

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/HB 415

SPONSOR: Council for Smarter Government and Representatives Lynn, Byrd, Kyle and Others

SUBJECT: Adoption

DATE: May 1, 2000

REVISED: 05/01/01 _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|-------------------------|
| 1. | <u>Matthews</u> | <u>Johnson</u> | <u>JU</u> | <u>Fav/2 amendments</u> |
| 2. | _____ | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
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I. Summary:

The CS/HB 415 re-enacts provisions adopted in Chapter 2001-03, L.O.F., which substantially revised Florida's adoption law (which becomes effective October 1, 2001) and adds the following:

- Creates a paternity registry within the registry of state adoption information,
- Requires specified persons to register with the paternity registry no later than 30 days from the birth of a minor to protect a claim of paternity,
- Integrates the paternity registry into the newly established statutory framework for termination of parental rights and adoption proceedings, to affect provisions relating to required consents, disclosure requirements, civil liability and criminal penalties, notice and diligent searches requirements,
- Requires the Department of Children and Families to initiate public awareness campaigns and public service announcements about the paternity registry,
- Shortens the statute of repose periods from two years to one year for actions based on fraud for purposes of setting aside a judgment terminating parental rights or a judgment of adoption based on fraud,
- Clarifies that a consent to adoption for a yet unplaced minor may be revoked within 3 days of execution or up to time of placement with a prospective adoptive parent, whichever occurs later,
- Removes the 12-month time period imposed for disclosing places of conception in petitions for termination of parental rights and notice thereof,
- Adds a cross-reference to s.382.013, F.S., to clarify the process by which acknowledgments of paternity are to be filed with the Office of Vital Statistics, and
- Expands the provision regarding an award of attorney's fees and costs incurred by a person whose consent was obtained by fraud or duress to provide an award of attorney's fees and costs to any prevailing party in all actions involving fraud or duress.

CS/HB 415 amends the following sections of the Florida Statutes: 63.039, 63.062, 63.082, 63.085, 63.087, 63.088, 63.089, 63.142, 63.165, 63.182, and 63.2325. The bill also re-enacts the exact provisions of the following sections revised or created in chapter 2001-03, L.O.F.: 39.703, 39.802, 39.806, 39.811, 39.812, 63.022, 63.032, 63.037, 63.0425, 63.0427, 63.052, 63.092, 63.097, 63.102, 63.112, 63.122, 63.125, 63.132, 63.162, 63.202, 63.207, 63.212, 63.219, 383.310, 395.1024, 984.03, and 985.03.

II. Present Situation:

Background

Under current law, three entities may handle adoptions in Florida: 1) the Department of Children and Families (DCF), 2) private adoption agencies licensed by DCF, and 3) intermediaries (i.e., licensed attorneys, medical doctors or out-of-state licensed adoption agencies). Depending on which entity handles the termination of parental rights and the adoption, different statutory and procedural requirements apply. Proceedings for termination of parental rights and adoptions by DCF and private adoption agencies fall within the ambit of Part IX of ch. 39, F.S., while proceedings for adoption handled through intermediaries are governed exclusively by ch. 63, F.S. Administrative rules govern the conduct of DCF and private adoption agencies while respective professional codes of conduct govern the actions of intermediaries unless they are an out-of-state licensed entity.

Prior to this year, the last major revision to Florida's adoption statutes occurred in 1992. Highly publicized and controversial court cases relating to termination of parental rights and adoption had underscored the emotionally charged and financially burdensome ramifications felt by all parties in the proceedings. Most of the cases centered on the issues of due process, particularly in the areas of informed consent and adequate notice. In 1997, the Senate Judiciary Committee issued an interim report on adoption based in part on two round table discussions (RTD) held by individuals representing various sectors and perspectives on the issue of adoption. (*See* September Interim Report 97-P-24). These discussions led to a consensus on major adoption issues to include in proposed legislation. Adoption bills were filed in 1998 (SB550), 1999 (SB 2) and 2000 (SB 345) but none were passed.

Current

In 2001, the Legislature comprehensively amended Florida's adoption law, which became law without the Governor's signature on April 18, 2001. *See* ch. 2000-03, L.O.F.; CS/HB 141. The provisions of the Act become effective October 1, 2001. The cumulative effect of the Act was to provide uniformity, continuity, clarification and finality regarding proceedings for termination of parental rights and proceedings for adoption. It streamlined the total adoption process by providing for a uniform bifurcated procedural framework whereby the proceedings for termination of parental rights are completed before the proceedings for the creation of new parental rights may be initiated. It added registered child-caring agencies to the list of entities eligible to handle adoptions. It set forth explicit and comprehensive disclosure, consent, notice, service, and hearing requirements in termination of parental rights and adoption proceedings. The following is a detailed analysis of those new provisions under Chapter 2001-03, L.O.F., within the context of the current law:

1. Proceedings: Termination of Parental Rights and Adoption

Present situation:

Under current law, adoptions handled by intermediaries under chapter 63, F.S., involve the termination of parental rights and final adoption in one proceeding. In contrast, adoptions handled by the Department of Children and Families and licensed child-placing agencies under chapter 39,

F.S., involve a two-step process: one proceeding to terminate the parental rights and one proceeding to finalize the adoption. A petition for adoption can not be filed any later than 30 days after placement of the child with a prospective adoptive parent unless the child is placed with a relative within the third degree of consanguinity. *See* s. 63.102, F.S. The hearing must then be held no earlier than 90 days after placement of the child with the petitioner. *See* s. 63.122(1), F.S. If the prospective adoptive parent (other than a relative) fails to file a petition for adoption within 30 days, any interested party, including the state, may file an action challenging the prospective adoptive parent's custody of the child. *See* s. 63.102(3), F.S.

Effect of provisions in chapter 2001-03, L.O.F.:

This Act brings all adoptions, whether initiated under ch. 39, F.S., or ch. 63, F.S., into parity to ensure that a child is truly available for adoption. All adoptions are uniformly subject to a bifurcated adoption process: one separate proceeding for the termination of parental rights and another proceeding for the creation of parental rights in the adoptive parents. With the exception of DCF which is already subject to similar provisions in ch. 39, F.S., all other adoption entities will now be subject to the new procedure and proceedings for termination of parental rights as set forth in the ss. 63.087, 63.088, and 63.089, F.S.

Specifically, ss. 63.087, 63.088, and 63.089, F.S., are created, to set forth the procedure and proceedings for the *termination of parental rights* as follows:

- Prohibits filing a petition for termination of parental rights until after the minor's birth-- A parent, a person having legal custody, or an adoption entity (upon written consent of the parent or legal custodian) can file the petition. [s. 63.087, F.S.]
- Requires explicit notice, diligent search and service requirements to be satisfied for purposes of securing required consents from specified persons for termination of parental rights and adoption to the entry of a judgment. [s. 63.088, F.S.]
- Provides hearing requirements to include a full evidentiary hearing on the petition and confirmation that notice, service and consent requirements have been satisfied before a judgment terminating parental rights is entered-- The hearing may not be held any sooner than 30 days after personal service has occurred or, if by constructive service, no sooner than 60 days after the first date notice is published. The court may order a paternity test at any time the court has jurisdiction over the minor. The petition for termination of parental rights must be dismissed if the court fails to find by clear and convincing evidence that the parental rights should be terminated. The order of dismissal must include written findings and specify the basis for rejecting a claim, if any, of abandonment. If consent to adoption is timely withdrawn, or if the consent or alternatively, an affidavit of nonpaternity was obtained by fraud or duress, no judgment for termination of parental rights may be entered. The parent's parental rights would then remain in full force and the court must enter an order providing for the placement of the minor. Any subsequent proceeding involving the minor must then be initiated as a custody action under ch. 61, F.S., a dependency action under ch. 39, F.S., or a paternity action under ch. 742, F.S. [s. 63.089, F.S.]

Specifically, ss. 63.102, 63.112, 63.122, and 63.142, F.S., are revised to set forth the procedure and *proceedings for adoption* as follows:

- Alters timeframe in which a petition for adoption subsequent to a judgment for termination of parental rights may be filed-- A petition for adoption must be filed no later than 60 days

(but no sooner than 30 days) after the entry of a judgment terminating parental rights. It requires additional documents to be filed with the petition for adoption: a certified copy of the judgment terminating parental rights and a copy of any declaratory statement previously entered, if any. Adult adoptees or minors who were the subject of a proceeding for termination of parental rights initiated under chapter 39, F.S., are not subject to the 30-day minimum. Adoptions involving placement of a minor with a relative are not subject to the 60-day maximum. As is currently the law, any interested person, including the state, may still file an action to challenge a prospective adoptive parent's physical custody of the minor if no petition for adoption is filed after the 60 days. Jurisdiction over the matter must remain with the circuit court until a final judgment is entered on the adoption. A petition for declaratory statement to seek prior court-approval of an adoption fee agreement may be filed at any time. The petition for declaratory statement must subsequently be consolidated with a petition for adoption. [s. 63.102, F.S.]

- Amends hearing requirements for a petition for adoption to provide that a hearing can not be held sooner than 30 days after the entry of the judgment terminating parental rights or sooner than 90 days after the minor has been placed in the petitioner's physical custody. [s. 63.122, F.S.]-- A judgment for adoption cannot be entered until after the date of appeal has expired and there is no pending appeal.

2. Required Consents

Present situation:

Consent is required of specific persons in all adoptions. The current consent process under ch. 63, F.S., requires written consent from the mother, the minor if over 12 years old, and optionally if the court requests, any person with legal custody of the minor, or the court having jurisdiction over the child if the person with physical custody does not have legal custody. Consent is also required from the father but only if he:

- was married to the mother at the time of conception or birth of the child,
- previously adopted the child,
- had paternity established by court order,
- filed an affidavit with the Division of Vital Statistics, or
- provided support to the child in a repetitive, customary manner. *See* s. 63.062, F.S.

The court can waive the requisite written consent of a parent (which can only be obtained post-birth of the child) before parental rights are terminated or before an adoption is finalized on the following grounds: 1) the child is deserted or abandoned, 2) the parent's rights were terminated in another jurisdiction, 3) the parent has been judicially adjudicated incompetent, 4) the legal guardian or lawful custodian has failed to respond in the proceeding, or 5) the spouse of the person to be adopted has unreasonably withheld consent. *See* ss. 63.062 and 63.072, F.S. *See* s. 63.072, F.S.

Effect of provisions in chapter 2001-03, L.O.F.:

The consent and waiver requirements are revised. First, the bill eliminates the court's discretion to waive requisite consents by repealing s. 63.072, F.S. Second, it clarifies whose consent to adoption must be obtained and to whom notice be given. Third, the section expands the categories of persons who may qualify as a father from whom consent must be obtained and to whom notice must be given. Fourth, it adds two more categories of persons whose consent must be obtained. Fifth, it provides for the execution of an affidavit of nonpaternity for specified persons. Fifth, it provides for a waiver of venue in specified cases.

Specifically, subsection (1) of section 63.062, F.S., prioritizes three major categories of “fathers” from whom consent must be obtained or to whom notice must be given. Consent or notice is only required of the man who first qualifies as a father in the order of the categories given:

- 1) A person who is the minor’s father by marriage at the time of conception or birth, by adoption or by an order of court;
- 2) A person who has been established to be the father by paternity testing;
- 3) A person who:
 - Has acknowledged, in writing, he is the father of the minor and has filed such acknowledgment with the Office of Vital Statistics in the Department of Health;
 - Has provided or attempted to provide the minor or the birth mother during her pregnancy with support in a repetitive customary manner;
 - Has been identified by the birth mother, with reasonable belief, as the person who may be the minor’s father in an action to terminate parental rights pending adoption; or

No consent or notice is required of any other person under a subsequent category. The man qualifying as the “father” would have standing to challenge a petition for or judgment for termination of parental rights and a subsequent adoption. Consent is also required from any party in any pending proceeding relating to paternity, custody, or termination of parental rights pertaining to the minor, and from any father who has provided or attempted to provide pre-natal support to the mother and child in a repetitive manner if consent was obtained from the birth mother and the established father. This section does not amend the current law regarding consent of the minor, if more than 12 years of age (unless the court determines it is in the minor’s best interest to dispense with the consent). This section also does not change the existing requirement to obtain the consent of the person having legal custody or of the court having jurisdiction over the minor if the person having physical custody of the minor does not have legal custody.

With the exception of a person who has qualified as a minor’s father by virtue of marriage at the time of conception or birth, by adoption, or by an order of paternity, a father may otherwise execute an affidavit of nonpaternity in lieu of a consent to adoption as provided under subsection (2). The affidavit of nonpaternity is an alternative sworn acknowledgment waiving any parental right during proceedings for termination of parental rights and adoption. Subsection (4) provides a detailed suggested affidavit of nonpaternity form. The person executes a statement that he will not claim or establish paternity of a child who is a subject of an adoption, that he has not provided any pre-birth or child support, that he was not married to, is not married, and has no intention of marrying the birth mother, and that he has no interest in assuming the responsibilities of parenthood for the child. Upon execution of a valid affidavit, such person waives further notice of any subsequent proceedings.

3. Notice and Due Diligence

Present situation:

Inadequate notice requirements or failure to adhere to notice and service requirements have been the basis for a number of challenges in adoption proceedings. For example, the following events may occur without requisite notice to a birth father even when his whereabouts are known: a contract for placement of a child may be executed; a court may pre-approve a contract for fees, costs and expenses; an adoption agency or intermediary may file a report of intent to place a minor; or a child may be placed in a prospective adoptive home. *See* ss. 63.102 and 63.092, F.S. Some otherwise valid judgments have been subject to being set aside much later in the process after the parties have become more entrenched emotionally and financially. *See In interest of B.G.C.*, 496 N.W. 2d 239,

240-241 (Iowa 1992)(Baby Jessica)(the man who signed the consent was not in fact the biological father).

Effect of provisions in chapter 2001-03, L.O.F.:

This bill provides additional and more exacting procedural safeguards to ensure adequate notice and service of petitions and other documents to all persons whose consents are required. Section 63.088, F.S., is created to require an adoption entity, once it has been contacted to place a minor or find a minor for adoption, to take certain steps to identify and locate the Afather.@

Specifically, subsection (1) requires the adoption entity to initiate steps to identify, locate and notify the Afather.@Such efforts must begin no later than 7 days after the adoption entity has been contacted in writing by the birth mother regarding her desire to place a child for adoption or if the birth mother has accepted any money from the adoption entity.

Subsection (2) requires personal service of the petition and the notice of hearing to terminate parental rights upon each person whose consent is required under s. 63.062, F.S., unless the person has executed an affidavit of nonpaternity or the person's identity and location are unknown after diligent search. A minimum of 30-days notice of the hearing is required. A statutorily suggested notice of petition and hearing form is provided.

Subsection (3) sets forth the inquiry process for determining the identity and location of any person, including any person registered with the paternity registry, who may qualify as the "father" of the minor and whose consent is required. The court must inquire of the person placing the minor for adoption and of any relative or person having legal custody of the minor who is present at the hearing. There is no requirement, however, that this inquiry be documented or reported which may be problematic if there is a court challenge based on whether this court-inquiry occurred. Alternatively, the information may be provided in a court-filed affidavit. This provision is similar to s. 39.803, F.S., which requires the court to make such inquiry at a termination of parental rights proceeding handled by DCF. The inquiry into the identification and location of a "father" may begin before the minor's birth.

Subsection (4) sets forth the diligent search process. If the court inquiry or other inquiry yields the identity, but not the location, of a person whose consent is required and who has not yet executed an affidavit of nonpaternity, the adoption entity must conduct an extensive diligent search for that person based upon 16 enumerated sources, including, but not limited to, the United States Postal Service through the Freedom of Information Act, one Internet data-bank locator service, and medical patient financial responsibility forms. With the exception of 3 sources, these sources are similar to those listed in the Affidavit of Diligent Search and Inquiry in the family law rules, approved by the Florida Supreme Court for notice in dissolutions of marriage. Subsection (4) does not require inquiries of unions, Title IV-D child-support agencies, or the Department of Motor Vehicles although it does require inquiry for information held by medical providers as to the party listed as financially responsible for the medical treatment and care to a birth mother or child. The sources listed in subsection (4) fall somewhat into the general categories of sources under subsections 39.803(5) and (6) which DCF must conduct for a diligent search. Under the new section, any person contacted by a petitioner or adoption entity must release the information requested unless otherwise prohibited by law. The adoption entity and petitioner must then jointly execute and file with the court an affidavit of diligent search regarding the search results. The diligent search may be initiated before the minor's birth.

Subsection (5) provides that if the court inquiry and the diligent search do not yield the identity and/or location of the person whose consent is required, then constructive notice of the petition and hearing to terminate parental rights must be made in accordance with ch. 49, F.S. Notice required in each county identified in the petition as provided in s. 63.087(6), F.S. Unless unknown and reasonably unascertainable, the following information must be in the notice:

- All information required in the petition under s. 63.087(6)(f), F.S. [petition for termination of parental rights must include: the minor's name, gender, date of birth and place of birth, all names by which the minor is or has been known, including the legal name, but excluding the minor's prospective adoptive name, to allow any interested parties to the action, including parents, persons having legal custody of the minor, persons with custodial or visitation rights to the minor and other persons entitled to notice pursuant to the Uniform Child Custody Jurisdiction Act or the Indian Child Welfare Act, to identify their interest in the action. In addition, if the petition is filed before the minor is 6 months old, the petition must include each city in which the mother resided or traveled in which conception may have occurred 12 months preceding the minor's birth];
- All information required in ch. 49, F.S., relating to constructive notice; and
- Physical description of the minor's mother and of any person reasonably believed to be the father, including, but not limited to: age, race, hair color, eye color, height, and weight.

4. Grounds for Termination of Parental Rights

Present situation:

In adoption proceedings the court may consider abandonment as grounds for terminating parental rights. However, what conduct constitutes abandonment is addressed differently by chapters 39 and 63, F.S. Under chapter 39, F.S., the definition for "abandoned," may encompass a finding of abandonment based on a parent's incarceration. This provision does not appear in the definition for "abandoned" under ch. 63, F.S. However, the Florida Supreme Court has held that a father's commission of a violent criminal offense during a mother's pregnancy and subsequent long-term incarceration may support a finding of abandonment. See *W.T.J. v. E.W.R.*, 721 So.2d 723 (Fla. 1998). Additionally, the courts have held that a determination of abandonment in adoption proceedings under ch. 63, F.S., may be found based on a consideration of pre-birth conduct, including lack of emotional support or emotional abuse towards the child's mother during her pregnancy. See *In Re Matter of Adoption of Baby E.A.W.*, 658 So.2d 961 (Fla. 1995) (Baby Emily), cert. denied by *G.W.B. v. J.S.W.*, 516 U.S. 1051, 116 S.Ct. 719, 133 L.Ed.2d 672 (1996); *In the Matter of the Adoption of Doe*, 543 So.2d 741, 746 (Fla. 1989), cert. denied, 493 U.S. 964, 110 S.Ct. 405, 107 L.Ed.2d 371 (1989).

Effects of provisions in chapter 2001-03, L.O.F.:

Section 63.089, F.S., is created and lists grounds for dismissing or granting a petition for termination of parental rights. The court may terminate parental rights based upon one or more of six grounds. However, prior to the entry of a judgment terminating parental rights, the court must determine by clear and convincing evidence, supported by written findings of fact, that for each person whose consent is required one or more of the following has been satisfied or has occurred:

- a. Execution of a valid consent that has not been withdrawn;
- b. Execution of a valid affidavit of nonpaternity;
- c. Proper and timely service of notice of proceeding and failure to file written response or appear at the evidentiary hearing;
- d. Proper and timely service of notice of proceeding and finding of abandonment;

- e. Judicially declared incapacitated parent;
- f. Failure of person who has legal custody, other than parent, to respond to request for consent to adoption or unreasonable withholding of consent after examination of reasons for refusal;
- g. Has been properly served notice of the proceeding but who the court finds, after examining written reasons for the withholding of consent, to be unreasonably withholding consent; or
- h. Failure of the adoptee's spouse to consent and that such failure is not excused by reason of prolonged and explained absence, unavailability, incapacity or other circumstances.

Subsection (4) of s. 63.089, F.S., provides specific criteria under which the court may make a finding of abandonment by a parent for purposes of terminating parental rights. This finding must be based on clear and convincing evidence. Under subsection (a), the court must consider whether a parent's actions constituted a willful disregard for the safety or welfare of the child or unborn child; a parent, while able to do so, refused to provide financial support or pay for medical care in an appropriate amount; anyone prevented the person alleged to have abandoned the child from providing support or paying for medical care; and the amount of support or expense paid was appropriate relative to resources available. Under subsection (b) a finding of abandonment will be made when the parent of a child is incarcerated on or after October 1, 2001, in state or federal prison and either the period of expected incarceration is for a substantial period during the minor's minority; the parent is a career or serious felony offender, as defined in specified sections of law; or the continuing parent-child relationship would be harmful based on a finding of clear and convincing evidence. Additionally, subsection (4) expressly excludes a finding of abandonment based on a lack of emotional support during a mother's pregnancy but may allow a finding of abandonment based on emotional abuse endured by the mother during her pregnancy. Any consideration of pre-birth conduct, however, is limited to those cases in which the father was informed that he was the father or after diligent search and notice were made to inform the person that he was or could be the father of the minor.

5. Disclosure, Waiting Period and Revocation of Consent

a. Disclosure for and Execution of Consents to Adoption and Affidavits of Nonpaternity

Present situation:

Inadequate initial and continued informed consent and disclosure to birth parents and adoptive parents of their rights and who represents their interests have sometimes presented conflicts and confusion in adoption proceedings. Under current law, an intermediary is required to secure a written acknowledgment signed by each person whose consent is required, stating that the intermediary represents only the adoptive parents. *See* s. 63.085, F.S. There is no current provision allowing for the execution of an affidavit of nonpaternity. The intermediary also must obtain a statement from the prospective adoptive parents acknowledging the disclosure requirements. *See* s. 63.085(2), F.S. However, there are no other comprehensive requirements for disclosure or execution of a consent or affidavit of nonpaternity.

Effect of provisions in chapter 2001-03, L.O.F.:

Section 63.082, F.S., relating to consent requirements, is clarified and expanded. It applies the revised requirements to affidavits of nonpaternity. In particular a person must be informed that he or she may request an independent witness to be present and sign a consent or affidavit. Subsection (4)(e) provides a comprehensive statutory form for a consent to adoption to include, among a number of provisions, an enumeration of a parent's rights prior to and after execution of a consent.

Subsection (6) requires each person who executes a consent to adoption to be given a copy of the consent, via hand-delivery, with a written acknowledgment of receipt, or via first class mail. If an adoption entity cannot provide the copy, the adoption entity must execute an acknowledgment of non-deliverability. The original consents and acknowledgments must be filed with the petition for termination of parental rights. No consent form or affidavit may be signed prior to satisfaction of the disclosure requirements under section 63.085, F.S.

Section 63.085, F.S., relating to disclosure requirements, is expanded to require extensive adoption disclosure statement to be made to parents and prospective adoptive parents. The adoption entity must provide a written disclosure statement to the person seeking to adopt or the person placing a minor for adoption within 7 days after contact by that person. If the parent was not the person who initiated the contact, the adoption entity must provide a written disclosure statement to the parent within 7 days after the parent is identified and located. After the birth of the minor if the consent of adoption has not yet been executed, a parent must again receive the disclosure statements. This section includes a comprehensive statutory form for the disclosure statements. It includes provisions relating to notice that an intermediary represents solely the interests of the prospective adoptive parents, to whom consents are required, to the right to seek independent counsel, and to waiting periods and revocations for executed consents.

b. Waiting Period for Execution and Revocation of Consent

Present situation:

The Round Table Discussion group reached consensus that current procedural safeguards for obtaining a birth mother's consent are inadequate, particularly in light of the physical and psychological effects of childbirth and the effects of medication someone's ability to make an informed and willing consent executed near the time of birth. Under Florida law a consent may be withdrawn only upon a court finding of fraud or duress. *See s. 63.082(5), F.S.*

With the exception of a 7-day revocation period for adoption conducted pursuant to a surrogacy agreement, Florida does not provide a waiting period before a consent may be signed after the child's birth, nor does it provide for a revocation period.¹ Under current law a mother's consent to adoption or a consent for voluntary surrender may be signed at any time after the birth of the child. *See ss. 63.062(1) and 63.082(4), F.S.* The consent for voluntary surrender must be an affidavit signed in the presence of two witnesses and notarized or taken in court. *See s. 63.082(4), F.S.* The Child Welfare League of America (CWLA), recommends that consents and releases for adoption or surrender of custody be executed in accordance with a parent's emotional readiness to make a definitive decision which should occur, at least, after the birth of a child and after a birth mother has had some opportunity to recover from the effects of a delivery. *See CWLA, Standards for Adoption Service, revised edition 1988.* The emotional and physical impact of childbirth on a birth parent are recognized in other related state and federal legislation such as timelines for payment of care by health insurance coverage of maternity and newborn care.

Effect of provisions in chapter 2001-03, L.O.F.:

Section 63.082, F.S., relating to the requirements for executing a consent to adoption, is amended to provide two different waiting and revocation periods. In cases in which a newborn is placed for adoption with identified prospective adoptive parents, there is a 48-hour waiting period before a

¹ Many of the states provide for a statutory revocation period during which a birth parent may revoke a consent to adoption, including allowing revocation up until the final hearing on the termination of parental rights. The two most populous states, California and New York, have revocation periods of 90 days and 45 days respectively.

consent for adoption may be executed. The 48-hour period is measured from the time the minor is born in a licensed hospital or the birth center, or from the time the mother is informed that she is fit for release from the hospital or the birth center, whichever is sooner. Once the consent is executed, it can only be withdrawn if the court finds that the consent was obtained by fraud or duress. In cases in which a minor is not initially placed for adoption following the minor's birth, there is no waiting period for executing the consent to adoption. Such consent then may be withdrawn or revoked in one of two ways. It may be revoked: 1) within 3 business days after execution or 1 business day after the mother's discharge, or b) up to any time prior to the minor's placement with the prospective adoptive parents, whichever occurs later. Subsection (7) allows revocation by certified mail. After the applicable revocation period, the consent can only be withdrawn upon a finding of fraud or duress.

Section 63.2325, F.S., is created to state that grounds for revocation of a consent for adoption or withdrawal of an affidavit of nonpaternity can not be based solely on the failure to meet a requirement of the adoption law but must be based on a material failure of fundamental fairness in the administration of due process, or the failure must constitute or contribute to fraud or duress in obtaining the consent or affidavit.

6. Appeals, Statutes of Limitations and Statutes of Repose

Present situation:

Until recently, adoptive parents often faced long-term emotional uncertainty and financial insecurity in the event a judgment for adoption was challenged due to fraudulently acquired consents or inadequate efforts to identify and locate the father. *See Stefanos v. Rivera-Berrios*, 673 So.2d 12 (Fla. 1996)(mother led father to believe she was getting an abortion). The 4-year statute of limitations period for traditional cases of fraud applied to adoption challenges. It was measured from the time the facts giving rise to the cause of action was discovered or should have been discovered with the exercise of due diligence. *See* ss. 95.11(3)(j), and 95.031(2)(a). Also applicable was the traditional 12-year period of repose for actions based on fraud, beginning from the date the fraud was committed.² *Id.* Last year, the Legislature substantially amended s. 63.182, F.S., to create a 1-year and 2-year statutes of repose. Any challenge to a judgment of termination of parental rights or subsequent adoption based on any ground, including duress but excluding fraud, is barred forever 1 year after entry of the judgment terminating parental rights. A similar claim based on fraud is barred after 2 years after entry of the judgment terminating parental rights.³

Effect of provisions in chapter 2001-03, L.O.F.:

Section 63.089(7), F.S., relating in part to judgments terminating parental rights, and section 63.142(4), F.S., relating in part to judgments of adoption are amended to reinforce the objective to achieve finality in adoptions and mitigate the potential for future challenges to final adoption judgments.⁴ Using the same statutory provision currently applicable to adoptions of abandoned newborns, these sections now allow a parent in any adoption to move to set aside a judgment terminating parental rights or a subsequent judgment of adoption based on a claim of fraudulent concealment which kept the parent from timely asserting his or her parental rights. In any adoption, such motion must be filed within a reasonable time but absolutely no later than 2 years after the date

² There is also a 4-year statute of limitations for actions to determine paternity, beginning from the time a child reaches majority. *See* s. 95.11(3)(b), F.S.

³ In addition, recently enacted law allows a parent in adoptions of abandoned newborns to move to set aside a judgment terminating parental rights or a subsequent judgment of adoption based on a claim of fraudulent concealment, which kept the parent from asserting his or her parental rights. *See* s. 63.0425(9), F.S.

of the judgment terminating the parental rights. Unless good cause is shown otherwise, a preliminary hearing must be held within 30 days of the motion to determine parent-child contact, if any, pending resolution of the motion, and specific written findings must be included in the order. The court may also order paternity testing on its own or upon motion of any party, if paternity has not been previously established. Within 45 days (except for good cause shown) of the preliminary hearing, the court must hold a final hearing on the motion to set aside the judgment.

Section 63.182, F.S., relating to the statute of repose, is amended to shorten the period from 2 years to 1 year for all actions based on fraud for purposes of setting aside a judgment of termination of parental rights or adoption.

Section. 63.142(4), F.S., is also amended to preclude the court from entering a judgment of adoption until the period for appeal of a valid judgment terminating parental rights has passed and no pending litigation exists.

7. Centralized State Registry of Adoption Information

Present situation:

The Round Table Discussion group reached consensus to continue the existence of the centralized repository of information in all adoptions. Currently, DCF maintains a statewide registry, established by the Legislature in 1982. The registry contains the names of adoptees, birth parents and adoptive parents, as well as any information those persons wish to include. *See* s. 63.165, F.S. Registration of information is strictly voluntary and paid for through statutorily-authorized fees charged to users of the service. *See* s. 63.165(2), F.S. All information contained in the registry is confidential and exempt from the provisions of s. 119.07(1), F.S., except as permitted by law with the express permission of the registrant. *See* s. 63.165(1), F.S. Intermediaries, DCF, and private adoption agencies must inform, in writing, birth parents, prior to termination of their parental rights, and the adoptive parents before placement, of the existence and purpose of the registry. *See* s. 63.165(3), F.S.

In cases of adoptions handled by an intermediary, DCF must provide a family medical history form to an intermediary who intends to place the child for adoption. *See* s. 63.082, F.S. This form must be attached to the petition for adoption and incorporated into the final home investigation. *Id.* Under current law the clerk of the court must forward to DCF and the agency placing the minor (if any), every petition for adoption and affidavit of fees and expenditures filed. *See* ss. 63.112(4) and 63.132(1)(c), F.S. The DCF is only required to maintain records of placed children, biological parents and adoptive parents in adoption proceedings conducted by DCF or adoption agencies under ch. 63, F.S. *See* Rule 65C-15.030, F.A.C. There are no similar requirements for intermediaries to retain their documents. The adoption records are also retained in the Florida county where the final judgment of adoption was entered. The court adoption files are sealed and retained for 75 years. *See* Rule 2.075(d)(6), Florida Rules of Judicial Administration. This method of record retention has posed problems in situations such as a medical crisis where the case file containing the final judgment cannot be located or otherwise identified.

Effect of provisions in chapter 2001-03, L.O.F.:

Sections 39.812 and 63.082, F.S., are amended to require that a form, provided by the department to adoption entities, contain the medical *and* social history of the parents and all information as required by the department. The current statutory requirement that this information be incorporated into the final home investigation report under s. 63.125, F.S., remains unchanged.

Section 63.165, F.S., relating to the state registry, is amended to require DCF's registry to retain adoption information in all adoptions for 99 years or as stated by applicable rule, whichever is longer. However, participation in the state registry remains voluntary consistent with the closed adoption policy underlying the law at this time.

8. The Best Interest of the Child

Present situation:

The RTD reached consensus that a determination of the best interest of the child should continue to be made *after* the parents' rights have been terminated. This is current case law. The Supreme Court of Florida has held that the best interest evidence is not relevant in placing a child for adoption until the child is first available for adoption. *See E.A.W. v. J.S.W.*, 658 So.2d 961, 966 (Fla. 1995).

Concern has been expressed that a best interest determination prior to proper termination of parental rights might deprive parents of parental rights to their children based solely on prospective adoptive parents' superior income or more formal education. *See In re Petition of Doe*, 638 N.E.2d 181, 182 (Ill. 1994).

Effect of provisions in chapter 2001-03:

The bill proposes no change to current standard but facilitates the use of this standard by providing for separate proceedings for the termination of parental rights and the creation of parental rights in adoptive parents.

9. Out-of-State Placement of Children for Adoption

Present situation:

The Round Table Discussion group reached consensus that neither agencies nor intermediaries should place children for adoption out-of-state unless the child is a special needs child, as defined by s. 409.166, F.S., or the adoption is to a stepparent or relative. However, federal law prohibits the denial or delay in the out-of-state adoption of children in foster care. *See* ch. 202, F.S., The Adoption and Safe Families Act of 1997. Under current Florida law only intermediaries are prohibited from placing children for out-of-state adoption unless the child is a special needs child or is being adopted by stepparents or relatives, although, intermediaries may provide interstate adoption services for all incoming children. Current law defines a special needs child as a child who has been placed with DCF or an agency, and who has established significant ties with foster parents or is not likely to be adopted because he or she is 8 years of age or older, mentally retarded, physically or emotionally handicapped, of black or racially mixed parentage, or is a member of a sibling group of any age, provided two or more siblings stay together through the adoption.

Effect of provisions in chapter 2001-03, L.O.F.:

Section 63.207, F.S., relating to out-of-state placement, is amended to allow out-of-state adoptions to be handled by any adoption entity and to lift the restriction on out-of-state adoptions of any child. This section allows the out-of-state placement and adoption of a child if: 1) The parent placing a minor for adoption chooses to place the minor outside the state and files an affidavit stating the reason for said placement, 2) The minor is to be placed with a relative within the third degree or with a stepparent, 3) The minor is a special needs child as defined in s. 409.166(2), F.S., or 4) For other good cause shown.

10. Report and Court Approval of Fees and Expenditures

Present situation:

Adoption agencies are required to meet certain reporting and auditing requirements pursuant to administrative rules adopted by DCF. Specifically, adoption agencies must file a written fee schedule with DCF and provide it to all persons making application for services. *See* Rule 65C-15.010(4), F.A.C. The schedule must disclose certain information. Further, agencies must execute a fee agreement with each applicant listing fees charged, services to be provided, and provisions for payment.

Intermediaries are required to report fees, costs and expenditures to the court but they do not have to file a fee schedule with DCF, provide a written fee schedule to persons applying for services, or execute a written fee agreement with such persons. However, intermediaries must obtain court approval for fees in amounts greater than \$1000 and costs more than \$2,500 *other than* actual documented medical costs and hospital costs. *See* s. 63.097, F.S. If the intermediary uses the services of a licensed child-placing agency, professional, the department, or other person, the prospective adoptive parent must pay the actual costs associated with the service provided, including the preliminary home study, counseling and the final home investigation. If the prospective adoptive parent is unable to pay, the court may order payment of a lesser amount.

With the exception of adoptions by a stepparent whose spouse is a natural or adoptive parent of the child being adopted, an adoption handled by an intermediary requires the filing of a report of expenses and receipts 10 days before a final hearing. *See* s. 63.132, F.S. The report must detail expenses or receipts incurred in connection with, but not limited to, the birth and placement of the minor and actual living and medical expenses for the birth mother.

Any time after an adoption agreement is reached between a birth mother and the prospective adoptive parents, a petition may be filed for a declaratory statement on that agreement, and a hearing for prior approval of fees and costs may be held. *See* s. 63.102(5), F.S. The statute does not indicate who may file this pleading or who must be noticed of such a proceeding.

Effect of provisions in chapter 2001-03, L.O.F.:

Section 63.097, F.S., relating to fees, is amended. Subsection (1) allows fees for foster care expenses, placement social services; and facility and administrative costs to be assessed by a licensed child-placing agency if approved by DCF during the licensing process. Subsection (2) lists those adoption fees, costs, and expenses, which may be appropriately paid out by or assessed upon adoptive parents by the adoption entity. They include but are not limited to, reasonable living expenses, reasonable and necessary medical expenses, court and litigation expenses, advertising costs, professional fees and other expenses associated with chapter requirements. Subsection (3) sets forth the threshold limits for certain classes of fees before court approval is required. Under subsection (4) a finding of extraordinary circumstances must be made before the court can approve any fee, cost or expense not otherwise allowed or prohibited under subsections (2) or (5). Subsection (5) prohibits: a) fees for locating a minor for adoption, b) non-refundable lump sum payments, and c) facilitation or acquisition fees if not specifically identified.

Section 63.102, F.S., relating in part to proceedings for court-approval of fees and costs, is amended to make all adoption entities, not just intermediaries, subject to the mandates. The court must pre-approve certain fees and costs in excess of set amounts. A contract for fees, costs, and expenses must be in writing but may be cancelled within 3 days from the date of execution.

Section 63.132, F.S., relating to reports of expenses and receipts to the courts, is amended to require all adoption entities to file an affidavit with the court itemizing all fees, costs, and expenses, and their basis, related to the termination of parental rights and subsequent adoption. Both the adoption entity and the prospective adoptive parents must sign the affidavit. A copy of the executed affidavit must be provided to the prospective adoptive parents. A separate court order for the approval or disapproval of the fees must be issued and must specify the basis for the order. As is current law, these fee provisions do not apply in cases involving adoptions by a stepparent whose spouse is a parent of the minor.

11. Venue and Jurisdiction

Present situation:

Currently there is no requirement that the entire adoption process (from termination of parental rights through the final adoption) be overseen by the same judge or even the same circuit court. A petition for adoption or declaratory statement (as to the adoption contract) does not have to be filed in the same county or with the same court where the petition for termination of parental rights was granted. Under ss. 39.812 and 39.813, F.S., the court which terminated the parental rights in proceedings initiated by DCF and licensed child-placing agencies under ch. 39, F.S., retains exclusive jurisdiction of the child and over all matters pertaining to the child's subsequent adoption. In addition, the court has continuing jurisdiction to conduct a judicial status review of the child and the progress towards the child's permanent adoptive placement. Under ch. 63, F.S., the termination of parental rights and the subsequent adoption occur in one proceeding. The only venue requirement is that the petition for adoption or for declaratory statement as to the adoption contract be filed in the county where the petitioner or the minor resides or where the agency is located with whom the minor has been placed. *See* s. 63.102, F.S.

Section 63.052, F.S., relating to guardianship and commitment of a child placed for adoption, sets forth the authority and responsibility of the intermediary, adoption agency and department for the children placed with them for adoption. However, no direction is provided relative to placement of the child prior to placement in the prospective adoptive home.

Effect of provisions in chapter 2001-03, L.O.F.:

Section 39.812, F.S., relating to post-disposition relief following termination of parental rights in proceedings initiated by DCF and licensed child-placing agencies, is amended to eliminate reference to licensed child-placing agencies (consistent with other changes in the Act) and to require that a petition for adoption be filed in the same division of the court that entered the judgment terminating parental rights. However, upon motion, the court may grant a change of venue for the convenience of the parties or witnesses, or in the interest of justice as set forth in s. 47.122, F.S., relating to change of venue based on inconvenience of the parties or in the interest of justice.

Section 63.087, F.S., provides that proper venue for proceedings to terminate parental rights pending adoption (initiated by adoption agencies and intermediaries), may lie in the county where:

- the minor resided for the prior 6 months,
- the parent resided at the time of the execution of the consent to adoption or the affidavit of nonpaternity, if the minor is younger than 6 months of age or the minor has not resided continuously in one county for 6 months,
- the adoption entity is located if the minor is under 6 months of age and there is a properly executed waiver of venue,

- the birth mother resides if there is no consent to adoption or an affidavit of nonpaternity executed by a parent, or
- the adoption entity is located if neither parent resides in the state.

If a parent contests the termination of parental rights based on legally recognized grounds as determined by the court in a hearing, then venue lies in the county where that parent resides, or alternatively where at least one parent resides, where at least one parent resided at the time of the executed consent or affidavit of nonpaternity, or lastly if neither of the former applies, where the adoption entity is located. In the court hearing to consider the venue, witnesses located in another jurisdiction are permitted to testify by deposition or by electronic means, such as telephone or audiovisual means. Additionally, jurisdiction to hear subsequent proceedings for adoption of the minor, after the petition for termination of parental rights is granted, lies with the same court whenever possible. The adoption entity or the petitioner bears the cost of the venue transfer. The court may change the venue in accordance with s. 47.122, F.S., relating to change of venue. Waiver of venue may be executed but only in those cases where the child is younger than 6 months and where proper venue may lie in a county other than where the parent whose rights are to be terminated resides, s. 63.062, F.S. A form for waiver of venue is set forth which must be executed as a separate document from all other documents.

Section 63.102, F.S., is amended to specify that proper venue for proceedings for adoption or for a declaratory statement as to the adoption must adhere to the venue requirements for the filing of a petition for termination of parental rights. However, in accordance with s. 47.122, F.S., relating to change of venue, venue may still be changed to the county where the petitioner or minor resides or where the adoption entity with whom the minor has been placed is located. The Act does not amend existing law which allows a petition to be filed in a county other than where the petitioner or minor resides when filing the petition in the county where the petitioner or minor resides may endanger his or her privacy, provided the substantive rights of any person are not affected. *See* s. 63.102(4), F.S. a previously filed declaratory statement must be consolidated with a subsequently filed petition for determination of parental rights or subsequently filed petition for adoption depending on when the declaratory statement petition was filed.

Section 63.052, F.S., is amended to identify where children surrendered to an intermediary for adoption can be placed prior to a court terminating parental rights pending adoption and a court ordered preliminary approval of placement of the minor in the adoptive home. For a child for whom a prospective adoptive home has been identified, placement can be either with a relative, in foster care or in the care of a prospective adoptive home. However, the child cannot be placed in the home of the prospective adoptive parents until that home has received a favorable preliminary home study. For a child for whom a prospective adoptive home has not been identified, the child must be placed in foster care until a suitable prospective adoptive home is available. Subsection (7) is added to s. 63.052, F.S. to state that the court retains jurisdiction of a minor placed for adoption until the adoption is final. It is the court's discretion whether to judicially review the status of a minor placed for adoption with an adoption entity or prospective adoptive parent and the progress toward permanent adoptive placement. Under current law, this judicial review is required in all adoptions handled by the department under ch. 39, F.S., and remains unchanged by this Act.

12. Criminal Penalties and Civil Liabilities

Present situation:

Under ch. 39, F.S., a person commits a misdemeanor of the first degree if he knowingly and willfully makes a false statement claiming paternity of a child in conjunction with a petition to

terminate parental rights under ch. 39, F.S., and causes the false statement to be filed with the court. *See* s. 39.804, F.S. (Supp.1998) Under ch. 63, F.S., a person commits a third-degree felony for violating any act prohibited under s. 63.212, F.S., punishable as provided in ch. 775, F.S. A person commits a second degree misdemeanor if the person advertises or otherwise publicizes the availability of a child for adoption. *See* s. 63.212(1)(h), F.S. Additionally, a court may prohibit an intermediary or an agency from placing children for adoption in the future if it finds that the intermediary or an agency violated a provision of ch. 63, F.S. *See* s. 63.219, F.S.

Effect of provisions in chapter 2001-03, L.O.F.:

Section 63.039, F.S., is created to provide for the duties of an adoption entity and states possible sanctions for violations thereof. Subsection (1) enumerates the affirmative duties of an adoption entity. The adoption entity must affirmatively follow these requirements to ensure that due process requirements are satisfied. Subsection (2) provides that a material failure on the part of the adoption entity to meet any of these duties may result in liability to the prospective adoptive parents for whom all sums paid by them or on their behalf in anticipation or in connection with the adoption may be recovered. In addition, the court must award attorney's fees to the prevailing party in any action based on fraud or duress. The award must be paid by the adoption entity or the applicable insurance carrier on behalf of the adoption entity. Subsection (3) holds an adoption entity liable for all sums paid by the prospective adoptive parents or on their behalf if the court finds that a consent or an affidavit of nonpaternity was obtained by fraud or duress attributable to the action of the adoption entity. In addition, the court may award reasonable attorneys fees and costs incurred by the prospective adoptive parents in connection with the adoption and any related litigation. The award must be paid directly to the prospective adoptive parents by the adoption entity or by any applicable insurance carrier on behalf of the adoption entity. Subsection (4) is discussed previously. [See supra 4. Appeals, Statute of Limitations and Statutes of Repose]. Subsection 4) requires the clerk of the court to forward copies of sanction orders to the respective adoption entity's regulating, governing or certifying body.

Section 63.212, F.S., related to prohibited acts, is amended to apply to all adoption entities defined in this bill and to create additional criminal penalties and civil liabilities upon any person for specific violations. A person commits a second degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S., for any of the following acts:

- Knowingly providing false information,
- Knowingly withholding material information,
- Intending to defraud an adoption entity by accepting benefits from more than one adoption entity in connection with the same pregnancy without disclosing such fact to that entity, or
- Knowingly filing a petition for termination of parental rights in a county inconsistent with the venue required when it is known that a parent intends to object to said termination.

In addition, that person is liable for damages caused by those acts or omissions, including reasonable attorneys fees and costs. The damages may be recovered either through an award of restitution in a criminal proceeding or through an award in a civil action.

Section 63.219, F.S., relating to the court-ordered sanction prohibiting an intermediary or an agency from placing a minor for adoption in the future, is amended to apply to all adoption entities who violate any provision of ch. 63, F.S.

13. At-Risk Placement

Present situation:

Under state rules, in adoptions handled by DCF and adoption agencies, if a child is placed with an adoption handled by an intermediary, there is no requirement for executing an “at-risk placement” statement. In fact, under current law a child may be placed with the prospective adoptive parents before consents are obtained so long as the placement is approved by the court. s. 63.092(2), F.S. The only requirements for approval of placement, which may be approved pre-birth, is that a report of intended placement be filed and a preliminary home study be completed. s. 63.092(1), F.S. The statute does not state what the report of intended placement should contain. *Id.*

A preliminary home study may be completed up to 12 months prior to placement and can be performed by either a licensed child-placing agency, a licensed psychologist, clinical social worker, marriage and family therapist, or mental health counselor or the DCF. s. 63.092(2), F.S. The preliminary home study determines the suitability of the intended adoptive parents [s. 63.092(2), F.S.], and, therefore, whether a child can be placed with or adopted by the prospective adoptive parents. The “suitability” of the placement or adoptive parents considers the fitness and capabilities of the adoptive parents, the compatibility of the child with the home, and the welfare of the child.

Effect of provisions in chapter 2001-03, L.O.F.:

Section 63.092, F.S., relating to the placement of children for adoption, is amended to require prospective adoptive parents to sign an at risk statement in all adoptions when the placement is at risk. “At risk” is defined in the Act as the placement of a child before parental rights are terminated. In signing this statement, prospective adoptive parents are acknowledging that the minor can be removed. This is similar to the existing administrative requirements by DCF for adoption agencies. *See* Rule 65C-15.002(5) and (6), F.A.C. Also, the Act expands the entities permitted to perform the preliminary home study to include a child-caring agency registered pursuant to s. 409.176, F.S. It also adds that upon completion of the preliminary home study, a copy of the study must be provided to the prospective adoptive parents.

In addition, the Act sets forth conditions whereupon a child cannot be placed in a home for adoption. Specifically, a child is prohibited from being placed in a home where the following persons reside: a convicted sexual predator as defined in s. 775.21, F.S., a convicted child abuser as defined in s. 827.03, F.S., a violent career criminal as defined in s. 775.084, F.S., a habitual violent felony offender as defined s. 775.084, F.S., a convicted first degree or second degree murderer in violation of s. 782.04, F.S., a convicted sexual batterer whose violation is a capital, life, or first degree felony pursuant to s. 794.011, F.S., or a person convicted of a substantially similar offense in another jurisdiction.

14. Placement and Communication with Relatives

Present situation:

Finally, the RTD and case law have been generally supportive of the policy that the court should consider the blood relationship with a child in determining the suitability of placement for the child. In dependency proceedings under ch. 39, F.S., placement with relatives is encouraged when placement with the birth parents is not recommended. Under s. 63.0425, F.S., the court must give a grandparent first priority of right to adopt a child if the child has been living with the grandparent for at least 6 months. In addition, certain procedural adoption requirements are more lax or inapplicable when the adoption involves a child who is to be placed with a relative or stepparent.

Section 63.0427, F.S., allows the courts to consider and include in the final adoption order continued communication or contact with the child's sibling(s). The court must determine if post adoption communication or contact with any sibling is in the best interest of the child. However, the post adoption communication or contact provision of the final adoption order does not impair the adoptive parent and child's ability to change residence nor is the continuing validity of the adoption contingent upon the communication or contact. The post adoption communication or contact can be terminated by the court or conditions imposed if determined by the court to be in the best interest of the child.

Effect of provisions in chapter 2001-03, L.O.F.:

Section 63.0425, F.S., relating to a grandparent's right to adopt when a child has resided with a grandparent for at least 6 months, is only slightly amended to reflect the obligation of all adoption entities to notify grandparents of an impending adoption before a petition for adoption is filed. The post adoption communication or contact with the child's sibling(s) provided for in s. 63.0427, F.S., is expanded to include other specified biological relatives with the agreement of the adoptive parents.

Section 63.0427, F.S., is revised to expand post-adoption contact provisions to apply to specified biological relatives conditioned upon the agreement of the adoptive parents.

15. Miscellaneous

Section 37 of the bill provides that a petition for adoption filed before October 1, 2001, shall be governed by the law in effect at the time of filing.

Section 38 provides severability of unconstitutionality clause

Sections 39 and 40 create s. 395.1024, F.S., and s. 383.310, F.S., respectively, to require licensed hospital facilities and birthing centers to establish protocols that educate staff as to the waiting periods, revocation periods and other requirements pertaining to consents and to the appropriate manner of interacting with birth parents and prospective adoptive parents in the process.

Section 41 provides that the bill will take effect October 1, 2001.

III. Effect of Proposed Changes:

Overall CS/HB 415 re-enacts the provisions of chapter 2001-03, L.O.F. (whose provisions become effective October 1, 2001) and additionally amends various provisions in that law. The following sets forth those provisions within the context of topical headings that have been additionally amended by CS/HB 415:

- **Proceedings for Termination of Parental Rights**

Section 63.087(6), F.S., relating to a petition for termination of parental rights, is revised to delete the reference to the 12-month period preceding a minor's birth for purposes of indicating when and where conception might have occurred.

- **Required Consents**

Section 63.062, F.S., is amended to expand the category of persons whose consent is required to include those persons who have registered with the paternity registry.

- **Notice and Due Diligence**

Section 63.088(3), F.S., is amended to expand the court's inquiry to determine the identity of a putative father, to include a determination of the identity of any person registered with the paternity registry.

Section 63.088(4), F.S., is amended to add the paternity registry as another source to use for conducting diligent searches to determine the identity of a putative father who has been identified but not yet located. This brings the total number of sources to search to 16.

- **Disclosure, Waiting Period and Revocation of Consent**

Section 63.085, F.S., relating to disclosure requirements is amended, to revise the suggested statutory disclosure statement to add provisions relating to the existence of the paternity registry within the state adoption information registry. This section is also amended to clarify that a consent to adoption for a yet unplaced minor may be revoked within 3 days of execution or up to the time the minor is placed for adoption, whichever occurs later.

- **Appeals and Statutes of Limitations and Repose**

Section 63.089(7), F.S., relating to relief from judgments terminating parental rights, is revised to shorten the time period from two years to one year in which to bring an action based on fraudulent concealment which kept the parent from timely asserting his or her parental rights. The time is still measured from the date the judgment terminating parental rights was entered. All other provisions relating to the procedural aspects of motion to set aside a judgment terminating parental rights remain unchanged by CS/HB 415.

Section 63.142, F.S., relating to relief from a judgment of adoption, is revised to shorten the time period from two years to one year in which to bring an action based on fraudulent concealment which kept the parent from timely asserting his or her parental rights. The time is still measured from the date the judgment terminating parental rights was entered. All other provisions relating to the procedural aspects of a motion to set aside a judgment terminating parental rights remain unchanged by CS/HB 415.

Section 63.182, F.S., relating to the statute of repose, is amended to shorten the period from 2 years to 1 year for all actions based on fraud for purposes of setting aside a judgment of termination of parental rights or adoption.

- **State Registry of Adoption**

Section 63.165, F.S., relating to the state registry of adoption information, is substantially revised to incorporate the creation of a paternity registry. Subsection (4) is created requiring the Department of Children and Families to maintain a paternity registry within the state registry of adoption information. Specifically, the provisions:

- ✓ Require specified men who want to maintain legal claim to parenthood to register no later than 30 days after the birth of the minor, but provides an exception for someone who is given false information was given or otherwise kept from learning of his right to assert parental interest in the minor,
- ✓ Excludes the following men from the paternity registry requirement: 1) if married to birth mother at time of conception or birth, 2) if child is his by adoption, 3) if child is his by judicial proceeding, 4) if child is his as established by genetic testing,

- ✓ Requires men who are registered with the paternity registry who have not executed a consent to adoption or an affidavit of nonpaternity, to be noticed of a petition to terminate parental rights and the subsequent hearing,
- ✓ Requires the following information to be provided: 1) the name, last known address, and social security number of the biological mother, 2) the name of the minor and location and date of the minor's birth (if known) or probable month or year of minor's expected birth, and 3) the name, address, driver's license number and social security number or state identification card of the putative father, and 4) a statement by the man claiming to be the minor's father,
- ✓ Requires registry information to be updated,
- ✓ Criminalizes the provision of false information to the paternity registry as a 2nd degree misdemeanor
- ✓ Limits access to or disclosure of information from the paternity registry to a court, birth mother or adoption entity,
- ✓ Provides that only a court determination of nonpaternity will allow removal of a person's name from the registry,
- ✓ Prohibits a fee assessment for registration,
- ✓ Authorizes a fee for conducting a search of the paternity registry for a birth mother or an adoption entity but exempts the court from the fee,
- ✓ Allows for the admissibility of paternity registry information in any court or administrative proceeding for any purpose, and
- ✓ Requires the Department of Children and Families to initiate public awareness campaigns and public service announcements about the paternity registry.

- **Criminal Penalties and Civil Liabilities**

Section 63.039, F.S., relating to duties and civil liabilities by adoption entities, is amended to provide not just the person whose consent was obtained by fraud or duress, is awarded attorney's fees and costs in an action to set aside a consent or affidavit of nonpaternity based on fraud or duress, but that whoever the prevailing party is, is awarded the attorney's fees and costs.

Section 63.165, F.S., is also amended, in part, to create a 2nd degree misdemeanor offense for any person who provides false information to the paternity registry. Such offense will be punishable as provided in s. 63.212(2), F.S. This means that such person will be subject to the criminal penalties and civil liabilities listed for similar offenses under that section.

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:

- CS/SB 415 re-enacts provisions in chapter 2001-03, L.O.F., which try to balance the constitutionally protected rights of parents against the interest of all parties, including the children, in the finality and certainty of adoption proceedings and judgments. The Supreme Court of Florida recognizes parental rights within the ambit of privacy rights under the Florida Constitution and the U.S. Constitution. *See Beagle v. Beagle*, 678 So.2d 1271, 1275 (Fla. 1996)(parental interest and right in determining the care and upbringing of children free from governmental intervention as a “longstanding and fundamental liberty interest”), quoting *Padgett v. Department of Health and Rehabilitative Services*, 577 So.2d 565, 570 (Fla. 1991); see also *Santosky v. Kramer*, 455 US 745, 102 SCT 1388, 71 Led 2d 599 (1982). The Court in *Beagle* additionally noted that this protection stems from the privacy provision that was added to the state constitution in 1980, the enactment of which provides a right “much broader in scope than that of the Federal Constitution.” *Beagle*, 678 at 1271, quoting *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544, 548 (Fla. 1985). For an unwed father, these constitutional protections only extend to the opportunity to develop the parental relationship; the failure to grasp the opportunity by accepting some measure of responsibility for the child can result in a loss of those protections. *In the Matter of the Adoption of Doe*, 543 So.2d 741, 748 (Fla. 1989). CS/HB 415 requires some measure of action on behalf of a putative father to establish paternity and exercise parental rights or else risk forfeiture of such right.
- Article I, section 24(a), *Florida Constitution*, expresses Florida’s public policy regarding access to government records, to allow every person the right to inspect or copy any public record made or received in connection with the official business of local or state government and in all branches of government. *See also*, s. 119.07, F.S. However, the Legislature may, by general law, exempt public records from this constitutional requirement provided the law states with specificity the public necessity justifying the exemption and provided the law is no broader than necessary to accomplish the stated purpose of the law. CS/HB 415 requires the paternity registry to be maintained by DCF. No exemption from the public records law is provided for identifying information and records maintained in the paternity registry. For example, in conducting diligent searches there is a requirement that all persons or entities contacted by an adoption entity or petitioner for a termination of parental rights who is trying to determine the location or identity of a putative father must disclose information in response to the inquiry. *See* s.63.088(4), F.S.
- Section 23 of article I of the *Florida Constitution* provides that every natural person has the right to be let alone and free from governmental intrusion into the person’s private life. The Florida constitutional right to privacy has been construed more broadly than any right to privacy guaranteed under the federal constitution. *See Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544 (Fla.1985). The Florida Supreme Court has held that the “right of privacy is a fundamental right which we believe demands the compelling state interest standard.” *Winfield* at 547-89. Consequently, the burden is on the state to justify

whatever regulatory measures on a person's right of privacy and to show that it is the least intrusive means of furthering the state's interest. CS/HB 415 requires personal identifying information about the potential mother or mother-to-be to be provided to the paternity registry if the putative father wishes to protect his claim to paternity. However, the information available in a paternity registry is admissible in any court or administrative proceeding for any purpose. *See* s. 63.165(4), F.S.) Additionally, such information must be maintained and will remain available in the paternity registry until removed by a court determination of paternity or nonpaternity, or potentially for whatever time period (but no more than 99 years) DCF has adopted in rules to maintain the records in the state registry of adoption (the paternity registry is actually created within the state registry of adoption information, therefore, these rules may similarly apply.)

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As does the act in ch. 200-03, L.O.F., CS/HB 415 may impose some additional court and administrative costs to participants arising from the requirement to bifurcate the termination of parental rights of the parents and the finalization of the adoption proceedings in two separate actions. However, any increased costs may be dependent on a number of factors including, but not limited to, travel time to the venues for the hearings by the different parties involved, and the number of hearings held.

In adoptions handled by adoption agencies, there may be an increase in costs and other expenses associated with the submission of additional documentation such as affidavits related to diligent search, inquiry, fees and expenses, and acknowledgments of receipts of pre-birth and post-birth disclosure. Finally, there will be additional expenses incurred associated with conducting searches of and notices to persons whose consents are required, and with copying and distributing consent, disclosure and family medical and social history forms, to parents and other persons.

However, these additional front-end costs or expenses may be offset somewhat by the mitigation in litigation that have historically arisen from claims based on invalid or lack of informed consent, inadequate notice, fraud, duress, and insufficient disclosure. Challenges to set aside or otherwise invalidate judgments terminating parental rights and subsequent judgments of adoptions may be more difficult to make if the parties adhere to the stricter and more explicit procedural safeguards. Parents, especially prospective parents, may be more assured by the certainty and finality of judgments terminating parental rights and subsequent adoptions, particularly after the statutory period of repose expires.

Additionally, parents may be better informed about the financial expenses engendered by adoption act and CS/HB 415 delineates guidelines and threshold limits for fees, costs, and

expenses. Adoption entities may be held more accountable for their actions based on their statutory duties to ensure compliance.

C. Government Sector Impact:

CS/HB 415 requires the Department of Children and Families to institute a public service campaign by preparing and distributing a publication about the paternity registry, and providing public service announcement. It is unknown at this time whether the fiscal impact of this bill is minimal and whether the new responsibilities are manageable within current staff resources. Some cost may be offset by the fees charged for conducting searches of the paternity registry.

As provided in chapter 2001-03, L.O.F., CS/HB 415 provides for a proceeding to terminate parental rights pending adoption and then a subsequent adoption hearing. The bifurcation of this process may result in minimal additional costs to the court system. CS/HB 415 similarly provides additional procedural safeguards that may result in fewer post adoption challenges, and thus may result in fewer costs for the court system. The fiscal impact from this legislation cannot be determined but should be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill creates the paternity registry and integrates the requirement into the new statutory framework for adoption. The following issues pertaining to the registry arise:

- No provision is made for rescission or revocation of a registration or removal of a name other than through a court determination of paternity or nonpaternity.
- There is no express provision for a public records exemption of such registry information.
- There is no procedure for how the department will verify that a registration is timely made for purposes of knowing whether to accept or reject the registration.
- It allows paternity registry information to be admitted in *any* court or administrative proceeding, not just in a termination of parental rights or an adoption proceeding. Thus, such information if requested by a court could potentially be used to establish jurisdiction over a nonresident in child support actions, or could be used in a criminal proceeding. There is no requirement that the information be relevant.
- No action is required of a putative father who registers until he receives required notice triggered by an initial filing of a petition to terminate parental rights. He is not necessarily required to provide pre-natal support or child support or to determine paternity if the child is born.
- It allows a person to register up to 30 days after the child is born which may pose a potential problem if the registration occurs after a diligent search has been conducted which current law provides can occur even prior to the child's birth
- It provides that failure to register forfeits the person's right to claim paternity. This may do away with the purpose, function or need for the constructive notice requirements.
- The paternity registry does not benefit out-of-state putative fathers (if mother moves to Florida to have child and putative father does not know where).

- There is a risk of invasion of privacy for the woman whose personal information is provided to the registry even if she does not subsequently become pregnant. The DCF is required to keep such information in the registry until removed through a court determination of paternity or nonpaternity or 99 years whichever occurs later.

VIII. Amendments:

#1 by Judiciary

Subsection (4) of s. 63.165, F.S., is deleted. This subsection provided for the establishment of a paternity registry, set forth the requirements for such registration, and established the duties of DCF to conduct a public awareness and public service campaign about the paternity registry. (WITH TITLE AMENDMENT)

#2 by Judiciary

Removes the reference to the “paternity registry” in the catch line to s. 63.165, F.S.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
