

By the Committee on Family Law & Children and  
Representatives Lynn and Sanderson

1                                   A bill to be entitled  
2           An act relating to termination of parental  
3           rights; amending s. 39.464, F.S.; providing  
4           additional grounds for the termination of  
5           parental rights; amending s. 39.469, F.S.;  
6           revising language with respect to the powers of  
7           disposition of the court concerning termination  
8           of parental rights; amending s. 39.471, F.S.;  
9           providing that certain orders are admissible in  
10          evidence in subsequent adoption proceedings  
11          relating to the child; amending s. 61.13, F.S.;  
12          including reference to one of the grounds for  
13          termination of parental rights as a rebuttable  
14          presumption of detriment to the child when the  
15          court is determining matters relating to the  
16          custody of a minor child; providing an  
17          effective date.

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

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21           Section 1. Subsection (1) of section 39.464, Florida  
22 Statutes, is amended to read:

23           39.464 Grounds for termination of parental rights.--

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

29           (a) When the parent or parents voluntarily executed a  
30 written surrender of the child and consented to the entry of  
31 an order giving custody of the child to the department or to a

1 licensed child-placing agency for subsequent adoption and the  
2 department or licensed child-placing agency is willing to  
3 accept custody of the child.

4 1. The surrender document must be executed before two  
5 witnesses and a notary public or other person authorized to  
6 take acknowledgments.

7 2. The surrender and consent may be withdrawn after  
8 acceptance by the department or licensed child-placing agency  
9 only after a finding by the court that the surrender and  
10 consent were obtained by fraud or duress.

11 (b) When the identity or location of the parent or  
12 parents is unknown and cannot be ascertained by diligent  
13 search as provided in s. 39.4625 within 60 days.

14 (c) When the parent or parents engaged in conduct  
15 toward the child or toward other children that demonstrates  
16 that the continuing involvement of the parent or parents in  
17 the parent-child relationship threatens the life or well-being  
18 of the child irrespective of the provision of services.  
19 Provision of services is evidenced by proof that services were  
20 provided through a previous plan or offered as a case plan  
21 from a child welfare agency.

22 (d) When the parent of a child is incarcerated in a  
23 state or federal correctional institution and:

24 1. The period of time for which the parent is expected  
25 to be incarcerated will constitute a substantial portion of  
26 the period of time before the child will attain the age of 18  
27 years;

28 2. The incarcerated parent has been determined by the  
29 court to be a violent career criminal as defined in s.  
30 775.084, a habitual violent felony offender as defined in s.  
31 775.084, a habitual felony offender as defined in s. 775.084,

1 or a sexual predator as defined in s. 775.21; has been  
2 convicted of first degree or second degree murder in violation  
3 of s. 782.04 or a sexual battery that constitutes a capital,  
4 life, or first degree felony violation of s. 794.011; or has  
5 been convicted of an offense in another jurisdiction which is  
6 substantially similar to one of the offenses listed in this  
7 paragraph. As used in this section, the term "substantially  
8 similar offense" means any offense that is substantially  
9 similar in elements and penalties to one of those listed in  
10 this paragraph, and that is in violation of a law of any other  
11 jurisdiction, whether that of another state, the District of  
12 Columbia, the United States or any possession or territory  
13 thereof, or any foreign jurisdiction; and

14 3. The court determines by clear and convincing  
15 evidence that continuing the parental relationship with the  
16 incarcerated parent would be harmful to the child and, for  
17 this reason, that termination of the parental rights of the  
18 incarcerated parent is in the best interest of the child.

19 (e)~~(d)~~ When the parent or parents engaged in egregious  
20 conduct that endangers the life, health, or safety of the  
21 child or the child's sibling or had the opportunity and  
22 capability to prevent egregious conduct that threatened the  
23 life, health, or safety of the child or the child's sibling  
24 and knowingly failed to do so.

25 1. As used in this subsection, the term "sibling"  
26 means another child who resides with or is cared for by the  
27 parent or parents regardless of whether the child is related  
28 legally or by consanguinity.

29 2. As used in this subsection, the term "egregious  
30 abuse" means conduct of the parent or parents that is  
31 deplorable, flagrant, or outrageous by a normal standard of

1 conduct. Egregious abuse may include an act or omission that  
2 occurred only once but was of such intensity, magnitude, or  
3 severity as to endanger the life of the child.  
4 (f)~~(e)~~ A petition for termination of parental rights  
5 may also be filed when a child has been adjudicated dependent,  
6 a case plan has been filed with the court, and the child  
7 continues to be abused, neglected, or abandoned by the  
8 parents. In this case, the failure of the parents to  
9 substantially comply for a period of 12 months after an  
10 adjudication of the child as a dependent child constitutes  
11 evidence of continuing abuse, neglect, or abandonment unless  
12 the failure to substantially comply with the case plan was due  
13 either to the lack of financial resources of the parents or to  
14 the failure of the department to make reasonable efforts to  
15 reunify the family. Such 12-month period may begin to run only  
16 after the entry of a disposition order placing the custody of  
17 the child with the department or a person other than the  
18 parent and the subsequent filing with the court of a case plan  
19 with a goal of reunification with the parent.

20 Section 2. Section 39.469, Florida Statutes, is  
21 amended to read:

22 39.469 Powers of disposition; order of disposition.--

23 (1) If the court finds that the grounds for  
24 termination of parental rights have not been established by  
25 clear and convincing evidence, the court shall:

26 (a) If grounds for dependency have been established,  
27 adjudicate or readjudicate the child dependent and:

28 1. Enter an order placing or continuing the child in  
29 foster care under a case plan; or

30 2. Enter an order returning the child to the parent or  
31 parents. The court shall retain jurisdiction over a child

1 returned to the parents or legal guardians for a period of 6  
2 months, but, at that time, based on a report of the social  
3 service agency and any other relevant factors, the court shall  
4 make a determination as to whether its jurisdiction shall  
5 continue or be terminated.

6 (b) If grounds for dependency have not been  
7 established, dismiss the petition.

8 (2) If the child is in foster-care custody of the  
9 department and the court finds that the grounds for  
10 termination of parental rights have been established by clear  
11 and convincing evidence, the court shall, by order, place the  
12 child in the custody of the department for the purpose of  
13 adoption or place the child in the custody of a licensed  
14 child-placing agency for the purpose of adoption.

15 (3) If the child is in the custody of one parent and  
16 the court finds that the grounds for termination of parental  
17 rights have been established for the remaining parent by clear  
18 and convincing evidence, the court shall enter an order  
19 terminating the rights of the parent for whom the grounds have  
20 been established and placing the child in the custody of the  
21 remaining parent, granting that parent sole parental  
22 responsibility for the child.

23 (4) If the child is neither in the custody of the  
24 Department of Children and Family Services nor in the custody  
25 of a parent and the court finds that the grounds for  
26 termination of parental rights have been established for  
27 either or both parents, the court shall enter an order  
28 terminating parental rights for the parent or parents for whom  
29 the grounds for termination have been established and placing  
30 the child with an appropriate custodian. If the parental  
31 rights of both parents have been terminated, or if the

1 parental rights of only one parent have been terminated and  
2 the court makes specific findings based on evidence presented  
3 that placement with the remaining parent is likely to be  
4 harmful to the child, the court may order that the child be  
5 placed with a custodian other than the department after  
6 hearing evidence of the suitability of such intended  
7 placement. Suitability of the intended placement includes the  
8 fitness of the intended placement, with primary consideration  
9 being given to the welfare of the child; the fitness and  
10 capabilities of the proposed custodian to function as the  
11 primary caretaker for a particular child; and the  
12 compatibility of the child with the home in which the child is  
13 intended to be placed. If the court orders that a child be  
14 placed with a custodian under this subsection, the court shall  
15 appoint such custodian as the guardian for the child as  
16 provided in s. 744.3021. The court may modify the order  
17 placing the child in the custody of the custodian and revoke  
18 the guardianship established under s. 744.3021 if the court  
19 subsequently finds that a party to the proceeding other than a  
20 parent whose rights have been terminated has shown a material  
21 change in circumstances which causes the placement to be no  
22 longer in the best interest of the child.

23 (5)(3) If the court terminates parental rights, the  
24 court shall enter a written order of disposition briefly  
25 stating the facts upon which its decision to terminate the  
26 parental rights is made. An order of termination of parental  
27 rights, whether based on parental consent or after notice  
28 served as prescribed in this part, permanently deprives the  
29 parents or legal guardian of any right to the child.

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1           ~~(6)(4)~~ The parental rights of one parent may be  
2 severed without severing the parental rights of the other  
3 parent only under the following circumstances:  
4           (a) If ~~where~~ the child has only one surviving parent;  
5           (b) If ~~where~~ the identity of a prospective parent has  
6 been established as unknown after sworn testimony;  
7           (c) If ~~where~~ the parent whose rights are being  
8 terminated became a parent through a single-parent adoption;  
9 ~~or~~  
10           (d) If ~~where~~ the protection of the child demands  
11 termination of the rights of a single parent; or-  
12           ~~(e) If the parent whose rights are being terminated~~  
13 meets the criteria specified in s. 39.464(1)(d).  
14           ~~(7)(5)~~ If the court terminates parental rights, it may  
15 order that the parents or relatives of the parent whose rights  
16 are terminated be allowed to maintain some contact with the  
17 child pending adoption if the best interests of the child  
18 support this continued contact. If the court orders such  
19 continued contact, the nature and frequency of the contact  
20 must be set forth in written order and may be reviewed upon  
21 motion of any party, including a prospective adoptive parent  
22 if a child has been placed for adoption. If a child is placed  
23 for adoption, the nature and frequency of the contact must be  
24 reviewed by the court at the time the child is adopted.  
25           ~~(8)(6)~~ If the court terminates parental rights, it  
26 shall, in its order of disposition, provide for a hearing, to  
27 be scheduled no later than 30 days after the date of  
28 disposition, in which the department or the licensed  
29 child-placing agency shall provide to the court a plan for  
30 permanency for the child. Thereafter, until the adoption of  
31 the child is finalized or the child reaches the age of 18

1 years, whichever occurs first, the court shall hold hearings  
2 at 6-month intervals to review the progress being made toward  
3 permanency for the child.

4 Section 3. Subsection (6) of section 39.471, Florida  
5 Statutes, 1996 Supplement, is amended to read:

6 39.471 Oaths, records, and confidential information.--

7 (6) No court record of proceedings under this part  
8 shall be admissible in evidence in any other civil or criminal  
9 proceeding, except that:

10 (a) Orders terminating the rights of a parent are ~~and~~  
11 ~~committing the child to a licensed child-placing agency or the~~  
12 ~~department for adoption shall be~~ admissible in evidence in  
13 subsequent adoption proceedings relating to the child.

14 (b) Records of proceedings under this part forming a  
15 part of the record on appeal shall be used in the appellate  
16 court in the manner hereinafter provided.

17 (c) Records necessary therefor shall be admissible in  
18 evidence in any case in which a person is being tried upon a  
19 charge of having committed perjury.

20 Section 4. Subsection (2) of section 61.13, Florida  
21 Statutes, 1996 Supplement, is amended to read:

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

24 (2)(a) The court shall have jurisdiction to determine  
25 custody, notwithstanding that the child is not physically  
26 present in this state at the time of filing any proceeding  
27 under this chapter, if it appears to the court that the child  
28 was removed from this state for the primary purpose of  
29 removing the child from the jurisdiction of the court in an  
30 attempt to avoid a determination or modification of custody.

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1           (b)1. The court shall determine all matters relating  
2 to custody of each minor child of the parties in accordance  
3 with the best interests of the child and in accordance with  
4 the Uniform Child Custody Jurisdiction Act. It is the public  
5 policy of this state to assure that each minor child has  
6 frequent and continuing contact with both parents after the  
7 parents separate or the marriage of the parties is dissolved  
8 and to encourage parents to share the rights and  
9 responsibilities, and joys, of childrearing. After considering  
10 all relevant facts, the father of the child shall be given the  
11 same consideration as the mother in determining the primary  
12 residence of a child irrespective of the age or sex of the  
13 child.

14           2. The court shall order that the parental  
15 responsibility for a minor child be shared by both parents  
16 unless the court finds that shared parental responsibility  
17 would be detrimental to the child. The court shall consider  
18 evidence of spousal or child abuse as evidence of detriment to  
19 the child. The court shall consider evidence that a parent has  
20 been convicted of a felony of the second degree or higher  
21 involving domestic violence as defined in s. 741.28 and  
22 chapter 775, or meets the criteria of s. 39.464(1)(d), as a  
23 rebuttable presumption of detriment to the child. If the  
24 presumption is not rebutted, shared parental responsibility,  
25 including visitation, residence of the child, and decisions  
26 made regarding the child, may ~~shall~~ not be granted to the  
27 convicted parent. However, the convicted parent is ~~shall~~ not  
28 ~~be~~ relieved of any obligation to provide financial support. If  
29 the court determines that shared parental responsibility would  
30 be detrimental to the child, it may order sole parental  
31 responsibility and make such arrangements for visitation as

1 will best protect the child or abused spouse from further  
2 harm.

3 a. In ordering shared parental responsibility, the  
4 court may consider the expressed desires of the parents and  
5 may grant to one party the ultimate responsibility over  
6 specific aspects of the child's welfare or may divide those  
7 responsibilities between the parties based on the best  
8 interests of the child. Areas of responsibility may include  
9 primary residence, education, medical and dental care, and any  
10 other responsibilities that ~~which~~ the court finds unique to a  
11 particular family.

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

16 c. The court may award the grandparents visitation  
17 rights with ~~of~~ a minor child if it is in the child's best  
18 interest. Grandparents ~~shall~~ have legal standing to seek  
19 judicial enforcement of such an award. ~~Nothing in~~ This section  
20 does not shall require that grandparents be made parties or  
21 given notice of dissolution pleadings or proceedings, nor do  
22 ~~shall~~ grandparents have legal standing as "contestants" as  
23 defined in s. 61.1306. A No court may not shall order that a  
24 child be kept within the state or jurisdiction of the court  
25 solely for the purpose of permitting visitation by the  
26 grandparents.

27 3. Access to records and information pertaining to a  
28 minor child, including, but not limited to, medical, dental,  
29 and school records, may shall not be denied to a parent  
30 because the such parent is not the child's primary residential  
31 parent.

1           (c) The circuit court in the county in which either  
2 parent and the child reside or the circuit court in which the  
3 original award of custody was entered have jurisdiction to  
4 modify an award of child custody. The court may change the  
5 venue in accordance with s. 47.122.

6           Section 5. This act shall effect October 1, 1997, and  
7 applies to any person incarcerated on October 1, 1997, who is  
8 sentenced to a term of incarceration which would qualify under  
9 the provisions of this act, as well as to any persons who are  
10 sentenced after that date.

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