

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 97 Domestic Violence

SPONSOR(S): Cassel and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 130

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mathews	Jones
2) Children, Families & Seniors Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law recognizes two main components of parenting disputes: parental responsibility and timesharing. Parental responsibility is the decision-making aspect of parenting, while time-sharing pertains to the more traditional custody schedule of the child. Florida courts have consistently ruled that a parent's desire and right to the companionship, care, custody, and management of his or her child is an important interest that warrants deference and, absent a powerful countervailing interest, protection.

Chapter 61, F.S., governs domestic relations, including actions for dissolution of marriage (DOM), child custody, child support, and alimony. Section 61.13, F.S., provides guidelines to assist courts in determining matters related 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.

Current law requires the court to order shared parental responsibility of a minor child unless the court finds that shared parental responsibility would be detrimental to the child and establishes a rebuttable presumption of detriment under specific, limited circumstances.

Domestic violence means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any other criminal offense resulting in the physical injury or death of one family or household member by another family or household member. To protect himself or herself from abuse or threats of abuse, a domestic violence victim may petition for a protective injunction. Under current law, evidence of domestic violence against the other parent, without a conviction of domestic violence, does not constitute evidence of detriment to the child.

HB 97 amends s. 61.13, F.S., to:

- Expand the factors a court must consider when determining whether a detriment to the child exists with respect to parental responsibility of a minor child.
- Add to the existing factors for modifying or establishing parental responsibility or time-sharing of a minor child.

As such, the bill enhances the protection of the minor child or children from possible abuse, harm, or retaliation by one of his or her parents.

The bill also amends s. 741.30, F.S., adding an additional factor the court must consider in determining reasonable cause that the petitioner in a domestic violence matter is in imminent danger of becoming a victim of domestic violence.

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

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0097.CJS

DATE: 2/8/2023

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Parental Responsibility

Florida law recognizes two main components of parenting disputes: parental responsibility and timesharing. Parental responsibility is the decision-making aspect of parenting, whereas time-sharing pertains to the more traditional custody schedule of the child. 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. Although the right to integrity of the family is among 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.

Section 61.13, F.S., provides guidelines to assist a court in determining matters related to parental responsibility and parenting¹ as well as time-sharing² of minor children in accordance with the best interests of the child while balancing the rights of parents. As a threshold consideration, the Legislature has declared that:

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.³

Although current law does not provide a presumption in favor of a specific time-sharing schedule, s. 61.13(2)(c)2., F.S., does require the court to order shared parental responsibility of a minor child unless the court finds that shared parental responsibility would be detrimental to the child. Current law creates a rebuttable presumption of detriment if a parent:

- Has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775;
- Meets the criteria for the termination of parental rights as established under s. 39.806(1)(d); or
- Has been convicted of or has adjudication withheld for a sexual offense enumerated in s. 943.0435(1)(h)1.a. and was 18 or older at the time of the offense and the victim was a minor or believed to be a minor.

If the presumption of detriment is not rebutted by the parent in question, the court may not award shared parental responsibility, including time-sharing, with the child and the parent. Further, regardless of a conviction of any offense of domestic violence, the court must also consider any evidence of domestic violence to the child or child abuse as evidence of detriment to the child. Under current law, evidence of domestic violence against the other parent, without a conviction of domestic violence, does not constitute evidence of detriment to the child.⁴

For purposes of establishing or modifying parental responsibility, the best interests of the child is the primary consideration.⁵ A modification of parental responsibility may not be made without showing a substantial, material, and unanticipated change in circumstances and that such modification is in the

¹ 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.

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

³ S. 61.13(2)(c)1., F.S.

⁴ *Id.*

⁵ S. 61.13(2)(c), F.S.

best interests of the child. In determining the best interests of the child, the court must evaluate each of the following factors:⁶

- (a) The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.
- (b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.
- (c) The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.
- (d) The length of time the child has lived in a stable environment and the desirability of maintaining continuity.
- (e) The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- (f) The moral fitness of the parents.
- (g) The mental health, physical health of the parents.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
- (j) The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including the child's friends, teachers, medical care providers, daily activities, and favorite things.
- (k) The demonstrated capacity and disposition of each parent to provide a consistent routine for the child.
- (l) The demonstrated capacity of each parent to 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 dealing with the child.
- (m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought.
- (n) Evidence that either parent has knowingly provided false information about regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.
- (o) The particular parenting tasks customarily performed by each parent, including the extent to which parenting responsibilities were undertaken by third parties.
- (p) The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.
- (q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.
- (r) The capacity and disposition of each parent to protect the child from the ongoing litigation regarding child custody.
- (s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.
- (t) Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

Domestic Violence

Domestic violence means any criminal offense resulting in the physical injury or death of one family or household member⁷ by another family or household member,⁸ including:

- Assault;⁹
- Aggravated assault;¹⁰
- Battery;¹¹
- Aggravated battery;¹²
- Sexual assault;¹³
- Sexual battery;¹⁴
- Stalking;¹⁵
- Aggravated stalking;¹⁶
- Kidnapping;¹⁷ and
- False imprisonment.¹⁸

In 2020,¹⁹ Florida law enforcement agencies received 106,615 domestic violence reports,²⁰ resulting in 63,345 arrests.²¹ During fiscal year 2021-2022, Florida's 41 certified domestic violence shelters²² admitted 11,811 victims to a residential services program and 38,630 victims to a non-residential outreach services program.²³ During the same year, the domestic violence centers answered 81,357

⁷ "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons presently residing together as if a family or who have resided together in the past as 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. S. 741.28(3), F.S.

⁸ S. 741.28(2), F.S.

⁹ "Assault" means an intentional, unlawful threat by word or act to do violence to another, coupled with an apparent ability to do so, creating a well-founded fear in such other person that violence is imminent. S. 784.011, F.S.

¹⁰ "Aggravated assault" means an assault with a deadly weapon without intent to kill or with intent to commit a felony. S. 784.021, F.S.

¹¹ "Battery" means the actual and intentional touching or striking of another against his or her will or intentionally causing bodily harm to another. S. 784.03, F.S.

¹² "Aggravated battery" means a battery in which the offender intentionally or knowingly caused great bodily harm, permanent disability, or permanent disfigurement; used a deadly weapon; or victimized a person the offender knew or should have known was pregnant. S. 784.045, F.S.

¹³ "Sexual assault" has the same meaning as sexual battery.

¹⁴ "Sexual battery" means oral, anal, or vaginal penetration by, or in union with, the sexual organ of another or the anal or vaginal penetration of another by any object, but does not include an act done for a bona fide medical purpose. S. 794.011(1)(h), F.S.

¹⁵ "Stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another. S. 784.048(2), F.S.

¹⁶ "Aggravated stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another and making a credible threat to that person. S. 784.048(3), F.S.

¹⁷ "Kidnapping" means forcibly, secretly, or by threat confining, abducting, or imprisoning another against his or her will and without lawful authority with the intent to hold for ransom or reward or as a shield or hostage; commit or facilitate a felony; inflict bodily harm upon or terrorize another; or interfere with the performance of any governmental or political function. S. 787.01(1), F.S.

¹⁸ "False imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will. S. 787.02(1), F.S.

¹⁹ The Florida Department of Law Enforcement has not issued a report with updated statistics after 2020.

²⁰ *Statewide Reported Domestic Violence Offenses in Florida, 1992-2020*, Florida Department of Law Enforcement, https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/02/DV_Offenses_by_Type.aspx (last visited Feb. 7, 2023).

²¹ *Florida's County and Jurisdictional Domestic Violence Related Arrests, 2020*, Florida Department of Law Enforcement, https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/07/DV_Jurisdiction_Arrests_2020.aspx (last visited Feb. 7, 2023).

²² "Domestic violence shelter" means an agency providing services to domestic violence victims as its primary mission. The Department of Children and Families operates the statewide Domestic Violence Program, responsible for certifying domestic violence centers. Section 39.905, F.S., and ch. 65H-1, F.A.C., set forth the minimum domestic violence center certification standards.

²³ *2022 Domestic Violence Annual Report*, Florida Department of Children and Families https://www.myflfamilies.com/service-programs/domestic-violence/docs/annual-report/Domestic_Violence_Annual_Report_2021-22.pdf (last visited Feb. 7, 2023).

crisis hotline calls, completed 171,008 safety plans with survivors, and provided 380,040 direct service information and referrals to survivors, family members, and individuals seeking services.²⁴

Domestic Violence Injunctions

An injunction is a court order prohibiting a person from doing a specified act or commanding a person to undo some wrong or injury.²⁵ An injunction for protection against domestic violence (“domestic violence injunction”) may be sought by a family or household member.²⁶ The parties do not need to be married before a person can seek relief from domestic violence, and a party’s right to seek relief is not affected by leaving the residence or household to avoid domestic violence.²⁷

Upon the filing of a petition, the court must set a hearing at the earliest possible time.²⁸ However, if the court finds the petitioner is in immediate and present danger of domestic violence, it may grant a temporary injunction in an ex parte proceeding,²⁹ pending a full hearing, and grant relief including:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the temporary exclusive use and possession of a shared residence or excluding the respondent from the petitioner’s residence; and
- Providing the petitioner a temporary parenting plan,³⁰ including a time-sharing schedule,³¹ which may award the petitioner up to 100 percent of the time-sharing.³²

A temporary injunction is effective for up to 15 days, and a full hearing must be set for a date prior to the injunction’s expiration.³³

In determining whether reasonable cause that the petitioner is in imminent danger exists, the court must consider ten specific factors:³⁴

1. The history between the petitioner and the respondent, including threats, harassment, stalking, and physical abuse.
2. Whether the respondent has attempted to harm the petitioner or family members or individuals closely associated with the petitioner.
3. Whether the respondent has threatened to conceal, kidnap, or harm the petitioner’s child or children.
4. Whether the respondent has intentionally injured or killed a family pet.
5. Whether the respondent has used, or has threatened to use, against the petitioner any weapons such as guns or knives.
6. Whether the respondent has physically restrained the petitioner from leaving the home or calling law enforcement.
7. Whether the respondent has a criminal history involving violence or the threat of violence.
8. The existence of a verifiable order of protection issued previously or from another jurisdiction.
9. Whether the respondent has destroyed personal property, including, but not limited to, telephones or other communications equipment, clothing, or other items belonging to the petitioner.

²⁴ *Id.*

²⁵ Black’s Law Dictionary 540 (6th ed. 1995).

²⁶ S. 741.30(1)(e), F.S.

²⁷ Ss. 741.30(1)(d) and (e), F.S.

²⁸ S. 741.30(4), F.S.

²⁹ “Ex parte,” Latin for “from one party,” refers to motions for orders that can be granted without waiting for a response from the other side. These are generally orders that are only in place until further hearings can be held. Legal Information Institutue, *Ex Parte*, https://www.law.cornell.edu/wex/ex_parte (last visited Mar. 17, 2020).

³⁰ A “parenting plan” governs the relationship between parents relating to decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and child. S. 61.046(14), F.S.

³¹ “Time-sharing schedule” means a timetable that must be included in a parenting plan that specifies the time, including overnights and holidays, which a minor child will spend with each parent. S. 61.046(23), F.S.

³² S. 741.30(5)(a), F.S.

³³ S. 741.30(5)(a), F.S.

³⁴ S. 741.30(6)(b), F.S.

10. 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.

Following a hearing, if a court determines that the petitioner is either a domestic violence victim or has reasonable cause to believe he or she is in imminent danger of becoming a domestic violence victim, it may grant a domestic violence injunction.³⁵

A court issuing a permanent injunction may grant relief including:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the exclusive use and possession of a shared residence or excluding the respondent from the petitioner's residence;
- Providing the petitioner with 100 percent of the time-sharing in a parenting plan;
- Establishing temporary support for a minor child or for the petitioner;
- Ordering the respondent to participate in treatment, intervention or counseling services;
- Referring a petitioner to a certified domestic violence center; and
- Ordering other relief it deems necessary to protect a domestic violence victim.³⁶

The terms of a permanent domestic violence injunction remain in effect until modified or dissolved, and either party may move at any time for modification or dissolution.³⁷

Effect of Proposed Changes

The bill amends s. 61.13(2)(c), F.S., to expand the factors a court must consider when determining whether a detriment to the child exists with respect to parental responsibility of a minor child. The bill requires the court to consider any evidence of domestic violence, rather than only a conviction. Additionally, the court must consider whether either parent has reasonable cause or has had reasonable cause to believe that he or she or the minor child is or has been in imminent danger of becoming a victim of domestic violence or sexual violence by the other parent, regardless of whether a cause of action has been brought. Lastly, the bill requires the court to consider whether either parent has or has had reasonable cause to believe that the minor child is or has been in imminent danger of becoming a victim of an act of abuse, abandonment, or neglect by the other parent, regardless of whether a cause of action has been brought.

Practically, the bill expands the factors a court must consider when determining detriment to the child. As such, the bill enhances the protection of the minor child or children from possible abuse, harm, or retaliation by one of his or her parents.

Next, the bill amends s. 61.13(3)(m), F.S., to require a court to consider, in the context of a determination of whether to establish or modify parental responsibility or a parenting plan (including a time-sharing schedule), evidence that a parent has reasonable cause to believe that he or she or the minor child is in imminent danger of becoming a victim of domestic violence, sexual violence, child abuse, child abandonment, or child neglect by the other parent.

The bill also amends s. 741.30, F.S., to add a factor the court must consider in determining reasonable cause that petitioner in a domestic violence matter is in imminent danger of becoming a victim of domestic violence. In addition to the currently enumerated factors, the bill requires the court to consider whether the respondent has or has had engaged in a pattern of abusive, threatening, intimidating, or controlling behavior which reasonably causes the petitioner to believe that the petitioner or his or her minor child or children are in imminent danger of becoming a victim of domestic violence. Therefore, the court would have to consider the alleged abuser's threats to harm the alleged victim or his or her child.

³⁵ *Id.*

³⁶ S. 741.30(6)(a), F.S.

³⁷ S. 741.30(6)(c), F.S.

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

B. SECTION DIRECTORY:

Section 1: Provides a short title.³⁸

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

Section 3: Amends s. 741.30, F.S., relating to domestic violence.

Section 4: Provides an effective date of July 1, 2023.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

³⁸ The bill provides that the act may be cited as "Greyson's Law." See 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, <https://www.cbsnews.com/miami/news/emergency-pickup-order-denied-hours-before-greyson-kessler-father-dead-fort-lauderdale/> (hereinafter cited as "CBS Article")(last visited Feb. 7, 2023); 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, <https://people.com/crime/florida-boy-killed-by-dad-murder-suicide-mom-asked-court-keep-father-away/>.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The current draft appears to remove lines 203-204 in error.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES