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CS/HB 1301

2023 Legislature

1
 2 An act relating to parenting and time-sharing of minor
 3 children; amending s. 61.13, F.S.; deleting the
 4 requirement for an unanticipated change in
 5 circumstances in order to modify a parenting plan or
 6 time-sharing schedule; creating a rebuttable
 7 presumption that equal time-sharing is in the best
 8 interests of a child; providing a standard of evidence
 9 to rebut such presumption; requiring a court to
 10 evaluate certain factors and make specific written
 11 findings of fact when creating or modifying a time-
 12 sharing schedule; providing an exception; authorizing
 13 modification of a time-sharing schedule under certain
 14 circumstances; conforming provisions to changes made
 15 by the act; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Paragraph (c) of subsection (2) and subsection
 20 (3) of section 61.13, Florida Statutes, are amended to read:

21 61.13 Support of children; parenting and time-sharing;
 22 powers of court.—

23 (2)

24 (c) The court shall determine all matters relating to
 25 parenting and time-sharing of each minor child of the parties in

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26 | accordance with the best interests of the child and in
 27 | accordance with the Uniform Child Custody Jurisdiction and
 28 | Enforcement Act, except that modification of a parenting plan
 29 | and time-sharing schedule requires a showing of a substantial
 30 | and, material, ~~and unanticipated~~ change of circumstances.

31 | 1. It is the public policy of this state that each minor
 32 | child has frequent and continuing contact with both parents
 33 | after the parents separate or the marriage of the parties is
 34 | dissolved and to encourage parents to share the rights and
 35 | responsibilities, and joys, of childrearing. Unless ~~Except as~~
 36 | otherwise provided in this section or agreed to by the parties
 37 | ~~paragraph~~, there is a no rebuttable presumption that equal for
 38 | ~~or against the father or mother of the child or for or against~~
 39 | ~~any specific~~ time-sharing of a minor child is in the best
 40 | interests of the minor child. To rebut this presumption, a party
 41 | must prove by a preponderance of the evidence that equal
 42 | timesharing is not in the best interests of the minor child.
 43 | Except when a time-sharing schedule is agreed to by the parties
 44 | and approved by the court, the court must evaluate all of the
 45 | factors set forth in subsection (3) and make specific written
 46 | findings of fact ~~schedule~~ when creating or modifying a
 47 | timesharing schedule ~~the parenting plan of the child.~~

48 | 2. The court shall order that the parental responsibility
 49 | for a minor child be shared by both parents unless the court
 50 | finds that shared parental responsibility would be detrimental

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51 to the child. The following evidence creates a rebuttable
 52 presumption of detriment to the child:

53 a. A parent has been convicted of a misdemeanor of the
 54 first degree or higher involving domestic violence, as defined
 55 in s. 741.28 and chapter 775;

56 b. A parent meets the criteria of s. 39.806(1)(d); or

57 c. A parent has been convicted of or had adjudication
 58 withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and
 59 at the time of the offense:

60 (I) The parent was 18 years of age or older.

61 (II) The victim was under 18 years of age or the parent
 62 believed the victim to be under 18 years of age.

63
 64 If the presumption is not rebutted after the convicted parent is
 65 advised by the court that the presumption exists, shared
 66 parental responsibility, including time-sharing with the child,
 67 and decisions made regarding the child, may not be granted to
 68 the convicted parent. However, the convicted parent is not
 69 relieved of any obligation to provide financial support. If the
 70 court determines that shared parental responsibility would be
 71 detrimental to the child, it may order sole parental
 72 responsibility and make such arrangements for time-sharing as
 73 specified in the parenting plan as will best protect the child
 74 or abused spouse from further harm. Whether or not there is a
 75 conviction of any offense of domestic violence or child abuse or

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76 | the existence of an injunction for protection against domestic
77 | violence, the court shall consider evidence of domestic violence
78 | or child abuse as evidence of detriment to the child.

79 | 3. In ordering shared parental responsibility, the court
80 | may consider the expressed desires of the parents and may grant
81 | to one party the ultimate responsibility over specific aspects
82 | of the child's welfare or may divide those responsibilities
83 | between the parties based on the best interests of the child.
84 | Areas of responsibility may include education, health care, and
85 | any other responsibilities that the court finds unique to a
86 | particular family.

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

91 | 5. There is a rebuttable presumption against granting
92 | time-sharing with a minor child if a parent has been convicted
93 | of or had adjudication withheld for an offense enumerated in s.
94 | 943.0435(1)(h)1.a., and at the time of the offense:

95 | a. The parent was 18 years of age or older.

96 | b. The victim was under 18 years of age or the parent
97 | believed the victim to be under 18 years of age.

98 |
99 | A parent may rebut the presumption upon a specific finding in
100 | writing by the court that the parent poses no significant risk

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101 of harm to the child and that time-sharing is in the best
 102 interests of the minor child. If the presumption is rebutted,
 103 the court shall consider all time-sharing factors in subsection
 104 (3) when developing a time-sharing schedule.

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

116 (3) For purposes of establishing or modifying parental
 117 responsibility and creating, developing, approving, or modifying
 118 a parenting plan, including a time-sharing schedule, which
 119 governs each parent's relationship with his or her minor child
 120 and the relationship between each parent with regard to his or
 121 her minor child, the best interests ~~interest~~ of the child must
 122 ~~shall~~ be the primary consideration. A determination of parental
 123 responsibility, a parenting plan, or a time-sharing schedule may
 124 not be modified without a showing of a substantial and,
 125 ~~material, and unanticipated~~ change in circumstances and a

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126 | determination that the modification is in the best interests of
 127 | the child. If the parents of a child are residing greater than
 128 | 50 miles apart at the time of the entry of the last order
 129 | establishing time sharing and a parent moves within 50 miles of
 130 | the other parent, then that move may be considered a substantial
 131 | and material change in circumstances for the purpose of a
 132 | modification to the time-sharing schedule, so long as there is a
 133 | determination that the modification is in the best interests of
 134 | the child. Determination of the best interests of the child
 135 | shall be made by evaluating all of the factors affecting the
 136 | welfare and interests of the particular minor child and the
 137 | circumstances of that family, including, but not limited to:
 138 | (a) The demonstrated capacity and disposition of each
 139 | parent to facilitate and encourage a close and continuing
 140 | parent-child relationship, to honor the time-sharing schedule,
 141 | and to be reasonable when changes are required.
 142 | (b) The anticipated division of parental responsibilities
 143 | after the litigation, including the extent to which parental
 144 | responsibilities will be delegated to third parties.
 145 | (c) The demonstrated capacity and disposition of each
 146 | parent to determine, consider, and act upon the needs of the
 147 | child as opposed to the needs or desires of the parent.
 148 | (d) The length of time the child has lived in a stable,
 149 | satisfactory environment and the desirability of maintaining
 150 | continuity.

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151 (e) The geographic viability of the parenting plan, with
 152 special attention paid to the needs of school-age children and
 153 the amount of time to be spent traveling to effectuate the
 154 parenting plan. This factor does not create a presumption for or
 155 against relocation of either parent with a child.

156 (f) The moral fitness of the parents.

157 (g) The mental and physical health of the parents.

158 (h) The home, school, and community record of the child.

159 (i) The reasonable preference of the child, if the court
 160 deems the child to be of sufficient intelligence, understanding,
 161 and experience to express a preference.

162 (j) The demonstrated knowledge, capacity, and disposition
 163 of each parent to be informed of the circumstances of the minor
 164 child, including, but not limited to, the child's friends,
 165 teachers, medical care providers, daily activities, and favorite
 166 things.

167 (k) The demonstrated capacity and disposition of each
 168 parent to provide a consistent routine for the child, such as
 169 discipline, and daily schedules for homework, meals, and
 170 bedtime.

171 (l) The demonstrated capacity of each parent to
 172 communicate with and keep the other parent informed of issues
 173 and activities regarding the minor child, and the willingness of
 174 each parent to adopt a unified front on all major issues when
 175 dealing with the child.

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176 (m) Evidence of domestic violence, sexual violence, child
 177 abuse, child abandonment, or child neglect, regardless of
 178 whether a prior or pending action relating to those issues has
 179 been brought. If the court accepts evidence of prior or pending
 180 actions regarding domestic violence, sexual violence, child
 181 abuse, child abandonment, or child neglect, the court must
 182 specifically acknowledge in writing that such evidence was
 183 considered when evaluating the best interests of the child.

184 (n) Evidence that either parent has knowingly provided
 185 false information to the court regarding any prior or pending
 186 action regarding domestic violence, sexual violence, child
 187 abuse, child abandonment, or child neglect.

188 (o) The particular parenting tasks customarily performed
 189 by each parent and the division of parental responsibilities
 190 before the institution of litigation and during the pending
 191 litigation, including the extent to which parenting
 192 responsibilities were undertaken by third parties.

193 (p) The demonstrated capacity and disposition of each
 194 parent to participate and be involved in the child's school and
 195 extracurricular activities.

196 (q) The demonstrated capacity and disposition of each
 197 parent to maintain an environment for the child which is free
 198 from substance abuse.

199 (r) The capacity and disposition of each parent to protect
 200 the child from the ongoing litigation as demonstrated by not

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201 discussing the litigation with the child, not sharing documents
202 or electronic media related to the litigation with the child,
203 and refraining from disparaging comments about the other parent
204 to the child.

205 (s) The developmental stages and needs of the child and
206 the demonstrated capacity and disposition of each parent to meet
207 the child's developmental needs.

208 (t) Any other factor that is relevant to the determination
209 of a specific parenting plan, including the time-sharing
210 schedule.

211 Section 2. This act shall take effect July 1, 2023.