

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 615 Parenting Plans
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 794

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------|----------------|--|
| Orig. Comm.: Civil Justice Subcommittee | | Robinson | Bond |

SUMMARY ANALYSIS

A parenting plan is a document established in a divorce or support action which details the legal rights and responsibilities of separated parents with regard to timesharing and parenting of their minor child. A parenting plan has two basic components: “parental responsibility” and “time-sharing.”

Parental responsibility refers to the responsibility and right of each parent to make parenting decisions regarding the child’s education, health care, and social and religious activities. Under current law, a court must order shared parental responsibility in almost every case unless the court finds that shared parental responsibility would be detrimental to the child. Shared parental responsibility requires that both parents confer with one another so that major decisions affecting the welfare of the child will be determined jointly.

The bill provides that a parenting plan which orders shared parental responsibility over healthcare decisions for a child must authorize either parent to consent to mental health treatment. Accordingly, each parent retains full parental rights but does not have to confer with or obtain the assent of the other parent before seeking mental health treatment for the child.

The bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Parenting Plans – In General

A parenting plan is a document established in a divorce or support proceeding under ch. 61, F.S., which details the legal rights and responsibilities of separated parents with regard to timesharing and parenting of their minor child. The parenting plan must be developed and agreed to by the parents and approved by a court; or established by the court, if the parents cannot agree.¹

The parenting plan may address the child's education, health care, and physical, social, and emotional well-being, but at a minimum must:²

- Describe in adequate detail how the parents will share and be responsible for the daily tasks associated with the upbringing of the child;
- Include a time-sharing schedule which specifies the time that the minor child will spend with each parent;
- Designate the parent(s) responsible for health care, school-related matters, including the address to be used for school-boundary determination and registration, and other activities; and
- Address the methods and technologies that the parents will use to communicate with the child.

Thus, a parenting plan has two basic components: a "parental responsibility order" and a "time-sharing order." "Parental responsibility" refers to the responsibility and right to make parenting decisions for the child after the parents separate. "Timesharing" refers to the time, including overnights and holidays, that the child will spend with each parent.³

In establishing parental responsibility and timesharing, a court must consider the "best interests of the child."⁴ Determining the best interest of the child requires the evaluation of all the factors affecting the welfare and interests of the child and the circumstances of the family, including, but not limited to:

- Any history of domestic violence.
- The moral fitness of the parents.
- The mental and physical health of the parents.
- The preference of the child.
- The willingness of each parent to comply with the parenting plan and encourage a close and continuing parenting relationship.
- The developmental stage and needs of the child.⁵

Parental Responsibility

Section 61.13(2)(c)2. requires that a court order *shared parental responsibility* in almost every case unless the court finds that shared parental responsibility would be detrimental to the child.⁶ Shared parental responsibility provides that both parents retain full parental rights and responsibilities with respect to their child and both parents must confer with each other so that major decisions affecting the welfare of the child will be determined jointly.⁷ This statutory mandate limits the ability of courts to order any other parenting arrangement if not affirmatively requested by the parties, even if it is obvious that

¹ s. 61.046(14), F.S.

² s. 61.13(2)(b), F.S.; A rebuttable presumption exists that shared parenting is detrimental to the child in cases in which a parent has been convicted of domestic violence or is incarcerated.

³ s. 61.046(23), F.S.

⁴ s. 61.13(2)(c), F.S.

⁵ s. 61.13(3), F.S.

⁶ *Id.*

⁷ s. 61.046(17), F.S.

the best interests of the child are not served by *shared parental responsibility*.⁸ Most parties routinely plead for shared parenting or consent to share parenting in a settlement agreement, even where there is considerable evidence that the parents are incapable of sharing parenting decisions.⁹

Nevertheless, in ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child.¹⁰ An *ultimate responsibility shared parenting order* allows the parent given "ultimate authority" over an aspect of the child's life the authority to make a decision when the parents do not agree. However, the other parent may make a motion to have that parenting decision reviewed by the court.¹¹ Areas of responsibility may include education, health care, or any other responsibility the court finds unique to a particular family.¹²

A parent seeking *sole parental responsibility*, the exclusive right to make decisions regarding the minor child,¹³ must petition the court for sole parental responsibility. A trial court has no independent authority to order sole parenting if there is no pleading asking for sole parenting and an allegation of a detriment to the child if shared parenting is ordered.¹⁴ Upon the petitioner establishing that shared parenting is detrimental, the court must order sole parental responsibility if it is in the best interest of the child.¹⁵

Mental Health Treatment

Mental health professionals have recently identified a number of challenges presented in providing mental health or counseling services to minor clients whose parents are divorced or separated and share parenting decisions.¹⁶ Obtaining the consent of both parents often involves navigating emotionally-charged and history-laden territory. This can create a tug-of-war between divorced or separated spouses who are, in effect, using their child as leverage in their marital dispute. This seems to arise most often when children need in-patient or full-day treatment for psychiatric issues related to depression, often caused by the family discord.¹⁷

In a 2010 article for the *Commentator*, a publication of the Family Law Section of the Florida Bar, one Florida Judge lamented the effect of the shared parenting requirement on decision-making regarding mental health.¹⁸

In cases in which a settlement agreement or a judgment said the parents will "share parenting" family judges are frequently asked in post judgment motions to decide if a child should take medication for ADHD, depression, a bipolar condition, etc.,... because the parents cannot "confer with each other" and "share" these parenting decisions and neither one has any authority to make the

⁸ Due process requires notice and an opportunity to be heard. Therefore, if a party does not ask for a particular relief allowed by law, i.e. sole parental responsibility, the court has no authority to grant the relief. See *Furman v. Furman*, 707 So. 2d 1183(Fla. 2d DCA 1998); *McDonald v. McDonald*, 732 So. 2d 505 (Fla. 4th DCA 1999); *McKeever v. McKeever*, 792 So. 2d 1234 (Fla. 4th DCA 2001).

⁹ The Honorable R. Thomas Corbin, *A Parenting Plan Must Include a Parental Responsibility Order and a Time-Sharing Schedule*, THE FLORIDA BAR FAMILY LAW SECTION: COMMENTATOR (Fall 2010), p. 18, available at www.familylawfla.org/newsletter/pdfs/Fam-Fall-2010-web.pdf.

¹⁰ s. 61.13(2)(c)2.a.

¹¹ *Supra* FN 9, at 19.

¹² s. 61.13(2)(c)2.a., F.S.

¹³ s. 61.046(18), F.S.

¹⁴ *Furman v. Furman*, 707 So. 2d 1183 (Fla. 2d DCA 1998).

¹⁵ s. 61.13(2)(c)2.b.

¹⁶ School of Social Work, University of North Carolina at Chapel Hill, *Theimann Advisory: FAQ on Services to Minors of Divorced Parents*, p. 2, available at, <http://ssw.unc.edu/files/web/pdf/TheimannAdvisoryJune09.pdf> (last visited January 29, 2016).

¹⁷ Ann Bittinger, *Legal Hurdles to Leap to Get Medical Treatment for Children*, THE FLORIDA BAR JOURNAL (January 2006), p. 24, available at https://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/afc19001ffae74fc852570e70055d333a!OpenDocument&Highlight=0,ann,bittinger*.

¹⁸ *Supra* FN 9, at 18.

decision alone because the order in their case requires them to “share parenting decisions.”

However, there is no authority that a judge in a Chapter 61 case has the power to make such parenting decision. A Chapter 61 judge has no authority to become a “super parent.”

Arguments over the merits or disadvantages of a proposed treatment in post judgement motions delay the provision of necessary mental health treatment to the child until a court designates a parent to exercise either ultimate responsibility or sole responsibility over medical care of the child.

EFFECT OF THE BILL

The bill provides that a parenting plan which orders *shared parental responsibility* over healthcare decisions for the child must authorize either parent to consent to mental health treatment for the child. Accordingly, each parent retains full parental rights but does not have to confer with the other parent or obtain the assent of the other parent before seeking mental health treatment for the child.

If a parent exercises his or her right to consent to mental health treatment for the child without conferring with or obtaining the assent of the other parent as authorized by the bill, current law provides a mechanism for the non-consenting parent to file a petition for a modification of the parenting plan.¹⁹ The supplemental petition must allege the disagreement on a parenting decision, that the disagreement is detrimental to the child, and request ultimate authority or sole responsibility as to health care decisions or all aspects of the child’s life.²⁰ The court may modify the parenting plan if the non-consenting parent shows a substantial, material, and unanticipated change of circumstances.²¹

The bill does not authorize either parent to consent to mental health treatment in cases in which the court has designated one parent to exercise ultimate authority with regard to health care decisions or in cases in which the court has awarded sole parental responsibility to one parent because shared parenting has been determined to be a detriment to the child.

B. SECTION DIRECTORY:

Section 1 amends s. 61.13, F.S., relating to support of children; parenting and time-sharing; powers of court.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

¹⁹ s. 61.13(3), F.S.

²⁰ *Supra* FN 9, at 18.

²¹ s. 61.13(2)(c), F.S.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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 does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a