

By the Committee on Children, Families, and Elder Affairs; and
Senator Brandes

586-03123-20

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1 A bill to be entitled
2 An act relating to grandparent visitation rights;
3 amending s. 752.011, F.S.; authorizing a grandparent
4 of a minor child whose parent was the victim of a
5 murder to petition the court for court-ordered
6 visitation with the child under certain circumstances;
7 removing the requirement that a grandparent
8 petitioning the court for court-ordered visitation
9 with a minor child make a prima facie showing of
10 significant harm to the child in a preliminary hearing
11 on such petition and instead requiring the grandparent
12 to make a prima facie showing of other specified
13 conditions; conforming provisions to changes made by
14 the act; providing an effective date.

15
16 WHEREAS, Florida law permits case-by-case judicial review
17 of grandparent visitation in very limited circumstances under s.
18 752.011, Florida Statutes; however, it does not address review
19 of grandparent visitation in criminal cases, such as when one
20 parent is deceased under violent or criminal circumstances and
21 the surviving parent forbids contact between the deceased's
22 parents and their grandchildren, and

23 WHEREAS, the right to petition courts is no guarantee of
24 access or visitation; rather, it simply allows courts to review
25 the case and determine what is both safe and in the best
26 interest of the child involved, and

27 WHEREAS, in the best interest of a child who is already
28 dealing with complex grief at the loss of a parent and, further,
29 in the interest of justice under circumstances where criminal

586-03123-20

20201886c1

30 proceedings are ongoing or anticipated, courts should have the
31 authority to review grandparent petitions for visitation, and

32 WHEREAS, giving courts the authority to review grandparent
33 petitions for visitation would prevent the separation of
34 children and families while the justice system reviews cases,
35 and could further disincentivize or deter criminal action in
36 divorce and custody cases, NOW, THEREFORE,

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

39
40 Section 1. Section 752.011, Florida Statutes, is amended to
41 read:

42 752.011 Petition for grandparent visitation with a minor
43 child.—

44 (1) A grandparent of a minor child may petition the court
45 for court-ordered visitation with the minor child if:

46 (a) The ~~whose~~ parents of the minor child are deceased,
47 missing, or in a persistent vegetative state; or

48 (b) ~~whose~~ One parent of the minor child is deceased,
49 missing, or in a persistent vegetative state and the ~~whose~~ other
50 parent has:

51 1. Been convicted of a felony or an offense of violence
52 evincing behavior that poses a substantial threat of harm to the
53 minor child's health or welfare;

54 2. Been identified by the state attorney as a person of
55 interest or an unindicted co-conspirator in an open homicide
56 investigation relating to the deceased parent's murder; or

57 3. Willingly allowed the minor child to be supervised by an
58 individual identified by the state attorney as a person of

586-03123-20

20201886c1

59 interest or an unindicted co-conspirator in an open homicide
60 investigation relating to the deceased parent's murder, ~~may~~
61 ~~petition the court for court-ordered visitation with the~~
62 ~~grandchild under this section.~~

63 (2) ~~(1)~~ Upon the filing of a petition by a grandparent for
64 visitation, the court shall hold a preliminary hearing to
65 determine whether the petitioner has made a prima facie showing
66 of one of the conditions in subsection (1) ~~parental unfitness or~~
67 ~~significant harm to the child.~~ Absent such a showing, the court
68 shall dismiss the petition and may award reasonable attorney
69 fees and costs to be paid by the petitioner to the respondent.

70 (3) ~~(2)~~ If the court finds that there is prima facie
71 evidence of one of the conditions in subsection (1) and that a
72 parent is unfit ~~or that there is significant harm to the child,~~
73 the court may appoint a guardian ad litem and shall refer the
74 matter to family mediation as provided in s. 752.015. If family
75 mediation does not successfully resolve the issue of grandparent
76 visitation, the court shall proceed with a final hearing.

77 (4) ~~(3)~~ After conducting a final hearing on the issue of
78 visitation, the court may award reasonable visitation to the
79 grandparent with respect to the minor child if the court finds
80 by clear and convincing evidence that a parent is unfit or that
81 there is significant harm to the child, that visitation is in
82 the best interest of the minor child, and that the visitation
83 will not materially harm the parent-child relationship.

84 (5) ~~(4)~~ In assessing the best interest of the child under
85 subsection (4) ~~(3)~~, the court shall consider the totality of the
86 circumstances affecting the mental and emotional well-being of
87 the minor child, including:

586-03123-20

20201886c1

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

92 (b) The length and quality of the previous relationship
93 between the minor child and the grandparent, including the
94 extent to which the grandparent was involved in providing
95 regular care and support for the child.

96 (c) Whether the grandparent established ongoing personal
97 contact with the minor child before the death of the parent,
98 before the onset of the parent's persistent vegetative state, or
99 before the parent was missing.

100 (d) The reasons cited by the respondent parent in ending
101 contact or visitation between the minor child and the
102 grandparent.

103 (e) Whether there has been significant and demonstrable
104 mental or emotional harm to the minor child as a result of the
105 disruption in the family unit, whether the child derived support
106 and stability from the grandparent, and whether the continuation
107 of such support and stability is likely to prevent further harm.

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

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

112 (h) The present mental, physical, and emotional health of
113 the grandparent.

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

116 (j) The result of any psychological evaluation of the minor

586-03123-20

20201886c1

117 child.

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

120 (l) A written testamentary statement by the deceased parent
121 regarding visitation with the grandparent. The absence of a
122 testamentary statement is not deemed to provide evidence that
123 the deceased or missing parent or parent in a persistent
124 vegetative state would have objected to the requested
125 visitation.

126 (m) Other factors that the court considers necessary to
127 making its determination.

128 (6)~~(5)~~ In assessing material harm to the parent-child
129 relationship under subsection (4) ~~(3)~~, the court shall consider
130 the totality of the circumstances affecting the parent-child
131 relationship, including:

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

135 (b) Whether visitation would materially interfere with or
136 compromise parental authority.

137 (c) Whether visitation can be arranged in a manner that
138 does not materially detract from the parent-child relationship,
139 including the quantity of time available for enjoyment of the
140 parent-child relationship and any other consideration related to
141 disruption of the schedule and routine of the parent and the
142 minor child.

143 (d) Whether visitation is being sought for the primary
144 purpose of continuing or establishing a relationship with the
145 minor child with the intent that the child benefit from the

586-03123-20

20201886c1

146 relationship.

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

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

152 (g) The reasons cited by the parent in ending contact or
153 visitation between the minor child and the grandparent which was
154 previously allowed by the parent.

155 (h) The psychological toll of visitation disputes on the
156 minor child.

157 (i) Other factors that the court considers necessary in
158 making its determination.

159 (7)~~(6)~~ Part II of chapter 61 applies to actions brought
160 under this section.

161 (8)~~(7)~~ If actions under this section and s. 61.13 are
162 pending concurrently, the courts are strongly encouraged to
163 consolidate the actions in order to minimize the burden of
164 litigation on the minor child and the other parties.

165 (9)~~(8)~~ An order for grandparent visitation may be modified
166 upon a showing by the person petitioning for modification that a
167 substantial change in circumstances has occurred and that
168 modification of visitation is in the best interest of the minor
169 child.

170 (10)~~(9)~~ An original action requesting visitation under this
171 section may be filed by a grandparent only once during any 2-
172 year period, except on good cause shown that the minor child is
173 suffering, or may suffer, significant and demonstrable mental or
174 emotional harm caused by a parental decision to deny visitation

586-03123-20

20201886c1

175 between a minor child and the grandparent, which was not known
176 to the grandparent at the time of filing an earlier action.

177 (11)~~(10)~~ This section does not provide for grandparent
178 visitation with a minor child placed for adoption under chapter
179 63 except as provided in s. 752.071 with respect to adoption by
180 a stepparent or close relative.

181 (12)~~(11)~~ Venue shall be in the county where the minor child
182 primarily resides, unless venue is otherwise governed by chapter
183 39, chapter 61, or chapter 63.

184 Section 2. This act shall take effect July 1, 2020.