

By Senator Deutch

30-03780B-08

20082552__

1 A bill to be entitled

2 An act relating to child custody and visitation; amending
3 s. 61.13, F.S.; revising the application of a rebuttable
4 presumption that a parent is a detriment to his or her
5 child if he or she is convicted of a crime involving
6 domestic violence from a felony of the third degree or
7 higher to a misdemeanor of the first degree or higher;
8 requiring a court to make explicit written findings that,
9 when determining the best interests of a child for the
10 purposes of shared parental responsibility and visitation,
11 the court considered evidence of domestic violence and
12 child abuse; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Paragraph (b) of subsection (2) and paragraph
17 (1) of subsection (3) of section 61.13, Florida Statutes, are
18 amended, present subsections (4) through (9) of that section are
19 redesignated as subsections (5) through (10), respectively, and a
20 new subsection (4) is added to that section, to read:

21 61.13 Custody and support of children; visitation rights;
22 power of court in making orders.--

23 (2)

24 (b)1. The court shall determine all matters relating to
25 custody of each minor child of the parties in accordance with the
26 best interests of the child and in accordance with the Uniform
27 Child Custody Jurisdiction and Enforcement Act. It is the public
28 policy of this state to assure that each minor child has frequent
29 and continuing contact with both parents after the parents

30-03780B-08

20082552__

30 separate or the marriage of the parties is dissolved and to
31 encourage parents to share the rights and responsibilities, and
32 joys, of childrearing. After considering all relevant facts, the
33 father of the child shall be given the same consideration as the
34 mother in determining the primary residence of a child
35 irrespective of the age or sex of the child.

36 2. The court shall order that the parental responsibility
37 for a minor child be shared by both parents unless the court
38 finds that shared parental responsibility would be detrimental to
39 the child. Evidence that a parent has been convicted of a
40 misdemeanor ~~felony~~ of the first ~~third~~ degree or higher involving
41 domestic violence, as defined in s. 741.28 and chapter 775, or
42 meets the criteria of s. 39.806(1)(d), creates a rebuttable
43 presumption of detriment to the child. If the presumption is not
44 rebutted, shared parental responsibility, including visitation,
45 residence of the child, and decisions made regarding the child,
46 may not be granted to the convicted parent. However, the
47 convicted parent is not relieved of any obligation to provide
48 financial support. If the court determines that shared parental
49 responsibility would be detrimental to the child, it may order
50 sole parental responsibility and make such arrangements for
51 visitation as will best protect the child or abused spouse from
52 further harm. Whether or not there is a conviction of any offense
53 of domestic violence or child abuse or the existence of an
54 injunction for protection against domestic violence, the court
55 shall consider evidence of domestic violence or child abuse as
56 evidence of detriment to the child.

57 a. In ordering shared parental responsibility, the court
58 may consider the expressed desires of the parents and may grant

30-03780B-08

20082552__

59 | to one party the ultimate responsibility over specific aspects of
60 | the child's welfare or may divide those responsibilities between
61 | the parties based on the best interests of the child. Areas of
62 | responsibility may include primary residence, education, medical
63 | and dental care, and any other responsibilities that the court
64 | finds unique to a particular family.

65 | b. The court shall order "sole parental responsibility,
66 | with or without visitation rights, to the other parent when it is
67 | in the best interests of" the minor child.

68 | 3. Access to records and information pertaining to a minor
69 | child, including, but not limited to, medical, dental, and school
70 | records, may not be denied to a parent because the parent is not
71 | the child's primary residential parent. Full rights under this
72 | subparagraph apply to either parent unless a court order
73 | specifically revokes these rights, including any restrictions on
74 | these rights as provided in a domestic violence injunction. A
75 | parent having rights under this subparagraph has the same rights
76 | upon request as to form, substance, and manner of access as are
77 | available to the other parent of a child, including, without
78 | limitation, the right to in-person communication with medical,
79 | dental, and education providers.

80 | (3) For purposes of shared parental responsibility and
81 | primary residence, the best interests of the child shall include
82 | an evaluation of all factors affecting the welfare and interests
83 | of the child, including, but not limited to:

84 | (1) Evidence of domestic violence or child abuse, including
85 | convictions, arrests, and attempts to obtain injunctions for
86 | protection or other complaints.

30-03780B-08

20082552__

87 (4) For purposes of shared parental responsibility and
88 visitation, the court shall make explicit written findings that,
89 when considering the best interests of the child, the court
90 specifically considered evidence of domestic violence and child
91 abuse as required by paragraph (3)(1).

92 Section 2. This act shall take effect July 1, 2008.