

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 775 Shared Parental Responsibility after Establishment of Paternity

**SPONSOR(S):** Judiciary Committee and Civil Justice Subcommittee, Benjamin and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1146

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**FINAL HOUSE FLOOR ACTION:** 114 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 775 passed the House on April 26, 2023, and subsequently passed the Senate on April 27, 2023.

Under Florida law, paternity may be established for a child born to an unmarried mother in multiple ways, whether by adjudicatory hearing, by voluntary acknowledgement, or by the Department of Revenue. Additionally, paternity may be established by court order in response to a Petition to Establish Paternity. However, without a court order specifically establishing a timesharing schedule and parental responsibility, an alleged father may be left without defined rights relating to his relationship with the child.

Currently, under s. 744.301, F.S., the mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody unless a court enters an order stating otherwise. As such, an alleged father must first establish paternity before being able to petition a court to determine parental responsibility and timesharing. This may leave an unmarried alleged father without any right to parent the child, even if both parents acknowledge the alleged father is the actual father and that he has established paternity. Further, shared parental responsibility does not apply until a court order is entered providing for shared parental responsibility.

The bill clarifies that, after the birth of a child, a parent may request a determination of parental responsibility and child support and for the creation of a parenting plan and timesharing schedule pursuant to ch. 61. The bill also requires that in an action to establish paternity, the court must also determine parental responsibility and a parenting plan, and establish a timesharing schedule in addition to an order determining a child support obligation.

The bill also clarifies that an unwed mother and a father who has established paternity are the natural guardians of a child and, as such, have the rights and responsibilities associated with raising a child. The bill also clarifies that DOR may continue to establish child support by administrative order.

The bill was approved by the Governor on June 9, 2023, ch.2023-209, L.O.F., and will become effective on July 1, 2023.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Background**

##### Rights and Responsibilities of a Parent

In a dissolution of marriage proceeding with children or in a paternity case, issues of parenting must be worked out between the parties. Florida courts have consistently ruled that a parent's desire and right to the companionship, care, custody, and management of his or her children is an important interest that warrants deference and, absent a powerful countervailing interest, protection. Further, a parent has general responsibilities owed to his or her children, including supervision, health and safety, education, care, and protection. In Florida, parenting is broken down into two distinct components: parental responsibility (decision-making) and timesharing (physical visitation with the child based on a parenting plan).

Under current law, issues related to timesharing and parental responsibility do not have to be addressed in a final judgment of paternity; a court is only required to address child support in such a paternity action.<sup>1</sup>

##### *Child Support*

Under s. 61.29, F.S., each parent has a fundamental obligation to support his or her minor or legally dependent child. A court must order either or both parents owing a duty of support to the child to pay support pursuant to s. 61.30, F.S. A parent's child support obligation is calculated based on the child support guidelines established in s. 61.30, F.S. These guidelines use a mathematical formula to develop the basic child support obligation of each parent. The court may not deviate from the basic child support obligation provided under the guidelines by more than five percent when establishing the child support award except in very limited circumstances, such as when the court orders substantial time-sharing.

##### *Timesharing and Parental Responsibility*

Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting<sup>2</sup> and time-sharing<sup>3</sup> of minor children in actions under ch. 61, F.S., in accordance with the best interests of the child while balancing the rights of parents. As a threshold consideration, the Legislature has declared that:

It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing.<sup>4</sup>

Under current law, the court sets a time-sharing schedule when the parties are unable to agree. In establishing time-sharing, the court must consider the best interests of the child<sup>5</sup> and evaluate all factors affecting the welfare and interests of the child and the circumstances of the family, including, but not limited to the:

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<sup>1</sup> S. 742.031(1), F.S.

<sup>2</sup> Parenting or parental responsibility refers to the responsibility and right to make important decisions about the child's welfare, such as education and medical care after the parents separate.

<sup>3</sup> Time-sharing refers to the time, including overnights and holidays, which the child spends with each parent. S. 61.046(23), F.S.

<sup>4</sup> S. 61.13(2)(c)1., F.S.

<sup>5</sup> S. 61.13(2)(c), F.S.

- Demonstrated capacity and disposition of each parent to facilitate and encourage a continuing parent-child relationship, honor the time-sharing schedule, and accommodate necessary changes.
- Anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.
- Demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child.
- Length of time the child has lived in a stable environment and the desirability of maintaining continuity.
- Geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- Mental health, physical health, and moral fitness of the parents.
- Home, school, and community record of the child.
- Reasonable preference of the child.
- Demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including the child's friends, teachers, and daily activities.
- Demonstrated capacity and disposition of each parent to:
  - Provide a consistent routine; and
  - Communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has ever knowingly provided false information about such matters.
- Particular parenting tasks customarily performed by each parent, including the extent to which parenting responsibilities were undertaken by third parties.
- Demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.
- Demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.
- Capacity and disposition of each parent to protect the child from the ongoing litigation regarding child custody.
- Developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

A court may prescribe a "parenting plan"<sup>6</sup> by which the parents are ordered to share decision-making and physical custody of the minor child. The parenting plan may order parents to exercise shared parental responsibility, it may delegate decision-making authority over specific matters to one parent, or it may grant a parent sole parental responsibility over the minor child. Common issues concerning a minor child may include education, healthcare, and social or emotional wellbeing.

### Establishment of Paternity

Pursuant to chapter 742, F.S., paternity may be established for a child born to an unmarried mother in multiple ways. Paternity may be established by adjudicatory hearing, by voluntary acknowledgement, or by the Department of Revenue.<sup>7</sup> Additionally, paternity may be established by court order in response to a Petition to Establish Paternity. Shared parental responsibility under ch. 61, F.S., does not apply until an order adjudicating paternity is entered. Without a court order specifically establishing a timesharing schedule and parental responsibility, an alleged father may be left without defined rights relating to his relationship with the child.

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<sup>6</sup> A "parenting plan" is a document created to govern the relationship between the parents relating to decisions which must be made regarding the child and must contain a timesharing schedule for the parents and child. S. 61.046(14), F.S. If a parenting plan is agreed to by the parties, it must be approved by the court.

<sup>7</sup> A request for timesharing or visitation may not be filed in a DOR action for paternity. See s. 409.2564, F.S.

### *Adjudicatory Hearing*

If paternity has been raised and determined as a matter of law within an adjudicatory hearing brought under the statutes governing inheritance, or dependency under workers' compensation or a similar compensation program, such adjudication establishes the paternity of the father.<sup>8</sup> When paternity is established through an adjudicatory hearing, the court is not required to establish parental responsibilities or a timesharing schedule.

### *Affidavit or Voluntary Acknowledgment*

Paternity may also be established by agreement. Both parents may agree and sign an affidavit of voluntary acknowledgement of paternity under oath in the presence of a notary or under oath in the presence of two witnesses.<sup>9</sup> Under this scenario, a rebuttable presumption of paternity is established and a sixty-day revocation period is triggered. During the sixty-day revocation period, either the mother or the alleged father may rescind the acknowledgement of paternity.<sup>10</sup> After the sixty day period, a signed voluntary acknowledgement of paternity constitutes an establishment of paternity and may only be challenged in court on the basis of fraud, duress, or material mistake of fact.<sup>11</sup> Alternatively, paternity may be established by both parents executing an affidavit of paternity or a stipulation of paternity and filing it with the clerk of court.<sup>12</sup> If both parents sign the affidavit or stipulation of paternity and file it with the clerk of court, paternity is deemed to be established at the time the affidavit is filed.

### *Department of Revenue*

If no acknowledgement or affidavit is completed, paternity may be established by the Department of Revenue pursuant to s. 409.256, F.S. The Department of Revenue (DOR) may commence a paternity proceeding or a paternity and child support proceeding if:

- Paternity has not otherwise been established;
- No one is named as the father on the child's birth certificate or the person named as the father is the putative father named in an affidavit;
- The mother was unmarried at the time of the child's conception and birth; or
- DOR is providing services under Title IV-D.<sup>13</sup>

DOR also has the statutory authority under s. 409.2563, F.S., to commence an administrative proceeding to establish child support obligations.<sup>14</sup>

### *Court Order*

Section 742.011, F.S., permits any woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child, to bring proceedings in court to determine the paternity of the child when paternity has not been established by law or otherwise. Section 742.031, F.S., requires the court to conduct a hearing on the complaint and establish paternity if the court finds the alleged father is the father of the child. Upon a determination of paternity, the court must decide on the ability of the parents to support the child.<sup>15</sup> In a matter brought under ch. 742, F.S., the court is not required to decide on an appropriate parenting plan or time-sharing schedule.<sup>16</sup> This could effectively result in paternity being established for the father and a child support order issued without providing a specific timesharing schedule with the child.

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<sup>8</sup> S. 742.10, F.S.

<sup>9</sup> *Id.*

<sup>10</sup> S. 742.10(1), F.S.

<sup>11</sup> S. 742.10(4), F.S.

<sup>12</sup> S. 742.10(1), F.S.

<sup>13</sup> S. 409.256(2), F.S.

<sup>14</sup> S. 409.2563, F.S.

<sup>15</sup> S. 742.031(1), F.S.

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

The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody unless a court order of competent jurisdiction enters an order stating otherwise.<sup>17</sup> If an order establishing paternity only includes a child support award and does not provide a parenting plan or timesharing schedule, the parent receiving the child support (obligee) is deemed to have all of the timesharing and sole parental responsibility without prejudice to the other parent (obligor).<sup>18</sup> Similarly, if a paternity judgment makes no child support award and does not provide a parenting plan, the mother is presumed to have all of the timesharing over the child as well as sole parental responsibility. As such, an order simply establishing paternity and nothing more, may leave the father with no decision-making authority over the child and no timesharing.

### **Effect of the Bill**

The bill amends s. 742.011, F.S., to clarify that, after the birth of a child, a parent may request a determination of parental responsibility and child support for the creation of a parenting plan and timesharing schedule pursuant to ch. 61. Absent such a determination of parental responsibility and child support, the mother would retain sole parental responsibility and all of the timesharing, even if the father had acknowledged paternity. As such, the bill includes language indicating a parent is able to request a determination of parental responsibility and timesharing in conjunction with a support determination.

The bill also amends s. 742.10, F.S., to require that an action brought in court to establish paternity must include the determination of parental responsibility and a parenting plan, and must establish a timesharing schedule and child support. The bill would attach specific parental responsibility and timesharing to the establishment of paternity for a father, rather than just ordering a child support obligation without granting the father any parental responsibility or timesharing of his child.

The bill amends s. 744.301, F.S., to clarify that an unwed mother and a father who has established paternity are the natural guardians of the child. As such, they are subject to the rights and responsibilities of parents that a married parent would enjoy. In the case where a father has not established paternity by court order or through the provisions under s. 742.10(1), F.S., the mother remains the only natural parent and is entitled to primary residential care and custody of the child.

The bill also clarifies that DOR may continue to make administrative determinations of child support pursuant to s. 409.2563, F.S.

The bill was approved by the Governor on June 9, 2023, ch.2023-209, L.O.F., and will become effective on July 1, 2023.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

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<sup>17</sup> S. 744.301(1), F.S.

<sup>18</sup> S. 742.031(2), F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.