

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 329 Child Protection  
**SPONSOR(S):** Health & Human Services Committee, Harrell  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	12 Y, 2 N	Stranburg	Bond
2) Health & Human Services Committee	17 Y, 0 N, As CS	Langston	Calamas
3) Judiciary Committee			

### SUMMARY ANALYSIS

Current law provides that the public policy of the state is for each minor to have frequent and continuing contact with both parents after the parents separate or divorce. In determining a time-sharing plan for contact with both parents, a court must weigh a number of factors in deciding what is in the best interests of the child.

A recovery residence is a form of group housing that is advertised as a peer-supported, alcohol-free, and drug-free living environment. These residences may be voluntarily certified through a program administered by the Department of Children and Families. The certification program requires the recovery residence to provide various documentation and establish certain policies in the recovery residence.

The bill prohibits a time-sharing plan from requiring a minor child to visit a parent residing in a recovery residence between the hours of 9 p.m. and 7 a.m., unless the court determines that it is in the minor child's best interest.

The bill also provides that a certified recovery residence may allow minor children to visit a resident parent, but may not allow the children to remain between the hours of 9 p.m. and 7 a.m., unless:

- A court has determined it is in the minor child's best interest; or
- The parent does not yet have a time-sharing plan and the recovery residence is a specialized residence for pregnant women or parents whose children reside with them.

The bill prohibits a minor child from visiting a parent at a recovery residence at any time if any resident of the recovery residence is required to register as a sexual predator or sexual offender.

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

The bill provides an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Parenting and Time-sharing

Current law provides that it is the public policy of the state that each minor child has frequent and continuing contact with both parents.<sup>1</sup> A court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.<sup>2</sup> In determining timesharing with each parent, a court must consider the best interests of the child based on a list of factors.<sup>3</sup> These factors include:

- 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;
- The moral fitness of the parents;
- The mental and physical health of the parents;
- The home, school, and community record of the child;
- 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 knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child;
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child;
- The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child; and
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

A final factor allows the court to take into account any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.<sup>4</sup>

##### Recovery Residences

Recovery residences (also known as “sober homes” or “sober living homes”) are alcohol- and drug-free living environments for individuals in recovery who are attempting to maintain abstinence from alcohol and drugs.<sup>5</sup> These residences offer no formal treatment but perhaps mandate or strongly encourage

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

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

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

<sup>4</sup> S. 61.13(3)(t), F.S.

<sup>5</sup> Douglas L. Polcin, Ed.D., MFT and Diane Henderson, B.A., *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses*, J Psychoactive Drugs, Jun 2008; 40(2): 153–159,

attendance at 12-step groups; and are self-funded through resident fees.<sup>6</sup> Section 397.311(36), F.S., defines a recovery residence as a residential dwelling unit, or other form of group housing, offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.

Recovery residences may elect to participate in a voluntary certification program administered through the Department of Children and Families (DCF).<sup>7</sup> Under the voluntary certification program, DCF approved two credentialing entities to design the certification programs and issue certificates: The Florida Association of Recovery Residences certifies the recovery residences and the Florida Certification Board certifies recovery residence administrators.

Sections 397.487 and 397.4871, F.S., set criteria for certification, including a requirement that the certified recovery residences be actively managed by a certified recovery residence administrator. Level 2 background screening is required for all recovery residence owners, directors and chief financial officers and for administrators seeking certification. Section 397.4872, F.S., allows DCF to exempt an individual from the disqualifying offenses of a Level 2 background screening if the individual meets certain criteria and the recovery residence attests that it is in the best interest of the program. Under s. 397.487, F.S., the credentialing entities must deny, suspend or revoke certification if a recovery residence or a recovery residence administrator fails to meet and maintain certain criteria. The credentialing entity must inspect recovery residences prior to the initial certification and during every subsequent renewal period, and must automatically terminate certification if it is not renewed within one year of the issuance date. It is a first degree misdemeanor<sup>8</sup> for any entity or person who advertises as a “certified recovery residence” or “certified recovery residence administrator”, respectively, unless the entity or person has obtained certification under this section.<sup>9</sup>

DCF publishes a list of all certified recovery residences and recovery residences administrators on its website.<sup>10</sup> As of March 1, 2017, there were 257 certified recovery residences in Florida.<sup>11</sup>

### **Effect of Proposed Changes**

The bill provides that a time-sharing plan pursuant to s. 61.13, F.S., may not require a minor child to visit a parent residing in a recovery residence between the hours of 9 p.m. and 7 a.m., unless the court determines that it is in the minor child’s best interest. When determining whether it is in a minor child’s best interest to visit the parent residing at a recovery residence, the court must take into account:

- Whether the parent resides in a specialized residence for pregnant women or parents with children;
- The number of adults living in the recovery residence; and
- The parent’s level of recovery.

Courts are prohibited from ordering visitation at a recovery residence if any resident of the recovery residence is required to register as a sexual predator under s. 755.21, F.S., or a sexual offender under s. 943.0435, F.S.

Additionally, the bill provides that, as a requirement to certification, a recovery residence may not allow minor children to visit or remain between the hours of 9 p.m. and 7 a.m., unless a court has determined that it is in the minor child’s best interest or it is a specialized residence for pregnant women or parents

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<sup>6</sup> Id.

<sup>7</sup> S. 397.487, F.S.

<sup>8</sup> A first degree misdemeanor is punishable by not more than one year imprisonment and not more than a \$1,000 fine. Ss. 775.082, 775.083, F.S.

<sup>9</sup> Ss. 397.487 and 397.4871, F.S.

<sup>10</sup> S. 397.4872, F.S.

<sup>11</sup> FLORIDA ASSOCIATION OF RECOVERY RESIDENCES, *Certified Residences*, <http://farronline.org/certification/certified-residences/> (last visited April 6, 2017).

whose children reside with them. A certified recovery residence may allow minor children to visit resident parents during the other hours of the day, unless any resident is required to register as a sexual predator under s. 755.21, F.S., or a sexual offender under s. 943.0435, F.S., in which case it may not allow minor children to visit at any time. If it is a specialized residence for pregnant women or parents whose children reside with them and the parent does not have a time-sharing plan, the recovery residence may allow minor children to visit between the hours of 9 p.m. and 7 a.m., if the parent files for the establishment of a time-sharing plan within 14 days of moving into the residence.

The bill provides an effective date of July 1, 2017.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 61.13, F.S., relating to parenting and time-sharing.

**Section 2:** Amends s. 397.487, F.S., relating to recovery residences.

**Section 3:** Provides an effective date of July 1, 2017.

## **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.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have any direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The 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:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create rulemaking authority or a need for rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 6, 2017, the Health and Human Services Committee adopted an amendment that allowed minor children to visit a parent at a recovery residence between the hours of 9 p.m. and 7 a.m. in certain circumstances and prohibited minor children from visiting at any time if any resident is required to register as a sexual predator under s. 755.21, F.S., or a sexual offender under s. 943.0435, F.S. The bill was reported favorably as a committee substitute. This analysis is drafted to the committee substitute as reported by the Health and Human Services Committee.