

Bill No. SB 20

Barcode 284056

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Saunders) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 39.0139, Florida Statutes, is created to read:

39.0139 Visitation restrictions.--

(1) SHORT TITLE.--This act may be cited as the "Keeping Children Safe Act."

(2) LEGISLATIVE FINDINGS AND INTENT.--

(a) The Legislature finds that for some children who are abused, abandoned, or neglected by a parent or other caregiver, abuse may include sexual abuse.

(b) The Legislature also finds that these same children are at risk of suffering from further harm during visitation or other contact.

(c) The Legislature further finds that visitation or other contact with the child may be used to influence the

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1 child's testimony.

2 (d) Therefore, it is the intent of the Legislature to  
3 protect children and reduce the risk of further harm to  
4 children who have been sexually abused or exploited by a  
5 parent or other caregiver by placing additional requirements  
6 on judicial determinations related to visitation and other  
7 contact.

8 (3) PROCEDURES TO PROTECT CHILD SAFETY DURING  
9 VISITATION AND OTHER CONTACT.--

10 (a) A rebuttable presumption of detriment to a child  
11 is created when a parent or caregiver:

12 1. Has been the subject of a report to the child abuse  
13 hotline alleging sexual abuse of any child as defined in s.  
14 39.01; or

15 2. Has been found guilty of, regardless of  
16 adjudication, or has entered a plea of guilty or nolo  
17 contendere to, charges under the following statutes, or  
18 substantially similar statutes of other jurisdictions:

19 a. Section 787.04, relating to removing minors from  
20 the state or concealing minors contrary to court order;

21 b. Section 794.011, relating to sexual battery;

22 c. Section 798.02, relating to lewd and lascivious  
23 behavior;

24 d. Chapter 800, relating to lewdness and indecent  
25 exposure;

26 e. Section 826.04, relating to incest; or

27 f. Chapter 827, relating to the abuse of children.

28 3. Has been determined by a court to be a sexual  
29 predator as defined in s. 775.21 or received a substantially  
30 similar designation under the laws of another jurisdiction.

31 (b) For purposes of this subsection, the term

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1 "substantially similar" has the same meaning as in s.

2 39.806(1)(d)2.

3 (4) HEARINGS ON VISITATION OR OTHER CONTACT.--A person  
4 who meets the criteria set forth in any category in subsection  
5 (3) may visit or have other contact with a child only after a  
6 hearing and an order by the court which allows the visitation  
7 or other contact. At such a hearing:

8 (a) The court must appoint an attorney ad litem or a  
9 guardian ad litem if one has not already been appointed. Any  
10 attorney ad litem or guardian ad litem appointed must have  
11 special training on the dynamics of sexual abuse.

12 (b) The court may receive any relevant and material  
13 evidence submitted, including written and oral reports to the  
14 extent of their probative value. These reports and evidence  
15 may be received by the court in its effort to determine the  
16 action to be taken with regard to the child and may be relied  
17 upon to the extent of their probative value, even though not  
18 competent in an adjudicatory hearing.

19 (c) If the court finds the person proves by clear and  
20 convincing evidence that the safety, well-being, and physical,  
21 mental, and emotional health of a child are not endangered by  
22 such visitation or contact, the presumption is rebutted and  
23 the court may allow visitation or other contact. The court  
24 shall enter a written order specifying any conditions it finds  
25 necessary to protect the child.

26 (d) If the court finds the person did not rebut the  
27 presumption established above, the court shall enter a written  
28 order prohibiting or restricting visitation or other contact  
29 with the child.

30 (5) CONDITIONS FOR VISITATION OR OTHER CONTACT.--Any  
31 visitation or other contact ordered under paragraph (4)(d)

1 shall be:

2       (a) Supervised by a person who has previously received  
3 special training on the dynamics of children who have been  
4 sexually abused; or

5       (b) Shall be conducted in a supervised visitation  
6 program, provided that the program has an agreement with the  
7 court and a current affidavit of compliance on file with the  
8 chief judge of the circuit in which the program is located,  
9 affirming that the program has agreed to comply with the  
10 minimum standards contained in an administrative order issued  
11 by the Chief Justice of the Supreme Court on November 17,  
12 1999, and provided the program has a written agreement with  
13 the court and with the department as described in s. 753.05  
14 containing policies and guidelines specifically related to  
15 referrals involving child sexual abuse.

16       (6) ADDITIONAL CONSIDERATIONS RELATED TO VISITATION OR  
17 OTHER CONTACT.--

18       (a) If a party or participant, based on communication  
19 with the child or other first-hand knowledge, informs the  
20 court that a person is attempting to influence the testimony  
21 of the child, the court shall immediately suspend visitation  
22 or other contact. The court shall then hold a hearing and  
23 determine whether it is in the best interests of the child to  
24 prohibit or restrict visitation or other contact.

25       (b) If a child is in therapy as a result of any of the  
26 allegations or convictions contained in paragraph (3)(a), and  
27 the child's therapist reports that the visitation or other  
28 contact is impeding the child's therapeutic progress, the  
29 court shall convene a hearing within 7 business days to review  
30 the terms, conditions, or appropriateness of continued  
31 visitation or other contact.

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1 Section 2. Subsection (9) of section 39.402, Florida  
2 Statutes, is amended to read:

3 39.402 Placement in a shelter.--

4 (9) At any shelter hearing, the department shall  
5 provide to the court a recommendation for scheduled contact  
6 between the child and parents, if appropriate. The court shall  
7 determine visitation rights absent a clear and convincing  
8 showing that visitation is not in the best interest of the  
9 child. Any order for visitation or other contact must conform  
10 to the provisions of s. 39.0139. If visitation is ordered but  
11 will not commence within 72 hours of the shelter hearing, the  
12 department shall provide justification to the court.

13 Section 3. Subsection (6) of section 39.506, Florida  
14 Statutes, is amended to read:

15 39.506 Arraignment hearings.--

16 (6) At any arraignment hearing, if the child is in an  
17 out-of-home placement, the court shall order visitation rights  
18 absent a clear and convincing showing that visitation is not  
19 in the best interest of the child. Any order for visitation or  
20 other contact must conform to the provisions of s. 39.0139.

21 Section 4. Section 39.509, Florida Statutes, is  
22 amended to read:

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

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1 frequent and continuing. Any order for visitation or other  
2 contact must conform to the provisions of s. 39.0139.

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

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

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

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

27 (5) The termination of parental rights does not affect  
28 the rights of grandparents unless the court finds that such  
29 visitation is not in the best interest of the child or that  
30 such visitation would interfere with the goals of permanency  
31 planning for the child.

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1           (6) In determining whether grandparental visitation is  
2 not in the child's best interest, consideration may be given  
3 to the finding of guilt, regardless of adjudication, or entry  
4 or plea of guilty or nolo contendere to charges under the  
5 following statutes, or similar statutes of other  
6 jurisdictions: s. 787.04, relating to removing minors from the  
7 state or concealing minors contrary to court order; s.  
8 794.011, relating to sexual battery; s. 798.02, relating to  
9 lewd and lascivious behavior; chapter 800, relating to  
10 lewdness and indecent exposure; s. 826.04, relating to incest;  
11 or chapter 827, relating to the abuse of children.  
12 Consideration may be given to the designation by a court as a  
13 sexual predator as defined in s. 775.21 or a substantially  
14 similar designation under the laws of another jurisdiction.  
15 Consideration may also be given to a report of abuse,  
16 abandonment, or neglect under ss. 415.101-415.113 or this  
17 chapter and the outcome of the investigation concerning such  
18 report.

19           Section 5. Paragraph (d) of subsection (3) of section  
20 39.521, Florida Statutes, is amended to read:

21           39.521 Disposition hearings; powers of disposition.--

22           (3) When any child is adjudicated by a court to be  
23 dependent, the court shall determine the appropriate placement  
24 for the child as follows:

25           (d) If the child cannot be safely placed in a  
26 nonlicensed placement, the court shall commit the child to the  
27 temporary legal custody of the department. Such commitment  
28 invests in the department all rights and responsibilities of a  
29 legal custodian. The department shall not return any child to  
30 the physical care and custody of the person from whom the  
31 child was removed, except for court-approved visitation

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1 periods, without the approval of the court. Any order for  
 2 visitation or other contact must conform to the provisions of  
 3 s. 39.0139. The term of such commitment continues until  
 4 terminated by the court or until the child reaches the age of  
 5 18. After the child is committed to the temporary legal  
 6 custody of the department, all further proceedings under this  
 7 section are governed by this chapter.

8  
 9 Protective supervision continues until the court terminates it  
 10 or until the child reaches the age of 18, whichever date is  
 11 first. Protective supervision shall be terminated by the court  
 12 whenever the court determines that permanency has been  
 13 achieved for the child, whether with a parent, another  
 14 relative, or a legal custodian, and that protective  
 15 supervision is no longer needed. The termination of  
 16 supervision may be with or without retaining jurisdiction, at  
 17 the court's discretion, and shall in either case be considered  
 18 a permanency option for the child. The order terminating  
 19 supervision by the department shall set forth the powers of  
 20 the custodian of the child and shall include the powers  
 21 ordinarily granted to a guardian of the person of a minor  
 22 unless otherwise specified. Upon the court's termination of  
 23 supervision by the department, no further judicial reviews are  
 24 required, so long as permanency has been established for the  
 25 child.

26 Section 6. Section 753.01, Florida Statutes, is  
 27 created to read:

28 753.01 Definitions.--As used in this chapter, the  
 29 term:

30 (1) "Clearinghouse on Supervised Visitation" or  
 31 "clearinghouse" means the entity within the Institute for

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1 Family Violence Studies in the School of Social Work of the  
 2 Florida State University which serves as a statewide resource  
 3 on supervised visitation issues by providing technical  
 4 assistance, training, and research.

5 (2) "Exchange monitoring" means supervision of  
 6 movement of a child from the custodial to the noncustodial  
 7 parent at the start of a visit and back to the custodial  
 8 parent at the end of the visit.

9 (3) "Supervised visitation program" means a program  
 10 created to offer structured contact between a parent or  
 11 caregiver and one or more children in the presence of a third  
 12 person responsible for observing and ensuring the safety of  
 13 those involved. Supervised visitation programs may also  
 14 include exchange monitoring of children who are participating  
 15 in court-ordered visitation programs or exchange monitoring  
 16 when there has been mutual consent between parties for the  
 17 purposes of facilitating a visitation.

18 Section 7. Section 753.02, Florida Statutes, is  
 19 created to read:

20 753.02 Clearinghouse on Supervised Visitation.--The  
 21 clearinghouse has the following responsibilities, subject to  
 22 the availability of resources:

23 (1) To develop standards for supervised visitation  
 24 programs in order to ensure both the quality of each program  
 25 and the safety of children and families utilizing program  
 26 services.

27 (2) To serve as a clearinghouse on resources and  
 28 research of supervised visitation programs.

29 (3) To provide technical assistance and other support  
 30 services to existing and emerging supervised visitation  
 31 programs.

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1       (4) To compile a directory of state-supervised  
2 visitation programs containing referral information.

3       (5) To formulate a newsletter for supervised  
4 visitation programs.

5       (6) To organize workshops and conferences that address  
6 issues and concerns of supervised visitation programs.

7       (7) To have the authority to apply for grants and  
8 accept private contributions.

9       (8) To compile data on the use of supervised  
10 visitation programs.

11           Section 8. Section 753.03, Florida Statutes, is  
12 created to read:

13           753.03 Standards for supervised visitation and  
14 supervised exchange services.--

15           (1) Within existing funds from the Department of  
16 Children and Family Services, the clearinghouse shall develop  
17 standards for supervised visitation programs in order to  
18 ensure the safety and quality of each program. Standards must  
19 be uniform for all the programs and must address the purpose,  
20 policies, standards of practice, program content, security  
21 measures, qualifications of providers, training standards,  
22 credentials and background screening requirements of staff,  
23 information to be provided to the court, and data collection  
24 for supervised visitation programs.

25           (2) The clearinghouse shall use an advisory board to  
26 assist in developing the standards. The advisory board must  
27 include:

28           (a) Two members of the executive board of the state  
29 chapter of the Supervised Visitation Network, appointed by the  
30 president of the state chapter of the Supervised Visitation  
31 Network.

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1           (b) A representative from the Office of the State  
2 Courts Administrator, appointed by the State Courts  
3 Administrator.

4           (c) A representative from the department, appointed by  
5 the Secretary of Children and Family Services.

6           (d) A representative from the Florida Coalition  
7 Against Domestic Violence, appointed by the executive director  
8 of the Florida Coalition Against Domestic Violence.

9           (e) A representative from a local law enforcement  
10 agency, appointed by the executive director of the Florida  
11 Sheriffs Association.

12           (f) A circuit court judge who presides over domestic  
13 violence proceedings, appointed by the Chief Justice of the  
14 Supreme Court.

15           (g) A circuit court judge who presides over dependency  
16 proceedings, appointed by the Chief Justice of the Supreme  
17 Court.

18           (h) Two representatives from a supervised visitation  
19 program, appointed by the director of the clearinghouse.

20           (i) A representative from the Commission on Marriage  
21 and Family Support Initiatives.

22           (j) A representative of the Statewide Guardian ad  
23 Litem Office, appointed by the executive director.

24           (3) The clearinghouse, with consultation from the  
25 advisory board, shall develop criteria and procedures for  
26 approving and rejecting certification applications and  
27 monitoring compliance with the certification of a supervised  
28 visitation program. The clearinghouse shall recommend the  
29 process for phasing in the implementation of the standards and  
30 certification procedures, criteria for distributing funds to  
31 eligible programs, and the state entity that should certify

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1 and monitor the supervised visitation programs.

2 (4) The clearinghouse shall submit a preliminary  
3 report containing its recommendations for the uniform  
4 standards by December 31, 2007, and a final report of all  
5 recommendations, including those related to the certification  
6 and monitoring developed to date by December 31, 2008, to the  
7 President of the Senate, the Speaker of the House of  
8 Representatives, and the Chief Justice of the Supreme Court.

9 Section 9. Section 753.04, Florida Statutes, is  
10 created to read:

11 753.04 Interim minimum standards for supervised  
12 visitation programs.--

13 (1) Until the standards for supervised visitation and  
14 supervised exchange services are developed pursuant to this  
15 chapter and a certification and monitoring process is fully  
16 implemented, each supervised visitation program must have an  
17 agreement with the court and comply with the "Minimum  
18 Standards for Supervised Visitation Programs Agreement"  
19 adopted by the Supreme Court on November 17, 1999. Under this  
20 order, a supervised visitation program shall enter into an  
21 agreement with the circuit court or circuit courts within the  
22 geographic jurisdiction of the program attesting to the  
23 willingness of the program to comply with the Supreme Court's  
24 standards.

25 (2) Until the standards for supervised visitation and  
26 supervised exchange services are completed and a certification  
27 and monitoring process is fully implemented, a supervised  
28 visitation program may not receive grant funds for access and  
29 visitation under 42 U.S.C. s. 669b unless the program provides  
30 documentation to the state agency administering the grant  
31 verifying that the program has entered into an agreement with

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1 the circuit court as required under subsection (1). This  
 2 subsection does not obligate the state agency administering  
 3 the grant to certify a program's compliance with the Minimum  
 4 Standards for Supervised Visitation Programs Agreement.

5 Section 10. Section 753.05, Florida Statutes, is  
 6 created to read:

7 753.05 Referrals involving child sexual abuse.--

8 (1) Any supervised visitation program that wishes to  
 9 accept referrals involving child sexual abuse must have an  
 10 agreement with the court and a current affidavit of compliance  
 11 on file with the chief judge of the circuit in which the  
 12 program is located, affirming that the program has agreed to  
 13 comply with the minimum standards contained in an  
 14 administrative order issued by the Chief Justice of the  
 15 Supreme Court on November 17, 1999, and provided the program  
 16 has a written agreement with the court and with the department  
 17 that contains policies and guidelines specifically related to  
 18 child sexual abuse.

19 (2) The agreement must include provisions for the  
 20 following:

21 (a) Program staff who supervise visits or other  
 22 contact must have specific training in child sexual abuse  
 23 provided through the Clearinghouse on Supervised Visitation  
 24 documented in personnel files;

25 (b) The program must have protocols for obtaining  
 26 background material on the family prior to the initiation of  
 27 services;

28 (c) The program must accept only those child sexual  
 29 abuse referrals in which staff have the requisite background  
 30 material, training, and security in place to safely monitor  
 31 contact;

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1       (d) The program must decline referrals of child sexual  
 2 abuse cases when staff lack necessary training and education,  
 3 when background material has not been received, or where lack  
 4 of security may allow revictimization of the child; and

5       (e) The program must suspend visits in cases when the  
 6 child appears to be traumatized by the visit or the individual  
 7 visiting or having other contact engages in inappropriate  
 8 behavior or violates program rules.

9           Section 11. Sections 753.001, 753.002, and 753.004,  
 10 Florida Statutes, are repealed.

11           Section 12. This act shall take effect July 1, 2007.

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14 ===== T I T L E   A M E N D M E N T =====

15 And the title is amended as follows:

16           Delete everything before the enacting clause

17

18 and insert:

19                           A bill to be entitled  
 20           An act relating to child visitation; creating  
 21           s. 39.0139, F.S.; providing a short title;  
 22           providing legislative findings and intent;  
 23           creating a presumption; providing for hearing;  
 24           providing conditions for visitation or other  
 25           contact; providing additional considerations  
 26           for visitation or other contact; amending ss.  
 27           39.402, 39.506, 39.509, 39,521, F.S. ;  
 28           subjecting specified visitation orders to s.  
 29           39.0139, F.S.; creating s. 753.01, F.S. ;  
 30           defining terms; creating s. 753.02, F.S. ;  
 31           providing responsibilities for the

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1 Clearinghouse on Supervised Visitation;  
2 creating s. 753.03, F.S.; providing for the  
3 development of standards; providing membership  
4 for an advisory board; providing for reports;  
5 creating s. 753.04, F.S.; providing interim  
6 standards for supervised visitation programs;  
7 creating s. 753.05, F.S.; providing for  
8 referrals related to child sexual abuse;  
9 repealing ss. 753.001, 753.002, and 753.004,  
10 F.S., relating to the Florida Family Visitation  
11 Network; providing an effective date.  
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