



HB 1107

2003
CS

CHAMBER ACTION

The Committee on Judiciary recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to children and families; creating s. 752.011, F.S.; providing for court-ordered visitation for grandparents and great-grandparents under certain circumstances; providing for appointment of a guardian ad litem and family mediation if the court makes a preliminary finding that the minor is threatened with demonstrable significant mental or emotional harm without such visitation; requiring court-ordered evaluation of the child if mediation fails; providing for a hearing to determine whether the minor is threatened with harm; providing for attorney's fees and costs; applying the Uniform Child Custody Jurisdiction and Enforcement Act; repealing s. 752.01, F.S., relating to action by grandparent for right of visitation and when petition shall be granted; encouraging consolidation of actions under ss. 61.13 and 752.011, F.S.; amending ss. 752.015 and 752.07, F.S., to conform cross references; amending s. 39.01, F.S.; including references to great-grandparents in



HB 1107

2003
CS

29 definitions relating to dependent children; amending s.
 30 39.509, F.S.; providing for great-grandparents' visitation
 31 rights; amending ss. 39.801 and 63.0425, F.S.; providing
 32 for a great-grandparent's right to notice of adoption;
 33 amending s. 61.13, F.S.; providing for great-grandparents'
 34 visitation rights; providing for consolidation of pending
 35 actions; conforming provisions relating to custody
 36 arrangements to changes made by the act; revising
 37 provisions relating to standing of grandparents with
 38 regard to custody arrangements; amending s. 63.172, F.S.;
 39 conforming references relating to great-grandparental
 40 visitation rights under ch. 752, F.S.; providing an
 41 effective date.

42
 43 Be It Enacted by the Legislature of the State of Florida:

44
 45 Section 1. Section 752.011, Florida Statutes, is created
 46 to read:

47 752.011 Action by grandparent or great-grandparent for
 48 right of visitation; when petition shall be granted.--

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

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

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

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

55 (d) The minor was born out of wedlock and not later
 56 determined to be a minor born within wedlock as provided in s.

57 742.091; or



HB 1107

2003
CS

58 | (e) A deceased parent of the minor has made a written
59 | testamentary statement requesting that there be visitation
60 | between his or her surviving minor child and the grandparent or
61 | great-grandparent.

62 | (2) Upon the filing of a petition by a grandparent or
63 | great-grandparent for visitation rights, the court shall hold a
64 | preliminary hearing to find whether there is evidence that the
65 | minor is suffering or is threatened with suffering demonstrable
66 | significant mental or emotional harm, or harm as defined in s.
67 | 39.01(30), as a result of a parental decision not to permit
68 | visitation or contact with the grandparent or great-grandparent.
69 | Absent such a finding, the court shall dismiss the petition and
70 | shall award reasonable attorney's fees and costs to be paid by
71 | the petitioner to the respondent.

72 | (3) If the court finds that there is evidence that the
73 | minor is suffering or is threatened with suffering demonstrable
74 | significant mental or emotional harm, or harm as defined in s.
75 | 39.01(30), as a result of a parental decision not to permit
76 | visitation or contact with the grandparent or great-grandparent,
77 | the court may appoint a guardian ad litem and shall order the
78 | matter to family mediation as provided in chapter 44 and Rules
79 | 12.740 and 12.741, Florida Family Law Rules of Procedure.

80 | (4) When mediation fails to yield a resolution, the court
81 | shall order a psychological evaluation of the minor pursuant to
82 | Rule 12.363, Florida Family Law Rules of Procedure, if
83 | comparable evidence of the findings expected from such an
84 | evaluation is unavailable.



HB 1107

2003
CS

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

88 (a) There is clear and convincing evidence that the minor
89 is suffering or is threatened with suffering demonstrable
90 significant mental or emotional harm, or harm as defined in s.
91 39.01(30), as a result of a parental decision not to permit
92 visitation or contact with the grandparent or great-grandparent
93 and that visitation with the grandparent or great-grandparent
94 will alleviate or mitigate the harm.

95 (b) That the visitation will not materially harm the
96 parent-child relationship.

97 (6) Part II of chapter 61, the Uniform Child Custody
98 Jurisdiction and Enforcement Act, applies to actions brought
99 under this chapter.

100 (7) If separate actions under this section and s. 61.13
101 are pending concurrently, courts are strongly encouraged to
102 consolidate the actions in order to minimize the burden of
103 litigation of visitation rights on the minor and the parties.

104 (8) An order of grandparent visitation or great-
105 grandparent visitation may be modified upon a showing of
106 substantial change in circumstances or a showing that visitation
107 is causing material harm to the parent-child relationship.

108 (9) An original action requesting visitation rights under
109 this chapter may be filed by any grandparent or great-
110 grandparent only once during any 2-year period, except on good
111 cause shown that the minor is suffering or threatened with
112 suffering demonstrable significant mental or emotional harm



HB 1107

2003
CS

113 caused by a parental decision to deny or limit contact or
114 visitation between a minor and the grandparent or great-
115 grandparent, which was not known to the grandparent or great-
116 grandparent at the time of filing an earlier action.

117 (10) This section does not provide for visitation rights
118 for grandparents or great-grandparents of minors placed for
119 adoption under chapter 63 except as provided in s. 752.07 with
120 respect to adoption by a stepparent.

121 (11) Section 57.105 applies to actions brought under this
122 chapter.

123 Section 2. Section 752.01, Florida Statutes, is repealed.

124 Section 3. Section 752.015, Florida Statutes, is amended
125 to read:

126 752.015 Mediation of visitation disputes.--It shall be the
127 public policy of this state that families resolve differences
128 over grandparent visitation within the family. It shall be the
129 further public policy of this state that when families are
130 unable to resolve differences relating to grandparent visitation
131 that the family participate in any formal or informal mediation
132 services that may be available. When families are unable to
133 resolve differences relating to grandparent visitation and a
134 petition is filed pursuant to s. 752.011 ~~s. 752.01~~, the court
135 shall, if such services are available in the circuit, refer the
136 case to family mediation in accordance with rules promulgated by
137 the Supreme Court.

138 Section 4. Section 752.07, Florida Statutes, is amended to
139 read:



HB 1107

2003
CS

140 752.07 Effect of adoption of child by stepparent on right
141 of visitation; when right may be terminated.--When there is a
142 remarriage of one of the natural parents of a minor child for
143 whom visitation rights may be or may have been granted to a
144 grandparent pursuant to s. 752.011 ~~s. 752.01~~, any subsequent
145 adoption by the stepparent will not terminate any grandparental
146 rights. However, the court may determine that ~~termination of~~
147 such visitation rights should be terminated based upon the
148 standards for granting such visitation which are set forth in s.
149 752.011 ~~is in the best interest of the child~~ and rule
150 accordingly, after affording the grandparent an opportunity to
151 be heard.

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

154 39.01 Definitions.--When used in this chapter, unless the
155 context otherwise requires:

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

159 (50) "Participant," for purposes of a shelter proceeding,
160 dependency proceeding, or termination of parental rights
161 proceeding, means any person who is not a party but who should
162 receive notice of hearings involving the child, including foster
163 parents or the legal custodian of the child, identified
164 prospective parents, grandparents or great-grandparents entitled
165 to priority for adoption consideration under s. 63.0425, actual
166 custodians of the child, and any other person whose
167 participation may be in the best interest of the child. A



HB 1107

2003
CS

168 community-based agency under contract with the department to
169 provide protective services may be designated as a participant
170 at the discretion of the court. Participants may be granted
171 leave by the court to be heard without the necessity of filing a
172 motion to intervene.

173 Section 6. Section 39.509, Florida Statutes, is amended to
174 read:

175 39.509 Grandparents' and great-grandparents' ~~Grandparents~~
176 rights.--Notwithstanding any other provision of law, a maternal
177 or paternal grandparent or great-grandparent as well as a
178 stepgrandparent or step-great-grandparent is entitled to
179 reasonable visitation with his or her grandchild or great-
180 grandchild who has been adjudicated a dependent child and taken
181 from the physical custody of the parent unless the court finds
182 that such visitation is not in the best interest of the child or
183 that such visitation would interfere with the goals of the case
184 plan. Reasonable visitation may be unsupervised and, where
185 appropriate and feasible, may be frequent and continuing.

186 (1) Grandparent or great-grandparent visitation may take
187 place in the home of the grandparent or great-grandparent unless
188 there is a compelling reason for denying such a visitation. The
189 department's caseworker shall arrange the visitation to which a
190 grandparent or great-grandparent is entitled pursuant to this
191 section. The state shall not charge a fee for any costs
192 associated with arranging the visitation. However, the
193 grandparent or great-grandparent shall pay for the child's cost
194 of transportation when the visitation is to take place in the
195 grandparent's or great-grandparent's home. The caseworker shall



HB 1107

2003
CS

196 document the reasons for any decision to restrict a
197 grandparent's or great-grandparent's visitation.

198 (2) A grandparent or great-grandparent entitled to
199 visitation pursuant to this section shall not be restricted from
200 appropriate displays of affection to the child, such as
201 appropriately hugging or kissing his or her grandchild or great-
202 grandchild. Gifts, cards, and letters from the grandparent or
203 great-grandparent and other family members shall not be denied
204 to a child who has been adjudicated a dependent child.

205 (3) Any attempt by a grandparent or great-grandparent to
206 facilitate a meeting between the child who has been adjudicated
207 a dependent child and the child's parent or legal custodian, or
208 any other person in violation of a court order shall
209 automatically terminate future visitation rights of the
210 grandparent or great-grandparent.

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

214 (5) The termination of parental rights does not affect the
215 rights of grandparents or great-grandparents unless the court
216 finds that such visitation is not in the best interest of the
217 child or that such visitation would interfere with the goals of
218 permanency planning for the child.

219 (6) In determining whether grandparental or great-
220 grandparental visitation is not in the child's best interest,
221 consideration may be given to the finding of guilt, regardless
222 of adjudication, or entry or plea of guilty or nolo contendere
223 to charges under the following statutes, or similar statutes of



224 other jurisdictions: s. 787.04, relating to removing minors
 225 from the state or concealing minors contrary to court order; s.
 226 794.011, relating to sexual battery; s. 798.02, relating to lewd
 227 and lascivious behavior; chapter 800, relating to lewdness and
 228 indecent exposure; or chapter 827, relating to the abuse of
 229 children. Consideration may also be given to a report of abuse,
 230 abandonment, or neglect under ss. 415.101-415.113 or this
 231 chapter and the outcome of the investigation concerning such
 232 report.

233 Section 7. Paragraph (a) of subsection (3) of section
 234 39.801, Florida Statutes, is amended to read:

235 39.801 Procedures and jurisdiction; notice; service of
 236 process.--

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

240 (a) Notice of the date, time, and place of the advisory
 241 hearing for the petition to terminate parental rights and a copy
 242 of the petition must be personally served upon the following
 243 persons, specifically notifying them that a petition has been
 244 filed:

- 245 1. The parents of the child.
- 246 2. The legal custodians of the child.
- 247 3. If the parents who would be entitled to notice are dead
 248 or unknown, a living relative of the child, unless upon diligent
 249 search and inquiry no such relative can be found.
- 250 4. Any person who has physical custody of the child.



HB 1107

2003
CS

251 5. Any grandparent or great-grandparent entitled to notice
252 of ~~priority for~~ adoption under s. 63.0425.

253 6. Any prospective parent who has been identified under s.
254 39.503 or s. 39.803.

255 7. The guardian ad litem for the child or the
256 representative of the guardian ad litem program, if the program
257 has been appointed.

258

259 The document containing the notice to respond or appear must
260 contain, in type at least as large as the type in the balance of
261 the document, the following or substantially similar language:

262 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
263 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
264 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
265 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
266 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
267 NOTICE."

268 Section 8. Paragraph (b) of subsection (2), paragraph (c)
269 of subsection (4), and subsections (6) and (7) of section 61.13,
270 Florida Statutes, are amended to read:

271 61.13 Custody and support of children; visitation rights;
272 power of court in making orders.--

273 (2)

274 (b)1. The court shall determine all matters relating to
275 custody of each minor child of the parties in accordance with
276 the best interests of the child and in accordance with the
277 Uniform Child Custody Jurisdiction and Enforcement Act. It is
278 the public policy of this state to assure that each minor child



HB 1107

2003
CS

279 | has frequent and continuing contact with both parents after the
280 | parents separate or the marriage of the parties is dissolved and
281 | to encourage parents to share the rights and responsibilities,
282 | and joys, of childrearing. After considering all relevant facts,
283 | the father of the child shall be given the same consideration as
284 | the mother in determining the primary residence of a child
285 | irrespective of the age or sex of the child.

286 | 2. The court shall order that the parental responsibility
287 | for a minor child be shared by both parents unless the court
288 | finds that shared parental responsibility would be detrimental
289 | to the child. Evidence that a parent has been convicted of a
290 | felony of the third degree or higher involving domestic
291 | violence, as defined in s. 741.28 and chapter 775, or meets the
292 | criteria of s. 39.806(1)(d), creates a rebuttable presumption of
293 | detriment to the child. If the presumption is not rebutted,
294 | shared parental responsibility, including visitation, residence
295 | of the child, and decisions made regarding the child, may not be
296 | granted to the convicted parent. However, the convicted parent
297 | is not relieved of any obligation to provide financial support.
298 | If the court determines that shared parental responsibility
299 | would be detrimental to the child, it may order sole parental
300 | responsibility and make such arrangements for visitation as will
301 | best protect the child or abused spouse from further harm.
302 | Whether or not there is a conviction of any offense of domestic
303 | violence or child abuse or the existence of an injunction for
304 | protection against domestic violence, the court shall consider
305 | evidence of domestic violence or child abuse as evidence of
306 | detriment to the child.



HB 1107

2003
CS

307 | a. In ordering shared parental responsibility, the court
308 | may consider the expressed desires of the parents and may grant
309 | to one party the ultimate responsibility over specific aspects
310 | of the child's welfare or may divide those responsibilities
311 | between the parties based on the best interests of the child.
312 | Areas of responsibility may include primary residence,
313 | education, medical and dental care, and any other
314 | responsibilities that the court finds unique to a particular
315 | family.

316 | b. The court shall order "sole parental responsibility,
317 | with or without visitation rights, to the other parent when it
318 | is in the best interests of" the minor child.

319 | c. The court may award the grandparents or great-
320 | grandparents visitation rights with a minor child pursuant to
321 | the criteria set forth in s. 752.011 ~~if it is in the child's~~
322 | ~~best interest~~. Grandparents or great-grandparents have legal
323 | standing to seek judicial enforcement of such an award. This
324 | section does not require that grandparents or great-grandparents
325 | be made parties to or given notice of dissolution pleadings or
326 | proceedings, ~~nor do grandparents have legal standing as~~
327 | ~~"contestants" as defined in s. 61.1306~~. However, if separate
328 | actions under this section and s. 752.011 are pending
329 | concurrently, courts are strongly encouraged to consolidate the
330 | actions in order to minimize the burden of litigation of
331 | visitation rights on the child. A court may not order that a
332 | child be kept within the state or jurisdiction of the court
333 | solely for the purpose of permitting visitation by the
334 | grandparents or great-grandparents.



HB 1107

2003
CS

335 3. Access to records and information pertaining to a minor
336 child, including, but not limited to, medical, dental, and
337 school records, may not be denied to a parent because the parent
338 is not the child's primary residential parent. Full rights under
339 this subparagraph apply to either parent unless a court order
340 specifically revokes these rights, including any restrictions on
341 these rights as provided in a domestic violence injunction. A
342 parent having rights under this subparagraph has the same rights
343 upon request as to form, substance, and manner of access as are
344 available to the other parent of a child, including, without
345 limitation, the right to in-person communication with medical,
346 dental, and education providers.

347 (4)

348 (c) When a custodial parent refuses to honor a
349 noncustodial parent's, ~~or~~ grandparent's, or great-grandparent's
350 visitation rights without proper cause, the court shall, after
351 calculating the amount of visitation improperly denied, award
352 the noncustodial parent, ~~or~~ grandparent, or great-grandparent a
353 sufficient amount of extra visitation to compensate the
354 noncustodial parent, ~~or~~ grandparent, or great-grandparent, which
355 visitation shall be ordered as expeditiously as possible in a
356 manner consistent with the best interests of the child and
357 scheduled in a manner that is convenient for the person deprived
358 of visitation. In ordering any makeup visitation, the court
359 shall schedule such visitation in a manner that is consistent
360 with the best interests of the child or children and that is
361 convenient for the noncustodial parent, ~~or~~ grandparent, or
362 great-grandparent. In addition, the court:



HB 1107

2003
CS

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

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

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

371 4. May order the custodial parent to have the financial
372 burden of promoting frequent and continuing contact when the
373 custodial parent and child reside further than 60 miles from the
374 noncustodial parent;

375 5. May award custody, rotating custody, or primary
376 residence to the noncustodial parent, upon the request of the
377 noncustodial parent, if the award is in the best interests of
378 the child; or

379 6. May impose any other reasonable sanction as a result of
380 noncompliance.

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

384 (6) In any proceeding under this section, the court may
385 not deny shared parental responsibility, custody, or visitation
386 rights to a parent, ~~or~~ grandparent, or great-grandparent solely
387 because that parent, ~~or~~ grandparent, or great-grandparent is or
388 is believed to be infected with human immunodeficiency virus;
389 but the court may condition such rights upon the parent's, ~~or~~
390 grandparent's, or great-grandparent's agreement to observe



HB 1107

2003
CS

391 measures approved by the Centers for Disease Control and
 392 Prevention of the United States Public Health Service or by the
 393 Department of Health for preventing the spread of human
 394 immunodeficiency virus to the child.

395 ~~(7) In any case where the child is actually residing with~~
 396 ~~a grandparent in a stable relationship, whether the court has~~
 397 ~~awarded custody to the grandparent or not, the court may~~
 398 ~~recognize the grandparents as having the same standing as~~
 399 ~~parents for evaluating what custody arrangements are in the best~~
 400 ~~interest of the child.~~

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

403 63.0425 Grandparent's or great-grandparent's right to
 404 adopt.--

405 (1) When a child ~~who~~ has lived with a grandparent or
 406 great-grandparent for at least 6 months within the 24-month
 407 period immediately preceding the filing of a petition for
 408 termination of parental rights pending adoption ~~is placed for~~
 409 ~~adoption~~, the adoption entity ~~handling the adoption~~ shall
 410 provide notice to notify that grandparent or great-grandparent
 411 of the hearing on the petition for termination of parental
 412 rights pending adoption ~~impending adoption before the petition~~
 413 ~~for adoption is filed. If the grandparent petitions the court to~~
 414 ~~adopt the child, the court shall give first priority for~~
 415 ~~adoption to that grandparent.~~

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

418 63.172 Effect of judgment of adoption.--



HB 1107

2003
CS

419 (2) If one or both parents of a child die without the
420 relationship of parent and child having been previously
421 terminated and a spouse of the living parent or a close relative
422 of the child thereafter adopts the child, the child's right of
423 inheritance from or through the deceased parent is unaffected by
424 the adoption and, unless the court orders otherwise, the
425 adoption will not terminate any grandparental or great-
426 grandparental rights delineated under chapter 752. For purposes
427 of this subsection, a close relative of a child is the child's
428 brother, sister, grandparent, great-grandparent, aunt, or uncle.
429 Section 11. This act shall take effect July 1, 2003.