



CHAMBER ACTION

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The Committee on Future of Florida's Families recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to children and families; creating s. 752.011, F.S.; providing for court-ordered visitation for grandparents and great-grandparents under certain circumstances; providing for appointment of a guardian ad litem and family mediation if the court makes a preliminary finding that the minor is threatened with demonstrable significant mental or emotional harm without such visitation; requiring court-ordered evaluation of the child if mediation fails; providing for a hearing to determine whether the minor is threatened with harm; providing for attorney's fees and costs; applying the Uniform Child Custody Jurisdiction and Enforcement Act; providing for venue in specified circumstances; repealing s. 752.01, F.S., relating to action by grandparent for right of visitation and when petition shall be granted; encouraging consolidation of actions under ss. 61.13 and 752.011, F.S.; amending ss. 752.015 and 752.07, F.S., to



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29 conform cross references; amending s. 39.01, F.S.;
30 including references to great-grandparents in definitions
31 relating to dependent children; amending s. 39.509, F.S.;
32 providing for great-grandparents' visitation rights;
33 amending ss. 39.801 and 63.0425, F.S.; providing for a
34 great-grandparent's right to notice of adoption; amending
35 s. 61.13, F.S.; providing for great-grandparents'
36 visitation rights; providing for consolidation of pending
37 actions; conforming provisions relating to custody
38 arrangements to changes made by the act; revising
39 provisions relating to standing of grandparents with
40 regard to custody arrangements; amending s. 63.172, F.S.;
41 conforming references relating to great-grandparental
42 visitation rights under ch. 752, F.S.; providing an
43 effective date.

44
45 Be It Enacted by the Legislature of the State of Florida:

46
47 Section 1. Section 752.011, Florida Statutes, is created
48 to read:

49 752.011 Action by grandparent or great-grandparent for
50 right of visitation; when petition shall be granted.--

51 (1) A grandparent or great-grandparent of a minor may
52 petition for visitation with that minor if:

53 (a) One or both of the parents of the minor are deceased;

54 (b) The marriage of the parents of the minor has been
55 dissolved, whether or not a dissolution action is pending;

56 (c) A parent of the minor has deserted the minor;



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57 (d) The minor was born out of wedlock and not later
58 determined to be a minor born within wedlock as provided in s.
59 742.091; or

60 (e) A deceased parent of the minor has made a written
61 testamentary statement requesting that there be visitation
62 between his or her surviving minor child and the grandparent or
63 great-grandparent.

64 (2) Upon the filing of a petition by a grandparent or
65 great-grandparent for visitation rights, the court shall hold a
66 preliminary hearing to find whether there is evidence that the
67 minor is suffering or is threatened with suffering demonstrable
68 significant mental or emotional harm, or harm as defined in s.
69 39.01(30), as a result of a parental decision not to permit
70 visitation or contact with the grandparent or great-grandparent.
71 Absent such a finding, the court shall dismiss the petition and
72 shall award reasonable attorney's fees and costs to be paid by
73 the petitioner to the respondent.

74 (3) If the court finds that there is evidence that the
75 minor is suffering or is threatened with suffering demonstrable
76 significant mental or emotional harm, or harm as defined in s.
77 39.01(30), as a result of a parental decision not to permit
78 visitation or contact with the grandparent or great-grandparent,
79 the court may appoint a guardian ad litem and shall order the
80 matter to family mediation as provided in chapter 44 and Rules
81 12.740 and 12.741, Florida Family Law Rules of Procedure.

82 (4) When mediation fails to yield a resolution, the court
83 shall order a psychological evaluation of the minor pursuant to
84 Rule 12.363, Florida Family Law Rules of Procedure, if



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85 comparable evidence of the findings expected from such an
86 evaluation is unavailable.

87 (5) After a hearing on the matter, the court may award
88 reasonable rights of visitation to the grandparent or great-
89 grandparent with respect to the minor if the court finds that:

90 (a) There is clear and convincing evidence that the minor
91 is suffering or is threatened with suffering demonstrable
92 significant mental or emotional harm, or harm as defined in s.
93 39.01(30), as a result of a parental decision not to permit
94 visitation or contact with the grandparent or great-grandparent
95 and that visitation with the grandparent or great-grandparent
96 will alleviate or mitigate the harm.

97 (b) That the visitation will not materially harm the
98 parent-child relationship.

99 (6) Part II of chapter 61, the Uniform Child Custody
100 Jurisdiction and Enforcement Act, applies to actions brought
101 under this chapter.

102 (7) If separate actions under this section and s. 61.13
103 are pending concurrently, courts are strongly encouraged to
104 consolidate the actions in order to minimize the burden of
105 litigation of visitation rights on the minor and the parties.

106 (8) An order of grandparent visitation or great-
107 grandparent visitation may be modified upon a showing of
108 substantial change in circumstances or a showing that visitation
109 is causing material harm to the parent-child relationship.

110 (9) An original action requesting visitation rights under
111 this chapter may be filed by any grandparent or great-
112 grandparent only once during any 2-year period, except on good



113 cause shown that the minor is suffering or threatened with
 114 suffering demonstrable significant mental or emotional harm
 115 caused by a parental decision to deny or limit contact or
 116 visitation between a minor and the grandparent or great-
 117 grandparent, which was not known to the grandparent or great-
 118 grandparent at the time of filing an earlier action.

119 (10) This section does not provide for visitation rights
 120 for grandparents or great-grandparents of minors placed for
 121 adoption under chapter 63 except as provided in s. 752.07 with
 122 respect to adoption by a stepparent.

123 (11) Section 57.105 applies to actions brought under this
 124 chapter.

125 (12) Venue shall be in the county where the grandchild or
 126 great-grandchild primarily resides, unless venue is otherwise
 127 governed by chapter 39, chapter 61, or chapter 63.

128 Section 2. Section 752.01, Florida Statutes, is repealed.

129 Section 3. Section 752.015, Florida Statutes, is amended
 130 to read:

131 752.015 Mediation of visitation disputes.--It shall be the
 132 public policy of this state that families resolve differences
 133 over grandparent visitation within the family. It shall be the
 134 further public policy of this state that when families are
 135 unable to resolve differences relating to grandparent visitation
 136 that the family participate in any formal or informal mediation
 137 services that may be available. When families are unable to
 138 resolve differences relating to grandparent visitation and a
 139 petition is filed pursuant to s. 752.011 ~~s. 752.01~~, the court
 140 shall, if such services are available in the circuit, refer the



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141 case to family mediation in accordance with rules promulgated by
142 the Supreme Court.

143 Section 4. Section 752.07, Florida Statutes, is amended to
144 read:

145 752.07 Effect of adoption of child by stepparent on right
146 of visitation; when right may be terminated.--When there is a
147 remarriage of one of the natural parents of a minor child for
148 whom visitation rights may be or may have been granted to a
149 grandparent pursuant to s. 752.011 ~~s. 752.01~~, any subsequent
150 adoption by the stepparent will not terminate any grandparental
151 rights. However, the court may determine that ~~termination of~~
152 such visitation rights should be terminated based upon the
153 standards for granting such visitation which are set forth in s.
154 752.011 ~~is in the best interest of the child~~ and rule
155 accordingly, after affording the grandparent an opportunity to
156 be heard.

157 Section 5. Subsections (46) and (50) of section 39.01,
158 Florida Statutes, are amended to read:

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

161 (46) "Next of kin" means an adult relative of a child who
162 is the child's brother, sister, grandparent, great-grandparent,
163 aunt, uncle, or first cousin.

164 (50) "Participant," for purposes of a shelter proceeding,
165 dependency proceeding, or termination of parental rights
166 proceeding, means any person who is not a party but who should
167 receive notice of hearings involving the child, including foster
168 parents or the legal custodian of the child, identified



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169 prospective parents, grandparents or great-grandparents entitled
170 to priority for adoption consideration under s. 63.0425, actual
171 custodians of the child, and any other person whose
172 participation may be in the best interest of the child. A
173 community-based agency under contract with the department to
174 provide protective services may be designated as a participant
175 at the discretion of the court. Participants may be granted
176 leave by the court to be heard without the necessity of filing a
177 motion to intervene.

178 Section 6. Section 39.509, Florida Statutes, is amended to
179 read:

180 39.509 Grandparents' and great-grandparents' ~~Grandparents~~
181 rights.--Notwithstanding any other provision of law, a maternal
182 or paternal grandparent or great-grandparent as well as a
183 stepgrandparent or step-great-grandparent is entitled to
184 reasonable visitation with his or her grandchild or great-
185 grandchild who has been adjudicated a dependent child and taken
186 from the physical custody of the parent unless the court finds
187 that such visitation is not in the best interest of the child or
188 that such visitation would interfere with the goals of the case
189 plan. Reasonable visitation may be unsupervised and, where
190 appropriate and feasible, may be frequent and continuing.

191 (1) Grandparent or great-grandparent visitation may take
192 place in the home of the grandparent or great-grandparent unless
193 there is a compelling reason for denying such a visitation. The
194 department's caseworker shall arrange the visitation to which a
195 grandparent or great-grandparent is entitled pursuant to this
196 section. The state shall not charge a fee for any costs



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197 associated with arranging the visitation. However, the
198 grandparent or great-grandparent shall pay for the child's cost
199 of transportation when the visitation is to take place in the
200 grandparent's or great-grandparent's home. The caseworker shall
201 document the reasons for any decision to restrict a
202 grandparent's or great-grandparent's visitation.

203 (2) A grandparent or great-grandparent entitled to
204 visitation pursuant to this section shall not be restricted from
205 appropriate displays of affection to the child, such as
206 appropriately hugging or kissing his or her grandchild or great-
207 grandchild. Gifts, cards, and letters from the grandparent or
208 great-grandparent and other family members shall not be denied
209 to a child who has been adjudicated a dependent child.

210 (3) Any attempt by a grandparent or great-grandparent to
211 facilitate a meeting between the child who has been adjudicated
212 a dependent child and the child's parent or legal custodian, or
213 any other person in violation of a court order shall
214 automatically terminate future visitation rights of the
215 grandparent or great-grandparent.

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

219 (5) The termination of parental rights does not affect the
220 rights of grandparents or great-grandparents unless the court
221 finds that such visitation is not in the best interest of the
222 child or that such visitation would interfere with the goals of
223 permanency planning for the child.



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224 (6) In determining whether grandparental or great-
225 grandparental visitation is not in the child's best interest,
226 consideration may be given to the finding of guilt, regardless
227 of adjudication, or entry or plea of guilty or nolo contendere
228 to charges under the following statutes, or similar statutes of
229 other jurisdictions: s. 787.04, relating to removing minors
230 from the state or concealing minors contrary to court order; s.
231 794.011, relating to sexual battery; s. 798.02, relating to lewd
232 and lascivious behavior; chapter 800, relating to lewdness and
233 indecent exposure; or chapter 827, relating to the abuse of
234 children. Consideration may also be given to a report of abuse,
235 abandonment, or neglect under ss. 415.101-415.113 or this
236 chapter and the outcome of the investigation concerning such
237 report.

238 Section 7. Paragraph (a) of subsection (3) of section
239 39.801, Florida Statutes, is amended to read:

240 39.801 Procedures and jurisdiction; notice; service of
241 process.--

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

245 (a) Notice of the date, time, and place of the advisory
246 hearing for the petition to terminate parental rights and a copy
247 of the petition must be personally served upon the following
248 persons, specifically notifying them that a petition has been
249 filed:

- 250 1. The parents of the child.
- 251 2. The legal custodians of the child.



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252 3. If the parents who would be entitled to notice are dead
253 or unknown, a living relative of the child, unless upon diligent
254 search and inquiry no such relative can be found.

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

256 5. Any grandparent or great-grandparent entitled to notice
257 of priority for adoption under s. 63.0425.

258 6. Any prospective parent who has been identified under s.
259 39.503 or s. 39.803.

260 7. The guardian ad litem for the child or the
261 representative of the guardian ad litem program, if the program
262 has been appointed.

263
264 The document containing the notice to respond or appear must
265 contain, in type at least as large as the type in the balance of
266 the document, the following or substantially similar language:

267 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
268 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
269 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
270 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
271 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
272 NOTICE."

273 Section 8. Paragraph (b) of subsection (2), paragraph (c)
274 of subsection (4), and subsections (6) and (7) of section 61.13,
275 Florida Statutes, are amended to read:

276 61.13 Custody and support of children; visitation rights;
277 power of court in making orders.--

278 (2)



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279 (b)1. The court shall determine all matters relating to
280 custody of each minor child of the parties in accordance with
281 the best interests of the child and in accordance with the
282 Uniform Child Custody Jurisdiction and Enforcement Act. It is
283 the public policy of this state to assure that each minor child
284 has frequent and continuing contact with both parents after the
285 parents separate or the marriage of the parties is dissolved and
286 to encourage parents to share the rights and responsibilities,
287 and joys, of childrearing. After considering all relevant facts,
288 the father of the child shall be given the same consideration as
289 the mother in determining the primary residence of a child
290 irrespective of the age or sex of the child.

291 2. The court shall order that the parental responsibility
292 for a minor child be shared by both parents unless the court
293 finds that shared parental responsibility would be detrimental
294 to the child. Evidence that a parent has been convicted of a
295 felony of the third degree or higher involving domestic
296 violence, as defined in s. 741.28 and chapter 775, or meets the
297 criteria of s. 39.806(1)(d), creates a rebuttable presumption of
298 detriment to the child. If the presumption is not rebutted,
299 shared parental responsibility, including visitation, residence
300 of the child, and decisions made regarding the child, may not be
301 granted to the convicted parent. However, the convicted parent
302 is not relieved of any obligation to provide financial support.
303 If the court determines that shared parental responsibility
304 would be detrimental to the child, it may order sole parental
305 responsibility and make such arrangements for visitation as will
306 best protect the child or abused spouse from further harm.



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307 Whether or not there is a conviction of any offense of domestic
308 violence or child abuse or the existence of an injunction for
309 protection against domestic violence, the court shall consider
310 evidence of domestic violence or child abuse as evidence of
311 detriment to the child.

312 a. In ordering shared parental responsibility, the court
313 may consider the expressed desires of the parents and may grant
314 to one party the ultimate responsibility over specific aspects
315 of the child's welfare or may divide those responsibilities
316 between the parties based on the best interests of the child.
317 Areas of responsibility may include primary residence,
318 education, medical and dental care, and any other
319 responsibilities that the court finds unique to a particular
320 family.

321 b. The court shall order "sole parental responsibility,
322 with or without visitation rights, to the other parent when it
323 is in the best interests of" the minor child.

324 c. The court may award the grandparents or great-
325 grandparents visitation rights with a minor child pursuant to
326 the criteria set forth in s. 752.011 ~~if it is in the child's~~
327 ~~best interest.~~ Grandparents or great-grandparents have legal
328 standing to seek judicial enforcement of such an award. This
329 section does not require that grandparents or great-grandparents
330 be made parties to or given notice of dissolution pleadings or
331 proceedings, ~~nor do grandparents have legal standing as~~
332 ~~"contestants" as defined in s. 61.1306.~~ However, if separate
333 actions under this section and s. 752.011 are pending
334 concurrently, courts are strongly encouraged to consolidate the



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335 actions in order to minimize the burden of litigation of
336 visitation rights on the child. A court may not order that a
337 child be kept within the state or jurisdiction of the court
338 solely for the purpose of permitting visitation by the
339 grandparents or great-grandparents.

340 3. Access to records and information pertaining to a minor
341 child, including, but not limited to, medical, dental, and
342 school records, may not be denied to a parent because the parent
343 is not the child's primary residential parent. Full rights under
344 this subparagraph apply to either parent unless a court order
345 specifically revokes these rights, including any restrictions on
346 these rights as provided in a domestic violence injunction. A
347 parent having rights under this subparagraph has the same rights
348 upon request as to form, substance, and manner of access as are
349 available to the other parent of a child, including, without
350 limitation, the right to in-person communication with medical,
351 dental, and education providers.

352 (4)

353 (c) When a custodial parent refuses to honor a
354 noncustodial parent's, ~~or~~ grandparent's, or great-grandparent's
355 visitation rights without proper cause, the court shall, after
356 calculating the amount of visitation improperly denied, award
357 the noncustodial parent, ~~or~~ grandparent, or great-grandparent a
358 sufficient amount of extra visitation to compensate the
359 noncustodial parent, ~~or~~ grandparent, or great-grandparent, which
360 visitation shall be ordered as expeditiously as possible in a
361 manner consistent with the best interests of the child and
362 scheduled in a manner that is convenient for the person deprived



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363 of visitation. In ordering any makeup visitation, the court
364 shall schedule such visitation in a manner that is consistent
365 with the best interests of the child or children and that is
366 convenient for the noncustodial parent, ~~or~~ grandparent, or
367 great-grandparent. In addition, the court:

368 1. May order the custodial parent to pay reasonable court
369 costs and attorney's fees incurred by the noncustodial parent,
370 ~~or~~ grandparent, or great-grandparent to enforce their visitation
371 rights or make up improperly denied visitation;

372 2. May order the custodial parent to attend the parenting
373 course approved by the judicial circuit;

374 3. May order the custodial parent to do community service
375 if the order will not interfere with the welfare of the child;

376 4. May order the custodial parent to have the financial
377 burden of promoting frequent and continuing contact when the
378 custodial parent and child reside further than 60 miles from the
379 noncustodial parent;

380 5. May award custody, rotating custody, or primary
381 residence to the noncustodial parent, upon the request of the
382 noncustodial parent, if the award is in the best interests of
383 the child; or

384 6. May impose any other reasonable sanction as a result of
385 noncompliance.

386 (d) A person who violates this subsection may be punished
387 by contempt of court or other remedies as the court deems
388 appropriate.

389 (6) In any proceeding under this section, the court may
390 not deny shared parental responsibility, custody, or visitation



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391 | rights to a parent, ~~or~~ grandparent, or great-grandparent solely
 392 | because that parent, ~~or~~ grandparent, or great-grandparent is or
 393 | is believed to be infected with human immunodeficiency virus;
 394 | but the court may condition such rights upon the parent's, ~~or~~
 395 | grandparent's, or great-grandparent's agreement to observe
 396 | measures approved by the Centers for Disease Control and
 397 | Prevention of the United States Public Health Service or by the
 398 | Department of Health for preventing the spread of human
 399 | immunodeficiency virus to the child.

400 | ~~(7) In any case where the child is actually residing with~~
 401 | ~~a grandparent in a stable relationship, whether the court has~~
 402 | ~~awarded custody to the grandparent or not, the court may~~
 403 | ~~recognize the grandparents as having the same standing as~~
 404 | ~~parents for evaluating what custody arrangements are in the best~~
 405 | ~~interest of the child.~~

406 | Section 9. Subsection (1) of section 63.0425, Florida
 407 | Statutes, is amended to read:

408 | 63.0425 Grandparent's or great-grandparent's right to
 409 | adopt.--

410 | (1) When a child ~~who~~ has lived with a grandparent or
 411 | great-grandparent for at least 6 months within the 24-month
 412 | period immediately preceding the filing of a petition for
 413 | termination of parental rights pending adoption ~~is placed for~~
 414 | ~~adoption~~, the adoption entity ~~handling the adoption~~ shall
 415 | provide notice to notify that grandparent or great-grandparent
 416 | of the hearing on the petition for termination of parental
 417 | rights pending adoption ~~impending adoption before the petition~~
 418 | ~~for adoption is filed. If the grandparent petitions the court to~~



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419 | ~~adopt the child, the court shall give first priority for~~
420 | ~~adoption to that grandparent.~~

421 | Section 10. Subsection (2) of section 63.172, Florida
422 | Statutes, is amended to read:

423 | 63.172 Effect of judgment of adoption.--

424 | (2) If one or both parents of a child die without the
425 | relationship of parent and child having been previously
426 | terminated and a spouse of the living parent or a close relative
427 | of the child thereafter adopts the child, the child's right of
428 | inheritance from or through the deceased parent is unaffected by
429 | the adoption and, unless the court orders otherwise, the
430 | adoption will not terminate any grandparental or great-
431 | grandparental rights delineated under chapter 752. For purposes
432 | of this subsection, a close relative of a child is the child's
433 | brother, sister, grandparent, great-grandparent, aunt, or uncle.

434 | Section 11. This act shall take effect July 1, 2003.

435 |