

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1146

INTRODUCER: Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Yarborough

SUBJECT: Shared Parental Responsibility After the Establishment of Paternity

DATE: April 18, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tuszynski</u>	<u>Cox</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Tuszynski</u>	<u>Twogood</u>	<u>RC</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1146 amends s. 742.011, F.S., to clarify that after the birth of a child a parent may request a determination of parental responsibility and child support and for the creation of a parenting plan and timesharing schedule pursuant to ch. 61, F.S. Absent such a determination of parental responsibility and child support, a mother retains sole parental responsibility and there is no requirement for timesharing.

The bill amends s. 742.10, F.S., to require that any action to establish paternity include a determination of parental responsibility and a parenting plan, establish a timesharing schedule, and child support. The bill attaches determinations of parental responsibility and timesharing to the establishment of paternity for a father under ch. 742, F.S.

The bill also amends s. 744.301, F.S., to clarify that an unwed mother and a father who sign a voluntary acknowledgment of paternity or have established paternity through a court judgment are the natural guardians of the child. As such, they are subject to the rights and responsibilities of parents that a married parent would enjoy. If a father has not established paternity, the mother is the natural parent and is entitled to primary residential care and custody of the child.

The bill does not appear to have a fiscal impact to state government or the private sector. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

## II. Present Situation:

### **Rights and Responsibilities of a Parent**

In a dissolution of marriage with children or in a paternity case, issues of parenting must be worked out between the parties. The United States Supreme Court and Florida courts have consistently ruled that a parent's desire and right to the companionship, care, custody, and management of his or her children is an important interest that warrants deference and, absent a powerful countervailing interest, protection.<sup>1</sup> Further, a parent has general responsibilities owed to his or her children, including supervision, health and safety, education, care, and protection. In Florida, parenting is broken down into two distinct components: parental responsibility (decision-making) and timesharing (physical visitation with the child based on a parenting plan).

Under current law, issues related to timesharing and parental responsibility do not have to be addressed in a final judgment of paternity; a court is only required to address child support in such a paternity action.<sup>2</sup>

### ***Child Support***

Under s. 61.29, F.S., each parent has a fundamental obligation to support his or her minor or legally dependent child. A court must order either or both parents owing a duty of support to the child to pay support pursuant to s. 61.30, F.S. A parent's child support obligation is calculated based on the child support guidelines established in s. 61.30, F.S. These guidelines use a mathematical formula to develop the basic child support obligation of each parent. The court may not deviate from the basic child support obligation provided under the guidelines by more than five percent when establishing the child support award except in very limited circumstances, such as when the court orders substantial time-sharing.

### ***Timesharing and Parental Responsibility***

Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting<sup>3</sup> and time-sharing<sup>4</sup> 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. As a threshold consideration, the Legislature has declared that:<sup>5</sup>

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

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<sup>1</sup> See *Lassiter v. Dep't of Soc. Services of Durham Cnty., N. C.*, 452 U.S. 18, 27 (1981) (calling the right "plain beyond the need for multiple citation" and quoting *Stanley v. Illinois*, 405 U.S. 645 (1972)); *I.T. v. Dep't of Children & Families*, 338 So. 3d 6 (Fla. 3d DCA 2022); *D.M.T. v. T.M.H.*, 129 So. 3d 320 (Fla. 2013); *F.R. v. Adoption of Baby Boy Born November 2, 2010*, 135 So. 3d 301 (Fla. 1st DCA 2012); *In Interest of J.D.*, 510 So. 2d 623 (Fla. 1st DCA 1987).

<sup>2</sup> Section 742.031(1), F.S.

<sup>3</sup> Parenting or parental responsibility refers to the responsibility and right to make important decisions about the child's welfare, such as education and medical care after the parents separate.

<sup>4</sup> Time-sharing refers to the time, including overnights and holidays, which the child spends with each parent. Section 61.046(23), F.S.

<sup>5</sup> Section 61.13(2)(c)1., F.S.

marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. ... [T]here is no presumption 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.

Therefore, current law does not provide a presumption in favor of a specific time-sharing schedule, and the court sets a time-sharing schedule which may be based on an agreement between the parties. In establishing time-sharing, the court must consider the best interests of the child<sup>6</sup> as the primary consideration and evaluate all factors affecting the welfare and interests of the child and the circumstances of the 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.
- 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.
- 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.<sup>7</sup>

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<sup>6</sup> Section 61.13(2)(c), F.S.

<sup>7</sup> Section 61.13(3), F.S.

A court may prescribe a “parenting plan”<sup>8</sup> by which the parents are ordered to share decision-making and physical custody of the minor child. The parenting plan may order parents to exercise shared parental responsibility, it may delegate decision-making authority over specific matters to one parent, or it may grant a parent sole parental responsibility over the minor child. Common issues concerning a minor child may include education, healthcare, and social or emotional wellbeing. Further, once a court has established parental responsibility, a parenting plan, or a time-sharing schedule, such plan may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child.<sup>9</sup>

### **Establishment of Paternity**

Pursuant to ch. 742, F.S., paternity of a child born to an unmarried mother may be established by adjudicatory hearing, voluntary acknowledgement, by the Department of Revenue,<sup>10</sup> or by court order in response to a Petition to Establish Paternity.<sup>11</sup> Shared parental responsibility under ch. 61, F.S., does not apply until an order adjudicating paternity is entered. Without a court order specifically establishing a timesharing schedule and parental responsibility, putative fathers whose paternity is established through ch. 742, F.S., are left without defined rights relating to his relationship with the child.

### ***Adjudicatory Hearing***

If paternity has been raised and determined as a matter of law within an adjudicatory hearing brought under the statutes governing inheritance, or dependency under workers’ compensation or a similar compensation program, such adjudication establishes the paternity of the father.<sup>12</sup> When paternity is established through an adjudicatory hearing, the court is not required to establish parental responsibilities or a timesharing schedule.

### ***Affidavit or Voluntary Acknowledgment***

Parents may also establish paternity by agreement and both parents may sign an affidavit of voluntary acknowledgement of paternity under oath in the presence of a notary or under oath in the presence of two witnesses.<sup>13</sup> This establishes a rebuttable presumption of paternity and a sixty-day revocation period is triggered. During the 60-day revocation period, either the mother or the alleged father may rescind the acknowledgement of paternity.<sup>14</sup> After the 60-day period, the signed voluntary acknowledgement of paternity constitutes an establishment of paternity and a court may only allow a collateral challenge based on fraud, duress, or material mistake of fact.<sup>15</sup> Alternatively, both parents may establish paternity by executing an affidavit of paternity

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<sup>8</sup> A “parenting plan” is a document created to govern the relationship between the parents relating to decisions which must be made regarding the child and must contain a timesharing schedule for the parents and child. Section 61.046(14), F.S. If a parenting plan is agreed to by the parties, it must be approved by the court.

<sup>9</sup> Section 61.13.(3), F.S.

<sup>10</sup> A request for timesharing or visitation may not be filed in a DOR action for paternity. *See s. 409.2564, F.S.*

<sup>11</sup> Section 742.011, F.S.

<sup>12</sup> Section 742.10, F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 742.10(1), F.S.

<sup>15</sup> Section 742.10(4), F.S.

or a stipulation of paternity and filing it with the clerk of court.<sup>16</sup> If both parents sign the affidavit or stipulation of paternity, paternity is established at the time the affidavit is filed with the clerk of court.

### ***Department of Revenue***

In the absence of an acknowledgement or affidavit of paternity, the Department of Revenue (DOR) may also establish paternity under s. 409.256, F.S. The DOR may commence a paternity proceeding or a paternity and child support proceeding when:

- Paternity has not otherwise been established;
- No one is named as the father on the child's birth certificate or the person named as the father is the putative father named in an affidavit;
- The mother was unmarried at the time of the child's conception and birth; or
- The DOR is providing services under Title IV-D.<sup>17</sup>

### ***Court Order***

Section 742.011, F.S., permits a woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child, to bring proceedings in court to determine the paternity of the child when paternity has not been established by law or otherwise. Section 742.031, F.S., requires the court to conduct a hearing on the complaint and establish paternity if the court finds the alleged father is the father of the child. Upon a determination of paternity, the court must decide on the ability of the parents to support the child.<sup>18</sup> In a matter brought under ch. 742, F.S., the court is not required to decide on an appropriate parenting plan or time-sharing schedule.<sup>19</sup> This can result in the establishment of paternity and a child support order issued without providing a specific timesharing schedule for the child.

The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody unless a court enters an order stating otherwise.<sup>20</sup> If an order establishing paternity includes a child support award but does not provide a parenting plan or timesharing schedule, the parent receiving the child support (obligee) is deemed to have all of the timesharing and sole parental responsibility without prejudice to the other parent (obligor).<sup>21</sup> Similarly, if a paternity judgment makes no child support award and does not provide a parenting plan, the mother is presumed to have all of the timesharing over the child as well as sole parental responsibility. As such, an order simply establishing paternity and nothing more, can leave a father with no decision-making authority or timesharing with the child.

### **III. Effect of Proposed Changes:**

The bill amends s. 742.011, F.S., to clarify that after the birth of a child a parent may request a determination of parental responsibility and child support and for the creation of a parenting plan

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<sup>16</sup> Section 742.10(1), F.S.

<sup>17</sup> Section 409.256(2), F.S.

<sup>18</sup> Section 742.031(1), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 744.301(1), F.S.

<sup>21</sup> Section 742.031(2), F.S.

and timesharing schedule pursuant to ch. 61, F.S. Absent such a determination, a mother retains sole parental responsibility and there is no requirement for timesharing.

The bill amends s. 742.10, F.S., to require that any action to establish paternity include a determination of parental responsibility and a parenting plan, establish a timesharing schedule, and child support. The bill requires that parental responsibility and timesharing be established in addition to the establishment of paternity for a father.

The bill also amends s. 744.301, F.S., to clarify that an unwed mother and a father who sign a voluntary acknowledgment of paternity or have established paternity through a court judgment are the natural guardians of the child. As such, they are subject to the rights and responsibilities of parents that a married parent would enjoy. If a father has not established paternity, the mother is the natural parent and is entitled to primary residential care and custody of the child.

The bill is effective July 1, 2023.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. **Government Sector Impact:**

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 742.011, 742.10, and 744.301.

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 Judiciary on March 29, 2023:**

The committee substitute adds language to s. 742.10(5), F.S., to acknowledge and clarify that the Department of Revenue has existing authority to establish an administrative support order under s. 409.2563, F.S. Currently, the department is authorized to establish these orders if there is no support order for a child in a Title IV-D case when paternity has already been established.

**CS by Children, Families, and Elder Affairs on March 14, 2023:**

The committee substitute reinserts inadvertently deleted language that is federally required to receive certain federal grants related to the operation of child support programs and removes a phrase for clarity and concision made unnecessary by a subsequent cross-reference.

B. **Amendments:**

None.