

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 1084

INTRODUCER: Committee on Children, Families and Elder Affairs

SUBJECT: Adoption/Putative Father Registry

DATE: March 12, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/CS
2.			JU	
3.			JA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Committee Substitute for Senate Bill 1084 amends ch. 63, F.S., relating to adoption and the rights and responsibilities of unmarried biological fathers. In addition, the bill:

- Mandates that prospective adoptive parents acknowledge receipt of adoption disclosures;
- Modifies the requirements for adoption disclosures;
- Clarifies that adoption proceedings initiated under ch. 39, F.S., are not exempted from new requirements proposed by the bill for disclosure to adoptive parents.
- Authorizes service of process by publication in termination of parental rights actions;
- Amends definitions;
- Clarifies that an adoption entity has an affirmative duty to provide an adoption disclosure statement to all persons whose consent to the adoption is required;
- Clarifies that grandparents are entitled to notice of a child's adoption in specified circumstances;
- Clarifies venue provisions;
- Provides that the notice and consent provisions of the chapter do not apply to cases in which a child is conceived as the result of a violation of certain criminal laws of this state or another

state, and adds to the list of applicable criminal laws, the law regarding sexual activity with certain minors;

- Limits the revocation period for consent to adoption to three business days, and provides instruction for the placement of a child if consent is withdrawn;
- Clarifies that in relative, adult, and stepchildren adoptions, the petitioner may file a joint petition for termination of parental rights (TPR) and adoption;
- Provides that an answer and an appearance are required in response to a petition for TPR, and that the failure to respond or appear may constitute grounds for TPR;
- Adds language to the diligent search section, stating that anyone who is contacted by a petitioner or adoption entity for information must release the requested records;
- Amends the criteria for determining whether a child has been abandoned for purposes of establishing TPR under ch. 63, F.S., when his or her parent is incarcerated;
- Clarifies that a report to the court regarding the intended placement of a minor by an adoption entity must be made two business days (rather than 48 hours) before the placement occurs, only if the entity participates in the placement;
- Clarifies that the name by which the child was previously known may not be disclosed in adoption documents, unless it is a joint petition for the adoption of a stepchild, relative or adult;
- Adds “privacy” to the reasons a child’s or a parent’s name may be deleted from a notice of adoption;
- Provides that an affidavit of expenses does not apply to the finalization of an adoption of a child whose parents’ rights were terminated pursuant to ch. 39, F.S., or to the domestication of a foreign adoption decree;
- Provides that the petitioner or adoption entity must file an affidavit under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA);
- Provides that if an adoption petition is dismissed, any further proceedings regarding the minor must be filed in a separate action;
- Clarifies that a foreign decree terminating a parental relationship is recognized in this state;
- Requires the clerk of court to provide each man who files a paternity action with a disclosure advising him of the requirement to file with the Registry; and
- Clarifies that procedures to establish paternity of children born out of wedlock are subject to exceptions provided in ch. 39 and ch. 63, F.S.

This bill substantially amends the following sections of the Florida Statutes: 39.812, 49.011, 63.032, 63.037, 63.039, 63.0425, 63.054, 63.062, 63.063, 63.082, 63.085, 63.087, 63.088, 63.089, 63.092, 63.102, 63.122, 63.132, 63.135, 63.142, 63.192, 63.212, 63.236, 742.021, 742.10.

II. Present Situation:

Disclosure to Prospective Adoptive Parents (See Sections 1, 5, 11 and 24 of SB 1084)

Section 63.085, F.S., requires adoption entities to provide a written disclosure statement to individuals seeking to adopt a child and to individuals seeking to place a child for adoption. The disclosure must notify the individuals of the following:

- Name, address, and telephone number of the adoption entity providing the disclosure;

- Adoption entity does not provide legal representation or advice;
- Child cannot be placed into a prospective adoptive home unless the prospective adoptive parents have received a favorable preliminary home study;
- Valid consent for adoption may not be signed by the birth mother until 48 hours after the birth of the child or after she is discharged from the hospital or birth center;
- Consent for adoption signed before the child attains the age of 6 months is binding and irrevocable from the moment it is signed and a consent for adoption signed after the child attains the age of 6 months is valid from the moment it is signed, but may be revoked until the child is placed in an adoptive home, or up to three days after it was signed, whichever period is longer;
- Consent for adoption is not valid if the signature of the person who signed the consent was obtained by fraud or duress;
- There are alternatives to adoption, including foster care, relative care, and parenting the child;
- Birth parent has the right to have a witness to be present and witness the signing of the consent or affidavit of nonpaternity;
- Birth parent, 14 years of age or younger, must have a parent, legal guardian, or court-appointed guardian ad litem to assist and advise the birth parent as to the adoption plan;
- Birth parent has a right to receive supportive counseling; and
- Payment of living or medical expenses by the prospective adoptive parents prior to the birth of the child does not, in any way, obligate the birth parent to sign the consent for adoption.

Current law does not specifically require the disclosure of the child's background information to the prospective adoptive parents, but complete disclosure can benefit the child, the adoptive family and the adoption entity as follows:

- Families who know a child's complete medical, social, and placement history are better able to make an informed decision about whether they are emotionally and financially prepared to meet the child's needs;
- It ensures the child is placed in an environment that can meet his or her needs;
- It ensures the adopted person has full and accurate knowledge of his or her family, medical, and genetic history; and
- It helps protect agencies and intermediaries from wrongful adoption lawsuits.¹

Service of Process (See Section 2 of SB 1084)

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 49.011, F.S., does not specifically allow service by publication in termination of parental rights proceedings pursuant to ch. 63, F.S.

¹Child Welfare Information Gateway, *Providing Background Information to Adoptive Parents, Bulletin for Professionals* (2003), available at http://www.childwelfare.gov/pubs/f_backgroundbulletin.cfm (last visited March 9, 2008).

In May 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].²

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

Putative Father Registry (See, *inter alia*, Sections 7, 8, 9, 11, 13 and 14 of SB 1084)

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.³

The Registry is maintained by the Office of Vital Statistics of the Department of Health. If a man thinks 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. By filing with the Registry, the potential father is claiming paternity for the child and confirms his willingness to support the child.⁴ Additionally, he consents to DNA testing, and may ultimately be required to pay child support.⁵ 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.⁶ The putative father may change his mind and, prior to the birth of the child, execute a notarized revocation of the claim of paternity.⁷ 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.⁸

The Putative Father Registry, and the concurrent revisions to ch. 63, F.S., were designed to protect the rights of all parties to an adoption proceeding: the right of the unmarried biological father to notice and an opportunity to be heard, the right of the birth mother to make an independent decision when the father fails to act, and the right of the adoptive parent to a stable and certain placement.⁹

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

³ 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 (last visited February 22, 2008).

⁴ Section 63.054(1), F.S.

⁵ Section 63.054(2), F.S.

⁶ Section 63.054(1), F.S.

⁷ Section 63.054(5), F.S.

⁸ *Id.*

⁹ Amy U. Hickman and Jeanne T. Tate, *Florida's Putative Father Registry: More Work is Needed to Follow the Established National Trends Toward Stable Adoption Placements*, Florida Bar Journal, January 2008, p.42.

The Legislature's findings with respect to the 2003 revisions to ch. 63, F.S., are codified in s. 63.053, F.S., and summarized as follows:

- If an unmarried biological father fails to take the actions that are available to him to establish a relationship with his child, his parental interest may be lost entirely;
- The interests of the state, the mother, the child, and the adoptive parents outweigh the interest of an unmarried biological father who does not take action in a timely manner to establish and demonstrate a relationship with his child;
- An unmarried biological 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 chapter and demonstrates a prompt and full commitment to his parental responsibilities; and
- A birth mother and a birth father have a right to privacy.¹⁰

The United States Supreme Court has upheld the constitutionality of putative father registries, 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.¹¹ The Florida Supreme Court has recognized this rationale as well.¹² Since its enactment, Florida's Registry has been the subject of conflicting case law questioning its applicability.¹³ In 2007, the Florida Supreme Court accepted *J.A. v. Heart of Adoptions*¹⁴ for review, and answered the following question, which had been certified as a matter of great public importance:

IN A PROCEEDING ON A PETITION FOR TERMINATION OF PARENTAL RIGHTS
PENDING ADOPTION, MAY THE UNMARRIED BIOLOGICAL FATHER'S RIGHTS IN
RELATION TO THE CHILD BE TERMINATED BASED ON THE UNMARRIED
BIOLOGICAL FATHER'S FAILURE TO PROPERLY FILE A CLAIM OF PATERNITY WITH
THE FLORIDA PUTATIVE FATHER REGISTRY?¹⁵

In response, the Court held that "the rights of an unmarried biological father in relation to the child, who is known or identified by the mother as the potential father and who is locatable by diligent search, may be terminated based on his failure to file a claim with the Florida Putative Father Registry only if the father was served with notice under section 63.062(3)(a), Florida Statutes (2005), and he fails to comply with the requirements of that subsection within the thirty-day period."¹⁶

¹⁰ See also, Chapter 2003-58, L.O.F.

¹¹ *Lehr v. Robertson*, 463 U.S. 248, 103 S.Ct. 2985 (1983).

¹² *In re Doe*, 543 So.2d 741 (Fla. 1989); *G.W.B. v. J.S.W.*, 658 So.2d 961 (Fla. 1995).

¹³ *J.S. v. S.A.*, 912 So.2d 650 (Fla. 4th DCA 2005); *A.F.L. v. Department of Children and Families*, 927 So.2d 101 (Fla. 5th DCA 2006); *B.B. v. P.J.M.*, 933 So.2d 57 (Fla. 1st DCA 2006); *A.S. v. Gift of Life Adoptions, Inc.*, 944 So.2d 380 (Fla. 2^d DCA 2006), *rev. den.*, 944 So. 2d 344 (2006); *J.C.J. v. Heart of Adoptions, Inc.*, 942 So.2d 906 (Fla. 2^d DCA 2007); *J.A. v. Heart of Adoptions*, 32 Fla. L. Weekly D807 (Fla. 2d DCA 2007); *S.D.T. v. Bundle of Hope Ministries, Inc.*, 949 So.2d 1132 (Fla. 1st DCA 2007).

¹⁴ *J.A. v. Heart of Adoptions*, 32 Fla. L. Weekly D807 (Fla. 2d DCA 2007).

¹⁵ *Heart of Adoptions v. J.A.*, 963 So.2d 189 (Fla. 2007).

¹⁶ *Id.* at 191.

The Supreme Court's decision, while it upholds the Registry, "swings the burden of providing notice back to the birth mother and the adoption entity and the risk of disrupted placements onto the adoptive parents and the child. . . ." ¹⁷ Because the opinion only addresses the situations in which a mother identifies a potential, locatable biological father, it leaves uncertain the applicability of the Registry in cases in which the mother does not identify the father, either fraudulently or as a matter of privacy. ¹⁸

In addition, while the majority recognized the notice provision of s. 63.088(1), F.S., which provides that an unmarried biological father is on notice of a potential pregnancy and adoption when he engages in a sexual relationship with a woman, Chief Justice Lewis' concurring opinion questioned whether such notice was sufficient, absent receipt of an adoption plan, creating a potential for disrupted placements in cases when the father is not identified or is not identified until after placement.

Incarceration and Abandonment (See Section 14 of SB 1084)

Section 63.089(4)(b), F.S., is substantively identical to s. 39.806(1)(d), F.S. Both sections provide that incarceration of a parent can be the basis for a finding of abandonment, and thus support termination of the parental rights of the incarcerated parent, when "[t]he 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."

In 2004, the Florida Supreme Court construed s. 39.806(1)(d), F.S., in response to a certified conflict among circuits. Specifically, the Court addressed the issue of whether s. 39.806(1)(d), F.S., was "solely forward-looking" or instead contemplated the entire period of incarceration (i.e., the portion already served, as well as the portion yet to be served). ¹⁹

In response, the Court held that

. . . before the parental rights of a parent incarcerated in a state or federal correctional institution may be terminated under section 39.806(1)(d)(1), the trial court must find by clear and convincing evidence that the time remaining in the parent's incarceration constitutes a substantial portion of the time remaining before the child or children attain the age of eighteen years. Because the starting point for a termination proceeding is a petition alleging grounds for termination, the trial court should measure the time of remaining incarceration and minority from the date that the petition is filed. ²⁰

The Court declined to state what specific percentage of a child's life constitutes "substantial" for purposes of s. 39.806(1)(d), F.S.

¹⁷ Amy U. Hickman and Jeanne T. Tate, *Florida's Putative Father Registry: More Work is Needed to Follow the Established National Trends Toward Stable Adoption Placements*, Florida Bar Journal, January 2008, at p.42.

¹⁸ *Id.*

¹⁹ *B.C. vs. Department of Children and Families*, 887 So.2d 1046, 1047 (Fla. 2004).

²⁰ *Id.* at 1055.

III. Effect of Proposed Changes:

Section 1

The bill amends s. 39.812, F.S., adding to the documents that must accompany a petition for adoption pursuant to ch. 39, F.S., a statement signed by the prospective adoptive parent, acknowledging receipt of all information required to be disclosed in accordance with s. 63.085, F.S. This section also removes superfluous language.

Section 2

The bill amends s. 49.011, F.S., authorizing service of process by publication in ch. 63, F.S., termination of parental rights actions.

Section 3

The bill amends s. 63.032, F.S., as follows:

- Amends the definition of child to mean an unmarried person under the age of 18 who has not been emancipated.
- Amends the definition of “parent,” deleting the reference to the definition of “parent” found in s. 39.01, F.S., but making the two provisions consistent.²¹
- Amends the definition of “primarily lives and works outside Florida,” to clarify that the definition includes military personnel and other citizens (not just State Department employees) who live and work outside Florida for *more than* six months (six months and one day) per year, and who designate a state other than Florida as their place of residence.
- Amends the definition of “unmarried biological father” to clarify that the definition includes a man who has not been adjudicated to be the legal father or has not executed an affidavit pursuant to s. 382.013(2)(c), F.S.,²² *before* the filing of the petition to terminate parental rights.

The bill also rearranges the section, placing the defined terms in alphabetical order.

Section 4

The bill amends s. 63.037, F.S., to clarify that adoption proceedings initiated under ch. 39, F.S., are not exempted from the new requirements proposed by the bill for disclosure to adoptive parents. (See **Technical Deficiencies.**)

Section 5

The bill amends s. 63.039, F.S., to clarify that an adoption entity has an affirmative duty to provide an adoption disclosure statement to all persons whose consent to the adoption is required

²¹ In relevant part, the s. 39.01(48), 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 s. 39.503, F.S.

²² 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 . . .”

The bill deletes the requirement that an adoption entity obtain a venue waiver in a TPR action that is located in a county other than where the parent resides.

Section 6

The bill amends the tag line of s. 63.0425 F.S., to conform it to the section 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, not entitled to adopt.

Section 7

The bill amends s. 63.054, F.S., to clarify that an unmarried biological father who fails to file a claim of paternity with the Registry before a petition for termination of parental rights (TPR) is filed, is also barred from filing a paternity claim pursuant to ch. 742, F.S.

The bill provides that an unmarried biological father is excepted from the time limitations for filing a claim for paternity with the Registry or pursuant to ch. 742, F.S., if (1) he has been identified by the mother; and (2) he has been served with notice of the intended adoption plan, and the mandatory response date is later than the date the petition for TPR is filed. Under those circumstances, the unmarried biological father must file with the Registry or file a ch. 742 paternity claim within 30 days of the service of notice of the intended adoption plan.

If the unmarried biological father is excepted from the time limitations for filing a claim for paternity with the Registry or pursuant to ch. 742, F.S., the bill requires the petitioner to submit a copy of the notice of intended adoption plan and proof of service to the Office of Vital Statistics. The bill precludes the unmarried biological father from filing a claim of paternity, and the Office from recording a claim of paternity, once the 30 day time for response has expired.

(See Technical Deficiencies.)

The bill provides that a person petitioning for TPR or adoption has no obligation to search for a putative father who changes his address without notice to the Registry, unless the individual has actual (not constructive) notice of the registrant's address and whereabouts.

The bill provides that a Registry search is required in any proceeding for TPR, including stepparent and relative adoptions in which parental rights are terminated simultaneously with the entry of the final judgment of adoption.

Section 8

The bill amends s. 63.062, F.S., clarifying that the consent of a father to adoption is required if:

- He was married to the mother at the time of conception;
- He has adopted the child;
- The child was adjudicated to be his child *before* a petition for TPR was filed;
- He filed a paternity affidavit *before* a petition for TPR was filed; or
- He has complied with the requirements of the Registry.

The bill provides that an adoption entity may serve a notice of intended adoption plan on any *known and locatable* unmarried biological father who is identified to the adoption entity by the mother *by the date she signs her consent for adoption* or who is identified by diligent search of

the Registry. The bill provides that such notice may be served any time before the birth or placement of the child.²³ **(See Technical Deficiencies.)**

The bill requires that the notice must include instructions for submitting a claim to the Registry, and requires the court to enter a default against an unmarried biological father or entity who does not timely file a claim with the Registry and a response with the court. The bill sets out very specifically the actions required to avoid default.

The bill amends the venue provision in s. 63.062, F.S., providing that venue transfer is governed by chapters 63 and 47, F.S.

Section 9

The bill amends s. 63.063, F.S., adding the word “strict” to clarify that a father must strictly comply with the requirements of ch. 63, F.S., thereby eliminating any suggestion that “substantial compliance” is sufficient.

Section 10

The bill 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 a violation of certain criminal laws of this state *or another state*, and adding to the list of applicable criminal laws the law regarding sexual activity with certain minors.²⁴

The bill deletes provisions allowing a parent to revoke or rescind his or her consent to the adoption of a child who is older than six months at any time prior to placement of the minor with the prospective adoptive parents, thus limiting the revocation period to three business days.²⁵

The bill further amends s. 63.082, F.S., to provide that if an adoption entity receives timely (within 3 business days after execution of the consent), written notice of an individual's desire to withdraw consent to the adoption of a child older than six months who has been placed with prospective adoptive parents, the adoption entity must arrange to regain custody of the minor or file a motion for emergency hearing. If the court finds that placement of the child with the person who had custody immediately before adoption may endanger the child, or that the person seeking to withdraw consent is not required to consent, has abandoned the child or has waived consent, the court shall order continuing placement with the prospective adoptive parents. If the prospective adoptive parents do not desire continued placement, the court shall determine the placement that is in the child's best interest.

²³ The Florida Supreme Court has interpreted the phrase “may serve” in the current law to mean that the adoption entity has discretion as to the timing of the service (i.e., at any time before placement of the child), not as to whether to serve at all. *Heart of Adoptions v. J.A.*, 963 So.2d 189, 199 (Fla. 2007).

²⁴ 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.”

²⁵ Pursuant to s. 63.082(4)(b), F.S., a consent to adoption is valid upon execution and may be withdrawn only if the court finds fraud or duress. Revocation is only available if the consent was for the adoption of a child older than six months.

Section 11

The bill amends s. 63.085, F.S., adding required language to the adoption disclosure, which must be provided to parents and prospective adoptive parents. The additional language includes detailed information about the Florida Putative Father Registry and about the consequences of failure to respond as required.

The bill also requires adoption entities that identify prospective parents and supervise placement to provide prospective adoptive parents with information concerning the child's background, if and when such information is disclosed to the adoption entity. The bill requires individuals and entities to release requested records to the adoption entity without requiring a subpoena or court order. The bill specifies that the following information, if available, must be disclosed to the prospective adoptive parents by the date of the final hearing:

- Family social and medical history;
- Biological mother's medical records documenting her prenatal care and the birth and delivery of the child;
- Child's medical records;
- Child's mental health, psychological, and psychiatric records, reports and evaluations;
- Child's educational records;
- Records documenting all incidents that required the department to provide services; and
- Information concerning availability of adoption subsidies.

The adoption entity must redact information identifying the child's parents, foster families, siblings, relatives, and perpetrators of crimes against the child or involving the child.

Section 12

The bill amends s. 63.087, F.S., clarifying that venue lies in the county where the child lives or the adoption entity is located and that the court may transfer venue at the request of a parent whose consent is required in accordance with s. 47.122, F.S.²⁶

The bill clarifies that in relative, adult, and stepchildren adoptions, the petitioner may file a joint petition for TPR and adoption and the joint petition will be governed by ch. 63, F.S., unless otherwise provided.

The bill provides that an answer *and* an appearance are required in response to a petition for TPR, and the failure to respond or appear may constitute grounds for TPR.²⁷

The bill specifies that the answer must be filed in accordance with Florida Family Law Rules of Procedure rather than with the Florida Rules of Civil Procedure.²⁸ The bill deletes the

²⁶ Section 47.122, F.S., provides that "[f]or the convenience of the parties or witnesses or in the interest of justice, any court of record may transfer any civil action to any other court of record in which it might have been brought."

²⁷ At least one court has interpreted a similar provision in ch. 39, F.S., to require that, even after entering a default following a respondent's failure to appear, the trial court must receive evidence to support the grounds for TPR alleged in the petition. *See S.S. v. DCF*, ---So.2d ---, 2008 WL 239023 (Fla. 3rd DCA 2008).

²⁸ Rule 12.020 of the Florida Family Law Rules of Procedure provides that "[t]he Florida Rules of Civil Procedure are applicable in all family law matters except as otherwise provided in these rules. These rules shall govern in cases where a conflict with the Florida Rules of Civil Procedure may occur . . ."

requirement that the petitioner provide notice of the final hearing, which is already required by the rules.

Section 13

The bill amends s. 63.088, F.S., providing that if a mother fails to identify an unmarried biological father to the adoption entity by the date she signs her consent for adoption, the unmarried biological father's claim that he did not receive notice is not a defense to the TPR. The bill also changes 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 must appear at the hearing.

The bill specifies that the court must conduct inquiry into the identity of, *inter alia*:

- Any man who filed an affidavit of paternity before the petition for termination was filed;
- Any man who was adjudicated to be the father before the petition for termination was filed; and
- Any man whom the mother identified to the adoption entity as a potential biological father before she signed the consent for adoption.

The bill deletes "regulatory agencies" as a required source of information for a diligent search, and adds language to the diligent search section, stating that anyone who is contacted by a petitioner or adoption entity must release requested records, except when prohibited by law, without necessity of subpoena or court order. The bill does not provide for any penalty for failure to comply.

The bill provides that a TPR judgment approving a diligent search that fails to locate a person is valid and not subject to direct or collateral attack because the mother failed to provide the adoption entity with sufficient information to locate the person.

Section 14

The bill amends s. 63.089, F.S., to provide that waiver of service in a TPR pending adoption proceeding can be demonstrated by the execution and filing of a consent for adoption or other document which affirmatively waives service.

The bill amends the criteria for determining whether a child has been abandoned for purposes of establishing TPR when his or her parent is incarcerated. The bill requires the court to consider whether the period of time for which the parent *has been* or is expected to be incarcerated constitutes a significant (rather than substantial) portion of the child's minority. The bill specifies that the time period for consideration begins on the date the parent becomes incarcerated.

The bill provides that a TPR pending adoption judgment:

- Frees the child for adoption;
 - Adjudicates the child's status;
-

- May not be challenged by a person claiming parental status who did not establish parental rights prior to the filing of the petition for TPR; and
- May not be challenged by an unmarried biological father who the mother did not identify before she signed a consent for adoption or who was not located because the mother failed or refused to provide information to locate him. (**See Related Issues.**)

The bill confirms that all records pertaining to a TPR pending adoption proceeding are confidential and specifically provides that an unmarried biological father does not have standing to seek the court case number or access to the court file if the mother did not identify him before she signed a consent for adoption.

Section 15

The bill amends s. 63.092, F.S., to clarify that a report to the court regarding the intended placement of a minor by an adoption entity must be made two business days (rather than 48 hours) before the placement occurs, only if the entity participates in the placement.

Section 16

The bill amends s. 63.102, F.S., clarifying that the name by which the child was previously known may not be disclosed in a petition for adoption, notice of hearing, judgment of adoption or court docket, unless it is a joint petition for the adoption of a stepchild, relative or adult.

The bill provides that the petition for adoption must be filed in the county where the TPR petition was filed or granted or where the adoption entity is located, and the court shall retain jurisdiction until final judgment within or outside the state is entered.

Section 17

The bill amends s. 63.122, F.S., adding “privacy” to the reasons a child’s *or a parent’s* name may be deleted from a notice of adoption. According to DCF, this may make it difficult to match adult adoptees with their adoption records as part of the Florida Adoption Reunion Registry.²⁹

Section 18

The bill provides that the section regarding affidavit of expenses does not apply to the finalization of an adoption of a child whose parents’ rights were terminated pursuant to ch. 39, F.S., or to the domestication of a foreign adoption decree.

Section 19

The bill amends s. 63.135, F.S., to provide 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 the affidavit.

Section 20

The bill amends s. 63.142, F.S., deleting the provision requiring the court to determine who will have custody of the child if a petition for adoption is dismissed, and providing instead that any further proceedings regarding the minor must be filed in a separate custody action, dependency action, or paternity action.

²⁹ Julie Mayo, *DCF Staff Analysis and Economic Impact Statement SB 1084* (January 28, 2008).

Section 21

The bill amends s. 63.192, F.S., clarifying that a foreign judgment or decree, within or without the United States, terminating a parental relationship is recognized in this state and no further proceedings are required before the adoption can be finalized.

Section 22

The bill amends s. 63.212, F.S., deleting the provision that makes it unlawful to knowingly make an improper venue choice.

Section 23

The bill provides that petitions for termination filed before July 1, 2009 will be governed by the law in effect at the time of filing.

Section 24

The bill amends s. 742.021, 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 25

The bill amends s. 742.10, F.S., to clarify that the section, which describes the procedures to establish paternity of children born out of wedlock, is subject to exceptions provided in ch. 39 and ch. 63, F.S.

Section 26

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The application of the Putative Father Registry implicates the constitutional right of an unmarried biological father to parent his child. However, the United States Supreme Court has upheld the constitutionality of putative father registries, 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.³⁰ The Florida Supreme Court has recognized this rationale as well.³¹

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.³²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent the bill streamlines the adoption process, the private sector may save the costs of litigation.

The Department of Health (DOH) provided an analysis of SB1084 on March 13, 2008, after the bill was heard by the Committee on Children, Families and Elder Affairs. According to DOH, the bill will require the Office of Vital Statistics to become more than the records repository it is now, by requiring the Office to analyze documents and compute timeframes to determine whether it must accept a claim of paternity. This increased decision-making may result in determinations which are adverse to individuals and which, in turn, may compel DOH to extend administrative hearing rights to substantially affected parties. Such proceedings may create delays, as well as conflicts between the judicial and executive branches. Also, because DOH will be receiving, generating and maintaining more confidential documents, there may be an increase in litigation to defend the confidential status of the records.³³

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) has not yet provided an analysis of this bill.

The OSCA did, however, provide an analysis in 2007 for SB 2030, which is similar to this bill. According to that analysis, to the extent 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. In addition, according to OSCA, to the extent the bill amends venue requirements, it may increase the need for judicial resources, although the same cases would presumably be filed, albeit in different counties. Finally, OSCA

³⁰ *Lehr v. Robertson*, 463 U.S. 248, 103 S.Ct. 2985 (1983).

³¹ *In re Doe*, 543 So.2d 741 (Fla. 1989); *G.W.B. v. J.S.W.*, 658 So.2d 961 (Fla. 1995).

³² *See B.C. vs. Department of Children and Families*, 887 So.2d 1046, 1047 (Fla. 2004).

³³ Department Of Health Bill Analysis, Economic Statement and Fiscal Note, SB 1084 (March 10, 2008).

advised that to the extent that the bill may result in challenges to its constitutionality, there would be an increase in judicial time to adjudicate such arguments.

According to the Florida Association of Court Clerks and Comptrollers, although the bill imposes additional responsibilities on the Clerks, it is not expected to have a fiscal impact on them.³⁴

The Department of Health (DOH) provided an analysis of SB1084 on March 13, 2008, after the bill was heard by the Committee on Children, Families and Elder Affairs. According to DOH, the implementation of this bill will require additional staffing (one OPS position) for the following reasons:

- When the Registry was originally enacted, no resources were provided to perform Registry functions.
- In 2007, 6,800 Florida adoptions were processed and 4,811 searches (at \$9 per search for total revenue of \$43,299) of the Registry were performed.
- The time-sensitive notices of intended adoption plans and proof of service of notice on the potential biological father must be processed and monitored.
- The additional information submitted must be reviewed, researched, indexed, and tracked regarding the 30-day limitation to ensure it is in compliance with the provisions of s. 63.054, F.S.

DOH estimates expenditures of \$24,335 in the first fiscal year, and \$19,969 in subsequent years.³⁵

VI. Technical Deficiencies:

In Section 4, the bill amends s. 63.037, F.S., to clarify that adoption proceedings initiated under ch. 39, F.S., are exempt only from the requirements for disclosure prescribed by s. 63.085(1), F.S. The bill also amends s. 63.085(3), however, stating that receipt of the disclosures required under ss. 63.085 (1) and (2), F.S., must be acknowledged in writing. If ch. 39, F.S., proceedings are exempt from s. 63.085 (1), F.S., it is inconsistent to require the acknowledgement required by s. 63.085 (1), F.S., in those cases.

In Section 8 (line 397), the bill provides that an adoption entity *may* serve a notice of intended adoption plan on specified individuals. At line 403, the bill provides (in a separate sentence) that the notice may be served any time before birth or placement. In current law, the references to serving notice and to the timing of the service are contained in a single sentence, and the Florida Supreme Court has interpreted the phrase "may serve" in that sentence to mean that the adoption entity has discretion as to the timing of the service (i.e., at any time before placement of the child), not as to whether to serve at all.³⁶ It is unclear if this interpretation would apply to the language proposed in the bill, since the concepts are placed in two sentences. It is, therefore, also unclear if the adoption entity has discretion to serve a notice at all.

³⁴ Beth Allman, Communications Director, Florida Association of Court Clerks and Comptrollers.

³⁵ Department Of Health Bill Analysis, Economic Statement and Fiscal Note, SB 1084 (March 10, 2008).

³⁶ *Heart of Adoptions v. J.A.*, 963 So.2d 189, 199 (Fla. 2007).

The Department of Health (DOH) provided an analysis of SB1084 on March 13, 2008, after the bill was heard by the Committee on Children, Families and Elder Affairs. According to DOH, paternity may be established by ss. 382.013(2)(c), F.S. (which allows for establishing paternity at the time of birth) and 382.016(1)(b), F.S. (which allows for establishing paternity after the record has been registered), as well as pursuant to ch. 742, F.S. The bill precludes an unmarried biological father from filing a paternity claim pursuant to ch. 742, F.S., if he has failed to file a claim of paternity before the date a petition for TPR has been filed. DOH suggests that the unmarried biological father should also be specifically precluded from filing a paternity claim pursuant to ss. 382.013(2)(c) and 382.016(1)(b), F.S.

The bill requires the submission of certain documents to the Office of Vital Statistics. It is unclear whether the Office of Vital Statistics in general, and the Putative Father Registry in particular, is or can be equipped to receive this type of documentation.

VII. Related Issues:

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 ch. 39, F.S.

At lines 1278-1282, the bill appears to allow a biological mother to purposefully withhold information about the identity of an unmarried biological father. This is consistent with the Legislature's findings when it established the Putative Father Registry:

- 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
- The unmarried biological 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 the legislation and demonstrates a prompt and full commitment to parental responsibilities.³⁷

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families and Elder Affairs on March 12, 2008:

Corrects some technical deficiencies, provides that the identity of foster families must be redacted from disclosures provided to adoptive families, and provides that adoption proceedings initiated under ch. 39, F.S. are not exempt from some of the bill's proposed disclosure requirements.

³⁷ Section 63.053, F.S.

B. Amendments:

None.

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