

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: CS/CS/SB 2532

INTRODUCER: General Government Appropriations Committee, Children, Families, and Elder Affairs Committee, and Senator Lynn

SUBJECT: Child Custody and Support

DATE: April 24, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/CS
2.	Daniell	Maclure	JU	Fav/7 amendments
3.	Blizzard/Daniell	DeLoach/Maclure	GA	Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill revises statutes relating to dissolution of marriage and the custody and support of minor children. The bill deletes the definitions of “custodial parent,” “primary residential parent,” “noncustodial parent,” “person entitled to be the primary residential parent of a child,” and “principal residence of a child,” and also replaces references to “custody,” “visitation,” and “primary residence” with the concepts of a “parenting plan” and “time-sharing schedule.” As a result, a parent will no longer be labeled as a primary or secondary 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.

The bill permits a court to temporarily modify child support when a member of the military is called to service and makes technical and conforming changes throughout the statutes.

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, 61.13002, 61.14, 61.181, 61.1827, 61.20, 61.21, 61.30,

61.401, 61.45, 409.2554, 409.2558, 409.2563, 409.2564, 409.25657, 409.25659, 409.2577, 409.2579, 409.811, 414.0252, 414.065, 414.085, 414.095, 414.295, 445.024, 741.0306, 741.30, 742.031, 753.01, and 827.06.

The bill reenacts section 61.1825(3)(a), Florida Statutes.

The bill repeals section 61.121, Florida Statutes.

II. Present Situation:

Child Custody and Visitation

The major child rearing decisions that must be made at the time of dissolution of marriage are commonly framed in terms of custody and visitation. Child custody decisions include determinations related to a child's primary residence, as well as which parent will have primary parental authority. Visitation involves a determination about how noncustodial parents will spend time with their children.

Research shows that children are negatively affected when they experience limited contact with either parent following separation or divorce.¹ 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.² 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.³ The terms custody and visitation have been criticized as unnecessarily negative and outdated, and the concept of "visiting" with one's child is unappealing to many parents.

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.
- To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.⁴

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.⁵ The concept of shared parental responsibility is intended to protect a child's right to an ongoing relationship with both parents.

¹ Joan Kelly, Psychologist, *Keynote Address: The United States Experience* (Dec. 1, 2005) (transcript available at <http://www.aifs.gov.au/institute/pubs/frtforum/kelly.doc>) (last visited April 12, 2008).

² *Id.*

³ *Id.*

⁴ Section 61.001(2), F.S.

⁵ Section 61.13(2)(b), F.S.

Chapter 61, F.S., provides a framework for child custody determinations in the context of a dissolution of marriage proceeding. The parent with whom a child lives most of the time is called the “custodial parent” or “primary residential parent,” and the other parent is called the “noncustodial parent.”⁶ The time spent with the noncustodial parent is referred to as visitation.

Florida law presumes that the parental responsibility for a minor child should be shared by both parents, unless shared responsibility would be detrimental to the child.⁷ Also, under current law the father of the child must be given the same consideration as the mother, irrespective of the age or sex of the child.⁸

A court is required to decide all matters in a custody proceeding with reference to the best interests of the child.⁹ In determining the best interests of the child, the court must evaluate the following factors.

- Which parent is more likely to allow the child frequent and continuing contact with the other parent.
- Love, affection, and other emotional ties existing between the parents and the child.
- Capacity and disposition of the parents to provide for the child.
- Length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- Permanence, as a family unit, of the existing or proposed custodial home.
- Moral fitness of the parents.
- Mental and physical health of the parents.
- Home, school, and community record of the child.
- Reasonable preference of the child.
- Willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.
- Evidence that any party has knowingly provided false information to the court regarding a domestic violence proceeding pursuant to s. 741.30, F.S.
- Evidence of domestic violence or child abuse.
- Any other fact considered by the court to be relevant.¹⁰

Child Support Guidelines

In 1984, Congress enacted the Child Support Enforcement Amendments of 1984,¹¹ requiring states to formulate non-binding child support guidelines to be used by judges and other decision-makers to establish child support obligation amounts.¹² In 1988, Congress made state

⁶ Section 61.046(3) and (12), F.S.

⁷ Section 61.13(2)(b), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 61.13(3), F.S.

¹¹ Child Support Enforcement Amendments of 1984, Pub. L. 98-378 (1984).

¹² See Admin. for Children & Families, U.S. Dep’t of Health & Human Servs., *Evaluation of Child Support Guidelines*, 1, available at <http://www.acf.hhs.gov/programs/cse/rpt/gdl/chap1.htm> (last visited April 12, 2008); Institute for Research on Poverty, *The Family Support Act of 1988*, Vol. 11:4, 15 (1988-89), available at <http://www.irp.wisc.edu/publications/focus/pdfs/foc114e.pdf> (last visited April 12, 2008).

child support guidelines presumptive and required states to reevaluate their child support guidelines at least once every four years.¹³

As part of the reevaluation, federal regulations require states to “consider economic data on the cost of raising children and to analyze case data, gathered through sampling or other methods, on the application of and deviations from the guidelines. Findings from the resulting analysis must inform each State’s guideline review to ensure that guidelines truly apply to the majority of cases in that State.”¹⁴

In preparation for Florida’s next review, the Legislature allocated funds for an economic review of the state’s child support guidelines.¹⁵ In November 2007, the Legislature contracted with the Department of Economics at Florida State University (FSU). The contract requires FSU to, at a minimum, address the following:

- Update Florida’s existing schedule amounts based on the latest available economic data in anticipation of Florida continuing to use the income shares model to incorporate more recent data on family income shares allocated to children to the extent such data is publicly available.
- Update the existing schedule amounts to reflect the effects of inflation and evaluate the methodological validity of this approach.
- Within the context of the income shares model, determine how other states using the income shares model treat the apportionment of child support to accommodate visitation arrangements and cases of joint or shared custody.
- Within the context of the income shares model, evaluate the treatment of low income parents and suggest possible alternatives based on the experience in other states that mitigate or avoid the anomalies created by the “self-support reserve” in the income shares model.
- Evaluate the problems created by imputation of income and consider alternative methods of imputing income, including the possible consequences of not imputing income, based on experiences in other states using the income shares model.
- Evaluate the methodological validity of adjusting the schedule of obligations to account for intrastate variations in the cost of living.
- Provide continuing consulting services through June 30, 2009.
- Itemize the tax benefits and burdens of child support in regard to the child care tax credit.¹⁶

The final report is due to the Legislature in November 2008.¹⁷ In addition, the Office of Program Policy Analysis and Governmental Accountability is working with legislative staff to do the case data analysis component of the federal review, and the Office of Economic and Demographic Research is exploring the advantages of statewide surveying related to the guidelines.

¹³ The Family Support Act of 1988, Pub. L. 100-485 (1988). See Admin. for Children & Families, *supra* note 12, at 1-2.

¹⁴ Admin. for Children & Families, *supra* note 12, at 2.

¹⁵ See Chapter 2007-72, Laws of Fla., proviso language accompanying specific appropriation 3186.

¹⁶ Contract for Analytical Services Relating to Child Support Guidelines Review (November 8, 2007).

¹⁷ *Id.*

III. Effect of Proposed Changes:

The bill provides for the redesignation of ch. 61, F.S., as “Dissolution of Marriage; Support; Time-Sharing.”

This bill amends ch. 61, F.S., by striking the terms, and the associated definitions, of “custodial parent,” “primary residential parent,” “noncustodial parent,” “person entitled to be the primary residential parent of a child,” and “principal residence of a child.” The bill also replaces references to “custody,” “primary residential parent,” “primary residence,” “noncustodial parent,” and “visitation” with the concepts of a “parenting plan” and “time-sharing schedule” throughout portions of the following.

- Chapter 61, F.S., dealing with dissolution of marriage; support; custody.
- Chapter 409, F.S., dealing with social and economic assistance.
- Chapter 414, F.S., dealing with family self-sufficiency.
- Chapter 445, F.S., dealing with workforce innovation.
- Chapter 741, F.S., dealing with marriage; domestic violence.
- Chapter 742, F.S., dealing with determination of parentage.
- Chapter 753, F.S., dealing with supervised visitation.
- Chapter 827, F.S., dealing with abuse of children.

The bill defines a “parenting plan” as a document developed and agreed to by the parents of a minor child, and approved by the court, or if the parents cannot agree, established by the court, which governs the relationship between the parents regarding the child. A parenting plan may address issues such as the child’s education, health care, and physical, social, and emotional well-being, and must include a time-sharing schedule. The parenting plan must take into account the Uniform Child Custody Jurisdiction and Enforcement Act, the International Child Abduction Remedies Act, the Parental Kidnapping Prevention Act, and the Convention on the Civil Aspects of International Child Abduction when addressing jurisdictional issues.

The bill defines “time-sharing schedule” as a timetable that must be included in the parenting plan that specifies the time that a minor child will spend with each parent.

The bill replaces the term “child custody evaluation” with the term “parenting plan recommendation,” which is defined as a “nonbinding recommendation made by a psychologist licensed under chapter 490.” The bill amends s. 61.122, F.S., to provide 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 (rather than pursuant to standards recommended by the American Psychological Association (APA)).¹⁸

¹⁸ According to the Family Law Section of The Florida Bar, it is necessary to reference standards that a reasonable psychologist would use, rather than standards recommended by the APA, because the APA still uses the term “child custody evaluations,” a term that this bill has replaced with “parenting plan recommendation.” Accordingly, making a reference to the APA standards would be incongruous. Correspondence from Elisha D. Roy, Sasser, Cestero, & Sasser, P.A., to the Senate Committee on Children, Families, and Elder Affairs; *see also* American Psychological Ass’n, *Guidelines for Child Custody Evaluations in Divorce Proceedings* (1994), <http://www.apa.org/practice/childcustody.html> (last visited April 12, 2008) (showing the APA’s continued use of the term “child custody evaluations”).

The bill amends s. 61.13, F.S., providing that any parenting plan approved by a court must address the following issues.

- Details about how parents will share daily tasks associated with the upbringing of the child.
- 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-related matters, and other activities.
- Methods and technologies parents will use to communicate with each other and with the child.

The bill clarifies that there is no presumption made for or against either parent when a parenting plan is created or modified, and that for purposes of creating or modifying a parenting plan, the best interests of the child shall always be the primary consideration. Section 8 of the bill lists factors to be considered in determining the best interests of the child, as follows.

- The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.
- The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.
- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- The moral fitness of the parents.
- The mental and physical health of the parents.
- The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.
- The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime.
- The demonstrated capacity of each parent to communicate with the other parent and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action regarding those issues has been brought.
- Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

- The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.
- The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.
- The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.
- Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

The bill also deletes several factors that are considered under current law to determine the best interests of the child, such as:

- The parent who is more likely to allow the child frequent and continuing contact with the nonresidential parent.
- The love, affection, and other emotional ties existing between the parents and the child.
- The capacity and disposition of the parents to provide the child with food, clothing, medical care, or other remedial care.
- The permanence, as a family unit, of the existing or proposed custodial home.
- The home, school, and community record of the child.
- 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.

The bill removes the provision that provides that a noncustodial parent cannot be denied overnight contact or visitation with the child solely because of the age or sex of the child, if the court had ordered that parental responsibility and visitation be shared by both parents.

The bill further amends s. 61.13, F.S., to provide additional factors a court may use to determine whether to modify the amount and terms and conditions of child support payments. Modification is allowed when:

- The court finds it in the best interests of the child.
- The child reaches majority.
- There is a substantial change in the circumstances of the parties.
- Section 743.07(2), F.S., dealing with the rights, privileges, and obligations of a person 18 years of age or older, applies.
- A child is emancipated.
- A child marries.
- A child joins the armed services.
- A child dies.

Under current law, s. 61.13002, F.S., provides that if a petition to modify child custody is filed when a parent is called to military service, the court cannot permanently modify the existing custody order, but it can enter a temporary order to modify custody if it is in the child's best interest. The bill amends s. 61.13002, F.S., to permit the court to also temporarily modify child support obligations by:

- Entering an order of temporary support from the servicemember to the other parent.
- Requiring the servicemember to enroll the child as a military dependant.
- Suspending, abating, or reducing the child support obligation of the nonservice member until the custody judgment or time-share order previously in effect is reinstated.

The bill amends s. 61.30, F.S., dealing with child support guidelines, replacing terms as noted above, and also amending the following terms.

- Inserts the word "schedule" after all references to "guidelines."
- Replaces references to "the obligor and obligee" with the phrase "each parent."
- Replaces the term "available income" with the term "net income."

Section 61.401, F.S., is amended to clarify that a guardian ad litem may be appointed for the *creation, approval*, and modification of a parenting plan.

The bill amends s. 409.2563, F.S., by deleting the provision that the Office of Program Policy Analysis and Government Accountability must conduct an evaluation of the statewide implementation of the administrative process for establishing child support.

Section 741.0306, F.S., is amended to require that the family law handbook¹⁹ be reviewed by the Family Law Section of the Florida Bar and that a report with recommendations for updating the handbook be provided to the Legislature by October 1, 2008, or as soon thereafter as practicable.

The bill republishes s. 61.1825(3)(a), F.S., dealing with the state case registry, in order to capture changes made elsewhere in the bill.

The bill also repeals s. 61.121, F.S., which provides "[t]he court may order rotating custody if the court finds that rotating custody will be in the best interest of the child."

The bill makes technical and conforming changes throughout the bill.

¹⁹ In 1998, the Legislature enacted s. 741.0306, F.S., creating a family law handbook to explain portions of Florida law pertaining to the rights and responsibilities of marital partners to each other and their children, both during the marriage and upon dissolution. The family law handbook is created by the Family Law Section of The Florida Bar and is reviewed for accuracy by the Family Court Steering Committee of the Florida Supreme Court. The family law handbook is supposed to be reviewed and updated annually; however, according to the Florida Association of Court Clerks and Comptrollers, these handbooks have never been updated, resulting in information being provided to the general public that is inaccurate. This may be particularly true with the new terminology proposed in this bill. Comm. on Healthy Families, House of Representatives, *House of Representatives Staff Analysis, HB 1075*, 10 (March 21, 2008), available at <http://www.flsenate.gov/data/session/2008/House/bills/analysis/pdf/h1075.HF.pdf> (last visited April 14, 2008).

The bill provides an effective date of October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill adds a provision that provides that if a parent refuses to honor the time-sharing schedule in the parenting plan without good cause, the court can order makeup time-sharing that is convenient for the nonoffending parent and *at the expense of the noncompliant parent* (lines 683-684 of the bill).

The Florida Bar Association (the Bar) may have to notify Thompson West Publisher so that the family law forms within Thompson West's Florida Rules of Court publication can be updated to reflect changes made in this bill.²⁰ As a result, this bill may have a fiscal impact on Thompson West, but the extent is indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁰ Office of the State Court Admin., *CS SB 2532 Analysis*, April 4, 2008.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by General Governmental Appropriations on April 22, 2008:

The committee substitute:

- Reinstates existing statutory language regarding the reasonable preference of the child with regard to the factors evaluated when establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan.
- Reinserts current law providing that day care is to be calculated without regard to the 25-percent reduction applied by s. 61.30(7), F.S.
- Clarifies that a guardian ad litem may be appointed for the *creation, approval, and* modification of a parenting plan.
- Makes technical and conforming changes.

CS by Children, Families, and Elder Affairs on April 1, 2008:

The committee substitute:

- Amends the definition of “parenting plan recommendation” to provide that only a licensed psychologist may complete the recommendation.
- Deletes repetitive language relating to presumptions in dissolution cases.
- Clarifies that a parent must continue to pay child support if the other parent refuses to honor a time-sharing schedule.
- Makes conforming amendments and clarifies the responsibilities of the service member and non-service member parent when a support or time-sharing order is temporarily modified due to deployment.
- Deletes substantive changes made by the bill to s. 61.30, F.S., relating to the child support guidelines, leaving only conforming changes in terminology.
- Clarifies that a guardian ad litem may be appointed in any dissolution case, not just in cases where parents cannot agree to a parenting plan.
- Clarifies that a custodial parent (now known as a parent who is owed support) still does not have a right to file a circuit court action. According to the Department of Revenue, this amendment brings the fiscal impact below \$25,000, which the agency can absorb.
- Requires review of the family law handbook and a report to the Legislature as to recommendations for revision.
- Makes technical and conforming amendments.

- B. **Amendments:**

None.