

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 774

INTRODUCER: Senator Bean

SUBJECT: Dependency Proceedings

DATE: January 19, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	<b>Pre-meeting</b>
2.			JU	
3.			AP	

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**I. Summary:**

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

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

The bill also credits community-based care lead agencies with certain ch. 63, F.S., adoptions of children from ch. 39, F.S., proceedings.

The bill has a nonrecurring fiscal impact of \$517,000 on the Department of Children and Families (DCF or department), for changes to the Florida Safe Families Network (FSFN).

The bill has an effective date of October 1, 2018.

## II. Present Situation:

### Background

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

### Paternity Inquiry

One of the most significant differences between ch. 39, F.S., and ch. 63, F.S., relates to the identification and treatment of prospective parents and unmarried biological fathers. Chapter 39, F.S., considers a “prospective parent” any person who claims to be, or has been identified as, a person who may be the mother or father of a child.<sup>6</sup> A judge is required to conduct an inquiry if the identity or location of the father is unknown and a petition for shelter,<sup>7</sup> dependency,<sup>8</sup> or termination of parental rights<sup>9</sup> has been filed. The judge is required to ask whether:

- The mother of the child was married at the probable time of conception of the child or at the time of birth of the child.
- The mother was cohabiting with a man at the probable time of conception of the child.
- The mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.
- The mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.
- Any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.
- Any man is named on the birth certificate.
- Any man has been determined by a court order to be the father of the child.
- Any man has been determined to be the father of the child by the Department of Revenue.

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<sup>1</sup> Section 39.001(1), F.S.

<sup>2</sup> Section 39.001(1)(f), F.S.

<sup>3</sup> Section 39.001(1)(j), F.S.

<sup>4</sup> Section 63.022(1)(a), F.S.

<sup>5</sup> Section 63.062, F.S.

<sup>6</sup> Section 39.01(62), F.S.

<sup>7</sup> Section 39.402(8)(c)4., F.S.

<sup>8</sup> Section 39.503(1), F.S.

<sup>9</sup> Section 39.803(1), F.S.

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

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

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

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

### **Establishment of Parental Rights**

Chapter 39, F.S., does not require the prospective father to take any action to establish parental rights or make any affirmative demonstration of the intent to parent other than to execute the affidavit of parenthood as directed by statute. There is no specific deadline to execute the affidavit of parenthood, other than the provision that it must be filed "while the child is a dependent child but no later than at the time of or prior to the adjudicatory hearing in any termination of parental rights proceeding for the child."<sup>13</sup> This means that a prospective father may be named early in the case, receive notice of hearings and be served with documents throughout the case without coming forward and asserting his right to the child, and then file an affidavit of parenthood at the TPR trial, establishing rights for the first time and delaying or stopping the TPR proceedings.

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<sup>10</sup> Sections 39.503(8) and 803(8), F.S.

<sup>11</sup> Sections 63.032(19) and 63.022(1)(e), F.S.

<sup>12</sup> Section 63.088(4).

<sup>13</sup> *Id.*

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

### **Establishment of Parentage**

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

### **Community-Based Care Lead Agencies and Adoption Credit**

Currently, the department negotiates agreements with community-based care lead agencies to establish measurable outcome targets to increase the number of adoptions. The agreements must also define the method for measuring performance, determining the level of performance required to earn an incentive payment, and the amount of the incentive payment for each target met. The bill would credit community-based care lead agencies with certain ch. 63, F.S., adoptions of children involved in ch. 39, F.S., proceedings. This change will result in the department having to make changes to the Florida Safe Families Network (FSFN) to comply with this provision.

## **III. Effect of Proposed Changes:**

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

**Section 2** amends s. 39.01, F.S., relating to definitions, to remove language from the definition of "parent" to conform with the overall changes of the bill, making a person identified under oath as a prospective parent a participant in the proceeding until he or she asserts parental rights to be

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<sup>14</sup> Section 63.054, F.S.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Section 63.062(2).

considered a party. The bill also defines "unmarried biological father" as the child's biological father who is not married to the child's mother at the time of conception or on the date of the birth of the child and who, before the advisory hearing is held on a petition to terminate parental rights, has not been adjudicated or declared by a court to be the legal father of the child or has not executed an affidavit of paternity.

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

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

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

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

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

**Section 5** amends s. 39.503, F.S., relating to identity or location of a parent unknown, to update the paternity inquiry by the court by changing wording to elicit more specific responses and

adding additional questions the ch. 63, F.S., paternity inquiry, seeking information regarding the identity of any man:

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

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

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

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

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

- File a claim of paternity with the Florida Putative Father Registry;
- Legally establish his parental rights to the child pursuant to the laws of the state;
- File a verified response with the court which contains a pledge of commitment to the child, a request for the court to calculate and order child support, and an agreement to submit to the court's jurisdiction;
- Provide support for the child as calculated by the court; and
- Seek to establish a substantial relationship with the child within the parameters established by the court, such as taking parental responsibility, providing support, and establishing

regular contact with the child in accordance with a written court order that takes the child's safety, well-being, or physical, mental, or emotional health of the child into account.

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

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

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

**Section 8** amends s. 409.1662, F.S., relating to the adoption incentive program for children within the child welfare system, to credit community-based care lead agencies with certain ch. 63, F.S., adoptions of children involved in ch. 39, F.S., proceedings.

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

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill has a fiscal impact on the department, that estimates the need for a nonrecurring \$517,000 appropriation in the 2018-19 fiscal year to make changes in FSFN to comply with section 8 of the bill. The department does not currently document adoption placements and finalizations made by adoption entities pursuant to s. 63.082(6), F.S., in FSFN.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends ss. 39.001, 39.01, 39.402, 39.502, 39.503, 39.801, 39.803, and 409.1662 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.