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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 379
RELATING TO: Paternity/DNA Testing
SPONSOR(S): Representative Brutus
TIED BILL(S): none

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

- (1) JUDICIAL OVERSIGHT
- (2) FISCAL POLICY AND RESOURCES
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill requires the Department of Health to collect and maintain a DNA sample for each live birth of every infant born in the state, with analysis of those samples to be done only by court order. The bill also requires that determination of paternity proceedings be electronically recorded.

This bill provides that in any action when an individual is required to pay child support as the father of a child, an extraordinary motion for a new trial may be made at any time related to the paternity of that child under certain specified circumstances.

This bill will have a substantial fiscal impact on state government and no fiscal impact on local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|-----------------------------------------|----------------------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain: Allowing paternity determinations and support orders to be overturned via the provisions of this bill will not support individual responsibility or family empowerment due to the potential for family fragmentation. Requiring DNA sampling for every live birth for no apparent immediate reason results in expanded governmental authority.

B. PRESENT SITUATION:

Newborn DNA Samples

Currently, all newborns in Florida are required to have metabolic and genetic screening tests performed by the Bureau of Laboratories in Jacksonville, using filter paper specimens collected by all hospitals and other birthing facilities. The Bureau of Laboratories currently stores these specimens in plastic bins in the Jacksonville Lab and has specimens for the period of 1995 to present. However, no policy exists regulating the length of time specimens are to be maintained.

In 1999, legislation was proposed to provide parents of newborns with a blood sample of the infant on specially treated filter paper immediately after birth. The sample, stored in a special envelope, and maintained by parents in their home refrigerator, would provide DNA identification, relative to law enforcement activities. This legislation did not require the Department of Health to be involved in the collection process or maintenance of the specimens. According to information from the University of Florida Genetics Center, a blood specimen on filter paper should be stored for future testing in a freezer to minimize decomposition due to moisture.

Recording of Proceedings

Paternity proceedings under chapter 742, Florida Statutes, are held 'in chancery' and may be closed to the public, but there is no requirement that they be recorded. Florida Rule of Judicial Administration 2.070 requires that all criminal and juvenile proceedings must be reported by a certified or official court reporter, as must all other proceedings where reporting is required by law or court rule, or where a party requests and pays for a court reporter. The rule provides a procedure for the chief judge of a circuit to implement a plan to authorize the use of electronic recording equipment in any judicial proceeding that would otherwise require the use of a court reporter at public expense.

New Trial in Paternity Determination

There is no existing procedure under which a judgment or determination of paternity underlying a child support order may be challenged at any time. Pursuant to ' 742.10(1), Florida Statutes, a notarized voluntary acknowledgment of paternity may be rescinded by any signatory within no more than 60 days after its execution; after that time, it "shall constitute an establishment of paternity and may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger...". Pursuant to ' 382.016(1)(c), Florida Statutes, a birth certificate bearing the name of the father may not be amended to remove the father's name or to add a different father's name except upon court order.

Pursuant to Florida Rule of Civil Procedure 1.530, a final judgment may be set aside:

- M by the granting of a motion in the lower court for rehearing or new trial, which motion must be made within ten days after the rendition of the judgment; or
- M by an appellate court pursuant to an authorized appeal, which must be taken within thirty days after rendition pursuant to Florida Rule of Appellate Procedure 9.110.

Pursuant to Florida Rule of Civil Procedure 1.540, the lower court may relieve a party from a judgment upon a motion made within one year after entry, on the grounds of:

- M mistake, inadvertence, surprise, or excusable neglect;
- M newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; or
- M fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

Under the same rule, the lower court may relieve a party from a judgment upon a motion on the grounds that:

- M the judgment is void;
- M the judgment has been satisfied, released or discharged;
- M a prior judgment upon which it is based has been reversed or otherwise vacated; or
- M it is no longer equitable that the judgment should have prospective application. The motion for the above grounds must be made "within a reasonable time", but there is no specific time limitation.

The appellate courts in Florida are divided on the question of when and how a legal father may challenge his paternity of a child (or have his paternity challenged by someone else), and several cases are pending in the Florida Supreme Court seeking to resolve the questions. See *D.F. v. Department of Revenue*, 736 So2d 782 (2d D.C.A. 1999), FSC case ¹ 96,288; *C.C.A. v. J.M.A.*, 744 So2d 515 (2d D.C.A. 1999), FSC case ¹ 96,935; *Anderson v. Anderson*, 746 So2d 525 (2d D.C.A. 1999), FSC case ¹ 00-59; see also, *DeRico v. Wilson*, 714 So2d 623 (5th D.C.A. 1998, conflict certified).

C. EFFECT OF PROPOSED CHANGES:

Newborn DNA Samples

This bill requires the Department of Health to collect and maintain a DNA sample for each live birth of every infant born in the state, with analysis of those samples to be done only by court order.

Recording of Proceedings

The bill requires that determination of paternity proceedings be electronically recorded.

New Trial in Paternity Determination

The bill creates a new ' 742.125, Florida Statutes. Subsection (1) provides that in any action in which a person is required to pay child support "as the father of a child", an extraordinary motion for a new trial may be made at any time regarding the paternity of the child. The motion must include:

M an affidavit by the movant that they have learned of newly discovered evidence since the judgment was entered; and

M test results from a scientifically credible genetic test showing a probability of paternity of zero percent that the person ordered to pay child support is the father of the child. The test must have been performed within 90 days prior to filing the motion, and must be of the type authorized under ' 742.12, Florida Statutes.

Subsection (2) requires that the court must grant relief on the motion if the following three apply:

M the genetic test was properly conducted;

M the obligor has not adopted the child; and

M the child was not conceived by artificial insemination while the obligor was married to the mother.

Subsection (3) provides a list of acts that shall not "solely" be grounds for denying relief under a motion, so long as the obligor did not know at the time of the act that he was not the natural father of the child:

M the obligor married the mother;

M the obligor acknowledged paternity in a sworn statement;

M the obligor consented to being named as the natural father on the birth certificate;

M the obligor was required to support the child because of a written voluntary promise or by a judicial or administrative support order;

M the obligor signed a voluntary acknowledgment of paternity;

M the obligor was determined to be the child's natural father; or

M the obligor acknowledged himself to be the child's natural father.

Subsection (4) provides that if the obligor is the one who submits the test results, the court may order additional genetic testing, to be scheduled by the clerk of the court. If the obligor or the mother willfully fail, without good cause, to submit to the additional tests, or if either the obligor or the mother is the custodian of the child and willfully fail, without good cause, to submit the child for testing, the court "shall issue an order determining the relief on the motion (for testing) against the party so failing to submit to testing". The party requesting the testing must pay any fees for the tests. However, if the custodian of the child is 'represented' by an administrative agency providing enforcement of child support orders and the agency requests the tests, the agency must pay for the tests and seek reimbursement from the person against whom the court assesses the costs of the action. Subsection (5) provides for the court to assess costs and attorney's fees against the movant if the court does not grant relief to the movant.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates ' 382.0136, Florida Statutes, to require the Department of Health to collect and maintain a DNA sample for each live birth of every infant born in the state. The section also provides that analysis of any sample shall be only by court order and the department is provided rulemaking authority.

Section 2. Amends ' 742.011, Florida Statutes, relating to determination of paternity proceedings, to require that all proceedings for paternity determination be recorded.

Section 3. Creates ' 742.125, Florida Statutes, to provide that in any action when an individual is required to pay child support as the father of a child, an extraordinary motion for a new trial may be made at any time related to the paternity of that child. Any motion filed must include:

M an affidavit stating that new evidence has become apparent since the entry of judgment; and

M the results from credible DNA testing showing a probability of paternity and administered within 90 days prior to filing the motion, finds there is a zero probability that the person ordered to pay support is the father of the child for whom support has been ordered.

Criteria that must be met in order for the court to grant relief are specified and the bill provides that the court shall not deny relief solely because of the occurrence of specified acts.

The bill provides authority for the court to order genetic testing for the mother, the child, and the person ordered to pay support under certain circumstances, and provides for relief for failure to comply with a testing order. The bill also provides for fees to be assessed against the movant if relief on a motion filed is not granted.

Section 4. Provides for an effective date of upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Department of Health

The Department of Health estimates the cost to the department for implementing the collection and maintenance of the DNA sample as \$502,203 for the first year and \$212,814 for the second year.

State Court System

The Office of the State Courts Administrator reports that counties without appropriate recording equipment will have start-up costs associated with the purchase of such equipment. The requirement that paternity proceedings be electronically recorded will result in other additional expenditures, although the exact amount is indeterminate at this time. The exact costs will vary by the current recording capacity in each county and even each courthouse, based on the number of courtrooms, hearing rooms, and number of judicial officers hearing such cases. In general, costs will be associated with the need for additional multi-track recording equipment, tapes, storage of the tapes, and personnel to operate the equipment. These costs are currently funded by counties, but under the revisions to Article V, may perhaps be state funded costs. The costs of transcribing these tapes could also be significant. The bill does not specify who would be responsible for transcription costs, although the responsibility usually rests with the parties in a civil action.

This bill would allow a man who comes to believe he is not the biological father of a child to re-litigate the child's parentage. It can be anticipated that for years after the passage of this legislation there will be an increase in filings to discontinue child support previously ordered in paternity, dissolution of marriage and domestic violence cases. This increase in filings may be disproportionate in the first year after passage of the legislation.

Existing court orders that were entered in the last 18 years (or more in some cases) will be subject to re-opening. The potential for re-litigation is significant. The legal issue of when a man who is the legal father of a child can later allege he is not the biological father of the child and be relieved of paying child support is not clear. The common law presumption was the husband of a woman who has a child during the marriage is the legal father of the child and owes a duty of support to the child whether or not he is the biological father of the child. See, *Quasi-Marital Children: The Common Law's Failure in Privette and Daniel Calls for Statutory Reform*, 26 Fla. St. U. L. Rev. 219 (1999). Two cases are now pending before the Florida Supreme Court that address this issue. Anderson v. Anderson, 746 So.2d 525 (Fla. 2d DCA 1999) review granted 760 So.2d 945 (Fla. 2000) and D.F. v. Department of Revenue ex rel. L.F. 736 So.2d 782 (Fla. 2d DCA 1999) review granted 761 So.2d 328 (Fla. 2000). Other District Courts have issued differing opinions. Compare, DeRico v. Wilson, 713 So.2d 623 (Fla. 5th DCA 1999).

The impact of this legislation on judicial workload cannot be determined, as the nature of the proceeding is not apparent. The bill provides that once the requisite DNA test is submitted, a hearing will be held to establish, among other things, whether the person ordered to pay support knew that the child was not his at the time the order of child support was entered. The length, complexity, and judicial workload associated with such hearings cannot be estimated.

In addition to the impact from re-litigating issues under existing court orders, pending and future paternity, dissolution of marriage, and domestic violence cases may become more complicated and parties demand a DNA test where one might not otherwise be requested or ordered.

The Office of State Courts Administrator also estimates that the bill may have a fiscal impact on the following entities:

M The court may appoint a guardian ad litem to protect the best interest of a child in these proceedings (both re-openings and pending and future cases) and this will likely impact the Guardian ad Litem Program. The program is currently operating without sufficient resources to meet its statutory mandate for abused and neglected children, it is probable that additional funding will be required to represent the children who will be brought into the judicial system as a result of this proposed legislation.

M The clerk of the court would incur costs associated with scheduling DNA testing, which is usually done by the parties or the Department of Revenue.

M It can be anticipated that this legislation may have an impact upon the Department of Children and Families, as the number of families receiving temporary cash assistance funds (TANF), Medicaid, or food stamps would likely increase if children are left without a legal father to provide support.

Department of Revenue

The Department of Revenue has reported that the operational impact on the Child Support Enforcement Program is indeterminate as the program cannot estimate the number of actions that would be filed in cases where Title IV-D service are being provided to the family. However, it is anticipated that the requirements of this bill would necessitate the use of contract legal services and genetic testing. It is likely that this bill would create an additional workload on child support staff, which could be absorbed without the need for additional full-time equivalents.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Collection of DNA samples for no demonstrable public purpose, much less any public health purpose, may perhaps give rise to a concern that such a requirement may violate Florida's right to privacy at art. 1, s. 23, Florida Constitution.

B. RULE-MAKING AUTHORITY:

The bill provides the Department of Health with rulemaking authority to collect and maintain DNA samples as required by the bill.

C. OTHER COMMENTS:

DNA Collection

Provisions of this bill would presumably provide an easily accessible DNA sample for use by persons involved in paternity lawsuits. However, these samples are being collected and stored at taxpayer expense.

The bill does not address the need for parental consent for collection and storage of a blood specimen for potential DNA testing of their newborn. Parents may raise a concern regarding the use of the specimen in later years for purposes that the parent does not support. Unlike infant screening in ' 383.14, Florida Statutes, there is no provision for the child's parent to refuse to consent to the taking of a DNA sample. The bill also does not specify the length of time the specimen is to be maintained by the department. However, since paternity cases may involve children until the age of majority, one may assume the maintenance will be for a period of 18 years.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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