

By Senator Campbell

33-225-00

1 A bill to be entitled
 2 An act relating to grandparents' visitation
 3 rights; creating s. 752.011, F.S.; providing
 4 for court-ordered grandparent visitation under
 5 certain circumstances; providing for
 6 appointment of a guardian ad litem and family
 7 mediation if the court makes a preliminary
 8 finding that the minor is threatened with
 9 demonstrable significant mental or emotional
 10 harm without visitation; requiring
 11 court-ordered evaluation of the child if
 12 mediation fails; providing for a hearing in
 13 which the determination of demonstrable
 14 significant mental or emotional harm to the
 15 minor will be made; providing criteria for such
 16 a determination; providing for attorney's fees
 17 and costs; applying the Uniform Child Custody
 18 Jurisdiction Act; repealing s. 752.01, F.S.,
 19 relating to grandparental visitation; amending
 20 s. 61.13, F.S., to conform to the act;
 21 encouraging consolidation of actions under ss.
 22 61.13, 752.011, F.S.; amending ss. 752.015,
 23 752.07, F.S., to conform cross-references;
 24 providing an effective date.

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

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 28 Section 1. Section 752.011, Florida Statutes, is
 29 created to read:
 30 752.011 Action by grandparent for right of visitation;
 31 when petition shall be granted.--

1 (1) A grandparent of a minor may petition for
2 visitation with that minor if:

3 (a) One or both of the parents of the minor are
4 deceased;

5 (b) The marriage of the parents of the minor has been
6 dissolved, whether or not a dissolution action is pending;

7 (c) A parent of the minor has deserted the minor;

8 (d) The minor was born out of wedlock and not later
9 determined to be a minor born within wedlock as provided in s.
10 742.091;

11 (e) The minor is living with both natural parents who
12 are still married to each other, whether or not there is a
13 broken relationship between either or both parents of the
14 minor and the grandparents, and either or both parents have
15 used their parental authority to prohibit a relationship
16 between the minor and the grandparents; or

17 (f) A deceased parent of the minor has made a written
18 testamentary statement requesting that there be visitation
19 between his or her surviving minor child and the grandparent
20 or grandparents.

21 (2) Upon the filing of a petition by a grandparent for
22 visitation rights, the court shall hold a preliminary hearing
23 to find whether there is evidence that the minor is suffering
24 or is threatened with suffering demonstrable significant
25 mental or emotional harm as a result of a parental decision
26 not to permit visitation or contact with the grandparent.
27 Absent such a finding, the court shall dismiss the petition
28 and may award reasonable attorney's fees and costs to be paid
29 by the petitioner to the respondent.

30 (3) If the court finds that there is evidence that the
31 minor is suffering or is threatened with suffering

1 demonstrable significant mental or emotional harm as a result
2 of a parental decision not to permit visitation or contact
3 with the grandparent, the court may appoint a guardian ad
4 litem and shall order the matter to family mediation pursuant
5 to chapter 44 and Rules 12.740 and 12.741, Fla. Fam. L.R.P.

6 (4) If mediation fails to yield a resolution, the
7 court shall order a psychological evaluation of the minor
8 pursuant to Rule 12.363, Fla. Fam. L.R.P., absent the
9 availability of comparable evidence of the findings expected
10 from such an evaluation.

11 (5) After a hearing on the matter, the court may award
12 reasonable rights of visitation to the grandparent with
13 respect to the minor if the court finds that:

14 (a) The minor is suffering or is threatened with
15 suffering demonstrable significant mental or emotional harm as
16 a result of a parental decision not to permit visitation or
17 contact with the grandparent and that visitation with the
18 grandparent will alleviate or mitigate the harm; and

19 (b) That the visitation will not materially harm the
20 parent-child relationship.

21 (6) In assessing demonstrable significant mental or
22 emotional harm as those terms are used in this chapter, the
23 court shall consider the totality of the circumstances
24 affecting the mental and emotional well-being of the minor,
25 including:

26 (a) The love, affection, and other emotional ties
27 existing between the minor and the grandparent, including
28 those based upon a relationship that has been permitted
29 previously by one or more of the minor's parents.

30 (b) The length and quality of the prior relationship
31 between the minor and the grandparent, including the extent to

1 which the grandparent has been involved in providing regular
2 care and support of the minor.

3 (c) Whether the grandparent has established or
4 attempted to establish ongoing personal contact with the
5 minor.

6 (d) The reasons for which a parent or parents have
7 made a decision to end contact or visitation between the minor
8 and the grandparent which was permitted previously by the
9 parent or parents.

10 (e) Whether there has been significant emotional or
11 mental trauma to the minor as the result of disruption in the
12 family unit due to divorce, abandonment by a parent, or
13 disability or death of a parent, sibling, or other household
14 member, for which the minor has derived support and stability
15 from the grandparental relationship and whether the
16 continuation of that support and stability is likely to
17 prevent further injury.

18 (f) The existence or threat of mental injury to the
19 minor as defined in s. 39.01.

20 (g) When one parent is deceased, whether grandparent
21 visitation will help maintain or facilitate contact between
22 the minor and the deceased parent's extended family of origin
23 such that significant emotional or mental trauma to the minor
24 from loss of additional family relationships is mitigated.

25 (h) The present mental, physical, and emotional needs
26 and health of the minor.

27 (i) The present mental, physical, and emotional health
28 of the grandparent.

29 (j) The recommendations of the minor's guardian ad
30 litem.

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1 (k) The results of the psychological evaluation of the
2 minor pursuant to Rule 12.363, Fla. Fam. L.R.P.

3 (l) The preference of the minor if the minor is
4 determined to be of sufficient maturity to express a
5 preference.

6 (m) When a parent is deceased, any written
7 testamentary statement by the deceased parent requesting that
8 visitation with the grandparent be granted or stating a belief
9 that such visitation would reduce or mitigate mental or
10 emotional harm to the minor as a result of the parent's death.
11 The absence of such a testamentary statement may not be
12 construed as evidence that the deceased parent would have
13 objected to the requested visitation.

14 (n) Such other factors as the court considers
15 necessary in making this determination.

16 (7) In assessing whether granting a petition brought
17 under this chapter will cause harm to the parent-child
18 relationship, the court shall consider the totality of the
19 circumstances affecting the parent-child relationship,
20 including:

21 (a) Whether there have been previous disputes between
22 the grandparent and the parents over childrearing or other
23 matters related to the care and upbringing of the minor;

24 (b) Whether visitation would in a material manner
25 interfere with or compromise parental authority;

26 (c) Whether visitation can be arranged in such a
27 manner as not to materially detract from the parent-child
28 relationship, including the quantity of time available for
29 enjoyment of the parent-child relationship and any other
30 consideration related to disruption of the schedule and
31 routines of the parents' and the minor's home lives;

1 (d) Whether visitation is being sought for the primary
2 purpose of continuing or establishing a relationship with the
3 minor with the intent that the minor benefit from the
4 relationship;

5 (e) Whether the requested visitation would expose the
6 minor to conduct, moral standards, experiences, or other
7 factors that are inconsistent with influences provided by the
8 parent;

9 (f) The nature of the relationship between the parents
10 and the grandparent;

11 (g) The reasons for which a parent or parents have
12 made a decision to end contact or visitation between the minor
13 and the grandparent which has been permitted previously by
14 that parent or parents;

15 (h) The psychological toll of visitation disputes on
16 the minor in the particular circumstances; and

17 (i) Such other factors as the court considers
18 necessary in making this determination.

19 (8) Sections 61.1302-61.1348, the Uniform Child
20 Custody Jurisdiction Act, apply to actions brought under this
21 chapter.

22 (9) If separate actions under this section and s.
23 61.13 are pending concurrently, courts are strongly encouraged
24 to consolidate the actions in order to minimize the burden of
25 litigation of visitation rights on the minor and the parties.

26 (10) An order of grandparent visitation may be
27 modified upon a showing of substantial change in circumstances
28 or a showing that visitation is causing material harm to the
29 parent-child relationship.

30 (11) An original action requesting visitation rights
31 under this chapter may be filed by any grandparent only once

1 during any 2-year period, except on good cause shown of
2 imminent or existing demonstrable significant mental or
3 emotional harm to a minor caused by a parental decision to
4 deny or limit contact or visitation between a minor and
5 grandparent, which was not known to the grandparent at the
6 time of filing an earlier action.

7 (12) This section does not provide for grandparental
8 visitation rights for minors placed for adoption under chapter
9 63 except as provided in s. 752.07 with respect to adoption by
10 a stepparent.

11 (13) Section 57.105 applies to actions brought under
12 this chapter.

13 Section 2. Section 752.01, Florida Statutes, is
14 repealed.

15 Section 3. Subsection (2) of section 61.13, Florida
16 Statutes, is amended to read:

17 61.13 Custody and support of children; visitation
18 rights; power of court in making orders.--

19 (2)(a) The court shall have jurisdiction to determine
20 custody, notwithstanding that the child is not physically
21 present in this state at the time of filing any proceeding
22 under this chapter, if it appears to the court that the child
23 was removed from this state for the primary purpose of
24 removing the child from the jurisdiction of the court in an
25 attempt to avoid a determination or modification of custody.

26 (b)1. The court shall determine all matters relating
27 to custody of each minor child of the parties in accordance
28 with the best interests of the child and in accordance with
29 the Uniform Child Custody Jurisdiction Act. It is the public
30 policy of this state to assure that each minor child has
31 frequent and continuing contact with both parents after the

1 parents separate or the marriage of the parties is dissolved
2 and to encourage parents to share the rights and
3 responsibilities, and joys, of childrearing. After considering
4 all relevant facts, the father of the child shall be given the
5 same consideration as the mother in determining the primary
6 residence of a child irrespective of the age or sex of the
7 child.

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

30 a. In ordering shared parental responsibility, the
31 court may consider the expressed desires of the parents and

1 may grant to one party the ultimate responsibility over
2 specific aspects of the child's welfare or may divide those
3 responsibilities between the parties based on the best
4 interests of the child. Areas of responsibility may include
5 primary residence, education, medical and dental care, and any
6 other responsibilities that the court finds unique to a
7 particular family.

8 b. The court shall order "sole parental
9 responsibility, with or without visitation rights, to the
10 other parent when it is in the best interests of" the minor
11 child.

12 c. The court may award the grandparents visitation
13 rights with a minor child pursuant to the criteria set forth
14 in s. 752.011 if it is in the child's best interest.

15 Grandparents have legal standing to seek judicial enforcement
16 of such an award. This section does not require that
17 grandparents be made parties or given notice of dissolution
18 pleadings or proceedings, nor do grandparents have legal
19 standing as "contestants" as defined in s. 61.1306. However,
20 if separate actions under this section and s. 752.011 are
21 pending concurrently, courts are strongly encouraged to
22 consolidate the actions in order to minimize the burden of
23 litigation of visitation rights on the child.A court may not
24 order that a child be kept within the state or jurisdiction of
25 the court solely for the purpose of permitting visitation by
26 the grandparents.

27 3. Access to records and information pertaining to a
28 minor child, including, but not limited to, medical, dental,
29 and school records, may not be denied to a parent because the
30 parent is not the child's primary residential parent.

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1 (c) The circuit court in the county in which either
2 parent and the child reside or the circuit court in which the
3 original award of custody was entered have jurisdiction to
4 modify an award of child custody. The court may change the
5 venue in accordance with s. 47.122.

6 (d) No presumption shall arise in favor of or against
7 a request to relocate when a primary residential parent seeks
8 to move the child and the move will materially affect the
9 current schedule of contact and access with the secondary
10 residential parent. In making a determination as to whether
11 the primary residential parent may relocate with a child, the
12 court must consider the following factors:

13 1. Whether the move would be likely to improve the
14 general quality of life for both the residential parent and
15 the child.

16 2. The extent to which visitation rights have been
17 allowed and exercised.

18 3. Whether the primary residential parent, once out of
19 the jurisdiction, will be likely to comply with any substitute
20 visitation arrangements.

21 4. Whether the substitute visitation will be adequate
22 to foster a continuing meaningful relationship between the
23 child and the secondary residential parent.

24 5. Whether the cost of transportation is financially
25 affordable by one or both parties.

26 6. Whether the move is in the best interests of the
27 child.

28 Section 4. Section 752.015, Florida Statutes, is
29 amended to read:

30 752.015 Mediation of visitation disputes.--It shall be
31 the public policy of this state that families resolve

1 differences over grandparent visitation within the family. It
2 shall be the further public policy of this state that when
3 families are unable to resolve differences relating to
4 grandparent visitation that the family participate in any
5 formal or informal mediation services that may be available.
6 When families are unable to resolve differences relating to
7 grandparent visitation and a petition is filed pursuant to s.
8 752.011 ~~752.01~~, the court shall, if such services are
9 available in the circuit, refer the case to family mediation
10 in accordance with rules promulgated by the Supreme Court.

11 Section 5. Section 752.07, Florida Statutes, is
12 amended to read:

13 752.07 Effect of adoption of child by stepparent on
14 right of visitation; when right may be terminated.--When there
15 is a remarriage of one of the natural parents of a minor child
16 for whom visitation rights may be or may have been granted to
17 a grandparent pursuant to s. 752.011 ~~752.01~~, any subsequent
18 adoption by the stepparent will not terminate any
19 grandparental rights. However, the court may determine that
20 ~~termination of such visitation rights~~ should be terminated
21 based upon the standards for granting such visitation which
22 are set forth in s. 752.011 ~~is in the best interest of the~~
23 ~~child~~ and rule accordingly, after affording the grandparent an
24 opportunity to be heard.

25 Section 6. This act shall take effect July 1, 2000.
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SENATE SUMMARY

Provides for court-ordered grandparent visitation rights under described circumstances. Provides for appointment of a guardian ad litem and family mediation if the court makes a preliminary finding that a minor is threatened with significant mental or emotional harm if grandparental visitation is not granted, and requires court-ordered evaluation of the child if mediation fails. Provides for a hearing in which the finding that there is a threat of such harm to the minor will be made. Provides for the application of the Uniform Child Custody Jurisdiction Act. (See bill for details.)