

1 pending adoption; amending s. 61.13, F.S.;
2 providing for great-grandparents' visitation
3 rights and standing with regard to evaluating
4 custody arrangements; conforming this section
5 to provisions of this act; amending s. 63.172,
6 F.S.; conforming references relating to
7 great-grandparental visitation rights under ch.
8 752, F.S.; providing an effective date.
9

10 Be It Enacted by the Legislature of the State of Florida:
11

12 Section 1. Section 752.011, Florida Statutes, is
13 created to read:

14 752.011 Action by grandparent or great-grandparent for
15 right of visitation; when petition shall be granted.--

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

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

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

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

23 (d) The minor was born out of wedlock and not later
24 determined to be a minor born within wedlock as provided in s.
25 742.091; or

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

30 (2) Upon the filing of a petition by a grandparent or
31 great-grandparent for visitation rights, the court shall hold

1 a preliminary hearing to find whether there is evidence that
2 the minor is suffering or is threatened with suffering
3 demonstrable significant mental or emotional harm as a result
4 of a parental decision not to permit visitation or contact
5 with the grandparent or great-grandparent. Absent such a
6 finding, the court shall dismiss the petition and shall award
7 reasonable attorney's fees and costs to be paid by the
8 petitioner to the respondent.

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

17 (4) When mediation fails to yield a resolution, the
18 court shall order a psychological evaluation of the minor
19 pursuant to Rule 12.363, Florida Family Law Rules of
20 Procedure, if comparable evidence of the findings expected
21 from such an evaluation is unavailable.

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

26 (a) There is clear and convincing evidence that the
27 minor is suffering or is threatened with suffering
28 demonstrable significant mental or emotional harm as a result
29 of a parental decision not to permit visitation or contact
30 with the grandparent or great-grandparent and that visitation
31

1 with the grandparent or great-grandparent will alleviate or
2 mitigate the harm; and

3 (b) That the visitation will not materially harm the
4 parent-child relationship.

5 (6) Part II of chapter 61, the Uniform Child Custody
6 Jurisdiction and Enforcement Act, apply to actions brought
7 under this chapter.

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

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

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

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

30 (11) Section 57.105 applies to actions brought under
31 this chapter.

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

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

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

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

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

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

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

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

24 Section 6. Section 39.509, Florida Statutes, is
25 amended to read:

26 39.509 Grandparents' and great-grandparents'
27 ~~Grandparents~~ rights.--Notwithstanding any other provision of
28 law, a maternal or paternal grandparent or great-grandparent
29 as well as a stepgrandparent or step-great-grandparent is
30 entitled to reasonable visitation with his or her grandchild
31 or great-grandchild who has been adjudicated a dependent child

1 and taken from the physical custody of the parent unless the
2 court finds that such visitation is not in the best interest
3 of the child or that such visitation would interfere with the
4 goals of the case plan. Reasonable visitation may be
5 unsupervised and, where appropriate and feasible, may be
6 frequent and continuing.

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

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

27 (3) Any attempt by a grandparent or great-grandparent
28 to facilitate a meeting between the child who has been
29 adjudicated a dependent child and the child's parent or legal
30 custodian, or any other person in violation of a court order
31

1 shall automatically terminate future visitation rights of the
2 grandparent or great-grandparent.

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

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

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

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

27 39.801 Procedures and jurisdiction; notice; service of
28 process.--

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

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

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

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

29 Section 8. Paragraph (b) of subsection (2), paragraphs
30 (c) and (d) of subsection (4), and subsection (6) of section
31 61.13, Florida Statutes, are amended to read:

1 61.13 Custody and support of children; visitation
2 rights; power of court in making orders.--

3 (2)

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

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

1 responsibility and make such arrangements for visitation as
2 will best protect the child or abused spouse from further
3 harm. Whether or not there is a conviction of any offense of
4 domestic violence or child abuse or the existence of an
5 injunction for protection against domestic violence, the court
6 shall consider evidence of domestic violence or child abuse as
7 evidence of detriment to the child.

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

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

21 c. The court may award the grandparents or
22 great-grandparents visitation rights with a minor child
23 pursuant to the criteria set forth in s. 752.011 if it is in
24 the child's best interest. Grandparents or great-grandparents
25 have legal standing to seek judicial enforcement of such an
26 award. This section does not require that grandparents or
27 great-grandparents be made parties to or given notice of
28 dissolution pleadings or proceedings. However, if separate
29 actions under this section and s. 752.011 are pending
30 concurrently, courts are strongly encouraged to consolidate
31 the actions in order to minimize the burden of litigation of

1 visitation rights on the child. A court may not order that a
2 child be kept within the state or jurisdiction of the court
3 solely for the purpose of permitting visitation by the
4 grandparents or great-grandparents.

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

18 (4)

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

1 interests of the child or children and that is convenient for
2 the noncustodial parent, ~~or~~ grandparent, or great-grandparent.

3 In addition, the court:

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

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

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

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

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

21 6. May impose any other reasonable sanction as a
22 result of noncompliance.

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

26 (6) In any proceeding under this section, the court
27 may not deny shared parental responsibility, custody, or
28 visitation rights to a parent, ~~or~~ grandparent, or
29 great-grandparent solely because that parent, ~~or~~ grandparent,
30 or great-grandparent is or is believed to be infected with
31 human immunodeficiency virus; but the court may condition such

1 | rights upon the parent's, ~~or~~ grandparent's, or
2 | great-grandparent's agreement to observe measures approved by
3 | the Centers for Disease Control and Prevention of the United
4 | States Public Health Service or by the Department of Health
5 | for preventing the spread of human immunodeficiency virus to
6 | the child.

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

9 | 63.0425 Grandparent's or great-grandparent's right to
10 | adopt.--

11 | (1) When a child has lived with a grandparent or
12 | great-grandparent for at least 6 months during ~~within~~ the
13 | 24-month period immediately preceding the filing of a petition
14 | for termination of parental rights pending adoption, the
15 | adoption entity shall notify ~~provide notice to~~ that
16 | grandparent or great-grandparent of the hearing on the
17 | petition for termination of parental rights pending adoption.

18 | Section 10. Subsection (2) of section 63.172, Florida
19 | Statutes, is amended to read:

20 | 63.172 Effect of judgment of adoption.--

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

1 Section 11. This act shall take effect July 1, 2004.

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SENATE SUMMARY

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Provides for court-ordered visitation by grandparents or great-grandparents in certain circumstances. Provides for appointment of a guardian ad litem and for family mediation if the court makes a preliminary finding that the minor is threatened with demonstrable significant mental or emotional harm in the absence of such visitation. Requires court-ordered evaluation of the child if mediation fails. Provides for a hearing to determine whether the minor is threatened with demonstrable significant mental or emotional harm. Provides criteria for such a determination. Provides for venue. Provides for awarding attorney's fees and costs. Applies the Uniform Child Custody Jurisdiction and Enforcement Act. Encourages consolidation of legal actions under ss. 61.13 and 752.011, F.S. Includes references to great-grandparents in definitions relating to dependent children. Provides for great-grandparents' visitation rights. Provides for a great-grandparent's right to notice of a hearing on termination of parental rights pending adoption. Provides for great-grandparents' visitation rights and standing with regard to evaluating custody arrangements.