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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 (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.



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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