

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/CS/HB 1163 (CS/CS/SB 1874)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Health & Human Services Committee; Appropriations Committee; Health & Human Services Access Subcommittee; Adkins and others (Judiciary; Children, Families, and Elder Affairs; Wise)	119 Y's	0 N's
COMPANION BILLS:	CS/CS/SB 1874	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 1163 passed the House on February 29, 2012. The bill was amended by the Senate on March 8, 2012, and subsequently passed the House on the same date. The bill significantly revises current law relating to adoption. The bill:

- Requires licensed child-placing agencies to take certain legal actions prior to and after taking custody of a surrendered newborn;
- Requires a newborn who tests positive for illicit or prescription drugs or alcohol to be placed with a licensed child-placing agency for the purposes of Florida's "Safe Haven" law for surrendered newborns. The Department of Children and Families is prohibited from taking custody of the surrendered newborn unless reasonable efforts to contact a licensed child-placing agency to take custody of the child fail;
- Revises the obligations and responsibilities of an unmarried biological father seeking to assert his parental rights to require the father to strictly comply with provisions of the statute and take certain demonstrative actions to prove his intent to assert parental rights;
- Amends the process for terminating parental rights to require certain actions of the party seeking termination and certain steps to be taken by the court prior to terminating parental rights;
- Specifies the duties of the court when considering a petition for termination of parental rights and, when the petition has been denied, requiring the court to provide for immediate placement of the child;
- Restricts advertisements offering a minor for adoption in Florida or seeking a minor for adoption in Florida and imposes criminal penalties and fines for violations of advertising restrictions;
- Provides that a person who knowingly publishes or assists in the publishing of an advertisement in violation of the bill's provisions commits a second degree misdemeanor and is subject to a fine of up to \$150 per day for each day the violation continues;
- Establishes the crime of adoption deception by a birth mother, or woman holding herself out to be a birth mother;
- Provides that a person who commits adoption deception commits a second degree misdemeanor if the amount of money received was \$300 or less and a person who commits adoption deception with receipt of money totaling more than \$300 commits a third degree felony; and
- Establishes the rights and obligations of a volunteer mother involved in a preplanned adoption agreement only if the child being offered up for adoption is genetically related to the volunteer mother.

The fiscal impact of this bill connected to third degree felonies for committing adoption deception is anticipated to be insignificant. Otherwise, no state fiscal impact is expected.

The bill was approved by the Governor on April 6, 2012, ch. 2012-81, Laws of Florida. The bill is effective on July 1, 2012.

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

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Adoption in Florida

Chapter 63, F.S., known as the Florida Adoption Act, applies to all adoptions, both public and private, involving the following entities:

- Department of Children and Families (DCF);
- Child-placing agencies licensed by DCF under s. 63.202;
- Child-caring agencies registered under s. 409.176;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

The Legislature's intent is to provide stable and permanent homes for adoptive children in a prompt manner, to prevent the disruption of adoptive placement, and to hold parents accountable for meeting the needs of children.¹ It is also the intent of the Legislature that in every adoption, the child's best interest should govern the court's determination in placement, with the court making specific findings as to those best interests.² The Legislature also intends to protect and promote the well-being of the persons being adopted.³ Safeguards are established to ensure that the minor is legally free for adoption, that the required persons consent to the adoption, or that the parent-child relationship is terminated by judgment of the court.⁴

Florida Adoption Statistics

For state fiscal year 2010-2011, 3,009 children were adopted in Florida.⁵ Over the last five years, nearly 17,000 children have been adopted out of Florida's child welfare system, while setting a record for the number of children adopted in two of the last five years.⁶ As a result of the improvement of adoption performance in the state, Florida has collected more than \$18 million in federal adoption incentive awards since 2009.⁷ Only Texas and Arizona have received more in adoption incentive awards during the same time period.⁸

During the period of July 2010 through June 2011, of the children discharged from foster care to a finalized adoption, over 51 percent were discharged in less than 24 months from the date of the child's latest removal from home.⁹ Of those children, the median length of stay in foster care was 20 months from the date of the latest removal from home to the date of discharge to adoption.¹⁰ During the same period, children not in foster care who are becoming newly available for adoption are being found

¹ Section 63.022(1)(a), F.S.

² Section 63.022(2), F.S.

³ Section 63.022(3), F.S.

⁴ Section 63.022(4), F.S.

⁵ Executive Office of the Governor, Office of Adoption and Child Protection, *Annual Report 2011*, December 30, 2011, page 59, available at www.flgov.com/wp-content/uploads/childadvocacy/oacp2011_annual_report.pdf (last accessed Jan. 28, 2012) (also on file with Health and Human Services Access Subcommittee).

⁶ *Id.* at page 6.

⁷ *Id.*

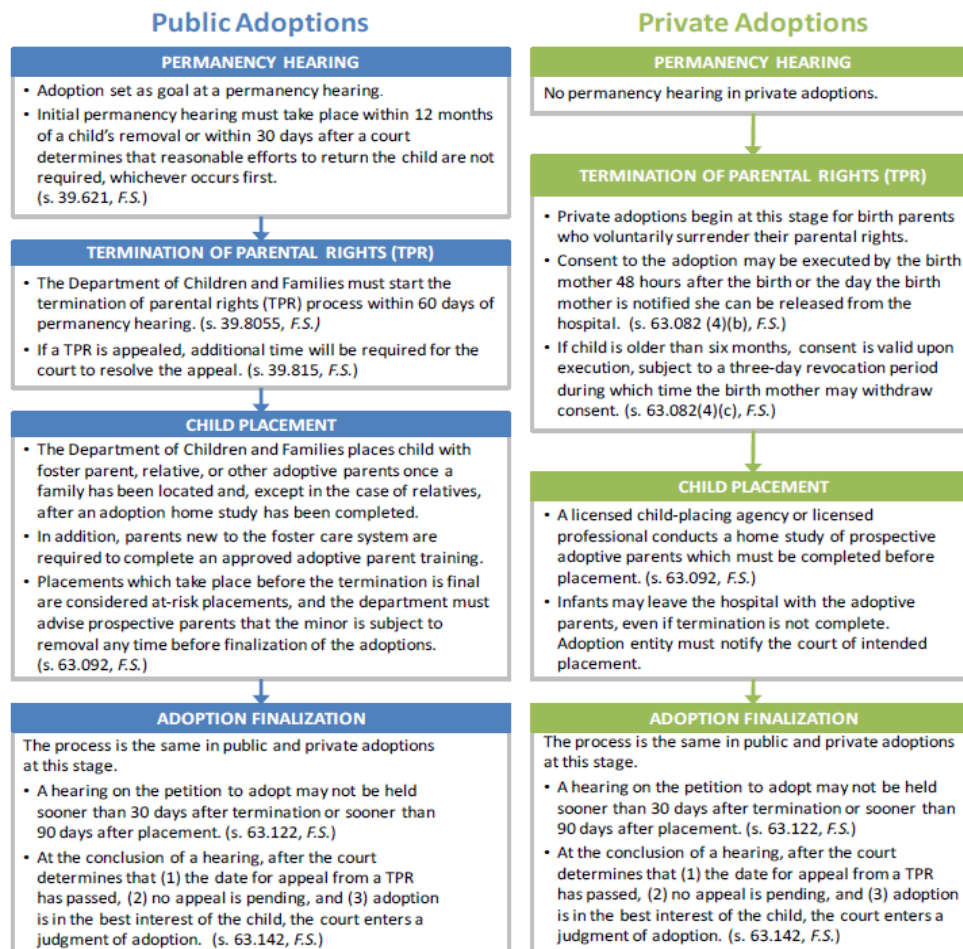
⁸ *Id.* at page 57.

⁹ *Id.* at page 55.

¹⁰ *Id.* at page 56.

permanent adoptive homes within 12 months.¹¹ In fact, the majority of these children adopted during the previous state fiscal year waited 12 months or less.¹²

The process for public adoptions and private adoptions in Florida is summarized in the chart below¹³:



Source: The *Florida Statutes* and *Florida Administrative Code*.

Permanency

Chapter 39, F.S., provides that time is of the essence for permanency of children in the dependency system.¹⁴ A permanency hearing must be held no later than 12 months after the date the child was removed from the home or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first.¹⁵ The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child.¹⁶ A permanency hearing must be held at

¹¹ See *supra* at FN 8, page 63.

¹² *Id.*; 66.63% of children adopted during this time period were waiting 12 months or less for finalization of adoption

¹³ Office of Program Policy Analysis and Government Accountability, *Research Memorandum-Adoption Processes in Florida*, Dec. 8, 2011, page 3 (on file with the Health and Human Service Access Subcommittee).

¹⁴ Section 39.621(1), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

least every 12 months for any child who continues to receive supervision from the department or awaits adoption.¹⁷ Available permanency goals for children, listed in order of preference, are:

- Reunification;
- Adoption, if a petition for termination of parental rights has been or will be filed;
- Permanent guardianship of a dependent child under s. 39.6221, F.S.;
- Permanent placement with a fit and willing relative under s. 39.6231, F.S.; or
- Placement in another planned permanent living arrangement under s. 39.6241, F.S.¹⁸

Adoption via Dependency — Pre-Termination of Parental Rights

A birth parent may decide, as the dependency process unfolds but prior to the termination of their parental rights, to work with a private adoption entity¹⁹ to find a permanent home for their child. The Legislature supports cooperation between private adoption entities and DCF to find permanent placement options for children in the care of DCF when the birth parents wish to participate in a private adoption plan with a qualified family.²⁰ A private adoption entity may intervene in dependency proceedings when it obtains consents to adopt from the parents of a minor child in the custody of the department, prior to the termination of their parental rights.²¹ The adoption entity must provide the court with a preliminary home study of the prospective adoptive parents with whom the child will be placed.²² The court must then determine whether the prospective adoptive parents are properly qualified to adopt the child, and whether the adoption is in the child's best interest.²³ The law requires that the dependency court, in determining the best interest of the child prior to termination of parental rights, consider the birth parents' rights to determine an appropriate placement for their child, the permanency offered, the child's bonding with any potential adoptive home in which the child has been residing, and the importance of maintaining sibling relationships.²⁴

If the court decides that it is in the child's best interest, the dependency court will order the transfer of custody of the minor child to the prospective adoptive parent under the supervision of the adoption entity, who shall provide monthly reports to the department until the adoption is finalized.²⁵

Adoption via Dependency — Post-Termination of Parental Rights

The laws relating to protection of children who are abused, abandoned, or neglected are found primarily in Chapter 39, F.S. When a child is adjudicated dependent, DCF must ensure there is a plan which will lead to a permanent living arrangement for the child.²⁶ If a child in foster care will not be reunited with a parent, the department will initiate a proceeding to terminate parental rights (TPR). Section 39.810, F.S., requires that the court must consider the "manifest best interests of the child" when determining whether to terminate a parent's right to their child, which includes an evaluation, among other factors, of:

- Suitable permanent relative custody arrangements;
- The ability of the birth parent(s) to provide for the material needs of the child;
- The ability of the birth parent(s) to care for the child's health, safety, and well-being upon the child's return home;

¹⁷ *Id.*

¹⁸ Section 39.621(2), F.S.

¹⁹ Section 63.032(3), (6), (9), and (11), F.S.; "adoption entity" is defined as DCF, a licensed child-placing (adoption) agency, a registered or approved child-caring agency, or an attorney licensed in Florida who intends to place a child for adoption.

²⁰ Section 63.022(5), F.S.

²¹ Section 63.082(6)(b), F.S.

²² *Id.*

²³ Section 63.082(6)(c), F.S.

²⁴ Section 63.082(6)(d), F.S.

²⁵ Section 63.082(6)(c), F.S.

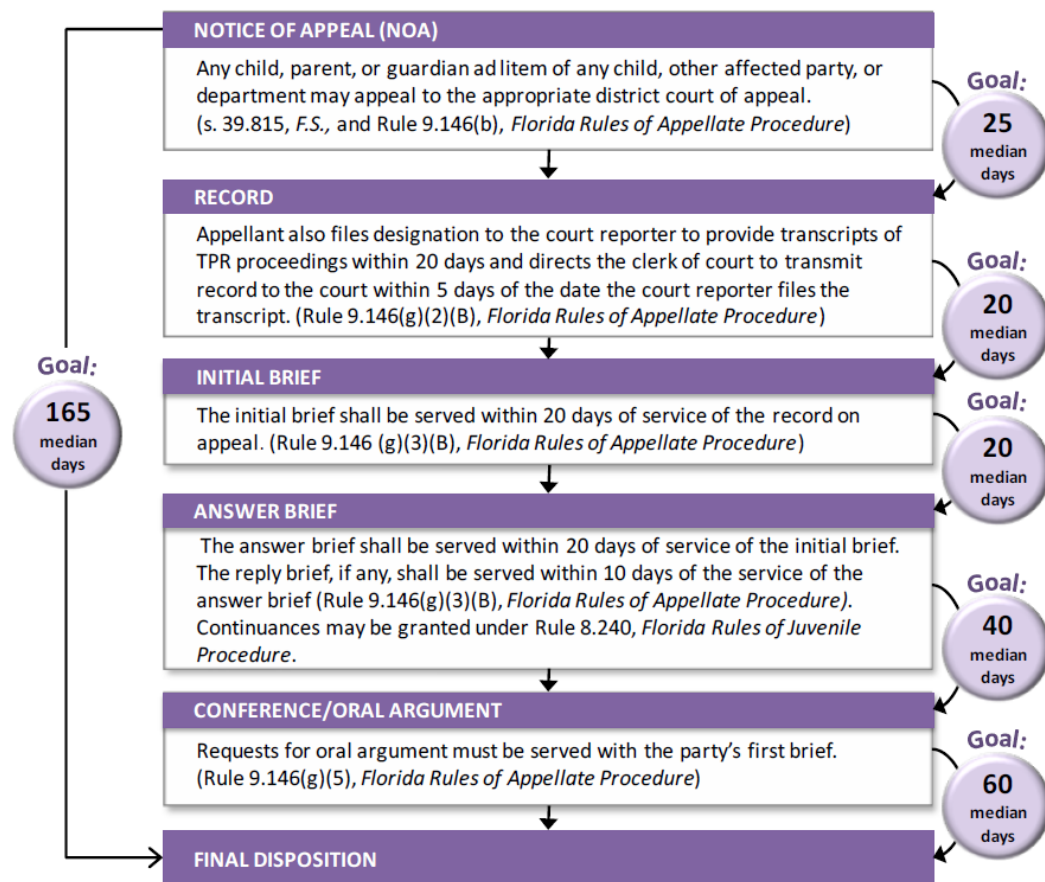
²⁶ See Part IX, Chapter 39, F.S.

- The present and future needs of the child; and
- The love, affection and emotional ties between the child and his or her parent(s), siblings, or other relatives.

In making this determination, the statute prohibits the court from comparing the attributes of the parent(s) and anyone providing a present or potential placement for the child. If the court determines that it is in the manifest best interests of the child for his or her parent's rights to be terminated, then the TPR order is entered and the child is placed in the custody of DCF for permanent placement. The Legislature has determined that adoption is the primary permanency option.²⁷

A parent has the right to appeal a judicial order terminating his or her parental rights. The chart below describes the stages involved in the process of appeal of termination of parental rights.²⁸ Each stage includes a timeline goal for completion of each stage in the process as established by the Florida Supreme Court. The median length of time for the process of appealing a termination of parental rights in Florida is 151 days.²⁹

Stages in Appeals from Termination of Parental Rights (TPR)



Source: Florida Rules of Appellate Procedure and Florida State Court Commission on District Court of Appeal Performance and Accountability: [Report of the District Court of Appeal Performance and Accountability Commission on Delay in Child Dependency/Termination of Parental Rights Appeals](#), June 2006.

²⁷ Section 39.621(6), F.S.

²⁸ See *supra* at FN 8, page 5.

²⁹ See *supra* at FN 8, page 1.

Diligent Search

When a child is removed from the physical custody of his or her parent or guardian, a diligent search must be initiated to identify and locate any absent parent.³⁰ The diligent search must include, at a minimum:

- Inquiries of all relatives of the parent or prospective parent made known to DCF;
- Inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent;
- Inquiries of other state and federal agencies likely to have information about the parent or prospective parent;
- Inquiries of appropriate utility and postal providers;
- A thorough search of at least one electronic database specifically designed for locating persons; and
- Inquiries of appropriate law enforcement agencies.³¹

An affidavit of diligent search shall be included in the predisposition report.³² Diligent search efforts shall continue until the department is released from any further search by the court.³³

Prospective Adoptive Parents

DCF promulgated several administrative rules related to the recruitment, screening, application, and evaluation process of adoptive parents.³⁴ The rules outline a detailed evaluation of applicants, including a family preparation and study process.³⁵ Prospective adoptive parents are required to execute an adoption application – either DCF form CF-FSP 5071, which is incorporated by reference in DCF rules, or an adoption application in a format created by a community based care provider that contains “all of the elements of CF-FSP 5071.”³⁶ Form CF-FSP 5071 requests necessary identifying information from prospective adoptive parents, such as current and past residences, date of marriage, names and ages of other children in the home, religious affiliation, interests, employment, financial status, life history (including medical history), and references. A check of the Florida Abuse Hotline Information System must be conducted on all adoptive applicants.³⁷ Lastly, criminal background checks through local, state, and federal law enforcement agencies will be conducted on all individuals 12 years old and older who reside in the prospective adoptive home.³⁸

Preliminary Home Study and Final Home Investigation

A preliminary home study to determine the suitability of the intended adoptive parents is required prior to placing the minor into an intended home, and may be completed prior to identifying a prospective adoptive minor.³⁹ The preliminary home study must be performed by a licensed child-placing agency, a registered child-caring agency, a licensed professional, or an agency described in s. 61.20(2), F.S.⁴⁰ The preliminary home study must include, at a minimum, the following:

³⁰ Section 39.503(5), F.S.

³¹ Section 39.503(6), F.S.

³² Section 39.502(8), F.S.

³³ Section 39.502(9), F.S.

³⁴ Rules 65C-16.001 through 65C-16.007, F.A.C.

³⁵ Rule 65C-16.005(4), F.A.C.

³⁶ Rule 65C-16.004(5), F.A.C.; the DCF adoption form is CF-FSP 5071 and can be found on the department’s website at <http://www.dcf.state.fl.us/DCFForms/Search/DCFFormSearch.aspx> (type in “CF-FSP 5071” in the Form Number field) (last visited on Jan. 19, 2012).

³⁷ Rule 65C-16.007(1), F.A.C.

³⁸ Rule 65C-16.007(2), F.S.

³⁹ Section 63.092(3), F.S.; unless good cause is shown, a home study is not required for adult adoptions of when the petitioner for adoption is a stepparent or a relative.

⁴⁰ *Id.*; DCF performs the preliminary home study if there are no such entities in the county where the prospective adoptive parents reside.

- Interview with the intended adoptive parents;
- Records checks of DCF's central abuse hotline;
- Criminal history check through FDLE and FBI;
- Assessment of the physical environment of the home;
- Determination of the financial security of the intended adoptive parents;
- Proof of adoptive parent counseling and education;
- Proof that information on adoption and the adoption process has been provided;
- Proof that information on support services available has been provided; and
- Copy of each signed acknowledgement of receipt of adoption entity disclosure forms.⁴¹

A favorable home study is valid for one year after the date of its completion.⁴² Following a favorable preliminary home study, a minor may be placed in the home pending entry of the judgment of adoption by the court. If the home study is unfavorable, placement shall not occur and the adoption entity, within 20 days of receiving the written recommendation, may petition the court to determine the suitability of adoption.⁴³

In order to ascertain whether the adoptive home is a suitable home for the minor and is in the best interest of the child, a final home investigation must be conducted before the adoption is concluded. The investigation is conducted in the same manner as the preliminary home study.⁴⁴ Within 90 days after placement of the child, a written report of the final home investigation must be filed with the court and provided to the petitioner.⁴⁵ The report must contain an evaluation of the placement with a recommendation on the granting of the petition for adoption.⁴⁶ The final home investigation must include:

- Information from preliminary home study;
- Two visits with the minor and the minor's adoptive parent or parents scheduled after the minor's placement. One visit must be in the home to determine suitability of the placement;
- Family social and medical history; and
- Other information relevant to suitability of placement Information required by rules promulgated by DCF.⁴⁷

"Safe Haven" Law- Abandonment of Newborns

Florida passed legislation providing for the safe abandonment of a newborn, in 2000.⁴⁸ The law provides that a parent may safely abandon an infant at a fire station, EMS station, or hospital emergency room within 3 days of birth.⁴⁹ The receiving entity must provide any necessary emergency care, and then transfer the infant to a hospital for any further treatment.⁵⁰ Infants admitted to a hospital under the safe abandonment law are presumed eligible for Medicaid coverage.⁵¹ The hospital then transfers the child to a licensed child-placing agency.⁵²

The child-placing agency is required to request assistance from law enforcement within 24 hours of receiving the infant, to determine whether the child is a missing child.⁵³ The licensed child-placing

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Section 63.125(1), F.S.

⁴⁵ Section 63.125(2), F.S.

⁴⁶ Section 63.125(3), F.S.

⁴⁷ Section 63.125(5), F.S.

⁴⁸ Ch. 2000-188, L.O.F.

⁴⁹ Section 383.50(1), F.S.

⁵⁰ Section 383.50(3), F.S.

⁵¹ Section 383.50(8), F.S.

⁵² Section 383.50(7), F.S.

⁵³ Section 63.0423(3), F.S.

agency seeks emergency custody via court order, and may place the child with court-approved prospective adoptive parents who become the infant's guardians pending termination of parental rights and final adoption.⁵⁴ The infant's parent may make a claim of parental rights to the court or to the entity having custody of the child at any time before the termination of parental rights.⁵⁵ Parenthood may be determined by scientific testing, if ordered by the court.⁵⁶

Safe haven abandonment pursuant to s. 383.50, F.S., does not constitute abuse or neglect, and a child safely abandoned under this statute is not deemed abandoned for purposes of reporting and investigation requirements of chapter 39 governing abuse, neglect and abandonment. Similarly, criminal investigation of a safe abandonment under this statute is prohibited, unless there is actual or suspected child abuse or neglect. A parent who abandons a child has the "absolute right to remain anonymous", and the statute prohibits pursuit of the parent.⁵⁷ In addition, the statute establishes a presumption that the abandoning parent consented to termination of parental rights.⁵⁸ A parent may rebut that presumption by making a claim for parental rights prior to termination.

Effect of Proposed Changes

The bill amends many provisions of chapter 63, F.S., relating to adoption.

Petition for Termination of Parental Rights

The bill requires DCF to include facts in its petition for termination of parental rights supporting the allegation that the parents of the child will be informed of the availability of placement with a private adoption entity, as defined in statute. If parents consent to placement with a private adoption entity, those children will be removed from the DCF process and the private adoption entities will assume responsibility for the child and the adoption process.

Definitions

The bill changes the definition of "abandoned" to cases in which a parent or person having legal custody makes little or no provision for support of the child or makes little or no effort to communicate with the child. The bill eases the criteria for considering a child to be abandoned and trigger the permanent placement process.

The bill exempts from the definition of "parent", found in s. 63.032(12), F.S., a gestational surrogate as defined in s. 742.13, F.S.⁵⁹

The bill clarifies the definition of "unmarried biological father", found in s. 63.032(19), F.S., to mean, in part, the child's biological father who is not married to the child's mother at the time of conception or on the date of the birth of the child. Current law is vague regarding the definition of an unmarried biological father as related to the timing of the birth of the child.

Termination of Parental Rights under Chapter 39, F.S.

The bill exempts adoption proceedings initiated under chapter 39, F.S., from the requirement that a search of the Florida Putative Father Registry be conducted, as provided in s. 63.054(7), F.S., if a search of the Registry was previously completed and documentation of the search is contained in the proceeding case file. The exemption may create inconsistency in the application of the statute. It may

⁵⁴ Section 63.0423(2), F.S.

⁵⁵ Section 63.0423(6) and (7), F.S.

⁵⁶ Section 63.0423(7), F.S.

⁵⁷ Section 383.50(5), F.S.

⁵⁸ Section 383.50(2), F.S.

⁵⁹ Section 742.13(5), F.S., defines "gestational surrogate" as a woman who contracts to become pregnant by means of assisted reproductive technology without the use of an egg from her body.

also provide for a legal challenge to an order terminating parental rights by a father in the case where a father has registered but was not provided notice of the hearing on termination of parental rights because a search of the registry was not completed.

Duty of Adoption Entity

The bill requires all adoptions of minor children to use an adoption entity⁶⁰ which will assume the responsibilities provided in s. 63.039, F.S., which outlines the duties owed to prospective adoptive parents and provides for sanctions. Adoption by a relative or stepparent does not require the use of an adoption entity under this provision. The bill deletes several references to a “licensed child-placing agency” throughout ch. 63, F.S., and replaces it with “adoption entity”. The bill adds the term “licensed child-placing agency under s. 63.202” to the definition of “adoption entity” for purposes of chapter 63, F.S., and deletes the duplicative term “an agency”.

Surrender of Newborn Infant and Responsibility for Infant Care

The bill provides that, upon entry of a final judgment terminating parental rights, an adoption entity that takes physical custody of an infant assumes responsibility for medical and other costs associated with emergency care and treatment of the infant from the time the entity takes custody of the infant. The bill specifies that the adoption entity does not inherit financial responsibility for care and treatment that was provided to the infant prior to the entity taking physical custody of the infant.

The bill proposes that an infant who tests positive for illegal or narcotic prescription drugs or alcohol, but shows no other signs of abuse or neglect, shall be placed with a licensed child-placing agency pursuant to s. 383.50, F.S.,⁶¹ and s. 63.0423, F.S., which outlines procedures for handling surrendered newborns. The bill further provides that if DCF is contacted regarding a surrendered newborn under this section of law, the department may only provide instruction on contacting a licensed child-placing agency to take custody of the child. DCF may not take custody of the surrendered newborn unless reasonable efforts to contact a licensed child-placing agency to take custody of the child fail. The change would require persons receiving surrendered infants to make a determination that there are no signs of child abuse and neglect without a referral to the abuse hotline or DCF investigation. This provision of the bill does not prevent DCF from conducting its investigatory duties. The bill also states that the provisions of s. 383.50(7), F.S., which require a hospital to contact a licensed child-placing agency or statewide central abuse hotline when it receives a newborn surrendered under the “Safe Haven Act”, are not eliminated by this provision.

The bill prohibits the court from ordering scientific testing to determine paternity or maternity of a minor child until the court determines that a prior order terminating parental rights is voidable pursuant to s. 63.0423(9)(a), F.S. An exception to this is provided if parties agree that such testing to determine paternity or maternity is in the best interests of the child, at which point the court may order such testing.

Communication Between Adopted Child and Relatives

The bill prohibits the court from increasing contact between an adopted child and siblings, birth parents, or other relatives without the consent of the adoptive parent or parents. The court may reduce such contact between the parties without the consent of the adoptive parent or parents.

Determining Suitability of Placement with Prospective Adoptive Parents

In circumstances where an intermediary (attorney) has taken custody of a minor who has been voluntarily surrendered through execution of a consent to adoption, the intermediary is responsible for

⁶⁰ Section 63.032(3), F.S., defines “adoption entity” as DCF; a child-caring agency licensed under s. 409.176; an intermediary, such as a Florida licensed attorney; or an out-of-state child-placing agency licensed by DCF to place children within the state.

⁶¹ Section 383.50, F.S., is Florida’s “safe haven” law for newborns.

the minor until the court orders preliminary approval of placement in a prospective adoptive home. The intermediary retains the right to remove the minor from the prospective adoptive home if the intermediary deems removal to be in the best interests of the child. The bill prohibits the intermediary from removing a child without a court order unless the child is in danger of imminent harm. The bill also clarifies that the intermediary does not become responsible for payment of the minor's medical bills that were incurred prior to taking physical custody after the execution of adoption consents.

The bill requires that prospective adoptive parents receive a completed and approved favorable preliminary home study within one year before placement of a minor child in the prospective.

The bill requires that, in the case where a suitable prospective adoptive home is not available, the minor must be placed in a licensed foster care home, with a home-study approved person or family, or with a relative until a suitable prospective adoptive home becomes available.

Rights of the Unmarried Biological Father

The bill requires strict compliance with the provisions of chapter 63, F.S., by an unmarried biological father in order to retain the rights afforded to him under applicable law. The bill provides that a registrant who files a claim of paternity form with the Office of Vital Statistics expressly consents to submit to and pay for DNA testing upon the request of any party.

Notice of Petition of Termination of Parental Rights and Consent to Adoption

Current law requires notice of proceedings to terminate parental rights to be served on the father of the minor if one of several elements is met.

The bill adds, as an element to require notice to be served, the fact that the father is listed on the child's birth certificate before the date a petition for termination of parental rights is filed. The bill requires the status of the father to be determined at the time the petition for termination of parental rights is filed. This status may not be modified with regard to the father's rights or obligations by any acts that occur after the petition has been filed. Case law allows the father's status, and thereby his rights and responsibilities, to be reassessed following marriage to the birth mother subsequent to the entry of judgment of termination of parental rights.⁶² The bill allows for the father's rights and obligations to be modified or altered if the judgment terminating parental rights is voided due to the fact that, at the time the petition was filed, the father relied on false information provided by a person pursuant to s. 63.0423(9)(a), F.S.

The bill provides that, in order to demonstrate a full commitment to the responsibilities of parenthood, an unmarried biological father must provide reasonable and regular financial support. The bill does not define "reasonable and regular". The bill states that an unmarried biological father retains the responsibility to provide financial assistance to the birth mother during pregnancy and to the child following birth regardless of whether the birth mother and child are receiving financial support from an adoption entity, prospective adoptive parent, or third party. In addition, the fact that the birth mother and child are receiving support from other sources does not excuse the father's duty to provide support. Merely expressing a desire to fulfill responsibilities towards his child does not satisfy the obligations of the father outlined in s. 63.062, F.S.

The bill requires an adoption entity to serve notice of an intended adoption plan on any known and locatable unmarried biological father who is identified to the entity by the birth mother at the time she signs her consent to adoption only if the child is 6 months old or less at the time the consent is executed.

⁶² See *D. and L.P. v. C.L.G. and A.R.L.*, 37 So.3d 897 (Fla. 1st DCA 2010).

The bill clarifies that an affidavit of nonpaternity is sufficient to waive notice of all court proceedings after execution if it contains a denial of parental obligations. It is not necessary that the affidavit include a denial of biological relationship to the child. The affidavit has the effect of indicating that, while the affiant may be the biological father of the child, the affiant has no intention of participating in the parenting of the child and is willfully surrendering his parental rights related to the child.

Private Adoption Entities and the Adoption Process

Following execution of consent to adoption by a parent or parents, as required by law, the bill directs the court to permit an adoption entity to intervene in a dependency hearing held pursuant to chapter 39, F.S. Upon intervention, the bill directs the court to immediately hold a hearing to determine if the adoption entity submitted the proper documents to be allowed to intervene and, if so, if a change of placement of the child is appropriate. Among the documents to be submitted is a preliminary home study. The bill provides that, unless the court is concerned about the completeness of the home study submitted by the adoption entity or is concerned about the qualifications of the individual who conducted the home study, another study to be completed by DCF is not necessary.

The bill requires DCF to provide, at the time a child is determined to be dependent by the court, information to prospective adoptive parents regarding the availability of parent training classes within the parents' community. The parents would have the discretion to choose the class they attended. DCF is required to provide the court with written acknowledgement of receipt of such information by the prospective adoptive parents.

The bill also requires an adoption entity to keep the court apprised every 90 days of the progress of any adoption proceeding. The adoption entity is required to continue to report to the court from the date that the child is placed with prospective adoptive parents until the date that the adoption is finalized by the court. The bill does not address the form such reports should take or what must be contained in the reports to the court.

The bill requires both the court and DCF to advise the biological parent of the right to participate in a private adoption plan at the time the petition for termination of parental rights is filed. This is consistent with the requirement that DCF include in the petition for termination of parental rights sufficient facts to allege that it will inform the parents of the availability of private placement of the child with adoption entity. However, this provision is slightly different in that the biological parent must be advised of his or her right to participate in a private adoption plan, not the availability of placement with a private adoption entity.

The bill does not allow a parent whose consent to adoption has been revoked or set aside to use any other consents executed by the other parent or an applicable third party to affect the rights and obligations of the other parent or applicable third party.

Revocation of Consent to Adoption and Waiver of Right to Records of Adopted Child

The bill provides that a consent to adoption of a child 6 months of age or older may be revoked up to three "business days" after it was signed. Current law provides a "three day" revocation period.

The bill confirms that prospective adoptive parents may waive their right to receive documents regarding the child's background information. The bill states that, if the prospective adoptive parents waive their right to receive such information, a copy of the written notification of the waiver to the adoption entity shall be filed with the court. The bill does not specify who shall provide said written notification of waiver to the court.

Termination of Parental Rights

The bill specifies that failure to “personally” appear at the hearing constitutes grounds for terminating parental rights. The bill adds to grounds that may be the basis for a finding of abandonment, as that term is used in s. 63.032, F.S., whether the person alleged to have abandoned the child failed to maintain contact with the child or provide for the welfare of the child, despite being able to do both. A termination of parental rights may result from a finding of abandonment.

If the court does not find clear and convincing evidence sufficient to enter a judgment terminating parental rights, the court must dismiss the petition and the parent or parents whose rights were sought to be terminated retain all rights in full force and effect. The court is required to enter an order based on written findings providing for the placement of the minor when the petition is dismissed. The bill prohibits the court from making permanent custody decisions between competing parties at the time the petition for termination of parental rights is dismissed. Instead, the court shall return the child to the parent or guardian who had physical custody of the child at the time of placement for adoption unless the court determines it is not in the best interests of the child or it is not an available option. The bill prevents the court from changing the placement of a child who has established a bonded relationship with the caregiver without a reasonable transition plan. The court may order the parties to work with a qualified professional in a reunification or unification plan to assist the child in this transition.

The bill permits the court to order scientific testing to determine paternity only if the court determines that the consent of the father is necessary, unless all parties agree that knowledge of paternity of the child is in the best interest of the child. The bill also prohibits the court from ordering scientific testing of paternity of an unmarried biological father where the minor has a father whose rights have not been terminated.

A parent whose rights have been terminated may file a motion for relief and the court must conduct a preliminary hearing to determine what contact, if any, is permitted between the child and the parent seeking relief. Contact can only be considered if it was requested by the parent who attended the preliminary hearing. The bill provides that contact may not be awarded unless the parent had a previous bonded relationship with the child and the parent has pled a legitimate legal basis and established a prima facie case for setting aside the judgment terminating rights. The bill requires the court to determine if the pleading seeking relief asserts sufficient facts on its face as to lead the court to grant the relief requested.

Contact between Adult Adoptee and Birth Parent

Current law allows an adult adoptee to petition the court to appoint an intermediary or licensed child-placing agency to contact a birth parent who has not registered with the adoption registry pursuant to s. 63.165, F.S., and advise them of the availability of same. The bill allows a birth parent to go through the same process to contact an adult adoptee and advise both the adult adoptee and the birth parent that the one or both parties is seeking to contact the other and of the availability of an intermediary or agency to facilitate contact.

Duties of State Adoption Information Center

The bill requires the state adoption information center, established under s. 63.167, F.S., to provide contact information for all adoption entities in a caller’s county or, if there are no adoption entities in the caller’s area, the contact information for the nearest adoption entity to the caller, when asked for a referral to make an adoption plan. The bill also requires the information center to rotate the order in which names of adoption entities are provided to callers.

Restrictions on Adoption Advertising and Unlawful Activities in Adoption

The bill makes it unlawful for a person to assist an unlicensed person or entity in publishing or broadcasting an advertisement making a minor available for adoption or seeking a minor for adoption without including a Florida license number of the agency or attorney placing the advertisement. The bill allows only a Florida licensed attorney or a Florida licensed adoption entity to place a paid advertisement in a telephone book, including the attorney or entity phone number, that a child is available for adoption or a child is sought for adoption.

The bill requires a person who publishes a telephone directory for distribution in Florida to include, in all adoption advertisements, a statement that only licensed Florida attorneys or adoption entities may place advertisements offering or seeking minors for adoption. The bill requires the telephone directory publisher to include in the advertisement the appropriate Florida Bar number or Florida license number of the attorney or entity placing the advertisement. A person who knowingly publishes or assists in the publishing of an advertisement in violation of these provisions commits a second degree misdemeanor⁶³ and is subject to a fine of up to \$150 per day for each day the violation continues.

The bill provides that a birth mother, or a woman holding herself out to be a birth mother, who solicits and receives payment of adoption-related expenses in connection with an adoption plan commits adoption deception if:

- The birth mother, or woman holding herself out to be a birth mother, knew or should have known she was not pregnant at the time she sought or accepted funds for adoption-related expenses;
- The birth mother, or woman holding herself out to be a birth mother, accepts living expenses from a prospective adoptive parent or adoption entity without disclosing that she is receiving living expenses from another prospective adoptive parent or adoption entity at the same time in an effort to secure the child for adoption; or
- The birth mother, or woman holding herself out to be a birth mother, makes false representations to induce payment of living expenses and does not intend to offer the child for the adoption.

A person who commits adoption deception commits a second degree misdemeanor if the amount of money received was \$300 or less.⁶⁴ The bill makes adoption deception with receipt of money totaling more than \$300 a third degree felony.⁶⁵ A person who commits adoption deception is also liable for damages as a result of acts or omissions, including reasonable attorney fees and costs incurred by the adoption entity or the prospective adoptive parent.

Preplanned Adoption Agreements

Under s. 63.213, F.S., relating to preplanned adoption agreements, the bill clarifies that the agreement in no way constitutes consent of the mother to place her biological child for adoption until 48 hours after the birth of the child. The bill states that the right to rescind consent within this time period only applies when the child is genetically related to the mother. The bill further specifies that certain provisions of the section apply only if the child is genetically related to the mother. Lastly, for purposes of this section, the definition of "child" is revised to mean a child or children conceived through a fertility technique. Current law refers only to a child or children conceived through an insemination, which does

⁶³ The maximum penalty for a second degree misdemeanor is a fine not exceeding \$500 and a term of imprisonment not exceeding 60 days.

⁶⁴ The thresholds for differing degrees of theft can be found in s. 812.014, F.S.

⁶⁵ A third degree felony is punishable by a fine not exceeding \$5,000 or a term of imprisonment not exceeding 5 years. If the offender is determined by the court to be a habitual offender, the term of imprisonment shall not exceed 10 years. Sections 775.082, 775.083, 775.084, F.S.

not account for improvements in medical technology that may allow for conception of a child in a manner other than insemination.

Application of New Law to Completed and Pending Adoptions

The bill confirms that any adoption made before July 1, 2012, the effective date of the bill, are valid. Any proceedings that are pending as of that date, or any amendments to proceedings pending on that date that are subsequently entered, are not affected by the change in law, unless the amendment is designated a remedial provision.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The provisions of the bill are designed to steer more surrendered newborns to the private adoption process and avoid the dependency process outlined in ch. 39, F.S. To the extent that the provisions accomplish that goal, the resources maintained by DCF for the purpose of the dependency process will be retained by the department. The provisions of the bill could positively impact the number of hours worked by DCF staff and investigators in opening and investigating cases. Also, the foster care system may have fewer children to care for, lessening the amount of money used to care for minors in the system.

The court system may see an increase in the number of petitions for termination of parental rights and the number of cases presented for finalization of adoption as more children are placed within the private adoption process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private adoption entities will realize an increase in the number of children placed in the private adoption process.

D. FISCAL COMMENTS:

None.