

## CHAPTER 2023-213

### Committee Substitute for Committee Substitute for Senate Bill No. 226

An act relating to support for dependent adult children; creating s. 61.1255, F.S.; providing legislative intent; defining the term “dependent adult child”; providing that civil suits to establish support for dependent adult children may be filed only in a certain court by specified individuals; specifying a timeframe during which such suits may be filed; providing an exception; specifying procedures for establishing such support; requiring such support to be paid to the dependent adult child or other specified persons; authorizing the court to irrevocably assign such support to certain trusts established for the benefit of the dependent adult child for a specified purpose; prohibiting the Department of Revenue from filing petitions to establish, modify, or enforce certain support orders; amending s. 61.13, F.S.; conforming a provision to changes made by the act; specifying that a child support order does not terminate on the child’s 18th birthday in certain circumstances; specifying that a court may modify a child support order for a minor child or child who is dependent in fact under certain circumstances; authorizing either parent to consent to mental health treatment for a child unless stated otherwise in the parenting plan; amending s. 61.29, F.S.; providing applicability; amending s. 61.30, F.S.; conforming a provision to changes made by the act; creating s. 61.31, F.S.; requiring the court to consider certain factors when determining the amount of support for a dependent adult child; authorizing the court to assign support to certain trusts established for the benefit of the dependent adult child for a specified purpose; requiring the court to consider certain state and federal programs and benefits in making its decisions; prohibiting the court from ordering support that will cause ineligibility for certain programs; amending s. 393.12, F.S.; providing an additional circumstance under which a guardian advocate must be represented by an attorney in guardianship proceedings; specifying that petitions to appoint a guardian advocate for a person with a developmental disability may request authority to bring a civil suit to establish periodic payments from the person’s parent or parents; providing construction; amending s. 742.031, F.S.; authorizing, rather than requiring, the court to order a father to pay attorney fees and certain costs and expenses to specified persons; making a technical change; amending s. 742.06, F.S.; conforming a provision to changes made by the act; creating s. 744.422, F.S.; authorizing a guardian of a dependent adult child to petition the court for authority to bring a civil suit to establish certain support payments from the dependent adult child’s parent or parents in certain circumstances; specifying that the amount of such support is determined pursuant to certain provisions of law; providing construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 61.1255, Florida Statutes, is created to read:

61.1255 Support for dependent adult children; legislative intent; powers of court.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to:

(a) Codify and clarify existing common law and Florida case law recognizing that the parents of a dependent adult child have an obligation to support that child.

(b) Provide procedures for establishing support for a dependent adult child.

(c) Provide safeguards, when establishing court-ordered support for a dependent adult child, to protect and preserve any means-based government benefits the dependent adult child is receiving or may be entitled to receive.

(2) POWERS OF COURT.—

(a) For purposes of this section, the term “dependent adult child” means an unmarried adult who is incapable of self-support as a result of a physical or mental incapacity that began before the person reached the age of 18.

(b) A civil suit to establish support for a dependent adult child may only be filed in circuit court in the county in which the dependent adult child resides by one of the following:

1. The dependent adult child or his or her agent under a durable power of attorney.

2. A parent or other person on behalf of the dependent adult child.

3. The dependent adult child’s guardian advocate appointed under chapter 393 or guardian appointed under chapter 744, if the dependent adult child’s right to sue or defend lawsuits has been removed by the court.

(c) A civil suit to establish support for a dependent adult child may be filed at any time after he or she reaches the age of 17 years and 6 months, unless such an order is already in place having been established during the child’s minority.

(d) If a court has jurisdiction over the parties because of an issue of child support, the parents may agree in writing to provide for dependent adult child support in the existing case if the agreement is submitted to the court for approval before the dependent adult child reaches the age of 18. Otherwise, the amount of support to be paid by one or both parents must be established in a separate support proceeding in circuit court pursuant to paragraph (b).

(e) Support ordered after the dependent adult child reaches the age of 18 may be paid only to the dependent adult child or his or her court-appointed

guardian advocate, guardian, or agent under a durable power of attorney. However, the court may irrevocably assign the support to a special needs trust under 42 U.S.C. s. 1396p(d)(4)(A) or to a pooled trust under 42 U.S.C. s. 1396p(d)(4)(C) established for the benefit of the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits.

(f) The Department of Revenue may not file a petition to establish, modify, or enforce a support order under this section.

Section 2. Paragraph (a) of subsection (1) and paragraph (b) of subsection (2) of section 61.13, Florida Statutes, are amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.

(1)(a) In a proceeding under this chapter, the court may at any time order either or both parents who owe a duty of support to a child to pay support to the other parent or, ~~in the case of both parents,~~ to a third party who has custody in accordance with the child support guidelines schedule in s. 61.30.

1. All child support orders and income deduction orders entered on or after October 1, 2010, must provide:

a. For child support to terminate on a child's 18th birthday unless the court finds or previously found that the minor child, or the child who is dependent in fact and between the ages of 18 and 19, is still in high school and is performing in good faith with a reasonable expectation of graduation before he or she reaches the age of 19 ~~s. 743.07(2) applies~~, or the continued support is otherwise agreed to by the parties;

b. A schedule, based on the record existing at the time of the order, stating the amount of the monthly child support obligation for all the minor children at the time of the order and the amount of child support that will be owed for any remaining children after one or more of the children are no longer entitled to receive child support; and

c. The month, day, and year that the reduction or termination of child support becomes effective.

2. The court initially entering an order requiring one or both parents to make child support payments has continuing jurisdiction after the entry of the initial order to modify the amount and terms and conditions of the child support payments if the modification is found by the court to be in the best interests of the child; ~~when~~ the child reaches majority; if there is a substantial change in the circumstances of the parties; the minor child, or the child who is dependent in fact and between the ages of 18 and 19, is still in high school and is performing in good faith with a reasonable expectation of graduation before he or she reaches the age of 19 ~~if s. 743.07(2) applies~~; or

~~the when~~ a child is emancipated, marries, joins the armed services, or dies. The court initially entering a child support order has 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.

(2)

(b) A parenting plan approved by the court must, at a minimum:

1. Describe in adequate detail how the parents will share and be responsible for the daily tasks associated with the upbringing of the child;

2. Include the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent;

3. Designate who will be responsible for:

a. Any and all forms of health care. If the court orders shared parental responsibility over health care decisions, ~~the parenting plan must provide that~~ either parent may consent to mental health treatment for the child unless stated otherwise in the parenting plan.

b. School-related matters, including the address to be used for school-boundary determination and registration.

c. Other activities; and

4. Describe in adequate detail the methods and technologies that the parents will use to communicate with the child.

Section 3. Section 61.29, Florida Statutes, is amended to read:

61.29 Child support guidelines; principles; applicability.—

(1) The following principles establish the public policy of the State of Florida in the creation of the child support guidelines:

~~(a)~~(1) Each parent has a fundamental obligation to support his or her minor or legally dependent child.

~~(b)~~(2) The guidelines schedule is based on the parent's combined net income estimated to have been allocated to the child as if the parents and children were living in an intact household.

~~(c)~~(3) The guidelines encourage fair and efficient settlement of support issues between parents and minimizes the need for litigation.

(2) The guidelines in this section do not apply to support for a dependent adult child as defined in s. 61.1255(2)(a). The amount of support for a dependent adult child is determined by s. 61.31.

Section 4. Paragraph (a) of subsection (1) of section 61.30, Florida Statutes, is amended to read:

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 ~~must shall~~ order as child support for a minor child, or a child who is dependent in fact and between the ages of 18 and 19 and who is still in high school and is performing in good faith with a reasonable expectation of graduation before he or she reaches the age of 19, 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 ~~must 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 either parent. This requirement applies to any living arrangement, whether temporary or permanent.

Section 5. Section 61.31, Florida Statutes, is created to read:

61.31 Amount of support for a dependent adult child.—

(1) In determining the amount of support to be paid after a dependent adult child as defined in s. 61.1255(2)(a) reaches the age of 18, the specific terms and conditions of such support, and the rights and duties of both parents with respect to the support, the court shall determine and consider all of the following:

(a) The dependent adult child's income and assets.

(b) Any existing and future needs of the dependent adult child which are directly related to his or her mental or physical incapacity and the substantial care and personal supervision directly required by or related to that incapacity.

(c) Whether a parent or other person pays for or will pay for the care or supervision of the dependent adult child or provides or will provide substantial care or personal supervision to the dependent adult child himself or herself.

(d) The financial resources available to each parent for the support, care, and supervision of the dependent adult child.

(e) Any other financial resources or other resources or programs available for the support, care, and supervision of the dependent adult child.

(2) The court may irrevocably assign the support to a special needs trust under 42 U.S.C. s. 1396p(d)(4)(A) or to a pooled trust under 42 U.S.C. s. 1396p(d)(4)(C) established for the benefit of the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits.

(3) In making its decisions, the court shall consider:

(a) Any state or federal programs and benefits that the dependent adult child is receiving or may receive due to reaching the age of majority; and

(b) The effect that the court-ordered support would have on the dependent adult child's eligibility for such programs and benefits.

(4) The court may not order support that will cause ineligibility for programs in which the dependent adult child currently participates, or programs and services for which the dependent adult child is reasonably expected to become eligible upon reaching the age of majority.

Section 6. Paragraph (b) of subsection (2) and subsection (3) of section 393.12, Florida Statutes, are amended to read:

393.12 Capacity; appointment of guardian advocate.—

(2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

(b) A person who is being considered for appointment or is appointed as a guardian advocate is not required to need not be represented by an attorney unless required by the court or if the guardian advocate is delegated any rights regarding property other than the right to be the representative payee for government benefits or to receive periodic payments for the support, care, maintenance, education, or other needs of the person with a developmental disability pursuant to s. 61.1255. This paragraph applies only to proceedings relating to the appointment of a guardian advocate and the court's supervision of a guardian advocate and is not an exercise of the Legislature's authority under pursuant to s. 2(a), Art. V of the State Constitution.

(3) PETITION.—

(a) A petition to appoint a guardian advocate for a person with a developmental disability may be executed by an adult person who is a resident of this state. The petition must be verified and must:

1.(a) State the name, age, and present address of the petitioner and his or her relationship to the person with a developmental disability;

2.(b) State the name, age, county of residence, and present address of the person with a developmental disability;

3.(e) Allege that the petitioner believes that the person needs a guardian advocate and specify the factual information on which such belief is based;

4.(d) Specify the exact areas in which the person lacks the decisionmaking ability to make informed decisions about his or her care and treatment services or to meet the essential requirements for his or her physical health or safety;

5.(e) Specify the legal disabilities to which the person is subject; and

6.(f) State the name of the proposed guardian advocate, the relationship of that person to the person with a developmental disability; the relationship that the proposed guardian advocate had or has with a provider of health care services, residential services, or other services to the person with a developmental disability; and the reason why this person should be appointed. The petition must also state if a willing and qualified guardian advocate cannot be located, the petition shall so state.

(b) A petition to appoint a guardian advocate may include a request for the authority to bring a civil action in circuit court to establish periodic payments from either or both parents of the person with a developmental disability for the support, care, maintenance, education, or other needs of that person pursuant to s. 61.1255. This section may not be construed to confer any obligation or duty for a guardian advocate to pursue support for the person with a developmental disability.

Section 7. Subsection (1) of section 742.031, Florida Statutes, is amended to read:

742.031 Hearings; court orders for support, hospital expenses, and attorney fees ~~attorney's fee~~.—

(1) Hearings for the purpose of establishing or refuting the allegations of the complaint and answer must ~~shall~~ be held in the chambers and may be restricted to persons, in addition to the parties involved and their counsel, as the judge in his or her discretion may direct. The court shall determine the issues of paternity of the child and the ability of the parents to support the child. Each party's social security number must ~~shall~~ be recorded in the file containing the adjudication of paternity. If the court finds that the alleged father is the father of the child, it must ~~shall~~ so order. If appropriate, the court may ~~shall~~ order the father to pay the complainant, her guardian, or any other person assuming responsibility for the child moneys sufficient to pay reasonable attorney ~~attorney's~~ fees, hospital or medical expenses, cost of confinement, and any other expenses incident to the birth of the child and to pay all costs of the proceeding. Bills for pregnancy, childbirth, and scientific testing are admissible as evidence without requiring third-party foundation testimony; and ~~shall~~ constitute prima facie evidence of amounts incurred for

such services or for testing on behalf of the child. The court shall order either or both parents owing a duty of support to the child to pay support under chapter 61 pursuant to s. 61.30. The court must shall issue, upon motion by a party, a temporary order requiring child support for a minor child under pursuant to s. 61.30 pending an administrative or judicial determination of parentage, if there is clear and convincing evidence of paternity on the basis of genetic tests or other evidence. The court may also make a determination of an appropriate parenting plan, including a time-sharing schedule, in accordance with chapter 61.

Section 8. Section 742.06, Florida Statutes, is amended to read:

742.06 Jurisdiction retained for future orders.—The court shall retain jurisdiction of the cause for the purpose of entering such other and further orders as changing circumstances of the parties may in justice and equity require. Modifications and enforcement of child support, time-sharing, and support for a dependent adult child are determined under chapter 61.

Section 9. Section 744.422, Florida Statutes, is created to read:

744.422 Petition for support for a dependent adult child.—Pursuant to s. 61.1255, a guardian may petition the court for the authority to bring a civil suit in circuit court to establish periodic payments from either or both parents of the dependent adult child for the support, care, maintenance, education, and any other needs of a dependent adult child if not otherwise provided for in the guardianship plan. The amount of support is determined pursuant to s. 61.31. This section may not be construed to confer any obligation or duty for a guardian to pursue support on behalf of a dependent adult child.

Section 10. This act shall take effect July 1, 2023.

Approved by the Governor June 12, 2023.

Filed in Office Secretary of State June 12, 2023.