

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1301 Parenting and Time-Sharing of Minor Children

**SPONSOR(S):** Judiciary Committee, Persons-Mulicka and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 1292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 4 N	Mathews	Jones
2) Judiciary Committee	22 Y, 0 N, As CS	Mathews	Kramer

### SUMMARY ANALYSIS

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. Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting and timesharing 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.

Current law does not provide a presumption in favor of a specific timesharing schedule. In establishing timesharing, the court must consider the best interests of the child and evaluate all factors affecting the welfare and interests of the child and the circumstances of the family.

In every case for modifying a parenting plan, including a timesharing schedule, the best interest of the child at issue should be the primary consideration. Pursuant to s. 61.13(2)(c), F.S., a court may only modify a parenting plan and timesharing schedule after a substantial, material, and unanticipated change in circumstances has been established.

With respect to a parent's relocation, there is no current presumption in favor of or against a request to relocate with a child when the relocation will materially affect the current timesharing and contact with the other parent entitled to timesharing.

CS/HB 1301 amends s. 61.13, F.S., relating to modifying a parenting plan or timesharing schedule to remove the requirement that the alleged substantial and material change in circumstances which warrants modification must also be unanticipated. The bill also creates a rebuttable presumption that equal timesharing is in the best interest of the child at issue. To overcome the presumption a party must prove by a preponderance of the evidence that equal timesharing is not in the best interests of the child.

The bill also amends s. 61.13, F.S., to create a presumption that if the parents of a child reside more than 50 miles apart and one parent relocates within 50 miles of the other parent, that move is a substantial and material change in circumstances for which modification of timesharing may be allowed.

The bill has an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Rights and Responsibilities of a Parent

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. 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). Although the right to integrity of the family is among one of the most fundamental rights, when parents divorce or separate, the parents' rights are subject to the overriding concern for the ultimate welfare or best interests of their children.

##### *Timesharing*

Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting<sup>1</sup> and timesharing<sup>2</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>3</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 marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific timesharing schedule when creating or modifying the parenting plan of the child.

Accordingly, current law does not provide a presumption in favor of a specific timesharing schedule, and the court sets a timesharing schedule when the parties are unable to agree. In establishing timesharing, the court must consider the best interests of the child<sup>4</sup> 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 timesharing 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.

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<sup>1</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>2</sup> Timesharing refers to the time, including overnights and holidays, which the child spends with each parent. S. 61.046(23), F.S.

<sup>3</sup> S. 61.13(2)(c)1., F.S.

<sup>4</sup> S. 61.13(2)(c), F.S.

- 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.

### *Parenting Plan*

A court may prescribe a "parenting plan"<sup>5</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.

A parenting plan is a document created to govern the relationship between parents relating to decisions that must be made regarding the minor child at issue.<sup>6</sup> A parenting plan must contain a timesharing schedule for the parents and the child.<sup>7</sup> The parenting plan should attempt to address all issues concerning the minor child, including, but not limited to, the child's education, health care, and physical, social, and emotional well-being.<sup>8</sup> In creating the parenting plan the court must consider all circumstances between the parents, including their historic relationship, domestic violence, and other factors.<sup>9</sup> A parenting plan is either created and agreed to by both parents and approved by the court, or is established by the court if the parents cannot agree to a plan or the parents agree to a plan that is not approved by the court.<sup>10</sup> A parenting plan may be utilized in cases involving minor children unrelated to a dissolution of marriage or in connection to a dissolution of marriage.

Pursuant to s. 61.13(2)(b), F.S., a parenting plan approved by the court must, at a minimum:

- Describe in adequate detail how the parents will share and be responsible for the daily tasks associated with raising the minor child;
- Include the timesharing schedule arrangements that specify the time that the minor child will spend with each parent;
- Designate which parent will be responsible for healthcare, school-related matters, and other activities; and
- Describe in adequate detail the methods and technologies the parents will use to communicate with the child.<sup>11</sup>

<sup>5</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. S. 61.046(14), F.S. If a parenting plan is agreed to by the parties, it must be approved by the court.

<sup>6</sup> S. 61.046(14), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> S. 61.13(2)(b), F.S.

Given the potential for heated disputes in matters involving a minor child, it is imperative that the parenting plan be as detailed as possible to eliminate ambiguity surrounding each parent's responsibilities and specific timesharing with the minor child. This generally includes a detailed description of the various holidays and with which parent the child will spend each holiday,<sup>12</sup> the location of the exchange from one parent's timesharing to the other parent's timesharing, who is responsible for the child's travel expenses, the times during which one parent will ensure the minor child is available to communicate with the other parent, the delegation of specific decision-making topics, and more.<sup>13</sup>

To assist parties with creating a parenting plan that meets the requirements under s. 61.13, F.S., the Florida Supreme Court has published a standardized parenting plan form, Form 12.995(a).<sup>14</sup> The form attempts to cover all possible aspects of an acceptable parenting plan including which parent can enroll the child in extra-curricular activities, the specific meaning of academic breaks and holidays, the process by which a parent should request a temporary schedule change, the specific days the child should be with each parent, and the specific time the exchange should occur.

Current law does not provide a presumption for or against either parent of a child or for any specific timesharing schedule when the court is creating or modifying a parenting plan.

### *Modification of Timesharing or a Parenting Plan*

In every case for modifying a parenting plan, including a timesharing schedule, the best interest of the child should be the primary consideration.<sup>15</sup> Pursuant to s. 61.13(2)(c), F.S., a court may only modify a parenting plan and timesharing schedule after a substantial, material, and unanticipated change in circumstances has been established. The requirement for a substantial change in circumstances promotes the finality of the judicial determination of custody and reflects the general belief that stability is good for children.<sup>16</sup> As such, in order to modify timesharing (commonly referred to as custody) of a minor child, the 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.<sup>17</sup>

Although the welfare and best interests of the child are of paramount concern, the final order delineating parental responsibility is *res judicata*.<sup>18,19</sup> The concept of *res judicata* promotes the finality of the judicial determination which, in turn, infers a presumption in favor of the reasonableness of the original decree.<sup>20</sup>

Demonstrating that there has been a substantial change in circumstances places an extraordinary burden on the party seeking to modify a timesharing schedule or child custody order, by design.<sup>21</sup> The high burden is intended to preclude parties from continually disrupting the lives of children by initiating

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<sup>12</sup> See *Mills v. Johnson*, 147 So. 3d 1023 (Fla. 2d DCA 2014) in which the trial court erred by adopting a timesharing schedule that did not address holiday timesharing given the historically contentious parenting relationship between the parties.

<sup>13</sup> See generally *Magdziak v. Sullivan*, 185 So. 3d 1291 (Fla. 5th DCA 2016); see also *Scudder v. Scudder*, 296 So. 3d 426 (Fla. 4th DCA 2020).

<sup>14</sup> Florida Supreme Court Approved Family Law Form 12.995(a), Parenting Plan (Feb. 2018), [https://www.flcourts.gov/content/download/686031/file\\_pdf/995a.pdf](https://www.flcourts.gov/content/download/686031/file_pdf/995a.pdf) (last visited Mar. 12, 2023).

<sup>15</sup> S. 61.13(3), F.S. The best interest of the child shall be determined by evaluating all of the factors affecting the welfare and interests of the child and the circumstances of the family provided under s. 61.13, F.S.

<sup>16</sup> *Sanchez v. Hernandez*, 45 So. 3d 57 (Fla. 4th DCA 2010).

<sup>17</sup> 25A Fla. Jur. 2d Family Law s. 961.

<sup>18</sup> *Wade v. Hirschman*, 903 So. 2d 928 (Fla. 2005).

<sup>19</sup> *Res judicata* is a term used to describe an issue that has already been adjudicated. Black's Law Dictionary 1336 (8th ed. 2004). *Res judicata* bars a party from further pursuing a claim that has already been decided or from re-litigating a decision that has already been reached.

<sup>20</sup> *Wade v. Hirschman*, 903 So. 2d at 934.

<sup>21</sup> *Reed v. Reed*, 182 So. 3d 837 (Fla. 4th DCA 2016); see generally *Wade v. Hirschman*.

repeated custody disputes.<sup>22</sup> However, the substantial change test should not serve to prohibit legitimate review in the best interests of the child where there have been significant changes affecting the well-being of the child, especially when the change of circumstances has occurred over a substantial period of time.<sup>23</sup>

As such, a court is unlikely to lightly consider the potential modification of a timesharing arrangement. It is the court's responsibility to look at the situation as a whole in a light that is most favorable to the well-being of the child at issue, including considerations for stability.

There is no current presumption in favor of or against a request to relocate with a child when the relocation will materially affect the current timesharing and contact with the other parent entitled to timesharing.<sup>24</sup> In making a determination regarding a temporary or permanent relocation, a court must consider:

- The nature, quality, extent of involvement, and duration of the child's relationship with the parent or other person proposing to relocate with the child and with the nonrelocating parent, other persons, siblings, half-siblings, and other significant persons in the child's life;
- The age and developmental stage of the child, the needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
- The feasibility of preserving the relationship between the nonrelocating parent or other person and the child through substitute arrangements that take into consideration the logistics of contact, access, and timesharing, as well as the financial circumstances of the parties; whether those factors are sufficient to foster a continuing meaningful relationship between the child and the nonrelocating parent or other person; and the likelihood of compliance with the substitute arrangements by the relocating parent or other person once he or she is out of the jurisdiction of the court;
- The child's preference, taking into consideration the age and maturity of the child;
- Whether the relocation will enhance the general quality of life for both the parent or other person seeking the relocation and the child, including, but not limited to, financial or emotional benefits or educational opportunities;
- The reasons each parent or other person is seeking or opposing the relocation;
- The current employment and economic circumstances of each parent or other person and whether the proposed relocation is necessary to improve the economic circumstances of the parent or other person seeking relocation of the child;
- That the relocation is sought in good faith and the extent to which the objecting parent has fulfilled his or her financial obligations to the parent or other person seeking relocation, including child support, spousal support, and marital property and marital debt obligations;
- The career and other opportunities available to the objecting parent or other person if the relocation occurs;
- A history of substance abuse or domestic violence as defined in s. 741.28 or which meets the criteria of s. 39.806(1)(d) by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation; and
- Any other factor affecting the best interest of the child or as set forth in s. 61.13.<sup>25</sup>

Relocation alone is not a substantial change in circumstances sufficient to warrant such modification of a parenting plan or timesharing schedule.<sup>26</sup> The party seeking to modify timesharing must still overcome the substantial change test before a court may address the requested modification. In custody disputes involving the relocation of a parent, courts generally conclude that the relocation does

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<sup>22</sup> *Sanchez v. Hernandez*, 45 So. 3d 57, 62 (Fla. 4th DCA 2010).

<sup>23</sup> 25A Fla. Jur. 2d Family Law s. 961 *citing to Reed*, 182 So. 3d 837.

<sup>24</sup> S. 61.13001(7), F.S.

<sup>25</sup> S. 61.13001(7)(a)-(k), F.S.

<sup>26</sup> *Ragle v. Ragle*, 82 So. 3d 109 (Fla. 1st DCA 2011); *see also Ness v. Martinez*, 249 So. 3d 754 (Fla 1st DCA 2018).

not amount to a substantial change if the relocation is not a significant distance away from the child's current location.<sup>2728</sup>

As such, a parent's relocation alone is not sufficient to trigger a modification of timesharing and custody under current law.

### **Effect of Proposed Changes**

CS/HB 1301 amends s. 61.13, F.S., to remove the requirement that a party who demonstrates the alleged substantial and material change in circumstances which warrants modification of a parenting plan or timesharing schedule, must also demonstrate that the change be unanticipated. The bill also creates a rebuttable presumption that equal timesharing is in the best interest of the child at issue. As such, a court must operate under the rebuttable presumption in favor of equal timesharing when creating or modifying a parenting plan. In order to overcome the rebuttable presumption, a party must prove by a preponderance of the evidence that equal timesharing is not in the best interests of the minor child. The bill requires a court to evaluate all factors listed under s. 61.13(3) and to provide written findings of fact for such factors.

The bill also amends s. 61.13, F.S., to create a presumption that if the parents of a child are living more than 50 miles apart at the time of the entry of the last order establishing timesharing and a parent moves within 50 miles of the other parent, that move may be considered a substantial and material change in circumstances for which modification of the parenting plan or timesharing schedule may be allowed. However, if such modification is not in the best interests of the child, the presumption does not apply. Therefore, under the bill, a non-custodial parent who lives 60 miles away from his or her child and permanently relocates to a residence that is only 40 miles away from the other parent triggers the ability for a court to modify the existing parenting plan.

The bill has an effective date of July 1, 2023.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 61.13, F.S., relating to support of children; parent and timesharing; powers of court.

**Section 2:** Provides an effective date.

## **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:

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<sup>27</sup> 25A Fla. Jur. 2d Family Law s. 963, *citing to D.M.J. v. A.J.T.*, 190 So. 3d 1129 (Fla. 2d DCA 2016).

<sup>28</sup> See *Villalba v. Villalba*, 316 So. 3d 366 (Fla. 4th DCA 2021) (in which a father changing his living situation from living with his parents with no extra bedroom for children at the time of the final judgment, but subsequently moving to a location with an extra bedroom for children, did not constitute a substantial, material, and unanticipated change in circumstances justifying a modification of child custody).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 11, 2023, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarified that the presumption of equal timesharing is a rebuttable presumption and provided the method by which the presumption may be overcome.
- Clarified that if the parents of a child are living more than 50 miles apart and one parent relocates to be within 50 miles of the other parent, that move may be considered a substantial and material change in circumstances for the purpose of a modification to a timesharing schedule.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.