

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1031 Designated Safe Exchange Locations

**SPONSOR(S):** Civil Justice Subcommittee, Rudman and others

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N, As CS	Mathews	Jones
2) Judiciary Committee	22 Y, 0 N	Mathews	Kramer

### SUMMARY ANALYSIS

A court may prescribe a “parenting plan” by which the parents are ordered to share decision-making and physical custody of the minor child. A parenting plan governs the relationship between parents relating to decisions that must be made regarding the minor child at issue. A parenting plan must contain a time-sharing schedule for the parents and the child. The parenting plan should attempt to address all issues concerning the minor child, including, but not limited to, the child’s education, health care, and physical, social, and emotional well-being. In creating the parenting plan, the court should take into consideration all circumstances between the parents, including their historic relationship, domestic violence, and other factors.

Pursuant to s. 61.13(2)(b), F.S., a parenting plan approved by the court must, at a minimum:

- Describe in adequate detail how the parents will share and be responsible for the daily tasks associated with raising the minor child;
- Include the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent;
- Designate which parent will be responsible for healthcare, school-related matters, and other activities; and
- Describe in adequate detail the methods and technologies the parents will use to communicate with the child.

Given the potential for heated disputes in matters involving a minor child, it is imperative that the parenting plan be as detailed as possible to eliminate ambiguity surrounding each parent’s responsibilities and specific time-sharing with the minor child.

CS/HB 1031 amends s. 61.13, F.S., to require a court to consider whether it is in the best interests of the minor child and the parties to require the use of a safe exchange location for periodic timesharing exchanges.

The bill identifies minimum requirements that each designated safe exchange location must meet, including a purple light in the parking lot and a camera surveillance system.

The bill may have an insignificant negative fiscal impact on counties and municipalities due to the required purple light and camera surveillance system.

The bill provides an effective date of July 1, 2023.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Timesharing, Parental Responsibility, and Parenting Plans

Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting<sup>1</sup> and time-sharing<sup>2</sup> 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. As a threshold consideration, the Legislature has declared that:<sup>3</sup>

It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.

Therefore, current law does not provide a presumption in favor of a specific time-sharing schedule, and the court sets a time-sharing schedule when the parties are unable to agree. In establishing time-sharing, the court must consider the best interests of the child<sup>4</sup> and evaluate all factors affecting the welfare and interests of the child and the circumstances of the 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.

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<sup>1</sup> Parenting or parental responsibility refers to the responsibility and right to make important decisions about the child's welfare, such as education and medical care after the parents separate.

<sup>2</sup> Time-sharing refers to the time, including overnights and holidays, which the child spends with each parent. S. 61.046(23), F.S.

<sup>3</sup> S. 61.13(2)(c)1., F.S.

<sup>4</sup> S. 61.13(2)(c), F.S.

- 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.

### *Parenting Plan*

A court may prescribe a "parenting plan"<sup>5</sup> by which the parents are ordered to share decision-making and physical custody of the minor child. The parenting plan may order parents to exercise shared parental responsibility, it may delegate decision-making authority over specific matters to one parent, or it may grant a parent sole parental responsibility over the minor child.

A parenting plan is a document created to govern the relationship between parents relating to decisions that must be made regarding the minor child at issue.<sup>6</sup> A parenting plan must contain a time-sharing schedule for the parents and the child.<sup>7</sup> The parenting plan should attempt to address all issues concerning the minor child, including, but not limited to, the child's education, health care, and physical, social, and emotional well-being.<sup>8</sup> In creating the parenting plan the court must consider all circumstances between the parents, including their historic relationship, domestic violence, and other factors.<sup>9</sup> A parenting plan is either created and agreed to by both parents and approved by the court, or is established by the court if the parents cannot agree to a plan or the parents agree to a plan that is not approved by the court.<sup>10</sup> A parenting plan may be utilized in cases involving minor children unrelated to a dissolution of marriage or in connection to a dissolution of marriage.

Pursuant to s. 61.13(2)(b), F.S., a parenting plan approved by the court must, at a minimum:

- Describe in adequate detail how the parents will share and be responsible for the daily tasks associated with raising the minor child;
- Include the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent;
- Designate which parent will be responsible for healthcare, school-related matters, and other activities; and
- Describe in adequate detail the methods and technologies the parents will use to communicate with the child.<sup>11</sup>

Given the potential for heated disputes in matters involving a minor child, it is imperative that the parenting plan be as detailed as possible to eliminate ambiguity surrounding each parent's responsibilities and specific time-sharing with the minor child. This generally includes a detailed description of the various holidays and with which parent the child will spend each holiday,<sup>12</sup> the location of the exchange from one parent's timesharing to the other parent's timesharing, who is responsible for the child's travel expenses, the times during which one parent will ensure the minor child is available to communicate with the other parent, the delegation of specific decision-making topics, and more.<sup>13</sup>

<sup>5</sup> A "parenting plan" is a document created to govern the relationship between the parents relating to decisions which must be made regarding the child and must contain a timesharing schedule for the parents and child. S. 61.046(14), F.S. If a parenting plan is agreed to by the parties, it must be approved by the court.

<sup>6</sup> S. 61.046(14), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> S. 61.13(2)(b), F.S.

<sup>12</sup> See *Mills v. Johnson*, 147 So. 3d 1023 (Fla. 2d DCA 2014) in which the trial court erred by adopting a time-sharing schedule that did not address holiday timesharing given the historically contentious parenting relationship between the parties.

<sup>13</sup> See generally *Magdziak v. Sullivan*, 185 So. 3d 1291 (Fla. 5<sup>th</sup> DCA 2016); see also *Scudder v. Scudder*, 296 So. 3d 426 (Fla. 4<sup>th</sup> DCA 2020).

To assist parties with creating a parenting plan that meets the requirements under s. 61.13, F.S., the Florida Supreme Court has published a standardized parenting plan form, Form 12.995(a).<sup>14</sup> The form attempts to cover all possible aspects of an acceptable parenting plan including which parent can enroll the child in extra-curricular activities, the specific meaning of academic breaks and holidays, the process by which a parent should request a temporary schedule change, the specific days the child should be with each parent, and even the specific time the exchange should occur.

Timesharing exchanges commonly occur in well-lit parking lots of popular establishments, rest stops at the midway point between both parents, the child's school, or a common landmark such as a specific coffee shop. There is no limitation as to the location the parties may agree to for the timesharing exchange. In matters where the parents have a historically contentious relationship, it is generally advised that the exchange be made in a public, well-lit location with security cameras and high foot traffic by other people. Generally, parents are able to agree on a change in exchange location and deviate from the location prescribed in the parenting plan as needed. However, when parents are unable to agree, the location specified in the parenting plan remains the default exchange location.

### Noncompliance with the Terms of a Parenting Plan

A parent's failure to comply with his or her parenting plan may lead to the parent being charged with interference with custody under s. 787.03, F.S., a third-degree felony punishable by up to five years imprisonment and a \$5,000 fine.<sup>15</sup>

Pursuant to s. 61.13(4)(d), F.S., a person who violates the terms of a parenting plan may be punished by contempt of court or other remedies the court may deem appropriate.<sup>16</sup> The penalty for civil contempt may be a monetary fine or other remedy imposed by the court as appropriate. Further, a court may initiate criminal contempt proceedings if the party's actions warrant such measures. Repeated noncompliance with the terms of a parenting plan, or repeated findings of contempt against a parent, may lead to a modification of timesharing in certain situations.

Many sheriffs' offices and police departments allow the public to use their lobbies as an exchange location; however, there is no standard process or procedure for all locations. Currently, a parent who is in fear of his or her safety based on the actions or behaviors of the other parent must still meet at the agreed-upon or court-ordered location for a custody exchange if there is no domestic violence injunction or other bar to exchange in place.

### **Effect of Proposed Changes**

CS/HB 1031 amends s. 61.13, F.S., to require a court to consider whether it is in the best interests of the minor child and the parties to require the use of a safe exchange location for periodic timesharing exchanges.

The bill requires each board of county commissioners in the state to designate at least one sheriff's office, or substation location, as a safe exchange location. The safe exchange location will not be inside the designated sheriff's office, but rather at a location in the parking lot identified by a purple light. The bill requires each location to install a purple light in the parking lot to identify the location. Further, the bill requires each designated safe exchange location to:

- Be accessible by a member of the public 24 hours a day, 7 days a week; and
- Provide adequate lighting and an external video surveillance system that records continuously at all hours.

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<sup>14</sup> Florida Supreme Court Approved Family Law Form 12.995(a), Parenting Plan (Feb. 2018), [https://www.flcourts.gov/content/download/686031/file\\_pdf/995a.pdf](https://www.flcourts.gov/content/download/686031/file_pdf/995a.pdf) (last visited Mar. 12, 2023).

<sup>15</sup> Ss. 775.082(3)(c)(e) and 775.083(1)(c), F.S.

<sup>16</sup> Contempt is a refusal to obey any legal order, mandate, or decree, made or given by any judge relative to any business of the court, after due notice thereof. S. 38.23, F.S.

The bill establishes minimum requirements of the recording system in each designated location. The external video surveillance system must:

- Have at least one camera fixed on the parking lot and be able to record the area in the vicinity of the purple light during both day and night;
- Record images clearly and must accurately display the date and time of the recorded image or video; and
- Retain video surveillance recordings or images for a minimum of 45 days.

The bill prohibits a cause of action from being brought against the county, the sheriff, a county commissioner, or a law enforcement officer or employee at the designated safe exchange location based on an incident that arises when parents meet at the location to exchange custody of a child.

The bill provides an effective date of July 1, 2023.

#### B. SECTION DIRECTORY:

**Section 1:** Provides a short title.

**Section 2:** Amends s. 61.13, F.S., relating to support or children; parenting and time-sharing; powers of court.

**Section 3:** Amends s. 125.01, F.S., relating to powers and duties.

**Section 4:**

Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have an insignificant negative fiscal impact on local governments by requiring certain locations to install a purple light and recording devices which meet the requirements of the bill.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill may require counties or municipalities to spend funds or take action requiring the expenditure of funds for the implementation of the required purple light and camera surveillance system. Additionally, the bill mandates each board of county commissioners to designate at least one designated safe exchange location. However, an exemption may apply because the fiscal impact may be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 20, 2023, the Civil Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removed a requirement that every parenting plan include language specifying that a parent may use a designated safe exchange location instead of the court ordered or agreed upon exchange location in certain geographic locations.
- Removed a provision which prohibited a parent who utilized the designated safe exchange location instead of the agreed upon or court ordered exchange location from being found to be in violation of his or her parenting plan or time-sharing schedule for doing so.
- Clarified that the designated safe exchange location is in the parking lot of the specified sheriff's office, not inside of the sheriff's office.
- Clarified that the required surveillance camera at the exchange location must be able to record at day and night.
- Removed the section of the bill which amended s. 787.03, F.S., relating to a parent's interference with custody.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.