

# **2015 FAMILY LAW LEGISLATION**

## **UPDATE FOR THE 30<sup>TH</sup> ANNUAL**

### **VIEW FROM THE BENCH PROGRAM**

*By General Magistrate Robert J. Jones*

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**CS/CS/HB**

**149**



The bill repeals s. 752.01, F.S., and creates s. 752.011, F.S. This new section allows a grandparent (which includes a great-grandparent) of a minor child whose parents are deceased, missing, or in a persistent vegetative state to petition the court for visitation. A grandparent may also petition for visitation if there are two parents, one of whom is deceased, missing, or in a persistent vegetative state and the other parent has been convicted of a felony or an offense of violence evincing behavior that poses a substantial threat of harm to the child's health or welfare. A parent is considered missing if his or her whereabouts are unknown for at least 90 days and a diligent search and inquiry into his or her location has occurred.

Upon the filing of a petition for visitation by a grandparent, the Court must hold a **preliminary hearing**. At this preliminary hearing, the grandparent must make a prima facie showing that the remaining parent is unfit or that there has been significant harm to the child. Then:

1. If the required prima facie showing is made, the court may appoint a guardian ad litem and shall refer the matter to family to mediation as provided in s. 752.015, Florida Statutes. If family mediation does not successfully resolve the issue of grandparent visitation, the Court shall proceed to a final hearing.
2. If, on the other hand, the required prima facie showing is not made, the Court must dismiss the petition and may award reasonable attorney's fees and costs to be paid by the petitioner to the respondent.

**At the final hearing**, the grandparent must show by **clear and convincing evidence** that the **parent is unfit or there has been significant harm to the child, that the visitation is in the best interest of the child and that the visitation will not materially harm the parent-child relationship**. If the grandparent makes the required showing, the Court may then award reasonable visitation to the grandparent. In assessing the best interest of the child, the Court must consider the totality of circumstances affecting the mental and emotional well-being of the child. Some of the factors that the Court must consider include:

- The love, affection, and other emotional ties existing between the child and the grandparent;
- The length and quality of the previous relationship between the child and the grandparent;

- Whether the grandparent established ongoing personal contact with the child;
- The reasons that the respondent parent cited to end contact;
- The existence of significant mental or emotion harm to the child as a result of the disruption in the family unit;
- The present mental, physical, and emotional health of the child and the grandparent;
- The recommendations of the child's guardian ad litem, if one is appointed;
- The results of any psychological evaluation of the child;
- The preference of the child if the child is determined to be of sufficient maturity to express a preference.
- A written testamentary statement by the deceased parent regarding visitation with the grandparent; and
- Such other factors as the court considers necessary in making its determination.

In determining material harm to the parent-child relationship, the Court must consider the totality of circumstances affecting the parent-child relationship, including:

- Whether there have been previous disputes between the grandparent and the parent over childrearing or other matters related to the care and upbringing of the child;
- Whether visitation would interfere with or compromise parental authority;
- Whether visitation can be arranged in a manner that does not detract from the parent-child relationship, including the quantity of time available for enjoyment of the parent-child relationship, and any other consideration related to disruption of the schedule and routine of the parent and the child;
- Whether visitation is being sought for the primary purpose of continuing or establishing a relationship with the child with the intent that the child benefit from the relationship;
- Whether the requested visitation would expose the child to conduct, moral standards, experiences, or other factors that are inconsistent with influences provided by the parent;
- The nature of the relationship between the parent and the grandparent;
- The reasons that the parent made the decision to end contact or visitation between the child and the grandparent which was previously allowed by the parent;
- The psychological toll of visitation disputes on the child; and
- Such other factors as the court considers necessary in making its determination.

An order granting grandparent **visitation may be modified** if a substantial change of circumstances has occurred and the modification is in the best interest of the child.

A grandparent can only file an original action for visitation only once in **any two-year period**, except on good cause shown that the minor child is suffering, or may suffer, significant and demonstrable mental or emotional harm cause by a parental decision to deny visitation between the child and the grandparent, which was not known to the grandparent at the time of the filing an earlier action.

The bill also addresses other statutes that govern child custody and visitation:

- The bill clarifies that Part II of ch. 61, F.S., the Uniform Child Custody Jurisdiction and Enforcement Act, applies to custody actions brought under the provisions of s. 752.011, F.S. (the grandparent visitation statute created by the bill).
- Courts are encouraged to consolidate actions pending under s. 61.13, F.S., with those brought under s. 752.011, F.S.

**The bill repeals s. 752.07, F.S., and creates s. 752.071, F.S.** The new section provides that *after adoption of a child by a stepparent or close relative, the adoptive parent may petition to terminate a previous order granting grandparent visitation*. The burden *is on the grandparent to show satisfaction of the criteria that would satisfy an original petition for visitation*.

***The bill provides an effective date of July 1, 2015.***

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## **CS/HB 7013**

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***The bill repeals a statutory provision prohibiting adoptions by homosexuals that has been declared unconstitutional by the Florida Third District Court of Appeal.***

***The bill also requires DCF to prioritize educational stability for foster children, when in the child's best interest, and include homeschooling as one of several educational options. The bill states that a person cannot be prohibited from adopting solely because he or she desires to educate the child at home***

**The bill creates** a program to advance the permanency, stability, and well-being of children in the child welfare system by awarding incentive payments to community-based care lead agencies (CBCs) and their subcontractors for achieving specified adoption performance standards. The program will require the Department of Children and Families (DCF) to conduct a baseline assessment of adoption performance. The bill requires DCF to then establish measurable outcome targets for performance by each CBC and its subcontractors and negotiate incentive payments to be paid to upon meeting these targets.

**The bill re-creates** a program to provide an adoption benefit of either \$5,000 or \$10,000, depending on whether the adopted child has special needs described in statute, for qualifying employees of state agencies who adopt a child from the child welfare system. The program was originally created in 2000 and provided benefits until its repeal in 2010. The benefit will be available for adoptions finalized on or after July 1, 2015.

**The bill requires** the CBCs to make reasonable attempts to contact adoptive families one year after the adoption's finalization to offer post-adoption services, document certain information related to the attempted contact, and report to DCF on the outcomes achieved and make recommendations for improvement.

**The bill requires** the Governor to select and recognize one or more individuals, families, or entities that have made significant contributions to the adoption of children from foster care each year. Currently the Office of Adoption and Child Protection (Office) in the Executive Office of the Governor

works to promote adoption, support of adoptive families, and advance child abuse prevention. Donations of recognition awards may be received by the Office's direct support organization, authorized by current law.

**The bill requires** child-placing agencies conducting intercountry adoption to maintain certain records and comply with federal requirements regarding the Hague Convention, an international agreement to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child.

*The bill provides an effective date of July 1, 2015.*