

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 621 Child Custody  
**SPONSOR(S):** Civil Justice Subcommittee; Renuart  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1650

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Woodburn	Bond
2) Community & Military Affairs Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Where the parents of a minor child are living apart, the parents must develop a parenting plan to be approved by the court. The plan outlines the responsibilities and time-sharing arrangements of the parents. In general, a change in the parenting plan 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. However, there is special exception for a parent who is deployed pursuant to military service commitments.

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. 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. If the deployment will be over 90 days the parent has the option of designating a family member to exercise the time-sharing with the child on the parent's behalf. The court is required to reinstate the order previously in effect upon the military parent's return from service.

The bill provides that the activation, deployment, or temporary assignment to military service cannot be the sole factor in the court's decision to grant a modification of permanent time-sharing and parental responsibility.

The bill does not appear to have a fiscal impact on the state or on local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **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;<sup>1</sup>
- To promote the amicable settlement of disputes that arise between parties to a marriage;<sup>2</sup> and
- To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.<sup>3</sup>

Where the parents of a minor child are living apart, the parents must develop a parenting plan to be approved by the court.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

The Legislature has stated that it is the public policy of this state that each minor child have frequent and continuing contact with both parents after the parents separate or the marriage of the parents is dissolved.<sup>7</sup> It is also articulated public policy to encourage parents to share the rights and responsibilities, and joys, of childrearing.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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) 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.<sup>11</sup>

---

<sup>1</sup> Section 61.001(2)(a), F.S.

<sup>2</sup> Section 61.001(2)(b), F.S.

<sup>3</sup> Section 61.001(2)(c), F.S.

<sup>4</sup> Section 61.13(2)(b), F.S. There are a variety of circumstances that initiate a court proceeding to establish a parenting plan, including: divorce, separation, establishment of paternity, and establishment of child support.

<sup>5</sup> *Id.*

<sup>6</sup> Section 61.13(3), F.S.

<sup>7</sup> Section 61.13(2)(c)1., F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Section 61.13(3), F.S.

<sup>11</sup> *See* s. 61.13(3)(a)-(t), F.S.

## 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

### Effect of the Bill

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.

#### B. SECTION DIRECTORY:

Section 1 amends s. 61.13002, F.S., regarding child visitation

Section 2 provides an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

---

<sup>12</sup> Section 61.13002, F.S.

<sup>13</sup> Section 61.13002(1), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 61.13002(2), F.S.

<sup>17</sup> Section 61.13002(5), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2011, the Civil Justice Subcommittee adopted one amendment. The amendment:

- Removed language relating to the reinstatement of the parenting plan within 10 days of notification to the court of the return of the parent from active duty;
- Removed language relating to the resumption of the original parenting order;
- Provides that the parent's activation, deployment or temporary assignment 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 rather than a *temporary* time-sharing agreement as was provided in the prior version of the bill.

The bill was then reported favorably. This analysis is drafted to the committee substitute.