HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 1119 Grandparent Visitation Rights
SPONSOR(S): Toledo and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1408

FINAL HOUSE FLOOR ACTION: 112 **Y's** 3 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 1119 passed the House on February 24, 2022, as amended, and subsequently passed the Senate on March 9, 2022.

Under current law in Florida, a grandparent may be awarded visitation rights under very limited circumstances, such as when a minor child's parents are deceased, missing, or in a permanent vegetative state. If only one parent is deceased, missing, or in a permanent vegetative state, the other parent must have been convicted of a felony or a violent offense in order for a grandparent to be able to petition for visitation. Further, the court must find that the grandparent has established a prima facie case that the surviving parent is unfit or poses a danger of significant harm to the child. If that burden is not met, the court must dismiss the grandparent's petition.

HB 1119 amends s. 752.011, F.S., to create a rebuttable presumption for granting reasonable visitation with a petitioning grandparent or step-grandparent under certain circumstances. Under the bill, if the court finds that one parent of a child has been held criminally liable for the death of the other parent, or civilly liable for an intentional tort causing the death of the other parent, a rebuttable presumption arises that the grandparent who is the parent of the child's deceased parent is entitled to reasonable visitation with the grandchild. The presumption may be overcome only if the court finds that visitation is not in the child's best interests. The bill does not distinguish between biological grandparents and step-grandparents.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 24, 2022, ch. 2022-217, L.O.F., and will become effective on July 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

History of Grandparent Visitation Rights

Under common law, a grandparent who was forbidden by his or her grandchild's parent from visiting the child was normally without legal recourse.[1] Nonparent visitation statutes, which did not exist before the late 1960s, now allow a grandparent in certain states to petition the court for the right to visit his or her grandchildren. Before the passage of these statutes, grandparents, like all other nonparents, lacked standing to sue for court-ordered visitation with their grandchildren.[2]

The common law rule against visitation by nonparents sought to preserve parental autonomy, as a value in and of itself, as a means of protecting children, and as a means of serving broader social goals. Courts historically expressed reluctance to undermine parents' authority by overruling their decisions regarding visitation and by introducing outsiders into the nuclear family.[3] This common law tradition received constitutional protection in the 1920s when the Supreme Court held that a parent's right to direct the upbringing of his or her children was a fundamental liberty interest.[4] Moreover, under common law, courts presumed that fit parents act in the child's best interests and recognized that conflicts regarding visitation are a source of potential harm to the children involved.[5] Common law tradition understood parental authority as the foundation of social order. Courts generally relied on ties of nature to resolve family disagreements rather than imposing coercive court orders.[6]

Later, however, states began to enact statutes to permit grandparents and sometimes other nonparents to petition for visitation rights. By the early 1990s, every state had enacted some form of grandparent visitation law expanding grandparents' visitation rights. Today, such statutes generally delineate who may petition the court and under what circumstances, and require the court to determine if visitation is in the child's best interests.[7] For example:

- Colorado law authorizes grandparents to request visitation rights in certain child custody cases or cases concerning the allocation of parental responsibilities, including those cases where a parent is deceased.[8]
- Connecticut law authorizes visitation if the grandparent can prove by clear and convincing evidence that a parent-like relationship exists between the grandparent and the minor and that denial of such visitation would cause actual and significant detriment to the child.[9]

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[1] Kristine L. Roberts, *State Supreme Court Applications of* Troxel v. Granville *and the Courts' Reluctance to Declare Grandparent Visitation Statutes Unconstitutional*, 41 Fam. Ct. Rev. 14, 16 (Jan. 2003); *See* Karin J. McMullen, *The Scarlet "N:" Grandparent Visitation Statutes That Base Standing on Non-Intact Family Status Violate the Equal Protection Clause of the Fourteenth Amendment*, 83 St. John's Law Review 693 (2009).
[2] *Id*.
[3] *Id*.
[4] *See Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925).
[5] Kristine L. Roberts, 41 Fam. Ct. Rev. at 16.
[6] *Id*.
[7] *Id*.
[8] Colo. Rev. Stat. Ann. s. 19-1-117. This section specifically defines "case concerning the allocation of parental responsibilities with respect to a child" to include situations where a parent has died, the marriage of the child's parents has been declared invalid or dissolved by a court, or legal custody or parental responsibility has been given or allocated to a party other than the child's parent.
[9] Conn. Gen. Stat. Ann. s. 46b-59. The Supreme Court of Connecticut has held that "[w]hen an otherwise fit parent denies his or her child access to an individual who has a parent-like relationship with the child and the parent's decision regarding visitation will cause the child to suffer real and substantial emotional harm, the State has a compelling interest in protecting the child's own complementary interest in preserving parent-like relationships that serve the child's welfare by avoiding the serious and immediate harm to the child that would result from the parent's decision to terminate or impair the child's relationship with the third party." *Boisvert v. Gavis*, 210 A.3d 1, 15 (Conn. 2019) (*citing Roth v. Weston,* 789 A.2d 431, 445 (Conn. 2002)).

- Georgia law authorizes a court to award visitation rights to any grandparent who is the parent of a deceased, incapacitated, or incarcerated[10] parent and specifies that parental objection to such visitation is merely given deference and is not conclusive to the court's decision.[11]

The enactment of grandparent visitation laws was apparently taken in response to two main trends: demographic changes in family composition, and an increase in the number of older Americans (with a concurrent growth of the senior lobby).[12] During the 1990s, many Americans also focused on drug abuse problems, significant poverty levels, and increasing numbers of children born out-of-wedlock or to single parents.

Nonetheless, these policy changes related to grandparent visitation rights soon raised constitutional concerns, because grandparent visitation rights statutes implicate the Fourteenth Amendment to the U.S. Constitution in the following two ways:

- Parents have a substantive due process right to direct the upbringing of their children; and
- Many grandparent visitation statutes differentiate among parents based upon family status, raising equal protection concerns.[13]

The Fourteenth Amendment requires that a state must not "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[14] Many state courts throughout the country have ruled that their states' grandparent visitation rights statutes are constitutional. However, courts in several states, including Florida, have determined certain grandparent visitation statutes to be unconstitutional.[15]

Grandparent Visitation Rights in Florida

Until 1978, grandparents in Florida did not have any legal right to visit their grandchild. Currently, provisions relating to grandparents' rights to visitation and custody are contained in chs. 39 and 752, F.S. Provisions previously enacted under ch. 61, F.S., have been removed, as they were held to be unconstitutional.

Chapter 752, Florida Statutes – Grandparent Visitation

In 1984, the legislature enacted ch. 752, F.S., titled "Grandparental Visitation Rights," giving grandparents standing to petition the court for visitation in certain situations. At its broadest, s. 752.01(1), F.S., required visitation to be granted when the court determined it to be in the best interests of the child and one of the following situations existed:

- One or both of the child's parents were deceased;
- The parents were divorced;
- One parent had deserted the child;
- The child was born out of wedlock; or

[10] Ga. Code Ann. s. 19-7-3(d). The Supreme Court of Georgia has ruled that this provision still requires proof by clear and convincing evidence of actual or threatened harm to the child in order to override an otherwise fit parent's objection. *Patten v. Ardis*, 816 S.E. 2d 633, 637 (Ga. 2018).
[11] Ga. Code Ann. s. 19-7-3(c)(3) provides that "a parent's decision regarding family member visitation shall be given deference by the court, the parent's decision shall not be conclusive when failure to provide family member contact would result in emotional harm to the child. A court may presume that a child who is denied any contact with his or her family member or who is not provided some m inimal opportunity for contact with his or her family member when there is a pre existing relationship between the child and such family member may suffer emotional injury that is harmful to such child's health. Such presumption shall be a rebuttable presumption."
[12] Karen J. McMullen, *The Scarlet "N:" Grandparent Visitation Statutes That Base Standing on Non-Intact Family Status Violate the Equal Protection Clause of the Fourteenth Amendment*, 83 St. John's Law Review 693 (2009).
[13] *Id*.
[14] Amend. XIV, s. 1, U.S. Const.
[15] Comm. on Judiciary, The Florida Senate, Grandparent Visitation Rights, (Interim Report 2009-120) (Oct. 2008) http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-120ju.pdf (last visited Feb. 14, 2022).

- One or both parents, who were still married, had prohibited the formation of a relationship between the child and the grandparent(s).[16]

Florida courts have consistently held as unconstitutional statutes that have attempted to compel visitation or custody with a grandparent based solely on the best interest of the child standard.[17] The courts' rulings are premised on the fact that the fundamental right to parent without intrusion by the government is a long-standing liberty interest recognized by both the United States and Florida constitutions.[18]

In 1996, the Florida Supreme Court conducted its first major analysis of s. 752.01, F.S., in *Beagle v. Beagle,* 678 So. 2d 1271 (Fla. 1996). There, the Court determined that s. 752.01(1)(e), F.S., which allowed grandparents to seek visitation when the child's family was intact, was facially unconstitutional. The Court opined as follows:

> The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.[19]

The Court held that based upon the privacy provision established in the Florida Constitution, the State "may not intrude upon the fundamental right of parents to raise their children, except in cases where the child is threatened with harm."[20]

In 2015, the Legislature amended ch. 752 of the Florida Statutes to provide that a grandparent of a minor child whose parents are deceased, missing, or in a permanent vegetative state may petition for visitation with a grandchild.[21] Under current law in Florida, a grandparent may be awarded visitation rights under very limited circumstances. As such, visitation may only be awarded when a minor child's parents are deceased, missing, or in a permanent vegetative state.[22] If only one parent is deceased, missing, or in a permanent vegetative state, the other parent must have been convicted of a felony or a violent offense in order for a grandparent to be able to petition for visitation. Further, the court must find that the grandparent has established a prima facie case that the surviving parent is unfit or poses a danger of significant harm to the child. If that burden is not met, the court must dismiss the grandparent's petition.

Effect of The Bill

HB 1119 expands the ability for a grandparent to petition for visitation rights with his or her grandchild in certain narrow circumstances.

Under the bill, if the court finds that one parent of a child has been found to be criminally liable for the death of either parent, or civilly liable for an intentional tort causing the death of the other parent of the child, a rebuttable presumption arises that the grandparent who is the parent of the child's deceased parent is entitled to reasonable visitation with the grandchild. The presumption may only be overcome if the court finds that visitation is not in the best interests of the child. The bill treats biological grandparents and step-grandparents equally and does not distinguish between the two.

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[16] *See* ch. 93-279, Laws of Fla. (s. 752.01, F.S. (1993)). Subsequent amendments by the Legislature removed some of these provisions. *See* s. 752.01, F.S. (2008).
[17] *Cranney v. Coronado*, 920 So. 2d 132, 134 (Fla. 2d DCA 2006) (quoting *Sullivan v. Sapp*, 866 So. 2d 28, 37 (Fla. 2004)).
[18] In 1980, Florida's citizens approved the addition of a privacy provision in the state constitution, which provides greater protection than the federal constitution. Specifically, Florida's right to privacy provision states that "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein." Art. I, s. 23, Fla. Const.
[19] *Beagle*, 678 So. 2d at 1276 (quoting *Winfield v. Div. of Pari-Mutuel Wagering*, 477 So. 2d 544, 547 (Fla. 1985)).
[20] *Id*.
[21] Ch. 2015-134, Laws of Fla.; s. 752.011, F.S.
[22] S. 752.011, F.S.

The bill will become effective on July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.