

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/SB 504

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Bogdanoff

SUBJECT: Child Visitation

DATE: April 19, 2011                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	<b>Fav/CS</b>
2.	O'Connor	Maclure	JU	<b>Favorable</b>
3.	Carpenter	Meyer, C.	BC	<b>Favorable</b>
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill amends Florida's Keeping Children Safe Act to require probable cause of sexual abuse by a parent or caregiver in order to create a presumption of detriment to a child. The bill further provides that persons meeting specified criteria may not visit or have contact with a child without a hearing and order by the court, and in order to begin or resume contact with the child, there must be an evidentiary hearing to determine whether contact is appropriate. The bill provides that the court shall hold a hearing within seven business days of finding out that a person is attempting to influence the testimony of the child. The hearing is to determine whether visitation with the person who is alleged to have influenced the testimony of the child is in the best interest of the child.

This bill also amends the legislative intent of the Act to provide that it is the intent to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in any proceeding pursuant to ch. 39, F.S.

This bill has no fiscal impact on state or local government.

This bill substantially amends section 39.0139, Florida Statutes.

## II. Present Situation:

### Supervised Visitation

Children involved in custody and visitation disputes are often considered “high risk” and can present emotional and behavioral difficulties later in life.<sup>1</sup> Research has shown that a child’s long-term behavioral and emotional adjustment will be more positive if he or she has contact with both parents.<sup>2</sup>

Supervised visitation programs “emerged as a service necessary for families experiencing separation and divorce, when conflict between the parents necessitates an ‘outside resource’ to allow the child contact with a noncustodial parent.”<sup>3</sup> These 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>4</sup> Supervision is available in a variety of ways: on-site visitation, off-site visitation at a neutral location, off-site visitation at the home of a relative or foster parent, or supervision of telephone calls between the parent and child.<sup>5</sup>

In addition to enabling and building healthy relationships between parents and children, other purposes of supervised visitation programs include:

- Preventing child abuse;
- Reducing the potential for harm to victims of domestic violence and their children;
- Providing written factual information to the court regarding supervised contact;
- Reducing the risk of parental kidnapping;
- Assisting parents with juvenile dependency case plan compliance; and
- Facilitating reunification, where appropriate.<sup>6</sup>

The use of supervised visitation programs has grown throughout the years. In 1995, there were 56 documented programs throughout the United States and by 1998, 94 programs had been identified.<sup>7</sup> In January 2005, the Florida Clearinghouse on Supervised Visitation started

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<sup>1</sup> Rachel Birnbaum and Ramona Alaggia, *Supervised Visitation: A Call for a Second Generation of Research*, 44 FAM. CT. REV. 119, 119 (Jan. 2006).

<sup>2</sup> *Id.*

<sup>3</sup> Wendy P. Crook et al., Institute for Family Violence Studies, Florida State University, *Florida’s Supervised Visitation Programs: A Report from the Clearinghouse on Supervised Visitation*, 6 (Jan. 2007), available at [http://familyvio.csw.fsu.edu/1996/BigDig1\\_2007.pdf](http://familyvio.csw.fsu.edu/1996/BigDig1_2007.pdf) (last visited Mar. 16, 2011).

<sup>4</sup> Nat Stern et al., *Visitation Decisions in Domestic Violence Cases: Seeking Lessons from One State’s Experience*, 23 WIS. J.L. GENDER & SOC’Y 113, 114 (Spring 2008).

<sup>5</sup> Nancy Thoennes and Jessica Pearson, *Supervised Visitation: A Profile of Providers*, 37 FAM. & CONCILIATION COURTS REV. 460, 465 (Oct. 1999).

<sup>6</sup> Wendy P. Crook, *supra* note 3, at 6.

<sup>7</sup> *Id.*

collecting program and service data in a web-based database.<sup>8</sup> By 2006, Florida had more than 60 supervised visitation programs, and the database held information on 5,196 cases.<sup>9</sup>

As of 2007, Florida was the only state that tracked the statewide usage of supervised visitation across all types of referrals, including domestic violence, child abuse and neglect, and separation or divorce cases.<sup>10</sup>

In an attempt to create program uniformity in certain areas, the Florida Supreme Court's Family Court Steering Committee began developing a minimum set of standards for supervised visitation programs in 1998. Chief Justice Harding endorsed the standards and issued an administrative order mandating that the chief judge of each circuit enter into an agreement with local programs that agreed to comply with the standards.<sup>11</sup> Seven years later, the Legislature amended ch. 753, F.S., to provide for the development of new standards, procedures for a certification process, and development of an advisory board, known as the Supervised Visitation Standards Committee (committee).<sup>12</sup> The committee prepared a report to the Legislature explaining the four overarching principles – safety, training, dignity and diversity, and community – and the standards through which the principles are implemented.

### **Keeping Children Safe Act**

In 2007, the Legislature created the Keeping Children Safe Act (Act)<sup>13</sup> to keep children in the custody of the Department of Children and Family Services (DCF or department) or its contractors safe during visitation or other contact with an individual who is alleged to have committed sexual abuse or some related criminal conduct. The Act creates a rebuttable presumption that visitation with a parent or caregiver will be detrimental to the child if the parent or caregiver has been reported to the child abuse hotline for sexual abuse of a child or has been convicted of certain crimes involving children.<sup>14</sup> If the presumption is not rebutted, visitation must be prohibited or allowed only through a supervised visitation program.<sup>15</sup>

In *In re: Te Interest of Helen Potts*, the circuit court in Pasco County held that s. 39.0139(3)(a)(1), F.S., the section of law finding a presumption of detriment if a parent or caregiver has been reported to the child abuse hotline, was unconstitutional.<sup>16</sup> The court explained that because the statute impinges a fundamental liberty interest – the right to parent<sup>17</sup> – the statute must serve a compelling state interest and use the least intrusive means possible to

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<sup>8</sup> *Id.* at 7. The Clearinghouse on Supervised Visitation was created in 1996 to provide statewide technical assistance on issues related to the delivery of supervised visitation services to providers. *Id.* at 3.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> Nat Stern et al., *supra* note 4, at 117. The Minimum Standards for Supervised Visitation Program Agreements can be found at [http://www.flcourts.org/gen\\_public/family/bin/svnstandard.pdf](http://www.flcourts.org/gen_public/family/bin/svnstandard.pdf) (last visited Mar. 16, 2011).

<sup>12</sup> Nat Stern and Karen Oehme, *A Comprehensive Blueprint for a Crucial Service: Florida's New Supervised Visitation Strategy*, 12 J.L. & FAM. STUD. 199, 206 (2010).

<sup>13</sup> Chapter 2007-109, s. 1, Laws of Fla.

<sup>14</sup> Section 39.0139(3), F.S.

<sup>15</sup> Section 39.0139(5), F.S.

<sup>16</sup> *In re: The Interest of Helen Potts*, case no. 07-00742DPAWS (Fla. 6th Jud. Cir. 2007).

<sup>17</sup> See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); *Troxel v. Granville*, 530 U.S. 57, 72-73 (2000).

achieve its compelling interest. Although the court found that s. 39.0139(3)(a)(1), F.S., serves a compelling state interest – to protect children from acts of sexual abuse and exploitation committed by a parent or caregiver – the statute did not do so in the least restrictive means possible. The statute does provide for an evidentiary hearing for those parents or caregivers who fall within the statute; however, those persons are deprived of visitation and contact with their child until the hearing is held. Additionally, the court stated that “there is no other place in the Florida Statutes that permits interference with a fundamental right based solely on an anonymous tip.”<sup>18</sup> Accordingly, the court found s. 39.0139(3)(a)(1), F.S., unconstitutional because:

The statute creates a rebuttable presumption that visitation of a dependent child by a parent or caregiver who has been reported to the child abuse hotline for sexual abuse, is detrimental to the child. The parent is not entitled to notice or entitled to be heard before his or her rights are eliminated. If a hearing is held at some future undetermined time, the onus is on the parent to rebut the presumption by clear and convincing evidence. Any and all evidence is permitted and the rules of evidence simply do not apply. . . . There is no other place in Chapter 39 that shifts the burden to the parent.<sup>19</sup>

The Keeping Children Safe Act also permits a court to immediately suspend visitation or other contact with a person who attempts to influence the testimony of a child.<sup>20</sup> Moreover, the Act requires a court to convene a hearing within seven business days to evaluate a report from the child’s therapist that visitation is impeding the child’s therapeutic process.<sup>21</sup>

### III. Effect of Proposed Changes:

This bill amends s. 39.0139, F.S., the Keeping Children Safe Act, by requiring a court to find probable cause that a parent or caregiver has sexually abused a child before creating a rebuttable presumption of detriment to the child. The bill provides that if a person meets certain criteria as set out in law, that person may not visit or have contact with a child without a hearing and order by the court. If visitation or contact is denied and the person wishes to begin or resume contact with the child victim, there must be an evidentiary hearing to determine whether contact is appropriate. The bill clarifies that *prior* to the hearing, the court shall appoint a guardian ad litem or attorney ad litem for the child.

The bill also provides that at the hearing, the court may receive evidence, to the extent of its probative value, such as recommendations from the child protective team, the child’s therapist, or the child’s guardian ad litem or attorney ad litem, even if the evidence may not be admissible under the rules of evidence. Regardless of whether the court finds that the person did or did not rebut the presumption of detriment, the court must enter a written order setting forth findings of fact.

The bill provides that once a rebuttable presumption of detriment has arisen or if visitation has already been ordered and a party or participant informs the court that a person is attempting to

<sup>18</sup> *In re, supra* note 16, at 7.

<sup>19</sup> *Id.*

<sup>20</sup> Section 39.0139(6)(a), F.S.

<sup>21</sup> Section 39.0139(6)(b), F.S.

influence the testimony of the child, the court must hold a hearing within seven business days to determine whether it is in the best interests of the child to prohibit or restrict visitation with the person who is alleged to have influenced the testimony of the child.

The bill also amends the legislative intent of the Act to provide that it is the intent to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in any proceeding pursuant to ch. 39, F.S.

The bill makes technical and conforming changes.

The bill provides an effective date of July 1, 2011.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirement of Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

The provisions of this have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

##### **C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

##### **D. Other Constitutional Issues:**

The Keeping Children Safe Act (Act) creates a rebuttable presumption that visitation with a parent or caregiver will be detrimental to the child if the parent or caregiver has been reported to the child abuse hotline for sexual abuse of a child or has been convicted of certain crimes involving children. If the person meets certain criteria, the person may not visit or have contact with the child until a hearing is held. At the hearing, all evidence is admissible, even if it is not generally admissible under the rules of evidence, and the person must try and overcome the presumption by clear and convincing evidence.

In *In re: The Interest of Helen Potts*,<sup>22</sup> the circuit court in Pasco County held that certain portions of the Act unconstitutionally infringed on the fundamental right to parent because the Act created a presumption of detriment based on an anonymous tip and did not provide notice or a time frame in which a hearing must be held. In addition, the court raised issue with the fact that all evidence is permitted and the rules of evidence do not

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<sup>22</sup> *In re: The Interest of Helen Potts*, case no. 07-00742DPAWS (Fla. 6th Jud. Cir. 2007).

apply and that the burden is placed on the parent to rebut the presumption by clear and convincing evidence.

This bill addresses the issue that a presumption of detriment could arise based on an anonymous call. The bill also provides that “to the extent of its probative value” all evidence may be heard, regardless of whether it would be admissible under the rules of evidence. According to representatives from The Florida Bar, evidence in ch. 39, F.S., cases is usually allowed to be heard despite the rules of evidence, but in an attempt to address the possible constitutional concern raised by the court, the bill does limit evidence “to the extent of its probative value.”<sup>23</sup> It is unclear how a court will rule in the future.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

After the Keeping Children Safe Act (Act) was created, there was debate on whether it applied only to children with cases under ch. 39, F.S., or whether it applied to all judicial determinations relating to visitation and contact with children.<sup>24</sup> This bill amends the legislative intent of the Act to provide that it is the intent to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in any proceeding pursuant to ch. 39, F.S. This change makes it clear that the provisions of s. 39.0139, F.S., only apply in cases under ch. 39, F.S.

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<sup>23</sup> Conversation with Thomas Duggar, Duggar & Duggar, P.A., representative of the Family Law Section of The Florida Bar (Mar. 21, 2011).

<sup>24</sup> See Alex Caballero and Ingrid Anderson, *Florida Statute Section 39.0139: Protecting Children from Sexual Abuse from Those Entrusted with Their Care*, 83 FLA. B.J. 59 (Mar. 2008); Judge Sue Robbins, *Florida Statute Section 39.0139: Limiting the Risk of Serious Harm to Children*, 82 FLA. B.J. 45 (May 2008).

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Children, Families, and Elder Affairs on March 22, 2011:**

The committee substitute provides that it is the intent of the Legislature to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in *any proceeding pursuant to ch. 39, F.S.*, rather than in any proceeding under the laws of the state.

- B. **Amendments:**

None.