

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: CS/SB 284

SPONSOR: Senator Carlton

SUBJECT: Great-grandparent's Rights

DATE: March 23, 1999

REVISED: _____

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

I. Summary:

This bill extends rights to great-grandparents to visit, to adopt, and to have standing for evaluating custody arrangements in dependency cases.

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

II. Present Situation:

Under current law, grandparents have certain rights to visitation and to priority consideration in adoption as provided in chapter 39, F.S., relating to dependency, chapter 61, F.S., relating to child custody and support, and chapter 752, F.S., relating to grandparent visitation, as follows:

- Under chapter 39, F.S., a natural or step-grandparent (unless not in the best interest of the child or in contravention of the goals of a case plan) is entitled to reasonable visitation with a grandchild who has been adjudicated dependent and removed from parental or other legal custody. *See* §39.509, F.S. In addition, a grandparent is entitled to notice of termination of parental rights proceedings arising out of a dependency action. *See* §39.801, F.S.
- Under chapter 61, F.S., a grandparent may be awarded visitation rights if in the best interest of a child in child custody and support proceedings. *See* §61.13, F.S. A grandparent also has standing to enforce such awards. Moreover, a grandparent may have the same legal standing as a parent to evaluate what custody arrangement is in the best interest of the child, provided the child actually resides with the grandparent at the time. *See* §61.13(7), F.S.
- Under chapter 63, F.S., a grandparent has a priority right to adopt a child if the child has resided with the grandparent for at least 6 months prior to placement. *See* §63.0425, F.S. In addition, in cases where one or both of a child's parents died before their rights were terminated and the child was subsequently adopted by a close relative or a subsequent spouse

of a surviving parent, the adoption may not terminate a grandparent's right to visitation with that grandchild. *See* §63.172, F.S.

- Under chapter 752, F.S., a grandparent has the right to petition and to receive visitation rights independent of any other pending legal action, if any. The visitation right must be granted if it is in the best interest of the child and one of 5 parental scenarios is satisfied. *See* §752.01, F.S. However, the Florida Supreme Court recently found certain provisions of chapter 752, F.S., facially unconstitutional which essentially precludes a grandparent (or great-grandparent) from securing visitation under this chapter, absent another pending action already involving the child.

With the exception of chapter 752, F.S., in which the definition for grandparent includes great-grandparent for purposes of visitation rights, great-grandparents do not have the same rights as grandparents under any of the other aforementioned provisions.

III. Effect of Proposed Changes:

This bill extends to great-grandparents certain rights, privileges and obligations currently afforded to grandparents under law. Specifically, the bill provides as follows:

Section 1 amends s. 39.01, F.S., to revise the definitions used in dependency and other proceedings for children under chapter 39, F.S. It expressly includes the term "great-grandparent" in the terms "next of kin" and "participant." Consequently, great-grandparents will have the standing and right to receive notice of hearings for proceedings under this chapter, to priority right for adoption, and to be granted leave by the court to be heard without the need to file a motion to intervene.

Section 2 amends s. 39.509, F.S., to extend to great-grandparents the right to reasonable visitation with a great-grandchild when that child has been adjudicated a dependent child and removed from parental or other legal custody as a result of dependency proceedings. All privileges and restrictions granted to a grandparent under this section of law are also extended to apply to a great-grandparent.

Section 3 amends s. 39.801, F.S., to extend to great-grandparents the right to receive notice of the date, time and place of the advisory hearing prior to termination of parental rights.

Section 4 amends s. 61.13, F.S., relating to visitation rights in dissolution of marriage and child custody and support matters, to extend to great-grandparents the right to be awarded visitation, and to receive compensatory visitation time in the event visitation is improperly denied, and to recover costs and fees if enforcement of the award becomes necessary. This section also extends to great-grandparents the protection afforded to grandparents against denial of visitation on the sole basis that the great-grandparent is or is believed to be infected with human immunodeficiency virus. Finally, this section provides great-grandparents the legal standing to evaluate what custody arrangement is in the best interest of the child, provided the child actually resides with the great-grandparent.

Section 5 amends s. 63.0425, F.S., to extend to great-grandparents the right to receive notification of an impending adoption of a child in those situations in which the child resided with the great-grandparent for at least six months prior to the placement for adoption, and to be given priority right to adopt such child.

Section 6 amends s. 63.172, F.S., to extend to great-grandparents the right to continued visitation in the cases where one or both parents of a child died prior to the termination of parental rights and the child was subsequently adopted by a spouse of the living parent or a close relative. For purposes of this subsection, the definition of “close relative” is expanded to include great-grandparents relating to the effect of judgments on adoption

Section 7 provides that the 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.

The Department of Juvenile Justice states that the bill’s provisions relating to notice requirements to persons in shelter hearings will have minimal impact on the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
