

STORAGE NAME: h1257s1.flc

DATE: April 11, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW & CHILDREN
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1257

RELATING TO: Adoption

SPONSOR(S): Committee on Family Law and Children and Representative Sanderson

STATUTE(S) AFFECTED: Sections 63.022, 63.032, 63.207, 63.042, 63.052, 63.062, 63.072, 63.092, 63.097, 63.102, 63.112, 63.125, 63.132, 63.162, 63.182, 63.085, 63.212, 39.01, and creating 63.063, 63.064, 63.065, 63.066, and 63.215, Florida Statutes

COMPANION BILL(S): SB 1762 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FAMILY LAW & CHILDREN YEAS 7 NAYS 1
- (2) CHILDREN & FAMILY EMPOWERMENT
- (3)
- (4)
- (5)

I. SUMMARY:

HB 1257 amends the Florida Adoption Act, Chapter 63, Florida Statutes. It specifies that it is the intent of the Legislature that courts in adoption cases shall enter only such orders as protect and promote the best interest of the adoptee. It also expresses Legislative intent that closure be achieved as quickly as possible in an adoptee's life by the establishment of rights, interests, and obligations of all parties and that uncertainty with regard to these rights, interests, and duties be eliminated as soon as possible. It adds Legislative intent that notice of a proposed adoption be made at the earliest possible time and, specifically, before the birth of the child when possible. To these ends, the bill, among other things:

- a.establishes a hearing to determine parental rights.
- b.reduces the period of time for a search for persons required to consent to an adoption from 60 to 30 days, and provides that if the search fails to locate such persons, that their parental rights will be terminated.
- c.authorizes out-of-state placement of any child by intermediaries.
- d.prohibits adoption by a prospective parent who is terminally ill, unless the court finds by clear and convincing evidence that such adoption is not detrimental to the person to be adopted.
- e.prohibits a prospective adoptive parent who has been convicted of domestic abuse, child abuse, or a felony involving violence against a person from obtaining custody of a child pursuant to chapter 63, Florida Statutes.
- f.requires prospective adoptive parents to be tested for human immunodeficiency virus as part of the preliminary home study.
- g.makes an unlawful act the provision of incorrect, untruthful, or misleading information relating to an adoption to an agency or intermediary.
- h.makes an unlawful act the contracting by a birth parent with more than one agency or intermediary to place a child.

The bill is expected to have no negative fiscal impact on state or local government except for the indeterminate cost of additional judicial time required by the hearings requirements.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Florida Adoption Act, Chapter 63, F.S. (the Act), provides the statutory basis for adoptions. This law has not undergone a comprehensive revision since 1973.

In 1994, the National Conference of Commissioners on Uniform State Laws proposed a Uniform Adoption Act to the states. According to representatives of the conference, only one state, Vermont, has adopted the Uniform Act in its entirety, making only minor changes. Two other states, Indiana and Maryland, are considering it this year.

Section 63.022(1) provides that "it is the intent of the Legislature to protect and promote the well-being of persons being adopted and their birth and adoptive parents and to provide to all children who can benefit by it a permanent family life, and whenever possible, to maintain sibling groups."

Section 63.032 provides definitions for "department," "child," "court," "minor," "adult," "person," "agency," "intermediary," "to place" or "placement," "adoption," "suitability of the intended placement," "primary residence and place of employment in Florida," "Primarily lives and works outside Florida," and "abandoned." An "intermediary" is defined as "an attorney or physician who is licensed or authorized to practice in this state or, for the purpose of adoptive placements of children from out of state with citizens of this state, a child-placing agency licensed in another state that is qualified by the department."

Subsection 63.062(1) lists the persons who are required to consent to an adoption unless excused by the court. Those persons are:

- (1)The mother of the minor.
- (2)The father of the minor, if:
 - (a)The minor was conceived or born while the father was married to the mother.
 - (b)The minor is his child by adoption.
 - (c)The minor has been established by court proceeding to be his child.
 - (d)He has acknowledged in writing, signed in the presence of a competent witness, that he is the father of the minor and has filed such acknowledgment with the Office of Vital Statistics of the Department of Health and Rehabilitative Services.
 - (e)He has provided the child with support in a repetitive, customary manner.
- (3)The minor, if more than 12 years of age, unless the court in the best interest of the minor dispenses with the minor's consent.

Subsection 63.062(3) requires the petitioner in an action for adoption to make good faith and diligent efforts to notify, and obtain written consent from, the persons required to consent to adoption within 60 days after filing the petition. These efforts may include conducting interviews and record searches to locate those persons, including verifying

information related to location of residence, employment, service in the Armed Forces, vehicle registration in this state, and corrections records.

Subsection 63.062(4) authorizes a licensed child-placing agency or DCF to consent to a subsequent adoption when parental rights have been terminated and the child has been placed with the agency or DCF.

Section 63.072 sets forth the persons whose consent to an adoption may be excused:

- (4)a parent who has deserted a child without affording means of identification or who has abandoned a child;
- (5)a parent whose parental rights have been terminated by order of a court of competent jurisdiction;
- (6)a parent judicially declared incompetent for whom restoration of competency is medically improbable;
- (7)a legal guardian or lawful custodian of the person to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of 60 days or who, after examination of his or her written reasons for withholding consent, is found by the court to be withholding his or her consent unreasonably; or
- (8)the spouse of the person to be adopted, if the failure of the spouse to consent to the adoption is excused by reason of prolonged, unexplained absence, unavailability, incapacity, or circumstances that are found by the court to constitute unreasonable withholding of consent.

The effect of the provisions of section 63.072 is to avoid the necessity of a termination of parental rights hearing when a parent meets any of the above criteria. The provision allowing an adoption to go forward without the consent of one parent, usually a father, based on abandonment is the provision which has most frequently been litigated. In chapter 39, F.S., dealing with children who have been abused, neglected, or abandoned, a termination of parental rights hearing is required, even when a parent has consented to the adoption or is alleged to have abandoned a child, although these occurrences give rise to the grounds for the hearing, section 39.464.

Section 63.092 requires that an intermediary report to the court any intended placement of a child with a person not related to the child within the third degree or a stepparent if the intermediary has knowledge of, or participates in, the placement. This section also requires a preliminary home study, performed by a licensed child-placing agency, a licensed professional, or agency described in s. 61.20(s), F.S., prior to placing the child. Further, this section sets forth the minimum requirements for the preliminary home study, as follows:

- (9)an interview with the intended adoptive parents;
- (10)records checks of the department's central abuse registry under chapter 415 and statewide criminal records correspondence checks through the Department of Law Enforcement (FDLE) on the intended adoptive parents;
- (11)an assessment of the physical environment of the home;
- (12)a determination of the financial security of the intended adoptive parents;
- (13)documentation of counseling and education of the intended adoptive parents on adoptive parenting;
- (14)documentation that information on adoption and the adoption process has been provided to the intended adoptive parents;

- (15)documentation that information on support services available in the community has been provided to the intended adoptive parents;
- (16)a written statement by the intermediary that disclosure has been made as required by section 63.085; and
- (17)a copy of the written acknowledgment required by section 63.085 (acknowledging the required disclosures by the intermediary).

Subsection 61.20(2) describes those persons who may conduct a social investigation and study when ordered by the court. Those persons are:

- (18)Qualified staff of the court;
- (19)A child-placing agency licensed pursuant to s. 409.175, F.S.;
- (20)A psychologist licensed pursuant to chapter 490, F.S.;
- (21)A clinical social worker, marriage and family therapist, or mental health counselor licensed pursuant to chapter 491, F.S. or
- (22)DCF, upon court request, after a filing of indigency pursuant to s. 57.081, F.S., by one of the adult parties to the proceeding.

Section 63.097 requires court approval of fees of more than \$1000 and costs of more than \$2500 paid to an intermediary other than actual, documented, medical costs, court costs, and hospital costs. It also requires that when an intermediary uses the services of a licensed child-placing agency, a professional, person conducting a preliminary home study, or DCF, the person seeking to adopt must pay an amount equal to the cost of all service performed, including, but not limited to, the cost of conducting the preliminary home study, counseling, and the final home investigation. Finally, this section authorizes the court to allow the person seeking to adopt to pay a lesser amount if the person is financially unable to pay the full cost of these activities.

Subsection 63.102(2) requires that a petition for adoption be filed in the county where the petitioner or petitioners or the child resides or where the agency in which the child has been placed is located.

Subsection 63.012(3) requires that, except for adoptions involving placement of a child with a relative within the third degree of consanguinity, a petition for adoption handled by an intermediary must be filed within 30 working days after the child is placed for adoption.

Subsection 63.122(4) provides that notice of hearing on the adoption petition must be served on:

- (23)DCF or any licensed child-placing agency placing the minor.
- (24)the intermediary.
- (25)any person whose consent to the adoption is required by this act who has not consented, unless such person's consent is excused by the court.
- (26)any person who is seeking to withdraw consent.

Section 63.182 provides that after one year from the entry of a judgment of adoption, any irregularity or procedural defect in the proceedings is cured, and the validity of the judgment shall not be subject to direct or collateral attack because of any irregularity or procedural defect.

Section 63.185 requires that for any person to adopt in Florida, his or her primary residence and place of employment must be in Florida, except for adoption of a special needs child.

Section 63.207 prohibits the out-of-state placement of a child for adoption by any one other than an intermediary, an agency, or DCF unless the child is to be placed with a relative within the third degree of consanguinity or with a stepparent. This section provides that an intermediary may place a child outside the state only if the child is a special needs child as defined in section 409.166. Subsection (2) of this section prohibits an intermediary from counseling a birth mother to leave the state to give birth to a child outside the state in order to secure a fee in excess of that permitted by section 63.097. Subsection (3) requires that, when applicable, the Interstate Compact on the Placement of Children authorized in section 409.401 be used in placing children outside Florida for adoption.

Section 63.212 lists unlawful acts relating to adoption, which include:

- (27) placing a child with a person who primarily lives and works outside Florida unless the person with whom the child is placed is a relative within the third degree of consanguinity or is a stepparent. DCF, intermediaries, and agencies are exempted from this prohibition, but intermediaries are allowed to place only special needs children outside the state.
- (28) anyone other than DCF, a licensed child-placing agency, or an intermediary placing a child for adoption within the state unless the child is placed with a relative within the third degree of consanguinity or a stepparent.
- (29) Selling or surrendering, or arranging for the sale or surrender, of a child to another person for money or for anything of value, or receiving such child for such payment or thing of value. Actual prenatal care and living expenses of the mother of the child to be adopted and actual living and medical expenses of such mother for a reasonable time, not to exceed 6 weeks, if medical needs require such support, after the birth of the child are exempted from the prohibition.
- (30) Transferring parental rights to a child in connection with selling or offering to sell such rights.
- (31) Assisting in any of the prohibited practices listed above.
- (32) Advertising or offering a child for adoption. DCF, agencies, and intermediaries are exempted.
- (33) Contracting for the purchase, sale, or transfer of custody or parental rights of a child or unborn fetus. The exceptions to this prohibition constitute the preplanned adoption provisions.

Section 63.219 provides that the sanction for a finding by the court that an intermediary or agency has violated any provision of the Act is to prohibit that agency or intermediary from placing a child for adoption in the future.

Paragraph 409.166(2)(a) defines a "special needs child" as "a child whose permanent custody has been awarded to the department or to a licensed child-placing agency and

1. who has established significant emotional ties with his or her foster parents; or
2. is not likely to be adopted because he or she is:
 - a. Eight years old or older;
 - b. Mentally retarded;

- c. Physically or emotionally handicapped;
- d. Of black or racially mixed heritage; or
- e. A member of a sibling group of any age, provided two or more members of a sibling group remain together for the purposes of adoption.

Effective January 1, 1996, the Family Law Rules of Procedure, rather than the Rules of Civil Procedure, are to be applied to cases involving adoptions, Rule 12.010(a)(1), Fla. Fam. L. R .P.

Section 25 U.S.C. ss. 1901 is the Indian Child Welfare Act of 1978. It provides, among other things, that if a child or the child's parents are members of a Native American tribe, that the tribe has primary jurisdiction over custody issues affecting the child, including adoption.

Constitutional Issues

Both state and federal courts have long held that parents have a fundamental liberty interest in the care, custody, and management of their children, *Santosky v. Kramer*, 455 US 745, 102 SCT 1388, 71 LEd 2d 599 (1982). However, the right is not absolute, and the exact parameters of the rights of an unwed father have been very difficult for the courts to define. In *Lehr v. Robertson*, 103 Sct 2985, 463 US 248, 77 LEd2d 614 (US 1983), the U.S. Supreme Court affirmed an order of adoption, withstanding a challenge by a New York unwed father. In this case, the father had never received notice of the pending adoption. The court found that the failure to give the father notice did not deny him due process, despite the fact that the state had actual notice of his whereabouts, when he had never established any custodial, personal, or financial relationship with the child and had not taken advantage of the statutory procedure by which he could have acquired the right to receive notices concerning adoption. This statutory procedure required mailing a postcard to the putative father registry.

Two major Florida Supreme Court cases have in recent years examined the rights of unwed fathers during adoption processes. In both, the fathers lost their appeals. In the first, *In the Matter of the Adoption of John Roe*, 543 So.2d 741 (Fla. 1989), the father appealed an order of adoption because he was not given notice of the adoption. The court denied his claim, finding that pre-birth conduct toward the unborn child could be considered in a finding of abandonment, and that notice to him was thus not required. More recently, in *In re the Adoption of Baby E.A.W.*, 658 So2d 961 (Fla. 1995), the court upheld a finding of abandonment by the father based on his lack of emotional support and emotional abuse of the mother during her pregnancy.

The Florida Supreme Court has most recently considered the effect of marriage on the paternity of a child born while the mother was married in *Department of Health and Rehabilitative Services v. Privette*, 617 So.2d 305 (Fla. 1993). Referring to the constitutional principles set forth in *Santosky*, the court found that the child's legally recognized father has an unmistakable interest in maintaining the relationship with his child unimpugned, at 307. Before a paternity determination can be ordered in a case in which the mother is married, or was married when the child was born, the legal father (in other words, the man to whom she was married) must be given an opportunity to be heard, and a guardian ad litem must be appointed to represent the best interests of the child.

B. EFFECT OF PROPOSED CHANGES:

The changes to section 63.022 add legislative intent that the court enter only such orders as protect and promote the best interest of the adoptee. Additional changes to this section provide for notice of adoption being given prior to the birth of the child being adopted. Notice of placements for adoption will be made to the court rather than to DCF.

The bill alphabetizes the definitions contained in section 63.032. It eliminates definitions for "primary residence and place of employment in Florida" and "primarily lives and works outside Florida." It adds definitions for "best interest of the person to be adopted," and "consent." It expands the definition of "abandonment" to include the following sentence: "The incarceration of a parent, custodian, or person responsible for the child's welfare does not constitute a bar to a finding of abandonment." (This sentence is already in the chapter 39 definition of "abandonment.") It removes the words "in lawful wedlock" from the definition of "adoption." It changes the definition of "department" from the Department of Health and Rehabilitative Services to the Department of Children and Family Services. In the definition of "suitability of the intended placement," the "welfare" of the child is replaced with the "best interest" of the child. In the definition of "to place" or "placement," the phrase "giving a child up for adoption" is replaced with "placing the child for adoption."

The bill prohibits adoption by persons who are terminally ill unless the court finds by clear and convincing evidence that such adoption is not detrimental to the person being adopted.

The bill adds a qualifier to the language which sets out the list of those who must give consent to an adoption. Currently, the law requires consent from any man who was married to the mother at the time the child was conceived or born. The bill limits this requirement by a provision that, in addition, that man must be the biological father of the child.

The bill adds that the consent of an alleged father who has filed a petition for paternity, as well as one who has completed an acknowledgment of paternity, is required for an adoption.

The bill shortens the time period for the diligent efforts to locate and obtain written consent from persons required to consent to adoption from 60 days to 30 days. It requires the court to terminate the rights of parties who are not found during the 30 day period.

The provisions of new section 63.063 include the following:

- (7) A prospective male parent is deemed to have notice at the time of sexual intercourse and a lack of knowledge shall not be a defense to contesting the adoption of a child conceived.

The provisions of new section 64.064 allow notice of an adoption prior to the birth of the child who may be adopted. The bill sets forth the form of a proposed notice of adoption.

The bill allows waiver of notice of adoption before or after the birth of the child by any interested party.

The bill provides that birth parents have an obligation to provide an address and telephone number and have an additional, continuing obligation to provide a change of address and telephone number within 10 days of any change to the intermediary or agency until a final judgment of adoption is entered.

The bill authorizes the court to appoint an attorney ad litem for an unlocatable birth father in order to perform diligent search and inquiry to locate said birth father in order to obtain consent.

The bill establishes for the first time in chapter 63 a procedure which is called a Termination of Parental Rights Hearing. The purpose of the hearing "to determine the rights of interested parties as soon as possible." The bill requires that the hearing not be conducted until after the birth of the child.

The procedures for the court to follow when the identity or location of a parent is unknown are identical to those in chapter 39, which are in turn based on the provisions of section 3-404 of the Uniform Adoption Act.

The bill adds a requirement that if the adoptive parents have not resided in Florida for at least a year, and are now Florida residents, that the diligent search and background check will be performed in the state of their last residence.

The bill also adds a requirement that the physical health of the adoptive parents be assessed, specifically including human immunodeficiency virus testing.

A requirement that the birth mother and the birth father when possible sign a statement that they understand the finality of their consent to adoption and that their consent is given freely and voluntarily is added as part of the preliminary home study of the adoptive parents.

The maximum fee for adoption without court approval is raised from \$1000 to \$2000, and the maximum costs from \$2500 to \$3000. These fees and costs do not include actual, documented medical costs, court costs, and hospital costs. The bill extends these limitations on fees and costs, which currently apply only to intermediaries, to agencies.

The bill allows the petition for adoption to be filed in the place where the intermediary is located.

The time the report of the final home investigation is changed to 90 days from the date of placement in the adoptive home, rather than 90 days from the date the petition for adoption is filed.

Agencies and intermediaries are required to retain permanently all records relating to the adoption of a minor, and to notify DCF at least 30 days prior to closing an office or agency as to the location of the records.

The bill reduces the period of time when an adoption may be appealed due to an irregularity or procedural defect from one year to three months.

The bill extends current restrictions on placement of special needs children to include agencies as well as intermediaries. It adds to the list of prohibited practices the following:

- (1) charging or accepting any fee or compensation of any nature from anyone for participating in the identification of a birth parent, prospective adoptive child, or adoptive parent;
- (2) providing to any agency or intermediary untruthful or misleading information when providing necessary information for the completion of an adoptive placement; or
- (3) contracting as a birth parent with an agency or intermediary or accepting benefits from an agency or intermediary and the contracting with or simultaneously accepting benefits from another agency or intermediary without providing the first agency or intermediary with written notice of the intention to withdraw from the contract to place.

While not striking the current provisions relating to preplanned adoption in section 63.212, the bill repeats these same provisions in new section 63.215.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

No agency or programs are eliminated or reduced.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not applicable.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No

- b. Does the bill require or authorize an increase in any fees?

No

- c. Does the bill reduce total taxes, both rates and revenues?

No

- d. Does the bill reduce total fees, both rates and revenues?

No

- e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

The bill clarifies the issue of persons to be given notice in adoptions proceedings.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

Not applicable.

- (2) service providers?

Not applicable.

- (3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends section 63.022 to express the legislative intent that, in matters coming before the court pursuant to this chapter, the court enter only such orders as protect and promote the best interest of the adoptee; that closure be achieved as quickly as possible in an adoptee's life by the establishment of rights, interests, and obligations of all parties and that uncertainty with regard to these rights, interests, and duties be eliminated as soon as possible; that planning for the future of the adoptee be facilitated and that the adoptee, as soon as possible, be given a permanent status; to ensure the integrity of adoption; and that notice of a proposed adoption be made at the earliest possible time and, specifically, before the birth of the child when possible. Clarifies and the safeguards expressed in the legislative intent, including adding the intent that adoptions be finalized as expeditiously as possible, that all placements of children for adoption shall be reported to the court through the filing of an intent to place notice, that licensed professionals pursuant to section 61.20 be added to the list of persons under whose guidance the child may live in a proposed adoptive home. Removes language authorizing the court to enter such orders as it deems necessary and suitable to promote and protect the best interests of the person to be adopted.

Section 2. Amends section 63.032 to provide definitions for "abandoned," "adoption," "adult," "agency," "best interest of the person to be adopted," "child," "consent," "court," "department," "intermediary," "minor," "person," "suitability of the intended placement," and "to place" or "placement."

Section 3. Renumbers section 63.207 as section 63.0323 and amends it to remove provisions prohibiting the placing or attempting to place a child for the purpose of adoption with a family who primarily live and work outside Florida in another state. Removes provisions relating to the placement of special needs children outside the state by intermediaries. Removes provision that violation of the court order subjects the intermediary to contempt of court and to the penalties provided in section 63.212.

Section 4. Amends section 63.042 to prohibit adoption by terminally ill persons, unless the court finds by clear and convincing evidence that it is not detrimental to the person being adopted to grant such adoption. Prohibits a prospective adoptive parent from obtaining custody of a child if that person has been convicted of domestic abuse, child abuse, or a felony involving violence against a person. Prohibits a prospective adoptive parent from obtaining custody of a child if the court determines by clear and convincing evidence that it is in the best interest of the child.

Section 5. Amends section 63.052 to provide that the custody of prospective adoptive parents is subject to the continuing suitability of the home, and that the adoptee may be removed at any time and the adoption dismissed before the finalization of the adoption upon the order of the court for good cause shown.

Section 6. Amends section 63.062 to provide that the consent of a man married to the mother at the time the child was conceived or born is required only if that man is in fact the biological father of the child. Adds requirement that person who has filed a paternity petition give consent to an adoption, in addition to a person who has acknowledged paternity in writing, signed in the presence of a competent witness, and filed this acknowledgment with the Office of Vital Statistics. Adds requirement that consent for adoption be obtained from a person who has filed a petition to establish paternity pursuant to chapter 742 or has responded to a notice of adoption pursuant to section 63.064. Provides that, in order for his consent to the adoption to be needed, a man must have provided the minor and the minor's mother during pregnancy with support in a repetitive, customary manner, taking into consideration the needs of the mother and the financial ability of the father. Requires that consent contain language that the birth parents have the right to see an attorney, the right to hold, care for, and feed the child; the right to place the child in foster care or family care, or the right to take the child home; the right to know what community resources are available should she not go through with the adoption. Allows the agency or intermediary to act on behalf of the petitioner in making good faith and diligent efforts to notify persons required to consent to adoption. Reduces the time for obtaining consent from 60 to 30 days. Provides that if the good faith and diligent efforts do not locate additional parties whose consent to the adoption may be required, and no additional parties come forward and acknowledge paternity and gain standing to challenge the adoption and service of process and notice pursuant to the rules of civil procedure have been given, the court shall terminate the unknown party's interest and allow the adoption to proceed to finalization. Provides that if such a party appears after the finalization of the adoption, the adoption order shall remain enforceable, provided that the notice was given and the rules of civil procedure complied with. Provides inquiries required to be made as part of a diligent search and gives the records to be searched as part of an affidavit of diligent search and inquiry.

Section 7. Creates section 63.063 to list the parties who are required to receive notice of adoption.

Section 8. Creates section 63.064 to provide the content of the required notice of adoption, including a proposed form. Provides that the notice may be waived in writing by any interested party before or after the birth of the child. Requires that the notice be served as prescribed by the rules of civil procedure and service of process be made as specified by law or civil actions. Requires birth parents to provide addresses and telephone numbers and changes of address and telephone numbers within 10 days of the change to the intermediary or agency until a final judgment of adoption is entered.

Authorizes the court to appoint an attorney ad litem for an unlocatable birth father in order to perform diligent search and inquiry to locate said birth father in order to obtain consent.

Section 9. Creates section 63.065 to require that before the court may terminate parental rights, in addition to other requirements, the court must conduct a hearing to determine the rights of interested parties as soon as possible. Requires that notice of the date, time, and place of the hearing must be sent to anyone responding to the notice of adoption in section 63.064. Requires that the hearing shall not be held prior to the birth of the child. Provides language to be included in the notice. Allows the notice to be waived if a person to whom notice would be required to be given executes a valid consent for adoption. Provides that if the person served with notice under this section fails to respond to the notice of adoption or appear at the hearing, the failure to respond or appear shall constitute consent for termination of parental rights by the person given notice.

Section 10. Creates section 63.066 to set forth procedures for the court to follow when the identity or location of a parent is unknown after filing of a notice of adoption.

Section 11. Amends section 63.072 to add to the list of persons whose consent to an adoption may be excused:

- (1)a parent who has failed to acknowledge paternity pursuant to chapter 742 after the notice of adoption is served upon him, so long as the notice provisions of section 63.063 have been met.
- (2)a parent who has not provided the minor and the minor's mother during pregnancy with support in a repetitive, customary manner. The court may consider the lack of emotional and financial support in making this determination.
- (3)a parent that the court determines to be unfit to take custody of a child. A history of domestic violence or child abuse shall be a rebuttable presumption of unfitness.

Section 12. Amends section 63.092 to require that the preliminary home study include national and local criminal checks, as well incident reports and abuse records. Adds the requirement that if adoptive parents have not resided in this state for a period of 1 year, and are now residents of Florida, a diligent search and background check be performed in the state of their last residence. Adds requirement that an assessment of the physical health of the adoptive applicants be done, including, but not limited to, human immunodeficiency virus testing. Adds a requirement that when possible, interviews be conducted with both birth parents, and that documentation be made of these interviews. Requires that the home study include a statement signed by the birth mother and, when possible, the birth father that they understand the finality of their consent to adoption and that the said consent is given freely and voluntarily and without coercion or duress from any person.

Section 13. Amends section 63.097 to increase from \$1,000 to \$2,000 the fees and from \$2,500 to \$3,000 the costs which may be paid without requiring court approval. Enlarges the scope of the section to include agencies as well as intermediaries.

Section 14. Amends section 63.102 to allow a petition for adoption to be filed in the placed where an intermediary is located. Requires that the petition be filed within 30 days after the child is placed.

Section 15. Amends section 63.112 to require that if the child was born out of the state or the adoptive couple resides outside the state, that the adoption will be in compliance with section 409.401. Requires that the birth parent provide an affidavit that the Federal Child Welfare Act, 25 U.S.C. 1901 et seq is not applicable to the adoption and whether the child qualifies as a Native American. Requires documentation that interviews be held with the birth mother unless her parental rights have been terminated, or she refuses the interview, and with the birth father, if he can be located.

Section 16. Amends section 63.125 to require that a written report of the final home investigation be filed within 90 days after the child is placed in the adoptive home rather than after the date the petition is filed.

Section 17. Amends section 63.132 to require that agencies as well as petitioners and intermediaries file reports of expenditures and receipts.

Section 18. Amends section 63.162 to require that all files, records, and papers of agencies and intermediaries pertaining to the adoption of a minor shall be permanently retained by the intermediary or agency. Requires that the intermediary or agency, prior to the closure of its office or agency, notify the department in writing at least 30 days prior to its closing as to the location of said files, records, and papers.

Section 19. Amends section 63.182 to reduce the time for the curing of any irregularities or procedural defects in adoptions proceedings from one year to 3 months.

Section 20. Amends section 63.085 to reduce the time for an appeal contesting the validity of a judgment of adoption from one year to 3 months.

Section 21. Amends section 63.212 to add "an agency" to those who may place special needs children for adoption with persons who live out of state. Adds "an intermediary" to those who may charge or accept a fee or compensation from anyone making a referral. Adds participating in the identification of a birth parent, prospective adoptive child, or adoptive parent as activities for which fees may be charged. Adds to the list of prohibited practices providing any agency or intermediary untruthful or misleading information when providing necessary information for the completion of an adoptive placement. Adds to the list of prohibited practices contracting as a birth parent with an agency or intermediary or accepting benefits from an agency or intermediary and contracting with another agency or intermediary without providing the first agency or intermediary with written notice of intention to withdraw from the contract to place. Makes numerous conforming and technical changes.

Section 22. Creates section 63.215 to authorize preplanned adoption agreements. Provides that such agreements may not effect final transfer of a child without review and approval of DCF and the court and without compliance with other applicable provisions of law, nor may they constitute consent of a mother to place her child until seven days following birth, unless the court finds that the mother was aware of their right to rescind within the 7-day period but chose not to rescind. Provides required terms for the preplanned adoption agreement. Sets forth prohibited provisions of the preplanned adoption agreement. Prohibits attorneys from simultaneously representing both an intended father and mother and the proposed potential mother. Prohibits payment of finder's fees to agents, finders, or intermediaries for finding volunteer mothers or matching a volunteer mother with an intended father and mother. Provides definitions

for "blood and tissue typing tests," "child," "fertility technique," "intended father," "intended mother," "parties," "preplanned adoption agreement," "preplanned adoption arrangement," and "volunteer mother."

Section 23. Amends section 39.01 to correct a reference.

Section 24. Provides an effective date of July 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

The Office of the State Courts Administrator predicts that some additional judicial time will be required by the bill due to the additional hearing required by the bill. The Office is unable to predict the costs associated with these additional hearings at this time.

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

The bill allows intermediaries more latitude in placing children out of state. It increases the amount of fees and costs which may be paid to private adoptions placement agencies and intermediaries.

3. Effects on Competition, Private Enterprise and Employment Markets:

The bill removes competitive barriers from intermediaries, reducing the differences between agencies and intermediaries in placing children for adoption.

D. **FISCAL COMMENTS:**

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with municipalities.

V. COMMENTS:

On page 11, line 7 of the bill, the word "not" appears to have been omitted.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Six technical and clarifying amendments were adopted in the Committee on Family Law and Children meeting of April 10, 1997.

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VII. SIGNATURES:

COMMITTEE ON FAMILY LAW & CHILDREN:

Prepared by:

Legislative Research Director:

PEGGY SANFORD

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