

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill may add more responsibilities for adoption entities.

Safeguard individual liberty – By clarifying the procedures unmarried biological fathers must take in order to protect their parental rights, an increased number of these men may file a claim with the registry.

Empower families – The bill may lend more stability to the adoption process.

B. EFFECT OF PROPOSED CHANGES:

The 2003 Florida Adoption Act¹ substantially revised the 2001 Florida Adoption Law, with primary focus on the areas of biological fathers' rights, notice and consent, statute of repose and grounds for challenges to termination of parental rights or adoption, statutory forms, venue, adoption fees and costs, and sanctions. A major change involved the creation of a Putative Father Registry within the Department of Health, Office of Vital Statistics, which requires an unmarried biological father to register with the registry in order to preserve any right to notice and consent regarding his parental right to a child placed for adoption. The registry replaced existing constructive notice provisions as previously applied to fathers who could not be identified or located. The category of "fathers" for whom notice and consent may be required was revised to incorporate and conform to the new definition of "unmarried biological father."

Service of Process

Service of process can be carried out in several ways. Primarily, service of process occurs through actual delivery of a copy of the process to the witness or defendant, or through substitute service which can occur by delivery to a person's residence, or through notice by mail or publication, as allowed by law. Section 49.011, Florida Statutes, allows service of process by publication in a number of specified legal proceedings. Section 409.011, Florida Statutes, does not specifically allow service by publication in termination of parental rights proceedings pursuant to Chapter 63, Florida Statutes.

In May of 2006, the Supreme Court of Florida looked at the service of process by publication statute in the context of a paternity action and noted:

The service of process statute does not permit constructive service of process in paternity cases, and there is no express provision within chapter 409 to authorize constructive service or to ensure that a legal father's interests are appropriately protected . . . Whether the statutes should be modified to address this dilemma is a policy decision for the Legislature to decide.²

Under this ruling, unless constructive service by publication is expressly permitted by s. 49.011, Florida Statutes, it is not permitted. The bill addresses this issue raised by the court by amending s. 49.011, Florida Statutes, to include termination of parental rights proceedings under chapter 63, Florida Statutes.

¹ See Chapter 2003-58, Laws of Florida.

² Department of Revenue v. Cummings, 930 So2d 604, 609 (Fla. 2006).

Definitions

The bill makes the following changes to s. 63.032, Florida Statutes, relating to definitions:

- Makes clarifying changes to the definitions of “adoption plan” and “to place”.
- Modifies the definition of “child” to mean a minor son or daughter, and deletes the current definition of “minor.”
- Changes the definition of “parent,” deleting the reference to the definition of “parent” found in s. 39.01, Florida Statutes. The Chapter 39, Florida Statutes., definition of “parent” provides that a person whose parental rights have been terminated, or who is an alleged parent, is not a “parent” unless his or her parental status falls under s. 39.503, Florida Statutes. Because it addresses dependency, s. 39.503, Florida Statutes, encompasses a wide range of individuals, including males who were cohabitating with the mother at the probable time of conception and males who were named in an application for public assistance. This amendment excludes from the definition of parent for purposes of chapter 63, Florida Statutes, those individuals who fall under s. 39.503, Florida Statutes.”
- Amends the definition of “primarily lives and works outside Florida,” to provide that a person who is a member of the military who designates a state other than Florida as his or her residence and a person who is a citizen of the United States who designates a state other than Florida as his or her residence, falls under the definition.
- Amends the definition of “unmarried biological father” to exclude men who execute an affidavit pursuant to s. 382.013(2)(c), Florida Statutes,³ prior to the filing of the petition to terminate parental right and to clarify that an adjudication as legal father must occur before a petition for termination of parental rights is filed.

Putative Father Registry

In 2003, the Florida Legislature created the Putative Father Registry, joining a number of other states with similar legislation. The registry is established and operated through the Office of Vital Statistics of the Department of Health. Any man who is concerned that he may be the father of a child born or about to be born out of wedlock can file a claim of paternity with the registry indicating that he wishes to establish his parental rights.⁴ By filing with the registry, the potential father is claiming paternity for the child and confirming his willingness to support the child. A claim of paternity may be filed at any time prior to the birth of the child, but a claim of paternity may not be filed after the date a petition is filed for termination of parental rights.⁵

The putative father may change his mind and prior to the birth of the child execute a notarized revocation of the claim of paternity.⁶ Once that revocation is received, the claim of paternity is deemed null and void. Additionally, if a court determines that a registrant is not the father of a minor, the court will order the man’s name removed from the registry.⁷ Since its enactment in 2003, Florida’s registry has been the subject of some conflicting case law.⁸

³ Section 382.013(2)(c), F.S., provides, “If the mother is not married at the time of the birth, the name of the father may not be entered on the birth certificate without the execution of an affidavit signed by both the mother and the person to be named as the father . . .”

⁴ Section 63.054(1), F.S.

⁵ Section 63.054(1), F.S.

⁶ Section 63.054(5), F.S.

⁷ Section 63.054(5), F.S.

⁸ See, for example, *A.S. v. Gift of Life Adoptions, Inc.*, 944 So.2d 380, 388 (Fla. 2d DCA 2006), rev. den. 944 So. 2d 344 (2006).; *J.C.J. v. Heart of Adoptions, Inc.*, 942 So.2d 906 (Fla. 2d DCA 2007).; and *J.A. v. Heart of Adoptions, Inc.*,

The bill makes a number of changes related to unmarried biological fathers, paternity, the Putative Father Registry, and notice requirements, including:

- Providing that a father who fails to register his paternity prior to the date a petition for termination of parental rights is filed is also barred from filing a paternity claim pursuant to chapter 742, Florida Statutes.
- Requiring that persons petitioning for termination of parental rights or adoption have no obligation to search for a putative father who changes his address without notice to the registry unless they have actual (not constructive) notice of the registrant's address and whereabouts.
- Providing that a registry search is required only in connection with the termination of parental Rights proceeding if a termination of parental rights proceeding and an adoption proceeding are being adjudicated separately.
- Providing that the consent of a father is required only when he secures a paternity judgment or files a paternity affidavit prior to the date that a petition for termination of parental rights is filed, providing for the court to enter a default under certain circumstances, and specifying what actions an unmarried biological father must take in order to avoid default.
- Adding the word "strict" to clarify that a father must strictly comply with the statute, thereby eliminating any suggestion that substantial compliance with the registry requirements is sufficient.

In addition, the bill does the following:

- Currently when a child to be adopted is older than 6 months of age the consent to adoption is subject to a revocation period of 3 days or at any time prior to the placement of the child with the adoptive parents whichever is later. The bill deletes this timeframe and replaces it with "3 business days".
- Provides that written disclosure shall be provided to the parent who did not initiate contact with the adoption entity, adds language to the adoption disclosure providing information about the Florida Putative Father Registry and what actions an unmarried biological father must take in order to protect his parental rights, and specifies the exact information which must be provided to a prospective adoptive family prior to the child's placement in the home.
- Provides that if a mother fails to identify an unmarried biological father to the adoption entity by the date she signs a consent for adoption, the father's claim that he did not receive actual notice of the adoption proceeding is not a defense to the termination of his parental rights.
- Clarifies who the court must attempt to identify through inquiry.
- Provides that abandonment as a result of incarceration may be found when the time period for which a person has been, as well as is expected to be, incarcerated constitutes a significant (rather than substantial) portion of the child's minority.
- Clarifies that a foreign judgment terminating a parental relationship is recognized in this state and no further proceedings are required before adoption can be finalized.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.812, Florida Statutes, relating to postdisposition relief and petition for adoption.

Section 2. Amends s. 49.011, Florida Statutes, relating to service of process by publication.

Section 3. Amends s. 63.032, Florida Statutes, relating to definitions.

Section 4. Amends s. 63.039, Florida Statutes, relating to duty of adoption entity to prospective adoptive parents and sanctions.

Section 5. Amends s. 63.0425, Florida Statutes, relating to grandparent's right to notice.

Section 6. Amends s. 63.054, Florida Statutes, relating to actions required by an unmarried biological father to establish paternal rights and the Florida Putative Father Registry.

Section 7. Amends s. 63.062, Florida Statutes, relating to persons required to consent to adoption and the affidavit of nonpaternity.

Section 8. Amends s. 63.063, Florida Statutes, relating to the responsibility of each party for their own actions and fraud or misrepresentation

Section 9. Amends s. 63.082, Florida Statutes, relating to execution of consent to adoption or affidavit of nonpaternity and family social and medical history.

Section 10. Amends s. 63.085, Florida Statutes, relating to disclosure by adoption entity.

Section 11. Amends s. 63.087, Florida Statutes, relating to the general provisions of proceeding to terminate parental rights pending adoption

Section 12. Amends s. 63.088, Florida Statutes, relating to proceeding to terminate parental rights pending adoption, notice and service, and diligent search.

Section 13. Amends s. 63.089, Florida Statutes, relating to proceeding to terminate parental rights pending adoption, hearings, grounds, and dismissal of petition.

Section 14. Amends s. 63.092, Florida Statutes, relating to report to the court of intended placement by an adoption entity, at-risk placements, and preliminary studies.

Section 15. Amends s. 63.102, Florida Statutes, relating to the filing of petition for adoption or declaratory statement, venue, and proceeding for approval of fees and costs.

Section 16. Amends s. 63.122, Florida Statutes, relating to notice of hearing on petition.

Section 17. Amends s. 63.132, Florida Statutes, relating to affidavit of expenses and receipts.

Section 18. Amends s. 63.135, Florida Statutes, relating to information to be submitted under oath to the court.

Section 19. Amends s. 63.142, Florida Statutes, relating to hearings and judgment of adoption.

Section 20. Amends s. 63.192, Florida Statutes, relating to recognition of foreign judgment affecting adoption.

Section 21. Amends s. 63.212, Florida Statutes, relating to prohibited acts and penalties for violation.

Section 22. Creates s. 63.236, Florida Statutes, relating to petitions filed before July 1, 2009 and governing law.

Section 23. Amends s. 742.021, Florida Statutes, relating to Venue, process, and complaints.

Section 24. Amends s. 742.10, Florida Statutes, relating to establishment of paternity for children born out of wedlock.

Section 25. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Any anticipated fiscal impact on state government would be on the courts. The Office of the State Courts Administrator has not responded to a request for this information.

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:

- Lines 127-129 of the bill add the requirement that the petition for adoption must be accompanied by an acknowledgment of receipt of the disclosure required pursuant to s. 63.085. This appears to be contradictory because it adds new language to s. 39.812 providing the adoption entity must disclose the information required under s. 63.085, while s. 63.037 continues to exempt Chapter 39 proceedings from this section.
- On lines 149-152 of the bill, the amended definition of the term “Adoption plan” uses the term “minor”; on line 157 of the bill, the term “minor” is added to the definition of the term “child”; and on line 172 of the bill, the definition of the term “minor” is deleted. To delete the definition of “minor” and then use it in other definitions as well as other sections of the chapter would appear to create an internal inconsistency within the chapter.
- The process of adoption has always involved a balancing act – the child, the birth parents, and the adoptive parents – all have interests and sometimes those interests are competing. As in many areas where policy must be determined, the emphasis on whose interest should be protected and at what cost to the interests of the other parties often moves back and forth along a continuum. Current Florida law provides for the following:
 - The Legislature finds that the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children.⁹
 - The Legislature finds that the interests of the state, the mother, the child, and the adoptive parents described in this chapter outweigh the interest of an unmarried biological father who does not take action in a timely manner to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter. An unmarried biological father has the primary responsibility to protect his rights and is presumed to know that his child may be adopted without his consent unless he complies with the provisions of this chapter and demonstrates a prompt and full commitment to his parental responsibilities.¹⁰

In a summary of a 2007 Florida Supreme Court decision it was stated that “while timely registration would preserve an unwed biological father’s right to notice of any subsequent adoption proceeding, unwed biological fathers were not otherwise entitled to actual notice of the registry or their legal obligation to register. In effect, Chapter 63 created a legal presumption that all unwed biological fathers in Florida had knowledge of their obligation to register absent actual notice. The failure to timely register served as a waiver of parental rights to which there was no legal defense”.¹¹

The Department of Health is required to establish and maintain a Florida Putative Father Registry through its Office of Vital Statistics. The Department of Health is also required, within existing resources, to produce and distribute a pamphlet or publication informing the public about the registry:

The pamphlet shall indicate the procedures for voluntary acknowledgment of paternity, the consequences of acknowledgment of paternity, the consequences of failure to acknowledge paternity, and the address of the Florida Putative Father Registry. Such pamphlets or publications shall be made available for distribution at all offices of the Department of Health and the Department of Children and Family Services and shall be included in health class curricula taught in public and charter schools in this state. The Department of Health shall also provide such pamphlets or publications to hospitals, adoption entities, libraries, medical clinics, schools, universities, and providers of child-related services, upon request. In cooperation with the Department of Highway Safety and Motor Vehicles, each person applying for a Florida driver's license, or renewal thereof, and each person applying for a Florida identification card shall be

⁹ See s. 63.022, Florida Statutes.

¹⁰ See s. 63.053, Florida Statutes.

¹¹ Arcaro, T.L., *No More Secrets: Unwed Biological Fathers Are Now Entitled to Actual Notice of Intended Adoptions in Florida*. The Florida Bar Public Interest Law Section Reporter, Winter 2007.

offered the pamphlet or publication informing the public about the Florida Putative Father Registry.¹²

In spite of the requirements of s. 63.054, Florida Statutes, according to the Department of Health there were only 54, 110, and 164 men registered with the Putative Father Registry in 2004, 2005, and 2006 respectively. At the same time there were 89,976, 96,895, and 105,770 children born out of wedlock in Florida in 2004, 2005, and 2006 respectively.¹³

The failure to provide unwed biological fathers with actual notice in adoption proceedings would appear to be inconsistent with the notice provisions found in other areas of Florida law such as dependency and child support proceedings:

This case demonstrates that Florida has taken substantially different statutory approaches to the rights and responsibilities of biological fathers of children born to unmarried mothers depending upon the issue at stake. In cases of adoption, we wish to minimize unmarried biological fathers' rights. When the state seeks to declare a child dependent, the unmarried biological father's rights are guarded in the hopes the father will fulfill his parental obligations to the child. In cases of child support, especially when the state seeks reimbursement of welfare payments, we attempt to maximize the unmarried biological father's responsibilities. Whether Florida needs a unified policy for the rights of such biological fathers or whether varying policies can coexist is an interesting issue that is raised, but certainly not resolved, in this case.¹⁴

In July 2007, the Florida Supreme Court ruled in favor of providing unwed biological fathers with actual notice of the Florida Putative Father Registry and the legal obligations they must satisfy if they are to retain parental rights. The Court determined that unwed biological fathers are entitled to receive actual notice of intended adoption plan related to their child and that they have 30 days to register with the Florida Putative Father Registry after having received this notice. The Court determined that the discretionary language found in s. 63.062(3)(a), Florida Statutes, that "an adoption entity **may** serve upon any unmarried biological father . . . a notice of intended adoption plan," was inconsistent with legislative intent and the statutory scheme set forth in Chapter 63. While unwed biological fathers may still be presumed to have knowledge of their obligations as set forth in Chapter 63, this presumption no longer serves to deny unwed biological fathers actual notice of intended adoptions.¹⁵

In this particular case, the Florida Supreme Court would appear to have provided new protections for unmarried biological fathers in the form of actual notice of their rights and information related to the Florida Putative Father Registry. This bill does not appear to amend the discretionary language referenced by the Florida Supreme Court in s. 63.062(3)(a), Florida Statutes.

- The language on lines 839-848 of the bill, relating to the proposed changes to the disclosure requirements, appears to create "excuses" for not providing information. Also the phrase "the information to be disclosed includes" appears to weaken the disclosure requirement.

D. STATEMENT OF THE SPONSOR

No statement provided.

¹² See s. 63.054, Florida Statutes.

¹³ Florida Department of Health, Florida Vital Statistics 2006 Annual Report, <http://www.flpublichealth.com/VSBOOK/pdf/2004/Births.pdf> , <http://www.flpublichealth.com/VSBOOK/pdf/2005/Births.pdf> and <http://www.flpublichealth.com/VSBOOK/pdf/2006/Births.pdf>

¹⁴ A.S. v. Gift of Life Adoptions, Inc., 944 So.2d 380, 388 (Fla. 2d DCA 2006), rev. den. 944 So. 2d 344 (2006).

¹⁵ Heart of Adoptions, Inc. v. J.A., 963 So.2d 189 (Fla. 2007).

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES