "putative father" and the Department of Revenue, the mother, or the child do not bear the burden of proving paternity. Fernandez v. Dept. of Revenue, 971 So. 2d 875 (Fla. 3d DCA 2007).

- A father who has acknowledged paternity will remain responsible for child support until he establishes good cause or prevails in his own action in circuit court to disestablish paternity and terminate the payment obligations. The father's unverified request for DNA testing, without a separate circuit court action and affidavit conforming to the applicable paternity statutes, was insufficient to halt the administrative proceeding for the benefit of the child. Fernandez v. Dept. of Revenue, 971 So. 2d 875 (Fla. 3d DCA 2007).

- The department may proceed administratively to establish support on behalf of:
  - An applicant or recipient of public assistance,
  - A former recipient of public assistance,
  - An individual who has applied for services,
  - Itself or the child as provided by §409.2561, Florida Statutes, in public assistance cases, or
  - A state or local government of another state.
    §409.2563(2)(c), Florida Statutes.

A support order issued by a circuit court prospectively supersedes an administrative support order rendered by the Department of Revenue. §409.2563(2)(d), Florida Statutes. However, to supersede an administrative order, the court must prospectively change the support obligations and determine the amount of any unpaid support owed under the administrative order, and shall include the amount as arrearage in its superseding order. The court may not retroactively modify any unpaid support owed under the administrative order, except as provided by §61.14(1)(a). §409.2563(10)(c), Florida Statutes. Dept. of Revenue ex rel. Chamberlain v. Manasala, 982 So. 2d 1257 (Fla. 1st DCA 2008) (holding that although a circuit court is authorized to supersede the entry of an administrative support order by entering a prospective order modifying the child support award, it is not authorized to enter an order vacating or retroactively affecting the administrative support order).

- The administrative order must provide and state findings, if applicable, concerning:
  - The full name and date of birth of the child or children;
  - The names of the parents and caregivers;
  - The parent's duty and ability to provide support;
  - The amount of the parent's monthly support obligation;
  - Any obligation to pay retroactive support;
  - The parent's obligation to provide for health care;
  - The beginning date of any required monthly payments and health insurance;
  - That all support payments ordered must be paid to the Florida State Disbursement Unit;
  - That the parents or caregiver must file a financial affidavit, appropriate disclosures, and any change of address;
  - That if the parent ordered to pay support receives unemployment compensation benefits, the payor shall withhold, and transmit to the department, 40 percent of the benefits for payment of support, not to exceed the amount owed. §409.2563(7)(e), Florida Statutes.

- An income deduction order must be incorporated into the administrative support order or, if not, then rendered separately. §409.2563(7)(e), Florida Statutes.

- The Department of Revenue may utilize this procedure to establish a child support obligation against a nonresident over whom the state may assert personal jurisdiction. §409.2563(3), Florida Statutes.

- The parent from whom support is being sought may consent in writing to entry of an administrative support order without a hearing. §409.2563(5)(c)(4), Florida Statutes.

Modification

- If it has not been superseded by a subsequent court order, the Department of Revenue may modify, suspend, or terminate an administrative support order in a Title IV-D case. §409.2563(12), Florida Statutes.

- A circuit court order may supersede a prior order by changing the support obligations prospectively. The circuit court does not have jurisdiction to vacate, amend, modify, or terminate an administrative order retroactively.

State, Dept. of Revenue ex rel. Chamberlain v. Manasala, 982 So. 2d 1257 (Fla. 1st DCA 2008).

- A circuit court order which required the father to pay the exact amount he had been ordered to pay under final administrative support order, was an enforcement order rather than a superseding order. The Department of Revenue therefore, had jurisdiction to enter administrative modification order. The circuit court order did not prospectively change the father's support obligation. Dept. of Revenue ex rel. Gauthier v. Hoover, 40 So. 3d 99 (Fla. 5th DCA 2010).

Judicial Enforcement

- An administrative support order issued with or without a hearing may be enforced by any lawful means except contempt. §§409.2563(5)(c)(6), 409.2563(9)(d)(1), Florida Statutes.
  - If the circuit court issues its own order enforcing the administrative support order, the circuit court may enforce its own order by contempt. §409.2563(10)(b), Florida Statutes.

- The Department of Revenue may implement an income deduction notice immediately upon rendition of an income deduction order, whether it is incorporated in the administrative support order or rendered separately. §409.2563(9)(a), Florida Statutes.

- The Department of Revenue may initiate other collection action 15 days after the date an administrative support order is rendered. §409.2563(9)(b), Florida Statutes.