

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

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BILL: SB 536

INTRODUCER: Senator Garcia

SUBJECT: Child Support

DATE: March 3, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	<b>Pre-meeting</b>
2.			AEG	
3.			FP	

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**I. Summary:**

SB 536 makes numerous changes to the Child Support Program, which is administered by the Department of Revenue (DOR), Florida’s Title IV-D agency. As the state’s Title IV-D agency, the DOR is responsible for collecting and enforcing child support. To receive services from the Child Support Program, families either complete an application for services, or are automatically referred because a parent is receiving cash or food assistance.

The bill makes the following changes to the Child Support Program:

- Amends the definition of ‘depository’ to clarify that the depository required by statute is established by the clerk of the circuit court;
- Expands the circumstances when a payment agreement with a deferred start date may be used to include when an obligor is making a good faith effort to participate in job training;
- Removes existing exceptions to the federal prohibition on treating involuntary incarceration as voluntary unemployment when establishing or modifying a support order;
- Authorizes the DOR to commence an administrative proceeding to determine paternity or paternity and child support based on an affidavit or written declaration completed by a nonparent caregiver of the child who has knowledge of the child’s paternity;
- Requires the clerk of court to credit a depository payment account for collections received by another state while enforcing the Florida administrative support order associated with the account;
- Resolves inconsistency in statute concerning the amount of the allocation for operations and maintenance of the Clerk of Court Child Support Collection System (CLERC) system by reorganizing statutes to reflect the current, more efficient practice for collecting, retaining, distributing, accounting for and reporting clerk fees in private child support cases; and
- Requires the clerk of court to credit a depository payment account for collections received by another state while enforcing the Florida administrative support order associated with the accounts. The clerk must apply credit in the amount indicated by a record from another

state's Title IV-D agency or court that is provided to the clerk by the DOR and that documents collections made or received by the other state.

The DOR states that the fiscal impact of the bill is indeterminate. See Section V Fiscal Impact Statement.

The bill is effective July 1, 2023.

## II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

## III. Effect of Proposed Changes:

### Depository Service Fees (Sections 3 and 4)

#### *Present Situation*

##### Title IV-D cases

Title IV-D (IV-D) refers to Title IV, Part D of the Social Security Act, which is the federally funded, state administered child support enforcement program.<sup>1</sup> The IV-D program is administered by the federal Office of Child Support Enforcement (OCSE), within the United States Department of Health and Human Services. The OCSE oversees the national child support program and partners with state and local child support agencies to encourage parental responsibility so that children receive financial, emotional, and medical support from both parents, even when they live in separate households.<sup>2</sup> The OCSE does not provide services directly to families, but helps state child support agencies develop, manage, and operate their child support programs effectively and according to federal law.<sup>3</sup>

As Florida's IV-D agency,<sup>4</sup> the DOR is responsible for collecting and enforcing child support.<sup>5</sup> The Child Support Program provides child support services to over one million children and collects over a billion dollars in child support each year. The Child Support Program works with parents, employers, financial institutions, the Internal Revenue Service, state and local agencies, and courts throughout the state to receive timely child support payments and also works with families and partners to:

- Locate parents, employers, and assets;
- Establish paternity;
- Establish and modify child support orders;

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<sup>1</sup> 42 U.S.C. s. 651, et. seq.

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Department of Health & Human Services, Office of Child Support Enforcement (OCSE), *About the Office of Child Support Enforcement*, (February 2, 2021) available at <https://www.acf.hhs.gov/css/about> (last visited February 27, 2023).

<sup>4</sup> Section 409.2557(1), F.S.

<sup>5</sup> *See* s. 61.13, F.S.

- Collect and disburse child support payments; and
- Monitor and enforce child support orders.<sup>6</sup>

Child support services are available even if a parent lives in another state or country.<sup>7</sup> The DOR offers child support services in all but two Florida counties, partnering with the State Attorney's Office for services in Miami-Dade County and the Manatee County Clerk of Court for services in Manatee County.<sup>8</sup>

#### Depository Role in IV-D Cases

Once a judge orders child support, the obligor may pay the obligee directly or payments can be made through an Income Withholding Order. If an Income Withholding Order is issued, the payments will be processed at the State Disbursement Unit (SDU)<sup>9</sup> administered by the DOR. The clerks of courts act as record keepers for payments processed at the SDU. Obligor must make all child support payments in IV-D cases to the SDU.<sup>10</sup>

Each clerk of the circuit court operates a child support depository.<sup>11</sup> The DOR extends participation in the federal child support cost reimbursement program to the central depository<sup>12</sup> in each county, to the maximum extent possible under existing federal law.<sup>13</sup> The depository receives reimbursement for services provided under a cooperative agreement with the DOR, and each depository is required to participate in the SDU.<sup>14</sup>

Upon request of the parties in a child support case, the court may order that child support payments be made through the depository or directly to the obligee if it is in the child's best interest.<sup>15</sup> If such an order is made, any party or the DOR in a IV-D case may file an affidavit with the depository that alleges the obligor has defaulted on his or her child support payment obligations and request that the payments be made through the depository.<sup>16</sup> The party must submit a copy of the affidavit to the court and to all parties.<sup>17</sup> Fifteen days after receipt of the

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<sup>6</sup> The Department of Revenue (DOR), *About the Child Support Program*, available at [https://floridarevenue.com/childsupport/about\\_us/Pages/about\\_us.aspx](https://floridarevenue.com/childsupport/about_us/Pages/about_us.aspx) (last visited February 27, 2023).

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

<sup>8</sup> *Id.*

<sup>9</sup> Section 61.046(20), F.S., provides that the "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 DOR pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the DOR 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.

<sup>10</sup> Sections 61.1824(1)(a), 61.1824(6), and 409.2559, F.S., and 42 U.S.C. s. 654b(a)(1)(A).

<sup>11</sup> Section 61.181(1)(a), F.S.

<sup>12</sup> Section 61.046(4), F.S., provides "depository" means the central governmental depository established pursuant to s. 61.181, F.S., 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.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Section 61.13(1)(d), F.S.

<sup>16</sup> Section 61.13(1)(d)3., F.S.

<sup>17</sup> *Id.*

affidavit, the depository must notify all parties that future payments will be paid through the depository, except income deduction payments must be made through the SDU.<sup>18</sup>

The DOR must contract with the Florida Association of Court Clerks (FACC) and the clerk depositories for operation and maintenance of the Clerk of Court Child Support Collection System (CLERC) System.<sup>19</sup> The CLERC System integrates all clerk of court and depositories and transmits payment data and State Case Registry Data to the DOR's automated child support enforcement system.<sup>20</sup> When a private case with a support order payable directly to the parent who is owed support becomes an IV-D case, the depository must create payment accounts on the CLERC System for payments to be disbursed to the parent owed support and for the payment data to be sent to the DOR.<sup>21</sup>

#### Depository Role in Non-IV-D Cases

Two types of depository fees are levied on non-IV-D child support payments. For payments not required to be processed through the SDU, depositories must impose and collect a fee on each payment made for receiving, recording, reporting, disbursing, monitoring, or handling alimony or child support payments.<sup>22</sup>

For non-IV-D cases processed by the SDU, the SDU collects a fee for each payment received and transmits 40 percent of the service charge to the depository in which the case is located for the depository's administration, management, and maintenance of such case.<sup>23</sup> If a payment is made to the SDU which is not accompanied by the required fee, the SDU is not permitted to deduct any moneys from the support payment for payment of the fee.<sup>24</sup> The fee must be a flat fee based, to the extent practicable, upon estimated reasonable costs of operation.<sup>25</sup> The fee is then 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 is permitted to be less than \$1 nor more than \$5 per payment made.<sup>26</sup> The fee must be considered by the court in determining the amount of support that the obligor is, or may be, required to pay.<sup>27</sup>

The fee for both payment types is 4% of the support payment and may not exceed \$5.25, and part of the fee must be remitted monthly to the DOR for deposit into the Child Support Enforcement Collection System Trust Fund (Trust Fund).<sup>28</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> Section 61.1826(3), F.S.

<sup>20</sup> Section 61.046(2), F.S.

<sup>21</sup> The DOR, *Senate Bill 536 Agency Analysis*, p. 3, (March 1, 2023) (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DOR SB 536 Analysis").

<sup>22</sup> Section 61.181(2)(a), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Section 61.181(2)(b)1., F.S. The Child Support Enforcement Collection System Trust Fund is established pursuant to s. 61.1811, F.S., and is used to deposit the DOR's share of fees in non-IV-D cases.

Under s. 61.181(2)(b)1., F.S., the CLERC allocation is established to be 75% of the additional 1% increase in the fee from 3% to 4%. Section 61.181(2)(b)2., provides a different method for determining the CLERC allocation (for each support payment of less than \$33, 18.75 cents; for each support payment between \$33 and \$140, an amount equal to 18.75 percent of the fee charged; and for each support payment in excess of \$140, 18.75 cents).<sup>29</sup> According to the DOR, the different methods used to determine the portion of the fee which is transmitted the Trust Fund have resulted in the CLERC system utilizing a hybrid calculation.<sup>30</sup>

Money deposited into the Trust Fund may only be used for the development, implementation and operation of the CLERC system.<sup>31</sup> The DOR's requirement to fund the CLERC System and the automation of depositories is limited to the state share of funds available in the Trust Fund.<sup>32</sup> The DOR and the FACC contract for data processing services as necessary for the operation of the child support program and for the purpose of paying the FACC the state share of the trust fund balances for operation and maintenance of CLERC System.<sup>33</sup>

Pursuant to the DOR's current contract with the FACC (Contract CC700) for income withholding payments in non-IV-D cases, the SDU transmits all payments to the relevant depository for each case.<sup>34</sup> The depository collects the clerk's statutory fee and retains 40% for the administration, management and maintenance of the case.<sup>35</sup>

According to the DOR, the current practice for collecting, retaining, distributing, accounting for and reporting clerk fees in non-IV-D cases on payments received directly by the depository and by the SDU has been in place for several years, coincides with programming of the CLERC System, and is reflected in the DOR's contracts with the FACC for services in support of the SDU and the depositories.<sup>36</sup>

### ***Effect of Bill***

The bill amends s. 61.181, F.S., making the following changes:

- Applies the methodology currently utilized by the CLERC system to determine how the amount of the fee allocated to the operation and maintenance of the CLERC system is calculated;
- Removes existing references to unused methodologies specified in s. 61.181(2)(b);
- Clarifies that the clerk of court maintains its share of the fee for receiving, recording, reporting, disbursing, monitoring, or handling alimony or child support payments which are not processed through the SDU.

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<sup>29</sup> The DOR SB 536 Analysis, p. 3.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

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

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

<sup>34</sup> The DOR SB 532 Analysis, p. 3.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

- Provides that for payments processed through the SDU, the clerk of court retains 40 percent of the fee for the depository’s administration, management, and maintenance of the case for payments processed through the SDU
- Requires the clerk of court to transmit the balance of the fee to the DOR for handling as program income after retaining 40 percent of the fee and paying the amount due to the Trust Fund;
- Requires the DOR to transfer funds received from the depository at least monthly through the Clerk of the Court Revenue Remittance System operated under s. 28.245, F.S.;<sup>37</sup>
- Provides that depository fees are payable on payments in all non-IV-D cases, not just those that are not required to be processed through the SDU;
- Prohibits depository fees from being imposed on payments on IV-D cases;
- Removes the existing requirement for the SDU to collect and remit fees to the depository on non-IV-D payments;
- Removes the existing requirement for the depository to provide the DOR with a monthly report of IV-D payment accounts;
- Removes a provision which specifies that the depository is not required to provide the IV-D agency with the date provided by a payor of income as required by s. 61.1301, F.S., if the fee increases, expires, or otherwise terminates. As a result, the depository must now provide the DOR with the date provided by a payor;
- Deletes obsolete language relating to prior dates;
- Changes the meaning of “depository” as defined in s. 61.046(4), F.S., to remove references to past dates and obsolete references;
- Clarifies that the depository is established by the clerk of the circuit court;
- Reorganizes current statutory provisions consistent with other changes made by the bill;
- Amends a cross-reference in s. 61.1811, F.S; and
- Updates a cross-reference to s. 61.181(2)(b), F.S.

The bill also corrects inconsistency in s. 61.181(2)(b) regarding allocation amounts for operation and maintenance of the CLERC System without altering the existing allocation methodology of the CLERC System.

## **Driver License Suspension (Section 2)**

### ***Present Situation***

If an obligor is 15 days delinquent in making a support payment, notice to the obligor of the delinquency must be provided by the DOR (in IV-D cases) or the clerk of the court (in non-IV-D cases).<sup>38</sup> The notice must state that the DOR or the clerk of the court will request the

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<sup>37</sup> Section 28.245, F.S., provides that notwithstanding any other provision of law, all moneys collected by the clerks of the court as part of the clerk’s court-related functions for subsequent distribution to any state entity must be transmitted electronically, by the 10th day of the month immediately after the month in which the moneys are collected, to the DOR for appropriate distribution. A uniform remittance form provided by the DOR detailing the specific amounts due each fund must accompany such submittal. All moneys collected by the clerks of court for remittance to any entity must be distributed pursuant to the law in effect at the time of collection.

<sup>38</sup> Section 61.13016(1), F.S.

Department of Highway Safety and Motor Vehicles (DHSMV) to suspend the obligor's driver license within 20 days after the date that the notice is mailed.<sup>39</sup> The notice lists several ways for an obligor to stop suspension of his or her license, including:

- Paying the delinquency in full;
- Entering into a written agreement for payment (with the obligee<sup>40</sup> or the DOR);
- Contesting the delinquency notice;
- Demonstrating that he or she is on reemployment assistance (unemployment compensation);
- Demonstrating that he or she is disabled and incapable of self-support;
- Demonstrating that he or she receives temporary cash assistance; or
- Demonstrating that he or she is making bankruptcy payments.<sup>41</sup>

The obligor may enter into a payment agreement, which may include a reasonable period of payment deferral to accommodate the obligor's good faith job-seeking efforts, in order to avoid license suspension.<sup>42</sup> If an obligor in a non-IV-D case 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.<sup>43</sup>

### ***Effect of Bill***

The bill amends s. 61.13016(1)(c)1.b., F.S., to permit payment agreements which include a deferred start date in instances where the obligor is shown to be participating in job training in good faith.

### **Child Support Guidelines; Incarceration as Voluntary Unemployment (Section 5)**

#### ***Present Situation***

As the state's IV-D agency, federal law authorizes the head of the DOR, or its designee, to obtain consumer reports to determine an individual's income, establish that individual's capacity to make support payments, or determine the appropriate amount of child support the individual pays. Additionally, s. 61.1354(3), F.S., specifies that, to obtain the information, the head of the IV-D agency, or its designee, must certify that:

- 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;
- 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 Florida law;

<sup>39</sup> Section 61.13016(1)(c), F.S.

<sup>40</sup> Section 61.046, F.S. defines "obligee" as 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.

<sup>41</sup> Section 61.13016(1)(c)1., F.S.

<sup>42</sup> Section 61.13016(1)(c)1.b., F.S.

<sup>43</sup> Section 61.13016(1)(c), F.S.

- 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
- The consumer report will be used solely for the purpose specified.<sup>44</sup>

In *DOR v. Jackson*,<sup>45</sup> the Florida Supreme Court held that a parent may not automatically have his or her child support payment obligations modified based solely on a reduction in income resulting from incarceration. The trial court has some discretion, but the child's interest in receiving support must generally supersede the obligor parent's substantial change in circumstances resulting from incarceration.

The District Courts of Appeal are not in agreement on whether income can be imputed when determining *an initial* child support order when the parent is in prison or going to prison.

In *McCall v. Martin*,<sup>46</sup> the Fourth District Court of Appeal reversed the trial court's order refusing to impute income to the father during his incarceration for committing battery on his wife, citing his absence of income. Relying on *Jackson* and *Mascola v. Lusskin*,<sup>47</sup> which was approved by the Supreme Court in *Jackson*, the Fourth District held that the father's child support order may not be modified based on his incarceration due to a conviction for attempting to kill the mother to avoid child support.

However, in *DOR v. Llamas*,<sup>48</sup> the First District Court of Appeal affirmed an order declining to impose a child support obligation upon the father who was going to prison. The First DCA certified conflict with the Fourth DCA's opinion in *McCall*, finding that the administrative law judge reasonably applied the law and did not abuse his discretion in declining to impute income to the father. Subsequently, in *Wilkerson v. Wilkerson*,<sup>49</sup> the Fifth DCA aligned itself with *McCall* and certified conflict with *Llamas*, holding that a court does not abuse its discretion in setting an initial child support obligation by imputing income to an incarcerated parent. The court in *Wilkerson* believed that an individual's actions that lead to incarceration are voluntary for purposes of s. 61.30(2)(b), F.S., and that s. 61.30, F.S., was not intended to operate as a shield to avoid having an initial support obligation established while the parent is incarcerated.

In 2016, Federal law was amended to prohibit state laws from treating incarceration as voluntary unemployment for purposes of establishing or modifying child support orders.<sup>50</sup> On September 17, 2020, the OCSE proposed two optional exceptions to allow incarceration to be treated as voluntary unemployment under child support guidelines, including incarceration which results from:

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<sup>44</sup> Section 61.1354(3), F.S.

<sup>45</sup> 846 So. 2d 486 (Fla. 2003).

<sup>46</sup> 34 So. 3d 121 (Fla. 4th DCA 2010).

<sup>47</sup> 727 So. 2d 328 (Fla. 4th DCA 1999).

<sup>48</sup> 196 So.3d 1267 (Fla. 1st DCA 2016).

<sup>49</sup> 220 So. 3d 480 (Fla. 5th DCA 2017).

<sup>50</sup> See 45 CFR 302.56(c)(3).



- Intentional nonpayment of child support resulting from a criminal case or civil contempt action; or
- Any offense of which the individual's dependent child or the child support recipient was the victim.<sup>51</sup>

Since 2021, Florida law has prohibited treating incarceration as voluntary unemployment when a support order is established or modified, unless incarceration is for intentional nonpayment of child support or an offense against a child or person who is owed child support, or the court or administrative tribunal deviates from the guideline amount as provided under current law.<sup>52</sup> The DOR has stated that the OCSE objects to Florida's exceptions to the Federal rule that a state's child support guidelines may not treat incarceration as voluntary unemployment when establishing or modifying support orders.<sup>53</sup> The OCSE has recently informed the DOR that it will not approve Florida's Title IV-D State Plan for compliance with federal child support guidelines requirements unless the exceptions are removed from Florida law.<sup>54</sup>

Florida is ineligible to receive federal IV-D matching funds and performance-based federal incentive payments if the state lacks an approved Title IV-D State Plan.<sup>55</sup> According to the DOR, the Child Support Program's State Fiscal Year 2022-23 appropriations for these funds are \$174.6 million and \$42.2 million, respectively.<sup>56</sup> The state will also incur a penalty to the Title IV-A TANF (Temporary Assistance for Needy Families) Grant without an approved Title IV-D State Plan.<sup>57</sup> For the first year of noncompliance, the penalty is 1-2% of TANF funds; for the second year, the penalty is 2-3% of TANF funds; and for the third and subsequent years, the penalty is 3-5% of the amounts otherwise payable to the state.<sup>58</sup> Florida's TANF Grant is currently \$560.5 million.<sup>59</sup>

As a condition of the state's IV-D State Plan and in order to continue receiving federal IV-D matching funds, Florida is obligated to comply with Federal IV-D regulations.<sup>60</sup> The "Federal Compliance Date" for Florida to comply with 45 CFR 302.56(c)(3) is approximately June 30, 2023.<sup>61</sup>

### ***Effect of Bill***

The bill makes changes to conform to the requirements of Federal law by deleting existing provisions of state law which prohibit classifying incarceration as voluntary unemployment when establishing or modifying a support order. As a result, incarceration will no longer be

<sup>51</sup> 85 FR 58029 (September 17, 2020).

<sup>52</sup> Section 61.30(2)(c), F.S.; Ch. 2021-103, s. 4, L.O.F.

<sup>53</sup> The DOR SB 536 Analysis, p. 4-5.

<sup>54</sup> *Id.*

<sup>55</sup> The DOR SB 536 Analysis, p. 5.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> See 42 USC 655(a)(1)(A) and 45 CFR 302.56(a).

<sup>61</sup> The DOR SB 536 Analysis, p. 5.

treated as voluntary unemployment for the purposes of support orders. The bill removes exceptions in instances where incarceration occurs as a result of intentional nonpayment of child support or an offense against a child or person who is owed child support; however, maintains the court's discretion to deviate from the guideline amount as provided by s. 61.30(1)(a), F.S., if the court makes written findings in its order explaining why ordering payment of the guideline amount would be unjust or inappropriate.

## **Determining Paternity or Paternity and Child Support (Section 6)**

### ***Present Situation***

The DOR is authorized pursuant to s. 409.256(2)(a)5., F.S., to commence administrative proceedings to determine paternity or paternity and child support only in cases where a child's mother or putative father has executed an affidavit or written declaration under penalty of perjury stating that the putative father is, or may be, the child's biological father. The affidavit or written declaration must set forth the factual basis for the allegation of paternity.<sup>62</sup>

In instances where a child lives with their mother or putative father, the DOR can often obtain an affidavit or written declaration of paternity that names the putative father or fathers.<sup>63</sup> The DOR has stated that obtaining proper documented authorization is problematic in cases where a child lives with a nonparent caregiver.<sup>64</sup> The mother and putative father may be unavailable to provide a written declaration or unwilling to cooperate in such instances.<sup>65</sup>

According to the DOR, the most common caregiver relationship involves instances where the caregiver is the child's grandmother and she is receiving public assistance for the child.<sup>66</sup> An administrative proceeding cannot be commenced without an affidavit or written declaration of paternity from the mother or putative father, and the DOR must file the case in circuit court to determine paternity and child support.<sup>67</sup> As of January 13, 2023, the DOR was responsible for establishing paternity for 48,075 children living with a nonparent caregiver of which 45,059 lived with a parent and 3,016 lived with a nonparent caregiver.<sup>68</sup> In nonparent caregiver cases, (87%) received some form of public assistance (cash assistance, food assistance, and/or Medicaid).<sup>69</sup>

The DOR uses a "Paternity Statement by Non-Parent" form to serve as the basis for a paternity action in circuit court when a paternity affidavit or written declaration is not available from the mother or putative father.<sup>70</sup> According to the DOR, nonparent caregivers often have knowledge

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<sup>62</sup> Section 409.256(2)(a)5., F.S.

<sup>63</sup> The DOR SB 536 Analysis, p. 5.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Rule 12E-1.039, F.A.C.; the "Paternity Statement by Non-Parent" form is referenced in the Florida Administrative Code as CS-PO34 and available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-08655>.

of the child's paternity.<sup>71</sup> The caregiver signs the statement under penalty of perjury and provides the factual basis for the allegation that the putative father named may be the father of the child at issue in the case.<sup>72</sup>

### ***Effect of Bill***

The bill amends s. 409.256(2)(a)5., F.S., to permit the DOR to initiate an administrative proceeding to determine paternity, or paternity and child support, where an affidavit or written declaration is executed by a nonparent caregiver of the child who has knowledge of the child's paternity.

### **Credit for Payments Made to Another State (Section 7)**

#### ***Present Situation***

Since enactment of Title IV-D of the Social Security Act in January 1975, states have been required to cooperate with one another in locating absent parents, establishing paternity, and obtaining and enforcing support owed by absent parents to their children.<sup>73</sup> Pursuant to the Full Faith and Credit for Child Support Order Act and the Uniform Interstate Family Support Act (UIFSA), courts of all U.S. territories, states, and tribes must give full faith and credit to a child support order issued by another state or tribe that had jurisdiction over the parties and the subject matter.<sup>74</sup>

In Florida, the DOR may request each depository to establish an account for the receipt and disbursement of support payments for IV-D interstate cases.<sup>75</sup> The DOR is required to provide a copy of the other state's order with the request, and the depository must advise the DOR of the account number in writing within 4 business days after receipt of the request.<sup>76</sup>

In child support cases where an obligor lives and works in a state other than Florida, a clerk of court may not credit the obligor's account for payments made to another state without prior approval from a Florida court.<sup>77</sup> Florida administrative support orders are not court orders and therefore a circuit court case is typically not available in which a motion for credit can be filed with the court.<sup>78</sup>

In some interstate IV-D cases, the DOR also receives support payments from federal offsets and other one-time collections.<sup>79</sup> The DOR reports such payments to the appropriate depository and

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<sup>71</sup> The DOR SB 536 Analysis, p. 6.

<sup>72</sup> *Id.*

<sup>73</sup> The OCSE, *Final Rule: Provision of Services in Interstate IV-D Cases*, available at <https://www.acf.hhs.gov/css/policy-guidance/final-rule-provision-services-interstate-iv-d-cases> (last visited February 27, 2023).

<sup>74</sup> The OCSE, *Child Support Handbook Chapter 7: Working Across Borders* at p. 1, available at [https://www.acf.hhs.gov/sites/default/files/documents/ocse/chapter7\\_0.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocse/chapter7_0.pdf) (last visited February 27, 2023).

<sup>75</sup> Section 61.181(1)(b), F.S.

<sup>76</sup> *Id.*

<sup>77</sup> The DOR SB 536 Analysis, p. 6.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

the clerk credits the payments to the obligor's account.<sup>80</sup> The absence of a complete accounting of payments at the depository makes it appear that payments were not made, which may result in inappropriate enforcement or collection actions, including judgments by operation of law initiated by the depository under s. 61.14(6), F.S.<sup>81</sup>

### ***Effect of Bill***

The bill amends s. 409.2563(8), F.S., to provide that when the DOR receives a record of a payment from a IV-D agency or a court in another state and the record shows the obligor made a payment in that state pursuant to a DOR-issued support order, the DOR is required to file a record of the payment with the appropriate depository. The DOR must request that the clerk review the record and update relevant payment accounts.

The bill requires the DOR to apply credit for payments made in another state if the clerk has not previously done so. If the other state's payment record reflects payments which are not shown in the clerk's payment accounts, the clerk must credit the obligor's account in an amount equal to that of the payment made to the other state. The bill allows parties to the administrative proceeding to dispute the application of credit in subsequent proceedings regarding payment under the support order.

### **Updated Definitions and Cross-References (Sections 1 and 4)**

Section 1 of the bill amends the definition of "Depository" in s. 61.046(4), F.S., consistent with section 3 of the bill. The bill clarifies that each depository is established by the appropriate clerk of the circuit court. Section 4 of the bill updates a cross-reference consistent with section 3 of the bill.

### **Effective Date**

The effective date of the bill is October 1, 2023.

## **IV. Constitutional Issues:**

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

None.

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

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

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

The DOR states that the proposed changes in section 3 of the bill will likely not increase net fee collection or individual fee amounts, and therefore are not subject to the requirements of Article VII, Section 19 of the Florida Constitution.<sup>82</sup>

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The DOR states that the Revenue Estimating Conference will determine any potential impact on state and local government.<sup>83</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 61.046, 61.13016, 61.181, 61.1811, 61.30, 409.256, and 409.2563 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

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<sup>82</sup> The DOR, *Senate Bill 536 Analysis*, p. 8 (January 3, 2023).

<sup>83</sup> *Id.*

B. Amendments:

None.

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

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