

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 77 Child Visitation
SPONSOR(S): Porth and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 570, SB 20

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Healthy Families</u>	<u>8 Y, 0 N</u>	<u>Preston</u>	<u>Mitchell</u>
2) <u>Healthcare Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Preston</u>	<u>Gormley</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill establishes the “Keeping Children Safe Act”. A rebuttable presumption of detriment to a child is created when a parent or caregiver seeking visitation or other contact with the child is the subject of a report to the child abuse hotline alleging sexual abuse; has been found guilty or has entered a plea of guilty or nolo contendere to certain specified crimes; or has been determined by a court to be a sexual predator as defined in statute. The bill creates a hearing process for visitation or other contact determinations and provides for court orders; provides that if visitation is ordered, it must be supervised either by an individual with special training in the dynamics of children who have been sexually abused or be conducted in supervised visitation programs that meet specified criteria; and provides additional factors to be taken into consideration related to visitation and other contact.

The bill provides that visitation ordered at a shelter hearing, an arraignment hearing, a disposition hearing, or with a grandparent or stepgrandparent, must follow these newly created requirements.

The bill requires the Clearinghouse on Supervised Visitation, an entity within the Institute for Family Violence Studies in the School of Social Work of the Florida State University, to develop standards for supervised visitation programs and provides for interim standards. The bill specifies requirements that must be met before a supervised visitation program can accept referrals of cases involving child sexual abuse.

The bill repeals ss. 753.001, 753.002, and 753.004, Florida Statutes, relating to the Family Visitation Network, and redesignates the title of chapter 753, Florida Statutes, as “Supervised Visitation.”

The bill does not appear to have a fiscal impact on either state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires the Clearinghouse on Supervised Visitation to develop standards for supervised visitation programs, may require additional court hearings, and requires additional training requirements for attorneys ad litem, guardians ad litem, and supervised visitation program staff. Requiring the appointment of an attorney ad litem or guardian ad litem with special training for hearings for visitation determinations may also place additional obligations on the Guardian ad Litem Program.

Safeguard individual liberty – The bill could serve to reduce the options of certain individuals seeking visitation or contact with children by requiring the use of supervised visitation centers or individuals with special training.

Promote personal responsibility – The bill requires individuals who are alleged to have committed or have been found to have committed sexual abuse of a child to use the services of a supervised visitation program or individuals with specialized training when visiting or having other contact with a child.

Empower families – The bill may allow visitation or contact between persons alleged to have committed or found to have committed sexual abuse of a child to have contact with a child that might otherwise be denied. It may also cause some contact to be denied if resources of the supervised visitation centers are insufficient to serve all families requiring program services.

Maintain public security – The bill is intended to increase the physical safety of certain specified individuals and families by requiring the use of supervised visitation programs and individuals with specialized training for visits and other contact.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Supervised Visitation

Supervised visitation programs provide parents who may pose a risk to their children or to another parent an opportunity to experience parent-child contact while in the presence of an appropriate third party.¹ Use of a “neutral third party” to oversee such contact has long been recognized as essential in child maltreatment cases in which the child has been removed from the home. In those cases, child protection workers supervised visits in order to maintain the child’s relationship with the parents and to work toward family reunification. In an effort to improve the conditions under which these services were provided, some social services’ agencies began contracting out the supervised visitation function to programs that focused specifically on these services.² Supervised visitation programs may offer a variety of services and these services vary from program to program.

Beginning in the late 1980’s, supervised visitation programs emerged as a service necessary for families experiencing separation and divorce, when conflict between the parents necessitates a third party to allow the child contact with a noncustodial parent.³ In addition, the epidemic of domestic violence and concern for the safety of the victim and/or the children at visitation has resulted in the creation of supervised visitation programs for family violence cases. As the American Bar Association has pointed out, court orders allowing family members to supervise visitation or visitation exchanges

¹ Thoennes, Nancy and Jessica Pearson, *Supervised Visitation: A Profile of Providers*, 37 Family and Conciliation Courts, 460, 460 (1999)

² Straus, Robert B., *Supervised Visitation and Family Violence*, 29 Family Law Quarterly, 229, 233 (1995-1996).

³ Birbaum, Rachel and Ramona Alaggia, *Supervised Visitation: A Call for a Second Generation of Research*, 44 Family Court Review, 119 (2006)

places those family members at risk of violence or manipulation by the abuser.⁴ In addition to enabling parent-child contact, other purposes of supervised visitation programs include:

- Preventing child abuse;
- Reducing the potential for harm to victims of domestic violence and their children;
- Helping build safe and healthy relationships between parents and children;
- Providing written factual information to the court regarding supervised contact, where appropriate;
- Reducing the risk of parental kidnapping;
- Assisting parents with juvenile dependency case plan compliance; and
- Facilitating reunification, where appropriate.

In an attempt to create program uniformity in such areas as staff training, terminology, and basic practice norms, the Florida Supreme Court's Family Court Steering Committee began developing a minimum set of standards for supervised visitation and exchange programs in 1998. Chief Justice Harding endorsed the Florida Supreme Court's Minimum Standards for Supervised Visitation Program Agreements and issued an administrative order in 1999 mandating that chief judges of each circuit enter into an agreement with local programs to whom trial judges referred cases that agreed to comply with the standards.⁵

The number of supervised visitation programs has continued to increase during the past 12 years. There were only 56 known programs in 28 states in 1995, and by 1998, 94 such programs were identified. In late 2006, the state of Florida alone had 62 such programs, and the Supervised Visitation Network (SVN, a networking organization of supervised access and visitation programs) included 525 agency, affiliate, and individual members in North America. The SVN indicates that Florida has the most supervised visitation programs in the country.⁶ Programs receive funding from a variety of sources including, federal Child Access and Visitation Grants administered by the Department of Children and Family Services (DCF), Promoting Safe and Stable Families Grants administered by DCF, United Way, county funding, city funding, federal Safe Haven/ Supervised Visitation Grants that can be used only for domestic violence cases, client fees for service, and private/corporate funds.

Florida is currently the only state which tracks the statewide usage of supervised visitation across all types of referrals, including domestic violence, child abuse and neglect, and separation and divorce cases. In January 2005, the Clearinghouse on Supervised Visitation started collecting program and service data in a web-based database. Program-level data include information about the programs themselves such as location, funding sources, number of employees and volunteers, etc. Service-level data capture information on clients and the services they receive.

Florida Law

Chapter 753, Florida Statutes, relating to supervised visitation programs, was enacted by the Florida Legislature in 1996. Obsolete provisions related to the Florida Family Visitation Task Force were repealed in 1999 and 2000. No additional changes have been made to chapter 753 since its enactment in 1996. Due to the tremendous growth in the supervised visitation program movement and the fact that the 1996 legislation did not address standards, safety, or staff credentials, it would appear that the remainder of chapter 753 has also become obsolete. There is no statutory requirement governing referrals to supervised visitation programs.

The Clearinghouse on Supervised Visitation

The Clearinghouse on Supervised Visitation was created in 1996 through an appropriation from the

⁴ American Bar Association Policy OOA109A, approved by the American Bar Association House of Delegates at the Annual Meeting in July 2000.

⁵ The Minimum Standards can be found at: http://www.flcourts.org/gen_public/family/bin/svnstandard.pdf

⁶ Florida's Supervised Visitation Programs: A Report from the Clearinghouse on Supervised Visitation. Institute for Family Violence Studies, College of Social Work, Florida State University, January 2007.

Office of the State Courts Administrator to provide statewide technical assistance on issues related to the delivery of supervised visitation services to providers, the judiciary, and the Department of Children and Family Services (DCF or department). Since 1996, the Clearinghouse has received contracts on an annual basis from DCF to continue this work. In 1998, the Clearinghouse published the first training manual which covered the recommended training content for providers developed by the Florida Supreme Court. The latest manual, published in 2006, is a completely revised and updated curriculum.

Since 1996, the Clearinghouse has also produced two semiannual newsletters and has developed a number of technical assistance tools. In addition, the Clearinghouse has provided on-site training throughout the United States and Canada, conducted telephonic and web-based training for providers, and responded to telephone requests for assistance from providers and the courts nationwide. In 2005 the Clearinghouse received funding to create an online database to collect supervised visitation data.

In 2003, the U.S. Department of Justice's Office on Violence Against Women funded the Clearinghouse to provide technical assistance and training to federal Safe Havens-Supervised Visitation grantees. This funding was renewed for 2005-2006.

Right to Visitation in Chapter 39 Proceedings

Currently, Florida law provides for court ordered visitation at hearings throughout the dependency court process:

- s. 39.402(9), Florida Statutes, relating to shelter placement, provides that the court shall determine visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child;
- s. 39.506(6), Florida Statutes, relating to arraignment, provides that 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; and
- s. 39.521, Florida Statutes, relating to disposition, provides that 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. 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.

In addition, s. 39.509, Florida Statutes, relating to grandparents rights, provides that 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.

THE BILL

The bill establishes the "Keeping Children Safe Act of 2007" and provides legislative intent to keep children in the custody of DCF or its contractors safe during visitation or other contact with an individual who is alleged to have committed sexual abuse or related criminal conduct. The bill provides for this safety by:

- Providing for the creation of a rebuttable presumption of detriment to a child when a parent or caregiver is the subject of a report to the abuse hotline alleging sexual abuse; has been found guilty or has entered a plea of guilty or nolo contendere to certain specified crimes; or has been determined by a court to be a sexual predator as defined in statute;
- Creating a hearing process for visitation or other contact determinations and provides for court orders; Provides that if visitation is ordered, it must be supervised either by an individual with special training on the dynamics of children who have been sexually abused or in supervised visitation programs that meet specified criteria;

- Specifying additional factors to be taken into consideration related to visitation and other contact; and
- Creating ss. 753.01, 753.02, 753.03, 753.04, and 753.05, Florida Statutes, related to supervised visitation programs, to provide definitions, provide responsibilities for the Clearinghouse on Supervised Visitation, provide for the development of program standards, provide for interim standards, and provide criteria for referrals involving sexual abuse.

In addition, the bill repeals ss. 753.001, 753.002, and 753.004, Florida Statutes, relating to the Family Visitation Network.

C. SECTION DIRECTORY:

- Section 1.** Creates s. 39.0139, Florida Statutes, relating to restrictions on visitation or other contact.
- Section 2.** Amends s. 30.402, Florida Statutes, relating to shelter placement.
- Section 3.** Amends s. 39.506, Florida Statutes, relating to arraignment hearings.
- Section 4.** Amends s. 39.509, Florida Statutes, relating to grandparents rights.
- Section 5.** Amends s. 39.521, Florida Statutes, relating to disposition hearings and the powers of disposition.
- Section 6.** Creates s. 753.01, Florida Statutes, relating to supervised visitation definitions.
- Section 7.** Creates s. 753.02, Florida Statutes, relating to the responsibilities of the Clearinghouse on Supervised Visitation .
- Section 8.** Creates s. 753.03, Florida Statutes, relating to standards for supervised visitation and supervised exchange programs.
- Section 9.** Creates s. 753.04, Florida Statutes, relating to interim standards for supervised visitation programs.
- Section 10.** Creates s. 753.05, Florida Statutes, relating to referrals involving child sexual abuse.
- Section 11.** Repeals ss. 753.001, 753.002, and 753.004, Florida Statutes, relating to the Family Visitation Network.
- Section 12.** Redesignates the title of chapter 753, Florida Statutes, as “Supervised Visitation.”
- Section 13.** Provides for an effective date of July 7, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues:

- Lines 76-78 of the bill, do not specify who is to develop and provide the special training to be required of attorneys ad litem and guardians ad litem. Nor does it specify who will certify and monitor that the training has been successfully completed by these individuals.
- Lines 98-99 of the bill, require that all persons supervising visitation pursuant to the provisions of the bill must receive or have already received training specific to supervising visitation between a victim and alleged perpetrator of sexual abuse. The bill does not specify who will develop and provide this training or who will certify and monitor that the training has been successfully completed by these particular supervisors.

D. STATEMENT OF THE SPONSOR

Concerns raised in the analysis were addressed in the amendment.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 20, 2007, the Committee on Healthy Families adopted a "strike-all" amendment by the bill sponsor that addresses issues identified in the bill analysis and that does the following:

- Provides a short title and legislative findings and intent related to keeping children who have been sexually abused from being re-abused during visitation and other contact;
- Creates s. 39.0139, Florida Statutes, related to visitation restrictions in cases involving sexual abuse under certain specified circumstances;

- Provides for the creation of a rebuttable presumption of detriment to a child when a parent or caregiver is the subject of a report to the abuse hotline alleging sexual abuse; has been found guilty or has entered a plea of guilty or nolo contendere to certain specified crimes; or has been determined by a court to be a sexual predator as defined in statute;
- Creates a hearing process for visitation or other contact determinations and provides for court orders; Provides that if visitation is ordered, it must be supervised either by an individual with special training on the dynamics of children who have been sexually abused or in supervised visitation programs that meet specified criteria;
- Provides additional factors to be taken into consideration related to visitation and other contact;
- Provides cross references to the newly created s. 39.0139, Florida Statutes, to ss. 39.402, 39.506, 38.509, and 39.421, Florida Statutes;
- Creates ss. 753.01, 753.02, 753.03, 753.04, and 753.05, Florida Statutes, related to supervised visitation programs, to provide definitions, provide responsibilities for the Clearinghouse on Supervised Visitation, provide for the development of program standards, provide for interim standards, and provide criteria for referrals involving sexual abuse;
- Repeals ss. 753.001, 753.002, and 753.004, Florida Statutes, relating to the Family Visitation Network; and
- Provides an effective date of July 1, 2007.

On March 27, 2007, the Healthcare Council adopted the “strike-all” amendment that was recommended by the Healthy Families Committee on February 20, 2007 and reported the bill out favorably as a Council Substitute. The analysis reflects the Council Substitute.