

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 77 Child Visitation  
**SPONSOR(S):** Porth and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 570

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Healthy Families</u>	<u></u>	<u>Preston</u>	<u>Mitchell</u>
2) <u>Healthcare Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

The bill provides for the “Keeping Children Safe Act of 2007”, which creates a presumption that visitation or contact is contrary to the best interest of a child when a parent, stepparent, grandparent, stepgrandparent, relative, or caregiver is alleged to have committed or has been found to have committed sexual abuse of a child. Visitation or other contact with an individual to whom this presumption applies shall be permitted only after a hearing and being so ordered by the court. The bill restricts the court from ordering visitation or contact with a person subject to this presumption unless the visitation or contact occurs in a supervised visitation program that conforms to specified standards.

The bill requires visitation ordered at a shelter hearing, an arraignment hearing, a disposition hearing, or with a grandparent or stepgrandparent, to follow these newly created requirements. The bill appears to significantly expand the scope of individuals entitled to visitation with a child.

The bill requires the Florida Family Visitation Network to develop standards for supervised visitation programs and requires all supervised visitation projects established by the Institute of Food and Agricultural Sciences of the University of Florida to comply with those standards.

Although the amount is indeterminate, funding for training, any additional court hearings, and any additional workload on the Guardian ad Litem Program may also be required.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill requires the Florida Family Visitation Network to develop standards for supervised visitation programs, may require additional court hearings, and requires additional training requirements for attorneys ad litem, guardians ad litem, and supervised visitation program staff. Requiring the appointment of an attorney ad litem or guardian ad litem with special training for hearings for visitation determinations may also place additional obligations on the Guardian ad Litem Program.

**Safeguard individual liberty** – The bill could serve to reduce the options of certain individuals seeking visitation or contact with children by requiring the use of supervised visitation centers.

**Promote personal responsibility** – The bill requires individuals who are alleged to have committed or have been found to have committed sexual abuse of a child to use the services of a supervised visitation program.

**Empower families** – The bill may allow visitation or contact between persons alleged to have committed or found to have committed sexual abuse of a child to have contact with a child that might otherwise be denied. It may also cause some contact to be denied if resources of the supervised visitation centers are insufficient to serve all families requiring program services.

**Maintain public security** – The bill is intended to increase the physical safety of certain specified individuals and families by requiring the use of supervised visitation programs.

#### B. EFFECT OF PROPOSED CHANGES:

##### BACKGROUND

##### Supervised Visitation

Supervised visitation programs provide parents who may pose a risk to their children or to another parent an opportunity to experience parent-child contact while in the presence of an appropriate third party.<sup>1</sup> Use of a “neutral third party” to oversee such contact has long been recognized as essential in child maltreatment cases in which the child has been removed from the home. In those cases, child protection workers supervised visits in order to maintain the child’s relationship with the parents and to work toward family reunification. In an effort to improve the conditions under which these services were provided, some social services’ agencies began contracting out the supervised visitation function to programs that focused specifically on these services.<sup>2</sup> Supervised visitation programs may offer a variety of services and these services vary from program to program.

Beginning in the late 1980’s, supervised visitation programs emerged as a service necessary for families experiencing separation and divorce, when conflict between the parents necessitates a third party to allow the child contact with a noncustodial parent.<sup>3</sup> In addition, the epidemic of domestic violence and concern for the safety of the victim and/or the children at visitation has resulted in the creation of supervised visitation programs for family violence cases. As the American Bar Association has pointed out, court orders allowing family members to supervise visitation or visitation exchanges places those family members at risk of violence or manipulation by the abuser.<sup>4</sup> In addition to enabling parent-child contact, other purposes of supervised visitation programs include:

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<sup>1</sup> Thoennes, Nancy and Jessica Pearson, *Supervised Visitation: A Profile of Providers*, 37 Family and Conciliation Courts, 460, 460 (1999)

<sup>2</sup> Straus, Robert B., *Supervised Visitation and Family Violence*, 29 Family Law Quarterly, 229, 233 (1995-1996).

<sup>3</sup> Birnbaum, Rachel and Ramona Alaggia, *Supervised Visitation: A Call for a Second Generation of Research*, 44 Family Court Review, 119 (2006)

- Preventing child abuse;
- Reducing the potential for harm to victims of domestic violence and their children;
- Helping build safe and healthy relationships between parents and children;
- Providing written factual information to the court regarding supervised contact, where appropriate;
- Reducing the risk of parental kidnapping;
- Assisting parents with juvenile dependency case plan compliance; and
- Facilitating reunification, where appropriate.

In an attempt to create program uniformity in such areas as staff training, terminology, and basic practice norms, the Florida Supreme Court's Family Court Steering Committee began developing a minimum set of standards for supervised visitation and exchange programs in 1998. Chief Justice Harding endorsed the Florida Supreme Court's Minimum Standards for Supervised Visitation Program Agreements and issued an administrative order in 1999 mandating that chief judges of each circuit enter into an agreement with local programs to whom trial judges referred cases that agreed to comply with the standards.<sup>5</sup>

The number of supervised visitation programs has continued to increase during the past 12 years. There were only 56 known programs in 28 states in 1995, and by 1998, 94 such programs were identified. In late 2006, the state of Florida alone had 62 such programs, and the Supervised Visitation Network (SVN, a networking organization of supervised access and visitation programs) included 525 agency, affiliate, and individual members in North America. The SVN indicates that Florida has the most supervised visitation programs in the country.<sup>6</sup> Programs receive funding from a variety of sources including, federal Child Access and Visitation Grants administered by the Department of Children and Family Services (DCF), Promoting Safe and Stable Families Grants administered by DCF, United Way, county funding, city funding, federal Safe Haven/ Supervised Visitation Grants that can be used only for domestic violence cases, client fees for service, and private/corporate funds.

Florida is currently the only state which tracks the statewide usage of supervised visitation across all types of referrals, including domestic violence, child abuse and neglect, and separation and divorce cases. In January 2005, the Clearinghouse on Supervised Visitation started collecting program and service data in a web-based database. Program-level data include information about the programs themselves such as location, funding sources, number of employees and volunteers, etc. Service-level data capture information on clients and the services they receive.

## **Florida Law**

Chapter 753, Florida Statutes, relating to supervised visitation programs, was enacted by the Florida Legislature in 1996. Obsolete provisions related to the Florida Family Visitation Task Force were repealed in 1999 and 2000. No additional changes have been made to Chapter 753 since its enactment in 1996. Due to the tremendous growth in the supervised visitation program movement and the fact that the 1996 legislation did not address standards, safety, or staff credentials, it would appear that the remainder of Chapter 753 has also become obsolete. There is no statutory requirement governing referrals to supervised visitation programs.

## **The Clearinghouse on Supervised Visitation**

The Clearinghouse on Supervised Visitation was created in 1996 through an appropriation from the Office of the State Courts Administrator to provide statewide technical assistance on issues related to

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<sup>4</sup> American Bar Association Policy OOA109A, approved by the American Bar Association House of Delegates at the Annual Meeting in July 2000.

<sup>5</sup> The Minimum Standards can be found at: [http://www.flcourts.org/gen\\_public/family/bin/svnstandard.pdf](http://www.flcourts.org/gen_public/family/bin/svnstandard.pdf)

<sup>6</sup> Florida's Supervised Visitation Programs: A Report from the Clearinghouse on Supervised Visitation. Institute for Family Violence Studies, College of Social Work, Florida State University, January 2007.

the delivery of supervised visitation services to providers, the judiciary, and DCF. Since 1996, the Clearinghouse has received contracts on an annual basis from DCF to continue this work. In 1998, the Clearinghouse published the first training manual which covered the recommended training content for providers developed by the Florida Supreme Court. The latest manual, published in 2006, is a completely revised and updated curriculum.

Since 1996, the Clearinghouse has also produced two semiannual newsletters and has developed a number of technical assistance tools. In addition, the Clearinghouse has provided on-site training throughout the United States and Canada, conducted telephonic and web-based training for providers, and responded to telephone requests for assistance from providers and the courts nationwide. In 2005 the Clearinghouse received funding to create an online database to collect supervised visitation data.

In 2003, the U.S. Department of Justice's Office on Violence Against Women funded the Clearinghouse to provide technical assistance and training to federal Safe Havens-Supervised Visitation grantees. This funding was renewed for 2005-2006.

### **Right to Visitation in Chapter 39 Proceedings**

Currently, Florida law provides for court ordered visitation at hearings throughout the dependency court process:

- s. 39.402(9), Florida Statutes, relating to shelter placement, provides that the court shall determine visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child;
- s. 39.506(6), Florida Statutes, relating to arraignment, provides that at any arraignment hearing, if the child is in an out-of-home placement, the court shall order visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child; and
- s. 39.521, Florida Statutes, relating to disposition, provides that if the child cannot be safely placed in a nonlicensed placement, the court shall commit the child to the temporary legal custody of the department ... The department shall not return any child to the physical care and custody of the person from whom the child was removed, except for court-approved visitation periods, without the approval of the court.

In addition, s. 39.509, Florida Statutes, relating to grandparents rights, provides that a maternal or paternal grandparent as well as a stepgrandparent is entitled to reasonable visitation with his or her grandchild **who has been adjudicated a dependent child and taken from the physical custody of the parent** unless the court finds that such visitation is not in the best interest of the child or that such visitation would interfere with the goals of the case plan. Reasonable visitation may be unsupervised.

Florida law does not specifically provide for visitation for stepparents, other relatives, or caregivers.

### **THE BILL**

The bill provides for the "Keeping Children Safe Act of 2007" and provides legislative intent to keep children in the custody of DCF or its contractors safe during visitation or other contact with an individual who is alleged to have committed sexual abuse or related criminal conduct. The bill provides for this safety by:

- Creating a presumption that visitation or contact is contrary to the best interest of a child when a parent, stepparent, grandparent, stepgrandparent, relative, or caregiver is alleged to have committed or has been found to have committed sexual abuse of a child. Visitation or other contact with an individual to whom this presumption applies shall be permitted only after a hearing and being so ordered by the court;
- Restricting the court from ordering visitation or contact with a person subject to this presumption unless the visitation or contact occurs in a supervised visitation program that conforms to specified standards;

- Requiring visitation ordered at a shelter hearing, an arraignment hearing, a disposition hearing, or with a grandparent, to follow these newly created requirements; and
- Requiring the Florida Family Visitation Network to develop standards for supervised visitation programs, subject to the availability of resources, and providing that all supervised visitation projects established by the Institute of Food and Agricultural Sciences of the University of Florida are required to comply with those standards.

The bill also appears to significantly expand the scope of individuals entitled to visitation with a child.

C. SECTION DIRECTORY:

**Section 1.** Cites the act as the “Keeping Children Safe Act of 2007.”

**Section 2.** Provides for legislative intent.

**Section 3.** Creates s. 39.0139, Florida Statutes, relating to visitation restrictions when the safety or welfare of a child cannot otherwise be adequately guaranteed.

**Section 4.** Amends s. 30.402, Florida Statutes, relating to shelter placement.

**Section 5.** Amends s. 39.506, Florida Statutes, relating to arraignment hearings.

**Section 6.** Amends s. 39.509, Florida Statutes, relating to grandparents rights.

**Section 7.** Amends s. 39.521, Florida Statutes, relating to disposition hearings and the powers of disposition.

**Section 8.** Amends s. 753.001, Florida Statutes, relating to supervised visitation definitions.

**Section 9.** Amends s. 753.002, Florida Statutes, relating to the Florida Family Visitation Network.

**Section 10.** Amends s. 753.004, Florida Statutes, relating to supervised visitation projects established by the Institute of Food and Agricultural Sciences at the University of Florida.

**Section 11.** Provides for an effective date of July 7, 2007.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Although the amount is indeterminate, funding for training, any additional court hearings, and any additional workload on the Guardian ad Litem Program may also be required.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Drafting Issues:**

- Lines 19-37 of the bill, relating to the short title and legislative intent, will appear in the Laws of Florida, but will not appear in the Florida Statutes as currently drafted.
- Line 26 of the bill, the word “protection” should be “protective”.
- Lines 24-27 of the bill state that an increasing portion of the allegations that bring children to the attention of child protection investigators involves sexual abuse of a child as defined in s. 39.01, Florida Statutes. Statistics from the Department of Children and Family Services do not appear to support this statement.

Percentage of Total Number of Reports Received by the Child Abuse Hotline by Fiscal Year<sup>7</sup>

TYPE OF MALTREATMENT	97-98	98-99	99-00	00-01	01-02	03-04	04-05
Sexual Battery - Incest	0.75	0.71	0.57	0.52	0.48	0.48	0.45
Sexual Battery – Not Incest	1.34	1.24	1.06	0.83	0.66	0.62	0.58
Sexual Molestation	3.43	3.81	3.89	3.87	2.79	2.53	2.59
Sexual Exploitation	0.67	0.71	0.68	0.71	0.64	0.58	0.51
Sexual Abuse Other Child	1.07	1.27	1.09	1.05	1.13	1.33	1.36

- Lines 21-37 of the bill, relating to legislative intent, and lines 51-69, relating to visitation restrictions, contain multiple references to types of sexual abuse:
  - Lines 26-27 reference “sexual abuse of a child as defined in s. 39.01, Florida Statutes”;
  - Lines 30-31 refer to “sexual abuse or related criminal conduct”;

<sup>7</sup> Child Abuse Annual Statistical Tables, Florida Department of Children and Family Services. No data available for fiscal year 2002-2003.

- Lines 34-37 refer to “matters relating to child sexual abuse or criminal conduct involving, allowing, or encouraging any sexual act against a child or exploitation of a child, including involvement of the child in human trafficking”;
- Lines 51-53 reference sexual abuse of a child;
- Lines 56-58 refer to designated sexual predators under s. 775.21;
- Lines 59-61 reference sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; and
- Lines 62-64 refer to sexual abuse of a child as defined in s. 39.01 or a sexual battery.

These terms are not mutually inclusive, therefore creating internal inconsistency within the bill.

Further, the legislative intent section of the bill refers only to “alleged” abuse, whereas the section of the bill relating to visitation restrictions refers to both “alleged” and “have committed” creating additional internal inconsistency within the bill.

- Lines 42-44 of the bill, appear to expand the scope of individuals entitled to visitation with a child.
  - Line 73 of the bill includes the term “heightened scrutiny”. The term is not currently used in the Florida Statutes and is not defined in this bill. "Heightened scrutiny" is an intermediate level of judicial review, applied by the courts in deciding constitutional questions.<sup>8</sup> It is unclear how this instruction applies in this context.
  - Lines 75-77 of the bill, do not specify who is to develop and provide the special training to be required of attorneys ad litem and guardians ad litem. Nor does it specify who will certify and monitor that the training has been successfully completed by these individuals.
  - Lines 83-86 of the bill, address standards that supervised visitation programs must conform to before the courts can order visitation between an individual subject to the presumption and a child to take place in a program. These include:
    - the “Minimum Standards for Supervised Visitation Program Agreement” as adopted by the Supreme Court on November 18, 1999; and
    - Standards that may be adopted under chapter 753.
- It is unclear how this provision will increase safety for children. First, there is no reference in the standards adopted by the Supreme Court in 1999 to additional training for program staff when supervising visitations involving sexually abused children. Second, the bill provides for standards to be developed by the Florida Family Visitation Network which does not exist. This would indicate that standards will not be developed under chapter 753 as a result of the bill.
- Lines 89-92 of the bill, require that all persons supervising visitation pursuant to the provisions of the bill must receive or have already received training specific to supervising visitation between a victim and alleged perpetrator of sexual abuse. The bill does not specify who will develop and provide this training or who will certify and monitor that the training has been successfully completed by these particular supervisors.
  - Lines 154-167 of the bill, current language relating to grandparent visitation, appears to conflict with the new language added on line 124 of the bill.
  - Lines 242-246 of the bill require the Florida Family Visitation Network to develop standards for supervised visitation programs. The Florida Family Visitation Network was never created pursuant to s. 753.002, Florida Statutes, and does not exist. It is therefore unclear how the required standards will be developed. The Legislature may want to consider repealing s. 753.002, Florida Statutes.

<sup>8</sup> See, e.g., *T.M. v. State of Florida*, 784 So.2d 442, 443.

- Lines 255-256 of the bill require any supervised visitation program established by the Institute of Food and Agricultural Sciences (IFAS) of the University of Florida to adhere to the standards developed by the non-existent Florida Family Visitation Network. IFAS has never established a supervised visitation program in Florida. The Legislature may want to consider repealing s. 753.004, Florida Statutes.

### **Other Comments:**

The bill states that it is the intent of the Legislature to keep children who may be victims of sexual abuse safe while using the services of supervised visitation programs. In the latest report published by the Clearinghouse on Supervised Visitation, it is stated:

This analysis enables us to identify two primary areas of concern with regard to the administration of supervised visitation programs in Florida: funding and standards. Reports of few staff members, heavy reliance on non-paid staff, frequent need to delay or deny services, and lack of security personnel are indicators of insufficient funding throughout the system. In turn, these issues raise concerns for program safety. Furthermore, the data suggest that programs are not observing the requirement for annual Affidavits of Compliance, which forms a cornerstone of the Supreme Court's Minimum Standards for Supervised Visitation Program Agreements. This raises a question of whether programs are complying in meaningful ways with the spirit and letter of the standards as envisioned by the Supreme Court. Florida is at the forefront of the development of supervised visitation programs nationally, but to earn recognition as a provider of quality, meaningful services in this arena, significant improvements to its infrastructure must be made.<sup>9</sup>

Based on findings in the report and in light of these concerns, the Clearinghouse made the following recommendations for maximizing the safety and effectiveness of supervised visitation programs:

- Updated standards and the certification of programs are essential to the future success of supervised visitation as a tool for keeping children and non-offending parents safe.
- Certified programs need to receive adequate funding to operate within the updated standards.
- Community Based Care Organizations must be required by their contracts with DCF to adhere to the reporting requirements of the federal Access and Visitation grant program.
- Programs must be required to use professional security personnel to enhance program safety in light of the risks inherent in providing supervised visitation services.
- The database should be upgraded to more accurately reflect program services.

Since the provisions of the bill do not require an existing entity to develop standards for these programs, do not provide for a certification and monitoring process to assure that the standards are implemented and does not provide funding for these responsibilities, it is unclear how this safety is to be achieved as a result of the bill.

### **D. STATEMENT OF THE SPONSOR**

Concerns identified in this bill analysis will be addressed in a strike all amendment.

## **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

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<sup>9</sup> Florida's Supervised Visitation Programs: A Report from the Clearinghouse on Supervised Visitation. Institute for Family Violence Studies, College of Social Work, Florida State University, January 2007.