

## Council Substitute for House Bill No. 77

An act relating to child visitation; creating s. 39.0139, F.S.; providing a short title; providing legislative findings and intent; creating a presumption; providing for a hearing; providing conditions for visitation or other contact; providing additional considerations for visitation or other contact; amending ss. 39.402, 39.506, 39.509, and 39.521, F.S.; subjecting specified visitation orders to s. 39.0139, F.S.; creating s. 753.01, F.S.; providing definitions; creating s. 753.02, F.S.; providing responsibilities for the Clearinghouse on Supervised Visitation; authorizing the clearinghouse to apply for grants and accept private contributions; creating s. 753.03, F.S.; providing for the development of standards; providing membership of an advisory board; providing for reports; creating s. 753.04, F.S.; providing interim standards for supervised visitation programs; creating s. 753.05, F.S.; providing for referrals related to child sexual abuse; requiring a supervised visitation program to agree to comply with specified standards; repealing ss. 753.001, 753.002, and 753.004, F.S., relating to the Florida Family Visitation Network; providing a directive to the Division of Statutory Revision; providing an effective date.

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

Section 1. Section 39.0139, Florida Statutes, is created to read:

39.0139 Visitation or other contact; restrictions.—

(1) SHORT TITLE.—This section may be cited as the “Keeping Children Safe Act.”

(2) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that:

1. For some children who are abused, abandoned, or neglected by a parent or other caregiver, abuse may include sexual abuse.

2. These same children are at risk of suffering from further harm during visitation or other contact.

3. Visitation or other contact with the child may be used to influence the child’s testimony.

(b) It is the intent of the Legislature to protect children and reduce the risk of further harm to children who have been sexually abused or exploited by a parent or other caregiver by placing additional requirements on judicial determinations related to visitation and other contact.

(3) PRESUMPTION OF DETRIMENT.—

(a) A rebuttable presumption of detriment to a child is created when a parent or caregiver:

1. Has been the subject of a report to the child abuse hotline alleging sexual abuse of any child as defined in s. 39.01;

2. Has been found guilty of, regardless of adjudication, or has entered a plea of guilty or nolo contendere to, charges under the following statutes or substantially similar statutes of other jurisdictions:

a. Section 787.04, relating to removing minors from the state or concealing minors contrary to court order;

b. Section 794.011, relating to sexual battery;

c. Section 798.02, relating to lewd and lascivious behavior;

d. Chapter 800, relating to lewdness and indecent exposure;

e. Section 826.04, relating to incest; or

f. Chapter 827, relating to the abuse of children; or

3. Has been determined by a court to be a sexual predator as defined in s. 775.21 or has received a substantially similar designation under laws of another jurisdiction.

(b) For purposes of this subsection, “substantially similar” has the same meaning as in s. 39.806(1)(d)2.

(4) HEARINGS.—A person who meets any of the criteria set forth in paragraph (3)(a) may visit or have other contact with a child only after a hearing and an order by the court that allows the visitation or other contact. At such a hearing:

(a) The court must appoint an attorney ad litem or a guardian ad litem for the child if one has not already been appointed. Any attorney ad litem or guardian ad litem appointed shall have special training in the dynamics of child sexual abuse.

(b) The court may receive and rely upon any relevant and material evidence submitted, including written and oral reports, to the extent of its probative value in its effort to determine the action to be taken with regard to the child, even if these reports and evidence may not be competent in an adjudicatory hearing.

(c) If the court finds the person proves by clear and convincing evidence that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by such visitation or other contact, the presumption in subsection (3) is rebutted and the court may allow visitation or other contact. The court shall enter a written order specifying any conditions it finds necessary to protect the child.

(d) If the court finds the person did not rebut the presumption established in subsection (3), the court shall enter a written order prohibiting or restricting visitation or other contact with the child.

(5) CONDITIONS.—Any visitation or other contact ordered under paragraph (4)(d) shall be:

(a) Supervised by a person who has previously received special training in the dynamics of child sexual abuse; or

(b) Conducted in a supervised visitation program, provided that the program has an agreement with the court and a current affidavit of compliance on file with the chief judge of the circuit in which the program is located affirming that the program has agreed to comply with the minimum standards contained in the administrative order issued by the Chief Justice of the Supreme Court on November 17, 1999, and provided the program has a written agreement with the court and with the department as described in s. 753.05 containing policies and guidelines specifically related to referrals involving child sexual abuse.

(6) ADDITIONAL CONSIDERATIONS.—

(a) If a party or participant, based on communication with the child or other firsthand knowledge, informs the court that a person is attempting to influence the testimony of the child, the court shall immediately suspend visitation or other contact. The court shall then hold a hearing and determine whether it is in the best interests of the child to prohibit or restrict visitation or other contact.

(b) If a child is in therapy as a result of any of the allegations or convictions contained in paragraph (3)(a) and the child's therapist reports that the visitation or other contact is impeding the child's therapeutic progress, the court shall convene a hearing within 7 business days to review the terms, conditions, or appropriateness of continued visitation or other contact.

Section 2. Subsection (9) of section 39.402, Florida Statutes, is amended to read:

39.402 Placement in a shelter.—

(9) At any shelter hearing, the department shall provide to the court a recommendation for scheduled contact between the child and parents, if appropriate. The court shall determine visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child. Any order for visitation or other contact must conform to the provisions of s. 39.0139. If visitation is ordered but will not commence within 72 hours of the shelter hearing, the department shall provide justification to the court.

Section 3. Subsection (6) of section 39.506, Florida Statutes, is amended to read:

39.506 Arraignment hearings.—

(6) At any arraignment hearing, if the child is in an out-of-home placement, the court shall order visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child. Any order for visitation or other contact must conform to the provisions of s. 39.0139.

Section 4. Section 39.509, Florida Statutes, is amended to read:

39.509 Grandparents rights.—Notwithstanding any other provision of law, a maternal or paternal grandparent as well as a stepgrandparent is entitled to reasonable visitation with his or her grandchild who has been adjudicated a dependent child and taken from the physical custody of the parent unless the court finds that such visitation is not in the best interest of the child or that such visitation would interfere with the goals of the case plan. Reasonable visitation may be unsupervised and, where appropriate and feasible, may be frequent and continuing. Any order for visitation or other contact must conform to the provisions of s. 39.0139.

(1) Grandparent visitation may take place in the home of the grandparent unless there is a compelling reason for denying such a visitation. The department's caseworker shall arrange the visitation to which a grandparent is entitled pursuant to this section. The state shall not charge a fee for any costs associated with arranging the visitation. However, the grandparent shall pay for the child's cost of transportation when the visitation is to take place in the grandparent's home. The caseworker shall document the reasons for any decision to restrict a grandparent's visitation.

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

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

(4) When the child has been returned to the physical custody of his or her parent, the visitation rights granted pursuant to this section shall terminate.

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

(6) In determining whether grandparental visitation is not in the child's best interest, consideration may be given to the following:

(a) The finding of guilt, regardless of adjudication, or entry or plea of guilty or nolo contendere to charges under the following statutes, or similar statutes of other jurisdictions: s. 787.04, relating to removing minors from the state or concealing minors contrary to court order; s. 794.011, relating to sexual battery; s. 798.02, relating to lewd and lascivious behavior; chapter 800, relating to lewdness and indecent exposure; s. 826.04, relating to incest; or chapter 827, relating to the abuse of children.

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

(c) ~~Consideration may also be given to~~ A report of abuse, abandonment, or neglect under ss. 415.101-415.113 or this chapter and the outcome of the investigation concerning such report.

Section 5. Paragraph (d) of subsection (3) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.—

(3) When any child is adjudicated by a court to be dependent, the court shall determine the appropriate placement for the child as follows:

(d) If the child cannot be safely placed in a nonlicensed placement, the court shall commit the child to the temporary legal custody of the department. Such commitment invests in the department all rights and responsibilities of a legal custodian. The department shall not return any child to the physical care and custody of the person from whom the child was removed, except for court-approved visitation periods, without the approval of the court. Any order for visitation or other contact must conform to the provisions of s. 39.0139. The term of such commitment continues until terminated by the court or until the child reaches the age of 18. After the child is committed to the temporary legal custody of the department, all further proceedings under this section are governed by this chapter.

Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department shall set forth the powers of the custodian of the child and shall include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, no further judicial reviews are required, so long as permanency has been established for the child.

Section 6. Section 753.01, Florida Statutes, is created to read:

753.01 Definitions.—As used in this chapter, the term:

(1) “Clearinghouse on Supervised Visitation” or “clearinghouse” means the entity within the Institute for Family Violence Studies in the School of Social Work of the Florida State University, which serves as a statewide resource on supervised visitation issues by providing technical assistance, training, and research.

(2) “Department” means the Department of Children and Family Services.

(3) “Exchange monitoring” means supervision of movement of a child from the custodial to the noncustodial parent at the start of the visit and back to the custodial parent at the end of the visit.

(4) “Supervised visitation program” means a program created to offer structured contact between a parent or caregiver and one or more children in the presence of a third person responsible for observing and ensuring the safety of those involved. Supervised visitation programs may also include exchange monitoring of children who are participating in court-ordered visitation programs or exchange monitoring where there has been mutual consent between parties for the purposes of facilitating a visitation.

Section 7. Section 753.02, Florida Statutes, is created to read:

753.02 Clearinghouse responsibilities and authority.—

(1) The clearinghouse shall have the following responsibilities, subject to the availability of resources:

(a) To develop standards for supervised visitation programs in order to ensure both the quality of each program and the safety of children and families using program services.

(b) To serve as a clearinghouse on resources and research of supervised visitation programs.

(c) To provide technical assistance and other support services to existing and emerging supervised visitation programs.

(d) To compile a directory of state-supervised visitation programs containing referral information.

(e) To formulate a newsletter for supervised visitation programs.

(f) To organize workshops and conferences that address issues and concerns of supervised visitation programs.

(g) To compile data on the use of supervised visitation programs.

(2) The clearinghouse may apply for grants and accept private contributions.

Section 8. Section 753.03, Florida Statutes, is created to read:

753.03 Standards for supervised visitation and supervised exchange programs.—

(1) Within existing funds from the department, the clearinghouse shall develop standards for supervised visitation programs in order to ensure the safety and quality of each program. Standards must be uniform for all the programs and must address the purposes, policies, standards of practice, program content, security measures, qualifications of providers, training standards, credentials and background screening requirements of staff, information to be provided to the court, and data collection for supervised visitation programs.

(2) The clearinghouse shall use an advisory board to assist in developing the standards. The advisory board must include:

(a) Two members of the executive board of the state chapter of the Supervised Visitation Network, appointed by the president of the state chapter of the Supervised Visitation Network.

(b) A representative of the Office of the State Courts Administrator, appointed by the State Courts Administrator.

(c) A representative of the department, appointed by the secretary of the department.

(d) A representative of the Florida Coalition Against Domestic Violence, appointed by the executive director of the Florida Coalition Against Domestic Violence.

(e) A representative of a local law enforcement agency, appointed by the executive director of the Florida Sheriffs Association.

(f) A circuit court judge who presides over domestic violence proceedings, appointed by the Chief Justice of the Supreme Court.

(g) A circuit court judge who presides over dependency proceedings, appointed by the Chief Justice of the Supreme Court.

(h) Two representatives of a supervised visitation program, appointed by the director of the clearinghouse.

(i) A representative of the Commission on Marriage and Family Support Initiatives.

(j) A representative of the Statewide Guardian Ad Litem Office, appointed by the executive director of the office.

(3) The clearinghouse, in consultation with the advisory board, shall develop criteria and procedures for approving and rejecting certification applications for and monitoring compliance with the certification of a supervised visitation program. The clearinghouse shall recommend the process for phasing in the implementation of the standards and certification procedures and the criteria for distributing funds to eligible programs and designating the state entity that should certify and monitor the supervised visitation programs.

(4) The clearinghouse shall submit a preliminary report containing its recommendations for the uniform standards by December 31, 2007, and a final report of all recommendations, including those related to the certification and monitoring developed to date, by December 31, 2008, to the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.

Section 9. Section 753.04, Florida Statutes, is created to read:

753.04 Interim minimum standards for supervised visitation programs.—

(1) Until the standards for supervised visitation and supervised exchange programs are developed pursuant to this chapter and a certification

and monitoring process is fully implemented, each supervised visitation program must have an agreement with the court and comply with the Minimum Standards for Supervised Visitation Programs Agreement adopted by the Supreme Court on November 17, 1999. Under this order, a supervised visitation program shall enter into an agreement with the circuit court or circuit courts within the geographic jurisdiction of the program attesting to the willingness of the program to comply with the Supreme Court's standards.

(2) Until the standards for supervised visitation and supervised exchange programs are completed and a certification and monitoring process is fully implemented, a supervised visitation program may not receive grant funds for access and visitation under 42 U.S.C. s. 669b unless the program provides documentation to the state agency administering the grant verifying that the program has entered into an agreement with the circuit court as required under subsection (1). This subsection does not obligate the state agency administering the grant to certify a program's compliance with the Minimum Standards for Supervised Visitation Programs Agreement.

Section 10. Section 753.05, Florida Statutes, is created to read:

753.05 Referrals involving child sexual abuse.—

(1) Any supervised visitation program that wishes to accept referrals involving child sexual abuse must have an agreement with the court and a current affidavit of compliance on file with the chief judge of the circuit in which the program is located affirming that the program has agreed to comply with the minimum standards contained in an administrative order issued by the Chief Justice of the Supreme Court on November 17, 1999, and provided the program has a written agreement with the court and with the department that contains policies and guidelines specifically related to child sexual abuse.

(2) The agreement must include provisions for the following:

(a) Program staff who supervise visits or other contact must have specific training in child sexual abuse provided through the Clearinghouse on Supervised Visitation documented in personnel files.

(b) The program must have protocols for obtaining background material on the family prior to the initiation of services.

(c) The program must accept only those child sexual abuse referrals for which staff have the requisite background material, training, and security in place to safely monitor contact.

(d) The program must decline referrals of child sexual abuse cases when staff lack necessary training or education, when background material has not been received, or when lack of security may allow revictimization of the child.

(e) The program must suspend visits in cases when the child appears to be traumatized by the visits or when the individual visiting or having other contact engages in inappropriate behavior or violates program rules.



Section 11. Sections 753.001, 753.002, and 753.004, Florida Statutes, are repealed.

Section 12. The Division of Statutory Revision is directed to redesignate the title of chapter 753, Florida Statutes, as “Supervised Visitation.”

Section 13. This act shall take effect July 1, 2007.

Approved by the Governor June 12, 2007.

Filed in Office Secretary of State June 12, 2007.