

SUSPENSION OF CHILD SUPPORT WHEN A CHILD IS IN A COMMITMENT FACILITY

Background & Analysis

States that have dealt with this issue support a modification of child support during a period of commitment. The rationale for continuing child support payments even while a child is in a commitment program is that while a child's needs may change upon commitment, that does not mean that the child has no needs at all. Garver v. Garver, 981 P. 2d 471 (Wyo. 1999). Clearly, even though a custodial parent would not have the same financial demands for child support when the child is in a commitment facility, there are nonetheless fixed costs such as for housing, transportation, and utilities that would be unaffected or only slightly affected by the child being in an out-of-home placement.

Florida also has established requirements that parents pay towards the cost of their child's care when such child is found to be dependent, in need of services, or delinquent and is in the care of a state agency - not just a DJJ commitment facility. For example, §985.514(1), Florida Statutes, say, "When any child is placed into secure or nonsecure detention care or into other placement for the purpose of being supervised by the department pursuant to a court order following a detention hearing, the court shall order the child's parents to pay fees to the department..." Likewise, §984.14(6), Florida Statutes, requires the collection of fees related to the care, support, and maintenance of a child in shelter care. Section 39.521(1)(d)7 requires the disposition order in a dependency case to include the child support obligations of the parents if the child is in an out-of-home placement. Lastly, §402.33(2), Florida Statutes, requires the assessment and collection of fees established by the Department of Health and Human Services for children who are in the care of the Department or one of its agencies or contractors. With these required child support obligations or fees for children in out-of-home placements, it follows that any child in the care of the State continues to have needs of support which are the obligations of the parents. As the court said in Armour, "Child support is a right which belongs to the child. It is not a requirement imposed by one parent on the other; rather it is a dual obligation imposed on the parents by the State." Armour v. Allen, 377 So.2d 798 at 800 (Fla. 1st DCA 1979).

While the change in circumstance resulting from a change in placement from a custodial parent to a state agency may indeed be the basis for a modification of child support, it would not be a sufficient basis to suspend child support obligations altogether. In deciding the issue of modifying support, §61.30, Florida Statutes, is the controlling authority.