

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Storms, Chair

Senator Rich, Vice Chair

MEETING DATE: Tuesday, January 31, 2012

TIME: 15 minutes after recess of session—6:00 p.m.

PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Storms, Chair; Senator Rich, Vice Chair; Senators Detert, Dockery, Gibson, and Latvala

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 990 Joyner (Similar H 851)	Natural Guardians; Revising provisions relating to the authority of natural guardians to act on behalf of their children, etc. JU 01/19/2012 Favorable CF 01/31/2012 Favorable	Favorable Yeas 6 Nays 0
2	SB 1662 Latvala (Identical H 1351, Compare H 139, S 166)	Homeless Youth; Defining the term "certified homeless youth"; providing that a minor who is a certified homeless youth or who has had the disabilities on nonage removed under specified provisions may obtain a certified copy of his or her birth certificate; providing that unaccompanied youths who are certified homeless youths 16 years of age or older shall have specified rights as long as they retain that status, etc. CF 01/31/2012 Favorable JU	Favorable Yeas 6 Nays 0
3	SB 1874 Wise (Similar CS/H 1163)	Adoption; Providing that all adoptions of minor children require the use of an adoption entity that will assume the responsibilities provided in specified provisions; revising requirements for when a minor's father must be served prior to termination of parental rights; revising language concerning applicability of notice and consent provisions in cases in which the child is conceived as a result of a violation of criminal law; specifying that it is a failure to personally appear that provides grounds for termination of parental rights in certain circumstances; restricting who may place a paid advertisement or paid listing of the person's telephone number offering certain adoption services; prohibiting the offense of adoption deception by a person who is a birth mother or a woman who holds herself out to be a birth mother, etc. CF 01/31/2012 Fav/CS JU BC	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, January 31, 2012, 15 minutes after recess of session—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1128 Oelrich (Identical H 813)	Eligibility for Temporary Cash Assistance and Food Assistance; Prohibiting an individual convicted of a felony offense from receiving temporary cash assistance or food assistance under certain conditions; providing conditions under which a person with a felony conviction may resume receiving such assistance; providing for designation of an alternative payee under certain circumstances, etc. CF 01/31/2012 Favorable CJ BC	Favorable Yeas 6 Nays 0
5	SB 320 Storms (Compare CS/CS/H 943, H 1419, S 1884)	Background Screening; Providing that mental health personnel working in a facility licensed under ch. 395, F.S., who work on an intermittent basis for less than 15 hours per week of direct, face-to-face contact with patients are exempt from the fingerprinting and screening requirements; exempting a volunteer who meets certain criteria and a client's relative or spouse from the screening requirement; requiring direct service providers working as of a certain date to be screened within a specified period; providing a phase-in for screening direct service providers; requiring that employers of direct service providers and certain other individuals be rescreened every 5 years unless fingerprints are retained electronically by the Department of Law Enforcement, etc. CF 01/31/2012 Fav/CS BC	Fav/CS Yeas 6 Nays 0
6	Other Related Meeting Documents		

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 Children, Families, and Elder Affairs Committee

BILL: SB 990

INTRODUCER: Senator Joyner

SUBJECT: Natural Guardians

DATE: January 30, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Irwin	Cibula	JU	Favorable
2.	Preston	Farmer	CF	Favorable
3.				
4.				
5.				
6.				

I. Summary:

Under s. 744.301, F.S., the mother and father of a child generally are the natural guardians of the child. The statute gives natural guardians substantial authority to act on the behalf of their minor child in matters of managing assets, transferring real or personal property, and settling of disputes when, in the aggregate, those matters do not exceed \$15,000. This bill conforms terminology used in s. 744.301, F.S., to terminology used in ch. 61, F.S. Specifically, the bill changes “mother and father” to “parents” and changes “child custody” to “parental responsibility.”

This bill amends section 744.301, Florida Statutes.

II. Present Situation:

Chapter 61, F.S., focuses predominately on issues arising from the dissolution of marriage with the purpose of “mitigat[ing] the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.”¹ In 1982, focus was shifted away from the award of custody and onto a presumption of shared parental responsibility in the best interests of the child.² Section 744.301, F.S., dealing with the authority of natural guardians, currently uses the terminology of “custody” and therefore does not reflect the current status of Florida family law.³

¹ Section 61.001(2)(c), F.S.

² 23 FLA. PRAC. *Florida Family Law* s. 9:7 (2011).

³ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: Natural Guardians Defined – Section 744.301* (2011) (on file with the Senate Committee on Judiciary).

Additionally, ch. 61, F.S., defines and uses the term “parent.” Section 744.301, F.S., currently uses the terminology “mother and father.”⁴ As a result, s. 744.301, F.S., “does not reflect the current statutory terminology as defined in the Florida Statutes and as used in family law.”⁵

III. Effect of Proposed Changes:

Under s. 744.301, F.S., the mother and father of a child generally are the natural guardians of the child. The statute gives natural guardians substantial authority to act on the behalf of their minor child in matters of managing assets, transferring real or personal property, and settling of disputes when, in the aggregate, those matters do not exceed \$15,000. This bill conforms terminology used in s. 744.301, F.S., to terminology used in ch. 61, F.S. Specifically, the bill changes “mother and father” to “parents” and changes “child custody” to “parental responsibility.”

This bill provides an effect date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Conformity in terminology should alleviate some burden on the private sector for a legal determination on the status of natural guardianship.⁶

C. Government Sector Impact:

Conformity in terminology should alleviate some burden on the need for the State Court System to determine the status of natural guardians.⁷

⁴ Section 61.13001(1)(d), F.S.

⁵ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 3, at 1.

⁶ *Id.*

⁷ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Joyner

18-00714-12

2012990__

A bill to be entitled

An act relating to natural guardians; amending s. 744.301, F.S.; revising provisions relating to the authority of natural guardians to act on behalf of their children; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 744.301, Florida Statutes, are amended to read:

744.301 Natural guardians.—

(1) The parents ~~mother and father~~ jointly are the natural guardians of their own children and of their adopted children, during minority. If one parent dies, the surviving parent remains the sole natural guardian even if he or she remarries. If the marriage between the parents is dissolved, the natural guardianship belongs to the parent to whom sole parental responsibility has been granted, or if the parents have been granted shared parental responsibility, custody of the child is awarded. If the parents are given joint custody, then both continue as natural guardians. If the marriage is dissolved and neither parent ~~the father nor the mother~~ is given parental responsibility for custody of the child, neither may shall act as natural guardian of the child. 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 ~~a court of competent jurisdiction~~ enters an order stating otherwise.

(2) Except as otherwise provided in this chapter natural

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

18-00714-12

2012990__

~~guardians are authorized, on behalf of any of their minor children, and without appointment, authority, or bond if the amounts received in the aggregate do not exceed \$15,000, natural guardians may to:~~

(a) Settle and consummate a settlement of any claim or cause of action accruing to any of their minor children for damages to the person or property of any ~~of said~~ minor children;

(b) Collect, receive, manage, and dispose of the proceeds of any ~~such~~ settlement;

(c) Collect, receive, manage, and dispose of any real or personal property distributed from an estate or trust;

(d) Collect, receive, manage, and dispose of and make elections regarding the proceeds from a life insurance policy or annuity contract payable to, or otherwise accruing to the benefit of, the child; and

(e) Collect, receive, manage, dispose of, and make elections regarding the proceeds of any benefit plan as defined in by s. 710.102, of which the minor is a beneficiary, participant, or owner,

~~without appointment, authority, or bond, when the amounts received, in the aggregate, do not exceed \$15,000.~~

Section 2. This act shall take effect July 1, 2012.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ARTHENIA L. JOYNER

Democratic Leader Pro Tempore
18th District

COMMITTEES:

Budget - Subcommittee on Criminal and Civil Justice
Appropriations, *Vice Chair*
Judiciary, *Vice Chair*
Budget
Budget - Subcommittee on Higher Education
Appropriations
Communications, Energy, and Public Utilities
Rules - Subcommittee on Ethics and Elections
Reapportionment
Transportation

SELECT COMMITTEE:

Protecting Florida's Children, *Vice Chair*

JOINT COMMITTEE:

Legislative Auditing Committee

January 19, 2012

The Honorable Rhonda Storms, Chairwoman
Senate Committee on Children, Families, & Elder Affairs
520 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

RECEIVED

JAN 18 2012

Senate Committee
Children and Families

Dear Madame Chairwoman:

This is to request that Senate Bill 990 related to Natural Guardians be placed on the agenda for the Committee on Children, Families, & Elder Affairs. The bill was passed today by the Committee on Judiciary. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in black ink that reads "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 18

ALJ/rr

REPLY TO:

- 508 W Dr. Martin Luther King Jr. Blvd, Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5059

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

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 Children, Families, and Elder Affairs Committee

BILL: SB 1662

INTRODUCER: Senator Latvala

SUBJECT: Homeless Youth

DATE: January 30, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill contains a number of provisions related to homeless children, including the following:

- Creates a definition for the term “certified homeless youth,” that includes unaccompanied youth, in chapter 382, F.S., and provides the criteria for that certification;
- Provides the authority for certified homeless youth or a minor, who has had the disabilities of nonage removed pursuant to ss. 743.01 and 743.015, F.S., to obtain his or her birth certificate;
- Provides that an unaccompanied youth as defined in 42 U.S.C. s. 11434a, who is also a certified homeless youth, and is 16 years of age or older has the same rights afforded to them as a minor who has had disabilities of nonage removed pursuant to s. 743.015, F.S.; and
- Provides that an unaccompanied youth who has had the disabilities of nonage removed may not be required to have a parent or legal guardian’s consent for any purpose as long as he or she meets the criteria of those definitions.

The bill substantially amends 382.002, 382.0085, and 382.025 and creates s. 743.067 of the Florida Statutes.

II. Present Situation:

Background

Homeless Children

Although the causes for homelessness among children vary, the underlying themes among these causes reveal a strong link between homelessness and broader social issues including:

- **Family Breakdown.** The same factors that contribute to adult homelessness such as poverty, lack of affordable housing, low education levels, unemployment, mental health, and substance abuse issues can also play a role in the occurrence and duration of a child's homelessness. Beyond those factors, the phenomenon of child homelessness is largely a reflection of family dysfunction and breakdown, specifically familial conflict, abuse, and disruption. Children typically enter a state of homelessness as a result of:
 - Running away from home;
 - Being locked out or abandoned by their parents or guardians; or
 - Running or being emancipated or discharged from institutional or other state care.^{1,2}
- **Systems Failure.** In addition, many children become homeless due to systems failure of mainstream programs like child welfare, juvenile corrections, and mental health programs. Every year between 20,000 and 25,000 children ages 16 and older transition from foster care to legal emancipation, or "age out" of the system. They enter into society with few resources and numerous challenges. As a result, former foster care children are disproportionately represented in the homeless population. Twenty-five percent of former foster children nationwide reported that they had been homeless at least one night within two-and a-half to four years after exiting foster care.³

Many children encounter the juvenile justice system while homeless. Without a home, family support, or other resources, homeless children are often locked up because they are without supervision. Homeless children are socially marginalized and often arrested for "status" offenses—an action that is only illegal when performed by minors, like running away or breaking curfew. For children who are released from juvenile corrections facilities, reentry is often difficult because they lack the familial support systems and opportunities for work and housing. Additionally, homeless children are more likely than the general child population to become involved in the juvenile justice system.⁴

¹ *Fundamental Issues to Prevent and End Youth Homelessness*. Youth Homelessness Series, Brief No. 1. National Alliance to End Homelessness. May, 2006. Retrieved January 25, 2012, from <http://www.endhomelessness.org/content/general/detail/1058>.

² Although family conflict also plays a part in adult homelessness, the nexus is more critical for youth since they are, by virtue of their developmental stage in life, still largely financially, emotionally, and, depending on their age, legally dependent upon their families.

³ *Fundamental Issues to Prevent and End Youth Homelessness*. Youth Homelessness Series, Brief No. 1. National Alliance to End Homelessness. May, 2006. Retrieved January 25, 2012, from <http://www.endhomelessness.org/content/general/detail/1058>.

⁴ *Id.*

According to the National Alliance to End Homelessness the prevalence of child homelessness is difficult to measure; researchers estimate that about 1.6 million children, aged 13-17, are homeless in the U.S.⁵ Florida has the third largest homeless population in the country, with roughly 60,000 people facing homelessness daily.⁶ During the 2010-2011 school year 56,680 school-aged children were identified as homeless in the state.⁷ Of those, 6,503 were categorized as unaccompanied.⁸

McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act (act)⁹ was the first significant federal legislative response to homelessness, and was passed and signed into law by President Ronald Reagan in 1987. The act has been reauthorized several times subsequently. The act originally consisted of 15 programs providing a range of services to the homeless, including emergency shelter, transitional housing, job training, primary health care, education, and some permanent housing. The act contains nine titles, of which Title VII authorizes four programs, including the Adult Education for the Homeless and the Education of Homeless Children and Youth Programs administered by the U.S. Department of Education.¹⁰

Definition of Homeless Children and Youth

Federal law provides a definition for the term “homeless children and youths.” The term means:¹¹ individuals who lack a fixed, regular, and adequate nighttime residence. The term also includes:

- Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
- Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- Migratory children who are living in circumstances described above.

The term “unaccompanied youth” includes a youth not in the physical custody of a parent or guardian.¹²

⁵ *The Heterogeneity of Homeless Youth in America: Examining Typologies*. National Alliance to End Homelessness. September 2011. Retrieved January 26, 2012, from <http://www.endhomelessness.org/content/article/detail/4247/>.

⁶ Florida Department of Children and Families. *Council on Homelessness Annual Report 2011*. Retrieved January 25, 2012, from <http://www.dcf.state.fl.us/programs/homelessness/council/index.shtml>.

⁷ Department of Education. Bureau Of Federal Educational Programs. *2010-2011 Final Survey Homeless Counts*. As of September 26, 2011. Retrieved January 27, 2012, from <http://www.fldoe.org/bsa/title1/pdf/1011HomelessStudentsCount.pdf>.

⁸ *Id.*

⁹ Pub. L. 100-77, July 22, 1987, 101 Stat. 482, 42 U.S.C. § 11301 et seq.

¹⁰ *Id.*

¹¹ 42 U.S.C. § 11434a.

¹² *Id.*

Florida law provides an identical definition for the term “children and youths who are experiencing homelessness.”¹³

School District Homeless Liaison

The reauthorization of the McKinney-Vento Act requires school districts to designate a liaison for homeless children and youth.¹⁴ The Florida Department of Education (DOE) has established at least one “school district homeless liaison” for each of the 67 counties.¹⁵ The liaison must ensure:¹⁶

- Homeless children and youth, including unaccompanied youth, are identified by school personnel and through coordinated activities with other entities and agencies;
- Homeless children and youth enroll in, and have a full and equal opportunity to succeed in, schools of that local education agency (LEA);
- Homeless families, children, and youth receive educational services for which such families, children, and youth are eligible, including Head Start, Even Start, and other preschool programs administered by the LEA, and referrals to health care services, dental services, mental health services, and other appropriate services;
- The parents or guardians of homeless students are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;
- Public notice of the educational rights of homeless children and youth is disseminated where such children and youth receive services under this Act, such as schools, family shelters, and soup kitchens;
- Enrollment disputes are mediated;
- The parents or guardians of homeless students, or any unaccompanied youth, are fully informed of all transportation services, including transportation to the school of origin, and are assisted in accessing transportation to the school of origin or the school which serves the location where the students currently reside.

The local homeless liaison is also required to coordinate and collaborate with the state Homeless Education Coordinator and community and school personnel responsible for providing education and related services to homeless students.

¹³ s. 1003.01(12), F.S.

¹⁴ Florida Department of Education. Retrieved January 27, 2012, from http://www.fldoe.org/bsa/title1/pdf/homeless_tap_08_23_051.pdf.

¹⁵ Florida Department of Education, District Liaison List. Retrieved January 28, 2012, from <https://app1.fldoe.org/flbpso/nclbchoice/bpsDirectory/directory.aspx>.

¹⁶ Florida Department of Education. *Technical Assistance Paper. Coordination of Title I, Part A Improving Basic Programs Operated by Local Educational Agencies, and Title X, Part C, McKinney-Vento Homeless Education Assistance Improvements Act of 2001 Education for Homeless Children and Youth Program*. December 15, 2009. Retrieved January 28, 2012, from <http://info.fldoe.org/docushare/dsweb/Get/Document-5625/dps-2009-169.pdf>.

Emergency Shelter Programs funded by U.S. Department of Housing and Urban Development

The emergency shelter programs funded by the Department of Housing and Urban Development are designed as the first step in the Continuum of Care (CoC).¹⁷ The Emergency Shelter Grants Program provides funds for emergency shelters as immediate alternatives to the street and transitional housing that helps people reach independent living. States use grant funds to rehabilitate and operate these facilities, provide essential social services, and prevent homelessness.¹⁸ The providers of service must document in their files that the child being served meets the federal definition of a homeless person.¹⁹

Runaway or Homeless Basic Youth Centers and Transitional Living Programs funded by U.S. Health and Human Services

The Basic Youth Center Programs work to establish or strengthen community-based programs that meet the immediate needs of runaway and homeless youth and their families. The programs provide youth up to age 18 with emergency shelter, food, clothing, counseling and referrals for health care. Basic centers seek to reunite young people with their families, whenever possible, or to locate appropriate alternative placements. The providers of service must maintain individual case files on the youth that are in the program.²⁰

The Transitional Living Programs provide homeless youth with stable, safe living accommodations for up to 18 months. The programs provide services to help young people develop skills necessary to move to independence and life as healthy, productive adults. These services are provided through more than 191 community-based residential centers. The program also helps homeless youths improve basic life and interpersonal skills, provides educational opportunities, assists with job preparation and attainment, and ensures that physical and mental health care needs are met. The providers of service must maintain individual case files on the youth that are in the program.²¹

¹⁷ According to HUD, a CoC is “a community plan to organize and deliver housing and services to meet the specific needs of people who are homeless as they move to stable housing and maximize self-sufficiency. It includes action steps to end homelessness and prevent a return to homelessness.” HUD identifies four necessary parts of a continuum:

Outreach, intake, and assessment in order to identify service and housing needs and provide a link to the appropriate level of both; Emergency shelter to provide an immediate and safe alternative to sleeping on the streets, especially for homeless families with children; Transitional housing with supportive services to allow for the development of skills that will be needed once permanently housed; and Permanent and permanent supportive housing to provide individuals and families with an affordable place to live with services if needed. Retrieved January 29, 2012, from <http://www.endhomelessness.org/content/article/detail/1744>.

¹⁸ U.S. Department of Housing and Homeless Development, Homelessness Resource Exchange. Retrieved January 28, 2012, from <http://www.hudhre.info/index.cfm?do=viewEsgProgram>.

¹⁹ U.S. Department of Housing and Homeless Development, Emergency Shelter Grant Desk Guide, Program Requirements and Responsibilities. Retrieved January 28, 2012, from <http://www.hudhre.info/index.cfm?do=viewEsgDeskguideSec4#4-4>.

²⁰ U.S. Department of Health and Human Services, Administration for Children and Families, Fact Sheet Basic Center Program. Retrieved January 28, 2012, from <http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm>.

²¹ Transitional Living Program for Homeless Youth. Retrieved January 28, 2012, from <http://www.benefits.gov/benefits/benefit-details/619>. Also see U.S. Department of Health and Human Services, Administration for Children and Families, Fact Sheet Transitional Program. <http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm>.

Birth Certificates

The Florida Department of Health (DOH), Office of Vital Statistics, maintains all vital records for the state. Under current law, homeless children are not specifically given the ability to obtain their birth certificate. Florida law provides that certified copies of the original birth certificate or a new or amended certificate, or affidavits thereof, are confidential and exempt from the provisions of s. 119.07(1) and, upon receipt of a request and payment of the fee prescribed in s. 382.0255, shall be issued only as authorized by the department and in the form prescribed by the department, and only:

- To the registrant, if of legal age;
- To the registrant's parent or guardian or other legal representative;
- Upon receipt of the registrant's death certificate, to the registrant's spouse or to the registrant's child, grandchild, or sibling, if of legal age, or to the legal representative of any of such persons;
- To any person if the birth record is over 100 years old and not under seal pursuant to court order;
- To a law enforcement agency for official purposes;
- To any agency of the state or the United States for official purposes upon approval of the department; or
- Upon order of any court of competent jurisdiction.²²

Therefore, homeless children not of legal age and without a parent, guardian or other legal representative are not able to obtain their birth certificate.

Disabilities of Nonage – Emancipation

All states have laws dealing with the "emancipation" of minors, that is, laws that specify when and under what conditions children become independent of their parents for important legal purposes. Approximately half of the states regulate emancipation by statutes specifically designed for that purpose. These statutes may specify the conditions required or the procedures for seeking emancipation. Statutes vary considerably from state to state, but under common law most states allow for the possibility of court-reviewed emancipation. No fixed age of emancipation exists, yet a minor is presumed to become emancipated upon reaching the age of majority. In most states, the age of majority is 18.²³

Emancipation is the removal of disability of nonage. In other words, emancipation is the act by which a person gains all the rights and responsibilities of an adult. An emancipated minor has the legal capacity to act as an adult, be in control of his or her affairs and free of the legal control and custody of his or her parents. Emancipated minors lose the benefits of their parents providing for them and the protection of the Department of Children and Family Services.²⁴

²² s. 382.025, F.S.

²³ Cornell University of Law. Legal Information Institute, *Emancipation of Minors*. Retrieved January 29, 2012, from http://www.law.cornell.edu/wex/emancipation_of_minors.

²⁴ Emancipation in Florida. Retrieved January 29, 2012, from [http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA\[1\].pdf](http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA[1].pdf).

In Florida, the disability of nonage of a minor who is married or has been married or subsequently becomes married, including one whose marriage is dissolved, or who is widowed, or widowed, is removed. The minor may assume the management of his or her estate, contract and be contracted with, sue and be sued, and perform all acts that he or she could do if not a minor.²⁵

A circuit court has jurisdiction to remove the disabilities of nonage of a minor age 16 or older residing in Florida upon a petition filed by the minor's natural or legal guardian or, if there is none, by a guardian ad litem. The petition shall contain the following information:²⁶

- The name, address, residence, and date of birth of the minor;
- The name, address, and current location of each of the minor's parents, if known;
- The name, date of birth, custody, and location of any children born to the minor;
- A statement of the minor's character, habits, education, income, and mental capacity for business, and an explanation of how the needs of the minor with respect to food, shelter, clothing, medical care, and other necessities will be met;
- Whether the minor is a party to or the subject of a pending judicial proceeding in this state or any other jurisdiction, or the subject of a judicial order of any description issued in connection with such pending judicial proceeding; and
- A statement of the reason why the court should remove the disabilities of nonage.

In addition, the law provides:

- If the petition is filed by the natural or legal guardian, the court must appoint an attorney ad litem for the minor child, and the minor child shall be brought before the court to determine if the interest of the minor will be fully protected by the removal of disabilities of nonage;
- If the petition is filed by the guardian ad litem or next friend, service of process must be perfected on the natural parents;
- If both parents are not jointly petitioning the court for the removal of the disabilities of nonage of the minor, service of process must be made upon the nonpetitioning parent;²⁷
- The court shall consider the petition and receive such evidence as it deems necessary to rule on the petition;
- If the court determines that removal of the disabilities of nonage is in the minor's best interest, it shall enter an order to that effect. An order removing the disabilities of nonage shall have the effect of giving the minor the status of an adult for purposes of all criminal and civil laws of the state, and shall authorize the minor thereafter to exercise all of the rights and responsibilities of persons who are 18 years of age or older; and
- The judgment shall be recorded in the county in which the minor resides, and a certified copy shall be received as evidence of the removal of disabilities of nonage for all matters in all courts.²⁸

²⁵ s. 743.01, F.S.

²⁶ s. 743.015, F.S.

²⁷ Constructive service of process may be used, provided the petitioning parent makes an actual, diligent search to discover the location of, and provide notice to, the nonpetitioning parent.

²⁸ s. 743.015, F.S.

III. Effect of Proposed Changes:

The bill contains a number of provisions relating to homeless children, including:

- Creating a definition of “certified homeless youth” in chapter 382, F.S., that means a minor who is a homeless child or youth, or unaccompanied youth, as defined in federal law and has been certified as homeless or unaccompanied by:
 - A school district homeless liaison;
 - The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director’s designee; or
 - The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director’s designee.²⁹
- Providing authorization for DOH to issue a birth certificate to a certified homeless youth or a minor who has had the disabilities of nonage removed; and
- Providing that an unaccompanied youth as defined in 42 U.S.C. s. 11434a, who is also a certified homeless youth, and is 16 years of age or older has the same rights as a minor who has had the disabilities of nonage removed under s.743.015, F.S. and may not be required to have a parent or guardian’s consent for any purpose.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²⁹ These three criteria are the same as used for other purposes, such as determining dependency on the Free Application for Federal Student Aid (FAFSA). Retrieved January 27, 2012, from <http://www.fafsaonline.com/fafsa-form/dependent-status-for-fafsa-5.php>.

C. **Government Sector Impact:**

None.

VI. Technical Deficiencies:

The provisions on lines 87-94 do not specify who will petition the court to have the disabilities of nonage removed. Since s. 743.015, F.S. requires the petition be filed by the minor's natural or legal guardian or, if there is none, a guardian ad litem, it is unclear who would be available to petition on behalf of an unaccompanied youth.

VII. Related Issues:

If the purpose of the bill is to allow homeless children who meet certain criteria to obtain a birth certificate, then providing for the removal of the disabilities of nonage may be unnecessary.

There are a variety of reasons that a minor would choose to act as an adult. One of the most important reasons is that a minor cannot enter into a contract. Contracts allow individuals to seek loans, receive credit, enter into lease agreements, and enter employment contracts. The ability to enter into a contract may also present an opportunity for the minor to agree to obligations that he or she may be unable to fulfill.

Current provisions in chapter 743 to remove the disabilities of nonage are more narrowly constructed than the language proposed in the bill and build in a variety of protections for the minors involved. Children in foster care, for example, may have the disabilities of nonage removed only for certain specific purposes, such as executing agreements for depository financial services,³⁰ executing contracts for a residential lease,³¹ and executing agreements for utility services.³²

The DOH may need to amend current rules in order to provide a process for certified homeless youth or minors who have had disabilities of nonage removed to obtain his or her birth certificate.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**

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

None.

B. **Amendments:**

None.

³⁰ s. 743.044, F.S.

³¹ s. 743.045, F.S.

³² s. 743.046, F.S.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Latvala

16-01165B-12

20121662__

A bill to be entitled

An act relating to homeless youth; amending s. 382.002, F.S.; defining the term "certified homeless youth"; conforming a cross-reference; amending s. 382.0085, F.S.; conforming cross-references; amending s. 382.025, F.S.; providing that a minor who is a certified homeless youth or who has had the disabilities on nonage removed under specified provisions may obtain a certified copy of his or her birth certificate; creating s. 743.067, F.S.; providing that unaccompanied youths who are certified homeless youths 16 years of age or older shall have specified rights as long as they retain that status; providing an effective date.

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

Section 1. Subsections (3) through (16) of section 382.002, Florida Statutes, are renumbered as subsections (4) through (17), respectively, a new subsection (3) is added to that section, and present subsections (7) and (8) of that section are amended, to read:

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

(3) "Certified homeless youth" means a minor who is a homeless child or youth, including an unaccompanied youth, as those terms are defined in 42 U.S.C. s. 11434a, and who has been certified as homeless or unaccompanied by:

(a) A school district homeless liaison;

(b) The director of an emergency shelter program funded by

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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the United States Department of Housing and Urban Development, or the director's designee; or

(c) The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director's designee.

~~(8)(7)~~ "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or a fetus as described in subsection ~~(7) (6)~~. In the case of cremation, dispersion of ashes or cremation residue is considered to occur after final disposition; the cremation itself is considered final disposition.

~~(9)(8)~~ "Funeral director" means a licensed funeral director or direct disposer licensed pursuant to chapter 497 or other person who first assumes custody of or effects the final disposition of a dead body or a fetus as described in subsection ~~(7) (6)~~.

Section 2. Subsection (9) of section 382.0085, Florida Statutes, is amended to read:

382.0085 Stillbirth registration.—

(9) This section or s. ~~382.002(15) 382.002(14)~~ may not be used to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a stillbirth.

Section 3. Paragraph (a) of subsection (1) of section 382.025, Florida Statutes, is amended to read:

382.025 Certified copies of vital records; confidentiality; research.—

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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59 (1) BIRTH RECORDS.—Except for birth records over 100 years
60 old which are not under seal pursuant to court order, all birth
61 records of this state shall be confidential and are exempt from
62 the provisions of s. 119.07(1).

63 (a) Certified copies of the original birth certificate or a
64 new or amended certificate, or affidavits thereof, are
65 confidential and exempt from the provisions of s. 119.07(1) and,
66 upon receipt of a request and payment of the fee prescribed in
67 s. 382.0255, shall be issued only as authorized by the
68 department and in the form prescribed by the department, and
69 only:

70 1. To the registrant, if the registrant is of legal age, is
71 a certified homeless youth, or is a minor who has had the
72 disabilities of nonage removed under s. 743.01 or s. 743.015;

73 2. To the registrant's parent or guardian or other legal
74 representative;

75 3. Upon receipt of the registrant's death certificate, to
76 the registrant's spouse or to the registrant's child,
77 grandchild, or sibling, if of legal age, or to the legal
78 representative of any of such persons;

79 4. To any person if the birth record is over 100 years old
80 and not under seal pursuant to court order;

81 5. To a law enforcement agency for official purposes;

82 6. To any agency of the state or the United States for
83 official purposes upon approval of the department; or

84 7. Upon order of any court of competent jurisdiction.

85 Section 4. Section 743.067, Florida Statutes, is created to
86 read:

87 743.067 Unaccompanied youths.—An unaccompanied youth, as

16-01165B-12

20121662

88 defined in 42 U.S.C. s. 11434a, who is also a certified homeless
89 youth, as defined in s. 382.002, and who is 16 years of age or
90 older shall have the same rights as a minor who has had the
91 disabilities of nonage removed under s. 743.015 and may not be
92 required to have a parent or guardian's consent for any purpose
93 for as long as he or she meets the criteria of those
94 definitions.

95 Section 5. This act shall take effect upon becoming a law.



Unaccompanied Youth

ARMWOOD HIGH SCHOOL

Stephanie Walker, Tori Wilson, Jessica Ireland, Tiara Brooks,
Michael Himes

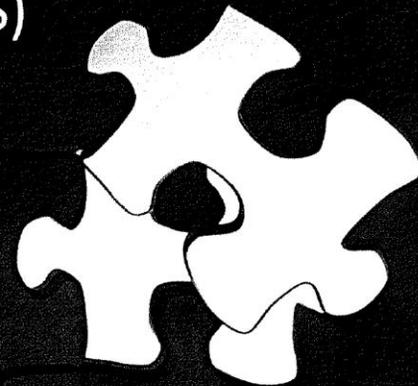
Who are they?

Unaccompanied Youth are youth from the ages 16-22 who are not in the physical custody of their parents/guardians, according to federal terms.



How does this happen?

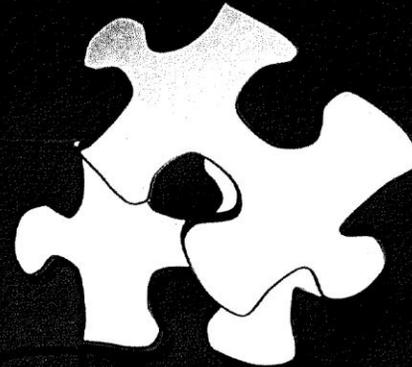
- Unaccompanied Youth are not simply runaways, they are truly the kids without guardianship, and must be certified as homeless or unaccompanied by:
 - A School District Liaison
 - Federal Program Director (HUD, HHS)



Just the Facts

- According to the Florida Department of Education, there are approximately 6,500 reported Unaccompanied Youth currently in the State of Florida.

“These are truly the kids who are falling through the cracks in our system.”



What are their roadblocks?

Common problems unaccompanied youth face:

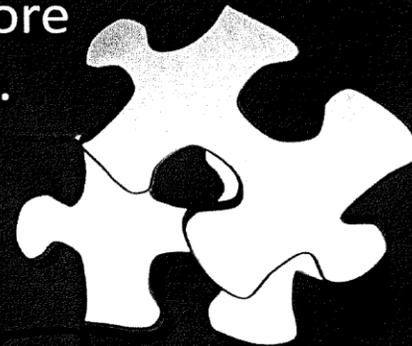
- Forms of parental consent
- Participation in certain school activities
- Requesting school records and official documents
- Access to prescribed medicines
- Signing in or out of school
- Birth Certificate



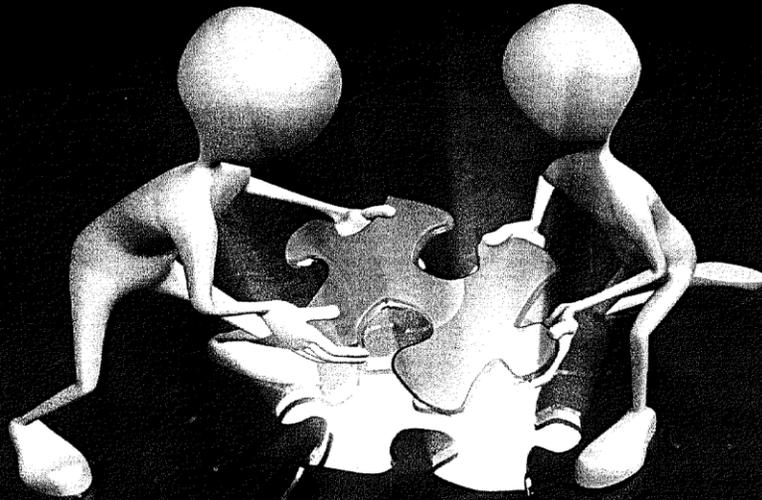
How can we help?

Response to needs:

- What we hope to accomplish through this bill is to grant our peers the rights of an emancipated youth.
- To prevent any kind of abuse of this statute, these youth must appear before district court to receive emancipation.
- There would be no fiscal according to staff analysis.



Passing this bill is the first step in helping our classmates put their lives back together.



THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-31-12

Meeting Date

Topic Homeless Youth
Name Tony Pirotta
Job Title Teacher

Bill Number SB 1662
(if applicable)
Amendment Barcode _____
(if applicable)

Address 544 Oak Creek Dr
Street
Brandon, FL 33511
City State Zip

Phone 813-662-0103
E-mail T.Pirotta@msn.com

Speaking: For Against Information

Representing Armwood High School

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/31/12

Meeting Date

Topic Unaccompanied Youth
Name Michael Himes
Job Title _____

Bill Number 1662
(if applicable)
Amendment Barcode _____
(if applicable)

Address 6603 Plover Ct.
Street
Seffner FL 33584
City State Zip

Phone (813) 685-9412
E-mail _____

Speaking: For Against Information

Representing ~~Seffner~~ Armwood High School

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-31-12
Meeting Date

Topic Homeless Youth
Name Jessica Ireland
Job Title _____

Bill Number 1662 (if applicable)
Amendment Barcode _____ (if applicable)

Address 12306 Langshaw Drive
Street
Thonotsassa FL 33512
City State Zip

Phone (813) 334-3342
E-mail ja12294@yahoo.com

Speaking: For Against Information

Representing Arnwood High School

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/31/12
Meeting Date

Topic Unaccompanied Youth
Name Tori A. Wilson
Job Title _____

Bill Number 1662 (if applicable)
Amendment Barcode _____ (if applicable)

Address 1514 Creekbend Drive
Street
Brandon FL 33510
City State Zip

Phone 813-957-5974
E-mail toricann21@hotmail.com

Speaking: For Against Information

Representing Arnwood High School

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/31/12
Meeting Date

Topic Unaccompanied Youth

Bill Number 1662
(if applicable)

Name Tiara Brooks

Amendment Barcode _____
(if applicable)

Job Title High School Students

Address 10810 Bloomfield Ridge Place
Street

Phone (813) 630-9426

Seffner FL 33584
City State Zip

E-mail brooks.tiara@gmail.com

Speaking: For Against Information

Representing Armwood High School

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/31/12
Meeting Date

Topic _____

Bill Number 1662
(if applicable)

Name Stephanie Walker

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1631 palm leaf drive
Street

Phone 813-520-3897

Brandon FL 33510
City State Zip

E-mail SSwalker08@yahoo.com

Speaking: For Against Information

Representing Armwood High School

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/31/12

Meeting Date

Topic Homeless Youth Bill Number 1662
Name FELY CURVA Amendment Barcode _____
Job Title Partner, Curva & Associates LLC
Address 1212 Piedmont Dr. Phone (850) 508-2257
Tallahassee FL 32312 E-mail curva@mindspring.com
City State Zip

Speaking: For Against Information

Representing FL. Coalition for the Homeless

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01/31/2012

Meeting Date

Topic HOMELESS YOUTH Bill Number 1662
Name MIKE Mc CARRON Amendment Barcode _____
Job Title EXEC. DIR.
Address 201 West Park Ave Phone 205-6820
Tallahassee FL 32312 E-mail mccarron@flacatholic.org
City State Zip

Speaking: For Against Information

Representing FLORIDA CATHOLIC CONFERENCE

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/31/2012

Meeting Date

Topic _____ Bill Number 1662
Name BRIAN PITTS Amendment Barcode _____
Job Title TRUSTEE
Address 1119 NEWTON AVENUE SOUTH Phone 727/897-9291
Street
SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City State Zip
Speaking: For Against Information
Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-31-12

Meeting Date

Topic Homeless Youth Bill Number 1662
Name Connie Milito Amendment Barcode _____
Job Title Chief Gov Relations Officer
Address 901 Kennedy Blvd Phone 813-624-5008
Street
Tampa FL 33601 E-mail cmilito@sdhc.us
City State Zip
Speaking: For Against Information
Representing Hillsborough City public Schools

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Children, Families, and Elder Affairs Committee

BILL: CS/SB 1874

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Wise

SUBJECT: Adoption

DATE: February 1, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	Fav/CS
2.			JU	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill substantially amends the Florida Adoption Act. Specifically, the bill:

- Removes legislative intent that all placements of minors for adoption be reported to the Department of Children and Families (DCF or department);
- Amends certain definitions in ch. 63, F.S.;
- Clarifies the duties and obligations of adoption entities (rather than licensed child-placing agencies) prior to and after taking custody of a surrendered newborn;
- Requires that a newborn who tests positive for illicit or prescription drugs or alcohol, but who shows no other signs of child abuse or neglect, be placed in the custody of an adoption entity;
- Prohibits DCF from being involved with a properly surrendered newborn who tests positive for illicit or prescription drugs or alcohol, except when reasonable efforts to contact an adoption entity to take custody of the child fail;
- Prohibits a court from ordering scientific testing until the court determines that a previously entered judgment terminating parental rights is voidable;
- Requires a child to have lived with a grandparent for six continuous months in order for the grandparent to receive notice of a hearing on the petition to terminate parental rights;

- Allows for judicial enforcement of a contact agreement between the prospective adoptive parents and the adoptive child's birth parent, other relative, or previous foster parent in certain circumstances;
- Prohibits an attorney from removing a child, who was voluntarily surrendered to the attorney, from a prospective adoptive home without a court order unless the child is in danger of imminent harm;
- Revises the obligations and responsibilities of an unmarried biological father seeking to assert his parental rights with regard to his child;
- Outlines the duties of the court when considering a petition for termination of parental rights and, when the petition has been denied, providing for placement of the child;
- Provides criteria a court must consider when determining reasonable attorney fees;
- Places restrictions on advertisements offering a minor for adoption or seeking a minor for adoption and establishes criminal penalties for violations of the advertising restrictions;
- Creates the crime "adoption deception";
- Clarifies the rights and obligations of a volunteer mother involved in a preplanned adoption agreement; and
- Makes technical and conforming changes.

This bill substantially amends the following sections of the Florida Statutes: 63.022, 63.032, 63.037, 63.039, 63.0423, 63.0425, 63.0427, 63.052, 63.053, 63.054, 63.062, 63.063, 63.082, 63.087, 63.088, 63.089, 63.092, 63.097, 63.152, 63.162, 63.167, 63.212, 63.213, 63.222, and 63.2325.

II. Present Situation:

Adoption is the "act of creating the legal relationship between parent and child where it did not exist."¹ The Legislature enacted the Florida Adoption Act in 1973² to "protect and promote the well-being of persons being adopted and their birth and adoptive parents and to provide to all children . . . a permanent family life."³ The Florida Adoption Act applies to public and private adoptions involving the following entities: Department of Children and Family Services (DCF or department); child-placing agencies licensed by DCF under s. 63.202, F.S.; child-caring agencies registered under s. 409.176, F.S.; an attorney licensed to practice law in Florida; or a child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

In fiscal year 2010-2011, over 3,000 children were adopted in Florida.⁴ Over the last five years, nearly 17,000 children have been adopted out of Florida's child welfare system, while setting a record for the number of children adopted in two of the last five years.⁵ As a result of the improvement of adoption performance in the state, Florida has collected more than \$18 million in federal adoption incentive awards since 2009.⁶ Only Texas and Arizona have received more in

¹ Section 63.032(2), F.S.

² Chapter 73-159, s. 2, Laws of Fla. Chapter 63, F.S., the Florida Adoption Act, governs all Florida adoptions.

³ Section 63.022(3), F.S.

⁴ Office of Adoption and Child Protection, Executive Office of the Governor, *Annual Report 2011*, at 59 (Dec. 2011), available at http://www.flgov.com/wp-content/uploads/childadvocacy/oacp2011_annual_report.pdf (last visited Jan. 29, 2012).

⁵ *Id.* at 6.

⁶ *Id.*

adoption incentive awards during the same time period.⁷ From July 2010 to June 2011, over 51 percent of the children discharged from foster care to a finalized adoption were discharged in less than 24 months from the date of the child's latest removal from the home.⁸

Termination of Parental Rights

The laws relating to protection of children who are abused, neglected, or abandoned are found primarily in ch. 39, F.S. When a child is adjudicated dependent, DCF must ensure that the child has a plan which will lead to a permanent living arrangement.⁹ Chapter 39, F.S., provides that time is of the essence for permanency of children in the dependency system.¹⁰ A permanency hearing must be held no later than 12 months after the date the child was removed from the home or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required.¹¹ The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the goal is in the best interests of the child.¹² Available permanency goals for children, in order of preference, are:

- Reunification;
- Adoption, if a petition for termination of parental rights (TPR) has been or will be filed;
- Permanent guardianship of a dependent child;
- Permanent placement with a fit and willing relative; or
- Placement in another planned permanent living arrangement.¹³

If a child in foster care will not be reunited with a parent, the department will initiate a TPR proceeding.¹⁴ In making the determination to terminate a parent's rights, current law prohibits a court from comparing the attributes of the parent(s) and anyone providing a present or potential placement for the child. If the court determines that it is in the manifest best interests of the child for the parent's rights to be terminated, then the TPR order is entered and the child is placed in the custody of DCF for permanent placement. The Legislature has determined that adoption is the primary permanency option.¹⁵

A birth parent may decide, as the dependency process unfolds, but prior to final TPR, to work with a private adoption entity¹⁶ to find a permanent home for the child. The Legislature supports cooperation between private adoption entities and DCF to find permanent placement options for children in the care of DCF when the birth parents wish to participate in a private adoption plan with a qualified family.¹⁷ A private adoption entity may intervene in dependency proceedings when it obtains consents to adopt from the parents of the minor child in the custody of DCF prior

⁷ *Id.* at 57.

⁸ *Id.* at 55. Of those children, the median length of stay in foster care was 20 months. *Id.* at 56.

⁹ See part VII, ch. 39, F.S.

¹⁰ Section 39.621(1), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ Section 39.621(2), F.S.

¹⁴ See part X, ch. 39, F.S.

¹⁵ Section 39.621(6), F.S.

¹⁶ An "adoption entity" is defined as DCF, an agency, a registered child-caring agency, an intermediary (attorney), or a child-placing agency licensed in another state. Section 63.032(3), F.S.

¹⁷ Section 63.022(5), F.S.

to the termination of their parental rights.¹⁸ The adoption entity must provide the court with a preliminary home study of the prospective adoptive parents, and the court must then decide whether the prospective adoptive parents are properly qualified to adopt the child and whether the adoption is in the child's best interests.¹⁹

Preliminary Home Study and Final Home Investigation

A preliminary home study to determine the suitability of the prospective adoptive parents is required prior to placing the minor into an intended home, and may be completed prior to identifying a prospective adoptive minor.²⁰ The preliminary home study must be performed by a licensed child-placing agency, a registered child-caring agency, a licensed professional, or an agency described in s. 61.20(2), F.S.²¹ The preliminary home study must include, at a minimum, the following:

- Interview with the prospective adoptive parents;
- Records checks of DCF's central abuse hotline;
- Criminal history check through the Florida Department of Law Enforcement;
- Assessment of the physical environment of the home;
- Determination of the financial security of the prospective adoptive parents;
- Proof of adoptive parent counseling and education;
- Proof that information on adoption and the adoption process has been provided;
- Proof that information on support services available has been provided; and
- Copy of each signed acknowledgment of receipt of adoption entity disclosure forms.²²

A favorable home study is valid for one year after the date of its completion.²³ Following a favorable preliminary home study, a minor may be placed in the home pending entry of the judgment of adoption by the court. If the home study is unfavorable, placement may not occur and the adoption entity, within 20 days of receiving the written recommendation, may petition the court to determine the suitability of adoption.²⁴

In order to ascertain whether the adoptive home is a suitable home for the minor and is in the best interests of the child, a final home investigation must be conducted before the adoption is concluded. The investigation is conducted in the same manner as the preliminary home study.²⁵ Within 90 days after placement of the child, a written report of the final home investigation must be filed with the court and provided to the petitioner.²⁶ The report must contain an evaluation of

¹⁸ Section 63.082(6)(b), F.S.

¹⁹ See s. 63.082(6), F.S.

²⁰ Section 63.092(3), F.S. Unless good cause is shown, a home study is not required for adult adoptions or when the petitioner for adoption is a stepparent or a relative.

²¹ *Id.* DCF performs the preliminary home study if there are no such entities in the county where the prospective adoptive parents reside.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Section 63.125(1), F.S.

²⁶ Section 63.125(2), F.S.

the placement with a recommendation on the granting of the petition for adoption.²⁷ The final home investigation must include:

- Information from the preliminary home study;
- Following the minor's placement, two scheduled visits with the minor and the minor's adoptive parent or parents. One visit must be in the home to determine suitability of the placement;
- Family social and medical history; and
- Other information relevant to suitability of placement information required by rules promulgated by DCF.²⁸

Putative Father Registry

In 2003, Florida enacted a Putative Father Registry (registry), joining at least 23 other states with similar legislation.²⁹ The registry is maintained by the Office of Vital Statistics of the Department of Health (DOH).³⁰ The DOH is required, within existing resources, to provide and distribute a pamphlet or publication informing the public about the registry.³¹

If a man thinks that he may be the father of a child born or about to be born to a woman, and that man wishes to establish parental rights, he must file as a "registrant" with the registry. By filing with the registry, the potential father is claiming paternity for the child and confirms his willingness to support the child.³² Additionally, he consents to DNA testing and may ultimately be required to pay child support.³³ A claim of paternity may be filed at any time prior to the child's birth, but may not be filed after the date a petition is filed for termination of parental rights.³⁴ The putative father may change his mind and, prior to the birth of the child, execute a notarized revocation of the claim of paternity.³⁵ Once that revocation is received, the claim of paternity is deemed null and void. Additionally, if a court determines that a registrant is not the father of a minor, the court will order the man's name be removed from the registry.³⁶

The registry was designed to protect the rights of all parties to an adoption proceeding: the rights of the unmarried biological father to notice and an opportunity to be heard, the rights of the birth mother to make an independent decision when the father fails to act, and the rights of the adoptive parent in retaining custody of the child.³⁷

²⁷ Section 63.125(3), F.S.

²⁸ Section 63.125(5), F.S.

²⁹ Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Open Government Sunset Review of Section 63.0541, F.S., Relating to the Florida Putative Father Registry*, 4 (Interim Project Report 2008-206) (Oct. 2007), available at www.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-206cf.pdf (last visited Jan. 29, 2012).

³⁰ Section 63.054(1), F.S.

³¹ Section 63.054(11), F.S.

³² Section 63.054(1), F.S.

³³ Section 63.054(2), F.S.

³⁴ Section 63.054(1), F.S.

³⁵ Section 63.054(5), F.S.

³⁶ *Id.*

³⁷ Amy U. Hickman and Jeanne T. Tate, *Florida's Putative Father Registry: More Work is Needed to Follow the Established National Trends Toward Stable Adoptive Placements*, 82 FLA. B.J. 42, 42-43 (Jan. 2008); see also s. 63.022(1), F.S.

Required Consent

Unless excused by the court, proper written consent for adoption is required from:

- The birth mother.
- The birth father if:
 - The minor was conceived or born while the father was married to the birth mother;
 - The minor is his child by adoption;
 - The minor has been adjudicated by the court to be his child by the date a petition is filed for TPR;
 - He has filed an affidavit of paternity by the date a petition is filed for TPR; or
 - In the case of an unmarried biological father, he has acknowledged in writing, signed in the presence of a competent witness, that he is the father of the child and filed such acknowledgment with the Office of Vital Statistics. Consent of an unmarried biological father is only necessary if he follows the requirements of ch. 63, F.S.³⁸
- The minor, if 12 years of age or older.
- Any person lawfully entitled to custody of the minor.
- The court having jurisdiction to determine custody, if the person having physical custody of the minor cannot consent.³⁹

The petitioner in a TPR proceeding must make diligent efforts to notify, and obtain written consent from, all persons required to give consent.⁴⁰

A parent may execute consent to placement with an adoption entity while the child is in the custody of DCF, as long as it is done prior to the parental rights being terminated.⁴¹ Upon execution of the consent of the parent, the adoption entity may intervene in the dependency case as a party in interest and must provide the court a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the placement.⁴² If the court determines that the prospective adoptive parents are properly qualified to adopt the child and that the adoption appears to be in the best interest of the minor child, the court shall immediately order the transfer of custody of the minor child to the prospective adoptive parents, under the supervision of the adoption entity. The adoption entity shall thereafter provide monthly supervision reports to the department until finalization of the adoption.⁴³ A person may withdraw consent for a child older than six months of age who has been placed with prospective adoptive parents within three business days after execution of the consent.⁴⁴

Disclosure to Prospective Adoptive Parents

Adoption entities are required to provide a written disclosure statement to individuals seeking to adopt a child and to individuals seeking to place a child for adoption.⁴⁵ The disclosure must

³⁸ Section 63.062(2), F.S.

³⁹ Section 63.062(1), F.S.

⁴⁰ Section 63.062(6), F.S.

⁴¹ Section 63.082(6), F.S.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Section 63.082(7), F.S.

⁴⁵ Section 63.085, F.S.

notify the individuals of the following:

- Name, address, and telephone number of the adoption entity providing the disclosure;
- The adoption entity does not provide legal representation or advice;
- A child cannot be placed into a prospective adoptive home unless the prospective adoptive parents have received a favorable preliminary home study;
- Valid consent for adoption may not be signed by the birth mother until 48 hours after the birth of the child or after she is discharged from the hospital or birth center;
- Consent for adoption signed before the child attains the age of six months is binding and irrevocable from the moment it is signed. A consent for adoption signed after the child attains the age of six months is valid from the moment it is signed, but may be revoked until the child is placed in an adoptive home, or up to three days after it was signed, whichever period is longer;
- Consent for adoption is not valid if the signature of the person who signed the consent was obtained by fraud or duress;
- An unmarried biological father must act immediately in order to protect his parental rights;
- There are alternatives to adoption, including foster care, relative care, and parenting the child;
- The birth parent has the right to have someone witness the signing of the consent or affidavit of nonpaternity;
- If the birth parent is 14 years of age or younger, he or she must have a parent, legal guardian, or court-appointed guardian ad litem assist and advise the birth parent as to the adoption plan;
- The birth parent has a right to receive supportive counseling; and
- Payment of living or medical expenses by the prospective adoptive parents prior to the birth of the child does not, in any way, obligate the birth parent to sign the consent for adoption.⁴⁶

The adoption entity must also provide the prospective adoptive parents with information concerning the background of the child to the extent such information is disclosed to the adoption entity. The information that must be disclosed includes:

- A family social and medical history form;
- The biological mother's medical records documenting her prenatal care and the birth and delivery of the child;
- A complete set of the child's medical records;
- All mental health, psychological, and psychiatric records concerning the child;
- The child's educational records;
- Records documenting all incidents that required DCF to provide services to the child; and
- Written information concerning the availability of adoption subsidies for the child, if applicable.⁴⁷

Some believe that complete disclosure can benefit the child, the adoptive family, and the adoption entity by ensuring the child is placed in an environment that can meet his or her needs –

⁴⁶ *Id.*

⁴⁷ *Id.*

both emotionally and financially. Additionally, it provides the adopted person the opportunity to have full and accurate knowledge of his or her family, medical, and genetic history. Finally, providing such disclosure may help protect agencies and intermediaries from wrongful adoption lawsuits.⁴⁸

Florida’s “Safe Haven” law

In 2000, the Florida Legislature passed legislation for the safe abandonment of a newborn.⁴⁹ The law provides that a parent may safely abandon an infant who is 7 days old or younger at a fire station, emergency medical services station, or hospital emergency room.⁵⁰ The receiving entity must provide any necessary emergency care, and then transfer the infant to a hospital for any further treatment. Infants admitted to a hospital under the safe haven law are presumed eligible for Medicaid coverage. The hospital then transfers the infant to a licensed child-placing agency.

The child-placing agency is required to request assistance from law enforcement within 24 hours of receiving the infant to determine whether the child is a missing child.⁵¹ The licensed child-placing agency must seek emergency custody via court order, and may place the infant with court-approved prospective adoptive parents who become the infant’s guardians pending termination of parental rights and final adoption.⁵² The infant’s parent may make a claim of parental rights to the court or to the entity having custody of the infant at any time before the TPR.⁵³ Parenthood may be determined by scientific testing, if ordered by the court.⁵⁴

Safe haven abandonment under s. 383.50, F.S., does not constitute abuse or neglect, and a child safely abandoned under the statute is not deemed abandoned for purposes of the reporting and investigating requirements of ch. 39, F.S. Similarly, criminal investigation of a safe abandonment under the statute is prohibited, unless there is actual or suspected child abuse or neglect. A parent who abandons a child has the “absolute right to remain anonymous,” and the law prohibits pursuit of the parent.⁵⁵ In addition, the statute establishes a presumption that the abandoning parent consented to TPR.⁵⁶ A parent may rebut the presumption by making a claim for parental rights prior to termination.

III. Effect of Proposed Changes:

This bill substantially amends ch. 63, F.S., the Florida Adoption Act.

Putative Father Registry (sections 3, 9, and 10)

If the parental rights of a child have been terminated by a judgment entered pursuant to ch. 39,

⁴⁸ Child Welfare Information Gateway, *Providing Background Information to Adoptive Parents* (2003), http://www.childwelfare.gov/pubs/f_backgroundbulletin.cfm (last visited Jan. 30, 2012).

⁴⁹ Chapter 2000-188, Laws of Fla.

⁵⁰ Section 383.50(1), F.S.

⁵¹ Section 63.0423(3), F.S.

⁵² Section 63.0423(2), F.S.

⁵³ Section 63.0423(6) and (7), F.S.

⁵⁴ Section 63.0423(7), F.S.

⁵⁵ Section 383.50(5), F.S.

⁵⁶ Section 383.50(2), F.S.

F.S.,⁵⁷ certain adoption provisions of ch. 63, F.S., are not required. For example, adoption proceedings initiated under ch. 39, F.S., are exempt from the disclosure requirements for the adoption entity, general provisions and procedures governing termination of parental rights pending adoption, and notice and service provisions governing termination of parental rights pending adoption. This bill adds that a search of the Florida Putative Father Registry, if a search was previously completed and documentation of the search is in the case file, is not required for adoption proceedings initiated under ch. 39, F.S.

The bill amends s. 63.054, F.S., which relates to actions required by an unmarried biological father. Under current law, an unmarried biological father may not file a claim of paternity with the Florida Putative Father Registry after the date a petition is filed for termination of parental rights (TPR). The bill provides that in a TPR proceeding, the petitioner must submit a copy of the petition for TPR to the Office of Vital Statistics *or* a document executed by the clerk of court showing the style of the case, the names of the persons whose rights are sought to be terminated, and the date and time of the filing of the petition. The bill also provides that an unmarried biological father who files a claim of paternity with the Office of Vital Statistics consents to submit to *and pay for* DNA testing.

Finally, the bill requires that an unmarried biological father “strictly” comply with ch. 63, F.S., and demonstrate a prompt and full commitment to his parental responsibilities or his child may be adopted without his consent. This provision may conflict with line 760 of the bill that requires “substantial compliance” with s. 63.062(2), F.S.

Adoption Entities and Surrendered Infants (sections 2, 4, 5, and 20)

This bill requires that all adoptions of minor children, with the exception of an adoption by a relative or stepparent, require the use of an adoption entity that will assume the responsibilities provided by law. The bill also amends the definition of “adoption entity” to include Florida-licensed child-placing agencies.

The bill amends s. 63.0423, F.S., relating to procedures with respect to surrendered infants. The bill replaces the term “licensed child-placing agency” with “adoption entity” throughout the section. The bill requires that upon entry of a final judgment terminating parental rights, an adoption entity must assume responsibility for all costs associated with the emergency services and care of the surrendered infant from the time the adoption entity takes physical custody of the infant. The bill provides that an infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, but shows no other signs of child abuse or neglect, must be placed in the custody of an adoption entity. However, the bill provides that this provision does not eliminate the reporting requirement under s. 383.50(7), F.S.⁵⁸ The bill prohibits the Department of Children and Families (DCF or department) from becoming involved in a situation where an infant is properly surrendered under ss. 63.0423 and 383.50, F.S., unless reasonable efforts to contact an adoption entity have not been successful.

⁵⁷ Chapter 39, F.S., relates to all proceedings relating to children. Part X of ch. 39, F.S., is the section of law dealing with termination of parental rights in certain circumstances.

⁵⁸ Section 383.50, F.S., provides for the treatment of a surrendered newborn infant to a hospital, emergency medical services station, or fire station. If a hospital suspects child abuse or neglect after admitting the infant, the hospital must report the actual or suspected abuse and neglect to the central abuse hotline. See s. 383.50(7), F.S.

The bill prohibits a court from ordering scientific testing to determine the paternity or maternity of a minor until the court determines that a previously entered judgment terminating the parental rights of a parent is voidable, unless all parties agree that such testing is in the best interests of the child.

Finally, the bill amends s. 63.152, F.S., authorizing an adoption entity (in addition to the clerk of court) to transmit a certified statement of an entry of a judgment of adoption to the state registrar of vital statistics in order to apply for a new birth record.

Contact Agreements (section 7)

Section 63.0427, F.S., provides that the adoptive parent of a child may petition the court for review of a communication or contact order if the adoptive parent believes that the best interests of the child are being compromised. The court may terminate or modify the communication or contact; however, the bill prohibits a court from increasing contact between an adopted child and his or her siblings, birth parents, or other relatives without the consent of the adoptive parent or parents.

The bill authorizes prospective adoptive parents to enter into an agreement to allow contact between the child to be adopted and the birth parent, other relative, or previous foster parent. Contact may take the form of visits, telephone calls, written correspondence, exchange of photographs, and other similar kinds of contact. An agreement establishing contact is enforceable by a court only if:

- The agreement is in writing and submitted to the court;
- The adoptive parents have agreed to the terms of the agreement;
- The court determines that contact is in the best interests of the child; and
- The child, if 12 years of age or older, has agreed to the contact agreement.

Any dispute regarding the contact agreement or any breach of the agreement does not affect the validity or finality of the adoption. The adoptive parent may terminate the contact if the adoptive parent reasonably believes that the contact is detrimental to the best interests of the child. To terminate a contact agreement, an adoptive parent must file a notice of intent to terminate the agreement with the court and provide a copy to any party to the agreement and provide the reasons for termination. The bill authorizes the court to order the parties to mediation, which is to be conducted pursuant to s. 61.183, F.S.,⁵⁹ and the petitioner is responsible for any fees associated with the services of the mediator.

Consent and Disclosure (sections 13 and 14)

Current law states that the notice and consent provisions of ch. 63, F.S., as they relate to the father of a child, do not apply in cases where the child is conceived as a result of a violation of a criminal law of Florida, another state, or another country.⁶⁰ The bill adds that a criminal

⁵⁹ Section 61.183, F.S., provides for mediation of contested issues related to dissolution of marriage cases.

⁶⁰ Section 63.082(1)(d), F.S.

conviction is not necessary for a court to find that a child was conceived as a result of a violation of a criminal law.

Following execution of a consent to adoption by the parent, as required by law, the bill requires the court to permit an adoption entity to intervene in a dependency hearing held pursuant to ch. 39, F.S. Current law provides the court discretion on allowing an adoption entity to intervene. Upon intervention, the bill directs the court to promptly hold a hearing to determine if the adoption entity submitted the proper documents to be allowed to intervene and, if so, if a change of placement of the child is appropriate. Among the documents that have to be submitted is a preliminary home study. The bill provides that unless the court is concerned about the completeness of the home study or is concerned about the qualifications of the individual who conducted the home study, another study to be completed by DCF is not necessary.

The bill provides that if the consent of one parent is set aside any other consents executed by the other parent may not be used by the parent whose consent was set aside to terminate or diminish the rights of the other parent whose consent was required for the adoption of the child.

The bill amends s. 63.085, F.S., to specify that a consent to adoption of a child six months of age or older may be revoked up to three *business* days after it was signed. Current law only provides a three day revocation period. The bill appears to be clarifying in nature in order to have s. 63.085(1), F.S., match s. 63.082(7), F.S.

The bill also clarifies in the disclosure required to be given to parents and prospective adoptive parents that if a parent is 14 years of age or younger, a parent, legal guardian, or court-appointed guardian ad litem must not only assist and advise the parent as to the adoption plan, but must also witness consent. Current law already provides that a consent or an affidavit of nonpaternity executed by a minor parent who is 14 years of age or younger must be witnessed by a parent, legal guardian, or court-appointed guardian ad litem.⁶¹

Finally, the bill amends s. 63.085, F.S., to provide that if the prospective adoptive parents waive receipt of any of the records required to be disclosed to the prospective adoptive parents, a copy of the written notification of the waiver shall be filed with the court.

Termination of Parental Rights Pending Adoption (sections 11, 15, 16, and 17)

Section 63.062, F.S., requires that a petition to terminate parental rights pending adoption may only be granted if notice is served to the father of a minor child if:

- The minor was conceived or born while the father was married to the mother;
- The minor is his child by adoption;
- The minor has been adjudicated by the court to be his child before the date the petition is filed;
- The father has filed an affidavit of paternity before the date a petition for TPR is filed; or
- An unmarried biological father has acknowledged in writing that he is the father of the minor.

⁶¹ Section 63.082(1)(c), F.S.

This bill also requires that notice be served to the father if he is listed on the child's birth certificate before the date a petition for TPR is filed.

The bill requires that the status of the father with regard to the father's rights or obligations be determined at the time the petition for TPR is filed, and that this status may not be modified, except as otherwise provided in s. 63.0423(9)(a), F.S.,⁶² by any acts that occur after the petition has been filed. Florida case law has permitted the father's status, and thereby his rights and responsibilities, to be reassessed following marriage to the birth mother subsequent to the entry of judgment of termination of parental rights.⁶³

The bill clarifies that, in order to demonstrate a full commitment to the responsibilities of parenthood, an unmarried biological father must provide reasonable and regular financial support to the child. However, the bill does not define what "reasonable and regular" means.

Current law requires consent of an unmarried biological father prior to termination of parental rights if the unmarried biological father has complied with certain requirements. If the child being placed with adoptive parents is six months old or younger, the unmarried biological father must have paid a fair and reasonable amount of living and medical expenses incurred in connection with the pregnancy and child's birth if he had knowledge of the pregnancy. The bill amends s. 63.062(2), F.S., to provide that the unmarried biological father retains the responsibility to provide financial assistance to the birth mother during pregnancy and to the child following birth regardless of whether the birth mother and child are receiving financial support from an adoption entity, prospective adoptive parent, or third party. If an unmarried biological father merely expresses a desire to fulfill his responsibilities toward his child, without any acts evidencing this intent, it does not satisfy the requirements of s. 63.062, F.S.

The bill requires an adoption entity to serve notice of an intended adoption plan on any known and locatable unmarried biological father who is identified to the entity by the birth mother at the time she signs consent to adoption, but only if the child is six months old or younger at the time she consents. The bill specifies that service of the notice of intended adoption plan is not required when the child is older than six months of age at the time of the execution of the consent by the mother. Under current law, there is no age limitation for the child in order for an adoption entity to have to serve notice of an intended adoption plan.

Finally, current law provides that a person may execute an affidavit of nonpaternity in lieu of having to give consent and by doing so waives notice to all court proceedings. The bill provides that the affidavit of nonpaternity does not need to deny the existence of a biological relationship, but rather it is sufficient if it contains a specific denial of parental obligations. The affidavit has the effect of indicating that, while the affiant may be the biological father of the child, the affiant has no intention of participating in the parenting of the child and is willfully surrendering his parental rights related to the child.

⁶² Section 63.0423(9)(a), F.S., provides that a judgment terminating parental rights is voidable if the court finds that a person knowingly gave false information that prevented the birth parent from timely making known his or her desire to assume parental responsibilities.

⁶³ See *D. and L.P. v. C.L.G. and A.R.L.*, 37 So. 3d 897 (Fla. 1st DCA 2010).

Section 63.087(6), F.S., requires an answer or pleading be filed in response to a petition to terminate parental rights pending adoption. Current law provides that failure to appear at the hearing on the petition is grounds upon which the court may terminate parental rights. The bill specifies that failure to “personally” appear at the hearing constitutes grounds for terminating parental rights.

Current law requires the court to conduct an inquiry of the person who is placing the minor for adoption regarding the identity of:

- a) Any man to whom the mother of the minor was married at the time of conception or birth;
- b) Any man who has filed an affidavit of paternity;
- c) Any man who has adopted the minor;
- d) Any man who has been adjudicated as the father of the minor; and
- e) Any man whom the mother identified to the adoption entity as a potential biological father.⁶⁴

A person may provide information to the court regarding each inquiry enumerated in s. 63.088(4), F.S., unless the inquiry identifies a father under paragraphs (a), (b), (c), or (d).

Section 63.089(5), F.S., provides that if a court does not find clear and convincing evidence sufficient to enter a judgment terminating parental rights, the court must dismiss the petition and the parent or parents whose rights were sought to be terminated retain all rights in full force and effect. The court must then enter an order based upon written findings providing for the placement of the minor. The bill prohibits the court from making custody decisions between competing eligible parties. Instead, the child must be returned to the parent or guardian who had physical custody of the child at the time of the placement for adoptions unless the court determines upon clear and convincing evidence that this placement is not in the best interests of the child or is not an available option. The bill prevents the court from changing the placement of a child who has established a bonded relationship with the caregiver without a reasonable transition plan. However, the court may direct the parties to participate in a reunification or unification plan with a qualified professional to assist the child in the transition.

Current law authorizes the court to order scientific testing to determine the paternity of a minor at any time when the court has jurisdiction over the minor. Under the bill, the court may only order scientific testing if the court determines that the consent of the alleged father would be required, unless all parties agree that testing is in the best interests of the child. However, the court may not order scientific testing to determine paternity if the child has a father as described in s. 63.088(4)(a)-(d), F.S., whose rights have not been terminated.

A parent may file a motion with the court to seek relief from a judgment terminating parental rights. The court must schedule a hearing within 30 days of such motion to determine what contact, if any, should be permitted between the parent and the child pending resolution of the motion. The bill amends subsection (7) of s. 63.089, F.S., to provide that a court may not authorize contact between the child and the parent unless the parent has previously established a bonded relationship with the child and the parent has pled a legitimate legal basis and established a prima facie case for setting aside the judgment terminating parental rights. Finally, the bill provides that if the court grants relief from the judgment terminating parental rights, and no new

⁶⁴ Section 63.088(4), F.S.

pleading to terminate parental rights is filed, the child must be returned to the parent or guardian who had physical custody of the child at the time of the placement for adoptions unless the court determines upon clear and convincing evidence that this placement is not in the best interests of the child or is not an available option. The bill prevents the court from changing the placement of a child who has established a bonded relationship with the caregiver without a reasonable transition plan. However, the court may direct the parties to participate in a reunification or unification plan with a qualified professional to assist the child in the transition. The bill also prohibits a court from placing a child with a person other than the adoptive parents without first obtaining a favorable home study of that person.

Attorney Fees (section 19)

This bill amends s. 63.097, F.S., which addresses the fees that are allowed in adoption cases. Specifically, the bill provides criteria that a court must take into consideration when determining reasonable attorney fees. The criteria the court must consider are:

- The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.
- The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney.
- The fee customarily charged in the locality for similar legal services.
- The amount involved in the subject matter of the representation, the responsibility involved in the representation, and the results obtained.
- The time limitations imposed by the client or by the circumstances and any additional or special time demands or requests of the attorney by the client.
- The nature and length of the professional relationship with the client.
- The experience, reputation, diligence, and ability of the attorney.
- Whether the fee is fixed or contingent.

These factors are the same factors set out in Rule 4-1.5 of the Rules Regulating the Florida Bar, which relates to how an attorney should determine reasonable fees and costs.

Prohibited Acts (section 23)

The bill amends s. 63.212, F.S., making it unlawful for a person to assist an unlicensed person or entity in publishing or broadcasting an advertisement that a minor is available for adoption or that a minor is sought for adoption. Under the bill, only a Florida licensed attorney or a Florida licensed adoption entity may place a paid advertisement or paid listing of the person's telephone number in a telephone directory that a child is offered or wanted for adoption or that the person is able to place, locate, or receive a child for adoption. This provision will prevent an attorney or adoption entity licensed in another state or country from advertising or broadcasting an offer of a child for adoption or soliciting a child from within the state for adoption.

The bill requires a person who publishes a telephone directory for distribution in Florida to include, in all adoption advertisements, a statement that only licensed Florida attorneys or adoption entities may provide adoption services. The bill requires the telephone directory publisher to include in the advertisement the appropriate Florida Bar number or Florida license

number of the attorney or entity placing the advertisement. Any person who knowingly publishes or assists in the publishing of an advertisement in violation of these provisions commits a second degree misdemeanor and is subject to a fine of up to \$150 per day for each day the violation continues.

The bill also establishes the elements to the crime of “adoption deception.” Specifically, a birth mother, or a woman holding herself out to be a birth mother, who solicits and receives payment of adoption-related expenses in connection with an adoption plan commits adoption deception if:

- She knew or should have known she was not pregnant at the time she sought or accepted funds for adoption-related expenses;
- She accepts living expenses from a prospective adoptive parent or adoption entity without disclosing that she is receiving living expenses from another prospective parent or adoption entity at the same time in an effort to secure the child for adoption; or
- She makes false representations to induce payment of living expenses and does not intend to offer the child for the adoption.

A person who willfully commits adoption deception commits a misdemeanor of the second degree if the sums received do not exceed \$300. If the sums received are more than \$300, the person committing adoption deception commits a felony of the third degree. A person who commits adoption deception is also liable for damages as a result of acts or omissions, including reasonable attorney fees and costs incurred by the adoption entity or the prospective adoptive parent.

Preplanned Adoption (section 24)

This bill amends the definition of “volunteer mother” in the section of law related to preplanned adoption agreements. Specifically, the bill provides that a “volunteer mother” is a female at least 18 years of age who voluntarily agrees, subject to a right of rescission *if it is her biological child*, that if she should become pregnant pursuant to a preplanned adoption arrangement, she will terminate her parental rights and responsibilities to the child in favor of the intended father and intended mother.

The bill amends s. 63.213, F.S., to provide that a volunteer mother may only rescind her consent to relinquish parental rights in a preplanned adoption if the child is genetically related to her.

The bill also revises the definition of “child” to mean a child or children conceived through a fertility technique. Current law refers only to a child or children conceived through an insemination, which does not account for improvements in medical technology that may allow for conception of a child in a manner other than insemination.

Other Provisions (sections 1, 2, 6, 8, 12, 18, 21, 22, 25, 26 and 27)

Legislative Intent

The legislative intent of ch. 63, F.S., is amended to remove the “safeguard” that all placements of minors for adoption, except relative, adult, and stepparent adoptions, be reported to DCF.

Definitions

The bill revises the definitions of “abandoned,” “adoption entity,” “parent,” “suitability of the intended placement,” and “unmarried biological father” in ch. 63, F.S. “Abandoned” is amended to mean a situation in which the parent or person having legal custody of the child, while being able, makes *little or* no provision for the child’s support *or* makes little or no effort to communicate with the child, which situation is sufficient to evince an intent to reject parental responsibilities. It is unclear what may be considered “little” for purposes of this definition.

The definition of “adoption entity” is amended to include Florida-licensed child-placing agencies. The definition of “parent” is changed to clarify that it means a woman who gives birth to a child *and who is not a gestational surrogate*. Finally, the bill provides that a child’s biological father who is not married to the child’s mother at the time of conception or *on the date of the birth* of the child is an “unmarried biological father.”

Grandparent’s Right to Notice

The bill amends s. 63.0425, F.S., to clarify that if a child has lived with a grandparent for at least six *continuous* months within the 24-month period immediately preceding the filing of a petition for termination of parental rights pending adoption, then the adoption entity must provide notice of the hearing to the grandparent. The bill does not specify what “continuous” means and whether some intermittent breaks during the timeframe would still permit a grandparent to receive notice of the hearing.

Intermediaries

Under current law, in circumstances where an intermediary (an attorney) has taken custody of a minor who has been voluntarily surrendered through execution of a consent to adoption, the intermediary is responsible for the minor until the court orders approval of placement in a prospective adoptive home. The intermediary retains the right to remove the minor from the prospective adoptive home if the intermediary deems removal to be in the best interests of the child. The bill prohibits the intermediary from removing a child without a court order unless the child is in danger of imminent harm. The bill also clarifies that the intermediary does not become responsible for the child’s medical bills that were incurred before taking physical custody of the child after the execution of adoption consents.

Section 63.162, F.S., is amended to allow a birth parent to petition the court to appoint an intermediary or a licensed child-placing agency to contact an adult adoptee who has not registered with the adoption registry and advise him or her of the availability of the intermediary or agency, and that the birth parent or adult adoptee, as applicable, wishes to establish contact.

Home Study

The bill requires that prospective adoptive parents receive a *completed and approved* favorable preliminary home study within one year before placement of a child in the home. The bill requires that, in the case where a suitable prospective adoptive home is not available, the child

must be placed in a licensed foster care home, with a person or family that has received a favorable preliminary home study, or with a relative until a suitable prospective adoptive home becomes available. Current law does not specify that the foster home be licensed and does not provide the option for placement with a person or family that has been home-study-approved.

The bill amends s. 63.092, F.S., to require a *signed* copy of the home study be provided to the intended adoptive parents who were the subject of the home study. The bill does not specify who is supposed to sign the copy of the home study.

State Adoption Information Center

The bill requires the state adoption information center, established in s. 63.167, F.S., to provide contact information for all adoption entities in a caller's county or, if there are no adoption entities in the caller's area, the contact information for the nearest adoption entity to the caller, when asked for a referral to make an adoption plan. The bill also requires the information center to rotate the order in which names of adoption entities are provided to callers.

Technical Provisions

The bill amends s. 63.222, F.S., to clarify that any adoption made before July 1, 2012, is valid and any proceedings that are pending as of that date and any subsequent amendments thereto are not affected by the changes made by the bill, unless the amendment is designated a remedial provision.

Finally, the bill makes technical and conforming changes throughout ch. 63, F.S.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Putative Father Registry

The application of the Putative Father Registry implicates the constitutional right of an unmarried biological father to parent his child. This fundamental right requires the

strictest scrutiny. This means that the burden is on the state to show why its conduct is justified by providing a compelling state interest and that the conduct is a substantially effective method for achieving that purpose.⁶⁵ The state must also show that the intrusion will accomplish the state's goal in the least intrusive way.⁶⁶

The United States Supreme Court has upheld the constitutionality of putative father registries, holding that an unmarried biological father does not have an absolute constitutional right to his biological child and that his rights are protected by the due process clause only if he takes some responsibility for the child.⁶⁷ The Florida Supreme Court has recognized this rationale as well.⁶⁸

Termination of Parental Rights

Parents have a fundamental liberty interest in determining the care and upbringing of their children. This interest is protected by both the Florida and federal constitutions.⁶⁹ During a termination of parental rights proceeding, notice must be given and consent must be received from certain parties prior to a court entering a judgment to terminate a parent's rights. The bill appears to be making it easier in some circumstances to move through the dependency process to receive a judgment terminating parental rights in order to place a child for adoption. Whenever a parent's rights are being terminated in order to place a child for adoption, the state and federal constitutional provisions relating to the fundamental liberty interest of a parent may be implicated.

Notice to an Unmarried Biological Father

The process of adoption involves a balancing of the interests of the child, the birth parents, and the adoptive parents. On lines 753-754, the bill appears to provide that an adoption entity is not required to provide notice of an intended adoption plan to an unmarried biological father when the child is older than six months of age at the time of the execution of the consent by the mother. In July 2007, the Florida Supreme Court ruled in favor of providing unmarried biological fathers with actual notice of the Florida Putative Father Registry and the legal obligations they must satisfy if they are to retain parental rights.⁷⁰ The Court also determined that unmarried biological fathers are entitled to receive actual notice of the intended adoption plan related to their child.⁷¹ The Court went on to state that while the requirements for terminating the rights of an unmarried biological father where the child is six months old or older were not discussed in the case, "the same ruling as to when service of notice is required would also apply."⁷²

⁶⁵ Russell W. Galloway, *Basic Substantive Due Process Analysis*, 26 U.S.F. L. REV. 625, 638 (1992).

⁶⁶ *Id.*

⁶⁷ See *Lehr v. Robertson*, 463 U.S. 248 (1983).

⁶⁸ *Matter of Adoption of Doe*, 543 So. 2d 741, 748-49 (Fla. 1989); *In re Adoption of Baby E.A.W.*, 658 So. 2d 961, 966-67 (Fla. 1995).

⁶⁹ *Beagle v. Beagle*, 678 So. 2d 1271 (Fla. 1996).

⁷⁰ See *Heart of Adoptions, Inc. v. J.A.*, 963 So. 2d 189 (Fla. 2007).

⁷¹ *Id.* at 200.

⁷² *Id.* at n. 6.

It is unclear how a court would rule if an unmarried biological father challenged this provision as violating his due process rights because he was not provided notice of the intended adoption plan.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill authorizes adoption entities to be contacted when a child is abandoned under the safe haven law and the bill directs the court to permit an adoption entity to intervene in a dependency hearing. Under current law, the definition of “adoption entity” includes intermediaries (attorneys). It appears that the bill may have a positive fiscal impact on private adoption entities (or intermediaries) because they may realize an increase in the number of children placed in the private adoption process.

C. Government Sector Impact:

It appears that certain provisions of the bill are designed to move toward the private adoption process in certain cases instead of going through the dependency process. To the extent the bill does this, the resources maintained by the Department of Children and Families (DCF or department) for the purpose of the dependency process may be able to be retained by the department. However, according to DCF, the department is unable to determine if the bill will have any direct fiscal impact on it.⁷³

VI. Technical Deficiencies:

The bill revises the definition of “abandoned” to mean a situation where a parent makes *little* or no provision for the child’s support *or* makes little or no effort to communicate with the child. It is unclear how a court will determine what “little” support means, which could result in an inconsistent application of the definition.

The bill replaces the term “licensed child-placing agency” with “adoption entity” throughout s. 63.0423, F.S., relating to procedures with respect to surrendered infants. However, the bill does not amend s. 383.50, F.S. (Florida’s Safe Haven Law). Accordingly, under the Safe Haven Law it appears that a hospital may still only contact a local licensed child-placing agency (or DCF) when an infant is properly surrendered under the law.

On lines 753-754 of the bill, it states that service of the notice of intended adoption is not required when the child is older than six months of age at the time of the execution of the consent by the mother. Strictly construing this provision, it appears that even if an

⁷³ Dep’t of Children and Families, *Staff Analysis and Economic Impact, SB 1874* (Jan. 12, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

unmarried biological father has done everything to show his commitment to the child, if the child is over six months of age, the adoption entity does not have to serve him notice of the intended adoption plan. It is unclear if this is the intended result.

On lines 1347-1366, the bill adds language regarding the court's order dismissing the petition to terminate parental rights. Throughout the new language in the bill, the term "child" is used; however, in current law the term "minor" is used. Accordingly, there are some inconsistencies with terminology.

VII. Related Issues:

Section 63.082(6), F.S., provides that private adoption entities may intervene in the adoption proceeding of a minor child who is in the custody of the Department of Children and Families (DCF or department) if (a) parental rights have been terminated; (b) the entity produces a favorable preliminary home study of the prospective adoptive parents; and (c) valid consents for placement of the minor with the entity have been obtained. If the court finds the adoption is in the best interest of the child, it shall enter an order immediately transferring custody to the prospective adoptive parents.

This bill amends s. 63.082(6), F.S., making it mandatory that the court permit an adoption entity to intervene in a dependency case if the entity has consent of the parents, a copy of the preliminary home study of the prospective adoptive parents, and any other evidence of the suitability of the placement.

The intervention of private adoption entities into the adoption of certain children in the custody of DCF was an issue researched by the Senate Committee on Children, Families, and Elder Affairs in 2009.⁷⁴ According to private adoption practitioners, there are widespread differences in adherence to the statute around the state. In several counties, intervention occurs without issue; in others, DCF and its community-based providers are reported to object to the intervention and slow the private adoption process.⁷⁵ According to the Senate interim report, "[r]eports from case law and stakeholder comments seem to bear this out."⁷⁶ Senate professional staff of the Committee on Children, Families, and Elder Affairs provided three recommendations in its report:

- Adopt the ch. 39, F.S., manifest best interest of the child standard;
- Maintain the existing best interest standard and reinstate mandatory intervention; or
- Remove the matter from dependency court jurisdiction.⁷⁷

⁷⁴ See Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Review of Section 63.082(6), F.S., Intervention by Private Adoption Entities in the Adoption of Certain Children in the Custody of the Department of Children and Families* (Interim Report 2010-104) (Oct. 2009), available at http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-104cf.pdf (last visited Jan. 30, 2012).

⁷⁵ *Id.* at 3.

⁷⁶ *Id.*

⁷⁷ *Id.* at 4.

According to the report, “Senate professional staff recommends that the Legislature consider reinstating mandatory intervention and maintaining the existing best interest standard. That option appears to strike a balance between the constitutional rights of the birth parents and the concerns expressed by dependency practitioners.”⁷⁸

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on January 31, 2012:

The committee substitute:

- Amends the definition of “adoption entity” to include Florida-licensed child-placing agencies;
- Clarifies that a search of the Florida Putative Father Registry is not required in cases in which a minor becomes available for adoption after the parental rights of each parent have been terminated under ch. 39, F.S., if the search was previously completed and documentation of the search is contained in the case file;
- Restores the section of law relating to who may be adopted back to current law;
- Provides that an infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, but shows no other signs of child abuse or neglect, shall be placed in the custody of an adoption entity. The committee substitute clarifies that the reporting requirements under the Safe Haven Law still apply;
- Changes the term “adoption entity” back to “person” for purposes of voiding a judgment terminating parental rights;
- Specifies that if the court orders mediation relating to a contact agreement between an adoptive parent and birth parent (or other relative or foster parent), the mediation must be conducted pursuant to s. 61.183, F.S., and that the petitioner is responsible for any fees associated with the mediator services;
- Provides that the status of a father, which is determined at the time of the filing of the petition to terminate parental rights, may be modified if a judgment terminating parental rights is voided based on a finding that false information was given to the father which prevented him from making known his desire to assume parental responsibility for the child or from exercising his parental rights;
- Provides criteria that a court must consider when determining reasonable attorney fees; and
- Makes other technical or conforming changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁷⁸ *Id.* at 5.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2012	.	
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	.	

The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present paragraphs (e) through (m) of subsection (4) of section 63.022, Florida Statutes, are redesignated as paragraphs (d) through (l), respectively, and subsection (2) and present paragraph (d) of subsection (4) of that section are amended to read:

63.022 Legislative intent.—

(2) It is the intent of the Legislature that in every adoption, the best interest of the child should govern and be of



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13 foremost concern in the court's determination. The court shall
14 make a specific finding as to the best interests ~~interest~~ of the
15 child in accordance with the provisions of this chapter.

16 (4) The basic safeguards intended to be provided by this
17 chapter are that:

18 ~~(d) All placements of minors for adoption are reported to~~
19 ~~the Department of Children and Family Services, except relative,~~
20 ~~adult, and stepparent adoptions.~~

21 Section 2. Subsections (1), (3), (12), (17), and (19) of
22 section 63.032, Florida Statutes, are amended to read:

23 63.032 Definitions.—As used in this chapter, the term:

24 (1) "Abandoned" means a situation in which the parent or
25 person having legal custody of a child, while being able, makes
26 little or no provision for the child's support or ~~and~~ makes
27 little or no effort to communicate with the child, which
28 situation is sufficient to evince an intent to reject parental
29 responsibilities. If, in the opinion of the court, the efforts
30 of such parent or person having legal custody of the child to
31 support and communicate with the child are only marginal efforts
32 that do not evince a settled purpose to assume all parental
33 duties, the court may declare the child to be abandoned. In
34 making this decision, the court may consider the conduct of a
35 father towards the child's mother during her pregnancy.

36 (3) "Adoption entity" means the department, an agency, a
37 child-caring agency registered under s. 409.176, an
38 intermediary, a Florida-licensed child-placing agency, or a
39 child-placing agency licensed in another state which is
40 qualified by the department to place children in the State of
41 Florida.



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42 (12) "Parent" means a woman who gives birth to a child and
43 who is not a gestational surrogate as defined in s. 742.13 or a
44 man whose consent to the adoption of the child would be required
45 under s. 63.062(1). If a child has been legally adopted, the
46 term "parent" means the adoptive mother or father of the child.
47 The term does not include an individual whose parental
48 relationship to the child has been legally terminated or an
49 alleged or prospective parent.

50 (17) "Suitability of the intended placement" means the
51 fitness of the intended placement, with primary consideration
52 being given to the best interests ~~interest~~ of the child.

53 (19) "Unmarried biological father" means the child's
54 biological father who is not married to the child's mother at
55 the time of conception or on the date of the birth of the child
56 and who, before the filing of a petition to terminate parental
57 rights, has not been adjudicated by a court of competent
58 jurisdiction to be the legal father of the child or has not
59 filed ~~executed~~ an affidavit pursuant to s. 382.013(2)(c).

60 Section 3. Section 63.037, Florida Statutes, is amended to
61 read:

62 63.037 Proceedings applicable to cases resulting from a
63 termination of parental rights under chapter 39.—A case in which
64 a minor becomes available for adoption after the parental rights
65 of each parent have been terminated by a judgment entered
66 pursuant to chapter 39 shall be governed by s. 39.812 and this
67 chapter. Adoption proceedings initiated under chapter 39 are
68 exempt from the following provisions of this chapter:
69 requirement for search of the Florida Putative Father Registry
70 provided in s. 63.054(7), if a search was previously completed



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71 and documentation of the search is contained in the case file;
72 disclosure requirements for the adoption entity provided in s.
73 63.085(1); general provisions governing termination of parental
74 rights pending adoption provided in s. 63.087; notice and
75 service provisions governing termination of parental rights
76 pending adoption provided in s. 63.088; and procedures for
77 terminating parental rights pending adoption provided in s.
78 63.089.

79 Section 4. Subsections (2) through (4) of section 63.039,
80 Florida Statutes, are renumbered as subsections (3) through (5),
81 respectively, and a new subsection (2) is added to that section
82 to read:

83 63.039 Duty of adoption entity to prospective adoptive
84 parents; sanctions.—

85 (2) With the exception of an adoption by a relative or
86 stepparent, all adoptions of minor children require the use of
87 an adoption entity that will assume the responsibilities
88 provided in this section.

89 Section 5. Paragraph (c) of subsection (2) of section
90 63.042, Florida Statutes, is amended to read:

91 63.042 Who may be adopted; who may adopt.—

92 (2) The following persons may adopt:

93 (c) A married person without his or her ~~the other~~ spouse
94 joining as a petitioner, if the person to be adopted is not his
95 or her spouse, and if:

96 1. His or her ~~The other~~ spouse is a parent of the person to
97 be adopted and consents to the adoption; or

98 2. The failure of his or her ~~the other~~ spouse to join in
99 the petition or to consent to the adoption is excused by the



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100 court for good cause shown or in the best interests ~~interest~~ of
101 the child.

102 Section 6. Subsections (1), (2), (3), (4), (7), (8), and
103 (9) of section 63.0423, Florida Statutes, are amended to read:

104 63.0423 Procedures with respect to surrendered infants.—

105 (1) Upon entry of final judgment terminating parental
106 rights, an adoption entity ~~A licensed child-placing agency~~ that
107 takes physical custody of an infant surrendered at a hospital,
108 emergency medical services station, or fire station pursuant to
109 s. 383.50 assumes ~~shall assume~~ responsibility for the all
110 medical ~~costs~~ and ~~all~~ other costs associated with the emergency
111 services and care of the surrendered infant from the time the
112 adoption entity ~~licensed child-placing agency~~ takes physical
113 custody of the surrendered infant.

114 (2) The adoption entity ~~licensed child-placing agency~~ shall
115 immediately seek an order from the circuit court for emergency
116 custody of the surrendered infant. The emergency custody order
117 shall remain in effect until the court orders preliminary
118 approval of placement of the surrendered infant in the
119 prospective home, at which time the prospective adoptive parents
120 become guardians pending termination of parental rights and
121 finalization of adoption or until the court orders otherwise.
122 The guardianship of the prospective adoptive parents shall
123 remain subject to the right of the adoption entity ~~licensed~~
124 ~~child-placing agency~~ to remove the surrendered infant from the
125 placement during the pendency of the proceedings if such removal
126 is deemed by the adoption entity ~~licensed child-placing agency~~
127 to be in the best interests ~~interest~~ of the child. The adoption
128 entity ~~licensed child-placing agency~~ may immediately seek to



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129 place the surrendered infant in a prospective adoptive home.

130 (3) The adoption entity ~~licensed child-placing agency~~ that
131 takes physical custody of the surrendered infant shall, within
132 24 hours thereafter, request assistance from law enforcement
133 officials to investigate and determine, through the Missing
134 Children Information Clearinghouse, the National Center for
135 Missing and Exploited Children, and any other national and state
136 resources, whether the surrendered infant is a missing child.

137 (4) The parent who surrenders the infant in accordance with
138 s. 383.50 is presumed to have consented to termination of
139 parental rights, and express consent is not required. Except
140 when there is actual or suspected child abuse or neglect, the
141 adoption entity may ~~licensed child-placing agency shall~~ not
142 attempt to pursue, search for, or notify that parent as provided
143 in s. 63.088 and chapter 49. For purposes of s. 383.50 and this
144 section, an infant who tests positive for illegal drugs,
145 narcotic prescription drugs, alcohol, or other substances, but
146 shows no other signs of child abuse or neglect, shall be placed
147 in the custody of an adoption entity. If the department is
148 contacted regarding an infant properly surrendered under this
149 section and s. 383.50, the department shall provide instruction
150 to contact an adoption entity and may not take custody of the
151 infant unless reasonable efforts to contact an adoption entity
152 to accept the infant have not been successful.

153 (7) If a claim of parental rights of a surrendered infant
154 is made before the judgment to terminate parental rights is
155 entered, the circuit court may hold the action for termination
156 of parental rights ~~pending subsequent adoption~~ in abeyance for a
157 period of time not to exceed 60 days.



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158 (a) The court may order scientific testing to determine
159 maternity or paternity at the expense of the parent claiming
160 parental rights.

161 (b) The court shall appoint a guardian ad litem for the
162 surrendered infant and order whatever investigation, home
163 evaluation, and psychological evaluation are necessary to
164 determine what is in the best interests ~~interest~~ of the
165 surrendered infant.

166 (c) The court may not terminate parental rights solely on
167 the basis that the parent left the infant at a hospital,
168 emergency medical services station, or fire station in
169 accordance with s. 383.50.

170 (d) The court shall enter a judgment with written findings
171 of fact and conclusions of law.

172 (8) Within 7 business days after recording the judgment,
173 the clerk of the court shall mail a copy of the judgment to the
174 department, the petitioner, and any person ~~the persons~~ whose
175 consent was ~~were~~ required, if known. The clerk shall execute a
176 certificate of each mailing.

177 (9) (a) A judgment terminating parental rights pending
178 adoption is voidable, and any later judgment of adoption of that
179 minor is voidable, if, upon the motion of a ~~birth~~ parent, the
180 court finds that a person knowingly gave false information that
181 prevented the ~~birth~~ parent from timely making known his or her
182 desire to assume parental responsibilities toward the minor or
183 from exercising his or her parental rights. A motion under this
184 subsection must be filed with the court originally entering the
185 judgment. The motion must be filed within a reasonable time but
186 not later than 1 year after the entry of the judgment



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187 terminating parental rights.

188 (b) No later than 30 days after the filing of a motion
189 under this subsection, the court shall conduct a preliminary
190 hearing to determine what contact, if any, will be permitted
191 between a ~~birth~~ parent and the child pending resolution of the
192 motion. Such contact may be allowed only if it is requested by a
193 parent who has appeared at the hearing and the court determines
194 that it is in the best interests ~~interest~~ of the child. If the
195 court orders contact between a ~~birth~~ parent and the child, the
196 order must be issued in writing as expeditiously as possible and
197 must state with specificity any provisions regarding contact
198 with persons other than those with whom the child resides.

199 (c) ~~At the preliminary hearing, The court, upon the motion~~
200 ~~of any party or upon its own motion,~~ may not order scientific
201 testing to determine the paternity or maternity of the minor
202 until such time as the court determines that a previously
203 entered judgment terminating the parental rights of that parent
204 is voidable pursuant to paragraph (a), unless all parties agree
205 that such testing is in the best interests of the child ~~if the~~
206 ~~person seeking to set aside the judgment is alleging to be the~~
207 ~~child's birth parent but has not previously been determined by~~
208 ~~legal proceedings or scientific testing to be the birth parent.~~
209 Upon the filing of test results establishing that person's
210 maternity or paternity of the surrendered infant, the court may
211 order visitation only if it appears to be ~~as it deems~~
212 ~~appropriate and~~ in the best interests ~~interest~~ of the child.

213 (d) Within 45 days after the preliminary hearing, the court
214 shall conduct a final hearing on the motion to set aside the
215 judgment and shall enter its written order as expeditiously as



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216 possible thereafter.

217 Section 7. Subsection (1) of section 63.0425, Florida
218 Statutes, is amended to read:

219 63.0425 Grandparent's right to notice.-

220 (1) If a child has lived with a grandparent for at least 6
221 continuous months within the 24-month period immediately
222 preceding the filing of a petition for termination of parental
223 rights pending adoption, the adoption entity shall provide
224 notice to that grandparent of the hearing on the petition.

225 Section 8. Section 63.0427, Florida Statutes, is amended to
226 read:

227 63.0427 Agreements for ~~Adopted minor's right to~~ continued
228 communication or contact between adopted child and ~~with~~
229 siblings, parents, and other relatives.-

230 (1) A child whose parents have had their parental rights
231 terminated and whose custody has been awarded to the department
232 pursuant to s. 39.811, and who is the subject of a petition for
233 adoption under this chapter, shall have the right to have the
234 court consider the appropriateness of postadoption communication
235 or contact, including, but not limited to, visits, written
236 correspondence, or telephone calls, with his or her siblings or,
237 upon agreement of the adoptive parents, with the parents who
238 have had their parental rights terminated or other specified
239 biological relatives. The court shall consider the following in
240 making such determination:

241 (a) Any orders of the court pursuant to s. 39.811(7).

242 (b) Recommendations of the department, the foster parents
243 if other than the adoptive parents, and the guardian ad litem.

244 (c) Statements of the prospective adoptive parents.



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245 (d) Any other information deemed relevant and material by
246 the court.

247
248 If the court determines that the child's best interests will be
249 served by postadoption communication or contact, the court shall
250 so order, stating the nature and frequency of ~~for~~ the
251 communication or contact. This order shall be made a part of the
252 final adoption order, but ~~in no event shall~~ the continuing
253 validity of the adoption may not be contingent upon such
254 postadoption communication or contact and, ~~nor shall~~ the ability
255 of the adoptive parents and child to change residence within or
256 outside the State of Florida may not be impaired by such
257 communication or contact.

258 (2) Notwithstanding ~~the provisions of~~ s. 63.162, the
259 adoptive parent may, at any time, petition for review of a
260 communication or contact order entered pursuant to subsection
261 (1), if the adoptive parent believes that the best interests of
262 the adopted child are being compromised, and the court may ~~shall~~
263 ~~have authority to~~ order the communication or contact to be
264 terminated or modified, as the court deems to be in the best
265 interests of the adopted child; however, the court may not
266 increase contact between the adopted child and siblings, birth
267 parents, or other relatives without the consent of the adoptive
268 parent or parents. As part of the review process, the court may
269 order the parties to engage in mediation. The department shall
270 not be required to be a party to such review.

271 (3) Prospective adoptive parents may enter into an
272 agreement for contact between the child to be adopted and the
273 birth parent, other relative, or previous foster parent of the



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274 child to be adopted. Such contact may include visits, written
275 correspondence, telephone contact, exchange of photographs, or
276 other similar types of contact. The agreement is enforceable by
277 the court only if:

278 (a) The agreement was in writing and was submitted to the
279 court.

280 (b) The adoptive parents have agreed to the terms of the
281 contact agreement.

282 (c) The court finds the contact to be in the best interests
283 of the child.

284 (d) The child, if 12 years of age or older, has agreed to
285 the contact outlined in the agreement.

286 (4) All parties must acknowledge that a dispute regarding
287 the contact agreement does not affect the validity or finality
288 of the adoption and that a breach of the agreement may not be
289 grounds to set aside the adoption or otherwise impact the
290 validity or finality of the adoption in any way.

291 (5) An adoptive parent may terminate the contact between
292 the child and the birth parent, other relative, or foster parent
293 if the adoptive parent reasonably believes that the contact is
294 detrimental to the best interests of the child.

295 (6) In order to terminate the agreement for contact, the
296 adoptive parent must file a notice of intent to terminate the
297 contact agreement with the court that initially approved the
298 contact agreement, and provide a copy of the notice to the
299 adoption entity that placed the child, if any, and to the birth
300 parent, other relative, or foster parent of the child who is a
301 party to the agreement, outlining the reasons for termination of
302 the agreement.



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303 (7) If appropriate under the circumstances of the case, the
304 court may order the parties to participate in mediation to
305 attempt to resolve the issues with the contact agreement. The
306 mediation shall be conducted pursuant to s. 61.183. The
307 petitioner shall be responsible for payment for the services of
308 the mediator.

309 (8) The court may modify the terms of the agreement in
310 order to serve the best interests of the child, but may not
311 increase the amount or type of contact unless the adoptive
312 parents agree to the increase in contact or change in the type
313 of contact.

314 (9) An agreement for contact entered into under this
315 subsection is enforceable even if it does not fully disclose the
316 identity of the parties to the agreement or if identifying
317 information has been redacted from the agreement.

318 Section 9. Subsections (1), (2), (3), and (6) of section
319 63.052, Florida Statutes, are amended to read:

320 63.052 Guardians designated; proof of commitment.—

321 (1) For minors who have been placed for adoption with ~~and~~
322 ~~permanently committed to~~ an adoption entity, other than an
323 intermediary, such adoption entity shall be the guardian of the
324 person of the minor and has the responsibility and authority to
325 provide for the needs and welfare of the minor.

326 (2) For minors who have been voluntarily surrendered to an
327 intermediary through an execution of a consent to adoption, the
328 intermediary shall be responsible for the minor until the time a
329 court orders preliminary approval of placement of the minor in
330 the prospective adoptive home, after which time the prospective
331 adoptive parents shall become guardians pending finalization of



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332 adoption, subject to the intermediary's right and responsibility
333 to remove the child from the prospective adoptive home if the
334 removal is deemed by the intermediary to be in the best
335 interests ~~interest~~ of the child. The intermediary may not remove
336 the child without a court order unless the child is in danger of
337 imminent harm. The intermediary does not become responsible for
338 the minor child's medical bills that were incurred before taking
339 physical custody of the child after the execution of adoption
340 consents. Prior to the court's entry of an order granting
341 preliminary approval of the placement, the intermediary shall
342 have the responsibility and authority to provide for the needs
343 and welfare of the minor. A ~~No~~ minor may not shall be placed in
344 a prospective adoptive home until that home has received a
345 favorable preliminary home study, as provided in s. 63.092,
346 completed and approved within 1 year before such placement in
347 the prospective home. The provisions of s. 627.6578 shall remain
348 in effect notwithstanding the guardianship provisions in this
349 section.

350 (3) If a minor is surrendered to an adoption entity for
351 subsequent adoption and a suitable prospective adoptive home is
352 not available pursuant to s. 63.092 at the time the minor is
353 surrendered to the adoption entity, the minor must be placed in
354 a licensed foster care home, ~~or~~ with a person or family that has
355 received a favorable preliminary home study pursuant to
356 subsection (2), or with a relative until ~~such~~ a suitable
357 prospective adoptive home is available.

358 (6) Unless otherwise authorized by law or ordered by the
359 court, the department is not responsible for expenses incurred
360 by other adoption entities participating in a placement of a



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361 minor.

362 Section 10. Subsections (2) and (3) of section 63.053,
363 Florida Statutes, are amended to read:

364 63.053 Rights and responsibilities of an unmarried
365 biological father; legislative findings.—

366 (2) The Legislature finds that the interests of the state,
367 the mother, the child, and the adoptive parents described in
368 this chapter outweigh the interest of an unmarried biological
369 father who does not take action in a timely manner to establish
370 and demonstrate a relationship with his child in accordance with
371 the requirements of this chapter. An unmarried biological father
372 has the primary responsibility to protect his rights and is
373 presumed to know that his child may be adopted without his
374 consent unless he strictly complies with ~~the provisions of~~ this
375 chapter and demonstrates a prompt and full commitment to his
376 parental responsibilities.

377 (3) The Legislature finds that a birth mother and a birth
378 father have a right of ~~to~~ privacy.

379 Section 11. Subsections (1), (2), (4), and (13) of section
380 63.054, Florida Statutes, are amended to read:

381 63.054 Actions required by an unmarried biological father
382 to establish parental rights; Florida Putative Father Registry.—

383 (1) In order to preserve the right to notice and consent to
384 an adoption under this chapter, an unmarried biological father
385 must, as the "registrant," file a notarized claim of paternity
386 form with the Florida Putative Father Registry maintained by the
387 Office of Vital Statistics of the Department of Health which
388 includes confirmation of his willingness and intent to support
389 the child for whom paternity is claimed in accordance with state



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390 law. The claim of paternity may be filed at any time before the
391 child's birth, but may not be filed after the date a petition is
392 filed for termination of parental rights. In each proceeding for
393 termination of parental rights, the petitioner must submit to
394 the Office of Vital Statistics a copy of the petition for
395 termination of parental rights or a document executed by the
396 clerk of the court showing the style of the case, the names of
397 the persons whose rights are sought to be terminated, and the
398 date and time of the filing of the petition. The Office of Vital
399 Statistics may not record a claim of paternity after the date a
400 petition for termination of parental rights is filed. The
401 failure of an unmarried biological father to file a claim of
402 paternity with the registry before the date a petition for
403 termination of parental rights is filed also bars him from
404 filing a paternity claim under chapter 742.

405 (a) An unmarried biological father is excepted from the
406 time limitations for filing a claim of paternity with the
407 registry or for filing a paternity claim under chapter 742, if:

408 1. The mother identifies him to the adoption entity as a
409 potential biological father by the date she executes a consent
410 for adoption; and

411 2. He is served with a notice of intended adoption plan
412 pursuant to s. 63.062(3) and the 30-day mandatory response date
413 is later than the date the petition for termination of parental
414 rights is filed with the court.

415 (b) If an unmarried biological father falls within the
416 exception provided by paragraph (a), the petitioner shall also
417 submit to the Office of Vital Statistics a copy of the notice of
418 intended adoption plan and proof of service of the notice on the



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419 potential biological father.

420 (c) An unmarried biological father who falls within the
421 exception provided by paragraph (a) may not file a claim of
422 paternity with the registry or a paternity claim under chapter
423 742 after the 30-day mandatory response date to the notice of
424 intended adoption plan has expired. The Office of Vital
425 Statistics may not record a claim of paternity 30 days after
426 service of the notice of intended adoption plan.

427 (2) By filing a claim of paternity form with the Office of
428 Vital Statistics, the registrant expressly consents to submit to
429 and pay for DNA testing upon the request of any party, the
430 registrant, or the adoption entity with respect to the child
431 referenced in the claim of paternity.

432 (4) Upon initial registration, or at any time thereafter,
433 the registrant may designate a physical ~~an~~ address other than
434 his residential address for sending any communication regarding
435 his registration. Similarly, upon initial registration, or at
436 any time thereafter, the registrant may designate, in writing,
437 an agent or representative to receive any communication on his
438 behalf and receive service of process. The agent or
439 representative must file an acceptance of the designation, in
440 writing, in order to receive notice or service of process. The
441 failure of the designated representative or agent of the
442 registrant to deliver or otherwise notify the registrant of
443 receipt of correspondence from the Florida Putative Father
444 Registry is at the registrant's own risk and may ~~shall~~ not serve
445 as a valid defense based upon lack of notice.

446 (13) The filing of a claim of paternity with the Florida
447 Putative Father Registry does not excuse or waive the obligation



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448 of a petitioner to comply with the requirements of s. 63.088(4)
449 for conducting a diligent search and required inquiry with
450 respect to the identity of an unmarried biological father or
451 legal father which are set forth in this chapter.

452 Section 12. Paragraph (b) of subsection (1), subsections
453 (2), (3), and (4), and paragraph (a) of subsection (8) of
454 section 63.062, Florida Statutes, are amended to read:

455 63.062 Persons required to consent to adoption; affidavit
456 of nonpaternity; waiver of venue.—

457 (1) Unless supported by one or more of the grounds
458 enumerated under s. 63.089(3), a petition to terminate parental
459 rights pending adoption may be granted only if written consent
460 has been executed as provided in s. 63.082 after the birth of
461 the minor or notice has been served under s. 63.088 to:

462 (b) The father of the minor, if:

463 1. The minor was conceived or born while the father was
464 married to the mother;

465 2. The minor is his child by adoption;

466 3. The minor has been adjudicated by the court to be his
467 child before ~~by~~ the date a petition ~~is filed~~ for termination of
468 parental rights is filed;

469 4. He has filed an affidavit of paternity pursuant to s.
470 382.013(2)(c) or he is listed on the child's birth certificate
471 before ~~by~~ the date a petition ~~is filed~~ for termination of
472 parental rights is filed; or

473 5. In the case of an unmarried biological father, he has
474 acknowledged in writing, signed in the presence of a competent
475 witness, that he is the father of the minor, has filed such
476 acknowledgment with the Office of Vital Statistics of the



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477 Department of Health within the required timeframes, and has
478 complied with the requirements of subsection (2).

479

480 The status of the father shall be determined at the time of the
481 filing of the petition to terminate parental rights and may not
482 be modified, except as otherwise provided in s. 63.0423(9) (a),
483 for purposes of his obligations and rights under this chapter by
484 acts occurring after the filing of the petition to terminate
485 parental rights.

486 (2) In accordance with subsection (1), the consent of an
487 unmarried biological father shall be necessary only if the
488 unmarried biological father has complied with the requirements
489 of this subsection.

490 (a)1. With regard to a child who is placed with adoptive
491 parents more than 6 months after the child's birth, an unmarried
492 biological father must have developed a substantial relationship
493 with the child, taken some measure of responsibility for the
494 child and the child's future, and demonstrated a full commitment
495 to the responsibilities of parenthood by providing reasonable
496 and regular financial support to the child in accordance with
497 the unmarried biological father's ability, if not prevented from
498 doing so by the person or authorized agency having lawful
499 custody of the child, and either:

500 a. Regularly visited the child at least monthly, when
501 physically and financially able to do so and when not prevented
502 from doing so by the birth mother or the person or authorized
503 agency having lawful custody of the child; or

504 b. Maintained regular communication with the child or with
505 the person or agency having the care or custody of the child,



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506 when physically or financially unable to visit the child or when
507 not prevented from doing so by the birth mother or person or
508 authorized agency having lawful custody of the child.

509 ~~2. The mere fact that an unmarried biological father~~
510 ~~expresses a desire to fulfill his responsibilities towards his~~
511 ~~child which is unsupported by acts evidencing this intent does~~
512 ~~not preclude a finding by the court that the unmarried~~
513 ~~biological father failed to comply with the requirements of this~~
514 ~~subsection.~~

515 ~~2.3.~~ An unmarried biological father who openly lived with
516 the child for at least 6 months within the 1-year period
517 following the birth of the child and immediately preceding
518 placement of the child with adoptive parents and who openly held
519 himself out to be the father of the child during that period
520 shall be deemed to have developed a substantial relationship
521 with the child and to have otherwise met the requirements of
522 this paragraph.

523 (b) With regard to a child who is ~~younger than~~ 6 months of
524 age or younger at the time the child is placed with the adoptive
525 parents, an unmarried biological father must have demonstrated a
526 full commitment to his parental responsibility by having
527 performed all of the following acts prior to the time the mother
528 executes her consent for adoption:

529 1. Filed a notarized claim of paternity form with the
530 Florida Putative Father Registry within the Office of Vital
531 Statistics of the Department of Health, which form shall be
532 maintained in the confidential registry established for that
533 purpose and shall be considered filed when the notice is entered
534 in the registry of notices from unmarried biological fathers.



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535 2. Upon service of a notice of an intended adoption plan or
536 a petition for termination of parental rights pending adoption,
537 executed and filed an affidavit in that proceeding stating that
538 he is personally fully able and willing to take responsibility
539 for the child, setting forth his plans for care of the child,
540 and agreeing to a court order of child support and a
541 contribution to the payment of living and medical expenses
542 incurred for the mother's pregnancy and the child's birth in
543 accordance with his ability to pay.

544 3. If he had knowledge of the pregnancy, paid a fair and
545 reasonable amount of the living and medical expenses incurred in
546 connection with the mother's pregnancy and the child's birth, in
547 accordance with his financial ability and when not prevented
548 from doing so by the birth mother or person or authorized agency
549 having lawful custody of the child. The responsibility of the
550 unmarried biological father to provide financial assistance to
551 the birth mother during her pregnancy and to the child after
552 birth is not abated because support is being provided to the
553 birth mother or child by the adoption entity, a prospective
554 adoptive parent, or a third party, nor does it serve as a basis
555 to excuse the birth father's failure to provide support.

556 (c) The mere fact that a father expresses a desire to
557 fulfill his responsibilities towards his child which is
558 unsupported by acts evidencing this intent does not meet the
559 requirements of this section.

560 (d) ~~(e)~~ The petitioner shall file with the court a
561 certificate from the Office of Vital Statistics stating that a
562 diligent search has been made of the Florida Putative Father
563 Registry of notices from unmarried biological fathers described



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564 in subparagraph (b)1. and that no filing has been found
565 pertaining to the father of the child in question or, if a
566 filing is found, stating the name of the putative father and the
567 time and date of filing. That certificate shall be filed with
568 the court prior to the entry of a final judgment of termination
569 of parental rights.

570 (e)~~(d)~~ An unmarried biological father who does not comply
571 with each of the conditions provided in this subsection is
572 deemed to have waived and surrendered any rights in relation to
573 the child, including the right to notice of any judicial
574 proceeding in connection with the adoption of the child, and his
575 consent to the adoption of the child is not required.

576 (3) Pursuant to chapter 48, an adoption entity shall serve
577 a notice of intended adoption plan upon any known and locatable
578 unmarried biological father who is identified to the adoption
579 entity by the mother by the date she signs her consent for
580 adoption if the child is 6 months of age or less at the time the
581 consent is executed ~~or who is identified by a diligent search of~~
582 ~~the Florida Putative Father Registry, or upon an entity whose~~
583 ~~consent is required~~. Service of the notice of intended adoption
584 plan is not required ~~mandatory~~ when the unmarried biological
585 father signs a consent for adoption or an affidavit of
586 nonpaternity or when the child is more than 6 months of age at
587 the time of the execution of the consent by the mother. The
588 notice may be served at any time before the child's birth or
589 before placing the child in the adoptive home. The recipient of
590 the notice may waive service of process by executing a waiver
591 and acknowledging receipt of the plan. The notice of intended
592 adoption plan must specifically state that if the unmarried



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593 biological father desires to contest the adoption plan he must,
594 within 30 days after service, file with the court a verified
595 response that contains a pledge of commitment to the child in
596 substantial compliance with subparagraph (2)(b)2. and a claim of
597 paternity form with the Office of Vital Statistics, and must
598 provide the adoption entity with a copy of the verified response
599 filed with the court and the claim of paternity form filed with
600 the Office of Vital Statistics. The notice must also include
601 instructions for submitting a claim of paternity form to the
602 Office of Vital Statistics and the address to which the claim
603 must be sent. If the party served with the notice of intended
604 adoption plan is an entity whose consent is required, the notice
605 must specifically state that the entity must file, within 30
606 days after service, a verified response setting forth a legal
607 basis for contesting the intended adoption plan, specifically
608 addressing the best interests ~~interest~~ of the child.

609 (a) If the unmarried biological father or entity whose
610 consent is required fails to timely and properly file a verified
611 response with the court and, in the case of an unmarried
612 biological father, a claim of paternity form with the Office of
613 Vital Statistics, the court shall enter a default judgment
614 against the ~~any~~ unmarried biological father or entity and the
615 consent of that unmarried biological father or entity shall no
616 longer be required under this chapter and shall be deemed to
617 have waived any claim of rights to the child. To avoid an entry
618 of a default judgment, within 30 days after receipt of service
619 of the notice of intended adoption plan:

- 620 1. The unmarried biological father must:
621 a. File a claim of paternity with the Florida Putative



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622 Father Registry maintained by the Office of Vital Statistics;
623 b. File a verified response with the court which contains a
624 pledge of commitment to the child in substantial compliance with
625 subparagraph (2) (b) 2.; and
626 c. Provide support for the birth mother and the child.
627 2. The entity whose consent is required must file a
628 verified response setting forth a legal basis for contesting the
629 intended adoption plan, specifically addressing the best
630 interests ~~interest~~ of the child.
631 (b) If the mother identifies a potential unmarried
632 biological father within the timeframes required by the statute,
633 whose location is unknown, the adoption entity shall conduct a
634 diligent search pursuant to s. 63.088. If, upon completion of a
635 diligent search, the potential unmarried biological father's
636 location remains unknown and a search of the Florida Putative
637 Father Registry fails to reveal a match, the adoption entity
638 shall request in the petition for termination of parental rights
639 pending adoption that the court declare the diligent search to
640 be in compliance with s. 63.088, that the adoption entity has no
641 further obligation to provide notice to the potential unmarried
642 biological father, and that the potential unmarried biological
643 father's consent to the adoption is not required.
644 (4) Any person whose consent is required under paragraph
645 (1) (b), or any other man, may execute an irrevocable affidavit
646 of nonpaternity in lieu of a consent under this section and by
647 doing so waives notice to all court proceedings after the date
648 of execution. An affidavit of nonpaternity must be executed as
649 provided in s. 63.082. The affidavit of nonpaternity may be
650 executed prior to the birth of the child. The person executing



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651 the affidavit must receive disclosure under s. 63.085 prior to
652 signing the affidavit. For purposes of this chapter, an
653 affidavit of nonpaternity is sufficient if it contains a
654 specific denial of parental obligations and does not need to
655 deny the existence of a biological relationship.

656 (8) A petition to adopt an adult may be granted if:

657 (a) Written consent to adoption has been executed by the
658 adult and the adult's spouse, if any, unless the spouse's
659 consent is waived by the court for good cause.

660 Section 13. Subsection (2) of section 63.063, Florida
661 Statutes, is amended to read:

662 63.063 Responsibility of parents for actions; fraud or
663 misrepresentation; contesting termination of parental rights and
664 adoption.—

665 (2) Any person injured by a fraudulent representation or
666 action in connection with an adoption may pursue civil or
667 criminal penalties as provided by law. A fraudulent
668 representation is not a defense to compliance with the
669 requirements of this chapter and is not a basis for dismissing a
670 petition for termination of parental rights or a petition for
671 adoption, for vacating an adoption decree, or for granting
672 custody to the offended party. Custody and adoption
673 determinations must be based on the best interests ~~interest~~ of
674 the child in accordance with s. 61.13.

675 Section 14. Paragraph (d) of subsection (1), paragraphs (c)
676 and (d) of subsection (3), paragraphs (a), (d), and (e) of
677 subsection (4), and subsections (6) and (7) of section 63.082,
678 Florida Statutes, are amended to read:

679 63.082 Execution of consent to adoption or affidavit of



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680 nonpaternity; family social and medical history; revocation
681 ~~withdrawal~~ of consent.-

682 (1)

683 (d) The notice and consent provisions of this chapter as
684 they relate to the father birth of a child ~~or to legal fathers~~
685 do not apply in cases in which the child is conceived as a
686 result of a violation of the criminal laws of this or another
687 state or country, including, but not limited to, sexual battery,
688 unlawful sexual activity with certain minors under s. 794.05,
689 lewd acts perpetrated upon a minor, or incest. A criminal
690 conviction is not required for the court to find that the child
691 was conceived as a result of a violation of the criminal laws of
692 this state or another state or country.

693 (3)

694 (c) If any person who is required to consent is unavailable
695 because the person cannot be located, an ~~the petition to~~
696 ~~terminate parental rights pending adoption must be accompanied~~
697 ~~by the~~ affidavit of diligent search required under s. 63.088
698 shall be filed.

699 (d) If any person who is required to consent is unavailable
700 because the person is deceased, the petition to terminate
701 parental rights pending adoption must be accompanied by a
702 certified copy of the death certificate. In an adoption of a
703 stepchild or a relative, the certified copy of the death
704 certificate of the person whose consent is required may ~~must~~ be
705 attached to the petition for adoption if a separate petition for
706 termination of parental rights is not being filed.

707 (4) (a) An affidavit of nonpaternity may be executed before
708 the birth of the minor; however, the consent to an adoption may



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709 ~~shall~~ not be executed before the birth of the minor except in a
710 preplanned adoption pursuant to s. 63.213.

711 (d) The consent to adoption or the affidavit of
712 nonpaternity must be signed in the presence of two witnesses and
713 be acknowledged before a notary public who is not signing as one
714 of the witnesses. The notary public must legibly note on the
715 consent or the affidavit the date and time of execution. The
716 witnesses' names must be typed or printed underneath their
717 signatures. The witnesses' home or business addresses must be
718 included. The person who signs the consent or the affidavit has
719 the right to have at least one of the witnesses be an individual
720 who does not have an employment, professional, or personal
721 relationship with the adoption entity or the prospective
722 adoptive parents. The adoption entity must give reasonable
723 advance notice to the person signing the consent or affidavit of
724 the right to select a witness of his or her own choosing. The
725 person who signs the consent or affidavit must acknowledge in
726 writing on the consent or affidavit that such notice was given
727 and indicate the witness, if any, who was selected by the person
728 signing the consent or affidavit. The adoption entity must
729 include its name, address, and telephone number on the consent
730 to adoption or affidavit of nonpaternity.

731 (e) A consent to adoption being executed by the birth
732 parent must be in at least 12-point boldfaced type and shall
733 contain the following recitation of rights ~~in substantially the~~
734 ~~following form:~~

735 CONSENT TO ADOPTION

736
737 YOU HAVE THE RIGHT TO SELECT AT LEAST ONE PERSON WHO DOES NOT



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738 HAVE AN EMPLOYMENT, PROFESSIONAL, OR PERSONAL RELATIONSHIP WITH
739 THE ADOPTION ENTITY OR THE PROSPECTIVE ADOPTIVE PARENTS TO BE
740 PRESENT WHEN THIS AFFIDAVIT IS EXECUTED AND TO SIGN IT AS A
741 WITNESS. YOU MUST ACKNOWLEDGE ON THIS FORM THAT YOU WERE
742 NOTIFIED OF THIS RIGHT AND YOU MUST INDICATE THE WITNESS OR
743 WITNESSES YOU SELECTED, IF ANY.

744
745 YOU DO NOT HAVE TO SIGN THIS CONSENT FORM. YOU MAY DO ANY OF THE
746 FOLLOWING INSTEAD OF SIGNING THIS CONSENT OR BEFORE SIGNING THIS
747 CONSENT:

- 748
- 749 1. CONSULT WITH AN ATTORNEY;
 - 750 2. HOLD, CARE FOR, AND FEED THE CHILD UNLESS OTHERWISE
751 LEGALLY PROHIBITED;
 - 752 3. PLACE THE CHILD IN FOSTER CARE OR WITH ANY FRIEND OR
753 FAMILY MEMBER YOU CHOOSE WHO IS WILLING TO CARE FOR THE CHILD;
 - 754 4. TAKE THE CHILD HOME UNLESS OTHERWISE LEGALLY PROHIBITED;
 - 755 AND
 - 756 5. FIND OUT ABOUT THE COMMUNITY RESOURCES THAT ARE
757 AVAILABLE TO YOU IF YOU DO NOT GO THROUGH WITH THE ADOPTION.

758
759 IF YOU DO SIGN THIS CONSENT, YOU ARE GIVING UP ALL RIGHTS TO
760 YOUR CHILD. YOUR CONSENT IS VALID, BINDING, AND IRREVOCABLE
761 EXCEPT UNDER SPECIFIC LEGAL CIRCUMSTANCES. IF YOU ARE GIVING UP
762 YOUR RIGHTS TO A NEWBORN CHILD WHO IS TO BE IMMEDIATELY PLACED
763 FOR ADOPTION UPON THE CHILD'S RELEASE FROM A LICENSED HOSPITAL
764 OR BIRTH CENTER FOLLOWING BIRTH, A WAITING PERIOD WILL BE
765 IMPOSED UPON THE BIRTH MOTHER BEFORE SHE MAY SIGN THE CONSENT
766 FOR ADOPTION. A BIRTH MOTHER MUST WAIT 48 HOURS FROM THE TIME OF



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767 BIRTH, OR UNTIL THE DAY THE BIRTH MOTHER HAS BEEN NOTIFIED IN
768 WRITING, EITHER ON HER PATIENT CHART OR IN RELEASE PAPERS, THAT
769 SHE IS FIT TO BE RELEASED FROM A LICENSED HOSPITAL OR BIRTH
770 CENTER, WHICHEVER IS SOONER, BEFORE THE CONSENT FOR ADOPTION MAY
771 BE EXECUTED. ANY MAN MAY EXECUTE A CONSENT AT ANY TIME AFTER THE
772 BIRTH OF THE CHILD. ONCE YOU HAVE SIGNED THE CONSENT, IT IS
773 VALID, BINDING, AND IRREVOCABLE AND CANNOT BE INVALIDATED
774 ~~WITHDRAWN~~ UNLESS A COURT FINDS THAT IT WAS OBTAINED BY FRAUD OR
775 DURESS.

776
777 IF YOU BELIEVE THAT YOUR CONSENT WAS OBTAINED BY FRAUD OR DURESS
778 AND YOU WISH TO INVALIDATE ~~REVOKE~~ THAT CONSENT, YOU MUST:

- 779
- 780 1. NOTIFY THE ADOPTION ENTITY, BY WRITING A LETTER, THAT
 - 781 YOU WISH TO WITHDRAW YOUR CONSENT; AND
 - 782 2. PROVE IN COURT THAT THE CONSENT WAS OBTAINED BY FRAUD OR
 - 783 DURESS.

784
785 This statement of rights is not required for the adoption of a
786 relative, an adult, a stepchild, or a child older than 6 months
787 of age. A consent form for the adoption of a child older than 6
788 months of age at the time of the execution of consent must
789 contain a statement outlining the revocation rights provided in
790 paragraph (c).

791 (6) (a) If a parent executes a consent for placement of a
792 minor with an adoption entity or qualified prospective adoptive
793 parents and the minor child is in the custody of the department,
794 but parental rights have not yet been terminated, the adoption
795 consent is valid, binding, and enforceable by the court.



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796 (b) Upon execution of the consent of the parent, the
797 adoption entity shall be permitted to ~~may~~ intervene in the
798 dependency case as a party in interest and must provide the
799 court that acquired ~~having~~ jurisdiction over the minor, pursuant
800 to the shelter or dependency petition filed by the department, a
801 copy of the preliminary home study of the prospective adoptive
802 parents and any other evidence of the suitability of the
803 placement. The preliminary home study must be maintained with
804 strictest confidentiality within the dependency court file and
805 the department's file. A preliminary home study must be provided
806 to the court in all cases in which an adoption entity has
807 intervened pursuant to this section. Unless the court has
808 concerns regarding the qualifications of the home study
809 provider, or concerns that the home study may not be adequate to
810 determine the best interests of the child, the home study
811 provided by the adoption entity shall be deemed to be sufficient
812 and no additional home study needs to be performed by the
813 department.

814 (c) If an adoption entity files a motion to intervene in
815 the dependency case in accordance with this chapter, the
816 dependency court shall promptly grant a hearing to determine
817 whether the adoption entity has filed the required documents to
818 be permitted to intervene and whether a change of placement of
819 the child is appropriate.

820 (d) ~~(e)~~ Upon a determination by the court that the
821 prospective adoptive parents are properly qualified to adopt the
822 minor child and that the adoption appears to be in the best
823 interests ~~interest~~ of the minor child, the court shall
824 immediately order the transfer of custody of the minor child to



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825 the prospective adoptive parents, under the supervision of the
826 adoption entity. The adoption entity shall thereafter provide
827 monthly supervision reports to the department until finalization
828 of the adoption.

829 ~~(e)~~ (d) In determining whether the best interests ~~interest~~
830 of the child are ~~is~~ served by transferring the custody of the
831 minor child to the prospective adoptive parent selected by the
832 parent, the court shall consider the rights of the parent to
833 determine an appropriate placement for the child, the permanency
834 offered, the child's bonding with any potential adoptive home
835 that the child has been residing in, and the importance of
836 maintaining sibling relationships, if possible.

837 (7) If a person is seeking to revoke ~~withdraw~~ consent for a
838 child older than 6 months of age ~~who has been placed with~~
839 ~~prospective adoptive parents:~~

840 (a) The person seeking to revoke ~~withdraw~~ consent must, in
841 accordance with paragraph (4) (c), notify the adoption entity in
842 writing by certified mail, return receipt requested, within 3
843 business days after execution of the consent. As used in this
844 subsection, the term "business day" means any day on which the
845 United States Postal Service accepts certified mail for
846 delivery.

847 (b) Upon receiving timely written notice from a person
848 whose consent to adoption is required of that person's desire to
849 revoke ~~withdraw~~ consent, the adoption entity must contact the
850 prospective adoptive parent to arrange a time certain for the
851 adoption entity to regain physical custody of the minor, unless,
852 upon a motion for emergency hearing by the adoption entity, the
853 court determines in written findings that placement of the minor



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854 with the person who had legal or physical custody of the child
855 immediately before the child was placed for adoption may
856 endanger the minor or that the person who desires to revoke
857 ~~withdraw~~ consent is not required to consent to the adoption, has
858 been determined to have abandoned the child, or is otherwise
859 subject to a determination that the person's consent is waived
860 under this chapter.

861 (c) If the court finds that the placement may endanger the
862 minor, the court shall enter an order continuing the placement
863 of the minor with the prospective adoptive parents pending
864 further proceedings if they desire continued placement. If the
865 prospective adoptive parents do not desire continued placement,
866 the order must include, but need not be limited to, a
867 determination of whether temporary placement in foster care,
868 with the person who had legal or physical custody of the child
869 immediately before placing the child for adoption, or with a
870 relative is in the best interests ~~interest~~ of the child and
871 whether an investigation by the department is recommended.

872 (d) If the person revoking ~~withdrawing~~ consent claims to be
873 the father of the minor but has not been established to be the
874 father by marriage, court order, or scientific testing, the
875 court may order scientific paternity testing and reserve ruling
876 on removal of the minor until the results of such testing have
877 been filed with the court.

878 (e) The adoption entity must return the minor within 3
879 business days after timely and proper notification of the
880 revocation ~~withdrawal~~ of consent or after the court determines
881 that revocation ~~withdrawal~~ is timely and in accordance with the
882 requirements of this chapter ~~valid and binding~~ upon



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883 consideration of an emergency motion, as filed pursuant to
884 paragraph (b), to the physical custody of the person revoking
885 ~~withdrawing~~ consent or the person directed by the court. If the
886 person seeking to revoke ~~withdraw~~ consent claims to be the
887 father of the minor but has not been established to be the
888 father by marriage, court order, or scientific testing, the
889 adoption entity may return the minor to the care and custody of
890 the mother, if she desires such placement and she is not
891 otherwise prohibited by law from having custody of the child.

892 (f) Following the revocation period ~~for withdrawal of~~
893 ~~consent~~ described in paragraph (a), ~~or the placement of the~~
894 ~~child with the prospective adoptive parents, whichever occurs~~
895 ~~later~~, consent may be set aside ~~withdrawn~~ only when the court
896 finds that the consent was obtained by fraud or duress.

897 (g) An affidavit of nonpaternity may be set aside ~~withdrawn~~
898 only if the court finds that the affidavit was obtained by fraud
899 or duress.

900 (h) If the consent of one parent is set aside or revoked in
901 accordance with this chapter, any other consents executed by the
902 other parent or a third party whose consent is required for the
903 adoption of the child may not be used by the parent whose
904 consent was revoked or set aside to terminate or diminish the
905 rights of the other parent or third party whose consent was
906 required for the adoption of the child.

907 Section 15. Subsection (1) and paragraph (a) of subsection
908 (2) of section 63.085, Florida Statutes, are amended, and
909 paragraph (c) is added to subsection (2) of that section, to
910 read:

911 63.085 Disclosure by adoption entity.-



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912 (1) DISCLOSURE REQUIRED TO PARENTS AND PROSPECTIVE ADOPTIVE
913 PARENTS.—Within 14 days after a person seeking to adopt a minor
914 or a person seeking to place a minor for adoption contacts an
915 adoption entity in person or provides the adoption entity with a
916 mailing address, the entity must provide a written disclosure
917 statement to that person if the entity agrees or continues to
918 work with the person. The adoption entity shall also provide the
919 written disclosure to the parent who did not initiate contact
920 with the adoption entity within 14 days after that parent is
921 identified and located. For purposes of providing the written
922 disclosure, a person is considered to be seeking to place a
923 minor for adoption if that person has sought information or
924 advice from the adoption entity regarding the option of adoptive
925 placement. The written disclosure statement must be in
926 substantially the following form:

927
928 ADOPTION DISCLOSURE

929 THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE PROVIDED TO ALL
930 PERSONS CONSIDERING ADOPTING A MINOR OR SEEKING TO PLACE A MINOR
931 FOR ADOPTION, TO ADVISE THEM OF THE FOLLOWING FACTS REGARDING
932 ADOPTION UNDER FLORIDA LAW:

933
934 1. The name, address, and telephone number of the adoption
935 entity providing this disclosure is:

936 Name:

937 Address:

938 Telephone Number:

939 2. The adoption entity does not provide legal
940 representation or advice to parents or anyone signing a consent



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941 for adoption or affidavit of nonpaternity, and parents have the
942 right to consult with an attorney of their own choosing to
943 advise them.

944 3. With the exception of an adoption by a stepparent or
945 relative, a child cannot be placed into a prospective adoptive
946 home unless the prospective adoptive parents have received a
947 favorable preliminary home study, including criminal and child
948 abuse clearances.

949 4. A valid consent for adoption may not be signed by the
950 birth mother until 48 hours after the birth of the child, or the
951 day the birth mother is notified, in writing, that she is fit
952 for discharge from the licensed hospital or birth center. Any
953 man may sign a valid consent for adoption at any time after the
954 birth of the child.

955 5. A consent for adoption signed before the child attains
956 the age of 6 months is binding and irrevocable from the moment
957 it is signed unless it can be proven in court that the consent
958 was obtained by fraud or duress. A consent for adoption signed
959 after the child attains the age of 6 months is valid from the
960 moment it is signed; however, it may be revoked up to 3 business
961 days after it was signed.

962 6. A consent for adoption is not valid if the signature of
963 the person who signed the consent was obtained by fraud or
964 duress.

965 7. An unmarried biological father must act immediately in
966 order to protect his parental rights. Section 63.062, Florida
967 Statutes, prescribes that any father seeking to establish his
968 right to consent to the adoption of his child must file a claim
969 of paternity with the Florida Putative Father Registry



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970 maintained by the Office of Vital Statistics of the Department
971 of Health by the date a petition to terminate parental rights is
972 filed with the court, or within 30 days after receiving service
973 of a Notice of Intended Adoption Plan. If he receives a Notice
974 of Intended Adoption Plan, he must file a claim of paternity
975 with the Florida Putative Father Registry, file a parenting plan
976 with the court, and provide financial support to the mother or
977 child within 30 days following service. An unmarried biological
978 father's failure to timely respond to a Notice of Intended
979 Adoption Plan constitutes an irrevocable legal waiver of any and
980 all rights that the father may have to the child. A claim of
981 paternity registration form for the Florida Putative Father
982 Registry may be obtained from any local office of the Department
983 of Health, Office of Vital Statistics, the Department of
984 Children and Families, the Internet websites for these agencies,
985 and the offices of the clerks of the Florida circuit courts. The
986 claim of paternity form must be submitted to the Office of Vital
987 Statistics, Attention: Adoption Unit, P.O. Box 210,
988 Jacksonville, FL 32231.

989 8. There are alternatives to adoption, including foster
990 care, relative care, and parenting the child. There may be
991 services and sources of financial assistance in the community
992 available to parents if they choose to parent the child.

993 9. A parent has the right to have a witness of his or her
994 choice, who is unconnected with the adoption entity or the
995 adoptive parents, to be present and witness the signing of the
996 consent or affidavit of nonpaternity.

997 10. A parent 14 years of age or younger must have a parent,
998 legal guardian, or court-appointed guardian ad litem to assist



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999 and advise the parent as to the adoption plan and to witness
1000 consent.

1001 11. A parent has a right to receive supportive counseling
1002 from a counselor, social worker, physician, clergy, or attorney.

1003 12. The payment of living or medical expenses by the
1004 prospective adoptive parents before the birth of the child does
1005 not, in any way, obligate the parent to sign the consent for
1006 adoption.

1007
1008 (2) DISCLOSURE TO ADOPTIVE PARENTS.—

1009 (a) At the time that an adoption entity is responsible for
1010 selecting prospective adoptive parents for a born or unborn
1011 child whose parents are seeking to place the child for adoption
1012 or whose rights were terminated pursuant to chapter 39, the
1013 adoption entity must provide the prospective adoptive parents
1014 with information concerning the background of the child to the
1015 extent such information is disclosed to the adoption entity by
1016 the parents, legal custodian, or the department. This subsection
1017 applies only if the adoption entity identifies the prospective
1018 adoptive parents and supervises the ~~physical~~ placement of the
1019 child in the prospective adoptive parents' home. If any
1020 information cannot be disclosed because the records custodian
1021 failed or refused to produce the background information, the
1022 adoption entity has a duty to provide the information if it
1023 becomes available. An individual or entity contacted by an
1024 adoption entity to obtain the background information must
1025 release the requested information to the adoption entity without
1026 the necessity of a subpoena or a court order. In all cases, the
1027 prospective adoptive parents must receive all available



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1028 information by the date of the final hearing on the petition for
1029 adoption. The information to be disclosed includes:

1030 1. A family social and medical history form completed
1031 pursuant to s. 63.162(6).

1032 2. The biological mother's medical records documenting her
1033 prenatal care and the birth and delivery of the child.

1034 3. A complete set of the child's medical records
1035 documenting all medical treatment and care since the child's
1036 birth and before placement.

1037 4. All mental health, psychological, and psychiatric
1038 records, reports, and evaluations concerning the child before
1039 placement.

1040 5. The child's educational records, including all records
1041 concerning any special education needs of the child before
1042 placement.

1043 6. Records documenting all incidents that required the
1044 department to provide services to the child, including all
1045 orders of adjudication of dependency or termination of parental
1046 rights issued pursuant to chapter 39, any case plans drafted to
1047 address the child's needs, all protective services
1048 investigations identifying the child as a victim, and all
1049 guardian ad litem reports filed with the court concerning the
1050 child.

1051 7. Written information concerning the availability of
1052 adoption subsidies for the child, if applicable.

1053 (c) If the prospective adoptive parents waive the receipt
1054 of any of the records described in paragraph (a), a copy of the
1055 written notification of the waiver to the adoption entity shall
1056 be filed with the court.



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1057 Section 16. Subsection (6) of section 63.087, Florida
1058 Statutes, is amended to read:

1059 63.087 Proceeding to terminate parental rights pending
1060 adoption; general provisions.—

1061 (6) ANSWER AND APPEARANCE REQUIRED.—An answer to the
1062 petition or any pleading requiring an answer must be filed in
1063 accordance with the Florida Family Law Rules of Procedure.
1064 Failure to file a written response to the petition constitutes
1065 grounds upon which the court may terminate parental rights.
1066 Failure to personally appear at the hearing constitutes grounds
1067 upon which the court may terminate parental rights. Any person
1068 present at the hearing to terminate parental rights pending
1069 adoption whose consent to adoption is required under s. 63.062
1070 must:

1071 (a) Be advised by the court that he or she has a right to
1072 ask that the hearing be reset for a later date so that the
1073 person may consult with an attorney; and

1074 (b) Be given an opportunity to admit or deny the
1075 allegations in the petition.

1076 Section 17. Subsection (4) of section 63.088, Florida
1077 Statutes, is amended to read:

1078 63.088 Proceeding to terminate parental rights pending
1079 adoption; notice and service; diligent search.—

1080 (4) REQUIRED INQUIRY.—In proceedings initiated under s.
1081 63.087, the court shall conduct an inquiry of the person who is
1082 placing the minor for adoption and of any relative or person
1083 having legal custody of the minor who is present at the hearing
1084 and likely to have the following information regarding the
1085 identity of:



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1086 (a) Any man to whom the mother of the minor was married at
1087 any time when conception of the minor may have occurred or at
1088 the time of the birth of the minor;

1089 (b) Any man who has filed an affidavit of paternity
1090 pursuant to s. 382.013(2)(c) before the date that a petition for
1091 termination of parental rights is filed with the court;

1092 (c) Any man who has adopted the minor;

1093 (d) Any man who has been adjudicated by a court as the
1094 father of the minor child before the date a petition for
1095 termination of parental rights is filed with the court; and

1096 (e) Any man whom the mother identified to the adoption
1097 entity as a potential biological father before the date she
1098 signed the consent for adoption.

1099
1100 The information sought under this subsection may be provided to
1101 the court in the form of a sworn affidavit by a person having
1102 personal knowledge of the facts, addressing each inquiry
1103 enumerated in this subsection, except that, if the inquiry
1104 identifies a father under paragraph (a), paragraph (b), ~~or~~
1105 paragraph (c), or paragraph (d), the inquiry may not continue
1106 further. The inquiry required under this subsection may be
1107 conducted before the birth of the minor.

1108 Section 18. Paragraph (d) of subsection (3), paragraph (b)
1109 of subsection (4), and subsections (5) and (7) of section
1110 63.089, Florida Statutes, are amended to read:

1111 63.089 Proceeding to terminate parental rights pending
1112 adoption; hearing; grounds; dismissal of petition; judgment.—

1113 (3) GROUNDS FOR TERMINATING PARENTAL RIGHTS PENDING
1114 ADOPTION.—The court may enter a judgment terminating parental



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1115 rights pending adoption if the court determines by clear and
1116 convincing evidence, supported by written findings of fact, that
1117 each person whose consent to adoption is required under s.
1118 63.062:

1119 (d) Has been properly served notice of the proceeding in
1120 accordance with the requirements of this chapter and has failed
1121 to file a written answer or personally appear at the evidentiary
1122 hearing resulting in the judgment terminating parental rights
1123 pending adoption;

1124 (4) FINDING OF ABANDONMENT.—A finding of abandonment
1125 resulting in a termination of parental rights must be based upon
1126 clear and convincing evidence that a parent or person having
1127 legal custody has abandoned the child in accordance with the
1128 definition contained in s. 63.032. A finding of abandonment may
1129 also be based upon emotional abuse or a refusal to provide
1130 reasonable financial support, when able, to a birth mother
1131 during her pregnancy.

1132 (b) The child has been abandoned when the parent of a child
1133 is incarcerated on or after October 1, 2001, in a federal,
1134 state, or county correctional institution and:

1135 1. The period of time for which the parent has been or is
1136 expected to be incarcerated will constitute a significant
1137 portion of the child's minority. In determining whether the
1138 period of time is significant, the court shall consider the
1139 child's age and the child's need for a permanent and stable
1140 home. The period of time begins on the date that the parent
1141 enters into incarceration;

1142 2. The incarcerated parent has been determined by a court
1143 of competent jurisdiction to be a violent career criminal as



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1144 defined in s. 775.084, a habitual violent felony offender as
1145 defined in s. 775.084, convicted of child abuse as defined in s.
1146 827.03, or a sexual predator as defined in s. 775.21; has been
1147 convicted of first degree or second degree murder in violation
1148 of s. 782.04 or a sexual battery that constitutes a capital,
1149 life, or first degree felony violation of s. 794.011; or has
1150 been convicted of a substantially similar offense in another
1151 jurisdiction. As used in this section, the term "substantially
1152 similar offense" means any offense that is substantially similar
1153 in elements and penalties to one of those listed in this
1154 subparagraph, and that is in violation of a law of any other
1155 jurisdiction, whether that of another state, the District of
1156 Columbia, the United States or any possession or territory
1157 thereof, or any foreign jurisdiction; or

1158 3. The court determines by clear and convincing evidence
1159 that continuing the parental relationship with the incarcerated
1160 parent would be harmful to the child and, for this reason,
1161 termination of the parental rights of the incarcerated parent is
1162 in the best interests ~~interest~~ of the child.

1163 (5) DISMISSAL OF PETITION.—If the court does not find by
1164 clear and convincing evidence that parental rights of a parent
1165 should be terminated pending adoption, the court must dismiss
1166 the petition and that parent's parental rights that were the
1167 subject of such petition shall remain in full force under the
1168 law. The order must include written findings in support of the
1169 dismissal, including findings as to the criteria in subsection
1170 (4) if rejecting a claim of abandonment.

1171 (a) Parental rights may not be terminated based upon a
1172 consent that the court finds has been timely revoked ~~withdrawn~~



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1173 under s. 63.082 or a consent to adoption or affidavit of
1174 nonpaternity that the court finds was obtained by fraud or
1175 duress.

1176 (b) The court must enter an order based upon written
1177 findings providing for the placement of the minor, but the court
1178 may not proceed to determine custody between competing eligible
1179 parties. The placement of the child should revert to the parent
1180 or guardian who had physical custody of the child at the time of
1181 the placement for adoption unless the court determines upon
1182 clear and convincing evidence that this placement is not in the
1183 best interests of the child or is not an available option for
1184 the child. The court may not change the placement of a child who
1185 has established a bonded relationship with the current caregiver
1186 without providing for a reasonable transition plan consistent
1187 with the best interests of the child. The court may direct the
1188 parties to participate in a reunification or unification plan
1189 with a qualified professional to assist the child in the
1190 transition. The court may order scientific testing to determine
1191 the paternity of the minor only if the court has determined that
1192 the consent of the alleged father would be required, unless all
1193 parties agree that such testing is in the best interests of the
1194 child. The court may not order scientific testing to determine
1195 paternity of an unmarried biological father if the child has a
1196 father as described in s. 63.088(4)(a)-(d) whose rights have not
1197 been previously terminated at any time during which the court
1198 has jurisdiction over the minor. Further proceedings, if any,
1199 regarding the minor must be brought in a separate custody action
1200 under chapter 61, a dependency action under chapter 39, or a
1201 paternity action under chapter 742.



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1202 (7) RELIEF FROM JUDGMENT TERMINATING PARENTAL RIGHTS.—

1203 (a) A motion for relief from a judgment terminating
1204 parental rights must be filed with the court originally entering
1205 the judgment. The motion must be filed within a reasonable time,
1206 but not later than 1 year after the entry of the judgment. An
1207 unmarried biological father does not have standing to seek
1208 relief from a judgment terminating parental rights if the mother
1209 did not identify him to the adoption entity before the date she
1210 signed a consent for adoption or if he was not located because
1211 the mother failed or refused to provide sufficient information
1212 to locate him.

1213 (b) No later than 30 days after the filing of a motion
1214 under this subsection, the court must conduct a preliminary
1215 hearing to determine what contact, if any, shall be permitted
1216 between a parent and the child pending resolution of the motion.
1217 Such contact shall be considered only if it is requested by a
1218 parent who has appeared at the hearing and may not be awarded
1219 unless the parent previously established a bonded relationship
1220 with the child and the parent has pled a legitimate legal basis
1221 and established a prima facia case for setting aside the
1222 judgment terminating parental rights. If the court orders
1223 contact between a parent and child, the order must be issued in
1224 writing as expeditiously as possible and must state with
1225 specificity any provisions regarding contact with persons other
1226 than those with whom the child resides.

1227 (c) At the preliminary hearing, the court, upon the motion
1228 of any party or upon its own motion, may order scientific
1229 testing to determine the paternity of the minor if the person
1230 seeking to set aside the judgment is alleging to be the child's



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1231 father and that fact has not previously been determined by
1232 legitimacy or scientific testing. The court may order visitation
1233 with a person for whom scientific testing for paternity has been
1234 ordered and who has previously established a bonded relationship
1235 with the child.

1236 (d) Unless otherwise agreed between the parties or for good
1237 cause shown, the court shall conduct a final hearing on the
1238 motion for relief from judgment within 45 days after the filing
1239 and enter its written order as expeditiously as possible
1240 thereafter.

1241 (e) If the court grants relief from the judgment
1242 terminating parental rights and no new pleading is filed to
1243 terminate parental rights, the placement of the child should
1244 revert to the parent or guardian who had physical custody of the
1245 child at the time of the original placement for adoption unless
1246 the court determines upon clear and convincing evidence that
1247 this placement is not in the best interests of the child or is
1248 not an available option for the child. The court may not change
1249 the placement of a child who has established a bonded
1250 relationship with the current caregiver without providing for a
1251 reasonable transition plan consistent with the best interests of
1252 the child. The court may direct the parties to participate in a
1253 reunification or unification plan with a qualified professional
1254 to assist the child in the transition. The court may not direct
1255 the placement of a child with a person other than the adoptive
1256 parents without first obtaining a favorable home study of that
1257 person and any other persons residing in the proposed home and
1258 shall take whatever additional steps are necessary and
1259 appropriate for the physical and emotional protection of the



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1260 child.

1261 Section 19. Subsection (3) of section 63.092, Florida
1262 Statutes, is amended to read:

1263 63.092 Report to the court of intended placement by an
1264 adoption entity; at-risk placement; preliminary study.—

1265 (3) PRELIMINARY HOME STUDY.—Before placing the minor in the
1266 intended adoptive home, a preliminary home study must be
1267 performed by a licensed child-placing agency, a child-caring
1268 agency registered under s. 409.176, a licensed professional, or
1269 agency described in s. 61.20(2), unless the adoptee is an adult
1270 or the petitioner is a stepparent or a relative. If the adoptee
1271 is an adult or the petitioner is a stepparent or a relative, a
1272 preliminary home study may be required by the court for good
1273 cause shown. The department is required to perform the
1274 preliminary home study only if there is no licensed child-
1275 placing agency, child-caring agency registered under s. 409.176,
1276 licensed professional, or agency described in s. 61.20(2), in
1277 the county where the prospective adoptive parents reside. The
1278 preliminary home study must be made to determine the suitability
1279 of the intended adoptive parents and may be completed prior to
1280 identification of a prospective adoptive minor. A favorable
1281 preliminary home study is valid for 1 year after the date of its
1282 completion. Upon its completion, a signed copy of the home study
1283 must be provided to the intended adoptive parents who were the
1284 subject of the home study. A minor may not be placed in an
1285 intended adoptive home before a favorable preliminary home study
1286 is completed unless the adoptive home is also a licensed foster
1287 home under s. 409.175. The preliminary home study must include,
1288 at a minimum:



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1289 (a) An interview with the intended adoptive parents;
1290 (b) Records checks of the department's central abuse
1291 registry and criminal records correspondence checks under s.
1292 39.0138 through the Department of Law Enforcement on the
1293 intended adoptive parents;
1294 (c) An assessment of the physical environment of the home;
1295 (d) A determination of the financial security of the
1296 intended adoptive parents;
1297 (e) Documentation of counseling and education of the
1298 intended adoptive parents on adoptive parenting;
1299 (f) Documentation that information on adoption and the
1300 adoption process has been provided to the intended adoptive
1301 parents;
1302 (g) Documentation that information on support services
1303 available in the community has been provided to the intended
1304 adoptive parents; and
1305 (h) A copy of each signed acknowledgment of receipt of
1306 disclosure required by s. 63.085.
1307
1308 If the preliminary home study is favorable, a minor may be
1309 placed in the home pending entry of the judgment of adoption. A
1310 minor may not be placed in the home if the preliminary home
1311 study is unfavorable. If the preliminary home study is
1312 unfavorable, the adoption entity may, within 20 days after
1313 receipt of a copy of the written recommendation, petition the
1314 court to determine the suitability of the intended adoptive
1315 home. A determination as to suitability under this subsection
1316 does not act as a presumption of suitability at the final
1317 hearing. In determining the suitability of the intended adoptive



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1318 home, the court must consider the totality of the circumstances
1319 in the home. A ~~No~~ minor may not be placed in a home in which
1320 there resides any person determined by the court to be a sexual
1321 predator as defined in s. 775.21 or to have been convicted of an
1322 offense listed in s. 63.089(4)(b)2.

1323 Section 20. Subsection (7) is added to section 63.097,
1324 Florida Statutes, to read:

1325 63.097 Fees.—

1326 (7) In determining reasonable attorney fees, courts shall
1327 use the following criteria:

1328 (a) The time and labor required, the novelty and difficulty
1329 of the question involved, and the skill requisite to perform the
1330 legal service properly.

1331 (b) The likelihood, if apparent to the client, that the
1332 acceptance of the particular employment will preclude other
1333 employment by the attorney.

1334 (c) The fee customarily charged in the locality for similar
1335 legal services.

1336 (d) The amount involved in the subject matter of the
1337 representation, the responsibility involved in the
1338 representation, and the results obtained.

1339 (e) The time limitations imposed by the client or by the
1340 circumstances and, as between attorney and client, any
1341 additional or special time demands or requests of the attorney
1342 by the client.

1343 (f) The nature and length of the professional relationship
1344 with the client.

1345 (g) The experience, reputation, diligence, and ability of
1346 the attorney or attorneys performing the service and the skill,



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1347 expertise, or efficiency of effort reflected in the actual
1348 providing of such services.

1349 (h) Whether the fee is fixed or contingent.

1350 Section 21. Section 63.152, Florida Statutes, is amended to
1351 read:

1352 63.152 Application for new birth record.—Within 30 days
1353 after entry of a judgment of adoption, the clerk of the court or
1354 the adoption entity shall transmit a certified statement of the
1355 entry to the state registrar of vital statistics on a form
1356 provided by the registrar. A new birth record containing the
1357 necessary information supplied by the certificate shall be
1358 issued by the registrar on application of the adopting parents
1359 or the adopted person.

1360 Section 22. Subsection (7) of section 63.162, Florida
1361 Statutes, is amended to read:

1362 63.162 Hearings and records in adoption proceedings;
1363 confidential nature.—

1364 (7) The court may, upon petition of an adult adoptee or
1365 birth parent, for good cause shown, appoint an intermediary or a
1366 licensed child-placing agency to contact a birth parent or adult
1367 adoptee, as applicable, who has not registered with the adoption
1368 registry pursuant to s. 63.165 and advise both ~~them~~ of the
1369 availability of the intermediary or agency and that the birth
1370 parent or adult adoptee, as applicable, wishes to establish
1371 contact ~~same~~.

1372 Section 23. Paragraph (c) of subsection (2) of section
1373 63.167, Florida Statutes, is amended to read:

1374 63.167 State adoption information center.—

1375 (2) The functions of the state adoption information center



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1376 shall include:

1377 (c) Operating a toll-free telephone number to provide
1378 information and referral services. The state adoption
1379 information center shall provide contact information for all
1380 adoption entities in the caller's county or, if no adoption
1381 entities are located in the caller's county, the number of the
1382 nearest adoption entity when contacted for a referral to make an
1383 adoption plan and shall rotate the order in which the names of
1384 adoption entities are provided to callers.

1385 Section 24. Paragraph (g) of subsection (1) and subsections
1386 (2) and (8) of section 63.212, Florida Statutes, are amended to
1387 read:

1388 63.212 Prohibited acts; penalties for violation.—

1389 (1) It is unlawful for any person:

1390 (g) Except an adoption entity, to advertise or offer to the
1391 public, in any way, by any medium whatever that a minor is
1392 available for adoption or that a minor is sought for adoption;
1393 and, further, it is unlawful for any person to publish or
1394 broadcast any such advertisement or assist an unlicensed person
1395 or entity in publishing or broadcasting any such advertisement
1396 without including a Florida license number of the agency or
1397 attorney placing the advertisement.

1398 1. Only a person who is an attorney licensed to practice
1399 law in this state or an adoption entity licensed under the laws
1400 of this state may place a paid advertisement or paid listing of
1401 the person's telephone number, on the person's own behalf, in a
1402 telephone directory that:

1403 a. A child is offered or wanted for adoption; or

1404 b. The person is able to place, locate, or receive a child



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1405 for adoption.

1406 2. A person who publishes a telephone directory that is
1407 distributed in this state:

1408 a. Shall include, at the beginning of any classified
1409 heading for adoption and adoption services, a statement that
1410 informs directory users that only attorneys licensed to practice
1411 law in this state and licensed adoption entities may legally
1412 provide adoption services under state law.

1413 b. May publish an advertisement described in subparagraph
1414 1. in the telephone directory only if the advertisement contains
1415 the following:

1416 (I) For an attorney licensed to practice law in this state,
1417 the person's Florida Bar number.

1418 (II) For a child placing agency licensed under the laws of
1419 this state, the number on the person's adoption entity license.

1420 (2) Any person who is a birth mother, or a woman who holds
1421 herself out to be a birth mother, who is interested in making an
1422 adoption plan and who knowingly or intentionally benefits from
1423 the payment of adoption-related expenses in connection with that
1424 adoption plan commits adoption deception if:

1425 (a) The person knows or should have known that the person
1426 is not pregnant at the time the sums were requested or received;

1427 (b) The person accepts living expenses assistance from a
1428 prospective adoptive parent or adoption entity without
1429 disclosing that she is receiving living expenses assistance from
1430 another prospective adoptive parent or adoption entity at the
1431 same time in an effort to adopt the same child; or

1432 (c) The person knowingly makes false representations to
1433 induce the payment of living expenses and does not intend to



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1434 ~~make an adoptive placement. It is unlawful for:~~
1435 ~~(a) Any person or adoption entity under this chapter to:~~
1436 ~~1. Knowingly provide false information; or~~
1437 ~~2. Knowingly withhold material information.~~
1438 ~~(b) A parent, with the intent to defraud, to accept~~
1439 ~~benefits related to the same pregnancy from more than one~~
1440 ~~adoption entity without disclosing that fact to each entity.~~
1441
1442 Any person who willfully commits adoption deception ~~violates any~~
1443 ~~provision of this subsection~~ commits a misdemeanor of the second
1444 degree, punishable as provided in s. 775.082 or s. 775.083, if
1445 the sums received by the birth mother or woman holding herself
1446 out to be a birth mother do not exceed \$300, and a felony of the
1447 third degree, punishable as provided in s. 775.082, s. 775.083,
1448 or s. 775.084, if the sums received by the birth mother or woman
1449 holding herself out to be a birth mother exceed \$300. In
1450 addition, the person is liable for damages caused by such acts
1451 or omissions, including reasonable attorney ~~attorney's~~ fees and
1452 costs incurred by the adoption entity or the prospective
1453 adoptive parent. Damages may be awarded through restitution in
1454 any related criminal prosecution or by filing a separate civil
1455 action.
1456 (8) Unless otherwise indicated, a person who willfully and
1457 with criminal intent violates any provision of this section,
1458 excluding paragraph (1)(g), commits a felony of the third
1459 degree, punishable as provided in s. 775.082, s. 775.083, or s.
1460 775.084. A person who willfully and with criminal intent
1461 violates paragraph (1)(g) commits a misdemeanor of the second
1462 degree, punishable as provided in s. 775.083; and each day of



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1463 continuing violation shall be considered a separate offense. In
1464 addition, any person who knowingly publishes or assists with the
1465 publication of any advertisement or other publication which
1466 violates the requirements of paragraph (1)(g) commits a
1467 misdemeanor of the second degree, punishable as provided in s.
1468 775.083, and may be required to pay a fine of up to \$150 per day
1469 for each day of continuing violation.

1470 Section 25. Paragraph (b) of subsection (1), paragraphs (a)
1471 and (e) of subsection (2), and paragraphs (b), (h), and (i) of
1472 subsection (6) of section 63.213, Florida Statutes, are amended
1473 to read:

1474 63.213 Preplanned adoption agreement.—

1475 (1) Individuals may enter into a preplanned adoption
1476 arrangement as specified in this section, but such arrangement
1477 may not in any way:

1478 (b) Constitute consent of a mother to place her biological
1479 child for adoption until 48 hours after the following birth of
1480 the child and unless the court making the custody determination
1481 or approving the adoption determines that the mother was aware
1482 of her right to rescind within the 48-hour period after the
1483 following birth of the child but chose not to rescind such
1484 consent. The volunteer mother's right to rescind her consent in
1485 a preplanned adoption applies only when the child is genetically
1486 related to her.

1487 (2) A preplanned adoption agreement must include, but need
1488 not be limited to, the following terms:

1489 (a) That the volunteer mother agrees to become pregnant by
1490 the fertility technique specified in the agreement, to bear the
1491 child, and to terminate any parental rights and responsibilities



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1492 to the child she might have through a written consent executed
1493 at the same time as the preplanned adoption agreement, subject
1494 to a right of rescission by the volunteer mother any time within
1495 48 hours after the birth of the child, if the volunteer mother
1496 is genetically related to the child.

1497 (e) That the intended father and intended mother
1498 acknowledge that they may not receive custody or the parental
1499 rights under the agreement if the volunteer mother terminates
1500 the agreement or if the volunteer mother rescinds her consent to
1501 place her child for adoption within 48 hours after the birth of
1502 the child, if the volunteer mother is genetically related to the
1503 child.

1504 (6) As used in this section, the term:

1505 (b) "Child" means the child or children conceived by means
1506 of a fertility technique ~~an insemination~~ that is part of a
1507 preplanned adoption arrangement.

1508 (h) "Preplanned adoption arrangement" means the arrangement
1509 through which the parties enter into an agreement for the
1510 volunteer mother to bear the child, for payment by the intended
1511 father and intended mother of the expenses allowed by this
1512 section, for the intended father and intended mother to assert
1513 full parental rights and responsibilities to the child if
1514 consent to adoption is not rescinded after birth by a the
1515 volunteer mother who is genetically related to the child, and
1516 for the volunteer mother to terminate, subject to any a right of
1517 rescission, all her parental rights and responsibilities to the
1518 child in favor of the intended father and intended mother.

1519 (i) "Volunteer mother" means a female at least 18 years of
1520 age who voluntarily agrees, subject to a right of rescission if



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1521 it is her biological child, that if she should become pregnant
1522 pursuant to a preplanned adoption arrangement, she will
1523 terminate her parental rights and responsibilities to the child
1524 in favor of the intended father and intended mother.

1525 Section 26. Section 63.222, Florida Statutes, is amended to
1526 read:

1527 63.222 Effect on prior adoption proceedings.—Any adoption
1528 made before July 1, 2012, is the effective date of this act
1529 ~~shall be valid, and any proceedings pending on that the~~
1530 ~~effective date and any subsequent amendments thereto of this act~~
1531 are not affected thereby unless the amendment is designated as a
1532 remedial provision.

1533 Section 27. Section 63.2325, Florida Statutes, is amended
1534 to read:

1535 63.2325 Conditions for invalidation ~~revocation~~ of a consent
1536 to adoption or affidavit of nonpaternity.—Notwithstanding the
1537 requirements of this chapter, a failure to meet any of those
1538 requirements does not constitute grounds for invalidation
1539 ~~revocation~~ of a consent to adoption or revocation ~~withdrawal~~
1540 of an affidavit of nonpaternity unless the extent and circumstances
1541 of such a failure result in a material failure of fundamental
1542 fairness in the administration of due process, or the failure
1543 constitutes or contributes to fraud or duress in obtaining a
1544 consent to adoption or affidavit of nonpaternity.

1545 Section 28. This act shall take effect July 1, 2012.

1547 ===== T I T L E A M E N D M E N T =====

1548 And the title is amended as follows:

1549 Delete everything before the enacting clause



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1550 and insert:

1551 A bill to be entitled
1552 An act relating to adoption; amending s. 63.022, F.S.;
1553 revising legislative intent to delete a reference to
1554 reporting requirements for placements of minors and
1555 exceptions; amending s. 63.032, F.S.; revising
1556 definitions; amending s. 63.037, F.S.; exempting
1557 adoption proceedings initiated under chapter 39, F.S.,
1558 from a requirement for a search of the Florida
1559 Putative Father Registry; amending s. 63.039, F.S.;
1560 providing that all adoptions of minor children require
1561 the use of an adoption entity that will assume the
1562 responsibilities provided in specified provisions;
1563 providing an exception; amending s. 63.042, F.S.;
1564 revising terminology relating to who may adopt;
1565 amending s. 63.0423, F.S.; revising terminology
1566 relating to surrendered infants; providing that an
1567 infant who tests positive for illegal drugs, narcotic
1568 prescription drugs, alcohol, or other substances, but
1569 shows no other signs of child abuse or neglect, shall
1570 be placed in the custody of an adoption entity;
1571 providing that if the Department of Children and
1572 Family Services is contacted regarding a surrendered
1573 infant who does not appear to have been the victim of
1574 actual or suspected child abuse or neglect, it shall
1575 provide instruction to contact an adoption entity and
1576 may not take custody of the infant; providing an
1577 exception; revising provisions relating to scientific
1578 testing to determine the paternity or maternity of a



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1579 minor; amending s. 63.0425, F.S.; requiring that a
1580 child's residence be continuous for a specified period
1581 in order to entitle the grandparent to notice of
1582 certain proceedings; amending s. 63.0427, F.S.;
1583 prohibiting a court from increasing contact between an
1584 adopted child and siblings, birth parents, or other
1585 relatives without the consent of the adoptive parent
1586 or parents; providing for agreements for contact
1587 between a child to be adopted and the birth parent,
1588 other relative, or previous foster parent of the
1589 child; amending s. 63.052, F.S.; deleting a
1590 requirement that a minor be permanently committed to
1591 an adoption entity in order for the entity to be
1592 guardian of the person of the minor; limiting the
1593 circumstances in which an intermediary may remove a
1594 child; providing that an intermediary does not become
1595 responsible for a minor child's medical bills that
1596 were incurred before taking physical custody of the
1597 child; providing additional placement options for a
1598 minor surrendered to an adoption entity for subsequent
1599 adoption when a suitable prospective adoptive home is
1600 not available; amending s. 63.053, F.S.; requiring
1601 that an unmarried biological father strictly comply
1602 with specified provisions in order to protect his
1603 interests; amending s. 63.054, F.S.; authorizing
1604 submission of an alternative document to the Office of
1605 Vital Statistics by the petitioner in each proceeding
1606 for termination of parental rights; providing that by
1607 filing a claim of paternity form the registrant



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1608 expressly consents to paying for DNA testing;
1609 requiring that an alternative address designated by a
1610 registrant be a physical address; providing that the
1611 filing of a claim of paternity with the Florida
1612 Putative Father Registry does not relieve a person
1613 from compliance with specified requirements; amending
1614 s. 63.062, F.S.; revising requirements for when a
1615 minor's father must be served prior to termination of
1616 parental rights; requiring that an unmarried
1617 biological father comply with specified requirements
1618 in order for his consent to be required for adoption;
1619 revising such requirements; providing that the mere
1620 fact that a father expresses a desire to fulfill his
1621 responsibilities towards his child which is
1622 unsupported by acts evidencing this intent does not
1623 meet the requirements; providing for the sufficiency
1624 of an affidavit of nonpaternity; providing an
1625 exception to a condition to a petition to adopt an
1626 adult; amending s. 63.063, F.S.; conforming
1627 terminology; amending s. 63.082, F.S.; revising
1628 language concerning applicability of notice and
1629 consent provisions in cases in which the child is
1630 conceived as a result of a violation of criminal law;
1631 providing that a criminal conviction is not required
1632 for the court to find that the child was conceived as
1633 a result of a violation of criminal law; requiring an
1634 affidavit of diligent search to be filed whenever a
1635 person who is required to consent is unavailable
1636 because the person cannot be located; providing that



1637 in an adoption of a stepchild or a relative, a
1638 certified copy of the death certificate of the person
1639 whose consent is required may be attached to the
1640 petition for adoption if a separate petition for
1641 termination of parental rights is not being filed;
1642 authorizing the execution of an affidavit of
1643 nonpaternity before the birth of a minor in preplanned
1644 adoptions; revising language of a consent to adoption;
1645 providing that a home study provided by the adoption
1646 entity shall be deemed to be sufficient except in
1647 certain circumstances; providing for a hearing if an
1648 adoption entity moves to intervene in a dependency
1649 case; revising language concerning seeking to revoke
1650 consent to an adoption of a child older than 6 months
1651 of age; providing that if the consent of one parent is
1652 set aside or revoked, any other consents executed by
1653 the other parent or a third party whose consent is
1654 required for the adoption of the child may not be used
1655 by the parent who consent was revoked or set aside to
1656 terminate or diminish the rights of the other parent
1657 or third party; amending s. 63.085, F.S.; revising
1658 language of an adoption disclosure statement;
1659 requiring that a copy of a waiver by prospective
1660 adoptive parents of receipt of certain records must be
1661 filed with the court; amending s. 63.087, F.S.;
1662 specifying that a failure to personally appear at a
1663 proceeding to terminate parental rights constitutes
1664 grounds for termination; amending s. 63.088, F.S.;
1665 providing that in a termination of parental rights



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1666 proceeding if a required inquiry that identifies a
1667 father who has been adjudicated by a court as the
1668 father of the minor child before the date a petition
1669 for termination of parental rights is filed the
1670 inquiry must terminate at that point; amending s.
1671 63.089, F.S.; specifying that it is a failure to
1672 personally appear that provides grounds for
1673 termination of parental rights in certain
1674 circumstances; revising provisions relating to
1675 dismissal of petitions to terminate parental rights;
1676 providing that contact between a parent seeking relief
1677 from a judgment terminating parental rights and a
1678 child may be awarded only in certain circumstances;
1679 providing for placement of a child in the event that a
1680 court grants relief from a judgment terminating
1681 parental rights and no new pleading is filed to
1682 terminate parental rights; amending s. 63.092, F.S.;
1683 requiring that a signed copy of the home study must be
1684 provided to the intended adoptive parents who were the
1685 subject of the study; amending s. 63.097, F.S.;
1686 providing guidelines for a court considering a
1687 reasonable attorney fee associated with adoption
1688 services; amending s. 63.152, F.S.; authorizing an
1689 adoption entity to transmit a certified statement of
1690 the entry of a judgment of adoption to the state
1691 registrar of vital statistics; amending s. 63.162,
1692 F.S.; authorizing a birth parent to petition that
1693 court to appoint an intermediary or a licensed child-
1694 placing agency to contact an adult adoptee and advise



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1695 both of the availability of the adoption registry and
1696 that the birth parent wishes to establish contact;
1697 amending s. 63.167, F.S.; requiring that the state
1698 adoption center provide contact information for all
1699 adoption entities in a caller's county or, if no
1700 adoption entities are located in the caller's county,
1701 the number of the nearest adoption entity when
1702 contacted for a referral to make an adoption plan;
1703 amending s. 63.212, F.S.; restricting who may place a
1704 paid advertisement or paid listing of the person's
1705 telephone number offering certain adoption services;
1706 requiring of publishers of telephone directories to
1707 include certain statements at the beginning of any
1708 classified heading for adoption and adoption services;
1709 providing requirements for such advertisements;
1710 providing criminal penalties for violations;
1711 prohibiting the offense of adoption deception by a
1712 person who is a birth mother or a woman who holds
1713 herself out to be a birth mother; providing criminal
1714 penalties; providing liability by violators for
1715 certain damages; amending s. 63.213, F.S.; providing
1716 that a preplanned adoption arrangement does not
1717 constitute consent of a mother to place her biological
1718 child for adoption until 48 hours following birth;
1719 providing that a volunteer mother's right to rescind
1720 her consent in a preplanned adoption applies only when
1721 the child is genetically related to her; revising the
1722 definitions of the terms "child," "preplanned adoption
1723 arrangement," and "volunteer mother"; amending s.



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1724 63.222, F.S.; providing that provisions designated as
1725 remedial may apply to any proceedings pending on the
1726 effective date of the provisions; amending s. 63.2325,
1727 F.S.; revising terminology relating to revocation of
1728 consent to adoption; providing an effective date.



723926

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2012	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment to Amendment (895908)

Delete line 147
and insert:
in the custody of an adoption entity. This provision does not
eliminate the reporting requirement under s. 383.50(7). When the
department is



431684

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2012	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Rich) recommended the following:

1 **Senate Amendment to Amendment (895908) (with title**
2 **amendment)**

3
4 Delete lines 89 - 101

5
6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 Delete lines 1563 - 1564

9 and insert:

10 providing an exception;

By Senator Wise

5-01417A-12

20121874__

1 A bill to be entitled
 2 An act relating to adoption; amending s. 63.022, F.S.;
 3 revising legislative intent to delete reference to
 4 reporting requirements for placements of minors and
 5 exceptions; amending s. 63.032, F.S.; revising
 6 definitions; amending s. 63.037, F.S.; exempting
 7 adoption proceedings initiated under chapter 39, F.S.,
 8 from a requirement for a search of the Florida
 9 Putative Father Registry; amending s. 63.039, F.S.;
 10 providing that all adoptions of minor children require
 11 the use of an adoption entity that will assume the
 12 responsibilities provided in specified provisions;
 13 providing an exception; amending s. 63.042, F.S.;
 14 revising terminology relating to who may adopt;
 15 amending s. 63.0423, F.S.; revising terminology
 16 relating to surrendered infants; providing that an
 17 infant who tests positive for illegal drugs, narcotic
 18 prescription drugs, alcohol, or other substances that
 19 would cause concern for the infant's welfare and
 20 safety if left in the care of the mother or is born to
 21 a mother who tests positive for such substances at the
 22 time of delivery, but shows no other signs of child
 23 abuse or neglect, is treated as having been properly
 24 surrendered; providing that if the Department of
 25 Children and Family Services is contacted regarding a
 26 surrendered infant who does not appear to have been
 27 the victim of actual or suspected child abuse or
 28 neglect, it shall provide instruction to contact an
 29 adoption entity and may not become involved; providing

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 an exception; revising provisions relating to
 31 scientific testing to determine the paternity or
 32 maternity of a minor; amending s. 63.0425, F.S.;
 33 requiring that a child's residence be continuous for a
 34 specified period in order to entitle the grandparent
 35 to notice of certain proceedings; amending s. 63.0427,
 36 F.S.; prohibiting a court from increasing contact
 37 between an adopted child and siblings, birth parents,
 38 or other relatives without the consent of the adoptive
 39 parent or parents; providing for agreements for
 40 contact between a child to be adopted and the birth
 41 parent, other relative, or previous foster parent of
 42 the child; amending s. 63.052, F.S.; deleting a
 43 requirement that a minor be permanently committed to
 44 an adoption entity in order for the entity to be
 45 guardian of the person of the minor; limiting the
 46 circumstances in which an intermediary may remove a
 47 child; providing that an intermediary does not become
 48 responsible for a minor child's medical bills that
 49 were incurred before taking physical custody of the
 50 child; providing additional placement options for a
 51 minor surrendered to an adoption entity for subsequent
 52 adoption when a suitable prospective adoptive home is
 53 not available; amending s. 63.053, F.S.; requiring
 54 that an unmarried biological father strictly comply
 55 with specified provisions in order to protect his
 56 interests; amending s. 63.054, F.S.; authorizing
 57 submission of an alternative document to the Office of
 58 Vital Statistics by the petitioner in each proceeding

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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59 for termination of parental rights; providing that by
 60 filing a claim of paternity form the registrant
 61 expressly consents to paying for DNA testing;
 62 requiring that an alternative address designated by a
 63 registrant be a physical address; providing that the
 64 filing of a claim of paternity with the Florida
 65 Putative Father Registry does not relieve a person
 66 from compliance with specified requirements; amending
 67 s. 63.062, F.S.; revising requirements for when a
 68 minor's father must be served prior to termination of
 69 parental rights; requiring that an unmarried
 70 biological father comply with specified requirements
 71 in order for his consent to be required for adoption;
 72 revising such requirements; providing that the mere
 73 fact that a father expresses a desire to fulfill his
 74 responsibilities towards his child which is
 75 unsupported by acts evidencing this intent does not
 76 meet the requirements; providing for the sufficiency
 77 of an affidavit of nonpaternity; providing an
 78 exception to a condition to a petition to adopt an
 79 adult; amending s. 63.063, F.S.; conforming
 80 terminology; amending s. 63.082, F.S.; revising
 81 language concerning applicability of notice and
 82 consent provisions in cases in which the child is
 83 conceived as a result of a violation of criminal law;
 84 providing that a criminal conviction is not required
 85 for the court to find that the child was conceived as
 86 a result of a violation of criminal law; requiring an
 87 affidavit of diligent search to be filed whenever a

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88 person who is required to consent is unavailable
 89 because the person cannot be located; providing that
 90 in an adoption of a stepchild or a relative, a
 91 certified copy of the death certificate of the person
 92 whose consent is required may be attached to the
 93 petition for adoption if a separate petition for
 94 termination of parental rights is not being filed;
 95 authorizing the execution of an affidavit of
 96 nonpaternity before the birth of a minor in preplanned
 97 adoptions; revising language of a consent to adoption;
 98 providing that a home study provided by the adoption
 99 entity shall be deemed to be sufficient except in
 100 certain circumstances; providing for a hearing if an
 101 adoption entity moves to intervene in a dependency
 102 case; revising language concerning seeking to revoke
 103 consent to an adoption of a child older than 6 months
 104 of age; providing that if the consent of one parent is
 105 set aside or revoked, any other consents executed by
 106 the other parent or a third party whose consent is
 107 required for the adoption of the child may not be used
 108 by the parent whose consent was revoked or set aside
 109 to terminate or diminish the rights of the other
 110 parent or third party; amending s. 63.085, F.S.;
 111 revising language of an adoption disclosure statement;
 112 requiring that a copy of a waiver by prospective
 113 adoptive parents of receipt of certain records must be
 114 filed with the court; amending s. 63.087, F.S.;
 115 specifying that a failure to personally appear at a
 116 proceeding to terminate parental rights constitutes

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117 grounds for termination; amending s. 63.088, F.S.;

118 providing that in a termination of parental rights

119 proceeding if a required inquiry that identifies a

120 father who has been adjudicated by a court as the

121 father of the minor child before the date a petition

122 for termination of parental rights is filed the

123 inquiry must terminate at that point; amending s.

124 63.089, F.S.; specifying that it is a failure to

125 personally appear that provides grounds for

126 termination of parental rights in certain

127 circumstances; revising provisions relating to

128 dismissal of petitions to terminate parental rights;

129 providing that contact between a parent seeking relief

130 from a judgment terminating parental rights and a

131 child may be awarded only in certain circumstances;

132 providing for placement of a child in the event that a

133 court grants relief from a judgment terminating

134 parental rights and no new pleading is filed to

135 terminate parental rights; amending s. 63.092, F.S.;

136 requiring that a signed copy of the home study must be

137 provided to the intended adoptive parents who were the

138 subject of the study; amending s. 63.152, F.S.;

139 authorizing an adoption entity to transmit a certified

140 statement of the entry of a judgment of adoption to

141 the state registrar of vital statistics; amending s.

142 63.162, F.S.; authorizing a birth parent to petition

143 that court to appoint an intermediary or a licensed

144 child-placing agency to contact an adult adoptee and

145 advise both of the availability of the adoption

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146 registry and that the birth parent wishes to establish

147 contact; amending s. 63.167, F.S.; requiring that the

148 state adoption center provide contact information for

149 all adoption entities in a caller's county or, if no

150 adoption entities are located in the caller's county,

151 the number of the nearest adoption entity when

152 contacted for a referral to make an adoption plan;

153 amending s. 63.212, F.S.; restricting who may place a

154 paid advertisement or paid listing of the person's

155 telephone number offering certain adoption services;

156 requiring publishers of telephone directories to

157 include certain statements at the beginning of any

158 classified heading for adoption and adoption services;

159 providing requirements for such advertisements;

160 providing criminal penalties for violations;

161 prohibiting the offense of adoption deception by a

162 person who is a birth mother or a woman who holds

163 herself out to be a birth mother; providing criminal

164 penalties; providing liability by violators for

165 certain damages; amending s. 63.213, F.S.; providing

166 that a preplanned adoption arrangement does not

167 constitute consent of a mother to place her biological

168 child for adoption until 48 hours following birth;

169 providing that a volunteer mother's right to rescind

170 her consent in a preplanned adoption applies only when

171 the child is genetically related to her; revising the

172 definitions of the terms "child," "preplanned adoption

173 arrangement," and "volunteer mother"; amending s.

174 63.222, F.S.; providing that provisions designated as

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175 remedial may apply to any proceedings pending on the
176 effective date of the provisions; amending s. 63.2325,
177 F.S.; revising terminology relating to revocation of
178 consent to adoption; providing an effective date.
179

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

181
182 Section 1. Paragraphs (e) through (m) of subsection (4) of
183 section 63.022, Florida Statutes, are redesignated as paragraphs
184 (d) through (l), respectively, and subsection (2) and present
185 paragraph (d) of subsection (4) of that section are amended to
186 read:

187 63.022 Legislative intent.—

188 (2) It is the intent of the Legislature that in every
189 adoption, the best interest of the child should govern and be of
190 foremost concern in the court's determination. The court shall
191 make a specific finding as to the best interests ~~interest~~ of the
192 child in accordance with the provisions of this chapter.

193 (4) The basic safeguards intended to be provided by this
194 chapter are that:

195 ~~(d) All placements of minors for adoption are reported to~~
196 ~~the Department of Children and Family Services, except relative,~~
197 ~~adult, and stepparent adoptions.~~

198 Section 2. Subsections (1), (12), (17), and (19) of section
199 63.032, Florida Statutes, are amended to read:

200 63.032 Definitions.—As used in this chapter, the term:

201 (1) "Abandoned" means a situation in which the parent or
202 person having legal custody of a child, while being able, makes
203 little or no provision for the child's support or ~~and~~ makes

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204 little or no effort to communicate with the child, which
205 situation is sufficient to evince an intent to reject parental
206 responsibilities. If, in the opinion of the court, the efforts
207 of such parent or person having legal custody of the child to
208 support and communicate with the child are only marginal efforts
209 that do not evince a settled purpose to assume all parental
210 duties, the court may declare the child to be abandoned. In
211 making this decision, the court may consider the conduct of a
212 father towards the child's mother during her pregnancy.

213 (12) "Parent" means a woman who gives birth to a child and
214 who is not a gestational surrogate as defined in s. 742.13 or a
215 man whose consent to the adoption of the child would be required
216 under s. 63.062(1). If a child has been legally adopted, the
217 term "parent" means the adoptive mother or father of the child.
218 The term does not include an individual whose parental
219 relationship to the child has been legally terminated or an
220 alleged or prospective parent.

221 (17) "Suitability of the intended placement" means the
222 fitness of the intended placement, with primary consideration
223 being given to the best interests ~~interest~~ of the child.

224 (19) "Unmarried biological father" means the child's
225 biological father who is not married to the child's mother at
226 the time of conception or on the date of the birth of the child
227 and who, before the filing of a petition to terminate parental
228 rights, has not been adjudicated by a court of competent
229 jurisdiction to be the legal father of the child or has not
230 filed ~~executed~~ an affidavit pursuant to s. 382.013(2)(c).

231 Section 3. Section 63.037, Florida Statutes, is amended to
232 read:

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233 63.037 Proceedings applicable to cases resulting from a
 234 termination of parental rights under chapter 39.—A case in which
 235 a minor becomes available for adoption after the parental rights
 236 of each parent have been terminated by a judgment entered
 237 pursuant to chapter 39 shall be governed by s. 39.812 and this
 238 chapter. Adoption proceedings initiated under chapter 39 are
 239 exempt from the following provisions of this chapter:
 240 requirement for search of the Florida Putative Father Registry
 241 provided in s. 63.054(7); disclosure requirements for the
 242 adoption entity provided in s. 63.085(1); general provisions
 243 governing termination of parental rights pending adoption
 244 provided in s. 63.087; notice and service provisions governing
 245 termination of parental rights pending adoption provided in s.
 246 63.088; and procedures for terminating parental rights pending
 247 adoption provided in s. 63.089.

248 Section 4. Subsections (2) through (4) of section 63.039,
 249 Florida Statutes, are renumbered as subsections (3) through (5),
 250 respectively, and a new subsection (2) is added to that section
 251 to read:

252 63.039 Duty of adoption entity to prospective adoptive
 253 parents; sanctions.—

254 (2) With the exception of an adoption by a relative or
 255 stepparent, all adoptions of minor children require the use of
 256 an adoption entity that will assume the responsibilities
 257 provided in this section.

258 Section 5. Paragraph (c) of subsection (2) of section
 259 63.042, Florida Statutes, is amended to read:

260 63.042 Who may be adopted; who may adopt.—

261 (2) The following persons may adopt:

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262 (c) A married person without his or her ~~the other~~ spouse
 263 joining as a petitioner, if the person to be adopted is not his
 264 or her spouse, and if:

265 1. His or her ~~The other~~ spouse is a parent of the person to
 266 be adopted and consents to the adoption; or

267 2. The failure of his or her ~~the other~~ spouse to join in
 268 the petition or to consent to the adoption is excused by the
 269 court for good cause shown or in the best interests ~~interest~~ of
 270 the child.

271 Section 6. Subsections (1), (2), (3), (4), (7), (8), and
 272 (9) of section 63.0423, Florida Statutes, are amended to read:

273 63.0423 Procedures with respect to surrendered infants.—

274 (1) Upon entry of final judgment terminating parental
 275 rights, an adoption entity ~~A licensed child-placing agency~~ that
 276 takes physical custody of an infant surrendered at a hospital,
 277 emergency medical services station, or fire station pursuant to
 278 s. 383.50 assumes ~~shall assume~~ responsibility for the all
 279 ~~medical costs~~ and ~~all~~ other costs associated with the emergency
 280 services and care of the surrendered infant from the time the
 281 adoption entity ~~licensed child-placing agency~~ takes physical
 282 custody of the surrendered infant.

283 (2) The adoption entity ~~licensed child-placing agency~~ shall
 284 immediately seek an order from the circuit court for emergency
 285 custody of the surrendered infant. The emergency custody order
 286 shall remain in effect until the court orders preliminary
 287 approval of placement of the surrendered infant in the
 288 prospective home, at which time the prospective adoptive parents
 289 become guardians pending termination of parental rights and
 290 finalization of adoption or until the court orders otherwise.

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291 The guardianship of the prospective adoptive parents shall
 292 remain subject to the right of the adoption entity licensed
 293 ~~child-placing agency~~ to remove the surrendered infant from the
 294 placement during the pendency of the proceedings if such removal
 295 is deemed by the adoption entity licensed child-placing agency
 296 to be in the best interests interest of the child. The adoption
 297 entity licensed child-placing agency may immediately seek to
 298 place the surrendered infant in a prospective adoptive home.

299 (3) The adoption entity licensed child-placing agency that
 300 takes physical custody of the surrendered infant shall, within
 301 24 hours thereafter, request assistance from law enforcement
 302 officials to investigate and determine, through the Missing
 303 Children Information Clearinghouse, the National Center for
 304 Missing and Exploited Children, and any other national and state
 305 resources, whether the surrendered infant is a missing child.

306 (4) The parent who surrenders the infant in accordance with
 307 s. 383.50 is presumed to have consented to termination of
 308 parental rights, and express consent is not required. Except
 309 when there is actual or suspected child abuse or neglect, the
 310 adoption entity may licensed child-placing agency shall not
 311 attempt to pursue, search for, or notify that parent as provided
 312 in s. 63.088 and chapter 49. For purposes of s. 383.50 and this
 313 section, an infant who tests positive for illegal drugs,
 314 narcotic prescription drugs, alcohol, or other substances that
 315 would cause concern for the infant's welfare and safety if left
 316 in the care of the mother, or who is born to a mother who tests
 317 positive for such substances at the time of delivery, but shows
 318 no other signs of child abuse or neglect, shall be treated as
 319 having been properly surrendered under this section. If the

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320 department is contacted regarding an infant properly surrendered
 321 under this section, the department shall provide instruction to
 322 contact an adoption entity and may not become involved unless
 323 reasonable efforts to contact an adoption entity to accept the
 324 infant have not been successful.

325 (7) If a claim of parental rights of a surrendered infant
 326 is made before the judgment to terminate parental rights is
 327 entered, the circuit court may hold the action for termination
 328 of parental rights ~~pending subsequent adoption~~ in abeyance for a
 329 period of time not to exceed 60 days.

330 (a) The court may order scientific testing to determine
 331 maternity or paternity at the expense of the parent claiming
 332 parental rights.

333 (b) The court shall appoint a guardian ad litem for the
 334 surrendered infant and order whatever investigation, home
 335 evaluation, and psychological evaluation are necessary to
 336 determine what is in the best interests interest of the
 337 surrendered infant.

338 (c) The court may not terminate parental rights solely on
 339 the basis that the parent left the infant at a hospital,
 340 emergency medical services station, or fire station in
 341 accordance with s. 383.50.

342 (d) The court shall enter a judgment with written findings
 343 of fact and conclusions of law.

344 (8) Within 7 business days after recording the judgment,
 345 the clerk of the court shall mail a copy of the judgment to the
 346 department, the petitioner, and any person the persons whose
 347 consent ~~was were~~ required, if known. The clerk shall execute a
 348 certificate of each mailing.

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349 (9) (a) A judgment terminating parental rights pending
 350 adoption is voidable, and any later judgment of adoption of that
 351 minor is voidable, if, upon the motion of a ~~birth~~ parent, the
 352 court finds that an adoption entity ~~a person~~ knowingly gave
 353 false information that prevented the ~~birth~~ parent from timely
 354 making known his or her desire to assume parental
 355 responsibilities toward the minor or from exercising his or her
 356 parental rights. A motion under this subsection must be filed
 357 with the court originally entering the judgment. The motion must
 358 be filed within a reasonable time but not later than 1 year
 359 after the entry of the judgment terminating parental rights.

360 (b) No later than 30 days after the filing of a motion
 361 under this subsection, the court shall conduct a preliminary
 362 hearing to determine what contact, if any, will be permitted
 363 between a ~~birth~~ parent and the child pending resolution of the
 364 motion. Such contact may be allowed only if it is requested by a
 365 parent who has appeared at the hearing and the court determines
 366 that it is in the best interests ~~interest~~ of the child. If the
 367 court orders contact between a ~~birth~~ parent and the child, the
 368 order must be issued in writing as expeditiously as possible and
 369 must state with specificity any provisions regarding contact
 370 with persons other than those with whom the child resides.

371 (c) ~~At the preliminary hearing, The court, upon the motion~~
 372 ~~of any party or upon its own motion,~~ may not order scientific
 373 testing to determine the paternity or maternity of the minor
 374 until such time as the court determines that a previously
 375 entered judgment terminating the parental rights of that parent
 376 is voidable pursuant to paragraph (a), unless all parties agree
 377 that such testing is in the best interests of the child if the

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378 ~~person seeking to set aside the judgment is alleging to be the~~
 379 ~~child's birth parent but has not previously been determined by~~
 380 ~~legal proceedings or scientific testing to be the birth parent.~~
 381 Upon the filing of test results establishing that person's
 382 maternity or paternity of the surrendered infant, the court may
 383 order visitation only if it appears to be as it deems
 384 ~~appropriate and~~ in the best interests ~~interest~~ of the child.

385 (d) Within 45 days after the preliminary hearing, the court
 386 shall conduct a final hearing on the motion to set aside the
 387 judgment and shall enter its written order as expeditiously as
 388 possible thereafter.

389 Section 7. Subsection (1) of section 63.0425, Florida
 390 Statutes, is amended to read:

391 63.0425 Grandparent's right to notice.—

392 (1) If a child has lived with a grandparent for at least 6
 393 continuous months within the 24-month period immediately
 394 preceding the filing of a petition for termination of parental
 395 rights pending adoption, the adoption entity shall provide
 396 notice to that grandparent of the hearing on the petition.

397 Section 8. Section 63.0427, Florida Statutes, is amended to
 398 read:

399 63.0427 ~~Agreements for Adopted minor's right to~~ continued
 400 communication or contact between adopted child and with
 401 siblings, parents, and other relatives.—

402 (1) A child whose parents have had their parental rights
 403 terminated and whose custody has been awarded to the department
 404 pursuant to s. 39.811, and who is the subject of a petition for
 405 adoption under this chapter, shall have the right to have the
 406 court consider the appropriateness of postadoption communication

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 407 or contact, including, but not limited to, visits, written
 408 correspondence, or telephone calls, with his or her siblings or,
 409 upon agreement of the adoptive parents, with the parents who
 410 have had their parental rights terminated or other specified
 411 biological relatives. The court shall consider the following in
 412 making such determination:

413 (a) Any orders of the court pursuant to s. 39.811(7).

414 (b) Recommendations of the department, the foster parents
 415 if other than the adoptive parents, and the guardian ad litem.

416 (c) Statements of the prospective adoptive parents.

417 (d) Any other information deemed relevant and material by
 418 the court.

419
 420 If the court determines that the child's best interests will be
 421 served by postadoption communication or contact, the court shall
 422 so order, stating the nature and frequency of ~~for~~ the
 423 communication or contact. This order shall be made a part of the
 424 final adoption order, but ~~in no event shall~~ the continuing
 425 validity of the adoption may not be contingent upon such
 426 postadoption communication or contact ~~and, nor shall~~ the ability
 427 of the adoptive parents and child to change residence within or
 428 outside the State of Florida may not be impaired by such
 429 communication or contact.

430 (2) Notwithstanding ~~the provisions of~~ s. 63.162, the
 431 adoptive parent may, at any time, petition for review of a
 432 communication or contact order entered pursuant to subsection
 433 (1), if the adoptive parent believes that the best interests of
 434 the adopted child are being compromised, and the court may shall
 435 ~~have authority to~~ order the communication or contact to be

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 436 terminated or modified, as the court deems to be in the best
 437 interests of the adopted child; however, the court may not
 438 increase contact between the adopted child and siblings, birth
 439 parents, or other relatives without the consent of the adoptive
 440 parent or parents. As part of the review process, the court may
 441 order the parties to engage in mediation. The department shall
 442 not be required to be a party to such review.

443 (3) Prospective adoptive parents may enter into an
 444 agreement for contact between the child to be adopted and the
 445 birth parent, other relative, or previous foster parent of the
 446 child to be adopted. Such contact may include visits, written
 447 correspondence, telephone contact, exchange of photographs, or
 448 other similar types of contact. The agreement is enforceable by
 449 the court only if:

450 (a) The agreement was in writing and was submitted to the
 451 court.

452 (b) The adoptive parents have agreed to the terms of the
 453 contact agreement.

454 (c) The court finds the contact to be in the best interests
 455 of the child.

456 (d) The child, if 12 years of age or older, has agreed to
 457 the contact outlined in the agreement.

458 (e) All parties acknowledge that a dispute regarding the
 459 contact agreement does not affect the validity or finality of
 460 the adoption and that a breach of the agreement may not be
 461 grounds to set aside the adoption or otherwise impact the
 462 validity or finality of the adoption in any way.

463 (f) An adoptive parent may terminate the contact between
 464 the child and the birth parent, other relative, or foster parent

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465 if the adoptive parent reasonably believes that the contact is
466 detrimental to the best interests of the child.

467 (g) In order to terminate the agreement for contact, the
468 adoptive parent must file a notice of intent to terminate the
469 contact agreement with the court that initially approved the
470 contact agreement, and provide a copy of the notice to the
471 adoption entity that placed the child, if any, and to the birth
472 parent, other relative, or foster parent of the child who is a
473 party to the agreement, outlining the reasons for termination of
474 the agreement.

475 (h) If appropriate under the circumstances of the case, the
476 court may order the parties to participate in mediation to
477 attempt to resolve the issues with the contact agreement.

478 (i) The court may modify the terms of the agreement in
479 order to serve the best interests of the child, but may not
480 increase the amount or type of contact unless the adoptive
481 parents agree to the increase in contact or change in the type
482 of contact.

483 (j) An agreement for contact entered into under this
484 subsection is enforceable even if it does not fully disclose the
485 identity of the parties to the agreement or if identifying
486 information has been redacted from the agreement.

487 Section 9. Subsections (1), (2), (3), and (6) of section
488 63.052, Florida Statutes, are amended to read:

489 63.052 Guardians designated; proof of commitment.—

490 (1) For minors who have been placed for adoption with ~~and~~
491 ~~permanently committed to~~ an adoption entity, other than an
492 intermediary, such adoption entity shall be the guardian of the
493 person of the minor and has the responsibility and authority to

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494 provide for the needs and welfare of the minor.

495 (2) For minors who have been voluntarily surrendered to an
496 intermediary through an execution of a consent to adoption, the
497 intermediary shall be responsible for the minor until the time a
498 court orders preliminary approval of placement of the minor in
499 the prospective adoptive home, after which time the prospective
500 adoptive parents shall become guardians pending finalization of
501 adoption, subject to the intermediary's right and responsibility
502 to remove the child from the prospective adoptive home if the
503 removal is deemed by the intermediary to be in the best
504 interests ~~interest~~ of the child. The intermediary may not remove
505 the child without a court order unless the child is in danger of
506 imminent harm. The intermediary does not become responsible for
507 the minor child's medical bills that were incurred before taking
508 physical custody of the child after the execution of adoption
509 consents. Prior to the court's entry of an order granting
510 preliminary approval of the placement, the intermediary shall
511 have the responsibility and authority to provide for the needs
512 and welfare of the minor. ~~A~~ ~~No~~ minor may not ~~shall~~ be placed in
513 a prospective adoptive home until that home has received a
514 favorable preliminary home study, as provided in s. 63.092,
515 completed and approved within 1 year before such placement in
516 the prospective home. The provisions of s. 627.6578 shall remain
517 in effect notwithstanding the guardianship provisions in this
518 section.

519 (3) If a minor is surrendered to an adoption entity for
520 subsequent adoption and a suitable prospective adoptive home is
521 not available pursuant to s. 63.092 at the time the minor is
522 surrendered to the adoption entity, the minor must be placed in

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523 a licensed foster care home, ~~or~~ with a home-study-approved
 524 person or family, or with a relative until such a suitable
 525 prospective adoptive home is available.

526 (6) Unless otherwise authorized by law or ordered by the
 527 court, the department is not responsible for expenses incurred
 528 by other adoption entities participating in a placement of a
 529 minor.

530 Section 10. Subsections (2) and (3) of section 63.053,
 531 Florida Statutes, are amended to read:

532 63.053 Rights and responsibilities of an unmarried
 533 biological father; legislative findings.-

534 (2) The Legislature finds that the interests of the state,
 535 the mother, the child, and the adoptive parents described in
 536 this chapter outweigh the interest of an unmarried biological
 537 father who does not take action in a timely manner to establish
 538 and demonstrate a relationship with his child in accordance with
 539 the requirements of this chapter. An unmarried biological father
 540 has the primary responsibility to protect his rights and is
 541 presumed to know that his child may be adopted without his
 542 consent unless he strictly complies with ~~the provisions of~~ this
 543 chapter and demonstrates a prompt and full commitment to his
 544 parental responsibilities.

545 (3) The Legislature finds that a birth mother and a birth
 546 father have a right of ~~to~~ privacy.

547 Section 11. Subsections (1), (2), (4), and (13) of section
 548 63.054, Florida Statutes, are amended to read:

549 63.054 Actions required by an unmarried biological father
 550 to establish parental rights; Florida Putative Father Registry.-

551 (1) In order to preserve the right to notice and consent to

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552 an adoption under this chapter, an unmarried biological father
 553 must, as the "registrant," file a notarized claim of paternity
 554 form with the Florida Putative Father Registry maintained by the
 555 Office of Vital Statistics of the Department of Health which
 556 includes confirmation of his willingness and intent to support
 557 the child for whom paternity is claimed in accordance with state
 558 law. The claim of paternity may be filed at any time before the
 559 child's birth, but may not be filed after the date a petition is
 560 filed for termination of parental rights. In each proceeding for
 561 termination of parental rights, the petitioner must submit to
 562 the Office of Vital Statistics a copy of the petition for
 563 termination of parental rights or a document executed by the
 564 clerk of the court showing the style of the case, the names of
 565 the persons whose rights are sought to be terminated, and the
 566 date and time of the filing of the petition. The Office of Vital
 567 Statistics may not record a claim of paternity after the date a
 568 petition for termination of parental rights is filed. The
 569 failure of an unmarried biological father to file a claim of
 570 paternity with the registry before the date a petition for
 571 termination of parental rights is filed also bars him from
 572 filing a paternity claim under chapter 742.

573 (a) An unmarried biological father is excepted from the
 574 time limitations for filing a claim of paternity with the
 575 registry or for filing a paternity claim under chapter 742, if:

576 1. The mother identifies him to the adoption entity as a
 577 potential biological father by the date she executes a consent
 578 for adoption; and

579 2. He is served with a notice of intended adoption plan
 580 pursuant to s. 63.062(3) and the 30-day mandatory response date

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581 is later than the date the petition for termination of parental
582 rights is filed with the court.

583 (b) If an unmarried biological father falls within the
584 exception provided by paragraph (a), the petitioner shall also
585 submit to the Office of Vital Statistics a copy of the notice of
586 intended adoption plan and proof of service of the notice on the
587 potential biological father.

588 (c) An unmarried biological father who falls within the
589 exception provided by paragraph (a) may not file a claim of
590 paternity with the registry or a paternity claim under chapter
591 742 after the 30-day mandatory response date to the notice of
592 intended adoption plan has expired. The Office of Vital
593 Statistics may not record a claim of paternity 30 days after
594 service of the notice of intended adoption plan.

595 (2) By filing a claim of paternity form with the Office of
596 Vital Statistics, the registrant expressly consents to submit to
597 and pay for DNA testing upon the request of any party, the
598 registrant, or the adoption entity with respect to the child
599 referenced in the claim of paternity.

600 (4) Upon initial registration, or at any time thereafter,
601 the registrant may designate a physical ~~an~~ address other than
602 his residential address for sending any communication regarding
603 his registration. Similarly, upon initial registration, or at
604 any time thereafter, the registrant may designate, in writing,
605 an agent or representative to receive any communication on his
606 behalf and receive service of process. The agent or
607 representative must file an acceptance of the designation, in
608 writing, in order to receive notice or service of process. The
609 failure of the designated representative or agent of the

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610 registrant to deliver or otherwise notify the registrant of
611 receipt of correspondence from the Florida Putative Father
612 Registry is at the registrant's own risk and ~~may shall~~ not serve
613 as a valid defense based upon lack of notice.

614 (13) The filing of a claim of paternity with the Florida
615 Putative Father Registry does not excuse or waive the obligation
616 of a petitioner to comply with the requirements of s. 63.088(4)
617 for conducting a diligent search and required inquiry with
618 respect to the identity of an unmarried biological father or
619 legal father which are set forth in this chapter.

620 Section 12. Paragraph (b) of subsection (1), subsections
621 (2), (3), and (4), and paragraph (a) of subsection (8) of
622 section 63.062, Florida Statutes, are amended to read:

623 63.062 Persons required to consent to adoption; affidavit
624 of nonpaternity; waiver of venue.—

625 (1) Unless supported by one or more of the grounds
626 enumerated under s. 63.089(3), a petition to terminate parental
627 rights pending adoption may be granted only if written consent
628 has been executed as provided in s. 63.082 after the birth of
629 the minor or notice has been served under s. 63.088 to:

630 (b) The father of the minor, if:

631 1. The minor was conceived or born while the father was
632 married to the mother;

633 2. The minor is his child by adoption;

634 3. The minor has been adjudicated by the court to be his
635 child before ~~by~~ the date a petition ~~is filed~~ for termination of
636 parental rights is filed;

637 4. He has filed an affidavit of paternity pursuant to s.
638 382.013(2)(c) or he is listed on the child's birth certificate

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639 ~~before~~ by the date a petition ~~is filed~~ for termination of
640 parental rights is filed; or

641 5. In the case of an unmarried biological father, he has
642 acknowledged in writing, signed in the presence of a competent
643 witness, that he is the father of the minor, has filed such
644 acknowledgment with the Office of Vital Statistics of the
645 Department of Health within the required timeframes, and has
646 complied with the requirements of subsection (2).

647
648 The status of the father shall be determined at the time of the
649 filing of the petition to terminate parental rights and may not
650 be modified for purposes of his obligations and rights under
651 this chapter by acts occurring after the filing of the petition
652 to terminate parental rights.

653 (2) In accordance with subsection (1), the consent of an
654 unmarried biological father shall be necessary only if the
655 unmarried biological father has complied with the requirements
656 of this subsection.

657 (a)1. With regard to a child who is placed with adoptive
658 parents more than 6 months after the child's birth, an unmarried
659 biological father must have developed a substantial relationship
660 with the child, taken some measure of responsibility for the
661 child and the child's future, and demonstrated a full commitment
662 to the responsibilities of parenthood by providing reasonable
663 and regular financial support to the child in accordance with
664 the unmarried biological father's ability, if not prevented from
665 doing so by the person or authorized agency having lawful
666 custody of the child, and either:

667 a. Regularly visited the child at least monthly, when

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668 physically and financially able to do so and when not prevented
669 from doing so by the birth mother or the person or authorized
670 agency having lawful custody of the child; or

671 b. Maintained regular communication with the child or with
672 the person or agency having the care or custody of the child,
673 when physically or financially unable to visit the child or when
674 not prevented from doing so by the birth mother or person or
675 authorized agency having lawful custody of the child.

676 ~~2. The mere fact that an unmarried biological father~~
677 ~~expresses a desire to fulfill his responsibilities towards his~~
678 ~~child which is unsupported by acts evidencing this intent does~~
679 ~~not preclude a finding by the court that the unmarried~~
680 ~~biological father failed to comply with the requirements of this~~
681 ~~subsection.~~

682 ~~2.3.~~ An unmarried biological father who openly lived with
683 the child for at least 6 months within the 1-year period
684 following the birth of the child and immediately preceding
685 placement of the child with adoptive parents and who openly held
686 himself out to be the father of the child during that period
687 shall be deemed to have developed a substantial relationship
688 with the child and to have otherwise met the requirements of
689 this paragraph.

690 (b) With regard to a child who is ~~younger than~~ 6 months of
691 age or younger at the time the child is placed with the adoptive
692 parents, an unmarried biological father must have demonstrated a
693 full commitment to his parental responsibility by having
694 performed all of the following acts prior to the time the mother
695 executes her consent for adoption:

696 1. Filed a notarized claim of paternity form with the

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697 Florida Putative Father Registry within the Office of Vital
698 Statistics of the Department of Health, which form shall be
699 maintained in the confidential registry established for that
700 purpose and shall be considered filed when the notice is entered
701 in the registry of notices from unmarried biological fathers.

702 2. Upon service of a notice of an intended adoption plan or
703 a petition for termination of parental rights pending adoption,
704 executed and filed an affidavit in that proceeding stating that
705 he is personally fully able and willing to take responsibility
706 for the child, setting forth his plans for care of the child,
707 and agreeing to a court order of child support and a
708 contribution to the payment of living and medical expenses
709 incurred for the mother's pregnancy and the child's birth in
710 accordance with his ability to pay.

711 3. If he had knowledge of the pregnancy, paid a fair and
712 reasonable amount of the living and medical expenses incurred in
713 connection with the mother's pregnancy and the child's birth, in
714 accordance with his financial ability and when not prevented
715 from doing so by the birth mother or person or authorized agency
716 having lawful custody of the child. The responsibility of the
717 unmarried biological father to provide financial assistance to
718 the birth mother during her pregnancy and to the child after
719 birth is not abated because support is being provided to the
720 birth mother or child by the adoption entity, a prospective
721 adoptive parent, or a third party, nor does it serve as a basis
722 to excuse the birth father's failure to provide support.

723 (c) The mere fact that a father expresses a desire to
724 fulfill his responsibilities towards his child which is
725 unsupported by acts evidencing this intent does not meet the

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726 requirements of this section.

727 ~~(d)(e)~~ The petitioner shall file with the court a
728 certificate from the Office of Vital Statistics stating that a
729 diligent search has been made of the Florida Putative Father
730 Registry of notices from unmarried biological fathers described
731 in subparagraph (b)1. and that no filing has been found
732 pertaining to the father of the child in question or, if a
733 filing is found, stating the name of the putative father and the
734 time and date of filing. That certificate shall be filed with
735 the court prior to the entry of a final judgment of termination
736 of parental rights.

737 ~~(e)(d)~~ An unmarried biological father who does not comply
738 with each of the conditions provided in this subsection is
739 deemed to have waived and surrendered any rights in relation to
740 the child, including the right to notice of any judicial
741 proceeding in connection with the adoption of the child, and his
742 consent to the adoption of the child is not required.

743 (3) Pursuant to chapter 48, an adoption entity shall serve
744 a notice of intended adoption plan upon any known and locatable
745 unmarried biological father who is identified to the adoption
746 entity by the mother by the date she signs her consent for
747 adoption if the child is 6 months of age or less at the time the
748 consent is executed or who is identified by a diligent search of
749 the Florida Putative Father Registry, or upon an entity whose
750 consent is required. Service of the notice of intended adoption
751 plan is not required ~~mandatory~~ when the unmarried biological
752 father signs a consent for adoption or an affidavit of
753 nonpaternity or when the child is more than 6 months of age at
754 the time of the execution of the consent by the mother. The

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755 notice may be served at any time before the child's birth or
 756 before placing the child in the adoptive home. The recipient of
 757 the notice may waive service of process by executing a waiver
 758 and acknowledging receipt of the plan. The notice of intended
 759 adoption plan must specifically state that if the unmarried
 760 biological father desires to contest the adoption plan he must,
 761 within 30 days after service, file with the court a verified
 762 response that contains a pledge of commitment to the child in
 763 substantial compliance with subparagraph (2)(b)2. and a claim of
 764 paternity form with the Office of Vital Statistics, and must
 765 provide the adoption entity with a copy of the verified response
 766 filed with the court and the claim of paternity form filed with
 767 the Office of Vital Statistics. The notice must also include
 768 instructions for submitting a claim of paternity form to the
 769 Office of Vital Statistics and the address to which the claim
 770 must be sent. If the party served with the notice of intended
 771 adoption plan is an entity whose consent is required, the notice
 772 must specifically state that the entity must file, within 30
 773 days after service, a verified response setting forth a legal
 774 basis for contesting the intended adoption plan, specifically
 775 addressing the best interests ~~interest~~ of the child.

776 (a) If the unmarried biological father or entity whose
 777 consent is required fails to timely and properly file a verified
 778 response with the court and, in the case of an unmarried
 779 biological father, a claim of paternity form with the Office of
 780 Vital Statistics, the court shall enter a default judgment
 781 against ~~the any~~ unmarried biological father or entity and the
 782 consent of that unmarried biological father or entity shall no
 783 longer be required under this chapter and shall be deemed to

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784 have waived any claim of rights to the child. To avoid an entry
 785 of a default judgment, within 30 days after receipt of service
 786 of the notice of intended adoption plan:

787 1. The unmarried biological father must:
 788 a. File a claim of paternity with the Florida Putative
 789 Father Registry maintained by the Office of Vital Statistics;
 790 b. File a verified response with the court which contains a
 791 pledge of commitment to the child in substantial compliance with
 792 subparagraph (2)(b)2.; and
 793 c. Provide support for the birth mother and the child.
 794 2. The entity whose consent is required must file a
 795 verified response setting forth a legal basis for contesting the
 796 intended adoption plan, specifically addressing the best
 797 interests ~~interest~~ of the child.

798 (b) If the mother identifies a potential unmarried
 799 biological father within the timeframes required by the statute,
 800 whose location is unknown, the adoption entity shall conduct a
 801 diligent search pursuant to s. 63.088. If, upon completion of a
 802 diligent search, the potential unmarried biological father's
 803 location remains unknown and a search of the Florida Putative
 804 Father Registry fails to reveal a match, the adoption entity
 805 shall request in the petition for termination of parental rights
 806 pending adoption that the court declare the diligent search to
 807 be in compliance with s. 63.088, that the adoption entity has no
 808 further obligation to provide notice to the potential unmarried
 809 biological father, and that the potential unmarried biological
 810 father's consent to the adoption is not required.

811 (4) Any person whose consent is required under paragraph
 812 (1)(b), or any other man, may execute an irrevocable affidavit

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813 of nonpaternity in lieu of a consent under this section and by
814 doing so waives notice to all court proceedings after the date
815 of execution. An affidavit of nonpaternity must be executed as
816 provided in s. 63.082. The affidavit of nonpaternity may be
817 executed prior to the birth of the child. The person executing
818 the affidavit must receive disclosure under s. 63.085 prior to
819 signing the affidavit. For purposes of this chapter, an
820 affidavit of nonpaternity is sufficient if it contains a
821 specific denial of parental obligations and does not need to
822 deny the existence of a biological relationship.

823 (8) A petition to adopt an adult may be granted if:

824 (a) Written consent to adoption has been executed by the
825 adult and the adult's spouse, if any, unless the spouse's
826 consent is waived by the court for good cause.

827 Section 13. Subsection (2) of section 63.063, Florida
828 Statutes, is amended to read:

829 63.063 Responsibility of parents for actions; fraud or
830 misrepresentation; contesting termination of parental rights and
831 adoption.—

832 (2) Any person injured by a fraudulent representation or
833 action in connection with an adoption may pursue civil or
834 criminal penalties as provided by law. A fraudulent
835 representation is not a defense to compliance with the
836 requirements of this chapter and is not a basis for dismissing a
837 petition for termination of parental rights or a petition for
838 adoption, for vacating an adoption decree, or for granting
839 custody to the offended party. Custody and adoption
840 determinations must be based on the best interests ~~interest~~ of
841 the child in accordance with s. 61.13.

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842 Section 14. Paragraph (d) of subsection (1), paragraphs (c)
843 and (d) of subsection (3), paragraphs (a), (d), and (e) of
844 subsection (4), and subsections (6) and (7) of section 63.082,
845 Florida Statutes, are amended to read:

846 63.082 Execution of consent to adoption or affidavit of
847 nonpaternity; family social and medical history; revocation
848 ~~withdrawal~~ of consent.—

849 (1)

850 (d) The notice and consent provisions of this chapter as
851 they relate to the father birth of a child ~~or to legal fathers~~
852 do not apply in cases in which the child is conceived as a
853 result of a violation of the criminal laws of this or another
854 state or country, including, but not limited to, sexual battery,
855 unlawful sexual activity with certain minors under s. 794.05,
856 lewd acts perpetrated upon a minor, or incest. A criminal
857 conviction is not required for the court to find that the child
858 was conceived as a result of a violation of the criminal laws of
859 this state or another state or country.

860 (3)

861 (c) If any person who is required to consent is unavailable
862 because the person cannot be located, an ~~the petition to~~
863 ~~terminate parental rights pending adoption must be accompanied~~
864 ~~by the affidavit of diligent search required under s. 63.088~~
865 shall be filed.

866 (d) If any person who is required to consent is unavailable
867 because the person is deceased, the petition to terminate
868 parental rights pending adoption must be accompanied by a
869 certified copy of the death certificate. In an adoption of a
870 stepchild or a relative, the certified copy of the death

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 871 certificate of the person whose consent is required ~~may must~~ be
 872 attached to the petition for adoption if a separate petition for
 873 termination of parental rights is not being filed.

874 (4) (a) An affidavit of nonpaternity may be executed before
 875 the birth of the minor; however, the consent to an adoption may
 876 ~~shall~~ not be executed before the birth of the minor except in a
 877 preplanned adoption pursuant to s. 63.213.

878 (d) The consent to adoption or the affidavit of
 879 nonpaternity must be signed in the presence of two witnesses and
 880 be acknowledged before a notary public who is not signing as one
 881 of the witnesses. The notary public must legibly note on the
 882 consent or the affidavit the date and time of execution. The
 883 witnesses' names must be typed or printed underneath their
 884 signatures. The witnesses' home or business addresses must be
 885 included. The person who signs the consent or the affidavit has
 886 the right to have at least one of the witnesses be an individual
 887 who does not have an employment, professional, or personal
 888 relationship with the adoption entity or the prospective
 889 adoptive parents. The adoption entity must give reasonable
 890 advance notice to the person signing the consent or affidavit of
 891 the right to select a witness of his or her own choosing. The
 892 person who signs the consent or affidavit must acknowledge in
 893 writing on the consent or affidavit that such notice was given
 894 and indicate the witness, if any, who was selected by the person
 895 signing the consent or affidavit. The adoption entity must
 896 include its name, address, and telephone number on the consent
 897 to adoption or affidavit of nonpaternity.

898 (e) A consent to adoption being executed by the birth
 899 parent must be in at least 12-point boldfaced type and shall

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 900 contain the following recitation of rights in substantially the
 901 following form:

902 CONSENT TO ADOPTION

903
 904 YOU HAVE THE RIGHT TO SELECT AT LEAST ONE PERSON WHO DOES NOT
 905 HAVE AN EMPLOYMENT, PROFESSIONAL, OR PERSONAL RELATIONSHIP WITH
 906 THE ADOPTION ENTITY OR THE PROSPECTIVE ADOPTIVE PARENTS TO BE
 907 PRESENT WHEN THIS AFFIDAVIT IS EXECUTED AND TO SIGN IT AS A
 908 WITNESS. YOU MUST ACKNOWLEDGE ON THIS FORM THAT YOU WERE
 909 NOTIFIED OF THIS RIGHT AND YOU MUST INDICATE THE WITNESS OR
 910 WITNESSES YOU SELECTED, IF ANY.

911
 912 YOU DO NOT HAVE TO SIGN THIS CONSENT FORM. YOU MAY DO ANY OF THE
 913 FOLLOWING INSTEAD OF SIGNING THIS CONSENT OR BEFORE SIGNING THIS
 914 CONSENT:

- 915
 916 1. CONSULT WITH AN ATTORNEY;
 917 2. HOLD, CARE FOR, AND FEED THE CHILD UNLESS OTHERWISE
 918 LEGALLY PROHIBITED;
 919 3. PLACE THE CHILD IN FOSTER CARE OR WITH ANY FRIEND OR
 920 FAMILY MEMBER YOU CHOOSE WHO IS WILLING TO CARE FOR THE
 921 CHILD;
 922 4. TAKE THE CHILD HOME UNLESS OTHERWISE LEGALLY PROHIBITED;
 923 AND
 924 5. FIND OUT ABOUT THE COMMUNITY RESOURCES THAT ARE
 925 AVAILABLE TO YOU IF YOU DO NOT GO THROUGH WITH THE
 926 ADOPTION.

927
 928 IF YOU DO SIGN THIS CONSENT, YOU ARE GIVING UP ALL RIGHTS TO

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929 YOUR CHILD. YOUR CONSENT IS VALID, BINDING, AND IRREVOCABLE
 930 EXCEPT UNDER SPECIFIC LEGAL CIRCUMSTANCES. IF YOU ARE GIVING UP
 931 YOUR RIGHTS TO A NEWBORN CHILD WHO IS TO BE IMMEDIATELY PLACED
 932 FOR ADOPTION UPON THE CHILD'S RELEASE FROM A LICENSED HOSPITAL
 933 OR BIRTH CENTER FOLLOWING BIRTH, A WAITING PERIOD WILL BE
 934 IMPOSED UPON THE BIRTH MOTHER BEFORE SHE MAY SIGN THE CONSENT
 935 FOR ADOPTION. A BIRTH MOTHER MUST WAIT 48 HOURS FROM THE TIME OF
 936 BIRTH, OR UNTIL THE DAY THE BIRTH MOTHER HAS BEEN NOTIFIED IN
 937 WRITING, EITHER ON HER PATIENT CHART OR IN RELEASE PAPERS, THAT
 938 SHE IS FIT TO BE RELEASED FROM A LICENSED HOSPITAL OR BIRTH
 939 CENTER, WHICHEVER IS SOONER, BEFORE THE CONSENT FOR ADOPTION MAY
 940 BE EXECUTED. ANY MAN MAY EXECUTE A CONSENT AT ANY TIME AFTER THE
 941 BIRTH OF THE CHILD. ONCE YOU HAVE SIGNED THE CONSENT, IT IS
 942 VALID, BINDING, AND IRREVOCABLE AND CANNOT BE INVALIDATED
 943 ~~WITHDRAWN~~ UNLESS A COURT FINDS THAT IT WAS OBTAINED BY FRAUD OR
 944 DURESS.

945
 946 IF YOU BELIEVE THAT YOUR CONSENT WAS OBTAINED BY FRAUD OR DURESS
 947 AND YOU WISH TO INVALIDATE ~~REVOKE~~ THAT CONSENT, YOU MUST:

- 948
 949 1. NOTIFY THE ADOPTION ENTITY, BY WRITING A LETTER, THAT
 950 YOU WISH TO WITHDRAW YOUR CONSENT; AND
 951 2. PROVE IN COURT THAT THE CONSENT WAS OBTAINED BY FRAUD OR
 952 DURESS.

953
 954 This statement of rights is not required for the adoption of a
 955 relative, an adult, a stepchild, or a child older than 6 months
 956 of age. A consent form for the adoption of a child older than 6
 957 months of age at the time of the execution of consent must

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958 contain a statement outlining the revocation rights provided in
 959 paragraph (c).

960 (6) (a) If a parent executes a consent for placement of a
 961 minor with an adoption entity or qualified prospective adoptive
 962 parents and the minor child is in the custody of the department,
 963 but parental rights have not yet been terminated, the adoption
 964 consent is valid, binding, and enforceable by the court.

965 (b) Upon execution of the consent of the parent, the
 966 adoption entity shall be permitted to ~~may~~ intervene in the
 967 dependency case as a party in interest and must provide the
 968 court that acquired ~~having~~ jurisdiction over the minor, pursuant
 969 to the shelter or dependency petition filed by the department, a
 970 copy of the preliminary home study of the prospective adoptive
 971 parents and any other evidence of the suitability of the
 972 placement. The preliminary home study must be maintained with
 973 strictest confidentiality within the dependency court file and
 974 the department's file. A preliminary home study must be provided
 975 to the court in all cases in which an adoption entity has
 976 intervened pursuant to this section. Unless the court has
 977 concerns regarding the qualifications of the home study
 978 provider, or concerns that the home study may not be adequate to
 979 determine the best interests of the child, the home study
 980 provided by the adoption entity shall be deemed to be sufficient
 981 and no additional home study needs to be performed by the
 982 department.

983 (c) If an adoption entity files a motion to intervene in
 984 the dependency case in accordance with this chapter, the
 985 dependency court shall promptly grant a hearing to determine
 986 whether the adoption entity has filed the required documents to

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987 be permitted to intervene and whether a change of placement of
 988 the child is appropriate.

989 (d)(e) Upon a determination by the court that the
 990 prospective adoptive parents are properly qualified to adopt the
 991 minor child and that the adoption appears to be in the best
 992 interests interest of the minor child, the court shall
 993 immediately order the transfer of custody of the minor child to
 994 the prospective adoptive parents, under the supervision of the
 995 adoption entity. The adoption entity shall thereafter provide
 996 monthly supervision reports to the department until finalization
 997 of the adoption.

998 (e)(d) In determining whether the best interests interest
 999 of the child are is served by transferring the custody of the
 1000 minor child to the prospective adoptive parent selected by the
 1001 parent, the court shall consider the rights of the parent to
 1002 determine an appropriate placement for the child, the permanency
 1003 offered, the child's bonding with any potential adoptive home
 1004 that the child has been residing in, and the importance of
 1005 maintaining sibling relationships, if possible.

1006 (7) If a person is seeking to revoke withdraw consent for a
 1007 child older than 6 months of age who has been placed with
 1008 prospective adoptive parents:

1009 (a) The person seeking to revoke withdraw consent must, in
 1010 accordance with paragraph (4)(c), notify the adoption entity in
 1011 writing by certified mail, return receipt requested, within 3
 1012 business days after execution of the consent. As used in this
 1013 subsection, the term "business day" means any day on which the
 1014 United States Postal Service accepts certified mail for
 1015 delivery.

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1016 (b) Upon receiving timely written notice from a person
 1017 whose consent to adoption is required of that person's desire to
 1018 revoke withdraw consent, the adoption entity must contact the
 1019 prospective adoptive parent to arrange a time certain for the
 1020 adoption entity to regain physical custody of the minor, unless,
 1021 upon a motion for emergency hearing by the adoption entity, the
 1022 court determines in written findings that placement of the minor
 1023 with the person who had legal or physical custody of the child
 1024 immediately before the child was placed for adoption may
 1025 endanger the minor or that the person who desires to revoke
 1026 withdraw consent is not required to consent to the adoption, has
 1027 been determined to have abandoned the child, or is otherwise
 1028 subject to a determination that the person's consent is waived
 1029 under this chapter.

1030 (c) If the court finds that the placement may endanger the
 1031 minor, the court shall enter an order continuing the placement
 1032 of the minor with the prospective adoptive parents pending
 1033 further proceedings if they desire continued placement. If the
 1034 prospective adoptive parents do not desire continued placement,
 1035 the order must include, but need not be limited to, a
 1036 determination of whether temporary placement in foster care,
 1037 with the person who had legal or physical custody of the child
 1038 immediately before placing the child for adoption, or with a
 1039 relative is in the best interests interest of the child and
 1040 whether an investigation by the department is recommended.

1041 (d) If the person revoking withdrawing consent claims to be
 1042 the father of the minor but has not been established to be the
 1043 father by marriage, court order, or scientific testing, the
 1044 court may order scientific paternity testing and reserve ruling

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1045 on removal of the minor until the results of such testing have
1046 been filed with the court.

1047 (e) The adoption entity must return the minor within 3
1048 business days after timely and proper notification of the
1049 ~~revocation withdrawal~~ of consent or after the court determines
1050 that revocation withdrawal is timely and in accordance with the
1051 requirements of this chapter ~~valid and binding~~ upon
1052 consideration of an emergency motion, as filed pursuant to
1053 paragraph (b), to the physical custody of the person revoking
1054 ~~withdrawing~~ consent or the person directed by the court. If the
1055 person seeking to revoke ~~withdraw~~ consent claims to be the
1056 father of the minor but has not been established to be the
1057 father by marriage, court order, or scientific testing, the
1058 adoption entity may return the minor to the care and custody of
1059 the mother, if she desires such placement and she is not
1060 otherwise prohibited by law from having custody of the child.

1061 (f) Following the revocation period ~~for withdrawal of~~
1062 ~~consent described in paragraph (a), or the placement of the~~
1063 ~~child with the prospective adoptive parents, whichever occurs~~
1064 ~~later~~, consent may be set aside ~~withdrawn~~ only when the court
1065 finds that the consent was obtained by fraud or duress.

1066 (g) An affidavit of nonpaternity may be set aside ~~withdrawn~~
1067 only if the court finds that the affidavit was obtained by fraud
1068 or duress.

1069 (h) If the consent of one parent is set aside or revoked in
1070 accordance with this chapter, any other consents executed by the
1071 other parent or a third party whose consent is required for the
1072 adoption of the child may not be used by the parent whose
1073 consent was revoked or set aside to terminate or diminish the

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1074 rights of the other parent or third party whose consent was
1075 required for the adoption of the child.

1076 Section 15. Subsection (1) and paragraph (a) of subsection
1077 (2) of section 63.085, Florida Statutes, are amended, and
1078 paragraph (c) is added to subsection (2) of that section, to
1079 read:

1080 63.085 Disclosure by adoption entity.—

1081 (1) DISCLOSURE REQUIRED TO PARENTS AND PROSPECTIVE ADOPTIVE
1082 PARENTS.—Within 14 days after a person seeking to adopt a minor
1083 or a person seeking to place a minor for adoption contacts an
1084 adoption entity in person or provides the adoption entity with a
1085 mailing address, the entity must provide a written disclosure
1086 statement to that person if the entity agrees or continues to
1087 work with the person. The adoption entity shall also provide the
1088 written disclosure to the parent who did not initiate contact
1089 with the adoption entity within 14 days after that parent is
1090 identified and located. For purposes of providing the written
1091 disclosure, a person is considered to be seeking to place a
1092 minor for adoption if that person has sought information or
1093 advice from the adoption entity regarding the option of adoptive
1094 placement. The written disclosure statement must be in
1095 substantially the following form:

1096
1097 ADOPTION DISCLOSURE
1098 THE STATE OF FLORIDA REQUIRES THAT THIS FORM BE PROVIDED TO ALL
1099 PERSONS CONSIDERING ADOPTING A MINOR OR SEEKING TO PLACE A MINOR
1100 FOR ADOPTION, TO ADVISE THEM OF THE FOLLOWING FACTS REGARDING
1101 ADOPTION UNDER FLORIDA LAW:
1102

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1103 1. The name, address, and telephone number of the adoption
 1104 entity providing this disclosure is:
 1105 Name:
 1106 Address:
 1107 Telephone Number:
 1108 2. The adoption entity does not provide legal
 1109 representation or advice to parents or anyone signing a consent
 1110 for adoption or affidavit of nonpaternity, and parents have the
 1111 right to consult with an attorney of their own choosing to
 1112 advise them.
 1113 3. With the exception of an adoption by a stepparent or
 1114 relative, a child cannot be placed into a prospective adoptive
 1115 home unless the prospective adoptive parents have received a
 1116 favorable preliminary home study, including criminal and child
 1117 abuse clearances.
 1118 4. A valid consent for adoption may not be signed by the
 1119 birth mother until 48 hours after the birth of the child, or the
 1120 day the birth mother is notified, in writing, that she is fit
 1121 for discharge from the licensed hospital or birth center. Any
 1122 man may sign a valid consent for adoption at any time after the
 1123 birth of the child.
 1124 5. A consent for adoption signed before the child attains
 1125 the age of 6 months is binding and irrevocable from the moment
 1126 it is signed unless it can be proven in court that the consent
 1127 was obtained by fraud or duress. A consent for adoption signed
 1128 after the child attains the age of 6 months is valid from the
 1129 moment it is signed; however, it may be revoked up to 3 business
 1130 days after it was signed.
 1131 6. A consent for adoption is not valid if the signature of

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1132 the person who signed the consent was obtained by fraud or
 1133 duress.
 1134 7. An unmarried biological father must act immediately in
 1135 order to protect his parental rights. Section 63.062, Florida
 1136 Statutes, prescribes that any father seeking to establish his
 1137 right to consent to the adoption of his child must file a claim
 1138 of paternity with the Florida Putative Father Registry
 1139 maintained by the Office of Vital Statistics of the Department
 1140 of Health by the date a petition to terminate parental rights is
 1141 filed with the court, or within 30 days after receiving service
 1142 of a Notice of Intended Adoption Plan. If he receives a Notice
 1143 of Intended Adoption Plan, he must file a claim of paternity
 1144 with the Florida Putative Father Registry, file a parenting plan
 1145 with the court, and provide financial support to the mother or
 1146 child within 30 days following service. An unmarried biological
 1147 father's failure to timely respond to a Notice of Intended
 1148 Adoption Plan constitutes an irrevocable legal waiver of any and
 1149 all rights that the father may have to the child. A claim of
 1150 paternity registration form for the Florida Putative Father
 1151 Registry may be obtained from any local office of the Department
 1152 of Health, Office of Vital Statistics, the Department of
 1153 Children and Families, the Internet websites for these agencies,
 1154 and the offices of the clerks of the Florida circuit courts. The
 1155 claim of paternity form must be submitted to the Office of Vital
 1156 Statistics, Attention: Adoption Unit, P.O. Box 210,
 1157 Jacksonville, FL 32231.
 1158 8. There are alternatives to adoption, including foster
 1159 care, relative care, and parenting the child. There may be
 1160 services and sources of financial assistance in the community

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1161 available to parents if they choose to parent the child.

1162 9. A parent has the right to have a witness of his or her
1163 choice, who is unconnected with the adoption entity or the
1164 adoptive parents, to be present and witness the signing of the
1165 consent or affidavit of nonpaternity.

1166 10. A parent 14 years of age or younger must have a parent,
1167 legal guardian, or court-appointed guardian ad litem to assist
1168 and advise the parent as to the adoption plan and to witness
1169 consent.

1170 11. A parent has a right to receive supportive counseling
1171 from a counselor, social worker, physician, clergy, or attorney.

1172 12. The payment of living or medical expenses by the
1173 prospective adoptive parents before the birth of the child does
1174 not, in any way, obligate the parent to sign the consent for
1175 adoption.

1176

1177 (2) DISCLOSURE TO ADOPTIVE PARENTS.—

1178 (a) At the time that an adoption entity is responsible for
1179 selecting prospective adoptive parents for a born or unborn
1180 child whose parents are seeking to place the child for adoption
1181 or whose rights were terminated pursuant to chapter 39, the
1182 adoption entity must provide the prospective adoptive parents
1183 with information concerning the background of the child to the
1184 extent such information is disclosed to the adoption entity by
1185 the parents, legal custodian, or the department. This subsection
1186 applies only if the adoption entity identifies the prospective
1187 adoptive parents and supervises the ~~physical~~ placement of the
1188 child in the prospective adoptive parents' home. If any
1189 information cannot be disclosed because the records custodian

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1190 failed or refused to produce the background information, the
1191 adoption entity has a duty to provide the information if it
1192 becomes available. An individual or entity contacted by an
1193 adoption entity to obtain the background information must
1194 release the requested information to the adoption entity without
1195 the necessity of a subpoena or a court order. In all cases, the
1196 prospective adoptive parents must receive all available
1197 information by the date of the final hearing on the petition for
1198 adoption. The information to be disclosed includes:

1199 1. A family social and medical history form completed
1200 pursuant to s. 63.162(6).

1201 2. The biological mother's medical records documenting her
1202 prenatal care and the birth and delivery of the child.

1203 3. A complete set of the child's medical records
1204 documenting all medical treatment and care since the child's
1205 birth and before placement.

1206 4. All mental health, psychological, and psychiatric
1207 records, reports, and evaluations concerning the child before
1208 placement.

1209 5. The child's educational records, including all records
1210 concerning any special education needs of the child before
1211 placement.

1212 6. Records documenting all incidents that required the
1213 department to provide services to the child, including all
1214 orders of adjudication of dependency or termination of parental
1215 rights issued pursuant to chapter 39, any case plans drafted to
1216 address the child's needs, all protective services
1217 investigations identifying the child as a victim, and all
1218 guardian ad litem reports filed with the court concerning the

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1219 child.

1220 7. Written information concerning the availability of
1221 adoption subsidies for the child, if applicable.

1222 (c) If the prospective adoptive parents waive the receipt
1223 of any of the records described in paragraph (a), a copy of the
1224 written notification of the waiver to the adoption entity shall
1225 be filed with the court.

1226 Section 16. Subsection (6) of section 63.087, Florida
1227 Statutes, is amended to read:

1228 63.087 Proceeding to terminate parental rights pending
1229 adoption; general provisions.—

1230 (6) ANSWER AND APPEARANCE REQUIRED.—An answer to the
1231 petition or any pleading requiring an answer must be filed in
1232 accordance with the Florida Family Law Rules of Procedure.
1233 Failure to file a written response to the petition constitutes
1234 grounds upon which the court may terminate parental rights.
1235 Failure to personally appear at the hearing constitutes grounds
1236 upon which the court may terminate parental rights. Any person
1237 present at the hearing to terminate parental rights pending
1238 adoption whose consent to adoption is required under s. 63.062
1239 must:

1240 (a) Be advised by the court that he or she has a right to
1241 ask that the hearing be reset for a later date so that the
1242 person may consult with an attorney; and

1243 (b) Be given an opportunity to admit or deny the
1244 allegations in the petition.

1245 Section 17. Subsection (4) of section 63.088, Florida
1246 Statutes, is amended to read:

1247 63.088 Proceeding to terminate parental rights pending

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1248 adoption; notice and service; diligent search.—

1249 (4) REQUIRED INQUIRY.—In proceedings initiated under s.
1250 63.087, the court shall conduct an inquiry of the person who is
1251 placing the minor for adoption and of any relative or person
1252 having legal custody of the minor who is present at the hearing
1253 and likely to have the following information regarding the
1254 identity of:

1255 (a) Any man to whom the mother of the minor was married at
1256 any time when conception of the minor may have occurred or at
1257 the time of the birth of the minor;

1258 (b) Any man who has filed an affidavit of paternity
1259 pursuant to s. 382.013(2)(c) before the date that a petition for
1260 termination of parental rights is filed with the court;

1261 (c) Any man who has adopted the minor;

1262 (d) Any man who has been adjudicated by a court as the
1263 father of the minor child before the date a petition for
1264 termination of parental rights is filed with the court; and

1265 (e) Any man whom the mother identified to the adoption
1266 entity as a potential biological father before the date she
1267 signed the consent for adoption.

1268
1269 The information sought under this subsection may be provided to
1270 the court in the form of a sworn affidavit by a person having
1271 personal knowledge of the facts, addressing each inquiry
1272 enumerated in this subsection, except that, if the inquiry
1273 identifies a father under paragraph (a), paragraph (b), ~~or~~
1274 paragraph (c), or paragraph (d), the inquiry may not continue
1275 further. The inquiry required under this subsection may be
1276 conducted before the birth of the minor.

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1277 Section 18. Paragraph (d) of subsection (3), paragraph (b)
1278 of subsection (4), and subsections (5) and (7) of section
1279 63.089, Florida Statutes, are amended to read:

1280 63.089 Proceeding to terminate parental rights pending
1281 adoption; hearing; grounds; dismissal of petition; judgment.—

1282 (3) GROUNDS FOR TERMINATING PARENTAL RIGHTS PENDING
1283 ADOPTION.—The court may enter a judgment terminating parental
1284 rights pending adoption if the court determines by clear and
1285 convincing evidence, supported by written findings of fact, that
1286 each person whose consent to adoption is required under s.
1287 63.062:

1288 (d) Has been properly served notice of the proceeding in
1289 accordance with the requirements of this chapter and has failed
1290 to file a written answer or personally appear at the evidentiary
1291 hearing resulting in the judgment terminating parental rights
1292 pending adoption;

1293 (4) FINDING OF ABANDONMENT.—A finding of abandonment
1294 resulting in a termination of parental rights must be based upon
1295 clear and convincing evidence that a parent or person having
1296 legal custody has abandoned the child in accordance with the
1297 definition contained in s. 63.032. A finding of abandonment may
1298 also be based upon emotional abuse or a refusal to provide
1299 reasonable financial support, when able, to a birth mother
1300 during her pregnancy.

1301 (b) The child has been abandoned when the parent of a child
1302 is incarcerated on or after October 1, 2001, in a federal,
1303 state, or county correctional institution and:

1304 1. The period of time for which the parent has been or is
1305 expected to be incarcerated will constitute a significant

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1306 portion of the child's minority. In determining whether the
1307 period of time is significant, the court shall consider the
1308 child's age and the child's need for a permanent and stable
1309 home. The period of time begins on the date that the parent
1310 enters into incarceration;

1311 2. The incarcerated parent has been determined by a court
1312 of competent jurisdiction to be a violent career criminal as
1313 defined in s. 775.084, a habitual violent felony offender as
1314 defined in s. 775.084, convicted of child abuse as defined in s.
1315 827.03, or a sexual predator as defined in s. 775.21; has been
1316 convicted of first degree or second degree murder in violation
1317 of s. 782.04 or a sexual battery that constitutes a capital,
1318 life, or first degree felony violation of s. 794.011; or has
1319 been convicted of a substantially similar offense in another
1320 jurisdiction. As used in this section, the term "substantially
1321 similar offense" means any offense that is substantially similar
1322 in elements and penalties to one of those listed in this
1323 subparagraph, and that is in violation of a law of any other
1324 jurisdiction, whether that of another state, the District of
1325 Columbia, the United States or any possession or territory
1326 thereof, or any foreign jurisdiction; or

1327 3. The court determines by clear and convincing evidence
1328 that continuing the parental relationship with the incarcerated
1329 parent would be harmful to the child and, for this reason,
1330 termination of the parental rights of the incarcerated parent is
1331 in the best interests ~~interest~~ of the child.

1332 (5) DISMISSAL OF PETITION.—If the court does not find by
1333 clear and convincing evidence that parental rights of a parent
1334 should be terminated pending adoption, the court must dismiss

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1335 the petition and that parent's parental rights that were the
 1336 subject of such petition shall remain in full force under the
 1337 law. The order must include written findings in support of the
 1338 dismissal, including findings as to the criteria in subsection
 1339 (4) if rejecting a claim of abandonment.

1340 (a) Parental rights may not be terminated based upon a
 1341 consent that the court finds has been timely revoked ~~withdrawn~~
 1342 under s. 63.082 or a consent to adoption or affidavit of
 1343 nonpaternity that the court finds was obtained by fraud or
 1344 duress.

1345 (b) The court must enter an order based upon written
 1346 findings providing for the placement of the minor, but the court
 1347 may not proceed to determine custody between competing eligible
 1348 parties. The placement of the child should revert to the parent
 1349 or guardian who had physical custody of the child at the time of
 1350 the placement for adoption unless the court determines upon
 1351 clear and convincing evidence that this placement is not in the
 1352 best interests of the child or is not an available option for
 1353 the child. The court may not change the placement of a child who
 1354 has established a bonded relationship with the current caregiver
 1355 without providing for a reasonable transition plan consistent
 1356 with the best interests of the child. The court may direct the
 1357 parties to participate in a reunification or unification plan
 1358 with a qualified professional to assist the child in the
 1359 transition. The court may order scientific testing to determine
 1360 the paternity of the minor only if the court has determined that
 1361 the consent of the alleged father would be required, unless all
 1362 parties agree that such testing is in the best interests of the
 1363 child. The court may not order scientific testing to determine

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1364 paternity of an unmarried biological father if the child has a
 1365 father as described in s. 63.088(4)(a)-(d) whose rights have not
 1366 been previously terminated at any time during which the court
 1367 has jurisdiction over the minor. Further proceedings, if any,
 1368 regarding the minor must be brought in a separate custody action
 1369 under chapter 61, a dependency action under chapter 39, or a
 1370 paternity action under chapter 742.

1371 (7) RELIEF FROM JUDGMENT TERMINATING PARENTAL RIGHTS.—

1372 (a) A motion for relief from a judgment terminating
 1373 parental rights must be filed with the court originally entering
 1374 the judgment. The motion must be filed within a reasonable time,
 1375 but not later than 1 year after the entry of the judgment. An
 1376 unmarried biological father does not have standing to seek
 1377 relief from a judgment terminating parental rights if the mother
 1378 did not identify him to the adoption entity before the date she
 1379 signed a consent for adoption or if he was not located because
 1380 the mother failed or refused to provide sufficient information
 1381 to locate him.

1382 (b) No later than 30 days after the filing of a motion
 1383 under this subsection, the court must conduct a preliminary
 1384 hearing to determine what contact, if any, shall be permitted
 1385 between a parent and the child pending resolution of the motion.
 1386 Such contact shall be considered only if it is requested by a
 1387 parent who has appeared at the hearing and may not be awarded
 1388 unless the parent previously established a bonded relationship
 1389 with the child and the parent has pled a legitimate legal basis
 1390 and established a prima facie case for setting aside the
 1391 judgment terminating parental rights. If the court orders
 1392 contact between a parent and child, the order must be issued in

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1393 writing as expeditiously as possible and must state with
1394 specificity any provisions regarding contact with persons other
1395 than those with whom the child resides.

1396 (c) At the preliminary hearing, the court, upon the motion
1397 of any party or upon its own motion, may order scientific
1398 testing to determine the paternity of the minor if the person
1399 seeking to set aside the judgment is alleging to be the child's
1400 father and that fact has not previously been determined by
1401 legitimacy or scientific testing. The court may order visitation
1402 with a person for whom scientific testing for paternity has been
1403 ordered and who has previously established a bonded relationship
1404 with the child.

1405 (d) Unless otherwise agreed between the parties or for good
1406 cause shown, the court shall conduct a final hearing on the
1407 motion for relief from judgment within 45 days after the filing
1408 and enter its written order as expeditiously as possible
1409 thereafter.

1410 (e) If the court grants relief from the judgment
1411 terminating parental rights and no new pleading is filed to
1412 terminate parental rights, the placement of the child should
1413 revert to the parent or guardian who had physical custody of the
1414 child at the time of the original placement for adoption unless
1415 the court determines upon clear and convincing evidence that
1416 this placement is not in the best interests of the child or is
1417 not an available option for the child. The court may not change
1418 the placement of a child who has established a bonded
1419 relationship with the current caregiver without providing for a
1420 reasonable transition plan consistent with the best interests of
1421 the child. The court may direct the parties to participate in a

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1422 reunification or unification plan with a qualified professional
1423 to assist the child in the transition. The court may not direct
1424 the placement of a child with a person other than the adoptive
1425 parents without first obtaining a favorable home study of that
1426 person and any other persons residing in the proposed home and
1427 shall take whatever additional steps are necessary and
1428 appropriate for the physical and emotional protection of the
1429 child.

1430 Section 19. Subsection (3) of section 63.092, Florida
1431 Statutes, is amended to read:

1432 63.092 Report to the court of intended placement by an
1433 adoption entity; at-risk placement; preliminary study.-

1434 (3) PRELIMINARY HOME STUDY.-Before placing the minor in the
1435 intended adoptive home, a preliminary home study must be
1436 performed by a licensed child-placing agency, a child-caring
1437 agency registered under s. 409.176, a licensed professional, or
1438 agency described in s. 61.20(2), unless the adoptee is an adult
1439 or the petitioner is a stepparent or a relative. If the adoptee
1440 is an adult or the petitioner is a stepparent or a relative, a
1441 preliminary home study may be required by the court for good
1442 cause shown. The department is required to perform the
1443 preliminary home study only if there is no licensed child-
1444 placing agency, child-caring agency registered under s. 409.176,
1445 licensed professional, or agency described in s. 61.20(2), in
1446 the county where the prospective adoptive parents reside. The
1447 preliminary home study must be made to determine the suitability
1448 of the intended adoptive parents and may be completed prior to
1449 identification of a prospective adoptive minor. A favorable
1450 preliminary home study is valid for 1 year after the date of its

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 1451 completion. Upon its completion, a signed copy of the home study
 1452 must be provided to the intended adoptive parents who were the
 1453 subject of the home study. A minor may not be placed in an
 1454 intended adoptive home before a favorable preliminary home study
 1455 is completed unless the adoptive home is also a licensed foster
 1456 home under s. 409.175. The preliminary home study must include,
 1457 at a minimum:

- 1458 (a) An interview with the intended adoptive parents;
- 1459 (b) Records checks of the department's central abuse
 1460 registry and criminal records correspondence checks under s.
 1461 39.0138 through the Department of Law Enforcement on the
 1462 intended adoptive parents;
- 1463 (c) An assessment of the physical environment of the home;
- 1464 (d) A determination of the financial security of the
 1465 intended adoptive parents;
- 1466 (e) Documentation of counseling and education of the
 1467 intended adoptive parents on adoptive parenting;
- 1468 (f) Documentation that information on adoption and the
 1469 adoption process has been provided to the intended adoptive
 1470 parents;
- 1471 (g) Documentation that information on support services
 1472 available in the community has been provided to the intended
 1473 adoptive parents; and
- 1474 (h) A copy of each signed acknowledgment of receipt of
 1475 disclosure required by s. 63.085.

1476
 1477 If the preliminary home study is favorable, a minor may be
 1478 placed in the home pending entry of the judgment of adoption. A
 1479 minor may not be placed in the home if the preliminary home

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 1480 study is unfavorable. If the preliminary home study is
 1481 unfavorable, the adoption entity may, within 20 days after
 1482 receipt of a copy of the written recommendation, petition the
 1483 court to determine the suitability of the intended adoptive
 1484 home. A determination as to suitability under this subsection
 1485 does not act as a presumption of suitability at the final
 1486 hearing. In determining the suitability of the intended adoptive
 1487 home, the court must consider the totality of the circumstances
 1488 in the home. A ~~No~~ minor may not be placed in a home in which
 1489 there resides any person determined by the court to be a sexual
 1490 predator as defined in s. 775.21 or to have been convicted of an
 1491 offense listed in s. 63.089(4)(b)2.

1492 Section 20. Section 63.152, Florida Statutes, is amended to
 1493 read:

1494 63.152 Application for new birth record.—Within 30 days
 1495 after entry of a judgment of adoption, the clerk of the court or
 1496 the adoption entity shall transmit a certified statement of the
 1497 entry to the state registrar of vital statistics on a form
 1498 provided by the registrar. A new birth record containing the
 1499 necessary information supplied by the certificate shall be
 1500 issued by the registrar on application of the adopting parents
 1501 or the adopted person.

1502 Section 21. Subsection (7) of section 63.162, Florida
 1503 Statutes, is amended to read:

1504 63.162 Hearings and records in adoption proceedings;
 1505 confidential nature.—

1506 (7) The court may, upon petition of an adult adoptee or
 1507 birth parent, for good cause shown, appoint an intermediary or a
 1508 licensed child-placing agency to contact a birth parent or adult

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 1509 adoptee, as applicable, who has not registered with the adoption
 1510 registry pursuant to s. 63.165 and advise both ~~them~~ of the
 1511 availability of the intermediary or agency and that the birth
 1512 parent or adult adoptee, as applicable, wishes to establish
 1513 contact same.

1514 Section 22. Paragraph (c) of subsection (2) of section
 1515 63.167, Florida Statutes, is amended to read:

1516 63.167 State adoption information center.—

1517 (2) The functions of the state adoption information center
 1518 shall include:

1519 (c) Operating a toll-free telephone number to provide
 1520 information and referral services. The state adoption
 1521 information center shall provide contact information for all
 1522 adoption entities in the caller's county or, if no adoption
 1523 entities are located in the caller's county, the number of the
 1524 nearest adoption entity when contacted for a referral to make an
 1525 adoption plan and shall rotate the order in which the names of
 1526 adoption entities are provided to callers.

1527 Section 23. Paragraph (g) of subsection (1) and subsections
 1528 (2) and (8) of section 63.212, Florida Statutes, are amended to
 1529 read:

1530 63.212 Prohibited acts; penalties for violation.—

1531 (1) It is unlawful for any person:

1532 (g) Except an adoption entity, to advertise or offer to the
 1533 public, in any way, by any medium whatever that a minor is
 1534 available for adoption or that a minor is sought for adoption;
 1535 and, further, it is unlawful for any person to publish or
 1536 broadcast any such advertisement or assist an unlicensed person
 1537 or entity in publishing or broadcasting any such advertisement

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 1538 without including a Florida license number of the agency or
 1539 attorney placing the advertisement.

1540 1. Only a person who is an attorney licensed to practice
 1541 law in this state or an adoption entity licensed under the laws
 1542 of this state may place a paid advertisement or paid listing of
 1543 the person's telephone number, on the person's own behalf, in a
 1544 telephone directory that:

1545 a. A child is offered or wanted for adoption; or

1546 b. The person is able to place, locate, or receive a child
 1547 for adoption.

1548 2. A person who publishes a telephone directory that is
 1549 distributed in this state:

1550 a. Shall include, at the beginning of any classified
 1551 heading for adoption and adoption services, a statement that
 1552 informs directory users that only attorneys licensed to practice
 1553 law in this state and licensed adoption entities may legally
 1554 provide adoption services under state law.

1555 b. May publish an advertisement described in paragraph (a)
 1556 in the telephone directory only if the advertisement contains
 1557 the following:

1558 (I) For an attorney licensed to practice law in this state,
 1559 the person's Florida Bar number.

1560 (II) For a child placing agency licensed under the laws of
 1561 this state, the number on the person's adoption entity license.

1562 (2) Any person who is a birth mother, or a woman who holds
 1563 herself out to be a birth mother, who is interested in making an
 1564 adoption plan and who knowingly or intentionally benefits from
 1565 the payment of adoption-related expenses in connection with that
 1566 adoption plan commits adoption deception if:

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1567 (a) The person knows or should have known that the person
 1568 is not pregnant at the time the sums were requested or received;

1569 (b) The person accepts living expenses assistance from a
 1570 prospective adoptive parent or adoption entity without
 1571 disclosing that she is receiving living expenses assistance from
 1572 another prospective adoptive parent or adoption entity at the
 1573 same time in an effort to adopt the same child; or

1574 (c) The person knowingly makes false representations to
 1575 induce the payment of living expenses and does not intend to
 1576 make an adoptive placement.

1577 It is unlawful for:

1578 (a) Any person or adoption entity under this chapter to:

1579 1. Knowingly provide false information; or

1580 2. Knowingly withhold material information.

1581 (b) A parent, with the intent to defraud, to accept
 1582 benefits related to the same pregnancy from more than one
 1583 adoption entity without disclosing that fact to each entity.

1584 Any person who willfully commits adoption deception ~~violates any~~
 1585 ~~provision of this subsection~~ commits a misdemeanor of the second
 1586 degree, punishable as provided in s. 775.082 or s. 775.083, if
 1587 the sums received by the birth mother or woman holding herself
 1588 out to be a birth mother do not exceed \$300, and a felony of the
 1589 third degree, punishable as provided in s. 775.082, s. 775.083,
 1590 or s. 775.084, if the sums received by the birth mother or woman
 1591 holding herself out to be a birth mother exceed \$300. In
 1592 addition, the person is liable for damages caused by such acts
 1593 or omissions, including reasonable ~~attorney~~ attorney's fees and
 1594 costs ~~incurred by the adoption entity or the prospective~~
 1595

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1596 adoptive parent. Damages may be awarded through restitution in
 1597 any related criminal prosecution or by filing a separate civil
 1598 action.

1599 (8) Unless otherwise indicated, a person who willfully and
 1600 with criminal intent violates any provision of this section,
 1601 excluding paragraph (1)(g), commits a felony of the third
 1602 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1603 775.084. A person who willfully and with criminal intent
 1604 violates paragraph (1)(g) commits a misdemeanor of the second
 1605 degree, punishable as provided in s. 775.083; and each day of
 1606 continuing violation shall be considered a separate offense. In
 1607 addition, any person who knowingly publishes or assists with the
 1608 publication of any advertisement or other publication which
 1609 violates the requirements of paragraph (1)(g) commits a
 1610 misdemeanor of the second degree, punishable as provided in s.
 1611 775.083, and may be required to pay a fine of up to \$150 per day
 1612 for each day of continuing violation.

1613 Section 24. Paragraph (b) of subsection (1), paragraphs (a)
 1614 and (e) of subsection (2), and paragraphs (b), (h), and (i) of
 1615 subsection (6) of section 63.213, Florida Statutes, are amended
 1616 to read:

1617 63.213 Preplanned adoption agreement.—

1618 (1) Individuals may enter into a preplanned adoption
 1619 arrangement as specified in this section, but such arrangement
 1620 may not in any way:

1621 (b) Constitute consent of a mother to place her biological
 1622 child for adoption until 48 hours ~~after the following~~ after the birth of
 1623 the child and unless the court making the custody determination
 1624 or approving the adoption determines that the mother was aware

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 1625 of her right to rescind within the 48-hour period after the
 1626 ~~following~~ birth of the child but chose not to rescind such
 1627 consent. The volunteer mother's right to rescind her consent in
 1628 a preplanned adoption applies only when the child is genetically
 1629 related to her.

1630 (2) A preplanned adoption agreement must include, but need
 1631 not be limited to, the following terms:

1632 (a) That the volunteer mother agrees to become pregnant by
 1633 the fertility technique specified in the agreement, to bear the
 1634 child, and to terminate any parental rights and responsibilities
 1635 to the child she might have through a written consent executed
 1636 at the same time as the preplanned adoption agreement, subject
 1637 to a right of rescission by the volunteer mother any time within
 1638 48 hours after the birth of the child, if the volunteer mother
 1639 is genetically related to the child.

1640 (e) That the intended father and intended mother
 1641 acknowledge that they may not receive custody or the parental
 1642 rights under the agreement if the volunteer mother terminates
 1643 the agreement or if the volunteer mother rescinds her consent to
 1644 place her child for adoption within 48 hours after the birth of
 1645 the child, if the volunteer mother is genetically related to the
 1646 child.

1647 (6) As used in this section, the term:

1648 (b) "Child" means the child or children conceived by means
 1649 of a fertility technique ~~an insemination~~ that is part of a
 1650 preplanned adoption arrangement.

1651 (h) "Preplanned adoption arrangement" means the arrangement
 1652 through which the parties enter into an agreement for the
 1653 volunteer mother to bear the child, for payment by the intended

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 1654 father and intended mother of the expenses allowed by this
 1655 section, for the intended father and intended mother to assert
 1656 full parental rights and responsibilities to the child if
 1657 consent to adoption is not rescinded after birth by ~~a the~~
 1658 volunteer mother who is genetically related to the child, and
 1659 for the volunteer mother to terminate, subject to any ~~a~~ right of
 1660 rescission, all her parental rights and responsibilities to the
 1661 child in favor of the intended father and intended mother.

1662 (i) "Volunteer mother" means a female at least 18 years of
 1663 age who voluntarily agrees, subject to a right of rescission if
 1664 it is her biological child, that if she should become pregnant
 1665 pursuant to a preplanned adoption arrangement, she will
 1666 terminate her parental rights and responsibilities to the child
 1667 in favor of the intended father and intended mother.

1668 Section 25. Section 63.222, Florida Statutes, is amended to
 1669 read:

1670 63.222 Effect on prior adoption proceedings.—Any adoption
 1671 made before July 1, 2012, is the effective date of this act
 1672 ~~shall be valid~~, and any proceedings pending on that the
 1673 ~~effective date and any subsequent amendments thereto of this act~~
 1674 are not affected thereby unless the amendment is designated as a
 1675 remedial provision.

1676 Section 26. Section 63.2325, Florida Statutes, is amended
 1677 to read:

1678 63.2325 Conditions for invalidation ~~revocation~~ of a consent
 1679 to adoption or affidavit of nonpaternity.—Notwithstanding the
 1680 requirements of this chapter, a failure to meet any of those
 1681 requirements does not constitute grounds for invalidation
 1682 ~~revocation~~ of a consent to adoption or revocation ~~withdrawal~~ of

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1683 an affidavit of nonpaternity unless the extent and circumstances
1684 of such a failure result in a material failure of fundamental
1685 fairness in the administration of due process, or the failure
1686 constitutes or contributes to fraud or duress in obtaining a
1687 consent to adoption or affidavit of nonpaternity.

1688 Section 27. This act shall take effect July 1, 2012.



The Florida Senate
Committee Agenda Request

RECEIVED

JAN 17 2012

Senate Committee
Children and Families

To: Senator Ronda Storms, Chair
Committee on Children, Families, and Elder Affairs

Subject: Committee Agenda Request

Date: January 17, 2012

I respectfully request that **Senate Bill # 1874**, relating to Adoption, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Stephen R. Wise".

Senator Stephen R. Wise
Florida Senate, District 5

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/31/12
Meeting Date

Topic Adoption Bill Number 1874
Name Frank Gonzalez Amendment Barcode _____
Job Title General Counsel, Children's Home Society (if applicable)
Address 1483 S. Semoran Blvd Phone 8321-397-3000
Winter Park, FL 32792 E-mail _____
City State Zip

Speaking: For Against Information
Representing Children's Home Society
Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.
This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Adoption Bill Number SB 1874
Name Patricia Strawbridge Amendment Barcode _____
Job Title _____ (if applicable)
Address 1516 E Colonial Dr Ste 202 Phone 407-920-8999
Orlando, FL 32803 E-mail PATRICIA@STRAWBRIDGE.COM
City State Zip

Speaking: For Against Information
Representing Florida Adoption Council
Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.
This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/31/2012

Meeting Date

Topic _____

Bill Number 1874
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH

Phone 727/897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Children, Families, and Elder Affairs Committee

BILL: SB 1128

INTRODUCER: Senator Oelrich

SUBJECT: Temporary Cash Assistance

DATE: January 30, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	Favorable
2.	_____	_____	CJ	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill removes the opt out provision in s. 414.095, F.S., which prohibits the denial of temporary cash assistance benefits solely based on a felony drug conviction, unless that conviction was for drug trafficking pursuant to s. 893.135, F.S. The bill also removes requirements related to substance abuse treatment. The bill also contains the following provisions:

- Requires the Department of Children and Families (DCF or department) to deny cash assistance benefits and food assistance benefits to any individual with a felony conviction on or after July 1, 2012 for possession of a controlled substance or trafficking pursuant to s. 893.135, F.S.;
- Provides an exception for persons who have successfully completed a treatment program for drug addiction or drug abuse; and
- Provides that an individual who has a felony conviction for drug trafficking is not eligible for cash assistance or food assistance.

The bill also provides for the appointment of an alternate payee to receive benefits on behalf of the children and other family members in the assistance group if an individual is denied assistance based on a felony drug possession conviction.

This bill substantially amends ss. 414.095, 409.2564, 409.902, 414.045, 414.0652, and 414.0655 of the Florida Statutes.

II. Present Situation:

Background

Temporary Assistance for Needy Families (TANF)

Under federal welfare reform legislation of 1996,¹ welfare programs known as Aid to Families with Dependent Children (AFDC), the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program were replaced by the Temporary Assistance for Needy Families (TANF) program.^{2,3} The law ended federal entitlement to assistance and instead created TANF as a block grant that provides States, territories and tribes federal funds each year. The law is best known as the major source of funding for cash welfare for needy families with children, with federal requirements related to work and time limits.^{4,5}

States receive block grants to design and operate their individual programs and to accomplish the goals of the TANF program. These goals include the following:⁶

- Assisting needy families so that children can be cared for in their own homes;
- Reducing the dependency of needy parents by promoting job preparation, work and marriage;
- Preventing out-of-wedlock pregnancies; and
- Encouraging the formation and maintenance of two-parent families

Temporary Cash Assistance Program (cash assistance)

The cash assistance program provides cash assistance to families with children under the age of 18 or under age 19 if full time secondary (high school) school students, that meet the technical, income, and asset requirements.^{7,8} Parents, children and minor siblings who live together must apply together. An individual must meet all of the eligibility requirements in order to qualify for cash assistance benefits. Those requirements include:

- Time Limits – Cash assistance is limited to a lifetime total of 48 months as an adult (except for child only cases, which have no time limit).

¹ The Personal Responsibility and Work Opportunity Reconciliation Act (PWRORA), Public Law 104-193.

² TANF became effective July 1, 1997, and was reauthorized in February 2006 under the Deficit Reduction Act of 2005.

³ US Dept. of Health and Human Services, Administration on Children and Families. Retrieved January 25, 2012, from <http://www.acf.hhs.gov/programs/ofa/tanf/about.html>.

⁴ *Id.*

⁵ Florida Department of Children and Family Services. Temporary Assistance for Needy Families (TANF) *An Overview of Program Requirements*. October 2006. Retrieved January 26, 2012, from <http://www.dcf.state.fl.us/programs/access/docs/TANF%20101%20final.pdf>.

⁶ US Dept. of Health and Human Services, Administration on Children and Families. Retrieved January 25, 2012, from <http://www.acf.hhs.gov/programs/ofa/tanf/about.html>.

⁷ Florida Department of Children and Family Services. Retrieved January 25, 2012, from <http://www.dcf.state.fl.us/programs/access/tca.shtml>.

⁸ Pregnant women may also receive TCA, either in the third trimester of pregnancy if unable to work, or in the 9th month of pregnancy.

- Work Rules – Some people must participate in work activities unless they meet an exemption. Regional Workforce Boards provide work activities and services needed to get or keep a job.
- Income and Deductions – Gross income must be less than 185 percent (\$27,214 for a family of two) of the Federal Poverty level and countable income cannot be higher than the payment standard for the family size. Individuals get a \$90 deduction from their gross earned income. Individuals receiving benefits also get an additional earned income deduction as an incentive to get and keep a job.
- Citizenship – Individuals must be U.S. citizens or qualified non-citizens.
- Residency – Individuals must live in the state of Florida.
- SSN – Individuals must provide a Social Security Number or proof they have applied for one.
- Assets – A family's countable assets must be equal to or less than \$2,000. Licensed vehicles needed for individuals subject to the work requirement may not exceed a combined value of \$8,500.
- Relationship – A child must be living in the home maintained by a parent or a relative who is a blood relative of the child.
- Child Support Cooperation – The parent or the caretaker relative of the children must cooperate with child support enforcement to identify and locate the parent(s) who do not live in the child's home, to prove a child's legal relationship to their parent and to get the court to order child support payments.
- Immunization – Children under age 5 must be up to date with childhood immunizations.
- Learnfare – Children age 6 to 18 must attend school and parents/caretakers must attend school conferences.

Supplemental Nutrition Assistance Program⁹ – (food assistance)

The Food Assistance Program is a federally funded program to help low-income people buy the food they need for good health. The benefits portion of the program is 100 percent federally funded and administration of the program is split between the state and the federal government.¹⁰ The U.S. Department of Agriculture (USDA) determines the amount of food assistance benefits an individual or family receives. Food assistance benefits are a supplement to a family's food budget. Households may need to spend some of their own cash, along with their food assistance benefits, to buy enough food for a month.¹¹ DCF reports that approximately 3,311,095 people are currently receiving food stamps at approximately \$450 million dollars annually.¹²

⁹ Formerly known as the Food Stamp Program.

¹⁰ DCF ACCESS Florida Food, Medical Assistance, and Cash Program Policy Manual, Retrieved January 27, 2012, from <http://www.dcf.state.fl.us/programs/access/esspolicymanual.shtml>.

¹¹ DCF Food Assistance Program Fact Sheet, October 2011. Retrieved January 27, 2012, from www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf.

¹² DCF Standard Data Reports. Retrieved January 27, 2012, from <http://www.dcf.state.fl.us/programs/access/StandardDataReports.asp>.

Protective Payees

The cash assistance program and food assistance programs require participants to satisfy work requirements established in federal law. In the event a cash assistance or food assistance recipient is noncompliant with the work activity requirements, DCF has authority to terminate cash assistance to the family.¹³ In the event that assistance is terminated, DCF will establish a protective payee that will receive cash assistance or food assistance funds on behalf of any children in the home who are under the age of 16.¹⁴ The protective payee shall be designated by the department and may include:

- A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interest of the child or children;
- A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interest of the child or children; or
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee and utilize the assistance in the best interest of the child or children.¹⁵

Federal Law – Felony Drug Conviction

Federal law provides that an individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance¹⁶ shall not be eligible for:

- Assistance under any State program funded under part A of title IV of the Social Security Act (cash assistance), or
- Benefits under the supplemental nutrition assistance program as defined in the Food Stamp Act of 1977 or any state program carried out under the Food Stamp Act of 1977 (food assistance).¹⁷

The law also provides that a state may, by specific reference in the law, chose to exempt any or all individuals in the state from this provision, or may limit the period of time for the prohibition.¹⁸

¹³ s. 414.065, F.S. establishes penalties for the cash assistance program and requires the department to administer sanctions related to food assistance consistent with federal regulations.

¹⁴ *Id.* In cases of food assistance, an authorized representative shall receive the program benefits.

¹⁵ s. 414.065, F.S.

¹⁶ As defined in 21.U.S.C.802(6).

¹⁷ Public Law 104-193 Section 115, *Denial of Assistance and Benefits for Certain Drug-Related Convictions*. Retrieved January 28, 2012, from <http://wdr.doleta.gov/readroom/legislation/pdf/104-193.pdf>.

¹⁸ *Id.*

Florida Law – Felony Drug Conviction

Florida has opted out of this provision of the federal law as follows:

Benefits shall not be denied to an individual solely based on a felony drug conviction, unless the conviction is for trafficking pursuant to s. 893.135, F.S. To be eligible under this section an individual convicted of a drug felony must be satisfactorily meeting the requirements of the temporary cash assistance program, including all substance abuse treatment requirements. Within the limits specified in this chapter, the state opts out of the provision of Pub. L. No 104-193, s. 115, that eliminates eligibility for temporary cash assistance and food assistance for any individual convicted of a controlled substance felony.¹⁹

III. Effect of Proposed Changes:

This bill eliminates an opt out provision in s. 414.095, F.S., which prohibits the denial of temporary cash assistance and food assistance benefits solely based on a felony drug conviction unless that conviction was for drug trafficking pursuant to s. 893.135, F.S.

The bill creates a new subsection to s. 414.095, F.S., titled *Ineligibility Due to Felony Convictions*, that contains the following provisions:

- Denies cash assistance and food assistance benefits to any individual who has been convicted on or after July 1, 2012 of an offense classified as a felony for the possession of a controlled substance as defined in the Controlled Substances Act or for trafficking pursuant to s. 893.1135, F.S., unless he or she can provide verification of successful completion of a treatment program for drug addiction or abuse;
- Provides that an individual with a felony conviction for drug trafficking is not eligible for cash or food assistance; and
- Provides that if an individual is deemed ineligible as a result of a felony drug conviction, an alternative payee will be designated to receive the assistance on behalf of others in the assistance group (e.g. children or other family members in the home).

The bill amends ss. 409.2564, 409.902, 414.045, 414.0652, and 414.0655, F.S., to conform cross-references.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁹ s. 414.095, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may result in a reduction in the number of individuals being provided with cash assistance and/or food assistance.

C. Government Sector Impact:

DCF could see a reduction in the number of applicants who apply for assistance. This could create a reduction in program expenditures, however the exact amount is not known.

The department further reports:

- It will need to make changes to its ACCESS Program's web application and paper applications to ask applicants and recipients about convictions for felony drug possession. Other system changes will be needed to create a process by which the department can request individuals to provide proof of completion of a substance abuse program and to create a disqualification process for felony controlled substance possession;
- Under federal TANF policy, a parent denied benefits due to a controlled substance felony is still considered "work eligible" when cash benefits are continued through a protective payee for the children. Requiring drug treatment compliance for these individuals as a condition of continued benefits for other family members reduces the potential risk to the work participation rate;²⁰ and
- Current federal law requires each individual, during the application process, to state, in writing, whether they or any member of their household has been convicted of a drug felony. Based on the department's prior experience with obtaining these statements on individuals with a drug trafficking felony there should be little immediate impact with implementation of this bill.²¹

VI. Technical Deficiencies:

Provisions in the bill appear to create a number of inconsistencies:

²⁰ Work participation rates, or the proportion of families receiving TANF cash assistance that participated in work activities, are the key performance measure the U.S. Department of Health and Human Services uses to assess state TANF programs.

²¹ Department of Children and Families. Staff Analysis and Economic Impact, SB 1128, December 12, 2011.

- The change to the section catchline on line 23 to add eligibility for food assistance to s.414.095, F.S. may be unnecessary since there are no provisions related to general eligibility requirements for the food assistance program in the section;
- The newly created language on lines 47-55 states that an individual convicted of an offense classified as a felony for possession of a controlled substance, as defined in the Controlled Substances Act, 21 U.S.C., s. 802(6), or pursuant to s. 893.135, is not eligible for temporary cash assistance or food assistance unless the department receives verification that the individual has satisfactorily completed a treatment program or regimen for drug addiction or drug abuse. The newly created language on lines 55-57 provides that an individual who has a felony conviction for drug trafficking is not eligible for temporary cash assistance or food assistance. Lines 47-55 appear to indicate that anyone convicted pursuant to s. 893.135, F.S. (trafficking) is not eligible for assistance unless they have completed a treatment program, whereas lines 55-57 stated that anyone convicted of trafficking is not eligible;
- Lines 53-55 provide that an individual may be eligible for cash assistance or food assistance if he or she has successfully completed a drug addiction or drug abuse program, however the bill does not specify what qualifies as a treatment program;²²and
- Line 60 refers to “alternative payee.” Current law specifies the designation of a protective payee or an authorized representative.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²² Legislation enacted during the 2011 session related to drug testing for applicants for applicants for TANF benefits specifies that an individual who tests positive under s. 414.0652 and is denied TANF benefits as a result may reapply for those benefits after 6 months if the individual can document the successful completion of a substance abuse treatment program offered by a provider that meets the requirements of s. 397.401 and is licensed by the department.

By Senator Oelrich

14-01192-12

20121128__

A bill to be entitled

An act relating to eligibility for temporary cash assistance and food assistance; amending s. 414.095, F.S.; prohibiting an individual convicted of a felony offense from receiving temporary cash assistance or food assistance under certain conditions; providing conditions under which a person with a felony conviction may resume receiving such assistance; providing for designation of an alternative payee under certain circumstances; amending ss. 409.2564, 409.902, 414.045, 414.0652, and 414.0655, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (2) through (18) of section 414.095, Florida Statutes, are renumbered as subsections (3) through (19), respectively, subsection (1), paragraph (a) of present subsection (2), paragraphs (c) and (e) of present subsection (14), and present subsection (17) are amended, and a new subsection (2) is added to that section, to read:

414.095 Determining eligibility for temporary cash and food assistance.—

(1) ELIGIBILITY FOR TEMPORARY CASH ASSISTANCE.—An applicant must meet eligibility requirements of this section before receiving services or temporary cash assistance under this chapter, except that an applicant shall be required to register for work and engage in work activities in accordance with s.

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445.024, as designated by the regional workforce board, and may receive support services or child care assistance in conjunction with such requirement. The department shall make a determination of eligibility based on the criteria listed in this chapter. The department shall monitor continued eligibility for temporary cash assistance through periodic reviews consistent with the food assistance eligibility process. ~~Benefits shall not be denied to an individual solely based on a felony drug conviction, unless the conviction is for trafficking pursuant to s. 893.135. To be eligible under this section, an individual convicted of a drug felony must be satisfactorily meeting the requirements of the temporary cash assistance program, including all substance abuse treatment requirements. Within the limits specified in this chapter, the state opts out of the provision of Pub. L. No. 104-193, s. 115, that eliminates eligibility for temporary cash assistance and food assistance for any individual convicted of a controlled substance felony.~~

(2) INELIGIBILITY DUE TO FELONY CONVICTION.—Pursuant to Pub. L. No. 104-193, s. 115, on or after July 1, 2012, an individual convicted of an offense classified as a felony for possession of a controlled substance, as defined in the Controlled Substances Act, 21 U.S.C., s. 802(6), or pursuant to s. 893.135, is not eligible for temporary cash assistance or food assistance unless the department receives verification that the individual has satisfactorily completed a treatment program or regimen for drug addiction or drug abuse. An individual who has a felony conviction for drug trafficking is not eligible for temporary cash assistance or food assistance. If the individual is deemed ineligible for temporary cash assistance or food

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59 assistance as a result of a felony drug conviction, an
 60 appropriate alternate payee shall be designated to receive the
 61 assistance on behalf of the other members of the assistance
 62 group.

63 ~~(3)(2)~~ ADDITIONAL ELIGIBILITY REQUIREMENTS.-

64 (a) To be eligible for services or temporary cash
 65 assistance and Medicaid:

- 66 1. An applicant must be a United States citizen, or a
 67 qualified noncitizen, as defined in this section.
 68 2. An applicant must be a legal resident of the state.
 69 3. Each member of a family must provide to the department
 70 the member's social security number or shall provide proof of
 71 application for a social security number. An individual who
 72 fails to provide a social security number, or proof of
 73 application for a social security number, is not eligible to
 74 participate in the program.
 75 4. A minor child must reside with a parent or parents, with
 76 a relative caretaker who is within the specified degree of blood
 77 relationship as defined by 45 C.F.R. part 233, or, if the minor
 78 is a teen parent with a child, in a setting approved by the
 79 department as provided in subsection (15) ~~(14)~~.
 80 5. Each family must have a minor child and meet the income
 81 and resource requirements of the program. All minor children who
 82 live in the family, as well as the parents of the minor
 83 children, shall be included in the eligibility determination
 84 unless specifically excluded.
 85 (15)(14) PROHIBITIONS AND RESTRICTIONS.-
 86 (c) The teen parent is not required to live with a parent,
 87 legal guardian, or other adult caretaker relative if the

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88 department determines that:

- 89 1. The teen parent has suffered or might suffer harm in the
 90 home of the parent, legal guardian, or adult caretaker relative.
 91 2. The requirement is not in the best interest of the teen
 92 parent or the child. If the department determines that it is not
 93 in the best interest of the teen parent or child to reside with
 94 a parent, legal guardian, or other adult caretaker relative, the
 95 department shall provide or assist the teen parent in finding a
 96 suitable home, a second-chance home, a maternity home, or other
 97 appropriate adult-supervised supportive living arrangement. Such
 98 living arrangement may include a shelter obligation in
 99 accordance with subsection (11) ~~(10)~~.

100
 101 The department may not delay providing temporary cash assistance
 102 to the teen parent through the alternative payee designated by
 103 the department pending a determination as to where the teen
 104 parent should live and sufficient time for the move itself. A
 105 teen parent determined to need placement that is unavailable
 106 shall continue to be eligible for temporary cash assistance so
 107 long as the teen parent cooperates with the department and the
 108 Department of Health. The teen parent shall be provided with
 109 counseling to make the transition from independence to
 110 supervised living and with a choice of living arrangements.

111 (e) If a parent or caretaker relative does not assign any
 112 rights a family member may have to support from any other person
 113 as required by subsection (8) ~~(7)~~, temporary cash assistance to
 114 the entire family shall be denied until the parent or caretaker
 115 relative assigns the rights to the department.

116 (17)(16) PROPORTIONAL REDUCTION.-If the Social Services

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 117 Estimating Conference forecasts an increase in the temporary
 118 cash assistance caseload and there is insufficient funding, a
 119 proportional reduction as determined by the department shall be
 120 applied to the levels of temporary cash assistance in subsection
 121 (11) ~~(10)~~.

122 Section 2. Paragraph (a) of subsection (11) of section
 123 409.2564, Florida Statutes, is amended to read:

124 409.2564 Actions for support.—

125 (11) (a) The Department of Revenue shall review child
 126 support orders in IV-D cases at least once every 3 years when
 127 requested by either party, or when support rights are assigned
 128 to the state under s. 414.095(8) ~~414.095(7)~~, and may seek
 129 modification of the order if appropriate under the child support
 130 guidelines in s. 61.30. Not less than once every 3 years the
 131 department shall provide notice to the parties subject to the
 132 order informing them of their right to request a review and, if
 133 appropriate, a modification of the child support order. The
 134 notice requirement may be met by including appropriate language
 135 in the initial support order or any subsequent orders.

136 Section 3. Subsection (2) of section 409.902, Florida
 137 Statutes, is amended to read:

138 409.902 Designated single state agency; payment
 139 requirements; program title; release of medical records.—

140 (2) Eligibility is restricted to United States citizens and
 141 to lawfully admitted noncitizens who meet the criteria provided
 142 in s. 414.095(4) ~~414.095(3)~~.

143 (a) Citizenship or immigration status must be verified. For
 144 noncitizens, this includes verification of the validity of
 145 documents with the United States Citizenship and Immigration

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 146 Services using the federal SAVE verification process.
 147 (b) State funds may not be used to provide medical services
 148 to individuals who do not meet the requirements of this
 149 subsection unless the services are necessary to treat an
 150 emergency medical condition or are for pregnant women. Such
 151 services are authorized only to the extent provided under
 152 federal law and in accordance with federal regulations as
 153 provided in 42 C.F.R. s. 440.255.

154 Section 4. Paragraph (b) of subsection (1) of section
 155 414.045, Florida Statutes, is amended to read:

156 414.045 Cash assistance program.—Cash assistance families
 157 include any families receiving cash assistance payments from the
 158 state program for temporary assistance for needy families as
 159 defined in federal law, whether such funds are from federal
 160 funds, state funds, or commingled federal and state funds. Cash
 161 assistance families may also include families receiving cash
 162 assistance through a program defined as a separate state
 163 program.

164 (1) For reporting purposes, families receiving cash
 165 assistance shall be grouped into the following categories. The
 166 department may develop additional groupings in order to comply
 167 with federal reporting requirements, to comply with the data-
 168 reporting needs of the board of directors of Workforce Florida,
 169 Inc., or to better inform the public of program progress.

170 (b) *Child-only cases*.—Child-only cases include cases that
 171 do not have an adult or teen head of household as defined in
 172 federal law. Such cases include:

173 1. Children in the care of caretaker relatives where the
 174 caretaker relatives choose to have their needs excluded in the

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175 calculation of the amount of cash assistance.

176 2. Families in the Relative Caregiver Program as provided
177 in s. 39.5085.

178 3. Families in which the only parent in a single-parent
179 family or both parents in a two-parent family receive
180 supplemental security income (SSI) benefits under Title XVI of
181 the Social Security Act, as amended. To the extent permitted by
182 federal law, individuals receiving SSI shall be excluded as
183 household members in determining the amount of cash assistance,
184 and such cases shall not be considered families containing an
185 adult. Parents or caretaker relatives who are excluded from the
186 cash assistance group due to receipt of SSI may choose to
187 participate in work activities. An individual who volunteers to
188 participate in work activity but whose ability to participate in
189 work activities is limited shall be assigned to work activities
190 consistent with such limitations. An individual who volunteers
191 to participate in a work activity may receive child care or
192 support services consistent with such participation.

193 4. Families where the only parent in a single-parent family
194 or both parents in a two-parent family are not eligible for cash
195 assistance due to immigration status or other limitation of
196 federal law. To the extent required by federal law, such cases
197 shall not be considered families containing an adult.

198 5. To the extent permitted by federal law and subject to
199 appropriations, special needs children who have been adopted
200 pursuant to s. 409.166 and whose adopting family qualifies as a
201 needy family under the state program for temporary assistance
202 for needy families. Notwithstanding any provision to the
203 contrary in s. 414.075, s. 414.085, or s. 414.095, a family

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204 shall be considered a needy family if:

205 a. The family is determined by the department to have an
206 income below 200 percent of the federal poverty level;

207 b. The family meets the requirements of s. 414.095(3) and
208 ~~(4) 414.095(2) and (3)~~ related to residence, citizenship, or
209 eligible noncitizen status; and

210 c. The family provides any information that may be
211 necessary to meet federal reporting requirements specified under
212 Part A of Title IV of the Social Security Act.

213
214 Families described in subparagraph 1., subparagraph 2., or
215 subparagraph 3. may receive child care assistance or other
216 supports or services so that the children may continue to be
217 cared for in their own homes or the homes of relatives. Such
218 assistance or services may be funded from the temporary
219 assistance for needy families block grant to the extent
220 permitted under federal law and to the extent funds have been
221 provided in the General Appropriations Act.

222 Section 5. Paragraph (c) of subsection (2) of section
223 414.0652, Florida Statutes, is amended to read:

224 414.0652 Drug screening for applicants for Temporary
225 Assistance for Needy Families.—

226 (2) The department shall:

227 (c) Require that any teen parent who is not required to
228 live with a parent, legal guardian, or other adult caretaker
229 relative in accordance with s. 414.095(15)(c) ~~414.095(14)(c)~~
230 must comply with the drug-testing requirement.

231 Section 6. Subsection (2) of section 414.0655, Florida
232 Statutes, is amended to read:

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233 414.0655 Medical incapacity due to substance abuse or
234 mental health impairment.-

235 (2) Notwithstanding any provision of s. 414.095(3)(a)4. or
236 5. 414.095(2)(a)4. or 5. to the contrary, a participant who is
237 absent from the home due to out-of-home residential treatment
238 for not more than 150 days shall continue to be a member of the
239 assistance group whether or not the child or children for whom
240 the participant is the parent or caretaker relative are living
241 in the residential treatment center.

242 Section 7. This act shall take effect July 1, 2012.



The Florida Senate
Committee Agenda Request

RECEIVED

JAN 11 2012

Senate Committee
Children and Families

To: Senator Ronda Storms, Chair
Committee on Children, Families, and Elder Affairs

Subject: Committee Agenda Request

Date: January 11, 2012

I respectfully request that **Senate Bill # 1128**, relating to Eligibility for Temporary Cash Assistance, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

Handwritten signature of Steve Oelrich in cursive.

Senator Steve Oelrich
Florida Senate, District 14

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1 / 31 / 2012

Meeting Date

Topic _____

Bill Number 1128
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH

Phone 727/897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 Children, Families, and Elder Affairs Committee

BILL: CS/SB 320

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Storms

SUBJECT: Background Screening

DATE: February 1, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

In 2010, the Legislature substantially rewrote the requirements and procedures for background screening of individuals and businesses that deal primarily with vulnerable populations. In 2011, the Legislature passed CS/SB 1992, which further implemented the 2010 legislation, however, this bill was vetoed by the Governor. The bill contains many of the provisions contained in the vetoed bill, while addressing the concerns of the Governor. It also incorporates the recommendations of the background screening workgroup.

The bill creates the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single “program” of screening individuals and will allow for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies. Once a person’s screening record is in the Clearinghouse, that person will avoid the need for many future state screens and related fees.

The bill exempts from screening or rescreening: mental health personnel working in hospitals with less than 15 hours of direct contact with adult patients per week in a hospital; Certified Nursing Assistant (CNA) applicants who have successfully passed background screening within

90 days of applying for certification; law enforcement officers who work or volunteer in summer camps and other facilities regulated under ch. 409, F.S., such as foster group homes and residential child-caring agencies; and certain volunteers, relatives of clients, and attorneys who provide services through a direct service provider that has a contractual relationship with the Department of Elderly Affairs (DOEA). The bill requires that these individuals not be listed on the Florida Department of Law Enforcement's (FDLE) Career Offender Search or the Dru Sjodin National Sex Offender Public Website.

The bill also:

- Requires electronic fingerprinting vendors to use technology systems that are compliant with the systems used by the FDLE;
- Allows employers to hire an employee for training and orientation before the screening is complete, provided the employee does not have any contact with clients until successful completion of the screening; and
- Creates background screening requirements related to the Division of Vocational Rehabilitation within the Department of Education

The bill substantially amends ss. 394.4572, 408.809, 409.1757, 409.221, 413.20, 413.208, 430.0402, 435.02, 435.04, 435.06, 435.12, , 464.203, 943.05, 943.053, 943.0585, and 943.059, and creates s. 456.0135 of the Florida Statutes.

II. Present Situation:

The Florida Legislature in 1995 created standard procedures for the criminal history background screening of prospective employees in order to protect vulnerable persons, including children, the elderly, and the disabled. Over time, implementation and coordination issues arose as technology changed and agencies were reorganized.

To address these issues, the legislature enacted legislation in 2010 that substantially rewrote the requirements and procedures for background screening of persons and businesses that deal primarily with vulnerable populations.¹ The bill provided that a "vulnerable person" includes minors and vulnerable adults as defined in s. 415.102(26), F.S. That section defines "vulnerable adult" as an adult "whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging."² Primary changes made by the bill included:

- Requiring that no person required to be screened may be employed until the screening has been completed and it is determined that the person is qualified;
- Increasing all Level 1 screening to Level 2 screening. This did not require existing employees to be rescreened until they otherwise due to be rescreened pursuant to existing law;

¹ Chapter 2010-114, L.O.F.

² *Id.*

- Requiring all fingerprint submissions to be done electronically by August 1, 2012, or earlier, should an agency decide to do so by rule. However, for those applying under AHCA, electronic prints were required as of August 1, 2010;
- Requiring certain personnel who dealt substantially with vulnerable persons and who were not presently being screened, including persons who volunteered for more than 10 hours a month, to begin Level 2 screening. This included homes for special services, transitional living facilities, prescribed pediatric extended care centers, and certain direct service providers under DOEA;
- Adding additional serious crimes to the list of disqualifying offenses for Level 1 and Level 2 screening;
- Authorizing agencies to request the retention of fingerprints by FDLE. The bill also provided for rulemaking and related implementation provisions for retention of fingerprints;
- Providing that an exemption for a disqualifying felony may not be granted until after at least three years from the completion of all sentencing sanctions for that felony;
- Requiring that all exemptions from disqualification be granted only by the agency head; and
- Rewriting all screening provisions for clarity and consistency.³

To implement these new requirements, DOEA adopted an emergency rule which required that all persons who came into direct contact with individuals receiving services provided through the department, whether as employee or volunteer, must undergo a level 2 background screening prior to employment or volunteerism.⁴ Level 2 background screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24 plus \$6.25 for hard copy fingerprints).⁵ The department did not make additional funds available to its service providers for this purpose, and most providers have passed this cost on to their prospective employees and volunteers.

It has been reported that the expansion of Level 2 background screening on volunteers and Area Agency and service provider staff resulting from the 2010 legislation has dramatically impacted these types of service providers. These individuals would include Aging Resource Center staff and Meals on Wheels program volunteers who do not enter a senior's home.

The Meals on Wheels program is dependent on volunteers, and the program is currently losing volunteers who cannot afford to pay for the cost of a level 2 background screening. If this trend continues, and the program continues to lose volunteers or is unable to recruit new volunteers, frail, homebound seniors will not receive needed meals and their nutrition may suffer.

Many service provider agencies have relationships with churches whose volunteers deliver several hundred meals during the holiday season. Under the new background screening requirements, these churches and civic organizations were unable to continue providing volunteers for holiday meal delivery.

³ *Id.*

⁴ See Rule 58ER10-1, *F.A.C.*, effective August 1, 2010.

⁵ *Florida Department of Law Enforcement, Criminal History Record Checks/Background Checks Fact Sheet* July 7, 2011. Retrieved January 28, 2012, from <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx>.

Senior centers, congregate meal sites, and health and wellness programs are also dependent on volunteer labor. It is feared that programs and activities will be curtailed or lost entirely if the volunteer force is further diminished.

The provisions of the 2010 legislation are also impacting the Home Care for the Elderly (HCE) caregivers. Many HCE caregivers are family members who receive a small monthly stipend of \$106 to help care for a frail, aging family member at home. Many of these caregivers have been providing this care for years. The stipend is used to pay for a number of things, including, but not limited to, incontinence products, nutritional supplements, respite care, etc. The new Level 2 background screening requirement is applicable to these family members/caregivers as well.⁶

III. Effect of Proposed Changes:

Mental Health Personnel

“Mental health personnel” are required to be Level 2 screened. “Mental health personnel” includes program directors, clinicians, staff, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals.⁷ Volunteers that have less than ten hours per month of contact with patients are not required to be screened so long as they remain in the line of sight of someone who has been Level 2 screened while having direct contact with patients.⁸

The bill amends s. 394.4572(1), F.S., to restore an exemption from fingerprinting and screening requirements that was removed in 2010 for mental health personnel who work on an intermittent basis for less than 15 hours per week with direct, face-to-face contact with patients in a hospital licensed pursuant to ch. 395, F.S., provided that the person is not listed on the FDLE Career Offender database⁹ or the Dru Sjodin National Sex Offender Public Website.¹⁰ The exemption is not available to persons working in a mental health facility where the primary purpose of the facility is the treatment of minors.

Agency for Health Care Administration Rescreening Schedule

Persons screened under the Agency for Health Care Administration (AHCA) must be rescreened every five years. In 2010, authority was given to AHCA to establish by rule a staggered schedule for the rescreening of all persons who have a controlling interest in, are employed by, or contract with a licensee on July 31, 2010. All such persons must be rescreened by July 31, 2015.

The bill amends s. 408.809, F.S., to add the rescreening staggered schedule to statute, thereby eliminating the need for a rule. The bill also amends this statute to limit an exemption from the screening process to persons whose background screening results have not yet been retained in the Care provider Background Screening Clearinghouse created by this bill.

⁶ Meeting with representatives from the Area Agencies on Aging and the Community Care for the Elderly program. November 18, 2010.

⁷ Section 394.4572(1)(a), F.S.

⁸ Section 394.4572(1)(c), F.S.

⁹ This search is free and can be made at <http://www.fdle.state.fl.us/coflyer/home.asp>.

¹⁰ This search is free and can be made at <http://www.nsopw.gov>.

Summer Camps

Summer camps are not licensed by the state but summer camp owners, operators, employees, and volunteers are required to be Level 2 screened.¹¹ Volunteers that have less than ten hours per month of contact with children are not required to be screened provided while having direct contact with children they remain in the line of sight of someone who has been Level 2 screened.¹²

The bill amends s. 409.1757, F.S., to add law enforcement officers with active certification to those licensed persons who do not have to be screened for purposes of ch. 409, F.S. The exemption applies to active sworn law enforcement officers who work or volunteer in summer camps and other facilities regulated under ch. 409, F.S., such as foster group homes and residential child-caring agencies.

Consumer-Directed Care

The Consumer-Directed Care (CDC) Program¹³ established under AHCA provides an alternative to institutional care. These alternatives include in-home and community-based care. The program allows recipients of in-home and community-based services the opportunity to select the services they need and the providers they want, including family and friends. The stated intent of the CDC Program is “to give such individuals more choices in and greater control over the purchased long-term care services they receive.”¹⁴

Persons who provide care under the CDC Program must undergo level 2 background screening pursuant to ch. 435, F.S.¹⁵ Other regulatory and care programs under AHCA screen individuals pursuant to ch. 435, F.S. and s. 408.809, F.S.¹⁶ It is believed to be an oversight that the provisions of s. 408.809, F.S., are not applicable for those providing services under the CDC Program.

The bill amends s. 409.221(4)(i), F.S., to provide that persons providing services under the CDC Program will be background screened pursuant to ch. 435, F.S., and s. 408.809, F.S.

The Department of Elderly Affairs

The Department of Elderly Affairs (DOEA) is the designated state unit on aging as defined in the Older Americans Act (OAA) of 1965.¹⁷ As such, DOEA’s role is to administer the state’s OAA allotment and grants, and to advocate, coordinate, and plan all elder services.¹⁸ The OAA requires states to provide elder services through a coordinated service delivery system through designated Area Agencies on Aging . Chapter 430, F.S., requires DOEA to fund service delivery

¹¹ Section 409.175(2)(i) and (k), F.S.

¹² Section 409.175(2)(i), F.S.

¹³ Section 409.212, F.S.

¹⁴ Section 409.212(3), F.S.

¹⁵ Section 409.212(4)(i), F.S.

¹⁶ See for example s. 400.215(1), F.S., (nursing homes); s. 400.512, F.S., (home health agencies); and s. 400.6065, F.S., (hospices).

¹⁷ Section 305(a)(1)(c), Older Americans Act.

¹⁸ Section 430.04(1), F.S.

“lead agencies” that coordinate and provide a variety of oversight and elder support services at the consumer level in the counties within each planning and service area. DOEA is 94 percent privatized through contracts with local entities and utilizes over 45,000 volunteers to deliver information and services to elders.¹⁹ Many of the volunteers are elders themselves.²⁰

The 2010 revision of the background screening laws created s. 430.0402, F.S., requiring Level 2 background screenings for “direct services providers” who provide services through a contractual relationship with DOEA.²¹ A “direct service provider” is defined as a person who, pursuant to a program to provide services to the elderly, has direct, face-to-face contact with a client while providing services to the client or has access to the client’s living areas or to the client’s funds or personal property.²² Volunteers are specifically included as “direct service providers.”²³

The statute contains no exception from background screening for a volunteer who has occasional or limited contact with elders. In other statutes, there are exceptions for volunteers who are in brief or occasional contact with vulnerable populations. For example, s. 393.0655(1), F.S., exempts from screening a volunteer who assists with persons with developmental disabilities if the volunteer assists less than 10 hours per month and a person who has been screened is always present and has the volunteer within his or her line of sight.²⁴

Area Agencies on Aging and Elder Care Services are entities who contract with DOEA to provide services to elders. Representatives of several of these entities report that the requirement of Level 2 background screening of volunteers has dramatically reduced the number of volunteers, potentially impacting the availability of services to elders. The Meals on Wheels program is dependent on volunteers, and the program is currently losing volunteers who cannot afford to pay for the cost of a Level 2 background screening. Senior centers, congregate meal sites, and health and wellness programs are also dependent on volunteers.

The provisions of the 2010 legislation also impacts Home Care for the Elderly (HCE)²⁵ caregivers. Many HCE caregivers are family members. These family members receive a monthly stipend of \$106 to help care for a family member at home. The stipend is used to pay for incontinence products, nutritional supplements, respite care, and other needed products and services. The new Level 2 background screening requirement is applicable to these family members who act as caregivers.

The bill amends s. 430.0402, F.S., to revise the definition of direct service provider to include only individuals who have direct, face-to-face contact with a client and have access to the client’s living areas, funds, personal property, or personal identification information as defined in

¹⁹ Department of Elder Affairs, *Summary of Programs and Services (2011)*, Retrieved January 29, 2012, from <http://elderaffairs.state.fl.us/doa/pubs/sops.html>.

²⁰ *Id.*

²¹ Section 34, ch. 2010-114, L.O.F.

²² Section 430.04(1)(b), F.S.

²³ *Id.*

²⁴ See e.g. s. 394.4572(1)(a), F.S. (contact with persons held for mental health treatment), and s. 409.175(2), F.S. (contact with children).

²⁵ Department of Elder Affairs, *Summary of Programs and Services (2011)*, Retrieved January 28, 2012, from <http://elderaffairs.state.fl.us/doa/pubs/sops.html>.

s. 817.568, F.S. Current law defines a direct service provider as having client contact **or** living area/property access.

The bill creates an exemption from background screening for the following:

- Volunteers who assist on an intermittent basis for less than 20 hours per month and who are not listed on the FDLE Career Offender database²⁶ or the Dru Sjodin National Sex Offender Public Website.²⁷
- Relatives.²⁸
- Attorneys in good standing with the Florida Bar.

The bill provides an exemption from additional background screening for an individual who becomes a direct care provider and provides services within the scope of his or her license. The exemption applies to a person who was previously screened by the Agency for Health Care Administration as a condition of licensure or employment. Such individuals would include owners, administrators, and employees of such entities as nursing homes, assisted living facilities, home health agencies, and adult day care establishments.²⁹

The bill provides time frames for screenings by DOEA:

- Individuals serving as direct service providers on July 31, 2011, must be screened by July 1, 2013.
- DOEA may adopt rules to establish a schedule to stagger the implementation of the required screenings over a 1-year period, beginning July 1, 2012, through July 1, 2013.
- Individuals shall be rescreened every 5 years following the date of his or her last background screening unless the individual's fingerprints are continuously retained and monitored by FDLE in the federal fingerprint retention program.

The bill removes “any authorizing statutes, if the offense was a felony” from the list of disqualifying offenses for direct services providers. The term “authorizing statute” is not defined by ch. 430, F.S. The term is defined in s. 408.803, F.S., and relates to entities regulated by the Agency for Health Care Administration.

Care Provider Background Screening Clearinghouse

Many different agencies, programs, employers, and professionals serve vulnerable populations in Florida. Personnel working with those entities and serving vulnerable persons are subject to background screening. However, due to restrictions placed on the sharing of criminal history

²⁶ This search is free and can be made at <http://www.fdle.state.fl.us/coflyer/home.asp>.

²⁷ This search is free and can be made at <http://www.nsopw.gov>.

²⁸ The bill provides a definition of the term “relative” as it relates to this exemption to mean an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of the client.

²⁹ For a complete list of entities, see s. 408.802, F.S.

information, persons who work for more than one agency or employer or change jobs, or wish to volunteer for such an entity, often must undergo a new and duplicative background screening and fingerprinting. This proves frustrating to those involved and leads to the payment of additional fees.

Policies imposed by the Federal Bureau of Investigation (FBI) prevent the sharing of criminal history information except within a given "program." Since each regulatory area is covered by a different controlling statute and screenings are done for separate purposes, the screenings have been viewed as separate "program" areas and sharing of results has not been allowed. In addition, screenings are only as good as the date they are run. Arrests or convictions occurring after the screening are not known until the person is rescreened or self-reports.

The bill creates the Care Provider Background Screening Clearinghouse (Clearinghouse) in s. 435.12, F.S. The purpose of the Clearinghouse is to create a single "program" of screening individuals who have direct contact with vulnerable persons. The Clearinghouse is created under AHCA and is to be implemented in consultation with FDLE. The Clearinghouse is a secure internet web-based system and is to be implemented by September 30, 2013, and allows for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies.³⁰

Fingerprints of the care providers will be retained by FDLE, meaning the electronically scanned image of the print will be stored digitally. FDLE will search the retained prints against incoming Florida arrests and must report the results to AHCA for inclusion in the Clearinghouse, thus avoiding the need for future state screens and related fees. A digital photograph of the person screened will be taken at the time the fingerprints are taken and retained by FDLE in electronic format, as well. This enables accurate identification of the person when they change jobs or are otherwise presented with a situation requiring screening and enables the new employer to access the Clearinghouse to verify that the person has been screened, is in the Clearinghouse, and is who they say they are. Retained fingerprints must be resubmitted for a FBI national criminal history check every five years until such time as the FBI implements its own retention program. Once the FBI implements its retention program, the need for any future screening by the specified agencies of persons in the Clearinghouse will be eliminated.

The bill does not require the rescreening of persons just to be entered into the Clearinghouse, but their fingerprints will be placed into the Clearinghouse once they are required to be rescreened by the operation of other screening laws. Once a person's fingerprints are in the Clearinghouse, they will not have to be reprinted in order to send their fingerprints to the FBI (avoiding further fees).

³⁰ "Specified agency" means the Department of Health, the Department of Children and Families, the Agency for Health Care Administration, the Department of Elder Affairs, the Department of Juvenile Justice, and the Agency for Persons with Disabilities, when these agencies are conducting state and national criminal history background screening on persons who work with children, elderly or disabled persons.

Electronic Screening Vendors

By July 1, 2012, all fingerprints submitted to FDLE must be submitted electronically.³¹ An agency may by rule require fingerprints to be submitted electronically prior to that date.³² An agency may contract with one or more vendors to perform all or part of the electronic fingerprinting and must ensure that each vendor is qualified and will ensure the integrity and security of all personal information.³³

The bill amends s. 435.04, F.S., to require vendors that do electronic fingerprinting to:

- Meet certain technical standards that are compatible with technology used by FDLE; and
- Have the ability to communicate electronically with the relevant state agency and to provide a photograph of the applicant taken at the time the fingerprints are submitted.

Employment Prior to Screening

Currently an employer may not “hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening” until the person has successfully completed the background screening.³⁴ The language creates uncertainty whether a person can be hired for the purpose of training and orientation prior to successfully completing the background screening.

The bill amends s. 435.06(2), F.S., to provide that an employer may hire an employee to a position that requires background screening before the employee completes the screening process for training and orientation purposes. However, the employee may not have direct contact with vulnerable persons until the screening process is successfully completed.

Screening of Health Care Professionals

Presently many health care professionals licensed by the Department of Health (DOH) are required to submit fingerprints upon initial licensure or renewal. These professions are regulated under chapters 458 (medical practice), 459 (osteopathic medicine), 460 (chiropractic medicine), 461 (podiatric medicine), 464 (nursing), or s.465.022 (pharmacies), F.S.

The bill creates s. 456.0135, F.S., to provide that after January 1, 2013, such fingerprints must be submitted electronically under FDLE procedures and through an approved vendor. For subsequent renewals, FDLE will submit the retained fingerprints to the FBI for a national criminal history check, avoiding the need for the professional to have her or his fingerprints taken again.

³¹ Section 435.04(1)(b), F.S.

³² Section 435.04(1)(d), F.S.

³³ Section 435.04(1)(c), F.S.

³⁴ Section 435.06(2)(a), F.S.

Certified Nursing Assistants

Certified Nursing Assistants (CNAs) provide care and assistance to persons with their activities of daily living.³⁵ To become a CNA, an individual must:

- Demonstrate a minimum competency to read and write.
- Successfully pass the Level 2 background screening described in s. 400.215, F.S.³⁶
- Meet one of the following requirements:
 - Successfully complete an approved training program and examination.
 - Achieve a minimum score, on the nursing assistant competency examination, be 18 years old, and have a high school degree or the equivalent.

Only CNAs may be employed in nursing homes to provide nursing assistance.³⁷ However, there are limited exceptions for a person to begin working as a CNA for up to four months prior to certification when the person is enrolled in a CNA program, is a CNA in another state, or has preliminarily passed the CNA exam.³⁸ Such individuals must be background screened pursuant to s. 400.215, F.S., before beginning work as a CNA in a nursing home.

The bill amends s. 464.203(1), F.S., to provide that if an applicant for CNA certification has successfully passed the background screening required by s. 400.215, F.S., or s. 408.809, F.S., within 90 days of applying for the certification, and the person's background screening results are not retained in the Clearinghouse, the Board of Nursing shall waive the requirement that the applicant pass another background screening.

Qualified Entities

A “qualified entity” is a business or organization that provides care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.³⁹ Qualified entities that register with FDLE may screen personnel and employees through the submission of fingerprints. Each request must be voluntary and conform to the requirements of the National Child Protection Act of 1993, as amended.⁴⁰

The bill amends s. 943.05(2)(h)2., F.S., to provide that qualified entities electing to participate in the fingerprint retention and search process must timely remit fees by a payment mechanism approved by the FDLE. Failure to pay the fees on a timely basis may result in the refusal by FDLE to permit the qualified entity to continue to participate in the fingerprint retention and search process until all fees owed are paid.

³⁵ Section 464.201(5), F.S.

³⁶ The background screening required by s. 400.215, F.S., refers to the screening described in s. 408.809, F.S., and is identical to the background screening required by s. 430.0402, F.S., except that the following are also disqualifying offenses: s. 741.28, F.S., relating to domestic violence, s. 831.30, F.S., relating to fraud in obtaining medicinal drugs, and s. 831.31, F.S., relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.

³⁷ Section 400.211, F.S.

³⁸ *Id.*

³⁹ Section 943.0542(1), F.S.

⁴⁰ Section 943.05, F.S.

Fingerprints and FDLE

The Criminal Justice Information Program is established within FDLE.⁴¹ The program maintains a system able to transmit criminal justice information to and between criminal justice agencies and a statewide automated fingerprint identification system.⁴² Fingerprints submitted to FDLE for a background screening must be done in a manner established by FDLE.⁴³ Any related fees must be borne by the person or entity submitting the request, or as provided by law.⁴⁴

The bill amends s. 943.053, F.S., to require fingerprints submitted for background checks be taken by a law enforcement agency employee, a government agency employee, a qualified electronic fingerprint service provider, or a private employer. Such prints may not be taken by the subject of the criminal history check.

The bill provides that a vendor, entity, or agency (except for criminal justice agencies) submitting fingerprints must enter into an agreement with FDLE. Such agreements must require:

- Compliance with FDLE specified standards;
- That persons with responsibility for submitting fingerprints are qualified to do so; and
- Collection and timely submission of fees.

Expunction and Sealing of Criminal History Records

Florida courts generally have jurisdiction over the maintenance and correction of judicial records containing criminal history information. However, the Legislature has provided some conditions, responsibilities, and duties regarding the expunction⁴⁵ and sealing⁴⁶ of such records. An expunged criminal history record must be destroyed by any criminal justice agency having custody of such record, except for records in the custody of FDLE.⁴⁷ Such a record retained by FDLE is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.⁴⁸ The person who is the subject of the expunged record may lawfully deny or fail to acknowledge the arrests covered by the expunged record, with limited exceptions.⁴⁹ One such exception is when the person is “seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly.”⁵⁰

⁴¹ Section 943.05, F.S.

⁴² Section 943.05(2), F.S.

⁴³ Section 943.053(12), F.S.

⁴⁴ *Id.*

⁴⁵ Section 943.0585, F.S.

⁴⁶ Section 943.059, F.S.

⁴⁷ Section 943.0585(4), F.S.

⁴⁸ *Id.*

⁴⁹ Section 943.0585(4)(a), F.S.

⁵⁰ Section 943.0585(4)(a)5., F.S.

Similar conditions exist for the sealing of a criminal history record. A criminal history record sealed by a court is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, and “is available only to the person who is the subject of the record, to the subject’s attorney, to criminal justice agencies for their respective criminal justice purposes,” and to certain entities “for their respective licensing, access authorization, and employment purposes.”⁵¹ The person who is the subject of the sealed record may lawfully deny or fail to acknowledge the arrests covered by the sealed record, with limited exceptions.⁵² One such exception is when the person is “seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly.”⁵³

The bills amends ss. 943.0585(4)(a)5. and 943.059(4)(a)5., F.S., to add DOH and DOEA to the list of agencies where persons must disclose the existence of expunged or sealed criminal history records for licensing, access authorization, and employment purposes.

Vocational Rehabilitation

The background screening legislation that was enacted during the 2010 session which substantially rewrote the requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations did not include the Division of Vocational Rehabilitation (DVR) in the screening process.

DVR currently has no statutory authority to perform any type of background check on its direct service providers. However, the division has required Level 1 background checks or proof of screening clearance from other agencies of most of them for several years. DVR serves people with mental and physical disabilities whose disabilities present a barrier to finding or maintaining employment. 97 percent of individuals DVR placed in jobs last year have 'significant' or 'most significant' disabilities. Services to students generally begin when they reach age 16, but students may be served beginning at age 14. Anyone under the age of 18 is considered to be vulnerable. DVR provides services to all of these individuals, if they have met eligibility criteria.⁵⁴

The bill defines the term “service provider” as it relates to DVR and provides background screening requirements that would allow DVR to appropriately screen its service providers who are providing one-on-one services to vulnerable clients. It also includes DVR in the definition of “specified agency” for purposes of participating in the Care Provider Background Screening Clearinghouse.

⁵¹ Section 943.059(4), F.S.

⁵² Section 943.059(4)(a), F.S.

⁵³ Section 943.059(4)(a)5., F.S.

⁵⁴ Memo from the Division of Vocational Rehabilitation. January 30, 2012. On file with the Committee on Children, Families, and Elder Affairs.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will reduce the number of persons who will need to undergo background screening prior to working with vulnerable persons. The Level 2 screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24 plus \$6.25 for hard copy fingerprints).⁵⁵ By decreasing the number of persons subject to screening, there will be less of a financial impact on employers and employees.

C. Government Sector Impact:

The bill does not appear to have a significant impact on state revenues. The bill is designed to reduce the number of duplicative screenings over the coming years, so there will be a corresponding reduction in the collected fees. However, it is not anticipated that this will represent a large percentage of those collections.

The bill does not appear to have any impact on state expenditures. The bill is designed to reduce the number of duplicative screenings over the coming years, so there will be a corresponding reduction in the related workload. However, the creation of the Clearinghouse and the retention of fingerprints will increase related workload. It is anticipated that such workload will be absorbed within existing resources.

VI. Technical Deficiencies:

None.

⁵⁵Florida Department of Law Enforcement, *Criminal History Record Checks / Background Checks Fact Sheet July 7, 2011*. Retrieved January 28, 2012, from <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx>.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Children, Families, and Elder Affairs Committee on January 31, 2012:

The committee substitute:

- Creates an exemption from level 2 background screening for direct service provider volunteers that serve on an intermittent basis for less than 20 hours per week provided the volunteers are not listed on the Department of Law Enforcement Career Offender Search or the Dru Sjodin National Sex Offender Public Website.
- Provides a detailed definition of “Relatives” as it pertains to direct service providers who are exempt from level 2 background screening.
- Changes the dates in the rescreening schedule to conform to current law.
- Creates the Care Provider Background Screening Clearinghouse to be managed by AHCA and amends related statutes to conform.
- Removes from the bill a provision authorizing private schools to seek an exemption from disqualification for its personnel and removes the proposed background screening workgroup.
- Revises the provision in the bill providing an exemption from background screening for mental health personnel working in a licensed hospital who work on an intermittent basis for less than 15 hours per week with direct contact with patients. The amendment leaves the exemption in place, provided that the person is not listed on the FDLE Career Offender database or the Dru Sjodin National Sex Offender Public Website.
- Creates background screening requirements related to the Division of Vocational Rehabilitation within the Department of Education.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2012	.	
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The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (d) is added to subsection (1) of section 394.4572, Florida Statutes, to read:

394.4572 Screening of mental health personnel.—

(1)

(d) Mental health personnel working in a facility licensed under chapter 395 who work on an intermittent basis for less than 15 hours per week of direct, face-to-face contact with patients, and who are not listed on the Department of Law



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13 Enforcement Career Offender Search or the Dru Sjodin National
14 Sex Offender Public Website, are exempt from the fingerprinting
15 and screening requirements, except that persons working in a
16 mental health facility where the primary purpose of the facility
17 is the mental health treatment of minors must be fingerprinted
18 and meet screening requirements.

19 Section 2. Section 408.809, Florida Statutes, is amended to
20 read:

21 408.809 Background screening; prohibited offenses.—

22 (1) Level 2 background screening pursuant to chapter 435
23 must be conducted through the agency on each of the following
24 persons, who are considered employees for the purposes of
25 conducting screening under chapter 435:

26 (a) The licensee, if an individual.

27 (b) The administrator or a similarly titled person who is
28 responsible for the day-to-day operation of the provider.

29 (c) The financial officer or similarly titled individual
30 who is responsible for the financial operation of the licensee
31 or provider.

32 (d) Any person who is a controlling interest if the agency
33 has reason to believe that such person has been convicted of any
34 offense prohibited by s. 435.04. For each controlling interest
35 who has been convicted of any such offense, the licensee shall
36 submit to the agency a description and explanation of the
37 conviction at the time of license application.

38 (e) Any person, as required by authorizing statutes,
39 seeking employment with a licensee or provider who is expected
40 to, or whose responsibilities may require him or her to, provide
41 personal care or services directly to clients or have access to



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42 client funds, personal property, or living areas; and any
43 person, as required by authorizing statutes, contracting with a
44 licensee or provider whose responsibilities require him or her
45 to provide personal care or personal services directly to
46 clients. Evidence of contractor screening may be retained by the
47 contractor's employer or the licensee.

48 (2) Every 5 years following his or her licensure,
49 employment, or entry into a contract in a capacity that under
50 subsection (1) would require level 2 background screening under
51 chapter 435, each such person must submit to level 2 background
52 rescreening as a condition of retaining such license or
53 continuing in such employment or contractual status. For any
54 such rescreening, the agency shall request the Department of Law
55 Enforcement to forward the person's fingerprints to the Federal
56 Bureau of Investigation for a national criminal history record
57 check. If the fingerprints of such a person are not retained by
58 the Department of Law Enforcement under s. 943.05(2)(g), the
59 person must file a complete set of fingerprints with the agency
60 and the agency shall forward the fingerprints to the Department
61 of Law Enforcement for state processing, and the Department of
62 Law Enforcement shall forward the fingerprints to the Federal
63 Bureau of Investigation for a national criminal history record
64 check. The fingerprints may be retained by the Department of Law
65 Enforcement under s. 943.05(2)(g). The cost of the state and
66 national criminal history records checks required by level 2
67 screening may be borne by the licensee or the person
68 fingerprinted. Until the person's background screening results
69 are retained in the clearinghouse created under s. 435.12, the
70 agency may accept as satisfying the requirements of this section



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71 proof of compliance with level 2 screening standards submitted
72 within the previous 5 years to meet any provider or professional
73 licensure requirements of the agency, the Department of Health,
74 the Department of Elderly Affairs, the Agency for Persons with
75 Disabilities, the Department of Children and Family Services, or
76 the Department of Financial Services for an applicant for a
77 certificate of authority or provisional certificate of authority
78 to operate a continuing care retirement community under chapter
79 651, provided that:

80 (a) The screening standards and disqualifying offenses for
81 the prior screening are equivalent to those specified in s.
82 435.04 and this section;

83 (b) satisfies the requirements of this section if The
84 person subject to screening has not had a break in service from
85 a position that requires level 2 screening ~~been unemployed~~ for
86 more than 90 days; and

87 (c) Such proof is accompanied, under penalty of perjury, by
88 an affidavit of compliance with the provisions of chapter 435
89 and this section using forms provided by the agency.

90 (3) All fingerprints must be provided in electronic format.
91 Screening results shall be reviewed by the agency with respect
92 to the offenses specified in s. 435.04 and this section, and the
93 qualifying or disqualifying status of the person named in the
94 request shall be maintained in a database. The qualifying or
95 disqualifying status of the person named in the request shall be
96 posted on a secure website for retrieval by the licensee or
97 designated agent on the licensee's behalf.

98 (4) In addition to the offenses listed in s. 435.04, all
99 persons required to undergo background screening pursuant to



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100 this part or authorizing statutes must not have an arrest
101 awaiting final disposition for, must not have been found guilty
102 of, regardless of adjudication, or entered a plea of nolo
103 contendere or guilty to, and must not have been adjudicated
104 delinquent and the record not have been sealed or expunged for
105 any of the following offenses or any similar offense of another
106 jurisdiction:

107 (a) Any authorizing statutes, if the offense was a felony.

108 (b) This chapter, if the offense was a felony.

109 (c) Section 409.920, relating to Medicaid provider fraud.

110 (d) Section 409.9201, relating to Medicaid fraud.

111 (e) Section 741.28, relating to domestic violence.

112 (f) Section 817.034, relating to fraudulent acts through
113 mail, wire, radio, electromagnetic, photoelectronic, or
114 photooptical systems.

115 (g) Section 817.234, relating to false and fraudulent
116 insurance claims.

117 (h) Section 817.505, relating to patient brokering.

118 (i) Section 817.568, relating to criminal use of personal
119 identification information.

120 (j) Section 817.60, relating to obtaining a credit card
121 through fraudulent means.

122 (k) Section 817.61, relating to fraudulent use of credit
123 cards, if the offense was a felony.

124 (l) Section 831.01, relating to forgery.

125 (m) Section 831.02, relating to uttering forged
126 instruments.

127 (n) Section 831.07, relating to forging bank bills, checks,
128 drafts, or promissory notes.



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129 (o) Section 831.09, relating to uttering forged bank bills,
130 checks, drafts, or promissory notes.

131 (p) Section 831.30, relating to fraud in obtaining
132 medicinal drugs.

133 (q) Section 831.31, relating to the sale, manufacture,
134 delivery, or possession with the intent to sell, manufacture, or
135 deliver any counterfeit controlled substance, if the offense was
136 a felony.

137 (5) A person who serves as a controlling interest of, is
138 employed by, or contracts with a licensee on July 31, 2010, who
139 has been screened and qualified according to standards specified
140 in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015 in
141 compliance with the following schedule. ~~The agency may adopt~~
142 ~~rules to establish a schedule to stagger the implementation of~~
143 ~~the required rescreening over the 5-year period, beginning July~~
144 ~~31, 2010, through July 31, 2015.~~ If, upon rescreening, such
145 person has a disqualifying offense that was not a disqualifying
146 offense at the time of the last screening, but is a current
147 disqualifying offense and was committed before the last
148 screening, he or she may apply for an exemption from the
149 appropriate licensing agency and, if agreed to by the employer,
150 may continue to perform his or her duties until the licensing
151 agency renders a decision on the application for exemption if
152 the person is eligible to apply for an exemption and the
153 exemption request is received by the agency within 30 days after
154 receipt of the rescreening results by the person. The
155 rescreening schedule shall be:

156 (a) Individuals for whom the last screening was conducted
157 on or before December 31, 2004, must be rescreened by July 31,



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158 2013.

159 (b) Individuals for whom the last screening conducted was
160 between January 1, 2005, and December 31, 2008, must be
161 rescreened by July 31, 2014.

162 (c) Individuals for whom the last screening conducted was
163 between January 1, 2009, through July 31, 2011, must be
164 rescreened by July 31, 2015.

165 (6)~~(5)~~ The costs associated with obtaining the required
166 screening must be borne by the licensee or the person subject to
167 screening. Licensees may reimburse persons for these costs. The
168 Department of Law Enforcement shall charge the agency for
169 screening pursuant to s. 943.053(3). The agency shall establish
170 a schedule of fees to cover the costs of screening.

171 (7)~~(6)~~(a) As provided in chapter 435, the agency may grant
172 an exemption from disqualification to a person who is subject to
173 this section and who:

174 1. Does not have an active professional license or
175 certification from the Department of Health; or

176 2. Has an active professional license or certification from
177 the Department of Health but is not providing a service within
178 the scope of that license or certification.

179 (b) As provided in chapter 435, the appropriate regulatory
180 board within the Department of Health, or the department itself
181 if there is no board, may grant an exemption from
182 disqualification to a person who is subject to this section and
183 who has received a professional license or certification from
184 the Department of Health or a regulatory board within that
185 department and that person is providing a service within the
186 scope of his or her licensed or certified practice.



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187 (8)~~(7)~~ The agency and the Department of Health may adopt
188 rules pursuant to ss. 120.536(1) and 120.54 to implement this
189 section, chapter 435, and authorizing statutes requiring
190 background screening and to implement and adopt criteria
191 relating to retaining fingerprints pursuant to s. 943.05(2).

192 (9)~~(8)~~ There is no unemployment compensation or other
193 monetary liability on the part of, and no cause of action for
194 damages arising against, an employer that, upon notice of a
195 disqualifying offense listed under chapter 435 or this section,
196 terminates the person against whom the report was issued,
197 whether or not that person has filed for an exemption with the
198 Department of Health or the agency.

199 Section 3. Section 409.1757, Florida Statutes, is amended
200 to read:

201 409.1757 Persons not required to be refingerprinted or
202 rescreened.—Any ~~provision of~~ law to the contrary
203 notwithstanding, human resource personnel who have been
204 fingerprinted or screened pursuant to chapters 393, 394, 397,
205 402, and this chapter, ~~and~~ teachers who have been fingerprinted
206 pursuant to chapter 1012, and law enforcement officers who meet
207 the requirements of s. 943.13, who have not been unemployed for
208 more than 90 days thereafter, and who under the penalty of
209 perjury attest to the completion of such fingerprinting or
210 screening and to compliance with ~~the provisions of~~ this section
211 and the standards for good moral character as contained in such
212 provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451,
213 402.305(2), ~~and~~ 409.175(6), and 943.13(7), are ~~shall~~ not be
214 required to be refingerprinted or rescreened in order to comply
215 with any caretaker screening or fingerprinting requirements.



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216 Section 4. Paragraph (i) of subsection (4) of section
217 409.221, Florida Statutes, is amended to read:

218 409.221 Consumer-directed care program.—

219 (4) CONSUMER-DIRECTED CARE.—

220 (i) *Background screening requirements.*—All persons who
221 render care under this section must undergo level 2 background
222 screening pursuant to chapter 435 and s. 408.809. The agency
223 shall, as allowable, reimburse consumer-employed caregivers for
224 the cost of conducting background screening as required by this
225 section. For purposes of this section, a person who has
226 undergone screening, who is qualified for employment under this
227 section and applicable rule, and who has not been unemployed for
228 more than 90 days following such screening is not required to be
229 rescreened. Such person must attest under penalty of perjury to
230 not having been convicted of a disqualifying offense since
231 completing such screening.

232 Section 5. Present subsections (7) through (26) of section
233 413.20, Florida Statutes, are renumbered as subsections (8)
234 through (27), respectively, and a new subsection (7) is added to
235 that section, to read:

236 413.20 Definitions.—As used in this part, the term:

237 (7) "Service provider" means a person or entity who
238 provides pursuant to this part employment services, supported
239 employment services, independent living services, self-
240 employment services, personal assistance services, vocational
241 evaluation or tutorial services, or rehabilitation technology
242 services, on a contractual or fee-for-service basis to
243 vulnerable persons as defined in s. 435.02.

244 Section 6. Section 413.208, Florida Statutes, is amended to



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245 read:

246 413.208 Service providers; quality assurance; ~~and~~ fitness
247 for responsibilities; background screening.-

248 (1) Service providers must register with the division. To
249 qualify for registration, the division must ~~of Vocational~~
250 Rehabilitation shall certify providers of direct service and
251 ensure that the service provider maintains they maintain an
252 internal system of quality assurance, has have proven functional
253 systems, and is are subject to a due-diligence inquiry as to its
254 their fitness to undertake service responsibilities, regardless
255 of whether a contract for services is procured competitively or
256 noncompetitively.

257 (2) (a) As a condition of registration under this section,
258 level 2 background screening pursuant to chapter 435 must be
259 conducted by the division on each of the following persons:

260 1. The administrator or a similarly titled person who is
261 responsible for the day-to-day operation of the service
262 provider.

263 2. The financial officer or similarly titled individual who
264 is responsible for the financial operation of the service
265 provider.

266 3. Any person employed by, or otherwise engaged on the
267 behalf of, a service provider who is expected to have direct,
268 face-to-face contact with a vulnerable person as defined in s.
269 435.02 while providing services to the person and have access to
270 the person's living areas, funds, personal property, or personal
271 identification information as defined in s. 817.568.

272 4. A director of the service provider.

273 (b) Level 2 background screening pursuant to chapter 435 is



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274 not required for the following persons:

275 1. A licensed physician, nurse, or other professional who
276 is licensed by the Department of Health and who has undergone
277 fingerprinting and background screening as part of such
278 licensure if providing a service that is within the scope of her
279 or his licensed practice.

280 2. A relative of the vulnerable person receiving services.
281 For purposes of this section, the term "relative" means an
282 individual who is the father, mother, stepfather, stepmother,
283 son, daughter, brother, sister, grandmother, grandfather, great-
284 grandmother, great-grandfather, grandson, granddaughter, uncle,
285 aunt, first cousin, nephew, niece, husband, wife, father-in-law,
286 mother-in-law, son-in-law, daughter-in-law, brother-in-law,
287 sister-in-law, stepson, stepdaughter, stepbrother, stepsister,
288 half-brother, or half-sister of the vulnerable person.

289 (c) Service providers are responsible for initiating and
290 completing the background screening as a condition of
291 registration.

292 (d)1. Every 5 years following initial screening, each
293 person subject to background screening under this section must
294 submit to level 2 background rescreening as a condition of the
295 service provider retaining such registration.

296 2. Until the person's background screening results are
297 retained in the clearinghouse created under s. 435.12, the
298 division may accept as satisfying the requirements of this
299 section proof of compliance with level 2 screening standards
300 submitted within the previous 5 years to meet any provider or
301 professional licensure requirements of the Agency for Health
302 Care Administration, the Department of Health, the Department of



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303 Elderly Affairs, the Agency for Persons with Disabilities, or
304 the Department of Children and Family Services, provided:
305 a. The screening standards and disqualifying offenses for
306 the prior screening are equivalent to those specified in s.
307 435.04 and this section;
308 b. The person subject to screening has not had a break in
309 service from a position that requires level 2 screening for more
310 than 90 days; and
311 c. Such proof is accompanied, under penalty of perjury, by
312 an affidavit of compliance with the provisions of chapter 435
313 and this section.
314 (e) In addition to the disqualifying offenses listed in s.
315 435.04, all persons subject to undergo background screening
316 pursuant to this section must not have an arrest awaiting final
317 disposition for, must not have been found guilty of, regardless
318 of adjudication, or entered a plea of nolo contendere or guilty
319 to, and must not have been adjudicated delinquent, and the
320 record has not been expunged for, any offense prohibited under
321 any of the following provisions or similar law of another
322 jurisdiction:
323 1. Section 409.920, relating to Medicaid provider fraud.
324 2. Section 409.9201, relating to Medicaid fraud.
325 3. Section 741.28, relating to domestic violence.
326 4. Section 817.034, relating to fraudulent acts through
327 mail, wire, radio, electromagnetic, photoelectronic, or
328 photooptical systems.
329 5. Section 817.234, relating to false and fraudulent
330 insurance claims.
331 6. Section 817.505, relating to patient brokering.



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332 7. Section 817.568, relating to criminal use of personal
333 identification information.

334 8. Section 817.60, relating to obtaining a credit card
335 through fraudulent means.

336 9. Section 817.61, relating to fraudulent use of credit
337 cards, if the offense was a felony.

338 10. Section 831.01, relating to forgery.

339 11. Section 831.02, relating to uttering forged
340 instruments.

341 12. Section 831.07, relating to forging bank bills, checks,
342 drafts, or promissory notes.

343 13. Section 831.09, relating to uttering forged bank bills,
344 checks, drafts, or promissory notes.

345 14. Section 831.31, relating to the sale, manufacture,
346 delivery, or possession with the intent to sell, manufacture, or
347 deliver any counterfeit controlled substance, if the offense was
348 a felony.

349 (f) The division may grant an exemption from
350 disqualification from this section only as provided in s.
351 435.07.

352 (3) The cost of the state and national criminal history
353 records checks required by level 2 screening and their retention
354 shall be borne by the service provider or the person being
355 screened.

356 (4) (a) The division shall deny, suspend, terminate, or
357 revoke a registration, rate agreement, purchase order, referral,
358 contract, or other agreement, or pursue other remedies in
359 addition to or in lieu of denial, suspension, termination, or
360 revocation, for failure to comply with this section.



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361 (b) If the division has reasonable cause to believe that
362 grounds for denial or termination of registration exist, it
363 shall provide written notification to the person affected,
364 identifying the specific record that indicates noncompliance
365 with the standards in this section.

366 (c) Refusal on the part of a provider to remove from
367 contact with any vulnerable person a person who is employed by,
368 or otherwise engaged on behalf of, the provider and who is found
369 to be not in compliance with the standards of this section shall
370 result in revocation of the service provider's registration and
371 contract.

372 Section 7. The background screening requirements of section
373 6 of this act do not apply to existing registrants with the
374 Division of Vocational Rehabilitation in effect before October
375 1, 2012. Such requirements apply to all registrants with the
376 division which are renewed or entered into on or after October
377 1, 2012.

378 Section 8. Section 430.0402, Florida Statutes, is amended
379 to read:

380 430.0402 Screening of direct service providers.-

381 (1) (a) Except as provided in subsection (2), level 2
382 background screening pursuant to chapter 435 is required for
383 direct service providers. Background screening includes
384 employment history checks as provided in s. 435.03(1) and local
385 criminal records checks through local law enforcement agencies.

386 (b) For purposes of this section, the term "direct service
387 provider" means a person 18 years of age or older who, pursuant
388 to a program to provide services to the elderly, has direct,
389 face-to-face contact with a client while providing services to



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390 the client and ~~or~~ has access to the client's living areas, or to
391 ~~the client's funds, or personal property, or personal~~
392 identification information as defined in s. 817.568. The term
393 includes coordinators, managers, and supervisors of residential
394 facilities and volunteers.

395 (2) Level 2 background screening pursuant to chapter 435
396 and this section is not required for the following direct
397 service providers:

398 (a)1. Licensed physicians, nurses, or other professionals
399 licensed by the Department of Health who have been fingerprinted
400 and undergone background screening as part of their licensure;
401 and

402 2. Attorneys in good standing with The Florida Bar; are not
403 subject to background screening if they are providing a service
404 that is within the scope of their licensed practice.

405 (b) Relatives. For purposes of this section, the term
406 "relative" means an individual who is the father, mother,
407 stepfather, stepmother, son, daughter, brother, sister,
408 grandmother, grandfather, great-grandmother, great-grandfather,
409 grandson, granddaughter, uncle, aunt, first cousin, nephew,
410 niece, husband, wife, father-in-law, mother-in-law, son-in-law,
411 daughter-in-law, brother-in-law, sister-in-law, stepson,
412 stepdaughter, stepbrother, stepsister, half-brother, or half-
413 sister of the client.

414 (c) Volunteers who assist on an intermittent basis for less
415 than 20 hours per month and who are not listed on the Department
416 of Law Enforcement Career Offender Search or the Dru Sjodin
417 National Sex Offender Public Website.

418 1. The program that provides services to the elderly is



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419 responsible for verifying that the volunteer is not listed on
420 either database.

421 2. Once the department is participating as a specified
422 agency in the clearinghouse created under s. 435.12, the
423 provider shall forward the volunteer information to the
424 Department of Elderly Affairs if the volunteer is not listed in
425 either database specified in subparagraph 1. The department must
426 then perform a check of the clearinghouse. If a disqualification
427 is identified in the clearinghouse, the volunteer must undergo
428 level 2 background screening pursuant to chapter 435 and this
429 section.

430 (3) Until the department is participating as a specified
431 agency in the clearinghouse created under s. 435.12, the
432 department may not require additional level 2 screening if the
433 individual is qualified for licensure or employment by the
434 Agency for Health Care Administration pursuant to the agency's
435 background screening standards under s. 408.809 and the
436 individual is providing a service that is within the scope of
437 his or her licensed practice or employment.

438 (4)~~(3)~~ Refusal on the part of an employer to dismiss a
439 manager, supervisor, or direct service provider who has been
440 found to be in noncompliance with standards of this section
441 shall result in the automatic denial, termination, or revocation
442 of the license or certification, rate agreement, purchase order,
443 or contract, in addition to any other remedies authorized by
444 law.

445 (5) Individuals serving as direct service providers on July
446 31, 2011, must be screened by July 1, 2013. The department may
447 adopt rules to establish a schedule to stagger the



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448 implementation of the required screening over a 1-year period,
449 beginning July 1, 2012, through July 1, 2013.

450 (6) An employer of a direct service provider who previously
451 qualified for employment or volunteer work under Level 1
452 screening standards or an individual who is required to be
453 screened according to the level 2 screening standards contained
454 in chapter 435, pursuant to this section, shall be rescreened
455 every 5 years following the date of his or her last background
456 screening or exemption, unless such individual's fingerprints
457 are continuously retained and monitored by the Department of Law
458 Enforcement in the federal fingerprint retention program
459 according to the procedures specified in s. 943.05.

460 (7) ~~(4)~~ The background screening conducted pursuant to this
461 section must ensure that, in addition to the disqualifying
462 offenses listed in s. 435.04, no person subject to the
463 provisions of this section has an arrest awaiting final
464 disposition for, has been found guilty of, regardless of
465 adjudication, or entered a plea of nolo contendere or guilty to,
466 or has been adjudicated delinquent and the record has not been
467 sealed or expunged for, any offense prohibited under any of the
468 following provisions of state law or similar law of another
469 jurisdiction:

470 ~~(a) Any authorizing statutes, if the offense was a felony.~~

471 (a) ~~(b)~~ Section 409.920, relating to Medicaid provider
472 fraud.

473 (b) ~~(e)~~ Section 409.9201, relating to Medicaid fraud.

474 (c) ~~(d)~~ Section 817.034, relating to fraudulent acts through
475 mail, wire, radio, electromagnetic, photoelectronic, or
476 photooptical systems.



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477 ~~(e)~~ Section 817.234, relating to false and fraudulent
478 insurance claims.

479 ~~(f)~~ Section 817.505, relating to patient brokering.

480 ~~(g)~~ Section 817.568, relating to criminal use of
481 personal identification information.

482 ~~(h)~~ Section 817.60, relating to obtaining a credit card
483 through fraudulent means.

484 ~~(i)~~ Section 817.61, relating to fraudulent use of credit
485 cards, if the offense was a felony.

486 ~~(j)~~ Section 831.01, relating to forgery.

487 ~~(k)~~ Section 831.02, relating to uttering forged
488 instruments.

489 ~~(l)~~ Section 831.07, relating to forging bank bills,
490 checks, drafts, or promissory notes.

491 ~~(m)~~ Section 831.09, relating to uttering forged bank
492 bills, checks, drafts, or promissory notes.

493 Section 9. Section 435.02, Florida Statutes, is amended to
494 read:

495 435.02 Definitions.—For the purposes of this chapter, the
496 term:

497 (1) "Agency" means any state, county, or municipal agency
498 that grants licenses or registration permitting the operation of
499 an employer or is itself an employer or that otherwise
500 facilitates the screening of employees pursuant to this chapter.
501 If there is no state agency or the municipal or county agency
502 chooses not to conduct employment screening, "agency" means the
503 Department of Children and Family Services.

504 (2) "Employee" means any person required by law to be
505 screened pursuant to this chapter, including, but not limited



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506 to, persons who are contractors, licensees, or volunteers.

507 (3) "Employer" means any person or entity required by law
508 to conduct screening of employees pursuant to this chapter.

509 (4) "Employment" means any activity or service sought to be
510 performed by an employee which requires the employee to be
511 screened pursuant to this chapter.

512 (5) "Specified agency" means the Department of Health, the
513 Department of Children and Family Services, the Division of
514 Vocational Rehabilitation within the Department of Education,
515 the Agency for Health Care Administration, the Department of
516 Elderly Affairs, the Department of Juvenile Justice, and the
517 Agency for Persons with Disabilities when these agencies are
518 conducting state and national criminal history background
519 screening on persons who work with children or persons who are
520 elderly or disabled.

521 (6)~~(5)~~ "Vulnerable person" means a minor as defined in s.
522 1.01 or a vulnerable adult as defined in s. 415.102.

523 Section 10. Paragraph (e) is added to subsection (1) of
524 section 435.04, Florida Statutes, to read:

525 435.04 Level 2 screening standards.—

526 (1)

527 (e) Vendors who submit fingerprints on behalf of employers
528 must:

529 1. Meet the requirements of s. 943.053; and

530 2. Have the ability to communicate electronically with the
531 state agency accepting screening results from the Department of
532 Law Enforcement and provide a photograph of the applicant taken
533 at the time the fingerprints are submitted.

534 Section 11. Paragraph (d) is added to subsection (2) of



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535 section 435.06, Florida Statutes, to read:

536 435.06 Exclusion from employment.—

537 (2)

538 (d) An employer may hire an employee to a position that
539 requires background screening before the employee completes the
540 screening process for training and orientation purposes.

541 However, the employee may not have direct contact with
542 vulnerable persons until the screening process is completed and
543 the employee demonstrates that he or she exhibits no behaviors
544 that warrant the denial or termination of employment.

545 Section 12. Section 435.12, Florida Statutes, is created to
546 read:

547 435.12 Care Provider Background Screening Clearinghouse.—

548 (1) The Agency for Health Care Administration in
549 consultation with the Department of Law Enforcement shall create
550 a secure web-based system, which shall be known as the "Care
551 Provider Background Screening Clearinghouse" or "clearinghouse,"
552 and which shall be implemented to the full extent practicable no
553 later than September 30, 2013, subject to the specified agencies
554 being funded and equipped to participate in such program. The
555 clearinghouse shall allow the results of criminal history checks
556 provided to the specified agencies for screening of persons
557 qualified as care providers under s. 943.0542 to be shared among
558 the specified agencies when a person has applied to volunteer,
559 be employed, be licensed, or enter into a contract that requires
560 a state and national fingerprint-based criminal history check.
561 The Agency for Health Care Administration and the Department of
562 Law Enforcement may adopt rules to create forms or implement
563 procedures needed to carry out this section.



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564 (2) (a) To ensure that the information in the clearinghouse
565 is current, the fingerprints of an employee required to be
566 screened by a specified agency and included in the clearinghouse
567 must be:

568 1. Retained by the Department of Law Enforcement pursuant
569 to s. 943.05(2)(g) and (h) and (3), and the Department of Law
570 Enforcement must report the results of searching those
571 fingerprints against state incoming arrest fingerprint
572 submissions to the Agency for Health Care Administration for
573 inclusion in the clearinghouse.

574 2. Resubmitted for a Federal Bureau of Investigation
575 national criminal history check every 5 years until such time as
576 the fingerprints are retained by the Federal Bureau of
577 Investigation.

578 3. Subject to retention on a 5-year renewal basis with fees
579 collected at the time of initial submission or resubmission of
580 fingerprints.

581 (b) Until such time as the fingerprints are retained at the
582 Federal Bureau of Investigation, an employee with a break in
583 service of more than 90 days from a position that requires
584 screening by a specified agency must submit to a national
585 screening if the person returns to a position that requires
586 screening by a specified agency.

587 (c) An employer of persons subject to screening by a
588 specified agency must register with the clearinghouse and
589 maintain the employment status of all employees within the
590 clearinghouse. Initial employment status and any changes in
591 status must be reported within 10 business days.

592 (3) An employee who has undergone a fingerprint-based



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593 criminal history check by a specified agency before the
594 clearinghouse is operational is not required to be checked again
595 solely for the purpose of entry in the clearinghouse. Every
596 employee who is or will become subject to fingerprint-based
597 criminal history checks to be eligible to be licensed, have
598 their license renewed, or meet screening or rescreening
599 requirements by a specified agency once the specified agency
600 participates in the clearinghouse shall be subject to the
601 requirements of this section with respect to entry of records in
602 the clearinghouse and retention of fingerprints for reporting
603 the results of searching against state incoming arrest
604 fingerprint submissions.

605 Section 13. Section 456.0135, Florida Statutes, is created
606 to read:

607 456.0135 General background screening provisions.—

608 (1) An application for initial licensure or license renewal
609 received on or after January 1, 2013, under chapter 458, chapter
610 459, chapter 460, chapter 461, or chapter 464, or s. 465.022
611 shall include fingerprints pursuant to procedures established by
612 the department through a vendor approved by the Department of
613 Law Enforcement and fees imposed for the initial screening and
614 retention of fingerprints. Fingerprints must be submitted
615 electronically to the Department of Law Enforcement for state
616 processing and the Department of Law Enforcement shall forward
617 the fingerprints to the Federal Bureau of Investigation for
618 national processing. Each board, or the department if there is
619 no board, shall screen the results to determine if an applicant
620 meets licensure requirements. For any subsequent renewal of the
621 applicant's license, the department shall request the Department



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622 of Law Enforcement to forward the retained fingerprints of the
623 applicant to the Federal Bureau of Investigation for a national
624 criminal history check.

625 (2) All fingerprints submitted to the Department of Law
626 Enforcement as required under subsection (1) shall be retained
627 by the Department of Law Enforcement as provided under s.
628 943.05(2)(g) and (h) and (3). The department shall notify the
629 Department of Law Enforcement regarding any person whose
630 fingerprints have been retained but who is no longer licensed.

631 (3) The costs of fingerprint processing, including the cost
632 for retaining fingerprints, shall be borne by the applicant
633 subject to the background screening.

634 Section 14. Subsection (1) of section 464.203, Florida
635 Statutes, is amended to read:

636 464.203 Certified nursing assistants; certification
637 requirement.—

638 (1) The board shall issue a certificate to practice as a
639 certified nursing assistant to any person who demonstrates a
640 minimum competency to read and write and successfully passes the
641 required background screening pursuant to s. 400.215. If the
642 person has successfully passed the required background screening
643 pursuant to s. 400.215 or s. 408.809 within 90 days before
644 applying for a certificate to practice and the person's
645 background screening results are not retained in the
646 clearinghouse created under s. 435.12, the board shall waive the
647 requirement that the applicant successfully pass an additional
648 background screening pursuant to s. 400.215. The person must
649 also meet and ~~meets~~ one of the following requirements:

650 (a) Has successfully completed an approved training program



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651 and achieved a minimum score, established by rule of the board,
652 on the nursing assistant competency examination, which consists
653 of a written portion and skills-demonstration portion approved
654 by the board and administered at a site and by personnel
655 approved by the department.

656 (b) Has achieved a minimum score, established by rule of
657 the board, on the nursing assistant competency examination,
658 which consists of a written portion and skills-demonstration
659 portion, approved by the board and administered at a site and by
660 personnel approved by the department and:

- 661 1. Has a high school diploma, or its equivalent; or
662 2. Is at least 18 years of age.

663 (c) Is currently certified in another state; is listed on
664 that state's certified nursing assistant registry; and has not
665 been found to have committed abuse, neglect, or exploitation in
666 that state.

667 (d) Has completed the curriculum developed by the
668 Department of Education and achieved a minimum score,
669 established by rule of the board, on the nursing assistant
670 competency examination, which consists of a written portion and
671 skills-demonstration portion, approved by the board and
672 administered at a site and by personnel approved by the
673 department.

674 Section 15. Paragraph (h) of subsection (2) of section
675 943.05, Florida Statutes, is amended to read:

676 943.05 Criminal Justice Information Program; duties; crime
677 reports.—

678 (2) The program shall:

679 (h) For each agency or qualified entity that officially



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680 requests retention of fingerprints or for which retention is
681 otherwise required by law, search all arrest fingerprint
682 submissions received under s. 943.051 against the fingerprints
683 retained in the statewide automated fingerprint identification
684 system under paragraph (g).

685 1. Any arrest record that is identified with the retained
686 fingerprints of a person subject to background screening as
687 provided in paragraph (g) shall be reported to the appropriate
688 agency or qualified entity.

689 2. To participate in this search process, agencies or
690 qualified entities must notify each person fingerprinted that
691 his or her fingerprints will be retained, pay an annual fee to
692 the department, and inform the department of any change in the
693 affiliation, employment, or contractual status of each person
694 whose fingerprints are retained under paragraph (g) if such
695 change removes or eliminates the agency or qualified entity's
696 basis or need for receiving reports of any arrest of that
697 person, so that the agency or qualified entity is not obligated
698 to pay the upcoming annual fee for the retention and searching
699 of that person's fingerprints to the department. The department
700 shall adopt a rule setting the amount of the annual fee to be
701 imposed upon each participating agency or qualified entity for
702 performing these searches and establishing the procedures for
703 the retention of fingerprints and the dissemination of search
704 results. The fee may be borne by the agency, qualified entity,
705 or person subject to fingerprint retention or as otherwise
706 provided by law. Consistent with the recognition of criminal
707 justice agencies expressed in s. 943.053(3), these services
708 shall be provided to criminal justice agencies for criminal



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709 justice purposes free of charge. Qualified entities that elect
710 to participate in the fingerprint retention and search process
711 shall timely remit the fee to the department by a payment
712 mechanism approved by the department. If requested by the
713 qualified entity, and with the approval of the department, such
714 fees may be timely remitted to the department by a qualified
715 entity upon receipt of an invoice for such fees from the
716 department. Failure of a qualified entity to pay the amount due
717 on a timely basis or as invoiced by the department may result in
718 the refusal by the department to permit the qualified entity to
719 continue to participate in the fingerprint retention and search
720 process until all fees due and owing are paid.

721 3. Agencies that participate in the fingerprint retention
722 and search process may adopt rules pursuant to ss. 120.536(1)
723 and 120.54 to require employers to keep the agency informed of
724 any change in the affiliation, employment, or contractual status
725 of each person whose fingerprints are retained under paragraph
726 (g) if such change removes or eliminates the agency's basis or
727 need for receiving reports of any arrest of that person, so that
728 the agency is not obligated to pay the upcoming annual fee for
729 the retention and searching of that person's fingerprints to the
730 department.

731 Section 16. Subsection (12) of section 943.053, Florida
732 Statutes, is amended, and subsection (13) is added to that
733 section, to read:

734 943.053 Dissemination of criminal justice information;
735 fees.—

736 (12) Notwithstanding any other provision of law, when a
737 criminal history check or a duty to disclose the absence of a



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738 criminal history check is mandated by state law, or when a
739 privilege or benefit is conferred by state law in return for
740 exercising an option of conducting a criminal history check, the
741 referenced criminal history check, whether it is an initial or
742 renewal check, shall include a Florida criminal history provided
743 by the department as set forth in this section. Such Florida
744 criminal history information may be provided by a private vendor
745 only if that information is directly obtained from the
746 department for each request. When a national criminal history
747 check is required or authorized by state law, the national
748 criminal history check shall be submitted by and through the
749 department in the manner established by the department for such
750 checks, unless otherwise required by federal law. The fee for
751 criminal history information as established by state law or, in
752 the case of national checks, by the Federal Government, shall be
753 borne by the person or entity submitting the request, or as
754 provided by law. Criminal history information provided by any
755 other governmental entity of this state or any private entity
756 shall not be substituted for criminal history information
757 provided by the department when the criminal history check or a
758 duty to disclose the absence of a criminal history check is
759 required by statute or is made a condition of a privilege or
760 benefit by law. When fingerprints are required or permitted to
761 be used as a basis for identification in conducting such a
762 criminal history check, the fingerprints must be taken by a law
763 enforcement agency employee, a government agency employee, a
764 qualified electronic fingerprint service provider, or a private
765 employer. Fingerprints taken by the subject of the criminal
766 history check may not be accepted or used for the purpose of



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767 identification in conducting the criminal history check.

768 (13) (a) For the department to accept an electronic
769 fingerprint submission from:

770 1. A private vendor engaged in the business of providing
771 electronic fingerprint submission; or

772 2. A private entity or public agency that submits the
773 fingerprints of its own employees, volunteers, contractors,
774 associates, or applicants for the purpose of conducting a
775 required or permitted criminal history background check,
776
777 the vendor, entity, or agency submitting the fingerprints must
778 enter into an agreement with the department which, at a minimum,
779 obligates the vendor, entity, or agency to comply with certain
780 specified standards to ensure that all persons having direct or
781 indirect responsibility for taking, identifying, and
782 electronically submitting fingerprints are qualified to do so
783 and ensures the integrity and security of all personal
784 information gathered from the persons whose fingerprints are
785 submitted.

786 (b) Such standards shall include, but need not be limited
787 to, requiring that:

788 1. All persons responsible for taking fingerprints and
789 collecting personal identifying information from the persons
790 being fingerprinted to meet current written state and federal
791 guidelines for identity verification and for recording legible
792 fingerprints;

793 2. The department and the Federal Bureau of Investigation's
794 technical standards for the electronic submission of
795 fingerprints are satisfied;



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796 3. The fingerprint images electronically submitted satisfy
797 the department's and the Federal Bureau of Investigation's
798 quality standards; and

799 4. A person may not take his or her own fingerprints for
800 submission to the department.

801 (c) The requirement for entering into an agreement with the
802 department for this purpose does not apply to criminal justice
803 agencies as defined at s. 943.045(10).

804 (d) The agreement with the department must require the
805 vendor, entity, or agency to collect from the person or entity
806 on whose behalf the fingerprints are submitted the fees
807 prescribed by state and federal law for processing the
808 fingerprints for a criminal history check. The agreement must
809 provide that such fees be timely remitted to the department by a
810 payment mechanism approved by the department. If requested by
811 the vendor, entity, or agency, and with the approval of the
812 department, such fees may be timely remitted to the department
813 by a vendor, entity, or agency upon receipt of an invoice for
814 such fees from the department. Failure of a vendor, entity, or
815 agency to pay the amount due on a timely basis or as invoiced by
816 the department may result in the refusal by the department to
817 accept future fingerprint submissions until all fees due and
818 owing are paid.

819 Section 17. Paragraph (a) of subsection (4) of section
820 943.0585, Florida Statutes, is amended to read:

821 943.0585 Court-ordered expunction of criminal history
822 records.—The courts of this state have jurisdiction over their
823 own procedures, including the maintenance, expunction, and
824 correction of judicial records containing criminal history



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825 information to the extent such procedures are not inconsistent
826 with the conditions, responsibilities, and duties established by
827 this section. Any court of competent jurisdiction may order a
828 criminal justice agency to expunge the criminal history record
829 of a minor or an adult who complies with the requirements of
830 this section. The court shall not order a criminal justice
831 agency to expunge a criminal history record until the person
832 seeking to expunge a criminal history record has applied for and
833 received a certificate of eligibility for expunction pursuant to
834 subsection (2). A criminal history record that relates to a
835 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
836 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
837 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
838 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
839 any violation specified as a predicate offense for registration
840 as a sexual predator pursuant to s. 775.21, without regard to
841 whether that offense alone is sufficient to require such
842 registration, or for registration as a sexual offender pursuant
843 to s. 943.0435, may not be expunged, without regard to whether
844 adjudication was withheld, if the defendant was found guilty of
845 or pled guilty or nolo contendere to the offense, or if the
846 defendant, as a minor, was found to have committed, or pled
847 guilty or nolo contendere to committing, the offense as a
848 delinquent act. The court may only order expunction of a
849 criminal history record pertaining to one arrest or one incident
850 of alleged criminal activity, except as provided in this
851 section. The court may, at its sole discretion, order the
852 expunction of a criminal history record pertaining to more than
853 one arrest if the additional arrests directly relate to the



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854 original arrest. If the court intends to order the expunction of
855 records pertaining to such additional arrests, such intent must
856 be specified in the order. A criminal justice agency may not
857 expunge any record pertaining to such additional arrests if the
858 order to expunge does not articulate the intention of the court
859 to expunge a record pertaining to more than one arrest. This
860 section does not prevent the court from ordering the expunction
861 of only a portion of a criminal history record pertaining to one
862 arrest or one incident of alleged criminal activity.

863 Notwithstanding any law to the contrary, a criminal justice
864 agency may comply with laws, court orders, and official requests
865 of other jurisdictions relating to expunction, correction, or
866 confidential handling of criminal history records or information
867 derived therefrom. This section does not confer any right to the
868 expunction of any criminal history record, and any request for
869 expunction of a criminal history record may be denied at the
870 sole discretion of the court.

871 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
872 criminal history record of a minor or an adult which is ordered
873 expunged by a court of competent jurisdiction pursuant to this
874 section must be physically destroyed or obliterated by any
875 criminal justice agency having custody of such record; except
876 that any criminal history record in the custody of the
877 department must be retained in all cases. A criminal history
878 record ordered expunged that is retained by the department is
879 confidential and exempt from the provisions of s. 119.07(1) and
880 s. 24(a), Art. I of the State Constitution and not available to
881 any person or entity except upon order of a court of competent
882 jurisdiction. A criminal justice agency may retain a notation



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883 indicating compliance with an order to expunge.

884 (a) The person who is the subject of a criminal history
885 record that is expunged under this section or under other
886 provisions of law, including former s. 893.14, former s. 901.33,
887 and former s. 943.058, may lawfully deny or fail to acknowledge
888 the arrests covered by the expunged record, except when the
889 subject of the record:

890 1. Is a candidate for employment with a criminal justice
891 agency;

892 2. Is a defendant in a criminal prosecution;

893 3. Concurrently or subsequently petitions for relief under
894 this section or s. 943.059;

895 4. Is a candidate for admission to The Florida Bar;

896 5. Is seeking to be employed or licensed by or to contract
897 with the Department of Children and Family Services, the
898 Division of Vocational Rehabilitation within the Department of
899 Education, the Agency for Health Care Administration, the Agency
900 for Persons with Disabilities, the Department of Health, the
901 Department of Elderly Affairs, or the Department of Juvenile
902 Justice or to be employed or used by such contractor or licensee
903 in a sensitive position having direct contact with children, the
904 ~~developmentally disabled, the aged, or the elderly as provided~~
905 ~~in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.~~
906 ~~402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5),~~
907 ~~chapter 916, s. 985.644, chapter 400, or chapter 429;~~

908 6. Is seeking to be employed or licensed by the Department
909 of Education, any district school board, any university
910 laboratory school, any charter school, any private or parochial
911 school, or any local governmental entity that licenses child



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912 care facilities; or

913 7. Is seeking authorization from a seaport listed in s.
914 311.09 for employment within or access to one or more of such
915 seaports pursuant to s. 311.12.

916 Section 18. Paragraph (a) of subsection (4) of section
917 943.059, Florida Statutes, is amended to read:

918 943.059 Court-ordered sealing of criminal history records.-
919 The courts of this state shall continue to have jurisdiction
920 over their own procedures, including the maintenance, sealing,
921 and correction of judicial records containing criminal history
922 information to the extent such procedures are not inconsistent
923 with the conditions, responsibilities, and duties established by
924 this section. Any court of competent jurisdiction may order a
925 criminal justice agency to seal the criminal history record of a
926 minor or an adult who complies with the requirements of this
927 section. The court shall not order a criminal justice agency to
928 seal a criminal history record until the person seeking to seal
929 a criminal history record has applied for and received a
930 certificate of eligibility for sealing pursuant to subsection
931 (2). A criminal history record that relates to a violation of s.
932 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
933 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
934 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
935 916.1075, a violation enumerated in s. 907.041, or any violation
936 specified as a predicate offense for registration as a sexual
937 predator pursuant to s. 775.21, without regard to whether that
938 offense alone is sufficient to require such registration, or for
939 registration as a sexual offender pursuant to s. 943.0435, may
940 not be sealed, without regard to whether adjudication was



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941 withheld, if the defendant was found guilty of or pled guilty or
942 nolo contendere to the offense, or if the defendant, as a minor,
943 was found to have committed or pled guilty or nolo contendere to
944 committing the offense as a delinquent act. The court may only
945 order sealing of a criminal history record pertaining to one
946 arrest or one incident of alleged criminal activity, except as
947 provided in this section. The court may, at its sole discretion,
948 order the sealing of a criminal history record pertaining to
949 more than one arrest if the additional arrests directly relate
950 to the original arrest. If the court intends to order the
951 sealing of records pertaining to such additional arrests, such
952 intent must be specified in the order. A criminal justice agency
953 may not seal any record pertaining to such additional arrests if
954 the order to seal does not articulate the intention of the court
955 to seal records pertaining to more than one arrest. This section
956 does not prevent the court from ordering the sealing of only a
957 portion of a criminal history record pertaining to one arrest or
958 one incident of alleged criminal activity. Notwithstanding any
959 law to the contrary, a criminal justice agency may comply with
960 laws, court orders, and official requests of other jurisdictions
961 relating to sealing, correction, or confidential handling of
962 criminal history records or information derived therefrom. This
963 section does not confer any right to the sealing of any criminal
964 history record, and any request for sealing a criminal history
965 record may be denied at the sole discretion of the court.

966 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
967 history record of a minor or an adult which is ordered sealed by
968 a court of competent jurisdiction pursuant to this section is
969 confidential and exempt from the provisions of s. 119.07(1) and



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970 s. 24(a), Art. I of the State Constitution and is available only
971 to the person who is the subject of the record, to the subject's
972 attorney, to criminal justice agencies for their respective
973 criminal justice purposes, which include conducting a criminal
974 history background check for approval of firearms purchases or
975 transfers as authorized by state or federal law, to judges in
976 the state courts system for the purpose of assisting them in
977 their case-related decisionmaking responsibilities, as set forth
978 in s. 943.053(5), or to those entities set forth in
979 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
980 licensing, access authorization, and employment purposes.

981 (a) The subject of a criminal history record sealed under
982 this section or under other provisions of law, including former
983 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
984 deny or fail to acknowledge the arrests covered by the sealed
985 record, except when the subject of the record:

- 986 1. Is a candidate for employment with a criminal justice
987 agency;
- 988 2. Is a defendant in a criminal prosecution;
- 989 3. Concurrently or subsequently petitions for relief under
990 this section or s. 943.0585;
- 991 4. Is a candidate for admission to The Florida Bar;
- 992 5. Is seeking to be employed or licensed by or to contract
993 with the Department of Children and Family Services, the
994 Division of Vocational Rehabilitation within the Department of
995 Education, the Agency for Health Care Administration, the Agency
996 for Persons with Disabilities, the Department of Health, the
997 Department of Elderly Affairs, or the Department of Juvenile
998 Justice or to be employed or used by such contractor or licensee



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999 in a sensitive position having direct contact with children, the
1000 ~~developmentally disabled, the aged, or the elderly as provided~~
1001 ~~in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.~~
1002 ~~402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), s.~~
1003 ~~415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;~~

1004 6. Is seeking to be employed or licensed by the Department
1005 of Education, any district school board, any university
1006 laboratory school, any charter school, any private or parochial
1007 school, or any local governmental entity that licenses child
1008 care facilities;

1009 7. Is attempting to purchase a firearm from a licensed
1010 importer, licensed manufacturer, or licensed dealer and is
1011 subject to a criminal history check under state or federal law;
1012 or

1013 8. Is seeking authorization from a Florida seaport
1014 identified in s. 311.09 for employment within or access to one
1015 or more of such seaports pursuant to s. 311.12.

1016 Section 19. This act shall take effect upon becoming a law.

1017
1018 ===== T I T L E A M E N D M E N T =====

1019 And the title is amended as follows:

1020
1021 Delete everything before the enacting clause
1022 and insert:

1023 A bill to be entitled
1024 An act relating to background screening; amending s.
1025 394.4572, F.S.; providing that mental health personnel
1026 working in a facility licensed under ch. 395, F.S.,
1027 who work on an intermittent basis for less than 15



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1028 hours per week of direct, face-to-face contact with
1029 patients are exempt from the fingerprinting and
1030 screening requirements under certain conditions;
1031 providing an exception; amending s. 408.809, F.S.;
1032 providing additional conditions for a person to
1033 satisfy screening requirements; eliminating a rule
1034 that requires the Agency for Health Care
1035 Administration to stagger rescreening schedules;
1036 providing a rescreening schedule; amending s.
1037 409.1757, F.S.; adding law enforcement officers who
1038 have a good moral character to the list of
1039 professionals who are not required to be
1040 refingerprinted or rescreened; amending s. 409.221,
1041 F.S.; revising provisions relating to background
1042 screening for persons rendering care in the consumer-
1043 directed care program; amending s. 413.20, F.S.,
1044 relating to general vocational rehabilitation
1045 programs; providing a definition; amending s. 413.208,
1046 F.S.; requiring registration of service providers;
1047 requiring background screening and rescreening of
1048 certain persons having contact with vulnerable
1049 persons; providing exemptions from background
1050 screening; providing disqualifying offenses; providing
1051 that the cost of screening shall be borne by the
1052 provider or the person being screened; providing
1053 conditions for the denial of registration; providing
1054 for notice of denial or termination; requiring
1055 providers to remove persons who have not successfully
1056 passed screening; providing for applicability;



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1057 amending s. 430.0402, F.S.; including a person who has
1058 access to a client's personal identification
1059 information within the definition of the term "direct
1060 service provider"; exempting certain professionals
1061 licensed by the Department of Health, attorneys in
1062 good standing, relatives of clients, and volunteers
1063 who assist on an intermittent basis for less than 20
1064 hours per month from level 2 background screening;
1065 excepting certain licensed professionals and persons
1066 screened as a licensure requirement from further
1067 screening under certain circumstances; requiring
1068 direct service providers working as of a certain date
1069 to be screened within a specified period; providing a
1070 phase-in for screening direct service providers;
1071 requiring that employers of direct service providers
1072 and certain other individuals be rescreened every 5
1073 years unless fingerprints are retained electronically
1074 by the Department of Law Enforcement; removing an
1075 offense from the list of disqualifying offenses for
1076 purposes of background screening; amending s. 435.02,
1077 F.S.; revising and providing definitions relating to
1078 employment screening; amending s. 435.04, F.S.;
1079 requiring vendors who submit fingerprints on behalf of
1080 employers to meet specified criteria; amending s.
1081 435.06, F.S.; authorizing an employer to hire an
1082 employee to a position that otherwise requires
1083 background screening before the completion of the
1084 screening process for the purpose of training the
1085 employee; prohibiting the employee from having direct



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1086 contact with vulnerable persons until the screening
1087 process is complete; creating s. 435.12, F.S.;
1088 creating the Care Provider Background Screening
1089 Clearinghouse under the Agency for Health Care
1090 Administration, in consultation with the Department of
1091 Law Enforcement; providing rulemaking authority;
1092 providing for the implementation and operation of the
1093 clearinghouse; providing for the results of certain
1094 criminal history checks to be shared among specified
1095 agencies; providing for retention of fingerprints;
1096 providing for the registration of employers; providing
1097 an exemption for certain employees who have undergone
1098 a criminal history check before the clearinghouse is
1099 operational; creating s. 456.0135, F.S.; requiring an
1100 application for initial licensure or license renewal
1101 in a profession regulated by the Department of Health
1102 to include fingerprints submitted by an approved
1103 vendor after a specified date; providing procedures
1104 and conditions for retention of fingerprints;
1105 requiring the applicant to pay the costs of
1106 fingerprint processing; amending s. 464.203, F.S.;
1107 requiring the Board of Nursing to waive background
1108 screening requirements for certain certified nursing
1109 assistants; amending s. 943.05, F.S.; providing
1110 procedures for qualified entities participating in the
1111 Criminal Justice Information Program that elect to
1112 participate in the fingerprint retention and search
1113 process; providing for the imposition of fees for
1114 processing fingerprints; authorizing the Department of



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1115 Law Enforcement to exclude certain entities from
1116 participation for failure to timely remit fingerprint
1117 processing fees; amending s. 943.053, F.S.; providing
1118 procedures for the submission of fingerprints by
1119 private vendors, private entities, and public agencies
1120 for certain criminal history checks; requiring the
1121 vendor, entity, or agency to enter into an agreement
1122 with the Department of Law Enforcement specifying
1123 standards for electronic submission of fingerprints;
1124 exempting specified criminal justice agencies from the
1125 requirement for an agreement; providing procedures for
1126 the vendor, entity, or agency to collect certain fees
1127 and to remit those fees to the Department of Law
1128 Enforcement; authorizing the Department of Law
1129 Enforcement to exclude certain entities from
1130 participation for failure to timely remit fingerprint
1131 processing fees; amending s. 943.0585, F.S.; revising
1132 provisions relating to the court-ordered expunction of
1133 criminal history records; amending s. 943.059, F.S.;
1134 revising provisions relating to the court-ordered
1135 sealing of criminal history records; providing an
1136 effective date.

By Senator Storms

10-00270-12

2012320__

1 A bill to be entitled
 2 An act relating to background screening; amending s.
 3 394.4572, F.S.; providing that mental health personnel
 4 working in a facility licensed under ch. 395, F.S.,
 5 who work on an intermittent basis for less than 15
 6 hours per week of direct, face-to-face contact with
 7 patients are exempt from the fingerprinting and
 8 screening requirements; providing an exception;
 9 amending s. 409.1757, F.S.; adding law enforcement
 10 officers who have a good moral character to the list
 11 of professionals who are not required to be
 12 reprinted or rescreened; amending s. 430.0402,
 13 F.S.; including volunteers within the definition of
 14 the term "direct service provider" for purposes of
 15 required background screening; exempting a volunteer
 16 who meets certain criteria and a client's relative or
 17 spouse from the screening requirement; excepting
 18 certain licensed professionals and persons screened as
 19 a licensure requirement from further screening under
 20 certain circumstances; requiring direct service
 21 providers working as of a certain date to be screened
 22 within a specified period; providing a phase-in for
 23 screening direct service providers; requiring that
 24 employers of direct service providers and certain
 25 other individuals be rescreened every 5 years unless
 26 fingerprints are retained electronically by the
 27 Department of Law Enforcement; removing an offense
 28 from the list of disqualifying offenses for purposes
 29 of background screening; amending s. 435.04, F.S.;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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2012320__

30 requiring vendors who submit fingerprints on behalf of
 31 employers to meet specified criteria; requiring that
 32 fingerprints be retained for any person screened by a
 33 certain date; amending s. 435.06, F.S.; authorizing an
 34 employer to hire an employee to a position that
 35 otherwise requires background screening before the
 36 completion of the screening process for the purpose of
 37 training the employee; prohibiting the employee from
 38 having direct contact with vulnerable persons until
 39 the screening process is complete; amending s. 435.07,
 40 F.S.; providing that personnel of a qualified entity
 41 as defined in ch. 943, F.S., may apply for an
 42 exemption from screening; amending s. 408.809, F.S.;

43 eliminating a rule that requires the Agency for Health
 44 Care Administration to stagger rescreening schedules;
 45 providing a rescreening schedule; amending s. 464.203,
 46 F.S.; requiring the Board of Nursing to waive
 47 background screening requirements for certain
 48 certified nursing assistants; requiring the
 49 establishment of a statewide interagency workgroup
 50 relating to statewide background screening procedures
 51 and information sharing; providing for membership;
 52 requiring the workgroup to submit a report to the
 53 Legislature by a specified date; setting forth the
 54 topics that, at a minimum, the workgroup must address
 55 in its work plan; providing an effective date.

56
57 Be It Enacted by the Legislature of the State of Florida:
58

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59 Section 1. Paragraph (d) is added to subsection (1) of
 60 section 394.4572, Florida Statutes, to read:
 61 394.4572 Screening of mental health personnel.—
 62 (1)
 63 (d) Mental health personnel working in a facility licensed
 64 under chapter 395 who work on an intermittent basis for less
 65 than 15 hours per week of direct, face-to-face contact with
 66 patients are exempt from the fingerprinting and screening
 67 requirements, except that persons working in a mental health
 68 facility where the primary purpose of the facility is the mental
 69 health treatment of minors must be fingerprinted and meet
 70 screening requirements.

71 Section 2. Section 409.1757, Florida Statutes, is amended
 72 to read:

73 409.1757 Persons not required to be refingerprinted or
 74 rescreened.—Any ~~provision of~~ law to the contrary
 75 notwithstanding, human resource personnel who have been
 76 fingerprinted or screened pursuant to chapters 393, 394, 397,
 77 402, and this chapter, ~~and~~ teachers who have been fingerprinted
 78 pursuant to chapter 1012, and law enforcement officers who meet
 79 the requirements of s. 943.13, who have not been unemployed for
 80 more than 90 days thereafter, and who under the penalty of
 81 perjury attest to the completion of such fingerprinting or
 82 screening and to compliance with ~~the provisions of~~ this section
 83 and the standards for good moral character as contained in such
 84 provisions as ss. 110.1127(3), 393.0655(1), 394.457(6), 397.451,
 85 402.305(2), ~~and~~ 409.175(6), and 943.13(7), are shall not be
 86 required to be refingerprinted or rescreened in order to comply
 87 with any caretaker screening or fingerprinting requirements.

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88 Section 3. Section 430.0402, Florida Statutes, is amended
 89 to read:

90 430.0402 Screening of direct service providers.—
 91 (1) (a) Level 2 background screening pursuant to chapter 435
 92 is required for direct service providers. Background screening
 93 includes employment history checks as provided in s. 435.03(1)
 94 and local criminal records checks through local law enforcement
 95 agencies.

96 (b) For purposes of this section, the term "direct service
 97 provider" means a person 18 years of age or older, including a
 98 volunteer, who, pursuant to a program to provide services to the
 99 elderly, has direct, face-to-face contact with a client while
 100 providing services to the client and ~~or~~ has access to the
 101 client's living areas or to the client's funds or personal
 102 property. The term does not include ~~includes coordinators,~~
 103 ~~managers, and supervisors of residential facilities and~~
 104 volunteers who assist on an intermittent basis for less than 20
 105 hours of direct, face-to-face contact with a client per month,
 106 individuals who are related by blood to the client, or the
 107 client's spouse.

108 (2) Licensed physicians ~~or,~~ nurses, ~~or~~ other professionals
 109 licensed by the Department of Health, or attorneys in good
 110 standing with The Florida Bar are not subject to background
 111 screening if they are providing a service that is within the
 112 scope of their licensed practice.

113 (3) Individuals qualified for employment by the Agency for
 114 Health Care Administration pursuant to the agency's background
 115 screening standards for licensure or employment contained in s.
 116 408.809 are not subject to subsequent or additional Level 2

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 117 screening pursuant to chapter 435, or to the unique screening
 118 requirements of this section, by virtue of their employment as a
 119 direct service provider if they are providing a service that is
 120 within the scope of their licensed practice.

121 ~~(4)(3)~~ Refusal on the part of an employer to dismiss a
 122 manager, supervisor, or direct service provider who has been
 123 found to be in noncompliance with standards of this section
 124 shall result in the automatic denial, termination, or revocation
 125 of the license or certification, rate agreement, purchase order,
 126 or contract, in addition to any other remedies authorized by
 127 law.

128 (5) Individuals serving as direct service providers on July
 129 31, 2011, must be screened by July 1, 2013. The department may
 130 adopt rules to establish a schedule to stagger the
 131 implementation of the required screening over a 1-year period,
 132 beginning July 1, 2012, through July 1, 2013.

133 (6) An employer of a direct service provider who previously
 134 qualified for employment or volunteer work under Level 1
 135 screening standards or an individual who is required to be
 136 screened according to the Level 2 screening standards contained
 137 in chapter 435, pursuant to this section, shall be rescreened
 138 every 5 years following the date of his or her last background
 139 screening or exemption, unless such individual's fingerprints
 140 are continuously retained and monitored by the Department of Law
 141 Enforcement in the federal fingerprint retention program
 142 according to the procedures specified in s. 943.05.

143 ~~(7)(4)~~ The background screening conducted pursuant to this
 144 section must ensure that, in addition to the disqualifying
 145 offenses listed in s. 435.04, no person subject to the

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 146 provisions of this section has an arrest awaiting final
 147 disposition for, has been found guilty of, regardless of
 148 adjudication, or entered a plea of nolo contendere or guilty to,
 149 or has been adjudicated delinquent and the record has not been
 150 sealed or expunged for, any offense prohibited under any of the
 151 following provisions of state law or similar law of another
 152 jurisdiction:

153 ~~(a) Any authorizing statutes, if the offense was a felony.~~

154 ~~(a)(b)~~ Section 409.920, relating to Medicaid provider
 155 fraud.

156 ~~(b)(c)~~ Section 409.9201, relating to Medicaid fraud.

157 ~~(c)(d)~~ Section 817.034, relating to fraudulent acts through
 158 mail, wire, radio, electromagnetic, photoelectronic, or
 159 photooptical systems.

160 ~~(d)(e)~~ Section 817.234, relating to false and fraudulent
 161 insurance claims.

162 ~~(e)(f)~~ Section 817.505, relating to patient brokering.

163 ~~(f)(g)~~ Section 817.568, relating to criminal use of
 164 personal identification information.

165 ~~(g)(h)~~ Section 817.60, relating to obtaining a credit card
 166 through fraudulent means.

167 ~~(h)(i)~~ Section 817.61, relating to fraudulent use of credit
 168 cards, if the offense was a felony.

169 ~~(i)(j)~~ Section 831.01, relating to forgery.

170 ~~(j)(k)~~ Section 831.02, relating to uttering forged
 171 instruments.

172 ~~(k)(l)~~ Section 831.07, relating to forging bank bills,
 173 checks, drafts, or promissory notes.

174 ~~(l)(m)~~ Section 831.09, relating to uttering forged bank

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175 bills, checks, drafts, or promissory notes.

176 Section 4. Paragraph (e) is added to subsection (1) of
177 section 435.04, Florida Statutes, and subsection (4) is added to
178 that section, to read:

179 435.04 Level 2 screening standards.—

180 (1)

181 (e) Vendors who submit fingerprints on behalf of employers
182 must:

183 1. Use technology that is compliant with systems used by
184 the Department of Law Enforcement; and

185 2. Have the ability to communicate electronically with the
186 state agency accepting screening results from the Department of
187 Law Enforcement.

188 (4) Fingerprints required for screening under this section
189 shall be retained for any person who is screened on or after
190 July 1, 2014.

191 Section 5. Paragraph (d) is added to subsection (2) of
192 section 435.06, Florida Statutes, to read:

193 435.06 Exclusion from employment.—

194 (2)

195 (d) An employer may hire an employee to a position that
196 requires background screening before the employee completes the
197 screening process for training and orientation purposes.
198 However, the employee may not have direct contact with
199 vulnerable persons until the screening process is completed and
200 the employee demonstrates that he or she exhibits no behaviors
201 that warrant the denial or termination of employment.

202 Section 6. Subsection (6) is added to section 435.07,
203 Florida Statutes, to read:

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204 435.07 Exemptions from disqualification.—Unless otherwise
205 provided by law, the provisions of this section apply to
206 exemptions from disqualification for disqualifying offenses
207 revealed pursuant to background screenings required under this
208 chapter, regardless of whether those disqualifying offenses are
209 listed in this chapter or other laws.

210 (6) Personnel of a qualified entity as described in s.
211 943.0542, who are required to be screened pursuant to s. 435.04,
212 may apply for an exemption pursuant to this chapter.

213 Section 7. Section 408.809, Florida Statutes, is amended to
214 read:

215 408.809 Background screening; prohibited offenses.—

216 (1) Level 2 background screening pursuant to chapter 435
217 must be conducted through the agency on each of the following
218 persons, who are considered employees for the purposes of
219 conducting screening under chapter 435:

220 (a) The licensee, if an individual.

221 (b) The administrator or a similarly titled person who is
222 responsible for the day-to-day operation of the provider.

223 (c) The financial officer or similarly titled individual
224 who is responsible for the financial operation of the licensee
225 or provider.

226 (d) Any person who is a controlling interest if the agency
227 has reason to believe that such person has been convicted of any
228 offense prohibited by s. 435.04. For each controlling interest
229 who has been convicted of any such offense, the licensee shall
230 submit to the agency a description and explanation of the
231 conviction at the time of license application.

232 (e) Any person, as required by authorizing statutes,

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 233 seeking employment with a licensee or provider who is expected
 234 to, or whose responsibilities may require him or her to, provide
 235 personal care or services directly to clients or have access to
 236 client funds, personal property, or living areas; and any
 237 person, as required by authorizing statutes, contracting with a
 238 licensee or provider whose responsibilities require him or her
 239 to provide personal care or personal services directly to
 240 clients. Evidence of contractor screening may be retained by the
 241 contractor's employer or the licensee.

(2) Every 5 years following his or her licensure,
 242 employment, or entry into a contract in a capacity that under
 243 subsection (1) would require level 2 background screening under
 244 chapter 435, each such person must submit to level 2 background
 245 screening as a condition of retaining such license or
 246 continuing in such employment or contractual status. For any
 247 such rescreening, the agency shall request the Department of Law
 248 Enforcement to forward the person's fingerprints to the Federal
 249 Bureau of Investigation for a national criminal history record
 250 check. If the fingerprints of such a person are not retained by
 251 the Department of Law Enforcement under s. 943.05(2)(g), the
 252 person must file a complete set of fingerprints with the agency
 253 and the agency shall forward the fingerprints to the Department
 254 of Law Enforcement for state processing, and the Department of
 255 Law Enforcement shall forward the fingerprints to the Federal
 256 Bureau of Investigation for a national criminal history record
 257 check. The fingerprints may be retained by the Department of Law
 258 Enforcement under s. 943.05(2)(g). The cost of the state and
 259 national criminal history records checks required by level 2
 260 screening may be borne by the licensee or the person
 261

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 262 fingerprinted. Proof of compliance with level 2 screening
 263 standards submitted within the previous 5 years to meet any
 264 provider or professional licensure requirements of the agency,
 265 the Department of Health, the Agency for Persons with
 266 Disabilities, the Department of Children and Family Services, or
 267 the Department of Financial Services for an applicant for a
 268 certificate of authority or provisional certificate of authority
 269 to operate a continuing care retirement community under chapter
 270 651 satisfies the requirements of this section if the person
 271 subject to screening has not been unemployed for more than 90
 272 days and such proof is accompanied, under penalty of perjury, by
 273 an affidavit of compliance with the provisions of chapter 435
 274 and this section using forms provided by the agency.

(3) All fingerprints must be provided in electronic format.
 275 Screening results shall be reviewed by the agency with respect
 276 to the offenses specified in s. 435.04 and this section, and the
 277 qualifying or disqualifying status of the person named in the
 278 request shall be maintained in a database. The qualifying or
 279 disqualifying status of the person named in the request shall be
 280 posted on a secure website for retrieval by the licensee or
 281 designated agent on the licensee's behalf.
 282

(4) In addition to the offenses listed in s. 435.04, all
 283 persons required to undergo background screening pursuant to
 284 this part or authorizing statutes must not have an arrest
 285 awaiting final disposition for, must not have been found guilty
 286 of, regardless of adjudication, or entered a plea of nolo
 287 contendere or guilty to, and must not have been adjudicated
 288 delinquent and the record not have been sealed or expunged for
 289 any of the following offenses or any similar offense of another
 290

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291 jurisdiction:

292 (a) Any authorizing statutes, if the offense was a felony.

293 (b) This chapter, if the offense was a felony.

294 (c) Section 409.920, relating to Medicaid provider fraud.

295 (d) Section 409.9201, relating to Medicaid fraud.

296 (e) Section 741.28, relating to domestic violence.

297 (f) Section 817.034, relating to fraudulent acts through

298 mail, wire, radio, electromagnetic, photoelectronic, or

299 photooptical systems.

300 (g) Section 817.234, relating to false and fraudulent

301 insurance claims.

302 (h) Section 817.505, relating to patient brokering.

303 (i) Section 817.568, relating to criminal use of personal

304 identification information.

305 (j) Section 817.60, relating to obtaining a credit card

306 through fraudulent means.

307 (k) Section 817.61, relating to fraudulent use of credit

308 cards, if the offense was a felony.

309 (l) Section 831.01, relating to forgery.

310 (m) Section 831.02, relating to uttering forged

311 instruments.

312 (n) Section 831.07, relating to forging bank bills, checks,

313 drafts, or promissory notes.

314 (o) Section 831.09, relating to uttering forged bank bills,

315 checks, drafts, or promissory notes.

316 (p) Section 831.30, relating to fraud in obtaining

317 medicinal drugs.

318 (q) Section 831.31, relating to the sale, manufacture,

319 delivery, or possession with the intent to sell, manufacture, or

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320 deliver any counterfeit controlled substance, if the offense was

321 a felony.

322 (5) A person who serves as a controlling interest of, is

323 employed by, or contracts with a licensee on July 31, 2010, who

324 has been screened and qualified according to standards specified

325 in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015 in

326 compliance with the following schedule. ~~The agency may adopt~~

327 rules to establish a schedule to stagger the implementation of

328 the required rescreening over the 5 year period, beginning July

329 31, 2010, through July 31, 2015. If, upon rescreening, such

330 person has a disqualifying offense that was not a disqualifying

331 offense at the time of the last screening, but is a current

332 disqualifying offense and was committed before the last

333 screening, he or she may apply for an exemption from the

334 appropriate licensing agency and, if agreed to by the employer,

335 may continue to perform his or her duties until the licensing

336 agency renders a decision on the application for exemption if

337 the person is eligible to apply for an exemption and the

338 exemption request is received by the agency within 30 days after

339 receipt of the rescreening results by the person. The

340 rescreening schedule shall be:

341 (a) Individuals for whom the last screening was conducted

342 on or before December 31, 2004, must be rescreened by July 31,

343 2014.

344 (b) Individuals for whom the last screening conducted was

345 between January 1, 2005, and December 31, 2008, must be

346 rescreened by July 31, 2015.

347 (c) Individuals for whom the last screening conducted was

348 between January 1, 2009, through July 31, 2011, must be

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 349 rescreened by July 31, 2016.

350 ~~(6)(5)~~ The costs associated with obtaining the required
 351 screening must be borne by the licensee or the person subject to
 352 screening. Licensees may reimburse persons for these costs. The
 353 Department of Law Enforcement shall charge the agency for
 354 screening pursuant to s. 943.053(3). The agency shall establish
 355 a schedule of fees to cover the costs of screening.

356 ~~(7)(6)~~(a) As provided in chapter 435, the agency may grant
 357 an exemption from disqualification to a person who is subject to
 358 this section and who:

- 359 1. Does not have an active professional license or
 360 certification from the Department of Health; or
- 361 2. Has an active professional license or certification from
 362 the Department of Health but is not providing a service within
 363 the scope of that license or certification.

364 (b) As provided in chapter 435, the appropriate regulatory
 365 board within the Department of Health, or the department itself
 366 if there is no board, may grant an exemption from
 367 disqualification to a person who is subject to this section and
 368 who has received a professional license or certification from
 369 the Department of Health or a regulatory board within that
 370 department and that person is providing a service within the
 371 scope of his or her licensed or certified practice.

372 ~~(8)(7)~~ The agency and the Department of Health may adopt
 373 rules pursuant to ss. 120.536(1) and 120.54 to implement this
 374 section, chapter 435, and authorizing statutes requiring
 375 background screening and to implement and adopt criteria
 376 relating to retaining fingerprints pursuant to s. 943.05(2).

377 ~~(9)(8)~~ There is no unemployment compensation or other

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 378 monetary liability on the part of, and no cause of action for

379 damages arising against, an employer that, upon notice of a
 380 disqualifying offense listed under chapter 435 or this section,
 381 terminates the person against whom the report was issued,
 382 whether or not that person has filed for an exemption with the
 383 Department of Health or the agency.

384 Section 8. Subsection (1) of section 464.203, Florida
 385 Statutes, is amended to read:

386 464.203 Certified nursing assistants; certification
 387 requirement.—

388 (1) The board shall issue a certificate to practice as a
 389 certified nursing assistant to any person who demonstrates a
 390 minimum competency to read and write and successfully passes the
 391 required background screening pursuant to s. 400.215. If the
 392 person has successfully passed the required background screening
 393 pursuant to s. 400.215 or s. 408.809 within 90 days before
 394 applying for a certificate to practice, the board shall waive
 395 the requirement that the applicant successfully pass an
 396 additional background screening pursuant to s. 400.215. The
 397 person must also meet ~~and meets~~ one of the following
 398 requirements:

399 (a) Has successfully completed an approved training program
 400 and achieved a minimum score, established by rule of the board,
 401 on the nursing assistant competency examination, which consists
 402 of a written portion and skills-demonstration portion approved
 403 by the board and administered at a site and by personnel
 404 approved by the department.

405 (b) Has achieved a minimum score, established by rule of
 406 the board, on the nursing assistant competency examination,

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407 which consists of a written portion and skills-demonstration
 408 portion, approved by the board and administered at a site and by
 409 personnel approved by the department and:
 410 1. Has a high school diploma, or its equivalent; or
 411 2. Is at least 18 years of age.
 412 (c) Is currently certified in another state; is listed on
 413 that state's certified nursing assistant registry; and has not
 414 been found to have committed abuse, neglect, or exploitation in
 415 that state.
 416 (d) Has completed the curriculum developed by the
 417 Department of Education and achieved a minimum score,
 418 established by rule of the board, on the nursing assistant
 419 competency examination, which consists of a written portion and
 420 skills-demonstration portion, approved by the board and
 421 administered at a site and by personnel approved by the
 422 department.
 423 Section 9. The Department of Children and Family Services,
 424 the Agency for Health Care Administration, the Department of
 425 Elderly Affairs, the Department of Health, the Agency for
 426 Persons with Disabilities, the Department of Juvenile Justice,
 427 and the Department of Law Enforcement shall create a statewide
 428 interagency background screening workgroup for the purpose of
 429 developing a work plan for implementing a statewide system for
 430 streamlining background screening processes and sharing
 431 background screening information.
 432 (1) The interagency workgroup shall be coordinated through
 433 the Agency for Health Care Administration and shall include
 434 representatives from each of the state agencies required to
 435 create the workgroup.

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436 (2) The interagency workgroup shall submit a work plan for
 437 implementing a streamlined background screening system to the
 438 President of the Senate and the Speaker of the House of
 439 Representatives by November 1, 2012.
 440 (3) The interagency workgroup work plan shall, at a
 441 minimum, address the following:
 442 (a) The feasibility of creating a single statewide database
 443 that is accessible by all agencies participating on the
 444 workgroup.
 445 (b) The feasibility of collocating or consolidating current
 446 screening processes.
 447 (c) Standardized screening criteria.
 448 (d) Consistent criminal history information.
 449 (e) Centralized exemptions.
 450 (f) State and national retention of prints.
 451 (g) National rescreens.
 452 (h) Responsibility for retained prints and resubmission.
 453 (i) Access to information.
 454 (j) Fees.
 455 (k) Screening turnaround time.
 456 (l) The need for cooperative agreements among agencies that
 457 may access information.
 458 (m) Legal considerations and the need for legislative
 459 action necessary for accessing information by participating
 460 agencies.
 461 (n) Guidelines for how the information shall be accessed,
 462 used, and disseminated.
 463 (o) The organizational level at which information may be
 464 accessed and shared.

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465 (p) The specific information to be maintained and shared
466 through the system.

467 (q) Registration of employee information regarding the
468 employment status of persons screened, including date of hire
469 and date of separation, to facilitate notifications of arrests
470 and dispositions to the appropriate provider.

471 (r) The costs of implementing the streamlined system to the
472 state, employers, employees, and volunteers.

473 Section 10. This act shall take effect July 1, 2012.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.31.2012
Meeting Date

Topic SB 320-Background Screening

Bill Number SB 320
(if applicable)

Name Lucy Mohs

Amendment Barcode 601956
(if applicable)

Job Title Public Affairs Director

Address 2002-A Old St. Augustine Rd
Street
Tallahassee, FL 32301
City State Zip

Phone (850) 245-3335

E-mail lucy.mohs@r.fldoe.org

Speaking: For Against Information

Representing DOE, Division of Vocational Rehabilitation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.31.2012
Meeting Date

Topic Background Screening

Bill Number SB 320
(if applicable)

Name Becki Forese

Amendment Barcode _____
(if applicable)

Job Title Member, FL Rehab. Litigation Council

Address 2002 A Old St. Augustine Rd
Street
Tallahassee, FL 32317
City State Zip

Phone (850) 245-3335

E-mail _____

Speaking: For Against Information

Representing FL Rehab Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/31/12

Meeting Date

Topic Background Screening

Bill Number 320
(if applicable)

Name Laura Cantwell

Amendment Barcode _____
(if applicable)

Job Title _____

Address 200 W College Av

Phone 571-5163

Tallahassee FL 32301
City State Zip

E-mail lcantwell@oarp.us

Speaking: For Against Information

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/31/12

Meeting Date

Topic Background Screening

Bill Number SB 320
(if applicable)

Name Shane Messer

Amendment Barcode _____
(if applicable)

Job Title legislative affairs director

Address 316 E Park Ave

Phone 850/224-6048

Tallahassee FL 32301
City State Zip

E-mail sparkse@fcomh.org

Speaking: For Against Information

Representing FL Council for Community Mental Health - waiver in support

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/31/2012

Meeting Date

Topic _____ Bill Number 320
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH Phone 727/897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic ~~SB 320~~ Background Screening Bill Number 320
(if applicable)

Name JESSICA SCHER Amendment Barcode _____
(if applicable)

Job Title Director, Public Policy

Address 6645 SW 76 Ter Phone 305-322-6143

Street

MIAMI FL

City

State

Zip

E-mail schjerj@

unitedwaymiami.org

Speaking: For Against Information

Representing United Way

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/31/12
Meeting Date

Topic Background Screening
Name Jane Wise
Job Title Executive Director
Address 2414 N. W. 7th St.
Tallahassee, FL 32308
City State Zip

Bill Number S320 (if applicable)
Amendment Barcode _____ (if applicable)
Phone 488-0055
E-mail Wisejda@fla.gov

Speaking: For Against Information

Representing Florida Assoc. of Area Agencies on Aging

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/31/12
Meeting Date

Topic Background Screening
Name Robert Beck
Job Title _____
Address 307 W. Park Ave, Suite 101
Tallahassee, FL 32301
City State Zip

Bill Number SB 320 (if applicable)
Amendment Barcode _____ (if applicable)
Phone 766 1410
E-mail rbeck@pinpointresults.com

Speaking: For Against Information

Representing Florida Council on Aging and Area Agencies on Aging

Appearing at request of Chair: Yes No
Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

JAN 31, 2012
Meeting Date

Topic BACKGROUND SCREENING BILL

Bill Number SB 320
(if applicable)

Name SHEILIA SALYER

Amendment Barcode _____
(if applicable)

Job Title SENIOR CENTER DIRECTOR

Address 1400 N. MONROE ST

Phone 891-4001

Street
TALLAHASSEE FL 32303
City State Zip

E-mail sheila.salyer@talgov.com

Speaking: For Against Information

Representing FL COUNCIL ON AGING + SENIOR CENTERS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

CourtSmart Tag Report

Room: SB 401
Caption: Children, Families, and Elder Affairs Committee

Case:

Type:
Judge:

Started: 1/31/2012 3:56:32 PM

Ends: 1/31/2012 4:58:14 PM

Length: 01:01:43

3:56:41 PM Roll Call
3:56:59 PM Senator Storms opening remarks
3:57:49 PM SB 990, Natural Guardians (Senator Joyner)
3:58:48 PM Senator Storms remarks
3:59:12 PM SB 990, Natural Guardians vote
3:59:30 PM SB 1662, Homeless Youth (Senator Latvala)
3:59:49 PM Senator Latvala remarks
4:00:26 PM SB 1662, Homeless Youth (Public Testimony)
4:05:48 PM Senator Dockery question
4:06:00 PM SB 1662, Homeless Youth (Public Testimony) response
4:06:30 PM Senator Dockery question
4:06:45 PM SB 1662, Homeless Youth (Public Testimony) response
4:06:52 PM Senator Dockery question
4:06:59 PM SB 1662, Homeless Youth (Public Testimony) response
4:07:05 PM Senator Detert remarks
4:07:55 PM Senator Storms remarks
4:09:53 PM Senator Latvala closing remarks
4:10:17 PM SB 1662, Homeless Youth vote
4:11:33 PM SB 1874, Adoption (Senator Wise)
4:12:47 PM SB 1874, Adoption (barcode 895908 strike all amendment) by Senators Storms and Rich
4:14:48 PM SB 1874, Adoption (barcode 723926 amendment to the amendment) by Senators Storms and Rich
4:16:27 PM SB 1874, Adoption (handwritten amendment to the amendment to the strike all amendment) by Senator Rich
4:18:02 PM SB 1874, Adoption (Public Testimony)
4:19:01 PM Senator Detert question
4:19:22 PM Senator Wise response
4:19:35 PM Representative Janet Adkins remarks
4:21:17 PM Senator Detert remarks
4:21:21 PM SB 1874, Adoption (Public Testimony)
4:26:30 PM Senator Rich remarks and question
4:27:05 PM Ashley Daniell, CFEA Staff Attorney, SB 1874 -- Adoption
4:29:17 PM Senator Storms remarks
4:30:08 PM Senator Rich question
4:30:28 PM Ashley Daniell, CFEA Staff Attorney, SB 1874 -- Adoption
4:30:39 PM Senator Rich remarks
4:30:54 PM Senator Detert remarks
4:31:25 PM Senator Storms remarks
4:31:36 PM Senator Wise closing remarks
4:31:52 PM SB 1874, Adoption vote
4:32:41 PM SB 320, Background Screening (Senator Storms)
4:35:01 PM SB 320, Background Screening (barcode 601956 strike all amendment) by Senator Storms
4:35:11 PM Senator Detert question
4:35:21 PM Senator Storms response
4:37:37 PM Senator Detert question
4:38:07 PM Senator Storms response
4:38:25 PM Senator Detert question
4:38:33 PM Senator Storms response
4:38:44 PM Senator Detert question
4:38:50 PM Senator Storms response
4:39:08 PM Senator Rich question
4:39:30 PM Senator Storms response
4:39:57 PM Senator Gibson question

4:40:19 PM Senator Storms response
4:41:15 PM Senator Gibson question
4:41:34 PM Senator Storms response
4:41:58 PM Senator Gibson question
4:42:14 PM Senator Rich response
4:42:26 PM SB 320, Background Screening (Public Testimony on the strike all amendment)
4:42:37 PM Senator Rich remarks
4:42:54 PM SB 320, Background Screening (Public Testimony)
4:45:25 PM SB 320, Background Screening vote
4:46:21 PM SB 1128, Eligibility for Temporary Cash Assistance and Food Assistance (Daniel Bruno, Senator Oelrich's
Legislative Assistant)
4:48:12 PM Senator Storms remark
4:48:15 PM Daniel Bruno response
4:48:25 PM Senator Gibson question
4:48:54 PM Daniel Bruno response
4:49:38 PM Senator Gibson question
4:49:52 PM Daniel Bruno response
4:50:35 PM Senator Storms remarks
4:50:52 PM Senator Gibson remarks and question
4:51:25 PM Daniel Bruno response
4:52:05 PM Senator Rich question
4:52:16 PM Daniel Bruno response
4:52:29 PM Senator Rich question
4:52:45 PM Daniel Bruno response
4:53:05 PM Senator Dockery question
4:53:17 PM Daniel Bruno response
4:53:34 PM SB 1128, Eligibility for Temporary Cash Assistance and Food Assistance (Public Testimony)
4:55:20 PM Senator Gibson remarks
4:56:10 PM SB 1128, Eligibility for Temporary Cash Assistance and Food Assistance vote
4:56:25 PM Senator Latvala motion
4:56:37 PM Senator Storms remarks
4:56:58 PM Senator Oelrich remarks
4:57:05 PM Senator Storms remarks
4:57:18 PM Senator Detert and Senator Storms remarks
4:58:10 PM Adjourn