



CHILD SUPPORT

THREE PATHWAYS TO ESTABLISHING CHILD SUPPORT

WAYS TO ESTABLISH CHILD SUPPORT

- ▶ Court proceedings:
 - ▶ A dissolution of marriage action pursuant to Florida Statute § 61.052.
 - ▶ A paternity action pursuant to Florida Statute § 742.031.
 - ▶ A petition for injunction against domestic violence pursuant to Florida Statute § 741.30(6)(a)4.
 - ▶ A petition for support unconnected with dissolution of marriage pursuant to Florida Statutes § 61.09 and 61.10.
- ▶ A Title IV-D Administrative Child Support Proceeding pursuant to Florida Statute § 409.2563(2)(f).
- ▶ A Title IV-D Judicial Proceeding pursuant to Florida Statute § 409.2564.



This presentation focuses on Court proceedings.

NET INCOMES

§ 61.29(1)(b): The guidelines schedule is based upon the parents' combined net income estimated to have been allocated to the child as if the parents and children were living in an intact household.

GROSS INCOME

- ▶ Florida Statute § 61.30 provides that gross income includes but is not limited to:
 - ▶ Salary or wages.
 - ▶ Bonuses, commissions, allowances, overtime, tips, and other similar payments.
 - ▶ 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.
 - ▶ Disability benefits.
 - ▶ All workers’ compensation benefits and settlements.
 - ▶ Reemployment assistance or unemployment compensation.

GROSS INCOME

- ▶ Pension, retirement, or annuity payments.
- ▶ Social security benefits.
- ▶ Spousal support received from a previous marriage or court ordered in the marriage before the court.
- ▶ Interest and dividends.
- ▶ Rental income, which is gross receipts minus ordinary and necessary expenses required to produce the income.
- ▶ Income from royalties, trusts, or estates.
- ▶ Reimbursed expenses or in kind payments to the extent that they reduce living expenses.
- ▶ Gains derived from dealings in property, unless the gain is nonrecurring.

REIMBURSED EXPENSES AND IN KIND PAYMENTS

- ▶ Reimbursed automobile expenses from a parties' own business should be including the calculation of a party's income. *Mikhail v. Mikhail* 279 So.3d 1269 (Fla. 2d DCA 2019).
- ▶ Value of the mortgage payments paid by the Former Husband and \$250 paid for by the Mother for the Former Wife's cellphone shall be included as in-kind contributions for purposes of calculating child support. *Schafstall v. Schafstall* 211 So.3d 1108 (Fla. 3d DCA 2017).
- ▶ Live-in fiancé and/or uncle's payment of/reimbursement for various bills, including home utilities, car payments, auto insurance, and groceries must be considered in calculating the former wife's gross income. *Varchetti v. Varchetti* 355 So.3d 435 (Fla. 4th DCA 2023).

BUSINESS INCOME

- ▶ Business income shall be included in the calculation for child support. It is calculated pursuant to Florida Statute § 61.30 as the gross income minus the necessary expenses required to produce the income. *Mattison v. Mattison* 266 So.3d 258 (Fla. 5th DCA 2019).
- ▶ The ordinary and necessary expenses have to be those required to produce income. Deducting payments to the Wife from revenues of the business for purposes of calculating Husband's income was error. *Jorgansen v. Tagarelli* 312 So.3d 505 (Fla 5th DCA 2020).
- ▶ The party claiming a disputed business expense bears the burden of proving the expense is proper. *Jorgensen v. Tagarelli* 312 So.3d 505 (Fla. 5th DCA 2020).

IMPUTATION OF INCOME

Florida Statute § 61.30(2)(b)

- ▶ Monthly income shall be imputed to an unemployed or underemployed parent if such unemployment or underemployment is found by the court to be voluntary on that parent's part, absent a finding of fact by the court of 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 if such information is available. If the information concerning a parent's income is unavailable, a parent fails to participate in a child support proceeding, or a parent fails to supply adequate financial information in a child support proceeding, income shall be automatically imputed to the parent and there is a rebuttable presumption that the parent has income equivalent to the median income of year-round full-time workers as derived from current population reports or replacement reports published by the United States Bureau of the Census. However, the court may refuse to impute income to a parent if the court finds it necessary for that parent to stay home with the child who is the subject of a child support calculation...

IMPUTING INCOME

- ▶ The party seeking to impute income other than at the amount provided by the United States Bureau of Census has the burden to present competent, substantial evidence that:
 - ▶ The unemployment or underemployment is voluntary and
 - ▶ Identifies the amount and source of the imputed income, through evidence of income from available employment for which the party is suitably qualified by education, experience, current licensure, or geographic location, with due consideration being given to the parties' time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order.
- ▶ The Court must make specific findings of fact

IMPUTING INCOME

- ▶ Income may not be imputed based upon:
 - ▶ Income records that are more than 5 years old at the time of the hearing or trial at which imputation is sought; or
 - ▶ Income at a level that a party has never earned in the past, unless recently degreed, licensed, certified, relicensed, or recertified and thus qualified for, subject to geographic location, with due consideration of the parties' existing time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order.
 - ▶ Incarceration may not be treated as voluntary unemployment in establishing or modifying a support order. However, the court may deviate from the child support guideline amount as provided in paragraph (1)(a).
 - ▶ Social security benefits received by a minor child due to the retirement or disability of the child's parent shall be included in the parent's gross income.
 - ▶ Public assistance as defined in § 409.2554 shall be excluded from gross income.

AUTOMATIC IMPUTATION

- ▶ If the information concerning a parent's income is unavailable, a parent fails to participate in a child support proceeding, or a parent fails to supply adequate financial information in a child support proceeding, income **shall** be automatically imputed to the parent and
- ▶ There is a **rebuttable presumption** that the parent has income equivalent to the median income of year-round full-time workers as derived from current population reports or replacement reports published by the United States Bureau of the Census.
- ▶ Website: <http://data.census.gov/>
 - ▶ 2023 median income for year-round, full-time workers (Table A-6):
 - ▶ Men \$66,790
 - ▶ Women \$55,240

ALLOWABLE DEDUCTIONS

- ▶ Pursuant to Florida Statute § 61.30(3) allowable deductions shall include:
 - ▶ Federal, state, and local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.
 - ▶ Federal insurance contributions or self-employment tax.
 - ▶ Mandatory union dues.
 - ▶ Mandatory retirement payments.
 - ▶ Health insurance payments, excluding payments for coverage of the minor child.
 - ▶ Court-ordered support for other children which is actually paid
 - ▶ Child support paid (but not ordered) for subsequently born children who existed at the time of establishment of the support obligation for the oldest child. *Speed v. Fla., Dep't of Revenue ex rel. Nelson* 749 So. 2d 510, 511 (Fla. 2d DCA 1999)
 - ▶ Spousal support paid pursuant to a court order from a previous marriage or the marriage before the court.

OVERNIGHT TIMESHARING

- ▶ Timesharing schedules play a role in determining the amount of child support to be paid. If parents have timesharing where the children are with one parent for more than 20% of the time the “gross up” method is used to calculate the child support. The “gross up” calculation is lengthier, however, the same form is used to complete the calculation.

CHILD CARE

- ▶ Child care costs incurred due to employment, job search, or education calculated to result in employment or to enhance income of current employment of either parent shall be added to the basic obligation.
- ▶ Child care costs may not exceed the level required to provide quality care from a licensed source.

HEALTH INSURANCE

- ▶ Health insurance costs resulting from coverage ordered pursuant to § 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.
- ▶ Tip: In order to receive credit as a child related expense, the paying parent must have proof of the portion of the total cost that is attributable to the child's coverage. Without the breakdown, the total cost will be listed as the paying parent's health insurance cost (as an allowable deduction from gross income).

UNCOVERED MEDICAL EXPENSES

- ▶ Orders and agreements should include a determination on how uncovered medical expenses should be paid. These expenses should be paid according to each party's pro-rata share of the net income. For example, if the Mother's net income is \$6,000 per month and the Father's net income is \$4,000 per month the Mother should be responsible for 60% of the uncovered and unreimbursed medical expenses and the Father should be responsible for 40% of the uncovered and unreimbursed expenses.

REMINDERS

- ▶ If the case involves child support, the parties must file with the court at or before a hearing to establish or modify child support a Child Support Guidelines Worksheet in substantial conformity with Florida Family Law Rules of Procedure Form 12.902(e). This requirement cannot be waived by the parties. *FLRP* Rule 12.285(k)
- ▶ A child support guideline worksheet must be included in the record. *Nepola v. Nepola* 373 So.3d 642 (Fla. 4th DCA 2023).
- ▶ The Court must make findings regarding net incomes. Even if a child support guideline worksheet is attached to the Final Judgment it is reversible error if the Court's Final Judgment fails to make findings regarding the net incomes of the parties. See *Skelly v. Skelly* 300 So.3d 342 (Fla. 5th DCA 2020).

REMINDERS

- ▶ Statutory child support guidelines must be applied, even for temporary support purposes. See *Nilsen v. Nilsen* 63 So.3d 850 (Fla. 1st DCA 2011) and *Blum v. Blum* 769 So.2d 1142 (Fla. 4th DCA 2000).
- ▶ Undifferentiated spousal and child support is an abuse of discretion. See *Van Maerssen* 213 So.3d 952 (Fla. 4th DCA 2017), *Greenhouse v. Greenhouse* 913 So.2d 1201 (Fla. 4th DCA 2005), and *Blum v. Blum* 769 So.2d 1142 (Fla. 4th DCA 2000).

DEVIATION

- ▶ The child support guideline presumptively establishes the amount the Court must 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
- ▶ The Court 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 Court 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.

DEVIATION FACTORS

- ▶ Extraordinary medical, psychological, educational, or dental expenses.
- ▶ Independent income of the child, not to include moneys received by a child from supplemental security income.
- ▶ The payment of support for a parent which has been regularly paid and for which there is a demonstrated need.
- ▶ Seasonal variations in one or both parents' incomes or expenses.
- ▶ The age of the child, taking into account the greater needs of older children.
- ▶ 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 fulfilling those needs will cause the support to exceed the presumptive amount established by the guidelines.

DEVIATION FACTORS

- ▶ Total available assets of the obligee, obligor, and the child.
- ▶ The impact of the Internal Revenue Service Child & Dependent Care Tax Credit, Earned Income Tax Credit, and dependency exemption and waiver of that exemption. The court may order a parent to execute a waiver of the Internal Revenue Service dependency exemption if the paying parent is current in support payments.
- ▶ An application of the child support guidelines schedule that 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.
- ▶ The particular parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties, such as where the child spends a significant amount of time, but less than 20 percent of the overnights, with one parent, thereby reducing the financial expenditures incurred by the other parent; or the refusal of a parent to become involved in the activities of the child.

DEVIATION FACTORS

- ▶ Any other adjustment that 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 that the parties jointly incurred during the marriage.
 - ▶ *Smith credit*: an equitable adjustment of child support based on amounts that would hypothetically be spent for prior-born children. *State, Dep't of Revenue on Behalf of Marshall v. Smith* 716 So. 2d 333 (Fla. 2d DCA 1998)
 - ▶ *Travel costs*: The expense of transporting the minor child for visitation is a childrearing expense like any other, which should be shared by the parents in accordance with their financial means. *Hiatt v. Mathieu* 350 So. 3d 357, 360 (Fla. 4th DCA 2022)
 - ▶ Costs associated with restrictions on timesharing, such as BAC device, are a part of the child support obligation. *Frye v. Cuomo* 296 So.3d 939 (Fla. 4th DCA 2020)
 - ▶ The costs of supervision should be treated as part of the child support calculations. *Moore v. Yahr* 192 So. 3d 544, 545 (Fla. 4th DCA 2016)

PAYMENT OF CHILD SUPPORT IN BROWARD

- ▶ 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. § 61.1301. Payments made by immediate income deduction shall be made to the State Disbursement Unit. § 61.13
- ▶ If both parties request and the court finds that it is in the best interest of the child, support payments need not be subject to immediate income deduction. Support orders that are not subject to immediate income deduction may be directed through the **depository** under § 61.181 or made payable **directly to the obligee**. For support orders payable directly to the obligee, 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.

PAYMENT OF CHILD SUPPORT IN BROWARD

- ▶ The depository for non Title IV-D, alimony, and non Income Deduction Order cases for Broward County shall be the Clerk of the Circuit Court. Any individual ordered to make payments for which the Clerk of Circuit Court is the named depository shall mail his or her payment by money order or other form of certified funds to Clerk of the Circuit Court, P.O. Box 14248, Fort Lauderdale, Florida 33302.
- ▶ The payor shall be responsible to pay any and all service fees and charges imposed by Clerk of the Circuit Court or the State Disbursement Unit as authorized by Chapter 61, Fla. Stat., unless otherwise ordered by the court.

PRACTICE TIPS

- ▶ 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. § 61.13(1)(d)(1)
- ▶ 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. § 61.13(8)
- ▶ A party to any subsequent judicial proceeding concerning the support of the same child or children shall affirmatively plead the existence of, and furnish the court with a correct copy of, an administrative support order rendered under this section, and shall provide the department with a copy of the initial pleading. The department may intervene as a matter of right in any such judicial proceeding involving issues within the scope of the Title IV-D case. § 409.2563

PRACTICE TIPS

- ▶ 2019-15-UFC Status Quo Order: “Unless there is a prior court order, domestic violence injunction (permanent or temporary) or agreement signed by both parties, if the parties have minor children and choose to live apart while the action is pending, the parent with whom the children are not residing for a majority of the time should make voluntary payments of child support to the other parent, prior to the entry of an order requiring payment of child support. Child support should in an amount as determined by the Uniform Child Support Guidelines, section 61.30, Florida Statutes. Since child support can be ordered retroactive to the date of filing the petition, it is advisable that the party making payment keep proof of the payments and bring them to court. Signed receipts should be obtained for any cash payments. Parent/child access and child support are separate and distinct under the law. Accordingly, a child's right to access to his or her parent is not contingent upon the payment of child support.”

SUPPORT FOR DEPENDENT ADULT CHILDREN

- ▶ Governed by § 61.1255
- ▶ The child support guidelines do not apply to support for a dependent adult child as defined in § 61.1255(2)(a). The amount of support for a dependent adult child is determined by § 61.31.