

By the Committee on Judiciary; and Senators Campbell and Cowin

308-2467-03

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 harm; providing for attorney's fees and costs;
15 applying the Uniform Child Custody Jurisdiction
16 and Enforcement Act; repealing s. 752.01, F.S.,
17 relating to grandparental visitation;
18 encouraging consolidation of actions under ss.
19 61.13, 752.011, F.S.; amending ss. 752.015,
20 752.07, F.S., to conform cross-references;
21 amending s. 39.01, F.S.; including references
22 to great-grandparents in definitions relating
23 dependent children; amending s. 39.509, F.S.;
24 providing for great-grandparents' visitation
25 rights; amending ss. 39.801, 63.0425, F.S.;
26 providing for a great-grandparent's right to
27 notice; amending s. 61.13, F.S.; providing for
28 great-grandparents' visitation rights;
29 conforming this section to provisions of this
30 act; amending s. 63.172, F.S.; conforming
31 references relating to great-grandparental

1 visitation rights under ch. 752, F.S. ;
2 providing an effective date.

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

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6 Section 1. Section 752.011, Florida Statutes, is
7 created to read:

8 752.011 Action by grandparent or great-grandparent for
9 right of visitation; when petition shall be granted.--

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

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

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

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

17 (d) The minor was born out of wedlock and not later
18 determined to be a minor born within wedlock as provided in s.
19 742.091; or

20 (e) A deceased parent of the minor has made a written
21 testamentary statement requesting that there be visitation
22 between his or her surviving minor child and the grandparent
23 or great-grandparent.

24 (2) Upon the filing of a petition by a grandparent or
25 great-grandparent for visitation rights, the court shall hold
26 a preliminary hearing to find whether there is evidence that
27 the minor is suffering or is threatened with suffering
28 demonstrable significant mental or emotional harm or harm as
29 defined in s. 39.01(30) as a result of a parental decision not
30 to permit visitation or contact with the grandparent or
31 great-grandparent. Absent such a finding, the court shall

1 dismiss the petition and shall award reasonable attorney's
2 fees and costs to be paid by the petitioner to the respondent.

3 (3) If the court finds that there is evidence that the
4 minor is suffering or is threatened with suffering
5 demonstrable significant mental or emotional harm or harm as
6 defined in s. 39.01(30) as a result of a parental decision not
7 to permit visitation or contact with the grandparent or
8 great-grandparent, the court may appoint a guardian ad litem
9 and shall order the matter to family mediation as provided in
10 chapter 44 and Rules 12.740 and 12.741 of the Florida Family
11 Law Rules of Procedure.

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

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

21 (a) There is clear and convincing evidence that the
22 minor is suffering or is threatened with suffering
23 demonstrable significant mental or emotional harm or harm as
24 defined in s. 39.01(30) as a result of a parental decision not
25 to permit visitation or contact with the grandparent or
26 great-grandparent and that visitation with the grandparent or
27 great-grandparent will alleviate or mitigate the harm; and

28 (b) That the visitation will not materially harm the
29 parent-child relationship.

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

4 (7) If separate actions under this section and s.
5 61.13 are pending concurrently, courts are strongly encouraged
6 to consolidate the actions to minimize the burden of
7 litigation of visitation rights on the minor and the parties.

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

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

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

25 (11) Section 57.105 applies to actions brought under
26 this chapter.

27 (12) Venue shall be in the county where the grandchild
28 primarily resides, unless venue is otherwise governed by
29 chapter 39, chapter 61, or chapter 63.

30 Section 2. Section 752.01, Florida Statutes, is
31 repealed.

1 Section 3. Section 752.015, Florida Statutes, is
2 amended to read:

3 752.015 Mediation of visitation disputes.--It shall be
4 the public policy of this state that families resolve
5 differences over grandparent visitation within the family. It
6 shall be the further public policy of this state that when
7 families are unable to resolve differences relating to
8 grandparent visitation that the family participate in any
9 formal or informal mediation services that may be available.
10 When families are unable to resolve differences relating to
11 grandparent visitation and a petition is filed pursuant to s.
12 752.011 ~~s. 752.01~~, the court shall, if such services are
13 available in the circuit, refer the case to family mediation
14 in accordance with rules promulgated by the Supreme Court.

15 Section 4. Section 752.07, Florida Statutes, is
16 amended to read:

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

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

30 39.01 Definitions.--When used in this chapter, unless
31 the context otherwise requires:

1 (46) "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 (50) "Participant," for purposes of a shelter
5 proceeding, dependency proceeding, or termination of parental
6 rights proceeding, means any person who is not a party but who
7 should receive notice of hearings involving the child,
8 including foster parents or the legal custodian of the child,
9 identified prospective parents, grandparents or
10 great-grandparents entitled to priority for adoption
11 consideration under s. 63.0425, actual custodians of the
12 child, and any other person whose participation may be in the
13 best interest of the child. A community-based agency under
14 contract with the department to provide protective services
15 may be designated as a participant at the discretion of the
16 court. Participants may be granted leave by the court to be
17 heard without the necessity of filing a motion to intervene.

18 Section 6. Section 39.509, Florida Statutes, is
19 amended to read:

20 39.509 Grandparents and great-grandparents
21 rights.--Notwithstanding any other provision of law, a
22 maternal or paternal grandparent or great-grandparent as well
23 as a stepgrandparent or step great-grandparent is entitled to
24 reasonable visitation with his or her grandchild or
25 great-grandchild who has been adjudicated a dependent child
26 and taken from the physical custody of the parent unless the
27 court finds that such visitation is not in the best interest
28 of the child or that such visitation would interfere with the
29 goals of the case plan. Reasonable visitation may be
30 unsupervised and, where appropriate and feasible, may be
31 frequent and continuing.

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

13 (2) A grandparent or great-grandparent entitled to
14 visitation pursuant to this section shall not be restricted
15 from appropriate displays of affection to the child, such as
16 appropriately hugging or kissing his or her grandchild or
17 great-grandchild. Gifts, cards, and letters from the
18 grandparent or great-grandparent and other family members
19 shall not be denied to a child who has been adjudicated a
20 dependent child.

21 (3) Any attempt by a grandparent or great-grandparent
22 to facilitate a meeting between the child who has been
23 adjudicated a dependent child and the child's parent or legal
24 custodian, or any other person in violation of a court order
25 shall automatically terminate future visitation rights of the
26 grandparent or great-grandparent.

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

30 (5) The termination of parental rights does not affect
31 the rights of grandparents or great-grandparents unless the

1 court finds that such visitation is not in the best interest
2 of the child or that such visitation would interfere with the
3 goals of permanency planning for the child.

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

18 Section 7. Paragraph (a) of subsection (3) of section
19 39.801, Florida Statutes, is amended to read:

20 39.801 Procedures and jurisdiction; notice; service of
21 process.--

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

25 (a) Notice of the date, time, and place of the
26 advisory hearing for the petition to terminate parental rights
27 and a copy of the petition must be personally served upon the
28 following persons, specifically notifying them that a petition
29 has been filed:

- 30 1. The parents of the child.
- 31 2. The legal custodians of the child.

1 3. If the parents who would be entitled to notice are
2 dead or unknown, a living relative of the child, unless upon
3 diligent search and inquiry no such relative can be found.

4 4. Any person who has physical custody of the child.

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

7 6. Any prospective parent who has been identified
8 under s. 39.503 or s. 39.803.

9 7. The guardian ad litem for the child or the
10 representative of the guardian ad litem program, if the
11 program has been appointed.

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13 The document containing the notice to respond or appear must
14 contain, in type at least as large as the type in the balance
15 of the document, the following or substantially similar
16 language: "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY
17 HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL
18 RIGHTS OF THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON
19 THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS
20 A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION
21 ATTACHED TO THIS NOTICE."

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

25 61.13 Custody and support of children; visitation
26 rights; power of court in making orders.--

27 (2)

28 (b)1. The court shall determine all matters relating
29 to custody of each minor child of the parties in accordance
30 with the best interests of the child and in accordance with
31 the Uniform Child Custody Jurisdiction and Enforcement Act. It

1 is the public policy of this state to assure that each minor
2 child has frequent and continuing contact with both parents
3 after the parents separate or the marriage of the parties is
4 dissolved and to encourage parents to share the rights and
5 responsibilities, and joys, of childrearing. After considering
6 all relevant facts, the father of the child shall be given the
7 same consideration as the mother in determining the primary
8 residence of a child irrespective of the age or sex of the
9 child.

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

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

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

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

30 3. Access to records and information pertaining to a
31 minor child, including, but not limited to, medical, dental,

1 and school records, may not be denied to a parent because the
2 parent is not the child's primary residential parent. Full
3 rights under this subparagraph apply to either parent unless a
4 court order specifically revokes these rights, including any
5 restrictions on these rights as provided in a domestic
6 violence injunction. A parent having rights under this
7 subparagraph has the same rights upon request as to form,
8 substance, and manner of access as are available to the other
9 parent of a child, including, without limitation, the right to
10 in-person communication with medical, dental, and education
11 providers.

12 (4)

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

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

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

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

6 4. May order the custodial parent to have the
7 financial burden of promoting frequent and continuing contact
8 when the custodial parent and child reside further than 60
9 miles from the noncustodial parent;

10 5. May award custody, rotating custody, or primary
11 residence to the noncustodial parent, upon the request of the
12 noncustodial parent, if the award is in the best interests of
13 the child; or

14 6. May impose any other reasonable sanction as a
15 result of noncompliance.

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

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

31

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

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

9 63.0425 Grandparent's right to adopt.--

10 (1) When a child ~~who~~ has lived with a grandparent or
11 great-grandparent for at least 6 months during the 24-month
12 period immediately preceding the filing of a petition for
13 termination of parental rights pending ~~is placed for adoption,~~
14 the adoption entity ~~handling the adoption~~ shall notify that
15 grandparent or great-grandparent of the hearing on the
16 petition for termination of parental rights pending adoption
17 ~~impending adoption before the petition for adoption is filed.~~
18 ~~If the grandparent petitions the court to adopt the child, the~~
19 ~~court shall give first priority for adoption to that~~
20 ~~grandparent.~~

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

23 63.172 Effect of judgment of adoption.--

24 (2) If one or both parents of a child die without the
25 relationship of parent and child having been previously
26 terminated and a spouse of the living parent or a close
27 relative of the child thereafter adopts the child, the child's
28 right of inheritance from or through the deceased parent is
29 unaffected by the adoption and, unless the court orders
30 otherwise, the adoption will not terminate any grandparental
31 or great-grandparental rights delineated under chapter 752.

1 For purposes of this subsection, a close relative of a child
2 is the child's brother, sister, grandparent,
3 great-grandparent, aunt, or uncle.

4 Section 11. This act shall take effect July 1, 2003.

5
6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 128

9 Does not allow an independent statutory right of action for
10 grandparent or great-grandparent visitation in those cases
11 involving a decision to prohibit or limit visitation by one or
12 both parents who are in married relationships.

13 Eliminates the criteria to be considered by the courts in
14 making their preliminary threshold finding and final finding
15 of specified harm for purposes of granting grandparent and
16 great-grandparent visitation rights.

17 Repeals subsection (7) of s. 61.13, F.S., which was declared
18 unconstitutional as it gave grandparents equal standing to
19 those of parents in child custody disputes.
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