

By Representative Harrington

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, F.S.;
 6 providing for great-grandparents visitation
 7 rights; amending ss. 39.801 and 63.0425, F.S.;
 8 providing for a great-grandparent's right to
 9 adopt; amending s. 61.13, F.S.; providing for
 10 great-grandparents visitation rights and
 11 standing with regard to evaluating custody
 12 arrangements; amending s. 63.172, F.S.;
 13 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.

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

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 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), paragraph
12 (c) of subsection (4), and subsections (6) and (7) of section
13 61.13, Florida Statutes, 1998 Supplement, are amended to read:

14 61.13 Custody and support of children; visitation
15 rights; power of court in making orders.--

16 (2)

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

30 2. The court shall order that the parental
31 responsibility for a minor child be shared by both parents

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

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

30 b. The court shall order "sole parental
31 responsibility, with or without visitation rights, to the

1 other parent when it is in the best interests of" the minor
2 child.

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

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

19 (4)

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

1 visitation in a manner that is consistent with the best
2 interests of the child or children and that is convenient for
3 the noncustodial parent, ~~or~~ grandparent, or great-grandparent.
4 In addition, the court:
5 1. May order the custodial parent to pay reasonable
6 court costs and attorney's fees incurred by the noncustodial
7 parent, ~~or~~ grandparent, or great-grandparent to enforce their
8 visitation rights or make up improperly denied visitation;
9 2. May order the custodial parent to attend the
10 parenting course approved by the judicial circuit;
11 3. May order the custodial parent to do community
12 service if the order will not interfere with the welfare of
13 the child;
14 4. May order the custodial parent to have the
15 financial burden of promoting frequent and continuing contact
16 when the custodial parent and child reside further than 60
17 miles from the noncustodial parent;
18 5. May award custody, rotating custody, or primary
19 residence to the noncustodial parent, upon the request of the
20 noncustodial parent, if the award is in the best interests of
21 the child; or
22 6. May impose any other reasonable sanction as a
23 result of noncompliance.
24 (d) A person who violates this subsection may be
25 punished by contempt of court or other remedies as the court
26 deems appropriate.
27 (6) In any proceeding under this section, the court
28 may not deny shared parental responsibility, custody, or
29 visitation rights to a parent, ~~or~~ grandparent, or
30 great-grandparent solely because that parent, ~~or~~ grandparent,
31 or great-grandparent is or is believed to be infected with

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

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

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

17 63.0425 Grandparent's or great-grandparent's right to
18 adopt.--

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

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

29 63.172 Effect of judgment of adoption.--

30 (2) If one or both parents of a child die without the
31 relationship of parent and child having been previously

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

10 Section 7. Subsections (40) and (42) of section
11 984.03, Florida Statutes, 1998 Supplement, are amended to
12 read:

13 984.03 Definitions.--When used in this chapter, the
14 term:

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

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

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

30 985.03 Definitions.--When used in this chapter, the
31 term:

1 (41) "Next of kin" means an adult relative of a child
2 who is the child's brother, sister, grandparent,
3 great-grandparent, aunt, uncle, or first cousin.

4 Section 9. This act shall take effect October 1 of the
5 year in which enacted.

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7 *****
8 HOUSE SUMMARY

9 Provides for great-grandparents visitation rights,
10 adoption rights, and standing for evaluating custody
11 arrangements, with respect to dependent children.
Conforms references relating to delinquent children.

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