
GUARDIAN AD LITEM TRAINING ON THE “KEEPING CHILDREN SAFE ACT”

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OVERVIEW OF HOUSE BILL 77, SECTION 1, KEEPING CHILDREN SAFE ACT¹

Chapter 39, Florida Statutes, was amended during the 2007 Legislative Session to provide further protection to children in the dependency process whose parent or other caregiver has a history of certain crimes, most of which involve sexually deviant behavior or has been reported to the child abuse hotline for sexual abuse of a child. In newly-created § 39.0139, which became effective on July 1, 2007, the burden is placed on a parent or other caregiver (or grandparent requesting visitation in a Chapter 39 proceeding) with a criminal record of certain crimes (listed below) or a child abuse hotline report alleging sexual abuse to provide clear and convincing evidence that visitation by that person will not endanger the safety, well-being, and physical, mental, and emotional health of the child. This rebuttable presumption of detriment also applies to a parent or other caregiver (or grandparent) who has been convicted of removing minors from the state or concealing minors contrary to court order or who has been designated as a sexual predator. Furthermore, this act seeks to protect a child from attempts to influence the child’s testimony and to insure that any therapy the child is receiving due to being sexually abused is not impeded by visitation with the abuser.

What is the intent of this law²?

To protect children and to 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.

When is the rebuttable presumption of detriment to a child caused by visitation with a parent or caregiver created?³

1. When the parent or caregiver has been the subject of a report to the child abuse hotline alleging sexual abuse *of any child* as defined in § 39.01(66).⁴ Note that this is not limited to

¹Section 39.0139(1)

²Section 39.0139(2)(b)

³Section 39.0139(3)(a)

⁴“Sexual abuse of a child” means one or more of the following acts:

(a) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(b) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

the child who is the subject of the dependency proceeding.

2. When the 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 Florida 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 (Note that this is the general sexual battery statute and is not limited to child victims);
 - c. Section 798.02, relating to lewd and lascivious behavior (This behavior need not have occurred in the presence of children);
 - d. Chapter 800, relating to lewdness and indecent exposure (Section 800.04 deals with lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age. The first two sections, 800.02, unnatural and lascivious act, and 800.03, exposure of sexual organs, need not involve a child.);
 - e. Section 826.04, relating to incest (sexual intercourse with a person to whom the defendant is related by lineal consanguinity, or a brother, sister, uncle, aunt, nephew, or niece);
 - f. Chapter 827, relating to the abuse of children (This chapter makes child abuse a crime, as well as nonsupport of dependents and misuse of child support money. It is questionable whether the Legislature intended that a conviction under this chapter would trigger section 39.0139).
3. When the parent or caregiver has been determined by a court to be a sexual predator as

(c) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.

(d) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include:

1. Any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child; or
2. Any act intended for a valid medical purpose.

(e) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(f) The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.

(g) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827.

defined in § 775.21⁵ or has received a substantially similar designation under laws of another jurisdiction.

What additional requirements are placed on judges?⁶

At the initial shelter hearing, it is possible that the Department of Children and Families (DCF) will have information about one or more of the parents or caregivers obtained from the DCF's child abuse hotline reports and a criminal history from the Florida Department of Law Enforcement. At this early stage in the case, this information may not have been gathered on all parents or caregivers.

The court should determine whether any person before the court at this time fits the criteria listed above. If so, visitation with the child who is the subject of the dependency proceeding should be denied until there has been a hearing at which the court determines whether there is clear and convincing evidence that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by visitation with the parent or caregiver. Remember that the burden is on the parent to rebut the presumption of detriment.

At this hearing, 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.

If the presumption of detriment is not rebutted, the court must enter an order prohibiting or restricting visitation or other contact with the child. If the presumption is rebutted by clear and convincing evidence, the court shall enter an order allowing visitation or other contact with any conditions it finds necessary to protect the child.

Visitation is also an issue at arraignment (§ 39.506) and disposition (§ 39.521) hearings. Any order for visitation or other contact entered at these hearings must conform to the provisions of § 39.0139.

Under the statute prior to July 1, 2007, the court was required to appoint a guardian ad litem at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding pursuant to § 39.822. The new statutory language adds the requirement that guardians ad litem appointed to these cases must have special training in the dynamics of child sexual abuse. However, the statute does not indicate what curriculum the training must have. The State Guardian ad Litem Office has undertaken the task of developing the training for staff and guardians ad litem. The court can also appoint an attorney ad litem, but this person must also have training in the dynamics of child sexual abuse, so the same issues exist as to where the attorney ad litem can obtain this training, what the curriculum should be, and who will certify that the training has been successfully completed.

The Clearinghouse on Supervised Visitation has developed a training manual on child sexual abuse

⁵There is no definition of "sexual predator" in section 775.21, but instead there are "sexual predator criteria" at section 775.21(4). A Florida Sexual Offenders and Predators website is maintained by the FDLE at <<http://offender.fdle.state.fl.us/offender/homepage.do>>.

⁶§ 39.0139(4)

referrals for training its staff. While this manual has extraneous material that deals specifically with the operation of supervised visitation centers, it also has extensive materials about the dynamics of sexual abuse. A certificate can be obtained after completion of the training materials. These training materials can be found at <http://familyvio.csw.fsu.edu/SV/Manuals.php> and are a good source of training for attorneys ad litem and guardians ad litem.

What conditions must be placed on the visitation of a parent or caregiver who does not overcome the presumption of detriment?⁷

Any visitation or other contact ordered must be:

1. Supervised by a person who has received special training in the dynamics of child abuse; or
2. Conducted in a supervised visitation program, provided certain requirements are met by the program (see first paragraph of Guardian ad Litem Training in Child Sexual Abuse Issues)

The same issues discussed in the preceding paragraph concerning the training of attorneys ad litem and guardians ad litem arise with the training of a supervisor who is not a staff person of a supervised visitation center. A judge would not be able to appoint a family member or other person to supervise a parent or other caregiver who has triggered § 39.0139, unless that person has received special training in the dynamics of child abuse. It would be incumbent on the judge to make an inquiry of any proposed supervisor as to that person's training in this area.

For information about supervised visitation programs, their locations, and contact information, contact Karen Oehme at the Clearinghouse on Supervised Visitation at Florida State University or visit the website at <http://familyvio.csw.fsu.edu>.

What protection is given against influencing testimony?⁸

A party or participant who has firsthand knowledge of or who has been told by the child about attempts by a person to influence the child's testimony may inform the court of such an incident. The court shall immediately suspend visitation or other contact. The court must then have a hearing and determine whether it is in the best interests of the child to prohibit or restrict visitation or other contact.

What protection is given to the progress of a child's therapy?⁹

If a child is in therapy as a result of sexual abuse by the parent involving the child 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.

What about grandparents' visitation?¹⁰

⁷§39.0139(5)

⁸§ 39.0139(6)(a)

⁹ §39.0139(6)(b)

Presently, pursuant to § 39.509, a grandparent whose grandchild has been adjudicated dependent and is not in the physical custody of a parent is entitled to reasonable visitation unless the court finds that such visitation is not in the best interest of the child or the visitation would interfere with the goals of the case plan. Under the Keeping Children Safe Act, if a grandparent fits the criteria in § 39.0139(3)(a) (see the third paragraph above), the rebuttable presumption would be created and the court would conduct the same type of hearing described above in the fourth paragraph.

What does the Keeping Children Safe Act mean for Guardians ad Litem, Program Attorneys, and the GAL Program?

The Guardian ad Litem Program (GALP) must develop a training curriculum which teaches guardians ad litem about the dynamics of child sexual abuse. Only guardians ad litem with this special training can be assigned to cases which arise under § 39.0139.

The Guardian ad Litem Program Attorney should review any information available at shelter, arraignment, or disposition hearings, looking for evidence that a parent or caregiver fits any of the criteria in § 39.0139(3)(a) (third paragraph, above) to determine if any parent or other caregiver who might be given visitation with a child fits the criteria which would bring the case under the Keeping Children Safe Act. At the shelter hearing, this information will most likely be available only through DCF. Further investigation by the Guardian ad Litem volunteer or case coordinator may uncover additional information which the GALP Attorney will need to bring to the court's attention.

If the Guardian ad Litem receives information from a child which indicates that a person is attempting to influence the testimony of the child or has other firsthand knowledge that this is occurring (for example, the GAL might overhear a conversation between a child and another person about the child's testimony), the Guardian ad Litem Attorney should file a motion to immediately suspend visitation or other contact, pursuant to § 39.0139(6). Since this motion should be granted by the judge without a hearing, it is suggested that a sworn affidavit signed by the Guardian ad Litem be attached to the motion, along with a proposed order immediately suspending visitation or other contact. The GALP Attorney should insure that a hearing is scheduled as soon as possible for the court to make the determination as to whether it is in the child's best interests to continue to prohibit or restrict visitation or other contact. Note that the language in § 39.0139(6)(a) is not restricted to parents or other caregivers who attempt to influence a child's testimony, but uses the word "person." Thus, it would seem that a child's contact with anyone who attempts to influence the child's testimony could be stopped pursuant to this section.

It is likely to be the Guardian ad Litem volunteer who hears from a child's therapist that the child's therapeutic progress is being impeded by visitation with the abuser. If this occurs, the GALP Attorney should file a motion with the therapist's written recommendation attached requesting a hearing within 7 business days to allow the court to review the terms, conditions, or appropriateness of continued visitation or other contact, pursuant to § 30.0139 (6)(b).

Guardian ad Litem Program Attorneys can review the training in child sexual abuse dynamics developed by the Clearinghouse on Supervised Visitation and available online at <http://familyvio.csw.fsu.edu/SV/Manuals.php>.

Guardians ad Litem play an important role under the Keeping Children Safe Act. While most of the initial information that will form the evidentiary basis for restricting or prohibiting the visitation of a parent or other caregiver under this act will come from the Department of Children and Families through the child abuse hotline reports and the FDLE criminal history reports, Guardians ad Litem can gather information from interviews with family and friends about the existence of any child sexual abuse reports or crimes which fit the criteria in § 39.0139(3)(a) in other states. This information should be verified through the other state's child welfare department or department of law enforcement before proceeding further in the Florida dependency case.

Guardians ad Litem are often the person whom the child confide in after a trusting relationship has been established and would be the likely person a child would tell about someone talking to the child about what the child is going to say in court. Guardians ad Litem should be vigilant about this kind of information. In monitoring the child's visitation or contact with other persons, signs of attempts to influence a child's testimony should be watched for and immediately reported to the Guardian ad Litem Attorney to determine whether a motion to immediately suspend the visitation should be filed.

Guardians ad Litem tend to maintain close contact with a child's therapist and may be the first official person in the dependency process whom the therapist discusses any concerns about the detrimental effect visitation with an abuser is having on a child's therapeutic progress. Guardians ad Litem must immediately report such concerns of the therapist to the Guardian ad Litem Attorney to determine if a motion to review the visitation should be filed.

Guardians ad Litem should endeavor to learn about and understand the dynamics of child sexual abuse in order to help insure that children who are in the dependency system are not further victimized while in the system by a parent or caregiver during visitation or other contact. Being aware of the signs of sexual abuse could save a child from continuing victimization.