

By Senator Abruzzo

25-00418-14

2014750__

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

25-00418-14

2014750__

30 s. 752.071, F.S.; providing conditions under which a
31 court may terminate a grandparent visitation order
32 upon adoption of a minor child by a stepparent or
33 close relative; amending ss. 39.6221, 39.6231, 63.087,
34 63.172, and 752.015, F.S.; conforming provisions and
35 cross-references to changes made by the act; providing
36 an effective date.

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

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

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

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

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

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

25-00418-14

2014750__

59 Reasonable visitation may be unsupervised and, where appropriate
60 and feasible, may be frequent and continuing. An ~~Any~~ order for
61 visitation or other contact must conform to ~~the provisions of s.~~
62 39.0139.

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

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

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

25-00418-14

2014750__

88 (4) When the child has been returned to the physical
89 custody of his or her parent, the visitation rights granted
90 pursuant to this section ~~shall~~ terminate.

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

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

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

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

105 2. Section s. 794.011, relating to sexual battery;

106 3. Section s. 798.02, relating to lewd and lascivious
107 behavior;

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

109 5. Section s. 826.04, relating to incest; or

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

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

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

25-00418-14

2014750__

117 Section 3. Paragraph (a) of subsection (3) of section
118 39.801, Florida Statutes, is amended to read:

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

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

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

129 1. The parents of the child.

130 2. The legal custodians of the child.

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

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

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

137 6. Any prospective parent who has been identified under s.
138 39.503 or s. 39.803.

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

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

25-00418-14

2014750__

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

25-00418-14

2014750__

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 significant harm to the child. Absent
182 such a showing, the court shall dismiss the petition and shall
183 award reasonable attorney fees and costs to be paid by the
184 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 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 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 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

25-00418-14

2014750__

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 the child is
232 determined to be of sufficient maturity to express a preference.

25-00418-14

2014750__

233 (1) 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 to
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.

25-00418-14

2014750__

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 to
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

25-00418-14

2014750__

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 an order granting grandparent visitation
304 under this chapter which was entered before the adoption. The
305 court may terminate the order unless the grandparent is able to
306 show that the criteria of s. 752.011 authorizing the visitation
307 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:

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

318 (b) State the reasons why a permanent guardianship is being
319 established instead of adoption;

25-00418-14

2014750__

320 (c) Specify the frequency and nature of visitation or
321 contact between the child and his or her parents;

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

325 (e) Specify the frequency and nature of visitation or
326 contact between the child and his or her siblings; and

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

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

332 39.6231 Permanent placement with a fit and willing
333 relative.—

334 (3) In its written order placing the child with a fit and
335 willing relative, the court shall:

336 (a) List the circumstances or reasons why reunification is
337 not possible by referring to specific findings of fact made in
338 its order adjudicating the child dependent or by making separate
339 findings of fact;

340 (b) State the reasons why permanent placement with a fit
341 and willing relative is being established instead of adoption;

342 (c) Specify the frequency and nature of visitation or
343 contact between the child and his or her parents;

344 (d) Specify the frequency and nature of visitation or
345 contact between the child and his or her grandparents or great-
346 grandparents, under s. 39.509;

347 (e) Specify the frequency and nature of visitation or
348 contact between the child and his or her siblings; and

25-00418-14

2014750__

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

352 Section 11. Paragraph (e) of subsection (4) of section
 353 63.087, Florida Statutes, is amended to read:

354 63.087 Proceeding to terminate parental rights pending
 355 adoption; general provisions.—

356 (4) PETITION.—

357 (e) The petition must include:

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

367 2. All information required by the Uniform Child Custody
 368 Jurisdiction and Enforcement Act and the Indian Child Welfare
 369 Act.

370 3. A statement of the grounds under s. 63.089 upon which
 371 the petition is based.

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

374 5. The name, address, and telephone number of the division
 375 of the circuit court in which the petition is to be filed.

376 6. A certification of compliance with the requirements of
 377 s. 63.0425 regarding notice to grandparents or great-

25-00418-14

2014750__

378 grandparents of an impending adoption.

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

381 63.172 Effect of judgment of adoption.—

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

392 Section 13. Section 752.015, Florida Statutes, is amended
393 to read:

394 752.015 Mediation of visitation disputes.—It is ~~shall be~~
395 the public policy of this state that families resolve
396 differences over grandparent visitation within the family. It is
397 ~~shall be~~ the further public policy of this state that, when
398 families are unable to resolve differences relating to
399 grandparent visitation, that ~~the~~ the family participate in any
400 formal or informal mediation services that may be available. If
401 ~~When~~ families are unable to resolve differences relating to
402 grandparent visitation and a petition is filed pursuant to s.
403 752.011 ~~s. 752.01~~, the court shall, if such services are
404 available in the circuit, refer the case to family mediation in
405 accordance with the Florida Family Law Rules of Procedure ~~rules~~
406 ~~promulgated by the Supreme Court.~~

25-00418-14

2014750__

407

Section 14. This act shall take effect July 1, 2014.