



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** –The bill will have a workload impact on the Department of Revenue and the Office of the State Courts Administrator (OSCA).

**Empower families** – By eliminating what is considered by many to be outdated and negative terminology related to divorcing parents and their children, the bill may reduce animosity in relationships between and among family members and thus improve family circumstances for children.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Child Custody and Visitation**

The major child rearing decisions that must be made at the time of dissolution of marriage are commonly framed in terms of custody and visitation. Child custody decisions include determinations related to a child's primary residence, as well as which parent shall have primary parental authority. Visitation involves a secondary determination about how noncustodial parents will spend time with their children. The terms custody and visitation have been criticized as unnecessarily negative, the idea of "visiting" with one's child is particularly unappealing to many parents, and the creation of many new parenting arrangements has made the terms outdated.

Custody rules were not always as flexible as they are today. For the greater part of Western history, tradition and common law automatically gave fathers custody of their children and that changed little throughout the Middle Ages. Later, English common law provided fathers with absolute powers, as well as the legal obligation to protect, support, and educate their children. Fathers continued to have the right to custody, regardless of circumstances, and mothers had very restricted access to their children after divorce until the mid-nineteenth century.<sup>1</sup>

A shift occurred with the enactment of the British Act of 1839, which directed the courts to award custody of children under the age of seven to mothers, and to award visiting rights to mothers for children seven years and older. This "tender years" doctrine, while originally intended to determine custody only until the children were old enough to be returned to the father's custody, became the first significant challenge to the paternal presumption.<sup>2</sup>

In the seventeenth and eighteenth centuries, the American legal system applied the paternal preference to divorce cases involving child custody. Several major historical trends began to weaken the paternal presumption in the late 1800s, including society's increasing concern for children's welfare and the impact of the industrial revolution. As fathers sought work outside the boundaries of the farm or village, mothers remained at home as primary caretakers of children. This resulting division of family responsibilities into wage earner and child nurturer influenced subsequent custody decisions. In addition, the movement toward a maternal preference was accompanied by an increase in the legal status of women in the United States during the nineteenth and twentieth centuries.<sup>3</sup> The paternal preference was gradually replaced by a maternal preference, and by the 1920s, the maternal

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<sup>1</sup> Roth, A. The tender years presumption in child custody disputes. *Journal of Family Law* 15: 423-461., 1976.

<sup>2</sup> Kelly, J.B. The Determination of Custody. *The Future of Children, Children and Divorce*. Vol. 4, No. 1, Spring 1994.

<sup>3</sup> Mason, M.A. *From father's property to children's rights: The history of child custody in the United States*. New York: Columbia University Press, 1994.

preference in custody determinations became as firmly fixed as the earlier paternal preference, both in statutes and in judicial decision making.<sup>4,5</sup>

The maternal presumption for custody remained the standard for many decades, challenged only after the divorce rate saw a dramatic increase in the 1960s. Fueled by claims of sex discrimination by fathers in custody decisions, constitutional concerns for equal protection,<sup>6</sup> the feminist movement, and the entry of large numbers of women into the work force, which weakened the concept of a primary maternal caretaker, most states abandoned the maternal presumption by the mid-1970s in favor of gender-neutral laws.<sup>7</sup> The Uniform Marriage and Divorce Act, approved in 1970, provided for a straight best interests standard, and was adopted in varying forms by the majority of states. For the first time in history, custody decisions were to be based on a consideration of the needs and interests of the child rather than on the gender or rights of the parent.

In attempting to define this newer but more vague standard of the child's best interests, the concept of the psychological (rather than biological) parent, the need for continuity in parenting, and the need for expedited decision making were proposed as important criteria. And, consistent with the best interests focus, children's own wishes with respect to custody were also considered if they were deemed to be of sufficient age to form an intelligent opinion.<sup>8</sup>

The historic shift to gender-neutral and best interests standards laid the groundwork for a new custody arrangement to emerge, that of joint custody. The concept of joint custody originated in the early 1970s from a small number of fathers, including mental health professionals, who desired continuity in their relationship with their children after divorce and raised objections over being disenfranchised of their parental rights simply because divorce had occurred. The growing interest in shared custody as a means of preserving parental status and responsibilities was enhanced by several parallel developments. First, after focusing almost exclusively on mothers and children for decades, the child development field began, in the early 1970s, to study the father's contributions to the development of the child. The expanding literature suggested that fathers' contributions to their children's development had been undervalued, as had the importance of children's attachment to their fathers. Second, gender roles within families began to shift, particularly in dual-career families. More mothers began to work outside the home in addition to carrying out domestic responsibilities and as a result, many mothers and fathers wanted fathers to play a greater role in their children's lives after divorce.<sup>9</sup> And third, as divorce engaged the attention of the nation, numerous studies documented the sense of loss and alienation experienced by noncustodial parents and children in traditional custody arrangements after divorce. These trends, heightened by the fact that more than one million children were involved in divorce each year, resulted in pressure to pass new laws permitting joint custody as a viable option for post divorce custodial status.

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<sup>4</sup> Roth, A. The tender years presumption in child custody disputes. *Journal of Family Law* 15: 423-461. 1976.

<sup>5</sup> The assumption that mothers were better suited to raise children received an intellectual underpinning in the 1940s from Freudian psychoanalytic theory, which emphasized the mother's role as "unique . . . the first and strongest love object . . . the prototype of all later love relations." The subsequent body of theory and research on the development of infant attachments to the mother was equally influential in supporting the maternal preference. Later research indicating infants formed meaningful attachments to both of their parents by the middle of the child's first year provided support to paternal claims for sole or joint custody.

<sup>6</sup> See *Watts v. Watts*, 350 N.Y. State 2d 285, 290-91 (Family Court 1973), *Devine v. Devine* 398 So. 2d 686 (Alabama 1981), which held that maternal preference laws were a form of sex discrimination and violated fathers' equal protection rights under the Fourteenth Amendment.

<sup>7</sup> Roth, A. The tender years presumption in child custody disputes. *Journal of Family Law* 15: 423-461.,1976.

<sup>8</sup> Goldstein, J., Freud, A., and Solnit, A. *Beyond the best interests of the child*. New York: Free Press, 1973.

<sup>9</sup> Kelly, J.B. *The Determination of Custody. The Future of Children, Children and Divorce*. Vol. 4, No. 1, Spring 1994.

In 1979, the first joint custody statute was enacted in California, followed by Kansas, and Oregon.<sup>10</sup> By 1991, more than 40 states had statutes in which joint custody was either an option or a preference, and most other states had recognized the concept of joint custody in case law.<sup>11</sup> The effect of such legislation has been to promote increasingly positive attitudes toward greater paternal involvement after divorce among parents, lawyers, mental health professionals, and judges.<sup>12</sup> Frequency of visitation has increased between fathers and children, in part because of research documenting the psychological and economic impact for many children of infrequent contact with fathers and because of a societal trend toward somewhat more father involvement in child rearing during the marriage.

It has become increasingly evident that the adversarial legal system, pitting parent against parent, is unwieldy, expensive, unsatisfactory, and unnecessary for large numbers of divorcing parents wanting to reach good agreements about their children. The effort to ensure that children have post divorce parenting arrangements which promote good social and psychological adjustment is an ongoing one, involving dialogue and debate at all levels.<sup>13</sup>

The bill eliminates what is considered by many to be outdated and negative terminology related to divorcing parents and their children in order to reduce animosity in relationships between and among family members and thus improve family circumstances for children. It does this by:

- Redesignating chapter 61, Florida Statutes, as “Dissolution of Marriage; Support; Time-Sharing;”
- Deleting the definitions of the terms “custodial parent” or “primary residential parent” and “noncustodial parent” and creating a definition for the terms “parenting plan”, “parenting plan recommendation” and “time-sharing schedule;”
- Amending all applicable sections of chapter 61, Florida Statutes, to delete the terms “custodial parent” and “noncustodial parent”; and replace references to either term with the term “parent” or “obligee” or “obligor”. It also replaces existing references to “custody order” or “visitation order” with “parenting plan” and/or “time-sharing plan”.
- Repealing s. 61.121, Florida Statutes, relating to rotating custody;
- Amending additional sections of the Florida Statutes, to conform to changes in terminology in chapter 61, Florida Statutes.

#### C. SECTION DIRECTORY:

- Section 1.** Redesignates chapter 61, Florida Statutes, as “Dissolution of Marriage; Support; Time-sharing.”
- Section 2.** Amends s. 61.046, Florida Statutes, relating to definitions.
- Section 3.** Amends s. 61.052, Florida Statutes, relating to dissolution of marriage.
- Section 4.** Amends s. 61.09, Florida Statutes, relating to alimony and child support unconnected with dissolution.
- Section 5.** Amends s. 61.10, Florida Statutes, relating to adjudication of obligation to support spouse or minor child unconnected with dissolution.
- Section 6.** Repeals s. 61.121, Florida Statutes, relating to rotating custody.
- Section 7.** Amends s. 61.122, Florida Statutes, relating to child custody evaluations; presumption of psychologist’s good faith; prerequisite to parent’s filing suit; award of fees, costs, reimbursement.
- Section 8.** Amends s. 61.13, Florida Statutes, relating to custody and support of children; visitation rights; power of court in making orders.

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<sup>10</sup> Folberg, J. Custody overview. In Joint custody and shared parenting. Washington, DC: Bureau of National Affairs and Association of Family and Conciliation Courts, 1984, pp. 3-10.

<sup>11</sup> McKnight, M. Issues and trends in the law of joint custody. In Joint custody and shared parenting. 2d ed. J. Folberg, ed. New York: Guilford Press, 1991, pp. 209-17.

<sup>12</sup> Maccoby, E.E., and Mnookin, R.H. Dividing the child: Social and legal dilemmas of custody. Cambridge, MA: Harvard University Press, 1992.

<sup>13</sup> Kelly, J.B. The Determination of Custody. The Future of Children, Children and Divorce. Vol. 4, No. 1, Spring 1994.

- Section 9.** Amends s. 61.13001, Florida Statutes, relating to parental relocation of a child.
- Section 10.** Amends s. 61.13022, Florida Statutes, relating to child custody modification.
- Section 11.** Amends s. 61.14, Florida Statutes, relating to enforcement and modification of support.
- Section 12.** Amends s. 61.181, Florida Statutes, relating to the depository for alimony transactions, support, maintenance, and support payments and fees.
- Section 13.** Amends s. 61.1827, Florida Statutes, relating to identifying information concerning applicants for and recipients of child support services.
- Section 14.** Amends s. 61.20, Florida Statutes, relating to social investigation and recommendations when child custody is an issue.
- Section 15.** Amends s. 61.21, Florida Statutes, relating to parenting course authorization, fees, required attendance, and contempt.
- Section 16.** Amends s. 61.30, Florida Statutes, relating to child support guidelines and retroactive child support.
- Section 17.** Amends s. 61.401, Florida Statutes, relating to appointment of a guardian ad litem.
- Section 18.** Amends s. 61.45, Florida Statutes, relating to court orders of visitation or custody, risk of violation and bond.
- Section 19.** Amends s. 409.2554, Florida Statutes, relating to definitions.
- Section 20.** Amends s. 409.2558, Florida Statutes, relating to distribution and disbursement of support.
- Section 21.** Amends s. 409.2563, Florida Statutes, relating to the administrative establishment of child support obligations.
- Section 22.** Amends s. 409.2564, Florida Statutes, relating to actions for support
- Section 23.** Amends s. 409.25657, Florida Statutes, relating to requirements for financial institutions.
- Section 24.** Amends s. 409.25659, Florida Statutes, relating to insurance claim data exchange.
- Section 25.** Amends s. 409.2577, Florida Statutes, relating to the parent locator service.
- Section 26.** Amends s. 409.2579, Florida Statutes, relating to safeguarding Title IV-D case file information.
- Section 27.** Amends s. 409.811, Florida Statutes, relating to definitions relating to the Florida Kidcare Act.
- Section 28.** Amends s. 414.0252, Florida Statutes, relating to definitions.
- Section 29.** Amends s. 414.065, Florida Statutes, relating to noncompliance with work requirements.
- Section 30.** Amends s. 414.085, Florida Statutes, relating to income eligibility standards.
- Section 31.** Amends s. 414.095, Florida Statutes, relating to determining eligibility for temporary cash assistance.
- Section 32.** Amends s. 414.295, Florida Statutes, relating to temporary cash assistance programs and public records exemption....
- Section 33.** Amends s. 445.024, Florida Statutes, relating to work requirements.
- Section 34.** Amends s. 741.0306, Florida Statutes, relating to creation of the family law handbook.
- Section 35.** Amends s. 741.30, Florida Statutes, relating to domestic violence injunctions and enforcement.
- Section 36.** Amends s. 742.031, Florida Statutes, relating to hearings, court orders for support, hospital expenses, and attorney's fees.
- Section 37.** Amends s. 753.01, Florida Statutes, relating to definitions.
- Section 38.** Amends s. 827.06, Florida Statutes, relating to nonsupport of dependents.
- Section 39.** Amends s. 61.1825, Florida Statutes, relating to the state case registry.
- Section 40.** Provides for an effective date of October 1, 2008.

## 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:  
None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

In addition to the responsibilities for updating forms, the Florida Bar will also have to notify Thompson West Publisher of amendments to the forms so that they can update Thompson West, who will need to reprint the family law forms, within their Florida Rules of Court publication. As a result, Thompson West may have costs as a result of the bill.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**STATEMENT OF THE SPONSOR**

The bill eliminates what is considered by many to be outdated and negative terminology related to divorcing parents and their children. The bill reduces animosity in relationships between and among family members and thus improves family circumstances for children.

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 25, 2008, the Committee on Healthy Families adopted five amendments to the bill that do the following:

- **Amendment #1** – Restores the word “of” that was inadvertently stricken.
- **Amendment #2** – Removes the word “not” which was inadvertently included in newly created language.
- **Amendment #3** – Replaces the current term “visitation” with the newly created term “time-sharing” for consistency.
- **Amendment #4** – Replaces the current term “available” with the term “net” in order to maintain consistency within s. 61.30, Florida Statutes.
- **Amendment #5** – Clarifies newly created terminology that is replacing the term “noncustodial” in order to eliminate the fiscal impact of the bill.

The bill was reported favorable with five amendments.

On April 17, 2008, the Healthcare Council adopted a strikeall amendment and 6 amendments to the strikeall amendment. The strikeall amendment incorporated the five amendments adopted by the Committee on Healthy Families, made a number of clarifying changes to conform the House Bill to the Senate Bill and removed proposed substantive changes to the child support guidelines in s.61.30, Florida Statutes. The six amendments to the amendment were further technical changes.

The bill was reported favorably as amended as a Council Substitute, and the analysis reflects the substance of the bill as amended.