

By the Committee on Judiciary

308-1780A-98

1 A bill to be entitled
2 An act relating to adoption; amending ss.
3 39.461, 39.464, 39.469, F.S., relating to the
4 petition and grounds for terminating parental
5 rights and powers of disposition; removing
6 provisions authorizing licensed child-placing
7 agencies to file actions to terminate parental
8 rights; amending s. 39.47, F.S.; providing
9 additional requirements for a petition for
10 adoption; prohibiting filing such petition
11 until the order terminating parental rights is
12 final; amending s. 63.022, F.S.; revising
13 legislative intent with respect to adoptions in
14 this state; amending s. 63.032, F.S.; revising
15 definitions; defining the term "adoption
16 entity"; creating s. 63.037, F.S.; exempting
17 adoption proceedings that result from a
18 termination of parental rights under ch. 39,
19 F.S., from certain provisions of ch. 63, F.S.;
20 creating s. 63.038, F.S.; providing criminal
21 penalties for committing certain fraudulent
22 acts; creating s. 63.039, F.S.; providing
23 sanctions and an award of attorney's fees under
24 certain circumstances; amending s. 63.052,
25 F.S.; providing for placement of a minor
26 pending adoption; specifying the jurisdiction
27 of the court over a minor who has been placed
28 for adoption; amending s. 63.062, F.S.;
29 specifying additional persons who must consent
30 to an adoption, execute an affidavit of
31 nonpaternity, or receive notice of proceedings

1 to terminate parental rights; permitting an
2 affidavit of nonpaternity under certain
3 circumstances; amending s. 63.082, F.S.;
4 revising requirements for executing a consent
5 to an adoption; providing a time period for
6 withdrawing consent; providing additional
7 disclosure requirements; amending s. 63.085,
8 F.S.; specifying information that must be
9 disclosed to persons seeking to adopt a minor
10 and to the birth parents; creating s. 63.087,
11 F.S.; requiring that a separate proceeding be
12 conducted by the court to determine whether a
13 birth parent's parental rights should be
14 terminated; providing for rules, jurisdiction,
15 and venue for such proceedings; providing
16 requirements for the petition and hearing;
17 creating s. 63.088, F.S.; providing
18 requirements for identifying and locating a
19 person who is required to consent to an
20 adoption or receive notice of proceedings to
21 terminate parental rights; providing
22 requirements for the notice; providing
23 requirements for conducting a diligent search
24 for such person whose location is unknown;
25 requiring that an unlocated or unidentified
26 person be served notice by constructive
27 service; providing that failure to respond or
28 appear constitutes grounds to terminate
29 parental rights pending adoption; creating s.
30 63.089, F.S.; providing procedures for the
31 proceeding to terminate parental rights pending

1 adoption; specifying the matters to be
2 determined; specifying grounds upon which
3 parental rights may be terminated; providing
4 for procedures following a judgment; providing
5 for records to be made part of the subsequent
6 adoption; amending s. 63.092, F.S.; providing
7 requirements to be met if a prospective
8 placement in an adoptive home is an at-risk
9 placement; defining at-risk placement; amending
10 s. 63.097, F.S.; revising requirements for the
11 court in approving specified fees and costs;
12 amending s. 63.102, F.S.; revising requirements
13 for filing a petition for adoption; providing
14 requirements for prior approval of fees and
15 costs; amending s. 63.112, F.S.; revising
16 requirements for the information that must be
17 included in a petition for adoption; amending
18 s. 63.122, F.S.; revising the time requirements
19 for hearing a petition for adoption; amending
20 s. 63.125, F.S., relating to the final home
21 investigation; conforming provisions to changes
22 made by the act; amending s. 63.132, F.S.;
23 revising requirements for the report of
24 expenditures and receipts which is filed with
25 the court; amending s. 63.142, F.S.; specifying
26 circumstances under which a judgment
27 terminating parental rights pending adoption is
28 voidable; providing for an evidentiary hearing
29 to determine the minor's placement following a
30 motion to void such a judgment; amending s.
31 63.152, F.S.; requiring that the clerk of the

1 court mail a copy of a new birth record to the
2 state registry of adoption information;
3 amending s. 63.165, F.S.; requiring that a copy
4 of the certified statement of final decree of
5 adoption be included in the state registry of
6 adoption information; requiring that the
7 Department of Children and Family Services
8 maintain such information for a specified
9 period; amending s. 63.182, F.S.; requiring
10 that an action to vacate an order of adoption
11 or an order terminating parental rights pending
12 adoption be filed within a specified period
13 after entry of the order; amending s. 63.207,
14 F.S.; revising provisions that limit the
15 placement of a minor in another state for
16 adoption; amending s. 63.212, F.S., relating to
17 prohibitions and penalties with respect to
18 adoptions; conforming provisions to changes
19 made by the act; repealing s. 63.072, F.S.,
20 relating to persons who may waive required
21 consent to an adoption; requiring that a
22 petition for adoption be governed by the law in
23 effect at the time the petition is filed;
24 providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 39.461, Florida Statutes, is
29 amended to read:

30 39.461 Petition for termination of parental rights.--
31

1 (1) All proceedings seeking an adjudication to
2 terminate parental rights pursuant to this chapter must be
3 initiated by the filing of an original petition by the
4 department, the guardian ad litem, ~~or a licensed child-placing~~
5 ~~agency~~ or ~~by~~ any other person who has knowledge of the facts
6 alleged or is informed of them and believes that they are
7 true.

8 (2) The form of the petition is governed by the
9 Florida Rules of Juvenile Procedure. The petition must be in
10 writing and signed by the petitioner or, if the department is
11 the petitioner, by an employee of the department, under oath
12 stating the petitioner's good faith in filing the petition.

13 (3) When a petition for termination of parental rights
14 has been filed, the clerk of the court shall set the case
15 before the court for an advisory hearing.

16 Section 2. Section 39.464, Florida Statutes, as
17 amended by section 12 of chapter 97-276, Laws of Florida, is
18 amended to read:

19 39.464 Grounds for termination of parental rights.--

20 (1) The department, the guardian ad litem, ~~a licensed~~
21 ~~child-placing agency,~~ or any person related to the child who
22 has knowledge of the facts alleged or who is informed of said
23 facts and believes that they are true, may petition for the
24 termination of parental rights under any of the following
25 circumstances:

26 (a) When the parent or parents voluntarily executed a
27 written surrender of the child and consented to the entry of
28 an order giving custody of the child to the department ~~or to a~~
29 ~~licensed child-placing agency~~ for subsequent adoption and the
30 department ~~or licensed child-placing agency~~ is willing to
31 accept custody of the child.

1 1. The surrender document must be executed before two
2 witnesses and a notary public or other person authorized to
3 take acknowledgments.

4 2. The surrender and consent may be withdrawn after
5 acceptance by the department ~~or licensed child-placing agency~~
6 only after a finding by the court that the surrender and
7 consent were obtained by fraud or duress.

8 (b) When the identity or location of the parent or
9 parents is unknown and, if the court requires a diligent
10 search pursuant to s. 39.4625, cannot be ascertained by
11 diligent search as provided in s. 39.4625 within 90 days.

12 (c) When the parent or parents engaged in conduct
13 toward the child or toward other children that demonstrates
14 that the continuing involvement of the parent or parents in
15 the parent-child relationship threatens the life or well-being
16 of the child irrespective of the provision of services.
17 Provision of services is evidenced by proof that services were
18 provided through a previous plan or offered as a case plan
19 from a child welfare agency.

20 (d) When the parent of a child is incarcerated in a
21 state or federal correctional institution and:

22 1. The period of time for which the parent is expected
23 to be incarcerated will constitute a substantial portion of
24 the period of time before the child will attain the age of 18
25 years;

26 2. The incarcerated parent has been determined by the
27 court to be a violent career criminal as defined in s.
28 775.084, a habitual violent felony offender as defined in s.
29 775.084, or a sexual predator as defined in s. 775.21; has
30 been convicted of first degree or second degree murder in
31 violation of s. 782.04 or a sexual battery that constitutes a

1 capital, life, or first degree felony violation of s. 794.011;
2 or has been convicted of an offense in another jurisdiction
3 which is substantially similar to one of the offenses listed
4 in this paragraph. As used in this section, the term
5 "substantially similar offense" means any offense that is
6 substantially similar in elements and penalties to one of
7 those listed in this paragraph, and that is in violation of a
8 law of any other jurisdiction, whether that of another state,
9 the District of Columbia, the United States or any possession
10 or territory thereof, or any foreign jurisdiction; and

11 3. The court determines by clear and convincing
12 evidence that continuing the parental relationship with the
13 incarcerated parent would be harmful to the child and, for
14 this reason, that termination of the parental rights of the
15 incarcerated parent is in the best interest of the child.

16 (e) When the parent or parents engaged in egregious
17 conduct that endangers the life, health, or safety of the
18 child or the child's sibling or had the opportunity and
19 capability to prevent egregious conduct that threatened the
20 life, health, or safety of the child or the child's sibling
21 and knowingly failed to do so.

22 1. As used in this subsection, the term "sibling"
23 means another child who resides with or is cared for by the
24 parent or parents regardless of whether the child is related
25 legally or by consanguinity.

26 2. As used in this subsection, the term "egregious
27 abuse" means conduct of the parent or parents that is
28 deplorable, flagrant, or outrageous by a normal standard of
29 conduct. Egregious abuse may include an act or omission that
30 occurred only once but was of such intensity, magnitude, or
31 severity as to endanger the life of the child.

1 (f) A petition for termination of parental rights may
2 also be filed when a child has been adjudicated dependent, a
3 case plan has been filed with the court, and the child
4 continues to be abused, neglected, or abandoned by the
5 parents. In this case, the failure of the parents to
6 substantially comply for a period of 12 months after an
7 adjudication of the child as a dependent child constitutes
8 evidence of continuing abuse, neglect, or abandonment unless
9 the failure to substantially comply with the case plan was due
10 either to the lack of financial resources of the parents or to
11 the failure of the department to make reasonable efforts to
12 reunify the family. Such 12-month period may begin to run only
13 after the entry of a disposition order placing the custody of
14 the child with the department or a person other than the
15 parent and the subsequent filing with the court of a case plan
16 with a goal of reunification with the parent.

17 (2) When a petition for termination of parental rights
18 is filed under subsection (1), a separate petition for
19 dependency need not be filed and the department need not offer
20 the parents a case plan with a goal of reunification, but may
21 instead file with the court a case plan with a goal of
22 termination of parental rights.

23 Section 3. Subsections (2) and (8) of section 39.469,
24 Florida Statutes, are amended to read:

25 39.469 Powers of disposition; order of disposition.--

26 (2) If the child is in foster care custody of the
27 department and the court finds that the grounds for
28 termination of parental rights have been established by clear
29 and convincing evidence, the court shall, by order, place the
30 child in the custody of the department for the purpose of
31

1 ~~adoption or place the child in the custody of a licensed~~
2 ~~child-placing agency for the purpose of adoption.~~

3 (8) If the court terminates parental rights, it shall,
4 in its order of disposition, provide for a hearing, to be
5 scheduled no later than 30 days after the date of disposition,
6 in which the department ~~or the licensed child-placing agency~~
7 shall provide to the court a plan for permanency for the
8 child. Thereafter, until the adoption of the child is
9 finalized or the child reaches the age of 18 years, whichever
10 occurs first, the court shall hold hearings at 6-month
11 intervals to review the progress being made toward permanency
12 for the child.

13 Section 4. Section 39.47, Florida Statutes, is amended
14 to read:

15 39.47 Postdisposition ~~Post disposition~~ relief.--

16 (1) ~~A licensed child-placing agency or~~ The department
17 that which is given custody of a child for subsequent adoption
18 in accordance with this chapter may place the child in a
19 family home for prospective subsequent adoption and may
20 thereafter become a party to any proceeding for the legal
21 adoption of the child and appear in any court where the
22 adoption proceeding is pending and consent to the adoption;
23 and that consent alone shall in all cases be sufficient.

24 (2) In any subsequent adoption proceeding, the parents
25 and legal guardian are ~~shall~~ not ~~be~~ entitled to any notice of
26 the proceeding and are not thereof, nor shall they be entitled
27 to knowledge at any time after the order terminating parental
28 rights is entered of the whereabouts of the child or of the
29 identity or location of any person having the custody of or
30 having adopted the child, except as provided by order of the
31 court pursuant to this chapter or chapter 63; and in any

1 habeas corpus or other proceeding involving the child brought
2 by any parent or legal guardian of the child, ~~an~~ no agent of
3 ~~the licensed child-placing agency or department~~ may not ~~shall~~
4 be compelled to divulge that information, but may be compelled
5 to produce the child before a court of competent jurisdiction
6 if the child is still subject to the guardianship of the
7 ~~licensed child-placing agency or department~~.

8 (3) The entry of the custody order to the department
9 ~~does or licensed child-placing agency~~ shall not entitle the
10 ~~licensed child-placing agency or department~~ to guardianship of
11 the estate or property of the child, but the ~~licensed~~
12 ~~child-placing agency or department~~ shall be the guardian of
13 the person of the child.

14 (4) The court shall retain jurisdiction over any child
15 for whom custody is given to ~~a licensed child-placing agency~~
16 ~~or to~~ the department until the child is adopted. After custody
17 of a child for subsequent adoption has been given to ~~an agency~~
18 ~~or~~ the department, the court has jurisdiction for the purpose
19 of reviewing the status of the child and the progress being
20 made toward permanent adoptive placement. As part of this
21 continuing jurisdiction, for good cause shown by the guardian
22 ad litem for the child, the court may review the
23 appropriateness of the adoptive placement of the child. The
24 petition for adoption must be filed in the division of the
25 circuit court which issued the judgment terminating parental
26 rights. A copy of the consent required under s. 63.062(4) and
27 executed by the department must be attached to the petition
28 for adoption. The petition for adoption must be accompanied by
29 a form created by the department which details the social and
30 medical history of each birth parent and includes the social
31 security number and date of birth for each birth parent, if

1 such information is available or readily obtainable. The
2 person seeking to adopt the minor may not file a petition for
3 adoption until the order terminating parental rights becomes
4 final. An adoption proceeding under this subsection is
5 governed by chapter 63, as limited under s. 63.037.

6 (5) The Legislature finds that children are most
7 likely to realize their potential when they have the ability
8 provided by good permanent families rather than spending long
9 periods of time in temporary placements or unnecessary
10 institutions. It is the intent of the Legislature that
11 decisions be consistent with the child's best interests and
12 that the department make proper adoptive placements as
13 expeditiously as possible following a final judgment
14 terminating parental rights.

15 Section 5. Section 63.022, Florida Statutes, is
16 amended to read:

17 63.022 Legislative intent.--

18 (1) It is the intent of the Legislature to protect and
19 promote the well-being of persons being adopted and their
20 birth and adoptive parents and to provide to all children who
21 can benefit by it a permanent family life, and, whenever
22 possible, to maintain sibling groups.

23 (2) The basic safeguards intended to be provided by
24 this chapter ~~act~~ are that:

25 (a) The minor ~~child~~ is legally free for adoption.

26 (b) The required persons consent to the adoption or
27 the parent-child relationship is terminated by judgment of the
28 court.

29 (c) The required social studies are completed and the
30 court considers the reports of these studies prior to judgment
31 on adoption petitions.

1 (d) All placements of minors for adoption are reported
2 to the Department of Children and Family Services.

3 (e) A sufficient period of time elapses during which
4 the minor ~~child~~ has lived within the proposed adoptive home
5 under the guidance of the department or a licensed
6 child-placing agency.

7 (f) All expenditures by adoption entities
8 ~~intermediaries~~ placing, and persons independently adopting, a
9 minor are reported to the court and become a permanent record
10 in the file of the adoption proceedings.

11 (g) Social and medical information concerning the
12 minor child and the birth parents is furnished by the birth
13 parent when available and filed with the court before a final
14 hearing on a petition to terminate parental rights pending
15 adoption consent to the adoption when a minor is placed by an
16 intermediary.

17 (h) A new birth certificate is issued after entry of
18 the adoption judgment.

19 (i) At the time of the hearing, the court may ~~is~~
20 ~~authorized to~~ order temporary substitute care when it
21 determines that the minor is in an unsuitable home.

22 (j) The records of all proceedings concerning custody
23 and adoption of minor children are confidential and exempt
24 from ~~the provisions of~~ s. 119.07(1), except as provided in s.
25 63.162.

26 (k) The birth parent, the adoptive parent, and the
27 minor child receive the same or similar safeguards, guidance,
28 counseling, and supervision in an intermediary adoption as
29 they receive in an agency or department adoption.

30 (l) In all matters coming before the court pursuant to
31 this chapter ~~act~~, the court shall enter such orders as it

1 deems necessary and suitable to promote and protect the best
2 interests of the person to be adopted.

3 Section 6. Section 63.032, Florida Statutes, is
4 amended to read:

5 63.032 Definitions.--As used in this chapter act,
6 ~~unless the context otherwise requires,~~the term:

7 (1) "Department" means the Department of Children and
8 Family Services.

9 (2) "Child" means a son or daughter, whether by birth
10 or adoption.

11 (3) "Court" means any circuit court of this state and,
12 when the context requires, the court of any state that is
13 empowered to grant petitions for adoption.

14 (4) "Minor" means a person under the age of 18 years.

15 (5) "Adult" means a person who is not a minor.

16 (6) "Person" includes a natural person, corporation,
17 government or governmental subdivision or agency, business
18 trust, estate, trust, partnership, or association, and any
19 other legal entity.

20 (7) "Agency" means any child-placing agency licensed
21 by the department pursuant to s. 63.202 to place minors for
22 adoption.

23 (8) "Intermediary" means an attorney ~~or physician~~ who
24 is licensed or authorized to practice in this state and who
25 has reported the intended placement of a minor for adoption
26 under s. 63.092 or, for the purpose of adoptive placements of
27 children from out of state with citizens of this state, a
28 child-placing agency licensed in another state that is
29 qualified by the department.

30 (9) "To place" or "placement" means the process of a
31 person giving a child up for adoption and the prospective

1 parents receiving and adopting the child, and includes all
2 actions by any person or agency participating in the process.

3 (10) "Adoption" means the act of creating the legal
4 relationship between parent and child where it did not exist,
5 thereby declaring the child to be legally the child of the
6 adoptive parents and their heir at law and entitled to all the
7 rights and privileges and subject to all the obligations of a
8 child born to such adoptive parents in lawful wedlock.

9 (11) "Suitability of the intended placement" includes
10 the fitness of the intended placement, with primary
11 consideration being given to the welfare of the child; the
12 fitness and capabilities of the adoptive parent or parents to
13 function as parent or parents for a particular child; any
14 familial relationship between the child and the prospective
15 placement; and the compatibility of the child with the home in
16 which the child is intended to be placed.

17 (12) "Primary residence and place of employment in
18 Florida" means a person lives and works in this state at least
19 6 months of the year and intends to do so for the foreseeable
20 future or military personnel who designate Florida as their
21 place of residence in accordance with the Soldiers' and
22 Sailors' Civil Relief Act of 1940 or employees of the United
23 States Department of State living in a foreign country who
24 designate Florida as their place of residence.

25 (13) "Primarily lives and works outside Florida" means
26 anyone who does not meet the definition of "primary residence
27 and place of employment in Florida."

28 (14) "Abandoned" means a situation in which the parent
29 or legal custodian of a child, while being able, makes no
30 provision for the child's support and makes no effort to
31 communicate with the child, which situation is sufficient to

1 evince a willful rejection of parental obligations. If, in the
2 opinion of the court, the efforts of such parent or legal
3 custodian to support and communicate with the child are only
4 marginal efforts that do not evince a settled purpose to
5 assume all parental duties, the court may declare the child to
6 be abandoned. In making this decision, the court may consider
7 the conduct of a father towards the child's mother during her
8 pregnancy.

9 (15) "Adoption entity" means the department under
10 chapter 39; an agency under chapter 63 or, at the request of
11 the department, under chapter 39; or an intermediary under
12 chapter 63, placing a person for adoption.

13 Section 7. Section 63.037, Florida Statutes, is
14 created to read:

15 63.037 Proceedings applicable to cases resulting from
16 a termination of parental rights under chapter 39.--A case in
17 which a minor becomes available for adoption after the
18 parental rights of each parent have been terminated by a court
19 order issued pursuant to chapter 39 will be governed by s.
20 39.47 and this chapter. Adoption proceedings filed under
21 chapter 39 are exempt from the following provisions of this
22 chapter: disclosure requirements for the adoption entity
23 provided in s. 63.085; general provisions governing
24 termination of parental rights pending adoption provided in s.
25 63.087; notice and service provisions governing termination of
26 parental rights pending adoption provided in s. 63.088; and
27 procedures for terminating parental rights pending adoption
28 provided in s. 63.089.

29 Section 8. Section 63.038, Florida Statutes, is
30 created to read:

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1 63.038 Prohibited acts.--A person who knowingly and
2 willfully provides false information under this chapter or
3 who, with the intent to defraud, accepts benefits related to
4 the same pregnancy from more than one agency or intermediary
5 without disclosing that fact to each entity commits a
6 misdemeanor of the second degree, punishable as provided in s.
7 775.082 or s. 775.083. In addition to any other penalty or
8 liability allowed by law, a person who knowingly and willfully
9 provides false information under this chapter or who, with
10 intent to defraud, accepts benefits related to the same
11 pregnancy from more than one agency or intermediary without
12 disclosing that fact to each entity and to any prospective
13 adoptive parent providing sums for the payment of the benefits
14 is liable for sums paid by anyone who paid sums permitted
15 under this chapter in anticipation of or in connection with an
16 adoption. A person seeking to collect moneys under this
17 section may do so by filing a civil action or may be awarded
18 restitution in a criminal prosecution.

19 Section 9. Section 63.039, Florida Statutes, is
20 created to read:

21 63.039 Duty of adoption entity to prospective adoptive
22 parents; sanctions.--

23 (1) An adoption entity placing a minor for adoption
24 has an affirmative duty to follow the requirements of this
25 chapter, specifically the following provisions, which protect
26 and promote the well-being of persons being adopted and their
27 birth and adoptive parents by promoting certainty, finality,
28 and permanency for such persons:

29 (a) Provide written initial disclosure to the adoptive
30 parent at the time and in the manner required under s.
31 63.085(1);

1 (b) Obtain a written statement by the adoptive parent
2 acknowledging receipt of the written initial disclosure and
3 distribute copies of that acknowledgment at the time and in
4 the manner required under s. 63.085(3);

5 (c) Provide written initial and postbirth disclosure
6 to the birth parent at the time and in the manner required
7 under s. 63.085(4);

8 (d) Obtain a written statement by the birth parent
9 acknowledging receipt of the written initial and postbirth
10 disclosure and distribute copies of that acknowledgment at the
11 time and in the manner required under s. 63.085(3);

12 (e) When a written consent for adoption is obtained,
13 obtain the consent at the time and in the manner required
14 under s. 63.082;

15 (f) When a written consent or affidavit of
16 nonpaternity for adoption is obtained, obtain a consent or
17 affidavit of nonpaternity that contains the language required
18 under s. 63.082;

19 (g) Include in the petition to terminate parental
20 rights pending adoption all information required under s.
21 63.087(6)(e);

22 (h) Obtain and file the affidavit of inquiry required
23 under s. 63.088(3);

24 (i) When the identity of a person whose consent to
25 adoption is necessary under this chapter is known but the
26 location of such a person is unknown, conduct the
27 due-diligence search and file the affidavit required under s.
28 63.088(4);

29 (j) Serve the petition and notice of hearing to
30 terminate parental rights pending adoption at the time and in
31 the manner required by s. 63.088; and

1 (k) Hold the hearings required under this chapter no
2 sooner than permitted by this chapter.

3 (2) An adoption entity that materially fails to meet a
4 duty specified in subsection (1), may be liable to the
5 prospective adoptive parents for all sums paid by the
6 prospective adoptive parents or on their behalf in
7 anticipation of or in connection with an adoption.

8 (3) If a court finds that a consent taken under this
9 chapter was obtained by fraud or duress attributable to the
10 adoption entity, the court must award all sums paid by the
11 prospective adoptive parents or on their behalf in
12 anticipation of or in connection with the adoption. The court
13 may also award reasonable attorney's fees and costs incurred
14 by the prospective adoptive parents in connection with the
15 adoption and any litigation related to placement or adoption
16 of a minor. An award under this subsection must be paid
17 directly to the prospective adoptive parents by the adoption
18 entity.

19 (4) If a person whose consent to an adoption is
20 necessary under s. 63.062 prevails in an action to set aside a
21 consent to adoption, a judgment terminating parental rights
22 pending adoption, or a judgment of adoption, the court must
23 award a reasonable attorney's fee to the prevailing party. An
24 award under this subsection is to be paid by the adoption
25 entity if the court finds that the acts or omissions of the
26 entity were the basis for the court's order granting relief to
27 the prevailing party.

28 (5) The court must provide to The Florida Bar any
29 order that imposes sanctions under this section against an
30 attorney, whether acting as an adoption agency or as an
31 intermediary. The court must provide to the Department of

1 Children and Family Services any order that imposes sanctions
2 under this section against an agency. The order must be
3 provided within 30 days after the date that the order was
4 issued.

5 Section 10. Section 63.052, Florida Statutes, is
6 amended to read:

7 63.052 Guardians designated; proof of commitment.--

8 (1) For minors who have been placed for adoption with
9 and permanently committed to an agency, the agency shall be
10 the guardian of the person of the minor child; for those who
11 have been placed for adoption with and permanently committed
12 to the department, the department shall be the guardian of the
13 person of the minor child.

14 (2) For minors who have been voluntarily surrendered
15 to an intermediary through an execution of consent to
16 adoption, the intermediary shall be responsible for the child
17 until the time a court orders preliminary approval of
18 placement of the child in the prospective adoptive home, at
19 which time the prospective adoptive parents become guardians
20 pending finalization of adoption. Until a court has terminated
21 parental rights pending adoption and has ordered preliminary
22 approval of placement of the minor in the adoptive home, the
23 minor must be placed in the care of a birth relative, placed
24 in foster care, or placed in the care of a prospective
25 adoptive home that has received a favorable home study by a
26 licensed child placing agency, a licensed professional, or an
27 agency described in s. 61.20(2) within 1 year before such
28 placement of the minor with the prospective adoptive parents.
29 The fact that a minor is temporarily placed with the
30 prospective adoptive parents does not give rise to a
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1 presumption that the parental rights of the birth parents will
2 subsequently be terminated.

3 (2) For minors who have been placed for adoption with
4 or voluntarily surrendered to an agency, but have not been
5 permanently committed to the agency, the agency shall have the
6 responsibility and authority to provide for the needs and
7 welfare for such minors. For those minors placed for adoption
8 with or voluntarily surrendered to the department, but not
9 permanently committed to the department, the department shall
10 have the responsibility and authority to provide for the needs
11 and welfare for such minors. The adoption entity may
12 ~~department, an intermediary, or a licensed child-placing~~
13 ~~agency has the authority to~~ authorize all appropriate medical
14 care for a minor ~~the children~~ who has ~~have~~ been placed for
15 adoption with or voluntarily surrendered to them. The
16 provisions of s. 627.6578 shall remain in effect
17 notwithstanding the guardianship provisions in this section.

18 (3) If a minor is surrendered to an intermediary for
19 subsequent adoption and a suitable prospective adoptive home
20 is not available under s. 63.092 at the time the minor is
21 surrendered to the intermediary or, if the minor is a newborn
22 admitted to a licensed hospital or birth center, at the time
23 the minor is discharged from the hospital or birth center the
24 minor must be placed in licensed foster care, ~~the intermediary~~
25 ~~shall be responsible for the child~~ until a suitable
26 prospective adoptive home is available under s. 63.092.

27 (4) If a minor ~~child~~ is voluntarily surrendered to an
28 intermediary for subsequent adoption and the adoption does not
29 become final within 180 days, the intermediary must report to
30 the court on the status of the minor ~~child~~ and the court may
31

1 at that time proceed under s. 39.453 or take action reasonably
2 necessary to protect the best interest of the minor child.

3 (5) The recital in the written consent given by the
4 department that the minor child sought to be adopted has been
5 permanently committed to the department shall be prima facie
6 proof of such commitment. The recital in the written consent
7 given by a licensed child-placing agency or the declaration in
8 an answer or recommendation filed by a licensed child-placing
9 agency that the minor child has been permanently committed and
10 the child-placing agency is duly licensed by the department
11 shall be prima facie proof of such commitment and of such
12 license.

13 (6) Unless otherwise authorized by law, the department
14 is not responsible for expenses incurred by licensed
15 child-placing agencies or intermediaries participating in
16 placement of a minor child for the purposes of adoption.

17 (7) The court retains jurisdiction over a minor who
18 has been placed for adoption until the adoption is final.
19 After a minor is placed with an adoption entity or prospective
20 adoptive parent, the court has jurisdiction for the purpose of
21 reviewing the status of the minor and the progress being made
22 toward permanent adoptive placement. As part of this
23 continuing jurisdiction, for good cause shown by a person
24 whose consent to an adoption is required under s. 63.062, by a
25 party to any proceeding involving the minor, or upon the
26 court's own motion, the court may review the appropriateness
27 of the adoptive placement of the minor.

28 Section 11. Section 63.062, Florida Statutes, is
29 amended to read:

30 63.062 Persons required to consent to adoption.--
31

1 (1) Unless supported by one or more of the grounds
2 enumerated under s. 63.089(3)~~consent is excused by the court,~~
3 a petition to terminate parental rights pending adoption ~~adopt~~
4 ~~a minor~~ may be granted only if written consent has been
5 executed as provided in s. 63.082 after the birth of the minor
6 or notice has been served under s. 63.088 to ~~by~~:

7 (a) The mother of the minor.

8 (b) The father of the minor, if:

9 1. The minor was conceived or born while the father
10 was married to the mother;;

11 2. The minor is his child by adoption;;

12 3. The minor has been established by court proceeding
13 to be his child.

14 (c) If there is no father as set forth in subsection
15 (b), any man for whom the minor has been established to be his
16 child by scientific tests that are generally acceptable within
17 the scientific community to show a probability of paternity.

18 (d) If there is no father as set forth in subsection
19 (b) or subsection (c), any man who:

20 1.4. He Has acknowledged in writing, signed in the
21 presence of a competent witness, that he is the father of the
22 minor and has filed such acknowledgment with the Office of
23 Vital Statistics of the Department of Health;;

24 2.5. He Has provided the child or the mother during
25 her pregnancy with support in a repetitive, customary manner;;

26 3. Has been identified by the birth mother as a person
27 she has reason to believe may be the father of the minor in an
28 action to declare the minor available for adoption pursuant to
29 this chapter; or

1 4. Is a party in any pending proceeding in which
2 paternity, custody, or termination of parental rights
3 regarding the minor is at issue.

4 ~~(e)(c)~~ The minor, if more than 12 years of age, unless
5 the court in the best interest of the minor dispenses with the
6 minor's consent.

7 (2) Any person whose consent is required under
8 paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d) may
9 execute an affidavit of nonpaternity in lieu of a consent
10 under this section and by doing so waives notice to all court
11 proceedings after the date of execution. An affidavit of
12 nonpaternity must be executed under s. 63.082 and the person
13 executing the affidavit must receive disclosure under s.
14 63.085 prior to signing the affidavit. An affidavit of
15 nonpaternity must be in substantially the following form:

16
17 AFFIDAVIT OF NONPATERNITY
18

19 1. I have personal knowledge of the facts
20 stated herein.

21 2. I have been told that ... has a child or
22 that she is pregnant and anticipates delivery
23 on or around I shall not establish or
24 claim paternity for this child.

25 3. The child or unborn child noted herein was
26 not conceived or born while the birth mother
27 was married to me. I AM NOT MARRIED TO THE
28 BIRTH MOTHER, nor do I intend to marry the
29 birth mother.

30 4. I have not provided the birth mother with
31 child support or prebirth support; I have not

1 provided her with prenatal care nor assisted
2 her with medical expenses; I have not provided
3 the birth mother or her child or unborn child
4 with support of any kind, nor do I intend to do
5 so.

6 5. I have no interest in assuming the
7 responsibilities of parenthood for this child.
8 I will not acknowledge in writing to be the
9 father of this child nor institute court
10 proceedings to establish the child to be mine.

11 6. I do not object to any decision or
12 arrangements ... makes regarding this child,
13 including adoption.

14
15 I WAIVE NOTICE OF ANY AND ALL PROCEEDINGS TO
16 TERMINATE PARENTAL RIGHTS OR FINALIZE AN
17 ADOPTION UNDER THIS CHAPTER.

18
19 ~~(3)(2)~~ The court may require that consent be executed
20 by:

21 (a) Any person lawfully entitled to custody of the
22 minor; or

23 (b) The court having jurisdiction to determine custody
24 of the minor, if the person having physical custody of the
25 minor has no authority to consent to the adoption.

26 ~~(4)(3)~~ The petitioner must make good faith and
27 diligent efforts as provided under s. 63.088 to notify, and
28 obtain written consent from, the persons required to consent
29 to adoption under s. 63.062 ~~within 60 days after filing the~~
30 ~~petition. These efforts may include conducting interviews and~~
31 ~~record searches to locate those persons, including verifying~~

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

4 (5)(4) If parental rights to the minor have previously
5 been terminated, a licensed child-placing agency or the
6 department with which the minor ~~child~~ has been placed for
7 subsequent adoption may provide consent to the adoption. In
8 such case, no other consent is required.

9 (6)(5) A petition to adopt an adult may be granted if:

10 (a) Written consent to adoption has been executed by
11 the adult and the adult's spouse, if any.

12 (b) Written consent to adoption has been executed by
13 the birth parents, if any, or proof of service of process has
14 been filed, showing notice has been served on the parents as
15 provided in this chapter ~~section~~.

16 Section 12. Section 63.082, Florida Statutes, is
17 amended to read:

18 63.082 Execution of consent or affidavit of
19 nonpaternity; family medical history; withdrawal of consent.--

20 (1) Consent or an affidavit of nonpaternity shall be
21 executed as follows:

22 (a) If by the person to be adopted, by oral or written
23 statement in the presence of the court or by being
24 acknowledged before a notary public.

25 (b) If by an agency, by affidavit from its authorized
26 representative.

27 (c) If by any other person, in the presence of the
28 court or by affidavit.

29 (d) If by a court, by an appropriate order or
30 certificate of the court.

31

1 (2) A consent that does not name or otherwise identify
2 the adopting parent is valid if the consent contains a
3 statement by the person consenting that the consent was
4 voluntarily executed and that identification of the adopting
5 parent is not required for granting the consent.

6 (3)(a) The department must provide a consent form and
7 a family social and medical history form to an adoption entity
8 that intermediary who intends to place a child for adoption.
9 The forms completed by the birth parents must be attached to
10 the petition to terminate parental rights pending adoption and
11 must contain such biological and sociological information, or
12 such information as to the family medical history, regarding
13 the minor child and the birth parents as is required by the
14 department. The information must be incorporated into the
15 final home investigation report specified in s. 63.125. The
16 ~~court may also require that the~~ birth mother and birth father
17 must be interviewed by a representative of the department, a
18 licensed child-placing agency, or a professional pursuant to
19 s. 63.092 before the consent is executed, unless the birth
20 parent is found to be an unlocated parent or an unidentified
21 parent. A summary of each interview, or a statement that the
22 parent is unlocated or unidentified, must be filed with the
23 petition to terminate parental rights pending adoption and
24 included in the final home study filed under s. 63.125.

25 (b) Consent executed by ~~the department, by a licensed~~
26 ~~child-placing agency, or by~~ an appropriate order or
27 certificate of the court under s. 63.062(2)(b) must be
28 attached to the petition to terminate parental rights pending
29 adoption and must be accompanied by a family medical history
30 ~~that includes such information concerning the medical history~~
31

1 ~~of the child and the birth parents as is available or readily~~
2 ~~obtainable.~~

3 (c) If any executed consent or social and medical
4 history is unavailable because the person whose consent is
5 required is unlocated or unidentified, the petition must be
6 accompanied by the affidavit of due diligence required under
7 s. 63.088.

8 (4) The consent to an adoption ~~for voluntary surrender~~
9 must be executed only after the birth of the minor. The
10 consent or affidavit of nonpaternity is valid and binding upon
11 execution, unless withdrawn under subsection (7). The consent
12 or affidavit of nonpaternity must be signed ~~child,~~ in the
13 presence of two witnesses, and be acknowledged before a notary
14 public who is not signing as one of the witnesses. The notary
15 public must legibly note on the consent or affidavit of
16 nonpaternity the date and time the consent or affidavit of
17 nonpaternity was executed. The witnesses' names must be typed
18 or printed underneath their signatures. The witnesses', ~~and~~
19 ~~their~~ home or business addresses and social security numbers,
20 driver's license numbers, or state identification card numbers
21 must be included. The absence of a social security number,
22 driver's license number, or state identification card number
23 shall not be deemed to invalidate the consent. The person who
24 signs the consent or affidavit has the right to have at least
25 one of the witnesses be an individual who does not have a
26 partnership, employment, agency, or other professional or
27 personal relationship with the adoption entity or the
28 prospective adoptive parents. The person who signs the consent
29 or affidavit of nonpaternity must be given reasonable notice
30 of the right to select a witness of his or her own choosing.
31 The person who signs the consent or affidavit of nonpaternity

1 must acknowledge in writing on the consent or affidavit that
2 such notice was given and indicate the witness, if any, who
3 was selected by the person signing the consent or affidavit. A
4 consent to adoption must contain, in at least 16-point
5 boldfaced type, an acknowledgement of the birth parent's
6 rights in substantially the following form:

7
8 YOU DO NOT HAVE TO SIGN THIS CONSENT FORM. YOU
9 HAVE THE RIGHT TO DO ANY OF THE FOLLOWING
10 INSTEAD OF SIGNING THIS CONSENT OR BEFORE
11 SIGNING THIS CONSENT:

- 12
13 (A) CONSULT WITH AN ATTORNEY;
14 (B) HOLD, CARE FOR, AND FEED THE CHILD;
15 (C) PLACE THE CHILD IN FOSTER CARE OR WITH ANY
16 FRIEND OR FAMILY MEMBER YOU CHOOSE WHO IS
17 WILLING TO CARE FOR YOUR CHILD;
18 (D) TAKE THE CHILD HOME; AND
19 (E) FIND OUT ABOUT THE COMMUNITY RESOURCES
20 THAT ARE AVAILABLE TO YOU IF YOU DO NOT GO
21 THROUGH WITH THE ADOPTION.

22
23 IF YOU DO SIGN THIS CONSENT, YOU ARE
24 RELINQUISHING ALL RIGHTS TO YOUR CHILD. YOUR
25 CONSENT IS VALID AND BINDING UNLESS WITHDRAWN
26 AS PERMITTED BY LAW. YOU MAY WITHDRAW YOUR
27 CONSENT FOR ANY REASON IF YOU DO SO WITHIN 3
28 BUSINESS DAYS AFTER THE DATE YOU SIGNED THE
29 CONSENT OR 1 BUSINESS DAY AFTER THE DATE OF THE
30 BIRTH MOTHER'S DISCHARGE FROM A LICENSED
31 HOSPITAL OR BIRTH CENTER, WHICHEVER IS LATER.

1
2 YOU MAY DO THIS BY NOTIFYING THE ADOPTION
3 ENTITY IN WRITING THAT YOU ARE WITHDRAWING YOUR
4 CONSENT. YOU MAY DO THIS BY PRESENTING A LETTER
5 AT A UNITED STATES POST OFFICE AND ASKING THAT
6 THE LETTER BE SENT BY CERTIFIED UNITED STATES
7 MAIL WITH RETURN RECEIPT REQUESTED WITHIN 3
8 BUSINESS DAYS AFTER THE DATE YOU SIGNED THE
9 CONSENT OR 1 BUSINESS DAY AFTER THE DATE OF THE
10 BIRTH MOTHER'S DISCHARGE FROM A LICENSED
11 HOSPITAL OR BIRTH CENTER, WHICHEVER IS LATER.
12 AS USED IN THIS SECTION, THE TERM "BUSINESS
13 DAY" MEANS A DAY ON WHICH THE UNITED STATES
14 POST OFFICE ACCEPTS CERTIFIED MAIL FOR
15 DELIVERY. THE COST OF THIS MUST BE PAID AT THE
16 TIME OF MAILING AND THE RECEIPT SHOULD BE
17 RETAINED AS PROOF THAT CONSENT WAS WITHDRAWN IN
18 A TIMELY MANNER.
19
20 THE ADOPTION ENTITY YOU SHOULD NOTIFY IS:
21 ...(Name of Adoption Entity)..., ...(Address of
22 Adoption Entity)..., ...(Phone Number of
23 Adoption Entity).... FOLLOWING 3 BUSINESS DAYS
24 AFTER THE DATE YOU SIGNED THE CONSENT OR 1
25 BUSINESS DAY AFTER THE DATE OF THE BIRTH
26 MOTHER'S DISCHARGE FROM A LICENSED HOSPITAL OR
27 BIRTH CENTER, WHICHEVER IS LATER, YOU MAY
28 WITHDRAW YOUR CONSENT ONLY IF YOU CAN PROVE IN
29 COURT THAT CONSENT WAS OBTAINED BY FRAUD OR
30 DURESS.
31

1 (5) Before any consent to adoption or affidavit of
2 nonpaternity is executed by a birth parent, but after the
3 birth of the child, all requirements of disclosure under s.
4 63.085 must be met.

5 (6) A copy of each consent signed in an action for
6 termination of parental rights pending adoption must be
7 provided to each person whose consent is required under s.
8 63.062. A copy of each consent must be hand delivered, with a
9 written acknowledgement of receipt signed by the person whose
10 consent is required, or mailed by first class United States
11 mail to the address of record in the court file. If a copy of
12 a consent cannot be provided as required in this section, the
13 adoption entity must execute an acknowledgement that states
14 the reason the copy of the consent is undeliverable. The
15 original consent and acknowledgment of receipt, or the
16 acknowledgment of mailing by the adoption entity, must be
17 filed with the petition for termination of parental rights
18 pending adoption.

19 (7)~~(5)~~ Consent may be withdrawn for any reason by
20 notifying the adoption entity in writing by certified United
21 States mail, return receipt requested, not later than 3
22 business days after execution of the consent or 1 business day
23 after the date of the birth mother's discharge from a licensed
24 hospital or birth center, whichever occurs later. As used in
25 this subsection, the term "business day" means a day on which
26 the United States Post Office accepts certified mail for
27 delivery. Upon receiving written notice from a person of that
28 person's desire to withdraw consent, the adoption entity must
29 contact the prospective adoptive parent to arrange a time
30 certain for the adoption entity to regain physical custody of
31 the child. The adoption entity must return the minor within 3

1 days to the physical custody of the person withdrawing
2 consent. Thereafter, consent may be withdrawn only when the
3 court finds that the consent was obtained by fraud or duress.
4 An affidavit of nonpaternity may be withdrawn only if the
5 court finds that the affidavit of nonpaternity was obtained by
6 fraud. The adoption entity must include its name, address, and
7 telephone number on the consent form.

8 Section 13. Section 63.085, Florida Statutes, is
9 amended to read:

10 (Substantial rewording of section. See
11 s. 63.085, F.S., for present text.)

12 63.085 Disclosure by adoption entity.--

13 (1) DISCLOSURE REQUIRED TO BIRTH PARENTS AND
14 PROSPECTIVE ADOPTIVE PARENTS.--Not later than 7 days after a
15 person seeking to adopt a minor or a person seeking to place a
16 minor for adoption contacts an adoption entity in person or
17 provides the adoption entity with a mailing address, the
18 entity must provide a written disclosure statement to that
19 person. If a birth parent did not initially contact the
20 adoption entity, the written disclosure must be provided
21 within 7 days after that birth parent is identified and
22 located. The written disclosure statement must be in
23 substantially the following form:

24
25 ADOPTION DISCLOSURE

26
27 THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE
28 PROVIDED TO ALL PERSONS CONSIDERING ADOPTION TO
29 ADVISE THEM OF THE FOLLOWING FACTS REGARDING
30 ADOPTION UNDER FLORIDA LAW:
31

- 1 1. Under section 63.212, Florida
2 Statutes, the existence of a placement or
3 adoption contract signed by the birth parent or
4 adoptive parent, prior approval of that
5 contract by the court, or payment of any
6 expenses permitted under Florida law does not
7 obligate anyone to sign a consent or ultimately
8 place a minor for adoption.
- 9 2. Under section 63.092, Florida
10 Statutes, a favorable preliminary home study
11 and a home investigation of the prospective
12 adoptive home must be completed as required by
13 chapter 63, Florida Statutes, before the minor
14 may be placed in that home.
- 15 3. Under section 63.082, Florida
16 Statutes, a consent for adoption or affidavit
17 of nonpaternity may not be signed until after
18 the birth of the minor. The consent or
19 affidavit of nonpaternity is valid and binding
20 upon execution unless withdrawn as permitted
21 under section 63.082, Florida Statutes. Consent
22 may be withdrawn for any reason by notifying
23 the adoption entity in writing. In order to
24 withdraw consent, the written withdrawal of
25 consent must be mailed no later than 3 business
26 days after execution of the consent or 1
27 business day after the date of the birth
28 mother's discharge from a licensed hospital or
29 birth center, whichever occurs later. The
30 letter must be mailed certified mail, return
31 receipt requested. This is done by presenting

1 it at any United States Post Office, and asking
2 that the letter be sent by certified United
3 States mail with return receipt requested. The
4 cost of this must be paid at the time of
5 mailing and the receipt should be retained as
6 proof that consent was withdrawn in a timely
7 manner. For purposes of this chapter, the term
8 "business day" means a day on which the United
9 States Post Office accepts certified mail for
10 delivery. Upon receiving written notice from a
11 person of that person's desire to withdraw
12 consent, the adoption entity must contact the
13 prospective adoptive parent to arrange a time
14 certain to regain physical custody of the
15 child. The adoption entity must return the
16 minor within 3 days to the physical custody of
17 the person withdrawing consent. Thereafter,
18 consent may be withdrawn only if the court
19 finds that consent was obtained by fraud. An
20 affidavit of nonpaternity, once executed, may
21 be withdrawn only if the court finds that
22 consent was obtained by fraud.

23 4. Under section 63.082, Florida
24 Statutes, a person who signs a consent or
25 affidavit of nonpaternity for adoption must be
26 given reasonable notice of his or her right to
27 select a person who does not have a
28 partnership, employment, agency, or other
29 professional or personal relationship with the
30 adoption entity or the prospective adoptive
31 parents to be present when the consent or

1 affidavit of nonpaternity is executed and to
2 sign the consent or affidavit as a witness.
3 5. Under section 63.088, Florida
4 Statutes, specific and extensive efforts are
5 required by law to attempt to obtain the
6 consents required under section 63.062, Florida
7 Statutes. If these efforts are unsuccessful, an
8 order terminating parental rights pending
9 adoption may not be issued by the court until
10 those requirements have been met and an
11 affidavit of service has been filed with the
12 court.
13 6. Under Florida law, an intermediary may
14 represent the legal interests of only the
15 adoptive parents, not of any birth parent. Each
16 person whose consent to an adoption is required
17 under section 63.062, Florida Statutes,
18 including each birth parent, is entitled to
19 seek independent legal advice and
20 representation before signing any document or
21 surrendering parental rights.
22 7. Under section 63.089, Florida
23 Statutes, the termination of parental rights
24 will occur simultaneously with the entry of a
25 judgment terminating parental rights pending
26 adoption.
27 8. Under section 63.182, Florida
28 Statutes, an action or proceeding of any kind
29 to vacate, set aside, or otherwise nullify an
30 order of adoption or an underlying order
31 terminating parental rights pending adoption on

1 any ground, including fraud or duress, must be
2 filed within 1 year after entry of the order
3 terminating parental rights pending adoption.

4 9. Under section 63.182, Florida
5 Statutes, for 1 year after the entry of a
6 judgment of adoption, any irregularity or
7 procedural defect in the adoption proceeding
8 may be the subject of an appeal contesting the
9 validity of the judgment.

10 10. Under section 63.089, Florida
11 Statutes, a judgment terminating parental
12 rights pending adoption is voidable and any
13 later judgment of adoption of that minor is
14 voidable if, upon the motion of a birth parent,
15 the court finds that any person knowingly gave
16 false information that prevented the birth
17 parent from timely making known his or her
18 desire to assume parental responsibilities
19 toward the minor or meeting the requirements
20 under chapter 63, Florida Statutes, to exercise
21 his or her parental rights. A motion under
22 section 63.089, Florida Statutes, must be filed
23 with the court originally entering the
24 judgment. The motion must be filed within a
25 reasonable time, but not later than 1 year
26 after the date the judgment to which the motion
27 is directed was entered.

28 11. Under section 63.165, Florida
29 Statutes, the State of Florida maintains a
30 registry of adoption information. Information
31

1 about the registry is available from the
2 Department of Children and Family Services.
3 12. Under section 63.032, Florida
4 Statutes, a court may find that a birth parent
5 has abandoned his or her child based on conduct
6 during the pregnancy or based on conduct after
7 the child is born. In addition, under section
8 63.089, Florida Statutes, the failure of a
9 birth parent to respond to notices of
10 proceedings involving his or her child shall
11 result in termination of parental rights of a
12 birth parent. A lawyer can explain what a birth
13 parent must do to protect his or her parental
14 rights. Any birth parent wishing to protect his
15 or her parental rights should act IMMEDIATELY.
16 13. Each birth parent and adoptive parent
17 is entitled to independent legal advice and
18 representation. Attorney information may be
19 obtained from the yellow pages, The Florida
20 Bar's lawyer referral service, and local legal
21 aid offices and bar associations.
22 14. There are counseling services
23 available in the community to assist in making
24 a parenting decision. Consult the yellow pages
25 of the telephone directory.
26 15. Medical and social services support
27 is available if the birth parent wishes to
28 retain parental rights and responsibilities.
29 Consult the Department of Children and Family
30 Services.
31

1 (2) ACKNOWLEDGMENT OF DISCLOSURE.--The adoption entity
2 must obtain a written statement acknowledging receipt of the
3 disclosure required under subsection (1) and signed by the
4 persons receiving the disclosure or, if it is not possible to
5 obtain such an acknowledgement, the adoption entity must
6 execute an affidavit stating why an acknowledgement could not
7 be obtained. A copy of the acknowledgement of receipt of the
8 disclosure must be provided to the person signing it. A copy
9 of the acknowledgement or affidavit executed by the adoption
10 entity in lieu of the acknowledgement must be maintained in
11 the file of the adoption entity. The original acknowledgement
12 or affidavit must be filed with the court. In the case of a
13 disclosure provided under subsection (1), the original
14 acknowledgement or affidavit must be included in the
15 preliminary home study required in s. 63.092(2).

16 (3) POST-BIRTH DISCLOSURE TO BIRTH PARENTS.--Before
17 execution of any consent to adoption by a birth parent, but
18 after the birth of the minor, all requirements of subsections
19 (1) and (2) for making certain disclosures to a birth parent
20 and obtaining a written acknowledgment of receipt must be
21 repeated.

22 Section 14. Section 63.087, Florida Statutes, is
23 created to read:

24 63.087 Proceeding to terminate parental rights pending
25 adoption; general provisions.--

26 (1) INTENT.--It is the intent of the Legislature to
27 provide a proceeding in which the court determines whether a
28 minor is legally available for adoption through a separate
29 proceeding to address termination of parental rights prior to
30 the filing of a petition for adoption.

31

1 (2) GOVERNING RULES.--The Florida Family Law Rules of
2 Procedure govern a proceeding to terminate parental rights
3 pending adoption unless otherwise provided by law.

4 (3) JURISDICTION.--A court of this state which is
5 competent to decide child welfare or custody matters has
6 jurisdiction to hear all matters arising from a proceeding to
7 terminate parental rights pending adoption. All subsequent
8 proceedings for the adoption of the minor, if the petition for
9 termination is granted, must be conducted by the same judge as
10 these proceedings whenever possible.

11 (4) VENUE.--A petition to terminate parental rights
12 pending adoption must be filed in the county where the child
13 resided for the prior 6 months or, if the child is younger
14 than 6 months of age, in the county where the birth mother or
15 birth father resided at the time of the execution of the
16 consent to adoption or the affidavit of nonpaternity, or, if
17 there is no consent or affidavit of nonpaternity executed by a
18 birth parent, in the county where the birth mother resides.

19 (5) PREREQUISITE FOR ADOPTION.--A petition for
20 adoption may not be filed until 30 days after the date the
21 judge signed the judgment terminating parental rights pending
22 adoption under this chapter, unless the adoptee is an adult or
23 the minor has been the subject of a judgment terminating
24 parental rights under chapter 39.

25 (6) PETITION.--

26 (a) A proceeding seeking to terminate parental rights
27 pending adoption pursuant to this chapter must be commenced by
28 the filing of an original petition after the birth of the
29 minor.

30 (b) The petition may be filed by a birth parent or
31 legal guardian of the minor.

1 (c) The petition must be entitled: "In the Matter of
2 the Proposed Adoption of a Minor Child."

3 (d) If a petition for a declaratory statement under s.
4 63.102 has previously been filed, a subsequent petition to
5 terminate parental rights pending adoption may, at the request
6 of any party or on the court's own motion, be consolidated
7 with that previous action. If the petition to terminate
8 parental rights pending adoption is consolidated with a prior
9 petition filed under this chapter for which a filing fee has
10 been paid, the petitioner may not be charged a subsequent or
11 additional filing fee.

12 (e) The petition to terminate parental rights pending
13 adoption must be in writing and signed by the petitioner under
14 oath stating the petitioner's good faith in filing the
15 petition. A written consent, affidavit of nonpaternity, or
16 affidavit of due diligence under s. 63.088, for each person
17 whose consent is required under s. 63.062, must be attached.

18 (f) The petition must include:

19 1. The minor's name, gender, date of birth, and place
20 of birth. The petition must contain all names by which the
21 minor is or has been known, including the minor's legal name
22 at the time of the filing of the petition, to allow interested
23 parties to the action, including birth parents, legal
24 guardians, persons with custodial or visitation rights to the
25 minor, and persons entitled to notice pursuant to the Uniform
26 Child Custody Jurisdiction Act or the Indian Welfare Act, to
27 identify their own interest in the action.

28 2. If the petition is filed before the day the minor
29 is 6 months old and if the identity or location of the birth
30 father is unknown, each city in which the birth mother resided
31

1 or traveled during the 12 months prior to the minor's birth,
2 including the county and state in which that city is located.

3 3. Unless the consent of each person whose consent is
4 required under s. 63.062 or an affidavit of nonpaternity is
5 attached to the petition, the name and address or, if a
6 specific address is unknown, the city, including the county
7 and state in which that city is located, of:

8 a. The minor's mother;

9 b. Any man whom the mother reasonably believes may be
10 the minor's father; and

11 c. Any legal custodian of the minor.

12
13 If a required name or address is not known, the petition must
14 so state.

15 4. All information required by the Uniform Child
16 Custody Jurisdiction Act and the Indian Welfare Act.

17 5. A statement of the grounds under s. 63.089 upon
18 which the petition is based.

19 6. The name, address, and telephone number of any
20 adoption entity seeking to place the minor for adoption.

21 7. The name, address, and phone number of the division
22 of the circuit in which the petition is to be filed.

23 (7) ANSWER NOT REQUIRED.--An answer to the petition or
24 any pleading need not be filed by any minor, parent, or legal
25 custodian, but any matter that might be set forth in an answer
26 or other pleading may be pleaded orally before the court or
27 filed in writing as any such person may choose.

28 Notwithstanding the filing of any answer or any pleading, any
29 person present at the hearing to terminate parental rights
30 pending adoption whose consent to adoption is required under
31 s. 63.062 must:

1 (a) Be advised by the court that he or she has a right
2 to ask that the hearing be reset for a later date so that the
3 person may consult with an attorney;

4 (b) Be given an opportunity to deny the allegations in
5 the petition; and

6 (c) Be given the opportunity to challenge the validity
7 of any consents or affidavits of nonpaternity signed by any
8 person.

9 Section 15. Section 63.088, Florida Statutes, is
10 created to read:

11 63.088 Proceeding to terminate parental rights pending
12 adoption; notice and service.--

13 (1) INITIATE LOCATION AND IDENTIFICATION
14 PROCEDURES.--When the location or identity of a person whose
15 consent to an adoption is required but is not known, the
16 adoption entity must begin the inquiry and diligent search
17 process required by this section not later than 7 days after
18 the date on which the person seeking to place a minor for
19 adoption has evidenced in writing to the entity a desire to
20 place the minor for adoption with that entity or not later
21 than 7 days after the date any money is provided as permitted
22 under this chapter by the adoption entity for the benefit of
23 the person seeking to place a minor for adoption.

24 (2) LOCATION AND IDENTITY KNOWN.--Before the court may
25 determine that a minor is available for adoption, and in
26 addition to the other requirements set forth in this chapter,
27 each person whose consent is required under s. 63.062, who has
28 not executed an affidavit of nonpaternity, and whose location
29 and identity has been determined by compliance with the
30 procedures in this section must be personally served, pursuant
31 to chapter 48, at least 30 days before the hearing with a copy

1 of the petition to declare a minor available for adoption and
2 with notice in substantially the following form:

3
4 NOTICE OF PETITION AND HEARING
5 TO TERMINATE PARENTAL RIGHTS PENDING ADOPTION

6
7 A petition to terminate parental rights pending
8 adoption has been filed. A copy of the petition
9 is being served with this notice. There will be
10 a hearing on the petition to terminate parental
11 rights pending adoption on ... (date) ... at
12 ... (time) ... before ... (judge) ... at ...
13 (location, including complete name and street
14 address of the courthouse) The court has
15 set aside ... (amount of time) ... for this
16 hearing.

17
18 UNDER SECTION 63.089, FLORIDA STATUTES, FAILURE
19 TO FILE A WRITTEN RESPONSE TO THIS NOTICE WITH
20 THE COURT OR TO APPEAR AT THIS HEARING
21 CONSTITUTES GROUNDS UPON WHICH THE COURT SHALL
22 END ANY PARENTAL RIGHTS YOU MAY HAVE REGARDING
23 THE MINOR CHILD.

24
25 (3) REQUIRED INQUIRY.--In all cases filed under this
26 section, the court must conduct the following inquiry of the
27 person who is placing the minor for adoption and of any
28 relative or custodian of the minor who is present at the
29 hearing and likely to have the following information:

1 (a) Whether the mother of the minor was married at any
2 time when conception of the minor may have occurred or at the
3 time of the birth of the minor;

4 (b) Whether the mother was cohabiting with a male at
5 any time when conception of the minor may have occurred;

6 (c) Whether the mother has received payments or
7 promises of support with respect to the minor or, because of
8 her pregnancy, from any person she has reason to believe may
9 be the father;

10 (d) Whether the mother has named any person as the
11 father on the birth certificate of the minor or in connection
12 with applying for or receiving public assistance;

13 (e) Whether any person has acknowledged or claimed
14 paternity of the minor; and

15 (f) Whether the mother knows the identity of any
16 person whom she has reason to believe may be the father.

17
18 The information required under this subsection may be provided
19 to the court in the form of a sworn affidavit by a person
20 having personal knowledge of the facts, addressing each
21 inquiry enumerated in this subsection. The inquiry required
22 under this subsection may be conducted before the birth of the
23 minor.

24 (4) LOCATION UNKNOWN; IDENTITY DETERMINED.--If the
25 inquiry by the court under subsection (3) identifies any
26 person whose consent is required under s. 63.062 and who has
27 not executed an affidavit of nonpaternity, and the location of
28 the person from whom consent is required is unknown, the
29 adoption entity must conduct a diligent search for that person
30 which must include the following inquiries:

31

1 (a) The person's current address, or any previous
2 address, through an inquiry of the United States Post Office
3 through the Freedom of Information Act;

4 (b) The last known employment of the person, including
5 the name and address of the person's employer. Inquiry should
6 be made of the last known employer as to any address to which
7 wage and earnings statements (W-2 forms) of the person have
8 been mailed. Inquiry should be made of the last known employer
9 as to whether the person is eligible for a pension or
10 profit-sharing plan and any address to which pension or other
11 funds have been mailed;

12 (c) Union memberships the person may have held or
13 unions that governed the person's particular trade or craft in
14 the area where the person last resided;

15 (d) Regulatory agencies, including those regulating
16 licensing in the area where the person last resided;

17 (e) Names and addresses of relatives to the extent
18 such can be reasonably obtained from the petitioner or other
19 sources, contacts with those relatives, and inquiry as to the
20 person's last known address. The petitioner shall pursue any
21 leads of any addresses where the person may have moved.
22 Relatives include, but are not limited to, parents, brothers,
23 sisters, aunts, uncles, cousins, nieces, nephews,
24 grandparents, great grandparents, former in-laws, stepparents,
25 and stepchildren;

26 (f) Information as to whether or not the person may
27 have died, and if so, the date and location;

28 (g) Telephone listings in the area where the person
29 last resided;

30 (h) Inquiries of law enforcement agencies in the area
31 where the person last resided;

1 (i) Highway patrol records in the state where the
2 person last resided;

3 (j) Department of Corrections records in the state
4 where the person last resided;

5 (k) Hospitals in the area where the person last
6 resided;

7 (l) Records of utility companies, including water,
8 sewer, cable TV, and electric companies in the area where the
9 person last resided;

10 (m) Records of the Armed Forces of the United States
11 as to whether there is any information as to the person;

12 (n) Records of the tax assessor and tax collector in
13 the area where the person last resided; and

14 (o) Search of one Internet data bank locator service.

15
16 Any person contacted by a petitioner who is requesting
17 information pursuant to this subsection must release the
18 requested information to the petitioner, except when
19 prohibited by law, without the necessity of a subpoena or
20 court order. An affidavit of diligent search executed by the
21 petitioner and the adoption entity must be filed with the
22 court confirming completion of each aspect of the diligent
23 search enumerated in this subsection and specifying the
24 results. The diligent search required under this subsection
25 may be conducted before the birth of the minor.

26 (5) LOCATION NOT DETERMINED OR IDENTITY UNKNOWN.--This
27 subsection only applies if, as to any person whose consent is
28 required under s. 63.062 and who has not executed an affidavit
29 of nonpaternity, the location or identity of the person is
30 unknown and the inquiry under subsection (3) fails to identify
31 the person or the due diligence search under subsection (4)

1 fails to locate the person. The unlocated or unidentified
2 person must be served notice of the petition under s.
3 63.087(6)(e) and hearing to terminate parental rights pending
4 adoption by constructive service in the manner provided in
5 chapter 49 in each county identified in the petition, as
6 provided in s. 63.087(6). The notice, in addition to all
7 information required in the petition under s. 63.087(6) and
8 chapter 49, must contain a physical description, including,
9 but not limited to, age, race, hair and eye color, and
10 approximate height and weight of the minor's mother and of any
11 person the mother reasonably believes may be the father; the
12 minor's date of birth; and any date and city, including the
13 county and state in which the city is located, in which
14 conception may have occurred. If any of the facts that must be
15 included in the petition under this subsection are unknown and
16 cannot be reasonably ascertained, the petition must so state.

17 Section 16. Section 63.089, Florida Statutes, is
18 created to read:

19 63.089 Proceeding to terminate parental rights pending
20 adoption.--

21 (1) HEARING.--The court may terminate parental rights
22 pending adoption only after a full evidentiary hearing.

23 (2) HEARING PREREQUISITES.--The court may hold the
24 hearing only when:

25 (a) For each person whose consent is required under s.
26 63.062:

27 1. A consent under s. 63.082 has been executed and
28 filed within the court;

29 2. An affidavit of nonpaternity under s. 63.082 has
30 been executed and filed with the court; or

31

1 3. Notice has been provided under ss. 63.087 and
2 63.088;

3 (b) For each notice and petition that must be served
4 under ss. 63.087 and 63.088:

5 1. At least 30 days have elapsed since the date of
6 personal service and an affidavit of service has been filed
7 with the court;

8 2. At least 60 days have elapsed since the first date
9 of publication of constructive service and an affidavit of
10 service has been filed with the court; or

11 3. An affidavit of nonpaternity which affirmatively
12 waives service has been executed and filed with the court;

13 (c) The minor named in the petition has been born; and

14 (d) The petition contains all information required
15 under s. 63.087 and all affidavits of inquiry, due diligence,
16 and service required under s. 63.088 have been obtained and
17 filed with the court.

18 (3) GROUNDS FOR TERMINATING PARENTAL RIGHTS PENDING
19 ADOPTION.--The court may issue a judgment terminating parental
20 rights pending adoption if the court determines by clear and
21 convincing evidence that each person whose consent to an
22 adoption is required under s. 63.062:

23 (a) Has executed a valid consent that has not been
24 withdrawn under s. 63.082 and the consent was obtained
25 according to the requirements of this chapter;

26 (b) Has executed an affidavit of nonpaternity and the
27 affidavit was obtained according to the requirements of this
28 chapter;

29 (c) Has been properly served notice of the proceeding
30 in accordance with the requirements of this chapter and has
31 failed to file a written answer or appear at the evidentiary

1 hearing resulting in the order terminating parental rights
2 pending adoption;

3 (d) Has abandoned the minor as abandonment is defined
4 in s. 63.032(14);

5 (e) Is a parent of the person to be adopted, which
6 parent has been judicially declared incapacitated with
7 restoration of competency found to be medically improbable;

8 (f) Is a legal guardian or lawful custodian of the
9 person to be adopted, other than a parent, who has failed to
10 respond in writing to a request for consent for a period of 60
11 days or, after examination of his or her written reasons for
12 withholding consent, is found by the court to be withholding
13 his or her consent unreasonably; or

14 (g) Is the spouse of the person to be adopted who has
15 failed to consent, and the failure of the spouse to consent to
16 the adoption is excused by reason of prolonged and unexplained
17 absence, unavailability, incapacity, or circumstances that are
18 found by the court to constitute unreasonable withholding of
19 consent.

20 (4) FINDING OF ABANDONMENT.--A finding of abandonment
21 resulting in a termination of parental rights must be based
22 upon clear and convincing evidence. A finding of abandonment
23 may not be based upon a lack of emotional support to a birth
24 mother during her pregnancy.

25 (a) In making a determination of abandonment the court
26 must consider:

27 1. Whether the actions alleged to constitute
28 abandonment demonstrate a willful disregard for the safety of
29 the child or unborn child;

30
31

1 2. Whether other persons prevented the person alleged
2 to have abandoned the child from making the efforts referenced
3 in this subsection;

4 3. Whether the person alleged to have abandoned the
5 child, while being able, refused to provide financial support
6 when such support was requested by the child's legal guardian
7 or custodian;

8 4. Whether the person alleged to have abandoned the
9 child, while being able, refused to pay for medical treatment
10 when such payment was requested by the child's legal guardian
11 or custodian and those expenses were not covered by insurance
12 or other available sources;

13 5. Whether the amount of support provided or medical
14 expenses paid was appropriate, taking into consideration the
15 needs of the child and relative means and resources available
16 to the person alleged to have abandoned the child and
17 available to the child's legal guardian or custodian during
18 the period the child allegedly was abandoned; and

19 6. Whether the child's legal guardian or custodian
20 made the child's whereabouts known to the person alleged to
21 have abandoned the child; advised that person of the needs of
22 the child or the needs of the mother of an unborn child with
23 regard to the pregnancy; or informed that person of events
24 such as medical appointments and tests relating to the child
25 or, if unborn, the pregnancy.

26 (b) The child has been abandoned when the parent of a
27 child is incarcerated on or after October 1, 1998, in a state
28 or federal correctional institution and sentenced to a term of
29 incarceration of 8 years or longer, regardless of how long the
30 person is actually incarcerated under that sentence or how

31

1 long the person will be incarcerated after October 1, 1998,
2 and:

3 1. The period of time for which the parent is expected
4 to be incarcerated will constitute a substantial portion of
5 the period of time before the child will attain the age of 18
6 years;

7 2. The incarcerated parent has been determined by the
8 court to be a violent career criminal as defined in s.
9 775.084, a habitual violent felony offender as defined in s.
10 775.084, or a sexual predator as defined in s. 775.21; has
11 been convicted of first degree or second degree murder in
12 violation of s. 782.04 or a sexual battery that constitutes a
13 capital, life, or first degree felony violation of s. 794.011;
14 or has been convicted of an offense in another jurisdiction
15 which is substantially similar to one of the offenses listed
16 in this paragraph. As used in this section, the term
17 "substantially similar offense" means any offense that is
18 substantially similar in elements and penalties to one of
19 those listed in this paragraph, and that is in violation of a
20 law of any other jurisdiction, whether that of another state,
21 the District of Columbia, the United States or any possession
22 or territory thereof, or any foreign jurisdiction; and

23 3. The court determines by clear and convincing
24 evidence that continuing the parental relationship with the
25 incarcerated parent would be harmful to the child and, for
26 this reason, that termination of the parental rights of the
27 incarcerated parent is in the best interest of the child.

28 (c) The only conduct of a father toward a mother
29 during pregnancy that the court may consider in determining
30 whether the child has been abandoned is conduct that occurred

31

1 after reasonable and diligent efforts have been made to inform
2 the father that he is, or may be, the father of the child.

3 (5) DISMISSAL OF CASE WITH PREJUDICE.--If the court
4 does not find by clear and convincing evidence that parental
5 rights of a birth parent should be terminated pending
6 adoption, the court must dismiss the case with prejudice and
7 that birth parent's parental rights remain in full force under
8 the law. Parental rights may not be terminated based upon a
9 consent that the court finds has been timely withdrawn under
10 s. 63.082 or a consent or affidavit of nonpaternity that the
11 court finds was obtained by fraud. The court must enter an
12 order based upon written findings providing for the placement
13 of the minor. The court may order scientific testing to
14 determine the paternity of the minor at any time during which
15 the court has jurisdiction over the minor. Further
16 proceedings, if any, regarding the minor must be brought in a
17 separate custody action under chapter 61, a dependency action
18 under chapter 39, or a paternity action under chapter 742.

19 (6) A JUDGMENT TERMINATING PARENTAL RIGHTS PENDING
20 ADOPTION.--

21 (a) The judgment terminating parental rights pending
22 adoption must be in writing and contain findings of fact as to
23 the grounds for terminating parental rights pending adoption.

24 (b) The clerk of the court shall mail a copy of the
25 judgment within 24 hours after filing to the department, the
26 petitioner, and the respondent. The clerk shall execute a
27 certificate of each mailing.

28 (c) A judgment terminating parental rights pending
29 adoption is voidable and any later judgment of adoption of
30 that minor is voidable if, upon the motion of a birth parent,
31 the court finds that a person knowingly gave false information

1 that prevented the birth parent from timely making known his
2 or her desire to assume parental responsibilities toward the
3 minor or meeting the requirements under this chapter to
4 exercise his or her parental rights. A motion under this
5 paragraph must be filed with the court originally entering the
6 judgment. The motion must be filed within a reasonable time,
7 but not later than 1 year after the date the judgment to which
8 the motion is directed was entered.

9 (d) Not later than 7 days after the filing of a motion
10 under this subsection, the court must conduct an evidentiary
11 hearing to determine the minor's placement. The legal
12 presumption that a minor be placed in the care and custody of
13 his or her parent may be rebutted only upon a showing that
14 such placement would endanger the minor. The order must
15 include a provision for visitation by a parent with whom the
16 minor is not placed if that parent has appeared at the
17 hearing. The order determining placement of the minor must be
18 issued in writing not later than 7 days after the hearing and
19 must state with specificity the basis for the placement and
20 any provisions regarding contact with persons other than those
21 with whom the child has been placed.

22 (7) RECORDS; CONFIDENTIAL INFORMATION.--All records
23 pertaining to a petition to terminate parental rights pending
24 adoption are records related to the subsequent adoption of the
25 minor and are subject to the provisions of s. 63.162, as such
26 provisions apply to records of an adoption proceeding. The
27 confidentiality provisions of this chapter do not apply to the
28 extent information regarding persons or proceedings must be
29 made available as specified under s. 63.088.

30 Section 17. Section 63.092, Florida Statutes, is
31 amended to read:

1 63.092 Report to the court of intended placement by an
2 intermediary; preliminary study.--

3 (1) REPORT TO THE COURT.--The adoption entity
4 ~~intermediary~~ must report any intended placement of a minor for
5 adoption with any person not related within the third degree
6 or a stepparent if the adoption entity intermediary has
7 knowledge of, or participates in, such intended placement. The
8 report must be made to the court before the minor is placed in
9 the home.

10 (2) AT-RISK PLACEMENT.--If the minor is placed in the
11 prospective adoptive home before the parental rights of the
12 minor's birth parents are terminated under s. 63.089, the
13 placement is an at-risk placement. If the placement is an
14 at-risk placement, the prospective adoptive parents must
15 acknowledge in writing before the minor may be placed in the
16 prospective adoptive home that the placement is at risk and
17 that the minor is subject to removal from the prospective
18 adoptive home by the adoption entity or by court order.

19 (3)~~(2)~~ PRELIMINARY HOME STUDY.--Before placing the
20 minor in the intended adoptive home, a preliminary home study
21 must be performed by a licensed child-placing agency, a
22 licensed professional, or agency described in s. 61.20(2),
23 unless the petitioner is a stepparent, a spouse of the birth
24 parent, or a relative. The preliminary study shall be
25 completed within 30 days after the receipt by the court of the
26 adoption entity's intermediary's report, but in no event may
27 the minor child be placed in the prospective adoptive home
28 prior to the completion of the preliminary study unless
29 ordered by the court. If the petitioner is a stepparent, a
30 spouse of the birth parent, or a relative, the preliminary
31 home study may be required by the court for good cause shown.

1 The department is required to perform the preliminary home
2 study only if there is no licensed child-placing agency,
3 licensed professional, or agency described in s. 61.20(2), in
4 the county where the prospective adoptive parents reside. The
5 preliminary home study must be made to determine the
6 suitability of the intended adoptive parents and may be
7 completed prior to identification of a prospective adoptive
8 minor child. A favorable preliminary home study is valid for
9 1 year after the date of its completion. A minor may child
10 ~~must~~ not be placed in an intended adoptive home before a
11 favorable preliminary home study is completed unless the
12 adoptive home is also a licensed foster home under s. 409.175.
13 The preliminary home study must include, at a minimum:
14 (a) An interview with the intended adoptive parents;
15 (b) Records checks of the department's central abuse
16 registry under chapter 415 and statewide criminal records
17 correspondence checks through the Department of Law
18 Enforcement on the intended adoptive parents;
19 (c) An assessment of the physical environment of the
20 home;
21 (d) A determination of the financial security of the
22 intended adoptive parents;
23 (e) Documentation of counseling and education of the
24 intended adoptive parents on adoptive parenting;
25 (f) Documentation that information on adoption and the
26 adoption process has been provided to the intended adoptive
27 parents;
28 (g) Documentation that information on support services
29 available in the community has been provided to the intended
30 adoptive parents; and
31

1 (h) A copy of each ~~the~~ signed acknowledgement
2 statement required by s. 63.085~~7~~ and

3 ~~(i) A copy of the written acknowledgment required by~~
4 ~~s. 63.085(1).~~

5
6 If the preliminary home study is favorable, a minor may be
7 placed in the home pending entry of the judgment of adoption.
8 A minor may not be placed in the home if the preliminary home
9 study is unfavorable. If the preliminary home study is
10 unfavorable, the intermediary or petitioner may, within 20
11 days after receipt of a copy of the written recommendation,
12 petition the court to determine the suitability of the
13 intended adoptive home. A determination as to suitability
14 under this subsection does not act as a presumption of
15 suitability at the final hearing. In determining the
16 suitability of the intended adoptive home, the court must
17 consider the totality of the circumstances in the home.

18 Section 18. Section 63.097, Florida Statutes, is
19 amended to read:

20 63.097 Fees.--

21 (1) The following fees, costs, and expenses may be
22 assessed by the adoption entity or paid by the adoption entity
23 on behalf of the prospective adoptive parents:

24 (a) Reasonable living expenses of the birth mother
25 which the birth mother is unable to pay due to involuntary
26 unemployment, medical disability due to the pregnancy which is
27 certified by a medical professional who has examined the birth
28 mother, or any other disability defined in s. 110.215.

29 Reasonable living expenses are rent, utilities, basic
30 telephone service, food, necessary clothing, transportation,
31 and items included in the affidavit filed under s. 63.132 and

1 found by the court to be necessary for the health of the
2 unborn child.

3 (b) Reasonable and necessary medical expenses.

4 (c) Expenses necessary to comply with the requirements
5 of this chapter including, but not limited to, service of
6 process under s. 63.088, a due diligence search under s.
7 63.088, a preliminary home study under s. 63.092, and a final
8 home study under s. 63.125.

9 (d) Court filing expenses, court costs, and other
10 litigation expenses.

11 (e) Costs associated with advertising under s.
12 63.212(1)(h).

13 (f) The following professional fees:

14 1. A reasonable hourly fee necessary to provide legal
15 representation to the adoptive parents in a proceeding filed
16 under this chapter.

17 2. A reasonable hourly fee for contact with the birth
18 parent related to the adoption. In determining a reasonable
19 hourly fee under this subparagraph, the court must consider if
20 the tasks done were clerical or of such a nature that the
21 matter could have been handled by support staff at a lesser
22 rate than the rate for legal representation charged under
23 subparagraph 1. This includes, but need not be limited to,
24 tasks such as transportation, transmitting funds, arranging
25 appointments, and securing accommodations. This does not
26 include obtaining a birth parent's signature on any document.

27 3. A reasonable hourly fee for counseling services
28 provided to a birth parent or adoptive parent by a
29 psychologist licensed under chapter 490 or a clinical social
30 worker, marriage and family therapist, or mental health
31 counselor licensed under chapter 491.

1 (2) Prior approval of the court is not required until
2 the cumulative total of amounts permitted under subsection (1)
3 exceeds:

4 (a) \$2,500 in legal or other fees;

5 (b) \$500 in court costs; or

6 (c) \$3,000 in expenditures.

7 (3) Any fees, costs, or expenditures not included in
8 subsection (1) or prohibited under subsection (4) require
9 court approval prior to payment and must be based on a finding
10 of extraordinary circumstances.

11 (4) The following fees, costs, and expenses are
12 prohibited:

13 1. Any fee or expense that constitutes payment for
14 locating a minor for adoption.

15 2. Cumulative expenses in excess of a total of \$500
16 related to the minor, the pregnancy, a birth parent, or
17 adoption proceeding which are incurred prior to the date the
18 prospective adoptive parent retains the adoption entity.

19 3. Any lump-sum payment to the entity which is
20 nonrefundable directly to the payor or which is not itemized
21 on the affidavit filed under s. 63.132.

22 4. Any fee on the affidavit which does not specify the
23 service that was provided and for which the fee is being
24 charged, such as a fee for facilitation, acquisition, or other
25 similar service, or which does not identify the date the
26 service was provided, the time required to provide the
27 service, the person or entity providing the service, and the
28 hourly fee charged.

29 ~~(1) APPROVAL OF FEES TO INTERMEDIARIES.--Any fee over~~
30 ~~\$1,000 and those costs as set out in s. 63.212(1)(d) over~~
31 ~~\$2,500, paid to an intermediary other than actual, documented~~

1 ~~medical costs, court costs, and hospital costs must be~~
2 ~~approved by the court prior to assessment of the fee by the~~
3 ~~intermediary and upon a showing of justification for the~~
4 ~~larger fee.~~

5 ~~(5)(2) FEES FOR AGENCIES OR THE DEPARTMENT.--~~When an
6 intermediary uses the services of a licensed child-placing
7 agency, a professional, any other person or agency pursuant to
8 s. 63.092, or, if necessary, the department, the person
9 seeking to adopt the child must pay the licensed child-placing
10 agency, professional, other person or agency, or the
11 department an amount equal to the cost of all services
12 performed, including, but not limited to, the cost of
13 conducting the preliminary home study, counseling, and the
14 final home investigation. The court, upon a finding that the
15 person seeking to adopt the child is financially unable to pay
16 that amount, may order that such person pay a lesser amount.

17 Section 19. Section 63.102, Florida Statutes, is
18 amended to read:

19 63.102 Filing of petition; venue; proceeding for
20 approval of fees and costs.--

21 (1) After a court order terminating parental rights
22 has been issued,a proceeding for adoption may shall be
23 commenced by filing a petition entitled, "In the Matter of the
24 Adoption of" in the circuit court. The person to be
25 adopted shall be designated in the caption in the name by
26 which he or she is to be known if the petition is granted. ~~if~~
27 ~~the child is placed for adoption by an agency,~~Any name by
28 which the minor child was previously known may shall not be
29 disclosed in the petition, the notice of hearing, or the
30 judgment of adoption.

31

1 (2) A petition for adoption or for a declaratory
2 statement as to the adoption contract shall be filed in the
3 county where the petitioner or petitioners or the minor child
4 resides or where the agency or intermediary with ~~in~~ which the
5 minor child has been placed is located.

6 (3) Except for adoptions involving placement of a
7 minor child with a relative within the third degree of
8 consanguinity, a petition for adoption in an adoption handled
9 by an intermediary shall be filed within 30 working days after
10 placement of a minor child with a parent seeking to adopt the
11 minor child. If no petition is filed within 30 days, any
12 interested party, including the state, may file an action
13 challenging the prospective adoptive parent's physical custody
14 of the minor child.

15 (4) If the filing of the petition for adoption or for
16 a declaratory statement as to the adoption contract in the
17 county where the petitioner or minor child resides would tend
18 to endanger the privacy of the petitioner or minor child, the
19 petition for adoption may be filed in a different county,
20 provided the substantive rights of any person will not thereby
21 be affected.

22 (5) A proceeding for prior approval of fees and costs
23 may be commenced any time after an agreement is reached
24 between the birth mother and the adoptive parents by filing a
25 petition for declaratory statement on the agreement entitled
26 "In the Matter of the Proposed Adoption of a Minor Child" in
27 the circuit court.

28 (a) The petition must be filed jointly by the adoption
29 entity and each person who enters into the agreement.

30 (b) A contract for the payment of fees, costs, and
31 expenditures permitted under this chapter must be in writing,

1 and any person who enters into the contract has 3 business
2 days in which to cancel the contract. To cancel the contract,
3 the person must notify the adoption entity in writing by
4 certified United States mail, return receipt requested, no
5 later than 3 business days after signing the contract. For the
6 purposes of this subsection, the term "business day" means a
7 day on which the United States Post Office accepts certified
8 mail for delivery. If the contract is canceled within the
9 first 3 business days, the person who cancels the contract
10 does not owe any legal, intermediary, or other fees, but may
11 be responsible for the adoption entity's actual costs during
12 that time.

13 (c) The court may grant prior approval only of fees
14 and expenditures permitted under s. 63.097. A prior approval
15 of prospective fees and costs does not create a presumption
16 that these items will subsequently be approved by the court
17 under s. 63.132 unless such a finding is supported by the
18 evidence submitted at that time. The court retains
19 jurisdiction to order an adoption entity to refund to the
20 person who enters into the contract any sum or portion of a
21 sum preapproved under this subsection if, upon submission of a
22 complete accounting of fees, costs, and expenses in an
23 affidavit required under s. 63.132, the court finds the fees,
24 costs, and expenses actually incurred to be less than the sums
25 approved prospectively under this subsection.

26 (d) The contract may not require, and the court may
27 not approve, any lump-sum payment to the entity which is
28 nonrefundable to the payor or any amount that constitutes
29 payment for locating a minor for adoption.

30 (e) If a petition for adoption is filed under this
31 section subsequent to the filing of a petition for a

1 declaratory statement or a petition to terminate parental
2 rights pending adoption, the previous petition may, at the
3 request of any party or on the court's own motion, be
4 consolidated with the petition for adoption. If the petition
5 for adoption is consolidated with a prior petition filed under
6 this chapter for which a filing fee has been paid, the
7 petitioner may not be charged any subsequent or additional
8 filing fee.

9 (f) Prior approval of fees and costs by the court does
10 not obligate the birth parent to ultimately relinquish the
11 minor for adoption.~~If a petition for adoption is subsequently~~
12 ~~filed, the petition for declaratory statement and the petition~~
13 ~~for adoption must be consolidated into one case.~~

14 Section 20. Section 63.112, Florida Statutes, is
15 amended to read:

16 63.112 Petition for adoption; description; report or
17 recommendation, exceptions; mailing.--

18 (1) A sufficient number of copies of the petition for
19 adoption shall be signed and verified by the petitioner and
20 filed with the clerk of the court so that service may be made
21 under subsection (4) and shall state:

22 (a) The date and place of birth of the person to be
23 adopted, if known;

24 (b) The name to be given to the person to be adopted;

25 (c) The date petitioner acquired custody of the minor
26 and the name of the person placing the minor;

27 (d) The full name, age, and place and duration of
28 residence of the petitioner;

29 (e) The marital status of the petitioner, including
30 the date and place of marriage, if married, and divorces, if
31 any;

1 (f) The facilities and resources of the petitioner,
2 including those under a subsidy agreement, available to
3 provide for the care of the minor to be adopted;

4 (g) A description and estimate of the value of any
5 property of the person to be adopted;

6 (h) The case style and date of entry of the order
7 terminating parental rights or the judgment declaring a minor
8 available for adoption name and address, if known, of any
9 ~~person whose consent to the adoption is required, but who has~~
10 ~~not consented, and facts or circumstances that excuse the lack~~
11 ~~of consent; and~~

12 (i) The reasons why the petitioner desires to adopt
13 the person.

14 (2) The following documents are required to be filed
15 with the clerk of the court at the time the petition is filed:

16 (a) A certified copy of the court order terminating
17 parental rights under chapter 39 or the judgment declaring a
18 minor available for adoption under this chapter ~~The required~~
19 ~~consents, unless consent is excused by the court.~~

20 (b) The favorable preliminary home study of the
21 department, licensed child-placing agency, or professional
22 pursuant to s. 63.092, as to the suitability of the home in
23 which the minor has been placed.

24 (c) The surrender document must include documentation
25 that an interview was ~~interviews were~~ held with:

26 1. ~~The birth mother, if parental rights have not been~~
27 ~~terminated;~~

28 2. ~~The birth father, if his consent to the adoption is~~
29 ~~required and parental rights have not been terminated; and~~

30 3. the minor child, if older than 12 years of age,
31 unless the court, in the best interest of the minor child,

1 dispenses with the minor's ~~child's~~ consent under s.
2 63.062(1)(c).

3
4 ~~The court may waive the requirement for an interview with the~~
5 ~~birth mother or birth father in the investigation for good~~
6 ~~cause shown.~~

7 (3) Unless ordered by the court, no report or
8 recommendation is required when the placement is a stepparent
9 adoption or when the minor ~~child~~ is related to one of the
10 adoptive parents within the third degree.

11 (4) The clerk of the court shall mail a copy of the
12 petition within 24 hours after filing, and execute a
13 certificate of mailing, to the department and the agency
14 placing the minor, if any.

15 Section 21. Section 63.122, Florida Statutes, is
16 amended to read:

17 63.122 Notice of hearing on petition.--

18 (1) After the petition to adopt a minor is filed, the
19 court must establish a time and place for hearing the
20 petition. The hearing may ~~must~~ not be held sooner than 30 days
21 after the date the judgment terminating parental rights was
22 entered or sooner than 90 days after the date the minor was
23 placed ~~the placing of the minor~~ in the physical custody of the
24 petitioner. The minor must remain under the supervision of
25 the department, an intermediary, or a licensed child-placing
26 agency until the adoption becomes final. When the petitioner
27 is a spouse of the birth parent, the hearing may be held
28 immediately after the filing of the petition.

29 (2) Notice of hearing must be given as prescribed by
30 the rules of civil procedure, and service of process must be
31 made as specified by law for civil actions.

1 (3) Upon a showing by the petitioner that the privacy
2 of the petitioner or minor child may be endangered, the court
3 may order the names of the petitioner or minor child, or both,
4 to be deleted from the notice of hearing and from the copy of
5 the petition attached thereto, provided the substantive rights
6 of any person will not thereby be affected.

7 (4) Notice of the hearing must be given by the
8 petitioner to the adoption entity that places the minor.+

9 ~~(a) The department or any licensed child-placing~~
10 ~~agency placing the minor.~~

11 ~~(b) The intermediary.~~

12 ~~(c) Any person whose consent to the adoption is~~
13 ~~required by this act who has not consented, unless such~~
14 ~~person's consent is excused by the court.~~

15 ~~(d) Any person who is seeking to withdraw consent.~~

16 (5) After filing the petition to adopt an adult, a
17 notice of the time and place of the hearing must be given to
18 any person whose consent to the adoption is required but who
19 has not consented. The court may order an appropriate
20 investigation to assist in determining whether the adoption is
21 in the best interest of the persons involved.

22 Section 22. Section 63.125, Florida Statutes, is
23 amended to read:

24 63.125 Final home investigation.--

25 (1) The final home investigation must be conducted
26 before the adoption becomes final. The investigation may be
27 conducted by a licensed child-placing agency or a professional
28 in the same manner as provided in s. 63.092 to ascertain
29 whether the adoptive home is a suitable home for the minor and
30 whether the proposed adoption is in the best interest of the
31 minor. Unless directed by the court, an investigation and

1 recommendation are not required if the petitioner is a
2 stepparent or if the minor child is related to one of the
3 adoptive parents within the third degree of consanguinity.
4 The department is required to perform the home investigation
5 only if there is no licensed child-placing agency or
6 professional pursuant to s. 63.092 in the county in which the
7 prospective adoptive parent resides.

8 (2) The department, the licensed child-placing agency,
9 or the professional that performs the investigation must file
10 a written report of the investigation with the court and the
11 petitioner within 90 days after the date the petition is
12 filed.

13 (3) The report of the investigation must contain an
14 evaluation of the placement with a recommendation on the
15 granting of the petition for adoption and any other
16 information the court requires regarding the petitioner or the
17 minor.

18 (4) The department, the licensed child-placing agency,
19 or the professional making the required investigation may
20 request other state agencies or child-placing agencies within
21 or outside this state to make investigations of designated
22 parts of the inquiry and to make a written report to the
23 department, the professional, or other person or agency.

24 (5) The final home investigation must include:

25 (a) The information from the preliminary home study.

26 (b) After the minor child is placed in the intended
27 adoptive home, two scheduled visits with the minor child and
28 the minor's child's adoptive parent or parents, one of which
29 visits must be in the home, to determine the suitability of
30 the placement.

31

1 (c) The family social and medical history as provided
2 in s. 63.082.

3 (d) Any other information relevant to the suitability
4 of the intended adoptive home.

5 (e) Any other relevant information, as provided in
6 rules that the department may adopt.

7 Section 23. Section 63.132, Florida Statutes, is
8 amended to read:

9 63.132 Affidavit ~~Report~~ of expenditures and
10 receipts.--

11 (1) At least 10 days before the hearing on the
12 petition for adoption, the petitioner and any adoption entity
13 ~~intermediary~~ must file two copies of an affidavit under this
14 section.

15 (a) The affidavit must be signed by the adoption
16 entity and the prospective adoptive parents. A copy of the
17 affidavit must be provided to the adoptive parents at the time
18 the affidavit is executed.

19 (b) The affidavit must itemize ~~containing a full~~
20 ~~accounting of~~ all disbursements and receipts of anything of
21 value, including professional and legal fees, made or agreed
22 to be made by or on behalf of the petitioner and any adoption
23 entity ~~intermediary~~ in connection with the adoption or in
24 connection with any prior proceeding to terminate parental
25 rights which involved the minor who is the subject of the
26 petition for adoption. The affidavit must also include, for
27 each fee itemized, the service provided for which the fee is
28 being charged, the date the service was provided, the time
29 required to provide the service, the person or entity that
30 provided the service, and the hourly fee charged.

31

1 (c) The clerk of the court shall forward a copy of the
2 affidavit to the department. The department must retain these
3 records for 5 years. Copies of affidavits received by the
4 department under this subsection must be provided upon the
5 request of any person. The department must redact all
6 identifying references to the minor, the birth parent, or the
7 adoptive parent from any affidavit released by the department.
8 The name of the adoption entity may not be redacted. The
9 intent of this paragraph is to create a resource for adoptive
10 parents and others wishing to obtain information about the
11 cost of adoption in this state.

12 (d) The affidavit ~~report~~ must show any expenses or
13 receipts incurred in connection with:

14 1.~~(a)~~ The birth of the minor.

15 2.~~(b)~~ The placement of the minor with the petitioner.

16 3.~~(c)~~ The medical or hospital care received by the
17 mother or by the minor during the mother's prenatal care and
18 confinement.

19 4.~~(d)~~ The living expenses of the birth mother. The
20 living expenses must be documented in detail to apprise the
21 court of the exact expenses incurred.

22 5.~~(e)~~ The services relating to the adoption or to the
23 placement of the minor for adoption that were received by or
24 on behalf of the petitioner, the adoption entity ~~intermediary~~,
25 either birth ~~natural~~ parent, the minor, or any other person.

26
27 The affidavit must state whether any of these expenses were or
28 are eligible to be paid for by collateral sources, including,
29 but not limited to, health insurance, Medicaid, Medicare, or
30 public assistance.

31

1 (2) The court may require such additional information
2 as is deemed necessary.

3 (3) The court must issue a separate order approving or
4 disapproving the fees, costs, and expenditures itemized in the
5 affidavit. The court may approve only fees, costs, and
6 expenditures allowed under s. 63.097. The court may reject in
7 whole or in part any fee, cost, or expenditure listed if the
8 court finds that the expense is:

9 (a) Contrary to this chapter;

10 (b) Not supported by a receipt in the record, if the
11 expense is not a fee of the adoption entity; or

12 (c) Not deemed by the court to be a reasonable fee or
13 expense, taking into consideration the requirements of this
14 chapter and the totality of the circumstances.

15 ~~(4)(3)~~ This section does not apply to an adoption by a
16 stepparent whose spouse is a birth natural or adoptive parent
17 of the minor child.

18 Section 24. Section 63.142, Florida Statutes, is
19 amended to read:

20 63.142 Hearing; judgment of adoption.--

21 (1) APPEARANCE.--The petitioner and the person to be
22 adopted shall appear at the hearing on the petition for
23 adoption, unless:

24 (a) The person is a minor under 12 years of age; ~~or~~

25 (b) The presence of either is excused by the court for
26 good cause.

27 (2) CONTINUANCE.--The court may continue the hearing
28 from time to time to permit further observation,
29 investigation, or consideration of any facts or circumstances
30 affecting the granting of the petition.

31 (3) DISMISSAL.--

1 (a) If the petition is dismissed, the court shall
2 determine the person that is to have custody of the minor.

3 (b) If the petition is dismissed, the court shall
4 state with specificity the reasons for the dismissal.

5 (4) JUDGMENT.--At the conclusion of the hearing, after
6 ~~when~~ the court determines that the date for a birth parent to
7 file an appeal of a valid judgment terminating that birth
8 parent's parental rights has passed and no appeal is pending
9 ~~all necessary consents have been obtained~~ and that the
10 adoption is in the best interest of the person to be adopted,
11 a judgment of adoption shall be entered.

12 (a) A judgment terminating parental rights pending
13 adoption is voidable and any later judgment of adoption of
14 that minor is voidable if, upon the motion of the birth
15 parent, the court finds that any person knowingly gave false
16 information that prevented the birth parent from timely making
17 known his or her desire to assume parental responsibilities
18 toward the minor or meeting the requirements under this
19 chapter to exercise his or her parental rights. A motion under
20 this paragraph must be filed with the court that entered the
21 original judgment. The motion must be filed within a
22 reasonable time, but not later than 1 year after the date the
23 judgment to which the motion is directed was entered.

24 (b) Not later than 7 days after the filing of a motion
25 under this subsection, the court must conduct an evidentiary
26 hearing to determine the minor's placement. The legal
27 presumption that a minor be placed in the care and custody of
28 his or her parent may be rebutted only upon a showing that
29 such placement would endanger the minor. The order must
30 include a provision for visitation by a parent with whom the
31 minor is not placed if that parent has appeared at the hearing

1 under this paragraph. The order determining placement of the
2 minor must be issued in writing not later than 7 days after
3 the hearing and must state with specificity both the basis for
4 the placement and any provisions regarding contact with
5 persons other than those with whom the child has been placed.

6 Section 25. Section 63.152, Florida Statutes, is
7 amended to read:

8 63.152 Application for new birth record.--Within 30
9 days after entry of a judgment of adoption, the clerk of the
10 court, and in agency adoptions, any child-placing agency
11 licensed by the department, shall prepare a certified
12 statement of the entry for the state registrar of vital
13 statistics on a form provided by the registrar. The clerk of
14 the court must mail a copy of the form completed under this
15 section to the state registry of adoption information under s.
16 63.165.A new birth record containing the necessary
17 information supplied by the certificate shall be issued by the
18 registrar on application of the adopting parents or the
19 adopted person.

20 Section 26. Section 63.165, Florida Statutes, is
21 amended to read:

22 63.165 State registry of adoption information; duty to
23 inform and explain.--Notwithstanding any other law to the
24 contrary, the department shall maintain a registry with the
25 last known names and addresses of an adoptee and his or her
26 birth ~~natural~~ parents and adoptive parents; the certified
27 statement of the final decree of adoption provided by the
28 clerk of the court under s. 63.152; and any other identifying
29 information ~~that~~ ~~which~~ the adoptee, birth ~~natural~~ parents, or
30 adoptive parents desire to include in the registry. The
31 department shall maintain the registry records for the time

1 required by rules adopted by the department in accordance with
2 this chapter or for 99 years, whichever period is greater.The
3 registry shall be open with respect to all adoptions in the
4 state, regardless of when they took place. The registry shall
5 be available for those persons choosing to enter information
6 therein, but no one shall be required to do so.

7 (1) Anyone seeking to enter, change, or use
8 information in the registry, or any agent of such person,
9 shall present verification of his or her identity and, if
10 applicable, his or her authority. A person who enters
11 information in the registry shall be required to indicate
12 clearly the persons to whom he or she is consenting to release
13 this information, which persons shall be limited to the
14 adoptee and the birth natural mother, birth natural father,
15 adoptive mother, adoptive father, birth natural siblings, and
16 maternal and paternal birth natural grandparents of the
17 adoptee. Except as provided in this section, information in
18 the registry is confidential and exempt from ~~the provisions of~~
19 s. 119.07(1). Consent to the release of this information may
20 be made in the case of a minor adoptee by his or her adoptive
21 parents or by the court after a showing of good cause. At any
22 time, any person may withdraw, limit, or otherwise restrict
23 consent to release information by notifying the department in
24 writing.

25 (2) The department may charge a reasonable fee to any
26 person seeking to enter, change, or use information in the
27 registry. The department shall deposit such fees in a trust
28 fund to be used by the department only for the efficient
29 administration of this section. The department and agencies
30 shall make counseling available for a fee to all persons

31

1 seeking to use the registry, and the department shall inform
2 all affected persons of the availability of such counseling.

3 (3) The department, intermediary, or licensed
4 child-placing agency must inform the birth parents before
5 parental rights are terminated, and the adoptive parents
6 before placement, in writing, of the existence and purpose of
7 the registry established under this section, but failure to do
8 so does not affect the validity of any proceeding under this
9 chapter.

10 Section 27. Section 63.182, Florida Statutes, is
11 amended to read:

12 (Substantial rewording of section. See
13 s. 63.182, F.S., for present text.)

14 63.182 Statute of repose.--An action or proceeding of
15 any kind to vacate, set aside, or otherwise nullify an order
16 of adoption or an underlying order terminating parental rights
17 on any ground, including fraud or duress, must be filed within
18 1 year after entry of the order terminating parental rights.

19 Section 28. Section 63.207, Florida Statutes, is
20 amended to read:

21 63.207 Out-of-state placement.--

22 (1) Unless the minor child is to be placed with a
23 relative within the third degree or with a stepparent, or is a
24 special needs child as defined in s. 409.166, an adoption
25 entity may not no person except an intermediary, an agency, or
26 the department shall:

27 (a) Take or send a minor child out of the state for
28 the purpose of placement for adoption; or

29 (b) Place or attempt to place a minor child for the
30 purpose of adoption with a family who primarily lives and
31 works outside Florida in another state. ~~An intermediary may~~

1 ~~place or attempt to place a child for adoption in another~~
2 ~~state only if the child is a special needs child as that term~~
3 ~~is defined in s. 409.166. If an adoption entity intermediary~~
4 ~~is acting under this subsection, the adoption entity must~~
5 ~~intermediary shall~~ file a petition for declaratory statement
6 pursuant to s. 63.102 for prior approval of fees and costs.
7 The court shall review the costs pursuant to s. 63.097. The
8 petition for declaratory statement must be converted to a
9 petition for an adoption upon placement of the minor child in
10 the home. The circuit court in this state must retain
11 jurisdiction over the matter until the adoption becomes final.
12 The adoptive parents must come to this state to have the
13 adoption finalized. Violation of the order subjects the
14 adoption entity intermediary to contempt of court and to the
15 penalties provided in s. 63.212.

16 (2) An adoption entity intermediary may not counsel a
17 birth mother to leave the state for the purpose of giving
18 birth to a child outside the state in order to secure a fee in
19 excess of that permitted under s. 63.097 when it is the
20 intention that the child is to be placed for adoption outside
21 the state.

22 (3) When applicable, the Interstate Compact on the
23 Placement of Children authorized in s. 409.401 shall be used
24 in placing children outside the state for adoption.

25 Section 29. Section 63.212, Florida Statutes, is
26 amended to read:

27 63.212 Prohibited acts; penalties for violation.--

28 (1) It is unlawful for any person:

29 (a) Except an adoption entity ~~the department, an~~
30 ~~intermediary, or an agency,~~ to place or attempt to place a
31 minor child for adoption with a person who primarily lives and

1 works outside this state unless the minor child is placed with
2 a relative within the third degree or with a stepparent or is
3 a special needs child as defined in s. 409.166. An adoption
4 entity intermediary may place or attempt to place a special
5 needs child for adoption with a person who primarily lives and
6 works outside this state only if the adoption entity
7 intermediary has a declaratory statement from the court
8 establishing the fees to be paid under s. 63.207. This
9 requirement does not apply if the minor child is placed with a
10 relative within the third degree or with a stepparent.

11 (b) Except an adoption entity ~~the department, an~~
12 ~~intermediary, or an agency,~~ to place or attempt to place a
13 minor child for adoption with a family whose primary residence
14 and place of employment is in another state unless the minor
15 child is placed with a relative within the third degree or
16 with a stepparent. An adoption entity intermediary may place
17 or attempt to place a special needs child for adoption with a
18 family whose primary residence and place of employment is in
19 another state only if the adoption entity intermediary has a
20 declaratory statement from the court establishing the fees to
21 be paid. This requirement does not apply if the special needs
22 child is placed with a relative within the third degree or
23 with a stepparent.

24 (c) Except an adoption entity ~~the Department of~~
25 ~~Children and Family Services, an agency, or an intermediary,~~
26 to place or attempt to place within the state a minor child
27 for adoption unless the minor child is placed with a relative
28 within the third degree or with a stepparent. This
29 prohibition, however, does not apply to a person who is
30 placing or attempting to place a minor child for the purpose
31

1 of adoption with the adoption entity ~~Department of Children~~
2 ~~and Family Services or an agency or through an intermediary.~~

3 (d) To sell or surrender, or to arrange for the sale
4 or surrender of, a minor child to another person for money or
5 anything of value or to receive such minor child for such
6 payment or thing of value. If a minor child is being adopted
7 by a relative within the third degree or by a stepparent, or
8 is being adopted through an adoption entity, this paragraph
9 does not prohibit ~~the Department of Children and Family~~
10 ~~Services, an agency, or an intermediary, nothing herein shall~~
11 ~~be construed as prohibiting~~ the person who is contemplating
12 adopting the child from paying, under s. 63.097 and s. 63.132,
13 the actual prenatal care and living expenses of the mother of
14 the child to be adopted, nor from paying, under s. 63.097 and
15 s. 63.132, the actual living and medical expenses of such
16 mother for a reasonable time, not to exceed 6 weeks, if
17 medical needs require such support, after the birth of the
18 minor child.

19 (e) Having the rights and duties of a parent with
20 respect to the care and custody of a minor to assign or
21 transfer such parental rights for the purpose of, incidental
22 to, or otherwise connected with, selling or offering to sell
23 such rights and duties.

24 (f) To assist in the commission of any act prohibited
25 in paragraph (a), paragraph (b), paragraph (c), paragraph (d),
26 or paragraph (e).

27 (g) Except an adoption entity ~~the Department of~~
28 ~~Children and Family Services or an agency~~, to charge or accept
29 any fee or compensation of any nature from anyone for making a
30 referral in connection with an adoption.

31

1 (h) Except an adoption entity ~~the Department of~~
2 ~~Children and Family Services, an agency, or an intermediary,~~
3 to advertise or offer to the public, in any way, by any medium
4 whatever that a minor child is available for adoption or that
5 a minor child is sought for adoption; and further, it is
6 unlawful for any person to publish or broadcast any such
7 advertisement without including a Florida license number of
8 the agency ~~or, attorney, or physician~~ placing the
9 advertisement.

10 (i) To contract for the purchase, sale, or transfer of
11 custody or parental rights in connection with any child, ~~or~~ in
12 connection with any fetus yet unborn, or in connection with
13 any fetus identified in any way but not yet conceived, in
14 return for any valuable consideration. Any such contract is
15 void and unenforceable as against the public policy of this
16 state. However, fees, costs, and other incidental payments
17 made in accordance with statutory provisions for adoption,
18 foster care, and child welfare are permitted, and a person may
19 agree to pay expenses in connection with a preplanned adoption
20 agreement as specified below, but the payment of such expenses
21 may not be conditioned upon the transfer of parental rights.
22 Each petition for adoption which is filed in connection with a
23 preplanned adoption agreement must clearly identify the
24 adoption as a preplanned adoption arrangement and must include
25 a copy of the preplanned adoption agreement for review by the
26 court.

27 1. Individuals may enter into a preplanned adoption
28 arrangement as specified herein, but such arrangement shall
29 not in any way:

30 a. Effect final transfer of custody of a child or
31 final adoption of a child, without review and approval of the

1 department and the court, and without compliance with other
2 applicable provisions of law.

3 b. Constitute consent of a mother to place her child
4 for adoption until 7 days following birth, and unless the
5 court making the custody determination or approving the
6 adoption determines that the mother was aware of her right to
7 rescind within the 7-day period following birth but chose not
8 to rescind such consent.

9 2. A preplanned adoption arrangement shall be based
10 upon a preplanned adoption agreement that must ~~which shall~~
11 include, but need not be limited to, the following terms:

12 a. That the volunteer mother agrees to become pregnant
13 by the fertility technique specified in the agreement, to bear
14 the child, and to terminate any parental rights and
15 responsibilities to the child she might have through a written
16 consent executed at the same time as the preplanned adoption
17 agreement, subject to a right of rescission by the volunteer
18 mother any time within 7 days after the birth of the child.

19 b. That the volunteer mother agrees to submit to
20 reasonable medical evaluation and treatment and to adhere to
21 reasonable medical instructions about her prenatal health.

22 c. That the volunteer mother acknowledges that she is
23 aware that she will assume parental rights and
24 responsibilities for the child born to her as otherwise
25 provided by law for a mother, if the intended father and
26 intended mother terminate the agreement before final transfer
27 of custody is completed, or if a court determines that a
28 parent clearly specified by the preplanned adoption agreement
29 to be the biological parent is not the biological parent, or
30 if the preplanned adoption is not approved by the court
31 pursuant to the Florida Adoption Act.

1 d. That an intended father who is also the biological
2 father acknowledges that he is aware that he will assume
3 parental rights and responsibilities for the child as
4 otherwise provided by law for a father, if the agreement is
5 terminated for any reason by any party before final transfer
6 of custody is completed or if the planned adoption is not
7 approved by the court pursuant to the Florida Adoption Act.

8 e. That the intended father and intended mother
9 acknowledge that they may not receive custody or the parental
10 rights under the agreement if the volunteer mother terminates
11 the agreement or if the volunteer mother rescinds her consent
12 to place her child for adoption within 7 days after birth.

13 f. That the intended father and intended mother may
14 agree to pay all reasonable legal, medical, psychological, or
15 psychiatric expenses of the volunteer mother related to the
16 preplanned adoption arrangement, and may agree to pay the
17 reasonable living expenses of the volunteer mother. No other
18 compensation, whether in cash or in kind, shall be made
19 pursuant to a preplanned adoption arrangement.

20 g. That the intended father and intended mother agree
21 to accept custody of and to assert full parental rights and
22 responsibilities for the child immediately upon the child's
23 birth, regardless of any impairment to the child.

24 h. That the intended father and intended mother shall
25 have the right to specify the blood and tissue typing tests to
26 be performed if the agreement specifies that at least one of
27 them is intended to be the biological parent of the child.

28 i. That the agreement may be terminated at any time by
29 any of the parties.

30 3. A preplanned adoption agreement shall not contain
31 any provision:

1 a. To reduce any amount paid to the volunteer mother
2 if the child is stillborn or is born alive but impaired, or to
3 provide for the payment of a supplement or bonus for any
4 reason.

5 b. Requiring the termination of the volunteer mother's
6 pregnancy.

7 4. An attorney who represents an intended father and
8 intended mother or any other attorney with whom that attorney
9 is associated shall not represent simultaneously a female who
10 is or proposes to be a volunteer mother in any matter relating
11 to a preplanned adoption agreement or preplanned adoption
12 arrangement.

13 5. Payment to agents, finders, and intermediaries,
14 including attorneys and physicians, as a finder's fee for
15 finding volunteer mothers or matching a volunteer mother and
16 intended father and intended mother is prohibited. Doctors,
17 psychologists, attorneys, and other professionals may receive
18 reasonable compensation for their professional services, such
19 as providing medical services and procedures, legal advice in
20 structuring and negotiating a preplanned adoption agreement,
21 or counseling.

22 6. As used in this paragraph, the term:

23 a. "Blood and tissue typing tests" include, but are
24 not limited to, tests of red cell antigens, red cell
25 isoenzymes, human leukocyte antigens, and serum proteins.

26 b. "Child" means the child or children conceived by
27 means of an insemination that is part of a preplanned adoption
28 arrangement.

29 c. "Fertility technique" means artificial
30 embryonation, artificial insemination, whether in vivo or in
31 vitro, egg donation, or embryo adoption.

1 d. "Intended father" means a male who, as evidenced by
2 a preplanned adoption agreement, intends to have the parental
3 rights and responsibilities for a child conceived through a
4 fertility technique, regardless of whether the child is
5 biologically related to the male.

6 e. "Intended mother" means a female who, as evidenced
7 by a preplanned adoption agreement, intends to have the
8 parental rights and responsibilities for a child conceived
9 through a fertility technique, regardless of whether the child
10 is biologically related to the female.

11 f. "Parties" means the intended father and intended
12 mother, the volunteer mother and her husband, if she has a
13 husband, who are all parties to the preplanned adoption
14 agreement.

15 g. "Preplanned adoption agreement" means a written
16 agreement among the parties that specifies the intent of the
17 parties as to their rights and responsibilities in the
18 preplanned adoption arrangement, consistent with the
19 provisions of this act.

20 h. "Preplanned adoption arrangement" means the
21 arrangement through which the parties enter into an agreement
22 for the volunteer mother to bear the child, for payment by the
23 intended father and intended mother of the expenses allowed by
24 this act, for the intended father and intended mother to
25 assert full parental rights and responsibilities to the child
26 if consent to adoption is not rescinded after birth by the
27 volunteer mother, and for the volunteer mother to terminate,
28 subject to a right of rescission, in favor of the intended
29 father and intended mother all her parental rights and
30 responsibilities to the child.

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1 i. "Volunteer mother" means a female person at least
2 18 years of age who voluntarily agrees, subject to a right of
3 rescission, that if she should become pregnant pursuant to a
4 preplanned adoption arrangement, she will terminate in favor
5 of the intended father and intended mother her parental rights
6 and responsibilities to the child.

7 (2) This section does not ~~Nothing herein shall be~~
8 ~~construed to~~ prohibit a licensed child-placing agency from
9 charging fees reasonably commensurate to the services
10 provided.

11 (3) It is unlawful for any adoption entity
12 ~~intermediary~~ to fail to report to the court, prior to
13 placement, the intended placement of a minor child for
14 purposes of adoption with any person not a stepparent or a
15 relative within the third degree, if the adoption entity
16 ~~intermediary~~ participates in such intended placement.

17 (4) It is unlawful for any adoption entity
18 ~~intermediary~~ to charge any fee over \$1,000 and those costs as
19 set out in paragraph (1)(d) over \$2,500, other than for actual
20 documented medical costs, court costs, and hospital costs
21 unless such fee is approved by the court prior to the
22 assessment of the fee by the adoption entity intermediary and
23 upon a showing of justification for the larger fee.

24 (5) It is unlawful for any adoption entity
25 ~~intermediary~~ to counsel a birth mother to leave the state for
26 the purpose of giving birth to a child outside the state in
27 order to secure a fee in excess of that permitted under s.
28 63.097 when it is the intention that the child be placed for
29 adoption outside the state.

30 (6) It is unlawful for any adoption entity
31 ~~intermediary~~ to obtain a preliminary home study or final home

1 investigation and fail to disclose the existence of the study
2 to the court.

3 (7) A person who violates any provision of this
4 section, excluding paragraph (1)(h), is guilty of a felony of
5 the third degree, punishable as provided in s. 775.082, s.
6 775.083, or s. 775.084. A person who violates paragraph
7 (1)(h) is guilty of a misdemeanor of the second degree,
8 punishable as provided in s. 775.083; and each day of
9 continuing violation shall be considered a separate offense.

10 Section 30. Section 63.072, Florida Statutes, is
11 repealed.

12 Section 31. Any petition for adoption filed before
13 October 1, 1998, shall be governed by the law in effect at the
14 time the petition was filed.

15 Section 32. This act shall take effect October 1,
16 1998.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 550

4 This committee substitute makes the following provisions:

- 5 - Amends Chapters 39 and 63, Florida Statutes, to provide
6 that ch. 39, F.S., applies to all adoptions that involve
7 children surrendered to the Department of Children and
8 families (DCF) and ch. 63, F.S., applies to all other
9 adoptions.
- 10 - Provides that an adoption entity has an affirmative duty
11 to follow specified due process provisions of the bill
12 and that a material failure on the part of the entity to
13 meet this duty may result in the entity being liable to
14 the adoptive parents for all sums paid by the adoptive
15 parents in connection with the adoption.
- 16 - Requires repayment to the adoptive parents of certain
17 fees, costs and expenditures by the adoption entity if
18 the court sets aside a consent to adoption or a judgment
19 under Chapter 63 due to fraud or duress attributable to
20 the adoption entity. Requires an award of attorneys fees
21 to the adoptive parent in such circumstances.
- 22 - Requires that a copy of any order imposing sanctions
23 under Chapter 63 be forwarded by the court to DCF if
24 against an agency and the Florida Bar if against an
25 intermediary.
- 26 - Provides that if the court sets aside a consent to
27 adoption or a judgment under Chapter 63 due to acts or
28 omissions attributable to the adoption entity that the
29 entity is liable to the prevailing party for a reasonable
30 attorney's fee.
- 31 - Provides that consent must be obtained or notice under
Chapter 63 must be provided to any man who is the child's
father by marriage, adoption or an order of paternity,
and if there is no one, then any man who has been
established to be the father by paternity testing, and if
there is no one, then any man who registers with the
department of vital statistics, has provided support to
the child or to the mother during her pregnancy in a
repetitive customary manner, has been identified under
oath by the birth mother as the father, or is a party in
a legal proceeding in which the custody, paternity or
termination of parental rights regarding the child is at
issue.
- Provides that an affidavit of nonpaternity may be
executed in lieu of a consent in certain circumstances.
Sets out form affidavit.
- Requires that certain persons with potential rights
regarding a minor being placed for adoption execute a
consent to adoption, an affidavit of nonpaternity, or
receive notice by personal or constructive service of an
action to terminate parental rights. Sets out form

- 1 notice.
- 2 - Allows person executing consent to an adoption or an
3 affidavit of nonpaternity to have an independent witness
present and requires advanced notice of this right.
- 4 - Provides that a consent to an adoption may be withdrawn
5 by certified mail within three business days after
6 execution or 1 business day after a birth mother's
7 discharge from a hospital or birth center whichever is
later. Business day for this purpose is defined as a day
on which the post office accepts certified mail.
- 8 - Permits termination or parental rights of an incarcerated
9 parent based upon the incarceration under certain
circumstances.
- 10 - Specifies the fees and expenditures related to the
11 adoption that may be collected from adoptive parents by
the adoption entity. Prohibits the charging of certain
12 fees including nonrefundable lump sum payments and
facilitation fees.
- 13 - Allows a party to an agreement for payment of fees, costs
14 and expenditures related to an adoption to cancel the
agreement within a period of 3 business days after
signing it.
- 15 - Requires that the adoption entity file an affidavit with
16 the court detailing all fees, costs and expenditures and
the basis for such related to the termination of parental
17 rights and subsequent adoption and that the adoption
entity provide a copy of the affidavit to the adoptive
18 parents at the time the affidavit is executed.
- 19 - Grants the court certain authority to disallow certain
20 fees, costs, or expenditures charged to an adoptive
parent and to order reimbursement to the adoptive parent
21 of monies collected by the adoption entity from the
adoptive parent but not subsequently supported by the
required affidavit of fees, costs and expenditures.
- 22 - Provides that petitions for declaratory statement,
23 termination of parental rights pending adoption, and
adoption filed under Chapter 63 pertaining to the same
24 minor may be consolidated upon the motion of any party or
order of the court and prohibits the charging of more
25 than one filing fee.
- 26 - Requires that, when readily obtainable, the social
27 security number and date of birth of each birth parent be
included on the social and medical history form filed
with the court.
- 28 - Requires that the clerk of the court forward the
29 statement of final decree of adoption to the adoption
registry maintained by DCF for retention.
- 30 - Creates a statute of repose prohibiting any challenge to
31 an order of adoption or underlying order terminating
parental rights on any ground, including fraud or duress,
more than 1 year after entry of the order terminating

1 parental rights.
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