

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 964

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Abruzzo

SUBJECT: Termination of Parental Rights

DATE: April 5, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	<b>Fav/CS</b>
2.	Clodfelter	Cannon	CJ	<b>Favorable</b>
3.	Brown	Cibula	JU	<b>Pre-meeting</b>
4.				
5.				
6.				

**I. Summary:**

CS/SB 964 provides that a father’s parental rights may be terminated if the court determines by clear and convincing evidence that the child was conceived during an act of sexual battery committed in violation of s. 794.001, F.S., or a similar law of another jurisdiction. The bill provides a presumption that termination is in the child’s best interests.

The bill also authorizes filing of a petition for termination of parental rights under these circumstances at any time.

This bill conforms a cross-reference to add the new s. 39.806(1)(m), F.S., to s. 39.811(6)(e), F.S., related to those grounds in which termination of the rights of one parent may be severed without severing the rights of the other parent.

This bill takes effect July 1, 2013, and applies prospectively and retroactively to all unlawful acts of sexual battery.

This bill substantially amends sections 39.806 and 39.811, Florida Statutes.

## II. Present Situation:

### Parental Rights

In the United States, the right to have and raise a family is a fundamental right grounded in the 14th Amendment.<sup>1</sup> Because parental rights are fundamental, parents are not easily deprived of these rights. Courts presume that parents have parental rights to their biological children and to overcome this presumption and deprive a parent of parental rights, there must be “grave and weighty reasons” for such deprivation.<sup>2</sup> Parental rights allow for significant involvement in a child’s life. These rights include the right to custody of the child, visitation with the child, and notice or consent for adoption.<sup>3</sup>

In most states two types of custody are referred to: physical and legal. Physical custody is when a parent has the right and obligation to provide a physical home for the child and to make day-to-day decisions concerning the child. Legal custody is when a parent has the right to make important decisions about a child’s welfare, including but not limited to decisions related to education and healthcare.<sup>4</sup>

Custody can also be sole or joint, with joint custody becoming more common. Such custody necessarily entails significant contact and communication between parents. For example, parents may have to communicate with each other about the child’s health, the child’s progress in school, and what activities the child is permitted to engage in. Joint custody can even restrict either parent from relocating if the relocation puts the child too far away from one of the parents.<sup>5</sup>

In cases in which the parents of a child have never been married, are separated, or are divorced, Florida courts are required to order that parental responsibility for the child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. Evidence that a parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28, F.S., and ch. 775, F.S., or meets the criteria of s. 39.806(1)(d), F.S., for termination of parental rights, creates a rebuttable presumption that shared parental responsibility would be detrimental to the child. If the convicted parent does not rebut the presumption, shared parental responsibility (including time-sharing with the child and decisions made regarding the child) may not be granted. However, preclusion from shared parental responsibility does not relieve the convicted parent of an obligation to provide financial support.<sup>6</sup>

A parent who does not have physical custody will normally have visitation rights. The right to visitation is strong and, absent exceptional circumstances, courts will not deny parents these rights. In Florida, if the court determines that shared parental responsibility would be detrimental

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<sup>1</sup> *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

<sup>2</sup> Kara N. Bitar. *The Parental Rights of Rapists*. 19 Duke J. of Gender Law & Policy 275, 276 (2012).

<sup>3</sup> *Id.*

<sup>4</sup> Florida has moved away from using the terms custody and visitation and instead the statutes refer to shared parental responsibility, sole parental responsibility, and time sharing. Chapter 2008-61, L.O.F.

<sup>5</sup> Section 61.13001, F.S.

<sup>6</sup> Section 61.13(2)(c)2., F.S.

to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan to best protect the child or abused spouse from further harm. Even if there is not a conviction for domestic violence or child abuse or an injunction for protection against domestic violence, the court must consider evidence of domestic violence or child abuse as evidence of detriment to the child.<sup>7</sup>

In addition to rights to custody and visitation, fathers normally must be provided notice if the mother wants to place the child for adoption and, under certain circumstances, must consent to the adoption. Notice and consent requirements vary by state. In Florida, the Legislature has found:

that 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 in accordance with the requirements of this chapter. 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 strictly complies with this chapter and demonstrates a prompt and full commitment to his parental responsibilities.<sup>8,9</sup>

A biological father's rights to notice and consent for adoption can affect women who want to place their newborn child for adoption as well as women who have decided to raise their child and want their spouse or significant other to adopt the child.<sup>10</sup>

Parental rights can also play a role when one parent is seeking public assistance. For instance, under the current welfare system, a single mother will not receive assistance unless she agrees to cooperate with the state in locating the father and obtaining child support from him.<sup>11</sup> In Florida, cooperation includes:

- Assisting in identifying and locating a parent who does not live in the same home as the child and providing complete and accurate information on that parent;
- Assisting in establishing paternity; and
- Assisting in establishing, modifying, or enforcing a support order with respect to a child of a family member.<sup>12</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> Section 63.053, F.S.

<sup>9</sup> In order to preserve the right to notice and consent to an adoption under Florida law, an unmarried biological father must file a notarized claim of paternity form with the Florida Putative Father Registry maintained by the Office of Vital Statistics of the Department of Health. The form includes confirmation of the father's willingness and intent to support the child for whom paternity is claimed in accordance with state law. Section 63.054, F.S.

<sup>10</sup> See generally Chapter 63, L.O.F.

<sup>11</sup> Section 414.095(6), F.S.

<sup>12</sup> *Id.* These requirements do not apply if the Department of Revenue determines that the parent or caretaker relative has good cause for failing to cooperate.

In sum, parental rights give parents the right to a substantial role in their children's lives. These rights are fundamental and courts will not readily terminate them. As such, a rapist who fathers a child, absent legislation to the contrary, may theoretically have rights to the child.

### **Termination of Parental Rights in General**

Florida courts have long recognized the “fundamental liberty interest of parents in determining the care and upbringing of their children free from the heavy hand of government paternalism.”<sup>13</sup> This fundamental parental right is not absolute, but is limited only by the principle that the welfare or best interest of the child is paramount.<sup>14</sup>

Because the state has a compelling interest in protecting its children, it may permanently and involuntarily terminate parental rights only after showing by clear and convincing evidence that the parent “poses a substantial risk of significant harm to the child.”<sup>15</sup> Florida courts have also held that, because termination of parental rights implicates a fundamental liberty interest, termination must be the least restrictive means of protecting the child.<sup>16</sup>

Relying on these constitutional principles, the framework for terminating parental rights in Florida requires the state to establish with clear and convincing evidence:<sup>17</sup>

- The existence of statutory grounds;
- That termination is in the child's best interests; and
- That termination is the least restrictive means of protecting the child.<sup>18</sup>

The “least restrictive means” analysis is not defined by statute. However, Florida courts have found that the least restrictive means test “requires the court to utilize measures short of termination if such measures can permit a safe re-establishment of the parent-child bond.”<sup>19</sup>

### **Grounds for Termination of Parental Rights in Florida**

A proceeding to terminate parental rights may be initiated by the department, the guardian ad litem, or any other interested person.<sup>20</sup> The petition for termination must include allegations that one of the grounds for termination has been met, that the parents were informed of their right to counsel, that termination is in the best interest of the child, and that the parents will be informed of availability of private placement of the child with an adoption entity.<sup>21</sup>

Unless certain exceptions apply, the department must file a petition to terminate parental rights if:

<sup>13</sup> *Padgett v. Department of Health and Rehabilitative Services*, 577 So. 2d 565, 570 (Fla. 1991).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 571.

<sup>16</sup> *Id.*

<sup>17</sup> Section 39.809(1), F.S.

<sup>18</sup> *T.C. v. Department of Children and Families*, 961 So. 2d 1060, 1061 (Fla. 4th DCA 2007).

<sup>19</sup> *L.D. v. Department of Children and Family Services*, 957 So. 2d 1203, 1206 (Fla. 3d DCA 2007) (quoting *E.R. v. Department of Children and Family Services*, 937 So. 2d 1196, 1199 (Fla. 3d DCA 2006)).

<sup>20</sup> Section 39.802(1), F.S.

<sup>21</sup> Section 39.802(4), F.S.

- At the time of the 12-month judicial review hearing, a child is not returned to the physical custody of the parents;
- A child has been in out-of-home care under the responsibility of the state for 12 of the most recent 22 months;
- A parent has been convicted of murder or manslaughter of the other parent, aiding, abetting, conspiracy, or solicitation to murder the other parent, or of a felony battery that resulted in serious bodily injury to the child or to any other child of the parent; or
- A court determines that reasonable efforts to reunify the child and parent are not required.<sup>22</sup>

In Florida, grounds for the termination of parental rights may be established under the following circumstances:<sup>23</sup>

- (a) Voluntary surrender of the child by the parent or parents;
- (b) Abandonment;
- (c) Conduct that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the physical and emotional well-being of the child, irrespective of the provision of services;
- (d) Incarceration under certain circumstances;<sup>24</sup>
- (e) Failure to comply with the case plan;
- (f) Egregious conduct that threatens the physical and emotional well-being of the child or the child's sibling;
- (g) Aggravated child abuse, sexual battery or sexual abuse, or chronic abuse;
- (h) Murder, voluntary manslaughter, or felony assault of the child or another child;
- (i) Parental rights to a sibling have been terminated involuntarily;
- (j) Parents have a history of extensive, abusive and chronic use of alcohol or controlled substances;
- (k) A test administered at birth indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances under certain circumstances; and
- (l) On three or more occasions the child or another child of the parent or parents has been placed in out-of-home care and the conditions that led to the child's out-of-home placement were caused by the parent or parents.

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<sup>22</sup> Section 39.8055, F.S.

<sup>23</sup> Section 39.806(1), F.S.

<sup>24</sup> The circumstances include: (1) 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; (2) The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, F.S., a habitual violent felony offender as defined in s. 775.084, F.S., or a sexual predator as defined in s. 775.21, F.S., has been convicted of first degree or second degree murder in violation of s. 782.04, F.S., or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011, F.S., or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or (3) The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

Reasonable efforts to preserve and reunify families are not required if a court determines that any of the events described in (b)-(d) or (f)-(l) above, has occurred.<sup>25</sup>

In determining the best interests of the child, the court must consider and evaluate all relevant factors, including:

- Availability of a permanent custody arrangement with a relative of the child;
- Ability of the parent to provide for the child;
- Capacity of the parent to care for the child;
- Mental and physical health needs of the child;
- Love, affection, and other emotional ties existing between the child and the parent;
- Likelihood of an older child remaining in long-term foster care upon termination;
- Child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination;
- Length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- Depth of the relationship existing between the child and the present custodian;
- Reasonable preferences and wishes of the child; and
- Recommendations for the child provided by the child's guardian ad litem or legal representative.<sup>26</sup>

Section 39.811(6), F.S., provides that the parental rights of one parent may be severed without severing the parental rights of the other parent only under certain, specified circumstances, one of which is if the parent whose rights are being terminated meets any of the grounds specified in s. 39.806(1)(d) and (f)-(l), F.S.

### **Grounds for Termination of Parental Rights in Other States**

At least 19 states, including Alaska, Connecticut, Idaho, Louisiana, Maine, Missouri, Montana, Oklahoma, Pennsylvania, Texas, Washington, and Wisconsin, allow for the termination of parental rights in cases where the parent is the father of a child conceived as a result of rape, sexual assault, or incest.<sup>27</sup>

In other states, consent to adoption is not required from a biological father if the child who is the subject of the adoption proceeding was conceived as the result of criminal sexual assault or abuse.<sup>28</sup> In Nevada and New Jersey, a person convicted of sexual assault has no right to custody or visitation with a child who is born because of the assault.<sup>29</sup>

<sup>25</sup> Section 39.806(2), F.S. See also s. 39.521(1)(f), F.S.

<sup>26</sup> Section 39.810, F.S.

<sup>27</sup> See, for example, AK. s. 25.23.180(c)(3); CT. GEN. STAT. ss. 17a-112(j)(3)(G) and 45a-717(g)(2)(G); ID. CODE ANN. s. 16-2005(2)(a); LA. Child. CODE ANN. art. 1015; ME. REV. STAT. ANN. Tit. 19-A, s. 1658; MO. REV. STAT. ANN. s. 211.447; MT. CODE ANN. s. 41-3-609(1)(c); OK. STAT. ANN. Tit. 10A 1-4-904(B)11; PA. CONS. STAT. ANN. s. 2511(a)(7); TX. Fam. CODE ANN. s. 161.007; WA. REV. CODE ANN. s. 13.34.132; WI. STAT. ANN. s. 48.415(9)(a).

<sup>28</sup> See 750 Ill. Comp. Stat. 50/8(a)(5); IN. CODE 31-19-9-8(a)(4); NY. Domestic Relations Laws. 111-a(1); S.C. CODE ANN. s. 20-7-1734.

<sup>29</sup> See NV. REV. STAT. s. 125C.210; NJ. STAT. ANN. 9:2-4.1.

At least one court has considered the constitutional implications of terminating parental rights to a child born as the result of illegal sexual intercourse. In *Pena v. Mattox*, the United States Court of Appeals for the Seventh Circuit considered the argument made by a biological father who conceived a child during statutory rape that he had a constitutionally protected right to parent the child.<sup>30</sup> The court noted that the United States Constitution forbids a state from depriving parents of their children without good reason, but went on to say:

It is not the brute biological fact of parentage, but the existence of an actual or potential relationship that society recognizes as worthy of respect and protection, that activates the constitutional claim. ...

[N]o court has gone so far as to hold that the mere fact of fatherhood, consequent upon a criminal act ... creates an interest that the Constitution protects in the name of liberty. ... The criminal does not acquire constitutional rights by his crime other than the procedural rights that the Constitution confers on criminal defendants. Pregnancy is an aggravating circumstance of a sexual offense, not a mitigating circumstance. The criminal should not be rewarded for having committed the aggravated form of the offense by receiving parental rights which he may be able to swap for the agreement of the victim's family not to press criminal charges. ...

The Constitution does not forbid the states to penalize the father's illicit and harmful conduct by refusing to grant him parental rights that he can use to block an adoption or simply enjoy as the fruit of his crime. ...

[A] state has discretion to decide whether it is better to encourage the kind of conduct in which the plaintiff engaged by giving him parental rights or discourage it by refusing to bestow legal protection on the relationship between father and child. The interest asserted by the plaintiff is not so compelling as to warrant our overriding the state's choice in the name of the Constitution.<sup>31</sup>

### **Paternity Establishment in Florida**

Unmarried fathers in Florida must legally establish paternity in order to claim their paternal rights.<sup>32</sup> Any woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child may bring proceedings to determine the paternity of the child when paternity has not been established by law or otherwise.<sup>33</sup>

Except as provided in ch. 39 and 63, F.S., primary jurisdiction and procedures for the determination of paternity for children born out of wedlock is provided in ch. 742, F.S.

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<sup>30</sup> *Pena v. Mattox*, 84 F.3d 894 (7th Cir. 1996).

<sup>31</sup> *Id.* at 899-902.

<sup>32</sup> A man who is or may be the biological father of a child whose paternity has not been established and whose mother was unmarried when the child was conceived and born is known as a "putative father." Section 409.256 (1)(g), F.S.

<sup>33</sup> Section 742.011, F.S.

Paternity is established if:

- The establishment of paternity has been raised and determined within an adjudicatory hearing brought under the statutes governing inheritance, or dependency under workers' compensation or similar compensation programs;
- An affidavit acknowledging paternity or a stipulation of paternity is executed by both parties and filed with the clerk of the court;
- An affidavit, a notarized voluntary acknowledgment of paternity, or a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury as provided for in s. 382.013, F.S., or s. 382.016, F.S., is executed by both parties; or
- Paternity is adjudicated by the Department of Revenue.<sup>34</sup>

### Sexual Battery

Section 794.011(1)(h), F.S., defines sexual battery as “oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.” Section 794.011, F.S., provides various levels of penalties for the commission of sexual battery, depending on the age of the victim and the circumstances of the offense, with the most serious offenses punishable by life in prison.

In 2011, victims reported 9,880 forcible sex offenses in Florida, including 5,273 forcible rapes.<sup>35</sup> One author reports that:

Pregnancy from rape occurs with “significant frequency.” Of the estimated 12 percent of adult women in the United States that have experienced at least one rape in their lifetime, 4.7 percent of these rapes result in pregnancy. Therefore, based on a 1990 study estimating that 683,000 women over the age of eighteen were raped in that year, conceivably 32,000 rape-related pregnancies occur annually. A separate study conducted in 2000 estimated that, given the decline in the incidence of rape, 25,000 pregnancies following the rape of adult women occur annually. It is difficult to determine with certainty the outcome of the approximately 25,000 to 32,000 rape-related pregnancies that occur in the United States each year. One study found that 50 percent of women who became pregnant by rape underwent abortions, 5.9 percent placed their infants for adoptions, and 32.3 percent of raped women kept their infants. Another study, conducted in a separate year, found markedly different results, concluding that 26 percent of women pregnant through rape underwent abortions. Of the 73 percent of women who carried their pregnancies to term, 36 percent placed their infants for adoption, and 64 percent raised the children they conceived through rape.<sup>36</sup>

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<sup>34</sup> Section 742.10, F.S.

<sup>35</sup> Florida Department of Law Enforcement, *Crime in Florida. 2011. available at [http://www.fdle.state.fl.us/Content/getdoc/594fa00a-35bb-4e79-ad95-ba8bb0fc67f5/CIF\\_Annual11.aspx](http://www.fdle.state.fl.us/Content/getdoc/594fa00a-35bb-4e79-ad95-ba8bb0fc67f5/CIF_Annual11.aspx).*

<sup>36</sup> Shauna R. Prewitt. *Giving Birth to a “Rapist’s Child:” A Discussion and Analysis of the Limited Legal Protections Afforded to Women Who Become Mothers Through Rape.* 98 Geo. L. J. 827, 828-829 (March 2010).

Section 804.04(4), F.S., prohibits lewd and lascivious battery, a similar offense that prohibits sexual activity with a child who is older than 12 years old but younger than 16 years old regardless of whether the child victim consented to the activity.<sup>37</sup> Lewd and lascivious battery is a second degree felony, punishable by up to 15 years in prison.

### **Restitution in Florida**

Unless a court finds clear and compelling reasons not to order restitution, it must order the defendant to make restitution to a victim in a criminal proceeding for:

- Damage or loss caused directly or indirectly by the defendant's offense; and
- Damage or loss related to the defendant's criminal episode.<sup>38</sup>

The term "victim" as used in the provisions of law relating to restitution means "each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense...."<sup>39</sup>

The court may require the defendant to pay restitution within a specified period or in installments, but the end of the specified period or the last installment cannot be later than:

- The end of the period of probation if probation is ordered;
- Five years after the end of the term of imprisonment if the court does not order probation; or
- Five years after the date of sentencing in any other case.<sup>40</sup>

If a defendant is placed on probation or paroled, complete satisfaction of any restitution ordered must be a condition of the probation or parole. The court may revoke probation, and the Parole Commission may revoke parole, if the defendant fails to comply with the restitution order.<sup>41</sup>

Pursuant to s. 775.089(11), F.S., the court may order the clerk of the court or the Department of Corrections (DOC) to collect and disburse restitution payments. In addition, an order of restitution may be enforced by the state or by a victim in the same manner as a judgment in a civil action.<sup>42</sup>

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<sup>37</sup> The definitions of "sexual activity" in s. 800.04(1)(a), F.S., and of "sexual battery" in s. 794.011(1)(h), F.S., are identical. Consensual or non-consensual sexual activity with a child under 12 years of age is sexual battery in violation of s. 794.011(2), F.S. Sexual battery of a child under 12 is punishable by a mandatory life sentence if the offender an adult, and a minimum 30 years in prison if the offender is a juvenile tried as an adult.

<sup>38</sup> Section 775.089(1)(a), F.S.

<sup>39</sup> Section 775.089(1)(c), F.S.

<sup>40</sup> Section 775.089(3), F.S.

<sup>41</sup> Section 775.089(4), F.S.

<sup>42</sup> Section 775.089(11), F.S.

## Child Support in Florida

The Department of Revenue (DOR) Child Support Enforcement Program (CSE) obtains court or administrative orders for child support, using guidelines provided in s. 61.30, F.S., to establish the amount of the obligation. The child support guidelines are based on the number of children and the combined income of the parents. The child support obligation is divided between the parents in direct proportion to their income or earning capacity. In most cases, a child support obligation continues until a child reaches 18 years of age.<sup>43</sup>

As required by federal law,<sup>44</sup> the child support enforcement program is prohibited from disclosing information on the whereabouts of one party or the child to the other party against whom a protective order with respect to the former party or the child has been entered. Additionally, the program may not disclose information on the whereabouts of one party or the child to another person if the program has reason to believe that the release of information to that person may result in physical or emotional harm to the party or the child.<sup>45</sup>

### III. Effect of Proposed Changes:

The bill substantially changes Florida's termination of parental rights standard to include harm not done to the child as stated in s. 39.806(1) F.S., but towards the mother of a child, as a result of a sexual battery that resulted in the birth of a child.

**Section 1** of the bill provides that a father's parental rights may be terminated if the court determines by clear and convincing evidence that the child was conceived during an act of sexual battery pursuant to s. 794.001, F.S., or a similar law of another jurisdiction. This means that the father does not have to be convicted of sexual battery under the criminal standard of proof of beyond a reasonable doubt in order to have his parental rights terminated. If the father was convicted of sexual battery, in many cases the court could order a termination of parental rights based on the conviction and lengthy incarceration pursuant to s. 39.806(1)(d), F.S.

The bill creates a presumption that termination of parental rights because the child was conceived as the result of sexual battery is in the child's best interests. It also provides that a petition for termination of parental rights under these circumstances may be filed at any time.

**Section 2** of the bill conforms a cross-reference to add the new s. 39.806(1)(m), F.S., to s. 39.811(6)(e), F.S., related to those grounds in which termination of the rights of one parent may be severed without severing the rights of the other parent.

**Section 3** of the bill provides an effective date of July 1, 2013, and provides for retroactive application.

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<sup>43</sup> Section 61.30(1)(a), F.S.

<sup>44</sup> 42 U.S.C. s. 654 (26).

<sup>45</sup> Section 409.2579, F.S.

**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 bill potentially implicates Article 1, Section 23, of the State Constitution relating to privacy rights.<sup>46</sup> Parents have a right to raise their children free from governmental intrusion, unless the state can show harm to the child.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

There may be costs to mothers who are petitioning the court to terminate parental rights under the newly created grounds for termination.

## C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) reported that the addition of two new grounds for termination of parental rights could increase judicial workload because there would be more grounds for petitions to be filed. However, it is not known in how many instances the new grounds would be applied. Also, if the additional grounds apply to cases in which other grounds already exist, there could be little effect on workload (at least in those cases) because the petition would already be filed alleging other grounds.<sup>47</sup>

The fiscal impact on expenditures of the state courts system cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload.<sup>48</sup>

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<sup>46</sup> FLA. CONST. art. 1, s. 23 provides, in part, that “[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life.”

<sup>47</sup> Florida Office of the State Courts Administrator, *2013 Judicial Impact Statement, SB 964* (Mar. 8, 2013) (on file with the Senate Committee on Judiciary).

<sup>48</sup> *Id.*

The Department of Children and Families indicates that a fiscal impact is not expected from the provisions of this bill.<sup>49</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill contains no provisions related to lewd or lascivious battery under s. 800.04, F.S., similar to the sexual battery offense already covered by the provisions of the bill. That offense may result in a pregnancy as well.

The addition of two new grounds for termination of parental rights under s. 39.806(1) F.S., does not guarantee that the court will terminate the parental rights of an individual who has committed sexual battery and the crime resulted in the conception of a child. The section states that “grounds for termination of parental rights may be established under any of the following circumstances.”

If the court does not terminate parental rights under the new grounds created by this bill, there is no safety net for the mother of the child related to contact with the father of the child except what is currently provided for in s. 61.13, F.S. Current law provides a specific reference to victims of domestic violence in relation to shared parental responsibility and time-sharing that provides that the court shall consider evidence of domestic violence as evidence of detriment to the child. The same consideration may need to be given to victims of sexual assault who decide to raise their children.

Creating alternate protection under ch. 61, F.S., may be particularly important because the termination of parental rights implicates a fundamental liberty interest, which must be the least restrictive means of protecting the child.<sup>50</sup>

Also, if the court does not terminate parental rights under the new grounds, and orders sole parental responsibility for the mother with no time sharing for the father, the court may still order the father of the child to pay child support. Without some statutory provision, the father of the child may have access to the mother’s location information. Again, current law shields that information in cases involving victims of domestic violence.

If parental rights are terminated under the provisions of this bill, no child support would be ordered, and some mothers who have chosen to raise their children may be left without the financial means to do so. Some type of financial support in the form of restitution specific to these types of cases may need to be considered.

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<sup>49</sup> Department of Children and Families, *Staff Analysis and Economic Impact (HB 887)* (February 22, 2013) (on file with the Senate Committee on Judiciary).

If parental rights are terminated under the provisions of this bill and the mother of the child must apply for public assistance, absent additional statutory provisions, the mother would be required to cooperate with the child support enforcement program. This would include helping identify and locate the father of the child.

## 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, 2013:**  
Provides that a father's parental rights may be terminated if the court determines, by clear and convincing evidence that the child was conceived during an act of sexual battery pursuant to s. 794.001, F.S., or a similar law of another jurisdiction;
- Provides that a petition for termination of parental rights under these circumstances may be filed at any time;
- Conforms a cross reference to add the new s. 39.806(1)(m), F.S., to s. 39.811(6)(e), F.S., related to those grounds in which termination of the rights of one parent may be severed without severing the rights of the other parent; and
- Provides for retroactive application.

### B. Amendments:

None.