

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 Children, Families, and Elder Affairs

BILL: CS/SB 1408

INTRODUCER: Judiciary Committee and Senator Perry and others

SUBJECT: Grandparent Visitation Rights

DATE: February 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Moody</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1408 amends Florida’s “Grandparental Visitation Rights” law to include an additional situation where a grandparent may petition for reasonable visitation with his or her grandchild.

Specifically, the bill creates a presumption that a court may award a grandparent reasonable visitation with a grandchild in cases where the court has found that one parent has been held criminally or civilly liable for the death of the other parent of the grandchild. This presumption would only apply to the grandparents who are the parents of the grandchild’s deceased parent. A court may decline to grant these visitation rights if visitation is not in the best interest of the child.

The bill takes effect July 1, 2022.

II. Present Situation:

Grandparent Visitation Rights

While parental rights have a well-founded history in U.S. legal system, grandparent’s rights are, in comparison, a more recent development. Under the common law, grandparents had no standard legal right to visit their grandchildren. Grandparent visitation rights began to gain

prominence in the 1960s, and today every state in the union has some form of grandparent visitation standard.¹

Colorado, for example, allows grandparents to request visitation rights in child custody cases or cases concerning the allocation of parental responsibilities, including those cases where a parent has become deceased.² Connecticut authorizes visitation if the grandparent can prove by clear and convincing evidence that a parent-like relationship exists between the grandparent and the minor and that denial of such visitation would cause real and significant harm.³ Georgia authorizes a court to award visitation rights in to any grandparent who is the parent of a deceased, incapacitated, or incarcerated⁴ parent and specifically provides that parental objection to such visitation is merely given deference and is not conclusive to the court's decision.⁵

Similar to the national trend with grandparent's visitation rights, Florida has had a long history with grandparent visitation legislation. In 1978, the Legislature adopted grandparent visitation legislation allowing courts to award grandparent visitation rights in dissolution of marriage proceedings under s. 61.1306(1), F.S. (1977).⁶ This provision, under ch. 61, F.S., was eventually repealed after courts ruled that grandparents lacked standing to petition in such dissolution of marriage cases.⁷

In 1984, the Legislature enacted ch. 752, F.S., titled "Grandparents Visitation Rights," granting grandparents standing to petition the court for visitation in certain limited situations.⁸ In 1993, ch. 752, F.S., was further amended to grant grandparents standing to file an action for visitation

¹ Sarah Elizabeth Culley, *Troxel v. Granville and its Effect on the Future of Grandparent Visitation Statutes; Legislative Reform*, JOURNAL OF LEGISLATION, Vol. 27:1, at 238, available at <http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1151&context=jleg> (last visited Feb. 3, 2022).

² Colo. Rev. Stat. Ann. s. 19-1-117. This sections specifically defines "case concerning the allocation of parental responsibilities with respect to a child" to include situations where: a parent has died, the marriage of the child's parents has been declared invalid or dissolved by a court, or legal custody or parental responsibility has been given or allocated to a party other than the child's parent.

³ Conn. Gen. Stat. Ann. s. 46b-59. The Supreme Court of Connecticut has held "When an otherwise fit parent denies his or her child access to an individual who has a parent-like relationship with the child and the parent's decision regarding visitation will cause the child to suffer real and substantial emotional harm, the State has a compelling interest in protecting the child's own complementary interest in preserving parent-like relationships that serve the child's welfare by avoiding the serious and immediate harm to the child that would result from the parent's decision to terminate or impair the child's relationship with the third party." *Boisvert v. Gavis*, 210 A.3d 1, 15 (Conn. 2019)(citing to that child *Roth v. Weston*, 789 A.2d 431, 445 (Conn. 2002)).

⁴ Ga. Code Ann. s. 19-7-3(d). The Supreme Court of Georgia has ruled, however, that this provision still requires proof by clear and convincing evidence of actual or threatened harm to the child in order to override an otherwise fit parents objection. *Patten v. Ardis*, 816 S.E.2d 633, 637 (Ga. 2018).

⁵ Ga. Code Ann. s. 19-7-3(c)(3) provides that "a parent's decision regarding family member visitation shall be given deference by the court, the parent's decision shall not be conclusive when failure to provide family member contact would result in emotional harm to the child. A court may presume that a child who is denied any contact with his or her family member or who is not provided some minimal opportunity for contact with his or her family member when there is a preexisting relationship between the child and such family member may suffer emotional injury that is harmful to such child's health. Such presumption shall be a rebuttable presumption."

⁶ Section 61.1306(1), F.S. (1977).

⁷ *Shuler v. Shuler*, 371 So. 2d 588, 590 (Fla. 1st DCA 1979).

⁸ Specifically, s. 752.01(1) (a)-(c), F.S. (1993) allowed visitation to be awarded if the court determined it to be in the best interests of the child and one of the following circumstances existed: (1) one or both of the child's parents were deceased, (2) the parents are divorced, (3) one parent had deserted the child, or (4) the child was born out of wedlock.

rights in situations where the family was still intact, but one or both of the parents “used their parental authority to prohibit a relationship between the minor child and the grandparents.”⁹ The constitutionality of this new subsection was specifically addressed in the 1996 case *Beagle v. Beagle*.¹⁰ In *Beagle*, the Florida Supreme Court ruled that this subsection was facially unconstitutional and did not satisfy *strict scrutiny*, holding that under Florida’s *privacy clause*¹¹ “the State may not intrude upon the parents’ fundamental right to raise their children except in cases where the child is threatened with harm.”¹²

In 2000, the Florida Supreme Court addressed the constitutionality of a 1997 amendment to ch. 61, F.S., which gave a grandparent the right to intervene in a custody dispute involving their grandchild if the grandparent could prove (1) that the grandchild was residing with them and (2) that the grandchild had a stable relationship with them. The court ruled that this amended section was unconstitutional because it allowed courts to make custody decisions based solely on the best interest of the child and placed the legal interests of the grandparent as equal to those of the parents.¹³ Finally, the court again addressed grandparent’s rights in 2004, invalidating another amendment to ch. 61, F.S., which authorized courts in dissolution of marriage proceedings to award a grandparent reasonable visitation with their grandchild if it was in the child’s best interest.¹⁴

Currently, statutes relating to grandparents rights to visitation and custody are contained in chs. 752 and 39, F.S. As previously discussed, ch. 61, F.S., has had various different grandparent rights provisions, but each has been repealed by the Legislature as a result of litigation. Chapter 752, F.S., titled “Grandparental Visitation Rights” allows for visitation to be awarded when a minor child’s parents are deceased, missing, or in a permanent vegetative state.¹⁵ If only one parent is deceased, missing or in a permanent vegetative state, the other parent must have been convicted of a felony or a violent offense in order for a grandparent to be able to petition for visitation. The court must also find the grandparent has made a *prima facie* showing of parental unfitness or danger of significant harm to the child, and if not, must dismiss the petition.

Dependency Proceedings

A dependent child is a child found by a court to have been abandoned, abused, or neglected by the child’s parents or other custodians.¹⁶ The Department of Children and Families (DCF) is responsible for providing care, safety and protection to the dependent children in its care. One of the most essential functions of the DCF is to achieve *permanency*, that is, to find a permanent

⁹ Section 752.01(1)(e), F.S. (1995).

¹⁰ 678 So. 2d 1271, 1276 (Fla. 1996).

¹¹ Specifically, Florida’s right to privacy provision states: “Every natural person has the right to be let alone and free from governmental intrusion into the persons private life except as otherwise provided herein.” FLA. CONST. art. I, s. 23.

¹² *Beagle*, 678 So. 2d at 1276.

¹³ *Richardson v. Richardson*, 766 So. 2d 1036, 1039 (Fla. 2000).

¹⁴ *Sullivan v. Sapp*, 866 So. 2d 28 (Fla. 2004). Specifically, s. 61.13(2)(b)2.c., F.S. (2001), 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. This section does not require that grandparents be made parties or given notice of dissolution pleadings or proceedings, nor do grandparents have legal standing as contestants.”

¹⁵ Section 752.011, F.S.

¹⁶ Sections 39.01(14)(a)-(f) and 984.03(12)(a)-(f), F.S. Additionally, dependent children may be those who are surrendered, voluntarily placed with adoption agencies, have no legal guardian, or are at a substantial risk of imminent abuse or neglect by the parent or parents of the custodian.

stable environment in which to place the child. Florida courts have a large role in supervising a child's case through the dependency and, when appropriate, the adoption process. Section 39.812(3), F.S., provides [t]he court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted." Additionally, courts are required to enter any orders the court deems necessary and suitable to promote and protect the best interests of a child to be adopted.¹⁷

The Legislative Intent of Part IV of ch. 39, F.S., titled "Taking Children into Custody and Shelter Hearings" specifically provides that:

Every child in out-of-home care be afforded the advantages that can be gained from the use of family finding to establish caring and long-term or permanent connections and relationships for children and youth in out-of-home care, as well as to establish a long-term emotional support network with family members and other adults who may not be able to take the child into their home but who want to stay connected with the child.¹⁸

Consistent with the above legislative intent, grandparents often play an important role in the dependency system. Nationwide, 2.7 million grandparents are raising grandchildren and nearly half of all children living with their grandparents are under the age of 6.¹⁹ When a child has been adjudicated dependent and is removed from the physical custody of his or her parents, the child's grandparents have the right to unsupervised, reasonable visitation, unless it is not in the best interest of the child or would interfere with the goals of the case plan.²⁰ These rights do not cease even if the court enters an order for termination of the child's parental rights. Before the court may terminate parental rights, notice must be provided to certain persons, including any grandparent entitled to priority for purposes of adoption.

III. Effect of Proposed Changes:

The bill amends ch. 752, F.S., titled "Grandparental Visitation Rights," to allow a grandparent to petition for reasonable visitation with his or her grandchild in a narrow set of circumstances.

The bill creates a presumption that a court may award a grandparent reasonable visitation with a grandchild in cases where the court has found that one parent has been held criminally or civilly liable for the death of the other parent of the grandchild. This presumption for visitation rights applies only to a grandparent who is a parent of the grandchild's deceased parent. This presumption may be overcome if the court finds that granting such visitation is not in the best interests of the child.

The bill applies to both biological grandparents, as well as step-grandparents.

¹⁷ Section 63.022(4)(k), F.S.

¹⁸ Section 39.04015(1)(e), F.S.

¹⁹ Children Now, *A Focus on Grandparents, The 2020 Census is Underway*, (Apr. 27, 2020) available at <https://www.childrennow.org/blog/2020-census/> (last visited Feb. 3, 2022).

²⁰ Section 39.509, F.S.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The United States Supreme Court has recognized the fundamental liberty interests involved in the “care, custody and management” of their children.²¹ The Florida Supreme Court has likewise recognized that decisions related to parenting are fundamental rights within the Fourteenth Amendment of the United States Constitution and the liberty interests under the privacy clause of the State Constitution.²² Any statute that infringes on these rights is subject to the highest level of judicial scrutiny, and the government must prove that the statute in question serves a compelling government interest through the least intrusive means necessary.

As discussed in the Current Situation section, grandparent visitation legislation has frequently been litigated and invalidated in this state. Some legislative efforts have been scrutinized by the courts for interfering with the fundamental rights of parents or for forcing courts to replace parental decisions with their own judgement. As discussed in the Florida Supreme Court’s 1996 *Beagle* decision, the issue with much of the previous legislation concerned the fact that the legislation allowed for the courts to intervene even when there was no showing of harm to a child.

In comparison to some previous legislative efforts, however, the bill is much more narrowly tailored, and potentially distinguishable from the invalidated statutes.

²¹ *Troxel*, 530 U.S. 57, 65 (2000).

²² *See* s. 61.1306(1), F.S. (1977) and *Shuler*, 371 So.2d at 591; and accompanying text.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 752.011, Florida Statutes.

IX. Additional Information:A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on January 24, 2022**

The CS revises the bill to be consistent with the House companion. The original Senate bill authorized additional grandparent rights in the context of a dependency proceeding. The CS authorizes a grandparent to be granted visitation with a grandchild in a narrow set of circumstances, but the grandchild need not be a subject of a dependency proceeding.

B. Amendments:

None.