

By Senator Abruzzo

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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.;  
4           redefining the term "next of kin" to include great-  
5           grandparents; amending s. 39.509, F.S.; providing  
6           great-grandparents the same visitation rights as  
7           grandparents; amending ss. 39.801 and 63.0425, F.S.;  
8           requiring notice to a great-grandparent under certain  
9           circumstances; repealing s. 752.01, F.S., relating to  
10          actions by a grandparent for visitation rights;  
11          creating s. 752.011, F.S.; authorizing the grandparent  
12          of a minor child to petition a court for visitation  
13          under certain circumstances; requiring a preliminary  
14          hearing; providing for the payment of attorney fees  
15          and costs by a petitioner who fails to make a prima  
16          facie showing of harm; authorizing grandparent  
17          visitation after a final hearing if the court makes  
18          specified findings; providing factors for court  
19          consideration; providing for application of the  
20          Uniform Child Custody Jurisdiction and Enforcement  
21          Act; encouraging the consolidation of certain  
22          concurrent actions; providing for modification of an  
23          order awarding grandparent visitation; limiting the  
24          frequency of actions seeking visitation; limiting  
25          application to a minor child placed for adoption;  
26          providing for venue; repealing s. 752.07, F.S.,  
27          relating to the effect of adoption of a child by a  
28          stepparent on grandparent visitation rights; creating  
29          s. 752.071, F.S.; authorizing, after petition, a court

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30 to terminate a grandparent visitation order upon  
31 adoption of a minor child by a stepparent or close  
32 relative; amending ss. 39.6221, 39.6231, 63.087,  
33 63.172, and 752.015, F.S.; conforming provisions and  
34 cross-references to changes made by the act; providing  
35 an effective date.

36  
37 Be It Enacted by the Legislature of the State of Florida:

38  
39 Section 1. Subsection (45) of section 39.01, Florida  
40 Statutes, is amended to read:

41 39.01 Definitions.—When used in this chapter, unless the  
42 context otherwise requires:

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

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

48 39.509 Visitation rights of grandparents and great-  
49 grandparents ~~Grandparents rights~~.—Notwithstanding any other  
50 ~~provision of~~ law, a maternal or paternal grandparent or great-  
51 grandparent, as well as a step-grandparent or step-great-  
52 grandparent, ~~stepgrandparent~~ is entitled to reasonable  
53 visitation with his or her grandchild or great-grandchild who  
54 has been adjudicated a dependent child and taken from the  
55 physical custody of the parent unless the court finds that such  
56 visitation is not in the best interest of the child or that such  
57 visitation would interfere with the goals of the case plan.  
58 Reasonable visitation may be unsupervised and, where appropriate

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59 and feasible, may be frequent and continuing. ~~An~~ Any order for  
60 visitation or other contact must conform to ~~the provisions of~~ s.  
61 39.0139.

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

74 (2) A grandparent or great-grandparent entitled to  
75 visitation pursuant to this section may ~~shall~~ not be restricted  
76 from appropriate displays of affection to the child, such as  
77 appropriately hugging or kissing his or her grandchild or great-  
78 grandchild. Gifts, cards, and letters from the grandparent or  
79 great-grandparent and other family members may ~~shall~~ not be  
80 denied to a child who has been adjudicated a dependent child.

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

87 (4) When the child has been returned to the physical

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88 custody of his or her parent, the visitation rights granted  
89 pursuant to this section ~~shall~~ terminate.

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

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

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

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

104 2. Section ~~s.~~ 794.011, relating to sexual battery;

105 3. Section ~~s.~~ 798.02, relating to lewd and lascivious  
106 behavior;

107 4. Chapter 800, relating to lewdness and indecent exposure;

108 5. Section ~~s.~~ 826.04, relating to incest; or

109 6. Chapter 827, relating to the abuse of children.

110 (b) The designation by a court as a sexual predator as  
111 defined in s. 775.21 or a substantially similar designation  
112 under laws of another jurisdiction.

113 (c) A report of abuse, abandonment, or neglect under ss.  
114 415.101-415.113 or this chapter and the outcome of the  
115 investigation concerning such report.

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

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117 39.801, Florida Statutes, is amended to read:

118 39.801 Procedures and jurisdiction; notice; service of  
119 process.-

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

123 (a) Notice of the date, time, and place of the advisory  
124 hearing for the petition to terminate parental rights and a copy  
125 of the petition must be personally served upon the following  
126 persons, specifically notifying them that a petition has been  
127 filed:

128 1. The parents of the child.

129 2. The legal custodians of the child.

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

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

134 5. Any grandparent or great-grandparent entitled to  
135 priority for adoption under s. 63.0425.

136 6. Any prospective parent who has been identified under s.  
137 39.503 or s. 39.803.

138 7. The guardian ad litem for the child or the  
139 representative of the guardian ad litem program, if the program  
140 has been appointed.

141

142 The document containing the notice to respond or appear must  
143 contain, in type at least as large as the type in the balance of  
144 the document, the following or substantially similar language:

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146 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING  
147 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF  
148 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND  
149 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE  
150 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS  
151 NOTICE."

152 Section 4. Section 63.0425, Florida Statutes, is amended to  
153 read:

154 63.0425 Grandparent's or great-grandparent's right to  
155 notice.-

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

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

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

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

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

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

171 752.011 Petition for grandparent visitation of a minor  
172 child.-A grandparent of a minor child whose parents are  
173 deceased, missing, or in a permanent vegetative state, or whose  
174 one parent is deceased, missing, or in a permanent vegetative

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175 state and whose other parent has been convicted of a felony or  
176 an offense of violence, may petition the court for court-ordered  
177 visitation with the grandchild under this section.

178 (1) Upon the filing of a petition by a grandparent for  
179 visitation, the court shall hold a preliminary hearing to  
180 determine whether the petitioner has made a prima facie showing  
181 of parental unfitness or danger of significant harm to the minor  
182 child. Absent such a showing, the court shall dismiss the  
183 petition and shall award reasonable attorney fees and costs to  
184 be paid by the petitioner to the respondent.

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

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

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

202 (a) The love, affection, and other emotional ties existing  
203 between the minor child and the grandparent, including those

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204 resulting from the relationship that had been previously allowed  
205 by the child's parent.

206 (b) The length and quality of the previous relationship  
207 between the minor child and the grandparent, including the  
208 extent to which the grandparent was involved in providing  
209 regular care and support for the child.

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

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

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

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

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

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

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

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

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

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233       (1) A written testamentary statement by the deceased parent  
234 regarding visitation with the grandparent. The absence of a  
235 testamentary statement is not deemed to provide evidence that  
236 the deceased parent would have objected to the requested  
237 visitation.

238       (m) Other factors that the court considers necessary in  
239 making its determination.

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

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

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

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

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

259       (e) Whether the requested visitation would expose the minor  
260 child to conduct, moral standards, experiences, or other factors  
261 that are inconsistent with influences provided by the parent.

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

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

267       (h) The psychological toll of visitation disputes on the  
268 minor child.

269       (i) Other factors that the court considers necessary in  
270 making its determination.

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

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

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

283       (9) An original action requesting visitation under this  
284 section may be filed by a grandparent only once during any 2-  
285 year period, except on good cause shown that the minor child is  
286 suffering, or may suffer, demonstrable significant mental or  
287 emotional harm caused by a parental decision to deny visitation  
288 between a minor child and the grandparent, which was not known  
289 to the grandparent at the time of filing an earlier action.

290       (10) This section does not provide for grandparent

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291 visitation with a minor child placed for adoption under chapter  
 292 63 except as provided in s. 752.071 with respect to adoption by  
 293 a stepparent or close relative.

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

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

298 Section 8. Section 752.071, Florida Statutes, is created to  
 299 read:

300 752.071 Effect of adoption by stepparent or close  
 301 relative.—After the adoption of a minor child by a stepparent or  
 302 close relative, the stepparent or close relative may petition  
 303 the court to terminate a court order granting grandparent  
 304 visitation under this chapter which was entered before the  
 305 adoption. The court may terminate the order unless the  
 306 grandparent is able to show that the criteria of s. 752.011  
 307 authorizing the visitation continue to be satisfied.

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

310 39.6221 Permanent guardianship of a dependent child.—

311 (2) In its written order establishing a permanent  
 312 guardianship, the court shall do all of the following:

313 (a) List the circumstances that make ~~or reasons why~~ the  
 314 child's parents unfit ~~are not fit~~ to care for the child and make  
 315 ~~why~~ reunification impossible, referencing is not possible by  
 316 ~~referring to~~ specific findings of fact made in its order  
 317 adjudicating the child dependent or by making separate findings  
 318 of fact. †

319 (b) State the reasons why establishment of a permanent

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320 guardianship is being ordered ~~established~~ instead of adoption.†

321 (c) Specify the frequency and nature of visitation or  
322 contact between the child and his or her parents.†

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

326 (e) Specify the frequency and nature of visitation or  
327 contact between the child and his or her siblings.† ~~and~~

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

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

333 39.6231 Permanent placement with a fit and willing  
334 relative.-

335 (3) In its written order placing the child with a fit and  
336 willing relative, the court shall do all of the following:

337 (a) List the circumstances that make ~~or reasons why~~  
338 reunification impossible, ~~referencing is not possible by~~  
339 ~~referring to~~ specific findings of fact made in its order  
340 adjudicating the child dependent or ~~by~~ making separate findings  
341 of fact.†

342 (b) State the reasons why permanent placement with a fit  
343 and willing relative is being ordered ~~established~~ instead of  
344 adoption.†

345 (c) Specify the frequency and nature of visitation or  
346 contact between the child and his or her parents.†

347 (d) Specify the frequency and nature of visitation or  
348 contact between the child and his or her grandparents or great-

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349 grandparents, under s. 39.509.

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

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

355 Section 11. Paragraph (e) of subsection (4) of section  
356 63.087, Florida Statutes, is amended to read:

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

359 (4) PETITION.—

360 (e) The petition must include:

361 1. The minor's name, gender, date of birth, and place of  
362 birth. The petition must contain all names by which the minor is  
363 or has been known, excluding the minor's prospective adoptive  
364 name but including the minor's legal name at the time of the  
365 filing of the petition. In the case of an infant child whose  
366 adoptive name appears on the original birth certificate, the  
367 adoptive name may ~~shall~~ not be included in the petition or, ~~nor~~  
368 ~~shall it be included~~ elsewhere in the termination of parental  
369 rights proceeding.

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

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

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

377 5. The name, address, and telephone number of the division

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378 of the circuit court in which the petition is to be filed.

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

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

384 63.172 Effect of judgment of adoption.—

385 (2) If one or both parents of a child die without the  
386 relationship of parent and child having been previously  
387 terminated and a spouse of the living parent or a close relative  
388 of the child thereafter adopts the child, the child's right of  
389 inheritance from or through the deceased parent is unaffected by  
390 the adoption and, unless the court orders otherwise, the  
391 adoption does ~~will~~ not terminate any grandparental or great-  
392 grandparental rights delineated under chapter 752. For purposes  
393 of this subsection, a close relative of a child is the child's  
394 brother, sister, grandparent, great-grandparent, aunt, or uncle.

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

397 752.015 Mediation of visitation disputes.—It is ~~shall be~~  
398 the public policy of this state that families resolve  
399 differences over grandparent visitation within the family. It is  
400 ~~shall be~~ the further public policy of this state that, when  
401 families are unable to resolve differences relating to  
402 grandparent visitation, that ~~that~~ the family participate in any  
403 formal or informal mediation services that may be available. If  
404 ~~When~~ families are unable to resolve differences relating to  
405 grandparent visitation and a petition is filed pursuant to s.  
406 752.011 ~~s. 752.01~~, the court shall, if such services are

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407 available in the circuit, refer the case to family mediation in  
408 accordance with the Florida Family Law Rules of Procedure ~~rules~~  
409 ~~promulgated by the Supreme Court.~~

410 Section 14. This act shall take effect July 1, 2015.