

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 835 Adoption
SPONSOR(S): Mahon, Anderson, and others
TIED BILLS: HB 983 **IDEN./SIM. BILLS:** SB 2456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary		Birtman	Havlicak
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 835 creates a paternity registry with which putative fathers must register in order to receive notice of a petition to terminate parental rights pending adoption. Men are not required to register if they are married to the mother when the child was conceived or born, are fathers by adoption, or are legal fathers by other court proceedings.

The bill reduces from 2 years to 1 year the time period within which an action must be filed to nullify an adoption or termination of parental rights on grounds of fraud or providing false information. It provides a 1-year limitation on the admissibility in court of scientific testing to show a probability of paternity.

There is an accompanying public records exemption bill, HB 983, that would exempt information in the paternity registry from public records requirements.

The effective date of the bill is October 1, 2003.

This bill appears to have a minimal fiscal impact on the state.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0835.ju
DATE: March 22, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Termination of parental rights and adoption: Adoption is the act of creating the legal relationship between parent and child where it did not exist.¹ In creating the Florida Adoption Act in 1973, the Legislature intended to provide safeguards to protect and promote the well being of persons being adopted and their birth and adoptive parents.² The first of the safeguards listed is that: “the minor is legally free for adoption.”³ For this to occur, any existing parental rights must be terminated with all due process required under the federal and state constitutions to extinguish a fundamental right.⁴

Rights of unwed fathers: The United States Supreme Court has protected a putative father’s right to constitutional protection of his parental rights when he has established a substantial relationship with his child. A substantial relationship is the existence of a biological link, and the father’s commitment to the responsibilities of fatherhood by participating in his child’s upbringing.⁵ The mere existence of a biological link does not merit constitutional protection.⁶ The Florida Supreme Court has similarly held that the failure of an unwed father to grasp the opportunity to develop a parental relationship by accepting some measure of responsibility for the child can result in a loss of constitutional protections.⁷

Pursuant to current Florida statute, consent or notice is required of the man who first qualifies as a “father” in the order of the following three categories:

1. A person who is the minor’s father by marriage at the time of conception or birth, by adoption or by order of the court;
2. A person who has been established to be the father by paternity testing;
3. A person who the birth mother has reason to believe is the father and who:
 - has acknowledged, in writing, he is the father of the minor and has filed such acknowledgment with the Office of Vital Statistics in the Department of Health;
 - has provided or attempted to provide the minor or the birth mother during her pregnancy with support in a repetitive customary manner; or

¹ See s. 63.032(2), F.S.

² See s. 63.022(1), F.S.

³ See s. 63.022(2)(a), F.S.

⁴ The Florida Supreme Court recognizes the interest of parents in determining the care and upbringing of their children free from governmental intervention as a longstanding and fundamental liberty interest, protected by both the Florida and Federal Constitutions. *Beagle v. Beagle*, 678 So.2d 1271 (Fla. 1996).

⁵ See *Lehr v. Robertson*, 463 U.S. 248 (1983). In this case, the U.S. Supreme Court held that the state’s failure to give a putative father notice of pending adoption proceedings, despite the state’s actual notice of his existence and whereabouts, did not deny him due process or equal protection, since he could have guaranteed that he would have received notice by mailing a postcard to the putative father registry.

⁶ See *Lehr* at 261.

⁷ See *In the Matter of the Adoption of Doe*, 543 So.2d 741, 748 (Fla. 1989).

- has been identified by the birth mother, with reasonable belief, as the person who may be the minor's father in an action to terminate parental rights pending adoption.⁸

Effect of proposed changes: The paternity registry requires a man to register if he believes that he is, or could be, the father of a child born outside of marriage, or adoption. The putative father may register prior to the birth of the child, but no later than 30 days after the child's birth. Ignorance of a pregnancy is not a sufficient reason to fail to register. A man who has registered is entitled to receive a notice of proceedings to terminate his parental rights, provided that there is a diligent search. A man who has not registered may not assert a legal interest in a child.

The Registry provisions created by the bill do the following:

- Requires the Department of Children and Families to create and maintain a paternity registry as part of the Adoption (Reunion) Registry that will allow a man to register if he believes that he is, or could be, the father of a child born outside of marriage or adoption.
- Does not require a man to register if he is married to the mother when the child was conceived or born, is a father by adoption, or is a legal father by other court proceedings.
- Provides for required information and penalty of second-degree misdemeanor for false information.
- Provides that the father may register prior to the birth of the child but no later than 30 days after the child's birth.
- Provides that ignorance of a pregnancy is not a sufficient reason to fail to register. A man who has sexual intercourse with a woman is deemed to have knowledge that it can result in a woman's pregnancy.
- Provides that a properly registered man is entitled to receive a termination of parental rights notice, and that provided there is diligent search, a man who fails to register may not assert an interest in a child.
- Upon request, the department must furnish a certificate attesting to the results of a search of the paternity registry to a court, the birth mother, or an adoption entity.
- A court may order the department to remove the name of a man from the paternity registry if the court determines that the man is not the child's father.
- The department may not charge a fee for registration, but may charge a fee for a search of the paternity registry.
- The department must produce and distribute an information pamphlet or publication informing the public about the paternity registry through offices of the department and the Department of Health as well as schools, universities, libraries, medical clinics, local, state and federal jails, other providers of child welfare services, and through public service announcements and other means.
- Provides rulemaking authority.

Paternity Testing: The court may order a paternity test at any time during which the court has jurisdiction over the minor.⁹

Effects of proposed changes: The amendment to s. 63.062, F.S., prohibits the admissibility of results of scientific testing to show a probability of paternity past the 1-year statute of repose, thus limiting an unwed father's right to receive notice, have the ability to consent, or the ability to challenge the termination of his rights. The amendment to s. 63.089, F.S., provides a 1-year limit for the use of scientific testing to show a probability of paternity, in regards to relief from a judgment terminating parental rights. The amendment to s. 63.142, F.S. provides a 1-year limit for the use of scientific testing to show a probability of paternity, in regards to relief from a judgment of adoption.

⁸ See s. 63.062(1), F.S.

⁹ See s. 63.089(5), F.S.

Statute of Repose: Under current law, any adoption challenge to set aside a judgment terminating parental rights or adoption is barred one year after termination of parental rights, if the action is based on any grounds other than fraud. If the action is based on fraud, the action is barred after two years from the entry of judgment terminating parental rights.¹⁰

Effects of proposed changes: The bill reduces the time period within which an action or proceeding may be filed to vacate, set aside, or otherwise nullify a judgment of adoption or an underlying judgment terminating parental rights, based on any ground, to one year after entry of the challenged judgment.

C. SECTION DIRECTORY:

Section 1 amends ss. 63.062(1) and (2), F.S., relating to persons who consent to adoption.

Section 2 amends s. 63.085(1), F.S., to conform required disclosure to parents and prospective adoptive parents to the 1-year time period within which an action must be filed to nullify an adoption or a termination of parental rights.

Section 3 amends ss. 63.088(3) and (4), F.S., to require court inquiry and a diligent search regarding notice of a registrant in the paternity registry.

Section 4 amends s. 63.089(7), F.S., relating to relief from a judgment terminating parental rights.

Section 5 amends s. 63.142, F.S., relating to relief from a judgment of adoption.

Section 6 amends s. 63.165, F.S., relating to the state registry of adoption information and paternity registry.

Section 7 amends s. 63.182, F.S., to reduce the time period within which an action must be filed to nullify an adoption or a termination of parental rights on grounds of fraud or providing false information from two years to one.

Section 8 provides that any petition for adoption filed before the effective date of this act shall be governed by the law in effect at the time the petition was filed.

Section 9 provides an effective date of October 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁰ See s. 63.182, F.S.

2. Expenditures:

The Department of Children and Family Services reported the following expenditures relating to similar legislation filed in 2002:

	FY 2003-2004	FY 2004-2005
Non-recurring start up:	\$133,332	
Recurring:	\$238,346	\$280,556

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Children and Family Services estimates that the paternity registry would require two FTE positions to implement and maintain a computer database to store, retrieve, and search data, and funds for development and dissemination of information about the registry.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Information in the Paternity Registry would be confidential. A separate bill, HB 983, addresses the public records exemption issues.

B. RULE-MAKING AUTHORITY:

The bill gives the Department of Children and Family Services the authority to adopt rules to implement the provisions relating to the Paternity Registry.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill places the paternity registry in the Department of Children and Family Services, rather than in the Department of Health, Office of Vital Statistics, which already operates a similar, but less extensive Putative Father Registry, and is required by law to officially record all births and adoptions in Florida, among other things.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The sponsor is expected to file a strike-all amendment, which is identical to SB 2456 (2003), and which generally does the following:

- Makes a legislative finding that the interests of the state, the mother, the child, and the adoptive parents outweigh the interests of an unwed biological father who does not take action in a timely manner to establish and demonstrate a relationship with his child; and that the unwed father has the primary responsibility to protect his rights, and is presumed to know that his child may be adopted without his consent unless he complies with the provisions of this legislation and demonstrates a prompt and full commitment to his parental responsibilities.
- Makes a legislative finding that an unmarried mother has a right of privacy with regard to her pregnancy and therefore has no legal obligation to disclose the identity of an unmarried biological father.
- Creates the Florida Putative Father Registry within the Department of Health, Office of Vital Statistics, with which an unmarried biological father must register in order to retain any parental rights.
- Deletes statutory provisions which require the mother to name a potential unmarried biological father.
- Deletes the extensive notice requirements in exchange for requiring registration with the Putative Father Registry.
- Shortens the statute of repose to one year, regardless of the grounds.
- Makes it easier and more lucrative for adoption entities and birth mothers to place children for adoption in Florida by increasing allowable fees to adoption entities and birth mothers, and by allowing out-of-state placement of children.