

By Senator Lynn

7-86-06

1                                   A bill to be entitled  
2           An act relating to termination of parental  
3           rights; amending s. 39.806, F.S.; providing  
4           that the parental rights of a person  
5           incarcerated in a state or federal correctional  
6           institution may be terminated if the period of  
7           time for which the parent has been and is  
8           expected to be incarcerated will constitute a  
9           substantial portion of time before the child  
10          attains the age of 18 years; reenacting ss.  
11          39.811(6) and 61.13(2)(b), F.S., relating to  
12          the circumstances for which the parental rights  
13          of a person may be terminated and shared  
14          parental responsibility, to incorporate the  
15          amendment made to s. 39.806, F.S., in  
16          references thereto; providing an effective  
17          date.

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

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21           Section 1. Paragraph (d) of subsection (1) of section  
22 39.806, Florida Statutes, is amended to read:

23           39.806 Grounds for termination of parental rights.--

24           (1) The department, the guardian ad litem, or any  
25 person who has knowledge of the facts alleged or who is  
26 informed of those facts and believes that they are true may  
27 petition for the termination of parental rights under any of  
28 the following circumstances:

29           (d) When the parent of a child is incarcerated in a  
30 state or federal correctional institution and either:

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1           1. The period of time for which the parent has been  
2 and is expected to be incarcerated will constitute a  
3 substantial portion of the period of time before the child  
4 will attain the age of 18 years;

5           2. The incarcerated parent has been determined by the  
6 court to be a violent career criminal as defined in s.  
7 775.084, a habitual violent felony offender as defined in s.  
8 775.084, or a sexual predator as defined in s. 775.21; has  
9 been convicted of first degree or second degree murder in  
10 violation of s. 782.04 or a sexual battery that constitutes a  
11 capital, life, or first degree felony violation of s. 794.011;  
12 or has been convicted of an offense in another jurisdiction  
13 which is substantially similar to one of the offenses listed  
14 in this paragraph. As used in this section, the term  
15 "substantially similar offense" means any offense that is  
16 substantially similar in elements and penalties to one of  
17 those listed in this subparagraph, and that is in violation of  
18 a law of any other jurisdiction, whether that of another  
19 state, the District of Columbia, the United States or any  
20 possession or territory thereof, or any foreign jurisdiction;  
21 or

22           3. The court determines by clear and convincing  
23 evidence that continuing the parental relationship with the  
24 incarcerated parent would be harmful to the child and, for  
25 this reason, that termination of the parental rights of the  
26 incarcerated parent is in the best interest of the child.

27           Section 2. For the purpose of incorporating the  
28 amendment made by this act to section 39.806, Florida  
29 Statutes, in a reference thereto, subsection (6) of section  
30 39.811, Florida Statutes, is reenacted to read:

31           39.811 Powers of disposition; order of disposition.--

1           (6) The parental rights of one parent may be severed  
2 without severing the parental rights of the other parent only  
3 under the following circumstances:

4           (a) If the child has only one surviving parent;

5           (b) If the identity of a prospective parent has been  
6 established as unknown after sworn testimony;

7           (c) If the parent whose rights are being terminated  
8 became a parent through a single-parent adoption;

9           (d) If the protection of the child demands termination  
10 of the rights of a single parent; or

11           (e) If the parent whose rights are being terminated  
12 meets any of the criteria specified in s. 39.806(1)(d) and  
13 (f)-(i).

14           Section 3. For the purpose of incorporating the  
15 amendment made by this act to section 39.806, Florida  
16 Statutes, in a reference thereto, paragraph (b) of subsection  
17 (2) of section 61.13, Florida Statutes, is reenacted 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 and Enforcement Act. It  
25 is the public policy of this state to assure that each minor  
26 child has frequent and continuing contact with both parents  
27 after the parents separate or the marriage of the parties is  
28 dissolved 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.

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

1 other responsibilities that 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           3. Access to records and information pertaining to a  
8 minor child, including, but not limited to, medical, dental,  
9 and school records, may not be denied to a parent because the  
10 parent is not the child's primary residential parent. Full  
11 rights under this subparagraph apply to either parent unless a  
12 court order specifically revokes these rights, including any  
13 restrictions on these rights as provided in a domestic  
14 violence injunction. A parent having rights under this  
15 subparagraph has the same rights upon request as to form,  
16 substance, and manner of access as are available to the other  
17 parent of a child, including, without limitation, the right to  
18 in-person communication with medical, dental, and education  
19 providers.

20           Section 4. This act shall take effect July 1, 2006.

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SENATE SUMMARY

Provides that the parental rights of a person  
incarcerated in a state or federal correctional  
institution may be terminated if the period of time for  
which the parent has been and is expected to be  
incarcerated will constitute a substantial portion of  
time before the child will attain the age of 18 years.