

2008 Changes to Florida Statute Chapter 61
Resulting from Senate Bill 2532 (Effective October 1, 2008)
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1. The terms "custodial parent", "non custodial parent", "primary residential parent" and "secondary residential parent" are no longer defined.
2. Words that have been stricken include: primary residence, custody, visitation and combinations including those words, such as, rotating custody and visitation rights.
3. The terms "parenting plan", "parenting plan recommendation" and "time-sharing schedule" are defined.
4. A parenting plan must be developed and agreed to by the parents and approved by the court, or, if the parents cannot agree, the parenting plan shall be established by the court.
5. The parenting plan must include a time-sharing schedule, defined as a timetable that specifies the time, including overnights and holidays, that a minor child will spend with each parent. If developed and agreed to by the parents of a minor child, it must be approved by the court; or, if the parents cannot agree, it shall be created by the court.
6. The parenting plan must address jurisdictional issues (s. 61.046(13)(a)). The parenting plan, developed by parents or by the court, and approved by the court is defined as meeting those jurisdictional issues.
7. Any parenting plan approved by the court must, at minimum, describe in adequate detail
 - a. how the parents will share and be responsible for the daily tasks associated with the upbringing of the child,
 - b. the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent,
 - c. a designation of who will be responsible for any and all forms of
 - i. health care,
 - ii. school-related matters,
 - iii. other activities
 - d. the methods and technologies that the parents will use to communicate with the child

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8. Child custody evaluation is called a "parenting plan recommendation" under this law. In 61.046(14) (definitions), the new law says that a "parenting plan recommendation" is a nonbinding recommendation made by a psychologist licensed under Chapter 490. In 61.20(2) (social investigation and recommendations regarding a parenting plan), the new law retains the current wording which says, "A social investigation and study, when ordered by the court shall be conducted by qualified staff of the court; a child placing agency ...; a clinical psychologist licensed pursuant to chapter 490; or a clinical social worker, marriage and family therapist, or mental health counselor licensed pursuant to chapter 491.
9. When a psychologist's parenting plan recommendation is sought by the court, the standard of a good faith recommendation has been changed from the standards of the American Psychological Association for custody evaluations in divorce proceedings to a now undefined standard that a "reasonable psychologist" would use to develop a parenting plan.
10. If an interested party (claimant) disagrees with a parenting plan recommendation, a legal action may be filed to dispute the parenting plan with costs being paid by the claimant unless the psychologist is found liable. The presumption is that the psychologist is acting in good faith.
11. Retained in the new law are:
 - a. the determination of all matters pertaining to parenting and time sharing in accordance with the best interests of the child,
 - b. no presumption for or against the mother or father in making such determinations,
 - c. the presumption of shared parental responsibility unless that would be detrimental to the child
12. Stricken from the new law are statements that restrict the courts judgment regardless of the age or sex of the child, including:
 - a. "...After consideration of all relevant facts, the father of the child shall be given the same consideration as the mother in determining the primary residence of a child irrespective of the age or sex of the child." (s. 61.13(2)(b)1.) is changed to "... There is no presumption for or against the father or mother of the child when creating or modifying the parenting plan of the child."

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- b. the court may not deny the non custodial parent overnight contact and access or visitation with the child solely because of the age or sex of the child (s. 61.13(7) stricken)
13. The new law adds to the "best interests of the child" tests listed in s. 61.13(3), now including items (a) through (t) below. It is possible that this more extensive list is also designed to take the place of the standards of the American Psychological Association in guiding the "reasonable psychologist"; or to give judges more guidance in making determinations regarding the best interests of the child.
- a. The demonstrated capacity (ability) and disposition (willingness) 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

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- 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
14. The financial responsibility section (s. 61.30 F.S.) has been modified to more specifically determine the deviation from the guideline amount when children spend significant time with a parent, with “significant time” being defined as more than 40% of overnights (s. 61.30(11)(b)8 F.S.). The instructions for calculating the deviation (amount subtracted from the obligation for the parent who spends the least time with the children), are given in the revised statute, 61.30(11)(b)1 through 61.30(11)(b)4. This does not eliminate child support; but only reduces it for parents who each spend significant time caring for children.

Note to parents from PDR on creating a parenting plan: All children, including teenagers, need consistency in their support and their environment. Teenagers, in addition, need flexibility. Plans that are too rigid will not work for older children. Children do best when they have a single place they consider as home and still have frequent contact with both parents who share responsibility and focus on the attachment and developmental needs of the children. Parents who create parenting plans with the sole focus on parents' needs, parents' rights and the desire to reduce child support sacrifice the needs of their children in the process. This applies to children of all ages, not just young children.