



## II. Present Situation:

Chapter 61, F.S., is titled “Dissolution of Marriage; Support; Custody.” The purposes of ch. 61 are described as follows:

- To preserve the integrity of marriage and to safeguard meaningful family relationships;
- To promote the amicable settlement of disputes that arise between parties to a marriage; and
- To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.<sup>1</sup>

It is the public policy of the State of Florida to encourage parents to share the rights, responsibilities and joys of child-rearing, and to ensure that children have frequent and continuing contact with both parents, even after divorce.<sup>2</sup> The concept of shared parental responsibility is intended to protect a child’s right to an ongoing relationship with both parents.<sup>3</sup>

Chapter 61, F.S., provides a framework for child custody determinations in the context of a dissolution proceeding. The parent with whom a child lives most of the time is called the “custodial” or “primary residential” parent and the other parent is called the “noncustodial” parent. The time spent with the noncustodial parent is referred to as visitation.

Empirical divorce research has confirmed the negative impact of limited contact with either parent on the majority of children. As a result, the widespread use of traditional visitation guidelines, in particular the visiting schedule of every other weekend with the non-resident parent, is in decline. Parenting plans, which provide multiple ways to allocate time between mother and father, and which take into account the children’s ages and developmental and psychological needs, are becoming more common.<sup>4</sup>

Chapter 752.01, F.S., describes the rights of grandparents to visitation with minor children. Section 752.01, F.S., authorizes the court, upon petition of a grandparent of a minor child, to award reasonable rights of visitation to the grandparent when it is in the best interests of the child. Section 752.015, F.S., encourages private resolution of grandparent visitation disputes, and provides that disputes that cannot be resolved shall be referred to mediation.

## III. Effect of Proposed Change

The bill amends ch. 61, F.S., replacing references made throughout the chapter to “custody,” “primary residential parent,” “primary residence,” “noncustodial parent” and “visitation” with the concepts of parenting plans and time-sharing.

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<sup>1</sup> Section 61.001(2), F.S.

<sup>2</sup> Section 61.13 (2)(b), F.S.

<sup>3</sup> Recognizing the benefits of joint custody and shared parenting, most states have adopted laws to encourage the involvement of both parents in raising their children, even after divorce. In many states, like in Florida, these laws take the form of language promoting “frequent and continuing contact” with both parents. <http://www.gocrc.com/research/legislation.html> (last visited March 22, 2007).

<sup>4</sup> J. Kelly, Keynote Address: The United States Experience (Transcribed) found at <http://www.aifs.gov.au/institute/pubs/frtforum/kelly.doc> (last visited March 22, 2007).

The bill defines “parenting plan” as an arrangement developed by the parents of a minor child, and approved or established by the court, which governs the relationship between the parents regarding the child. A parenting plan may address issues such as education, health care, physical, social and emotional well-being, and may also include a time-sharing schedule.

The bill defines a “parenting plan recommendation” as a nonbinding recommendation made by a licensed mental health professional, or other designated individual, about a parenting plan. The bill provides that a psychologist who has been appointed to develop a “parenting plan recommendation” is presumed to be acting in good faith if the recommendation is reached pursuant to standards that a reasonable psychologist would use to develop such a plan. “Parenting plan recommendation” replaces the term “child custody evaluation” throughout ch. 61, F.S.

The bill defines “time-sharing schedule” as a timetable that has been developed by the parents of a minor child, incorporated into a parenting plan, and approved or established by the court. The schedule specifies the time the minor child will spend with each parent.

The bill clarifies that the court will have jurisdiction to approve, create or modify a parenting plan or a time-sharing schedule, and specifies that the following issues must be addressed in the plan:

- Details about how parents will share daily tasks;
- Time-sharing schedule that will specify the time the child will spend with each parent;
- Designation of who will be responsible for health care, school matters, and other activities; and
- Methods and technologies parents will use to communicate with each other and with the child.

The bill substantially amends s. 61.13 (3), F.S., and specifies that in creating, developing, approving or modifying a parenting plan or a time-sharing schedule, there will be no presumption made for or against either parent, regardless of the age or gender of the child. In all circumstances, the best interests of the child shall be the primary consideration. Evidence that a parent has been convicted of a felony of the third degree or higher involving domestic violence creates a rebuttable presumption of detriment to the child.<sup>5</sup>

The bill identifies the factors to be considered to determine the best interests of the child, rewording and eliminating some of the factors identified in current law,<sup>6</sup> and adding other factors including geographical viability, the capacity of each parent to stay informed about the child’s activities, the capacity of each parent to establish a consistent routine, the parenting tasks performed by each parent before the litigation, and the developmental needs of the child.

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<sup>5</sup> The Florida Evidence Code defines a presumption as an assumption of fact which the law makes from the existence of another fact or group of facts found or otherwise established. Except for presumptions that are conclusive under the law from which they arise, all presumptions are rebuttable. Section 90.301, F.S.

<sup>6</sup> Section 61.13(3), F.S.

The bill amends s. 61.13(4), F.S., to provide that a parent who fails to provide time-sharing as scheduled is responsible for incidental costs incurred by the compliant parent as a result of the other parent's non-compliance, and takes out references to grandparent visitation in this section.

Section 61.30, F.S., provides guidelines for child support in Florida. The bill amends s. 61.30, F.S., replacing terms as noted above, but the amendments do not appear to have any impact on the state's child support enforcement program.<sup>7</sup> The bill does not change the court's obligation to adjust an award of child support to the extent that a child spends a "substantial amount of time" with each parent, which means the parents divide time with the child on at least a 60 percent to 40 percent basis.

The bill amends s. 741.0306, F.S., to provide that the concepts of parenting plans and time-sharing schedules be included in the family law handbook prepared by the Florida Bar. The bill makes conforming changes in ss. 741.30 (Domestic Violence) and 742.031 (Paternity), F.S.

The bill reenacts s. 61.1825(3)(a), F.S., for the purpose of incorporating the amendments made by the bill to s. 741.30, F.S., and provides an effective date of July 1, 2007.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Revenue (DOR), the calculation of retroactive child support in cases in which the child spends a substantial amount of time with each parent

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<sup>7</sup> Department of Revenue, 2007 Bill Analysis, SB 1896.

will be more involved in cases where the number of overnights is different during the retroactive period than it is when the guideline worksheet is prepared or at the time of the final hearing. The impact is expected to be slight as this issue does not typically come up in DOR cases.<sup>8</sup>

**VI. Technical Deficiencies:**

The definition of “noncustodial parent” is not stricken from s. 61.046, F.S., but the term is stricken throughout the remainder of the bill.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>8</sup> Department of Revenue, 2007 Bill Analysis, SB 1896.



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## VIII. Summary of Amendments:

### **Barcode 183654 by Children, Families, and Elder Affairs**

The amendment deletes the definition of “noncustodial parent” from the definition section of the bill, because the term has been stricken throughout the remainder of the bill. (WITH TITLE AMENDMENT)

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