

By the Committee on Children and Families; and Senator Silver

300-2050A-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 second or third degree ~~or~~  
22 ~~higher~~ involving domestic violence, as defined in s. 741.28  
23 and chapter 775, or meets the criteria of s. 39.806(1)(d),  
24 creates a rebuttable presumption of detriment to the child. If  
25 the presumption is not rebutted, shared parental  
26 responsibility, including visitation, residence of the child,  
27 and decisions made regarding the child, may not be granted to  
28 the convicted parent. However, the convicted parent is not  
29 relieved of any obligation to provide financial support. If  
30 the court determines that shared parental responsibility would  
31 be 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 nonincarcerated parent or legal custodian agrees to the  
16 visitation.

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 ordered in the temporary injunction to the final  
20 judgment on injunction for protection against domestic  
21 violence if:

22 a. The respondent received personal service of process  
23 of the notice of the hearing for the injunction;

24 b. The respondent had the opportunity to be heard at  
25 the hearing for the injunction; and

26 c. The respondent was informed in the notice of the  
27 hearing for the injunction that the court may extend the  
28 relief granted in the temporary injunction to the final  
29 judgment on injunction against domestic violence even if the  
30 respondent fails to appear at the noticed hearing and fails to  
31 exercise his or her right to be heard at the hearing.

1  
2 However, the respondent must receive personal service of  
3 process of notice if the court grants any additional relief  
4 ~~any subsequent petition for injunction seeking an extension of~~  
5 ~~time may be served on the respondent by the clerk of the court~~  
6 ~~by certified mail in lieu of personal service by a law~~  
7 ~~enforcement officer.~~

8 (c)1. Within 24 hours after the court issues an  
9 injunction for protection against domestic violence or  
10 changes, continues, extends, or vacates an injunction for  
11 protection against domestic violence, the clerk of the court  
12 must forward a certified copy of the injunction ~~for service~~ to  
13 the sheriff with jurisdiction over the residence of the  
14 petitioner. The injunction must be served in accordance with  
15 the order of the court ~~this subsection.~~

16 2. Within 24 hours after service of process of an  
17 injunction for protection against domestic violence upon a  
18 respondent, the law enforcement officer must forward the  
19 written proof of service of process to the sheriff with  
20 jurisdiction over the residence of the petitioner.

21 3. Within 24 hours after the sheriff receives a  
22 certified copy of the injunction for protection against  
23 domestic violence, the sheriff must make information relating  
24 to the injunction available to other law enforcement agencies  
25 by electronically transmitting such information to the  
26 department.

27 4. Within 24 hours after the sheriff or other law  
28 enforcement officer has made service upon the respondent and  
29 the sheriff has been so notified, the sheriff must make  
30 information relating to the service available to other law  
31

1 enforcement agencies by electronically transmitting such  
2 information to the department.

3 5. Within 24 hours after an injunction for protection  
4 against domestic violence is vacated, terminated, or otherwise  
5 rendered no longer effective by ruling of the court, the clerk  
6 of the court must notify the sheriff receiving original  
7 notification of the injunction as provided in subparagraph 2.  
8 That agency shall, within 24 hours after receiving such  
9 notification from the clerk of the court, notify the  
10 department of such action of the court.

11 Section 6. Subsections (1), (6), and (10) of section  
12 784.046, Florida Statutes, are amended to read:

13 784.046 Action by victim of repeat violence for  
14 protective injunction; powers and duties of court and clerk of  
15 court; filing and form of petition; notice and hearing;  
16 temporary injunction; issuance; statewide verification system;  
17 enforcement.--

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

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

22 (b) "Repeat violence" means two incidents of violence  
23 or stalking committed by the respondent, one of which must  
24 have been within 6 months of the filing of the petition, which  
25 are directed against the petitioner or the petitioner's  
26 ~~immediate~~ family member or household member.

27 (6)(a) When it appears to the court that an immediate  
28 and present danger of repeat violence exists, the court may  
29 grant a temporary injunction which may be granted in an ex  
30 parte hearing, pending a full hearing, and may grant such  
31 relief as the court deems proper, including an injunction

1 enjoining the respondent from committing any acts of repeat  
2 violence.

3 (b) In a hearing ex parte for the purpose of obtaining  
4 such temporary injunction, no evidence other than the verified  
5 pleading or affidavit shall be used as evidence, unless the  
6 respondent appears at the hearing or has received reasonable  
7 notice of the hearing.

8 (c) Any such ex parte temporary injunction shall be  
9 effective for a fixed period not to exceed 15 days. A full  
10 hearing, as provided by this section, shall be set for a date  
11 no later than the date when the temporary injunction ceases to  
12 be effective. The court may grant a continuance of the ~~ex~~  
13 ~~parte injunction and the full~~ hearing before or during a  
14 hearing, for good cause shown by any party, including a  
15 continuance for the purpose of obtaining service of process.  
16 If necessary, an injunction shall be extended to remain in  
17 full force and effect during any period of continuance.

18 (10) The terms of an injunction restraining the  
19 respondent shall remain in effect until modified or dissolved.  
20 Either party ~~The petitioner or the respondent~~ may move the  
21 court at any time to modify or dissolve an injunction ~~at any~~  
22 ~~time.~~ Such relief may be granted in addition to other civil or  
23 criminal remedies.

24 Section 7. This act shall take effect July 1, 1999.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 1176

Rectifying an intra-sectional inconsistency regarding  
visitation of parents involved in felonies involving domestic  
violence.

Enumerating notice requirements.

Providing that a non-incarcerated parent or a legal custodian  
of a minor may consent to the minor's visitation with a parent  
convicted of a capital or first degree felony involving  
domestic violence.