

By the Committee on Judiciary and Senator Silver

308-2233-98

1 A bill to be entitled
2 An act relating to domestic violence; amending
3 s. 25.385, F.S.; providing for instruction for
4 circuit and county judges in domestic violence;
5 redefining the term "domestic violence" for
6 purposes of training provided by the Florida
7 Court Educational Council; defining "judge who
8 has responsibility for cases of domestic
9 violence"; revising duties of the council;
10 providing for a comprehensive domestic violence
11 education plan and tools; requiring the council
12 to develop educational programs on domestic
13 violence; providing the programs may be a part
14 of other programs offered by the Office of
15 State Courts Administrator; providing for
16 maintenance by the office of certain records of
17 judicial attendance of such programs; providing
18 for public inspection of the records; providing
19 for inclusion of certain information with
20 respect to the programs in the annual report by
21 the council to the Governor and Legislature;
22 amending s. 44.102, F.S.; providing for
23 nonreferral of a case to court-ordered family
24 mediation upon the court's own motion, under
25 specified circumstances; amending s. 61.13,
26 F.S.; prohibiting the court from awarding
27 visitation rights to a parent who has been
28 convicted of a capital felony or a first-degree
29 felony that involved domestic violence;
30 providing certain exceptions; requiring that
31 the Supreme Court through The Florida Bar

1 annually report to the Governor and Legislature
2 on its courses of continuing legal education on
3 domestic violence; amending s. 741.28; deleting
4 requirement that victim and alleged perpetrator
5 currently or formerly have resided in the same
6 single dwelling unit; providing an effective
7 date.

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

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11 Section 1. Section 25.385, Florida Statutes, is
12 amended to read:

13 25.385 Instruction for circuit and county court judges
14 in domestic violence ~~Standards for instruction of circuit and~~
15 ~~county court judges in handling domestic violence cases.--~~

16 (1) It is crucial to the fair and efficient
17 administration of justice in this state that all members of
18 the judiciary be educated on domestic violence. Therefore, the
19 Florida Court Educational Council shall establish standards
20 for domestic violence instruction and a comprehensive
21 education plan to ensure that each circuit and county court
22 judge who has responsibility for cases of domestic violence
23 has the opportunity to attend educational programs on a
24 periodic, regular, and timely basis ~~of circuit and county~~
25 ~~court judges who have responsibility for domestic violence~~
26 ~~cases, and the council shall provide such instruction on a~~
27 ~~periodic and timely basis.~~

28 (2) As used in this section:

29 (a) The term "domestic violence" is defined as in s.
30 741.28 ~~means any assault, battery, sexual assault, sexual~~
31 ~~battery, or any criminal offense resulting in physical injury~~

1 ~~or death of one family or household member by another, who is~~
2 ~~or was residing in the same single dwelling unit.~~

3 (b) A "judge who has responsibility for cases of
4 domestic violence," includes, but is not limited to, a circuit
5 or county judge who hears domestic violence-related cases, or
6 cases where domestic violence may be present, on a temporary,
7 part-time, or emergency basis, in any division of the court,
8 including, but not limited to, family, civil, criminal,
9 probate, or juvenile divisions ~~Family or household member"~~
10 ~~means spouse, former spouse, persons related by blood or~~
11 ~~marriage, persons who are presently residing together, as if a~~
12 ~~family, or who have resided together in the past, as if a~~
13 ~~family, and persons who have a child in common regardless of~~
14 ~~whether they have been married or have resided together at any~~
15 ~~time.~~

16 (3)(a) The Florida Court Education Council shall
17 develop and make available educational tools for instruction
18 in domestic violence, which may include, but are not limited
19 to, bench guides, video training tapes, and any other packaged
20 or presented materials the council deems appropriate, so that
21 judges can obtain information timely and efficiently before
22 hearing cases where domestic violence may be involved.

23 (b) The Florida Court Education Council shall develop
24 educational programs on domestic violence, which must include
25 training in: laws governing domestic violence; prevalence of
26 domestic violence; characteristics and impacts of domestic
27 violence on children or other dependents; custody and
28 visitation issues; issues of whether, and under what
29 conditions, mediation is appropriate; information on community
30 resources and referral services; and any other information
31 that the council deems appropriate. The educational programs

1 may be a part of other programs provided by the Office of the
2 State Courts Administrator.

3 (4) The Office of State Courts Administrator shall
4 maintain records, including the date and curriculum of the
5 programs, of all judges who attend educational programs on
6 domestic violence, and of the current assignment of each
7 attendee, and on request shall make such records available for
8 public inspection.

9 (5) The Florida Court Education Council shall provide,
10 as part of its annual report to the Governor, the President of
11 the Senate, and the Speaker of the House of Representatives, a
12 description of the types of educational programs on domestic
13 violence offered, course materials, learning objectives, the
14 references and the names and credentials of instructors, the
15 number of judges listed by circuit and county who attend the
16 educational programs, and any other information that is
17 relevant to a full description of the educational programs on
18 domestic violence.

19 Section 2. Paragraph (b) of subsection (2) of section
20 44.102, Florida Statutes, is amended to read:

21 44.102 Court-ordered mediation.--

22 (2) A court, under rules adopted by the Supreme Court:

23 (b) In circuits in which a family mediation program
24 has been established and upon a court finding of a dispute,
25 shall refer to mediation all or part of custody, visitation,
26 or other parental responsibility issues as defined in s.
27 61.13. Upon motion or request of a party, or upon the court's
28 own motion, a court shall not refer any case to mediation if
29 it finds there has been a history of domestic violence that
30 would compromise the mediation process.

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1 Section 3. Paragraph (b) of subsection (2) of section
2 61.13, Florida Statutes, is amended to read:

3 61.13 Custody and support of children; visitation
4 rights; power of court in making orders.--

5 (2)

6 (b)1. The court shall determine all matters relating
7 to custody of each minor child of the parties in accordance
8 with the best interests of the child and in accordance with
9 the Uniform Child Custody Jurisdiction Act. It is the public
10 policy of this state to assure that each minor child has
11 frequent and continuing contact with both parents after the
12 parents separate or the marriage of the parties is dissolved
13 and to encourage parents to share the rights and
14 responsibilities, and joys, of childrearing. After considering
15 all relevant facts, the father of the child shall be given the
16 same consideration as the mother in determining the primary
17 residence of a child irrespective of the age or sex of the
18 child.

19 2. The court shall order that the parental
20 responsibility for a minor child be shared by both parents
21 unless the court finds that shared parental responsibility
22 would be detrimental to the child. Evidence that a parent has
23 been convicted of a felony of the third degree or higher
24 involving domestic violence, as defined in s. 741.28 and
25 chapter 775, or meets the criteria of s. 39.464(1)(d), creates
26 a rebuttable presumption of detriment to the child. If the
27 presumption is not rebutted, shared parental responsibility,
28 including visitation, residence of the child, and decisions
29 made regarding the child, may not be granted to the convicted
30 parent. However, the convicted parent is not relieved of any
31 obligation to provide financial support. If the court

1 determines that shared parental responsibility would be
2 detrimental to the child, it may order sole parental
3 responsibility and make such arrangements for visitation as
4 will best protect the child or abused spouse from further
5 harm. Whether or not there is a conviction of any offense of
6 domestic violence or child abuse or the existence of an
7 injunction for protection against domestic violence, the court
8 shall consider evidence of domestic violence or child abuse as
9 evidence of detriment to the child. If the parent of the child
10 is convicted of a capital felony or a felony of the first
11 degree which involved domestic violence against another parent
12 of the child, the court may not award visitation rights to the
13 convicted parent unless the child is over 16 years of age and
14 agrees to the order of visitation; or unless the convicted
15 parent acted in self-defense and is granted executive clemency
16 or a petition for such clemency is pending on the parent's
17 behalf; or unless the court finds extraordinary circumstances
18 to warrant that visitation is in the manifest best interests
19 of the child. A parent shall not be deemed convicted under
20 this subparagraph until the conviction has been affirmed on
21 appeal or the time for filing an appeal has passed and no
22 appeal has been filed.

23 a. In ordering shared parental responsibility, the
24 court may consider the expressed desires of the parents and
25 may grant to one party the ultimate responsibility over
26 specific aspects of the child's welfare or may divide those
27 responsibilities between the parties based on the best
28 interests of the child. Areas of responsibility may include
29 primary residence, education, medical and dental care, and any
30 other responsibilities that the court finds unique to a
31 particular family.

1 b. The court shall order "sole parental
2 responsibility, with or without visitation rights, to the
3 other parent when it is in the best interests of" the minor
4 child.

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

15 3. Access to records and information pertaining to a
16 minor child, including, but not limited to, medical, dental,
17 and school records, may not be denied to a parent because the
18 parent is not the child's primary residential parent.

19 Section 4. The Supreme Court, through The Florida Bar,
20 shall report to the Governor, the President of the Senate, and
21 the Speaker of the House of Representatives on the courses
22 which in their brochure outline contain reference to domestic
23 violence and which The Florida Bar approves for continuing
24 legal education credits for members of The Florida Bar. The
25 report must be submitted annually, beginning September 1,
26 1998. For courses offered or sponsored by The Florida Bar, the
27 report must include course materials; references and names of
28 instructors; a description of courses offered; the section or
29 committee of The Florida Bar which sponsors the course; the
30 number of attorneys who attend such courses, if available; and
31 any other information that describes or assesses the

1 continuing legal education courses on domestic violence which
2 are offered by The Florida Bar.

3 Section 5. Section 741.28, Florida Statutes, is
4 amended to read:

5 741.28 Domestic violence; definitions.--As used in ss.
6 741.28-741.31, the term:

7 (1) "Domestic violence" means any assault, aggravated
8 assault, battery, aggravated battery, sexual assault, sexual
9 battery, stalking, aggravated stalking, kidnapping, false
10 imprisonment, or any criminal offense resulting in physical
11 injury or death of one family or household member by another
12 family or household member ~~who is or was residing in the same~~
13 ~~single dwelling unit.~~

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

20 (3) "Department" means the Florida Department of Law
21 Enforcement.

22 (4) "Law enforcement officer" means any person who is
23 elected, appointed, or employed by any municipality or the
24 state or any political subdivision thereof who meets the
25 minimum qualifications established in s. 943.13 and is
26 certified as a law enforcement officer under s. 943.1395.

27 Section 6. This act shall take effect July 1, 1998.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 494

The Committee Substitute for Senate Bill 494:

- Clarifies that a parent is not deemed convicted until the conviction has been affirmed on appeal or the time for filing an appeal has passed and no appeal has been filed.
- Changes the definition of domestic violence under s. 741.28, F.S., to require that the alleged violence be committed by a family or household member and removes the requirement that the alleged perpetrator has been or is residing in the same single dwelling unit.