

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 Appropriations Committee on Health and Human Services

BILL: CS/SB 976

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

SUBJECT: Court-appointed Psychologists

DATE: April 9, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tuszynski</u>	<u>Tuszynski</u>	<u>CF</u>	Fav/CS
2.	<u>Sneed</u>	<u>McKnight</u>	<u>AHS</u>	Pre-meeting
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 976 clarifies the process which a parent seeking to disqualify a court-appointed psychologist must follow, and also clarifies that moving to disqualify the psychologist is not a condition precedent to filing a supplemental legal action against the psychologist. Additionally, the bill clarifies that a two-way attorney fee shifting provision applies in any supplemental legal actions against the psychologist in his or her capacity as a court appointee, and does not apply to the underlying legal action.

The bill also requires the parent first move to disqualify the psychologist and appoint a different, alternative psychologist before a parent can file an administrative complaint against a court-appointed psychologist.

The bill will likely have an insignificant negative fiscal impact on state expenditures and revenues. **See Section V., Fiscal Impact Statement.**

The bill takes effect July 1, 2025.

II. Present Situation:

Family Law

In Florida, the general reference to “family law” matters include many different types of cases. Family law courts have jurisdiction over cases involving:

- Dissolution of marriage.
- Annulment.
- Child support.
- Paternity.
- Adoption.
- Name changes.
- Civil domestic violence, repeat violence, dating violence, stalking, and sexual violence injunctions.
- Juvenile dependency.
- Modifications and enforcements of orders, and more.¹

Best Interests of the Child Standard

Throughout all family law proceedings involving a minor child, the primary focus of the court is on the best interest of the minor child. Thus, when determining any issue involving child custody, the judge must first assess how his or her order would impact the child. Florida law provides a non-exhaustive list of 20 factors that a court must consider to determine the best interests of a minor child.² The factors affecting the welfare and interests of the child and the circumstances of the family, include, but are not limited to the:

- Demonstrated capacity and disposition of each parent to facilitate and encourage a continuing parent-child relationship, honor the timesharing 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.³
- 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.

¹ Florida Office of the State Courts Administrator, *Family Court in Florida*, available at: <https://www.flcourts.gov/Resources-Services/Office-of-Family-Courts/Family-Court-in-Florida> (last visited March 26, 2025).

² Section 61.13(3), F.S.

³ Section 61.13(3), F.S.

- 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 evidence that a parent has or has had a reasonable cause to believe that he or she or his or her minor child or children are in imminent danger of becoming victims of an act of domestic violence.
- Evidence that either parent has ever knowingly provided false information about to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.
- Particular parenting tasks customarily performed by each parent, including the extent to which parenting responsibilities were undertaken by third parties.
- 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.
- Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

Parental Responsibility

Florida courts have consistently ruled that a parent's desire and right to the companionship, care, custody, and management of his or her children is an important interest that warrants deference and, absent a powerful countervailing interest, protection. Further, a parent has general responsibilities owed to his or her children, including supervision, health and safety, education, care, and protection. In Florida, parenting is broken down into two distinct components: parental responsibility (decision-making) and timesharing (physical visitation with the child based on a parenting plan). Although the right to integrity of the family is among one of the most fundamental rights, when parents divorce or separate, the parents' rights are subject to the overriding concern for the ultimate welfare or best interests of their children.

In family law matters, the commonly referred to idea of "custody" is broken down into parental responsibility and timesharing. Parental responsibility refers to the legal duty and right of a parent to care for, protect, and raise his or her child, including making important decisions regarding the child's upbringing and welfare such as religion, medical decisions, and education issues. Timesharing refers to the actual schedule each parent spends with the child according to a timesharing schedule detailed in a parenting plan.

Under Florida law, a court generally orders parental responsibility of a minor child to be shared by both parents.⁴ However, a court may deviate from shared parental responsibility if it finds that shared parental responsibility would be detrimental to the minor child.⁵ In determining whether there would be a detriment to the child, the court shall consider:

- Evidence of domestic violence;⁶
- Whether either parent has or has had a reasonable cause to believe that he or she or his or her minor child or children are or have been in imminent danger of becoming victims of domestic violence or sexual violence by the other parent against the parent or against the child or children whom the parents share in common, regardless of whether a cause of action has been brought or is pending on the issue;
- Whether either parent has or has had reasonable cause to believe that his or her minor child or children are or have been in imminent danger of becoming victims of an act of abuse, abandonment, or neglect by the other parent; and
- Any other relevant factors.⁷

Current law provides factors that create a rebuttable presumption that shared parental responsibility is detrimental to the child, as follows:

- A parent has been convicted of a first-degree misdemeanor or higher level of crime involving domestic violence as defined in s. 741.28, F.S., and ch. 775, F.S.;
- A parent meets the criteria for the termination of his or her parental rights under s. 39.806(1)(d), F.S. relating to a parent who is incarcerated; or
- A parent has been convicted of or had adjudication withheld as a sexual offender for an offense enumerated in s. 943.0435(1)(h)1.a., F.S., and at the time of the offense the parent was 18 years old or older and the victim was under 18 years old or the parent believed the victim to be under 18.⁸

Parenting Plan

A court may prescribe a “parenting plan”⁹ 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. Common issues concerning a minor child may include education, healthcare, and social or emotional wellbeing.

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.¹⁰ A parenting plan must contain a timesharing schedule for the parents and the child.¹¹ The parenting plan should attempt to

⁴ Section 61.13(2)(c)(2), F.S.

⁵ *Id.*

⁶ Section 741.28, F.S.

⁷ Section 61.13(2)(c)(2), F.S.

⁸ Section 61.13(2)(c)(3), F.S.

⁹ 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.

¹⁰ Section 61.046(14), F.S.

¹¹ *Id.*

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.¹² In creating the parenting plan, the court must consider all circumstances between the parents, including their historic relationship, domestic violence, and other factors.¹³ 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.¹⁴ 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.

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 timesharing 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.¹⁵

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 timesharing with the minor child. This generally includes a detailed description of the various holidays and with which parent the child will spend each holiday,¹⁶ 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.¹⁷

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).¹⁸ 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 the specific time the exchange should occur.

¹² Section 61.046(14), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 61.13(2)(b), F.S.

¹⁶ See *Mills v. Johnson*, 147 So. 3d 1023 (Fla. 2d DCA 2014) in which the trial court erred by adopting a timesharing schedule that did not address holiday timesharing given the historically contentious parenting relationship between the parties.

¹⁷ See generally *Magdziak v. Sullivan*, 185 So. 3d 1291 (Fla. 5th DCA 2016); see also *Scudder v. Scudder*, 296 So. 3d 426 (Fla. 4th DCA 2020).

¹⁸ Florida Supreme Court Approved Family Law Form 12.995(a), Parenting Plan (Feb. 2018), available at: https://www.flcourts.gov/content/download/686031/file_pdf/995a.pdf (last visited Mar. 26, 2025).

Timesharing

Under current law, a rebuttable presumption exists that equal time-sharing of a minor child is in the child's best interests.¹⁹ As such, a court will start with the presumption that time-sharing should be divided equally (commonly referred to as "50/50") between both parents. However, either parent may rebut the presumption by proving that such equal-timesharing is not in the minor child's best interests.

To successfully overcome the presumption, the parent seeking to rebut the presumption must prove that 50/50 timesharing is not in the child's best interests by a preponderance of the evidence (that is, that the evidence presented is more convincing and likely true than the other parent's evidence, or in other words, meaning it's more probable than not). In establishing a timesharing schedule, except for when the parties agree to a schedule without court intervention, the court must consider the best interests of the child²⁰ and evaluate all "best interest"²¹ factors.

When creating or modifying a time-sharing schedule, the court must evaluate all factors and must make specific written findings of fact related to each factor.²²

Court-Appointed Social Investigation and Study

Section 61.20, F.S., provides authority for the court to order a "social investigation and study" in matters where the parenting plan is at issue. As such, a court may order a social investigation and study concerning all relevant details relating to the child and each parent in the case. Under Florida law, a social investigation and study may be ordered in any action where the parenting plan is at issue because the parents cannot agree and either:

- Such an investigation has not been done and, thus, a study has not been provided to the court by the parties; or
- The court determines that the investigation and study that have been done are insufficient.²³

In a case where the court deems it necessary to order a social investigation and study, either the parties can jointly choose an investigator, or, if they are unable to agree, the court will select and appoint an investigator.²⁴ The social investigator must be qualified as an expert to testify regarding his or her written study.^{25,26} The investigation and study must be conducted by:

- Qualified staff of the court;
- A child-placing agency licensed pursuant to s. 409.175, F.S.;
- A psychologist licensed under ch. 490, F.S.;
- A clinical social worker;
- A Marriage and Family therapist; or
- A mental health counselor licensed under ch. 491, F.S.²⁷

¹⁹ Section 61.13(2)(c)(1), F.S.

²⁰ Section 61.13(2)(c), F.S.

²¹ Section 61.13(3), F.S.

²² Section 61.13(2)(c)(1), F.S.

²³ Section 61.20(1), F.S.

²⁴ Fla. Fam. L.R.P. 12.364.

²⁵ *Id.*

²⁶ Section 90.702, F.S.

²⁷ Section 61.20(2), F.S.

Additionally, if a party is indigent and the court does not have qualified staff to perform the investigation and study, the court may request that the Department of Children and Family Services (DCF) conduct the study.²⁸

When a social investigation and study is ordered, each party must be provided a copy of the report in advance of a hearing on the matter and must have an opportunity to review the report and offer evidence to rebut conclusions contained therein.²⁹ The Florida Family Law Rules of Procedure requires the written report to be provided to the parties no later than 30 days before trial.³⁰

Court Appointed Psychologist

There are specific provisions related to court-appointed psychologists who are ordered to develop a parenting plan recommendation in a dissolution of marriage, domestic violence, or a paternity matter involving the relationship of a child and a parent.³¹ Under current law, a court-appointed psychologist is presumed to be acting in good faith if his or her recommendation has been reached under standards that a reasonable psychologist would use to develop a parenting plan recommendation.³²

Additionally, current law prohibits an administrative complaint against a court-appointed psychologist who acted in good faith from being filed anonymously. As such, a parent who wishes to file an administrative complaint against a court-appointed psychologist must include his or her name, address, and telephone number in the complaint.³³ However, current law does not require a parent to first seek to disqualify and replace the psychologist before he or she may file an administrative complaint against the psychologist.

Under current law, a parent who desires to file a legal action against such a court-appointed psychologist must petition the judge or presided over the underlying matter to appoint another psychologist.³⁴ If that parent establishes good cause for such an additional appointment, the court shall appoint another psychologist.³⁵ Current law provides for the award of two-way attorney fees in such a civil legal action dependent on whether the psychologist is found liable. As such, if, in a civil legal action against the psychologist, the psychologist is held not liable, the parent who brought the action is responsible for all reasonable costs and reasonable attorney fees associated with the action for the psychologist.³⁶ However, if the psychologist is held liable, he

²⁸ Section 61.20(2), F.S.

²⁹ See *Sacks v. Sacks*, 991 So. 2d 922 (Fla. 5th DCA 2008) (providing that parties must have a reasonable period of time prior to trial so that each can properly evaluate the report, undertake discovery, where appropriate, and have an adequate opportunity for preparation of rebuttal evidence; see also *Leinbach v. Leinbach*, 634 So. 2d 252, 253 (Fla. 2d DCA 1994) (providing that procedural due process prohibits a trial court from relying on a social investigation report to determine child custody without first providing the report to the parties and permitting them to introduce evidence that might rebut the conclusions or recommendations included in the report).

³⁰ Fla. Fam. L.R.P. 12.363(b).

³¹ See generally, s. 61.122, F.S.

³² Section 61.122(1), F.S.

³³ Section 61.122(2), F.S.

³⁴ Section 61.122(3), F.S.

³⁵ *Id.*

³⁶ Section 61.122(4), F.S.

or she will be responsible for and must pay all reasonable costs and attorney fees for the parent who brought the action.³⁷

Attorney Fees

Historical Treatment of Attorney Fees

The traditional “English rule” entitled a prevailing party in civil litigation to attorney fees as a matter of right. However, Florida and a majority of other United States jurisdictions have adopted the “American rule,” where each party bears its own attorney fees unless a “fee-shifting statute” provides an entitlement to fees. In Florida, several such fee-shifting statutes entitle the prevailing party or, more specifically, a particular prevailing claimant or plaintiff, to have his or her fees paid by the other party.³⁸

Statutorily-Provided Attorney Fees

Several Florida and federal statutes state that a prevailing party in court proceedings is entitled to attorney fees as a matter of right.³⁹ These statutes are known as “fee-shifting statutes” and often entitle the prevailing party to a reasonable attorney fee, which must be paid by the other party. When a fee-shifting statute applies, the court must determine and calculate what constitutes a reasonable attorney fee. One such fee-shifting statute pertains to actions brought against court-appointed psychologists.⁴⁰

Lodestar Approach

In 1985, the Florida Supreme Court held that courts should calculate the amount of statutorily authorized attorney fees under the “lodestar approach.”⁴¹ Under this approach, the first step is for the court to determine the number of hours reasonably expended by an attorney on the case. The second step requires the court to determine a reasonable hourly rate. The number of hours reasonably expended (determined in the first step), multiplied by the reasonable hourly rate (determined in the second step), produces the “lodestar amount,” which is considered an objective basis for what the attorney fee amount should be.

Administrative Complaint Process

In Florida, certain professions and businesses are monitored by various agencies and departments. For example, a licensed attorney must be in good standing with the Florida Bar, and a disgruntled client may file a complaint with the Bar in relation to the attorney’s representation

³⁷ Section 61.122(4), F.S.

³⁸ See, e.g., s. 400.023, F.S. (nursing home resident); s. 440.34, F.S. (claimant in a workers’ compensation case in certain situations); s. 501.2105, F.S. (plaintiff in specified FDUTPA actions); ss. 626.9373 and 627.428, F.S. (prevailing insured party in a case brought against an insurer); s. 790.33, F.S. (plaintiff in a suit to enforce his or her firearm rights); see also 42 U.S.C. s. 1988(b) (federal fee-shifting statute for prevailing parties in actions to enforce certain civil rights statutes).

³⁹ See, e.g., s. 627.428, F.S. (providing that an insured who prevails against an insurer is entitled to “a reasonable sum” of attorney fees); s. 501.2105, F.S. (providing that the prevailing party in an action under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is entitled to “a reasonable legal fee”); 42 U.S.C. s. 1988(b) (providing that a prevailing party seeking to enforce specified civil rights statutes may recover “a reasonable attorney’s fee”).

⁴⁰ Section 61.122(4), F.S.

⁴¹ *Fla. Patient’s Comp. Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985).

⁴² Florida Department of Health, *Enforcement*, available at: <https://www.floridahealth.gov/licensing-and-regulation/enforcement/index.html> (last visited March 26, 2025).

of the client. Likewise, the Florida Department of Health (DOH) investigates complaints and reports involving healthcare providers and enforces applicable laws.⁴² As such, DOH may take administrative action against providers under its purview including issuing reprimands, fines, restricting the practice of a specific provider, requiring remedial education, probation, license suspension or license revocation.⁴³ Depending on the severity of the allegation, a professional who is the subject of an administrative action may ultimately lose his or her license and be prohibited from practicing in the state if the complaint is determined to be verified and truthful.

The DOH does not charge a fee for anyone to file a complaint against a professional under its purview and the complaint remains confidential if probable cause is not found.⁴⁴ However, if probable cause is found, the complaint remains confidential until 10 days after such probable cause is found.⁴⁵

The DOH currently licenses and regulates a large variety of healthcare professionals including medical doctors and psychologists.⁴⁶

III. Effect of Proposed Changes:

Section 1 amends s. 61.122, F.S., to clarify that moving to disqualify a court-appointed psychologist is not a condition precedent to filing a supplemental legal action against the psychologist. The bill imposes a procedural condition precedent a parent must meet before he or she can file an administrative complaint against a court-appointed psychologist who was appointed to conduct a social investigation and study or make a parenting plan recommendation in a family law action. As such, a parent who wishes to file an administrative complaint against a court-ordered psychologist in relation to the psychologist's parenting plan recommendation must first move to disqualify the court-appointed psychologist from the family law proceeding before he or she can file an administrative complaint.

The bill requires a parent who wants to disqualify the selection of a court-appointed psychologist who has acted in good faith in developing a parenting plan recommendation to petition the judge presiding over the family law case to appoint a new, alternative psychologist in lieu of the originally appointed psychologist.

The bill also clarifies which party is responsible for paying certain attorney fees and costs in any supplemental legal action (that is, a separate legal action arising out of the underlying family law matter, not a pleading filed within the same case) against a court-appointed psychologist in his or her capacity as a court-appointed resource in a family law matter. The bill clarifies that the two-way attorney fee shifting structure outlined under current law applies to any additional or supplemental legal action against the court-appointed psychologist and does not apply as it relates to any hearings or filings in the underlying family law proceeding.

⁴² Florida Department of Health, *Enforcement*, available at: <https://www.floridahealth.gov/licensing-and-regulation/enforcement/index.html> (last visited March 26, 2025).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ A complete list of the professions regulated under DOH can be found at <https://www.floridahealth.gov/licensing-and-regulation/index.html>.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate, yet insignificant, fiscal impact on local government for increases in workload associated with additional filings related to the disqualification of a court-appointed psychologist.

C. Government Sector Impact:

The bill will likely have an insignificant negative fiscal impact on the Department of Children and Families for increases in workload associated with additional filings related to the disqualification of a court-appointed psychologist. The costs can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 61.122 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.)

CS by Children, Families, and Elder Affairs on April 1, 2025:

- Changes the title to “court-appointed psychologists;”
- Clarifies that moving to disqualify the psychologist is not a condition precedent to filing a supplemental legal action against the psychologist;
- Prohibits the filing of an administrative complaint before the complainant has moved to disqualify the court-appointed psychologist;
- Clarifies that a two-way attorney fee shifting provision applies in any supplemental legal actions against the psychologist; and
- Makes conforming and clean up language changes.

B. Amendments:

None.