

**STORAGE NAME:** h0055s1.flc

**DATE:** March 13, 1997

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
Family Law and Children  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 55

**RELATING TO:** Child Custody

**SPONSOR(S):** Committee on Family Law and Children and Representative Morse

**STATUTE(S) AFFECTED:** Section 61.13, reenacting ss. 39.408(3)(a) and 741.30(5)(a)

**COMPANION BILL(S):** SB 1006

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

(1) Family Law and Children YEAS 9 NAYS 0

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**I. SUMMARY:**

This bill adds two factors to the list which the court shall consider when making a determination as to shared parental responsibility and primary residence of a child:

- a. the parent who, during the parties' marriage, was the child's primary caretaker.
- b. evidence of domestic violence or child abuse.

The bill also amends s. 61.13(2)(b), F.S., 1996 Supplement, to replace the term "spousal" as it relates to abuse with the term "domestic violence".

The bill also reenacts section 39.408(3)(a), F.S., concerning dependency hearings, and section 741.30(5)(a), F.S., concerning domestic violence, for the purpose of incorporating the amendment to section 61.12, F.S.

The is no fiscal impact predicted for this bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

For purposes of shared parental responsibility and primary residence, the court is required to evaluate the best interests of the child. Section 61.13(3), Florida Statutes, sets forth a list of factors for the court to consider in making that evaluation. Currently, consideration of the parent who, during the parties' marriage, was the child's primary caretaker or evidence of domestic violence or child abuse are not among the listed factors.

Section 61.13(2)(b)2, Florida Statutes, requires the court to order parental responsibility to be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. The court must consider evidence of spousal or child abuse as evidence of detriment. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make visitation arrangements that will best protect the child or abused spouse from further harm.

Section 61.13(2)(b)2, F.S., also requires the court to consider evidence that a parent has been convicted of a felony on the second degree or higher involving domestic violence as a rebuttable presumption of detriment to the child. If this presumption is not rebutted, then the court may not grant shared parental responsibility, including visitation, residence of the child, and decisions made regarding the child to the convicted parent. The convicted parent is not relieved of any obligation to provide financial support.

Public concern has been expressed that some courts are narrowly construing section 61.13(3), F.S. The courts may, therefore, be excluding evidence of spousal or child abuse as a factor in determining shared parental responsibility and primary residence of a child.

B. EFFECT OF PROPOSED CHANGES:

This bill adds consideration of the parent who, during the parties marriage, was the child's primary caretaker and evidence of domestic violence or child abuse to the list of factors for the court to consider in making its determination of shared parental responsibility and primary residence of a child. This change is expected to remove ambiguities which may exist in the current statute and reduce the potential for misinterpretation by the court. The bill also replaces the term "spousal" as relating to abuse with "domestic violence" in s. 61.13(2)(b), F.S., 1996 Supplement.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

This section is not applicable to this bill.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

This section is not applicable to this bill.

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

(4) Are families required to participate in a program?

(5) Are families penalized for not participating in a program?

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This section is not applicable to this bill.

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

**D. SECTION-BY-SECTION ANALYSIS:**

This section need be completed only in the discretion of the Committee.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

**1. Non-recurring Effects:**

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

There is no fiscal impact from this bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Two amendments were adopted by the Committee on Family Law and Children on March 11, 1997, and enrolled into the committee substitute for House Bill 55.

**Amendment #1:** Adds the consideration of the parent who, during the parties' marriage was the child's primary caretaker to the list of factors for the court to consider for purposes of determining shared parental responsibility and primary residence. The bill adds evidence of spousal or child abuse to the same list of factors and the amendment replaces the term "spousal" with the term "domestic violence".

**Amendment #2:** Replaces the term "spousal" used in conjunction with abuse with the term "domestic violence" in s. 61.13(2)(b), F.S., 1996 Supplement.

VII. SIGNATURES:

COMMITTEE ON Family Law and Children:  
Prepared by:

Legislative Research Director:

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Carol E. Preston

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Peggy Sanford