

Florida Custody and Divorce Law

The Florida law that governs divorce, custody, and related family law matters is known as Chapter 61 of the Florida Statutes. Chapter 61 is titled Dissolution of Marriage, Support and Time Sharing, and was substantially rewritten in 2008 by Senate Bill No. 2532. Below are some of the highlights of the new law.

Certain definitions were modified as follows:

The terms "**Custodial Parent**", "**Noncustodial Parent**" and "**Primary Residential Parent**" were abolished. The new designation for both the Mother and Father is "**Parent**." *The purpose for this change was to equalize the importance of both parents. The old terms understated the role the secondary parent played in the life of their child.*

The term "**Visitation Plan**" has also been done away with and replaced with the terms "**Parenting Plan**" and "**Time-Sharing Schedule**". *The purpose for this change was to encourage courts to craft parenting arrangements allowing both parents a greater role in their children's life.*

A "**Parenting Plan**" means a document created to govern the relationship between the parents relating to decisions that must be made regarding the minor child and **must contain a Time-Sharing Schedule for the parents and child. The issues concerning the minor child may include, but are not limited to, the child's education, health care, and physical, social, and emotional well-being.** In creating the plan, all circumstances between the parents, including their historic relationship, domestic violence, and other factors must be taken into consideration. The parenting plan must be (i) developed and agreed to by the parents and approved by a court; or (ii) established by the court, with or without the use of a court-ordered parenting plan recommendation, if the parents cannot agree to a plan or the parents agreed to a plan that is not approved by the court.

Section 61.13(2)(a) provides a court may approve, grant, or modify a Parenting Plan, notwithstanding that the child is not physically present in Florida, if it appears to the court that the child was removed from the state for the primary purpose of removing the child from the court's jurisdiction in an attempt to avoid the court's approval, creation, or modification of a Parenting Plan.

Section 61.13(2)(b) further provides that any 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 the upbringing of the child, the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent, a designation of who will be responsible for any and all forms of health care, school-related matters, other activities, and the methods and technologies that the parents will use to communicate with the child.

A “**Time-Sharing Schedule**” means a timetable that must be included in the parenting plan that specifies the time, including overnights and holidays, that a minor child will spend with each parent. The time-sharing schedule is required to be (i) developed and agreed to by the parents of a minor child and approved by the court; or (ii) established by the court if the parents cannot agree or if their agreed-upon schedule is not approved by the court.

The purpose for the above revisions is to require a much more comprehensive plan for the parenting needs of children as the old visitation plans were frequently bare-bones and did not spell out specific needs of the child. Further, the new law is designed to ensure judges make a proper analysis of as many variables that comprise the parenting equation.

Section 61.13(3) revamps the facts a court will consider as follows:

For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a Parenting Plan, including a Time-Sharing Schedule, which governs each parent's relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, **the best interest of the child shall be the primary consideration**. Determination of the best interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the minor child, including, but not limited to:

(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. (The word “reasonable” was added to address the lack of reasonableness and flexibility of parents).

(b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties (i.e. grandparents).

(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, satisfactory 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. This factor does not create a presumption for or against relocation of either parent with a child. (This is an attempt to make parenting plans more responsive to long-distance relationships).

(f) The moral fitness of the parents.

- (g) The mental and 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, but not limited to, 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, such as discipline, and daily schedules for homework, meals, and bedtime.
- (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 when 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 to the court 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 and the division of parental responsibilities before the institution of litigation and during the pending litigation, 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 as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.
- (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.

It is important to note that a parent who fails to pay child support may not be prohibited from seeing their child. Section 61.13(4) provides that a parent who is ordered to pay child support or alimony fails to pay child support or alimony, the parent who should have received the child support or alimony may not refuse to honor the time-sharing schedule presently in effect between the parents. Further, when a parent refuses to honor the other parent's rights under the time-sharing schedule, the parent whose time-sharing rights were violated shall continue to pay any ordered child support or alimony.

The new law also provides the judge/court with the power to correct parents that interfere with the other parent's time with their child. The new powers given to the judges/court are as follows:

When a parent refuses to honor the time-sharing schedule in the Parenting Plan without proper cause, the court:

1. Shall, after calculating the amount of time-sharing improperly denied, award the parent denied time a sufficient amount of extra time-sharing to compensate for the time-sharing missed, and such time-sharing shall be ordered as expeditiously as possible in a manner consistent with the best interests of the child and scheduled in a manner that is convenient for the parent deprived of time-sharing. In ordering any makeup time-sharing, the court shall schedule such time-sharing in a manner that is consistent with the best interests of the child or children and that is convenient for the non-offending parent and at the expense of the noncompliant parent.
2. May order the parent who did not provide time-sharing or did not properly exercise time-sharing under the time-sharing schedule to pay reasonable court costs and attorney's fees incurred by the non-offending parent to enforce the time-sharing schedule.
3. May order the parent who did not provide time-sharing or did not properly exercise time-sharing under the time-sharing schedule to attend a parenting course approved by the judicial circuit.
4. May order the parent who did not provide time-sharing or did not properly exercise time-sharing under the time-sharing schedule to do community service if the order will not interfere with the welfare of the child.
5. May order the parent who did not provide time-sharing or did not properly exercise time-sharing under the time-sharing schedule to have the financial burden of promoting frequent and continuing contact when that parent and child reside further than 60 miles from the other parent.

6. May, upon the request of the parent who did not violate the time-sharing schedule, modify the parenting plan if modification is in the best interests of the child.

7. May impose any other reasonable sanction as a result of noncompliance.

Finally, it is the public policy of the state of Florida 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.

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. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child, in which case the court may order sole parental responsibility.