

**SB 312** by **Detert (CO-INTRODUCERS) Gaetz**; (Similar to CS/H 0235) Restitution for Juvenile Offenses

784468 A S CF, Detert Delete L.85 - 92: 03/24 04:43 PM

**SB 368** by **Abruzzo (CO-INTRODUCERS) Smith**; (Compare to CS/CS/H 0149) Rights of Grandparents and Great-grandparents

**CS/SB 378** by **CJ, Garcia, Gibson (CO-INTRODUCERS) Bullard, Smith, Detert**; (Similar to CS/H 0099) Juvenile Justice

483030 A S L CF, Garcia Delete L.34 - 68: 03/26 08:22 AM

**CS/SB 768** by **HP, Gaetz**; (Similar to CS/H 0309) Patient Observation Status Notification

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CHILDREN, FAMILIES, AND ELDER AFFAIRS**

**Senator Sobel, Chair**  
**Senator Altman, Vice Chair**

**MEETING DATE:** Thursday, March 26, 2015

**TIME:** 9:00 —11:00 a.m.

**PLACE:** 301 Senate Office Building

**MEMBERS:** Senator Sobel, Chair; Senator Altman, Vice Chair; Senators Dean, Detert, Garcia, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 312</b> Detert (Similar CS/H 235)	Restitution for Juvenile Offenses; Requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; authorizing the court to order both parents or guardians liable for the child's restitution regardless of one parent or guardian having sole parental responsibility; specifying that the Department of Children and Families, foster parents, and specified agencies contracted with the department are not guardians for purposes of restitution, etc.	CJ     03/02/2015 Favorable CF     03/26/2015 JU FP
2	<b>SB 368</b> Abruzzo (Compare CS/CS/H 149)	Rights of Grandparents and Great-grandparents; Redefining the term "next of kin" to include great-grandparents; providing great-grandparents the same visitation rights as grandparents; authorizing the grandparent of a minor child to petition a court for visitation under certain circumstances; providing for application of the Uniform Child Custody Jurisdiction and Enforcement Act; authorizing, after petition, a court to terminate a grandparent visitation order upon adoption of a minor child by a stepparent or close relative, etc.	JU     03/10/2015 Favorable CF     03/26/2015 ACJ FP
3	<b>CS/SB 378</b> Criminal Justice / Garcia / Gibson (Similar CS/H 99)	Juvenile Justice; Authorizing a law enforcement officer to issue a warning to a juvenile who admits having committed a misdemeanor or to inform the child's parent or guardian of the child's infraction; allowing a law enforcement officer who does not exercise one of these options to issue a civil citation or require participation in a similar diversion program; requiring a law enforcement officer to provide written documentation in certain circumstances, etc.	CJ     03/02/2015 Temporarily Postponed CJ     03/10/2015 Fav/CS CF     03/26/2015 RC

**COMMITTEE MEETING EXPANDED AGENDA**

Children, Families, and Elder Affairs

Thursday, March 26, 2015, 9:00 —11:00 a.m.

---

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 768</b> Health Policy / Gaetz (Compare H 309, S 820)	Patient Observation Status Notification; Requiring a licensed facility to document observation services in a patient's discharge papers when the facility places the patient on observation status; requiring a licensed facility to notify a patient or patient's proxy of observation status through discharge papers; authorizing a licensed facility to notify a patient or patient's proxy of observation status through other forms of communication, etc.  HP 03/10/2015 Fav/CS CF 03/26/2015 FP	

---

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
	<b>Senate Confirmation Hearing:</b> A public hearing will be held for consideration of the below-named executive appointment to the office indicated.		
	<b>Secretary of Elderly Affairs</b>		
5	Verghese, Samuel P. (Tallahassee)	Pleasure of Governor	

---

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

---

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 312

INTRODUCER: Senators Detert and Gaetz

SUBJECT: Restitution for Juvenile Offenses

DATE: March 19, 2015      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Favorable</b>
2.	Preston	Hendon	CF	<b>Pre-meeting</b>
3.	_____	_____	JU	_____
4.	_____	_____	FP	_____

**I. Summary:**

SB 312 expands the authority of the court to order restitution when a child is found to have committed a delinquent act, regardless of whether the child is adjudicated delinquent or adjudication is withheld.

It requires, rather than authorizes, the child and the child’s parent or guardian, to pay restitution when the court has determined that restitution is appropriate. It also authorizes the court to do the following:

- Set up a payment plan if the child and the parents or guardians are unable to pay the restitution in one lump-sum payment;
- Absolve the parent or guardian of any liability for restitution if after a hearing, the court finds that the current offense is the child’s first referral and the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts, or the victim entitled to restitution is the child’s parent or guardian; and
- Make both of the child’s parents or guardians responsible for restitution, regardless of whether one parent or guardian has sole parental responsibility.

The bill clarifies that the Department of Children and Families (DCF or department), a foster parent with whom the child is placed, or the community-based care lead agency supervising the placement of the child is not considered a guardian responsible for restitution for the delinquent acts of a dependent child.

The bill is anticipated to have an insignificant fiscal impact on state government and has an effective date of July 1, 2015.

**II. Present Situation:**

Section 985.437, F.S., authorizes a court with jurisdiction over a child who has been adjudicated delinquent to order the child to pay restitution to the victim for any damage<sup>1</sup> or loss caused by the child's offense<sup>2</sup> in a reasonable amount or manner.<sup>3</sup> Section 985.35, F.S., authorizes the court to place a child whose adjudication of delinquency is withheld in a probation program.<sup>4</sup> The probation program may include paying restitution in money or in kind.<sup>5</sup> The court determines the amount and manner of restitution that is reasonable.<sup>6</sup>

Before entering an order of restitution, the court must first conduct a restitution hearing addressing the child's ability to pay and the amount of restitution to which the victim is entitled.<sup>7</sup> A restitution hearing is not required if the child previously entered into an agreement to pay<sup>8</sup> or has waived his or her right to attend a restitution hearing.<sup>9</sup> When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or his parents or guardian<sup>10</sup> can reasonably be expected to pay.<sup>11</sup>

Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or by performing community service.<sup>12</sup> However, a parent or guardian may be absolved of any liability for restitution in their child's criminal case if, after a hearing, the court finds that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."<sup>13</sup> This provision is not limited to first offenses by the child.

The clerk of the circuit court receives and dispenses restitution payments and must notify the court if restitution is not made.<sup>14</sup> The Department of Juvenile Justice (DJJ) is responsible for

---

<sup>1</sup> "Any damage" has been interpreted by Florida's courts to include damage for pain and suffering, *C.W. v. State*, 655 So.2d 87 (Fla. 1995).

<sup>2</sup> The damage or loss must be directly or indirectly related to the child's offense or criminal episode, *L.R.L. v. State*, 9 So.3d 714 (Fla. 2d DCA 2009).

<sup>3</sup> If restitution is ordered, it becomes a condition of probation, or if the child is committed to a residential commitment program, part of community-based sanctions upon release from the program, s. 985.437(1), F.S.

<sup>4</sup> Section 985.35(4), F.S.

<sup>5</sup> Section 985.437(2), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008). If a court intends to establish an amount of restitution based solely on evidence adduced at a hearing of a charge of delinquency, the juvenile must be given notice.

<sup>8</sup> *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

<sup>9</sup> *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).

<sup>10</sup> In chapter 985, F.S., the term "legal custody or guardian" means a legal status created by court order or letter of guardianship which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, train, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

<sup>11</sup> Section 985.437(2), F.S.

<sup>12</sup> *Id.* Similar to the process for juveniles, a parent or guardian cannot be ordered to pay restitution arising from offenses committed by their minor child without the court providing the parent with meaningful notice and an opportunity to be heard or without making a determination of the parents' ability to pay. See *S.B.L. v. State*, 737 So.2d 1131 (Fla. 1st DCA 1999) (holding that the trial court violated the mother's due process right by ordering her to pay restitution without affording her meaningful opportunity to be heard at the restitution hearing); *A.T. v. State*, 706 So.2d 109 (Fla. 2d DCA 1998) (trial court erred by ordering the juvenile and her mother to pay restitution without making a determination of either's ability to do so); and *C.D.D. v. State*, 684 So.2d 866, 867 (Fla. 2nd DCA 1996) (holding that the trial court was required to consider the juvenile's and mother's ability to pay before imposing a restitution order).

<sup>13</sup> Section 985.437(4), F.S.

<sup>14</sup> Section 985.437(3), F.S.

monitoring restitution payments by the child, including notifying the court when restitution payments are not being made.<sup>15</sup> The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise.<sup>16</sup> According to the DJJ, many jurisdictions will not terminate the department's supervision until the child's restitution obligation is paid.<sup>17</sup>

If a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the real property of the child or parent.<sup>18</sup> The court may transfer a restitution order to a collection court or a private collection agent to collect unpaid restitution.<sup>19</sup>

Current law does not specifically exempt the DCF, a foster parent, or a community-based care organization supervising a child from paying restitution when the court requires the child's parent or legal guardian to be held accountable for the dependent child's delinquent acts.

### III. Effect of Proposed Changes:

**Section 1** amends s. 985.35, F.S., to specify that an order of restitution made in a delinquency case, including one in which the court withholds adjudication of delinquency, is the responsibility of the child and the child's parent or guardian.

**Section 2** amends s. 985.437, F.S., to expand the responsibility for payment of restitution to the parent or guardian of the child if the court enters an order of restitution in a juvenile case, regardless of whether the court adjudicates the child delinquent or withholds such adjudication. If the court finds it appropriate and orders restitution, the court may set up a payment plan for the child and the parent or guardian if they are unable to pay in one lump-sum payment.

The bill absolves the parent or guardian of liability for restitution if:

- After a hearing, the court finds that it is the child's first referral to the delinquency system and the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; or
- The victim is the child's parent or guardian.

The bill also authorizes the court to make both of the child's parents or guardians liable for restitution, regardless of whether one parent has sole parental responsibility for the child.

Finally, the bill specifies that the DCF, a foster parent with whom the child is placed, or the community-based care lead agency supervising the placement of the child pursuant to a contract with the DCF is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent.

---

<sup>15</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 312* (2015) (on file with the Senate Criminal Justice Committee).

<sup>16</sup> Section 985.437(5), F.S.

<sup>17</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 312* (2015) (on file with the Senate Criminal Justice Committee).

<sup>18</sup> Section 985.0301(5)(d), F.S., provides that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089(5), F.S. That section provides that a restitution order may be enforced in the same manner as a judgment in a civil action.

<sup>19</sup> Section 985.045, F.S., provides that this is also allowed in a case where the circuit court has retained jurisdiction over the child and the child's parent or legal guardian.

**Section 3** amends s. 985.513, F.S., to remove duplicative language relating to the restitution obligations of parents and guardians.

**Section 4** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There exists a greater potential for victims to receive all or a portion of the restitution owed them as a result of changes made by the bill. On the other hand, parents ordered to pay restitution on behalf of their child under the bill will most likely be negatively impacted.<sup>20</sup>

C. Government Sector Impact:

To the extent there are more restitution hearings conducted as a result of the bill, there may also be an additional workload increase on the court system.<sup>21</sup>

**VI. Technical Deficiencies:**

None.

---

<sup>20</sup> Department of Juvenile Justice, *2015 Bill Analysis for SB 312 (2015)* (on file with the Senate Criminal Justice Committee), Department of Children and Families, *2015 Bill Analysis for SB 312 (2015)* (on file with the Senate Committee on Children, Families and Elder Affairs).

<sup>21</sup> Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 312 (2015)* (on file with the Senate Committee on Children, Families and Elder Affairs).

**VII. Related Issues:**

Lines 85-87 provide that the court may order both of the child's parents or guardians responsible for restitution, regardless of whether one parent or guardian has sole parental responsibility. The court currently has the ability to order sole parental responsibility for a child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child. An exception in cases where sole parental responsibility is awarded to one parent with no visitation for the other parent might need to be created in the bill.

It is unclear if "the community-based care lead agency supervising the placement of the child pursuant to a contract with the Department of Children and Families" on lines 90-92 would include residential group home providers under contract with a lead agency that are providing care for a child. Homes licensed or registered under ss. 409.175 and 409.176, F.S., might need to be referenced in the bill.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 985.35, 985.437, and 985.513.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.





784468

LEGISLATIVE ACTION

Senate

.  
. .  
. .  
. .  
. .

House

---

The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 85 - 92

and insert:

(5) The court may only order restitution to be paid by the parents or guardians who have current custody and parental responsibility.

(6) For purposes of this section, the Department of



784468

9 Children and Families, a foster parent with whom the child is  
10 placed, or the community-based care lead agency supervising the  
11 placement of the child pursuant to a contract with the  
12 Department of Children and Families, or a facility registered  
13 under s. 409.176 is not considered a guardian

14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 Delete lines 11 - 15

17 and insert:

18 court to order restitution to be paid only by the  
19 parents or guardians who have current custody and  
20 parental responsibility of the child; specifying that  
21 the Department of Children and families, foster  
22 parents, a facility registered under s. 409.176, F.S.,  
23 and specified agencies

By Senator Detert

28-00300-15

2015312\_\_

A bill to be entitled

An act relating to restitution for juvenile offenses; amending s. 985.35, F.S.; conforming provisions to changes made by the act; amending s. 985.437, F.S.; requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; providing for payment plans in certain circumstances; authorizing the parent or guardian to be absolved of liability for restitution in certain circumstances; authorizing the court to order both parents or guardians liable for the child's restitution regardless of one parent or guardian having sole parental responsibility; specifying that the Department of Children and Families, foster parents, and specified agencies contracted with the department are not guardians for purposes of restitution; amending s. 985.513, F.S.; removing duplicative provisions authorizing the court to require a parent or guardian to be responsible for any restitution ordered against the child; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 985.35, Florida Statutes, is amended to read:

985.35 Adjudicatory hearings; withheld adjudications; orders of adjudication.—

(4) If the court finds that the child named in the petition

Page 1 of 5

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

28-00300-15

2015312\_\_

has committed a delinquent act or violation of law, it may, in its discretion, enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency.

(a) Upon withholding adjudication of delinquency, the court may place the child in a probation program under the supervision of the department or under the supervision of any other person or agency specifically authorized and appointed by the court. The court may, as a condition of the program, impose as a penalty component restitution in money or in kind to be made by the child and the child's parent or guardian as provided in s. 985.437, community service, a curfew, urine monitoring, revocation or suspension of the driver license of the child, or other nonresidential punishment appropriate to the offense, and may impose as a rehabilitative component a requirement of participation in substance abuse treatment, or school or other educational program attendance.

Section 2. Present subsection (5) of section 985.437, Florida Statutes, is renumbered as subsection (7), subsections (1), (2), and (4) are amended, and new subsections (5) and (6) are added to that section, to read:

985.437 Restitution.—

(1) Regardless of whether adjudication is imposed or withheld, the court that has jurisdiction over ~~a~~ an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, order the child and the child's parent or guardian to make restitution in the manner provided in this section. This order shall be part of the child's probation program to be implemented by the department or, in the case of a

Page 2 of 5

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

28-00300-15

2015312\_\_

59 committed child, as part of the community-based sanctions  
60 ordered by the court at the disposition hearing or before the  
61 child's release from commitment.

62 (2) If the court orders restitution, the court shall ~~may~~  
63 order the child and the child's parent or guardian to make  
64 restitution in money, through a promissory note ~~assigned by the~~  
65 ~~child's parent or guardian,~~ or in kind for any damage or loss  
66 caused by the child's offense in a reasonable amount or manner  
67 to be determined by the court. When restitution is ordered by  
68 the court, the amount of restitution may not exceed an amount  
69 the child and the parent or guardian could reasonably be  
70 expected to pay or make. If the child and the child's parent or  
71 guardian are unable to pay the restitution in one lump-sum  
72 payment, the court may set up a payment plan that reflects their  
73 ability to pay the restitution amount.

74 (4) The parent or guardian may be absolved of liability for  
75 restitution under this section if:

76 (a) After a hearing, the court finds that it is the child's  
77 first referral to the delinquency system and ~~A finding by the~~  
78 court, ~~after a hearing,~~ that the parent or guardian has made  
79 diligent and good faith efforts to prevent the child from  
80 engaging in delinquent acts; or

81 (b) The victim entitled to restitution as a result of  
82 damage or loss caused by the child's offense is that child's  
83 absolves the parent or guardian of liability for restitution  
84 under this section.

85 (5) The court may order both parents or guardians liable  
86 for restitution associated with the child's care regardless of  
87 whether one parent or guardian has sole parental responsibility.

28-00300-15

2015312\_\_

88 (6) For purposes of this section, the Department of  
89 Children and Families, a foster parent with whom the child is  
90 placed, or the community-based care lead agency supervising the  
91 placement of the child pursuant to a contract with the  
92 Department of Children and Families is not considered a guardian  
93 responsible for restitution for the delinquent acts of a child  
94 who is found to be dependent as defined in s. 39.01(15).

95 Section 3. Subsection (1) of section 985.513, Florida  
96 Statutes, is amended to read:

97 985.513 Powers of the court over parent or guardian at  
98 disposition.—

99 (1) The court that has jurisdiction over an adjudicated  
100 delinquent child may, by an order stating the facts upon which a  
101 determination of a sanction and rehabilitative program was made  
102 at the disposition hearing,<sup>+</sup>

103 ~~(a)~~ order the child's parent or guardian, together with the  
104 child, to render community service in a public service program  
105 or to participate in a community work project. In addition to  
106 the sanctions imposed on the child, the court may order the  
107 child's parent or guardian to perform community service if the  
108 court finds that the parent or guardian did not make a diligent  
109 and good faith effort to prevent the child from engaging in  
110 delinquent acts.

111 ~~(b) Order the parent or guardian to make restitution in~~  
112 ~~money or in kind for any damage or loss caused by the child's~~  
113 ~~offense. The court may also require the child's parent or legal~~  
114 ~~guardian to be responsible for any restitution ordered against~~  
115 ~~the child, as provided under s. 985.437. The court shall~~  
116 ~~determine a reasonable amount or manner of restitution, and~~

28-00300-15

2015312\_\_

117 ~~payment shall be made to the clerk of the circuit court as~~  
118 ~~provided in s. 985.437.~~ The court may retain jurisdiction, as  
119 provided under s. 985.0301, over the child and the child's  
120 parent or legal guardian whom the court has ordered to pay  
121 restitution until the restitution order is satisfied or the  
122 court orders otherwise.

123 Section 4. This act shall take effect July 1, 2015.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

---

BILL: SB 368

INTRODUCER: Senators Abruzzo and Smith

SUBJECT: Rights of Grandparents and Great-grandparents

DATE: March 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>FP</u>	_____

---

**I. Summary:**

SB 368 provides that a grandparent of a minor child whose parents are deceased, missing, or in a permanent vegetative state may petition for visitation with a grandchild. If only one parent is deceased, missing or in a permanent vegetative state, the other parent must have been convicted of a felony or a violent offense in order for a grandparent to be able to petition for visitation. The court must find the grandparent has made a prima facie showing of parental unfitness or danger of significant harm to the child, and if not, must dismiss the petition.

If the court finds that there is prima facie evidence that a parent is unfit or that there is danger of significant harm to the child, the bill allows the court to appoint a guardian ad litem for the child and requires the court to order the family to mediation.

The bill provides a list of factors for the court to consider in assessing best interest of the child and material harm to the parent-child relationship. The bill places a limit on the number of times a grandparent can file an original action for visitation, absent a real, substantial, and unanticipated change of circumstances.

The bill adds great-grandparents to statutes defining next of kin, and to statutes which require notice of legal proceedings to grandparents.

The bill repeals s.752.01, F.S., relating to grandparent visitation rights, which has been found largely unconstitutional by Florida courts. The bill also repeals s. 752.07, F.S., relating to grandparental rights after adoption of a child by a stepparent.

The bill is not expected to have a significant fiscal impact on state government and has an effective date of July 1, 2015.

## II. Present Situation:

### History of Grandparent Visitation Rights

Under common law, a grandparent who was forbidden by his or her grandchild's parent from visiting the child was normally without legal recourse.<sup>1</sup> Nonparent visitation statutes which did not exist before the late 1960s, now allow grandparents to petition courts for the right to visit their grandchildren. Before the passage of these statutes, grandparents – like all other nonparents – had no right to sue for court-ordered visitation with their grandchildren.<sup>2</sup>

The common law rule against visitation by nonparents sought to preserve parental autonomy, as a value in and of itself, as a means of protecting children and to serve broader social goals:

- Courts historically expressed reluctance to undermine parents' authority by overruling their decisions regarding visitation and by introducing outsiders into the nuclear family.<sup>3</sup> This common law tradition received constitutional protection in the 1920s when the Supreme Court held that a parent's right to direct the upbringing of his or her children was a fundamental liberty interest.<sup>4</sup>
- Under common law, courts presumed that fit parents act in the child's best interests and recognized that conflicts regarding visitation are a source of potential harm to the children involved.<sup>5</sup>
- Common law tradition understood parental authority as the very foundation of social order. Courts generally relied on ties of nature to resolve family disagreements rather than imposing coercive court orders.<sup>6</sup>

In response, states began to enact statutes to permit grandparents and sometimes other nonparents to petition for visitation rights. States passed the first wave of grandparent visitation statutes between 1966 and 1986. By the early 1990s, all states had enacted grandparent visitation laws that expanded grandparents' visitation rights. Today, the statutes generally delineate who may petition the court and under what circumstances and then require the court to determine if visitation is in the child's best interests.<sup>7</sup>

The enactment of grandparent visitation statutes responded primarily to two trends: demographic changes in family composition and an increase in the number of older Americans and the concurrent growth of the senior lobby.<sup>8</sup> Grandparent visitation resonated with the public as well, who responded to sentimental images of grandparents in the popular media and the conclusions

---

<sup>1</sup> Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 FAM. CT. REV. 14, 16 (Jan. 2003). Also see Karin J. McMullen, *The Scarlet "N:" Grandparent Visitation Statutes That Base Standing on Non-Intact Family Status Violate the Equal Protection Clause of the Fourteenth Amendment*, ST. JOHN'S LAW REVIEW, 83 (2009).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

<sup>5</sup> Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 FAM. CT. REV. 14, 16 (Jan. 2003).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Karen J. McMullen, *The Scarlet "N:" Grandparent Visitation Statutes That Base Standing on Non-Intact Family Status Violate the Equal Protection Clause of the Fourteenth Amendment*, ST. JOHN'S LAW REVIEW, 83 (2009).

of social scientists who focused on the importance of intergenerational family ties. During the 1990s, many Americans also focused on drug abuse problems of parents, significant poverty levels, and increasing numbers of out-of-wedlock children. Also during this period, Americans looked less to traditional social institutions, such as churches, and more toward the legal system as a way to solve their family problems.<sup>9</sup>

Policy related to grandparent visitation soon led to constitutional concerns because grandparent visitation statutes implicate the Fourteenth Amendment in two ways:

- The substantive due process rights of parents to direct the upbringing of their children in as much as parents' decisions are challenged, and
- The right to equal protection because many grandparent visitation statutes differentiate among parents based upon family status.<sup>10</sup>

The pertinent clauses in the Fourteenth Amendment state that a state shall not “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”<sup>11</sup> As of 2007, 23 state supreme courts had ruled on the constitutionality of their grandparent visitation statutes, with the majority finding their statutes constitutional; however, courts in several large states, Florida included, have held their grandparent visitation statutes unconstitutional.<sup>12</sup>

### **Grandparent Visitation Rights in Florida**

Until 1978, Florida grandparents did not have any statutory right to visit their grandchild. Currently, provisions relating to grandparents rights to visitation and custody are contained in chs. 752 and 39, F. S. Provisions previously in ch. 61, F.S., have been removed because they were ruled unconstitutional.

### **Chapter 752, Florida Statutes – Grandparent Visitation**

The legislature enacted ch. 752, F.S., titled “Grandparental Visitation Rights,” in 1984, giving grandparents standing to petition the court for visitation in certain situations. At its broadest, s.752.01(1), F.S., required visitation to be granted when the court determined it to be in the best interests of the child and one of the following situations existed:

- One or both of the child’s parents were deceased;
- The parents were divorced;
- One parent had deserted the child;
- The child was born out of wedlock; or
- One or both parents, who were still married, had prohibited the formation of a relationship between the child and the grandparent(s).<sup>13</sup>

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> U.S. CONST. amend. XIV, s. 1.

<sup>12</sup> Comm. on Judiciary, The Florida Senate, Grandparent Visitation Rights, (Interim Report 2009-120) (Oct. 2008). available at [http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim\\_reports/pdf/2009-120ju.pdf](http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-120ju.pdf). (last visited March 23, 2015).

<sup>13</sup> See ch. 93-279, Laws of Fla. (s. 752.01, F.S. (1993)). Subsequent amendments by the Legislature removed some of these criteria. See s. 752.01, F.S. (2008).



Florida courts have considered the constitutionality of s. 752.01, F.S., on numerous occasions and have “consistently held all statutes that have attempted to compel visitation or custody with a grandparent based solely on the best interest of the child standard . . . to be unconstitutional.”<sup>14</sup> The courts’ rulings are premised on the fact that the fundamental right of parenting is a long-standing liberty interest recognized by both the United States and Florida constitutions.<sup>15</sup>

In 1996, the Florida Supreme Court addressed its first major analysis of s. 752.01, F.S., in *Beagle v. Beagle*, 678 So. 2d 1271 (Fla. 1996). In *Beagle*, the Court determined that s. 752.01(e), F.S., which allowed grandparents to seek visitation when the child’s family was intact, was facially unconstitutional. The Court announced the standard of review applicable when deciding whether a state’s intrusion into a citizen’s private life is constitutional:

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least restrictive means.<sup>16</sup>

The Court held that “[b]ased upon the privacy provision in the Florida Constitution, . . . the State may not intrude upon the fundamental right of parents to raise their children except in cases where the child is threatened with harm.”<sup>17</sup>

To date, almost all of the provisions in s. 752.01, F.S., have been found to be unconstitutional,<sup>18</sup> although these provisions are still found in the Florida Statutes because they have not been repealed by the Legislature.

### **Chapter 61, Florida Statutes – Dissolution of Marriage and Parental Responsibility**

The courts have also struck down two grandparent rights provisions in ch. 61, F.S., which governs dissolution of marriage and parental responsibility for minor children. In 2000, the Florida Supreme Court struck down s. 61.13(7), F.S., which granted grandparents custodial rights in custody or dissolution of marriage proceedings.<sup>19</sup> In *Richardson v. Richardson*, 766 So. 2d 1036 (Fla. 2000), the Court recognized that when a custody dispute is between two fit parents, it is proper to use the best interests of the child standard. However, when the dispute is between a

---

<sup>14</sup> *Cranney v. Coronado*, 920 So. 2d 132, 134 (Fla. 2d DCA 2006) (quoting *Sullivan v. Sapp*, 866 So. 2d 28, 37 (Fla. 2004)).

<sup>15</sup> In 1980, Florida’s citizens approved the addition of a privacy provision in the state constitution, which provides greater protection than the federal constitution. Specifically, Florida’s right to privacy provision states: “Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein.” FLA. CONST. art. I, s. 23.

<sup>16</sup> *Beagle*, 678 So. 2d at 1276 (quoting *Winfield v. Division of Pari-Mutuel Wagering*, 477 So. 2d 544, 547 (Fla. 1985)).

<sup>17</sup> *Id.*

<sup>18</sup> See *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998); *Lonon v. Ferrell*, 739 So. 2d 650 (Fla. 2d DCA 1999); *Saul v. Brunetti*, 753 So. 2d 26 (Fla. 2000).

<sup>19</sup> The subsection read that “[i]n any case where the child is actually residing with a grandparent in a stable relationship, whether the court has awarded custody to the grandparent or not, the court may recognize the grandparents as having the same standing as parents for evaluating what custody arrangements are in the best interest of the child.” Section 61.13(7), F.S. (1997).

fit parent and a third party, there must be a showing of detrimental harm to the child in order for custody to be denied to the parent.<sup>20</sup>

In 2004, the Florida Supreme Court struck down the statutory provision that awarded reasonable grandparent visitation in a dissolution proceeding if the court found that the visitation would be in the child's best interest.<sup>21</sup> Based on the rationale of earlier Florida cases, the Court declared the provision "unconstitutional as violative of Florida's right of privacy because it fails to require a showing of harm to the child prior to compelling and forcing the invasion of grandparent visitation into the parental privacy rights."<sup>22</sup>

### **Chapter 39, Florida Statutes – Dependent Children**

When a child has been adjudicated dependent and is removed from the physical custody of his or her parents, the child's grandparents have the right to unsupervised, reasonable visitation, unless visitation is not in the best interests of the child or would interfere with the goals of the case plan.<sup>23</sup> The court may deny grandparent visitation if it is not in the child's best interest or based on the grandparent's prior criminal history.

When the child is returned to the custody of his or her parent, the visitation rights granted to a grandparent must be terminated.<sup>24</sup>

Existing grandparent visitation with a child who has been adjudicated dependent does not automatically terminate if the court enters an order for a termination of parental rights. Grandparent visitation rights will only terminate if the court finds that continued grandparent visitation is not in the best interest of the child or visitation would interfere with DCF goals of permanency planning for the child.<sup>25</sup> Before the court may terminate parental rights, notice must be provided to certain persons, including any grandparent entitled to priority for purposes of adoption.<sup>26</sup>

If the court determines that reunification with a parent and adoption are not in the best interest of the child, the child can be placed with a permanent guardian or with a fit and willing relative. The court must address a number of factors in the order for permanent guardianship or placement with a fit and willing relative, including the frequency and nature of visitation or contact between the child and his or her grandparents.<sup>27</sup>

---

<sup>20</sup> *Richardson*, 766 So. 2d at 1039.

<sup>21</sup> *Sullivan v. Sapp*, 866 So. 2d 28 (Fla. 2004). Specifically, s. 61.13(2)(b)2.c., F.S. (2001), provided: "The court may award the grandparents visitation rights with a minor child if it is in the child's best interest. Grandparents have legal standing to seek judicial enforcement of such an award. This section does not require that grandparents be made parties or given notice of dissolution pleadings or proceedings, nor do grandparents have legal standing as contestants. . ."

<sup>22</sup> *Id.*

<sup>23</sup> Section 39.509, F.S.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Section 39.801(3)(a), F.S. A grandparent has the right to notice by the court if a child has lived with the grandparent for at least 6 out of 24 months immediately preceding the filing of a petition for termination of parental rights pending adoption. Section 63.0425(1), F.S.

<sup>27</sup> Sections 39.6221(2)(d) and 39.6231(3)(d), F.S.

## U.S. Supreme Court – Troxel v. Granville

The U.S. Supreme Court ruled on the issue of grandparent visitation and custody rights in 2000 when the Court struck down a Washington state law as unconstitutional as applied. In *Troxel v. Granville*, 530 U.S. 57 (2000), the Court found the Washington law<sup>28</sup> to be “breathtakingly broad” within the context of a “best interest” determination.<sup>29</sup> The Court noted that no consideration had been given to the decision of the parent, the parent’s fitness to make decisions had not been questioned, and no weight had been given to the fact that the mother had agreed to some visitation.<sup>30</sup> Based on these observations, the Court found the Washington statute unconstitutional as applied because “the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a better decision could be made.”<sup>31</sup>

The grandparent visitation cases decided by state supreme courts after *Troxel* all seem to recognize that the legal landscape has changed. Although the Troxel Court may have endeavored to leave room for the states to resolve questions relating to grandparent visitation on a case-by-case basis, the plurality did provide guidance and clarification, as the state courts all acknowledge:<sup>32</sup>

- When they consider grandparents' visitation petitions, courts must presume a fit parent's decisions regarding visitation to be in his or her child's best interests, and they must accord some weight to these decisions. Likewise, in crafting statutes, legislatures must incorporate this presumption in favor of parents.
- Courts can no longer (at least explicitly) employ the contrary presumption that visitation with their grandparents generally benefits grandchildren. Statutes that presume grandparent visitation to be in a child's best interests violate parents' constitutional rights.
- Although there appears to have been a movement among some state supreme courts to strike down statutes as unconstitutional because they failed to require a showing of harm, other courts disagreed with this view and instead upheld the statutes' constitutionality and the use of the best-interests standard to determine if visitation was appropriate. In *Troxel*, the plurality neither condemned nor endorsed the harm standard, and it found the use of the best-interests standard alone, without some deference to parents, insufficient.<sup>33</sup>

## The Effect of Court Ordered Visitation on Children and Their Families

Requests for visitation by third parties over parental objections raise a multitude of issues. Increasing attention appears to be focused on the effects of those requests for visitation on the children involved. In an analysis of *Troxel v. Granville*, one author stated:

---

<sup>28</sup> The Washington statute provided that “Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.” WA. REV. CODE s. 26.10.160(3).

<sup>29</sup> *Troxel v. Granville*, 530 U.S. at 67.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Kristine L. Roberts, *State Supreme Court Applications of Troxel v. Granville and the Courts’ Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 FAM. CT. REV. 14, 16 (Jan. 2003)

<sup>33</sup> *Id.*

I am not suggesting that relationships must be conflict free in order to be viewed as being emotionally beneficial to those participating in them; however, when the relationships between members of the extended family and members of the nuclear family are so strained and when the ability to resolve those disputes is so impaired that one side or the other feels compelled to seek judicial intervention, the possibility that children will benefit from a court-imposed solution is remote. Where, over parental objection, visitation with a third party has been court ordered, the conflict between the parent and the individual whose bid for visitation the court has honored exacts a toll on the child(ren)....<sup>34</sup>

Another legal scholar has stated that while grandparents can be wonderful resources for children, parents, not courts, should decide with whom their children should spend time and that a court reversal of a parent's decision raises problems:

Allowing courts to overrule parents is not good for children. The best interest of the child standard may sound appealing but, as an untethered guide to deciding where parental autonomy ends and the state's authority begins, it is not, in fact, in the best interest of the child. The main point here is that parental autonomy is not the enemy of the child; it is the best way this society knows to protect the child's best interest.<sup>35</sup>

One commentator recognizes that grandparent visitation is a highly sensitive issue, especially in Florida where the senior citizen population is so large. While there are some bad grandparents, the pervasiveness of the stereotype of loving grandparents makes it hard to envision a situation where a child would not benefit from contact with his or her grandparents. For that reason, many courts have succumbed to sentimentality when deciding whether or not to grant grandparents visitation rights.<sup>36</sup>

A more objective view has been taken by the Florida Supreme Court. Both the Federal and Florida constitutions convey rights of privacy. Among those privacy rights lies the right of parents to raise their child as they see fit. Case law has long addressed this right and, while it may seem unfair or unwise to deny loving grandparents the right to visit their grandchild, based on a long line of federal and state precedent it is clear that the Florida Supreme Court is correct in deciding that, absent some showing of harm to the child, a court cannot override a fit parent's decision. Case law shows that, absent a grandparent proving harm to the child, visitation is rarely granted.<sup>37</sup>

A statute which demands such a showing of harm, while technically correct because it adheres to judicial rulings, will do little to help grandparents attain visitation with their grandchildren. The

---

<sup>34</sup> David A. Martindale, *Troxel v. Granville: A Nonjusticiable Dispute*, 41 FAM. CT. REV. 88 (Jan. 2003)

<sup>35</sup> Katharine T. Bartlett, *Grandparent Visitation: Best Interests Test is Not in Child's Best Interest*, WEST VIRGINIA LAW REVIEW. 102:723 (2000).

<sup>36</sup> Maegen E. Peek, *Grandparent Visitation Statutes: Do Legislatures Know The Way To Carry The Sleigh Through The Wide And Drifting Law?* FLORIDA LAW REVIEW (Apr. 2001)

<sup>34</sup> Id.

<sup>37</sup> Id.

better solution would be to shift the focus away from judicial intrusions upon families and instead help families resolve their disputes themselves through mediation and counseling.<sup>38</sup>

### **Harm to a Child**

As a result of court rulings that Florida's grandparent visitation statutes were unconstitutional because the state may not intrude upon the fundamental right of parents to raise their children except in cases where the child is threatened with harm", legislation filed for consideration during past legislative sessions seeking to grant grandparent visitation has required a showing of harm when a grandparent petitions the court for visitation.

Chapter 39, F.S., relating to proceedings relating to dependent children defines the term "abuse" as:

any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions...<sup>39</sup>

Chapter 39, F.S. provides that "harm"

to a child's health or welfare can occur when any person inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to...<sup>40</sup>

Chapter 39, F.S., also provides that:

Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter... shall report such knowledge or suspicion... immediately to the department's central abuse hotline... Personnel at the department's central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions shall be accepted for the protective investigation...<sup>41</sup>

---

<sup>38</sup> *Id.*

<sup>39</sup> Section 39.01(2), F.S.

<sup>40</sup> Section 39.01(32), F.S.

<sup>41</sup> Section 39.201(1) and (2), F.S.

### III. Effect of Proposed Changes:

The bill makes numerous changes to laws relating to contact between grandparents and grandchildren.

**Section 1** amends s. 39.01, F.S., to add “great-grandparents” to the definition of the term “next of kin”.

**Section 2** amends s. 39.509, F.S., relating to grandparents’ rights, to provide great grandparents with the same rights as grandparents when visiting a grandchild who has been adjudicated dependent and removed from the physical custody of his or her parents.

**Section 3** amends s. 39.801, F.S., relating to notice and service of process, to add great-grandparents to the list of persons to be notified when a termination of parental rights petition has been filed.

**Section 4** amends s. 63.0425, F.S., relating to grandparent’s right to notice, to add great-grandparents to the persons who must be notified when a termination of parental rights petition is filed.

**Section 5** repeals s. 752, 01, F.S, relating to action by grandparent for right of visitation.

**Section 6** creates s. 752.011, F.S., relating to a petition for grandparent visitation of a minor child, to specify limited circumstances under which a grandparent or may petition for visitation with a child. The newly created section authorizes grandparents to file a petition for visitation with a child if:

- The parents are deceased, missing, or in a permanent vegetative state; or
- At least one parent is deceased, missing, or in a permanent vegetative state and the other parent has been convicted of a felony or a violent offense.

If a petition for grandparent visitation is filed, the court will hold a preliminary hearing to determine whether a prima facie showing of parental unfitness or danger of significant harm to the minor child exists. If the petitioner establishes a prima facie case, the court will order the case to family mediation and may appoint a guardian ad litem.

At the final hearing, the court will determine by clear and convincing evidence whether the parent is unfit or a danger of significant harm to the child exists, visitation is in the best interest of the minor child, and visitation will not materially harm the parent-child relationship.

In determining the best interest of the child, the court will consider factors such as:

- The love, affection, and other emotional ties between the child and the grandparent;
- The length and quality of the previous relationship between the child and the grandparent;
- Whether the grandparent established ongoing personal contact with the child before the death of the parent;
- The reasons that the parent ended contact or visitation with the grandparent;
- Whether there has been demonstrable significant mental or emotional harm to the child and whether the support and stability of the grandparent has benefitted the child;

- Mental, physical, and emotional health of both the minor child and the grandparent;
- The recommendation of a guardian ad litem; and
- The preference of the minor child if he or she is sufficiently mature.

In assessing material harm to the parent and child relationship, the court must look at the totality of the circumstances.

The Uniform Child Custody Jurisdiction and Enforcement Act, which governs the resolution of child custody between states, applies to determination of grandparent visitation. The bill encourages consolidation of court determination of grandparent visitation and child custody, parenting, and time-sharing actions to minimize the burden of litigation on the parties.

The grandparent may file a petition once every 2 years, except on good cause that the minor child is suffering or may suffer harm caused by a parent's denial of grandparent visitation.

**Section 7** repeals s. 752.07, F.S., relating to the effect of the adoption of a child by stepparent on right of visitation and when that right may be terminated.

**Section 8** creates s. 752.071, F.S., relating to the effect of adoption by a stepparent or close relative, to authorize the stepparent to petition the court to terminate grandparent visitation, unless the grandparent can show that the criteria authorizing visitation with a child who remains in parental custody still applies.

**Section 9** amends s. 39.6221, F.S., relating to permanent guardianship of a dependent child, to add the level of contact between the child and the great-grandparent as a factor to be used by the court in determining a suitable permanent guardianship.

**Section 10** amends s. 39.6231, F.S., relating to placement with a fit and willing relative, to add the level of contact between the child and the great-grandparent as a factor to be used by the court in determining placement with a fit and willing relative.

**Section 11** amends s. 63.087, F.S., relating to proceedings to terminate parental rights pending adoption, to add great-grandparents to the list of persons to receive notice of a pending adoption.

**Section 12** amends s. 63.172, F.S., relating to the effect of judgment of adoption, to preserve existing visitation with a great-grandparent if one or both parents of a child die without parental rights being terminated and a spouse of the living parent or a close relative of the child adopts the child.

**Section 13** amends s. 752.015, F.S., relating to mediation, to replace rules promulgated by the Supreme Court with the Florida Family Law Rules of Procedure.

**Section 14** provides an effective date of July 1, 2015.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill does not affect cities or counties.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Various provisions of ch. 752, F.S., have been challenged as unconstitutional a number of times since becoming law in 1984. In 1996, the Florida Supreme Court reviewed the issue of whether it is proper for the government to impose grandparent visitation on an intact family, absent evidence of demonstrated harm to the child.<sup>42</sup> In applying Article I, s. 23 of the Florida Constitution, the court found that parents have a fundamental right to be free from governmental interference. Further, the court found that the state failed to show a compelling interest.<sup>43</sup> For these reasons, the court ruled that part of the law unconstitutional.

In 1998, the Florida Supreme Court again struck down part of the grandparent visitation law.<sup>44</sup> The court noted that the United States Supreme Court had recognized an implicit right of person privacy in the liberty interest protected by the Due Process Clause of the Fourteenth Amendment. Along with the implicit right of privacy, the State Constitution provides the explicit right of privacy to citizens under Article I, s. 23.<sup>45</sup> Here the Court found that the law suffered the same infirmity, namely the part of the law that mandated grandparent visitation under a best interest of the child standard, without a showing of proof of demonstrable harm to the child.<sup>46</sup>

Again, in 2004, the Florida Supreme Court reviewed a statute which authorized a court to award grandparent visitation rights to a child if it is in the child's best interest. The statutory provision challenged was not in ch. 752, F.S., but in ch. 61, F.S., dealing with custody time-sharing, and paternity (s. 61.13(2)(b)2.c., F.S.)<sup>47</sup> Here, the child's mother filed a motion for rehearing in a paternity action and subsequently died in a car accident.

---

<sup>42</sup> *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996).

<sup>43</sup> *Id.* at 1276.

<sup>44</sup> *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998).

<sup>45</sup> *Id.* at 513-514.

<sup>46</sup> *Id.* at 514.

<sup>47</sup> *Sullivan v. Sapp*, 866 So.2d 28, 38 (Fla. 2004). Section 61.13(2)(b)2.c., F.S. (2003), provided, "The court may award the grandparents visitation rights with a minor child if it is in the child's best interest. Grandparents have legal standing to seek judicial enforcement of such an award."



The case was before the court on a motion to intervene filed by the grandmother.<sup>48</sup> Although the court resolved the case on the issue of the motion to intervene, the court reiterated the unconstitutionality of any provision of law which would impose grandparent visitation absent a showing of harm to the child.<sup>49</sup>

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

### C. Government Sector Impact:

The Department of Children and Families (DCF) identifies a potential fiscal impact from this bill. The impact relates to:

- Possible increased costs for Community-based Care lead agencies, subcontracted agencies, dependency case managers, and foster parents, associated with transporting or supervising great-grandparent visitation; and
- Possible increased costs for private adoption attorneys and Children's Legal Services due to adding great-grandparents to the list of relatives entitled to service of process on a notice of a petition to terminate parental rights.

Personal service of process costs about \$35 (in state); up to \$180 (out-of-state), and \$28 or higher (internationally).<sup>50</sup>

The Office of the State Courts Administrator (OSCA) indicates that the impact on judicial workload is difficult to determine as the number of petitions to be filed as a result of the bill is unknown.<sup>51</sup>

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

From an operational perspective, it's difficult to see how some provisions of the bill will work:

- On lines 178-181, it is unclear how a court will declare parents who are deceased, missing or in a persistent vegetative state unfit;

<sup>48</sup> *Id.* at 30-31.

<sup>49</sup> *Id.* at 38-39.

<sup>50</sup> Department of Children and Families, 2015 Agency Legislative Bill analysis for SB 368 (January 9, 2015); on file with the Senate Committee on Children, Families and Elder Affairs.

<sup>51</sup> Office of the State Courts Administrator, 2015 *Judicial Impact Statement* (March 10, 2015); on file with the Senate Judiciary Committee.

- On line 181, the source of the danger of significant harm is not identified;
- On lines 182-184, it is unclear how a court will award attorney fees and costs to parents who are deceased, missing or in a persistent vegetative state;
- On lines 188-189, it is unclear how a court would order parents who are deceased, missing, or in a persistent vegetative state to family mediation;
- In general, if the parents are deceased, missing, or in a persistent vegetative state, who will be in court to respond to the allegations being made by the grandparent;
- Lines 210-211 reference only the period of time before the death of the parent, not the period of time before the parent disappeared or lapsed into a persistent vegetative state. The same comment applies to lines 233-236 as it only references a deceased parent;
- Lines 240-270 require the court to examine the effect of grandparent visitation with a child on the parent-child relationship. A number of factors the court is to consider assume a parent-child relationship exists. For example:
  - Lines 247-248 – whether visitation would materially interfere with or compromise parental authority.
  - Lines 249-250 – whether visitation can be arranged in a manner that does not materially detract from the parent-child relationship.
  - If the parents are deceased, missing, or in a persistent vegetative state, there is no parent-child relationship.
- Lines 283-289 provide that a grandparent can only file a petition for visitation once during any 2 year period unless there has been a change in circumstances related to a parental decision to deny visitation. This appears unlikely to happen unless the missing parent returns or the parent in a persistent vegetative state recovers.
- The bill is silent on the fact that if a court finds that there is prima facie evidence that the minor child is suffering or is threatened with suffering demonstrable significant mental or emotional harm a result of not being allowed to visit a grandparent, the judge will be required to call the child abuse hotline under the provisions of ch. 39, F.S. This may result in the department commencing a child protective investigation pursuant to s. 39.301, F.S.

### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.509, 39.801, 63.0425, 39.6221, 39.6231, 63.087, 63.172, and 752.015.

This bill creates the following sections of the Florida Statutes: 752.011 and 752.071.

This bill repeals the following sections of the Florida Statutes: 752.01 and 752.07.

### **IX. Additional Information:**

#### **A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

#### **B. Amendments:**

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---

By Senator Abruzzo

25-00324-15

2015368\_\_

1 A bill to be entitled  
 2 An act relating to the rights of grandparents and  
 3 great-grandparents; amending s. 39.01, F.S.;  
 4 redefining the term "next of kin" to include great-  
 5 grandparents; amending s. 39.509, F.S.; providing  
 6 great-grandparents the same visitation rights as  
 7 grandparents; amending ss. 39.801 and 63.0425, F.S.;  
 8 requiring notice to a great-grandparent under certain  
 9 circumstances; repealing s. 752.01, F.S., relating to  
 10 actions by a grandparent for visitation rights;  
 11 creating s. 752.011, F.S.; authorizing the grandparent  
 12 of a minor child to petition a court for visitation  
 13 under certain circumstances; requiring a preliminary  
 14 hearing; providing for the payment of attorney fees  
 15 and costs by a petitioner who fails to make a prima  
 16 facie showing of harm; authorizing grandparent  
 17 visitation after a final hearing if the court makes  
 18 specified findings; providing factors for court  
 19 consideration; providing for application of the  
 20 Uniform Child Custody Jurisdiction and Enforcement  
 21 Act; encouraging the consolidation of certain  
 22 concurrent actions; providing for modification of an  
 23 order awarding grandparent visitation; limiting the  
 24 frequency of actions seeking visitation; limiting  
 25 application to a minor child placed for adoption;  
 26 providing for venue; repealing s. 752.07, F.S.,  
 27 relating to the effect of adoption of a child by a  
 28 stepparent on grandparent visitation rights; creating  
 29 s. 752.071, F.S.; authorizing, after petition, a court

Page 1 of 15

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

25-00324-15

2015368\_\_

30 to terminate a grandparent visitation order upon  
 31 adoption of a minor child by a stepparent or close  
 32 relative; amending ss. 39.6221, 39.6231, 63.087,  
 33 63.172, and 752.015, F.S.; conforming provisions and  
 34 cross-references to changes made by the act; providing  
 35 an effective date.  
 36

37 Be It Enacted by the Legislature of the State of Florida:  
 38

39 Section 1. Subsection (45) of section 39.01, Florida  
 40 Statutes, is amended to read:

41 39.01 Definitions.—When used in this chapter, unless the  
 42 context otherwise requires:

43 (45) "Next of kin" means an adult relative of a child who  
 44 is the child's brother, sister, grandparent, great-grandparent,  
 45 aunt, uncle, or first cousin.

46 Section 2. Section 39.509, Florida Statutes, is amended to  
 47 read:

48 39.509 Visitation rights of grandparents and great-  
 49 grandparents ~~Grandparents rights.~~—Notwithstanding any other  
 50 ~~provision of~~ law, a maternal or paternal grandparent or great-  
 51 grandparent, as well as a step-grandparent or step-great-  
 52 grandparent, ~~stepgrandparent~~ is entitled to reasonable  
 53 visitation with his or her grandchild or great-grandchild who  
 54 has been adjudicated a dependent child and taken from the  
 55 physical custody of the parent unless the court finds that such  
 56 visitation is not in the best interest of the child or that such  
 57 visitation would interfere with the goals of the case plan.  
 58 Reasonable visitation may be unsupervised and, where appropriate

Page 2 of 15

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

25-00324-15

2015368\_\_

59 and feasible, may be frequent and continuing. ~~An Any~~ order for  
60 visitation or other contact must conform to ~~the provisions of~~ s.  
61 39.0139.

62 (1) Grandparent or great-grandparent visitation may take  
63 place in the home of the grandparent or great-grandparent unless  
64 there is a compelling reason for denying such a visitation. The  
65 department's caseworker shall arrange the visitation to which a  
66 grandparent or great-grandparent is entitled pursuant to this  
67 section. The state ~~may shall~~ not charge a fee for any costs  
68 associated with arranging the visitation. However, the  
69 grandparent or great-grandparent shall pay for the child's cost  
70 of transportation ~~if when~~ the visitation is to take place in the  
71 grandparent's or great-grandparent's home. The caseworker shall  
72 document the reasons for any decision to restrict a  
73 grandparent's or great-grandparent's visitation.

74 (2) A grandparent or great-grandparent entitled to  
75 visitation pursuant to this section ~~may shall~~ not be restricted  
76 from appropriate displays of affection to the child, such as  
77 appropriately hugging or kissing his or her grandchild or great-  
78 grandchild. Gifts, cards, and letters from the grandparent or  
79 great-grandparent and other family members ~~may shall~~ not be  
80 denied to a child who has been adjudicated a dependent child.

81 (3) ~~An Any~~ attempt by a grandparent or great-grandparent to  
82 facilitate a meeting between the child who has been adjudicated  
83 a dependent child and the child's parent or legal custodian, or  
84 any other person in violation of a court order shall  
85 automatically terminate future visitation rights of the  
86 grandparent or great-grandparent.

87 (4) When the child has been returned to the physical

Page 3 of 15

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

25-00324-15

2015368\_\_

88 custody of his or her parent, the visitation rights granted  
89 pursuant to this section ~~shall~~ terminate.

90 (5) The termination of parental rights does not affect the  
91 rights of grandparents or great-grandparents unless the court  
92 finds that such visitation is not in the best interest of the  
93 child or that such visitation would interfere with the goals of  
94 permanency planning for the child.

95 (6) In determining whether grandparental or great-  
96 grandparental visitation is not in the child's best interest,  
97 ~~the court consideration~~ may consider ~~be given to~~ the following:

98 (a) The finding of guilt, regardless of adjudication, or  
99 entry or plea of guilty or nolo contendere to charges under the  
100 following statutes, or similar statutes of other jurisdictions:

101 1. Section ~~s-~~ 787.04, relating to removing a minor child  
102 minors from the state or concealing a minor child ~~minors~~  
103 contrary to court order;

104 2. Section ~~s-~~ 794.011, relating to sexual battery;

105 3. Section ~~s-~~ 798.02, relating to lewd and lascivious  
106 behavior;

107 4. Chapter 800, relating to lewdness and indecent exposure;

108 5. Section ~~s-~~ 826.04, relating to incest; or

109 6. Chapter 827, relating to the abuse of children.

110 (b) The designation by a court as a sexual predator as  
111 defined in s. 775.21 or a substantially similar designation  
112 under laws of another jurisdiction.

113 (c) A report of abuse, abandonment, or neglect under ss.  
114 415.101-415.113 or this chapter and the outcome of the  
115 investigation concerning such report.

116 Section 3. Paragraph (a) of subsection (3) of section

Page 4 of 15

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

25-00324-15

2015368\_\_

117 39.801, Florida Statutes, is amended to read:

118 39.801 Procedures and jurisdiction; notice; service of  
119 process.—

120 (3) Before the court may terminate parental rights, in  
121 addition to the other requirements set forth in this part, the  
122 following requirements must be met:

123 (a) Notice of the date, time, and place of the advisory  
124 hearing for the petition to terminate parental rights and a copy  
125 of the petition must be personally served upon the following  
126 persons, specifically notifying them that a petition has been  
127 filed:

128 1. The parents of the child.

129 2. The legal custodians of the child.

130 3. If the parents who would be entitled to notice are dead  
131 or unknown, a living relative of the child, unless upon diligent  
132 search and inquiry no such relative can be found.

133 4. Any person who has physical custody of the child.

134 5. Any grandparent or great-grandparent entitled to  
135 priority for adoption under s. 63.0425.

136 6. Any prospective parent who has been identified under s.  
137 39.503 or s. 39.803.

138 7. The guardian ad litem for the child or the  
139 representative of the guardian ad litem program, if the program  
140 has been appointed.

141

142 The document containing the notice to respond or appear must  
143 contain, in type at least as large as the type in the balance of  
144 the document, the following or substantially similar language:

145

25-00324-15

2015368\_\_

146 ~~FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING~~

147 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF  
148 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND  
149 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE  
150 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS  
151 NOTICE.”

152 Section 4. Section 63.0425, Florida Statutes, is amended to  
153 read:

154 63.0425 Grandparent’s or great-grandparent’s right to  
155 notice.—

156 (1) If a child has lived with a grandparent or great-  
157 grandparent for at least 6 months within the 24-month period  
158 immediately preceding the filing of a petition for termination  
159 of parental rights pending adoption, the adoption entity shall  
160 provide notice to that grandparent or great-grandparent of the  
161 hearing on the petition.

162 (2) This section does not apply if the placement for  
163 adoption is the result of the death of the child’s parent and a  
164 different preference is stated in the parent’s will.

165 (3) This section does not apply in stepparent adoptions.

166 (4) This section does not contravene the provisions of s.  
167 63.142(4).

168 Section 5. Section 752.01, Florida Statutes, is repealed.

169 Section 6. Section 752.011, Florida Statutes, is created to  
170 read:

171 752.011 Petition for grandparent visitation of a minor  
172 child.—A grandparent of a minor child whose parents are  
173 deceased, missing, or in a permanent vegetative state, or whose  
174 one parent is deceased, missing, or in a permanent vegetative

25-00324-15

2015368\_\_

175 state and whose other parent has been convicted of a felony or  
 176 an offense of violence, may petition the court for court-ordered  
 177 visitation with the grandchild under this section.

178 (1) Upon the filing of a petition by a grandparent for  
 179 visitation, the court shall hold a preliminary hearing to  
 180 determine whether the petitioner has made a prima facie showing  
 181 of parental unfitness or danger of significant harm to the minor  
 182 child. Absent such a showing, the court shall dismiss the  
 183 petition and shall award reasonable attorney fees and costs to  
 184 be paid by the petitioner to the respondent.

185 (2) If the court finds that there is prima facie evidence  
 186 that a parent is unfit or that there is a danger of significant  
 187 harm to the minor child, the court shall proceed toward a final  
 188 hearing, may appoint a guardian ad litem, and shall order the  
 189 matter to family mediation as provided in s. 752.015.

190 (3) After conducting a final hearing on the issue of  
 191 visitation, the court may award reasonable visitation to the  
 192 grandparent with respect to the minor child if the court finds  
 193 by clear and convincing evidence that a parent is unfit or that  
 194 there is a danger of significant harm to the minor child, that  
 195 visitation is in the best interest of the minor child, and that  
 196 the visitation will not materially harm the parent-child  
 197 relationship.

198 (4) In assessing the best interest of the minor child under  
 199 subsection (3), the court shall consider the totality of the  
 200 circumstances affecting the mental and emotional well-being of  
 201 the minor child, including:

202 (a) The love, affection, and other emotional ties existing  
 203 between the minor child and the grandparent, including those

Page 7 of 15

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

25-00324-15

2015368\_\_

204 resulting from the relationship that had been previously allowed  
 205 by the child's parent.

206 (b) The length and quality of the previous relationship  
 207 between the minor child and the grandparent, including the  
 208 extent to which the grandparent was involved in providing  
 209 regular care and support for the child.

210 (c) Whether the grandparent established ongoing personal  
 211 contact with the minor child before the death of the parent.

212 (d) The reasons that the surviving parent cited in ending  
 213 contact or visitation between the minor child and the  
 214 grandparent.

215 (e) Whether there has been demonstrable significant mental  
 216 or emotional harm to the minor child as a result of the  
 217 disruption in the family unit from which the child derived  
 218 support and stability from the grandparent, and whether the  
 219 continuation of that support and stability is likely to prevent  
 220 further harm.

221 (f) The existence or threat to the minor child of mental  
 222 injury as defined in s. 39.01.

223 (g) The present mental, physical, and emotional health of  
 224 the minor child.

225 (h) The present mental, physical, and emotional health of  
 226 the grandparent.

227 (i) The recommendations of the minor child's guardian ad  
 228 litem, if one is appointed.

229 (j) The results of any psychological evaluation of the  
 230 minor child.

231 (k) The preference of the minor child if he or she is  
 232 determined to be of sufficient maturity to express a preference.

Page 8 of 15

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

25-00324-15

2015368\_\_

233 (l) A written testamentary statement by the deceased parent  
 234 regarding visitation with the grandparent. The absence of a  
 235 testamentary statement is not deemed to provide evidence that  
 236 the deceased parent would have objected to the requested  
 237 visitation.

238 (m) Other factors that the court considers necessary in  
 239 making its determination.

240 (5) In assessing material harm to the parent-child  
 241 relationship under subsection (3), the court shall consider the  
 242 totality of the circumstances affecting the parent-child  
 243 relationship, including:

244 (a) Whether there have been previous disputes between the  
 245 grandparent and the parent over childrearing or other matters  
 246 related to the care and upbringing of the minor child.

247 (b) Whether visitation would materially interfere with or  
 248 compromise parental authority.

249 (c) Whether visitation can be arranged in a manner that  
 250 does not materially detract from the parent-child relationship,  
 251 including the quantity of time available for enjoyment of the  
 252 parent-child relationship and any other consideration related to  
 253 disruption of the schedule and routines of the parent and the  
 254 minor child.

255 (d) Whether visitation is being sought for the primary  
 256 purpose of continuing or establishing a relationship with the  
 257 minor child with the intent that the child benefit from the  
 258 relationship.

259 (e) Whether the requested visitation would expose the minor  
 260 child to conduct, moral standards, experiences, or other factors  
 261 that are inconsistent with influences provided by the parent.

25-00324-15

2015368\_\_

262 (f) The nature of the relationship between the child's  
 263 parent and the grandparent.

264 (g) The reasons that the parent cited in ending contact or  
 265 visitation between the minor child and the grandparent which was  
 266 previously allowed by the parent.

267 (h) The psychological toll of visitation disputes on the  
 268 minor child.

269 (i) Other factors that the court considers necessary in  
 270 making its determination.

271 (6) Part II of chapter 61, the Uniform Child Custody  
 272 Jurisdiction and Enforcement Act, applies to actions brought  
 273 under this section.

274 (7) If separate actions under this section and s. 61.13 are  
 275 pending concurrently, the courts are strongly encouraged to  
 276 consolidate the actions in order to minimize the burden of  
 277 litigation on the minor child and the other parties.

278 (8) An order for grandparent visitation may be modified  
 279 upon a showing by the person petitioning for modification that a  
 280 substantial change in circumstances has occurred and that  
 281 modification of visitation is in the best interest of the minor  
 282 child.

283 (9) An original action requesting visitation under this  
 284 section may be filed by a grandparent only once during any 2-  
 285 year period, except on good cause shown that the minor child is  
 286 suffering, or may suffer, demonstrable significant mental or  
 287 emotional harm caused by a parental decision to deny visitation  
 288 between a minor child and the grandparent, which was not known  
 289 to the grandparent at the time of filing an earlier action.

290 (10) This section does not provide for grandparent



25-00324-15

2015368\_\_

291 visitation with a minor child placed for adoption under chapter  
 292 63 except as provided in s. 752.071 with respect to adoption by  
 293 a stepparent or close relative.

294 (11) Venue shall be in the county where the minor child  
 295 primarily resides, unless venue is otherwise governed by chapter  
 296 39, chapter 61, or chapter 63.

297 Section 7. Section 752.07, Florida Statutes, is repealed.

298 Section 8. Section 752.071, Florida Statutes, is created to  
 299 read:

300 752.071 Effect of adoption by stepparent or close  
 301 relative.-After the adoption of a minor child by a stepparent or  
 302 close relative, the stepparent or close relative may petition  
 303 the court to terminate a court order granting grandparent  
 304 visitation under this chapter which was entered before the  
 305 adoption. The court may terminate the order unless the  
 306 grandparent is able to show that the criteria of s. 752.011  
 307 authorizing the visitation continue to be satisfied.

308 Section 9. Subsection (2) of section 39.6221, Florida  
 309 Statutes, is amended to read:

310 39.6221 Permanent guardianship of a dependent child.-

311 (2) In its written order establishing a permanent  
 312 guardianship, the court shall do all of the following:

313 (a) List the circumstances that make or reasons why the  
 314 child's parents unfit are not fit to care for the child and make  
 315 why reunification impossible, referencing is not possible by  
 316 referring to specific findings of fact made in its order  
 317 adjudicating the child dependent or by making separate findings  
 318 of fact.†

319 (b) State the reasons why establishment of a permanent

25-00324-15

2015368\_\_

320 guardianship is being ordered ~~established~~ instead of adoption.†

321 (c) Specify the frequency and nature of visitation or  
 322 contact between the child and his or her parents.†

323 (d) Specify the frequency and nature of visitation or  
 324 contact between the child and his or her grandparents or great-  
 325 grandparents, under s. 39.509.†

326 (e) Specify the frequency and nature of visitation or  
 327 contact between the child and his or her siblings.† ~~and~~

328 (f) Require that the permanent guardian not return the  
 329 child to the physical care and custody of the person from whom  
 330 the child was removed without the approval of the court.

331 Section 10. Subsection (3) of section 39.6231, Florida  
 332 Statutes, is amended to read:

333 39.6231 Permanent placement with a fit and willing  
 334 relative.-

335 (3) In its written order placing the child with a fit and  
 336 willing relative, the court shall do all of the following:

337 (a) List the circumstances that make or reasons why  
 338 reunification impossible, referencing is not possible by  
 339 ~~referring to~~ specific findings of fact made in its order  
 340 adjudicating the child dependent or ~~by~~ making separate findings  
 341 of fact.†

342 (b) State the reasons why permanent placement with a fit  
 343 and willing relative is being ordered ~~established~~ instead of  
 344 adoption.†

345 (c) Specify the frequency and nature of visitation or  
 346 contact between the child and his or her parents.†

347 (d) Specify the frequency and nature of visitation or  
 348 contact between the child and his or her grandparents or great-

25-00324-15

2015368\_\_

349 ~~grandparents~~ under s. 39.509.

350 (e) Specify the frequency and nature of visitation or  
351 contact between the child and his or her siblings.

352 (f) Require that the relative not return the child to the  
353 physical care and custody of the person from whom the child was  
354 removed without the approval of the court.

355 Section 11. Paragraph (e) of subsection (4) of section  
356 63.087, Florida Statutes, is amended to read:

357 63.087 Proceeding to terminate parental rights pending  
358 adoption; general provisions.—

359 (4) PETITION.—

360 (e) The petition must include:

361 1. The minor's name, gender, date of birth, and place of  
362 birth. The petition must contain all names by which the minor is  
363 or has been known, excluding the minor's prospective adoptive  
364 name but including the minor's legal name at the time of the  
365 filing of the petition. In the case of an infant child whose  
366 adoptive name appears on the original birth certificate, the  
367 adoptive name ~~may shall~~ not be included in the petition ~~or, nor~~  
368 ~~shall it be included~~ elsewhere in the termination of parental  
369 rights proceeding.

370 2. All information required by the Uniform Child Custody  
371 Jurisdiction and Enforcement Act and the Indian Child Welfare  
372 Act.

373 3. A statement of the grounds under s. 63.089 upon which  
374 the petition is based.

375 4. The name, address, and telephone number of any adoption  
376 entity seeking to place the minor for adoption.

377 5. The name, address, and telephone number of the division

25-00324-15

2015368\_\_

378 of the circuit court in which the petition is to be filed.

379 6. A certification of compliance with the requirements of  
380 s. 63.0425 regarding notice to grandparents or great-  
381 grandparents of an impending adoption.

382 Section 12. Subsection (2) of section 63.172, Florida  
383 Statutes, is amended to read:

384 63.172 Effect of judgment of adoption.—

385 (2) If one or both parents of a child die without the  
386 relationship of parent and child having been previously  
387 terminated and a spouse of the living parent or a close relative  
388 of the child thereafter adopts the child, the child's right of  
389 inheritance from or through the deceased parent is unaffected by  
390 the adoption and, unless the court orders otherwise, the  
391 adoption does will not terminate any grandparental or great-  
392 grandparental rights delineated under chapter 752. For purposes  
393 of this subsection, a close relative of a child is the child's  
394 brother, sister, grandparent, great-grandparent, aunt, or uncle.

395 Section 13. Section 752.015, Florida Statutes, is amended  
396 to read:

397 752.015 Mediation of visitation disputes.—It is shall be  
398 the public policy of this state that families resolve  
399 differences over grandparent visitation within the family. It is  
400 ~~shall be~~ the further public policy of this state that, when  
401 families are unable to resolve differences relating to  
402 grandparent visitation, ~~that~~ the family participate in any  
403 formal or informal mediation services that may be available. If  
404 ~~When~~ families are unable to resolve differences relating to  
405 grandparent visitation and a petition is filed pursuant to s.  
406 752.011 s. 752.04, the court shall, if such services are

25-00324-15

2015368\_\_

407 available in the circuit, refer the case to family mediation in  
408 accordance with the Florida Family Law Rules of Procedure ~~rules~~  
409 ~~promulgated by the Supreme Court.~~

410 Section 14. This act shall take effect July 1, 2015.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

---

BILL: CS/SB 378

INTRODUCER: Criminal Justice Committee and Senators Garcia and others

SUBJECT: Juvenile Justice

DATE: March 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.	Crosier	Hendon	CF	Pre-meeting
3.			RC	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 378 expands juvenile civil citation by allowing law enforcement to issue a civil citation to youth who have committed a second or subsequent misdemeanor. Civil citation is presently only available to youth who admit to committing a first-time misdemeanor.

In addition, law enforcement will be authorized to issue a simple warning to the youth, inform the youth's parents of the misdemeanor, issue a civil citation or require participation in a similar diversion program under the bill. The bill also states that if an arrest is made, law enforcement must provide written documentation as to why the arrest is warranted.

The bill is not expected to have a fiscal impact on the state and is effective October 1, 2015.

**II. Present Situation:**

Section 985.12, F.S., establishes a civil citation process that provides an efficient and innovative alternative to the Department of Juvenile Justice's (DJJ of department) custody for youth who commit nonserious delinquent acts.<sup>1</sup> The department is required to encourage and assist in the implementation and improvement of civil citation programs or other similar diversion programs

---

<sup>1</sup> Section 985.12(1), F.S.

around the state.<sup>2</sup> It must also develop guidelines for civil citation which include intervention services based upon proven civil citation or similar diversion programs within the state.<sup>3</sup>

These programs are to be established at the local level in concurrence with the chief judge, state attorney, public defender, and head of each local law enforcement agency. The statute provides that a law enforcement officer may issue a civil citation to a youth who admits to committing a misdemeanor without taking the youth into custody. Only first-time misdemeanants are eligible.<sup>4</sup> A law enforcement officer currently has the discretion to give a warning to the youth, inform the parents, issue a civil citation, or arrest a youth.

The law enforcement officer must send a copy of the citation to the department, sheriff, state attorney, DJJ's intake office or the community service performance monitor, parent or guardian of the youth, and the victim.<sup>5</sup> The issuance of a civil citation is not considered a referral to the department.<sup>6</sup>

A civil citation program or similar diversion program may be operated by law enforcement, the department, a juvenile assessment center, a county or municipality, or an entity selected by the county or municipality. Operations must be in consultation and agreement with the state attorney and local law enforcement agencies.<sup>7</sup>

Youth issued a civil citation may be assigned up to 50 hours of community service and must participate in intervention services as indicated by a needs assessment. Intervention services include family counseling, urinalysis monitoring, substance abuse and mental health treatment services.<sup>8</sup> At the time a civil citation is issued, the law enforcement officer must advise the youth that he or she has the option of refusing the civil citation and of being referred to DJJ. The youth may refuse the civil citation at any time before completion of the work assignment.<sup>9</sup>

The youth is required to report to a community service performance monitor within seven working days after the civil citation has been issued. The youth must also complete at least five community service hours per week. The monitor reports information to DJJ regarding the youth's service hour completion and the expected completion date.<sup>10</sup> If the youth fails to timely report or complete a work assignment, fails to timely comply with assigned intervention services, or if the youth commits a subsequent misdemeanor, the law enforcement officer must issue a report to DJJ alleging that the youth has committed a delinquent act, thereby initiating formal judicial processing.<sup>11</sup>

According to the department, there are currently 59 counties that have implemented civil citation programs. In contrast, Bradford, Polk, Taylor, Calhoun, Gulf, Hardee, Sarasota, and Washington

---

<sup>2</sup> *Id.*

<sup>3</sup> Section 985.12(2), F.S.

<sup>4</sup> Section 985.12(1)

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Section 985.12(6), F.S.

<sup>10</sup> Section 985.12(4), F.S.

<sup>11</sup> Section 985.12(5), F.S.

counties have not yet implemented one. However, these counties have similar diversion programs available.<sup>12</sup>

Additionally, the department states that in calendar years 2013 and 2014, there were 16,149 civil citations issued (7,634 in 2013 and 8,515 in 2014). In fiscal year 2013-14, there were 34,485 arrests of youth for misdemeanors. Of those arrests, 21,349 youth were eligible for civil citation and of those, 8,059 or 38 percent received one. The DJJ also found that the recidivism rate for youth completing civil citation during fiscal year 2012-13 was 5 percent. To calculate this rate, the department monitored the youth for 12 months to determine if there was a subsequent adjudication, adjudication withheld, or an adult conviction.<sup>13</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 985.12, F.S., to allow law enforcement that makes contact with a juvenile who admits to having committed a misdemeanor the discretion to issue a simple warning, inform the child's guardian or parents of the child's infraction, issue a civil citation or require participation in a similar diversion program. Based on the assessed needs of the juvenile, the diversion program may assess up to 50 community service hours and require participation in intervention services, such as family counseling, urinalysis monitoring, and substance abuse and mental health treatment services. This section also allows use of the juvenile civil citation by allowing law enforcement to issue a civil citation to youth who have committed a second or subsequent misdemeanor. The bill also states that if an arrest is made, law enforcement must provide written documentation as to why the arrest is warranted.

**Section 2** reenacts s. 943.051, F.S., for the purpose of incorporating the amendment to s. 985.12, F.S.

**Section 3** reenacts s. 985.11, F.S., for the purpose of incorporating the amendment to s. 985.12, F.S.

The effective date of the bill is October 1, 2015.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

---

<sup>12</sup> Electronic mail from Meredith Stanfield, DJJ Legislative Director, dated February 25, 2015 (on file with the Senate Criminal Justice Committee).

<sup>13</sup> *Id.*

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Expanding civil citation could result in more youth having future opportunities for employment since these youth will not have the hurdle of an arrest record.

**C. Government Sector Impact:**

To the extent that youth are diverted from the more costly juvenile justice system, the greater the potential cost savings are to the state.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 985.12 of the Florida Statutes.

The bill reenacts sections 943.051 and 985.11 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:** (Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 10, 2015:**

- Makes issuing a civil citation discretionary.
- Deletes the provision allowing law enforcement to arrest a first-time juvenile misdemeanor under exceptional circumstances.
- Provides that if an arrest is made, law enforcement must give written documentation as to why the arrest is warranted.

**B. Amendments:**

None.



483030

LEGISLATIVE ACTION

Senate

.  
. .  
. .  
. .  
. .

House

---

The Committee on Children, Families, and Elder Affairs (Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 34 - 68

and insert:

around the state. Each county in Florida shall create a civil citation program or similar diversion program. The civil citation or similar diversion program shall be established at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency involved. The program may be





11 operated by an entity such as a law enforcement agency, the  
12 department, a juvenile assessment center, the county or  
13 municipality, or another ~~some other~~ entity selected by the  
14 county or municipality. An entity operating the civil citation  
15 or similar diversion program must do so in consultation and  
16 agreement with the state attorney and local law enforcement  
17 agencies. Under such a juvenile civil citation or similar  
18 diversion program, a any law enforcement officer, upon making  
19 contact with a juvenile who admits having committed a  
20 misdemeanor, may choose to issue a simple warning or inform the  
21 child's guardian or parent of the child's infraction, or may  
22 issue a civil citation or require participation in a similar  
23 diversion program, and assess up to ~~not more than~~ 50 community  
24 service hours, and require participation in intervention  
25 services as indicated by an assessment of the needs of the  
26 juvenile, including family counseling, urinalysis monitoring,  
27 and substance abuse and mental health treatment services. A copy  
28 of each citation issued under this section shall be provided to  
29 the department, and the department shall enter appropriate  
30 information into the juvenile offender information system. Use  
31 of the civil citation or similar diversion program is not  
32 limited to first-time misdemeanors and may be used in a second  
33 or subsequent misdemeanor. A local law enforcement officer may  
34 make an arrest for a first-time misdemeanor with the concurrence  
35 of his or her supervisor if the arresting officer provides  
36 written documentation as to why an arrest was warranted rather  
37 than a civil citation. ~~Only first-time misdemeanor offenders are~~  
38 eligible for the civil citation or similar diversion program. At  
39 the conclusion of a juvenile's civil citation program or similar



483030

40 diversion program, the agency operating the program shall report  
41 the outcome to the department. The issuance of a civil citation  
42 is not considered a referral to the department.

43 (a) A local civil citation program, or similar diversion  
44 program, must divert at least 80 percent of all juveniles who  
45 commit first-time misdemeanors, excluding the following  
46 offenses:

47 1. A misdemeanor involving the possession or use of a  
48 firearm.

49 2. A misdemeanor involving exposure of sexual organs or  
50 other related sexual behavior, including, but not limited to,  
51 prostitution or lewd and lascivious behavior.

52 3. A misdemeanor that is directly related to, or a part of,  
53 gang activity.

54 (b) If a local program fails to divert 80 percent of first-  
55 time misdemeanor offenders into a civil citation or similar  
56 diversion program, local authorities shall notify the  
57 department, who shall issue recommendations to the local  
58 authorities on how to increase the percentage of civil citations  
59 or diversions for juveniles.

60 (c) The department shall submit a report annually to the  
61 President of the Senate and the Speaker of the House of  
62 Representatives detailing local programs which are below the 80  
63 percent threshold.

64 ===== T I T L E A M E N D M E N T =====

65 And the title is amended as follows:

66 Delete lines 3 - 14

67 and insert:

68 985.12, F.S.; requiring each county in the state to



483030

69 create a civil citation or similar diversion program;  
70 authorizing a law enforcement officer to issue a  
71 warning to a juvenile who admits having committed a  
72 misdemeanor or to inform the child's parent or  
73 guardian of the child's infraction; allowing a law  
74 enforcement officer who does not exercise one of these  
75 options to issue a civil citation or require  
76 participation in a similar diversion program;  
77 providing that repeat misdemeanor offenders may  
78 participate in the civil citation program or a similar  
79 diversion program under certain circumstances;  
80 authorizing a local law enforcement officer to make an  
81 arrest under certain conditions and circumstances;  
82 requiring that a certain percentage of juveniles be  
83 diverted into a civil citation program; providing  
84 exceptions; requiring the Department of Juvenile  
85 Justice to submit an annual report to the Legislature;  
86 reenacting ss.

By the Committee on Criminal Justice; and Senators Garcia, Gibson, Bullard, Smith, and Detert

591-02107-15

2015378c1

1 A bill to be entitled  
 2 An act relating to juvenile justice; amending s.  
 3 985.12, F.S.; authorizing a law enforcement officer to  
 4 issue a warning to a juvenile who admits having  
 5 committed a misdemeanor or to inform the child's  
 6 parent or guardian of the child's infraction; allowing  
 7 a law enforcement officer who does not exercise one of  
 8 these options to issue a civil citation or require  
 9 participation in a similar diversion program;  
 10 requiring a law enforcement officer to provide written  
 11 documentation in certain circumstances; providing that  
 12 repeat misdemeanor offenders may participate in the  
 13 civil citation program or a similar diversion program  
 14 under certain circumstances; reenacting ss.  
 15 943.051(3)(b) and 985.11(1)(b), F.S., relating to the  
 16 issuance of a civil citation, and the issuance of a  
 17 civil citation or similar diversion program,  
 18 respectively, to incorporate the amendments made to s.  
 19 985.12, F.S., in references thereto; providing an  
 20 effective date.  
 21  
 22 Be It Enacted by the Legislature of the State of Florida:  
 23  
 24 Section 1. Subsection (1) of section 985.12, Florida  
 25 Statutes, is amended to read:  
 26 985.12 Civil citation.—  
 27 (1) There is established a juvenile civil citation process  
 28 for the purpose of providing an efficient and innovative  
 29 alternative to custody by the Department of Juvenile Justice for

Page 1 of 6

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-02107-15

2015378c1

30 children who commit nonserious delinquent acts and to ensure  
 31 swift and appropriate consequences. The department shall  
 32 encourage and assist in the implementation and improvement of  
 33 civil citation programs or other similar diversion programs  
 34 around the state. The civil citation or similar diversion  
 35 program shall be established at the local level with the  
 36 concurrence of the chief judge of the circuit, state attorney,  
 37 public defender, and the head of each local law enforcement  
 38 agency involved. The program may be operated by an entity such  
 39 as a law enforcement agency, the department, a juvenile  
 40 assessment center, the county or municipality, or ~~another some~~  
 41 ~~other~~ entity selected by the county or municipality. An entity  
 42 operating the civil citation or similar diversion program must  
 43 do so in consultation and agreement with the state attorney and  
 44 local law enforcement agencies. Under such a juvenile civil  
 45 citation or similar diversion program, a ~~any~~ law enforcement  
 46 officer, upon making contact with a juvenile who admits having  
 47 committed a misdemeanor, may choose to issue a simple warning or  
 48 inform the child's guardian or parent of the child's infraction,  
 49 or may issue a civil citation or require participation in a  
 50 similar diversion program, and assess up to not more than 50  
 51 community service hours, and require participation in  
 52 intervention services as indicated by an assessment of the needs  
 53 of the juvenile, including family counseling, urinalysis  
 54 monitoring, and substance abuse and mental health treatment  
 55 services. A copy of each citation issued under this section  
 56 shall be provided to the department, and the department shall  
 57 enter appropriate information into the juvenile offender  
 58 information system. Use of the civil citation or similar

Page 2 of 6

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-02107-15

2015378c1

59 diversion program is not limited to first-time misdemeanors and  
 60 may be used in a second or subsequent misdemeanor. If an arrest  
 61 is made, a law enforcement officer must provide written  
 62 documentation as to why an arrest was warranted. Only first-time  
 63 misdemeanor offenders are eligible for the civil citation or  
 64 similar diversion program. At the conclusion of a juvenile's  
 65 civil citation program or similar diversion program, the agency  
 66 operating the program shall report the outcome to the  
 67 department. The issuance of a civil citation is not considered a  
 68 referral to the department.

69 Section 2. For the purpose of incorporating the amendment  
 70 made by this act to section 985.12, Florida Statutes, in a  
 71 reference thereto, paragraph (b) of subsection (3) of section  
 72 943.051, Florida Statutes, is reenacted to read:

73 943.051 Criminal justice information; collection and  
 74 storage; fingerprinting.—

75 (3)

76 (b) A minor who is charged with or found to have committed  
 77 the following offenses shall be fingerprinted and the  
 78 fingerprints shall be submitted electronically to the  
 79 department, unless the minor is issued a civil citation pursuant  
 80 to s. 985.12:

- 81 1. Assault, as defined in s. 784.011.
- 82 2. Battery, as defined in s. 784.03.
- 83 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 84 4. Unlawful use of destructive devices or bombs, as defined  
 85 in s. 790.1615(1).
- 86 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 87 6. Assault or battery on a law enforcement officer, a

Page 3 of 6

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

591-02107-15

2015378c1

88 firefighter, or other specified officers, as defined in s.  
 89 784.07(2) (a) and (b).  
 90 7. Open carrying of a weapon, as defined in s. 790.053.  
 91 8. Exposure of sexual organs, as defined in s. 800.03.  
 92 9. Unlawful possession of a firearm, as defined in s.  
 93 790.22(5).  
 94 10. Petit theft, as defined in s. 812.014(3).  
 95 11. Cruelty to animals, as defined in s. 828.12(1).  
 96 12. Arson, as defined in s. 806.031(1).  
 97 13. Unlawful possession or discharge of a weapon or firearm  
 98 at a school-sponsored event or on school property, as provided  
 99 in s. 790.115.

100 Section 3. For the purpose of incorporating the amendment  
 101 made by this act to section 985.12, Florida Statutes, in a  
 102 reference thereto, paragraph (b) of subsection (1) of section  
 103 985.11, Florida Statutes, is reenacted to read:

104 985.11 Fingerprinting and photographing.—

105 (1)

106 (b) Unless the child is issued a civil citation or is  
 107 participating in a similar diversion program pursuant to s.  
 108 985.12, a child who is charged with or found to have committed  
 109 one of the following offenses shall be fingerprinted, and the  
 110 fingerprints shall be submitted to the Department of Law  
 111 Enforcement as provided in s. 943.051(3)(b):

- 112 1. Assault, as defined in s. 784.011.
- 113 2. Battery, as defined in s. 784.03.
- 114 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 115 4. Unlawful use of destructive devices or bombs, as defined  
 116 in s. 790.1615(1).

Page 4 of 6

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

591-02107-15 2015378c1

117 5. Neglect of a child, as defined in s. 827.03(1)(e).  
 118 6. Assault on a law enforcement officer, a firefighter, or  
 119 other specified officers, as defined in s. 784.07(2)(a).  
 120 7. Open carrying of a weapon, as defined in s. 790.053.  
 121 8. Exposure of sexual organs, as defined in s. 800.03.  
 122 9. Unlawful possession of a firearm, as defined in s.  
 123 790.22(5).  
 124 10. Petit theft, as defined in s. 812.014.  
 125 11. Cruelty to animals, as defined in s. 828.12(1).  
 126 12. Arson, resulting in bodily harm to a firefighter, as  
 127 defined in s. 806.031(1).  
 128 13. Unlawful possession or discharge of a weapon or firearm  
 129 at a school-sponsored event or on school property as defined in  
 130 s. 790.115.  
 131  
 132 A law enforcement agency may fingerprint and photograph a child  
 133 taken into custody upon probable cause that such child has  
 134 committed any other violation of law, as the agency deems  
 135 appropriate. Such fingerprint records and photographs shall be  
 136 retained by the law enforcement agency in a separate file, and  
 137 these records and all copies thereof must be marked "Juvenile  
 138 Confidential." These records are not available for public  
 139 disclosure and inspection under s. 119.07(1) except as provided  
 140 in ss. 943.053 and 985.04(2), but shall be available to other  
 141 law enforcement agencies, criminal justice agencies, state  
 142 attorneys, the courts, the child, the parents or legal  
 143 custodians of the child, their attorneys, and any other person  
 144 authorized by the court to have access to such records. In  
 145 addition, such records may be submitted to the Department of Law

Page 5 of 6

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-02107-15 2015378c1

146 Enforcement for inclusion in the state criminal history records  
 147 and used by criminal justice agencies for criminal justice  
 148 purposes. These records may, in the discretion of the court, be  
 149 open to inspection by anyone upon a showing of cause. The  
 150 fingerprint and photograph records shall be produced in the  
 151 court whenever directed by the court. Any photograph taken  
 152 pursuant to this section may be shown by a law enforcement  
 153 officer to any victim or witness of a crime for the purpose of  
 154 identifying the person who committed such crime.  
 155 Section 4. This act shall take effect October 1, 2015.

Page 6 of 6

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

---

**BILL:** CS/SB 768

**INTRODUCER:** Health Policy Committee and Senator Gaetz

**SUBJECT:** Patient Observation Status Notification

**DATE:** March 23, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	<b>Fav/CS</b>
2.	Hendon	Hendon	CF	<b>Pre-meeting</b>
3.			FP	

**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 768 requires a hospital to document the placement of a patient on observation status in that patient's discharge papers. The bill requires that the patient or his or her proxy be notified of the observation status through the discharge papers and allows the facility to also notify the patient through brochures, signage, or other forms of communication. Such notification is important as an elderly person who is not admitted is unlikely to have any subsequent stay in a nursing home paid under Medicare.

The bill is not expected to have a fiscal impact on the state and has an effective date of July 1, 2015.

**II. Present Situation:**

**Observation Status**

Observation services are services provided in a hospital in order to help the treating physician decide whether the patient needs to be admitted to the hospital or if the patient can be discharged.

These services can occur in the hospital's emergency department or in another area of the hospital.<sup>1</sup>

The physician or other practitioner responsible for a patient's care at the hospital is also responsible for deciding whether the patient should be admitted as an inpatient. Although generally a physician should order a patient admitted who is expected to spend 24 hours or more in the hospital, such a decision is a complex medical judgment which the physician should only make after considering a number of factors including:

- The severity of signs and symptoms exhibited by the patient;
- The medical probability of something adverse happening to the patient;
- The need for diagnostic studies to assist in the admitting decision; and
- The availability of diagnostic procedures at the time when the patient presents.<sup>2</sup>

Observation services are considered outpatient services even if the patient spends one or more nights in the hospital. Outpatient services are covered under Medicare Part B, rather than Part A, so some patients with Medicare can see increased out of pocket costs for observation services versus being admitted to the hospital.<sup>3</sup> For example, hospital inpatient services are covered under Medicare Part A which requires the patient to pay a one-time deductible (\$1,260) for all hospital services for the first 60 days of his or her stay. However, hospital outpatient services, including observation services, are covered under Medicare Part B and the patient must pay the Part B deductible (\$147) as well as 20 percent of the Medicare-approved amount for doctor services.<sup>4</sup> Also, a patient may be responsible for the costs of a skilled nursing facility stay once discharged from the hospital and any prescription drug costs which typically are not covered under Medicare Part B.<sup>5</sup>

According to a study published in 2014, between 2001 and 2009, the rate of hospitals' use of observation services for Medicare patients has approximately doubled. In addition, the number of Medicare patients who were placed on observation status and then released without being admitted to the hospital has increased by 131 percent over the same time period.<sup>6</sup> The federal Centers for Medicare and Medicaid Services (CMS) also noted an increase in the percentage of hospital patients receiving observation services for longer than 48 hours from approximately 3 percent in 2006 to approximately 8 percent in 2011.<sup>7</sup> This trend concerns CMS since "beneficiaries who are treated for extended periods of time as hospital outpatients receiving

---

<sup>1</sup> U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Product No. 11435, *Are You a Hospital Inpatient or Outpatient? If You Have Medicare – Ask!* (May 2014) <https://www.medicare.gov/Pubs/pdf/11435.pdf> (Last visited Feb. 23, 2015).

<sup>2</sup> Medicare Benefit Policy Manual, Chapter 1 at 10, available at <http://cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c01.pdf> (last visited March 6, 2015).

<sup>3</sup> AARP Public Policy Institute, *Rapid Growth in Medicare Hospital Observation Services: What's Going On?*, p. 1 (September 2013) [http://www.aarp.org/content/dam/aarp/research/public\\_policy\\_institute/health/2013/rapid-growth-in-medicare-hospital-observation-services-AARP-ppi-health.pdf](http://www.aarp.org/content/dam/aarp/research/public_policy_institute/health/2013/rapid-growth-in-medicare-hospital-observation-services-AARP-ppi-health.pdf) (Last visited Feb. 23, 2015.)

<sup>4</sup> See supra note, at 1, and Medicaid.gov., *Medicare 2015 costs at a glance* <http://www.medicare.gov/your-medicare-costs/costs-at-a-glance/costs-at-a-glance.html> (Last visited Feb. 23, 2015).

<sup>5</sup> Note: Some Medicare beneficiaries purchase separate Medicare Part D coverage for prescription drugs.

<sup>6</sup> Supra note 3, at 6.

<sup>7</sup> Fed. Reg., Vol. 78, No. 160, pp. 50495-50907 (August 19, 2013) <http://www.gpo.gov/fdsys/pkg/FR-2013-08-19/pdf/2013-18956.pdf> (last visited Feb. 25, 2015).



observation services may incur greater financial liability...[from] Medicare Part B copayments, the cost of self-administered drugs that are not covered under Part B, and the cost of post hospital skilled nursing facility care.”<sup>8</sup>

Part of the cause of the upward trend in longer periods on observation status may be due to hospitals’ wariness of the denial of their Medicare Part A inpatient claims due to a Medicare review contractor determining that the inpatient admission was not reasonable and necessary. To combat this, CMS, enacted the 48 hour benchmark which is guidance that states that “the decision to admit a beneficiary should be made within 24 to 48 hours of observation care [and that] only in rare and exceptional cases do reasonable and necessary outpatient observation services in the hospital span more than 48 hours.”<sup>9</sup> In addition, starting April 1, 2015,<sup>10</sup> Medicare’s review contractors are required to presume as reasonable and necessary admissions for patients that are expected to require more than one Medicare utilization day (defined as spanning two midnights).<sup>11</sup>

Once a person is discharged from a hospital, they often need additional time to rehabilitate in a nursing home prior to returning home. When a person is admitted and has a three night stay in a hospital and needs rehabilitative care, Medicare will pay for up to 60 days in a skilled nursing home.<sup>12</sup> If a person is not admitted to the hospital and subsequently goes into a nursing home, Medicare will not pay for the nursing home stay.

### III. Effect of Proposed Changes:

**Section 1** amends s. 395.301, F.S., to require a hospital<sup>13</sup> to document the placement of a patient on observation status in that patient’s discharge papers. The bill requires that the patient or his or her proxy be notified of the observation status through the discharge papers and allows the facility to also notify the patient through brochures, signage, or other forms of communication. A greater awareness among patients and their families will allow better planning for paying for the cost of any subsequent rehabilitative care in a nursing home.

**Section 2** provides an effective date of July 1, 2015.

---

<sup>8</sup> Id. Note: For skilled nursing facility care to be covered under Medicare Part A the patient must have a prior 3-day stay in the hospital as an inpatient.

<sup>9</sup> Id.

<sup>10</sup> See Amanda Cassidy, *The Two-Midnight Rule*, Health Affairs, Health Policy Briefs (January 22, 2015) available at [http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief\\_id=133](http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief_id=133), (last visited Feb. 25, 2015).

<sup>11</sup> Supra note 10, at 50908

<sup>12</sup> See official Medicare website, <http://www.medicare.gov/coverage/skilled-nursing-facility-care.html>, (last visited March 23, 2015).

<sup>13</sup> The bill refers to any licensed facility which also includes ambulatory surgical centers and mobile surgical facilities. However, patients are not permitted to stay overnight in either of those facility types and, therefore, it is unlikely the provisions in this bill would affect such facilities.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

CS/SB 768 may provide a positive fiscal impact for some patients who are placed on observation status in a hospital if such placement would require that they pay high out of pocket costs for outpatient services not covered by their insurance and if through receiving the notification the patient can avoid such costs.

The bill may cause a negative fiscal impact for facilities that fail to document observation status in a patient's discharge papers since failing to do so would constitute a licensure violation for that facility.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 395.301 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Health Policy on March 10, 2015:**

The CS removes the requirement that a hospital, ambulatory surgical center, or mobile surgical facility provide written and oral notification immediately to a patient when that patient is placed on observation status, as well as the details required to be in such a notification. The CS adds a requirement that a hospital, ambulatory surgical center, or mobile surgical facility document observation services in a patient's discharge papers and that the patient, or his or her proxy, must be notified of the observation services through such documentation. The CS also allows the facility to notify the patient through brochures, signage, or other forms of communication.

- B. **Amendments:**

None.

By the Committee on Health Policy; and Senator Gaetz

588-02133-15

2015768c1

1 A bill to be entitled  
 2 An act relating to patient observation status  
 3 notification; amending s. 395.301, F.S.; requiring a  
 4 licensed facility to document observation services in  
 5 a patient's discharge papers when the facility places  
 6 the patient on observation status; requiring a  
 7 licensed facility to notify a patient or patient's  
 8 proxy of observation status through discharge papers;  
 9 authorizing a licensed facility to notify a patient or  
 10 patient's proxy of observation status through other  
 11 forms of communication; providing an effective date.  
 12  
 13 Be It Enacted by the Legislature of the State of Florida:  
 14  
 15 Section 1. Section 395.301, Florida Statutes, is amended,  
 16 to read:  
 17 395.301 Itemized patient bill; form and content prescribed  
 18 by the agency; patient observation status notification.—  
 19 (1) A licensed facility not operated by the state shall  
 20 notify each patient during admission and at discharge of his or  
 21 her right to receive an itemized bill upon request. Within 7  
 22 days following the patient's discharge or release from a  
 23 licensed facility not operated by the state, the licensed  
 24 facility providing the service shall, upon request, submit to  
 25 the patient, or to the patient's survivor or legal guardian as  
 26 may be appropriate, an itemized statement detailing in language  
 27 comprehensible to an ordinary layperson the specific nature of  
 28 charges or expenses incurred by the patient, which in the  
 29 initial billing shall contain a statement of specific services

Page 1 of 5

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

588-02133-15

2015768c1

30 received and expenses incurred for such items of service,  
 31 enumerating in detail the constituent components of the services  
 32 received within each department of the licensed facility and  
 33 including unit price data on rates charged by the licensed  
 34 facility, as prescribed by the agency.  
 35 (2) (a) Each such statement submitted pursuant to this  
 36 section:  
 37 1. May not include charges of hospital-based physicians if  
 38 billed separately.  
 39 2. May not include any generalized category of expenses  
 40 such as "other" or "miscellaneous" or similar categories.  
 41 3. Shall list drugs by brand or generic name and not refer  
 42 to drug code numbers when referring to drugs of any sort.  
 43 4. Shall specifically identify therapy treatment as to the  
 44 date, type, and length of treatment when therapy treatment is a  
 45 part of the statement.  
 46 (b) Any person receiving a statement pursuant to this  
 47 section shall be fully and accurately informed as to each charge  
 48 and service provided by the institution preparing the statement.  
 49 (3) On each itemized statement submitted pursuant to  
 50 subsection (1) there shall appear the words "A FOR-PROFIT (or  
 51 NOT-FOR-PROFIT or PUBLIC) HOSPITAL (or AMBULATORY SURGICAL  
 52 CENTER) LICENSED BY THE STATE OF FLORIDA" or substantially  
 53 similar words sufficient to identify clearly and plainly the  
 54 ownership status of the licensed facility. Each itemized  
 55 statement must prominently display the phone number of the  
 56 medical facility's patient liaison who is responsible for  
 57 expediting the resolution of any billing dispute between the  
 58 patient, or his or her representative, and the billing

Page 2 of 5

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

588-02133-15

2015768c1

59 department.

60 (4) An itemized bill shall be provided once to the  
61 patient's physician at the physician's request, at no charge.

62 (5) In any billing for services subsequent to the initial  
63 billing for such services, the patient, or the patient's  
64 survivor or legal guardian, may elect, at his or her option, to  
65 receive a copy of the detailed statement of specific services  
66 received and expenses incurred for each such item of service as  
67 provided in subsection (1).

68 (6) No physician, dentist, podiatric physician, or licensed  
69 facility may add to the price charged by any third party except  
70 for a service or handling charge representing a cost actually  
71 incurred as an item of expense; however, the physician, dentist,  
72 podiatric physician, or licensed facility is entitled to fair  
73 compensation for all professional services rendered. The amount  
74 of the service or handling charge, if any, shall be set forth  
75 clearly in the bill to the patient.

76 (7) Each licensed facility not operated by the state shall  
77 provide, prior to provision of any nonemergency medical  
78 services, a written good faith estimate of reasonably  
79 anticipated charges for the facility to treat the patient's  
80 condition upon written request of a prospective patient. The  
81 estimate shall be provided to the prospective patient within 7  
82 business days after the receipt of the request. The estimate may  
83 be the average charges for that diagnosis related group or the  
84 average charges for that procedure. Upon request, the facility  
85 shall notify the patient of any revision to the good faith  
86 estimate. Such estimate shall not preclude the actual charges  
87 from exceeding the estimate. The facility shall place a notice

588-02133-15

2015768c1

88 in the reception area that such information is available.

89 Failure to provide the estimate within the provisions  
90 established pursuant to this section shall result in a fine of  
91 \$500 for each instance of the facility's failure to provide the  
92 requested information.

93 (8) Each licensed facility that is not operated by the  
94 state shall provide any uninsured person seeking planned  
95 nonemergency elective admission a written good faith estimate of  
96 reasonably anticipated charges for the facility to treat such  
97 person. The estimate must be provided to the uninsured person  
98 within 7 business days after the person notifies the facility  
99 and the facility confirms that the person is uninsured. The  
100 estimate may be the average charges for that diagnosis-related  
101 group or the average charges for that procedure. Upon request,  
102 the facility shall notify the person of any revision to the good  
103 faith estimate. Such estimate does not preclude the actual  
104 charges from exceeding the estimate. The facility shall also  
105 provide to the uninsured person a copy of any facility discount  
106 and charity care discount policies for which the uninsured  
107 person may be eligible. The facility shall place a notice in the  
108 reception area where such information is available. Failure to  
109 provide the estimate as required by this subsection shall result  
110 in a fine of \$500 for each instance of the facility's failure to  
111 provide the requested information.

112 (9) If a licensed facility places a patient on observation  
113 rather than inpatient status, observation services shall be  
114 documented in the patient's discharge papers. The patient or  
115 patient's proxy shall be notified of observation services  
116 through discharge papers and also may be notified through

588-02133-15

2015768c1

117 brochures, signage, or other forms of communication for this  
118 purpose.

119 ~~(10)(9)~~ A licensed facility shall make available to a  
120 patient all records necessary for verification of the accuracy  
121 of the patient's bill within 30 business days after the request  
122 for such records. The verification information must be made  
123 available in the facility's offices. Such records shall be  
124 available to the patient prior to and after payment of the bill  
125 or claim. The facility may not charge the patient for making  
126 such verification records available; however, the facility may  
127 charge its usual fee for providing copies of records as  
128 specified in s. 395.3025.

129 ~~(11)(10)~~ Each facility shall establish a method for  
130 reviewing and responding to questions from patients concerning  
131 the patient's itemized bill. Such response shall be provided  
132 within 30 days after the date a question is received. If the  
133 patient is not satisfied with the response, the facility must  
134 provide the patient with the address of the agency to which the  
135 issue may be sent for review.

136 ~~(12)(11)~~ Each licensed facility shall make available on its  
137 Internet website a link to the performance outcome and financial  
138 data that is published by the Agency for Health Care  
139 Administration pursuant to s. 408.05(3)(k). The facility shall  
140 place a notice in the reception area that the information is  
141 available electronically and the facility's Internet website  
142 address.

143 Section 2. This act shall take effect July 1, 2015.

The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Samuel P. Verghese  
Secretary of Elderly Affairs

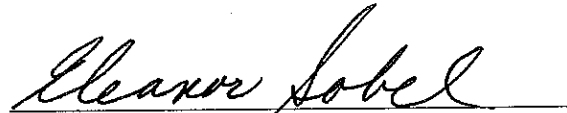
**NOTICE OF HEARING**

TO: Mr. Samuel P. Verghese

YOU ARE HEREBY NOTIFIED that the Committee on Children, Families, and Elder Affairs of the Florida Senate will conduct a hearing on your executive appointment on Thursday, March 26, 2015, in 301 Senate Office Building, commencing at 9:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 23rd day of March, 2015

Committee on Children, Families, and Elder  
Affairs



Senator Eleanor Sobel  
As Chair and by authority of the committee

cc: Members, Committee on Children, Families, and Elder Affairs  
Office of the Sergeant at Arms

Amended

A black and white copy of this document is not official

640

STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections

I, Ken Detzner, Secretary of State,  
do hereby certify that

*Samuel P. Verghese*

is duly appointed

**Secretary,**

**Department of Elderly Affairs**

for a term beginning on the  
Sixth day of January, A.D., 2015,  
to serve at the pleasure of the Governor  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature

Given under my hand and the Great Seal of the  
State of Florida at Tallahassee, the Capital, this  
the Twenty-Sixth day of February, A.D., 2015.



*Ken Detzner*

Secretary of State

If photocopied or chemically altered, the word 'VOID' will appear.

State of Florida appears in small letters across the face of this 8 1/2 x 11 document.



*Amended*



**RICK SCOTT**  
GOVERNOR

RECEIVED

15 FEB 25 PM 1:1

DEPT. OF STATE  
SECRETARY OF STATE

February 24, 2015

Secretary Kenneth W. Detzner  
Department of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 20.41, Florida Statutes:

Secretary Samuel Paul Verghese  
856 Willow Avenue  
Tallahassee, Florida 32303

as Secretary of the Department of Elder Affairs, subject to confirmation by the Senate. This appointment is effective January 6, 2015, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/vh

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED  
DEPARTMENT OF STATE

2015 FEB -9 PM 1:40

STATE OF FLORIDA

County of Leon

DIVISION OF ELECTIONS  
TALLAHASSEE, FL

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary, Florida Department of Elder Affairs

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]  
Signature

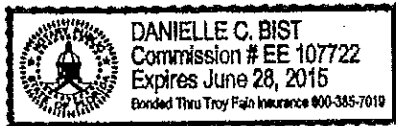
Sworn to and subscribed before me this 10<sup>th</sup> day of February, 2015.

[Signature]  
Signature of Officer Administering Oath or of Notary Public

Danielle C. Bist  
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_



## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

856 Willow Avenue

Street or Post Office Box

Tallahassee, FL, 32303

City, State, Zip Code

Samuel P. Verghese

Print name as you desire commission issued

[Signature]  
Signature