

By Senator Carlton

24-491-99

See HB

1                                   A bill to be entitled  
 2           An act relating to children and families;  
 3           amending s. 39.01, F.S.; including references  
 4           to great-grandparents in definitions relating  
 5           to dependent children; amending s. 39.509,  
 6           F.S.; providing for great-grandparents  
 7           visitation rights; amending ss. 39.801 and  
 8           63.0425, F.S.; providing for a  
 9           great-grandparent's right to adopt; amending s.  
 10          61.13, F.S.; providing for great-grandparents  
 11          visitation rights and standing with regard to  
 12          evaluating custody arrangements; amending s.  
 13          63.172, F.S.; conforming references relating to  
 14          great-grandparental visitation rights under ch.  
 15          752, F.S.; amending ss. 984.03 and 985.03,  
 16          F.S.; including references to  
 17          great-grandparents in definitions relating to  
 18          delinquent children; providing an effective  
 19          date.

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

22  
 23           Section 1. Subsections (48) and (50) of section 39.01,  
 24 Florida Statutes, 1998 Supplement, are amended to read:

25           39.01 Definitions.--When used in this chapter, unless  
 26 the context otherwise requires:

27           (48) "Next of kin" means an adult relative of a child  
 28 who is the child's brother, sister, grandparent,  
 29 great-grandparent, aunt, uncle, or first cousin.

30           (50) "Participant," for purposes of a shelter  
 31 proceeding, dependency proceeding, or termination of parental

1 rights proceeding, means any person who is not a party but who  
2 should receive notice of hearings involving the child,  
3 including foster parents or caregivers, identified prospective  
4 parents, grandparents or great-grandparents entitled to  
5 priority for adoption consideration under s. 63.0425, actual  
6 custodians of the child, and any other person whose  
7 participation may be in the best interest of the child.  
8 Participants may be granted leave by the court to be heard  
9 without the necessity of filing a motion to intervene.

10 Section 2. Section 39.509, Florida Statutes, 1998  
11 Supplement, is amended to read:

12 39.509 Grandparents and great-grandparents  
13 rights.--Notwithstanding any other provision of law, a  
14 maternal or paternal grandparent or great-grandparent, as well  
15 as a stepgrandparent or step-great-grandparent, is entitled to  
16 reasonable visitation with his or her grandchild or  
17 great-grandchild who has been adjudicated a dependent child  
18 and taken from the physical custody of the parent, custodian,  
19 legal guardian, or caregiver unless the court finds that such  
20 visitation is not in the best interest of the child or that  
21 such visitation would interfere with the goals of the case  
22 plan. Reasonable visitation may be unsupervised and, where  
23 appropriate and feasible, may be frequent and continuing.

24 (1) Grandparent or great-grandparent visitation may  
25 take place in the home of the grandparent or great-grandparent  
26 unless there is a compelling reason for denying such a  
27 visitation. The department's caseworker shall arrange the  
28 visitation to which a grandparent or great-grandparent is  
29 entitled pursuant to this section. The state shall not charge  
30 a fee for any costs associated with arranging the visitation.  
31 However, the grandparent or great-grandparent shall pay for

1 the child's cost of transportation when the visitation is to  
2 take place in the grandparent's or great-grandparent's home.  
3 The caseworker shall document the reasons for any decision to  
4 restrict a grandparent's or great-grandparent's visitation.

5 (2) A grandparent or great-grandparent entitled to  
6 visitation pursuant to this section shall not be restricted  
7 from appropriate displays of affection to the child, such as  
8 appropriately hugging or kissing his or her grandchild or  
9 great-grandchild. Gifts, cards, and letters from the  
10 grandparent or great-grandparent and other family members  
11 shall not be denied to a child who has been adjudicated a  
12 dependent child.

13 (3) Any attempt by a grandparent or great-grandparent  
14 to facilitate a meeting between the child who has been  
15 adjudicated a dependent child and the child's parent,  
16 custodian, legal guardian, or caregiver in violation of a  
17 court order shall automatically terminate future visitation  
18 rights of the grandparent or great-grandparent.

19 (4) When the child has been returned to the physical  
20 custody of his or her parent or permanent custodian, legal  
21 guardian, or caregiver, the visitation rights granted pursuant  
22 to this section shall terminate.

23 (5) The termination of parental rights does not affect  
24 the rights of grandparents or great-grandparents unless the  
25 court finds that such visitation is not in the best interest  
26 of the child or that such visitation would interfere with the  
27 goals of permanency planning for the child.

28 (6) In determining whether grandparental or  
29 great-grandparental visitation is not in the child's best  
30 interest, consideration may be given to the finding of guilt,  
31 regardless of adjudication, or entry or plea of guilty or nolo

1 | contendere to charges under the following statutes, or similar  
2 | statutes of other jurisdictions: s. 787.04, relating to  
3 | removing minors from the state or concealing minors contrary  
4 | to court order; s. 794.011, relating to sexual battery; s.  
5 | 798.02, relating to lewd and lascivious behavior; chapter 800,  
6 | relating to lewdness and indecent exposure; or chapter 827,  
7 | relating to the abuse of children. Consideration may also be  
8 | given to a finding of confirmed abuse, abandonment, or neglect  
9 | under ss. 415.101-415.113 or this chapter.

10 |         Section 3. Paragraph (a) of subsection (3) of section  
11 | 39.801, Florida Statutes, 1998 Supplement, is amended to read:

12 |         39.801 Procedures and jurisdiction; notice; service of  
13 | process.--

14 |         (3) Before the court may terminate parental rights, in  
15 | addition to the other requirements set forth in this part, the  
16 | following requirements must be met:

17 |         (a) Notice of the date, time, and place of the  
18 | advisory hearing for the petition to terminate parental rights  
19 | and a copy of the petition must be personally served upon the  
20 | following persons, specifically notifying them that a petition  
21 | has been filed:

- 22 |             1. The parents of the child.
- 23 |             2. The caregivers or legal custodians of the child.
- 24 |             3. If the parents who would be entitled to notice are  
25 | dead or unknown, a living relative of the child, unless upon  
26 | diligent search and inquiry no such relative can be found.
- 27 |             4. Any person who has physical custody of the child.
- 28 |             5. Any grandparent or great-grandparent entitled to  
29 | priority for adoption under s. 63.0425.
- 30 |             6. Any prospective parent who has been identified  
31 | under s. 39.503 or s. 39.803.

1           7. The guardian ad litem for the child or the  
2 representative of the guardian ad litem program, if the  
3 program has been appointed.

4  
5 The document containing the notice to respond or appear must  
6 contain, in type at least as large as the type in the balance  
7 of the document, the following or substantially similar  
8 language: "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY  
9 HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL  
10 RIGHTS OF THIS CHILD (OR CHILDREN)."

11           Section 4. Paragraph (b) of subsection (2), paragraphs  
12 (c) and (d) of subsection (4), and subsections (6) and (7) of  
13 section 61.13, Florida Statutes, 1998 Supplement, are amended  
14 to read:

15           61.13 Custody and support of children; visitation  
16 rights; power of court in making orders.--

17           (2)

18           (b)1. The court shall determine all matters relating  
19 to custody of each minor child of the parties in accordance  
20 with the best interests of the child and in accordance with  
21 the Uniform Child Custody Jurisdiction Act. It is the public  
22 policy of this state to assure that each minor child has  
23 frequent and continuing contact with both parents after the  
24 parents separate or the marriage of the parties is dissolved  
25 and to encourage parents to share the rights and  
26 responsibilities, and joys, of childrearing. After considering  
27 all relevant facts, the father of the child shall be given the  
28 same consideration as the mother in determining the primary  
29 residence of a child irrespective of the age or sex of the  
30 child.

31

1           2. The court shall order that the parental  
2 responsibility for a minor child be shared by both parents  
3 unless the court finds that shared parental responsibility  
4 would be detrimental to the child. Evidence that a parent has  
5 been convicted of a felony of the third degree or higher  
6 involving domestic violence, as defined in s. 741.28 and  
7 chapter 775, or meets the criteria of s. 39.806(1)(d), creates  
8 a rebuttable presumption of detriment to the child. If the  
9 presumption is not rebutted, shared parental responsibility,  
10 including visitation, residence of the child, and decisions  
11 made regarding the child, may not be granted to the convicted  
12 parent. However, the convicted parent is not relieved of any  
13 obligation to provide financial support. If the court  
14 determines that shared parental responsibility would be  
15 detrimental to the child, it may order sole parental  
16 responsibility and make such arrangements for visitation as  
17 will best protect the child or abused spouse from further  
18 harm. Whether or not there is a conviction of any offense of  
19 domestic violence or child abuse or the existence of an  
20 injunction for protection against domestic violence, the court  
21 shall consider evidence of domestic violence or child abuse as  
22 evidence of detriment to the child.

23           a. In ordering shared parental responsibility, the  
24 court may consider the expressed desires of the parents and  
25 may grant to one party the ultimate responsibility over  
26 specific aspects of the child's welfare or may divide those  
27 responsibilities between the parties based on the best  
28 interests of the child. Areas of responsibility may include  
29 primary residence, education, medical and dental care, and any  
30 other responsibilities that the court finds unique to a  
31 particular family.

1           b. The court shall order "sole parental  
2 responsibility, with or without visitation rights, to the  
3 other parent when it is in the best interests of" the minor  
4 child.

5           c. The court may award the grandparents and  
6 great-grandparents visitation rights with a minor child if it  
7 is in the child's best interest. Grandparents and  
8 great-grandparents have legal standing to seek judicial  
9 enforcement of such an award. This section does not require  
10 that grandparents or great-grandparents be made parties or  
11 given notice of dissolution pleadings or proceedings, nor do  
12 grandparents or great-grandparents have legal standing as  
13 "contestants" as defined in s. 61.1306. A court may not order  
14 that a child be kept within the state or jurisdiction of the  
15 court solely for the purpose of permitting visitation by the  
16 grandparents or great-grandparents.

17           3. Access to records and information pertaining to a  
18 minor child, including, but not limited to, medical, dental,  
19 and school records, may not be denied to a parent because the  
20 parent is not the child's primary residential parent.

21           (4)

22           (c) When a custodial parent refuses to honor a  
23 noncustodial parent's, ~~or~~ grandparent's, or  
24 great-grandparent's visitation rights without proper cause,  
25 the court shall, after calculating the amount of visitation  
26 improperly denied, award the noncustodial parent, ~~or~~  
27 grandparent, or great-grandparent a sufficient amount of extra  
28 visitation to compensate the noncustodial parent, ~~or~~  
29 grandparent, or great-grandparent, which visitation shall be  
30 ordered as expeditiously as possible in a manner consistent  
31 with the best interests of the child and scheduled in a manner

1 that is convenient for the person deprived of visitation. In  
2 ordering any makeup visitation, the court shall schedule such  
3 visitation in a manner that is consistent with the best  
4 interests of the child or children and that is convenient for  
5 the noncustodial parent, ~~or~~ grandparent, or great-grandparent.

6 In addition, the court:

7 1. May order the custodial parent to pay reasonable  
8 court costs and attorney's fees incurred by the noncustodial  
9 parent, ~~or~~ grandparent, or great-grandparent to enforce their  
10 visitation rights or make up improperly denied visitation;

11 2. May order the custodial parent to attend the  
12 parenting course approved by the judicial circuit;

13 3. May order the custodial parent to do community  
14 service if the order will not interfere with the welfare of  
15 the child;

16 4. May order the custodial parent to have the  
17 financial burden of promoting frequent and continuing contact  
18 when the custodial parent and child reside further than 60  
19 miles from the noncustodial parent;

20 5. May award custody, rotating custody, or primary  
21 residence to the noncustodial parent, upon the request of the  
22 noncustodial parent, if the award is in the best interests of  
23 the child; or

24 6. May impose any other reasonable sanction as a  
25 result of noncompliance.

26 (d) A person who violates this subsection may be  
27 punished by contempt of court or other remedies as the court  
28 deems appropriate.

29 (6) In any proceeding under this section, the court  
30 may not deny shared parental responsibility, custody, or  
31 visitation rights to a parent, ~~or~~ grandparent, or



1 great-grandparent solely because that parent,~~or~~ grandparent,  
2 or great-grandparent is or is believed to be infected with  
3 human immunodeficiency virus; but the court may condition such  
4 rights upon the parent's,~~or~~ grandparent's, or  
5 great-grandparent's agreement to observe measures approved by  
6 the Centers for Disease Control and Prevention of the United  
7 States Public Health Service or by the Department of Health  
8 ~~and Rehabilitative Services~~ for preventing the spread of human  
9 immunodeficiency virus to the child.

10 (7) In any case where the child is actually residing  
11 with a grandparent or great-grandparent in a stable  
12 relationship, whether or not the court has awarded custody to  
13 the grandparent or great-grandparent ~~or not~~, the court may  
14 recognize the grandparents or great-grandparents as having the  
15 same standing as parents for evaluating what custody  
16 arrangements are in the best interest of the child.

17 Section 5. Subsection (1) of section 63.0425, Florida  
18 Statutes, is amended to read:

19 63.0425 Grandparent's or great-grandparent's right to  
20 adopt.--

21 (1) When a child who has lived with a grandparent or  
22 great-grandparent for at least 6 months is placed for  
23 adoption, the agency or intermediary handling the adoption  
24 shall notify that grandparent or great-grandparent of the  
25 impending adoption before the petition for adoption is filed.  
26 If the grandparent or great-grandparent petitions the court to  
27 adopt the child, the court shall give first priority for  
28 adoption to that grandparent or great-grandparent.

29 Section 6. Subsection (2) of section 63.172, Florida  
30 Statutes, is amended to read:

31 63.172 Effect of judgment of adoption.--

1           (2) If one or both parents of a child die without the  
2 relationship of parent and child having been previously  
3 terminated and a spouse of the living parent or a close  
4 relative of the child thereafter adopts the child, the child's  
5 right of inheritance from or through the deceased parent is  
6 unaffected by the adoption and, unless the court orders  
7 otherwise, the adoption will not terminate any grandparental  
8 or great-grandparental rights delineated under chapter 752.  
9 For purposes of this subsection, a close relative of a child  
10 is the child's brother, sister, grandparent,  
11 great-grandparent, aunt, or uncle.

12           Section 7. Subsections (40) and (42) of section  
13 984.03, Florida Statutes, 1998 Supplement, are amended to  
14 read:

15           984.03 Definitions.--When used in this chapter, the  
16 term:

17           (40) "Next of kin" means an adult relative of a child  
18 who is the child's brother, sister, grandparent,  
19 great-grandparent, aunt, uncle, or first cousin.

20           (42) "Participant," for purposes of a shelter  
21 proceeding, means any person who is not a party but who should  
22 receive notice of hearings involving the child, including  
23 foster parents, identified prospective parents, grandparents  
24 or great-grandparents entitled to priority for adoption  
25 consideration under s. 63.0425, actual custodians of the  
26 child, and any other person whose participation may be in the  
27 best interest of the child. Participants may be granted leave  
28 by the court to be heard without the necessity of filing a  
29 motion to intervene.

30           Section 8. Subsection (41) of section 985.03, Florida  
31 Statutes, 1998 Supplement, is amended to read:

