

CHAPTER 2011-209

Committee Substitute for Senate Bill No. 504

An act relating to child visitation; amending s. 39.0139, F.S.; revising legislative intent; requiring probable cause of sexual abuse in order to create a presumption of detriment; providing that persons meeting specified criteria may not visit or have contact with a child without a hearing and court order; revising requirements for a hearing seeking to rebut a presumption of detriment; revising provisions relating to hearings on whether to prohibit or restrict visitation or other contact with the person who is alleged to have influenced a child's testimony; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) and subsections (3), (4), and (6) of section 39.0139, Florida Statutes, are amended to read:

39.0139 Visitation or other contact; restrictions.—

(2) LEGISLATIVE FINDINGS AND INTENT.—

(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 contact between a parent or caregiver who meets the criteria under paragraph (3)(a) and a child victim in any proceeding pursuant to this chapter ~~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. A court of competent jurisdiction has found probable cause exists that a parent or caregiver has sexually abused a child ~~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. A parent or caregiver 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. A court of competent jurisdiction has been determined a parent or caregiver by a court to be a sexual predator as defined in s. 775.21 or a parent or caregiver 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.

(c) A person who meets any of the criteria set forth in paragraph (a) may not visit or have contact with a child without a hearing and order by the court.

(4) HEARINGS.—A person who meets any of the criteria set forth in paragraph (3)(a) who seeks to begin or resume contact with the child victim shall have the right to an evidentiary hearing to determine whether contact is appropriate 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) Prior to the hearing, the court shall ~~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) At the hearing, the court may receive and rely upon any relevant and material evidence submitted to the extent of its probative value, including written and oral reports or recommendations from the child protective team, the child’s therapist, the child’s guardian ad litem, or the child’s attorney ad litem, 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, recommendations, and evidence may not be admissible under the rules of evidence 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 setting forth findings of fact and 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 setting

forth findings of fact and prohibiting or restricting visitation or other contact with the child.

(6) ADDITIONAL CONSIDERATIONS.—

(a) Once a rebuttable presumption of detriment has arisen under subsection (3) or if visitation is ordered under subsection (4) and 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 hold a hearing within 7 business days to 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 with the person who is alleged to have influenced the testimony of the child.

(b) If a child is in therapy as a result of any finding of the allegations or conviction ~~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. This act shall take effect July 1, 2011.

Approved by the Governor June 21, 2011.

Filed in Office Secretary of State June 21, 2011.