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CS/HB 77

2007 Legislature

1 A bill to be entitled
2 An act relating to child visitation; creating s. 39.0139,
3 F.S.; providing a short title; providing legislative
4 findings and intent; creating a presumption; providing for
5 a hearing; providing conditions for visitation or other
6 contact; providing additional considerations for
7 visitation or other contact; amending ss. 39.402, 39.506,
8 39.509, and 39.521, F.S.; subjecting specified visitation
9 orders to s. 39.0139, F.S.; creating s. 753.01, F.S.;
10 providing definitions; creating s. 753.02, F.S.; providing
11 responsibilities for the Clearinghouse on Supervised
12 Visitation; authorizing the clearinghouse to apply for
13 grants and accept private contributions; creating s.
14 753.03, F.S.; providing for the development of standards;
15 providing membership of an advisory board; providing for
16 reports; creating s. 753.04, F.S.; providing interim
17 standards for supervised visitation programs; creating s.
18 753.05, F.S.; providing for referrals related to child
19 sexual abuse; requiring a supervised visitation program to
20 agree to comply with specified standards; repealing ss.
21 753.001, 753.002, and 753.004, F.S., relating to the
22 Florida Family Visitation Network; providing a directive
23 to the Division of Statutory Revision; providing an
24 effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
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28 Section 1. Section 39.0139, Florida Statutes, is created
29 to read:

30 39.0139 Visitation or other contact; restrictions.--

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

33 (2) LEGISLATIVE FINDINGS AND INTENT.--

34 (a) The Legislature finds that:

35 1. For some children who are abused, abandoned, or
36 neglected by a parent or other caregiver, abuse may include
37 sexual abuse.

38 2. These same children are at risk of suffering from
39 further harm during visitation or other contact.

40 3. Visitation or other contact with the child may be used
41 to influence the child's testimony.

42 (b) It is the intent of the Legislature to protect
43 children and reduce the risk of further harm to children who
44 have been sexually abused or exploited by a parent or other
45 caregiver by placing additional requirements on judicial
46 determinations related to visitation and other contact.

47 (3) PRESUMPTION OF DETRIMENT.--

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

50 1. Has been the subject of a report to the child abuse
51 hotline alleging sexual abuse of any child as defined in s.
52 39.01;

53 2. Has been found guilty of, regardless of adjudication,
54 or has entered a plea of guilty or nolo contendere to, charges

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55 under the following statutes or substantially similar statutes
56 of other jurisdictions:

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

59 b. Section 794.011, relating to sexual battery;

60 c. Section 798.02, relating to lewd and lascivious
61 behavior;

62 d. Chapter 800, relating to lewdness and indecent
63 exposure;

64 e. Section 826.04, relating to incest; or

65 f. Chapter 827, relating to the abuse of children; or

66 3. Has been determined by a court to be a sexual predator
67 as defined in s. 775.21 or has received a substantially similar
68 designation under laws of another jurisdiction.

69 (b) For purposes of this subsection, "substantially
70 similar" has the same meaning as in s. 39.806(1)(d)2.

71 (4) HEARINGS.--A person who meets any of the criteria set
72 forth in paragraph (3)(a) may visit or have other contact with a
73 child only after a hearing and an order by the court that allows
74 the visitation or other contact. At such a hearing:

75 (a) The court must appoint an attorney ad litem or a
76 guardian ad litem for the child if one has not already been
77 appointed. Any attorney ad litem or guardian ad litem appointed
78 shall have special training in the dynamics of child sexual
79 abuse.

80 (b) The court may receive and rely upon any relevant and
81 material evidence submitted, including written and oral reports,
82 to the extent of its probative value in its effort to determine

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83 the action to be taken with regard to the child, even if these
84 reports and evidence may not be competent in an adjudicatory
85 hearing.

86 (c) If the court finds the person proves by clear and
87 convincing evidence that the safety, well-being, and physical,
88 mental, and emotional health of the child is not endangered by
89 such visitation or other contact, the presumption in subsection
90 (3) is rebutted and the court may allow visitation or other
91 contact. The court shall enter a written order specifying any
92 conditions it finds necessary to protect the child.

93 (d) If the court finds the person did not rebut the
94 presumption established in subsection (3), the court shall enter
95 a written order prohibiting or restricting visitation or other
96 contact with the child.

97 (5) CONDITIONS.--Any visitation or other contact ordered
98 under paragraph (4)(d) shall be:

99 (a) Supervised by a person who has previously received
100 special training in the dynamics of child sexual abuse; or

101 (b) Conducted in a supervised visitation program, provided
102 that the program has an agreement with the court and a current
103 affidavit of compliance on file with the chief judge of the
104 circuit in which the program is located affirming that the
105 program has agreed to comply with the minimum standards
106 contained in the administrative order issued by the Chief
107 Justice of the Supreme Court on November 17, 1999, and provided
108 the program has a written agreement with the court and with the
109 department as described in s. 753.05 containing policies and

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110 guidelines specifically related to referrals involving child
111 sexual abuse.

112 (6) ADDITIONAL CONSIDERATIONS.--

113 (a) If a party or participant, based on communication with
114 the child or other firsthand knowledge, informs the court that a
115 person is attempting to influence the testimony of the child,
116 the court shall immediately suspend visitation or other contact.
117 The court shall then hold a hearing and determine whether it is
118 in the best interests of the child to prohibit or restrict
119 visitation or other contact.

120 (b) If a child is in therapy as a result of any of the
121 allegations or convictions contained in paragraph (3)(a) and the
122 child's therapist reports that the visitation or other contact
123 is impeding the child's therapeutic progress, the court shall
124 convene a hearing within 7 business days to review the terms,
125 conditions, or appropriateness of continued visitation or other
126 contact.

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

129 39.402 Placement in a shelter.--

130 (9) At any shelter hearing, the department shall provide
131 to the court a recommendation for scheduled contact between the
132 child and parents, if appropriate. The court shall determine
133 visitation rights absent a clear and convincing showing that
134 visitation is not in the best interest of the child. Any order
135 for visitation or other contact must conform to the provisions
136 of s. 39.0139. If visitation is ordered but will not commence

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137 within 72 hours of the shelter hearing, the department shall
138 provide justification to the court.

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

141 39.506 Arraignment hearings.--

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

147 Section 4. Section 39.509, Florida Statutes, is amended to
148 read:

149 39.509 Grandparents rights.--Notwithstanding any other
150 provision of law, a maternal or paternal grandparent as well as
151 a stepgrandparent is entitled to reasonable visitation with his
152 or her grandchild who has been adjudicated a dependent child and
153 taken from the physical custody of the parent unless the court
154 finds that such visitation is not in the best interest of the
155 child or that such visitation would interfere with the goals of
156 the case plan. Reasonable visitation may be unsupervised and,
157 where appropriate and feasible, may be frequent and continuing.
158 Any order for visitation or other contact must conform to the
159 provisions of s. 39.0139.

160 (1) Grandparent visitation may take place in the home of
161 the grandparent unless there is a compelling reason for denying
162 such a visitation. The department's caseworker shall arrange the
163 visitation to which a grandparent is entitled pursuant to this
164 section. The state shall not charge a fee for any costs

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165 associated with arranging the visitation. However, the
166 grandparent shall pay for the child's cost of transportation
167 when the visitation is to take place in the grandparent's home.
168 The caseworker shall document the reasons for any decision to
169 restrict a grandparent's visitation.

170 (2) A grandparent entitled to visitation pursuant to this
171 section shall not be restricted from appropriate displays of
172 affection to the child, such as appropriately hugging or kissing
173 his or her grandchild. Gifts, cards, and letters from the
174 grandparent and other family members shall not be denied to a
175 child who has been adjudicated a dependent child.

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

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

184 (5) The termination of parental rights does not affect the
185 rights of grandparents unless the court finds that such
186 visitation is not in the best interest of the child or that such
187 visitation would interfere with the goals of permanency planning
188 for the child.

189 (6) In determining whether grandparental visitation is not
190 in the child's best interest, consideration may be given to the
191 following:

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192 (a) The finding of guilt, regardless of adjudication, or
 193 entry or plea of guilty or nolo contendere to charges under the
 194 following statutes, or similar statutes of other jurisdictions:
 195 s. 787.04, relating to removing minors from the state or
 196 concealing minors contrary to court order; s. 794.011, relating
 197 to sexual battery; s. 798.02, relating to lewd and lascivious
 198 behavior; chapter 800, relating to lewdness and indecent
 199 exposure; s. 826.04, relating to incest; or chapter 827,
 200 relating to the abuse of children.

201 (b) The designation by a court as a sexual predator as
 202 defined in s. 775.21 or a substantially similar designation
 203 under laws of another jurisdiction.

204 (c) ~~Consideration may also be given to~~ A report of abuse,
 205 abandonment, or neglect under ss. 415.101-415.113 or this
 206 chapter and the outcome of the investigation concerning such
 207 report.

208 Section 5. Paragraph (d) of subsection (3) of section
 209 39.521, Florida Statutes, is amended to read:

210 39.521 Disposition hearings; powers of disposition.--

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

214 (d) If the child cannot be safely placed in a nonlicensed
 215 placement, the court shall commit the child to the temporary
 216 legal custody of the department. Such commitment invests in the
 217 department all rights and responsibilities of a legal custodian.
 218 The department shall not return any child to the physical care
 219 and custody of the person from whom the child was removed,

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220 | except for court-approved visitation periods, without the
221 | approval of the court. Any order for visitation or other contact
222 | must conform to the provisions of s. 39.0139. The term of such
223 | commitment continues until terminated by the court or until the
224 | child reaches the age of 18. After the child is committed to the
225 | temporary legal custody of the department, all further
226 | proceedings under this section are governed by this chapter.

227 |
228 | Protective supervision continues until the court terminates it
229 | or until the child reaches the age of 18, whichever date is
230 | first. Protective supervision shall be terminated by the court
231 | whenever the court determines that permanency has been achieved
232 | for the child, whether with a parent, another relative, or a
233 | legal custodian, and that protective supervision is no longer
234 | needed. The termination of supervision may be with or without
235 | retaining jurisdiction, at the court's discretion, and shall in
236 | either case be considered a permanency option for the child. The
237 | order terminating supervision by the department shall set forth
238 | the powers of the custodian of the child and shall include the
239 | powers ordinarily granted to a guardian of the person of a minor
240 | unless otherwise specified. Upon the court's termination of
241 | supervision by the department, no further judicial reviews are
242 | required, so long as permanency has been established for the
243 | child.

244 | Section 6. Section 753.01, Florida Statutes, is created to
245 | read:

246 | 753.01 Definitions.--As used in this chapter, the term:
247 | (1) "Clearinghouse on Supervised Visitation" or

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248 "clearinghouse" means the entity within the Institute for Family
 249 Violence Studies in the School of Social Work of the Florida
 250 State University, which serves as a statewide resource on
 251 supervised visitation issues by providing technical assistance,
 252 training, and research.

253 (2) "Department" means the Department of Children and
 254 Family Services.

255 (3) "Exchange monitoring" means supervision of movement of
 256 a child from the custodial to the noncustodial parent at the
 257 start of the visit and back to the custodial parent at the end
 258 of the visit.

259 (4) "Supervised visitation program" means a program
 260 created to offer structured contact between a parent or
 261 caregiver and one or more children in the presence of a third
 262 person responsible for observing and ensuring the safety of
 263 those involved. Supervised visitation programs may also include
 264 exchange monitoring of children who are participating in court-
 265 ordered visitation programs or exchange monitoring where there
 266 has been mutual consent between parties for the purposes of
 267 facilitating a visitation.

268 Section 7. Section 753.02, Florida Statutes, is created to
 269 read:

270 753.02 Clearinghouse responsibilities and authority.--

271 (1) The clearinghouse shall have the following
 272 responsibilities, subject to the availability of resources:

273 (a) To develop standards for supervised visitation
 274 programs in order to ensure both the quality of each program and
 275 the safety of children and families using program services.

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276 (b) To serve as a clearinghouse on resources and research
277 of supervised visitation programs.

278 (c) To provide technical assistance and other support
279 services to existing and emerging supervised visitation
280 programs.

281 (d) To compile a directory of state-supervised visitation
282 programs containing referral information.

283 (e) To formulate a newsletter for supervised visitation
284 programs.

285 (f) To organize workshops and conferences that address
286 issues and concerns of supervised visitation programs.

287 (g) To compile data on the use of supervised visitation
288 programs.

289 (2) The clearinghouse may apply for grants and accept
290 private contributions.

291 Section 8. Section 753.03, Florida Statutes, is created to
292 read:

293 753.03 Standards for supervised visitation and supervised
294 exchange programs.--

295 (1) Within existing funds from the department, the
296 clearinghouse shall develop standards for supervised visitation
297 programs in order to ensure the safety and quality of each
298 program. Standards must be uniform for all the programs and must
299 address the purposes, policies, standards of practice, program
300 content, security measures, qualifications of providers,
301 training standards, credentials and background screening
302 requirements of staff, information to be provided to the court,
303 and data collection for supervised visitation programs.

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304 (2) The clearinghouse shall use an advisory board to
305 assist in developing the standards. The advisory board must
306 include:

307 (a) Two members of the executive board of the state
308 chapter of the Supervised Visitation Network, appointed by the
309 president of the state chapter of the Supervised Visitation
310 Network.

311 (b) A representative of the Office of the State Courts
312 Administrator, appointed by the State Courts Administrator.

313 (c) A representative of the department, appointed by the
314 secretary of the department.

315 (d) A representative of the Florida Coalition Against
316 Domestic Violence, appointed by the executive director of the
317 Florida Coalition Against Domestic Violence.

318 (e) A representative of a local law enforcement agency,
319 appointed by the executive director of the Florida Sheriffs
320 Association.

321 (f) A circuit court judge who presides over domestic
322 violence proceedings, appointed by the Chief Justice of the
323 Supreme Court.

324 (g) A circuit court judge who presides over dependency
325 proceedings, appointed by the Chief Justice of the Supreme
326 Court.

327 (h) Two representatives of a supervised visitation
328 program, appointed by the director of the clearinghouse.

329 (i) A representative of the Commission on Marriage and
330 Family Support Initiatives.

331 (j) A representative of the Statewide Guardian Ad Litem

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332 Office, appointed by the executive director of the office.

333 (3) The clearinghouse, in consultation with the advisory
 334 board, shall develop criteria and procedures for approving and
 335 rejecting certification applications for and monitoring
 336 compliance with the certification of a supervised visitation
 337 program. The clearinghouse shall recommend the process for
 338 phasing in the implementation of the standards and certification
 339 procedures and the criteria for distributing funds to eligible
 340 programs and designating the state entity that should certify
 341 and monitor the supervised visitation programs.

342 (4) The clearinghouse shall submit a preliminary report
 343 containing its recommendations for the uniform standards by
 344 December 31, 2007, and a final report of all recommendations,
 345 including those related to the certification and monitoring
 346 developed to date, by December 31, 2008, to the President of the
 347 Senate, the Speaker of the House of Representatives, and the
 348 Chief Justice of the Supreme Court.

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

351 753.04 Interim minimum standards for supervised visitation
 352 programs.--

353 (1) Until the standards for supervised visitation and
 354 supervised exchange programs are developed pursuant to this
 355 chapter and a certification and monitoring process is fully
 356 implemented, each supervised visitation program must have an
 357 agreement with the court and comply with the Minimum Standards
 358 for Supervised Visitation Programs Agreement adopted by the
 359 Supreme Court on November 17, 1999. Under this order, a

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360 supervised visitation program shall enter into an agreement with
361 the circuit court or circuit courts within the geographic
362 jurisdiction of the program attesting to the willingness of the
363 program to comply with the Supreme Court's standards.

364 (2) Until the standards for supervised visitation and
365 supervised exchange programs are completed and a certification
366 and monitoring process is fully implemented, a supervised
367 visitation program may not receive grant funds for access and
368 visitation under 42 U.S.C. s. 669b unless the program provides
369 documentation to the state agency administering the grant
370 verifying that the program has entered into an agreement with
371 the circuit court as required under subsection (1). This
372 subsection does not obligate the state agency administering the
373 grant to certify a program's compliance with the Minimum
374 Standards for Supervised Visitation Programs Agreement.

375 Section 10. Section 753.05, Florida Statutes, is created
376 to read:

377 753.05 Referrals involving child sexual abuse.--

378 (1) Any supervised visitation program that wishes to
379 accept referrals involving child sexual abuse must have an
380 agreement with the court and a current affidavit of compliance
381 on file with the chief judge of the circuit in which the program
382 is located affirming that the program has agreed to comply with
383 the minimum standards contained in an administrative order
384 issued by the Chief Justice of the Supreme Court on November 17,
385 1999, and provided the program has a written agreement with the
386 court and with the department that contains policies and
387 guidelines specifically related to child sexual abuse.

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388 (2) The agreement must include provisions for the
389 following:

390 (a) Program staff who supervise visits or other contact
391 must have specific training in child sexual abuse provided
392 through the Clearinghouse on Supervised Visitation documented in
393 personnel files.

394 (b) The program must have protocols for obtaining
395 background material on the family prior to the initiation of
396 services.

397 (c) The program must accept only those child sexual abuse
398 referrals for which staff have the requisite background
399 material, training, and security in place to safely monitor
400 contact.

401 (d) The program must decline referrals of child sexual
402 abuse cases when staff lack necessary training or education,
403 when background material has not been received, or when lack of
404 security may allow revictimization of the child.

405 (e) The program must suspend visits in cases when the
406 child appears to be traumatized by the visits or when the
407 individual visiting or having other contact engages in
408 inappropriate behavior or violates program rules.

409 Section 11. Sections 753.001, 753.002, and 753.004,
410 Florida Statutes, are repealed.

411 Section 12. The Division of Statutory Revision is directed
412 to redesignate the title of chapter 753, Florida Statutes, as
413 "Supervised Visitation."

414 Section 13. This act shall take effect July 1, 2007.