

By Representative Lynn

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; amending s. 63.072,
17 F.S.; including certain parents whose consent
18 to an adoption may be waived; providing an
19 effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

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

25 39.464 Grounds for termination of parental rights.--

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

31

1 (a) When the parent or parents voluntarily executed a
2 written surrender of the child and consented to the entry of
3 an order giving custody of the child to the department or to a
4 licensed child-placing agency for subsequent adoption and the
5 department or licensed child-placing agency is willing to
6 accept custody of the child.

7 1. The surrender document must be executed before two
8 witnesses and a notary public or other person authorized to
9 take acknowledgments.

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 The surrender and consent may be withdrawn after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

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

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

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

27 1. The period of time for which the parent is
28 incarcerated constitutes a substantial portion of the period
29 of time before the child will attain the age of 18 years;

30 2. The incarcerated parent has been determined by the
31 court to be a violent career criminal as defined in s.

1 775.084, a habitual violent felony offender as defined in s.
2 775.084, a habitual felony offender as defined in s. 775.084,
3 or a sexual predator as defined in s. 775.21; has been
4 convicted of first-degree or second-degree murder in violation
5 of s. 782.04 or a sexual battery that constitutes a capital,
6 life, or first-degree felony violation of s. 794.011; or has
7 been convicted of an offense in another jurisdiction which is
8 substantially similar to one of the offenses listed in this
9 paragraph. As used in this section, the term "substantially
10 similar offense" means any offense that is substantially
11 similar in elements and penalties to one of those listed in
12 this paragraph, and that is in violation of a law of any other
13 jurisdiction, whether that of another state, the District of
14 Columbia, the United States or any possession or territory
15 thereof, or any foreign jurisdiction; and

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

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

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

1 2. As used in this subsection, the term "egregious
2 abuse" means conduct of the parent or parents that is
3 deplorable, flagrant, or outrageous by a normal standard of
4 conduct. Egregious abuse may include an act or omission that
5 occurred only once but was of such intensity, magnitude, or
6 severity as to endanger the life of the child.

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

23 Section 2. Section 39.469, Florida Statutes, is
24 amended to read:

25 39.469 Powers of disposition; order of disposition.--

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

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

31

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

3 2. Enter an order returning the child to the parent or
4 parents. The court shall retain jurisdiction over a child
5 returned to the parents or legal guardians for a period of 6
6 months, but, at that time, based on a report of the social
7 service agency and any other relevant factors, the court shall
8 make a determination as to whether its jurisdiction shall
9 continue or be terminated.

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

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

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

27 (4) If the child is neither in the custody of the
28 Department of Children and Family Services nor in the custody
29 of a parent and the court finds that the grounds for
30 termination of parental rights have been established for
31 either or both parents, the court shall enter an order

1 terminating parental rights for the parent or parents for whom
2 the grounds for termination have been established and placing
3 the child with an appropriate custodian. If the parental
4 rights of both parents are not terminated, the court must
5 consider, in making the placement decision, the circumstances
6 of the parent for whom parental rights have not been
7 terminated. The order placing the child with the custodian
8 must set forth the powers of the custodian of the child and
9 must include the powers ordinarily granted to a guardian of
10 the person of a minor unless otherwise specified. The court
11 may modify the order placing the child in the custody of the
12 custodian if it subsequently finds that a party to the
13 proceeding other than a parent whose rights have been
14 terminated has shown a material change in circumstances which
15 causes the custodial placement to be no longer in the best
16 interest of the child.

17 ~~(5)(3)~~ If the court terminates parental rights, the
18 court shall enter a written order of disposition briefly
19 stating the facts upon which its decision to terminate the
20 parental rights is made. An order of termination of parental
21 rights, whether based on parental consent or after notice
22 served as prescribed in this part, permanently deprives the
23 parents or legal guardian of any right to the child.

24 ~~(6)(4)~~ The parental rights of one parent may be
25 severed without severing the parental rights of the other
26 parent only under the following circumstances:

- 27 (a) If ~~where~~ the child has only one surviving parent;
28 (b) If ~~where~~ the identity of a prospective parent has
29 been established as unknown after sworn testimony;

30
31

1 (c) If ~~where~~ the parent whose rights are being
2 terminated became a parent through a single-parent adoption;
3 ~~or~~

4 (d) If ~~where~~ the protection of the child demands
5 termination of the rights of a single parent; or.

6 (e) If the parent whose rights are being terminated
7 meets the criteria specified in s. 39.464(1)(d).

8 ~~(7)(5)~~ If the court terminates parental rights, it may
9 order that the parents or relatives of the parent whose rights
10 are terminated be allowed to maintain some contact with the
11 child pending adoption if the best interests of the child
12 support this continued contact. If the court orders such
13 continued contact, the nature and frequency of the contact
14 must be set forth in written order and may be reviewed upon
15 motion of any party, including a prospective adoptive parent
16 if a child has been placed for adoption. If a child is placed
17 for adoption, the nature and frequency of the contact must be
18 reviewed by the court at the time the child is adopted.

19 ~~(8)(6)~~ If the court terminates parental rights, it
20 shall, in its order of disposition, provide for a hearing, to
21 be scheduled no later than 30 days after the date of
22 disposition, in which the department or the licensed
23 child-placing agency shall provide to the court a plan for
24 permanency for the child. Thereafter, until the adoption of
25 the child is finalized or the child reaches the age of 18
26 years, whichever occurs first, the court shall hold hearings
27 at 6-month intervals to review the progress being made toward
28 permanency for the child.

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

31 39.471 Oaths, records, and confidential information.--

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

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

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

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

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

16 61.13 Custody and support of children; visitation
17 rights; power of court in making orders.--

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

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

1 and to encourage parents to share the rights and
2 responsibilities, and joys, of childrearing. After considering
3 all relevant facts, the father of the child shall be given the
4 same consideration as the mother in determining the primary
5 residence of a child irrespective of the age or sex of the
6 child.

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

27 a. In ordering shared parental responsibility, the
28 court may consider the expressed desires of the parents and
29 may grant to one party the ultimate responsibility over
30 specific aspects of the child's welfare or may divide those
31 responsibilities between the parties based on the best

1 interests of the child. Areas of responsibility may include
2 primary residence, education, medical and dental care, and any
3 other responsibilities that ~~which~~ the court finds unique to a
4 particular family.

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

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

20 3. Access to records and information pertaining to a
21 minor child, including, but not limited to, medical, dental,
22 and school records, may shall not be denied to a parent
23 because the such parent is not the child's primary residential
24 parent.

25 (c) The circuit court in the county in which either
26 parent and the child reside or the circuit court in which the
27 original award of custody was entered have jurisdiction to
28 modify an award of child custody. The court may change the
29 venue in accordance with s. 47.122.

30 Section 5. Section 63.072, Florida Statutes, is
31 amended to read:

1 63.072 Persons whose consent to an adoption may be
2 waived.--The court may excuse the consent of the following
3 individuals to an adoption:

4 (1) A parent who has deserted a child without
5 affording means of identification or who has abandoned a
6 child;

7 (2) A parent whose parental rights have been
8 terminated by order of a court of competent jurisdiction;

9 (3) A parent judicially declared incompetent for whom
10 restoration of competency is medically improbable;

11 (4) A parent who is incarcerated in a state or federal
12 correctional institution when:

13 (a) The period of time for which the parent is
14 incarcerated constitutes a substantial portion of the period
15 of time before the child will attain the age of 18 years;

16 (b) The incarcerated parent has been determined by the
17 court to be a violent career criminal as defined in s.
18 775.084, a habitual violent felony offender as defined in s.
19 775.084, a habitual felony offender as defined in s. 775.084,
20 or a sexual predator as defined in s. 775.21; has been
21 convicted of first-degree or second-degree murder in violation
22 of s. 782.04 or a sexual battery that constitutes a capital,
23 life, or first-degree felony violation of s. 794.011; or has
24 been convicted of an offense in another jurisdiction
25 substantially similar to one of the offenses listed in this
26 paragraph. As used in this section, the term "substantially
27 similar offense" means any offense that is substantially
28 similar in elements and penalties to one of those listed in
29 this paragraph and that is in violation of a law of another
30 jurisdiction, whether that of another state, the District of
31

1 Columbia, the United States or any possession or territory
2 thereof, or any foreign jurisdiction; and

3 (c) The court determines by clear and convincing
4 evidence that continuing the parental relationship with the
5 incarcerated parent would be harmful or potentially harmful to
6 the child and, for this reason, that the termination of the
7 parental rights of the incarcerated parent is in the best
8 interest of the child.

9 (5)(4) A legal guardian or lawful custodian of the
10 person to be adopted, other than a parent, who has failed to
11 respond in writing to a request for consent for a period of 60
12 days or who, after examination of his or her written reasons
13 for withholding consent, is found by the court to be
14 withholding his or her consent unreasonably; or

15 (6)(5) The spouse of the person to be adopted, if the
16 failure of the spouse to consent to the adoption is excused by
17 reason of prolonged, unexplained absence, unavailability,
18 incapacity, or circumstances that are found by the court to
19 constitute unreasonable withholding of consent.

20 Section 6. This act shall take effect October 1, 1997.
21
22
23
24
25
26
27
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

LEGISLATIVE SUMMARY

Revises provisions of law with respect to termination of parental rights to:

1. Provide that when the parent of a child is incarcerated in a state or federal correctional institution and certain other factors exist parental rights may be terminated.

2. Provide for the power of the court to make described dispositions with respect to the termination of parental rights.

3. Provide that orders terminating the rights of a parent are admissible in evidence in subsequent adoption proceedings relating to the child.

4. Include reference to one of the grounds for termination of parental rights as a rebuttable presumption of detriment of the child.

5. Provide that described parents of a child who are incarcerated in a state or federal correctional institution shall not be required to consent to an adoption.

See bill for details.