

By the Committee on Children, Families, and Elder Affairs; and  
Senator Bogdanoff

586-02854-11

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1 A bill to be entitled

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

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

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

20 39.0139 Visitation or other contact; restrictions.—

21 (2) LEGISLATIVE FINDINGS AND INTENT.—

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

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30 (3) PRESUMPTION OF DETRIMENT.—

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

33 1. A court of competent jurisdiction has found probable  
34 cause exists that a parent or caregiver has sexually abused a  
35 child ~~Has been the subject of a report to the child abuse~~  
36 ~~hotline alleging sexual abuse of any child~~ as defined in s.  
37 39.01;

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

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

44 b. Section 794.011, relating to sexual battery;

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

47 d. Chapter 800, relating to lewdness and indecent 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

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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 any  
73 relevant and material evidence submitted to the extent of its  
74 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  
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

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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.

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