

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 141 Minor Time-sharing for Registered Sexual Offenders and Sexual Predators

**SPONSOR(S):** Leek

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	17 Y, 0 N	Rochester	Jones
2) Children, Families & Seniors Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

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. At the state level, 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.

Currently, there is no blanket provision in Florida law prohibiting a sex offender or sexual predator from exercising time-sharing with his or her minor child. Moreover, current law presumes that parental responsibility should be shared by both parents, unless the court finds that "shared parental responsibility would be detrimental to the child." Accordingly, in a proceeding under the Florida dissolution of marriage and time-sharing statutes, a judge has wide discretion to decide parenting and time-sharing matters relating to a minor child. A judge must consider the best interests of the child while balancing the rights of parents. In establishing a time-sharing plan, the court must evaluate all factors affecting the welfare and interests of the child and the circumstances of the family, including (but not limited to) mental health, physical health, moral fitness of the parents, and evidence of domestic abuse or sexual violence.

Although current law requires the court to acknowledge in writing when it considers evidence of sexual violence in evaluating the best interests of the child, it is possible to be classified as a sexual offender without committing a violent sexual act. Therefore, under current law, a sexual offender who has not committed a violent sexual act may still be entitled to time-sharing with a minor child.

HB 141 generally prohibits the court from granting a parent time-sharing with a minor child if the parent is required to register as a sexual offender or sexual predator and at the time of the offense for which the parent had to register:

- The registrant was 18 years of age or older; and
- The victim was under 18 years of age or the registrant believed the victim to be under 18 years of age.

However, the court may grant time-sharing if it makes a specific finding in writing that the registrant poses no significant risk of harm to the child and that time-sharing is in the best interest of 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, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

#### Sexual Offenders and Sexual Predators

##### *Sexual Offenders*

Under Florida law, a person is a sexual offender if he or she:

- Was released on or after October 1, 1997, from a criminal sanction resulting from a qualifying conviction;<sup>1</sup>
- Establishes or maintains a residence in Florida and has not been designated a sexual predator by a court of this state but has been designated a sexual predator, sexually violent predator, or another sexual offender designation in another state or jurisdiction, if such designation subjects or would subject him or her to registration or public notification in that state or jurisdiction;<sup>2</sup>
- Establishes or maintains a residence in this state and is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a qualifying conviction;<sup>3</sup> or
- Has been adjudicated delinquent on or after July 1, 2007, for a qualifying offense, if the juvenile was at least 14 years old at the time he or she committed the offense.<sup>4</sup>

Qualifying convictions for sexual offender designation include:

- Sexual misconduct with an individual with a developmental disability;<sup>5</sup>
- Sexual misconduct with a mental health patient by an employee;<sup>6</sup>
- Kidnapping or false imprisonment, where the victim is a minor and there is a sexual component to the crime;<sup>7</sup>
- Luring or enticing a child, with a prior sexual conviction;<sup>8</sup>
- Human trafficking;<sup>9</sup>
- Sexual battery;<sup>10</sup>
- Unlawful sexual activity with minors;<sup>11</sup>
- Lewd or lascivious battery, molestation, conduct, or exhibition;<sup>12</sup>
- Video voyeurism with prior video voyeurism conviction;<sup>13</sup>
- Lewd or lascivious offense on an elderly person;<sup>14</sup>
- Sexual performance by a child;<sup>15</sup>
- Providing obscene materials to a minor;<sup>16</sup>
- Computer pornography involving minors;<sup>17</sup>

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<sup>1</sup> S. 943.0435(1)(h)1.a.(II), F.S.

<sup>2</sup> S. 934.0435(1)(h)1.b., F.S.

<sup>3</sup> S. 934.0435(1)(h)1.c., F.S.

<sup>4</sup> S. 934.0435(1)(h)1.d., F.S.

<sup>5</sup> S. 393.135(2), F.S.

<sup>6</sup> S. 394.4593(2), F.S.

<sup>7</sup> Ss. 787.01 and 787.02, F.S.

<sup>8</sup> S. 787.025(2), F.S.

<sup>9</sup> Ss. 787.06(3)(b), (d), (f), or (g), F.S.

<sup>10</sup> S. 794.011, excluding s. 794.011(10), F.S.

<sup>11</sup> S. 794.05, F.S.

<sup>12</sup> S. 800.04, F.S.

<sup>13</sup> S. 810.145(8), F.S.

<sup>14</sup> S. 825.1025, F.S.

<sup>15</sup> S. 827.071, F.S.

<sup>16</sup> S. 847.0133, F.S.

- Soliciting a minor over the internet;<sup>18</sup>
- Traveling to meet minors;<sup>19</sup>
- Lewd or lascivious exhibition over the internet;<sup>20</sup>
- Transmission of child pornography by electronic device or equipment;<sup>21</sup>
- Transmission of material harmful to minors;<sup>22</sup>
- Selling or buying minors to engage in sexually explicit conduct;<sup>23</sup>
- Racketeering with written findings that the racketeering involved at least one sexual offense;<sup>24</sup>
- Sexual misconduct with a forensic client;<sup>25</sup> and
- Sexual misconduct by an employee on a juvenile offender.<sup>26</sup>

Qualifying delinquency adjudications for sexual offender designation include:

- Sexual battery;<sup>27</sup>
- Lewd or lascivious battery by encouraging, forcing, or enticing any person under 16 years old to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity,<sup>28</sup> if either:
  - The victim is under 12 years old; or
  - The court finds sexual activity by the use of force or coercion;
- Lewd or lascivious molestation against a victim less than 12 years old,<sup>29</sup> if the court finds molestation involving unclothed genitals;
- Lewd or lascivious molestation against a victim at least 12 years old but less than 16 years old,<sup>30</sup> if the court finds both:
  - Use of force or coercion; and
  - Unclothed genitals.

### *Sexual Predators*

A person is a sexual predator in Florida if he or she:

- Was convicted of a qualifying offense committed on or after October 1, 1993; and
- Has not received a pardon or otherwise had the conviction set aside for the qualifying offense.

Qualifying convictions for sexual predator designation include:

- Capital, life, or first degree felony kidnapping or false imprisonment, when the victim is a minor and there is a sexual component to the crime;<sup>31</sup>
- Capital, life, or first degree felony sexual battery;<sup>32</sup>
- Capital, life, or first degree felony lewd or lascivious battery or molestation;<sup>33</sup>
- Capital, life, or first degree felony selling or buying minors to engage in sexually explicit conduct;<sup>34</sup>

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<sup>17</sup> S. 847.0135(2), F.S.

<sup>18</sup> S. 847.0135(3), F.S.

<sup>19</sup> S. 847.0135(4), F.S.

<sup>20</sup> S. 847.0135(5), F.S.

<sup>21</sup> S. 847.0137, F.S.

<sup>22</sup> S. 847.0138, F.S.

<sup>23</sup> S. 847.0145, F.S.

<sup>24</sup> S. 895.03, F.S.

<sup>25</sup> S. 916.1075(2), F.S.

<sup>26</sup> S. 985.701(1), F.S.

<sup>27</sup> S. 794.011, F.S.

<sup>28</sup> S. 800.04(4)(a)2., F.S.

<sup>29</sup> S. 800.04(5)(c)1., F.S.

<sup>30</sup> S. 800.04(5)(d), F.S.

<sup>31</sup> Ss. 787.01 and 787.02, F.S.; *Raines v. State*, 805 So.2d 999 (Fla. 4th DCA 2001).

<sup>32</sup> *Supra*, note 27.

<sup>33</sup> S. 800.04, F.S.

- An offense that would require registration as a sexual offender, other than transmission of child pornography by electronic device or transmission of material harmful to minors, by a person with a prior conviction for a sexual offense;<sup>35</sup> or
- A conviction for a similar offense committed in another jurisdiction.<sup>36</sup>

The court must make written findings designating a person who meets the criteria as a sexual predator.<sup>37</sup>

### 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. 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.

#### *Parental Time-Sharing*

Parental time-sharing is the time, including overnights and holidays, which a minor child spends with each parent.<sup>38</sup> Judges have wide discretion 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.

In establishing time-sharing, the court must evaluate all factors affecting the welfare and interests of the child<sup>39</sup> 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

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<sup>34</sup> *Supra*, note 23.

<sup>35</sup> S. 775.21(4)(a)1.b., F.S.

<sup>36</sup> S. 775.21(4), F.S.

<sup>37</sup> Ss. 775.21(4)(c) and 775.21(5), F.S.

<sup>38</sup> S. 61.046(23), F.S.

<sup>39</sup> S. 61.13(2)(c), F.S.

- 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.
- 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.

Currently, there is no blanket provision in Florida law prohibiting a sex offender or sexual predator from exercising time-sharing with his or her minor child. Moreover, current law presumes that parental responsibility should be shared by both parents, unless the court finds that "shared parental responsibility would be detrimental to the child."

Although current law requires the court to acknowledge in writing when it considers evidence of sexual violence in evaluating the best interests of the child, it is possible to be classified as a sexual offender without committing a violent sexual act. Therefore, under current law, a sexual offender who has not committed a violent sexual act may still be entitled to time-sharing with a minor child.

### *Termination of Parental Rights*

Under chapter 39, F.S., the Department of Children and Families (DCF) may 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.<sup>40</sup> Alternatively, 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, or a conviction requiring the parent to register as a sexual predator.<sup>41</sup>

### **Effect of Proposed Changes**

HB 141 prohibits a court from granting a parent time-sharing with a minor child if the parent is required to register as sexual offender or a sexual predator and at the time of the offense for which the parent had to register:

- The registrant was 18 years of age or older; and
- The victim was under 18 years of age or the registrant believed the victim to be under 18 years of age.

However, the bill provides an exception. The court may grant time-sharing if it makes a specific finding in writing that the registrant poses no significant risk of harm to the child and that time-sharing is in the best interest of the child.

The bill provides an effective date of July 1, 2021.

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<sup>40</sup> S. 39.8055, F.S.

<sup>41</sup> S. 39.806, F.S.

**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, 2021.

**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:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

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. However, the Court has also recognized that a parent's right to time-sharing is not absolute, and the Legislature may enact time-sharing policy when it affects the best interest of the child.<sup>42</sup>

**B. RULE-MAKING AUTHORITY:**

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<sup>42</sup> C.E.S. v. State, Dept. of Health and Rehabilitative Services, 462 So. 2d 1160 (Fla. 2d DCA 1984); Von Eiff v. Azicri, 720 So. 2d 510 (Fla. 1998).

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**