

**THE SILENT PENALTY: INTEREST ACCRUES ON UNPAID
CHILD SUPPORT IN FLORIDA**

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I. INTRODUCTION

When a couple has a child together, the parents are primarily responsible for tending to the child's needs.¹ When an unmarried couple—who either never married, are separated, or are divorced—has a child or children together, then typically arrangements are made to ensure that the child or children are supported financially.² The financial arrangements to support a child or children are often referred to as child support.³ Child support can be agreed upon or it can be ordered by the court.⁴ However, a parent who becomes delinquent on child support payments could unknowingly face hundreds of dollars in penalty interest. There is no statutory requirement in Florida that obligors—the parents who are obligated to pay child support under a court order or by other agreement—receive periodic notices of delinquency.⁵ There also is no statutory requirement in Florida that the interest rate applied to the delinquent amount, the amount of interest that has accrued, or an estimate of the amount of interest likely to accrue, be periodically provided in writing to obligors. Parent-obligors should be informed periodically of the interest rate and the amount of penalty as a matter of constitutional right. In the spirit and under the principles of consumer protection, parent-obligors also should be provided

¹ Stephanie Giggetts, Annotation, *Application of Child-Support Guidelines to Cases of Joint-, Split-, or Similar Shared-Custody Arrangements*, 57 A.L.R. 5TH 389, § 2(a) (1998 & Supp. 2013) (“Parents have a mutual duty to support their children.”). See also Exec. Order No. 12,953, 60 Fed. Reg. 11,013 (Feb. 27, 1995) (“Children need and deserve the emotional and financial support of both their parents.”).

² Giggetts, *supra* note 1, at § 2(a). Child support guidelines are used to determine the amount of child support a parent must pay. “Most child-support guidelines, however, contemplate that one parent will have primary physical custody of the child and thus require the noncustodial parent to make child-support payments to the custodial parent. Some states have included specific provisions for cases where custody is equally shared and have developed worksheets to be used in such a situation.” *Id.*

³ BLACK'S LAW DICTIONARY 113 (4th ed. 2011).

⁴ FLA. STAT. § 61.14(1)(a) (2016). “While the duty to pay child support may arise from common law or statute, contract, or a confusion of both, . . . Florida statutory law and contract law are separate and distinct sources for the obligation. Contracts regarding the support of minor children remain subject to the plenary power of the state to control, regulate and discretion to enforce.” *Burkley v. Burkley*, 911 So. 2d 262, 267 (Fla. 5th Dist. Ct. App. 2005) (internal citations omitted).

⁵ CLERK OF THE CIRCUIT COURT AND COMPTROLLER, ESCAMBIA COUNTY, FLA., *Court Services — Child Support*, ESCAMBIA COUNTY FLORIDA CLERK OF THE CIRCUIT COURT AND COMPTROLLER, http://www.escambiaclerk.com/clerk/coc_child_support.aspx (last visited May 10, 2016).

notice so they can be informed of the potential impact of penalty interest.

Parents who become delinquent on court-ordered child support payments are charged interest on the delinquent amount.⁶ In Florida, the interest is calculated quarterly.⁷ However, these parent-obligors are likely unaware of the amount of penalty interest assessed because the clerk, or local depository, is not required to specify the potential impact that interest will have on the delinquent amount.⁸ The delinquency notice informs the obligor of several things: (1) the amount of the delinquency; (2) that the delinquency becomes a judgment as a matter of law; (3) that the judgment will be made for 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[;]” and (4) that the obligor has a right to contest the impending judgment.⁹ Additionally, the delinquency and the subsequent penalty interest may be submitted to credit reporting agencies.¹⁰

Obligors should be informed of the potential amount of the penalty interest. Disclosing this information to obligors would advance the broad concept of constitutional due process rights, propel the principle of notice that underlies consumer protectionism, and may help improve the efficacy of the Florida statute by positively impacting the collection of arrears or the past due amount.¹¹ In a federally-funded report published in 2007 that analyzed arrears in nine states, including Florida, two broad strategies for arrears management were aimed at either preventing arrears from accruing or managing existing arrears.¹² “An effective arrears management plan will focus on interventions that address

⁶ FLA. STAT. § 61.14(6)(b)(1) (2016).

⁷ FLA. STAT. § 55.03 (2016).

⁸ FLA. STAT. § 61.14(6)(b)(1) (2016). Once an obligor is 15 days delinquent, the local depository is required to serve notice on the obligor and include information about the amount of the delinquency. *Id.*

⁹ FLA. STAT. § 61.14(6)(b)(1)(a-c) (2016).

¹⁰ FLA. STAT. § 61.14(6)(b)(1)(d) (2016). In the delinquency notice, the obligor is informed that the local depository has the authority to release information about the delinquency to more than one credit reporting agency. *Id.* However, the statute does not specify the information that could be released.

¹¹ See generally, Elaine Sorensen, Liliana Sousa & Simon Schaner, *Assessing Child Support Arrears in Nine Large States and the Nation*, THE URBAN INSTITUTE, at 87 (July 11, 2007), available at <https://aspe.hhs.gov/sites/default/files/pdf/75136/report.pdf>.

¹² *Id.* at 80, 87.

the factors that contribute to arrears growth the most."¹³ According to the report,

It is also important to recognize that many factors contribute to arrears and thus multiple strategies are needed to contain them. No single strategy is sufficient to manage arrears. Although the assessment of interest on a routine basis is probably the single most important factor contributing to arrears, clearly other factors contribute to arrears since many states do not assess interest on a routine basis.¹⁴

In addition to the possibility of the state maximizing its arrears management program, obligors also could benefit by reducing the negative impact on their credit scores when they are able to avoid paying penalty interest.

Published information devoted exclusively to Florida's child support arrears program is extremely limited. Section II of this Article will discuss arrears management strategies and why Florida could benefit from implementing such strategies. Section III of this Article will discuss substantive due process rights and the intersection of those rights and the impact of accrued interest on judgments. Section IV will explore how obligors are entitled to consumer protection principles and practices. Section V suggests legislation that Florida should consider.

II. FLORIDA SHOULD IMPLEMENT PROGRAMS TO MORE EFFECTIVELY MANAGE ITS CHILD SUPPORT ARREARS PROGRAM

Past due child support obligations become judgments.¹⁵ Consequentially, these judgments accrue interest, which likely contributes to the growth of arrears.¹⁶ Interest on the arrears is probably the largest factor that contributes to arrears growth.¹⁷ Florida should examine ways to better manage its arrears program and to better explain to obligors the interest on arrears.

A. Purpose of Child Support: It is for the Children

The purpose of child support is to provide income to dependents who are incapable of providing for themselves.¹⁸ Child

¹³ *Id.* at 87–88. Some of the strategies include providing accurate information about the amount owed in arrears, revising the interest policy, establishing an amnesty program, and creating a compromise program. *Id.*

¹⁴ *Id.* at 90.

¹⁵ Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9103, 100 Stat. 1874, 1973 (1986) (amending 42 U.S.C. § 666).

¹⁶ FLA. STAT. § 55.03(2) (2016).

¹⁷ Sorensen et al., *supra* note 11, at 55.

¹⁸ See generally, RANA HOLZ, *Child Support*, in FLA. PROCEEDING AFTER DISSOLUTION OF MARRIAGE § 12 (7th ed., 2005). See also, *Evans v. Evans*, 595 So. 2d 988, 990 (Fla. 1st

support “is a right that belongs to the child.”¹⁹ It is an obligation that is shared by both parents, not an imposition on one parent by another.²⁰ The court may order either parent or both parents who have an obligation to the child to pay support to the other parent.²¹

Federal law requires states to create and enforce child support obligations.²² Federal law also requires states to establish guidelines for child support.²³ The amount that a parent must pay is established using child support guidelines.²⁴ Consequently, federal law also mandates that states have procedures in place to establish penalties for parents who fail to pay child support.²⁵ To comply with federal mandates, Florida implemented statutes to govern child support obligations and the legal consequences of failing to meet those obligations.²⁶ Failure to pay child support obligations may result in civil penalties.²⁷ The Florida legislature also established criminal penalties for failure to pay child support.²⁸ The state found

Dist. Ct. App. 1992) (explaining that it is the very strong public policy of Florida to require a parent to provide support for his or her children).

¹⁹ Rana Holz & Thomas J. Sasser, *Child Support Myths and Truths: Exploring the Assumptions Underlying Florida’s Statutory Guidelines*, 73 FLA. B.J. 58, 58 (Oct. 1999) (citing *Imami v. Imami*, 584 So. 2d 596 (Fla. 1st Dist. Ct. App. 1991)).

²⁰ *Id.* (citing *Armour v. Allen*, 377 So. 2d 798 (Fla. 1st Dist. Ct. App. 1979)).

²¹ FLA. STAT. § 61.13(1)(a) (2016). “[T]he 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.” *Id.*

²² 42 U.S.C. § 654(4) (2014); 42 U.S.C. § 666(a)(2), (5) (2007).

²³ 42 U.S.C. § 667 (2014). “The federal government requires each state, as a condition for having its state welfare plan approved, to establish guidelines for child support award amounts.” Holz & Sasser, *supra* note 19, at 58.

²⁴ 42 U.S.C. § 667 (2016). *See also* FLA. STAT. § 61.30 (2016) (the guidelines are widely used by judges). “The general approach taken in *Winters* is still correct. In a split custody case, the trial court first determines the total child support obligation and each child’s share of that obligation. Thereafter, the court determines the method of parental payment that gives each child his or her share while assuring that each parent pays no more than the proper percentage of the total support.” *Gingola v. Velasco*, 668 So. 2d 1054, 1055 n.1 (Fla. 2d Dist. Ct. App. 1996) (citing *Winters v. Katseralis*, 623 So. 2d 613 (Fla. 2d Dist. Ct. App. 1993)).

²⁵ 42 U.S.C. § 666 (a)(4), (16) (2016).

²⁶ FLA. STAT. § 61.13(4)(d) (2016). “A person who violates this subsection may be punished by contempt of court or other remedies as the court deems appropriate.” *Id.*

²⁷ 42 U.S.C. § 666 (a)(4), (16) (2016).

²⁸ FLA. STAT. § 827.06(1) (2016). The Florida Legislature recognized that most parents have a desire to support and be connected to their children. Although some parents have a genuine inability to provide support, some parents intentionally fail to pay child support. For those parents, the Florida Legislature toughened penalties. “Recognizing that it is the public policy of this state that children shall be maintained primarily from the resources of their parents, . . . it is the intent of the Legislature that the criminal penalties provided for in this section are to be pursued in all appropriate

“that existing statutory provisions for civil enforcement of support have not proven sufficiently effective or efficient in gaining adequate support for all children.”²⁹ When civil penalties do not work, then criminal penalties may be sought.³⁰

The Florida judiciary has taken notice of the difficulty of child support enforcement.³¹ “The enforcement of child support has become a major governmental concern It is a problem fueled in part by the increasingly transient nature of our society.”³² The judicial branch has an interest in the enforcement of its court orders, and the legislative branch has an interest in achieving fiscal efficiency.³³ “All branches of government have a public policy interest in the maintenance and support of minor children.”³⁴

B. Interest Accumulates on Arrears, Precipitates Arrears Growth, and Complicates Arrears Management Programs

Past due obligations, or arrears, accrue interest in the same way other civil judgments do.³⁵ In 1986, Congress amended the Social Security Act and ordered all past due child support to become judgments by operation of law.³⁶ “Since most states require that interest be charged on judgments, many states began to charge interest on child support arrears after this legislation was enacted.”³⁷ Florida is one of the states that charges interest on judgments.³⁸

From a policy perspective, a state should collect interest on child support arrears to compensate the obligee, or custodial parent, for the lost time value of money.³⁹ However, assessing interest on

cases where civil enforcement has not resulted in payment.” *Id.*

²⁹ *Id.*

³⁰ FLA. STAT. § 827.06 (2016).

³¹ *State ex. rel. Pittman v. Stanjeski*, 562 So. 2d 673, 677 (Fla. 1990).

³² *Id.* at 677. Parents who are entitled to child support but do not receive it often are discouraged from pursuing enforcement because they think it is futile, that welfare programs will pay just as much, or they are unable to hire an attorney. *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ NAT’L CONFERENCE OF STATE LEGISLATORS, *Interest on Child Support Arrears*, <http://www.ncsl.org/research/human-services/interest-on-child-support-arrears.aspx> (last visited May 10, 2016).

³⁶ Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9103, 100 Stat. 1874, 1973 (1986) (amending 42 U.S.C. § 666).

³⁷ Sorensen et al., *supra* note 11, at 8.

³⁸ FLA. STAT. § 55.03 (2016). Florida is among 35 states that charge interest on arrears. NAT’L CONFERENCE OF STATE LEGISLATORS, *supra* note 35. See Appendix A.

³⁹ Jerry Reiss & Marc H. Brawer, *The Intersection of F.S. § 55.03 and Florida Family Law: Statutory Interest Calculations for Past-due Support Payments*, 87 FLA. B.J. 54, 58 (July 2013).

arrears contributes significantly to the growth of arrears.⁴⁰ “The primary factor that has caused arrears to grow dramatically . . . has been the assessment of interest on a routine basis.”⁴¹ Florida was among nine states included in a study of large states that assess arrears.⁴² According to the study, states that charged interest on arrears experience far more significant growth in arrears than states that do not charge interest.⁴³ Between 1987 and 2006, states that charged interest on arrears saw the size of their arrears grow from \$5.4 billion to \$58.7 billion, a substantial increase of \$53.3 billion, or 987 percent, whereas states that did not charge interest saw less growth— from \$2.8 billion to \$19.5 billion, an increase of \$16.7 billion, or 596 percent.⁴⁴

The main culprit for the growth in arrears was the interest that was assessed.⁴⁵ Between the 1990s and the beginning of the next decade, assessing interest on arrears “was probably the single biggest factor that contributed to arrears growth.”⁴⁶ Technology also buoyed the growth of tacking on interest. “Many states began to assess interest on a routine basis in the 1990s, as their computer systems could manage to calculate and track interest.”⁴⁷ States that

⁴⁰ Sorensen et al., *supra* note 11, at 55.

⁴¹ Sorensen et al., *supra* note 11, at 8, 55. The conclusion was based on examining a 15-year period, from 1991 to 2006. Other major factors that contributed to growing arrears were non-compliance with current child support orders and low payment rate on arrears. Sorensen et al., *supra* note 11, at 54. Incarceration of the obligor parent serves as an accelerant for child support owed. Eli Hager, *For Men in Prison, Child Support Becomes a Crushing Debt*, THE WASHINGTON POST, https://www.washingtonpost.com/politics/for-men-in-prison-child-support-becomes-a-crushing-debt/2015/10/18/e751a324-5bb7-11e5-b38e-06883aacba64_story.html (last visited May 10, 2016).

⁴² Sorensen et al., *supra* note 11, at 1. The nine states include: Arizona, Florida, Illinois, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Texas. Selected because of their size, these states collectively held about 40 percent of the nation’s arrears at the time the data was extracted between 2003 and 2004. At that time, Florida had \$3.83 billion in arrears. Sorensen et al., *supra* note 11, at 14–15.

⁴³ Sorensen et al., *supra* note 11, at 55.

⁴⁴ Sorensen et al., *supra* note 11, at 55.

⁴⁵ Sorensen et al., *supra* note 11, at 55.

⁴⁶ Sorensen et al., *supra* note 11, at 55.

⁴⁷ Sorensen et al., *supra* note 11, at 55. In this study, Florida reportedly charges no interest on arrears; however, it is unclear whether that interest policy only applies retroactively to arrears. Sorensen et al., *supra* note 11, at 57. Florida does not charge interest on retroactive support. NAT’L CONFERENCE OF STATE LEGISLATORS, *supra* note 35. However, Florida charged a twelve percent annual interest rate on judgments between 1981 and 1994, and it charged anywhere from an eight percent to eleven percent annual interest rate between 1995 and 2011. Jeff Atwater, Florida’s Chief Financial Officer, *Historical Judgment Interest Rates*, FLA. DEP’T OF FIN. SERVS., <http://www.myfloridacfo.com/Division/AA/Vendors/JudgmentInterestRates.htm#U->

charge interest on a regular basis have a larger increase in arrears than states that do not.⁴⁸

Although there have not been any recently published reports exclusively devoted to Florida's arrearage management program, Florida was included in a federal study that also captured the actions of eight other states that were working to manage their arrears.⁴⁹ Collectively, the states have implemented programs to prevent the accumulation of arrears and help manage existing arrears.⁵⁰

To prevent the accumulation of arrears, some states have implemented programs to "set realistic orders," "increase parental participation in the order establishment process," "reduce retroactive support," "implement early intervention strategies," and "increase review and modification."⁵¹ One option to help set realistic orders is a provision for low-income obligors.⁵² In Florida, low-income obligors may get a reduction in child support.⁵³ Depending on the circumstances, the court may modify child support obligations if the parents' combined net monthly income is less than the minimum guidelines.⁵⁴ Another early intervention strategy intended to prevent child support delinquency is frequent communication with the obligor.⁵⁵ Some states use phone calls, letters, and emails to remind the non-custodial parent to make a

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⁴⁸ Sorensen et al., *supra* note 11, at 55.

⁴⁹ Sorensen et al., *supra* note 11, at 80.

⁵⁰ Sorensen et al., *supra* note 11, at 80.

⁵¹ Sorensen et al., *supra* note 11, at 80–86. The states have tried numerous strategies, but only these six were discussed. Some of the strategies were identified by state. Sorensen et al., *supra* note 11, at 80–86.

⁵² Sorensen et al., *supra* note 11, at 81–82. The other strategies include using (New York) state income tax returns to help determine child support orders, using databases that hold information about whether an obligor is institutionalized or receiving certain types of federal financial benefits, presuming income is at minimum wage, setting orders at twenty-five to fifty dollars monthly, and waiving standard child support guidelines for low-income obligors. "Nearly all of the study states have a low-income provision in their state child support guidelines, which aims to reduce child support order amount for low-income obligors." Sorensen et al., *supra* note 11, at 81.

⁵³ Sorensen et al., *supra* note 11, at 82.

⁵⁴ FLA. STAT. § 61.30(6)(a)(1) (2016). The minimum combined monthly net income in 2014 was \$800. FLA. STAT. § 61.30(6) (2016). "Florida's child support guidelines include provisions that are intended to prevent child support from pushing low-income noncustodial parents into poverty." THOMAS S. MCCAULEY, ET AL., REVIEW AND UPDATE OF FLORIDA'S CHILD SUPPORT GUIDELINES, REPORT TO THE FLORIDA LEGISLATURE 3 (Mar. 5, 2004), available at <https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/2004fsu.pdf> (last visited May 10, 2016).

⁵⁵ Sorensen et al., *supra* note 11, at 83.

payment or provide notice of account status issues.⁵⁶

Florida gives instructional information to the non-custodial parent about its obligation and how to remit payments. Additionally, the state conducts orientation appointments to review the order, the enforcement process, and the consequences for non-compliance.⁵⁷ In July 2011, Florida child support staff opened an office on a Saturday in Lakeland, Florida “to resolve pending driver’s license suspensions” as a result of child support delinquency.⁵⁸ As a result, the state collected nearly \$37,000 from 115 cases.⁵⁹

To help manage existing arrears, the states discussed in the federal study also established procedures to provide accurate information about arrears owed, to increase arrears collections, to revise interest policies, to implement arrears amnesty programs, to implement arrears compromise programs, and to review non-paying arrears cases for possible case closure.⁶⁰ Arizona, for example, developed a web-based portal so that customers can access current information, including arrears.⁶¹ Two other states revised their interest policies.⁶² Michigan began using a simple rate, instead of a compounded rate, and applied arrears payments to the principle first.⁶³ Both of these changes were made to reduce the growth rate of arrears.⁶⁴ “States that charge interest on a routine

⁵⁶ Sorensen et al., *supra* note 11, at 84. Pennsylvania has used all three types of communications with child support customers. Sorensen et al., *supra* note 11, at 84.

⁵⁷ Sorensen et al., *supra* note 11, at 84. In 2012, Florida implemented a new web-based computer system to automate routine child support activities, including customer service. FLA. DEP’T OF REVENUE, 2012 ANNUAL REPORT 5–6 (2012), available at http://dor.myflorida.com/dor/report/2012_annual_report.pdf (last accessed May 10, 2016). The state also launched a pilot program for web chat with customers. *Id.* at 5.

⁵⁸ Sorensen et al., *supra* note 11, at 14.

⁵⁹ FLA. DEP’T OF REVENUE, *supra* note 57, at 5. Florida collected \$1.6 billion, an increase of 2.1 percent over the prior year, in child support in its fiscal year ending in 2012. FLA. DEP’T OF REVENUE, *supra* note 57, at 5. However, the report does not address arrears specifically.

⁶⁰ Sorensen et al., *supra* note 11, at 87–89. The states have tried numerous strategies, but only these six were discussed. The strategies were not identified to the individual states. However, at the time of the study, Arizona was exploring a web-based program that calculated the arrears. Sorensen et al., *supra* note 11, at 87. “The tool will allow custodial and non-custodial parents to easily obtain timely and accurate information about the amount of arrears owed” Sorensen et al., *supra* note 11, at 87. Since then, Arizona has released its online tool. See *Child Support Calculator Information*, Arizona Supreme Court, <http://www.azcourts.gov/familylaw/Child-Support-Calculator-Information> (last accessed May 12, 2016).

⁶¹ Sorensen et al., *supra* note 11, at 87.

⁶² Sorensen et al., *supra* note 11, at 87.

⁶³ Sorensen et al., *supra* note 11, at 87.

⁶⁴ Sorensen et al., *supra* note 11, at 87.

basis may want to review their interest policy to ensure that it is consistent with the goals of the program."⁶⁵

C. Florida Should Consider the Most Effective Ways to Manage Arrears

First, Florida could improve the efficacy of its arrears management program by examining its program prior to implementing certain strategies, such as better communicating the interest and arrears owed.⁶⁶ There may be no single implementation that will successfully manage an arrears program. However, a healthy program

will focus on interventions that address the factors that contribute to arrears growth the most. Thus, it behooves states to understand what drives arrears growth in their state. . . . It is also important to recognize that many factors contribute to arrears and thus multiple strategies are needed to contain them. No single strategy is sufficient to manage arrears.⁶⁷

Second, Florida should consider more effective ways of communicating the interest and arrears owed. Obligor who are bound by Florida law have arrears that are subject to complex calculations, which may contribute to the lack of awareness about the impact of the interest accruing.⁶⁸ Under Florida law, calculating interest is difficult in a 365-day calendar year, and it is even more complicated for a leap year.⁶⁹ "[A] logistical nightmare is presented for the family law practitioner, especially considering the impact that the leap year has on the process."⁷⁰ The calculation is complicated because it must be performed quarterly.⁷¹ Florida amended its laws in 2011 and implemented this new interest calculation that went into effect in July 2011.⁷²

Before the amendment, the interest was calculated by applying

⁶⁵ Sorensen et al., *supra* note 11, at 87.

⁶⁶ Sorensen et al., *supra* note 11, at 90.

⁶⁷ Sorensen et al., *supra* note 11, at 90. Florida has set goals to increase collection of child support overall, particularly working with employers. FLA. DEP'T OF REVENUE, *supra* note 57, at 18–19. Its strategies to boost collections include streamlining the process for employers to more easily comply with wage withholdings, creating "child support compliance positions," and more readily identifying missing case information that will lead to an increase in enforcement actions in cases of nonpayment. FLA. DEP'T OF REVENUE, *supra* note 57, at 19.

⁶⁸ Reiss & Brawer, *supra* note 39, at 54.

⁶⁹ Reiss & Brawer, *supra* note 39, at 54.

⁷⁰ Reiss & Brawer, *supra* note 39, at 54.

⁷¹ FLA. STAT. § 55.03 (2016).

⁷² Reiss & Brawer, *supra* note 39, at 54.

a daily interest rate.⁷³ Now, the interest is calculated quarterly “by averaging the discount rate of the Federal Reserve Bank of New York for the preceding twelve months, then adding 400 basis points to the averaged federal discount rate.”⁷⁴ Under the revised interest calculation statute, “[t]he relatively simple calculation became complicated”⁷⁵

If the calculation confounds practitioners, then the likelihood that it is even more confounding for the lay obligor is high. The impact of statutory interest should be communicated clearly in plain language to help improve the collection of arrears and help obligors avoid paying an exorbitant penalty because the interest tab was ticking.

Although Florida provides information to non-custodial parents about their obligations and, in some cases, reviews implications of non-compliance, the state should consistently and regularly communicate with non-custodial parents to help prevent interest accumulating on arrears and, consequently, arrearage growth.⁷⁶

III. OBLIGORS HAVE A SUBSTANTIAL DUE PROCESS RIGHT TO BE INFORMED OF THE IMPACT OF THE INTEREST ON JUDGMENTS

Obligors who are delinquent in court-ordered child support payments may be entitled to know the potential impact of the interest rate on the delinquency as a matter of constitutional right. While an obligee has a right to collect a judgment, the obligor also may have rights under due process.⁷⁷

A. Constitutional Due Process Protects Individual Rights

The U.S. Constitution provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.”⁷⁸ According to the Supreme Court, “governmental benefits to which recipients have a ‘statutory entitlement’ are a form of property and,

⁷³ Reiss & Brawer, *supra* note 39, at 54.

⁷⁴ FLA. STAT. § 55.03 (2016).

⁷⁵ Reiss & Brawer, *supra* note 39, at 54.

⁷⁶ Sorensen et al., *supra* note 11, at 84.

⁷⁷ See generally, Diana Gribbon Motz & Andrew H. Bada, *The Due Process Rights of Postjudgment Debtors and Child Support Obligors*, 45 MD. L. REV. 61, 61-62 (1986).

⁷⁸ U.S. CONST. amend. XIV, § 1; see also, U.S. CONST. amend. V. Amendment V also requires federal due process rights. *Id.*

therefore, . . . may not be discontinued without due process of law.⁷⁹ For example, in *Goldberg v. Kelly*, the Court ruled that welfare benefits were a property right that required due process before termination.⁸⁰ Sometimes a property right can be an entitlement to a job.⁸¹ Wages have been also defined as property that are subject to constitutional protection.⁸² Therefore, individuals have a right to due process when their constitutional interest to wages is being challenged.

There are two types of due process—procedural and substantive. Procedural due process is an opportunity to be heard, including when the deprivation of property is involved, and is “one of the fundamental requisites of due process.”⁸³ It involves a notice and a hearing *prior* to action by the government or an agency.⁸⁴ The right to notice and a hearing, in order to serve its full purpose, must be granted at a time when the deprivation can still be prevented. No later hearing or damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. This often-cited rationale indicates that some method of notice and hearing should be implemented either before the withholding takes place or immediately thereafter.⁸⁵

In 1983, the U.S. Supreme Court struck down a Florida (and Pennsylvania) law that enabled private parties to seize property without prior notice or hearing even though the deprived party had

⁷⁹ Note, *Statutory Entitlement and the Concept of Property*, 86 Yale L.J. 695, 695 (Mar. 1977).

⁸⁰ *Goldberg v. Kelly*, 397 U.S. 254 (1970) (concluding that welfare benefits are an entitlement granted by statute and deprivation of such right requires due process). “The Court . . . relies upon the Fourteenth Amendment and in effect says that failure of the government to pay a promised charitable installment to an individual deprives that individual of his own property, in violation of the Due Process Clause of the Fourteenth Amendment.” *Id.* at 275 (Black, J. dissenting).

⁸¹ *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 538 (1985) (holding that the property right to continued employment was created by Ohio statute). “The point is straightforward: the Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct.” *Id.* at 541.

⁸² Douglas B. Neagli & Matthew B. Troutman, *Constitutional Implications of the Child Support Enforcement Amendments of 1984*, 24 J. FAM. L. 301, 306 (1985–86). The Supreme Court has determined that wages are a “specialized type of property presenting distinct problems in our economic system.” *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 340 (1969). The Court held that Wisconsin’s prejudgment garnishment of wages procedures that were executed without notice or a hearing violated due process. *Id.* at 341.

⁸³ Neagli & Troutman, *supra* note 82, at 304 (referring to *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1964))).

⁸⁴ Neagli & Troutman, *supra* note 82, at 304 (emphasis added).

⁸⁵ Neagli & Troutman, *supra* note 82, at 304.

immediate post-seizure opportunities to retrieve the property.⁸⁶ However, the Court said that no matter how brief the deprivation of property, “[a]ny significant taking of property by the State is within the purview of the Due Process Clause.”⁸⁷

Analogous to the procedural due process right to notice and a hearing, obligors should be notified specifically about the amount of interest charged on child support arrears, especially prior to the state reporting the information to credit reporting agencies. The notification could prevent an obligor from receiving negative information on his or her credit report, which could impact the obligor’s ability to secure employment, housing, and financing. Obligor’s also should be informed of the potential impact of the interest and the interest rate on arrears for the same reasons.

Substantive due process is a concept that explores whether the government was justified in depriving the person of life, liberty, or property.⁸⁸ This concept of due process “looks to whether there is a . . . good enough reason for such deprivation.”⁸⁹ Historically, successfully asserting a substantive due process claim has been challenging, especially for plaintiffs claiming a due process violation of a right that is not enumerated in the Constitution.⁹⁰ However, the Courts have extended substantive due process rights to unenumerated rights, including the right to contract and the right of parents’ control in the upbringing of children.⁹¹ More recently, though, the Court has taken a narrow view of types of rights that fall into a due process claim.⁹² Nevertheless, “[s]ubstantive due process can be used any time the government takes away life, liberty or property.”⁹³ A right to be informed about the specific impact of the interest or the interest rate on a judgment resulting from delinquent child support is not an enumerated right. However, obligors may

⁸⁶ *Fuentes v. Shevin*, 407 U.S. 67, 67 (1972) (concluding that the state deprives a person of property when officials seize a piece of property in exchange for the surrender of another piece of property, no matter how brief the deprivation). Until then, Florida law allowed “the summary seizure of goods or chattels in a person’s possession under a writ of replevin.” *Id.* at 69.

⁸⁷ *Id.* at 86.

⁸⁸ Erwin Chemerinsky, *Substantive Due Process*, 15 *TOURO L. REV.* 1501 (1998), available at http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1638&context=faculty_scholarship. “[S]trangely enough, if you look through Supreme Court opinions you will never find a definition” of substantive due process. *Id.* at 1501.

⁸⁹ *Id.*

⁹⁰ *Id.* at 1502, 1534.

⁹¹ *Id.* at 1509 (internal citations omitted).

⁹² *Id.* at 1533.

⁹³ *Id.* at 1508.

have a substantive due process right to be informed of such impact because the government is impacting the obligors' liberty and property.

B. Obligor May Challenge Judgments under the Due Process Clause

Because child support orders may involve seizing a portion of obligors' earnings, a constitutional due process challenge—specifically a procedural due process challenge—can arise.⁹⁴ “Recently, this constitutional provision has been the basis for a spate of civil actions in federal courts throughout the country challenging state procedures” on a variety of issues, including postjudgment collection processes.⁹⁵ Specifically, parties have battled about the type of postjudgment notice that is provided to obligors. “These cases raise questions regarding the type of notice and hearing that must be afforded postjudgment debtors (or child support obligors) in order to comply with modern era views of due process.”⁹⁶

The due process challenges are available to obligors who voluntarily agreed to pay child support. They are equally available to non-child support postjudgment debtors. Moreover, the child support obligor and the postjudgment debtors are equally positioned to pursue due process challenges because their judgments are functions of the operation of law.

A child support obligor would seem to be in a position identical to that of a postjudgment debtor for purposes of due process analysis. At some time in the past, each had an opportunity to contest in court whether he or she owed an obligation to another individual and, in each case, a court determined that the debtor or obligor was, indeed, liable. Although an obligor, unlike a debtor, may have entered into a voluntary agreement to pay child support, this does not diminish the existence of the obligor's liability or the fact that it has been determined by a court and so is binding as a matter of law.⁹⁷

Therefore, “an obligor is clearly not in any way in a more favorable position than an ordinary judgment debtor.”⁹⁸

C. Postjudgment Due Process Rights Have Evolved

The U.S. Supreme Court's discussion on postjudgment due

⁹⁴ Diana Gribbon Motz & Andrew H. Baida, *The Due Process Rights of Postjudgment Debtors and Child Support Obligors*, 45 MD. L. REV. 61 (1986).

⁹⁵ Motz & Baida, *supra* note 94, at 61.

⁹⁶ Motz, *supra* note 94, at 61–62 (internal citation omitted).

⁹⁷ Motz, *supra* note 94, at 90 n.5.

⁹⁸ Motz, *supra* note 94, at 90 n.5.

process rights began almost a century ago.⁹⁹ In 1924, the Court declined to extend postjudgment due process rights in *Endicott-Johnson Corp. v. Encyclopedia Press, Inc.* because a defendant who had his or her day in court is not entitled to a subsequent notice of a hearing or action.¹⁰⁰ Unless there was a statutory requirement to provide notice before the property was taken to satisfy a judgment, the Court said there was no reason to give postjudgment notice.¹⁰¹

In 1946, the Court seemed to extend its position when it upheld a New York judgment that granted past due alimony and interest, although the respondent had no notice of the subsequent hearing or judgment.¹⁰² In 1967, the Court declined to overturn *Endicott* when the issue arose in an Arizona case.¹⁰³ “[T]he Arizona Supreme Court had upheld as constitutionally sufficient a state procedure that provided for notice of the underlying debt, but for no additional notice of intent to execute.” The Court ultimately dismissed the case, so *Endicott* was left unresolved.¹⁰⁴

In 1976, the Court changed the way that it analyzed postjudgment due process claims. It established a three-prong balancing test in *Mathews v. Eldridge* to examine constitutional due process challenges.¹⁰⁵ Soon, lower courts began applying the three-part test to postjudgment due process challenges.

That same year, a Florida district court applied the *Mathews* balancing test specifically to a postjudgment garnishment procedure, holding in *Brown v. Liberty Loan Corp.* that the statutes

⁹⁹ Motz, *supra* note 94, at 62.

¹⁰⁰ *Johnson Corp. v. Encyclopedia Press, Inc.*, 266 U.S. 285, 288 (1924). The Court held that the “established rules of our system of jurisprudence do not require that a defendant . . . have a further notice and hearing before supplemental proceedings are taken to reach his property in satisfaction of the judgment.” *Id.* at 288.

¹⁰¹ *Id.* at 288 (holding that the notice is not essential to advance justice). *But cf.* *Hutchinson v. Cox*, 784 F. Supp. 1339, 1343 (S.D. Ohio 1992) (recognizing that the due process analysis in *Endicott-Johnson* had long been abandoned by the U.S. Supreme Court).

¹⁰² *Griffin v. Griffin*, 327 U.S. 220, 235 (1946). “Due process does not require that notice be given before confirmation of rights theretofore established in a proceeding of which adequate notice was given.” *Id.* at 233–34.

¹⁰³ *Hanner v. Demarcus*, 390 U.S. 736, 741 (1967) (Douglas, J., dissenting) (noting that since *Endicott*, there has been an expansion of the scope of notice required).

¹⁰⁴ Motz, *supra* note 94, at 63 (internal citation omitted).

¹⁰⁵ *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The three balancing factors included: (1) “the private interest that will be affected by the official action[;]” (2) “the risk of an erroneous deprivation of such interests through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards[;]” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.*

violated due process after it examined the private and governmental interests.¹⁰⁶ The Fifth Circuit overturned the district court because the state's interests outweighed the debtor's interest, and it upheld Florida's postjudgment garnishment procedures as constitutional.¹⁰⁷ It was the first court to apply the *Mathews* balancing test.¹⁰⁸ After *Brown*, a Michigan court in 1976 also upheld that postjudgment attachment procedures were constitutional.¹⁰⁹

However, the courts began shifting in 1980, when the Third Circuit declared Pennsylvania's post-garnishment procedures unconstitutional in *Finberg v. Sullivan*.¹¹⁰ The Court "held that the challenged Pennsylvania postjudgment garnishment procedures did not adequately protect a judgment debtor's interests, nor fairly accommodate the interests of both debtors and creditors."¹¹¹ "*Finberg* represents the first of a new, but increasingly long, line of cases in which various postjudgment garnishment procedures have been held unconstitutional."¹¹²

But the trend to require detailed notice seemingly slowed in the mid-1980s when two federal district courts ruled on the same New York statute governing postjudgment procedures—before it was revised and after it was revised.¹¹³ In 1982, New York law "provide[d] no requirement that the judgment debtor be notified of the enforcement action. Notice of the seizure, or the attempt to seize, property of a debtor is a fundamental element of due process."¹¹⁴ The Court in the Southern District of New York, thus,

¹⁰⁶ *Brown v. Liberty Loan Corp.*, 539 F.2d 1355, 1362–63 (5th Cir. 1976), *cert. denied*, 430 U.S. 949 (1977).

¹⁰⁷ *Id.* at 1363, 1369. "For instance, [the district court] does not consider the state's interest in facilitating the enforcement of judgments obtained in its courts or the creditor's interest in satisfying a judgment from a debtor's assets. Given proper weight, those interests appear to outweigh the debtor's interests." *Id.*

¹⁰⁸ Motz, *supra* note 94, at 66.

¹⁰⁹ *First Nat'l Bank v. Hasty*, 410 F. Supp. 482, 490 (E.D. Mich. 1976). *But cf.* *Betts v. Tom*, 431 F. Supp. 1369, 1378 (D. Haw. 1977) (striking down a Hawaii statute that allowed "ex parte writs of garnishments to be served on personal checking accounts" that contain federally-subsidized benefits "without further statutory procedures").

¹¹⁰ Motz, *supra* note 94, at 67.

¹¹¹ Motz, *supra* note 94, at 67 (noting in *Finberg* that "[t]hough acknowledging that predeprivation notice and a hearing were not required by due process, the court determined that the judgment debtor's "compelling" interest in asserting exemptions in order to regain use of money in her seized bank account demanded a "prompt" postseizure hearing). *Finberg v. Sullivan*, 634 F.2d 50 (3d Cir. 1980).

¹¹² Motz, *supra* note 94, at 67–68.

¹¹³ Motz, *supra* note 94, at 73.

¹¹⁴ *Deary v. Guardian Loan Co.*, 534 F. Supp. 1178, 1187 (1982) (concluding that New York's postjudgment enforcement procedures were unconstitutional).

ruled the statute unconstitutional.¹¹⁵ Two years later, after the statute was amended to include notification to debtors of (1) only some of the exemptions to which they might be entitled, and (2) debtors' right to consult a lawyer, the Court in the Eastern District of New York ruled that the statute satisfied the Due Process Clause of the Fourteenth Amendment.¹¹⁶

While the courts have been inconsistent in their rulings on due process requirements for postjudgment procedures, the minimum amount of notice theme seems to be holding. The courts have not been inclined to heighten the requirement for notice because there is no constitutional requirement to do so. "Judgment debtors need only be afforded notice that . . . [some] exemptions may be available and that they have a right to contest a garnishment Such notice is entirely adequate to protect the postjudgment debtors rights and, accordingly, comply with the requirements of due process."¹¹⁷ Although there may be no constitutional requirement to be particularly elaborative on judgment debtors' notice, there is no constitutional prohibition from doing so. Further, states may benefit practically by heightening their level of postjudgment communication to debtors.

IV. OBLIGORS ARE ENTITLED TO DISCLOSURE UNDER CONSUMER PROTECTION PRINCIPLES

In many ways, obligors are similar to consumers and should be afforded the same spirit of transparency that exists in consumer protection. Both are subject to legal arrangements that require payments be made to a creditor; thus, both are entitled to consumer protection laws and practices.

Consumer protection is a concept that fosters disclosure, notification, and education. The strength of consumer protection is based on transparency, particularly in financial regulation.¹¹⁸ Transparency is at its peak when relevant information is made available to consumers and anyone else who may act on their behalf.¹¹⁹ The relevant information is made available through

¹¹⁵ *Id.* at 1187.

¹¹⁶ *McCahey v. L.P. Investors*, 593 F. Supp. 319, 329 (E.D.N.Y. 1984) (concluding that judgment debtors in this context are entitled to notice of both the creditor's actions and exemptions to which they may be entitled, and must be afforded a prompt opportunity to challenge the creditor's enforcement and to assert their exemptions).

¹¹⁷ *Motz*, *supra* note 94, at 74.

¹¹⁸ Daniel Schwarcz, *Transparently Opaque: Understanding the Lack of Transparency in Insurance Consumer Protection*, UCLA L. REV. 394, 396 (2014).

¹¹⁹ Schwarcz, *supra* note 118, at 394. "A central goal of financial regulation is to

disclosures, or notices, to better inform consumers.¹²⁰ It also helps promote accountability.¹²¹

Congress recently expanded its protection of consumers, including potential obligors, by establishing the Consumer Financial Protection Bureau.¹²² The bureau is designed to “heighten government accountability” and be responsible for overseeing the enforcement of laws that govern consumer financial products and services.¹²³ The bureau promotes transparency as one of its core values because “[b]eing transparent and open to the public encourages greater accountability.”¹²⁴

The bureau manages and enforces laws that govern “providers of consumer financial products and services” that otherwise are not subject to routine federal oversight.¹²⁵ Although the agency had the authority to enforce laws, the agency was challenged to “fill in the gap” in some of its enforcement-related procedures, particularly with pre-enforcement.¹²⁶ Such procedures are encouraged because proponents argue they lead to efficiency and support the credibility of the enforcement process.¹²⁷ The “consultative process” helps would-be defendants avoid possible charges.¹²⁸ One such procedure, known as the “Wells process,” is used by the Securities and Exchange Commission (“SEC”).¹²⁹ Soon after its inception, the bureau was encouraged to adopt a similar pre-enforcement model.¹³⁰ The process begins with a notice that identifies particular

promote markets that are more transparent for consumers and retail investors.” Schwarcz, *supra* note 118, at 394.

¹²⁰ Schwarcz, *supra* note 118, at 400. “Many consumer financial protections are designed to deliver relevant information to individuals in order to improve their financial decisionmaking.” Schwarcz, *supra* note 118, at 400.

¹²¹ Schwarcz, *supra* note 118, at 394.

¹²² Eric J. Mogilnicki & Timothy J. Perla, *Due Process, Transparency and the Consumer Financial Protection Bureau*, BNA SECURITIES REGULATION & LAW REPORT, 1 (2011) (noting that President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law in 2010).

¹²³ CONSUMER FIN. PROT. BUREAU, *Creating the Consumer Bureau*, <http://consumerfinance.gov/the-bureau/creatingthebureau/> (last visited May 16, 2016).

¹²⁴ Dan Munz, *Keeping it Sunny at the CFPB*, CONSUMER FIN. PROT. BUREAU (Apr. 6, 2011), <http://www.consumerfinance.gov/blog/keeping-it-sunny-at-the-cfpb/>.

¹²⁵ CONSUMER FIN. PROTECT. BUREAU, *supra* note 123.

¹²⁶ Mogilnicki & Perla, *supra* note 122, at 1. “Even though the Bureau has gained broad enforcement authority, it has not established procedures that would allow the targets of potential enforcement actions to understand and respond to potential charges before they are made public.” *Id.*

¹²⁷ Mogilnicki & Perla, *supra* note 122, at 2.

¹²⁸ Mogilnicki & Perla, *supra* note 122, at 2.

¹²⁹ Mogilnicki & Perla, *supra* note 122, at 3.

¹³⁰ Mogilnicki & Perla, *supra* note 122, at 2.

charges the SEC is considering and provides the recipient with a chance to respond.¹³¹ The notice, along with the opportunity to respond, is the consultative process that proponents argue benefits the enforcement procedure and provides due process.¹³²

Likewise, Florida should adopt a similar pre-enforcement model. Although the pre-enforcement process would apply to postjudgment debtors who are delinquent on their child support payments, the pre-enforcement process could help the state be more efficient in collecting arrears. The model would include providing specificity in its delinquency notices, especially the potential interest that will accrue on the delinquency, as a pre-enforcement measure that would help improve the efficacy of arrears management. This type of notice and transparency—two factors of consumer protection—could significantly enhance an arrears management program.

A. The Balance Between the Obligee's Right to Collect a Judgment and the Obligor's Due Process Rights is Tethered to Consumer Protection Laws and Principles

The intersection of judgment obligors and consumers is evident in federal regulations that protect the credit of consumers.¹³³ Under the auspices of consumer credit protection, federal law restricts garnishments of parents who are obligated to pay child support; therefore, obligors are consumers and should be given similar notices and disclosures that are provided to consumers.¹³⁴ The disclosures could improve the efficacy of regulation if properly executed.¹³⁵

One of the reasons that obligors are consumers is because a consumer-focused federal regulation applies to obligors.¹³⁶ The Consumer Credit Protection Act limits the amount of money that can be withheld from an obligor's pay.¹³⁷ Generally, the maximum amount that may be garnished is no more than twenty-five percent of disposable income or any amount greater than thirty times the

¹³¹ Mogilnicki & Perla, *supra* note 122, at 4.

¹³² Mogilnicki & Perla, *supra* note 122, at 2.

¹³³ 15 U.S.C. § 1673 (2016). Federal law restricts garnishments as part of Title 15, Chapter 41 that regulates consumer credit protection. *Id.*

¹³⁴ *Id.*

¹³⁵ Schwarcz, *supra* note 118, at 401. Examples of successful mandatory disclosures include nutritional food labeling, ATM fees, payday loans, mortgages, and consumer safety. *Id.* (internal citations omitted).

¹³⁶ 15 U.S.C. § 1673 (2016).

¹³⁷ 15 U.S.C. § 1673(a) (2016).

federal minimum hourly wage.¹³⁸ The restriction was created because “[t]he unrestricted garnishment of compensation . . . encourages the making of predatory extensions of credit.”¹³⁹ Congress wanted to discourage job loss and the consequential impact on interstate commerce.¹⁴⁰ Prior to passing this portion of the Act, Congress wanted to correct “[t]he great disparities among the laws of several [s]tates relating to garnishment [that] have . . . frustrated the purposes thereof in many areas of the country.”¹⁴¹ Because the federal government protects obligors’ wages under the shield of consumer credit protection, obligors are considered to be consumers and are entitled to consumer protections.

*B. The Interest Rate on Arrears Should be Disclosed to Obligors,
Just as it is to Consumers*

The disclosure of the interest rate on arrears should be patterned after the credit card industry’s requirement to disclose interest and fees that will accrue.¹⁴² With the passing of the Fair Credit and Charge Card Disclosure Act of 1988, the credit card industry adopted the “Schumer Box,” which provides consumers with clear and conspicuous information on fees, penalties, and interest in a tabular format.¹⁴³ The purpose of the Act was to “assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.”¹⁴⁴ Consumers are now better educated on the impact of delinquent payments, although there is some doubt that the Schumer Box has had an impact on consumer awareness.¹⁴⁵

¹³⁸ *Id.*

¹³⁹ 15 U.S.C. § 1671(a) (2016).

¹⁴⁰ *Id.*

¹⁴¹ 15 U.S.C. § 1671(a)(3) (2016).

¹⁴² Fair Credit and Charge Card Disclosure Act of 1988, Pub. L. No. 100-583, 102 Stat. 2960 (1988).

¹⁴³ Named after U.S. Sen. Charles Schumer who introduced the bill into Congress, the “Schumer Box” is a popular reference of the box on credit card statements and solicitations that contains the disclosure information. Kenneth Benton, *The Regulation Z Amendments for Open-End Credit Disclosures*, FEDERAL RESERVE BANK, available at http://www.philadelphiafed.org/bank-resources/publications/consumer-compliance-outlook/2009/first-quarter/q1_03.cfm.

¹⁴⁴ 15 U.S.C. § 1601 (2016).

¹⁴⁵ MACRO INTERNATIONAL, DESIGN AND TESTING OF EFFECTIVE TRUTH IN LENDING DISCLOSURES: FINDINGS FROM EXPERIMENTAL STUDY (2008), available at <https://www.federalreserve.gov/newsevents/press/bcreg/bcreg20081218a8.pdf>.

Obligors, like consumers, should have easier access to information, especially information, such as interest on arrears, which would be submitted to a credit reporting agency. Currently, there is no requirement that Florida communicates how interest on arrears would impact an obligor. At best, the state will provide an obligor a statement of the total amount owed, including interest, after the obligor pays the clerk of the court twenty-five dollars.¹⁴⁶ However, an obligor should not be required to pay a fee to find out the amount of interest he or she owes, but rather the state should periodically and routinely disclose the amount of interest that has accrued.

The disclosure of the amount of accrued interest has been discussed broadly in the business law context of debt collectors' responsibilities.¹⁴⁷ In the debate about how much information debt collectors have to disclose, the courts have varied in their conclusions.¹⁴⁸ Some courts have proposed "safe harbor language" to use in communications to debtors.¹⁴⁹ Perhaps the language that would provide the most information to obligors was suggested by a Connecticut judge.¹⁵⁰ The judge opined that a valid notice to obligors would say: "As of today, [date], you owe \$----. This amount consists of a principal of \$----, accrued interest of \$----, and fees of \$----. This balance will continue to accrue interest after [date] at a rate of \$---- per [day/week/month/year]."¹⁵¹ This type of language would be quite helpful to Florida when it acts as a debt collector pursuing payments from obligors or debtors. It deserves serious consideration.

V. FLORIDA SHOULD ADOPT LEGISLATION ON NOTIFICATION OF ARREARS AND INTEREST RATE ON ARREARS

Obligors are offered protection under consumer laws and should be treated as consumers. The full disclosure of interest rate on arrears and the timely notification of the interest on arrears could

¹⁴⁶ FLA. STAT. § 61.14(6)(f)(1) (2016).

¹⁴⁷ Rachel Marin, *Collecting Interest on Charged Off Debts and How Debt Collectors Must Disclose the Accrual of Interest to the Debtor*, BUS. LAW TODAY, Apr. 2014, at 1, 3.

¹⁴⁸ *Id.* at 2. Under 15 U.S.C. § 1692g(a)(1) of the Fair Debt Collection Practices Act ("FDCPA"), debt collectors are only required to state the "amount due" when they are communicating with debtors. *Id.* Courts have been grappling with exactly what must be disclosed in the "amount due."

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 3; *see also*, Jones v. Midland Funding, 755 F. Supp. 2d, 393, 398, n.7 (D. Conn. 2010).

¹⁵¹ Marin, *supra* note 147, at 3.

lead to more efficient arrears management. Florida lawmakers should adopt legislation that would provide for timely, periodic notification of arrears and the interest rate on arrears.¹⁵²

Currently, there is no Florida law requiring detailed notice of interest or the amount of arrears owed.¹⁵³ In 1990, the Florida Supreme Court upheld the constitutionality of the statute that enables a judgment to be issued against an obligor before the obligor has an opportunity to address the court, but advised that the statute “should be interpreted to allow for a hearing prior to the entry of a ‘final judgment by operation of law,’ provided that the obligor timely files a response.”¹⁵⁴ However, the statute has since been modified significantly to specify notification procedures to the obligor and points of entry for the obligor.¹⁵⁵ Still, the statute makes no mention of regularly informing obligors of past due amounts, the interest on arrears, and the potential impact of that interest on arrears.¹⁵⁶

Until 1994, California courts had said the state’s failure to notify an obligor that she owed interest on unpaid child support is a matter of law, not a violation of due process.¹⁵⁷ Another California court had ruled that there is no due process requirement to notify the obligor that arrears had accrued interest.¹⁵⁸ Despite these rulings, and soon after both those cases, California implemented a law that requires notification of interest accrual in three different ways: on the money judgment, judicial council forms, and any statement of account that is sent from the local child support agency.¹⁵⁹

¹⁵² 15 U.S.C. §1673 (2016).

¹⁵³ FLA. STAT. § 61.14 (2016).

¹⁵⁴ *State ex. rel. Pittman v. Stanjeski*, 562 So. 2d 673, 679, 680 (1990) (overturning the lower courts, which declared the statute unconstitutional).

¹⁵⁵ FLA. STAT. § 61.14(6)(a)(1) (2016).

¹⁵⁶ FLA. STAT. § 61.14(6)(b)(3)(f)(1) (2016).

¹⁵⁷ *In re Marriage of Thompson*, 48 Cal. Rptr. 2d 882 (Cal. App. 5th Dist. 1996) (“Under the applicable statutes, there was no denial of due process if respondent was not advised he owed interest on the unpaid child support. Interest accrues as a matter of law, and parents are charged with knowledge of the law.”).

¹⁵⁸ *County of Los Angeles v. Salas*, 45 Cal. Rptr. 2d 61, 63 (Cal. App. 2d Dist. 1995) (overturning a lower court’s ruling that excused interest on child support arrears because lack of notification equated to a due process violation). The court stated: “We have found no authority that supports the trial court’s determination that in a postjudgment demand for child support arrearages, due process required the district attorney give Ms. Salas written notice that the arrearages had accrued interest.” *Id.*

¹⁵⁹ The court added this notation in the case:

We note that since the trial court rendered its decision in this case on February 14, 1994, the Legislature added section 695.211 to the Code of

Even though the Florida judiciary maintains that there is no due process requirement to notify obligors of the amount of interest on arrearages, the state legislature should modify the laws to advance the concept of due process and expand consumer protection by requiring notice, disclosure, and transparency. The principle of notification is an essential element of consumer protection, and Florida should implement the notice requirement and consider the following options:

1. Statutory language that requires quarterly, annual, or periodic notice of the interest penalty, and
2. Expanded use of an existing rule that requires courts to include such a notification to obligors.

The authors propose legislation, best used for directional purposes, that Florida lawmakers could incorporate to amend Florida Statute § 61.14:

1. Title: Interest accrual on arrearages; notice statement of account; required contents¹⁶⁰
2. Every money judgment or order for child support shall provide notice that interest on arrearages accrues at the rate set by the state's Chief Financial Officer under Fla. Stat. § 55.03 and shall include the quarterly interest rates used in the prior four quarters and the most recent annual interest rate.¹⁶¹
3. Every money judgment or order for child support shall provide a clear and conspicuous explanation of how the state's Chief Financial Officer determines rates.
4. The notice provisions required by this section shall be incorporated into all appropriate judicial forms.¹⁶²

Civil Procedure effective September 28, 1994. (Stats. 1994, ch. 959, § 1). Code of Civil Procedure section 695.211 provides: "(a) Every money judgment or order for child support shall provide notice that interest on arrearages accrues at the legal rate. [(b)] (b) The notice provisions required by this section shall be incorporated in the appropriate Judicial Council forms. [(c)] (c) Upon implementation of the Statewide Automated Child Support System (SACSS) prescribed in Section 10815 of the Welfare and Institutions Code and certification of the SACSS by the United States Department of Health and Human Services, whenever a statement of account is issued by the district attorney in any child support action, the statement shall include a statement of an amount of current support, arrearages, and interest due." Thus, under Code of Civil Procedure section 695.211, a district attorney must include in any statement of account the amount of interest due on child support arrearages. However, at the time this order was entered no affirmative obligation existed.

Id. at 64, n.1. "[W]henver a statement of account is issued by the local child support agency in any child support action, the statement shall include a statement of an amount of current support, arrearages, and interest due." CAL. CIV. PROC. CODE ANN. § 695.211 (2016).

¹⁶⁰ This would be similar to the CA. CIV. PROC. CODE ANN. § 695.211 (2016).

¹⁶¹ This would be similar to the CA. CIV. PROC. CODE ANN. § 695.211(a) (2016).

¹⁶² This would be similar to the CA. CIV. PROC. CODE ANN. § 695.211(b) (2016).

5. Whenever a statement of account is issued by the state or local child support agency in any child support action, the statement shall include a statement of an amount of current support due; the amount or an estimate of arrears due; the interest rate that may apply; and the amount or an estimate of the interest due.¹⁶³
6. The statement also shall include a projection of the amount owed if the arrears are not paid for one year. The projection shall make reasonable assumptions, including as to the failure to pay the current arrears for the next twelve months, the estimate of interest for that period, and the resulting estimate of arrears due.

VI. CONCLUSION

Parent-obligors who are delinquent in child support payments are entitled to know how much interest is accruing on arrears. Informing obligors of the potential amount of interest would advance the broad concept of constitutional due process rights and expand the principle of notice that underlies consumer protection. In addition, Florida could improve the efficacy of its arrears management program by better communicating the arrears, including the interest and its impact on arrears.

¹⁶³ This would be similar to the CA. CIV. PROC. CODE ANN. § 695.211(c) (2016).

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VII. APPENDIX

Table of Interest on Arrears, Retroactive Support and Adjudicated Arrears (current as of May 2013)

State	Interest on Arrears	Amount	Interest on Retro-active Support	Amount	Inter-est on Adju-dicated Arrears	Amount
AL	✓	From Sep. 1, 2001: 7.5 percent per annum.*	✓	From Sep. 1, 2001: 7.5 percent per annum.*	✓	From Sep. 1, 2001: 7.5 percent per annum.*
AK	✓	6 percent per annum, with interest accrual beginning at the end of the month support was due and not paid.	✓	Statutory interest rate, which is 6 percent from Oct. 1, 1996.*	✓	As ordered in the judgment.
AZ	✓	10 percent simple interest per annum.	✓	10 percent simple interest per annum, prospective from date of court order.	✓	10 percent simple interest per annum.
AR	✓	10 percent per annum.		N/A	✓	10 percent per annum.
CA	✓	10 percent per annum, with interest accrual	✓	10 percent per annum, with interest accrual	✓	10 percent per annum, with interest accrual

		beginning the first day of the month following either the day the installment is due or from the date of entry of judgment.		beginning the first day of the month following either the day the installment is due or from the date of entry of judgment.		beginning the first day of the month following either the day the installment is due or from the date of entry of judgment.
CO	✓	From July 1, 1979: 12 percent compounded interest per annum. Discretionary enforcement.*	✓	From July 1, 1979: 12 percent compounded interest per annum. Discretionary enforcement.*	✓	From July 1, 1979: 12 percent compounded interest per annum. Discretionary enforcement.*
CT		No response available.		No response available.		No response available.
DE		N/A		N/A		N/A
Wash. D.C.		N/A		N/A		N/A
FL	✓	A missed payment becomes a judgment by operation of law. Rates are determined annually by CFO. Interest charges are assessed by the clerk of		N/A	✓	A missed payment becomes a judgment by operation of law. Rates are determined annually by CFO. Interest charges are assessed by the clerk of

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		the court in the county that issued the order or otherwise maintains the official payment record.				the court in the county that issued the order or otherwise maintains the official payment record.
GA	✓	From Jan. 1, 2007: 7 percent per annum commencing 30 days from the day such award or payment is due.		N/A	✓	From Jan. 1, 2007: 7 percent per annum commencing 30 days from the day such award or payment is due.
GU	✓	Prior to Jan. 1, 2008: 12 percent per annum. Effective Jan. 1, 2008: 6 percent per annum.*		N/A	✓	Prior to Jan. 1, 2008: 12 percent per annum. Effective Jan. 1, 2008: 6 percent per annum.
HI		No response available.		No response available.		No response available.
ID		No response available.		No response available.		No response available.
IL	✓	9 percent per annum on support obligations which become due and	✓	9 percent per annum on support obligations which become due and	✓	9 percent per annum on support obligations which become due and remain

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		remain unpaid for 30 days.		remain unpaid for 30 days.		unpaid for 30 days.
IN		N/A	✓	1.5 percent monthly if requested by a party and per a specific child support order.	✓	1.5 percent monthly if requested by a party and per a specific child support order.
IA	✓	10 percent interest charged on late payments in law, but not commonly applied to child support.	✓	Only if reduced to or included in judgment. 10 percent interest charged on late payments in law, but not commonly applied to child support.	✓	Only if reduced to or included in judgment. 10 percent interest charged on late payments in law, but not commonly applied to child support.
KS	✓	Kansas law provides for the assessment and collection of judgment interest at 8 percent per annum, however the IV-D program does not calculate or	✓	8 percent per annum from date of judgment.	✓	Kansas law provides for the assessment and collection of judgment interest at 8 percent per annum, however the IV-D program does not calculate or

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		enforce judgment interest.				enforce judgment interest.
KY	✓	No interest unless case is referred to the Kentucky Department of Revenue for enforcement of arrears at 12 percent compounded interest per annum per order of the court.		N/A	✓	No interest unless case is referred to the Kentucky Department of Revenue for enforcement of arrears at 12 percent compounded interest per annum per order of the court.
LA		N/A		N/A		N/A
ME	✓	Although the state does not charge interest, it is authorized by statute at one-year United States treasury bill rate plus 6 percent.	✓	Although the state does not charge interest, it is authorized by statute at one-year United States treasury bill rate plus 6 percent.	✓	Although the state does not charge interest, it is authorized by statute at one-year United States treasury bill rate plus 6 percent.
MD		N/A		N/A	✓	10 percent simple interest per annum on money judgments, but only applied in a limited number of

						cases by direction of the court.by direction of the court.
MA	✓	From July 1, 2010: .05 percent per month when obligor owes more than \$500 in past-due support and has not paid the minimum monthly payment. In certain circumstances, an obligor may be exempt or eligible to apply for a waiver for accrued interest.*	✓	From July 1, 2010: .05 percent per month when obligor owes more than \$500 in past-due support and has not paid the minimum monthly payment. In certain circumstances, an obligor may be exempt or eligible to apply for a waiver for accrued interest.*	✓	From July 1, 2010: .05 percent per month when obligor owes more than \$500 in past-due support and has not paid the minimum monthly payment. In certain circumstances, an obligor may be exempt or eligible to apply for a waiver for accrued interest.*
MI	✓	From Jan. 1, 2011: surcharge calculated at six-month intervals at five-year United States treasury bill rate plus 1	✓	From Jan. 1, 2011: surcharge calculated at six-month intervals at five-year United States treasury bill rate plus 1	✓	From Jan. 1, 2011: surcharge calculated at six-month intervals at five-year United States treasury bill rate plus 1 percent per

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		percent per annum. Discretionary by judge.		percent per annum. Discretionary by judge.		annum. Discretionary by judge.
MN	✓	From Jan. 1, 2008, 4 percent per annum.*	✓	From Jan. 1, 2008, 4 percent per annum.*	✓	From Jan. 1, 2008, 4 percent per annum.*
MS	✓	Dependent on order.	✓	Usually charged at 8 percent per annum when payment is missed.	✓	Usually charged at 8 percent per annum when ordered by the court.
MO		N/A	✓	1 percent simple interest per month once reduced to a lump-sum judgment. Obligee must compute and file computation with the circuit clerk to make interest collectible.	✓	1 percent simple interest per month once reduced to a lump-sum judgment. Obligee must compute and file computation with the circuit clerk to make interest collectible.
MT		No response available.		No response available.		No response available.
NE	✓	Judgment interest rate, which is calculated	✓	Judgment interest rate, which is calculated	✓	Judgment interest rate, which is calculated at one-year

		at one-year United States Treasury bill rate.		at one-year United States Treasury bill rate.		United States Treasury bill rate.
NV	✓	In the absence of an express contract, interest rate is equal to the prime rate at the largest bank in Nevada on Jan. 1 or July 1 immediately preceding the date of the transaction, plus 2 percent upon all money from its due date.		N/A	✓	In the absence of an express contract, interest rate is equal to the prime rate at the largest bank in Nevada on Jan. 1 or July 1 immediately preceding the date of the transaction, plus 2 percent upon all money from its due date.
NH		N/A		N/A		N/A
NJ		No response available.		No response available.		No response available.
NM		N/A	✓	At the court's discretion.	✓	From May 19, 2004, 4 percent.*
NY	✓	9 percent on arrearages reduced to a money judgment by the court.		N/A	✓	9 percent on arrearages reduced to a money judgment by the court.

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NC		N/A		N/A		N/A
ND	✓	For 2012 and 2013, interest rate is 6.5 percent. Interest is equal to the prime rate as published in the Wall Street Journal on the first Monday in December of each year plus 3 percent rounded up to the nearest one-half percentage point. IV-D program will calculate interest on arrears accrued after July 1, 2002; otherwise, interest only added to IV-D program if a court has ordered the interest amount to be calculated	✓	For 2012 and 2013, interest rate is 6.5 percent. Interest is equal to the prime rate as published in the Wall Street Journal on the first Monday in December of each year plus 3 percent rounded up to the nearest one-half percentage point. IV-D program will calculate interest on arrears accrued after July 1, 2002; otherwise, interest only added to IV-D program if a court has ordered the interest amount to be calculated	✓	For 2012 and 2013, interest rate is 6.5 percent. Interest is equal to the prime rate as published in the Wall Street Journal on the first Monday in December of each year plus 3 percent rounded up to the nearest one-half percentage point. IV-D program will calculate interest on arrears accrued after July 1, 2002; otherwise, interest only added to IV-D program if a court has ordered the interest amount to be calculated

		by another entity and has approved amount.		by another entity and has approved amount.		by another entity and has approved amount.
OH	✓	The court shall assess interest on the amount of support an obligor failed to pay if the court determines the failure to be willful and the arrears accrued after July 15, 1992. Interest rate is equal to the federal short-term rate.		N/A	✓	Interest can be assessed if the arrears have been reduced to judgment.
OK	✓	10 percent per annum.	✓	10 percent per annum.	✓	Shall not exceed 10 percent annually.
OR	✓	9 percent interest per annum, but only if a party requests and provides an accounting that includes a calculation of accrued interest.	✓	9 percent interest per annum, but only if a party requests and provides an accounting that includes a calculation of accrued interest.	✓	9 percent interest per annum, but only if a party requests and provides an accounting that includes a calculation of accrued interest.

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PA		No response available.		No response available.		No response available.
PR	✓	Interest rate is determined by the Financial Institutions Commissioner at the rate applicable on the day the child support order was issued.		No response available.		No response available.
RI	✓	1 percent per month on unpaid balance.	✓	1 percent per month on unpaid balance.	✓	1 percent per month on unpaid balance.
SC		No response available.		No response available.		No response available.
SD	✓	Obligee can initiate a court action to obtain a judgment for interest at court's discretion. If reduced to judgment, rate is 1 percent per month.	✓	Obligee can initiate a court action to obtain a judgment for interest at court's discretion. If reduced to judgment, rate is 1 percent per month.	✓	Obligee can initiate a court action to obtain a judgment for interest at court's discretion. If reduced to judgment, rate is 1 percent per month.
TN	✓	12 percent per annum.		N/A	✓	Interest rate equal to the federal reserve

						weekly average prime loan rate for the calendar week preceding the judgment, except the rate shall not exceed 10 percent.
IX	✓	6 percent simple interest per annum from the date support is delinquent.	✓	6 percent simple interest per annum from the date order is rendered.	✓	6 percent simple interest per annum from the date support is delinquent.
UT		N/A		N/A	✓	Federal post-judgment rate plus 2 percent. Rate changes each January.
VT	✓	From July 1, 2004: 12 percent annually, whether adjudicated or not.*		N/A	✓	From July 1, 2004: 12 percent annually, whether adjudicated or not.*
VI		N/A		N/A		N/A
VA	✓	From July 1, 2004: 6 percent annually on all arrearages greater	✓	From July 1, 2004: 6 percent annually.*	✓	From July 1, 2004: 6 percent annually on all arrearages greater than

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		than one month's support.*				one month's support.*
WA	✓	12 percent interest may be charged on amount reduced to judgment.	✓	12 percent interest may be charged on amount reduced to judgment.	✓	12 percent interest may be charged on amount reduced to judgment.
WV	✓	From July 1, 2008: 5 percent simple interest per annum.*	✓	No pre-judgment interest is charged. Once the retroactive support becomes a judgment, interest is charged from the date of the order forward at 1 percent simple interest per annum.	✓	From July 1, 2008: 5 percent simple interest per annum.*
WI	✓	From Jan. 2014- Dec. 2015: 6 percent	✓	Interest is charged on missed court-ordered periodic payments for retroactive child support.	✓	From Jan. 2014- Dec. 2015: 6 percent
WY	✓	Discretionary by judge. May be a	✓	10 percent interest may	✓	10 percent interest may be

		10 percent penalty on current missed obligation payments. 10 percent interest may be charged on amount reduced to judgment.		be charged on amount reduced to judgment.		charged on amount reduced to judgment.
Number of States	35		28		40	

**Interest rates for amounts accrued prior to this date may differ. "No response available" indicates that a state did not provide a response. "N/A" indicates that a response is not applicable because the state does not charge interest.*

Sources: National Conference of State Legislatures, May 2013; Federal Office of Child Support Enforcement, an Office of the Administration for Children & Families in the U.S. Department of Health and Human Services; additional sources are cited and linked when available.