

By Senator Silver

38-185A-98

1 A bill to be entitled
2 An act relating to domestic violence; amending
3 s. 25.385, F.S.; redefining the term "domestic
4 violence" for purposes of training provided by
5 the Florida Court Educational Council; amending
6 s. 61.13, F.S.; prohibiting the court from
7 awarding visitation rights to a parent who has
8 been convicted of a capital felony or a
9 first-degree felony that involved domestic
10 violence; providing certain exceptions;
11 requiring that the Supreme Court require judges
12 who hear cases involving domestic violence to
13 attend educational programs on domestic
14 violence; requiring the Florida Court Education
15 Council to develop the programs; requiring that
16 the Office of State Courts Administrator report
17 to the Governor and Legislature on the
18 programs; requiring that The Florida Bar report
19 on its courses of continuing legal education on
20 domestic violence; providing an effective date.

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

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24 Section 1. Section 25.385, Florida Statutes, is
25 amended to read:

26 25.385 Standards for instruction of circuit and county
27 court judges in handling domestic violence cases.--

28 (1) The Florida Court Educational Council shall
29 establish standards for instruction of circuit and county
30 court judges who have responsibility for domestic violence

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1 cases, and the council shall provide such instruction on a
2 periodic and timely basis.

3 (2) As used in this section:

4 (a) The term "domestic violence" means any assault,
5 aggravated assault, battery, aggravated battery, sexual
6 assault, sexual battery, stalking, aggravated stalking,
7 kidnapping, false imprisonment, or any criminal offense
8 resulting in physical injury or death of one family or
9 household member by another, who is or was residing in the
10 same single dwelling unit.

11 (b) "Family or household member" means spouse, former
12 spouse, persons related by blood or marriage, persons who are
13 presently residing together, as if a family, or who have
14 resided together in the past, as if a family, and persons who
15 have a child in common regardless of whether they have been
16 married or have resided together at any time.

17 Section 2. Paragraph (b) of subsection (2) of section
18 61.13, Florida Statutes, is amended to read:

19 61.13 Custody and support of children; visitation
20 rights; power of court in making orders.--

21 (2)

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

1 same consideration as the mother in determining the primary
2 residence of a child irrespective of the age or sex of the
3 child.

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

1 petition for such executive clemency is pending on the
2 parent's behalf, or unless the court finds that extraordinary
3 circumstances warrant such visitation.

4 a. In ordering shared parental responsibility, the
5 court may consider the expressed desires of the parents and
6 may grant to one party the ultimate responsibility over
7 specific aspects of the child's welfare or may divide those
8 responsibilities between the parties based on the best
9 interests of the child. Areas of responsibility may include
10 primary residence, education, medical and dental care, and any
11 other responsibilities that the court finds unique to a
12 particular family.

13 b. The court shall order "sole parental
14 responsibility, with or without visitation rights, to the
15 other parent when it is in the best interests of" the minor
16 child.

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

27 3. Access to records and information pertaining to a
28 minor child, including, but not limited to, medical, dental,
29 and school records, may not be denied to a parent because the
30 parent is not the child's primary residential parent.

31 Section 3. Judicial education on domestic violence.--

1 (1) The Supreme Court shall require each judge in this
2 state who is responsible for or who hears cases that involve
3 domestic violence to attend educational programs on domestic
4 violence. The educational programs may be a part of the
5 educational programs provided by the Office of the State
6 Courts Administrator. The Florida Court Education Council
7 shall develop the educational programs, which must include
8 training on the laws governing domestic violence, the
9 prevalence and dynamics of domestic violence, the impact of
10 domestic violence on children, and any other information that
11 the council deems appropriate. This section applies regardless
12 of whether a judge hears cases on a temporary, part-time, or
13 emergency basis, and applies to any judge who hears civil,
14 criminal, or juvenile cases that involve domestic violence.

15 (2) The Office of State Courts Administrator shall
16 maintain records of all judges who attend educational programs
17 on domestic violence, including the date and curriculum of the
18 programs, and shall provide an annual report to the Governor,
19 the President of the Senate, and the Speaker of the House of
20 Representatives. The report must include a description of the
21 type of programs, the proficiency of judges in understanding
22 domestic violence, the number of judges listed by circuit and
23 county who attend the educational programs, the cases assigned
24 to the judges who attend the programs, and any other
25 information that is relevant to a full description of the
26 educational programs on domestic violence.

27 Section 4. The Florida Bar shall report to the
28 Governor, the Chief Justice of the Supreme Court, the
29 President of the Senate, and the Speaker of the House of
30 Representatives on the courses on domestic violence which The
31 Florida Bar approves for continuing legal education credits

1 for members of The Florida Bar. The report must be submitted
2 by September 1, 1998, and must include course materials,
3 references, names of instructors, a description of courses
4 offered, the section or committee of The Florida Bar which
5 sponsors the course, the number of attorneys who attend such
6 courses, and any other information that describes or assesses
7 the continuing legal education courses on domestic violence
8 which are offered by The Florida Bar.

9 Section 5. This act shall take effect July 1, 1998.

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12 SENATE SUMMARY

13 Provides that if a parent of a child in a divorce
14 proceeding is convicted of a capital felony or a
15 first-degree felony that involved domestic violence
16 against another parent of the child, the court may not
17 award visitation rights to the convicted parent.
18 Authorizes the court to make an exception and award
19 visitation rights if the child is 16 years of age or
20 older and agrees to the visitation, if the parent acted
21 in self defense in committing the act of domestic
22 violence and has been granted clemency or a petition for
23 clemency is pending, or if the court finds extraordinary
24 circumstances warrant such visitation. Requires judges
25 who hear cases involving domestic violence to attend
26 educational programs on domestic violence. Requires that
27 the Office of State Courts Administrator annually report
28 to the Governor and Legislature on the programs and on
29 judges who attend the programs. Requires that The Florida
30 Bar report to the Governor, the Supreme Court, and the
31 Legislature on The Florida Bar's continuing legal
education on domestic violence.