

By the Committee on Children, Families, and Elder Affairs; and  
Senator Steube

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1                   A bill to be entitled  
2           An act relating to the determination of parentage;  
3           creating s. 742.19, F.S.; defining the term "alleged  
4           parent"; providing presumptions of legal parentage;  
5           authorizing a child, the child's mother, or the  
6           child's alleged parent to file a petition in circuit  
7           court to rebut the presumption of legal parentage;  
8           requiring such petition to include certain  
9           information; requiring the court to appoint a guardian  
10          ad litem or an attorney ad litem under certain  
11          conditions; providing qualifications and requirements  
12          for a guardian ad litem; requiring the court to hold  
13          an evidentiary hearing on the petition; specifying  
14          that the petitioner has the burden of producing  
15          certain clear and convincing evidence; requiring the  
16          court to dismiss the petition under certain  
17          circumstances; requiring the court to order genetic  
18          testing of the child and the alleged parent if the  
19          court allows the petition to proceed; requiring  
20          certain information to be included in the order;  
21          requiring the alleged parent to file the test results  
22          with the court by a specified date; specifying that a  
23          statistical probability of parentage of 95 percent or  
24          more creates a rebuttable presumption that the alleged  
25          parent is a biological parent; providing a procedure  
26          for a party to object to the test results; authorizing  
27          the court to enter a summary judgment of parentage and  
28          requiring the court to hold a trial if a presumption  
29          of parentage is established; requiring the court to

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30 dismiss the petition and seal the court file if the  
31 test results indicate that the alleged parent is not a  
32 biological parent; requiring the court to determine  
33 parental rights in the best interest of the child;  
34 requiring the court to evaluate specified factors to  
35 determine the best interest of the child; providing  
36 information to be included in final orders or  
37 judgments; authorizing the court to approve, grant, or  
38 modify a parenting plan in the best interest of the  
39 child and under certain conditions; requiring that a  
40 parenting plan include certain information;  
41 authorizing the court to order the payment of child  
42 support; requiring the court to consider certain  
43 criteria in its calculation of child support;  
44 authorizing the court to modify a parenting plan or  
45 child support order entered pursuant to this section  
46 upon a showing by the parent petitioning for  
47 modification that a substantial change in  
48 circumstances has occurred; clarifying that an order  
49 entered under this section does not impugn or affect a  
50 child's legitimacy; amending s. 61.046, F.S.;

51 clarifying that a parenting plan entered under a  
52 specified section determines the rights of custody and  
53 access for purposes of the Uniform Child Custody  
54 Jurisdiction and Enforcement Act, the International  
55 Child Abduction Remedies Act, and the Convention on  
56 the Civil Aspects of International Child Abduction;  
57 providing an effective date.

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59 Be It Enacted by the Legislature of the State of Florida:

60  
61 Section 1. Section 742.19, Florida Statutes, is created to  
62 read:

63 742.19 Establishment of parentage for children born in  
64 wedlock or when parentage is otherwise established by law.—

65 (1) As used in this section, the term “alleged parent”  
66 means a person with a reasonable and well-founded belief that he  
67 or she is a child’s biological parent.

68 (2) A person is presumed to be the legal parent of a child  
69 when:

70 (a) At the time of the child’s conception or birth, the  
71 person was married to the child’s mother; or

72 (b) Parentage has been established under s. 742.091, s.  
73 742.10, or s. 742.105.

74 (3) The child, the child’s mother, or the child’s alleged  
75 parent may seek to rebut the presumption of legal parentage in  
76 subsection (2) by filing a petition in circuit court. The  
77 petition must:

78 (a) Be signed by the petitioner under oath.

79 (b) Identify as parties the mother, the mother’s spouse,  
80 the alleged parent, and any other person who may be the parent.

81 (c) Provide specific facts to support a claim that the  
82 alleged parent is the biological parent of the child, that the  
83 alleged parent has demonstrated a substantial interest in or  
84 concern for the welfare of the child, and that it is in the best  
85 interest of the child to establish the alleged parent as the  
86 legal parent of the child.

87 (4) (a) The court must appoint a guardian ad litem for the

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88 child unless good cause is shown that a guardian ad litem is not  
89 necessary to protect the best interest of the child. The person  
90 appointed as a guardian ad litem must meet the qualifications in  
91 s. 61.402, shall have the powers and authorities described in s.  
92 61.403, shall be immune from liability pursuant to s. 61.405,  
93 and must maintain confidentiality in accordance with s. 61.404,  
94 unless otherwise specified by a court order.

95 (b) If the court determines that the child is of sufficient  
96 age and understanding to participate in the proceedings, the  
97 court must appoint an attorney ad litem for the child in lieu of  
98 a guardian ad litem unless good cause is shown that an attorney  
99 ad litem is not necessary to protect the best interest of the  
100 child.

101 (5) (a) The court shall hold an evidentiary hearing on the  
102 petition and the petitioner has the burden to produce clear and  
103 convincing evidence that:

104 1. The alleged parent has demonstrated a substantial  
105 interest in or concern for the welfare of the child; and

106 2. The best interest of the child would be served by  
107 allowing the petition to proceed.

108 (b) In making its determination, the court shall give  
109 particular weight to the fact that the mother is deceased or  
110 incapacitated, or that the mother seeks or obtains a dissolution  
111 of her marriage to her spouse.

112 (c) If the court determines that the alleged parent has not  
113 demonstrated a substantial interest in or concern for the  
114 welfare of the child or that the best interest of the child  
115 would not be served by allowing the petition to proceed, the  
116 court must dismiss the petition and seal the court file.

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117 (6) (a) If the petition is allowed to proceed under  
118 subsection (5), the court must order the child and the alleged  
119 parent to submit to genetic testing conducted by a qualified  
120 technical laboratory, as defined in s. 409.256, to determine the  
121 probability of parentage. Upon the entry of the order for  
122 scientific testing, the court must inform each person to be  
123 tested of the procedures and requirements for objecting to the  
124 test results and of the consequences of the failure to object.

125 (b) The alleged parent shall file the test results,  
126 together with the opinions and conclusions of the test  
127 laboratory, with the court no later than 15 days after the test  
128 results are issued. Test results are admissible in evidence and  
129 should be weighed along with other evidence of the parentage of  
130 the alleged parent unless the statistical probability of  
131 parentage equals or exceeds 95 percent. A statistical  
132 probability of parentage of 95 percent or more creates a  
133 rebuttable presumption, as defined in s. 90.304, that the  
134 alleged parent is a biological parent of the child.

135 (c) Any objection to the test results must be made in  
136 writing and must be filed with the court no later than 30 days  
137 after the test results are filed or as otherwise specified by  
138 the court.

139 1. If no objection is filed, the test results shall be  
140 admitted into evidence without the need for predicate to be laid  
141 or third-party foundation testimony to be presented.

142 2. If an objection is filed, the court must hold an  
143 evidentiary hearing. Nothing in this paragraph prohibits a party  
144 from calling an outside expert witness to refute or support the  
145 testing procedure or results, or the mathematical theory on

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146 which they are based. If the test results or the expert analysis  
147 of the inherited characteristics is disputed, the court, upon  
148 reasonable request of a party, must order that an additional  
149 test be made by the same laboratory or an independent laboratory  
150 at the expense of the party requesting additional testing.

151 (d) If no objection is filed or if a party fails to rebut  
152 the presumption of parentage which arose from the statistical  
153 probability of parentage of 95 percent or more, the court may  
154 enter a summary judgment of parentage and must hold a trial  
155 pursuant to subsection (7). If the test results indicate that  
156 the alleged parent is not a biological parent, the court must  
157 dismiss the petition and seal the court file.

158 (7) If the genetic testing establishes that the alleged  
159 parent is the biological parent of the child, the court must  
160 hold a trial to determine whether:

161 (a) The mother's spouse remains the legal parent of the  
162 child based on the best interest of the child;

163 (b) The parentage and legal rights and obligations of the  
164 mother's spouse are terminated and granted to the biological  
165 parent; or

166 (c) The mother, mother's spouse, and biological parent must  
167 share parental rights and responsibilities.

168 (8) To determine the best interest of the child, the court  
169 shall evaluate all of the following:

170 (a) The established bond between the child and the mother's  
171 spouse, including love, affection, and emotional ties.

172 (b) The established bond between the child and the  
173 biological parent, including love, affection, and emotional  
174 ties.

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175 (c) The permanence and stability of the child's current  
176 family unit or units, including the length of time the child has  
177 lived in a satisfactory environment and the desirability of  
178 maintaining continuity or creating stability.

179 (d) The capacity and disposition of the mother's spouse and  
180 the biological parent to provide for the child's financial  
181 needs.

182 (e) The moral fitness of the mother's spouse and the  
183 biological parent.

184 (f) The mental and physical health of the mother's spouse  
185 and the biological parent.

186 (g) The home, school, and community record of the child.

187 (h) The preference of the child, taking into consideration  
188 the child's age and understanding.

189 (i) Whether the mother's spouse or the biological parent  
190 has abandoned, abused, or neglected the child, or has otherwise  
191 been remiss in his or her responsibilities toward the child.

192 (j) Whether the mother's spouse or the biological parent  
193 has ever acted contrary to the best interest of the child.

194 (k) Whether the mother's spouse or the biological parent  
195 wishes to exercise or continue to exercise parental rights.

196 (l) Whether the mother is deceased or incapacitated.

197 (m) Whether the mother seeks or obtains a dissolution of  
198 her marriage to the spouse.

199 (n) Any other factor affecting the welfare and interests of  
200 the child and the circumstances of that family.

201 (9) (a) If the court determines that it is in the best  
202 interest of the child for the mother's spouse to remain the  
203 legal parent of the child to the exclusion of the biological

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204 parent, the court must dismiss the petition and seal the court  
205 file.

206 (b) If the court determines that it is in the best interest  
207 of the child for the parental rights of the mother's spouse to  
208 be terminated and the biological parent to be the legal parent  
209 of the child, the court must enter a final order or judgment:

210 1. Terminating the parental rights and responsibilities of  
211 the mother's spouse, declaring that the biological parent is the  
212 legal parent of the child, and specifying the biological  
213 parent's parental rights and responsibilities, including, but  
214 not limited to, time-sharing and child support.

215 2. Requiring that the biological parent's name be  
216 substituted on the child's birth certificate and the mother's  
217 spouse's name be removed.

218 (c) If the court determines that the mother's spouse and  
219 the biological parent have each established a substantial  
220 relationship with the child and that it is in the best interest  
221 of the child for both the mother's spouse and the biological  
222 parent to be the child's legal parents, the court shall enter a  
223 final order or judgment:

224 1. Preserving the parental rights of the mother's spouse.

225 2. Establishing the biological parent's parental rights and  
226 responsibilities as the child's third legal parent.

227 3. Requiring the Office of Vital Statistics of the  
228 Department of Health to amend the child's birth certificate to  
229 add the third legal parent.

230 4. Declaring that each legal parent is recognized as an  
231 equal parent to the child and has equal standing to secure  
232 shared parenting rights to time-sharing, parental



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233 responsibility, and child support.

234 (10) The court may approve, grant, or modify a parenting  
235 plan, as defined in s. 61.046, in a final order or judgment  
236 entered pursuant to paragraph (9) (b) or paragraph (9) (c). A  
237 parenting plan may be developed and agreed to by all legal  
238 parents and approved by a court or may be established by the  
239 court.

240 (a) The court must consider the factors listed in s.  
241 61.13(3) to determine the best interest of the child before  
242 approving or establishing a parenting plan. The best interest of  
243 the child should govern and be of foremost concern in the  
244 court's approval of or establishment of a parenting plan.

245 (b) The court may approve or establish a parenting plan,  
246 regardless of whether the child is physically present in this  
247 state, if the court finds that the child was removed from this  
248 state for the primary purpose of removing the child from the  
249 court's jurisdiction in an attempt to avoid the court's  
250 approval, creation, or modification of the parenting plan.

251 (c) A parenting plan approved or established by the court  
252 must describe the shared responsibilities for the daily tasks of  
253 parenting; the time-sharing schedule specifying the time the  
254 child will spend with each parent; a designation of which parent  
255 will be responsible for health care, school-related matters, and  
256 extracurricular activities; the address to be used for school-  
257 boundary determination and registration; and the means of  
258 communication or technology which the parents will use to  
259 communicate with the child.

260 (d) The court shall determine matters relating to the  
261 parenting and time-sharing of each child of the parties in

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262 accordance with the Uniform Child Custody Jurisdiction and  
263 Enforcement Act, part II of chapter 61.

264 (11) The court may order the payment of child support by  
265 any legal parent or parents owing a duty of support in a final  
266 order or judgment entered pursuant to paragraph (9) (b) or  
267 paragraph (9) (c). When calculating child support, the court  
268 shall:

269 (a)1. For an order entered pursuant to paragraph (9) (b),  
270 calculate support obligations pursuant to s. 61.30.

271 2. For an order entered pursuant to paragraph (9) (c),  
272 ensure that the child receives the same full benefit of the  
273 total child support as a child would receive under the  
274 guidelines schedule in s. 61.30.

275 (b) Consider each deviation factor listed in s.  
276 61.30(11) (a) to ensure that the distribution of the child  
277 support is fair and equitable.

278 (12) The court may modify a parenting plan or child support  
279 order entered pursuant to this section upon a showing by the  
280 parent petitioning for modification that a substantial change in  
281 circumstances has occurred.

282 (13) An order entered pursuant to this section does not  
283 impugn or affect a child's legitimacy.

284 Section 2. Paragraphs (c) and (d) of subsection (14) of  
285 section 61.046, Florida Statutes, are amended to read:

286 61.046 Definitions.—As used in this chapter, the term:

287 (14) "Parenting plan" means a document created to govern  
288 the relationship between the parents relating to decisions that  
289 must be made regarding the minor child and must contain a time-  
290 sharing schedule for the parents and child. The issues

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291 concerning the minor child may include, but are not limited to,  
292 the child's education, health care, and physical, social, and  
293 emotional well-being. In creating the plan, all circumstances  
294 between the parents, including their historic relationship,  
295 domestic violence, and other factors must be taken into  
296 consideration.

297 (c) For purposes of the Uniform Child Custody Jurisdiction  
298 and Enforcement Act, part II of this chapter, a judgment or  
299 order incorporating a parenting plan under this part or under s.  
300 742.19 is a child custody determination under part II of this  
301 chapter.

302 (d) For purposes of the International Child Abduction  
303 Remedies Act, 42 U.S.C. ss. 11601 et seq., and the Convention on  
304 the Civil Aspects of International Child Abduction, enacted at  
305 the Hague on October 25, 1980, rights of custody and rights of  
306 access are determined pursuant to the parenting plan under this  
307 part or under s. 742.19.

308 Section 3. This act shall take effect July 1, 2018.