

By the Committee on Judiciary and Senator Carlton

308-1886-99

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.; providing an effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

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

21           39.01 Definitions.--When used in this chapter, unless  
22 the context otherwise requires:

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

26           (50) "Participant," for purposes of a shelter  
27 proceeding, dependency proceeding, or termination of parental  
28 rights proceeding, means any person who is not a party but who  
29 should receive notice of hearings involving the child,  
30 including foster parents or caregivers, identified prospective  
31 parents, grandparents or great-grandparents entitled to

1 priority for adoption consideration under s. 63.0425, actual  
2 custodians of the child, and any other person whose  
3 participation may be in the best interest of the child.  
4 Participants may be granted leave by the court to be heard  
5 without the necessity of filing a motion to intervene.

6 Section 2. Section 39.509, Florida Statutes, 1998  
7 Supplement, is amended to read:

8 39.509 Grandparents and great-grandparents  
9 rights.--Notwithstanding any other provision of law, a  
10 maternal or paternal grandparent or great-grandparent, as well  
11 as a stepgrandparent or step-great-grandparent, is entitled to  
12 reasonable visitation with his or her grandchild or  
13 great-grandchild who has been adjudicated a dependent child  
14 and taken from the physical custody of the parent, custodian,  
15 legal guardian, or caregiver unless the court finds that such  
16 visitation is not in the best interest of the child or that  
17 such visitation would interfere with the goals of the case  
18 plan. Reasonable visitation may be unsupervised and, where  
19 appropriate and feasible, may be frequent and continuing.

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

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

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

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

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

24           (6) In determining whether grandparental or  
25 great-grandparental visitation is not in the child's best  
26 interest, consideration may be given to the finding of guilt,  
27 regardless of adjudication, or entry or plea of guilty or nolo  
28 contendere to charges under the following statutes, or similar  
29 statutes of other jurisdictions: s. 787.04, relating to  
30 removing minors from the state or concealing minors contrary  
31 to court order; s. 794.011, relating to sexual battery; s.

1 798.02, relating to lewd and lascivious behavior; chapter 800,  
2 relating to lewdness and indecent exposure; or chapter 827,  
3 relating to the abuse of children. Consideration may also be  
4 given to a finding of confirmed abuse, abandonment, or neglect  
5 under ss. 415.101-415.113 or this chapter.

6 Section 3. Paragraph (a) of subsection (3) of section  
7 39.801, Florida Statutes, 1998 Supplement, is amended to read:  
8 39.801 Procedures and jurisdiction; notice; service of  
9 process.--

10 (3) Before the court may terminate parental rights, in  
11 addition to the other requirements set forth in this part, the  
12 following requirements must be met:

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

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

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

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

11 61.13 Custody and support of children; visitation  
12 rights; power of court in making orders.--

13 (2)

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

27 2. The court shall order that the parental  
28 responsibility for a minor child be shared by both parents  
29 unless the court finds that shared parental responsibility  
30 would be detrimental to the child. Evidence that a parent has  
31 been convicted of a felony of the third degree or higher

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

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

27       b. The court shall order "sole parental  
28 responsibility, with or without visitation rights, to the  
29 other parent when it is in the best interests of" the minor  
30 child.

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

13           3. Access to records and information pertaining to a  
14 minor child, including, but not limited to, medical, dental,  
15 and school records, may not be denied to a parent because the  
16 parent is not the child's primary residential parent.

17           (4)

18           (c) When a custodial parent refuses to honor a  
19 noncustodial parent's, ~~or~~ grandparent's, or  
20 great-grandparent's visitation rights without proper cause,  
21 the court shall, after calculating the amount of visitation  
22 improperly denied, award the noncustodial parent, ~~or~~  
23 grandparent, or great-grandparent a sufficient amount of extra  
24 visitation to compensate the noncustodial parent, ~~or~~  
25 grandparent, or great-grandparent, which visitation shall be  
26 ordered as expeditiously as possible in a manner consistent  
27 with the best interests of the child and scheduled in a manner  
28 that is convenient for the person deprived of visitation. In  
29 ordering any makeup visitation, the court shall schedule such  
30 visitation in a manner that is consistent with the best  
31 interests of the child or children and that is convenient for

1 the noncustodial parent,~~or~~ grandparent, or great-grandparent.

2 In addition, the court:

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

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

9 3. May order the custodial parent to do community  
10 service if the order will not interfere with the welfare of  
11 the child;

12 4. May order the custodial parent to have the  
13 financial burden of promoting frequent and continuing contact  
14 when the custodial parent and child reside further than 60  
15 miles from the noncustodial parent;

16 5. May award custody, rotating custody, or primary  
17 residence to the noncustodial parent, upon the request of the  
18 noncustodial parent, if the award is in the best interests of  
19 the child; or

20 6. May impose any other reasonable sanction as a  
21 result of noncompliance.

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

25 (6) In any proceeding under this section, the court  
26 may not deny shared parental responsibility, custody, or  
27 visitation rights to a parent,~~or~~ grandparent, or  
28 great-grandparent solely because that parent,~~or~~ grandparent,  
29 or great-grandparent is or is believed to be infected with  
30 human immunodeficiency virus; but the court may condition such  
31 rights upon the parent's,~~or~~ grandparent's, or



1 great-grandparent's agreement to observe measures approved by  
2 the Centers for Disease Control and Prevention of the United  
3 States Public Health Service or by the Department of Health  
4 ~~and Rehabilitative Services~~ for preventing the spread of human  
5 immunodeficiency virus to the child.

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

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

15 63.0425 Grandparent's or great-grandparent's right to  
16 adopt.--

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

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

27 63.172 Effect of judgment of adoption.--

28 (2) If one or both parents of a child die without the  
29 relationship of parent and child having been previously  
30 terminated and a spouse of the living parent or a close  
31 relative of the child thereafter adopts the child, the child's

1 right of inheritance from or through the deceased parent is  
2 unaffected by the adoption and, unless the court orders  
3 otherwise, the adoption will not terminate any grandparental  
4 or great-grandparental rights delineated under chapter 752.  
5 For purposes of this subsection, a close relative of a child  
6 is the child's brother, sister, grandparent,  
7 great-grandparent, aunt, or uncle.

8 Section 7. This act shall take effect October 1, 1999.

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10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
11 COMMITTEE SUBSTITUTE FOR  
12 SB 284

13

14 Deletes amendments to s. 984.03, F.S., relating to rights of  
15 persons as participants in shelter proceedings.

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17 Deletes amendments to s. 985.03, F.S., relating to rights of  
18 persons as next of kin of a homicide victim to receive notice  
19 of, to be present at, and to be heard in all crucial stages of  
20 a juvenile proceeding against the juvenile offender.

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