

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 250

INTRODUCER: Judiciary Committee and Senator Lee

SUBJECT: Family Law

DATE: February 9, 2016      REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 250 revises the law on parental time-sharing with minor children.

Current law provides that the public policy of the state is for each minor to have frequent and continuing contact with both parents after the parents separate or divorce. Consistent with existing legislative intent, the bill establishes a presumption that approximately equal timesharing with a child by both parents is in the child's best interest.

Current law provides a list of factors for the court to apply in determining or modifying time-sharing, based on the best interests of the child. This bill instead, provides that these factors are to be used in determining whether a party has overcome the statutory presumption of equal timesharing.

The bill adds two factors to the list for the court to consider in determining whether a party has overcome the presumption favoring equal time-sharing, which are:

- The amount of time-sharing requested by each parent; and
- The frequency with which a parent would likely leave the child in the care of a nonrelative on evenings and weekends when the other parent would otherwise provide care.

The bill requires a court to support an order that provides for unequal timesharing with written findings of fact.

## II. Present Situation:

### Parenting and Time-sharing

#### *Florida Law*

The public policy of the state is for each minor child to have “frequent and continuing contact with both parents.”<sup>1</sup> 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.<sup>2</sup> In determining timesharing with each parent, a court must consider the best interests of the child based on a specific list of factors.

Factors for the court to consider in determining the best interest of the child include:

- 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.
- 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.<sup>3</sup>

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.<sup>4</sup>

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

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

<sup>3</sup> Section 61.13(3), F.S.

<sup>4</sup> Section 61.13(3)(t), F.S.

### ***Equal Time-sharing in other States***

No state has required the court to order equal time-sharing or joint custody of minor children. A number of states, in addition to Florida, provide in law a presumption that joint custody is in the best interest of the child. These states are the District of Columbia, Idaho, Minnesota, New Mexico, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin. Other states provide the presumption only if the parents agree. These states are Alabama, California, Connecticut, Maine, Michigan, Mississippi, Nevada, New Hampshire, and Vermont.<sup>5</sup>

Several state legislatures recently amended laws on child custody to encourage equal time-sharing. Arkansas codified a preference for joint custody.<sup>6</sup> The South Dakota Legislature passed a law that permits the court to order joint physical custody when the court has awarded joint legal custody if it is in the best interest of the child.<sup>7</sup> The Utah Legislature enacted a rebuttable presumption for joint legal custody. Grounds for rebutting the presumption include domestic violence and physical or mental needs of a parent or child.<sup>8</sup>

### **Presumption in Law**

A presumption in law is a type of a rule of evidence calling for a certain result in a case. A presumption may be rebuttable or irrebuttable. A rebuttable presumption is an “inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence.”<sup>9</sup> An irrebuttable presumption may not be overcome.

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

The bill provides additional guidelines for the court to use in determining a time-sharing schedule of a minor child.

Current law provides that the public policy of the state is for each minor to have frequent and continuing contact with both parents after the parents separate or divorce. Consistent with existing legislative intent, this bill creates a rebuttable presumption that approximately equal timesharing with a minor child by both parents is in the best interest of the child. A party may overcome the presumption by providing evidence based on factors that affect the welfare and interests of the child and the circumstance of the family.

Current law provides a list of factors for the court to consider in establishing or modifying a time-sharing schedule, based on the best interests of the child. In addition to the factors presently provided in law, this bill adds the following:

- The amount of timesharing requested by each parent; and
- The frequency that a parent would likely leave the child in the care of a nonrelative on evenings and weekends when the other parent would be available and willing to provide care.

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<sup>5</sup> National Conference of State Legislatures, *Shared/Joint Custody Enactments 2012* (Feb. 2015).

<sup>6</sup> AR s. 901.

<sup>7</sup> South Dakota House Bill 1055 (Chapter 141).

<sup>8</sup> Utah HB 88 (Chapter 269); HB 107 (Chapter 271).

<sup>9</sup> BLACK'S LAW DICTIONARY, (10th ed. 2014).

The bill also makes some revisions to the existing factors. Under existing law, a court must consider the demonstrated capacity of a parent undertaking various activities. The bill allows a court to consider the disposition of a parent to perform different parenting roles after a divorce.

Under the bill, if the initial permanent timesharing schedule does not provide for approximately equal time-sharing, the court order must include written findings of fact justifying its order for unequal timesharing.

The bill takes effect October 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not affect cities or counties.

##### **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:**

The bill creates a presumption that equal time-sharing is presumed to be in the best interest of a child. Assuming that placing a presumption in law simplifies time-sharing actions, parties to a time-sharing action may spend less on litigation costs.

##### **C. Government Sector Impact:**

None.

#### **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 by Judiciary on January 26, 2016:**

The CS:

- Removes all provisions relating to alimony and the collaborative law process;
- Leaves intact all provisions on time-sharing, including language providing that approximately equal time-sharing is presumed to be in the best interest of the child;  
and
- Provides a later effective date of October 1, 2016.

- B. **Amendments:**

None.