

By the Committee on Family Law & Children and  
Representatives Morse, Feeney and Constantine

1                                   A bill to be entitled  
2           An act relating to child custody; amending s.  
3           61.13, F.S.; providing for consideration of the  
4           child's primary caretaker, domestic violence,  
5           or child abuse in custody proceedings;  
6           reenacting ss. 39.408(3)(a) and 741.30(5)(a),  
7           F.S., relating to disposition hearings in  
8           dependency cases, and relating to temporary  
9           injunctions in domestic violence cases, to  
10          incorporate said amendment in references;  
11          providing an effective date.  
12  
13   Be It Enacted by the Legislature of the State of Florida:  
14  
15           Section 1. Paragraph (b) of subsection (2) of section  
16   61.13, Florida Statutes, 1996 Supplement, is amended, and  
17   paragraph (k) of subsection (3) of said section is  
18   redesignated as paragraph (m), and new paragraphs (k) and (l)  
19   are added to said subsection, to read:  
20           61.13 Custody and support of children; visitation  
21   rights; power of court in making orders.--  
22           (2)  
23           (b)1. The court shall determine all matters relating  
24   to custody of each minor child of the parties in accordance  
25   with the best interests of the child and in accordance with  
26   the Uniform Child Custody Jurisdiction Act. It is the public  
27   policy of this state to assure that each minor child has  
28   frequent and continuing contact with both parents after the  
29   parents separate or the marriage of the parties is dissolved  
30   and to encourage parents to share the rights and  
31   responsibilities, and joys, of childrearing. After considering

1 all relevant facts, the father of the child shall be given the  
2 same consideration as the mother in determining the primary  
3 residence of a child irrespective of the age or sex of the  
4 child.

5           2. The court shall order that the parental  
6 responsibility for a minor child be shared by both parents  
7 unless the court finds that shared parental responsibility  
8 would be detrimental to the child. The court shall consider  
9 evidence of domestic violence ~~spousal~~ or child abuse as  
10 evidence of detriment to the child. The court shall consider  
11 evidence that a parent has been convicted of a felony of the  
12 second degree or higher involving domestic violence as defined  
13 in s. 741.28 and chapter 775, as a rebuttable presumption of  
14 detriment to the child. If the presumption is not rebutted,  
15 shared parental responsibility, including visitation,  
16 residence of the child, and decisions made regarding the  
17 child, shall not be granted to the convicted parent. However,  
18 the convicted parent shall not be relieved of any obligation  
19 to provide financial support. If the court determines that  
20 shared parental responsibility would be detrimental to the  
21 child, it may order sole parental responsibility and make such  
22 arrangements for visitation as will best protect the child or  
23 abused spouse from further harm.

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

1 other responsibilities which the court finds unique to a  
2 particular family.

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

7           c. The court may award the grandparents visitation  
8 rights of a minor child if it is in the child's best interest.  
9 Grandparents shall have legal standing to seek judicial  
10 enforcement of such an award. Nothing in this section shall  
11 require that grandparents be made parties or given notice of  
12 dissolution pleadings or proceedings, nor shall grandparents  
13 have legal standing as "contestants" as defined in s. 61.1306.  
14 No court shall order that a child be kept within the state or  
15 jurisdiction of the court solely for the purpose of permitting  
16 visitation by the grandparents.

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

21           (3) For purposes of shared parental responsibility and  
22 primary residence, the best interests of the child shall  
23 include an evaluation of all factors affecting the welfare and  
24 interests of the child, including, but not limited to:

25           (k) The parent who, during the parties' marriage, was  
26 the child's primary caretaker.

27           (l) Evidence of domestic violence or child abuse.

28           Section 2. For the purpose of incorporating the  
29 amendment to s. 61.13, Florida Statutes, in references  
30 thereto, the sections or subdivisions of Florida Statutes set  
31 forth below are reenacted to read:

1           39.408 Hearings for dependency cases.--

2           (3) DISPOSITION HEARING.--At the disposition hearing,  
3 if the court finds that the facts alleged in the petition for  
4 dependency were proven in the adjudicatory hearing, or if the  
5 parents have consented to the finding of dependency or  
6 admitted the allegations in the petition, have failed to  
7 appear for the arraignment hearing after proper notice, or  
8 have not been located despite a diligent search having been  
9 conducted, the court shall receive and consider a  
10 predisposition study, which must be in writing and presented  
11 by an authorized agent of the department.

12           (a) The predisposition study shall cover for any  
13 dependent child all factors specified in s. 61.13(3), and must  
14 also provide the court with the following documented  
15 information:

16           1. An assessment defining the dangers and risks of  
17 returning the child home, including a description of the  
18 changes in and resolutions to the initial risks.

19           2. A description of what risks are still present and  
20 what resources are available and will be provided for the  
21 protection and safety of the child.

22           3. A description of the benefits of returning the  
23 child home.

24           4. A description of all unresolved issues.

25           5. An abuse registry history for all caretakers,  
26 family members, and individuals residing within the household.

27           6. The complete child protection team report and  
28 recommendation or, if no report exists, a statement reflecting  
29 that no report has been made.

30  
31

1           7. All opinions or recommendations from other  
2 professionals or agencies that provide evaluative, social,  
3 reunification, or other services to the family.

4           8. The availability of appropriate prevention and  
5 reunification services for the family to prevent the removal  
6 of the child from the home or to reunify the child with the  
7 family after removal, including the availability of family  
8 preservation services through the Family Builders Program, the  
9 Intensive Crisis Counseling Program, or both.

10          9. The inappropriateness of other prevention and  
11 reunification services that were available.

12          10. The efforts by the department to prevent  
13 out-of-home placement of the child or, when applicable, to  
14 reunify the family if appropriate services were available,  
15 including the application of intensive family preservation  
16 services through the Family Builders Program, the Intensive  
17 Crisis Counseling Program, or both.

18          11. Whether the services were provided to the family  
19 and child.

20          12. If the services were provided, whether they were  
21 sufficient to meet the needs of the child and the family and  
22 to enable the child to remain at home or to be returned home.

23          13. If the services were not provided, the reasons for  
24 such lack of action.

25          14. The need for, or appropriateness of, continuing  
26 the services if the child remains in the custody of the family  
27 or if the child is placed outside the home.

28          15. Whether family mediation was provided.

29          16. Whether a multidisciplinary case staffing was  
30 conducted and, if so, the results.

31

1           17. If the child has been removed from the home and  
2 there is a parent who may be considered for custody pursuant  
3 to s. 39.41(1), a recommendation as to whether placement of  
4 the child with that parent would be detrimental to the child.

5           741.30 Domestic violence; injunction; powers and  
6 duties of court and clerk; petition; notice and hearing;  
7 temporary injunction; issuance of injunction; statewide  
8 verification system; enforcement.--

9           (5)(a) When it appears to the court that an immediate  
10 and present danger of domestic violence exists, the court may  
11 grant a temporary injunction ex parte, pending a full hearing,  
12 and may grant such relief as the court deems proper, including  
13 an injunction:

14           1. Restraining the respondent from committing any acts  
15 of domestic violence.

16           2. Awarding to the petitioner the temporary exclusive  
17 use and possession of the dwelling that the parties share or  
18 excluding the respondent from the residence of the petitioner.

19           3. On the same basis as provided in s. 61.13(2), (3),  
20 (4), and (5), granting to the petitioner temporary custody of  
21 a minor child or children.

22           Section 3. This act shall take effect upon becoming a  
23 law.

24  
25  
26  
27  
28  
29  
30  
31