

By Senator Silver

38-1009-99

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. 61.13, F.S.; prohibiting the court
23 from awarding visitation rights to a parent who
24 has been convicted of a capital felony or a
25 first-degree felony that involved domestic
26 violence; providing certain exceptions;
27 requiring that the Supreme Court through The
28 Florida Bar annually report to the Governor and
29 Legislature on its courses of continuing legal
30 education on domestic violence; amending s.
31 741.28, F.S.; redefining the term "domestic

1 violence" to delete the requirement that the
2 victim and alleged perpetrator reside or have
3 formerly resided in the same dwelling unit;
4 amending s. 741.30, F.S.; revising the degree
5 of danger required for issuance of an
6 injunction for protection against domestic
7 violence; providing for evidence to be
8 presented at a hearing for which both parties
9 have received notice; authorizing the court to
10 enter an order for the protection of minor
11 children against domestic violence; revising
12 notice requirements for a respondent who does
13 not attend the hearing on a temporary
14 injunction; amending s. 784.046, F.S.;
15 authorizing the court to extend an injunction
16 during a continuance; providing an effective
17 date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 25.385, Florida Statutes, is
22 amended to read:

23 25.385 Instruction for circuit and county court judges
24 in domestic violence ~~Standards for instruction of circuit and~~
25 ~~county court judges in handling domestic violence cases.--~~

26 (1) It is crucial to the fair and efficient
27 administration of justice in this state that all members of
28 the judiciary be educated on domestic violence. Therefore, the
29 Florida Court Educational Council shall establish standards
30 for domestic violence instruction and a comprehensive
31 education plan to ensure that each circuit and county court

1 judge who has responsibility for cases of domestic violence
2 has the opportunity to attend educational programs on a
3 periodic, regular, and timely basis ~~of circuit and county~~
4 ~~court judges who have responsibility for domestic violence~~
5 ~~cases, and the council shall provide such instruction on a~~
6 ~~periodic and timely basis.~~

7 (2) As used in this section:

8 (a) The term "domestic violence" has the same meaning
9 as provided in s. 741.28 ~~means any assault, battery, sexual~~
10 ~~assault, sexual battery, or any criminal offense resulting in~~
11 ~~physical injury or death of one family or household member by~~
12 ~~another, who is or was residing in the same single dwelling~~
13 ~~unit.~~

14 (b) A "judge who has responsibility for cases of
15 domestic violence," includes, but is not limited to, a circuit
16 or county judge who hears domestic violence-related cases, or
17 cases where domestic violence may be present, on a temporary,
18 part-time, or emergency basis, in any division of the court,
19 including, but not limited to, family, civil, criminal,
20 probate, or juvenile divisions ~~Family or household member"~~
21 ~~means spouse, former spouse, persons related by blood or~~
22 ~~marriage, persons who are presently residing together, as if a~~
23 ~~family, or who have resided together in the past, as if a~~
24 ~~family, and persons who have a child in common regardless of~~
25 ~~whether they have been married or have resided together at any~~
26 ~~time.~~

27 (3)(a) The Florida Court Education Council shall
28 develop and make available educational tools for instruction
29 in domestic violence, which may include, but are not limited
30 to, bench guides, video training tapes, and any other packaged
31 or presented materials the council deems appropriate, so that

1 judges can obtain information timely and efficiently before
2 hearing cases where domestic violence may be involved.

3 (b) The Florida Court Education Council shall develop
4 educational programs on domestic violence, which must include
5 training in: laws governing domestic violence; prevalence of
6 domestic violence; characteristics and impacts of domestic
7 violence on children or other dependents; custody and
8 visitation issues; issues of whether, and under what
9 conditions, mediation is appropriate; information on community
10 resources and referral services; and any other information
11 that the council deems appropriate. The educational programs
12 may be a part of other programs provided by the Office of the
13 State Courts Administrator.

14 (4) The Office of State Courts Administrator shall
15 maintain records, including the date and curriculum of the
16 programs, of all judges who attend educational programs on
17 domestic violence, and of the current assignment of each
18 attendee, and on request shall make such records available for
19 public inspection.

20 (5) The Florida Court Education Council shall provide,
21 as part of its annual report to the Governor, the President of
22 the Senate, and the Speaker of the House of Representatives, a
23 description of the types of educational programs on domestic
24 violence offered, course materials, learning objectives, the
25 references and the names and credentials of instructors, the
26 number of judges listed by circuit and county who attend the
27 educational programs, and any other information that is
28 relevant to a full description of the educational programs on
29 domestic violence.

30 Section 2. Paragraph (b) of subsection (2) of section
31 61.13, Florida Statutes, 1998 Supplement, is amended to read:

1 61.13 Custody and support of children; visitation
2 rights; power of court in making orders.--

3 (2)

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

17 2. The court shall order that the parental
18 responsibility for a minor child be shared by both parents
19 unless the court finds that shared parental responsibility
20 would be detrimental to the child. Evidence that a parent has
21 been convicted of a felony of the third degree or higher
22 involving domestic violence, as defined in s. 741.28 and
23 chapter 775, or meets the criteria of s. 39.806(1)(d), creates
24 a rebuttable presumption of detriment to the child. If the
25 presumption is not rebutted, shared parental responsibility,
26 including visitation, residence of the child, and decisions
27 made regarding the child, may not be granted to the convicted
28 parent. However, the convicted parent is not relieved of any
29 obligation to provide financial support. If the court
30 determines that shared parental responsibility would be
31 detrimental to the child, it may order sole parental

1 responsibility and make such arrangements for visitation as
2 will best protect the child or abused spouse from further
3 harm. Whether or not there is a conviction of any offense of
4 domestic violence or child abuse or the existence of an
5 injunction for protection against domestic violence, the court
6 shall consider evidence of domestic violence or child abuse as
7 evidence of detriment to the child. If the parent of the child
8 is convicted of a capital felony or a felony of the first
9 degree which involved domestic violence against another parent
10 of the child, the court may not award visitation rights to the
11 convicted parent unless the child is over 16 years of age and
12 agrees to the order of visitation; the convicted parent acted
13 in self-defense and is granted executive clemency or a
14 petition for such clemency is pending on the parent's behalf;
15 or the court finds that visitation is in the manifest best
16 interests of the child.

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

26 b. The court shall order "sole parental
27 responsibility, with or without visitation rights, to the
28 other parent when it is in the best interests of" the minor
29 child.

30 c. The court may award the grandparents visitation
31 rights with a minor child if it is in the child's best

1 interest. Grandparents have legal standing to seek judicial
2 enforcement of such an award. This section does not require
3 that grandparents be made parties or given notice of
4 dissolution pleadings or proceedings, nor do grandparents have
5 legal standing as "contestants" as defined in s. 61.1306. A
6 court may not order that a child be kept within the state or
7 jurisdiction of the court solely for the purpose of permitting
8 visitation by the grandparents.

9 3. Access to records and information pertaining to a
10 minor child, including, but not limited to, medical, dental,
11 and school records, may not be denied to a parent because the
12 parent is not the child's primary residential parent.

13 Section 3. The Supreme Court, through The Florida Bar,
14 shall report to the Governor, the President of the Senate, and
15 the Speaker of the House of Representatives on the courses
16 which, in their brochure outline, contain reference to
17 domestic violence and which The Florida Bar approves for
18 continuing legal education credits for members of The Florida
19 Bar. The report must be submitted annually, beginning
20 September 1, 1999. For courses offered or sponsored by The
21 Florida Bar, the report must include course materials;
22 references and names of instructors; a description of courses
23 offered; the section or committee of The Florida Bar which
24 sponsors the course; the number of attorneys who attend such
25 courses, if available; and any other information that
26 describes or assesses the continuing legal education courses
27 on domestic violence which are offered by The Florida Bar.

28 Section 4. Section 741.28, Florida Statutes, is
29 amended to read:

30 741.28 Domestic violence; definitions.--As used in ss.
31 741.28-741.31, the term:

1 (1) "Domestic violence" means any assault, aggravated
2 assault, battery, aggravated battery, sexual assault, sexual
3 battery, stalking, aggravated stalking, kidnapping, false
4 imprisonment, or any criminal offense resulting in physical
5 injury or death of one family or household member by another
6 ~~who is or was residing in the same single dwelling unit.~~

7 (2) "Family or household member" means spouses, former
8 spouses, persons related by blood or marriage, persons who are
9 presently residing together as if a family or who have resided
10 together in the past as if a family, and persons who have a
11 child in common regardless of whether they have been married
12 or have resided together at any time.

13 (3) "Department" means the Florida Department of Law
14 Enforcement.

15 (4) "Law enforcement officer" means any person who is
16 elected, appointed, or employed by any municipality or the
17 state or any political subdivision thereof who meets the
18 minimum qualifications established in s. 943.13 and is
19 certified as a law enforcement officer under s. 943.1395.

20 Section 5. Paragraphs (a) and (g) of subsection (1),
21 paragraphs (h), (i), and (j) of subsection (3), paragraphs (a)
22 and (b) of subsection (5), paragraph (a) of subsection (6),
23 and paragraphs (a) and (c) of subsection (7) of section
24 741.30, Florida Statutes, 1998 Supplement, are amended to
25 read:

26 741.30 Domestic violence; injunction; powers and
27 duties of court and clerk; petition; notice and hearing;
28 temporary injunction; issuance of injunction; statewide
29 verification system; enforcement.--

30 (1) There is created a cause of action for an
31 injunction for protection against domestic violence.

1 (a) Any person described in paragraph (e), who is the
2 victim of any act of domestic violence, or has reasonable
3 cause to believe he or she is in ~~imminent~~ danger of becoming
4 the victim of any act of domestic violence, has standing in
5 the circuit court to file a sworn petition for an injunction
6 for protection against domestic violence.

7 (g) Any person, including an officer of the court, who
8 offers evidence or recommendations relating to the cause of
9 action must either present the evidence or recommendations in
10 writing to the court with copies to each party and their
11 attorney, or must present the evidence under oath at a hearing
12 at which all parties were noticed to be ~~are~~ present.

13 (3)

14 (h) Petitioner has suffered or has reasonable cause to
15 fear ~~imminent~~ domestic violence because respondent has:

16 (i) Petitioner alleges the following additional
17 specific facts: (mark appropriate sections)

18 Petitioner is the custodian of a minor child or
19 children whose names and ages are as follows:

20 Petitioner needs the exclusive use and possession
21 of the dwelling that the parties share.

22 Petitioner is unable to obtain safe alternative
23 housing because:

24 Petitioner genuinely fears that respondent
25 ~~imminently~~ will abuse, remove, or hide the minor child or
26 children from petitioner because:

27

28 (j) Petitioner genuinely fears ~~imminent~~ domestic
29 violence by respondent.

30 (5)(a) When it appears to the court that it is
31 necessary for the protection of the petitioner, the court may

1 grant a temporary ~~an immediate and present danger of domestic~~
2 ~~violence exists, the court may grant a temporary injunction ex~~
3 ~~parte, pending a full hearing, and may grant such relief as~~
4 ~~the court deems proper, including an injunction:~~

5 1. Restraining the respondent from committing any acts
6 of domestic violence.

7 2. Awarding to the petitioner the temporary exclusive
8 use and possession of the dwelling that the parties share or
9 excluding the respondent from the residence of the petitioner.

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

13 (b) In a hearing ex parte for the purpose of obtaining
14 such ex parte temporary injunction, no evidence other than
15 verified pleadings or affidavits shall be used as evidence,
16 unless the respondent appears at the hearing or has received
17 reasonable notice of the hearing. A denial of a petition for
18 an ex parte injunction shall be by written order noting the
19 legal grounds for denial. When the only ground for denial is
20 no appearance of ~~an immediate and present~~ danger of domestic
21 violence, the court shall set a full hearing on the petition
22 for injunction with notice at the earliest possible time.
23 Nothing herein affects a petitioner's right to promptly amend
24 any petition, or otherwise be heard in person on any petition
25 consistent with the Florida Rules of Civil Procedure.

26 (6)(a) Upon notice and hearing, the court may grant
27 such relief as the court deems proper, including an
28 injunction:

29 1. Restraining the respondent from committing any acts
30 of domestic violence.

31

1 2. Awarding to the petitioner the exclusive use and
2 possession of the dwelling that the parties share or excluding
3 the respondent from the residence of the petitioner.

4 3. On the same basis as provided in chapter 61,
5 awarding temporary custody of, or temporary visitation rights
6 with regard to, a minor child or children of the parties.

7 4. On the same basis as provided in chapter 61,
8 establishing temporary support for a minor child or children
9 or the petitioner.

10 5. Ordering the respondent to participate in
11 treatment, intervention, or counseling services to be paid for
12 by the respondent. When the court orders the respondent to
13 participate in a batterers' intervention program, the court,
14 or any entity designated by the court, must provide the
15 respondent with a list of all certified batterers'
16 intervention programs and all programs which have submitted an
17 application to the Department of Corrections to become
18 certified under s. 741.325, from which the respondent must
19 choose a program in which to participate. If there are no
20 certified batterers' intervention programs in the circuit, the
21 court shall provide a list of acceptable programs from which
22 the respondent must choose a program in which to participate.

23 6. Referring a petitioner to a certified domestic
24 violence center. The court must provide the petitioner with a
25 list of certified domestic violence centers in the circuit
26 which the petitioner may contact.

27 7. Ordering such other relief as the court deems
28 necessary for the protection of a victim of domestic violence
29 or minor children, including injunctions or directives to law
30 enforcement agencies, as provided in this section.

31

1 (7)(a)1. The clerk of the court shall furnish a copy
2 of the petition, financial affidavit, uniform child custody
3 jurisdiction act affidavit, if any, notice of hearing, and
4 temporary injunction, if any, to the sheriff or a law
5 enforcement agency of the county where the respondent resides
6 or can be found, who shall serve it upon the respondent as
7 soon thereafter as possible on any day of the week and at any
8 time of the day or night. The clerk of the court shall be
9 responsible for furnishing to the sheriff such information on
10 the respondent's physical description and location as is
11 required by the department to comply with the verification
12 procedures set forth in this section. Notwithstanding any
13 other provision of law to the contrary, the chief judge of
14 each circuit, in consultation with the appropriate sheriff,
15 may authorize a law enforcement agency within the jurisdiction
16 to effect service. A law enforcement agency serving
17 injunctions pursuant to this section shall use service and
18 verification procedures consistent with those of the sheriff.

19 2. When an injunction is issued, if the petitioner
20 requests the assistance of a law enforcement agency, the court
21 may order that an officer from the appropriate law enforcement
22 agency accompany the petitioner and assist in placing the
23 petitioner in possession of the dwelling or residence, or
24 otherwise assist in the execution or service of the
25 injunction. A law enforcement officer shall accept a copy of
26 an injunction for protection against domestic violence,
27 certified by the clerk of the court, from the petitioner and
28 immediately serve it upon a respondent who has been located
29 but not yet served.

30 3. All orders issued, changed, continued, extended, or
31 vacated subsequent to the original service of documents

1 enumerated under subparagraph 1., shall be certified by the
2 clerk of the court and delivered to the parties at the time of
3 the entry of the order. The parties may acknowledge receipt
4 of such order in writing on the face of the original order.
5 In the event a party fails or refuses to acknowledge the
6 receipt of a certified copy of an order, the clerk shall note
7 on the original order that service was effected. If delivery
8 at the hearing is not possible, the clerk shall mail certified
9 copies of the order to the parties at the last known address
10 of each party. Service by mail is complete upon mailing.
11 When an order is served pursuant to this subsection, the clerk
12 shall prepare a written certification to be placed in the
13 court file specifying the time, date, and method of service
14 and shall notify the sheriff.

15

16 If the respondent has been served previously with the
17 temporary injunction and has failed to appear at the ~~initial~~
18 hearing on the temporary injunction, the court may extend the
19 relief provided in the temporary injunction to the permanent
20 injunction without further notice to the respondent. However,
21 the respondent must be given notice if the court grants any
22 additional relief ~~any subsequent petition for injunction~~
23 ~~seeking an extension of time may be served on the respondent~~
24 ~~by the clerk of the court by certified mail in lieu of~~
25 ~~personal service by a law enforcement officer.~~

26 (c)1. Within 24 hours after the court issues an
27 injunction for protection against domestic violence or
28 changes, continues, extends, or vacates an injunction for
29 protection against domestic violence, the clerk of the court
30 must forward a certified copy of the injunction ~~for service~~ to
31 the sheriff with jurisdiction over the residence of the

1 petitioner. The injunction must be served in accordance with
2 the order of the court ~~this subsection~~.

3 2. Within 24 hours after service of process of an
4 injunction for protection against domestic violence upon a
5 respondent, the law enforcement officer must forward the
6 written proof of service of process to the sheriff with
7 jurisdiction over the residence of the petitioner.

8 3. Within 24 hours after the sheriff receives a
9 certified copy of the injunction for protection against
10 domestic violence, the sheriff must make information relating
11 to the injunction available to other law enforcement agencies
12 by electronically transmitting such information to the
13 department.

14 4. Within 24 hours after the sheriff or other law
15 enforcement officer has made service upon the respondent and
16 the sheriff has been so notified, the sheriff must make
17 information relating to the service available to other law
18 enforcement agencies by electronically transmitting such
19 information to the department.

20 5. Within 24 hours after an injunction for protection
21 against domestic violence is vacated, terminated, or otherwise
22 rendered no longer effective by ruling of the court, the clerk
23 of the court must notify the sheriff receiving original
24 notification of the injunction as provided in subparagraph 2.
25 That agency shall, within 24 hours after receiving such
26 notification from the clerk of the court, notify the
27 department of such action of the court.

28 Section 6. Subsections (1), (6), and (10) of section
29 784.046, Florida Statutes, are amended to read:

30 784.046 Action by victim of repeat violence for
31 protective injunction; powers and duties of court and clerk of

1 court; filing and form of petition; notice and hearing;
2 temporary injunction; issuance; statewide verification system;
3 enforcement.--

4 (1) As used in this section, the term:

5 (a) "Violence" means any assault, battery, sexual
6 battery, or stalking by a person against any other person. The
7 term includes domestic violence, as defined in s. 741.28.

8 (b) "Repeat violence" means two incidents of violence
9 or stalking committed by the respondent, one of which must
10 have been within 6 months of the filing of the petition, which
11 are directed against the petitioner or the petitioner's
12 ~~immediate~~ family member or household member.

13 (6)(a) When it appears to the court that an immediate
14 and present danger of repeat violence exists, the court may
15 grant a temporary injunction which may be granted in an ex
16 parte hearing, pending a full hearing, and may grant such
17 relief as the court deems proper, including an injunction
18 enjoining the respondent from committing any acts of repeat
19 violence.

20 (b) In a hearing ex parte for the purpose of obtaining
21 such temporary injunction, no evidence other than the verified
22 pleading or affidavit shall be used as evidence, unless the
23 respondent appears at the hearing or has received reasonable
24 notice of the hearing.

25 (c) Any such ex parte temporary injunction shall be
26 effective for a fixed period not to exceed 15 days. A full
27 hearing, as provided by this section, shall be set for a date
28 no later than the date when the temporary injunction ceases to
29 be effective. The court may grant a continuance of the ~~ex~~
30 ~~parte injunction and the full~~ hearing before or during a
31 hearing, for good cause shown by any party, including a

1 continuance for the purpose of obtaining service of process.

2 If necessary, an injunction shall be extended to remain in

3 full force and effect during any period of continuance.

4 (10) The terms of an injunction restraining the
5 respondent shall remain in effect until modified or dissolved.

6 Either party ~~The petitioner or the respondent~~ may move the
7 court at any time to modify or dissolve an injunction ~~at any~~
8 ~~time.~~ Such relief may be granted in addition to other civil or
9 criminal remedies.

10 Section 7. This act shall take effect July 1, 1999.

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12
13 SENATE SUMMARY

14 Provides for instruction for circuit and county judges in
15 domestic violence cases. Redefines the term "domestic
16 violence" for purposes of training provided by the
17 Florida Court Educational Council and revises duties of
18 the council. Provides for a comprehensive domestic
19 violence education plan and tools and requires the
20 council to develop educational programs on domestic
21 violence. Provides for maintenance by the Office of the
22 State Courts Administrator of records of judicial
23 attendance of such programs. Requires inclusion of
24 specified information with respect to the programs in the
25 annual report by the council to the Governor and
26 Legislature. Prohibits a court from awarding visitation
27 rights to a parent who has been convicted of a capital
28 felony or a first-degree felony that involved domestic
29 violence. Requires the Supreme Court to annually report
30 to the Governor and Legislature on its courses of
31 continuing legal education on domestic violence. Deletes
the requirement that the victim and alleged perpetrator
must reside or have formerly resided in the same dwelling
unit in order to bring an action for an injunction for
protection against domestic violence. Revises the degree
of danger required in order for the court to issue such
an injunction. Provides for an order for the protection
of minor children against domestic violence. Authorizes
the court to extend an injunction during the period of a
continuance. (See bill for details.)