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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2013	.	
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The Committee on Children, Families, and Elder Affairs (Clemens) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 752.011, Florida Statutes, is created to
read:

752.011 Petition for grandparent visitation of a minor
child.—A grandparent of a minor child whose parent or parents
are deceased, missing, or in a permanent vegetative state may
petition the court for court-ordered visitation with the
grandchild under this section.

(1) Upon the filing of a petition by a grandparent for



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13 visitation the court shall hold a preliminary hearing to
14 determine whether the petitioner has made a prima facie showing
15 of parental unfitness or significant harm to the child. Absent
16 such a showing, the court shall dismiss the petition and shall
17 award reasonable attorney fees and costs to be paid by the
18 petitioner to the respondent.

19 (2) If the court finds that there is prima facie evidence
20 that a parent is unfit or that there is a danger of significant
21 harm to the child, the court shall proceed toward a final
22 hearing, may appoint a guardian ad litem, and shall order the
23 matter to family mediation as provided in s. 752.015.

24 (3) After conducting a final hearing on the issue of
25 visitation, the court may award reasonable visitation to the
26 grandparent with respect to the minor child if the court finds
27 by clear and convincing evidence that a parent is unfit or that
28 there is a danger of significant harm to the child, that
29 visitation is in the best interest of the minor child, and that
30 the visitation will not materially harm the parent-child
31 relationship.

32 (4) In assessing the best interest of the child under
33 subsection (3), the court shall consider the totality of the
34 circumstances affecting the mental and emotional well-being of
35 the minor child, including:

36 (a) The love, affection, and other emotional ties existing
37 between the minor child and the grandparent, including those
38 resulting from the relationship that had been previously allowed
39 by the child's parent.

40 (b) The length and quality of the previous relationship
41 between the minor child and the grandparent, including the



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42 extent to which the grandparent was involved in providing
43 regular care and support for the child.

44 (c) Whether the grandparent established ongoing personal
45 contact with the minor child before the death of the parent.

46 (d) The reasons that the surviving parent made the decision
47 to end contact or visitation between the minor child and the
48 grandparent.

49 (e) Whether there has been demonstrable significant mental
50 or emotional harm to the minor child as a result of disruption
51 in the family unit, for which the child derived support and
52 stability from the grandparental relationship, and whether the
53 continuation of that support and stability is likely to prevent
54 further harm.

55 (f) The existence or threat to the minor child of mental
56 injury as defined in s. 39.01.

57 (g) The present mental, physical, and emotional health of
58 the minor child.

59 (h) The present mental, physical, and emotional health of
60 the grandparent.

61 (i) The recommendations of the minor child's guardian ad
62 litem, if one is appointed.

63 (j) The results of any psychological evaluation of the
64 minor child.

65 (k) The preference of the minor child if the child is
66 determined to be of sufficient maturity to express a preference.

67 (l) A written testamentary statement by the deceased parent
68 regarding visitation with the grandparent. The absence of such a
69 testamentary statement does not provide evidence that the
70 deceased parent would have objected to the requested visitation.



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71 (m) Such other factors as the court considers necessary in
72 making its determination.

73 (5) In assessing material harm to the parent-child
74 relationship under subsection (3), the court shall consider the
75 totality of the circumstances affecting the parent-child
76 relationship, including:

77 (a) Whether there have been previous disputes between the
78 grandparent and the parent over childrearing or other matters
79 related to the care and upbringing of the minor child.

80 (b) Whether visitation would materially interfere with or
81 compromise parental authority.

82 (c) Whether visitation can be arranged in a manner that
83 does not materially detract from the parent-child relationship,
84 including the quantity of time available for enjoyment of the
85 parent-child relationship and any other consideration related to
86 disruption of the schedule and routines of the parent and the
87 minor child.

88 (d) Whether visitation is being sought for the primary
89 purpose of continuing or establishing a relationship with the
90 minor child with the intent that the child benefit from the
91 relationship.

92 (e) Whether the requested visitation would expose the minor
93 child to conduct, moral standards, experiences, or other factors
94 that are inconsistent with influences provided by the parent.

95 (f) The nature of the relationship between the parent and
96 the grandparent.

97 (g) The reasons that the parent made the decision to end
98 contact or visitation between the minor child and the
99 grandparent which was previously allowed by the parent.



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100 (h) The psychological toll of visitation disputes on the
101 minor child.

102 (i) Such other factors as the court considers necessary in
103 making its determination.

104 (6) Part II of chapter 61, the Uniform Child Custody
105 Jurisdiction and Enforcement Act, applies to actions brought
106 under this section.

107 (7) If separate actions under this section and s. 61.13 are
108 pending concurrently, the courts are strongly encouraged to
109 consolidate the actions in order to minimize the burden of
110 litigation of grandparent visitation on the minor child and the
111 other parties.

112 (8) An order for grandparent visitation may be modified
113 upon a showing by the person petitioning for modification that a
114 substantial change in circumstances has occurred and that
115 modification of visitation is in the best interest of the minor
116 child.

117 (9) An original action requesting visitation under this
118 section may be filed by a grandparent only once during any 2-
119 year period, except on good cause shown that the minor child is
120 suffering or threatened with suffering demonstrable significant
121 mental or emotional harm caused by a parental decision to deny
122 visitation between a minor child and the grandparent, which was
123 not known to the grandparent at the time of filing an earlier
124 action.

125 (10) This section does not provide for grandparent
126 visitation with a minor child placed for adoption under chapter
127 63, except as provided in s. 752.071 with respect to adoption by
128 a stepparent or close relative.



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129 (11) Venue shall be in the county where the minor child
130 primarily resides, unless venue is otherwise governed by chapter
131 39, chapter 61, or chapter 63.

132 Section 2. Section 752.015, Florida Statutes, is amended to
133 read:

134 752.015 Mediation of visitation disputes.—It shall be the
135 public policy of this state that families resolve differences
136 over grandparent visitation within the family. It shall be the
137 further public policy of this state that when families are
138 unable to resolve differences relating to grandparent visitation
139 that the family participate in any formal or informal mediation
140 services that may be available. If ~~When~~ families are unable to
141 resolve differences relating to grandparent visitation and a
142 petition is filed pursuant to s. 752.011 ~~s. 752.01~~, the court
143 shall, if such services are available in the circuit, refer the
144 case to family mediation in accordance with the Florida Family
145 Law Rules of Procedure ~~rules promulgated by the Supreme Court.~~

146 Section 3. Section 752.071, Florida Statutes, is created to
147 read:

148 752.071 Effect of adoption by stepparent or close
149 relative.—After the adoption of a minor child by a stepparent or
150 close relative, the stepparent or close relative may petition
151 the court to terminate an order granting grandparent visitation
152 under this chapter which was entered before the adoption. The
153 court may terminate the order unless the grandparent is able to
154 show that the criteria of s. 752.011 authorizing the visitation
155 continue to be satisfied.

156 Section 4. Subsection (45) of section 39.01, Florida
157 Statutes, is amended to read:



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158 39.01 Definitions.—When used in this chapter, unless the
159 context otherwise requires:

160 (45) “Next of kin” means an adult relative of a child who
161 is the child’s brother, sister, grandparent, great-grandparent,
162 aunt, uncle, or first cousin.

163 Section 5. Section 39.509, Florida Statutes, is amended to
164 read:

165 39.509 Grandparents’ and great-grandparents’ ~~Grandparents~~
166 rights.—Notwithstanding any other provision of law, a maternal
167 or paternal grandparent or great-grandparent as well as a
168 stepgrandparent or step-great-grandparent is entitled to
169 reasonable visitation with his or her grandchild or great-
170 grandchild who has been adjudicated a dependent child and taken
171 from the physical custody of the parent unless the court finds
172 that such visitation is not in the best interest of the child or
173 that such visitation would interfere with the goals of the case
174 plan. Reasonable visitation may be unsupervised and, where
175 appropriate and feasible, may be frequent and continuing. Any
176 order for visitation or other contact must conform to the
177 provisions of s. 39.0139.

178 (1) Grandparent or great-grandparent visitation may take
179 place in the home of the grandparent or great-grandparent unless
180 there is a compelling reason for denying such a visitation. The
181 department’s caseworker shall arrange the visitation to which a
182 grandparent or great-grandparent is entitled pursuant to this
183 section. The state shall not charge a fee for any costs
184 associated with arranging the visitation. However, the
185 grandparent or great-grandparent shall pay for the child’s cost
186 of transportation when the visitation is to take place in the



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187 grandparent's or great-grandparent's home. The caseworker shall
188 document the reasons for any decision to restrict a
189 grandparent's or great-grandparent's visitation.

190 (2) A grandparent or great-grandparent entitled to
191 visitation pursuant to this section shall not be restricted from
192 appropriate displays of affection to the child, such as
193 appropriately hugging or kissing his or her grandchild or great-
194 grandchild. Gifts, cards, and letters from the grandparent or
195 great-grandparent and other family members shall not be denied
196 to a child who has been adjudicated a dependent child.

197 (3) Any attempt by a grandparent or great-grandparent to
198 facilitate a meeting between the child who has been adjudicated
199 a dependent child and the child's parent or legal custodian, or
200 any other person in violation of a court order shall
201 automatically terminate future visitation rights of the
202 grandparent or great-grandparent.

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

206 (5) The termination of parental rights does not affect the
207 rights of grandparents or great-grandparents unless the court
208 finds that such visitation is not in the best interest of the
209 child or that such visitation would interfere with the goals of
210 permanency planning for the child.

211 (6) In determining whether grandparental or great-
212 grandparental visitation is not in the child's best interest,
213 consideration may be given to the following:

214 (a) The finding of guilt, regardless of adjudication, or
215 entry or plea of guilty or nolo contendere to charges under the



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216 following statutes, or similar statutes of other jurisdictions:
217 s. 787.04, relating to removing a minor child ~~minors~~ from the
218 state or concealing a minor child ~~minors~~ contrary to court
219 order; s. 794.011, relating to sexual battery; s. 798.02,
220 relating to lewd and lascivious behavior; chapter 800, relating
221 to lewdness and indecent exposure; s. 826.04, relating to
222 incest; or chapter 827, relating to the abuse of children.

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

226 (c) A report of abuse, abandonment, or neglect under ss.
227 415.101-415.113 or this chapter and the outcome of the
228 investigation concerning such report.

229 Section 6. Paragraph (a) of subsection (3) of section
230 39.801, Florida Statutes, is amended to read:

231 39.801 Procedures and jurisdiction; notice; service of
232 process.-

233 (3) Before the court may terminate parental rights, in
234 addition to the other requirements set forth in this part, the
235 following requirements must be met:

236 (a) Notice of the date, time, and place of the advisory
237 hearing for the petition to terminate parental rights and a copy
238 of the petition must be personally served upon the following
239 persons, specifically notifying them that a petition has been
240 filed:

241 1. The parents of the child.

242 2. The legal custodians of the child.

243 3. If the parents who would be entitled to notice are dead
244 or unknown, a living relative of the child, unless upon diligent



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245 search and inquiry no such relative can be found.

246 4. Any person who has physical custody of the child.

247 5. Any grandparent or great-grandparent entitled to
248 priority for adoption under s. 63.0425.

249 6. Any prospective parent who has been identified under s.
250 39.503 or s. 39.803.

251 7. The guardian ad litem for the child or the
252 representative of the guardian ad litem program, if the program
253 has been appointed.

254

255 The document containing the notice to respond or appear must
256 contain, in type at least as large as the type in the balance of
257 the document, the following or substantially similar language:
258 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
259 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
260 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
261 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
262 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
263 NOTICE."

264 Section 7. Subsection (1) of section 63.0425, Florida
265 Statutes, is amended to read:

266 63.0425 Grandparent's or great-grandparent's right to
267 notice.—

268 (1) If a child has lived with a grandparent or great-
269 grandparent for at least 6 months within the 24-month period
270 immediately preceding the filing of a petition for termination
271 of parental rights pending adoption, the adoption entity shall
272 provide notice to that grandparent or great-grandparent of the
273 hearing on the petition.



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274 Section 8. Subsection (2) of section 63.172, Florida
275 Statutes, is amended to read:

276 63.172 Effect of judgment of adoption.—

277 (2) If one or both parents of a child die without the
278 relationship of parent and child having been previously
279 terminated and a spouse of the living parent or a close relative
280 of the child thereafter adopts the child, the child's right of
281 inheritance from or through the deceased parent is unaffected by
282 the adoption and, unless the court orders otherwise, the
283 adoption does ~~will~~ not terminate any grandparental or great-
284 grandparental rights delineated under chapter 752. For purposes
285 of this subsection, a close relative of a child is the child's
286 brother, sister, grandparent, great-grandparent, aunt, or uncle.

287 Section 9. Sections 752.01 and 752.07, Florida Statutes,
288 are repealed.

289 Section 10. This act shall take effect July 1, 2013.

290

291 ===== T I T L E A M E N D M E N T =====

292 And the title is amended as follows:

293 Delete everything before the enacting clause
294 and insert:

295 A bill to be entitled
296 An act relating to grandparent visitation rights;
297 creating s. 752.011, F.S.; authorizing the grandparent
298 of a minor child to petition a court for visitation
299 under certain circumstances; requiring a preliminary
300 hearing; providing for the payment of attorney fees
301 and costs by a petitioner who fails to make a prima
302 facie showing of harm; authorizing grandparent



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303 visitation if the court makes specified findings;
304 providing factors for court consideration; providing
305 for application of the Uniform Child Custody
306 Jurisdiction and Enforcement Act; encouraging the
307 consolidation of certain concurrent actions; providing
308 for modification of an order awarding grandparent
309 visitation; limiting the frequency of actions seeking
310 visitation; limiting application to a minor child
311 placed for adoption; providing for venue; amending s.
312 752.015, F.S.; conforming references; creating s.
313 752.071, F.S.; providing conditions under which a
314 court may terminate a grandparent visitation order
315 upon adoption of a minor child by a stepparent or
316 close relative; amending s. 39.01, F.S.; revising the
317 definition of "next of kin" to include great-
318 grandparents for purposes of various proceedings
319 relating to children; amending s. 39.509, F.S.;
320 providing for visitation rights of great-grandparents;
321 amending ss. 39.801 and 63.0425, F.S.; providing for a
322 great-grandparent's right to notice of adoption;
323 amending s. 63.172, F.S.; conforming provisions;
324 repealing s. 752.01, F.S., relating to actions by a
325 grandparent for visitation rights; repealing s.
326 752.07, F.S., relating to the effect of adoption of a
327 child by a stepparent on grandparent visitation
328 rights; providing an effective date.