

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 Children, Families, and Elder Affairs

BILL: SB 1286
 INTRODUCER: Senator Book
 SUBJECT: Designated Public Safe Exchange Locations
 DATE: March 20, 2023 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tuszynski	Cox	CF	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1286 amends s. 125.01, F.S., expanding the duties of county legislative and governing bodies by requiring each board of county commissioners to designate one or more sheriff’s office or police department locations as public safe exchange locations for parents to exchange custody of a child. The safe exchange location must:

- Have staff on site 24-hours a day.
- Install a purple light on the outside of the building to identify it as a designated public exchange location.
- Be accessible 24 hours a day, 7 days a week.
- Provide adequate lighting.
- Provide external video surveillance that records continuously, 24 hours a day, 7 days a week, that meets all of the following criteria:
 - At least one camera fixed on the entrance to the premises and able to record the areas near the external purple light.
 - Records images clearly and displays accurate date and time.
 - Retains video recordings or images for at least 6 months.

The bill requires a designation of a minimum of one safe exchange location in counties with a population of less than 50,000, a minimum of two locations for a population of less than 75,000, and a minimum of three locations for a population of more than 75,000.

The bill amends s. 61.13, F.S., requiring any parenting plan approved by a court to allow a parent or parent’s designee to exchange a child with the other parent or parent’s designee at a designated public safe exchange location. The bill details that a parent may not be found in violation of a parenting plan, time-sharing schedule, or child exchange order or be charged with interference with the same under s. 787.03, F.S. if the parent or designee chooses to use a public safe exchange location previously agreed to by both parents in a parenting plan, sharing schedule, or child exchange order.

The bill also amends s. 787.03, F.S., of the Florida Criminal Code to make conforming changes to the crime of “interference with custody” to state that a parent or designee may not be charged with that crime solely for using or attempting to use a public safe exchange location previously agreed to by both parents or specified in a parenting plan, time-sharing schedule, or child exchange order.

The county and municipality mandate provisions of Article VII, section 18 of the Florida Constitution may apply. See Section IV. Constitutional Issues.

The bill will have an indeterminate negative fiscal impact on the government sector. See Section V. Fiscal Impact Statement.

The bill takes effect 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.¹ 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, including parental responsibility (decision-making) and timesharing (physical visitation with the child based on a parenting plan).

Timesharing and Parental Responsibility

Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting² and time-sharing³ 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:

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 parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no

¹ See *Lassiter v. Dep’t of Soc. Services of Durham Cnty., N. C.*, 452 U.S. 18 (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).

² 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. See *CustodyXChange, Parental Rights and Parental Responsibilities: Know Yours*, available at <https://www.custodyxchange.com/topics/custody/legal-concepts/parental-rights-responsibility.php> (last visited March 15, 2023)

³ Time-sharing refers to the time, including overnights and holidays, which the child spends with each parent. Section 61.046(23), F.S.

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.⁴

In establishing time-sharing, the court must consider the best interests of the child⁵ as the primary consideration and evaluate all factors affecting the welfare and interests of the child and the circumstances of the family.⁶

A court may prescribe a “parenting plan”⁷ 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 time-sharing plan⁸ may be ordered, and 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.⁹

Cassie Carli and Safe Exchange of Custody

In late March of 2022, Cassie Carli of Navarre, Florida went missing after meeting with her 4-year-old daughter’s father, her ex-boyfriend, to exchange custody of the child.¹⁰ Ms. Carli’s body was found a week later in Alabama and her ex-boyfriend was arrested in Tennessee on charges of tampering with evidence, giving false information concerning a missing persons investigation, and destruction of evidence.¹¹

County Government and Powers

Florida has two distinct County types:

- **Charter Counties** – these counties operate under a county charter and have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.¹²
- **Non-charter Counties** – these counties operate under powers of self-government that are provided by general or special law.¹³

⁴ Section 61.13(2)(c)1., F.S.

⁵ Section 61.13(2)(c), F.S.

⁶ Section 61.13(3), F.S.

⁷ 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.

⁸ Section 61.13(2)(b), F.S.

⁹ Section 61.13.(3), F.S.

¹⁰ WEAR News 3, *TIMELINE: Disappearance, body discovery of Navarre mother Cassie Carli*, available at <https://weartv.com/news/local/timeline-disappearance-of-missing-navarre-mother-cassie-carli> (last visited March 14, 2023).

¹¹ *Id.*

¹² FLA. CONST. art. VIII, s. 1(g).

¹³ FLA. CONST. art. VIII, s. 1(f).

Section 125.01, F.S., specifies powers of self-government for non-charter counties, unless such powers are preempted by general or special law.¹⁴ Such powers include, but are not limited to, the authority to:

- Employ personnel;¹⁵
- Perform any act not specifically enumerated that is not inconsistent with law and is in the common interest of the people of the county;¹⁶
- Adopt ordinances and prescribe fines;¹⁷ and
- Provide hospitals, ambulance service, and health and welfare programs.¹⁸

Article VII, section 18 (a) of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

Interference with Custody

In 1974, the Legislature created the offense of interference with custody.¹⁹ It is a third degree felony²⁰ for a person:

- Without legal authority, to knowingly or recklessly take a child 17 years of age or under or any incompetent person from the custody of his or her parent, guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian.²¹
- In the absence of a court order determining custody or visitation rights, who is a parent, stepparent, guardian, or relative who has custody of a child or incompetent person, to take or conceal the child or incompetent person with a malicious intent to deprive another person of his or her right to custody.²²

Defenses to a charge of interference with custody are:

- The defendant had reasonable cause to believe the action was necessary to preserve the child from danger;
- The defendant was the victim of an act of domestic violence or had reasonable cause to believe he or she was about to become the victim of an act of domestic violence and the defendant had reasonable cause to believe the action was necessary to escape or protect himself or herself from the domestic violence or preserve the child from exposure; or
- The child was taken away at his or her own instigation without enticement and without purpose to commit a criminal offense against the child, and the defendant establishes that it was reasonable to rely on the instigating acts of the child.²³

¹⁴ See Section 125.01, F.S.

¹⁵ Section 125.01(3)(a), F.S.

¹⁶ Section 125.01(1)(w), F.S.

¹⁷ Section 125.01(1)(t), F.S.

¹⁸ Section 125.01(1)(e), F.S.

¹⁹ Chapter 74-383, s. 24, L.O.F., codified as s. 787.03, F.S.

²⁰ A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

²¹ Section 787.03(1), F.S.

²² Section 787.03(2), F.S.

²³ Section 787.03(4), F.S.

The statute does not apply if a spouse flees with a child because he or she:

- Is the victim of domestic violence or reasonably believes that he or she is about to become a victim of such violence; or
- Believes the welfare of the child is in danger.²⁴

In order to avail himself or herself of the exception for spouses, a person who takes a child must file a report, within 10 days after taking the child, with the sheriff's office or the state attorney's office of the county where the child resided at the time he or she was taken.²⁵ The report must contain the name of the person taking the child, the current address and telephone number of the person and child, and the reasons the child was taken.²⁶ Within a reasonable time, the person also must commence a custody proceeding consistent with the federal Parental Kidnapping Prevention Act or the Uniform Child Custody Jurisdiction and Enforcement Act.^{27, 28}

III. Effect of Proposed Changes:

The bill amends s. 125.01, F.S., to expand the duties of a county legislative and governing body to require each board of county commissioners to designate one or more sheriff's office or police department locations as public safe exchange locations for parents to exchange custody of a child. The safe exchange location must:

- Have staff on site 24-hours a day.
- Install a purple light on the outside of the building to identify it as a designated public exchange location.
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²⁴ Section 787.03(6)(a), F.S.

²⁵ Section 787.03(6)(b), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Parental Kidnapping Prevention Act, 28 U.S.C. s. 1738A; Uniform Child Custody Jurisdiction and Enforcement Act, ss. 61.501 through 61.542, F.S.

to use a public safe exchange location previously agreed to by both parents in a parenting plan, time-sharing schedule, or child exchange order.

The bill also amends s. 787.03, F.S., conforming changes to the crime of “interference with custody” to state that a parent or designee may not be charged with that crime solely for using or attempting to use a public safe exchange location previously agreed to by both parents or specified in a parenting plan, time-sharing schedule, or child exchange order.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county and municipality mandate provisions of Article VII, section 18 of the Florida Constitution may apply because the bill requires local governments to expend funds on sheriff offices or police department buildings designated as public safe exchange locations to:

- Install certain lighting and video surveillance equipment.
- Retain/store video or images for at least 6 months.

Article VII, section 18 (a) of the Florida Constitution provides in part that a county or municipality may not be bound by a general law requiring a county or municipality to spend funds or take an action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. None of the constitutional exceptions appear to apply.

Article VII, section 18 (d) provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. Laws having an “insignificant fiscal impact” are exempt from the mandate requirements, which for Fiscal Year 2022-2023 is forecast at approximately \$2.3 million. However, any local government costs associated with the bill are speculative and not readily estimable for purposes of determining whether the exemption for bills having an insignificant fiscal impact applies.

If the bill does qualify as a mandate, in order to be binding upon cities and counties the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house.

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:

The bill may have an indeterminate negative fiscal impact on those sheriff's offices and police departments designated as safe exchange locations as they will be required to incur a cost to install certain lighting and video surveillance to comply with the bill's language.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 61.13, 125.01, and 787.03 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.