

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 0284

SPONSOR: Senator Carlton

SUBJECT: Great-grandparent's Rights

DATE: January 27, 1999

REVISED: 02/03/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosby</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/ 1 amendment</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 284 provides for great-grandparent's visitation rights, adoption rights and standing for evaluating custody arrangements in cases involving dependent children.

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.509, 39.801, 61.13, 63.0425, 63.172, 984.02, and 985.03.

II. Present Situation:

Under current law, grandparents are included among those who may act as a participant in actions, as well as receive notice of actions, regarding dependent children. Section 39.509, F.S., provides that grandparents are entitled to reasonable visitation with such child. Great-grandparents, however, have no such rights.

III. Effect of Proposed Changes:

Section 1 amends the definitions in s. 39.01, F.S., relating to dependency proceedings for children, to include the term "great-grandparent" under the definitions of "next of kin" and "participant." By making this change to the term "participant," a great-grandparent will be entitled to receive notice of hearings involving the child and will be entitled to priority for adoption consideration. Participants may be granted leave by the court to be heard without the necessity of filing a motion to intervene.

Section 2 amends s. 39.509, F.S., grandparent's rights, to include a great-grandparent among those who may be entitled to reasonable visitation with his or her great-grandchild when that child has been adjudicated a dependent child. All privileges and restrictions granted to a grandparent under this section of law are extended to include a great-grandparent.

Section 3 amends s. 39.801, F.S., regarding procedures, jurisdiction, notice and service of process in an action to terminate parental rights, to state that the great-grandparent, who is entitled to priority for adoption, is entitled to receive notice of the date, time, and place of the advisory hearing (prior to the termination of parental rights).

Section 4 amends s. 61.13, F.S., regarding the custody and support of children, to include great-grandparents among those to whom the court may award visitation and allows for the court to award a great-grandparent costs and fees should they have to enforce this right. This section is also amended to preclude a great-grandparent from not receiving visitation because that great-grandparent is infected with the human immunodeficiency virus. Finally, this section is amended to provide that, in a case where the child is residing with a great-grandparent in a stable arrangement, the great-grandparent shall have the same standing as a parent when evaluating what custody arrangement is in the best interest of the child.

Section 5 amends s. 63.0425, F.S., regarding a grandparent's right to adopt, to include great-grandparents among those who shall receive notification of an impending adoption of a child. In order for this provision to be applicable in a situation, the child must have lived with the great-grandparent for at least six months prior to placement for adoption.

Section 6 amends s. 63.172, F.S., regarding the effect of judgment on adoption, to extend to great-grandparents the rights delineated under ch. 752, F.S., regarding grandparent visitation, in the case where one or both parents of a child die and a spouse of the living parent or "close relative" of the child adopts said child. In such a case, the child's right of inheritance is not affected by the adoption and the adoption will not terminate the right of any great-grandparent. For purposes of this subsection, the definition of "close relative" is expanded to include great-grandparents.

Section 7 amends s. 984.03, F.S., regarding children and families in need of services, to include great-grandparents in the definitions of "next of kin" and "participant." The term "next of kin" is currently defined as an adult relative of the child and may include a brother, sister, grandparent, aunt, uncle, or first cousin; a search reveals that this term is not used elsewhere in this chapter of law. The term "participant," for purposes of shelter proceedings, means any person who is not a party but who should receive notice of hearings involving the child. This group currently includes foster parents, identified prospective parents, grandparents entitled to priority for adoption consideration (under 63.0425, F.S.), actual custodians of the child, and any other person whose participation may be in the best interest of the child. Participants may be granted leave to be heard without the necessity of filing a motion to intervene.

Section 8 amends s. 985.03, F.S., regarding delinquency, to include great-grandparents in the definition of "next of kin." The term "next of kin" is currently defined as an adult relative of the child and may include a brother, sister, grandparent, aunt, uncle, or first cousin. The term "next of kin" is reportedly used twice more in this chapter of law where it is referenced in the context of next of kin of a homicide victim. The two reported references regard confidential information release to the next of kin of a homicide victim (s. 985.04(6), F.S.) and the rights of victims as extended to the next of kin of a homicide victim (s. 985.206(4), F.S.).

This act shall take effect October 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Children and Family Services reports this bill will result in a minor increase in workload due to the increased responsibility to provide notice to great-grandparents. This minor increase in workload reportedly can be handled by current staff.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Chapter 752, F.S., regarding grandparent visitation rights, is not amended in this bill; however, by reference, the provisions of s. 6 (of this bill) extend to great-grandparents visitation rights, as provided in ch. 752, F.S., in the event of the death of one or both parents of the child. The comparable statutory provision in ch. 752, F.S., states that a court "shall, upon petition filed by a grandparent of a minor child, award reasonable rights of visitation to the grandparent with respect to a child when it is in the best interest of the minor child if: (a) One or both parents of the child are deceased..." s. 752.01(1)(a), F.S.

Late last year the Florida Supreme Court issued an opinion wherein they reviewed and ruled upon the question of whether s. 752.01(1)(a), F.S., infringes upon the privacy rights of the parent, as protected under Article I, Section 23 of the Florida Constitution. *Von Eiff v. Azicri*, 23 Fla. L. Weekly S583 (Fla. Nov. 12, 1998). In the *Von Eiff* case, the child's mother died, the father remarried, and the stepmother adopted the child. The maternal grandparents petitioned for unsupervised visitation of the child. At the trial court level the court ruled in favor of the grandparents and ordered unsupervised visitation with the child. *Id.* at S584. The case was appealed to the Third District Court of Appeals where, for the most part, the trial court's finding was upheld. *Id.* The case was then certified to the Florida Supreme Court as an issue of great public importance. In reaching its decision, the Florida Supreme Court held that, in spite of the many beneficial relationships a child may have in one's life, "it is not for the government to decide with whom the child builds these relationships." *Id.* at S586. The Florida Supreme Court noted that "familial privacy is grounded on the right of parents to rear their children without unwarranted governmental interference" and, finding no compelling state interest to justify s. 752.01(1)(a), F.S., struck the provision down as facially unconstitutional. *Id.*

VIII. Amendments:

#1 by Children and Families:

This amendment corrects a deficiency of the law, but not of this bill. The term "next of kin" was defined but not used elsewhere in chapter 984, F.S. This amendment deletes that definition. (WITH TITLE AMENDMENT)