

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 774

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

SUBJECT: Dependency Proceedings

DATE: February 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 744 imports the more expeditious procedures of the adoption act, ch. 63, F.S., into the dependency law, ch. 39, F.S., for identifying prospective parents or unmarried biological fathers prior to terminating all parental rights. Specifically, the bill aligns the procedures for identifying prospective parents in dependency cases with identifying unmarried biological fathers in adoption cases by:

- Importing some of the questions from the chapter 63, F.S., inquiry into the chapter 39, F.S., inquiry a court must go through in order to identify a prospective parent or an unmarried biological father;
- Providing for a process in chapter 39, F.S., which is similar to the process in chapter 63, F.S., by which an unmarried biological father may assert his parental rights and become a legal father;
- Allowing a court to proceed to terminate the unmarried biological father's parental rights if an he fails to assert his rights after being personally served with notice and an explanation of how to assert his rights; and
- Permitting a dependency court to make a formal determination of the child's paternity within chapter 39, F.S.

The bill requires certain records checks of the Department of Children and Families' Central Abuse Registry be provided directly to the entity conducting a home study to ensure the integrity of the results and protect the best interest of children being placed for adoption.

The bill also allows licensed adoption agencies to use their professional judgement to determine the appropriate counseling and education, dependent upon the type of adoption and the child being adopted.

II. Present Situation:

Termination of Parental Rights in Florida

Currently, chapter 39, F.S., related to dependency, and chapter 63, F.S., related to adoption, utilize different procedures for the termination of parental rights, which is necessary before for a child may be placed for adoption. Chapter 39, F.S., provides for the *involuntary* termination of parental rights by the state which triggers strict due process protections for the parent; whereas, chapter 63, F.S., requires consent for a *voluntary* termination of parental rights for purposes of adoption.

Legal Parentage

Notably, status as a biological parent or parent in fact is not the same as being a legal parent. In Florida, before reaching a termination proceeding under chapter 39, F.S., or an adoption proceeding under chapter 63, F.S., a child's legal parentage may need to be established. Under Florida law, legal parentage may be established in several ways.

Unless abandoned following a home birth, the child's legal mother is usually the biological mother identified by virtue of the fact that she has given birth at a hospital or elsewhere with the assistance of a midwife or other emergency or medical professionals.¹ If she is the only known parent of the child at the time of birth, she will be the only parent listed on the birth certificate.²

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

- In the case of a child born to a legally married couple, legal parentage is established by operation of the common law rule that presumes the husband of the child's mother is the legal father, particularly where the husband's name is listed as the father on the birth certificate and he acknowledges the child as his own.³
- For a child born to a couple that is not married to one another, legal parentage may be established by:

¹ Section 382.013(1), F.S.

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

³ *G.F.C. v. S.G.*, 686 So. 2d 1382, 1384 (Fla. 5th DCA 1997) ("There existed an almost irrebuttable presumption that the husband was the father of his wife's children, a presumption which could be overcome only upon a showing that the husband either was impotent or lacked access to his wife at the time of conception.") (citing 41 Am.Jur.2d *Presumption From Birth In Wedlock*, § 10 (1995)). See also s. 382.013(2) (a), F.S. ("If the mother is married at the time of birth, the name of the husband shall be entered on the birth certificate as the father of the child, unless paternity has been determined otherwise by a court of competent jurisdiction.").

- A voluntary acknowledgment of paternity entered by the parties during proceedings to determine inheritance, dependency under worker’s compensation or a similar compensation program, or by the Department of Revenue to determine child support;⁴
- Voluntary acknowledgment of paternity signed by both parents within five days after the child’s birth as reflected on the child’s birth certificate issued by the Department of Health’s Office of Vital Statistics;⁵
- Marrying after the birth of the child, in which case the child is treated as if born into an intact marriage (common law rule above);⁶ or
- DNA testing to establish paternity when the “putative” or unmarried biological father does not acknowledge paternity within five days after the birth of the child, provided certain procedures set out in chapter 742, F.S., are followed.⁷
- In adoption cases, the legal parentage of a child is established by judicial decree after the rights of the legal or biological parent(s) are terminated.⁸
- In donor cases, where a child is conceived within wedlock by means of donated biological contributions (sperm, eggs or preembryos), the husband and wife are deemed the legal parents and the donor relinquishes all rights and obligations, provided the written consent requirements set out in chapter 742, F.S., are followed.⁹
- For children born in another state within the U.S., a certified copy of a final order concerning legal parentage from that state is conclusive evidence of paternity.¹⁰
- If the legal father who was married to the mother at the child’s birth voluntarily disestablishes paternity, the biological father may be able to establish paternity and become the legal parent.¹¹

“The status of legal parent . . . has tremendous legal significance, as it comes with near complete independence in decision-making [for the child] and significant constitutional protection.”¹²

“Parental rights constitute a fundamental liberty interest . . . protected by the Due Process Clause

⁴ Section 409.256, F.S. If the affidavit or stipulation is filed in conjunction with an adjudicatory hearing, it establishes parentage. When no adjudicatory hearing is held, however, the affidavit or stipulation creates a rebuttable presumption of parentage and may be rescinded within 60 days. *Id.*

⁵ Section 382.013(2) (c), F.S. (“If the mother is not married at the time of the birth, the name of the father may not be entered on the birth certificate without the execution of an affidavit signed by both the mother and the person to be named as the father. . . . Upon request of the mother and the person to be named as the father, the facility shall assist in the execution of the affidavit, a notarized voluntary acknowledgment of paternity, or a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury as specified by s. 92.525(2).”).

⁶ Section 742.091, F.S. *See also* s. 382.013(f), F.S.

⁷ Section 742.10, F.S. *See also* s. 63.032, F.S. (“‘Unmarried biological father’ means the child’s biological father who is not married to the child’s mother at the time of conception or on the date of the birth of the child and who, before the filing of a petition to terminate parental rights, has not been adjudicated by a court of competent jurisdiction to be the legal father of the child or has not filed an affidavit pursuant to s. 382.013(2)(c).”).

⁸ Section 63.032, F.S. (“‘Adoption’ means the act of creating the legal relationship between parent and child where it did not exist, thereby declaring the child to be legally the child of the adoptive parents and their heir at law and entitled to all the rights and privileges and subject to all the obligations of a child born to such adoptive parents in lawful wedlock.”); ss. 63.087-.089, F.S. (governing procedures for termination of parental rights pending adoption).

⁹ Sections 742.11 & 742.14, F.S.

¹⁰ Section 742.105, F.S.

¹¹ Section 742.18, F.S.

¹² Dara E. Purvis, *Intended Parents and the Problem of Perspective*, 24 YALE J.L. & FEMINISM 210, 213–14 (2012).

of the Fourteenth Amendment[.]”¹³ Additionally, “[l]egal parents enjoy considerable protection from state and third-party interference”¹⁴ and are not subjected to the scrutiny that those seeking to become adoptive parents must undergo.¹⁵ “While legal parents bear the obligations of parentage, such as food, shelter, clothing, medical care, and the like, legal parents also enjoy all of the benefits of parentage, such as custody and influencing the child’s educational, moral, and religious development.”¹⁶

Best Interests of the Child

But the paramount consideration in the parent-child relationship is not the right of the parents but the best interests of the child. In Parents who are “fit parents” will be free from state interference because “fit parents” are presumed “to act in the best interests of their children.”¹⁷ As the United States Supreme Court has explained:

“[O]ur constitutional system long ago rejected any notion that a child is the mere creature of the State and, on the contrary, asserted that parents generally have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations. ... The law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children.”¹⁸

Chapter 39, F.S., Dependency Proceedings

Parents who are clearly not acting in the best interests of their children, however, by causing serious harm to or engaging in serious neglect of their children will be subject to state intervention under Florida’s dependency law, chapter 39, F.S. The purpose of Florida’s dependency system (foster care) is to protect children from abuse, neglect, and abandonment, while simultaneously working with parents to keep families intact when possible.¹⁹

Once a child is deemed dependent and comes under the supervision of the Department of Children and Families, the goal is to achieve “permanency” or a stable living arrangement for the child (i.e., “permanency goal”)²⁰ as soon as possible.²¹ The preferred permanency goals for the child are either reunification with the parent(s) or adoption.²² When removal of the child from

¹³ *In re K.M.*, 946 So. 2d 1214, 1219 (Fla. 2d DCA 2006) (quoting *Padgett v. Dep’t of Health & Rehab. Servs.*, 577 So.2d 565, 571 (Fla.1991)(internal quotation marks omitted); citing *Troxel v. Granville*, 530 U.S. 57, 66, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) (plurality opinion)).

¹⁴ Melanie B. Jacobs, *Why Just Two? Disaggregating Traditional Parental Rights and Responsibilities to Recognize Multiple Parents*, 9 J.L. & FAM. STUD. 309, 311 (2007).

¹⁵ See note 2, *supra*.

¹⁶ *Id.*

¹⁷ *Troxel v. Granville*, 530 U.S. 57, 68–69 (2000) (“[S]o long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.”).

¹⁸ *Id.* (quoting *Parham v. J. R.*, 442 U.S. 584, 602 (1979)).

¹⁹ Section 39.001(1)(a), (b), (e), (f), F.S.

²⁰ Section 39.01(53), F.S. (defining “permanency goal” as “the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child.”).

²¹ Section 39.001(1) (h), F.S.

²² *Id.*

the home is necessary, the permanency goal also aims to ensure the child is not “in foster care longer than 1 year.”²³ The Florida Statutes affirm that “[t]ime is of the essence for permanency of children in the dependency system.”²⁴

For parents who have lost temporary custody of their children under chapter 39, F.S., courts recognize a constitutional, fundamental liberty interest in being a parent to a child which is *not* dependent on the parent’s behavior or loss of custody.²⁵ Although a parent’s fundamental right to be a parent is not unlimited, the parent’s rights generally *cannot* be terminated without his or her consent or without following “the strict procedures set forth in chapter 39,” for the involuntary termination of parental rights.²⁶ Under chapter 39, F.S., proceedings,

Termination of parental rights by the state requires clear and convincing evidence of: (1) a statutory ground for termination set forth in section 39.806, Florida Statutes [such as abandonment, abuse, neglect, incarceration]; (2) that termination is in the manifest best interest of the child pursuant to section 39.810; and (3) that termination is the least restrictive means of protecting the child from harm. *See Padgett v. Dep’t of Health & Rehab. Servs.*, 577 So. 2d 565, 570–71 (Fla. 1991). A finding of least restrictive means is required because “parental rights constitute a fundamental liberty interest.” *Id.* at 571.²⁷

Chapter 63, F.S., Adoption Proceedings

The purpose of chapter 63, F.S., is not only to provide procedures for adoptions, but also to ensure that “the best interest of the child should govern and be of foremost concern in the court’s determination.”²⁸ The goal of chapter 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.”²⁹

Before a child can be adopted under chapter 63, F.S., the child must be legally free to be adopted, meaning the legal parents’ parental rights have been terminated. Unlike chapter 39,

²³ Section 39.001(1)(f)-(h), F.S.

²⁴ Section 39.806(1)(e)1., F.S.

²⁵ *See Santosky v. Kramer*, 455 U.S. 745, 753, 787, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (“The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs.”); *S.M. v. Florida Dept. of Children & Families*, 202 So. 3d 769, 777–78 (Fla. 2016) (“Likewise, this fundamental right is equally as strong, if not stronger, under the Florida Constitution. This Court, in *Padgett*, explained: ‘Florida courts have long recognized this fundamental parental right ... to enjoy the custody, fellowship and companionship of [their] offspring. This rule is older than the common law itself.’”) (quoting *Dep’t of Health and Rehab. Serv’s v. Padgett*, 577 So. 2d 565, 570 (Fla. 1991), citing *Santosky*, 455 U.S. at 753, 102 S.Ct. 1388, 577 So.2d at 570)).

²⁶ *Fahey v. Fahey*, 213 So. 3d 999, 1001 (Fla. 1st DCA 2016) (“Under Florida law, parental rights may only be terminated through adoption or the strict procedures set forth in chapter 39, Florida Statutes”).

²⁷ *D.S. v. Dep’t of Children & Families*, 164 So. 3d 29, 33 (Fla. 4th DCA 2015).

²⁸ Section 63.022, F.S.(2).

²⁹ Section 63.022(1)(a), F.S.

F.S., chapter 63, F.S., requires consent of the known legal parents before an adoption may proceed, unless certain statutory criteria are present.³⁰

Termination of Parental Rights Procedures

One of the most significant differences between the procedures for terminating parental rights (TPR) under the dependency law, ch. 39, F.S., and under the adoption law, ch. 63, F.S., is how perspective parents and unmarried biological fathers, respectively are identified and treated. Both perspective parents and unmarried biological fathers are those who have not taken the appropriate steps under Florida law to become a “legal” parent or father³¹ at the time the TPR proceedings commence.

Identification and Treatment of Perspective Parents under Chapter 39, F.S.

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.³² A judge is required to conduct an inquiry if the identity or location of the father is unknown and a petition for shelter,³³ dependency,³⁴ or termination of parental rights³⁵ 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.

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:³⁶

“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

³⁰ Section 63.062, F.S.

³¹ *See supra*, p. 2.

³² Section 39.01(62), F.S.

³³ Section 39.402(8)(c)4., F.S.

³⁴ Section 39.503(1), F.S.

³⁵ Section 39.803(1), F.S.

³⁶ Sections 39.503(8) and 803(8), F.S.

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.”

Unlike chapter 63, F.S., *see infra*, 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.”³⁷ 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 trial, establishing rights for the first time and delaying or stopping the TPR proceedings.

However, a prospective father’s affidavit is not conclusive. 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 chapter 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.

Identification and Treatment of Unmarried Biological Fathers under Chapter 63, F.S.

Chapter 63, F.S., however, requires that, to establish the identity of an unmarried biological father, the judge inquire of the person placing the child for adoption, of any relative, or of any legal custodian of the child, about the identity of the father, as follows:³⁸

- Who the mother of the minor was married to the time of conception or birth of the child;
- 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 the minor child before the date a petition for TPR is filed with the court; and
- Who the mother has identified to the adoption entity as a potential biological father before the date she signed the consent for adoption.

Chapter 63, F.S., recognizes an “inchoate” interest in the unmarried biological father that may *acquire* constitutional due process protection:

An unmarried biological father 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. The state has a compelling interest in requiring an unmarried

³⁷ *Id.*

³⁸ Section 63.088(4).

biological father to demonstrate that commitment by providing appropriate medical care and financial support and by establishing legal paternity rights in accordance with the requirements of this chapter.³⁹

Thus, if an unmarried biological father has not come forward and demonstrated a timely and full commitment to parent the child, the unmarried biological father's parental rights will not acquire constitutionally protected legal parent status and may be deemed waived and surrendered.⁴⁰ Likewise, if the unmarried biological father is identified but does not timely respond to the notice of the adoption plan within 30 days, the court may enter a default judgment against the unmarried biological father, meaning his consent will not be required and will be deemed waived.⁴¹

More specifically, chapter 63, F.S., requires an unmarried biological father to preserve and perfect his rights by registering with the Putative Father Registry or filing a chapter 742, F.S., claim of paternity.⁴² This can be done at any time, including prior to a child's birth, but not after the date a petition to terminate parental rights (TPR) is filed.⁴³ Failure to assert paternity before the date a TPR petition is filed bars a chapter 742, F.S., claim of paternity.⁴⁴ As noted above, 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, including providing financial support for the child, regularly visiting the child, or maintaining regular communication with the child (unless prevented from doing so).⁴⁵

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., to remove language from the definition of "parent" to conform to the overall changes of the bill, making a person identified under oath as a prospective parent a "participant" until he or she asserts parental rights to be considered a "party." The bill also defines "unmarried biological father" as the child's biological father who is not married to the

³⁹ Section 63.022(1)(e), F.S. (emphasis added). *See also* s. 63.062(a)2., F.S. (setting forth specific actions unmarried biological fathers must take to be entitled to constitutional protection); *D.M.T. v. T.M.H.*, 129 So. 3d 320, 335 (Fla. 2013) ("a biological father's constitutional rights are inchoate and develop into a fundamental right to be a parent when an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child . . . [because] his interest in personal contact with his child acquires substantial protection under the due process clause."). (citations, quotation marks, and alterations in original text omitted).

⁴⁰ Section 63.092(2)(e), F.S.

⁴¹ Section 63.092(3)(a), F.S.

⁴² Section 63.054, F.S.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Section 63.062(2).

child's mother at the time of conception or date of birth; 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 to elicit more specific responses. The bill also adds some questions from the paternity inquiry from chapter 63, F.S., seeking information regarding the identity of any man:

- Who the mother was married to at the time of conception or birth of the child;
- 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
- Who the mother identified as the father under oath to a representative of the department.

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

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

The bill also requires the court, at the dependency advisory hearing, to determine whether the unmarried biological father took the necessary steps to assert his parental rights to gain standing to contest the dependency petition. If the court determines that the unmarried biological father has failed to assert his parental rights, it may find that he is no longer a prospective parent and is no longer entitled to further notice regarding the child unless otherwise ordered by the court.

If an unmarried biological father was not identified by the court's inquiry at the dependency advisory, but was subsequently identified, he may not use the lack of notice as a defense against the finding of dependency.

Section 5 amends s. 39.503, F.S., relating to the identity or location of an unknown parent, to update the paternity inquiry by the court to elicit more specific responses. The bill also adds

some questions from the chapter 63, F.S., paternity inquiry, seeking information regarding the identity of any man:

- Who the mother was married to at the time of conception or birth of the child;
- 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
- Who the mother identified as the father under oath to a representative of the department.

If the unmarried biological father is identified after the foregoing inquiry and is personally served with the petition for dependency but fails to assert his parental rights, the court may make this finding and proceed with further notice.

The bill also allows the court to enter an agreed order establishing parentage and 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 chapter 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 chapter 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 will no longer be considered a participant and will not be entitled to any further notice.

Section 6 amends s. 39.801, F.S., relating to termination of parental rights procedures, jurisdiction, notice, and service of process. When a child does not have a legal father, the bill creates a procedure for personally serving notice of the termination of parental rights petition to an unmarried biological father who is known and locatable. This notice is not required if the unmarried biological father has signed an affidavit of nonpaternity or a consent to termination of parental rights. 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 (which aligns with the 30-day requirement in chapter 63, F.S.):

- 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 termination of parental rights (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 hearing 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 hearing 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 current questions to elicit more specific responses. The bill also adds some questions from the chapter 63, F.S., paternity inquiry, seeking information regarding the identity of any man:

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

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

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Children and Families reports that there should be no fiscal impact to state government.⁴⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

⁴⁶ Dept. of Children & Families, *2018 Agency Legislative Bill Analysis, Senate Bill 774*, (Jan. 29, 2018) (on filed with Senate Judiciary Committee).

IX. Additional Information:

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

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

The amendment does the following:

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

- B. **Amendments:**

None.