

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Children, Families, and Elder Affairs Committee

BILL: SB 2030

INTRODUCER: Senator Rich

SUBJECT: Adoption

DATE: April 8, 2007

REVISED: 04/19/07

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/12 amendments
2.			JU	
3.			HA	
4.				
5.				
6.				

I.

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Senate Bill 2030 modifies current statutes relating to the termination of parental rights, adoption and paternity procedures.

The bill modifies the procedures and timetables governing the Florida Putative Father Registry, and revises the procedures for terminating parental rights, with reference to venue, notice, service of process, affidavits, and the conditions for certain court judgments.

The bill requires that certain information be disclosed to prospective adoptive parents and revises the procedures and requirements relating to adoptions, with reference to venue, consent, the filing and content of petitions and affidavits, timeframes, the recognition of foreign adoptions, and the participation of adoption intermediaries, especially in the adoption of special needs children.

This bill substantially amends the following sections of the Florida Statutes: 39.812, 49.011, 63.022, 63.032, 63.039, 63.043, 63.0425, 63.052, 63.053, 63.054, 63.062, 63.063, 63.082, 63.085, 63.087, 63.088, 63.089, 63.092, 63.097, 63.102, 63.112, 63.122, 63.125, 63.132, 63.135, 63.142, 63.152, 63.162, 63.192, 63.207, 63.212, 63.213, 409.166, 409.176, 742.021, 742.10 and creates the following section of the Florida Statutes: 63.236.

II. Present Situation:

Putative Father Registry

In 2003, pursuant to the unanimous vote of the Florida House and Senate, Florida enacted a Putative Father Registry (Registry), joining at least twenty-three other states with similar legislation.¹ In 2006, United States Senator Mary Landrieu (D-LA) introduced legislation to create a national putative father registry to serve as a central registry for all state registries to assure that no father is denied notice due to the mother's interstate travel; the bill did not pass.²

The Florida Registry is established and operated through the Office of Vital Statistics of the Department of Health. If a man is concerned that he may be the father of a child born or about to be born to a woman, and that man wishes to establish parental rights, he must file as a "registrant" with the Registry.³

By filing with the Registry, the potential father is claiming paternity for the child and confirms his willingness to support the child. Additionally, he consents to DNA testing, and may ultimately be required to pay child support. A claim of paternity may be filed at any time prior to the child's birth, but a claim of paternity may not be filed after the date a petition is filed for termination of parental rights.⁴

The putative father may change his mind and prior to the birth of the child execute a notarized revocation of the claim of paternity.⁵ Once that revocation is received, the claim of paternity is deemed null and void. Additionally, if a court determines that a registrant is not the father of a minor, the court will order the man's name removed from the Registry.⁶

The United States Supreme Court, in Lehr v. Robertson,⁷ upheld the constitutionality of New York's Putative Father Registry, holding that an unmarried biological father does not have an absolute constitutional right to his biological child and that his rights are protected by the due process clause only if he takes some responsibility for the child. The Florida Supreme Court recognized the rationale of this decision in the cases of In re Doe⁸ and G.W.B. v. J.S.W.⁹

Since its enactment in 2003, Florida's Registry has been the subject of some conflicting case law.

In J.S. v. S.A., the Fourth District Court of Appeals upheld the trial court's finding that the father had abandoned the child and that, as such, the father's consent was "excused" for purposes of the proceeding to terminate his parental rights pending adoption. The Registry was not at issue in the case, but the appellate court referenced it in a footnote, and noted its "concern about potential

¹ Child Welfare Information Gateway, *Rights of Presumed (Putative) Fathers: Summary of State Laws* (October 2004), available online at http://www.childwelfare.gov/systemwide/laws_policies/statutes/putativeall.pdf.

² <http://www.govtrack.us/congress/bill.xpd?bill=s109-3803>.

³ Section 63.054(1), F.S.

⁴ *Id.*

⁵ Section 63.054(5), F.S.

⁶ *Id.*

⁷ 463 U.S. 248, 103 S.Ct. 2985 (1983).

⁸ 543 So.2d 741 (Fla. 1989).

⁹ 658 So.2d 961 (Fla. 1995).

due process problems in rigidly applying these [Registry] provisions without regard to good cause exceptions or extenuating circumstances.”¹⁰

In A.F.L. v. Department of Children and Families, the Fifth District Court of Appeals ruled that a father who failed to timely assert his parental rights by complying with the mandates of s. 63.054, F.S., did not preserve those rights. The court noted, “[e]ither the father timely registered, in which case his rights are preserved, or he did not, in which case his rights were not preserved.”¹¹

B.B. v. P.J.M., the First District Court of Appeals acknowledged that a father’s registration with the Registry pursuant to s. 63.062(1)(b), F.S., was one statutory method to identify persons required to consent to adoption, but that the establishment of a father’s identity in another court proceeding was another means of identifying such persons.¹² The court found that the father in the case before it had established his paternity in the underlying dependency proceeding.^{13 14}

In A.S. v. Gift of Life Adoptions, Inc., the trial court entered judgment terminating parental rights and found that the father’s consent was not required because he failed to timely register his paternity or otherwise legally establish his rights.¹⁵ The Second District Court of Appeals reversed the trial court, acknowledging that the biological father’s failure to register meant that he was not a “parent” or a person whose consent to adoption was required, but concluding that “. . . if A.S. was not a parent, there was no authority to terminate his parental rights . . .” pursuant to s. 63.089, F.S. The Court decided that the filing of a paternity action pursuant to ch. 742, F.S., before the adoption was concluded, made the termination of parental rights premature. The court specifically limited its holding to unmarried biological fathers who have not registered but who become aware of an adoption proceeding after it is filed and before it is concluded.

In J.C.J. v. Heart of Adoptions, Inc., the trial court again terminated a biological father’s parental rights pursuant to s. 63.089(3), F.S., after finding that his consent to the adoption was not required because he failed to register.¹⁶ The Second District Court of appeals reversed, agreeing that J.C.J.’s consent was not required, but holding that since s. 63.089 (3), F.S., specified the grounds upon which the trial court may terminate the parental rights of a *person whose consent is required*, the section did not apply to J.C.J. because his consent was not required. The Court held, “the trial court erred in terminating the rights, if any, of a party not properly contemplated by the statutory section stated.”¹⁷ The court remanded the case with a direction that the trial court first consider the pending paternity action to determine if the birth father met the statutory definition of a parent, after which the termination and adoption proceedings could be addressed.

On March 28, 2007, in J.A. v. Heart of Adoptions, Inc., the Second District reversed on facts similar to the J.C.J. case and certified the following question as one of great public importance:

¹⁰ 912 So.2d 650, 661 (Fla. 4th DCA 2005).

¹¹ 927 So.2d 101, 104 (Fla. 5th DCA 2006).

¹² 933 So.2d 57, 59 (Fla. 1st DCA 2006).

¹³ *Id.* at 60.

¹⁴ *See also*, S.D.T. v. Bundle of Hope Ministries, Inc., --- So.2d ---, 2007 WL 597042 (Fla. 1st DCA 2007).

¹⁵ 944 So.2d 380, 388 (Fla. 2^d DCA 2006), rev. den. 944 So. 2d 344 (2006).

¹⁶ 942 So.2d 906 (Fla. 2^d DCA 2007).

¹⁷ *Id.* at 908.

IN A PROCEEDING ON A PETITION FOR TERMINATION OF PARENTAL RIGHTS PENDING ADOPTION, MAY THE PUTATIVE FATHER'S RIGHTS IN RELATION TO THE CHILD BE TERMINATED BASED ON THE PUTATIVE FATHER'S FAILURE TO PROPERLY FILE A CLAIM OF PATERNITY WITH THE FLORIDA PUTATIVE FATHER REGISTRY?¹⁸

Agreeing that the disposition of the case was controlled by the J.C.J. decision, Judge Canady described the impetus for the certified question in a concurring opinion as follows:

While I recognize that A.S. and J.C.J. both undertake a painstaking analysis of the statutory scheme, I believe that the analysis never truly comes to terms with the provision in section 63.062(2)(d) that an unmarried biological father who does not timely file a claim of paternity “is deemed to have waived and surrendered any rights in relation to the child.” I am unpersuaded that a trial court errs in terminating any rights in relation to the child of a biological father who has failed to timely register with the Florida Putative Father Registry and who is therefore by the unequivocal terms of the statute “deemed to have waived and surrendered” such rights. A judgment terminating any parental rights of such a biological father does nothing more than carry out the mandate of section 63.062(2)(d).¹⁹

According to the Family Law Section of the Florida Bar (Family Law), by giving any father standing to assert his rights by filing a paternity action anytime prior to the finalization of an adoption, this case law puts all Florida adoption placements at risk of disruption.

Service of Process

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

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

The service of process statute does not permit constructive service of process in paternity cases, and there is no express provision within chapter 409 to authorize constructive service or to ensure that a legal father's interests are appropriately protected . . . Whether the statutes should be modified to address this dilemma is a policy decision for the Legislature to decide [internal citations omitted].²⁰

Under this ruling, unless constructive service by publication is expressly permitted by s. 49.011, F.S., it is not permitted.

¹⁸ -- So.2d --, 2007 WL 914676 (Fla. 2^d DCA 2007).

¹⁹ *Id.*

²⁰ Department of Revenue v. Cummings, 930 So.2d 604, 609 (Fla. 2006).

FACCA Facilities

According to DCF, the Florida Association of Christian Child Caring Agencies (FACCA) was established in 1982 for the main purpose of providing accreditation for faith-based children's residential and family foster homes. Pursuant to s. 409.176(5), F.S., facilities registered by FACCA are exempted from licensing by DCF. Today, FACCA has 28 registered member agencies, two of which are child-placing agencies.

Incarceration and Abandonment

The Florida Supreme Court recently interpreted language in s. 39.806(1)(d), F.S., which is identical to language currently in s. 63.089(4)(b)1, F.S. This language allows incarceration of a parent to be the basis for a finding of abandonment of a child supporting the termination of the parental rights of the incarcerated parent when "the period of time for which the parent is expected to be incarcerated will constitute a **substantial** portion of the period of time before the child will attain the age of 18 years (emphasis added)."

In B.C. vs. DCF, the Court held that: (1) the statutes listing incarceration as a ground for termination of parental rights require the court to evaluate whether the time for which a parent is expected to be incarcerated **in the future** constitutes a substantial portion of the time before the child reaches the age of 18; (2) the father's remaining sentence of four years did not constitute a substantial portion of time before his child reached the age of 18 (the child was four years old at the time of the hearing); (3) for purposes of terminating parental rights on the ground of incarceration, a trial court should measure the time of remaining incarceration and minority from the date the termination petition is filed.²¹

The Florida Supreme Court had previously ruled,²² and this decision reaffirmed, that incarceration alone does not, as a matter of law, authorize termination of parental rights on the basis of abandonment. While the B.C. ruling was one of statutory interpretation, the Court based its interpretation on the long-established Constitutional principal that parental rights constitute a fundamental liberty interest. For this reason, at least when termination of parental rights is sought based on this ground in chapter 39, F.S., the State (petitioner) must, in order to prevail, establish that the termination is the least restrictive means of protecting the child from serious harm.²³

In recognizing a fundamental liberty interest in raising one's children, the Florida Supreme Court has also ruled that when termination of parental rights is sought and the parent is indigent, the parent may be entitled to representation by appointed counsel.²⁴

Chapter 63 currently contains no provision for the appointment of counsel for indigent parents.

III. Effect of Proposed Changes:

Section 1 amends s. 39.812, F.S., clarifying that the standard for an adoptive home study is the same in all Florida adoption actions.

²¹ 887 So.2d 1046 (Fla. 2004).

²² In re B.W., 498 So.2d 946 (Fla. 1986).

²³ 887 So.2d at 1053-1054.

²⁴ S.B. v. Department of Children and Families, 851 So.2d 689, 692 (Fla. 2003).

Section 2 amends s. 49.011, F.S., authorizing service of process by publication in ch. 63, F.S., termination of parental rights actions. *See supra* p. 4.

Section 3 amends s. 63.022, F.S., to allow only one parent rather than both parents to participate in a private adoption plan with a qualified family when a child is in custody of the Department.

According to the Department of Children and Families (DCF), this amendment addresses the cases where a child is removed from a parent due to abuse or neglect, possibly making it unsafe for both parents to be involved in making a decision about the permanent placement options for the child.

Section 4 amends s. 63.032, F.S., to expand the definition of “adoption entity” to include an attorney licensed in another state who is placing a child from another state into Florida.

According to Family Law, the change is designed to address an issue originating with Florida’s interstate compact office which blocks interstate approval of any intermediary/attorney adoption originating in another state because the current definition does not recognize out of state attorneys licensed to place in the respective state. The change would allow attorneys authorized to place in the originating state to process an adoption placement through the interstate compact, thus allowing prospective adoptive parents to avoid the high cost of retaining an out of state agency.

According to DCF, the process to determine that an attorney has a valid and current license in another state may create a significant workload. [Addressed in Amendment Barcode Number 942452].

Section 4 further amends s. 63.032, F.S., as follows:

- Modifies the definition of child to mean a “minor” son or daughter, and deletes the subsequent definition of minor.²⁵
- Amends the definition of “legal custody,” adding “letter of guardianship” to the means by which the legal status of a custodian may be created. According to Family Law, this change will enable Florida courts to complete foreign adoptions for families adopting in those countries that provide only a letter of guardianship and require finalization in the receiving country.
- Changes the definition of “parent,” deleting the reference to the definition of “parent” found in s. 39.01, F.S. In relevant part, the ch. 39, F.S., definition of “parent” provides that a person whose parental rights have been terminated, or who is an alleged parent, is *not* a “parent” *unless* his or her parental status falls under s. 39.503, F.S. Because it addresses dependency, s. 39.503, F.S., encompasses a wide range of individuals, including males who were cohabitating with the mother at the probable time of conception and males who were named in an application for public assistance. This amendment excludes from the definition of parent for purposes of termination of parental rights those individuals who fall under

²⁵ The term “minor” is defined in s. 1.01, F.S., for application to all statutes as “any person who has not attained the age of 18 years.”

s. 39.503, F.S.

- Deletes the definition of “person.”
- Combines the definition of “placement” and “to place.”
- Creates a definition of “primarily lives and works in Florida,” clarifying that military and state department personnel who designate Florida as their residence or who actually reside in Florida are Florida residents for purposes of the adoption statute.
- Changes definition of “relative” to include persons related by blood, adoption or marriage, thus allowing the spouse of a blood relative or an adoptive relative to be considered a relative for purposes of the “short form adoption.”
- Amends the definition of “unmarried biological father” to exclude men who execute an affidavit pursuant to s. 382.013(2)(c), F.S.,²⁶ prior to the filing of the petition to terminate parental rights. According to Family Law, this protects the parental rights of a man who otherwise may not timely register with the Registry.

Section 5 amends s. 63.039, F.S., deleting the provision that requires an adoption entity to obtain a written venue waiver when “venue for the termination of parental rights will be located in a county other than the county where a parent whose rights are to be terminated resides,” making the provision consistent with substantive venue provisions.

Section 5 also creates s. 63.039(1)(j), F.S., to clarify that each adoption entity has an affirmative duty to provide an adoption disclosure to all persons whose consent is required and to any unmarried biological father identified by the mother.

Section 6 amends s. 63.0423, F.S., clarifying that judgments terminating parental rights pending adoption are voidable pursuant to the section only in cases involving abandoned infants, and adds a requirement that only a “parent whose consent is required for adoption” may petition the court to void such a judgment.

Section 7 amends the tag line of s. 63.0452, F.S., to conform to current law which provides that a grandparent with whom a child has lived for at least six months within 24 months prior to the filing of a petition for termination of parental rights is entitled to notice.

Section 8 amends s. 63.052, F.S., by designating the adoption entity as the responsible party for a child placed for adoption. Section 8 also amends s. 63.052(7), F.S., to clarify that the court’s jurisdiction continues until the adoption is “finalized within or outside this state.” This change is consistent with the provision allowing out-of-state adoptive parents to finalize their adoptions in their home states.

Section 9 amends s. 63.053, F.S., making it clear that an unmarried biological father who fails to timely act as required by the law has waived his parental rights entirely.

²⁶ Section 382.013(2)(c), F.S., provides in relevant part “If the mother is not married at the time of the birth, the name of the father may not be entered on the birth certificate without the execution of an affidavit signed by both the mother and the person to be named as the father . . .”

Section 10 amends s. 63.054, F.S. to:

- Clarify that a father who fails to register his paternity prior to the date a petition for termination of parental rights is filed is also barred from filing a paternity claim pursuant to ch. 742, F.S.;²⁷
- Require that persons petitioning for termination of parental rights or adoption have no obligation to search for a putative father who changes his address without notice to the Registry unless they have actual (not constructive) notice of the registrant's address and whereabouts; and
- Clarify that a Registry search is required only in connection with a termination of parental rights.

Section 11 amends s. 63.062, F.S., providing that the consent of a father is required only when he secures a paternity judgment or files a paternity affidavit prior to the date that a petition for termination of parental rights is filed. According to Family Law, this provision is necessary to assure the stability of all adoption placements.

Section 12 amends s. 63.063, F.S., adding the word "strict" to clarify that a father must strictly comply with the statute, thereby eliminating any suggestion that substantial compliance with the Registry requirements is sufficient.

Section 13 amends s. 63.082, F.S., providing that the notice and consent provisions of the chapter do not apply to cases in which a child is conceived as the result of criminal acts in other states or criminal acts under s. 794.05, F.S.²⁸ Provisions allowing a parent to revoke or rescind his or her consent "at any time prior to placement of the minor with the prospective adoptive parents . . ." are deleted.

Section 13 further amends s. 63.082, F.S., to provide that if a child is in the custody of DCF and parental rights have not yet been terminated, adoption consent by a parent with an adoption entity or qualified prospective adoptive parent shall be the basis for a transfer of custody of the child. In addition, the petition for termination of parental rights or the petition for adoption may be filed with the court in the county where the adoption entity is located rather than with the dependency court, and monthly supervision reports by the adoption entity will be optional and provided to the court rather than the Department.

According to DCF, these changes would be contrary to the "best interest of the child" standard and the unified family court guiding principles of "one judge, one family." The Department, guardian *ad litem* and dependency judge who have had the most contact with the child over the previous months and

²⁷ According to Family Law, this provision is designed to address the case law emerging from the Second District Court of Appeal (see discussion *supra* at pp. 3-4). Because a court is not authorized to finalize an adoption until the child has resided with the adoptive parents for at least 90 days, this case law could subject all adoption placements to disruption before finalization. The intended design of Florida's adoption law is to assure that all adoptions are stable at the time of placement. A disrupted adoption and protracted adoption litigation is contrary to the adopted child's best interests and necessarily increases the cost of a Florida adoption.

²⁸ Section 794.05, F.S., provides in relevant part "A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree . . . If an offense under this section directly results in the victim giving birth to a child, paternity of that child shall be established as described in chapter 742. If it is determined that the offender is the father of the child, the offender must pay child support pursuant to the child support guidelines described in chapter 61."

years, could be instantly taken off of a case by the execution of consent to adopt and the filing of a petition. With the execution of adoption consent, the parent from whom a child was removed will be allowed to be a decision maker about the safety and best interests of the child. Many children are removed due to the alcohol or drug addiction, domestic violence or the mental health challenges of their parents and these children need the intervention of the Department and court in determining the safety and best interests of children. [Addressed by Amendment Barcode Numbers 675652 and 225722].

Section 14 amends s. 63.085, F.S., providing that adoption disclosure shall be provided to any known and identified potential unmarried biological father and adding language to the adoption disclosure providing information about the Florida Putative Father Registry.

Section 14 further amends s. 63.085, F.S., to specify the exact information which must be provided to a prospective adoptive family prior to the child's placement in the home. According to Family Law, complete disclosure regarding the child's background is essential to avoid disrupted adoption placements.

Section 15 amends s. 63.087, F.S., clarifying that venue should only be transferred to a proper venue under ch. 63, F.S., and only a parent whose consent is required has standing to seek to change venue.

Section 16 amends s. 63.088, F.S., changing the mandatory language of the Notice of Petition and Hearing to Terminate Parental Rights Pending Adoption to clarify that the respondent must file an answer and appear at the hearing. The section specifies that the court must conduct inquiry into the identity of, *inter alia*, any man who was established by a court judgment to be the father of the minor before the petition for termination was filed and any man who filed an affidavit of paternity before the petition for termination was filed.

Section 16 also adds language to the diligent search requirements, stating that anyone who is contacted by a petitioner or adoption entity must release the requested information, except when prohibited by law, without necessity of subpoena or court order. According to Family Law, this will allow adoption entities to more efficiently conduct the search. The bill does not provide for any penalty for failure to comply.

Section 17 amends s. 63.089, F.S., clarifying that a court shall grant termination of parental rights when all persons whose consent is required have properly executed consent or there are grounds to excuse consent, authorizing a court to issue a judgment declaring that a person has no parental rights, and stating that a judgment terminating parental rights frees a child for adoption and may not be challenged by a person claiming parental status who did not establish parental rights prior to the filing of the petition for termination.

Section 17 further amends s. 63.089, F.S., to provide that abandonment as a result of incarceration may be found when the time period for which a person has been (as well as is expected to be) incarcerated constitutes a significant (rather than substantial) portion of the child's minority. The section also authorizes the court to consider the parent's entire term of incarceration in relation to the child's majority in the context of abandonment by incarceration.

Section 17 also deletes language providing guidelines for finding abandonment, and makes other technical changes. [Addressed by Amendment Barcode Number 100690].

Section 18 amends s. 63.092, F.S., deleting the references that allow child caring agencies registered under s. 409.176, F.S., to perform home studies.

Section 19 makes technical changes to s. 63.097, F.S.

Section 20 amends s. 63.102, F.S., to clarify the procedures for a short form adoption.

Section 21, 23 and 24 make technical changes.

Section 22 amends s. 63.122, F.S., adding “privacy” to the reasons a child’s name may be deleted from a notice of adoption, and deleting the provision that authorizes courts to order investigations of adult adoptions.

Section 25 amends s. 63.135, F.S., provides that the petitioner or adoption entity must file an affidavit under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), and deletes the description of the details required in an affidavit.

Section 26 amends s. 63.142(3)(a), F.S., providing that if a termination action is dismissed, any further proceedings regarding the minor must be filed in a separate custody action, a dependency action, or a paternity action.

Section 27 amends s. 63.152, F.S., to require that the clerk in each circuit transmit the judgment of adoption to the state where the adoptee was born. This authorizes the parties to seek amendment of an out of state birth certificate.

Section 28 amends s. 63.162, F.S., to provide that the names of the petitioners (adoptive parents) and the child may (rather than shall) not be noted on any docket, index or other record outside the court file. According to DCF, this change of language is contrary to the strict confidentiality currently in state law to protect the privacy of an adopted child, birth parents and adoptive parents. [Addressed by Amendment Barcode Number 965252].

In addition, Section 28 amends s. 63.162, F.S., to allow an adoption entity to be appointed by the court to contact a birth parent to advise him or her of an adult adoptee’s request to open the closed adoption file. This function is the current responsibility of the Department as mandated in s. 63.165, F.S., with implementation and maintenance of the Florida Adoption Reunion Registry.

Section 29 amends s. 63.192, F.S., clarifying that a foreign judgment terminating a parental relationship is recognized in this state and no further proceedings are required before adoption can be finalized.

Section 30 amends s. 63.207, F.S., to clarify those prospective adoptive parents who live outside of Florida and adopt a child from Florida may finalize the adoption in their home state or in this state.

Section 31 amends s. 63.212, F.S., eliminating the criminal sanction against entities as to venue choice.

Section 33 provides that petitions for termination filed before July 1, 2007 will be governed by the law in effect at the time of filing.

Section 34 amends s. 409.166, F.S., to redefine “special needs” children to include children whose permanent custody was awarded to an adoption intermediary in addition to the Department or licensed child-placing agencies.

According to DCF, the definition of “special needs” determines the eligibility of adopted children for financial assistance and the current definition limits these benefits to children permanently committed to the Department or licensed child-placing agencies. [Addressed by Amendment Barcode Number 630438].

Section 35 amends s. 409.176, F.S., to expand the category of facilities exempt from the licensing provisions of s. 409.175, F.S., to include child-placing facilities (in addition to child-caring facilities and family foster homes). See *supra* at pp. 4-5.

According to DCF, the licensing provisions of s. 409.175, F. S., and the process of renewing the licenses for child-placing agencies, is a function and responsibility of the Department that provides protections and safeguards for prospective adoptive families.

Section 36 amends s. 742.01, F.S., to require that the clerk of court provide each man who files a paternity action with a disclosure advising him of the requirement to file with the Registry.

Section 37 makes technical changes.

Section 38 provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

If incarcerated parents whose parental rights are involuntarily terminated have a right to counsel as a result of the fundamental liberty interest in parenting, this class may be expected to be expanded as a result of this bill, resulting in additional costs associated with the appointment of counsel. Since the cost of appointed counsel generally falls to the counties, this cost would impact county governments.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Authorizing the consideration of periods of incarceration prior to the filing of a petition for termination of parental rights, as well as changing the time from “a substantial portion” to “a significant portion” of a child’s minority may implicate state and federal Constitutional provisions relating to the fundamental liberty interest to parent. The broader consideration of the impact of incarceration to offenses occurring prior to its enactment may impact the Constitutional prohibitions against *ex post facto* punishment, as well.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

According to the State Court System, to the extent the bill streamlines the adoption process, the private sector would save the costs of litigation.

C. Government Sector Impact:

According to the Office of the State Courts Administrator (OSCA), the bill restricts the ability of certain biological fathers to litigate chapter 63, F.S., adoptions and, to the extent that they would no longer participate in such proceedings, the cases may take less time to resolve, thereby conserving judicial resources.

Also according to OSCA, the bill amends venue requirements, but it is not known whether this will increase the need for judicial resources since the same cases would presumably be filed, albeit in a different county. To the extent that the bill results in challenges to its constitutionality, there would be an increase in judicial time to adjudicate such arguments.

According to DCF, this bill would have a significant fiscal impact on the specific funding sources used for maintenance adoption subsidies. Currently, children eligible for maintenance adoption subsidies are determined to be eligible for Title IV-E-Adoption Assistance, TANF or State Funds (General Revenue and Tobacco). The majority (at least 75%) of maintenance adoption subsidies are reimbursed with Title IV-E Adoption Assistance at a current penetration rate of approximately 58%. The federal law limits the use of these federal dollars to children who are permanently committed to the department or a licensed child placing agency; as such, funding for children permanently committed to an attorney must be TANF, which is limited, or State Funds. Essentially, this bill would increase the need for more State Funds to sustain the maintenance adoption subsidy program. [Addressed by Amendment Barcode Number 630438].

On page 9, lines 24-28, the bill permits an attorney licensed in another state to place a child in Florida. The Department does not currently license or qualify attorneys from

other states for this purpose. This would create a workload increase for the Department. [Addressed by Amendment Barcode Number 942452].

If incarcerated parents whose parental rights are involuntarily terminated have a right to counsel as a result of the fundamental liberty interest in parenting, this class may be expected to be expanded as a result of this bill, resulting in additional costs associated with the appointment of counsel. Since the cost of appointed counsel generally falls to the counties, this cost would impact county governments.

VI. Technical Deficiencies:

On page 10, line 8, the bill modifies the definition of child to mean a “minor” son or daughter. It is unclear why the definition needs to be different from the definition of “minor” in chapter 39. The words “son or daughter” although in current law, do not provide any clarity. Also, the definition as amended does not address an emancipated minor. [Addressed by Amendment Barcode Number 931674].

On page 10, lines 21 through 29, the definition of “legal custody” includes another term, “legal custodian” and provides a definition of that term within the overall definition. [Addressed by Amendment Barcode Number 931674].

On page 11, lines 1 through 7, the bill amends the definition of “parent” to be different from the definition in ch. 39, F.S. Parent is defined to be a woman or a man. In the last sentence of the definition, there is reference to an “alleged or prospective parent.” It is not clear what this phrase means, particularly with regard to the female “parent.” This should read “alleged or prospective father.” [Addressed by Amendment Barcode Number 931674].

On page 35, line 11, the word “becoming” should be replaced with “becomes.” [Addressed by Amendment Barcode Number 934810].

On page 45, lines 28 through page 46, line 3, a provision is added requiring “a person contacted by a petitioner or adoption entity . . .” to release information to the requester unless otherwise prohibited by law. This provision does not specify “records”, but “information” which could be construed to mean verbal information. In addition, many of the “records” listed are not Florida records so presumably this provision would not apply.

On page 47, line 27, the words “or other document,” are added to the otherwise very specific list of documents that are proof of a waiver of service. It is not clear what “other document” might qualify.

On page 64, line 27, it is not clear why the word “shall” was changed to “may.” For confidentiality purposes, the term “shall” should be reinstated. [Addressed by Amendment Barcode Number 965252].

VII. Related Issues:

At page 61, line 13, the bill deletes the provision that authorizes courts to investigate the adoption of an adult, to determine if adoption is in the best interests of the adult. Without this provision, there would be no statutory authority for initiating investigations into adoptions involving vulnerable adults or into adult adoptions that may violate the ban on adoption by homosexuals (see s. 63.042(3), F.S.). [Addressed by Amendment Barcode Number 203522].

Currently, s. 39.806(1)(d), F.S., and s. 63.089(4)(b)1, F.S., both describe the same circumstances under which length of incarceration may be a factor in terminating parental rights. This bill will cause the provisions to significantly diverge, creating a situation in which an incarcerated parent might have his parental rights terminated for one child and not another, based solely on whether the child has been found to be a dependent child under chapter 39.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

Barcode 942452 by the Children, Families, and Elder Affairs Committee

Removes provision which would have allowed an attorney licensed in another state to place a child in Florida.

Barcode 931674 by the Children, Families, and Elder Affairs Committee

Changes definition of “child” to be consistent with the definition of “child” in s. 39.01; makes a separate definition for “legal custodian” outside the definition of “legal custody;” and changes the word “parent” to “father” after the phrase “alleged or purported” in the definition of parent.

Barcode 675652 by the Children, Families, and Elder Affairs Committee

Deletes provision which would have allowed an executed consent for placement with an adoption entity to be the basis for a transfer of custody from DCF.

Barcode 225722 by the Children, Families, and Elder Affairs Committee

When a person whose consent to adoption is required withdraws his/her consent after the child has been placed for adoption, current law requires that the person be given custody of the child unless such placement may endanger the child. The bill authorizes the court to direct continued placement with the prospective parents if the court finds that the prospective parents want continued placement, and the amendment requires the court to also consider the best interests of the child in making this decision.

Barcode 934810 by the Children, Families, and Elder Affairs Committee

Makes technical change, replacing the word “becoming” with “becomes.”

Barcode 100690 by the Children, Families, and Elder Affairs Committee

Restores current law providing guidelines for determining whether a parent has abandoned a child.

Barcode 203522 by the Children, Families, and Elder Affairs Committee

Restores current law giving courts authority to order investigations into adult adoptions to determine if they are in the best interests of the adult (WITH TITLE AMENDMENT).

Barcode 965252 by the Children, Families, and Elder Affairs Committee

Changes “may” to “shall” in reference to not noting the names of the petitioner and minor in court documents.

Barcode 630438 by the Children, Families, and Elder Affairs Committee

Deletes provisions that would have expanded the definition of “special needs children” to include not just children whose custody has been awarded to DCF or a licensed child-placing agency, but also children whose custody has been awarded to an adoption intermediary, and restores current law (WITH TITLE AMENDMENT).

Barcode 745526 by the Children, Families, and Elder Affairs Committee

Provides for severability (WITH TITLE AMENDMENT).

Barcode 941422 by the Children, Families, and Elder Affairs Committee

Allow a certificate of foreign birth for an adoptee born in a foreign country to be issued without a judgment of adoption by a Florida court upon submission of certain specified documents (WITH TITLE AMENDMENT).

Barcode 612476 by the Children, Families, and Elder Affairs Committee

Increases the age defining a “newborn infant” for purposes of the section from 3 days to 7 days (WITH TITLE AMENDMENT).

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