

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 Children, Families, and Elder Affairs Committee

BILL: CS/SB 1650

INTRODUCER: Military Affairs, Space, and Domestic Security Committee and Senator Storms

SUBJECT: Child Custody

DATE: April 1, 2011 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | O'Connor | Maclure | JU | Favorable |
| 2. | Fleming | Carter | MS | Fav/CS |
| 3. | Daniell | Walsh | CF | Favorable |
| 4. | | | BC | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill provides that a parent's activation, deployment, or temporary assignment to military service and the resulting temporary disruption to the child may not be the sole factor in a court's decision to grant a petition for or modification of a permanent time-sharing agreement. Under current law, a court is prohibited from modifying time-sharing during the time a parent is away for military service, except to issue a temporary modification order if it is in the best interest of the child. There is no specific provision stating that military service cannot be the sole factor in granting a petition for modification.

The bill further provides that if such a temporary order is issued, the court must automatically reinstate the time-sharing order previously in effect before the military parent's activation, deployment, or temporary assignment to military service within 10 days after notification by that parent of his or her return from service unless resumption of the original order is no longer in the child's best interest. The bill also provides that the nonmilitary parent has the burden of proving that the original order is no longer in the child's best interest.

This bill substantially amends section 61.13002, Florida Statutes.

II. Present Situation:

Time-Sharing After Dissolution of Marriage

Chapter 61, F.S., is titled “Dissolution of Marriage; Support; Time-Sharing.” The purposes of the chapter are described as follows:

- To preserve the integrity of marriage and to safeguard meaningful family relationships;¹
- To promote the amicable settlement of disputes that arise between parties to a marriage;² and
- To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.³

Upon dissolution of marriage, the parties develop a parenting plan approved by the court. The parenting plan must, at a minimum, describe in adequate detail:

- How the parents will share and be responsible for the daily tasks associated with the upbringing of the child;
- The time-sharing schedule arrangements that specify the time that the minor child will spend with each parent;
- A designation of who will be responsible for any and all forms of health care, school-related matters, including the address to be used for school-boundary determination and registration, and other activities; and
- The methods and technologies that the parents will use to communicate with the child.⁴

Once the parenting plan and time-sharing schedule are approved by the court, modification requires a parent to show a substantial, material, and unanticipated change in circumstances and that the modification is in the best interests of the child.⁵

The Legislature has stated that it is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parents is dissolved.⁶ It is also articulated public policy to encourage parents to share the rights and responsibilities, and joys, of childrearing.⁷ There is no presumption in Florida for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.⁸ Florida courts determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child.⁹ To determine the best interests of the child, the court will consider a list of factors that is enumerated in statute, but is not exhaustive. Some of the factors include:

¹ Section 61.001(2)(a), F.S.

² Section 61.001(2)(b), F.S.

³ Section 61.001(2)(c), F.S.

⁴ Section 61.13(2)(b), F.S.

⁵ Section 61.13(3), F.S.

⁶ Section 61.13(2)(c)1., F.S.

⁷ *Id.*

⁸ *Id.*

⁹ Section 61.13(3), F.S.

1) capacity of each parent to have a close parent-child relationship; 2) length of time the child has lived in a stable environment; 3) moral fitness of the parents; 4) reasonable preference of the child; 5) evidence of violence, abuse, or neglect; and 6) developmental stages and needs of the child.¹⁰

Time-Sharing and Military Parents

In addition to the numerous factors that Florida courts take into account in every time-sharing determination, the Legislature has recognized the need to consider the unique circumstances of parents serving in the military regarding modification of time-sharing.¹¹ When a parent is unable to comply with a time-sharing schedule because of military service, courts are precluded from modifying the judgment or order as it existed on the date the parent left for service.¹² The court may, however, enter a temporary modification order only if there is clear and convincing evidence that such modification is in the best interests of the child.¹³ Before entering a temporary order for modification, courts are required to consider and provide for as much contact between the military parent and his or her child and to permit liberal time-sharing periods during leave from military service.¹⁴ Additionally, if a parent cannot comply with time-sharing because he or she is away for military service in excess of 90 days, the parent has the option to designate a family member to exercise time-sharing with the child on the parent's behalf.¹⁵

In the event that a temporary order to modify the time-sharing agreement is issued, the court is required to reinstate the order previously in effect upon the military parent's return from service. If good cause is shown, the court will hold an expedited hearing in custody and visitation matters and allow the military parent to appear remotely if military duties preclude him or her from appearing in person.¹⁶

III. Effect of Proposed Changes:

This bill provides that a parent's activation, deployment, or temporary assignment to military service and the resulting temporary disruption to the child may not be the sole factor in a court's decision to grant a petition for or modification of permanent time-sharing and parental responsibility. This provision clearly directs courts to look at the totality of the circumstances when evaluating the inability of military parents to fully comply with previously ordered time-sharing agreements due to their service obligations. Although current law prohibits courts from modifying time-sharing during the time a parent is away for military service, except to issue a temporary modification order if it is in the best interest of the child, there is no specific provision stating that military service cannot be the sole factor in granting a petition for modification. The bill emphasizes that a court should not find that continuing a current time-sharing agreement is against a child's best interest solely on the basis that the military parent is unable to be present during service.

¹⁰ See s. 61.13(3)(a)-(t), F.S.

¹¹ Section 61.13002, F.S.

¹² Section 61.13002(1), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 61.13002(2), F.S.

¹⁶ Section 61.13002(5), F.S.

The bill further provides that if such a temporary order is issued, the court must automatically reinstate the time-sharing order previously in effect before the military parent's activation, deployment, or temporary assignment to military service within 10 days after notification by that parent of his or her return from service. Current law does not specify notification requirements on the part of a military parent returning from service or a set period of time within which the court must reinstate the previous time-sharing order. This provision in the bill will provide the military parent with a set time by which the court will restore the previous time-sharing agreement upon his or her notification of return from service, instead of having to wait an undetermined period of time. There is an exception if the court finds that resumption of the original order is no longer in the child's best interest.

The bill also provides that the nonmilitary parent has the burden of proving that the original order is no longer in the child's best interest. The statute in its current form does not specify who bears the burden of proof. Generally, in a legal action the burden of proof is on the party who asserts the proposition to be established. Thus, this provision is most likely intended to be a codification of current practice by specifying that the burden is on the parent who is asserting that the current time-sharing arrangement is no longer in the best interest of the child.

The bill provides an effective date of July 1, 2011.

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:

Parents who are away serving in the military will be more likely to maintain current time-sharing schedules with their children.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) reports that the bill's requirement that the court reinstate the time-sharing order previously in effect within 10 days after the notification of that parent of his or her return from service will increase judicial workload, although the exact impact cannot be determined. The OSCA also notes that because the bill does not specify how the parent will notify the court, the ambiguity may result in the need for clarification by the court and require additional judicial workload.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Military Affairs, Space, & Domestic Security Committee on March 30, 2011:

The committee substitute:

- Clarifies that the bill applies to the modification of permanent time-sharing orders; and
- Clarifies that if a temporary order is issued, the previous time-sharing order must be automatically reinstated within 10 days of notification by the military parent of his or her return.

B. Amendments:

None.

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

¹⁷ Office of the State Courts Administrator, *Senate Bill 1650 Fiscal Analysis* (Mar. 8, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).