

2017 FAMILY LAW LEGISLATION UPDATE

By General Magistrate Robert J. Jones

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An Act relating to Child Support and Parenting Time Plans



This Bill was passed by the Legislature. If this Bill is signed by the Governor or is allowed to become law without the Governor’s signature, the bill will take effect on January 1, 2018.

This Bill authorizes the Department of Revenue (department) to establish parenting time plans agreed to by both parents in Title IV-D administrative child support proceedings. The department will be required to provide parents Title IV-D Parenting Time Plans with a proposed administrative support order. The bill creates a standard Title IV-D Parenting Time Plan that may be used by parents. In the event the parents cannot agree on a parenting time plan, they will be referred to the circuit court for the establishment of a plan. The department shall create and provide a form for a petition to establish a parenting time plan for parents who have not agreed on a parenting schedule at the time of the child support hearing. The department shall provide the form to the parents, but may not file the petition or represent either parent at the hearing. The parents may not pay a fee to file such a petition to determine a parenting time plan. The bill also requires the enforcement or modification of an established parenting time plan to be sought through a court of appropriate jurisdiction.

Some of the applicable provisions of this 29 page Bill are as follows:

409.2551 Legislative intent.—

It is also the public policy of this state to encourage frequent contact between a child and each parent to optimize the development of a close and continuing relationship between each parent and the child.

409.2554 Definitions; ss. 409.2551-409.2598.—As used in ss. 71 409.2551-409.2598, the term:

(16) "Title IV-D Standard Parenting Time Plan" means a document that may be agreed to by the parents to govern the relationship between the parents and to provide the parent who owes support a reasonable minimum amount of time with his or her child. The plan set forth in s. 409.25633 includes timetables that specify the time, including overnights and holidays, that a child may spend with each parent.

409.2557 State agency for administering child support enforcement program.— (2) The department's authority includes, but is not be limited to, the establishment of paternity or support obligations, the establishment of a Title IV-D Standard Parenting Time Plan or any other parenting time plan agreed to and signed by the parents, and the modification, enforcement, and collection of support obligations.

409.2563 Administrative establishment of child support obligations.—

(2) PURPOSE AND SCOPE.—

(a) It is not the Legislature's intent to limit the jurisdiction of the circuit courts to hear and determine issues regarding child support or parenting time. This section is intended to provide the department with an alternative procedure for establishing child support obligations and establishing a parenting time plan only if the parents are in agreement, in Title IV-D cases in a fair and expeditious manner when there is no court order of support. The procedures in this section are effective throughout the state and shall be implemented statewide.

(b) If the parents do not have an existing time-sharing schedule or parenting time plan and do not agree to a parenting time plan, a plan may not be included in the initial administrative order and the order must include a statement explaining its absence.

(c) If the parents have a judicially established parenting time plan, the plan may not be included in the administrative or initial judicial order.

(d) Any notification provided by the department may not include a Title IV-D Standard Parenting Time Plan if Florida is not the child's home state, when one parent does not reside in Florida, if either parent has requested

nondisclosure for fear of harm from the other parent, or when the parent who owes support is incarcerated.

(e) The administrative procedure set forth in this section concerns only the establishment of child support obligations and, if agreed to and signed by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan. This section does not grant jurisdiction to the department or the Division of Administrative Hearings to hear or determine issues of dissolution of marriage, separation, alimony or spousal support, termination of parental rights, dependency, disputed paternity, except for a determination of paternity as provided in s. 409.256, or change of time-sharing. If both parents have agreed to and signed a parenting time plan before the establishment of the administrative support order, the department or the Division of Administrative Hearings shall incorporate the agreed-upon parenting time plan into the administrative support order. This paragraph notwithstanding, the department and the Division of Administrative Hearings may make findings of fact that are necessary for a proper determination of a parent's support obligation as authorized by this section.

(f) If there is no support order for a child in a Title IV-D case whose paternity has been established or is presumed by law, or whose paternity is the subject of a proceeding under s.409., the department may establish a parent's child support obligation pursuant to this section, s. 61.30, and other relevant provisions of state law. The administrative support order must include a parenting time plan or Title IV-D Standard Parenting Time Plan as agreed to and signed by both parents. The parent's obligation determined by the department may include any obligation to pay retroactive support and any obligation to provide for health care for a child, whether through insurance coverage, reimbursement of expenses, or both. The department may proceed on behalf of:

1. An applicant or recipient of public assistance, as provided by ss. 409.2561 and 409.2567;
2. A former recipient of public assistance, as provided by s. 409.2569;
3. An individual who has applied for services as provided by s. 409.2567;
4. Itself or the child, as provided by s. 409.2561; or

5. A state or local government of another state, as provided by chapter 88.

(g) Either parent, or a caregiver if applicable, may at any time file a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any. A support order issued by a circuit court prospectively supersedes an administrative support order rendered by the department.

(h) Pursuant to paragraph (e), neither the department nor the Division of Administrative Hearings has jurisdiction to award or change child custody or rights of parental contact. The department or the Division of Administrative Hearings shall incorporate a parenting time plan or Title IV-D Standard Parenting Time Plan as agreed to and signed by both parents into the administrative support order.

(i) That the parent from whom support is being sought may file a request for a hearing in writing within 20 days after the date of mailing or other service of the proposed administrative support order or will be deemed to have waived the right to request a hearing;

(j) That if the parent from whom support is being sought does not file a timely request for hearing after service of the proposed administrative support order, the department will issue an administrative support order that incorporates the findings of the proposed administrative support order, and any agreed-upon parenting time plan. The department will send by regular mail a copy of the administrative support order and any incorporated parenting time plan to both parents, or parent and caregiver if applicable;

(k) That after an administrative support order is rendered incorporating any agreed-upon parenting time plan, the department will file a copy of the order with the clerk of the 334 circuit court;

(l) That after an administrative support order is rendered, the department may enforce the administrative support order by any lawful means. The department does not have jurisdiction to enforce any parenting time plan that is incorporated into an administrative support order;

(m) That either parent, or caregiver if applicable, may file at any time a civil action in a circuit court having jurisdiction and proper venue to determine parental support obligations, if any, and that a support order

issued by a circuit court supersedes an administrative support order rendered by the department;

(n) That neither the department nor the Division of Administrative Hearings has jurisdiction to award or change child custody or rights of parental contact or time-sharing, and these issues may be addressed only in circuit court. The department or the Division of Administrative Hearings **may** incorporate, if agreed to and signed by both parents, a parenting time plan or Title IV-D Standard Parenting Time Plan when the administrative support order is established.

409.25633 Title IV-D Standard Parenting Time Plans.-

The best interest of the child is the primary consideration of the parenting plan and special consideration should be given to the age and needs of each child. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when a parenting time plan is created.

(1) A Title IV-D Standard Parenting Time Plan shall be presented to the parents in any administrative action taken by the Title IV-D program to establish or modify child support or to determine paternity. If the parents agree to the Title IV-D Standard Parenting Time Plan or to another parenting time plan, the plan must be signed by the parents and incorporated into the administrative order. If the parents do not agree to a Title IVD Standard Parenting Time Plan or if an agreed-upon parenting time plan is not included, the Department of Revenue must enter an administrative support order and refer the parents to the court of appropriate jurisdiction to establish a parenting time plan. The department must note on the referral that an administrative support order has been entered. If a parenting time plan is not included in the administrative support order entered pursuant to s. 409.2563, the department must provide information to the parents on the process to establish such a plan.

(2) After the incorporation of an agreed-upon parenting time plan into an administrative order, a modification or enforcement of the parenting time plan may be sought through a court of appropriate jurisdiction.

(3) The parent who owes support is entitled to parenting time with the child. If the parents do not have a signed, agreed-upon parenting time plan, the following Title IV-D Standard Parenting Time Plan must be incorporated into an administrative support order if agreed to and signed by the parents:

(a) Every other weekend.—The second and fourth full weekend of the month from 6 p.m. on Friday through 6 p.m. on Sunday. The weekends may begin upon the child's release from school on Friday and end on Sunday at 6 p.m. or when the child returns to school on Monday morning. The weekend time may be extended by holidays that fall on Friday or Monday;

(b) One evening per week.—One weekday beginning at 6 p.m. and ending at 8 p.m. or, if both parents agree, from when the child is released from school until 8 p.m.;

(c) Thanksgiving break.—In even-numbered years, the Thanksgiving break from 6 p.m. on the Wednesday before Thanksgiving until 6 p.m. on the Sunday following Thanksgiving. If both parents agree, the Thanksgiving break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday;

(d) Winter break.—In odd-numbered years, the first half of winter break, from the child's release from school, beginning at 6 p.m. or, if both parents agree, upon the child's release from school, until noon on December 26. In even-numbered years, the second half of winter break from noon on December 26 until 6 p.m. on the day before school resumes or, if both parents agree, upon the child's return to school;

(e) Spring break.—In even-numbered years, the week of spring break from 6 p.m. the day the child is released from school until 6 p.m. the night before school resumes. If both parents agree, the spring break parenting time may begin upon the child's release from school and end upon the child's return to school the following Monday; and

(f) Summer break.—For 2 weeks in the summer beginning at 6 p.m. the first Sunday following the last day of school.

(4) In the event the parents have not agreed on a parenting schedule at the time of the child support hearing, the department shall enter an administrative support order and refer the parents to a court of appropriate jurisdiction for the establishment of a parenting time plan.

(5) The Title IV-D Standard Parenting Time Plan is not intended for the use by, and may not be provided to, parents and families with domestic or family violence concerns.

(6) If, after the incorporation of an agreed-upon parenting time plan into an administrative support order, a parent becomes concerned about the safety of the child during the child's time with the other parent, a modification of the parenting time plan may be sought through a court of appropriate jurisdiction.

(7) The department shall create and provide a form for a petition to establish a parenting time plan for parents who have not agreed on a parenting schedule at the time of the child support hearing. The department shall provide the form to the parents, but may not file the petition or represent either parent at the hearing.

(8) The parents may not be required to pay a fee to file the petition to establish a parenting plan.

(9) The department may adopt rules to implement and administer this section.