

By the Committee on Judiciary and Senator Campbell

308-685-00

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; or

11 (e) A deceased parent of the minor has made a written
12 testamentary statement requesting that there be visitation
13 between his or her surviving minor child and the grandparent
14 or grandparents.

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

24 (3) If the court finds that there is evidence that the
25 minor is suffering or is threatened with suffering
26 demonstrable significant mental or emotional harm as a result
27 of a parental decision not to permit visitation or contact
28 with the grandparent, the court may appoint a guardian ad
29 litem and shall order the matter to family mediation as
30 provided in chapter 44 and Rules 12.740 and 12.741 of the
31 Florida Family Law Rules of Procedure.

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

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

9 (a) The minor is suffering or is threatened with
10 suffering demonstrable significant mental or emotional harm as
11 a result of a parental decision not to permit visitation or
12 contact with the grandparent and that visitation with the
13 grandparent will alleviate or mitigate the harm; and

14 (b) That the visitation will not materially harm the
15 parent-child relationship.

16 (6) In assessing demonstrable significant mental or
17 emotional harm as those terms are used in this chapter, the
18 court shall consider the totality of the circumstances
19 affecting the mental and emotional well-being of the minor,
20 including:

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

25 (b) The length and quality of the prior relationship
26 between the minor and the grandparent, including the extent to
27 which the grandparent has been involved in providing regular
28 care and support of the minor.

29 (c) Whether the grandparent has established or
30 attempted to establish ongoing personal contact with the
31 minor.

1 (d) The reasons for which a parent or parents have
2 made a decision to end contact or visitation between the minor
3 and the grandparent which was permitted previously by the
4 parent or parents.

5 (e) Whether there has been demonstrable significant
6 mental or emotional harm to the minor as the result of
7 disruption in the family unit due to divorce, abandonment by a
8 parent, or disability or death of a parent, sibling, or other
9 household member, for which the minor has derived support and
10 stability from the grandparental relationship and whether the
11 continuation of that support and stability is likely to
12 prevent further harm.

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

15 (g) When one parent is deceased, whether grandparent
16 visitation will help maintain or facilitate contact between
17 the minor and the deceased parent's extended family of origin
18 such that demonstrable significant mental or emotional harm to
19 the minor from loss of additional family relationships is
20 mitigated.

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

23 (i) The present mental, physical, and emotional health
24 of the grandparent.

25 (j) The recommendations of the minor's guardian ad
26 litem.

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

29 (l) The preference of the minor if the minor is
30 determined to be of sufficient maturity to express a
31 preference.

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

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

11 (7) In assessing whether granting a petition brought
12 under this chapter will cause material harm to the
13 parent-child relationship, the court shall consider the
14 totality of the circumstances affecting the parent-child
15 relationship, including:

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

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

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

27 (d) Whether visitation is being sought for the primary
28 purpose of continuing or establishing a relationship with the
29 minor with the intent that the minor benefit from the
30 relationship;

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1 (e) Whether the requested visitation would expose the
2 minor to conduct, moral standards, experiences, or other
3 factors that are inconsistent with influences provided by the
4 parent;

5 (f) The nature of the relationship between the parents
6 and the grandparent;

7 (g) The reasons for which a parent or parents have
8 made a decision to end contact or visitation between the minor
9 and the grandparent which has been permitted previously by
10 that parent or parents;

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

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

15 (8) Sections 61.1302-61.1348, the Uniform Child
16 Custody Jurisdiction Act, apply to actions brought under this
17 chapter.

18 (9) If separate actions under this section and s.
19 61.13 are pending concurrently, courts are strongly encouraged
20 to consolidate the actions in order to minimize the burden of
21 litigation of visitation rights on the minor and the parties.

22 (10) An order of grandparent visitation may be
23 modified upon a showing of substantial change in circumstances
24 or a showing that visitation is causing material harm to the
25 parent-child relationship.

26 (11) An original action requesting visitation rights
27 under this chapter may be filed by any grandparent only once
28 during any 2-year period, except on good cause shown that the
29 minor is suffering or threatened with suffering demonstrable
30 significant mental or emotional harm caused by a parental
31 decision to deny or limit contact or visitation between a

1 minor and grandparent, which was not known to the grandparent
2 at the time of filing an earlier action.

3 (12) This section does not provide for grandparental
4 visitation rights for minors placed for adoption under chapter
5 63 except as provided in s. 752.07 with respect to adoption by
6 a stepparent.

7 (13) Section 57.105 applies to actions brought under
8 this chapter.

9 Section 2. Section 752.01, Florida Statutes, is
10 repealed.

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

13 61.13 Custody and support of children; visitation
14 rights; power of court in making orders.--

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

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

1 same consideration as the mother in determining the primary
2 residence of a child irrespective of the age or sex of the
3 child.

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

26 a. In ordering shared parental responsibility, the
27 court may consider the expressed desires of the parents and
28 may grant to one party the ultimate responsibility over
29 specific aspects of the child's welfare or may divide those
30 responsibilities between the parties based on the best
31 interests of the child. Areas of responsibility may include

1 primary residence, education, medical and dental care, and any
2 other responsibilities that the court finds unique to a
3 particular family.

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

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

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

23 3. Access to records and information pertaining to a
24 minor child, including, but not limited to, medical, dental,
25 and school records, may not be denied to a parent because the
26 parent is not the child's primary residential parent.

27 (c) The circuit court in the county in which either
28 parent and the child reside or the circuit court in which the
29 original award of custody was entered have jurisdiction to
30 modify an award of child custody. The court may change the
31 venue in accordance with s. 47.122.

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

8 1. Whether the move would be likely to improve the
9 general quality of life for both the residential parent and
10 the child.

11 2. The extent to which visitation rights have been
12 allowed and exercised.

13 3. Whether the primary residential parent, once out of
14 the jurisdiction, will be likely to comply with any substitute
15 visitation arrangements.

16 4. Whether the substitute visitation will be adequate
17 to foster a continuing meaningful relationship between the
18 child and the secondary residential parent.

19 5. Whether the cost of transportation is financially
20 affordable by one or both parties.

21 6. Whether the move is in the best interests of the
22 child.

23 Section 4. Section 752.015, Florida Statutes, is
24 amended to read:

25 752.015 Mediation of visitation disputes.--It shall be
26 the public policy of this state that families resolve
27 differences over grandparent visitation within the family. It
28 shall be the further public policy of this state that when
29 families are unable to resolve differences relating to
30 grandparent visitation that the family participate in any
31 formal or informal mediation services that may be available.

1 When families are unable to resolve differences relating to
2 grandparent visitation and a petition is filed pursuant to s.
3 752.011 ~~752.01~~, the court shall, if such services are
4 available in the circuit, refer the case to family mediation
5 in accordance with rules promulgated by the Supreme Court.

6 Section 5. Section 752.07, Florida Statutes, is
7 amended to read:

8 752.07 Effect of adoption of child by stepparent on
9 right of visitation; when right may be terminated.--When there
10 is a remarriage of one of the natural parents of a minor child
11 for whom visitation rights may be or may have been granted to
12 a grandparent pursuant to s. 752.011 ~~752.01~~, any subsequent
13 adoption by the stepparent will not terminate any
14 grandparental rights. However, the court may determine that
15 ~~termination of~~ such visitation rights should be terminated
16 based upon the standards for granting such visitation which
17 are set forth in s. 752.011 ~~is in the best interest of the~~
18 ~~child~~ and rule accordingly, after affording the grandparent an
19 opportunity to be heard.

20 Section 6. This act shall take effect July 1, 2000.

21
22 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
23 COMMITTEE SUBSTITUTE FOR
24 SB 288

25 Changes the applicability of the grandparent visitation right
26 action to implicitly exclude parents in "intact families" and
27 limits the bill's application to those cases in which 1) One
28 or both parents are deceased, 2) The parents' marriage is
dissolving or dissolved, 3) A parent has deserted, 4) The
minor is born out of wedlock, or 5) The deceased parent has
expressed a testamentary statement requesting such visitation.

29 Makes technical changes to conform the provisions to the
30 standard of harm required to initiate and succeed on a
petition for grandparent visitation rights.

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