

By Representative Lynn

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. 39.902, F.S.; conforming certain  
23          definitions; amending s. 44.102, F.S.;  
24          providing for nonreferral of a case to  
25          court-ordered family mediation upon the court's  
26          own motion, under specified circumstances;  
27          amending s. 61.13, F.S.; prohibiting the court  
28          from awarding visitation rights to a parent who  
29          has been convicted of a capital felony or a  
30          first-degree felony that involved domestic  
31          violence; providing certain exceptions;

1           amending ss. 39.902 and 943.171, F.S. ;  
2           conforming certain definitions; requiring that  
3           the Supreme Court through The Florida Bar  
4           annually report to the Governor and Legislature  
5           on its courses of continuing legal education on  
6           domestic violence; providing an effective date.

7

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

9

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

12           25.385 Instruction for circuit and county court judges  
13 in domestic violence ~~Standards for instruction of circuit and~~  
14 ~~county court judges in handling domestic violence cases.--~~

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

27           (2) As used in this section:

28           (a) The term "domestic violence" has the same meaning  
29 as provided in s. 741.28 ~~means any assault, battery, sexual~~  
30 ~~assault, sexual battery, or any criminal offense resulting in~~  
31 ~~physical injury or death of one family or household member by~~

1 ~~another, who is or was residing in the same single dwelling~~  
2 ~~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. Subsections (1) and (3) of section 39.902,  
20 Florida Statutes, 1998 Supplement, are amended to read:

21 39.902 Definitions.--As used in this part, the term:

22 (1) "Domestic violence" has the same meaning as  
23 provided in s. 741.28 ~~means any assault, battery, sexual~~  
24 ~~assault, sexual battery, or any criminal offense resulting in~~  
25 ~~physical injury or death of one family or household member by~~  
26 ~~another who is or was residing in the same single dwelling~~  
27 ~~unit.~~

28 (3) "Family or household member" has the same meaning  
29 as provided in s. 741.28 ~~means spouses, former spouses, adults~~  
30 ~~related by blood or marriage, persons who are presently~~  
31 ~~residing together as if a family or who have resided together~~

1 ~~in the past as if a family, and persons who have a child in~~  
2 ~~common regardless of whether they have been married or have~~  
3 ~~resided together at any time.~~

4 Section 3. Paragraph (b) of subsection (2) of section  
5 44.102, Florida Statutes, is amended to read:

6 44.102 Court-ordered mediation.--

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

8 (b) In circuits in which a family mediation program  
9 has been established and upon a court finding of a dispute,  
10 shall refer to mediation all or part of custody, visitation,  
11 or other parental responsibility issues as defined in s.

12 61.13. Upon motion or request of a party, or upon the court's  
13 own motion, a court shall not refer any case to mediation if  
14 it finds there has been a history of domestic violence that  
15 would compromise the mediation process.

16 Section 4. Paragraph (b) of subsection (2) of section  
17 61.13, Florida Statutes, 1998 Supplement, is amended to read:

18 61.13 Custody and support of children; visitation  
19 rights; power of court in making orders.--

20 (2)

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

1 residence of a child irrespective of the age or sex of the  
2 child.

3           2. The court shall order that the parental  
4 responsibility for a minor child be shared by both parents  
5 unless the court finds that shared parental responsibility  
6 would be detrimental to the child. Evidence that a parent has  
7 been convicted of a felony of the third degree or higher  
8 involving domestic violence, as defined in s. 741.28 and  
9 chapter 775, or meets the criteria of s. 39.806(1)(d), creates  
10 a rebuttable presumption of detriment to the child. If the  
11 presumption is not rebutted, shared parental responsibility,  
12 including visitation, residence of the child, and decisions  
13 made regarding the child, may not be granted to the convicted  
14 parent. However, the convicted parent is not relieved of any  
15 obligation to provide financial support. If the court  
16 determines that shared parental responsibility would be  
17 detrimental to the child, it may order sole parental  
18 responsibility and make such arrangements for visitation as  
19 will best protect the child or abused spouse from further  
20 harm. Whether or not there is a conviction of any offense of  
21 domestic violence or child abuse or the existence of an  
22 injunction for protection against domestic violence, the court  
23 shall consider evidence of domestic violence or child abuse as  
24 evidence of detriment to the child. If the parent of the child  
25 is convicted of a capital felony or a felony of the first  
26 degree which involved domestic violence against another parent  
27 of the child, the court may not award visitation rights to the  
28 convicted parent unless the child is over 16 years of age and  
29 agrees to the order of visitation; or unless the convicted  
30 parent acted in self-defense and is granted executive clemency  
31 or a petition for such clemency is pending on the parent's

1 behalf; or unless the court finds that visitation is in the  
2 manifest best interests of the child.

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

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

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

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

30 Section 5. Subsection (2) of section 943.171, Florida  
31 Statutes, is amended to read:

1           943.171 Basic skills training in handling domestic  
2 violence cases.--

3           (2) As used in this section, the term:

4           (a) "Domestic violence" has the same meaning as  
5 provided in s. 741.28 ~~means any assault, battery, sexual~~  
6 ~~assault, sexual battery, or any criminal offense resulting in~~  
7 ~~the physical injury or death of one family or household member~~  
8 ~~by another who is or was residing in the same single dwelling~~  
9 ~~unit.~~

10           (b) "Family or household member" has the same meaning  
11 as provided in s. 741.28 ~~means spouse, former spouse, persons~~  
12 ~~related by blood or marriage, persons who are presently~~  
13 ~~residing together, as if a family, or who have resided~~  
14 ~~together in the past, as if a family, and persons who have a~~  
15 ~~child in common regardless of whether they have been married~~  
16 ~~or have resided together at any time.~~

17           Section 6. The Supreme Court, through The Florida Bar,  
18 shall report to the Governor, the President of the Senate, and  
19 the Speaker of the House of Representatives on the courses  
20 which in their brochure outline contain reference to domestic  
21 violence and which The Florida Bar approves for continuing  
22 legal education credits for members of The Florida Bar. The  
23 report must be submitted annually, beginning September 1,  
24 1998. For courses offered or sponsored by The Florida Bar, the  
25 report must include course materials; references and names of  
26 instructors; a description of courses offered; the section or  
27 committee of The Florida Bar which sponsors the course; the  
28 number of attorneys who attend such courses, if available; and  
29 any other information that describes or assesses the  
30 continuing legal education courses on domestic violence which  
31 are offered by The Florida Bar.



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

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

\*\*\*\*\*

HOUSE SUMMARY

Provides for instruction for circuit and county judges in domestic violence cases. Redefines the term "domestic violence" for purposes of training provided by the Florida Court Educational Council and revises duties of the council. Provides for a comprehensive domestic violence education plan and tools and requires the council to develop educational programs on domestic violence. Provides for maintenance by the Office of the State Courts Administrator of records of judicial attendance of such programs. Requires inclusion of specified information with respect to the programs in the annual report by the council to the Governor and Legislature. Prohibits a court from awarding visitation rights to a parent who has been convicted of a capital felony or a first-degree felony that involved domestic violence. Requires the Supreme Court to annually report to the Governor and Legislature on its courses of continuing legal education on domestic violence. See bill for details.