

1 A bill to be entitled
2 An act relating to children and families;
3 creating s. 752.011, F.S.; providing for
4 court-ordered visitation for grandparents and
5 great-grandparents under certain circumstances;
6 providing for appointment of a guardian ad
7 litem and family mediation if the court makes a
8 preliminary finding that the minor is
9 threatened with demonstrable significant mental
10 or emotional harm without such visitation;
11 requiring court-ordered evaluation of the child
12 if mediation fails; providing for a hearing to
13 determine whether the minor is threatened with
14 demonstrable significant mental or emotional
15 harm; providing criteria for such a
16 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;
20 encouraging consolidation of actions under ss.
21 61.13, 752.011, F.S.; amending ss. 752.015,
22 752.07, F.S., to conform cross-references;
23 amending s. 39.01, F.S.; including references
24 to great-grandparents in definitions relating
25 to dependent children; amending s. 39.509,
26 F.S.; providing for great-grandparents'
27 visitation rights; amending ss. 39.801,
28 63.0425, F.S.; providing for a
29 great-grandparent's right to adopt; amending s.
30 61.13, F.S.; providing for great-grandparents'
31 visitation rights and standing with regard to

1 evaluating custody arrangements; conforming
2 this section to provisions of this act;
3 amending s. 63.172, F.S.; conforming references
4 relating to great-grandparental visitation
5 rights under ch. 752, F.S.; providing an
6 effective date.

7

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

9

10 Section 1. Section 752.011, Florida Statutes, is
11 created to read:

12 752.011 Action by grandparent or great-grandparent for
13 right of visitation; when petition shall be granted.--

14 (1) A grandparent or great-grandparent of a minor may
15 petition for visitation with that minor if:

16 (a) One or both of the parents of the minor are
17 deceased;

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

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

21 (d) The minor was born out of wedlock and not later
22 determined to be a minor born within wedlock as provided in s.
23 742.091; or

24 (e) A deceased parent of the minor has made a written
25 testamentary statement requesting that there be visitation
26 between his or her surviving minor child and the grandparent
27 or great-grandparent.

28 (2) Upon the filing of a petition by a grandparent or
29 great-grandparent for visitation rights, the court shall hold
30 a preliminary hearing to find whether there is evidence that
31 the 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 or great-grandparent. Absent such a
4 finding, the court shall dismiss the petition and shall award
5 reasonable attorney's fees and costs to be paid by the
6 petitioner to the respondent.

7 (3) If the court finds that there is evidence that the
8 minor is suffering or is threatened with suffering
9 demonstrable significant mental or emotional harm as a result
10 of a parental decision not to permit visitation or contact
11 with the grandparent or great-grandparent, the court may
12 appoint a guardian ad litem and shall order the matter to
13 family mediation as provided in chapter 44 and Rules 12.740
14 and 12.741 of the Florida Family Law Rules of Procedure.

15 (4) When mediation fails to yield a resolution, the
16 court shall order a psychological evaluation of the minor
17 pursuant to Rule 12.363, Fla. Fam. L.R.P., if comparable
18 evidence of the findings expected from such an evaluation is
19 unavailable.

20 (5) After a hearing on the matter, the court may award
21 reasonable rights of visitation to the grandparent or
22 great-grandparent with respect to the minor if the court finds
23 that:

24 (a) There is clear and convincing 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 or great-grandparent and that visitation
29 with the grandparent or great-grandparent will alleviate or
30 mitigate the harm; and

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1 (b) That the visitation will not materially harm the
2 parent-child relationship.

3 (6) In assessing demonstrable significant mental or
4 emotional harm as those terms are used in this chapter, the
5 court shall consider the totality of the circumstances
6 affecting the mental and emotional well-being of the minor,
7 including:

8 (a) The love, affection, and other emotional ties
9 existing between the minor and the grandparent or
10 great-grandparent, including those based upon a relationship
11 that has been permitted previously by one or more of the
12 minor's parents.

13 (b) The length and quality of the prior relationship
14 between the minor and the grandparent or great-grandparent,
15 including the extent to which the grandparent or
16 great-grandparent has been involved in providing regular care
17 and support of the minor.

18 (c) Whether the grandparent or great-grandparent has
19 established or attempted to establish ongoing personal contact
20 with the minor.

21 (d) The reasons for which a parent or parents have
22 made a decision to end contact or visitation between the minor
23 and the grandparent or great-grandparent which was permitted
24 previously by the parent or parents.

25 (e) Whether there has been demonstrable significant
26 mental or emotional harm to the minor as the result of
27 disruption in the family unit due to divorce, abandonment by a
28 parent, or disability or death of a parent, sibling, or other
29 household member, for which the minor has derived support and
30 stability from the relationship with the grandparent or
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1 great-grandparent and whether the continuation of that support
2 and stability is likely to prevent further harm.

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

5 (g) When one parent is deceased, whether visitation
6 with the grandparent or great-grandparent will help maintain
7 or facilitate contact between the minor and the deceased
8 parent's extended family of origin such that demonstrable
9 significant mental or emotional harm to the minor from loss of
10 additional family relationships is mitigated.

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

13 (i) The present mental, physical, and emotional health
14 of the grandparent or great-grandparent.

15 (j) The recommendations of the minor's guardian ad
16 litem.

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

19 (l) The preference of the minor if the minor is
20 determined to be of sufficient maturity to express a
21 preference.

22 (m) When a parent is deceased, any written
23 testamentary statement by the deceased parent requesting that
24 visitation with the grandparent or great-grandparent be
25 granted or stating a belief that such visitation would reduce
26 or mitigate demonstrable significant mental or emotional harm
27 to the minor as a result of the parent's death. The absence of
28 such a testamentary statement may not be construed as evidence
29 that the deceased parent would have objected to the requested
30 visitation.

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

3 (7) In assessing whether granting a petition brought
4 under this chapter will cause material harm to the
5 parent-child relationship, the court shall consider the
6 totality of the circumstances affecting the parent-child
7 relationship, including:

8 (a) Whether there have been previous disputes between
9 the parents and the grandparent or great-grandparent over
10 childrearing or other matters related to the care and
11 upbringing of the minor;

12 (b) Whether visitation would materially interfere with
13 or compromise parental authority;

14 (c) Whether visitation can be arranged in such a
15 manner as not to materially detract from the parent-child
16 relationship, including the quantity of time available for
17 enjoyment of the parent-child relationship and any other
18 consideration related to disruption of the schedule and
19 routines of the parents' and the minor's home lives;

20 (d) Whether visitation is being sought for the primary
21 purpose of continuing or establishing a relationship with the
22 minor with the intent that the minor benefit from the
23 relationship;

24 (e) Whether the requested visitation would expose the
25 minor to conduct, moral standards, experiences, or other
26 factors that are inconsistent with influences provided by the
27 parent;

28 (f) The nature of the relationship between the parents
29 and the grandparent or great-grandparent;

30 (g) The reasons for which a parent or parents have
31 made a decision to end contact or visitation between the minor

1 and the grandparent or great-grandparent which has been
2 permitted previously by that parent or parents;

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

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

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

10 (9) If separate actions under this section and s.
11 61.13 are pending concurrently, courts are strongly encouraged
12 to consolidate the actions in order to minimize the burden of
13 litigation of visitation rights on the minor and the parties.

14 (10) An order of grandparent visitation or
15 great-grandparent visitation may be modified upon a showing of
16 substantial change in circumstances or a showing that
17 visitation is causing material harm to the parent-child
18 relationship.

19 (11) An original action requesting visitation rights
20 under this chapter may be filed by any grandparent or
21 great-grandparent only once during any 2-year period, except
22 on good cause shown that the minor is suffering or threatened
23 with suffering demonstrable significant mental or emotional
24 harm caused by a parental decision to deny or limit contact or
25 visitation between a minor and grandparent or
26 great-grandparent, which was not known to the grandparent or
27 great-grandparent at the time of filing an earlier action.

28 (12) This section does not provide for visitation
29 rights for grandparents or great-grandparents of minors placed
30 for adoption under chapter 63 except as provided in s. 752.07
31 with respect to adoption by a stepparent.

1 (13) Section 57.105 applies to actions brought under
2 this chapter.

3 Section 2. Section 752.01, Florida Statutes, is
4 repealed.

5 Section 3. Section 752.015, Florida Statutes, is
6 amended to read:

7 752.015 Mediation of visitation disputes.--It shall be
8 the public policy of this state that families resolve
9 differences over grandparent visitation within the family. It
10 shall be the further public policy of this state that when
11 families are unable to resolve differences relating to
12 grandparent visitation that the family participate in any
13 formal or informal mediation services that may be available.
14 When families are unable to resolve differences relating to
15 grandparent visitation and a petition is filed pursuant to s.
16 752.011 ~~s. 752.01~~, the court shall, if such services are
17 available in the circuit, refer the case to family mediation
18 in accordance with rules promulgated by the Supreme Court.

19 Section 4. Section 752.07, Florida Statutes, is
20 amended to read:

21 752.07 Effect of adoption of child by stepparent on
22 right of visitation; when right may be terminated.--When there
23 is a remarriage of one of the natural parents of a minor child
24 for whom visitation rights may be or may have been granted to
25 a grandparent pursuant to s. 752.011 ~~s. 752.01~~, any subsequent
26 adoption by the stepparent will not terminate any
27 grandparental rights. However, the court may determine that
28 ~~termination of~~ such visitation rights should be terminated
29 based upon the standards for granting such visitation which
30 are set forth in s. 752.011 ~~is in the best interest of the~~

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1 ~~child~~ and rule accordingly, after affording the grandparent an
2 opportunity to be heard.

3 Section 5. Subsections (46) and (50) of section 39.01,
4 Florida Statutes, are amended to read:

5 39.01 Definitions.--When used in this chapter, unless
6 the context otherwise requires:

7 (1) "Abandoned" means a situation in which the parent
8 or

9 (46) "Next of kin" means an adult relative of a child
10 who is the child's brother, sister, grandparent,
11 great-grandparent, aunt, uncle, or first cousin.

12 (50) "Participant," for purposes of a shelter
13 proceeding, dependency proceeding, or termination of parental
14 rights proceeding, means any person who is not a party but who
15 should receive notice of hearings involving the child,
16 including foster parents or the legal custodian of the child,
17 identified prospective parents, grandparents or
18 great-grandparents entitled to priority for adoption
19 consideration under s. 63.0425, actual custodians of the
20 child, and any other person whose participation may be in the
21 best interest of the child. A community-based agency under
22 contract with the department to provide protective services
23 may be designated as a participant at the discretion of the
24 court. Participants may be granted leave by the court to be
25 heard without the necessity of filing a motion to intervene.

26 Section 6. Section 39.509, Florida Statutes, is
27 amended to read:

28 39.509 Grandparents' and great-grandparents'
29 ~~Grandparents~~ rights.--Notwithstanding any other provision of
30 law, a maternal or paternal grandparent or great-grandparent
31 as well as a stepgrandparent or step-great-grandparent is

1 entitled to reasonable visitation with his or her grandchild
2 or great-grandchild who has been adjudicated a dependent child
3 and taken from the physical custody of the parent unless the
4 court finds that such visitation is not in the best interest
5 of the child or that such visitation would interfere with the
6 goals of the case plan. Reasonable visitation may be
7 unsupervised and, where appropriate and feasible, may be
8 frequent and continuing.

9 (1) Grandparent or great-grandparent visitation may
10 take place in the home of the grandparent or great-grandparent
11 unless there is a compelling reason for denying such a
12 visitation. The department's caseworker shall arrange the
13 visitation to which a grandparent or great-grandparent is
14 entitled pursuant to this section. The state shall not charge
15 a fee for any costs associated with arranging the visitation.
16 However, the grandparent or great-grandparent shall pay for
17 the child's cost of transportation when the visitation is to
18 take place in the grandparent's or great-grandparent's home.
19 The caseworker shall document the reasons for any decision to
20 restrict a grandparent's or great-grandparent's visitation.

21 (2) A grandparent or great-grandparent entitled to
22 visitation pursuant to this section shall not be restricted
23 from appropriate displays of affection to the child, such as
24 appropriately hugging or kissing his or her grandchild or
25 great-grandchild. Gifts, cards, and letters from the
26 grandparent or great-grandparent and other family members
27 shall not be denied to a child who has been adjudicated a
28 dependent child.

29 (3) Any attempt by a grandparent or great-grandparent
30 to facilitate a meeting between the child who has been
31 adjudicated a dependent child and the child's parent or legal

1 custodian, or any other person in violation of a court order
2 shall automatically terminate future visitation rights of the
3 grandparent or great-grandparent.

4 (4) When the child has been returned to the physical
5 custody of his or her parent, the visitation rights granted
6 pursuant to this section shall terminate.

7 (5) The termination of parental rights does not affect
8 the rights of grandparents or great-grandparents unless the
9 court finds that such visitation is not in the best interest
10 of the child or that such visitation would interfere with the
11 goals of permanency planning for the child.

12 (6) In determining whether grandparental or
13 great-grandparental visitation is not in the child's best
14 interest, consideration may be given to the finding of guilt,
15 regardless of adjudication, or entry or plea of guilty or nolo
16 contendere to charges under the following statutes, or similar
17 statutes of other jurisdictions: s. 787.04, relating to
18 removing minors from the state or concealing minors contrary
19 to court order; s. 794.011, relating to sexual battery; s.
20 798.02, relating to lewd and lascivious behavior; chapter 800,
21 relating to lewdness and indecent exposure; or chapter 827,
22 relating to the abuse of children. Consideration may also be
23 given to a report of abuse, abandonment, or neglect under ss.
24 415.101-415.113 or this chapter and the outcome of the
25 investigation concerning such report.

26 Section 7. Paragraph (a) of subsection (3) of section
27 39.801, Florida Statutes, is amended to read:

28 39.801 Procedures and jurisdiction; notice; service of
29 process.--

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

4 (a) Notice of the date, time, and place of the
5 advisory hearing for the petition to terminate parental rights
6 and a copy of the petition must be personally served upon the
7 following persons, specifically notifying them that a petition
8 has been filed:

- 9 1. The parents of the child.
- 10 2. The legal custodians of the child.
- 11 3. If the parents who would be entitled to notice are
12 dead or unknown, a living relative of the child, unless upon
13 diligent search and inquiry no such relative can be found.
- 14 4. Any person who has physical custody of the child.
- 15 5. Any grandparent or great-grandparent entitled to
16 priority for adoption under s. 63.0425.
- 17 6. Any prospective parent who has been identified
18 under s. 39.503 or s. 39.803.
- 19 7. The guardian ad litem for the child or the
20 representative of the guardian ad litem program, if the
21 program has been appointed.

22
23 The document containing the notice to respond or appear must
24 contain, in type at least as large as the type in the balance
25 of the document, the following or substantially similar
26 language: "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY
27 HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL
28 RIGHTS OF THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON
29 THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS
30 A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION
31 ATTACHED TO THIS NOTICE."

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

4 61.13 Custody and support of children; visitation
5 rights; power of court in making orders.--

6 (2)

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

20 2. The court shall order that the parental
21 responsibility for a minor child be shared by both parents
22 unless the court finds that shared parental responsibility
23 would be detrimental to the child. Evidence that a parent has
24 been convicted of a felony of the third degree or higher
25 involving domestic violence, as defined in s. 741.28 and
26 chapter 775, or meets the criteria of s. 39.806(1)(d), creates
27 a rebuttable presumption of detriment to the child. If the
28 presumption is not rebutted, shared parental responsibility,
29 including visitation, residence of the child, and decisions
30 made regarding the child, may not be granted to the convicted
31 parent. However, the convicted parent is not relieved of any

1 obligation to provide financial support. If the court
2 determines that shared parental responsibility would be
3 detrimental to the child, it may order sole parental
4 responsibility and make such arrangements for visitation as
5 will best protect the child or abused spouse from further
6 harm. Whether or not there is a conviction of any offense of
7 domestic violence or child abuse or the existence of an
8 injunction for protection against domestic violence, the court
9 shall consider evidence of domestic violence or child abuse as
10 evidence of detriment to the child.

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

20 b. The court shall order "sole parental
21 responsibility, with or without visitation rights, to the
22 other parent when it is in the best interests of" the minor
23 child.

24 c. The court may award the grandparents or
25 great-grandparents visitation rights with a minor child
26 pursuant to the criteria set forth in s. 752.011 ~~if it is in~~
27 ~~the child's best interest~~. Grandparents or great-grandparents
28 have legal standing to seek judicial enforcement of such an
29 award. This section does not require that grandparents or
30 great-grandparents be made parties or given notice of
31 dissolution pleadings or proceedings, nor do grandparents or

1 great-grandparents have legal standing as "contestants" as
2 defined in s. 61.1306. However, if separate actions under this
3 section and s. 752.011 are pending concurrently, courts are
4 strongly encouraged to consolidate the actions in order to
5 minimize the burden of litigation of visitation rights on the
6 child.A court may not order that a child be kept within the
7 state or jurisdiction of the court solely for the purpose of
8 permitting visitation by the grandparents or
9 great-grandparents.

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

14 (4)

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

31

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

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

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

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

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

18 6. May impose any other reasonable sanction as a
19 result of noncompliance.

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

23 (6) In any proceeding under this section, the court
24 may not deny shared parental responsibility, custody, or
25 visitation rights to a parent,~~or~~ grandparent, or
26 great-grandparent solely because that parent,~~or~~ grandparent,
27 or great-grandparent is or is believed to be infected with
28 human immunodeficiency virus; but the court may condition such
29 rights upon the parent's,~~or~~ grandparent's, or
30 great-grandparent's agreement to observe measures approved by
31 the Centers for Disease Control and Prevention of the United

1 States Public Health Service or by the Department of Health
2 for preventing the spread of human immunodeficiency virus to
3 the child.

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

11 Section 9. Subsection (1) of section 63.0425, Florida
12 Statutes, is amended to read:

13 63.0425 Grandparent's or great-grandparent's right to
14 adopt.--

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

23 Section 10. Subsection (2) of section 63.172, Florida
24 Statutes, is amended to read:

25 63.172 Effect of judgment of adoption.--

26 (2) If one or both parents of a child die without the
27 relationship of parent and child having been previously
28 terminated and a spouse of the living parent or a close
29 relative of the child thereafter adopts the child, the child's
30 right of inheritance from or through the deceased parent is
31 unaffected by the adoption and, unless the court orders

1 otherwise, the adoption will not terminate any grandparental
2 or great-grandparental rights delineated under chapter 752.
3 For purposes of this subsection, a close relative of a child
4 is the child's brother, sister, grandparent,
5 great-grandparent, aunt, or uncle.

6 Section 11. This act shall take effect July 1, 2001.

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