IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR THE COUNTY OF MIAMI-DADE

FINAL REPORT OF THE MIAMI-DADE COUNTY GRAND JURY

SPRING TERM A.D. 2013

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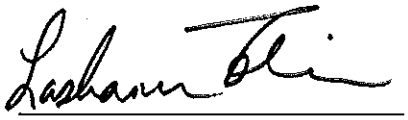

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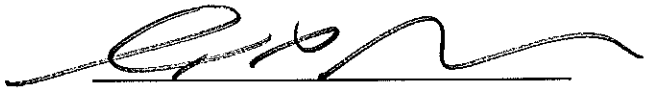

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FILED

December 11, 2013

Circuit Judge Presiding
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EQUAL TIME-SHARING: IS "ONE-SIZE FITS ALL" LEGISLATION IN THE BEST INTEREST OF THE CHILD?

I. INTRODUCTION

At the end of the 2013 Regular Legislative Session, the Florida Legislature forwarded to the governor a bill that was hailed as Florida's Alimony Reform Bill.[1] It was touted as a bill that would transform alimony determinations, payments and calculations. Among other things, it would eliminate permanent alimony in Florida. There was a great deal of media coverage over this proposed law that, if passed, would have had a significant impact on future divorce actions.[2] However, almost unnoticed, and tucked away at the end of that bill were several provisions that would change current Florida law on the issue of time-sharing of parents with their minor children.[3] We believe that, if passed, these changes will have a significant negative impact on the minor children who find themselves in the middle of dissolution of marriage[4] cases in our state. Because of our concerns in this regard, we submit this report.

Chapter 2008-61, Laws of Florida, effective October 1, 2008, eliminated such terms as custodial parent, noncustodial parent, primary residential parent, secondary residential parent, and visitation from Chapter 61, Florida Statutes. Instead, after the changes, parents are to develop a parenting plan that includes, among other things, their time-sharing schedule with the minor child(ren). If the parents cannot agree, a parenting plan will be established by the Court.[5] By passing the new parenting law in 2008, Florida moved into the forefront of a national trend toward mitigating the animosity and litigation in dissolution of marriage cases to preserve the family unit for the children.[6] We believe the proposed legislative modification of Florida Statute

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[1] The specific reference for the bill was Committee Substitute for Committee Substitute for Senate Bill 718. Hereinafter, we will refer to the bill as SB 718.

[2] On May 1, 2013 the governor executed a letter to the President of the Florida Senate advising that "the retroactive adjustment of alimony could result in unfair, unanticipated results." After comparing the proposed legislation to current Florida law, he decided to veto the bill. A copy of the letter can be found at http://www.flgov.com/wp-content/uploads/2013/05/Veto-Letter-SB-718.pdf

[3] The focus of SB 718 was so overwhelmingly targeted on alimony that the governor's letter vetoing the bill does not even mention or refer to time-sharing.

[4] Divorces are now referred to as dissolutions of marriage. In this report, we may use both terms interchangeably.

[5] http://www.floridasupremecourt.org/decisions/2008/sc08-1660.pdf

[6] http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/Articles/DF8450C89BE9C83B852574F2005D594A

61.13 (3) will essentially be a giant step backward and will undo the positive reforms that are presently in place.

II. HOW TO PROTECT THE CHILDREN

Too often, the children of parents in dissolution proceedings or paternity actions end up being used as pawns by one parent to "get back at" or acquire an advantage over the other parent. These parents are so caught up in their own grief and possible feelings of betrayal, that they do not realize their minor children are going through a grieving process of their own.[7] Some parents fail to realize or even consider how the decision to get a divorce or the divorce proceeding itself is impacting their minor children. In the meantime, the lives of their children are being torn apart and what was once normal for the children has now been turned upside down. In most of these situations there is nothing the child can do except strap in for a very long, torturous and possibly volatile, roller-coaster ride.

In the midst of all this chaos, sits a Circuit Court Judge, who oftentimes, in addition to refereeing the fighting between the parents, has as one of her primary goals, looking out for what is in the best interest of the child(ren). From our perspective, one of the most critical aspects of

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[7] **Children** grieving **in divorce**

1. Denial - Denial is a common first response children experience because they need to believe that their parents will change their minds and the divorce is not going to happen. "Mom or Dad will change their mind." "Dad will come home next week."

2. Anger - Children experiencing anger want to blame someone for the sadness they feel. They are often irritable, aggressive and uncooperative. "I hate Dad for leaving us." "Mom should have cooked more and kept the house cleaner."

3. Bargaining - In this stage, children may feel their parents will stay together if they make a deal. The bargaining stage allows the child to feel they have some control over the situation, and they try to please. In bargaining, the child can focus on hope and delay facing sadness. "If I do all my homework maybe Mom and Dad will call off the divorce."

4. Depression - Depression involves a great sense of loss and sadness children feel when they realize that nothing will stop the divorce. Parents need to allow their children to grieve the loss and express their sadness. When a parent rushes to encourage the child to focus only on the positive, it may be a reflection of the parent's inability to process sadness in themselves. "I can't stop the divorce and can't fix the situation."

5. Acceptance - Acceptance is not characterized by happiness; it means moving beyond the feelings of loss. It begins when there is less depression, more resolution and stability, and the child accepts the divorce. Acceptance appears gradually and may take months or years to occur. Divorce is a major transition and a journey of growth. There are no absolute rules that determine how the process of healing will occur. [The] children's ability to adapt to divorce is going to depend on [the parent's] ability to adapt to the divorce. The sooner [the parent] begin[s] to heal, the sooner [the] children will start on their road to recovery.

"The Grieving Process Of Divorce". Positive Parenting. Retrieved 10 April 2012.

this judicial assignment is the determination of how much time each parent will get to spend with each of their minor children - the time-sharing issue. Here again, parents may use this opportunity to attack each other with claims of "unfitness." Or, they may attempt to manipulate the process in an effort to give the other parent more (or less) time with the minor child(ren), depending on which result, they believe, will inflict more pain on the other parent. At this point, many parents are not the least bit concerned about the impact their selfish actions are having and will have on their children. Fortunately, for the children, this is a major concern and a priority for the Court. In fact, when performing this function, the judges are required to consider and determine what is in the best interests of the child.

A. SB 718 Presumes that Equal Time-sharing is in the Best Interest of the Child: Is it?

In its present form, Florida Statute 61.13(2)(c) dictates that:
"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..."

In an effort to assist the courts in determining what is in the best interests of the child, the Florida Legislature has given the courts specific guidance on issues such as shared parenting and time-sharing. For instance, from the time the statute was amended, effective October 1, 2009, Florida Statute 61.13 (2)(c)1 has contained the following provisions:

> 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. [emphasis added]

For more than four (4) years now the law in this state has clearly stated that there is no presumption for either parent when it comes to creating or modifying any time-sharing schedule. Even a cursory review of the statute makes it clear that the legislature intended to make a policy statement on the issue of shared parenting and time-sharing. We wholeheartedly agree with that policy.

However, one of the major changes set forth in SB 718 is the insertion of an additional sentence at the end of the aforementioned statutory provision. Immediately after declaring that there is no presumption for or against "any specific time-sharing schedule," SB 718 effectively

creates one. The proposed legislation specifically states "equal time-sharing with a minor child by both parents **is** in the best interest of the child unless the court finds" the existence of a limited number of specified exceptions.[8] Following this newly created presumption is a short laundry list of exceptions that the court **may find** leads to the conclusion that equal time-sharing with a minor child by both parents is **not** in the best interest of the child. In other words, prospectively, the courts will be obligated to order 50-50 equal time-sharing in all cases in Florida "unless the court finds that:

a. The safety, well-being, and physical, mental, and emotional health of the child would be endangered by equal time-sharing...;
b. Clear and convincing evidence of extenuating circumstances justify a departure from equal time-sharing and the court makes written findings justifying the departure from equal time-sharing;
c. A parent is incarcerated;
d. The distance between parental residences makes equal time-sharing impracticable;
e. A parent does not request at least 50% time-sharing;
f. A permanent injunction has been entered against a parent or household member relating to contact between the subject of the injunction and the parent or household member," or
g. Domestic violence, as defined in s.741.28, has occurred.[9]

With the existence of this presumption in the statute, we believe that there will inevitably be parents who will attempt to manipulate the system because the starting point for deciding time-sharing issues has been moved. What is a court to do when it appears that a parent's desire to have equal time-sharing with the minor child is driven by a desire to exact some sort of revenge on the other parent? With the existence of this presumption in the statute, the hands of the court will be tied and our judges will be limited in what they consider and what they can do. We believe placing minor children in the parent's home, under such circumstances, could potentially be placing those children in an unsafe environment and placing them at risk. Clearly, this is not in the best interest of the child and not the result the legislature intended.

We believe the proposed equal time-sharing legislation offers a one-size-fits-all approach and that it may not (and will not) be appropriate in every case. Children are unique, even when

[8] SB 718 61.13(2)(c)1

[9] Id.

they are identical twins. Parents, parenting practices and home environments are all different from one family to the next. As such, an analysis of the appropriate amount of time-sharing to allow between parents and their minor child(ren) must be done on a case-by-case basis, as opposed to trying to apply a cookie cutter approach. To find a better way of determining what is in the best interest of the child, we simply took a look at current Florida law.

B. The Current Law Used by the Court in Assessing the Best Interest of the Child: A Case-by-Case Basis

When deciding the amount of time-sharing the minor children will have with each parent, the law in Florida mandates that the **primary consideration** for the court shall be what is in the "best interest of the child".[10] In the past, major (and costly) battles were fought over who would get "custody"[11] of the children. The battleground has moved and the battles now occur over how much time each parent will get to spend with each child. Because of the volatile environment that often exists in dissolution proceedings, the Florida Legislature has given the courts final say over **all** aspects of **all** issues between parents and their minor children, whether they arise during the pendency of the dissolution action or after a final order of dissolution has been entered. However, if the parents reach an accord during the dissolution or paternity proceedings, they have the option of conferring and fashioning an agreement to present to the court on issues that may include shared-parenting,[12] a time-sharing schedule and development of a parenting plan. If the parents cannot (or will not) come to an agreement on these issues, the legislature has determined that the judge, who is the trier of fact and has a superior vantage point, will decide for them.

The Florida Legislature has also given the courts great assistance in resolving conflicts between parties as to the appropriate parameters of shared parenting **and** time-sharing schedules. As to the time-sharing, the legislature has delineated a great number of factors the court must take into consideration in determining what would be in the best interest of the child.

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[10] Florida Statute 61.13 (3)

[11] The concept of child custody has now become an archaic term and is in disfavor. The law and the courts are now more attuned to having both parents involved in making decisions concerning their children as well as both parents spending time with the children. Time-sharing is now the accepted terminology.

[12] Shared parenting requires both parents to confer on major decisions affecting the welfare of the child. Under shared parenting decisions on issues such as education, religion, health and discipline, even in situations where the child lives with one parent.

Specifically, Florida Statute 61.13(3) provides that the determination of the best interest of the child

> (3) . . . 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. (emphasis added)[13]

Under current Florida law, the court is duty bound to consider these factors when conducting the critical analysis of determining appropriate time-sharing between parents and their minor child(ren). We believe that these are all legitimate and important factors that the court should take into consideration when fulfilling its role of deciding what is in the best interest of the minor child. However, the court's ability in this regard will be severely limited if the provisions set forth in SB 718 are enacted.

Under the legislation proposed by SB 718, the court will no longer consider "all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family," as required under the present statute. Instead, the court will begin the assessment process with a legislatively created statutory presumption that **equal time-sharing with a minor child *is* in the best interest of the child** unless the court finds a limited number of factors or situations to be present. We believe the insertion of this presumption in the statute is a grave mistake. More importantly, we anticipate that the presence of this provision in the statute will require the courts of this state to take actions that will **not** be in the best interests of the minor

[13] We have included the entire list in this section of the report to accentuate the breadth and depth of criteria the court presently considers while it is assessing what would be in the best interest of the minor child(ren).

children in this state. One of the reasons we believe this result is likely to occur is because, as presently written, section 61.13 (2) (c)1 of SB 718 imposes two (2) different burdens of proof in the same statutory provision.

C. Requiring a Heightened Burden of Proof to Establish "Extenuating Circumstances" Will Put Children at Risk

One of the other areas of concern for us with SB 718 is the existence of two (2) very different burdens of proof within the same statute. As members of this Grand Jury, becoming familiar with the various burdens of proof that exist within our legal system has been part of our education process. For instance, we know that before a police officer can make a lawful arrest, the officer should have "probable cause" that a crime has been committed and that the defendant committed it. During our term, we learned that probable cause was the same standard we would use in deciding whether sufficient evidence had been presented to warrant issuance of a "true bill" or Indictment for a First Degree Murder charge. Notwithstanding this standard at the front end of the criminal justice process, we also learned that before a defendant can be convicted at trial of any crime in this state, the prosecutor must present sufficient evidence to establish or prove the defendant's guilt to the exclusion of and beyond a reasonable doubt.[14] Obviously, the reasonable doubt standard is significantly higher than probable cause.

Just as burdens of proof exist in the criminal arena, they exist in the civil arena as well. However, since one's liberty is not at stake in civil trials, the burden of proof in a civil trial is usually much lower. Nevertheless, depending on the nature of the case, there are varying burdens of proof applied in civil courts. The usual standard is referred to as "the preponderance, or greater weight, of the evidence."[15] Accordingly, for one side to win at trial in a civil matter, that party must prove the case by the greater weight of the evidence, regardless of how close the decision might be. For instance, in weighing the evidence at the end of a trial or hearing, if the court (or jury) finds that the plaintiff's proof is at 50.1% and the defendant's proof is at 49.9%,

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[14]Standard Jury Instructions for Criminal Cases, 3.7 Plea of Not Guilty; Reasonable Doubt; and Burden of Proof: The presumption [of innocence] stays with the defendant as to each material allegation in the [information] through each stage of the trial unless it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

[15]Standard Jury Instructions for Civil Cases, 3.9 Greater Weight (Preponderance) of Evidence Defined: "Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in the case.

the plaintiff, the party with the greater weight of evidence, wins, even if the difference is only one tenth of one percent!

Similar to the burdens of proof that exist at the end of trials to determine who wins the case, burdens of proof are also applied during trials or hearings for establishing levels of proof of certain facts. For most facts at issue in a civil trial, the level or standard for proving (or disproving) that fact at trial is the preponderance or greater weight of the evidence. For instance, if one parent contended that the other parent was not entitled to equal time-sharing, examples of facts in dispute could include one of the "exceptions" set forth in 61.13 (2)(c) 1 of SB 718. Again, under SB 718, equal time-sharing is presumed to be in the best interest of the child unless the safety, health or welfare of the child would be endangered, a parent was incarcerated or had a history of domestic violence, a permanent injunction had been entered, the distance between parental residences make equal time-sharing impractical or a parent did not request at least 50% time-sharing. Parents seeking to prove any one of these exceptions at a trial or hearing would be successful if they met the standard of the preponderance or greater weight of the evidence.

However, SB 718 has another exception listed under the proposed changes to Chapter 61.13.[16] That exception is referred to as "extenuating circumstances" and it is different from the other six (6) exceptions in two major ways. First, if the judge uses this exception to depart from the 50-50 equal time-sharing presumption, the judge must make "written findings justifying the departure". Second, the parent seeking to prove this exception will only be successful if the extenuating circumstances are proven to the standard of "clear and convincing evidence". Proof by this heightened standard of clear and convincing evidence requires that a party establishing proof of a fact, must persuade the court that the point he is seeking to prove is ***highly probable***.[17] This raises the stakes significantly over an issue where, if the parent seeking to prove the point fails, the child may be the one who suffers.

The list of exceptions that is tied to SB 718's equal time-sharing presumption is specific and finite and the items listed therein would all appear to militate against being in the best

[16]SB 718 61.13 (2)(c) 1.b.

[17] 1.4 Burden of Proof—Clear And Convincing Evidence: When a party has the burden of proving any claim or defense by clear and convincing evidence, it means you must be persuaded by the evidence that the claim or defense is highly probable. This is a higher standard of proof than proof by a preponderance of the evidence. You should base your decision on all of the evidence, regardless of which party presented it.

interests of the child. Yet, because the list is not exhaustive, there might be other relevant factors or extenuating circumstances not listed that could be just as (or maybe even more) harmful to the child.[18] However, to satisfy proof of those extenuating circumstances, the parent will be held to presenting their evidence to the higher standard of clear and convincing evidence. To compound this problem, SB 718 does not even include a definition of "extenuating circumstances."

We believe imposing this heightened standard will remove the court's discretion, tie the hands of our judges and result in decisions by those judges that could be injurious to and not in the best interests of our children.

D. The Impact of a Heightened Burden of Proof on Self-Represented Litigants

One of the realities that leads us to the above conclusion is the fact that in many of these dissolution of marriage or paternity cases, the parents are representing themselves. It was reported to us that as many as 65-80% of the cases being handled in Family Court in Miami-Dade County involve parents representing themselves on at least one side of the litigation. These *pro se* (or self-represented litigants) have no formal (or even informal) legal training and, thus, are not knowledgeable about concepts such as burdens of proof. Further, unlike lawyers, those *pro se* litigants are not schooled in the nuances that exist between the various burdens. Finally, these self-represented parties are presenting their cases to a judge whose primary function is to remain a neutral arbiter and make rulings based on what has been presented. The judge is not permitted to become an advocate for one side or the other, or give legal advice to guide a self-represented litigant.

Therefore, at the close of a hearing or trial in a dissolution of marriage or paternity case, there may be a contested issue of time-sharing where one parent presented evidence of "extenuating circumstances" (whatever that means) in hopes that the other parent would not receive equal time-sharing. In a close case, applying the preponderance or greater weight of the evidence standard, the court could find that a 50-50 equal time-sharing split would not be in the child's best interest. Yet, applying the heightened burden of clear and convincing evidence standard **to the same evidence,** the court would have to find that the self-represented litigant's evidence did not rise to the appropriate level. In that situation the court would be legally

[18] For example, the factors delineated in the present version of Florida Statute 61.13(3) and printed herein on pages 6-7.

obligated to enter an order imposing equal time-sharing, even though the court believed that taking this course of action would not be in the minor child's best interest.

To expect that self-represented litigants would understand what happened in such a scenario is not realistic. In assessing whether certain burdens have been met in trials and hearings, we understand that learned lawyers, trial judges and appellate courts battle over these issues all the time. If the lawyers and the judges cannot agree on whether a burden of proof has been met in a particular case, we cannot expect untrained, and possibly unlearned, *pro se* litigants to perform well or be successful in their understanding when they are attempting to navigate the nuances between the various exceptions and the attendant conflicting burdens of proof in the proposed statute. Again, the parents are not the ones who will lose; the children will be the ones who will suffer. We do not believe the Florida Legislature intended such a result. Accordingly, we recommend:

1. *That all provisions in SB 718 affecting time-sharing be removed before it is sent back to the governor for signature.*

Alternatively, if the decision is made to proceed with modifying the time-sharing provisions of 61.13, we recommend:

2. *That the Florida Legislature include a definition of "extenuating circumstances;" and*
3. *That the Florida Legislature remove the heightened burden of proof of clear and convincing evidence that presently applies to the "extenuating circumstances" exception.*

E. The Impact of SB 718 on Future Child Support Enforcement Cases

Another area where the equal time-sharing presumption may negatively impact families here in Miami-Dade County is with the work conducted by the Child Support Enforcement Division ("CSED") of the State Attorney's Office ("SAO"). The law in Florida states that every child has the right of support of both parents until the minor child attains the age of majority.[19] Under the proposed equal time-sharing legislation, there is the risk that the "presumption" can be misused by a non-custodial parent for financial gain. This may thwart the efforts for the CSED, whose primary focus is to obtain support from the non-custodial parent for the benefit of the minor child. The duties of the CSED here in the 11th Judicial Circuit include the following:

[19] Florida Statute 487.021(6) "Age of majority" means any natural person 18 years of age or older, or an emancipated minor.

- Locating missing parents for child support purposes
- Determining paternity when needed
- Establishing medical and financial support orders
- Enforcing support orders
- Modifying support orders

As reflected above, the CSED is not involved in establishing or determining child custody or child-sharing issues. However, as a result of receipt of a Parenting Time Opportunities for Children (PTOC) federal grant, parents involved with CSED cases in Miami-Dade County will soon have the option of having time-sharing issues for their children resolved.[20] The aim of the PTOC pilot program is to improve the financial and emotional support of children in the child support system by increasing safe opportunities for them to build relationships with both parents.[21] The parenting time grants focus on providing opportunities to create formal parenting time arrangements at the point of establishing the orders for child support.

One of the overriding concerns that led to this pilot program is the fact that studies show children's lives are enhanced when both parents are involved. A March 26, 1999 press release issued by the United States Department of Health and Human Services in connection with its "*Be Their Dad*" Parental Responsibility Campaign noted:

> Research indicates that a child is better off when both parents are involved in their upbringing in a positive way. More than a quarter of American children (nearly 22 million) do not live with their father. Girls without a father in their life are two and a half times more likely to get pregnant and 53% more likely to commit suicide. Boys without a father in their life are 63% more likely to run away and 37% more likely to abuse drugs. Both girls and boys without father involvement

[20]In fiscal year 2012, The Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE) used its grant making authority to establish the "Parenting Time Opportunities for Children in the Child Support Program (PTOC). OCSE recently launched the PTOC, a pilot program to give child support agencies grants to develop, implement, and evaluate procedures to establish parenting time orders along with new child support orders. The goal is to learn more about how the child support program can safely and effectively give families opportunities to establish parenting time orders, thereby improving child well-being overall and related child support outcomes.

[21]This aim would seem to coincide with the Florida Legislature's public policy that each minor child has frequent and continuing contact with both parents. The OCSE believes spending positive time with both parents promotes child well-being and is associated with better child support outcomes. As unmarried parents do not have systematic access to assistance in establishing parenting time orders, state and local child support programs have sought to address this service gap.

> are twice as likely to drop out of high school, twice as likely to end up in jail and nearly four times as likely to need help with emotional or behavioral problems.[22]

In connection with applying for the federal grant, the administrators in the CSED were curious as to the amount of contact already taking place between the children whose cases were being handled by the CSED and the non-custodial parent of those children. In July 2012, CSED conducted a week-long survey of 100 custodial parents seeking child support services, who did not have child support orders, to determine if these custodial parents had formal, written parenting plans with the other parents. The CSED also wanted to find out if the children associated with these cases were visiting both parents on a regular basis. Survey results showed 74% of the custodial parents stated their children had face-to-face contact with the noncustodial parent and that such contact had taken place within the previous week or month. About 43% of the children also spent an overnight stay with the noncustodial parent. However, **over 93% of the custodial parents did not have a formal parent time-sharing plan in place.**

In 2014, when the federal grant becomes effective and while CSED is handling cases seeking orders for child support, the CSED will also be evaluating those cases to determine whether a time-sharing agreement exists between the parents. If the parents do not have such an agreement, they will be advised of the existence of available mediators who will be able to assist in the preparation of a time-sharing agreement for their minor children. Specifically, to participate in the grant program, the parents must be unmarried individuals for whom paternity is not an issue. They must have at least one child who is under 14 years of age and there must not be any evidence or history of family violence between the parties. If all of those conditions are satisfied, the CSED can refer those parents to the mediator for preparation of a time-sharing agreement. Both parents must agree to participate in this mediation process. The grant pays for the services of the mediators. CSED staff will **not** be involved in the mediation process nor with any other aspect of establishing time-sharing issues. The end goal is to establish mediated parenting plans at the same time that child support orders are established.

As Florida law permits child support awards to be adjusted when there is a legally binding agreement for substantial time-sharing arrangements, in order to avoid subsequent legal proceedings, there is an incentive for parents to resolve the time-sharing issues at the time the

[22] http://archive.hhs.gov/news/press/1999pres/990326.html

child support order is established. Parents who are eligible for the project will attend mediation prior to their initial child support hearing. Agreed-upon time-sharing arrangements will be passed on to the judicial officer to be signed concurrently with the child support order.

What does all of this have to do with SB 718's proposed equal time-sharing presumption? The law in Florida provides a formula for calculating the amount of child support to be paid by non-custodial parents. The amount of the support payments is affected by the annual percentage number of overnight stays of the children with the non-custodial parent. If the annual number of overnight stays reaches the amount of 20% (approximately 73 overnight stays in a year) that could trigger a reduction in the amount of child support payments. With the existence of an equal time-sharing presumption in place, there is a great incentive for the non-custodial parent to request such a time-sharing split based solely on financial considerations. The motive might be solely financial in nature, but absent clear and convincing evidence with regards to "extenuating circumstances" that would warrant a departure from equal time-sharing, the courts will be obligated to enter, adopt and enforce such a time-sharing arrangement in all prospective cases. To be clear, the incentive to save money by obtaining more time-sharing may also be present in dissolution and paternity actions and perhaps more so when there is vexatious litigation between the parties in connection with those battles. Obviously, in CSED situations where there has been limited or even no contact between the minor child and the non-custodial parent, an equal time-sharing arrangement, on its face, does not appear to be one that will be in the best interest of the child. We do not believe the legislature had this unintended consequence in mind when it proposed this legislation. To avoid these unintended consequences, we strongly recommend:

1. *That the presumption of equal time-sharing in the Committee Substitute for Committee Substitute SB 718 be removed.*

III. RECOMMENDATIONS

We have not reviewed or analyzed any to the provisions of SB 718 that relate to alimony. Our specific concern is for the children who will be impacted by the time-sharing provisions tucked away at the end of the bill. In fact, the insertion of these provisions appears to be an afterthought inasmuch as the subject matters are not related. For these reasons, and based on the concerns raised herein, the Grand Jury makes the following recommendations.

1. We recommend that prior to sending the proposed legislation back to the governor, that the Florida Legislature remove the parenting and equal time-sharing presumption from Florida Alimony Reform Bill SB 718.

2. We recommend that if the Florida Legislature removes the provisions from Florida Alimony Reform Bill SB 718 and desires to amend Florida Statute 61.13, that the Florida Legislature **not** create an equal time-sharing presumption in this state.

Alternatively, if the Florida Legislature decides to retain the equal time-sharing presumption of SB 718 and proceed with amending Florida Statute 61.13:

3. We strongly recommend that prior to the approval or implementation of any equal time-sharing presumption provision, that the Florida Legislature request that an Interim Project be done to assess the impact that implementation of said provision could have on the minor children in this state who unwittingly find themselves involved in dissolution and/or custody disputes.[23]

4. We recommend that if the equal time-sharing presumption is not removed, that the Florida Legislature include a definition of "extenuating circumstances."

5. We recommend that if the equal time-sharing presumption is not removed, that the Florida Legislature remove the heightened burden of proof of "clear and convincing evidence" as it relates to evidence of extenuating circumstances in connection with justifying or departure from the equal time-sharing presumption.

6. We recommend that if the equal time-sharing presumption is not removed, that the standard and burden for use by the court in determining whether extenuating circumstances exist that would justify a departure from equal time-sharing be the preponderance or greater weight of the evidence standard.

[23] We are aware that, on occasion, the Florida Senate and House request Interim Projects (Reports) be conducted in connection with certain legislative proposals. These Interim Projects often are done to evaluate the impact of certain proposed legislation.

NAME OF DEFENDANT	CHARGE	INDICTMENT RETURNED
OSCAR QUINTANA	First Degree Murder	True Bill
DWAYNE LEBARR	First Degree Murder Robbery Using Deadly Weapon or Firearm	True Bill
LINAKER CHARLEMAGNE (A), also known as "SNIPER"	First Degree Murder Murder/Premeditated/Attempt/ Deadly Weapon or Aggravated/Battery	True Bill
GREGORY COOPER	First Degree Murder Attempted Armed Robbery	True Bill
EXILDO MASTRAPA	First Degree Murder First Degree Murder Battery Tamper/Wit/Vic/Misd	True Bill
[A] LISANIA QUINTERO, also known as LIZZY, [B] WILBER GRANDA, also known as LIL BRO, [C] JONATHAN STEVEN RICO, also known as ROCO and/or REEK and [D] YSRAEL GRANDA, also known as IZZY	Murder 1st Degree /Conspiracy [A,B,C,D] First Degree Murder [A&C] Tamper/Wit/Vic/1F/1PBL [A,B,C,D] Solicitation of 1st Degree Murder [A,B,D] Tampering With or Fabricating Physical Evidence [B&D]	True Bill
DANTE E. PATTERSON	First Degree Murder Murder/Premeditated/Attempt/Deadly Weapon or Aggravated Battery Murder Second Degree/Attempt/ Deadly Weapon/Firearm	True Bill
KEONNE CHANTEL WILLIAMS	First Degree Murder Robbery Using Deadly Weapon or Firearm Firearm/Weapon/Ammunition/Possession by Convicted Felon or Delinquent Attempted Armed Robbery Robbery Using Deadly Weapon or Firearm	True Bill
RAFAEL ANGEL AGUILERA (A), FELIX D. SOTO (B) and GEOVANNY PADRON (C)	First Degree Murder (A-C) Murder/Premeditated/Attempt (A-C) Burglary With Assault or Battery Therein/While Armed (A-C) Aggravated Battery/Deadly Weapon (A-C)	True Bill
WILEME BAPTISTE	First Degree Murder Murder/Premeditated/Attempt/Deadly Weapon or Aggravated Battery Murder/Premeditated/Attempt/Deadly Weapon or Aggravated Battery Firearm/Unlawful Possession by a Minor	True Bill

NAME OF DEFENDANT	CHARGE	INDICTMENT RETURNED
MITCHELL LEE SIMPSON	First Degree Murder Robbery Using Deadly Weapon or Firearm	True Bill
JOSE ALBERTO MORA	First Degree Murder	True Bill
QUIRRE KEON GANTT	First Degree Murder Firearm/Weapon/Ammunition Possession by Convicted Felon or Delinquent	True Bill
GARY AMOS JEAN	First Degree Murder	True Bill
REGINALD LOUIS JACKSON	First Degree Murder First Degree Murder Robbery Using Deadly Weapon or Firearm Robbery Using Deadly Weapon or Firearm Kidnapping/With a Weapon, Firearm Or Aggravated Battery Kidnapping/With a Weapon, Firearm Or Aggravated Battery Burglary With Assault or Battery Therein While Armed	True Bill
STEVEN C. BATEMAN	Unlawful Compensation/Reward for Official Behavior Unlawful Compensation/Reward for Official Behavior/ Exerting Influence Exploitation of Official Position Conflict of Interest/Acquiring Financial Interest Conflict of Interest/Illegal Lobbying	True Bill
LUIS LORENZO MARTINEZ	First Degree Murder	True Bill
ISAIS J. RUIZ	First Degree Murder Robbery Using Deadly Weapon or Firearm Firearm/Weapon/Ammunition Possession by Convicted Felon or Delinquent	True Bill
JAMAL ROYAL JACKSON	First Degree Murder Robbery/Deadly Weapon/Firearm/ Attempt	True Bill
LUIS ENRIQUE GONZALEZ DIAZ	First Degree Murder Burglary With Assault or Battery Therein / While Armed	True Bill
DWAYNE LEBARR	First Degree Murder Robbery Using Deadly Weapon or Firearm Burglary With Assault or Battery, or Armed (Remaining)	True Bill
(A) IRVELL JENKINS, also known as THUGGA, (B) JAMEL HOMER TENNYSON, also known as UNO, (C) KENNY TENNYSON, also known as CINCO, and (D) NATHANIEL WOODARD, also known as NATE	First Degree Murder (A,C,D) Robbery Using Deadly Weapon/ Firearm (A,C,D) Robbery/Armed/Conspiracy (A,B,C,D)	True Bill

NAME OF DEFENDANT	CHARGE	INDICTMENT RETURNED
KELVIN ALEXIS CASTILLO	First Degree Murder Kidnapping/With a Weapon, Firearm or Aggravated Battery Robbery Using Deadly Weapon or Firearm Grand Theft 3rd Degree / Vehicle Burglary With an Assault or Battery, or Armed (Remaining In) Firearm/Weapon/Ammunition Possession by Convicted Felon or Delinquent	True Bill

ACKNOWLEDGMENTS

In the conclusion of our term as Miami-Dade County Grand Jurors, we would like to express our appreciation for the opportunity to serve in this capacity and learn through our experience the function and importance of our job as jurors. All of us have taken time out of our daily lives to participate in this process and we were fortunate to have a very diverse and congenial group of people to work together with, which is one of the great things about living in Miami-Dade County itself.

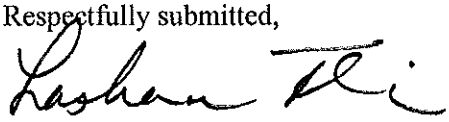
So, in recognition of all those who have brought our term as jurors together, we would like to thank first:

- Chief Assistant State Attorney Don L. Horn, who has been a great teacher and facilitator of this process for us. Through his efforts, we came to understand our role as grand jurors and how to complete the work we had to do. He was able to do this with great personality and perception, which made what wasn't by any means, a pleasant task, something much easier to get through and understand;
- Also, Rose Anne Dare, whose communications by e-mail, letters for our employers and other details, made our lives much easier and kept us together;
- Nelido Gil, our bailiff, who kept things moving, attended to our needs and also our lunch if the day was long enough to need one;
- Our Judge, the Hon. Gisela Cardonne Ely, and her associate judges, who were always congenial in bringing about a conclusion to our work;
- And, State Attorney Katherine Fernandez Rundle, who met with and welcomed us in the beginning of our term as jurors.

There were many official witnesses who provided great detail with precision and professionalism during our time as jurors. However, we would especially like to thank those who came forward on their own time to assist us in our investigation.

Thanks to all of you for making our experience on the Grand Jury enlightening and fulfilling.

Respectfully submitted,



Lashanne Toliver, Foreperson
Miami-Dade County Grand Jury
Spring Term 2013

ATTEST:

Joshua Summers
Clerk

Date: December 11, 2013