

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 Committee on Children, Families, and Elder Affairs

BILL: SB 1106

INTRODUCER: Senator Berman

SUBJECT: Domestic Violence and Parental Responsibility Determinations

DATE: January 14, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1106 amends provisions relating to domestic violence and parental responsibility. The definition of domestic violence in ss. 414.0252 and 741.28(3), F.S., are amended to include conduct which constitutes coercive control, and coercive control is defined in s. 741.28, F.S.

The bill also requires the instructions for certain injunction forms to inform the petitioner that if he or she intends to request that the court prohibit or limit time-sharing between the respondent and the child, he or she must state with specificity details which have caused the petitioner to fear that the respondent imminently will abuse, remove, or hide the child from the petitioner.

The bill includes several amendments to the template petition for injunction form under s. 741.30(3)(b), F.S., including in summary:

- Incorporates conduct which constitutes coercive control to the definition of domestic violence;
- Informs the petitioner that he or she should provide details regarding any threats to conceal, kidnap, or harm the petitioner's child or children in paragraph (i) of the form;
- Instructs the petitioner to describe any actions taken or threats made by the respondent to cause fear that he or she imminently will abuse, remove, or hide the child from the petitioner; and
- Modifies the list of potential relief that may be sought in the injunction to relocate part of an existing option for relief regarding a temporary time-sharing schedule that prohibits time-sharing between the respondent and the child.

The bill amends provisions relating to shared parental responsibility, rebuttable presumptions, and the best interest factors that the court must consider when establishing or modifying a parenting plan. The bill clarifies that shared parental responsibility must be in best interest of the child. Evidence that establish a rebuttable presumption of detriment to a child under current law also create a rebuttable presumption that shared parental responsibility is not in the child's best

interests if proven by clear and convincing evidence. Two additional circumstances are added to the list of evidence that establish a rebuttable presumption. The bill relocates a provision under current law that provides a presumption may be rebutted upon a specific findings in writing by the court, and also provides the court must consider all time-sharing factors when developing a time-sharing schedule if a presumption is rebutted.

If the court finds that shared parental responsibility would be detrimental to the child based on factors other than that which is established by a rebuttable presumption, the court may order sole parental responsibility and create a time-sharing schedule that will best protect the child or parent, instead of abused spouse, from further harm. The bill suggests specific protections which the court may order to protect the child or parent, such as supervised visitation. The provision under current law that requires the court to consider evidence of domestic violence or child abuse as evidence of detriment to the child even if there has been no conviction or the existence of an injunction is removed in the bill.

One of the best interest factors (i.e. regarding evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect) that the court must consider when determining a parenting plan was moved to be a rebuttable presumption of detriment to the child. Two factors have also been added to the list, including, in part, the extent and nature of the relationship between the parent and child, and the motives of the parents to seek shared parental responsibility.

The term “child” is defined in s. 61.046, F.S., to have the same meaning as s. 39.01(11), F.S. Technical amendments are made to the sections included in the bill. Sections 921.0024, 943.0584, and 943.171, F.S., are amended to update cross-references to s. 741.28, F.S.

This bill does not appear to have a fiscal impact on state, county, or municipal governments. See V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Domestic Violence

Domestic violence is a pattern of behavior, violence, or threats of violence that a person uses to gain power and control over a current or former intimate partner.¹ The use of threats, intimidation, isolation, and using children as pawns are examples of the tactics domestic violence perpetrators use against victims.²

¹ Florida Coalition Against Domestic Violence, *Leading Florida Higher, Lifting Survivors Upward, Florida's Commitment to Ending Domestic Violence and Saving Lives*, p. 3, available at <https://www.myflfamilies.com/service-programs/domestic-violence/docs/2019%20Annual%20%20Report.pdf> (last visited Jan. 14, 2022).

² *Id.*

Domestic violence harms all family members.³ Family violence harms the victim and presents dangers for immediate family members.⁴ Significant trauma, such as domestic violence, can interfere with brain and skill development of the young child.⁵ A child’s emotional, psychological, or physical development can be harmed if he or she is exposed to violence at a young age.⁶ Children who witness violence are more likely to have difficulty in school, abuse drugs or alcohol, act aggressively, and suffer from depression.⁷

Domestic violence continues to be a widespread issue throughout the United States⁸ and worldwide.⁹ There are several laws which serve to protect victims from domestic violence,¹⁰ including, but not limited to, injunctions and parenting plans.¹¹ Some of these provisions are discussed in more detail below.

Greyson Kessler

The negative impacts of domestic violence on a family and coparenting partners can be illustrated through the case of Greyson Kessler. Greyson was a vibrant, fun-loving and sweet four year old at the time of his death on May 20, 2021 when his father, John Stacey, shot and killed him before committing suicide.¹² This tragic murder-suicide happened after Mr. Stacey sent threatening text messages to, and left abusive voice messages for, Greyson’s mother, Alison Kessler, harassed her, and left a tracker on her car.¹³ For instance, he sent her one text message which stated “You deserve to have your head separated from body, and deserve to die. But I am

³ Seifert, K. *Domestic Violence Harms All Family Members*, Psychology Today, October 30, 2012, available at [Domestic Violence Harms All Family Members | Psychology Today](#) (last visited Jan. 10, 2022) (hereinafter cited as “DV Harms Families”).

⁴ U.S. Department of Justice, Office of Justice Programs, *Family Violence, Special Features*, available at [Family Violence | Overview | Office of Justice Programs \(ojp.gov\)](#) (last visited Jan. 10, 2022) (hereinafter cited as “US DOJ Family Violence”).

⁵ DV Harms Families.

⁶ US DOJ Family Violence.

⁷ *Id.*

⁸ National Conference of State Legislatures (NCSL), *Domestic Violence/Domestic Abuse Definitions and Relationships*, June 13, 2019, available at [Domestic Violence/Domestic Abuse Definitions and Relationships \(ncsl.org\)](#) (last visited Jan. 10, 2022) (hereinafter cited as “NCSL DV”).

⁹ Khan, N. *What Are the Effects of Domestic Violence on the Family and Children*, Better Help, November 11, 2021, available at [Domestic Violence - What Are The Effects Of Domestic Violence On Children? | BetterHelp](#) (last visited Jan. 10, 2022).

¹⁰ NCSL DV.

¹¹ See chs. 61 and 741, F.S.

¹² Scouten, T., *Police Confirm Murder-Suicide In Deaths of Father, 4-Year Old Son Greyson Kessler Hours Before Emergency Pick-Up Order Was Denied*, CBS Miami, May 25, 2021, available at [Police Confirm Murder-Suicide In Deaths Of Father, 4-Year-Old Son Greyson Kessler Hours Before Emergency Pick-Up Order Was Denied – CBS Miami \(cbslocal.com\)](#) (hereinafter cited as “CBS Article”); Baker, K.C., *Fla. Boy, 4, Killed by Dad in Murder-Suicide on Day Mom Asked Court to Keep Father Away From Him*, People, May 25, 2021, available at [Fla. Boy, 4, Killed by Dad in Murder-Suicide on Day Mom Asked Court for Help | PEOPLE.com](#); Wright, M., *Mother Fights to Pass ‘Greyson’s Law’ after Son Killed by Father in Murder-Suicide*, Local10.com, Oct. 13, 2021, available at [Mother fights to pass ‘Greyson’s Law’ after son killed by father in murder-suicide \(local10.com\)](#); Associated Press, *Florida Dad Threatened Mom, Killed Son, Help Came Too Late*, May 25, 2021, available at [Florida dad threatened mom, killed son; help came too late - ABC News \(go.com\)](#) (hereinafter cited as “AP Article”); Perez, A., *After ‘Preventable’ Tragedy, Family Prepares to Bury Boy in Broward*, Local10.com, May 26, 2021, available at [After ‘preventable’ tragedy, family prepares to bury boy in Broward \(local10.com\)](#) (hereinafter cited as “Local10 Article”) (all sites last visited Jan. 10, 2022).

¹³ CBS Article.

not the violent type. God will deal with you.”¹⁴ Ms. Kessler suggested that Mr. Stacey was a member of a cult named “The Moonies” and he had not received treatment or therapy for the post-traumatic stress disorder he experienced from it.¹⁵

Ms. Kessler and Mr. Stacey shared custody of Greyson, and the murder-suicide occurred during his designated time-sharing period.¹⁶ Ms. Kessler filed a petition for domestic violence injunction on May 19, 2021 and, after Greyson missed school on Friday, she filed for an emergency pick up order.¹⁷ After the murder-suicide, unbeknownst to the judge, the court granted the restraining order and denied the request for a pick up order.¹⁸

Domestic Violence Data

Based on data from 2000 to 2018, approximately 26% of women and 27% of men have been subjected to physical or sexual violence from a current or former husband or male intimate partner at least once in their lifetime, totaling approximately 641 to 753 million victims.¹⁹ According to a national study conducted by the Centers for Disease Control and Prevention (CDC), approximately 1 in 4 women and nearly 1 in 10 men have experienced domestic violence acts including sexual violence, physical violence, or stalking in their lifetime.²⁰ The CDC also estimates that over 43 million women and 37 million men have been victims of such domestic violence by intimate partners throughout their lifetime.²¹ The national cost of medical and mental health care services related to domestic violence is estimated to be over \$8 billion annually.²²

In 2019, there were 105,298 crimes of domestic violence reported to the FDLE which resulted in 66,069 arrests.²³ During FY 2019-20, Florida’s certified domestic violence centers²⁴ provided emergency shelter to 13,250 survivors of domestic violence and their children.²⁵ Further,

¹⁴ *Id.*

¹⁵ CBS Article.

¹⁶ Local10 Article.

¹⁷ *Id.*

¹⁸ AP Article.

¹⁹ World Health Organization (WHO) on behalf of the United Nations Inter Agency Working Group on Violence Against Women Estimation and Data, *Violence Against Women Prevalence Estimates, 2018: Executive Summary*,

²⁰ CDC, *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release*, p. 7, Nov. 2018, available at [The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief — Updated Release \(cdc.gov\)](https://www.cdc.gov/nisvs/data/briefs/2015-data-brief-04.html) (last visited Jan. 10, 2022) (hereinafter cited as “CDC Study”).

²¹ *Id.* at pp. 20 & 22.

²² Huecker, M., King, K., & others, *Domestic Violence*. National Center for Biotechnology Information, Aug. 26, 2021, available at [Domestic Violence - StatPearls - NCBI Bookshelf \(nih.gov\)](https://pubmed.ncbi.nlm.nih.gov/34814441/) (last visited Jan. 10, 2022).

²³ The Department of Children and Families (DCF), *Domestic Violence Statistics*, available at [Domestic Violence - Florida Department of Children and Families \(myflfamilies.com\)](https://www.myflfamilies.com/domestic-violence-overview) (last visited Jan. 10, 2022) (hereinafter cited as “Florida DV Statistics”) [citing Florida Department of Law Enforcement (FDLE), *Florida’s County and Jurisdictional Reported Domestic Violence Offenses, 2019*, available at [DV Jurisdiction Offenses 2019.aspx \(state.fl.us\)](https://www.floridalegal.org/Portals/0/Files/2019-DV-Statistics.pdf), last visited (Jan. 10, 2022)].

²⁴ Section 39.902(2), F.S.; Rule 65H-1.011, F.A.C. provide that domestic violence centers provide services to survivors of domestic violence. Florida has 41 certified domestic violence centers. The certified domestic violence centers provide crisis counseling and support services to victims of domestic violence and their children. Department of Children and Families, *Domestic Violence Overview*, available at <https://www.myflfamilies.com/service-programs/domestic-violence/overview.shtml> (last visited Jan. 14, 2022).

²⁵ *Id.*

advocates developed 153,757 safety plans related to domestic violence cases and provided a total of 233,602 hours of advocacy and counseling services.²⁶

The National Domestic Violence Hotline (NDVH) is available to help by phone, live chat, and text 24 hours per day, 7 days per week.²⁷ The hotline receives more than 24,000 per month.²⁸ Florida contracts with Florida Legal Services, Inc. (FLS) to offer a domestic violence hotline that is available to provide legal advice and referrals for services.²⁹ With federal funding and in collaboration with FLS and Rural Women’s Health Project, a fotonovela has been developed for Spanish-speaking members of rural communities to provide information about the legal hotline services.³⁰ During FY 2019-20, the domestic violence hotline received 73,817 calls from individuals seeking emergency services, information and assistance.³¹

Definitions

Federal law

There are several federal laws which establish protections for domestic violence victims, such as the Violence Against Women Act (VAWA)³² and the Gun Control Act.³³ The VAWA establishes that interstate domestic violence, stalking,³⁴ and interstate violation of protection

²⁶ *Id.*

²⁷ NDVH, *Here for You*, available at [Domestic Violence Support | The National Domestic Violence Hotline \(thehotline.org\)](https://www.thehotline.org) (last visited Jan. 10, 2022).

²⁸ U.S. Department of Health & Human Services, Family and Youth Services Bureau, *The National Domestic Violence Hotline*, available at [The National Domestic Violence Hotline | The Administration for Children and Families \(hhs.gov\)](https://www.hhs.gov) (last visited Jan. 10, 2022).

²⁹ The DCF, *Domestic Violence Legal Hotline*, available at [Domestic Violence - Florida Department of Children and Families \(myflfamilies.com\)](https://myflfamilies.com) (last visited Jan. 10, 2022).

³⁰ *Id.*

³¹ Florida DV Statistics.

³² 18 U.S.C. ch.110A.

³³ 18 U.S.C. § 922(g)(8) and (9).

³⁴ 18 U.S.C. §2261A defines “stalking” as whoever (1) travels in interstate or foreign commerce or is present within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel or presence engages in conduct that – (A) places that person in reasonable fear of the death of, or serious bodily injury to – (i) that person; (ii) an immediate family member as defined in section 115) of that person; (iii) a spouse or intimate partner of that person; or (iv) the pet, service animal, emotional support animal, or horse of that person; or (B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of subparagraph (A); or (2) with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that – (A) places that person in reasonable fear of the death of or serious bodily injury to a person, a pet, a service animal, an emotional support animal, or a horse described in clause (i), (ii), (iii), or (iv) of paragraph (1)(A); or (B) causes, attempts to cause, or would reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of paragraph (1)(A). 18 U.S.C. §2266(2) defines “course of conduct” as a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose. 18 U.S.C. §1365(3) defines “serious bodily injury” as bodily injury which involves – (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty. 18 U.S.C. §2266(11) defines “pet” as a domesticated animal, such as a dog, cat, bird, rodent, fish, turtle, or other animal that is kept for pleasure rather than for commercial purposes. 18 U.S.C. §2266(12) defines “emotional support animal” as an animal that is covered by the exclusion specified in s. 5.303 of title 24, Code of Federal Regulations (or a successor regulation), and that is not a service animal. 28 C.F.R. §36.104 defines “service animal” means

order³⁵ are federal offenses. The Gun Control Act provides that possession of a firearm and/or ammunition while subject to a qualifying protection order,³⁶ or possession of firearm and/or ammunition after a conviction of a qualifying misdemeanor crime of domestic violence are criminal offenses.³⁷

18 U.S.C. §2261(b) defines a domestic violence offender as a person who travels in interstate or foreign commerce³⁸ or enters or leaves Indian country³⁹ or is present within special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner,⁴⁰ or dating partner, and who, in the course of or as a result of such travel or presence, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner.

34 U.S.C. §12291(8), for purposes of VAWA grant program, domestic violence is defined as felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

H.R. 1620 (2021), the VAWA Reauthorization, which has passed the U.S. House of Representatives, includes an expanded definition of domestic violence for purposes of the

any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

³⁵ 18 U.S.C. §2262

³⁶ 18 U.S.C. §2261, 2261A, and 2262.

³⁷ 18 U.S.C. §922(g)(8) and (9).

³⁸ 18 U.S.C. §2266(9) states that "travel in interstate or foreign commerce" does not include travel from 1 State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.

³⁹ 18 U.S.C. §2266(3) defines "enter or leave Indian country" as leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government. 18 U.S.C. §2266(4) states that "Indian country" has the same meaning as 18 U.S.C. §1151, which states except as otherwise provided in ss. 1154 and 1156, U.S.C., the term "Indian country" as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

⁴⁰ 18 U.S.C. 2266 states "spouse or intimate partner" includes – (A) for purposes of – (i) sections other than 2261A- (I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or (II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and (ii) section 2261A – (I) a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or (II) a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, the type of the relationship, and the frequency of the interaction between the persons involved in the relationship. (B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

VAWA grant program but does not alter the definition of domestic violence offender under 18 U.S.C. §2261(b). The expanded definition, which has not yet been enacted, includes a pattern of behavior involving the use or attempted use of physical, sexual, verbal, psychological, economic, or technological abuse or any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim by a specified person, such as a current or former spouse. Opponents of the expanded definition argue that narrowing the definition to a violent physical act is qualitatively different from other types of abuse (such as economic abuse) which ought to be reflected in the legal definitions.⁴¹

Other States' Laws

Approximately 38 states include a definition of domestic violence and penalties within the criminal code, and almost every state provides a definition within the domestic relations and social services code.⁴² States' definitions vary with some including nonphysical abuse including intimidation and emotional abuse.⁴³

Several states have codified legislation in which the definition of domestic violence includes coercive control or have adopted laws in separate provisions for coercion as a crime or defined term, including, but not limited to, Alabama, Colorado, Delaware, Hawaii, Missouri, New York, and Washington.⁴⁴ For instance, Hawaii's definition of domestic violence for purposes of domestic abuse protective orders includes coercive control, and "coercive control" is defined as a pattern of threatening, humiliating, or intimidating actions, which may include assaults, or other abuse that is used to harm, punish, or frighten an individual. "Coercive control" includes a pattern of behavior that seeks to deprive the individual's liberty or freedom and strip away the individual's sense of self, including bodily integrity and human rights, whereby the "coercive control" is designed to make an individual dependent by isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior including:

- Isolating the individual from friends and family;
- Controlling how much money is accessible to the individual and how it is spent;
- Monitoring the individual's activities, communications, and movements;
- Name-calling, degradation, and demeaning the individual frequently;
- Threatening to harm or kill the individual or a child or relative of the individual;
- Threatening to publish information or make reports to the police or the authorities;
- Damaging property or household goods; and

⁴¹ Congressional Research Service, *The Violence Against Women Act (VAWA) Reauthorization: Issues for Congress*, p. 5, Mar. 31, 2021, available at [The Violence Against Women Act \(VAWA\) Reauthorization: Issues for Congress](#) (last visited Jan. 12, 2022) [noting In *United States v. Castleman*, the U.S. Supreme Court held that a misdemeanor offense of having "intentionally or knowingly cause[d] bodily injury to" the mother of the respondent's child qualified as "a misdemeanor crime of domestic violence." Justice Sotomayor delivered the opinion of the Court that included extensive discussion about acts of physical force. The Court held that it must attribute "'the common-law meaning of force' to [18 U.S.C.] §921(a)(33)(A)'s definition of a 'misdemeanor crime of domestic violence' as an offense that 'has, as an element, the use or attempted use of physical force'." Justice Scalia rendered a concurring opinion which submitted that "when everything is domestic violence, nothing is" and argued that if the definition of domestic violence includes all domestic acts then the definition of a new term would need to be established "...to denote actual domestic violence."]

⁴² NCSL DV.

⁴³ *Id.*

⁴⁴ *Id.*; HI Rev Stat s. 586-1.

- Forcing the individual to take part in criminal activity or child abuse.⁴⁵

Florida law

Under Florida law, the term “domestic violence” means any assault,⁴⁶ aggravated assault,⁴⁷ battery,⁴⁸ aggravated battery,⁴⁹ sexual assault, sexual battery,⁵⁰ stalking,⁵¹ aggravated stalking,⁵² kidnapping,⁵³ false imprisonment,⁵⁴ or any criminal offense resulting in physical injury or death of one family or household member by another family member or household member.⁵⁵ A family or household member includes spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.⁵⁶ Under current law, the term “coercive control” is not included in the definition of, or defined as a separate term in relation to, domestic violence provisions.

⁴⁵ HI Rev Stat s. 586-1.

⁴⁶ Section 784.011(1), F.S., defines “assault” as intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

⁴⁷ Section 784.021(1), F.S., defines “aggravated assault” as an assault: (a) with a deadly weapon without the intent to kill; or (b) with an intent to commit a felony.

⁴⁸ Section 784.03(1)(a), F.S., states that the offense of battery occurs when a person: 1. Actually and intentionally touches or strikes another person against the will of the other; or 2. Intentionally causes bodily harm to another person.

⁴⁹ Section 784.045(1)(a), F.S., states a person commits aggravated battery who, in committing battery: 1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or 2. Uses a deadly weapon.

⁵⁰ Section 794.011(1)(h), F.S., defines “sexual battery” as oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

⁵¹ Section 748.048(2), F.S., states a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking.

⁵² Section 784.048(3), F.S., states that a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking. Section 784.048(1)(a), F.S., states that “harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. Section 784.048(1)(c), F.S., defines “credible threat” as a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. Section 784.048(1)(d), F.S., states “cyberstalk” means: 1. To engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or 2. To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission. Section 784.048(1)(b), F.S., defines “course of conduct” as a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose.

⁵³ Section 787.01(1)(a), F.S., defines “kidnapping” as forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to: 1. Hold for ransom or reward or as a shield or hostage; 2. Commit or facilitate commission of any felony; 3. Inflict bodily harm upon or to terrorize the victim or another person; or 4. Interfere with the performance of any governmental or political function.

⁵⁴ Section 787.02(1)(a), F.S., defines “false imprisonment” as forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will.

⁵⁵ Section 741.28(2), F.S.

⁵⁶ Section 741.28(3), F.S.

Injunctions

Current law establishes a cause of action for an injunction for protection against domestic violence.⁵⁷ The circuit court has jurisdiction to hear a petition for injunction.⁵⁸ This petition may be filed by any person who either is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming the victim of domestic violence.⁵⁹ The person can file a petition against a current or former spouse, any person related by blood or marriage, any person who is or was residing within a single dwelling unit, or is a person with whom the petitioner had a child.⁶⁰ A person is not precluded from requesting an injunction because he or she is not a spouse.⁶¹ The court is prohibited from issuing mutual orders of protection, but may issue separate injunctions for petition against domestic violence where each party has complied with the provisions under law which cannot be waived.⁶² A petitioner is not required to be represented by an attorney.⁶³

An injunction may be sought even if there is no other cause of action pending between the parties, but a petitioner must disclose the pendency of any such action in a petition.⁶⁴ If an action is filed under ch. 61, F.S., regarding dissolution of marriage, support and time-sharing, any ordered entered in that proceeding takes precedence of any inconsistent provision of an injunction ordered under s. 741.30, F.S., which addresses matters governed by ch. 61, F.S.⁶⁵

A sworn petition for injunction for protection against domestic violence must contain specific allegations of domestic violence, including facts and circumstances upon the basis of which relief is sought.⁶⁶ Effective October 1, 2002, the clerk of the court may not assess a fee for filing a petition for protection against domestic violence.⁶⁷ The clerk of the court is tasked with several responsibilities with respect to injunction proceedings, including, but not limited to:

- Assisting petitioners in seeking injunctions for protection against domestic violence and enforcement for a violation of such injunction;⁶⁸
- Providing simplified petition forms for the injunction, any modifications, and the enforcement of them, including instructions for completion;
- Making available any informational brochures on domestic violence that are provided by local certified domestic violence centers; and
- Distributing a statewide uniform informational brochure, when available, to petitioners at the time of the filing for an injunction for protection against domestic violence or repeat violence.⁶⁹

⁵⁷ Section 741.30(1), F.S.

⁵⁸ Section 741.30(1)(a), F.S.

⁵⁹ Section 741.30(1)(a), F.S.

⁶⁰ Section 741.30(3)(f), F.S.

⁶¹ Section 741.30(1)(e), F.S.

⁶² Section 741.30(1)(i), F.S.

⁶³ Section 741.30(1)(f), F.S.

⁶⁴ Section 741.30(1)(b), F.S.

⁶⁵ Section 741.30(1)(c), F.S.

⁶⁶ Section 741.30(3)(a), F.S.

⁶⁷ Section 741.30(2)(a), F.S.

⁶⁸ Section 741.30(2)(c)1., F.S.

⁶⁹ *Id.*

A domestic violence form pack and form packs for injunctions, such as stalking and repeat violence, as well as other helpful information and links on domestic violence are available on the Broward County Clerk of Court.⁷⁰ The form packs include copies of the required forms that must be filed with the sworn petition for injunction, such as the Cover Sheet for Family Court Cases and the Notice of Related Cases, and forms that may be filed at the discretion of the petitioner, such as a Request for Confidential Filing of Address.⁷¹

Current law sets out the following sample sworn petition which must be in substantially the same form when it is filed with the court to request an injunction for domestic violence:⁷²

PETITION FOR
INJUNCTION FOR PROTECTION
AGAINST DOMESTIC VIOLENCE

Before me, the undersigned authority, personally appeared Petitioner ...(Name)..., who has been sworn and says that the following statements are true:

(a) Petitioner resides at: ...(address)...

(Petitioner may furnish address to the court in a separate confidential filing if, for safety reasons, the petitioner requires the location of the current residence to be confidential.)

(b) Respondent resides at: ...(last known address)...

(c) Respondent’s last known place of employment: ...(name of business and address)...

(d) Physical description of respondent:.....

Race.....

Sex.....

Date of birth.....

Height.....

Weight.....

Eye color.....

Hair color.....

Distinguishing marks or scars.....

(e) Aliases of respondent:

(f) Respondent is the spouse or former spouse of the petitioner or is any other person related by blood or marriage to the petitioner or is any other person who is or was residing within

⁷⁰ Brenda D. Forman Clerk of Courts (COC), *Domestic Violence Forms and Self-Help*, available at [Domestic Violence - Broward County Clerk of Courts \(browardclerk.org\)](http://DomesticViolence-BrowardCountyClerkofCourts(browardclerk.org)) (last visited Jan. 12, 2022).

⁷¹ COC, *Domestic Violence Form Pack*, available at [DomesticViolenceFormsPackage1.pdf \(browardclerk.org\)](http://DomesticViolenceFormsPackage1.pdf(browardclerk.org)) (last visited Jan. 12, 2022).

⁷² Section 741.30(3)(b), F.S.

a single dwelling unit with the petitioner, as if a family, or is a person with whom the petitioner has a child in common, regardless of whether the petitioner and respondent are or were married or residing together, as if a family.

(g) The following describes any other cause of action currently pending between the petitioner and respondent:.....

.....
The petitioner should also describe any previous or pending attempts by the petitioner to obtain an injunction for protection against domestic violence in this or any other circuit, and the results of that attempt:.....

.....
Case numbers should be included if available.

(h) Petitioner is either a victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence because respondent has: ...(mark all sections that apply and describe in the spaces below the incidents of violence or threats of violence, specifying when and where they occurred, including, but not limited to, locations such as a home, school, place of employment, or visitation exchange)...

.....
.....

....committed or threatened to commit domestic violence defined in s. 741.28, Florida Statutes, as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another. With the exception of persons who are parents of a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

....previously threatened, harassed, stalked, or physically abused the petitioner.

....attempted to harm the petitioner or family members or individuals closely associated with the petitioner.

....threatened to conceal, kidnap, or harm the petitioner’s child or children.

....intentionally injured or killed a family pet.

....used, or has threatened to use, against the petitioner any weapons such as guns or knives.

....physically restrained the petitioner from leaving the home or calling law enforcement.

....a criminal history involving violence or the threat of violence (if known).

....another order of protection issued against him or her previously or from another

jurisdiction (if known).

....destroyed personal property, including, but not limited to, telephones or other communication equipment, clothing, or other items belonging to the petitioner.

....engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.

(i) Petitioner alleges the following additional specific facts: ...(mark appropriate sections)...

....A minor child or minor children reside with the petitioner whose names and ages are as follows:

....Petitioner needs the exclusive use and possession of the dwelling that the parties share.

....Petitioner is unable to obtain safe alternative housing because:

....Petitioner genuinely fears that respondent imminently will abuse, remove, or hide the minor child or children from petitioner because:

(j) Petitioner genuinely fears imminent domestic violence by respondent.

(k) Petitioner seeks an injunction: ...(mark appropriate section or sections)...

....Immediately restraining the respondent from committing any acts of domestic violence.

....Restraining the respondent from committing any acts of domestic violence.

....Awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.

....Providing a temporary parenting plan, including a temporary time-sharing schedule, with regard to the minor child or children of the parties which might involve prohibiting or limiting time-sharing or requiring that it be supervised by a third party.

....Establishing temporary support for the minor child or children or the petitioner.

....Directing the respondent to participate in a batterers' intervention program.

....Providing any terms the court deems necessary for the protection of a victim of domestic violence, or any minor children of the victim, including any injunctions or directives to law enforcement agencies.

Further, every petition for injunction against domestic violence must contain, directly above the signature line, a statement in specified font type which confirms that the statements contained in

the petition are true and correct, and the petitioner understands that they are being made under penalty of perjury punishable as provided for in s. 837.02, F.S.⁷³

If the sworn petition seeks to determine a parenting plan and time-sharing schedule with regard to the parties' minor child or children, allegations required under s. 61.522, F.S., of the Uniform Child Custody Jurisdiction and Enforcement Act must be accompanied by or included incorporated into the petition.⁷⁴

In determining whether there is reasonable cause to believe that the petitioner is in imminent danger of becoming a victim of domestic violence, the court must consider and evaluate all relevant factors alleged in the petition, including, but not limited to:

- The history between the petitioner and respondent, including any threats, harassment, stalking, or physical abuse;
- Whether the respondent has attempted to harm the petitioner or individuals closely associated with the petitioner;
- Whether the respondent has threatened to conceal, kidnap, or harm the petitioner's child;
- Whether the respondent has intentionally injured or killed a family pet;
- Whether the respondent has used, or has threatened to use, against the petitioner any weapons;
- Whether the respondent has a criminal history involving violence or the threat of violence;
- The existence of a verifiable order of protection issued previously or from another jurisdiction;
- Whether the respondent has destroyed personal property; and
- Whether the respondent engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.⁷⁵

The court may grant a temporary injunction ex parte, pending a full hearing, if it appears that an immediate and present danger of domestic violence exists.⁷⁶ The court may grant such relief that it deems proper, including an injunction:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the temporary and exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner;
- On the same basis as provided in s. 61.13, F.S., providing the petitioner a temporary parenting plan, including a time-sharing schedule, which may award the petitioner up to 100 percent of the time-sharing;
- Ordering the respondent to participate in treatment, intervention, or counseling services;
- Referring a petitioner to a certified domestic violence center;⁷⁷
- Awarding to the petitioner the temporary, exclusive care, possession, or control of an animal that is owned or cared for by certain persons, including the parties to the injunction; and

⁷³ Section 741.30(3)(c), F.S.

⁷⁴ Section 741.30(3)(d), F.S.

⁷⁵ Section 741.30(6)(b), F.S.

⁷⁶ Section 741.30(6)(a), F.S.

⁷⁷ Section 741.30(6)(a)6., F.S., requires the court to provide the petitioner with a list of certified domestic centers.

- Ordering such other relief as the court deems necessary for the protection of a victim.⁷⁸

Relief ordered that restrains the respondent from committing any acts of domestic violence or other relief granted that the court deems is necessary for protection of the victim remain in effect until the injunction is modified or dissolved.⁷⁹ Any temporary parenting plan remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting certain parenting rights, including, but not limited to, placement, adoption or time-sharing.⁸⁰

A temporary or final judgment on injunction must explicitly state that:

- The injunction is valid and enforceable in all counties in the State of Florida;
- Law enforcement officers may use their arrest powers under s. 901.15(6), F.S. to enforce the terms of the injunction;
- The court had jurisdiction over the parties and matter under the laws of Florida and that reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect that person's due process rights;
- The date the respondent was served with the temporary or final order, if the information is known;⁸¹ and
- It is a violation of s. 790.233, F.S., and a first degree misdemeanor, for the respondent to possess or control any firearm or ammunition.⁸²

The court may also include in the injunction an order that the respondent attend a batterer's intervention program (BIP),⁸³ and must order it in certain circumstances.⁸⁴ When the court orders the alleged perpetrator to participate in a BIP, the court must provide a list of batterers' intervention programs.⁸⁵

Parental Rights

The interest of parents in the care, custody, and control of their children is a recognized fundamental liberty protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. This fundamental liberty interest is rooted in the fundamental right of privacy from interference in making important decisions relating to marriage, family relationships, child rearing, and education.⁸⁶ The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:

⁷⁸ Section 741.30(6)(a), F.S.

⁷⁹ Section 741.30(6)(c), F.S., provides that any party may move to modify or dissolve the injunction at any time.

⁸⁰ Section 741.30(6)(a)4., F.S.

⁸¹ Section 741.30(6)(d), F.S.

⁸² Section 741.30(6)(g), F.S.

⁸³ BIPs are designed to address the root cause of domestic violence and deter participants from committing acts of domestic violence in the future. Battered Women's Justice Project, *Current Research on Batterer Intervention Programs and Implications for Policy*, p. 1, Dec. 2017, available at <https://www.bwjv.org/assets/batterer-intervention-paper-final-2018.pdf> (last visited Jan. 14, 2022).

⁸⁴ Section 741.30(6)(e), F.S.

⁸⁵ Section 741.30(6)(a)5., F.S.

⁸⁶ *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education). See *Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eighth grade violates the parents' constitutional right to direct the religious upbringing of their children); *Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.⁸⁷

The Florida Supreme Court has recognized that under Art. I., s. 23 of the Florida Constitution, parents have a fundamental liberty interest in determining the care and upbringing of their children.⁸⁸ These rights may not be intruded upon absent a compelling state interest.⁸⁹ According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.⁹⁰

Parental Time-Sharing

Parental time-sharing is the time, including overnights and holidays, which a minor child spends with each parent.⁹¹ A parent's right to time-sharing is not absolute, and the Legislature may enact a time-sharing policy when it affects the best interest of the child.⁹² As a result of the constitutional right to a meaningful parent-child relationship, there must be competent, substantial evidence in the record that demonstrates that any restrictions or limitations on time-sharing are in the best interests of the child before those restrictions will be sustained.⁹³ Thus, where there is no evidence that the noncustodial parent is unfit, that extreme circumstances preclude visitation, or that visitation would adversely affect the welfare of the child, the trial court abuses its discretion in failing to provide visitation rights for that parent.⁹⁴ Moreover,

parents act in their children's best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state); *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

⁸⁷ *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

⁸⁸ *Beagle v. Beagle*, 678 So.2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent's constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

⁸⁹ *Id.* See, e.g., *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So.2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So.2d 1105, 1106 (Fla. 5th DCA 2001).

⁹⁰ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So.2d 544, 547 (Fla. 1985) (citations omitted).

⁹¹ See s. 61.046(23), F.S. The schedule may be developed and agreed to by the parents of a minor child and approved by the court or established by the court if the parents cannot agree or if their agreed-upon schedule is not approved by the court.

⁹² See, e.g., *Mallick v. Mallick*, 2020 WL 6106287 (Fla. 2d DCA Oct. 16, 2020); *Bainbridge v. Pratt*, 168 So.3d 310 (Fla. 1st DCA 2011).

⁹³ *Miller v. Miller*, 302 So.3d 457 (Fla. 5th DCA 2020).

⁹⁴ *McArdle v. McArdle*, 753 So.2d 696 (Fla. 4th DCA 2000); *Johnston v. Boram*, 386 So.2d 1230 (Fla. 5th DCA 1980).

restriction of visitation is generally disfavored, unless the restriction is necessary to protect the welfare of the child.⁹⁵

Section 61.13(2), F.S., provides judges wide discretion in determining matters relating to parenting and time-sharing 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. The court is required to determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).⁹⁶

In establishing time-sharing, the court must make a determination of the best interests of the child by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that 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 time-sharing 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.
- 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.

⁹⁵ See *Munoz v. Munoz*, 210 So.3d 227 (Fla. 2d DCA 2017); *Davis v. Lopez-Davis*, 162 So.3d 19 (Fla. 4th DCA 2014).

⁹⁶ Section 61.13(2)(c), F.S. The UCCJEA was developed by the Legal Resource Center on Violence Against Women, the National Center on State Courts, and the National Council of Juvenile and Family Court Judges (NCJFCJ) to address jurisdictional and enforcement issues in child custody cases. The NCJFCJ, *Uniform Child Custody Jurisdiction and Enforcement Act: Guide for Court Personnel and Judges*, July 18, 2018, available at <https://www.ncjfcj.org/publications/uniform-child-custody-jurisdiction-and-enforcement-act-guide-for-court-personnel-and-judges/> (last visited April 7, 2021).

- 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.⁹⁷

Further, the court may order sole parental responsibility and make such arrangements for time-sharing as will best protect the child or abused spouse from further harm if the court determines that shared parental responsibility would be detrimental to the child.⁹⁸ Current law provides for a rebuttable presumption⁹⁹ that parental time-sharing would be detrimental to the child if there is evidence that:

- A parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28, F.S., and ch. 775, F.S.;
- Meets the criteria of s. 39.806(1)(d), F.S., relating to grounds for termination of parental rights of incarcerated parents; or
- A parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:
 - The parent was 18 years of age or older.
 - The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.¹⁰⁰

A parent may rebut the presumption if the court finds in writing that the parent poses no significant risk of harm to the child and that time sharing is in the best interests of the minor child.¹⁰¹ If a parent rebuts the presumption, the court must consider all the best interest factors noted above that must be considered when determining a time-sharing schedule.¹⁰²

If the presumption is not rebutted, shared parental responsibility, including time-sharing and decisions regarding the child, may not be granted to the convicted parent.¹⁰³ In any event, the convicted parent is not relieved of any obligation to provide financial support.¹⁰⁴ The court may consider evidence of domestic violence or child abuse as evidence of detriment to the child even if the parent is not convicted of any such offenses or an injunction for protection against domestic violence has not been issued.¹⁰⁵

⁹⁷ Section 61.13(3)(a)-(t), F.S.

⁹⁸ Section 61.13(2)(c)2., F.S.

⁹⁹ Every rebuttable presumption is either a presumption: (a) affecting the burden of producing evidence and requiring the trier of fact to assume the existence of the presumed fact, unless credible sufficient evidence is introduced to the contrary in which case the trier of fact must determine whether the fact has been proven without regard to the presumption; or (b) affecting the burden of proof that imposes upon the party against whom it operates the burden of proof concerning the nonexistence of the presumed fact. Section 90.302, F.S.

¹⁰⁰ Section 61.13(2)(c)2., F.S.

¹⁰¹ Section 61.13(2)(c)5., F.S.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Section 61.13(2)(c)5., F.S.

¹⁰⁵ Section 61.13(2)(c)2., F.S.

The court has discretion to make specific orders regarding the parenting plan or time-sharing schedule that relate to the circumstances of the parties, that relate to the nature of the case, or that are equitable, and may provide for child support in accordance with s. 61.30, F.S., even if equal time-sharing is ordered.¹⁰⁶ The court also has the discretion to make orders that are specified under current law, such as modifying the parenting plan if it is in the child's best interest, and other orders to impose reasonable sanctions for the parent's noncompliance.¹⁰⁷ When a parent refuses to honor the other parent's rights under a time-sharing schedule without proper cause, the court must award the parent who was denied time a sufficient amount of extra time-sharing to compensate for the time that the parent missed.¹⁰⁸

Termination of Parental Rights

Section 39.806, F.S., authorizes the DCF to file a petition for termination of parental rights (TPR) against both parents when they fail to remedy the family problems that brought a child into the dependency system.¹⁰⁹ Alternatively, the DCF may move to terminate only one of the parent's rights if it can prove certain grounds, such as incarceration, egregious conduct, chronic substance abuse, the conception of the child as a result of sexual battery, a conviction requiring the parent to register as a sexual predator, or an incarcerated parent who the court determined is a sexual predator in s. 775.084, F.S., or committed a sexual battery that constitutes a capital, life, or first degree felony in violation of s. 794.011, F.S.¹¹⁰

III. Effect of Proposed Changes:

Domestic Violence (sections 3 to 5)

The bill modifies the definition of "domestic violence" in ss. 414.0252(4), F.S., and 741.28(3), F.S., to include conduct which constitutes coercive control. "Coercive control" is defined as a pattern of threatening, humiliating, or intimidating actions by one family or household member against another family or household member, where such actions are used to harm, punish, or frighten the family or household member and make him or her dependent on the other family or household member by isolating, exploiting, or regulating him or her. The term includes, but is not limited to:

- Isolating the family or household member from his or her friends or family.
- Controlling the amount of money accessible to the family or household member and how he or she spends such money.
- Monitoring the family or household member's activities, communications, or movements.
- Frequently engaging in conduct meant to demean, degrade, dehumanize, or embarrass the family or household member.
- Threatening to cause physical harm to or kill the child or relative of the family or household member.

¹⁰⁶ Section 61.13(5), F.S.

¹⁰⁷ Section 61.13(4)(c), F.S.

¹⁰⁸ Section 61.13(4)(c)1., F.S.

¹⁰⁹ Section 39.8055, F.S.

¹¹⁰ Section 39.806, F.S.

- Threatening to publish false information or make false reports to a law enforcement officer or other law enforcement personnel about the family or household member.
- Damaging the family or household member's property, household goods, or personal effects.
- Forcing the family or household member to participate in criminal activity.

The bill also modifies the content that is required to be included in the instructions that the clerk's office must provide for simplified petition forms, including the injunction, any modifications, and the enforcement. Specifically, the instructions must inform the petitioner that if he or she intends to seek an injunction that prohibits or limits time-sharing between the respondent and the child, he or she must state with specificity details which have caused the petitioner to fear that the respondent immediately will abuse, remove, or hide the child from the petitioner.

Additionally, the template petition for injunction form under s. 741.30(3)(b), F.S., is amended to include:

- Incorporates coercive control in the definition of domestic violence;
- Notes that the petitioner must provide details regarding any threats to conceal, kidnap, or harm the petitioner's child or children in paragraph (i) of the form;
- Instructs the petitioner to describe any actions taken or threats made by the respondent to cause fear that the respondent imminently will abuse, remove, or hide the child from the petitioner, including where and when the actions were taken or the threats were made, directly or indirectly; whether and how the respondent failed to comply with an existing parenting plan or time-sharing schedule; and any actions taken or comments made by the child that suggest the respondent has caused the child to fear for his or her safety; and
- Modifies the list of potential relief that may be sought in the injunction to relocate part of an existing option for relief to a new option whereby the petitioner seeks an injunction providing a temporary time-sharing schedule that prohibits time-sharing between the respondent and the child of the parties.

Parental Responsibility (sections 1 and 2)

SB 1106 modifies provisions relating to parental responsibility, specifically in regards to shared parental responsibility, parenting plans, and factors that the court must consider when determining such plans.

The bill modifies the standard that the court must apply when determining whether to order shared parental responsibility for a child to include a best interest determination based on reasonable factors, including, but not limited to, the time-sharing factors in s.61.13(3), F.S., unless the court finds that shared parental responsibility would be detrimental to the child.

It also amends the rebuttable presumption that establishes detriment to the child if the circumstances set out in that subparagraph are met to clarify that the rebuttable presumption for such circumstances also establishes that shared parental responsibility is not in the child's best interest if they are proven by clear and convincing evidence. Two additional circumstances are also added to the list that establish a rebuttable presumption, including:

- A parent or child has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence caused by the other parent, upon a review of all relevant factors, including, but not limited to, the factors in s. 741.30(6)(b); or
- There is alleged domestic violence as defined in s. 784.046(1)(c); child abuse as defined in s. 39.01(2); child abandonment as defined in s. 39.01(1); or child neglect as defined in s. 39.01(50) by a parent, regardless of whether a cause of action has been brought or is currently pending in court. This provision is a slightly modified version of one of the best interest factors that the court must consider when making a determination of parent plan.

The bill relocates, to apply to all rebuttable presumptions, a provision under current law that provides a parent may rebut the presumption upon a specific finding in writing by the court that the parent does not pose a significant risk of harm to the child and that time-sharing is in the best interests of the child. It also relocates the provision that if the presumption is rebutted, the court must consider all time-sharing factors in subsection (3) when developing the time-sharing schedule.

Even if the court does not find that shared responsibility would be detrimental to the child based upon the circumstances that establish a rebuttable presumption, the court may find that shared parental responsibility would be detrimental to the child and order sole parental responsibility and make such arrangements for time-sharing that will best protect the child or parent (as opposed to abused spouse under current law), including, but not limited to, supervised visitation by a third party at the expense of the parent without sole parental responsibility or a designated location at which to pick up and drop off the child. The bill removes the requirement that the time-sharing will best protect the child or abused spouse from further harm. It also removes the provision that requires the court to consider evidence of domestic violence or child abuse as evidence of detriment to the child regardless of whether a conviction for any offence of domestic violence or child abuse or the existence of an injunction for protection against domestic violence.

The bill amends the best interest factors that a court must consider when making a determination about the establishment or modification of parental responsibility, a parenting plan or a time-sharing schedule. Specifically, the factor regarding evidence of domestic violence, sexual abuse, child abuse, child abandonment, or child neglect that was relocated to the subparagraph as a rebuttable presumption noted above. It also adds the following two factors:

- Whether and to what extent the child has developed a relationship with either parent and the nature of any bond that has been established between such parent and the child. An example of the nature of the relationship that should be considered is if the child has expressed or exhibited behavior that suggests that he or she fears for his or her safety or well-being while being cared for by a parent. Upon the request of one parent, and at the parent's expense, the court may order an independent evaluation by a psychiatrist licensed under ch. 458, F.S., or ch. 459, F.S., or a psychologist licensed under ch. 490, F.S.
- Clear and convincing evidence that a parent has an improper motive for seeking shared parental responsibility and whether such motive will negatively interfere with that parent's ability to safely and effectively share parental responsibilities.

For purposes of ch. 61, F.S., the term “child”¹¹¹ has the same meaning as in s. 39.01(11), F.S. Technical amendments are made to the sections included in the bill. Sections 921.0024, 943.0584, and 943.171, F.S., are amended to update cross-references to s. 741.28, F.S.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18, of the Florida Constitution.

B. Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The Florida Supreme Court has recognized that under Art. I., s. 23 of the Florida Constitution, parents have a fundamental liberty interest in determining the care and upbringing of their children.¹¹² However, a parent’s right to time-sharing is not absolute, and the Legislature may enact a time-sharing policy when it affects the best interest of the child.¹¹³

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill provides additional grounds for which there is a rebuttable presumption of detriment to the child and that shared parental responsibility is not in the best interest in the child, and provides that the rebuttable presumption may be rebutted in certain circumstances. It also modifies when sole parental responsibility may be granted, and the best interest factors that must be considered when the court determines parental responsibility. To the extent that these provisions result in additional litigation related to

¹¹¹ Section 39.01(11), F.S., defines “child” as any unmarried person under the age of 18 years who has not been emancipated by order of the court.

¹¹² *Beagle v. Beagle*, 678 So.2d 1271, 1275 (Fla. 1996).

¹¹³ *See, e.g., Mallick v. Mallick*, 2020 WL 6106287 (Fla. 2d DCA Oct. 16, 2020); *Bainbridge v. Pratt*, 168 So.3d 310 (Fla. 1st DCA 2011).

the ability to be granted time-sharing rights, the bill may result in both parents involved in parenting plans and time-sharing agreements paying additional legal fees to litigate related to the time-sharing rights of the child or children.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill provides additional grounds for which there is a rebuttable presumption of detriment to the child and that shared parental responsibility is not in the best interest in the child, and provides that the rebuttable presumption may be rebutted in certain circumstances. It also modifies when sole parental responsibility may be granted, and the best interest factors that must be considered when the court determines parental responsibility. To the extent that these provisions result in additional litigation related to the ability to be granted time-sharing rights, the bill may result in both parents involved in parenting plans and time-sharing agreements paying additional legal fees to litigate related to the time-sharing rights of the child or children.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 61.046, 61.13, 414.0252, 741.28, 741.30, 921.0024, 943.0584, and 943.171 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.