

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 1292

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

SUBJECT: Parenting Plans

DATE: April 19, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tuszynski</u>	<u>Cox</u>	<u>CF</u>	Fav/CS
2.	<u>Tuszynski</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1292 creates a rebuttable presumption that equal time-sharing with minor children is in the best interests of a child, and provides that a parent moving to a residence within 50 miles of the primary residence of a child may be considered a substantial and material change in circumstances.

The bill also provides that to rebut the presumption, the party in opposition to equal time-sharing must prove by a preponderance of the evidence that equal time-sharing is not in the best interests of the minor child who is common to the parties.

The bill will likely not have a fiscal impact on the private sector or government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Timesharing with Minor Children

In general terms, ch. 61, F.S., contains the statutes that govern the dissolution of marriage, the distribution of assets and liabilities arising from the marriage, and the parents' responsibilities to support and care for their children, whether the parents are married or unmarried.

Section 61.13, F.S., establishes a court's authority to order payments for child support and to approve, grant, or modify a parenting plan.¹ When making a decision in these areas, the guiding principle a court must follow is the "best interests of the child" standard. Additionally, the public policy of the state is that each child have frequent and continuing contact with both parents unless the court finds that shared parental responsibility would be detrimental to the child. Shared parental responsibility refers to the authority of both parents, regardless of the time-sharing schedule, to make decisions for the child in matters such as education and health care.²

Timesharing - In General

The public policy of the state is for each minor child to have "frequent and continuing contact with both parents."³ Additionally, a court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.⁴ In setting a time-sharing award, there 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.⁵ In determining time-sharing with each parent, a court must consider the best interests of the child based on statutory factors, namely:

- The demonstrated capacity of each parent to have a close and continuing parent-child relationship, honor the time-sharing schedule, and be reasonable when changes are required.
- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child, including developmental needs.
- 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, 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.
- The moral fitness and the mental and physical health of the parents.
- The reasonable preference of the child, if the child is of sufficient intelligence, understanding, and experience to express a preference.
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime, and to be involved in the child's school and extracurricular activities.
- The demonstrated capacity of each parent to keep the other parent informed about the minor child, and the willingness of each parent to adopt a unified front on major issues.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has knowingly provided false information about these issues. If the court accepts evidence of prior or pending actions on these issues, the court must acknowledge in writing that the evidence was considered in evaluating best interests.

¹ A parenting plan is the document that is created "to govern the relationship between the parents relating to the decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and child."

Section 61.046(14) F.S.

² See s. 61.13(2)(c)3., F.S.

³ Section 61.13(2)(c)1., F.S.

⁴ Section 61.13 (2)(c)2., F.S.

⁵ Section 61.13(2)(c)1., F.S.

- The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before and during litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.⁶

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.⁷

Modification of a Timesharing Award

Times change and circumstances change. Just like alimony, timesharing with a minor child is subject to future modification by the court. Either party to a final judgment of dissolution or final order regarding timesharing and child support may seek modification of the timesharing or child support award on the grounds of a substantial change in circumstances.⁸ The party seeking modification of a timesharing order must allege, and the trial court must find, that:

- Circumstances have substantially and materially changed since the original custody determination;
- The change was not reasonably contemplated by the parties; and
- The child's best interests justify changing custody.⁹

The court may modify support retroactively to the date of the filing of the motion.¹⁰ Unlike alimony, timesharing is always modifiable while the child is a minor and the parties may not enter into an agreement that prohibits modification in the future.

Studies on Equal Time-sharing

A paper reviewing 40 studies on equal time-sharing found in part that:

While acknowledging that some studies were more methodologically sophisticated and used more valid and reliable measures than the others, the fact remains that the 40 studies reached similar conclusions. First, shared parenting was linked to better outcomes for children of all ages across a wide range of emotional, behavioral, and physical health measures. Second, there was not any convincing evidence that overnighting or shared parenting was linked to negative outcomes for infants or toddlers.¹¹

Relocation of Children with Parents

Section 61.13001, F.S., details the judicial process for parent relocation with a child in a dissolution of marriage and for the purposes of time-sharing agreements. The law defines "relocation" to mean a change in the location of the principal residence of a parent or other

⁶ Section 61.13(3), F.S.

⁷ Section 61.13(3)(t), F.S.

⁸ Section 61.14(1)(a), F.S.

⁹ *Korkmaz v. Korkmaz*, 200 So. 3d 263, 265 (Fla. Dist. Ct. App. 2016)

¹⁰ Section 61.14(1)(a), F.S.

¹¹ Neilson, *Shared Physical Custody: Summary of 40 Studies on Outcomes for Children*, *Journal of Divorce & Remarriage*, 55:613–635, 2014

person from his or her principle place of residence at the time of the last order establishing or modifying time-sharing. The change of location must be at least 50 miles from the residence and for at least 60 consecutive days, not including absence for the purpose of vacation, education, or the provision of health care for the child.¹²

Presumptions

A presumption in a legal proceeding is an assumption of the existence of a fact that is in reality unproven by direct evidence. A presumption is derived from another fact or group of facts that has been proven in the action. If a presumption is recognized, the presumed fact must be found to be present if the trier of fact finds that the underlying facts which give rise to the presumption exist. Presumptions usually assist in managing circumstances in which direct proof is rendered difficult. Presumptions arising out of considerations of fairness, public policy, and probability, as well as judicial economy, are also useful devices for allocating the burden of proof.¹³ There are two types of presumption applicable to civil actions -- a presumption affecting the burden of producing evidence and a presumption affecting the burden of proof.¹⁴

Presumptions that are recognized primarily to facilitate the determination of an action, rather than to implement public policy, are presumptions affecting the burden of producing evidence. These so-called bursting bubble presumptions are recognized when the underlying facts are proved to exist and they remain in effect until credible evidence is introduced to disprove the presumed fact. Once the evidence of the nonexistence of the presumed fact is offered, the presumption disappears.¹⁵

Any presumption not falling within the category of presumptions affecting the burden of producing evidence is a presumption affecting the burden of proof.¹⁶ These presumptions are recognized because they express a policy that society deems desirable. When proof is introduced of the basic facts giving rise to a presumption affecting the burden of proof, the presumption operates to shift the burden of persuasion regarding the presumed fact to the opposing party.¹⁷

Florida law is silent as to a rebuttable presumption for equal time-sharing absent of these enumerated factors.

III. Effect of Proposed Changes:

Timesharing with Minor Children

The bill creates a rebuttable presumption that equal time-sharing between the parents is in the best interest of a child common to the parties. The parties may waive the presumption and agree on a different timesharing agreement.

¹² See generally s. 61.13001, F.S.

¹³ *Presumptions—Generally*, 1 Fla. Prac., Evidence s. 301.1 (2020 ed.).

¹⁴ Section 90.302, F.S.

¹⁵ *Types of presumptions which affect the burden of producing evidence*, 1 Fla. Prac., Evidence s. 303.1 (2020 ed.).

¹⁶ Section 90.304, F.S.

¹⁷ *Types of presumptions which affect the burden of proof*, 1 Fla. Prac., Evidence § 304.1 (2020 ed.).

The bill provides that to rebut the presumption, the party in opposition to equal time-sharing must prove by a preponderance of the evidence that equal time-sharing is not in the best interests of the minor child who is common to the parties. As stated above, current s. 61.13(3), F.S., requires the court to consider the enumerated factors when determining the best interest of the child for, in part, time-sharing schedules. Therefore, to rebut the presumption provided for in the bill, the court will take evidence related to such factors to determine the best interest.

The bill also provides that a parent's permanent relocation to a residence within 50 miles of the primary residence of the child may be considered as a substantial and material change in circumstances for the purpose of a time-sharing modification.

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 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:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate positive impact on persons who are seeking for timesharing with a child or seeking to relocate by making timesharing orders more predictable thereby reducing litigation costs.

C. **Government Sector Impact:**

The bill may have an indeterminate positive impact on the courts by making timesharing orders more predictable thereby reducing workload and hearing litigation costs.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 61.13 of the Florida Statutes:

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 19, 2023:

The committee substitute:

- Clarifies that the rebuttable presumption does not modify the requirement for a court to consider all statutory factors when determining time-sharing.
- Changes the evidentiary standard to rebut the presumption from “competent and substantial” to “preponderance of the evidence.”
- Removes the presumption that a move back to within 50 miles is a substantial, material and unanticipated change in circumstances and instead allows a court to consider this change a substantial and material change in circumstances for the purposes of a time-sharing modification.

CS by Children, Families, and Elder Affairs on March 27, 2023:

The committee substitute adds language to indicate how a party would rebut the presumption of equal timesharing.

B. **Amendments:**

None.