

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 attorney ad litem under certain
9 circumstances; providing requirements for guardians ad
10 litem; requiring the court to hold an evidentiary
11 hearing on the petition; providing a burden of proof;
12 requiring the court to consider certain factors when
13 determining whether to allow a petition to proceed;
14 requiring certain persons to submit to genetic testing
15 if a petition is allowed to proceed; providing
16 requirements for the order for scientific testing;
17 requiring the genetic test results, along with the
18 opinions and conclusions of the qualified technical
19 laboratory, to be filed with the court within a
20 specified timeframe; creating a rebuttable
21 presumption; requiring the court to dismiss the
22 petition and seal the court file under certain
23 circumstances; requiring written objections to genetic
24 test results to be filed within a certain time frame;
25 requiring an evidentiary hearing, at which certain

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

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

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50 | Section 1. Section 742.092, Florida Statutes, is created

51 to read:

52 742.092 Establishment of paternity.-

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

58 (2) A child, the child's biological mother, or a man who
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
84 sufficient age and maturity to participate in the proceedings,
85 the court must appoint an attorney ad litem for the child in
86 lieu of a guardian ad litem, unless good cause is shown that an
87 attorney ad litem is not necessary to protect the best interests
88 of the 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.

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

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

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

112 (5)(a) If a petition to determine paternity is allowed to
113 proceed after the evidentiary hearing pursuant to subsection
114 (4), the child and alleged biological father must submit to
115 genetic testing conducted by a qualified technical laboratory,
116 as defined in s. 409.256(1), to determine the probability of
117 parentage. In the order for genetic testing, the court must
118 inform each person who is required to be tested of the
119 procedures and requirements for objecting to the genetic test
120 results and the consequences for failing to object.

121 (b) The alleged biological father must file the genetic
122 test results, together with the opinions and conclusions of the
123 qualified technical laboratory, with the court no later than 15
124 days after the alleged biological father receives the test
125 results from the laboratory. The test results are admissible in

126 evidence and must be weighed along with any other evidence of
127 parentage of the alleged biological father, unless the
128 statistical probability of parentage from the genetic test
129 results equals or exceeds 95 percent. A statistical probability
130 of parentage of 95 percent or more creates a rebuttable
131 presumption, as defined in s. 90.304, that the alleged
132 biological father is the actual biological father of the child.

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

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

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

149 (b) If an objection to the genetic test results is not
150 filed, the test results may be admitted into evidence without

151 the need for predicate to be laid or third-party foundation
152 testimony to be presented.

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

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

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

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

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

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

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

176 biological father.

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

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

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

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

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

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

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

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

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

201 parental rights.

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

204 (m) If the biological mother of the child is seeking or
205 has obtained a dissolution of marriage from her husband.

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

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

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

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

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

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

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

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

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

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

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

251 legal parents agreed to a plan that is not approved by the
 252 court.

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

259 (b) The court may approve, establish, or modify a
 260 parenting plan, notwithstanding that the child is not physically
 261 present in the state, if the court finds that the child was
 262 removed from the state for the primary purpose of removing the
 263 child from the court's jurisdiction in an attempt to avoid the
 264 court's approval, creation, or modification of a parenting plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

303 61.046 Definitions.—As used in this chapter, the term:

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

314 (c) For purposes of the Uniform Child Custody Jurisdiction
 315 and Enforcement Act, part II of this chapter, a judgment or
 316 order incorporating a parenting plan under this part is a child
 317 custody determination under part II of this chapter or under s.
 318 742.092.

319 (d) For purposes of the International Child Abduction
 320 Remedies Act, 42 U.S.C. ss. 11601 et seq., and the Convention on
 321 the Civil Aspects of International Child Abduction, enacted at
 322 the Hague on October 25, 1980, rights of custody and rights of
 323 access are determined pursuant to the parenting plan under this
 324 part or under s. 742.092.

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