

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 1896

INTRODUCER: Judiciary Committee and Senator Lynn

SUBJECT: Custody/Time-Sharing with Children

DATE: April 12, 2007 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/1 amendment
2.	Cibula	Maclure	JU	Fav/CS
3.			JA	
4.				
5.				
6.				

I. Summary:

This bill revises statutes relating to child custody issues to replace the concepts of “custodial parent,” “noncustodial parent,” “primary residential parent,” and “visitation” with the concepts of “parenting plans” and “time-sharing.” As a result, a parent will no longer be labeled as a primary or secondary parent.

Similar to a custody order, a parenting plan will govern parental decision making for a child, allocate parental responsibilities, and define time-sharing with each parent. The bill also revises the factors a court should consider (formerly as part of a custody determination) to determine the amount of time a child will spend with a parent and to allocate parental authority among the parents. Many of the new factors will favor the parent who has the “demonstrated capacity and disposition” to care for the child. The bill also deletes the factor that favors the parent with the capacity to “provide” for a child.

The bill substantially amends the following sections of the Florida Statutes: 61.046, 61.052, 61.09, 61.10, 61.122, 61.13, 61.13001, 61.181, 61.1827, 61.20, 61.21, 61.30, 61.401, 61.45, 741.0306, 741.30, and 742.031. The bill reenacts section 61.1825, Florida Statutes. The bill also repeals section 61.121, Florida Statutes.

II. Present Situation:

Chapter 61, F.S., is titled “Dissolution of Marriage; Support; Custody.” The purposes of ch. 61, F.S., 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.¹

It is the public policy of the state 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.² The concept of shared parental responsibility is intended to protect a child's right to an ongoing relationship with both parents.

Chapter 61, F.S., provides a framework for child custody determinations in the context of a dissolution marriage 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.

Section 61.13(3), F.S., sets forth the following factors for courts to evaluate when making custody and visitation determinations:

- (a) The parent who is more likely to allow the child frequent and continuing contact with the nonresidential parent.
- (b) The love, affection, and other emotional ties existing between the parents and the child.
- (c) The capacity and disposition of the parents to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home.
- (f) The moral fitness of the parents.
- (g) The mental and physical health of the parents.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
- (j) The willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.
- (k) Evidence that any party has knowingly provided false information to the court regarding a domestic violence proceeding pursuant to s. 741.30.
- (l) Evidence of domestic violence or child abuse.
- (m) Any other fact considered by the court to be relevant.

Under s. 61.13001(7), F.S., courts are directed to consider the following factors when evaluating a primary residential parent's proposed relocation with a child:

¹ Section 61.001(2), F.S.

² Section 61.13(2)(b)1., F.S.

- (a) The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate with the child and with the nonrelocating parent, other persons, siblings, half-siblings, and other significant persons in the child's life.
- (b) The age and developmental stage of the child, the needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.
- (c) The feasibility of preserving the relationship between the nonrelocating parent or other person and the child through substitute arrangements that take into consideration the logistics of contact, access, visitation, and time-sharing, as well as the financial circumstances of the parties; whether those factors are sufficient to foster a continuing meaningful relationship between the child and the nonrelocating parent or other person; and the likelihood of compliance with the substitute arrangements by the relocating parent once he or she is out of the jurisdiction of the court.
- (d) The child's preference, taking into consideration the age and maturity of the child.
- (e) Whether the relocation will enhance the general quality of life for both the parent seeking the relocation and the child, including, but not limited to, financial or emotional benefits or educational opportunities.
- (f) The reasons of each parent or other person for seeking or opposing the relocation.
- (g) The current employment and economic circumstances of each parent or other person and whether or not the proposed relocation is necessary to improve the economic circumstances of the parent or other person seeking relocation of the child.
- (h) That the relocation is sought in good faith and the extent to which the objecting parent has fulfilled his or her financial obligations to the parent or other person seeking relocation, including child support, spousal support, and marital property and marital debt obligations.
- (i) The career and other opportunities available to the objecting parent or objecting other person if the relocation occurs.
- (j) A history of substance abuse or domestic violence as defined in s. 741.28 or which meets the criteria of s. 39.806(1)(d) by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.
- (k) Any other factor affecting the best interest of the child or as set forth in s. 61.13.

III. Effect of Proposed Change

This bill revises statutes relating to child custody issues to replace the concepts of "custodial parent," "noncustodial parent," "primary residential parent," and "visitation" with the concepts of "parenting plans" and "time-sharing." As a result, a parent will no longer be labeled as a noncustodial or secondary parent.

The bill also replaces the term “custody evaluation” with “parenting plan recommendation” throughout ch. 61, F.S. Despite technical changes to the law, a parenting plan recommendation is functionally the same as a custody evaluation.

Similar to a custody order, a parenting plan will govern parental decision making for a child, allocate parental responsibilities, and allocate time-sharing with a child. Specifically, 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, and physical, social, and emotional well-being.

The bill also revises the factors a court should consider (formerly as part of a custody determination) to determine the amount of time a child will spend with a parent and to allocate parental authority among the parents. Many of the new factors, created as s. 61.13(3)(h), (i), (m), and (n), F.S., will favor the parent who has the “demonstrated capacity and disposition” to care for the child. The bill also deletes a factor, codified as s. 61.13(3)(c), F.S., that favors the parent with the capacity to “provide” for a child. As a result, the bill may encourage courts to favor the parent who acts as a caregiver over a parent who provides the most for a child financially.

Other significant changes to the factors for consideration in awarding time-sharing and parental authority:

- delete a child’s preferences as a factor; and
- require courts to consider which parent is most able to raise a child with a serious medical condition, including, but not limited to, an autism spectrum disorder or a related condition.

The bill amends s. 61.13(4), F.S., to require a person who does not comply with a time-sharing schedule to pay the costs of court-ordered make-up time-sharing. Moreover, the bill provides that a parent who fails to provide time-sharing as scheduled may be responsible for incidental costs incurred by the compliant parent as a result of the other parent’s non-compliance.

Lastly, the bill adds an additional factor for courts to consider for determining whether a parent may relocate with a child. This factor requires courts to consider how a relocation will affect a child with an autism spectrum disorder or related condition.

The bill takes effect upon becoming a law.

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:

None.

VI. Technical Deficiencies:

For consistency with the changes made by amendment 190686, clarifying that a time-sharing schedule is part of a parenting plan, the word “schedule” should be deleted from on page 18, line 18 of the bill.

The bill contains duplicative provisions directing courts to consider the domestic violence convictions of a parent when establishing a parenting plan. These provisions begin on page 20, line 27, and on page 23, line 1. The Legislature may wish to remove one of these provisions.

The bill contains duplicative provisions requiring all jurisdictional issues to be addressed in a parenting plan. These provisions begin on page 5, line 27, and page 17, line 29. The Legislature may wish to remove one of these provisions.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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