

Flores

**06/03/2010 Approved by Governor; Chapter No. 2010-199 Effective Date:
01/01/2011**

Bill Summary: An act relating to child support and alimony; amends s. 61.08, F.S.; allows for an award of more than one type of alimony; revises factors to be considered when deciding whether to award alimony or maintenance; provides a rebuttable presumption for the classification of the length of marriages; provides for the determination of the length of a marriage; provides for an award of bridge-the-gap alimony (for a limited period), provides that such award is NOT modifiable; provides for an award of rehabilitative alimony, and/or permanent alimony in certain circumstances, provides for modification or termination of such awards; provides applicability; amends s. 61.13, F.S.; requires all child support orders after a certain date to contain certain provisions; creates s. 61.29, F.S.; provides principles the court must follow when establishing or modifying child support obligations/implementing the child support guidelines schedule; amends s. 61.30, F.S.; creates a rebuttable presumption of census-level wages to be used to impute income if information about earning is not available; provides that the burden of proof is on the party seeking to impute income to the other party; prohibits imputation of income for out-of-date records or unprecedented earnings; removes the three combined monthly net income amounts on the guidelines schedule; provides for calculation of the obligor parent's child support payments under certain circumstances -- changing, as it refers to low income calculation -- net income less than \$650.00 a month, from the current reference of "combined income" to now reference the same as "net income of the obligor parent only"; changes the child support payment required of the obligor, if he/she makes less than \$650.00 a month to the lesser of the case-by-case child support amount determination in s. 61.30(6), F.S., and 90 percent of the difference between the obligor parent's monthly net income and the current federal poverty guidelines for a single individual; amends s. 61.30(7), F.S., to fully apportion child care expenses without the 25 percent deduction that is currently allowed; amends s. 61.30(11), F.S.; revises the deviation factors that a court may consider when adjusting a parent's share of the child support award to include the Child & 16

Dependent Care Tax Credit and the Earned Income Tax Credit (in addition to other items in current law); changes the term “visitation” to “timesharing” and lowers the definition of “substantial amount of time” under s. 61.30, F.S., from “40 percent of the overnights” per year to “20 percent”, thereby requiring that nearly all child support calculations will require adjustment based on the specific time sharing arrangement of the case at issue.

Impact of Bill on Judiciary/New Action Required by Judiciary: This bill amends Section 61.08 as follows:

To allow for three additional types of alimony - (1) bridge-the-gap, (2) durational, or (3) any combination of the new and existing forms of alimony, in addition to the existing two types of alimony -- rehabilitative and permanent.

☐ To require the court to first make a specific factual determination as to *whether either party has an actual need for alimony or maintenance and whether either party has the ability to pay alimony or maintenance* before the court considers the relevant statutory factors under 61.08(2) to determine the proper amount and type of alimony or maintenance.

☐ To require the court to consider additional relevant statutory factors under 61.08(2) when determining alimony or maintenance as follows:

- The court shall also consider the earning capacities, educational levels, vocational skills, and employability of the parties when considering the existing factors under section 61.08(2)(e);
- The court shall consider the responsibilities each party will have with regard to any minor children they have in common;
- The court shall consider the tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payments;
- The court shall also consider income available to either party through investments of any asset held by that party when considering the factor currently existing as section 61.08(2)(g); and
- The court *shall* (currently the court isn't required but permitted) consider any other factors necessary to do equity and justice between the parties.

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To amend Section 61.08 to include (4),(5),(6), and (7), to provide a definition for rehabilitative and permanent alimony (rehabilitative and permanent alimony currently exists in statute but are not defined), and bridge-the-gap and durational alimony (two new types of alimony created

by the bill). For each of those four types of alimony, the amendment to this section also provides when it may be awarded, its purpose, when it terminates, and whether it is modifiable.

This bill requires that all child support orders and income deduction orders issued after October 1, 2010, terminate upon a child's 18th birthday unless special circumstances exist. The bill requires the court's orders to include a schedule which states the amount of monthly child support for each of the minor children at the time of the order. The schedule will also include the amount of child support that will be owed for the remaining children for whom child support will continue once any of the children become no longer eligible to receive child support. The order must also state the day, month, and year that the reduction or termination of child support become effective. This bill provides principles the court must follow when establishing or modifying child support obligations/implementing the child support guidelines schedule. In order to impute income beyond minimum wage, this bill requires that census information be used to impute income if information about earnings is not available. This bill provides that the burden of proof is on the party seeking to impute income to the other party. It prohibits imputation of income for out-of-date records or unprecedented earnings.

This bill removes the three combined monthly net income amounts on the guidelines schedule. When calculating child support based on low income – when the obligor parent's net income less than \$650.00 a month – the bill changes the current reference from “combined income” to “net income of the obligor,” changing the child support payment required of the obligor. So, if the child support obligor makes less than \$650.00 a month, his/her child support payment shall be the lesser of the case-by-case child support amount determination in s. 61.30(6), F.S., and 90 percent of the difference between the obligor parent's 18

monthly net income and the current federal poverty guidelines for a single individual. This bill amends s. 61.30(7), F.S., to fully apportion child care expenses without the 25 percent deduction that is currently allowed. Child care costs incurred on behalf of the child for various reasons can still be added to the basic obligation; however, they will no longer be reduced by 25 percent. The total minimum child support need shall be determined by adding child care costs and health insurance costs to the minimum child support need. This results in apportioning the full cost of child care between the parents.

This bill amends s. 61.30(11)(a), F.S.; revises the deviation factors that a court may consider when adjusting a parent's share of the child support award to include the Child & Dependent Care Tax Credit and the Earned Income Tax Credit, in addition to other items in current law; changes the term "visitation" to "timesharing"; and lowers the definition of "substantial amount of time" under s. 61.30, F.S., from "40 percent of the overnights" per year to "20 percent", thereby requiring that nearly all child support calculations will require adjustment based on the specific time-sharing arrangement of the case at issue.