

HB 387

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1 A bill to be entitled
 2 An act relating to child visitation; amending s. 39.0139,
 3 F.S.; revising legislative intent; requiring probable
 4 cause of sexual abuse in order to create a presumption of
 5 detriment; providing that persons meeting specified
 6 criteria may not visit or have contact with a child
 7 without a hearing and court order; revising requirements
 8 for hearing seeking to rebut a presumption of detriment;
 9 revising provisions relating to hearings on whether to
 10 prohibit or restrict visitation or other contact with the
 11 person who is alleged to have influenced a child's
 12 testimony; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

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 16 Section 1. Paragraph (b) of subsection (2) and subsections
 17 (3), (4), and (6) of section 39.0139, Florida Statutes, are
 18 amended to read:

19 39.0139 Visitation or other contact; restrictions.—

20 (2) LEGISLATIVE FINDINGS AND INTENT.—

21 (b) It is the intent of the Legislature to protect
 22 children and reduce the risk of further harm to children who
 23 have been sexually abused or exploited by a parent or other
 24 caregiver by placing additional requirements on judicial
 25 determinations related to contact between a parent or caregiver
 26 who meets the criteria under paragraph (3)(a) and a child victim
 27 in any proceeding under the laws of this state ~~visitation and~~
 28 ~~other contact.~~

29 (3) PRESUMPTION OF DETRIMENT.—

30 (a) A rebuttable presumption of detriment to a child is
 31 created when ~~a parent or caregiver~~:

32 1. A court of competent jurisdiction has found probable
 33 cause exists that a parent or caregiver has sexually abused a
 34 child ~~Has been the subject of a report to the child abuse~~
 35 ~~hotline alleging sexual abuse of any child as defined in s.~~
 36 39.01;

37 2. A parent or caregiver has been found guilty of,
 38 regardless of adjudication, or has entered a plea of guilty or
 39 nolo contendere to, charges under the following statutes or
 40 substantially similar statutes of other jurisdictions:

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

43 b. Section 794.011, relating to sexual battery;

44 c. Section 798.02, relating to lewd and lascivious
 45 behavior;

46 d. Chapter 800, relating to lewdness and indecent
 47 exposure;

48 e. Section 826.04, relating to incest; or

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

50 3. A court of competent jurisdiction has ~~been~~ determined a
 51 parent or caregiver ~~by a court~~ to be a sexual predator as
 52 defined in s. 775.21 or a parent or caregiver has received a
 53 substantially similar designation under laws of another
 54 jurisdiction.

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

57 (c) A person who meets any of the criteria set forth in
58 paragraph (a) may not visit or have contact with a child without
59 a hearing and order by the court.

60 (4) HEARINGS.—A person who meets any of the criteria set
61 forth in paragraph (3) (a) who seeks to begin or resume contact
62 with the child victim shall have the right to an evidentiary
63 hearing to determine whether contact is appropriate ~~may visit or~~
64 ~~have other contact with a child only after a hearing and an~~
65 ~~order by the court that allows the visitation or other contact.~~
66 ~~At such a hearing:~~

67 (a) Prior to the hearing, the court shall ~~The court must~~
68 appoint an attorney ad litem or a guardian ad litem for the
69 child if one has not already been appointed. Any attorney ad
70 litem or guardian ad litem appointed shall have special training
71 in the dynamics of child sexual abuse.

72 (b) At the hearing, the court may receive and rely upon
73 any relevant and material evidence submitted to the extent of
74 its probative value, including written and oral reports or
75 recommendations from the child protective team, the child's
76 therapist, the child's guardian ad litem, or the child's
77 attorney ad litem, ~~to the extent of its probative value in its~~
78 ~~effort to determine the action to be taken with regard to the~~
79 ~~child,~~ even if these reports, recommendations, and evidence may
80 not be admissible under the rules of evidence ~~competent in an~~
81 ~~adjudicatory hearing.~~

82 (c) If the court finds the person proves by clear and
83 convincing evidence that the safety, well-being, and physical,
84 mental, and emotional health of the child is not endangered by

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85 such visitation or other contact, the presumption in subsection
86 (3) is rebutted and the court may allow visitation or other
87 contact. The court shall enter a written order setting forth
88 findings of fact and specifying any conditions it finds
89 necessary to protect the child.

90 (d) If the court finds the person did not rebut the
91 presumption established in subsection (3), the court shall enter
92 a written order setting forth findings of fact and prohibiting
93 or restricting visitation or other contact with the child.

94 (6) ADDITIONAL CONSIDERATIONS.—

95 (a) Once a rebuttable presumption of detriment has arisen
96 under subsection (3) or if visitation is ordered under
97 subsection (4) and ~~If~~ a party or participant, based on
98 communication with the child or other firsthand knowledge,
99 informs the court that a person is attempting to influence the
100 testimony of the child, the court shall hold a hearing within 7
101 business days to ~~immediately suspend visitation or other~~
102 ~~contact. The court shall then hold a hearing and~~ determine
103 whether it is in the best interests of the child to prohibit or
104 restrict visitation or other contact with the person who is
105 alleged to have influenced the testimony of the child.

106 (b) If a child is in therapy as a result of any finding ~~of~~
107 ~~the allegations~~ or conviction ~~convictions~~ contained in paragraph
108 (3) (a) and the child's therapist reports that the visitation or
109 other contact is impeding the child's therapeutic progress, the
110 court shall convene a hearing within 7 business days to review
111 the terms, conditions, or appropriateness of continued
112 visitation or other contact.

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Section 2. This act shall take effect July 1, 2011.