

By Senator Harris

24-1490-98

1                                   A bill to be entitled  
2           An act relating to proceedings relating to the  
3           custody and support of children; amending s.  
4           61.13, F.S.; requiring a court to state in  
5           writing its findings of fact and conclusions of  
6           law pertaining to the court's determination of  
7           parental responsibility or residential  
8           responsibility; creating s. 61.50, F.S.;  
9           requiring notices of hearings under ch. 61,  
10          F.S., to include an advisory note; providing an  
11          effective date.

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13           WHEREAS, the Legislature has clearly stated that the  
14          public policy of this state is that children who do not live  
15          with both parents are entitled to frequent and continuing  
16          contact with both parents, unless the children are thereby  
17          subjected to abuse or neglect, and

18           WHEREAS, in furtherance of that public policy, the  
19          Legislature has removed all gender-based criteria from chapter  
20          61, Florida Statutes, so that both fathers and mothers are to  
21          be considered equally by the judiciary when determining a  
22          child's best interests in a dispute regarding a child's  
23          residency, and

24           WHEREAS, some residents of this state have a perception  
25          that, despite the gender neutrality of chapter 61, Florida  
26          Statutes, the law is being applied by trial courts in a  
27          gender-biased manner, and

28           WHEREAS, such a perception, if grounded in fact, is  
29          unacceptable, is contrary to children's best interests, and is  
30          contrary to the public policy of this state, and

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1           WHEREAS, such a perception, if not grounded in fact, is  
2 against the public interest because it reduces confidence in  
3 the judiciary without justification, and

4           WHEREAS, a lack of a record of trial court proceedings  
5 can prevent meaningful appellate review or other analysis of  
6 trial court action, and

7           WHEREAS, it is in the public interest to ensure that  
8 legislative policy is properly implemented by trial courts and  
9 that trial courts are properly protected from erroneous  
10 perceptions that erode public confidence in the judiciary,

11 NOW, THEREFORE,

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13 Be It Enacted by the Legislature of the State of Florida:

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15           Section 1. Paragraph (b) of subsection (2) of section  
16 61.13, Florida Statutes, is amended to read:

17           61.13 Custody and support of children; visitation  
18 rights; power of court in making orders.--

19           (2)

20           (b)1. The court shall determine all matters relating  
21 to custody of each minor child of the parties in accordance  
22 with the best interests of the child and in accordance with  
23 the Uniform Child Custody Jurisdiction Act. It is the public  
24 policy of this state to assure that each minor child has  
25 frequent and continuing contact with both parents after the  
26 parents separate or the marriage of the parties is dissolved  
27 and to encourage parents to share the rights and  
28 responsibilities, and joys, of childrearing. After considering  
29 all relevant facts, the father of the child shall be given the  
30 same consideration as the mother in determining the primary  
31 residence of a child irrespective of the age or sex of the

1 child. If a judicial determination of parental responsibility,  
2 residential responsibility, or both is made by a trial court  
3 after a hearing on the merits and based on the factors set  
4 forth in subsection (3), the court shall state in writing the  
5 findings of fact based on competent substantial evidence found  
6 in the record and the conclusions of law on which its decision  
7 is based.

8         2. The court shall order that the parental  
9 responsibility for a minor child be shared by both parents  
10 unless the court finds that shared parental responsibility  
11 would be detrimental to the child. Evidence that a parent has  
12 been convicted of a felony of the third degree or higher  
13 involving domestic violence, as defined in s. 741.28 and  
14 chapter 775, or meets the criteria of s. 39.464(1)(d), creates  
15 a rebuttable presumption of detriment to the child. If the  
16 presumption is not rebutted, shared parental responsibility,  
17 including visitation, residence of the child, and decisions  
18 made regarding the child, may not be granted to the convicted  
19 parent. However, the convicted parent is not relieved of any  
20 obligation to provide financial support. If the court  
21 determines that shared parental responsibility would be  
22 detrimental to the child, it may order sole parental  
23 responsibility and make such arrangements for visitation as  
24 will best protect the child or abused spouse from further  
25 harm. Whether or not there is a conviction of any offense of  
26 domestic violence or child abuse or the existence of an  
27 injunction for protection against domestic violence, the court  
28 shall consider evidence of domestic violence or child abuse as  
29 evidence of detriment to the child.

30         a. In ordering shared parental responsibility, the  
31 court may consider the expressed desires of the parents and

1 may grant to one party the ultimate responsibility over  
2 specific aspects of the child's welfare or may divide those  
3 responsibilities between the parties based on the best  
4 interests of the child. Areas of responsibility may include  
5 primary residence, education, medical and dental care, and any  
6 other responsibilities that the court finds unique to a  
7 particular family.

8           b. The court shall order "sole parental  
9 responsibility, with or without visitation rights, to the  
10 other parent when it is in the best interests of" the minor  
11 child.

12           c. The court may award the grandparents visitation  
13 rights with a minor child if it is in the child's best  
14 interest. Grandparents have legal standing to seek judicial  
15 enforcement of such an award. This section does not require  
16 that grandparents be made parties or given notice of  
17 dissolution pleadings or proceedings, nor do grandparents have  
18 legal standing as "contestants" as defined in s. 61.1306. A  
19 court may not order that a child be kept within the state or  
20 jurisdiction of the court solely for the purpose of permitting  
21 visitation by the grandparents.

22           3. Access to records and information pertaining to a  
23 minor child, including, but not limited to, medical, dental,  
24 and school records, may not be denied to a parent because the  
25 parent is not the child's primary residential parent.

26           Section 2. Section 61.50, Florida Statutes, is created  
27 to read:

28           61.50 Notice of hearing; required advisory.--Each  
29 notice of a hearing under this chapter which is required to be  
30 served upon opposing parties or their counsel must include the  
31 following advisory:

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"Proceedings of this type are not automatically recorded or transcribed by the court. You have the right to have a court reporter present to record the proceedings, for a charge, if you wish. Failure to make a record of the proceedings could prevent any opportunity for appellate review."

Section 3. This act shall take effect July 1, 1998.

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SENATE SUMMARY

In connection with proceedings relating to the dissolution of marriage and the custody of children, requires a court to state in writing its findings of fact and conclusions of law pertaining to the court's determination of parental responsibility or residential responsibility. Requires notices of hearings under ch. 61, F.S., to include an advisory note relating to preservation of a record of the hearing.