

## Florida Divorce Laws

### Chapter 61 Dissolution Of Marriage; Support; Custody

#### 61.001 Purpose of chapter. -

- (1) This chapter shall be liberally construed and applied.
- (2) Its purposes are:
  - (a) To preserve the integrity of marriage and to safeguard meaningful family relationships;
  - (b) To promote the amicable settlement of disputes that arise between parties to a marriage; and
  - (c) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.

#### 61.011 Dissolution in chancery. -

Proceedings under this chapter are in chancery.

#### 61.021 Residence requirements. -

To obtain a dissolution of marriage, one of the parties to the marriage must reside 6 months in the state before the filing of the petition.

#### 61.031 Dissolution of marriage to be a vinculo. -

No dissolution of marriage is from bed and board, but is from bonds of matrimony.

#### 61.043 Commencement of a proceeding for dissolution of marriage or for alimony and child support; dissolution questionnaire. -

- (1) A proceeding for dissolution of marriage or a proceeding under s. 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.
- (2) Upon filing for dissolution of marriage, the petitioner must complete and file with the clerk of the circuit court an unsigned anonymous informational questionnaire. For purposes of anonymity, completed questionnaires must be kept in a separate file for later distribution by the clerk to researchers from the Florida State University Center for Marriage and Family. These questionnaires must be made available to researchers from the Florida State University Center for Marriage and Family at their request. The actual questionnaire shall be formulated by researchers from Florida State University who shall distribute them to the clerk of the circuit court in each county.

#### **61.044 Certain existing defenses abolished. -**

The defenses to divorce and legal separation of condonation, collusion, recrimination, and laches are abolished.

#### **61.046 Definitions. -**

As used in this chapter:

(1) "Business day" means any day other than a Saturday, Sunday, or legal holiday.

(2) "Clerk of Court Child Support Collection System" or "CLERC System" means the automated system established pursuant to s. 61.181(2)(b)1., integrating all clerks of court and depositories and through which payment data and State Case Registry data is transmitted to the department's automated child support enforcement system.

(3) "Custodial parent" or "primary residential parent" means the parent with whom the child maintains his or her primary residence.

(4) "Department" means the Department of Revenue.

(5) "Depository" means the central governmental depository established pursuant to s. 61.181, created by special act of the Legislature or other entity established before June 1, 1985, to perform depository functions and to receive, record, report, disburse, monitor, and otherwise handle alimony and child support payments not otherwise required to be processed by the State Disbursement Unit.

(6) "Federal Case Registry of Child Support Orders" means the automated registry of support order abstracts and other information established and maintained by the United States Department of Health and Human Services as provided by 42 U.S.C. s. 653(h).

(7) "Income" means any form of payment to an individual, regardless of source, including, but not limited to: wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government. United States Department of Veterans Affairs disability benefits and unemployment compensation, as defined in chapter 443, are excluded from this definition of income except for purposes of establishing an amount of support.

(8) "IV-D" means services provided pursuant to Title IV-D of the Social Security Act, 42 U.S.C. ss. 651 et seq.

(9) "Local officer" means an elected or appointed constitutional or charter government official including, but not limited to, the state attorney and clerk of the circuit court.

(10) "National medical support notice" means the notice required under 42 U.S.C. s. 666(a)(19).

(11) "Noncustodial parent" means the parent with whom the child does not maintain his or her primary residence.

(12) "Obligee" means the person to whom payments are made pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.

(13) "Obligor" means a person responsible for making payments pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.

(14) "Payor" means an employer or former employer or any other person or agency providing or administering income to the obligor.

(15) "Shared parental responsibility" means a court-ordered relationship in which both parents retain full parental rights and responsibilities with respect to their child and in which both parents confer with each other so that major decisions affecting the welfare of the child will be determined jointly.

(16) "Sole parental responsibility" means a court-ordered relationship in which one parent makes decisions regarding the minor child.

(17) "State Case Registry" means the automated registry maintained by the Title IV-D agency, containing records of each Title IV-D case and of each support order established or modified in the state on or after October 1, 1998. Such records shall consist of data elements as required by the United States Secretary of Health and Human Services.

(18) "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the department pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the department in which the support order was initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.

(19) "Support order" means a judgment, decree, or order, whether temporary or final, issued by a court of competent jurisdiction or administrative agency for the support and maintenance of a child which provides for monetary support, health care, arrearages, or past support. When the child support obligation is being enforced by the Department of Revenue, the term "support order" also means a judgment, decree, or order, whether temporary or final, issued by a court of competent jurisdiction for the support and maintenance of a child and the spouse or former spouse of the obligor with whom the child is living which provides for monetary support, health care, arrearages, or past support.

(20) "Support," unless otherwise specified, means:

(a) Child support and, when the child support obligation is being enforced by the Department of Revenue, spousal support or alimony for the spouse or former spouse of the obligor with whom the child is living.

(b) Child support only in cases not being enforced by the Department of Revenue.

### **61.052 Dissolution of marriage. -**

(1) No judgment of dissolution of marriage shall be granted unless one of the following facts appears, which shall be pleaded generally:

(a) The marriage is irretrievably broken.

(b) Mental incapacity of one of the parties. However, no dissolution shall be allowed unless the party alleged to be incapacitated shall have been adjudged incapacitated according to the provisions of s. 744.331 for a preceding period of at least 3 years. Notice of the proceeding for dissolution shall be served upon one of the nearest blood relatives or guardian of the incapacitated person, and the relative or guardian shall be entitled to appear and to be heard upon the issues. If the incapacitated party has a general guardian other than the party bringing the proceeding, the petition and summons shall be served upon the incapacitated party and the guardian; and the guardian shall defend and protect the interests of the incapacitated party. If the incapacitated party has no guardian other than the party bringing the proceeding, the court shall appoint a guardian ad litem to defend and protect the interests of the incapacitated party. However, in all dissolutions of marriage granted on the basis of incapacity, the court may require the petitioner to pay alimony pursuant to the provisions of s. 61.08.

(2) Based on the evidence at the hearing, which evidence need not be corroborated except to establish that the residence requirements of s. 61.021 are met which may be corroborated by a valid Florida driver's license, a Florida voter's registration card, a valid Florida identification card issued under s. 322.051, or the testimony or affidavit of a third party, the court shall dispose of the petition for dissolution of marriage when the petition is based on the allegation that the marriage is irretrievably broken as follows:

(a) If there is no minor child of the marriage and if the responding party does not, by answer to the petition for dissolution, deny that the marriage is irretrievably broken, the court shall enter a judgment of dissolution of the marriage if the court finds that the marriage is irretrievably broken.

(b) When there is a minor child of the marriage, or when the responding party denies by answer to the petition for dissolution that the marriage is irretrievably broken, the court may:

1. Order either or both parties to consult with a marriage counselor, psychologist, psychiatrist, minister, priest, rabbi, or any other person deemed qualified by the court and acceptable to the party or parties ordered to seek consultation; or
2. Continue the proceedings for a reasonable length of time not to exceed 3 months, to enable the parties themselves to effect a reconciliation; or
3. Take such other action as may be in the best interest of the parties and the minor child of the marriage.

If, at any time, the court finds that the marriage is irretrievably broken, the court shall enter a judgment of dissolution of the marriage. If the court finds that the marriage is not irretrievably broken, it shall deny the petition for dissolution of marriage.

(3) During any period of continuance, the court may make appropriate orders for the support and alimony of the parties; the primary residence, custody, rotating custody, visitation, support, maintenance, and education of the minor child of the marriage; attorney's fees; and the preservation of the property of the parties.

(4) A judgment of dissolution of marriage shall result in each spouse having the status of being single and unmarried. No judgment of dissolution of marriage renders the child of the marriage a child born out of wedlock.

(5) The court may enforce an antenuptial agreement to arbitrate a dispute in accordance with the law and tradition chosen by the parties.

(6) Any injunction for protection against domestic violence arising out of the dissolution of marriage proceeding shall be issued as a separate order in compliance with chapter 741 and shall not be included in the judgment of dissolution of marriage.

(7) In the initial pleading for a dissolution of marriage as a separate attachment to the pleading, each party is required to provide his or her social security number and the full names and social security numbers of each of the minor children of the marriage.

(8) Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. Each party is also required to provide the full name, date of birth, and social security number for each minor child of the marriage. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement.

#### **61.061 Proceedings against nonresidents. -**

Proceedings may be brought against persons residing out of the state.

#### **61.071 Alimony pendente lite; suit money. -**

In every proceeding for dissolution of the marriage, a party may claim alimony and suit money in the petition or by motion, and if the petition is well founded, the court shall allow a reasonable sum therefor. If a party in any proceeding for dissolution of marriage claims alimony or suit money in his or her answer or by motion, and the answer or motion is well founded, the court shall allow a reasonable sum therefor.

#### **61.075 Equitable distribution of marital assets and liabilities. -**

(1) In a proceeding for dissolution of marriage, in addition to all other remedies available to a court to do equity between the parties, or in a proceeding for disposition of assets following a dissolution of marriage by a court which lacked jurisdiction over the absent spouse or lacked jurisdiction to dispose of the assets, the court shall set apart to each spouse that spouse's nonmarital assets and liabilities, and in distributing the marital assets and liabilities between the parties, the court must begin with the premise that the distribution should be equal, unless there is a justification for an unequal distribution based on all relevant factors, including:

(a) The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.

(b) The economic circumstances of the parties.

(c) The duration of the marriage.

(d) Any interruption of personal careers or educational opportunities of either party.

- (e) The contribution of one spouse to the personal career or educational opportunity of the other spouse.
  - (f) The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.
  - (g) The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties.
  - (h) The desirability of retaining the marital home as a residence for any dependent child of the marriage, or any other party, when it would be equitable to do so, it is in the best interest of the child or that party, and it is financially feasible for the parties to maintain the residence until the child is emancipated or until exclusive possession is otherwise terminated by a court of competent jurisdiction. In making this determination, the court shall first determine if it would be in the best interest of the dependent child to remain in the marital home; and, if not, whether other equities would be served by giving any other party exclusive use and possession of the marital home.
  - (i) The intentional dissipation, waste, depletion, or destruction of marital assets after the filing of the petition or within 2 years prior to the filing of the petition.
  - (j) Any other factors necessary to do equity and justice between the parties.
- (2) If the court awards a cash payment for the purpose of equitable distribution of marital assets, to be paid in full or in installments, the full amount ordered shall vest when the judgment is awarded and the award shall not terminate upon remarriage or death of either party, unless otherwise agreed to by the parties, but shall be treated as a debt owed from the obligor or the obligor's estate to the obligee or the obligee's estate, unless otherwise agreed to by the parties.
- (3) In any contested dissolution action wherein a stipulation and agreement has not been entered and filed, any distribution of marital assets or marital liabilities shall be supported by factual findings in the judgment or order based on competent substantial evidence with reference to the factors enumerated in subsection (1). The distribution of all marital assets and marital liabilities, whether equal or unequal, shall include specific written findings of fact as to the following:
- (a) Clear identification of nonmarital assets and ownership interests;
  - (b) Identification of marital assets, including the individual valuation of significant assets, and designation of which spouse shall be entitled to each asset;
  - (c) Identification of the marital liabilities and designation of which spouse shall be responsible for each liability;
  - (d) Any other findings necessary to advise the parties or the reviewing court of the trial court's rationale for the distribution of marital assets and allocation of liabilities.
- (4) The judgment distributing assets shall have the effect of a duly executed instrument of conveyance, transfer, release, or acquisition which is recorded in the county where the property is located when the judgment, or a certified copy of the judgment, is recorded in the official records of the county in which the property is located.
- (5) As used in this section:

(a) "Marital assets and liabilities" include:

1. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them;
2. The enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both;
3. Interspousal gifts during the marriage;
4. All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs; and
5. All real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim for a special equity.

(b) "Nonmarital assets and liabilities" include:

1. Assets acquired and liabilities incurred by either party prior to the marriage, and assets acquired and liabilities incurred in exchange for such assets and liabilities;
2. Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent, and assets acquired in exchange for such assets;
3. All income derived from nonmarital assets during the marriage unless the income was treated, used, or relied upon by the parties as a marital asset;
4. Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties, and assets acquired and liabilities incurred in exchange for such assets and liabilities; and
5. Any liability incurred by forgery or unauthorized signature of one spouse signing the name of the other spouse. Any such liability shall be a nonmarital liability only of the party having committed the forgery or having affixed the unauthorized signature. In determining an award of attorney's fees and costs pursuant to s. 61.16, the court may consider forgery or an unauthorized signature by a party and may make a separate award for attorney's fees and costs occasioned by the forgery or unauthorized signature. This subparagraph does not apply to any forged or unauthorized signature that was subsequently ratified by the other spouse.

(6) The cut-off date for determining assets and liabilities to be identified or classified as marital assets and liabilities is the earliest of the date the parties enter into a valid separation agreement, such other date as may be expressly established by such agreement, or the date of the filing of a petition for dissolution of marriage. The date for determining value of assets and the amount of liabilities identified or classified as marital is the date or dates as the judge determines is just and equitable under the circumstances. Different assets may be valued as of different dates, as, in the judge's discretion, the circumstances require.

(7) All assets acquired and liabilities incurred by either spouse subsequent to the date of the marriage and not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities. Such presumption is overcome by a showing that the assets and liabilities are nonmarital assets and liabilities. The presumption is only for evidentiary purposes in the dissolution proceeding and does not vest title. Title to disputed assets shall vest only by the judgment of a court. This section does not require the joinder of spouses in the conveyance, transfer, or hypothecation of a spouse's individual property; affect the laws of descent and distribution; or establish community property in this state.

(8) The court may provide for equitable distribution of the marital assets and liabilities without regard to alimony for either party. After the determination of an equitable distribution of the marital assets and liabilities, the court shall consider whether a judgment for alimony shall be made.

(9) To do equity between the parties, the court may, in lieu of or to supplement, facilitate, or effectuate the equitable division of marital assets and liabilities, order a monetary payment in a lump sum or in installments paid over a fixed period of time.

#### **61.076 Distribution of retirement plans upon dissolution of marriage. -**

(1) All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs are marital assets subject to equitable distribution.

(2) If the parties were married for at least 10 years, during which at least one of the parties who was a member of the federal uniformed services performed at least 10 years of creditable service, and if the division of marital property includes a division of uniformed services retired or retainer pay, the final judgment shall include the following:

##### **(a) Sufficient information to identify the member of the uniformed services;**

(b) Certification that the Soldiers' and Sailors' Civil Relief Act of 1940 was observed if the decree was issued while the member was on active duty and was not represented in court;

(c) A specification of the amount of retired or retainer pay to be distributed pursuant to the order, expressed in dollars or as a percentage of the disposable retired or retainer pay.

(3) An order which provides for distribution of retired or retainer pay from the federal uniformed services shall not provide for payment from this source more frequently than monthly and shall not require the payor to vary normal pay and disbursement cycles for retired or retainer pay in order to comply with the order.

#### **61.077 Determination of entitlement to setoffs or credits upon sale of marital home. -**

A party is not entitled to any credits or setoffs upon the sale of the marital home unless the parties' settlement agreement, final judgment of dissolution of marriage, or final judgment equitably distributing assets or debts specifically provides that certain credits or setoffs are allowed or given at the time of the sale. In the absence of a settlement agreement involving the marital home, the court shall consider the following factors before determining the issue of credits or setoffs in its final judgment:

- (1) Whether exclusive use and possession of the marital home is being awarded, and the basis for the award;
- (2) Whether alimony is being awarded to the party in possession and whether the alimony is being awarded to cover, in part or otherwise, the mortgage and taxes and other expenses of and in connection with the marital home;
- (3) Whether child support is being awarded to the party in possession and whether the child support is being awarded to cover, in part or otherwise, the mortgage and taxes and other expenses of and in connection with the marital home;
- (4) The value to the party in possession of the use and occupancy of the marital home;
- (5) The value of the loss of use and occupancy of the marital home to the party out of possession;
- (6) Which party will be entitled to claim the mortgage interest payments, real property tax payments, and related payments in connection with the marital home as tax deductions for federal income tax purposes;
- (7) Whether one or both parties will experience a capital gains taxable event as a result of the sale of the marital home; and
- (8) Any other factor necessary to bring about equity and justice between the parties.

#### **61.08 Alimony. -**

- (1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be rehabilitative or permanent in nature. In any award of alimony, the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. In all dissolution actions, the court shall include findings of fact relative to the factors enumerated in subsection (2) supporting an award or denial of alimony.
- (2) In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:
  - (a) The standard of living established during the marriage.
  - (b) The duration of the marriage.
  - (c) The age and the physical and emotional condition of each party.
  - (d) The financial resources of each party, the nonmarital and the marital assets and liabilities distributed to each.
  - (e) When applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
  - (f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.

(g) All sources of income available to either party.

The court may consider any other factor necessary to do equity and justice between the parties.

(3) To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a life insurance policy or a bond, or to otherwise secure such alimony award with any other assets which may be suitable for that purpose.

(4)(a) With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless the provisions of paragraph (c) or paragraph (d) apply, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless the provisions of paragraph (c) or paragraph (d) apply, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support shall provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If the provisions of subparagraph 1. apply, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency shall have the same rights as the obligee in requesting that payments be made through the depository.

#### **61.09 Alimony and child support unconnected with dissolution. -**

If a person having the ability to contribute to the maintenance of his or her spouse and support of his or her minor child fails to do so, the spouse who is not receiving support or who has custody of the child or with whom the child has primary residence may apply to the court for alimony and for support for the child without seeking dissolution of marriage, and the court shall enter an order as it deems just and proper.

#### **61.10 Adjudication of obligation to support spouse or minor child unconnected with dissolution; child custody, child's primary residence, and visitation. -**

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, shall establish the child's primary residence, and shall determine the custody and visitation rights of the parties. Such an action does not preclude either party from maintaining any other proceeding under this chapter for other or additional relief at any time.

#### **61.11 Writs. -**

(1) When either party is about to remove himself or herself or his or her 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 alimony or support to the party who should receive it.

(2)(a) When the court issues a writ of bodily attachment in connection with a court-ordered support obligation, the writ or attachment to the writ must include, at a minimum, such 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 and authorization for the assessment and collection of the actual costs associated with the service of the writ and transportation of the respondent in compliance thereof. 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.

(b) The clerk of the court shall forward a copy of the writ for service to the sheriff of the county in which the writ is issued.

(c) Upon receipt of a writ from the clerk of the court, the sheriff shall enter the information on any unserved writ into the Florida Crime Information Center telecommunications system to make the information available to other law enforcement agencies within the state. The writ shall be enforceable in all counties of the state.

(d) Upon receipt of the purge payment, the receiving agency shall provide the subject with a written receipt acknowledging such payment, which must be carried on the person of the respondent for a period of at least 30 days from the date of payment as proof of such payment. A sheriff receiving such payment shall forward the funds to the sheriff who entered the information about the writ into the Florida Crime Information Center telecommunications system and who shall forward the funds to the appropriate clerk of court.

(e) After a writ is modified, purged, recalled, terminated, or otherwise rendered ineffective by ruling of the court, the clerk of the court shall notify the sheriff receiving the original writ. That agency shall modify or cancel the entry in the Florida Crime Information Center telecommunications system in accordance with such notification.

#### **61.12 Attachment or garnishment of amounts due for alimony or child support. -**

(1) So much as the court orders of the money or other things due to any person or public officer, state or county, whether the head of a family residing in this state or not, when the money or other thing is due for the personal labor or service of the person or otherwise, is subject to attachment or garnishment to enforce and satisfy the orders and judgments of the court of this state for alimony, suit money, or child support, or other orders in proceedings for dissolution, alimony, or child support; when the money or other thing sought to be attached or garnished is the salary of a public officer, state or county, the writ of attachment or garnishment shall be served on the public officer whose duty it is to pay the salary, who shall obey the writ as provided by law in other cases. It is the duty of the officer to notify the public officer whose duty it is to audit or issue a warrant for the salary sought to be attached immediately upon service of

the writ. A warrant for as much of the salary as is ordered held under the writ shall not issue except pursuant to court order unless the writ is dissolved. No more of the salary shall be retained by virtue of the writ than is provided for in the order.

(2) The provisions of chapter 77 or any other provision of law to the contrary notwithstanding, the court may issue a continuing writ of garnishment to an employer to enforce the order of the court for periodic payment of alimony or child support or both. The writ may provide that the salary of any person having a duty of support pursuant to such order be garnisheed on a periodic and continuing basis for so long as the court may determine or until otherwise ordered by the court or a court of competent jurisdiction in a further proceeding. Any disciplinary action against the employee by an employer to whom a writ is issued pursuant to this section solely because such writ is in effect constitutes a contempt of court, and the court may enter such order as it deems just and proper.

### **61.121 Rotating custody. -**

The court may order rotating custody if the court finds that rotating custody will be in the best interest of the child.

### **61.122 Child custody evaluations; presumption of psychologist's good faith; prerequisite to parent's filing suit; award of fees, costs, reimbursement. -**

(1) A psychologist who has been appointed by the court to conduct a child custody evaluation in a judicial proceeding is presumed to be acting in good faith if the evaluation has been conducted pursuant to standards that a reasonable psychologist would have used as recommended by the American Psychological Association's guidelines for child custody evaluation in divorce proceedings.

(2) An administrative complaint against a court-appointed psychologist which relates to a child custody evaluation conducted by the psychologist may not be filed anonymously. The individual who files such an administrative complaint must include in the complaint his or her name, address, and telephone number.

(3) A parent who wishes to file a legal action against a court-appointed psychologist who has acted in good faith in conducting a child custody evaluation must petition the judge who presided over the child custody proceeding to appoint another psychologist. Upon the parent's showing of good cause, the court shall appoint another psychologist. The court shall make a determination as to who is responsible for all court costs and attorney's fees associated with making such an appointment.

(4) If a legal action, whether it be a civil action, a criminal action, or an administrative proceeding, is filed against a court-appointed psychologist in a child custody proceeding, the claimant is responsible for all reasonable costs and reasonable attorney's fees associated with the action for both parties if the psychologist is held not liable. If the psychologist is held liable in civil court, the psychologist must pay all reasonable costs and reasonable attorney's fees for the claimant.

### **61.13 Custody and support of children; visitation rights; power of court in making orders. -**

(1)(a) In a proceeding for dissolution of marriage, the court may at any time order either or both parents who owe a duty of support to a child to pay support in accordance with the guidelines in s. 61.30. The court initially entering an order requiring one or both parents to make child support payments shall have continuing jurisdiction after the entry of the initial order to modify the amount and terms and conditions of the child support payments when the modification is found

necessary by the court 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 court initially entering a child support order shall also have continuing jurisdiction to require the obligee to report to the court on terms prescribed by the court regarding the disposition of the child support payments.

(b) Each order for support shall contain a provision for health care coverage for the minor child when the coverage is reasonably available. Coverage is reasonably available if either the obligor or obligee has access at a reasonable rate to a group health plan. The court may require the obligor either to provide health care coverage or to reimburse the obligee for the cost of health care coverage for the minor child when coverage is provided by the obligee. In either event, the court shall apportion the cost of coverage, and any noncovered medical, dental, and prescription medication expenses of the child, to both parties by adding the cost to the basic obligation determined pursuant to s. 61.30(6). The court may order that payment of uncovered medical, dental, and prescription medication expenses of the minor child be made directly to the obligee on a percentage basis.

1. In a non-Title IV-D case, a copy of the court order for health care coverage shall be served on the obligor's union or employer by the obligee when the following conditions are met:

a. The obligor fails to provide written proof to the obligee within 30 days after receiving effective notice of the court order, that the health care coverage has been obtained or that application for coverage has been made;

b. The obligee serves written notice of intent to enforce an order for health care coverage on the obligor by mail at the obligor's last known address; and

c. The obligor fails within 15 days after the mailing of the notice to provide written proof to the obligee that the health care coverage existed as of the date of mailing.

2.a. A support order enforced under Title IV-D of the Social Security Act which requires that the obligor provide health care coverage is enforceable by the department through the use of the national medical support notice, and an amendment to the support order is not required. The department shall transfer the national medical support notice to the obligor's union or employer. The department shall notify the obligor in writing that the notice has been sent to the obligor's union or employer, and the written notification must include the obligor's rights and duties under the national medical support notice. The obligor may contest the withholding required by the national medical support notice based on a mistake of fact. To contest the withholding, the obligor must file a written notice of contest with the department within 15 business days after the date the obligor receives written notification of the national medical support notice from the department. Filing with the department is complete when the notice is received by the person designated by the department in the written notification. The notice of contest must be in the form prescribed by the department. Upon the timely filing of a notice of contest, the department shall, within 5 business days, schedule an informal conference with the obligor to discuss the obligor's factual dispute. If the informal conference resolves the dispute to the obligor's satisfaction or if the obligor fails to attend the informal conference, the notice of contest is deemed withdrawn. If the informal conference does not resolve the dispute, the obligor may request an administrative hearing under chapter 120 within 5 business days after the termination of the informal conference, in a form and manner prescribed by the department. However, the filing of a notice of contest by the obligor does not delay the withholding of premium payments by the union, employer, or health plan administrator. The union, employer, or health plan administrator must implement the withholding as directed by the national medical support notice unless notified by the department that the national medical support notice is terminated.

b. In a Title IV-D case, the department shall notify an obligor's union or employer if the obligation to provide health care coverage through that union or employer is terminated.

3. In a non-Title IV-D case, upon receipt of the order pursuant to subparagraph 1., or upon application of the obligor pursuant to the order, the union or employer shall enroll the minor child as a beneficiary in the group health plan regardless of any restrictions on the enrollment period and withhold any required premium from the obligor's income. If more than one plan is offered by the union or employer, the child shall be enrolled in the group health plan in which the obligor is enrolled.

4.a. Upon receipt of the national medical support notice under subparagraph 2. in a Title IV-D case, the union or employer shall transfer the notice to the appropriate group health plan administrator within 20 business days after the date on the notice. The plan administrator must enroll the child as a beneficiary in the group health plan regardless of any restrictions on the enrollment period, and the union or employer must withhold any required premium from the obligor's income upon notification by the plan administrator that the child is enrolled. The child shall be enrolled in the group health plan in which the obligor is enrolled. If the group health plan in which the obligor is enrolled is not available where the child resides or if the obligor is not enrolled in group coverage, the child shall be enrolled in the lowest cost group health plan that is available where the child resides.

b. If health care coverage or the obligor's employment is terminated in a Title IV-D case, the union or employer that is withholding premiums for health care coverage under a national medical support notice must notify the department within 20 days after the termination and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

5.a. The amount withheld by a union or employer in compliance with a support order may not exceed the amount allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b), as amended. The union or employer shall withhold the maximum allowed by the Consumer Credit Protection Act in the following order:

(I) Current support, as ordered.

(II) Premium payments for health care coverage, as ordered.

(III) Past due support, as ordered.

(IV) Other medical support or coverage, as ordered.

b. If the combined amount to be withheld for current support plus the premium payment for health care coverage exceed the amount allowed under the Consumer Credit Protection Act, and the health care coverage 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:

(I) Current support, as ordered.

(II) Past due support, as ordered.

(III) Other medical support or coverage, as ordered.

6. The Department of Revenue may adopt rules to administer the child support enforcement provisions of this section which affect Title IV-D cases.

(c) 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.

(d)1. Unless the provisions of subparagraph 3. apply, all child support orders entered on or after January 1, 1985, shall direct that the payments of child support be made as provided in s. 61.181 through the depository in the county where the court is located. 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.

2. Unless the provisions of subparagraph 3. apply, all child support orders entered before January 1, 1985, shall be modified by the court to direct that payments of child support shall be made through the depository in the county where the court is located upon the subsequent appearance of either or both parents to modify or enforce the order, or in any related proceeding.

3. If both parties request and the court finds that it is in the best interest of the child, support payments need not be directed through the depository. The order of support shall provide, or shall be deemed to provide, that either party may subsequently apply to the depository to require direction of the payments through the depository. The court shall provide a copy of the order to the depository.

4. If the parties elect not to require that support payments be made through the depository, any party 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 both parties that future payments shall be paid through the depository.

5. In IV-D cases, the IV-D agency shall have the same rights as the obligee in requesting that payments be made through the depository.

(e) In a judicial circuit with a work experience and job training pilot project, if the obligor is unemployed or has no income and does not have an account at a financial institution, then the court shall order the obligor to seek employment, if the obligor is able to engage in employment, and to immediately notify the court upon obtaining employment, upon obtaining any income, or upon obtaining any ownership of any asset with a value of \$500 or more. If the obligor is still unemployed 30 days after any order for support, the court may order the obligor to enroll in the work experience, job placement, and job training pilot program for noncustodial parents as established in s. 409.2565, if the obligor is eligible for entrance into the pilot program.

(2)(a) The court shall have jurisdiction to determine custody, notwithstanding that the child is not physically present in this state at the time of filing any proceeding under this chapter, if it appears to the court that the child was removed from this state for the primary purpose of removing the child from the jurisdiction of the court in an attempt to avoid a determination or modification of custody.

(b)1. The court shall determine all matters relating to custody of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act. It is the public policy of this state to assure that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. After considering all relevant facts, the father of the child shall be given the same consideration as the mother in determining the primary residence of a child irrespective of the age or sex of the child.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. Evidence that a parent has been convicted of a felony of the third degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775, or meets the criteria of s. 39.806(1)(d), creates a rebuttable presumption of detriment to the child. If the presumption is not rebutted, shared parental responsibility, including visitation, residence of the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for visitation as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

a. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include primary residence, education, medical and dental care, and any other responsibilities that the court finds unique to a particular family.

b. The court shall order "sole parental responsibility, with or without visitation rights, to the other parent when it is in the best interests of" the minor child.

c. The court may award the grandparents visitation rights with a minor child if it is in the child's best interest. Grandparents have legal standing to seek judicial enforcement of such an award. This section does not require that grandparents be made parties or given notice of dissolution pleadings or proceedings. A court may not order that a child be kept within the state or jurisdiction of the court solely for the purpose of permitting visitation by the grandparents.

3. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to a parent because the parent is not the child's primary residential parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

(c) The circuit court in the county in which either parent and the child reside or the circuit court in which the original award of custody was entered have jurisdiction to modify an award of child custody. The court may change the venue in accordance with s. 47.122.

(d) No presumption shall arise in favor of or against a request to relocate when a primary residential parent seeks to move the child and the move will materially affect the current schedule of contact and access with the secondary residential parent. In making a determination as to whether the primary residential parent may relocate with a child, the court must consider the following factors:

1. Whether the move would be likely to improve the general quality of life for both the residential parent and the child.
2. The extent to which visitation rights have been allowed and exercised.
3. Whether the primary residential parent, once out of the jurisdiction, will be likely to comply with any substitute visitation arrangements.
4. Whether the substitute visitation will be adequate to foster a continuing meaningful relationship between the child and the secondary residential parent.
5. Whether the cost of transportation is financially affordable by one or both parties.
6. Whether the move is in the best interests of the child.

(3) For purposes of shared parental responsibility and primary residence, the best interests of the child shall include an evaluation of all factors affecting the welfare and interests of the child, including, but not limited to:

- (a) The parent who is more likely to allow the child frequent and continuing contact with the nonresidential parent.
- (b) The love, affection, and other emotional ties existing between the parents and the child.
- (c) The capacity and disposition of the parents to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home.
- (f) The moral fitness of the parents.
- (g) The mental and physical health of the parents.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
- (j) The willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.

(k) Evidence that any party has knowingly provided false information to the court regarding a domestic violence proceeding pursuant to s. 741.30.

(l) Evidence of domestic violence or child abuse.

(m) Any other fact considered by the court to be relevant.

(4)(a) When a noncustodial parent who is ordered to pay child support or alimony and who is awarded visitation rights fails to pay child support or alimony, the custodial parent shall not refuse to honor the noncustodial parent's visitation rights.

(b) When a custodial parent refuses to honor a noncustodial parent's visitation rights, the noncustodial parent shall not fail to pay any ordered child support or alimony.

(c) When a custodial parent refuses to honor a noncustodial parent's or grandparent's visitation rights without proper cause, the court shall, after calculating the amount of visitation improperly denied, award the noncustodial parent or grandparent a sufficient amount of extra visitation to compensate the noncustodial parent or grandparent, which visitation shall be ordered as expeditiously as possible in a manner consistent with the best interests of the child and scheduled in a manner that is convenient for the person deprived of visitation. In ordering any makeup visitation, the court shall schedule such visitation in a manner that is consistent with the best interests of the child or children and that is convenient for the noncustodial parent or grandparent. In addition, the court:

1. May order the custodial parent to pay reasonable court costs and attorney's fees incurred by the noncustodial parent or grandparent to enforce their visitation rights or make up improperly denied visitation;
2. May order the custodial parent to attend the parenting course approved by the judicial circuit;
3. May order the custodial parent to do community service if the order will not interfere with the welfare of the child;
4. May order the custodial parent to have the financial burden of promoting frequent and continuing contact when the custodial parent and child reside further than 60 miles from the noncustodial parent;
5. May award custody, rotating custody, or primary residence to the noncustodial parent, upon the request of the noncustodial parent, if the award is in the best interests of the child; or
6. May impose any other reasonable sanction as a result of noncompliance.

(d) A person who violates this subsection may be punished by contempt of court or other remedies as the court deems appropriate.

(5) The court may make specific orders for the care and custody of the minor child as from the circumstances of the parties and the nature of the case is equitable and provide for child support in accordance with the guidelines in s. 61.30. An award of shared parental responsibility of a minor child does not preclude the court from entering an order for child support of the child.

(6) In any proceeding under this section, the court may not deny shared parental responsibility, custody, or visitation rights to a parent or grandparent solely because that parent or grandparent is or is believed to be infected with human immunodeficiency virus; but the court may condition such rights upon the parent's or grandparent's agreement to observe measures approved by the Centers for Disease Control and Prevention of the United States Public Health Service or by the Department of Health for preventing the spread of human immunodeficiency virus to the child.

(7) In any case where the child is actually residing with a grandparent in a stable relationship, whether the court has awarded custody to the grandparent or not, the court may recognize the grandparents as having the same standing as parents for evaluating what custody arrangements are in the best interest of the child.

(8) If the court orders that parental responsibility, including visitation, be shared by both parents, the court may not deny the noncustodial parent overnight contact and access to or visitation with the child solely because of the age or sex of the child.

(9)(a) Beginning July 1, 1997, each party to any paternity or support proceeding is required to file with the tribunal as defined in s. 88.1011(22) and State Case Registry upon entry of an order, and to update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of employer. Beginning October 1, 1998, each party to any paternity or child support proceeding in a non-Title IV-D case shall meet the above requirements for updating the tribunal and State Case Registry.

(b) Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement.

(c) Beginning July 1, 1997, in any subsequent Title IV-D child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the court of competent jurisdiction shall deem state due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the tribunal and State Case Registry pursuant to paragraph (a). Beginning October 1, 1998, in any subsequent non-Title IV-D child support enforcement action between the parties, the same requirements for service shall apply.

(10) At the time an order for child support is entered, 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 that is the subject of such child support order. Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. All social security numbers required by this section shall be provided by the parties and maintained by the depository as a separate attachment in the file. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement.

### **61.1301 Income deduction orders. -**

(1) ISSUANCE IN CONJUNCTION WITH AN ORDER ESTABLISHING, ENFORCING, OR MODIFYING AN OBLIGATION FOR ALIMONY OR CHILD SUPPORT. -

(a) Upon the entry of an order establishing, enforcing, or modifying an obligation for alimony, for 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. 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. Copies of the orders 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 establishing, enforcing, or modifying the obligation. If the obligee is a recipient of Title IV-D services, the court shall furnish to the Title IV-D agency a copy of the income deduction order and the order establishing, enforcing, or modifying the obligation.

1. In Title IV-D cases, the Title IV-D agency may implement income deduction after receiving a copy of an order from the court under this paragraph or a forwarding agency under UIFSA, URESA, or RURESAs by issuing an income deduction notice to the payor.

2. 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 specified by paragraph (2)(e). The income deduction notice must contain the following information from the income deduction order upon which the notice is based: the case number, the court that entered the order, and the date entered.

3. Payors shall deduct support payments from income, as specified in the income deduction notice, in the manner provided under paragraph (2)(e).

4. 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.

5. If a support order entered before January 1, 1994, in a non-Title IV-D case does not specify income deduction, income deduction may be initiated upon a delinquency without the need for any amendment to the support order or any further action by the court. In such case the obligee may implement income deduction by serving a notice of delinquency on the obligor as provided for under paragraph (f).

(b) The income deduction order shall:

1. 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.

2. 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;

3. 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), as amended;

4. 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;
  5. In Title IV-D cases, direct a payor to provide to the court depository the date on which each deduction is made;
  6. 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; and
  7. Direct that, at such time as the State Disbursement Unit becomes operational, 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.
- (c) 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. In order to find good cause, the court must at a minimum make written findings that:
1. Explain why implementing immediate income deduction would not be in the child's best interest;
  2. There is proof of timely payment of the previously ordered obligation without an income deduction order in cases of modification; and
  - 3.a. 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
  - b. 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.
- (d) 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. Notwithstanding the foregoing, however, at such time as the State Disbursement Unit becomes operational, 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.

(e) Statement of obligor's rights. 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:

1. All fees or interest which shall be imposed.
2. 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 amounts 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.
3. That the income deduction order applies to current and subsequent payors and periods of employment.
4. 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.
5. 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.
6. 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.
7. 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.

(f) Notice of delinquency. If a support order was entered before January 1, 1994, or the court orders the income deduction to be effective upon a delinquency as provided in paragraph (c), 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 under this subsection.

1. The notice of delinquency shall state:
  - a. The terms of the order establishing, enforcing, or modifying the obligation.
  - b. The period of delinquency and the total amount of the delinquency as of the date the notice is mailed.
  - c. All fees or interest which may be imposed.
  - d. 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 amounts 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.
  - e. That the income deduction order applies to current and subsequent payors and periods of employment.

f. 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. The application shall be filed within 15 days after the date the notice of delinquency was served.

g. 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.

h. 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.

2. 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.

(g) At any time, any party, including the IV-D agency, may apply to the court to:

1. 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

2. Modify the amount of income deducted when the arrearage has been paid.

(2) ENFORCEMENT OF INCOME DEDUCTION ORDERS. -

(a) The obligee or his or her agent shall serve an income deduction order and notice to payor, or, in Title IV-D cases, the Title IV-D agency 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 pursuant to paragraph (c).

(b)1. 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.

2. 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.

(c)1. 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 pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support, the amount of the arrearage, or the identity of the obligor, the payor, or the obligee. 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.

2. 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.

(d) When a court determines that an income deduction order is proper pursuant to paragraph (c), 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.

(e) Notice to payor and income deduction notice. 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:

1. Provide the obligor's social security number.
2. 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);
3. 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;
4. 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;
5. 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;
6. 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;

7. 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;
  8. 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;
  9. 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;
  10. 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;
  11. 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;
  12. 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;
  13. 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
  14. 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.
- (f) 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 on the same grounds set out in paragraph (c), 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 pursuant to s. 409.2563 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.

(g) 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.

(h)1. 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.

2. 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.

3. 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.

4.a. 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.

b. 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.

c. 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 in accordance with subsection (1). The depository created pursuant to s. 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.

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

(j)1. 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.

2. An employee may bring a civil action in the courts of this state against an employer who refuses to employ, discharges, or otherwise disciplines an employee because of an income deduction order. The employee is entitled to reinstatement and all wages and benefits lost plus reasonable attorney's fees and costs incurred.

(k) When a payor no longer provides income to an obligor, he or she shall notify the obligee and, if the obligee is a IV-D applicant, the IV-D agency and shall also provide the obligor's last known address and the name and address of the obligor's new payor, if known. A payor who violates this subsection is subject to a civil penalty not to exceed \$250 for the first violation or \$500 for a subsequent violation. Penalties shall be paid to the obligee or the IV-D agency, whichever is enforcing the income deduction order.

(3)(a) It is the intent of the Legislature that this section may be used to collect arrearages in child support or in alimony payments.

(b) 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. The department shall send notice of this requirement by regular mail to the payor and the depository operated pursuant to s. 61.181, and the notice shall state the amount of the obligation to pay current support, if any, and the amount owed for arrearages, retroactive support, delinquency, and costs. For income deduction orders entered before July 1, 2004, which do not include this requirement, the department shall send by certified mail, restricted delivery, return receipt requested, 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.

(4) 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:

(a) 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.

(b) 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.

(c) 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.

61.13015 Petition for suspension or denial of professional licenses and certificates.

(1) An obligee may petition the court which entered the support order or the court which is enforcing the support order for an order to suspend or deny the license or certificate issued pursuant to chapters 409, 455, 456, 559, and 1012 of any obligor with a delinquent support obligation. However, no petition may be filed until the obligee has exhausted all other available remedies. The purpose of this section is to promote the public policy of s. 409.2551.

(2) The obligee shall give notice to any obligor when a delinquency exists in the support obligation. The notice shall specify that the obligor has 30 days from the date on which service of the notice is complete to pay the delinquency or to reach an agreement with the obligee to pay the delinquency. The notice shall specify that, if payment is not made or an agreement cannot be reached, the license or certificate may be denied or suspended pursuant to a court order.

(3) If a delinquency exists and the obligor fails to pay the delinquency or to reach an agreement to pay the delinquency within 30 days following completion of service of the notice of the delinquency, the obligee shall send a second notice to the obligor stating that the obligor has 30 days to pay the delinquency or reach an agreement with the obligee to pay the delinquency. If the obligor fails to respond to either notice from the obligee or if the obligor fails to pay the delinquency or to reach an agreement to pay the delinquency after the second notice, the obligee may petition the court to deny the application for the license or certificate or to suspend the license or certificate of the obligor. The court may find that it would be inappropriate to deny or suspend a license or certificate if:

(a) Denial or suspension would result in irreparable harm to the obligor or employees of the obligor or would not accomplish the objective of collecting the delinquency; or

(b) The obligor demonstrates that he or she has made a good faith effort to reach an agreement with the obligee.

The court may not deny or suspend a license or certificate if the court determines that an alternative remedy is available to the obligee which is likely to accomplish the objective of collecting the delinquency. If the obligor fails in the defense of a petition for denial or suspension, the court which entered the support order or the court which is enforcing the support order shall enter an order to deny the application for the license or certificate or to suspend the license or certificate of the obligor. In the case of suspension, the court shall order the obligor to surrender the certificate or license to the department or to the licensing board which issued the license or certificate. In the case of denial, the court shall order the appropriate department or licensing board to deny the application.

(4) If the court denies or suspends a license or certificate and the obligor subsequently pays the delinquency or reaches an agreement with the obligee to settle the delinquency and makes the first payment required by the agreement, the license or certificate shall be issued or reinstated upon written proof to the court that the obligor has complied with the court order. Proof of payment shall consist of a certified copy of the payment record issued by the depository. The court shall order the appropriate department or licensing board to issue or reinstate the license or certificate without additional charge to the obligor.

(5) Notice shall be served under this section by mailing it by certified mail, return receipt requested, to the obligor at his or her last address of record with the local depository. If the obligor has no address of record with the local depository, or if the last address of record with the local depository is incorrect, service shall be by publication as provided in chapter 49. When service of the notice is made by mail, service is complete upon the receipt of the notice by the obligor.

### **61.13016 Suspension of driver's licenses and motor vehicle registrations. -**

(1) The driver's license and motor vehicle registration of a support obligor who is delinquent in payment or who has failed to comply with subpoenas or a similar order to appear or show cause relating to paternity or support proceedings may be suspended. When an obligor is 15 days delinquent making a payment in support or failure to comply with a subpoena, order to appear, order to show cause, or similar order in IV-D cases, the Title IV-D agency may provide notice to the obligor of the delinquency or failure to comply with a subpoena, order to appear, order to show cause, or similar order and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the Department of Highway Safety and Motor Vehicles. When an obligor is 15 days delinquent in making a payment in support in non-IV-D cases, and upon the request of the obligee, the depository or the clerk of the court must provide notice to the obligor of the delinquency and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the Department of Highway Safety and Motor Vehicles. In either case, the notice must state:

(a) The terms of the order creating the support obligation;

(b) The period of the delinquency and the total amount of the delinquency as of the date of the notice or describe the subpoena, order to appear, order to show cause, or other similar order which has not been complied with;

(c) That notification will be given to the Department of Highway Safety and Motor Vehicles to suspend the obligor's driver's license and motor vehicle registration unless, within 20 days after the date the notice is mailed, the obligor:

1.a. Pays the delinquency in full and any other costs and fees accrued between the date of the notice and the date the delinquency is paid;

b. Enters into a written agreement for payment with the obligee in non-IV-D cases or with the Title IV-D agency in IV-D cases; or in IV-D cases, complies with a subpoena or order to appear, order to show cause, or a similar order; or

c. Files a petition with the circuit court to contest the delinquency action; and

2. Pays any applicable delinquency fees.

If the obligor in non-IV-D cases enters into a written agreement for payment before the expiration of the 20-day period, the obligor must provide a copy of the signed written agreement to the depository or the clerk of the court.

(2) If the obligor does not, within 20 days after the mailing date on the notice, pay the delinquency, enter into a payment agreement, comply with the subpoena, order to appear, order to show cause, or other similar order, or file a motion to contest, the Title IV-D agency in IV-D cases, or the depository or clerk of the court in non-IV-D cases, shall file the notice with the Department of Highway Safety and Motor Vehicles and request the suspension of the obligor's driver's license and motor vehicle registration in accordance with s. 322.058.

(3) The obligor may, within 20 days after the mailing date on the notice of delinquency or noncompliance and intent to suspend, file in the circuit court a petition to contest the notice of delinquency or noncompliance and intent to suspend on the ground of mistake of fact regarding the existence of a delinquency or the identity of the obligor. The obligor must serve a copy of the petition on the Title IV-D agency in IV-D cases or depository or clerk of the court in non-IV-D cases. When an obligor timely files a petition to contest, the court must hear the matter within 15 days after the petition is filed. The court must enter an order resolving the matter within 10 days after the hearing, and a copy of the order must be served on the parties. The timely filing of a petition to contest stays the notice of delinquency and intent to suspend until the entry of a court order resolving the matter.

#### **61.1354 Sharing of information between consumer reporting agencies and the IV-D agency. -**

(1) Upon receipt of a request from a consumer reporting agency as defined in s. 603(f) of the Fair Credit Reporting Act, the IV-D agency or the depository in non-Title-IV-D cases shall make available information relating to the amount of overdue support owed by an obligor. The IV-D agency or the depository in non-Title-IV-D cases shall give the obligor written notice, at least 15 days prior to the release of information, of the IV-D agency's or depository's authority to release information to consumer reporting agencies relating to the amount of overdue support owed by the obligor. The obligor shall be informed of his or her right to request a hearing with the IV-D agency or the court in non-Title-IV-D cases to contest the accuracy of the information.

(2) The IV-D agency shall report periodically to appropriate consumer reporting agencies, as identified by the IV-D agency, the name and social security number of any delinquent obligor and the amount of overdue support owed by the obligor. The IV-D agency, or its designee, shall provide the obligor with written notice, at least 15 days prior to the initial release of information, of the IV-D agency's authority to release the information periodically to the consumer reporting agencies. The notice shall state the amount of overdue support owed and shall inform the obligor of the right to request a hearing with the IV-D agency within 15 days after receipt of the notice to contest the accuracy of the information. After the initial notice is given, no further notice or opportunity for a hearing need be given when updated information concerning the same obligor is periodically released to the consumer reporting agencies.

(3) For purposes of determining an individual's income and establishing an individual's capacity to make support payments or for determining the appropriate amount of child support payment to be made by the individual, consumer reporting agencies shall provide, upon request, consumer reports to the head of the IV-D agency pursuant to s. 604 of the Fair Credit Reporting Act, provided that the head of the IV-D agency, or its designee, certifies that:

(a) The consumer report is needed for the purpose of determining an individual's income and establishing an individual's capacity to make support payments or determining the appropriate amount of child support payment to be made by the individual;

(b) Paternity of the child of the individual whose report is sought, if that individual is the father of the child, has been established or acknowledged pursuant to the laws of Florida;

(c) The individual whose report is sought was provided with at least 15 days' prior notice, by certified or registered mail to the individual's last known address, that the report was requested; and

(d) The consumer report will be used solely for the purpose described in paragraph (a).

(4) For purposes of setting an initial or modified child support order, consumer reporting agencies shall provide, upon request, consumer reports to the IV-D agency.

(5) The Department of Revenue is authorized to adopt rules necessary to implement this section.

#### **61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders. -**

(1)(a) When the parties enter into an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, or when a party is required by court order to make any payments, and the circumstances or the financial ability of either party changes or the child who is a beneficiary of an agreement or court order as described herein reaches majority after the execution of the agreement or the rendition of the order, either party may apply to the circuit court of the circuit in which the parties, or either of them, resided at the date of the execution of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, for an order decreasing or increasing the amount of support, maintenance, or alimony, and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties or the child, decreasing, increasing, or confirming the amount of separate support, maintenance, or alimony provided for in the agreement or order. A finding that medical insurance is reasonably available or the child support guidelines in s. 61.30 may constitute changed circumstances. Except as otherwise provided in s. 61.30(11)(c), the court may modify an order of support, maintenance, or alimony by increasing or decreasing the support, maintenance, or alimony retroactively to the date of the filing of the action or supplemental action for modification as equity requires, giving due regard to the changed circumstances or the financial ability of the parties or the child.

(b) For each support order reviewed by the department as required by s. 409.2564(12), 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 under s. 61.30, the department 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.

(c) The department shall have authority to adopt rules to implement this section.

(2) When an order or agreement is modified pursuant to subsection (1), the party having an obligation to pay shall pay only the amount of support, maintenance, or alimony directed in the new order, and the agreement or earlier order is modified accordingly. No person may commence an action for modification of a support, maintenance, or alimony agreement or order except as herein provided. No court has jurisdiction to entertain any action to enforce the recovery of separate support, maintenance, or alimony other than as herein provided.

(3) This section is declaratory of existing public policy and of the laws of this state.

(4) If a party applies for a reduction of alimony or child support and the circumstances justify the reduction, the court may make the reduction of alimony or child support regardless of whether or not the party applying for it has fully paid the accrued obligations to the other party at the time of the application or at the time of the order of modification.

(5)(a) When a court of competent jurisdiction enters an order for the payment of alimony or child support or both, 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. This presumption is adopted as a presumption under s. 90.302(2) to implement the public policy of this state that children shall be maintained from the resources of their parents and as provided for in s. 409.2551, and that spouses be maintained as provided for in s. 61.08. The court shall state in its order the reasons for granting or denying the contempt.

(b) In a judicial circuit with a work experience and job training pilot project, if at the time of the contempt hearing the obligor is unemployed or has no income, then the court shall order the obligor to seek employment, if the obligor is able to engage in employment, and to immediately notify the court upon obtaining employment, upon obtaining any income, or upon obtaining any ownership of any asset with a value of \$500 or more. If the obligor is still unemployed 30 days after any order for support, the court may order the obligor to enroll in a work experience, job placement, and job training program for noncustodial parents as established in s. 409.2565, if the obligor is eligible for entrance into the pilot program.

(6)(a)1. When support payments are made through the local depository or through the State Disbursement Unit, any payment or installment of support which becomes due and is unpaid under any support order is delinquent; and this unpaid payment or installment, and all other costs and fees herein provided for, become, after notice to the obligor and the time for response as set forth in this subsection, a final judgment by operation of law, which has the full force, effect, and attributes of a judgment entered by a court in this state for which execution may issue. No deduction shall be made by the local depository from any payment made for costs and fees accrued in the judgment by operation of law process under paragraph (b) until the total amount of support payments due the obligee under the judgment has been paid.

2. A certified statement by the local depository evidencing a delinquency in support payments constitute evidence of the final judgment under this paragraph.

3. The judgment under this paragraph is a final judgment as to any unpaid payment or installment of support which has accrued up to the time either party files a motion with the court to alter or modify the support order, and such judgment may not be modified by the court. The court may modify such judgment as to any unpaid payment or installment of support which accrues after the date of the filing of the motion to alter or modify the support order. This subparagraph does not prohibit the court from providing relief from the judgment pursuant to Rule 1.540, Florida Rules of Civil Procedure.

(b)1. When an obligor is 15 days delinquent in making a payment or installment of support and the amount of the delinquency is greater than the periodic payment amount ordered by the court, the local depository shall serve notice on the obligor informing him or her of:

a. The delinquency and its amount.

b. An impending judgment by operation of law against him or her in the amount of the delinquency and all other amounts which thereafter become due and are unpaid, together with costs and a service charge of up to \$7.50, for failure to pay the amount of the delinquency.

c. The obligor's right to contest the impending judgment and the ground upon which such contest can be made.

d. The local depository's authority to release information regarding the delinquency to one or more credit reporting agencies.

2. The local depository shall serve the notice by mailing it by first class mail to the obligor at his or her last address of record with the local depository. If the obligor has no address of record with the local depository, service shall be by publication as provided in chapter 49.

3. When service of the notice is made by mail, service is complete on the date of mailing.

(c) Within 15 days after service of the notice is complete, the obligor may file with the court that issued the support order, or with the court in the circuit where the local depository which served the notice is located, a motion to contest the impending judgment. An obligor may contest the impending judgment only on the ground of a mistake of fact regarding an error in whether a delinquency exists, in the amount of the delinquency, or in the identity of the obligor.

(d) The court shall hear the obligor's motion to contest the impending judgment within 15 days after the date of the filing of the motion. Upon the court's denial of the obligor's motion, the amount of the delinquency and all other amounts which thereafter become due, together with costs and a service charge of up to \$7.50, become a final judgment by operation of law against the obligor. The depository shall charge interest at the rate established in s. 55.03 on all judgments for support.

(e) If the obligor fails to file a motion to contest the impending judgment within the time limit prescribed in paragraph (c) and fails to pay the amount of the delinquency and all other amounts which thereafter become due, together with costs and a service charge of up to \$7.50, such amounts become a final judgment by operation of law against the obligor at the expiration of the time for filing a motion to contest the impending judgment.

(f)1. Upon request of any person, the local depository shall issue, upon payment of a service charge of up to \$7.50, a payoff statement of the total amount due under the judgment at the time of the request. The statement may be relied upon by the person for up to 30 days from the time it is issued unless proof of satisfaction of the judgment is provided.

2. When the depository records show that the obligor's account is current, the depository shall record a satisfaction of the judgment upon request of any interested person and upon receipt of the appropriate recording fee. Any person shall be entitled to rely upon the recording of the satisfaction.

3. The local depository, at the direction of the department, or the obligee in a non-IV-D case, may partially release the judgment as to specific real property, and the depository shall record a partial release upon receipt of the appropriate recording fee.

4. The local depository is not liable for errors in its recordkeeping, except when an error is a result of unlawful activity or gross negligence by the clerk or his or her employees.

(7) When modification of an existing order of support is sought, the proof required to modify a settlement agreement and the proof required to modify an award established by court order shall be the same.

(8)(a)[fn1] When reviewing and approving any lump-sum settlement under s. 440.20(11)(a) and (b), a judge of compensation claims must consider whether the settlement serves the interests of the worker and the worker's family, including, but not limited to, whether the settlement provides for appropriate recovery of any child support arrearage.

(b) In accordance with the provisions of s. 440.22, any compensation due or that may become due an employee under chapter 440 is exempt from garnishment, attachment, execution, and assignment of income, except for the purposes of enforcing child or spousal support obligations.

(9) Unless otherwise ordered by the court or agreed to by the parties, the obligation to pay the current child support for that child is terminated when the child reaches 18 years of age or the disability of nonage is removed. The termination of the current child support obligation does not otherwise terminate the obligation to pay any arrearage, retroactive support, delinquency, or costs owed by the obligor.

(10)(a) In a Title IV-D case, if an obligation to pay current child support is terminated due to the emancipation of the child and the obligor owes an arrearage, retroactive support, delinquency, or costs, the obligor shall continue to pay at the same rate in effect immediately prior to emancipation until all arrearages, retroactive support, delinquencies, and costs are paid in full or until the amount of the order is modified. Any income-deducted amount or amount paid by the obligor which 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.

(b) In a Title IV-D case, if an obligation to pay current child support for multiple children is reduced due to the emancipation of one child and the obligor owes an arrearage, retroactive support, delinquency, or costs, the obligor shall continue to pay at the same rate in effect immediately prior to emancipation until all arrearages, retroactive support, delinquencies, and costs are paid in full or until the amount of the order is modified. Any income-deducted amount or amount paid by the obligor which 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. If an obligation to pay current support for more than one child is not reduced when a child is emancipated because the order does not allocate support per child, this paragraph does not apply.

(c) Paragraphs (a) and (b) provide an additional remedy for collection of unpaid support and apply to cases in which a support order was entered before, on, or after July 1, 2004.

(11)(a) A court may, upon good cause shown, and without a showing of a substantial change of circumstances, modify, vacate, or set aside a temporary support order before or upon entering a final order in a proceeding.

(b) The modification of the temporary support order may be retroactive to the date of the initial entry of the temporary support order; to the date of filing of the initial petition for dissolution of marriage, initial petition for support, initial petition determining paternity, or supplemental petition for modification; or to a date prescribed in paragraph (1)(a) or s. 61.30(11)(c) or (17), as applicable.

[fn1] Note. - As amended by s. 1, ch. 2001-91. For a description of multiple acts in the same session affecting a statutory provision, see preface to the Florida Statutes, "Statutory Construction." Paragraph (8)(a) was also amended by s. 11, ch. 2001-158, and that version reads:

(8)(a) When reviewing any settlement of lump-sum payment pursuant to s. 440.20(11)(a) and (b), judges of compensation claims shall consider the interests of the worker and the worker's family when approving the settlement, which must consider and provide for appropriate recovery of past due support.

### **61.16 Attorney's fees, suit money, and costs. -**

(1) The court may from time to time, after considering the financial resources of both parties, 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 any proceeding under this chapter, including enforcement and modification proceedings and appeals. In those cases in which an action is brought for enforcement and the court finds that the noncompliant party is without justification in the refusal to follow a court order, the court may not award attorney's fees, suit money, and costs to the noncompliant party. An application for attorney's fees, suit money, or costs, whether temporary or otherwise, shall not require corroborating expert testimony in order to support an award under this chapter. The trial court shall have continuing jurisdiction to make temporary attorney's fees and costs awards reasonably necessary to prosecute or defend an appeal on the same basis and criteria as though the matter were pending before it at the trial level. In all cases, the court may order that the amount be paid directly to the attorney, who may enforce the order in that attorney's name. In determining whether to make attorney's fees and costs awards at the appellate level, the court shall primarily consider the relative financial resources of the parties, unless an appellate party's cause is deemed to be frivolous. In Title IV-D cases, attorney's fees, suit money, and 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 nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees. The Department of Revenue shall not be considered a party for purposes of this section; however, fees may be assessed against the department pursuant to s. 57.105(1).

(2) In an action brought pursuant to Rule 3.840, Florida Rules of Criminal Procedure, whether denominated direct or indirect criminal contempt, the court shall have authority to:

- (a) Appoint an attorney to prosecute said contempt.
- (b) Assess attorney's fees and costs against the contemtor after the court makes a determination of the contemtor's ability to pay such costs and fees.
- (c) Order that the amount be paid directly to the attorney, who may enforce the order in his or her name.

### **61.17 Alimony and child support; additional method for enforcing orders and judgments; costs, expenses. -**

(1) An order or judgment for the payment of alimony or child support or either entered by any court of this state may be enforced by another chancery court in this state in the following manner:

- (a) The person to whom such alimony or child support is payable or for whose benefit it is payable may procure a certified copy of the order or judgment and file it with a complaint for enforcement in the circuit court for the county in

which the person resides or in the county where the person charged with the payment of the alimony or child support resides or is found.

(b) If the pleadings seek a change in the amount of the alimony or child support money, the court has jurisdiction to adjudicate the application and change the order or judgment. In such event the clerk of the circuit court in which the order is entered changing the original order or judgment shall transmit a certified copy thereof to the court of original jurisdiction, and the new order shall be recorded and filed in the original action and become a part thereof. If the pleadings ask for a modification of the order or judgment, the court may determine that the action should be tried by the court entering the original order or judgment and shall then transfer the action to that court for determination as a part of the original action.

(c) Enforcement of a case certified under Title IV-D of the Social Security Act under this section shall grant to the registering court jurisdiction to address only those issues allowed and reimbursable under Title IV-D of the Social Security Act.

(2) The court in which such an action is brought has jurisdiction to award costs and expenses as are equitable, including the cost of certifying and recording the judgment entered in the action in the court of original jurisdiction and reasonable attorney's fees.

(3) The entry of a judgment for arrearages for child support, alimony, or attorney's fees and costs does not preclude a subsequent contempt proceeding or certification of a IV-D case for intercept, by the United States Internal Revenue Service, for failure of an obligor to pay the child support, alimony, attorney's fees, or costs for which the judgment was entered.

### **61.18 Alimony and child support; default in undertaking of bond posted to ensure payment. -**

(1) When there is a breach of the condition of any bond posted to ensure the payment of alimony or child support, either temporary or permanent, for a party or minor children of the parties, the court in which the order was issued may order payment to the party entitled thereto of the principal of the bond or the part thereof necessary to cure the existing default without further notice from time to time where the amount is liquidated.

(2) The sureties on the bond, or the sheriff or clerk holding a cash bond, shall be ordered to pay into the registry of court, or to any party the court may direct, the sum necessary to cure the default.

(3) If the principal or sureties or sheriff or clerk fails to pay within the time and as required by the order, the court may enforce the payment by contempt against the principal or sureties on the bond or sheriff or clerk without further notice, or may issue an execution against the principal, sureties, sheriff, or clerk for the amount unpaid under any prior order or orders, but no sureties on the bond are liable for more than the penalty of the bond.

### **61.181 Depository for alimony transactions, support, maintenance, and support payments; fees. -**

(1)(a) The office of the clerk of the court shall operate a depository unless the depository is otherwise created by special act of the Legislature or unless, prior to June 1, 1985, a different entity was established to perform such functions. The department shall, no later than July 1, 1998, extend participation in the federal child support cost reimbursement program to the central depository in each county, to the maximum extent possible under existing federal law. The

depository shall receive reimbursement for services provided under a cooperative agreement with the department pursuant to s. 61.1826. Each depository shall participate in the State Disbursement Unit and shall implement all statutory and contractual duties imposed on the State Disbursement Unit. Each depository shall receive from and transmit to the State Disbursement Unit required data through the Clerk of Court Child Support Enforcement Collection System. Payments on non-Title IV-D cases without income deduction orders shall not be sent to the State Disbursement Unit.

(b) Upon request by the department, the depository created pursuant to paragraph (a) shall establish an account for the receipt and disbursement of support payments for Title IV-D interstate cases. The department shall provide a copy of the other state's order with the request, and the depository shall advise the department of the account number in writing within 4 business days after receipt of the request.

(2)(a) For payments not required to be processed through the State Disbursement Unit, the depository shall impose and collect a fee on each payment made for receiving, recording, reporting, disbursing, monitoring, or handling alimony or child support payments as required under this section. For non-Title IV-D cases required to be processed by the State Disbursement Unit pursuant to this chapter, the State Disbursement Unit shall, on each payment received, collect a fee, and shall transmit to the depository in which the case is located 40 percent of such service charge for the depository's administration, management, and maintenance of such case. If a payment is made to the State Disbursement Unit which is not accompanied by the required fee, the State Disbursement Unit shall not deduct any moneys from the support payment for payment of the fee. The fee shall be a flat fee based, to the extent practicable, upon estimated reasonable costs of operation. The fee shall be reduced in any case in which the fixed fee results in a charge to any party of an amount greater than 3 percent of the amount of any support payment made in satisfaction of the amount which the party is obligated to pay, except that no fee shall be less than \$1 nor more than \$5 per payment made. The fee shall be considered by the court in determining the amount of support that the obligor is, or may be, required to pay.

(b)1. The fee imposed in paragraph (a) shall be increased to 4 percent of the support payments which the party is obligated to pay, except that no fee shall be more than \$5.25. The fee shall be considered by the court in determining the amount of support that the obligor is, or may be, required to pay. Notwithstanding the provisions of s. 145.022, 75 percent of the additional revenues generated by this paragraph shall be remitted monthly to the Clerk of the Court Child Support Enforcement Collection System Trust Fund administered by the department as provided in subparagraph 2. These funds shall be used exclusively for the development, implementation, and operation of the Clerk of the Court Child Support Enforcement Collection System to be operated by the depositories, including the automation of civil case information necessary for the State Case Registry. The department shall contract with the Florida Association of Court Clerks and the depositories to design, establish, operate, upgrade, and maintain the automation of the depositories to include, but not be limited to, the provision of on-line electronic transfer of information to the IV-D agency as otherwise required by this chapter. The department's obligation to fund the automation of the depositories is limited to the state share of funds available in the Clerk of the Court Child Support Enforcement Collection System Trust Fund. Each depository created under this section shall fully participate in the Clerk of the Court Child Support Enforcement Collection System and transmit data in a readable format as required by the contract between the Florida Association of Court Clerks and the department.

2. Moneys to be remitted to the department by the depository shall be done daily by electronic funds transfer and calculated as follows:

a. For each support payment of less than \$33, 18.75 cents.

b. For each support payment between \$33 and \$140, an amount equal to 18.75 percent of the fee charged.

c. For each support payment in excess of \$140, 18.75 cents.

3. The fees established by this section shall be set forth and included in every order of support entered by a court of this state which requires payment to be made into the depository.

(3)(a) 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. On or after July 1, 1998, if a payment is made on a Title IV-D case which is not accompanied by the required transaction fee, the depository shall not deduct any moneys from the support payment for payment of the fee. Nonpayment of the required fee shall be considered a delinquency, and when the total of fees and costs which are due but not paid exceeds \$50, the judgment by operation of law process set forth in s. 61.14(6)(a) shall become applicable and operational. As part of its collection and distribution functions, the depository shall maintain records listing:

1. The obligor's name, address, social security number, place of employment, and any other sources of income.
2. The obligee's name, address, and social security number.
3. The amount of support due as provided in the court order.
4. The schedule of payment as provided in the court order.
5. The actual amount of each support payment received, the date of receipt, the amount disbursed, and the recipient of the disbursement.
6. The unpaid balance of any arrearage due as provided in the court order.
7. Other records as necessary to comply with federal reporting requirements.

(b) The depository may require a payor or obligor to complete an information form, which shall request the following about the payor or obligor who provides payment by check:

1. Full name, address, and home phone number.
2. Driver's license number.
3. Social security number.
4. Name, address, and business phone number of obligor's employer.
5. Date of birth.
6. Weight and height.

7. Such other information as may be required by the State Attorney if prosecution for an insufficient check becomes necessary.

If the depository requests such information, and a payor or obligor does not comply, the depository may refuse to accept personal checks from the payor or obligor.

(c) Parties using the depository for support payments shall inform the depository of changes in their names or addresses. An obligor shall, additionally, notify the depository of all changes in employment or sources of income, including the payor's name and address, and changes in the amounts of income received. Notification of all changes shall be made in writing to the depository within 7 days of a change.

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

(4) The depository shall provide to the IV-D agency, at least once a month, a listing of IV-D accounts which identifies all delinquent accounts, the period of delinquency, and total amount of delinquency. The list shall be in alphabetical order by name of obligor, shall include the obligee's name and case number, and shall be provided at no cost to the IV-D agency.

(5) The depository shall accept a support payment tendered in the form of a check drawn on the account of a payor or obligor, unless the payor or obligor has previously remitted a check which was returned to the depository due to lack of sufficient funds in the account. If the payor or obligor has had a check returned for this reason, the depository shall accept payment by cash, cashier's check, or money order, or may accept a check upon deposit by the payor or obligor of an amount equal to 1 month's payment. Upon payment by cash, cashier's check, or money order, the depository shall disburse the proceeds to the obligee within 2 working days. Payments drawn by check on the account of a payor or obligor shall be disbursed within 4 working days. Notwithstanding the provisions of s. 28.243, the administrator of the depository shall not be personally liable if the check tendered by the payor or obligor is not paid by the bank.

(6) Certified copies of payment records maintained by a depository shall without further proof be admitted into evidence in any legal proceeding in this state.

(7) The depository shall provide to the Title IV-D agency the date provided by a payor, as required in s. 61.1301, for each payment received and forwarded to the agency. If no date is provided by the payor, the depository shall provide the date of receipt by the depository and shall report to the Title IV-D agency those payors who fail to provide the date the deduction was made.

(8) On or before July 1, 1994, the depository shall provide information required by this chapter to be transmitted to the Title IV-D agency by on-line electronic transmission pursuant to rules promulgated by the Title IV-D agency.

(9) If the increase in fees as provided by paragraph (2)(b) expires or is otherwise terminated, the depository shall not be required to provide the Title IV-D agency the date provided by a payor as required by s. 61.1301.

(10) Compliance with the requirements of this section shall be included as part of the annual county audit required pursuant to s. 218.39.

#### **61.183 Mediation of certain contested issues. -**

(1) In any proceeding in which the issues of parental responsibility, primary residence, visitation, or support of a child are contested, the court may refer the parties to mediation in accordance with rules promulgated by the Supreme Court. 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 nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees.

(2) If an agreement is reached by the parties on the contested issues, a consent order incorporating the agreement shall be prepared by the mediator and submitted to the parties and their attorneys for review. Upon approval by the parties, the consent order shall be reviewed by the court and, if approved, entered. Thereafter, the consent order may be enforced in the same manner as any other court order.

(3) 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 the provisions of s. 119.07(1).

#### **61.19 Entry of judgment of dissolution of marriage, delay period. -**

No final judgment of dissolution of marriage may be entered until at least 20 days have elapsed from the date of filing the original petition for dissolution of marriage; but the court, on a showing that injustice would result from this delay, may enter a final judgment of dissolution of marriage at an earlier date.

#### **61.191 Application. -**

(1) This act applies to all proceedings commenced on or after July 1, 1971. However, pending actions for divorce are deemed to have been commenced on the bases provided in s. 61.052, and evidence as to such bases for dissolution of marriage after July 1, 1971, shall be in compliance with this act.

(2) This act applies to all proceedings commenced after July 1, 1971, for the modification of a judgment or order entered prior to July 1, 1971.

(3) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to July 1, 1971, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

#### **61.20 Social investigation and recommendations when child custody is in issue. -**

(1) In any action where the custody of a minor child is in issue, the court may order a social investigation and study concerning all pertinent details relating to the child and each parent when such an investigation has not been done and the study therefrom provided to the court by the parties or when the court determines that the investigation and study that have been done are insufficient. The agency, staff, or person conducting the investigation and study ordered by the

court pursuant to this section shall furnish the court and all parties of record in the proceeding a written study containing recommendations, including a written statement of facts found in the social investigation on which the recommendations are based. The court may consider the information contained in the study in making a decision on the child's custody and the technical rules of evidence do not exclude the study from consideration.

(2) A social investigation and study, when ordered by the court, shall be conducted by qualified staff of the court; a child-placing agency licensed pursuant to s. 409.175; a psychologist licensed pursuant to chapter 490; or a clinical social worker, marriage and family therapist, or mental health counselor licensed pursuant to chapter 491. If a certification of indigence based on an affidavit filed with the court pursuant to s. 57.081 is provided by an adult party to the proceeding and the court does not have qualified staff to perform the investigation and study, the court may request that the Department of Children and Family Services conduct the investigation and study.

(3) Except as to persons who obtain certification of indigence as specified in subsection (2), for whom no costs shall be incurred, the adult parties involved in a child custody proceeding wherein the court has ordered a social investigation and study performed shall be responsible for the payment of the costs of such investigation and study. Upon submission of the study to the court, the agency, staff, or person performing the study shall include a bill for services, which shall be taxed and ordered paid as costs in the proceeding.

#### **61.21 Parenting course authorized; fees; required attendance authorized; contempt. -**

(1) LEGISLATIVE FINDINGS; PURPOSE. - It is the finding of the Legislature that:

(a) A large number of children experience the separation or divorce of their parents each year. Parental conflict related to divorce is a societal concern because children suffer potential short-term and long-term detrimental economic, emotional, and educational effects during this difficult period of family transition. This is particularly true when parents engage in lengthy legal conflict.

(b) Parents are more likely to consider the best interests of their children when determining parental arrangements if courts provide families with information regarding the process by which courts make decisions on issues affecting their children and suggestions as to how parents may ease the coming adjustments in family structure for their children.

(c) It has been found to be beneficial to parents who are separating or divorcing to have available an educational program that will provide general information regarding:

1. The issues and legal procedures for resolving custody and child support disputes.
2. The emotional experiences and problems of divorcing adults.
3. The family problems and the emotional concerns and needs of the children.
4. The availability of community services and resources.

(d) Parents who are separating or divorcing are more likely to receive maximum benefit from a program if they attend such program at the earliest stages of their dispute, before extensive litigation occurs and adversarial positions are assumed or intensified.

(2) The Department of Children and Family Services shall approve a parenting course which shall be a course of a minimum of 4 hours designed to educate, train, and assist divorcing parents in regard to the consequences of divorce on parents and children.

(a) The parenting course referred to in this section shall be named the Parent Education and Family Stabilization Course and may include, but need not be limited to, the following topics as they relate to court actions between parents involving custody, care, visitation, and support of a child or children:

1. Legal aspects of deciding child-related issues between parents.
2. Emotional aspects of separation and divorce on adults.
3. Emotional aspects of separation and divorce on children.
4. Family relationships and family dynamics.
5. Financial responsibilities to a child or children.
6. Issues regarding spousal or child abuse and neglect.
7. Skill-based relationship education that may be generalized to parenting, workplace, school, neighborhood, and civic relationships.

(b) Information regarding spousal and child abuse and neglect shall be included in every parent education and family stabilization course. A list of local agencies that provide assistance with such issues shall also be provided.

(c) The parent education and family stabilization course shall be educational in nature and shall not be designed to provide individual mental health therapy for parents or children, or individual legal advice to parents or children.

(d) Course providers shall not solicit participants from the sessions they conduct to become private clients or patients.

(e) Course providers shall not give individual legal advice or mental health therapy.

(3) All parties to a dissolution of marriage proceeding with minor children or a paternity action which involves issues of parental responsibility shall be required to complete the Parent Education and Family Stabilization Course prior to the entry by the court of a final judgment. The court may excuse a party from attending the parenting course for good cause.

(4) All parties required to complete a parenting course under this section shall begin the course as expeditiously as possible after filing for dissolution of marriage and shall file proof of compliance with the court prior to the entry of the final judgment.

(5) All parties to a modification of a final judgment involving shared parental responsibilities, custody, or visitation may be required to complete a court-approved parenting course prior to the entry of an order modifying the final judgment.

(6) The department shall provide each judicial circuit with a list of approved course providers and sites at which the parent education and family stabilization course required by this section may be completed. The department shall also include on the list of course providers and sites at least one site in each circuit at which the parent education and family stabilization course may be completed on a sliding fee scale, if available.

(7) A reasonable fee may be charged to each parent attending the course.

(8) Information obtained or statements made by the parties at any educational session required under this statute shall not be considered in the adjudication of a pending or subsequent action, nor shall any report resulting from such educational session become part of the record of the case unless the parties have stipulated in writing to the contrary.

(9) The court may hold any parent who fails to attend a required parenting course in contempt, or that parent may be denied shared parental responsibility or visitation or otherwise sanctioned as the court deems appropriate.

(10) Nothing in this section shall be construed to require the parties to a dissolution of marriage to attend a court-approved parenting course together.

(11) The court may, without motion of either party, prohibit the parenting course from being taken together, if there is a history of domestic violence between the parties.

### **61.30 Child support guidelines; retroactive child support. -**

(1)(a) The child support guideline amount as determined by this section presumptively establishes the amount the trier of fact shall order as child support in an initial proceeding for such support or in a proceeding for modification of an existing order for such support, whether the proceeding arises under this or another chapter. The trier of fact 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. The trier of fact 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. Notwithstanding the variance limitations of this section, the trier of fact shall order payment of child support which varies from the guideline amount as provided in paragraph (11)(b) whenever any of the children are required by court order or mediation agreement to spend a substantial amount of time with the primary and secondary residential parents. This requirement applies to any living arrangement, whether temporary or permanent.

(b) 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.

(c) For each support order reviewed by the department as required by s. 409.2564(12), 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 under s. 61.30, the department 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.

(2) Income shall be determined on a monthly basis for the obligor and for the obligee as follows:

(a) Gross income shall include, but is not limited to, the following items:

1. Salary or wages.
2. Bonuses, commissions, allowances, overtime, tips, and other similar payments.
3. 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.
4. Disability benefits.
5. All workers' compensation benefits and settlements.
6. Unemployment compensation.
7. Pension, retirement, or annuity payments.
8. Social security benefits.
9. Spousal support received from a previous marriage or court ordered in the marriage before the court.
10. Interest and dividends.
11. Rental income, which is gross receipts minus ordinary and necessary expenses required to produce the income.
12. Income from royalties, trusts, or estates.
13. Reimbursed expenses or in kind payments to the extent that they reduce living expenses.
14. Gains derived from dealings in property, unless the gain is nonrecurring.

(b) Income on a monthly basis shall be imputed to an unemployed or underemployed parent when such employment or underemployment is found to be voluntary on that parent's part, absent 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; however, the court may refuse to impute income to a primary residential parent if the court finds it necessary for the parent to stay home with the child.

(c) Public assistance as defined in s. 409.2554 shall be excluded from gross income.

(3) Allowable deductions from gross income shall include:

(a) Federal, state, and local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.

- (b) Federal insurance contributions or self-employment tax.
  - (c) Mandatory union dues.
  - (d) Mandatory retirement payments.
  - (e) Health insurance payments, excluding payments for coverage of the minor child.
  - (f) Court-ordered support for other children which is actually paid.
  - (g) Spousal support paid pursuant to a court order from a previous marriage or the marriage before the court.
- (4) Net income for the obligor and net income for the obligee shall be computed by subtracting allowable deductions from gross income.
- (5) Net income for the obligor and net income for the obligee shall be added together for a combined net income.
- (6) The following schedules shall be applied to the combined net income to determine the minimum child support need:

Combined Child or Children  
Monthly  
Available  
Income One Two Three Four Five Six

650.00	74	75	75	76	77	78
700.00	119	120	121	123	124	125
750.00	164	166	167	169	171	173
800.00	190	211	213	216	218	220
850.00	202	257	259	262	265	268
900.00	213	302	305	309	312	315
950.00	224	347	351	355	359	363
1000.00	235	365	397	402	406	410
1050.00	246	382	443	448	453	458
1100.00	258	400	489	495	500	505
1150.00	269	417	522	541	547	553
1200.00	280	435	544	588	594	600
1250.00	290	451	565	634	641	648
1300.00	300	467	584	659	688	695
1350.00	310	482	603	681	735	743
1400.00	320	498	623	702	765	790
1450.00	330	513	642	724	789	838
1500.00	340	529	662	746	813	869
1550.00	350	544	681	768	836	895
1600.00	360	560	701	790	860	920
1650.00	370	575	720	812	884	945

1700.00 380 591 740 833 907 971  
1750.00 390 606 759 855 931 996  
1800.00 400 622 779 877 955 1022  
1850.00 410 638 798 900 979 1048  
1900.00 421 654 818 923 1004 1074  
1950.00 431 670 839 946 1029 1101  
2000.00 442 686 859 968 1054 1128  
2050.00 452 702 879 991 1079 1154  
2100.00 463 718 899 1014 1104 1181  
2150.00 473 734 919 1037 1129 1207  
2200.00 484 751 940 1060 1154 1234  
2250.00 494 767 960 1082 1179 1261  
2300.00 505 783 980 1105 1204 1287  
2350.00 515 799 1000 1128 1229 1314  
2400.00 526 815 1020 1151 1254 1340  
2450.00 536 831 1041 1174 1279 1367  
2500.00 547 847 1061 1196 1304 1394  
2550.00 557 864 1081 1219 1329 1420  
2600.00 568 880 1101 1242 1354 1447  
2650.00 578 896 1121 1265 1379 1473  
2700.00 588 912 1141 1287 1403 1500  
2750.00 597 927 1160 1308 1426 1524  
2800.00 607 941 1178 1328 1448 1549  
2850.00 616 956 1197 1349 1471 1573  
2900.00 626 971 1215 1370 1494 1598  
2950.00 635 986 1234 1391 1517 1622  
3000.00 644 1001 1252 1412 1540 1647  
3050.00 654 1016 1271 1433 1563 1671  
3100.00 663 1031 1289 1453 1586 1695  
3150.00 673 1045 1308 1474 1608 1720  
3200.00 682 1060 1327 1495 1631 1744  
3250.00 691 1075 1345 1516 1654 1769  
3300.00 701 1090 1364 1537 1677 1793  
3350.00 710 1105 1382 1558 1700 1818  
3400.00 720 1120 1401 1579 1723 1842  
3450.00 729 1135 1419 1599 1745 1867  
3500.00 738 1149 1438 1620 1768 1891  
3550.00 748 1164 1456 1641 1791 1915  
3600.00 757 1179 1475 1662 1814 1940  
3650.00 767 1194 1493 1683 1837 1964  
3700.00 776 1208 1503 1702 1857 1987  
3750.00 784 1221 1520 1721 1878 2009  
3800.00 793 1234 1536 1740 1899 2031  
3850.00 802 1248 1553 1759 1920 2053  
3900.00 811 1261 1570 1778 1940 2075

3950.00 819 1275 1587 1797 1961 2097  
4000.00 828 1288 1603 1816 1982 2119  
4050.00 837 1302 1620 1835 2002 2141  
4100.00 846 1315 1637 1854 2023 2163  
4150.00 854 1329 1654 1873 2044 2185  
4200.00 863 1342 1670 1892 2064 2207  
4250.00 872 1355 1687 1911 2085 2229  
4300.00 881 1369 1704 1930 2106 2251  
4350.00 889 1382 1721 1949 2127 2273  
4400.00 898 1396 1737 1968 2147 2295  
4450.00 907 1409 1754 1987 2168 2317  
4500.00 916 1423 1771 2006 2189 2339  
4550.00 924 1436 1788 2024 2209 2361  
4600.00 933 1450 1804 2043 2230 2384  
4650.00 942 1463 1821 2062 2251 2406  
4700.00 951 1477 1838 2081 2271 2428  
4750.00 959 1490 1855 2100 2292 2450  
4800.00 968 1503 1871 2119 2313 2472  
4850.00 977 1517 1888 2138 2334 2494  
4900.00 986 1530 1905 2157 2354 2516  
4950.00 993 1542 1927 2174 2372 2535  
5000.00 1000 1551 1939 2188 2387 2551  
5050.00 1006 1561 1952 2202 2402 2567  
5100.00 1013 1571 1964 2215 2417 2583  
5150.00 1019 1580 1976 2229 2432 2599  
5200.00 1025 1590 1988 2243 2447 2615  
5250.00 1032 1599 2000 2256 2462 2631  
5300.00 1038 1609 2012 2270 2477 2647  
5350.00 1045 1619 2024 2283 2492 2663  
5400.00 1051 1628 2037 2297 2507 2679  
5450.00 1057 1638 2049 2311 2522 2695  
5500.00 1064 1647 2061 2324 2537 2711  
5550.00 1070 1657 2073 2338 2552 2727  
5600.00 1077 1667 2085 2352 2567 2743  
5650.00 1083 1676 2097 2365 2582 2759  
5700.00 1089 1686 2109 2379 2597 2775  
5750.00 1096 1695 2122 2393 2612 2791  
5800.00 1102 1705 2134 2406 2627 2807  
5850.00 1107 1713 2144 2418 2639 2820  
5900.00 1111 1721 2155 2429 2651 2833  
5950.00 1116 1729 2165 2440 2663 2847  
6000.00 1121 1737 2175 2451 2676 2860  
6050.00 1126 1746 2185 2462 2688 2874  
6100.00 1131 1754 2196 2473 2700 2887  
6150.00 1136 1762 2206 2484 2712 2900

6200.00 1141 1770 2216 2495 2724 2914  
6250.00 1145 1778 2227 2506 2737 2927  
6300.00 1150 1786 2237 2517 2749 2941  
6350.00 1155 1795 2247 2529 2761 2954  
6400.00 1160 1803 2258 2540 2773 2967  
6450.00 1165 1811 2268 2551 2785 2981  
6500.00 1170 1819 2278 2562 2798 2994  
6550.00 1175 1827 2288 2573 2810 3008  
6600.00 1179 1835 2299 2584 2822 3021  
6650.00 1184 1843 2309 2595 2834 3034  
6700.00 1189 1850 2317 2604 2845 3045  
6750.00 1193 1856 2325 2613 2854 3055  
6800.00 1196 1862 2332 2621 2863 3064  
6850.00 1200 1868 2340 2630 2872 3074  
6900.00 1204 1873 2347 2639 2882 3084  
6950.00 1208 1879 2355 2647 2891 3094  
7000.00 1212 1885 2362 2656 2900 3103  
7050.00 1216 1891 2370 2664 2909 3113  
7100.00 1220 1897 2378 2673 2919 3123  
7150.00 1224 1903 2385 2681 2928 3133  
7200.00 1228 1909 2393 2690 2937 3142  
7250.00 1232 1915 2400 2698 2946 3152  
7300.00 1235 1921 2408 2707 2956 3162  
7350.00 1239 1927 2415 2716 2965 3172  
7400.00 1243 1933 2423 2724 2974 3181  
7450.00 1247 1939 2430 2733 2983 3191  
7500.00 1251 1945 2438 2741 2993 3201  
7550.00 1255 1951 2446 2750 3002 3211  
7600.00 1259 1957 2453 2758 3011 3220  
7650.00 1263 1963 2461 2767 3020 3230  
7700.00 1267 1969 2468 2775 3030 3240  
7750.00 1271 1975 2476 2784 3039 3250  
7800.00 1274 1981 2483 2792 3048 3259  
7850.00 1278 1987 2491 2801 3057 3269  
7900.00 1282 1992 2498 2810 3067 3279  
7950.00 1286 1998 2506 2818 3076 3289  
8000.00 1290 2004 2513 2827 3085 3298  
8050.00 1294 2010 2521 2835 3094 3308  
8100.00 1298 2016 2529 2844 3104 3318  
8150.00 1302 2022 2536 2852 3113 3328  
8200.00 1306 2028 2544 2861 3122 3337  
8250.00 1310 2034 2551 2869 3131 3347  
8300.00 1313 2040 2559 2878 3141 3357  
8350.00 1317 2046 2566 2887 3150 3367  
8400.00 1321 2052 2574 2895 3159 3376

8450.00	1325	2058	2581	2904	3168	3386
8500.00	1329	2064	2589	2912	3178	3396
8550.00	1333	2070	2597	2921	3187	3406
8600.00	1337	2076	2604	2929	3196	3415
8650.00	1341	2082	2612	2938	3205	3425
8700.00	1345	2088	2619	2946	3215	3435
8750.00	1349	2094	2627	2955	3224	3445
8800.00	1352	2100	2634	2963	3233	3454
8850.00	1356	2106	2642	2972	3242	3464
8900.00	1360	2111	2649	2981	3252	3474
8950.00	1364	2117	2657	2989	3261	3484
9000.00	1368	2123	2664	2998	3270	3493
9050.00	1372	2129	2672	3006	3279	3503
9100.00	1376	2135	2680	3015	3289	3513
9150.00	1380	2141	2687	3023	3298	3523
9200.00	1384	2147	2695	3032	3307	3532
9250.00	1388	2153	2702	3040	3316	3542
9300.00	1391	2159	2710	3049	3326	3552
9350.00	1395	2165	2717	3058	3335	3562
9400.00	1399	2171	2725	3066	3344	3571
9450.00	1403	2177	2732	3075	3353	3581
9500.00	1407	2183	2740	3083	3363	3591
9550.00	1411	2189	2748	3092	3372	3601
9600.00	1415	2195	2755	3100	3381	3610
9650.00	1419	2201	2763	3109	3390	3620
9700.00	1422	2206	2767	3115	3396	3628
9750.00	1425	2210	2772	3121	3402	3634
9800.00	1427	2213	2776	3126	3408	3641
9850.00	1430	2217	2781	3132	3414	3647
9900.00	1432	2221	2786	3137	3420	3653
9950.00	1435	2225	2791	3143	3426	3659
10000.00	1437	2228	2795	3148	3432	3666

For combined monthly available income less than the amount set out on the above schedules, 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 orders should the parent's income increase in the future. For combined monthly available income greater than the amount set out in the above schedules, the obligation shall be the minimum amount of support provided by the guidelines 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%

(7) Child care costs incurred on behalf of the children due to employment, job search, or education calculated to result in employment or to enhance income of current employment of either parent shall be reduced by 25 percent and then shall be added to the basic obligation. After the adjusted child care costs are added to the basic obligation, any moneys prepaid by the noncustodial parent for child care costs for the child or children of this action shall be deducted from that noncustodial parent's child support obligation for that child or those children. Child care costs shall not exceed the level required to provide quality care from a licensed source for the children.

(8) Health insurance costs resulting from coverage ordered pursuant to s. 61.13(1)(b), and any noncovered medical, dental, and prescription medication expenses of the child, shall be added to the basic obligation unless these expenses have been ordered to be separately paid on a percentage basis. After the health insurance costs are added to the basic obligation, any moneys prepaid by the noncustodial parent for health-related costs for the child or children of this action shall be deducted from that noncustodial parent's child support obligation for that child or those children.

(9) Each parent's percentage share of the child support need shall be determined by dividing each parent's net income by the combined net income.

(10) Each parent's actual dollar share of the child support need shall be determined by multiplying the minimum child support need by each parent's percentage share.

(11)(a) The court may adjust the minimum child support award, or either or both parents' share of the minimum child support award, based upon the following considerations:

1. Extraordinary medical, psychological, educational, or dental expenses.
2. Independent income of the child, not to include moneys received by a child from supplemental security income.
3. The payment of support for a parent which regularly has been paid and for which there is a demonstrated need.
4. Seasonal variations in one or both parents' incomes or expenses.
5. The age of the child, taking into account the greater needs of older children.
6. 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 the fulfilling of those needs will cause the support to exceed the proposed guidelines.
7. Total available assets of the obligee, obligor, and the child.
8. The impact of the Internal Revenue Service dependency exemption and waiver of that exemption. The court may order the primary residential parent to execute a waiver of the Internal Revenue Service dependency exemption if the noncustodial parent is current in support payments.
9. When application of the child support guidelines 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.

10. The particular shared parental arrangement, such as where the child spends a significant amount of time, but less than 40 percent of the overnights, with the noncustodial parent, thereby reducing the financial expenditures incurred by the primary residential parent; or the refusal of the noncustodial parent to become involved in the activities of the child.

11. Any other adjustment which 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 which the parties jointly incurred during the marriage.

(b) Whenever a particular shared parental arrangement provides that each child spend a substantial amount of time with each parent, the court shall adjust any award of child support, as follows:

1. In accordance with subsections (9) and (10), calculate the amount of support obligation apportioned to the noncustodial parent without including day care and health insurance costs in the calculation and multiply the amount by 1.5.

2. In accordance with subsections (9) and (10), calculate the amount of support obligation apportioned to the custodial parent without including day care and health insurance costs in the calculation and multiply the amount by 1.5.

3. Calculate the percentage of overnight stays the child spends with each parent.

4. Multiply the noncustodial parent's support obligation as calculated in subparagraph 1. by the percentage of the custodial parent's overnight stays with the child as calculated in subparagraph 3.

5. Multiply the custodial parent's support obligation as calculated in subparagraph 2. by the percentage of the noncustodial parent's overnight stays with the child as calculated in subparagraph 3.

6. The difference between the amounts calculated in subparagraphs 4. and 5. shall be the monetary transfer necessary between the custodial and noncustodial parents for the care of the child, subject to an adjustment for day care and health insurance expenses.

7. Pursuant to subsections (7) and (8), calculate the net amounts owed by the custodial and noncustodial parents for the expenses incurred for day care and health insurance coverage for the child. Day care shall be calculated without regard to the 25-percent reduction applied by subsection (7).

8. Adjust the support obligation owed by the custodial or noncustodial parent pursuant to subparagraph 6. by crediting or debiting the amount calculated in subparagraph 7. This amount represents the child support which must be exchanged between the custodial and noncustodial parents.

9. The court may deviate from the child support amount calculated pursuant to subparagraph 8. based upon the considerations set forth in paragraph (a), as well as the custodial parent's low income and ability to maintain the basic necessities of the home for the child, the likelihood that the noncustodial parent will actually exercise the visitation granted by the court, and whether all of the children are exercising the same shared parental arrangement.

10. For purposes of adjusting any award of child support under this paragraph, "substantial amount of time" means that the noncustodial parent exercises visitation at least 40 percent of the overnights of the year.

(c) A noncustodial parent's failure to regularly exercise court-ordered or agreed visitation not caused by the custodial parent which resulted in the adjustment of the amount of child support pursuant to subparagraph (a)10. or paragraph (b) shall be deemed a substantial change of circumstances for purposes of modifying the child support award. A modification pursuant to this paragraph shall be retroactive to the date the noncustodial parent first failed to regularly exercise court-ordered or agreed visitation.

(12)(a) A parent with a support obligation may have other children living with him or her who were born or adopted after the support obligation arose. If such subsequent children exist, 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.

(b) Except as provided in paragraph (a), 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. 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. However, if the existence of such subsequent children is raised, 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.

(c) The issue of subsequent children under paragraph (a) or paragraph (b) 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.

(13) 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.

(14) 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.

(15) For purposes of establishing an obligation for support in accordance with this section, if a person who is receiving public assistance is found to be noncooperative as defined in s. 409.2572, the IV-D agency is authorized to submit to the court an affidavit attesting to the income of the custodial parent based upon information available to the IV-D agency.

(16) The Legislature shall review the guidelines established in this section at least every 4 years beginning in 1997.

(17) In an initial determination of child support, whether in a paternity action, dissolution of marriage action, or petition for support during the marriage, 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:

(a) The court shall apply the guidelines in effect at the time of the hearing subject to the obligor's demonstration of his or her actual income, as defined by subsection (2), 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.

(b) All actual payments made by the noncustodial parent to the custodial parent or the child or third parties for the benefit of the child throughout the proposed retroactive period.

(c) The court should consider an installment payment plan for the payment of retroactive child support.

#### **61.401 Appointment of guardian ad litem. -**

In an action for dissolution of marriage, modification, parental responsibility, custody, or visitation, if the court finds it is in the best interest of the child, the court may appoint a guardian ad litem to act as next friend of the child, investigator or evaluator, not as attorney or advocate. The court in its discretion may also appoint legal counsel for a child to act as attorney or advocate; however, the guardian and the legal counsel shall not be the same person. In such actions which involve an allegation of child abuse, abandonment, or neglect as defined in s. 39.01, which allegation is verified and determined by the court to be well-founded, the court shall appoint a guardian ad litem for the child. The guardian ad litem shall be a party to any judicial proceeding from the date of the appointment until the date of discharge.

#### **61.402 Qualifications of guardians ad litem. -**

A guardian ad litem must be either a citizen certified by the Guardian Ad Litem Program to act in family law cases or an attorney who is a member in good standing of The Florida Bar. Prior to certifying a guardian ad litem to be appointed under this chapter, the Guardian Ad Litem Program must conduct a security background investigation as provided in s. 39.821.

#### **61.403 Guardians ad litem; powers and authority. -**

A guardian ad litem when appointed shall act as next friend of the child, investigator or evaluator, not as attorney or advocate but shall act in the child's best interest. A guardian ad litem shall have the powers, privileges, and responsibilities to the extent necessary to advance the best interest of the child, including, but not limited to, the following:

(1) The guardian ad litem may investigate the allegations of the pleadings affecting the child, and, after proper notice to interested parties to the litigation and subject to conditions set by the court, may interview the child, witnesses, or any other person having information concerning the welfare of the child.

(2) The guardian ad litem, through counsel, may petition the court for an order directed to a specified person, agency, or organization, including, but not limited to, hospitals, medical doctors, dentists, psychologists, and psychiatrists, which order directs that the guardian ad litem be allowed to inspect and copy any records and documents which relate to the minor child or to the child's parents or other custodial persons or household members with whom the child resides. Such order shall be obtained only after notice to all parties and hearing thereon.

(3) The guardian ad litem, through counsel, may request the court to order expert examinations of the child, the child's parents, or other interested parties in the action, by medical doctors, dentists, and other providers of health care including psychiatrists, psychologists, or other mental health professionals.

(4) The guardian ad litem may assist the court in obtaining impartial expert examinations.

(5) The guardian ad litem may address the court and make written or oral recommendations to the court. The guardian ad litem shall file a written report which may include recommendations and a statement of the wishes of the child. The report must be filed and served on all parties at least 20 days prior to the hearing at which it will be presented unless the court waives such time limit. The guardian ad litem must be provided with copies of all pleadings, notices, and other documents filed in the action and is entitled to reasonable notice before any action affecting the child is taken by either of the parties, their counsel, or the court.

(6) A guardian ad litem, acting through counsel, may file such pleadings, motions, or petitions for relief as the guardian ad litem deems appropriate or necessary in furtherance of the guardian's function. The guardian ad litem, through counsel, is entitled to be present and to participate in all depositions, hearings, and other proceedings in the action, and, through counsel, may compel the attendance of witnesses.

(7) The duties and rights of nonattorney guardians do not include the right to practice law.

(8) The guardian ad litem shall submit his or her recommendations to the court regarding any stipulation or agreement, whether incidental, temporary, or permanent, which affects the interest or welfare of the minor child, within 10 days after the date such stipulation or agreement is served upon the guardian ad litem.

#### **61.404 Guardians ad litem; confidentiality. -**

The guardian ad litem shall maintain as confidential all information and documents received from any source described in s. 61.403(2) and may not disclose such information or documents except, in the guardian ad litem's discretion, in a report to the court, served upon both parties to the action and their counsel or as directed by the court.

#### **61.45 Court order of visitation or custody; risk of violation; bond. -**

(1) In a proceeding in which the court enters an order of child custody or visitation, including in a modification proceeding, upon the presentation of competent substantial evidence that there is a risk that one party may violate the court's order of visitation or custody by removing a child from this state or country or by concealing the whereabouts of a child, or upon stipulation of the parties, the court may:

(a) Order that a parent may not remove the child from this state without the notarized written permission of both parents or further court order;

(b) Order that a parent may not remove the child from this country without the notarized written permission of both parents or further court order;

(c) Order that a parent may not take the child to a country that has not ratified or acceded to the Hague Convention on the Civil Aspects of International Child Abduction unless the other parent agrees in writing that the child may be taken to the country;

(d) Require a parent to surrender the passport of the child; or

(e) Require that party to post bond or other security.

(2) If the court enters an order of child custody or visitation, including in a modification proceeding, that includes a provision entered under paragraph (1)(b) or paragraph (1)(c), a certified copy of the order should be sent by the parent who requested the restriction to the Passport Services Office of the United States Department of State requesting that they not issue a passport to the child without their signature or further court order.

(3) In assessing the need for a bond or other security, the court may consider any reasonable factor bearing upon the risk that a party may violate a visitation or custody order by removing a child from this state or country or by concealing the whereabouts of a child, including but not limited to whether:

(a) A court has previously found that a party previously removed a child from Florida or another state in violation of a custody or visitation order, or whether a court had found that a party has threatened to take a child out of Florida or another state in violation of a custody or visitation order;

(b) The party has strong family and community ties to Florida or to other states or countries, including whether the party or child is a citizen of another country;

(c) The party has strong financial reasons to remain in Florida or to relocate to another state or country;

(d) The party has engaged in activities that suggest plans to leave Florida, such as quitting employment; sale of a residence or termination of a lease on a residence, without efforts to acquire an alternative residence in the state; closing bank accounts or otherwise liquidating assets; or applying for a passport;

(e) Either party has had a history of domestic violence as either a victim or perpetrator, child abuse or child neglect evidenced by criminal history, including but not limited to, arrest, an injunction for protection against domestic violence issued after notice and hearing under s. 741.30, medical records, affidavits, or any other relevant information; or

(f) The party has a criminal record.

(4) The court must consider the party's financial resources prior to setting the bond amount under this section. Under no circumstances may the court set a bond that is unreasonable.

(5) Any deficiency of bond or security shall not absolve the violating party of responsibility to pay the full amount of damages determined by the court.

(6)(a) Upon a material violation of any custody or visitation order by removing a child from this state or this country or by concealing the whereabouts of a child, the court may order the bond or other security forfeited in whole or in part.

(b) This section, including the requirement to post a bond or other security, does not apply to a parent who, in a proceeding to order or modify child custody or visitation, the court determines is a victim of an act of domestic violence or has reasonable cause to believe he or she is about to become the victim of an act of domestic violence, as defined in s. 741.28. An injunction for protection against domestic violence issued pursuant to s. 741.30 for a parent as the petitioner which is in effect at the time of the court proceeding shall be one means of demonstrating sufficient evidence that the parent is a victim of domestic violence or is about to become the victim of an act of domestic violence, as defined in s.

741.28, and shall exempt the parent from this section, including the requirement to post a bond or other security. A parent who is determined by the court to be exempt from the requirements of this section must meet the requirements of s. 787.03(6) if an offense of interference with custody is committed.

(7)(a) Upon an order of forfeiture, the proceeds of any bond or other security posted pursuant to this subsection may only be used to:

1. Reimburse the nonviolating party for actual costs or damages incurred in upholding the court's order of custody or visitation.
2. Locate and return the child to the residence as set forth in the visitation or custody order.
3. Reimburse reasonable fees and costs as determined by the court.

(b) Any remaining proceeds shall be held as further security if deemed necessary by the court, and if further security is not found to be necessary; applied to any child support arrears owed by the parent against whom the bond was required, and if no arrears exists; all remaining proceeds will be allocated by the court in the best interest of the child.

(8) At any time after the forfeiture of the bond or other security, the party who posted the bond or other security, or the court on its own motion may request that the party provide documentation substantiating that the proceeds received as a result of the forfeiture have been used solely in accordance with this subsection. Any party using such proceeds for purposes not in accordance with this section may be found in contempt of court.

**Note:** Laws may have changed since our last update. For the latest information on these divorce laws, speak to a local divorce lawyer in the state.