

By Senator Jones

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1                                   A bill to be entitled  
2       An act relating to establishment of paternity;  
3       creating s. 742.092, F.S.; creating a presumption of a  
4       legal father; authorizing certain persons to rebut  
5       such presumption by filing a petition to determine  
6       paternity; providing requirements for a petition to  
7       determine paternity; requiring the court to appoint a  
8       guardian ad litem or an attorney ad litem under  
9       certain circumstances; providing requirements for  
10      guardians ad litem; requiring the court to hold an  
11      evidentiary hearing on the petition; providing a  
12      burden of proof; requiring the court to consider  
13      certain factors when determining whether to allow a  
14      petition to proceed; requiring certain persons to  
15      submit to genetic testing if a petition is allowed to  
16      proceed; providing requirements for the order for  
17      scientific testing; requiring the genetic test  
18      results, along with the opinions and conclusions of  
19      the qualified technical laboratory, to be filed with  
20      the court within a specified timeframe; creating a  
21      rebuttable presumption; requiring the court to dismiss  
22      the petition and seal the court file under certain  
23      circumstances; requiring that written objections to  
24      genetic test results be filed within a certain  
25      timeframe; requiring an evidentiary hearing, at which  
26      certain experts may testify, if an objection to the  
27      test results is filed; requiring additional testing  
28      under certain circumstances; requiring the court to  
29      enter a summary judgment of paternity and hold a trial

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30 for certain purposes under certain circumstances;  
31 requiring the court to consider certain factors when  
32 determining the best interests of a child at trial;  
33 providing requirements for the court's final order or  
34 judgment; authorizing the court to approve, grant, or  
35 modify a parenting plan, even if the child is not  
36 physically present in the state; requiring the court  
37 to consider certain factors when approving,  
38 establishing, or modifying a parenting plan; providing  
39 parenting plan requirements; authorizing the court to  
40 enter an order for the payment of child support;  
41 providing requirements for the calculation of such  
42 child support; authorizing the court to modify a  
43 parenting plan, time-sharing schedule, or child  
44 support order upon a showing of a substantial change  
45 in circumstances; providing construction; amending s.  
46 61.046, F.S.; conforming cross-references; providing  
47 an effective date.

48  
49 Be It Enacted by the Legislature of the State of Florida:

50  
51 Section 1. Section 742.092, Florida Statutes, is created to  
52 read:

53 742.092 Establishment of paternity.—

54 (1) A man is presumed to be the legal father of a child if,  
55 at the time of the child's conception or birth, he was married  
56 to the child's biological mother or if parentage has otherwise  
57 been established under s. 742.091, s. 742.10, or s. 742.105.

58 (2) A child, the child's biological mother, or a man who

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59 has a reasonable and well-founded belief that he is the child's  
60 biological father may rebut the presumption established in  
61 subsection (1) by filing a petition in circuit court to  
62 determine the paternity of the child. The petition must meet all  
63 of the following requirements:

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

65 (b) Identify as parties the child's biological mother, the  
66 child's legal father, the child's alleged biological father, and  
67 any other person who may be the child's legal parent.

68 (c) Allege specific facts to support a claim that the  
69 alleged biological father is the child's actual biological  
70 father, that the alleged biological father has manifested a  
71 substantial and continuing concern for the welfare of the child,  
72 and that it is in the best interests of the child to establish  
73 the alleged biological father as a legal parent of the child.

74 (3) (a) In a proceeding to establish paternity under this  
75 section, the court shall appoint a guardian ad litem for the  
76 child unless good cause is shown that a guardian ad litem is not  
77 necessary to protect the best interests of the child. A person  
78 appointed as a guardian ad litem must meet the qualifications  
79 and maintain confidentiality as provided under ss. 61.402 and  
80 61.404, respectively; has the powers and authorities specified  
81 under s. 61.403; and is immune from liability as provided under  
82 s. 61.405.

83 (b) If the court determines that the child is of sufficient  
84 age and maturity to participate in the proceedings, the court  
85 must appoint an attorney ad litem for the child in lieu of a  
86 guardian ad litem, unless good cause is shown that an attorney  
87 ad litem is not necessary to protect the best interests of the

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88 child.

89 (4) (a) The court shall hold an evidentiary hearing on the  
90 petition to determine paternity, at which the petitioner has the  
91 burden of producing clear and convincing evidence that the  
92 alleged biological father has manifested a substantial and  
93 continuing concern for the welfare of the child and that the  
94 best interests of the child would be served by allowing the  
95 petition to proceed.

96 (b) In making its determination on whether to allow the  
97 petition to proceed, the court shall give weight to all of the  
98 following:

99 1. Whether the biological mother is deceased or  
100 incapacitated.

101 2. Whether the biological mother is seeking or has obtained  
102 a dissolution of her marriage to the presumed legal father.

103 3. Whether the legal father seeks to maintain his presumed  
104 status as the legal father of the child.

105 (c) If the court finds that the alleged biological father  
106 has not manifested a substantial and continuing concern for the  
107 welfare of the child or that the child's best interests would  
108 not be served by allowing the petition to proceed, the court  
109 must dismiss the petition with prejudice and seal the court  
110 file.

111 (5) (a) If a petition to determine paternity is allowed to  
112 proceed after the evidentiary hearing pursuant to subsection  
113 (4), the child and the alleged biological father must submit to  
114 genetic testing conducted by a qualified technical laboratory,  
115 as defined in s. 409.256(1), to determine the probability of  
116 parentage. In the order for genetic testing, the court must

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117 inform each person who is required to be tested of the  
118 procedures and requirements for objecting to the genetic test  
119 results and the consequences for failing to object.

120 (b) The alleged biological father must file the genetic  
121 test results, together with the opinions and conclusions of the  
122 qualified technical laboratory, with the court no later than 15  
123 days after the alleged biological father receives the test  
124 results from the laboratory. The test results are admissible in  
125 evidence and must be weighed along with any other evidence of  
126 parentage of the alleged biological father, unless the  
127 statistical probability of parentage from the genetic test  
128 results equals or exceeds 95 percent. A statistical probability  
129 of parentage of 95 percent or more creates a rebuttable  
130 presumption, as defined in s. 90.304, that the alleged  
131 biological father is the actual biological father of the child.

132 (c) If the genetic test results indicate that the alleged  
133 biological father is not the actual biological father of the  
134 child, the court must dismiss the petition and seal the court  
135 file.

136 (6) An objection to the genetic test results must be made  
137 in writing and filed with the court within 30 days after the  
138 test results are filed or as otherwise specified by the court.

139 (a) If an objection is filed, the court must hold an  
140 evidentiary hearing. At the evidentiary hearing, a party may  
141 call an outside expert to refute or support the genetic testing  
142 procedures or results, or the mathematical theory on which such  
143 results are based. If the test results or the expert analysis of  
144 the inherited characteristics is disputed, the court, upon  
145 reasonable request of a party, must order that an additional

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146 test be made by the same laboratory or an independent laboratory  
147 at the expense of the party requesting the additional testing.

148 (b) If an objection to the genetic test results is not  
149 filed, the test results may be admitted into evidence without  
150 the need for predicate to be laid or third-party foundation  
151 testimony to be presented.

152 (7) If an objection to the genetic testing is not filed, a  
153 party fails to rebut the presumption of paternity established  
154 under paragraph (5) (b), or the genetic testing establishes that  
155 the alleged biological father is the actual biological father of  
156 the child, the court must enter a summary judgment of paternity  
157 and hold a trial to determine:

158 (a) If the husband of the child's biological mother should  
159 remain the sole legal father of the child based on the best  
160 interests of the child;

161 (b) If the parentage and the legal rights,  
162 responsibilities, and obligations of the husband of the child's  
163 biological mother should be terminated and granted to the  
164 biological father; or

165 (c) If the child's biological mother, mother's husband, and  
166 biological father should share parentage and the legal rights,  
167 responsibilities, and obligations of the child.

168 (8) At trial, the court must determine the best interests  
169 of the child by evaluating all of the factors affecting the  
170 welfare and interests of the particular child and the  
171 circumstances of the family, including, but not limited to:

172 (a) The established bond between the child and the  
173 biological mother's husband.

174 (b) The established bond between the child and the

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175 biological father.

176 (c) The permanency and stability of the child's current  
177 family unit, including the length of time the child has lived in  
178 a satisfactory environment and the desirability to maintain  
179 continuity or create stability for the child.

180 (d) The capacity and disposition of the biological mother's  
181 husband and the biological father to provide for the child's  
182 financial needs.

183 (e) The moral fitness of the biological mother's husband  
184 and the biological father.

185 (f) The mental and physical health of the biological  
186 mother's husband and the biological father.

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

188 (h) The reasonable preference of the child, if the court  
189 deems the child to be of sufficient intelligence, understanding,  
190 and experience to express a preference.

191 (i) Evidence that the biological mother's husband or the  
192 biological father has abandoned, abused, or neglected the child,  
193 or has otherwise been remiss in his responsibilities for the  
194 child.

195 (j) Evidence that the biological mother's husband or the  
196 biological father has ever acted contrary to the best interests  
197 of the child.

198 (k) Evidence that the biological mother's husband or the  
199 biological father wishes to exercise or continue to exercise his  
200 parental rights.

201 (l) If the biological mother of the child is deceased or  
202 incapacitated.

203 (m) If the biological mother of the child is seeking or has

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204 obtained a dissolution of marriage from her husband.

205 (n) Any other factor that the court deems relevant.

206 (9) (a) If the court determines that it is in the best  
207 interests of the child for the biological mother's husband to  
208 remain the legal father of the child to the exclusion of the  
209 biological father, the court must enter a final order or  
210 judgment denying the petition to determine paternity and seal  
211 the court file.

212 (b) If the court determines that it is in the best  
213 interests of the child for the parental rights of the biological  
214 mother's husband to be terminated and the biological father to  
215 be the legal father of the child, the court must enter a final  
216 order or judgment that does both of the following:

217 1. Terminates the parental rights and responsibilities of  
218 the biological mother's husband, declaring that the biological  
219 father is the legal father of the child, and specifying the  
220 biological father's rights, responsibilities, and obligations,  
221 including, but not limited to, time-sharing and child support.

222 2. Requires that the biological father's name be  
223 substituted on the child's birth certificate and the name of the  
224 biological mother's husband be removed.

225 (c) If the court determines that the biological mother's  
226 husband and the biological father each have established a  
227 substantial relationship with the child and that it is in the  
228 best interests of the child for both men to be the child's legal  
229 father, the court must enter a final order or judgment that does  
230 all of the following:

231 1. Preserves the parental and legal rights of the  
232 biological mother's husband.



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233 2. Establishes the biological father's legal rights,  
234 responsibilities, and obligations as the child's third legal  
235 parent.

236 3. Requires the Office of Vital Statistics of the  
237 Department of Health to amend the child's birth certificate to  
238 add the biological father's name as the third legal parent of  
239 the child.

240 4. Declares that each legal parent is recognized as an  
241 equal parent to the child and has equal standing to secure  
242 shared parenting rights to time-sharing, parental  
243 responsibility, and child support.

244 (10) The court may approve, establish, or modify a  
245 parenting plan, as defined in s. 61.046, in a final order or  
246 judgment entered pursuant to paragraph (9) (b) or paragraph  
247 (9) (c). The parenting plan must be developed and agreed to by  
248 all legal parents and approved by the court or established by  
249 the court if all legal parents cannot agree to a plan or all  
250 legal parents agreed to a plan that is not approved by the  
251 court.

252 (a) The court must consider the factors listed in s.  
253 61.13(3) to determine the best interests of the child before  
254 approving, establishing, or modifying a parenting plan. The best  
255 interests of the child should govern and be of foremost concern  
256 in the court's approval, establishment, or modification of a  
257 parenting plan.

258 (b) The court may approve, establish, or modify a parenting  
259 plan, notwithstanding that the child is not physically present  
260 in the state, if the court finds that the child was removed from  
261 the state for the primary purpose of removing the child from the

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262 court's jurisdiction in an attempt to avoid the court's  
263 approval, creation, or modification of a parenting plan.

264 (c) A parenting plan that is approved or established by the  
265 court must, at a minimum, include all of the following:

266 1. Describe the shared responsibilities for the daily tasks  
267 of parenting.

268 2. The time-sharing schedule specifying the time the child  
269 will spend with each legal parent.

270 3. A designation of which legal parent will be responsible  
271 for health care, school-related matters, and extracurricular  
272 activities.

273 4. The address to be used for school boundary determination  
274 and registration.

275 5. The means of communication or technology which the legal  
276 parents will use to communicate with the child.

277 (d) The court shall determine matters relating to the  
278 parenting and time-sharing of each child of the parties in  
279 accordance with the Uniform Child Custody Jurisdiction and  
280 Enforcement Act, part II of chapter 61, and this section.

281 (11) The court may order the payment of child support by  
282 any legal parent owing a duty of support in a final order or  
283 judgment entered pursuant to paragraph (9) (b) or paragraph  
284 (9) (c). When calculating child support, the court shall:

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

287 2. For an order entered pursuant to paragraph (9) (c),  
288 ensure that the child receives the same full benefit of the  
289 total amount of child support as a child would receive under the  
290 guidelines schedule in s. 61.30.

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291 (b) Consider each deviation factor listed in s.  
292 61.30(11)(a) to ensure that the distribution of the child  
293 support is fair and equitable.

294 (12) The court may modify a parenting plan, time-sharing  
295 schedule, or child support order entered under this section upon  
296 a showing by the parent petitioning for modification that a  
297 substantial change in circumstance has occurred.

298 (13) An order or a judgment entered under this section does  
299 not impugn or affect a child's legitimacy.

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

302 61.046 Definitions.—As used in this chapter, the term:

303 (14) "Parenting plan" means a document created to govern  
304 the relationship between the parents relating to decisions that  
305 must be made regarding the minor child and must contain a time-  
306 sharing schedule for the parents and child. The issues  
307 concerning the minor child may include, but are not limited to,  
308 the child's education, health care, and physical, social, and  
309 emotional well-being. In creating the plan, all circumstances  
310 between the parents, including their historic relationship,  
311 domestic violence, and other factors must be taken into  
312 consideration.

313 (c) For purposes of the Uniform Child Custody Jurisdiction  
314 and Enforcement Act, part II of this chapter, a judgment or  
315 order incorporating a parenting plan under this part is a child  
316 custody determination under part II of this chapter or under s.  
317 742.092.

318 (d) For purposes of the International Child Abduction  
319 Remedies Act, 42 U.S.C. ss. 11601 et seq., and the Convention on

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320 the Civil Aspects of International Child Abduction, enacted at  
321 the Hague on October 25, 1980, rights of custody and rights of  
322 access are determined pursuant to the parenting plan under this  
323 part or under s. 742.092.

324 Section 3. This act shall take effect July 1, 2024.