

By Senator Rich

34-467A-07

1                                   A bill to be entitled  
2           An act relating to visitation with a child who  
3           is in the custody of the Department of Children  
4           and Family Services; creating the "Keeping  
5           Children Safe Act"; providing legislative  
6           intent; creating s. 39.0143, F.S.; creating a  
7           presumption that a person's visitation with a  
8           child is against the best interest of a child  
9           under certain circumstances; prohibiting  
10          certain persons from visiting or contacting the  
11          child without a hearing and court order;  
12          requiring the person to prove by clear and  
13          convincing evidence that he or she will not  
14          harm the child; requiring the court to appoint  
15          an attorney ad litem or guardian ad litem to  
16          represent the child; allowing the person to  
17          visit with the child in a supervised visitation  
18          program; amending ss. 39.402, 39.506, 39.509,  
19          and 39.521, F.S.; requiring that any order of  
20          visitation with a child who is in the temporary  
21          or permanent custody of the Department of  
22          Children and Family Services be issued in  
23          conformity with s. 39.0143, F.S.; amending s.  
24          753.002, F.S.; requiring the Florida Family  
25          Visitation Network to develop standards for  
26          supervised visitation programs in order to  
27          ensure the safety of children in each program;  
28          requiring program staff to demonstrate good  
29          moral character using level 2 standards for  
30          screening set forth in ch. 435, F.S.; amending  
31          s. 753.004, F.S.; requiring each supervised

1           visitation project to comply with the safety  
2           standards developed by the Florida Family  
3           Visitation Network; providing an effective  
4           date.

5  
6 Be It Enacted by the Legislature of the State of Florida:

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8           Section 1. This act may be cited as the "Keeping  
9 Children Safe Act."

10           Section 2. It is the public policy of this state that  
11 children be kept safe when in the temporary or permanent  
12 custody of the Department of Children and Family Services or  
13 its contractors. An increasing portion of the allegations that  
14 bring children to the attention of child protective  
15 investigators involve sexual abuse, lewd or lascivious acts  
16 against a child, or the exploitation of a child. This state  
17 has a substantial public interest in protecting vulnerable  
18 children, including children who may be especially traumatized  
19 by contact with an alleged perpetrator of sexual abuse or  
20 related criminal conduct. In furtherance of that interest, it  
21 is the intent of the Legislature to regulate the contact a  
22 child has with certain persons who might harm the child when  
23 visiting or having other contact with the child.

24           Section 3. Section 39.0143, Florida Statutes, is  
25 created to read:

26           39.0143 Visitation restrictions.--

27           (1) This section applies to any person involved in a  
28 proceeding initiated under this chapter.

29           (2) It is presumed that a person's visitation with a  
30 child is against the best interest of the child if the person:  
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- 1           (a) Is the subject to an allegation or a judicial  
2 determination of sexual abuse;
- 3           (b) Has been determined by a court to be a sexual  
4 predator as defined in s. 775.21;
- 5           (c) Has been convicted of a sexual battery that  
6 constitutes a capital felony, life felony, or first-degree  
7 felony under s. 794.011;
- 8           (d) Has been convicted of violating s. 826.04,  
9 relating to incest, violating s. 827.071, relating to sexual  
10 performance by a child, or committing any offense prohibited  
11 in chapter 800, relating to lewdness and indecent exposure;
- 12           (e) Has been convicted of an offense in another  
13 jurisdiction which is substantially similar to an offense  
14 listed in this subsection; or
- 15           (f) Has been alleged to have subjected the child or a  
16 sibling to sexual battery or sexual abuse as defined in s.  
17 39.01.
- 18           (3) For purposes of subsection (2), the term  
19 "substantially similar" has the same meaning as in s.  
20 39.806(1)(d)2.
- 21           (4) A person who meets the criteria set forth in one  
22 or more categories in subsection (2) may visit or have other  
23 contact with the child only after a hearing and an order by  
24 the court which allows the visitation. The person must prove  
25 by clear and convincing evidence that he or she will not harm  
26 the child.
- 27           (5) If a person subject to subsection (2) files a  
28 motion requesting visitation or contact with the child, the  
29 court must appoint an attorney ad litem or a guardian ad litem  
30 who has special training to represent the child.

1           (6) A court may not allow a person to visit or have  
2 contact with a child during the pendency of a proceeding under  
3 this section unless the visitation occurs in a supervised  
4 visitation program that meets the standards adopted by the  
5 Supreme Court or established under chapter 753 along with any  
6 other conditions that the court, in explicit written findings,  
7 determines will ensure the safety of the child at all times.  
8 Before any supervision is approved, staff members of the  
9 supervised visitation program must receive training on  
10 supervising visitation events occurring between a victim and  
11 an alleged perpetrator of sexual abuse.

12           Section 4. Subsection (9) of section 39.402, Florida  
13 Statutes, is amended to read:

14           39.402 Placement in a shelter.--

15           (9) At any shelter hearing, the department shall  
16 provide to the court a recommendation for scheduled contact  
17 between the child and parents, if appropriate. The court shall  
18 determine visitation rights absent a clear and convincing  
19 showing that visitation is not in the best interest of the  
20 child. Any order of visitation must be issued in conformity  
21 with s. 39.0143. If visitation is ordered but will not  
22 commence within 72 hours of the shelter hearing, the  
23 department shall provide justification to the court.

24           Section 5. Subsection (6) of section 39.506, Florida  
25 Statutes, is amended to read:

26           39.506 Arraignment hearings.--

27           (6) At any arraignment hearing, if the child is in an  
28 out-of-home placement, the court shall order visitation rights  
29 absent a clear and convincing showing that visitation is not  
30 in the best interest of the child. Any order of visitation  
31 must be issued in conformity with s. 39.0143.

1 Section 6. Section 39.509, Florida Statutes, is  
2 amended to read:

3 39.509 Grandparents rights.--Notwithstanding any other  
4 ~~provision of~~ law, a maternal or paternal grandparent as well  
5 as a stepgrandparent is entitled to reasonable visitation with  
6 his or her grandchild who has been adjudicated a dependent  
7 child and taken from the physical custody of the parent unless  
8 the court finds that the ~~such~~ visitation is not in the best  
9 interest of the child or that the ~~such~~ visitation would  
10 interfere with the goals of the case plan. Reasonable  
11 visitation may be unsupervised and, where appropriate and  
12 feasible, may be frequent and continuing. Any order of  
13 visitation must be issued in conformity with s. 39.0143.

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

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

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

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

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

14           (6) In determining whether grandparental visitation is  
15 not in the child's best interest, consideration may be given  
16 to the finding of guilt, regardless of adjudication, or entry  
17 or plea of guilty or nolo contendere to charges under the  
18 following statutes, or similar statutes of other  
19 jurisdictions: s. 787.04, relating to removing minors from  
20 the state or concealing minors contrary to court order; s.  
21 794.011, relating to sexual battery; s. 798.02, relating to  
22 lewd and lascivious behavior; chapter 800, relating to  
23 lewdness and indecent exposure; or chapter 827, relating to  
24 the abuse of children. Consideration may also be given to a  
25 report of abuse, abandonment, or neglect under ss.  
26 415.101-415.113 or this chapter and the outcome of the  
27 investigation concerning such report.

28           Section 7. Paragraph (d) of subsection (3) of section  
29 39.521, Florida Statutes, is amended to read:

30           39.521 Disposition hearings; powers of disposition.--  
31

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

4           (d) If the child cannot be safely placed in a  
5 nonlicensed placement, the court shall commit the child to the  
6 temporary legal custody of the department. ~~The~~ Such commitment  
7 invests in the department all rights and responsibilities of a  
8 legal custodian. The department ~~may~~ shall not return any child  
9 to the physical care and custody of the person from whom the  
10 child was removed, except for court-approved visitation  
11 periods, without the approval of the court. The term of such  
12 commitment continues until terminated by the court or until  
13 the child reaches the age of 18. After the child is committed  
14 to the temporary legal custody of the department, all further  
15 proceedings under this section are governed by this chapter.  
16 Any order of visitation must be issued in conformity with s.  
17 39.0143.

18  
19 Protective supervision continues until the court terminates it  
20 or until the child reaches the age of 18, whichever date is  
21 first. Protective supervision shall be terminated by the court  
22 whenever the court determines that permanency has been  
23 achieved for the child, whether with a parent, another  
24 relative, or a legal custodian, and that protective  
25 supervision is no longer needed. The termination of  
26 supervision may be with or without retaining jurisdiction, at  
27 the court's discretion, and shall in either case be considered  
28 a permanency option for the child. The order terminating  
29 supervision by the department shall set forth the powers of  
30 the custodian of the child and shall include the powers  
31 ordinarily granted to a guardian of the person of a minor

1 unless otherwise specified. Upon the court's termination of  
2 supervision by the department, no further judicial reviews are  
3 required, so long as permanency has been established for the  
4 child.

5 Section 8. Subsection (8) is added to section 753.002,  
6 Florida Statutes, to read:

7 753.002 Florida Family Visitation Network.--There is  
8 hereby created the Florida Family Visitation Network, which  
9 shall have the following responsibilities subject to the  
10 availability of resources:

11 (8) To develop standards for supervised visitation  
12 programs in order to ensure the safety of children in each  
13 program. The standards must include a requirement that program  
14 staff demonstrate good moral character using level 2 standards  
15 for screening set forth in chapter 435.

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17 This section shall take effect July 1, 1996.

18 Section 9. Subsection (4) is added to section 753.004,  
19 Florida Statutes, to read:

20 753.004 Supervised visitation projects.--Within its  
21 existing resources, the Institute of Food and Agricultural  
22 Sciences of the University of Florida may establish supervised  
23 visitation projects in communities throughout the state.

24 (4) A supervised visitation project must comply with  
25 the safety standards developed under s. 753.002.

26 Section 10. This act shall take effect July 1, 2007.  
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SENATE SUMMARY

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3 Creates a presumption that a person's visitation with a  
4 child is against the best interest of a child under  
5 certain circumstances. Prohibits certain persons from  
6 visiting or contacting the child without a hearing and a  
7 court order. Requires the person to prove by clear and  
8 convincing evidence that he or she will not harm the  
9 child. Requires the court to appoint an attorney ad litem  
10 or guardian ad litem to represent the child. Allows the  
11 person to visit with the child in a supervised visitation  
12 program. Requires the Florida Family Visitation Network  
13 to develop standards for supervised visitation programs  
14 to ensure the safety of children in each program.  
15 Requires program staff to demonstrate good moral  
16 character. Requires each supervised visitation project to  
17 use the safety standards developed by the Florida Family  
18 Visitation Network.  
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