

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 663 Establishment of Paternity  
**SPONSOR(S):** Benjamin  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N	Mathews	Jones
2) Children, Families & Seniors Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Pursuant to chapter 742, F.S., paternity may be established for a child born to an unmarried mother in multiple ways. Paternity may be established by adjudicatory hearing, by voluntary acknowledgement, or by the Department of Revenue. Additionally, paternity may be established by court order in response to a Petition to Establish Paternity. Pursuant to s. 742.011, F.S., following the birth of a child, a parent may request a determination of parental responsibility and child support for the creation of a parenting plan and timesharing schedule pursuant to ch. 61. As such, an unwed father is able to request a determination of his parental rights and responsibilities and is subject to the rights and responsibilities a married father would enjoy in the same situation.

Historically, courts in Florida have deferred to the stability and consistency of an intact family unit rather than identify a separate biological father outside of the mother's marriage. However, over time and through advances in science and genetic testing, the issue of a biological father versus a legal father has become more prevalent. Notably, the Supreme Court of Florida held in *Simmonds v. Perkins*, that a biological father who has shown a substantial and continuing concern for the welfare of the child retains standing to challenge the presumption of legitimacy of the legal father.

HB 663 creates s. 742.092, F.S., to provide the process by which an alleged biological father may rebut the presumption of legitimacy of the mother's husband and seek to establish the rights, responsibilities, and obligations as the child's actual biological father. The bill provides a presumption that a man is presumed to be the child's legal father if he was married to the mother at the time of conception or birth, or if parentage has otherwise been established under statute. The bill identifies the process by which an alleged biological father may rebut the presumption by filing a petition to determine paternity with the circuit court. Under the bill, the court must keep the best interests of the child at the forefront of any determination. As such, the bill authorizes the court, after receiving testimony and evidence from each party, to:

- Deny the petition and maintain the mother's husband as the child's legal father;
- Terminate parental rights of the mother's husband and substitute the actual biological father on the child's birth certificate; or
- Maintain the mother's husband's status as the legal father while also acknowledging the biological father as a third legal parent.

The bill provides for the establishment, adoption, and modification of a parenting plan, including timesharing and child support, to be shared among all legal parents.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2024.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

Florida has a long history of placing importance on a child's legitimacy, and the common law has upheld that tenet, often giving deference to a legal father over a biological father to ensure the child's legitimacy. The presumption of legitimacy primarily protected a child's need for a family unit,<sup>1</sup> and sought to ensure that a child benefitted from such and the consistency that accompanies it, sometimes to the detriment of the biological father. Historically, courts in Florida have deferred to the stability and consistency of an intact family unit rather than identify a separate biological father outside of the mother's marriage.<sup>2</sup> However, over time and through advances in science and genetic testing, the issue of a biological father versus a legal father has become more prevalent. Notably, the Supreme Court of Florida held in *Simmonds v. Perkins*, that a biological father who has shown a substantial and continuing concern for the welfare of the child retains standing to challenge the presumption of legitimacy in favor of the legal father.<sup>3</sup>

#### Establishment of Paternity

Pursuant to chapter 742, F.S., paternity may be established for a child born to an unmarried mother in multiple ways. Paternity may be established by adjudicatory hearing, by voluntary acknowledgement, or by the Department of Revenue.<sup>4</sup> Additionally, paternity may be established by court order in response to a Petition to Establish Paternity. Pursuant to s. 742.011, F.S., following the birth of a child, a parent may request a determination of parental responsibility and child support for the creation of a parenting plan and timesharing schedule pursuant to ch. 61. As such, an unwed father is able to request a determination of his parental rights and responsibilities and is subject to the rights and responsibilities a married father would enjoy in the same situation.

#### *Adjudicatory Hearing*

If paternity has been raised and determined as a matter of law within an adjudicatory hearing brought under the statutes governing inheritance, or dependency under workers' compensation or a similar compensation program, such adjudication establishes the paternity of the father.<sup>5</sup> When paternity is established through an adjudicatory hearing, the court is not required to establish parental responsibilities or a timesharing schedule.

#### *Affidavit or Voluntary Acknowledgment*

Paternity may also be established by agreement. Both parents may agree and sign an affidavit of voluntary acknowledgement of paternity under oath in the presence of a notary or under oath in the presence of two witnesses.<sup>6</sup> Under this scenario, a rebuttable presumption of paternity is established and a sixty-day revocation period is triggered. During the sixty-day revocation period, either the mother or the alleged father may rescind the acknowledgement of paternity.<sup>7</sup> After the sixty day period, a signed voluntary acknowledgement of paternity constitutes an establishment of paternity and may only be challenged in court on the basis of fraud, duress, or material mistake of fact.<sup>8</sup> Alternatively, paternity

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<sup>1</sup> Chris W. Altenbernd, *Quasi-Marital Children: The Common Law's Failure in Privette and Danial Calls for Statutory Reform*, 26 Fla. St. U. L. Rev. 219, 274 (Winter 1999).

<sup>2</sup> See *Dept. of Health and Rehab. Services v. Privette*, 617 So. 2d 305 (Fla. 1993); *C.G. v. J.R. and J.R.*, 130 So. 3d 776 (Fla. 2d DCA 2014), .

<sup>3</sup> *Simmonds v. Perkins*, 247 So. 3d 397 (Fla. 2018).

<sup>4</sup> A request for timesharing or visitation may not be filed in a DOR action for paternity. See s. 409.2564, F.S.

<sup>5</sup> S. 742.10, F.S.

<sup>6</sup> *Id.*

<sup>7</sup> S. 742.10(1), F.S.

<sup>8</sup> S. 742.10(4), F.S.

may be established by both parents executing an affidavit of paternity or a stipulation of paternity and filing it with the clerk of court.<sup>9</sup> If both parents sign the affidavit or stipulation of paternity and file it with the clerk of court, paternity is deemed to be established at the time the affidavit is filed.

### *Department of Revenue*

If no acknowledgement or affidavit is completed, paternity may be established by the Department of Revenue pursuant to s. 409.256, F.S. The Department of Revenue (DOR) may commence a paternity proceeding or a paternity and child support proceeding if:

- Paternity has not otherwise been established;
- No one is named as the father on the child's birth certificate or the person named as the father is the putative father named in an affidavit;
- The mother was unmarried at the time of the child's conception and birth; or
- DOR is providing services under Title IV-D.<sup>10</sup>

DOR also has the statutory authority under s. 409.2563, F.S., to commence an administrative proceeding to establish child support obligations.<sup>11</sup>

### *Court Order*

Section 742.011, F.S., permits 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, to bring proceedings in court to determine the paternity of the child when paternity has not been established by law or otherwise. Section 742.031, F.S., requires the court to conduct a hearing on the complaint and establish paternity if the court finds the alleged father is the father of the child. Upon a determination of paternity, the court must decide on the responsibility of each parent to support the child by calculating child support.<sup>12</sup> In a matter brought under ch. 742, F.S., a parent may request a determination of parental responsibility and child support and for the creation of a parenting plan and time-sharing schedule pursuant to ch. 61, F.S.

The parents jointly are the natural guardians of their own children.<sup>13</sup> However, if a father has not established paternity under s. 742.011 or s. 742.10(1), F.S., the mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless the court enters an order stating otherwise.<sup>14</sup> If an order establishing paternity only includes a child support award and does not provide a parenting plan or timesharing schedule, the parent receiving the child support (obligee) is deemed to have all of the timesharing and sole parental responsibility without prejudice to the other parent (obligor).<sup>15</sup> An action brought in court to establish paternity must include the determination of parental responsibility and a parenting plan, and must establish a timesharing schedule and child support.<sup>16</sup>

### **Effect of Proposed Changes**

HB 663 creates s. 742.092, F.S., providing for a presumption that a man who was married to the child's mother at the time of conception or birth is the child's legal father. The bill also provides a presumption that a man is the child's legal father if paternity has been legally established. The bill provides that the child, the child's biological mother, or a man who has a reasonable and well-founded belief that he is the child's biological father may rebut the presumption of the legal father's paternity by filing a petition in circuit court. The petition to determine the paternity of the child must:

- Be signed by the petitioner under oath;

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<sup>9</sup> S. 742.10(1), F.S.

<sup>10</sup> S. 409.256(2), F.S.

<sup>11</sup> S. 409.2563, F.S.

<sup>12</sup> S. 742.031(1), F.S.

<sup>13</sup> S. 744.301(1), F.S.

<sup>14</sup> S. 744.301(1), F.S.

<sup>15</sup> S. 742.031(2), F.S.

<sup>16</sup> S. 742.10, F.S.

- Identify as parties the child's biological mother, the child's legal father, the child's alleged biological father, and any other person who may be the child's legal parent; and
- Allege specific facts to support a claim that:
  - The alleged biological father is the child's actual biological father;
  - The alleged biological father has manifested a substantial and continuing concern for the welfare of the child; and
  - It is in the best interests of the child to establish the alleged biological father as a legal parent of the child.

Under the bill, the court must appoint a guardian ad litem (GAL) for the child unless good cause is shown that a GAL is not necessary to protect the best interests of the child. A GAL acting within the scope of his or her powers and authorities as provided under s. 61.403, F.S., is immune from liability as provided under s. 61.405, F.S. Alternatively, if the court determines that the subject child is old enough and mature enough to participate in the proceedings, the court must appoint an attorney ad litem (AAL) for the child in lieu of a GAL, unless the court finds good cause that an AAL is not necessary to protect the best interests of the child.

Once a petition to determine paternity has been filed with the court, the court must hold an evidentiary hearing on the petition. During the hearing, the petitioner has the burden of producing clear and convincing evidence that:

- The alleged biological father has manifested a substantial and continuing concern for the welfare of the child; and
- The best interests of the child would be served by allowing the petition to proceed.

Pursuant to the bill, the court must consider all of the following factors in making its determination on whether to allow the petition to proceed:

- Whether the biological mother is deceased or incapacitated.
- Whether the biological mother is seeking or has obtained a dissolution of her marriage to the presumed legal father.
- Whether the legal father seeks to maintain his presumed status as the legal father of the child.

If the court finds that the alleged biological father has not manifested the requisite substantial and continuing concern for the welfare of the child or that it is not in the child's best interests to allow the petition to proceed, the court must dismiss the petition with prejudice and seal the court file.

However, if the court deems the petition sufficient to proceed, then the child and alleged biological father must both submit to genetic testing by a qualified technical laboratory. The alleged biological father must file the genetic test results with the court within 15 days after he receives the results from the laboratory. Such results are admissible as evidence and must be weighed along with any other evidence of parentage of the alleged biological father unless the statistical probability of parentage is 95% or greater. A statistical probability of parentage of 95% or more creates a rebuttable presumption that the alleged biological father is the actual biological father of the child. Alternatively, if the genetic test results indicate that the alleged biological father is not the actual biological father of the child, then the court must dismiss the petition and seal the court file.

Under the bill, an objection to the genetic test results must be made in writing and filed with the court within 30 days after the test results are filed or as otherwise prescribed by the court. Upon the filing of an objection to the results, the court must hold an evidentiary hearing wherein a party may call upon outside experts to refute or support the test results. The court, upon the reasonable request of a party, may order additional testing at the expense of the party requesting such.

If no objection to the genetic testing is filed, a party fails to rebut the presumption of paternity, or the genetic testing establishes that the alleged biological father is the actual biological father, the court must enter summary judgment of paternity and hold a trial to determine:

- If the husband of the child's biological mother should remain the sole legal father of the child based on the best interests of the child;

- If the parentage and the legal rights, responsibilities, and obligations of the husband of the child's biological mother should be terminated and granted to the actual biological father; or
- If the child's biological mother, mother's husband, and biological father should share the parentage and the legal rights, responsibilities, and obligations of the child.

During the trial, the court must determine the best interests of the child by evaluating all of the factors affecting the welfare and interests of the child and the family, including, but not limited to:

- The established bond between the child and the biological mother's husband.
- The established bond between the child and the biological father.
- The permanency and stability of the child's current family unit, including the length of time the child has lived in a satisfactory environment and the desirability to maintain continuity of care or to create stability for the child.
- The capacity and disposition of the biological mother's husband and the biological father to provide for the child's financial needs.
- The moral fitness of the biological mother's husband and the biological father.
- The mental and physical health of the biological mother's husband and the biological father.
- The home, school, and community record of the child.
- The reasonable preference of the child, if the court deems him or her to be of sufficient intelligence, understanding, and expertise to express a preference.
- Evidence that the biological mother's husband or the biological father has abandoned, abused, or neglected the child, or has otherwise been remiss in his responsibilities for the child.
- Evidence that the biological mother's husband or the biological father has ever acted contrary to the best interests of the child.
- Evidence that the biological mother's husband or the biological father wishes to exercise or continue to exercise his parental rights.
- Whether the biological mother of the child is deceased or incapacitated.
- Whether the biological mother of the child is seeking or has obtained a dissolution of marriage from her husband.
- Any other factors that the court deems relevant.

### Possible Outcomes After Trial

Following a trial on the matter, the court must determine which outcome is in the best interests of the child. Based upon the evidence presented, the court may order one of three outcomes.

#### *Biological Mother's Husband Remains Child's Legal Father*

If the court determines that it is in the best interests of the child for the biological mother's husband to remain the legal father of the child to the exclusion of the biological father, the court must enter a final order denying the petition to determine paternity and seal the court file.

#### *Parental Rights of Biological Mother's Husband are Terminated*

If the court determines that it is in the best interests of the child for the parental rights of the biological mother's husband to be terminated and the biological father to be the legal father of the child, the court must enter a final order that:

- Terminates the parental rights and responsibilities of the biological mother's husband;
- Declares the biological father as the legal father of the child;
- Specifies the biological father's rights, responsibilities, and obligations, including, but not limited to, timesharing and child support; and
- Requires that the biological father's name be substituted on the child's birth certificate and the name of the biological mother's husband be removed from the same.

#### *Both the Biological Mother's Husband and the Biological Father Remain as Legal Fathers*

If the court determines that the biological mother's husband and the biological father each have established a substantial relationship with the child and that it is in the child's best interests for both men to be the child's legal father, then the court must enter a final order that:

- Preserves the parental and legal rights of the biological mother's husband;
- Establishes the biological father's legal rights, responsibilities, and obligations as the child's third legal parent;
- Requires the Office of Vital Statistics of the Department of Health to amend the child's birth certificate to add the biological father's name as the third legal parent; and
- Declares that each legal parent is recognized as an equal parent to the child and has equal standing to secure shared parenting rights to timesharing, parental responsibility, and child support.

### Parenting Plan

The court may approve, establish, or modify a parenting plan in a final order or judgment entered pursuant to the provisions of the bill. The parenting plan must be developed and agreed to by all legal parents or ordered by the court if all legal parents are otherwise unable to agree on a parenting plan. The court must consider all factors listed under s. 61.13(3), F.S., to determine the best interests of the child before approving, establishing, or modifying a parenting plan. The bill provides the minimum requirements for any parenting plan approved, established, or modified by the court, including a description of the time-sharing schedule, address used for school boundary purposes, parental decision-making roles, and more.

Under the bill, the court is authorized to order the payment of child support by any legal parent owing a duty of support to the child. In calculating a child support award, the court must follow the provisions established under s. 61.30, F.S. However, in calculating support where there are three legal parents, the court must ensure that the child receives the full benefit of the total amount of support, just as a child would receive under the guidelines schedule in s. 61.30, F.S. Further, the court must consider each deviation factor to ensure that the distribution of the support is fair and equitable among all legal parents.

The bill provides an effective date of July 1, 2024.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 742.092, F.S., relating to establishment of paternity.

**Section 2:** Amends s. 61.046, F.S., relating to definitions.

**Section 3:** Provides an effective date of July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

The United States Supreme Court has recognized a parent's fundamental liberty interests involved in the care, custody and management of his or her children.<sup>17</sup> Likewise, the Florida Supreme Court has recognized that decisions related to parenting are fundamental rights protected under the Fourteenth Amendment of the United States Constitution and the liberty interests under the privacy clause provided under the Florida Constitution.<sup>18</sup> Any statute that infringes on these rights is subject to the highest level of judicial scrutiny, and the government must prove that the statute in question serves a compelling government interest through the least intrusive means necessary.

The proposed bill is narrowly-tailored and appears to be consistent with a parent's fundamental liberty interests involved in the care, custody and management of his or her children.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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<sup>17</sup> *Troxel*, 530 U.S. 57, 65 (2000).

<sup>18</sup> See *supra* note 5 and accompanying text.