

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.

18  
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 The surrender and consent may be withdrawn after  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, or a sexual predator as defined in s. 775.21; has

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

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

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

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

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

1 occurred only once but was of such intensity, magnitude, or  
2 severity as to endanger the life of the child.

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

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

21 39.469 Powers of disposition; order of disposition.--

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

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

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

29 2. Enter an order returning the child to the parent or  
30 parents. The court shall retain jurisdiction over a child  
31 returned to the parents or legal guardians for a period of 6

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

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

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

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

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

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

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

29 (6)(4) The parental rights of one parent may be  
30 severed without severing the parental rights of the other  
31 parent only under the following circumstances:

1           (a) If ~~where~~ the child has only one surviving parent;

2           (b) If ~~where~~ the identity of a prospective parent has  
3 been established as unknown after sworn testimony;

4           (c) If ~~where~~ the parent whose rights are being  
5 terminated became a parent through a single-parent adoption;

6 ~~or~~

7           (d) If ~~where~~ the protection of the child demands  
8 termination of the rights of a single parent; or-

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

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

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

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

3           39.471 Oaths, records, and confidential information.--

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

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

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

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

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

19           61.13 Custody and support of children; visitation  
20 rights; power of court in making orders.--

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

28           (b)1. The court shall determine all matters relating  
29 to custody of each minor child of the parties in accordance  
30 with the best interests of the child and in accordance with  
31 the Uniform Child Custody Jurisdiction Act. It is the public



1 policy of this state to assure that each minor child has  
2 frequent and continuing contact with both parents after the  
3 parents separate or the marriage of the parties is dissolved  
4 and to encourage parents to share the rights and  
5 responsibilities, and joys, of childrearing. After considering  
6 all relevant facts, the father of the child shall be given the  
7 same consideration as the mother in determining the primary  
8 residence of a child irrespective of the age or sex of the  
9 child.

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

30           a. In ordering shared parental responsibility, the  
31 court may consider the expressed desires of the parents and

1 may grant to one party the ultimate responsibility over  
2 specific aspects of the child's welfare or may divide those  
3 responsibilities between the parties based on the best  
4 interests of the child. Areas of responsibility may include  
5 primary residence, education, medical and dental care, and any  
6 other responsibilities that ~~which~~ the court finds unique to a  
7 particular family.

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

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

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

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

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

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