

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 541

Child Custody and Visitation

SPONSOR(S): Criminal & Civil Justice Policy Council; Health Care Services Policy Committee; Civil Justice & Courts Policy Committee; Frishe

TIED BILLS: None

IDEN./SIM. BILLS: CS/SB 904

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	10 Y, 0 N, As CS	Bond	De La Paz
2)	Health Care Services Policy Committee	6 Y, 0 N, As CS	Preston	Schoolfield
3)	Criminal & Civil Justice Policy Council	12 Y, 0 N, As CS	Bond	Havlicak
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

This bill amends family law related to parenting plans in the following manner:

- Current law provides that a court may ask a licensed psychologist to prepare a proposed parenting plan. This bill adds other mental health professionals that may be called upon to recommend a parenting plan.
- Current law allows a court to presume that a parent who has been convicted of a felony that involves domestic violence should not have shared parental responsibility. This bill lowers the threshold to first degree misdemeanors.
- This bill codifies current case law that requires a party trying to modify a parenting plan to first show that there was a substantial change in circumstances that was not reasonably contemplated at the time of the final judgment.
- Current law provides a process by which a parent can apply for court permission to relocate with a child. This bill amends the procedures and requires courts to conduct hearings within a set period of time.
- This bill also updates and corrects language throughout the statutes relating to parenting plans.

This bill does not appear to have a fiscal impact on local governments. This bill will likely have a minimal, if any, negative fiscal impact on state government. See "Fiscal Comments" in Part II D. of this analysis.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Parenting Plan - In General

A parenting plan is a document that details the legal rights and responsibilities related to children of unmarried parents living apart. Section 61.046(13), F.S., provides that a parenting plan can be created by agreement of the parents or, if the parents cannot agree, by the court. A court has the power to refuse to accept a settlement agreement between parents that is not in the best interest of a child. This bill amends s. 61.046(13), F.S., to recognize this traditional power by providing that the court may reject the parents' agreement and set a parenting plan.

Section 61.046(14), F.S., defines "parenting plan recommendation" as a recommended parenting plan created by a psychologist licensed under chapter 490. This bill amends the definition to add that a parenting plan recommendation may also be prepared by one of the mental health professionals listed in s. 61.20(2), F.S.¹, a guardian ad litem appointed pursuant to s. 61.401, F.S., or a licensed mental health professional appointed by the court.

Section 61.13(2)(b), F.S., requires that a parenting plan must include certain information. This bill adds that a parenting plan must include the address to be used for school registration.

Parenting Plan - Modification

Section 61.13(3), F.S., creates criteria for use by the court in determining the best interests of a child, and requires that the primary consideration of a court, in creating or approving an original or modified parenting plan, is the best interest of the child. Under current case law, a parent seeking a modification of a parenting plan must show a substantial change in circumstances that was not reasonably contemplated at the time of the final judgment.² This bill amends ss. 61.13(2)(c) and 61.13(3), F.S., to provide that modification of a parenting plan requires a showing of a substantial, material change in circumstances that was not reasonably contemplated at the time of the most recent final judgment regarding parental responsibility.

Shared Parental Responsibility - Domestic Violence Presumption

Section 61.13(2)(c), F.S., requires the court to determine all matters relating to parenting and time-sharing in the best interest of the child. The court may take into account any relevant information in

¹ Section 61.20(2), F.S., lists the following professionals: "qualified staff of the court; a child-placing agency licensed pursuant to s. 409.175; a psychologist licensed pursuant to chapter 490; or a clinical social worker, marriage and family therapist, or mental health counselor licensed pursuant to chapter 491" and, as to an indigent person, staff of the Department of Children and Family Services.

² *Wade v. Hirschman*, 903 So.2d 928 (Fla. 2005).

making a determination as to the best interests of the child, including whether a parent has a criminal history record. The paragraph includes a presumption in favor of shared parental responsibility, but provides that 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. If such presumption is not rebutted, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm.

Section 741.28, F.S., defines domestic violence as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." Under Florida law, simple assault and simple battery are first degree misdemeanors; the remaining offenses listed in the definition of domestic violence describe felony offenses.

This bill amends the rebuttable presumption of detriment to a child in s. 61.13(2)(c), F.S., to lower the threshold to include the first degree misdemeanor offenses of assault or battery that involve domestic violence, provided that a victim of such misdemeanor offenses was a child involved in the parenting plan or was a spouse of the parent.

This bill also amends s. 61.13(3)(m), F.S., to require that, where a court takes domestic violence into account in determining a parenting plan, the court must make a written finding that evidence of domestic violence was considered.

This bill also amends s. 741.30(5)(a), F.S., relating to domestic violence injunctions, to specify that a temporary domestic violence injunction may be the basis for a judge granting a temporary parenting plan.

Parental Relocation

Section 61.13001, F.S., governs permanent parental relocation with a child. It requires that a parent moving more than 50 miles for more than 60 days must notify the other parent of the move. If the other parent objects, the parent moving must seek court approval for the relocation. The initial petition is served on the other parent, but is not filed with the court in order to give the parties time to discuss the matter. Effective October 1, 2009, this bill:

- Reorganizes the definitions section.
- Amends the specific notice that must be given to other parent or other person who has legal access to the child to shorten the response time from 30 days to 20 days and to remove the requirement that the notice contain the address of the moving parent.
- Repeals the requirement that the moving parent not file the petition with the court until after the parties have had a chance to discuss the matter.
- Requires that a hearing on temporary relocation must be held within 30 days of filing, and a final hearing on relocation must be held within 90 days.

Other

This bill also :

- Amends family law statutes to refer to "parents" rather than "parties."
- Amends family law statutes to refer to "access" to a child rather than "visitation" with a child.
- Removes dated language in s. 61.13(1)(d), F.S., regarding child support orders entered before January 1, 1985.

B. SECTION DIRECTORY:

Section 1 amends s. 61.046, F.S., regarding definitions applicable to ch. 61, F.S.

Section 2 amends s. 61.13, F.S., regarding child support and time-sharing.

Section 3 amends s. 61.13001, F.S., regarding parental relocation with a child.

Section 4 amends s. 61.183, F.S., regarding mediation.

Section 5 amends s. 61.20, F.S., regarding social investigations regarding parenting plans.

Section 6 amends s. 61.21, F.S., regarding parenting courses.

Section 7 amends s. 61.30, F.S., regarding child support guidelines.

Section 8 amends s. 741.30, F.S., regarding domestic violence.

Section 9 provides an effective date of October 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate, see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill requires a trial court to specifically acknowledge in writing when evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect is considered by the court in evaluating the best interest of the child. This may minimally increase judicial workload to the extent that judges are not currently including this finding in writing when making a ruling. However, it is unlikely that trial courts are neglecting to include this finding under current law. Appellate courts continuously remind trial courts that specific findings of fact are required to justify final judgments.³

³ For instance, in the general area of dissolution of marriage, one recent appellate court said: " "In fashioning an equitable distribution, a court is required to make specific written findings of fact that identify, classify, value, and distribute the parties' assets and liabilities." *Pavese v. Pavese*, 932 So.2d 1269, 1270 (Fla. 2d DCA 2006); see also *Reddell v. Reddell*, 899 So.2d 1154, 1155 (Fla. 5th DCA 2005) ("[a] trial court's failure to make requisite findings regarding an equitable distribution constitutes reversible error"). The failure to do so precludes meaningful appellate review. *Pavese*, 932 So.2d at 1270. *Lift v. Lift*, 1 So.3d 259 (Fla. 4th DCA 2009).

This bill requires, related to petitions for parental relocation, that in most cases a hearing must be held within 30 days after filing the petition for relocation, and a nonjury trial be held within 90 days after notice to set cause for trial is filed. The State Courts System states that the fiscal impact of this provision cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial and staff workload as a result.⁴ They say that meeting such time frames in a civil case may be impossible due to limited judicial resources. It is unclear what fiscal impact, if any, is directly related to a requirement that certain hearings occur within a specific period of time. It is more likely that there is no fiscal impact on the courts, who will simply conduct these hearings within existing resources to the detriment of other hearings that will necessarily be delayed.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The new language at lines 649 to 654 require a court to conduct a hearing within 30 days of the filing of a motion for temporary relocation, and require that a final hearing on relocation be conducted within 90 days. Article V, section 2(a) of the Florida Constitution provides that the Supreme Court must adopt rules for practice and procedure in all courts. If the court were to interpret these time limits as a rule of court, the court would have the prerogative to invalidate these time limits as an infringement upon the court's rulemaking power if the court found that the time limits impermissibly encroached on the court's authority to adopt rules of practice and procedure.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2009, the Civil Justice & Courts Policy Committee amended the bill to:

- Conform to CS/SB 904.
- Remove a reference to the Family Law Rules of Procedure relating to experts who may suggest a parenting plan, and replace the reference with the term "licensed mental health professional" from the rule.
- Remove outdated references to the support depositories in the individual counties with reference to the Statewide Disbursement Unit. See Drafting Issues or Other Comments in the pre-meeting analysis of this bill.
- Replace references to an "involuntary" change in circumstances with references to a change in circumstances that was not reasonably contemplated at the time of the final judgment.

The bill was then reported favorably with a committee substitute.

⁴ Office of the State Courts Administrator, *Judicial Impact Statement, SB 904* (March 6, 2009).

On March 25, 2009, the Health Care Services Policy Committee adopted one amendment that changed the effective date of the bill from July 1, 2009 to October 1, 2009. The bill was then reported favorably with a committee substitute.

On April 6, 2009, the Criminal & Civil Justice Courts Policy Council adopted two amendments to the bill. One amendment clarifies that, when seeking modification, only the most recent judgment related to parental responsibility is taken into account. The other amendment limits the presumption regarding misdemeanor domestic violence convictions to apply only where the child or a spouse was a victim. The bill was then reported favorably with a council substitute.