

1 A bill to be entitled

2 An act relating to the rights of grandparents and
3 great-grandparents; amending s. 39.01, F.S.; revising
4 the definition of the term "next of kin" to include
5 great-grandparents for purposes of various proceedings
6 relating to children; amending s. 39.509, F.S.;
7 providing great-grandparents the same visitation
8 rights as grandparents; amending ss. 39.801 and
9 63.0425, F.S.; providing for a great-grandparent's
10 right to notice of adoption; repealing s. 752.01,
11 F.S., relating to actions by a grandparent for
12 visitation rights; creating s. 752.011, F.S.;
13 authorizing the grandparent of a minor child to
14 petition a court for visitation under certain
15 circumstances; requiring a preliminary hearing;
16 providing for the payment of attorney fees and costs
17 by a petitioner who fails to make a prima facie
18 showing of harm; authorizing grandparent visitation if
19 the court makes specified findings; providing factors
20 for court consideration; providing for application of
21 the Uniform Child Custody Jurisdiction and Enforcement
22 Act; encouraging the consolidation of certain
23 concurrent actions; providing for modification of an
24 order awarding grandparent visitation; limiting the
25 frequency of actions seeking visitation; limiting
26 application to a minor child placed for adoption;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

27 providing for venue; repealing s. 752.07, F.S.,
 28 relating to the effect of adoption of a child by a
 29 stepparent on grandparent visitation rights; creating
 30 s. 752.071, F.S.; providing conditions under which a
 31 court may terminate a grandparent visitation order
 32 upon adoption of a minor child by a stepparent or
 33 close relative; amending ss. 39.6221, 39.6231, 63.087,
 34 63.172, and 752.015, F.S.; conforming provisions and
 35 cross-references to changes made by the act; providing
 36 an effective date.

37

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

39

40 Section 1. Subsection (45) of section 39.01, Florida
 41 Statutes, is amended to read:

42 39.01 Definitions.—When used in this chapter, unless the
 43 context otherwise requires:

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

47 Section 2. Section 39.509, Florida Statutes, is amended to
 48 read:

49 39.509 Visitation rights of grandparents and great-
 50 grandparents ~~Grandparents rights~~.—Notwithstanding any other
 51 ~~provision of~~ law, a maternal or paternal grandparent or great-
 52 grandparent as well as a step-grandparent or step-great-

53 grandparent ~~stepgrandparent~~ is entitled to reasonable visitation
 54 with his or her grandchild or great-grandchild who has been
 55 adjudicated a dependent child and taken from the physical
 56 custody of the parent unless the court finds that such
 57 visitation is not in the best interest of the child or that such
 58 visitation would interfere with the goals of the case plan.
 59 Reasonable visitation may be unsupervised and, where appropriate
 60 and feasible, may be frequent and continuing. ~~An~~ Any order for
 61 visitation or other contact must conform to ~~the provisions of~~ s.
 62 39.0139.

63 (1) Grandparent or great-grandparent visitation may take
 64 place in the home of the grandparent or great-grandparent unless
 65 there is a compelling reason for denying such a visitation. The
 66 department's caseworker shall arrange the visitation to which a
 67 grandparent or great-grandparent is entitled pursuant to this
 68 section. The state may ~~shall~~ not charge a fee for any costs
 69 associated with arranging the visitation. However, the
 70 grandparent or great-grandparent shall pay for the child's cost
 71 of transportation if ~~when~~ the visitation is to take place in the
 72 grandparent's or great-grandparent's home. The caseworker shall
 73 document the reasons for any decision to restrict a
 74 grandparent's or great-grandparent's visitation.

75 (2) A grandparent or great-grandparent entitled to
 76 visitation pursuant to this section may ~~shall~~ not be restricted
 77 from appropriate displays of affection to the child, such as
 78 appropriately hugging or kissing his or her grandchild or great-

79 grandchild. Gifts, cards, and letters from the grandparent or
 80 great-grandparent and other family members may ~~shall~~ not be
 81 denied to a child who has been adjudicated a dependent child.

82 (3) Any attempt by a grandparent or great-grandparent to
 83 facilitate a meeting between the child who has been adjudicated
 84 a dependent child and the child's parent or legal custodian, or
 85 any other person in violation of a court order shall
 86 automatically terminate future visitation rights of the
 87 grandparent or great-grandparent.

88 (4) When the child has been returned to the physical
 89 custody of his or her parent, the visitation rights granted
 90 pursuant to this section ~~shall~~ terminate.

91 (5) The termination of parental rights does not affect the
 92 rights of grandparents or great-grandparents unless the court
 93 finds that such visitation is not in the best interest of the
 94 child or that such visitation would interfere with the goals of
 95 permanency planning for the child.

96 (6) In determining whether grandparental or great-
 97 grandparental visitation is not in the child's best interest,
 98 the court ~~consideration~~ may consider ~~be given to~~ the following:

99 (a) The finding of guilt, regardless of adjudication, or
 100 entry or plea of guilty or nolo contendere to charges under the
 101 following statutes, or similar statutes of other jurisdictions:

102 1. Section ~~s.~~ 787.04, relating to removing a minor child
 103 ~~minors~~ from the state or concealing a minor child ~~minors~~
 104 contrary to court order;

- 105 2. Section ~~s.~~ 794.011, relating to sexual battery;
- 106 3. Section ~~s.~~ 798.02, relating to lewd and lascivious
- 107 behavior;
- 108 4. Chapter 800, relating to lewdness and indecent
- 109 exposure;
- 110 5. Section ~~s.~~ 826.04, relating to incest; or
- 111 6. Chapter 827, relating to the abuse of children.

112 (b) The designation by a court as a sexual predator as

113 defined in s. 775.21 or a substantially similar designation

114 under laws of another jurisdiction.

115 (c) A report of abuse, abandonment, or neglect under ss.

116 415.101-415.113 or this chapter and the outcome of the

117 investigation concerning such report.

118 Section 3. Paragraph (a) of subsection (3) of section

119 39.801, Florida Statutes, is amended to read:

120 39.801 Procedures and jurisdiction; notice; service of

121 process.—

122 (3) Before the court may terminate parental rights, in

123 addition to the other requirements set forth in this part, the

124 following requirements must be met:

125 (a) Notice of the date, time, and place of the advisory

126 hearing for the petition to terminate parental rights and a copy

127 of the petition must be personally served upon the following

128 persons, specifically notifying them that a petition has been

129 filed:

- 130 1. The parents of the child.

- 131 2. The legal custodians of the child.
- 132 3. If the parents who would be entitled to notice are dead
- 133 or unknown, a living relative of the child, unless upon diligent
- 134 search and inquiry no such relative can be found.
- 135 4. Any person who has physical custody of the child.
- 136 5. Any grandparent or great-grandparent entitled to
- 137 priority for adoption under s. 63.0425.
- 138 6. Any prospective parent who has been identified under s.
- 139 39.503 or s. 39.803.
- 140 7. The guardian ad litem for the child or the
- 141 representative of the guardian ad litem program, if the program
- 142 has been appointed.

143

144 The document containing the notice to respond or appear must

145 contain, in type at least as large as the type in the balance of

146 the document, the following or substantially similar language:

147 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING

148 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF

149 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND

150 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE

151 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS

152 NOTICE."

153 Section 4. Section 63.0425, Florida Statutes, is amended

154 to read:

155 63.0425 Grandparent's or great-grandparent's right to

156 notice.—

157 (1) If a child has lived with a grandparent or great-
 158 grandparent for at least 6 months within the 24-month period
 159 immediately preceding the filing of a petition for termination
 160 of parental rights pending adoption, the adoption entity shall
 161 provide notice to that grandparent or great-grandparent of the
 162 hearing on the petition.

163 (2) This section does not apply if the placement for
 164 adoption is the result of the death of the child's parent and a
 165 different preference is stated in the parent's will.

166 (3) This section does not apply in stepparent adoptions.

167 (4) This section does not contravene the provisions of s.
 168 63.142(4).

169 Section 5. Section 752.01, Florida Statutes, is repealed.

170 Section 6. Section 752.011, Florida Statutes, is created
 171 to read:

172 752.011 Petition for grandparent visitation of a minor
 173 child.—A grandparent of a minor child whose parents are
 174 deceased, missing, or in a permanent vegetative state, or whose
 175 one parent is deceased, missing, or in a permanent vegetative
 176 state and whose other parent has been convicted of a felony or
 177 an offense of violence, may petition the court for court-ordered
 178 visitation with the grandchild under this section.

179 (1) Upon the filing of a petition by a grandparent for
 180 visitation the court shall hold a preliminary hearing to
 181 determine whether the petitioner has made a prima facie showing
 182 of parental unfitness or significant harm to the child. Absent

183 such a showing, the court shall dismiss the petition and shall
184 award reasonable attorney fees and costs to be paid by the
185 petitioner to the respondent.

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

191 (3) After conducting a final hearing on the issue of
192 visitation, the court may award reasonable visitation to the
193 grandparent with respect to the minor child if the court finds
194 by clear and convincing evidence that a parent is unfit or that
195 there is a danger of significant harm to the child, that
196 visitation is in the best interest of the minor child, and that
197 the visitation will not materially harm the parent-child
198 relationship.

199 (4) In assessing the best interest of the child under
200 subsection (3), the court shall consider the totality of the
201 circumstances affecting the mental and emotional well-being of
202 the minor child, including:

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

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

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

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

213 (d) The reasons that the surviving parent cited in ending
214 contact or visitation between the minor child and the
215 grandparent.

216 (e) Whether there has been demonstrable significant mental
217 or emotional harm to the minor child as a result of the
218 disruption in the family unit from which the child derived
219 support and stability from the grandparent, and whether the
220 continuation of that support and stability is likely to prevent
221 further harm.

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

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

226 (h) The present mental, physical, and emotional health of
227 the grandparent.

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

230 (j) The results of any psychological evaluation of the
231 minor child.

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

234 (l) A written testamentary statement by the deceased

235 parent regarding visitation with the grandparent. The absence of
236 a testamentary statement is not deemed to provide evidence that
237 the deceased parent would have objected to the requested
238 visitation.

239 (m) Other factors that the court considers necessary to
240 making its determination.

241 (5) In assessing material harm to the parent-child
242 relationship under subsection (3), the court shall consider the
243 totality of the circumstances affecting the parent-child
244 relationship, including:

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

248 (b) Whether visitation would materially interfere with or
249 compromise parental authority.

250 (c) Whether visitation can be arranged in a manner that
251 does not materially detract from the parent-child relationship,
252 including the quantity of time available for enjoyment of the
253 parent-child relationship and any other consideration related to
254 disruption of the schedule and routines of the parent and the
255 minor child.

256 (d) Whether visitation is being sought for the primary
257 purpose of continuing or establishing a relationship with the
258 minor child with the intent that the child benefit from the
259 relationship.

260 (e) Whether the requested visitation would expose the

261 minor child to conduct, moral standards, experiences, or other
 262 factors that are inconsistent with influences provided by the
 263 parent.

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

266 (g) The reasons that the parent cited in ending contact or
 267 visitation between the minor child and the grandparent which was
 268 previously allowed by the parent.

269 (h) The psychological toll of visitation disputes on the
 270 minor child.

271 (i) Other factors that the court considers necessary to
 272 making its determination.

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

276 (7) If separate actions under this section and s. 61.13
 277 are pending concurrently, the courts are strongly encouraged to
 278 consolidate the actions in order to minimize the burden of
 279 litigation on the minor child and the other parties.

280 (8) An order for grandparent visitation may be modified
 281 upon a showing by the person petitioning for modification that a
 282 substantial change in circumstances has occurred and that
 283 modification of visitation is in the best interest of the minor
 284 child.

285 (9) An original action requesting visitation under this
 286 section may be filed by a grandparent only once during any 2-

287 year period, except on good cause shown that the minor child is
 288 suffering, or may suffer, demonstrable significant mental or
 289 emotional harm caused by a parental decision to deny visitation
 290 between a minor child and the grandparent, which was not known
 291 to the grandparent at the time of filing an earlier action.

292 (10) This section does not provide for grandparent
 293 visitation with a minor child placed for adoption under chapter
 294 63 except as provided in s. 752.071 with respect to adoption by
 295 a stepparent or close relative.

296 (11) Venue shall be in the county where the minor child
 297 primarily resides, unless venue is otherwise governed by chapter
 298 39, chapter 61, or chapter 63.

299 Section 7. Section 752.07, Florida Statutes, is repealed.

300 Section 8. Section 752.071, Florida Statutes, is created
 301 to read:

302 752.071 Effect of adoption by stepparent or close
 303 relative.—After the adoption of a minor child by a stepparent or
 304 close relative, the stepparent or close relative may petition
 305 the court to terminate an order granting grandparent visitation
 306 under this chapter which was entered before the adoption. The
 307 court may terminate the order unless the grandparent is able to
 308 show that the criteria of s. 752.011 authorizing the visitation
 309 continue to be satisfied.

310 Section 9. Subsection (2) of section 39.6221, Florida
 311 Statutes, is amended to read:

312 39.6221 Permanent guardianship of a dependent child.—

313 (2) In its written order establishing a permanent
 314 guardianship, the court shall:

315 (a) List the circumstances or reasons why the child's
 316 parents are not fit to care for the child and why reunification
 317 is not possible by referring to specific findings of fact made
 318 in its order adjudicating the child dependent or by making
 319 separate findings of fact;

320 (b) State the reasons why a permanent guardianship is
 321 being established instead of adoption;

322 (c) Specify the frequency and nature of visitation or
 323 contact between the child and his or her parents;

324 (d) Specify the frequency and nature of visitation or
 325 contact between the child and his or her grandparents or great-
 326 grandparents, under s. 39.509;

327 (e) Specify the frequency and nature of visitation or
 328 contact between the child and his or her siblings; and

329 (f) Require that the permanent guardian not return the
 330 child to the physical care and custody of the person from whom
 331 the child was removed without the approval of the court.

332 Section 10. Subsection (3) of section 39.6231, Florida
 333 Statutes, is amended to read:

334 39.6231 Permanent placement with a fit and willing
 335 relative.—

336 (3) In its written order placing the child with a fit and
 337 willing relative, the court shall:

338 (a) List the circumstances or reasons why reunification is

339 not possible by referring to specific findings of fact made in
 340 its order adjudicating the child dependent or by making separate
 341 findings of fact;

342 (b) State the reasons why permanent placement with a fit
 343 and willing relative is being established instead of adoption;

344 (c) Specify the frequency and nature of visitation or
 345 contact between the child and his or her parents;

346 (d) Specify the frequency and nature of visitation or
 347 contact between the child and his or her grandparents or great-
 348 grandparents, under s. 39.509;

349 (e) Specify the frequency and nature of visitation or
 350 contact between the child and his or her siblings; and

351 (f) Require that the relative not return the child to the
 352 physical care and custody of the person from whom the child was
 353 removed without the approval of the court.

354 Section 11. Paragraph (e) of subsection (4) of section
 355 63.087, Florida Statutes, is amended to read:

356 63.087 Proceeding to terminate parental rights pending
 357 adoption; general provisions.—

358 (4) PETITION.—

359 (e) The petition must include:

360 1. The minor's name, gender, date of birth, and place of
 361 birth. The petition must contain all names by which the minor is
 362 or has been known, excluding the minor's prospective adoptive
 363 name but including the minor's legal name at the time of the
 364 filing of the petition. In the case of an infant child whose

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365 adoptive name appears on the original birth certificate, the
366 adoptive name may ~~shall~~ not be included in the petition or, ~~nor~~
367 ~~shall it be included~~ elsewhere in the termination of parental
368 rights proceeding.

369 2. All information required by the Uniform Child Custody
370 Jurisdiction and Enforcement Act and the Indian Child Welfare
371 Act.

372 3. A statement of the grounds under s. 63.089 upon which
373 the petition is based.

374 4. The name, address, and telephone number of any adoption
375 entity seeking to place the minor for adoption.

376 5. The name, address, and telephone number of the division
377 of the circuit court in which the petition is to be filed.

378 6. A certification of compliance with the requirements of
379 s. 63.0425 regarding notice to grandparents or great-
380 grandparents of an impending adoption.

381 Section 12. Subsection (2) of section 63.172, Florida
382 Statutes, is amended to read:

383 63.172 Effect of judgment of adoption.—

384 (2) If one or both parents of a child die without the
385 relationship of parent and child having been previously
386 terminated and a spouse of the living parent or a close relative
387 of the child thereafter adopts the child, the child's right of
388 inheritance from or through the deceased parent is unaffected by
389 the adoption and, unless the court orders otherwise, the
390 adoption does ~~will~~ not terminate any grandparental or great-

391 grandparental rights delineated under chapter 752. For purposes
 392 of this subsection, a close relative of a child is the child's
 393 brother, sister, grandparent, great-grandparent, aunt, or uncle.

394 Section 13. Section 752.015, Florida Statutes, is amended
 395 to read:

396 752.015 Mediation of visitation disputes.—It is ~~shall be~~
 397 the public policy of this state that families resolve
 398 differences over grandparent visitation within the family. It is
 399 ~~shall be~~ the further public policy of this state that, when
 400 families are unable to resolve differences relating to
 401 grandparent visitation, that ~~that~~ the family participate in any
 402 formal or informal mediation services that may be available. If
 403 ~~When~~ families are unable to resolve differences relating to
 404 grandparent visitation and a petition is filed pursuant to s.
 405 752.011 ~~s. 752.01~~, the court shall, if such services are
 406 available in the circuit, refer the case to family mediation in
 407 accordance with the Florida Family Law Rules of Procedure ~~rules~~
 408 ~~promulgated by the Supreme Court.~~

409 Section 14. This act shall take effect July 1, 2014.