

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 Committee on Rules

BILL: CS/CS/SB 932

INTRODUCER: Rules Committee; Children, Families, and Elder Affairs Committee; and Senator Wright

SUBJECT: Minor Time-sharing for Parent Convicted of or Had Adjudication Withheld for a Specified Offense

DATE: April 7, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Favorable</u>
3.	<u>Moody</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 932 amends s. 61.13, F.S., expanding the application of the rebuttable presumption of detriment to the child to include when a parent has been convicted or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., F.S. (offense criteria relevant to sexual offender registration), and at the time of the offense:

- The parent was 18 years of age or older; and
- The victim was under 18 years of age or the parent believed the victim was under 18 years of age.

A rebuttable presumption against granting a parent time-sharing with his or her minor child is also created based on the same criteria. The bill provides that the presumption against granting time-sharing may be rebutted upon the court making written findings that the parent poses no significant risk of harm to the child and that time-sharing is in the child's best interest. If the presumption is rebutted, the bill also requires the court to consider all time-sharing factors provided for in s. 61.13(3), F.S.

To the extent that the bill results in additional litigation relating to the ability to have time-sharing rights, the bill may result in an increased workload on the state court system from additional or more lengthy hearings and an indeterminate fiscal impact on parents who must pay additional legal fees related to such hearings. See Section V. Fiscal Impact Section.

The bill is effective July 1, 2021.

II. Present Situation:

Parental Rights

The interest of parents in the care, custody, and control of their children is a recognized fundamental liberty protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. This fundamental liberty interest is rooted in the fundamental right of privacy from interference in making important decisions relating to marriage, family relationships, child rearing, and education.¹ The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.²

The Florida Supreme Court has recognized that under Art. I., s. 23 of the Florida Constitution, parents have a fundamental liberty interest in determining the care and upbringing of their children.³ These rights may not be intruded upon absent a compelling state interest.⁴ According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.⁵

¹ *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education). See *Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eighth grade violates the parents' constitutional right to direct the religious upbringing of their children); *Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that parents act in their children's best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state); *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

² *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

³ *Beagle v. Beagle*, 678 So.2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent's constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

⁴ *Id.* See, e.g., *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So.2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So.2d 1105, 1106 (Fla. 5th DCA 2001).

⁵ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So.2d 544, 547 (Fla. 1985) (citations omitted).

Parental Time-Sharing

Parental time-sharing is the time, including overnights and holidays, which a minor child spends with each parent.⁶ A parent's right to time-sharing is not absolute, and the Legislature may enact a time-sharing policy when it affects the best interest of the child.⁷ As a result of the constitutional right to a meaningful parent-child relationship, there must be competent, substantial evidence in the record that demonstrates that any restrictions or limitations on time-sharing are in the best interests of the child before those restrictions will be sustained.⁸ Thus, where there is no evidence that the noncustodial parent is unfit, that extreme circumstances preclude visitation, or that visitation would adversely affect the welfare of the child, the trial court abuses its discretion in failing to provide visitation rights for that parent.⁹ Moreover, restriction of visitation is generally disfavored, unless the restriction is necessary to protect the welfare of the child.¹⁰

Section 61.13(2), F.S., provides judges wide discretion in determining matters relating to parenting and time-sharing of minor children in actions under ch. 61, F.S., in accordance with the best interests of the child, while balancing the rights of parents. The court is required to 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 and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).¹¹

In establishing time-sharing, the court must make a determination of the best interests of the child by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, but not limited to, the:

- Demonstrated capacity and disposition of each parent to facilitate and encourage a continuing parent-child relationship, honor the time-sharing schedule, and accommodate necessary changes.
- Anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.
- Demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child.
- Length of time the child has lived in a stable environment and the desirability of maintaining continuity.
- Geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.

⁶ See s. 61.046(23), F.S. The schedule may be developed and agreed to by the parents of a minor child and approved by the court or established by the court if the parents cannot agree or if their agreed-upon schedule is not approved by the court.

⁷ See, e.g., *Mallick v. Mallick*, 2020 WL 6106287 (Fla. 2d DCA Oct. 16, 2020); *Bainbridge v. Pratt*, 168 So.3d 310 (Fla. 1st DCA 2011).

⁸ *Miller v. Miller*, 302 So.3d 457 (Fla. 5th DCA 2020).

⁹ *McArdle v. McArdle*, 753 So.2d 696 (Fla. 4th DCA 2000); *Johnston v. Boram*, 386 So.2d 1230 (Fla. 5th DCA 1980).

¹⁰ See *Munoz v. Munoz*, 210 So.3d 227 (Fla. 2d DCA 2017); *Davis v. Lopez-Davis*, 162 So.3d 19 (Fla. 4th DCA 2014).

¹¹ Section 61.13(2)(c), F.S. The UCCJEA was developed by the Legal Resource Center on Violence Against Women, the National Center on State Courts, and the National Council of Juvenile and Family Court Judges (NCJFCJ) to address jurisdictional and enforcement issues in child custody cases. The NCJFCJ, *Uniform Child Custody Jurisdiction and Enforcement Act: Guide for Court Personnel and Judges*, July 18, 2018, available at <https://www.ncjfcj.org/publications/uniform-child-custody-jurisdiction-and-enforcement-act-guide-for-court-personnel-and-judges/> (last visited April 7, 2021).

- Mental health, physical health, and moral fitness of the parents.
- Home, school, and community record of the child.
- Reasonable preference of the child.
- Demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, the child’s friends, teachers, and daily activities.
- Demonstrated capacity and disposition of each parent to:
 - Provide a consistent routine; and
 - Communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has ever knowingly provided false information about such matters.
- Particular parenting tasks customarily performed by each parent, including the extent to which parenting responsibilities were undertaken by third parties.
- Demonstrated capacity and disposition of each parent to participate and be involved in the child’s school and extracurricular activities.
- Demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.
- Capacity and disposition of each parent to protect the child from the ongoing litigation regarding child custody.
- Developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child’s developmental needs.¹²

Further, the court may order sole parental responsibility and make such arrangements for time-sharing as will best protect the child or abused spouse from further harm if the court determines that shared parental responsibility would be detrimental to the child.¹³ Current law provides for a rebuttable presumption¹⁴ that parental time-sharing would be detrimental to the child if there is evidence that:

- A parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28, F.S., and ch. 775, F.S.; or
- Meets the criteria of s. 39.806(1)(d), F.S., relating to grounds for termination of parental rights of incarcerated parents.¹⁵

If the presumption is not rebutted, shared parental responsibility, including time-sharing and decisions regarding the child, may not be granted to the convicted parent.¹⁶ In any event, the convicted parent is not relieved of any obligation to provide financial support.¹⁷ The court may

¹² Section 61.13(3)(a)-(t), F.S.

¹³ Section 61.13(2)(c)2., F.S.

¹⁴ Every rebuttable presumption is either a presumption: (a) affecting the burden of producing evidence and requiring the trier of fact to assume the existence of the presumed fact, unless credible sufficient evidence is introduced to the contrary in which case the trier of fact must determine whether the fact has been proven without regard to the presumption; or (b) affecting the burden of proof that imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact. Section 90.302, F.S.

¹⁵ Section 61.13(2)(c)2., F.S.

¹⁶ *Id.*

¹⁷ *Id.*

consider evidence of domestic violence or child abuse as evidence of detriment to the child even if the parent is not convicted of any such offenses or an injunction for protection against domestic violence has not been issued.¹⁸

Currently, Florida law does not expressly prohibit a sex offender from exercising time-sharing with his or her minor child unless there is a court order to the contrary.

Although current law requires the court to acknowledge in writing when it considers evidence of sexual violence in evaluating the best interests of the child,¹⁹ it is possible to be classified as a sexual offender without committing a violent sexual act.²⁰ Therefore, under current law, a sexual offender who has not committed a violent sexual act may still be entitled to time-sharing with a minor child.

Termination of Parental Rights

Section 39.806, F.S., authorizes the Department of Children and Families (DCF) to file a petition for termination of parental rights (TPR) against both parents when they fail to remedy the family problems that brought a child into the dependency system.²¹ Alternatively, the DCF may move to terminate only one of the parent's rights if it can prove certain grounds, such as incarceration, egregious conduct, chronic substance abuse, the conception of the child as a result of sexual battery, a conviction requiring the parent to register as a sexual predator, or an incarcerated parent who the court determined is a sexual predator in s. 775.084, F.S., or committed a sexual battery that constitutes a capital, life, or first degree felony in violation of s. 794.011, F.S.²²

Sexual Offenses

Sexual offenses enumerated under s. 943.0435(1)(h)1.a., F.S., include:

- Sexual misconduct with a person having a developmental disability (s. 393.135(2), F.S.);
- Sexual misconduct with a mental health patient by an employee (s. 394.4593(2), F.S.);
- Specified violations of kidnapping or falsely imprisoning a minor (s. 787.01 or s. 787.02, F.S.);²³
- Luring or enticing a child, by a person with a prior sexual conviction (s. 787.025(2), F.S.);
- Human trafficking for commercial sexual activity (s. 787.06(3)(b), (d), (f), or (g), F.S.);
- Sexual battery (s. 794.011, excluding s. 794.011(10), F.S.);
- Unlawful sexual activity with a minor (s. 794.05, F.S.);
- Lewd or lascivious battery, molestation, conduct, or exhibition (s. 800.04, F.S.);
- Video voyeurism, involving a minor victim (s. 810.145(8), F.S.);
- Lewd or lascivious offense on an elderly or disabled person (s. 825.1025, F.S.);
- Sexual performance by a child (s. 827.071, F.S.);

¹⁸ Section 61.13(2)(c)2., F.S.

¹⁹ Section 61.13(3)(m), F.S.

²⁰ For example, an offender might have been required to register as a sexual offender based on a felony conviction for video voyeurism. *See* s. 810.145, F.S.

²¹ Section 39.8055, F.S.

²² Section 39.806, F.S.

²³ However, the Florida Supreme Court has held there must be a sexual element to the kidnapping or false imprisonment when the victim is a minor. *State v. Robinson*, 873 So.2d 1205 (Fla. 2004).

- Providing obscene materials to a minor (s. 847.0133, F.S.);
- Computer pornography involving a minor (s. 847.0135(2), F.S.);
- Soliciting a minor over the Internet (s. 847.0135(3), F.S.);
- Traveling to meet a minor (s. 847.0135(4), F.S.);
- Lewd or lascivious exhibition over the Internet (s. 847.0135(5), F.S.);
- Transmitting child pornography by electronic device or equipment (s. 847.0137, F.S.);
- Transmitting material harmful to a minor by electronic device (s. 847.0138, F.S.);
- Selling or buying a minor to engage in sexually explicit conduct (s. 847.0145, F.S.);
- Racketeering involving a sexual offense (s. 895.03, F.S.);
- Sexual misconduct with a forensic client (s. 916.1075(2), F.S.); and
- Sexual misconduct by an employee with a juvenile offender (s. 985.701(1), F.S.).

Florida's Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for classification as a sexual offender.²⁴ The registration laws also require reregistration and provide for public and community notification of certain information about sexual offenders. The laws span several different chapters and numerous statutes²⁵ and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles, and the Department of Children and Families (DCF).

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the juvenile was 14 years of age or older.²⁶

Sexual offenders are required to report at registration and reregistration certain information, including but not limited to, physical characteristics, relevant sex offense history, and information on residence, vehicles/vessels owned, and travel. The FDLE, through its agency website, provides a searchable database that includes some of this information.²⁷ Further, local

²⁴ Sections 775.21 and 943.0435, F.S.

²⁵ Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

²⁶ Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

²⁷ The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. The FDLE maintains a database that allows members of the public to search for sexual offenders through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education.

law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage. Registration requirements may differ based on a special status, e.g., the sexual offender is in the DOC's control or custody, under the DOC's or the DJJ's supervision, or in a residential commitment program under the DJJ.

III. Effect of Proposed Changes:

The bill amends s. 61.13, F.S., to create a rebuttable presumption of detriment to the child and to establish a rebuttable presumption against a court from granting a parent time-sharing with his or her minor child if the parent has been convicted or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., F.S. (offense criteria relevant to sexual offender registration), and at the time of the offense:

- The parent was 18 years of age or older; and
- The victim was under 18 years of age or the registrant believed the victim to be under 18 years of age.

However, the court may grant time-sharing if it makes a specific finding in writing that the parent poses no significant risk of harm to the child and that time-sharing is in the best interest of the child. The bill also requires the court to consider all time-sharing factors provided under current law when developing a time-sharing schedule if the presumption is rebutted.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The Florida Supreme Court has recognized that under Art. I, s. 23 of the Florida Constitution, parents have a fundamental liberty interest in determining the care and upbringing of their children.²⁸ However, a parent's right to time-sharing is not absolute, and the Legislature may enact a time-sharing policy when it affects the best interest of the child.²⁹

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill provides that the prohibition on granting time-sharing in specified instances to a parent does not apply if the court makes a specific finding in writing that the parent poses no significant risk of harm to the child and that time-sharing is in the best interest of the child. To the extent that this provision results in additional litigation related to the ability to be granted time-sharing rights, the bill may result in both parents involved in parenting plans and time-sharing agreements paying additional legal fees to litigate related to the time-sharing rights of the minor child or children.

C. Government Sector Impact:

The bill provides that the prohibition on granting time-sharing in specified instances to a parent does not apply if the court makes a specific finding in writing that the parent poses no significant risk of harm to the child and that time-sharing is in the best interest of the child. To the extent that this provision results in an increased workload to the courts from additional or more extensive hearings to make such determinations, the bill may result in an indeterminate fiscal impact on the state court system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 61.13 of the Florida Statutes.

²⁸ *Beagle v. Beagle*, 678 So.2d 1271, 1275 (Fla. 1996).

²⁹ *See, e.g., Mallick v. Mallick*, 2020 WL 6106287 (Fla. 2d DCA Oct. 16, 2020); *Bainbridge v. Pratt*, 168 So.3d 310 (Fla. 1st DCA 2011).

IX. 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 Rules on April 6, 2021:

The committee substitute:

- Amends the bill to establish a rebuttable presumption against, rather than prohibiting, parental time-sharing with a minor child if the parent is convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., F.S.; and
- Requires the court to consider all time-sharing factors under current law when developing a time-sharing schedule if the presumption is rebutted.

CS by Children, Families, and Elder Affairs on March 2, 2021:

The committee substitute amends the bill to prohibit time-sharing with a minor child if the parent is convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., F.S., rather than prohibiting time-sharing if a parent is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.

- B. **Amendments:**

None.