

**0The 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 Judiciary Committee

BILL: SB 1686

INTRODUCER: Senator Fasano

SUBJECT: Effect of Crimes

DATE: February 17, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	<b>Pre-meeting</b>
2.	_____	_____	CJ	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill expands on the “barring the killer receiving benefits” doctrine under s. 732.802, F.S., by prohibiting a person from receiving:

- Alimony if the person was convicted of an enumerated offense (first or second degree murder, manslaughter, DUI manslaughter, BUI manslaughter, aggravated assault, or a substantially similar offense) against a divorcing spouse or family member of the divorcing spouse and the crime results in the death of or creates a substantial risk of death or serious injury to the victim.
- An equitable distribution of marital assets and liabilities in a divorce proceeding if the person was convicted of an offense involving an attempt or conspiracy to murder the divorcing spouse.

The bill conforms to the Uniform Probate Code § 2-114 by:

- Providing that a parent who criminally abused, abandoned, neglected, or sexually abused his or her minor child loses his or her right to the intestate succession in any part of the child’s estate and all rights to administer the estate of the child.
- Providing that if the parent is disqualified from taking a distributive share in the decedent’s estate, the decedent child’s estate must be distributed as if the parent had predeceased the decedent.
- Prohibiting a half brother or sister of a decedent child from taking a distributive share in the decedent’s estate if the parent of the decedent child is disqualified from taking a distributive share in the decedent’s estate.

This bill amends sections 61.075 and 61.08, Florida Statutes.  
This bill creates section 732.8025, Florida Statutes.

## II. Present Situation:

### Equitable Distribution and Alimony

Chapter 61, F.S., governs proceedings for the dissolution of marriage in Florida. Under s. 61.075, F.S., a court must distribute the marital assets and liabilities of the parties based on the premise that the distribution be equal.<sup>1</sup> The court must do so unless justification exists for an unequal distribution based on relevant factors specified in s. 61.075(1), F.S.

The relevant factors a court must consider in determining whether to make an unequal distribution of marital assets and liabilities include:

- a) The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.
- b) The economic circumstances of the parties.
- c) The duration of the marriage.
- d) Any interruption of personal careers or educational opportunities of either party.
- e) The contribution of one spouse to the personal career or educational opportunity of the other spouse.
- f) The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.
- g) The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties.
- h) The desirability of retaining the marital home as a residence for any dependent child of the marriage, or any other party, when it would be equitable to do so, it is in the best interest of the child or that party, and it is financially feasible for the parties to maintain the residence until the child is emancipated or until exclusive possession is otherwise terminated by a court of competent jurisdiction. In making this determination, the court shall first determine if it would be in the best interest of the dependent child to remain in the marital home; and, if not, whether other equities would be served by giving any other party exclusive use and possession of the marital home.
- i) The intentional dissipation, waste, depletion, or destruction of marital assets after the filing of the petition or within 2 years prior to the filing of the petition.
- j) Any other factors necessary to do equity and justice between the parties.<sup>2</sup>

Although a court may consider “other factors necessary to do equity and justice between the parties” in dividing the marital assets and liabilities, the court is not expressly required to consider criminal acts perpetrated by one spouse upon another.

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<sup>1</sup> Section 61.075(1), F.S.

<sup>2</sup> Section 61.075(1), F.S.

In determining whether to award alimony in a divorce proceeding, a court may “consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded.”<sup>3</sup> However, if the court determines that one party has a need for alimony and the other party has the ability to pay, the court in determining the type or amount of alimony must consider:

- a) The standard of living established during the marriage.
- b) The duration of the marriage.
- c) The age and the physical and emotional condition of each party.
- d) The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.
- e) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.
- g) The responsibilities each party will have with regard to any minor children they have in common.
- h) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.
- i) All sources of income available to either party, including income available to either party through investments of any asset held by that party.
- j) Any other factor necessary to do equity and justice between the parties.<sup>4</sup>

Although a court must consider “any other factor necessary to do equity and justice between the parties” in determining the type or amount of alimony, the court is not expressly required to consider criminal acts perpetrated by one spouse upon another. Moreover, the words of the statute appear to confine the court’s analysis to examining the needs of one spouse for alimony and the ability of the other spouse to pay.

### **Killer Not Entitled to Receive Property or Other Benefits By Reason of Victim’s Death**

A surviving person who unlawfully and intentionally kills or participates in procuring the death of a decedent is not entitled to any benefits under a will or through intestacy under the Florida Probate Code. In such situations, the estate of the decedent passes as if the killer had predeceased the decedent.<sup>5</sup> A named beneficiary of a bond, life insurance policy, or other contractual arrangements who unlawfully and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and the bond or policy becomes payable as though the killer had predeceased the decedent.<sup>6</sup> A final judgment of conviction of murder of any degree is conclusive. In the absence of a conviction of murder, the court may determine by the greater weight of the evidence whether the killing of the decedent was unlawful and intentional.<sup>7</sup>

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<sup>3</sup> Section 61.08(1), F.S.

<sup>4</sup> Section 61.08(2), F.S.

<sup>5</sup> Section 732.802 (1), F.S.

<sup>6</sup> Section 732.802 (3), F.S.

<sup>7</sup> Section 732.802 (5), F.S.

### **Uniform Probate Code Section 2-114**

The Uniform Probate Code is not binding on Florida but specifies general rules that bar intestate succession of parents under certain circumstances.

A parent is barred from inheriting from or through a child of the parent if:

- (1) the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or
  - (2) the child died before reaching [18] years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under law of this state other than this [code] on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child.
- (b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting this under [Section 2-114 of the Uniform Probate Code] is treated as if the parent predeceased the child.<sup>8</sup>

### **Termination of Parental Rights and Inheritance Rights under Intestacy**

Chapter 39, F.S., generally authorizes the termination of parental rights for abuse, abandonment, or neglect.<sup>9</sup> The chapter does not specifically address whether an intestate estate of a child whose parents had their parental rights terminated may take an intestate share of the child's estate. A minor may not legally disinherit a parent whose parental rights have been terminated.<sup>10</sup> This appears to result from requirements that a person be at least 18 years of age to make a will.

Chapters 731 through 735, F.S., are known as the "Florida Probate Code."<sup>11</sup> Substantive rights regarding probate are covered in the probate code and procedural matters are governed by probate rules adopted by the Florida Supreme Court. Chapter 732, F.S., governs substantive issues relating to wills.

Any property of decedent that is not disposed of by his or her will passes to his heirs by intestate succession.<sup>12</sup> In general, the laws of intestacy are a default for situations when a decedent has failed to or may not make a will. The laws of intestacy attempt to duplicate the dispositive scheme that the decedent would have wanted if he or she had affirmatively left a valid will.

Section 732.108, F.S., provides requirements for the intestate succession by or from an adopted person. If a child is adopted under the requirements of ch. 63, F.S., then s. 732.108, F.S., provides that for the purposes of intestate succession for the termination of inheritance rights of

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<sup>8</sup> Uniform Probate Code § 2-114 Parent Barred From Inheriting in Certain Circumstances.

<sup>9</sup> See ss. 39.801 – 39.815, F.S.

<sup>10</sup> Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on Proposed Section 732.1081, [F.S.,] Addressing Inheritance Rights of Parents Whose Parental Rights Have Been Terminated* (2010) (on file with the Senate Committee on Judiciary).

<sup>11</sup> Section 731.005, F.S.

<sup>12</sup> Section 732.101(1), F.S.

the natural parents in favor of the adoptive parent or parents. If the child is not legally adopted, for purposes of intestate succession, the inheritance rights of the natural parent whose parental rights have been legally terminated continue to remain.

Under the probate code, a child who becomes 18 and who otherwise meets the requirements to make a will may do so, and may elect whether or not to include a parent whose parental rights have been terminated.

### **III. Effect of Proposed Changes:**

#### **Prohibition on Equitable Distribution and Alimony**

The bill provides that if a spouse is convicted of an offense involving an attempt or conspiracy to murder the other spouse, a court may not make an equitable distribution of property to such spouse.

The bill provides a list of criminal offenses and conditions that preclude a spouse from receiving alimony. Specifically, a person convicted of first degree or second degree murder, manslaughter, DUI manslaughter,<sup>13</sup> BUI manslaughter,<sup>14</sup> aggravated assault, or a substantially similar offense under the laws of another jurisdiction may not receive alimony if the crime was committed at any time during the marriage and the crime results in death or creates a substantial risk of death or serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ of a *family member of a divorcing party*. The bill defines family member, for purposes of the section, as a spouse, child, parent, or sibling. The family member can be related to the individual by blood, marriage, or adoption to qualify as a family member.

#### **Bar to Intestate Succession for Parent who Abused, Abandoned or Neglected Minor Child**

The bill conforms to the Uniform Probate Code § 2-114 which bars parents from inheriting from their children in certain circumstances. The bill provides that a parent loses his or her right to intestate succession in any part of the child's estate and all rights to administer the estate of the child, if he or she committed against the child:

- Abuse, abandonment, or neglect pursuant to s. 39.01, F.S.;
- A violation of s. 827.03 (relating to abuse); or
- Sexual abuse as defined in s. 39.01, F.S.

A parent who has been convicted of one of the enumerated crimes loses his or her right to inherit from the child's estate and the right to administer the child's estate. If the parent is disqualified from taking a distributive share in the decedent's estate under the bill, the decedent's estate must be distributed as though the parent had predeceased the decedent. A half brother or sister of the decedent whose parent is disqualified may not take a distributive share in the decedent's estate.

The bill provides an effective date of July 1, 2012.

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<sup>13</sup> Driving under the influence manslaughter causing the death any human being or unborn quick child. *See* s. 316.193(3)(c) 3., F.S.

<sup>14</sup> Boating under the influence manslaughter causing the death any human being. *See* s. 327.35(3)(c)3., F.S.

**Other Potential Implications:**

Senate Bill 988 contains a comparable provision which creates s. 732.1081, F.S., to amend the Florida Probate code to bar inheritance through intestate succession by a parent from a child in cases when the natural or adoptive parent's parental rights were terminated pursuant to ch. 39, F.S., prior to the death of the child. In such cases, the natural or adoptive parent must be treated as if the parent predeceased the child. Senate Bill 988 is now on the calendar.

**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.

**B. Private Sector Impact:**

Persons who commit the enumerated crimes in the bill will be barred from receiving an equitable distribution of marital assets and liabilities or alimony in a divorce proceeding and will be barred from inheriting from their child's estate, as appropriate.

**C. Government Sector Impact:**

The Office of State Courts Administrator reports that the office does not anticipate a significant impact on the judicial or court workload from the bill's requirements.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that that a parent loses his or her right to intestate succession in any part of the child's estate and all right to administer the estate of the child, if he or she committed against the child:

- Abuse, abandonment, or neglect pursuant to s. 39.01, F.S.;
- A violation of s. 827.03 (relating to abuse); or
- Sexual abuse as defined in s. 39.01, F.S.

The provisions of the bill relating to equitable distribution of marital assets and liabilities and awards of alimony expressly provide that a spouse must be convicted of certain crimes in order for the spouse to be barred from receiving an equitable distribution of marital assets or an alimony award. The provisions relating to parental offenses against a child do not expressly require that a parent be convicted of a crime against a child in order to be barred from inheriting through the child. The Legislature may wish to clarify whether a parent must be convicted of a crime before the prohibition on inheriting through a child applies.

The Uniform Probate Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar believes "that it would be appropriate for Florida law to bar inheritance by a parent whose parental rights have been terminated."<sup>15</sup>

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>15</sup>Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper on Proposed Section 732.1081, [F.S.] Addressing Inheritance Rights of Parents Whose Parental Rights Have Been Terminated* (2010) (on file with the Senate Committee on Judiciary).