

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 368

INTRODUCER: Senator Abruzzo

SUBJECT: Rights of Grandparents and Great-grandparents

DATE: March 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Pre-meeting
2.			CF	
3.			ACJ	
4.			FP	

I. Summary:

SB 368 provides in limited circumstances visitation rights for grandparents and great-grandparents with their grandchildren and great-grandchildren in situations in which the child is in the custody of a parent. The bill also provides great-grandparents with the same rights to visitation with a child who has been adjudicated dependent as that afforded to grandparents.

Under existing law, grandparents have the right to unsupervised, reasonable visitation with a grandchild who has been adjudicated dependent unless the court finds that visitation would not be in the best interest of the child or would interfere with the goals of a case plan developed by the Department of Children and Families (DCF).¹ However, a grandparent may be denied visitation if he or she has entered a plea or been found guilty of certain enumerated crimes.

A grandparent's visitation rights under existing law extend to:

- Visitation in the home of the grandparent unless a caseworker documents a compelling reason to deny or restrict visitation; and
- Unrestricted appropriate displays of affection with the child and provision of gifts and cards to the child.²

Existing ch. 752, F.S., authorizes grandparents to file a petition for visitation with a child who has not been adjudicated dependent. Several provisions of the chapter, however, have been ruled unconstitutional by the Florida Supreme Court. This bill repeals those provisions and creates new authority for grandparents and great-grandparents to file a petition for visitation with a child if:

- The parents are deceased, missing, or in a permanent vegetative state; or

¹ Section 39.509, F.S.

² Section 39.509(1) and (2), F.S.

- At least one of the parents is deceased, missing, or in a permanent vegetative state and the other parent has been convicted of a felony or a violent offense.

If a petition for grandparent visitation is filed, the court will hold a preliminary hearing to determine whether a prima facie showing of parental unfitness or danger of significant harm to the minor child exists. If the petitioner establishes a prima facie case, the court will order the case to family mediation. At the final hearing, the court will determine by clear and convincing evidence whether the parent is unfit or a danger of significant harm to the child exists, visitation is in the best interest of the minor child, and visitation will not materially harm the parent-child relationship.

In determining the best interest of the child, the court will consider factors such as the emotional ties, length, and quality of the relationship between the child and the grandparent, the reason that the parent ended visitation with the grandparent, whether there has been demonstrable significant mental or emotional harm to the child and whether the support and stability of the grandparent has benefitted the child, the mental, physical, and emotional health of both the minor child and the grandparent; the recommendation of a guardian ad litem; and the child's preference.

II. Present Situation:

Grandparent Visitation Law

Grandparent and Great-grandparent Visitation when a Parental Relationship is Intact

Chapter 752, F.S., establishes grandparent visitation rights. These rights extend to great-grandparents.³ Under this law, grandparents may petition the court over a parent's objection for visitation with a minor child.

In 1984, the Florida Legislature created ch. 752, F.S., to give grandparents the right to petition for visitation with their grandchildren. Since that time, almost all of the substantive provisions of ch. 752, F.S., has been struck down as unconstitutional. Specifically, the court found that parents have a fundamental right to be free from governmental interference in their parenting. Imposing grandparent visitation on a parent would violate those fundamental rights.

Section 752.01, F.S., provides grandparents and great-grandparents reasonable rights to visitation of a child if the court determines visitation is in the child's best interest and:

- The child's parents divorce;
- A parent of the child has deserted the child; or
- The minor child is considered to have been born out of wedlock.

In determining a child's best interest, a court must consider:

- The willingness of the grandparent or great-grandparent to encourage a close relationship between the child and the parent or parents;
- The length and quality of the relationship between the grandparent or great-grandparent;
- The preference of the child if the child is sufficiently mature to express a preference;
- The mental and physical health of the child; and

³ Section 752.001, F.S.

- The mental and physical health of the grandparent or great-grandparent.⁴

The right to grandparent visitation does not apply to situations in which a child is placed for adoption unless the child is adopted by a stepparent subsequent to the remarriage of one of the natural parents.

Section 752.015, F.S., provides for disputes over grandparent visitation to be resolved through mediation.

Grandparent Visitation with a Child who has been Adjudicated Dependent

The court has struck down much of ch. 752, F.S., which provided grandparents visitation with children in intact families. Chapter 39, F.S., provides grandparent visitation with children who have been adjudicated dependent. Grandparents have the right to unsupervised, reasonable visitation unless the court finds that visitation would not be in the best interest of the child or would interfere with the goals of the case plan designed by a caseworker with the Department of Children and Families (DCF).⁵

Visitation rights extend to:

- Visitation in the home of the grandparent unless a caseworker documents a compelling reason to deny or restrict visitation; and
- Unrestricted appropriate displays of affection with the child and provision of gifts and cards to the child.⁶

Termination of Visitation Rights

The right of grandparents to visitation with a grandchild who is adjudicated dependent automatically terminates if the grandparents facilitate a meeting between the child and a parent or another person in violation of a court order. If the court returns the child to the physical custody of the parent, visitation rights terminate.⁷

Prior Criminal History as a Basis for Denying Visitation

The court may deny grandparent visitation if it is not in the child's best interest, based on the grandparent's prior criminal history. Specifically, the court may deny visitation if the person has entered a plea of guilt or nolo contendere or been found guilty, of the following:

- Removing a minor child from the state or concealing a minor child;
- Sexual battery;
- Lewd and lascivious behavior, including indecent exposure;
- Incest; or
- Child abuse.

⁴ Sections 752.01(1) and (2), F.S.

⁵ Section 39.509, F.S.

⁶ Section 39.509(1) and (2), F.S.

⁷ Section 39.509(3) and (4), F.S.

Designation as a sexual predator may also be a basis for denial of visitation as is a report and investigation for abuse, abandonment, or neglect of a disabled adult.⁸

Termination of Parental Rights

Before the court may terminate parental rights, notice must be provided to certain persons, including:

- The parents of the child;
- The legal custodians of the child;
- A living relative of the child if the parents are dead or unknown;
- Any person who has physical custody of the child; and
- Any grandparent entitled to priority for purposes of adoption.⁹

Existing grandparent visitation with a child who has been adjudicated dependent does not automatically terminate if the court enters an order for a termination of parental rights. Grandparent visitation rights will only terminate if the court finds that continued grandparent visitation is not in the best interest of the child or visitation would interfere with DCF goals of permanency planning for the child.¹⁰

Permanent Placement and Permanent Guardianship

A court may determine that reunification with a parent and adoption are not in the best interest of the child. The court may instead determine that a permanent guardianship is in the child's best interest. The court must address a number of factors in the order for permanent guardianship, including the frequency and nature of visitation or contact between the child and his or her grandparents.¹¹

Alternatively, the court may enter an order for permanent placement if the court finds that it is in the best interest of the child. If so, the court must address a number of factors in the order for permanent placement, including the frequency and nature of visitation or contact between the child and his or her grandparents.¹²

Uniform Child Custody and Enforcement Act

The Uniform Child Custody and Enforcement Act (UCCJEA) applies to situations in which parents live in different states. The UCCJEA is used to determine which court has jurisdiction in child custody matters. The UCCJEA generally favors the resolution of disputes in the child's home state.¹³

⁸ Section 39.509(6), F.S.

⁹ Section 39.801(3)(a), F.S. A grandparent has the right to notice by the court if a child has lived with the grandparent for at least 6 out of 24 months immediately preceding the filing of a petition for termination of parental rights pending adoption. Section 63.0425(1), F.S.

¹⁰ Section 39.509(5), F.S.

¹¹ Section 39.6221(2)(d), F.S.

¹² Section 39.6231(3)(d), F.S.

¹³ See *Arjona v. Torres*, 941 So. 2d 451 (Fla. 3d DCA 2006); *In re D.N.H.W.*, 955 So. 2d 1236 (Fla. 2d DCA 2007).

III. Effect of Proposed Changes:

This bill gives great-grandparents the same visitation right grandparents have with a child who has been adjudicated dependent. Additionally, under certain limited circumstances, the bill provides grandparents and great-grandparents with visitation rights to a child who is in the custody of a parent.

Visitation Rights with Children who Remain in Parental Custody (Parental Rights have not been Terminated)

In 1984, the Florida Legislature created ch. 752, F.S., to give grandparents the right to petition for visitation with their grandchildren over the objection of a parent. Since that time, almost all of the substantive provisions of ch. 752, F.S., have been struck down as unconstitutional. (See discussion in “D. Other Constitutional Issues” section below.)

In response to these court rulings which have invalidated several provision in ch. 752, F.S., this bill repeals s. 752.01 and s. 752.07, F.S., and specifies special, limited circumstances under which a grandparent or great-grandparent may petition for visitation with a minor child through the creation of s. 752.011, F.S.

Section 752.011, F.S., authorizes grandparents and great-grandparents to file a petition for visitation with a child if:

- The parents are deceased, missing, or in a permanent vegetative state; or
- At least one of the parents is deceased, missing, or in a permanent vegetative state and the other parent has been convicted of a felony or a violent offense.

If a petition for grandparent visitation is filed, the court will hold a preliminary hearing to determine whether a prima facie showing of parental unfitness or danger of significant harm to the minor child exists. If the petitioner establishes a prima facie case, the court will order the case to family mediation.

At the final hearing, the court will determine by clear and convincing evidence whether the parent is unfit or a danger of significant harm to the child exists, visitation is in the best interest of the minor child, and visitation will not materially harm the parent-child relationship.

In determining the best interest of the child, the court will consider factors such as:

- The love, affection, and other emotional ties 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 before the death of the parent;
- The reasons that the parent ended contact or visitation with the grandparent;
- Whether there has been demonstrable significant mental or emotional harm to the child and whether the support and stability of the grandparent has benefitted the child;
- Mental, physical, and emotional health of both the minor child and the grandparent;
- The recommendation of a guardian ad litem; and
- The preference of the minor child if he or she is sufficiently mature.

In assessing material harm to the parent and child relationship, the court must look at the totality of the circumstances.

The Uniform Child Custody Jurisdiction and Enforcement Act, which governs the resolution of child custody between states, applies to determination of grandparent visitation. This bill encourages consolidation of court determination of grandparent visitation and child custody, parenting, and time-sharing actions to minimize the burden of litigation on the parties.

The grandparent may file a petition once every 2 years, except on good cause that the minor child is suffering or may suffer harm caused by a parent's denial of grandparent visitation.

This bill repeals existing s. 752.07, F.S., which provided for the continuation of grandparent visitation upon adoption by a stepparent. Instead, the bill authorizes the stepparent to petition the court to terminate grandparent visitation, unless the grandparent can show that the criteria authorizing visitation with a child who remains in parental custody still applies.

Section 63.172(2), F.S., preserves existing grandparent visitation if one or both parents of a child die without parental rights being terminated and a spouse of the living parent or a close relative of the child adopts the child. This bill preserves great-grandparent rights to visitation in s. 63.172, F.S.

Visitation Rights with Children who Have Been Adjudicated Dependent

This bill grants great-grandparents the same visitation rights as that afforded to grandparents with a child who has been adjudicated dependent and taken from the physical custody of the parent. Visitation rights extend to:

- Visitation in the home of the great-grandparent unless a caseworker documents a compelling reason to deny or restrict visitation; and
- Unrestricted appropriate displays of affection with the child and provision of gifts and cards to the child.

Termination of Visitation Rights

The right of great-grandparents to visitation with a great-grandchild who is adjudicated dependent automatically terminates if they violate a court order by facilitating a meeting between the child and a parent or another person in violation of a court order. If the court returns the child to the physical custody of the parent, visitation rights terminate.

Prior Criminal History as a Basis for Denying Visitation

The court may deny great-grandparent visitation if it is not in the child's best interest, based on the great-grandparent's prior criminal history. Just as for grandparents, the court may deny visitation if the person has entered a plea of guilt or nolo contendere or been found guilty, of the following:

- Removing a minor child from the state or concealing a minor child;
- Sexual battery;
- Lewd and lascivious behavior, including indecent exposure;
- Incest; or

- Child abuse.

Designation as a sexual predator may also be a basis for denial of visitation as is a report and investigation for abuse, abandonment, or neglect of a disabled adult.

Great-grandparent Adoption of a Great-grandchild

This bill adds great-grandparents to the list of relatives entitled to receive the notice of hearing at which the court is considering a termination of parental rights. The court may consider a great-grandparent for adoption of a dependent child if the child has lived with him or her for the same length of time (6 months within the last 24-month period preceding the filing of a petition for the termination of parental rights) as that afforded to grandparents who wish to adopt.

Granting a Child a Permanent Guardianship as an Alternative to Adoption

This bill includes the level of contact between the child and the great-grandparent as a factor to be used by the court in determining a suitable permanent guardianship.

Granting a Child a Permanent Placement with a Fit and Willing Relative as an Alternative to Adoption

This bill includes the level of contact between the child and a great-grandparent as a factor to be used by the court in determining a permanent placement of a child with a suitable relative.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not affect cities and counties.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Various provisions of ch. 752, F.S., have been challenged as unconstitutional a number of times since becoming law in 1984. In 1996, the Florida Supreme Court reviewed the issue of whether it is proper for the government to impose grandparent visitation on an intact family, absent evidence of demonstrated harm to the child.¹⁴ In applying Article I, s. 23 of the Florida Constitution, the court found that parents have a fundamental right to be free from governmental interference. Further, the court found that the state failed to

¹⁴ *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996).

show a compelling interest.¹⁵ For these reasons, the court ruled that part of the law unconstitutional.

In 1998, the Florida Supreme Court again struck down part of the grandparent visitation law.¹⁶ The court noted that the United States Supreme Court had recognized an implicit right of person privacy in the liberty interest protected by the Due Process Clause of the Fourteenth Amendment. Along with the implicit right of privacy, the State Constitution provides the explicit right of privacy to citizens under Article I, s. 23.¹⁷ Here the Court found that the law suffered the same infirmity, namely the part of the law that mandated grandparent visitation under a best interest of the child standard, without a showing of proof of demonstrable harm to the child.¹⁸

Again, in 2004, the Florida Supreme Court reviewed a statute which authorized a court to award grandparent visitation rights to a child if it is in the child's best interest. The statutory provision challenged was not in ch. 752, F.S., but in ch. 61, F.S., dealing with custody time-sharing, and paternity (s. 61.13(2)(b)2.c., F.S.)¹⁹ Here, the child's mother filed a motion for rehearing in a paternity action and subsequently died in a car accident. The case was before the court on a motion to intervene filed by the grandmother.²⁰ Although the court resolved the case on the issue of the motion to intervene, the court reiterated the unconstitutionality of any provision of law which would impose grandparent visitation absent a showing of harm to the child.²¹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Children and Families (DCF) identifies a potential fiscal impact from this bill. The impact relates to:

- Possible increased costs for Community-based Care lead agencies, subcontracted agencies, dependency case managers, and foster parents, associated with transporting or supervising great-grandparent visitation; and

¹⁵ *Id.* at 1276.

¹⁶ *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998).

¹⁷ *Id.* at 513-514.

¹⁸ *Id.* at 514.

¹⁹ *Sullivan v. Sapp*, 866 So.2d 28, 38 (Fla. 2004). Section 61.13(2)(b)2.c., F.S. (2003), provided, "The court may award the grandparents visitation rights with a minor child if it is in the child's best interest. Grandparents have legal standing to seek judicial enforcement of such an award."

²⁰ *Id.* at 30-31.

²¹ *Id.* at 38-39.

- Possible increased costs for private adoption attorneys and Children’s Legal Services due to adding great-grandparents to the list of relatives entitled to service of process on a notice of a petition to terminate parental rights.

Personal service of process costs about \$35 (in state); up to \$180 (out-of-state), and \$28 or higher (internationally).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 39.509, 39.801, 63.0425, 39.6221, 39.6231, 63.087, 63.172, and 752.015.

This bill creates the following sections of the Florida Statutes: 752.011 and 752.071.

This bill repeals the following sections of the Florida Statutes: 752.01 and 752.07.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.