

Tab 1 SB 774 by Bean; (Similar to CS/H 00505) Dependency Proceedings						
820270	D	S	RCS	CF, Bean	Delete everything after	01/22 06:18 PM
632020	AA	S	WD	CF, Bean	Delete L.572 - 573:	01/22 01:16 PM
383900	AA	S	WD	CF, Bean	Delete L.572 - 573:	01/22 01:38 PM
234782	AA	S	RCS	CF, Bean	btw L.572 - 573:	01/22 06:18 PM
Tab 2 SB 1022 by Steube; (Similar to H 00549) Determination of Parentage						
181004	A	S	RCS	CF, Steube	Delete L.61 - 322:	01/22 06:18 PM
Tab 3 SB 1232 by Baxley; (Similar to H 00643) Public Assistance Fraud						
682894	A	S	RCS	CF, Baxley	Delete L.45:	01/22 06:18 PM
868328	A	S	RCS	CF, Baxley	Delete L.69 - 78.	01/22 06:18 PM
Tab 4 SB 1418 by Rouson; (Similar to CS/H 01069) Substance Abuse Services						
909590	D	S	RCS	CF, Rouson	Delete everything after	01/22 06:18 PM
Tab 5 SB 1448 by Passidomo (CO-INTRODUCERS) Broxson; (Similar to H 01123) Tax Exemptions for the Elderly						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Garcia, Chair
Senator Torres, Vice Chair

MEETING DATE: Monday, January 22, 2018

TIME: 3:30—5:30 p.m.

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

MEMBERS: Senator Garcia, Chair; Senator Torres, Vice Chair; Senators Broxson, Campbell, and Steube

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 774 Bean (Similar CS/H 505)	Dependency Proceedings; Revising the types of information relating to the identity and location of a child's legal father that fall within the scope of a court inquiry at a shelter hearing or a hearing regarding a petition for termination of parental rights; providing for certain unmarried biological fathers to receive notice of dependency hearings under certain circumstances; requiring notice of a petition for termination of parental rights to be served on an unmarried biological father identified under oath or by a diligent search of the Florida Putative Father Registry under certain circumstances, etc. CF 01/22/2018 Fav/CS JU AP	Fav/CS Yeas 4 Nays 1
2	SB 1022 Steube (Similar H 549)	Determination of Parentage; Authorizing a child, the child's mother, or the child's alleged parent to file a petition in circuit court to rebut the presumption of legal parentage and establish actual legal parentage; requiring the court to appoint a guardian ad litem or an attorney ad litem under certain conditions; specifying that a statistical probability of parentage of 95 percent or more creates a rebuttable presumption that the alleged parent is a biological parent, etc. JU 01/10/2018 Favorable CF 01/22/2018 Fav/CS RC	Fav/CS Yeas 5 Nays 0
3	SB 1232 Baxley (Similar H 643)	Public Assistance Fraud; Revising the maximum reward paid to persons providing certain information leading to the recovery of certain fraudulent public assistance payments; directing state-retained shares of recovered public assistance overpayments to be held in the Federal Grants Trust Fund; revising the definition of the term "criminal justice agency" to include the fraud investigations component of the department, etc. CF 01/22/2018 Fav/CS AHS AP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Monday, January 22, 2018, 3:30—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1418 Rouson (Similar CS/H 1069)	Substance Abuse Services; Requiring the Department of Children and Families to notify an applicant within a certain timeframe regarding the status of the applicant's application for an exemption from disqualification for a disqualifying offense revealed pursuant to a background screening; prohibiting service providers from having certain contractual or referral relationships with recovery residences; revising criteria for an exemption from disqualification for an employee providing mental health and substance use treatment services under certain circumstances, etc. CF 01/22/2018 Fav/CS CJ RC	Fav/CS Yeas 5 Nays 0
5	SB 1448 Passidomo (Similar H 1123)	Tax Exemptions for the Elderly; Exempting from the sales and use tax specified items that enable elderly persons to age in place and live independently in their homes or residences, etc. CF 01/22/2018 Favorable AFT AP	Favorable Yeas 5 Nays 0
6	Update from Department of Elder Affairs by Secretary Jeffrey Bragg		Discussed
7	Update from AARP by Advocacy Manager Jack McRay		Discussed
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 Committee on Children, Families, and Elder Affairs

BILL: CS/SB 774

INTRODUCER: Senator Bean

SUBJECT: Dependency Proceedings

DATE: January 23, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.			JU	
3.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 744 addresses the two separate procedures for identification and subsequent treatment of prospective parents and unmarried biological fathers prior to the termination of parental rights required for adoption. One is found in ch. 39, F.S., "Proceedings Relating to Children," and the other is found in ch. 63, F.S., "Adoption." The bill aligns procedures for identification of prospective biological parents and their subsequent treatment within ch. 39, F.S., proceedings with ch. 63, F.S., to move children toward permanency more quickly. The bill:

- Provides additional questions and rewords existing questions in the inquiry courts use to identify parents to elicit more precise responses;
- Provides a process in ch. 39, F.S., similar to ch. 63, F.S., for an unmarried biological father to assert his parental rights and become a legal father;
- Allows a court to proceed in a child's case if an identified unmarried biological father fails to assert his rights after being personally served with an explanation of how to assert his rights; and
- Specifies that a dependency court can make a formal determination of the child's paternity within ch. 39, F.S.

The bill also requires certain records check of the Department of Children and Families' Central Abuse Registry be provided directly to the entity conducting the home study to ensure the integrity of the results and protect the best interest of children being placed for adoption, and allows licensed adoption agencies to use their professional judgement to determine the

appropriate counseling and education, dependent upon the type of adoption and the child being adopted.

The bill has no fiscal impact on state revenues or expenditures and has an effective date of October 1, 2018.

II. Present Situation:

Background

Currently, there are two separate procedures for the termination of parental rights (TPR) required prior to the adoption of a child. One is found in ch. 39, F.S., “Proceedings Relating to Children,” and the other is found in ch. 63, F.S., “Adoption.” The primary focus of ch. 39, F.S., is the preservation and strengthening of families, with the health and safety of children of paramount concern.¹ A child is to be removed from parental custody only when the child’s welfare cannot be adequately safeguarded without such removal.² Other permanency options are provided but only when reunification and adoption are not possible.³ By contrast, the purpose of ch. 63, F.S., is to provide stable and permanent homes for adoptive children in a prompt manner, to prevent the disruption of adoptive placements, and to hold parents accountable for meeting the needs of children.⁴ Consent to TPR is central under ch. 63, F.S., and is mandatory unless certain statutory criteria are present.⁵

Paternity Inquiry

One of the most significant differences between ch. 39, F.S., and ch. 63, F.S., relates to the identification and treatment of prospective parents and unmarried biological fathers. Chapter 39, F.S., considers a “prospective parent” any person who claims to be, or has been identified as, a person who may be the mother or father of a child.⁶ A judge is required to conduct an inquiry if the identity or location of the father is unknown and a petition for shelter,⁷ dependency,⁸ or termination of parental rights⁹ has been filed. The judge is required to ask whether:

- The mother of the child was married at the probable time of conception of the child or at the time of birth of the child.
- The mother was cohabiting with a man at the probable time of conception of the child.
- The mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.
- The mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

¹ Section 39.001(1), F.S.

² Section 39.001(1)(f), F.S.

³ Section 39.001(1)(j), F.S.

⁴ Section 63.022(1)(a), F.S.

⁵ Section 63.062, F.S.

⁶ Section 39.01(62), F.S.

⁷ Section 39.402(8)(c)4., F.S.

⁸ Section 39.503(1), F.S.

⁹ Section 39.803(1), F.S.

- Any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.
- Any man is named on the birth certificate.
- Any man has been determined by a court order to be the father of the child.
- Any man has been determined to be the father of the child by the Department of Revenue.

The law does not specify that the inquiry should stop after an affirmative response to any particular question and provides a means for any man identified through the inquiry to become a party to the proceedings and to be treated as a parent, as follows:¹⁰

"If the inquiry and diligent search identifies a prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department. A prospective parent who files a sworn affidavit of parenthood . . . shall be considered a parent for all purposes under this section unless the other parent contests the determination of parenthood."

Chapter 63, F.S., however, states that the child's biological father who was not married to the child's mother at the time of conception or birth of the child "has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during the pregnancy and after the child's birth."¹¹ To establish the identity of an unmarried biological father, the judge conducts an inquiry of the person who is placing the minor for adoption and of any relative or person having legal custody of the minor who is present at the hearing and likely to have the following information regarding the identity of any man:¹²

- To whom the mother of the minor was married at any time when conception of the minor may have occurred or at the time of the birth of the minor;
- Who has filed an affidavit of paternity pursuant to s. 382.013(2)(c), F.S., before the date that a petition for TPR is filed with the court;
- Who has adopted the minor;
- Who has been adjudicated by a court as the father of the minor child before the date a petition for TPR is filed with the court; and
- Whom the mother identified to the adoption entity as a potential biological father before the date she signed the consent for adoption.

Establishment of Parental Rights

Chapter 39, F.S., does not require the prospective father to take any action to establish parental rights or make any affirmative demonstration of the intent to parent other than to execute the affidavit of parenthood as directed by statute. There is no specific deadline to execute the affidavit of parenthood, other than the provision that it must be filed "while the child is a dependent child but no later than at the time of or prior to the adjudicatory hearing in any

¹⁰ Sections 39.503(8) and 803(8), F.S.

¹¹ Sections 63.032(19) and 63.022(1)(e), F.S.

¹² Section 63.088(4).

termination of parental rights proceeding for the child.”¹³ This means that a prospective father may be named early in the case, receive notice of hearings and be served with documents throughout the case without coming forward and asserting his right to the child, and then file an affidavit of parenthood at the TPR trial, establishing rights for the first time and delaying or stopping the TPR proceedings.

Chapter 63, F.S., however, requires an unmarried biological father to preserve and perfect his rights by registering with the Putative Father Registry or filing a ch. 742, F.S., claim of paternity.¹⁴ This can be done at any time, including prior to a child's birth, but not after the date a petition is filed for TPR.¹⁵ Failure to assert paternity before the date a petition is filed for TPR bars a ch. 742, F.S., claim of paternity.¹⁶ An unmarried biological father is also required to take some measure of responsibility for the child and the child's future and to demonstrate a full commitment to the responsibilities of parenthood by providing financial support and regularly visiting or maintaining regular communication with the child unless prevented from doing so.¹⁷

Establishment of Parentage

Under s. 39.503(8), F.S., the court may accept an affidavit of parentage and consider the affiant a parent for all purposes unless the known parent contests the determination of parentage. If the known parent contests the determination of parentage, the prospective parent may not be recognized as a parent until proceedings to determine parentage under ch. 742, F.S., have been concluded. This requires the parties to file separate pleadings for a determination of parentage, although it may still be heard by the same judge.

III. Effect of Proposed Changes:

Section 1 amends s. 39.001, F.S., relating to purposes and intent, to add language stating that parents should be engaged to the fullest extent possible in the lives of their children and that an unmarried biological father has the same rights under ch. 39, F.S., as he would under ch. 63, F.S. The bill also provides that an unmarried biological father's interest is inchoate until he demonstrates a timely and full commitment to the responsibilities of parenthood and that failure to comply with the requirements of ch. 39, F.S., may result in the termination of his parental rights.

Section 2 amends s. 39.01, F.S., relating to definitions, to remove language from the definition of "parent" to conform with the overall changes of the bill, making a person identified under oath as a prospective parent a participant in the proceeding until he or she asserts parental rights to be considered a party. The bill also defines "unmarried biological father" as the 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 and who, before the advisory hearing is held on a petition to terminate parental rights, has not been adjudicated or declared by a court to be the legal father of the child or has not executed an affidavit of paternity.

¹³ *Id.*

¹⁴ Section 63.054, F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 63.062(2).

Section 3 amends s. 39.402, F.S., relating to placement in a shelter, to update the paternity inquiry by the court by changing the wording of existing questions to elicit more specific responses and adding additional questions from the ch. 63, F.S., paternity inquiry, seeking information regarding the identity of any man:

- Who has filed an affidavit of paternity pursuant to s. 382.013(2)(c), F.S., before the date that a petition for TPR is filed with the court;
- Who has adopted the child;
- Who has been adjudicated by a court as the father of child before an advisory hearing is held on a petition for TPR; and
- Whom the mother identified as the father under oath to a representative of the department.

Section 4 amends s. 39.502, F.S., relating to notice, process, and service, to give notice to unmarried biological fathers if the child does not have a legal father, and require personal service to those who are known and able to be located. This notice is not required if the unmarried biological father has signed an affidavit of nonpaternity or a consent to TPR. The notice of petition for dependency must specifically state that if the unmarried biological father wishes to assert his parental rights and contest the dependency petition he must, within 30 days after service:

- File a claim of paternity with the Florida Putative Father Registry;
- Legally establish his parental rights to the child pursuant to the laws of the state;
- File a verified response with the court which contains a pledge of commitment to the child, a request for the court to calculate and order child support, and an agreement to submit to the court's jurisdiction;
- Provide support for the child as calculated by the court; and
- Seek to establish a substantial relationship with the child within the parameters established by the court, such as taking parental responsibility, providing support, and establishing regular contact with the child in accordance with a written court order that takes the child's safety, well-being, or physical, mental, or emotional health of the child into account.

The bill also requires the court, at the dependency advisory hearing, to determine whether the unmarried biological father took the necessary steps to assert his parental rights to gain standing to contest the dependency petition. If the court determines that the unmarried biological father has failed to assert his parental rights, it may find that he is no longer a prospective parent and is no longer entitled to further notice regarding the child unless otherwise ordered by the court. If an unmarried biological father was not identified by the court's inquiry at the dependency advisory, but was subsequently identified, he may not use the lack of notice as a defense against the finding of dependency.

Section 5 amends s. 39.503, F.S., relating to identity or location of a parent unknown, to update the paternity inquiry by the court by changing wording to elicit more specific responses and adding additional questions the ch. 63, F.S., paternity inquiry, seeking information regarding the identity of any man:

- Who has filed an affidavit of paternity pursuant to s. 382.013(2)(c), F.S., before the date that a petition for TPR is filed with the court;
- Who has adopted the child;

- Who has been adjudicated by a court as the father of child before an advisory hearing is held on a petition for TPR; and
- Whom the mother identified as the father under oath to a representative of the department.

The bill allows the court to enter an agreed order establishing parentage based on an uncontested request to establish parentage, order the Office of Vital Statistics to amend the child's birth certificate to reflect the new parentage, and order child support. A prospective parent may only file an affidavit of parenthood when the child does not already have two legally recognized parents. If the child already has two legally recognized parents or the known parent objects to the recognition of parentage, the prospective parent must seek to establish parentage pursuant to ch. 742, F.S., which may be heard by the same court in accordance with the procedures of that chapter.

The bill also allows the known and prospective parent to agree to voluntarily submit to scientific testing to determine parentage if the child does not already have two legally recognized parents. If the known and prospective parent both agree to scientific testing, the court must assess the cost as a cost of litigation. This will allow the use of genetic testing if the parties agree without the formality of a ch. 742, F.S., proceeding.

The bill also requires a genetic test as evidence be weighed along with all other evidence of parentage unless the statistical probability of parentage equals or exceeds 95 percent, which creates a rebuttable presumption that the alleged parent is the biological parent of the child. If the test show the alleged parent is not the biological parent, the alleged parent is no longer considered a participant or entitled to further notice.

Section 6 amends s. 39.801, F.S., relating to procedures and jurisdiction, notice and service of process, to create a procedure for giving notice in ch. 39, F.S., TPR proceedings to unmarried biological fathers and requiring personal service to those who are known and locatable. This notice is not required if the unmarried biological father has signed an affidavit of nonpaternity or a consent to TPR. The notice of petition for dependency must specifically state that if the unmarried biological father wishes to assert his parental rights and contest the dependency petition he must, within 30 days after service:

- File a claim of paternity with the Florida Putative Father Registry;
- Legally establish his parental rights to the child pursuant to the laws of the state;
- File a verified response with the court which contains a pledge of commitment to the child, a request for the court to calculate and order child support, and an agreement to submit to the court's jurisdiction;
- Provide support for the child as calculated by the court; and
- Seek to establish a substantial relationship with the child within the parameters established by the court, such as taking parental responsibility, providing support, and establishing regular contact with the child in accordance with a written court order that takes the child's safety, well-being, or physical, mental, or emotional health of the child into account.

The bill requires the court, at TPR advisory hearings, to determine whether the unmarried biological father took the necessary steps to assert his parental rights to gain standing to contest the dependency or TPR petition. If the court determines that the unmarried biological father has

failed to assert his parental rights, it may find that he is no longer a prospective parent and is no longer entitled to further notice regarding the child unless otherwise ordered by the court. If an unmarried biological father was not identified by the court's inquiry at the dependency or TPR advisory, but was subsequently identified, he may not use the lack of notice as a defense against the finding of TPR. This change at the TPR advisory will allow courts to move forward to achieve permanency by adoption in a shorter time frame.

Section 7 amends s. 39.803, F.S., relating to identity or location unknown after filing of a termination of parental rights petition, to update the court's paternity inquiry by changing wording in current questions to elicit more specific responses and adding additional questions from the ch. 63, F.S., paternity inquiry, seeking information regarding the identity of any man:

- Who has filed an affidavit of paternity pursuant to s. 382.013(2)(c), F.S., before the date that a petition for TPR is filed with the court;
- Who has adopted the minor;
- Who has been adjudicated by a court as the father of the minor child before the date a petition for TPR is filed with the court; and
- Whom the mother identified to the adoption entity as a potential biological father before the date she signed the consent for adoption.

Section 8 amends s. 63.092, F.S., relating to the report to the court of intended placement by an adoption entity, to:

- Require the "records check of the department's Central Abuse Registry" be provided directly to the entity conducting the home study to ensure the integrity of the results and protect the best interest of children being placed for adoption, and
- Allow licensed adoption agencies to use their professional judgement to determine the appropriate counseling and education, dependent upon the type of adoption and the child being adopted.

Section 9 provides an effective date of October 1, 2018.

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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends ss. 39.001, 39.01, 39.402, 39.502, 39.503, 39.801, 39.803, and 63.092 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Children, Families, and Elder Affairs on January 22, 2018:

The amendment does the following:

- Makes a number of technical and conforming changes including replacing the term “individually served” with the term “personally served” and replacing the term “alleged parent” with the term “prospective parent.”
- Requires certain records check of the Department of Children and Families’ Central Abuse Registry be provided directly to the entity conducting the home study to ensure the integrity of the results and protect the best interest of children being placed for adoption; and
- Allows licensed adoption agencies to use their professional judgement to determine the appropriate counseling and education, dependent upon the type of adoption and the child being adopted.
- Removes the provision that allows the community-based lead care agencies to receive credit for specified adoptions.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/22/2018	.	
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The Committee on Children, Families, and Elder Affairs (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (n), (o), and (p) of subsection (1) of section 39.001, Florida Statutes, are redesignated as paragraphs (o), (p), and (q), respectively, and a new paragraph (n) is added to that subsection to read:

39.001 Purposes and intent; personnel standards and screening.—



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11 (1) PURPOSES OF CHAPTER.—The purposes of this chapter are:
12 (n) Whenever possible, to ensure that children have the
13 benefit of loving and caring relationships with both of their
14 parents. To that end, parents should be engaged to the fullest
15 extent possible in the lives of their children and prospective
16 parents should be afforded a prompt, full, and fair opportunity
17 to establish a parental relationship with their children and
18 assume all parental duties. A prospective parent who is an
19 unmarried biological father has the same rights under this
20 chapter as under chapter 63. Accordingly, his interest is
21 inchoate until he demonstrates a timely and full commitment to
22 the responsibilities of parenthood. Because time is of the
23 essence under this chapter, and the time limitations belong to
24 the child and not to the parent or to any prospective parent,
25 prospective parents, including unmarried biological parents,
26 must be aware that failure to comply with the specific
27 requirements of this chapter may result in permanent elimination
28 or termination of their rights or interests as actual or
29 inchoate parents or prospective parents.

30 Section 2. Subsection (50) of section 39.01, Florida
31 Statutes, is amended, subsection (81) is renumbered as
32 subsection (82), and a new subsection (81) is added to that
33 section, to read:

34 39.01 Definitions.—When used in this chapter, unless the
35 context otherwise requires:

36 (50) "Parent" means a woman who gives birth to a child and
37 a man whose consent to the adoption of the child would be
38 required under s. 63.062(1). The term "parent" also means legal
39 father as defined in this section. If a child has been legally



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40 adopted, the term "parent" means the adoptive mother or father
41 of the child. For purposes of this chapter only, when the phrase
42 "parent or legal custodian" is used, it refers to rights or
43 responsibilities of the parent and, only if there is no living
44 parent with intact parental rights, to the rights or
45 responsibilities of the legal custodian who has assumed the role
46 of the parent. The term does not include an individual whose
47 parental relationship to the child has been legally terminated,
48 or an alleged or prospective parent, unless:

49 ~~(a) The parental status falls within the terms of s.~~
50 ~~39.503(1) or s. 63.062(1); or~~

51 ~~(b)~~ parental status is applied for the purpose of
52 determining whether the child has been abandoned.

53 (81) "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 advisory hearing is held on a petition to
57 terminate parental rights, has not been adjudicated or declared
58 by a court of competent jurisdiction to be the legal father of
59 the child or has not executed an affidavit pursuant to s.
60 382.013(2)(c).

61 Section 3. Paragraph (c) of subsection (8) of section
62 39.402, Florida Statutes, is amended to read:

63 39.402 Placement in a shelter.—

64 (8)

65 (c) At the shelter hearing, the court shall:

66 1. Appoint a guardian ad litem to represent the best
67 interest of the child, unless the court finds that such
68 representation is unnecessary;



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69 2. Inform the parents or legal custodians of their right to
70 counsel to represent them at the shelter hearing and at each
71 subsequent hearing or proceeding, and the right of the parents
72 to appointed counsel, pursuant to the procedures set forth in s.
73 39.013;

74 3. Give the parents or legal custodians an opportunity to
75 be heard and to present evidence; and

76 4. Inquire of those present at the shelter hearing as to
77 the identity and location of the legal father. In determining
78 who the legal father of the child may be, the court shall
79 inquire under oath of those present at the shelter hearing
80 whether they have any of the following information regarding the
81 identity of any man:

82 a. To whom the mother of the child was married at any time
83 when conception of the child may have occurred or at the time of
84 the birth of the child.

85 b. Who has filed an affidavit of paternity pursuant to s.
86 382.013(2)(c) before an advisory hearing is held on a petition
87 for termination of parental rights.

88 c. Who has adopted the child.

89 d. Who has been adjudicated by a court of competent
90 jurisdiction as the father of the child before an advisory
91 hearing is held on a petition for termination of parental
92 rights.

93 e. Whom the mother identified as the father under oath to a
94 representative of the department.

95 ~~a. Whether the mother of the child was married at the~~
96 ~~probable time of conception of the child or at the time of birth~~
97 ~~of the child.~~



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98 ~~f.b. With whom Whether~~ the mother was cohabiting ~~with a~~
99 ~~male~~ at the probable time of conception of the child.

100 ~~g.e. Who claims to be the father and from whom Whether~~ the
101 mother has received payments or promises of support with respect
102 to the child or because of her pregnancy ~~from a man who claims~~
103 ~~to be the father.~~

104 ~~h.d. Whom Whether~~ the mother has named ~~any man~~ as the
105 father on the birth certificate of the child or in connection
106 with applying for or receiving public assistance.

107 ~~i.e. Who Whether any man~~ has acknowledged or claimed
108 paternity of the child in a jurisdiction in which the mother
109 resided at the time of or since conception of the child or in
110 which the child has resided or resides.

111 ~~j.f. Who Whether a man~~ is named on the birth certificate of
112 the child pursuant to s. 382.013(2).

113 ~~k.g. Who Whether a man~~ has been determined by a court order
114 to be the father of the child.

115 ~~l.h. Who Whether a man~~ has been determined to be the father
116 of the child by the Department of Revenue as provided in s.
117 409.256.

118 Section 4. Subsections (7) through (19) of section 39.502,
119 Florida Statutes, are renumbered as subsections (8) through
120 (20), respectively, subsection (1) and present subsection (9) of
121 that section are amended, and a new subsection (7) is added to
122 that section, to read:

123 39.502 Notice, process, and service.—

124 (1) Unless parental rights have been terminated, all
125 parents must be notified of all proceedings or hearings
126 involving the child. Notice in cases involving shelter hearings



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127 and hearings resulting from medical emergencies must be that
128 most likely to result in actual notice to the parents. In all
129 other dependency proceedings, notice must be provided in
130 accordance with subsections (4)-(10) ~~(4)-(9)~~, except when a
131 relative requests notification pursuant to s. 39.301(14)(b), in
132 which case notice shall be provided pursuant to subsection (20)
133 ~~(19)~~.

134 (7) (a) If a child does not have a legal father, notice of
135 the petition for dependency shall be personally served upon any
136 known and locatable unmarried biological father who is
137 identified under oath before the court or who is identified by a
138 diligent search of the Florida Putative Father Registry. Service
139 of the notice of the petition for dependency is not required if
140 the unmarried biological father signs an affidavit of
141 nonpaternity or a consent to termination of his parental rights
142 and such affidavit or consent is accepted by the department. The
143 recipient of the notice may waive service of process by
144 executing a waiver and acknowledging receipt of the notice.

145 (b) The notice of petition for dependency must specifically
146 state that if the unmarried biological father desires to assert
147 his parental rights to acquire standing to contest the
148 dependency petition he must, within 30 days after service:

149 1. File a claim of paternity with the Florida Putative
150 Father Registry pursuant to instructions provided for submitting
151 a claim of paternity form to the Office of Vital Statistics,
152 including the address to which the claim must be sent.

153 2. Legally establish his parental rights to the child
154 pursuant to the laws of the state.

155 3. File a verified response with the court which contains a



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156 pledge of commitment to the child, a request for the court to
157 calculate and order child support, and an agreement to submit to
158 the court's jurisdiction.

159 4. Provide support for the child as calculated by the court
160 under s. 61.30.

161 5. Seek to establish a substantial relationship with the
162 child within the parameters established by court order. An
163 unmarried biological father must develop a substantial
164 relationship with the child by taking parental responsibility
165 for the child and the child's future; providing financial
166 support to the child in accordance with his ability, if not
167 prevented from doing so by the person or authorized agency
168 having lawful custody of the child; and establishing or
169 maintaining regular contact with the child in accordance with a
170 written court order. An order for visitation or other contact
171 may be entered by the court if the court determines that such
172 contact will not endanger the safety, well-being, or physical,
173 mental, or emotional health of the child. The court may consider
174 the results of any home study in making such determination.

175 (c) The court shall determine whether the unmarried
176 biological father took the steps necessary to assert his
177 parental rights to acquire standing to contest the dependency
178 petition pursuant to paragraph (b) and, if not, the court shall
179 enter a finding that the unmarried biological father is no
180 longer a prospective parent or participant, may not contest the
181 petition for dependency or any subsequent petition for
182 termination of parental rights, and is no longer entitled to any
183 further notice of proceedings regarding the child unless
184 otherwise ordered by the court.



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185 (d) If an unmarried biological father is not identified
186 pursuant to the inquiry under section 39.503, the unmarried
187 biological father's claim that he did not receive actual notice
188 of the dependency proceeding is not a defense to a finding that
189 the child is dependent.

190 (10) ~~(9)~~ When an affidavit of diligent search has been filed
191 under subsection (9) ~~(8)~~, the petitioner shall continue to
192 search for and attempt to serve the person sought until excused
193 from further search by the court. The petitioner shall report on
194 the results of the search at each court hearing until the person
195 is identified or located or further search is excused by the
196 court.

197 Section 5. Section 39.503, Florida Statutes, is amended to
198 read:

199 39.503 Identity or location of parent unknown; special
200 procedures.—

201 (1) If the identity or location of a parent is unknown and
202 a petition for dependency or shelter is filed, the court shall
203 conduct under oath the following inquiry of the parent or legal
204 custodian who is available, or, if no parent or legal custodian
205 is available, of any relative or custodian of the child who is
206 present at the hearing and likely to have any of the following
207 information regarding the identity of any man:

208 (a) To whom the mother of the minor was married at any time
209 when conception of the child may have occurred or at the time of
210 the birth of the child.

211 (b) Who has filed an affidavit of paternity pursuant to s.
212 382.013(2) (c) before an advisory hearing is held on a petition
213 for termination of parental rights.



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- 214 (c) Who has adopted the child.
- 215 (d) Who has been adjudicated by a court of competent
216 jurisdiction as the father of the child before an advisory
217 hearing is held on a petition for termination of parental
218 rights.
- 219 (e) Whom the mother identified as the father under oath to
220 a representative of the department.
- 221 ~~(a) Whether the mother of the child was married at the~~
222 ~~probable time of conception of the child or at the time of birth~~
223 ~~of the child.~~
- 224 ~~(f)(b) With whom~~ Whether the mother was cohabiting ~~with a~~
225 ~~male~~ at the probable time of conception of the child.
- 226 ~~(g)(e) Who~~ Who claims to be the father and from whom ~~Whether~~
227 the mother has received payments or promises of support with
228 respect to the child or because of her pregnancy ~~from a man who~~
229 ~~claims to be the father.~~
- 230 ~~(h)(d) Who~~ Who ~~Whether~~ the mother has named ~~any man~~ as the
231 father on the birth certificate of the child or in connection
232 with applying for or receiving public assistance.
- 233 ~~(i)(e) Who~~ Who ~~Whether any man~~ has acknowledged or claimed
234 paternity of the child in a jurisdiction in which the mother
235 resided at the time of or since conception of the child, or in
236 which the child has resided or resides.
- 237 ~~(j)(f) Who~~ Who ~~Whether a man~~ is named on the birth certificate
238 of the child pursuant to s. 382.013(2).
- 239 ~~(k)(g) Who~~ Who ~~Whether a man~~ has been determined by a court
240 order to be the father of the child.
- 241 ~~(l)(h) Who~~ Who ~~Whether a man~~ has been determined to be the
242 father of the child by the Department of Revenue as provided in



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243 s. 409.256.

244 (2) The information required under ~~in~~ subsection (1) may be
245 supplied to the court or the department in the form of a sworn
246 affidavit by a person having personal knowledge of the facts.

247 (3) If the inquiry under subsection (1) identifies any
248 person as a parent or prospective parent, the court shall
249 require notice of the hearing to be provided to that person.

250 (4) If the inquiry under subsection (1) fails to identify
251 any person as a parent or prospective parent, the court shall so
252 find and may proceed without further notice.

253 (5) If the inquiry under subsection (1) identifies a parent
254 or prospective parent, and that person's location is unknown,
255 the court shall direct the petitioner to conduct a diligent
256 search for that person before scheduling a disposition hearing
257 regarding the dependency of the child unless the court finds
258 that the best interest of the child requires proceeding without
259 notice to the person whose location is unknown.

260 (6) If the inquiry under subsection (1) identifies an
261 unmarried biological father or an unmarried biological father is
262 identified by another means and is personally served with a
263 petition for dependency but fails to assert his parental rights
264 as specified in s. 39.502(7), the court shall so find and may
265 proceed without further notice.

266 (7) ~~(6)~~ The diligent search required by subsection (5) must
267 include, at a minimum, inquiries of all relatives of the parent
268 or prospective parent made known to the petitioner, inquiries of
269 all offices of program areas of the department likely to have
270 information about the parent or prospective parent, inquiries of
271 other state and federal agencies likely to have information



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272 about the parent or prospective parent, inquiries of appropriate
273 utility and postal providers, a thorough search of at least one
274 electronic database specifically designed for locating persons,
275 a search of the Florida Putative Father Registry, and inquiries
276 of appropriate law enforcement agencies. Pursuant to s. 453 of
277 the Social Security Act, 42 U.S.C. s. 653(c)(4), the department,
278 as the state agency administering Titles IV-B and IV-E of the
279 act, shall be provided access to the federal and state parent
280 locator service for diligent search activities.

281 (8)~~(7)~~ Any agency contacted by a petitioner with a request
282 for information pursuant to subsection (7) ~~(6)~~ shall release the
283 requested information to the petitioner without the necessity of
284 a subpoena or court order.

285 (9) (a)~~(8)~~ If the inquiry and diligent search identifies a
286 prospective parent, that person must be given the opportunity to
287 become a party to the proceedings by completing a sworn
288 affidavit of parenthood and filing it with the court or the
289 department. A prospective parent who files a sworn affidavit of
290 parenthood while the child is a dependent child but no later
291 than at the time of or before the adjudicatory hearing in any
292 termination of parental rights proceeding for the child shall be
293 considered a parent for all purposes under this section unless
294 the other parent contests the determination of parenthood. If
295 neither the known parent nor the prospective parent objects to a
296 request to establish parentage under the laws of the state, the
297 court may enter an agreed order, order the Office of Vital
298 Statistics to amend the child's birth certificate, and order the
299 petitioning parent to pay support for the child.

300 (b) If the known parent contests the recognition of the



301 prospective parent as a parent, the prospective parent may not
302 be recognized as a parent until proceedings to determine
303 maternity or paternity under chapter 742 have been concluded.
304 However, the prospective parent shall continue to receive notice
305 of hearings as a participant pending results of the chapter 742
306 proceedings to determine maternity or paternity. The dependency
307 court may hear the chapter 742 proceeding and establish
308 parentage in accordance with the procedures in that chapter,
309 including entry of an order or judgment establishing parentage.

310 (c) A prospective parent may only file a sworn affidavit of
311 parenthood when the child does not have two legally recognized
312 parents. If a child has two legally recognized parents, the
313 prospective parent must seek to establish parentage pursuant to
314 chapter 742.

315 (d) Nothing in this subsection prevents the known parent
316 and the prospective parent from agreeing to voluntarily submit
317 to scientific testing to determine the maternity or paternity of
318 the child if the child does not already have two legally
319 recognized parents and the court determines it is in the child's
320 best interest.

321 (e) Test results are admissible in evidence and shall be
322 weighed along with other evidence of parentage unless the
323 statistical probability of parentage equals or exceeds 95
324 percent. A statistical probability of parentage that equals or
325 exceeds 95 percent creates a rebuttable presumption, as
326 described in s. 90.304, that the prospective parent is the
327 biological parent of the child. If a party fails to rebut the
328 presumption of parentage which arose from the statistical
329 probability of parentage that equals or exceeds 95 percent, the



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330 court may enter a summary judgment of parentage. If the test
331 results show the prospective parent is not the biological
332 parent, the prospective parent is no longer considered a
333 participant or entitled to notice of the proceedings.

334 (f) The court shall assess the cost of the paternity
335 determination as a cost of litigation.

336 (10)-(9) If the diligent search under subsection (5) fails
337 to identify and locate a parent or prospective parent, the court
338 shall so find and may proceed without further notice.

339 Section 6. Subsection (3) of section 39.801, Florida
340 Statutes, is amended to read:

341 39.801 Procedures and jurisdiction; notice; service of
342 process.—

343 (3) Before the court may terminate parental rights, in
344 addition to the other requirements set forth in this part, the
345 following requirements must be met:

346 (a) Notice of the date, time, and place of the advisory
347 hearing for the petition to terminate parental rights and a copy
348 of the petition must be personally served upon the following
349 persons, specifically notifying them that a petition has been
350 filed:

- 351 1. The parents of the child.
- 352 2. The legal custodians of the child.
- 353 3. If the parents who would be entitled to notice are dead
354 or unknown, a living relative of the child, unless upon diligent
355 search and inquiry no such relative can be found.
- 356 4. Any person who has physical custody of the child.
- 357 5. Any grandparent entitled to priority for adoption under
358 s. 63.0425.



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359 6. Any prospective parent who has been identified under s.
360 39.503 or s. 39.803, unless a court order has been entered
361 pursuant to s. 39.503(4), (6), or (10) or s. 39.803(4), (6), or
362 (10) s. 39.503(4) or (9) or s. 39.803(4) or (9) which indicates
363 no further notice is required. Except as otherwise provided in
364 this section, if there is not a legal father, notice of the
365 petition for termination of parental rights must be provided to
366 any known prospective father who is identified under oath before
367 the court or who is identified by a diligent search of the
368 Florida Putative Father Registry. Service of the notice of the
369 petition for termination of parental rights is not required if
370 the prospective father executes an affidavit of nonpaternity or
371 a consent to termination of his parental rights which is
372 accepted by the court after notice and opportunity to be heard
373 by all parties to address the best interests of the child in
374 accepting such affidavit.

375 7. The guardian ad litem for the child or the
376 representative of the guardian ad litem program, if the program
377 has been appointed.

378
379 The document containing the notice to respond or appear must
380 contain, in type at least as large as the type in the balance of
381 the document, the following or substantially similar language:
382 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
383 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
384 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
385 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
386 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
387 NOTICE."



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388 (b) If a child does not have a legal father, notice of the
389 petition for termination of parental rights shall be personally
390 served upon any known and locatable unmarried biological father
391 who is identified under oath before the court or who is
392 identified by a diligent search of the Florida Putative Father
393 Registry. Service of the notice of the petition for termination
394 of parental rights is not required if the unmarried biological
395 father signs an affidavit of nonpaternity or a consent to
396 termination of his parental rights and such affidavit or consent
397 is accepted by the department. The recipient of the notice may
398 waive service of process by executing a waiver and acknowledging
399 receipt of the notice. The notice of petition for termination of
400 parental rights must specifically state that if the unmarried
401 biological father desires to assert his parental rights to
402 acquire standing to contest the petition he must, within 30 days
403 after service:

404 1. File a claim of paternity with the Florida Putative
405 Father Registry pursuant to instructions provided for submitting
406 a claim of paternity form to the Office of Vital Statistics,
407 including the address to which the claim must be sent.

408 2. Legally establish his parental rights to the child
409 pursuant to the laws of the state.

410 3. File a verified response with the court which contains a
411 pledge of commitment to the child, a request for the court to
412 calculate and order child support, and an agreement to submit to
413 the court's jurisdiction.

414 4. Provide support for the child as calculated by the court
415 under s. 61.30.

416 5. Seek to establish a substantial relationship with the



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417 child within the parameters established by court order. A father
418 must develop a substantial relationship with the child by taking
419 parental responsibility for the child and the child's future;
420 providing financial support to the child in accordance with his
421 ability, if not prevented from doing so by the person or
422 authorized agency having lawful custody of the child; and
423 establishing or maintaining regular contact with the child in
424 accordance with a written court order. An order for visitation
425 or other contact may be entered by the court if the court
426 determines that such contact will not endanger the safety, well-
427 being, and physical, mental, or emotional health of the child.
428 The court may consider the results of any home study when making
429 such determination.

430 (c) The court shall determine whether the unmarried
431 biological father took the steps necessary to assert his
432 parental rights to acquire standing to contest the termination
433 of parental rights petition pursuant to paragraph (b) and, if
434 not, the court shall enter a finding that the unmarried
435 biological father is no longer a prospective parent or
436 participant, may not contest the petition for termination of
437 parental rights, and is no longer entitled to any further notice
438 of proceedings regarding the child unless otherwise ordered by
439 the court.

440 (d) If an unmarried biological father is not identified
441 pursuant to the inquiry under section 39.803, the unmarried
442 biological father's claim that he did not receive actual notice
443 of the termination proceeding is not a defense to the petition
444 nor grounds that the proceeding is otherwise defective.

445 (e) ~~(b)~~ If a party required to be served with notice as



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446 prescribed in paragraph (a) cannot be served, notice of hearings
447 must be given as prescribed by the rules of civil procedure, and
448 service of process must be made as specified by law or civil
449 actions.

450 ~~(f)(e)~~ Notice as prescribed by this section may be waived,
451 in the discretion of the judge, with regard to any person to
452 whom notice must be given under this subsection if the person
453 executes, before two witnesses and a notary public or other
454 officer authorized to take acknowledgments, a written surrender
455 of the child to a licensed child-placing agency or the
456 department.

457 ~~(g)(d)~~ If the person served with notice under this section
458 fails to personally appear at the advisory hearing, the failure
459 to personally appear shall constitute consent for termination of
460 parental rights by the person given notice. If a parent appears
461 for the advisory hearing and the court orders that parent to
462 personally appear at the adjudicatory hearing for the petition
463 for termination of parental rights, stating the date, time, and
464 location of said hearing, then failure of that parent to
465 personally appear at the adjudicatory hearing shall constitute
466 consent for termination of parental rights.

467 Section 7. Section 39.803, Florida Statutes, is amended to
468 read:

469 39.803 Identity or location of parent unknown after filing
470 of termination of parental rights petition; special procedures.—

471 (1) If the identity or location of a parent is unknown and
472 a petition for termination of parental rights is filed, the
473 court shall conduct under oath the following inquiry of the
474 parent who is available, or, if no parent is available, of any



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475 relative, caregiver, or legal custodian of the child who is
476 present at the hearing and likely to have the information
477 regarding the identity of any man:

478 (a) To whom the mother of the child was married at any time
479 when conception of the child may have occurred or at the time of
480 the birth of the child.

481 (b) Who has filed an affidavit of paternity pursuant to s.
482 382.013(2)(c) before an advisory hearing is held on a petition
483 for termination of parental rights.

484 (c) Who has adopted the child before an advisory hearing is
485 held on the petition for termination of parental rights.

486 (d) Who has been adjudicated by a court as the father of
487 the child before an advisory hearing is held on a petition for
488 termination of parental rights.

489 (e) Whom the mother identified as the father under oath to
490 a representative of the department before an advisory hearing is
491 held on the petition for termination of parental rights.

492 ~~(a) Whether the mother of the child was married at the~~
493 ~~probable time of conception of the child or at the time of birth~~
494 ~~of the child.~~

495 ~~(f)(b) With whom Whether~~ the mother was cohabiting ~~with a~~
496 ~~male~~ at the probable time of conception of the child.

497 ~~(g)(c) Who claims to be the father and from whom Whether~~
498 the mother has received payments or promises of support with
499 respect to the child or because of her pregnancy ~~from a man who~~
500 ~~claims to be the father.~~

501 ~~(h)(d) Who Whether~~ the mother has named ~~any man~~ as the
502 father on the birth certificate of the child or in connection
503 with applying for or receiving public assistance before an



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504 advisory hearing is held on the petition for termination of
505 parental rights.

506 (i) ~~(e)~~ Who ~~Whether a man~~ has acknowledged or claimed
507 paternity of the child in a jurisdiction in which the mother
508 resided at the time of or since conception of the child, or in
509 which the child has resided or resides before an advisory
510 hearing is held on the petition for termination of parental
511 rights.

512 (j) ~~(f)~~ Who ~~Whether a man~~ is named on the birth certificate
513 of the child pursuant to s. 382.013(2).

514 (k) ~~(g)~~ Who ~~Whether a man~~ has been determined by a court
515 order to be the father of the child.

516 (l) ~~(h)~~ Who ~~Whether a man~~ has been determined to be the
517 father of the child by the Department of Revenue as provided in
518 s. 409.256.

519 (2) The information required in subsection (1) may be
520 supplied to the court or the department in the form of a sworn
521 affidavit by a person having personal knowledge of the facts.

522 (3) If the inquiry under subsection (1) identifies any
523 person as a parent or prospective parent, the court shall
524 require notice of the hearing to be provided to that person.

525 (4) If the inquiry under subsection (1) fails to identify
526 any person as a parent or prospective parent, the court shall so
527 find and may proceed without further notice.

528 (5) If the inquiry under subsection (1) identifies a parent
529 or prospective parent, and that person's location is unknown,
530 the court shall direct the petitioner to conduct a diligent
531 search for that person before scheduling an adjudicatory hearing
532 regarding the petition for termination of parental rights to the



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533 child unless the court finds that the best interest of the child
534 requires proceeding without actual notice to the person whose
535 location is unknown.

536 (6) If the inquiry under subsection (1) identifies an
537 unmarried biological father or an unmarried biological father is
538 identified by another means and is personally served with a
539 petition for termination of parental rights but fails to assert
540 his parental rights as specified in s. 39.801(3)(b), the court
541 shall so find and may proceed without further notice.

542 (7)-(6) The diligent search required by subsection (5) must
543 include, at a minimum, inquiries of all known relatives of the
544 parent or prospective parent, inquiries of all offices of
545 program areas of the department likely to have information about
546 the parent or prospective parent, inquiries of other state and
547 federal agencies likely to have information about the parent or
548 prospective parent, inquiries of appropriate utility and postal
549 providers, a thorough search of at least one electronic database
550 specifically designed for locating persons, a search of the
551 Florida Putative Father Registry, and inquiries of appropriate
552 law enforcement agencies. Pursuant to s. 453 of the Social
553 Security Act, 42 U.S.C. s. 653(c)(4), the department, as the
554 state agency administering Titles IV-B and IV-E of the act,
555 shall be provided access to the federal and state parent locator
556 service for diligent search activities.

557 (8)-(7) Any agency contacted by petitioner with a request
558 for information pursuant to subsection (7) -(6) shall release the
559 requested information to the petitioner without the necessity of
560 a subpoena or court order.

561 (9)-(8) If the inquiry and diligent search identifies a



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562 prospective parent, that person must be given the opportunity to
563 become a party to the proceedings by completing a sworn
564 affidavit of parenthood and filing it with the court or the
565 department. A prospective parent who files a sworn affidavit of
566 parenthood while the child is a dependent child but no later
567 than at the time of or before the adjudicatory hearing in the
568 termination of parental rights proceeding for the child shall be
569 considered a parent for all purposes under this section.

570 ~~(10)~~(9) If the diligent search under subsection (5) fails
571 to identify and locate a prospective parent, the court shall so
572 find and may proceed without further notice.

573 Section 8. This act shall take effect October 1, 2018.

574
575 ===== T I T L E A M E N D M E N T =====

576 And the title is amended as follows:

577 Delete everything before the enacting clause
578 and insert:

579 A bill to be entitled
580 An act relating to dependency proceedings; amending s.
581 39.001, F.S.; providing an additional purpose of ch.
582 39, F.S.; amending s. 39.01, F.S.; revising the
583 definition of the term "parent" and defining the term
584 "unmarried biological father"; amending s. 39.402 and
585 39.803, F.S.; revising the types of information
586 relating to the identity and location of a child's
587 legal father that fall within the scope of a court
588 inquiry at a shelter hearing or a hearing regarding a
589 petition for termination of parental rights; amending
590 s. 39.502, F.S.; providing for certain unmarried



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591 biological fathers to receive notice of dependency
592 hearings under certain circumstances; amending ss.
593 39.503, F.S.; revising the types of information
594 relating to the identity and location of a child's
595 legal father that fall within the scope of a court
596 inquiry at a dependency or shelter hearing; requiring
597 a court to take certain actions if a person fails to
598 assert parental rights; providing conditions for
599 establishing paternity in a dependency proceeding;
600 authorizing the court to order certain scientific
601 testing to determine maternity or paternity of a
602 child; providing for assessment of costs of
603 litigation; amending s. 39.801, F.S.; requiring notice
604 of a petition for termination of parental rights to be
605 served on an unmarried biological father identified
606 under oath or by a diligent search of the Florida
607 Putative Father Registry under certain circumstances;
608 providing conditions for contesting the petition;
609 conforming cross-references; providing an effective
610 date.



632020

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/22/2018	.	
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The Committee on Children, Families, and Elder Affairs (Bean) recommended the following:

Senate Amendment to Amendment (820270) (with title amendment)

Delete lines 572 - 573

and insert:

Section 8. Subsection (3) of section 63.092, Florida Statutes, is amended to read:

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

(3) PRELIMINARY HOME STUDY.—Before placing the minor in the intended adoptive home, a preliminary home study must be



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11 performed by a licensed child-placing agency, a child-caring
12 agency registered under s. 409.176, a licensed professional, or
13 an agency described in s. 61.20(2), unless the adoptee is an
14 adult or the petitioner is a stepparent or a relative. If the
15 adoptee is an adult or the petitioner is a stepparent or a
16 relative, a preliminary home study may be required by the court
17 for good cause shown. The department is required to perform the
18 preliminary home study only if there is no licensed child-
19 placing agency, child-caring agency registered under s. 409.176,
20 licensed professional, or agency described in s. 61.20(2), in
21 the county where the prospective adoptive parents reside. The
22 preliminary home study must be made to determine the suitability
23 of the intended adoptive parents and may be completed prior to
24 identification of a prospective adoptive minor. A favorable
25 preliminary home study is valid for 1 year after the date of its
26 completion. Upon its completion, a signed copy of the home study
27 must be provided to the intended adoptive parents who were the
28 subject of the home study. A minor may not be placed in an
29 intended adoptive home before a favorable preliminary home study
30 is completed unless the adoptive home is also a licensed foster
31 home under s. 409.175. The preliminary home study must include,
32 at a minimum:

- 33 (a) An interview with the intended adoptive parents;
- 34 (b) Records checks of the department's central abuse
35 registry, which the department shall provide to the entity
36 conducting the preliminary home study and criminal records
37 correspondence checks under s. 39.0138 through the Department of
38 Law Enforcement on the intended adoptive parents;
- 39 (c) An assessment of the physical environment of the home;



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40 (d) A determination of the financial security of the
41 intended adoptive parents;

42 (e) Documentation of counseling and education of the
43 intended adoptive parents on adoptive parenting as determined by
44 the entity conducting the preliminary home study. The department
45 shall not require training as specified in s. 409.175(14);

46 (f) Documentation that information on adoption and the
47 adoption process has been provided to the intended adoptive
48 parents;

49 (g) Documentation that information on support services
50 available in the community has been provided to the intended
51 adoptive parents; and

52 (h) A copy of each signed acknowledgment of receipt of
53 disclosure required by s. 63.085.

54 If the preliminary home study is favorable, a minor may be
55 placed in the home pending entry of the judgment of adoption. A
56 minor may not be placed in the home if the preliminary home
57 study is unfavorable. If the preliminary home study is
58 unfavorable, the adoption entity may, within 20 days after
59 receipt of a copy of the written recommendation, petition the
60 court to determine the suitability of the intended adoptive
61 home. A determination as to suitability under this subsection
62 does not act as a presumption of suitability at the final
63 hearing. In determining the suitability of the intended adoptive
64 home, the court must consider the totality of the circumstances
65 in the home. A minor may not be placed in a home in which there
66 resides any person determined by the court to be a sexual
67 predator as defined in s. 775.21 or to have been convicted of an
68 offense listed in s. 63.089(4)(b)2.



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

And the title is amended as follows:

Delete line 609

and insert:

conforming cross-references; amending s. 63.092, F.S.;
requiring the Department of Children and Families to
release specified records to entities conducting
preliminary home studies; providing the department of
Children and Families shall not require specified
training for certain home studies; providing an
effective.



383900

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/22/2018	.	
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The Committee on Children, Families, and Elder Affairs (Bean) recommended the following:

Senate Amendment to Amendment (820270) (with title amendment)

Delete lines 572 - 573
and insert:

Section 8. Subsection (3) of section 63.092, Florida Statutes, is amended to read:

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

(3) PRELIMINARY HOME STUDY.—Before placing the minor in the



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11 intended adoptive home, a preliminary home study must be
12 performed by a licensed child-placing agency, a child-caring
13 agency registered under s. 409.176, a licensed professional, or
14 an agency described in s. 61.20(2), unless the adoptee is an
15 adult or the petitioner is a stepparent or a relative. If the
16 adoptee is an adult or the petitioner is a stepparent or a
17 relative, a preliminary home study may be required by the court
18 for good cause shown. The department is required to perform the
19 preliminary home study only if there is no licensed child-
20 placing agency, child-caring agency registered under s. 409.176,
21 licensed professional, or agency described in s. 61.20(2), in
22 the county where the prospective adoptive parents reside. The
23 preliminary home study must be made to determine the suitability
24 of the intended adoptive parents and may be completed prior to
25 identification of a prospective adoptive minor. A favorable
26 preliminary home study is valid for 1 year after the date of its
27 completion. Upon its completion, a signed copy of the home study
28 must be provided to the intended adoptive parents who were the
29 subject of the home study. A minor may not be placed in an
30 intended adoptive home before a favorable preliminary home study
31 is completed unless the adoptive home is also a licensed foster
32 home under s. 409.175. The preliminary home study must include,
33 at a minimum:

- 34 (a) An interview with the intended adoptive parents;
- 35 (b) Records checks of the department's central abuse
36 registry, which the department shall provide to the entity
37 conducting the preliminary home study, and criminal records
38 correspondence checks under s. 39.0138 through the Department of
39 Law Enforcement on the intended adoptive parents;



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40 (c) An assessment of the physical environment of the home;
41 (d) A determination of the financial security of the
42 intended adoptive parents;
43 (e) Documentation of counseling and education of the
44 intended adoptive parents on adoptive parenting as determined by
45 the entity conducting the preliminary home study. The department
46 shall not require training as specified in s. 409.175(14) for
47 cases involving children placed for adoption that are not in the
48 custody or control of the department;
49 (f) Documentation that information on adoption and the
50 adoption process has been provided to the intended adoptive
51 parents;
52 (g) Documentation that information on support services
53 available in the community has been provided to the intended
54 adoptive parents; and
55 (h) A copy of each signed acknowledgment of receipt of
56 disclosure required by s. 63.085.
57 If the preliminary home study is favorable, a minor may be
58 placed in the home pending entry of the judgment of adoption. A
59 minor may not be placed in the home if the preliminary home
60 study is unfavorable. If the preliminary home study is
61 unfavorable, the adoption entity may, within 20 days after
62 receipt of a copy of the written recommendation, petition the
63 court to determine the suitability of the intended adoptive
64 home. A determination as to suitability under this subsection
65 does not act as a presumption of suitability at the final
66 hearing. In determining the suitability of the intended adoptive
67 home, the court must consider the totality of the circumstances
68 in the home. A minor may not be placed in a home in which there



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69 resides any person determined by the court to be a sexual
70 predator as defined in s. 775.21 or to have been convicted of an
71 offense listed in s. 63.089(4)(b)2.

72
73

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

75 And the title is amended as follows:

76 Delete line 609

77 and insert:

78 conforming cross-references; amending s. 63.092, F.S.;

79 requiring the Department of Children and Families to

80 release specified records to entities conducting

81 preliminary home studies; providing the department of

82 Children and Families shall not require specified

83 training for certain home studies; providing an

84 effective.

85



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/22/2018	.	
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	.	
	.	

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43 intended adoptive parents on adoptive parenting as determined by
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82 training for certain home studies; providing an

83 effective.

By Senator Bean

4-00807-18

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1 A bill to be entitled
 2 An act relating to dependency proceedings; amending s.
 3 39.001, F.S.; providing an additional purpose of ch.
 4 39, F.S.; amending s. 39.01, F.S.; revising the
 5 definition of the term "parent" and defining the term
 6 "unmarried biological father"; amending s. 39.402 and
 7 39.803, F.S.; revising the types of information
 8 relating to the identity and location of a child's
 9 legal father that fall within the scope of a court
 10 inquiry at a shelter hearing or a hearing regarding a
 11 petition for termination of parental rights; amending
 12 s. 39.502, F.S.; providing for certain unmarried
 13 biological fathers to receive notice of dependency
 14 hearings under certain circumstances; amending ss.
 15 39.503, F.S.; revising the types of information
 16 relating to the identity and location of a child's
 17 legal father that fall within the scope of a court
 18 inquiry at a dependency or shelter hearing; requiring
 19 a court to take certain actions if a person fails to
 20 assert parental rights; providing conditions for
 21 establishing paternity in a dependency proceeding;
 22 authorizing the court to order certain scientific
 23 testing to determine maternity or paternity of a
 24 child; providing for assessment of costs of
 25 litigation; amending s. 39.801, F.S.; requiring notice
 26 of a petition for termination of parental rights to be
 27 served on an unmarried biological father identified
 28 under oath or by a diligent search of the Florida
 29 Putative Father Registry under certain circumstances;

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30 providing conditions for contesting the petition;
 31 conforming cross-references; amending s. 409.1662,
 32 F.S.; requiring the Department of Children and
 33 Families to include certain information regarding
 34 adoptions in outcome-based agreements between lead
 35 agencies and their subcontracted providers; providing
 36 an effective date.

37
 38 Be It Enacted by the Legislature of the State of Florida:

39
 40 Section 1. Paragraphs (n), (o), and (p) of subsection (1)
 41 of section 39.001, Florida Statutes, are redesignated as
 42 paragraphs (o), (p), and (q), respectively, and a new paragraph
 43 (n) is added to that subsection to read:

44 39.001 Purposes and intent; personnel standards and
 45 screening.-

46 (1) PURPOSES OF CHAPTER.—The purposes of this chapter are:
 47 (n) Whenever possible, to ensure that children have the
 48 benefit of loving and caring relationships with both of their
 49 parents. To that end, parents should be engaged to the fullest
 50 extent possible in the lives of their children and prospective
 51 parents should be afforded a prompt, full, and fair opportunity
 52 to establish a parental relationship with their children and
 53 assume all parental duties. A prospective parent who is an
 54 unmarried biological father has the same rights under this
 55 chapter as under chapter 63. Accordingly, his interest is
 56 inchoate until he demonstrates a timely and full commitment to
 57 the responsibilities of parenthood. Because time is of the
 58 essence under this chapter, and the time limitations belong to

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59 the child and not to the parent or to any prospective parent,
 60 prospective parents, including unmarried biological parents,
 61 must be aware that failure to comply with the specific
 62 requirements of this chapter may result in permanent elimination
 63 or termination of their rights or interests as actual or
 64 inchoate parents or prospective parents.

65 Section 2. Subsection (50) of section 39.01, Florida
 66 Statutes, is amended, subsection (81) is renumbered as
 67 subsection (82), and a new subsection (81) is added to that
 68 section, to read:

69 39.01 Definitions.—When used in this chapter, unless the
 70 context otherwise requires:

71 (50) "Parent" means a woman who gives birth to a child and
 72 a man whose consent to the adoption of the child would be
 73 required under s. 63.062(1). The term "parent" also means legal
 74 father as defined in this section. If a child has been legally
 75 adopted, the term "parent" means the adoptive mother or father
 76 of the child. For purposes of this chapter only, when the phrase
 77 "parent or legal custodian" is used, it refers to rights or
 78 responsibilities of the parent and, only if there is no living
 79 parent with intact parental rights, to the rights or
 80 responsibilities of the legal custodian who has assumed the role
 81 of the parent. The term does not include an individual whose
 82 parental relationship to the child has been legally terminated,
 83 or an alleged or prospective parent, unless+

84 ~~(a) The parental status falls within the terms of s.~~
 85 ~~39.503(1) or s. 63.062(1); or~~

86 ~~(b) parental status is applied for the purpose of~~
 87 ~~determining whether the child has been abandoned.~~

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88 (81) "Unmarried biological father" means the child's
 89 biological father who is not married to the child's mother at
 90 the time of conception or on the date of the birth of the child
 91 and who, before the advisory hearing is held on a petition to
 92 terminate parental rights, has not been adjudicated or declared
 93 by a court of competent jurisdiction to be the legal father of
 94 the child or has not executed an affidavit pursuant to s.
 95 382.013(2)(c).

96 Section 3. Paragraph (c) of subsection (8) of section
 97 39.402, Florida Statutes, is amended to read:

98 39.402 Placement in a shelter.—

99 (8)

100 (c) At the shelter hearing, the court shall:

101 1. Appoint a guardian ad litem to represent the best
 102 interest of the child, unless the court finds that such
 103 representation is unnecessary;

104 2. Inform the parents or legal custodians of their right to
 105 counsel to represent them at the shelter hearing and at each
 106 subsequent hearing or proceeding, and the right of the parents
 107 to appointed counsel, pursuant to the procedures set forth in s.
 108 39.013;

109 3. Give the parents or legal custodians an opportunity to
 110 be heard and to present evidence; and

111 4. Inquire of those present at the shelter hearing as to
 112 the identity and location of the legal father. In determining
 113 who the legal father of the child may be, the court shall
 114 inquire under oath of those present at the shelter hearing
 115 whether they have any of the following information regarding the
 116 identity of any man:

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117 a. To whom the mother of the child was married at any time
 118 when conception of the child may have occurred or at the time of
 119 the birth of the child.

120 b. Who has filed an affidavit of paternity pursuant to s.
 121 382.013(2) (c) before an advisory hearing is held on a petition
 122 for termination of parental rights.

123 c. Who has adopted the child.

124 d. Who has been adjudicated by a court of competent
 125 jurisdiction as the father of the child before an advisory
 126 hearing is held on a petition for termination of parental
 127 rights.

128 e. Whom the mother identified as the father under oath to a
 129 representative of the department.

130 ~~a. Whether the mother of the child was married at the~~
 131 ~~probable time of conception of the child or at the time of birth~~
 132 ~~of the child.~~

133 ~~f. b. With whom Whether~~ the mother was cohabiting with a
 134 ~~male~~ at the probable time of conception of the child.

135 ~~g. e. Who claims to be the father and from whom Whether~~ the
 136 mother has received payments or promises of support with respect
 137 to the child or because of her pregnancy ~~from a man who claims~~
 138 ~~to be the father.~~

139 ~~h. d. Whom Whether~~ the mother has named ~~any man~~ as the
 140 father on the birth certificate of the child or in connection
 141 with applying for or receiving public assistance.

142 ~~i. e. Who Whether any man~~ has acknowledged or claimed
 143 paternity of the child in a jurisdiction in which the mother
 144 resided at the time of or since conception of the child or in
 145 which the child has resided or resides.

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146 ~~j. f. Who Whether a man~~ is named on the birth certificate of
 147 the child pursuant to s. 382.013(2).

148 ~~k. g. Who Whether a man~~ has been determined by a court order
 149 to be the father of the child.

150 ~~l. h. Who Whether a man~~ has been determined to be the father
 151 of the child by the Department of Revenue as provided in s.
 152 409.256.

153 Section 4. Subsections (7) through (19) of section 39.502,
 154 Florida Statutes, are renumbered as subsections (8) through
 155 (20), respectively, subsection (1) and present subsection (9) of
 156 that section are amended, and a new subsection (7) is added to
 157 that section, to read:

158 39.502 Notice, process, and service.—

159 (1) Unless parental rights have been terminated, all
 160 parents must be notified of all proceedings or hearings
 161 involving the child. Notice in cases involving shelter hearings
 162 and hearings resulting from medical emergencies must be that
 163 most likely to result in actual notice to the parents. In all
 164 other dependency proceedings, notice must be provided in
 165 accordance with subsections (4)-(10) ~~(4)-(9)~~, except when a
 166 relative requests notification pursuant to s. 39.301(14) (b), in
 167 which case notice shall be provided pursuant to subsection (20)
 168 ~~(19)~~.

169 (7) (a) Notice of the petition for dependency shall be
 170 individually served upon any known and locatable unmarried
 171 biological father who is identified under oath before the court
 172 or who is identified by a diligent search of the Florida
 173 Putative Father Registry. Service of the notice of the petition
 174 for dependency is not required if the unmarried biological

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175 father signs an affidavit of nonpaternity or a consent to
 176 termination of his parental rights and such affidavit or consent
 177 is accepted by the department. The recipient of the notice may
 178 waive service of process by executing a waiver and acknowledging
 179 receipt of the notice.

180 (b) The notice of petition for dependency must specifically
 181 state that if the unmarried biological father desires to assert
 182 his parental rights to acquire standing to contest the
 183 dependency petition he must, within 30 days after service:

184 1. File a claim of paternity with the Florida Putative
 185 Father Registry pursuant to instructions provided for submitting
 186 a claim of paternity form to the Office of Vital Statistics,
 187 including the address to which the claim must be sent.

188 2. Legally establish his parental rights to the child
 189 pursuant to the laws of the state.

190 3. File a verified response with the court which contains a
 191 pledge of commitment to the child, a request for the court to
 192 calculate and order child support, and an agreement to submit to
 193 the court's jurisdiction.

194 4. Provide support for the child as calculated by the court
 195 under s. 61.30.

196 5. Seek to establish a substantial relationship with the
 197 child within the parameters established by court order. An
 198 unmarried biological father must develop a substantial
 199 relationship with the child by taking parental responsibility
 200 for the child and the child's future; providing financial
 201 support to the child in accordance with his ability, if not
 202 prevented from doing so by the person or authorized agency
 203 having lawful custody of the child; and establishing or

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204 maintaining regular contact with the child in accordance with a
 205 written court order. An order for visitation or other contact
 206 may be entered by the court if the court determines that such
 207 contact will not endanger the safety, well-being, or physical,
 208 mental, or emotional health of the child. The court may consider
 209 the results of any home study in making such determination.

210 (c) The court shall determine whether the unmarried
 211 biological father took the steps necessary to assert his
 212 parental rights to acquire standing to contest the dependency
 213 petition pursuant to paragraph (b) and, if not, the court shall
 214 enter a finding that the unmarried biological father is no
 215 longer a prospective parent or participant, may not contest the
 216 petition for dependency or any subsequent petition for
 217 termination of parental rights, and is no longer entitled to any
 218 further notice of proceedings regarding the child unless
 219 otherwise ordered by the court.

220 (d) If an unmarried biological father is not identified
 221 pursuant to the inquiry under this section, the unmarried
 222 biological father's claim that he did not receive actual notice
 223 of the dependency proceeding is not a defense to a finding that
 224 the child is dependent.

225 (10)-(9) When an affidavit of diligent search has been filed
 226 under subsection (9) -(8), the petitioner shall continue to
 227 search for and attempt to serve the person sought until excused
 228 from further search by the court. The petitioner shall report on
 229 the results of the search at each court hearing until the person
 230 is identified or located or further search is excused by the
 231 court.

232 Section 5. Section 39.503, Florida Statutes, is amended to

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233 read:

234 39.503 Identity or location of parent unknown; special
235 procedures.-

236 (1) If the identity or location of a parent is unknown and
237 a petition for dependency or shelter is filed, the court shall
238 conduct under oath the following inquiry of the parent or legal
239 custodian who is available, or, if no parent or legal custodian
240 is available, of any relative or custodian of the child who is
241 present at the hearing and likely to have any of the following
242 information regarding the identity of any man:

243 (a) To whom the mother of the minor was married at any time
244 when conception of the child may have occurred or at the time of
245 the birth of the child.

246 (b) Who has filed an affidavit of paternity pursuant to s.
247 382.013(2)(c) before an advisory hearing is held on a petition
248 for termination of parental rights.

249 (c) Who has adopted the child.

250 (d) Who has been adjudicated by a court of competent
251 jurisdiction as the father of the child before an advisory
252 hearing is held on a petition for termination of parental
253 rights.

254 (e) Whom the mother identified as the father under oath to
255 a representative of the department.

256 ~~(a) Whether the mother of the child was married at the~~
257 ~~probable time of conception of the child or at the time of birth~~
258 ~~of the child.~~

259 ~~(f)(b) With whom Whether the mother was cohabiting with a~~
260 ~~male at the probable time of conception of the child.~~

261 (g)(e) Who claims to be the father and from whom Whether

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262 the mother has received payments or promises of support with
263 respect to the child or because of her pregnancy ~~from a man who~~
264 ~~claims to be the father.~~

265 (h)(d) Who Whether the mother has named ~~any man~~ as the
266 father on the birth certificate of the child or in connection
267 with applying for or receiving public assistance.

268 (i)(e) Who Whether any man has acknowledged or claimed
269 paternity of the child in a jurisdiction in which the mother
270 resided at the time of or since conception of the child, or in
271 which the child has resided or resides.

272 (j)(f) Who Whether a man is named on the birth certificate
273 of the child pursuant to s. 382.013(2).

274 (k)(g) Who Whether a man has been determined by a court
275 order to be the father of the child.

276 (l)(h) Who Whether a man has been determined to be the
277 father of the child by the Department of Revenue as provided in
278 s. 409.256.

279 (2) The information required under ~~in~~ subsection (1) may be
280 supplied to the court or the department in the form of a sworn
281 affidavit by a person having personal knowledge of the facts.

282 (3) If the inquiry under subsection (1) identifies any
283 person as a parent or prospective parent, the court shall
284 require notice of the hearing to be provided to that person.

285 (4) If the inquiry under subsection (1) fails to identify
286 any person as a parent or prospective parent, the court shall so
287 find and may proceed without further notice.

288 (5) If the inquiry under subsection (1) identifies a parent
289 or prospective parent, and that person's location is unknown,
290 the court shall direct the petitioner to conduct a diligent

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291 search for that person before scheduling a disposition hearing
 292 regarding the dependency of the child unless the court finds
 293 that the best interest of the child requires proceeding without
 294 notice to the person whose location is unknown.

295 (6) If the inquiry under subsection (1) identifies an
 296 unmarried biological father or an unmarried biological father is
 297 identified by another means and is individually served with a
 298 petition for dependency but fails to assert his parental rights
 299 as specified in s. 39.502(7), the court shall so find and may
 300 proceed without further notice.

301 (7)(6) The diligent search required by subsection (5) must
 302 include, at a minimum, inquiries of all relatives of the parent
 303 or prospective parent made known to the petitioner, inquiries of
 304 all offices of program areas of the department likely to have
 305 information about the parent or prospective parent, inquiries of
 306 other state and federal agencies likely to have information
 307 about the parent or prospective parent, inquiries of appropriate
 308 utility and postal providers, a thorough search of at least one
 309 electronic database specifically designed for locating persons,
 310 a search of the Florida Putative Father Registry, and inquiries
 311 of appropriate law enforcement agencies. Pursuant to s. 453 of
 312 the Social Security Act, 42 U.S.C. s. 653(c)(4), the department,
 313 as the state agency administering Titles IV-B and IV-E of the
 314 act, shall be provided access to the federal and state parent
 315 locator service for diligent search activities.

316 (8)(7) Any agency contacted by a petitioner with a request
 317 for information pursuant to subsection (7) (6) shall release the
 318 requested information to the petitioner without the necessity of
 319 a subpoena or court order.

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320 (9) (a) (4) If the inquiry and diligent search identifies a
 321 prospective parent, that person must be given the opportunity to
 322 become a party to the proceedings by completing a sworn
 323 affidavit of parenthood and filing it with the court or the
 324 department. A prospective parent who files a sworn affidavit of
 325 parenthood while the child is a dependent child but no later
 326 than at the time of or before the adjudicatory hearing in any
 327 termination of parental rights proceeding for the child shall be
 328 considered a parent for all purposes under this section unless
 329 the other parent contests the determination of parenthood. If
 330 neither the known parent nor the prospective parent objects to a
 331 request to establish parentage under the laws of the state, the
 332 court may enter an agreed order, order the Office of Vital
 333 Statistics to amend the child's birth certificate, and order the
 334 petitioning parent to pay support for the child.

335 (b) If the known parent contests the recognition of the
 336 prospective parent as a parent, the prospective parent may not
 337 be recognized as a parent until proceedings to determine
 338 maternity or paternity under chapter 742 have been concluded.
 339 However, the prospective parent shall continue to receive notice
 340 of hearings as a participant pending results of the chapter 742
 341 proceedings to determine maternity or paternity. The dependency
 342 court may hear the chapter 742 proceeding and establish
 343 parentage in accordance with the procedures in that chapter,
 344 including entry of an order or judgment establishing parentage.

345 (c) A prospective parent may only file a sworn affidavit of
 346 parenthood when the child does not have two legally recognized
 347 parents. If a child has two legally recognized parents, the
 348 prospective parent must seek to establish parentage pursuant to

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349 chapter 742.

350 (d) Nothing in this subsection prevents the known parent
 351 and the prospective parent from agreeing to voluntarily submit
 352 to scientific testing to determine the maternity or paternity of
 353 the child if the child does not already have two legally
 354 recognized parents and the court determines it is in the child's
 355 best interest.

356 (e) Test results are admissible in evidence and shall be
 357 weighed along with other evidence of parentage unless the
 358 statistical probability of parentage equals or exceeds 95
 359 percent. A statistical probability of parentage that equals or
 360 exceeds 95 percent creates a rebuttable presumption, as
 361 described in s. 90.304, that the alleged parent is the
 362 biological parent of the child. If a party fails to rebut the
 363 presumption of parentage which arose from the statistical
 364 probability of parentage that equals or exceeds 95 percent, the
 365 court may enter a summary judgment of parentage. If the test
 366 results show the alleged parent is not the biological parent,
 367 the prospective parent is no longer considered a participant or
 368 entitled to notice of the proceedings.

369 (f) The court shall assess the cost of the paternity
 370 determination as a cost of litigation.

371 (10)(9) If the diligent search under subsection (5) fails
 372 to identify and locate a parent or prospective parent, the court
 373 shall so find and may proceed without further notice.

374 Section 6. Subsection (3) of section 39.801, Florida
 375 Statutes, is amended to read:

376 39.801 Procedures and jurisdiction; notice; service of
 377 process.—

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378 (3) Before the court may terminate parental rights, in
 379 addition to the other requirements set forth in this part, the
 380 following requirements must be met:

381 (a) Notice of the date, time, and place of the advisory
 382 hearing for the petition to terminate parental rights and a copy
 383 of the petition must be personally served upon the following
 384 persons, specifically notifying them that a petition has been
 385 filed:

- 386 1. The parents of the child.
- 387 2. The legal custodians of the child.
- 388 3. If the parents who would be entitled to notice are dead
 389 or unknown, a living relative of the child, unless upon diligent
 390 search and inquiry no such relative can be found.
- 391 4. Any person who has physical custody of the child.
- 392 5. Any grandparent entitled to priority for adoption under
 393 s. 63.0425.
- 394 6. Any prospective parent who has been identified under s.
 395 39.503 or s. 39.803, unless a court order has been entered
 396 pursuant to s. 39.503(4), (6), or (10) or s. 39.803(4), (6), or
 397 (10) s. 39.503(4) or (9) or s. 39.803(4) or (9) which indicates
 398 no further notice is required. Except as otherwise provided in
 399 this section, if there is not a legal father, notice of the
 400 petition for termination of parental rights must be provided to
 401 any known prospective father who is identified under oath before
 402 the court or who is identified by a diligent search of the
 403 Florida Putative Father Registry. Service of the notice of the
 404 petition for termination of parental rights is not required if
 405 the prospective father executes an affidavit of nonpaternity or
 406 a consent to termination of his parental rights which is

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407 accepted by the court after notice and opportunity to be heard
 408 by all parties to address the best interests of the child in
 409 accepting such affidavit.

410 7. The guardian ad litem for the child or the
 411 representative of the guardian ad litem program, if the program
 412 has been appointed.

413
 414 The document containing the notice to respond or appear must
 415 contain, in type at least as large as the type in the balance of
 416 the document, the following or substantially similar language:
 417 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
 418 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
 419 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
 420 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
 421 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
 422 NOTICE."

423 (b) Notice of the petition for termination of parental
 424 rights shall be individually served upon any known and locatable
 425 unmarried biological father who is identified under oath before
 426 the court or who is identified by a diligent search of the
 427 Florida Putative Father Registry. Service of the notice of the
 428 petition for termination of parental rights is not required if
 429 the unmarried biological father signs an affidavit of
 430 nonpaternity or a consent to termination of his parental rights
 431 and such affidavit or consent is accepted by the department. The
 432 recipient of the notice may waive service of process by
 433 executing a waiver and acknowledging receipt of the notice. The
 434 notice of petition for termination of parental rights must
 435 specifically state that if the unmarried biological father

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

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436 desires to assert his parental rights to acquire standing to
 437 contest the petition he must, within 30 days after service:

438 1. File a claim of paternity with the Florida Putative
 439 Father Registry pursuant to instructions provided for submitting
 440 a claim of paternity form to the Office of Vital Statistics,
 441 including the address to which the claim must be sent.

442 2. Legally establish his parental rights to the child
 443 pursuant to the laws of the state.

444 3. File a verified response with the court which contains a
 445 pledge of commitment to the child, a request for the court to
 446 calculate and order child support, and an agreement to submit to
 447 the court's jurisdiction.

448 4. Provide support for the child as calculated by the court
 449 under s. 61.30.

450 5. Seek to establish a substantial relationship with the
 451 child within the parameters established by court order. A father
 452 must develop a substantial relationship with the child by taking
 453 parental responsibility for the child and the child's future;
 454 providing financial support to the child in accordance with his
 455 ability, if not prevented from doing so by the person or
 456 authorized agency having lawful custody of the child; and
 457 establishing or maintaining regular contact with the child in
 458 accordance with a written court order. An order for visitation
 459 or other contact may be entered by the court if the court
 460 determines that such contact will not endanger the safety, well-
 461 being, and physical, mental, or emotional health of the child.
 462 The court may consider the results of any home study when making
 463 such determination.

464 (c) The court shall determine whether the unmarried

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465 biological father took the steps necessary to assert his
 466 parental rights to acquire standing to contest the dependency
 467 petition pursuant to paragraph (b) and, if not, the court shall
 468 enter a finding that the unmarried biological father is no
 469 longer a prospective parent or participant, may not contest the
 470 petition for termination of parental rights, and is no longer
 471 entitled to any further notice of proceedings regarding the
 472 child unless otherwise ordered by the court.

473 (d) If an unmarried biological father is not identified
 474 pursuant to the inquiry under this section, the unmarried
 475 biological father's claim that he did not receive actual notice
 476 of the termination proceeding is not a defense to the petition
 477 nor grounds that the proceeding is otherwise defective.

478 (e)(b) If a party required to be served with notice as
 479 prescribed in paragraph (a) cannot be served, notice of hearings
 480 must be given as prescribed by the rules of civil procedure, and
 481 service of process must be made as specified by law or civil
 482 actions.

483 (f)(e) Notice as prescribed by this section may be waived,
 484 in the discretion of the judge, with regard to any person to
 485 whom notice must be given under this subsection if the person
 486 executes, before two witnesses and a notary public or other
 487 officer authorized to take acknowledgments, a written surrender
 488 of the child to a licensed child-placing agency or the
 489 department.

490 (g)(d) If the person served with notice under this section
 491 fails to personally appear at the advisory hearing, the failure
 492 to personally appear shall constitute consent for termination of
 493 parental rights by the person given notice. If a parent appears

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494 for the advisory hearing and the court orders that parent to
 495 personally appear at the adjudicatory hearing for the petition
 496 for termination of parental rights, stating the date, time, and
 497 location of said hearing, then failure of that parent to
 498 personally appear at the adjudicatory hearing shall constitute
 499 consent for termination of parental rights.

500 Section 7. Section 39.803, Florida Statutes, is amended to
 501 read:

502 39.803 Identity or location of parent unknown after filing
 503 of termination of parental rights petition; special procedures.—

504 (1) If the identity or location of a parent is unknown and
 505 a petition for termination of parental rights is filed, the
 506 court shall conduct under oath the following inquiry of the
 507 parent who is available, or, if no parent is available, of any
 508 relative, caregiver, or legal custodian of the child who is
 509 present at the hearing and likely to have the information
 510 regarding the identity of any man:

511 (a) To whom the mother of the child was married at any time
 512 when conception of the child may have occurred or at the time of
 513 the birth of the child.

514 (b) Who has filed an affidavit of paternity pursuant to s.
 515 382.013(2)(c) before an advisory hearing is held on a petition
 516 for termination of parental rights.

517 (c) Who has adopted the child before an advisory hearing is
 518 held on the petition for termination of parental rights.

519 (d) Who has been adjudicated by a court as the father of
 520 the child before an advisory hearing is held on a petition for
 521 termination of parental rights.

522 (e) Whom the mother identified as the father under oath to

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523 a representative of the department before an advisory hearing is
 524 held on the petition for termination of parental rights.

525 ~~(a) Whether the mother of the child was married at the~~
 526 ~~probable time of conception of the child or at the time of birth~~
 527 ~~of the child.~~

528 ~~(f)(b) With whom whether the mother was cohabiting with a~~
 529 ~~male at the probable time of conception of the child.~~

530 ~~(g)(c) Who claims to be the father and from whom whether~~
 531 the mother has received payments or promises of support with
 532 respect to the child or because of her pregnancy ~~from a man who~~
 533 ~~claims to be the father.~~

534 ~~(h)(d) Who whether the mother has named any man as the~~
 535 father on the birth certificate of the child or in connection
 536 with applying for or receiving public assistance before an
 537 advisory hearing is held on the petition for termination of
 538 parental rights.

539 ~~(i)(e) Who whether any man has acknowledged or claimed~~
 540 paternity of the child in a jurisdiction in which the mother
 541 resided at the time of or since conception of the child, or in
 542 which the child has resided or resides before an advisory
 543 hearing is held on the petition for termination of parental
 544 rights.

545 ~~(j)(f) Who whether a man is named on the birth certificate~~
 546 of the child pursuant to s. 382.013(2).

547 ~~(k)(g) Who whether a man has been determined by a court~~
 548 order to be the father of the child.

549 ~~(l)(h) Who whether a man has been determined to be the~~
 550 father of the child by the Department of Revenue as provided in
 551 s. 409.256.

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552 (2) The information required in subsection (1) may be
 553 supplied to the court or the department in the form of a sworn
 554 affidavit by a person having personal knowledge of the facts.

555 (3) If the inquiry under subsection (1) identifies any
 556 person as a parent or prospective parent, the court shall
 557 require notice of the hearing to be provided to that person.

558 (4) If the inquiry under subsection (1) fails to identify
 559 any person as a parent or prospective parent, the court shall so
 560 find and may proceed without further notice.

561 (5) If the inquiry under subsection (1) identifies a parent
 562 or prospective parent, and that person's location is unknown,
 563 the court shall direct the petitioner to conduct a diligent
 564 search for that person before scheduling an adjudicatory hearing
 565 regarding the petition for termination of parental rights to the
 566 child unless the court finds that the best interest of the child
 567 requires proceeding without actual notice to the person whose
 568 location is unknown.

569 (6) If the inquiry under subsection (1) identifies an
 570 unmarried biological father or an unmarried biological father is
 571 identified by another means and is individually served with a
 572 petition for termination of parental rights but fails to assert
 573 his parental rights as specified in s. 39.801(3)(b), the court
 574 shall so find and may proceed without further notice.

575 ~~(7)(6)~~ The diligent search required by subsection (5) must
 576 include, at a minimum, inquiries of all known relatives of the
 577 parent or prospective parent, inquiries of all offices of
 578 program areas of the department likely to have information about
 579 the parent or prospective parent, inquiries of other state and
 580 federal agencies likely to have information about the parent or

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581 prospective parent, inquiries of appropriate utility and postal
 582 providers, a thorough search of at least one electronic database
 583 specifically designed for locating persons, a search of the
 584 Florida Putative Father Registry, and inquiries of appropriate
 585 law enforcement agencies. Pursuant to s. 453 of the Social
 586 Security Act, 42 U.S.C. s. 653(c)(4), the department, as the
 587 state agency administering Titles IV-B and IV-E of the act,
 588 shall be provided access to the federal and state parent locator
 589 service for diligent search activities.

590 ~~(8)(7)~~ Any agency contacted by petitioner with a request
 591 for information pursuant to subsection (7) ~~(6)~~ shall release the
 592 requested information to the petitioner without the necessity of
 593 a subpoena or court order.

594 ~~(9)(8)~~ If the inquiry and diligent search identifies a
 595 prospective parent, that person must be given the opportunity to
 596 become a party to the proceedings by completing a sworn
 597 affidavit of parenthood and filing it with the court or the
 598 department. A prospective parent who files a sworn affidavit of
 599 parenthood while the child is a dependent child but no later
 600 than at the time of or before the adjudicatory hearing in the
 601 termination of parental rights proceeding for the child shall be
 602 considered a parent for all purposes under this section.

603 ~~(10)(9)~~ If the diligent search under subsection (5) fails
 604 to identify and locate a prospective parent, the court shall so
 605 find and may proceed without further notice.

606 Section 8. Paragraph (b) of subsection (2) of section
 607 409.1662, Florida Statutes, is amended to read:

608 409.1662 Children within the child welfare system; adoption
 609 incentive program.—

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610 (2) ADMINISTRATION OF THE PROGRAM.—

611 (b) Using the information from the baseline assessment, the
 612 department shall annually negotiate outcome-based agreements
 613 with lead agencies and their subcontracted providers. The
 614 agreements must establish measurable outcome targets to increase
 615 the number of adoptions resulting in permanent placements that
 616 enhance children's well-being. The agreements must ~~will~~ define
 617 the method for measuring performance and for determining the
 618 level of performance required to earn the incentive payment, and
 619 the amount of the incentive payment which may be earned for each
 620 target. The agreements must ensure that any placement for
 621 adoption by an adoption entity pursuant to s. 63.082(6) is
 622 credited to the lead agency and its subcontractor as if the lead
 623 agency or its subcontractor had made the placement.

624 Section 9. This act shall take effect October 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/22/18

Meeting Date

774

Bill Number (if applicable)

432020

Amendment Barcode (if applicable)

Topic Dependency, home studies

Name Marilyn Appewell

Job Title Social Worker

Address 5422 Piedmont Cr dr st
Street

Tall, FL 32317
City State Zip

Phone 850-577-3077

Email twndmom31@aol.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/22/2018

Meeting Date

774

Bill Number (if applicable)

Topic 774- Dependency Proceedings

Amendment Barcode (if applicable)

Name Sabrina Abboud

Job Title Policy Analyst

Address 111 S. Magnolia Dr. #3

Phone (850)425-2600

Street

Tallahassee

FL

32301

City

State

Zip

Email contact@iamforkids.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing The Children's Campaign

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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APPEARANCE RECORD

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

1/22/18
Meeting Date

774
Bill Number (if applicable)

Topic SB 774

Amendment Barcode (if applicable)

Name Candice Brower

Job Title Regional Counsel

Address 255 S. Main St. Suite 205
Street

Phone 352-681-0293

Gainesville FL 32601
City State Zip

Email Candice.brower@rci.fl.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Regional Counsel (1st DCA Region)

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.

APPEARANCE RECORD

11/22/2018
Meeting Date

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

SB 774
Bill Number (if applicable)

Topic SB 774 - Biological Fathers/Adoptions
Amendment Barcode (if applicable)

Name JEFFREY DEEN

Job Title Regional Conflict Counsel S# DCA

Address 101 Sunnytown Rd
Street

Phone 407-389-5140

Casselberry FL
City State Zip

Email JDEEN@RCSSTATE.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Regional Conflict Counsel

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.

APPEARANCE RECORD

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

1/22/2018

Meeting Date

774

Bill Number (if applicable)

Topic Dependency Proceedings

Amendment Barcode (if applicable)

Name Joshua Sanders

Job Title Deck hand

Address 141 Sanders hill rd.

Phone 850-363-4250

Solchoppy

City

FL.

State

32358

Zip

Email JoshSanders646@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Self

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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APPEARANCE RECORD

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

1/22/2018
Meeting Date

774
Bill Number (if applicable)

Topic Dependency Proceedings

Amendment Barcode (if applicable)

Name Tom Powell

Job Title Attorney for Josh Sanders

Address 803 S. Calhoun St.
Street

Phone 850/224-1452

Tallahassee FL 32303
City State Zip

Email tom@powellforthedefense.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Josh Sanders, a father

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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APPEARANCE RECORD

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

1/22/11
Meeting Date

774
Bill Number (if applicable)

Topic Allyson

Amendment Barcode (if applicable)

Name ALAN ABRAMOWITZ

Job Title DIRECTOR GAL

Address 400 Calhoun
Street

Phone 850 241-3270

Tallahassee FL 32301
City State Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

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)

1.22.18

Meeting Date

774

Bill Number (if applicable)

Topic Dependency Proceedings

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title President & CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

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)

1.22.18
Meeting Date

774
Bill Number (if applicable)

Topic Dependency; home studies

632020
Amendment Barcode (if applicable)

Name Madonna Finney

Job Title Attorney

Address 337 Meadow Ridge Dr
Street

Phone 5773077

Tallahassee FL 32312
City State Zip

Email MFinney@
aol.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

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.

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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)

1-22-18

Meeting Date

774

Bill Number (if applicable)

Topic Dependency Proceedings

Amendment Barcode (if applicable)

Name CHRISTINA SPUDAS

Job Title Exec. Dir.

Address 1401 N. University Drive, Ste. 401

Phone 954-796-0860

Street

Coral Springs, FL 33071

Email CHRISTINA.SPUDAS@FLORISSCHWARTZFIRST.ORG

City

State

Zip

write

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA'S CHILDREN FIRST

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.

**The Florida Senate
COMMITTEE VOTE RECORD**

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 774
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, January 22, 2018
TIME: 3:30—5:30 p.m.
PLACE: 401 Senate Office Building

FINAL VOTE		SENATORS	1/22/2018 ¹ Amendment 234782		1/22/2018 ² Amendment 820270			
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Broxson						
X		Campbell						
X		Steube						
	X	Torres, VICE CHAIR						
X		Garcia, CHAIR						
4	1	TOTALS	RCS	-	RCS	-		
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable UNF=Unfavorable -R=Reconsidered	RCS=Replaced by Committee Substitute RE=Replaced by Engrossed Amendment RS=Replaced by Substitute Amendment	TP=Temporarily Postponed VA=Vote After Roll Call VC=Vote Change After Roll Call	WD=Withdrawn OO=Out of Order AV=Abstain from Voting
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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: CS/SB 1022

INTRODUCER: Senator Steube

SUBJECT: Determination of Parentage

DATE: January 23, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1022 authorizes a court to recognize a third legal parent and add that parent to the child's birth certificate. Under the bill, when an "alleged parent" reasonably believes that he or she is the biological parent of a child already deemed the legal child of another, the alleged parent may file a petition in circuit court to establish that he or she is the "actual" legal parent of the child. The child or the child's mother may also file a petition to establish actual legal parentage.

The bill sets forth the procedures both the court and the petitioner must follow. To prevail, the petitioner must ultimately rebut one of the presumptions of legal parentage in another person during a trial and establish that the alleged parent: (a) is the biological parent, (b) has demonstrated a substantial concern and interest in the child's welfare, and (c) that it is in the best interests of the child to establish the biological parent as a legal parent.

If the petitioner is successful, the bill authorizes the court to enter an order recognizing the alleged or biological parent as a legal parent of the child in one of two ways: (1) by terminating the rights of the current legal parent (not the mother) and adding the new legal parent/biological parent to the birth certificate; *or* (2) by adding the biological legal parent as a third legal parent to the birth certificate. However, if the petitioner is unsuccessful at any stage of the proceeding or the court determines that establishing the alleged parent's legal parentage is not in the best interests of the child, the court must dismiss the petition and seal the record.

The bill may have a fiscal impact on the state court system and has an effective date of July 1, 2018.

II. Present Situation:

Overview

In Florida, the biological father of a child conceived as the result of an extramarital affair with a married woman will not be deemed the child's legal parent. Rather, by operation of a common law rule safeguarding the legitimacy of children, the mother's husband is deemed the legal parent of the child because the child was born into an intact marriage.¹

Legal Parentage

Well before DNA and extensive keeping of birth records and birth certificates, issues of legal parentage—both maternity and paternity—arose.

In modern times, the status of being a “legal parent” is coveted for a variety of reasons. “The status of legal parent . . . has tremendous legal significance, as it comes with near complete independence in decision-making [for the child] and significant constitutional protection.”² “Parental rights constitute a fundamental liberty interest . . . protected by the Due Process Clause of the Fourteenth Amendment[.]”³ Additionally, “[l]egal parents enjoy considerable protection from state and third-party interference”⁴ and are not subjected to the scrutiny that those seeking to become adoptive parents must undergo.⁵ “While legal parents bear the obligations of parentage, such as food, shelter, clothing, medical care, and the like, legal parents also enjoy all of the benefits of parentage, such as custody and influencing the child's educational, moral, and religious development.”⁶

But the paramount consideration in the parent-child relationship is not the right of the parents but the best interests of the child. Parents who are “fit parents” will be free from state interference because “fit parents” are presumed “to act in the best interests of their children.”⁷ As the United States Supreme Court has explained:

“[O]ur constitutional system long ago rejected any notion that a child is the mere creature of the State and, on the contrary, asserted that parents generally have the

¹ *Department of Health & Rehabilitative Services v. Privette*, 617 So. 2d 305 (Fla. 1993); *C.G. v. J.R.*, 13 So. 3d 776 (Fla. 2d DCA 2014) (defining the “legal father” as “the man to whom the mother was married when the child was born and whose name appears on the birth certificate”).

² Dara E. Purvis, *Intended Parents and the Problem of Perspective*, 24 YALE J.L. & FEMINISM 210, 213–14 (2012).

³ *In re K.M.*, 946 So. 2d 1214, 1219 (Fla. 2d DCA 2006) (quoting *Padgett v. Dep't of Health & Rehab. Servs.*, 577 So.2d 565, 571 (Fla.1991)(internal quotation marks omitted); citing *Troxel v. Granville*, 530 U.S. 57, 66, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) (plurality opinion)).

⁴ Melanie B. Jacobs, *Why Just Two? Disaggregating Traditional Parental Rights and Responsibilities to Recognize Multiple Parents*, 9 J.L. & FAM. STUD. 309, 311 (2007).

⁵ See note 2, *supra*.

⁶ *Id.*

⁷ *Troxel v. Granville*, 530 U.S. 57, 68–69 (2000) (“[S]o long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.”).

right, coupled with the high duty, to recognize and prepare [their children] for additional obligations. ... The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children."⁸

Third Party Intervention in the Legal Parent-Child Relationship

Generally, the only third party permitted to interfere with the legal parent-child relationship is the state, when intervention is necessary to protect the health or safety of the child.⁹ However, when the state must intervene for the health and safety of the child, the state must also presume that parents want to be “fit” and competent parents, and must make every effort to keep families stable and intact.¹⁰ Stability is one of the key statutory factors in determining the best interests of the child and is deemed paramount in determining custody or timesharing between parents¹¹ as well as dependency issues.¹²

On the other hand, “a parent’s desire for and right to the companionship, care, custody and management of his or her children is an important interest that undeniably warrants deference . . . absent a powerful countervailing interest, protection.”¹³ Where the child’s mother is not married when the child is born, the right of both unmarried biological fathers and mothers to establish a legal parent-child relationship with the child has been recognized in Florida.¹⁴ The constitutional right of the unwed biological parent is described as “inchoate” and may “develop into a fundamental right to be a parent” when the biological parent “demonstrates a full commitment to

⁸ *Id.* (quoting *Parham v. J. R.*, 442 U.S. 584, 602 (1979)).

⁹ See Ch. 39, F.S.

¹⁰ Section 39.001(1), F.S. (“The purposes of this chapter are: (a) To provide for the care, safety, and protection of children . . . (b) To recognize that most families desire to be competent caregivers and providers for their children and that children achieve their greatest potential when families are able to support and nurture the growth and development of their children. Therefore, the Legislature finds that policies and procedures that provide for prevention and intervention through the department's child protection system should be based on the following principles: 1. The health and safety of the children served shall be of paramount concern. . . . 3. The prevention and intervention *should intrude as little as possible* into the life of the family, . . . [and] ensure[] the health and safety of children *and the integrity of families*. (f) *To preserve and strengthen the child's family ties whenever possible*, removing the child from parental custody only when his or her welfare cannot be adequately safeguarded without such removal.”).

¹¹ Section 61.13(3), F.S. (requiring court to consider factors including the maintaining the stability of the child’s current environment, as well as each parent’s capacity to honor timesharing schedule, put the child’s needs above his or her own, communicate with the other parent, create a stable home life establishing routines for the child, etc.). See also *Neville v. McKibben*, 227 So. 3d 1270, 1273 (Fla. 1st DCA 2017) (“the trial court must find, at a minimum, that its custody determination is in the best interests of the child”).

¹² Section 39.001(1)(h), F.S. (“To ensure that permanent placement with the biological or adoptive family is achieved as soon as possible for every child in foster care and that no child remains in foster care longer than 1 year.”).

¹³ *T.M.H. v. D.M.T.*, 79 So. 3d 787, 796–97 (Fla. 5th DCA 2011), *aff’d in part, disapproved in part*, 129 So. 3d 320 (Fla. 2013) (quoting *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 26, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981), accord *Stanley*, 405 U.S. at 651, 92 S.Ct. 1208); see also *Lehr v. Robertson*, 463 U.S. 248, 256, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983)).

¹⁴ *D.M.T. v. T.M.H.*, 129 So. 3d 320, 335 (Fla. 2013) (“a biological father’s constitutional rights are inchoate and develop into a fundamental right to be a parent when an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child” (citations, quotation marks, and alterations in original text omitted) (extending to unmarried biological mother who contributed an egg to her same-sex partner with the intention of conceiving and parent a child together) . . . [because] his interest in personal contact with his child acquires substantial protection under the due process clause.”)

the responsibilities of parenthood by coming forward to participate in the rearing of [the] child.”¹⁵ However, when the mother is already married, the unwed biological parent is not the legal parent. Rather, for purposes of legitimacy, the mother’s spouse is the legal parent under the common law presumption applicable to children born into an intact marriage.¹⁶

The Common Law Presumption of Parentage for Legitimacy

Though not identical, historically, parentage and legitimacy have been closely related concepts.¹⁷ Parentage determines who bears the duty to care for and support a child (the parent in fact), whereas legitimacy concerns the legal relationships between the parent and the child and its consequences.¹⁸ Many of the laws establishing presumptions concerning legal parentage at common law were developed to shield a child from the severe consequences of illegitimacy. Illegitimacy carried not only a stigma of disrepute for the unwed mother and her innocent child,¹⁹ it carried criminal penalties for the mother and father engaged in adultery²⁰ as well as severe legal consequences for the child:

Under the English common law, a bastard could not be the heir of anyone, and neither could he have heirs except the heirs of his own body; being nullius filius, he was considered to be kin to nobody and to have no ancestor from whom any inheritable blood could be derived, and in this country, . . . it is generally recognized that in the absence of any statute conferring rights of inheritance upon them, illegitimate children are without capacity to inherit from or through either parent. Common law disabilities of the illegitimate are relaxed or removed only to the extent that the legislature has seen fit to remove them, and no rights of inheritance can exist in any case which is not within the statute.²¹

Under Florida’s common law, “any action challenging a child’s legitimacy” as a byproduct of challenging the child’s parentage was viewed “with great disfavor.”²² The Florida Supreme Court in *Department of Health & Rehabilitative Services v. Privette* expressed concern over disturbing the common law presumption of legitimacy where the Department of Health & Rehabilitative Services sued the biological father for support of a child born into the mother’s intact marriage, even though the mother’s spouse had been listed as the legal father on the birth certificate:

¹⁵ *Id.* (internal quotations and citation omitted).

¹⁶ *Daniel v. Daniel*, 681 So. 2d 849, 851 (Fla. 2d DCA 1996), *approved*, 695 So. 2d 1253 (Fla. 1997) (quoting *In Matter of Adoption of Baby James Doe*, 572 So.2d 986, 988 (Fla. 1st DCA 1990) (“A child born or conceived during a lawful marriage is a legitimate child.”)).

¹⁷ *Id.* at 851–52 (“The American Heritage College Dictionary 1001 (3d ed. 1993), defines paternity as ‘the state of being a father; fatherhood. . . . a woman attempting to establish that a particular man is the father of her child. . . .’ Only one person can be the biological father of a child. The American Heritage College Dictionary 775 (3d ed. 1993), defines legitimate as ‘being in compliance with the law; lawful. . . . Born to legally married parents.’ Paternity and legitimacy are related concepts, but nonetheless separate and distinct concepts.”).

¹⁸ *Id.*

¹⁹ *G.F.C. v. S.G.*, 686 So. 2d 1382, 1384–85 (Fla. 5th DCA 1997) (noting that adultery was historically a crime; and “[s]ociety was so scornful of bringing children into the world as a result of adulterous conduct that ‘bastardy’ was also a crime.”).

²⁰ *Id.* (noting that the biological father often did not come forward for fear of criminal prosecution).

²¹ *In re Caldwell's Estate*, 247 So. 2d 1, 5 (Fla. 1971) (citing 10 Am.Jur.2d Sec. 146, Pg. 948).

²² *G.F.C. v. S.G.*, 686 So. 2d 1382, 1384–85 (Fla. 5th DCA 1997).

Once children are born legitimate, they have a right to maintain that status both factually and legally if doing so is in their own best interest. Art. I, § 9, Fla. Const. The child's legally recognized father likewise has an unmistakable interest in maintaining the relationship with his child unimpugned, . . . such that his opposition to the blood test and reasons for so objecting would be relevant evidence in determining the child's best interests.²³

Thus, legitimacy laws came into being to protect children. While a child would not necessarily suffer the same legal consequences if legal parentage were challenged today, the child would still suffer the consequences of potential alienation from a loved legal parent.²⁴

Establishing Legal Parentage of a Child in Florida

Currently, a child's legal parentage is established in several ways in Florida. Unless abandoned following a home birth, the child's mother is usually identified by virtue of the fact that she has given birth at a hospital or elsewhere with the assistance of a midwife or other emergency or medical professionals.²⁵ If she is the only known parent of the child at the time of birth, she will be the only parent listed on the birth certificate.²⁶

The identity of the legal father of the child may be established as follows:

- In the case of a child born to a legally married couple, legal parentage is established by operation of the common law rule that presumes the husband of the child's mother is the legal father, particularly where the husband's name is listed as the father on the birth certificate and he acknowledges the child as his own.²⁷
- For a child born to a couple that is not married to one another, legal parentage may be established by:

²³ 617 So.2d 305 (Fla.1993).

²⁴ It appears the only legislative body in the United States to permit more than two legal parents is California. Section 7612 (c) of the California Family Code focuses more on the potential harm to the child:

(c) In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child. In determining detriment to the child, the court shall consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment to the child does not require a finding of unfitness of any of the parents or persons with a claim to parentage.

²⁵ Section 382.013(1), F.S.

²⁶ Section 382.013(2) (c), F.S. ("If the mother is not married at the time of the birth, the name of the father may not be entered on the birth certificate without the execution of an affidavit signed by both the mother and the person to be named as the father.").

²⁷ *G.F.C. v. S.G.*, 686 So. 2d 1382, 1384 (Fla. 5th DCA 1997) ("There existed an almost irrebuttable presumption that the husband was the father of his wife's children, a presumption which could be overcome only upon a showing that the husband either was impotent or lacked access to his wife at the time of conception.") (citing 41 Am.Jur.2d *Presumption From Birth In Wedlock*, § 10 (1995)). See also s. 382.013(2) (a), F.S. ("If the mother is married at the time of birth, the name of the husband shall be entered on the birth certificate as the father of the child, unless paternity has been determined otherwise by a court of competent jurisdiction.").

- A voluntary acknowledgment of paternity entered by the parties during proceedings to determine inheritance, dependency under worker’s compensation or a similar compensation program, or by the Department of Revenue to determine child support;²⁸
- Voluntary acknowledgment of paternity signed by both parents within five days after the child’s birth as reflected on the child’s birth certificate issued by the Department of Health’s Office of Vital Statistics;²⁹
- Marrying after the birth of the child, in which case the child is treated as if born into an intact marriage (common law rule above);³⁰ or
- DNA testing to establish paternity when the “putative” or unmarried biological father does not acknowledge paternity within five days after the birth of the child, provided certain procedures set out in chapter 742, F.S., are followed.³¹
- In adoption cases, the legal parentage of a child is established by judicial decree after the rights of the legal or biological parent(s) are terminated.³²
- In donor cases, where a child is conceived within wedlock by means of donated biological contributions (sperm, eggs or preembryos), the husband and wife are deemed the legal parents and the donor relinquishes all rights and obligations, provided the written consent requirements set out in chapter 742, F.S., are followed.³³
- For children born in another state within the U.S., a certified copy of a final order concerning legal parentage from that state is conclusive evidence of paternity.³⁴
- If the legal father who was married to the mother at the child’s birth voluntarily disestablishes paternity, the biological father may be able to establish paternity and become the legal parent.³⁵

“If a father’s name is listed on the birth certificate, the birth certificate may only be amended to remove the father’s name or to add a different father’s name upon court order.”³⁶

²⁸ Section 409.256, F.S. If the affidavit or stipulation is filed in conjunction with an adjudicatory hearing, it establishes parentage. When no adjudicatory hearing is held, however, the affidavit or stipulation creates a rebuttable presumption of parentage and may be rescinded within 60 days. *Id.*

²⁹ Section 382.013(2) (c), F.S. (“If the mother is not married at the time of the birth, the name of the father may not be entered on the birth certificate without the execution of an affidavit signed by both the mother and the person to be named as the father. . . . Upon request of the mother and the person to be named as the father, the facility shall assist in the execution of the affidavit, a notarized voluntary acknowledgment of paternity, or a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury as specified by s. 92.525(2).”).

³⁰ Section 742.091, F.S. *See also* s. 382.013(f), F.S.

³¹ Section 742.10, F.S. *See also* s. 63.032, F.S. (““Unmarried biological father” means the 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 and who, before the filing of a petition to terminate parental rights, has not been adjudicated by a court of competent jurisdiction to be the legal father of the child or has not filed an affidavit pursuant to s. 382.013(2)(c).”).

³² Section 63.032, F.S. (““Adoption” means the act of creating the legal relationship between parent and child where it did not exist, thereby declaring the child to be legally the child of the adoptive parents and their heir at law and entitled to all the rights and privileges and subject to all the obligations of a child born to such adoptive parents in lawful wedlock.”); ss. 63.087-.089, F.S. (governing procedures for termination of parental rights pending adoption).

³³ Sections 742.11 & 742.14, F.S.

³⁴ Section 742.105, F.S.

³⁵ Section 742.18, F.S.

³⁶ Section 382.016(1)(c), F.S.

Legal Father versus Biological Father in *C.G. v. J.R.*³⁷

As recognized in *C.G. v. J.R.*, there is no basis under Florida law to recognize dual paternity where the child was conceived as the result of an extramarital affair between the biological father and the child's mother. Rather, because a child is born into a legally intact marriage, the child's legal father is the mother's spouse.³⁸

Facts of C.G. v. J.R.

The biological father and the legal father were business partners. The biological father began having an affair with the legal father's wife (the mother) in 2005 and they conceived a child. Because the child was born while the mother was married, the mother's spouse was named as the legal father on the birth certificate. As soon as the child was born, the mother permitted the biological father to frequently visit the child. Although the biological father was aware that the child was his, the legal father was not made aware of the affair for approximately seven months after the child's birth. Until that point, the legal father believed he was the biological father.³⁹

However, in May 2007, after learning of the affair, the mother and the legal father no longer allowed the biological father to visit the child. The biological father filed a paternity action. However, he was not permitted to visit the child until January 2009 when the mother and legal father separated.

At that point, the mother and biological father entered into an agreement acknowledging him as the biological and "legal" father, granting him visitation with the child and providing that he would provide support for the child. The agreement also contained a stipulation that the legal father's rights were not affected or removed. The legal father signed the agreement, and a trial court entered a final order acknowledging the agreement in February 2009.⁴⁰

Things began to fall apart, however, after the mother was arrested for drug possession. As a result of her arrest, the biological father refused to return the child to the legal father following a visitation with the child, citing concerns that the legal father was also using drugs. The child was eventually returned to the mother pursuant to an emergency pick-up order, and the legal father filed a motion to set aside both the January 2009 agreement and the February 2009 court order.⁴¹

Between February 2009 and June 2009, things had apparently been smoothed over between the mother and the biological father. The mother and her new boyfriend moved in with the biological father and his family, and they subsequently entered into another agreement acknowledging the biological father as the legal father and granting him visitation. The new agreement also purported to release the legal father of any financial obligation for the child. The legal father's parental rights were not mentioned in this agreement, nor did he sign it.⁴²

³⁷ 13 So. 3d 776 (Fla. 2d DCA 2014).

³⁸ See note 37, *supra*.

³⁹ *Id.* at 777.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 777-78.

In June 2009, the mother filed for divorce, although the petition was dismissed in October 2010 for lack of prosecution. In the meantime, the trial court adopted the new agreement of the biological father and the mother on a temporary basis while the legal father pursued his motion to vacate the earlier agreement and order.⁴³

Finally, in October 2009, the trial court vacated the final judgment approving the first agreement between the mother and biological father on the basis that “dual paternity” is contrary to Florida law and public policy. Thus, the trial court concluded the agreement was unenforceable.⁴⁴

Although the biological father had not seen the child since 2009, in July 2011, he filed an emergency motion for timesharing and sole or shared custody on the basis that: (1) his DNA test reveals he is the child’s biological father, and (2) he has been involved in the child’s life. He also cited concerns over the mother’s instability and drug use.⁴⁵

Although the biological father’s motion was denied, the matter was set for trial and a guardian ad litem was appointed to the child in February 2012 to evaluate the best interests of the child. In March 2012, the guardian ad litem filed her report noting that the only suitable parents were either the legal father or the biological father because the mother had not had any contact with the child for longer than two years. The report noted that the mother was a drug user and unstable.⁴⁶

As between the fathers, the guardian ad litem reported that it was in the best interests of the child to be placed with the legal father. The report noted the faults of the biological father:

- He permitted the mother to reside with her boyfriend in his home while she abused drugs and used “the media and street signs to publicize the custody issue.”⁴⁷
- He tried “to gain an advantage in the custody battle” by entering the agreements with the mother.⁴⁸
- His moral fitness was in question because,
 - He used public forums to convey information about how he interfered with the attempts of the legal father and mother to reconcile their marriage;
 - He may have made false allegations of medical neglect of the child; and
 - He may have made false allegations concerning drug use by the legal father.⁴⁹

The guardian ad litem reported that the legal father was “better equipped to facilitate timesharing based on [the biological father’s] unilateral decision to modify the timesharing agreement (i.e., when he refused to return [the child] after visitation).”⁵⁰ The legal father, however, had been more cooperative with timesharing. The guardian ad litem also reported that the child was doing well in her placement with her legal father and considered him to be her father, and that the child was so closely bonded to her half-siblings that it would be detrimental to the child to separate them. Additionally, the guardian ad litem noted that the child’s home, school, and community records

⁴³ *Id.* at 778.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

favored placement with the legal father. The guardian ad litem “ultimately concluded that it was in [the child’s] best interest to preserve the ‘presumption of legitimacy’ that arose when she was born during an intact marriage.”⁵¹

The trial court agreed and entered an order against the biological father in his paternity action. In its order, the trial court considered the statutory child custody factors⁵² and found that the biological father had no “significant relationship with the child” and that none of the factors favored him. Rather, the factors favored the legal father. Thus, the trial court ruled that it was in the child’s best interest that the legal father “remain as her legitimate and legal father.”⁵³ The trial court ordered that the birth certificate reflect that the legal father is the father.⁵⁴

The trial court’s order was affirmed by the Second District Court of Appeal. Initially, the Second District rejected the biological father’s argument that the trial court erroneously ruled against his emergency motion for timesharing. The Second District held that, contrary to the biological father’s argument, the child custody factors were supported by competent, substantial evidence.⁵⁵

The Second District also issued a written opinion to explain why it was affirming the trial court’s order vacating the February 2009 agreement between the mother and the biological father which purported to recognize both the biological and the legal fathers’ rights to parent the child. The Second District noted that the issue is “whether a child can have two legally recognized fathers in addition to a mother.”⁵⁶ After examining current Florida law,⁵⁷ the Second District held that there was no support under the law to legally recognize two fathers when the child was born into an intact marriage:

This is not a case where either the biological father or the legal father has abandoned the child. Nor is this a case where either father failed to demonstrate a strong desire to be a part of the child’s life or even the ability to care for the child. Rather, this is one of those cases presenting the unfortunate circumstance of a child who was born into a legally intact marriage but who was conceived as the result of an extramarital affair. The consequence of that circumstance is that the third party, here C.G., has an interest in that child which is adverse to the legal father, here J.R. We are cognizant of the gravity of our decision and the legal ramification that it has on C.G.’s and H.G.-R.’s relationship. However, under the facts of this case, there is

⁵¹ *Id.* at 779.

⁵² Section 61.13(3), F.S.

⁵³ *C.G. v. J.R.* at 779.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ The court examined but ultimately distinguished the cases of *T.M.H. v. D.M.T.*, 79 So. 3d 787 (Fla. 5th DCA 2011), *approved in part, disapproved in part*, 129 So. 3d 320 (Fla. 2013) (holding that unmarried biological mother who gave egg to same sex partner with the intent and demonstrated commitment to parent the resulting child was not a donor but more akin to a unmarried biological father who has an inchoate constitutional right that develops into a fundamental right upon coming forward to participate in rearing of child), and *Greenfield v. Daniels*, 51 So. 3d 421, 427 (Fla. 2010) (holding that child born into a legally intact marriage could claim survivor damages in a wrongful death action involving the biological father “so long as it is established that the decedent is the biological parent and that he acknowledged responsibility for support.”). The court noted that these cases were distinguishable because *C.G. v. J.R.* did not involve an unmarried parent, nor did it involve a wrongful death claim.

simply no support in Florida law for the proposition that H.G.-R. is entitled to have two legally recognized fathers. *Because similar circumstances could arise in other cases, the legislature may choose to readdress the issue of a biological father's right to establish paternity where the child is conceived and born during an intact marriage to another man.* But under the current state of the law, we are constrained to affirm the trial court's order vacating the February 2009 order approving the original paternity and support agreement.⁵⁸

The Florida Bar Family Law Section's Concern with *C.G. v. J.R.*

In response to the Second District's opinion and calls to "to fill the gap" in chapter 742 and address the interests of a biological father who desires a parental relationship with a biological child born out of an extramarital affair into an intact marriage, the Family Law Section of The Florida Bar established the following standing positions that were adopted by The Florida Bar:

96. Supports the right of a biological parent to pursue and, when appropriate, establish his or her parental rights when the biological parent has demonstrated or evinced a settled purpose to assume parental responsibilities and when doing so would be in the best interest of the child.

97. Supports the concept that a child may legally have more than two mothers, two fathers or, when appropriate, more than two parents. The best interests of the child must be the foremost concern in determining such matters.⁵⁹

Thus, the Family Law Section drafted the proposed bill, designated as section 742.19, F.S., to address the issues of "quasi-marital children and parental rights in a manner that will further the best interests of the children" while also helping the law "catch up with science."⁶⁰

III. Effect of Proposed Changes:

The bill provides that an "alleged parent" is one who reasonably believes that he or she is the biological parent of a child. The bill permits the alleged parent, the child, or the child's mother to rebut the presumption of legal parentage in one person and establish "actual legal parentage" in another person either to the exclusion of *or* in addition to the legal parent(s). In other words, the bill permits the court to decree that a child has more than two legal parents.

⁵⁸ *Id.* (emphasis added).

⁵⁹ The Family Law Section of The Florida Bar, *White Paper: BASIS FOR PROPOSED SECTION 742.19, FLORIDA STATUTES* (2017) (on file with the Senate Committee on Judiciary).

⁶⁰ *Id.* See also Roberts, P. *Truth and Consequences: Part I. Disestablishing the Paternity of Non-Marital Children*. Center for Law and Social Policy (2003), available at <https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/0111.pdf> (last visited January 8, 2018) (noting the ease of conducting DNA testing and the dilemma created for states, courts, parents and children: "At what point should the truth about genetic parentage outweigh the consequences of leaving a child fatherless? Is a child better off knowing his/her genetic heritage or maintaining a relationship with his/her father and his family that provides both emotional and financial support? Should it matter who brings the action or should the rules be the same for men trying to disestablish paternity, women seeking to oust a father from the child's life, and third parties trying to assert their paternity of a child who already has a legal father?")

Specifically, the alleged parent, the child, or the child's mother may file a petition in circuit court to rebut the presumption that:

- A child born to an intact marriage is the child of the mother's spouse;
- A child born to an unmarried couple who later marries is the child of the mother's spouse;⁶¹
- A voluntary acknowledgment of paternity entered by the parties during proceedings to determine inheritance, dependency under worker's compensation or a similar compensation program, or by the Department of Revenue to determine child support, establishes the child's parentage;⁶² or
- A foreign judgment of another state resulting from a voluntary acknowledgment or affidavit of paternity establishes the child's parentage.⁶³

The bill provides the procedures the courts and a petitioner must follow to establish parentage in an alleged parent.

Step 1—The Petition: A petitioner initiates an action to establish “actual legal parentage” and rebut the enumerated legal presumptions by filing a petition in circuit court. The petition must meet the following requirements:

- Be signed by the petitioner under oath.
- Identify all parties, including the mother, the mother's spouse, the alleged parent, and any other person who may be a parent.
- Provide specific facts to support a claim that the alleged parent: (1) is the biological parent; (2) has demonstrated a substantial interest in or concern for the welfare of the child; *and* (3) should be deemed a legal parent based on the best interests of the child.

Step 2—Protect the Child's Best Interests: Unless deemed unnecessary, the court must appoint a guardian ad litem or attorney ad litem for the child depending on the child's age and level of understanding.

Step 3—Evidentiary Hearing on Petition: The court now acts as a gatekeeper and must conduct an evidentiary hearing to essentially test whether the petition is filed in good faith or whether it must be dismissed. In deciding whether to dismiss the petition and seal the record, or permit the petition to move forward, the court must determine two things, giving particular weight to the mother's circumstances (if she is deceased, incapacitated, or seeking a divorce from her spouse):

- (1) Whether the alleged parent has demonstrated a substantial concern or interest for the welfare of the child. If this is not demonstrated, the court must dismiss the petition and seal the record.
- (2) Whether it would be in the best interests of the child to permit the petition to proceed. If the court determines that the best interests of the child will not be served by permitting the petition to go forward, the court must dismiss the petition and seal the record.

⁶¹ Section 742.091, F.S.

⁶² Section 742.10(1), F.S.

⁶³ Section 742.105, F.S.

Step 4—Order Genetic Testing: If the court determines that the petition may proceed, the court must next order the alleged parent and the child to submit to genetic testing to determine the probability of parentage. The court must also advise all parties of the testing requirements, how to object to the results, and of the consequences for failing to object. However, it is the responsibility of the alleged parent to file the test results by the date specified in the court's order.

Once the test results are filed, the next steps vary depending on whether an objection is filed:

- If no written objection to the test results is filed within 10 days, the results must be admitted into evidence by the court without the need for an evidentiary foundation or predicate, and weighed by the court along with all other evidence of parentage.
- If a party timely files a written objection to the test results, the court must hold an evidentiary hearing and permit the party to refute the test results (usually by calling expert witnesses). If a party places the test results in dispute, the court may order retesting at the requesting party's expense.
- If the test results show the alleged parent is not the biological parent, the court must dismiss the petition and seal the court file.
- However, if the test results show there is a statistical probability of parentage of 95 percent or more, a rebuttable presumption that the alleged parent is the biological parent is created.
- When there is no objection to the test results or a party fails to rebut the 95 percent parentage presumption, the court may enter summary judgment on the parentage issue but must conduct a trial.
- If the court otherwise rules that genetic testing establishes the alleged parent is the biological parent, the court must conduct a trial.

Step 5—Trial: During the trial, the court must decide between three options:

- (1) Whether the mother's spouse remains the legal parent based on the best interests of the child.
 - In determining the best interests of the child, the court is required to evaluate a long list of factors affecting the welfare and interests of the child and the circumstances of the family.
 - If the court determines that the mother's spouse should remain the legal parent to the exclusion of the biological parent, the court must dismiss the petition and seal the court file.
- (2) Whether the parental rights of the mother's spouse should be terminated and granted to the biological parent if doing so is in the best interests of the child.
 - If the court decides to terminate the parental rights of the mother's spouses and recognize the biological parent as the legal parent, the court must enter an order reflecting the same and order that the birth certificate be amended.
- (3) Whether the all three – the mother, the mother's spouse, and the biological parent – should have shared parental rights and responsibilities.
 - The court may decide the child should have three legal parents when both the mother's spouse (legal parent) and the biological parent have established a substantial relationship with the child and the petitioner shows that adding the biological parent as a legal parent is in the best interests of the child.
 - The court will enter an order that:

- Preserves the rights of the mother’s spouse;
- Establishes the biological parent’s rights and responsibilities as a third legal parent;
- Requires that the birth certificate be amended to add a third legal parent; and
- Declares that each legal parent is recognized as an equal parent with equal standing to secure shared parenting rights, including time-sharing, responsibility, and child support.

Step 6—Continuing Jurisdiction After Trial: When the court rules that the biological parent must replace the mother’s spouse as the legal parent or declares there are three legal parents, the court has continuing jurisdiction to:

- Approve, grant, or modify parenting plans as defined in s. 64.046, F.S. (which is amended by the bill to include a cross-reference to the newly created provision).
- Order the payment of child support calculated under the child support guidelines⁶⁴ when the biological parent replaces the mother’s spouse as the legal parent.
- Order the payment of child support when there are three legal parents to ensure the child receives the same full benefit of the total child support amount that would be received under the child support guidelines.⁶⁵

The bill states the legitimacy of a child is not affected by the proceedings to establish a biological parent as a legal parent.

The effective date of the bill is July 1, 2018.

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:

Equal Protection: The bill’s use of the word “parent” rather than “father” may avoid some equal protection issues. However, the bill may also apply to situations beyond the scenario presented in *C.G. v. J.R.* (involving a contest between the legal father and biological father), that could give rise to other equal protection issues.

⁶⁴ Section 61.30, F.S.

⁶⁵ *Id.*

Under the bill, a “legal parent” includes the legal spouse of the *child’s mother* at the time of the child’s birth. Although not contemplated at common law, the presumption would appear to now apply to the same-sex spouse of the birth mother when they are legally married for purposes of establishing legal parentage. Additionally, an unmarried biological mother who has contributed biological material to a legally married same-sex male couple appears to fall within the bill’s definition of an “alleged parent.”

However, in the case of a legally married, same-sex male couple, the spouse of the biological father does not meet the definition of a “legal parent” under the common law presumption (legal parent is the *mother’s* spouse at the time of birth).

Due Process: The bill provides that, if it is in the “best interests of the child,” the court can enter an order terminating the legal parent’s parental rights and establishing the biological parent’s legal rights. However, a legal parent’s parental rights are constitutionally protected and generally cannot be terminated without their consent (as in the case of adoption⁶⁶) or without following “the strict procedures set forth in chapter 39, Florida Statutes,” for involuntary termination of parental rights.⁶⁷ Under chapter 39 proceedings,

Termination of parental rights by the state requires clear and convincing evidence of: (1) a statutory ground for termination set forth in section 39.806, Florida Statutes [such as abandonment, abuse, neglect, incarceration]; (2) that termination is in the manifest best interest of the child pursuant to section 39.810; and (3) that termination is the least restrictive means of protecting the child from harm. *See Padgett v. Dep’t of Health & Rehab. Servs.*, 577 So.2d 565, 570–71 (Fla. 1991). A finding of least restrictive means is required because “parental rights constitute a fundamental liberty interest.” *Id.* at 571.⁶⁸

Accordingly, it appears likely that a legal parent’s parental rights cannot be terminated in the manner described by the bill without running afoul of the legal parent’s due process rights.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

With the exception of the child, any party to a petition to establish an alleged parent’s legal parentage of a child will likely incur financial costs.

⁶⁶ See Chapter 63, F.S. (the Florida Adoption Act).

⁶⁷ *Fahey v. Fahey*, 213 So. 3d 999, 1001 (Fla. 1st DCA 2016) (“Under Florida law, parental rights may only be terminated through adoption or the strict procedures set forth in chapter 39, Florida Statutes”).

⁶⁸ *D.S. v. Dep’t of Children & Families*, 164 So. 3d 29, 33 (Fla. 4th DCA 2015).

Attorney's Fees and Court Costs: The bill makes no provision for attorney's fees or court costs (including the guardian ad litem's fees) to any party. While there is a discretionary attorney's fee and costs provision applicable to all proceedings under chapter 742,⁶⁹ any award is within the court's discretion and based in part on the financial resources of the parties to pay. Thus, the mother's spouse/legal parent who is forced to defend his or her legal status against termination (which may violate his or her due process rights) may still be liable to pay his or her own attorney's fees or court costs. The difficulty, however, in requiring that the "petitioner" pay attorney's fees and court costs under the bill is that the "petitioner" may be the child.

Genetic Testing Costs: The bill does not specify whether the alleged parent or another party is responsible to pay for genetic testing, although it does specify that the party seeking retesting will bear the cost. Because the alleged parent is responsible to file the results of a genetic test, it seems reasonable that they may be required to pay the costs of testing.

Child Support: The bill does not state whether the alleged parent, once declared as a legal parent, will owe back child support payments. However, it would appear that the new legal parent's obligations for child support relate back to the date of the child's birth because the new legal parent will be added to the birth certificate. Thus, it appears the newly established legal parent may owe an arrearage of child support.

Additionally, when the new legal parent replaces the mother's spouse on the birth certificate and the parental rights of the mother's spouse are terminated (which, again, implicates due process concerns), it is unclear from the bill whether the mother's spouse will be entitled to recoup the financial support provided to the child since the child's birth from the mother and the new legal parent.

It appears the "alleged parent" cannot be forced into the proceedings in order to force the payment of child support, because the alleged parent is responsible to file the genetic test results with the court. If the alleged parent fails to file the results, the petition will likely be dismissed.

C. Government Sector Impact:

The state court system and the guardian ad litem program have not provided information on the fiscal impact of the bill to committee staff. It appears the bill could add to the workload of the courts as well as to the guardian ad litem program. However, the amount of the fiscal impact is not known.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁶⁹ Section 742.045, F.S.

VIII. Statutes Affected:

This bill substantially amends sections 742.13 and 61.046 of the Florida Statutes.
This bill creates section 742.19 of the Florida Statutes.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on January 22, 2018:

The amendment does the following:

- Relocates the definition of the term “alleged parent” from s. 742.13, F.S., to newly created s. 742.19, F.S.; and
- Makes additional technical and conforming changes.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/22/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 61 - 322

and insert:

Section 1. Section 742.19, Florida Statutes, is created to read:

742.19 Establishment of parentage for children born in wedlock or when parentage is otherwise established by law.—

(1) As used in this section, the term "alleged parent" means a person with a reasonable and well-founded belief that he



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11 or she is a child's biological parent.

12 (2) A person is presumed to be the legal parent of a child
13 when:

14 (a) At the time of the child's conception or birth, the
15 person was married to the child's mother; or

16 (b) Parentage has been established under s. 742.091, s.
17 742.10, or s. 742.105.

18 (3) The child, the child's mother, or the child's alleged
19 parent may seek to rebut the presumption of legal parentage in
20 subsection (2) by filing a petition in circuit court. The
21 petition must:

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

23 (b) Identify as parties the mother, the mother's spouse,
24 the alleged parent, and any other person who may be the parent.

25 (c) Provide specific facts to support a claim that the
26 alleged parent is the biological parent of the child, that the
27 alleged parent has demonstrated a substantial interest in or
28 concern for the welfare of the child, and that it is in the best
29 interest of the child to establish the alleged parent as the
30 legal parent of the child.

31 (4) (a) The court must appoint a guardian ad litem for the
32 child unless good cause is shown that a guardian ad litem is not
33 necessary to protect the best interest of the child. The person
34 appointed as a guardian ad litem must meet the qualifications in
35 s. 61.402, shall have the powers and authorities described in s.
36 61.403, shall be immune from liability pursuant to s. 61.405,
37 and must maintain confidentiality in accordance with s. 61.404,
38 unless otherwise specified by a court order.

39 (b) If the court determines that the child is of sufficient



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40 age and understanding to participate in the proceedings, the
41 court must appoint an attorney ad litem for the child in lieu of
42 a guardian ad litem unless good cause is shown that an attorney
43 ad litem is not necessary to protect the best interest of the
44 child.

45 (5) (a) The court shall hold an evidentiary hearing on the
46 petition and the petitioner has the burden to produce clear and
47 convincing evidence that:

48 1. The alleged parent has demonstrated a substantial
49 interest in or concern for the welfare of the child; and

50 2. The best interest of the child would be served by
51 allowing the petition to proceed.

52 (b) In making its determination, the court shall give
53 particular weight to the fact that the mother is deceased or
54 incapacitated, or that the mother seeks or obtains a dissolution
55 of her marriage to her spouse.

56 (c) If the court determines that the alleged parent has not
57 demonstrated a substantial interest in or concern for the
58 welfare of the child or that the best interest of the child
59 would not be served by allowing the petition to proceed, the
60 court must dismiss the petition and seal the court file.

61 (6) (a) If the petition is allowed to proceed under
62 subsection (5), the court must order the child and the alleged
63 parent to submit to genetic testing conducted by a qualified
64 technical laboratory, as defined in s. 409.256, to determine the
65 probability of parentage. Upon the entry of the order for
66 scientific testing, the court must inform each person to be
67 tested of the procedures and requirements for objecting to the
68 test results and of the consequences of the failure to object.



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69 (b) The alleged parent shall file the test results,
70 together with the opinions and conclusions of the test
71 laboratory, with the court no later than 15 days after the test
72 results are issued. Test results are admissible in evidence and
73 should be weighed along with other evidence of the parentage of
74 the alleged parent unless the statistical probability of
75 parentage equals or exceeds 95 percent. A statistical
76 probability of parentage of 95 percent or more creates a
77 rebuttable presumption, as defined in s. 90.304, that the
78 alleged parent is a biological parent of the child.

79 (c) Any objection to the test results must be made in
80 writing and must be filed with the court no later than 30 days
81 after the test results are filed or as otherwise specified by
82 the court.

83 1. If no objection is filed, the test results shall be
84 admitted into evidence without the need for predicate to be laid
85 or third-party foundation testimony to be presented.

86 2. If an objection is filed, the court must hold an
87 evidentiary hearing. Nothing in this paragraph prohibits a party
88 from calling an outside expert witness to refute or support the
89 testing procedure or results, or the mathematical theory on
90 which they are based. If the test results or the expert analysis
91 of the inherited characteristics is disputed, the court, upon
92 reasonable request of a party, must order that an additional
93 test be made by the same laboratory or an independent laboratory
94 at the expense of the party requesting additional testing.

95 (d) If no objection is filed or if a party fails to rebut
96 the presumption of parentage which arose from the statistical
97 probability of parentage of 95 percent or more, the court may



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98 enter a summary judgment of parentage and must hold a trial
99 pursuant to subsection (7). If the test results indicate that
100 the alleged parent is not a biological parent, the court must
101 dismiss the petition and seal the court file.

102 (7) If the genetic testing establishes that the alleged
103 parent is the biological parent of the child, the court must
104 hold a trial to determine whether:

105 (a) The mother's spouse remains the legal parent of the
106 child based on the best interest of the child;

107 (b) The parentage and legal rights and obligations of the
108 mother's spouse are terminated and granted to the biological
109 parent; or

110 (c) The mother, mother's spouse, and biological parent must
111 share parental rights and responsibilities.

112 (8) To determine the best interest of the child, the court
113 shall evaluate all of the following:

114 (a) The established bond between the child and the mother's
115 spouse, including love, affection, and emotional ties.

116 (b) The established bond between the child and the
117 biological parent, including love, affection, and emotional
118 ties.

119 (c) The permanence and stability of the child's current
120 family unit or units, including the length of time the child has
121 lived in a satisfactory environment and the desirability of
122 maintaining continuity or creating stability.

123 (d) The capacity and disposition of the mother's spouse and
124 the biological parent to provide for the child's financial
125 needs.

126 (e) The moral fitness of the mother's spouse and the



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- 127 biological parent.
- 128 (f) The mental and physical health of the mother's spouse
129 and the biological parent.
- 130 (g) The home, school, and community record of the child.
- 131 (h) The preference of the child, taking into consideration
132 the child's age and understanding.
- 133 (i) Whether the mother's spouse or the biological parent
134 has abandoned, abused, or neglected the child, or has otherwise
135 been remiss in his or her responsibilities toward the child.
- 136 (j) Whether the mother's spouse or the biological parent
137 has ever acted contrary to the best interest of the child.
- 138 (k) Whether the mother's spouse or the biological parent
139 wishes to exercise or continue to exercise parental rights.
- 140 (l) Whether the mother is deceased or incapacitated.
- 141 (m) Whether the mother seeks or obtains a dissolution of
142 her marriage to the spouse.
- 143 (n) Any other factor affecting the welfare and interests of
144 the child and the circumstances of that family.
- 145 (9) (a) If the court determines that it is in the best
146 interest of the child for the mother's spouse to remain the
147 legal parent of the child to the exclusion of the biological
148 parent, the court must dismiss the petition and seal the court
149 file.
- 150 (b) If the court determines that it is in the best interest
151 of the child for the parental rights of the mother's spouse to
152 be terminated and the biological parent to be the legal parent
153 of the child, the court must enter a final order or judgment:
- 154 1. Terminating the parental rights and responsibilities of
155 the mother's spouse, declaring that the biological parent is the



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156 legal parent of the child, and specifying the biological
157 parent's parental rights and responsibilities, including, but
158 not limited to, time-sharing and child support.

159 2. Requiring that the biological parent's name be
160 substituted on the child's birth certificate and the mother's
161 spouse's name be removed.

162 (c) If the court determines that the mother's spouse and
163 the biological parent have each established a substantial
164 relationship with the child and that it is in the best interest
165 of the child for both the mother's spouse and the biological
166 parent to be the child's legal parents, the court shall enter a
167 final order or judgment:

168 1. Preserving the parental rights of the mother's spouse.

169 2. Establishing the biological parent's parental rights and
170 responsibilities as the child's third legal parent.

171 3. Requiring the Office of Vital Statistics of the
172 Department of Health to amend the child's birth certificate to
173 add the third legal parent.

174 4. Declaring that each legal parent is recognized as an
175 equal parent to the child and has equal standing to secure
176 shared parenting rights to time-sharing, parental
177 responsibility, and child support.

178 (10) The court may approve, grant, or modify a parenting
179 plan, as defined in s. 61.046, in a final order or judgment
180 entered pursuant to paragraph (9) (b) or paragraph (9) (c). A
181 parenting plan may be developed and agreed to by all legal
182 parents and approved by a court or may be established by the
183 court.

184 (a) The court must consider the factors listed in s.



185 61.13(3) to determine the best interest of the child before
186 approving or establishing a parenting plan. The best interest of
187 the child should govern and be of foremost concern in the
188 court's approval of or establishment of a parenting plan.

189 (b) The court may approve or establish a parenting plan,
190 regardless of whether the child is physically present in this
191 state, if the court finds that the child was removed from this
192 state for the primary purpose of removing the child from the
193 court's jurisdiction in an attempt to avoid the court's
194 approval, creation, or modification of the parenting plan.

195 (c) A parenting plan approved or established by the court
196 must describe the shared responsibilities for the daily tasks of
197 parenting; the time-sharing schedule specifying the time the
198 child will spend with each parent; a designation of which parent
199 will be responsible for health care, school-related matters, and
200 extracurricular activities; the address to be used for school-
201 boundary determination and registration; and the means of
202 communication or technology which the parents will use to
203 communicate with the child.

204 (d) The court shall determine matters relating to the
205 parenting and time-sharing of each child of the parties in
206 accordance with the Uniform Child Custody Jurisdiction and
207 Enforcement Act, part II of chapter 61.

208 (11) The court may order the payment of child support by
209 any legal parent or parents owing a duty of support in a final
210 order or judgment entered pursuant to paragraph (9) (b) or
211 paragraph (9) (c). When calculating child support, the court
212 shall:

213 (a)1. For an order entered pursuant to paragraph (9) (b),



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214 calculate support obligations pursuant to s. 61.30.

215 2. For an order entered pursuant to paragraph (9)(c),
216 ensure that the child receives the same full benefit of the
217 total child support as a child would receive under the
218 guidelines schedule in s. 61.30.

219 (b) Consider each deviation factor listed in s.
220 61.30(11)(a) to ensure that the distribution of the child
221 support is fair and equitable.

222 (12) The court may modify a parenting plan or child support
223 order entered pursuant to this section upon a showing by the
224 parent petitioning for modification that a substantial change in
225 circumstances has occurred.

226 (13) An order entered pursuant to this section does not

227
228 ===== T I T L E A M E N D M E N T =====

229 And the title is amended as follows:

230 Delete lines 3 - 21

231 and insert:

232 creating s. 742.19, F.S.; defining the term "alleged
233 parent"; providing presumptions of legal parentage;
234 authorizing a child, the child's mother, or the
235 child's alleged parent to file a petition in circuit
236 court to rebut the presumption of legal parentage;
237 requiring such petition to include certain
238 information; requiring the court to appoint a guardian
239 ad litem or an attorney ad litem under certain
240 conditions; providing qualifications and requirements
241 for a guardian ad litem; requiring the court to hold
242 an evidentiary hearing on the petition; specifying



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243 that the petitioner has the burden of producing
244 certain clear and convincing evidence; requiring the
245 court to dismiss the petition under certain
246 circumstances; requiring the court to order genetic
247 testing of the child and the alleged parent if the
248 court allows the petition to proceed; requiring
249 certain information to be included in the order;
250 requiring the alleged parent to file the test results
251 with the court by a

By Senator Steube

23-00909A-18

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1 A bill to be entitled
 2 An act relating to the determination of parentage;
 3 amending s. 742.13, F.S.; defining the term "alleged
 4 parent"; creating s. 742.19, F.S.; providing
 5 presumptions of legal parentage; authorizing a child,
 6 the child's mother, or the child's alleged parent to
 7 file a petition in circuit court to rebut the
 8 presumption of legal parentage and establish actual
 9 legal parentage; requiring such petition to include
 10 certain information; requiring the court to appoint a
 11 guardian ad litem or an attorney ad litem under
 12 certain conditions; providing qualifications and
 13 requirements for a guardian ad litem; requiring the
 14 court to hold an evidentiary hearing on the petition
 15 to make a certain determination; requiring the court
 16 to dismiss the petition under certain circumstances;
 17 requiring the court to order genetic testing of the
 18 child and the alleged parent if the court allows the
 19 petition to proceed; requiring certain information to
 20 be included in the order; requiring the alleged parent
 21 to file the test results with the court on or before a
 22 specified date; specifying that a statistical
 23 probability of parentage of 95 percent or more creates
 24 a rebuttable presumption that the alleged parent is a
 25 biological parent; providing a procedure for a party
 26 to object to the test results; authorizing the court
 27 to enter a summary judgment of parentage and requiring
 28 the court to hold a trial if a presumption of
 29 parentage is established; requiring the court to

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

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30 dismiss the petition and seal the court file if the
 31 test results indicate that the alleged parent is not a
 32 biological parent; requiring the court to determine
 33 parental rights in the best interest of the child;
 34 requiring the court to evaluate specified factors to
 35 determine the best interest of the child; providing
 36 information to be included in final orders or
 37 judgments; authorizing the court to approve, grant, or
 38 modify a parenting plan in the best interest of the
 39 child and under certain conditions; requiring that a
 40 parenting plan include certain information;
 41 authorizing the court to order the payment of child
 42 support; requiring the court to consider certain
 43 criteria in its calculation of child support;
 44 authorizing the court to modify a parenting plan or
 45 child support order entered pursuant to this section
 46 upon a showing by the parent petitioning for
 47 modification that a substantial change in
 48 circumstances has occurred; clarifying that an order
 49 entered under this section does not impugn or affect a
 50 child's legitimacy; amending s. 61.046, F.S.;
 51 clarifying that a parenting plan entered under a
 52 specified section determines the rights of custody and
 53 access for purposes of the Uniform Child Custody
 54 Jurisdiction and Enforcement Act, the International
 55 Child Abduction Remedies Act, and the Convention on
 56 the Civil Aspects of International Child Abduction;
 57 providing an effective date.
 58

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

60
61 Section 1. Section 742.13, Florida Statutes, is amended to
62 read:

63 742.13 Definitions.—As used in ss. 742.11-742.19 ~~ss.~~
64 ~~742.11-742.17~~, the term:

65 (1) "Alleged parent" means a person with a reasonable and
66 well-founded belief that he or she is a child's biological
67 parent.

68 (2)(1) "Assisted reproductive technology" means those
69 procreative procedures which involve the laboratory handling of
70 human eggs or preembryos, including, but not limited to, in
71 vitro fertilization embryo transfer, gamete intrafallopian
72 transfer, pronuclear stage transfer, tubal embryo transfer, and
73 zygote intrafallopian transfer.

74 (3)(2) "Commissioning couple" means the intended mother and
75 father of a child who will be conceived by means of assisted
76 reproductive technology using the eggs or sperm of at least one
77 of the intended parents.

78 (4)(3) "Egg" means the unfertilized female reproductive
79 cell.

80 (5)(4) "Fertilization" means the initial union of an egg
81 and sperm.

82 (6)(5) "Gestational surrogate" means a woman who contracts
83 to become pregnant by means of assisted reproductive technology
84 without the use of an egg from her body.

85 (7)(6) "Gestational surrogacy" means a state that results
86 from a process in which a commissioning couple's eggs or sperm,
87 or both, are mixed in vitro and the resulting preembryo is

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88 implanted within another woman's body.

89 (8)(7) "Gestational surrogacy contract" means a written
90 agreement between the gestational surrogate and the
91 commissioning couple.

92 (9)(8) "Gamete intrafallopian transfer" means the direct
93 transfer of eggs and sperm into the fallopian tube prior to
94 fertilization.

95 (10)(9) "Implantation" means the event that occurs when a
96 fertilized egg adheres to the uterine wall for nourishment.

97 (11)(10) "In vitro" refers to a laboratory procedure
98 performed in an artificial environment outside a woman's body.

99 (12)(11) "In vitro fertilization embryo transfer" means the
100 transfer of an in vitro fertilized preembryo into a woman's
101 uterus.

102 (13)(12) "Preembryo" means the product of fertilization of
103 an egg by a sperm until the appearance of the embryonic axis.

104 (14)(13) "Pronuclear stage transfer" or "zygote
105 intrafallopian transfer" means the transfer of an in vitro
106 fertilized preembryo into the fallopian tube before cell
107 division takes place.

108 (15)(14) "Sperm" means the male reproductive cell.

109 (16)(15) "Tubal embryo transfer" means the transfer of a
110 dividing, in vitro fertilized preembryo into the fallopian tube.

111 Section 2. Section 742.19, Florida Statutes, is created to
112 read:

113 742.19 Establishment of parentage for children born in
114 wedlock or when parentage is otherwise established by law.—

115 (1) A person is presumed to be the legal parent of a child
116 when:

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117 (a) At the time of the child's conception or birth, the
 118 person was married to the child's mother; or
 119 (b) Parentage has been established under s. 742.091, s.
 120 742.10, or s. 742.105.
 121 (2) The child, the child's mother, or the child's alleged
 122 parent may rebut the presumption of legal parentage in
 123 subsection (1) and establish actual legal parentage by filing a
 124 petition in circuit court. The petition must:
 125 (a) Be signed by the petitioner under oath.
 126 (b) Identify as parties the mother, the mother's spouse,
 127 the alleged parent, and any other person who may be the parent.
 128 (c) Provide specific facts to support a claim that the
 129 alleged parent is the biological parent of the child, that the
 130 alleged parent has demonstrated a substantial interest in or
 131 concern for the welfare of the child, and that it is in the best
 132 interest of the child to establish the alleged parent as the
 133 legal parent of the child.
 134 (3) (a) The court must appoint a guardian ad litem for the
 135 child unless good cause is shown that a guardian ad litem is not
 136 needed. The person appointed as a guardian ad litem must meet
 137 the qualifications in s. 61.402, shall have the powers and
 138 authorities described in s. 61.403, and must maintain
 139 confidentiality in accordance with s. 61.404, unless otherwise
 140 specified by a court order.
 141 (b) If the court determines that the child is of sufficient
 142 age and understanding to participate in the proceedings, the
 143 court must appoint an attorney ad litem for the child in lieu of
 144 a guardian ad litem unless good cause is shown that an attorney
 145 ad litem is not needed.

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146 (4) (a) The court shall hold an evidentiary hearing on the
 147 petition to determine whether:
 148 1. The alleged parent has demonstrated a substantial
 149 interest in or concern for the welfare of the child.
 150 2. The best interest of the child would be served by
 151 allowing the petition to proceed.
 152 (b) In making its determination, the court shall give
 153 particular weight to the fact that the mother is deceased or
 154 incapacitated, or that the mother seeks or obtains a dissolution
 155 of her marriage to her spouse.
 156 (c) If the court determines that the alleged parent has not
 157 demonstrated a substantial interest in or concern for the
 158 welfare of the child or that the best interest of the child
 159 would not be served by allowing the petition to proceed, the
 160 court must dismiss the petition and seal the court file.
 161 (5) (a) If the petition is allowed to proceed under
 162 subsection (4), the court must order the child and the alleged
 163 parent to submit to genetic testing conducted by a qualified
 164 technical laboratory, as defined in s. 409.256, to determine the
 165 probability of parentage. Upon the entry of the order for
 166 scientific testing, the court must inform each person to be
 167 tested of the procedures and requirements for objecting to the
 168 test results and of the consequences of the failure to object.
 169 (b) The alleged parent shall file the test results,
 170 together with the opinions and conclusions of the test
 171 laboratory, with the court on or before a date specified in the
 172 order. Test results are admissible in evidence and should be
 173 weighed along with other evidence of the parentage of the
 174 alleged parent unless the statistical probability of parentage

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

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175 equals or exceeds 95 percent. A statistical probability of
 176 parentage of 95 percent or more creates a rebuttable
 177 presumption, as defined in s. 90.304, that the alleged parent is
 178 a biological parent of the child.

179 (c) Any objection to the test results must be made in
 180 writing and must be filed with the court no more than 10 days
 181 after the test results are filed.

182 1. If no objection is filed, the test results shall be
 183 admitted into evidence without the need for predicate to be laid
 184 or third-party foundation testimony to be presented.

185 2. If an objection is filed, the court must hold an
 186 evidentiary hearing. Nothing in this paragraph prohibits a party
 187 from calling an outside expert witness to refute or support the
 188 testing procedure or results, or the mathematical theory on
 189 which they are based. If the test results or the expert analysis
 190 of the inherited characteristics is disputed, the court, upon
 191 reasonable request of a party, must order that an additional
 192 test be made by the same laboratory or an independent laboratory
 193 at the expense of the party requesting additional testing.

194 (d) If no objection is filed or if a party fails to rebut
 195 the presumption of parentage which arose from the statistical
 196 probability of parentage of 95 percent or more, the court may
 197 enter a summary judgment of parentage and must hold a trial
 198 pursuant to subsection (6). If the test results indicate that
 199 the alleged parent is not a biological parent, the court must
 200 dismiss the petition and seal the court file.

201 (6) If the genetic testing establishes that the alleged
 202 parent is the biological parent of the child, the court must
 203 hold a trial to determine whether:

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204 (a) The mother's spouse remains the legal parent of the
 205 child based on the best interest of the child;

206 (b) The parentage and legal rights and obligations of the
 207 mother's spouse are terminated and granted to the biological
 208 parent; or

209 (c) The mother, mother's spouse, and biological parent must
 210 share parental rights and responsibilities.

211 (7) To determine the best interest of the child, the court
 212 shall evaluate all of the following:

213 (a) The established bond between the child and the mother's
 214 spouse, including love, affection, and emotional ties.

215 (b) The established bond between the child and the
 216 biological parent, including love, affection, and emotional
 217 ties.

218 (c) The permanence and stability of the child's current
 219 family unit or units, including the length of time the child has
 220 lived in a satisfactory environment and the desirability of
 221 maintaining continuity or creating stability.

222 (d) The capacity and disposition of the mother's spouse and
 223 the biological parent to provide for the child's financial
 224 needs.

225 (e) The moral fitness of the mother's spouse and the
 226 biological parent.

227 (f) The mental and physical health of the mother's spouse
 228 and the biological parent.

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

230 (h) The preference of the child, taking into consideration
 231 the child's age and understanding.

232 (i) Whether the mother's spouse or the biological parent

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

23-00909A-18 20181022__

237 has abandoned, abused, or neglected the child, or has otherwise
 238 been remiss in his or her responsibilities toward the child.
 239 (j) Whether the mother's spouse or the biological parent
 240 has ever acted contrary to the best interest of the child.
 241 (k) Whether the mother's spouse or the biological parent
 242 wishes to exercise or continue to exercise parental rights.
 243 (l) Whether the mother is deceased or incapacitated.
 244 (m) Whether the mother seeks or obtains a dissolution of
 245 her marriage to the spouse.
 246 (n) Any other factor affecting the welfare and interests of
 247 the child and the circumstances of that family.
 248 (8) (a) If the court determines that it is in the best
 249 interest of the child for the mother's spouse to remain the
 250 legal parent of the child to the exclusion of the biological
 251 parent, the court must dismiss the petition and seal the court
 252 file.
 253 (b) If the court determines that it is in the best interest
 254 of the child for the parental rights of the mother's spouse to
 255 be terminated and the biological parent to be the legal parent
 256 of the child, the court must enter a final order or judgment:
 257 1. Terminating the parental rights and responsibilities of
 258 the mother's spouse, declaring that the biological parent is the
 259 legal parent of the child, and specifying the biological
 260 parent's parental rights and responsibilities, including, but
 261 not limited to, time-sharing and child support.
 2. Requiring that the biological parent's name be
 substituted on the child's birth certificate and the mother's
 spouse's name be removed.
 (c) If the court determines that the mother's spouse and

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262 the biological parent have each established a substantial
 263 relationship with the child and that it is in the best interest
 264 of the child for both the mother's spouse and the biological
 265 parent to be the child's legal parents, the court shall enter a
 266 final order or judgment:
 267 1. Preserving the parental rights of the mother's spouse.
 268 2. Establishing the biological parent's parental rights and
 269 responsibilities as the child's third legal parent.
 270 3. Requiring the Office of Vital Statistics of the
 271 Department of Health to amend the child's birth certificate to
 272 add the third legal parent.
 273 4. Declaring that each legal parent is recognized as an
 274 equal parent to the child and has equal standing to secure
 275 shared parenting rights to time-sharing, parental
 276 responsibility, and child support.
 277 (9) The court may approve, grant, or modify a parenting
 278 plan, as defined in s. 61.046, in a final order or judgment
 279 entered pursuant to paragraph (8) (b) or paragraph (8) (c). A
 280 parenting plan may be developed and agreed to by all legal
 281 parents and approved by a court or may be established by the
 282 court.
 283 (a) The court may approve or establish a parenting plan,
 284 regardless of whether the child is physically present in this
 285 state, if the court finds that the child was removed from this
 286 state for the primary purpose of removing the child from the
 287 court's jurisdiction in an attempt to avoid the court's
 288 approval, creation, or modification of the parenting plan.
 289 (b) A parenting plan approved or established by the court
 290 must describe the shared responsibilities for the daily tasks of

23-00909A-18 20181022__

291 parenting; the time-sharing schedule specifying the time the
 292 child will spend with each parent; a designation of which parent
 293 will be responsible for health care, school-related matters, and
 294 extracurricular activities; the address to be used for school-
 295 boundary determination and registration; and the means of
 296 communication or technology which the parents will use to
 297 communicate with the child.

298 (c) The court shall determine matters relating to the
 299 parenting and time-sharing of each child of the parties in
 300 accordance with the Uniform Child Custody Jurisdiction and
 301 Enforcement Act, part II of chapter 61. The best interest of the
 302 child should govern and be of foremost concern in the court's
 303 determination.

304 (10) The court may order the payment of child support by
 305 any legal parent or parents owing a duty of support in a final
 306 order or judgment entered pursuant to paragraph (8) (b) or
 307 paragraph (8) (c). When calculating child support, the court
 308 shall:

309 (a)1. For an order entered pursuant to paragraph (8) (b),
 310 calculate support obligations pursuant to s. 61.30.

311 2. For an order entered pursuant to paragraph (8) (c),
 312 ensure that the child receives the same full benefit of the
 313 total child support as a child would receive under the
 314 guidelines schedule in s. 61.30.

315 (b) Consider each deviation factor listed in s.
 316 61.30(11) (a) to ensure that the distribution of the child
 317 support is fair and equitable.

318 (11) The court may modify a parenting plan or child support
 319 order entered pursuant to this section upon a showing by the

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320 parent petitioning for modification that a substantial change in
 321 circumstances has occurred.

322 (12) An order entered pursuant to this section does not
 323 impugn or affect a child's legitimacy.

324 Section 3. Paragraphs (c) and (d) of subsection (14) of
 325 section 61.046, Florida Statutes, are amended to read:

326 61.046 Definitions.—As used in this chapter, the term:

327 (14) "Parenting plan" means a document created to govern
 328 the relationship between the parents relating to decisions that
 329 must be made regarding the minor child and must contain a time-
 330 sharing schedule for the parents and child. The issues
 331 concerning the minor child may include, but are not limited to,
 332 the child's education, health care, and physical, social, and
 333 emotional well-being. In creating the plan, all circumstances
 334 between the parents, including their historic relationship,
 335 domestic violence, and other factors must be taken into
 336 consideration.

337 (c) For purposes of the Uniform Child Custody Jurisdiction
 338 and Enforcement Act, part II of this chapter, a judgment or
 339 order incorporating a parenting plan under this part or under s.
 340 742.19 is a child custody determination under part II of this
 341 chapter.

342 (d) For purposes of the International Child Abduction
 343 Remedies Act, 42 U.S.C. ss. 11601 et seq., and the Convention on
 344 the Civil Aspects of International Child Abduction, enacted at
 345 the Hague on October 25, 1980, rights of custody and rights of
 346 access are determined pursuant to the parenting plan under this
 347 part or under s. 742.19.

348 Section 4. This act shall take effect July 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/22/18

Meeting Date

SB 1022

Bill Number (if applicable)

Topic Perunage

Amendment Barcode (if applicable)

Name Michelle Kliver Smith

Job Title Attorney

Address 214 W. Seaview Drive

Phone (305) 720-5838

Street

Dick Key FL 33050

City

State

Zip

Email michelle@floridakeys

family

Speaking: For Against Information

Waive Speaking: In Support Against *law*
(The Chair will read this information into the record.)

Representing Family Law Section FL Bar

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.

**The Florida Senate
COMMITTEE VOTE RECORD**

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1022
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, January 22, 2018
TIME: 3:30—5:30 p.m.
PLACE: 401 Senate Office Building

FINAL VOTE		SENATORS	1/22/2018 Amendment 181004 1					
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Broxson						
X		Campbell						
X		Steube						
X		Torres, VICE CHAIR						
X		Garcia, CHAIR						
5	0	TOTALS	RCS	-				
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: CS/SB 1232

INTRODUCER: Senator Baxley

SUBJECT: Public Assistance Fraud

DATE: January 23, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Fav/CS
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1232 requires that excess funds recovered by the Department of Children and Families (DCF) from public assistance fraud be used exclusively by the department in its efforts to combat public assistance fraud. The bill requires DCF to develop a plan on how to use these funds, including the payment of awards to persons reporting fraud.

The bill could have a positive fiscal impact on the state if DCF prevents more public assistance fraud. The bill has an effective date of July 1, 2018.

II. Present Situation:

Public Assistance Programs

The Department of Children and Families (DCF) operates the Economic Self-Sufficiency program, also known as ACCESS. There are five services within the Economic Self-Sufficiency program as described below.

- **Temporary Cash Assistance** provides cash assistance to families with children under the age of 18, or through age 18 if the 18-year-old is enrolled in high school full time. The program provides time-limited financial assistance and services intended to help families gain economic self-sufficiency. These families must meet the program's technical, income, and asset requirements.

- **Food Assistance Program** helps low income families meet their household nutritional needs by supplementing their purchasing power with a monthly benefit allotment based on the number of people in the household and how much money is left after countable expenses are subtracted. Families must meet the program's eligibility rules. Food assistance benefits may only be used to purchase groceries; they may not be used to purchase household items such as cleaning supplies, grooming items, tobacco, alcoholic beverages, or hot food.
- **Relative Caregiver Program** provides monthly cash assistance to relatives who have custody of a related child under age 18 who has been found to be dependent by a Florida court and placed in their home by a Community-Based Care Lead Agency. The monthly cash assistance amount is higher than a Temporary Case Assistance grant for one child, but less than the amount paid for a child in the foster care program.
- **Optional State Supplementation** is a state-funded public assistance program that provides a monthly cash payments to indigent elderly or disabled individuals who live in special non-institutional, residential living facilities, including assisted living facilities, adult family care homes and mental health residential treatment facilities.
- **Medicaid** provides medical coverage to low-income individuals and families and the Economic Self-Sufficiency program determines eligibility for all Medicaid program participants, except for individuals who receive federal Supplemental Security Income (SSI) payments, as these individuals are automatically Medicaid eligible. The Medicaid program is administered by the Agency for Health Care Administration.

In addition, the state investigates fraud resulting from Disaster Assistance/Emergency benefits, the School Readiness and Voluntary Pre-Kindergarten programs, and Social Security Disability benefits.¹

Public Assistance Fraud

Section 414.39, F.S., defines public assistance fraud as when someone fails to disclose information used to determine their eligibility for public assistance; fails to disclose a change in circumstances that would affect their eligibility; or aids another person in the commission of any such act, commits a misdemeanor or felony depending on the amount of the fraud.

Department of Children and Families

Section 414.39, F.S., also requires DCF to create an error-prone or fraud-prone case profile within its public assistance information system and shall screen each application for public assistance, including food assistance, Medicaid, and temporary cash assistance, against the profile to identify cases that have a potential for error or fraud. Each case so identified shall be subjected to pre-eligibility fraud screening. If funded to do so, DCF shall pay a reward to a person who furnishes and reports original information relating to a violation of the state's public assistance fraud laws. In 2011, DCF created the Public Benefits Integrity office to prevent and detect fraud, waste, abuse in the public assistance programs, as well as to recover benefits that

¹ Department of Financial Services, Division of Public Assistance Fraud website.
<https://www.myfloridacfo.com/division/PAF/> (last visited 1/18/18).

were erroneously paid. In Fiscal Year 2015-16, the office collected over \$22 million through benefit recovery.²

When benefits are overpaid, a claim is established by DCF detailing the dollar amount of benefits within each public assistance program the recipient household may have participated. The claim amounts to a federal debt that must be repaid by the household. Under existing public assistance program rules, a percentage of the federal claim may be retained by the state as an incentive to identify and recover overpaid benefits.³ The percentage of federal debt collected that the state may retain is known as the state-retained share of recoveries. The percentage retained varies based on the reason that benefits were overpaid in the first place.

Section 414.39 also allows DCF, subject to availability of funds, to pay a reward to a person who furnishes and reports original information relating to a violation of the state's public assistance fraud laws if:

- a report is made to DFS or the Department of Law Enforcement (FDLE),
- the information relates to criminal fraud upon public assistance program funds or a criminal violation of public assistance fraud laws by another person, or
- leads to the recovery of a fine, penalty, or forfeiture of property.

The reward may not exceed 10 percent of the amount recovered or \$500,000, whichever is less, in a single case. The reward shall be paid from the state share of the recovery in DCF's Federal Grants Trust Fund.

Department of Financial Services

Section 414.411, F.S., assigns the responsibility to investigate all public assistance fraud to the Department of Financial Services (DFS). DFS examines records and interviews persons who may have knowledge of public assistance fraud. All public assistance recipients must allow state agencies access to their past or present employers and records. DFS may administer oaths and affirmations, issue and serve subpoenas for the attendance of witnesses or the production of business records, books, papers, correspondences, memoranda, and other records. The Division of Public Assistance Fraud within DFS is considered a criminal justice agency. Such designation allows access to specialized training and to the state and federal criminal history databases.⁴ DFS public assistance fraud investigations can result in criminal prosecution based on a referral to a state attorney or administrative sanctions and recoveries in the commission of fraud. Currently DFS investigates less than 10% of the referrals made by DCF and the Office of Early Learning.⁵

III. Effect of Proposed Changes:

Section 1 amends s. 414.39, F.S., to clarify that the amount of the reward DCF may pay for information regarding public assistance fraud may not exceed 10 percent of the amount

² Office of Program Policy Analysis and Government Accountability, Government Program Summaries, available at <http://www.oppaga.state.fl.us/profiles/5047> (last visited 1/17/18).

³ Department of Financial Services Bill Analysis of HB 643. Dated 11/29/17. On file with the Senate Committee on Children, Families and Elder Affairs.

⁴ Florida Crime Information Center/National Crime Information Center

⁵ Department of Financial Services Bill Analysis of HB 643. Dated 11/29/17. On file with the Senate Committee on Children, Families and Elder Affairs.

recovered in full or \$500,000, whichever is less. Current law allows DCF to pay awards up to 10 percent of the amount recovered or \$500,000, whichever is less.

Section 2 amends s. 414.41, F.S., relating to recovered funds from public assistance fraud. The bill requires that excess funds in the Federal Grants Trust Fund be retained each year for use by DCF for its efforts to combat public assistance fraud. The bill allows such funds to be used to pay awards as well as pay for fraud prevention initiatives implemented by DCF. DCF will report to the legislature each October 1st what such initiatives accomplished in regards to the amount of awards paid and the outcome of fraud prevention activities. The bill requires such expenditures to be appropriated by the legislature. Currently, DCF can propose to use such funds for public assistance fraud prevention through its legislative budget request.

Section 4 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill would restrict the use of recovered funds from public assistance fraud in the DCF Federal Grants Trust Fund to activities contained in DCF's plan for improving its efforts to combat public assistance fraud.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

DCF collects between \$4 and \$7 million each year beyond the costs of its public assistance fraud recovery efforts.⁶ These funds are typically appropriated by the legislature for department priorities in the General Appropriations Act each year. The bill

⁶ Department of Children and Families Bill Analysis of SB 1232. Dated 12/12/17. On file with the Senate Committee on Children, Families and Elder Affairs.

would require excess funds be appropriated to DCF for activities in its plan for reducing public assistance fraud.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 414.39 and 414.41.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on January 22, 2018:

The CS removes the designation of DCF's public assistance fraud office as a criminal justice agency.

- B. **Amendments:**

None.



682894

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/22/2018	.	
	.	
	.	
	.	

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

- 1 **Senate Amendment**
- 2 Delete line 45
- 3 and insert:
- 4 to respond to emergent public assistance fraud



868328

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/22/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 69 - 78.

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

And the title is amended as follows:

Delete lines 15 - 18

and insert:

authorization; providing an effective date.

By Senator Baxley

12-00966B-18

20181232__

1 A bill to be entitled
 2 An act relating to public assistance fraud; amending
 3 s. 414.39, F.S.; revising the maximum reward paid to
 4 persons providing certain information leading to the
 5 recovery of certain fraudulent public assistance
 6 payments; revising the funding source for such
 7 rewards; amending s. 414.41, F.S.; directing state-
 8 retained shares of recovered public assistance
 9 overpayments to be held in the Federal Grants Trust
 10 Fund; requiring such funds to be reallocated to the
 11 Department of Children and Families; specifying how
 12 such funds may be used by the department; requiring
 13 the department to submit an annual report and to
 14 propose certain projects for legislative
 15 authorization; amending s. 943.045, F.S.; revising the
 16 definition of the term "criminal justice agency" to
 17 include the fraud investigations component of the
 18 department; providing an effective date.
 19
 20 Be It Enacted by the Legislature of the State of Florida:
 21
 22 Section 1. Paragraphs (b) and (c) of subsection (11) of
 23 section 414.39, Florida Statutes, are amended to read:
 24 414.39 Fraud.—
 25 (11)
 26 (b) The reward may not exceed 10 percent of the amount
 27 recovered in full by the department or \$500,000, whichever is
 28 less, in a single case.
 29 (c) The reward shall be paid from the state-retained state

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20181232__

30 share of the recovered overpayments held ~~recovery~~ in the Federal
 31 Grants Trust Fund from moneys collected pursuant to s. 414.41.
 32 Section 2. Subsection (4) is added to section 414.41,
 33 Florida Statutes, to read:
 34 414.41 Recovery of payments made due to mistake or fraud.—
 35 (4) All collected state-retained shares of recovered
 36 overpayments during each fiscal year shall be held in the
 37 Federal Grants Trust Fund to be reallocated to the department
 38 the following fiscal year for use as specified in this
 39 subsection.
 40 (a) Funds held in the Federal Grants Trust Fund pursuant to
 41 this subsection may be used by the department to:
 42 1. Pay public assistance fraud rewards as provided in s.
 43 414.39(11) and to fund public assistance fraud detection; and
 44 2. Fund prevention initiatives that enable the department
 45 to respond to and investigate emergent public assistance fraud
 46 schemes and threats pursuant to authorization under paragraph
 47 (c).
 48 (b) By October 1 of each year, the department shall submit
 49 a report to the Legislature which includes the following:
 50 1. The actual outcomes and returns on investment associated
 51 with projects approved pursuant to paragraph (c) during the
 52 previous fiscal year.
 53 2. The amount of funds in the Federal Grants Trust Fund
 54 available for expenditure pursuant to this subsection.
 55 3. The number and amount of public assistance fraud rewards
 56 paid during the previous fiscal year and anticipated to be paid
 57 during the next fiscal year.
 58 4. Descriptions of specific proposed projects to be

Page 2 of 3

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

12-00966B-18

20181232__

59 supported by the expenditure of funds held according to this
60 subsection, including expected outcomes of the proposed
61 projects, and the estimated return on investment for the
62 following fiscal year.

63 (c) Contingent upon specific authorization in the General
64 Appropriations Act or similar legislation, and notwithstanding
65 chapter 216, the department may use funds, pursuant to this
66 subsection, to pay public assistance fraud rewards and to fund
67 one or more of the specific projects proposed in the annual
68 report required under paragraph (b).

69 Section 3. Paragraph (d) of subsection (11) of section
70 943.045, Florida Statutes, is amended to read:

71 943.045 Definitions; ss. 943.045-943.08.—The following
72 words and phrases as used in ss. 943.045-943.08 shall have the
73 following meanings:

74 (11) "Criminal justice agency" means:

75 (d) The protective and fraud investigations components
76 ~~component~~ of the Department of Children and Families, which
77 investigate ~~investigates~~ the crimes of abuse and neglect and
78 public assistance fraud.

79 Section 4. This act shall take effect July 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/22/18

Meeting Date

SB 1232

Bill Number (if applicable)

Topic SB 1232

Amendment Barcode (if applicable)

Name Jeri Culley

Job Title Assistant Secretary

Address 1317 Winewood Blvd

Street

Phone _____

Tallahassee

FL

32399

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Department of Children and Families

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 (10/14/14)

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1232
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, January 22, 2018
TIME: 3:30—5:30 p.m.
PLACE: 401 Senate Office Building

FINAL VOTE		SENATORS	1/22/2018 Amendment 682894 ¹		1/22/2018 Amendment 868328 ²			
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Broxson						
X		Campbell						
X		Steube						
X		Torres, VICE CHAIR						
X		Garcia, CHAIR						
5	0	TOTALS	RCS	-	RCS	-		
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: CS/SB 1418

INTRODUCER: Senator Rouson

SUBJECT: Substance Abuse Services

DATE: January 23, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Fav/CS
2.			CJ	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1418 modifies requirements for licensed substance abuse service providers offering treatment to individuals living in recovery residences. Recovery residences (also known as “sober homes”) are alcohol and drug-free living environments where individuals with substance use disorder reside while they receive treatment services on an outpatient basis.

The bill allows licensed service providers to accept referrals from noncertified recovery residences when it appears that the resident may benefit from such services. The bill further requires certified recovery residences to comply with relevant provisions of the Florida Fire Prevention Code.

SB 1418 also addresses instances involving individuals who have been disqualified for employment with substance abuse service providers following a failed background screening. The bill requires the Department of Children and Families (“DCF”) to render a decision on an application for exemption from disqualification within 60 days of receiving the application, and allows an individual to work for up to 90 days while DCF evaluates his or her application for an exemption under certain conditions. The bill expands the authority of an agency secretary to grant an exemption from disqualification for employment to include individuals applying for work providing mental health and substance abuse treatment. The bill also increases the number of offenses screened for on background checks of owners, directors, and chief financial officers of certified recovery residences.

The bill will likely have an indeterminate fiscal impact on the state and is effective July 1, 2018.

II. Present Situation:

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.¹ Substance use disorder occurs when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.² Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance use disorder.³ Brain imaging studies of persons with substance use disorder show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.⁴

Substance Abuse Treatment in Florida

DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services.

DCF provides treatment for substance abuse through a community-based provider system that serves adolescents and adults affected by substance misuse, abuse or dependence.⁵ DCF regulates substance abuse treatment by licensing individual treatment components under chapter 397, F.S., and chapter 65D-30, F.A.C.

The 2017 Legislature passed and the Governor approved HB 807, which made several changes to DCF's licensure program for substance abuse treatment providers in chapter 397, F.S.⁶ HB 807 revised the licensure application requirements and process and required applicants to provide detailed information about the clinical services they provide.

Recovery Residences

Recovery residences function under the premise that individuals benefit in their recovery by residing in an alcohol and drug-free environment. Recovery residences are designed to be

¹ World Health Organization, *Substance Abuse*, available at http://www.who.int/topics/substance_abuse/en/ (last visited January 17, 2018).

² Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, available at <http://www.samhsa.gov/disorders/substance-use> (last visited January 18, 2018).

³ National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, available at <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited January 17, 2018).

⁴ Id.

⁵ Department of Children and Families, *Treatment for Substance Abuse*, <http://www.myflfamilies.com/service-programs/substance-abuse/treatment-and-detoxification>, (last visited January 17, 2018).

⁶ Ch. 2017-173, L.O.F.

financially self-sustaining through rent and fees paid by residents, and there is no limit on the length of stay for those who abide by the rules.⁷

Section 397.311, F.S., defines a recovery residence as a residential dwelling unit, or other form of group housing, offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment. A 2009 Connecticut study notes the following: “Sober houses do not provide treatment, [they are] just a place where people in similar circumstances can support one another in sobriety. Because they do not provide treatment, they typically are not subject to state regulation.”⁸

Federal Fair Housing Act and Americans with Disabilities Act

The Federal Fair Housing Act of 1988 (FFHA)⁹ prohibits discrimination on the basis of a handicap in all types of housing transactions. The FFHA defines a “handicap” to mean mental or physical impairments that substantially limit one or more major life activities. The term “mental or physical impairment” may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term “major life activity” may include seeing, hearing, walking, breathing, performing manual tasks, caring for oneself, learning, speaking, or working. The FFHA also protects persons who have a record of such impairment or are regarded as having such impairment. Persons who are currently using controlled substances illegally, person convicted of illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FFHA.¹⁰

The Florida Fair Housing Act provides that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available.¹¹ Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.¹²

In July 1999, the U.S. Supreme Court held that the unnecessary institutionalization of persons with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).¹³ In its opinion, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective, community-based services. This decision interpreted Title II of the ADA and its implementing

⁷ *Recovery Residence Report*; Department of Children and Families, Office of Substance Abuse and Mental Health, October 1, 2013, (on file with the Senate Committee on Children, Families and Elder Affairs).

⁸ *Id.*

⁹ 42 U.S.C. 3601 *et seq.*

¹⁰ U.S. Department of Justice, *The Fair Housing Act*, available at http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited January 17, 2018).

¹¹ S. 760.23(7)(b), F.S.

¹² S. 760.23(9)(b), F.S.

¹³ *Olmstead v. L.C.*, 527 U.S. 581, (1999).

regulation, which requires states to administer their services, programs, and activities “in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities.”

The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.¹⁴ In addition, in the *United States of America v. City of Boca Raton*, the court held that the city’s ordinance excluding substance abuse treatment facilities from residential areas violates the FFHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.¹⁵

Based on this protected class status held by individuals in substance abuse recovery, federal courts have held that mandatory conditions placed on housing for people in recovery from either state or sub-state entities, such as ordinances, licenses, or conditional use permits, are overbroad in application and result in violations of the FFHA and ADA.¹⁶ Additionally, federal courts have invalidated regulations that require registry of housing for protected classes, including recovery residences.¹⁷ Further, federal courts have enjoined state action that is predicated on discriminatory local government decisions.¹⁸

State and local governments have the authority to enact regulations, including housing restrictions, which serve to protect the health and safety of the community.¹⁹ However, this authority may not be used as a guise to impose additional restrictions on protected classes under the FHA.²⁰ Further, these regulations must not single out housing for disabled individuals and place requirements that are different and unique from the requirements for housing for the

¹⁴ U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All?*, available at http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited January 18, 2018).

¹⁵ *United States of America vs. City of Boca Raton* 1008 WL 686689 (S.D.Fla.2008).

¹⁶ Department of Children and Families, *Recovery Residence Report*, Oct. 1, 2013, available at <http://www.dcf.state.fl.us/programs/samh/docs/SoberHomesPR/DCFProvisoRpt-SoberHomes.pdf> (last visited January 18, 2018).. See, e.g., *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (S.D. Fla. 2007); *Oxford House, Inc.*, 819 F. Supp. 1179; *Marbrunak v. City of Stow, OH.*, 947 F.2d 43 (6th Cir. 1992); *United States v. City of Baltimore, MD*, 845 F. Supp. 2d. 640 (D. Md. 2012); *Children's Alliance v. City of Bellevue*, 950 F. Supp. 1491 (W.D. Wash. 1997); *Oxford House-Evergreen v. Plainfield*, 769 F. Supp. 1329 (D.N.J. 1991); *Potomac Group Home, Inc.*, 823 F. Supp. 1285 (D. Md. 1993).

¹⁷ *Recovery Residence Report*, supra note 16. See, e.g., *Nevada Fair Housing Center, Inc., v. Clark County, et. al.*, 565 F. Supp. 2d 1178 (D. Nev. 2008); See, *Human Resource Research and Management Group*, 687 F. Supp. 2d 237 (E.D.N.Y. 2010); *Community Housing Trust et. al., v. Dep’t of Consumer and Regulatory Affairs et. al.*, 257 F. Supp. 2d 208 (D.C. Cir. 2003); *City of Edmonds v. Oxford House et. al.*, 574 U.S. 725 (1995); *Safe Haven Sober Houses, LLC, et. al., v. City of Boston, et. al.*, 517 F. Supp. 2d 557 (D. Mass. 2007); *United States v. City of Chicago Heights*, 161 F. Supp. 2d 819 (N.D. Ill. 2001).

¹⁸ *Recovery Residence Report*, supra, note 16. See, e.g., *Larkin v. State of Mich.* 883 F. Supp. 172 (E.D. Mich. 1994), judgment *aff’d* 89 F.3d 285 (6th Cir. 1996); *Arc of New Jersey, Inc., v. State of N.J.*, 950 F. Supp. 637, (D.N.J. 1996); *North Shore-Chicago Rehab., Inc. v. Village of Skokie*, 827 F. Supp. 497 (N.D. Ill. 1993); *Easter Seal Soc. of New Jersey, Inc. v. Township of North Bergen*, 798 F. Supp. 228 (D.N.J. 1992); *Ardmore, Inc. v. City of Akron, Ohio*, 1990 WL 385236 (N.D. Ohio 1990).

¹⁹ 42 U.S.C. § 3604(f)(9).

²⁰ *Recovery Residence Report*, supra, note 16. See, e.g., *Bangerter v. Orem City Corp.*, 46 F.3d 1491, (10th Cir. 1995); *Ass’n for Advancement of the Mentally Handicapped, Inc. v. City of Elizabeth*, 876 F. Supp. 614 (D.N.J. 1994); *Pulcinella v. Ridley Tp.*, 822 F. Supp. 204 (E.D. Pa. 1993).

general population.²¹ Instead, the FFHA and ADA require state and local governments to make reasonable accommodations necessary to allow a person with a qualifying disability equal opportunity to use and enjoy a dwelling.²² The governmental entity bears the burden of proving through objective evidence that a regulation serves to protect the health and safety of the community and is not based upon stereotypes or unsubstantiated inferences.²³

Voluntary Certification of Recovery Residences in Florida

Florida does not license recovery residences. Instead, in 2015 the Legislature enacted sections 397.487–397.4872, F.S., which establish voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.

While certification is voluntary, Florida law incentivizes certification. Since July 1, 2016, Florida has prohibited licensed substance abuse service providers from referring patients to a recovery residence unless the recovery residence is certified and is actively managed by a certified recovery residence administrator.²⁴ Referrals by licensed service providers to uncertified recovery residences are limited to those licensed service providers under contract with a managing entity as defined in s. 394.9082, F.S.; referrals by a recovery residence to a licensed service provider when the recovery residence or its owners, directors, operators, or employees do not benefit, directly or indirectly, from the referral; and referrals before July 1, 2018 by a licensed service provider to that licensed service provider's wholly owned subsidiary.²⁵

DCF publishes a list of all certified recovery residences and recovery residence administrators on its website.²⁶ As of January 13, 2018, there were 312 certified recovery residences in Florida.²⁷

Substance Use Disorder and Criminal History

Persons who have recovered from a substance use disorder or mental illness often have a criminal history.²⁸ Common offenses would include using and selling illegal substances, prostitution, or financial fraud. Section 435.04, F.S., allows persons with disqualifying offenses identified through background screening to apply to the respective state agency head (the Secretary of the Department of Children and Families or the Secretary of the Agency for Health

²¹ *Bangerter v. Orem City Corp.*, 46 F.3d 1491 (10th Cir. 1995); *Human Res. Research and Mgmt. Grp, Inc. v. County of Suffolk*, 687 F. Supp. 2d 237 (E.D.N.Y. 2010); *Potomac Grp. Home Corp. v. Montgomery Cnty., Md.*, 823 F. Supp. 1285 (D. Md. 1993).

²² *Recovery Residence Report*, *supra*, note 16. 42 U.S.C. § 3604(f)(3)(B); 42 U.S.C. § 12131, *et. seq.*, 28 C.F.R. § 35.130(b)(7). To comply with the reasonable accommodation provisions of the ADA, regulations have been promulgated for public entities (defined by 28 C.F.R. § 35.104). This includes a self-evaluation plan of current policies and procedures and modify as needed (28 C.F.R. § 35.105). This is subject to the exclusions of 28 C.F.R. § 35.150. For judicial interpretation, *see, Jeffrey O.*, 511 F. Supp. 2d 1339; *Oxford House Inc., v. Township of Cherry Hill*, 799 F. Supp. 450 (D.N.J. 1992).

²³ *Oconomowoc Residential Programs, Inc., v. City of Milwaukee*, 300 F. 3d 775 (7th Cir. 2002); *Oxford House- Evergreen*, 769 F. Supp. 1329; *Cason v. Rochester Housing Auth.*, 748 F. Supp. 1002 (W.D.N.Y. 1990).

²⁴ S. 397.4873(1), F.S.

²⁵ S. 397.4873(2), F.S.

²⁶ S. 397.4872, F.S.

²⁷ Florida Association of Recovery Residences, *Certified Residences*, <http://farronline.org/certification/certified-residences/> (last visited January 17, 2018).

²⁸ SB 450 Department of Children and Families Bill Analysis. Oct. 11, 2017. On file with the Senate Committee on Children, Families and Elder Affairs.

Care Administration) for an exemption if it has been three or more years since their conviction. The applicant must produce all court records regarding their convictions, letters of recommendation, evidence of their rehabilitation, education documents, evidence of employment, and fill out a questionnaire. The requirements of this exemption often deter persons from applying to work as volunteers, peers, or other employees of a substance abuse treatment program that provides support. Social support services have been shown to facilitate recovery from a substance use disorder or mental illness is facilitated by the use.²⁹

Background Screening Process

In 1995, the Legislature created standard procedures for criminal history background screening of prospective employees; chapter 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,³⁰ and may include criminal records checks through local law enforcement agencies. A level 2 background screening includes, but, is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.³¹

For both levels of screening, FDLE responds to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying information. If the employer or agency finds that an individual has a history containing a disqualifying offenses, it must disqualify that individual from employment.

Individuals Requiring Background Screening Under Chapter 397, F.S.

Only certain individuals affiliated with substance abuse treatment providers require background screening. Section 397.4073, F.S., requires all owners, directors, chief financial officers, and clinical supervisors of service providers, as well as all service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services to undergo level 2 background screening.

Regarding recovery residences, s. 397.487 and s. 397.4871, F.S., each require level 2 background screening for all recovery residence owners, directors and chief financial officers and for administrators seeking certification. DCF may exempt an individual from the disqualifying offenses of a level 2 background screening if the individual meets certain criteria and the recovery residence attests that it is in the best interest of the program.³²

²⁹ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment. What Are Peer Recovery Support Services? Available at <https://store.samhsa.gov/shin/content/SMA09-4454/SMA09-4454.pdf> (last visited January 17, 2018).

³⁰ The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at <https://www.nsopw.gov/> (last visited January 17, 2018).

³¹ S. 435.04, F.S.

³² S. 397.4872, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 394.4572, F.S., relating to screening of mental health personnel, by expanding the group of individuals for whom an agency head can grant exemptions from disqualification to include applicants otherwise disqualified from employment. Specifically, the bill allows an agency head to grant exemptions from disqualification to those seeking to work solely in mental health treatment programs or facilities or in programs or facilities that treat co-occurring substance use and mental health disorders.

Section 2 amends s. 397.4073, F.S., relating to personnel background checks, to require DCF to render a decision on an application for exemption from employment disqualification within 60 days after DCF receives the complete application. The bill imposes this requirement in cases involving owners, directors, chief financial officers, clinical supervisors, and personnel of service providers, who have direct contact with children or developmentally disabled adults receiving services, and who are disqualified from employment pursuant to level 2 background screening and seek an exemption from disqualification. The bill also mandates level 2 background screenings for any of the personnel listed above who have direct contact with individuals receiving treatment.

The bill expands the scope of background screenings for owners, directors, and chief financial officers of certified recovery residences to also screen for those offenses enumerated in s. 408.809, F.S., and allows an individual to work under supervision for up to 90 days while DCF evaluates his or her application for an exemption from disqualification under certain conditions. The bill also adds additional crimes, such as prostitution, 3rd degree burglary, 3rd degree grand theft, 3rd degree forgery, and related attempt crimes, to an existing list in statute for which an individual may receive an exemption from disqualification, where those individuals are working with adolescents 13 years of age and older and adults with substance use disorders.

Section 3 amends s. 397.487, F.S., relating to recovery residences, to require that all certified recovery residences comply with the provisions of the Florida Fire Prevention Code which apply to one-family and two-family dwellings, public lodging establishments or rooming houses, or other housing facilities as applicable.

Section 4 amends s. 397.4873, F.S., relating to referrals to or from recovery residences, by modifying existing restrictions on referrals to or from recovery residences to allow referrals by a recovery residence to a licensed service provider when a resident has experienced a recurrence of substance use and, in the best judgment of the recovery residence administrator, it appears that the resident may benefit from clinical treatment services. The bill also provides that a recovery residence or its owners, directors, operators, employees, or volunteers may not benefit from referrals made pursuant to provisions of s. 397.4873, F.S.

Section 5 amends s. 435.07, F.S., by specifying that applicants who will be exempted from disqualification for employment solely because of the newly added crimes in Section 2 of the bill may be exempted from disqualification without a statutorily imposed 3 year waiting period following release from confinement or court-ordered supervision.

Section 6 provides an effective date of July 1, 2018.

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 may have an impact on recovery residences which need to modify features of existing physical structures or move to new locations in order to comply with relevant provisions of the Florida Fire Prevention Code. This impact is indeterminate.

C. Government Sector Impact:

DCF may be impacted by an increased workload associated with the newly added time limit on rendering decisions for employment disqualification exemptions. This impact is not expected to be significant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.4572, 397.4073, 397.487, 397.4873, 435.07.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Children, Families, and Elder Affairs on January 22, 2018:

- Removed the creation of a new licensable component of “treatment with housing overlay” and restores the deletion of day and night treatment with community housing.
- Expanded the staff and volunteers who are subject to a level 2 background screening to include anyone with direct contact with individuals receiving treatment; these personnel must also undergo a background screening as required in s. 408.809, F.S.
- Expanded the crimes for which an individuals may receive an exemption from disqualification without the statutorily imposed waiting period, if they are working with adolescents 13 years of age and older and adults with substance use disorders.
- Allowed an individual to work under supervision for up to 90 days while DCF is evaluates his or her application for an exemption from disqualification under certain conditions

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/22/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (2) of section 394.4572, Florida
Statutes, is amended to read:

394.4572 Screening of mental health personnel.—

(2) (a) The department or the Agency for Health Care
Administration may grant exemptions from disqualification as
provided in chapter 435.



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11 (b) The department or the Agency for Health Care
12 Administration, as applicable, may grant exemptions from
13 disqualification for service provider personnel to work solely
14 in mental health treatment programs or facilities or in programs
15 or facilities that treat co-occurring substance use and mental
16 health disorders.

17 Section 2. Paragraphs (a), (f), and (g) of subsection (1)
18 and subsection (4) of section 397.4073, Florida Statutes, are
19 amended to read:

20 397.4073 Background checks of service provider personnel.-

21 (1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND
22 EXCEPTIONS.-

23 (a) The department shall require level 2 background
24 screening pursuant to chapter 435 for all owners, directors,
25 chief financial officers, and clinical supervisors, and for
26 service provider personnel and volunteers, except as provided in
27 paragraph (c), who have direct contact with individuals
28 receiving treatment. Such screening shall also include
29 background screening as provided in s. 408.809. ~~Background~~
30 checks shall apply as follows:

31 ~~1. All owners, directors, chief financial officers, and~~
32 ~~clinical supervisors of service providers are subject to level 2~~
33 ~~background screening as provided under chapter 435. Inmate~~
34 ~~substance abuse programs operated directly or under contract~~
35 ~~with the Department of Corrections are exempt from background~~
36 ~~screening requirements under this section ~~this requirement.~~~~

37 ~~2. All service provider personnel who have direct contact~~
38 ~~with children receiving services or with adults who are~~
39 ~~developmentally disabled receiving services are subject to level~~



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40 ~~2 background screening as provided under chapter 435.~~

41 (f) Service provider personnel who request an exemption
42 from disqualification must submit the request within 30 days
43 after being notified of the disqualification. The department
44 shall grant or deny the exemption from disqualification within
45 60 days after receipt of a complete application.

46 (g) If 5 years or more have elapsed since the applicant for
47 the exemption completed or was lawfully released from
48 confinement, supervision, or nonmonetary condition imposed by
49 the court for the most recent disqualifying offense, such
50 applicant service provider personnel may work with adults with
51 substance use disorders under the supervision of persons who
52 meet all personnel requirements of this chapter for up to 90
53 days after being notified of the disqualification or until the
54 department a qualified professional licensed under chapter 490
55 or chapter 491 or a master's level certified addictions
56 professional until the agency makes a final determination
57 regarding the request for an exemption from disqualification,
58 whichever is earlier.

59 (h) ~~(g)~~ The department may not issue a regular license to
60 any service provider that fails to provide proof that background
61 screening information has been submitted in accordance with
62 chapter 435.

63 (4) EXEMPTIONS FROM DISQUALIFICATION.—

64 (a) The department may grant to any service provider
65 personnel an exemption from disqualification as provided in s.
66 435.07.

67 (b) Since rehabilitated substance abuse impaired persons
68 are effective in the successful treatment and rehabilitation of



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69 individuals with substance use disorders, for service providers
70 which treat adolescents 13 years of age and older, service
71 provider personnel whose background checks indicate crimes under
72 s. 796.07(2)(e), s. 810.02(4), s. 812.014(2)(c), s. 817.563, s.
73 831.01, s. 831.02, s. 832.05(4), s. 893.13, or s. 893.147, and
74 any related criminal attempt, solicitation, or conspiracy under
75 s. 777.04, may be exempted from disqualification from employment
76 pursuant to this paragraph.

77 (c) The department may grant exemptions from
78 disqualification for service provider personnel to work solely
79 in substance abuse treatment programs or facilities or in
80 programs or facilities that treat co-occurring substance use and
81 mental health disorders. The department may further limit such
82 ~~grant exemptions from disqualification which would limit service~~
83 ~~provider personnel~~ to working with adults in substance abuse
84 treatment facilities.

85 Section 3. Subsection (1), paragraph (m) of subsection (3),
86 and subsection (6) of section 397.487, Florida Statutes, are
87 amended to read:

88 397.487 Voluntary certification of recovery residences.—

89 (1) The Legislature finds that a person suffering from
90 addiction has a higher success rate of achieving long-lasting
91 sobriety when given the opportunity to build a stronger
92 foundation by living in a recovery residence while receiving
93 treatment or after completing treatment. The Legislature further
94 finds that this state and its subdivisions have a legitimate
95 state interest in protecting these persons, who represent a
96 vulnerable consumer population in need of adequate housing. It
97 is the intent of the Legislature to protect persons who reside



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98 in a recovery residence.

99 (3) A credentialing entity shall require the recovery
100 residence to submit the following documents with the completed
101 application and fee:

102 (m) Proof of satisfactory fire, safety, and health
103 inspections. A recovery residence must comply with the
104 provisions of the Florida Fire Prevention Code which apply to
105 one-family and two-family dwellings, public lodging
106 establishments, or rooming houses, or other housing facilities,
107 as applicable.

108 (6) All owners, directors, and chief financial officers of
109 an applicant recovery residence are subject to level 2
110 background screening as provided under chapter 435 and s.
111 408.809. A recovery residence is ineligible for certification,
112 and a credentialing entity shall deny a recovery residence's
113 application, if any owner, director, or chief financial officer
114 has been found guilty of, or has entered a plea of guilty or
115 nolo contendere to, regardless of adjudication, any offense
116 listed in s. 408.809(4) or s. 435.04(2) unless the department
117 has issued an exemption under s. 397.4073 or s. 397.4872. In
118 accordance with s. 435.04, the department shall notify the
119 credentialing agency of an owner's, director's, or chief
120 financial officer's eligibility based on the results of his or
121 her background screening.

122 Section 4. Section 397.4873, Florida Statutes, is amended
123 to read:

124 397.4873 Referrals to or from recovery residences;
125 prohibitions; penalties.—

126 (1) A service provider licensed under this part may not



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127 make a referral of a prospective, current, or discharged patient
128 to, or accept a referral of such a patient from, a recovery
129 residence unless the recovery residence holds a valid
130 certificate of compliance as provided in s. 397.487 and is
131 actively managed by a certified recovery residence administrator
132 as provided in s. 397.4871.

133 (2) Subsection (1) does not apply to:

134 (a) A licensed service provider under contract with a
135 managing entity as defined in s. 394.9082.

136 (b) Referrals by a recovery residence to a licensed service
137 provider when a resident has experienced a recurrence of
138 substance use and, in the best judgment of the recovery
139 residence administrator, it appears that the resident may
140 benefit from clinical treatment services ~~the recovery residence~~
141 ~~or its owners, directors, operators, or employees do not~~
142 ~~benefit, directly or indirectly, from the referral.~~

143 (c) Referrals made before July 1, 2018, by a licensed
144 service provider to that licensed service provider's wholly
145 owned subsidiary.

146 (3) A recovery residence or its owners, directors,
147 operators, employees, or volunteers may not benefit, directly or
148 indirectly, from a referral made pursuant to subsection (1) or
149 subsection (2).

150 (4) ~~(3)~~ For purposes of this section, a licensed service
151 provider or recovery residence shall be considered to have made
152 a referral if the provider or recovery residence has informed a
153 patient by any means about the name, address, or other details
154 of a recovery residence or licensed service provider, or
155 informed a licensed service provider or a recovery residence of



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156 any identifying details about a patient.

157 ~~(5)-(4)~~ A licensed service provider shall maintain records
158 of referrals to or from recovery residences as may be prescribed
159 by the department in rule.

160 ~~(6)-(5)~~ After June 30, 2019, a licensed service provider
161 violating this section shall be subject to an administrative
162 fine of \$1,000 per occurrence. Repeat violations of this section
163 may subject a provider to license suspension or revocation
164 pursuant to s. 397.415.

165 ~~(7)-(6)~~ Nothing in this section requires a licensed service
166 provider to refer a patient to or to accept a referral of a
167 patient from a recovery residence.

168 Section 5. Subsection (2) of section 435.07, Florida
169 Statutes, is amended to read:

170 435.07 Exemptions from disqualification.—Unless otherwise
171 provided by law, the provisions of this section apply to
172 exemptions from disqualification for disqualifying offenses
173 revealed pursuant to background screenings required under this
174 chapter, regardless of whether those disqualifying offenses are
175 listed in this chapter or other laws.

176 (2) Persons employed, or applicants for employment, by
177 treatment providers who treat adolescents 13 years of age and
178 older who are disqualified from employment solely because of
179 crimes under s. 796.07(2)(e), s. 810.02(4), s. 812.014(2)(c), s.
180 817.563, s. 831.01, s. 831.02, s. 832.05(4), s. 893.13, or s.
181 893.147, and any related criminal attempt, solicitation, or
182 conspiracy under s. 777.04, may be exempted from
183 disqualification from employment pursuant to this chapter
184 without application of the waiting period in subparagraph



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185 (1) (a)1.

186 Section 6. This act shall take effect July 1, 2018.

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

188 And the title is amended as follows:

189 Delete everything before the enacting clause
190 and insert:

191 A bill to be entitled

192 An act relating to substance abuse services; amending
193 s. 394.4572, F.S.; authorizing the Department of
194 Health or the Agency for Health Care Administration,
195 as applicable, to grant exemptions from
196 disqualification for service provider personnel to
197 work solely in certain treatment programs and
198 facilities; amending s. 397.4073, F.S.; revising
199 provisions relating to background checks and
200 exemptions from disqualification for certain service
201 provider personnel and volunteers; requiring the
202 Department of Children and Families to grant or deny
203 an exemption from disqualification within a certain
204 timeframe; authorizing certain applicants for an
205 exemption to work under the supervision of certain
206 persons for a specified period of time while his or
207 her application is pending; authorizing certain
208 persons to be exempted from disqualification from
209 employment; authorizing the department to grant
210 exemptions from disqualification for service provider
211 personnel to work solely in certain treatment programs
212 and facilities; amending s. 397.487, F.S.; revising
213 legislative findings relating to voluntary



909590

214 certification of recovery residences; requiring
215 recovery residences to comply with specified Florida
216 Fire Prevention Code provisions; revising background
217 screening requirements for owners, directors, and
218 chief financial officers of recovery residences;
219 amending s. 397.4873, F.S.; providing exceptions to
220 limitations on referrals by recovery residences to
221 licensed service providers; prohibiting recovery
222 residences and specified affiliated individuals from
223 benefitting from certain referrals; providing
224 penalties; amending s. 435.07, F.S.; authorizing the
225 exemption of certain persons from disqualification
226 from employment; providing an effective date.

By Senator Rouson

19-01249-18

20181418__

1 A bill to be entitled
 2 An act relating to substance abuse services; amending
 3 s. 397.311, F.S.; deleting the definition of the term
 4 "day or night treatment with community housing";
 5 defining the term "treatment with housing overlay";
 6 amending s. 397.4073, F.S.; requiring the Department
 7 of Children and Families to notify an applicant within
 8 a certain timeframe regarding the status of the
 9 applicant's application for an exemption from
 10 disqualification for a disqualifying offense revealed
 11 pursuant to a background screening; amending s.
 12 397.487, F.S.; revising legislative findings relating
 13 to voluntary certification of recovery residences;
 14 requiring recovery residences to comply with specified
 15 Florida Fire Prevention Code provisions; revising
 16 background screening requirements for owners,
 17 directors, and chief financial officers of recovery
 18 residences; amending s. 397.4873, F.S.; prohibiting
 19 service providers from having certain contractual or
 20 referral relationships with recovery residences;
 21 revising applicability; prohibiting recovery
 22 residences and specified affiliated individuals from
 23 benefiting from certain referrals; providing
 24 penalties; amending s. 435.07, F.S.; revising criteria
 25 for an exemption from disqualification for an employee
 26 providing mental health and substance use treatment
 27 services under certain circumstances; amending s.
 28 394.9085, F.S.; conforming a cross-reference;
 29 providing an effective date.

Page 1 of 8

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

19-01249-18

20181418__

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Paragraph (a) of subsection (26) of section
 34 397.311, Florida Statutes, is amended to read:
 35 397.311 Definitions.—As used in this chapter, except part
 36 VIII, the term:
 37 (26) Licensed service components include a comprehensive
 38 continuum of accessible and quality substance abuse prevention,
 39 intervention, and clinical treatment services, including the
 40 following services:
 41 (a) "Clinical treatment" means a professionally directed,
 42 deliberate, and planned regimen of services and interventions
 43 that are designed to reduce or eliminate the misuse of drugs and
 44 alcohol and promote a healthy, drug-free lifestyle. As defined
 45 by rule, "clinical treatment services" include, but are not
 46 limited to, the following licensable service components:
 47 1. "Addictions receiving facility" is a secure, acute care
 48 facility that provides, at a minimum, detoxification and
 49 stabilization services; is operated 24 hours per day, 7 days per
 50 week; and is designated by the department to serve individuals
 51 found to be substance use impaired as described in s. 397.675
 52 who meet the placement criteria for this component.
 53 2. "Day or night treatment" is a service provided in a
 54 nonresidential environment, with a structured schedule of
 55 treatment and rehabilitative services.
 56 ~~3. "Day or night treatment with community housing" means a~~
 57 ~~program intended for individuals who can benefit from living~~
 58 ~~independently in peer community housing while participating in~~

Page 2 of 8

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

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59 ~~treatment services for a minimum of 5 hours a day for a minimum~~
60 ~~of 25 hours per week.~~

61 ~~3.4-~~ "Detoxification" is a service involving subacute care
62 that is provided on an inpatient or an outpatient basis to
63 assist individuals to withdraw from the physiological and
64 psychological effects of substance abuse and who meet the
65 placement criteria for this component.

66 ~~4.5-~~ "Intensive inpatient treatment" includes a planned
67 regimen of evaluation, observation, medical monitoring, and
68 clinical protocols delivered through an interdisciplinary team
69 approach provided 24 hours per day, 7 days per week, in a highly
70 structured, live-in environment.

71 ~~5.6-~~ "Intensive outpatient treatment" is a service that
72 provides individual or group counseling in a more structured
73 environment, is of higher intensity and duration than outpatient
74 treatment, and is provided to individuals who meet the placement
75 criteria for this component.

76 ~~6.7-~~ "Medication-assisted treatment for opiate addiction"
77 is a service that uses methadone or other medication as
78 authorized by state and federal law, in combination with
79 medical, rehabilitative, and counseling services in the
80 treatment of individuals who are dependent on opioid drugs.

81 ~~7.8-~~ "Outpatient treatment" is a service that provides
82 individual, group, or family counseling by appointment during
83 scheduled operating hours for individuals who meet the placement
84 criteria for this component.

85 ~~8.9-~~ "Residential treatment" is a service provided in a
86 structured live-in environment within a nonhospital setting on a
87 24-hours-per-day, 7-days-per-week basis, and is intended for

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88 individuals who meet the placement criteria for this component.

89 9. "Treatment with housing overlay" is a program that
90 provides one or more of the components in subparagraphs 2.-8.
91 for individuals who are living independently in a recovery
92 residence while participating in substance abuse treatment
93 services. A service provider that offers treatment with housing
94 overlay may only do so through a recovery residence that holds a
95 valid certificate of compliance as provided in s. 397.487 and is
96 actively managed by a certified recovery residence administrator
97 as provided in s. 397.4871.

98 Section 2. Paragraphs (f) and (g) of subsection (1) of
99 section 397.4073, Florida Statutes, are amended to read:

100 397.4073 Background checks of service provider personnel.—

101 (1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND
102 EXCEPTIONS.—

103 (f) Service provider personnel who request an exemption
104 from disqualification must submit the request within 30 days
105 after being notified of the disqualification. The department
106 must notify the applicant within 60 days after receipt of a
107 completed application whether an exemption is granted or denied.

108 (g) If 5 years or more have elapsed since the most recent
109 disqualifying offense, service provider personnel may work with
110 adults with substance use disorders under the supervision of a
111 qualified professional licensed under chapter 490 or chapter 491
112 or a master's-level-certified addictions professional until the
113 agency makes a final determination regarding the request for an
114 exemption from disqualification.

115 (h) (g) The department may not issue a regular license to
116 any service provider that fails to provide proof that background

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117 screening information has been submitted in accordance with
118 chapter 435.

119 Section 3. Subsection (1), paragraph (m) of subsection (3),
120 and subsection (6) of section 397.487, Florida Statutes, are
121 amended to read:

122 397.487 Voluntary certification of recovery residences.—

123 (1) The Legislature finds that a person suffering from
124 addiction has a higher success rate of achieving long-lasting
125 sobriety when given the opportunity to build a stronger
126 foundation by living in a recovery residence while receiving
127 treatment or after completing treatment. The Legislature further
128 finds that this state and its subdivisions have a legitimate
129 state interest in protecting these persons, who represent a
130 vulnerable consumer population in need of adequate housing. It
131 is the intent of the Legislature to protect persons who reside
132 in a recovery residence.

133 (3) A credentialing entity shall require the recovery
134 residence to submit the following documents with the completed
135 application and fee:

136 (m) Proof of satisfactory fire, safety, and health
137 inspections. A recovery residence must comply with the
138 provisions of the Florida Fire Prevention Code which apply to
139 one-family and two-family dwellings, public lodging
140 establishments or rooming houses, or other housing facilities,
141 as applicable.

142 (6) All owners, directors, and chief financial officers of
143 an applicant recovery residence are subject to level 2
144 background screening as provided under chapter 435 and s.
145 408.809. A recovery residence is ineligible for certification,

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146 and a credentialing entity shall deny a recovery residence's
147 application, if any owner, director, or chief financial officer
148 has been found guilty of, or has entered a plea of guilty or
149 nolo contendere to, regardless of adjudication, any offense
150 listed in s. 435.04(2) unless the department has issued an
151 exemption under s. 397.4872. In accordance with s. 435.04, the
152 department shall notify the credentialing agency of an owner's,
153 director's, or chief financial officer's eligibility based on
154 the results of his or her background screening.

155 Section 4. Section 397.4873, Florida Statutes, is amended
156 to read:

157 397.4873 Referrals to or from recovery residences;
158 prohibitions; penalties.—

159 (1) A service provider licensed under this part may not:

160 (a) Make a referral of a prospective, current, or
161 discharged patient to, or accept a referral of such a patient
162 from, a recovery residence unless the recovery residence holds a
163 valid certificate of compliance as provided in s. 397.487 and is
164 actively managed by a certified recovery residence administrator
165 as provided in s. 397.4871.

166 (b) Have a contractual or referral relationship with a
167 recovery residence to provide treatment with housing overlay
168 pursuant to s. 397.311(26) unless the recovery residence holds a
169 valid certificate of compliance as provided in s. 397.487 and is
170 actively managed by a certified recovery residence administrator
171 as provided in s. 397.4871.

172 (2) Subsection (1) does not apply to:

173 (a) A licensed service provider under contract with a
174 managing entity as defined in s. 394.9082.

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175 (b) Referrals by a recovery residence to a licensed service
 176 provider when a resident has experienced a recurrence of
 177 substance use and, in the best judgment of the recovery
 178 residence administrator, it appears that the resident may
 179 benefit from clinical treatment services ~~the recovery residence~~
 180 ~~or its owners, directors, operators, or employees do not~~
 181 ~~benefit, directly or indirectly, from the referral.~~

182 (c) Referrals made before July 1, 2018, by a licensed
 183 service provider to that licensed service provider's wholly
 184 owned subsidiary.

185 (3) A recovery residence or its owners, directors,
 186 operators, employees, or volunteers may not benefit, directly or
 187 indirectly, from a referral made pursuant to subsection (1) or
 188 subsection (2).

189 (4)(3) For purposes of this section, a licensed service
 190 provider or recovery residence shall be considered to have made
 191 a referral if the provider or recovery residence has informed a
 192 patient by any means about the name, address, or other details
 193 of a recovery residence or licensed service provider, or
 194 informed a licensed service provider or a recovery residence of
 195 any identifying details about a patient.

196 (5)(4) A licensed service provider shall maintain records
 197 of referrals to or from recovery residences as may be prescribed
 198 by the department in rule.

199 (6)(5) After June 30, 2019, a licensed service provider
 200 violating this section shall be subject to an administrative
 201 fine of \$1,000 per occurrence. Repeat violations of this section
 202 may subject a provider to license suspension or revocation
 203 pursuant to s. 397.415.

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204 ~~(7)(6)~~ Nothing in this section requires a licensed service
 205 provider to refer a patient to or to accept a referral of a
 206 patient from a recovery residence.

207 Section 5. Subsections (2) through (5) of section 435.07,
 208 Florida Statutes, are renumbered as subsections (3) through (6),
 209 respectively, and a new subsection (2) is added to that section,
 210 to read:

211 435.07 Exemptions from disqualification.—Unless otherwise
 212 provided by law, the provisions of this section apply to
 213 exemptions from disqualification for disqualifying offenses
 214 revealed pursuant to background screenings required under this
 215 chapter, regardless of whether those disqualifying offenses are
 216 listed in this chapter or other laws.

217 (2) The head of the appropriate agency may grant an
 218 exemption from disqualification which is limited solely to
 219 employment related to providing mental health and substance
 220 abuse treatment under chapter 394 or chapter 397 to an employee
 221 otherwise disqualified from employment under subsection (1).

222 Section 6. Subsection (6) of section 394.9085, Florida
 223 Statutes, is amended to read:

224 394.9085 Behavioral provider liability.—

225 (6) For purposes of this section, the terms "detoxification
 226 services," "addictions receiving facility," and "receiving
 227 facility" have the same meanings as those provided in ss.
 228 397.311(26)(a)3. ~~397.311(26)(a)4.~~, 397.311(26)(a)1., and
 229 394.455(39), respectively.

230 Section 7. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/22/18
Meeting Date

1418

Bill Number (if applicable)

909590

Amendment Barcode (if applicable)

Topic Substance Abuse Services

Name Kelly Mallette

Job Title

Address 104 W. Jefferson Street

Street

Tallahassee, FL 32301

City

State

Zip

Phone (850) 224-3427

Email Kelly@rlbackpa.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Association for Clear & Compassionate Governance of Substance Abuse Treatment

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.

APPEARANCE RECORD

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

1-22-18

Meeting Date

1418

Bill Number (if applicable)

Topic Substance Abuse

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Sr Policy Advisor

Address 2818 Mahan Dr

Phone 878 2194

Street

Tallahassee FL 32308

City

State

Zip

Email jill@myAlpha.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Behavioral Health Assoc

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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APPEARANCE RECORD

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

SB 1418

1/22/18

Meeting Date

[Signature]

Bill Number (if applicable)

909590

Amendment Barcode (if applicable)

Topic Substance Abuse Services

Name Melanie Brown Woodley

Job Title CEO

Address 316 E Park
Street

Phone 226-6048

Jall
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing A Council Community Mental Health

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.

APPEARANCE RECORD

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

1/22/18

Meeting Date

1418

Bill Number (if applicable)

Topic Substance Abuse Services

Amendment Barcode (if applicable)

Name Alisa LaPorte (an LEE sa)

Job Title Exec Director

Address _____

Phone 671-4445

Street

TLH

FL

32302

Email alisa@nami-florida.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing National Alliance on Mental Illness - FL

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

January 22nd 2018
Meeting Date

1418
Bill Number (if applicable)

Topic Substance Abuse Services

Amendment Barcode (if applicable)

Name Lauren Jackson

Job Title Lobbyist

Address 205 S. Adams Street
Street

Phone 931-265-8999

Tallahassee FL 32301
City State Zip

Email lauren@ericksconsultants.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Broward County (Ericks Consultants, Inc.)

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1.22.18

Meeting Date

1418

Bill Number (if applicable)

Topic Substance Abuse Services

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title President & CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

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.

APPEARANCE RECORD

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

1418
Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date _____

Topic Substance Abuse

Name BETH LABASKY

Job Title Committee

Address 1400 Village Sq Blvd

Phone 8503227335

Street Tall City Tallahassee State Fla Zip 32312

Email bethlabasky@aol.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Informed Families of Florida

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.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1418
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Monday, January 22, 2018
TIME: 3:30—5:30 p.m.
PLACE: 401 Senate Office Building

FINAL VOTE		SENATORS	1/22/2018 Amendment 909590 ¹					
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Broxson						
X		Campbell						
X		Steube						
X		Torres, VICE CHAIR						
X		Garcia, CHAIR						
5	0	TOTALS	RCS	-				
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: SB 1448

INTRODUCER: Senator Passidomo

SUBJECT: Tax Exemptions for the Elderly

DATE: January 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Favorable
2.			AFT	
3.			AP	

I. Summary:

SB 1448 provides an exemption to the sales tax to persons age 60 or older for the purchase of items that would assist the person to live independently in their home. Items such as handrails, hospital beds, and walkers would be covered by the exemption.

The fiscal impact on the state is indeterminate, but would reduce sales tax collections deposited in the General Revenue Fund. The bill has an effective date of July 1, 2018.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions,¹ transient rentals,² rental of commercial real estate,³ and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 250 exemptions, exclusions, deductions, and credits from the sales and use tax.⁴ Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁵

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to "all transactions occurring in the county which

¹ Section 212.04, F.S.

² Section 212.03, F.S.

³ Section 212.031, F.S.

⁴ See Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 164-170 (2017).

⁵ Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at http://dor.myflorida.com/dor/taxes/sales_tax.html (last visited Nov. 15, 2017).

transactions are subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by [ch. 212, F.S.], and on communications services as defined in ch. 202, F.S.”⁶ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered into. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 percent to 1.5.⁷

III. Effect of Proposed Changes:

Section 1 amends s. 212.08, F.S., to add a new exemption from the sales and use tax. The bill would exempt items that assist an elderly person to remain independent and living in their home. Items such as bed handles, hospital beds, lifts, handrails, toilet seat risers, etc. would be exempt from the state and local sales tax. The bill authorizes persons age 60 or older who live in their own home to qualify for this exemption. Retailers, or the Department of Revenue would need to determine if persons qualified for this exemption. Persons purchasing this equipment for an elder person would not qualify for the exemption.

Section 2 provides an effective date of July 1, 2018.

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:

The bill would exempt certain items from the sales tax. The estimating conference has not held an impact conference to estimate the amount of the lost revenue.

B. Private Sector Impact:

None.

⁶ Section 212.054, F.S.

⁷ Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook*, 2017 Local Discretionary Sales Surtax Rates in Florida’s Counties, 224-225 (2017), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2017.pdf> (last visited Nov. 15, 2017).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.08 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Passidomo

28-01425-18

20181448__

1 A bill to be entitled
2 An act relating to tax exemptions for the elderly;
3 amending s. 212.08, F.S.; exempting from the sales and
4 use tax specified items that enable elderly persons to
5 age in place and live independently in their homes or
6 residences; providing requirements for receiving the
7 exemption; providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Paragraph (t) is added to subsection (5) of
12 section 212.08, Florida Statutes, to read:

13 212.08 Sales, rental, use, consumption, distribution, and
14 storage tax; specified exemptions.—The sale at retail, the
15 rental, the use, the consumption, the distribution, and the
16 storage to be used or consumed in this state of the following
17 are hereby specifically exempt from the tax imposed by this
18 chapter.

19 (5) EXEMPTIONS; ACCOUNT OF USE.—

20 (t) Items that assist in independent living for the
21 elderly.—Items set forth in this paragraph which enable an
22 elderly person to age in place and live independently in his or
23 her home or residence are exempt from the taxes imposed by this
24 chapter. To receive the tax exemptions contained in this
25 paragraph, the person must be at least 60 years of age, as
26 evidenced by a copy of a birth certificate or other legal proof
27 of age, provided at the time of the purchase. The items include:

- 28 1. Bed transfer handles.
29 2. Hospital beds.

Page 1 of 2

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

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30 3. Power lift recliners.
31 4. Furniture risers.
32 5. Handrails, bed rails, or grab bars.
33 6. Shower seats.
34 7. Stair lifts.
35 8. Toilet seat risers.
36 9. Lever style door knobs.
37 10. Walkers.
38 Section 2. This act shall take effect July 1, 2018.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/22/18
Meeting Date

SB 1448
Bill Number (if applicable)

Topic Tax Exemptions for the Elderly

Amendment Barcode (if applicable)

Name Dorere Barker

Job Title Associate State Director

Address 200 W. College Ave, Suite 304

Phone 850-228-6387

Street
Gall City FL State 32301 Zip

Email dobarker@aarfp.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing AARP FL

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.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 1448
FINAL ACTION: Favorable
MEETING DATE: Monday, January 22, 2018
TIME: 3:30—5:30 p.m.
PLACE: 401 Senate Office Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Broxson						
X		Campbell						
X		Steube						
X		Torres, VICE CHAIR						
X		Garcia, CHAIR						
5	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

Department of
ELDER AFFAIRS

STATE OF FLORIDA



Senate Children, Families & Elder Affairs Committee
January 22, 2018

Jeffrey S. Bragg, Secretary

Florida Department of Elder Affairs

- Approximately 5.2 million residents age 60 or older, expected to increase to 7.6 million in the next 13 years.
- Latest statistics show that over 1,000 people are coming to Florida every day, of which more than half are over 60 years old.

Dementia Care and Cure Initiative

- DCCI is a statewide effort to educate and engage communities to be more dementia friendly, promote better care, and to support research efforts to find a cure.
- In April 2016, the Department announced Leon County and the City of Tallahassee as the first Dementia-Caring Community in Florida.
- Expanded into Fort Myers, Sarasota, Orlando, (Jacksonville & Pensacola).
- Communities for a Lifetime (CFAL)/ AARP



Statewide Community-Based Services

- Continuing efforts to streamline waitlist process by revamping the screening tools (701B).
- Added new parameters to the Comprehensive Assessment and Review for Long-term Care Services (CARES) screening tool to capture information on Veterans in our system.

Office of Public and Professional Guardians

- In 2016, expanded the authority of the office and increased accountability for professional guardians adding the authority to investigate complaints made against professional guardians.
- New partnership with network of Florida's Clerks of Court offices, each of whom have a full complement of investigative staff.



Real Possibilities



AARP STATE FACT SHEET FLORIDA

AARP has offices in all 50 states, Washington, DC, Puerto Rico and the US Virgin Islands.

Contact Information

Florida State Office
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Manager, Advocacy
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National Office
Beverly Gilyard
Director of Federal Strategy
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AARP is working to help Americans 50+ in Florida live life to the fullest. We advocate for our members on critical priorities, such as strengthening Social Security, protecting seniors' access to their doctors, and ensuring all Americans have independence and choice as they age.

AARP serves as a one-stop resource for information on the age 50+ population in Florida and public opinion research. In addition to serving as a clearinghouse for information about older Americans, we also offer programs and tools that help Americans age 50+ make the best decisions about their health and financial security. We hope the data below and the programs on the reverse side will be helpful to you and your constituents.

AARP MEMBERS

Total number of AARP members in Florida: **2,842,918**

SOCIAL SECURITY

Social Security Beneficiaries: **4,334,337**

Retirees: **3,081,274**

Widow(er)s: **271,702**

Disabled Workers: **565,238**

Social Security recipients who rely on Social Security for 50% or more of their income: **52.6%**

Social Security recipients who rely on Social Security for 90% or more of their income: **27.1%**

MEDICARE

Total Medicare Beneficiaries: ~ **4,159,419**

HELPING PEOPLE LIVE INDEPENDENTLY

(Medicaid data for older adults and people with physical disabilities)

Percent of Medicaid long-term care spending for home and community-based services: **21.4%**

Percent of Medicaid long-term care spending for institutional care: **78.6%**

Estimated number of family caregivers during the year: **2,670,000**

Unpaid contributions of family caregivers annually are valued at: **\$29.7 billion**

FLORIDA AT A GLANCE

Recognize, Assist, Include, Support, and Engage (RAISE) Family Caregivers Act

Family caregivers are the most important source of support for people with chronic or other health conditions, disabilities, or functional limitations. Millions of family caregivers help their loved ones live at home and in their communities, providing the bulk of this assistance. About 40 million family caregivers provide about \$470 billion annually in unpaid care to their loved ones.¹ According to *Caregiving in the US 2015*, about 3.7 million family caregivers provide care to a child under age 18 because of a medical, behavioral, or other condition or disability and 6.5 million family caregivers assist both adults and children.² Estimates show 3.5 million individuals with intellectual or developmental disabilities (I/DD) live with family caregivers, of whom over 850,000 are age 60+.³

What do family caregivers do?

Family caregivers help with activities such as eating, bathing, dressing, transportation, and managing finances; perform medical/nursing tasks such as wound care and managing multiple, complex medications; arrange and coordinate care among multiple providers and settings; and pay for services to help their loved ones, such as home modifications, transportation, or a home care aide. The assistance family caregivers provide saves taxpayer dollars by helping to delay or prevent more costly nursing home care and unnecessary hospital stays. Family caregivers spend an average of 18 hours a week caring for their loved one;⁴ almost one-third of family caregivers provide an average of 62 hours of care a week.⁵

What challenges do family caregivers face?

Family caregivers take on physical, emotional, and financial challenges. They commonly experience emotional strain and mental health problems, especially depression, and have poorer physical health than noncaregivers.⁶ Family caregivers generally do not receive training and other assistance to help them provide care.⁷ Too often family caregivers aren't even recognized and included, as appropriate, by health care and social service providers helping their loved ones. Navigating, locating, and coordinating fragmented services is too often bewildering, complex, and very time consuming.

Most family caregivers are employed and juggle work and caregiving responsibilities. They often make workplace accommodations because of caregiving, up to and including leaving their jobs.⁸ Employers have an interest in supporting family caregiver employees so they do not lose talented workers. Family caregivers (age 50 and older) who leave the workforce to care for a parent lose, on average, nearly \$304,000 in wages and benefits over their lifetime. These estimates range from \$283,716 for men to \$324,044 for women.⁹ In addition, family caregivers may pay out-of-pocket for services whose costs add up over time.

Family caregivers will only face greater strains in the future as the "caregiver support ratio" – the number of potential family caregivers aged 45-64 for each person aged 80+ - shrinks. In 2010, the ratio was more than seven potential caregivers for every person in the high-risk years of 80-plus. By 2030, this ratio is projected to decline sharply to 4 to 1 and to less than 3 to 1 in 2050.¹⁰

¹ S. Reinhard, L. Feinberg, R. Choula & A. Houser, *Valuing the Invaluable: 2015 Update, Undeniable Progress, but Big Gaps Remain* (AARP PPI, 2015), available at <http://www.aarp.org/content/dam/aarp/ppi/2015/valuing-the-invaluable-2015-update-undeniable-progress.pdf>.

² National Alliance for Caregiving (NAC) and AARP, *Caregiving in the U.S. 2015: Executive Summary*, (June 2015), available at http://www.aarp.org/ppi/info-2015/caregiving-in-the-united-states-2015/?cmp=CRGVNUSA_MAY21_015.

³ D. Braddock, Testimony before the Commission on Long-Term Care on *Summary of National Trends: 2013 The State of the States in Developmental Disabilities* (July 17, 2013) available at <http://ltccommission.lmp01.lucidus.net/wp-content/uploads/2013/12/TestimonyBraddock-LongTermCareCommission07-17-2013.pdf>.

⁴ S. Reinhard, L. Feinberg, R. Choula & A. Houser, *Valuing the Invaluable: 2015 Update, Undeniable Progress, but Big Gaps Remain* (AARP PPI, 2015).

⁵ National Alliance for Caregiving and AARP, *Caregiving in the US 2015: Executive Summary*, (June 2015).

⁶ L. Feinberg, S. Reinhard, A. Houser & R. Choula, *Valuing the Invaluable: 2011 Update, The Growing Contributions and Costs of Family Caregiving* (AARP PPI, 2011), available at <http://www.aarp.org/relationships/caregiving/info-07-2011/valuing-the-invaluable.html>.

⁷ S. Reinhard, C. Levine & S. Samis, *Home Alone: Family Caregivers Providing Complex Chronic Care* (AARP PPI and United Hospital Fund, 2012), available at http://www.aarp.org/content/dam/aarp/research/public_policy_institute/health/home-alone-family-caregivers-providing-complex-chronic-care-rev-AARP-ppi-health.pdf.

⁸ L. Feinberg, S. Reinhard, A. Houser & R. Choula, *Valuing the Invaluable: 2011 Update, The Growing Contributions and Costs of Family Caregiving* (AARP PPI, 2011).

⁹ Data from MetLife Mature Market Institute, *The MetLife Study of Caregiving: Costs to Working Caregivers: Double Jeopardy for Baby Boomers Caring For Their Parents* (Westport, CT: MetLife Mature Market Institute, 2011), as cited in L. Feinberg & R. Choula, *Understanding the Impact of Family Caregiving on Work* (AARP PPI, 2012), available at http://www.aarp.org/content/dam/aarp/research/public_policy_institute/ltc/2012/understanding-impact-family-caregiving-work-AARP-ppi-ltc.pdf.

¹⁰ D. Redfoot, L. Feinberg, & A. Houser, *The Aging of the Baby Boom and the Growing Care Gap: A Look at Future Declines in the Availability of Family Caregivers* (AARP PPI, 2013), available at http://www.aarp.org/content/dam/aarp/research/public_policy_institute/ltc/2013/baby-boom-and-the-growing-care-gap-insight-AARP-ppi-ltc.pdf.

Credit for Caring Act

Millions of family caregivers help their loved ones live independently in their homes and communities. In 2013, about 40 million family caregivers provided unpaid care valued at about \$470 billion to adults who needed help with daily activities such as bathing, dressing, meal preparation, medical/nursing tasks, and transportation, more than total Medicaid spending that year.¹ About 3.7 million family caregivers provide care to a child under age 18 because of a medical, behavioral, or other condition or disability and 6.5 million family caregivers assist both adults and children.² Not only does this assistance help people live in their homes and communities, it saves taxpayer dollars by helping to delay or prevent their loved ones from needing more costly nursing home care and helping to prevent unnecessary hospital readmissions.

To make this care possible, family caregivers take on physical, emotional, and financial challenges. In addition to providing hands-on assistance and coordinating care, family caregivers pay for goods, services, and supports for their loved ones out-of-pocket, such as service providers, adult day care, transportation, home modifications, assistive technology, and other supports. Although family caregivers often take on care responsibilities willingly, financial strains are unavoidable, and as a country we should support family caregivers as they take on these costs and responsibilities. A family caregiver tax credit is one way to help address the financial challenges family caregivers face, help them stay in the workforce and contribute to the economy, and help them be more financially secure as they juggle caregiving and paid employment.

Why is a family caregiver tax credit needed?

Caregiving is costly both in terms of direct expenses and potential income and retirement savings foregone. Family caregivers often pay out-of-pocket to assist their loved ones. In a national survey, nearly 7 in 10 (68%) of family caregivers say they have had to use their own money to help provide care for their loved one. Nearly 4 in 10 (39%) felt financially strained.³ One survey found that over 40 percent of caregivers spend more than \$5,000 a year on caregiving expenses.⁴ Another survey found caregivers of persons age 50 and older reported spending an average of more than 10 percent of their annual income on caregiving expenses, an average of \$5,531 out-of-pocket in 2007. Long-distance caregivers averaged \$8,728 in annual expenses. Paying for caregiving expenses can mean using savings, cutting back on the caregiver's own health care, or reducing or stopping saving for their own future.

Employed family caregivers can also lose income if they leave the workforce or cut back their hours. Staying in the workforce can help family caregivers be more financially secure. Leaving the workforce can mean lost job security and career mobility, employment benefits, and retirement savings. Estimates of lifetime income-related losses sustained by family caregivers age 50 and over who leave the workforce to care for a parent range from a total of \$283,716 for men to \$324,044 for women, or \$303,880 on average, in lost income and benefits over a caregiver's lifetime. Evidence suggests that caring for aging parents in midlife has a greater economic impact on female caregivers' retirement years than on male caregivers' retirement years, and may substantially increase women's risks of living in poverty and receiving public assistance in old age. Employers are also affected when they lose employees due to their caregiving responsibilities.



The Commonwealth Fund



Florida: 2017 Long-Term Services and Supports Scorecard Results

Picking Up the Pace of Change: Long-Term Services and Supports Scorecard, 2017 Edition takes a multi-dimensional approach to measure state-level performance of long-term services and supports (LTSS) systems that assist older people, adults with disabilities, and family caregivers. The full report is available at www.longtermscorecard.org.

Purpose: The *Scorecard* aims to pick up the pace of improving LTSS and measures system performance from the viewpoint of service users and their families. It is designed to help states improve the performance of their LTSS systems so that older people and adults with disabilities in all states can exercise choice and control over their lives, thereby maximizing their independence and well-being. State policymakers often control key indicators measured, and they can influence others through oversight activities and incentives.

Results: The *Scorecard* examines state performance, both overall and along five key dimensions. Each dimension comprises 3 to 6 data indicators, for a total of 25. It also measures changes in performance since the second *Scorecard* (2014), wherever possible (on 23 of the 25 indicators). The table below summarizes current performance and change in performance at the dimension level. State ranks on each indicator appear on the next page.

Dimension	Rank	Number of Indicators with Trend*	Number of Indicators Showing:**		
			Substantial Improvement	Little or No Change	Substantial Decline
OVERALL	46	23	6	15	1
Affordability & Access	46	5	0	4	1
Choice of Setting & Provider	49	5	3	1	0
Quality of Life & Quality of Care	40	3	1	2	0
Support for Family Caregivers	46	4	1	3	0
Effective Transitions	21	6	1	5	0

*Trend cannot be shown if data are missing for either the current or baseline data year. In each state, 20 to 23 indicators have enough data to calculate a trend. **See full report for how change is defined.

Impact of Improved Performance: If Florida improved its performance to the level of the average of the top-five-performing states,

- 642,773 more place-based subsidized units and vouchers would be available to help low-income people with LTSS needs afford housing;
- 365,959 more people of all ages would receive Medicaid LTSS to help them with daily activities;
- 103,708 more home health and personal care aides would be available to provide care in the community;
- 69,367 more low-/moderate-income adults with disabilities would have Medicaid coverage;
- \$1,861,800,000 more would go to home-and community-based services instead of nursing homes.

Family Caregiving and Out-of-Pocket Costs: 2016 Report

The purpose of this study was to explore the out-of-pocket costs of caregiving and the financial strain on the family caregiver. In addition to out-of-pocket costs, this study also looks at other financial and personal strains family caregivers may experience. For example, many family caregivers may need to cut back on spending in other areas (e.g., personal spending, basic living expenses, retirement savings, etc.) due to the costs of caregiving.

Key Findings

- + Family caregivers, on average, are spending roughly \$7,000 (\$6,954) per year on out-of-pocket costs related to caregiving. A financial strain measure (average annual family caregiver expense divided by the caregivers' annual incomes) shows family caregivers are spending, on average, nearly 20% of their income on caregiving expenses.
- + Household expenses garner the largest share of family caregivers' expenses with 41% of total spending. This includes rent/mortgage payments, home modifications, as well as other household expenses. Medical expenses account for the second largest share (25%). This includes assisted living or skilled nursing facilities, insurance costs, and other medical expenses.
- + Long-distance caregivers (defined as those living more than one hour away from their care recipient) incurred the highest out-of-pocket costs (\$11,923) compared to caregivers living with or close by their care recipients.
- + Those caring for an adult with dementia reported nearly twice the out-of-pocket costs than those caring for someone who does not have dementia (\$10,697 vs. \$5,758).
- + The individuals most "highly financially-strained" tend to be lower income, non-White/non-Asian family caregivers, and caring for someone who needs assistance with at least one Activity of Daily Living (ADL). There are, however, subgroups in every income group that are "highly financially-strained".
- + More than half of family caregivers (56%) experience at least one work-related strain. This may take the form of working different hours, fewer/more hours, and taking time off (whether paid or unpaid).

Methodology

- + This study was conducted using a mixed method approach that included both a survey and diary component in order to calculate an annual figure of out-of-pocket spending for each family caregiver. This study utilized GfK's national, probability-based online Knowledge Panel®. The study was conducted from July 18, 2016 to August 28, 2016 among 1,864 family caregivers.



Research

Caregiver Advise, Record and Enable (CARE) Act

Revised March 2014

(Session No.) Legislative Assembly
of (State)

HOUSE BILL NO. _____

Introduced by (Sponsors)

(Committee Assignment)

A BILL for an Act to require a medical hospital as defined in [STATE STATUTE] to allow a patient an opportunity to designate, upon entry to a hospital, a caregiver in the patient's medical record; to require a hospital to notify and meet with the designated caregiver along with the patient to discuss the patient's plan of care prior to the patient's discharge or transfer to another facility; to require a hospital to instruct the designated caregiver in certain after-care tasks upon a patient's discharge to his or her current residence; and to provide an effective date.

Statement of Legislative Intent

At any given time, an estimated [##] [STATE RESIDENTS] provide varying degrees of unreimbursed care to adults with limitations in daily activities. The total value of the unpaid care provided to individuals in need of long-term services and supports amounts to an estimated \$[##] every year, based on 2009 data. Caregivers are often members of the individual's immediate family, but friends and other community members also serve as caregivers. While most caregivers are asked to assist an individual with basic activities of daily living, such as mobility, eating, and dressing, many are expected to perform complex tasks on a daily basis such as administering multiple medications, providing wound care, and operating medical equipment.

Despite the vast importance of caregivers in the individual's day-to-day care, many caregivers find that they are often left out of discussions involving a patient's care while in the hospital and, upon the patient's discharge, receive little to no instruction on the tasks they are expected to perform. The federal Centers for Medicare & Medicaid Services (CMS) estimates that \$17 billion in Medicare funds is spent each year on unnecessary hospital readmissions. Additionally, hospitals desire to avoid the imposition of new readmission penalties under the federal Patient Protection and Affordable Care Act (ACA).

In order to successfully address the challenges of a surging population of older adults and others living with chronic conditions and who have significant needs for long-term services and supports, the state must develop methods to enable caregivers to continue to support their loved ones at home and in the community, and avoid costly hospital readmissions. Therefore, it is the intent of the [STATE] Legislative Assembly that this Act enables caregivers to provide competent post-hospital care to their family and other loved ones, at minimal cost to the taxpayers of this State.

- c. In the event that the patient or the patient's legal guardian designates an individual as a caregiver under this Act:
- i. The hospital shall promptly request the written consent of the patient or the patient's legal guardian to release medical information to the patient's designated caregiver following the hospital's established procedures for releasing personal health information and in compliance with all federal and state laws.
 1. If the patient or the patient's legal guardian declines to consent to release medical information to the patient's designated caregiver, the hospital is not required to provide notice to the caregiver under Section 3 of this Act or provide information contained in the patient's discharge plan under Section 4 of this Act.
 - ii. The hospital shall record the patient's designation of caregiver, the relationship of the designated caregiver to the patient, and the name, telephone number, and address of the patient's designated caregiver in the patient's medical record.
- d. A patient may elect to change his or her designated caregiver at any time, and the hospital must record this change in the patient's medical record within twenty-four (24) hours.
- B. A designation of a caregiver by a patient or a patient's legal guardian under this Section does not obligate any individual to perform any after-care tasks for any patient.
- C. This section shall not be construed to require a patient or a patient's legal guardian to designate any individual as a caregiver as defined by this Act.

Section 3.

Notice to Designated Caregiver.

- A. A hospital shall notify the patient's designated caregiver of the patient's discharge or transfer to another hospital or facility licensed by the [STATE DEPARTMENT OR LICENSING BODY] as soon as possible and not later than four (4) hours prior to the patient's actual discharge or transfer to such facility.

Section 4.

Instruction to Designated Caregiver.

- A. As soon as possible and not later than twenty-four (24) hours prior to a patient's discharge from a hospital, the hospital shall consult with the designated caregiver along with the patient regarding the caregiver's capabilities and limitations and issue a discharge plan that describes a patient's after-care needs at his or her residence.
- a. At minimum, a discharge plan shall include:

Section 6.

Effective Date.

A. This Act shall be effective immediately upon ratification.

Department of Elder Affairs
Statewide Analysis
Assessed Prioritized Consumer List
Totals by Assessed Rank Level and Program

As of 12/26/2017

Rank	Unduplicated Consumer Count by Programs	Adjusted Count	Alzheimer Disease Initiative (ADI)	Community Care for the Elderly (CCE)	Home Care for the Elderly (HCE)	Local Service Programs (LSP)	Older Americans Act (OAA)	Statewide Medicaid Managed Long-term Care (LTCC)	Total APCL Count
8-APS	53	8	6	1	4	0	46	21	78
7-IR	8	7	2	2	0	0	10	2	16
6-AO	5	4	0	1	0	0	4	1	6
5	4,738	3,764	601	2,338	538	7	3,951	1,084	8,519
4	7,877	6,278	631	4,410	849	14	4,729	6,197	16,830
3	19,646	15,868	1274	12,459	1,696	27	11,928	15,976	43,360
2	22,133	17,173	977	13,722	1,294	31	13,494	17,126	46,644
1	9,863	7,940	1000	6,213	1,617	16	6,312	7,678	22,836
*No Rank	188	90	0	5	0	13	170	0	188
State Total:	64,511	51,132	4,491	39,151	5,998	108	40,644	48,085	138,477

*1 This column is the number of individuals, not the number of APCL enrollments. Individuals may have an APCL enrollment for more than one program.

*2 This column is the number of individuals who have an APCL enrollment and are not receiving any service other than Case Management.

*3 Many individuals enter the system through the CCE program and are later determined to be eligible for Medicaid or one or more of the other programs.

*4 This column is the number of APCL enrollments, not the number of individuals. Individuals may have an APCL enrollment for more than one program. It is the sum of ADI, CCE, HCE, LSP, OAA and LTCC columns.

CourtSmart Tag Report

Room: SB 401

Case No.:

Type:

Caption: Senate Committee on Children, Families, and Elder Affairs

Judge:

Started: 1/22/2018 3:30:59 PM

Ends: 1/22/2018 5:20:04 PM Length: 01:49:06

3:31:07 PM Meeting Called to Order
3:31:10 PM Roll Call
3:31:20 PM Quorum Present
3:31:46 PM Tab 4 SB 1418
3:31:49 PM Sen Rouson
3:34:35 PM AM 909590 adopted
3:34:45 PM Questions
3:34:49 PM Sen Broxson
3:36:39 PM Alisa Lapolt
3:36:48 PM Lauren Jackson , Broward County, waives in support
3:36:54 PM Barney Bishop, Florida Smart Justice Alliance, in favor
3:36:56 PM Kelly Mallette, Substance Abuse Services, speaks in favor
3:39:25 PM Beth Labasky, Informed Families of Florida, waives in support
3:39:56 PM Jill Gran, Florida Behavioral , waives in support
3:40:50 PM Melanie Woofer, Florida Community Mental Health , waives in support
3:41:03 PM Sen Rouson waives close
3:41:17 PM CS SB 1418 Roll Call
3:41:27 PM CS SB 1418 recorded favorably
3:41:36 PM Tab 2 SB 1022
3:41:40 PM Sen Steube
3:42:40 PM AM 181004
3:43:15 PM AM 181004 adopted
3:43:47 PM Sen Broxson
3:43:49 PM
3:43:54 PM
3:43:57 PM
3:47:56 PM Vice Chair Torres question
3:49:29 PM Michelle Smith, Florida Bar, speaks in support
3:52:37 PM Sen Broxson
3:52:41 PM Michelle Smith
3:54:15 PM Sen Torres
3:55:23 PM Members on Debate
3:55:31 PM Sen Stuebe waives close
3:55:38 PM SB 1022 Roll call
3:55:49 PM SB 1022 recorded favorably
3:56:00 PM Tab 1 SB 774
3:56:04 PM Sen Bean
3:58:36 PM AM 234782
3:59:46 PM AM adopted
4:00:01 PM AM 632020 withdrawn
4:00:19 PM AM 39300 withdrawn
4:01:16 PM AM 82720 adopted

4:01:30 PM Marilu Allwelt, waives in support
4:01:36 PM Sabrina Abboud, The Children's Campaign, waives in support
4:02:14 PM Candice Brower, Regional Counsel, speaks in support
4:05:07 PM Jeffrey Deen, Regional Counsel 5th District, speaks in opposition
4:14:53 PM Joshua Sanders, father, speaking in opposition
4:17:20 PM Sen Torres
4:17:23 PM Sen Campbell
4:19:15 PM Christina Spudeas, Florida Children First, waives in opposition
4:19:35 PM
4:19:53 PM Tom Powell, attorney, speaks in opposition
4:24:46 PM Alan Armrbromowitz, Director GAL, Speaks in favor
4:27:24 PM Barney Bishop, Florida Smart Justice Alliance, waives in favor
4:27:46 PM Madonna Finney, Adoption Attorney, speaks to inform
4:29:44 PM Debate
4:29:48 PM Sen Broxson
4:30:28 PM Sen Campbell
4:32:01 PM Sen Torres
4:32:05 PM Sen Steube
4:34:00 PM Sen Bean close
4:35:34 PM Roll Call CS SB 774
4:35:51 PM CS SB 774 recorded favorably
4:36:27 PM Tab 5 SB 1448
4:36:36 PM Sen Broxson
4:37:59 PM Doreen Barker, AARP, waives in support
4:38:08 PM Roll Call SB 1448
4:38:18 PM SB 1448 recorded favorably
4:43:52 PM Members of Youth Sunshine Speak regarding SB 590
4:44:11 PM Tab 3 SB 1232 Sen Baxley
4:44:15 PM Sen Baxley
4:45:31 PM AM 682894
4:45:35 PM Sen Baxley
4:45:51 PM Question
4:45:54 PM AM 68294 adopted
4:45:59 PM AM 868328
4:46:34 PM AM 868328 adopted
4:48:24 PM Jeri Culley from Department of Children and Families speaks to inform
4:48:34 PM Sen Torres question
4:48:56 PM Sen Baxley closes
4:49:16 PM Roll Call CS SB 1232
4:49:33 PM CS SB 1242 recorded favorably
4:50:33 PM Secretary of Elder Affairs Jeff Bragg Presentation
4:55:14 PM Sen Broxson
4:58:55 PM Discussion
5:07:16 PM Jack McRay, AARP presentation
5:19:54 PM Meeting adjourned