

By Senator Torres

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1 A bill to be entitled
2 An act relating to grandparent visitation rights;
3 amending s. 752.011, F.S.; authorizing a grandparent
4 of a minor child who has exclusively cared for the
5 minor child for at least 6 months to petition the
6 court for court-ordered visitation with the child
7 under certain circumstances; requiring the court to
8 consider the totality of the circumstances and
9 specified criteria in its determination of substantial
10 mental or emotional harm to the child; providing an
11 effective date.

12
13 WHEREAS, the Florida Supreme Court has ruled that this
14 state's constitutional privacy provision is a guarantee of
15 greater protection than is afforded by the Federal Constitution,
16 and

17 WHEREAS, the Legislature recognizes that this state's
18 fundamental right of privacy also protects parents' right to
19 raise their children, and

20 WHEREAS, in certain circumstances, grandparents raise their
21 grandchildren and care for a minor child for a significant time
22 without pursuing legal rights or temporary custody of the child,
23 and

24 WHEREAS, the termination of the relationship between a
25 young grandchild and a grandparent who served as the minor
26 child's primary caregiver, along with other changes in
27 environment, may have severe and harmful effects on the minor
28 child, and

29 WHEREAS, an unstable environment can compromise the brain

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30 development of minor children, and

31 WHEREAS, a grandparent who served as the primary caregiver
 32 of a minor child for a significant time should be awarded
 33 visitation with the grandchild if a court determines that ending
 34 the grandparent-grandchild relationship would result in
 35 significant mental or emotional harm to the minor child, and

36 WHEREAS, the Legislature finds that protecting children
 37 from significant mental or emotional harm is a compelling state
 38 interest, NOW, THEREFORE,

39

40 Be It Enacted by the Legislature of the State of Florida:

41

42 Section 1. Section 752.011, Florida Statutes, is amended to
 43 read:

44 752.011 Petition for grandparent visitation with a minor
 45 child.—

46 (1) A grandparent of a minor child may petition the court
 47 for court-ordered visitation with the minor child if:

48 (a) The ~~whose~~ parents of the minor child are deceased,
 49 missing, or in a persistent vegetative state;~~, or~~

50 (b) ~~whose~~ One parent of the minor child is deceased,
 51 missing, or in a persistent vegetative state and ~~the whose~~ other
 52 parent has been convicted of a felony or an offense of violence
 53 evincing behavior that poses a substantial threat of harm to the
 54 minor child's health or welfare; or

55 (c) The minor child was left in the grandparent's exclusive
 56 care for at least 6 months within 1 year before the filing of
 57 the petition by the grandparent, ~~may petition the court for~~
 58 ~~court-ordered visitation with the grandchild under this section.~~

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59 (2)~~(1)~~ Upon the filing of a petition by a grandparent for
60 visitation, the court shall hold a preliminary hearing to
61 determine whether the petitioner has made a prima facie showing
62 of parental unfitness or significant mental or emotional harm to
63 the child. Absent such a showing, the court shall dismiss the
64 petition and may award reasonable attorney fees and costs to be
65 paid by the petitioner to the respondent.

66 (3)~~(2)~~ If the court finds that there is prima facie
67 evidence that a parent is unfit or that there is significant
68 mental or emotional harm to the child, the court may appoint a
69 guardian ad litem and shall refer the matter to family mediation
70 as provided in s. 752.015. If family mediation does not
71 successfully resolve the issue of grandparent visitation, the
72 court shall proceed with a final hearing.

73 (4)~~(3)~~ After conducting a final hearing on the issue of
74 visitation, the court may award reasonable visitation to the
75 grandparent with respect to the minor child if the court finds
76 by clear and convincing evidence that a parent is unfit or that
77 there is significant mental or emotional harm to the child, that
78 visitation is in the best interest of the minor child, and that
79 the visitation will not materially harm the parent-child
80 relationship.

81 (5) In assessing significant mental or emotional harm to
82 the child under subsection (4), the court shall consider the
83 totality of the circumstances affecting the child, including:

84 (a) The age of the minor child.

85 (b) The relationship between the minor child and the
86 parent.

87 (c) The nature of the parent's current and past provision

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88 for the minor child's developmental, cognitive, psychological,
89 and physical needs.

90 (d) The parent's history of criminal behavior, which may
91 include the frequency of incarceration and the unavailability of
92 the parent to the minor child due to incarceration.

93 (e) Whether ending the minor child's contact or visitation
94 with the grandparent will place the child in an intolerable
95 situation.

96 (f) Other factors that the court considers necessary to
97 make its determination.

98 (6)~~(4)~~ In assessing the best interest of the child under
99 subsection (4) ~~(3)~~, the court shall consider the totality of the
100 circumstances affecting the mental and emotional well-being of
101 the minor child, including:

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

106 (b) The length and quality of the previous relationship
107 between the minor child and the grandparent, including the
108 extent to which the grandparent was involved in providing
109 regular care and support for the child.

110 (c) Whether the grandparent established ongoing personal
111 contact with the minor child before the death of the parent,
112 before the onset of the parent's persistent vegetative state, or
113 before the parent was missing.

114 (d) The reasons cited by the respondent parent in ending
115 contact or visitation between the minor child and the
116 grandparent.

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117 (e) Whether there has been significant and demonstrable
118 mental or emotional harm to the minor child as a result of the
119 disruption in the family unit, whether the child derived support
120 and stability from the grandparent, and whether the continuation
121 of such support and stability is likely to prevent further harm.

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

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

126 (h) The present mental, physical, and emotional health of
127 the grandparent.

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

130 (j) The result of any psychological evaluation of the minor
131 child.

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

134 (l) A written testamentary statement by the deceased parent
135 regarding visitation with the grandparent. The absence of a
136 testamentary statement is not deemed to provide evidence that
137 the deceased or missing parent or parent in a persistent
138 vegetative state would have objected to the requested
139 visitation.

140 (m) Other factors that the court considers necessary to
141 make ~~making~~ its determination.

142 ~~(7)(5)~~ In assessing material harm to the parent-child
143 relationship under subsection (4) ~~(3)~~, the court shall consider
144 the totality of the circumstances affecting the parent-child
145 relationship, including:

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

149 (b) Whether visitation would materially interfere with or
150 compromise parental authority.

151 (c) Whether visitation can be arranged in a manner that
152 does not materially detract from the parent-child relationship,
153 including the quantity of time available for enjoyment of the
154 parent-child relationship and any other consideration related to
155 disruption of the schedule and routine of the parent and the
156 minor child.

157 (d) Whether visitation is being sought for the primary
158 purpose of continuing or establishing a relationship with the
159 minor child with the intent that the child benefit from the
160 relationship.

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

164 (f) The nature of the relationship between the child's
165 parent and the grandparent.

166 (g) The reasons cited by the parent in ending contact or
167 visitation between the minor child and the grandparent which was
168 previously allowed by the parent.

169 (h) The psychological toll of visitation disputes on the
170 minor child.

171 (i) Other factors that the court considers necessary in
172 making its determination.

173 (8)~~(6)~~ Part II of chapter 61 applies to actions brought
174 under this section.

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175 (9)~~(7)~~ If actions under this section and s. 61.13 are
176 pending concurrently, the courts are strongly encouraged to
177 consolidate the actions in order to minimize the burden of
178 litigation on the minor child and the other parties.

179 (10)~~(8)~~ An order for grandparent visitation may be modified
180 upon a showing by the person petitioning for modification that a
181 substantial change in circumstances has occurred and that
182 modification of visitation is in the best interest of the minor
183 child.

184 (11)~~(9)~~ An original action requesting visitation under this
185 section may be filed by a grandparent only once during any 2-
186 year period, except on good cause shown that the minor child is
187 suffering, or may suffer, significant and demonstrable mental or
188 emotional harm caused by a parental decision to deny visitation
189 between a minor child and the grandparent, which was not known
190 to the grandparent at the time of filing an earlier action.

191 (12)~~(10)~~ This section does not provide for grandparent
192 visitation with a minor child placed for adoption under chapter
193 63 except as provided in s. 752.071 with respect to adoption by
194 a stepparent or close relative.

195 (13)~~(11)~~ Venue shall be in the county where the minor child
196 primarily resides, unless venue is otherwise governed by chapter
197 39, chapter 61, or chapter 63.

198 Section 2. This act shall take effect July 1, 2017.