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 Judiciary Committee

BILL:	CS/CS/SB 904
INTRODUCER:	Judiciary Committee, Children, Families, and Elder Affairs Committee, and Senator Deutch
SUBJECT:	Parental Responsibility and Time-Sharing
DATE:	April 8, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Walsh	CF	**Fav/CS**
2.	Daniell	Maclure	JU	**Fav/CS**
3.			WPSC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	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 parental responsibility for minor children. The bill amends the definitions of "parenting plan," "parenting plan recommendation," and "time-sharing schedule," and replaces references to "parents" and "visitation" with references to "parties" and "access" in certain provisions.

The bill also clarifies that there is no presumption for or against a particular time-sharing schedule in a parenting plan, and provides that modification of a parenting plan and time-sharing schedule requires a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the child's best interests.

Current law creates a rebuttable presumption of detriment to a child if a parent has been convicted of a third-degree felony or higher involving domestic violence. The bill lowers the threshold for this rebuttable presumption to a first-degree misdemeanor.

The bill makes significant changes to the statute relating to parental relocation with a child in order to streamline requirements and criteria for relocation.

Additionally, the bill amends the domestic violence injunction statute, permitting a court to create a temporary parenting plan, including a time-sharing schedule, that may award the petitioner with up to 100 percent time-sharing.

The bill makes technical and conforming changes throughout the statutes.

This bill substantially amends the following sections of the Florida Statutes: 61.046, 61.13, 61.13001, 61.183, 61.20, 61.21, 61.30, and 741.30.

II. Present Situation:

Parenting Plans

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

Research shows that children are negatively affected when they experience limited contact with either parent following separation or divorce.[2] 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.[3] 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.[4] 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.

In 2008, the Legislature amended ch. 61, F.S., to reflect this trend.[5] The following definitions were stricken from ch. 61, F.S.:

- Custodial parent;
- Primary residential parent;
- Noncustodial parent;
- Person entitled to be the primary residential parent of a child; and
- Principal residence of a child.

In addition, references to "custody," "visitation," and "primary residence" were replaced with the concepts of "parenting plans" and "time-sharing schedules," and the term "child custody evaluation" was replaced with the term "parenting plan recommendation." Section 61.046(14), F.S., defines a parenting plan recommendation as "a nonbinding recommendation made by a

[1] Section 61.13(2)(c), F.S.
[2] Dr. Joan Kelly, *Keynote Address: The United States Experience*, 2 (Dec. 1, 2005) (transcript available at http://www.aifs.gov.au/institute/pubs/frtforum/kelly.doc) (last visited Mar. 30, 2009).
[3] *Id*.
[4] *Id*.
[5] Chapter 2008-61, Laws of Fla.

psychologist licensed under chapter 490." A parenting plan recommendation is distinguishable from the social investigation prescribed by s. 61.20, F.S. A social investigation may be ordered by the court when parents are unable to agree on a parenting plan and may be conducted by staff of the court, a child-placing agency, a psychologist, or a clinical social worker, marriage and family therapist, or mental health counselor.[6] Unless a certificate of indigence is filed, the adult parties involved in the proceeding are responsible for the cost of the investigation.[7]

Section 61.046(13), F.S., defines a parenting plan as a "document created to govern the relationship between the parties relating to the decisions that must be made regarding the minor child and shall contain a time-sharing schedule[8] for the parents and child." A parenting plan can be created by an agreement between the parents or, if the parents cannot agree, by the court.

Any parenting plan approved by the court must address at least the following issues:

- How the parents will share daily tasks;
- The time-sharing schedule;
- Designation of who will be responsible for health care, school-related matters, and other activities; and
- Methods and technologies the parents will use to communicate with the child.[9]

Section 61.13(3), F.S., provides that the primary consideration when establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, is the child's best interests. The statute sets out factors that the court must consider when determining the best interests of the child, including evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect.[10]

Domestic Violence and Parental Responsibility for Minor Children

It is estimated that between 960,000 and three million adults in the United States are victims of intimate partner violence each year.[11] In Florida, over 115,000 incidents of domestic violence were reported in 2007.[12] Of those incidents, 214 resulted in murder or manslaughter.[13]

In recent years, states have begun to recognize that domestic violence is an important consideration in child custody decisions. Every state identifies the existence of domestic violence

[6] Section 61.20(2), F.S.
[7] Section 61.20(3), F.S.
[8] A time-sharing schedule is defined as "a timetable that must be included in the parenting plan that specifies the time, including overnights and holidays, that a minor child will spend with each parent." Section 61.046(22), F.S.
[9] Section 61.13(2)(b), F.S.
[10] Section 61.13(3)(m), F.S.
[11] Legal Momentum, *Understanding the Effects of Domestic Violence, Sexual Assault and Stalking on Housing and the Workplace*, http://action.legalmomentum.org/site/DocServer/statistics.pdf?docID=556 (last visited Mar. 30, 2009).
[12] Fla. Dep't of Law Enforcement, Fla. Statistical Analysis Ctr., *Florida's Crime Rate at a Glance, Total Domestic Violence, 1992-2007*, http://www3.fdle.state.fl.us/FSAC/data_statistics.asp (follow "Total Reported Domestic Violence Offenses by County, 1992-2007" hyperlink under the "UCR Domestic Violence Data" heading) (last visited Mar. 30, 2009). Domestic violence crimes include murder, manslaughter, forcible rape, sodomy, and fondling, aggravated assault and stalking, simple assault and stalking, threat/intimidation, and arson.
[13] *Id.*

as a factor to be considered in a custody decision, and at least 24 states (including Florida) recognize a rebuttable presumption[14] that it is detrimental to a child to be placed in the custody of the perpetrator of family violence.[15]

Social science data supports the need to consider domestic violence in child custody cases. Statistics show:

- Men who batter their partners are likely to abuse their children as well;[16]
- Parental separation or divorce does not prevent violence and, in fact, abuse, harassment, and stalking, as well as threats to kidnap or hurt children, often escalate after separation;
- Over half of men who batter go on to batter again; and
- Successful completion of a batterer's intervention program does not always eliminate risk to the victim or the children.[17]

The majority of family violence defendants are never prosecuted, and one-third of the cases that would be considered felonies if committed by a stranger are filed as misdemeanors when they involve domestic violence.[18]

Section 61.13(2)(c), F.S., requires the court in a dissolution of marriage proceeding to order shared parental responsibility for a minor child, unless shared responsibility is detrimental to the child. Evidence that a parent has been convicted of a felony of the third degree or higher involving domestic violence[19] creates a rebuttable presumption of detriment to the child. If the presumption is not rebutted, shared parental responsibility, including time-sharing, may not be granted to the convicted parent. In addition, whether or not there is a conviction of any offense of domestic violence or child abuse, the court must consider evidence of domestic violence or child abuse as evidence of detriment to the child.[20]

Additionally, in a domestic violence proceeding the court is permitted to grant a temporary injunction *ex parte* that provides the petitioner with 100 percent of the time-sharing.[21] The temporary parenting plan remains in effect until the order expires or another order is entered affecting the child. According to the Family Law Section of The Florida Bar (Family Law

[14] A rebuttable presumption is an "inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence." BLACK'S LAW DICTIONARY (8th ed. 2004).
[15] Daniel G. Saunders and Karen Oehme, *Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns*, 1 (Oct. 2007), *available at* http://new.vawnet.org/Assoc_Files_VAWnet/AR_CustodyRevised.pdf (last visited Mar. 30, 2009).
[16] In a national survey, 50 percent of men who frequently assaulted their wives also abused their children. The Black Church and Domestic Violence Institute, *Facts*, http://www.bcdvi.org/facts.htm (last visited Mar. 30, 2009).
[17] Daniel G. Saunders and Karen Oehme , *supra* note 15, at 3-5.
[18] The Black Church and Domestic Violence Institute, *supra* note 16. *See also* South Florida Sun-Sentinel, *Man Sets Fire to House, Killing Children He Lost in Custody Battle* (Dec. 23, 2006), where Tony Camacho, after losing a custody battle against his wife, set fire to his house, killing himself and his two children. According to the article, Mr. Camacho had been arrested two years earlier for domestic violence battery, but the charges were dropped. Despite the arrest, Mr. Camacho appeared to have unsupervised visitation with his children.
[19] Domestic violence is defined in s. 741.28, F.S., 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."
[20] Section 61.13(2)(c)2., F.S.
[21] Section 741.30(5)(a), F.S.

Section), the current law "fails to recognize that in many instances, the children benefit from some relationship with both parties no matter their faults."[22]

Parental Relocation

The U.S. population has become increasingly mobile over the years, with one in five Americans changing his or her residence each year.[23] Primary residential parent's often wish to relocate for a number of reasons, such as economic necessity, remarriage, education, or a fresh start.[24] However, a primary residential parent's ability to move may be restricted by a statute or settlement agreement. Prior to October 1, 2006, Florida courts based relocation determinations on s. 61.13(2)(d), F.S., which stated: "'No presumption shall arise in favor of or against a request to relocate when a primary residential parent seeks to move the child and the move will materially affect the current schedule of contact and access with the secondary residential parent.'"[25] The statute also specified factors that a court had to take into consideration before approving relocation. The statute imposed "a fact-specific framework that allow[ed] the trial court to base a relocation decision 'on what is best for the child, even though a result may not be best for the primary residential parent seeking to relocate.'"[26]

In 2005, the Florida Supreme Court approved the "substantial change" test, where the petitioner has to show (1) that the circumstances have substantially and materially changed since the original custody determination, and (2) that the child's best interests justify changing custody.[27]

In the absence of a residency restriction clause in the final judgment, many times the primary residential parent simply moved without authorization. Florida courts have held that "'a relocation by the custodial parent without prior approval of the court is not *per se* improper where the final judgment does not prohibit such location.' In other words, absent a residency restriction clause, custodial parents are generally free to relocate with their children and often do so without notifying the non-custodial parent."[28] This scenario is often described as a "catch 22":

> The "catch 22" scenario unfolds as follows. Absent a residency restriction clause, the custodial parent is free to move the children without the consent of, or even notice to, the non-custodial parent. A trial court is prohibited from including a residency restriction clause in a final judgment unless the custodial parent seeks to relocate. An intent to relocate is often first revealed when the move takes place. At that point, the non-custodial parent's only option is to seek a modification of custody. However, to secure a modification of custody, he or she must show a

[22] *Talking Points for Children's Issues Bills*, provided by Nelson Diaz, Becker & Poliakoff, P.A., to staff of the Senate Committee on Judiciary (Mar. 26, 2009) (on file with the Senate Committee on Judiciary).
[23] Chris Ford, *Untying the Relocation Knot: Recent Developments and a Model for Change*, 7 COLUM. J. GENDER & L. 1, 7 (1997).
[24] *Id*.
[25] Patricia A. McKenzie, *Nowhere to Run: Custody, Relocation, and Domestic Violence in Florida*, 31 NOVA L. REV. 355, 360 (2007) (quoting s. 61.13(2)(d), F.S. (2005)).
[26] *Berrebbi v. Clarke*, 870 So. 2d 172, 174 (Fla. 2d DCA 2004) (quoting *Flint v. Fortson*, 744 So. 2d 1217, 1218 (Fla. 4th DCA 1999)).
[27] *Wade v. Hirschman*, 903 So. 2d 928, 931 n.2 (Fla. 2005).
[28] *Leeds v. Adamse*, 832 So. 2d 125, 127 (Fla. 4th DCA 2002) (quoting *Bartolotta v. Bartolotta*, 703 So. 2d 1229, 1230 (Fla. 4th DCA 1998)).

> substantial change of circumstances, and that the modification will be in the best interest of the children. Until recently, relocation of the children without notice or consent was not a substantial change of circumstances that would support modification of the custody provisions of a final judgment. The non-custodial parent is up the custody creek without the proverbial paddle.
>
> . . . .
>
> *For a non-custodial parent to be guaranteed of notification before a relocation takes place, a residency restriction clause must be in existence by agreement or order. All that an inclusion of such a provision will do is allow the parties to either agree to the move or request leave of court to relocate.* This will allow the trial court to review the factors outlined in section 61.13(2)(d), Florida Statutes (2001), in an objective and thoughtful manner instead of having to address these sensitive issues after the fact. It will prevent the infamous flights in the night that send families into the land of panic, chaos, and hostility, and which cause such disruption in the lives of children.[29]

In 2006, the Legislature amended ch. 61, F.S., providing two methods for allowing relocation.[30] The first method of relocation is by written agreement by the parents and any other person entitled to visitation.[31] If there is no agreement to relocate, the statute requires a parent who wishes to relocate with a child to provide advance notice to the other parent and to any other persons who are entitled to visitation with the child.[32] If the other parent and other persons entitled to visitation do not object to the Notice of Intent to Relocate, the court shall presume that relocation is in the best interest of the child and allow relocation to proceed, entering an order to that effect.[33] If the other parent or other person entitled to visitation objects to the Notice of Intent to Relocate, s. 61.13001(7), F.S., provides a list of factors a court must consider when determining whether to allow the proposed relocation.

According to the Family Law Section, the majority of relocation cases are resolved by the court, rather than by agreement.[34] The bill's amendments to ch. 61, F.S., with respect to relocation, are intended to streamline the process for the benefit of the parties involved.[35]

III. Effect of Proposed Changes:

Parenting Plans

The bill amends the definitions of "parenting plan," "parenting plan recommendation," and "time-sharing schedule" in s. 61.046, F.S. Specifically, the definition of "parenting plan" is

---

[29] *Leeds*, 832 So. 2d at 127-28 (internal citations omitted) (emphasis added).
[30] Chapter 2006-245 , Laws of Fla.
[31] Section 61.13001(2), F.S.
[32] Section 61.13001(3), F.S. The parent wishing to relocate must prepare a Notice of Intent to Relocate, delineating certain information, and serve it on the other parent and any other person entitled to visitation with the child.
[33] Section 61.13001(3)(e), F.S.
[34] *Talking Points for Children's Issues Bills*, *supra* note 22.
[35] *Id.*

amended to provide that if the parents cannot agree on a plan *or* the court does not approve the plan, then the plan will be established by the court. The bill allows the court to establish a parenting plan with or without the use of a court-ordered parenting plan recommendation.

The bill also amends the definition of "parenting plan recommendation" to allow not only psychologists licensed under ch. 490, F.S., to make nonbinding parenting plan recommendations, but also to allow court-appointed mental health practitioners and other professionals designated pursuant to ss. 61.20[36] and 61.401, F.S.,[37] or the Florida Family Law Rule of Procedure 12.363.[38]

The definition of "time-sharing schedule" is amended to conform to the new definition of "parenting plan" proposed by the bill. Specifically, the bill amends the definition to provide that the time-sharing schedule can be:

- Developed and agreed to by the parents and approved by the court; or
- Established by the court if the parents cannot agree or their agreed upon schedule is not approved by the court.

The bill amends s. 61.13, F.S., to provide that any parenting plan approved by the court must include the address to be used for school-boundary determination and registration, and clarifies that there is no presumption either for or against any particular time-sharing schedule in a parenting plan. Additionally, the bill clarifies that when determining the best interests of the child for purposes of establishing or modifying parental responsibility and creating, developing approving, or modifying a parenting plan, the court must evaluate the statutory factors in regards to the particular child and the circumstances of that particular family.

The bill also provides that modification of a parenting plan, time-sharing schedule, or a determination of parental responsibility requires a showing of a substantial, material, and unanticipated change in circumstances and a determination that modification is in child's best interests.

Domestic Violence and Parental Responsibility for Minor Children

The bill amends s. 61.13, F.S., to provide that when the court determines parental responsibility, there is a rebuttable presumption of detriment to the child if there is evidence that a parent has been convicted of a first-degree misdemeanor involving domestic violence. Current law establishes the rebuttable presumption if there is evidence that a parent has been convicted of a third-degree felony involving domestic violence.

[36] Section 61.20(2), F.S., allows a social investigation, when ordered by the court, to be conducted by qualified staff of the court, a child-placing agency licensed pursuant to s. 409.175, F.S., a psychologist licensed pursuant to ch. 490, F.S., or a clinical social worker, marriage and family therapist, or mental health counselor licensed pursuant to ch. 491, F.S.
[37] Section 61.401, F.S., permits the court to appoint a guardian ad litem in "an action for dissolution of marriage or for the creation, approval, or modification of a parenting plan, if the court finds it is in the best interest of the child."
[38] Rule 12.363(1), Fla. Fam. L. R. P., provides that when the issue of visitation, parental responsibility, or residential placement of a child is in controversy, the court may appoint a "licensed mental health professional or other expert for an examination, evaluation, testing, or interview of any minor child or to conduct a social or home study investigation."

The bill also amends one of the statutory factors that a court can consider when evaluating a child's best interests. Specifically, the bill provides that if the court accepts evidence of prior or pending actions involving domestic violence, sexual violence, or child abuse, neglect, or abandonment, the court must specifically acknowledge in writing that such evidence was considered.

The bill also amends s. 741.30, F.S., to allow the court to grant an *ex parte* temporary injunction that provides the petitioner a temporary parenting plan, including a time-sharing schedule, that can award the petitioner up to 100 percent of the time-sharing.

Parental Relocation

The bill significantly amends s. 61.13001, F.S., relating to parental relocation. Specifically, the bill:

- Deletes the definition of "change of residence address," which references the relocation of the child;
- Amends the definition of "relocation," referencing the relocation of the parent (rather than the child) and incorporating language from the definition of "change of residence address" (*e.g.*, change in location must be more than 50 miles from the original place of residence);
- Amends the definitions of "other person" and "parent;"
- Removes the requirement that a parent notify the other parent, and other persons entitled to time-sharing with the child, of a proposed relocation of the child's residence via a Notice of Intent to Relocate;[39]
- Requires that a Petition to Relocate be filed by a parent or other person seeking relocation and served upon the other parent and every other person entitled to access to or time-sharing with the child;
- Amends the deadline for objecting to relocation from 30 days after service of the Notice of Intent to Relocate to 20 days after service of the Petition to Relocate;
- Provides that failure to respond to a Petition to Relocate results in a presumption that relocation is in the child's best interests and that, absent good cause, the court must enter an order allowing the relocation;
- Provides that if a response objecting to a Petition to Relocate is filed, the petitioner may not relocate and the matter must proceed to a temporary hearing or trial;
- Amends the bases upon which the court may grant a temporary order restraining relocation to include that the Petition to Relocate does not comply with the statutory requirements;
- Amends the bases upon which the court may grant a temporary order permitting relocation of the child to include that the Petition to Relocate was properly filed and complies with the statutory requirements;

[39] According to representatives from the Family Law Section of The Florida Bar, the Notice of Intent became a delaying tool for a parent to use to extend the relocation process. The bill eliminates the initial 30-day process out of the parental relocation procedure. Conversation with Scott Rubin, Chair of the Family Law Section of The Florida Bar (Mar. 26, 2009).

- Requires that a motion seeking temporary relocation be heard within 30 days after the motion is filed and that, if a notice to set the matter for a nonjury trial is filed, the trial must be held within 90 days after the notice is filed; and
- Amends the applicability of the relocation provisions.

Other

The bill amends s. 61.13(1)(d), F.S., to delete the date reference to child support orders entered before, on, or after January 1, 1985. The bill does not change the current requirement that all child support orders must be payable through the depository in the county where the court is located, unless both parties agree and the court finds that it is in the best interest of the child that payments not be made to the depository.

The bill amends s. 61.21, F.S., to clarify that the parents, not the "adult parties" to a dissolution proceeding, are responsible for the costs of a social investigation.[40]

The bill strikes the references to "visitation" and replaces it with references to "access" to a child or "time-sharing" throughout the bill.

The bill makes technical and conforming amendments.

The bill provides an effective date of October 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Legislature has the exclusive power to enact substantive laws, while article V, section 2 of the Florida Constitution gives the Florida Supreme Court the power to "adopt rules for the practice and procedure in all courts." This bill may be challenged on a claim that it violates the separation of powers doctrine.[41] The bill requires that a motion seeking temporary relocation be heard within 30 days after the motion is filed and that, if a notice

[40] Under s. 61.401, F.S., a guardian ad litem is made a party to the proceedings, but should not be made responsible for the costs of a social investigation.
[41] See FLA. CONST. art. II, s. 3.

to set the matter for a nonjury trial is filed, the trial must be held within 90 days after the notice is filed. It is not always clear what constitutes substantive law versus practice and procedure. Generally, substantive laws create, define, and regulate rights, whereas court rules of practice and procedure prescribe the method of process by which a party seeks to enforce substantive rights or obtain redress.[42] Courts have tended to decide the distinction on a case-by-case basis, often finding the following types of provisions unconstitutional:

- Provisions regarding timing and sequence of court procedures,
- Provisions creating expedited proceedings,
- Provisions issuing mandates to the courts to perform certain functions, and
- Provisions attempting to supersede or modify existing rules of court.[43]

To the extent the court views this provision of the bill as an encroachment on the court's procedural rule-making authority, it may come under constitutional scrutiny.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Office of the State Courts Administrator (OSCA), the bill may create additional workload on the courts because the bill requires the court to specifically acknowledge in writing when evidence of domestic violence, sexual violence, or child abuse, abandonment, or neglect is considered by the court in making its determination of the best interests of the child.[44]

Additionally, this bill requires that, absent good cause, a hearing must be held within 30 days after filing the petition for relocation, and a nonjury trial be held within 90 days after the notice is filed. According to OSCA, meeting these time frames in a civil case may be difficult due to limited judicial resources.[45]

---

[42] *Haven Fed. Savings & Loan Ass'n v. Kirian*, 579 So. 2d 730, 732 (Fla. 1991).
[43] *See Military Park Fire Control Tax District N. 4 v. De Marois*, 407 So. 2d 1020 (Fla. 4th DCA 1981) (creating priorities among types of civil matters to be processed or appealed); *Allen v. Butterworth*, 756 So. 2d 52 (Fla. 2000) (timing and sequence of court procedures); *Haven Fed. Savings & Loan Ass'n v. Kirian*, 579 So. 2d 730, 732 (Fla. 1991), and *Watson v. First Florida Leasing, Inc.*, 537 So. 2d 1370 (Fla. 1989) (attempting to supersede or modify existing rules of court).
[44] Office of the State Courts Administrator, *Judicial Impact Statement, SB 904* (Mar. 6, 2009) (on file with the Senate Committee on Judiciary).
[45] *Id*. The Office of the State Courts Administrator's analysis references that a hearing must be held within 30 days of filing the *petition for relocation*; however, the bill requires that a hearing be held within 30 days after a *motion for a temporary relocation* is filed. It is unclear whether the petition for relocation and a motion for a temporary relocation are the same thing.

According to OSCA, the "fiscal impact of the bill cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial and staff workload" as a result of the foregoing.[46]

VI. Technical Deficiencies:

On line 84 of the bill, there is a reference to Rule 12.363 of the Florida Family Law Rules of Procedure. Making specific reference to a particular rule creates the risk that, over time, the rule may be amended, thereby rendering the statute obsolete or unclear. In addition, the terms used in Rule 12.363 (*e.g.*, mental health professional and other expert) are not otherwise defined in the Rule, and the application of those terms to the bill may, therefore, be unclear.

On line 334 of the bill, the term "visitation" is added to the definition of "other person." It is unclear why this term is added here, because it has been deleted throughout the remainder of the bill.

VII. Related Issues:

According to the Department of Revenue (DOR), the existing s. 61.13(1)(d), F.S., conflicts with certain federal requirements for child support payments. As required by federal law, s. 61.1824(1), F.S., requires DOR to operate the Florida State Disbursement Unit, which is responsible for the collection and disbursement of support payments in all Title IV-D cases and all non-Title IV-D cases where the initial support order was issued after January 1, 1994, and the obligor is paying through an income deduction order. The child support depositories operated by the clerks of the circuit court are required to participate fully in the State Disbursement Unit, and they receive federal Title IV-D matching funds to do so. According to DOR, although the changes proposed by the bill do not create the conflict, s. 61.13(1)(d), F.S., is not in conformance with other federal and state requirements because it allows the parents to agree not to have certain child support payments to be made to the State Disbursement Unit.[47]

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 Judiciary on April 6, 2009:
The committee substitute amends the definition of "time-sharing schedule" to conform to the new definition of "parenting plan" proposed by the bill, changes the effective date from July 1, 2009, to October 1, 2009, and makes technical changes.

CS by Children, Families, and Elder Affairs on March 11, 2009:
The committee substitute:

- Clarifies the identity of the professionals permitted to make a parenting plan recommendation;

[46] *Id*.
[47] Department of Revenue, *2009 Bill Analysis, CS/SB 904* (Mar. 14, 2009) (on file with the Senate Committee on Judiciary).

- Codifies a Florida Supreme Court decision specifying that modification of a parenting plan and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances;
- Clarifies that there is no presumption in favor of a particular time-sharing schedule in a parenting plan;
- Requires that certain notification language (previously required in the Intent to Relocate) be included in a Petition to Relocate; and
- Makes other conforming and technical amendments.

B. Amendments:

None.