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## MEMORANDUM

**TO:** Concetta Rizzo  
**FROM:** Joseph A. DiVito, Esquire  
Peter J. Vasti, Esq.  
**DATE:** September 21, 2011  
**RE:** Guidelines for Principals When Facing Divorce and  
Custody Issues With Students

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This memo is intended to furnish some additional guidance for our principals when facing divorce and custody situations with students. A brief explanation of the glossary of terms in legal proceedings is helpful in understanding these complicated legal issues.

### GLOSSARY OF TERMS:

**Child:** For purposes of Florida law, an individual who has not attained 18 years of age.

**Custody:**

**Concurrent Custody:** An eligible extended family member is awarded custodial rights to care for a child concurrently with the child(ren)'s parent or parents.

**Legal Custody:** Refers to the parent(s) who will have the decision-making authority relating to the health, education, and welfare of a child. See "primary residential responsibility" below.

**Physical Custody:** This term means the physical care and supervision of a child.

**Child Custody Proceeding:** This is a Court proceeding in which legal custody, physical custody, residential care, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear.

**Child Custody Determination:** A judgment, decree, or other order of a court providing for the legal custody, physical custody, residential care, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

**Custodial Parent:** This term was abolished in 2008 by Senate Bill No. 2532. 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.

**Divorce or Dissolution of Marriage Proceedings:** This is a Court proceeding which not only addresses a dissolution of the marriage vows, but also addresses the issues of parental rights, custody and visitation. It is important to note that as a judicial proceeding, the Judge has the full jurisdiction over the children and the parties. In Florida, the process is called a "Dissolution of Marriage." Other states refer to the proceedings as "Divorce." The terms are similar.

**Extended Family Member:** a person who is (a) a relative of a minor child within the third degree by blood or marriage to the parent; or (b) the stepparent of a minor child if the stepparent is currently married to the parent of the child and is not a party in a pending dissolution, separate maintenance, domestic violence, or other civil or criminal proceeding in any court of competent jurisdiction involving one or both of the child's parents as an adverse party.

**Guardian or Attorney ad Litem:** Sometimes the Court will appoint a Guardian or Attorney ad Litem, to represent the specific interests of the child(ren) during the litigation. The rights and authority of the Guardian ad Litem will be established under a Court Order and its terms should be followed.

**Joint Custody or Rotating Primary Residential Responsibility:** Establishes that the parents will rotate primary residential responsibility and a time schedule is always established. It does not mean that the parents together have "joint" custody at the same time. It is important to review the Court document establishing the time(s) that the parent will rotate, as such rotation establishes which parent has the right of primary residential responsibility.

**Natural Guardians:** The mother and father jointly are natural guardians of their own children and of their adopted children, during minority. If one parent dies, the surviving parent remains the sole natural guardian even if he or she remarries. If the marriage between the parents is dissolved, the natural guardianship belongs to the parent to whom custody of the child is awarded. If the parents are given joint custody, then both continue as natural guardians. If the marriage is dissolved and neither the father nor the mother is given custody of the child, neither shall act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order stating otherwise.

**Noncustodial Parent:** This term was abolished in 2008 by Senate Bill No. 2532. 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.

**Parenting Plan:** A document created to govern the relationship between the parents relating to decisions that must be made regarding the minor child(ren) and must contain a Time-Sharing Schedule for the parents and child(ren). The issues concerning the minor child(ren) may include, but are not limited to, the child(ren)'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)(b) of the Florida Statutes 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(ren), the time-sharing schedule arrangements that specify the time that the minor child(ren) 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(ren).

**Paternity Decree:** A court order or decree in which a judicial determination of paternity is established. The order establishes the biological father of a child. The order may also contain visitation rights and other parental rights for the biological father. If a judgment of paternity contains only a child support award with no parenting plan or time-sharing schedule, the obligee parent (i.e. the parent that receives the support payments) shall receive all of the time-sharing and sole parental responsibility without prejudice to the obligor parent (i.e. the parent required to make the support payments). If a paternity judgment contains no such provisions, the mother shall be presumed to have all of the time-sharing and sole parental responsibility.

**Primary Residential Parent:** This term was abolished in 2008 by Senate Bill No. 2532. 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.

**Primary Residential Responsibility** (sometimes called "custody"): This means that the parent with whom the child maintains his or her primary resident has authority to manage the day-to-day issues of the child(ren). This term generally establishes which parent has the area of responsibility for a child(ren)'s health, education, welfare, religion, etc. unless the Court Order limits such responsibility.

**Shared Parental Responsibility:** A court-ordered relationship in which both parents retain full parental rights and responsibilities with respect to their child(ren) and in which both parents confer with each other so that major decisions affecting the welfare of the child will be determined jointly. The court shall order that the parental responsibility for a minor child(ren) be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child(ren). Shared parental responsibility means that both parents, even after the divorce, will continue to share parental responsibilities for their child(ren). Such responsibilities include those pertaining to education. Florida Statute 61.13 is attached to this memo, and generally establishes that each parent has access to certain information about their child. It is important to note that shared parental responsibility does not award "custody" and does not mean that either parent is entitled to access to the child(ren) while at school.

**Sole Primary Residential Responsibility:** When a parent is considered a serious detriment or harm to the child(ren), the Court may award sole parental responsibility, depriving the other parent of any parental rights and responsibilities. The parent with sole primary residential responsibility is the parent to whom **all** authority is given regarding school issues.

**Time-Sharing Schedule:** A timetable that must be included in the Parenting Plan that specifies the time, including overnights and holidays, that a minor child(ren) 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(ren)

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.

**Visitation Plan:** This term was abolished in 2008 by Senate Bill No. 2532 and replaced with the following terms: "Parenting Plan" and "Time-Sharing Schedule" (see definitions above). The purpose for this change was to encourage courts to craft parenting arrangements allowing both parents a greater role in their children's life.

### **GUIDELINES:**

**1. Enrollment Contract:** As with all issues between a private Catholic school and a family, one must begin with an examination of the enrollment contract. Therefore, you must first review the application forms and enrollment forms and determine to whom your duty must be given. If both parents have signed those forms, then both parents have certain contractual rights. If only one parent has signed the form, the duties of the school flow only to that parent by contract. The other (nonsigning) parent may have parental rights, but the school does not owe any contractual duties.

**2. Parental Rights:** When parents go through a divorce, the Court enters certain Orders that impact parental rights, and such Orders may also impact the contractual rights that exist between the school and the parents (from the enrollment contract). I cannot over emphasize the need to have any parent deliver a copy (preferably a certified copy) of any Court Order or paternity decree. Without such a copy, a principal should not rely upon any verbal representations from any parent or any person.

Florida Statute 61.13 makes it clear that the Court has jurisdiction regarding custody issues. Even when awarding shared parental responsibility, the Court may establish primary areas of responsibility to one parent. In such a case, the Court Order acts to modify the enrollment contract and a school must defer to the parent given responsibility for education. If the Court Order is silent, the school's duty remains to:

- Both parents, if both parents have signed the enrollment contract
- If one parent has signed the enrollment contract, then all contractual rights flow to that parent. The nonsigning parent is still entitled to certain rights for access of school records, reports, teacher conferences, etc.; but should not have the right to give direction on picking up the child after school, emergency contacts, or early withdrawal from school (for doctor appointments, etc.) unless the parent signing the enrollment contract has given written consent OR a valid Court Order or decree establishes such rights.
- I have highlighted (shaded) Subsection (2)(c)3 from the excerpt of Florida Statute 61.13. *Principals should read the highlighted portion of this law, as it directly addresses the issue of school records and access to information.*

**3. School should be neutral in a Dissolution of Marriage proceeding.** Principals, teachers and all staff should always avoid taking sides in a Dissolution of Marriage proceeding. The school should be a neutral party and act in a professional manner, being guided by the enrollment contract and the school handbook, policies and/or procedures. If a parent insists that a school not furnish certain information or allow access to the other parent, then the school should require the appropriate documentation (Court Order or decree) upon which such authority is given.

The reason I have included Subsection (3) of Florida Statute 61.13, is to show the factors that a

Court considers when deciding primary residential responsibility (i.e. custody). Reference is made to subsections (a through t). Principals, teachers and other school staff are often subpoenaed to testify in custody disputes. They are seeking to establish factors set forth in the law. I would suggest that school staff not volunteer to testify, but rather inform a parent that a proper subpoena must be issued and served. Such a process assures the appearance that school staff are remaining neutral and not favoring one party as a voluntary witness. When subpoenaed, school staff should limit their responses to "just the facts" and refrain from giving any opinions. For example, a teacher can testify that a student is late, or has a neat appearance or a dirty appearance, etc. Another example pertains to a parent's involvement at a school. Testimony can be given that a parent regularly attends parent/teacher conferences, school events, etc. School staff should refrain from drawing conclusions that a parent is a "bad" parent because a student is always late or because the parent is not involved at the school. Those are conclusions based on opinion and are not facts.

**4. Parents of child(ren) never married.** In situations where children attend school whose parents never married, then a school's duty to a parent will depend upon:

- If a legal proceeding has adjudicated paternity, then the school should obtain a copy of the paternity decree (or similar Court Order) and examine it as to what rights have been established between the parents.
- If there is no paternity decree (or similar Court Order) then the school's duty again flows from the enrollment contract. That is, if both parents (even though not married) have signed the enrollment agreement, then the school owes a contractual duty to both. If only the mother has signed the enrollment agreement, then any person claiming to be the biological father must present evidence of that fact. Florida Law, for purposes of intestate succession (i.e. distribution of one's estate after death), also recognizes that a biological parent can be established by a written instrument. Such instrument may be in the form of an affidavit acknowledging paternity (acknowledged by both parties). The name of a father shown on a birth certificate is *prima facie* that such person is the biological father and a school may rely upon it.

It is my suggestion that in situations where the biological parent has been established, that such biological parent be treated similar to a divorced parent. That is, the biological parent be given access to information (i.e. school records, report cards). The guidelines is to treat a biological parent similar to a parent who was divorced and does not have primary residential responsibility.

**5. Primary residential responsibility.** As identified under the Glossary of Terms, the parent having primary residential responsibility is the parent who has the authority to manage the day-to-day issues of the child(ren). Except for those times clearly designated in a Court Order, the parent having primary residential responsibility is the parent to whom a school must defer on consent for school pick-up, early withdrawal, etc.

**6. Joint custody or rotating primary residential responsibility.** If a joint custody or rotating primary residential responsibility has been established (see Glossary of Terms), then a school must identify the specific times authorized under the joint arrangement on which parent has which day to exercise those rights of authority.

**7. Sole primary residential responsibility.** In situations where a Court has ordered sole primary residential responsibility, then a school should direct all authority and rights to such parent, and the other parent is not permitted any rights for access of information, parent conferences, or any contact at all through the school. Written consent from the parent having sole parental responsibility

should be required.

**8. Providing copies of information.** On the issue of access to information, I would suggest that parent-student handbooks include a disclosure that one copy of such information is made available to the family. In situations where a second copy is requested, a school may charge a reasonable fee for providing that copy and/or mailing it to a second address. Absent this language in the handbook, then I would suggest that a school has a contractual duty to provide it to both parties signing the enrollment agreement without charge. If a second copy is made to a parent not signing the enrollment contract, a reasonable fee could be charged for providing that additional copy and mailing it.

**9. School is not a place for parental visitation.** All visitors should first check in with the school office and no one should be permitted to wander the school campus. Except for situations where visitors are permitted to the classroom (open house, special event days, etc.), policy should be established that parents (regardless of marital status) are not permitted to "visit" children during the school hours. Clearly, disruptions to school curriculum should be avoided. The school has a right to deny direct access to the classroom and have a parent come to the office with the child to be called from the classroom to the office.

**10. Parents with an attorney.** In circumstances where any parent involves their attorney with the school, then the principal, teacher or staff should refrain from any further discussions and refer the attorney and parent to a member of this firm. I would encourage principals to invite parents to discuss school issues directly with the school administration without their attorney. However, if a parent refuses to do so, then the principal should indicate that they will not be able to continue a discussion without the school's attorney present. It should be emphasized to the parents that they have chosen to elevate the matter to a legal issue, as it is no longer an educational issue. Thus, the school's attorney must be involved.

### CONCLUSION:

The rights of parents of children in private Catholic schools are impacted by legal proceedings involving divorce, custody and/or paternity. A certified copy of any Court Order should be obtained by the school administration before reaching a conclusion as to any such rights. When in doubt, principals should seek legal advice from this office.

JAD:jb

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Select Year: 2011 

## The 2011 Florida Statutes

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[Title VI](#)  
CIVIL PRACTICE AND  
PROCEDURE

[Chapter 61](#)  
DISSOLUTION OF MARRIAGE; SUPPORT;  
TIME-SHARING

[View Entire  
Chapter](#)

### **61.13 Support of children; parenting and time-sharing; powers of court.—**

(1)(a) In a proceeding under this chapter, the court may at any time order either or both parents who owe a duty of support to a child to pay support to the other parent or, in the case of both parents, to a third party who has custody in accordance with the child support guidelines schedule in s. [61.30](#).

1. All child support orders and income deduction orders entered on or after October 1, 2010, must provide:

a. For child support to terminate on a child's 18th birthday unless the court finds or previously found that s. [743.07\(2\)](#) applies, or is otherwise agreed to by the parties;

b. A schedule, based on the record existing at the time of the order, stating the amount of the monthly child support obligation for all the minor children at the time of the order and the amount of child support that will be owed for any remaining children after one or more of the children are no longer entitled to receive child support; and

c. The month, day, and year that the reduction or termination of child support becomes effective.

2. The court initially entering an order requiring one or both parents to make child support payments has continuing jurisdiction after the entry of the initial order to modify the amount and terms and conditions of the child support payments if the modification is found by the court to be in the best interests of the child; when the child reaches majority; if there is a substantial change in the circumstances of the parties; if s. [743.07\(2\)](#) applies; or when a child is emancipated, marries, joins the armed services, or dies. The court initially entering a child support order has continuing jurisdiction to require the obligee to report to the court on terms prescribed by the court regarding the disposition of the child support payments.

(b) Each order for support shall contain a provision for health insurance for the minor child when health insurance is reasonable in cost and accessible to the child. Health insurance is presumed to be reasonable in cost if the incremental cost of adding health insurance for the child or children does not exceed 5 percent of the gross income, as defined in s. [61.30](#), of the parent responsible for providing health insurance. Health insurance is accessible to the child if the health insurance is available to be used in the county of the child's primary residence or in another county if the parent who has the most time under the time-sharing plan agrees. If the time-sharing plan provides for equal time-sharing, health insurance is accessible to the child if the health insurance is available to be used in either county where the child resides or in another county if both parents agree. The court may require the obligor to provide health insurance or to reimburse the obligee for the cost of health insurance for the minor child when insurance is provided by the obligee. The presumption of reasonable cost may be rebutted by evidence of any of the factors in s. [61.30\(11\)\(a\)](#). The court may deviate from what is presumed reasonable in cost only upon a written finding explaining its determination why ordering or not ordering

the provision of health insurance or the reimbursement of the obligee's cost for providing health insurance for the minor child would be unjust or inappropriate. In any event, the court shall apportion the cost of health insurance, and any noncovered medical, dental, and prescription medication expenses of the child, to both parties by adding the cost to the basic obligation determined pursuant to s. 61.30 (6). The court may order that payment of noncovered medical, dental, and prescription medication expenses of the minor child be made directly to the obligee on a percentage basis. In a proceeding for medical support only, each parent's share of the child's noncovered medical expenses shall equal the parent's percentage share of the combined net income of the parents. The percentage share shall be calculated by dividing each parent's net monthly income by the combined monthly net income of both parents. Net income is calculated as specified by s. 61.30(3) and (4).

1. In a non-Title IV-D case, a copy of the court order for health insurance shall be served on the obligor's union or employer by the obligee when the following conditions are met:

a. The obligor fails to provide written proof to the obligee within 30 days after receiving effective notice of the court order that the health insurance has been obtained or that application for health insurance has been made;

b. The obligee serves written notice of intent to enforce an order for health insurance on the obligor by mail at the obligor's last known address; and

c. The obligor fails within 15 days after the mailing of the notice to provide written proof to the obligee that the health insurance existed as of the date of mailing.

2.a. A support order enforced under Title IV-D of the Social Security Act which requires that the obligor provide health insurance is enforceable by the department through the use of the national medical support notice, and an amendment to the support order is not required. The department shall transfer the national medical support notice to the obligor's union or employer. The department shall notify the obligor in writing that the notice has been sent to the obligor's union or employer, and the written notification must include the obligor's rights and duties under the national medical support notice. The obligor may contest the withholding required by the national medical support notice based on a mistake of fact. To contest the withholding, the obligor must file a written notice of contest with the department within 15 business days after the date the obligor receives written notification of the national medical support notice from the department. Filing with the department is complete when the notice is received by the person designated by the department in the written notification. The notice of contest must be in the form prescribed by the department. Upon the timely filing of a notice of contest, the department shall, within 5 business days, schedule an informal conference with the obligor to discuss the obligor's factual dispute. If the informal conference resolves the dispute to the obligor's satisfaction or if the obligor fails to attend the informal conference, the notice of contest is deemed withdrawn. If the informal conference does not resolve the dispute, the obligor may request an administrative hearing under chapter 120 within 5 business days after the termination of the informal conference, in a form and manner prescribed by the department. However, the filing of a notice of contest by the obligor does not delay the withholding of premium payments by the union, employer, or health plan administrator. The union, employer, or health plan administrator must implement the withholding as directed by the national medical support notice unless notified by the department that the national medical support notice is terminated.

b. In a Title IV-D case, the department shall notify an obligor's union or employer if the obligation to provide health insurance through that union or employer is terminated.

3. In a non-Title IV-D case, upon receipt of the order pursuant to subparagraph 1., or upon application of the obligor pursuant to the order, the union or employer shall enroll the minor child as a



beneficiary in the group health plan regardless of any restrictions on the enrollment period and withhold any required premium from the obligor's income. If more than one plan is offered by the union or employer, the child shall be enrolled in the group health plan in which the obligor is enrolled.

4.a. Upon receipt of the national medical support notice under subparagraph 2. in a Title IV-D case, the union or employer shall transfer the notice to the appropriate group health plan administrator within 20 business days after the date on the notice. The plan administrator must enroll the child as a beneficiary in the group health plan regardless of any restrictions on the enrollment period, and the union or employer must withhold any required premium from the obligor's income upon notification by the plan administrator that the child is enrolled. The child shall be enrolled in the group health plan in which the obligor is enrolled. If the group health plan in which the obligor is enrolled is not available where the child resides or if the obligor is not enrolled in group coverage, the child shall be enrolled in the lowest cost group health plan that is accessible to the child.

b. If health insurance or the obligor's employment is terminated in a Title IV-D case, the union or employer that is withholding premiums for health insurance under a national medical support notice must notify the department within 20 days after the termination and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

5.a. The amount withheld by a union or employer in compliance with a support order may not exceed the amount allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b), as amended. The union or employer shall withhold the maximum allowed by the Consumer Credit Protection Act in the following order:

- (I) Current support, as ordered.
- (II) Premium payments for health insurance, as ordered.
- (III) Past due support, as ordered.
- (IV) Other medical support or insurance, as ordered.

b. If the combined amount to be withheld for current support plus the premium payment for health insurance exceed the amount allowed under the Consumer Credit Protection Act, and the health insurance cannot be obtained unless the full amount of the premium is paid, the union or employer may not withhold the premium payment. However, the union or employer shall withhold the maximum allowed in the following order:

- (I) Current support, as ordered.
- (II) Past due support, as ordered.
- (III) Other medical support or insurance, as ordered.

6. An employer, union, or plan administrator who does not comply with the requirements in subparagraph 4.a. is subject to a civil penalty not to exceed \$250 for the first violation and \$500 for subsequent violations, plus attorney's fees and costs. The department may file a petition in circuit court to enforce the requirements of this subparagraph.

7. The department may adopt rules to administer the child support enforcement provisions of this section that affect Title IV-D cases.

(c) To the extent necessary to protect an award of child support, the court may order the obligor to purchase or maintain a life insurance policy or a bond, or to otherwise secure the child support award with any other assets which may be suitable for that purpose.

(d)1. All child support orders shall provide the full name and date of birth of each minor child who is the subject of the child support order.

2. If both parties request and the court finds that it is in the best interest of the child, support payments need not be subject to immediate income deduction. Support orders that are not subject to

immediate income deduction may be directed through the depository under s. 61.181 or made payable directly to the obligee. Payments made by immediate income deduction shall be made to the State Disbursement Unit. The court shall provide a copy of the order to the depository.

3. For support orders payable directly to the obligee, any party, or the department in a IV-D case, may subsequently file an affidavit with the depository alleging a default in payment of child support and stating that the party wishes to require that payments be made through the depository. The party shall provide copies of the affidavit to the court and to each other party. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be paid through the depository, except that income deduction payments shall be made to the State Disbursement Unit.

(2)(a) The court may approve, grant, or modify a parenting plan, notwithstanding that the child is not physically present in this state at the time of filing any proceeding under this chapter, if it appears to the court that the child was removed from this 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.

(b) 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 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 including the address to be used for school-boundary determination and registration, and other activities; and the methods and technologies that the parents will use to communicate with the child.

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

1. 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.

2. 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. Evidence that 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, or meets the criteria of s. 39.806(1)(d), creates a rebuttable presumption of detriment to the child. If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

a. 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.

b. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

3. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

(d) The circuit court in the county in which either parent and the child reside or the circuit court in which the original order approving or creating the parenting plan was entered may modify the parenting plan. The court may change the venue in accordance with s. 47.122.

(3) 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. A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. Determination of the best interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, 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.

(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, 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.

(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. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.
  - (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.
- (4)(a) When 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.
- (b) 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.
  - (c) 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 nonoffending 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 nonoffending 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.

(d) A person who violates this subsection may be punished by contempt of court or other remedies as the court deems appropriate.

(5) The court may make specific orders regarding the parenting plan and time-sharing schedule as such orders relate to the circumstances of the parties and the nature of the case and are equitable and provide for child support in accordance with the guidelines schedule in s. 61.30. An order for equal time-sharing for a minor child does not preclude the court from entering an order for child support of the child.

(6) In any proceeding under this section, the court may not deny shared parental responsibility and time-sharing rights to a parent solely because that parent is or is believed to be infected with human immunodeficiency virus, but the court may, in an order approving the parenting plan, require that parent to observe measures approved by the Centers for Disease Control and Prevention of the United States Public Health Service or by the Department of Health for preventing the spread of human immunodeficiency virus to the child.

(7)<sup>1</sup>(a) Each party to any paternity or support proceeding is required to file with the tribunal as defined in s. 88.1011(22) and State Case Registry upon entry of an order, and to update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of employer. Each party to any paternity or child support proceeding in a non-Title IV-D case shall meet the above requirements for updating the tribunal and State Case Registry.

(b) Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement.

(c) In any subsequent Title IV-D child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the court of competent jurisdiction shall deem state due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the tribunal and State Case Registry pursuant to paragraph (a). In any

subsequent non-Title IV-D child support enforcement action between the parties, the same requirements for service shall apply.

(8) At the time an order for child support is entered, each party is required to provide his or her social security number and date of birth to the court, as well as the name, date of birth, and social security number of each minor child that is the subject of such child support order. Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. All social security numbers required by this section shall be provided by the parties and maintained by the depository as a separate attachment in the file. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement.

**History.**—s. 7, Oct. 31, 1828; RS 1489; GS 1938; RGS 3201; CGL 4993; s. 16, ch. 67-254; s. 15, ch. 71-241; s. 1, ch. 75-67; s. 1, ch. 75-99; s. 26, ch. 77-433; s. 1, ch. 78-5; s. 18, ch. 79-164; ss. 1, 4, ch. 82-96; s. 3, ch. 84-110; s. 1, ch. 84-152; s. 118, ch. 86-220; s. 1, ch. 87-95; s. 4, ch. 88-176; s. 1, ch. 89-183; s. 1, ch. 89-350; s. 4, ch. 91-246; s. 4, ch. 93-188; s. 1, ch. 93-208; s. 1, ch. 93-236; s. 9, ch. 94-134; s. 9, ch. 94-135; s. 14, ch. 95-222; s. 5, ch. 96-183; s. 2, ch. 96-305; s. 24, ch. 97-95; s. 3, ch. 97-155; s. 3, ch. 97-170; s. 4, ch. 97-226; s. 1, ch. 97-242; s. 8, ch. 98-397; s. 122, ch. 98-403; s. 3, ch. 99-8; s. 2, ch. 99-375; s. 7, ch. 2000-151; s. 1, ch. 2001-2; s. 4, ch. 2001-158; s. 3, ch. 2002-65; s. 2, ch. 2002-173; s. 2, ch. 2003-5; s. 2, ch. 2004-334; s. 1, ch. 2005-39; s. 1, ch. 2005-82; s. 7, ch. 2005-239; s. 1, ch. 2006-245; s. 8, ch. 2008-61; s. 2, ch. 2009-90; s. 3, ch. 2009-180; s. 1, ch. 2010-187; s. 3, ch. 2010-199; s. 76, ch. 2011-92.

<sup>1</sup>**Note.**—Section 81, ch. 2011-92, provides that “[e]xcept as otherwise expressly provided in this act, this act shall take effect upon the earlier of 90 days following Congress amending 42 U.S.C. s. 666(f) to allow or require states to adopt the 2008 version of the Uniform Interstate Family Support Act, or 90 days following the state obtaining a waiver of its state plan requirement under Title IV-D of the Social Security Act.” Section 76, ch. 2011-92, amended paragraph (7)(a), to read:

“(a) Each party to any paternity or support proceeding is required to file with the tribunal as defined in s. 88.1011 and State Case Registry upon entry of an order, and to update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver’s license number, and name, address, and telephone number of employer. Each party to any paternity or child support proceeding in a non-Title IV-D case shall meet the above requirements for updating the tribunal and State Case Registry.

**Note.**—Former s. 65.14.