

The Florida Senate

2018 Florida Statutes

<p><u>Title VI</u> CIVIL PRACTICE AND PROCEDURE</p>	<p><u>Chapter 61</u> DISSOLUTION OF MARRIAGE; SUPPORT; TIME-SHARING</p> <p>Entire Chapter</p>	<p>SECTION 14 Enforcement and modification of support, maintenance, or alimony agreements or orders.</p>
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61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)(a) When the parties enter into an agreement for payments for, or instead of, support, maintenance, or alimony, whether in connection with a proceeding for dissolution or separate maintenance or with any voluntary property settlement, or when a party is required by court order to make any payments, and the circumstances or the financial ability of either party changes or the child who is a beneficiary of an agreement or court order as described herein reaches majority after the execution of the agreement or the rendition of the order, either party may apply to the circuit court of the circuit in which the parties, or either of them, resided at the date of the execution of the agreement or reside at the date of the application, or in which the agreement was executed or in which the order was rendered, for an order decreasing or increasing the amount of support, maintenance, or alimony, and the court has jurisdiction to make orders as equity requires, with due regard to the changed circumstances or the financial ability of the parties or the child, decreasing, increasing, or confirming the amount of separate support, maintenance, or alimony provided for in the agreement or order. A finding that medical insurance is reasonably available or the child support guidelines schedule in s. [61.30](#) may constitute changed circumstances. Except as otherwise provided in s. [61.30](#)(11)(c), the court may modify an order of support, maintenance, or alimony by increasing or decreasing the support, maintenance, or alimony retroactively to the date of the filing of the action or supplemental action for modification as equity requires, giving due regard to the changed circumstances or the financial ability of the parties or the child.

(b)1. The court may reduce or terminate an award of alimony upon specific written findings by the court that since the granting of a divorce and the award of alimony a supportive relationship has existed between the obligee and a person with whom the obligee resides. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists.

2. In determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides, the court shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as “my husband” or “my wife,” or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

b. The period of time that the obligee has resided with the other person in a permanent place of abode.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other’s company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of the provisions of this paragraph.

(c) For each support order reviewed by the department as required by s. [409.2564](#)(11), if the amount of the child support award under the order differs by at least 10 percent but not less than \$25 from the amount that would be awarded under s. [61.30](#), the department shall seek to have the order modified and any modification shall be made without a requirement for proof or showing of a change in circumstances.

(d) The department shall have authority to adopt rules to implement this section.

(2) When an order or agreement is modified pursuant to subsection (1), the party having an obligation to pay shall pay only the amount of support, maintenance, or alimony directed in the new order, and the agreement or earlier order is modified accordingly. No person may commence an action for modification of a support, maintenance, or alimony agreement or order except as herein provided. No court has jurisdiction to entertain any action to enforce the recovery of separate support, maintenance, or alimony other than as herein provided.

(3) This section is declaratory of existing public policy and of the laws of this state.

(4) If a party applies for a reduction of alimony or child support and the circumstances justify the reduction, the court may make the reduction of alimony or child support regardless of whether or not the party applying for it has fully paid the accrued obligations to the other party at the time of the application or at the time of the order of modification.

(5)(a) When a court of competent jurisdiction enters an order for the payment of alimony or child support or both, the court shall make a finding of the obligor's imputed or actual present ability to comply with the order. If the obligor subsequently fails to pay alimony or support and a contempt hearing is held, the original order of the court creates a presumption that the obligor has the present ability to pay the alimony or support and to purge himself or herself from the contempt. At the contempt hearing, the obligor shall have the burden of proof to show that he or she lacks the ability to purge himself or herself from the contempt. This presumption is adopted as a presumption under s. [90.302](#)(2) to implement the public policy of this state that children shall be maintained from the resources of their parents and as provided for in s. [409.2551](#), and that spouses be maintained as provided for in s. [61.08](#). The court shall state in its order the reasons for granting or denying the contempt.

(b) In a proceeding in circuit court to enforce a support order under this chapter, chapter 88, chapter 409, or chapter 742, or any other provision of law, if the court finds that payments due under the support order are delinquent or overdue and that the obligor is unemployed, underemployed, or has no income but is able to work or participate in job training, the court may order the obligor to:

1. Seek employment.
2. File periodic reports with the court, or with the department if the department is providing Title IV-D services, detailing the obligor's efforts to seek and obtain employment during the reporting period.
3. Notify the court or the department, as appropriate, upon obtaining employment, income, or property.
4. Participate in job training, job placement, work experience, or other work programs that may be available pursuant to chapter 445, chapter 446, or any other source.

An obligor who willfully fails to comply with a court order to seek work or participate in other work-related activities may be held in contempt of court. This paragraph is in furtherance of the public policy of the state of ensuring that

children are maintained from the resources of their parents to the extent possible.

(6)(a)1. When support payments are made through the local depository or through the State Disbursement Unit, any payment or installment of support which becomes due and is unpaid under any support order is delinquent; and this unpaid payment or installment, and all other costs and fees herein provided for, become, after notice to the obligor and the time for response as set forth in this subsection, a final judgment by operation of law, which has the full force, effect, and attributes of a judgment entered by a court in this state for which execution may issue. No deduction shall be made by the local depository from any payment made for costs and fees accrued in the judgment by operation of law process under paragraph (b) until the total amount of support payments due the obligee under the judgment has been paid.

2. A certified statement by the local depository evidencing a delinquency in support payments constitute evidence of the final judgment under this paragraph.

3. The judgment under this paragraph is a final judgment as to any unpaid payment or installment of support which has accrued up to the time either party files a motion with the court to alter or modify the support order, and such judgment may not be modified by the court. The court may modify such judgment as to any unpaid payment or installment of support which accrues after the date of the filing of the motion to alter or modify the support order. This subparagraph does not prohibit the court from providing relief from the judgment pursuant to Rule 1.540, Florida Rules of Civil Procedure.

(b)1. When an obligor is 15 days delinquent in making a payment or installment of support and the amount of the delinquency is greater than the periodic payment amount ordered by the court, the local depository shall serve notice on the obligor informing him or her of:

- a. The delinquency and its amount.
- b. An impending judgment by operation of law against him or her in the amount of the delinquency and all other amounts which thereafter become due and are unpaid, together with costs and a service charge of up to \$25, for failure to pay the amount of the delinquency.
- c. The obligor's right to contest the impending judgment and the ground upon which such contest can be made.
- d. The local depository's authority to release information regarding the delinquency to one or more credit reporting agencies.

2. The local depository shall serve the notice by mailing it by first class mail to the obligor at his or her last address of record with the local depository. If the obligor has no address of record with the local depository, service shall be by publication as provided in chapter 49.

3. When service of the notice is made by mail, service is complete on the date of mailing.

(c) Within 15 days after service of the notice is complete, the obligor may file with the court that issued the support order, or with the court in the circuit where the local depository which served the notice is located, a motion to contest the impending judgment. An obligor may contest the impending judgment only on the ground of a mistake of fact regarding an error in whether a delinquency exists, in the amount of the delinquency, or in the identity of the obligor.

(d) The court shall hear the obligor's motion to contest the impending judgment within 15 days after the date of filing of the motion. Upon the court's denial of the obligor's motion, the amount of the delinquency and all other amounts that become due, together with costs and a service charge of up to \$25, become a final judgment by operation of law against the obligor. The depository shall charge interest at the rate established in s. [55.03](#) on all judgments for support. Payments on judgments shall be applied first to the current child support due, then to any delinquent principal, and then to interest on the support judgment.

(e) If the obligor fails to file a motion to contest the impending judgment within the time limit prescribed in paragraph (c) and fails to pay the amount of the delinquency and all other amounts which thereafter become due, together with costs and a service charge of up to \$25, such amounts become a final judgment by operation of law against the obligor at the expiration of the time for filing a motion to contest the impending judgment.

(f)1. Upon request of any person, the local depository shall issue, upon payment of a service charge of up to \$25, a payoff statement of the total amount due under the judgment at the time of the request. The statement may be relied upon by the person for up to 30 days from the time it is issued unless proof of satisfaction of the judgment is provided.

2. When the depository records show that the obligor's account is current, the depository shall record a satisfaction of the judgment upon request of any interested person and upon receipt of the appropriate recording fee. Any person shall be entitled to rely upon the recording of the satisfaction.

3. The local depository, at the direction of the department, or the obligee in a non-IV-D case, may partially release the judgment as to specific real property, and the depository shall record a partial release upon receipt of the appropriate recording fee.

4. The local depository is not liable for errors in its recordkeeping, except when an error is a result of unlawful activity or gross negligence by the clerk or his or her employees.

(g) The local depository shall send the department monthly by electronic means a list of all Title IV-D and non-Title IV-D cases in which a judgment by operation of law has been recorded during the month for which the data is provided. At a minimum, the depository shall provide the names of the obligor and obligee, social security numbers of the obligor and obligee, if available, and depository number.

(7) When modification of an existing order of support is sought, the proof required to modify a settlement agreement and the proof required to modify an award established by court order shall be the same.

(8)(a) When an employee and an employer reach an agreement for a lump-sum settlement under s. [440.20\(11\)](#), no proceeds of the settlement shall be disbursed to the employee, nor shall any attorney's fees be disbursed, until after a judge of compensation claims reviews the proposed disbursement and enters an order finding the settlement provides for appropriate recovery of any support arrearage. The employee, or the employee's attorney if the employee is represented, shall submit a written statement from the department that indicates whether the employee owes unpaid support and, if so, the amount owed. In addition, the judge of compensation claims may require the employee to submit a similar statement from a local depository established under s. [61.181](#). A sworn statement by the employee that all existing support obligations have been disclosed is also required. If the judge finds the proposed allocation of support recovery insufficient, the parties may amend the allocation of support recovery within the settlement agreement to make the allocation of proceeds sufficient. The Office of the Judges of Compensation Claims shall adopt procedural rules to implement this paragraph.

(b) In accordance with the provisions of s. [440.22](#), any compensation due or that may become due an employee under chapter 440 is exempt from garnishment, attachment, execution, and assignment of income, except for the purposes of enforcing child or spousal support obligations.

(9) Unless otherwise ordered by the court or agreed to by the parties, the obligation to pay the current child support for that child is terminated when the child reaches 18 years of age or the disability of nonage is removed. The termination of the current child support obligation does not otherwise terminate the obligation to pay any arrearage, retroactive support, delinquency, or costs owed by the obligor.

(10)(a) In a Title IV-D case, if an obligation to pay current child support is terminated due to the emancipation of the child and the obligor owes an arrearage, retroactive support, delinquency, or costs, the obligor shall continue to pay at the same rate in effect immediately prior to emancipation until all arrearages, retroactive support, delinquencies, and costs are paid in full or until the amount of the order is modified. Any income-deducted amount or amount paid by the obligor which is in excess of the obligation to pay current support shall be credited against the arrearages, retroactive support, delinquency, and costs owed by the obligor.

(b) In a Title IV-D case, if an obligation to pay current child support for multiple children is reduced due to the emancipation of one child and the obligor owes an arrearage, retroactive support, delinquency, or costs, the obligor shall continue to pay at the same rate in effect immediately prior to emancipation until all arrearages, retroactive support, delinquencies, and costs are paid in full or until the amount of the order is modified. Any income-deducted amount or amount paid by the obligor which is in excess of the obligation to pay current support shall be credited against the arrearages, retroactive support, delinquency, and costs owed by the obligor. If an obligation to pay current support for more than one child is not reduced when a child is emancipated because the order does not allocate support per child, this paragraph does not apply.

(c) Paragraphs (a) and (b) provide an additional remedy for collection of unpaid support and apply to cases in which a support order was entered before, on, or after July 1, 2004.

(11)(a) A court may, upon good cause shown, and without a showing of a substantial change of circumstances, modify, vacate, or set aside a temporary support order before or upon entering a final order in a proceeding.

(b) The modification of the temporary support order may be retroactive to the date of the initial entry of the temporary support order; to the date of filing of the initial petition for dissolution of marriage, initial petition for support, initial petition determining paternity, or supplemental petition for modification; or to a date prescribed in paragraph (1)(a) or s. [61.30](#)(11)(c) or (17), as applicable.

History.—ss. 1, 2, ch. 16780, 1935; CGL 1936 Supp. 4993(1); s. 16, ch. 67-254; s. 16, ch. 71-241; s. 2, ch. 75-67; s. 124, ch. 86-220; s. 5, ch. 87-95; s. 6, ch. 88-176; s. 14, ch. 91-45; s. 5, ch. 92-138; s. 3, ch. 93-208; s. 335, ch. 95-147; s. 15, ch. 95-222; s. 7, ch. 97-170; s. 40, ch. 98-397; s. 5, ch. 99-375; s. 1, ch. 2001-91; ss. 10, 11, ch. 2001-158; s. 3, ch. 2002-173; s. 73, ch. 2003-402; s. 1, ch. 2004-47; s. 50, ch. 2004-265; s. 4, ch. 2004-334; ss. 5, 6, 7, 8, ch. 2005-39; s. 3, ch. 2005-82; s. 1, ch. 2005-168; s. 11, ch. 2008-61; s. 1, ch. 2008-92; s. 28, ch. 2008-111; s. 16, ch. 2010-187.

Note.— Former s. 65.15.

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