

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.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 558

INTRODUCER: Senator Grall

SUBJECT: Contracts for Postadoption Contact

DATE: March 11, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rao	Tuszynski	CF	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

Florida law provides children that have been adopted from the child welfare system with a process for continuing contact with their siblings, or upon agreement of the adoptive parents, with their biological parents after adoption.

SB 558 expands this process by providing an option for the adopted child, adoptive parents, and the biological parent to voluntarily enter a postadoption contract that permits continued contact between legal relatives and the adopted child until the child reaches 18 years of age. This contract may be entered into in lieu of, or in addition to the postadoption communication or contact order provided under current law.

The bill specifies requirements for the contract for postadoption contact and provides a process for the enforcement, modification, or termination of the contract. Any party to the contract may seek to enforce the contract, but only the adopted child or adoptive parents are allowed to seek modification or termination of the contract.

The bill specifies the contract is unenforceable, but not terminated, during any period of time in which the adoptive parents temporarily lose custody of the adopted child. Additionally, the contract for postadoption contact automatically terminates upon the adopted child reaching 18 years of age.

The bill provides a definition for the term legal relative.

The bill has no fiscal impact on the private or government sector. *See* Section V., Fiscal Impact Statement.

The bill provides an effective date of July 1, 2025.

II. Present Situation:

Adoptions

The Florida Adoptions Act, codified in ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system, involving the following entities:¹

- The Department of Children and Families (DCF) under Chapter 39, F.S.;
- Child-placing agencies licensed by the DCF under s. 63.202, F.S.;
- Child-caring agencies registered under s. 409.176, F.S.;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state which is licensed by the DCF to place children in Florida.

Adoption is the act of creating a legal relationship between a parent and child where one did not previously exist, declaring the child to be the legal child of the adoptive parents and entitled to all rights and privileges and subject to all the obligations of a child born to the adoptive parents.² Generally, adoptions can be referred to as “private adoptions” or “adoptions from the child welfare system.” Private adoptions begin upon a birth parent voluntarily surrendering their parental rights with the intent of placing a child in an adoptive home.³ Adoptions from the child welfare system may be sought as a permanent placement for a child that cannot reunify to his or her home due to safety concerns.⁴ Adoption is one of the legally recognized child-welfare permanency goals that may be ordered by a court for a child within the child welfare system.⁵

To free a child for adoption —both private adoptions and adoptions from the child welfare system— the legal relationship between the child and his or her current parents must be terminated in a proceeding known as a termination of parental rights.⁶ Generally, the process of a termination of parental rights includes obtaining the social and medical histories and records of the child and making a diligent search for any parent whose location is unknown.⁷ Once a court terminates parental rights, the adoptive parents can file a petition for the adoption of the child⁸ and a final home investigation can be conducted to ensure the proposed adoption is in the best interest of the minor.⁹

¹ Section 63.032(3), F.S.

² Section 63.032(2), F.S.

³ *See generally*, Section 63.032, F.S.

⁴ Section 39.811(2), F.S.; *See generally*, Parts VIII and X of ch. 39, F.S.

⁵ Section 39.01(62), F.S., defines “permanency goal” to mean the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time that another permanency goal is pursued. *See also* Section 39.621(3), F.S.

⁶ Section 39.812, F.S. governs the termination of parental rights for a case in which a minor is adopted from the child welfare system. Section 63.087, F.S. governs the termination of parental rights for a private adoption.

⁷ The Florida Bar, *Consumer Pamphlet: Adoption in Florida*, available at: <https://www.floridabar.org/public/consumer/pamphlet002/#general> (last visited 3/7/25).

⁸ Section 63.112, F.S.; In “private” adoptions the petition for termination of parental rights and the petition for adoption are often filed simultaneously as it is rarely contested, and the adoptive placement is known. In adoptions from the child welfare system, the termination of parental rights is often contested, and an adoptive placement is not always identified at the time of termination, so the petition for adoption is often filed later.

⁹ Section 63.125, F.S.

Open Adoptions

Open adoptions generally refer to ongoing contact or information sharing between birth parents, adoptive parents, and the adopted child.¹⁰ Typically, the degree of openness of the adoption varies on the wishes of the birth parents, adoptive parents, and the adopted child.

Communication between the adopted child and the birth parents can be limited to the exchange of letters and photos to as expansive as regular in-person visits.¹¹ Increased postadoption contact may be beneficial for older adopted children that had an attachment to birth relatives prior to adoption.¹² Additionally, open adoptions may offer adopted children a greater sense of identity, due to an increased opportunity to discuss their background and heritage with their birth parent.¹³ Adoptive parents may find open adoptions allow for greater transparency with adopted children, and can help provide a better understanding of the child's origins which ultimately can lead to a supportive home environment.¹⁴

Postadoption Communication and Contact

Postadoption contact agreements (PACA) are arrangements that allow contact or communication between a child, his or her adoptive family, and members of the child's birth family or other persons with whom the child has an established relationship, such as a foster parent, after the child's adoption has been finalized.¹⁵ These arrangements, sometimes referred to as cooperative adoption or open adoption agreements, can range from informal, mutual understandings between the birth and adoptive families to written, formal contracts.

These PACA have become more prevalent in recent years due to several factors, to include:¹⁶

¹⁰ American Bar Association, *The Evolution of Open Adoption: Legal Frameworks, Protocols, and Impact Analysis*, available at: https://www.americanbar.org/groups/family_law/resources/committee-articles/evolution-open-adoption-legal-frameworks-protocols-impact-analysis/?_cf_chl_rt_tk=eIPq0B8BaJ8lDwBgFB6wIpMHa15hf4JsnBGAG_dqKY4-1733223995-1.0.1.1-FX3abjF9obwMm5N0QRxEE8yKmWGs.OfoKRfJ8tu04b8#:~:text=This%20article%20examines%20the%20shift%20from%20closed%20to,parents%2C%20and%20adoptive%20parents%2C%20weighing%20advantages%20and%20challenges.

(last visited 3/7/25).

¹¹ *Id.*

¹² Child Welfare Information Gateway, *Postadoption Contact Agreements Between Birth and Adoptive Families*, available at: https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/cooperative.pdf?VersionId=_7jeA0qMdgmYy81k.6tMFikJNOmvdVt (last visited 3/7/25).

¹³ American Bar Association, *The Evolution of Open Adoption: Legal Frameworks, Protocols, and Impact Analysis*, available at: https://www.americanbar.org/groups/family_law/resources/committee-articles/evolution-open-adoption-legal-frameworks-protocols-impact-analysis/?_cf_chl_rt_tk=eIPq0B8BaJ8lDwBgFB6wIpMHa15hf4JsnBGAG_dqKY4-1733223995-1.0.1.1-FX3abjF9obwMm5N0QRxEE8yKmWGs.OfoKRfJ8tu04b8#:~:text=This%20article%20examines%20the%20shift%20from%20closed%20to,parents%2C%20and%20adoptive%20parents%2C%20weighing%20advantages%20and%20challenges.

(last visited 3/7/25).

¹⁴ *Id.*

¹⁵ Child Welfare Information Gateway. (2018). *Postadoption contact agreements between birth and adoptive families*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau, p. 1, available at:

<https://www.childwelfare.gov/resources/postadoption-contact-agreements-between-birth-and-adoptive-families/> (last visited 3/8/35).

¹⁶ *Id.*, p. 2

- Many adopted children, especially older children, have attachments to one or more birth relatives with whom ongoing contact may be desirable.
- Birth parents who participate in selecting an adoptive family may have a wide range of choices and may base their decision on the willingness of the adoptive parent(s) to allow postadoption contact.
- Contact and communication with birth relatives can be a resource for adoptive parents and adopted children for information about the child's medical, social, and cultural history.

For a PACA to be enforceable, it must be approved by the court that has jurisdiction over the adoption.¹⁷ Generally, all parties to be included in the agreement must agree in writing to all terms of the agreement prior to the adoption finalization. The court may approve the agreement only if all parties agree on its provisions, and the court finds the agreement is in the best interests of the child.¹⁸ In multiple states, the court must consider the wishes of or obtain written consent of the adoptive child if they are 12 years of age or older.¹⁹ In other states, that age is 14 years.²⁰

Florida Law on Postadoption Communication

Florida law provides a process that allows a child adopted from the child welfare system to seek continued communication with his or her siblings, or their biological parents or other specified relatives after an adoption.²¹ A child can have the court consider the appropriateness of postadoption communication if the child's parents had their parental rights terminated and whose custody has been awarded to the department pursuant to s. 39.811, and is now the subject of a petition for adoption under ch. 63, F.S.²²

This postadoption communication and contact may include, but is not limited to, visits, written correspondence, or telephone calls. In determining the appropriateness of the postadoption communication or contact, the court shall consider the following information:²³

- Any orders of the court pursuant to s. 39.811(7), F.S.
- Recommendations of the DCF, the foster parents if other than the adoptive parents, and the guardian ad litem.
- Statements of the prospective adoptive parents.
- Any other information deemed relevant and material to the court.

If postadoption communication or contact is in the best interest of the child, the court will enter an order stating the nature and frequency of the communication or contact.²⁴ This order must be included in the final adoption order, but the adoption's continuing validity is not contingent upon the postadoption communication or contact. Further, postadoption communication or contact is

¹⁷ *Id.*, p. 3

¹⁸ *Id.*

¹⁹ *Id.*; Arizona, California, Connecticut, Indiana, Louisiana, Massachusetts, Pennsylvania, Rhode Island, and Utah.

²⁰ *Id.*; Delaware, Georgia, Nebraska, New Mexico, New Hampshire, Oregon, Vermont, Virginia, and the District of Columbia.

²¹ Section 63.0427, F.S.

²² Section 63.0427(1), F.S.

²³ Section 63.0427(1), F.S.

²⁴ Section 63.0427, F.S.

not allowed to impair the ability of the adoptive parents and child from changing residence within or outside Florida.²⁵

Florida allows the adoptive parent to petition for review of a communication or contact order if the adoptive parent believes the best interests of the adopted child are being compromised.²⁶ Upon this petition, the court may order the postadoption communication or contact to be terminated or modified; however, the court is prohibited from increasing the contact between the adopted child and siblings, birth parents, or other relatives without the consent of the adoptive parents. During review of the postadoption communication or contact, the court may order the parties to engage in mediation.²⁷

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 63.0427, F.S. to authorize certain individuals to enter into a written contract for postadoption contact that permits contact between an adopted child and his or her legal relatives after an adoption is finalized.

The bill defines the term “legal relative” as a person who was related to the child biologically or through any relationship established or recognized by law, court, order, or marriage, immediately preceding the entry of an order terminating parental rights.

The bill allows the following parties to enter a written contract for postadoption contact:

- An adoptive parent;
- A biological parent;
- The adopted child, if he or she is 14 years of age or older.
 - The bill requires the adopted child to be a party to the contract if he or she is over 14 years of age and is deemed to have the capacity to enter the contract.

The contract for postadoption contact may be in lieu of, or in addition to, a postadoption communication or contact order that is ordered by the court. The parties entering into a contract for postadoption contact must do so voluntarily.

The bill allows any party to the contract for postadoption contact to file the contract with the court. The contract must be made a part of the final adoption order, but the continuing validity of the adoption is not contingent upon compliance with the terms of the contract.

The postadoption contract permits continued contact between legal relatives and the adopted child until the child reaches 18 years of age. The contract may provide for privileges relating to the adopted child such as visitation, as well as communication and contact with the child, which includes, but is not limited to:

- Written correspondence and telephone calls;
- Sharing of information about the child; and

²⁵ Section 63.0427, F.S.

²⁶ Section 63.0427(2), F.S.

²⁷ Section 63.0427(2), F.S.

- Sharing of information about biological or adoptive parents.

A provision in a contract for postadoption contact is unenforceable if the provision permits contact between an adopted child and a person that is legally restrained from contacting the child or, the provision impairs the adoptive parents' and child's ability to change residence within or outside the state.

The bill requires a contract for postadoption contact to include the following statements in at least 14-point boldface type:

- "Failure to follow the terms of this contract, or any amendment thereto, does not invalidate a final adoption order."
- "A disagreement between the parties to, or any action brought to enforce, this contract may not serve as the basis for any action or order affecting the custody of the adopted child."

The bill establishes procedures for the enforcement, modification, or termination of the contract for postadoption contact. Any party (the adoptive parent, biological parent, and adopted child) may seek the enforcement of the contract for postadoption contact. However, only the adoptive parent or adopted child may unilaterally seek to modify or terminate the contract. The bill does not allow the biological parent to unilaterally seek to modify or terminate the contract.

The bill allows the contract for postadoption contact to be modified or terminated upon the agreement of all parties to the contract and establishes a process for enforcing, modifying, or terminating a contract upon disagreement between the parties of the contract, as follows:

- **Notice to all parties to the contract:** The party that is seeking enforcement, modification, or termination must deliver by certified mail or personal service to all other parties to the contract a notice stating with reasonable particularity the requested action.
- **Response period:** Any party who opposes the action sought may, within 30 days provide a response by certified mail or personal service.
- **Written recommendation from a Psychologist or Clinical Social Worker:** If a response from a party that opposes the action sought is not received during the 30-day period, or the received response is not satisfactory, the adoptive parent must seek and obtain a written recommendation from a licensed psychologist or a licensed clinical social worker addressing whether the requested action is in the child's best interest. The psychological professional must include other recommendations regarding the child's continued contact with legal relatives. The opinion of the psychological professional must be provided to the other parties to the contract by the adoptive parents within 90 days after delivery of the initial notice of the requested action to enforce, modify, or terminate the contract.
 - The bill requires the adoptive parent to seek and obtain the recommendation from the psychological professional at his or her own expense.
- **Mediation:** If the parties are not thereafter able to reach an agreement, the parties must engage in mediation.
- **Petition for Enforcement, Modification, or Termination:** After two mediation sessions, or refusal of any party to engage in mediation, the party that initially sought enforcement, modification, or termination may petition the court for enforcement, modification, or termination of the contract for postadoption contact.

- **Court Issuance of an Enforcement, Modification, or Termination of the Contract:** The court shall primarily consider the best interest of the child in determining whether to enforce, modify, or terminate the contract. However, the court shall also consider the good faith of each party, any change in circumstances since the execution of the contract, the extent of each party's compliance with the contract, and any other evidence the court finds appropriate.
 - The burden of proof is on the party that seeks the enforcement, modification, or termination of the contract.
- **Amendment to the Final Adoption Order:** If appropriate, the court shall issue an enforcement, modification, or termination order and make the order a part of the final adoption order.

The bill provides that the contract for postadoption contact does not terminate, but is unenforceable, during any period of time in which the adoptive parents temporarily lose custody of the child.

Upon the child reaching 18 years of age, the contract for postadoption contact automatically terminates.

Section 2 of the bill provides an effective date of July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends s.63.0427 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.