

By Senator Brandes

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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 whose parent was the victim of a
5 murder to petition the court for court-ordered
6 visitation with the child under certain circumstances;
7 removing the requirement that a grandparent
8 petitioning the court for court-ordered visitation
9 with a minor child make a prima facie showing of
10 parental unfitness or significant harm to the child in
11 a preliminary hearing on such petition and instead
12 requiring the grandparent to make a prima facie
13 showing of other specified conditions; conforming
14 provisions to changes made by the act; providing an
15 effective date.

16
17 WHEREAS, Florida law permits case-by-case judicial review
18 of grandparent visitation in very limited circumstances under s.
19 752.011, Florida Statutes; however, it does not address review
20 of grandparent visitation in criminal cases, such as when one
21 parent is deceased under violent or criminal circumstances and
22 the surviving parent forbids contact between the deceased's
23 parents and their grandchildren, and

24 WHEREAS, the right to petition courts is no guarantee of
25 access or visitation; rather, it simply allows courts to review
26 the case and determine what is both safe and in the best
27 interest of the child involved, and

28 WHEREAS, in the best interest of a child who is already
29 dealing with complex grief at the loss of a parent and, further,

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30 in the interest of justice under circumstances where criminal
31 proceedings are ongoing or anticipated, courts should have the
32 authority to review grandparent petitions for visitation, and

33 WHEREAS, giving courts the authority to review grandparent
34 petitions for visitation would prevent the separation of
35 children and families while the justice system reviews cases,
36 and could further disincentivize or deter criminal action in
37 divorce and custody cases, NOW, THEREFORE,

38
39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. Section 752.011, Florida Statutes, is amended to
42 read:

43 752.011 Petition for grandparent visitation with a minor
44 child.—

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

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

49 (b) ~~whose~~ One parent of the minor child is deceased,
50 missing, or in a persistent vegetative state and the ~~whose~~ other
51 parent has:

52 1. 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;

55 2. Been identified by the state attorney as a person of
56 interest or an unindicted co-conspirator in an open homicide
57 investigation relating to the deceased parent's murder; or

58 3. Willingly allowed the minor child to be supervised by an

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59 individual identified by the state attorney as a person of
60 interest or an unindicted co-conspirator in an open homicide
61 investigation relating to the deceased parent's murder, may
62 ~~petition the court for court-ordered visitation with the~~
63 ~~grandchild under this section.~~

64 (2)~~(1)~~ Upon the filing of a petition by a grandparent for
65 visitation, the court shall hold a preliminary hearing to
66 determine whether the petitioner has made a prima facie showing
67 of one of the conditions in subsection (1) ~~parental unfitness or~~
68 ~~significant harm to the child.~~ Absent such a showing, the court
69 shall dismiss the petition and may award reasonable attorney
70 fees and costs to be paid by the petitioner to the respondent.

71 (3)~~(2)~~ If the court finds that there is prima facie
72 evidence of one of the conditions in subsection (1) ~~that a~~
73 ~~parent is unfit or that there is significant harm to the child,~~
74 the court may appoint a guardian ad litem and shall refer the
75 matter to family mediation as provided in s. 752.015. If family
76 mediation does not successfully resolve the issue of grandparent
77 visitation, the court shall proceed with a final hearing.

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

85 (5)~~(4)~~ In assessing the best interest of the child under
86 subsection (4) ~~(3)~~, the court shall consider the totality of the
87 circumstances affecting the mental and emotional well-being of

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88 the minor child, including:

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

93 (b) The length and quality of the previous relationship
94 between the minor child and the grandparent, including the
95 extent to which the grandparent was involved in providing
96 regular care and support for the child.

97 (c) Whether the grandparent established ongoing personal
98 contact with the minor child before the death of the parent,
99 before the onset of the parent's persistent vegetative state, or
100 before the parent was missing.

101 (d) The reasons cited by the respondent parent in ending
102 contact or visitation between the minor child and the
103 grandparent.

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

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

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

113 (h) The present mental, physical, and emotional health of
114 the grandparent.

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

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117 (j) The result of any psychological evaluation of the minor
118 child.

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

121 (l) A written testamentary statement by the deceased parent
122 regarding visitation with the grandparent. The absence of a
123 testamentary statement is not deemed to provide evidence that
124 the deceased or missing parent or parent in a persistent
125 vegetative state would have objected to the requested
126 visitation.

127 (m) Other factors that the court considers necessary to
128 making its determination.

129 (6)~~(5)~~ In assessing material harm to the parent-child
130 relationship under subsection (4) ~~(3)~~, the court shall consider
131 the totality of the circumstances affecting the parent-child
132 relationship, including:

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

136 (b) Whether visitation would materially interfere with or
137 compromise parental authority.

138 (c) Whether visitation can be arranged in a manner that
139 does not materially detract from the parent-child relationship,
140 including the quantity of time available for enjoyment of the
141 parent-child relationship and any other consideration related to
142 disruption of the schedule and routine of the parent and the
143 minor child.

144 (d) Whether visitation is being sought for the primary
145 purpose of continuing or establishing a relationship with the

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146 minor child with the intent that the child benefit from the
147 relationship.

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

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

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

156 (h) The psychological toll of visitation disputes on the
157 minor child.

158 (i) Other factors that the court considers necessary in
159 making its determination.

160 (7)~~(6)~~ Part II of chapter 61 applies to actions brought
161 under this section.

162 (8)~~(7)~~ If actions under this section and s. 61.13 are
163 pending concurrently, the courts are strongly encouraged to
164 consolidate the actions in order to minimize the burden of
165 litigation on the minor child and the other parties.

166 (9)~~(8)~~ An order for grandparent visitation may be modified
167 upon a showing by the person petitioning for modification that a
168 substantial change in circumstances has occurred and that
169 modification of visitation is in the best interest of the minor
170 child.

171 (10)~~(9)~~ An original action requesting visitation under this
172 section may be filed by a grandparent only once during any 2-
173 year period, except on good cause shown that the minor child is
174 suffering, or may suffer, significant and demonstrable mental or

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175 emotional harm caused by a parental decision to deny visitation
176 between a minor child and the grandparent, which was not known
177 to the grandparent at the time of filing an earlier action.

178 (11)~~(10)~~ This section does not provide for grandparent
179 visitation with a minor child placed for adoption under chapter
180 63 except as provided in s. 752.071 with respect to adoption by
181 a stepparent or close relative.

182 (12)~~(11)~~ Venue shall be in the county where the minor child
183 primarily resides, unless venue is otherwise governed by chapter
184 39, chapter 61, or chapter 63.

185 Section 2. This act shall take effect July 1, 2020.