

By the Committee on Children, Families, and Elder Affairs; and  
Senator Deutch

586-05900-08

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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 or sexual  
12 violence and child abuse, abandonment, or neglect;  
13 providing an effective date.

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

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

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

24 (2)

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

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

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

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

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

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

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

85 (1) Evidence of domestic violence, sexual violence, ~~or~~  
86 child abuse, child abandonment, or child neglect, regardless

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87 of whether a prior or pending action regarding those issues has  
88 been brought.

89 (4) For purposes of determining shared parental  
90 responsibility and visitation, if the court accepts evidence of  
91 domestic violence, sexual violence, child abuse, child  
92 abandonment, or child neglect, the court shall specifically  
93 acknowledge in writing that, when considering the best interests  
94 of the child, the court considered evidence of domestic violence,  
95 sexual violence, child abuse, child abandonment, or child neglect  
96 as required by paragraph (3)(1).

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