

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 385 Safe Exchange of Minor Children

SPONSOR(S): Judiciary Committee

TIED BILLS: **IDEN./SIM. BILLS:** SB 580

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Mathews	Kramer

SUMMARY ANALYSIS

A court may prescribe a “parenting plan” by which parents are ordered to share decision-making and physical custody of a minor child. A parenting plan governs the relationship between parents relating to decisions that must be made regarding the minor child at issue and must contain a timesharing schedule for the parents and the child. Ideally, a 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, it is imperative that the plan be as detailed as possible to eliminate ambiguity surrounding each parent’s responsibilities and specific timesharing with the child. 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 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.

PCS for CS/HB 385 requires each sheriff to designate at least one parking lot as a neutral safe exchange location for use by parents of a common child and also identifies minimum requirements that each designated safe exchange location must satisfy, including a purple light or signage in the parking lot and a camera surveillance system. The PCS provides a county, sheriff, law enforcement officer, or employee of the safe exchange location protection from a legal suit based on an incident arising out of a meeting at a safe exchange location.

The PCS also amends s. 61.13, F.S., and creates s. 61.455, F.S., to provide that a court may order the exchange of a child pursuant to a parenting plan to be conducted at a neutral safe exchange location if there is competent evidence that there is a risk or an imminent threat of harm to one of the parents or the child during the exchange. The PCS amends s. 741.30, F.S., to change the standard form of the petition for protection against domestic violence to allow the petitioner to request that the court require timesharing exchanges to be conducted at a safe exchange location, and to authorize or require the court to order the use of a neutral exchange location in an ex parte order for a temporary injunction under certain circumstances. Further, the PCS authorizes the court to require the exchange to take place at a neutral safe exchange location in a final injunction following proper notice and a hearing.

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

The PCS provides an effective date of July 1, 2024.

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 parenting¹ and timesharing² 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 a rebuttable presumption for equal timesharing between parents, the Legislature has declared that:³

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. Unless otherwise provided in this section or agreed to by the parties, there is a rebuttable presumption that equal time-sharing of a minor child is in the best interests of the minor child. To rebut this presumption, a party must prove by a preponderance of the evidence that equal time-sharing is not in the best interests of the minor child.

Although current law establishes a presumption in favor of an equal timesharing schedule, when the parties are unable to agree to a specific schedule the court must evaluate statutory factors and create a timesharing schedule for the parents to follow. In establishing timesharing, the court must consider the best interests of the child⁴ 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 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.
- 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.

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 Timesharing 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 S. 61.13(2)(c), F.S.

- 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.

Parenting Plan

A court may prescribe a "parenting plan"⁵ 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 for decisions that must be made regarding the minor child at issue.⁶ A parenting plan must contain a timesharing schedule for the parents and the child.⁷ 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.⁸ In creating the parenting plan, the court must consider all circumstances between the parents, including their historic relationship, domestic violence, and other factors.⁹ 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.¹⁰ 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 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.¹¹

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,¹² 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

⁵ 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.

⁶ S. 61.046(14), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ S. 61.13(2)(b), F.S.

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

child is available to communicate with the other parent, the delegation of specific decision-making topics, and more.¹³

To assist parties with creating a parenting plan that meets the requirements under s. 61.13, F.S., the Florida Supreme Court published a standardized parenting plan form, Form 12.995(a).¹⁴ 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 preferable that the exchange be made in a public, well-lit location with security cameras and high foot traffic by other people. Usually, 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.

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.

Domestic Violence

Domestic violence means any criminal offense resulting in the physical injury or death of one family or household member¹⁵ by another family or household member,¹⁶ including:

- Assault;¹⁷
- Aggravated assault;¹⁸
- Battery;¹⁹
- Aggravated battery;²⁰
- Sexual assault;²¹
- Sexual battery;²²
- Stalking;²³
- Aggravated stalking;²⁴
- Kidnapping;²⁵ and

¹³ 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).

¹⁴ 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 (last visited Nov. 28, 2023).

¹⁵ "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 if 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.

¹⁶ S. 741.28(2), F.S.

¹⁷ "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.

¹⁸ "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.

¹⁹ "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.

²⁰ "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.

²¹ "Sexual assault" has the same meaning as sexual battery.

²² "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.

²³ "Stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another. S. 784.048(2), F.S.

²⁴ "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.

²⁵ "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.

- False imprisonment.²⁶

In 2020,²⁷ Florida law enforcement agencies received 106,615 domestic violence reports,²⁸ resulting in 63,345 arrests.²⁹ During fiscal year 2021-2022, Florida's 41 certified domestic violence shelters³⁰ admitted 11,811 victims to a residential services program and 38,630 victims to a non-residential outreach services program.³¹ During the same year, the domestic violence centers answered 81,357 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.³²

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.³³ An injunction for protection against domestic violence ("domestic violence injunction") may be sought by a family or household member.³⁴ 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.³⁵

Upon the filing of a petition for an injunction against domestic violence, the court must set a hearing at the earliest possible time.³⁶ 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,³⁷ 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 to the petitioner a temporary parenting plan,³⁸ including a timesharing schedule,³⁹ which may award the petitioner up to 100 percent of the timesharing.⁴⁰

A temporary injunction is effective only for up to 15 days, and a full hearing must be set for a date prior to the injunction's expiration.⁴¹

In determining whether reasonable cause exists that the petitioner is in imminent danger exists, the court must consider ten specific factors:⁴²

²⁶ "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.

²⁷ The Florida Department of Law Enforcement has not issued a report with updated statistics since 2020.

²⁸ *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 Nov. 28, 2023).

²⁹ *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 Nov. 28, 2023).

³⁰ "Domestic violence shelter" means an agency providing services to domestic violence victims as its primary mission. The Florida 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.

³¹ 2022 *Domestic Violence Annual Report*, Florida Department of Children and Families https://www.myflfamilies.com/sites/default/files/2023-02/Domestic_Violence_Annual_Report_2021-22.pdf (last visited Nov. 28, 2023).

³² *Id.*

³³ Black's Law Dictionary 540 (6th ed. 1995).

³⁴ S. 741.30(1)(e), F.S.

³⁵ S. 741.30(1)(d) and (e), F.S.

³⁶ S. 741.30(4), F.S.

³⁷ "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 in place only until further hearings can be held. Legal Information Institute, *Ex Parte*, https://www.law.cornell.edu/wex/ex_parte (last visited Nov. 28, 2023).

³⁸ A "parenting plan" governs the relationship between parents relating to decisions that must be made regarding the minor child and must contain a timesharing schedule for the parents and child. S. 61.046(14), F.S.

³⁹ "Timesharing 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.

⁴⁰ S. 741.30(5)(a), F.S.

⁴¹ S. 741.30(5)(a), F.S.

⁴² S. 741.30(6)(b), F.S.

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.
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 the 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 issue a permanent domestic violence injunction.⁴³

A court issuing a permanent domestic violence 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 timesharing 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 relief it deems necessary to protect a domestic violence victim.⁴⁴

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.⁴⁵

Effect of Proposed Changes

PCS for CS/HB 385 amends s. 125.01, F.S., to require the sheriff in each county to designate at least one parking lot at the sheriff's office or substation as a neutral safe exchange location. The designated parking lot and respective sheriff's office must:

- Be identified with a purple light or a sign on the premises to clearly designate the neutral safe exchange location.
- Be accessible 24 hours a day, 7 days a week.
- Provide adequate lighting.
- Provide an external video surveillance system that records continuously for 24 hours a day, 7 days a week.
- Provide at least one camera that is fixed on the parking lot and which is able to record the area of the purple light or sign during both day and night.
- Record images and video that clearly and accurately display the time and date of the recording.
- Retain video surveillance recordings or images for at least 45 days.

⁴³ *Id.*

⁴⁴ S. 741.30(6)(a), F.S.

⁴⁵ S. 741.30(6)(c), F.S.

The PCS amends s. 125.01, F.S., to provide a county, sheriff, law enforcement officer, or employee of the safe exchange location protection from a legal suit based on an incident arising out of a meeting at a safe exchange location.

The PCS amends sections within ch. 61, F.S., relating to marital and family law, to provide that a court may require timesharing exchanges to be conducted at a safe exchange location. Specifically, the PCS amends s. 61.13, F.S., to provide that a parenting plan must designate authorized locations for the exchange of the child. Under the PCS, the exchange may be required to be conducted at a neutral safe exchange location if there is:

- Competent substantial evidence that there is a risk or an imminent threat of harm to one of the parents or the child during the exchange;
- The court finds such a requirement necessary to ensure the safety of a parent of the child; and
- Such a requirement is in the best interest of the child.

The PCS creates s. 61.455, F.S., to provide that in any type of proceeding in which a court enters or modifies a parenting plan and timesharing schedule, the court may order that the exchange take place at a neutral safe exchange location if there is:

- Competent substantial evidence that there is a risk or an imminent threat of harm to one parent or the child during the actual exchange; and
- Such requirement is in the best interest of the child.

The PCS amends s. 741.30, F.S., to revise the form for petition for protection against domestic violence to include an option wherein the petitioner may request the court to order timesharing exchanges to be conducted at a neutral safe exchange location or supervised visitation program.

The PCS further requires the court to include such an exchange location requirement in a temporary, ex parte injunction for protection against domestic violence if the court awards temporary timesharing to the respondent in the ex parte injunction and it is in the best interests of the child to require the use of the safe exchange location. Finally, if the petitioner and the respondent already have an existing parenting plan or timesharing schedule, the PCS authorizes the court to require the use of a neutral safe exchange location as a component of either a temporary or permanent injunction if it is in the best interests of the child.

The PCS has an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 61.13, F.S., relating to support of children; parenting and timesharing; powers of court.

Section 2: Creates s. 61.455, F.S., relating to court-ordered parenting plan; neutral safe exchange location or supervised visitation program.

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

Section 4: Amends s. 741.30, relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.

Section 5: 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 PCS may have an insignificant negative fiscal impact on local governments by requiring certain locations to install a purple light or sign and recording devices which meet the requirements of the PCS.

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 PCS may require counties or municipalities to spend funds or take action requiring the expenditure of funds for the implementation of the required purple light or sign and camera surveillance system as the PCS mandates each sheriff 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES