

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 149	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Judiciary Committee; Children, Families & Seniors Subcommittee; Rouson and others	112 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/SB 368	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/CS/HB 149 passed the House on March 27, 2015, and subsequently passed the Senate on April 27, 2015. The bill amends laws related to grandparent visitation.

Current law provides that grandparents and great-grandparents may petition for visitation rights with their minor grandchildren and great-grandchildren; however, court decisions have declared much of this law unconstitutional.

The bill repeals the language found unconstitutional from the statutes and creates a new limited grandparent visitation statute. It allows a grandparent of a minor child whose parents are deceased, missing, or in a persistent vegetative state to petition the court for visitation. A grandparent may also petition for visitation if there are two parents, one of whom is deceased, missing, or in a persistent vegetative state and the other has been convicted of a felony or certain violent crimes. The bill requires the grandparent to make a preliminary showing of parental unfitness or significant harm to the child.

The bill requires that grandparents first attempt mediation and, if necessary, the court may appoint a guardian ad litem for the child. If mediation is ineffective, the court must proceed to a final hearing. The bill lists factors for the court to consider in its final determination, including the previous relationship the grandparent had with the child, the findings of a guardian ad litem, the potential disruption to the family, the consistency of values between the grandparent and the parent, and the reasons visitation ended.

The bill limits the number of times a grandparent can file for visitation, absent a real, substantial and unanticipated change of circumstances.

This bill appears to have no fiscal impact on state or local government.

The bill was approved by the Governor on June 11, 2015, ch. 2015-134, L.O.F., and will become effective on July 1, 2015.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### *Grandparent Visitation Rights in Florida*

Currently, s. 752.01(1), F.S., provides that a grandparent or great-grandparent may petition for visitation rights with their grandchildren or great-grandchildren when visitation is in the best interest of the minor child, and:

- the marriage of the child's parents has been dissolved;<sup>1</sup>
- a parent has deserted the child; or
- the child was born out of wedlock and not later determined to have been born within wedlock.<sup>2</sup>

However, two current statutory grounds for awarding grandparent visitation have been ruled unconstitutional: when the marriage of the child's parents has been dissolved<sup>3</sup> and when the child was born out of wedlock.<sup>4</sup> Yet these two provisions remain in the statute.

The decisions finding these two provisions unconstitutional were based on a consistent line of Florida Supreme Court decisions that struck down as unconstitutional, "statutes that have attempted to compel visitation or custody with a grandparent based solely on the best interest of the child, without the required showing of harm to the child . . . ."<sup>5</sup> The Florida Supreme Court has held that grandparent visitation laws, when either of the child's parents prohibited a relationship between the child and grandparent, are unconstitutional, explaining that the state "may not intrude upon the parents' fundamental right to raise their children except in cases where the child is threatened with harm."<sup>6</sup>

The Florida Supreme Court has also held that privacy is a fundamental right and any statute that infringes on that right is subject to the "compelling state interest" test, the highest standard of review. It concluded that current statutes that allowed for grandparent visitation when one or both parents of the child are deceased but did not evaluate harm to the child failed that test because the circuit court must order visitation based on the "best interest" of the child, and cannot award such visitation "without first requiring proof of demonstrable harm to the child."<sup>7</sup>

At the same time, in the context of those cases, the court has provided a framework within which a statute creating grandparents' visitation rights might be enacted. Those opinions state that a grandparent of a minor child whose parents are deceased, missing, or in a persistent vegetative state may petition the court for visitation. Likewise, a grandparent may petition for visitation if there are two parents, one of whom is deceased, missing, or in a persistent vegetative state and the other has been convicted of a felony or an offense of violence. However, the grandparent must make a preliminary showing of parental unfitness or significant harm to the child.

The bill is drafted to address these constitutional concerns, including language that the grandparent must make a preliminary showing of parental unfitness or significant harm to the child, and the specific instances in which a petition can be filed conforming with case law.

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<sup>1</sup> s. 752.01(1)(a), F.S.

<sup>2</sup> s. 752.01(1)(c), F.S.

<sup>3</sup> *Lonon v. Ferrell*, 739 So. 2d 650 (Fla. 2d DCA 1999); *Belair v. Drew*, 776 So. 2d 1105 (Fla. 5th DCA 2005).

<sup>4</sup> *Saul v. Brunetti*, 753 So. 2d 26 (Fla. 2000).

<sup>5</sup> *Sullivan v. Sapp*, 866 So. 2d 28, 37 (Fla. 2004).

<sup>6</sup> *Beagle v. Beagle*, 678 So. 2d 1271, 1276 (Fla. 1996).

<sup>7</sup> *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998).

## *Remarriage or Adoption*

Currently, s. 752.07, F.S., provides that in the event of a remarriage by a parent (when the other parent is deceased) or if there is an adoption by a stepparent, any existing visitation order in favor of a grandparent is unaffected, unless the grandparent has notice and an opportunity to be heard.

### **Effect of the Bill**

#### *Grandparent Visitation Rights*

The bill repeals s. 752.01, F.S., and creates s. 752.011, F.S. This new section allows a grandparent of a minor child whose parents are deceased, missing, or in a persistent vegetative state to petition the court for visitation. A grandparent may also petition for visitation if there are two parents, one of whom is deceased, missing, or in a persistent vegetative state and the other has been convicted of a felony or an offense of violence evincing behavior that poses a substantial risk of harm to the child. A parent is considered missing if his or her whereabouts are unknown for at least 90 days and a diligent search and inquiry into his or her location has occurred.

The grandparent must make a preliminary showing that the remaining parent is unfit or that there has been significant harm to the child; if made, the court must direct the family to mediation and move toward a final hearing. The court may appoint a guardian ad litem for the child.

At the final hearing, the grandparent must show by clear and convincing evidence that the parent is unfit or there has been significant harm to the child. If the grandparent meets that burden, the court may grant visitation only if it is in the best interest of the child and will not harm the parent-child relationship. The bill requires the court to consider the totality of circumstances and lists multiple factors the court must consider in determining the best interest of the child. The factors are:

- the love, affection, and other emotional ties existing between the child and the grandparent;
- the length and quality of the previous relationship between the child and the grandparent;
- whether the grandparent established ongoing personal contact with the child;
- the reasons that the respondent parent cited to end contact;
- whether there has been significant and demonstrable mental or emotional harm to the minor child as a result of the disruption in the family unit, whether the child derived support and stability from the grandparent, and whether the continuation of such support and stability is likely to prevent further harm;
- the existence or threat to the child of mental injury;
- the present mental, physical, and emotional health of the child and the grandparent;
- the recommendations of the child's guardian ad litem, if one is appointed;
- the results of any psychological evaluation of the child;
- the preference of the child;
- a written testamentary statement by the deceased, missing, or vegetative parent regarding visitation with the grandparent; and
- such other factors as the court considers necessary in making its determination.

In determining harm to the parent-child relationship, the court must consider:

- whether there have been previous disputes between the grandparent and the parent over childrearing or other matters related to the care and upbringing of the child;
- whether visitation would interfere with or compromise parental authority;
- whether visitation can be arranged in a manner that does not detract from the parent-child relationship, including the quantity of time available for enjoyment of the parent-child relationship, and any other consideration related to disruption of the schedule and routine of the parent and the child;
- whether visitation is being sought for the primary purpose of continuing or establishing a relationship with the child with the intent that the child benefit from the relationship;
- whether the requested visitation would expose the child to conduct, moral standards, experiences, or other factors that are inconsistent with influences provided by the parent;
- the nature of the relationship between the parent and the grandparent;
- the reasons that the parent made the decision to end contact or visitation between the child and the grandparent which was previously allowed by the parent;
- the psychological toll of visitation disputes on the child; and
- other factors the court considers necessary in making its determination.

An order granting grandparent visitation may be modified if a substantial change of circumstances has occurred and the modification is in the best interest of the child.

A grandparent can only file an action for visitation once in a two-year period, unless a real, substantial and unanticipated change of circumstances has occurred.

The bill also addresses other statutes that govern child custody and visitation:

- The bill specifies that the requirements of Part II of ch. 61, F.S., the Uniform Child Custody Jurisdiction and Enforcement Act,<sup>8</sup> apply to custody actions brought under the provisions of s. 752.011, F.S. (the grandparent visitation statute created by the bill); and
- Courts are encouraged to consolidate actions pending under s. 61.13, F.S.,<sup>9</sup> with those brought under s. 752.011, F.S.

### *Remarriage or Adoption*

The bill repeals s. 752.07, F.S., and creates s. 752.071, F.S. The new section provides that after adoption of a child by a stepparent or close relative, the adoptive parent may petition to terminate a previous order granting grandparent visitation. The burden is on the grandparent to show satisfaction of the criteria that would satisfy an original petition for visitation.

The bill provides an effective date of July 1, 2015.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

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<sup>8</sup> The Uniform Child Custody Jurisdiction and Enforcement act governs multi-state child custody disputes.

<sup>9</sup> Section 61.13, F.S., governs child support obligations and custodial arrangements for minor children in a dissolution proceeding.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have any direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

None.