

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 130

INTRODUCER: Senator Berman and others

SUBJECT: Domestic Violence

DATE: March 6, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			CF	
3.			RC	

I. Summary:

SB 130 amends two statutes in an effort to refine the descriptions of what constitutes evidence or risks of domestic violence for use in child custody determinations and in domestic violence injunction proceedings.

Section 61.13, F.S., expands the list of factors a court must consider when determining whether shared parental responsibility, meaning shared authority to make decisions for a child, would be detrimental to a child. The new factors require the court to also consider:

- Evidence of domestic violence;
- Whether a parent, in the past or currently, has reasonable cause to believe that he or she or the minor child is or has been in imminent danger of becoming a victim of domestic violence or sexual violence by the other parent, even if no legal action has been brought or is currently pending in court;
- Whether either parent, in the past or currently, has reasonable cause to believe that the shared minor child is or has been in imminent danger of becoming a victim of abuse, abandonment, or neglect by the other parent, even if no legal action has been brought or is currently pending; and
- Any other relevant factors.

Additionally, when a parental responsibility or time-sharing schedule is established or modified by a court, the “best interest of the child” factors that the court must consider are expanded to include evidence that a parent has or has had reasonable cause to believe that he or she or the minor child is in imminent danger of becoming a victim of domestic violence.

Section 741.30, F.S., expands the factors a court must consider when determining whether to issue a domestic violence injunction. The court must consider whether the respondent named in the petition has engaged in a pattern of abusive or threatening behaviors which demonstrates a

continuing purpose and which reasonably causes the petitioner to believe that he or she or the minor shared child is in imminent danger of becoming a victim of an act of domestic violence.

The bill takes effect July 1, 2023.

II. Present Situation:

Greyson Kessler: A Victim of Domestic Violence

Greyson Kessler, a 4-year-old boy, was shot and killed by his father who then killed himself. Greyson's parents shared custody of their son, although his mother, Alison Kessler, witnessed many alarming indications that the father, John Stacey, was dangerous.

According to media reports, John Stacey regularly harassed Alison Kessler. He sent disturbing voice and text messages in which he called her degrading names and said she deserved to be decapitated and killed. He also installed a tracking device on her car and tracked her movements.¹

Alison Kessler became increasingly alarmed for Greyson's safety when she realized that Greyson's father would harm their son simply to hurt her. On Wednesday, May 19, 2021, Greyson's father picked him up for a visit. Alison tried making contact with the father but did not receive a response over the next two days. She feared for Greyson's safety and petitioned a court on Thursday for a permanent restraining order to keep the father away from their son. She cited the escalating nature of recent text messages.²

Alison learned that Greyson was absent from school on Thursday and Friday. On Friday, May 21, Alison Kessler's attorney filed a request for an emergency order to have local authorities pick up Greyson from his father. The attorney noted that the mother was justifiably concerned that Greyson could be injured while in the care of his father.³ Police found the bodies of Greyson and his father at the father's apartment on Friday night and believed the deaths may have occurred on Thursday.⁴

According to one media report, the judge, not knowing the deaths had occurred, issued an order on Friday that supported the restraining order against the father but denied the request for Greyson's emergency pick up.⁵

¹ See KC Baker, *Fla. Boy, 4, Killed by Dad in Murder-Suicide on Day Mom Asked Court to Keep Father Away From Him*, People (May 25, 2021), <https://people.com/crime/florida-boy-killed-by-dad-murder-suicide-mom-asked-court-keep-father-away/>.

² CBS Miami, *Police Confirm Murder-Suicide In Deaths of Father, 4-Year-Old Son Greyson Kessler Hours Before Emergency Pick-Up Order Was Denied* (May 25, 2021), <https://www.cbsnews.com/miami/news/emergency-pickup-order-denied-hours-before-greyson-kessler-father-dead-fort-lauderdale/>.

³ *Id.*

⁴ Peter Belfiore, DailyMail.com, *Father kills his son, 4, then himself after child's mother begged cops to check on him when he sent her threatening texts saying she 'deserved to have her head separated from her body'* (May 24, 2021), <https://www.dailymail.co.uk/news/article-9612843/Florida-woman-says-authorities-failed-act-4-year-old-sons-death-murder-suicide.html>.

⁵ AP News, *Florida dad threatened mom, killed son; help came too late* (May 25, 2021), <https://apnews.com/article/florida-shootings-60733cbb82ac327f59e3221833a202d0>.

Chapter 61 – Dissolution of Marriage and Parenting Responsibilities

In general terms, chapter 61, F.S., contains the statutes that govern the dissolution of marriage, the distribution of assets and liabilities arising from the marriage, and the parents' responsibilities to support and care for their children, whether the parents are married or unmarried.

Parenting and Time-Sharing: Factors to Consider When Determining What Is Detrimental to a Child

Section 61.13, F.S., establishes a court's authority to order payments for child support and to approve, grant, or modify a parenting plan.⁶ When making a decision in these areas, the guiding principle a court must follow is the "best interests of the child" standard. Additionally, the public policy of the state is that each child have frequent and continuing contact with both parents unless the court finds that shared parental responsibility would be detrimental to the child. Shared parental responsibility refers to the authority of both parents, regardless of the time-sharing schedule, to make decisions for the child in matters such as education and health care.⁷ However, the following factors in s. 61.13(2)(c)2., F.S., create a rebuttable presumption of detriment to the child if the parent:

- Has been convicted of a first degree misdemeanor or higher involving domestic violence as defined in s. 741.28, F.S.,⁸ and chapter 775;
- Is incarcerated for a significant portion of the child's minority and has been convicted of serious violent or sexual offenses or the court finds clear and convincing evidence that harm would result from continuing the parent-child relationship;⁹ or
- Has been convicted of or had adjudication withheld for an offense that requires the person to register as a sexual offender,¹⁰ and was 18 years of age or older and the victim was under the age of 18 years or the parent believed the victim was under 18 years of age.

If the presumption of detriment to the child is not rebutted by the convicted parent after being notified 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. The court must consider evidence of domestic violence or child abuse as evidence of detriment to the child, regardless of whether there is a conviction for those offenses. If a court determines that shared parental responsibility would be detrimental to the child, the

⁶ A parenting plan is the document that is created "to govern the relationship between the parents relating to the decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and child."

Section 61.046(14) F.S.

⁷ See s. 61.13(2)(c)3., F.S.

⁸ "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Section 741.28(2), F.S.

⁹ Under s. 39.806(1)(d), F.S., these matters constitute grounds for terminating the parental rights of an incarcerated parent.

¹⁰ Section 943.0435(1)(h)1.a., F.S., provides a lengthy list of criminal sexual offenses that require a person to register as a sexual offender with the Department of Law Enforcement.

court may order sole parental responsibility and make arrangements for time-sharing that will best protect the child or abused parent from further harm.¹¹

Factors to Consider When Determining the Best Interests of a Child in a Parenting Plan

Section 61.13(3), F.S., states that when a court establishes or modifies parental responsibility and creates, develops, approves, or modifies a parenting plan, including a time-sharing schedule,¹² the best interests of the child is the court's primary consideration. Parental responsibility, a parenting plan, or a time-sharing plan may not be modified unless there is a showing of a substantial, material, and unanticipated change in circumstances and there is a determination that the modification is in the best interests of the child. The statute then provides a list of twenty factors, although the list is not exhaustive, which a court should consider when determining the best interests of a child.¹³

¹¹ Section 61.13(2)(c)2., F.S.

¹² A time-sharing schedule means a timetable that must be included in the parenting plan that specifies the time, including overnights and holidays, that a minor child will spend with each parent. Section 61.046(14), F.S.

¹³ Those factors are:

- (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.

Chapter 741 – Marriage and Domestic Violence

Domestic violence means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.¹⁴

Domestic Violence Statistics in Florida

In 2021, the most recent year for which complete statistics¹⁵ are available from the Department of Law Enforcement, Florida recorded 103,915 incidents of domestic violence. The primary offenses by category are:

Murder	192
Manslaughter	28
Simple Assault	82,735
Aggravated Assault	16,183
Rape	1,877
Threat/Intimidation	1,405
Fondling	958
Simple Stalking	396
<u>Aggravated Stalking</u>	<u>141</u>
Total	103,915

- (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 Section 741.28(2), F.S.

¹⁵ Florida Department of Law Enforcement, *Crime in Florida Abstract, January – December 2021*, <http://www.fdle.state.fl.us/CJAB/UCR/UCR/2021/Annual/UCR-Crime-in-Florida-Abstract-Statewide-2021A.aspx>. According to FDLE, the source of this information is the Florida Uniform Crime Report, 2021. Statistics for 2022 will be available in April, 2023.

Of the 192 murders reported, the relationship between the victim and the offender was:

Spouse	32
Parent	28
Child	21
Sibling	11
Other Family Member	34
Cohabitant	56
<u>Other</u>	<u>10</u>
Total	192

Domestic Violence Injunctions

An injunction is a court order that commands or prevents an action. To receive a general injunction, the petitioner must show that there is no adequate remedy available at law and that he or she will suffer an irreparable injury if the injunction is not granted.¹⁶ To receive an injunction for protection against domestic violence, a petitioner must file a sworn statement in the circuit court declaring that he or she is either a victim of domestic violence or has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence and state the reasons for that belief.¹⁷ The petition may be filed in the circuit where the petitioner currently or temporarily resides, where the respondent resides, or where the domestic violence occurred.¹⁸ State law prohibits a filing fee from being charged against the petitioner.¹⁹ Once the petition is filed, the court must set a hearing for the earliest possible time.²⁰

Section 741.30(6)(b), F.S., establishes ten factors, listed in the footnote below, that a court must consider and evaluate when determining whether a petitioner who files for an injunction has stated reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.²¹ In broad terms, those factors involve: the history of offenses between the

¹⁶ BLACK'S LAW DICTIONARY (11th ed. 2019).

¹⁷ Section 741.30(1)(a) and (3)(a), F.S.

¹⁸ Section 741.30(1)(j), F.S.

¹⁹ Section 741.30(2)(a), F.S.

²⁰ Section 741.30(4), F.S.

²¹ Section 741.30(6)(b), F.S., lists these factors:

1. The history between the petitioner and the respondent, including threats, harassment, stalking, and physical abuse.
2. Whether the respondent has attempted to harm the petitioner or family members or individuals closely associated with the petitioner.
3. Whether the respondent has threatened to conceal, kidnap, or harm the petitioner's child or children.
4. Whether the respondent has intentionally injured or killed a family pet.
5. Whether the respondent has used, or has threatened to use, against the petitioner any weapons such as guns or knives.
6. Whether the respondent has physically restrained the petitioner from leaving the home or calling law enforcement.
7. Whether the respondent has a criminal history involving violence or the threat of violence.
8. The existence of a verifiable order of protection issued previously or from another jurisdiction.
9. Whether the respondent has destroyed personal property, including, but not limited to, telephones or other communications equipment, clothing, or other items belonging to the petitioner.
10. Whether the respondent engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.

petitioner and the respondent and the respondent's threats and actions toward family, friends, and pets; the threat or use of weapons or physical restraints; a criminal history of violence; the issuance of orders of protection; the destruction of personal property; and actions that cause the petitioner to believe he or she is about to become a victim of domestic violence.

III. Effect of Proposed Changes:

Section 1 – Name of the Act

The bill names the act as “Greyson’s Law” in memory of Greyson Kessler.

Section 2 - Parenting and Time-Sharing: Factors to Consider When Determining What Is Detrimental to a Child

The bill prescribes additional factors a court must consider when determining what constitutes “detriment” to a minor child when determining whether to order shared parental responsibility. These factors are:

- Evidence of domestic violence as defined in s. 741.28;²²
- Whether either parent has or has had reasonable cause to believe that the parent or minor child or children are or have been in imminent danger of becoming victims of domestic violence²³ or sexual violence²⁴ by the other parent, regardless of whether a cause of action has been brought or is currently pending in court;
- Whether either parent has or has had reasonable cause to believe that the minor child or children are or have been in imminent danger of becoming victims of an act of abuse,²⁵ abandonment,²⁶ or neglect by the other parent against the child or children regardless of whether a cause of action has been brought or is currently pending in court; and

In making its determination under this paragraph, the court is not limited to those factors enumerated in subparagraphs 1.-10.

²² Domestic violence is defined in s. 741.28, F.S., as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.”

²³ *Id.*

²⁴ Sexual violence means any one incident of the following, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney: sexual battery, as defined in chapter 794; a lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child, as described in chapter 787; sexual performance by a child, as described in chapter 827; or any other forcible felony wherein a sexual act is committed or attempted.

²⁵ Abuse is defined in s. 39.01(2), F.S., to mean any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

²⁶ Abandonment is defined in s. 39.01(1), F.S., as a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this subsection, “establish or maintain a substantial and positive relationship” includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to

- Any other relevant factors.

Additionally, the bill amends s. 61.13(3)(m), F.S., to add one more factor that a court must consider when establishing or modifying parental responsibility or creating or modifying a parenting plan or time-sharing schedule. The additional factor is “evidence that a parent has or has had reasonable cause to believe that he or she or the minor child or children are in imminent danger of becoming victims of an act of domestic violence.”

Section 3 – Domestic Violence Injunctions

The bill adds an additional factor which the court must consider when determining whether a petitioner has reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence and in need of a domestic violence injunction. The new factor is “whether the respondent has or had engaged in a pattern of abusive, threatening, intimidating, or controlling behavior that is composed of a series of acts, no matter how short of a period of time, which demonstrates a continuity of purpose and which reasonably cause the petitioner to believe that the petitioner or his or her minor child or children are in imminent danger of becoming victims of any act of domestic violence.”

The bill deletes existing language which provides that the court is not limited to those previously listed 10 factors when determining whether the petitioner has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence. This deletion might be in error and is discussed in more detail in the “Technical Deficiencies” section of the analysis.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. A man’s acknowledgment of paternity of the child does not limit the period of time considered in determining whether the child was abandoned. The term does not include a surrendered newborn infant as described in s. 383.50, F.S., a “child in need of services” as defined in chapter 984, or a “family in need of services” as defined in chapter 984. The absence of a parent, legal custodian, or caregiver responsible for a child’s welfare, who is a service member, by reason of deployment or anticipated deployment as defined in 50 U.S.C. s. 3938(e), may not be considered or used as a factor in determining abandonment. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child’s welfare may support a finding of abandonment.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Lines 201-202 strike language which states, “In making its determination under this paragraph, the court is not limited to those factors enumerated in subparagraphs 1.-10.” It appears that this language has been deleted in error and the text should be restored to existing law and amended to add the new subparagraph.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.13 and 741.30.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.