

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 Children, Families, and Elder Affairs Committee

BILL: CS/SB 2532

INTRODUCER: Children, Families and Elder Affairs Committee and Senator Lynn

SUBJECT: Child Custody and Support

DATE: April 3, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/CS
2.			JU	
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Committee Substitute for Senate Bill 2532 amends ch. 61, F.S., relating to dissolution of marriage and the custody and support of minor children. The bill replaces references made throughout the chapter to “custody,” “primary residential parent,” “primary residence,” “noncustodial parent” and “visitation,” with the concepts of parenting plans and time-sharing.

The bill permits a court to temporarily modify child support and to order a service member to apply for military dependent benefits on behalf of a minor child, when a member of the military is called to service.

The bill amends s. 61.30, F.S., relating to child support guidelines, making conforming changes to the section.

The bill makes conforming amendments throughout the statutes.

The bill substantially amends the following sections of the Florida Statutes: 61.046, 61.052, 61.09, 61.10, 61.122, 61.13, 61.13001, 61.13002, 61.14, 61.181, 61.1827, 61.20, 61.21, 61.30, 61.401, 61.45, 409.2554, 409.2558, 409.2563, 409.2564, 409.25657, 409.25659, 409.2577,

409.2579, 409.811, 414.0252, 414.065, 414.085, 414.095, 414.295, 445.024, 741.0306, 741.30, 742.031, 753.01, and 827.06. The bill retitles ch. 61, reenacts section 61.1825(3)(a), and repeals section 61.121 of the Florida Statutes.

II. Present Situation:

Child Custody

Chapter 61, F.S., is titled “Dissolution of Marriage; Support; Custody.” The purposes of ch. 61, F.S., are described as follows:

- To preserve the integrity of marriage and to safeguard meaningful family relationships;
- To promote the amicable settlement of disputes that arise between parties to a marriage; and
- To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.¹

It is the public policy of the state to encourage parents to share the rights, responsibilities, and joys of child-rearing, and to ensure that children have frequent and continuing contact with both parents, even after divorce.² The concept of shared parental responsibility is intended to protect a child’s right to an ongoing relationship with both parents.

Chapter 61, F.S., provides a framework for child custody determinations in the context of a dissolution of marriage proceeding. The parent with whom a child lives most of the time is called the “custodial” or “primary residential parent,” and the other parent is called the “noncustodial” parent.³ The time spent with the noncustodial parent is referred to as visitation.

Florida law presumes that the parental responsibility for a minor child should be shared by both parents, unless shared responsibility would be detrimental to the child.⁴ Also under current law, the father of the child must be given the same consideration as the mother, irrespective of the age or sex of the child.⁵

A court is required to decide all matters in a custody proceeding with reference to the best interests of the child.⁶ In determining the best interests of the child, the court must evaluate at least the following factors:

- Which parent is more likely to allow the child frequent and continuing contact with the other parent;
- Love, affection, and other emotional ties existing between the parents and the child;
- Capacity and disposition of the parents to provide for the child;
- Length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- Permanence, as a family unit, of the existing or proposed custodial home;

¹ Section 61.001(2), F.S.

² Section 61.13(2)(b), F.S.

³ Section 61.046, F.S.

⁴ Section 61.13(2)(b), F.S.

⁵ Section 61.13(2)(b), F.S.

⁶ Section 61.13(2)(b), F.S.

- Moral fitness of the parents;
- Mental and physical health of the parents;
- Home, school, and community record of the child;
- Reasonable preference of the child;
- Willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent;
- Evidence that any party has knowingly provided false information to the court regarding a domestic violence proceeding pursuant to s. 741.30;
- Evidence of domestic violence or child abuse; and
- Any other fact considered by the court to be relevant.⁷

Research shows that children are negatively impacted when they experience limited contact with either parent following separation or divorce. As a result, the widespread use of traditional visitation guidelines, in particular the visiting schedule of every other weekend with the non-resident parent, is in decline. Parenting plans, which provide multiple ways to allocate time between mother and father, and which take into account the children's ages and developmental and psychological needs, are becoming more common.⁸ The terms custody and visitation have been criticized as unnecessarily negative and outdated, and the concept of "visiting" with one's child is particularly unappealing to many parents.

Child Support Guidelines

In 1984, Congress enacted the Child Support Enforcement Amendments of 1984, requiring states to formulate non-binding child support guidelines to be used by judges and other decision-makers to establish child support obligation amounts.⁹ In 1988, Congress made state child support guidelines presumptive and required states to review their child support guidelines at least once every four years.¹⁰

As part of the reevaluation, federal regulations require states to consider economic data on the cost of raising children and to analyze case data, gathered through sampling or other methods, on the application of and deviations from the guidelines. Findings from the resulting analysis must inform each State's guideline review to ensure that guidelines truly apply to the majority of cases in that state.¹¹

In preparation for Florida's next review, the Legislature allocated funds for an economic review of the state's child support guidelines.¹² In November 2007, the Legislature contracted with the Department of Economics at Florida State University (FSU). The contract requires FSU to, at a minimum, address the following:

⁷ Section 61.13(3), F.S.

⁸ Joan Kelly, *Keynote Address: The United States Experience* (transcribed), available at <http://www.aifs.gov.au/institute/pubs/frtforum/kelly.doc> (last visited March 25, 2008).

⁹ Child Support Enforcement Amendments of 1984, Pub. L. 98-378 (1984).

¹⁰ The Family Support Act of 1988, Pub. L. 100-485 (1988).

¹¹ United States Dept. of Health and Human Services, *Evaluation of Child Support Guidelines*, vol. I, ch. 1, available at <http://www.acf.hhs.gov/programs/cse/rpt/gdl/chap1.htm> (last visited March 25, 2008).

¹² See Chapter 2007-72, L.O.F.

- Update of Florida’s existing schedule amounts based on the latest available economic data in anticipation of Florida continuing to use the income shares model to incorporate more recent data on family income shares allocated to children to the extent such data is publicly available.
- Update the existing schedule amounts to reflect the effects of inflation and evaluate the methodological validity of this approach.
- Within the context of the income shares model, determine how selected other states using the income shares model treat the apportionment of child support to accommodate visitation arrangements and cases of joint or shared custody.
- Within the context of the income shares model, evaluate the treatment of low income parents and suggest possible alternatives based on the experience in other states that mitigate or avoid the anomalies created by the “self-support reserve” in the income shares model.
- Evaluate the problems created by imputation of income and consider alternative methods of imputing income, including the possible consequences of not imputing income, based on experiences in other states using the income shares model.
- Evaluate the methodological validity of adjusting the schedule of obligations to account for intrastate variations in the cost of living.
- Provide continuing consulting services through June 30, 2009.
- Itemize the tax benefits and burdens of child support in regard to the child care tax credit.¹³

The final report is due to the Legislature in November 2008, and the FSU researchers will be available to legislative staff until June 30, 2009.¹⁴ In addition, OPPAGA is working with legislative staff to do the case data analysis component of the federal review, and the Office of Economic and Demographic Research (EDR) is exploring the advantages of statewide surveying related to the guidelines.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 2532 amends ch. 61, F.S., replacing references made throughout the chapter to “custody,” “primary residential parent,” “primary residence,” “noncustodial parent” and “visitation” with the concepts of parenting plans and time-sharing. The bill strikes the terms, and the associated definitions, of “custodial parent” and “noncustodial parent.”

The bill redesignates the title of ch. 61, F.S., as “Dissolution of Marriage; Support; Time-Sharing.”

The bill defines “parenting plan” as a document developed by the parents of a minor child, and approved or established by the court, which governs the relationship between the parents regarding the child. A parenting plan may address issues such as education, health care, physical, social and emotional well-being, and must include a time-sharing schedule.

The bill replaces the term “custody evaluation” with the term “parenting plan recommendation,” which is defined as a nonbinding recommendation made by a psychologist licensed under

¹³ Contract for Analytical Services Relating to Child Support Guidelines Review (November 8, 2007).

¹⁴ *Id.*

ch. 490, F.S., concerning a parenting plan. The bill provides that a psychologist who has been appointed to develop a parenting plan recommendation is presumed to be acting in good faith if the recommendation is reached pursuant to standards that a reasonable psychologist would use (rather than pursuant to standards recommended by the American Psychological Association) to develop such a plan.

The bill defines “time-sharing schedule” as a timetable that must be included in the parenting plan that specifies the time that a minor child will spend with each parent.

The bill provides that any parenting plan approved by a court must address the following issues:

- Details about how parents will share daily tasks;
- Time-sharing schedule that will specify the time the child will spend with each parent;
- Designation of who will be responsible for health care, school matters, and other activities; and
- Methods and technologies parents will use to communicate with each other and with the child.

The parenting plan and time-sharing schedule proposed by the bill are similar to the family law form order currently used in dissolution cases involving dependent children.¹⁵

The bill clarifies that there is no presumption made for or against either parent when a parenting plan is created or modified, and that for purposes of creating or modifying a parenting plan, the best interests of the child shall always be the primary consideration. The bill lists the factors to be considered to determine the best interests of the child, rewording and deleting some of the factors identified in current law¹⁶ and adding new factors for the courts to consider.¹⁷

Current law (s. 61.13002, F.S.) provides that if a petition to modify child custody is filed when a parent is called to military service, the court cannot permanently modify the existing custody order, but it can enter a temporary order to modify custody if it is in the child's best interest. The bill permits the court to also temporarily modify child support obligations and to require the service member to apply for military dependent benefits on behalf of the minor child.

Section 61.30, F.S., provides guidelines for child support in Florida. The bill amends

¹⁵ Florida Sate Courts, Family Forms, *Final Judgment of Dissolution of Marriage with Dependent or Minor Children*, available at http://www.flcourts.org/gen_public/family/forms_rules/index.shtml#petsup (last visited March 30, 2008).

¹⁶ Factors deleted include which parent is more likely to allow the child frequent and continuing contact with the nonresidential parent; love, affection, and other emotional ties existing between the parents and the child; capacity of the parents to provide for the child; the permanence, as a family unit, of the existing or proposed custodial home; home, school, and community record of the child; reasonable preference of the child; willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.

¹⁷ Factors added or reworded include each parent's relative capacity to facilitate the parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required, to act upon the needs of the child, to provide a consistent routine, to communicate with the other parent, to participate in school and extracurricular activities, to be informed of the circumstances of the minor child, to maintain an environment free from substance abuse, and to protect the child from the ongoing litigation; the anticipated division of parental responsibilities after the litigation; the geographic viability of the parenting plan; the developmental stages and needs of the child; the particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation.

s. 61.30, F.S., replacing terms as noted above, and also amending the following terms:

- Inserts the word “schedule” after all references to “guidelines”;
- Replaces references to “the obligor and obligee” with the phrase “each parent”; and
- Replaces the term “available income” with the term “net income.”

The bill requires that the family law handbook¹⁸ authorized by s. 741.0306, F.S., be reviewed, and that a report with recommendations for updating the handbook be provided to the Legislature by October 1, 2008 or as soon thereafter as practicable.

The bill makes conforming changes to the following sections of the Florida Statutes: ss. 409.2554 and 409.2558, relating to collections; s. 409.2563, relating to administrative child support orders; s. 409.2564, relating to actions for support; s. 409.25657, relating to financial institutions; s. 409.25659, relating to insurance claim data; s. 409.2577, relating to parent locator services; s. 409.2579, relating to Title IV-D case information; s. 409.811, relating to KidCare; s. 414.0252; ss. 414.065, 414.085, 414.095, 414.295, and 445.024, relating to temporary cash assistance; s. 741.0306, relating to a family law handbook; s. 741.30, relating to domestic violence; s. 742.031, relating to paternity; s. 753.01, relating to exchange monitoring of children; and s. 827.06, relating to nonsupport of dependents. The bill repeals s. 61.121, F.S., relating to rotating custody, and reenacts s. 61.1825, F.S., relating to the State Case Registry.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁸ The bill makes conforming amendments to s. 741.0306, F.S., relating to the creation of a family law handbook. This provision was enacted in 1998 and the original handbook was authored by the Family Law Section of the Florida Bar. The purpose of the handbook was to explain marital law to applicants for a marriage license. According to the Florida Association of Court Clerks, these handbooks have never been updated, resulting in information being provided to the general public that is inaccurate. This may be particularly true with the new terminology proposed in this bill.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOR estimates that it will cost less than \$25,000 to implement the provisions of this bill, and that it can absorb the costs by reprioritizing other projects.¹⁹

The Office of the State Courts Administrator's (OSCA) Office of Court Improvement (OCI) has not yet analyzed this bill. However, the analysis of HB 1075, which is the companion to this bill, states that while there is anticipated to be very little increase in workload for the judiciary, there will be an impact on the workload of the OCI. The OCI currently has a .5 FTE for an attorney who is assigned to maintain and update forms for the court. Staff will be redirected from other assignments in order to implement the provisions of this bill.²⁰

The OSCA/OCI staff will be required to review each Supreme Court Approved Family Law Form and make recommendations to the Court as to how the forms should be updated in response to changes in terminology in the bill. Some of the forms are updated by OSCA/OCI and the remaining forms are updated by the Family Law Rules Committee of the Florida Bar Association (the Bar). Updated forms from both OSCA and the Bar must then be approved formally by the Court. Once approved by the Court, all updated forms must be formatted and posted to the Court's website.²¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 7 amends provisions relating to custody evaluations. Among other changes, the bill removes the requirement that a psychologist making a custody evaluation (renamed a parenting plan recommendation) be evaluated with reference to the guidelines recommended by the American Psychological Association (APA), providing instead that a psychologist completing a parenting plan recommendation will be presumed to be acting in good faith if he or she acts according to the standards of a "reasonable psychologist." According to the Family Law Section of the Florida Bar, this change was necessitated by the fact that APA still uses terminology replaced by this bill (e.g., "custody evaluation"²²), making a reference to APA standards incongruous.²³

¹⁹ E-mail from Debbie Thomas, Legislative and Cabinet Services Specialist, DOR (March 29, 2008).

²⁰ House of Representatives Staff Analysis HB 1075 (March 21, 2008).

²¹ *Id.*

²² See American Psychological Association, *Guidelines for Child Custody Evaluations in Divorce Proceedings* (1994), available at <http://www.apa.org/practice/childcustody.html>.

²³ Elisha D. Roy, Sasser, Cestero & Sasser, P.A. (April 1, 2008).

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Children, Families and Elder Affairs on April 1, 2008:**

- Amends definition of parenting plan recommendation to provide that only a licensed psychologist may complete.
- Deletes repetitive language relating to presumptions in dissolution cases.
- Clarifies that a parent must continue to pay child support if the other parent refuses to honor a time-sharing schedule.
- Makes conforming amendments and clarifies the responsibilities of the service member and non-service member parent when a support or time-sharing order is temporarily modified due to deployment.
- Deletes substantive changes made by the bill to s. 61.30, F.S., relating to the child support guidelines, leaving only conforming changes in terminology.
- Clarifies that a guardian ad litem may be appointed in any dissolution case, not just in cases where parents cannot agree to a parenting plan.
- Clarifies that a custodial parent (now known as a parent who is owed support) still does not have a right to file a circuit court action. According to DOR, this amendment brings the fiscal impact to below \$25,000, which the agency can absorb.
- Requires review of the family law handbook and a report to legislature as to recommendations for revision.
- Makes technical and conforming amendments.

B. Amendments:

None.