

Committee Substitute for House Bill No. 1111

An act relating to termination of parental rights; amending s. 39.464, F.S.; providing additional grounds for the termination of parental rights; amending s. 39.469, F.S.; revising language with respect to the powers of disposition of the court concerning termination of parental rights; amending s. 39.471, F.S.; providing that certain orders are admissible in evidence in subsequent adoption proceedings relating to the child; amending s. 61.13, F.S.; including reference to one of the grounds for termination of parental rights as a rebuttable presumption of detriment to the child when the court is determining matters relating to the custody of a minor child; providing that termination of parental rights does not affect grandparents' rights; providing an effective date.

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

Section 1. Subsection (1) of section 39.464, Florida Statutes, is amended to read:

39.464 Grounds for termination of parental rights.—

(1) The department, the guardian ad litem, a licensed child-placing agency, or any person who has knowledge of the facts alleged or who is informed of said facts and believes that they are true, may petition for the termination of parental rights under any of the following circumstances:

(a) When the parent or parents voluntarily executed a written surrender of the child and consented to the entry of an order giving custody of the child to the department or to a licensed child-placing agency for subsequent adoption and the department or licensed child-placing agency is willing to accept custody of the child.

1. The surrender document must be executed before two witnesses and a notary public or other person authorized to take acknowledgments.

2. The surrender and consent may be withdrawn after acceptance by the department or licensed child-placing agency only after a finding by the court that the surrender and consent were obtained by fraud or duress.

(b) When the identity or location of the parent or parents is unknown and cannot be ascertained by diligent search as provided in s. 39.4625 within 60 days.

(c) When the parent or parents engaged in conduct toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life or well-being of the child irrespective of the provision of services. Provision of services is evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency.

(d) When the parent of a child is incarcerated in a state or federal correctional institution and:

1. The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years;

2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this paragraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; and

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

(e)(d) When the parent or parents engaged in egregious conduct that endangers the life, health, or safety of the child or the child's sibling or had the opportunity and capability to prevent egregious conduct that threatened the life, health, or safety of the child or the child's sibling and knowingly failed to do so.

1. As used in this subsection, the term "sibling" means another child who resides with or is cared for by the parent or parents regardless of whether the child is related legally or by consanguinity.

2. As used in this subsection, the term "egregious abuse" means conduct of the parent or parents that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious abuse may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.

(f)(e) A petition for termination of parental rights may also be filed when a child has been adjudicated dependent, a case plan has been filed with the court, and the child continues to be abused, neglected, or abandoned by the parents. In this case, the failure of the parents to substantially comply for a period of 12 months after an adjudication of the child as a dependent child constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due either to the lack of financial resources of the parents or to the failure of the department to make reasonable efforts to reunify the family. Such 12-month period may begin to run only after the entry of a disposition order placing the custody of the child with the department or a person other than the parent and the

subsequent filing with the court of a case plan with a goal of reunification with the parent.

Section 2. Section 39.469, Florida Statutes, is amended to read:

39.469 Powers of disposition; order of disposition.—

(1) If the court finds that the grounds for termination of parental rights have not been established by clear and convincing evidence, the court shall:

(a) If grounds for dependency have been established, adjudicate or readjudicate the child dependent and:

1. Enter an order placing or continuing the child in foster care under a case plan; or

2. Enter an order returning the child to the parent or parents. The court shall retain jurisdiction over a child returned to the parents or legal guardians for a period of 6 months, but, at that time, based on a report of the social service agency and any other relevant factors, the court shall make a determination as to whether its jurisdiction shall continue or be terminated.

(b) If grounds for dependency have not been established, dismiss the petition.

(2) If the child is in foster-care custody of the department and the court finds that the grounds for termination of parental rights have been established by clear and convincing evidence, the court shall, by order, place the child in the custody of the department for the purpose of adoption or place the child in the custody of a licensed child-placing agency for the purpose of adoption.

(3) If the child is in the custody of one parent and the court finds that the grounds for termination of parental rights have been established for the remaining parent by clear and convincing evidence, the court shall enter an order terminating the rights of the parent for whom the grounds have been established and placing the child in the custody of the remaining parent, granting that parent sole parental responsibility for the child.

(4) If the child is neither in the custody of the Department of Children and Family Services nor in the custody of a parent and the court finds that the grounds for termination of parental rights have been established for either or both parents, the court shall enter an order terminating parental rights for the parent or parents for whom the grounds for termination have been established and placing the child with an appropriate custodian. If the parental rights of both parents have been terminated, or if the parental rights of only one parent have been terminated and the court makes specific findings based on evidence presented that placement with the remaining parent is likely to be harmful to the child, the court may order that the child be placed with a custodian other than the department after hearing evidence of the suitability of such intended placement. Suitability of the intended placement includes the fitness of the intended placement, with primary consideration being given to the welfare of the child; the fitness and capabilities of the proposed custodian to function as the primary caretaker for a

particular child; and the compatibility of the child with the home in which the child is intended to be placed. If the court orders that a child be placed with a custodian under this subsection, the court shall appoint such custodian as the guardian for the child as provided in s. 744.3021. The court may modify the order placing the child in the custody of the custodian and revoke the guardianship established under s. 744.3021 if the court subsequently finds that a party to the proceeding other than a parent whose rights have been terminated has shown a material change in circumstances which causes the placement to be no longer in the best interest of the child.

(5)(3) If the court terminates parental rights, the court shall enter a written order of disposition briefly stating the facts upon which its decision to terminate the parental rights is made. An order of termination of parental rights, whether based on parental consent or after notice served as prescribed in this part, permanently deprives the parents or legal guardian of any right to the child.

(6)(4) The parental rights of one parent may be severed without severing the parental rights of the other parent only under the following circumstances:

- (a) If ~~Where~~ the child has only one surviving parent;
- (b) If ~~Where~~ the identity of a prospective parent has been established as unknown after sworn testimony;
- (c) If ~~Where~~ the parent whose rights are being terminated became a parent through a single-parent adoption; ~~or~~
- (d) If ~~Where~~ the protection of the child demands termination of the rights of a single parent; or;
- (e) If the parent whose rights are being terminated meets the criteria specified in s. 39.464(1)(d).

(7)(5) If the court terminates parental rights, it may order that the parents or relatives of the parent whose rights are terminated be allowed to maintain some contact with the child pending adoption if the best interests of the child support this continued contact. If the court orders such continued contact, the nature and frequency of the contact must be set forth in written order and may be reviewed upon motion of any party, including a prospective adoptive parent if a child has been placed for adoption. If a child is placed for adoption, the nature and frequency of the contact must be reviewed by the court at the time the child is adopted.

(8)(6) If the court terminates parental rights, it shall, in its order of disposition, provide for a hearing, to be scheduled no later than 30 days after the date of disposition, in which the department or the licensed child-placing agency shall provide to the court a plan for permanency for the child. Thereafter, until the adoption of the child is finalized or the child reaches the age of 18 years, whichever occurs first, the court shall hold hearings at 6-month intervals to review the progress being made toward permanency for the child.

Section 3. Subsection (6) of section 39.471, Florida Statutes, 1996 Supplement, is amended to read:

39.471 Oaths, records, and confidential information.—

(6) No court record of proceedings under this part shall be admissible in evidence in any other civil or criminal proceeding, except that:

(a) Orders terminating the rights of a parent ~~are and committing the child to a licensed child-placing agency or the department for adoption shall~~ be admissible in evidence in subsequent adoption proceedings relating to the child.

(b) Records of proceedings under this part forming a part of the record on appeal shall be used in the appellate court in the manner hereinafter provided.

(c) Records necessary therefor shall be admissible in evidence in any case in which a person is being tried upon a charge of having committed perjury.

Section 4. Subsection (2) of section 61.13, Florida Statutes, 1996 Supplement, is amended to read:

61.13 Custody and support of children; visitation rights; power of court in making orders.—

(2)(a) The court shall have jurisdiction to determine custody, notwithstanding that the child is not physically present in this state at the time of filing any proceeding under this chapter, if it appears to the court that the child was removed from this state for the primary purpose of removing the child from the jurisdiction of the court in an attempt to avoid a determination or modification of custody.

(b)1. The court shall determine all matters relating to custody of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction Act. It is the public policy of this state to assure that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. After considering all relevant facts, the father of the child shall be given the same consideration as the mother in determining the primary residence of a child irrespective of the age or sex of the child.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. The court shall consider evidence of spousal or child abuse as evidence of detriment to the child. The court shall consider evidence that a parent has been convicted of a felony of the second degree or higher involving domestic violence as defined in s. 741.28 and chapter 775, or meets the criteria of s. 39.464(1)(d), as a rebuttable presumption of detriment to the child. If the presumption is not rebutted, shared parental responsibility, including visitation, residence of the child,

and decisions made regarding the child, ~~may shall~~ not be granted to the convicted parent. However, the convicted parent ~~is shall~~ not be relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for visitation as will best protect the child or abused spouse from further harm.

a. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include primary residence, education, medical and dental care, and any other responsibilities that ~~which~~ the court finds unique to a particular family.

b. The court shall order "sole parental responsibility, with or without visitation rights, to the other parent when it is in the best interests of" the minor child.

c. The court may award the grandparents visitation rights with ~~of~~ a minor child if it is in the child's best interest. Grandparents ~~shall~~ have legal standing to seek judicial enforcement of such an award. ~~Nothing in This section does not shall~~ require that grandparents be made parties or given notice of dissolution pleadings or proceedings, nor ~~do shall~~ grandparents have legal standing as "contestants" as defined in s. 61.1306. A ~~No~~ court may not shall order that a child be kept within the state or jurisdiction of the court solely for the purpose of permitting visitation by the grandparents.

3. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, ~~may shall~~ not be denied to a parent because the ~~such~~ parent is not the child's primary residential parent.

(c) The circuit court in the county in which either parent and the child reside or the circuit court in which the original award of custody was entered have jurisdiction to modify an award of child custody. The court may change the venue in accordance with s. 47.122.

Section 5. The termination of parental rights does not affect the rights of grandparents.

Section 6. This act shall effect October 1, 1997, and applies to any person incarcerated after October 1, 1997, who is sentenced to a term of incarceration which would qualify under the provisions of this act, as well as to any persons who are sentenced after that date.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.